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Remarks of Hon. W. W. Boyce,
OF SOUTH CAROLINA.

In the House of Representatives, U. S., June 27, on the bill making appropriation to carry into effect the Mexican Treaty.

Mr. Boyce said: Mr. Chairman—This is a subject of great importance in two points in view. First, in reference to the power of the House over the subject of appropriations required by treaties; and second, in regard to the expediency of passing the appropriation bill for ten millions of dollars, now before the committee. The first question is—What degree of discretion has this House the right to exercise, when a bill comes here asking an appropriation to carry out a treaty? I have no doubt but that the House has a right to exercise a full discretion, a free and entire discretion of the subject. I have no doubt but that we are at liberty, if we think proper, to reject the bill, and to refuse the appropriation.

Mr. Chairman, it has been well said that ours is a government of checks and balances. Its whole organization is such. The House of Representatives represents the people and the States. By one form of election, he is elected by the people. In the event of a choice not being made at first, he is elected by the States. Therefore, I say, our whole political system is one of checks and balances. In construing the Constitution, we are not to construe it as a part of the whole. We are to look at all the clauses, to put them all together, and if possible, endeavor to draw a harmonious conclusion. Let us do that in this instance. In the first place, we find in the Constitution, with regard to the House of Representatives, two important provisions; that no revenue bill shall originate except in the House of Representatives, thereby giving to the representatives of the people the full, absolute and entire power to place all pecuniary burdens on the people. Then, again, it is provided that no money shall be drawn from the treasury but in consequence of an appropriation to be made by law, to the passage of which the action of the House of Representatives, is, of course, necessary. Therefore, no money can be taken, first, from the people, but by the action of the House; and secondly, no money can be drawn from the treasury but by the action of the House.

If there is any principle in the Constitution more important than another, more characteristic of the whole tenor of our government, more essentially American, it is the great principle that the representatives of the people are to act on all subjects involving the raising of money or the appropriation of money. I take it, then, that this is the great principle which is impressed on the Constitution. And, if we examine that instrument by the light of history, we see the importance of this principle. Our ancestors derived it from England. It was the principle which secured the liberty of the English people. It was the great principle which they had struggled for centuries—the right of the commons to decide upon the pecuniary burdens of the people, and whether they should give money to the king or not. We derive that great principle from the history of England; and it is the same for which our fathers struggled in the American revolution. It is the principle on which the revolution was successfully carried out, and on which its battles had been fought—the right of the representatives of the people to tax in the first instance, and to appropriate the money from the treasury. Without it, liberty cannot exist. Therefore it is the fundamental principle of our government; and we are bound to construe the Constitution so as that this principle shall at any rate have its full force. However any other principle may suffer disregard, this principle must have efficacy. Let us now construe the Constitution in that light.—We find another clause in the Constitution which regards to the treaty making

power. The President and Senate are authorized to make treaties.—Well, cannot these two powers stand together? Undoubtedly they can.—When the President and Senate make treaties which do not require the legislative action of the House, and are not prohibited by the Constitution, they are the law of the land; but any treaties which they make involving appropriations of money require the legislative action of the House, and cannot be operative and in full force until the House passes the necessary appropriation.

Suppose, Mr. Chairman, that we transpose these different clauses of the Constitution. Suppose we put this clause which restricts any other body than the House of Representatives from raising money in the first instance, and that clause which requires appropriation bills to be passed through both Houses. Suppose, I say, we put these clauses together, alongside the clause giving the treaty making power to the President and Senate, how will it read then?

"He, (the President) shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the senators present concur," "but"—use either conjunction, or neither—"all bills for raising revenue shall originate in the House of Representatives;" "No money shall be drawn from the treasury, but in consequence of appropriation made by law." Certainly in the construction, the construction I contend for would be conclusive; but the effect of the various clauses of the Constitution are in no degree dependent upon their local position in the Constitution, nor are they in any degree affected by it. To all intents and purposes the money clauses I have just referred to are as efficacious where they now stand as if they had a local position in immediate connexion with the treaty power clause.

