

## POLITICAL SCIENCE QUARTERLY.

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### THE OLEOMARGARINE LAW:

#### A STUDY OF CONGRESSIONAL POLITICS.

THE time was when a discussion of great political questions aroused and attracted the attention of the whole people. The entire country was interested in and often electrified by the orations of Webster and Clay and Calhoun in Congress, or of Seward and Lincoln and Douglas on the stump. But the autocratic machine work of committees under the five-minute rule has abolished such debates in the House, and the editorial machine work of the daily press has supplanted those of the campaign ; so that a grave and vital question in our national life may be decided and settled at the present time almost without the notice of the general public.

Legislation runs wild at our state capitals. Grant the doctrine that state laws may prescribe or prohibit certain drinks, and it is an easy step to interfere with or prohibit certain foods, as has been done in the case of oleomargarine. If this tendency continue, we of this generation may live to see laws passed to regulate our clothing or our religion, that will be as arbitrary as anything against which our forefathers rebelled. At Columbus, last winter, a bill was introduced to prevent any denizen of Ohio from eating meat slaughtered and dressed outside of the state limits. And at Springfield, Illinois, the coopers' unions sought the passage of an act to prevent the use of second-hand flour-barrels and butter-firkins.

Few voters have much respect personally for their representatives in our law-making bodies. The men whom we send to

the city council or the state legislature or Congress are often the very last to whom we would entrust our private business, or whose advice and counsel we would seek in our daily life. Yet it is becoming a national habit to seek legislation as a cure for each and every new ill that arises, and all classes are clamoring for laws that they imagine will cure hard times or remedy individual impecuniosity. No thought is given to the axiom that the legislature (state or national) can contain no more wisdom than the sum of the knowledge and experience of the persons composing it. No note is taken of what is often true, that no single person in the legislature has any acquaintance whatever with the business matter upon which legislation is demanded. The result is that our troubles and perplexities are increased and multiplied as fast as legislation trespasses upon new and unknown territory.

The purpose of this paper is to consider the Oleomargarine law passed by Congress in 1886, which, during the debates upon the bill, was frequently termed "protection run mad." This enactment certainly marks a new era in our political history. It widens the sphere of sumptuary legislation, emphasizes the interference theory of government, and extends the doctrine of protection to domains never before reached in our history. The strength of this movement is shown by the large majorities which the bill obtained in the House and in the Senate, and by the apparently absolute acquiescence and approval of the whole country.

Under the rules of each House the "Act defining butter, *etc.*," was in charge of the chairman of its Committee on Agriculture; so that the debate was regulated by his dictation, and the allotment of time was generally in "chunks" of five or ten minutes. Thus the argument was necessarily of that broken and colloquial character destructive of forensic talent and display. Nevertheless, the discussions were exceedingly thorough, and a perusal will fascinate the political student. Their analysis shows that representatives and senators united to pass the bill under the influence of three different motives:

First, there were some who wanted the government to sup-

press an article of food that they believed to be foul in its nature and deleterious to the public health, or, perhaps, a positive poison;

Second, there were many who desired to prohibit the sale of any article that entered into competition with butter; and

Third, there were those who wished merely to legislate against selling oleomargarine under the name of genuine butter, because of the deception involved in such a transaction.

To obtain an adequate idea of the tendencies and consequences of this sort of legislation, let us consider, in connection with the arguments, the facts in the case.

The voters of the first class were more numerous in the lower House. The Senate committee took a considerable amount of sworn testimony that pretty thoroughly exploded the arguments against oleomargarine on the ground of its composition. Few senators could have been influenced by the cry of "poison," for by the time the Senate voted on the bill it was perfectly clear that, on the score of healthfulness, the matter could as safely be left to the care of local boards of health and to municipal and state officials as the subject of "bob veal." What then was the evidence that stimulated the action of the House of Representatives?

(a) A presentation of the list of patents that had been taken out for the manufacture of oleomargarine; and

(b) The private analyses presented by scientific men, based upon samples which were labeled oleomargarine and butterine, originating no one proved where.

