THE CONFEDERATE CONSTITUTION, TARIFFS, AND THE LAFFER RELATIONSHIP

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This article offers an example of a national constitution, that of the Confederate States of America, which effectively constrained its fiscal authorities to tax rates on the lower end of the Laffer relationship. The taxes were Confederate import tariffs. Drawing on primary sources, the paper documents the role that this de facto capping of tariff rates played in the history of the drafting of the Confederate Constitution. That the Laffer relationship found constitutional expression for an important tax suggests that the “tariff” might have played a more significant role in the North-South conflict than is currently acknowledged. (JEL K10, N41, F13, H20)

I. INTRODUCTION

Documenting who understood the Laffer relationship between tax rates and tax revenues has been a cottage industry for economists for a number of years.1 This article offers a historical antecedent of a higher order. We document the existence of a national government whose constitution effectively limited its fiscal authorities to tax rates on the Laffer relationship’s lower end more than 100 years before Arthur Laffer drew on a napkin. That government was the Confederate States of America. The tax rates were Confederate import tariffs.

Constitutions are not repositories for the inconsequential. Indeed, constitutions are the paramount legal and political institutions in societies. A constitution contains a society’s fundamental rules, specifying the constraints placed on governments and individuals that establish a society’s incentive structure for the future. Constitutional rules are not to be taken lightly.2 The Confederacy’s constitutional “cap” on import tariffs was not explicit, however. Rather, the cap follows inescapably from juxtaposing a straightforward economist’s perspective on the Confederate Constitution’s tariff-enabling clause with the historical record. An intriguing byproduct of this juxtaposition is the proposition that the “tariff” might have been even more important to the Confederacy’s “found ing fathers” than historical economists currently acknowledge.

Short of a time machine, however, no one can discern whether the framers of the Confederate Constitution actually knew of the Laffer relationship. But what the Confederates knew is not the issue. Our interest is directed at what the Confederates did. What they did was implement a tariff clause whose wording effectively constrained their fiscal authorities to tariff rates on the lower end of the Laffer curve. Regardless of what the Confederate framers actually knew about the Laffer relationship, they acted as if they knew about it.

Just as constitutions are not inconsequential, Confederate import tariffs were not

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1. A recent example is from the Journal of Political Economy (Showalter, 1999). The book cover page showed that Alexander Hamilton explained the Laffer relationship in the Federalist papers. The journal’s editors suggested that the relation be called the Hamilton curve. Another example is Irwin (1998), who cites a discussion of a Laffer relationship in Adam Smith’s Wealth of Nations.

2. For an economic analysis of the behavior of rational actors during actual constitution making (the drafting of the U.S. Constitution), demonstrating that expected costs and benefits of alternative rules matter, see McGuire and Ohlsfeldt (1997).

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expected to be inconsequential taxes. Todd (1954, chap. 4) argues that Confederate tariffs were expected to supply substantial revenues to the Confederacy, indicating that the Confederate Secretary of the Treasury expected to raise more than $25 million in 1861 alone. Such expectations are not surprising. Except for 1836, import tariffs were the largest single source of U.S. government revenue from 1789 to 1860. The Confederacy’s founding fathers obviously brought this knowledge of government revenue sources to the drafting of their constitution.

Any discussion of the effects of the Confederacy’s tariff rule on resource allocation is necessarily speculative. The tariff rate prescription was operative for only four years, years marked by a devastating war, which the Confederacy lost. Moreover, the Confederacy early in its history actively discouraged cotton exports—its primary export—in an attempt to coerce political and military support from England and France. Export restrictions have consequences similar to import tariffs. Also, the North’s naval blockade of Confederate seaports, though obviously porous, amounted to an externally imposed import (and export) quote against the Confederacy. It exacted an increasing toll on the Confederacy as the Civil War progressed, undermining the Confederacy’s de facto cap on import tariff rates.