The President, with the Senate, two-thirds concurring, has the right to make treaties, but where any money is to be drawn from the treasury, the bill for that purpose originates in the House of Representatives, and no money can be drawn from the treasury but by appropriation made by a law, in which both Houses must concur.—If both clauses of the Constitution which govern this matter stood together, side by side, there would be no doubt about this question. If these clauses were in juxtaposition, there would be no room for doubt.

There is no locality in the Constitution. One clause has as much force as another, as far as construction is concerned. I take it, then, that there is no doubt that this House has the right to pass and act freely upon money bills which come before it for its action, whether that money is to carry out a treaty or not.

In construing the Constitution, I think it is proper, that we should endeavor to throw around it every possible security in relation to the expenditure of the public money. If we secure the public money against being wasted, we accomplish a great result. The construction which I contend for does accomplish that purpose, as far as it can be done. If treaties are the law of that land, and obligatory upon the House without its action, we have no discretion, but must make the appropriation from the public treasury; and the President and Senate may determine how much shall be expended in that way, and for what purposes.

We are, therefore, bound to give that construction to the Constitution, which will secure the money of the people; and the construction I contend for is the one best adapted to accommodate that object.

Again, we should so construe the Constitution as to be in harmony with the genius of our institutions. The whole genius of our institutions looks to the fact that the money of the people shall not be expended but by the consent of the representatives of the people. That fact has been alluded to by every one who has written upon the Constitution and laws of England, as the great safeguard of the English people, and they maintain the doctrine that the commons, who are the representatives of the people, have a right to pass upon all questions involving the expenditure of the money of the people. And that is the spirit of our institutions. It cannot be supposed that we have fallen behind England in that respect, and that we are placed in a less favorable position than the people of England occupy.

I beg leave here to read a few lines from the celebrated work of De Lorme on the constitution of England, who, considering the powers of the House of Commons, says:

"In reading the foregoing enumeration of the powers with which the laws of England have intrusted the king, we are at a loss to reconcile them with

the idea of a monarchy which, we are told, is limited. The king not only unites in himself all the branches of the executive power; he not only disposes, without control, of the whole military power in the State, but he is, moreover, it seems, the master of the law itself, since he calls up and dismisses at his will the legislative bodies.—We find him, therefore, at first sight, invested with all the prerogatives that ever were claimed by the most absolute monarchs, and we are at a loss to find that liberty which the English seem so confident they possess.

But the representatives of the people still have—that is saying enough—they still have in their hands, now that the Constitution is fully established, the same powerful weapon which has enabled their ancestors to establish it. It is still from their liberality alone that the king can obtain subsidies; and in these days, when everything is rated by pecuniary estimation; in these days, when gold is become the great moving-spring of affairs, it may be safely affirmed that he who depends on the will of other men with regard to so important an article, is, whatever his power may be in other respects, in a state of real dependence." * * * * *

"The King of England, therefore, has the prerogative of commanding armies and equipping fleets; but, without the concurrence of his Parliament, he cannot maintain them. He can bestow places and employments; but, without his Parliament, he cannot pay the salaries attending on them. He can declare war; but, without his Parliament, it is impossible for him to carry it on. In a word, the royal prerogative, destitute as it is of the power of imposing taxes, is like a vast body, which cannot of itself accomplish its motions; or, if you will, it is like a ship, completely equipped, but from which the Parliament can, at pleasure, draw off the water and leave it aground, and also set it again afloat by granting subsidies."

