

“Historically as Certain as Our Revolution Itself”: The Nullifiers and History

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Abstract

Despite the common defamation of the states' rights theories acted upon in the Nullification Crisis of 1832, there exists a great deal of historical support for the nullifiers' positions. Nullifiers believed in a decentralized constitutional system, while nationalists believed in a centralized constitutional system. This tension between central and decentralized positions had been at issue in the American struggle for independence though the exact manner in which these problems manifested themselves was different in the two events. The states' rights ideas championed primarily by John C. Calhoun were consistent with American political tradition. At the most basic level, the Nullification Crisis was over a disparity between constitutional interpretations. However, a demonstration of the existence of such issues in the American Revolution and the implications of those forces on the early republic demonstrate that the Nullifiers' positions were consistent with history and traditional American resistance to centralized power.

“Historically as Certain as Our Revolution Itself”: The Nullifiers and History

Few today have taken the doctrines of nullification championed by John C. Calhoun seriously. Modern scholarship tends to dismiss the strong states rights position adopted by the South as mere contrivances designed to protect slavery, and the 1860s saw the violent repudiation of such doctrines. Violence nearly erupted thirty years earlier in 1833 when most of the political establishment arrayed itself against Calhoun and the South Carolina nullifiers. However, a fair and careful historical analysis of Calhoun’s argument reveals that the nullifiers acted reasonably and logically in accordance with historical precedents established during the war for independence. As a result any critique should focus on the nullifier’s perception of their situation, abstract questions of political science, or the mere practicality of Calhoun’s proposed system.

A great deal of continuity and similarity exists between the American struggle for independence and the Nullification Crisis of 1832. While independence mainly involved questions of sovereignty, in both a disparity of constitutional interpretations centered on questions of where exactly sovereignty resided in the constitutional system and whether a centralized unitary system or a dispersed system existed. In England during the 1760s and 1770s, most believed Parliament to be sovereign and that a unitary nation of some sort existed under the sovereignty of that parliament and was represented in it. The colonies, however, were in the process of developing a view of the English Constitution that was much more federal in nature. Thus, there was a direct conflict between a decentralized and consolidated vision of the empire. A similar disparity of constitutional interpretation came to a head in the Nullification Crisis of 1832 when South Carolina acted upon a decentralized conception of the Union in response to centralizing tendencies.

A definitional diversion must be made before beginning in earnest. Donald Livingston, Professor Emeritus at Emory University, identified “two ideal conceptions of legitimate political order,” from the early modern era.¹ The first and pre-dominant one he refers to as “Hobbesian” or the “modern unitary state,” and the other he calls the “Althusian” or the “modern federated polity.” The first model is “composed of egotistically motivated individuals who contract to form a sovereign office to rule for the sake of peace and stability.” Though, Livingston refers to the first model as “Hobbesian” after Thomas Hobbs’ exposition of such a theory in *Leviathan* (1651), he intends the term as a broad label. For example, Livingston includes Locke’s political theory under this label as well because, despite the libertarian flavor, Locke propounded the same basic system Hobbs did. For Livingston any system that supposes man began in a state of nature and contracted to create society, government, and sovereignty falls into this broad category. “Hobbesian” serves as a convenient label for consolidated, centralized, unitary systems not merely the version of it propounded by Hobbes. The second model, named for Johannes Althusius, author of a treatise on political theory entitled *Politica* “root[s] political order... in social bonds and duties.” It conceives of sovereignty as a “symbiotic relation among... independent social orders.” This system believes society to exist independent of and prior to government. Sovereignty then is vested in the societies that create government.² These two positions are drastically different in both presuppositions and implications. The Hobbesian model consolidates power in a sovereign center, while the Althusian model disperses power throughout the component parts of a polity or system of polities. These two fundamental positions manifested themselves in the

¹ Donald W. Livingston, “The very Idea of Secession,” *Society* 35, no. 5 (July 1998), 38.