II. THE CONFEDERATE CONSTITUTION’S TARIFF CLAUSE

Constitutional scholars have long noted a marked similarity between the United States and the Confederate constitutions. The Confederacy’s founding fathers obviously had profound admiration for the U.S. Constitution, as they in fact modeled their constitution after it. Nevertheless, the two constitutions’ tariff-enabling clauses are quite different. The Confederate clause (Article I, Section 8, Clause 1) states that:

The Congress shall have power—
To lay and collect taxes, duties, imposts and excises, for revenue necessary to pay the debts, provide for the common defense, and carry on the Government of the Confederate States; but no duties shall be granted from the treasury; nor shall any duties or taxes on importations from foreign nations be laid to promote or foster any branch of industry, and all duties, imposts and excises shall be uniform throughout the Confederate States. [emphasis added]

Import duties were to be only for revenue purposes. Moreover, import duties were not to “promote or foster any branch of industry.”

The U.S. Constitution omits a “for revenue necessary” clause as well as a prohibition on tariffs being used to “promote or foster any branch of industry.” The U.S. Constitution’s taxation clause (Article I, Section 8, Clause 1, as well) states that:

The Congress shall have 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; but all Duties, Imposts and Excises shall be uniform throughout the United States.

6. There were actually two Confederate constitutions—a Provisional Constitution and a Permanent Constitution. The Provisional Constitution was the first order of business when the original seceding states [South Carolina, Georgia, Florida, Alabama, Mississippi, and Louisiana] gathered in Montgomery on 5 February 1861, to form a government. This constitution was written, debated, and adopted in three days; it was finished by 8 February. The Provisional Constitution’s tariff clause reads: “The Congress shall have power to lay and collect taxes, duties, imposts and excises for the revenue necessary to pay the debts and carry on the Government of the Confederacy, and all duties, imposts and excises shall be uniform throughout the States of the Confederacy.” Note that contrary to the Permanent Constitution, there is no prohibition on duties to “promote or foster any branch of industry.” The Permanent Constitution’s tariff clause was the product of the same Montgomery convention with Texas included. It was adopted on 11 March 1865 and later ratified by all seceding states.

7. Some might argue the second provision prescribed import duties altogether. To wit, by raising domestic price above foreign price, “duties or taxes on importations” will always “promote or foster” the protected industry. Such an interpretation is at odds with (1) the fact that the Confederate Constitution permitted tariffs for revenue purposes; and (2) the Confederacy enacted import tariffs.

3. See Taussig (1931). The largest source of U.S. government revenue in 1836 was land sales.
5. As an indication of the effect of Confederate export policies and the Northern blockade. Confederate tariff revenues were about $1.3 million between February 1861 and February 1862; they were about $700,000 between February 1862 and December 1862; $900,000 between January 1863 and October 1863; $450,000 between October 1863 and April 1864; and probably no more than $10,000 or so throughout the remainder of 1864 and the collapse of the Confederacy, for a total of $3.5 million during the Confederacy’s history (Todd [1954, 125]). This when total tariff revenues in the United States were $53 million in 1860 and $39 million in 1861 (U.S. Bureau of the Census, [1975, Series U 207-12, 883]).
Given that the U.S. Constitution was the model for the Confederate Constitution, the Confederate framers obviously made conscious constitutional choices to prohibit tariffs that "promote or foster" industry and include a "for revenue necessary" provision in their tariff clause.8

The conventional interpretation of the Confederacy's tariff-enabling clause is that it represented a compromise between southern free trade sentiment and the Confederacy's tax revenue requirements.9 Our contention is that the clause goes beyond some vague notion of "compromise." In particular, it represents a constitutional constraint that effectively limited Confederate tariffs to the lower end of the Laffer curve. But before turning to an examination of the economic and historical basis for this interpretation of the Confederate tariff clause, we examine some of the forerunners to the clause.

