

**PANAMA CANAL TOLLS, THE  
TRADITIONAL POLICY OF THE UNITED  
STATES IN RELATION TO WATERWAYS.  
SPEECH OF HON. THEODORE E. BURTON  
OF OHIO IN THE SENATE OF THE UNITED  
STATES MAY 19, 1914**

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Panama Canal Tolls, the Traditional Policy of the United States in Relation to Waterways.  
Speech of Hon. Theodore E. Burton of Ohio in the Senate of the United States May 19, 1914 by  
Theodore E. Burton

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**THEODORE E. BURTON**

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SPEECH

OF

HON. THEODORE E. BURTON

OF OHIO

IN THE

SENATE OF THE UNITED STATES

MAY 19, 1914



WASHINGTON  
1914

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SPEECH  
OF  
HON. THEODORE E. BURTON.

The Senate, as in Committee of the Whole, had under consideration the bill (H. R. 14385) to amend section 5 of an act to provide for the opening, maintenance, protection, and operation of the Panama Canal and the sanitation of the Canal Zone, approved August 24, 1912.

THE TRADITIONAL POLICY OF THE UNITED STATES IN RELATION TO  
WATERWAYS.

Mr. BURTON. Mr. President, in support of the bill to repeal the exemption of our coastwise shipping from the payment of tolls in the Panama Canal three classes of arguments have been earnestly and ably presented to the Senate.

First. That the Hay-Panuefote treaty of 1901 requires entire equality among nations, and consequently the exemption of any shipping of the United States is a violation of its provisions. It is further argued that even if the treaty in itself does not forbid discrimination, at least when negotiations and treaties made before and after are considered with it, the inhibition is absolutely conclusive.

Second. The economic argument that the exemption from payment of tolls constitutes a subsidy, and that is not justified by our laws, is contrary to the spirit of our institutions, and is opposed by the party in power and by many adherents of the Republican Party. In this connection it is maintained that the exemption will not materially benefit producer or consumer or aid in reducing rates on transcontinental railroads.

Third. The opinion of other nations. It is alleged that this opinion is practically unanimous against us. The President, in his brief and forcible message, while regarding the exemption as a mistaken economic policy from every point of view and in plain contravention of the treaty with Great Britain, adds: "The meaning of the treaty is not debated outside of the United States. Everywhere else the language of the treaty is given but one interpretation, and that interpretation precludes the exemption." He also gives an intimation of "matters of even greater delicacy and nearer consequence" with which he will have difficulty in dealing unless the exemption act is repealed.

The distinguished Senator from Massachusetts has aptly expressed this argument in quoting from the Declaration of Independence the words, "a decent respect for the opinions of mankind," to which he added, "and the high position of the United States among the nations of the world."

But in addition to these three, there is still a further argument equally potent in favor of repeal, and that is the traditional and practically uniform policy of the United States in advocating—yes, demanding—the free and equal use of navigable channels or waterways. Our policy in this regard is as

near to being invariable as upon any important national question. It is much more constant than our record as regards the relation of the Federal Government to the States or upon tariff or foreign affairs.

Nations, like individuals, have their distinctive qualities, opinions, and aspirations which shape their course and determine their standing among the countries of the world. Thus their movements may be forward or backward. They may advance the cause of human liberty or retard its development. They may promote international confidence or breed discord and repulsion.

German idealism has given to nations the attribute of personality. The great Swiss-German publicist, *Muntzschil*, says:

Individual States differ like individual men in spirit, character, and form. \* \* \* While history explains the organic nature of the State, we learn from it at the same time that the State does not stand on the same grade with the lower organisms of plants and animals, but is of a higher kind; we learn that it is a moral and spiritual organism, a great body which is capable of taking up into itself the feelings and thoughts of the nation, of uttering them in laws, and realizing them in acts; we are informed of moral qualities and of the character of each State. History ascribes to the State a personality which, having spirit and body, possesses and manifests a will of its own. \* \* \*

The recognition of the personality of the State is thus not less indispensable for public law (*Staatsrecht*) than for international law (*Völkerrecht*).

The United States from the very beginning insisted upon certain fundamental principles, such as that all men are created equal; that governments derive their just powers from the consent of the governed. The basis of the demand for equal use of channels is found in the essential ideas which actuated the American Revolution. Liberty and equality of rights demanded as a concomitant equality of opportunity and unrestricted progress. Progress and equality of opportunity require common access to those utilities and agencies which are necessary for the use and benefit of mankind.

Thus we see that from the very first our ancestors strenuously insisted upon the abolition of exactions and the removal of restrictions which royal privilege had imposed or which had been accepted as belonging to countries because of favorable location or other advantages. Many of the colonists prior to the Revolution had been actively engaged in trade and in commerce by sea. One of the accusations against King George III in the Declaration of Independence is "for cutting off our trade with all parts of the world."

