From Tariffs to the Income Tax: Trade Protection and Revenue in the United States Tax System

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Abstract

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Utilizing historical and statistical data, it is argued that the federal income tax amendment of 1913 drastically, and somewhat inadvertently, altered the constitutional political economy of congressional trade politics by decoupling the import tariff from its traditional role as a revenue device. Prior to this change, the revenue attributes of the tariff system acted as a mild constraint upon the extreme protectionist interest group politics that characterized the early 20th century. The removal of this constraint and its ensuing policy effects are illustrative of the complex and often overlooked role that revenue may play in trade and tariff politics. By treating the 16th amendment as a trade policy measure gone awry, this study challenges the prevailing historical consensus on the original purposes and intent of federal income taxation.

I. Between Revenue and Protection

1.1 Introduction

> "The tariff is not an economic question exclusively. It is a political problem as well." – E.E. Schattschneider[1]

Excepting slavery, no single issue excited the political passions of the 19th century United States with such consistency and recurrence as the tariff. The intricacies of the tariff schedule continuously occupied the attention of Congress for over 140 years, making them among the most enduring policy debates in American history. This debate coincided with the rise and eventual demise of an "American school" of economic thought wherein tariff protectionism formed the centerpiece of federal economic policy, contrary to the emerging free-trade consensus of most economists at the time. Furthermore, it touched upon issues well beyond the spheres of theoretical and applied economic policy. Tariffs were the political scientist's quintessential example of congressional interest group politics as recently as 1930. They also played a formative role in the study of American constitutional theory and the associated concept of federalism.

Today tariffs are thought of today as an administrative policy, most commonly

[1] E.E. Schattschneider, 1935. *Politics, Pressures, and the Tariff.* New York: Prentice Hall. p. vii

associated with a multitude of highly specialized executive branch agencies holding jurisdiction over international trade. Though Congress still weighs in on trade, particularly as it concerns individual industries and prominent constituencies, they willingly ceded their leading constitutional role in tariff formation to the Executive Branch in 1934 amidst the Great Depression.

Ironically, the Smoot-Hawley Tariff act that prompted this cession of power represented the peak of the American protectionist school's policy influence some four years prior. E.E. Schattschneider (1935) famously observed that "(i)f one is permitted to appraise this legislation apart from its economic consequences, it must be rated as one of the most notable political achievements in American history."[2] It was the most complex and far-reaching piece of legislation that Congress ever assembled up until that point. The statute also raised tariff rates to a level unseen since the 1828 "Tariff of Abominations," only this time applied to a significantly larger industrial economy.

When its economic effects are taken into account, Smoot-Hawley often ranks among the worst policy blunders of the Great Depression.[3] The new tariff schedule decimated international trade, both through its protective rates and the resulting wave of foreign retaliation. From 1929 to 1933 U.S. exports declined from $5.2 billion to $1.7 billion and imports from $4.4 billion to $1.5 billion, or roughly two thirds of international

[2] Schattschneider, 1935. p. 283

[3] Scholarly opinion concerning the blunderous effects of the Smoot-Hawley tariff was already widely ascribed to before the measure even took effect. In May 1930 over a thousand economists signed a letter to President Hoover urging a veto of the bill out of concern that it would ignite a retaliatory tariff war and exacerbate the emerging depression. "1028 Economists ask Hoover to Veto Pending Tariff Bill," *New York Times,* May 5, 1930.

trade before the tariff's adoption.[4] Thomas Rustici (2005) argues that Smoot-Hawley "created much more economic damage than conventionally assumed" when its broader effects upon agriculture and the U.S. banking system are considered.[5] U.S. agricultural exports, he notes, were particularly harmed by the collapse of international trade. This collapse caused "agricultural export communities [to] experience[e] concentrated dead weight loss inefficiencies," sparking a wave of rural bank failures beginning in November 1930 and thus, ultimately, the onset of the Great Depression's banking crisis.[6]

Though notable in itself for the economic woes it produced, Smoot-Hawley marks a political watershed in the history of United States trade policy formulation. In 1934, on the heels of the 1930 tariff's disastrous policy effects, Congress reacted to its blunder by completely reorganizing the procedures by which the United States government conducts its trade policy. This change took form in the Reciprocal Trade Agreements Act of 1934, which initiated a shift in the tariff-setting power from its historical place in Congress to the executive branch. A shift of this magnitude would have been unthinkable only four years prior. "The very tendencies that have made the legislation bad," wrote Schattschneider, "have…made it politically invincible."[7] Viewing Smoot-Hawley with the benefit of hindsight, one could take this observation a step further. The institutional framework of lawmaking that rendered Smoot-Hawley impossible to repeal through conventional tariff schedule revisions produced an outcome of such disruptive proportions that a subsequent Congress was willing to abdicate its tariff-setting powers to

[4] C.K. Rowley, W. Thorbecke and R.E. Wagner, 1995. *Trade Protection in the United States.* Aldershot, UK: Edward Elgar. p. 160
[5] Thomas C. Rustici, 2005. *The economic effects of the Smoot-Hawley Act of 1930 and the beginning of the Great Depression*. Doctoral dissertation, George Mason University. p. 253
[6] *Ibid.*, p. 250
[7] Schattschneider, 1935. p. 283

save international trade from itself.

In viewing the events of 1930 and 1934, a question arises as to why these legislative outcomes occurred at this particular point in history. The tariff-setting power had been exercised almost exclusively by Congress since the founding era and, though it had produced several periods of heavy protectionism, it had never inextricably degraded into the extreme state of interest-driven politics experienced in 1930. The Tariff of Abominations briefly pushed the country to the brink of disunion in 1832, but even its problems were not without legislative resolution by way of a compromise rate reduction the following year. In fact, when viewed as a whole, tariff politics of the United States from 1789-1930 are characterized by either the balance and counterbalance of free trade and protectionist interests or, more often, prolonged periods of relatively high but stable protectionism.

The antebellum era saw competitive policy fluctuations from the founding until 1846, followed by a brief 15 year period of moderate free trade. In 1861 the United States began a 50 year commitment to protectionism that, although subject to minor tweaks amidst the occasional pressure of a free-trade faction in Congress, remained intact with remarkable consistency. 1913 witnessed a brief period of trade liberalization as the country transitioned to the income tax revenue system, only to be followed by a decade of resurgent protectionism culminating in Smoot-Hawley.

Several questions immediately emerge from even this cursory synopsis of U.S. tariff history. Why did protectionism survive and thrive virtually unimpeded for 50 years between the Civil War and the Underwood Tariff of 1913? Why did this period differ markedly from the fluctuations between high and low tariff policies prior to 1860 and

after 1913? Why were the effects of Smoot-Hawley so disastrous compared to the relatively minor disruptive effects of its protectionist predecessors, and, equally notable, why were its political effects so problematic as to justify the RTAA?

The answers stem from the underlying argument of this text, to wit: the political resolution of tariff policy in the United States has been directly affected by the constitutional mechanisms governing its creation, and changes to those mechanisms over time. In the most immediate implication of this argument, tariff politics in the 19th and early 20th centuries were driven by two simultaneous policy functions, one mandated by a clause of the Constitution and the other a presumed extension of the very same enabling clause. As the function of that clause changed, so too did the political results it produced, and thus the precipitous drive to Smoot Hawley in 1930.

Since its introduction at the constitutional convention in 1787 the import tariff has played a central and often concurrent role on two fronts of American policymaking – raising revenue and trade protection. The simultaneity of these seemingly divergent policy goals is no coincidence. In fact, it stems from a relatively unique characteristic of tariffs that sets them apart from many other forms of entry barrier-oriented economic regulations. As explained by Tullock (1967), tariffs exhibit a dual rent characteristic in which they provide both revenue for disbursement in the form of expenditures and industry protection in the form of higher prices on their import competitors.[8]

The availability of a tariff's revenue and protection rents may be seen in partial equilibrium from Figure 1.1-A

[8] Tullock, 1967, in Rowley, ed. p. 174; Rowley, Thorbecke, and Wagner, 1995, pp. 82-83

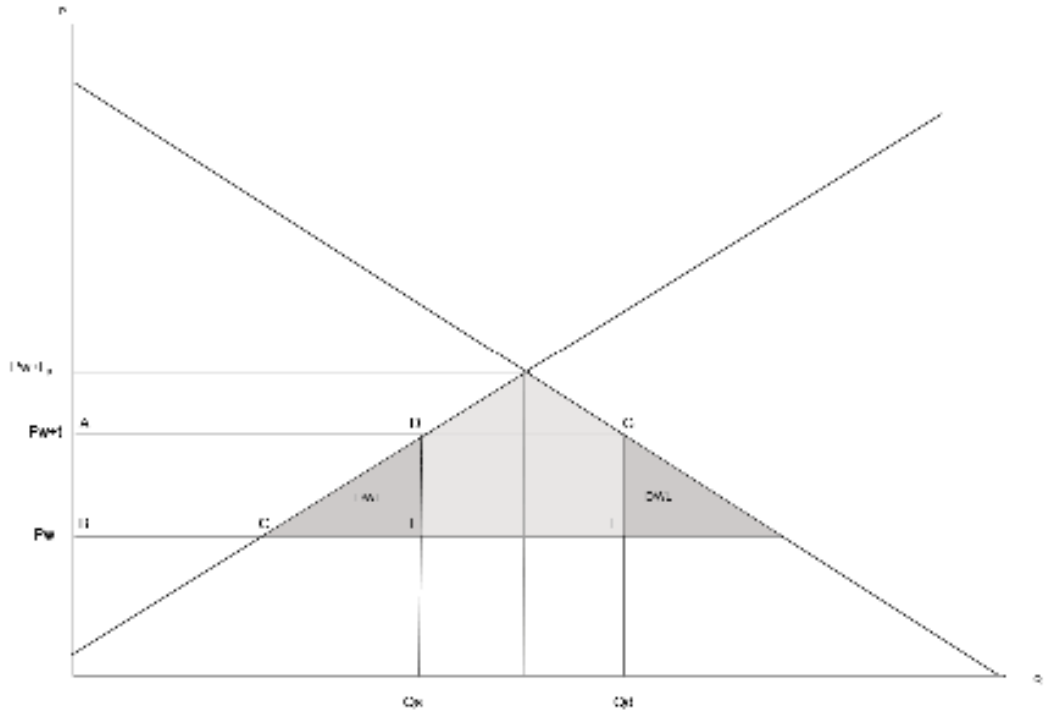

Figure 1.1-A, The Tariff in Partial Equilibrium

The imposition of a tariff *t* induces a consumer surplus transfer. The protection rent, representing the producer surplus transfer, is designated ABCD. The revenue rent is designated DEFG, representing the duties assessed against the import good and made available for disbursement through government expenditures. Noting this condition, Tullock describes a pure rent-seeking environment in which "domestic producers would invest resources in lobbying for the tariff until the marginal return on the last dollar so spent was equal to its likely return producing the transfer."[9] It thus becomes possible that "rational wealth-seeking domestic producers as well as rational government-revenue-seeking interests" will expend significant resources in the pursuit of a tariff, creating a

[9] Tullock, 1967, p. 174

substantial diversion of money to wasteful and unproductive activities.[10]

To a point, the interests of protection and revenue rent-seekers will coincide as a tariff's rate increases. A rate increase that generates additional revenue simultaneously imposes higher prices on the import competitors of the target industry. So long as this condition holds, the lobbying goals of both groups should exhibit legislative congruence. In theory, a tariff's protective rent should increase exponentially as rates increase until complete prohibition is obtained against import competitors, leaving only the domestic producer. The same cannot be said of a tariff's revenue-generating capacity. As prohibition completely deflects the importation of a good, no revenue is actually collected. Revenue capacity necessarily peaks at a rate well to the left of prohibition, indicating that tariffs exhibit the characteristics of the famous (or infamous depending on one's political perspective) Laffer relationship.[11]

The intuitive concept behind the Laffer curve anticipates a point at which a tax's deterrent effects upon the taxed good or activity overcome and thus diminish its revenue capacity. Yet as Alan Blinder (1981) observes, this occurrence is simply the product of its underlying mathematics. Per Rolle's theorem, in a continuous and differentiable function

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[10] Rowley, *et al*, 1995, p. 83

[11] The political connotation of the name "Laffer Curve" is not without controversy, particularly given its central role to the debate surrounding "supply side" income taxation in the late 20th century. For the purposes of the present study it is used strictly as a matter of accessibility, given the curve's established familiarity in the economic lexicon. The term's use in the present study bears little normative relation to its more familiar modern iteration as a tenet of "supply side" macroeconomic theory though, rather being considered strictly as an explanatory device for the study of tariff rates. In fact, the Laffer Curve's application to trade substantially predates its modern formulation by Arthur Laffer, being referenced by Jonathan Swift in the context of taxation as early as the 18th century and tracing back at least to John C. Calhoun in 1842 for the particular instance of national tariff policy. See Clyde Wilson, ed., 1992. *The Essential Calhoun.* New Brunswick, N.J.: Transaction Publishers, p. 194. Henry George made similar use of the concept in 1886 while developing his political economy arguments on the nature of trade protectionism. See George, 1886. *Protection or Free Trade.* New York: Henry George Co., p. 74. Designating the Laffer concept by another name, be it Swift, Calhoun, or George, may accordingly convey greater historical accuracy, though it would also limit the accessibility of the present study to scholarly audiences as none of these alternative designations is in widespread use.

on the x-axis with two equal points, or $f(x)$, a point must exist between them where $f'(x) = 0$. This point coincides with the Laffer Curve's peak, or its maximum revenue capacity.[12] For tariff rate t, revenue R = tpM, where p is the taxed good's price and M the amount imported. It follows that revenue will be maximized at tariff rate t* where $dR/dt = 0$, as illustrated in Figure 1.1-B.

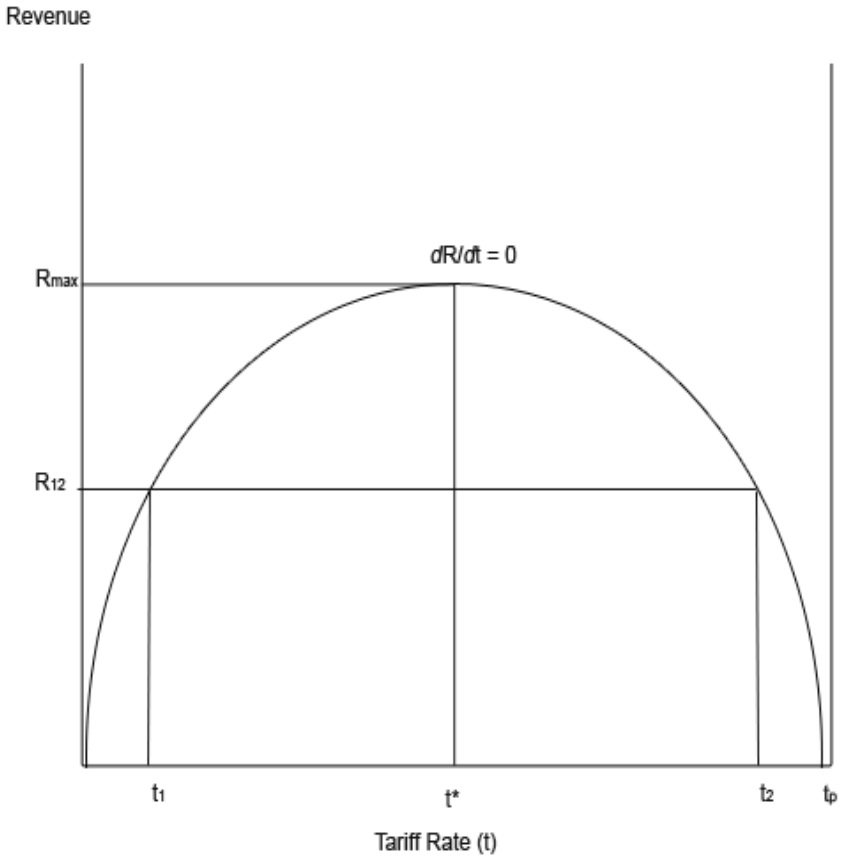

Figure 1.1-B, The Tariff and the Laffer Relationship

[12] Alan S. Blinder, 1981. "Thoughts on the Laffer Curve." in Meyer, L.H., ed. *The Supply-Side Effects of Economic Policy*. Center for the Study of American Business, Washington University St. Louis and the Federal Reserve Bank of St. Louis, pp. 81-92.

The existence of a Laffer relationship for tariffs carries substantial political economy implications of its own in addition to those associated with rent seeking. The divergence of the revenue maximizing rate of t* from higher rates intended to deter importation indicates that protection-seeking and revenue-seeking interests will not always coincide as they attempt to influence the character of a proposed tariff. In a tax system that derives a large amount of its revenue from tariffs, the political competition for these rents will inevitably interact.

The implications of the tariff's dual rent characteristic are significant to understanding the development of U.S. trade policy. From 1789 until 1913 the tariff system functioned as the primary source of revenue for the United States government. Tariffs were simultaneously employed to provide tax revenue and varying levels of protection for import-competing industries. The legacy of both aspects outlived the transition of the revenue system to the modern income tax after 1913. As recently as 1932 the Democratic Party advocated return to "a competitive tariff for revenue," while the Republican Party openly espoused tariff protection well into the 1940's.[13]

Viewed in sum, the "legislative tariff era," stretching from the founding of the United States until the Reciprocal Trade Agreements Act of 1934, provides one of the longest existing records of the political relationship between revenue and protection rent-seekers. It is also among the least understood, owing in large part to a diffuse and inconsistent body of historical literature and, more importantly, the unfamiliarity of a tariff-based national revenue policy to the modern United States. Tariff revenue systems

[13] Democratic Party Platform of 1932, American Presidency Project, University of California Santa Barbara, http://www.presidency.ucsb.edu/showplatforms.php?platindex=D1932, Accessed August 19, 2007.

are not unknown to the world today. The Bahamas still regularly obtains in excess of 50% of its revenue from tariffs, and many similarly situated countries in the Caribbean and sub-Saharan Africa obtain more than a quarter of their revenues by taxing trade. As of 2004, taxes on trade supplied at least 10% of the public treasury in 30 countries.[14] But for the United States, which once financed as much as 90% of its annual budget from import duties, tariffs have not been a significant source of revenue since shortly after the income tax amendment of 1913.

This dissertation proposes to investigate the bygone era of tariff finance, and in so doing untangle the complex relationship between the tariff's dual rent principle and its governing constitutional mechanisms. The subsequent analysis will further attempt to explain specific problems of U.S. tariff history through the insights provided by these concepts, utilizing both historical research and data analysis of annual imports into the United States. It is posited that the rapid transformation of tariff politics from 1913-1934 is directly attributable to the tariff's dual rent relationship, and the impact that a major constitutional change – the income tax amendment – had on the legislative execution of the tariff system.

Such analysis will assist the explanation of significant policy problems in U.S. history such as Smoot-Hawley, in addition to providing insight for the operation of tariff revenue systems, including those in use today. Before forming a theory of the income tax amendment's effects on the U.S. tariff system, it is first necessary to establish the status of "tariff history" as a subject of scholarly inquiry, and its relationship to relevant concepts from economics and constitutional theory.

[14] World Development Indicators, World Bank, 2007

1.2 The Tariff in U.S. History

> "The superiority of free trade is of the profession's most cherished beliefs, yet international trade is rarely free" – Dani Rodrik[15]

Though a topic of academic discussion for over a century, tariff history in the United States remains a loosely defined area of inquiry for scholars. It draws from many disciplines, notably history, economics, political science, and constitutional law. It is also an inherently broad topic due to its endurance for well over a century. As a result different disciplines and scholarly traditions have independently developed their own theories of particular events in tariff history, often lacking consistency with other disciplines or even awareness of their contributions.

Economists naturally tend to view tariff history through the lens of trade theory, and accordingly exhibit the discipline's well-established free trade orthodoxy.[16] The case is far less clear among historians, where a surprising amount of sympathy is often

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[15] Dani Rodrik, 1995. "Political Economy of Trade Policy." In Grossman, G.M, and Rogoff, K. eds. *Handbook of International Economics III.* Amsterdam: Elsevier, p. 1458.

[16] As Rodrik (1995, p. 1458) observes, "The superiority of free trade is one of the [economics] profession's most cherished beliefs." Economist Paul Krugman has discussed circumstances, generally termed "new trade theory," in which free trade may not necessarily serve a country's best interests as the Ricardan theory of comparative advantage would suggest. Krugman attaches a qualification to his observation though, noting that the positive question of the theoretical benefits of trade interventionism in particular circumstances is complicated by the normative question of whether governments should pursue this course in policy. The problem of rent-seeking may dissipate the theorized gains of strategic trade regulation, and the ability of a government to pursue a strategic policy may be rendered impractical by political capture of the intended regulatory mechanism. Krugman therefore observes that the result of such a policy "can easily be that excessive or misguided intervention takes place because the beneficiaries have more knowledge than the losers." Indeed, he continues, this tendency is so commonplace in the history of United States trade policy that seeking an objective arbiter of strategic trade decisions from existing regulatory bodies such as the U.S. Commerce Department is probably "not realistic." A "blanket policy of free trade," he continues, "may not be the optimal policy according to theory but may be the best policy that the country is likely to get." See Krugman, 1987. "Is Free Trade Passe?" *Economic Perspectives,* Vol. 1-2, p. 142. Given that the present dissertation pertains directly to historical episodes in which the domestic political systems of the United States operated in this manner, the widespread preference given to free trade by academic economists is taken under this caveat as a representative consensus of the discipline.

extended to the protectionist arguments of the late 19th century, of which more is to be said. In addition to the divergence of their methodological approaches, this lack of consensus is likely a product of the diffuse and sporadic nature of the U.S. tariff history literature. Though it traversed several decades, the tariff issue's recurrence ensured that it did not become associated with a single defined "era" of history such as the Progressive Era, the Civil War Era, the Jacksonian era, the "Gilded Age," or the Great Depression. Tariff politics entered each of these periods much as they left them – a politically contentious issue that outlived its age before attaining a lasting resolution. At most, each of these "eras" only altered the side which enjoyed the upper hand of tariff policymaking.

Scholars have long acknowledged the underdeveloped state of the historical tariff literature, particularly between the first half of the 19th century and the early 20th century. At the time of his 1977 study – arguably the most extensive lobbying model of a 19th century tariff to date – Jonathan Pincus observed that existing work on "the effects of antebellum tariffs is not very full or detailed."[17] Douglas E. Bowers made a similar observation in 1983, describing mid 19th century lobbying in particular as a "neglected chapter in American history" that had only begun to analyze the tariff issue. As James L. Huston's (2004) survey of 19th century historical scholarship indicates the literature has only recently experienced a surge in attention toward political economy and its lobbying elements. Unfortunately recent historical interest in political economy is still in its relative infancy with only occasional work being done on tariff lobbying. Nor is this problem a new one – as early as 1894 O.L. Elliott observed a deficit of scholarly material

[17] Jonathan J. Pincus, 1977. *Pressure Groups and Politics in Antebellum Tariffs.* New York: Columbia University Press, p. 91

on historical American tariff policy, particularly in the period between the Constitutional Convention and the Civil War.[18]

Literature covering the late 19th and early 20th century is in slightly better shape, largely due to the attentiveness to this period in Frank Taussig's (1931) classic *Tariff History of the United States* and subsequent studies such as Richard Franklin Bensel's (1990, 2000) political-economic histories of the late 19th century. Historians have also explored specific pieces of legislation from this era in depth, including the Wilson-Gorman, McKinley, and Payne-Aldrich tariffs, and specific tariff-conducive industries such as iron and cotton textiles.[19] The resulting tariff literature is still dependent on a small number of works, typically dissociated from each other or a broader tariff narrative. Moreover, as the reader advances further into the early 20th century, the tariff issue becomes an overlooked feature in the larger body of "Progressive Era" history.

This state of neglect becomes particularly problematic when addressing the central focus of the present study, the transition from the tariff revenue system to the income tax in 1913 and its related constitutional and political implications. Many histories of the Progressive Era, and the income tax movement in particular, carry an unusually strong ideological bent that offers little room for the dry mechanics of trade

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[18] Douglas E. Bowers, 1983 ''From Logrolling to Corruption: The Development of Lobbying in Pennsylvania, 1815– 1861,'' *Journal of the Early Republic,* Vol. 3, pp. 439–74; James L. Huston, 2004. ''Economic Landscapes Yet to be Discovered: The Early American Republic and Historians' Unsubtle Adoption of Political Economy,'' *Journal of the Early Republic,* Vol. 24, pp. 219–32; O.L. Elliott, 1894."Review: The First Stages of the Tariff Policy of the United States." *Annals of the American Academy of Political Science.* 5:108-111. pp. 108-9.

[19] Examples include Joanne R. Reitano, 1994. The Tariff Question in the Gilded Age: the Great Debate of 1888. College Park, PA: Penn State University Press; Paul Wolman, 1992. Most Favored Nation: The Republican Revisionists and U.S. Tariff Policy, 1897-1912. Chapel Hill, NC: University of North Carolina Press; Richard J. Joseph, 2004. The Origins of the American Income Tax. Syracuse, NY: Syracuse University Press; Robert Fogel and Stanley Engerman, 1969. "A Model for the Explanation of Industrial Expansion during the Nineteenth Century." Journal of Political Economy, 7-3:306-328.

economics. Though occasional exceptions exist, most historians of this period treat the 16th Amendment as a left-progressive social policy, intended from its outset to rectify the gap between rich and poor.[20] The protective tariff, which was actually the central issue of the events in Congress that produced the amendment, becomes little more than an afterthought in this paradigm, wherein the income tax is approvingly assumed to serve the purpose of wealth redistribution and the effects of the tariff on international trade becomes an entirely dissociated policy area of its own.

Scholarly studies of the tariff in the United States prior to 1934 generally fall into two categories. The first consists of broad narrative overviews of the "tariff history" genre for the United States. These works typically tell the story of U.S. history through its tax laws, starting with the first tariff of 1789 and continuing to the system in place at the time of publication. Notable examples include Taussig (1931), Stanwood (1904), Hill (1893), Thompson (1888), and McKinley (1894) as well as a more recent body of "taxation histories" including Ratner (1971, 1980), and Weisman (2002).[21]

The earliest examples of the "tariff history" genre, though detailed and historically informative, were often little more than political tomes for protectionism as in the case of Thompson and McKinley. As the economics of free trade gained wider acceptance, the "tariff history" genre attracted greater scholarly input. The most influential work by far is Taussig's *Tariff History of the United States,* begun in the late

[20] The historiography of the income tax amendment, including its left-progressive ideological emphasis, is discussed in further detail in Chapter 4.2.

[21] William McKinley, 1904. *The Tariff.* New York, NY: G.P. Putnam's Sons; Edward Stanwood, 1903. *American Tariff Controversies in the Nineteenth Century.* Boston and New York: Houghton Mifflin & Co; William Hill, 1893. *The First Stages of Tariff Policy in the United States.* Baltimore: Guggenheimer, Weil & Co; R.W. Thompson, 1888. *The History of Protective Tariff Laws.* Chicago: R.S. Peale and Co; Sidney Ratner, 1972. *The Tariff in American History.* New York: Van Nostrand; Frank W. Taussig, 1931. *The Tariff History of the United States.* 8th Ed. New York: G.G. Putnam & Sons; Steven R. Weisman, 2002. *The Great Tax Wars.* New York: Simon and Schuster.

1880's and updated to reflect each successive tariff revision through Smoot-Hawley. Still in print a century later, Taussig's work remains the standard roadmap to early American tariff history. Stanwood's two-volume work from 1904 similarly remains the defining, and in many regards the only, comprehensive legislative history of 19th century tariffs. The work is unfortunately limited by its author's open embrace of protectionist trade theory, a source of critique from other scholars including Taussig in his own day.[22] Stanwood's exhaustive detail separates his writings from earlier political tracts containing legislative histories, but his politics nonetheless provide a caveat to his conclusions.

Both of these works have effectively attained "classic" status, and Taussig in particular has endured as a primary component of the trade history literature. Unfortunately, surprisingly little has emerged since 1931 – the year of Taussig's last edition – to either update or expand upon U.S. "tariff history" as a whole. Aside from Ratner, the closest exceptions appear in a subset of works addressing specific historical periods, such as Bensel's (1990, 2000) two volumes covering the political economy of economic policies from 1859-1900 and Verdier's (1994) comparative study of international trade lobbying in the United States, Britain, and France after 1860. Nonetheless the once-vibrant genre of "tariff history" has suffered from neglect for the better part of a century, leaving a deservedly respected but dated and infrequently expanded upon literature as the core of modern historical inquiry.

The second category consists of a broader and much more loosely defined set of case studies addressing specific topics in U.S. trade history, typically a single tariff act,

[22] F.W. Taussig, 1904. "Review: American Tariff Controversies in the Nineteenth Century." *Political Science Quarterly.* Vol. 19-2, pp. 302-305.

an election, or a historical tariff's impact on a single industry. These studies range in method from mathematical models, such as Fogel and Engerman's (1969) examination of the iron industry to historical and political narratives, such as Schattschneider's (1934) assessment of the Smoot-Hawley tariff. Authors such as Irwin (1998), James (1978), and Reitano (1997) have chosen to make case studies of particular tariff laws, using both statistical and narrative methods. As may be expected, these studies split between the disciplines of economics and history.

Collectively both the narrative accounts and case studies provide a respectable framework of material on the historical U.S. tariff system, though also one that has many unfilled gaps and is often limited to a handful of classic works. Equally problematic is the troublesome association between economic theory and history in much of the existing tariff literature. Taussig wrote his *Tariff History* as a trade economist, and a handful of modern writers, notably Irwin, Bensel, and McGuire and Van Cott, have since demonstrated the value of economic theory in explaining historical trade policy. However, a pronounced gap between economists and historians on matters of trade still exists, as illustrated in McGuire and Van Cott's (2003) attempt to integrate the Lerner symmetry theorem into U.S. tariff history. Much to the authors' dismay, this well known tenet of international economics was virtually unacknowledged among U.S. tariff historians outside of the economics discipline. McGuire and Van Cott observed a tendency of historians to explain the tariff solely through "higher import prices" on the taxed goods, ignoring its symmetry consequences and their propensity to undermine the

Constitution's prohibition on export taxes.[23]

Examples abound in which prominent historians attempt to assess historical tariff policies without the benefit of a solid grounding in economic theory. The result is often marked by confusion about the tariff's dual rent properties, oversimplification of its political economy, and unfamiliarity with a complementary literature based on economic modeling. They emphasize the tariff's readily visible effects on revenue, whereas protective rent-seeking and especially the tariff's symmetry effects are little understood.

One recent exchange in a popular Civil War periodical illustrates some of the perils of tariff history unaided by economic grounding. In an article entitled "The Truth about Tariffs" James M. McPherson, a Pulitzer Prize winning historian and former president of the American Historical Association, was asked to comment on the tariff's incidence and burdens in the decades before the Civil War (a time when tariff politics also contributed to the sectional divisions between the North and South). Without hesitance, McPherson offered an estimate of each region's tariff burdens based on a cursory examination of census figures and anecdotal information about regional consumption patterns of dutiable goods.[24] In actuality, the analysis reflected tariff incidence as realized only through its revenue component, which "supplied ninety percent of federal revenue before the Civil War." Astonishingly, McPherson made little to no accounting of the tariff's protective component, its deterrent effects, or the Lerner symmetry principle. Furthermore, he discounted the ability of historians to measure tariff incidence more precisely than his own "fair guess," apparently unaware of an extensive

[23] R.A. McGuire and T.N. Van Cott, T.N., 2003. "A Supply and Demand Exposition of a Constitutional Tax Loophole: The Case of Tariff Symmetry." *Constitutional Political Economy,* 14(1), pp. 39-45. Note 6.
[24] James M. McPherson, 2004. "The Truth About Tariffs." *North and South.* Vol. 7, Number 1, p. 52

economic literature, typified by James (1978), which attempts to do precisely that using a far more sophisticated general equilibrium model.[25] In a final stroke of irony, McPherson wrote his article in response to another historian, Charles Adams, who acknowledged the tariff's symmetry effects but mistakenly attributed them to a direct policy of export taxation. The United States had no such policy after 1787, as it was prohibited by the Constitution.

The confused economic analyses of historians such as Adams and McPherson are not atypical when it comes to matters of historical tariff policy. The author's own examination of the Morrill Tariff Act revealed a long chain of historians who concluded the statute was a "revenue measure," devoid of interest group pressures, based solely on the word of its congressional sponsors in their public speeches about the bill. In actuality, evidence from the private letters of the tariff's primary sponsors revealed the opposite to be true. Dozens of specific rates in this tariff schedule were decided in direct collusion with protection-seeking interest groups.[26]

In some cases, the problem created by the absence of a background in trade economics is pervasive. The late 1860's were crucial and formative years for the protective regime that lasted until 1913, and Heather Cox Richardson's (1997) *The Greatest Nation on Earth* is widely viewed as the definitive history of the Republican Party's economic program in this era. Richardson's work contains a detailed and thoroughly researched recounting of tariff policy at the close of the Civil War, yet she approaches the rise of protectionism and the motives behind it with ostensibly uncritical

[25] John A. James, 1978. "The Welfare Effects of the Antebellum Tariff: A General Equilibrium Analysis." *Explorations in Economic History.* Vol. 15, pp. 231-256.
[26] Phillip W. Magness, 2009. "Morrill and the Missing Industries: Strategic Lobbying Behavior and the Tariff of 1861." *Journal of the Early Republic*, Vol. 29 (Summer).

concurrence. The high tariff policies that emerged in 1865, readers are told, "were designed to strengthen and benefit all parts of the American economy, raising the standard of living for everyone" in accordance with the long-discredited trade doctrines of Henry C. Carey.[27] Richardson similarly discounts any suggestion of a rent seeking motive behind the rate increases: "Far from catering to a specific economic interest when they developed their revenue legislations, the Republicans tried to bolster a new national system." Carey is quoted with seeming approval about the need to escape the "tyranny" of British commerce. The brief "free trade" movement under the 1846 and 1857 tariffs is treated unfavorably as a time of "increasing dependence on imports." Post-war tariffs are said unquestioningly to have "bolstered the national economy," though with little to show for this claimed effect beyond the general pattern of late 19th century industrialization, acknowledged *post hoc*. In short, the late 19th century protective regime that the Republican Party established after the Civil War is portrayed as an integral and positive component of American industrialization.[28]

It may be duly noted that the dramatic rise of U.S. industrialism in the late 19th century occurred under a prolonged heavy tariff regime. This condition has proven paradoxical to historians and economists alike, who generally believe that the American economy grew in spite of the tariff's ill effects because of the country's size and market integration.[29] Other historians have been less enthusiastic about protectionism's benefits,

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[27] Heather Cox Richardson, 1997. 1997. *The Greatest Nation on Earth.* Cambridge: Harvard University Press., p. 136.
[28] *Ibid*, pp. 136-8
[29] Thomas K. McCraw, ed., 1997. *Creating Modern Capitalism: How Entrepreneurs, Companies, and Countries Triumphed in Three Industrial Revolutions*. Cambridge, MA: Harvard University Press. p. 314; Douglas A. Irwin, 2007. "Tariff Incidence in America's Gilded Age." *Journal of Economic History,* Vol. 67, pp. 582-607.

but similarly uncritical in their analysis of its origins. For example, David Montgomery's highly regarded history of the Reconstruction era (1865-1877) restates Carey's arguments for protectionism in detail, yet ignores the possible presence of an interest group element behind the "national strength" arguments.[30]

Ignorance of trade economics is also a prominent feature of many biographies of Alexander Hamilton. Duly celebrated as a founding father, a *Federalist Papers* co-author, and an accomplished politician as the first Secretary of the Treasury, Hamilton's formative role in the early stages American trade policy is difficult to understate. His influence should not be mistaken for soundness in his theories of international trade. While articulate and immensely capable in his economic thought, Hamilton remained an ideological follower of protectionism for most of his life and subscribed to trade theories that were considered retrograde even in his own day. As early as 1774 he lent his support to the radical doctrine of autarky as a pretext for American independence:

> Food and clothing we have within ourselves. Our climate produces cotton, wool, flax, and hemp; which, with proper cultivation, would furnish us with summer apparel in abundance. The article of cotton, indeed, would do more; it would contribute to defend us from the inclemency of winter. We have sheep, which, with due care in improving and increasing them, would soon yield a sufficiency of wool. The large quantity of skins we have among us would never let us want a warm and comfortable suit. It would be no unbecoming employment for our daughters to provide silks of their own country. The silk-worm answers as well here as in any part of the world. Those hands which may be deprived of business by the cessation of commerce, may be occupied in various kinds of manufactures and other internal improvements. If, by the necessity of the thing, manufactures should once be established, and take root among us, they will pave the way still

[30] For example, see David Montgomery's restatement of Carey's "national strength" motive for protection and comparable neglect of the interest group motive. Montgomery, 1981. *Beyond Equality: Labor and the Radical Republicans, 1862-1872.* Urbana: University of Illinois Press, pp. 86-7.

> more to the future grandeur and glory of America; and, by lessening its need of external commerce, will render it still securer against the encroachments of tyranny.[31]

This formative statement carries the caveat of its political purpose in an anti-British pamphlet, as well as Hamilton's young age at its publication, yet the protective doctrine was a theme he would revisit many times. In 1782 he wrote:

> To preserve the balance of trade in favor of a nation ought to be a leading aim of its policy. The avarice of individuals may frequently find its account in pursuing channels of traffic prejudicial to that balance, to which the government may be able to oppose effectual impediments.[32]

The "vesting Congress with the power of regulating trade ought to have been a principal object of the Confederation," he continued, for "[i]t is as necessary for the purposes of commerce as of revenue." Those "who maintain that trade will regulate itself, and is not to be benefited by the encouragements or restraints of government" stood "contrary to the uniform practice and sense of the most enlightened nations."

Hamilton acutely recognized the role of the tariff in revenue generation, and capably explained it to the New York state convention during the ratification of the Constitution. Yet he also clung to the belief that government should actively manage the trade of foreign goods into the United States and returned to this theme on multiple subsequent occasions. William Graham Sumner, the 19th century sociologist and historian, summarized Hamilton's intellectual development on trade in noting that by 1791 "he was completely befogged in the mists of mercantilism."[33]

The hard line position of Hamilton's 1774 pamphlet moderated with time,

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[31] Alexander Hamilton, [1774]. "A Full Vindication of the Measures of Congress," in Richard B. Vernier, ed., 2008. *The Revolutionary Writings of Alexander Hamilton.* Indianapolis: Liberty Fund.
[32] Hamilton, [1782]. "The Continentalist, No. V." in Vernier, ed., 2008.
[33] William Graham Sumner, 1890. *Alexander Hamilton.* New York: Dodd, Mead, & Co. p. 180

supplanted by a milder tariff-based approach to bridge the price difference between foreign and domestic producers, and also by his acute recognizance of the revenue-generating ability of import taxation. He remained the country's most influential protectionist voice though until his disposal in the famous duel with Aaron Burr in 1804, and personally shaped most of the early tariff statutes of the United States. His influence persisted even further in death, directly inspiring the "American System" political economy of Henry Clay and Matthew and Henry C. Carey as well as the German Historical School of Friedrich List. The elder Carey called Hamilton "the road to true independence" and the "light" against the "darkness" of Smith's free trade. List studied Hamilton during a brief residency in the United States in the 1820's, and cited him as a forerunner to his own school of thought.[34]

Hamilton's fullest articulation of his own version of protectionism appeared in his 1791 *Report on Manufactures* to Congress. The last of his three major papers on the Treasury, the *Report on Manufactures* contained both a visionary expression of American economic nationalism and Hamilton's specific policy prescriptions to attain it. The *Report* was in many ways a necessary rejoinder to extreme agrarianism, which viewed industry with distrust and deemed manufacturing an economically inferior trade to the cultivation of raw materials. As policy though, Hamilton's treatise intended that the tools of trade regulation be used to stimulate and encourage the development of a manufacturing sector. The *Report's* prescription may be broadly categorized as a program of (1) import substitution, (2) strategic and "infant" industry development, and (3) the

[34] See Matthew Carey, [1822] 1968. *Essays on Political Economy,* New York: Augustus M. Kelley, pp. 99-100; Friedrich List. 1827. *Outlines of American Political Economy in a Series of Letters to Charles J. Ingersoll.* Philadelphia: S. Parker. Letter V.

countervailing of discriminatory trade practices abroad.

Each component was interrelated. Addressing the first of these objects, Hamilton observed the abundance of agricultural raw materials in the United States. Noting trade discrimination against American products from Europe, he urged that "a more extensive demand for that surplus may be created at home" through the encouragement of a manufacturing sector. Second, such encouragement was particularly indispensible "in the infancy of new enterprises" where foreign competition, or even consciously discriminatory policies, could inhibit the natural development of a given industry. Hamilton's third argument conceded that his program would be unnecessary if "the system of perfect liberty to industry and commerce were the prevailing system of nations." A reality of the "opposite spirit" justified intervention.[35]

In the remainder of the *Report* Hamilton delineated eleven different policies that could be used to encourage manufacturing. They ranged from public subsidy of transportation and infrastructure, commonly known as "internal improvements" in the 18th and 19th centuries, to regulatory measures intended to influence national commerce. Some were admittedly impractical from a constitutional standpoint, such as the taxation of exports. The two most relevant policies for trade, and among those Hamilton lent his favor, were "Protecting duties -- or duties on those foreign articles which are the rivals of the domestic ones intended to be encouraged" and "pecuniary bounties," or subsidies to desired articles of manufacture. Hamilton expressed a preference for bounties over protective tariffs on the basis that they did not have "a tendency to produce scarcity." He

[35] Alexander Hamilton, "Report on Manufactures" in *Annals of Congress*, 1st Congress, Volume II, Appendix, pp. 971-1034.

endorsed both policies though, noting of tariffs that the "propriety of this species of encouragement need not be dwelt upon, as it is not only a clear result from the numerous topics which have been suggested, but is sanctioned by the laws of the United States, in a variety of instances." This policy also had "the additional recommendation of being a resource of revenue."[36]

His pen turned next to a description of industries worthy of protection and encouragement for a variety of strategic and economic reasons. Iron and its manufactures were "entitled to pre-eminent rank" and recommended as the object of an "additional duty." Copper, lead, coal, glass, and over a dozen other manufactured articles received Hamilton's recommendation. He also suggested specific increases to the existing tariff rates, most of them surprisingly mild by later standards. The moderation of these specific recommendations likely reflected the infancy of the federal tariff system itself, as well as Hamilton's intent that they be coupled with a bounty program that Congress received with far greater reluctance.[37] Frank Taussig nonetheless credits Hamilton's "powerful advocacy of protection" in the *Report* for the early prominence of tariffs in the American political dialogue.[38]

Hamilton's essay was significant in its own time for its eloquent presentation of the infant industry argument for protection, described as "more detailed than any previous writer" on the subject. Yet as Douglas Irwin notes, "there is little that is

[36] *Ibid*.
[37] Sumner (1890, p. 180) suggests that Hamilton "was not disposed to press his notions" of commercial protectionism as policy, probably owing to its conflict with other political aims such as revenue.
[38] Taussig, 1931. p. 16.

fundamentally new in his analysis."[39] The document largely culled from older mercantilist pamphlets, albeit presented more succinctly and persuasively than many of its predecessors.[40]

Influential as it was to policymakers, the policy prescriptions of Hamilton's *Report* have little more to offer to the modern study of international trade than the interminable protectionist tracts they inspired from Henry C. Carey. Nobel Laureate economist Milton Friedman dismissed Hamilton's primary argument, the infant industry theory, as a "smokescreen" for favors to industries that never grow up. Hamilton's other major argument, the use of tariffs as an answer to the predatory trade policies from other nations, has "no validity whatsoever, either in principle or in practice" for the reason that such policies tend to self-inflict the foreign power that enacts them with the associated burden of higher prices. In summarizing his assessment of Hamilton as a trade economist, as compared to the constitutional theorist of his larger reputation, Friedman notes the *Report's* "decided lack of success" as a theoretical counterargument to Adam Smith's contemporary free trade position.[41]

For all its incompatibility with modern trade theory, one would be hard pressed to find even a mildly unflattering depiction of the 1791 *Report's* economic logic from leading historians and biographers of his life. Much to the contrary, its philosophical vindication of the manufacturing economy is seldom differentiated from its policy prescriptions. The document is routinely celebrated not only for its influence (which,

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[39] Douglas A. Irwin, 1997. *Against the Tide: An Intellectual History of Free Trade.* Princeton, NJ: Princeton University Press, p. 122.
[40] A thorough examination and critique of Hamilton's arguments from a free trade perspective is given in Sumner, 1890. pp. 173-8
[41] Milton Friedman and Rose Friedman,1980. *Free to Choose: A Personal Statement.* New York: Harcourt Brace Jovanovich, pp. 49-50, 35.

even if premised on faulty economics, is undeniable) but also as doctrine unto itself. Many modern historians would likely approve of the characterization it was given in 1882 by Henry Cabot Lodge, the American statesman and arch-protectionist Senator from Massachusetts who also dabbled in early Hamilton scholarship. The *Report on Manufactures*, wrote Lodge, was "economically the most important" of his three great Treasury reports. "Hamilton was in his grave many years before protection was seriously taken up and well defined, but when it came…it came as he had foreseen it would come, and it succeeded as he wished it to succeed."[42]

In keeping with this praise, many writers still see prophesy in the words of the 1791 essay. Richard Brookhiser (2000), a well known Hamilton biographer, describes it as a "two part" document, both "visionary and programmatic." Hamilton's "vision" is recounted approvingly, and his "programs" are assessed uncritically save for a favorable commendation of the *Report's* preference for direct "bounties," or subsidies, to manufacturers over protective tariffs, which were recommended "sparingly" by comparison.[43] It is on this basis that Brookhiser tries to rescue Hamilton's name from the unfavorable connotation that the word "protectionism" conveys to the modern ear. He is apparently unaware that tariffs and subsidies have comparable ill effects upon international trade, as both are alternative means to achieve a similar manipulation of domestic prices vis-à-vis the world market. Hamilton intended each as a different means to affect the same policy.

Ron Chernow's (2004) widely acclaimed biography of Hamilton makes some of

[42] Henry Cabot Lodge, 1882. *Alexander Hamilton,* Cambridge, MA: The Riverside Press, pp. 107-8.
[43] Richard Brookhiser, 2000. *Alexander Hamilton: American.* Simon and Schuster, pp. 93-95.

the boldest endorsements of his economics. To Chernow the *Report* was "a full-blown vision of the many ways the federal government could invigorate" an industrial economy and a "prescient statement of American economic nationalism." With passing derision and a touch of the straw man, Hamilton's critics such as Thomas Jefferson are identified as anti-industrialist Physiocrats and presented as the *Report's* only counterargument.[44] Hamilton actually borrowed approvingly from some of Smith's critiques of Physiocrat excesses for ancillary prodding of their southern agrarian advocates.[45] His central argument, however, was as much a rejoinder to Adam Smith on trade as it was to Jefferson on agriculture. Hamilton avoided Smith by name in his product for Congress, though early drafts of the *Report* assembled by his assistant Tench Coxe contained explicit references to Smith's free trade arguments. Simply stated, Hamilton set out to refute Smith's anti-interventionist approach to trade and economy, arguing instead for "the incitement and patronage of government" to attain favorable nationalist patterns of wealth and industry through the careful management of foreign commerce. Upon analyzing the Coxe drafts, historian Jacob Cooke identified Smith as "Hamilton's principal intellectual target" in the *Report.*[46]

Amazingly, Chernow's depiction allows for no indication that Smith's successors defeated Hamilton's progeny in the intellectual debate over free trade. Much to the contrary, he suggests that Hamilton actually sympathized with Smith's free trade doctrine

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[44] Ron Chernow, 2004. *Alexander Hamilton.* New York: Penguin, pp. 375-6.
[45] For examples of the parallels between Smith and Hamilton on the Physiocrat question, see Edward G. Bourne. 1894. "Alexander Hamilton and Adam Smith" The Quarterly Journal of Economics, Vol. 8, No. 3 (Apr.), pp. 328-344.
[46] Hamilton, 1791; Jacob E. Cooke, 1975. "Tench Coxe, Alexander Hamilton, and the Encouragement of American Manufactures" The William and Mary Quarterly, Third Series, Vol. 32, No. 3 (Jul.), pp. 370-392, 375.

"in the best of all possible worlds" and only deviated from it because "aggressive European trade policies obligated the United States to respond in kind."[47] Managed industrialization through tariffs, subsidies, and internal improvements spending would accomplish just that, and Chernow uncritically accepts the promised benefits of the very same "countervailing tariff" argument that Friedman rejected. In this bizarre rhetorical sleight of hand, Hamilton's intended refutation of Smith's trade arguments becomes not only a concurring reiteration of the *Wealth of Nations'* theoretical virtue but a practical improvement upon its idealism, delivered by a healthy dose of *Realpolitik*.

Chernow is not alone in committing this peculiar reversal of roles between Smith and Hamilton. John Patrick Diggins, a widely acclaimed historian of the founding era, nonetheless almost incomprehensibly characterized the *Report* as a call "for the immediate development of productive enterprise and the end to all trade restrictions" and praised it for constructively building upon the *Wealth of Nations,* rather than retorting Smith as was more often the case.[48] Similar recent scholarship has cast the *Report's* tariffs as a matter of incurring minor short term costs to ensure "long term, permanent" national prosperity and as a "blueprint" for "individual security and national strength."[49] That most economists reject this argument is largely absent from the discussion.

The apparent disconnect between historians and economists on figures such as Hamilton is illustrative of an underlying problem in the present trade history literature. Simply stated, the economics of trade are necessary to understand the history of trade

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[47] Chernow, 2004, p. 377

[48] John Patrick Diggins, 2006. "Alexander Hamilton, Abraham Lincoln, and the Spirit of Capitalism" in Douglas Ambrose and Robert W.T. Martin, eds. *The Many Faces of Alexander Hamilton.* New York: NYU Press, p. 275.

[49] Colleen A. Sheehan, 2006. "Madison versus Hamilton: the Battle over Republicanism and the Role of Public Opinion," in Ambrose and Martin, eds. p. 174.

policy. Without them, even distinguished and widely acclaimed historians fall into the trap presented by intuitively appealing yet long discredited tariff arguments from the past, especially when they are associated with the name of a well-known historical figure. The fact that such distinguished men as Hamilton, Henry Clay, Abraham Lincoln, and William McKinley were all followers of protection has lent its doctrines undeserved credibility. Of course, protectionist theorists should not be excluded from discussion because they fell out of favor among academic economists. Pro-tariff economists such as Carey enjoyed widespread support and influence in their day, with legislators and presidents actively seeking their policy advice. Indeed, some historians clearly delineate between 19th century protectionist rhetoric and the less-than-altruistic reality that often lurked behind it.[50] A clear disconnect is evident though when more than the occasional historian extends uncritical deference to past protective regimes or their claimed motives.

While tariff history is something of a mixed bag, exhibiting both economic-minded analysis and its neglect, the related topic of tariffs as a matter of constitutional economics is only lightly developed. The constitutional legitimacy of protective of tariffs was a central problem of legal theory for the first 50 years of the United States' existence, and reappeared in the Supreme Court almost a century later as harmed interests challenged the Fordney-McCumber and Smoot-Hawley tariffs.[51] In each case, free traders alleged the unconstitutionality of protective tariffs based on the claim that they do not fulfill the Constitution's designation of tariffs as a revenue device. Today scholarly

[50] For example, see Richard F. Bensel, 1994. *Yankee Leviathan.* Cambridge: Cambridge University Press, p. 326; Marc J. Egnal, 2008. *Clash of Extremes: the Economic Origins of the Civil War.* New York: Hill and Wang.

[51] *J. W. Hampton, Jr., & Co*. v. *United States*, 276 U.S. 394 (1928); *Board of Trustees of University of Illinois* v. *United States,* 289 U.S. 48 (1933)

discussion of this seemingly fundamental dispute is relegated to biographies and a small literature on the nullification dispute.[52] In the trade literature, the constitutionality issue has been virtually untouched since Stanwood discussed it in 1904. Publications by McGuire and van Cott (2002, 2003) and a working paper of Baack, McGuire, and Van Cott (2005) indicate some renewed interest in this topic surrounding the constitutional convention's rejection of the supermajority commerce clause proposal of George Mason. The authors of these studies illustrate the potentially drastic trade policy implications of altering the Constitution's revenue and commerce clause powers. Otherwise, protective tariffs – once a cause for threatened secession and later the basis of two Supreme Court challenges – are simply assumed to enjoy constitutional sanction, either by virtue of a loose construction or the fact that they have endured for so long in practice.

In reflection of the literature's present state, it may be stated that while tariff historians have gained demonstrable insight from trade economics, they do so irregularly. Nor are historians solely to blame for this. Perhaps indicative as a source of the problem, modern case studies from the strict economics discipline have progressed inexorably away from the narrative history that augmented earlier works, such as Taussig. Equilibrium modeling presently dominates many leading economic history journals, adding indisputable value as a means of testing hypotheses but also limiting its own accessibility to narrative historians. The result is summarized in three general observations: (1) Historical literature on American tariff policy is abundant in some topics yet sparse and irregular for others; (2) This literature is dated and built heavily

[52] For example, see Forrest McDonald, 2000. *States Rights and the Union: Imperium in Imperio*. Lawrence, KS: University Press of Kansas.

upon a small group of classic works and narrow specialized studies; and (3) This literature is often inconsistent and even contradictory, in part due to a lack of sufficient interdisciplinary integration between historical narrative, economic theory, constitutional economics, and methodology.

1.3 Borrowing from Economics

> "Truly, my philanthropic friends, Exeter Hall philanthropy is wonderful. And the social science - not a "gay science," I should say but a rueful, - which finds the secret of this universe in "supply and demand" and reduces the duty of human governors to that of letting men alone, is also wonderful. Not a "gay science" I should say, like some we have heard of; no, a dreary, desolate, and indeed quite abject and distressing one; what we might call, by way of eminence, the dismal science." – Thomas Carlyle, 1849[53]

As may be gleaned from the present state of the historical literature, the economics discipline has much to offer in the way of tools for historical trade analysis. In particular, the association of protective tariffs with rent seeking has a lengthy history of its own tracing back to the origin of the concept itself with Gordon Tullock (1967) and Ann Krueger (1972). It is this theory of rent seeking that lies at the root of the tariff's dual rent characteristic. It thus forms the economic basis for the present inquiry into the historical tariff's constitutional political economy.

In similar suit, protective tariffs have provided a traditional example of a regulatory "capture" by beneficiary interests from the formative literature, as discussed

[53] Thomas Carlyle. "Occasional Discourse on the Negro Question." *Fraser's Magazine for Town and Country,* Vol. XL, February 1849.

by George Stigler (1971), Richard Posner (1974), Sam Peltzman (1976), and Gary Becker (1983). This latter view associates tariffs with the establishment of an industry-backed entry barrier against a foreign competitor. The barrier, it is posited, emerges from a transaction between the beneficiary parties and a supplier of regulation, i.e. a lawmaker. The favorable regulatory control on competitor entry (the tariff rate) coincides with the tariff's protection rent.

The expenditures offered to the regulatory supplier in exchange for a favorable entry control similarly coincide with the practice of rent seeking. It is for this reason, as Robert Tollison observed, that rent seeking is "a very close cousin to the interest-group theory of government."[54] The two theories concur insofar as they explain the emergence of a regulation along side and the cost and processes of obtaining it.

The "Economic Theory of Regulation," (ETR) as it has been termed, has developed fairly steadily since Stigler first proposed it, having gained subsequent integration into the mainstream literature of regulation and political economy.[55] Subsequent to Peltzman's (1976) modification of the Stigler model, the ETR has progressed away from simple complete capture scenarios in order to account for lobbying competition between groups whose interests do not coincide. The resulting theoretical framework anticipates the partial capture scenario explored by Peltzman in which a regulation supplies a muted albeit potentially significant entry barrier in favor of the dominant interest group.

Further attempts to model the regulatory outcome of interest group competition

[54] Robert Tollison, 1991. "Regulation and Interest Groups." in High, Jack, ed. 1991. *Regulation: Economic Theory and History.* Ann Arbor: University of Michigan Press. p. 72

[55] Sam Peltzman, 1993. "George Stigler's Contribution to the Economic Analysis of Regulation." *The Journal of Political Economy.* Vol. 101, No. 5, p. 820.

generally divide into two schools of thought. The first approach, built around Becker (1983), anticipates interest group competition to induce lobbying efficiency and thus policies that minimize deadweight cost and maximize the efficiency of the transfer itself. As Dani Rodrik notes, the common political equilibrium in trade policy – tariff protectionism – violates this expectation.[56]

The second approach, built around Mancur Olson (1965), attributes the emergence of tariffs to a collective action bias that tends to benefit cohesive, organized, and well-established interests as they organize to influence policymakers. An organization with a cohesive stake in a tariff (such as a beneficiary industry) has an advantage in controlling free riders among its contributors over a comparatively diffuse opponent of protection (such as a consumer interest group). As a result, impacted groups have asymmetrical levels of access to policymakers and resultant policies come to reflect the better organized group. The abundance of inefficient distributive policies is said to illustrate this latter approach's explanatory value for both tariffs and policymaking in general.[57]

Though rent seeking enjoys wide acknowledgement similar to the ETR, a problem has persisted since its early investigation with the measurement of its welfare cost. Tullock's original conceptualization, where rent seeking could hypothetically waste away an amount of resources up to the margin of the acquired rent itself, represents an extreme scenario not unlike the complete regulatory "capture" posited in Stigler's early work and his predecessors. While important as theory, the calculation problems associated with

[56] Rodrik, 1995, p. 1470.
[57] Rowley, *et al*, 1995, pp. 92-93; Mancur Olson points to the readily observed presence of "absurdly inefficient outcomes" in government policy. Olson, 2000. *Power and Prosperity.* New York: Basic Books, p. 58.

rent seeking limit the ability of researchers to accurately assess its actual costs and impacts. As Dennis Mueller (2003) notes, most attempts to measure the welfare costs of rent seeking follow two approaches. The first calculates the size of a policy's rent trapezoid (or in the tariff case ABCD+DEFG) at the risk of substantially overstating actual rent seeking costs. The second involves recorded lobbying expenditures from sources such as campaign records at the risk of substantially understating actual costs in the non-recorded exchanges that saturate the world of political lobbying. For purposes of an accurate estimate of rent seeking costs, neither is sufficient.[58]

The principles entailed in the ETR and the related rent seeking concept allow for a number of general observations about the tariff that assist in contextualizing its role as a policy issue in the late 19th and early 20th century United States. In summary: (1) Per the ETR, a protective tariff functions as a favorable entry-barrier regulation sought from lawmakers in exchange for the support of beneficiary interests. (2) Where interest groups succeed in obtaining a favorable tariff they will do so subject to competition with other interests and accordingly fall short of obtaining a complete capture, or prohibitive tariff. (3) The symmetry effects of the tariff suggest that producer and commercial interests engaged in exportation are likely to oppose protective tariffs. (4) In the event that a tariff is sought and regulatory competition ensues, affected interests will expend varying levels of resources to obtain a favorable policy, hence the practice of rent seeking and its associated wastes. (5) The political organization of affected interests will be asymmetrical, contingent upon their ability to control free riders.

[58] Tollison, 1991, p. 72; Dennis C. Mueller, 2003. *Public Choice III.* Cambridge: Cambridge University Press, pp. 355-7

The political economy literature contains multiple different models of tariff formation relating to the indicator of political support and the factor mobility/specificity assumptions being made. In most models from this literature, tariff formation is examined as a result of the anticipated gains and losses from its protective attribute. Whether an interest group benefits from a protective tariff policy depends heavily upon the validity and applicability of these assumptions to the case, with evidence showing different political alignments between labor and capital owners for different industries, both historically and in the present.[59] Evident in most models, however, is the tendency of protective tariffs to allocate their gains unevenly across society.

It is something of a historical curiosity in the United States that many 19th century protectionists, citing the arguments of Carey, purported to devise a tariff system that would lift all industries by giving them a stake in the barriers it imposed against import competition.[60] This allegation notwithstanding, the redistributive bias of protectionism is evident in the tendency of a tariff's incidence to pass through onto consumers and particularly exporters by way of its symmetry effects. In effect, a protective tariff will have both "winners" and "losers," though the ability of each to influence policy varies widely by circumstance.

The revenue component of tariff formation is substantially less explored as a political economy issue, if for no other reason than the fact that modern industrial economies seldom use tariffs for revenue (even as this is not the case in the developing

[59] Stephen P. Magee, William A. Brock, and Leslie Young, 1989. *Black Hole Tariffs and Endogenous Policy Theory.* Cambridge: Cambridge University Press *et al*, 1989, p. 108; Rowley, *et al*, 1995. pp. 73-77; Michael Hiscox, 2002. "Commerce, Coalitions, and Factor Mobility: Evidence from Congressional Votes on Trade Legislation." *American Political Science Review.* Vol. 96, No. 3, p. 593-608.
[60] Henry C. Carey, 1872. *Manual of Social Science.* Philadelphia: Henry Carey Baird, pp. 347-9, 462

world, or in the U.S. historically). Yet since the U.S. Constitution explicitly linked the tariff power to revenue, this oft-overlooked "rent" may be crucial to understanding the politics of protection in the late 19th and early 20th century. Indeed, the main deviations in protectionist tariff policy leading up to Smoot-Hawley – the moderate reduction attempts of the Wilson-Gorman Tariff of 1894 and the successful Underwood Tariff of 1913 – overtly linked protection (and its entrenched political position) to the country's revenue system. The drastic modification of that revenue system with the 16th amendment in 1913 may therefore hold explanatory implications for the tariff's political economy, and particularly the effects of its revenue rent.

1.4 Research Hypotheses

> "But I will tell you a Secret, which I learned many Years ago from the Commissioners of the Customs in London: They said, when any Commodity appeared to be taxed above a moderate Rate, the Consequence was to lessen that Branch of the Revenue by one Half; and one of those Gentlemen pleasantly told me, that the Mistake of Parliaments, on such Occasions, was owing to an Error of computing Two and Two to make Four; whereas, in the Business of laying heavy Impositions, Two and Two never made more than One; which happens by lessening the Import, and the strong Temptation of running such Goods as paid high Duties, at least in this Kingdom" – Jonathan Swift, 1738[61]

Per the tariff's dual rent characteristic, it may be generally hypothesized that the tariff and tax policy of the United States between 1865 and 1913 was influenced by the political interaction of protectionist interest groups and the seekers of federal revenue

[61] Jonathan Swift, 1738. "Answer to a Paper called a Memorial of the Poor Inhabitants, Tradesmen, and Labourers of the Kingdom of Ireland," in Sir Walter Scott, ed., 1824. *The Works of Jonathan Swift.* Edinburgh: Archibald Constable & Co. Vol. 2, p. 170.

disbursements. Resultant policies likely exhibited signs of influence wielded by both groups, though often at different times and not necessarily at comparable levels. In light of this observation, three research hypotheses may be stated as the basis of the present inquiry.

I. In situations where tariffs provide a significant component of the public treasury, the relationship between a tariff's revenue-generating ability and the protection it offers will fundamentally affect the character of the resultant tariff policy. The respective goals of protection and revenue are divergent at any rate above a tariff's revenue maximization point, t*.[62] As a result, the political economy of the tariff will not play out in this scenario for reasons strictly endogenous to trade protection. Neither will the taxing policies of the government depend solely on the fiscal considerations of their revenue generation and use for public expenditures. Rather, trade protection will occur under the constraint of a revenue system and its own accompanying political economy considerations. It is accordingly hypothesized that, contingent upon the governing institutional constraints of the lawmaking body, political competition between protection and revenue seeking interests will tend to produce a tariff that forgoes some degree of revenue for protection. Protective policies will necessarily contain similar concessions to revenue generation.

II. In the event of regulatory competition between protection and revenue seekers, collective action advantages will tend to favor the beneficiaries of protection due to their cohesiveness and homogeneity of interests.[63] In a legislative setting, protection seekers

[62] See Figure 1.1-B. Also see R.A. McGuire and T.N. Van Cott, 2003. "The Confederate Constitution, Tariffs, and the Laffer Relationship." *Economic Inquiry,* 40(3), 2002, 428-38.
[63] Mancur Olson, 1965. *The Logic of Collective Action.* Cambridge: Harvard University Press.

will enjoy logrolling advantages through individual lawmakers (regulatory suppliers) who enter into agreement with geographically cohesive industries in their districts. Lawmakers will behave with similar responsiveness to revenue seekers in their districts, though their ability to supply appropriations will be subject to competition with the appropriation requests of other lawmakers.[64] It is accordingly hypothesized that protectionist interests will typically enjoy a greater return on their lobbying efforts than revenue seekers.

III. The political implications of the tariff's dual rent characteristic as expressed in the first two hypotheses will also depend upon the governing constitutional framework of the legislative process, and the manner in which this framework affects both the seekers of each rent and the congressional suppliers of the corresponding regulation (the tariff schedule). Thus, as the tariff receives its constitutional sanction from an enumerated power of Congress, the legislation resulting from that power will inevitably be shaped by the prevailing constitutional interpretation of its execution. A significant change in that interpretation, such as a Supreme Court ruling or a constitutional amendment, will not only alter the policy choices available to Congress but also the political economy of the resultant policy, as influenced by the tariff's dual rent characteristic.

Several implications of these hypotheses are immediately apparent to the present consideration of the historical U.S. tariff system. First, the Revenue Clause of Article I, Section 9 of the Constitution will be shown to have effectively bound the United States to

[64] Protection-seeking interests accordingly enjoy a more pronounced benefit from the committee structure of Congress, which is especially conducive to logrolling through the actions of individual committee members (though this is not to suggest the complete absence of similar revenue seeking influences). It should also be noted that revenue seeking activity in the period under consideration is presumed to operate under a relatively steady balanced budget principle, which historically operated as part of the United States' informal "fiscal constitution" prior to the Great Depression era.

a tariff finance system by limiting Congress' options on taxation in general. This effect was both intended at the Constitutional Convention, where delegates openly anticipated tariff finance, and executed from the early days of the republic, where tradition reinforced the tariff's use and the Supreme Court curtailed alternative viable taxing mechanisms as with the income tax case of 1895. These conditions combined to ensure the tariff's primacy in the U.S. tax system from 1789-1913. In so doing, they also created the scenario described in the first hypothesis.

Second, it may be theorized that the need for revenue in a tariff-based public finance system prior to 1913, and more specifically revenue seeking interests, exerted a moderating effect upon the severity of a tariff's protective attributes. While the sustained protectionism of the half-century following the Civil War clearly illustrates that this circumstance permitted a protective policy, it may also be noted that the continuous need for revenue prevented a complete capture of the tariff mechanism by these interests. Thus tariff rates, while protectionist, fell shy of becoming exclusionary or unduly antagonistic toward the United States' significant trading partners.

Third, the adoption of the Income Tax Amendment in 1913 may be interpreted as a significant change in the existing constitutional framework of trade policy as well as taxation, for the Constitution's Revenue Clause effectively linked the two by way of the tariff's dual rent characteristic. The abandonment of tariffs as a basis for fiscal policy by way of the income tax accordingly decouples its connection to trade regulation in a way that necessarily alters the political dynamic of tariff creation. Absent of a restraining need for tariff revenue due to its supply from another source, tariff politics became a near-exclusive domain of protection-seeking producer interests (and the typically weaker, less

cohesive consumer and exporter interests who traditionally advocate free trade). This changing constitutional framework may also explain why the United States adopted increasingly prohibitive and antagonistic protective policies in the 1920's and 30's.

II. The Tariff as a Constitutional Problem

2.1 Tariffs and Federalism

> Politics, n. A strife of interests masquerading as a contest of principles. The conduct of public affairs for private advantage.[65]

Viewed together, the lengthy literature on the political economy effects of international trade and the closely related topic of regulation form a theoretical basis for understanding why trade barriers exist despite a general consensus of experts regarding their detrimental effects to the nation that imposes them. For most of the United States' history however, the politics of trade have been shaped by a third pertinent attribute, deriving not from economics but from political theory and constitutional law. The abilities of the United States government to assess tariffs and to "regulate Commerce with foreign Nations" derive from the Constitution itself and subsequent interpretations built around its enabling clauses. Furthermore, when assessed as a matter of political economy and interpreted through the economic theory of regulation, trade politics take on the characteristics of the political "faction" in which a multitude of competing interests, both free trade and protectionist, lobby the government for a desired policy outcome.

The basic premise of federalist constitutional theory, as espoused by James Madison, revolves around the notion that factions will be able to counteract factions

[65] Ambrose Bierce, 1906. *The Cynic's Word Book.* New York: Doubleday, Page, & Company.

within the framework of the U.S. Constitution. Madison defined this goal as the Constitution's essence: to "break and control the violence of faction."[66] Through a constitutional framework, he reasoned, "Ambition must be made to counteract ambition" and thus prevent the dominance of national policy by any single group of interests at the expense of another.[67]

A brief examination of the history of trade in the United States reveals a pattern that is perplexingly inconsistent with the Madisonian constitutional ideal. Protectionism appears as a consistent feature of American trade policy for most of the country's existence. The legislative history of the tariff from the end of the War of 1812 in 1816 to the ceding of congressional trade power in the 1934 Reciprocal Trade Agreements Act (RTAA) is one of unmitigated heavy protectionism, save a handful of brief free-trade interludes from 1846-60 and 1913-22. Between 1865 and 1913 – the longest stretch of protectionism – average tariff rates for the United States dipped below 40% only twice (Figure 2.1-A). Even after the RTAA, tariffs remained above 30% on average through the end of World War II. The second half of the 20th century saw a substantial movement toward trade liberalization in the United States, yet factional trade politics surrounding particular imports – steel, automobiles, agriculture – appear to be as strong as ever.

[66] James Madison, Alexander Hamilton, and John Jay [1787-88] 1987. *The Federalist Papers.* London: Penguin Classics. Federalist #10
[67] Madison, 1788. Federalist #51

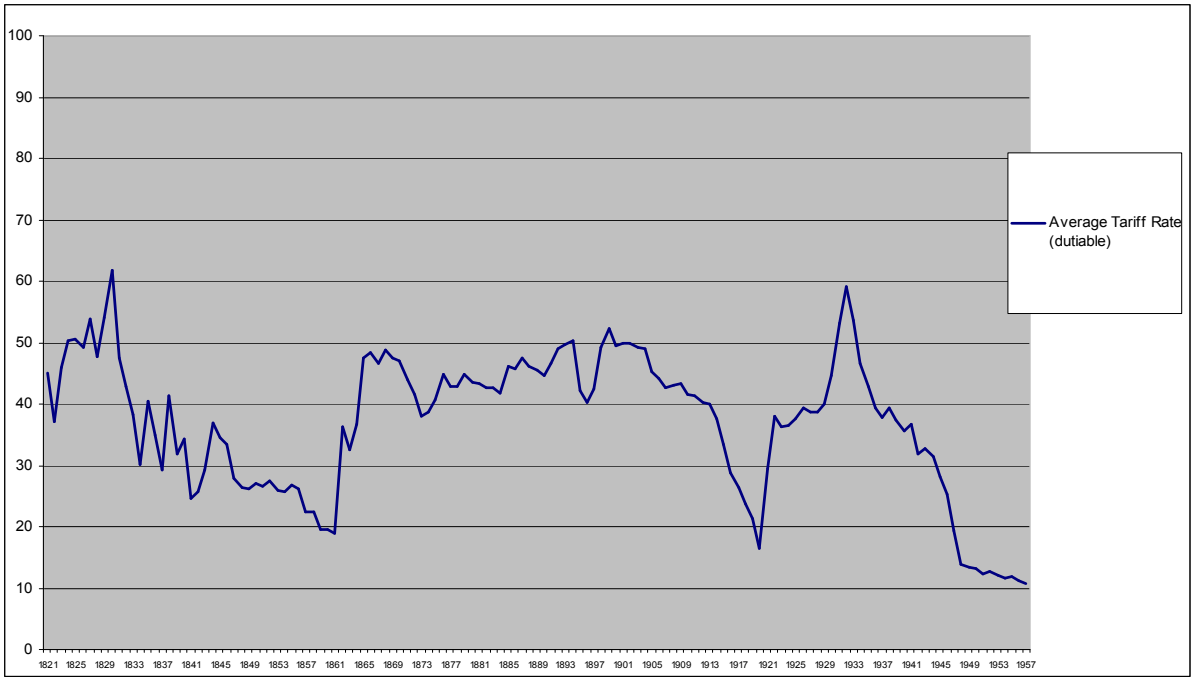

Figure 2.1-A, Average Tariff Rate over Time
Source: United States Census Bureau, 1960. *Historical Statistics of the United States: Colonial Times to 1957.* Washington, D.C.: Government Printing Office.

Certainly prior to 1934, and even to an extent in the modern era, American trade policy appears to reflect a "triumph of the faction," and often times a numerically small and geographically isolated yet extremely cohesive faction at that. The iron mills of Pennsylvania, the sugar planters of the Louisiana coast, the corn farmers of Iowa, and the wool growers of Vermont have all secured protection for themselves at points in U.S. history. If these and other similar faction-driven examples are taken to accurately reflect the state of tariff legislation when placed in the hands of Congress (which also happens to be the ostensible case for its removal under the RTAA), trade may constitute a peculiar breakdown of the Constitution's underlying mechanisms of checks and balances, separated powers, and federalism – each expected by Madison to serve as safeguards against factional dominance. This apparent inconsistency suggests that the successful

operation of constitutional mechanisms weighs heavily upon the ability of a given faction to induce a policy augmentation of its economic interests, and thus the aforementioned relationship between trade's political economy and regulation itself.

2.2 The Problem of the Faction

> "All phenomena of government are phenomena of groups pressing one another, forming one another, and pushing out new groups and group representatives…to mediate the adjustments. It is only as we isolate these group activities, determine their representative values, and get the whole process stated in terms of them, that we approach to a satisfactory knowledge of government." – Arthur Bentley[68]

In late 1787 Madison took up a concept that weighed heavily on the minds of the recently concluded constitutional convention's participants. This concept was the faction, and factions, Madison noted, were a frequent source of anxiety and ill in government. In *Federalist 10* he provided a simple definition of the term:

> By a faction, I understand a number of citizens, whether amounting to a majority or a minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adversed to the rights of other citizens, or to the permanent and aggregate interests of the community.[69]

Economic interests weigh heavily upon factionalized interests, with the distribution of wealth constituting the "most common and durable source" of factional division.

The characteristics of a faction are immediately recognizable in the politics of

[68] Arthur Bentley, 1908. *The Process of Government.* Chicago: University of Chicago Press, p. 269
[69] Madison, James (1787). Federalist #10

trade, where groups unite around a common commercial interest, such as an industry or factor of production, and solicit legislators for a favorable trading system. Madison likely had this tendency in mind when he listed manufacturing and mercantile interests among the economic divisions known through history to induce factional politics.[70] A desired trade regime may even run counter to the "aggregate interests" of the nation's consumers, as with many protective policies. It is here that Madison sees the faction's danger: the tendency to benefit the factional interest at the expense of a nation's aggregate interests, or even political stability.

The solution to factions found in *Federalist 10* aims at counteracting their effects by mechanisms that impede the ability of a single faction from obtaining majority control over policy. Under said mechanisms, "either the existence of the same passion or interest in a majority at the same time must be prevented, or the majority…must be rendered, by their number and local situation, unable to concert and carry into effect schemes of oppression." The most immediate and practical means of rendering any single faction unable to dominate is in the abundance of faction itself. As Madison put it,

> Extend the sphere, and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength, and to act in unison with each other.[71]

The United States, he continued, would be well suited to advantageously counter faction with faction by its size and through the features of its constitutional system. He diverged from Montesquieu, who had warned of the proliferation of faction in a large republic as

[70] *Ibid.*
[71] *Ibid.*

an exacerbating influence upon factional discord. Instead he turned to David Hume, who saw faction's abundance and diversity as a check upon itself.

The use of constitutional features as a mechanism of factional control derives from an English legal background and the framers' study of European history. It is reasoned that the tyranny of a single interest may be averted, and the common interest of the nation preserved, by arranging the government into cross sectional divisions, each having the ability to check the authority of the other. Blackstone espoused the mechanism of separated powers to prevent any given branch of the government from becoming an agent of factional dominance. The resulting government, he noted, would better reflect the public interest:

> Like three distinct powers in mechanics, they jointly impel the machine of government in a direction different from what either, acting by themselves, would have done; but at the same time in a direction partaking of each, and formed out of all; a direction which constitutes the true line of the liberty and happiness of the community.[72]

Montesquieu before him indicated the benefits of a divided government in constraining its potential for abuse. In a proper arrangement, "[t]he legislative body being composed of two parts, they check one another by the mutual privilege of rejecting. They are both restrained by the executive power, as the executive is by the legislative."[73] Jefferson developed this notion further in his 1784 essay *Notes on Virginia:*

> An elective despotism was not the government we fought for; but one which should not only be founded on free principles, but in which the powers of government should be so divided and balanced among several bodies of magistracy, as that no one could transcend their legal limits,

[72] William Blacksone, [1765] 1979. *Commentaries on the Laws of England: A Facsimile of the First Edition of 1765—1769.* Chicago: University of Chicago Press. 1:149-151.
[73] Montesquieu, The Spirit of Laws. 1748. Translated by Thomas Nugent, 1750. Book 11, Chapter 6 "Of the Constitution of England."

without being effectually checked and restrained by the others.[74]

Continuing his argument from *Federalist 10,* Madison turned next to the structure of the new Constitution as a mechanism for preventing factional dominance. Noting the inadequacy of "exterior provisions" for preserving a "partition of power among the several departments" when left to themselves, Madison identifies a need to construct a government in which separate individual interests may exercise a check or constitutional veto upon the actions of other interests within the government. "The defect must be supplied," he notes, "by so contriving the interior structure of the government as that its several constituent parts may, by their mutual relations, be the means of keeping each other in their proper places."[75]

Seeking to provide such a structure, the Constitution calls for a strict separation of powers, exercised horizontally between the three branches of the federal government, each enabled with the "necessary constitutional means and personal motives to resist encroachments of the others."[76] The system of federalism adds to this a vertical check upon the authority exercised between state and national government. Says Madison "Were it admitted…that the Federal Government may feel an equal disposition with the State governments to extend its power beyond the due limits, the latter would still have the advantage in the means of defeating such encroachments" by exciting the sympathies of the other states to alter the national policy. "One spirit would animate and conduct the whole."[77]

Acting through the internal constructs of separated powers and federalism, and

[74] Thomas Jefferson, [1774] 1852. *Notes on the State of Virginia.* Richmond, VA: J.W. Randolph. p. 129.
[75] Madison, 1788, Federalist #51
[76] *Ibid.*
[77] Madison, 1788. Federalist #46

exercising checks by a veto upon the policies of other factional interests, the private interests of society may be made to serve a public end by ensuring no single interest dominates. Madison elaborates upon this point to illustrate the means of exerting a check:

> Whilst all authority in it will be derived from and dependent on the society, the society itself will be broken into so many parts, interests, and classes of citizens, that the rights of individuals, or of the minority, will be in little danger from interested combinations of the majority.[78]

Thus, under the Constitution, it is intended that "the private interest of every individual may be a sentinel over the public rights."[79]

Trade's location within the context of Madison's argument ultimately depends upon the specific constitutional mechanisms governing its administration. Generally considered however, the spirit of Madison's argument seems to entail that factional abuse of the national trade policy, as in extreme protectionism, will be curtailed and counteracted by an abundance of competitor interests seeking free commerce, particularly insofar as a liberal trade policy is believed to better the general welfare of a nation as a whole. The legislative sphere, where trade policy decisions are made, may be seen as a constitutional mechanism to ensure the ambition of a protectionist faction is counteracted by the ambitions of commerce and its accompanying interests. The bicameral feature of Congress, accompanied by presidential concurrence, should thus ensure that trade policy more closely reflects the general welfare, as a liberal trade policy is believed to achieve. In 1841 John C. Calhoun explained how such a mechanism functions while defending President John Tyler's veto power, then recently exercised against protective tariff and national banking measures.

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[78] Madison, 1788. Federalist #51
[79] *Ibid.*

> Regarded, then, separately, neither [house of Congress] truly represent the sense of the community, and each is imperfect of itself; but when united, and the concurring voice of each is made necessary to enact laws, the one corrects the defects of the other; and, instead of less popular derogating from the more popular…the two together give a more full and perfect utterance to the voice of the people than either could separately. Taken separately, six States might control the House; and a little upwards of four millions might control the Senate, by a combination of the fourteen smaller States; but by requiring the concurrent votes of the two, the six largest States must add eight others to have the control in both bodies…This more full and perfect expression of the voice of the people by the concurrence of the two…is a great advance towards a full and perfect expression of their voice…To render it still more perfect, [the framers'] next step was to require the assent of the President.[80]

Thus it becomes apparent that the majority required to enact a law consists of a number numerically greater than fifty percent of any single chamber of Congress. As each chamber represents different interests by its construct and as the President, in theory, represents a third overlapping national interest, the concurrence of factional interests required to give assent to the law becomes significantly higher than would be the case under a simple majoritarian democracy. In theory then, trade policies that succeed in becoming law should more closely reflect a broad cross-section of society, particularly its numerically larger base of consumers, than it does the wishes of a cohesive yet numerically limited protectionist faction. History attests, however, that the opposite has often been the case. The specific constructs of the Constitution itself, and the ability of federalist theory to function within those constructs on matters of trade, thus becomes an object of inquiry toward the end of resolving this apparent paradox.

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[80] Ross Lence, ed. 1992. *Union and Liberty: The Political Philosophy of John C. Calhoun*. Indianapolis: Liberty Fund, pp. 496-7.

2.3 Between "Imposts" and "Duties"

> "And if it be consider'd that political matters are subject to the same mutations, as certainly they are, it will be sufficiend to excuse our ancestors, who suiting their government to the ages in which they lived, could neither foresee the changes that might happen in future generations, nor appoint remedies for the mischiefs they did not foresee." – Algernon Sidney[81]

Congress obtains its authority to enact tariffs from Article I, Section 8, Clause 1 of the Constitution, stating simply:

> The Congress shall have Power To lay and collect, Taxes, Duties, Imposts and Excises, to pay Debts and provide for the common Defense and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States.