III. FORERUNNERS TO THE CONFEDERATE TARIFF CLAUSE

Given the earlier noted insight of Alexander Hamilton into the Laffer relationship (in the Federalist papers), his thoughts represent a good starting point for understanding the origins of the Confederate tariff clause. As Hamilton (Hamilton et al. [1945, no. 21, 132]) observed:

It is a signal advantage of taxes on articles of consumption, that they contain in their own nature a limit, which cannot be exceeded without defeating the end proposed,—that is, an extension of

8. Another striking tariff difference between the two constitutions concerns the provisions for export tariffs. The U.S. Constitution bans such tariffs (Article I, Section 9, Clause 5). The Confederate Constitution permitted export tariffs provided they secured at least a two-thirds majority of both legislative houses (Article I, Section 9, Clause 6). This difference is interesting for two reasons. First, although the Confederate Constitution permitted such tariffs, constitutional historians attribute the export tariff ban in the U.S. Constitution to the influence of southern delegates to the 1787 Constitutional Convention. Second, the long-standing proposition in international economics about the symmetry of import and export tariffs undermines the significance of the U.S. Constitution's export tariff ban. This becomes particularly important when one realizes that a significant percentage of antebellum U.S. exports were from the South. For an examination of these issues, see McGuire and Van Cott (2001).

9. See Holcombe (1992) and Todd (1954, Chap. 4) for examples of the "compromise" view of the Confederate tariff clause.

the revenue when 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.

The Federalist was written, of course, in support of the U.S. Constitution. Nonetheless, Hamilton used his insight in paper no. 21 to allude later in paper no. 35 to the issue underlying the Confederate Constitution's tariff clause.

Hamilton (Hamilton et al. [1945, no. 35, 216, 218]) observed that restricting the national government's revenue sources to import duties risked "the oppression of particular branches of industry; and an unequal distribution of the taxes, as well among the several States as among the citizens of the same State." The potential for this "oppression" followed, argued Hamilton, because "the federal power of taxation ... confined to duties on imports, it is evident that the government, for want of being able to command other resources, would frequently be tempted to extend these duties to injurious excess." But, said Hamilton, "So far as these observations tend to inculcate a danger of the import duties being extended to an injurious extreme it may be observed, conformably to a remark made in another part of these papers [no. 21], that the interest of the revenue itself would be a sufficient guard against such an extreme."

Hamilton obviously saw that Laffer-type considerations could prevent the national government from exacerbating regional "oppression" by pushing tariff rates further up the upper portion of the Laffer curve. However, Hamilton left unaddressed the question of how to constrain governments to the lower portion of the Laffer curve where there are equivalent revenue possibilities with less regional "oppression." The latter is the issue that we argue the Confederates effectively addressed.

If one is searching for the direct antecedent to the Confederate's tariff clause, the clearest example is found in the South Carolina nullification crisis between 1828-33, arguably a precursor of the 1861 Confederate secession. Indeed, what became the distinctive of the Confederate tariff clause in 1861 were the economic centerpiece of the
nullification crisis. The immediate issue in the nullification crisis was the U.S. Tariff Act of 1828, popularly known as the Tariff of Abominations. This tariff increased U.S. tariff protection to unprecedented heights.

Led by John C. Calhoun, perhaps the foremost intellectual spokesman for the antebellum South, the state of South Carolina asserted a constitutional right to interpose or nullify the federal tariff’s applicability to South Carolina. According to Calhoun, protective or prohibitory U.S. tariffs were unconstitutional; only revenue tariffs were constitutionally sanctioned. As Calhoun put it in December 1828, “the [U.S.] 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” [emphasis added].

The U.S. Constitution obviously has no explicit proscription along the lines suggested by Calhoun. Calhoun’s position nonetheless was that the proscription was implicit in the Constitution because the 1787 Philadelphia Constitutional Convention deliberately omitted the power to enact protective or prohibitory tariffs from the Constitution (Lence, [1992, 315]). However, James Madison, in correspondence written at the time of the nullification crisis, challenged Calhoun’s view of the constitutional framing at the Philadelphia convention. 12

10. To Calhoun, the larger constitutional issue was how to prevent majority interests in some regions from “tyrannizing” minority interests in other regions, the same issue Alexander Hamilton confronted some 40 years earlier in Federalist no. 35. To appreciate the richness of this constitutional dispute, see Freedling (1965, 1967). Also see Calhoun’s writings and speeches during the period, most notably “Exposition and Protest,” “The Fort Hill Address: On the Relations of the States and the Federal Government,” and “Speech on the Revenue Collection [Force] Bill,” all of which are contained in Lence (1992).