² *Ibid.*, 38.

disparate constitutional positions of the 1770s and 1830s, and these positions will be referred to in these terms.

In July of 1776, thirteen colonies denounced their monarch and separated themselves from the British Empire. This was no sudden action; a decade long debate regarding the power of Parliament and the very nature of the British Empire preceded it. Over the course of this debate American views shifted from a carefully defined subordination to Parliament to an understanding of the Empire as a system of confederate polities. Ultimately, this contest of strength among parts of the empire convinced colonists of designs against their liberties and climaxed in the Declaration of Independence.

An example of constitutional contest occurred in Massachusetts during 1762. A dispute arose between the Massachusetts House of Representatives and Massachusetts's Royal Governor Francis Bernard. In response to reports of a privateer endangering Massachusetts fishing vessels, Governor Bernard outfitted a war ship and informed the House of his actions when they came in session. The House of Representatives did not condone the Governor's actions, as he expected; rather they censured him. The thrust of their argument was that he had acted unconstitutionally in outfitting a ship and allocating funds to defray the expenses of the expedition without the consent of the House of Representatives. A line from the censure read, "It is in effect taking from the house their most darling privilege, the right of originating all Taxes."³ It later added a rhetorical flourish: "for it would be of little consequence to the people whether they were subject to George or Lewis, the King of Great Britain or the French King, if both were arbitrary, as

³ James Otis, *A Vindication of the Conduct of the House of Representatives of the Province of the Massachusetts-Bay: More Particularly, in the Last Session of the General Assembly* (Boston: Edes & Gill in Queen St, 1762), 7.

both would be if both could levy Taxes without Parliament.”⁴ Governor Bernard eventually dismissed the legislature before the argument had been settled. Choosing not to wait till the next House session to continue the argument, Representative James Otis wrote a tract entitled *A Vindication of the Conduct of the House of Representatives of the Province of the Massachusetts-Bay*.

The argument, both in session and in Otis’s pamphlet, revealed several things. First was the obvious fear of arbitrary power. The official censure of the government explicitly stated that fear of arbitrary power motivated House jealousy over finances: “And when once the representatives of a people give up this privilege, the government will very soon become arbitrary.”⁵ Otis concluded that because the House had the power to tax, there existed an implicit limit upon the Governor and Council’s ability to use money in the treasury. He asserted that a House Act specifically permitting spending was necessary for the Governor or Council to use public money.⁶ *A Vindication* demonstrated that the colonists held strong opinions regarding the power of their assemblies to tax and defended those rights against intrusions of arbitrary power.

Second, *A Vindication* demonstrated the high regard colonists had for the King. Otis asserted that, “the British constitution as now established in his Majesty’s person and family, is the wisest and best in the world.”⁷ He continued, “The King of Great-Britain is the best as well as most glorious Monarch upon the Globe, and his subjects the happiest

⁴ Ibid., 7.

⁵ Ibid., 7.

⁶ Ibid., 16.

⁷ Ibid., 10.

in the universe.”⁸ This was not mere rhetoric; professor of history at Boston University Brendan McConville observed that the colonies were far more enthusiastic in their loyalty to the King than the people of England were.⁹ Third, *A Vindication* provided insight into Otis’s view of the constitutional position of the colonies within the empire. Speaking of what he believed to be the “last resort” for a colonial assembly when conflict arises with the governor, Otis wrote, “I mean as we are a dependent government, a dutiful and humble remonstrance to his Majesty.”¹⁰ This statement acknowledges the supremacy of the Crown and Parliament over the colonies. He asserted that Parliament alone had the right to an “appeal to Heaven, and the longest sword” when the King overstepped his bounds.¹¹ However, he also articulated a view of the colonial assemblies as parallel to Parliament within their jurisdiction.¹² The colonists understood the governor as the King’s agent, his council as an equivalent to the House of Lords, and colonial assemblies as equivalent to the House of Commons.¹³ Just as the commons did in England, the houses controlled the purse strings in the colonies, and both bodies acted as checks on the King’s prerogative as exercised through the governor. It was only a matter of time before the view of colonial assemblies as analogous to Parliament expanded to include the right to armed opposition against usurpations of their power, or as Otis phrased it, “an appeal to “the longest sword.”