Since the time of Alexander Hamilton's (1791) *Report on Manufactures* protectionism has been justified by this clause, though its constitutional sanction is less clear than is generally thought. While he described the clause as an "express authority" to tax imports without qualification, Hamilton conceded that "[a] question has been made concerning the constitutional right of the Government of the United States to apply this species of encouragement" to manufactures.[82] This question was of little concern to him and he brushed it aside, deeming the power to deter imports through taxation a self-evident property of the tax itself. Yet his identification of constitutional doubt, however brief and regardless of the cavalier dismissal that accompanied it, likely hinted at Hamilton's

[81] Algernon Sidney, [1680] 1995. *Discourses on Government.* Indianapolis: Liberty Fund, Chapter 3, Section 37.

[82] Hamilton, 1791. In *Federalist No. 35* Hamilton similarly referenced "persons who imagine that [import taxation] can never be carried to too great a length; since the higher they are, the more it is alleged they will tend to discourage an extravagant consumption, to produce a favourable balance of trade, and to promote domestic manufactures."

cognizance of the transformative implications of his protectionist proposal for the Constitution's taxing authority. For all the ink spilt on the topic of taxation in the founding era, the constitutional convention never explicitly examined tariffs as a tool to regulate foreign commerce – only as a revenue device. The clause that Hamilton claimed as sanction for his proposed protective tariff system was drafted to rectify the need for a uniform and easily administered federal revenue source, notoriously absent from the Articles of Confederation. Indeed, it is doubtful that the clause's use for any purpose other than raising revenue ever crossed the minds of most delegates in attendance at the 1787 constitutional convention, or even the contentious ratification debates that followed.

The key to understanding the Revenue Clause's original meanings is itself a matter of semiotic confusion. Common usage suggests a synonym between the term "duties," which appears in the clause, and that of the import tariff. The records of the convention plainly reveal that this association is mistaken. The import tariff power actually derives from the archaic term "imposts." Luther Martin, a Maryland delegate known for both his keen legal insight and irritating eccentricities, asked for a clear statement of the Revenue Clause's terminology on August 16, 1787 after it was presented to the full convention by the Committee of Detail. He queried "what was meant by the Committee of detail in the expression "duties" and "imposts". If the meaning were the same, the former was unnecessary; if different, the matter ought to be made clear."[83]

Martin related the information he sought in a letter to his state's ratification convention. "In answer to this inquiry we were informed, that [the term "Duties"] was

[83] James Madison, Jonathan Elliott, ed. [1787] 1881. *Debates on the Adoption of the Federal Constitution.* Philadelphia: J. B. Lippincott and Co. June 16, 1787.

meant to give the general government the power of laying *stamp* duties on paper, parchment, and vellum."[84] Pennsylvania delegate James Wilson answered that the import tariff power was to be known as an impost, which "are appropriated to commerce."[85] The convention's delegates received and understood this distinction without debate, though Martin considered the clause as a whole to be an insufficient guardian against exorbitant taxation. "By the power to lay and collect imposts, they may impose duties on any or *every* article of *commerce* imported into these States to what amount they please." Notably, Martin did not associate this predicted abuse with a protectionist motive. Rather, he simply saw it as an enabler of excess in which the national government is empowered "to *sluice* [the people] at *every vein* as long as they have a *drop* of blood."[86] These warnings notwithstanding, the other delegates acceded to the impost with the intent that it should form the primary, and indeed mandated, means of filling the treasury.

2.4 The Tariff before 1787

> "Virginia vessels are compelled to enter and pay fees before trading in Maryland ports. This is unneighborly, but Maryland vessels must do the same here until her laws are repealed." – Virginia colonial statute, mid 17th century[87]

To understand the term "impost" in its context as understood by the 1787

[84] Luther Martin, [1788] 1839, "The Genuine Information," in *Secret Proceedings and Debates of the Convention Assembled at Philadelphia in the Year 1787.* Richmond, VA: Wilbur Curtiss Co., p. 52
[85] Madison, *Debates,* June 16, 1787.
[86] Martin, 1788, p. 53
[87] William Hill, 1893. *The First Stages of Tariff Policy in the United States.* Baltimore: Guggenheimer, Weil & Co. p. 15

convention delegates, one must look back to its use under the Articles of Confederation. The term "impost" described not just any tariff but a specific type of tariff system wherein a low, uniform rate was assessed for the specific purpose of generating revenue. It was intended to function like a simple consumption tax upon imported goods, and in its pre-1787 form the rates seldom differentiated beyond two or three broad categories of goods and seldom exceeded 10 percent *ad valorem.*

The term "impost" was almost universally employed to describe the pre-revolutionary revenue systems of the American colonies, though they were not the only form of import taxes in use. Tariff statutes first appeared in the American colonies during the 17th century, with the earliest examples – a 1630's statute in Massachusetts and a similar law some years later in Virginia – being intended to simply discourage consumption of non-necessity imports and therefore cut the expenses of the crown in supporting the colonies. "Protective acts" were "not numerous" in the colonies, according to William Hill. When adopted, they usually consisted of discriminatory taxes on imported agricultural crops, cattle, and horses from the other colonies. Other early colonial laws imposed tonnage "duties" on ships from other colonies, adopted "clearly for revenue" purposes and used to furnish harbor improvements and defenses.[88]

The "impost" entered the tax lexicon as a specific type of tariff around the turn of the 18th century when a handful of colonies established them as permanent revenue systems. The term appeared in the title of many early revenue laws and lacked a precise definition, but was typically characterized by (1) low rates, intended to generate revenue,

[88] Hill, 1893, pp. 13-15, 20. Hill was a political economy professor at the University of Chicago. He authored a "tariff history" of the United States from the colonial era to the Constitutional Convention. Published in 1893, it remains one of the only detailed accounts of trade policy in the pre-revolutionary period.

and (2) uniform application to all imported goods. Impost statutes were often, though not always, linked to a short "specific duty" schedule of tariffs assessed on certain goods by the quantity imported. In almost all cases, specific duties applied to wine, liquor, and spirits, which were deemed both "sin taxes" and "luxury taxes," conducive to revenue generation.

Beginning in 1645, Massachusetts levied a tax of one to two pounds sterling per "pipe" of wine, a unit equal to 108 gallons. In 1692 the colony added a low *ad valorem* impost on all other imports besides those already specified, and reapproved it annually until the revolution. South Carolina followed suit in 1703 and adopted "an act for the levying of *imposition* on furs, skins, liquors, and other goods and merchandise imported…" (emphasis added). This tariff assigned specific duties to a small number of food and luxury items and set an impost on "all other imports, 3 per cent." New York adopted a tax on a broad number of items in 1691, then replaced it in 1715 with a more limited schedule consisting of specific wine and liquor duties and a small 5 percent impost. This system remained in place until 1775. Other colonies were more sporadic, usually adopting temporary liquor importation taxes. Rhode Island, Delaware, Georgia, and New Jersey had no tariff of any form at the time of the revolution.[89]

The colonial revenue system temporarily disappeared during the Revolutionary War. "The imposts," notes Hill, "which, for three-quarters of a century, the colonists had been collected, were not exacted by the new states" after the Declaration of Independence due to wartime disruption of commerce.[90] When peace resumed in 1781 the need for

[89] Hill, 1893, pp. 31-36
[90] *Ibid.,* p. 39

revenue manifested itself in mounting war debts, though several colonies also recognized the risk of impeding the commerce of a fledgling nation to obtain it. Most states slowly reinstated a low uniform impost rate on all imports or specific duties on luxury goods. According to Hill, the "southern states did not go beyond" the "purely revenue" specific tariffs on items such as alcohol, tea, coffee, and sugar. Northern states utilized the impost concept, or some combination of imposts and specific duties.[91]

Save for the occasional temporary tariffs on specific goods and the overtly discriminatory navigation and shipping taxes of the middle 17th century, most colonies shied away from tariff protectionism before the revolution. This changed somewhat in the mid 1780's when the New England states began to modify their newly restored impost laws, drawn for revenue purposes, to offer moderate protection to individually specified articles. In 1785 Connecticut enacted a law taxing hats, shoes, boots, leather, saddles, and rum at higher specific rates beyond the state's 7 percent impost. New Hampshire followed suit in 1786, with a law designed to "produce a considerable revenue" and, by its preamble, "tend to encourage the manufacture of many articles" within the state. As with Connecticut, moderate protection categories were added to clothing and leather goods in addition to the standard revenue taxes. Rhode Island established a 2.5 percent impost in 1783, but amended it two years later with specific tariffs on many of the same import-competing manufactured goods as the other New England states. Again, the intent to stimulate home manufactures was expressed in the legislative committee that authored the bill.[92]

[91] *Ibid*., p. 43
[92] *Ibid.*, pp. 43-48

By 1787, a clear movement was afoot in most of the northern states to modify the old impost system into a new type of dual-purpose tariff schedule, divided between revenue and protective categories. Hill observed that this transition in thinking was most poignant in Massachusetts. The state reinstated its imposts after the revolution with extreme hesitance, going so far as to caution against the "highly injurious" character of excessive trade regulation in her 1782 statute establishing a handful of luxury taxes and uniform 2.5 percent and 5 percent impost rates. By 1786, the mood had changed and the new tax statute overtly sought "to encourage agriculture, the improvement of raw materials and manufactures." It raised duties as high as 25 percent in some cases and greatly expanded the specific duties list to import-competing products. "Thus in four years," notes Hill, "Massachusetts developed a system of protection more complete and consistent than the United States has ever had."[93]

By every indication at the time of the 1787 constitutional convention, the old impost system was being phased out at the state level above of the Mason-Dixon Line while remaining intact below. This circumstance likely reflected the emerging industrial economies of the north contrasted with the plantation agriculture of the slaveholding south. While it portends a growing acceptance of protectionism in some states, this movement is equally notable for the fact that it transformed the concept of the import tariff to the dual-rent function implied by the Laffer relationship. No longer described as "imposts," the new state taxation statutes openly defined this dual purpose in their preambles and accompanying legislative reports.

Of more pressing interest to the constitutional convention, however, was the

[93] *Ibid*., pp. 50-52

continued relevance of the old "impost" concept on the national level. While New England shied away from the earlier system for a new dual-purpose tariff, the national Congress under the Articles of Confederation became almost wholly preoccupied with the uniform impost concept. In fact, the erection of state-level protective measures was viewed as a problem on the national level due to its disruption of internal commerce. The national government under the Articles also expressly disavowed any interest in protective taxes on trade.[94] In 1780 Don José Moñino y Redondo, the Chief Minister of King Charles III of Spain, requested a statement of the United States' policies on the "protection of national industries." John Jay answered for the fledgling government:

> With respect to the protection of national industry, I take it for granted that it will always flourish where it is lucrative and not discouraged, which was the case in North America when I left it; every man being then at liberty, by the law, to cultivate the earth as he pleased, to raise what he pleased, to manufacture as he pleased, and to sell the produce of his labor to whom he pleased, and for the best prices, without any duties or impositions whatsoever.[95]

The new country effectively pledged to break with the mercantilist traditions of Europe, constraining itself to taxing trade for revenue purposes alone.

Revenue presented a continuous problem under the Articles, as its only enumerated tax mechanism was extraordinarily cumbersome and the adoption of new

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[94] Hill (1893, p. 40) observed that the early United States under the Articles of Confederation was looked to by Enlightenment thinkers in hope that it would spurn the protective mercantilist traditions of European commercial policy much as it broke from the old world systems of government. He described a sense of American "revulsion" with restrictive British policies in particular. "What Locke, Rousseau and Voltaire had done to awaken a desire for political liberty and equality, the Physiocrats and Adam Smith were doing for industrial and commercial freedom." Hill also noted (p. 75) that of the major "founding fathers," Alexander Hamilton was "perhaps the only one of importance" to advocate protection before 1785. Thomas Jefferson, James Madison, John Adams, and Benjamin Franklin each expressed their sympathies with free trade during the Revolutionary War era.

[95] John Jay, "Answers to Questions from the Count de Floridablanca." in Francis Wharton, ed. 1889. *The Revolutionary Diplomatic Correspondence of the United States.* Washington, DC: Government Printing Office, Vol. III, p. 718.

revenue measures required the concurrence of all 13 states. The eighth Article established a "common treasury" for the national government to be "supplied by the several States in proportion to the value of all land within each State" as determined by a convoluted system of land assessors and surveyors. Tax historian Robin Einhorn calls the system laid forth an "absurdity" onto itself for simple want of any practical enforcement mechanism.[96] The proportional system created a high incentive for non-payment by making the tax administration subservient to the compliance of individual state legislatures. Furthermore it was vulnerable to discretionary abuse in the likely event that politics entered into the property assessment process. The haphazard system never saw any practical use, and likely represented little more than the haste of the Articles' compilation during the Revolutionary War.

In addition to a poorly designed tax system, the government under the Articles was plagued by the early makings of sectional division in its tax administration. The politics of apportionment, or deciding how much of the tax each state would supply, proved a volatile political territory for self-evident reasons. Attempts to modify the troublesome Article 8 generally revolved around the political need of a tax system that distributed the national government's burdens across 13 states of vastly different sizes and populations, some slave and some free, in a manner that was both fair and agreeable under the unanimous consensus required to amend the Articles. In fact, the Constitution's infamous "three fifths" ratio for the counting of slaves under the census and congressional apportionment systems did not originate at the 1787 Philadelphia

[96] Robin Einhorn, 2006. *American Taxation, American Slavery.* Chicago: University of Chicago Press. pp. 124-5

convention as is commonly assumed. Three fifths was a carefully negotiated formula for counting slaves for apportionment purpose under a proposed amendment to Article 8 from 1783. The constitutional convention simply borrowed its ratio from this earlier compromise, deeming it a known entity and therefore a path of least resistance.[97]

Given the treacherous nature of tax apportionment politics, the old colonial impost system had much to commend itself on a national level under the Articles. The impost's uniform rates, usually a small *ad valorem* percentage on all goods, made it one of the few tax systems that did not require a complex and politically contentious apportionment system to divide its burdens among the states. Instead, it would be self-apportioning due to its dependence upon the consumption patterns of each state. This solved the population counting problem as well, for states with large populations would automatically consume more goods and thus pay more taxes than the small states. No need existed to determine ratios for the counting of slaves, as consumption was consumption, automatically taxed with the impost no matter the buyer. Furthermore, the impost was administratively simple, requiring only customs houses at the ports and no complex assessment procedure as with the land tax.[98]

Congress first proposed an impost system in 1781, apparently after a lengthy unrecorded debate in which they experienced the political futility of attempting to draft an enumerated tariff schedule with specific duties. After "nine sessions in committee, Congress dropped the enumerated rates" for an impost system.[99] They submitted an amendment to Article 8 that would "vest in Congress the authority to levy an impost of 5

[97] *Ibid.*, pp. 143-44.
[98] *Ibid.*, pp. 133-4
[99] *Ibid.*, pp. 132-3

per cent. on all goods imported." Hill notes that the measure was initially uncontroversial and its supporters considered the remaining British troops a greater threat to ratification than any local political opposition. Over the next two years all states except for Rhode Island gave their assent.[100]

Rhode Island stubbornly and adamantly resisted, viewing the modest impost as a usurpation of state authority by the national government.[101] Seeking to appease these concerns, Congress offered a second impost bill in 1783 that would allow the states to appoint the tariff collectors. Mounting war debts strained the national treasury beyond what a simple revenue impost could provide at this point though, so Congress also sought a small schedule of specific luxury tariffs. They also significantly broadened the revenue system by attempting to impose an accompanying state contribution quota based on land and head taxes. It was here that the three fifths rule would be applied to determine a slave state's proportion of the national quota. From a historical perspective, the coupling of these new measures did little to commend either before the states. Einhorn describes the apportionment quotas and their accompanying slave clause as "an attempt to save the requisition system" of the original Article 8.[102] As the states received the 1783 proposal, the difficulties it invited by expanding the tax mechanisms to include a quota became increasingly apparent. A 1786 report to the national Congress reflected the Articles' frustrating amendment process. New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Virginia and South Carolina had "complied only in part with the said system" through partial ratifications of its provisions. Rhode Island, New York,

[100] Hill, 1893, p. 99
[101] *Ibid.*, p. 101, note 2.
[102] Hill, 1893, p. 102; Einhorn, 2006, p. 145

Maryland and Georgia had yet to assent to anything, and only North Carolina and Delaware had agreed to the amendment "in full conformity."[103] The non-compliant states eventually relented that year after multiple pleas from Congress, save for New York, which balked at the system much as Rhode Island had done previously.

The failure of the 1781 impost amendment and the 1783 impost and apportionment systems should not be interpreted as a rejection of the concept, and quite the contrary. Both enjoyed nearly unanimous support in the national Congress, attracting such advocates as Hamilton, Madison, and Oliver Ellsworth, all later participants of the 1787 Philadelphia convention. They recognized the impost feature of both measures as particularly suited to a fair distribution of the tax burden across the states simply because it avoided the need for a complex and politically contentious apportionment formula. The impost's popularity was also widely recognized by state legislators of the day. "[N]o object has been yet discovered to which so few objections lie, as the impost duty formerly recommended to the States," wrote Virginia delegate Joseph Jones to George Washington in 1783.[104] But the Articles of Confederation did not require simple popularity or even a large supermajority to amend Article 8 and authorize the impost. They required unanimous consent, and in each case the impost portion of the proposed revenue system, so commendable for its simplicity, uniformity, and ease of implementation, failed because of the resistance of a single state.

[103] Journal of the Continental Congress, February 15, 1786 in Philip B. Kurland and Ralph Lerner, eds. 1987. *The Founders Constitution.* Chicago: University of Chicago Press.
[104] Joseph Jones to George Washington, February 27, 1783, quoted in Einhorn, 2006, p. 147

2.5 The Tariff at the Constitutional Convention

> "By asserting their independence, the Americans have at once renounced the privileges, as well as the duties, of British subjects – the are become foreign states; and if in some instances, as in the loss of the carrying-trade, they should feel the inconvenience of their choice, they could not, nor ought they to complain" – Lord Sheffield, Member of Parliament, 1784[105]

Going into the constitutional convention of 1787, the national impost policy's connection to tariff protectionism was tenuous at best. Its proponents in Congress were quick to stress the uniformity of impost rates and distinguished it from the complex enumerated tariff schedules, which they rejected in 1781 and constrained to a few luxury items in 1783. When the term "impost" came up at the constitutional convention, there is no reason to believe that the delegates had anything other than the 5 percent general tax on imports from 1781 and 1783 measures in mind. In none of the recorded notes of the convention was the impost ever explicitly associated with tariff protectionism. Echoing the Continental Congress before them, most of the delegates commended the impost concept as a fair and efficient revenue device throughout the convention's debates and the subsequent ratification process.

The Revenue Clause itself presents a curious constitutional puzzle as it authorizes four specific forms of revenue devices, "Taxes, Duties, Imposts and Excises." Luther Martin's line of questioning revealed the impost to be the clause's provision for taxing foreign commerce, and the "duties" term applied specifically to what were known as

[105] John Holroyd, Lord Sheffield, [1784] 1970. *Observations on the Commerce of the American States.* New York: Augustus M. Kelley, p. 2.

"stamp duties," affixed to specific consumption items. Martin's later exposition of the clause strongly indicates the term "excises" applied in its common usage as a domestic tax on the use and consumption of specified articles.

The simple category of "taxes" is the least obvious of the four, and indeed the one that Martin considered most prone to abuse. He disapprovingly interpreted "the power to lay and collect taxes" to entail what he described as "a *capitation* tax on their *heads,* or an *assessment* on their *property,*" suggesting its connection to the earlier apportionment schemes of the old Article 8.[106] *Federalist 36* lends credence to this reading, suggesting that the term included the federal power of enacting a "poll tax" which, contrary to its modern association with a tax on voting, was historically synonymous with the "capitation" – a type of head tax assessed uniformly upon the population and apportioned by a general census. *Federalist 36* deprecates the use of such taxes, but suggests they were envisioned by the Constitution to provide for emergencies such as war when foreign commerce, and thus the revenue that derived from it, halted.[107]

The Constitution also provided three explicit constraints on the use of the Revenue Clause. The first appeared in the clause itself, holding that "all Duties, Imposts and Excises shall be uniform throughout the United States." Two other tax limitations appeared in Article I, Section 9. One further constrained the power to tax commerce by providing that "No Tax or Duty shall be laid on Articles exported from any State," of which more will be said in its relation to import tariffs. The second clause, and immediate

[106] Martin, 1788, p. 53

[107] Hamilton, Federalist #36. In the historical British system the term "poll tax" referred to a head tax on the general population. It was often assessed at the time of an election, hence its subsequent association with voting. There is little reason to believe that the framers understood the term "poll tax" to apply any differently than this British usage, as opposed to its later notoriety as a means of impeding suffrage rights.

object at the present, affirms the association of the term "Taxes" with the capitation or poll tax, by holding that "No capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration therein before directed to be taken." This "Capitations Clause" is arguably among the most confusing and obscure provisions in the entire Constitution, and it played prominently into the subsequent matter of the income tax. Its purpose in 1787, however, was undoubtedly a constraint upon the Revenue Clause's tax power. Furthermore, all evidence suggests that it was modeled upon the non-impost component of the 1783 revenue system, and particularly its three fifths ratio for the apportionment of slaves. In the final days of the 1787 convention three North Carolina delegates wrote their state's governor to describe the Capitation Clause:

> It is provided in the 9th Section of Article the first that no Capitation or other direct Tax shall be laid except in proportion to the number of Inhabitants, in which number five blacks are only Counted as three. If a land tax is laid we are to pay the same rate, for Example: fifty Citizens of North Carolina can be taxed no more for all their Lands than fifty Citizens in one of the Eastern States…When it is also considered that five Negroes are only to be charged the Same Poll Tax as three whites the advantage must be considerably increased under the proposed Form of Government.[108]

Notably, the Capitations Clause did not prohibit capitations and other direct taxes as is popularly believed; rather it bound them to an apportionment system determined by the census. In practice, this constraint functions as a discouragement onto itself for the same reasons the old Article 8 was never put to effective use under the Articles of Confederation. The capitation was still technically permitted under the census apportionment stipulation and, of equal importance, seems to be the envisioned direct

[108] William Blount, Richard D. Spaight, and Hugh Williamson to Governor Caswell, September 18, 1787, in Kurland and Lerner, eds, 1987.

"taxes" of the Revenue Clause as per Martin, the North Carolina delegates, and *Federalist 36.*

Considered jointly, these three "tax clauses" of the Constitution are notable not only for the revenue systems they authorized but also for the preference they associated with those systems. Stated simply, their joint effect was as much a constraint upon Congress' revenue tools as it was an authorization of them. The Revenue Clause was essentially a set of instructions to future congresses on the design of their revenue systems. Those instructions contained a very specific toolbox of tax options. They also bestowed preferences upon certain types of taxes within that toolbox by way of regulating them in the two tax clauses of Article I, Section 9. Their joint adoption is a seminal event in American tax history as (1) the foremost preference was given to the import tariff, and (2) the constraints constitutionally prohibited the tariff's most viable substitute revenue policy, the income tax, until they were altered in 1913.

The constitutional convention's debates merit further examination, as the primacy they bestowed upon the tariff was apparently intended for a specific type of tariff as per its own designation, the impost. James Madison hinted as much in the preface to his debate notes as a primary justification for the new Constitution. Under the old Articles, "[t]he reiterated and elaborate efforts of Cong. to procure from the States a more adequate power to raise the means of payment had failed." Repeated attempts to secure "ordinary requisitions," namely the 1781 and 1783 revenue bills, "had only displayed the inefficiency of the authy. making them; none of the States having duly complied with

them."[109] The impost's primacy as a revenue system was hinted at early on in the 1787 convention, with James Wilson identifying it along with the post office's profits as "substantial" sources of revenue. The impost in particular, he added a few days later, was "anxiously wished for by the public." Rufus King of Massachusetts echoed this view, noting "it was uncertain what mode might be used in levying a national revenue; but that it was probable, imposts would be one source of it." King also commended the 5 percent rate from the attempts to amend the old Article 8.[110]

William Paterson's "New Jersey Plan" proposed the first specific iteration of a Revenue Clause on June 15:

> Resd. that in addition to the powers vested in the U. States in Congress, by the present existing articles of Confederation, they be authorized to pass acts for raising a revenue, by levying a duty or duties on all goods or merchandizes of foreign growth or manufacture, imported into any part of the U. States, by Stamps on paper, vellum or parchment, and by a postage on all letters or packages passing through the general post-Office, to be applied to such federal purposes as they shall deem proper & expedient; to make rules & regulations for the collection thereof.[111]

Hamilton predictably opposed Paterson's plan, deeming its revenue system too narrow. He achieved a name for himself in the convention's early days by delivering several blusterous speeches in favor of an expanded national government and, in the most infamous case, a quasi-monarchical executive branch. His June 19 address was no exception, calling for "a general and national government, completely sovereign," that would "annihilate the State distinctions and State operations." Such a government would

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[109] Madison, *Debates*, "Preface to the Debates"
[110] Robert Yates, 1787. "Notes of the Secret Debates of the Federal Convention," in *Secret Proceedings and Debates of the Convention Assembled at Philadelphia in the Year 1787,* p. 123; Madison, *Debates,* June 16, June 11
[111] Madison, *Debates,* June 15.

"grant the regulation of trade and a more effectual collection of the revenue, and some partial duties. These, at five or ten per cent. would only perhaps amount to a fund to discharge the debt of the corporation."[112] Hamilton's brand of nationalism found little audience at the convention though, and later became a source of trouble for his political career as word leaked out from the "secret" proceedings that he desired a king. The two other delegates from New York, Robert Yates and John Lansing, consistently opposed him and shifted their state's vote away from his propositions.

Among most other delegates an import-based tax system was politically appealing, particularly if based around the old impost concept. Paterson's proposal is also notable as it specifically implied that the clause envisioned the impost variant of a tariff through the language "for raising a revenue." It follows from this wording that a tariff must be for the express purpose of generating revenue. A protective tariff rate actually impedes revenue by deterring importation, thus it follows that only "revenue tariffs," of which the impost system is an example, would meet the proposed clause's stipulations. Some attention has been given to the convention's decision on June 19 to recommend the competing Virginia Plan over Paterson's New Jersey proposal. In particular, Paterson's phrase does not appear in the final version of the Revenue Clause, produced some weeks later by the Committee of Style while building on the Virginia Plan. While some scholars have interpreted this omission as a broadening of the clause's powers to include non-revenue purposes, among them trade protection.[113] There is however no evidence to suggest that the change was anything more than stylistic, as the convention continued to

[112] Yates, 1787. pp. 141-2
[113] See McGuire and Van Cott, 2002, p. 431, note 12

favorably entertain the impost after June 19.

In one instance Roger Sherman of Connecticut pointed to popular support for the old 1781 impost system as evidence that most states were "willing to trust Congs. with power to draw revenue from Trade"[114] Gouverneur Morris, who served on the Committee of Style and is believed to be the primary author of the Constitution's final text, was even more explicit. "Revenue will be drawn it is foreseen as much as possible, from trade."[115]

The Revenue Clause was presented again on August 6, reading simply "The Legislature of the United States shall have the power to lay and collect taxes, duties, imposts and excises."[116] The convention took up the clause ten days later, though the debate was relatively sparse, centering on two interrelated issues. First, Daniel Carroll of Maryland observed "the great difference of interests among the States" and doubted "the propriety in that point of view of letting a majority be a quorum" on laws enacted under the clause. His concern foreshadowed the factional abuse concept, later incorporated into the *Federalist* arguments and here observed to be a recurring problem of trade policy in particular. Next, George Mason of Virginia urged that the Revenue Clause be linked to the proposed export tariff prohibition found later in the document, describing this as a "security" to the export-producing "staple States" of the south.[117]

Morris and Madison both expressed their initial opposition to Mason's proposal, regarding export taxation as a potentially viable revenue source. The convention's sentiments seemed to favor the provision though and it was agreed, after a brief debate, to return to the export prohibition in a later section. While the discussion centered on

[114] Madison, *Debates,* June 20
[115] *Ibid.*, July 26
[116] *Ibid.*, August 6
[117] *Ibid.*, August 16.

taxation, John F. Mercer of Maryland was among the few delegates to explicitly recognize that tariffs on trade could have other policy effects besides their revenue effects. He deemed export tariffs "impolitic, as encouraging the raising of articles not meant for exportation." Roger Sherman of Connecticut notably considered the export tariff inferior to the proposed import tariff because the "complexity of the business in America would render an equal tax on exports impracticable." As with the old 1781 amendment, uniformity and fairness were widely recognized as the most commendable characteristics of the impost and a basis for equitable taxation. [118]

The Revenue Clause itself produced little further debate from August 16 until its appearance in the final document a month later. Notably, a clear sense emerged from the discussion that the clause's use by the legislature was to be chained to an explicit revenue purpose. It existed to discharge the national debt and defray the government's expenses, with little other purpose being mentioned and certainly no cognizance of the tariff's use as a protectionist regulatory mechanism. On August 25 Sherman suggested that it was "necessary to connect with the clause for laying taxes duties &c an express provision for the object of the old debts." He moved to insert explicit language connecting these powers to "the payment of said debts and for the defraying the expences that shall be incurred for the common defence and general welfare," though the convention initially rejected this language, deeming it an "unnecessary" redundancy. Sherman's suggestion was revived in the Committee of Style for presentation on September 4 though, and the present version of the clause emerged from it shortly after.[119]

[118] *Ibid*.,
[119] *Ibid.,* August 25, September 4

When discussed at the convention, the regulation of trade appeared not in the Revenue Clause where the tariff power originates but rather in the context of the Commerce Clause, permitting Congress to "regulate Commerce with foreign Nations" and between the states. Madison's notes on the convention reveal a variety of motives behind this device, not the least to induce a uniformity of laws for interstate trade. In fact, the interstate portion of the clause was born out of "the vain attempts [of the states] to supply their respective treasuries by imposts, which turned their commerce into the neighbouring ports." Madison listed Britain though as a primary motivation for regulating commerce, accusing them of "a monopolizing policy injurious to the trade of the U. S. and destructive to their navigation." The inadequacy of the Articles of Confederation, he continued, prevented "a Countervailing policy on the part of the U. States."[120]

The notion of a "countervailing" trade policy was a recurring topic in the founding era, though less certain was its character. Even dedicated free traders like Thomas Jefferson recoiled at what they considered a predatory trading policy by Britain, and believed in the propriety of some form of countervailing measure. The publication in 1784 of *Observations on the Commerce of the American States* by John Holroyd, Lord Sheffield, an English member of parliament, gave direct reaffirmation of American anxiety. This lengthy tract, built around common mercantilist arguments, laid out an agenda of navigation, tariff, and specie regulation laws that its author intended to preserve the colonial era "triangle trade" with the new American states in a post-independence economy. Sheffield's goal was to build a dependent American customer base for British manufactured goods while maintaining Britain's influx of raw materials

[120] *Ibid.*, "Preface"

from across the Atlantic and between the continent and its West Indian holdings.[121]

The economics of countervailing trade policy were not especially known in this period, as even Adam Smith's theory of absolute advantage first appeared only a decade prior to the constitutional convention. Forrest McDonald suggests that there is some evidence Hamilton recognized the perils of a heavy-handed trade policy toward the Pitt government of Britain, not for protective reasons but for the risk of provoking an even more severe retaliation, and was thus willing to afford caution when Madison and Jefferson were not.[122] It was nonetheless commonly believed by most legislators that the best policy answer to nations deemed to exhibit a hostile trade policy of their own was to retaliate. In so doing, the American object was never to "protect" its home industry from those hostile policies but rather to induce their repeal abroad through the disincentive of retaliatory penalties. In a sense, many believed the regulation of commerce could be used internationally much as a boycott intends to change the disfavored practices of a private business. Jefferson maintained as much while serving as the nation's first Secretary of State. His 1793 report to Congress maintained that "two methods occur" to counter the discriminatory trade policies of other nations: first, by "friendly arrangements with the several nations with whom these restrictions exist" through the treaty power, and second, by "the separate act of our own legislatures for countervailing their effects." Through this latter approach (and the less favored of the two in Jefferson's mind), it was intended that access to American trade should become an enticement to better trading terms onto itself. "Free commerce and navigation are not to be given in exchange for restrictions and

[121] John Holroyd, Lord Sheffield, [1784] 1970. *Observations on the Commerce of the American States.* New York: Augustus M. Kelley.
[122] Forrest McDonald. 1982. *Alexander Hamilton: A Biography.* New York: W.W. Norton, p. 140.

vexations; nor are they likely to produce a relaxation of them."[123]

Though intuitively appealing, this policy often falls short for the same reason that most boycotts are unsuccessful. It rests upon the assumption that the United States comprises a sufficiently large and non-substitutable share of the intended target's trading interest in a given good to work. Absent goods meeting these conditions, the countervailing strategy may offer no more inducement for policy change than a disgruntled customer's self-proclaimed boycott of Coca Cola. Jefferson himself learned the common futility of countervailing commercial regulations in his largely disastrous embargo policy against Great Britain during the build up to the War of 1812. This policy, which halted all manner of American commerce with Britain (and, effectively, most of Europe due to the Napoleonic Wars' complex alliances), was not adopted with any protectionist intent or design despite its resemblance of autarky in practice. It was to be a war measure, a commercial boycott of the British economy in retaliation for the impressment of American sailors into the Royal Navy.

Despite their similar ends, the concept of trade regulation embodied in the Jefferson embargo differs drastically from the countervailing commercial policies in Hamilton's 1791 *Report on Manufactures.* Significantly, Hamilton sought not to induce Britain to alter its discriminatory trade policies nor even to retaliate against them in protest. Rather, he believed the United States must utilize commercial regulation to attain economic self sufficiency. Agriculture alone was "too uncertain a reliance" for the economic health and stability of the new nation. America needed "a substitute for"

[123] Thomas Jefferson, 1793. "Report on the Privileges and Restrictions on the Commerce of the United States in Foreign Countries" in *State Papers and Publick Documents of the United States, 1789-96.* Boston: T.B. Wait and Sons, 1815, pp. 342-358.

European agricultural demands and that substitute could be found "in an extensive domestic market" of manufactured goods, intentionally cultivated and insulated by the regulatory tools of the state.[124] By producing exclusively in agriculture, he argued, the United States effectively yielded its need of manufactured items, and especially technologically complex goods that could not be produced in single units by artisans, to Europe. This situation proved dangerous for the future and health of the domestic economy as it placed the United States "to a certain extent in the situation of a country precluded from foreign Commerce."[125] Under this scenario the United States could "without difficulty obtain from abroad the manufactured supplies," but only while experiencing "numerous and very injurious impediments to the emission and vent of their own commodities."[126] Thus, American trade became subservient to the policies imposed against it by Europe. The existing European policies, he noted, had the effect of reducing Americans to "confine their views to Agriculture and refrain from Manufactures" – a situation which Hamilton believed would lead to comparative impoverishment for the United States.[127]

Whereas the Jeffersonians turned to negotiation and aggressive direct retaliation as a means of combating European trade barriers, Hamilton saw another route to escaping their effects upon the American economy. Rather than charge the line erected by Britain, he would flank it by replacing the need for European manufactures with a domestic manufacturing industry:

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[124] Hamilton, 1791. "Report on Manufactures" in *Annals of Congress*, 1st Congress, Volume II, Appendix., p. 985
[125] *Ibid*., p. 987
[126] *Ibid*.
[127] *Ibid*., p. 987

> To diversify and extend these [industrial] improvements is the surest and safest method of indemnifying ourselves for any inconveniences, which those or similar measures have a tendency to beget. If Europe will not take from us the products of our soil, upon terms consistent with our interest, the natural remedy is to contract as fast as possible our wants of her.[128]

Put simply, Hamilton sought to create "a more extensive demand for that surplus [of agriculture]…at home." A domestic manufacturing industry, he noted, would "require the incitement and patronage of government."[129]

The vast disparities between the Jeffersonian and Hamiltonian views of a countervailing commercial policy cast significant confusion onto the original meaning of the Commerce Clause, and its relation to the Revenue Clause. Delegates to the 1787 convention certainly intended for the federal government to establish some form of national commercial policy. The relevant question though is its intended use and scope. Was commerce to be regulated as a tool of diplomacy in order that Europe may be induced to abandon its discriminatory laws against the United States? Or was it to be regulated as a means of escaping the effects of those laws, and if so through what devices?

The convention debates on the Commerce Clause left surprisingly few clues on the exact character of the commercial regulations they intended. The clause itself was offered, as one commentator suggested on June 19, "because the States individually are incompetent to the purpose" of developing an unspecified uniform commercial policy.[130] Its only plainly stated use, however, was to be in the establishment of a national "Navigation Act" governing the transport of goods on U.S.-owned ships. This policy,

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[128] *Ibid*., p. 987
[129] *Ibid*., pp. 971, 989
[130] Madison, *Debates,* June 19.

pursued aggressively for self-evident reasons by the shipbuilding states of New England, drew immediate objections from the slave states, where foreign-owned shipping firms were often utilized as a cheaper alternative. South Carolina's Charles Pinckney "remarked that there were five distinct commercial interests--1. the fisheries & W. India trade, which belonged to the N. England States. 2. the interest of N. York lay in a free trade. 3. Wheat & flour the Staples of the two Middle States, (N. J. & Penna.)--4. Tob[acc]o. the staple of Mary[lan]d & Virginia & partly of N. Carolina. 5. Rice & Indigo, the staples of S. Carolina & Georgia." Absent limitations on the Commerce Clause's power, he warned, "These different interests would be a source of oppressive regulations" against each other and at the behest of their respective constituencies. He accordingly joined with Mason in requesting a two-thirds supermajority in Congress to enact all commercial legislation.[131]

In answer, George Clymer of Pennsylvania stressed the need of the Mid-Atlantic States to "defend themselves against foreign regulations" as a reason why commercial laws should not be subject to this extra burden. Sherman of Connecticut posited that "the diversity" of interests between the states "was itself a security" against abuse, rendering the proposed supermajority moot. Madison echoed this argument in a precursory statement to his position in the *Federalist Papers*:

> He observed that the disadvantage to the S. States from a navigation act, lay chiefly in a temporary rise of freight, attended however with an increase of Southn. as well as Northern Shipping--with the emigration of Northern seamen & merchants to the Southern States--& with a removal of the existing & injurious retaliations among the States on each other. The power of foreign nations to obstruct our retaliating measures on them by a corrupt influence would also be less if a majority

[131] *Ibid.*, August 29

> shd be made competent than if 2/3 of each House shd. be required to legislative acts in this case. An abuse of the power would be qualified with all these good effects. But he thought an abuse was rendered improbable by the provision of 2 branches--by the independence of the Senate, by the negative of the Executive, by the interest of Connecticut & N. Jersey which were agricultural, not commercial States; by the interior interest which was also agricultural in the most commercial States--by the accession of Western States which wd. be altogether agricultural. He added that the Southern States would derive an essential advantage in the general security afforded by the increase of our maritime strength. He stated the vulnerable situation of them all, and of Virginia in particular. The increase of the Coasting trade, and of seamen, would also be favorable to the S. States, by increasing, the consumption of their produce. If the Wealth of the Eastern should in a still greater proportion be augmented, that wealth wd. contribute the more to the public wants, and be otherwise a national benefit.[132]

It may thus be maintained with certainty that the chief architects of federalist theory did intend for its safeguards of concurrence and checks and balances to encompass the regulation of foreign commerce and, in so doing, curtail factional abuses. Yet as with most other recorded commentators at the convention, Madison only specifically associated the clause with the navigation policy.

The majority of the Commerce Clause debate followed this pattern, with its critics supporting the supermajority proposal to guard against factional abuse and proponents contending that the Constitution's federalist design was sufficient enough to render such a clause unnecessary. A lone deviation from this argument, and indeed one of the only explicit endorsements of factionalized commercial policy at the convention, came from Nathaniel Gorham of Massachusetts. Gorham "urged the improbability of a combination against the interest of the Southern States" but nonetheless maintained the need to

[132] *Ibid.*

"relieve the Eastern States" of competition with foreign ships by way of a navigation law. Still, such a law, he envisioned, would be moderate in design. "It was moreover certain that foreign ships would never be altogether excluded especially those of Nations in treaty with us."[133]

The southern delegates ultimately dropped their insistence for the supermajority provision in exchange for northern affirmation of the export tax prohibition and an additional clause protecting the slave trade from congressional interference until 1808.[134] This last of the "great compromises" at the constitutional convention effectively cemented the final terms of each clause it entailed, though some delegates such as Mason held out for an eventual amendment to resuscitate the supermajority provision. It is certain from this complex chain of events that the relevant constitutional clauses – the Revenue Clause, the Commerce Clause, the capitations prohibition, and the export tax prohibition – emerged in relation to each other. Less understood is how they were intended to interact, and indeed which clauses were to take precedence and when.

It is readily apparent that the Commerce Clause offered the greatest potential for a broad interpretation. Though born of a desire countervail discriminatory European statutes, its exact scope and tools were never explicitly defined outside of a request for a national navigation law, itself tepidly associated with New England's factional interests though always pledged in moderation and constraint. A fair assumption may be made in the vein of Jefferson's later commentary and actions that the Commerce Clause entailed an embargo power to directly regulate foreign goods in the conduct of foreign policy.

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[133] *Ibid.*

[134] This bargain is sometimes referred to as the "dirty compromise." See Madison, *Debates*, August 16, August 25.

Less certain is whether the Commerce Clause included the mechanism of the tariff among its available regulatory tools to obtain an effective prohibition on foreign goods, albeit for very different motives than Jefferson's use of trade as a diplomatic carrot. This distinction seems uncontroversial today, perhaps even contrived given the widespread use of tariffs as a protective regulatory device. In fact though, it was a dominant question of constitutional law for the first half of the 19th century and was not conclusively settled by the Supreme Court until 1928. Indeed, upon closer examination the distinction between a Revenue Clause tariff and a Commerce Clause regulation is itself at the center of the tariff's dual rent characteristic and thus a fundamental matter of the effects of constitutional design on tariff policy.

The distinction may even determine the legislative support of a protectionist policy. Absent another policy motive such as war, an open embargo of specific commercial goods is likely to provoke visible legislative resistance as its intended policy effects – the exclusion of that good – are readily evident and stated. A tariff, by contrast, has a tendency to blur the lines between its two functional uses for revenue and protection. Even a modest revenue tariff may exert a slight deterrent effect upon the import to which it is affixed, and even heavy protectionist rates may generate a small tax income so long as they are short of exclusionary. As a result, the policy device of the tariff is far more susceptible to legislative logrolling than an outright regulatory embargo. Its protective effects, obtained through passive revenue administration under a complex tariff schedule, are also less likely to attract widespread public notice than an outright regulatory prohibition on imports, save for the most egregious examples. In practice, the tariff becomes a well suited mechanism for cloaking the full scope of its protective aims

– a tactic that was common in the 19th century according to Taussig, particularly where specific duties were selected over ad valorem rates.[135] Thus the question of whether the Constitution permits Revenue Clause tariffs to be used for regulatory means under the Commerce Clause obtains central importance.

Despite the widespread use of tariffs for regulatory purposes including in the founding era, an argument may be made that this practice defies the original purposes of the constitutional convention, or is at least an accident of constitutional design. The argument essentially holds that the tariff power obtains its direct sanction in the Revenue Clause and must therefore fulfill that clause's purpose of generating revenue as its primary object. A tariff that does not generate revenue by design (or one that intentionally discriminates against the importation of revenue-generating goods) is therefore unconstitutional.

A strict reading of the Revenue Clause would indeed lend support this argument, as it actually associated import taxation with a specific type of tariff, known for its uniformity and revenue purposes – the impost. The constitutional convention and the preceding experience under the Articles of Confederation both illustrate a strong preference for a national impost system – so strong in fact that it was intended to be the primary revenue device of the new national government and was constrained as such by the limitations imposed upon competing revenue devices by the capitations clause.

This strict reading is also lent further credence by the fact that the Revenue Clause itself was never associated with any object at the convention besides the generation of revenue. Despite their relative silence on the subject of protective tariffs, the delegates

[135] Taussig, 1931. p. 159

were indisputably aware of this type of policy. On August 28 a minority faction of the delegates objected to a clause prohibiting the individual states from taxing the commerce of their neighbors on the grounds that it might limit their "wish to encourage by import duties certain manufactures for which they enjoyed natural advantages" over the other states. Madison answered by condemning the trouble caused by interstate tariff disputes under the Articles of Confederation. Furthermore, the elimination of such disputes by a uniform national commercial system was reason in itself to commend the new Constitution:

> The encouragement of Manufactures in that mode requires duties not only on imports directly from foreign Countries, but from the other States in the Union, which would revive all the mischiefs experienced from the want of a Genl. Government over commerce.[136]

Madison's *Federalist 42* echoes this complaint and even praises the Constitution for impeding protectionist trade policies at the state level. When read in this light the Commerce Clause' state level provisions served not to empower the federal government's regulatory control of interstate commerce, as is its most common modern use, but rather to curtail the troublesome protectionist policies of the individual states upon their neighbors during the middle 1780's.

Just prior to the 1787 convention Madison similarly complained to a fellow Virginia legislator, "There is a rage at present for high duties, partly for the purpose of revenue, partly of forcing manufactures, which it is difficult to resist."[137] After noting that

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[136] Madison, *Debates,* August 28

[137] Madison to Edmund Pendleton, January 9, 1787, in Gaillard Hunt, ed. *The Writings of James Madison.* New York: G.P. Putnam's Sons, Volume 2, p. 306. Curiously, this statement has been cited to suggest Madison's early acquiescence to the practice of tariff protectionism at the time of the constitutional convention, even though it was plainly written in hostility. See, for example, Robert P. Reeder, 1928. "The Constitutionality of Protective Tariffs." *University of Pennsylvania Law Review,* Vol. 76-8, pp. 974-9.

the Virginia Senate had recently succeeded in halting one such proposal to tax the imports of other states, Madison continued to dismantle the arguments for tariff protectionism one by one:

> It seems to be forgotten, in the first case, that in the arithmetic of the customs, as Dean Swift observ., 2 and 2 do not make four; and in the second, that manufactures will come of themselves when we are ripe for them. A prevailing argument, among others on the subject, is, that we ought not to be dependent on foreign nations for useful articles, as the event of a war may cut off all external supplies. This argument certainly loses its force when it is considered that, in case of a war hereafter, we should stand on very different ground from what we lately did. Neutral nations, whose rights are becoming every day more and more extensive, would not now suffer themselves to be shut out from our ports, nor would the hostile Nation presume to attempt it.[138]

Madison offered what is perhaps his most revealing statement on the proper scope of the tariff power during the ratification fight for the 1783 impost proposal. A resolution Madison submitted to the national congress written in 1785 professes to delineate the powers which the national government "ought to enjoy" in commercial matters. He supported a power "prohibiting vessels belonging to any foreign nation from entering into any of the ports of the U.S." in appropriate circumstances. The tariff, he wrote, could be imposed "on the vessels, produce or manufactures of foreign nations" when "to be appropriated to the establishmt. & support of a marine, & *to this purpose alone*" with the caveat that "States in Congress assd. shall concur, *on principles of extreme necessity*, in any other appropriation" (emphasis added).[139] Quite simply, when read in the context of the Commerce Clause's intended use for a navigation act, Madison's 1785 proposals

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[138] *Ibid*.
[139] James Madison, "Draft of Resolutions on Foreign Trade for the Virginia House of Delegates," November 12, 1785, in Kurland and Lerner, eds., 1987.

appear to give authoritative credibility to both a limited reading of that clause's scope in relation to the tariff power and to the notion that the Revenue Clause is constrained to taxes that actually generate revenue.

The Constitution's export tariff prohibition is itself suggestive of an attempt by the founders to limit the government's intrusion into international trade, albeit a complex one. James McHenry of Maryland described this prohibition as a safeguard to ensure that "unproductive States cannot draw a revenue from productive States into the Public Treasury, nor unproductive States be hampered in their Manufactures to the emolument of others."[140] It was thus clearly born out of a desire by the delegates to disallow commercial policies that unduly burden one state to the benefit of another.

McGuire and Van Cott note that the practical value of this prohibition is substantially negated by the import tariff's Lerner symmetry effects.[141] This clause was nonetheless thought of as a constraint upon import tariffs among some members of the founding generation. John Taylor of Caroline, a prominent Jeffersonian voice in the early U.S. Senate, directly associated the export prohibition with a symmetry constraint upon protective import tariffs: "Of what value is the [Article I, Section 9] prohibition to impose a tax or duty on articles to be exported from any State, if Congress can impair or destroy this right of exportation for the sake of enriching a local class of capitalists."[142]

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[140] James McHenry, Resolution to the Maryland House of Delegates, November 29, 1787 in Max Farrand, ed. 1911. *The Records of the Federal Convention of 1787.* New Haven, CT: Yale University Press, Vol. 3, p. 149.
[141] McGuire and Van Cott, 2003.
[142] John Taylor of Caroline [1822] 1992. *Tyranny Unmasked.* Indianapolis: Liberty Fund. p. 100.

2.6 The Tariff during Ratification

> "[The Impost of 1783] does not suggest an idea that it was necessary to grant the United States unlimited authority in matters of revenue. A variety of amendments were proposed to this system, some of which are upon the journals of Congress, but it does not appear that any of them proposed to invest the general government with discretionary power to raise money. On the contrary, all of them limit them to certain definite objects, and fix the bounds over which they could not pass." – Robert Yates, 1788.[143]

Generally taken, the records generated by the Constitution's ratification period further augment the notion that the Revenue Clause chained the tariff power to actual revenue generation. The confusing relationship of this power to the Commerce Clause persisted though, and indeed there is reason to doubt that the leading founders even fully understood how the two would interact. Shortly after the convention Madison penned a lengthy letter to Thomas Jefferson about the proposed system of government, including a cryptic allusion to the two clauses. "The line of distinction between the power of regulating trade and that of drawing revenue from it, which was once considered the barrier of our liberties, was found, on fair discussion, to be absolutely undefinable."[144]

Whether others viewed this line with similar uncertainty is not recorded, though some delegates expressed their aversion to any tariff besides the revenue variety. What is certain, however, is that the overwhelming majority of delegates to the convention left with the understanding that the tariff, and specifically its impost variety, was intended to be the national government's primary source of tax income by way of the Revenue

[143] Yates, "Brutus" No. 7, January 3, 1788, in Herbert J. Storing, ed. 1981. *The Complete Anti-Federalist*. Chicago: University of Chicago Press. Vol. 2, pp. 88-92

[144] James Madison to Thomas Jefferson, October 24, 1787 in Hunt, ed., 1911, Vol. 5, p. 26.

Clause. Oliver Ellsworth gave one of the most detailed expositions of this "most important clause" to the Connecticut ratifying convention. To Ellsworth, the clause was unmistakably chained to actual revenue collection as it was intended to enable the federal Congress to "command the whole power of the purse." Among the clause's tax components, he specifically identified the impost as "the best way of raising a national revenue" and, significantly, noted that its success was dependent upon a continuous flow of trade.

> The imports into the United States amount to a very large sum. They never will be less, but will continue to increase for centuries to come. As the population of our country increases, the imports will necessarily increase. They will increase, because our citizens will choose to be farmers, living independently on their freeholds, rather than to be manufacturers, and work for a groat a day. I find by calculation that a general impost of 5 per cent. would raise the sum of £245,000 per annum, deducting 8 per cent. for the charges of collecting. A further sum might be deducted for smuggling--a business which is too well understood among us, and which is looked upon in too favorable a light. But this loss in the public revenue will be overbalanced by an increase of importations.[145]

Ellsworth foresaw the clause encompassing a limited specific tax at higher rates upon rum, though this too would serve a revenue purpose.

Thomas Davies, a state delegate at the Massachusetts convention, echoed many of Ellsworth's sentiments about the impost's primacy in the tax system. "[I]t will not do to overburden the impost," however, "because that would promote smuggling, and be dangerous to the revenue."[146] Robert Livingston of New York predicted the impost, along with excises, would form the base revenue device in times of peace, to be augmented in

[145] Oliver Ellsworth, Connecticut Ratifying Convention, January 7, 1788 in Elliott, ed. 1881, Vol. II, p. 193.
[146] Thomas Davies, Massachusetts Ratifying Convention, January 18, 1788 in Elliott, ed. Vol. 2, p. 42.

other exigencies by direct taxation under the Capitations clause.[147] James Wilson extolled the impost power, "which is not given by the present Articles of the Confederation," to the Pennsylvania convention. "A very considerable part of the revenue of the United States will arise from that source; it is the easiest, most just, and most productive mode of raising revenue; and it is a safe one, because it is voluntary." Furthermore, Wilson explicitly linked the Revenue Clause's objects to its treasury function, "for the purpose mentioned in the 8th section of the 1st article; that is, 'to pay the debts and provide for the common defence and general welfare of the United States.'"[148] His wording strongly implies that the concluding phrase of the Revenue Clause defines and constrains the uses of the various tax mechanisms in its opening line.

Critics of the Revenue Clause targeted its powers not for any perceived use as a regulatory mechanism or a commercial impediment, but rather as a tool for exorbitant taxation. One state delegate in New York proposed an amendment that would further limit taxes under the Capitations Clause to use only "when moneys arising from the impost and excise are insufficient for the public exigencies," thus further solidifying the primacy of the impost even in the eyes of its critics. Governor George Clinton of New York similarly objected to the power not on its imprudence, but rather its administration on the state level.[149]

Edmund Randolph, architect of the Virginia plan, praised the impost power to his state's convention, again casting it in revenue terms. "Credit being restored, and confidence diffused in the country, merchants and men of wealth will be induced to come

[147] Robert Livingston, New York Ratifying Convention, June 20, 1788 in Elliott, ed. Vol. 4, p. 222
[148] James Wilson, Pennsylvania Ratifying Convention, December 4, 1787 in Elliott, ed. Vol. 2, p. 467.
[149] Resolution of Mr. Williams, New York Ratifying Convention, June 26, 1788 in Elliott, ed. Vol. 2, p. 331

among us, immigration will increase, and commerce will flourish; the impost will therefore be more sure and productive." Another delegate echoed him, stating "Money cannot be raised in a more judicious manner than by impost."[150] Patrick Henry, a critic of the Constitution, attacked the impost power, though not from any fear that it may be transformed to protective uses. He believed the simple existence of a federal "common treasury," filled by the impost, would unfairly distribute the burdens of taxation onto the "importing states."[151]

Like Wilson, Randolph also provided a direct attestation that the Revenue Clause was to be used solely for the generation of revenue. Noting that the "meaning of this clause has been perverted, to alarm our apprehensions," he offered a clarification. "The plain and obvious meaning of [the Revenue Clause] is, that no more duties, taxes, imposts, and excises, shall be laid, than are sufficient to pay the debts, and provide for the common defence and general welfare, of the United States."[152]

As with the other ratifying conventions, delegate after delegate affirmed the revenue character of the tariff. Madison called upon the impost power to justify the permission of proportional direct taxation under the Capitations Clause. He cautioned against throwing "disproportion of the burdens" of the treasury into import taxation, where it would "discourage commerce and suffer many political evils."[153]

The Commerce Clause became subject of extensive discussion in Virginia, home to Mason who never abandoned the supermajority requirement he attempted to insert at the convention. Madison defended the clause's power, though again by stressing its role

[150] George Nicholas, Virginia Ratifying Convention, June 6, 1788 in Elliott, ed. Vol. 3, p. 99
[151] Patrick Henry, Virginia Ratifying Convention, June 9, 1788, in Elliott, ed. Vol. 3, p. 158
[152] Edmund Randolph, Virginia Ratifying Convention, June 10, 1788, in Elliott, ed. Vol. 3, p. 207.
[153] James Madison, Virginia Ratifying Convention, June 11, 1788, in Elliott, ed. Vol. 3, p. 252.

in establishing a uniform national policy and superseding burdensome state impediments to internal trade. The Commerce Clause that Madison presented to his home state had little vision for a regulatory regime that managed and controlled the flow of goods into the country. To the contrary, it would serve to secure the nation's trade by providing a "guard against smuggling, and such other attacks on the revenue."[154] Mason nonetheless convinced the convention to call for a constitutional amendment such that "no navigation law, or law regulating commerce, shall be passed without the consent of two thirds of the members present, in both houses."[155] The North Carolina convention gave its second to this proposal, though nothing more came of it in the new federal Congress.

As odd as it may seem given the tariff's early dominance of the U.S. political debate, the records of the constitutional convention and ratification process simply do not show any authoritative advocacy of protectionism, or even hint that it was envisioned by either of the clauses now used to give it sanction. Most records echo Ellsworth, Madison, and Randolph by strictly associating the tariff with its revenue function. A solitary exception appears in a brief statement by Thomas Dawes at the Massachusetts ratifying convention. "Our manufactures are another great subject, which has received no encouragement by national duties on foreign manufactures, and they never can by any authority in the Confederation." Dawes claimed the new Constitution would enable the country "to prevent the importation of such foreign commodities as are made from such raw materials as we ourselves raise."[156] There is no reason to treat Dawes' statement as representative of common opinion though. He was a minor participant with no first hand

[154] *Ibid.,* p. 260.
[155] Amendments, Virginia Ratifying Convention, in Elliott, ed., Vol. 3, p. 660
[156] Thomas Dawes, Massachusetts Ratifying Convention, January 21, 1788, in Elliott, ed., Vol. 2, p. 59

knowledge of the Philadelphia convention, and his brief argument had no recorded parallels in any other state convention.

Outside of what may be interpreted from these remarks, the ratification debates left little guidance on the troublesome relationship between the Revenue and Commerce clauses. Clearly both have been subsequently utilized to give nearly limitless sanction to protective tariffs, yet equally evident is that this use is a far cry from anything even remotely associated with the way both clauses were presented before the state conventions during ratification. The Commerce Clause, when discussed, was deemed necessary as a unifying mechanism for state commercial policies. Its envisioned scope seldom extended beyond the navigation act proposal, a modest and uncontroversial regulation when compared to the later protectionist tariff regimes.

The Revenue Clause was given an even narrower reading, almost always being associated with a treasury purpose and specifically connected to the impost concept. Even Alexander Hamilton cloaked his discussion of this clause in strict revenue terms during the ratification debates. As he told the New York convention, "The propriety of Congress possessing an exclusive power over the impost appears from the necessity of their having a considerable portion of our resources, to pledge as a fund for the reduction of the debts of the United States. When you have given a power of taxation to the general government, none of the states individually will be holden for the discharge of the federal obligations: the burden will be on the Union."[157] Barring the possibility of an unstated motive by later protectionists such as Hamilton, it may be reasonably concluded that most of the founders understood the Revenue Clause to sanction a low revenue tariff in the

[157] Alexander Hamilton, New York Ratifying Convention, June 28, 1788, in Elliott, ed., Vol. II, p. 363.

style of the five percent imposts of 1781 and 1783, and likely little else.

III. The Constitution in Practice

3.1 The Origins of American Protectionism

> While Hamilton, with necromancy warm,
> Issued from central York, the apt alarm;
> To freight, with royal spells, our iron charm.
> Then in big bulk, we floundered at our ease,
> As the Leviathan deforms the seas;
> In one vast compact body, firm we lay,
> Like icy masses in the frozen bay;
> Impeding the *free* commerce of the land,
> Condens'd, though hideous – terrible, though grand.[158]

When the first tariffs under the new Constitution were proposed in 1789 they exhibited characteristics well beyond the scope of the original impost policies of 1781 and 1783. Even more curious, however, is that this transformation in the tariff's purpose appears to have taken the founding generation completely off guard. Debate on the original tariff act began innocently enough. James Madison, then serving in the House of Representatives, offered the first tariff bill on April 9, 1789, only the second significant piece of legislation taken up by the new Congress after its creation. True to its Revenue Clause origins, the bill was designated a system of "Duties on Imposts." It provided a

[158] Anthony Pasquin. 1804. *The Hamiltoniad, Or, an Extinguisher for the Royal Faction of New England.* Boston: Independent Chronicle Office.

simple schedule of specific "duties" on liquor, wine, sugar, and coffee. The heart of the bill, however, was its impost provision – a tax "on all other articles ___ per cent. on their value at the time and place of import." Madison intentionally left the rate blank, placing the choice of an optimal revenue impost level before the legislative body.[159]

The bill's kinship to the old 1781 and 1783 impost proposals was readily apparent to every member of the House, and the first speaker after Madison, Elias Boudinot of New Jersey, suggested "that the blanks be filled up in the manner they were recommended to be charged by Congress in 1783."[160] A quick succession of speakers highlighted the bill's revenue purposes, with John Laurance of New York even advising against the specific duties on alcohol:

> [P]erhaps simplifying the system may be productive of happy consequences, and it strikes me that confusion and perplexity will be best avoided by such a measure; hence it may be proper to lay a duty at a certain rate per cent. on the value of all articles, without attempting an enumeration of any; because if we attempt to specify every article, it will expose us to a question which must require more time than can be spared…[161]

To members such as Laurance, simple prudence advised against any specific enumeration beyond the uniform impost rate. To do so would open a Pandora's Box of faction and politics wherein individual imports became the subject of debate and contention. Little did he know, the next speaker was already preparing to pry at the lid. Thomas Fitzsimons of Pennsylvania rose to speak on Madison's bill with a mind toward tariff protection. Revenue concerns alone could no longer guide the bill. With a paper bearing hastily calculated specific duties in hand, Fitzsimons offered his own suggestions for the bill,

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[159] *Annals of Congress*, 1st Congress, p. 106, 108
[160] *Ibid*, p. 108
[161] *Ibid.*, pp. 109-110

calculated so as to "encourage the productions of our country, and protect our infant manufactures."[162] The idea was novel even for Fitzsimons, who had represented Pennsylvania in the constitutional convention though he uttered not a word about the Revenue Clause during the debates. The protection he sought was moderate compared to later statutes, its list apparently modeled after an existing Pennsylvania state tariff. The consequences would long outlive his immediate and temporary legislative aim.

Historians have long been of the consensus that Fitzsimons' amendment caught Madison, and indeed most of the Congress, completely off guard. To quote Robin Einhorn, "nobody seems to have foreseen…that the impost would become a protective tariff."[163] Blindsided by the move and confused that someone would use the Revenue Clause for a purpose other than revenue, Madison reiterated his call for a uniform impost. He had offered the bill in haste, expecting a speedy approval, to capture the tax revenue of the coming summer months' trade. He intended it to provoke a short discussion wherein Congress need only fill the blanks and decide a proper uniform rate. Fitzsimons now proposed a slate of specific duties, covering all types of manufactures from iron to cloth to leather goods. As Einhorn observes,

> The impost's principal political advantaged diminished in that moment. Congressmen had decided to think about the economy rather than only the revenue, initiating the tariff politics that later generations knew only too well: Pennsylvanians leading the charge for protective duties, southerners objecting to taxes that would force their constituents to subsidize the development of northern industry, New Englanders balancing the competing claims of import merchants (who preferred low tariffs) and manufacturers (who preferred high tariffs), and everyone engaged in log-rolling and other strategic behaviors that would make tariff politics a paradigmatic case for

[162] *Ibid.*, p. 111.
[163] Einhorn, 2006. p. 170

twentieth-century political scientists investigating the legislative process.[164]

In one lasting and completely unexpected swipe, the entire original purpose of the Revenue Clause crumbled into a sea of factionalized protectionist politics.

Madison seems to have been personally taken back by the development. After a week of debate in which legislator after legislator scrambled to add his own favored item to the list of specific duties, he apprised Virginia jurist Edmund Pendleton of the situation. "In settling the *rate of* duties, the ideas of different quarters, Northern and Southern, Eastern and Western, do not entirely accord." "If the duties are raised too high," he warned, "the error will proceed as much from the popular ardor to throw the burden of revenue on trade as from the premature policy of stimulating manufactures."[165] Similar letters to Thomas Jefferson and Edmund Randolph kept them informed of the emerging political divisions over the tariff, each displaying Madison's trepidation over the precedent that was being set.

From a constitutional standpoint, the Revenue Clause provided Madison and his allies a strong argument against Fitzsimons' plan. The moderate, uniform revenue impost, so plainly anticipated when the clause was being written, was known to every state and favored by national majorities in spite of its difficulty in meeting the unanimous consent required by the Articles of Confederation. Fitzsimons' tariff was little known outside of Pennsylvania. It was comparatively convoluted in design and, while ostensibly offered as a Revenue Clause law, implemented rates that plainly served other purposes than revenue. Hindsight suggests that Madison could have called upon the recently approved

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[164] *Ibid.*, pp. 150-51

[165] James Madison to Edmund Pendleton, April 19, 1789, in *Letters and other Writings of James Madison.* Philadelphia: J.B. Lippincott & Co., 1865. Vol. 1, p. 465

Constitution as his strongest argument for restoring the moderate impost of his original proposal. His bill, after all, was what most delegates to the Philadelphia convention envisioned and furthermore he had spent the previous year assuring the anti-federalists that their fears of excessive taxation under the clause were alarmist and ill-founded. Yet for reasons largely unexplained and likely owing to the surprise that accompanied Fitzsimons' proposal, Madison made no such constitutional appeal. As Hill noted, proponents of the Madison impost "urged every other reason against [the Fitzsimmons tariff's] adoption, but not once did they say that protection to American industries would be unconstitutional or even undesirable."[166]

Hill overstated his case slightly. Thomas Tudor Tucker of South Carolina gave an impassioned speech against protection on May 8, complaining that high duties "tend to the oppression of certain citizens and States, in order to promote the benefit of other States and other classes of citizens." "High duties," he continued a day later, "are improper, because they are impolitic, and likely to defeat the object of revenue."[167] It is nonetheless true that Madison and his supporters made little effort to enlist the Constitution to their side. Over the next month, Fitzsimons' specific duties crept into the bill line by line, producing a tariff schedule with a claimed revenue purpose but also distinct, if extremely moderate, protective attributes.

It is difficult to understate the significance of this event as a precedent for future tariffs. As Hill observed, "one can picture very different results following the rejection of a protective measure at the beginning of our government, especially if the rejection had

[166] Hill, 1893. p. 111
[167] *Annals of Congress,* 1st Congress, pp. 303, 307

been made, not for the purpose of securing immediate revenue, but because of a real opposition to the principle of protection." While it cannot be conclusively said that the "rejection of a protective tariff by the first Congress would have proved such a measure to be unconstitutional," it would have "shown the interpretation which the founders of our government put upon the instrument which they had framed."[168] Instead, Madison seems to have acquiesced, albeit temporarily, if for no other reason than a more immediate and pressing need for a federal revenue system – any revenue system. Fitzsimons' proposal had the more immediate effect of transforming a short debate on the proper impost rate into a complex process of political bargaining on individual tariffs, drawn out across many months. The new government was in dire need of money. Madison knew that if the Constitution itself was to survive he must deliver a revenue system, even if it was an imperfect one tainted by the factional politics of protection. Such intrusions could be corrected at a later time after the national finances were stabilized, but absent any revenue the new government itself might not survive infancy.

The decision to attach protective rates to the first tariff act has long been maintained as evidence of their intended sanction under the Constitution. Given the paucity of evidence for protection in the 1787 debates, the 1789 Congress composed of many of the same men has always presented an appealing substitute for the constitutional convention's authority. This was the primary argument used by the Supreme Court in 1928 when it finally gave a clear sanction to the protective tariff.[169]

The composition of these early legislatures undoubtedly bolsters their stature *ad*

[168] Hill, 1893. pp. 112-113
[169] *J. W. Hampton, Jr., & Co*. v. *United States*, 276 U.S. 394 (1928)

verecundiam, though a cautionary note must be affixed to such an argument. The early Congresses were plainly not above the occasional affront to the very same document their members produced a few years prior. The Sedition Act of 1798 criminalized allegedly "false, scandalous, and malicious writing" against public officials in what was widely considered a direct affront to the recently adopted First Amendment. The fact that many members of the Fifth Congress were also present when the Bill of Rights was ratified has done little to resuscitate this law from its notoriety, particularly given its use to persecute newspaper editors who opposed the incumbent Federalist Party. Nor has the signature of President John Adams, who, like Madison, ranks among the preeminent names of the founding generation.[170]

It would also be a mistake to conclude that Madison's tolerance for the Fitzsimons tariffs accurately conveys his early sentiments on the protective tariff's constitutionality, even as he vacillated toward this same policy decades later during his own presidency. Nor did the relative silence of the free traders portend an enduring acquiescence to a constitutionally-sanctioned high tariff regime. As the introduction of Hamilton's 1791 *Report on Manufactures* conceded, the protective system already had its doubters, and within a few months of the *Report's* publication Madison was openly questioning its constitutionality.

In January 1792 Madison once more wrote his friend Pendleton about the tariff, again a subject of congressional action in the wake of Hamilton's report. Hamilton's tariff regime surpassed Fitzsimons though, as it was systemic and intended to establish a

[170] "Although the Sedition Act was never tested in this Court, the attack upon its validity has carried the day in the court of history." *New York Times, Co*. v. *Sullivan,* 376 U.S. 254, 276 (1964).

comprehensive protective program of favorable import duties, drawbacks or subsidies to industries, and "internal improvement" expenditures on American infrastructure, usually to assist in the production and transport of protected domestic industries. As with Fitzsimons before him, Hamilton's actual tariff rates were mild compared to the 19th century's protective system, likely by design. Like Madison, Hamilton was acutely aware of the pressing need for a stable national revenue system, on which rested nothing less than the survival of the new government. As Treasury Secretary he knew the organizational challenge of setting up a national customs administration, and consciously accommodated merchant interests in its design.[171] To isolate and antagonize them with heavy protectionism at this point in history would have almost certainly destroyed the fledgling tariff's revenue. Hamilton was no more willing or able to sacrifice this system for significantly higher tariff rates than Madison had been willing to forgo it over the subversion of his uniform impost.

Still, Hamilton's 1791 tariffs met with little-acknowledged acceptance in Congress, and certainly deviated from a mild uniform impost of 2 or 5 percent.[172] The rate increases were small numerical adjustments, akin to tinkering, but drastic in their lasting stature for subsequent generations. Madison reviled the protective policies proposed in Hamilton's report and did so explicitly on the constitutional grounds he avoided in 1789. He shied from naming Hamilton's legislative project directly, but he contextualized his attack against the *Report on Manufactures* in the unmistakable wording of the Revenue Clause:

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[171] Gautham Rao, 2008. *The Creation of the American State: Customs Houses, Law, and Commerce in the Age of Revolution.* Doctoral dissertation, University of Chicago. p. 100.
[172] Douglas A. Irwin. 2004. "The Aftermath of Hamilton's 'Report on Manufactures.'" *Journal of Economic History,* Vol. 64, pp. 800-821.

> I consider [Hamilton's report] myself as subverting the fundamental and characteristic principle of the Government; as contrary to the true and fair, as well as the received construction, and in bidding defiance to the sense in which the Constitution is known to have been proposed, advocated, and adopted. If Congress can do whatever in their discretion can be done by money, and will promote the General Welfare, the government is no longer a limited one, possessing enumerated powers, but an indefinite one, subject to particular exceptions.[173]

Madison's reference to unconstitutional actions undertaken to "promote the General Welfare" is itself significant, as this terminology appears as an enabling phrase for the taxes permitted by the Revenue Clause. Madison stressed this point as well, noting that the wording "General Welfare" was taken from the Articles of Confederation at the 1787 convention to be "a general caption to the specified powers" of the government, not a blanket sanction for untold and indefinite authority.[174]

3.2 A Constitutional Counterargument

> "No regulation of commerce can increase the quantity of industry in any society beyond what its capital can maintain. It can only divert a part of it into a direction into which it might not otherwise have gone." – Adam Smith, 1776[175]

Despite the precedent-setting endorsement of moderate protectionism in the first congresses, free traders and anti-federalists alike continued to challenge the constitutionality of non-revenue tariffs on a regular basis until the middle 19th century,

[173] Madison to Pendleton, January 21, 1792, in *Letters of Madison*, 1865, Vol. 1., p. 546
[174] *Ibid*.
[175] Adam Smith [1776] 1981. *An Inquiry into the Nature and Causes of the Wealth of Nations.* Indianapolis: Liberty Fund, Book IV, ii, 3.

and sporadically thereafter until the Supreme Court conclusively ruled against them in 1928. A dispute over the tariff's sanction under the Revenue Clause provided the pretext for the largest constitutional crisis between the founding and the Civil War, the nullification dispute of 1832.

At issue throughout was whether the Revenue Clause bound Congress to enact tariffs for the purpose of actual collection, and not simply as a means of regulating behavior by tax encouragement or discouragement. Given the volume of evidence from the 1787 debates and the predecessor legislation under the Articles of Confederation, there can be little doubt that the framers intended for the Revenue Clause itself to produce an actual treasury collection. The issue of the protective tariff's constitutionality, however, revolves around several questions of its design, administration, and place within the federal system. (1) Are the tariff's protective attributes the actual effect of the tax, or are they merely incidental and secondary to its revenue property? (2) Does the tariff power come from the Revenue Clause alone by way of its impost feature, or may it also be used as an instrument in the execution of the Commerce Clause? (3) Given the tariff's dual-rent property, what means exist to differentiate a revenue tariff from a protective one? (4) Should a controversy arise over a protective tariff, what constitutional instruments are properly empowered to curtail its alleged effects? (5) How does the tariff's revenue designation and attribute under the Revenue Clause relate to alternative forms of federal taxation, including those subject to the Capitations Clause?

The Revenue Clause's scope of application was not well understood in the early years of the republic, even by those who drafted it. This much is evidenced by an unusual Supreme Court case from 1796 in which the government itself intentionally challenged

the constitutionality of a federal tax on carriages, seeking a court clarification of whether this measure (and other taxes like it) fell within the purview of the Constitution's enumerated legislative powers and supplying attorneys to argue both sides. The case of *Hylton v. United States* was significant in its own right for establishing the power of judicial review some seven years before the more famous *Marbury v. Madison.* It escapes most history books though because of its unusual origin and because, unlike *Marbury,* the challenged law was upheld. Even *Hylton's* text contributes to its historical inaccessibility. Rather than issue a single opinion of the court, each individual justice wrote on the case in seriatim, reaching the same conclusions through different arguments. The case spoke indirectly to the Revenue Clause's tax functions, but more importantly it defined the circumstances by which the tariff would attain primacy as the national revenue system and which would later be used to challenge the constitutionality its main competitor, the income tax.

Hylton interpreted the Revenue Clause in light of the Capitations Clause to establish two distinct constitutional rules for taxation. The rule of uniformity governed all "all duties, imposts and excises" as per the Revenue Clause, prescribing their consistent application across the entire country. The rule of apportionment governed any "direct tax" as per the Capitations Clause, not by prohibiting such taxes but rather by chaining their administration to an apportionment system based on the census. In the words of Justice Samuel Chase that would define the two rules for a century, "A general power is given to Congress, to lay and collect taxes, of every kind or nature, without any restraint, except only on exports; but two rules are prescribed for their government, namely, uniformity and apportionment: Three kinds of taxes, to wit, duties, imposts, and excises

by the first rule, and capitation, or other direct taxes, by the second rule."[176]

The broad language of Chase's argument also cloaked the limitations it envisioned, as the latter apportionment rule would effectively be used to exclude any direct tax, such as that on income, unless it were apportioned across the states by the complex census formula. The cumbersome administrative nature of such a system established a *de facto* constitutional preference for the three types of taxes falling under the uniformity rule, which, though seen as wide by Chase and particularly open to discretion in those taxes termed "duties," also constrained the development of tax policy to its own scope. Tariffs escaped the apportionment rule by design of their administration, much as the proposed impost bills attempted under the Articles of Confederation.

Chase also pointedly, if subconsciously, linked the Revenue Clause to its actual assessment of taxes by defining its purpose. "The great object of the Constitution was, to give Congress a power to lay taxes, *adequate to the exigencies of government*" (emphasis added).[177]

Hylton affirmed the validity of the carriage tax as a proper instrument under the uniformity rule, and from there forward the court shied away from the matter of federal taxation for almost a century. The question of the tariff persisted in their absence though, with its opponents finding an alternative venue for their grievances in the model provided by the anti-federalist retort to the Alien and Sedition Acts – the Virginia and Kentucky Resolutions of 1798.

[176] *Hylton v. United States,* 3 U.S. 171 (1796).
[177] *Ibid*.

Thomas Jefferson quickly became the public face of the opposition to the system set forth in Hamilton's 1791 *Report,* though notably he made his constitutional case only against the bounties, or manufacturer subsidies, that were intended to accompany and bolster the proposed tariff system. Jefferson made no case against the tariff itself other than to state his disdain for its protective attributes and largely resigned himself to accepting its design as Congress determined, so long as the pernicious bounty policy could be defeated on constitutional grounds. His reasons for yielding the constitutional argument against protection may have been the product of political pragmatism. Though Hamilton succeeded in attaching protective categories to the revenue system, most of these rates were low enough that the Jeffersonians begrudgingly endured them while choosing to do battle with the Treasury Secretary elsewhere. He perceived greater danger in Hamilton's public debt and banking programs and his proposed bounties. As historian Adam Tate notes, "Instead of wrangling over tariff policy, the Republican opposition battled Hamilton's direct taxes."[178]

With Jefferson's election as president in 1800, his followers finally saw an opportunity to make their stand against the tariff. Two influential Jeffersonians took up the long-festering constitutional case against protectionism. The first was Edmund Pendleton, Madison's correspondent from 1792 and a leading Virginia jurist for many decades, then in his eightieth year at the outset of Jefferson's presidency. The second was Pendleton's nephew John Taylor of Caroline, another Virginian who was elected to three non-consecutive stints in the United States Senate. Pendleton viewed the protective tariff,

[178] Adam Tate. "Sectionalism, the Union, and Old Republican Political Economy: John Taylor of Caroline on the Revolution of 1800." Paper presented to the Southern Political Science Association, New Orleans, Louisiana, January 10, 2008. p. 6

even in its milder form, as an abuse of the Revenue Clause' power and blamed its adoption on a deliberately expansive misreading of the Constitution's enumerated powers by the Federalist Party. In a widely circulated 1801 letter to the *Richmond Enquirer,* Pendleton called upon Congress to "erect new barriers against folly, fraud, and ambition" so as to curtail their recurrence should the Hamiltonians regain power. His essay identified six "principles" of the federal government and "enquire[d] whether they have been violated under the Constitution," the fourth relating to the tariff:

> Union is certainly the basis of our political prosperity, and this can only be preserved by confining, with precision, the federal government to the exercise of powers clearly required by the general interest or respecting foreign nations and the state governments to objects of a local nature; because the states exhibit such varieties of character and interests that a consolidated general government would be in a perpetual conflict with state interests, from its want of local knowledge or from a prevalence of local prejudice or interest, so as certainly to produce civil war and disunion. If, then, the distinct provinces of the general and state governments are not clearly defined; if the former may assail the latter by penalties and by absorbing all subjects of taxation, if a system leading to consolidation may be formed or pursued, and if, instead of leaving it to the respective states to encourage their agriculture or manufactures as their local interest may dictate, the general government may by bounties or protecting duties tax the one to promote the other, then the Constitution has not sufficiently provided for the continuance of the union by securing the rights of the state governments and local interests.[179]

Pendleton's grievance was two-fold. In the first part, the protective tariff exceeded the limited scope of constitutional power that he deemed proper for the national government. Second, the Constitution lacked a mechanism to contain such excesses, and therefore was in need of a clarification to establish it as a restrictive rather than expansive document.

[179] Edmund Pendleton. "The Danger Not Over." *The Richmond Examiner,* October 5, 1801.

Jefferson personally avoided the call for constitutional change implicit in Pendleton's letter, though he was keenly aware of the danger in tariff excesses and generally concurred with the grievances against it. He discussed the general principles they embodied with Pendleton's nephew Taylor in a famous exchange from 1798. Though disgusted with Hamilton's entire commercial program, Jefferson counseled Taylor to exercise "a little patience, and we shall see the reign of witches pass over, their spells dissolve, and the people, recovering their true sight, restore their government to its true principles."[180] Holding to this promise, Jefferson used his first message to Congress in 1801 to advocate a revision of the federal tax statutes. Though his primary emphasis was the elimination of the politically unpopular internal excise taxes, he also sought to reorient the revenue system to its impost origins.

> War, indeed, and untoward events may change this prospect of things and call for expenses which imposts could not meet; but sound principles will not justify our taxing the industry of our fellow citizens to accumulate treasure for wars to happen we know not when, and which might not, perhaps, happen but from the temptations offered by that treasure.[181]

Taylor, who served a part of his senatorial career in the Jefferson administration, balanced his early disdain for the tariff with a greater objection to the internal excises. In 1804 an anonymous political pamphlet defending, as its title claimed, "the Measures of the Administration of Thomas Jefferson" appeared in print, bearing many of the polemic characteristics of Taylor's writing.[182]

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[180] Thomas Jefferson to John Taylor, June 4, 1798, in Albert E. Bergh, ed. 1907. *The Writings of Thomas Jefferson.* Washington, D.C.: Thomas Jefferson Memorial Association, p. 209.
[181] Thomas Jefferson, Address to Congress, December 8, 1801 in *Addresses and Messages of the Presidents of the United States.* New York: Edward Walker, 1842, p. 97.
[182] The tract was actually published under the pseudonym "Curtius." For additional information regarding Taylor's likely authorship of this pamphlet see Tate, 2008, p. 2, note 2.

The lengthy tract focused upon Hamilton's federal banking system, bounties, and internal excises, though it also touched upon the tariff issue. With some irony given his later reputation as an anti-tariff pamphleteer, Taylor actually espoused tariffs as the fairest constitutional form of taxation, albeit with the caveat that they be low and uniform as with the impost concept. The Constitution, he conceded, "gave Congress absolute and exclusive power over duties on foreign commodities." It provided these powers out of a "general, not to say universal impression" that the primary federal taxing authority be exercised over imports. This power, however, fulfilled a clear revenue function and thus should be exercised judiciously and impartially across the country. If designed to reflect the uniformity principle, the tariff commended itself over the alternative of internal taxation via excises and duties as these tended to foster "a system of extensive patronage dangerous to a republican government."[183] Stated differently, Taylor viewed the factionalization of the internal tax system with greater fear than even the tariff system, and thus recommended the latter favorably to the former so long as it could be constrained to the low rates of the intended impost system.