Sir, that is the basis of the English Constitution—the right of the representative to determine the pecuniary burdens that shall be imposed upon the people. And shall it be said that the representatives of the American people have less power than the commons of England? Certainly not. I consider, then, this right of the House of Representatives to pass upon all money bills as the corner stone of this Constitution, and the great safeguard of our liberties; and for one I will never consent to abandon it. I cannot agree with the opinions on this subject expressed by the gentleman from Alabama, [Mr. Phillips.] I know that some of the ablest writers upon constitutional law have held different doctrines—federal doctrines which were promulgated by the earlier fathers of the federal school.—That this House have no right to pronounce upon appropriations required by a treaty; that the treaty-making power is absolute and unlimited; and that, after a treaty has been ratified, this House is under an absolute and peremptory obligation to make the appropriations required. That is, I think the doctrine set forth by the gentleman from Alabama. But, sir, I hold that the House has a perfect, full and free discretion? that we are to do as we think best according to our honest judgments; not that we are wontly to reject a treaty appropriation without a sufficient cause, but that we have the right to exercise a sound discretion as to whether we will pass or reject it.

Why, sir, what was the practice of the British government at the time our Constitution was formed? for the practice of that government at that time is of much importance in giving the proper interpretation and meaning to our own Constitution in reference to this subject because it was from that source our ancestors, in a great degree, derived their ideas of government. It was from that source they drew the very life blood of our institutions.—Now, sir, what was the practice in England at the time of the formation of our Constitution? According to Blackstone and other elementary writers, the king is invested with the absolute right to make treaties. But, in point of fact, all monetary propositions, or propositions affecting in any way the internal regulations of the country, embraced in treaties, had to be submitted to the House of Commons.

Well, sir, our ancestors, in framing our Constitution, could not have been governed, in a great degree, in framing the treaty-making power, by the practice then in existence in England, and which is still in existence there. With the practice then existing, that all propositions involving the appropriation of money must be submitted to the House of Commons, is it to be supposed that our ancestors were ignorant of that practice? Or, supposing them to be acquainted with it, is it to be supposed they were blind to its force?

Sir, when they, in imitation of the practice in England, constituted the President and two-thirds of the Senate the treaty-making power, and when that practice gave to the House of Commons the right to refuse appropriations if they thought proper, it cannot be supposed that the founders of our institutions would endow our House of Representatives with less power, or with less authority, than was given to the British House of Commons—a body which nominally had a very large constituency, but which really had a very small one.—I must conclude, then, from these circumstances, if from none other, that the true interpretation of the Constitution is to give to this House the power for which I have contended. I cannot conceive that our fathers, in forming our institutions, would have given to this House fewer rights and privileges than was given to the corresponding body in England, but I must conclude that while they gave to the President and Senate the power of making treaties, they gave to this House the right to grant or refuse appropriations.

Again, Mr. Chairman, the Constitution says, in one clause, that Congress shall have power to pass all laws necessary and proper to carry into effect the expressly enumerated powers conferred on any department. It does not say that they shall pass such laws, but that they shall have power to do so. Well, that meets this particular case. The treaty-making power is conferred on two departments of this government. It comes, then, expressly under this clause of the Constitution.—This clause of the Constitution grants to Congress, and includes this House, the power to pass such laws as may be necessary and proper. It does not say that they shall pass such laws, but that "they shall have power" so to do. This implies discretion. They are at liberty to pass these laws or not, as they think proper. If they have any discretion on the subject, they must have a full discretion. You cannot have a half discretion. Such a thing is metaphysically impossible.—I cannot draw a line of 36 Degrees and 30 minutes, or any other line, through a discretion. It must be an entire discretion, or no discretion. It is an unlimited discretion. A reasonable discretion, I grant you—one to be exercised under a just sense of the responsibility weighing on this House. It is an unlimited, but rational discretion; and it is for that discretion I now contend.