⁸ Ibid., 10.

⁹ Brendan McConville, *The King’s Three Faces: The Rise and Fall of Royal America, 1688-1776* (Chapel Hill, NC: University of North Carolina Press, 2006), 76-80.

¹⁰ James Otis, *A Vindication*, 17.

¹¹ Ibid., 17.

¹² Ibid., 23.

¹³ Jack P. Greene, *Peripheries and Center: Constitutional Development in the Extended Politics of the British Empire and the United States, 1607-1788* (New York: W.W. Norton and Company, 1986), 31.

While those like Otis saw legislative checks on the governor as a positive thing, some in the colonies and most in England believed that the assemblies were the branches of government that were overreaching. They believed that the lower houses existed at the king's pleasure and need not exist to maintain the rights of the colonists. Thus, an assembly that managed to limit the governor had not checked power but rather usurped Royal prerogative.¹⁴ It was widely believed that the assemblies had limited power and were to function as an organ for internal management of the colonies, but that the will of the king in counsel was the law for the colonies.¹⁵ These interpretational issues that had been limited to small debates between assemblies and colonial governors would be taken to another dimension in the mid 1760's when the debate between the colonies and Parliament began.

The grand constitutional debate began in earnest when, in response to the Stamp Act, many of the colonies sent representatives to what has been named the Stamp Act Congress. This congress produced the *Declaration of Rights* (1765), which expressed similar themes as those in Otis's *Vindication*. The first point of the declaration pledged allegiance to king and "all due subordination to that august body, the Parliament of Great Britain," demonstrating widespread loyalty toward the king and recognition of Parliamentary supremacy.¹⁶ In subsequent points the delegates constructed an argument against the Stamp Act grounded in the right of Englishmen not to be taxed without their consent. The third points states, "That it is inseparably essential to the freedom of a

¹⁴ Ibid., 33.

¹⁵ Ibid., 53. Greene recounts a less intense Constitutional debate that occurred throughout the 1750s. In this debate many of these positions were articulated and the lines were drawn but left untested for later debate.

¹⁶ *The Declaration of Rights of the Stamp Act Congress*, Stamp Act Congress, 1765.

people, and the undoubted rights of Englishmen, that no taxes should be imposed on them, but with their own consent, given personally, or by their representatives.”¹⁷ Here in almost as many words is the remembered rallying cry of the Revolution: “No taxation without representation.”

The language of this document brings to mind the argument James Otis expressed a year earlier in *The Rights of the British Colonists Asserted and Proved* (1764). In this pamphlet Otis allowed that the colonies were “subject to and dependent on Great Britain; and that therefore as over subordinate governments, the parliament of Great-Britain has an undoubted power and lawful authority to make acts for the general good.”¹⁸ Continuing, he asserted, “The supreme power cannot take from any man any part of his property, without his consent in person, or by representation.”¹⁹ Otis concluded that it is entirely unjust for Parliament to tax the colonies, as they are not represented in that body and “if a man is not his own assessor in person, or by deputy, his liberty is gone, or lay entirely at the mercy of others.”²⁰ Both of these documents acknowledged Parliamentary supremacy over the colonies and a right to general legislation, but also explicitly denied the power of Parliament to tax the colonies, as that was an explicit violation of the right of an individual to give consent to taxes in person or by a representative.

The British of course disagreed with this assertion of colonial rights. Though forced to repeal the Stamp Act, Parliament expressed in the Declaratory Act its opinion on the colonial assemblies’ exclusive right to taxation. The act states that the colonial

¹⁷ Ibid.