The underpinnings of a constitutional case against tariff protectionism were already present by the onset of the Jefferson administration. By Jefferson's departure in 1809, the case remained an abstract, having yet to be made against an actual tariff excepting Pendleton's general grievances against the Hamiltonian system. In its early years the tariff fight took a back seat to the political battles over the Federalist Party's bounties, the public credit and banking program, the Alien and Sedition Acts, and the

[183] Curtius. 1804. *A Defense of the Measures of the Administration of Thomas Jefferson.* Washington, D.C.: Samuel H. Smith, p. 42.

internal tax systems that produced the Whiskey Rebellion of 1794 and became a Jeffersonian rallying cry in the electoral "Revolution of 1800." In comparison to these other Federalist "outrages," both real and perceived, the tariffs adopted in the wake of Hamilton's *Report* struck many Jeffersonians as lesser transgressions. So long as they controlled Congress and the White House, the tariff could be effectively contained; its desired expansion by manufacturing interests having halted after 1792 and now assured in check for the foreseeable future by the outcome of the 1800 election. With equal significance, mounting tensions with Britain over the naval impressment issue caused recurring disruptions for U.S. foreign commerce from 1806 until the conclusion of the War of 1812 in 1815, including the self-inflicted Embargo Act. As a result the topic of tariff policy simply did not receive a full public hearing in these times. The groundwork for its discussion had already been laid though.

In 1803 Virginia jurist St. George Tucker penned one of the first scholarly textbooks on the new Constitution. While addressing the revenue clause he warned of a potential for factional abuse of trade. Tucker recognized that the Constitution provided some safeguards against factional behavior when taxes are strictly used for revenue. The objection "that a representative of Massachusetts, or Georgia, could not be a proper judge of the most fit objects of taxation in Virginia," he noted, is something "the constitution seems to have guarded against effectually, by requiring that the sum to be raised by direct taxes should be apportioned among the several states in the first instance."[184] These safeguards, Tucker feared, would become less certain in matters of indirect taxation,

[184] St. George Tucker, [1803] 1999. *View of the Constitution of the United States.* Indianapolis: Liberty Fund p. 181

carried out under the uniformity rule. Here a factional interest could exert dominance with little recourse from the abused party. The source of faction in this case is in the economic differences of the separate states:

> It may in time become so great as to shift all the burdens of government from a part of the states, and to impose them, exclusively on the rest of the union. The northern states, for example, already manufacture within themselves, a very large proportion, or perhaps the whole, of many articles, which in other states are imported from foreign parts, subject to heavy duties. They are consequently exempted, in the same proportion, from the burden of duties paid on these articles. Hence a considerable inequality already exists between the contributions from the several states; this inequality daily increases and is indeed daily favored, upon principles of national policy.[185]

Taxes assessed against imports, Tucker emphasized, were particularly vulnerable in this regard.

"[W]henever any species of manufacture becomes considerable…," he continued, "it is considered proper to impose what are called protecting duties, upon foreign articles of the same kind. Nor does the matter rest here, for several American manufactures are now subject to an excise: this species of tax, though advanced by the manufacturer, is paid by the consumer."[186] Thus national policy would take on the character of serving a distinctly factional interest by shifting the tax burden onto the consumer. Tucker nonetheless expressed general confidence in the ability of the Constitution to prevent this situation from emerging, but stressed that the documents' capacity to do so extended only as far as its safeguards would permit.

When Tucker wrote in 1803, he did so at a time when the philosophical tariff battles of the 1790's had largely yielded to the Jeffersonian "Revolution of 1800." Tariff

[185] *Ibid.,* p. 182
[186] *Ibid.*

reform took a back seat to the dismantling of other Federalist policies in this new decade, but neither was there a resurgence of Hamiltonian protectionism to push the rates higher. Where trade was concerned, Jefferson only sought interference through the embargo policy, which he was always careful to distinguish for its military and diplomatic intent. Ever the conservative of the Jeffersonian camp, Taylor remained naturally distrustful of the federal government even in the control of his own party. Madison troubled him in particular, and Taylor never fully forgave this fellow Virginian for actions during the Congresses of the early 1790's that he considered acquiescence to the Federalist agenda. As the 1808 election approached, he feared that that Jefferson's longtime lieutenant and heir apparent to the presidency had gone soft, particularly where trade protection and the encouragement of manufacturers were concerned. Taylor accordingly organized a small insurgency among the Virginia Jeffersonians, who offered James Monroe instead as their favored choice for the nomination.[187]

Taylor's suspicions proved warranted, as Madison's position on the desirability of the tariff had changed dramatically, to say nothing of his view on its constitutionality. In 1816 as president, Madison allied with Henry Clay to guide a moderate but assuredly more protective schedule through Congress, ostensibly to insulate American industry from the price shocks that followed the conclusion of the War of 1812 and the ensuing resumption of Atlantic trade. The man who once decried Hamilton's *Report on Manufactures* as an assault on the plain, strictly construed letter of the Constitution he helped to craft had become a convert to the very same doctrine, albeit incrementally, and

[187] John Taylor, 1809. *The Spirit of Seventy-Six: A Pamphlet, containing a series of Letters, written by Colonel John Taylor, of Caroline, to Thomas Ritchie, Editor of the "Enquirer," in consequence of an unwarrantable Attack made by that Editor upon Colonel Taylor.* Richmond: E.C. Standard, Publisher.

would remain so until his death.

The renewed calls for protectionism that followed the War of 1812 also gave rise to an intellectual reaction among the old Jeffersonian-Republicans built around resistance to the emerging tariff system. The 1816 schedule far surpassed any of Hamilton's proposals of 1791, which had been tempered by a more pressing need for a stable customs system. Though it would be further exceeded in the next decade, the new tariff provided a tangible grievance against the use, or misuse, of the Constitution's Revenue Clause. Finally, after two decades of biding his time, Taylor had a pretext to assault protectionism directly with the proposed Tariff of 1816 and, more so, had many allies in his cause.

Anti-tariff activism after 1815 was largely, although not exclusively, a political feature of the southern states combined with an intermittent following in the agricultural Midwest. These sectional alignments of the anti-tariff movement are unsurprising as they represented agricultural producers – cash crops in the south and food crops in the Midwest – who sold their goods in export-driven markets and were thus highly sensitive to trade barriers. Its main proponents, as Adam Tate notes, also "distrusted manufacturers" in the tradition of Jefferson and shared in his physiocratic philosophical disposition as expressed in *Notes on Virginia.*[188] It is by no coincidence that this position coincided with the agricultural economic interests of its proponents, but it also developed into a deeper philosophical system.

Situated along side the transition into protectionism that accompanied the post-

[188] Adam L. Tate. 2005. *Conservatism and Southern Intellectuals: 1789-1861.* Columbia, MO: University of Missouri Press. pp. 59-60

war period, the main thinkers of free trade agrarianism overlapped the founding generation and its Jacksonian successor. Taylor became the most prolific contributor to within the group to follow in the direct Jeffersonian tradition. The anti-tariff banner similarly attracted John Randolph of Roanoke (1773-1833), Taylor's sometimes colleague in the Senate and a cousin of Edmund Randolph. The free trade agrarians also claimed Roanoke's half-brother and St. George Tucker's son Nathaniel Beverley Tucker (1784-1851), whose lifespan coincided with the great tariff battles of the 1830's that post-dated the deaths of his ideological colleagues.[189] Though they failed at stemming the tide swell towards protection in 1828, the influence of these and other political figures of the early 19th century extended into the tariff battles and nullification crisis that followed, and continued exerting influence on political thought – particularly southerners – until the Civil War. More pertinent to the immediate subject of factions, they developed a system of thought that identified protectionist interests as factional agents and evaluated them through their ability to affect personal economic gain through policy.

Taylor wrote in a time when, not unlike the present, protective tariffs were cloaked in the rhetoric of economic nationalism. In an 1808 essay he challenged this "public interest" claim, arguing instead that tariffs served little more purpose than to enrich select factional beneficiaries. Denouncing protection as a "device of subjecting" agriculture "to the payment of bounties to manufacturing," Taylor identified a loss in welfare for the whole by the transfer of protective benefits to industry factions:

[189] Beverley Tucker is most notable as the author of a nullification-era novel entitled *The Partisan Leader*, in which he presents a fictional secession war set in Virginia with frightening similarity to the Civil War three decades later. The novel was intended as an election-year political tract on the abuse of protective tariffs. As with the nullification crisis itself, the tariff in Tucker's novel provided an impetus for disunionism. See Tucker, 1836. *The Partisan Leader: A Tale of the Future.* Washington, D.C.: Duff Green.

> This device is one item in every system for rendering governments too strong for nations. Such an object never was and never can be effected, except by factions legally created at the public expense. The wealth transferred from the nation to such factions, devotes them to the will of the government, by which it is bestowed. They must render service for which it was given, or it would be taken away…Whatever strength or wealth a government and its legal factions acquire by law, is taken from a nation; and whatever is taken from a nation, weakens and impoverishes that interest, which composes the majority.[190]

Taylor's argument continued by identifying the "device of protecting duties" as a diversion of economically productive resources to an artificial "capitalist interest." This interest, he argued, would function as an "aristocratical order" that "unite(s) with governments in oppressing every species of useful industry." Once present, this protectionist interest would enact policies "to intercept advantages too enormous to escape the vigilance of capital, impoverish husbandmen, and aid in changing a fair to a fraudulent government; but they will never make either of these intrinsically valuable classes richer, wiser or freer."[191]

John Randolph gave his concurrence to Taylor's position. Yet, breaking clearly from the anti-Federalists before him, Randolph viewed the factional threat of protectionist tariffs as a new post-Constitutional Convention development that emerged strictly from unconstrained majoritarianism. As he addressed the Senate in 1830 on a tariff matter, Randolph warned of "one discovery since made in politics [that] had not yet entered into the head of any man in the Union" but "if not arrested…will destroy all Republican Government."

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[190] John Taylor, [1818] 1977. *Arator: Being a Series of Agricultural Essays, Practical and Political, in Sixty-Four Numbers.* Indianapolis: Liberty Fund. pp. 73-74
[191] *Ibid.,* pp. 74-76

> That discovery is this: that of a bare majority…that a bare majority may oppress, harass, and plunder the minority at pleasure, but that it is their interest to keep up the minority to the highest possible point consistent with their subjugation, because, the larger that minority shall be, in proportion to the majority, by that same proportion are the profits of the majority enhanced.[192]

The principle put forth in this speech reflects the ability of a factional majority to expand its tax in scope and simultaneously diffuse its costs upon the taxed interests.

When examined in detail the free trade agrarians represent an advance upon the earlier critiques of the *Federalist Papers* theory of faction. Mason, Edmund Randolph, and St. George Tucker concerned themselves with the sufficiency of existing safeguards in the Constitution to enable the thwarting of a faction. The later agrarians turned their attention to the peculiar characteristics of a protectionist faction that enabled it to become abusive. Though certainly aware of the constitutional checks and balances, Taylor and Randolph of Roanoke saw their root causes in their tendency to obtain a transfer of wealth – a rent – at the expense of less cohesive minority interests, and their ability to exploit the device of majority rule toward this end.

In 1821 Taylor published an anti-tariff volley entitled *Tyranny Unmasked.* The pamphlet's arguments followed his earlier thought, but began to address free commerce through the language of rights and the mechanisms of constitutional government. Tariffs introduced a tyrannical practice of forced transfer into government, adopted in a method that "entirely excluded a consideration of natural rights; and wholly neglected to enquire what are the effects of the legal modes we have adopted for transferring property and accumulating capitals, upon these rights." What appeared as simple "transfers of property

[192] Russell Kirk, 1997. *Randolph of Roanoke: A Study in American Politics, with Selected Speeches and Letters.* Indianapolis: Liberty Fund, p. 555

from industry to capitalists," his term for protectionist interests, imposed a "tyranny to the rest of the nation" and thus a violation of constitutional property rights.[193]

In terming trade as a matter of rights, *Tyranny Unmasked* spawned a generation of constitutional arguments against protection that remained theoretically viable until the Civil War. The constitutional argument may be summarized in the recognition that Article I, Section 9's Revenue Clause stipulates that taxes be both laid and collected, and only for a public function of government expenditure or retiring its debt. A protective tariff functions primarily as a barrier to importation, and a prohibitive tariff completely so. Since deterred imports are not taxable, it follows that tariffs assessed for purposes other than taxation are not authorized by this clause (or even the Commerce Clause, which, by this construction, permits only the open and direct regulation of foreign commerce such as an embargo, rather than by the indirect means of commerce taxation). As the symmetry effects of the price mechanism transfer the import tax's burdens onto exporters, it is further argued that tariff protection removes all value from Article I, Section 9's prohibition on export taxes. Furthermore, Taylor argued, given that protective tariffs infringe upon property rights, the absence of direct constitutional sanction for them would place any protective scheme in violation of the reserved rights of the states and people in Amendments 9 and 10.[194]

At the time of his death in 1824 Taylor's constitutional argument typified the views of the free trade agrarians. Their position was undoubtedly linked to their own states' economic interests as agricultural exporters, though it also derived from a general

[193] Taylor, 1821., pp. 236-7
[194] *Ibid.,* pp. 99-103, 239

distrust of manufacturers. Equally important, men such as Randolph and Taylor exhibited a strong economic libertarian streak in the Jeffersonian tradition, regarding most forms of federal interference in the economy as an anathema to personal liberty.[195] In addition to tariffs, they opposed other federal economic policies such as the Bank of the United States and the federal subsidization of "internal improvements" such as canals, harbors, and waterways. Constitutional arguments emerged around these issues as well – particularly the banking policy, which came to a head before the Supreme Court in 1819.

Though now considered a judicial landmark, the case of *McCulloch v. Maryland* sparked the fires of a decade-long debate on the proper constitutional role of the federal government and the powers of Congress. Jefferson himself had argued against the bank's constitutionality in the 1790's, though the policy was not contested in court until after the War of 1812 when the Bank of the United States was revived. Like *Hylton,* the case itself was born of unusual circumstances. It involved an attempt by the state of Maryland to impose a tax upon the federal bank branch as a means of protesting its claim of federal sanction. When the court convened to receive each party's arguments, there stood an aged Luther Martin, itching to unleash his final broadside against the national government he helped to both create and oppose some three decades prior. Now in his seventh decade of life, ravaged by time and his own habitual indulgence of the drink, and weighted by the baggage of decades of political stances that may only be described as consistently contrarian, Martin nonetheless mustered his recollection of the Philadelphia convention to make a case that his sometimes-ally, sometimes-enemy agrarians could have called their own. The Bank, he maintained in terms that mirrored Jefferson some

[195] Tate, 2005. pp. 58-60

decades prior, was not encompassed within the enumerated powers of Article I, Section 8. Citing the *Federalist* papers, he called upon the experience of his own stance against the ratification of the Constitution. He reminded the court of the answers that had been offered to mollify his misgivings:

> That it was then maintained, by the enemies of the constitution, that it contained a vast variety of powers, lurking under the generality of its phraseology, which would prove highly dangerous to the liberties of the people, and the rights of the states, unless controlled by some declaratory amendment, which should negative their existence. This apprehension was treated as a dream of distempered jealousy. The danger was denied to exist.[196]

To sanction the Bank now would be to "engraft upon" the Constitution "powers of a vast extent, which were disclaimed" by the Constitution's friends when opponents of ratification, Martin included, raised their specter.[197] Features not envisioned by most at the Philadelphia convention were now working their way into the body of the Constitution through its silence. The court – then firmly in old Federalist Party hands even as its own electoral organization waned – brushed Martin's argument aside and granted sanction to the Bank under the Constitution's "necessary and proper" clause.

The *McCulloch* precedent was significant in its own right as a central tenet of modern constitutional law. Equally important to the tariff though, it signaled that the strict construction arguments at the heart of the anti-tariff case would not find a friendly audience before the Marshall court. Though long itching to test the protective tariff's constitutionality, its critics would have to find another means to mount their challenge or risk setting an unfavorable precedent that cast aside the underlying basis of their

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[196] *McCulloch v. Maryland,* 17 U.S. 316 (1819)
[197] *Ibid.*; Bill Kauffman, 2008. *Forgotten Founder, Drunken Prophet: The Life of Luther Martin.* Wilmington, DE: ISI Books. p. 162

challenge much as *McCulloch* had done for the banking issue.

3.3 The Tariff in Constitutional Crisis

> "It is just possible to see Calhoun and Andrew Jackson as the Christ and Antichrist of political order in the United States." – Allen Tate, 1928[198]

The nullification crisis following the 1828 "Tariff of Abominations" and its successor Tariff of 1832 produced by far the most radical and controversial development in constitutional theory with a bearing on trade. The crisis, instigated when the legislature of South Carolina passed an ordinance nullifying these two protective federal tariff statutes within the boundaries of their state, pushed the country to the brink of disunion and civil war in 1832 before a carefully crafted compromise set a timetable for the gradual elimination of the protectionist system over the next decade.

The primary agitator of the crisis was John C. Calhoun, erstwhile Vice President of the United States turned Senator from South Carolina. Calhoun's political legacy today derives mostly from his membership in the great senatorial "triumvirate" with Henry Clay and Daniel Webster, and carries with it the taint of his vociferous defenses of slavery toward the end of his life – a fact that continues to make a just evaluation of his capable political mind into a daunting task. What may be said with certainty though is that Calhoun took an almost continuous leading role in the American free trade movement from 1828 until his death in 1850. In doing so he certainly drew from the

[198] Allen Tate. 1928. *Stonewall Jackson: the Good Soldier*. New York: Minton, Balch & Co. p. 38

intellectual tradition of the earlier agrarian free traders and expanded upon their principles. His philosophical grounding, however, was distinct. The agrarians came from a largely conservative aristocracy, imbued with a strain of Jeffersonian rationality and coached in Virginia civil tradition. Calhoun exhibited a radical flair, hailed from the South Carolina frontier, and detested the high society of his own Charleston to say nothing of the industrial states or even the upper South.[199]

Richard Hofstadter, though certainly no advocate of Calhoun's politics, described him as "probably the last American statesman to do any primary political thinking." Of the Senate triumvirate, he "showed the most striking mind."[200] Prior to 1828 Calhoun fit comfortably among advocates of hawkish union nationalism. A leader of the "war hawks" in the War of 1812, turned cabinet secretary for James Monroe, turned Vice President under the second Adams and Jackson, he actually espoused the Tariff of 1816 – seen as Madison's ultimate betrayal by agrarians such as Taylor – out of the belief that it would invigorate American industry after the war. The exorbitant "Tariff of Abominations" marked a turning point for Calhoun though. The political and economic changes in South Carolina in the wake of this bill converted Calhoun from nationalist to sectionalist, the latter becoming a position he would identify with until his death.[201]

When John Quincy Adams signed the 1828 Tariff, Calhoun, his Vice President, delivered a stinging unsigned rebuke through the South Carolina legislature. The *Exposition* and accompanying legislative resolutions of *Protest* laid out the political

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[199] The differences between the agrarians and Calhoun, despite their alliance on trade politics, is exhibited in the statement of Nathaniel Beverley Tucker to Sen. James H. Hammond of South Carolina: "The man I most dread is Calhoun." Tate, 2005. p. 144

[200] Richard Hofstadter, 1948. *The American Political Tradition*. New York: Vintage Books. pp. 89-90

[201] *Ibid.* p. 92

doctrine most commonly associated with him: nullification.[202] The *Exposition* begins simply enough as a reiteration of the main agrarian arguments against protective tariffs. The economy of South Carolina, noted Calhoun's anonymous pen, depended directly upon its export trade and tariffs intruded upon that trade to the benefit of recipient industries. Though sufficient to make a case of factional abuse's existence, critiques of tariff injustice alone offer little remedy for the aggrieved party:

> All such rules [of stated unconstitutionality] constitute, in fact, but an appeal from the minority to the justice and reason of the majority…Universal experience, in all ages and countries, however, teaches that power can only be restrained by power, and not by reason and justice; and that all restrictions on authority, unsustained by an equal antagonist power, must forever prove wholly inefficient in practice.[203]

Having, in his mind, appealed unsuccessfully to the "justice and reason" of the majority that adopted the 1828 Tariff, Calhoun perceived in it a direct failure of *Federalist 10's* principles. Only an additional method of recourse by factional antagonism, and a radical one at that, could counterbalance the situation.

Facing this dilemma Calhoun sought out a mechanism to alter the rulemaking dynamics of Congress and thus its susceptibility to protectionist factions. His answer appeared in the Virginia and Kentucky Resolutions, offered in 1798 and 1799 by Madison and Jefferson to counter the Alien and Sedition Acts. The state assemblies of each declared the objectionable statutes unconstitutional while simultaneously professing – in intentionally vague terminology that many of the Sedition Act's supporters saw as a veiled threat – their intent to respect the authority of the federal union while retaining

[202] Lence, ed., 1992. p. 311
[203] Calhoun, "Exposition and Protest," in Lence, ed., 1992, p. 347

their protest against its actions.[204] As Madison indicated at the time, the Resolutions exhibited the concept of dual sovereignty he espoused earlier in his Publius essays.[205] *Federalist 46* contained the clearest statement of this concept:

> But ambitious encroachments of the federal government, on the authority of the State governments, would not excite the opposition of a single State, or of a few States only. They would be signals of general alarm. Every government would espouse the common cause. A correspondence would be opened. Plans of resistance would be concerted. One spirit would animate and conduct the whole. The same combinations, in short, would result from an apprehension of the federal, as was produced by the dread of a foreign, yoke; and unless the projected innovations should be voluntarily renounced, the same appeal to a trial of force would be made in the one case as was made in the other.[206]

As historian Kevin Gutzman describes it, by 1798 "Madison was casting about for some means of constitutionalizing protection of minority rights against what must have seemed a perpetual Federalist [Party] domination."[207] He collaborated in secret on the resolution's draft with Jefferson, himself serving as Vice President to John Adams who had signed the measures into law. Madison also found a willing public sponsor for his draft in the Virginia legislature, John Taylor of Caroline, then serving in the House of Delegates. A potential solution to the majoritarian problem appeared in the Virginia Resolution's carefully worded third section:

> That this Assembly doth explicitly and peremptorily declare, that it views the powers of the federal government, as resulting from the compact, to which the states are parties; as limited by the plain sense and intention of the instrument constituting the compact; as no further valid that

[204] Kevin R. Gutzman, 1995. "A Troublesome Legacy: James Madison and the 'Principles of 98.'" *Journal of the Early Republic.* Vol. 15, No.4, pp. 569-589.
[205] Kevin R. Gutzman, 1994. "From Interposition to Nullification: Peripheries and Center in the Thought of James Madison." *Essays in History.* Vol. 36., Footnote 30.
[206] Madison, Federalist #46
[207] Gutzman, 1994.

> they are authorized by the grants enumerated in that compact; and that in case of a deliberate, palpable, and dangerous exercise of other powers, not granted by the said compact, the states who are parties thereto, have the right, and are in duty bound, to interpose for arresting the progress of the evil, and for maintaining within their respective limits, the authorities, rights and liberties appertaining to them.[208]

Madison's language seemingly stops short of open confrontation with the federal government, but openly expresses the doctrine of a state's right to "interpose" against unconstitutional acts. The Resolutions' exact meaning quickly became lost in the reaction they provoked and mooted by the demise of the objectionable statutes, while Madison, tamed by the Jeffersonian victory in 1800, shied away from the states' rights rhetoric of his early career. His experiment in institutionalizing the dual sovereignty he suggested in the *Federalist Papers* concluded without clear resolution.

Thirty years later Calhoun saw in Madison's text both a solution to the dual sovereignty issue and a more radical mechanism – one that could provide open and direct recourse to an aggrieved state facing a hostile majority in the federal Congress. He seized upon the Virginia Resolution's third clause in particular and formed a political theory around it.

The resulting "doctrine of interposition" functions a means of withdrawing state concurrence from a federal policy – an act that Madison and Jefferson intended to arouse the sympathies of other states, thus producing pressure to remove the aggravating policy. Calhoun's solution extended and formalized this notion into a direct state veto right upon certain federal policies within its borders. The relief from an abusive tariff, he concluded,

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[208] "Virginia Resolution of 1798" in *The Virginia Report of 1799-1800 Touching the Alien and Sedition Laws.* Richmond: J.W. Randolph, 1850. p. 22

"which the minor interests must ever fail to find in any technical system of construction, may be found in the reserved rights of the States themselves, if they be properly called into action" as a check upon the aggravating federal policy.[209] The nullification mechanism entailed in this doctrine, if accepted, expands policy concurrence beyond the branches of the federal government to the member states. The added layer of state concurrence extends a policy's adoption threshold to near unanimity, and thus intentionally far beyond a simple 50 percent majority, at which point Randolph of Roanoke indicated factional abuse to be most dangerous. If acquiesced to, nullification halts faction-driven protectionism in its tracks. The ultimately fatal shortcomings of the same doctrine appear in an accompanying breakdown in efficient lawmaking, and an accompanying strain of disunionist sentiment.

Reaction to South Carolina's nullification in 1832 came swiftly and from all corners. The four years between the *Exposition and Protest* and the Ordinance provided for ample discussion of Calhoun's doctrine including the epic clash of the Webster-Hayne Senate debate in 1830. An aging Madison even weighed in, siding with Webster much to the chagrin of the nullifiers. The former President informed one Senator that nullification's danger appeared not in its meaning to the tariff grievance but to the state's relationship with the union. "The conduct of S. Carolina has called forth not only the question of nullification," he wrote in 1833, "but the more formidable one of secession. It is asked whether a State by resuming the sovereign form in which it entered the Union, may not of right withdraw from it at will."[210] In differentiating the 1832 Tariff protest

[209] Lence, ed., 1992, p. 348
[210] James Madison to William Cabell Rives in Hunt, ed. Vol. 9, p. 513

from the Alien and Sedition Acts, Madison effectively hedged his distinction upon the arbitrary devices of circumstance: "the state of things at that time was the more properly appealed to."[211]

Madison's rejection of nullification carries the strong authority of his reputation, in part because he also weighed in for the constitutionality of protective tariffs. It is perhaps more significant to note that his opinion also benefits from the fact that his two primary cohorts in the 1798 resolutions, Jefferson and Taylor, as well as most lesser players in their protest, were deceased by the time Calhoun made his stance against the Tariff of Abominations. Taylor, the most doctrinaire of this group, never wavered from his earlier position. More notably, the evidence is actually strong that Jefferson's twilight years brought him closer to Taylor's side than Madison's, both on the general theory of interposition and the particular issue of the tariff. Only Madison was alive though to give his contrary opinion.

In 1828 Madison wrote two letters to a correspondent, Joseph C. Cabell, calling upon his own recollections of the 1787 convention. In what must rank among the most radical philosophical vacillations to emerge from the entire founding generation, the man who in 1792 described Hamilton's *Report on Manufactures* as subversive to the "fundamental and characteristic principle of the Government" now declared his "opinion that a power to impose duties & restrictions on imports with a view to encourage domestic productions, was constitutionally lodged in Congress."[212]

Madison's acknowledged stature affords great weight to his assessment in the

[211] *Ibid.*
[212] James Madison to Joseph C. Cabell, October 30, 1828, in Hunt, ed. Vol. 9, p. 317.

minds of constitutional scholars, and indeed it has been the trend to almost unquestioningly defer to the authority of his 1828 letter in assessing the Revenue Clause. Viewed against the full context of his remarkable political career though, one finds it difficult to avoid an unsettling conclusion. Madison's views about the tariff system and the constitutional mechanisms governing it changed from the time of the constitutional convention, and drastically so.

Indeed, Madison's letter to Cabell actually echoes many of the same arguments used in Hamilton's 1791 report. From the letter's outset he affirmed the virtues of free trade as a "general rule" in ideal circumstances, but quickly conscribed this assessment with "exceptions to the general rule, now expressed by the phrase 'Let us alone,'" wherein "interpositions of the competent authority" were permissible. His reasoning for this assessment might have easily come from Hamilton's own pen, for it was the same argument the latter used to critique the free trade system of Adam Smith. Madison continued:

> The Theory of 'Let us alone,' supposes that all nations concur in a perfect freedom of commercial intercourse. Were this the case, they would, in a commercial view, be but one nation, as much as the several districts composing a particular nation; and the theory would be as applicable to the former, as to the latter. But this golden age of free trade has not yet arrived; nor is there a single nation that has set the example. No Nation can, indeed, safely do so, until a reciprocity at least be ensured to it. Take for a proof, the familiar case of the navigation employed in a foreign commerce. If a nation adhering to the rule of never interposing a countervailing protection of its vessels, admits foreign vessels into its ports free of duty, whilst its own vessels are subject to a duty in foreign ports, the ruinous effect is so obvious, that the warmest advocate for the theory in

question, must shrink from a *universal* application of it. [213]

Madison offered Cabell a litany of such "exceptions" to free trade, many of them previously offered in Hamilton's *Report.* He warned that "[a] nation leaving its foreign trade, in all cases, to regulate itself, might soon find it regulated by other nations, into a subserviency to a foreign interest." The discriminatory trade policies of Britain and other powers would drive any pure system of free trade into commercial dependency. Some degree of trade regulation was proper, moreover, to guard against unnecessary dependence "on others for the munitions of public defence" as well as on "instruments of agriculture and of mechanic arts." The man who once decried the dangers of perpetual dependence implied by the Federalists' infant industry argument now affirmed the propriety of aiding producers in a "nascent and infant state by public encouragement" to ensure their survival. Countervailing retaliation was a valid "exception" to free trade too in order to "to parry the evil by opposite regulations of its foreign commerce."[214]

Speaking to the Constitution itself, Madison portrayed the taxing power of the Revenue Clause as an implicit mechanism of enacting the regulatory power of the Commerce Clause. "[I]t was quite natural, however certainly the general power to regulate trade might include a power to impose duties on it, not to omit it in a clause enumerating the several modes of revenue authorized by the Constitution." Deviating from the specific distinction that the Committee on Style made at the 1787 convention when queried by Martin, Madison now declared that the "terms *imposts* and *duties* are synonymous" as found in the clause.[215]

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[213] *Ibid*.
[214] *Ibid*.
[215] *Ibid*., Madison to Cabell, September 18, 1828 in Hunt, ed. Vol. 9, pp. 316-40

In making the case for his expansive interpretation, Madison effectively reinvented his own recollection of the events of 1787. The one-time partisan of the strict Jeffersonian view on enumerated powers suddenly found in the constitutional convention's silence that the Revenue Clause created powers "without pointing out the objects…leaving them applicable in carrying into effect the other specified powers." The Clause's stipulation for the "General Welfare," once described by Madison as "a general caption to the specified powers" which the Hamiltonians had abusively enlisted to justify federal authority beyond its constitutional enumeration, suddenly became an expansive license for other unnamed "objects for which taxes, duties, imposts, and excises might be required."[216]

Aside from his own purported memories and interpretations thereof, Madison actually had sparingly little to offer Cabell from the constitutional convention itself to justify tariff protectionism; for there was none. The convention had been silent on that issue, and no substantive discussion of the Revenue Clause portrayed its intended use as Madison now described. Instead, he enlisted the obscure remarks of Thomas Dawes during the Massachusetts ratification meeting, the lone advocate of tariff protectionism in a nationwide discussion of the new Constitution that generally avoided the subject. Silence again lent a voice to Madison's new position, for he assumed that Dawes' remarks, isolated though they were, must have been representative of a popular sentiment in the New England states where a copy of the ratification debates were not preserved. Thus his entire case stood on a lone minor authority, coupled with supposition over the content of missing records and the observation that "no adverse inferences" to Dawes'

[216] *Ibid.*

sentiments were expressed where records survived.[217]

Madison's letters to Cabell pose a peculiar challenge for constitutional scholarship as they must be assessed on two related and easily confused bases. For all their inconsistency with Madison's earlier positions during the tariff debates of the 1780's and 90's, the arguments he makes in the Cabell letters are actually a reasonably strong expression of an expansively constructed Revenue Clause. Irrespective of the *McCulloch* decision's effects on the enforcement strategies of the agrarians and Jeffersonians, its implicit powers concept generally synchronizes with Madison's later interpretations of the Revenue and Commerce Clauses insofar as one may be used as a mechanism of enacting the other. Madison also succinctly captures Hamilton's old arguments from the 1791 *Report*, which, even if contrary to common modern understandings of international trade, represented the protectionist position at its strongest philosophical articulation. Viewed in this sense, Madison's letters are a powerful volley against the agrarian and Calhounite positions, a series of arguments and counterarguments to be assessed on their own merits respective to the strengths and weaknesses of the adversarial position.

Historians should resist the temptation to embrace the second means of assessing the Cabell letters, to wit: an affirmation of their content by the reputation and authority of their author. Even as the capability of his arguments is conceded, Madison's positions in 1828 exhibit multiple fundamental and far-reaching inconsistencies with the earlier stages of his own career. By logical extension, they also create a curious and apparently singular exemption to the Madisonian constitutional devices of factional control whenever trade

[217] Madison to Cabell, September 18, 1828 in Hunt, ed. Vol. 9, p. 330.

policy is involved. Protection, having been designated a matter of national interest, is found permissible despite its notoriously factionalized genesis.

As noted, many aspects of the Cabell letters are tantamount to an enthusiastic embrace of the very same Hamiltonian concepts that Madison denounced to Pendleton in the strongest of terms many decades prior. His authority on matters of trade protection is thus both inconsistent and conflicted, with little reason to commend his 1828 arguments over the completely divergent position he took in 1792.

An authoritative counterexample to Madison's novel late-life tariff views may be found not only in Taylor, himself notorious for his unwavering consistency across decades in most political matters, but in Thomas Jefferson. In late 1825 President John Quincy Adams gave his endorsement to an expansive reading of the Revenue and Commerce clauses for highly protective and interventionist ends:

> [I]f the power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States; if the power to regulate commerce with foreign nations and among the several States and with the Indian tribes…and to make all laws which shall be necessary and proper for carrying these powers into execution – if these powers and others enumerated in the Constitution may be effectually brought into action by laws promoting the improvement of agriculture, commerce, and manufactures, the cultivation and encouragement of the mechanic and of the elegant arts, the advancement of literature, and the progress of the sciences, ornamental and profound, to refrain from exercising them for the benefit of the people themselves would be to hide in the earth the talent committed to our charge – would be treachery to the most sacred of trusts.[218]

Incensed at what he considered to be his successor's subversion of the Constitution's limited powers, Jefferson invoked the old "Principles of '98" one final time. Nothing

[218] John Quincy Adams, Address to Congress, December 6, 1825, in Walker, ed., 1842, p. 314.

short of the future of the union itself was at stake should Adams' policies meet with success, and Jefferson was willing to state as much as a consequential warning to those who would pursue them. On Christmas Eve he set his mind to organizing an opposition movement through the Virginia legislature, just as he had done with the current president's father over the Alien and Sedition Acts. He started with a letter to Madison expressing his despair over the "torrent of general opinion" amassing in favor of "internal improvements" expenditures, a complimentary component of Henry Clay's high tariff "American System." The grievance was not lodged lightly, as he had "long ceased to think on subjects of this kind, and pay little attention to public proceedings" in his retirement.[219] Jefferson's letter was more significant for its enclosure, a lengthy resolution in the vein of the 1798 protests that he intended for the Virginia Assembly to adopt in a stand against the creeping reemergence of the old Federalist Party agenda.

The document's logic foreshadowed that taken by Calhoun only three years later. Jefferson began by asserting a "compact" theory of the union, wherein Virginia and the other states "became, on that acquisition [of independence from Great Britain], free and independant states, and as such authorised to constitute governments, each for itself, in such form as it thought best." The Constitution, he continued, formed a compact governing international and interstate relations, though each state "retained at the same time, each to itself the other rights of independant government comprehending mainly their domestic interests." The resolution then set out to delineate instances in which the terms of this compact had been violated by the intrusion of the federal government into

[219] Thomas Jefferson to James Madison, December 24, 1825 in Paul Leicester Ford, ed. 1899. *The Writings of Thomas Jefferson*. New York: G.P. Putnam's Sons. Vol. 10, p. 348-52

state powers, by its "mere interpolations into the compact, and direct infractions of it." Jefferson continued:

> They claim for example, and have commenced the exercise of a right to construct roads, open canals, & effect other internal improvements within the territories and jurisdictions exclusively belonging to the several states, which this assembly does declare has not been given to that branch by the constitutional compact, but remain to each state among it's domestic and unalienated powers exercisable within itself, and by it's domestic authorities alone.
>
> This assembly does further disavow, and declare to be most false and unfounded, the doctrine, that the compact, in authorising it's federal branch to lay and collect taxes, duties, imposts and excises to pay the debts and provide for the common defence and general welfare of the U S. has given them thereby a power to do whatever *they* may think, or pretend, would promote the general welfare, which construction would make that, of itself, a complete government, without limitation of powers; but that the plain sense and obvious meaning was that they might levy the taxes necessary to provide for the general welfare by the various acts of power therein specified and delegated to them, and by no others.[220]

Lest he be accused of disunionist agitation, Jefferson took care to affirm "the blessings of their union as to foreign nations and questions arising among themselves," though he also offered the caveat that such blessings could not withstand "submission to a government of unlimited powers." Seeking conciliation rather than confrontation, Jefferson's resolution expressed an open willingness to entertain a constitutional amendment to permit some limited federal involvement in the construction of roads and canals, as well as peaceful acquiescence to the existing federal "improvements" program until its critics could muster the strength to oppose it. He concluded though by affirming Virginia's

[220] *Ibid.*

constitutional stand on a limited reading of the Revenue Clause, the usurpations "against which, in point of right, we do protest as null and void, and never to be quoted as precedents of right."[221]

Though Madison was the addressed recipient of this document, its contents clearly placed Jefferson himself in closer line with the beliefs of the recently deceased Taylor. Jefferson in fact repeatedly aligned himself with Taylor on other matters late in life. In 1821 he praised the "recent recall to first principles" contained in Taylor's book *Constructions Construed,* a precursor to *Tyranny Unmasked* in which Taylor developed many of the general arguments that he applied to the specific case of the tariff a year later.[222] In another letter he told a correspondent that "Colonel Taylor and myself have rarely, if ever, differed in any political principle of importance. Every act of his life, and every word he ever wrote, satisfies me to this."[223] It stretches credulity to suggest that Jefferson was not aware of Taylor's well known and numerous rejoinders against the tariff when he wrote this endorsement.

Lest his correspondence be confined to Madison's eyes only, Jefferson reiterated the principles of his proposed 1825 Virginia resolution over the next two days to William Branch Giles, a longtime confidant who served multiple stints as a Senator and Governor of Virginia. He again addressed the magnitude of events that impelled him to write, being then "in my eighty-third year, worn down with infirmities" and having little time for political affairs, and discussed at length how John Quincy Adams, now president, had spoken with him during his own administration about the disunionist movement in New

[221] *Ibid.*
[222] Thomas Jefferson to Spencer Roane, March 9, 1821 in Ford, ed., 1899, Vol. 10, p. 189
[223] Thomas Jefferson to Thomas Ritchie, December 25, 1820 in Ford, ed. 1899, Vol. 10, p. 170.

England over the Embargo Act.[224] A second letter to Giles, intended for his eyes alone, contained a much more candid and indeed extreme assessment of the federal power being claimed under the Constitution.

> I see, as you do, and with deepest affliction, the rapid strides with which the federal branch of our government is advancing towards the usurpation of all the rights reserved to the States, and the consolidation in itself of all powers, foreign and domestic; and that, too, by constructions which, if legitimate, leave no limits to their power…Under the power to regulate commerce, they assume indefinitely that also over agriculture and manufactures, and call it regulation to take the earnings of one of these branches of industry, and that too the most depressed, and put them into the pockets of the other, the most flourishing of all.[225]

In contrast to Madison who embraced the position to justify protective tariffs a few years later, Jefferson directly confronted the "sophistry" of those who interpreted of the Revenue Clause's "general welfare" phrase as a power onto itself. This expansive reading gave the federal government free reign to pursue "whatsoever they shall think, or pretend will be for the general welfare."[226] If Jefferson's remarks merit note for their frankness, the radicalism of his solution affirms the gravity in which they were offered:

> Are we then to stand to our arms with the hot-headed Georgian? No. That must be the last resource, not to be thought of until much longer and greater sufferings…We must have patience and long endurance with our brethren while under delusion; give them time for reflection and experience of consequences; keep ourselves in a situation to profit by the chapter of accidents; and separate from our companions only when the sole alternatives left, are the dissolution of our Union with them, or submission to a government without limitation of powers. Between these two

[224] Thomas Jefferson to William B. Giles, December 25, 1825, in Ford, ed. 1899, Vol. 10, pp. 350-4.
[225] Thomas Jefferson to William B. Giles, December 26, 1825, in Ford, ed. 1899, Vol. 10, pp. 354-7
[226] *Ibid.*

evils, when we must make a choice, there can be no hesitation.[227]

Jefferson's letters of 1825 and Madison's letters during the nullification crisis reflect a clear divergence of thought between the two men many years after they jointly asserted the interposition doctrine in 1798. Madison's answer to Jefferson indicates as much, though he cloaked his emerging embrace of broad constitutional construction by cautioning his old friend against forcing Virginia into the politically disadvantageous position of taking the lead against the "internal improvements" program. He downplayed the threat of the legislation as well, highlighting several obstacles in Congress that still remained.[228]

Madison's moderating assurances concealed his acquiescence and even approval of the very same programs that Jefferson decried as the height of unconstitutional legislative power. Some four years later Madison hinted in a letter to Martin Van Buren that he was willing to set aside his earlier constitutional objections to "internal improvements" out of support for their effects. Though he previously regarded them as "encroachments" in a tempering of Jefferson's preferred term "usurpations," Madison came to view the canal and roads projects with favor. "[S]uch improvements" are "justly ranked among the greatest advantages and best evidences of good Government," and furthermore had the effect of "binding the several parts of the Union more firmly together."[229] As in his positions on the protective tariff, Madison had come to value unionist nationalism over constitutionalism.

In early 1826 Jefferson answered Madison's plea for moderation by placing the

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[227] *Ibid.*
[228] James Madison to Thomas Jefferson, December 28, 1825 in Hunt, ed. Vol. 9, pp. 236-40
[229] James Madison to Martin Van Buren, July 5, 1830, in Hunt, ed. Vol. 9, p. 381.

resolution on hold so that they may "see the course" of Congress in the matter before acting. Around the same time he urged the same strategy to William F. Gordon, the member of the Virginia House of Delegates who was set to sponsor the measure. It is notable however that Jefferson did not change his convictions about the "internal improvements" bill when he reexamined the timeliness of his resolution. His letter to Gordon, though plainly written after receiving Madison's advice, is virtually identical to the earlier Giles letter in its assessment of federal usurpations and its cautionary warning about a federal "government of discretion" that would justify and impel Virginia's separation from the union.[230] Jefferson settled upon the strategy of "rest[ing] awhile on our oars and see which way the tide will set" but he did not live to see the issue's conclusion or plot the next course, passing away on July 4, 1826.

Madison survived another decade, drifting further from his Jeffersonian roots and also enabling him to lend his increasingly nationalist voice directly to the tariff dispute. The difference of views between the two elder statesmen was not lost upon Congress itself amidst the nullification fight. In the famous Hayne-Webster debate of 1830, the anti-tariff Robert Hayne cited Jefferson's 1825 resolution to enlist the author of the Declaration of Independence to his side. Daniel Webster cited the father of the Constitution from his Cabell letters. Clearly then, the disputes surrounding the tariff and the nullification response were as much an issue of divided opinion among the leading lights of the founding generation as they were among the next. Jefferson, in following Taylor, exhibited a semblance of consistency between his 1798 pronouncements and his position at the end of his life. With Madison, his final affirmation of the tariff is given

[230] Thomas Jefferson to William F. Gordon, January 1, 1826, in Ford, ed., Vol. 10, pp. 429-30

with equal force of language and professed certitude, but the conclusiveness of its authority is compromised by years of vacillation and prior inconsistency.

Though their variation from his earlier constitutionalism is palpable, Madison's nationalist pronouncements on the tariff in the Cabell letters have amassed a considerable, and probably undeserved, authority. In 1829 William Branch Giles, then serving as Governor of Virginia, published the private letter Jefferson had written him in 1825 to defend nullification and utilized it to question Madison's consistency. Rather than acknowledge Madison's obviously wavering thought though, many historians have openly embraced his nationalist pro-tariff conclusions for political reasons. Dropping any pretense of analytical objectivity, one recent Madison biographer accused Giles of "age-baiting" for suggesting a difference in the views of Madison at age 50 and at age 79. These critics, he continues, "were simply too obtuse to understand the subtlety of [Madison's] constitutional reasoning" when they deemed him inconsistent.[231] Exactly what "subtlety" might explain how Madison transformed from assaulting the protective tariff to embracing and celebrating it is largely left to the reader. Another biographer claimed that Madison was "protect[ing] the name and memory of his great friend," Jefferson, "from the political misuse of the nullifiers."[232] Madison likely believed himself to be fulfilling this role at times and openly suggested that Jefferson's tariff views had been misconstrued from private letters, intemperately written. Read in context of Jefferson's proposed 1825 resolution though, it becomes apparent that Madison underestimated the divergence of his own views from those of his late mentor. Another

[231] Drew R. McCoy, 1991. *The Last of the Fathers: James Madison and the Republican Legacy.* Cambridge: Cambridge University Press, p. 153
[232] Adrienne Koch, 1950. *Jefferson and Madison: The Great Collaboration.* New York: Alfred A Knopf, p. 287.

widely celebrated biography of Madison goes further in acknowledging the intricacies of his debate with the nullifiers, but remains largely deferential to his authority. Its author deems an 1830 restatement of the Cabell letters argument to be Madison's "final, most carefully considered interpretation of the powers of the federal constitution."[233] Yet another historian weighs in on Madison's side, deferring uncritically to Madison's "subtle analysis of governmental authority" and assailing nullifiers such as Giles for "recklessly distort[ing]" Jefferson, though again without elaboration on what the alleged distortion might be.[234]

Madison's "defense" of Jefferson from the nullifiers exhibits one half of a strange schizophrenia among historians that has also tended to condemn Jefferson's 1825 resolution and letters for the very same characteristics that Giles ascribed them and Madison claimed to refute. This condition is rendered all the more curious by Jefferson's late-life consistency with, and indeed direct appeal to, the 1798 resolutions. In stark contrast to the deference afforded to Madison's aged wisdom in 1828, one biographer dismisses Jefferson's writings from 1825 as the work of an "agitated and impulsive octogenarian." Another describes Jefferson as a "crabbed and distrustful old man," caught up in the winds of "Southern apologis[m]." To quote a recent historiographical assessment of the 1825 episode, subsequent scholars have concluded "almost to a

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[233] Ralph Louis Ketcham, 1990. *James Madison: A Biography.* Charlottesville, VA: University of Virginia Press, p. 642. For an example of deference to Madison's authority from an overtly protectionist standpoint see Edward Stanwood, 1903. *American Tariff Controversies in the Nineteenth Century.* Boston: Houghton-Mifflin, Vol. 1, p. 37

[234] Michael Kammen. 2006. *A Machine that Would Go By Itself: the Constitution in American Culture.* Edison, NJ: Transaction Publishers, p. 56. Kammen's assessment of Madison's nullification views is particularly egregious in several parts. He asserts that Madison supported the constitutionality of protective tariffs "grudgingly," and only after 1827. In fact Madison came to that view as early as 1816 when he signed such a tariff into law as president.

man…that it reflects poorly on Jefferson."[235] The general scorn for the 1825 resolution, often offered by the very same writers who celebrate Jefferson's 1798 assault on the Alien and Sedition Acts, may simply reflect a political bias against its constitutional implications, not to mention the authority it appears to lend to the oft-detested nullifiers. Assessed on their own language though, Jefferson's 1825 writings are remarkably consistent to the "Principles of '98," perhaps even exhibiting a fuller logical extension of them. Alan Pell Crawford, a recent Jefferson biographer and among the only historians to defend his 1825 writings, assesses them thusly: "Jefferson saw no contradiction, perhaps because none exists."[236]

Still, this view of Jefferson's later writings remains in the minority, a curious testament to the selective partialities of some scholars on tariff matters. Whereas Madison, who vacillated wildly between strict and loose constitutional construction across his career, is afforded reverence for his final judgment, the dogged constitutionalism of Jefferson at the end of his life is viewed with disdain. This assessment of Jefferson is likely attributable to the discomforting consequences of this radical strain in his thought. The disquieting silence that surrounds Madison's inconsistency on the tariff issue is more troubling though, as that inconsistency also undermines his impartiality as a witness to the events of 1787 – the basis on which he formed his arguments to justify the protective tariff's sanction under the Revenue Clause.

As a matter of political theory, Madison's reaction to nullification is similarly troubling – a point that has been noticed by more scholars than with the case of his

[235] Assessments of Jefferson by James Morton Smith and by Leonard W. Levy, quoted in Alan Pell Crawford, 2008. *Twilight at Monticello: the Final Years of Thomas Jefferson.* New York: Random House, p. 220.
[236] *Ibid.*

specific tariff views. As with Webster in the 1830 debate, Madison exhibited a degree of perceptiveness that had been lost upon the nullifiers, at least in their earliest form, regarding nullification's disruptive potential to the nation's political unity. Madison correctly saw the logical extension from nullification to secession, and thus the danger of disunion. As he wrote shortly before his death in 1836,

> A political system which does not contain an effective provision for a peaceable decision of all controversies arising within itself, would be a Govt. in name only. Such a provision is obviously essential; and it is equally obvious that it cannot be either peaceable or effective by making every part an authoritative umpire.[237]

The logical consistency of this otherwise highly practical critique of nullification becomes problematic when it is admitted that the finality vested in the federal authority, in this case, trumps a system professed by Madison to exhibit dual sovereignty. As Gutzman summarizes the problem, "What aspect of sovereignty that leaves the states is not clear."[238]

Adding further confusion to Madison's logic, he continued to profess his adherence to dual sovereignty throughout the nullification crisis. As historian Lacey Ford observes, "at the core of Madison's determined and multifaceted opposition to nullification lay his commitment to the concept of divided sovereignty."[239] Madison diverged on this point from Webster, long a proponent of the doctrine that the constitutional convention produced unequivocal federal sovereignty. In 1830, while denouncing South Carolina, Madison nonetheless declared "The Constitution of the U. S. divides the sovereignty; the portions surrendered by the States, composing the Federal

[237] Madison, "Notes on Nullification," in Hunt, ed., Vol. 9, p. 606-7.
[238] Gutzman, 1994
[239] Ford, 1994, p. 54

sovereignty over specified subjects; the portions retained forming the sovereignty of each over the residuary subjects within its sphere."[240] He continued to base this opinion in his earlier federalist theory of faction, in which the political division created by dual sovereignty would check any one agent from becoming dominant. The subsequent contest in the political arena aided by strict constitutional construction, notes Ford, would enable a resolution to problems of factional abuse.[241] The stricter mechanism of recourse for the minority faction sought by Calhoun, however, was denied, thus, in Calhoun's mind, reducing its participation to a mere formality to be acknowledged yet ultimately discarded as the factional policy takes effect.

In a sense Madison's own reaction to nullification exhibited the emerging challenges to his theory of the faction in government. Calhoun, notes Gutzman, formed his nullification argument by direct logical extension of *Federalists 10, 45,* and *46,* and from the example of the Kentucky and Virginia Resolutions against the Alien and Sedition Acts. His *Exposition* cited these documents directly and treated nullification as their derived consequence. In response, Madison deprecated the nullification doctrine by an appeal to the danger seen in its results, not the logic of its derivation. When confronted with a connection to his actions in 1798, Madison "erected specious distinctions" and returned to an appeal to the "Union's fate."[242] This appeal proved prescient, yet the absence of logical finality from his rebuttal became the greatest danger to Madison's own concepts of sovereignty and the faction in federalist theory.

Despite its unresolved theoretical faults, Madison's opposition deprived the

[240] James Madison to Nicholas P. Trist, February 15, 1830, in Hunt, ed. Vol. 9, p. 354.
[241] Lacy K. Ford. 1994. "Inventing the concurrent majority: Madison, Calhoun, and the problem of majoritarianism in American political thought." *Journal of Southern History.* Vol. 60, No. 1, pp. 55-57
[242] Gutzman, 1995, p. 589.

nullifiers of the political support needed to take their cause beyond South Carolina. Notes Ford, Calhoun's theory "failed not so much because its logic was defective…but because it did not attract political support."[243] The decisive stroke against Calhoun came not from Madison's hedging of the dual sovereignty doctrine but rather from a newly emergent political force: Jacksonian majoritarianism.

Though less of an appeal to political theory than to the saber, Andrew Jackson's response to nullification and his accompanying Force Bill proposal elicited the imagery of war should South Carolina not yield. Jackson's response exhibited characteristics distinct from both Madison and Calhoun. Taking a nationalist tone, he reduced the principle of government to the will of the majority, upheld as supreme and assumed to embody final validity. Thus, declared Jackson, ours "is a government in which all the people are represented, which operates directly on the people individually, not upon the States." Thus the condition threatening to undermine the government itself was not the faction, as Madison contended. Nor was it the faction exerting its will upon another absent the latter's recourse, as Calhoun had claimed. Jackson saw a threat in the anti-majoritarian actions of South Carolina against "a law of the United States…repealed by the authority of a small majority of the voters of a single State."[244] He had, as Ford notes, "endorsed the sovereignty of the 'American People' in order to sustain an existing national majority" and "unlike Madison and Calhoun, Jackson did not seek to check majoritarianism but to protect its prerogatives…[he] did not fear majorities; he reveled in

[243] Ford, 1994, p. 57
[244] Andrew Jackson, Proclamation of December 11, 1832, in *Addresses and Messages of the Presidents of the United States,* p. 450

them."[245]

Nullification subsided in 1833 without a rightful victor, though no side relinquished the opportunity to claim victory. In exchange for South Carolina's withdrawal of the nullification ordinance, Clay and Calhoun crafted the Compromise Tariff, which lowered rates on a schedule over the next decade to a uniform 20%. The Madisonians brushed aside their logical shortcomings to claim vindication of the American system of government. Faction had countered faction and resolved itself through legislative means. To Jackson, South Carolina withdrew in defeat, overcome by the majority's will. To Calhoun, the repugnant tariff was gone, the hand of its beneficiaries forced by South Carolina. Withdrawing the ordinance meant nothing more than facilitating the change in law, and the response by the opposition, said Calhoun, was a "triumphant acknowledgment that nullification is peaceful and efficient."[246] The truce was unsteady though – a convergence of circumstance that permitted all sides to withdraw from the field intact.

The 1833 Compromise produced an uneasy settlement of the tariff issue as well. Within months of its expiration in 1842, the call for heavy protectionism at the behest of Clay himself – the compromise's co-author – returned to Congress' chambers. Madisonian theory survived the nullification test but not unchallenged, and a new emergent doctrine of majoritarianism – the same concept warned against by Randolph of Roanoke – grew stronger in appeal. Sectionalizing issues, with slavery the most violently professed among them, took grip of the nation with force. Yet faction still sustained the

[245] Ford, 1994, pp. 56-57
[246] Lence, ed., 1992, p. 429

ubiquitous tariff issue on the national agenda, and would for another century.

The federalist conceptualization of factional politics had a well developed, if not unerring, position in American political thought by the time nullification subsided. Jacksonian majoritarianism, though a newcomer to American government, drew popular appeal from its simplicity and seeming sensibility. The will of the many, it was reasoned, should reign. American political climate in this era offered the least certainty to the third view, now defended by Calhoun, who, like the anti-Federalists and agrarians before him, increasingly mistrusted the ability of the government to deflect the majority's tendency to impose its costs upon minority factions.[247] In response he penned his *Disquisition on Government*, an attempt as he put it to understand the "object of government" as it operates through the laws of human nature from which government originates.[248]

As Calhoun biographer Ross M. Lence notes, the *Disquisition's* purposes are twofold. On the surface, it represents an "elaborate defense of [Calhoun's] doctrine of the concurrent majority." This doctrine, represented in an earlier form by nullification, essentially holds that, rather than a simple numerical majority, a governing majority should more fully represent the concurrence of the communities of interest that stand to be affected by a given policy.[249] "Beneath the surface," continues Lence, the treatise "is a

[247] In the decades following nullification the issue of slavery quickly emerged among the sectional interests defended by Calhoun. Northern populations grew more rapidly than southern ones, and new free states, once held at parity with the slave states, entered the union giving the former a numerical advantage. The subject came to dominate Calhoun's later career (e.g. Hofstadter, 1948, pp. 103-104), and has since tainted the favor at which his political theories are received. The tariff never disappeared from Calhoun's thought though, and far from it – he provided the intellectual force in opposition to Clay on the Tariff of 1842, and fought vigorously for its 1846 repeal. As such, the application of his later political theories to tariff politics, considered in the Madisonian factional framework, has additional value for the constitutional analysis of trade.

[248] Lence, ed., 1992, p. 5

[249] Calhoun's concurrence principle is strikingly similar to the external cost principle of decision-making as described in James M. Buchanan and Gordon Tullock. 1962. *The Calculus of Consent.* Ann Arbor, MI:

systematic analysis and critique of the founding principles" of the *Federalist Papers*.[250] Its arguments include explicit rejections of federalist theory, among them the benefits of an "extended, compound republic" as expressed in *Federalist 10* and the notion that such a government could be sufficiently limited through the separation of powers as expressed in *Federalist 51*.[251]

Though certainly a restraining force upon the government, simple counteraction of faction against faction fails to ensure durability in the protection it affords to minority factions. As with Madison, Calhoun saw an inherent tendency "in government to oppression and abuse of power." In *Federalist 10* Madison saw this problem resolved by the division of factions into a number so great and over geographical regions so broad that none could individually muster a majority at the expense of another. Calhoun saw this function, embodied in the right of suffrage afforded to all factions, as an "indispensable and primary principle" of constitutional government, albeit an insufficient feature to fully counter factional abuse.[252] A flaw emerged in the fact that a government constructed in this manner, even with counteracting checks upon the powers exercised by its various agents, still conducted itself within each agency on a rule of simple majority, thus enabling factional abuse to persist by way of factional alliance.

Simple congressional tariff legislation, by example, permits the imposition of costs – higher prices – upon non-majority interests by majority rule in each chamber.

University of Michigan Press. Buchanan and Tullock relate a higher level of required concurrence to a minimization of a policy's external costs onto society, a larger segment of society being represented in the majority required for that decision. This comes however at a greater cost in time, effort etc. to reach a decision.

[250] *Ibid.,* p. xviii

[251] *Ibid.* p. xix

[252] *Ibid.* p. 13

Though the bicameral legislature and the separation of powers extend the threshold of adoption, they alone are insufficient to provide an enduring defense to the harmed interests as control of each is sustained only as far as the next election. Taxes and their disbursements necessarily divide the affected populace "into taxpayers and tax-consumers," the former being enriched by the transfer (e.g. a protection rent) and the latter being made to bear its costs.[253] Tax consumers thus seek out the authority this condition entails, namely control over the government.

> If no one interest be strong enough, of itself, to obtain it a combination will be formed between those whose interests are most alike – each conceding something to the others, until a sufficient number is obtained to make a majority.[254]

Herein exists the great danger of simple majority rule. Even if rendered difficult to obtain by constitutional mechanisms, a majority faction or coalition of factions still exercises controlling power for the duration of its majority, transient though it may be. "The dominant majority" for the time that it controls the government "would, in reality, through the right of suffrage be the rulers – the controlling, governing, and irresponsible power" in absolute, and thus able to impose the costs of its government upon the remainder. Increasing concurrence accordingly becomes a means of escaping this problem, hence Calhoun's assertion:

> There is, again, but one mode in which this can be effected; and that is, by taking the sense of each interest or portion of the community, which may be unequally and injuriously affected by the action of the government, separately, through its own majority, or in some other way by which its voice may be fairly expressed; and to require the consent of each interest, either to put or to keep

[253] Calhoun, J. C. "A Disquisition on Government." in Lence, ed., 1992. p. 19
[254] *Ibid.,* p. 15

the government in action.[255]

When such a system is constructed the concurrence requirement between multiple decision-making bodies raises the adoption threshold for a policy closer to unanimity, or full concurrence of all affected interests. Calhoun anticipated that higher concurrence will create a "disposition to harmonize" on policy outcomes, thus minimizing the costs imposed upon any one party.[256]

In this light, Calhoun's application of the nullification doctrine to the 1828 "Tariff of Abominations" may be interpreted as an attempt to enforce a concurrent majority upon the laws of Congress, as adopted through numerical majorities. As a device of factional control, the concurrent majority when strictly applied requires nothing short of full acquiescence from affected interests. As no interest would rationally volunteer itself to the abuses of another faction, the device eliminates the "violence of the faction" and reconciles the government to the professed goals of Madisonian federalist theory. The concurrent majority's greatest operational vulnerability, however, remains its functional impracticality and political acceptability. In vesting every potentially effected interest with a veto right, efficient policymaking becomes impossible.

3.4 The Tariff and the Laffer Relationship

> "It is a signal advantage of taxes on articles of consumption, that they contain in their own nature a security against excess. They prescribe their own limit; which cannot be exceeded without defeating the end proposed, that is, an extension of the revenue. When

[255] *Ibid.,* p. 21
[256] *Ibid.,* pp. 48-51

> applied to this object, the saying is as just as it is witty, that, "in political arithmetic, two and two do not always make four." If duties are too high, they lessen the consumption; the collection is eluded; and the product to the treasury is not so great as when they are confined within proper and moderate bounds. This forms a complete barrier against any material oppression of the citizens by taxes of this class, and is itself a natural limitation of the power of imposing them." – Alexander Hamilton, *Federalist* #21

Assessed strictly as an anti-tariff strategy, South Carolina's nullification stance actually succeeded in bringing about a brief albeit haphazardly administered period of tariff relief over the subsequent decade. Still, lacking a viable mechanism to test challenges to the tariff's legitimacy save for a hostile supreme court, assessments of its constitutional validity rose and fell with the political parties in power. Both sides of the tariff debate knew the respite of the 1833 compromise would not long endure its expiration in 1842 and thus prepared to reformulate their arguments for the issue's inevitable reemergence.

Calhoun's *Exposition* explicitly distinguished the tariff's revenue effects from its protective effects, acknowledging the destruction of revenue capability as rates became prohibitory by design. Assuming his strict reading of the Revenue Clause is correct this distinction appears to facilitate a means of determination between permissible and unconstitutional policies. A tariff that increases revenue fulfills the clause's requirements. A tariff that increases protection at the expense of revenue violates it. In the eyes of the law though, this determination becomes easily muddled by legislative intent.

While Calhoun saw intent as a problem of enforcement, his critics saw it as a fundamental weakness in the constitutional argument itself. The discussion of the

Revenue Clause in Justice Joseph Story's 1833 *Commentaries on the Constitution* may be considered a direct rebuttal of Calhoun's *Exposition,* even though he never mentions the document by name.[257]

While stopping short of endorsement, Story acknowledged the careful logic behind a strict reading of the Revenue Clause. A tax that deters its own collection by its rate fulfills little revenue function. Holding the tax's character to turn upon the "general welfare" stipulation of the clause, Story inquired "Who is to decide upon such a point?" After addressing two additional variations upon the readings given to the Revenue Clause, he returned to this point of enforcement. As legislatures assess taxes both for revenue and non-revenue purposes, the question becomes one of "[h]ow, then, is a case to be dealt with, of a mixed nature, where revenue is mixed up with other objects in the framing of the law?" [258] The argument continued in Story's assessment of the commerce clause, where he again addressed tariffs:

> If it be said, that the motive is not to collect revenue, what has that to do with the power? When an act is constitutional, as an exercise of a power, can it be unconstitutional from the motives, with which it is passed? If it can, then the constitutionality of an act must depend, not upon the power, but upon the motives of the legislature. It will follow, as a consequence, that the same act passed by one legislature will be constitutional, and by another unconstitutional.[259]

Describing this consequence as a "novel and absurd" doctrine, Story contended that an

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[257] Joseph Story, Melville M. Bigelow, ed [1833] 1891. *Commentaries on the Constitution of the United States.* Boston: Little, Brown, and Company. § 958 in particular restates the argument in language lifted directly from the *Exposition.* "It is true, that the eighth section of the first article of the constitution authorizes congress to lay and collect an impost duty; but it is granted, as a tax power, for the sole purpose of revenue; a power, in its nature, essentially different from that of imposing protective, or prohibitory duties. The two are incompatible; for the prohibitory system must end in destroying the revenue from imports. It has been said, that the system is a violation of the spirit, and not of the letter of the constitution. The distinction is not material. The constitution may be as grossly violated by acting against its meaning, as against its letter..."

[258] Story, 1833, § 966, 968

[259] *Ibid*., § 1086. For a further discussion of the motive principle, see also § 966, 967, and 968.

assessment of a tariff's constitutionality in this manner "would confuse and destroy all the tests of constitutional rights and authorities." The legislative motives that determine a tariff's intent, be it protection or revenue, "must be utterly unknown, and incapable of ascertainment by any judicial or other inquiry." Thus, he concluded, "[t]he manner of applying a power may be an abuse of it; but this does not prove, that it is unconstitutional."[260] If Story's premise is accepted and a tariff's character is purely an extension of its motives, proponents of a strict Revenue Clause reading are left without a constitutional remedy.

Calhoun saw his first opportunity to answer Story's challenge after the 1833 compromise expired in 1842. The 1840 election gave the protectionist Whig Party a majority in Congress, and with it they quickly turned to revising the tariff schedule. Though lacking the votes to stop the new measure, now-Senator Calhoun used the occasion to expand upon his earlier anti-tariff arguments and clarify the distinction between a protective and revenue tariff. The Whig argument for the bill deemed it only "incidentally protective" in motive. This doctrine sought to distinguish tariff increases from what was categorized rather arbitrarily as prohibitive protection by contending that a given duty's protective effects were "incidental," and thus of secondary motive, to its revenue purposes. Senator John Crittenden, a Kentucky Whig, articulated this concept by noting "The government takes all that can be levied for the treasury; but if, in doing it,

[260] *Ibid*. § 1086. To the contrary, Story also believed that non-revenue tariffs fell within the scope of an expansive interpretation of the commerce clause. He reached this conclusion by disassociating the tariff as an instrument of policy from its assessment, leaving the matter to the question of motive. The revenue collected from a tariff, he contended, "flows from, and does not create the power" of the tariff itself. "It may constitute the motive for the exercise of the power, just as any other cause may; as for instance, the prohibition of foreign trade, or the retaliation of foreign monopoly; but it does not constitute the power." § 1084.

the manufactures of Kentucky can be encouraged, why should they not be encouraged?"[261]

When taken to its logical end, the unstated implication of this doctrine for the Constitution's revenue clause is to ensure its fulfillment in any rate short of complete prohibition. Given a tariff's rate *t*, the price of a good *p,* and imports *M*,

$$R = tpM$$

R represents the revenue it provides.[262] For any good on which *t* is assessed, some amount of *R* will inevitably be collected so long as $M>0$. Lacking any further means beyond a legislator's designation to determine incidental character, any given tariff below complete exclusion exhibits sufficient "revenue" characteristics.

Calhoun's answer came in his August 5, 1842 speech against the proposed bill. A tariff's character, he responded, emerged not from its stated motive but from its effects in operation, consistent with that motive. When applied for protection, it "seeks, directly, exclusion or diminution" by nature, this effect also being its "desired result." Though protective and revenue tariffs are "intimately blended in practice" by the incidental protective effects of a revenue duty, he contended that "plain and intelligible rules may be laid down, by which one may be so distinguished from the other, as never to be

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[261] *Congressional Globe*, 27th Congress, 2nd Session, p. 808

[262] See Blinder (1981, pp. 84-7), in general discussion of the tax rate, and Irwin (1998, pp.64-5), specific to tariffs. Douglas A. Irwin. 1998. "Higher Tariffs, Lower Revenues? Analyzing the Fiscal Aspects of 'The Great Tariff Debate of 1888'." *Journal of Economic History,* Vol. 58-1, pp. 59-72. It follows that the decline in tariff revenue after revenue maximization is determined by the taxed good's price elasticity. Blinder (p. 87) indicates that extremely high elasticity is often necessary for a low revenue maximization point. He accordingly rejects the usefulness of the Laffer Curve for broad-based tax policy. The relationship may nonetheless have greater explanatory value for specific import items, where high elasticity and extremely high tariff rates are common. Robert Walker, for example, indicated that many items on the 1842 Tariff schedule were taxed at ad valorem equivalents well in excess of 100% of their value. Robert J. Walker. "Report of the Secretary of the Treasury for 1845." in *Reports of the Secretary of the Treasury of the United States, Volume VI.* Washington, D.C.: Blair and Rives. 1851.

confounded."[263]

Calhoun's "rules" explicitly identified the dual-rent characteristic in the U.S. tariff schedule, and furthermore hypothesized the conditions that would pull tax rates into the upper prohibitive region of the curve.[264] In doing so he effectively "discovered" how the Laffer Curve illustrates the tariff's properties as per its two sources of rent:

> On all articles on which duties can be imposed, there is a point in the rate of duties which may be called the maximum point of revenue – that is, a point at which the greatest amount of revenue would be raised. If it be elevated above that, the importation of the article would fall off more rapidly than the duty would be raised; and, if depressed below it, the reverse effect would follow: that is, the duty would decrease more rapidly than the importation would increase. If the duty be raised above that point, it is manifest that all the intermediate space between the maximum point and that to which it may be raised, would be purely protective, and not for revenue.[265]

This rule, when admitted, provided sufficient information for Calhoun to describe a rudimentary diagram of the principle it entailed.

> It results from the facts stated, that any given amount of duty, other than a maximum, may be collected on any article, by two distinct rates of duty – one above the maximum point, and the other below it. The lower is the revenue rate, and the higher the protective; and all the intermediate is purely protective, whatever it be called, and involves, to that extent, the principle of prohibition, as perfectly as if raised so high as to exclude importation totally. It follows, that all duties not laid strictly for revenue are purely protective whether called incidental or not

Thus, Figure 1.1-B may be used to illustrate the principles Calhoun described. Revenue $R_{1,2}$ is obtained at both tariff rates t_1 and t_2, though the transfer loss in consumer surplus

[263] Calhoun, in Wilson, ed, 1992, p. 194.
[264] Though it is his clearest and most detailed articulation of the subject, the August 5 speech was not the first time Calhoun hypothesized the Laffer relationship. A week earlier he stated "Here is a rule which may be depended on, it cannot be got over: Raise the duty so high as to diminish the amount of importation, it must be for positive and direct protection, and nothing else." *Congressional Globe*, 27th Congress, 2nd Session, p. 808.
[265] Calhoun, in Wilson, ed., 1992, p. 195.

for the given good is smaller at t_1.[266] The range between t*, the revenue maximization rate, and t_p, complete prohibition, is purely protective according to Calhoun as any rate in this range above the maximum supplies a level of revenue that may also be obtained at its corresponding rate below the maximum.

If the strict construction of the revenue clause is admitted at this point, a constitutional "Revenue Tariff" becomes any rate *t* less than or equal to t*. Furthermore, this realization alters the determination of constitutionality from an arbitrary assessment of purported legislative motives to a specific economic principle, thus answering Story. A constitutional tariff is determined by its position in relation to t* for a given good, and thus the rate where revenue is maximized at $dR/dt = 0$.

Though certain to exist, the maximization rate of t* complicates its enforcement on an entire tariff schedule due to the difficulty associated with its practical implementation. The prohibitive effects of a tariff described by Calhoun depend upon the price elasticity of demand for the import against which it is assessed.[267] Even if a precise upward constitutional barrier could be drawn at t*, the calculations entailed in ascertaining this point for a tariff schedule of several thousand goods simply exceeded any practical legislative or judicial capability. Proponents of the constitutional argument were thus left to approximate t* based on their observations of tariff revenues following the adjustment of a duty for given goods.[268] Their first and only opportunity to do so

[266] McGuire and Van Cott, 2002, p. 432
[267] Blinder (1981, p. 86) and Irwin (1998, pp. 64-5) elaborate on the calculation of a revenue maximization tax rate.
[268] Proponents of the strict constitutional construction attempted to approximate revenue-maximizing rates for specific items based on customs house returns. Calhoun offered the example of cotton bagging in the context of his argument during the 1842 debates (*Congressional Globe*, 27th Congress, 2nd Session, p. 808).

came with the Democratic sweep of the 1844 election.

In 1845 Treasury Secretary Robert Walker proposed an overhaul of the existing tariff schedule based upon the notion that the highest constitutionally permissible tariff rate was at the revenue maximization point. Walker recommended to Congress that "no duty be imposed on any article above the lowest rate which will yield the largest amount of revenue." He continued:

> A partial and a total prohibition are alike in violation of the true object of the taxing power. They only differ in degree, and not in principle. If the revenue limit may be exceeded one per cent., it may be exceeded one hundred. If it may be exceeded upon any one article, it may be exceeded on all; and there is no escape from this conclusion, but in contending that Congress may lay duties on all articles so high as to collect no revenue, and operate as a total prohibition.[269]

A tariff of this sort, it followed, would violate the revenue requirement entailed in a strict construction of the revenue clause. Thus, no constitutional rate could exceed revenue maximization.

Walker openly anticipated that his proposed revisions to the 1842 tariff, notably a reduction of existing rates and the implementation of a standardized ad valorem schedule, would augment revenue.[270] His 1846 "Walker Tariff" (along with further reductions in 1857) represents the closest the United States came to adopting a tariff policy under the influence of the constitutional argument against protection. It may thus be seen as an indicator of the argument's legislative triumph, albeit a temporary one with the inherent fault that no safeguard save the resumption of the earlier radical threat of nullification

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Robert Walker, the Secretary of the Treasury for President Polk, similarly based his recommended rates for the 1846 tariff on approximations intended to maximize revenue.

[269] Walker, 1845, pp. 4, 7

[270] Walker (1845, p. 4) reported that for the 1845 fiscal year, existing ad valorem duties averaging 23.57 percent brought in more revenue than specific duties at an average equivalent of 41.3 percent, indicating "that lower duties increase the revenue."

could maintain its permanence beyond an election cycle.

Whereas the rigorous logic in Calhoun's argument fostered its appeal, its application formed its greatest discouragement. It died not from its somewhat successful application to tariffs, but rather its association with slavery. As Peter Aranson noted, subsequent generations of scholars have often "fear[ed] to eat from the tree of Calhoun's thought, for it is watered from the poisonous wells of states' rights and slavery."[271]

For Aranson though, Calhoun's arguments were as much a theory of process as they were answers to the political questions of his day, both good and evil. He delineated a constitutional theory that united rigorous textual adherence to the document with the principals of political economy, and sought to enforce it as a constraint upon the purview of federal power by requiring cost-averse concurrence between all parties to the government. In 1832 and again in 1846, this theory provided a means of combating two prior protective tariff schedules that were widely seen to discriminate against certain sectors of the economy, particularly southern and western agriculture, to the betterment of highly factionalized interest groups. In 1861 though, it became an argument for disunion, premised in part on the territorial slavery issue. The Civil War that encompassed Calhoun's theories became their undoing and ushered in a new era of trade politics marked, if anything, by their surprising stability.

[271] Peter H. Aranson, 1991. "Calhoun's Constitutional Economics." *Constitutional Political Economy.* Vol. 2-1, p. 48.

IV. High Revenue, High Tariff Protectionism

4.1 The Tariff in the Gilded Age

> "In itself the abolition of protection is like the driving off of a robber. But it will not help a main to drive off one robber, if another, still stronger and more rapacious, be left to plunder him." – Henry George[272]

William A. Niskanen summarized the peculiar situation of Calhoun's political theory thusly: "Americans have an unfortunate habit…of evaluating a legal concept by the motivations of its advocates."[273] His assessment may be particularly applicable to the tariff issue, given how rapidly Calhoun's argument fell from its 1846 pinnacle under Walker and Polk. In barely two decades time, the argument had been vacated, a prostrate relic of that which the Civil War discarded in its wake. One need not take up the question of the tariff's relationship to the war to note the implications for its political economy. Prior to 1860, the opposition constituency to the protectionist tendencies of the congressional process formed an uneasy political block, anchored in the slaveholding south and enabled by an unstable coalition with the free labor agricultural west.[274] Its occasional successes came from an appeal to a constraining view of the Revenue clause,

[272] Henry George, 1888. *Protection or Free Trade: An Examination of the Tariff Question with Especial Regard to the Labor of Interests.* New York: Henry George. p. 267
[273] William A. Niskanen, 1999. "On the Constitution of a Compound Republic." Vol. 10-2, p. 173
[274] Douglas A. Irwin, 2008. "Antebellum Tariff Politics: Regional Coalitions and Shifting Economic Interests." *Journal of Law and Economics.* Vol. 51, pp. 715-41.

albeit never through the traditional constitutional arbiters of the judicial branch. Initially blocked by the Federalist Party dominance of the Supreme Court in *McCulloch,* it only succeeded by appealing to the extra-judicial strategies of a state veto on concurrence, as with nullification in 1832, or the embrace of another branch of government, as with the Polk administration in 1846. Neither solution carried the longevity of a judicial precedent and the nullification route was entirely voided with the war in 1865 by reason of its close kinship to the concept of secession.

Without embracing nullification's use to prop up slavery or the disunionist effects of secession, Niskanen suggests that this outcome nonetheless reflects a shortcoming in constitutional design relating to the document's ability to affect change within its own procedures in respect to the rights of the minority faction and the costs imposed by policy thereupon. The Alien and Sedition laws, the tariff, and even the slavery debate that precipitated the Civil War each reflected a constitutional conflict between majorities and minorities at the federal level in which the latter invoked state-level resistance out of the belief that its interests were not being accounted for in the federal-level policies of the former. Niskanen believes a strengthening of the Madisonian federalist concept offers the best answer to this tendency for conflict, itself still represented in what he dubs the "constitutional anarchy of our time." Its perpetuation however comes from a tendency to resolve the most heated majority-minority conflicts "in an *ad hoc* manner that deferred a more general recognition" of the underlying constitutional problems that brought them about. The Civil War, he contends, represents the "first major tragic failure" to reach a

more general solution to the factional problem.[275]

In terms of the actual trade legislation, the Civil War essentially, if inadvertently, stabilized the tariff system around a status quo that was to endure for another half-century. No longer restrained by the voice and votes of southern exporters, manufacturers were able to pursue a protectionist trade agenda – a situation that was little abated by the return of a severely weakened South after the war. Thus the Morrill Tariff of 1861, a reversal of the 1846 policy that took effect on the eve of the Civil War, became the first piece of an ascendant protective regime that attained near permanency by 1866.[276]

The sustained protective character of the post-war tariff system is well known in the historical literature, though it should not be mistaken for a complete regulatory capture of the customs system by beneficiary interests. Protectionism was certainly a distinguishing feature of the tariff schedule. From the Civil War to 1913, only twice did the average tariff rate drop below 40%, and then just barely in 1873-74. The doctrine of "High Protection" was nonetheless tempered by the need for tariff revenue, and most policy discussions centered on striking the proper balance of each.

From the Civil War till the First World War, the tariff retained its role as the primary revenue-generating tool of the federal government. For the latter half of the 19th century the tariff routinely supplied 50% or more of the federal treasury and was the single largest source of income by far in every year save those interrupted by the aforementioned wars.[277] All tariffs in this period began in the House of Representatives as "bills for raising Revenue" as stipulated by the Constitution, and starting with the

[275] Niskanen, 1999. p. 173
[276] Magness, "Morrill and the Missing Industry," 2009.
[277] See Figure 2.1-A

Morrill Tariff of 1861, even the most ardent protectionists presented their high rates as an accompanying feature of the existing revenue system.

Tariff politics also became a highly partisan issue after the war – a trend that only intensified around the turn of the 20th century. Republicans embraced the protective side of the tariff, usually expressing a willingness to forgo some trade, and thus the revenue it generated, for higher rates on "home industries." The Democrats continued in their traditional role as a "revenue tariff" party. This divide traced back to the early tariff battles between the Federalists and Jeffersonians, though its immediate origin was the merging of the remnants of the Whig Party into the fledgling Republican Party in the 1850's. The Republicans formally embraced protection in their platform for the first time in 1860, largely as a result of an intense behind-the-scenes campaign by Henry C. Carey to attach a tariff plank. The Morrill Tariff of 1861 was signed by Democratic president James Buchanan out of latent loyalties to the regional interests of his home state of Pennsylvania, but the bill's legislative origin was entirely Republican.[278] When the Civil War concluded these partisan divisions simply resumed and intensified.

The federal tax system in place at the end of the Civil War was both complicated and burdensome on the public, for it was born of an unprecedented war demand for revenue. Though the period from 1861-65 was unmistakably marked by successive increases in the tariff schedule, the federal government also sought out other revenue sources including a complex system of internal taxes and, for a brief time, a tax on income. Given the unusual exigencies of the Civil War tax system, this tax system is best viewed as a temporary deviation from the constitutional development of federal policy

[278] *Ibid.,* pp. 322, 329

save for two counts. First, the Civil War income tax technically created a constitutional problem onto itself as it was a direct tax and, failing to be apportioned by the census, appeared to violate the letter of the Capitations Clause. Its repeal after the war eliminated any basis for a constitutional challenge, but the precedent it raised set the stage for this issue to reemerge in coming decades.