There is another clause of the Constitution which it seems to me is full of meaning on this subject. It is the clause which has been just alluded to by the gentleman from Maine who preceded me in this debate, that all appropriations for the support of the army must be renewed every two years. So jealous were our ancestors of a standing army, or permanent military establishment, that they required appropriations for the support of the army should pass before the people every two years, which was the limit of the term of the members of the House of Representatives; so that every time the representatives of the people come fresh from the people, with the ideas and instincts of the people, they should have the right to pass on the subject as to whether the army should be longer continued or not. If we were to admit this unlimited power in the President and Senate to pass treaties, and we were bound to make the appropriations, what would become of this great power by which our ancestors intended to preserve their liberties, and to put it out of the power of any ambitious general or chief, at any future time to have a standing army. If you permit this absolute power, contended for by the gentleman from New York, the President and Senate may enter into the treaty stipulations with some foreign nations, and engage to give subsidies or keep up standing armies for any length of time, and this great clause, intended to secure the liberties of the country, would be nugatory. I cannot consent to any construction of the Constitution which would lead to such disastrous consequences.

Again, may not this House refuse to make appropriation, which have been commenced by a previous Congress? Suppose laws were passed by a previous Congress by which it was enacted that certain appropriations should be made for certain works, or any particular purpose, has not every House of Representatives, as it comes here, the right to determine whether it shall carry out those appropriations or not? Undoubtedly they have.—The law requiring them to do so is the law of the land. Treaties can be no more at the utmost than the laws of the land; but the law of Congress is not irrevocably binding on another.—One Congress may enact that there shall be appropriations, but the next Congress may refuse to make those appropriations, though called for by

the President, House of Representatives, and the Senate, how much more have we the right to refuse to make appropriations under a treaty ratified by the Senate and President? I think this view of the subject is conclusive, in reference to all the subjects of which they dispose, yet this House would not even then be absolutely bound to make treaty appropriations. But I cannot and do not admit that treaties are laws where they undertake to provide for the payment of money.—They are not fully operative and efficacious on this point until they have been affirmatively acted upon by the House.

I would beg leave to call the attention of the Committee to this important fact, that the restrictions upon the powers of the Government contained in the Constitution, are restrictions on the legislative powers of the Government, not on the treaty-making power. The Constitution, for instance, prescribes that Congress shall pass no bill of attainder, and that no preference shall be given to the ports of one State over those of another, and that no laws shall be passed concerning the establishment of religion. All these great principles of liberty, which are embodied in the Constitution, are, in form, restrictions only upon the legislative powers of the Government. They are not restrictions upon the treaty-making power. What follows, then, as a consequence? If the Legislative authority granted to this House to lay taxes and pass appropriation bills is no restriction upon the treaty-making power much less would the exceptions to the legislative authority of this House be any restriction on the treaty-making power. And thus you would arrive at this monstrous result, that the treaty-making power was an unlimited power; and the President and the Senate might do what they thought proper, without being bound by the limitations of the Constitution. It is impossible that such a construction of the Constitution can be sound. And, therefore, we must admit what I have been contending for, that the legislative powers granted to this House over the purse are limitations on the treaty-making power.

I was surprised to hear the gentleman from New York [Mr. Smith] give the treaty-making power so broad a construction as he did; but his conclusion is entirely at variance with his argument. After assuming that treaties place us under a moral necessity to vote the money they require, he tells us he will not vote for this appropriation. It is contended by some that the Constitution imparts a peculiar sanctity and vigor to treaties, which declares they shall be the supreme law of the land. But in what sense does the Constitution say that? Supreme over what? Not over Congress, and not over the House of Representatives; but they shall be supreme—I mean in the last instance, when they become laws—supreme over State laws and constitutions. That is the meaning of the word "supreme," in this connection. For instance, after this treaty shall have been passed upon favorably by this House, if it is so favorably passed upon, it is to become the supreme law of the land in reference to State laws and State constitutions. The word "supreme" as it is found in this connection in the Constitution, is not intended to mean that the treaty-making power shall be supreme over the legislative power; and that the action of the Senate and President upon the subjects of a treaty, shall be supreme over this House, where it concerns any matter over which this House has legislative discretion. No such thing. Suppose the ground contended for by the honorable gentleman from New York is correct, that treaties are supreme, and that we are bound to execute them under all circumstances, what limit would there be to the power of the President and the Senate in making treaties? They would have a *carte blanche* to do whatever they might think proper to do; there would be no barrier to their discretion; and where there is no link to discretion there is no liberty.