In the report of the committee of the Continental Congress, in response to the conciliatory resolution proffered by Lord North in 1775, complaint was made that freedom of movement had been denied to the ships of the colonies. The report, submitted to Congress on July 25, 1775, is in the following language:

On the contrary, to show they mean no discontinuance of injury, they pass acts, at the very time of holding out this proposition, for restraining the commerce and fisheries of the province of New England, and for interrupting the trade of other colonies with all foreign nations and with each other. This proves unequivocally they mean not to relinquish the exercise of indiscriminate legislation over us.

#### ILLUSTRATIONS OF CLAIM OF NATURAL RIGHTS IN NAVIGABLE STREAMS.

This claim of a natural right was asserted by the Continental Congress during the Revolutionary War in a demand made upon Spain for the free navigation of the Mississippi River. The domain of Spain then extended along the westerly bank



of the Mississippi and on the easterly bank from the mouth to the present northerly boundary of the State of Louisiana, parallel 31 of north latitude. On the 6th of August, in the year 1779, the minister of the United States, Mr. John Jay, was authorized, by resolution—

to conclude with France and Spain a treaty or treaties, offensive or defensive, in which offensive or defensive treaty nevertheless you shall insert on the part of your State a proper article or articles for obtaining the free navigation of the River Mississippi.

The following month a similar resolution was passed and made the basis for instructions to Mr. Jay. The inability to agree on this subject prevented the making of a treaty. Notwithstanding the earnest desire for a treaty of friendship and alliance with Spain, the Members of the Continental Congress refused to enter into any engagement, however favorable, unless the free navigation of the Mississippi was assured.

On the 2d of October, 1780, Benjamin Franklin, in writing a letter to Mr. Jay, said:

Poor as we are, yet as I know we shall be rich, I would rather agree with them (Spain) to buy at a great price the whole of their right on the Mississippi than sell a drop of its waters. A neighbor might as well ask me to sell my street door.

As the war was protracted and the success of the colonies became less promising, the Congress became less insistent. It seems to have been the opinion that the river had been used by the United States without trouble with Spain, and there was no reason to fear that the friendly disposition between the two nations would be interrupted. The minister was authorized, in 1781, if he could not obtain the desired concession, to recede from it. No final agreement, however, was entered into, and the question was left open until the matter was again taken up by Mr. Jefferson in the year 1792, to which I shall make reference later.

The next manifestation of this policy was before the adoption of the Federal Constitution. In the negotiations for the preliminary treaty of 1782 with Great Britain, October 8, 1782, Benjamin Franklin and John Jay, commissioners on behalf of the United States, submitted a draft, which contained the following provision:

Fourthly. That the navigation of the River Mississippi from its source to the ocean shall forever remain free and open, and that both there and in all rivers, harbors, lakes, ports, and places belonging to His Britannic Majesty or to the United States, or in any part of the world, the merchants and merchant ships of the one and the other shall be received, treated, and protected like the merchants and merchant ships of the sovereign of the country. That is to say, the British merchants and merchant ships, on the one hand, shall enjoy in the United States and in all places belonging to them the same protection and commercial privileges and be liable only to the same charges and duties as their own merchants and merchant ships; and, on the other hand, the merchants and merchant ships of the United States shall enjoy in all places belonging to His Britannic Majesty the same protection and commercial privileges and be liable only to the same charges and duties of British merchants and merchant ships, saving always to the chartered trading companies of Great Britain such exclusive use and trade and their respective posts and establishments as neither the subjects of Great Britain nor any of the more favored nations participate in.

This was refused.

On April 29, 1783, the American commissioners presented to Mr. Hartley, the British commissioner, an article for the pro-

posed final treaty giving equal rights to both nations in the navigable waters of each. It was in the following language:

All rivers, harbors, lakes, ports, and places belonging to the United States, or any of them, shall be open and free to the merchants and other subjects of the Crown of Great Britain and their trading vessels, who shall be received, treated, and protected like the merchants and trading vessels of the States in which they may be and be liable to no other charges or duties.

And, reciprocally, all rivers, harbors, lakes, ports, and places under the dominion of His Britannic Majesty shall thenceforth be open and free to the merchant trading vessels of the said United States, and of each and every of them, who shall be received, treated, and protected like the merchants and trading vessels of Great Britain and be liable to no other charges and duties, saving always to the chartered trading companies of Great Britain such exclusive use and trade of their respective ports and establishments as neither the other subjects of Great Britain nor any of the most favored nations participate in.

It will thus be seen that a new and advanced principle with reference to freedom of navigation—that of entire equality in the use of both national and international waters—was presented by these eminent patriots, all of whom were so prominent in the early days of this Republic and had so much to do in shaping our institutions and policies.

May 21, 1783, Mr. Hartley made a counter proposition, which only gave equality in import and export duties to the ships of both countries.