A moment's reflection will suffice to demonstrate that such evidence could have no standing before a justice of the peace, let alone a court of record. And that it was gravely accepted by the House of Representatives argues poorly for the mental capacity of its majority. The list of patents embraces all the idle experiments of "cranks" and all the failures of incompetents who had set up to produce oleomargarine by intricate methods and with the aid of a laboratory. There was no proof presented to show that a single one of the numerous patents in question was employed in the actual manufacture of oleomarga-

rine. On the contrary, it was distinctly shown that the records of the Patent office had nothing to do with the case, because the manufacture of oleomargarine, as at present conducted, is a perfectly simple and open process known to everybody and free to all, covered by no patents and dependent upon neither acids nor chemicals. As for the analyses, no effort was made to prove the authenticity of the samples upon which they were based; no testimony whatever was demanded as to their origin; and subsequent developments make it absolutely certain that these samples must have been unfairly and unscrupulously concocted by the lobby that clamored for the passage of the bill. These subsequent developments may be briefly indicated by two circumstances:

(a) The Commissioner of Agriculture was a most earnest and enthusiastic supporter of the bill, in 1886, and a firm believer in the impurity of oleomargarine. In 1887 the Bureau of Agriculture issued a bulletin on the subject of oleomargarine, in which ~~the following statement by~~ Professor Atwater is endorsed as the sum and substance of the whole matter. It is particularly interesting to read, because the chairman of the Committee on Agriculture, who put the bill through the House, made these distinct and emphatic statements:

There is no such thing as oleomargarine that is as wholesome in every respect as butter. . . . I do not agree that oleomargarine can be made palatable and wholesome as human food. Without a qualification I do not consent to that proposition.<sup>1</sup>

But here is the conclusion of Professor Atwater, endorsed by the Department of Agriculture:

To recapitulate briefly, butter and oleomargarine have very nearly the same chemical composition. In digestibility there may be a slight balance in favor of butter, though for the nourishment of healthy persons this difference can hardly be of any considerable consequence. For supplying the body with heat and muscular energy, which is their chief use in nutrition, they are of practically equal value, excelling in this respect all other common food materials. Such, at any rate, is the practically unanimous testimony of the latest and best experimental research.<sup>2</sup>

<sup>1</sup> *Record*, 1st Session, XLIX Congress, vol. 17, pp. 5044, 5202.

<sup>2</sup> Division of Chemistry, Bulletin no. 13, part 1, p. 24.

(b) The law was filled with provisions for condemning and confiscating unwholesome oleomargarine product ; but, after a year's experience, it turns out that not a single pound of it has fallen under the penalty.

The singular part of the proceeding is that no restriction was placed upon the use of unwholesome colorings and acids for renovating genuine butter. Salicylic acid is widely advertised as a preservative to prevent decomposition in straight butter, and boracic acid is also sold to arrest the progress of rancidity or disguise its presence. All medical authority unanimously condemns these acids as most injurious to health and conducive to disease. Their use, during the past two years, has greatly increased among dealers who repack and work over sour, strong and cheesy low-grade butter. Congress virtually put a premium upon this sort of manipulation by omitting to provide against it in case it was practised upon genuine butter made in the old-fashioned way ; although, if practised upon oleomargarine, it constitutes a crime. About the first case that arose under the sanitary sections of the law was in Iowa in November, 1886. Sixty-six pounds of rancid butter were seized as oleomargarine by the Internal Revenue collector of the district. He was subsequently obliged to release the stuff because it was proved to be straight butter, although not at all attractive for table use. Under his auspices, then, scientific tests were made of eight samples, selected from various sources without the knowledge of the official chemist, with the following results :

Sample No. 1 — Chicago butterine — was pronounced good butter ;

“ “ 2 — creamery butter two years old — was pronounced oleomargarine ;

“ “ 3 — fresh butter salted 3 ounces to the pound — was pronounced good butter ;

“ “ 4 — one-third lard — was pronounced good butter ;

“ “ 5 — creamery butter salted 5 ounces to the pound — was pronounced good butter ;

“ “ 6 — creamery butter churned at temperature of 73° — was pronounced oleomargarine ;

Sample No. 7 — one-half lard — was pronounced good butter ;

“ “ 8 — unsalted creamery fresh from the churn — was pronounced oleomargarine.