12. In two separate correspondences, one in 1828 and another in 1832, Madison disputed Calhoun’s idea about what transpired at the 1787 Philadelphia convention with respect to protective or prohibitory tariffs (see Farrand [1911, v. 3, 477 and 518–21]). Such tariffs, argued Madison, were never meant to be unconstitutional. Madison’s challenge of Calhoun’s view, though it does not mention Calhoun by name, appears to be supported by events at Philadelphia. The “New Jersey Plan” for organizing a

Calhoun and his fellow South Carolina nullifiers did not prevail when faced with (1) Andrew Jackson’s threat to use federal troops to collect tariffs accruing in South Carolina, and (2) a promised relaxation of the tariff. But neither the nullifiers’ failure nor whether Calhoun was correct about the goings on at the Philadelphia convention undermines the significance of the nullification crisis for understanding the Confederate Constitution’s tariff clause. To wit, the Confederacy’s founding fathers made explicit in their Constitution that which Calhoun, rightly or wrongly, argued was implicit in the U.S. Constitution. 13 Calhoun can properly be viewed as the intellectual bridge between the tariff clauses in the two constitutions. Among legal scholars in fact, the Confederate Constitution is acknowledged to embody the constitutionalism of Calhoun. 14

IV. A DIAGRAMMATIC ANALYSIS OF THE CONFEDERATE TARIFF CLAUSE

Tariffs in the Confederate Constitution involved the Confederate legislators in a trade-off between the benefits implicit in the resulting revenue and the costs associated with promoting and fostering an industry. For the economist, such costs can be proxied by the effect of the tariff on producer surplus.

13. Given the earlier noted difference between the U.S. and Confederate constitutions concerning export tariffs (see note 8), it is interesting that Calhoun understood the symmetry of import and export tariffs. However, rather than claim that the U.S. Constitution’s import tariff clause was flawed, Calhoun argued that the clause was misinterpreted to allow protective or prohibitory import tariffs, thus leading to unconstitutional reductions in the South’s exports (see Lence [1992, 316–24]).

That is, by how much do producers’ revenues relative to producers’ opportunity costs change with the enactment of a tariff?¹⁵

Producer surplus reaches a maximum at the tariff that reduces imports to zero, a tariff usually known as the exclusionary tariff. An exclusionary tariff, however, generates no tariff revenue. Maximum tariff revenue occurs at a tariff rate lower than the exclusionary tariff. More important—and this is the entire point of the Laffer relation—any feasible level of tariff revenue other than the maximum can be generated with two tariff rates—a “high” rate and a “low” rate. In the low rate region, tariff revenue and producer surplus move in the same direction with changes in the tariff rate. They move inversely in the high rate region.

The Confederacy’s taxation clause precluded tariff rates in the high rate region. Such rates “promote or foster” domestic industry more, while generating the same tariff revenue obtainable with a tariff in the low rate region. That is, there is always a lower tariff rate that will produce the same revenue with less promoting or fostering of the domestic industry. The Confederate Constitution effectively mandated the lower rate.¹⁶

Consider Figure 1. It presents a supply-and-demand diagram for a country that is a price-taker as an importer—a reasonable assumption for the Confederacy. The domestic supply and demand for the product are S and D. The supply of imports, $S_m$, is perfectly elastic at the world price, $P_w$. Absent a tariff, imports are $Q_5 - Q_4$. Tariffs $t_0$ and $t_1$ represent two revenue equivalent tariffs. With $t_0$, the domestic price is $P_m + t_0$, imports are $Q_4 - Q_3$, and tariff revenue is $ABCD$. With $t_1$, domestic price is $P_m + t_1$, imports are $Q_3 - Q_2$, and tariff revenue is $EFGH$.