The objects of free constitutions is to throw around governments the barriers of laws and restraints. I think there is danger that this treaty-making power may be carried too far. It is the tendency of power constantly to increase; it is continually stealing from the many to the few. The tendency of this treaty-making power is to absorb all other powers, and it behooves us, the representatives of the people, to see that it does not transgress beyond its proper limits. Take the instance of this treaty. If this treaty-making power can appropriate money, and we are bound to carry out their will, what limit will there be to the treaty-making power? None, none whatever. For there is no legislative power in all the grants of the Constitution so closely hedged in, so carefully

protected, as the money power.—That is expressly confined to this House. They are the tribune of the people. They stand between the people and all pecuniary oppression, or extravagance, or prodigality.

If, therefore, the treaty-making power can invade this great principle, where is to stop? We are at sea, then, that we are bound to take our stand upon this point; that the House has a right to exercise a fair, rational, and reasonable discretion of this subject, and to say whether they will or will not pass any appropriation bill which may be required to carry out the provisions of that treaty. The power of the House on this subject is not an injurious power, as has been said by some. It may be said, as it has been said by some of the elementary writers on this subject, that if the House of Representatives have a right to pass upon the subject of treaties which come before them in their legislative capacity, the business of making treaties would be greatly perplexed and entangled, that the President and Senate would be short of their strength, and that the treaty-making power would thereby lose much of its efficacy and force. No such thing. The power of the House in this regard is simply a negative power. The House cannot initiate a treaty. Nobody pretends that it can do any diplomatic act. It cannot take the first step in such a matter. It may express an opinion, but it can do nothing in the way of action. The House may pass resolutions which may induce the President to make treaties, but it can do nothing in the way of opening negotiations or closing them. Its power is simply a negative power; and a most useful power it is. It is a beautiful illustration of the workings of the concurrent majority principle on which Mr. Calhoun constructed his profound theory of Government. The very fact that the House of Representatives have this negative power to refuse to make appropriations, if they, in the exercise of their best judgment, think that the appropriations ought not to be made, may be used as a very powerful weapon of negotiation by the President and Senate, because, if foreign governments require too much money in the treaties we are forming with them, they may say to them: "We ourselves might be willing to accept your offer, and give you this amount of money; but this treaty has to pass through the ordeal of the House of Representatives. The Representatives of the people have to be satisfied in the subject; and they are a little particular about the money of the people. They might refuse to pass the appropriation bill to enable us to comply with the terms of the treaty; and thus the treaty would become null and void." So far then from the power of the House of Representatives to pass upon this point being injurious, it is a power which might be of the greatest benefit, as it can be used by the President and Senate as a power of argument to resist the demands of a foreign power for an exorbitant sum of money in the negotiation of a treaty. On all these accounts, then, I conclude that the House of Representatives, on the question of appropriating money which is required by a treaty, has an entire and free discretion in the exercise of sound judgment. They are not bound to appropriate money, unless in the exercise of a reasonable discretion they think that the best interests of the country require that they should.

On this point, I beg leave to read a passage from Mr. Madison, as embracing very fully my views on the subject. Mr. Madison says:

"It came next to the fifth construction, which left with the President and the Senate the power of making treaties, but required at the same time the legislative sanction and co-operation in those cases where the Constitution had given express and specific powers to the Legislature. It was to be presumed, that in all such cases the Legislature would exercise its authority with discretion, allowing due weight to the reasons which led to the treaty, and to the circumstances of the existence of the treaty. Still, however, this House, in its legislative capacity, must exercise its reason; it must deliberate—for deliberation is implied in legislation. If it must carry all treaties into effect, it would no longer exercise a legislative power, it would be the mere instrument of the will of another department, and would have no will of its own. Where the Constitution contains a specific and peremptory injunction on Congress to do a particular act, Congress must, of course, do the act, because the Constitution, which is paramount over all the departments, has expressly taken away the legislative discretion of Congress. The case is essentially different where the act of one department of the government interferes with a

power expressly vested in another, and nowhere expressly taken away; here the latter power must be exercised according to its nature; and if it be a legislative power, it must be exercised with that deliberation and discretion which is essential to the nature of Legislative power."