The reason why the offer of the American commissioners was not accepted is set forth very fully in the reply of Mr. Hartley, the British commissioner, of May 21, 1783:

A proposition having been offered by the American ministers for the consideration of His Britannic Majesty's ministers and of the British nation for an entire and reciprocal freedom of intercourse and commerce between Great Britain and the American United States in the following words—

Then follows the article suggested by the American commissioners of April 29, 1783, given above:

It is to be observed that this proposition implies a more ample participation of British commerce than the American States possessed even under their former connection of dependence upon Great Britain, so as to amount to an entire abolition of the British act of navigation in respect to the 13 United States of America, and although proceeding on their part from the most conciliatory and liberal principles of amity and reciprocity, nevertheless it comes from them as newly established States, and who, in consequence of their former condition of dependence, have never yet had any established system of national commercial laws, or of commercial connections by treaties with other nations, free and unembarrassed of many weighty considerations, which require the most scrupulous attention and investigation on the part of Great Britain, whose ancient system of national and commercial policy is thus suddenly called upon to take a new principle for its foundation, and whose commercial engagements with other ancient States may be most materially affected thereby. For the purpose, therefore, of giving sufficient time for the consideration and discussion of so important a proposition respecting the present established system of the commercial laws and policy of Great Britain and their subsisting commercial engagements with foreign powers, it is proposed that a temporary intercourse of commerce shall be established between Great Britain and the American States previously to the conclusion of any final and perpetual compact. In this intervening period, as the strict line and measure of reciprocity, from various circumstances, can not be absolutely and completely adhered to, it may be agreed that the commerce between the two countries shall revive, as nearly as can be, upon the same footing and terms as formerly subsisted between them, provided always that no concession on either side in the proposed temporary convention shall be argued hereafter in support of any future demand or claim. In the meantime the proposition above stated may be transmitted to London, requesting (with His Majesty's consent) that it may be laid before Parliament for

their consideration. \* \* \* With regard to the West Indies, there is no objection to the most free intercourse between them and the United States. The only restriction proposed to be laid upon that intercourse is prohibiting American ships carrying to those colonies any other merchandise than the produce of their own country. The same observation may be made upon this restriction as upon the former. It is not meant to affect the interests of the United States, but it is highly necessary, lest foreign ships should make use of the American flag to carry on a trade with the British West India Islands.

It is also proposed, upon the same principle, to restrain the ships that may trade to Great Britain from America from bringing foreign merchandise into Great Britain. The necessity of this restriction is likewise evident, unless Great Britain meant to give up the whole navigation net. There is no necessity for any similar restrictions on the part of the American States, those States not having as yet any acts of navigation.

In view of the insistence of Great Britain, the American commissioners were compelled to yield their contention.

The treaty was signed at Paris, September 3, 1783, by John Adams, Benjamin Franklin, and John Jay on behalf of the United States, and by Mr. Hartley for Great Britain.

Article 8 is the only one which refers to navigation. It is as follows:

The navigation of the River Mississippi from its source to its mouth shall forever remain free and open to the subjects of Great Britain and the citizens of the United States.

As regards the refusal to grant reciprocal use of channels, Mr. John Adams, in his diary for Monday, May 19, 1783, volume 3 of his collected works, page 203, says:

Mr. Hartley informed us to-day that the King's council had not agreed to our proposition of putting Britons upon the footing of Americans in all American ports, rivers, etc., and Americans on the footing of Britons in all British ports, rivers, etc. He says he is sorry for this, because he thinks it just and politic, and he shall ever be in Parliament for bringing things to this point.

At a later time the question of the navigation of that portion of the Mississippi River flowing through the territory belonging to Spain was again raised. Mr. Jefferson, then Secretary of State, claimed the right to equal navigation by boats of the United States as a natural right, and in his report in 1792 on negotiations with Spain regarding a treaty relative to the navigation of the Mississippi River he said:

If we appeal to this as we feel it written in the heart of man, what sentiment is written in deeper characters than that the ocean is free to all men and the rivers to all their inhabitants? Is there a man, savage or civilized, unbiassed by habit, who does not feel and attest this truth? Accordingly, in all tracts of country united under the same political society we find this natural right universally acknowledged and protected by laying the navigable rivers open to all their inhabitants. When their rivers enter the limits of another society, if the right of the upper inhabitants to descend the stream is in any case obstructed, it is an act of force by a stronger society against a weaker, condemned by the judgment of mankind.

In a treaty framed in 1795 equal use of the Mississippi River was provided for both nations in the portions flowing through territory belonging to Spain south of the thirty-first parallel of north latitude; also in that part which served as the western boundary of the United States. This treaty was ratified in the year 1796, during the administration of President Washington. In the following decade Madison, then Secretary of State under President Jefferson, made the same claim with reference to streams east of the Mississippi passing from the United States through the Floridas.