Thus the tests determined the truth in only two instances out of eight.

By far the most important case that has arisen under the aforementioned sanitary provisions of the law was a quantity of genuine butter in Georgia. This butter was what is known in the trade as Norwegian butter, and was winter make. It was seized by the collector as oleomargarine, and at his instance it was analyzed and tested by the state chemist under the direction of the state agricultural authorities. It was pronounced unquestionably oleomargarine. An appeal to the laboratory at Washington and abundant affidavits from the makers and shippers subsequently proved the pedigree of the butter direct from the milk-pail. The shipment was released and an action against the collector for heavy damages is still pending in the Georgia courts. Of course the quality of the stuff had not improved during the period of attempted confiscation. These events illustrate the absurdity of the situation.

Let us now direct our investigation towards those legislators who voted for the Oleomargarine law in order to prohibit any sort of competition with butter. At first it seems strange that the ancient doctrine of protection should be extended so as to favor one *domestic* industry against another ; that sumptuary legislation, which in some states and on some days prohibits certain drinks, should interfere now with articles of food ; or that the paternal theory of government, which seeks to embrace our railroads and telegraphs, should descend even to the butter on our table. But such an innovation is like the first plunge into a cold bath : we soon get accustomed to it. Only, for fear some one may dispute my premises, let me present a few citations :

A member from New York (since promoted to the Senate) said :

What then do we propose by this bill? We propose, under the constitution, if you please, to give incidental protection to the agricultural industries of the country. . . . Who is there who believes for a moment

that oleomargarine would be sold in the markets of the United States if the purchaser knew the vile compound he was buying? . . . I grant, sir, this measure may possibly have the effect of stamping this industry out of existence.<sup>1</sup>

A member from Wisconsin (now deceased) said :

If I could have the legislation I want, I would make the tax so high that the operation of the law would utterly destroy the manufacture.<sup>2</sup>

The following is a condensation of remarks made by an alleged Solon from Iowa (since re-elected to the fiftieth Congress) :

The manufacture of oleomargarine and butterine has not only threatened damage to the butter and dairy interests of Iowa and all Western states, but *it has already resulted in serious loss*. . . . It is not only unwise upon purely economic grounds, but it is unfair as a matter of honest dealing, either to permit or encourage any encroachment upon the legitimate field of agriculture ; and in fairness to our agricultural classes, I think competition which involves imitation of any of their products should not be allowed. If imitation butter is permitted without restraint, it cannot be predicted what next in the line of imitation will follow ; and if these damaging aggressions upon the old and stable province of the farmer are permitted, it may not be long until he finds his occupation seriously crippled. So I say let us "hold fast that which is good," and protect our farmers in that domain of industry. . . . Who that has lived upon the farm can for a moment fail to appreciate the importance to every farmer of preserving the domain so long by common consent assigned to him? . . . Readers of our legislative history well know how the representatives from agricultural sections of the country have stood loyally by the protective policy, and that, too, when it was perfectly apparent that the immediate and direct benefits resulting from the policy accrued to the manufacturers, and the more remote and indirect to the farmers. And I firmly believe and assert, in this presence, as my earnest conviction, that if the protectionists of the East stand loyally by the interests of the farmers and accord to them the direct protection they now so much need, they may be assured that the law of reciprocity will not be forgotten by the representatives of those who now ask for assistance.<sup>3</sup>

A Maine representative complained that

This oleomargarine is crowding out good butter.<sup>4</sup>

<sup>1</sup> *Record*, 1st Session, XLIX Congress, vol. 17, pp. 4871, 4872.

<sup>2</sup> *Ibid.*, p. 4927.

<sup>3</sup> *Ibid.*, Appendix, pp. 170, 172.

<sup>4</sup> *Ibid.*, p. 4977.