Second, whereas most of the internal taxes used to finance the Civil War were repealed shortly after its conclusion, the tariff system bucked this trend for the aforementioned reason of growing protectionist factionalization around the tariff-setting mechanisms of the government. Given the post-war trend of tax reduction, observed Frank Taussig, "a reduction of import duties should have taken place."[279]

From the strict perspective of prudent policymaking, every reason existed for this reduction to happen. The wartime tariffs had been imposed on the pretext of collecting revenue for a specific purpose envisioned by the Revenue Clause. Beginning in 1866, the Treasury Department also organized the United States Revenue Commission under the guidance of David A. Wells, a distinguished political economist of his day. The commission was assigned the task of making advisory recommendations to Congress on the deregulation of the wartime revenue system. Wells gained distinction as a leading proponent of free trade in his later years, though in 1866 he viewed a moderately high tariff as a necessary counterbalance to the elimination of the internal tax system. Wells' purpose was to restore the primacy of the tariff in federal taxation, much as it had been by design of the constitutional convention up until the war. The Commission accordingly attempted to estimate the "ideal" revenue tariff rates on all matter of goods. It issued

[279] Taussig, 1931. p. 172

reports on the "proper" rates for coffee, tea, sugar, molasses, and certain cotton items. It also anticipated moderate liberalization of existing duties and an expansion of the free list, as well as the adjustment of traditional "revenue" categories such as alcohol to maximize their tax-generating potential.[280] The Wells proposals were substantially higher than the impost rates of the founding era, but their stated motive was to stabilize the federal revenue system in the wake of the repeal of its wartime provisions. They also generally reflected the popular sentiment that the entire wartime system including its tariff schedule would eventually be reformed under the guidance of its revenue capabilities.[281]

Reform of the tariff system never came though. True, Congressional sentiments had already turned back toward protection with the Morrill Tariff on the eve of the Civil War and its strongest critics – the South – returned to Congress without the political clout to muster a counterargument. But more than any other factor, the wartime tariffs were sustained by the complacency of the business interests that adapted to them and took cover in the relatively high protection that these "war revenue" measures came to provide in the absence of their claimed military purpose. Tariff adjustment was accordingly delayed, and "the feeling that no reform was needed obtained a stronghold." Business interests suddenly found after the war that they enjoyed desirable protection with the status quo and therefore resisted any effort to alter it. As a result the tariff system, "which had been at the first a temporary expedient for aiding in the struggle for the Union, adopted hastily and without any thought of deliberation, gradually became accepted as a

[280] David A. Wells. 1866. *Report of the United States Revenue Commission.* Washington, D.C.: Government Printing Office, pp. 17-19, 23-24.
[281] Taussig, 1931. p. 173

permanent institution." From here, notes Taussig, it was but a "short step" from the wartime tariff system to the treatment of "high protection as a theory and a dogma."[282]

The entrenchment of protectionism after the Civil War attained ratification as Congress repeatedly shirked the call to extend revenue reforms to the tariff schedule, even modest ones. But neither did Congress significantly expand upon the Civil War tariff system. The two most notable Republican tariff increases of the postbellum 19th century – 1890 and 1897 – raised rates by less than 10 percentage points on average over the most notable Democratic decrease in 1894, and all three schedules placed rates within a marginal fluctuation of their Civil War levels. Simply stated, even the most ardent protectionists could little afford to push the rates too high as doing so would jeopardize the fiscal policy aspects of the tariff system. Diminished trade, be it from prohibitory rates or foreign retaliation, would also destroy the federal treasury. While manufacturer pressures sustained existing high rates and developed an entrenched network of protective rent-suppliers in Congress, no rational politician would completely forgo tariff revenue for the sake of establishing trade autarky and risk a severe budget deficit. Advocates of neither policy feature could afford to completely exclude the other.

The tariff issue produced a sharp and continuous divide on strict party lines. As historian Richard F. Bensel observes, over 94% of Republican members of the House supported tariff protection on major role call votes between 1878 and 1886. From 1888 to 1900, their solidarity increased to 99% on average. Democrats aligned in the opposite direction, with only 17.5% supporting protection on average in the first period, and less

[282] *Ibid*., p. 174

than 4% in the second.[283] Unfortunately, this division also left little room for bipartisan compromise. As a result, successful tariff legislation only tended to occur in rare years where one party controlled both chambers of Congress and the White House.

When coupled with manufacturer support of the existing system, partisan deadlock in Congress had the effect of impeding any meaningful tariff reform. In 1867 the Wells commission proposed a revision that, while maintaining the protective character of most rates, slightly reduced the tariff on scrap iron, coal, lumber, hemp, flax, and some manufactured articles with the intent of stimulating revenue. Though a majority supported the plan in both chambers, Republican proponents of the status quo blocked the bill's consideration in the House by a rules procedure that effectively imposed a supermajority requirement.[284]

Here was the fault in Calhoun's concurrence principle, and the earlier supermajority arguments of Mason and Randolph at the constitutional convention. The voting thresholds of both moderate federalist theory and the more radical concurrent majoritarianism functioned by inhibiting change without the representative ascent of the country's aggregated interests. In theory, such systems should prevent the original establishment of a policy that serves a factionalized minority. It speaks nothing to repealing an existing factionalized policy though, short of amassing extremely large counter-majorities. The shifting political alignments after the Civil War and the remnants of its tax policies had entrenched a policy that suited the protectionist factions in times of peace. Trapped by laws already on the books, its opponents would now have to assemble

[283] Richard F. Bensel, 2000. *The Political Economy of American Industrialization, 1877-1900.* Cambridge, UK: Cambridge University Press, pp. 470-71
[284] Taussig, 1931. pp. 176-7

popular concurrence against an already empowered faction.

Thus, from 1865 till 1883 the tariff schedule assumed a protectionist status quo with only minor attempts to remove its entrenched barriers to trade. When changed at all, the tariff underwent minor modifications to "purely revenue articles" save for extremely modest concessions on pig iron on occasional manufactured goods in 1870 and 1872.[285] Notably though, Congress consistently adhered to the pretext of revenue when altering the schedules in this period. In 1872 and 1883, as well as with a later revision in 1890, changes to the schedule were prompted by a federal budgetary surplus. Any meaningful reforms were blocked by manufacturing interests though, excepting reductions on "revenue" categories such as tea where a rate cut was believed to lower federal returns on customs collection.[286] Trapped in an unworkable congressional system that seemed to impede tariff reform at every turn, free traders looked to uncovering the reasons for their setbacks and, if possible, a systemic change that could break the protectionist coalition.

While the politics of trade mired in stagnant adherence to the protectionist system, its political economy became a dominant topic of scholarly discussion. In 1886 the noted political economist Henry George offered a theoretical differentiation between revenue and protective rates, in part echoing Calhoun a generation prior:

> The two objects, revenue and protection, are not merely distinct, but antagonistic. The same duty may raise some revenue and give some protection, but, past a certain point at least, in proportion as one object is secured the other is sacrificed, since revenue depends on the bringing in of commodities; protection on keeping them out. So the same tariff may embrace both protective and revenue duties, but while the protective duties lessen its power of collecting revenue, the revenue

[285] *Ibid*., p. 180
[286] *Ibid*., pp. 183-5

> duties by adding to the cost of home production lessen its power of encouraging home producers.[287]

Like the antebellum agrarians, George recognized and articulated the Laffer relationship's applicability to the tariff. More notable, he effectively expressed the tariff's dual rent property and hinted at a circumstance in which the constituents of each function, revenue and protection, may conflict. The goals of revenue maximization and protection, he noted, were ultimately incompatible with each other. "[J]ust in proportion as [the protective tariff] accomplishes its object, the less revenue will it yield." A tariff's character could therefore be determined by which function it served.

Originally, noted George, "the purpose of obtaining revenue" through a tariff tended "to be the original stock upon which protective features are grafted," producing a revenue measure in which incidental features offered some protection to producers of the taxed goods. In the United States however, the "original purpose of yielding revenue" had "been subordinated to that of giving protection" to the point that it became "a protective tariff yielding incidental revenue."[288]

The policy discussions of the time posited that these two features were alternative ends of a single policy spectrum, jointly encompassing taxation and trade. The global prevalence of tariff systems attested to its uses for both, and the intended constitutional primacy of the impost lent it direct favor in the United States. For George though, this dilemma was false, and its framing left the free trade position, even if stronger, at the perpetual mercy of the protectionists. George was no fan of protectionism, calling it a "contradictory and absurd" doctrine that even in his own time had been defeated on

[287] George, 1888. p. 80
[288] *Ibid*.

intellectual grounds. Protection, however, had a tendency to be "beaten down only to spring up again."[289] Though ultimately a policy of enrichment for a narrow group of beneficiary industries, protection also carried with it the popular appeal of employment in those sectors. It was thus able to rally electoral support around a tangible result, as opposed to the abstract promises of opportunity offered by the free traders. George cited England's experience with free trade which, while certainly successful, offered little easily witnessed demonstration of its employment gains. A protectionist could always point to the jobs lost if his factory were to be shuttered amidst foreign competition. Thus, noted George, "American revenue reformers delude themselves if they imagine that protection can now be overthrown in the United States by a movement on the lines of the Cobden Club. The day for that has passed."[290]

George possessed a keen eye for politics, often unparalleled among his free trade contemporaries. He is now recognized as one of the primary precursors to the subject of inquiry known as Public Choice, in which economic theory is utilized to study non-market decisions such as those in the political realm. He identified rudimentary versions of the rent-seeking concept almost a century before it was first formalized by Tullock and, with equal importance, recognized the centrality of rational self-interest-pursuing groups to the political process.[291]

George devoted a substantial portion of his career to the advocacy of a "single tax" revenue system built around a land tax, which he maintained to serve the public interest by way of its simplified and unobtrusive administration. He recognized in

[289] *Ibid.*, p. 242-3
[290] *Ibid*., p. 233
[291] Thomas E. Borcherding, Patricia Dillon, and Thomas D. Willet. 1998. "Henry George: Precursor to Public Choice." *American Journal of Economics and Sociology.* Vol. 57-2, pp. 173-182.

principle though that those taxes which advantageously commended themselves to efficient and unobtrusive revenue collection were often the least preferred in practice; indeed common tax systems, of which the tariff was one, were often exceedingly convoluted in design, economically inefficient, and apt to cause political irritation, though primarily on the groups they taxed. George's observation is prescient in its similarity to a question still asked of tariffs as per Rodrik (1995): why are they so prevalent if, even as a means of protection, they achieve their aims so inefficiently? In a stroke of early Olsonian logic, George posited that existing tax systems, the tariff among them, attained their political permanence through the cohesive interest groups they benefit and by spreading their costs upon a diffuse, unorganized body of the public known as consumers. Most taxes, he wrote:

> are ultimately paid by that indefinable being, the consumer; and he pays them in a way which does not call his attention to the fact that he is paying a tax—pays them in such small amounts and in such insidious modes that he does not notice it, and is not likely to take the trouble to remonstrate effectually.[292]

Such systems existed by design, and "the great obstacle to the simplification of taxation is these private interests, whose representatives cluster in the lobby whenever a reduction of taxation is proposed, to see that the taxes by which they profit are not reduced." The tariff served as George's primary example.

> The fastening of a protective tariff upon the United States has been due to these influences, and not to the acceptance of absurd theories of protection upon their own merits. The large revenue which the civil war rendered necessary was the golden opportunity of these special interests, and taxes were piled up on every possible thing, not so much to raise revenue as to enable particular

[292] Henry George, 1884. *Progress and Poverty: An Inquiry into the Causes of Industrial Depressions.* London: William Reeves. VIII.IV.16

> classes to participate in the advantages of tax-gathering and tax-pocketing. And, since the war, these interested parties have constituted the great obstacle to the reduction of taxation; those taxes which cost the people least having, for this reason, been found easier to abolish than those taxes which cost the people most. And, thus, even popular governments, which have for their avowed principle the securing of the greatest good to the greatest number, are, in a most important function, used to secure a questionable good to a small number, at the expense of a great evil to the many.[293]

The tariff thus existed by reason of the support it elicited from its beneficiary interest groups, its costs being diffused upon consumers and its counterargument relegated to the abstracts of an intellectually valid but politically unappealing academic theory of free trade. Furthermore, this state of things was actively encouraged by the legislative process:

> But to introduce a tariff bill into a congress or parliament is like throwing a banana into a cage of monkeys. No sooner is it proposed to protect one industry than all the industries that are capable of protection begin to screech and scramble for it. They are, in fact, forced to do so, for to be left out of the encouraged ring is necessarily to be discouraged. The result is, as we see in the United States, that they all get protected, some more and some less, according to the money they can spend and the political influence they can exert.[294]

So long as the free traders offered only the revenue tariff as an alternative to protection they would never win the policy debate and never overcome the political interests behind protection, or the legislative process that cultivated it by design. For reason of those interests, he deemed the simple reduction of protective tariffs "such a lame and timorous application of the free-trade principle that it is a misnomer to speak of it as free trade." True free trade would require elimination of the tariff mechanism itself as well "in its true sense…the abolition of all internal taxes that fall on buying, selling, transporting or

[293] *Ibid*., VIII.IV.17
[294] George, 1888. p. 168

exchanging, on the making of any transaction or the carrying on of any business."[295] In short, it would take the abolition of all indirect taxes wherein the burden was dispersed upon consumers, and the resort to direct taxation, where the burden was realized upon consummation of the tax.

George avoided the constitutional analysis that attracted most of his precursors, contenting himself only to mounting an objection to the protective policy itself and its supportive interests. The tariff was an inherently faulty tax design and left to the ravages of interest group politics would necessarily gravitate toward protection. Ironically, this tendency itself had caused most free traders to counsel their advocacy by going no further than the revenue tariff. To seek additional liberalization "would be to meet the lion of 'vested interests'" and compel an alternative mode of taxation that did not easily diffuse upon consumers.[296]

As is plainly evident from the preceding analysis though, George's case had an obstacle in the Constitution itself. Read loosely and absent the guidance of the strict construction that men such as Taylor, Calhoun, and Walker attempted to enforce, the clauses of the Constitution actually seemed to prop up the protective system, albeit under the pretext and constraint of revenue generation. The Revenue Clause established the primacy of the impost among federal tax systems. The Commerce Clause, when loosely construed and utilized to enlist the Revenue Clause to its aid, sanctioned the regulation of trade by the tariff system. Finally, the Capitations Clause imposed severe and impractical political limitations on a general land tax, as desired by George, or any other method of

[295] *Ibid.*, p. 286
[296] *Ibid.*, p. 291

direct taxation through its requirement that such a system be apportioned among the states by the census. This cumbersome relic of the Articles of Confederation still haunted the federal revenue system a century later. The implication was unavoidable: if opponents of protection were to ever succeed in dismantling the post-Civil War tariff system, one or more of these clauses would have to be tested before the Supreme Court. Should that fail the Constitution itself may need to be amended.

George's argument made neither a call for a court challenge nor an amendment to the Constitution on its own. The influence of his argument on those who did however is difficult to understate. In 1892 a group of five Democratic representatives and a Senator entered the entirety of George's 1886 book, *Protection or Free Trade,* into the Congressional Record by dividing it into six segments and reading them as speeches. The portions were then reassembled and over a million copies of these "speeches" were ordered printed for mass distribution to the public as part of Grover Cleveland's presidential campaign. The feat was repeated 20 years later by George's own son, then serving as a member of Congress from New York.[297] Both printings portended major attempts at tariff reform by Congress, as well as the events that precipitated a court challenge and a constitutional amendment, each pertaining to the income tax.

George's "single tax" system is often seen as an equity-minded reform today, intended to produce a fairer distribution of the tax burden. It was also a reform of the way that taxes were assessed though, perhaps even more fundamentally than its credited end. The proposal sought to fundamentally alter the political economy of taxation itself by

[297] "George's Book in Campaign: Millions of Copies of "Protection or Free Trade" to be circulated." *New York Times,* April 12, 1912

changing the federal government's revenue mechanisms and constraining them to a single option, thus eliminating the factionalizing tendencies of a complex and multifaceted tax system wherein logrolling was rampant. George's "single tax" never came to pass (although it was briefly proposed by a couple of congressmen during the 1894 debate on the Wilson-Gorman Tariff). Its example highlighted protectionism as a political economy problem though, and tariff reformers would eventually attempt to answer it by altering the constraints of constitutional revenue policy in other ways.

4.2 Tariffs, Income Taxes, and Left-Progressivism?

> "The only economic advantage of the Income Tax is that it is cheaper, to levy, and this the Consistorial Counselor does not mention." – Karl Marx[298]

Before undertaking a general examination of the income tax movement, it is necessary to recognize that its relationship to the tariff debate is not a well-developed feature of income tax history. Indeed, many historians overlook the tariff issue entirely while casting the 16th Amendment as a product exemplar of Progressive Era social policy. One income tax historian openly concedes this bias, noting that the "dominant scholarly tradition [of the income tax] is progressive" and "predicated upon" a view of society defined by class conflicts and the divide between the wealthy and poor.[299] The amendment is thus routinely said to have served a variety of social and economic needs,

[298] Karl Marx, 1847. "The Communism of the *Rheinischer Beobachter"* in Jack Cohen, ed. 1976. *The Collected Works of Karl Marx,* London: Lawrence and Wishart, Vol. 6, p. 220.
[299] Joseph, 2004. p. 4

varying in degree from an equity-based progressive modernization of the revenue system to a quasi-Marxian mechanism of wealth redistribution in response to the excesses of robber barons, industrial monopolies, and the monied elite. Though exceptions certainly exist, it is not a far cry to state that the historiography of the income tax movement includes a partisan embrace of the income tax itself by historians who deem it a just, equitable, and necessary historical correction to the Gilded Age.

This social-class interpretation of the income tax amendment has obtained its most enthusiastic endorsements from scholars who are known for their progressive-left politics. Howard Zinn commends the income tax along side railroad regulation and trust-busting, each described as "economic justice" policies, and approvingly includes it among a list of policies that gave the period its "progressive" name.[300] Jean Anyon similarly describes the amendment as the product of "Labor, Socialist, and other protests against the 'Robber Barons,'" each aiming to consciously slow a growing "gap between rich and poor."[301] These interpretations are not to be unexpected as they comport with the ideological themes of their respective works, but the class view also permeates most mainstream historical works on the subject. With very few exceptions the amendment is almost always described using socio-economic and class terminology.

Tax historian John Whiteclay Chambers attributes the income tax movement to "a desire to tap new sources of income and wealth generated by modern business, industry, and finance – corporate and individual profits, sales of stocks and bonds, inheritance" and a need for greater federal revenues. The amendment it produced is described as a

[300] Howard Zinn, 1990. *The Politics of History*. Urbana-Champaign, IL: University of Illinois Press., p. 42; Zinn, 1980. *A People's History of the United States.* New York: Harper Collins, p. 349.
[301] Jean Anyon, 2005. *Radical Possibilities: Public Policy, Urban Education, and a New Social Movement.* London: Taylor and Francis. p. 50

"redress" for "the sectional economic imbalance favoring the northeast," drawing its support from a cadre of progressive, socialist, reformer, and working class constituencies. Its opponents were "prominent industrialists and financiers," as well as "conservative" southerners.[302] In similar fashion, historian Michael E. McGerr credits the tax to a Progressive Era wealth equalization policy. "If wealth made the upper ten [percent] behave so poorly, then perhaps government should take some of that wealth away."[303] Akhil Reed Amar, a noted constitutional law scholar, describes the amendment as "profoundly redistributive." In another work, he contends the 16th amendment "affirm[ed] the legitimacy of a progressive income tax system that would take more from rich persons and rich states."[304]

This viewpoint extends deep into the popular psyche of how the income tax movement is perceived. A reader's compendium edited by two well known scholars and put out by the Society of American Historians attributes the income tax movement to "a coalition of…progressives alarmed by the concentration of industrial wealth, and some conservatives who felt that the government needed an elastic and reliable system of revenue to cope with national emergencies."[305] A popular textbook on the U.S. Constitution similarly asserts that the amendment was enacted for two progressive purposes, the redistribution of income and the establishment of a "stable and adequate

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[302] John Whiteclay Chambers, 1980. *The Tyranny of Change: America in the Progressive Era, 1890-1917.* New York: St. Martin's Press. pp. 186-7

[303] Michael E. McGerr, 2005. *A Fierce Discontent: the Rise and Fall of the Progressive Movement in America.* Oxford: Oxford University Press. 97-98.

[304] Akhil Reed Amar, 1998. *The Bill of Rights: Creation and Construction.* New Haven, CT: Yale University Press, p. 300; Amar, 2005. *America's Constitution: A Biography.* New York: Random House, p. 408.

[305] Eric Foner and John A. Garrity, eds. 1991. *The Reader's Companion to American History.* Boston: Houghton Mifflin Co. p. 541

revenue base" to enact "social welfare programs."[306]

W. Elliot Brownlee's recent history of income taxation is notable in its acknowledgement of the tariff issue, though it too addresses the movement from its origins in the 1890's through the framework of economic populism. To Brownlee, the income tax was the product of "popular pressure" to "redress the wealth and power maldistribution" that many blamed for "the evils of industrialization." A desire, if not need, for progressive taxation defined the movement. Thus Brownlee treats it as a clash between populist ideals and Gilded Age excesses in which mass public support eventually overcame entrenched elites on a tide of class outrage and "equitable" economic reforms.[307]

Daniel Verdier, a political scientist who specializes in international trade policy, offers a relatively unique interpretation of the income tax movement in that he acknowledges its tariff origins. To Verdier though, the tariff issue at the turn of the century effectively served as a "proxy for the public debate – indeed, the class war – between farm and factory." "Free trade," he notes, "served as a proxy for antitrust." This movement manifested itself in the populist Republicans who broke from their party out of the belief that their support for the tariff was bolstering the monopolistic tendencies of its industrial beneficiaries, even while they deemed protection a favorable economic in principle. Thus, while he recognizes the income tax's relationship to the tariff, Verdier interprets both policies as attributes of a larger movement wherein the tariff was

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[306] John R. Vile, 2006. *A Companion to the United States Constitution and its Amendments.* 6th Edition. Santa Barbara, CA: Greenwood Publishing. p. 204

[307] W. Elliot Brownlee, 2004. *Federal Taxation in America.* Cambridge: Cambridge University Press, pp. 46-49, 51-54

supplanted not by "opponents of protectionism" but "opponents of monopoly."[308]

Each of these interpretations of the income tax amendment – ideological leftist, social-class, and antitrust – contains its own grain of insight, and all comport well with the traditional historiography of the Progressive Era. Nor do these historians necessarily deny the income tax's relationship to trade and the protective tariff policy outright. It is nonetheless easy to lose sight of the tariff connection to an amendment that is widely viewed as a policy of social reform, class struggle, and an answer to the excesses of the previous generation. The subsequent use of the income tax as policy supports each of these notions, particularly its function as a wealth redistribution device and, later, a means of funding the welfare state of the 20th century. The social-class interpretation and its related derivatives are therefore a natural explanation for the 16th amendment.

That said, it is a central contention of the present study that the traditional social-class view of the income tax amendment is fundamentally flawed, even as it is built around some elements of truth, strong intuition, and conventional wisdom. By confining their analysis to the rhetoric of a single Populist-Progressive component of the larger legislative coalition behind the income tax, many historians have missed the mark in interpreting both its origins and policy purposes. In one notable though lightly elaborated exception, historian Lewis L. Gould seems to caution against an overemphasis of these social-class features. "Few politicians in 1913 saw the income tax as a means of funding expansive social programs. Its main purpose was as an element in the debate over the place of the tariff in raising government revenue."[309] Robin Einhorn echoes, noting that

[308] Daniel Verdier, *Democracy and International Trade: Britain, France, and the United States, 1860-1990.* Princeton: Princeton University Press. p. 115, 118-19
[309] Lewis L Gould, 2001. *America in the Progressive Era, 1890-1914.* Harlow, UK: Longman. p. 69

"despite rhetoric to the contrary," the 1894 and 1913 income tax movements were actually concerned with offsetting "the regressive impact of very high tariffs."[310] Primary source evidence from the debates surrounding the income tax tends to bear this observation out, and suggest the need for greater attention to the tariff issue.

The income tax amendment itself was born directly out of a legislative battle over the propriety of the protective tariff and its revenue alternative. Its participants enlisted the same principles that characterized the great tariff debates of the previous century, openly calling upon such familiar names as Robert Walker and Henry George on the free trade side, as well as Hamilton and Henry C. Carey for protection. While a variety of social and class issues contributed directly to the political coalitions that amassed around the income tax, its direct instigating event was another routine attempt at tariff reform, which both exhibited the same constitutional issues surrounding trade policy since the founding and illustrated a perceived need for constitutional change. So central was the tariff issue to the 16th Amendment that the latter was born of and consumed the debates in a special session of Congress on tariff revision in 1909. In that same session the Democrats' main legislative sponsor of the income tax launched his cause with a broadside against the entire post-Civil War tariff system. His primary Republican adversary met this charge by publicly labeling the income tax an assault on the entire protective status quo, which he deemed a "settled policy" and set out to defend with every parliamentary tool he could muster. Curiously, this tariff-centered legislative battle over the income tax amendment produced the unlikeliest of voting patterns in Congress as each side staked the future of the tariff system on its ability to control, or conversely

[310] Einhorn, 2006. p. 262

thwart, the 16th amendment's ratification and implementation.

As later evidence will illustrate, both sides miscalculated in their efforts to bring about the respective policy goals of continued protection and tariff liberalization, producing a period of erratic and rapid policy fluctuations from the amendment's adoption until the Smoot-Hawley tariff of 1930. The respective errors of each side stemmed from both their recognition of the earlier issues surrounding the tariff's proper role under the Revenue Clause, and imperfect attempts to alter the constitutional status quo. To better explain these events, it is first necessary to understand the income tax as a constitutional issue in its own right, and one that was directly connected to the Revenue Clause and its implicit tariff issues.

The federal income tax movement, dating from roughly 1894 until the 16th amendment's ratification in 1913, was a precipitous and eventful procession in policy that transformed the United States' revenue system practically overnight upon its implementation. The dramatic change entailed was hardly envisioned, however, just a few years prior and perhaps even seen as a radical move, reserved only for extreme revenue demands. In the Gilded Age, the tariff reigned supreme and in no decade were its politics closer to the public's mind than the 1880's. Aided by the interests it served, the protective tariff regime of the Civil War lingered beyond its original lifespan till even its friends could no longer avoid it as a pressing issue.

By the 1880's the schedule itself was exceedingly complex, having undergone a patchwork of superficial amendments that preserved its protective character yet haphazardly rearranged its categories into a jumble of specific duties assessed by all manner of size, volume, weight, and bundling. The 1861 Morrill Tariff, a generally

protectionist measure known for its awkward pairings of specific and *ad valorem* duties, seemed neat by comparison. Compared along side the orderly 8-rate schedule of Walker's 1846 tariff, it was an indiscernible chaos. Of equal note, the tariff schedule of the 1880's routinely produced a revenue surplus to the point that this curious Civil War relic was actually seen as evidence that the government was taxing its citizens at a faster rate than it could spend. Encumbered by its complexity and burdened by the unpopularity of its surpluses, the tariff schedule was ripe for an overhaul.

In 1882 president Chester A. Arthur, himself a former chief customs collector for New York City, convened a commission to revue the revenue system. Its membership was stacked toward the protectionist side and its recommendations were a predictable reordering of the existing rates coupled to a modest reduction, but it placed the tariff issue on the table again for its first major reexamination since the Wells commission. Democrats had gained an edge in Congress and the free traders saw their opportunity and prepared to use the commission's finding to challenge the protective system and offered a bill cutting most rates by 20 percent. As was often the fate of such reforms, a protectionist faction of the Democratic Party out of Pennsylvania broke with their party and joined the Republicans in opposition.[311] So too faltered reform attempts in 1884 and 1886, even as popular sentiments seemed to portend a growing free trade movement.

It was in this climate of frustration in 1887 that Grover Cleveland decided to make a stand on the tariff. By the late 19th century, the president's annual State of the Union address had become an uneventful formality. By tradition, the chief executive did not even deliver the speech himself. It arrived in print form in early December and was

[311] Reitano, 1994. pp. 4-5

presented to Congress by a surrogate reader, its text usually containing routine descriptions of impending budgetary requests. Cleveland's message was different by design. He intended to call out Congress for its failure to address the tariff schedule and finally force a bill by popular appeal. His message became the first salvo in what was to be known as the "Great Tariff Debate" of 1888.[312]

Even as the country argued the merits of the protective system, revenue remained a pressing concern. The fiscal surpluses of the 1880's were unique to virtually any point in American history in that they were, to quote Douglas Irwin (1998), "seemingly intractable." In some years the budget surplus exceeded expenditures by over 40 percent.[313] Thus while Cleveland assaulted the protective system, its "corrupt" maintenance through legislative maneuvers against the popular will, its tendency to favor factionalized monopolies, and its burdens upon consumers, the discussion in Congress framed around how a change in the tariff schedule would alter the treasury.

Republicans, who tended to favor protection, and Democrats alike actually agreed that action should be taken to reduce the surplus, and, surprisingly, both parties were relatively content with the present level of federal spending. Expanding the budget was accordingly rejected as use for the surplus. It would have to be answered by altering the tariff. Remarkably, both sides also recognized that the tariff exhibited properties similar to the Laffer Curve, which would determine the effects of a rate change on revenue.

Cleveland and the Democrats believed a reduction in rates across the board would also cut the revenue, in addition to untangling what they saw as a cumbersome protective

[312] *Ibid*., pp. 10-11
[313] Irwin, 1998, pp. 59, 60

regime's choke on the economy. The Republicans countered that "any tariff reduction would stimulate imports and raise even more revenue."[314] Each party accordingly answered Cleveland with directly opposite policies. The Democratic-controlled House passed a sweeping across the board reduction called the Mills Tariff after its author. The Republican-controlled Senate categorically rejected the Mills bill, and proposed (though did not pass) its own revision in which the rates were increased, particularly on protective categories.[315] The "Great Tariff Debate" thus diverged over differing opinions as to where the existing schedule fell on the Laffer curve. Democrats believed it to be near the curve's revenue apex, or t* in Figure 1.1-B. Republicans believed it fell to the apex's right, wherein any reduction would actually move the schedule's rates toward t* and thus increase the surplus.

The tariff issue received no direction out of Congress by design, for 1888 was also an election year. Both parties staked their campaigns on their respective positions and allowed the tariff to define the race perhaps more than any other election in history. The results reflected the country's close division on the issue, as well as its intensity on the public's mind. With a turnout rate of almost 80%, the 1888 campaign ranks among the highest in U.S. history. Cleveland actually carried the popular vote by 90,000 votes, but lost the campaign in the Electoral College as his home state of New York went to Republican Benjamin Harrison by a slim margin. This turnabout was achieved, in part, when the Republicans utilized a letter from the British minister to Washington expressing sympathy for Cleveland's free trade positions to drum up anti-British sentiments among

[314] *Ibid*, p. 59
[315] *Ibid*, p. 62.

New York City's Irish voters.[316] The House also changed hands, giving Republicans a majority in both chambers, effectively paving the way for their desired increase with the McKinley Tariff of 1890.

The comparison of the Republican and Democratic Laffer curve arguments is perhaps of greater interest to this inquiry though. While data limitations exist for this period, Irwin used two price-elasticity models to estimate t* for the tariff schedule in aggregate, and thus approximate which argument was correct. His first model, using an assumption of fixed import prices, proposes two elasticity rates for import demand, -2.6 and -3.7. The lower elasticity suggests that the Democrats were correct and that the average tariff rate was somewhere to the left of t* (=62.5%). A reduction in overall rates, in addition to alleviating their protective attributes, would have also reduced their revenue income. At import elasticities above -3.7 (=37%), however, the Republican argument becomes correct; the average tariff rate falls to the right of t*, and a reduction would increase revenue. Though Irwin recognizes the plausibility of both, his data suggests that the Democrats had the stronger case for revenue reduction, though with the caveat that the Republicans correctly predicted an increase in total imports as a result of any reduction. He further suggests that the competing revenue claims had the effect of cloaking the underlying issue of protectionism, noting that ultimately "[n]either party was willing to sacrifice this position on trade policy merely to balance the fiscal position of the federal government."[317]

From the free trader perspective, the results of the 1888 election and the

[316] Reitano, 1994. p. 123
[317] Irwin, 1998, pp. 69, 71

subsequent Republican policy affirmed George's predictions about the political dynamics of tariff politics. Even in favorable reform circumstances, the free traders' "revenue" tariff system could not hold its own against the interest groups that propped up the protective regime. Representative William McKinley of Ohio, soon to be Ways and Means chairman, claimed complete electoral vindication for protectionism in Harrison's victory, even as Republicans lost the popular vote and carried the Electoral College entirely on the narrowest of wins in New York. Declaring the tariff issue "settled," he utilized the Republicans' new and sweeping power to push through an upward revision to the already protectionist tariff system in 1890 and raised the average rate from about 39% to 48%.[318] McKinley overreached though, and public resentment of the expanding federal tax system swept the Republicans out of Congress in the midterm election and put Cleveland back in the White House again two years later. Cleveland and the Democrats now had a second chance, and in so doing they would choose a course that tested the Capitations Clause and force the most significant constitutional challenge on trade since the nullifiers in 1832.

4.3 Testing the Capitations Clause

> "If the Court sanctions the power of discriminating taxation, and nullifies the uniformity mandate of the Constitution, it will mark the hour when the sure decadence of our present government will commence" – David A. Wells[319]

[318] Reitano, 1994, p. 129
[319] Quoted in *Pollock v. Farmer's Loan & Trust Co.*, 157 U.S. 429, 607 (1895)

As Irwin's study indicates, the "Great Tariff Debate" of 1888 offered mixed signals regarding the tariff schedule's actual place on the Laffer curve, with some evidence hinting that the Democrats were correct and the average total rate fell to the left of t*. Data limitations, modeling assumptions, and the sheer complexity of the tariff system limit the reliability of the elasticity estimates needed to make this calculation. The debate itself is nevertheless significant, because it illustrated how the dual rents expressed in the curve – revenue and protection – interacted to shape the outcome of U.S. tariff policy. Regardless of the actual revenue-maximizing rate, the tariff battle in Congress was a contest, as George had identified it, between high tariff protectionists and "revenue" tariff free-traders. Resultant policies accordingly fluctuated between their respective positions with the electoral gains of each side, the other always functioning as a counteracting political force.

It is generally true, also as George predicted, that the protectionists' victories outnumbered the "revenue" free traders, and indeed the period from the Civil War till 1890 was little more than a succession of frustration and setback for the tariff reformers revolving around a high but stationary protectionist schedule with ample revenue capacity. Nonetheless, the two forces kept each other in check enough to stabilize the U.S. tariff system for the better half of a century around a relatively consistent schedule, even if its features were less than ideal. On occasion this tension even produced a self-correcting force that re-stabilized the tariff schedule around its 50 year status quo. Such an event happened in 1892 and 1894, when voters punished the upward changes of the McKinley Tariff. Congressional politics is more than pure interest group conflict though, and the late 19th century tariff system was largely born from institutional rigidity,

imposed in part by the constitutional mechanisms under which Congress legislated. As has been shown thus far, the dynamic tension between protection and the "revenue" tariff was no coincidence but a direct product of the Constitution itself, both in its intended design and by accident of its earlier interpretation. The Constitution gave primary sanction to a revenue system based on imposts, constrained most viable tax substitutes to the politically unworkable apportionment system, and, by both tradition and accident, led to the establishment and political entrenchment of an intertwined protectionist policy. Exasperated by decades of political wrangling over tariff reform with little to show in return, proponents of the free trade system turned to the Constitution itself in search of a workable escape.

The Wilson-Gorman Tariff of 1894 was intended to be the free traders' turning point against the incumbent protective system. The Republican electoral defeats in the wake of the McKinley act placed the Democratic Party in its strongest position since before the Civil War and with it a chance to finish Cleveland's call from the 1888 debate. For almost a decade, the tariff had dominated political debate more than any other issue and its primacy was virtually assured when the all-Democratic 53rd Congress convened in 1893. Cleveland's tariff bill advanced with promise at first, making what Taussig described as "considerable reductions" that, while not fully a revenue tariff, constituted "a real and unmistakable change in the general tariff policy of the United States."[320]

Party unity collapsed in the Senate though, strained by the emerging currency issues of the silver movement and some lingering political divisions between the administration and the Democratic Party's leadership. In both committee and on the floor,

[320] Taussig, 1931. p. 289

the Senate watered down the House bill with a succession of amendments that were all, generally, "in the same direction" – restoring to the tariff schedule what the House had removed. Localized interest groups, and particularly the Sugar Trust constituencies on the Gulf Coast, persuaded individual senators (including some nominally disposed to free trade) to exempt them from meaningful tariff reform, thus effectively gutting the bill.[321] In the end, the trade reform movement's hurrah fizzled into a slight reduction of rates, differing only from the periodic tariff revisions of the surrounding decades by its definite, if slight, downward direction. Cleveland allowed the bill to become law without his signature, considering it better than nothing but also a far cry from the long-due overhaul he desired.

Its disappointments aside, the Wilson-Gorman Tariff was nonetheless significant for another reason. For the first time since the Civil War, it proposed that the government seek a substantial portion of its revenue from a system other than the import tariff and a longstanding system of accompanying domestic alcohol excises. The Wilson-Gorman Tariff coupled its modest reductions with the first modern income tax.

The reasons for the income tax provision are both complex and difficult to encapsulate in any single motive. Richard J. Joseph, a leading historian of the 1894 legislation, attributes the income tax provision to the convergence of multiple issues around the tariff bill, while also noting that historians have tended to simplify its origins and eventual establishment within the framework of a progressive social movement. As noted from its typical iteration, a populist/progressive movement based upon class differences is the driving force behind the income tax from 1894-1913. As summarized,

[321] *Ibid*., pp. 289, 314-315

this view treats the income tax's origins thusly:

> The income tax is born in the economic depression of 1893. The crisis stimulates a national debate over political values and fiscal policy. It accentuates ideological divisions over the tariff and taxation in general. It gives western Populists a historic opportunity to advance their reformist agenda. Fearful of this advance, congressional Democrats seize the moment of crisis to introduce income tax legislation. They see the tax as a means of appealing to farmers and workers and thus broadening their base of support in the West and South. They see it as a symbol of social equality…[and] ultimately succeed in their endeavor thanks to the skill and ingenuity of their party leaders. They create a tax system imbued with egalitarian ideals that shapes the course of U.S. development in the years to come.[322]

It is beyond the purview of the present study to evaluate every aspect of this "Progressive thesis" on income taxation save to note is prevalence in the historical literature. Joseph acknowledges and expands upon several of its merits, including the populist elements of the income tax movement's electoral support and the class rhetoric that was used at times in advancing it. As history though, it is both simplistic and, often, ideologically driven. The pursuit of an overarching class narrative brings neglect to the income tax's contextual origins amidst a tariff reform movement, and at times even loses sight of the early income tax's actual policy design to its better known and modern successor.

Joseph contends that the income tax is best understood as an attempt to redistribute "not social wealth, but rather the tax burden."[323] It must thus be understood in the context of the tax incidences (and benefits) associated with the system it was replacing, the tariff. He thus traces the popular movement behind the income tax to multiple grievances with the equitability of the tariff regime, some familiar and others

[322] Joseph, 2004, p. 27
[323] *Ibid.*, p. 29

new. Protection generally served to prop up the domestic producers it insulated from foreign competition, creating a non-revenue tax incidence upon consumers of those goods through higher prices (essentially the protective rent). The revenue incidence also fell on consumers though, who inherited the physical tariff payment itself as it passed through from the customs house via the price mechanism. It is not difficult to see how these effects, taken jointly, could form the basis of a populist appeal to consumers, "fuel[ing] their resentment toward the opulent business elite."[324] Such an appeal was made, and it took the form of attaching an alternative tax system onto the Democrats' effort to reform the tariff schedule.

The presence of a small faction of 10 Populists in the House encouraged the decision of Democratic leaders to attach an income tax provision to the tariff bill. In exchange, they attracted Populist votes on a crucial quorum call, thus ensuring the passage of the Wilson-Gorman Act in the House and, ultimately, into law.[325] This coalition formalized the association of tariff reform with agrarian and, to a lesser degree, working class populism in a way that curiously resembled George's grievances against the revenue tariff free-traders, albeit for practical reasons as much as philosophical.

Their vote-getting motives aside, the effect was to introduce a new component to the frustration-laden political dichotomy between high tariff protectionism and revenue tariff free trade. The tariff would still provide the major source of federal income, but income taxes would complement it with a secondary source, even if slight at first. And the 1894 tax was slight, consisting of "a trifling 2 percent tax rate" on income over

[324] *Ibid.*, p. 41
[325] *Ibid*., pp. 56-7

$4,000, including that of corporations, and generating a negligible portion of federal revenue on the whole during its brief existence. As Joseph notes, the populist pressure for a redistribution of the tax burden led Congress seek a secondary income source, the only issue being the type of tax they chose. "This issue was resolved in favor of an income tax, which the Fifty-third Congress viewed as supplemental to import duties."[326]

Issues of fairness, tax equity, and the associated classes that bore a tax's incidence permeated the 1894 debates. There is much evidence that Congress took up such questions as ability to pay, consumption patterns, and even geography when designing the Wilson-Gorman income tax. In one instance several members of Congress linked the tax to citizenship, identifying it as a means to recoup the civic burdens of those Americans living abroad for untaxed earnings.[327] These are fundamentally normative questions though, subject to persistent issues of measurement, definition, categorization, and philosophical conceptualization.[328] Of greater relevance to the present inquiry is the effect of the income tax upon the tariff system and its revenue-protection dichotomy, and the evidence from subsequent debates indicates that it was quickly recognized as a possible answer to the frustrating tariff issue.

For all its progressive reputation, the 1894 income tax provision was also intended from its inception as an answer to the protective tariff. The actual language of the tax came from a specially assembled revenue subcommittee at House Ways and Means, chaired by Tennessee Democrat Benton McMillin. The McMillin committee's report on the income tax and a linked proposal to retool the "revenue" duties on alcohol

[326] *Ibid*., p. 122
[327] *Ibid*., pp. 90-93, 67-68
[328] Deborah Stone, 2001. *Policy Paradox.* New York: W.W. Norton.

plainly illustrates a belief that the root of the problem was the tariff's tendency to attract factionalized protectionist interests, and a resulting political economy of high protection:

> Through years of increasing tariff taxation many manufacturers have come to feel that high rates of duty were essential to their continuance and prosperity; that the higher the duties the greater their prosperity; that the more economic the administration of public affairs the less excuse there would be for high protection. They had begun to regard taxes collected directly from accumulations as their natural enemy…Higher and higher rates of tariff duties were demanded and higher and higher given by Congresses in sympathy with them until we have reached that point where the present internal revenue and tariff combined do not yield the revenue necessary to meet public expenditures.[329]

McMillin extolled the equity of the income tax as a substitute revenue device, though he appealed as much to historical precedent as any argument of class rhetoric. The tax had been viewed favorably to the excesses of tariff protectionism by David A. Wells, among others, dating to the Revenue Commission of the late 1860's. Its ultimate purpose was not to anticipate and sustain expansive federal expenditures with a new and redistributionist tax system, but to guard against budget deficits where the tariff fell short and to encourage economy in government by linking a small part of the tax incidence to the primary beneficiaries of federal policy at the time, import-competing producers.[330] The income tax, at least in the eyes of one of its main sponsors, was a matter of political efficiency. It allowed fiscal policy freedom precisely by undermining the political rigidity of the protective tariff system. The 2% tax would be necessarily redistributive given its application to incomes over $4,000, but only mildly so, and aimed at tax incidence rather

[329] Benton McMillin, "Income Tax and Increase of Tax on Spirits," House Report No. 276, 53rd Congress, 2nd Session, January 24, 1894. p. 1.
[330] *Ibid.,* 2-3

than income itself. As Joseph notes, the McMillin committee "deliberately chose a narrow base and nominal rate for political and fiscal reasons" so as *not* to generate revenues "far in excess of projected fiscal needs."[331]

McMillin's introduction of the income tax to Congress contained a similar mixture of anti-protection rhetoric and grievances against the unfairness of the tariff's *incidence* as a tax system. The two were inextricably linked in his mind, and his speech introducing the measure specifically targeted the protective properties of the tariff as the source of the class rhetoric that accompanied the income tax debate. McMillin's main concern, however, was not redistributing wealth itself but undoing the already existent redistributive rent characteristics of the tariff system. "We do not come here in any spirit of antagonism to wealth," he assured his colleagues, but to correct a tariff system that "put this burden on the things men eat and wear" while "leav[ing] out those vast accumulations of wealth" that it propped up. "[I]n a single lifetime fortunes are gathered together here by protection, and the tribute that it levies on the many for the enrichment of the few." The income tax would shift this incidence and deconstruct a preexisting market distortion that enriched certain producers by the protective policy. "Make the tariff what it should be," he concluded, "and regulate revenues by changing internal revenue taxes. This tax can be raised and lowered without affecting business. Tariff rates can not be."[332]

The 1894 income tax was short lived. It was passed upon the precedent of the Civil War income tax, scrapped at the war's conclusion when the tariff became a

[331] Joseph, 2004. p. 122
[332] *Congressional Record,* Vol. 26, Appendix, pp. 411-15.

permanent fixture of the revenue system. Even supporters knew that a constitutional test was likely by passing the measure because of the income tax lacked an unambiguous sanction in the Revenue Clause and, more notably, appeared to run counter to the Capitations Clause. The long-awaited trial of the reaches and limitations on federal tax power had finally reached the court in *Pollock v. Farmers' Loan and Trust Co*.

The case itself was simple enough to organize. A New York law firm located two shareholders of stock in two financial corporations that were subject to the tax. They filed suit to enjoin the corporations from paying the income tax on the grounds that it was unconstitutional.[333] Tax supporters answered the suit by pressing for a broad interpretation of the Revenue Clause wherein a tax on income was encapsulated in the phrase "Taxes, Duties, Imposts and Excises." In its broadest usage, the income tax was said to be an excise upon earnings. Furthermore, they formulated a dialectic case against the Capitations Clause's relevance. This latter clause applied the apportionment rule to capitations, analogous to the poll tax, and an unelaborated category of "direct taxes," traditionally associated with taxes on land. So long as the income tax did not fall under a narrow interpretation of these two phrases, it was necessarily an indirect tax and thus not subject to the apportionment rule as defined a century prior in *Hylton.*[334]

The case against the income tax depended on the application of the Capitations Clause's apportionment rule. If the income tax or even a portion of it was deemed a direct tax, it could not be constitutionally enacted without chaining its assessment to the census and apportioning its burden accordingly. That portion, they contended, came from the

[333] Joseph, 2004. pp. 106-8
[334] Steven R. Weisman, 2002. *The Great Tax Wars: Lincoln to Wilson*. New York: Simon and Schuster. p. 149

Wilson-Gorman Act's practical effect of assessing taxes on income "derived from property," thus making it the "functional equivalent of a property tax" and subject to the Capitations Clause.[335] In practical effect, they contended, there was no difference between a tax on property, wherein the value was determined by its production, and a tax on the income of that property from its production. Therefore, even if the a "direct tax" is narrowly confined to poll and land taxes, the income tax fell under its purview and the apportionment rule applied.

The Supreme Court agreed with this argument and Chief Justice Melville Fuller issued a decisive repudiation of the income tax's constitutionality. Its application to property rent violated the apportionment rule set out by *Hylton,* as the plaintiffs contended. In dicta, Fuller vindicated the theory that the federal taxing power was itself severely constrained by the Constitution.

> [A]lthough there have been, from time to time, intimations that there might be some tax which was not a direct tax, nor included under the words 'duties, imports, and excises,' such a tax, for more than 100 years of national existence, has as yet remained undiscovered, notwithstanding the stress of particular circumstances has invited thorough investigation into sources of revenue.[336]

In justifying his opinion, Fuller delineated a broad examination of the records of the founding era, which he interpreted as collectively disposed toward establishing a revenue system based on limited concessions of the taxing power from the states to the federal government. He acknowledged that the founders had envisioned the primacy of the impost tariff in their intended revenue system, with other taxes and particularly direct taxes being intended as an alternative for "extraordinary exigencies," such as a war.

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[335] Weisman, 2002. p. 150
[336] *Pollock v. Farmers Loan & Trust Co*., 157 U.S. 429 (1895)

Turning to the 1894 tax itself, he noted that judicial precedent had generally affirmed "that taxes on land are direct taxes" and indeed lent some credence to the narrow association of the phrase with the taxation of property. Nonetheless, he observed, "in none of them is it determined that taxes on rents or income derived from land are not taxes on land." Furthermore, "An annual tax upon the annual value or annual user of real estate appears to us the same in substance as an annual tax on the real estate, which would be paid out of the rent or income."[337]

The Constitution's general character, he continued, affirmed this position as its tax clauses were "intended to guard against was the exercise by the general government of the power of directly taxing persons and property within any state through a majority made up from the other states." Fuller concluded his assessment by effectively shutting the door upon the fledgling income tax movement. "If, by calling a tax indirect when it is essentially direct, the rule of protection could be frittered away, one of the great landmarks defining the boundary between the nation and the states of which it is composed, would have disappeared, and with it one of the bulwarks of private rights and private property."[338]

The court actually never conclusively resolved the issue of whether all income taxes were unconstitutional, but rather only those extracted from real estate. They could not reach an answer on other forms of income taxation such as that on stocks and bonds. The effect of the case was sweeping though, as these different components of income could not be separated from each other in the assessment of the tax. As a result the

[337] *Ibid*.
[338] *Ibid*.

income tax experiment of 1894 was no more, halted within months of its enactment. Though the court conceded that an income tax subjected to the apportionment rule would withstand this scrutiny, the effect of the ruling was to void the tax entirely as the administration of an apportioned system would be prohibitively complex and politically unviable.

Not all agreed with the *Pollock* ruling's effects, or even its rationale. Supporters of the income tax, particularly the Populist members of Congress, seized on a fiery dissent by Justice John Marshall Harlan and vowed to overturn the case in a future court with a different membership. Within weeks supporters of the income tax entered a motion to rehear some of their arguments, alleging new information. The court patiently obliged them, only to reiterate their earlier finding against the income tax.[339]

Initially, some income tax proponents vowed to challenge the case again and seek a reversal of the decision. Though intuitively strong at several points, Fuller's ruling closely aligned with the plaintiff's arguments and glossed past a volume of judicial precedent that, while never explicitly endorsing the government's arguments about the indirect nature of the income tax, lent them more credence than the *Pollock* opinion suggested. A narrow 5-4 vote on one of the key questions of the case provided further hope that a different court with different members may rule differently.[340]

It did not take long for the political rhetoric surrounding the decision to overshadow more restrained attempts of some to analyze its legal merits, and to some extent this characteristic pervades much of the historical literature as well. If an intuitive

[339] Edwin R.A. Seligman, 1911. *The Income Tax: A study of the history, theory, and practice of income taxation at home and abroad.* New York: Macmillan Co. p. 579
[340] *Ibid.*, pp. 586-7

appeal to the founding era's abstract aversion to expansive federal taxation was his strength, Fuller's weak point was to be found in his casual deviations from *stare decisis* to obtain a clear and conclusive ruling. But such legalisms seldom succeed in engaging public opinion any more than an appeal to dry academic debates about the comparative efficiencies of tax systems. The bulk of the critiques against *Pollock* were thus products of the very same rhetorical appeals, and even occasional demagoguery, that helped to popularize the income tax movement in the first place.

Fuller's critics dubbed his opinion the "Dred Scott decision of government revenue," and almost immediately impugned the court's motives with the suggestion that they had been bought.[341] The ruling was roundly denounced as a corrupt bargain with the industrial elite and said a product of backroom deals with the Morgans and Rockefellers of the financial world. An *ad hominem* repudiation of the justices in *Pollock* was not beneath the critics of its own day, nor even some writers to the present. In fact, many progressive historians have been openly sympathetic to the Populist complaints and continue to attack the decision not on its legal merit, but for its social and symbolic effects on the distribution of wealth, its alleged incompatibility with the "democratic" will of a representative legislature, and even the personal circumstances of the justices themselves. The Fuller court is still regularly portrayed by historians as a judicial aberration and a relic of monied conservatism. Its decision in *Pollock* is deemed tantamount to resisting the "forces of popular democracy" and impeding the alleged justice and equity of the new income tax system for reasons deriving from the social and class interests of the court's membership. After all, it is noted that the same Fuller court

[341] *Ibid.*, p. 589

issued the 1905 decision of *Lochner v. New York,* long reviled by progressive ideology as the peak of laissez-faire capitalism's influence over the judiciary.[342]

Regardless of the firestorm it ignited, *Pollock* was an inescapable impediment to the income tax movement so long as it stood. Though Populists and tariff reformers alike professed their optimism for a reversal, most eventually acknowledged that the court's ruling would be insurmountable by any judicial means. Even if its membership were to change, the court could not easily undo *Pollock* for "such a proceeding would undoubtedly impair its prestige."[343] Even if contentious, the ruling by Fuller advanced a reasonably compelling legal argument and staked it to a decisive position that could not be easily abandoned. Adherents of the income tax soon realized what was required of them for their movement to succeed. They would have to amend the Constitution itself.

4.4 A Faulty Design

> "Your statement of yesterday seems like a new proclamation on tariff. It will be worth untold millions of product to American industrials, renew confidence and strengthen credits." – Nelson W. Aldrich, telegram to the American Protective Tariff League, April 29, 1909[344]

Though he was certainly cognizant of the Populist-Progressive arguments for the income tax, Edwin R.A. Seligman had little use for the heated rhetoric it often entailed.

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[342] Joseph, 2004, pp. 111-112; Wiesman, 2002, pp. 158-159
[343] Seligman, 1911. p. 589
[344] Telegram by Nelson Aldrich, enclosed in Wilbur F. Wakeman to Nelson Aldrich, April 30, 1909 in Aldrich Papers, LOC.

He was nonetheless a proponent of the income tax and an influential one at that. A distinguished and widely read professor at Columbia University, Seligman was among the nation's leading intellectual figures at the turn of the 20th century. He is best remembered for his work on the economics of taxation and was among the first academic economists to explore the technical side of the income tax. Prompted by the Wilson-Gorman debate, Seligman devoted the decade and a half from 1894 until 1911 composing a 700-page survey of income tax policies, present and historical, from around the world.[345] At the time of its publication on the eve of the modern American income tax, his work constituted nearly the entirety of scholarly assessment for this emergent mode of taxation, frequently encountered but seldom studied for its own sake.

Yet Seligman offered more than a historical survey joined to economic theory. His careful and exhaustive tract is an inexorable march toward the inquiry posed in its concluding chapter: is an income tax desirable policy? He answered this question with an investigation into the necessity of income taxation, quickly finding that it was not a requisite solution to federal revenue needs that were already met with the tariff. Neither was it justified by the potential elasticity it offered, commended for bringing about a yearly balance to the federal budget. As framed in 1894, the income tax addressed a question of equity in tax incidence or, more specifically, a tariff that "imposes too large a share of the burden on the expenditure of the poorer classes" and permits the wealthier classes to bear "a gradually smaller share of the public burden."[346] To Seligman, an issue of class distinction did indeed justify the income tax movement, though not necessarily as

[345] Seligman, 1911. pp. v-vi
[346] *Ibid.*, p. 640

envisioned by the progressive leftist paradigm that is so common among its historians. Simply stated, the tariff concentrated its benefits on a wealthy minority while diffusing its incidence on the greater public, and in so doing had become politically intractable. Seligman continued:

> [I]t is obvious that there is no immediate likelihood of a fundamental change in the tariff, and we have learned that the system of state and local taxation is becoming in some respects progressively worse rather than better. In the face of this situation the argument for some kind of an income tax becomes very strong.[347]

Though well aware of the protective tariff's perils, Seligman was not eager to cede this policy device, which "may sometimes form an important political weapon" perhaps not unlike that envisioned by Jefferson's embargo a century prior. In making the case for the income tax though he appears to have happened upon an anticipated effect that many of its supporters openly professed. Indeed, some proponents of the alternative or "single tax" system, such as that suggested by Henry George during the tariff debates of the 1880's, desired it for the reason "that there can be no such thing as a system of protection" when revenue is confined to an alternative single source premised on direct taxation, such as land or income. [348]

Seligman believed this system to be dangerously constraining, an artificial limitation on the government's policy options. He nonetheless seems to have recognized that the income tax, when coupled with the existing protective regime and other federal tax sources, would imbalance the status quo of tax incidence even if not strictly necessary to supply the government's revenue wants. Furthermore, by shifting the incidence of

[347] *Ibid.*, p 642
[348] Edwin R.A. Seligman, 1921. *Essays in Taxation.* New York: Macmillan Co. p. 75

taxation away from the incumbent protective tariff system, the political support that sustained it was similarly bound to change.

The nature of the tariff's political support attracted the attention of many economists in this period, and led them to embrace the income tax as a means of reform. Davis R. Dewey, editor of the American Economic Review, made the case more explicitly than even Seligman. The income tax, he reasoned, would "add another prop to our national system in order to lessen the importance of the tariff system of import duties." Dependence upon the tariff for revenue had the undesirable effect of fostering strong relationships between policymakers and the beneficiary industries. "While not hostile to protective duties reasonably levied, we may well consider it unfortunate that taxes and industrial enterprise should be so closely associated." Dewey approvingly concluded that the income tax would "help to divorce this alliance."[349]

The progressive bent of many income tax historians has had the unfortunate side effect of obscuring its relationship to the tariff issue, and with it the effects that the 16th Amendment had on the somewhat dormant, albeit lingering constitutional issues surrounding the tariff rates. As late as the 1880's economists such as David A. Wells were attempting to revive the old Revenue Clause arguments against protection, last endorsed at the federal level in the Polk administration. More notably, many tariff reformers seem to have recognized the sustained protectionist regime as a constitutional problem of factionalization in its own right, rather than simply a matter of politics in which their side had the misfortune of being outmaneuvered time and again. The social-

[349] Davis R. Dewey, "Would a Federal Income Tax be fair to New England?" *Boston Globe,* January 16, 1910.

class narrative gives little room for the constitutional side of the amendment's political economy though, its adoption being cast – quite literally in some cases – as a triumph of the "good" forces of popular democracy and social equality over the "bad" embodied in a wealthy and exploitative industrial elite.

Still, the evidence is strong that income tax was as much a component of federal tariff policy as it was an abstract matter of "social justice" reform, and probably more so. In fact, as historian John D. Buenker has noted many Americans at the turn of the century, rightly or wrongly, "identified the protective tariff as the chief cause for the rising cost of living," and thus with it much of the social angst attributed to the gap between rich and poor. The income tax also struck at the heart of the debate over the efficiency of the tariff's revenue capacities, first expounded under the surpluses of 1888 only to be cited as a deficit risk a decade later. Most of all, the tariff and the income tax represented two divergent means of distributing the federal tax burden, with the tide of popular opinion pressing for a shift "from consumers, laborers, farmers, and small businessmen onto the financiers and capitalists" who often benefited from the protective system.[350] Like the revenue-protection dichotomy, tax incidence had become a source of factional alignment, though with greater parity between the multitude of interest groups it attracted.

As Richard F. Bensel notes, "a partial substitution of a progressive income tax for protection would have redistributed wealth in at least three ways."[351] First, tax incidence would shift from agriculture to industry as the old revenue-protection dichotomy implied.

[350] John D. Buenker, 1985. *The Income Tax and the Progressive Era.* New York: Garland Publishers. p. 37, 40
[351] Bensel, 2000, p. 160

After a century of tariff battles, farmers still produced the overwhelming majority of the U.S. export volume and thus were hit with tariff symmetry for the benefit of protected industrial manufacturers. Second, since the Civil War and the dissolution of the slave plantation system this division had fallen into alignment with the income divisions between the upper and lower classes, wherein the revenue tariff's burdens fell hardest on consumption items purchased by small scale farmers and agricultural laborers. Third, the division established itself on geographical lines, pitting the industrial northeast against the remainder of the country. Bensel's study of political party platforms across time, party, and region generally bears out these divisions around the turn of the 20th century.[352]

The convergence of these forces effectively set the stage for the first truly competitive factional showdown on tariff policy since before the Civil War, the anti-tariff forces having lingered prostrate for several decades prior due to the diffusion of their interests vis-à-vis a comparatively homogenous industrial interest group base. Yet as the events of 1894 illustrated, even a Democratic electoral sweep could barely dislodge an entrenched protectionist policy. The reason for this is often overlooked, though it is not difficult to identify from the policy debates of the period. More than a simple matter of "good" or "equitable" policy, the income tax debate struck at the core of the tariff's political economy and, more so, did this at a constitutional level.

Bensel is among the few modern historians to have recognized this aspect of the debate, noting that the income tax "would have alleviated dependence on the tariff for

[352] *Ibid*.

federal revenue and thus might have enabled a reduction in customs duties."[353] When it is conceded that the protective tariff's intractable political position and the continuous setbacks of the tariff reform movement were a direct product of the Constitution itself, or more specifically its apparent inability to contain a factional capture of federal trade policy, the tariff reformer's escape strategy becomes clear: change the Constitution, and alter the way the tariff's political economy manifests itself within the legislative functions of the government.

It is no understatement to note that the income tax's adoption with the 16th amendment provided for the single most drastic change in the federal tax system since the drafting of the Revenue Clause itself. It almost instantly negated the constitutional primacy that the founders gave to the impost-based tariff system, and even reversed their plainly stated preference for indirect taxation over the limited and extreme exigencies in which a direct levy might be affected, albeit under the strict constraint of the apportionment rule. Its effects may have indeed produced the modern tax system complete with progressively delineated income brackets, itself often sold to the public with the rhetoric of wealth "equity." But viewed within the context of the Constitution's revenue system, the conclusion is inescapable. The income tax was first and foremost an answer to the policy it replaced, that policy being the tariff system.

To many tariff reformers the logic behind the income tax was a self-evident component of the tariff's dichotomous revenue and protective characteristics. They recognized that the tariff's political support was sustained by its centrality to both policy functions, with the only debate concerning the appropriate rates on the schedule. The

[353] *Ibid.*, p. 159

tariff could be a revenue policy with incidental protective features or a protective policy with incidental revenue features, as most agreed it had become for the last half century. In either case though, the tariff served some aspect of both policy aims and was therefore believed to be sustained on both grounds. Should another revenue system supplant the primacy of the tariff it would be stripped of a critical justification for its retention and finally exposed as the product of unbridled interest group politics that its critics contended it to be. Decoupled from revenue, the tariff would have to stand before the public only on its protective effects and risk complete exposure of a policy that made frequent use of its revenue counterpart to cloak its real intent.[354]

The strategy was as uncertain as it was bold. It rested on the assumption that the tariff system's revenue function effectively enabled and eased its capture by protective interests. Political support for the tariff was thus an aggregation of public expenditures (the revenue rent) and the consumer surplus transfers of protection, with the disposition of the policy having been pulled toward the latter by their organizational advantages. Should revenue be removed from the equation and transferred to another source, it was believed that protectionism would no longer have the political strength to sustain itself on that policy basis alone. The income tax therefore offered a theorized key to finally loosening the protective system's iron grip on American trade policy.

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[354] Examples of how legislators utilized the tariff system's complexity to conceal its protective character abound. The protective 1842 Tariff represents one such extreme where Congress mandated the immediate dockside payment of all customs obligations in cash, supplanting an earlier credit and bond system. Though portrayed as an anti-corruption measure, the cash payment system was actually intended to impose administrative burdens on merchants engaged in foreign importation. See Phillip W. Magness, 2008 "Walker and the Warehousing Act." Paper presented to the Policy History Conference, May 30, 2008, St. Louis, Missouri. Taussig repeatedly references another common strategy in which price-based *ad valorem* duties were converted to complex unit-based specific duties to conceal their comparison to *ad valorem* percentage rates. In many cases, the specific duties greatly exceeded their purported *ad valorem* equivalent levels.

Not surprisingly, the evidence is strong that participants on both sides of the income tax debate recognized its projected constitutional implication for the tariff system and calculated their responses accordingly. They did so out of recognition that the tariff, despite its national prominence, regularly defied popular expression as a national issue and succumbed to capture by extremely factionalized beneficiary interest groups. The answer to the tariff question was an institutional one, and thus predicated on disrupting the status quo of the political equation that sustained it.

By the turn of the 20th century, tariff protectionism no longer enjoyed widespread national support and was often assigned blame in times of economic turmoil whether it merited it or not. To most Americans, tariffs equaled higher prices be it in the rents they afforded to protected industries or as a *de facto* tax upon consumption. When the economy sputtered, consumer frustration with high prices translated into frustration with the tariff itself. Protection nevertheless remained regionally popular in the industrial northeast. The Republican Party, long dominant in this region, was able to use its legislative seniority to rigorously enforce party unity and form a nearly-unbreakable high tariff coalition in Congress from the mid 1880's until 1909 when the income tax movement intruded upon a routine tariff revision. According to Bensel, this Republican-led voting bloc "involved substantial side payments to groups and interests outside the manufacturing belt." Notably, votes were traded for military pensioner benefits and raw material protection was extended to the wool-growing agricultural regions, as was the case in the Republicans' 1890 McKinley Tariff and the 1897 Dingley Tariff.[355]

In fact, the wool regions had been a crucial, albeit precarious, component of tariff

[355] Bensel, 2000. p. 486

protectionism going back to before the Civil War. Raw wool tariffs meant higher input prices for the New England manufacturers of woolen goods, themselves at the heart of the protectionist coalition and a prime recipient of high tariff rents. If not carefully managed the tariff coalition would break down, as happened in 1857 when woolen manufacturers briefly defected to the free trade position in order to acquire cheaper Canadian wool inputs. Since the 1861 tariff the Republican strategy had been to offer protection to both groups, with the intent of offsetting higher raw wool prices by providing even greater cover to the woolens industry.[356] This logrolling tactic paid off and helped to make the tariff a permanent fixture, supported by a carefully managed coalition. In the McKinley Tariff vote of 1890, arguably the high water mark of American protectionism in this era, the bill drew strong support from representatives in both raw wool and wool manufacturing districts. The same pattern appeared as well in districts with large military pensioner populations, an issue that the Republicans had successfully coupled to their tariff position on an electoral level.[357] These and similar side deals accounted for the tariff votes of the late 19th century, wherein Bensel found that Republican support for protections seldom deviated from complete unanimity.

[356] Magness, 2009. pp. 317-18
[357] Bensel, 2000. p. 496

V. The "Progressive" Income Tax

5.1 The Great Income Tax Debate of 1909

> "With the greatly reduced Tariff duties which will surely come when the income tax shall have taken the place of the Protective Tariff as a revenue producer the imports of competitive articles will reach a much larger sum, and the idle mills and factories and the hosts of unemployed work people will be much greater in number." – Pamphlet of the American Protective Tariff League, 1909[358]

By the early 1900's, majority opinion appears to have turned on the tariff. The tariff coalition remained intact in Congress, but elsewhere even components of the Republican Party recognized the trend and attempted to soften their rhetoric. President Theodore Roosevelt's name is less associated with high tariff dogmatism than his assassinated predecessor McKinley, who at times had a reputation as a one-note protectionist. Roosevelt openly entertained the income tax, expressing hope that it would generate more revenue and also deeming its redistribution of the tax incidence compatible with his own embrace of progressive reform. In 1908 the GOP platform even cautiously conceded the need for a "revision of the tariff," though as tax historian Steven R. Weisman notes "the word *downward* was omitted next to *revision*."[359]

The reason for this careful parsing of words traces to an economic recession that began the previous year. As with other downturns in this era, the tariff became a popular

[358] "Strange Reason for Favoring the Income Tax." *The American Economist,* September 3, 1909
[359] Weisman, 2002. p. 211

target to blame even if its connection was tangential. The main beneficiaries of the tariff's protective attributes were better-situated than most to absorb its price burdens on consumers, and taxes were generally unpopular in times of economic depression. The Republican position at the turn of the century was accordingly a precarious one, torn between answering public displeasure with the tax burden and satisfying its most loyal and entrenched interest group and the home state constituencies of its most senior legislators from the northeast. They held the White House continuously from 1897 until 1913, though the last two terms consisted of Roosevelt and his successor William Howard Taft, who also shared Roosevelt's position on the income tax. In Congress though, the high-tariff Republicans of the industrial northeast dominated the main tax-writing committees and showed little interest in compromise. Ultimately it was this unwavering devotion to protection that set the income tax amendment into motion and, in so doing, shook the Republican Party to its core.

Despite the "revision" overture, which coincided more with a Taft campaign pledge than the party's congressional delegation, the 1908 GOP platform was still a solidly protectionist document. Whereas Taft and a handful of Midwestern reformers saw the election as an opportunity to moderate the tariff schedule, the party's old guard actually viewed the "revision" plank as a means of making the tariff schedule, and particularly its protectionist features, more "scientific" and thus more permanent. The platform contained what was deemed a "substantially new" means for assessing tariff rates. The proper level of protection, it was claimed, "is best maintained by the imposition of such duties as will equal the difference between the cost of production at

home and abroad with a reasonable profit to American industries."[360] Prior protectionism was premised upon giving American producers an advantageous position over their foreign competitors through what was effectively guesswork in setting the rates, which were often crudely calculated and highly politicized. Here was a "formula," as it was described, that would accurately determine the price that would place U.S. firms on an equal footing, or so it was alleged, by simply taking the difference between foreign and domestic prices.

The formula, notes Taussig, had "an engaging appearance of moderation" though its actual effect was little different than what preceded it, as exclusionary tariffs would be necessary to ensure the promised profit. "Consistently and thoroughly applied," this plank, deemed the "true principle" of protection by its supporters, "means that duties shall be high enough to cause anything and everything to be made within the country."[361] While moderates such as Taft genuinely intended to act on some sort of tariff reform in the wake of the 1908 campaign promises, Taussig noted that many leading congressional Republicans saw their new "true principle" of tariff calculation as a virtual continuation of the prohibitory system. One example came from Rhode Island Senator Nelson W. Aldrich:

> Assuming that the price fixed by the reports is the correct one, if it costs 10 cents to produce a razor in Germany and 20 cents in the United States, it will require a 100 per cent. duty to equalize the conditions in the two countries…And so far as I am concerned, I shall have no hesitancy in voting for a duty which will equalize the conditions.[362]

More than just a tariff stalwart, Aldrich came as close as any single member of Congress

[360] Taussig, 1931, p. 363
[361] *Ibid*.
[362] *Ibid.*, pp. 364-5. note 2

to personifying the industrial elite of American society. His daughter Abby married an heir to the Rockefeller Standard Oil fortune, and much of Aldrich's personal wealth came from the sale of his stake in a large railroad interest to industrial financier John Pierpont Morgan. From his dominant perch on the Senate Finance Committee, Aldrich also took a leading role in the first significant tariff revision since the Republican-led Dingley act of 1897, which reversed most of the mild Wilson-Gorman reductions.

Shortly after his inauguration in 1909, William Howard Taft called Congress together for a special session to revise the tariff schedule in a presumably downward direction in accordance with his own campaign pledge. As with many tariff reformers before him, Taft had high hopes for a cautious downward revision. Unlike Cleveland's 1888 endeavor, Taft's party controlled both houses of Congress. Of equal significance, the reform was being initiated by the traditionally pro-tariff Republicans for the first time in several decades. Though this circumstance carried with it the anticipated effect of severely toning down any tariff revision, it was also thought to increase the reformers' political prospects for getting a compromise bill through both chambers without the near-unanimous party divisions that characterized most tariff votes from 1888 onward.

The tariff bill's House sponsor, Ways and Means Chairman Sereno E. Payne, had protectionist inclinations that quickly manifested in the committee review process. The committee hearings favored witnesses from import competing industries and entailed a lengthy process by which items on the schedule were compared to the price of their foreign competitors, in apparent keeping with the "true principle" formula. Nonetheless, Payne seems to have answered Taft's call in good faith and proposed moderating the duties on iron and steel, as well as a handful of other industries. According to Taussig,

the "House bill made significant reductions: none of revolutionary character, or likely to have serious economic effects, yet indicative of a disposition" toward cautious tariff reform.[363]

Senate consideration of the bill played out much like the tariff reform efforts of prior decades, and for many of the same reasons. Taussig, for example, contended that Senate was particularly disposed to the logrolling process of vote-trading because its equal representation between the states gave individual members a level of influence disproportionate to the populations of their states. Payne's bill immediately landed in Aldrich's Finance Committee, and over the course of several weeks there, was amended 847 times in a closed committee procedure before being sent to the floor in a completely revised package of Aldrich's own design. The Senate re-imposed duties on various raw items where they had been removed, raised the rates on several key categories in the House bill, and substituted specific duties for *ad valorem* rates to conceal their effects.[364] Once again, the Senate had whittled away any meaningful tariff reform initiated on the House side.

The Finance Committee revisions produced much of the rent seeking behavior that typified this historical process. Companies seeking protection flooded Aldrich's office with petitions, memorials, and recommended rates, each hammered out behind closed doors before being submitted for "public" review in committee. A fabric producer thanked the senator for ensuring its product would be "sufficiently covered." A silk goods manufacturer suggested his desired rate before confidently "put[ting] ourselves

[363] *Ibid.,* pp. 370-2
[364] *Ibid.*, pp. 375-6

absolutely in your hands, feeling that you will take care of us."[365] Literally hundreds of similar requests appear in Aldrich's papers, as do occasional replies in which the senator invited and encouraged their input.[366] In fact, Aldrich likely believed this to be the way tariff business should be done. Its result served a protectionist end that he deemed both beneficial to the country and a proper use of legislative power.

In more than one instance Aldrich actively colluded with manufacturing interests, soliciting their desired tariff rates outright. Elbert H. Gary, chairman of the U.S. Steel Corporation, supplied Aldrich with a memorandum of amendments and clause changes for a draft copy of the bill to which he had been privy. A similar document arrived at Aldrich's office from the American Smelting and Refining Co., covering the clauses on lead rates and the administration of bonded warehouses for smelted metal imports.[367]

The Senate bill still retained enough minor reductions to retain Taft's nominal support, though it also visibly frustrated the president to the point that he more than once intimated the possibility of a veto as the Senate's changes were being debated in a conference committee. The tariff schedule needed a systematic restructuring in his mind, as much as with the free traders. What it got from Payne-Aldrich Tariff of 1909 was effectively a jumble of haphazard political concessions forming yet another slight variation in the course of an intractable political problem. Unlike its predecessors though, it happened at a time when the tariff was clearly falling out of favor with a frustrated and tax-weary public. Aldrich approached the policy as if it were business as usual. In doing

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[365] American Silk Spinning Co to Nelson Aldrich, May 1, 1909; Mechanical Fabric Company to Nelson Aldrich, April 22, 1909 in Nelson W. Aldrich Papers, Library of Congress (LOC), Washington, D.C.
[366] For example, see Nelson Aldrich to W.H. Bowker, April 25, 1909 in Aldrich Papers, LOC.
[367] Elbert H. Gary to Nelson W. Aldrich, April 20, 1909; Edward Brush to Arthur Sheldon, April 22, 1909 in Aldrich Papers, LOC.

so he left himself vulnerable to a broader revenue system reform movement that had finally ripened to a stage where it might affect policy.

Early into the 1909 special tariff session Representatives Champ Clark of Missouri, the Democratic minority leader, and Cordell Hull of Tennessee initiated the assault that would eventually become the tariff system's undoing. It was an early step in a three decade trade liberalizing campaign for Hull, a congressional protégé of McMillin who later attained fame as the Secretary of State behind the 1934 Reciprocal Trade Agreements Act. Clark too had strong anti-tariff credentials and would eventually become Speaker of the House on an anti-tariff campaign. Following the strategy of the Democrat-Populist coalition with Wilson-Gorman, they devised a small income tax bill on individual earnings over $5,000 and attempted to attach it as an amendment to the Payne-Aldrich tariff. Clark and Hull had *Pollock* in mind while drafting the measure and carefully worded it to account for the Supreme Court's strong but narrow repudiation of income taxes on real estate property earnings. The constitutionality of this measure was still in doubt, but at minimum they could force another test in the courts and, perhaps, avoid the drastic step of amending the Constitution.

Republican Speaker Joe Cannon thwarted the move, utilizing his infamously heavy-handed enforcement of party loyalty to stave off discontent among a small group of Midwestern representatives. In the Senate Aldrich would hear nothing of the amendment either and set out to bury it, as he had done with prior income tax proposals.[368] The tariff bill, he intended, would proceed as all others before it save the Wilson-Gorman act, which Aldrich routinely assailed as a "free trader" measure despite

[368] Weisman, 2002 pp. 218-220

its notoriously moderate reductions. All other issues including the income tax could wait until the next general session, where he was equally confident that he could contain them through the Finance Committee. "So far as the majority of this committee are concerned," he thundered, "there will be no general discussion of the question of the wisdom or unwisdom of the protective policy." That policy was, in his mind, settled and the "bill has been prepared" to sustain it.[369]

In making this declaration Aldrich knew that his ranking Democrat counterpart on the Finance Committee, John W. Daniel of Virginia, was busy stoking the fires of the income tax movement and planning to introduce a version of the Clark-Hull amendment. With 62 Republican seats in the 92 member Senate, Aldrich had a clear numerical majority as long as he could preserve party unity. The GOP's tariff coalition was no longer the reliable block it had been in 1897 and prior though. A group of seven populist Midwestern defectors led by Senators Robert M. LaFollette of Wisconsin and Albert B. Cummins of Iowa had turned against the tariff and embraced the income tax movement. Although these members were generally sympathetic to protection in principle, they resented the tariff's high incidence on consumers, laborers, and farmers when compared to its allocation of protective benefits to wealthy manufacturing interests. LaFollette could also occasionally draw on a handful of swing votes from the agricultural states such as William E. Borah of Idaho, and was expected to find a sympathetic ear with Albert Beveridge of Indiana, who had a personal if erratic relationship with Taft, and who similarly resented the "business-as-usual" approach to tariff revision.[370] In total, Aldrich

[369] *Congressional Record*, Vol. 44, p. 1376
[370] Roy G. Blakey and Gladys C. Blakey, [1940] 2006. *The Federal Income Tax.* Clark, NJ: The Lawbook Exchange, p. 28.

eventually told a reporter in the midst of the tariff debate, he could only reliably control 44 Republican votes, or three short of a majority.[371] If LaFollette and Cummins united with the anti-tariff Democrats, an income tax might gain enough support to jeopardize his control of the tariff revision.

On April 15, 1909 Daniel joined with Senator Joseph Weldon Bailey of Texas to present a version of the Clark-Hull income tax. Cannon's parliamentary maneuvering had bottled up this proposal in the House, but the income tax's prospects were stronger in the Senate to begin with due to the fractures in the GOP tariff coalition. The Democrats accordingly adopted a strategy of concentrating on the Senate with the hope that the income tax might be forced into the Conference Committee between the two chambers.

Joe Bailey was chosen to lead the Democrats' efforts, and he quickly affirmed every suspicion behind Aldrich's heavy-handed control of the bill in the Finance Committee. The income tax was going to be used to assault the protective tariff regime. The tapping of Bailey represented a bold tactical move by the Democrats. He was known as a parliamentary brawler, in one case literally so having been involved in a fistfight on the floor of the Senate with Beveridge. His rhetoric contained an occasional agrarian populist flair, but he was by no means a Progressive of the LaFollette mold either. To the contrary, Bailey was almost universally detested by the Progressive movement in his home state due to his financial involvement with the Waters-Pierce Oil Company. Waters-Pierce was fined and barred from conducting business in Texas in 1900 after being found guilty of collusion with the Standard Oil trust, and faced a similar case in Missouri at the time of the income tax debate. Throughout the investigations Bailey

[371] Alfred Henry Lewis. "Aldrich Two Votes Short," *Washington Post,* May 8, 1909.

received payments for legal counsel to the company, ultimately at the price of his own political career. He was twice investigated over the controversy by enemies in the Texas Legislature his name became synonymous with the oil barons until a mounting Progressive challenge to his reelection hastened his retirement from the Senate in 1912.[372]

The fact that the Democrats' lead Senate sponsor of the income tax was a veritable antithesis of ideological Progressivism in his own right should cast doubt upon its redistributionist reputation. If anything, Bailey's business connections gave him more in common with Aldrich, his Republican counterpart in the income tax fight, than any social reformer.[373] If Aldrich was the Senate embodiment of old money from the industrial northeast, Bailey fulfilled a similar role for the blossoming Texas oil economy.

Paradoxically, the man who seemed to defy everything one might expect for the public face of the "progressive" income tax was in fact ideally situated for the job. Bailey was a vocal free trader, self-proclaimed "Jeffersonian," and veteran of the 1890's tariff fights, having led the Democrats' opposition to the 1897 Dingley Tariff as the House minority leader.[374] Even more so Bailey was widely regarded as the Democrats' most

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[372] Sam H. Acheson. [1932] 1970. *Joe Bailey, the Last Democrat.* Freeport, NY: Books for Libraries Press, pp. 176-80.

[373] At one point during the tariff debate the *New York Times* even printed rumors that Bailey had entered into a collusive agreement with Aldrich to preserve the tariff on a list of raw materials. Historian Claude E. Barfield was unable to find "definite proof" of this allegation, though he notes that these types of arrangements were common on tariff particulars even among partisan adversaries. See Claude Barfield, 1970. "'Our Share of the Booty': The Democratic Party, Cannonism, and the Payne-Aldrich Tariff," *Journal of American History*, Vol. 57, p. 319, note 31.

[374] Bailey was widely known for his mastery of the tariff issue, even at an early age. His principle biographer (Acheson, 1932) recounts a college friend's description of Bailey's participation in a debating society at the University of Virginia: "I learned that Bailey had been speaking on the tariff ever since he could talk, …and I knew he'd wipe the rest of us off the face of the earth with that subject" (p. 16). A few months shy of his 21st birthday, Bailey was chosen as a Democratic presidential elector for Grover Cleveland in 1884 and campaigned across Mississippi on an anti-tariff platform (p. 25). Elected to the House in 1891, he established himself as a leading Democratic critic of the recent McKinley Tariff law.

able floor debater in the Senate. Cordell Hull would later recall the selection of Bailey for the job, noting that the Texan had a "legal mind scarcely second to that of anyone else in our history."[375] Even in the best of circumstances the income tax was going to be an uphill fight, and its proponents needed someone who could hold his own against Aldrich, the most powerful man in the Senate.

The showdown between Bailey and Aldrich began the moment that Aldrich laid the tariff bill on the Senate floor and immediately declared its protective attributes a settled policy. Such was Aldrich's style. The Rhode Island senator was supremely confident of his own ability to control the course of legislation. He was a man who, as one biographer put it, "wore his crown of kingship as one who did not feel its weight upon his head." Even when acknowledging a shortage of votes for his tariff, he boasted openly of being able to "bring them to heel" by offering concessions and favors to individual senators.[376] Thus when Aldrich deemed the protective issue settled, he genuinely believed it to be so and viewed men such as Bailey who would challenge him with open contempt.