Although $ABCD$ equals $EFGH$, the cost to “promote or foster” domestic industry varies considerably between the two tariffs. Tariff $t_0$ raises producer surplus by $P_w|AE(P_m + t_0)$, whereas $t_1$ raises producer surplus by $P_m|J(E(P_m + t_1))$. In effect, Confederate policymakers were instructed by their Constitution’s tariff clause to choose $t_0$.

Given Figure 1, the corresponding Laffer curve ($LC$) in Figure 2 is straightforward. Tariff revenues $TR_0$ and $TR_1$ in Figure 2 correspond to $ABCD$ and $EFGH$, respectively, in Figure 1. These revenues follow from tariffs $t_0$ and $t_1$ in Figure 2 also shows the relation between tariffs and the costs to “promote or foster” domestic industry ($PF$). At $t_0$, these costs are $PF_{t_0}$; at $t_1$, they are $PF_{t_1}$. These costs rise continuously with increases in the tariff rate, reaching a maximum with the exclusionary tariff $t_e$ in Figures 1 and 2.¹⁷

Figure 2 shows a range of tariffs where tariff revenue exceeds additional producer surplus. This need not be the case. Moreover, the precise relationship is not necessary for our discussion. The Confederate Constitution’s tariff clause did not instruct its policymakers to maximize the positive difference (or minimize the negative difference) between tariff revenue and the costs to “promote or foster any branch of industry.” Nor does the Confederate Constitution assign specific “weights” to tariff revenue and the costs to promote or foster. Rather, the Confederate Constitution tells Confederate legislators to view promoting or fostering costs as the downside of raising tariff revenue. The resulting message is straightforward: tariffs above the revenue maximizing rate were unconstitutional.

V. ANTEBELLUM AND CONFEDERATE TARIFFS

Questions might arise concerning our interpretation of the Confederate tariff clause, particularly because the Confederates nowhere explicitly stated, as Alexander Hamilton did, that they were aware of the inverse Laffer relationship between high tariff rates and tariff revenues.

It turns out that the first Confederate tariff schedule was the U.S. tariff schedule in force on 1 November 1860.¹⁸ This schedule

¹⁵. The “source” of producer surplus in this case is a reduction in consumer surplus.

¹⁶. Given the Journal of Political Economy’s reference to Alexander Hamilton’s insight with respect to the Laffer relationship, it should be noted that Hamilton also was a strong supporter of tariffs to encourage domestic manufactures, the very thing the Confederate Constitution viewed as the cost or downside of tariffs.

¹⁷. If the supply and demand are linear, producer surplus increases at an increasing rate as the tariff rate rises.

¹⁸. On 9 February 1861, the Confederacy de facto adopted the U.S. schedule with no. 5 of the Acts and Resolutions of the Provisional Congress. It was formally adopted on 16 February 1861 with no. 18 of the Acts and Resolutions of the Provisional Congress, No. 5 was an act to continue in force all laws of the United States in force since November 1860 until altered or repealed and that
was the product of much political debate among various economic and regional interests during the antebellum years, some wanting higher tariffs, others wanting lower tariffs. The results of this debate, the overall U.S. tariff protection, are shown in Table 1, which presents average U.S. tariff rates (measured by tariff revenues as a percent of dutiable imports) between 1821 and 1870. Note that U.S. tariff protection trended downward from its 61.69% peak in 1830 until the start of the Civil War. The 1830 peak was the result of the previously mentioned 1828 Tariff of Abominations. More interesting legislation started to wane. In fact, no congressional delegation from any southern state gave majority support to either the 1824 or 1828 tariffs. Then starting with the 1832 tariff act, average tariff protection began to fall. Consequently, the South overall supported the major tariff acts of 1833, 1846, and 1857, as each further lowered the overall level of tariff protection. For detailed discussion of the tariff during the ante-bellum period, including the roles played by various economic and regional interests, see Lebergott (1984), Taussig (1931), and Attack and Passell (1994).