¹⁸ James Otis, *The Rights of British Colonists Asserted and Proved* (Boston: Edes & Gill, in Queen Street, 1764), 17.

¹⁹ Ibid., 20.

²⁰ Ibid., 21.

legislatures' claims were illegal. It also argued that the various "votes, resolutions, and orders, derogatory to the legislative authority of parliament" were inconsistent with colonial "dependence" upon Britain.²¹ The Act's titular declaration asserts that the king and Parliament had full authority "to make laws and statutes of sufficient force and validity to bind the colonies and people of America, subjects of the crown of Great Britain, in all cases whatsoever."²²

Parliament rested its claim to power over the colonies upon the theory of virtual representation as articulated by Thomas Whateley a year before the Stamp Act's adoption. Whateley, a Parliamentary deputy of Lord Greenville, prepared a book length argument for virtual representation in order to head off questions regarding the legitimacy of Parliamentary measures to raise internal revenues in the colonies, prior the passage of the Stamp Act.²³ This is the source of the basic argument that the colonists were in fact represented in Parliament in the same manner any non-voting Englishmen was represented in Parliament:

The Fact is, that the Inhabitants of the Colonies are represented in Parliament; they do not indeed choose the Members of that Assembly; neither are Nine Tenths of the People of Britain Electors... All British Subjects are really in the same; none are actually, all are virtually represented in Parliament; for every Member of Parliament sits in the House, not as Representative of his own Constituents, but as one of the august Assembly by which all the Commons of Great Britain are represented... but as it is, they and the Colonies and all British Subjects whatever, have an equal Share in the general Representation of the Commons of Great Britain, and are bound by the Consent of the Majority of that House, whether their

²¹ An Act for the Better Securing the Dependency of His Majesty's Dominion in America upon the Crown and Parliament of Great Britain, 1766, 10 Geo. 3, c. 12.

²² Ibid.

²³ Jack Greene, *Peripheries and Center*, 80-81.

own particular Representatives consented to or opposed the Measure there taken, or whether they had not particular Representatives there.²⁴

This constitutional interpretation of the empire and the rules of Parliament in turn rested upon a conception of the English Empire as a unitary nation state.

That virtual representation rested upon a unitary state model is no mere summation. Whateley, earlier in his book, explicitly stated as much: “The British Empire in Europe and in America is still the same Power: Its subjects in both are still the same People: and all equally participate in the Adversity or Prosperity of the whole.”²⁵ He argued that the colonies and Britain shared mutual interests thus implying the existence of a single community with a single government. He stated, “It is an indisputable Consequence of their being thus one Nation, that they must be governed by the same supreme Authority, be subject to one executive Power in the King, to one legislative Power in the Parliament of Great-Britain.”²⁶ Finally, he concluded, “Their Connection would otherwise be an Alliance, not a Union; and they would be no longer one State, but a Confederacy of many.”²⁷ No clearer declaration of a Hobbesian concept of the state is possible. Clearly, Parliament was approaching the constitutional debate from a consolidated, unitary-state perspective.

Though, they acknowledged Parliamentary supremacy, colonists balked at the Stamp Act and the theories used attempting to justify it. This is because, while acknowledging their own dependent status, they maintained claims on certain rights that

²⁴ Thomas Whateley, *The Regulations Lately Made Concerning the Colonies and Taxes Imposed upon Them, Considered* (London, 1765), 107-109.

²⁵ *Ibid.*, 39.

²⁶ *Ibid.*, 40.