Aldrich utilized his opening speech to frame the ensuing debate on his own terms. This included preempting the income tax proposal that Bailey filed a few days prior with two arguments. First he insisted, much to the doubt of the Democrats, that the tariff in its present form would be more than adequate to supply the government with revenue. Second, he declared that the addition of any other tax into the revenue system would have the effect of unduly burdening the public. Implicating Daniel and Bailey directly, he

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[375] Cordell Hull. 1948. *The Memoirs of Cordell Hull,* New York: Macmillan Co., p. 60.
[376] Claude G. Bowers, 1932. *Beveridge and the Progressive Era.* Boston: Houghton-Mifflin Co. p. 323; "Aldrich Two Votes Short," *Washington Post,* May 8, 1909

charged the Democrats with attempting to double tax the country and produce a wholly unnecessary surplus. The tariff issue was, after all, settled in his mind. Therefore an income tax would only add to its existing revenue, leaving Bailey in the unenviable position of having to justify a large tax increase. Bailey vociferously objected to Aldrich's portrayal of his proposal and answered by explaining his purpose, exactly as Aldrich had intended:

> If I were permitted to control the procedure, I would make the two propositions in one motion. I would provide for the reduction of the duties on articles of common necessity, and then I would supply the deficiency of revenue created by a remission of those duties to the people by the levy of an income tax.[377]

The Rhode Island senator believed he had his Democratic counterpart trapped, both in repudiating the Protective Principle and in stating an untenable political position. As Aldrich pointed out, "you would increase the revenues, instead of reducing them, and your income tax would be more unnecessary than it is at this moment, because you would have a large surplus revenue."[378] Just as the Republicans had claimed in 1888, Aldrich believed that the existing tariff system sat well to the right of the revenue maximizing rate of t* on the Laffer Curve. Any reduction in the tariff would therefore increase the tariff's revenue, making the income tax a redundancy.

The Rhode Island senator continued his exposition of the income tax. Revenue, he insisted, could only be decreased by two opposite courses – "either by the adoption of prohibitory duties, which will stop the revenue, or by placing manufactured articles that compete with articles produced in this country on the free list." It was this latter course,

[377] *Congressional Record*, Vol. 44, p. 1379
[378] *Ibid*.

noted Aldrich, that the Democrats intended to pursue and in so doing they would be "putting out the fires and the furnaces and stopping the machinery of production" by depriving each of their protective sustenance. [379]

Still confident of the protective policy's general support within the body, Aldrich decided to lay down the gauntlet and test the strength of protectionism against free trade in the court of popular opinion. Gazing directly at Bailey, he proceeded to inform the chamber of what was at stake. "Perhaps you would like to reduce the revenues for the purpose of imposing an income tax and thus taking the first steps for the destruction of the protective system."[380] To Aldrich the income tax, or any alternative revenue measure for that matter, threatened to undermine the entire tariff system. In fact this was precisely what Bailey intended to achieve, and Aldrich believed he could counter it by sounding the alarm to its beneficiaries.

Sympathetic corners of the press immediately seized on the talking points that the Rhode Island senator had provided them. Nothing less than the "survival of the High Tariff [is] at stake," thundered an editorial in the *Boston Globe*. The paper remarked that a critic of the Payne-Aldrich bill feared it would not generate sufficient funds to fill the treasury. "This is the assigned reason, but back of it is one much more vital. At stake is really the continuation of the protective tariff system." The income tax, the paper feared, would be used to build up a "huge surplus" at which point there would "come a demand on the part of low tariff men to reduce the tariff," deeming it "no longer essential for the support of the government." Effectively conceding that the revenue component of tariff

[379] *Ibid*.
[380] *Ibid*.

politics had long been used to prop up the protective regime, the *Globe* warned that an income tax would make "the demand for revision downward…irresistible."[381] "Senator Aldrich sets his face like a flint against additional schemes of taxation," echoed an unsigned opinion piece in the *New York Times.* "Politically, this is wise" as "anybody can see that if an income tax is imposed and death dues collected, the tariff would have to come down."[382]

Elsewhere in the country the press took a less sympathetic approach to Aldrich's alarm, though they too recognized that nothing short of the protective tariff was at stake in Bailey's bill. "Mr. Aldrich sees in [the income tax] a dire menace to the protective tariff principle," noted a correspondent for the *Atlanta Constitution.* Should it be adopted, the duties "will inevitably be lowered…This is exactly what Mr. Aldrich and the high protective tariff republicans do not want." The income tax fight, concluded the paper, was a fight "for the life of the principle of protection of 'infant industries,' which has been the shibboleth of the [Republican] party for years."[383]

At the time of the tariff debate John Warwick Daniel was something of an elder statesman of the Democratic Party. The progeny of an old Virginia family known for producing several generations of jurists and lawyers, Daniel had served continuously in Congress since 1885 and was nearing the end of his fourth consecutive term in the Senate. He was known as the "Lame Lion of Lynchburg" to his colleagues owing to a permanent disability from Civil War, coupled with his reputation as a powerful orator.[384]

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[381] "Income Tax is the Real Issue," *Boston Globe,* April 21, 1909.
[382] "High Tariff with Retrenchment," *New York Times,* April 20, 1909.
[383] John Corrigan, Jr. "Protective Tariff Versus Income Tax," *The Atlanta Constitution,* April 25, 1909.
[384] U.S. Congress. *John Warwick Daniel (Late a Senator from Virginia). Memorial Addresses*. 61st Cong., 3d sess., 1910-1911. Washington: Government Printing Office, 1911.

Like Bailey, Daniel also defied the common historian's association of the income tax with progressive social reformers. Far from it, he authored the Senate resolution supporting Grover Cleveland's deployment of federal troops to put down the Chicago Pullman riots of 1894 – a defining event of the Populist labor movement and the incident that first brought national attention to labor organizer Eugene V. Debs, a major ideological face of the Progressive Era for the left-progressive tradition. While Daniel aligned with the Populists' free silver movement in the 1890's along with most southerners, his politics were far from progressive. A 1905 biographical directory of prominent political figures went so far as to rank him among the most conservative members of the Senate.[385] With equal significance, Daniel had been an active participant in the lively tariff debates of the Cleveland and Harrison presidencies well before the events of 1894 infused trade politics with the income tax movement. His verbal assaults on the McKinley Tariff of 1890 established his free trader credentials, and many were mass circulated in pamphlet form.[386]

By 1909 time had taken its toll on Daniel and his oratory lacked the exuberance of Bailey or the self-righteousness of Aldrich. The Payne-Aldrich tariff debate proved to be his last major stance before his death. Daniel rose in response the moment that Aldrich concluded his introduction of the tariff bill. Whether the tariff or another reason bore the primary blame for the Panic of 1907 mattered not, he declared, as it was indisputable that

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[385] Merrill Edward Gates, Ed. *Men of Mark in America.* Washington, D.C.: Men of Mark Publishing Company, 272.

[386] For examples, see John W. Daniel, "The Destructive Tariff on Wool and Woolens," Speech before the Senate of the United States, August 30, 1890, Pamphlet: Washington, D.C.; Daniel, "The Tariff on Cotton Ties is a Tax for Monopoly Only: The Republican War on Agricultural Interests," Speech before the Senate of the United States, August 9, 1890, Pamphlet: Washington, D.C; Daniel, "The Tariff on Tin-plate" Speech before the Senate of the United States, August 12, 1890, Pamphlet: Washington, D.C.

the tariff still burdened American consumers at large. Aldrich's bill would only affirm and perhaps even extend this burden in a time of economic downturn, whereas the real policy question was whether Congress "would do something to relieve it." Daniel continued:

> One fact remains in conspicuous view and abides in many painful memories. It is this: That a protective tariff, however high, a great surplus, however enormous, do not prevent trade revulsions, and do not protect the masses of the people from the hardships of depressed condition, either in manufacture or in commerce.[387]

The problem, he insisted, stemmed from the Payne-Aldrich bill's betrayal of its alleged function, "to provide revenue" as "is, of course, the first declared purpose of the bill." With the income tax proposal, Daniel assured the chamber that he sought only to initiate "gradual reductions of the schedules of the protective tariff." Anything more would be imprudent and alarmist, though a change must be made. "If we determine to go downstairs at all, we cannot get downstairs by leaping off the roof to the ground but we must go down one step at a time."[388] From there he laid out a methodical refutation of the protective system. Daniel enlisted prominent Republicans from decades past to build his case against the tariff. He utilized arguments from the 1860's by John Sherman and James Garfield, two noted GOP protectionists, to illustrate that Aldrich's bill and the current tariff regime surpassed even the extremes that these men were willing to implement at earlier points of their own careers. He also called upon Daniel Webster to show that Aldrich exceeded the "economic nationalism" policies of the republic's formative years. And he referenced Walker's 1846 Tariff as an illustration of the revenue

[387] *Congressional Record*, Vol. 44, p. 1384
[388] *Ibid*., pp. 1385-6

principle of taxation.[389] As many before him had predicted, the "infant industries" of the American manufacturing sector never seemed to grow up under the tariff schedule that was supposed to incubate them into competitive self-sustenance.

Daniel also made plain appeal to the inequity of the tariff system's incidence, the burdens it imposed upon the laboring and agricultural classes, and its tendency to benefit a comparatively under-taxed manufacturing elite. Such arguments doubtlessly garnered favor among the LaFollettes and other progressive reformers. Still, this leading critic of the Payne-Aldrich bill was plainly more concerned with Walker's economic principles of 1846 than the ideological "principles of 1848." His were not arguments of a left-progressive social activist, consumed by theories of class division and wealth redistribution. They were the arguments of a hardened tariff reformer and drew from the very same themes and principles that characterized the anti-tariff position in the same debate a half century or more prior.

Within a day of the initial debate even some high tariff advocates were beginning to question the prudence of Aldrich's legislative strategy. Daniel coupled his offensive on the Republicans' protective system with a strenuous protest against Aldrich's heavy-handed approach toward controlling the bill's progression, his 847 amendments included. The vigor of the Democrats' complaints, coupled with a lukewarm Republican reception outside of the high tariff northeast, suggested that the Rhode Island senator may have overplayed his hand. Only a day after it had praised Aldrich's defense of the protective system from the income tax, the *New York Times* began to express its doubts about his ability as a legislative tactician.

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[389] *Ibid*., p. 1388

> There is no occasion for surprise in the fact that Senator Daniel and Senator Bailey propose as a substitute for this impost taxes that would not compel the people to pay $6.50 to the protected manufacturers for every dollar collected at the Customs Houses. The protectionist ship is a pretty stanch old craft; and so long as she has to fear the assaults only of a completely disorganized enemy she will continue to be seaworthy. But, really, Senator Aldrich is steering her straight on the rocks.[390]

Only two days passed between Aldrich's introduction of the bill and the first signs of growing discontent within his own party, to say nothing of the Democrats' objections. On the second day of debate Democrat Augustus O. Bacon of Georgia prodded Cummins, the progressive Republican from Iowa, to state his support for an income tax even if Aldrich's revenue projections were correct and the tariff bill prevented any deficit.[391] The feared progressive insurgency was becoming a reality for the GOP, and with it a minority bloc of crucial Republican votes were starting to defect to the anti-tariff Democrats.

Given the unusual composition of the coalition that formed against the Payne-Aldrich bill, it is difficult to fully comprehend the motives of its membership. Their variety alone defies any simple explanation, though that is what many historians have given it. Most of the Republican defectors came from the party's progressive wing and supported the income tax in accordance with this political view. As noted, their motives – social equity, wealth redistribution, and a general political alignment against the industrial elite – have been exhaustively explored in the historical literature, and indeed projected onto the entirety of the income tax movement, much to the neglect of its trade component. These progressive Republicans, however, seldom contributed more than a

[390] "Mr. Aldrich's Surprise," *New York Times,* April 21, 1909.
[391] Blakey and Blakey, 1940, p. 32

dozen votes in a Senate where a measure would have to surpass 46 to succeed, assuming the full chamber was present. The Democrats provided the anti-tariff core with 32 votes and, more importantly, sponsored and directed the main legislative challenges to Aldrich.

Even a cursory glance at the Democratic leaders, Bailey and Daniel, reveals greater complexity in the motive question than is apparent from the smaller block of Republican insurgents. As a rule of thumb, the Democrats had been a consistent anti-tariff party for most of their existence since their founding by Thomas Jefferson, one of the tariff's first critics, and the "revenue tariff" was a consistent feature of their platform from the late 19th century till the present debate in 1909. Individual Democratic members, even those disposed to free trade, were not immune to logrolling though when it came to specific items on the tariff schedule.[392] This tendency as much as any threatened party unity in 1909, much as it had before during the Wilson-Gorman debates. On the eve of the Payne-Aldrich bill's consideration by the Senate some Democratic members openly conceded in a party caucus conference that they would use the debate to push for protection for specific industries in their states and districts. This view apparently represented a minority, but it existed nonetheless.[393] Even Daniel of Virginia, a career

[392] Barfield (1970) provides a detailed account of Democratic support for protection of individual articles during the 1909 debate, also noting that the Democratic members of the Senate Finance Committee, including Bailey and Virginia Senator John W. Daniel, often voted with Aldrich on individual rates for raw materials. It is tempting to interpret these events as Democratic support for the concept of protectionism, though the author of the present study diverges from Barfield on this point. Bailey and Daniel in particular were well established anti-tariff men and maintained a general ideological opposition to the high protection doctrine throughout the Payne-Aldrich debate, usually by way of the income tax proposal. Democratic concessions on individual tariff rates are more likely an indicator of the perils inherent to logrolling and the high likelihood that a protective tariff of some form would pass under the Republican majority. These conditions increase the appeal of the "defect" option in the Prisoner's Dilemma scenario, wherein members opposed to the general character of the bill as a whole nevertheless attempt to secure benefits for their home districts from its individual amendments, knowing that a bill of some form will likely become law.

[393] John Corrigan, Jr. "For Income Tax and Low Tariff on Necessaries." *Atlanta Constitution,* April 15, 1909

anti-tariff man, would later make an exception for the duties on lumber during the course of the Payne-Aldrich debate. Lumber was a growing southern industry at the time.[394]

These and other tariff defections on individual products plagued the Democratic caucus and fractionalized a party that was, at least in name and platform, committed to the general principles of free trade.[395] After hearing a plethora of Democratic pleas for protection to individual home industries, South Carolina Senator Ben Tillman exclaimed in exasperation "we are getting very badly mixed; and I am afraid before we get through, there will not be trough enough for all the hogs to get their snouts into it."[396] Aldrich and the high tariff Republicans were content with this condition, as it allowed them to lesson Democratic opposition to the bill by offering them individual rates at virtually no cost to themselves, and indeed in a way that was consistent with protective ideology.

The danger of logrolling and its inherent tendency toward defection around individual tariff rates illustrated the problems of a direct Democratic attack on the Payne-Aldrich bill, to say nothing of their numerical minority in votes. The solution came in a flanking move by way of the income tax proposition, agreed to in a Senate Democratic caucus meeting on April 14. After hours of bickering over tariff specifics the caucus was left "far from agreement on the attitude they will assume on the tariff bill," save that they supported the general principle of rate reductions. They nonetheless coalesced unanimously around the income tax, deemed an acceptable "revenue-producer." The caucus also agreed that the income tax was preferable to the inheritance tax, an alternative occasionally promoted by Theodore Roosevelt that was popular among the

[394] U.S. Congress. *John Warwick Daniel (Late a Senator from Virginia). Memorial Addresses*. 61st Cong., 3d sess., 1910-1911. Washington: Government Printing Office, 1911.
[395] Barfield, 1970, p. 315
[396] *Congressional Record*, Vol. 44, p. 1635, excerpted in Barfield, 1970, p. 317

progressive Republicans for its wealth redistribution properties. The implementation of the income tax must also be accompanied by "substantial reductions in [tariff] schedules, and particularly for a decrease in the rates on the necessaries of life."[397]

The significance of the Democratic Caucus' decision to support the income tax has been generally overlooked.[398] It effectively allowed the party to make a unified, if indirect, attack on the protective tariff without stirring the hornet's nest of logrolling on individual rates. These defections had whittled away most of Cleveland's proposed reductions in the Wilson-Gorman bill in 1894, and were already creating problems for party discipline. The income tax could function in its place as a roundabout means of undermining the existent revenue tariff without compromising cohesion within the caucus; indeed defections could and would continue around individual rates even as the income tax supporters launched a unified broadside against the protective principle.

The Democrats' two-pronged strategy, an income tax and a general unspecific commitment to tariff reduction, comported with everything Bailey intended and announced as he prepared to challenge Aldrich on the floor. It also met approval from Hull on the House side, who recognized the tariff reform issue as dead there under Cannon's watch and placed his hopes with the Senate.[399] As policy though, it signified that the Democrats considered the two issues to be fundamentally interrelated, the motive for one being its replacement capacity for the revenue previously provided by the other.

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[397] John Corrigan, Jr. "For Income Tax and Low Tariff on Necessaries." *Atlanta Constitution,* April 15, 1909.

[398] Blakey and Blakey (1940, p. 29) devote a single passing sentence to this event. Barfield (1970, p. 315) largely omits the income tax issue from his discussion of the caucus, focusing instead on internal Democratic defections on tariff protection for individual raw materials. Weisman (2002) makes no mention of the event, though he discusses the subsequent Democratic income tax effort it spawned.

[399] Blakely and Blakey, 1940, p. 29

The two policies were substitutes, and the income tax commended itself to the Democrats not for class or wealth redistributionist reasons of its own policy design and offered for its own sake, but as a more equitable and politically feasible alternative to the heavily factionalized protective tariff policy. Just as Bailey informed Aldrich on the opening day of debate, he desired them to be "two propositions in one motion."

Not all recognized the interdependence of Bailey's two propositions, or even the centrality of liberalizing trade to the income tax issue. An intuitive temptation existed to compound the income tax's redistribution of tax incidence with the redistribution of wealth itself, and in fact this confusion may have aided the rhetorical case before the middle and lower classes. In one instance a sympathetic article in the *Atlanta Constitution* praised Bailey's opening presentation of his income tax measure with a headline that would make Eugene V. Debs envious: "Force wealth to pay taxes, urges Bailey."[400] In fact, the speech that it referenced (and described in more accurate terminology in the article's back pages) was as much a volley against trade protectionism in the classical economic mold of Jefferson, Calhoun, Cleveland, George or any of the anti-tariff campaigners before him. An appeal to tax incidence was an appeal to the voters' pocketbooks and of the "two propositions" it formed the more resonant political message.

The referenced address by Bailey was a pivotal moment in the income tax movement, or at least Cordell Hull stated as much several decades later while serving as Franklin Roosevelt's Secretary of State. Bailey's speech, he recalled, was "remarkable," and delivered to a packed Senate gallery that included several members from the other chamber as well as the first lady. "After his speech the income tax movement flared up

[400] "Force Wealth to Pay Taxes, Urges Bailey" *The Atlanta Constitution,* April 27, 1909.

noticeably throughout the Nation."[401]

Bailey opened his address with a lengthy philosophical discussion of the principles of taxation. He defined it as a central issue of the relationship between a government and its citizens, and delineated several principles of just and economical taxation. This brought him directly to the question of the protective tariff, the true object of his proposed amendment.

> The chief difficulty in dealing with that phase of the tax question presented by this bill arises out of the fact that tariff duties are imposed by the party now responsible for legislation not only for the purpose of raising revenue to support the Government, but also as a means of regulating our commerce with foreign nations, developing domestic enterprises, maintaining the wages of labor, and insuring the profits of manufactures.[402]

He took aim at the tariff's rent transfer to protected industries, at its price incidence on consumers of protected products, at its tax incidence on the consumers of imported products, and on its symmetry burdens for exporters. He turned next to the apportionment rule, noting its practical effect of binding the country to the tariff system. "[H]owever desirable it may be, free trade is impossible in this country" for the reason that tariffs were a constitutional necessity. "Without them we could only raise sufficient revenue by resorting to direct taxation," bound by the Capitations Clause and thus rendered politically impossible.[403] He hesitated to advocate a change to this clause and reiterated his belief that a properly worded income tax may avoid the court's disfavor, but the implicit message contained a critique of the constitutional mechanisms sustaining the present protective system. "With Congress thus forbidden to levy direct taxes according

[401] Hull to Blakey and Blakey, February 11, 1936, quoted in Blakey and Blakey, 1940, p. 30
[402] *Congressional Record*, Vol. 44, p. 1533
[403] *Ibid*.

to the harsh rule of apportionment, we must continue to collect large sums through our customs-houses."[404] The question was thus one of sound public policy. If Congress was legally obliged to collect its revenue by tariffs, it was also ethically obliged to collect them in a way that was equitable and just, and in this they had failed.

The real question of the tariff debate and its income tax corollary was just that, a matter of just and equitable taxation. As Bailey put it for the tariff, "Shall tariff duties be imposed for the purpose of raising revenue to support the Government, or shall they be imposed for the purpose of protecting certain classes of our people against foreign competition?" The latter was the policy of the day, and Bailey recognized its abandonment was "impossible" under the existing political situation but for one alternative, the shifting of the incidence of its revenue component onto income, hence his proposal.[405]

In one broad swipe the Texas senator had effectively turned the strongest critique of the income tax – its use as a means of redistributing wealth, which Aldrich deemed socialistic – completely on its head. The protective tariff itself was inherently redistributive, only in a much more fundamental way than his income tax proposal as it avoided the requisite accompanying expenditure of tax revenue on the lower classes. In this, Bailey likened the tariff to the bounty, or subsidy system first suggested by Hamilton, noting the only difference in their effect to be that the latter requires an appropriation in addition to the tax that funds it. He also appealed to the principles of the free market, accusing the tariff men of subverting them and ascribing false benefits of

[404] *Ibid*., p. 1534
[405] *Ibid*.

economy and wealth to the protective system.[406] This argument, he reasoned, was patently absurd. "When an American citizen traveling abroad finds the serfs of Europe groveling in their misery and poverty, does he not understand that there are other causes for the difference between them and us than merely that we have and they do not have a protective tariff?" To the contrary, he noted, one of the most sustained periods of economic expansion to date had occurred under the Walker Tariff of 1846, which liberalized the rates and simplified the tariff schedule.[407]

Unlike the progressives, Bailey had little interest in increasing federal expenditures in conjunction with the revenue policy, be it from a tariff or an income tax. Throughout his speech he implored economy in federal expenditures, and echoing Daniel a few days prior, pointed out examples of budgetary excess that could be trimmed. He intended simply to counteract the protective tariff's own intrinsic redistributive properties, which certainly imposed a regressive burden on the lower classes but also, by direct effect of their imposition and without so much as a single federal appropriation, transferred the earned wealth of free market trade to an intended recipient by manipulating the rules of commercial exchange. Bailey's charge was no Progressive Era social argument, but a much older one from the very core of American tariff debates and it resonated with the force and spirit of John Taylor of Caroline's polemics in the same chamber almost a century prior.

The message incensed Republican members from the industrial states, and none more than Aldrich who jumped into the fray and turned Bailey's soliloquy into a

[406] *Ibid*.
[407] *Ibid*, p. 1535

showdown between the two most skillful debaters in Congress. Much as Aldrich had intended when he lured Bailey into the debate a week prior, the Texas senator set out to provoke his Rhode Island counterpart. Furthermore, Bailey's purpose in doing so seems to have been to directly repudiate the suggestion that he intended to utilize the income tax for a wealth redistribution program. To rebut this charge he paraphrased a statement by Aldrich from the 1894 debate when the Rhode Islander deemed the income tax a "Populistic, Socialistic, Democratic plan of redistributing income." Furious and well aware that this charge might offend the insurgent western members of his own party who he needed to pass the tariff, Aldrich interrupted. "Mr. President, I have never at any time or anywhere expressed any such opinion as that which the Senator from Texas now attributes to me."[408] Pressed by Bailey and threatened with the retrieval of the Congressional Record from 1894, the exchange devolved into an embarrassing commentary of backtracking by Aldrich:

> Mr. BAILEY: …the Senator from Rhode Island made us of almost the identical expression which I have just repeated, and which he denies having uttered.
>
> Mr. ALDRICH: Whenever the income tax proposition has appeared in this body…it has appeared here advocated by Populists or by others who sympathized with them in a desire to redistribute the wealth of the United States by this method.
>
> Mr. BAILEY: Was it supported only by such?
>
> Mr. ALDRICH: At the time which I mentioned, I think I can say it was supported only by such.
>
> Mr. BAILEY: But not now?
>
> Mr. ALDRICH: Not now, I think.
>
> Mr. BAILEY: Mr. President, I now have before me the Congressional Record of the 21st of June, 1894, from which I will read: "Mr. ALDRICH: Does he not understand that the income tax is

[408] *Ibid*., p. 1536

> supported by the Socialist party, by the Populist party, and by the Democratic party with a few honorable exceptions, simply as a means for the redistribution of wealth?"[409]

The discussion provoked uproar from the galleries shortly thereafter when Bailey asked Aldrich if President Taft, who had also espoused the income tax for revenue purposes, was a Socialist. Bailey had his adversary cornered, but more importantly he had driven home a point about his proposal that has gone seldom acknowledged to the present day. Past critics and later sympathizers of the income tax alike have defined the measure by its redistributive uses. While Aldrich correctly noted that Socialist and Populists at the turn of the century embraced these redistributive uses openly, Bailey intended to disavow any such motive of his own. "I agree, of course, with the Senator from Rhode Island," he sardonically replied to continued laughter. Bailey's next statement was an expression of his own governing philosophy: "it is worse than folly for Congress to levy and collect taxes not needed for an economical administration of the Government." Such a folly would include using the income tax for the redistribution of income to the poor, but also encompassed the present system of achieving the same in the reverse direction by protective rent transfers.

In full, the Bailey-Aldrich debate consumed more than two hours time. Bailey supported his critique of tariffs with multiple passages from an early edition of Frank Taussig's *Tariff History* to the chagrin of Aldrich, who deemed the professor the "dean of the free traders."[410] Taussig was a powerful name to enlist, being one of the preeminent trade economists of the day, and only further affirms the centrality of trade to the income tax debate. Bailey also again recounted the Walker Tariff, the Tariff of 1857, and the

[409] *Ibid*.
[410] *Ibid.*, p. 1537

"revenue tariff" arguments of President Franklin Pierce. Further prodding of Aldrich only amounted to a public exposition of the tariff bill's protective attributes, with each interruption from the Rhode Island senator affirming his devotion to the doctrine. Turning to the specifics of the income tax bill itself, Bailey enlisted not a Socialist, or Populist, or other progressive reformer, but Adam Smith's principles of just taxation. The income tax, he contended, "better conforms to that sound canon of taxation which enjoins upon us to lay all taxes on those who can bear them with the least inconvenience."[411] Once again, he was setting a rhetorical trap for Aldrich. When the Rhode Islander objected to the fairness of the $5,000 income tax bracket, Bailey asked his concurrence with Smith's principles. Aldrich obliged, only for the Texan to point out his concession was an indictment of his own position, wherein the tariff's incidence was inequitably assessed.

Judging by the gallery responses and extensive press coverage it generated, Bailey's speech succeeded in its intended effect of arousing public sentiment and derailing Aldrich's push for a quick tariff vote. The Democrats were united and ready to push for the income tax, though it would still be an uphill fight to garner a majority vote. Further complicating the issue was Cummins, who introduced his own competing income tax with a 6% rate on earnings above $100,000 (roughly $2.2 million in present dollars). Cummins boldly declared he could pull together as many as 20 Republican "insurgents" as the press dubbed them, calling Aldrich's own vote counting into question and bringing

[411] *Ibid.*, p. 1538. Bailey is paraphrasing two of Smith's principles of just taxation (*Wealth of Nations,* Book V, ii, b): "The subject of every State ought to contribute towards the support of the government, as nearly as possible, in proportion to their respective abilities" and "Every tax ought to be levied at the time, or in the manner in which it is most likely to be convenient for the contributor to pay it." The *Congressional Record* does not indicate that Smith was named in the speech, but several press accounts indicate that Bailey identified Smith as the author of these principles in an aside to his prepared remarks.

a specter of uncertainty into the Senate chamber.[412] In reality, he was able to reliably deliver around 10 to unite with the Democrats, as show in a vote on an early amendment containing minor tariff rate increases. This bloc was not enough to consistently thwart Aldrich outright, but it placed the income tax supporters within striking distance of a majority, assuming they could unite their efforts.[413]

A joint effort, notes tax historian Steven R. Weisman, would require Bailey and Cummins set "aside their egos for the sake of the cause," which they eventually did on May 18. The two faction leaders merged their proposals into a single bill using Bailey's rates and $5,000 tax cap, but including a corporate tax rebate provision sought by the Republicans.[414] Aldrich continued to rail against what he deemed an emergent war on protection in the meantime, but also took the Bailey-Cummins proposal as a genuine threat. If he could delay a vote for long enough he could force their proposal into the Finance Committee for review, and effectively kill the income tax.

On May 17 Senator Chauncey Depew of New York, a railroad magnate and former general counsel for Cornelius Vanderbilt, went to the floor to stir protectionist sentiment. The income tax, he declared, "is the most direct possible attack upon the protective system. The only way in which the surplus revenues it would produce, and which are not now needed, could be taken care of, would be either a horizontal reduction of the tariff to bring the revenues down to the expenditures or else to enter upon a bacchanalian saturnalia of extravagance."[415]

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[412] Wiesman, 2002, p. 225; "Insurgents ready to fight Aldrich," *New York Times,* April 25, 1909
[413] Blakey and Blakey, 1940, p. 32
[414] Weisman, 2002, p. 224; Blakey and Blakey, 1940, p. 33
[415] *Congressional Record*, Vol. 44, p. 2103; "Depew Defends Protective Tariff," *New York Times,* May 18, 1909

Such alarmist sentiments were not confined to Aldrich and DePew, but in fact represented the mainstream of the protectionist lobby. They recognized the income tax as an attempt to dismantle the tariff just as Bailey intended, and set out to stop it at all costs. The *American Economist* magazine, a curiously mis-titled in-house organ of the American Tariff League, railed against the income tax threat to protection. In Great Britain, one issue claimed, "the income tax is the mainstay of Free-Trade, and that revenue from Protective Tariff duties would long ago have been compulsory but for the revenue obtained from the income tax."[416] Another issue declared that free trade competition would destroy profits and with it most taxable income, thereby defeating the income tax's entire purpose.[417] Showing that protectionist sensationalism knew no bounds, the Tariff League even claimed that the income tax "falls with special weight on the shoulders of widows and orphans," who would become "fair prey" to greedy tax collectors.[418]

In the Senate chamber the contest quickly turned into a battle of parliamentary maneuvers. On the income tax side a difference of opinion in strategy strained the Democrat's alliance with the GOP insurgency. Bailey made no effort to conceal that he was pressing the tax to force a downward tariff reform. He believed that Aldrich would be able to pick off Republican votes through various concessions and logrolling offers as amendments to the tariff bill were debated, thus making quick action a necessity. Cummins was less concerned with the tariff bill's character than he was with establishing a dual system that spread the tax burden onto income. The progressive insurgents were

[416] "The Detested Income Tax," *The American Economist,* August 13, 1909
[417] "Loss through Income Tax," *The American Economist,* August 27, 1909
[418] "From Widows and Orphans," *The American Economist,* September 24, 1909

accordingly content to bide their time until after the tariff schedule was finalized.[419] The alliance stumbled briefly on May 25 when Bailey sprung an income tax amendment to the tariff bill on the unsuspecting high-tariff Republicans. A day prior, reports from the insurgent camp had suggested their numbers were growing to between 16 and 19 pro-income tax votes, more than enough to carry the chamber. Aldrich hastily maneuvered to have Bailey's vote postponed for two weeks, but the scare was too close. The protectionists decided to appeal to Taft for assistance in restoring party unity and delaying the vote gave Aldrich until June 10th to sway the president's mind.[420]

Aldrich was usually a master at counting his votes in the Senate, but the Bailey amendment left him puzzled. Even his strongest estimates put the measure within striking distance and many of the insurgents were unwilling to state their position, or to respond to his efforts at logrolling. A delegation including Aldrich and Senators Murray Crane and Henry Cabot Lodge of Massachusetts took their plea for help to the president in late May. As Taft remembered the meeting, they "came to appeal to me to save them from that situation" in which the Republican Party split over the tariff, producing an income tax.[421]

Not much is known of the meeting itself, save that it was the first of many trips Aldrich made to the White House before the impending vote. Aldrich's personal papers abound with evidence of his collusion behind the scenes on individual rates in the tariff bill, but not his private negotiations with President Taft. Scholars have long complained of the "sporadic and uneven" nature of Taft's papers during this period as well, and Taft

[419] Blakey and Blakey, 1940, p. 34
[420] *Ibid*. pp. 34-35; Weisman, 2002, pp. 226-7
[421] Quoted in Weisman, 2002, p. 227

himself once lamented on his own failure to keep a diary of his presidency.[422]

Several authors have speculated that a variety of issues were raised. Steven R. Weisman notes that what happened in the meeting "is not clear." Taft may have pressed Aldrich to loosen his opposition on the income tax in exchange for protective tariff assurances, which the President had been previously reluctant to give. Aldrich may have offered concessions to prevent a rumored Taft veto.[423] Blakey and Blakey (1940) note that both men were alarmed about an emerging split within the Republican Party itself, and may have been driven to common ground by this concern. Cordell Hull later lent this credence, noting that the combination of a "high cost of living, trusts, high tariffs, and other economic and social welfare conditions" were contributing to an ideological divergence between the insurgent Republicans and the old guard of the Northeast.[424]

Aldrich also likely attempted to defend the validity of *Pollock* to Taft, who had been among its critics and likely believed a carefully tailored law could circumvent a narrowly construed reading of its principles. Should the income tax bill succeed it would inevitably force another test before the Supreme Court at the risk of either producing a more sweeping ruling against the income tax or resulting in a reversal that damaged the court's prestige, neither of which Taft desired.[425] In one of their conversations Taft also likely convinced Aldrich to float the idea of a compromise to the insurgents and the Democrats through Borah, wherein they would withdraw from the income tax in exchange for a milder tax on corporate dividends. The progressive Republicans were

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[422] Stanley Solvick, 1963. "William Howard Taft and the Payne-Aldrich Tariff," *Mississippi Valley Historical Review*, Vol. 50, pp. 430-31.
[423] Weisman, 2002. pp. 226-228.
[424] Blakey and Blakey, 1940, p. 35
[425] Weisman, 2002, p. 227; Solvick, 1963, p. 433

reportedly "cool" to the idea, and Bailey, who simply desired an alternative tax system that spread the incidence away from the tariff, sought assurances that this corporate tax would be retained in the Conference Committee. Aldrich was unprepared to make this offer.[426]

Still, the meetings between Taft and Aldrich remain shrouded in speculation save for the consequential decisions they produced.[427] Aldrich's primary biographer describes him, along with Payne, taking extended rides in the president's automobile, conferring with Taft on the golf course, and holding private dinners behind shuttered doors at the White House that extended late into the evening.[428] When the negotiations concluded though, Aldrich emerged with a completely unexpected and daring legislative strategy. The tariff bill would proceed as planned, but two corollary compromise measures would be offered to reunite the factions of the GOP. A moderate 1% corporate dividends tax would be offered as an alternative to the income tax, but in exchange for withdrawing the income tax bill Aldrich himself would direct an income tax constitutional amendment out of the Finance Committee, its purpose being to supersede the *Pollock* decision.[429]

The Aldrich-Taft compromise was risky in its own right, particularly as the constitutional amendment was concerned. Aldrich personally believed it was a necessary but correctable concession to make. He still had two tools at his avail to stop this 16th Amendment. He could defeat its ratification by the states, where a three-fourths

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[426] Blakey and Blakey, 1940, p. 36

[427] Solvick (1963, pp. 431-2) discusses the documentary evidence of Taft's position toward Aldrich at length. The emerging picture balances between the President's private frustrations with Aldrich for overreaching and his recognition of the difficult political scenario Aldrich faced in getting a majority. Taft personally favored the milder protectionism of Payne's House bill, and therefore seemed disposed to press Aldrich for other concessions such as the corporate and income taxes.

[428] Nathaniel W. Stephenson, 1930. *Nelson W. Aldrich: A Leader in American Politics.* New York: Charles Scribner's Sons, p. 351

[429] *Ibid.,* pp. 354-55; Weisman, 2002, p. 227

consensus was required. If that failed, the income tax would become constitutionally permissible but he could still rely on Cannon's control of the House, and hopefully rebuild his own hold on the Senate, to prevent any actual income tax bill from emerging out of Congress.

When coupled with the amendment, Taft's corporate tax weakened the Republican insurgents just enough for Aldrich to outmaneuver Bailey. The votes still existed to push an income tax bill through if considered in its own right but Aldrich took advantage of Bailey's absence from the floor on June 29th to attach the corporate tax onto the tariff bill. Doing so constrained the insurgency's choice to two options: either take the less-certain income tax alone, or accept the tariff and the corporate tax jointly with the sureties of Aldrich's support and, by implication, that of Taft and Cannon. Noting their moment to execute this maneuver had arrived upon finding Bailey absent, Aldrich executed a series of deft floor maneuvers he had planned out in advance with Henry Cabot Lodge of Massachusetts. Without Bailey to voice an objection or manage the fate of his own proposal, Aldrich called the amendment to the Senate floor. Lodge immediately motioned to substitute the measure with an alternative "inheritance tax" of his own, which Aldrich then amended with a second substitution – the corporations tax he had agreed upon with Taft, carefully worded to be an "excise" on corporate profits in the hope that it would pass constitutional muster as a Revenue Clause excise.[430] The trick took advantage of the fact that Bailey's measure was a proposed amendment to the tariff bill rather than a stand alone bill of its own. An amendment to a substitute for an

[430] Blakey and Blakey, 1940, p. 47; The Supreme Court actually upheld the narrowly tailored corporate "excise" tax as was hoped. See *Flint* v. *Stone Tracy Co.,* 220 U.S. 107 (1911)

amendment was unamendable under Senate rules, an old parliamentary tactic that could be used to shut down undesired further actions on a bill.[431]

With Aldrich's move the immediate threat of attaching an income tax to the tariff bill was effectively quashed. By early July enough of the insurgents returned to the fold to easily pass the Payne-Aldrich Tariff, which quickly progressed through the conference committee and received final approval a month later. The corporate "excise" tax concessions notwithstanding, the new tariff was still of a markedly protective character. The most generous estimates described it as an extremely modest reduction. Others noted little substantive change or even pointed to items where the rates had actually been increased. [432] All that remained to fulfill the compromise was the constitutional amendment.

[431] Curiously, this same motion was used in 1860 by Representatives John Sherman and Justin Morrill to block attempts in the House of Representatives to amend away the protective rates of the Morrill Tariff.
[432] Weisman, 2002, pp. 230-233

Figure 5.1-A. Anti-Income Tax Cartoon, 1909

5.2 A Club to Beat Down the Tariff

> "We must go back to the tariff of 1846 for a solution of our tariff problem." – Vice President Thomas R. Marshall, 1913[433]

The complex set of agreements between Taft and Aldrich may be deemed a success insofar as they temporarily averted a split in the Republican Party, while also offering conciliations to each faction in Congress. Few were particularly enthused by the immediate results though. Aldrich's old guard Republicans from the northeast got their tariff, but at the cost of the begrudgingly acquiesced corporate excise tax. The tariff's survival also miffed the Democrats, its protective attributes as objectionable as any point in recent memory. Ironically, it was the 16th Amendment that proved to be the least controversial component of the package.

The Democrats considered the amendment a partial vindication of their push to dismantle the tariff system, not to mention a reminder that the work was incomplete. After all, they had accomplished no small feat in moving Nelson Aldrich to allow the measure when just weeks prior he had staked his entire defense of the protective system around the income tax's defeat. The northeastern Republicans seem to have considered it a "harmless gesture," something that they could defeat at ratification or in a future session.[434] That they would seek to thwart the measure's ratification was a forgone conclusion, openly conceded in the press. The *New York Times* predicted that "it will be stoutly opposed" by many Republican members, who were presently giving it their

[433] "Walker Tariff Bill of 1846 said to be Ultimate Aim of Democratic Party," *Christian Science Monitor,* July 23, 1913
[434] Blakey and Blakey, 1940, p. 60

support "not because they approved it, but because of tariff complications and to head off the immediate passage of the Cummins-Bailey income tax."[435]

The Democrats saw the 16th amendment, officially sponsored by Republican Senator Norris Brown of Nebraska, as a portion of their own platform that had been "appropriated" without credit, though they welcomed its introduction as the best they could obtain given the circumstances.[436] As soon as the amendment passed state and local Democratic parties around the country gave their support to ratification. As had been Bailey's contention throughout the Senate debate, these platforms often coupled their endorsement of the income tax with a protest against the protective Payne-Aldrich tariff and calls for immediate tariff reform, again demonstrating their intertwined relationship.[437]

The 16th amendment itself sparked surprisingly little controversy in either chamber of Congress. Those hostile to it knew that to oppose it would expose the Payne-Aldrich bill to Bailey's income tax plan, which was still looming in the background despite the corporate tax's attachment to the tariff. Bailey himself made sure all were aware of this and only withdrew his scheme a few moments before the vote on the constitutional amendment. By this point passage was virtually assured. The proposed amendment itself was simple and direct, reading "The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment

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[435] "The Income Tax Amendment," *New York Times,* July 14, 1909
[436] "Rush Tariff Bill," *Washington Post,* July 7, 1909.
[437] Examples of this are numerous. The Massachusetts Democratic Party adopted a plank supporting ratification and tariff reform, "Republicans put on Democratic Ticket," *New York Times,* October 1, 1909. The Vermont Democratic Party adopted a plank condemning the Payne-Aldrich bill, coupled with a call for ratification, "Vermont Democratic Slate," *Washington Post,* July 15, 1910. Connecticut deemed the tariff a "breech of faith" and called for its immediate repeal along with income tax ratification, "Baldwin named in Connecticut, Platform Scores Tariff," *New York Times,* September 9, 1910.

among the several states, and without regard to any census or enumeration." The specific case of the income tax was to be exempted from the apportionment rule of the Capitations Clause.

The constitutional amendment still sparked a short debate, where the Democrats again provided its most enthusiastic support. The House discussion was more substantive than the Senate by far, with the latter chamber discussing little beyond competing versions of how the amendment should be worded, most bringing about the same effect through slightly different means.[438] By the time of the vote most senators had already said their piece on the income tax concept during the prolonged tariff debate of the previous several months. Further discussion would only be repetitive, and interrupt the motion when its reluctant Republican supporters simply wanted the deed to be done with.

In the House though, a succession of speakers declared their support for the amendment and, with equal importance, chained it to the tariff issue. Representative Ollie James of Kentucky was first, declaring that "[t]he protective tariff system is vicious enough in itself without adding to it the iniquity of saying that in order to perpetuate it you must place the taxing burden of the Government upon the masses of the people."[439] Adam Byrd of Mississippi pointed out that the income tax would circumvent protectionist agenda setters, stating "it is a well known fact that the tariff law will be the product of the brain of one Senator, and however infamous the measure may be, it will receive the unqualified support" of protectionist interests.[440]

The amendment drew laudatory remarks from Cordell Hull, who had been

[438] Blakey and Blakey, 1940, p. 62
[439] *Congressional Record*, Vol. 44, p. 4393
[440] *Ibid*., p. 4415

orchestrating the income tax movement behind the scenes for months and feeding his talking points to the other chamber by way of Bailey as Cannon quashed any substantive discussion on the House side. In a single stinging swipe at the Republicans he linked the fate of the two issues, tariff and income tax:

> When the veteran showman P.T. Barnum gave utterance to his life experience to the effect that the people like to be humbugged, he must have had in mind also the painfully cruel manner in which the Republican party, with its high protective tariff, deceives, humbugs, hoodwinks, and defrauds the American people. The truth of this statement could not be better illustrated than by that party's present so-called "revision" of the tariff. How long will or can the country endure this "system?" Until we can secure the imposition of an income tax, and thereby destroy it?[441]

To the Democrats, the 16th amendment would finally provide that opportunity.

The votes on the constitutional amendment were virtually unanimous in both chambers, and came in each case after only a few hours of debate. The Senate passed the amendment 77 to 0, with even the tariff stalwarts Aldrich and DePew holding to their promises from the compromise. The House voted 318 in favor to 14 against, all of them Republicans.[442] Save for a handful of the insurgents, Republican enthusiasm for the amendment immediately dampened. The old guard of the northeast prepared to mount a fight against the same amendment they had agreed to advance in order to rescue their tariff bill.

The amendment's ratification exhibited similar regional dynamics to the Senate debates of 1909. The Democratic, mostly agricultural states of the South and West were among the first to ratify. Weisman notes that the strongest opposition "came from states

[441] *Ibid.,* p. 4405
[442] Blakey and Blakey, 1940, p. 62

with the wealthiest, most highly industrialized and most urbanized populations," typically the traditional protectionist constituencies of the northeast.[443] Connecticut and Rhode Island rejected the measure outright as expected, and Pennsylvania chose simply not to even consider it. The lone western opposition came from Utah owing to the political machinery of protection stalwart Reed Smoot, the senator of later tariff infamy from the act that bears his name.[444] Other northeastern states showed reluctance and in some cases only acted after the Republicans suffered electoral losses there in 1910 and 1912. In Massachusetts the committee process bottled up the measure for several years by recommending no action, though that state finally relented and ratified in 1913. A similar event happened in New Jersey until a Democratic landslide swept the state in the 1910 election. The fellow northeastern states of Vermont and New Hampshire were also latecomers to the amendment, being among the last two to ratify.[445]

Table 5.2-A displays the order of each state vote, also illustrating that ratification came in three distinct waves. The first began almost immediately after the amendment was presented for approval in 1909 and lasted until the late summer recesses of the 1910 legislative sessions. Of the 9 ratifications in this period, all save Illinois sat below the Mason-Dixon Line, where the tariff reform argument had its strongest appeal.

[443] Weisman, 2002. p. 253
[444] Like many Republicans Senator Smoot later claimed to support the income tax in public as it neared ratification, though Aldrich had consistently counted him among the protectionist loyalists during the 1909 debate.
[445] Blakey and Blakey, 1940, pp. 68-69; Weisman, 2002, pp. 263-4

Table 5.2-A, Income Tax Amendment Ratification

State	House Ratification	Senate Ratification	Date of Previous Rejection
1909-1910 (1st Wave)			
Alabama	8/2/1909	8/10/1909	
Illinois	3/1/1910	2/9/1910	
Kentucky	2/8/1910	2/9/1910	
South Carolina	2/16/1910	2/19/1910	
Mississippi	1/29/1910	3/7/1910	
Oklahoma	3/4/1910	3/9/1910	
Maryland	3/21/1910	4/8/1910	
Georgia	7/26/1910	7/11/1910	
Texas	8/16/1910	8/4/1910	
1911-1912 (2nd Wave)			
Montana	1/30/1911	1/10/1911	
Indiana	1/30/1911	1/17/1911	
Ohio	1/19/1911	1/18/1911	
Oregon	1/23/1911	1/18/1911	
Kansas	2/18/1911	1/19/1911	
California	1/31/1911	1/20/1911	
Idaho	1/20/1911	1/20/1911	
Washington	1/26/1911	1/26/1911	
Nevada	1/24/1911	1/31/1911	
Colorado	2/15/1911	2/7/1911	
Nebraska	2/1/1911	2/8/1911	
North Carolina	2/11/1911	2/11/1911	
North Dakota	1/24/1911	2/16/1911	
Iowa	2/24/1911	2/22/1911	
Michigan	1/24/1911	2/23/1911	
Missouri	3/16/1911	3/7/1911	
Maine	3/31/1911	3/30/1911	H&S - 3/28-30/1911
Tennessee	4/7/1911	4/6/1911	
Arkansas	4/22/1911	4/17/1911	S - 3/7/1911
New York	7/12/1911	4/19/1911	H - 5/25/1910
Wisconsin	2/9/1911	5/26/1911	
South Dakota	2/3/1912	2/3/1912	
Arizona	4/6/1912	4/3/1912	
Minnesota	6/6/1912	6/11/1912	
Louisiana	5/30/1912	6/28/1912	
1913 (3rd Wave)			
West Virginia	1/31/1913	1/29/1913	S - 2/16/1911
Delaware	2/3/1913	2/3/1913	
New Mexico	2/3/1913	2/3/1913	
Wyoming	2/3/1913	2/3/1913	
New Jersey	1/27/1913	2/4/1913	S - 3/20/1911
Vermont	2/19/1913	2/18/1913	H&S - 1/17/1911
New Hampshire	2/18/1913	2/19/1913	S - 3/23/1911
Massachusetts	3/4/1913	2/27/1913	H&S - 5/1910
Did Not Ratify			*Reason*

Virginia	Rejected	3/9/1910	H - 3/7/1910	States' Rights
Connecticut	Rejected	Rejected	H&S - 6-7/1911	GOP control
Florida	4/17/1911	No action		States' Rights
Pennsylvania	5/10/1911	No action		GOP control
Rhode Island	Rejected	Rejected	H&S - 4/1910	GOP control
Utah	Rejected	2/17/1911	H - 3/9/1911	GOP control

Source: Ratification dates from Blakey and Blakey, 1940, p. 69; Horace Greeley & Co., 1912. *The Tribune Almanac and Political Register.* New York: The Tribune Association, pp. 459-61

The states of this first wave showed little affinity for leftist progressivism even as they ranked near the bottom in terms of wealth and income. The South as a whole averaged half of the national per capita income in 1910, and lagged behind other regions in most measures of wealth.[446] Still, they were politically conservative and largely resistant to increased federal expenditures to the point that the income tax's promising revenue capabilities actually provided an unanticipated pretext for some to oppose the amendment. Southern critics of the amendment insisted it would open the door to intrusive and costly policies out of Washington and "allow federal tax collectors to ravage the South."[447] When the income tax carried in the South (and it eventually won out in every state of the region save for Florida and Virginia), it almost always did so on the prospects of reforming the hated tariff.

One of the most illustrative, not to mention bizarre, displays of southern conservatism occurred in Virginia, where the ratification vote pitted the region's traditional anti-tariff campaigners against a virulent strain of anti-Washington states rights rhetoric. Virginia was home to Senator Daniel, had been sympathetic to the income tax during the 1909 debate, and followed similar economic and voting patterns as most of

[446] John D. Buenker, 1981. "The Ratification of the Federal Income Tax Amendment." *Cato Journal* Vol. 1-1, p. 200
[447] *Ibid*., p. 204

the other southern states that quickly ratified the amendment during the first wave. It was almost universally thought that Virginia would follow suit and give its approval with ease. The *Washington Post* reported with confidence in early 1910 that "Virginia will be one of the first states in the Union to act on this matter" after the Virginia Assembly's federal relations committee recommended ratification to the full chamber.[448] The amendment received a public endorsement from the Governor and a quick vote of approval from the state Senate in February 1910. Most expected the House would quickly follow.

As a matter of formality that many including the *Post* reporter deemed unnecessary for passage, Virginia decided to use the occasion to hold a public presentation in favor of the amendment. The state assembly formally invited Senator Bailey to travel to Richmond from Washington and address the body on the propriety of the amendment.[449] The widely-attended speech presented four interrelated principles in support of the income tax amendment. As summarized by tax historians Blakey and Blakey (1940), the first two arguments described the income tax in general terms as a just revenue system while assuring the legislators that the Constitution still provided sufficient safeguards against its abuse through excessive taxation. He turned to the tariff next, asserting "that a federal tax was necessary because Republican extravagance could not otherwise be supported." Finally, he contended, "the Democratic Party could not reform the tariff unless aided by the revenue from a federal income tax."[450] Contemporary press reports also referenced Bailey's contention "that an income tax

[448] "Both Favor Income Tax," *Washington Post,* February 26, 1910
[449] *Journal of the House of Delegates of the State of Virginia*, 1910, p. 519
[450] Blakey and Blakey, 1940, p. 70

would make for tariff reduction."[451] It may be surmised that these accounts that the tariff issue was a central feature of Bailey's ratification argument and a conscious part of his strategy to finally break the Republican protective system, much as it had been during the Payne-Aldrich debate of the previous year.

Most of the legislature was taken by surprise when House of Delegates Speaker Richard E. Byrd rose in opposition to the amendment. Byrd made an impassioned speech in which he attacked the amendment as an intrusion upon states' rights in the area of taxation, likening it to a fiscal version of the carpetbagger rule that followed the Civil War. The argument was enough to sway several delegates and the House suddenly and unexpectedly rejected ratification. The Old Dominion's conservative anti-tariff campaigners were effectively routed by an appeal to an even more conservative disdain for federal power in general. As Byrd claimed in his speech,

> A hand from Washington will be stretched out and placed upon every man's business; the eye of the federal inspector will be in every man's counting house. —The law will of necessity have inquisitorial features, it will provide penalties, it will create complicated machinery. Under it men will be hailed into courts distant from their homes. Heavy fines imposed by distant and unfamiliar tribunals will constantly menace the taxpayer. An army of federal inspectors, spies and detectives will descend upon the state... do not hesitate to say that the adoption of this amendment will be such a surrender to imperialism that has not been seen since the Northern states in their blindness forced the fourteenth and fifteenth amendments upon the entire sisterhood of the Commonwealth.[452]

The anti-income tax forces saw a glimmer of hope in Virginia for a ratification fight that was rapidly turning against them. The home state of Senator Daniel, a leader in the

[451] "Virginia's Blow at Income Tax," *Washington Post,* March 9, 1910
[452] Buenker, 1981, p. 204

income tax fight, had rejected the amendment it produced, and surely the states' rights argument they made against it would appeal throughout the South.[453]

Such optimism was short-lived, and while the states' rights argument was repeated elsewhere, it was never as successful as in Virginia save in Florida. The Florida vote followed a reverse pattern with the House approving the measure and citing its anti-tariff potential, only to see a Senate states' rights faction bottle the measure in committee.[454]

Tax historian John D. Buenker attributes a variety of motives to southern supporters of ratification, including anti-northeastern sentiments, reaction against the intrusion of business interests into federal policy, strict loyalty to the Democratic Party, and even nascent southern populism that later came into its own in the 1920's and 30's.[455] Tariff reform provided the most consistent regional argument for southern support though, particularly during the first wave.

In Bailey's home state of Texas, the sponsor of the ratification resolution read excerpts from the senator's April 1909 speech into the legislative record. One newspaper declared that the amendment would mean that there was "no excuse for the tariff then." Another reminded readers that the income tax was born of the Payne-Aldrich tariff debate. "It was intended to help out the Government's revenues, and one effect of it was supposed to be that it would lower the amount of tariff taxes necessary to be imposed."[456]

In early 1910 the South Carolina legislature invited Bailey to present the case for

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[453] "Virginia's Blow at Income Tax," *Washington Post,* March 9, 1910
[454] Buenker, 1981, p. 209
[455] *Ibid.*, p. 207
[456] "Income Tax Law Report Favorable," *Galveston Daily News,* August 4, 1910; "Good Prospects for Income Tax," *Galveston Daily News,* April 24, 1911; "The Income Tax Amendment," *San Antonio Express News,* January 15, 1911.

the amendment, much as Virginia had done. The Texas senator utilized many of the same arguments as the Richmond speech. He railed against the redistributive tariff system and its minimal incidence upon the industrial northeast. As one paper reported, Bailey asserted "that the only means to raise the necessary revenue for the government, provided the tariff decreased under a future democratic administration would be the income tax."[457] The amendment was ratified by South Carolina shortly thereafter.

In many states the tariff issue was inseparable from the distribution of the federal tax burden. One Georgia legislator confidently predicted that the income tax would place the expenses of the government on those who resided "north of the Mason and Dixon line."[458] This transfer of tax incidence would undermine the basis of the tariff system though, which was redistributive in itself toward the beneficiaries of its high rates. This was as much an affront to the proper role of government in their minds as any spending extravagance to emerge from Washington. One Georgia legislator predicted the income tax would "lower the tariff and make for economy in the management of the national government." Another put the issue more bluntly. The amendment would provide "a club to beat down high protective tariff rates."[459]

Excepting Illinois, the first wave of ratification generally reflected the amendment's natural constituencies in the Democratic agricultural South. The second wave, lasting from January 1911 until the summer legislative sessions of 1912, was in part continuation of the previous year and part byproduct of an electoral shift. Defeating

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[457] "Bailey on Income Tax," *Galveston Daily News,* February 16, 1910; "Bailey Makes Plea for Income Tax," *Atlanta Constitution,* February 16, 1910.
[458] "Income Tax Bill has Right of Way," *Atlanta Constitution,* July 12, 1910.
[459] "Georgia Favors Income Tax," *Atlanta Constitution,* July 13, 1910; "Senate votes for Income Tax," *Atlanta Constitution,* July 12, 1910.

the amendment at the ratification stage had always been a part of Aldrich's strategy when he permitted and supported a Senate vote on the matter. With 35 states necessary for ratification, the high tariff Republicans could afford their expected losses in the South and hope to thwart the effort elsewhere. As the *New York Times* observed not long after the measure was submitted to the states, "the tariff fight did not end with the adjournment of Congress" and would continue in the state legislatures where, they believed, the tide was against ratification. The amendment's opponents confidently predicted in 1909 that at least 9 northeastern states stood opposed out of 46 in the union, leaving Aldrich needing only three others.[460]

The amendment failed a crucial early test in New York during the first wave of ratification when Governor Charles Evans Hughes announced his opposition and successfully thwarted the measure in the legislature. Far more so than Virginia, the New York vote was seen as a bellwether for the amendment and a demonstration of Republican political strength. "The outcome is believed to be exactly what was foreseen by Senator Aldrich last summer," noted a commentator to the *Chicago Tribune.* The amendment was his "flank move" to preserve the tariff system, and now he exhibited "undisguised satisfaction" at halting its advance through the ratification process.[461] The *New York Times* denounced this stratagem in an editorial while curiously approving of its result, noting a strong objection "not to the substance of the amendment, but to the manner in which it was brought into being."

> It was originally proposed to the Senate of the United States to save Mr. Aldrich and his associates from defeat on the revision of the tariff. To avoid this the amendment, together with the

[460] "Menace to Income Tax," *Washington Post,* July 9, 1909
[461] "Income Tax and Aldrich Trap?" *Chicago Tribune,* January 7, 1910

> corporation tax, was contrived. It was not a nice device – to use no stronger term – and in the exigency it was carried out in a bungling fashion. If we are to have the Constitution changed in this matter, it certainly would be better to have it done decently and in order.[462]

The election of 1910 placed the first chink in Aldrich's armor when the tariff act he guided through the previous year provoked a voter backlash not unlike the McKinley bill of two decades prior. Voters handed the U.S. House of Representatives to the Democrats and swept them into many state offices for the first time in several decades. In other cases, the electoral message resonated sufficiently with surviving Republicans to bring them on board with ratification.

As Table 5.2-A illustrates, the second wave of ratification consisted of (1) the remainder of the South, (2) Midwestern and western states that had supported the Democratic income tax movement or the Republican insurgency in 1909, and (3) New York, the Republicans' celebrated bulwark against ratification in 1910, which was sufficiently shaken by the election that it moved to reconsider and ratify in July 1911.

As always, the tariff issue hovered over the ratification process. "[T]he effect of the adoption of the income tax amendment," noted the *Christian Science Monitor* in 1911, "…will have a very strong bearing upon future tariff legislation," and indeed it was intended to be so. The newspaper's coverage of ratification is illustrative of the tariff issue's centrality and bears noting:

> As Senator Brown puts it, the argument that duties cannot be reduced or abolished because the treasury will need the revenue will no longer be effective…The treasury officials admit, he says, that the tax on incomes will produce $70,000,000 a year. Tariff revisionists, of course, will find in an income increase approximating even the latter figure a powerful argument in favor of the

[462] "The Rejected Amendment," *New York Times,* May 5, 1910

> reduction of the duties that are now levied, ostensibly with the purpose of enabling the government to meet its running expenses.[463]

Foreshadowing events that were soon to come, the paper cautioned against too much optimism on the part of tariff reformers. Surplus revenue, it continued, was no guarantee for action, even though there had been "a very pronounced change of popular sentiment against the protective tariff recently."[464]

Notably, supporters and critics of the amendment alike recognized its far reaching implications for the tariff. As one Missouri newspaper opined, "the strongest entrenchment of the tariff has been its pleaded necessity as a revenue producer. The strength of this plea against a fair tariff revision will be lessened – or rather destroyed" by the income tax. In Utah, home of Senator Smoot and the only western state to reject the amendment, a commentator reached virtually identical conclusions. "With the right to levy an income tax the labors of the Democratic tariff framers will be lightened. They will not have to give so much thought to their cuts in the tariff duties and the enactment of tariff legislation will be facilitated."[465]

Senator Brown of Nebraska, the amendment's official sponsor and a moderate Republican insurgent, was especially keen to his own party's fears about the amendment and its tariff implications. Turning the Democrat's argument on its head and inadvertently, if presciently, anticipating things to come, he assured his colleagues that their fears were misplaced:

> Will anyone suggest that a tariff law was ever passed except by the votes of those interested

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[463] "Thirty States for Income Tax," *Christian Science Monitor,* April 25, 1911
[464] *Ibid*.
[465] "Dealing Above the Table," *Moberly Weekly Monitor,* April 28, 1911; "Income Tax is on Programme of Democrats," *Salt Lake Tribune,* November 28, 1912.

> primarily in its effect on the industries locally at home, and, secondarily, in its effect on industries away from home? How frequently, indeed, do we find Members of Congress applying the same economic principle differently as the point of application may be near-by or far away from the industries of the people who elected them. This habit of legislators to remember their own localities and faithfully protect their interests against encroachment is deeply rooted everywhere. It has the moral support of every community and is as certain to control the votes of legislators in the future as it has in the past. No State will be desirous of having an income tax passed which could injure the State…[466]

To Brown, the very same political economy factors that spawned the revolt against Payne-Aldrich would, in effect, preserve the tariff after the income tax.

If the 1910 election showed the weaknesses of high tariff Republicanism, the 1912 election proved to be its complete undoing. This event, more than any other, placed ratification within striking distance and initiated the third wave. As found in Table 5.2-A, more than half of the ratifications in the third wave came from northeastern states that previously resisted the amendment – Vermont, New Hampshire, Massachusetts, and New Jersey. The 1912 election was the primary factor in this switch, and it too turned heavily on the tariff issue.

By late 1912 the Republican Party was in shambles, having suffered dual blows from a voter backlash against the excesses of the Payne-Aldrich bill and a larger split in the party than Aldrich could have ever imagined when Theodore Roosevelt mounted a third-party challenge to Taft's reelection. As Taussig noted, the Republican electoral fortunes 1912 were an unmistakable product of a mishandled tariff bill in 1909. The Republicans' "stubborn maintenance of a rigid protective policy" proved to be their

[466] Norris Brown. "Shall the Income Tax Amendment Be Ratified?" *The Editorial Review,* April 1910.

undoing. While the lack of meaningful change in the protective system was cause in itself for complaint, the "mode in which the subject was dealt with" caused the greatest trouble for its supporters. The Senate deal smacked of cronyism and a closed, exclusionary legislative process that, when coupled with economic troubles and rising prices, made high tariff protectionism a target of electoral outrage.[467]

As of January 1913 the Democrats controlled the White House and both chambers of Congress, with the 16th Amendment only a few states away from attaining ratification as the third wave of states began their consideration or, in some cases, reconsideration. The incoming Congress plainly had tariff reform on its mind. The previous year, newly empowered House Democrats led by Clark and Hull having attempted to set the ball rolling on an income tax system coupled with a bill to dismantle the Payne-Aldrich tariff's protective rates on sugar.[468] They succumbed to Senate opposition, but the recent election had given them control of that chamber too and the incoming president, Woodrow Wilson, had promised during his campaign to push forward on both measures.

The income tax amendment and the 1912 campaign provided a forum for tariff critics to revive the old Revenue Clause constitutional argument and incorporate it into their arsenal against the protective tariff. In 1911 Edgar H. Farrar, president of the American Bar Association, made the tariff the subject of a speech at the Willard Hotel in Washington, D.C: "It was one of the greatest calamities in the history of the country when the Supreme Court declared the income tax unconstitutional." He went on to advocate the abolition of all customs houses except to collect revenue on luxury items

[467] Taussig, 1931, pp. 407, 409-12
[468] "That Income Tax and Free Sugar to Cause Fight," *Atlanta Constitution,* March 3, 1912.

such as liquor and cigars. This policy, he contended, should be enacted gradually along with the income tax amendment, as "a vast business has been built up" around the protective system.[469]

As had been the case in 1909, the real driving force behind the amendment's relevance in the 1912 campaign was not the progressive Republican insurgents, however sympathetic they may have been, but the Democratic Party's push for tariff reform. Few Democrats were more vocal on that issue than Thomas R. Marshall, the governor of Indiana. Marshall was an early contender for his party's presidential nod and staked his campaign almost entirely on tariff reform. He declared it "the issue upon which the National election must be decided." The tariff was the first of "but two issues" that defined his federal policy, the other being eliminating waste from government expenditures. In speech after speech, Marshall asserted that the only constitutional tariff was the "tariff for revenue" alone.[470] He rose to national prominence in 1910 by advocating what he designated the "horizontal tariff" to coincide with the fiscal system overhaul that the Democrats intended to carry out should they take Congress and secure the 16th Amendment's ratification. The plan would reduce all duties over time on a designated percentage-based schedule until reaching a fixed uniform rate, effectively instituting the impost plan that the framers had intended in 1787.[471]

Aided by his outspoken role in the tariff debate, Marshall was tapped to be Woodrow Wilson's running mate and won election as Vice President in 1912. He

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[469] "Chats of Visitors to the Capital," *Washington Post,* July 4, 1911.
[470] "Gov. Marshall puts tariff issue first," *New York Times,* July 26, 1912; "Gov. Marshall," *Los Angeles Times,* January 23, 1910.
[471] "Horizontal Tariff," *Los Angeles Times,* January 26, 1910; "A Unique Tariff Idea," *Washington Post,* February 9, 1910.

continued to hit hard on the tariff theme while making a whirlwind campaign tour across the country. At a campaign stop in Maine, he queried "Why must the consumer always be the goat?" Condemning both the high tariff Republicans and the progressive insurgents by name for their respective embrace of manufacturer and socialist interests, he proclaimed the "democratic theory of the tariff for revenue is the only defensible theory" of taxation.[472] In another speech Marshall labeled the tariff a "slush fund" for vested interests.[473] It was not an abstract concept of greed that bred the hated industrial trusts, he told an audience in Illinois, but rather the government's own doctrine of high protection. "The tariff schedules of this country…have produced the trusts and monopolies, having been enacted by a species of logrolling and the never-ending changes in the schedules" for the purpose of "helping one man and harming another without right." The solution to the economic grievances that were manifesting themselves in the political sphere was to be found in having "business divorced from the tinkering of government" that was the protective tariff policy.[474]

The fortunes of the income tax amendment in the state legislatures rose directly with those of the Democratic Party at the polls. With the measure on the verge of ratification, its implications for the tariff were acknowledged by protectionists and free traders alike. The *Washington Post* noted the race to the finish line as several states that had recently flipped Democratic in the previous year's election were in the process of ratifying the amendment. "The occasion for the hurry-up tactics is owing to the prospective reduction in the tariff and consequent loss of revenue from that

[472] "Why is consumer always the goat?" *Atlanta Constitution,* August 27, 1912.
[473] "Tariff breeds slush funds," *Atlanta Constitution,* August 29, 1912
[474] "Tariff virus in our system," *Atlanta Constitution,* September 19, 1912

source…Tentatively the bill providing for an income tax to offset the deficit in customs is already in course of preparation."[475] Such was the expected result of the previous two election cycles, where the Democrats had made tariff reform a centerpiece of their agenda.

The 1912 Democratic Platform devoted more ink to the tariff than any other issue. It opened with a statement reviving the long-dormant Revenue Clause argument, and indicating their intention of making a constitutional stand against protection:

> We declare it to be a fundamental principle of the Democratic party that the Federal government, under the Constitution, has no right or power to impose or collect tariff duties, except for the purpose of revenue, and we demand that the collection of such taxes shall be limited to the necessities of government honestly and economically administered.

It was not social or class tension, but the "high Republican tariff" that was "the principal cause of the unequal distribution of wealth" in the United States. The lowest paid industries, they noted, were among the most heavily protected, and the tariff's incidence was fundamentally redistributive away from the farmer and laborer in both its revenue and protective functions. They shed the cautious gradualism of past tariff advocacy and declared for an "immediate downward revision" of the tariff schedule, including the transfer of several products entirely onto the free list. "American wages," they concluded, "are established by competitive conditions, and not by the tariff."[476]

The tariff was also to be the first policy broached by the incoming administration. On the heel of his inauguration Woodrow Wilson convened a joint session of Congress, which he opened with the first address to that body delivered by a president in person in

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[475] "Next Door to Ratification," *Washington Post,* February 3, 1913.
[476] Democratic Party Platform of 1912, American Presidency Project, University of California Santa Barbara http://www.presidency.ucsb.edu/showplatforms.php?platindex=D1912, Accessed April 10, 2009

over a century:

> We long ago passed beyond the modest notion of "protecting" the industries of the country and moved boldly forward to the idea that they were entitled to the direct patronage of the Government. For a long time – a time so long that the men now active in public policy hardly remember the conditions that preceded it – we have sought in our tariff schedules to give each group of manufacturers or producers what they themselves thought that they needed in order to maintain a practically exclusive market as against the rest of the world.[477]

Wilson concluded with a call to restructure the tariff schedule in a way that would "build up trade." Led by now-Speaker Clark, Ways and Means Chairman Oscar Underwood of Alabama, and Hull, the Democrats "were able to march straight to their goal."[478]

As anticipated, the Democrats' tariff reform bill also depended upon the 16th amendment's ratification, finally attained in early February 1913. As one tax historian notes, "the question of the income tax was almost inextricably bound up with the issue of tariff revision and the attendant need for additional revenue" just as it had been in 1909. The promised tariff reform was expected to cut into the treasury by $70,000,000, and the income tax would serve as a complimentary measure to prevent a deficit.[479] Essential to understanding the income tax movement's relation to trade is the fact that the Democrats stood practically alone in taking this position. Bailey's "dual proposition" of the income tax and tariff reform was a distinctly Democratic policy and it was the one that carried the day when both were enacted in 1913.

By contrast, the Republicans in 1912 made tepid and insincere overtures to future tariff reform while defending the essential character of the existing system. More

[477] Wilson, W. 1913. "Message to Congress." *The New York Times,* 8 April.
[478] Taussig, 1931. p. 416
[479] Buenker, 1985, pp. 355-6

interesting was the platform of Roosevelt's "Bull Moose" or Progressive Party, which siphoned most of its support from the Republican Party's liberal insurgency. They stated multiple grievances with the corrupt process that bore the Payne-Aldrich schedule and called for its downward revision to remove those influences where deemed in "excess." They also endorsed the income tax amendment on the principles of tax equity and wealth redistribution. On trade, however, the Progressives unequivocally declared their support for "a protective tariff which shall equalize conditions of competition between the United States and foreign countries, both for the farmer and the manufacturer, and which shall maintain for labor an adequate standard of living." "The Democratic Party," their platform continued, "is committed to the destruction of the protective system through a tariff for revenue only – a policy which would inevitably produce widespread industrial and commercial disaster."[480] This declaration marked the divide between the erstwhile Republican insurgency and the Democrats, significantly illustrating that the latter party (and also the prime mover of both aspects of the 1913 reforms) cannot simply be lumped into the progressive social reform paradigm.

Neither does a review of the 1913 legislation support such a reading. Taussig observed the "remarkable party cohesion" in the Democratic caucus and credited it with producing the first meaningful liberalization of the tariff schedule since before the Civil War.[481] The seniority system in both chambers also favored southern members, few of whom were keen on either high taxes or federal expenditures and all of whom came from states that had traditionally aligned with the anti-tariff movement for over a century. As

[480] Progressive Party Platform of 1912, American Presidency Project, University of California Santa Barbara http://www.presidency.ucsb.edu/ws/index.php?pid=29617, Accessed April 17, 2009.
[481] Taussig, 1931, p. 416

Tax historian John D. Buenker notes, "for most of these [southern congressmen and senators], tariff revision was the crucial issue and they were concerned not to let potential arguments over income tax rates threaten party unity." Many were "economic conservatives" with a "deep-seated distaste for federal tax collections of any sort." To these members, the income tax was a blow to the industrial northeastern Republicans "and a justification for tariff reduction, but they had no intention of permitting a drastic assault upon wealth or raising more revenue than was necessary" to offset the tariff reductions. The final income tax bill included some extremely moderate redistributive characteristics, though these had been included almost entirely to court the small but vocal progressive Republican insurgency.[482]

The guiding principles of the 1913 legislation were neither overly progressive nor particularly new. Rather, they turned to the antebellum peak of the U.S. free trade movement where the tariff was concerned. From their electoral upset in 1910 to the passage of the Underwood Tariff in October 1913, the Democrats repeatedly enlisted the name of the Walker Tariff of 1846 to their cause. Upon taking the reigns of Ways and Means from Payne in 1911, Underwood immediately announced his intention to seek a tariff for "revenue only" and pointed to Robert Walker's schedule as a model of this policy.[483] The protectionist press recoiled in horror, dredging out stories of the economic ruin it supposedly wrought some 65 years prior, while the free traders asserted that dire predictions made by the adversaries of the 1846 act were unfounded then, as well as in the present day. One protectionist paper accused the Wilson administration of attempting

[482] Buenker, 1985, pp. 362-4
[483] John Corrigan, Jr. "Oscar Underwood, Democratic Leader, tells what should be done to tariff," *Atlanta Constitution,* March 5, 1911

to "practically re-enact" the Walker bill and bring about a "reign of panic and bankruptcy…God send us safe deliverance."[484]

Marshall called upon the Walker Tariff many times over on the campaign trail. After the election the new Vice President suggested it as a model to guide the tariff reforms. As one newspaper observed, the Democratic Party "has had the Walker tariff constantly in mind" while writing their revision. This much was later admitted on the Senate floor by Furnifold M. Simmons of North Carolina, the cosponsor of the Underwood bill and new chairman of the Finance Committee.[485] As it happened, the tariff reformers fell short of their 1846 model and retained some protected categories, albeit at lower rates that were usually consistent with the Democrats' stated goal of gradual reductions. They still restored many of Walker's innovative features to the tariff schedule for the first time in over 50 years. In addition to overall reductions, many rates were converted to *ad valorem* and placed upon fixed schedule categories corresponding to each product – particularly on "Schedule C," the section encompassing metal manufactured goods, and "Schedule D," that pertaining to wood items.[486]

As to the revenue question, the income tax largely served its intended purpose and did so without any significant support from the Republicans – perhaps to be expected – or more pointedly, from the Republican "insurgency" and its breakaway "Progressive" third parties in the 1912 election. Democrats controlled 286 seats in the House, to 122 Republicans and 21 self-identified "Progressives" – a group consisting of ex-Republican

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[484] "What we may expect," *Los Angeles Times,* April 10, 1911; "The Walker Tariff," *Chicago Tribune,* September 30, 1911; "The Tariff of 1846," *Los Angeles Times,* August 1, 1913.
[485] "Walker Tariff Bill of 1846 Said to be the Ultimate Aim of Democratic Party," *Christian Science Monitor,* July 23, 1846; "Senators in heated debate on tariff bill," *Wall Street Journal,* August 25, 1913
[486] *United States Statutes At Large*. Washington, D.C.: Government Printing Office. 1913. Chapter 16.

insurgents who had either turned independent or run on the Bull Moose slate. Hull presented the income tax sections of the Underwood bill to the House chamber, stressing its comparatively equitable distribution of federal tax incidence versus the old protective system. He drew parallels between the proposal and the British income tax system, which had been in place since 1842 and supplanted much of the tariff's revenue functions there.[487] The high tariff wing of the GOP charged throughout the debate that the income tax amounted to "class legislation," though the Democrats retorted with the same answer they had used all along. As one representative from Tennessee pointed out, "They were never heard to complain, however, of the existing class legislation which taxes the hats, coats, and shirts of the masses almost 71 per cent."[488]

The discussion flowed freely from the Underwood bill's tariff features to its income tax and back again, with the Democratic leadership maintaining a remarkable degree of party unity. Taussig described Wilson's management of the bill behind the scenes as "brilliant," and Underwood an "able leader" from the floor.[489] Not all Democrats were completely content with their leadership. One representative from Connecticut chastised his party for "unintelligently" moving several goods to the free list. The change harmed a company in his district, which he openly identified as "one of the largest contributors to President Wilson's campaign fund" as if to justify retaining the protective rates. Underwood held firm though , and the tariff schedule he produced survived virtually all attempts to amend it.[490]

The Underwood bill, including both its tariff and income tax sections, passed the

[487] Blakey and Blakey, 1940. pp. 78-9.
[488] "Not a Dent Made in Tariff Measure," *Atlanta Constitution,* May 7, 1913.
[489] Taussig, 1931, p. 416
[490] "Not a Dent Made in Tariff Measure," *Atlanta Constitution,* May 7, 1913.

House with ease in early May 1913, with few questions "as to the desirability of an income tax and very little opposition…to any of the sections" beyond stylistic clarifications.[491] The press reported rumored grumblings among some Democrats over the income tax portion, but they did not manifest themselves in the vote. All but 5 Democrats in the House supported the measure, and all but 2 Republicans voted no. The self-identified "Progressive" faction also came down against the tariff and income tax measure, with 14 out of 21 siding with the Republicans. Of the remainder, 5 supported the bill and 3 were absent.[492]

The Senate took longer than the House to consider the bill, owing to less rigid party leadership and months spent considering amendments to individual rates. Taussig nevertheless reports approvingly that most of the successful Senate changes were "in the direction of lowering the House rates," and showed few of the "manipulations" that had plagued this chamber during past tariff revisions.[493]

Like the House, the Senate version of the bill combined the trade-liberalizing tariff schedule and the revenue-replenishing income tax into a single vote. All but two of the progressive GOP insurgents opposed this package and those who did support it – LaFollette and Miles Poindexter of Washington – continued to assault the Democratic majority on other grounds.[494] Of the Senate Democrats, only Louisiana's delegation voted no accounting to their objections over the sugar tariff reductions. The final bill was an imperfect attempt at complete trade liberalization, but it was a substantive reduction nonetheless. When all was said and done it exuded every appearance that the Democrats'

[491] Blakey and Blakey, 1940, p. 83
[492] "House Passes Tariff by Vote of 281 to 139," *Boston Globe,* May 9, 1913.
[493] Taussig, 1931. p. 417
[494] Buenker, 1985, p. 366; Blakey and Blakey, 1940, p. 91.

tariff reform strategy, over four years in the making since Bailey stated his "dual propositions" in the last round of the tariff battle, had borne its intended fruit. Free traders had finally broken the entrenched tariff system, and they did so by shifting the political and constitutional balance of the 126 year old revenue system with the income tax.

Observers of all stripes recognized the Underwood Tariff as an intentional realignment of fiscal and trade policy. In November 1913 Frank Taussig surveyed the liberalizing effects of the new tariff. "The income tax," he noted, is "expected to make up for loss in the customs revenue." He further acknowledged the political benefits behind a "temporary retention of the sugar duty" through the beginning of 1914, which "eases the process of fiscal rearrangement."[495] Writing in early 1914, Seligman compared the amendment to England's repeal of its protective Corn Laws, though in the American case the new income tax was intentionally enacted "to compensate for the loss of revenue" from the tariff system it supplanted.[496] Britain had stumbled its way through this process by trial and error between 1842, the adoption of its income tax, and 1846, when the protective Corn Laws were repealed. Roy G. Blakey, a University of Minnesota economist who would later write an acclaimed history of the 16th amendment's adoption and ratification, predicted future tariff reductions as the income tax policy became more developed. The new law was just a "first step in the introduction of a vast and more or less complex system."[497]

Similar sentiments were common in the academic literature of the time, where the new income tax was widely acknowledged as a revenue source and a solution that would

[495] Frank W. Taussig, 1913. "The Tariff Act of 1913." *Quarterly Journal of Economics,* Vol. 28-1, p. 8.
[496] Edwin R.A. Seligman, 1914. "The Federal Income Tax." *Political Science Quarterly,* Vol. 29-1, p. 1
[497] Roy G. Blakey. 1914. "The New Income Tax." *American Economic Review,* Vol. 4-1, p. 38

accompany liberalizations in the tariff system.[498] Most agreed that the new amendment would dramatically change the way that the United States financed its general government and conducted its foreign trade. They believed the transition would be gradual and incremental though, with the Underwood bill constituting the first of many similar reforms. The tumultuous two decades that actually followed were largely unseen in any prediction, scholarly or otherwise.

5.3 What Hath We Wrought?

> "The trust-making part of protective duties has an effect about which there is no uncertainty, and if the American people discover this fact, they will not have reached their goal, but the laborious route that leads to it will at least lie distinctly before them." – John Bates Clark, 1904[499]

The average rates of the Underwood Tariff dropped rapidly in the years following its adoption as its individual sections, some of them staggered in time, took full effect. In its three year lifespan the Payne-Aldrich Tariff consistently exceeded 40% on average for dutiable imports, continuing the same pattern of the previous 5 decades. Starting in 1913 the average rate declined by no less than 3% a year, and usually well above that, until reaching 16.4% in 1920, an all time low in American history since the beginning of reliable records in 1821 (Figure 2.1-A). Not even the brief "revenue tariff" period from

[498] Other examples include Henry Brookings Wallace, 1912. "A Balanced Tariff." *American Economic Review,* Vol. 2-3, pp. 568-575; H. Parker Willis, 1914. "The Tariff of 1913." *Journal of Political Economy,* Vol. 22-1, 2, & 3.
[499] John Bates Clark. 1904. "Monopoly and Tariff Reduction." *Political Science Quarterly,* Vol. 19-3, p. 386

1846-60 reached this level. The nation's transition to an income tax revenue system happened with equal haste, even surpassing that expected from an amendment intended by most to disperse the tax incidence across multiple sources. Between 1865 and 1913, tariffs consistently generated roughly 40% to 60% of the federal government's annual revenues. Between this same period from 1913 to 1920 this percentage dropped from over 40% to barely 4% (Figure 5.3-A).