A New-Yorker said :

I, sir, am in favor of protecting the dairy interests of America from competition with the manufacture of oleomargarine.<sup>1</sup>

Another :

This oleomargarine business is a bad business, and the sooner it is exterminated the better it will be for us.<sup>2</sup>

A Missourian with a national reputation said :

In my mind it may become a question whether the bill should not increase the tax on oleomargarine to such extent as will crush it out, if it be found that ten cents has not accomplished that purpose.<sup>3</sup>

A Wisconsin representative said :

I should regret the reduction [of the tax from ten cents] in fear that it might not accomplish the object that, I am free to say, inclines me to the support of the measure under consideration ; for I fly the flag of an intent to destroy the manufacture by taxing it out of existence.<sup>4</sup>

A Californian said :

One of the objects is to seize upon an industry that we consider is undeserving of encouragement.<sup>5</sup>

And the chairman of the Committee on Agriculture in the Senate—the gentleman who piloted the bill safely through that distinguished body—made the following remarkable assertions :

I hope the legislation passed here will forever make such a fraudulent manufacture as the imitation of butter impossible in this country. I will state that frankly. . . . I do not hesitate to take the ground, here and now, that it is the duty of this government, when any considerable number of its people are threatened by some unexpected evil, to interpose its powerful arm and protect them. I hold that the protection of this [dairy] interest and this [dairy] industry is for the benefit of the whole people, not the farmers alone. Shall it be said that the government has no right to interfere for the protection of this great interest, even temporarily? I think not, Mr. President.<sup>6</sup>

Will not these grounds hold good to protect the manufacture of good old-fashioned rag-paper from the fraudulent manufac-

<sup>1</sup> *Record*, 1st Session, XLIX Congress, vol. 17, p. 5046.

<sup>4</sup> *Ibid.*, p. 5082.

<sup>2</sup> *Ibid.*, p. 4894.

<sup>5</sup> *Ibid.*, p. 5172.

<sup>3</sup> *Ibid.*, p. 5083.

<sup>6</sup> *Ibid.*, pp. 5340, 7081.



ture of imitation paper from wood-pulp? According to similar arguments the strong arm of the government might be invoked to interpose in favor of the ragmen!

But the conduct of these legislators is not surprising in view of the demands of their constituents. Careful observation finds the whole transaction to be merely an ordinary exemplification of human selfishness and greed, acknowledging no restraint from any higher law. Even after the enactment of this law, the Iowa Butter and Cheese association pledged its members "to withhold their patronage from all stores, groceries or other establishments that take out licenses for the sale of oleomargarine," and provided for a "black list" by directing its secretary to obtain the names of dealers who took out licenses. Could there be any worse case of "boycott"?

The figures or statistics upon which this internal protective legislation was based were nearly as ridiculous as the so-called evidence that oleomargarine was poisonous. There were some indications that the sale of oleomargarine in this country had reached one hundred million pounds during the preceding twelve months. On the strength of this it was stated, as an undisputed fact, that two hundred million pounds had been sold; and some ardent advocates of the law declared the production to be three hundred million pounds. Under a two-cent tax the production for the first twelve months of the enforcement of the law will barely exceed thirty million pounds; and it is now apparent that the production never at any time reached one hundred million pounds per annum.

The cost of the lowest grade of oleomargarine was undoubtedly about eight cents per pound. Starting from this basis, the speech-makers at first declared the cost to be seven or eight cents per pound; and, as their enthusiasm waxed strong, the cost was asserted to be six cents; and finally five cents was estimated to be the correct cost of production. As a matter of fact, the cost of the highest grades of butterine (or oleomargarine) was often twenty cents per pound, and the actual average cost of the entire production of the article during the twelve months prior to this legislation was about twelve cents per pound.

The number of manufacturers was stated to be between three hundred and five hundred ; but when the law went into effect only thirty-seven were found to take out licenses.