20. A rate as high as the 1830 rate was not reached again until after the 1930 Smoot-Hawley Tariff.
is that U.S. tariff protection was lowest in the years immediately preceding the Civil War. Does this, along with the Confederacy's adoption of the existing U.S. tariff schedule, undermine ascribing constitutional significance to the Confederacy's tariff action? Not at all! Constitutional significance is supported by placing the Confederacy's action in the context of antebellum tariff history, as well as by important events in 1860.21

Table 1 indicates that U.S. tariff protection increased significantly in 1862—indeed, the rate was twice that of 1861, increasing to over 40% by 1865 and remaining so for all but two years until World War I. The 1862 rate traces to several earlier events. As noted, starting in the 1830s U.S. tariff protection began to be reduced. Then the Walker Tariff of 1846 sharply lowered overall tariffs and remained in effect until 1857, when tariffs were lowered even further. Though the decade of the 1850s was one of sizable economic growth (especially rapid growth in manufacturing), the Panic of 1857 and the ensuing depression of 1857-59 commenced immediately after enactment of the lower 1857 tariffs. Many longtime protectionists in the Northeast, including the powerful Horace Greeley of the New York Tribune, argued that "low" tariffs were responsible for the "crisis" in financial markets and the ensuing depression. In the eyes of the protectionists, higher tariffs were the solution to the crisis. As a result, a drum beat for protection among various Northeasterners, industries, and labor groups commenced in late 1857. These protectionists were not

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21. The view today among economists is that the tariff played a somewhat limited role in the North-South tensions leading to the Civil War. The conventional view among historians is that the tariff was an important factor in North-South tensions. For a discussion of the views of both groups of scholars, see Atack and Passell (1994). By way of contrast, Adams (2000) argues that the tariff dwarfed all other factors.
TABLE I
U.S. Tariff Protection: 1821–70

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Source: U.S. Bureau of the Census (1975, Series U 207–12, 888.)

Note: The average tariff rate is calculated as the ratio of the value of duties collected to the value of total dutiable imports. Data are not available prior to 1821.

The Morrill Tariff of 1861, which returned overall tariff protections to its 1846 level, is usually thought of as a Civil War finance measure. However, raising U.S. tariffs had been a paramount objective of the Republican party and their protectionist allies at least since the Panic of 1857 and was a key plank in the August 1860 Republican party platform. Moreover, the U.S. House of Representatives actually passed the Morrill tariff in its 1859–60 session, prior to the departure of southern congressmen from the House of Representatives. This vote took place on 10 May 1860, well before Lincoln’s election, Confederate secession, and Lincoln’s inauguration.23

The House vote largely followed a North-South split. The Congressional Globe (U.S. House of Representatives, 1859–60) lists the vote as 105–64.24 Only one “yes” vote was from a secessionist state (Tennessee). Six “yes” votes were from border states (four from Kentucky and two from Maryland). Only 15 “no” votes came from northern states. Thirty-nine of the “no” votes were from secessionist states, along with ten other “no” votes from border states. This means that 87% of northern congressmen but only 12.5% of southern congressmen (and just 1 out of 40 congressmen from secessionist states) voted in favor of the Morrill tariff, the year prior to secession.

The handwriting was on the wall for the South, and ultimately for the Confederacy, after the Panic of 1857. On the eve of secession and the Civil War, northern politicians overall wanted dramatically higher tariff rates; Southern politicians did not. The Confederates certainly had important reasons to attach constitutional significance to “low” tariff rates.25

VI. THE CONFEDERATE CONSTITUTIONAL CONVENTION

Further evidence of the importance of low tariff rates to the South comes from the Confederacy’s constitutional deliberations in Montgomery, Alabama. No official record of the constitutional goings on at Montgomery exists, but Thomas Read Rootes Cobb, a Georgia representative to the first Provisional

22. The South’s economy was largely unaffected by the 1857 panic. Contrary to the protectionists’ view of the panic, the contemporary business press and current scholarly interpretation trace the 1857 panic to other events. The end of the Crimean War led to bumper grain crops in Europe with a resultant precipitous decline in European demand for American grains. Consequently, the American farm belt suffered severely, which had repercussions on specie payments and eventually on eastern financial markets. See Hustin (1983) for a discussion of these issues.