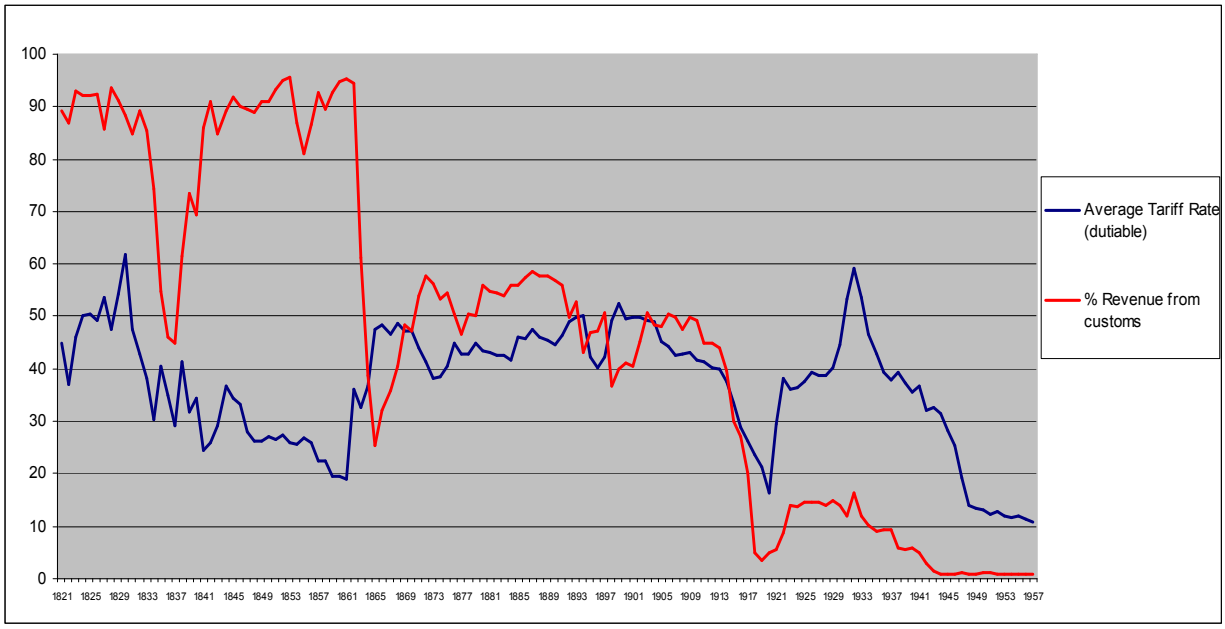

Figure 5.3-A, Customs Duties as a Source of Federal Revenue
Source: Census Bureau, 1960.

Figure 5.3-B displays the breathtaking speed by which the income tax came to supplant tariffs (and all other taxes) as the main source of federal revenue. The graph displays tariff revenue, alcohol and tobacco excise revenue, and total income tax revenue (consisting of personal income taxes, corporate income taxes, and estate taxes) as a

percentage of the total federal tax receipts for a given year. For purposes of comparison, the income tax revenue category includes the pre-*Pollock* income tax during the Civil War and the Taft corporations tax from the 1909 compromise, which effectively functioned as a transitional system to the income tax that was adopted with the Underwood Tariff. In this sense, the 16th amendment metaphorically opened the legal floodgate to income taxation, thus giving it clear constitutional sanction. The ensuing rise of the income tax coincides directly with the decline of these other two revenue systems, with the income tax actually attaining preeminence between 1916-17 and remaining there. Tariff revenue stagnated around 15% before declining continuously for the next several decades to its largely negligible present state. Excise taxes dropped rapidly as well, though they enjoyed an expected resurgence in 1932 with the repeal of prohibition.

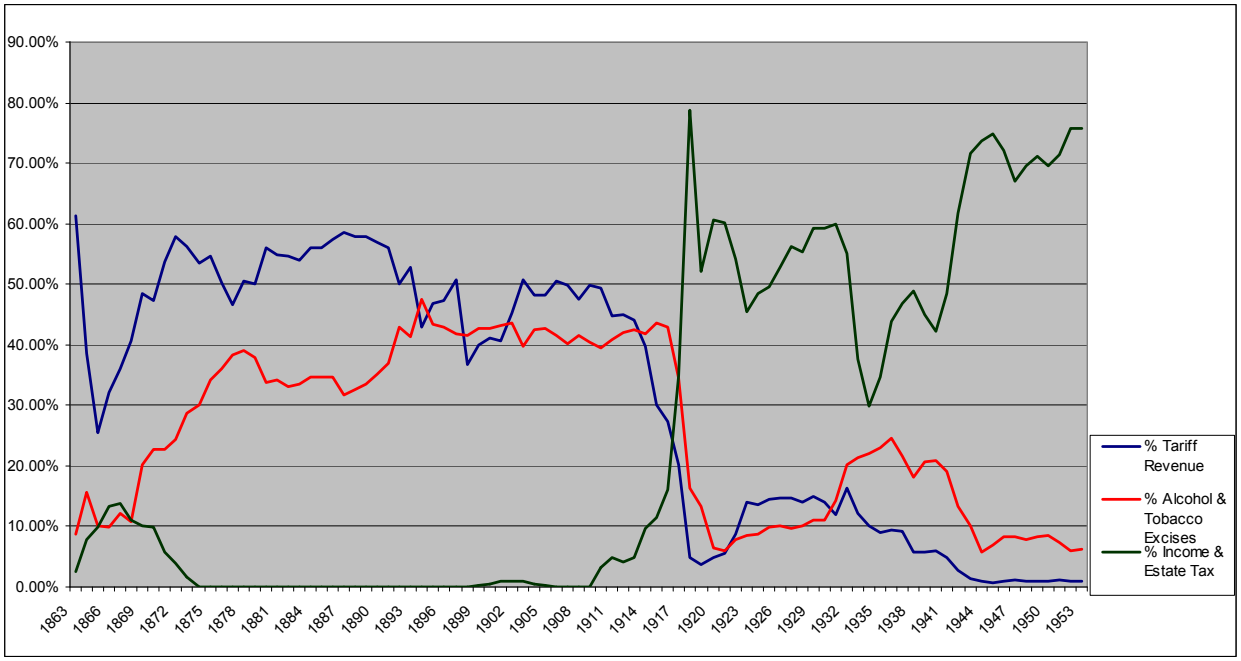

Figure 5.3-B: Sources of Federal Tax Revenue, 1863-1953
Source: Census Bureau, 1960. pp. 712-713; *Annual Report of the Commissioner of Internal Revenue*, 1863-1925. Washington, D.C.: Government Printing Office.

For all of its reputation, the Underwood Tariff did not radically liberalize U.S. policy to a state of free trade. It simply initiated the first significant downward reversal of rates than had been maintained for over half a century. As Taussig notes, it "made very radical changes from those previously on the statute book," though most actual reductions were moderate and in some cases "nominal."[500] Its duration was not to last either, and in 1920 – the same year that the average rate hit its historic low – the Republican Party recaptured Congress and the White House and renewed their push to restore the protective rates of Payne-Aldrich.

The Republican Party fought the Underwood Tariff from its inception and denounced it in their 1916 and 1920 platforms. So did most of the economic beneficiaries of protection. In 1914, less than a year from the tariff revision, the American Protective Tariff League published and widely disseminated a pamphlet declaring the Underwood law a complete failure and predicting impeding economic ruin.[501] When that ruin never came, they answered that the economy survived in spite of its laws because of World War I, and the windfall it provided to American industry and agriculture alike as American goods were exported to war-ravaged Europe. From a practical angle the war served to obscure the politics of the tariff and effectively prevented any objective analysis of its results. When Republicans began their push for an upward movement on the tariff schedule in 1919 the Democrats had little more to go by than the same theoretical arguments they used to justify the Underwood reductions. "The experiment of 1913," notes Taussig, had proven "quite inconclusive" in providing evidence of the economic

[500] Taussig, 1931, p. 433
[501] *The Protective Tariff Cyclopedia: the Underwood and Payne-Aldrich Laws compared, giving every rate of duty in both laws.* New York: the American Protective Tariff League, 1914.

effects of trade liberalization, as it applied to a world economy under the heavy distortive effects of a war.[502] Consequently, the Democrats had little quantifiable data to illustrate the promised self-evident vindication of their policy, and the Republicans simply resumed their prior talking points of high tariff advocacy.

There is much evidence that the tariff issue cut to the core of the Republican Party at this time. Tariff policy was overshadowed by the controversial League of Nations component of the Treaty of Paris during much of the campaign, but it formed the basis of the Republican response to the post-war economic recession along with a push to simplify the income tax. This latter revenue system had grown to include an unprecedented 67% marginal tax rate for the uppermost bracket in 1918 to fund the war effort, even shocking some prominent income tax supporters such as Seligman.[503] Shortly after the election the chairman of the Republican National Committee remarked that "Protection has always been a fundamental Republican doctrine" and claimed the ballot box results as a vindication of that policy. An upward revision of the tariff schedule thus became the fulfillment "of the just expectations of the American people relative to the enactment of a Republican Protective Tariff law."[504]

Popular pressure for restoring a protective tariff was far from what the RNC claimed though, and it only manifested itself on the Republican side of the ticket. The evidence is equally strong that the Democrats considered the tariff issue settled and paid it little further attention than to reaffirm their continued support of the status quo. "Mention tariff to a Democratic politician and he will say it is no longer an issue, that it

[502] Taussig, 1931, pp. 448-9
[503] Weisman, 2002, p. 328
[504] "Chairman Adams contrasts Republican and Democratic Platforms." *The American Economist,* July 14, 1922.

passed into desuetude in 1914," quipped one protectionist editorial page during the campaign.[505] True to this observation, 1920 Democratic nominee James M. Cox intentionally avoided the issue on the campaign trail and called it a diversion by the Warren G. Harding camp to obscure the League of Nations controversy. As he told one paper asking for his tariff position:

> I have sounded out the people wherever I have gone, and I am sure that they are not interested in the tariff and other matters over which we have no control. We don't mean to talk tariff and other vague matters, but to discuss issues the people are interested in. We want the affairs of the world readjusted. We want the cost of living readjusted. We want commerce restored. We want all nations to set their houses in order and to meet their national financial obligations.[506]

The postwar financial situation had created a perfect storm for tariff politics though, and by 1919 some were wondering if even Wilson might back an upward revision of the tariff schedule to capture a small amount of additional revenue in the face of a mounting deficit. The Republican strategy was in many ways the reverse of the Democrats in 1913 – reform the income tax system by repealing its increasingly unpopular graduated wartime rates and use the opportunity to initiate a general restructuring of the federal tax system including the tariff schedule.[507] Added to the mix was a sudden reversal of the traditional anti-tariff attitudes of the agricultural west after the prices of corn, wheat, wool, meat, and sugar bottomed out with the resumption of postwar trade. Egged on by the industrial northeast, which was prepared to offer them "*carte blanche* to fix as they pleased the duties on their products," the farmers of these states unexpectedly softened toward protection. Logrolling triumphed yet again, and the manufacturing interests

[505] "Need of Tariff Protection," *Los Angelis Times,* January 6, 1920.
[506] "Governor Cox to Ignore Tariff," *Christian Science Monitor,* August 20, 1920
[507] "Government is Facing Deficit," *Los Angeles Times,* October 8, 1919

obtained their own desired rates in return.[508]

The result was the Fordney-McCumber Tariff of 1922. In this act, according to Taussig, the protective doctrine "was carried further than ever before."[509] Save for the Smoot-Hawley Tariff that replaced it, few other pieces of tariff legislation have drawn as much contempt as Fordney-McCumber. Taussig openly scorned the law and suggested it compared unfavorably to the worst excesses of Payne-Aldrich. Blakey and Blakey quipped that it took the "statesmanship" of Hamilton and "reduced [it] to the smell of pork."[510]

Fordney-McCumber's height was nothing out of the ordinary for protective measures. The average rate on dutiable goods approached its stable pre-income tax level, falling just under 40%. The tariff's scope was much broader though and now extended protection to all manner of agricultural goods in addition to the traditional industrial manufactures. Of equal significance, the government now obtained the vast majority of its tax receipts from another source. Revenue was no longer a part of the tariff politics equation. In real dollar amounts, pre-1913 and post-1922 tariff receipts were closely comparable.[511] The difference in revenue origins came from an explosion in receipts from other sources. Individual and corporate income taxes were at the center of this change and provided 46% of federal revenues by 1925.[512]

The congressional debates over Fordney-McCumber offer few significant

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[508] Taussig, 1931, p. 453
[509] *Ibid*., p. 488
[510] Blakey and Blakey, 1940, p. v.
[511] Customs generated $318,891,000 in 1913, the last year under the old protective system. In 1925 with protection restored, they generated $547,561,000, or roughly $310 million in real term 1913 dollars using a Consumer Price Index base for comparison.
[512] Census Bureau, 1960. p. 713

revelations beyond providing another demonstration of tariff legislation obtained by logrolling. Compared to the pre-1913 bills it was business as usual, though Congress included an additional feature to assist in tariff administration. They established the U.S. Tariff Commission, the predecessor of the current International Trade Commission, and empowered the president to make adjustments in certain tariff rates based on "scientific" principles in accordance with changing trade patterns, though this too was almost always used to raise rates in response to "unfair" trading practices.[513] Furthermore, for the first time in American history Congress established a tariff for protection in its own right, completely free of the revenue system that was used to justify its constitutional existence since 1789.

When evaluated in light of its origin as the Democrats' answer to the tariff problem, the income tax failed to meet even the most basic expectations of its proponents beyond a temporary relief from high protectionism. The income tax's restraining effects upon the federal budget, as predicted by Hull and many other Democrats in their advocacy of the policy, appear to have been non-existent and its further use as a revenue policy continued largely independent of the tariff system. Prior to the 16th Amendment, Congress' revenue collection options were substantially constrained by the Capitations Clause. The dominance of tariffs in federal revenue policy before 1913 was a direct consequence of this prohibition, even after antebellum strict constructions of the Revenue Clause fell by the wayside. Prior to the amendment the politics of tariff formation guaranteed the presence of two competing sources of interest group pressure, even if they

[513] An anti-dumping statute, adopted in conjunction with Fordney-McCumber and utilizing this feature, remained in effect until the Kennedy Round of the GATT and provided the direct legislative predecessor to the modern anti-dumping and countervailing duty procedures of the USITC.

were mismatched at different times in size and clout. The tariff naturally attracted rent seekers engaged in the production of import-competing goods. But its *de facto* primacy as the government's main, and at times only, significant source of supplying the federal treasury also ensured that its revenue capacity, and the pressure of associated expenditure-seeking interests, were never far from the minds of most politicians.

The tariff's dual rent feature had long been a recognized component of its politics to the point that even ideological protectionists – the Hamiltons and Clays, the McKinleys and Aldriches – would gasp at the thought of completely isolating the country into tax-prohibitive autarky. The government's revenue had to come from somewhere, and the Constitution provided precious few viable options to collect it outside of the taxation of imports. As a result, revenue capacity was a pronounced feature of virtually every tariff debate of the 19th century, even those where it took a back seat to protectionist motives. The recurring recognition of the Laffer Curve principle by all sides of the debate bears this observation out, dating at least to Calhoun in 1842 and Walker in 1846. The tariff battles of 1888 and 1909 ranked it the central question of political economy outside of the policy dispute between free trade and protection itself.

In each case the great political disagreement revolved around the actual location of items on the tariff schedule in relation to their revenue-maximizing point of t*, though also often in the way that was most convenient to a particular side's policy preferences. After the Civil War the Republicans generally believed most rates fell to the right of this point, and on the curve's upper half, consistent with the expectations of high protectionism. They accordingly answered most budgetary surpluses with a push to raise the rates, also affording higher protection. In times of deficit, as with 1909, they opted for

a restructuring of the tariff schedule, nominally presented as a reduction through its reorganization of certain "revenue" categories. The Democrats, being more disposed to the revenue tariff, viewed t* according to the circumstances of a given tariff battle, including with some self-contradiction.[514] It is important to note that these positions manifested in the talking points of each party irrespective of the actual revenue maximizing rates, but rather in accordance with where each side *perceived* them to be. Though politically driven and of questionable accuracy, the claims of the two parties clearly illustrate the constraining effect that the revenue question placed around the debate between protection and free trade.

The amendment process expectedly brought consequences of a constitutional proportion, though not all effects appeared as intended or predicted. In providing a clear and explicit constitutional sanction for the income tax, the 16th Amendment drastically altered the existing relationship between the tariff schedule and the politics of revenue generation. The amendment effectively severed the two issues from each other with consequences that were witnessed in the 1910's and 20's. At first, the removal of a revenue need from the tariff system also deprived it of the political support that had been necessary to sustain the protective system for decades, and this was precisely what the income tax's main Democratic sponsors desired and its Republican critics feared. In 1913 on the eve of ratification an unnamed congressman summarized this widespread belief about the amendment's political economy. The new income tax "will bring in so great a

[514] The inconsistencies in the Democrats' position seem to have mattered little, though each iteration of the argument appeared many years apart. For example, a Laffer Curve argument was enlisted by Calhoun and Walker in the 1840's to predict (and later obtain) increased revenue by reducing the rates of an earlier protective Whig tariff schedule. In 1888 the reverse of this argument became a convenient answer to mounting budget surpluses. In 1909, a tariff reduction again became a means of resolving deficits albeit with an acknowledged corollary component in the income tax.

revenue that it will force us to cut the Tariff far deeper than we should. We have no answer now to those who demand Free Trade."[515]

Something clearly went amiss though after 1922, as the protective system returned with a vengeance and did so in its own right. Over a century of prior tariff schedules came into being as tax laws, presented under the claimed cover of the Revenue Clause and advanced through Congress as revenue bills with protective features, even when those features were dominant. Fordney-McCumber represented a new type of tariff where a "scientific" form of protection was the main feature, and revenue had little if anything to do with the rates. The income tax had indeed brought in "so great a revenue" as to render the older customs system irrelevant to fiscal policy questions, but the consequence was not necessarily a downward push on the tariff rates.

Could it be that Bailey and the Democrats, who placed so much faith in the income tax as an answer to their tariff difficulties, miscalculated? Or that the income tax, denounced by Aldrich's high tariff Republicans as the greatest threat protection had ever seen, was by sheer accident its greatest benefit? The Fordney-McCumber Tariff and subsequent drive to the politically intractable Smoot-Hawley bill are suggestive of this answer.

Tax historians, even those sympathetic to free trade, have paid surprisingly little attention to Fordney-McCumber at a constitutional level. The early and detail-rich study of income taxation by Blakey and Blakey (1940) concentrates upon how the tariff and income tax issues were separated from each other as the Harding administration prioritized its tax agenda. In their narrative the two subjects interacted only so far as they

[515] "The Way is Open to Free Trade," *The American Economist,* February 21, 1913.

competed with each other for time on the legislative calendar. Harding and most Republicans pressed for an income tax cut first before taking up an independent tariff bill, though western Republicans successfully petitioned in 1921 to alleviate the struggling farm sector with a limited protective "Emergency Tariff" on wheat and other agricultural items.[516] When the income tax bill was offered the debate centered on revenue considerations stemming from the calculations and estimates of Andrew Mellon, the new Secretary of the Treasury. The tariff issue accordingly drops from their pages, a separate issue pertaining to the dissociated policy of trade. Weisman (2002) avoids the Fordney-McCumber measure entirely, turning his history to the succession of income tax bills that followed from the Mellon income tax cuts. Other recent trade historians pay similar neglect to the income tax issue after 1921.[517]

One of the few attempts to tease out the constitutional implications of the 16th Amendment on Fordney-McCumber appeared in a 1954 tract against the income tax by Frank Chodorov, a political journalist best known as a founding figure in 20th century conservative print media and for his patronage of a young William F. Buckley, Jr. True to the tone of his text in which the income tax is deemed the "root of all evil," Chodorov denounced the 16th Amendment as a miscalculation at best, if not a willful manipulation of tax policy by the Populist and Socialist advocates of wealth redistribution. His is a polemic precisely counter to the paradigm in which the income tax is praised for this same end, and is thus susceptible to many of the same misconceptions about the amendment's left-progressive reputation. While the later establishment of the modern

[516] Blakey and Blakey, 1940, pp. 199-200
[517] See, for example, William J. Bernstein, 2008. *A Splendid Exchange: How Trade Shaped the World.* New York: Atlantic Monthly Press, p. 350

progressive income tax was the main target of Chodorov's ire, he also briefly examined the amendment's implications for trade. Whatever the promises or intentions of the amendment may have been, "the historic fact is that tariffs rose higher than ever after income taxation" – a feature that was "ultimately constitutionalized" by Fordney-McCumber in 1922.[518]

Chodorov attributed this event directly to the separation of trade and revenue policy as a result of the amendment:

> The income tax so enriched the Treasury that the revenue from tariffs became unimportant, and the government could afford to give more and more protection to the manufacturers; not only did the government thus gain the political support of the manufacturers, but it also shared in their tariff-enlarged profits through the income tax. If the government did not have the income tax it could not have raised the tariffs so high as to make importations impossible except for luxury goods. For, in order to get revenue the government would have had to encourage importations by keeping tariffs low. It would have to pursue a tariff-for-revenue policy rather than a protective policy.[519]

The argument's provocative style and libertarian tone, wherein "the government" is taken as a unitary entity and source of tax woes, tends to conceal its recognition of a more fundamental principle of interest group politics at work. Chodorov is also guilty of oversimplification, as lawmakers prior to 1913 were obviously not forced to abandon their protective policy out of revenue concerns.

Chodorov still managed to recognize a crucial practical effect of the 16th Amendment though, to wit: the constitutional separation of revenue from trade policy as a result of the income tax also deprived Congress of any restraining effect that the general

[518] Frank Chodorov, 1954. *The Income Tax: the Root of All Evil.* New York: Devin-Adair Co., p. 40
[519] *Ibid*., pp. 40-41

need for revenue imposed upon the protective system. When lawmakers were constitutionally bound to fill the treasury with the tariff system they could only partially forgo its revenue to attain protection; to push the rates too high and extend their scope too broadly for protective purposes would have the simultaneous effect of starving the federal government of its only substantive source of tax revenue. This condition fostered a political equilibrium in which a clear and intended protective policy thrived, but not so far as to threaten all international trade itself, and with it the government's lifeblood at the time, customs revenue.

The income tax amendment thus made it politically possible to affect greater levels of tariff protection, as exhibited by the broad scope of Fordney-McCumber, while also maintaining a stable revenue stream to the federal treasury. It is implicit to this development that interest groups seeking federal revenue rents in the form of expenditures will begin to achieve their policy goals by shaping the rates and categories of income taxation that supply their budgetary needs, thus ceding trade entirely to the domain of the classical division between a politically weak diffusion of consumers and the concentrated, homogeneous interest groups of the protection lobby. In effect, the 16th Amendment set the stage for a collective action scenario where trade regulation comes into being and expands largely unchallenged.

5.4 One Last Hurrah

> "He proclaims a tariff policy that will continue greatly to strangle our foreign trade and market situation… will insure the continuance of artificially high production costs; will measurably prevent the repayment of our foreign debts of $24,000,000,000, will constantly invite retaliations, reprisals, and boycotts by other nations and will gradually curtail and limit the export and sale of most American products…The inevitable result soon will be overproduction, as we already see in agriculture, textiles, coal, automobiles, iron and steel and numerous other great industries, and such overproduction will mean vast stagnation and idleness of both labor and capital." – Cordell Hull, 1927[520]

The Fordney-McCumber tariff had a disheartening effect upon free traders, still mostly concentrated in the Democratic Party. Their 1924 platform attacked the measure as the "most unjust, unscientific and dishonest tariff tax measure ever enacted in our history," a piece of "class legislation which defrauds the people for the benefit of a few." The same plank linked this call for tariff reduction with a reaffirmation of the income tax as the "fairest tax with which to raise revenue." It also took issue with agricultural protectionism, charging that Fordney-McCumber "has forced the American farmer, with his export market debilitated, to buy manufactured goods at sustained high domestic levels" and blaming it for destroying the farm export market to Europe in the form of reciprocal isolationism.[521] Southern agricultural states continued to form the core of the anti-tariff movement as well. Senator James T. Heflin of Alabama charged that the tariff was "sucking the blood out of farmers." Joseph Robinson of Arkansas, the Democratic minority leader, attempted repeatedly throughout the 1920's to forge a coalition with the

[520] "Hull Assails Coolidge on High Tariff Stand." *New York Times,* November 17, 1927
[521] Democratic Party Platform of 1924, American Presidency Project, University of California Santa Barbara, http://www.presidency.ucsb.edu/ws/index.php?pid=29593, Accessed April 21, 2009

western wheat farmers "to tear down this tariff wall," drawing occasional support from Borah of Idaho, one of the old Republican insurgents from the income tax fight.[522]

The anti-tariff movement was still politically outnumbered in Congress, even more so than the pre-1913 battles owing in large part to the political economy effects of the income tax amendment. In 1927 they adopted a long shot strategy to attempt a final assault against the protective system. Instead of fighting the tariff battle in an unwinnable legislative scenario, free traders opted to revive the old Revenue Clause constitutional argument against protection and force the trial before the Supreme Court that the Jeffersonians intentionally avoided almost exactly a century prior in the wake of *McCulloch v. Maryland.*

Fordney-McCumber offered a pretext for a lawsuit through its variable rates provisions under the Tariff Commission, and two recent judicial developments suggested the circumstances were more favorable than the Federalist Party high water mark on the court in 1819. First, the court was in the midst of developing the formative cases of what has since become known as the "nondelegation doctrine." This doctrine established a rule based upon the constitutional separation of powers that severely limited the ability of Congress to delegate its enumerated powers onto an administrative authority within the executive branch. Though the defining nondelegation rulings were not made until the New Deal era cases of *Panama Refining Company v. Ryan* and *Schechter Poultry Co. v. United States,* the doctrine was an emerging judicial theory and had received the court's endorsement in the 1892 case of *Field v. Clark.*[523] This doctrine could be applied to the

[522] "Arkansan Urges Strong Coalition to Defeat Tariff," *Atlanta Constitution,* June 17, 1926
[523] *Panama Refining Co. v. Ryan,* 293 U.S. 388 (1934); *Schechter Poultry Co. v. United States,* 295 U.S. 495 (1935); *Field v. Clark*, 143 U.S. 649

tariff since the Fordney-McCumber variable rates provision essentially permitted a delegation of Congress' tariff-setting authority to an administrative bureau within the Executive Branch. It also provided the standing for a suit from any aggrieved party subject to a tariff rate that had been modified by the executive branch.

Second, the Supreme Court had recently given its sanction to some of the intuitive principles behind the Revenue Clause argument in the 1922 case of *Bailey v. Drexel Furniture Co.* This ruling struck down a 1919 law in which Congress attempted to impose a 10 percent excise tax on companies that used child labor under the ages of 16 and 14, as defined by two categories of workers. The court essentially reasoned that the child labor tax violated the enumerated powers of Congress because it was not a tax but a regulation, extracted and enforced by penalizing with additional taxation should they defy its policy aims. The tax, it said, is "a penalty to coerce people of a state to act as Congress wishes them to act in respect of a matter completely the business of the state government under the federal Constitution."[524]

Bailey also established a rule distinguishing between a legitimate revenue tax and a "penalty" tax, wherein the latter would be unconstitutional. The court's definition of this category seemed to encompass several features associated with the protective tariff:

> Where the sovereign enacting the law has power to impose both tax and penalty, the difference between revenue production and mere regulation may be immaterial, but not so when one sovereign can impose a tax only, and the power of regulation rests in another. Taxes are occasionally imposed in the discretion of the Legislature on proper subjects with the primary motive of obtaining revenue from them and with the incidental motive of discouraging them by making their continuance onerous. They do not lose their character as taxes because of the

[524] *Bailey v. Drexel Furniture Co.,* 259 U.S. 20 (1922)

> incidental motive. But there comes a time in the extension of the penalizing features of the so-called tax when it loses its character as such and becomes a mere penalty, with the characteristics of regulation and punishment. Such is the case in the law before us.[525]

The *Bailey* decision was rendered by now-Chief Justice William Howard Taft, no stranger to the tariff issue or its propensity for regulatory excesses. *Bailey* also attempted to create a rule differentiating constitutional revenue taxes from unconstitutional regulatory taxes, thereby creating a possible answer to Joseph Story's critique of Calhoun in 1832 on the grounds that his argument required a subjective judicial interpretation of legislative motive.

If *Bailey* was an indicator of the court's current position, it could be enlisted along with the nondelegation doctrine to form a strong argument against the Fordney-McCumber Tariff. Though the income tax now seemed to enable rather than curtail the protective factional tendencies of Congress it also demonstrated that the tariff system no longer served any substantive revenue purpose, its sole aim being the regulation of international commerce by punitive taxation. This regulatory tariff, so the reasoning went, fell under *Bailey's* designation as an unconstitutional penalty. It violated a strict reading of the Revenue Clause and, as so many leading political figures had intimated a century prior, was therefore unconstitutional.

The tariff lawsuit quickly gained a reputable following within the anti-tariff movement and its allies. John W. Davis, the 1924 Democratic nominee for president, stated his belief that the Fordney-McCumber act was an unconstitutional delegation of power, as did Borah, the western Republican insurgent. These critics also pointed out that

[525] *Ibid*.

only two out of a dozen flexible rate changes carried out by the Executive Branch between 1922 and 1927 were reductions. The rest increased tariff rates beyond their statutory level. This bias toward rate increases further suggested that the protectionist character of the bill extended into its administrative features, which were supposed to rely upon "scientific" rate calculations taken from domestic and foreign pricing data.[526]

The pretext for a court challenge began in 1927 when President Coolidge instructed the Tariff Commission to institute a 2 cent raise in the duty on barium dioxide. J.W. Hampton, Jr., & Co., a large New York law firm that specialized in trade cases for commercial import companies, initiated a court challenge on its own behalf. The case was initially dismissed in U.S. Customs Court, though observers on both sides fully expected it to go to the Supreme Court, the intended venue of the test from the outset of the case.[527] Hampton's petition to the Supreme Court assailed the Fordney-McCumber Tariff on five counts, each coming under the cover of two general arguments: (1) the law unconstitutionally delegated the power to adjust the rates to a bureaucracy "that could determine the amount and scope" of taxation, and (2) the tariff "on the face of the statute…is not for raising revenue, but for the declared policy of protection to a special class of citizens, and is not, therefore, for the purpose of raising revenue to support the general Government."[528] The recent string of favorable court precedents, particularly *Bailey,* was cited in support of these contentions.

Beneficiaries of the protective system immediately realized the implications of the case and in early 1928, shortly after oral arguments were given, the *Christian Science*

[526] Raymond Clapper, "Flexible Tariff Law Faces Test," *Atlanta Constitution,* May 27, 1927
[527] "Appeals Court upholds Coolidge Tariff Power," *Washington Post,* February 25, 1927.
[528] "Attacks Legality of Flexible Duty," *New York Times,* May 27, 1927.

Monitor reported that "manufacturers, merchants, and importers are awaiting [the decision] with deep concern."[529] The *Wall Street Journal* characterized the case as having the potential for "a wide effect upon all future tariff legislation."[530]

The court heard arguments for the case of *J.W. Hampton, Jr., & Co. v. United States* in early March 1928. The counsel for the plaintiff, Walter E. Hampton, unleashed a barrage of constitutional attacks on the tariff. Under *Bailey* "a levy frankly stated to be for the purpose of protection, irrespective of revenue, is illegal." Nor was it valid, he continued, to use the tariff to achieve a regulatory purpose under the Commerce Clause. Echoing the argument so often used by John Taylor of Caroline, Hampton used the "scientific formula" principle of the variable rates provision to establish that the tariff was statutorily chained to the production costs of the privately owned domestic enterprises it benefitted. As such it constituted a "levy for a private purpose" intended solely "to equalize foreign and domestic cost differences" of a private firm. It thus fell outside of the accepted limits of the Commerce Clause at the time, as the Supreme Court had previously challenged the constitutionality of bounties, or direct subsidies.[531]

The government countered each argument, first by denying that the variable rates provision was an unconstitutional delegation. It was a permissible administrative delegation of duties within defined parameters that were still the power of Congress to set. As to the Revenue Clause argument, they simply appealed to the United States' long history of protective tariffs. "It is too late in the day to question the power of Congress to protect American industry, through the operation of laws imposing duties on imports,"

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[529] "Factors in the Flexible Tariff Case," *Christian Science Monitor,* April 7, 1928
[530] "Daily Import Reports," *Wall Street Journal,* February 13, 1928
[531] *J. W. Hampton, Jr., & Co*. v. *United States*, 276 U.S. 394 (1928).

answered the Solicitor General, as this practice dated back to 1789. Like Madison before them, critics of the protective system had missed their opportunity to make that argument.

The Supreme Court sided with the government in all counts and upheld the Fordney-McCumber Tariff. Taft wrote the opinion and even appealed to *Bailey*, though his argument seemed to confuse both the economic effects of the tariff and their similarity to this earlier case. "So long as the motive of Congress and the effect of its legislative action are to secure revenue for the benefit of the general government," he contended, "the existence of other motives in the selection of the subjects of taxes can not invalidate Congressional action." Fordney-McCumber was "a revenue act so framed" even though it contained a declaration of a protectionist motive, and thus could not be subjected to the *Bailey* rule.

Taft found the appeal to history more pressing than the motive issue though, and deferred entirely to its weight. Protective tariffs enjoyed constitutional sanction simply by virtue of their widespread use over the previous 130 years:

> [N]o historian, whatever his view of the wisdom of the policy of protection, would contend that Congress since the first Revenue Act in 1789 has not assumed that it was within its power in making provision for the collection of revenue to put taxes upon importations and to vary the subjects of such taxes or rates in an effort to encourage the growth of the industries of the nation by protecting home production against foreign competition.[532]

In making this observation Taft effectively found the protective purposes of any tariff to be inherently incidental to its revenue function by way of the simple order of their introduction in 1789 and common use ever since. By inference from these principles, virtually any import tariff of any type or character becomes constitutionally permissible.

[532] *J. W. Hampton, Jr., & Co*. v. *United States*, 276 U.S. 394 (1928).

With the rendering of the *Hampton* decision the road was completely cleared of any remaining constitutional obstacles to protection save simple popular expression of free trade principles through the representative channels of the government, where a collective action scenario heavily favored the tariff. The Capitations Clause was already circumvented, ironically at the free traders' own hand. Now they were deprived of the last legal tool in their arsenal, the Revenue Clause argument. Free of any constitutional constraint whatsoever and tossed into a legislative system that seemed to nurture factions rather than counteract them against one another, American trade policy was completely within the hands of those who followed the protectionist doctrine. Prior to 1913 the political economy of trade protection played out in a system constrained by its revenue needs. It now occurred free from this limitation, and subjected only to the factional interests of free trade and protection. From this point forward Smoot-Hawley was but a small legislative step; the sources of anti-tariff resistance likely to be minimal and relegated to a permanent minority.

VI. EVIDENCE

6.1 Protection and Revenue: Descriptive Tariff Measures

> "The idea that the government would give up tariff revenue in exchange for income-tax revenue was contrary to all experience. It promised to make the swap, and perhaps its leaders believed the promise, but the nature of government is such that it cannot give up one power for another." – Frank Chodorov[533]

Preliminary support for the hypotheses of the present analysis may be found in simple statistical observations about the historical U.S. tariff system. The revenue functions of the tariff system plainly underwent a dramatic change with the introduction of the income tax in 1913, as seen in Figure 5.3-B. What then of the tariff's protective functions? The most basic and readily available measure of the tariff system over time is the Average Tariff Rate (ATR), or the ratio of total customs revenue to the recorded value of dutiable imports, resulting in an "average" rate of import duties by percentage for a given year. In a sense, the ATR is akin to converting the entire tariff schedule to a single Ad Valorem Equivalent (AVE) rate.

Figure 2.1-A illustrates the ATR on dutiable goods from 1821, the first year of available data, until the 1950's. A number of simple observations are immediately apparent, coinciding with the historical narrative of the tariff as a constitutional issue.

[533] Frank Chodorov, 1954. *The Income Tax: the Root of All Evil.* New York: Devin-Adair Co. p. 40

From the first data measurement until 1845 the ATR fluctuated wildly, producing drastic peaks and troughs with each successive tariff act. This pattern is consistent with the contentious political battles of this period, when the constitutionality of the protective tariff was not only unresolved but a primary source of political contention during the Nullification Crisis. The 1846 Walker reforms represented a temporary triumph of the Revenue Clause argument and inaugurated a decade and a half of sustained downward revision in the ATR until 1861.

The Morrill Tariff of 1861 marks the beginning of the first period with direct bearing on the present research hypotheses. Following the dramatic upward swing in the ATR after 1861, this rate practically stabilized until 1913. During this half-century stretch it seldom dipped below 40%, and rises above 50% were equally infrequent. Even more curious is the fact that the contentious and heated tariff battles between 1883 and 1913 produced no drastic swing in the ATR, even though the tariff schedule was subjected to no less than five major overhauls, not to mention dozens of other smaller revisions and failed attempts at tariff reform. Of equal significance as Figure 6.1-A shows, the tariff system also supplied a stable amount of roughly half of the federal government's revenues throughout this period, the largest single tax source by far.

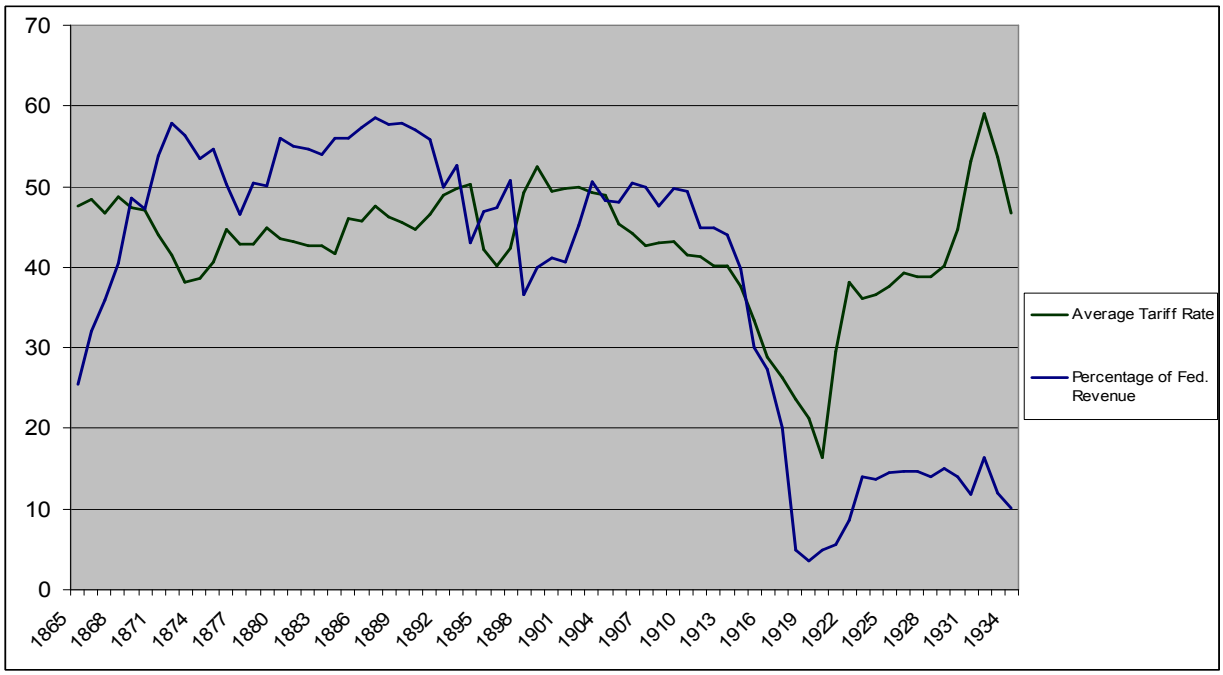

Figure 6.1-A, Federal Revenue Derived from Tariffs, 1865-1934
Source: Author's Calculations based on Census Bureau, 1960.

On the surface then, the original hypothesis of this study appears to bear out. From 1789 to 1913 the constitutional tax system created by the Revenue Clause effectively ensured that the political economy of trade protection would play out under the constraining effects of the fiscal policy system. Once the initial philosophical divide surrounding the tariff system's place in the federalist system of government was tilted heavily in one direction as a side effect of the Civil War, most fluctuations in the design and purpose of the tariff schedule ceased. The resultant balance between the tariff's protective and revenue functions was a constant source of political irritation and agitation, but the system it produced was remarkably stable – so stable in fact that it is unparalleled by any other period in American history prior to the modern trade liberalization movement that began after World War II.

The ATR in the subsequent period suggests additional evidence for the research hypotheses, and particularly the third regarding the effects of a major constitutional change to the tariff system. The ATR sat consistently between 40-50% for over five decades until the inauguration of the income tax system in 1913, yet it declined continuously with each successive year until reaching a historical low in 1921. Of equal note as Figures 5.3-B and 6.1-A suggest, this rapid decline directly followed an equally precipitous drop in the percentage of federal revenue taken from the tariff system as the government transitioned over to the modern income tax. Taken as a whole from the late 1860's to 1921, the ATR and the percentage of federal revenue from tariffs actually moved in sync with each other.

This pattern changed quickly in 1922 with the advent of the Fordney-McCumber tariff wherein the ATR again shot upward, approaching its previous 40% level. Federal dependence on the tariff's revenue capacity did not similarly recover though, encountering only a minor uptick followed by a continuous decline to only a few percentage points during the Great Depression. The ATR, however, inched upward until suddenly spiking after the Smoot-Hawley act of 1930. In addition to greatly exceeding the rates for any year in the late 19th century period of "high tariff protectionism," the ATR under Smoot-Hawley reached historic levels. The 59% peak in 1932 was surpassed only one other time in American history (1830) making it the second highest average rate ever. Yet Smoot-Hawley was also a significantly more expansive measure than the 1828 Tariff of Abominations. Its enabling statute contained a schedule that was double the

length of the 1909 Payne-Aldrich act and over 20 times that of its 1828 forbearer.[534] These considerations lend additional support to the present historical interpretation by suggesting that the tariff system shot upward once freed from the constraining effects of the revenue system by the 16th amendment. Stated briefly, lawmakers could now pursue a highly protective policy without jeopardizing tariff revenue. The government now received its tax receipts from elsewhere irrespective of the tariff policy in place.

While promising, the ATR only touches the surface of the historical U.S. tariff system. Additional descriptive statistics illustrate the intricacies of late 19th and early 20th century tariff politics, including the careful balances struck between a tariff schedule's revenue and protective features. As ATR is only a bi-dimensional measure of the overall tariff's "height" over time, it does not fully capture these individual characteristics. Historical tariff schedules must instead be examined on an item-by-item basis. The vast complexity of these schedules precludes complete consideration of the thousands of different duties and customs categories in each, but historical knowledge of the political atmosphere that produced them permits an informed selection of certain major and representative categories to examine their effects.

The historical tariff's uncontested "revenue categories" are a good starting point for this analysis. Certain "luxury" goods were universally recognized as prospective revenue categories early on in U.S. tariff history. Prominent among them were beer, wine, spirits, silks, laces, and tobacco items, especially cigars. These items were identified for their consumption patterns (including price inelasticity), and because they were thought to be purchased by wealthier classes who could afford the tax incidence.

[534] Schattschneider, 1935. p. 23

Robert Walker specifically identified these items for heavy revenue taxation when laying out his rules for designing the 1846 tariff, even conceding that their "revenue" rates would likely exceed levels that would be prohibitively protective on other non-revenue categories. David A. Wells reached similar conclusions during the Revenue Commission of the late 1860's.[535] Virtually all successive tariff schedules until 1913 followed suit, even when the overall character of the tariff swayed toward higher protection.

Traditionally "protected" categories provide a second basis for individual rate analysis, though these items are an inherently more complex feature of trade politics as the propriety of their protection was constantly subject to challenge unlike the widely acceded "luxury" categories. Taussig notes that three industries in particular played a dominant and recurring role in tariff politics from the country's founding forward: cotton, wool, and iron and steel.[536] Each of these industries changed over time as technologies advanced, and U.S. production of each generally shifted away from raw and unfinished products toward higher manufactures as time progressed. The products of these industries were nonetheless recurring objects of the trade protection debate, and each merits closer examination.

U.S. iron and steel production divided into two sectors: raw metals taken from ore and scrap, and manufactured goods made of this metal. Both sectors were considered candidates for protection, though the trend over time shifted toward manufactures and especially semi-finished manufactures such as beams, girders, bolts, blocks, and wire.

The wool sector experienced similar dynamics in that American sheep growers

[535] Walker, 1845, Table M. Wells, 1866, pp. 23-26
[536] Taussig, 1931, Chapters III-V.

and the producers of woolens, their manufactured product, both faced import competition and both vied for protection. This dynamic often produced internal discord within the wool sector of the economy from the 1850's onward as the woolens industry tried to lower its raw material costs of production by targeting high unfinished wool tariffs while favoring protective rates on its own major products, typically consisting of semi-finished wool textiles, yarns, cloths, carpets, and common clothing items. This internal battle played out within protectionist circles, and often resulted in the raw wool rates fluctuating from tariff to tariff, and even from the free to dutiable lists, as an overall protective character was maintained for woolens.

The cotton industry differed from both iron and wool in that its chief raw input had an abundant and comparatively advantaged domestic supply. The United States occupied a position as the world's major cotton exporter for most of the 19th century, thus tariff battles in the cotton sector typically affected the producers of semi-finished cotton cloth. These cloth textile mills were geographically concentrated in the northeast and faced intense import competition from European competitors who were often utilizing the same American cotton inputs. Cotton cloth accordingly became a favored object of protective tariffs, and a common illustration for Henry C. Carey's vicinage argument wherein the geographical proximity of American raw cotton production was said to justify a high tariff on the basis of import substitution.

Protective tariffs applied to many other industries, some of which merit consideration due to their recurring presence over time. Semi-finished glass products were continually subjected to high rates for the better part of the 19th and early 20th centuries. The sugar protection movement also surged in the late 19th century with the

consolidation of this industry to a nearly monopolistic state, making it among the few major agricultural products on the protective end of the tariff schedule prior to the Fordney-McCumber act of 1922 (foreign tobacco was also taxed at high rates, though generally as a luxury item in Caribbean cigar leaf rather than its import competing characteristics). These and a handful of other products are accordingly considered along with cotton, wool, and iron products within a "basket" of representative goods with which to examine individual rates on the tariff schedule.

Table 6.1-A illustrates the ad valorem equivalent rates for selected goods, covering schedules from the McKinley Tariff of 1890 to the Underwood Tariff of 1913. Several observations may be made by considering each statute in turn. Individual duties from the "high protection" period prior to 1913 generally affirm the stability exhibited by the ATR, each followed by a rapid reduction with the Underwood Tariff.

Appendix I displays a comparison of AVE rates for selected larger import groupings under these tariff measures. Several trends are immediately discernable. The three Republican tariffs imposed stable, consistent rates on woolen goods, interrupted briefly by the Democratic measure in 1894 and only drastically reduced in 1913. Raw iron and steel gradually declined under all of the "high protection" tariffs, reflecting an industry in transition toward finished and manufactured products, where the AVE category rates were more stable. Glass products remained fairly consistent across each schedule before the Underwood Tariff.

Table 6.1-A, Selected AVE Rates – McKinley through Underwood Tariff

Article	McKinley (1893)	Wilson-Gorman (1896)	Dingley (1898)	Dingley (1907)	Payne-Aldrich (1911)	Underwood (1914)
Cotton Thread	50.23%	37.85%	43.97%	30.44%	30.56%	21.37%
Cotton Knit Clothing	68.66%	50.00%	61.79%	59.69%	60.17%	30.00%
Crown Window Glass	74.88%	55.64%	86.69%	55.73%	62.42%	26.73%
All Glass Products	63.79%	46.07%	57.49%	53.21%	55.12%	32.91%
Bar Iron	52.65%	30.76%	27.44%	27.91%	18.37%	5.00%
Steel Ingots	37.83%	27.65%	26.95%	19.83%	23.14%	0.00%
Screws	90.80%	13.24%	45.00%	38.28%	54.23%	25.00%
All Iron Manufactures	55.38%	38.81%	45.51%	30.29%	31.63%	22.39%
Lead	72.06%	51.94%	76.41%	59.71%	83.71%	22.18%
Sugar	12.86%	41.20%	80.21%	65.04%	54.35%	31.75%
Wool Yarn	105.61%	38.56%	105.36%	87.26%	76.61%	18.00%
Wool Blankets	84.45%	29.76%	95.43%	82.64%	74.88%	25.00%
Wool Carpets	62.85%	39.78%	63.73%	60.20%	61.72%	48.34%
Wool Cloth	100.02%	48.14%	99.01%	95.36%	95.39%	35.00%

Source: Author's calculations, based on "Articles Entered for Consumption." *Foreign Commerce and Navigation of the United States.* 1892-1914 Editions. Washington, DC: Government Printing Office.

Table 6.1-A and Appendix I also indicate that the main rate variations in this period reflect the differences between the three Republican schedules (McKinley, Dingley, and Payne-Aldrich) and the Democratic schedule (Wilson-Gorman), a mild tariff reduction, and the Democratic-led dismantling of the tariff system in 1913 (Underwood). Some categories such as raw wool also briefly migrated to the free list under Wilson-Gorman, or were reestablished there in 1913 as part of the tariff system reforms.

The sugar schedule became substantially more complex after the McKinley tariff due to the growing clout of sugar refiners as a political force under the famed "Sugar Trust" that emerged in the 1890's. Sugar was taxed as a single category at a relatively mild 13% AVE under the McKinley Tariff. It increased to a fixed 40% ad valorem rate, assessed in beat and cane categories, under Wilson-Gorman. The 1897 Dingley tariff

inaugurated a complex specific duty schedule with dozens of grain and purity differentiations, and aggregate average AVE rates exceeding 60%. These were retained and only slightly moderated by Payne-Aldrich a decade later.

Raw iron AVE rates decreased across this period, though they still remained high by modern standards. Pig and scrap iron declined from 28% and 46% respectively in 1890 to just under 10% in two decades time, and bar iron dropped from 53% to 18%. This trend was not evident in steel ingots, where rates hovered above 20% from 1894 forward. Semi-finished goods such as steel wire remained stable throughout at around 40% AVE. Finished manufactures varied, with rates on anchors increasing and rates on nails and screws decreasing.

The revenue purpose of tobacco and alcohol tariffs was plainly evident in all tariff schedules from this period. The AVE rates may be seen in Table 6.1-B:

Table 6.1-B, AVE Rates for Alcohol and Tobacco

YEAR	Malted Bev.	Distilled Spirits	Wines	All Alcohol	All Tobacco	TARIFF
1892	47.51%	171.28%	54.71%	69.49%	101.13%	*McKinley (1890)*
1893	48.28%	166.45%	53.10%	68.44%	117.82%	
1894	50.28%	168.53%	54.06%	70.34%	121.08%	*Wilson-Gorman*
1895	39.00%	124.01%	51.13%	63.23%	109.10%	
1896	38.64%	125.10%	48.01%	61.30%	109.06%	
1897	38.24%	126.77%	45.39%	74.78%	111.65%	*Dingley*
1898	53.46%	145.35%	47.03%	75.02%	120.55%	
1899	51.09%	140.40%	51.28%	70.24%	113.40%	
1900	50.83%	134.48%	51.70%	70.86%	105.96%	
1901	50.55%	130.38%	54.58%	79.60%	110.63%	
1902	51.90%	132.55%	46.52%	80.89%	114.85%	
1903	53.24%	131.06%	51.44%	71.76%	119.64%	
1904	53.22%	128.96%	52.13%	73.16%	118.46%	
1905	54.79%	125.70%	51.53%	72.20%	109.47%	
1906	55.35%	125.37%	52.80%	73.91%	104.41%	
1907	54.32%	121.74%	51.60%	73.14%	87.20%	
1908	54.79%	122.95%	50.49%	74.03%	83.64%	
1909	54.55%	118.41%	45.36%	71.60%	85.14%	*Payne-Aldrich*
1910	61.67%	126.12%	48.24%	73.63%	81.55%	

1911	60.61%	148.72%	61.01%	89.85%	87.82%	
1912	61.61%	143.54%	61.99%	88.85%	82.18%	
1913	63.50%	144.16%	62.67%	91.58%	82.46%	*Underwood*
1914	64.57%	147.77%	65.25%	94.90%	83.17%	

Source: Author's calculations, based on "Articles Entered for Consumption." *Foreign Commerce and Navigation of the United States.* 1892-1914 Editions. Washington, DC: Government Printing Office.

All alcohol duties were specific and generally retained at a stable tax per unit, excepting slight reductions in the Wilson-Gorman act. Specific duties on tobacco were among the most stable throughout the period even as their AVE rates fluctuated with consumption. The specific duties underwent only slight reductions in the Wilson-Gorman act followed by a restoration of the McKinley rates in 1897.

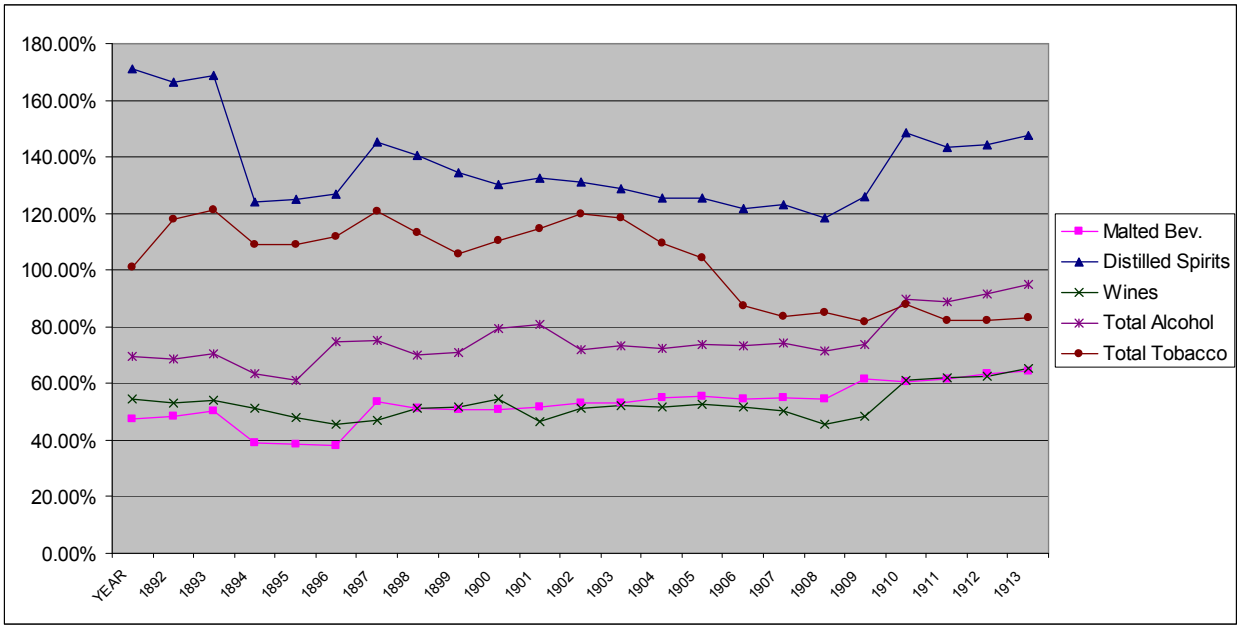

Figure 6.1-B, AVE Tariff Rates by Revenue Category
Source: Author's calculations, based on "Articles Entered for Consumption." *Foreign Commerce and Navigation of the United States.* 1892-1914 Editions. Washington, DC: Government Printing Office.

As Figures 6.1-C, D, and E illustrate, alcohol and tobacco consistently generated substantial revenue returns for the government during the "High Tariff" era.

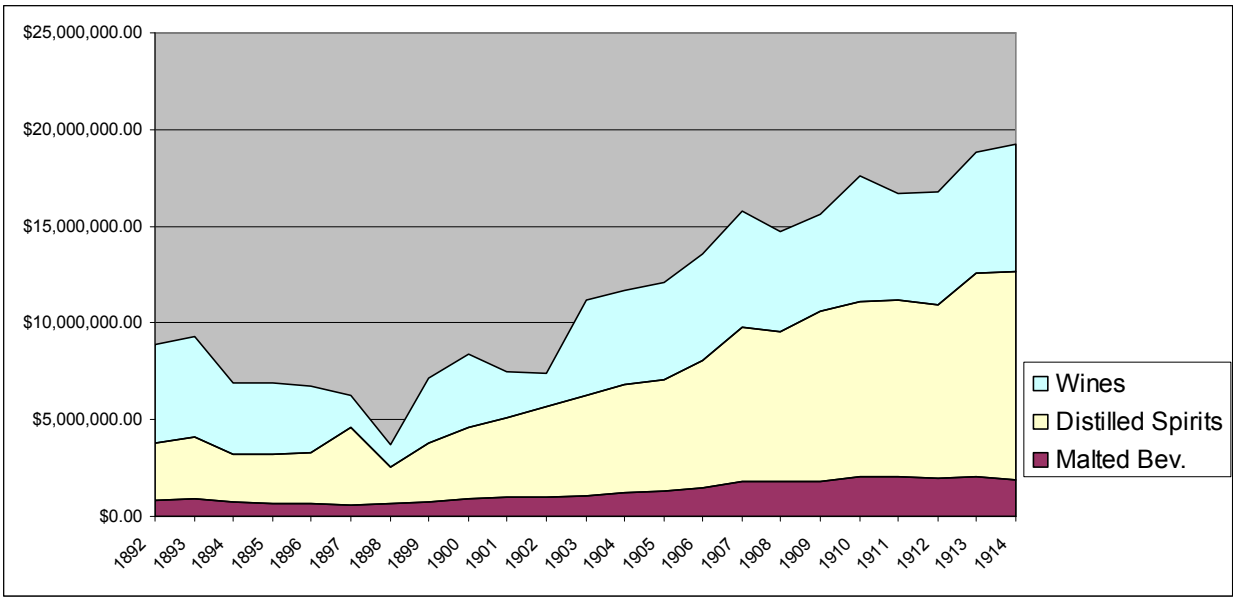

Figure 6.1-C, Tariff Revenue on Alcohol, 1892-1914
Source: Author's calculations, based on "Articles Entered for Consumption." *Foreign Commerce and Navigation of the United States.* 1892-1914 Editions. Washington, DC: Government Printing Office.

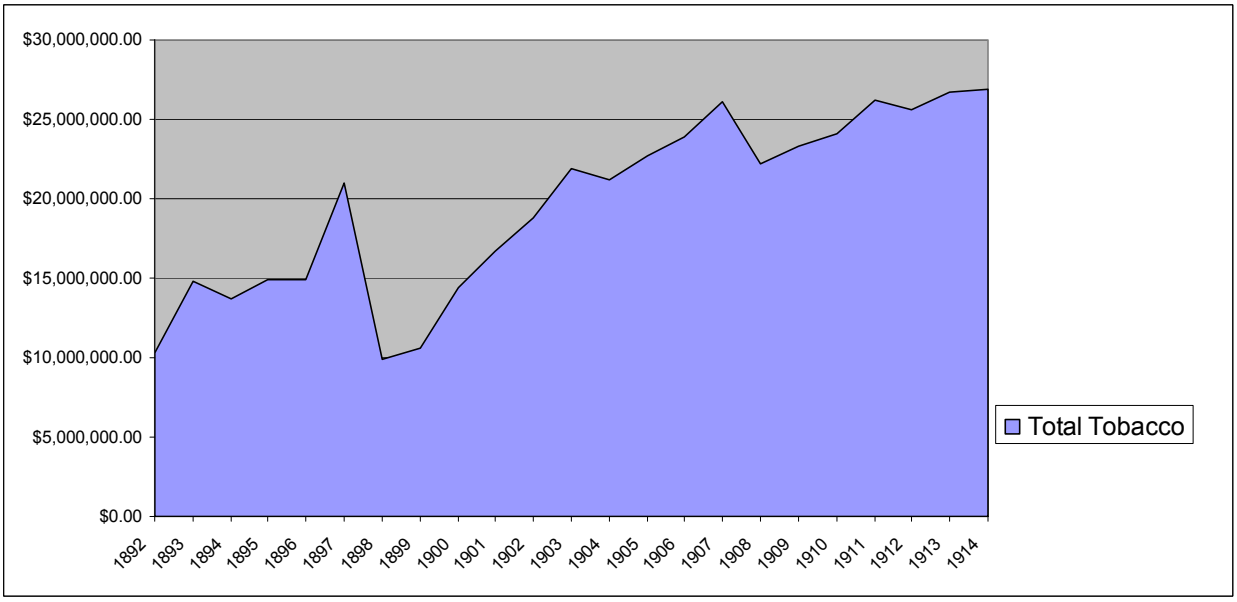

Figure 6.1-D, Tariff Revenue on Tobacco, 1892-1914
Source: Author's calculations, based on "Articles Entered for Consumption." *Foreign Commerce and Navigation of the United States.* 1892-1914 Editions. Washington, DC: Government Printing Office.

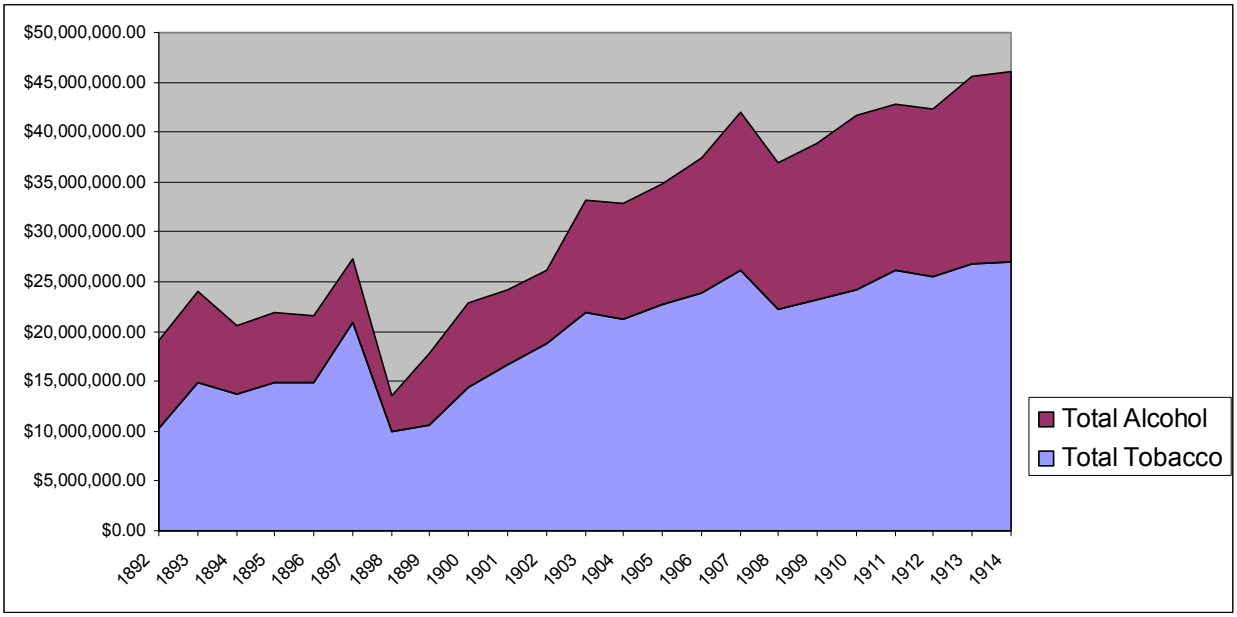

Figure 6.1-E, Tariff Revenue on Alcohol and Tobacco, 1892-1914
Source: Author's calculations, based on "Articles Entered for Consumption." *Foreign Commerce and Navigation of the United States.* 1892-1914 Editions. Washington, DC: Government Printing Office.

The Underwood Tariff of 1913 marked a dramatic change in U.S. tariff policy, and its individual rates expectedly followed this trend. Unfortunately, events beyond Congress' control prevented the Underwood Tariff from seeing its full potential as World War I broke out in Europe. The tariff operated without disruption though for brief 8-month period ending in late June 1914, almost exactly as the first shots were fired. Statistical data from these months reveal the transformative character of the law.

The Underwood Tariff eliminated several duties entirely, moving dozens of goods to the free list. Most categories of pig iron, steel ingots, all raw wool, coal, most nails, and most raw copper were admitted duty free. The tariff drastically reduced several other rates. Window glass dropped from a 62% AVE under Payne-Aldrich to less than 27%. Rates on screws were halved, and the average rate on lead goods dropped to a fourth of

its previous level. Wool blankets were cut from a complex schedule based on thread counts, averaging at 74% AVE to a uniform ad valorem rate of 25%. Wool cloth and dress goods were more than halved, also switching to a uniform ad valorem rate of 35%. Carpet rates dropped dramatically to the 20% and 30% schedules from previous AVE's above 60% and 70%, with the lone exception of room carpets, which were retained at 50%. The cotton thread schedule was dramatically simplified from complex standards and thicknesses to two categories, colored and uncolored. Their rates were reduced from an average 30% AVE to just over 20%.

It is notable, as Table 6.1-B illustrates, that the Underwood tariff left the specific duties on most alcohol and tobacco products unchanged. The average AVE from tobacco was 83%, down only a few percentage points from Payne-Aldrich and attributable entirely to yearly fluctuations in consumption. Both tobacco and alcohol continued to generate large amounts of revenue under the Underwood schedule. Figure 6.1-E further illustrates these two sectors as a portion of the tariff system's total revenues over time, affirming their use as "revenue categories" in times of high protection and liberalization alike. Together, tobacco and alcohol consistently supplied between 9% and 15% of total tariff revenue. These percentages are misleading at first glance, though their magnitude is immediately apparent when it is noted that they comprised but two industries of a tariff schedule that numbered product categories in the thousands. Most of the remaining major "revenue" categories were in similar luxury items such as silk and lace or in foodstuffs, which were taxed for consumption.

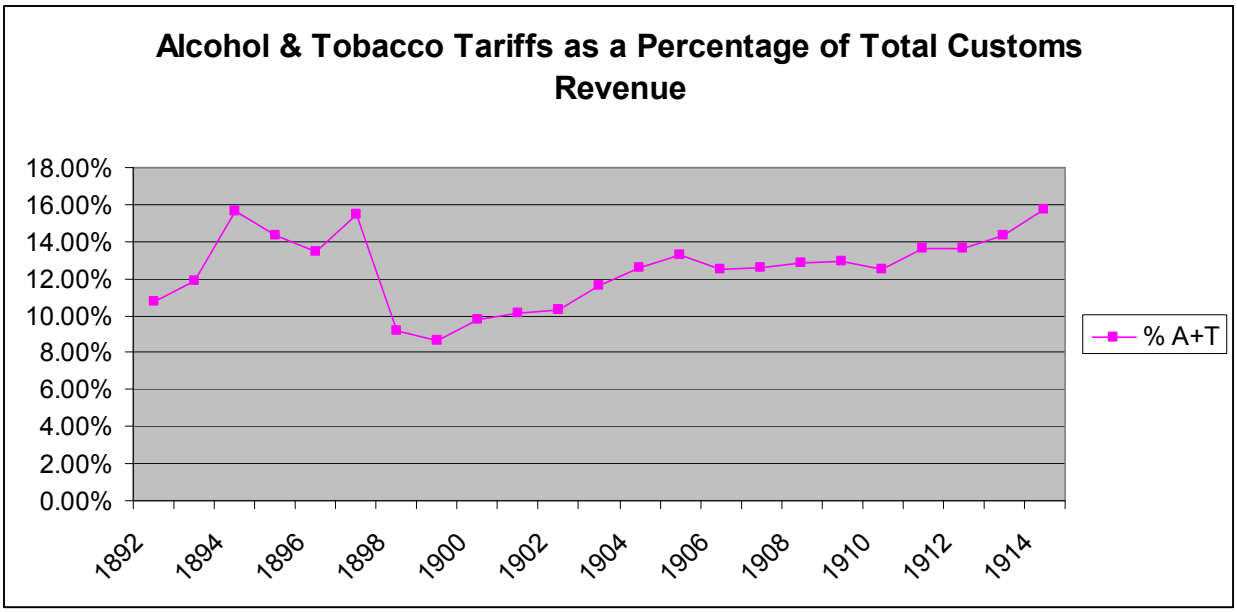

Figure 6.1-F, Alcohol and Tobacco Revenue
Source: Author's calculations, based on "Articles Entered for Consumption." *Foreign Commerce and Navigation of the United States.* 1892-1914 Editions. Washington, DC: Government Printing Office.

The two categories of alcohol and tobacco continued to supply substantial tariff revenue in the early 1910's, even as the country transitioned to the income tax. From Underwood forward though, the tariff supplied a smaller and smaller portion of federal treasury as the income tax supplanted its revenue function. In 1920 alcohol revenues were largely removed from this equation as well with the advent of prohibition. While the 18th amendment exceeds the scope of this study, it is reasonable speculation to inquire whether the political economy of the Volstead Act was altered by the income tax amendment as well. The temperance movement may have received an inadvertent boost of support when federal fiscal policy was decoupled from the reliable tax income generated by the wine and liquor tariffs and their domestic excise tax counterparts.

The Underwood reductions also had a clear stimulating effect on imports in several categories. In less than 8 months time under the new rates, the volume of window

glass imported had matched the entire year's total for 1911. Over 320,000 pounds of wire nails were imported on the free list, compared to just over 50,000 in 1911 under an AVE of about 14% – among the milder rates on the Payne-Aldrich schedule. The Underwood Tariff delayed the implementation of its provision transferring raw wool to the free list until the beginning of 1914, yet in only 6 months time imports were more than double the entire yearly total from 1911. The Underwood tariff dropped the rate on yarn from an average of 76% AVE to a uniform ad valorem rate of 18%, increasing imports from under 200,000 to 2.7 million pounds a year. The 1914 revenues from the milder yarn tariff brought in over $340,000 in six months, more than four times the typical yearly total under Payne-Aldrich. These shifts in import volume should not be taken as indicative of the new tariff's full effects and are included only to illustrate the drastic change of course it entailed. Nevertheless, the Underwood Tariff plainly broke from the previous four schedules, far surpassing even the tepid reductions of Wilson-Gorman.

Viewed in sum, the cross section of goods displayed in Table 6.1-A generally affirms the stability of the tariff system prior to the income tax amendment and Underwood reforms of 1913. It illustrates how the tariff system developed over time, amounting largely to a slow progression of minor specific duty adjustments that often had the effect of retaining a target AVE rate through specific duties or slightly tinkering with them to reflect a desired level of protection. The table is equally notable in what it does not show though, to wit: the numerous paths not taken during the contentious tariff fights of this historical period. Just as the high tariff Republicans designed their system to preserve and sustain existing rates at a stable level with periodic adjustments to reflect changing prices and demands for protection, their critics pressed hard for drastic tariff

reforms. Neither periodic adjustments to retain the status quo nor its systemic dismantling in 1913 came with ease, though advocates of both positions sought a way to manage each with precision.

6.2 Breakeven Revenue and "Scientific" Tariff Adjustment

> "Protective duties are, in fact, self-testing. They reveal in their very working whether they were originally justifiable or not." – John Bates Clark[537]

Historical debates on the tariff often invoked the revenue and protective attributes of particular duties to illustrate the hypothesized effects of a rate change on a given good. Though tariff rates developed for reasons of political economy and a fair amount of discretion and guesswork, the politicians who designed them often dressed their schedules with the language of purported "scientific" neutrality. Individual rates were publicly said to be determined around a variety of mathematical principles, each said to demonstrate that the tariff was "fairly" assessed. In cases where documentary evidence survives, many historical tariff rates were anything but "fair" and the information used to determine them often came from direct collusion between legislators and affected producers.[538] Still, setting tariff rates was an imprecise art form where rent seeking and regulatory tradeoffs were often easy to detect. The development of "scientific" principle to determine the tariff rates, and thus conceal the stigma of overt collusion, accordingly

[537] Clark, 1904. p. 380
[538] For examples of documented collusive behavior in tariff-setting see Schattschneider, 1935; Taussig, 1931; Magness, 2009. The Nelson W. Aldrich papers at the Library of Congress similarly demonstrate this tendency. They contain several hundred examples of industry lobbying and collusion with lawmakers in establishing the Payne-Aldrich rates.

had immense appeal.

Two such attempts to find a mathematical principle of tariff rates deserve mention, as they also correspond to the debate between a revenue tariff with incidental protection and its overtly protective rival, as well as the partisan divide that emerged around each. The first, which will be termed the "Revenue Principle," traces its origins to the constitutional Revenue Clause argument against protection, and in particular John C. Calhoun's 1842 formulation of it wherein the Laffer Curve apex functions as an upper constitutional constraint on tariff rates. As strict mathematical theory, Calhoun's model is indeed an objective and scientific boundary by which a "revenue" tariff may be differentiated from a protective one by simply locating its revenue maximizing rate of t* and setting the tariff equal to or less than that rate (See Figure 1.1-B). This boundary was implicit in the constitutional argument used by Calhoun and Walker in the 1840's and Vice President Marshall in the 1910's. It was also explicitly incorporated into the constitution of the short-lived southern Confederacy in 1861.[539]

The greatest fault of the Revenue Principle is not in its science, but its application. As will be discussed in detail in a subsequent chapter, the calculation of the revenue maximization rate for a given good requires extensive price elasticity data to account for how both the production and consumption of that good will respond to the price change induced by the tariff. In addition to being difficult to simply ascertain, these data impose prohibitive complexity on a tariff schedule covering several thousand different goods at the same time. The matter is complicated even further by the assumptions of the model being used to identify t*, as the theorized conditions of trade may further affect the

[539] McGuire and Van Cott, 2003.

requisite calculations. Though conceptually appealing, a rigorous and strictly mathematical application of the Revenue Principle is wholly impractical even with the assistance of sophisticated modeling software and technology in the modern day, much less the historical period in question.

Neither was the Revenue Principle useless, and indeed Calhoun and Walker devoted much of their industry toward attempting to approximate the ideal revenue-maximizing rates. One common technique consisted of estimating the anticipated effect of a rate change on revenue based upon previous yearly returns, and to approximate from this the amount of imports that would be necessary to sustain a given level of revenue. During the 1842 tariff debate Calhoun used the tariff on cotton bagging to illustrate this concept. Anticipating a demand for 11 million yards of imported cotton bagging, he noted that a 2 cent per yard rate would generate $220,000. He then estimated that a proposed increase to 5 cents would cut into this revenue, citing lower imports in a previous year when rates were 3.5 cents and a corresponding lower tax return. If Congress' object was to create a revenue-neutral change in the tariff rate, it would need to recognize that the protective effects of the rate increase would outpace the revenue they generated, suggesting a loss from the revenue perspective.[540]

Walker used a similar technique while preparing his 1845 Treasury report, which became the basis of the 1846 tariff schedule. Walker compiled a comparison of tariff rate changes and their effects on imports and revenue over the previous several years to illustrate "how far the present rates exceed the lowest revenue duties, and how much they must be reduced so as to yield a revenue equal to that now obtained from these

[540] *Congressional Globe*, 27th Congress, 2nd Session, p. 808

articles."[541] The technique was admittedly insufficient to identify the exact revenue-maximizing rate for each item, though Walker simply intended it to provide guidance whereby that rate might be approximated from the tariff's prior returns and the level of imports that would be necessary to sustain or increase its revenue capacity.

The second "scientific" means of rate calculation has also been duly noted, and is here referred to as the "Protective Principle." This Republican concept was dubbed the "true principle" of protection in its fullest articulation, the 1908 GOP platform and during the Payne-Aldrich debate. As previously described, it entailed measuring the distance between the domestic market price of a good and the world price of its import competitor and assessing a tariff equal to the difference (often with an added discretionary amount that was deemed "fair" for securing a clear home producer advantage).[542]

The Protective Principle also has a long and influential history in U.S. tariff politics. Though it was not overtly set in formula until 1908, it conceptually influenced many earlier attempts to find the "optimal" protective rates when policymakers often compared and analyzed pricing data submitted to them along with tariff solicitations from domestic producers. After 1908, it became a protectionist dogma onto itself and also influenced several notable policy advances in U.S. tariff law. The predecessor statutes to most modern anti-dumping and countervailing duty provisions date to the creation of the U.S. Tariff Commission in the early 20th century and the controversial "flexible tariff"

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[541] Walker, 1845, p. 5

[542] A similarity may be noted between the Protective Principle and the modern "price gap" measure of protection, which computes the tariff equivalents of non-tariff barriers to trade by comparing the domestic and external prices of a good. For a discussion of the price gap technique, see Michael Ferrantino, 2006. "Quantifying the Trade and Economic Effects of Non-Tariff Measures," *OECD Trade Policy Working Papers*, No. 28, OECD Publishing.
doi:10.1787/837654407568

provisions of the Fordney-McCumber act. Most were written with the belief that the Tariff Commission would be able to compare the difference between domestic and world prices on a given good, and "scientifically" adjust the rate based upon this difference with the stated policy goal in mind, be it to countervail allegedly unfair foreign production practices in a given sector or to resynchronize rates following a drastic price change.

Like the Revenue Principle, the Protective Principle is mathematically impractical to extend to an entire tariff schedule. It too presents massive information requirements, in this case pertaining to existing world and domestic prices (and thus also invoking price elasticity) at any given time. The principle also operates around a raw calculation of the treasury and protective effects of a single tariff rate, not taking into account the potential tax wedge effects of the tariff's revenue attributes and the complicating tendency of a tariff-induced price change to affect other prices, of which more to be said in the following chapter. A tariff schedule built around the Protective Principle would also be subject to nearly constant modification to remain current, as the distance between the domestic and world prices upon which it is based quite literally changes every time the price of the good itself changes.

Both "scientific" principles presented a peculiar problem for their respective advocates among historical policymakers. The act of revising tariff rates was inherently bounded by information limitations in virtually all cases. Advocates of both protection and revenue had to settle for rates based on educated guesses under the guidance of their respective favored principles, and do so with limited information. These conditions led legislators from both parties to look to previous experiences with tariff rate modification as their surest guide to approximate a rate in accordance with the desired governing

principle. In most cases this amounted to simple trial and error, and aside from the ideological wrangling between the protection and revenue factions, most tariff schedule overhauls (and virtually all lesser individual rate modifications that occurred in the interim between major tariff acts) attempted to adjust the rates in accordance with what had been observed through the assessment and collection of the previous tariff schedule.

Viewed in light of each principle, the setting of a particular tariff rate was thus a process of adjustments based on partial information about their anticipated import and revenue effects, and within the context of a given policy goal. As with many economic phenomena, these estimations reflected general supply and demand principles that, while operative, defied precise calculation or full and perfect anticipation. Their complexity is itself a testament to the impossibility of transforming the tariff schedule into carefully managed table of imports operating on precise and self-correcting calculations. Such a system would be no more possible than state-managed pricing in which production is set in accordance with prohibitively complex input-output calculations, all ultimately rendered unworkable in their own right as each manipulation further distorted pricing itself as a measure of value for these components.[543] Tariff protection in particular is by definition an attempt to manage pricing by distorting the market value of imports, and thus inherently vulnerable to a calculation trap. Even loose estimations accordingly have limitations as a basis for setting policy.

The two aforementioned principles nonetheless guided the setting of historical

[543] In a sense, the complexity issues surrounding the "scientifically" managed adjustments, as sought by historical protectionists, is somewhat analogous to the accounting or calculation problem of a centrally planned economy. The interdependency of rates on an economy-wide tariff schedule makes calculation-based management irretrievably complex for want of an independent accounting metric, as is provided by competitive free-market pricing. See Ludwig von Mises. [1922] 1981. *Socialism: An Economic and Sociological Analysis.* Indianapolis: Liberty Fund. Appendix.

tariff rates, whether to serve a fiscal need for revenue or to translate a manufacturer's pleas for protection into tangible policy in accordance with his reported prices and competitive conditions. That these estimations should have been made from a combination of adjustments based on previous rates and simple trial and error is to be entirely expected. Rates based on the Revenue Principle in particular lend themselves to this type of policymaking, as both Calhoun and Walker demonstrated. The estimations behind this principle are in fact fairly similar to those of a firm when pricing its product and attempting to anticipate its sales in light of its operating costs and its revenue at a given price – all crucially important considerations for production that are mathematically certain in the abstract, but difficult to fully know at any future time and thus relegated to practical estimation and adjustment. From the perspective of the policymaker, the tariff rate was directly analogous to the price of a given good and its customs returns were comparable to sales revenue.

For purposes of the present inquiry, recreating the technique of the Revenue Principle may help to illustrate the role that revenue concerns played in the tariff politics of the 1890's and 1900's, particularly in the case of moderate rate reductions such as the Wilson-Gorman act. From the 1880's forward many reformers espoused trade liberalization by way of the "horizontal tariff" wherein existing rates would be reduced by a targeted percentage of the previous duty – usually 20% off the rate wherein the existing rate equals 100% – regardless of its actual height.[544] A 40% duty would

[544] The horizontal tariff principle, frequently espoused in the late 19th century United States, is strikingly similar to the proportional reduction formula used in modern trade liberalization efforts. For a discussion of proportional tariff reduction including its relation to tariff-dependent revenue systems in developing economies, see Rod Falvey, 1994. "Revenue Enhancing Tariff Reform." *Review of World Economics,* Vol. 130-1, pp. 175-190.

accordingly be reduced by 20% of its total, or 8 percentage points, to 32%.

The political realities of logrolling effectively precluded a horizontal tariff from ever being enacted, as lawmakers instead attempted to fine tune particular rates on particular goods in the service of their interest constituencies. Still, the practical effects of any rate change remained a concern to policymakers of all stripes. Protectionists wished to know if a reduction would overexpose certain industries to import competition, and tariff reformers wished to know its revenue effects. The effect of a rate change on the level of imports was a concern from both perspectives. Revenue tariff reformers would have been more interested though in the level of imports that needed to be sustained under the new rate to replicate or exceed its predecessor's revenue generating capacity. As in Calhoun's cotton bagging example, a reasonable expectation of growing demand for an imported product in a coming year might serve as guidance in setting a strong revenue-generating rate.