The number of farmers who were being ruined by oleomargarine was stated to be five millions at the beginning of the discussion. This number grew to seven and eight millions before the final vote was taken in the lower House. But at the opening of the debates in the Senate the philanthropic senator from New Hampshire announced that the welfare of twenty-five millions of people was at stake. The intimation that half the population of the United States was dependent upon butter-making for existence is too absurd for comment.

The value of all the cows needed to furnish milk for the inhabitants of this country (including our large cities) and to furnish milk for our countless cheese-factories was added to the value of those necessary to provide the single item of butter. To this was added the value of all stock used to furnish butcher's meat for the whole United States, and the cattle on the ranches and ranges of the far West were all included. Then the value of all the farming lands in the country and of the barns upon same, together with the wild lands of the territories used for grazing, was estimated and added. And the value of all the cheese-factories and milk-wagons in the country was figured up, as well as the cost of creameries and dairies. The sum total of these values was called two thousand millions of dollars ; and it was announced that this vast sum was at stake and liable to destruction or total loss if oleomargarine was permitted to exist. Applying such statistics with whip and spur, the chairmen of the Committees on Agriculture in both Houses rushed the bill through, with the avowed determination of enhancing the price of butter for the sole benefit of those engaged in the manufacture of this one article. I see no reason why the same arguments will not apply to suppress and abolish all labor-saving machinery, all new inventions, and all competition against any established industry that is sufficiently powerful to command the necessary number of votes. In the House of Representatives the result was 177 yeas, 101 nays

and 45 absent. In the Senate it was 37 yeas, 24 nays and 15 absent or not voting.

The third group of advocates of this measure is the only class that is entitled to our respect, *viz.*, those who were willing to go to any length to prevent oleomargarine from being sold under the name of butter. Notwithstanding the weighty objections to the appeal for Federal interference in such a matter, there is an innate sense of honesty among good people that sympathizes with the idea of calling things by their right names. I hope that this third group was far more numerous than either of the others; but there is no way to determine the fact. When a member from Pennsylvania said: "How much oleomargarine and butterine would people consume if sold for what they really are? I venture to assert that not one million pounds would be manufactured,"<sup>1</sup> he was but a sorry prophet. Yet he struck the keynote of the opposition to oleomargarine among thinking people; for, undoubtedly, the largest portion of the product up to that time had been marketed under false pretenses. The member from Delaware (who was not re-elected) proved himself entirely unfit for a legislator when he said: "Let people know what they are buying, and my word for it, no man is so poor, and I trust no man will be so mean, that he will feed his children upon such stuff."<sup>2</sup> A member from Iowa was guilty of a falsehood in saying: "The fact is, as shown by all testimony, that it will not sell when known. No one buys it knowing what it is."<sup>3</sup>

In truth, just as there are annually sold and consumed in the United States millions of gallons of water artificially charged to imitate the naturally effervescent product of medicinal springs, without harm and with much benefit to the masses of the people, so also, since November 1, 1886, there have been sold, for exactly what it is, about thirty million pounds of oleomargarine,<sup>4</sup> to the great benefit of the laboring classes, who could not afford

<sup>1</sup> *Record*, 1st Session, XLIX Congress, vol. 17, p. 5128.

<sup>2</sup> *Ibid.*, p. 5047.

<sup>3</sup> *Ibid.*, p. 4901.

<sup>4</sup> The Report of the Commissioner of Internal Revenue (July 21, 1887) shows 21,800,000 lbs. in eight months: Nov. 1, 1886 — June 30, 1887. This period includes the busy season for this product.

to buy genuine butter and who find in the new product a most acceptable substitute.

The fault lies in singling out oleomargarine as the one article to be taxed and licensed and subjected to the organized system of espionage necessary in the Internal Revenue department. Why do not the advocates of the Oleomargarine act vouchsafe us some reason for omitting bogus cheese? There are dozens of imitated and sophisticated food-products worthy of attention, but cheese is closely allied to butter. There are millions of pounds of skimmed-milk cheese sold annually in the United States as "full cream." Moreover, there is a considerable and growing product of cheese-oil that is sold to the cheese-factories of the dairy districts to supplant cream in their processes of manufacture. Cheese-oil is very similar to "oleo" oil, and is produced from exactly the same material, — beef-suet. Are we not entitled to some explanation from our law-givers on this point? But none is afforded us.