I have said thus much upon this branch of the subject, not so much because I considered it necessary upon the present occasion, as because I desired, for one; to put upon record my opinions of the power of this House over the appropriation of money where it is required by treaty; and because I cannot foresee what may occur hereafter, and I do not want to act blindfolded upon this subject.

I will now, for a few moments, turn my attention to the consideration of the particular treaty now before us, and give the reasons which induce me to vote for the appropriation.

In the first place, the fact that the treaty has been negotiated by the President, with the consent of two-thirds of the Senate, is a strong recommendation in favor of the treaty. So far as the President himself is concerned, I have much respect for his judgment, and great confidence in the correctness of his purposes. I repeat, then, that the fact that it comes with the recommendation of the President, is an argument to my mind in its favor. The fact that it has received the approbation of two-thirds of the Senate—a body composed of men as patriotic and intelligent as can be found in the country—after mature deliberations; and the further fact that the treaty is of their own making, they having refused to adopt the first treaty, which they rejected and sent back to Mexico. I say that these facts afford a strong argument in its favor. But I do not say I would yield my views to any such authority when they come in conflict.

I look to the treaty itself in the next place, and find enough in that instrument to satisfy me that I ought to vote for the appropriation. The first point I notice in it is that it settles the Mesilla Valley difficulty. There is no doubt that a serious difficulty exists between this country and Mexico in regard to that territory. In running the boundary line between the two countries, according to the terms of the treaty of the Guadalupe Hidalgo, our commissioners and surveyors did not agree. Our Government contended for one boundary, and Mexico for another. The American commissioners did agree with the Mexican commissioners in the first instance.

I have read with some degree of care the views of those who understand this subject, and I must confess the argument, to my mind, is strongly in favor of the American claim. And I look upon it, not because it is the American argument, but because it is based upon the rule which should have governed the commissioners in settling the boundary. But, sir, we do not want to go to war with Mexico. I would rather give up the Mesilla Valley than to go to war with that nation in her weak and distracted condition; much rather would I yield to her demands, unreasonable though they may be, than to go to war with her. I would shun war at any time by all honorable means, but if we must have it, let us go to war with a nation from which we may win glory, with a nation equally powerful with ourselves, and not a weak, distracted, convulsed, and tottering power like Mexico. Sir, I am glad of the opportunity to settle, by treaty, our difficulties with Mexico, in a manner honorable to both parties; which will satisfy the demands of that nation without too great cost on our part.

Further, I think we have gained an important point in obtaining a release from our obligations, on account of the eleventh article of the treaty of Guadalupe Hidalgo. I think, on referring to the language of that treaty; it will be found that there is strong ground for giving it the construction which the Mexican government claim for it.—Here is the language:

"Art. 11. Considering that a great part of the territories which by the present treaty are to be comprehended for the future within the limits of the United States, is now occupied by savage tribes, who will hereafter be under the exclusive control of the government of the United States, and whose incursions within the territory of Mexico would be prejudicial in the extreme, it is solemnly agreed that all such incursions shall be forcibly restrained by the government of the United States whenever they may be prevented; and that when they cannot be prevented, they shall be punished by the said government, and satisfaction for the same shall be exacted, all in the same way, and with equal diligence and energy, as if the said incursions were committed or committed by the government of the United States with a

(CONTINUED ON FOURTH PAGE.)