The question of anticipating a tariff's revenue capacity is somewhat comparable to the question of optimal pricing for the producer of a given good. In firm pricing strategy, a tool called breakeven sales analysis allows a similar type of estimation as a basis for future production decisions. By anticipating the effects of a price change on sales and firm revenue, a producer can construct a "breakeven" curve for a given product indicating the minimum required elasticity to maintain an existing level of sales following a price change. Thomas Nagle and Reed K. Holden (2002) suggest that this tool functions as a proxy for actual price elasticity data, which can be difficult to obtain

or approximate for pricing decisions.[545] In formula, the change in the percentage of sales necessary for a seller to break even following a price change is equal to $-\Delta P/CM + \Delta P$ where P is price and CM is the contribution margin of the product sale (or a unit's sale price minus its variable cost of production). The resulting calculation gives the percentage that sales must increase to maintain a "breakeven" level of income given a price reduction (or, in the case of a price increase, the reduction in sales that may be absorbed before breaking even).[546]

The breakeven formula may be relatively easily adapted to account for revenue changes in response to the alteration of a tariff rate by substituting tariff revenue for sales revenue and the level of imports for the level of sales. The calculated breakeven point thus becomes the volume of imports that must be sustained in order for a proposed change in the tariff rate to be "revenue neutral." Utilizing value, the breakeven import volume may be accordingly calculated for tariff changes to each good and compared against the existing import volume as a baseline.

Table 6.2-A displays the calculated breakeven importation levels facing policymakers during the Wilson-Gorman tariff reforms of 1894. The existing McKinley Tariff rates reflect an example of a high protection Republican schedule, whereas Wilson-Gorman represents a moderate Democratic reduction. The breakeven import value column represents the level (in assessed dollar amounts) to which annual imports would have to grow, given the rate reduction between McKinley and Wilson-Gorman, for the rate change to be revenue-neutral. Put differently, should imports exceed this figure

[545] Thomas T. Nagle and Reed K. Holden. 2002. *The Strategy and Tactics of Pricing.* Upper Saddle River: Prentice Hall, 2002, pp. 49-50.
[546] *Ibid*, pp. 38-39

the tariff rate cut will result in increased revenue from the particular good. Should imports fall short under the new rate, revenue will decline.

Table 6.2-A, Breakeven Values for 1894 Wilson-Gorman Tariff Reforms

Article	1893 AVE	1895 AVE	Rate Change (Percentage Points)	Breakeven Import Value	Import Value Change for Revenue Breakeven	% of Import Change required to Breakeven
Bituminous coal	22.72%	13.76%	-8.96%	$5,944,302.37	$2,345,264.65	65.16%
Culm of coal	28.68%	15.88%	-12.80%	$27,754.88	$12,388.33	80.62%
Coke	20.00%	15.00%	-5.00%	$116,317.45	$29,079.36	33.33%
Cotton thread	50.23%	37.85%	-12.39%	$997,501.08	$245,950.48	32.73%
Carpet - cotton	50.00%	30.00%	-20.00%	$31,163.33	$12,465.33	66.67%
Total - cotton cloth	**48.01%**	**41.96%**	**-6.05%**	**$6,613,133.47**	**$833,250.28**	**14.42%**
Laces	60.00%	50.00%	-10.00%	$15,376,797.18	$2,562,799.53	20.00%
Total - cotton knit clothing	**68.66%**	**50.00%**	**-18.66%**	**$8,767,215.82**	**$2,382,613.99**	**37.32%**
All Manuf. Of Cotton		**45.87%**	**45.87%**	**$41,493,793.64**	**$8,150,240.01**	**24.44%**
bottles > 1 pint green	70.17%	41.06%	-29.11%	$234,296.05	$97,209.05	70.91%
bottles < 1 pint green	85.67%	80.45%	-5.23%	$94,887.90	$5,787.90	6.50%
bottles > 1 pint flint	61.27%	35.14%	-26.14%	$63,848.32	$27,234.62	74.38%
bottles < 1 pint flint	81.30%	48.20%	-33.11%	$40,471.21	$16,480.21	68.69%
window glass < 10x15	19.84%	15.62%	-4.22%	$15,739.84	$3,346.84	27.01%
window 10x15 to 16x24	53.60%	25.32%	-28.28%	$6,128.99	$3,233.99	111.71%
window 16x24 to 24x30	100.42%	38.21%	-62.20%	$7,168.51	$4,440.51	162.78%
window 24x30 to 24x36	73.33%	19.10%	-54.24%	$2,480.85	$1,834.85	284.03%
window > 24x36	97.27%	71.61%	-25.66%	$74,007.28	$19,521.38	35.83%
Total - crown window glass	**74.88%**	**55.64%**	**-19.24%**	**$98,439.82**	**$25,291.92**	**34.58%**
Total - glass and glassware	**63.79%**	**46.07%**	**-17.72%**	**$10,999,470.38**	**$3,055,368.82**	**38.46%**
Pig iron (all)	**28.12%**	**17.41%**	**-10.70%**	**$2,417,329.61**	**$920,227.62**	**61.47%**
Scrap iron	46.32%	28.26%	-18.06%	$479,395.52	$186,912.64	63.91%
Bar iron - charcoal prod	56.82%	33.87%	-22.96%	$1,020,585.50	$412,342.13	67.79%
All bar iron	**52.65%**	**30.76%**	**-21.89%**	**$1,218,854.06**	**$506,713.99**	**71.15%**
Railway iron	58.14%	49.87%	-8.27%	$41,636.34	$5,921.95	16.58%
steel ingots < 1 cent/lb	50.48%	38.10%	-12.38%	$517,086.89	$126,842.89	32.50%
steel ingots 1-1.4 cents	39.06%	30.51%	-8.56%	$107,264.00	$23,495.00	28.05%
steel ingots 1.4-1.8 cents	52.76%	36.70%	-16.06%	$69,190.20	$21,056.20	43.74%
steel ingots 1.8-2.2 cents	44.68%	35.09%	-9.59%	$6,873.17	$1,475.17	27.33%
steel ingots 2.2-3 cents	43.11%	31.57%	-11.54%	$36,518.60	$9,777.60	36.56%
steel ingots 3-4 cents	41.54%	36.07%	-5.48%	$127,319.32	$16,784.32	15.18%
steel ingots 4-7 cents	35.64%	23.49%	-12.15%	$192,571.18	$65,641.18	51.71%
steel ingots 7-10 cents	30.36%	20.83%	-9.53%	$969,545.16	$304,286.89	45.74%
steel ingots 10-13 cents	30.07%	20.91%	-9.16%	$52,911.57	$16,123.67	43.83%
steel ingots 13-16 cents	29.38%	19.83%	-9.55%	$39,071.32	$12,700.32	48.16%
steel ingots > 16 cents	30.75%	20.86%	-9.90%	$123,638.81	$39,788.81	47.45%
All steel ingots	**37.83%**	**27.65%**	**-10.18%**	**$2,194,707.41**	**$590,689.24**	**36.83%**
hoop or band iron (all)	**44.71%**	**30.00%**	**-14.71%**	**$84,003.19**	**$27,635.19**	**49.03%**
wire rods	34.00%	23.00%	-10.99%	$2,479,716.53	$801,883.48	47.79%

All steel wire	**42.19%**	**39.79%**	**-2.40%**	**$256,621.61**	**$14,608.61**	**6.04%**
anchors	32.95%	28.08%	-4.87%	$29,980.01	$4,434.05	17.36%
iron girders	74.64%	45.45%	-29.20%	$222,627.76	$87,080.96	64.24%
cast iron vessels	26.97%	27.63%	0.65%	$17,728.64	-$430.12	-2.37%
cut nails	23.58%	22.50%	-1.08%	$302.40	$13.90	4.82%
horseshoe nails	36.48%	30.00%	-6.48%	$1,090.67	$193.67	21.59%
wire nails (all)	46.00%	25.00%	-21.00%	$898.58	$410.18	83.98%
iron spikes	107.15%	25.00%	-82.15%	$290.59	$222.79	328.60%
screws <.5 in	1.40%	25.93%	24.53%	$0.16	-$2.84	-94.60%
screws .5-1 in	83.33%	33.25%	-50.08%	$7.52	$4.52	150.63%
screws 1-2 in	46.67%	11.90%	-34.77%	$11.77	$8.77	292.17%
screws > 2 in	110.95%	10.85%	-100.10%	$214.69	$193.69	922.33%
All screws	**90.80%**	**13.24%**	**-77.56%**	**$205.76**	**$175.76**	**585.85%**
All Iron Manuf.	**55.38%**	**38.81%**	**-16.57%**	**$42,567,465.62**	**$12,739,544.11**	**42.71%**
lead in silver ore	75.36%	47.37%	-27.99%	$1,893,847.04	$703,385.04	59.09%
pig lead	49.13%	54.59%	5.46%	$145,640.17	-$16,192.83	-10.01%
sheet lead	36.65%	32.34%	-4.31%	$7,065.15	$831.65	13.34%
Total lead	**72.06%**	**51.94%**	**-20.11%**	**$1,884,586.87**	**$526,058.37**	**38.72%**
malted bev. in jugs or bottles	41.55%	30.93%	-10.62%	$1,602,981.45	$409,766.37	34.34%
cordials	115.05%	90.36%	-24.69%	$544,050.12	$116,770.28	27.33%
grain whiskey	293.26%	172.99%	-120.27%	$947,595.11	$388,619.87	69.52%
other material-distilled	366.91%	276.82%	-90.10%	$98,347.66	$24,149.24	32.55%
wine - casks	69.38%	46.35%	-23.03%	$3,725,910.11	$1,236,706.72	49.68%
wine - bottles >1 pint	28.96%	28.61%	-0.35%	$1,898,798.16	$22,852.59	1.22%
champagne - .5-1 pint	52.62%	49.73%	-2.89%	$2,353,158.32	$129,445.97	5.82%
champagne - 1 pint	55.22%	51.69%	-3.53%	$3,067,492.47	$196,270.99	6.84%
vermouth - 1 pint	53.38%	53.21%	-0.17%	$169,687.53	$532.36	0.31%
Total - Alcohol	**67.45%**	**61.29%**	**-6.16%**	**$13,078,095.57**	**$1,195,189.03**	**10.06%**
salt - bagged	35.14%	21.58%	-13.55%	$726,507.33	$280,233.40	62.79%
salt - bulk	82.33%	114.23%	31.90%	$127,074.60	-$49,246.34	-27.93%
maple sugar	6.25%	40.00%	33.75%	$1.44	-$7.76	-84.38%
Total - refined sugar	**12.91%**	**41.20%**	**28.29%**	**$397,926.63**	**-$871,878.32**	**-68.66%**
cigar leaf, unstemmed	238.68%	124.29%	-114.39%	$3,801,557.95	$1,821,900.47	92.03%
other leaf, unstemmed	81.93%	93.61%	11.68%	$6,102,539.28	-$869,799.73	-12.48%
other leaf, stemmed	95.44%	105.14%	9.71%	$694,873.42	-$70,667.99	-9.23%
cigars	125.37%	112.68%	-12.69%	$3,062,906.15	$309,977.99	11.26%
cigarettes	155.44%	133.62%	-21.82%	$46,046.06	$6,464.06	16.33%
snuff	141.79%	138.85%	-2.94%	$8,743.23	$181.23	2.12%
other tobacco	198.59%	238.12%	39.53%	$58,192.66	-$11,584.50	-16.60%
Total - tobacco products	**112.28%**	**105.17%**	**-7.11%**	**$13,439,035.33**	**$850,648.11**	**6.76%**
Total - raw wool	**44.27%**	**0.00%**	**-44.27%**	**n/a**	**n/a**	**n/a**
wool yarn	105.61%	38.56%	-67.05%	$1,925,350.58	$1,222,430.25	173.91%
wool blankets < .30/lb	88.22%	25.00%	-63.22%	$5,095.50	$3,651.50	252.87%
wool blankets .30-.40	100.21%	30.00%	-70.21%	$758.26	$531.26	234.03%
wool blankets .40-.50	103.89%	35.00%	-68.89%	$990.69	$656.94	196.83%

Total - wool blankets	**84.45%**	**29.76%**	**-54.69%**	**$16,366.64**	**$10,599.64**	**183.80%**
Aubusson, oriental carpets	60.85%	40.00%	-20.85%	$1,933,662.35	$662,625.48	52.13%
Brussels carpets	81.50%	40.00%	-41.50%	$146,339.40	$74,518.40	103.76%
Druggets	82.57%	30.00%	-52.57%	$6,360.75	$4,049.75	175.24%
Felt carpet	62.57%	30.00%	-32.57%	$6,947.87	$3,616.87	108.58%
Saxony carpets	69.55%	40.00%	-29.55%	$166,427.31	$70,710.69	73.88%
tapestry	77.97%	42.50%	-35.47%	$6,292.49	$2,862.49	83.45%
treble ingrain	63.05%	32.50%	-30.55%	$53,548.96	$25,945.33	93.99%
velvet	71.86%	40.00%	-31.86%	$83,439.25	$36,992.25	79.64%
Dutch carpets	64.74%	30.00%	-34.74%	$41,175.37	$22,096.37	115.82%
Total - wool carpets	**62.85%**	**39.78%**	**-23.07%**	**$2,434,588.39**	**$893,812.27**	**58.01%**
Total - wool cloth	**100.02%**	**48.14%**	**-51.88%**	**$26,608,665.28**	**$13,801,742.98**	**107.77%**
Total - dress goods	**51.83%**	**49.35%**	**-2.48%**	**$8,591,745.79**	**$411,618.58**	**5.03%**
Felts	93.09%	43.06%	-50.03%	$141,194.76	$75,889.11	116.21%
Wearing apparel, ready made	**81.23%**	**50.00%**	**-31.23%**	**$606,416.71**	**$233,161.36**	**62.47%**

Source: Author's calculations, based on *Foreign Commerce and Navigation,* 1893-1895. Note: summary AVE rates for article categories are listed in bold

For purposes of comparison, the difference between the Wilson-Gorman breakeven import level and the actual level of imports under the McKinley Tariff for 1893 are represented as a percentage. As may be seen from the table, the percentage growth of imports necessary to meet the breakeven point is substantial for most import categories. Revenue neutrality would require these imports to increase by several dozen or even hundreds of percentage points. This reality is likely a combination of high rates and low import volumes under the McKinley Tariff schedule's protected categories. A substantial cut in one of these rates would be expected to raise the import volume, though a question remains as to whether the new rate will meet or surpass its previous revenues.

For example, the McKinley Tariff heavily protected raw wool at 47% AVE, though $18.4 million were imported nonetheless, generating some $8.1 million in customs revenue. The Wilson-Gorman act removed this tariff entirely, and wool imports exploded to over $31 million within the first full year under the new schedule. Though import volume increased substantially, it is possible to see that a small impost-style

revenue tariff on raw wool of 2% would have fallen far short of the breakeven revenue level required for parity with the protective McKinley rates. Tariff liberalization did not necessarily mean revenue would increase for a given good, even as a protective rate was removed and imports rose dramatically.

The dramatic size of breakeven import change may be *prima facie* evidence of the protective character of a particular tariff item, reflecting a similarly large modification in the rate itself between McKinley and Wilson-Gorman. Breakeven analysis accordingly offers some value to historians as a tool for interpreting the policy role of a given rate. This much may also be seen from the traditional revenue categories of alcohol and tobacco. Whereas breakeven levels on protected items such as wool and woolens tended to require massive increases in importation, these revenue categories necessitated only small import changes. The total dollar amount of alcohol imports needed only to increase by 10% and tobacco goods by only 7%. A similar explanation also seems to apply to some "luxury" manufactured items such as dress clothing and lace (5% and 20%, respectively).

Table 6.2-B displays the breakeven results for the Underwood Tariff liberalizations of 1913. Again, a similar and indeed more pronounced pattern emerges in the results, likely due to the Underwood liberalizations far exceeding Wilson-Gorman. The tariff on some products was removed entirely, and elsewhere many import-competing categories underwent drastic rate reductions. The breakeven revenue levels followed suit, requiring an import change of several dozen or even hundreds of percentage points to retain revenue neutrality. The traditional revenue categories of alcohol and tobacco stand out in stark contrast. The breakeven percentage change for

tobacco was only 6%, and the alcohol AVE was actually raised slightly, indicating that imports could absorb a moderate decline and still remain revenue neutral.

Table 6.2-B, Breakeven Values for the Underwood Tariff Reforms

Article	1911 AVE	1914 AVE*	Rate Change (Percentage Points)	Breakeven Import Value	Import Value Change for Revenue Breakeven	% of Import Change required to Breakeven
Bituminous coal	14.83%	0.00%	-14.83%	n/a	n/a	n/a
Culm of coal	7.62%	0.00%	-7.62%	n/a	n/a	n/a
Coke	20.00%	0.00%	-20.00%	n/a	n/a	n/a
				n/a	n/a	n/a
Copper ore	0.00%	0.00%	0.00%	n/a	n/a	n/a
Copper plates	0.00%	0.00%	0.00%	n/a	n/a	n/a
Copper sheathing	10.97%	5.00%	-5.97%	$6,030.80	$3,281.80	119.38%
Total cotton thread	30.56%	21.37%	-9.19%	$6,017,245.53	$1,809,431.58	43.00%
Carpet – cotton	50.00%	20.00%	-30.00%	$79,572.05	$47,744.85	150.01%
Total cotton cloth*	42.99%	20.46%	-22.53%	$18,559,847.42	$9,727,234.83	110.13%
Lace - common articles	60.00%	60.00%	0.00%	$28,151,122.76	$0.00	0.00%
All cotton knit clothing	60.17%	30.00%	-30.17%	$870,373.62	$436,431.62	100.57%
All manuf. of cotton*	55.71%	42.79%	-12.92%	$83,681,156.05	$19,410,263.57	30.20%
Total crown window glass	62.42%	26.73%	-35.69%	$1,927,437.89	$1,102,056.74	133.52%
Total glass and glassware*	55.12%	32.91%	-22.20%	$11,117,479.02	$4,478,337.36	67.45%
Pig iron	8.69%	15.00%	6.31%	$3,174,767.70	-$2,306,395.30	-42.08%
Scrap iron	8.72%	0.00%	-8.72%			
All bar iron	18.37%	5.00%	-13.37%	$4,361,898.20	$3,174,606.34	267.38%
All steel ingots	23.14%	0.00%	-23.14%	n/a	n/a	n/a
hoop or band (all)	17.83%	10.00%	-7.83%	$16,436.70	$7,217.70	78.29%
wire rods > .04/lb	14.15%	15.00%	0.85%	$835,996.01	-$49,930.99	-5.64%
All steel wire	38.18%	15.00%	-23.18%	$2,122,014.12	$1,288,403.04	154.56%
Anchors	39.91%	15.00%	-24.91%	$5,509.87	$3,438.87	166.05%
iron girders (partial)	30.54%	10.00%	-20.54%	$984,203.40	$661,900.40	205.37%
cast iron vessels	11.16%	10.00%	-1.16%	$125,181.13	$13,054.43	11.64%
cut nails	14.12%	0.00%	-14.12%	n/a	n/a	n/a
horseshoe nails	9.82%	0.00%	-9.82%	n/a	n/a	n/a
iron spikes	37.88%	0.00%	-37.88%	n/a	n/a	n/a
All screws	54.23%	25.00%	-29.23%	$4,304.25	$2,319.96	116.92%
Total iron manuf.*	31.63%	22.39%	-9.25%	$45,389,081.05	$13,269,327.90	41.31%
lead ore	63.45%	21.88%	-41.57%	$247,948.27	$162,427.27	189.93%
pig lead	69.07%	25.00%	-44.07%	$503,936.62	$321,536.62	176.28%
sheet lead	52.75%	25.00%	-27.75%	$6,089.71	$3,203.47	110.99%
Total lead	83.71%	22.18%	-61.53%	$2,729,207.13	$2,006,172.89	277.47%
Total Alcohol	89.85%	94.90%	5.05%	$17,558,952.58	-$987,071.42	-5.32%

salt – bagged	33.01%	0.00%	-33.01%	n/a	n/a	n/a
salt – bulk	79.50%	0.00%	-79.50%	n/a	n/a	n/a
Total sugar (inc. bounty ret.)	54.35%	31.75%	-22.60%	$165,326,433.91	$68,737,062.79	71.16%
Total tobacco	87.82%	83.17%	-4.64%	$31,451,356.10	$1,663,176.34	5.58%
Total raw wool	42.21%	0.00%	-42.21%	n/a	n/a	n/a
Total yarn	76.61%	18.00%	-58.61%	$794,469.77	$607,815.74	325.64%
Total blankets	74.88%	25.00%	-49.88%	$167,232.32	$111,399.73	199.52%
Aubusson, oriental carpets	71.13%	35.00%	-36.13%	$95,387.27	$48,452.27	103.23%
Brussels carpets	72.02%	25.00%	-47.02%	$21,799.96	$14,232.96	188.09%
Woven room carpets	61.63%	50.00%	-11.63%	$4,544,167.27	$857,800.38	23.27%
Druggets	65.42%	20.00%	-45.42%	$70,401.45	$48,877.45	227.08%
Felt carpeting	50.00%	20.00%	-30.00%	$482.57	$289.57	150.04%
Saxony carpets	65.82%	30.00%	-35.82%	$88,169.62	$47,986.62	119.42%
Tapestry	70.70%	20.00%	-50.70%	$1,438.96	$1,031.89	253.49%
treble ingrain	65.01%	20.00%	-45.01%	$13,824.50	$9,571.50	225.05%
Velvet	60.32%	30.00%	-30.32%	$91,056.62	$45,768.62	101.06%
wool, Dutch carpets	55.00%	20.00%	-35.00%	$33.00	$21.00	175.00%
carpets, n.o.p.	50.00%	20.00%	-30.00%	$87,510.55	$52,505.45	149.99%
Total Carpets	61.72%	48.34%	-13.37%	$4,963,312.61	$1,075,578.55	27.67%
Total wool cloth	95.39%	35.00%	-60.39%	$14,244,042.66	$9,017,491.59	172.53%
Total dress goods	102.11%	35.00%	-67.11%	$18,567,475.31	$12,203,202.44	191.75%
Felts	95.53%	35.00%	-60.54%	$264,507.04	$167,614.70	172.99%
Wearing apparel, ready made*	78.32%	35.54%	-42.78%	$103,903.57	$56,758.32	120.39%

Source: Author's calculations based on *Foreign Commerce and Navigation,* 1893-1895. Note: * designates AVE rates taken from 1915 totals due to the Underwood Tariff's staggered implementation schedule. All other Underwood rates reflect FY 1914 totals.

In the case of the Underwood reforms, the large rate reductions and high breakeven levels for most categories that underwent rate reductions are suggestive that lawmakers were willing to absorb a loss of tariff revenue due to the knowledge that it would be supplanted by other sources with the new income tax. It is also notable that they left the tobacco and alcohol virtually unchanged, indicating that lawmakers continued to utilize these highly productive revenue categories at least for a short while as the income tax was implemented. Policymakers in 1913 were willing to forgo revenue for trade liberalization where it mitigated the protective system but not where the tariff was strictly a revenue device, at least in the two primary example categories.

Viewed in full, the breakeven analyses for the two instances of tariff liberalization from the "high tariff" period, one mild and one more significant, display a clear differentiation between the uses of different import categories for different policy purposes. It also suggests that the relationship between protective and revenue categories was a complex one, difficult to predict and prone to results that defied expectations. Lawmakers of the period recognized a connection between the two policy goals and often attempted to "tinker" with rates to affect one or the other, but they likely overestimated the precision with which they could accurately do so and underestimated the interrelated complexity of adjusting multiple tariff rates at once.

Knowing the challenges of the tariff calculation problem, it becomes easy to understand why lawmakers almost completely misunderstood the political economy implications of the income tax amendment. Both protectionists and free traders alike viewed the tariff system's rates as a cumulative aggregation of their protective and revenue effects, though tariff liberalizers sought to differentiate these effects in the way they altered rates between import-competing and revenue categories. In reality the two policy goals were quasi-competitive, and especially so at the higher end of trade protection. Even as policymakers tried to affect the political economy of the tariff system by undermining its revenue base with the income tax, individual tariff categories were subject to the competitive tradeoff between lost/gained revenue and lost/gained protection. Freed from the revenue side of this tradeoff by the income tax, the tariff question turned solely on the political tide of the trade protection movement hence the pronounced breakeven percentage changes for the Underwood reforms after revenue ceased to be a dominant tariff policy concern. Fordney-McCumber thus represents a

reversal in this tide, again freed from revenue constraints.

As has been amply documented, lawmakers at the turn of the century often contextualized their tariff policy goals in terms of the Laffer relationship. The process of finding a revenue-neutral import breakeven point indicates that they also likely had great difficulty in discerning exactly where an existing rate fell on the Laffer Curve, even as they utilized it as a rhetorical tool to advocate for policy change in one direction or another. This calculation depended on another variable underlying the breakeven strategy, price elasticity. Unknown to lawmakers at the time who extolled the emergence of "scientific" tariff calculations at the expert administration of the U.S. Tariff Commission, elasticity would prove to be a tougher shell to crack than even the notoriously quirky process of revenue projection.

6.3 Tariffs, Revenue, and the Laffer Relationship

> "If by this latter duty were meant so trifling a duty that none would feel it, the old law maxim, the law does not take notice *de minimis,* might be adduced; but a trifling tax does not do any one any good, nor does the subject loose in injustice by the fact that perhaps comparatively few are affected. For those few, that tariff is as injurious as a sweeping one is to all." – Francis Lieber, 1869[547]

Multiple examples from tariff legislation in the 19th and early 20th century indicate that the political question of free trade or protectionism was qualified by the tariff's

[547] Francis Lieber, 1869. *Notes of Fallacies Peculiar to American Protectionists, or Chiefly Resorted to in America.* New York: American Free Trade League, p. 31.

simultaneous role in federal fiscal policy. The debate over tariffs also became a contest between the "revenue tariff" with incidental protective qualities and the more familiar protective tariff with incidental revenue capacity. Furthermore, as has been illustrated throughout its historical application, the Revenue Clause of the Constitution effectively imposed these parameters on the debate by bestowing constitutional primacy on the tariff as a revenue device. Only after 1913 were these two features of revenue and protection separated. Virtually all tariff policy prior to 1913 was therefore subject to the revenue implications of the Laffer Relationship in addition to the politics of interest group lobbying for protective purposes. The traditional political economy features of the free trade/protection debate were accordingly compounded by revenue.

The intuitive appeal of the Laffer Curve is strong and its theoretical mechanics are relatively simple. The same cannot be said for its practical application though. The most famous modern use of the Laffer Curve, the income tax debates of the 1980's, produced two powerful critiques of its utility as a guideline for federal fiscal policy. The first, developed by James Buchanan and D.R. Lee, asserted that since rationally motivated political decision-makers adopt taxes to finance the various undertakings of government, "there would never seem a logical reason for increasing tax rates beyond maximum revenue limits." Should a situation emerge where tax rates fell to the right of the revenue maximization point, a rational politician, seeking to increase available funds for government expenditures, would move to reduce the rate and thereby increase revenue.[548]

[548] James Buchanan and D.R. Lee 1982. "Politics, Time, and the Laffer Curve." *Journal of Political Economy,* 90-4, p. 816). An extensive literature of explanations for this critique has emerged in its wake. Buchanan and Lee suggest that the revenue maximization points of a given tax differ between the long run and short run, meaning a policymaker's rate decision may outpace public response to a tax change. Besci (2000) argues that the curve's shape is "shifty," thereby limiting the ability of policymakers to determine

An income tax rate on the upper half of the Laffer Relationship accordingly becomes irrational, unless one assumes that a rationally-acting politician has miscalculated the shape of the curve itself and mistakenly permitted rates to exceed the revenue maximization level of t* due to this information deficiency.

Ironically, the pre-1913 U.S. tariff system provides another answer to this critique as a result of its dual uses in fiscal policy and trade regulation. The conscious policy of trade protection provided legislators with a rational reason to forgo revenue and intentionally raise rates beyond t* and into the upper half of the Laffer Curve.[549] A completely prohibitory tariff would take this example to its extreme by definition, as its object would be to completely exclude the foreign competition of an import-competing product, defeating its own revenue capacity by intentional deterrence. The Republicans' "true principle" of so-called "scientific" protectionism in the early 20th century reveals that this policy was openly contemplated for particular items on the tariff schedule and, in some instances, enacted. The object of this "principle" was to compare the domestic price of a product and its imported competitor, setting the tariff rate equal to the difference between the two and, if necessary, an additional designated profit margin for the home industry. Holding all else equal, a tariff based on this formula would be prohibitory by design.

The second critique of the Laffer Curve concerns the mathematical characteristics of t*, the revenue-maximizing rate. Alan Blinder first observed that the curve's height is empirically dependent upon the price elasticity characteristics of the object of taxation.

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whether existing rates are to the right or left of the revenue maximum. See. Z. Besci, 2003. The shifty Laffer Curve." *Federal Reserve Bank of Atlanta Economic Review,* 85, pp. 53-64.

[549] Phillip W. Magness, 2008. "Constitutional Tariffs, Incidental Protection, and the Laffer Relationship." *Constitutional Political Economy,* Vol. 20.

Taking the simple case of a single object excise tax, Blinder illustrated that the t* maximization rate has an inverse relationship with the price elasticity of the taxed object, though only atypically high elasticities of supply and demand would create sufficiently low t* rates for the Laffer Curve to have meaningful fiscal policy implications. This circumstance, he observed, was realistic only for narrowly constrained taxes where high elasticities are common. Elasticities of this level are unlikely for "any broad-based tax" though, and accordingly preclude the Curve's relevance to the income tax debates of the 1980's by implication.[550]

The pre-1913 tariff system seems to offer an answer to this second critique as well. Its customs categories were narrowly defined around single goods where high elasticities might be expected and the tariff rates tended to be exorbitantly high by modern tax standards. Individual rates on late 19th and early 20th century schedules routinely exceeded the equivalent of 50% or 100% *ad valorem*, and in some instances were even pushed upwards of 300%.[551]

On the surface the Laffer Relationship seems to offer a means of obtaining a relatively precise measure of the way that fiscal issues interacted with protectionism in the pre-1913 U.S. tariff system, as well as any constraints it imposed upon interest group pressures for higher tariff rates. Expectedly then, tariff rates enacted prior to 1913 should exhibit the characteristics of both protective and revenue rents whereas those enacted after the income tax amendment should exhibit primarily protective features with only incidental revenue. The Laffer Relationship should accordingly assist in the identification

[550] Blinder, 1981, pp. 86-7
[551] See Appendix I

of protective categories by the calculation of the t* rate and its juxtaposition along side actual rates. The purpose and character of a customs category as well as its fiscal effects (and thus its relationship to the Revenue Clause argument against protection) could be determined by comparing the actual rate to the revenue-maximizing peak of the Laffer Curve. This analysis may further elucidate the effects of modifying the tariff rate beyond that which is visible from the simple direction of the change.

Unfortunately such a comparison is complicated by two substantial data limitations. Each must be considered in turn. First, it is difficult to accurately distill a given tariff schedule to an empirical measure of its character and policy purpose(s) that compares easily across time. Far from imposing the single rate of the original impost proposal or even a classified system of uniform schedules, the typical U.S. tariff laws of the period in question established exceedingly complex schedules for assessing hundreds or even thousands of different items at different rates, many of them standardized to units of measurement that defy any meaningful comparison with other categories.

Economists have long sought an accurate, standardized measure for the character of a particular tariff by attempting to calculate its severity in its "height," or the Average Tariff Rate it imposes on all dutiable goods. As noted before, this calculation is made by taking the ratio of total customs revenue to the recorded value of dutiable imports, resulting in an "average" rate of import duties by percentage for a given year. While prevalent in the literature and roughly indicative of the general direction of a change in the tariff schedule, use of the ATR stems largely from the lack of a better alternative as it also exhibits an acknowledged methodological bias. Since ATR is calculated using collected customs revenue it tends to skew towards revenue categories on the tariff

schedule and understate protective categories, where importation (and thus revenue collection) is intentionally deterred. The effect of restrictive rates on heavily protected goods registers lightly in comparison to lower revenue categories. Prohibitive rates that produce no revenue by design do not register at all, even though they represent the most severe application of the tariff's protective effects.[552] As a result, a heavily protective tariff that also contains a large schedule of revenue categories (as is true of tariff policy in the late 19th century United States) may result in an ATR that substantially understates the severity of protection it applies to particular categories or industries. ATR is therefore an inadequate measure for examining the questions that have been posed about the pre-income tax tariff schedule. As a proxy figure for the tariff schedule's aggregate relationship to t*, it is of little use at all.

The second data issue is more directly relevant to identifying t* for a given customs category, as it concerns the availability of a necessary statistical components to make this calculation. The calculation of t* for goods on a historical tariff schedule would require, at minimum, extensive and reliable figures indicating price elasticity for each item, to say nothing of complicating data constraints depending upon the model used and the loosening of its assumptions, as would be necessary to account for variations in import prices after the imposition of a tariff. Historical measures of price elasticity within the U.S. market are difficult to come by even for prominent industries such as iron, where occasional estimations have been made. For most items on any given 19th or early 20th century tariff schedule they are nonexistent. Even in the present,

[552] "Value of U.S. Imports for Consumption, Duties Collected, and Ratio of Duties to Values." Statistical Services Division, United States International Trade Commission, Washington, D.C., 2006, p. 8.

accurate elasticity data are difficult to ascertain, particularly for the import competitors of a domestic good. The lack of price elasticity figures accordingly imposes limits on the Laffer Curve as an analytical tool.

Some of the problems caused by this data limitation may be sidestepped by substituting a range of elasticities as a proxy to calculate a theoretical t* rate. Though this technique does not identify the actual t* revenue of a given historical import, it establishes a set range of theoretical candidates for t* and permits further hypothesizing on their relation to actual historical rates. Douglas Irwin's study of the 1888 tariff debate used a similar technique to test the competing Republican and Democratic arguments about the tariff's location on the Laffer Curve when measured in aggregate, enabling him to identify the possible scenarios in which each the arguments of each party might be correct.[553]

In addition to demonstrating this methodology, Irwin's calculations provide a good starting point to derive the calculation of t*. A tariff's revenue, R, is equal to its rate, t, taken as a percentage of its import value (price, p, multiplied by volume of imports, M), or:

$$R = tpM$$

The Laffer Curve thus appears in an expression of the tariff's revenue, R, as it relates to its rate, t. The aforementioned equation may be differentiated to reflect the relation between a change in the tariff rate and revenue, giving us the marginal tax yield:

$$dR/dt = pM + (tp)dM/dt + (tM)dp/dt$$

The first term, pM, estimates the marginal tax yield absent behavioral responses to a

[553] Irwin, 1998.

change in the tariff and has been dubbed the "naïve Treasury" term by Blinder.[554] The second term, (tp)*d*M/*d*t, represents the wedge effect of the tax, wherein revenue responds to the change in the tax base. As Irwin indicates, the "tax base" for the tariff is the quantity of imports. The third term, (tM)*d*p/*d*t, represents the effect on revenue from the change in import prices as a result of the tax. Taken in cumulative, these three terms effectively determine the height and position of the Laffer Curve.

In the simplest case of the tariff, it is assumed that the imported good and its domestic competitor are perfect substitutes. Given acknowledged data limitations and what may be discerned from 19th and early 20th tariff schedules, a perfect substitutes assumption is actually fairly well suited for many historical U.S. imports. Many of the most heavily protected tariff categories at this time applied to industries with little product differentiation between imports and their domestic competitors. This included a wide range of raw materials such as wool and sugar, but also unfinished manufactures and those with generic qualities, such as cotton cloth, glass sheets, iron and steel (both raw production and certain manufactured goods), yarns, woolen cloths and materials, carpets, small iron manufactures such as screws and nails, and generic clothing and textiles. Though exceptions indisputably exist on historical tariff schedules, something approaching near-perfect substitution remains a reasonable descriptor for most of the tariff categories that are the subject of the present study. Further analysis will accordingly begin by making this assumption.

Irwin's first scenario describes a case where the import supply is perfectly elastic, indicating that the price increase from of the tariff is passed entirely onto domestic

[554] Blinder, pp. 84-5

consumers (in other words, import prices are fixed). A perfectly elastic supply of foreign goods means that $dp/dt = 0$ and therefore the final term $(tM)dp/dt$ drops from the equation.[555]

The Laffer Curve peak of t* is found by setting $dR/dt = 0$. The actual t* rate is dependent upon the elasticity of import demand for the taxed good, or η_D:

$$t^* = -1/1+\eta_D$$

The comparison of an actual tariff rate to t* accordingly requires the η_D for that good, immediately exposing the aforementioned information constraint on any attempt to calculate its actual revenue-maximizing rate (and corresponding amount of revenue, which would ultimately be of greater interest to 19th century lawmakers). For a given good, η_D may be calculated as follows:

$$\eta_D = \frac{\frac{\Delta M}{M}}{\frac{\Delta p}{p}}$$

As noted the requisite elasticity data for this period in history is unfortunately limited, consisting of little more than Irwin's estimate of -2.6 for all U.S. import demand between 1869-1913, and an actual product-by-product calculation of the actual t* rate is all but precluded.[556] The calibration of historical import data under hypothetical elasticities nonetheless offers an opportunity for further interpretation.[557]

Table 6.3-A illustrates an array of hypothesized revenue maximizing rates for

[555] Irwin, 1998, p. 64
[556] *Ibid*., p. 67
[557] The use of partial equilibrium models to calibrate the effects of a tariff on imports is well established in the international trade literature. See, e.g., Kenneth A. Reinert, Ramkishen S. Rajan, Amy Joycelyn Glass, and Lewis S. Davis, eds. 2009. *The Princeton Encyclopedia of the World Economy.* Princeton, NJ: Princeton University Press, pp. 891-3. The present examination of a tariff's revenue attributes is effectively an extension from this technique, utilizing Irwin's method of elasticity arrays.

their corresponding import demand elasticities, using Irwin's derivation.

Table 6.3-A, t* with Fixed Import Price Assumption

η_D	t*
-1.2	500.0%
-1.5	200.0%
-1.7	142.9%
-2	100.0%
-2.2	83.3%
-2.5	66.7%
-2.7	58.8%
-3	50.0%
-3.2	45.5%
-3.5	40.0%
-3.7	37.0%
-4	33.3%
-4.2	31.3%
-4.5	28.6%
-4.7	27.0%
-5	25.0%

It is evident from this table that lower revenue maximization rates correspond to the larger import demand elasticities. The table also suggests that under the fixed import price assumption, t* was indeed an attainable rate unlike the case of Blinder's critique of the Laffer Curve as an income tax indicator in the 1980's. With tariff rates frequently occurring in the vicinity of 50% or 100% AVE, if not more, it is entirely plausible that individual goods were being taxed at rates well to the right of t* on the Laffer Curve, thus fulfilling a clear protective design at the expense of revenue.

Figure 6.3-A graph (1) illustrates the revenue generated by a tariff (or its familiar revenue rent, area "C") when coupled with the implicit elasticity consideration under the fixed import price assumption. Revenue in this case is determined by the tariff rate, t, and the η_D of the taxed import. The latter is depicted through the slope of import demand in

the corresponding graph (2). Knowing η_D and holding to the fixed import supply assumption, it is then possible to calculate the customs revenue from an import taxed at t, this revenue return being depicted in the shaded area of (2). If a different η_D is assumed for the good the slope changes, thereby reflecting a new level of revenue from the tariff at the given rate.

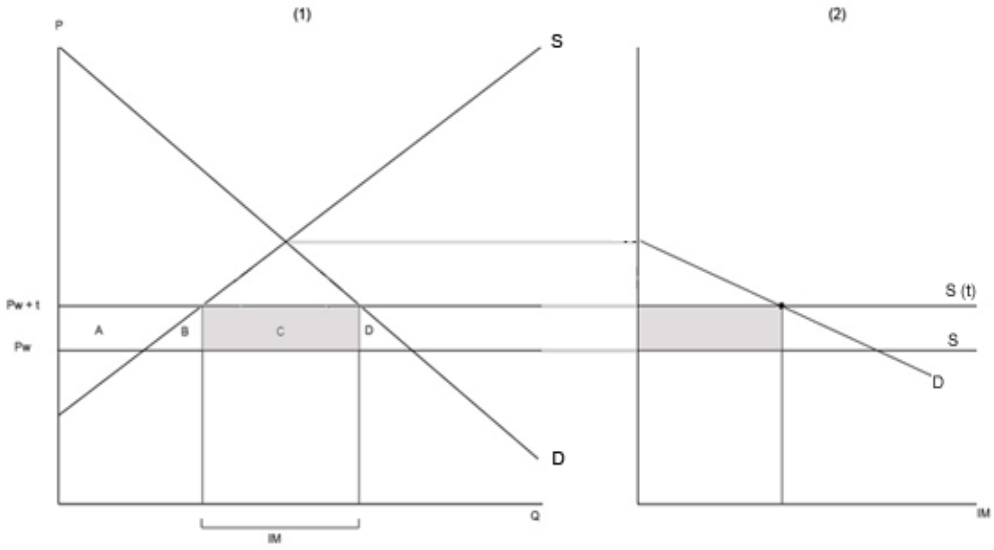

Figure 6.3-A, Revenue Effects of a Tariff

Tariff revenue at rate t is therefore shown to be determined by η_D for the good, holding all else constant. If the actual η_D is unknown and a hypothetical array of elasticities is utilized for this calculation, the resulting revenue from t is depicted through the differing slope. Stated another way, each hypothesized η_D will generate an associated level of revenue at rate t. By implication then, the revenue maximizing rate of t* will vary depending upon the hypothesized η_D. Using this rate (or any specified rate for that matter) and a given η_D it is therefore relatively easy to simulate the effects of a tariff change on revenue in actual dollars, calibrated to known historical import figures.

A second and more complex scenario relaxes the assumption that the supply of

foreign goods is perfectly elastic, holding instead that the imposition of a tariff affects the price of imports. This condition restores the third term, (tM)*d*p/*d*t, reflecting the revenue effects of from the tariff-induced change in import prices. As a result t* is no longer simply a function of η_D, but also the elasticity of supply for the foreign good or E_S. Again following Irwin, a new revenue maximization rate may be obtained.[558]

$$t^* = (\eta_D - E_S)/ E_S(1 + \eta_D)$$

The addition of E_s into the equation generally produces a higher revenue-maximizing rate than the fixed import price scenario. This effect is attributable to the reduction of import prices as a result of the tariff, which in turn expands imports even as the tariff itself is designed to deter them.[559] Table 6.3-B illustrates that the array of hypothetical revenue maximization rates quickly becomes more complex, now depending upon both E_S and η_D.

Table 6.3-B, t* with Variable Import Price Assumption

ϵS / η_D	2	3	4	5	6	7	8	9	10
-1.2	800.0%	700.0%	650.0%	620.0%	600.0%	585.7%	575.0%	566.7%	560.0%
-1.5	350.0%	300.0%	275.0%	260.0%	250.0%	242.9%	237.5%	233.3%	230.0%
-1.7	264.3%	223.8%	203.6%	191.4%	183.3%	177.6%	173.2%	169.8%	167.1%
-2	200.0%	166.7%	150.0%	140.0%	133.3%	128.6%	125.0%	122.2%	120.0%
-2.2	175.0%	144.4%	129.2%	120.0%	113.9%	109.5%	106.3%	103.7%	101.7%
-2.5	150.0%	122.2%	108.3%	100.0%	94.4%	90.5%	87.5%	85.2%	83.3%
-2.7	138.2%	111.8%	98.5%	90.6%	85.3%	81.5%	78.7%	76.5%	74.7%
-3	125.0%	100.0%	87.5%	80.0%	75.0%	71.4%	68.8%	66.7%	65.0%
-3.2	118.2%	93.9%	81.8%	74.5%	69.7%	66.2%	63.6%	61.6%	60.0%
-3.5	110.0%	86.7%	75.0%	68.0%	63.3%	60.0%	57.5%	55.6%	54.0%
-3.7	105.6%	82.7%	71.3%	64.4%	59.9%	56.6%	54.2%	52.3%	50.7%
-4	100.0%	77.8%	66.7%	60.0%	55.6%	52.4%	50.0%	48.1%	46.7%
-4.2	96.9%	75.0%	64.1%	57.5%	53.1%	50.0%	47.7%	45.8%	44.4%
-4.5	92.9%	71.4%	60.7%	54.3%	50.0%	46.9%	44.6%	42.9%	41.4%
-4.7	90.5%	69.4%	58.8%	52.4%	48.2%	45.2%	42.9%	41.1%	39.7%
-5	87.5%	66.7%	56.3%	50.0%	45.8%	42.9%	40.6%	38.9%	37.5%

[558] *Ibid.,* p. 65
[559] *Ibid.*

Viewing the elasticity arrays of both scenarios, it becomes possible to envision the revenue effects of a tariff rate change on a given individual category. Assuming our knowledge of reliable elasticity data and accurate assumptions about the trading market for the good in question, it is theoretically possible to calculate t* for comparison with where a rate change actually stood, and thus determine whether it would increase or decrease revenue.

Aside from the limitations imposed by the paucity of reliable elasticity data, the study of revenue effects is somewhat constricted by the infrequency of successful trade liberalization bills during the pre-income tax "high tariff" era. It is however possible to consider the hypothetical revenue effects of proposed though unsuccessful reforms. One such proposal recurred throughout this period. For much of the late 19th and early 20th centuries, tariff reformers ascribed to the "horizontal tariff" principle in which existing tariff rates would be liberalized by fixed across uniform rate reductions on all categories, normally set at 20%. This "horizontal tariff" was routinely proposed as a metric to gauge trade liberalization from 1883 onward, albeit without much success until it partially influenced the 1913 reforms.

Using historical data under the McKinley Tariff in 1893, the Wilson-Gorman Tariff in 1895, and the Dingley Tariff in 1907 it is possible to project the hypothetical revenue effects of the 20% horizontal tariff reduction, had Congress chosen to take this route. The fixed import price assumption of the first scenario is assumed, primarily because it requires only one elasticity variable, η_D, to calibrate the revenue effects of a tariff change. Since elasticities are taken as a hypothetical and thus calibrated using an

array, the inclusion of variable import prices and thus E_S from the second scenario would have the multiplicative effect on hypothesized scenarios depicted in Table 6.3-B.[560]

Holding to the fixed import price assumption, the revenue effect of a 20% rate reduction will be exhibited in the change of the shaded area of Figure 6.3-A. The tariff rate effects of the "horizontal" reduction are calculated so that $t_h = 0.8*t$. Using 1 as a pre-reduction calibration point, the change in the domestic price following this reduction is calculated. Historical import value and revenue data permit the calculation of M. The revenue effect of the reduction is accordingly found by solving for the change in M from the formula for η_D, or:

$$\Delta M = M\left(\frac{\Delta p}{p}\right)\eta_D$$

Here η_D is assigned a hypothetical value. The present analysis uses a range of values from -1.5 to -4.5.[561] The resulting revenue effect of a 20% reduction for each hypothetical η_D is displayed in Appendix II for the McKinley, Wilson-Gorman, and Dingley Tariffs in selected years immediately preceding a tariff schedule overhaul.

As may be seen from all three examples, whether the revenue effect is positive or negative largely depends upon the greater hypothetical elasticity of import demand and on the height of the initial tariff, much as Table 6.3-A also indicates. Thus under the McKinley Tariff for 1893, a 20% reduction on the heavily taxed category of wool yarn (105% AVE), would yield an increase in revenue even at the lower end of its assumed η_D.

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[560] The result of such analysis would produce an unmanageable array of hypothetical revenue effects when extended across a tariff schedule of several hundred items, thereby limiting its practical interpretive value. It should not be concluded from this observation, however, that the fixed import price assumption necessarily pertains to all goods on the historical U.S. tariff schedule.

[561] While the upper range of these hypothetical values is an unlikely estimate of all imports as Irwin's calculations suggest, a high η_D for individual goods on the tariff schedule is more plausible.

Goods with more moderate initial rates also tend to lose revenue with the horizontal reduction, assuming a lower η_D.

The figures of Appendix II are by no means exhaustive and are presented only for hypothetical analysis so as to illustrate the widely differing revenue effects of a general tariff rate reduction on different tariff categories. They do, however, illustrate the dual presence of revenue and protective categories in the tariff schedule by showing that the same uniform policy – in this case a 20% reduction – would likely produce very different policy effects for each category where it was applied. It may be accordingly observed that individual rates on a given historical tariff schedule likely fell to both the left and the right of t*. A rate increase or reduction came with real revenue consequences depending on this position in the existing tariff system – a fact that lawmakers could not easily ignore when modifying the tariff schedule, even if the overall character of the new schedule change followed a single direction.

6.4 The Income Tax: A Rational Mistake?

> "It has been argued that general business has been waiting on the tariff and numbers of timid people have been withholding stock market commitments until this matter is finally settled." – *Wall Street Journal*, June 30, 1909[562]

The historical discussion surrounding the income tax amendment provides ample evidence that its subsequent effects were unanticipated, if not openly mistaken.

[562] "Broad Street Gossip." *Wall Street Journal,* June 30, 1909

Opponents of the policy saw in it the gravest of threats to the protective tariff system. Nelson Aldrich likely took this belief to the grave, dying barely a year after the Underwood reforms gutted the tariff that bore his name and began the transfer of the revenue system over to the income tax. Had he lived a short while longer he would have been pleasantly surprised to discover the ease with which the tariff regime returned, and with a vengeance at that given the sheer complexity of Fordney-McCumber and Smoot-Hawley.

Joe Bailey lived long enough to see the income tax in practice, dying in 1929 as the Smoot-Hawley bill was being formulated on the eve of the Great Depression. In 1920 he attempted a return to Texas politics by seeking the Democratic nomination for governor. Bailey commented publicly on the income tax policy he helped to create, but denounced what it had become. His income tax "was not the present one," he told an audience in San Antonio. The original income tax was only three pages long and was never intended to contain the complex graduated schedule it had already blossomed to in less than a decade. "The present law…could not be understood by the congressmen themselves."[563] Elsewhere on the campaign trail he called the new income tax system "a tax to penalize prosperity" and an incomprehensible "riddle," requiring accountants, lawyers, and tax specialists to decipher.[564] Were the matter up to him, the former senator who spawned the income tax amendment would restore the tax system to its origin in his 1909 proposition. Bailey left little indicator of his reaction to the Fordney-McCumber tariff two years later, though its enactment probably elicited a similar response alleging

[563] "Prohibition Views Outlined by Bailey." *Galveston Daily News,* April 8, 1920.
[564] "J.W. Bailey Formally Announces for Governor." *Galveston Daily News,* February 19, 1920

the amendment's misuse.

Remarkably, both Bailey and Aldrich managed to completely mistake the constitutional and policy consequences of the income tax. The trade liberalizing effects that they respectively favored and feared lasted less than eight years before the new income tax-based revenue system shifted the political economy of the tariff irretrievably towards protection until rescued by the previously unthinkable executive branch cessions of the 1934 Reciprocal Trade Agreements Act. Assuming that both Aldrich and Bailey approached the income tax as rational political actors, the implications of their mistakes are far reaching. Did the lawmakers of 1909 actually create a system that would ultimately bring about the opposite effects of their design? Did the income tax opponents perceive a phantom threat to protectionism? Given the modern significance of the income tax, it could be justly stated that American history offers few other examples of a policy miscalculation with comparably severe effects.

Anecdotal evidence of a miscalculation by both sides is abundant, particularly given that, in addition to Bailey's free trade rhetoric, the amendment received the favorable endorsement Seligman, Dewey, and many other leading economists of the day. Dewey openly predicted that the amendment would "divorce" the alliance between protectionist industries and revenue seekers, thus eliminating the more harmful effects of interest-driven tariff politics. Aldrich's opposition to the income tax was vehement, pronounced, and couched heavily in protectionist rhetoric. It appears then that supporters and opponents of the amendment alike operated in an environment of bounded rationality. Each pursued a policy that he perceived to advance his respective position on the trade question, but did so under the constraints of limited information and faulty

constitutional assumptions about the political economy of the tariff.

As has been suggested, both sides perceived the tariff schedule as an aggregation of its protection and revenue-seeking interests. In reality these interests diverged in their goals, as represented by the upper half of the Laffer Curve. The removal of revenue policy – one half of the tariff equation before 1913 – accordingly left the protectionist side unchallenged, its fortunes constrained only by the shifting winds of the electorate.

Further evidence of the income tax policy's intent and reception may be obtained by observing the reaction of the stock market to the events of 1909. If the bounded rationality assumption is correct, the stocks of import-competing firms would have reacted to decisive Senate actions on the income tax by following the Aldrich-Bailey divide. A vote or other legislative action signifying the income tax's advance might be expected to depress the stocks of these firms. An action signifying its defeat might be met with a rally.

These historical data must be examined in light of the events surrounding the income tax issue. It should be recalled that Bailey offered an income tax as an amendment to the Payne-Aldrich tariff bill, in part to divert revenue from the tariff as a pretext for trade liberalization. The legislative battle waged around whether Aldrich would be able to contain a small group of Republican "insurgents" before they united with the Democratic minority to attach the income tax. After months of uncertainty and parliamentary maneuvering, Aldrich settled on a strategy of defeating the measure with a complex compromise he crafted with President Taft. In exchange for allowing the protective Payne-Aldrich Tariff to pass into law, Aldrich would curtail the Republican insurgency by two counteroffers to the Bailey income tax proposal: a significantly milder

corporate "excise" tax to be included in the tariff, and the constitutional amendment to remove the issues caused by the *Pollock* decision. Aldrich approved the concessions in part because he believed he could kill the amendment later during the ratification process, effectively removing the threat of the income tax for several years to come.

Bailey's proposal proved to be a more immediate challenge for Aldrich than the constitutional amendment. Though he approved of that concession, Bailey continued to press forward with his effort to attach an income tax onto the tariff bill and likely still had the numbers to do so should it come to a direct vote of the Senate. In order to preserve the protective tariff, Aldrich first had to kill the Bailey measure by offering the corporate "excise" tax as an alternative. This occurred on June 29 when Aldrich took advantage of Bailey's absence from the Senate to substitute his measure, thus effectively killing the income tax itself for 1909 and leaving only the uncertain and then-distant prospect of the constitutional amendment's ratification.

There is considerable evidence that Wall Street kept a close eye on the tariff and income tax debate as it unfolded in the Senate. In late June the *Washington Post* observed that the market awaited resolution of "the perplexities of the tariff situation" and the "effort to tax corporation earnings."[565] Another report attributed weeks of a sluggish activity in the early summer to tariff uncertainty. Traders on the New York Stock Exchange openly complained of "tiresome delay over the tariff and the complications interjected by the recommendations for an income tax amendment to the Constitution."[566] Import competing firms took notice too, with a lead smelting company announcing in

[565] "Wall Street Gossip," *Washington Post,* June 27, 1909.
[566] "Wall Street Gossip," *Washington Post,* June 22, 1909

mid June that "the favorable settling of the tariff bill" would bring about "better times" for its stockholders.[567] Many traders reacted with dismay after the Taft-Aldrich compromise was publicly unveiled on June 15th. It was feared that the three-pronged proposal would delay the final vote on the tariff bill for months, further suppressing stock prices. Nor was Wall Street particularly keen on the new tax prospects of the income tax amendment and the corporations excise.[568]

Anecdotal evidence also indicates that Wall Street, and particularly import-competing firms, reacted very favorably to the news that Aldrich had outmaneuvered Bailey in the income tax fight on June 29th. The *Wall Street Journal* attributed a surge in activity on the stock market to "the practical settlement of the tariff question" following a month of uncertainty. "The practical completion of the tariff schedules in the senate…figured largely in the arguments of the bulls and appeared to be the foundation of renewed optimism on the part of many of the commission houses."[569] Steel posted the largest gains in trading on June 29th. One report from that day indicated a "partner in one of the large commission houses…had on his books a number of orders to be executed immediately [after] it became assured that tariff schedules were definitely adjusted." These orders, which reputedly contained a large volume of steel stock, were said to be contingent on the fate of the tariff bill and the related income tax proposal. "[S]everal of the customers today construed the Senate's refusal to decrease the tariff on steel products as the last word on the subject."[570]

Given these reports, a noticeable movement in import-competing stocks would

[567] "Federal Mining and Smelting." *Wall Street Journal,* June 24, 1909.
[568] "Taxation of Net Earnings." *Wall Street Journal,* June 19, 1909.
[569] "Features of the Market." *Wall Street Journal,* June 30, 1909
[570] "Boom in Steel Shares," *Washington Post,* June 30, 1909

provide strong evidence of how the income tax and tariff were interpreted by investors, who presumably acted rationally based on the information available to them at the time. The effect of a given vote or congressional action relating to the income tax might accordingly be reflected in the stock prices of an affected firm. Upward movement, as was anecdotally reported for the steel industry, may signify that investors viewed the defeat of Bailey's income tax on June 29th as a boon for these industries. Downward movement might be similarly expected for an event signifying uncertainty in the Payne-Aldrich bill.

One matter should be addressed concerning the nature of the stock market in 1909 before undertaking additional study. Industrial firms of the type that likely favored protection were uncommon on the railroad-dominated stock exchange prior to the 1890's, and were only beginning to establish themselves as a market mainstay in 1909. Those industrial firms that traded publicly tended to be the infamous "trusts" of this era, many of which held large controlling market shares in their product. The copper industry was dominated by Amalgamated Copper Mining Co, operators of the massive Anaconda mine in Montana. Iron and steel production belonged to Pennsylvania industrial giant U.S. Steel and its cross-state rival Bethlehem Steel. Few companies had a market share to rival the American Sugar Refining Co. in its perch at the helm of the "Sugar Trust," which controlled in excess of 90% of the U.S. sugar refining industry in 1909. Much of the remainder belonged to the American Beet Sugar Co., a sometimes rival on tariff policy that occasionally contested cane sugar protection to the advantage of its own subsector. Virtually all of these firms faced import competition of some sort and, unsurprisingly, all

lent their support in one form or another to the protective tariff system.[571] The sugar tariffs, among the most convoluted and severe on the schedule, were widely seen as synonymous with the far reach of corporate protectionism in this period.

Figure 6.4-A displays the stock market behavior of ten firms from mid June to mid July 1909, as measured by variations in their average stock prices. Eight of the ten were import-competing industries. The remaining two are a streetcar and railway company, Brooklyn Rapid Transit, and a utilities company for New York City, Consolidated Gas. Each are included for visual comparison due to their relative insulation from events that would directly affect import-competing firms.

[571] Examples of industry support for the tariff are numerous and were widely reported during the income tax debate. As noted in prior discussion, prominent import-competing firms such as U.S. Steel and the American Smelting and Refining Co. actively colluded with Aldrich in crafting the text of his tariff bill in sections that applied to their product. See Aldrich Papers, LOC. The following financial articles suggested industry responsiveness to the settling of the tariff question. **Lead:** "Federal Mining & Smelting" *Wall Street Journal,* June 24, 1909. **Copper:** "Copper Market," *Wall Street Journal*, February 17, 1909. **Steel:** "Tariff and Steel," *Wall Street Journal,* January 1, 1909. **Woolens:** "The Tariff on Wool," *Wall Street Journal,* March 20, 1909. **Sugar:** "Sugar and the Tariff," *Wall Street Journal,* March 20, 1909.

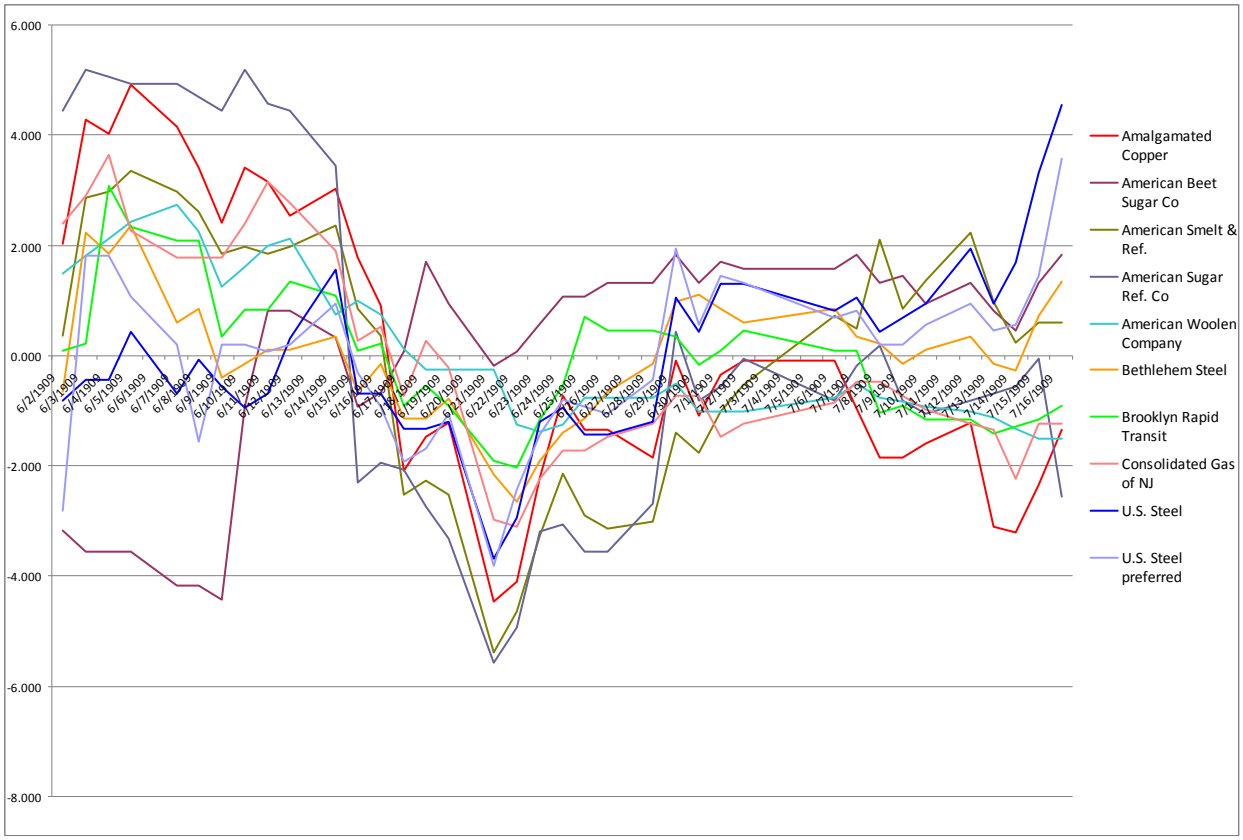

Figure 6.4-A, Variation in Average Stock Prices for June and July 1909
Source: Stock prices obtained from daily reports in the *New York Times* and the *Wall Street Journal* for June and July 1909

Several observable trends appear in this figure, suggesting the anecdotal reports from Wall Street were accurate. A noticeable dip occurred on June 15th, the day of the Taft-Aldrich compromise signifying tariff uncertainty. A noticeable upswing also appears among most of the eight import-competing firms on June 29th, suggesting a positive reaction to the defeat of Bailey's income tax proposal. Another dramatic market drop appears on June 21st followed by an equally dramatic recovery the next day, though closer investigation reveals this was not a tariff-related event. A false wire report that morning contained rumors of the sudden death of E.H. Harriman, chairman of Union Pacific and one of the richest men in the United States, while he was vacationing in

Europe. Panic over the disposition of his estate shocked the market until a later wire corrected the mistake, causing a full rebound the next day.[572]

Though telling, these data reflect only a small part of the stock market picture. Other lesser events appear in the vicinity of June 10, the day Congress resumed discussions of the income tax proposal after Aldrich's delay from a month prior. Possible movements also seem to appear in early July, around the time the House (July 12) and Senate (July 5) passed the 16th amendment. In any case, these preliminary returns appear to justify a closer examination. A short list of major industrial firms that traded on the NYSE with regularly reported stock returns may be found in Table 6.4-A:

Table 6.4-A, Selected Major NYSE Industrial Firms, 1909

Stock	Product
Amalgamated Copper Refining Co.	Copper
American Beet Sugar Co.	Beet sugar
American Sugar Refining Co.	Cane sugar
American Smelting & Refining Co.	Lead, silver, copper
American Woolen Company	Woolen textiles
Bethlehem Steel	Iron and steel
U.S. Steel (common stock)	Iron and steel
U.S. Steel (preferred stock)	Iron and steel

Using daily reports of these stocks from the *Wall Street Journal* and the *New York Times,* it is possible to conduct a statistical analysis of their reaction to major events as the tariff and income tax policies were developed in Congress. For example, all eight stocks posted gains on June 29th, many of them substantial. Bethlehem led the pack with a rise of 3.75% on its stock, with U.S. Steel close behind at 3.37%. American Sugar posted 2.5% followed by 2.16% gains on Amalgamated Copper's stock. American Woolens rounded out the group with the lowest gain, a not-insubstantial .74% on a day

[572] "Harriman Not Ill," *New York Times,* June 22, 1909.

that the average railroad stock rose by only a third of a percent.[573]

The event study methodology from the finance discipline is particularly suited to this form of analysis, as it seeks to measure the economic impact of an identified historical event on the value of a firm and test it for statistical significance. Event studies are well established as a tool for historical analysis, including the receptiveness of firms to a change in a governing law or regulatory policy.[574] This method is most commonly applied to recent historical events on the modern stock exchange where data scarcity, caused by the substantially smaller stock exchange at the turn of the century, is seldom a problem. Still, a handful of event studies have successfully analyzed stock data from the "Progressive Era," particularly as it relates to the introduction of regulatory changes. Examples from the literature include the Sherman Antitrust Act, early federal antitrust cases, early railroad regulation by the Interstate Commerce Commission, and an aborted legislative attempt at sugar tariff reform in 1912 on the heels of the Democratic electoral gains of 1910.[575]

The underlying premise of an event study holds that the market effects of an incident may be observed through the abnormal stock returns of an affected company, where an abnormal return is the difference between the company's actual stock returns and its projected "normal" returns based on a control market indicator that is unaffected

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[573] Stock data reported in "Range of Prices," *Wall Street Journal,*

[574] A. Craig MacKinley, 1997. "Event Studies in Economics and Finance." *Journal of Economic Literature,* Vol. 35, pp. 13-39.

[575] Werner Troesken, 2000. "Did the Trusts Want a Federal Antitrust Law? An Event Study of State Antitrust Enforcement and Passage of the Sherman Act." In Jac C. Heckleman, John C. Moorehouse, and Robert M. Whaples, eds. *Public Choice Interpretations of American Economic History*. Boston: Kluwer Academic Press; George Bittlingmayer, 1993. "The Stock Market and Early Antitrust Enforcement." *Journal of Law and Economics,* Vol. 36-1, pp. 1-32; Wallace P. Mullin, 2004. "Railroad Revisionists Revisited: Stock Market Evidence from the Progressive Era." *Journal of Regulatory Economics,* Vol. 17-1, pp. 25-47; Sarah F. Ellison and Walter P. Mullin. 1995. "Economics and Politics: the Case of Sugar Tariff Reform." *Journal of Law and Economics,* Vol. 38, pp. 335-366.

by the event. Using the assumption that the stock market reflects rational and efficient trading behavior, the most pronounced event effects will be those that also impact the anticipated prospects of the legislation in question, particularly if unexpected or sudden. The 1909 debate in the Senate is suited for this type of study as the tariff and its competing income tax attachment lingered in uncertainty for months as the politics of the Bailey proposal and the Republican insurgency played out. For most of this period neither side knew the exact extent of its support and all expected a close and unpredictable vote. Therefore a major legislative announcement or vote that signified an advantage to one side or the other might be expected to cause a sharp reaction among affected stocks.

By treating tariff protectionism as a regulatory event as indicated in Tullock's rent-seeking hypothesis and the Stigler-Peltzman corollary, its outcome may be seen as a market entry control in favor of domestic producers. Events that advanced the tariff should accordingly bring positive abnormal returns among tariff-responsive stocks. Events that spelled tariff uncertainty should cause a decline, as should those advancing the income tax. A demonstration of this latter occurrence is particularly relevant to the rationality question, as it tests the prevalence of the belief that the income tax would undermine the protective system. Its successes and failures in Congress should therefore show an inverse reaction among import-competing stocks.

A market model event study examines the stock returns of a specific firm, *i,* in relation to the returns of a specified market portfolio, *m*, at the time of the event, *t.* The

specific firm's actual return is thus R_{it} and the market portfolio return is R_{mt}.[576]

$$R_{it} = \alpha_i + \beta_i R_{mt} + \epsilon_{it}$$

The parameters of the model are α and β, while ϵ is an uncorrelated residual component. In modern uses of this model, portfolio *m* is typically a broad stock market index such as the Dow Jones Industrial or the S&P 500. Unfortunately the historical stock market of 1909 lacks a comparable market-wide index. Since the behavior in question is the reaction of an import-competing firm to tariff and income tax legislation, a suitable replacement may be found by taking a market index of firms that are more likely to be insulated from the direct and immediate effects of trade policy changes, such as the railroad and utility company examples from Figure 6.4-A. Pre-Dow stock indexes were often organized by firms in a single economic sector, and one of the most prominent measures in 1909 tracked the daily performance of the railroad industry, the "Railroad 20" average. Compared to most industrial manufacturers, railroad firms were relatively isolated from the direct and immediate effects of tariff policy. Given the limited choices of available and consistent daily stock data from this historical period, the Railroad 20 offers a reasonably strong market indicator to predict the "normal" daily performance of the stock market apart from the most immediate effects of tariff-specific events.

Figure 6.4-B shows the daily return percentage of the Railroad 20 index for June and July 1909, along side a similar "Industrial 12" index of manufacturing firms including some of those identified in Table 6.4-A for the present study.

[576] *Ibid.,* p. 18; John J. Binder, 1985. "Measuring Economic Effects of Regulation with Stock Price Data." *RAND Journal of Economics.* Vol. 16-2, p. 170.

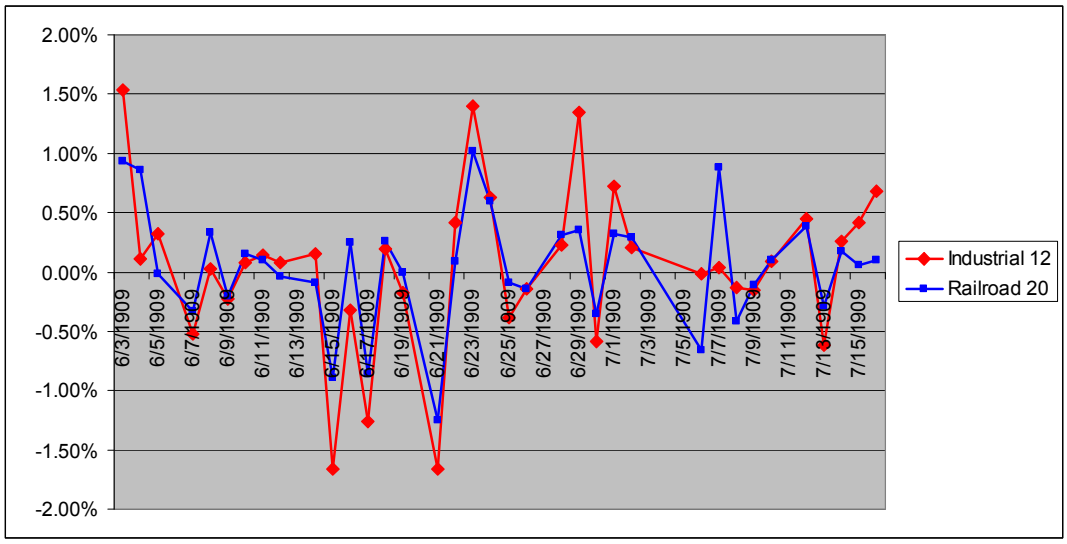


Figure 6.4-B, Daily Stock Index Return Percentages for June and July 1909
Source: "Daily Movement of Averages," *Wall Street Journal,* June 1-July 15, 1909.

The figure illustrates that both indexes performed with relative similarity to each other, though on certain days in question the change of one index was substantially more pronounced than the other. For example, on July 29th the Industrial 12, containing several import-competitors, outperformed the more stable Railroad 20 by over a percentage point even as both posted gains.

The event study methodology rests on the assumption that stocks will respond either positively or negatively to an event that affects the predicted earnings of a company. In each case, the stock change of the firm in question reflects an "abnormal return" beyond that which is anticipated in the normal return of the market index *m*. The abnormal stock return (AR_{it}) for given firm *i* on the date of event *t* is therefore determined by the following, where ER_{it} is the expected return signified by the market index.[577]

[577] MacKinlay, 1997, p. 15.

$$AR_{it} = R_{it} - ER_{it}$$

For purposes of this analysis, these data will be utilized to test the null hypothesis that selected import-competing stocks did not exhibit an abnormal return in price, be it positive or negative, in response to a legislative event in the 1909 tariff and income tax debate. Should evidence for the alternative hypothesis of abnormal returns exist, it will be evaluated in light of the reported position of each participant in the debate.

An event portending support for the Bailey income tax plan, uncertainty in the future of the tariff bill, or both might be expected to depress the stocks of an import-competing firm. An event signifying the defeat or setback for the income tax plan might be expected to prompt a rally of the same stocks. In observing the direction of stocks in each event it should be noted that the 16th amendment, though it ultimately produced the income tax in 1913 and was openly welcomed by income tax proponents, might be received with less anxiety than any of the immediate income tax bill proposals of 1909. Indeed, many import-competing firms hoped that Aldrich would succeed in his plan to derail the 16th amendment much later during the ratification phase. At the very least, it signified that opponents of the tax had bought much-needed time, perhaps even several years, to thwart a policy that appeared to be in imminent danger of passing at the time the Taft-Aldrich compromise was announced.[578] Therefore an event affecting the Bailey plan would be expected to show stronger abnormal returns than the 16th amendment itself.

The present event study uses the eight aforementioned import-competing stocks in Table 6.4-A, and the Railroad 20 average as a control variable indicating the normal

[578] The *New York Times,* for example, suggested that the Taft-Aldrich compromise had bought income tax opponents at least two years time to rebuild their numbers during a drawn out ratification process. See "No income tax now, Taft joins Aldrich" *New York Times,* June 15, 1909.

market returns. Data for this analysis incorporates daily closing prices over 61 consecutive trading days (May 5 to July 19, 1909). For purposes of separating the predicted normal returns from the identified event itself, this range of dates is subdivided into two periods following the event study technique described by Michael J. Seiler (2004).[579] The first 30 trading days comprise an estimation period to establish a predicted normal return for each stock. The remaining days comprise the event period surrounding the June 29th development in the Senate, and a surrounding window of 15 trading days before and after this event. In each case, stock closing prices are converted into daily returns as the percentage of the change in the stock's value on given day *t*, or:

$$R_{it} = (p_{it} - p_{i,t-1})/(p_{i,t-1})$$

The parameters for calculating a predicted stock return are obtained by Ordinary Least Squares, using the estimation period actual returns on the individual stock and the Railroad 20 average to represent the market return as a control. The resulting α and β coefficients permit the calibration of $R_{it} = \alpha_i + \beta_i R_{mt} + \epsilon_{it}$ for each stock, which is then used to calculate its abnormal returns in the event period. The abnormal returns are then standardized and aggregated to provide a Total Standardized Abnormal Return (TSAR) for the eight import-competing firms covering each day in the event period, and then tested for significance by calculating a standard Z-statistic.

Multiple dates within the event period exhibited statistically significant abnormal returns. The results for each date are depicted in Table 6.4-B, along with their corresponding Z-statistics, p-values, and confidence levels where applicable.

[579] Michael J. Seiler. 2004. *Performing Financial Studies: A Methodological Cookbook.* Upper Saddle River, NJ: Prentice Hall, pp. 218-219, 222-223.

Table 6.4-B, Abnormal Returns in the Event Period

Date	TSAR	z-statistic	p-value	Stat. Sig.	Expected Effect on Industry Stocks	Event
6/11/1909	0.12522	0.04266	0.96597			
6/12/1909	0.16625	0.05664	0.95483			
6/14/1909	-1.85500	-0.63198	0.52740			
6/15/1909	-11.75837	-4.00599	0.00006	99%	-	Taft-Aldrich compromise presented to Congress
6/16/1909	-3.66501	-1.24864	0.21180			
6/17/1909	-4.52513	-1.54168	0.12315			
6/18/1909	-1.74675	-0.59510	0.55177			
6/19/1909	-1.64908	-0.56183	0.57423			
6/21/1909	-9.76070	-3.32540	0.00088	99%	-	Harriman death rumor shakes Wall Street
6/22/1909	0.55350	0.18857	0.85043			
6/23/1909	2.65030	0.90294	0.36656			
6/24/1909	0.31963	0.10890	0.91329			
6/25/1909	-2.01540	-0.68663	0.49231			
6/26/1909	0.52473	0.17877	0.85812			
6/28/1909	-0.52397	-0.17851	0.85832			
6/29/1909	12.87424	4.38616	0.00001	99%	+	Aldrich defeats Bailey income tax plan
6/30/1909	-5.22076	-1.77867	0.07529	90%		
7/1/1909	0.68994	0.23506	0.81417			
7/2/1909	-1.86345	-0.63486	0.52552			
7/6/1909	3.74442	1.27570	0.20206			16th Amendment passes Senate*
7/7/1909	-6.48462	-2.20926	0.02716	95%	-	
7/8/1909	1.42546	0.48564	0.62722			
7/9/1909	-3.71622	-1.26609	0.20548			
7/10/1909	-1.01763	-0.34670	0.72882			
7/12/1909	0.16572	0.05646	0.95498			16th Amendment passes House
7/13/1909	-4.99385	-1.70137	0.08887	90%	-	
7/14/1909	-3.14724	-1.07224	0.28361			
7/15/1909	5.16118	1.75838	0.07868	90%	+	Tariff conference committee, Aldrich/Cannon gain control
7/16/1909	2.40075	0.81792	0.41340			
7/17/1909	-4.35524	-1.48380	0.13786			
7/19/1909	-0.10247	-0.03491	0.97215			

The data suggest several interpretations. First, as suspected based upon newspaper reports at the time, Aldrich's successful parliamentary maneuvers on June 29 appear to have been well received by the import-competing stocks in this analysis. The results of the analysis indicate that the abnormal return for these stocks is statistically significant with 99% confidence, suggesting that the defeat of the immediate Bailey income tax

proposal was interpreted as a victory for tariff protectionism. In similar fashion, the reports of tariff uncertainty that were conveyed by the introduction of the Taft-Aldrich compromise proposals on June 15th are validated by a statistically significant negative abnormal return, also at 99% confidence.

Second, evidence exists of additional abnormal returns in the following weeks, although with less robust statistical significance. In particular, the import-competing stocks appear to have posted negative abnormal returns within a day of the 16th amendment passing the House and the Senate (the Senate vote actually occurred on a non-trading day), though these returns are only significant at a lower level of confidence. This observation carries the caveat that historical reports did not make an explicit connection between these returns and the votes on the amendment. But neither is a negative stock market effect following the 16th amendment's passage is not out of the range of plausibility. Import-competitor aversion to the Bailey income tax plan was widely known and appears in the statistical evidence of the better documented events on June 15th and 29th. That they might respond similarly to the constitutional amendment is a reasonable expectation, and one deserving of additional investigation beyond the limited sample of the present analysis.

Third, the event analysis conveys analytical implications for the larger question of rational firm behavior set forth at the beginning of this chapter. Both anecdotal observations of the stock market and statistically significant abnormal returns on June 29th suggest the income tax was widely perceived as a threat to the protective tariff system. Assuming the same rational behavior applied to stock market trading, this perception was also evidently rational, albeit in a way that was bounded by imperfect

information and a faulty understanding of the tariff's political economy. It thus becomes apparent, as has been posited, that the income tax amendment was the culmination of faulty assumptions and beliefs about the tariff system, its later political effects having little if any resemblance to its original design and intent.

VII. CONCLUSIONS & POLICY IMPLICATIONS

7.1 Conclusion

> "But whether the Constitution really be one thing, or another, this much is certain – that it has either authorized such a government as we have had, or has been powerless to prevent it." – Lysander Spooner[580]

Viewed with the hindsight of its tumultuous history, the tariff surely ranks among the most paradoxical institutions to emerge from the 1787 constitutional convention. In a sense its operation defies the reputation of the Constitution itself, known for its farsighted checks and balances and for its general versatility as a governing document. Much to the contrary, the tariff's constitutional history is a clumsy one, fraught with legal crises, unanticipated consequences, and outright political miscalculations. Only days after the first Congress convened, the tariff unexpectedly burst onto the floor of the House of Representatives in a way that most of the framers never even contemplated much less intended. It stood at the center of the dreaded political factionalization of the country within a few years time as the first party system emerged around it and other associated economic policies from Hamilton's treasury reports and Jefferson's rejoinders. From 1828 to 1832 the tariff brought a state to the brink of disunion, and nearly provoked a national constitutional crisis. Though the situation temporarily defused, the tariff issue

[580] Lysander Spooner, 1869. *No Treason No. VI: The Constitution of No Authority.* Boston: Lysander Spooner, Appendix.

festered then reappeared after the Civil War. It mired the government in a legislative stalemate of special interests for the latter half of the 19th century, provoked a radical and, from the perspective of trade, ultimately blunderous reformulation of the federal revenue system from 1909-1913, resurrected itself again with a factional vengeance in the 1920's, and catastrophically faltered by its own hand with the Smoot-Hawley act of 1930. That which has been examined of the tariff thus far would seem to suggest that it is nothing short of a constitutional aberration.

Yet the same tariff issue offers a strong and extended example of the far-reaching consequences of constitutional design on the outcome of a policy. The evidence thus far considered suggests that from 1789-1934 protectionism waxed and waned and waxed again precisely as the Constitution permitted it to do so, and more specifically as the prevailing constitutional interpretation changed. In this sense, the income tax amendment was every bit the transformative event in federal trade policy as its better-known affects on federal revenue policy. Historical analysis of the events surrounding its adoption and accompanying statistical records of the intricacies of the turn of the century tariff schedule both support this conclusion.