23. The Senate vote occurred after senators from many secessionist states had left. Interestingly, Abraham Lincoln did not sign the Morrill Act. It was signed by James Buchanan two days before Lincoln’s inauguration. For a discussion of the timing of the Morrill tariff, see Taussig (1931, 158–59). For an example of the prevailing view among historical economists of the Morrill tariff, see Walton and Rockoff (1998, 463), who incorrectly contend that “the first step towards higher tariffs was actually taken before the war but after the southern opposition of the tariff had left the Congress” (emphasis added).

24. Although The Congressional Globe lists the total yes votes as 105, the list includes only 104 names.

25. This should not be interpreted to mean that all southern interests preferred low tariffs. Some in the South, for example, Louisiana sugar producers, supported protective duties. But in 1861 it is clear that the South overall preferred lower tariff rates.
Congress of the Confederate States, and a member of the committee that drafted the Confederate Constitution, kept notes of the constitutional deliberations. He also wrote at least once a day to his wife, confiding in her about congressional as well as constitutional deliberations. Cobb’s notes and letters are regarded enough that they are commonly cited by historians of the Confederacy. In fact, as Lee (1963, 40) has remarked, “Cobb’s correspondence with his wife during the convention stands as the most complete and enlightening single documentation of the Montgomery Convention.”

Cobb’s letters indicate that the tariff was a major consideration among the committee members. Within the first few days of starting work on the Permanent Constitution, Cobb (1860–61, 30) told his wife on 16 February 1861:

By the by, the foolish telegrams sent off by the Associated Press as to “Free Trade with all the world,” was utterly unfounded, the agent asked Mr. Toombs [another Georgia delegate and member of the constitutional committee] the news when he [T] was pretty high from wine and his response induced the telegrams. A tariff will be laid on goods from all foreign nations. The amount is not yet agreed on but it will probably be (I give my individual opinion only) not less than the U.S. tariff of ’52.

Then on 4 March, Cobb confided to his wife again that “the tariff question is troubling us a good deal. The absolute Free Trade principle is very strongly advocated” (63, emphasis in original). Trade issues are mentioned again in another letter to his wife on 7 March (69).

Even more important evidence is that “Cobb’s Notes on the Confederate Constitution” (1905, 288) make explicit what the Confederates did, as the “Notes” indicate: “The power of Congress to lay and collect taxes and duties was limited by making Section 8, Clause 1, read for revenue necessary to pay the debts, provide for the common defense, & c.” (emphasis added). The “tariff question” was settled on 11 March 1861 when the Provisional Congress adopted the Permanent Constitution, with its aforementioned tariff clause.26

VII. AN ALTERNATIVE VIEW OF THE CONFEDERATE TARIFF CLAUSE

It has been suggested to us that the purpose of the Confederate Constitution’s tariff clause was to establish a uniform, ad valorem tariff rate for all imports, thereby blunting rent-seeking incentives. The basis of the suggestion is the word any in the tariff clause—that is, promoting or fostering “any branch of industry.” No imports, in this view, were to receive disproportionate protection. With one product’s tariff rate every product’s tariff rate, any industry’s incentive to seek import protection would be reduced. Although it is an intriguing method to obtain freer international trade, the idea falters for several reasons when it comes to explaining the Confederacy’s tariff clause.

First, if the objective of the Confederate founding fathers was a uniform tariff rate for all imported commodities, why not simply say so in the constitution? It is not a difficult concept to verbalize.28 Second, a uniform ad valorem rate does not necessarily lead to equivalent wealth transfers across industries. The actual impacts will depend on supply and demand conditions in each industry. As a result, even if there were an objective of a uniform tariff rate on all commodities, rent-seeking behavior over the tariff would not be prevented.