It is to the interest of the manufacturer to have his oleomargarine sold for exactly what it is. When he produces a better and more palatable article than ordinary country butter, he does not wish it to be sold to the consumer as butter. He does not want the credit and reputation, to which he is entitled for producing a good standard article at a reasonable price, to be given to the dairyman. Nor, on the other hand, when a slovenly farmer markets a dirty, greasy article in the form of butter, does the oleomargarine maker desire to be burdaped with the suspicion that this disagreeable product came from his factory. But is this a proper matter for the attention of Congress? Are the clauses of the constitution relating to the "general welfare" and to "regulation of commerce between the states" to be construed as including these matters of domestic detail?

When the bill passed both Houses of Congress it would seem that the President hesitated to sign it. When he finally did so, he sent a special message to Congress expressing some of his misgivings. A Washington paper contained this squib:

Owing to the crowded state of our columns, we must decline to comply with the request of "a Jacksonian Democrat," who asks us to repro-

duce the full text of the President's oleomargarine message. We will, however, give a fair digest of that remarkable state paper, condensing from memory: For many obvious reasons this bill should not become a law. I therefore return it approved to the body in which it originated.

Since the bill became a law the oleomargarine manufacturers have not demanded its repeal. With the timidity and cowardice universally characteristic of commerce, they have submitted to what seemed inevitable. Bowing to the doctrine of expediency, they have asked only for a few amendments in the matter of licenses and minor regulations. On the other hand, the more violent advocates of the measure, being quite discontented with its results, were moving to procure more legislation at the short session of the forty-ninth Congress last winter. Bills were then introduced to prohibit the manufacture of oleomargarine absolutely. The price of butter has been much lower since the passage of this law than before. The masses persist in going without butter when they cannot afford it or have no money to buy it — and more legislation is demanded. Children are spreading their bread with syrups or "sauce," and the butter trade is no better off than before the law was passed. Butterine and oleomargarine have poisoned nobody, and are being sold for exactly what they are, but appeals are being prepared to influence Congress in favor of more laws. Is it not time for thinking citizens, who are selfishly interested neither in butter nor oleomargarine, to inquire: Whither are we drifting? Has not every individual voter an interest at stake? Are not dangers threatening all of us from the precedent that has been established by the Oleomargarine law?

HENRY C. BANNARD.

## THE CONSTITUTION OF THE UNITED STATES IN RECONSTRUCTION.<sup>1</sup>

THE doctrine of state sovereignty perished in the destruction of the Confederate armies. With that dogma our constitutional law ceased to have any concern. Its principle was antecedent to and above the constitution. State rights, on the other hand, were, under the theory of national sovereignty, determined by the constitution itself. Before the war the scope of the powers assigned to the states had been influenced much by the state-sovereignty theory. The pressure of the government's peril during the rebellion, however, had caused a natural reaction, and many of the most widely recognized attributes of state authority had been assumed by the general government. With the assured success of the Federal arms, a distinct definition of the rights of a state under the new situation became a matter of the first importance. The working out of such a definition was the main problem of reconstruction.

Inextricably involved in this leading legal question, was an even more troublesome practical difficulty. What was, and what should be, the civil and political status of the Southern blacks?

The definition of state rights first presented itself as a vital political issue when Federal authority began to be firmly re-established in the rebellious communities. In the course of the year 1863 the military situation in Tennessee and Arkansas seemed to justify the President in taking the preliminary steps towards the rehabilitation of those states with civil authority. His message of the 8th of December may be taken as the beginning of the process which only terminated with the withdrawal of the Federal troops from Louisiana and South Carolina by President Hayes in 1877. Between the close of 1863 and the end of hostilities no important progress was made towards

<sup>1</sup> Cf. the article entitled "The Constitution of the United States in Civil War," *POLITICAL SCIENCE QUARTERLY*, June, 1886.