There is ample historical evidence of the first research hypothesis, to wit that a tariff-based revenue system will impose a fiscal constraint upon the traditional political economy of trade protection. The complex relationship between the protective and revenue aspects of the tariff proved to be a recurring theme of virtually every major legislative debate on the subject before 1913. More importantly, the belief that the revenue tariff system also sustained protectionism became the underlying premise of the income tax movement, at least in the eyes of its main Democratic proponents and their

standpatter Republican antagonists.

The tariff's historical fiscal policy uses are affirmed in the distinct differentiation between protected manufactures and "revenue" categories, primarily alcohol and tobacco, as exhibited by the breakeven analysis of turn of the century tariff legislation. This function essentially made legislative tariff battles a tripartite debate over revenue, protection, and free trade. That the revenue component quickly fell out of use and discussion with the introduction of the income tax is indicative of a transformative policy event, wherein nearly all subsequent tariff policy was ceded to the more familiar contest between the remaining two parties.

While the constraining role of revenue in shaping early federal tariff policy is unmistakable, the preceding analysis reveals the difficulty of taking a comprehensive single-unit measurement of the U.S. tariff schedule. The higher end of individual protective rates likely fell well to the right of the Laffer Curve apex as the elasticity analysis suggests, indicating that policymakers were willing to forgo substantial revenue capacity on those particular goods even as they adjusted their rates to attain differing levels of protection. By contrast, the revenue categories of alcohol and tobacco were held at relatively consistent levels across multiple tariff schedules with differing policy goals, each rate being intended to maximize their tax potential.

Given the complexity of historical tariff rates it is difficult to know precisely where a schedule as a whole fell on the spectrum of policy goals ranging from a revenue tariff to complete protectionism. Even some "protected" categories managed to generate revenue as their internal demand exceeded the capacity of domestic supply. Still, given that a horizontal reduction of rates or the establishment of the constitutionally-intended

uniform impost would have augmented importation across hundreds of taxed imports, it is certain that the country chose to forgo some revenue for the tariff's protective rent during most of its historical dependence on the tariff as a revenue device.

The second of the research hypotheses offers an explanation of why high but stable tariff protectionism became a status quo policy after the early constitutional questions surrounding the Revenue Clause were either settled or set aside in the years following the Civil War. From roughly 1865 to 1913 the historical revenue debate took place within the framework of an existing and stable protective tariff regime; its politics the product of factionalized interests representing emergent industrial sectors such as steel, sugar, woolens, lead, cotton textiles, and other manufactures. The intractable political situation caused by these companies attests to their collective action strength, derived from homogenous concentrated interests with a high stake in the resultant policy. It was also a steady political situation though, and the tariff's revenue function tempered both drastic reformulations of the existing system and a prohibitive protectionist extreme.

Taken in their own right and free from a revenue constraint, the politics of protection-seeking interest groups resemble a classic prisoner's dilemma in which each individual producer desires protection to obtain strategic advantages for itself in relation to other industries. This decision often gauges the respective inability or unwillingness of other industries to do the same, as is exhibited in the historical wool-woolens example and other cases where both raw materials and finished products were subject to protection. Should a strategically situated producer obtain protection while preserving low cost imports for his raw materials, he will reap the full advantage of both policies, other things being equal. In similar fashion, a manufacturer who enjoys uncontested

protection of his own good as free trade exists elsewhere will escape the higher prices of a comprehensive tariff system while enjoying the tariff-induced returns to his industry. The aggregate effect of unrestrained protectionism is thus all import-competing firms choosing the "defect" option to obtain strategic protection for their own product:

	A declines protection	**A seeks protection (defects)**
B declines protection	Trade uninterrupted, advantage neither	Advantage A
B seeks protection (defects)	Advantage B	Trade interrupted, advantage neither

Figure 7.1-A, the Tariff as a Prisoner's Dilemma

The extreme scenario of full defection illustrates the perils of unrestrained protectionism. A high tariff is obtained in all sectors, effectively undermining all international trade and thereby negating any strategic price advantage sought by an individual firm or sector. A firm's advantage therefore depends upon its ability to absorb schedule-wide price increases relative to other firms, to say nothing of provoked retaliatory measures from abroad. Furthermore the tariff situation defies political resolution, as no individual firm will volunteer itself for the competition of an international market when all others enjoy protection even as that protection collectively harms all firms. This scenario mirrors the one described by Schattschneider in 1935 when he deemed the Smoot-Hawley Tariff, by then reviled for its contributing effects to the Great Depression, "politically invincible" in

spite of its recent infamy.[581] No individual producer would take the lead of forgoing protection for himself and no legislator would voluntarily cede protection for an industry in his home district so long as it remained in place elsewhere.

The tariff revenue system that existed prior to 1913, bolstered by its constitutional sanction and the apportionment limitations imposed by the Capitations Clause, effectively altered the rules of this conventional tariff prisoner's dilemma by subjecting the mutual defect option to a constraint. A completely prohibitive tariff system, or even an extreme schedule that antagonized foreign trading partners as did Smoot-Hawley, would have the simultaneous effect of curtailing importation and thereby destroying the primary source of federal revenue. Import competing firms by and large could (and did) still choose the defect option, but the policymaking rubric in which regulatory concession was offered was also necessarily mindful of its revenue component. Legislators also served expenditure-seeking interests and accordingly balanced the tariff schedule, and the scope and degree of protection it offered, between these two goals.

Holding to this interpretation, the detrimental behavior postulated in the conventional tariff prisoner's dilemma came to govern U.S. tariff policy during the 1920's culminating in Smoot-Hawley. Only the introduction of an external political pressure via the RTAA in 1934 could rescue the federal tariff system from this legislative hole, which actually remains on the statute books to the present day even though most of its provisions have been superseded by bilateral and multilateral trade agreements.

According to I.M. Destler, the RTAA may be credited with creating an additional "bargaining" factor in the political equation of trade policy, that of international pressure.

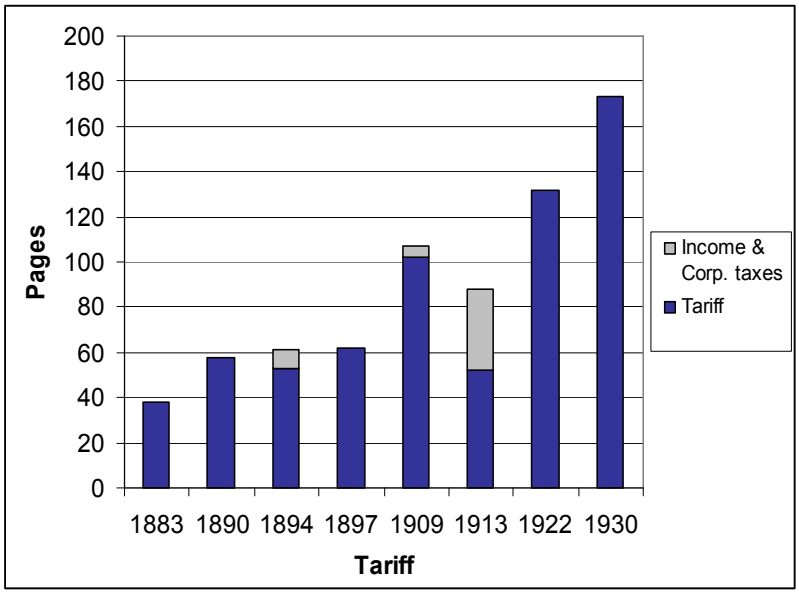
[581] Schattschneider, 1935. p. 283

The negotiating weight of reciprocal trade liberalization creates "something of a political counterweight on the liberal trade side" by increasing the stakes and influence of export interests to a level that counteract domestic producers through international pressure.[582] In this sense, the RTAA could be interpreted as replacing the historical internal revenue constraint on protectionist interest group dominance with an external constraint created by international diplomacy.

The constraining presence of the tariff's historical revenue component also differentiates the pre-income tax protective systems from Fordney-McCumber and Smoot-Hawley, which lacked any substantive tax-generating components. As noted, this distinction was evident in the overall sources of federal revenue after the income tax transition and in the novel features of Fordney-McCumber. The 1922 tariff extended protection into agricultural sectors where it had never existed before, and created an entirely new administrative function to adjust individual tariff rates according to a "scientific principle" that was largely supportive of sustaining and expanding protection.

Additional evidence is found in the sheer comprehensiveness of the 1922 and 1930 measures vis-à-vis their predecessors. To this end figure 7.1-B depicts the page length of each major schedule-wide tariff act from 1883 to 1930 as they appeared in the United States Statutes At Large.

[582] I.M. Destler, 1986. *American Trade Politics.* Washington, D.C.: Institute for International Economics. p. 16



17. Figure 7.1-B, Tariff Statutes by Length
Source: *United States Statutes At Large*. Washington, D.C.: Government Printing Office. 1883, 1890, 1894, 1897, 1909, 1913, 1922, and 1930 editions

The tariff-specific sections of each act, including the schedule, free list, and customs administration provisions are depicted in blue. The Wilson-Gorman, Payne-Aldrich, and Underwood Tariffs also contained income tax or "corporate excise" tax provisions, depicted in gray. The tariff-specific sections of each statute between 1883 and 1913 remained fairly constant in length with the exception of Payne-Aldrich in 1909. The Fordney-McCumber and Smoot-Hawley statutes exhibited unprecedented length and complexity by comparison, with each more than doubling the average length of their forerunners during the revenue-constrained "high protection" era. This drastic change came with a reason. As the tariff's purpose shifted solely to its function as a regulatory mechanism over international trade, its provisions became more attuned to the detailed minutiae of import-competing categories. Duties were defined at increasingly specific and differentiated unit measurements and types, and from 1922 forward the tariff

contained the variable rates provisions at the center of the *Hampton* Supreme Court ruling. Gone were the broad ad valorem categories of earlier revenue tariff provisions, or the graduated schedules of the Walker and Underwood statutes.

From the first Congress of 1789 until the income tax amendment, the Revenue Clause was used as an enabling pretext for the policy of protectionism. There is surprisingly little evidence that the clause was ever intended for this use, and early American legal history offers multiple examples where a protectionist design was questioned on constitutional grounds. Be it for better or for worse though, the protective tariff's association with the Revenue Clause is still a historical reality, and one that illustrates the concepts of the third hypothesis. As originally offered, this research proposition suggested that the tariff's dual rent characteristic and the interaction of its protective and revenue features would occur insofar as it was permitted by a governing constitutional design. A change in that design would therefore significantly alter the status quo of the tariff's political economy considerations, leading to a reformulation in the direction of American trade policy.

The strongest evidence for this hypothesis is found in the recognition that such a change occurred in 1913 with far-reaching and ultimately unanticipated consequences for the tariff system. The persistence of the tariff through its association with the Revenue Clause depended on the simultaneous operation of the Capitations Clause and its apportionment rule. The administrative and political burdens associated with this rule also imposed a *de facto* constitutional mandate wherein the federal government received the majority of its finances from the limited range of three tax types permitted in the Revenue Clause – duties, imposts, and excises. The taxation of imports attained a central

position among these options as had been hoped by the founding generation, though not always in ways that they foresaw or intended. The absence of a constitutionally permissible alternative tax system assured tariff primacy, essentially weaving its associated tradeoffs of revenue and protection into the fabric of federal fiscal policy. The political dynamics of protectionism at the turn of the century played out exactly as the prevailing constitutional interpretation of the tariff permitted.

The income tax amendment sought to disrupt the high but stable protectionist status quo of the early 20th century by altering the constitutional framework that was believed to be responsible for its existence and political entrenchment. It completely reformulated those constitutional rules by permitting an alternative revenue system, though its eventual effects fully defied the expectations of its supporters and opponents alike. This much is plainly evident in the reaction of Wall Street to the perceived outmaneuvering of the income tax threat in 1909 as the Payne-Aldrich policy was adopted. As with so many other features of the tariff's constitutional history, otherwise rationally-acting policymakers miscalculated the effects of changing the governing constitutional design. Although a clause intended for raising revenue gave birth to the protective tariff, the revenue policy itself was not the sustaining basis of the protective regime as many had supposed at the time. Rather, it was a soft yet far-reaching constraint upon protection as suggested by the first two research hypotheses. The income tax removed this constitutional constraint and, save for the brief Underwood reform period, the tariff became solely associated with its protective regulatory uses as they were advanced by concentrated beneficiary interests with little outside challenge.

The recurring tendency of the tariff issue to respond to its governing

constitutional mechanisms in unanticipated ways is suggestive that this otherwise celebrated document has performed rather abysmally for most of its history in the area of trade policy. Indeed, save for the long-discarded and politically anarchic nullification doctrine, there is little evidence that the *Federalist Papers* thesis – that ambition may be made to counteract ambition – has applied to the tariff system in any meaningful or effective way, at least under the Constitution's original design. Rather, this system existed as a textbook manifestation of highly concentrated and cohesive factional interests in government, their ability to shape tariff policy being limited only by its simultaneous use as the primary revenue tool of the government.

Much can be learned from the case of the income tax amendment in the United States and the events that produced it. First, this event illustrates the shortcomings of treating tariff politics as a strict matter of their protection rent, particularly when revenue is an equally prominent feature of the policy. A protection-oriented political economy model of tariff formation only holds true with the assumption that protection-seeking interests are the lone client of the tariff's rent, and that they may achieve their policy free of other constraining factors and only in regulatory competition with interests seeking free trade. The introduction of a substantial revenue component alters the institutional structure in which the tariff policy is crafted, as do constitutional boundaries that support and further institutionalize that revenue component.

Viewed in this light, it becomes evident that most historians have paid alarmingly little attention to a crucial component of the tariff's political economy in the exact historical period when tariff policy held its most prominent position on the national policy agenda of the United States. A tendency exists to treat 19th and early 20th century

tariffs as an issue of interest group protectionism or of tax revenue policy, but seldom as both simultaneously.[583] Indeed this approach is not entirely irrational given the rampant evidence of vote trading and manufacturer collusion during this period. Even Taussig, author of the defining historical summary of the tariff, lodges his primary grievances against the interest groups that colluded with lawmakers in historical schedule preparation. Revenue becomes at best a secondary consideration in his analysis of legislative motive. And while this complex relationship occasionally enters the tariff history literature, its direct and historically pronounced connection to the income tax amendment has been largely forgotten.

The existence of a large tariff-financed revenue system, both historically in the U.S. and in countries that still rely on this mode of taxation, signifies that policymakers and analysts alike must incorporate an additional consideration into their study of the tariff's political economy. A traditional model of tariff support based strictly on the positions and strengths of those interests that protection benefits or harms is probably inadequate in this situation. Revenue, its associated interest groups, and its larger fiscal policy implications for the government must also be considered. Where protection is to occur at the expense of revenue, a tradeoff between the two policy goals exists and its ramifications extend well beyond the simple status of a country's trade barriers.

Similarly, the transition from a tariff-based tax system to a non-tariff alternative is not without its own perils. As the U.S. example suggests, this decision appears to have had the unintended effect of completely removing the last moderating pressures of the

[583] Irwin (1998) and Bensel (2000) count among the few economic historians to make explicit reference to this relationship.

revenue system of the tariff schedule, instigating a precipitous and ultimately disastrous upward push on the level and scope of protection it afforded. Though no modern country using a tariff finance system has an economy of a comparable size to the United States, it should be understood that the transition from such a system is not simply a stand-alone act of trade liberalization. It is also an underlying institutional change in fiscal policy tools, and one that can carry far-reaching and unanticipated consequences at the constitutional level.

Figure 7.1-C, Protectionist Anti-Income Tax Cartoon, 1913

VIII. Appendixes

Appendix I – Selected Historical Ad Valorem Equivalent Rates

McKinley and Wilson-Gorman Tariffs

	McKinley Tariff of 1890		Wilson-Gorman Tariff of 1894	
INDUSTRY	**Article**	**AVE 1893**	**Article**	**AVE 1896**
Coal	Bituminous coal	22.72%	Bituminous coal	13.76%
	Culm of coal	28.68%	Culm of coal	15.88%
	Coke	20.00%	Coke	15.00%
Coffee	Coffee	17.93%	Coffee	free
Copper	Copper ore	8.22%	Copper ore	free
	Copper plates	11.80%	Copper plates	free
	Copper sheathing	35.00%	Copper sheathing	20.00%
	Manuf., nop	45.00%	Manuf., nop	35.00%
Cotton goods	All thread	50.23%	All thread	37.85%
	Carpet - cotton	50.00%	Carpet - cotton	30.00%
	All cotton cloth	48.01%	All cotton cloth	
	Laces	60.00%	Laces	50.00%
	All cotton knit clothing	68.66%	All cotton knit clothing	50.00%
	All Manuf. Of Cotton	57.08%	All Manuf. Of Cotton	45.87%
Fiber Hemp	bagging <.6/sqyd	32.52%	bagging - all	free
	bagging >.6/sqyd	26.37%	bags for grain	free
Glass	bottles > 1 pint green	70.17%	bottles > 1 pint green	41.06%
	bottles < 1 pint green	85.67%	bottles < 1 pint green	80.45%
	bottles > 1 pint flint	61.27%	bottles > 1 pint flint	35.14%
	bottles < 1 pint flint	81.30%	bottles < 1 pint flint	48.20%
	window < 10x15	19.84%	window < 10x15	15.62%
	window 10x15 to 16x24	53.60%	window 10x15 to 16x24	25.32%
	window 16x24 to 24x30	100.42%	window 16x24 to 24x30	38.21%
	window 24x30 to 24x36	73.33%	window 24x30 to 24x36	19.10%
	window > 24x36	97.27%	window > 24x36	71.61%
	all crown window glass	74.88%	all crown window glass	55.64%

	all glass and glassware	63.79%	all glass and glassware	46.07%
Iron & Steel	Pig iron	28.12%	Pig iron	17.41%
	Scrap iron	46.32%	Scrap iron	28.26%
	Bar iron - charcoal prod	56.82%	Bar iron - charcoal prod	33.87%
	All bar iron	52.65%	All bar iron	30.76%
	Railway iron	58.14%	Railway iron	49.87%
	steel ingots < 1 cent/lb	50.48%	steel ingots < 1 cent/lb	38.10%
	steel ingots 1-1.4 cents	39.06%	steel ingots 1-1.4 cents	30.51%
	steel ingots 1.4-1.8 cents	52.76%	steel ingots 1.4-1.8 cents	36.70%
	steel ingots 1.8-2.2 cents	44.68%	steel ingots 1.8-2.2 cents	35.09%
	steel ingots 2.2-3 cents	43.11%	steel ingots 2.2-3 cents	31.57%
	steel ingots 3-4 cents	41.54%	steel ingots 3-4 cents	36.07%
	steel ingots 4-7 cents	35.64%	steel ingots 4-7 cents	23.49%
	steel ingots 7-10 cents	30.36%	steel ingots 7-10 cents	20.83%
	steel ingots 10-13 cents	30.07%	steel ingots 10-13 cents	20.91%
	steel ingots 13-16 cents	29.38%	steel ingots 13-16 cents	19.83%
	steel ingots > 16 cents	30.75%	steel ingots > 16 cents	20.86%
	All steel ingots	37.83%	All steel ingots	27.65%
	hoop or band iron < 10 ga.	40.03%	hoop or band (all)	30.00%
	hoop or band iron 10-20 ga.	50.23%		
	wire rods	34.00%	wire rods > .04/lb	23.00%
	steel wire < 10 ga.	32.54%	steel wire < 13 ga.	36.19%
	steel wire 10-16 ga.	48.77%	steel wire 13-16 ga.	43.69%
	steel wire 16-26 ga.	51.06%	steel wire > 16 ga.	55.29%
	steel wire > 26 ga	26.08%		
	All steel wire	42.19%	All steel wire	39.79%
Iron Manufactures	anchors	32.95%	anchors	28.08%
	iron girders	74.64%	iron girders	45.45%
	cast iron vessels	26.97%	cast iron vessels	27.63%
	cut nails	23.58%	cut nails	22.50%
	horseshoe nails	36.48%	horseshoe nails	30.00%
	wire nails < 1 inch	46.43%	wire nails - all	25.00%
	wire nails 1-2 in	36.25%		
	wire nails > 2 in	33.06%		
	iron spikes	107.15%	iron spikes	25.00%
	screws <.5 in	1.40%	screws <.5 in	25.93%
	screws .5-1 in	83.33%	screws .5-1 in	33.25%
	screws 1-2 in	46.67%	screws 1-2 in	11.90%
	screws > 2 in	110.95%	screws > 2 in	10.85%
	All screws	90.80%	All screws	13.24%
	All Iron Manuf.	55.38%	All Iron Manuf.	38.81%

Lead	lead in silver ore	75.36%	lead in silver ore	47.37%
	pig lead	49.13%	pig lead	54.59%
	sheet lead	36.65%	sheet lead	32.34%
	Total lead	72.06%	Total lead	51.94%
Salt	salt - bagged	35.14%	salt - bagged	21.58%
	salt - bulk	82.33%	salt - bulk	114.23%
Sugar	Total sugar (inc. bounty ret.)	12.86%	Total sugar (inc. bounty ret.)	41.20%
Wool - class 1, Clothing	unwashed	59.63%	all wool	free
	washed	48.86%		
	scoured	66.69%		
Wool - class 2, Combing	unscoured	56.23%	all wool	free
	scoured	43.60%		
	sorted	91.68%		
Wool - class 3, Carpet	wool, < .13/lb	32.00%	all wool	free
	wool sorted, < .13/lb	64.00%		
	wool > .13/lb	50.00%		
	wool sorted > .13/lb	100.00%		
Wool Manuf.	yarns < .30/lb	278.67%	yarns < .40/lb	30.00%
	yarns .30-.40/lb	118.80%		
	yarns > .40/lb	105.42%	yarns > .40/lb	40.00%
	All yarn	105.61%	All yarn	38.56%
	wool blankets < .30/lb	88.22%	wool blankets < .30/lb	25.00%
	wool blankets .30-.40	100.21%	wool blankets .30-.40	30.00%
	wool blankets .40-.50	103.89%	wool blankets >.40	35.00%
			wool blankets, 3 yds <.50	40.00%
	wool blankets >.50	80.33%	wool blankets, 3 yds >.50	50.00%
	All Blankets	84.45%	All Blankets	29.76%
	Aubusson, oriental carpets	60.85%	Aubusson, oriental carpets	40.00%
	Brussels carpets	81.50%	Brussels carpets	40.00%
	Druggets	82.57%	Druggets	30.00%
	Felt carpet	62.57%	Felt carpet	30.00%
	Saxony carpets	69.55%	Saxony carpets	40.00%
	tapestry	77.97%	tapestry	42.50%
	treble ingrain	63.05%	treble ingrain	32.50%
	velvet	71.86%	velvet	40.00%
	wool, Dutch carpets	64.74%	wool, Dutch carpets	30.00%

	carpets, n.o.p.	50.00%	carpets, n.o.p.	40.00%
	All Carpets	62.85%	All Carpets	39.78%
	wool cloth <.30/lb	163.09%	wool cloth <.50/lb	40.00%
	wool cloth .30-.40/lb	144.86%		
	wool cloth > .40/lb	99.50%	wool cloth > .50/lb	50.00%
	All wool cloth	100.02%	All wool cloth	48.14%
	All wool dress goods	51.83%	All wool dress goods	49.35%
	Felts	93.09%	Felts (all, rates 25-50%)	43.06%
	Wearing apparel, ready made	81.23%	Wearing apparel, ready made	50.00%

Dingley and Payne-Aldrich Tariffs

Dingley Tariff of 1897			Payne-Aldrich Tariff of 1909	
Article	**AVE 1898**	**AVE 1907**	**Article**	**AVE 1911**
Bituminous coal	27.57%	21.29%	Bituminous coal	14.83%
Culm of coal	14.53%	11.20%	Culm of coal	7.62%
Coke	20.00%	20.00%	Coke	20.00%
Coffee	free	free	Coffee	free
Copper ore		free	Copper ore	free
Copper plates		free	Copper plates	free
Copper sheathing	4.15%	4.99%	Copper sheathing	10.97%
Manuf., nop	45.00%	45.00%	Manuf., nop	45.00%
All thread	43.97%	30.44%	All thread	30.56%
Carpet - cotton	50.00%	50.00%	Carpet - cotton	50.00%
All cotton cloth		38.17%	All cotton cloth	42.99%
Laces	50-60%	59.99%	Lace - common articles	62.13%
All cotton knit clothing	61.79%	59.69%	All cotton knit clothing	60.17%
All Manuf. Of Cotton	54.78%	53.38%	All Manuf. Of Cotton	55.71%
bagging - <15 oz, sq yd	17.21%	9.78%	bagging - <15 oz, sq yd	12.87%
bags for grain	free	26.98%	bags for grain	31.93%
bottles > 1 pint green	61.74%	60.52%	bottles > 1 pint green and flint	60.64%
bottles < 1 pint green	85.97%	67.51%	bottles < 1 pint green and flint	69.63%
bottles > 1 pint flint	55.47%	59.89%		
bottles < 1 pint flint	65.66%	55.56%		
window < 10x15	42.46%	41.08%	window < 150 sq in & < 1.5 cent/lb	91.51%
window 10x15 to 16x24	104.32%	71.59%	window < 150 sq in & > 1.5 cent/lb	46.62%
window 16x24 to 24x30	117.66%	74.32%	window 150-384, <1.25 c/lb	109.84%
window 24x30 to 24x36	127.89%	78.69%	window 150-384, >1.25 c/lb	69.04%
window 24x36 to 30x40	154.81%	87.39%	window 384-720, < 2.1/8	116.61%
window 30x40 to 40x60	145.02%	71.79%	window 384-720, > 2.1/8	68.90%

window > 40x60	134.90%	60.59%	window 720-864	83.89%
			window 864-1200	83.77%
			window 1200-2400	82.27%
			window > 2400	92.10%
all crown window glass	86.69%	55.73%	all crown window glass	62.42%
all glass and glassware	57.49%	53.21%	all glass and glassware	55.12%
Pig iron	15.30%	14.47%	Pig iron	8.69%
Scrap iron	36.67%	29.27%	Scrap iron	8.72%
Bar iron - charcoal prod	29.60%	29.59%	Bar iron - charcoal prod	18.92%
All bar iron	27.44%	27.91%	All bar iron	18.37%
Railway iron and steel	35.02%	28.78%	Railway iron and steel	
steel ingots < 1 cent/lb		31.29%	steel ingots < .75 cent/lb	23.47%
steel ingots 1-1.4 cents	29.13%	34.82%	steel ingots .75-1.3 cents	27.70%
steel ingots 1.4-1.8 cents	35.59%	34.59%	steel ingots 1.3-1.8 cents	31.23%
steel ingots 1.8-2.2 cents	33.85%	33.79%	steel ingots 1.8-2.2 cents	28.44%
steel ingots 2.2-3 cents	30.81%	32.65%	steel ingots 2.2-3 cents	30.56%
steel ingots 3-4 cents	36.62%	34.07%	steel ingots 3-4 cents	30.98%
steel ingots 4-7 cents	24.76%	22.95%	steel ingots 4-7 cents	20.72%
steel ingots 7-10 cents	21.99%	21.47%	steel ingots 7-10 cents	20.29%
steel ingots 10-13 cents	20.68%	21.10%	steel ingots 10-13 cents	19.22%
steel ingots 13-16 cents	20.49%	20.34%	steel ingots 13-16 cents	18.62%
steel ingots > 16 cents	20.58%	13.82%	steel ingots 16-24 cents	21.55%
			steel ingots 24-32 cents	19.33%
			steel ingots 32-40 cents	19.15%
			steel ingots > 40 cents	64.83%
All steel ingots	26.95%	19.83%	All steel ingots	23.14%
hoop or band (all)	27.76%	28.57%	hoop or band (all)	17.83%
wire rods > .04/lb	19.55%	18.37%	wire rods > .04/lb	14.15%
steel wire < 13 ga.	37.10%	39.04%	steel wire < 13 ga.	36.82%
steel wire 13-16 ga.	44.71%	43.98%	steel wire 13-16 ga.	39.15%
steel wire > 16 ga.	56.44%	55.16%	steel wire > 16 ga.	41.82%
steel wire val. >.04/lb		40.00%	steel wire on which sp. Du. <35%	35.00%
All steel wire	42.33%	41.90%	All steel wire	38.18%
anchors		41.87%	anchors	39.91%
iron girders	25.92%	36.75%	iron girders - 9/10cent/lb or less	30.54%
cast iron vessels	20.85%	10.89%	cast iron vessels	11.16%
cut nails	19.91%	20.48%	cut nails	14.12%
horseshoe nails	32.17%	25.64%	horseshoe nails	9.82%
wire nails < 1 inch	11.65%		wire nails < 1 inch	4.40%
wire nails > 1 inch	17.13%	8.13%	wire nails > 1 inch	12.89%
iron spikes	48.03%	43.20%	iron spikes	37.88%
screws <.5 in			screws <.5 in	11.11%
screws .5-1 in		37.02%	screws .5-1 in	28.15%

screws 1-2 in		33.64%	screws 1-2 in	32.65%
screws > 2 in		54.22%	screws > 2 in	55.73%
All screws	45.00%	38.28%	All screws	54.23%
All Iron Manuf.	45.51%	30.29%	All Iron Manuf.	31.63%
lead ore	69.87%	78.80%	lead ore	63.45%
pig lead	123.66%	49.45%	pig lead	69.07%
sheet lead	58.05%	48.99%	sheet lead	52.75%
Total lead	76.41%	59.71%	Total lead	83.71%
salt - bagged	39.04%	36.14%	salt - bagged	33.01%
salt - bulk	86.62%	90.24%	salt - bulk	79.50%
Total sugar (inc. bounty ret.)	80.21%	65.04%	Total sugar (inc. bounty ret.)	54.35%
unwashed, on skin	76.82%	47.49%	unwashed, on skin	43.38%
unwashed, not on skin	63.91%	44.52%	unwashed, not on skin	46.06%
	87.47%			
washed, not on skin	113.94%	61.32%	washed, not on skin	97.57%
scoured	111.59%	37.50%	scoured	69.84%
unscoured, on skin	35.54%	39.47%	unscoured, on skin	52.27%
unscoured, not on skin	64.63%	41.11%	unscoured, not on skin	49.20%
unwashed, on skin < .12/lb	47.91%	26.73%	all on skin < .12/lb	30.20%
unwashed, not on skin, </12	42.60%	35.92%	all not on skin, </12	36.53%
unwashed, on skin > .12/lb	36.72%	45.68%		
unwashed, not on skin, >/12	49.18%	35.18%		
yarns < .30/lb	142.84%	143.13%	yarns < .30/lb	149.05%
yarns > .30/lb	104.54%	87.25%	yarns > .30/lb	76.61%
All yarn	105.36%	87.26%	All yarn	76.61%
wool blankets < .40/lb	106.73%	107.70%	wool blankets < .40/lb	95.68%
wool blankets .40-.50	102.86%	106.12%	wool blankets .40-.50	104.95%
wool blankets >.50	85.49%	71.30%	wool blankets >.50	67.64%
wool blankets, 3 yds <.40	153.75%	165.42%	wool blankets, 3 yds <.40	168.53%
wool blankets, 3 yds.40-.70	129.20%	120.98%	wool blankets, 3 yds.40-.70	124.94%
wool blankets, 3 yds >.70	93.59%	104.55%	wool blankets, 3 yds >.70	102.54%
All Blankets	95.43%	82.64%	All Blankets	74.88%
Aubusson, oriental carpets	63.43%	66.34%	Aubusson, oriental carpets	71.13%
Brussels carpets	79.08%	75.81%	Brussels carpets	72.02%
Woven room carpets	63.24%	60.01%	Woven room carpets	61.63%
Druggets	74.41%	70.81%	Druggets	65.42%
Felt carpeting		50.00%	Felt carpeting	50.00%
Saxony carpets	74.37%	72.67%	Saxony carpets	65.82%

tapestry	70.80%	60.73%	tapestry	70.70%
treble ingrain	71.59%	66.72%	treble ingrain	65.01%
velvet	67.59%	58.86%	velvet	60.32%
wool, Dutch carpets	71.45%	58.63%	wool, Dutch carpets	55.00%
carpets, n.o.p.	50.00%	50.00%	carpets, n.o.p.	50.00%
All Carpets	63.73%	60.20%	All Carpets	61.72%
wool cloth <.40/lb	138.83%	134.97%	wool cloth <.40/lb	149.59%
wool cloth .40-70/lb	124.29%	118.89%	wool cloth .40-70/lb	123.71%
wool cloth > .70/lb	95.39%	94.33%	wool cloth > .70/lb	94.17%
All wool cloth	99.01%	95.36%	All wool cloth	95.39%
All wool dress goods	103.30%		All wool dress goods	102.11%
Felts <1.5/lb	45.00%		Felts	95.53%
Wearing apparel, ready made	71.06%		Wearing apparel, ready made	78.32%

Payne-Aldrich and Underwood Tariffs

Payne-Aldrich Tariff of 1909		**Underwood Tariff of 1913**	
Article	**AVE 1911**	**Article**	**AVE 1914**
Bituminous coal	14.83%	Bituminous coal	free
Culm of coal	7.62%	Culm of coal	free
Coke	20.00%	Coke	free
Coffee	free	Coffee	free
Copper ore	free	Copper ore	free
Copper plates	free	Copper plates	free
Copper sheathing	10.97%	Copper sheathing	5.00%
Manuf., nop	45.00%	Manuf., nop	20.00%
All thread	30.56%	All thread	21.37%
Carpet - cotton	50.00%	Carpet - cotton	20.00%
All cotton cloth	42.99%	All cotton cloth *1915	20.46%
Lace - common articles	62.13%	Lace - common articles	60.00%
All cotton knit clothing	60.17%	All cotton knit clothing	30.00%
All Manuf. Of Cotton	55.71%	All Manuf. Of Cotton	42.79%
bagging - <15 oz, sq yd	12.87%	bags or sacks	10.00%
bags for grain	31.93%		
bottles > 1 pint green and flint	60.64%	bottles, all	30.00%
bottles < 1 pint green and flint	69.63%		
window < 150 sq in & < 1.5 cent/lb	91.51%	window < 150 sq in	20.77%
window < 150 sq in & > 1.5 cent/lb	46.62%		

window 150-384, <1.25 c/lb	109.84%	window 150-384,	31.51%
window 150-384, >1.25 c/lb	69.04%		
window 384-720, < 2.1/8	116.61%	window 384-720,	32.71%
window 384-720, > 2.1/8	68.90%		
window 720-864	83.89%	window 720-1200	42.83%
window 864-1200	83.77%		
window 1200-2400	82.27%	window 1200-2400	47.74%
window > 2400	92.10%	window > 2400	28.33%
all crown window glass	62.42%	all crown window glass	26.73%
all glass and glassware	55.12%	all glass and glassware *1915	32.91%
Pig iron	8.69%	Pig iron, ferrosilicon	15.00%
Scrap iron	8.72%	Pig iron, all other	free
Bar iron - charcoal prod	18.92%	Scrap iron	free
All bar iron	18.37%	All bar iron	5.00%
steel ingots < .75 cent/lb	23.47%		
steel ingots .75-1.3 cents	27.70%		
steel ingots 1.3-1.8 cents	31.23%		
steel ingots 1.8-2.2 cents	28.44%		
steel ingots 2.2-3 cents	30.56%		
steel ingots 3-4 cents	30.98%		
steel ingots 4-7 cents	20.72%		
steel ingots 7-10 cents	20.29%		
steel ingots 10-13 cents	19.22%		
steel ingots 13-16 cents	18.62%		
steel ingots 16-24 cents	21.55%		
steel ingots 24-32 cents	19.33%		
steel ingots 32-40 cents	19.15%		
steel ingots > 40 cents	64.83%		
All steel ingots	23.14%	All steel ingots	free
hoop or band (all)	17.83%	hoop or band, non coated	10.00%
wire rods > .04/lb	14.15%	wire rods, all	15.00%
steel wire < 13 ga.	36.82%		
steel wire 13-16 ga.	39.15%		
steel wire > 16 ga.	41.82%		
steel wire on which sp. Du. <35%	35.00%		
All steel wire	38.18%	All steel wire	15.00%
anchors	39.91%	anchors	15.00%
iron girders - 9/10cent/lb or less	30.54%	iron girders	10.00%
cast iron vessels	11.16%	cast iron vessels	10.00%
cut nails	14.12%	wire nails, all	free
horseshoe nails	9.82%	horseshoe nails	free
wire nails < 1 inch	4.40%		
wire nails > 1 inch	12.89%		

iron spikes	37.88%	iron spikes	free
screws <.5 in	11.11%		
screws .5-1 in	28.15%		
screws 1-2 in	32.65%		
screws > 2 in	55.73%		
All screws	54.23%	All screws	25.00%
All Iron Manuf.	31.63%	All Iron Manuf. *1915	22.39%
lead ore	63.45%	lead ore	21.88%
pig lead	69.07%	pig lead	25.00%
sheet lead	52.75%	sheet lead	25.00%
Total lead	83.71%	Total lead	22.18%
salt - bagged	33.01%	salt - bagged	free
salt - bulk	79.50%	salt - bulk	free
Total sugar (inc. bounty ret.)	54.35%	Total sugar (inc. bounty ret.)	31.75%
unwashed, on skin	43.38%	unwashed, all	free
unwashed, not on skin	46.06%		
washed, not on skin	97.57%	washed, all	free
scoured	69.84%	scoured	free
unscoured, on skin	52.27%	washed and unwashed	free
unscoured, not on skin	49.20%	scoured	free
all on skin < .12/lb	30.20%	washed and unwashed	free
all not on skin, </12	36.53%	scoured	free
yarns < .30/lb	149.05%		
yarns > .30/lb	76.61%		
All yarn	76.61%	All yarn	18.00%
wool blankets < .40/lb	95.68%		
wool blankets .40-.50	104.95%		
wool blankets >.50	67.64%		
wool blankets, 3 yds <.40	168.53%		
wool blankets, 3 yds.40-.70	124.94%		
wool blankets, 3 yds >.70	102.54%		
All Blankets	74.88%	All Blankets	25.00%
Aubusson, oriental carpets	71.13%	Aubusson, oriental carpets	35.00%
Brussels carpets	72.02%	Brussels carpets	25.00%

Woven room carpets	61.63%	Woven room carpets	50.00%
Druggets	65.42%	Druggets	20.00%
Felt carpeting	50.00%	Felt carpeting	20.00%
Saxony carpets	65.82%	Saxony carpets	30.00%
tapestry	70.70%	tapestry	20.00%
treble ingrain	65.01%	treble ingrain	20.00%
velvet	60.32%	velvet	30.00%
wool, Dutch carpets	55.00%	wool, Dutch carpets	20.00%
carpets, n.o.p.	50.00%	carpets, n.o.p.	20.00%
All Carpets	61.72%	All Carpets	48.34%
wool cloth <.40/lb	149.59%		
wool cloth .40-70/lb	123.71%		
wool cloth > .70/lb	94.17%		
All wool cloth	95.39%	All wool cloth	35.00%
All wool dress goods	102.11%	Total dress goods	35.00%
Felts	95.53%	Felts	35.00%
Wearing apparel, ready made	78.32%	Wearing apparel, ready made *1915	35.54%

Source: Appendix I data taken from author's calculations, based on "Articles Entered for Consumption." *Foreign Commerce and Navigation of the United States.* 1892-1914 Editions. Washington, DC: Government Printing Office.

Appendix II – Revenue Effects of the "Horizontal Tariff" Reduction

McKinley Tariff, preceding Wilson-Gorman Revision

McKinley Tariff	FY 1893 (begins 6/30/92)		*Change in Tariff Revenue, 20% rate reduction*			
			ηD			
Category	**Article**	**Initial Tariff Rate**	**-1.5**	**-2.5**	**-3.5**	**-4.5**
Coal	Bituminous coal	22.72%	-$118,959.86	-$89,229.02	-$59,498.18	-$29,767.34
	Culm of coal	28.68%	-$578.11	-$375.82	-$173.53	$28.76
	Coke	20.00%	-$2,652.04	-$2,093.71	-$1,535.39	-$977.07
Coffee	Coffee	17.93%	-$93,033.96	-$76,026.30	-$59,018.65	-$42,010.99
Copper	Copper ore	8.22%	-$6,728.98	-$6,238.23	-$5,747.49	-$5,256.74
	Copper plates	11.80%	-$1,236.24	-$1,100.28	-$964.31	-$828.35
	Copper sheathing	35.00%	-$13.68	-$7.08	-$0.47	$6.13
	Manuf., nop	45.00%	-$2,137.20	-$464.61	$1,207.98	$2,880.57
Cotton goods	thread < .25/lb	45.03%	-$3,607.28	-$779.61	$2,048.05	$4,875.71
	thread .25-.40/lb	51.12%	-$9,592.68	$555.83	$10,704.34	$20,852.85
	thread .4-.5/lb	50.17%	-$3,374.12	$28.81	$3,431.73	$6,834.66
	thread .5-.6/lb	48.96%	-$2,303.15	-$115.88	$2,071.39	$4,258.66
	all thread	50.23%	-$29,991.75	$348.18	$30,688.11	$61,028.04
	Carpet - cotton	50.00%	-$747.92	$0.00	$747.92	$1,495.84
	All cotton cloth	48.01%	-$235,246.92	-$22,089.21	$191,068.49	$404,226.20
	Laces	60.00%	-$430,550.32	$307,535.94	$1,045,622.21	$1,783,708.47
	All cotton knit clothing	68.66%	-$154,382.97	$327,176.10	$808,735.17	$1,290,294.24
Fiber Hemp	bagging <.6/sqyd	32.52%	-$1,424.95	-$817.11	-$209.27	$398.57
	bagging >.6/sqyd	26.37%	-$175.98	-$121.66	-$67.33	-$13.01
Glass	bottles > 1 pint green	70.17%	-$3,038.49	$7,762.17	$18,562.83	$29,363.48
	bottles < 1 pint green	85.67%	$428.30	$10,891.58	$21,354.86	$31,818.14
	bottles > 1 pint flint	61.27%	-$1,187.74	$1,011.72	$3,211.18	$5,410.65
	bottles < 1 pint flint	81.30%	-$95.04	$2,442.34	$4,979.71	$7,517.08
	window < 10x15	19.84%	-$374.65	-$296.62	-$218.58	-$140.54
	window 10x15 to 16x24	53.60%	-$110.72	$22.37	$155.46	$288.56
	window 16x24 to 24x30	100.42%	$112.32	$552.46	$992.60	$1,432.73
	window 24x30 to 24x36	73.33%	-$11.37	$44.22	$99.80	$155.39
	window > 24x36	97.27%	$1,772.45	$10,020.42	$18,268.39	$26,516.36
	all crown window glass	74.88%	-$1,111.34	$5,450.76	$12,012.86	$18,574.97
	all glass and glassware	63.79%	-$237,713.06	$279,452.42	$796,617.90	$1,313,783.38
Iron & Steel	Pig iron	28.12%	-$55,784.41	-$36,845.06	-$17,905.72	$1,033.63
	Scrap iron	46.32%	-$12,034.53	-$1,992.29	$8,049.96	$18,092.21
	Bar iron - charcoal prod	56.82%	-$21,989.49	$9,434.98	$40,859.45	$72,283.92
	All bar iron	52.65%	-$27,610.24	$3,976.37	$35,562.98	$67,149.59
	Railway iron	58.14%	-$1,255.53	$675.96	$2,607.45	$4,538.94
	steel ingots < 1 cent/lb	50.48%	-$15,532.33	$379.90	$16,292.13	$32,204.36
	steel ingots 1-1.4 cents	39.06%	-$3,476.75	-$1,431.48	$613.78	$2,659.05
	steel ingots 1.4-1.8 cents	52.76%	-$1,863.51	$279.99	$2,423.49	$4,566.99
	steel ingots 1.8-2.2 cents	44.68%	-$223.74	-$51.34	$121.05	$293.45
	steel ingots 2.2-3 cents	43.11%	-$1,112.87	-$317.77	$477.33	$1,272.44
	steel ingots 3-4 cents	41.54%	-$4,605.59	-$1,553.24	$1,499.11	$4,551.46
	steel ingots 4-7 cents	35.64%	-$5,177.95	-$2,598.93	-$19.90	$2,559.12
	steel ingots 7-10 cents	30.36%	-$25,677.11	-$15,867.63	-$6,058.15	$3,751.33
	steel ingots 10-13 cents	30.07%	-$1,414.15	-$881.83	-$349.52	$182.79

	steel ingots 13-16 cents	29.38%	-$1,003.28	-$639.02	-$274.76	$89.51
	steel ingots > 16 cents	30.75%	-$3,254.12	-$1,985.19	-$716.25	$552.68
	All steel ingots	37.83%	-$66,266.84	-$29,542.28	$7,182.29	$43,906.85
	hoop or band iron < 10 ga.	40.03%	-$1,269.08	-$487.00	$295.09	$1,077.17
	hoop or band iron 10-20 ga.	50.23%	-$1,032.15	$11.74	$1,055.63	$2,099.52
	wire rods	34.00%	-$67,540.51	-$36,514.23	-$5,487.95	$25,538.33
	steel wire < 10 ga.	32.54%	-$3,970.43	-$2,274.65	-$578.86	$1,116.92
	steel wire 10-16 ga.	48.77%	-$4,062.07	-$240.66	$3,580.74	$7,402.14
	steel wire 16-26 ga.	51.06%	-$41.01	$2.24	$45.49	$88.74
	steel wire > 26 ga	26.08%	-$23.22	-$16.17	-$9.12	-$2.06
	All steel wire	42.19%	-$10,082.30	-$3,190.43	$3,701.43	$10,593.30
Iron Manufactures	anchors	32.95%	-$1,017.86	-$574.02	-$130.17	$313.68
	iron girders	74.64%	-$2,110.68	$9,971.97	$22,054.62	$34,137.27
	cast iron vessels	26.97%	-$662.55	-$451.14	-$239.73	-$28.31
	cut nails	23.58%	-$9.76	-$7.19	-$4.62	-$2.05
	horseshoe nails	36.48%	-$36.80	-$17.70	$1.40	$20.49
	wire nails < 1 inch	46.43%	-$19.41	-$3.13	$13.15	$29.44
	wire nails 1-2 in	36.25%	-$0.08	-$0.04	$0.00	$0.04
	wire nails > 2 in	33.06%	-$0.57	-$0.32	-$0.07	$0.18
	iron spikes	107.15%	$4.15	$16.61	$29.06	$41.52
	screws <.5 in	1.40%	-$0.01	-$0.01	-$0.01	-$0.01
	screws .5-1 in	83.33%	$0.00	$0.33	$0.67	$1.00
	screws 1-2 in	46.67%	-$0.12	-$0.02	$0.09	$0.19
	screws > 2 in	110.95%	$1.54	$5.68	$9.82	$13.95
	All screws	90.80%	$0.49	$4.45	$8.40	$12.36
	All Iron Manuf.	55.38%	-$1,108,165.75	$355,633.82	$1,819,433.40	$3,283,232.97
Lead	lead in silver ore	75.36%	-$17,166.96	$91,006.50	$199,179.95	$307,353.40
	pig lead	49.13%	-$6,526.63	-$276.33	$5,973.98	$12,224.28
	sheet lead	36.65%	-$255.97	-$121.98	$12.02	$146.01
	Total lead	72.06%	-$26,490.23	$86,373.73	$199,237.69	$312,101.65
Liquor and Wines	malted bev. in jugs or bottles	41.55%	-$49,716.88	-$16,763.99	$16,188.89	$49,141.77
	cordials	115.05%	$37,423.33	$127,918.40	$218,413.47	$308,908.54
	grain whiskey	293.26%	$825,861.48	$1,594,998.99	$2,364,136.50	$3,133,274.01
	other material-distilled	366.91%	$185,285.15	$345,107.61	$504,930.07	$664,752.53
	wine - casks	69.38%	-$57,830.12	$133,888.34	$325,606.81	$517,325.27
	wine - bottles >1 pint	28.96%	-$70,897.52	-$45,720.65	-$20,543.78	$4,633.08
	champagne - .5-1 pint	52.62%	-$86,246.90	$12,282.98	$110,812.87	$209,342.75
	champagne - 1 pint	55.22%	-$106,975.33	$33,107.80	$173,190.93	$313,274.05
	vermouth - 1 pint	53.38%	-$6,491.29	$1,220.13	$8,931.55	$16,642.97
	Total Alcohol	67.45%	-$305,516.79	$559,491.76	$1,424,500.31	$2,289,508.86
Salt	salt - bagged	35.14%	-$18,138.30	-$9,321.96	-$505.62	$8,310.72
	salt - bulk	82.33%	-$350.80	$18,769.82	$37,890.44	$57,011.06
Sugar	beet, cane, except maple	12.86%	-$27,147.21	-$23,845.33	-$20,543.45	-$17,241.58
	maple sugar	6.25%	-$0.11	-$0.10	-$0.09	-$0.09
Tobacco	cigar leaf, unstemmed	238.68%	$1,761,663.76	$3,566,114.61	$5,370,565.46	$7,175,016.31
	other leaf, unstemmed	81.93%	-$19,176.58	$729,740.74	$1,478,658.05	$2,227,575.37
	other leaf, stemmed	95.44%	$21,219.89	$132,779.34	$244,338.78	$355,898.23
	cigars	125.37%	$348,187.77	$1,040,488.56	$1,732,789.35	$2,425,090.15
	cigarettes	155.44%	$10,646.50	$25,947.43	$41,248.35	$56,549.28
	snuff	141.79%	$1,703.35	$4,457.63	$7,211.92	$9,966.20
	other tobacco	198.59%	$38,329.21	$82,357.79	$126,386.37	$170,414.95
	Total tobacco	112.28%	$981,799.56	$3,520,845.20	$6,059,890.84	$8,598,936.48

Wool - class 1, Clothing	unwashed	59.63%	-$221,048.51	$149,650.79	$520,350.08	$891,049.38
	washed	48.86%	-$111.45	-$6.14	$99.16	$204.47
	scoured	66.69%	-$979.41	$1,636.28	$4,251.97	$6,867.66
Wool - class 2, Combing	unscoured	56.23%	-$44,814.67	$17,158.96	$79,132.59	$141,106.21
	scoured	43.60%	-$10.44	-$2.80	$4.83	$12.47
	sorted	91.68%	$73.66	$613.07	$1,152.49	$1,691.90
Wool - class 3, Carpet	wool, < .13/lb	32.00%	-$374,701.58	-$218,981.45	-$63,261.31	$92,458.83
	wool sorted, < .13/lb	64.00%	-$426.58	$514.84	$1,456.27	$2,397.69
	wool > .13/lb	50.00%	-$18,644.08	$0.00	$18,644.08	$37,288.16
	wool sorted > .13/lb	100.00%	$72.68	$363.40	$654.12	$944.84
	Total raw wool	44.39%	-$737,318.57	-$176,933.38	$383,451.82	$943,837.01
Wool Manufactures	yarns < .30/lb	278.67%	$128.42	$250.56	$372.69	$494.83
	yarns .30-.40/lb	118.80%	$892.21	$2,884.54	$4,876.87	$6,869.20
	yarns > .40/lb	105.42%	$38,771.49	$162,163.38	$285,555.28	$408,947.17
	All yarn	105.61%	$39,683.99	$165,118.26	$290,552.53	$415,986.80
	wool blankets < .30/lb	88.22%	$14.94	$194.74	$374.55	$554.36
	wool blankets .30-.40	100.21%	$9.21	$45.69	$82.16	$118.63
	wool blankets .40-.50	103.89%	$17.11	$74.75	$132.38	$190.02
	wool blankets >.50	80.33%	-$21.81	$366.60	$755.01	$1,143.41
	All Blankets	84.45%	$13.04	$671.09	$1,329.15	$1,987.20
	Aubusson, oriental carpets	60.85%	-$41,730.47	$33,577.87	$108,886.22	$184,194.56
	Brussels carpets	81.50%	-$257.24	$7,376.04	$15,009.32	$22,642.60
	Druggets	82.57%	-$3.49	$248.61	$500.72	$752.82
	Felt carpet	62.57%	-$103.84	$104.84	$313.52	$522.21
	Saxony carpets	69.55%	-$2,202.16	$5,205.85	$12,613.86	$20,021.88
	tapestry	77.97%	-$34.44	$299.18	$632.80	$966.42
	treble ingrain	63.05%	-$847.30	$908.29	$2,663.88	$4,419.46
	velvet	71.86%	-$919.23	$2,918.05	$6,755.33	$10,592.60
	wool, Dutch carpets	64.74%	-$551.09	$728.53	$2,008.16	$3,287.78
	carpets, n.o.p.	50.00%	-$633.56	$0.00	$633.56	$1,267.12
	All Carpets	62.85%	-$47,606.22	$49,772.33	$147,150.88	$244,529.43
	wool cloth <.30/lb	163.09%	$4,088.71	$9,662.52	$15,236.34	$20,810.15
	wool cloth .30-.40/lb	144.86%	$27,287.58	$70,118.77	$112,949.96	$155,781.16
	wool cloth > .40/lb	99.50%	$489,125.81	$2,495,663.24	$4,502,200.67	$6,508,738.10
	All wool cloth	100.02%	$513,014.95	$2,562,965.95	$4,612,916.95	$6,662,867.95
	dress goods <.15/sqyd	93.93%	$45,414.23	$313,681.83	$581,949.43	$850,217.02
	dress goods >.15/sqyd	89.60%	$15,773.19	$166,150.31	$316,527.44	$466,904.57
	dress goods w. > 4 oz.	103.86%	$261,354.47	$1,143,086.09	$2,024,817.70	$2,906,549.32
	Total dress goods	51.83%	-$320,544.71	$31,101.27	$382,747.26	$734,393.25
	Felts	93.09%	$1,423.77	$10,478.82	$19,533.87	$28,588.91
	Wearing apparel, ready made	81.23%	-$1,528.05	$37,881.03	$77,290.11	$116,699.19

Wilson-Gorman Tariff, preceding Dingley revision

Wilson-Gorman Tariff	FY 1896 (begins 6/30/95)		*Change in Tariff Revenue, 20% rate reduction*			
			ηD			
Category	**Article**	**Initial Tariff Rate**	**-1.5**	**-2.5**	**-3.5**	**-4.5**
Coal	Bituminous coal	13.76%	-$81,179.75	-$70,478.54	-$59,777.32	-$49,076.10
	Culm of coal	15.88%	-$520.28	-$438.61	-$356.95	-$275.29
	Coke	15.00%	-$2,879.04	-$2,457.72	-$2,036.40	-$1,615.07
	Copper sheathing	20.00%	-$11.73	-$9.26	-$6.79	-$4.32
	Manuf., nop	35.00%	-$647.95	-$335.15	-$22.34	$290.46
Cotton goods	thread < .25/lb - uncolored, no. 38	34.00%	-$6,432.52	-$3,476.40	-$520.29	$2,435.82
	thread .25-.40/lb - uncol, no. 66	43.22%	-$4,078.47	-$1,148.52	$1,781.43	$4,711.38
	thread .25-.4/lb - colored, no. 20	17.73%	-$3,141.07	-$2,575.10	-$2,009.13	-$1,443.16
	thread .25-.4/lb - colored, no. 50	42.59%	-$8,148.61	-$2,471.01	$3,206.59	$8,884.19
	all thread	37.85%	-$35,122.13	-$15,641.35	$3,839.43	$23,320.21
	Carpet - cotton	30.00%	-$734.65	-$459.16	-$183.66	$91.83
	Laces	50.00%	-$437,823.87	$0.00	$437,823.87	$875,647.75
	All Manuf. Of Cotton	45.87%	-$1,330,719.03	-$244,698.50	$841,322.04	$1,927,342.57
	bottles < 1 pint green	80.45%	-$104.63	$1,838.55	$3,781.72	$5,724.90
	bottles > 1 pint flint	35.14%	-$1,001.57	-$514.77	-$27.97	$458.83
	bottles < 1 pint flint	48.20%	-$13.85	-$1.19	$11.48	$24.15
	window < 10x15	15.62%	-$283.39	-$239.81	-$196.23	-$152.65
	window 16x24 to 24x30	38.21%	-$100.14	-$43.60	$12.95	$69.49
	window 24x30 to 24x36	19.10%	-$2.15	-$1.72	-$1.30	-$0.87
	window > 24x36	71.61%	-$658.18	$2,022.41	$4,703.01	$7,383.61
	all crown window glass	55.64%	-$1,749.94	$594.06	$2,938.06	$5,282.05
	all glass and glassware	46.07%	-$257,158.90	-$45,216.36	$166,726.19	$378,668.74
Iron & Steel	Pig iron	17.41%	-$55,658.38	-$45,855.75	-$36,053.13	-$26,250.50
	Scrap iron	28.26%	-$2,895.26	-$1,904.69	-$914.11	$76.46
	Bar iron - charcoal prod	33.87%	-$26,269.64	-$14,279.97	-$2,290.30	$9,699.37
	All bar iron	30.76%	-$31,202.04	-$19,029.82	-$6,857.59	$5,314.63
	Railway iron	49.87%	-$60.56	-$0.39	$59.77	$119.94
	steel ingots < 1 cent/lb	38.10%	-$8,508.40	-$3,730.96	$1,046.49	$5,823.93
	steel ingots 1-1.4 cents	30.51%	-$3,437.30	-$2,113.93	-$790.57	$532.80
	steel ingots 1.4-1.8 cents	36.70%	-$3,476.46	-$1,652.37	$171.72	$1,995.81
	steel ingots 1.8-2.2 cents	35.09%	-$968.38	-$498.84	-$29.31	$440.23
	steel ingots 2.2-3 cents	31.57%	-$10,574.05	-$6,275.47	-$1,976.89	$2,321.69
	steel ingots 3-4 cents	36.07%	-$9,798.09	-$4,813.69	$170.71	$5,155.11
	steel ingots 4-7 cents	23.49%	-$3,728.08	-$2,752.58	-$1,777.08	-$801.58
	steel ingots 7-10 cents	20.83%	-$22,221.44	-$17,284.38	-$12,347.33	-$7,410.27
	steel ingots 10-13 cents	20.91%	-$1,138.07	-$883.95	-$629.82	-$375.70
	steel ingots 13-16 cents	19.83%	-$1,088.70	-$862.03	-$635.37	-$408.71
	steel ingots > 16 cents	20.86%	-$2,706.22	-$2,103.92	-$1,501.62	-$899.32
	All steel ingots	27.65%	-$69,934.23	-$46,787.19	-$23,640.15	-$493.12
	hoop or band (all)	30.00%	-$97.55	-$60.97	-$24.39	$12.19
	wire rods > .04/lb	23.00%	-$36,382.81	-$27,134.90	-$17,886.99	-$8,639.08
	steel wire < 13 ga.	36.19%	-$6,913.98	-$3,374.99	$164.00	$3,703.00
	steel wire 13-16 ga.	43.69%	-$1,576.17	-$417.89	$740.38	$1,898.66
	steel wire > 16 ga.	55.29%	-$1,100.86	$345.75	$1,792.37	$3,238.98
	All steel wire	39.79%	-$9,827.76	-$3,841.71	$2,144.33	$8,130.38

Iron Manufactures	anchors	28.08%	-$1,151.84	-$761.61	-$371.37	$18.86
	iron girders	45.45%	-$580.06	-$116.23	$347.61	$811.45
	cast iron vessels	27.63%	-$177.70	-$118.94	-$60.18	-$1.42
	cut nails	22.50%	-$4.73	-$3.56	-$2.40	-$1.23
	horseshoe nails	30.00%	-$152.87	-$95.54	-$38.22	$19.11
	wire nails - all	25.00%	-$877.21	-$626.58	-$375.95	-$125.32
	iron spikes	25.00%	-$4.86	-$3.47	-$2.08	-$0.69
	screws <.5 in	25.93%	-$0.24	-$0.17	-$0.10	-$0.02
	screws .5-1 in	33.25%	-$0.24	-$0.13	-$0.03	$0.08
	screws 1-2 in	11.90%	-$1.90	-$1.69	-$1.48	-$1.27
	screws > 2 in	10.85%	-$0.64	-$0.58	-$0.51	-$0.45
	All screws	13.24%	-$3.11	-$2.72	-$2.33	-$1.94
	All Iron Manuf.	38.81%	-$1,075,499.71	-$450,585.35	$174,329.00	$799,243.35
Lead	lead in silver ore	47.37%	-$27,817.59	-$3,389.22	$21,039.15	$45,467.51
	pig lead	54.59%	-$45,614.32	$12,151.69	$69,917.70	$127,683.71
	sheet lead	32.34%	-$198.53	-$114.59	-$30.66	$53.27
	Total lead	51.94%	-$74,222.29	$7,661.45	$89,545.19	$171,428.93
Liquor and Wines	malted bev. in jugs or bottles	30.93%	-$38,519.53	-$23,366.08	-$8,212.63	$6,940.83
	brandy	66.54%	-$18,918.20	$31,053.08	$81,024.36	$130,995.64
	cordials	90.36%	$6,493.82	$62,175.54	$117,857.26	$173,538.98
	grain whiskey	172.99%	$327,535.85	$748,854.93	$1,170,174.00	$1,591,493.08
	other material-distilled	276.82%	$86,350.92	$168,712.45	$251,073.98	$333,435.50
	wine - casks < 14% alc	46.35%	-$45,530.12	-$7,485.22	$30,559.68	$68,604.58
	wine - casks > 14% alc	68.20%	-$19,217.54	$38,539.28	$96,296.10	$154,052.92
	wine - bottles >1 pint	28.61%	-$49,767.14	-$32,417.94	-$15,068.74	$2,280.46
	champagne - .5-1 pint	49.73%	-$62,769.98	-$842.82	$61,084.35	$123,011.52
	champagne - 1 pint	51.69%	-$85,244.41	$7,574.48	$100,393.37	$193,212.26
	vermouth - 1 pint	53.21%	-$8,238.68	$1,463.63	$11,165.93	$20,868.24
	Total Alcohol	61.65%	-$328,113.57	$293,780.41	$915,674.39	$1,537,568.36
Salt	salt - bagged	21.58%	-$101.79	-$78.07	-$54.35	-$30.63
	salt - bulk	114.23%	$102.33	$354.53	$606.74	$858.94
Sugar	sugar - beet < 16 standard	40.00%	-$2,578.10	-$991.58	$594.95	$2,181.47
	sugar - cane <16 standard	40.00%	-$2,250,056.21	-$865,406.23	$519,243.74	$1,903,893.71
	sugar - beet >16 standard	44.38%	-$72,115.85	-$17,348.34	$37,419.17	$92,186.68
	sugar - cane >16 standard	44.21%	-$30,626.87	-$7,556.23	$15,514.40	$38,585.03
	maple sugar	40.00%	-$2,624.51	-$1,009.43	$605.66	$2,220.74
	Total sugar (inc. bounty ret.)	41.20%	-$3,014,010.81	-$1,048,932.63	$916,145.55	$2,881,223.72
Tobacco	cigar leaf, unstemmed	124.29%	$617,982.22	$1,868,173.44	$3,118,364.65	$4,368,555.87
	other leaf, unstemmed	93.61%	$137,060.46	$969,173.94	$1,801,287.41	$2,633,400.89
	other leaf, stemmed	105.14%	$27,366.68	$115,328.64	$203,290.59	$291,252.55
	cigars	112.68%	$160,570.72	$571,579.26	$982,587.79	$1,393,596.33
	cigarettes	133.62%	$6,885.16	$19,082.60	$31,280.04	$43,477.47
	snuff	138.85%	$1,263.53	$3,370.21	$5,476.88	$7,583.55
	other tobacco	238.12%	$45,829.81	$92,832.11	$139,834.40	$186,836.70
	Total tobacco	105.17%	$750,386.11	$3,159,724.28	$5,569,062.45	$7,978,400.63
Wool Manuf.	yarns < .40/lb	30.00%	-$5,738.24	-$3,586.40	-$1,434.56	$717.28
	yarns > .40/lb	40.00%	-$36,672.57	-$14,104.84	$8,462.90	$31,030.64
	All yarn	38.56%	-$42,722.07	-$18,197.94	$6,326.19	$30,850.32
	wool blankets < .30/lb	25.00%	-$1,202.90	-$859.21	-$515.53	-$171.84
	wool blankets .30-.40	30.00%	-$269.34	-$168.34	-$67.33	$33.67
	wool blankets >.40	35.00%	-$556.83	-$288.01	-$19.20	$249.61
	wool blankets, 3 yds <.50	40.00%	-$121.06	-$46.56	$27.94	$102.43

	wool blankets, 3 yds >.50	50.00%	-$118.66	$0.00	$118.66	$237.32
	All Blankets	29.76%	-$2,333.03	-$1,469.18	-$605.32	$258.53
	Aubusson, oriental carpets	40.00%	-$10,773.36	-$4,143.60	$2,486.16	$9,115.92
	Brussels carpets	40.00%	-$5,955.67	-$2,290.64	$1,374.38	$5,039.41
	Druggets	30.00%	-$29.89	-$18.68	-$7.47	$3.74
	Felt carpet	30.00%	-$118.92	-$74.33	-$29.73	$14.87
	Saxony carpets	40.00%	-$5,327.17	-$2,048.91	$1,229.35	$4,507.61
	tapestry	42.50%	-$1,020.96	-$312.54	$395.88	$1,104.30
	treble ingrain	32.50%	-$703.59	-$403.70	-$103.81	$196.08
	velvet	40.00%	-$4,258.00	-$1,637.69	$982.61	$3,602.92
	wool, Dutch carpets	30.00%	-$562.37	-$351.48	-$140.59	$70.30
	carpets, n.o.p.	40.00%	-$54,690.06	-$21,034.64	$12,620.78	$46,276.21
	All Carpets	39.78%	-$84,214.37	-$32,946.56	$18,321.25	$69,589.07
	wool cloth <.50/lb	40.00%	-$154,999.41	-$59,615.16	$35,769.10	$131,153.35
	wool cloth > .50/lb	50.00%	-$652,478.03	$0.00	$652,478.03	$1,304,956.07
	All wool cloth	48.14%	-$814,756.95	-$71,747.66	$671,261.62	$1,414,270.91
	dress goods <.50/lb	40.00%	-$52,672.93	-$20,258.82	$12,155.29	$44,569.41
	dress goods >..50/lb	50.00%	-$729,123.68	$0.01	$729,123.69	$1,458,247.37
	Total dress goods	49.35%	-$784,638.06	-$24,994.56	$734,648.94	$1,494,292.44
	Felts (all, rates 25-50%)	43.06%	-$6,026.29	-$1,731.43	$2,563.44	$6,858.30
	Wearing apparel, ready made	50.00%	-$14,207.01	$0.00	$14,207.02	$28,414.03

Dingley Tariff, preceding Payne-Aldrich revision

Dingley Tariff	FY 1907 (begins 7/30/06)		*Change in Tariff Revenue, 20% rate reduction*			
			ηD			
Category	**Article**	**Initial Tariff Rate**	**-1.5**	**-2.5**	**-3.5**	**-4.5**
Coal	Bituminous coal	21.29%	-$103,556.79	-$79,863.96	-$56,171.13	-$32,478.30
	Culm of coal	11.20%	-$16,245.53	-$14,564.70	-$12,883.87	-$11,203.04
	Coke	20.00%	-$17,102.64	-$13,502.09	-$9,901.53	-$6,300.98
	Copper sheathing	4.99%	-$492.55	-$471.63	-$450.70	-$429.78
	Manuf., nop	45.00%	-$1,083.74	-$235.59	$612.56	$1,460.71
Cotton goods	*all thread*	30.44%	-$136,082.04	-$83,884.64	-$31,687.24	$20,510.16
	Carpet - cotton	50.00%	-$511.88	$0.00	$511.88	$1,023.76
	All cotton cloth	38.17%	-$539,644.82	-$235,548.71	$68,547.41	$372,643.53
	All laces	59.99%	-$1,338,290.01	$954,651.77	$3,247,593.54	$5,540,535.32
	knit goods, general	50.00%	-$2,979.52	$0.00	$2,979.52	$5,959.04
	knit goods, machined >1.50/doz	56.90%	-$2,151.60	$936.55	$4,024.71	$7,112.87
	knit goods, machined 1.5-3	60.16%	-$10,947.28	$8,002.73	$26,952.73	$45,902.73
	knit goods, machined, 3-5	61.54%	-$7,881.89	$6,952.41	$21,786.72	$36,621.02
	knit goods, machined 5-7	64.29%	-$2,167.48	$2,712.28	$7,592.03	$12,471.79
	knit goods, machined 7-15	59.65%	-$3,352.83	$2,277.11	$7,907.04	$13,536.98
	knit goods, machined >15/doz	50.00%	-$227.92	$0.00	$227.92	$455.84
	All cotton knit clothing	59.69%	-$29,959.66	$20,462.51	$70,884.68	$121,306.85
	All Manuf. Of Cotton	53.38%	-$2,803,569.07	$527,287.19	$3,858,143.45	$7,188,999.72
Fiber Hemp	bagging - <15 oz, sq yd	9.78%	-$20,989.59	-$19,128.35	-$17,267.12	-$15,405.89
	bags for grain	26.98%	-$153,513.89	-$104,505.04	-$55,496.19	-$6,487.33
Glass	bottles > 1 pint green	60.52%	-$1,852.40	$1,424.09	$4,700.58	$7,977.07

	bottles < 1 pint green	67.51%	-$383.09	$706.24	$1,795.57	$2,884.91
	bottles > 1 pint flint	59.89%	-$205.22	$144.38	$493.98	$843.57
	bottles < 1 pint flint	55.56%	-$37.55	$12.52	$62.60	$112.68
	window < 10x15	41.08%	-$22,507.33	-$7,917.21	$6,672.92	$21,263.05
	window 10x15 to 16x24	71.59%	-$5,142.77	$15,749.15	$36,641.08	$57,533.00
	window 16x24 to 24x30	74.32%	-$1,786.30	$8,031.97	$17,850.25	$27,668.52
	window 24x30 to 24x36	78.69%	-$300.55	$3,095.06	$6,490.66	$9,886.26
	window 24x36 to 30x40	87.39%	$224.01	$3,443.15	$6,662.29	$9,881.43
	window 30x40 to 40x60	71.79%	-$232.59	$732.15	$1,696.89	$2,661.63
	window > 40x60	60.59%	-$3.08	$2.39	$7.85	$13.31
	all crown window glass	55.73%	-$36,129.13	$12,502.44	$61,134.02	$109,765.60
	all glass and glassware	53.21%	-$283,407.67	$50,418.31	$384,244.29	$718,070.28
Iron & Steel	Pig iron	14.47%	-$367,943.12	-$316,420.22	-$264,897.31	-$213,374.41
	Scrap iron	29.27%	-$11,338.87	-$7,245.78	-$3,152.70	$940.38
	Bar iron - charcoal prod	29.59%	-$57,074.19	-$36,121.08	-$15,167.98	$5,785.12
	All bar iron	27.91%	-$62,202.01	-$41,317.29	-$20,432.57	$452.16
	Railway iron and steel	28.78%	-$4,043.40	-$2,621.43	-$1,199.46	$222.51
	steel ingots < 1 cent/lb	31.29%	-$1.95	-$1.17	-$0.39	$0.40
	steel ingots 1-1.4 cents	34.82%	-$6,947.36	-$3,623.84	-$300.33	$3,023.18
	steel ingots 1.4-1.8 cents	34.59%	-$491.02	-$258.67	-$26.33	$206.02
	steel ingots 1.8-2.2 cents	33.79%	-$675.49	-$368.39	-$61.29	$245.82
	steel ingots 2.2-3 cents	32.65%	-$2,962.17	-$1,690.28	-$418.38	$853.51
	steel ingots 3-4 cents	34.07%	-$1,594.75	-$859.31	-$123.86	$611.58
	steel ingots 4-7 cents	22.95%	-$6,959.22	-$5,195.88	-$3,432.54	-$1,669.19
	steel ingots 7-10 cents	21.47%	-$38,616.66	-$29,681.41	-$20,746.15	-$11,810.90
	steel ingots 10-13 cents	21.10%	-$1,970.17	-$1,524.85	-$1,079.52	-$634.19
	steel ingots 13-16 cents	20.34%	-$1,173.88	-$921.18	-$668.47	-$415.77
	steel ingots > 16 cents	13.82%	-$27,724.88	-$24,051.03	-$20,377.18	-$16,703.34
	All steel ingots	19.83%	-$91,843.53	-$72,719.28	-$53,595.02	-$34,470.77
	hoop or band (all)	28.57%	-$275.77	-$179.85	-$83.93	$11.99
	wire rods > .04/lb	18.37%	-$24,408.17	-$19,805.57	-$15,202.97	-$10,600.37
	steel wire < 13 ga.	39.04%	-$2,165.17	-$893.17	$378.83	$1,650.82
	steel wire 13-16 ga.	43.98%	-$3,182.16	-$811.62	$1,558.92	$3,929.46
	steel wire > 16 ga.	55.16%	-$2,975.54	$908.79	$4,793.13	$8,677.46
	steel wire val. >.04/lb	40.00%	-$23,418.80	-$9,007.23	$5,404.34	$19,815.91
	All steel wire	41.90%	-$32,145.45	-$10,476.19	$11,193.07	$32,862.34
Iron Manufactures	anchors	41.87%	-$96.19	-$31.45	$33.29	$98.03
	iron girders	36.75%	-$19,206.60	-$9,104.82	$996.95	$11,098.73
	cast iron vessels	10.89%	-$2,246.42	-$2,021.40	-$1,796.38	-$1,571.36
	cut nails	20.48%	-$55.36	-$43.34	-$31.31	-$19.28
	horseshoe nails	25.64%	-$2.95	-$2.07	-$1.20	-$0.33
	wire nails > 1 inch	8.13%	-$48.26	-$44.78	-$41.30	-$37.82
	iron spikes	43.20%	-$30.72	-$8.68	$13.36	$35.40
	screws .5-1 in	37.02%	-$2.55	-$1.19	$0.17	$1.53
	screws 1-2 in	33.64%	-$4.29	-$2.36	-$0.42	$1.52
	screws > 2 in	54.22%	-$1.36	$0.33	$2.02	$3.72
	All screws	38.28%	-$8.49	-$3.68	$1.13	$5.93
	All Iron Manuf.	30.29%	-$1,518,653.63	-$940,370.82	-$362,088.01	$216,194.80
Lead	lead ore	78.80%	-$4,849.03	$51,395.03	$107,639.10	$163,883.16
	pig lead	49.45%	-$41,947.16	-$1,127.51	$39,692.14	$80,511.79
	sheet lead	48.99%	-$744.21	-$36.48	$671.25	$1,378.97
	Total lead	59.71%	-$55,679.91	$38,164.84	$132,009.58	$225,854.32
Liquor and Wines	malted bev. in jugs or bottles	42.90%	-$78,049.83	-$22,832.58	$32,384.67	$87,601.92

	brandy	118.94%	$12,242.40	$39,505.23	$66,768.06	$94,030.88
	cordials	113.81%	$15,636.85	$54,562.59	$93,488.34	$132,414.08
	gin	239.35%	$702,035.67	$1,420,046.23	$2,138,056.78	$2,856,067.33
	grain whiskey	123.18%	$302,972.74	$927,398.89	$1,551,825.04	$2,176,251.18
	other material-distilled	277.36%	$140,521.19	$274,437.01	$408,352.83	$542,268.65
	wine - casks < 14% alc	69.76%	-$651.90	$1,581.72	$3,815.34	$6,048.97
	wine - casks > 14% alc	78.41%	-$4,490.25	$43,154.83	$90,799.91	$138,444.99
	wine - bottles >1 pint	35.60%	-$5,347.45	-$2,689.24	-$31.02	$2,627.19
	champagne - .5-1 pint	52.67%	-$104,834.94	$15,188.30	$135,211.54	$255,234.78
	champagne - 1 pint	55.71%	-$123,470.71	$42,568.64	$208,607.98	$374,647.33
	vermouth - 1 pint	46.12%	-$287.63	-$49.94	$187.74	$425.43
	Total Alcohol	0.00%	$0.00	$0.00	$0.00	$0.00
Salt	salt - bagged	36.14%	-$10,231.96	-$5,007.33	$217.30	$5,441.93
	salt - bulk	90.24%	$1,946.35	$18,894.46	$35,842.58	$52,790.70
Sugar	sugar < 16 standard	65.52%	-$2,562,842.11	$3,721,636.45	$10,006,115.01	$16,290,593.57
	sugar> 16 standard	72.57%	-$2,176.42	$7,602.01	$17,380.45	$27,158.89
	maple sugar	49.65%	-$8,340.72	-$146.41	$8,047.90	$16,242.21
	Total sugar (inc. bounty ret.)	65.04%	-$2,646,133.57	$3,627,651.92	$9,901,437.41	$16,175,222.90
Tobacco	cigar leaf, unstemmed	186.98%	$2,961,597.98	$6,523,391.69	$10,085,185.40	$13,646,979.11
	other leaf, unstemmed	64.29%	-$145,599.57	$182,204.50	$510,008.56	$837,812.62
	other leaf, stemmed	83.92%	$0.34	$32.56	$64.78	$97.01
	cigars	152.86%	$1,772.22	$4,369.87	$6,967.52	$9,565.16
	cigarettes	146.73%	$17,184.48	$43,700.76	$70,217.05	$96,733.34
	snuff	78.46%	-$195.78	$1,903.58	$4,002.93	$6,102.28
	other tobacco	151.22%	$30,097.22	$74,791.72	$119,486.21	$164,180.71
	Total tobacco	133.29%	$1,845,961.59	$5,129,438.21	$8,412,914.83	$11,696,391.45
Wool - class 1, Clothing	unwashed, on skin	47.49%	-$12,466.50	-$1,453.45	$9,559.60	$20,572.64
	unwashed, not on skin	44.52%	-$922,725.20	-$217,210.55	$488,304.10	$1,193,818.74
	washed, not on skin	61.32%	-$19.47	$16.69	$52.86	$89.02
	scoured	37.50%	-$294.77	-$134.02	$26.73	$187.48
Wool - class 2, Combing	unscoured, on skin	39.47%	-$910.29	-$364.30	$181.70	$727.70
	unscoured, not on skin	41.11%	-$119,273.44	-$41,870.76	$35,531.92	$112,934.61
Wool - class 3, Carpet	unwashed, on skin < .12/lb	26.73%	-$7,485.94	-$5,129.34	-$2,772.75	-$416.16
	unwashed, not on skin, </12	35.92%	-$199,939.67	-$98,966.89	$2,005.88	$102,978.66
	unwashed, on skin > .12/lb	45.68%	-$214.99	-$41.14	$132.71	$306.56
	unwashed, not on skin, >/12	35.18%	-$359,550.33	-$184,469.47	-$9,388.62	$165,692.23
	Total raw wool	41.03%	-$1,641,049.30	-$579,904.43	$481,240.45	$1,542,385.32
Wool Manuf.	yarns < .30/lb	143.13%	$4.48	$11.62	$18.77	$25.91
	yarns > .30/lb	87.25%	$1,098.67	$17,410.24	$33,721.81	$50,033.38
	All yarn	87.26%	$1,101.52	$17,419.14	$33,736.76	$50,054.39
	wool blankets < .40/lb	107.70%	$19.90	$78.54	$137.18	$195.82
	wool blankets .40-.50	106.12%	$12.71	$52.17	$91.64	$131.10
	wool blankets >.50	71.30%	-$612.15	$1,807.01	$4,226.17	$6,645.34
	wool blankets, 3 yds <.40	165.42%	$13.23	$31.01	$48.78	$66.56
	wool blankets, 3 yds.40-.70	120.98%	$401.00	$1,260.03	$2,119.05	$2,978.08
	wool blankets, 3 yds >.70	104.55%	$437.43	$1,874.57	$3,311.71	$4,748.84
	All Blankets	82.64%	-$58.01	$4,553.10	$9,164.22	$13,775.34
	Aubusson, oriental carpets	66.34%	-$1,302.72	$2,087.45	$5,477.62	$8,867.79
	Brussels carpets	75.81%	-$156.06	$892.58	$1,941.22	$2,989.86
	Woven room carpets	60.01%	-$140,183.78	$100,209.60	$340,602.99	$580,996.38
	Druggets	70.81%	-$155.83	$431.46	$1,018.75	$1,606.04
	Felt carpeting	50.00%	-$0.20	$0.00	$0.20	$0.40

	Saxony carpets	72.67%	-$1,083.51	$3,839.49	$8,762.50	$13,685.50
	tapestry	60.73%	-$10.41	$8.24	$26.89	$45.54
	treble ingrain	66.72%	-$506.39	$849.48	$2,205.35	$3,561.22
	velvet	58.86%	-$1,707.24	$1,030.24	$3,767.71	$6,505.18
	wool, Dutch carpets	58.63%	-$58.85	$34.28	$127.40	$220.52
	carpets, n.o.p.	50.00%	-$2,067.60	$0.00	$2,067.60	$4,135.20
	All Carpets	60.20%	-$147,734.59	$108,546.15	$364,826.88	$621,107.61
	wool cloth <.40/lb	134.97%	$4,632.50	$12,704.63	$20,776.75	$28,848.87
	wool cloth .40-70/lb	118.89%	$19,163.85	$61,885.90	$104,607.94	$147,329.98
	wool cloth > .70/lb	94.33%	$133,613.18	$897,993.62	$1,662,374.07	$2,426,754.51
	All wool cloth	95.36%	$153,719.23	$966,433.63	$1,779,148.03	$2,591,862.43

Source: Appendix II data taken from author's calculations, based on "Articles Entered for Consumption." *Foreign Commerce and Navigation of the United States.* 1892-1914 Editions. Washington, DC: Government Printing Office.

Curriculum Vitae

Phillip W. Magness holds a B.A. in Political Science from the University of St. Thomas and a Master's in Public Policy from George Mason University. He is currently an Adjunct Professor at the American University's School of Public Affairs, where he teaches administrative politics. In addition to this dissertation, he has published several articles on the history of international trade, higher education policy, and the presidency of Abraham Lincoln. He is also the coauthor of a forthcoming book on colonization policy in the Lincoln administration. Aside from his academic interests, Magness competes on George Mason University's Underwater Hockey team and is an avid SCUBA diver.