Third, and more important, the Confederate government never adopted an across-the-board tariff schedule. The “government” in this case includes those drafting and approving the Confederate Constitution. On 9 February 1861, the Confederate government formally adopted the U.S. tariff schedule in force on 1 November 1860. That schedule was far from a uniform, ad valorem rate applied to all commodities. And after a small number of changes to the U.S. tariff schedule during the next two months, the Provisional Congress of the Confederacy adopted its own multiple-rate tariff schedule with a general tariff act on 21 May 1861. The

26. Cobb died in December 1862 at Fredericksburg. We thank the Hargrett Rare Book and Manuscript Library at the University of Georgia for making Cobb’s letters available to us.

27. For extended discussion in the secondary literature on the Confederacy’s constitutional decisions, see Harwell (1979), DeRosso (1991), and Quynn (1959).
act, titled “To provide Revenue from Commodities Imported from Foreign Countries,” reads in part:

On all articles enumerated in schedule A, an ad valorem duty of twenty-five per cent. On all articles enumerated in schedule B, an ad valorem duty of twenty per cent. On all articles enumerated in schedule C, an ad valorem duty of fifteen per cent. On all articles enumerated in schedule D, an ad valorem duty of ten per cent. On all articles enumerated in schedule E, an ad valorem duty of five per cent. And that all articles enumerated in schedule F, a specific duty as therein named. And that all articles enumerated in schedule G, shall be exempt from duty.30

Immediately following the listing of duties are the Confederate tariff schedules, with 12 articles (or groups of articles) listed on schedule A; 32 articles (or groups) listed on schedule B; 215 listed on schedule C; 142 listed on schedule D; 30 listed on schedule E; 2 specific duties, on ice and salt, listed on schedule F; and 30 listed on schedule G that were exempt from duty.30 Overwhelmingly, the two most common tariff rates are the 15% and 10% rates, and the highest rate is 25% on only 12 out of 431 ad valorem dutiable articles (or groups). Although at best only suggestive of the Confederate’s average tariff rate collected on dutiable goods, the average of the rates, simply averaged over the number of articles (or groups) enumerated on each schedule (excluding the 2 specific-duty articles and the 30 duty-free articles) is 13.3%. Given the historical rates indicated in Table 1, an average rate of 13.3% certainly suggests a Confederate preference for historically “lower” import duties.

VIII. CONCLUDING COMMENTS

The last three decades of the antebellum period were marked by the objections of various Southerners to high tariffs, especially in South Carolina. Many Southerners perceived that high tariffs subsidized northern manufacturing at the expense of the South. Given the South’s high demand for manufactured imports and sizable exports of raw materials circa 1860, it should not be surprising that on the eve of secession and the Civil War many southern (and consequently Confederate) interests supported low tariff rates. For the Confederacy to permit high tariffs constitutionally would raise the specter of the Confederacy voluntarily subsidizing northern manufacturing. Such a possibility is highly unlikely.

Our objective, noted early on, has been to show that the constitutional expression of this Confederate preference for low tariffs effectively constrained its lawmakers to the lower end of the Laffer relationship. This we have demonstrated by joining a straightforward supply and demand perspective on the Confederate tariff clause with the historical record. Whether the Confederate framers knew of the Laffer relationship is not relevant; their behavior was consistent with it.

The Confederacy’s founding fathers obviously did not specify the exact tariff rates that defined the lower end of the Laffer relationship. Why should one expect the Confederate founders to have special insight on the exact shape of the relationship for various tariffs? Even if they had such insight, why would they put it in their constitution? What the Confederacy did do, however, is worthy of special notice. A de facto constitutional mandate that tariffs lie on the lower end of the Laffer relationship means that the Confederacy went beyond simply observing that a given tax revenue is obtainable with a “high” and “low” tax rate, à la Alexander Hamilton and others. Indeed, the constitutional action suggests that the tariff issue may in fact have been even more important in the North–South tensions that led to the Civil War than many economists and historians currently believe.

REFERENCES