²⁷ *Ibid.*, 40.

served to limit Parliamentary supremacy. Chief amongst these was the right to be taxed only by their own representatives. While an individual right, it could only exist if “collective” or community rights were protected, because as colonists saw it, they were represented only in their local assemblies. For the colonists, this essentially meant that their assemblies’ sole powers of taxation had to be maintained, because allowing Parliamentary taxation was equivalent to surrendering liberty due to the lack of colonial representation in that body. This demonstrates the interplay between two principles, the first being that representation was necessary to taxation, the second being that separate communities existed. The emphasis colonists placed upon their collective rights embodied in their legislatures clearly indicates that Whateley’s arguments regarding the unitary nature of the empire were not accepted in the colonies. This disparity of interpretation served as a frame for future struggles pitching the community rights of the colonies against the claims of Parliament.²⁸

Round two of the debate came after Parliament passed the Townshend Acts in another attempt to raise revenue in the colonies. In his *Letters From a Farmer in Pennsylvania* John Dickinson argued against the right to Parliamentary taxation of the colonies while allowing Parliamentary supremacy. Discussing the Townshend duties, he said, “the Parliament unquestionably possesses a legal authority to regulate the trade of Great Britain, and all her colonies.”²⁹ He believed such authority was necessary and dismissed any arguments to the contrary. Dickinson wrote that Parliament had a right to regulate trade and that the incidental raising of revenue through duties designed to

²⁸ Robert W. Tucker and David C. Hendrickson, *The Fall of the First British Empire: Origins of the War of American Independence* (Baltimore: The Johns Hopkins University Press, 1982), 161-163.

²⁹ John Dickinson, “Letter II,” in *Empire and Nation: Letters from a Farmer in Pennsylvania Farmer, Letters from the Federal Farmer*, (Englewood Cliffs, NJ: Prentice Hall, Inc., 1962), 7.

regulate was not a violation of rights. However, he affirmed the illegality of taxation without representation.³⁰ Observing that the Townshend Acts were designed specifically to raise revenue, Dickinson stated, “This I call an innovation: and a most dangerous innovation.”³¹ He believed it so dangerous because it was a blatant attempt to raise revenue without the consent of those taxed. Dickinson grounded the principle of no taxation without representation in the traditional understanding of taxes as a free gift of the people to their sovereign. With this foundation established he affirmed the sixth point of the Stamp Act Congress Declaration of Resolves: “it is unreasonable, and inconsistent with the principles and spirit of the British constitution, for the people of Great Britain to grant to his Majesty the property of the colonies.”³² There is an implicit distinction between the “people of Great Britain” and the “colonies.” The “colonies” must mean the people or peoples of the colonies. The English Parliament was unable to tax the colonies because the tax was no longer a free gift of the people if another people coerced it from them. Dickinson’s letters articulate essentially the same view of the colonies that Otis did in 1762, but the continued debate was on the verge of causing a significant shift in thinking.

These arguments fostered a belief that the Empire was a system of confederated polities. Though less popular, some held to the confederated polities view as early as the 1760s. It had risen to prominence by the 1770s.³³ Normally considered a nationalist, even

³⁰ Ibid., 7-9.

³¹ Ibid., 10.

³² John Dickinson, “Letter IV,” in *Empire and Nation: Letters from a Farmer in Pennsylvania* Farmer, *Letters from the Federal Farmer*, (Englewood Cliffs, NJ: Prentice Hall, Inc., 1962), 23.

³³ Jack Greene, *Peripheries and Center*, 134-136. John, McConville, *The King’s Three Faces*, 204. John McConville notes that some had held this view as early as the first decade of the 1700s.

Alexander Hamilton expressed such an opinion in his “The Farmer Refuted.” He argued that there was a right to self-government: “for civil liberty cannot possibly have any existence where the society for whom laws are made have no share in making them.”³⁴ His use of the word *society* here is another indicator of the colonial American emphasis upon community rather than strictly the individual. By a detailed examination of the various colonial charters and former colonial interactions with Parliament, Hamilton argued that the colonies were “entirely discordant with that sovereignty of Parliament.”³⁵ Elsewhere he claimed that, “the voice of nature, the spirit of the British constitution, and the charters of the colonies in general” opposed parliamentary supremacy over the colonies.³⁶ The one allowance made for Parliamentary authority was the right to regulate external trade. His veneration for custom necessitated this concession, as the colonies had permitted such actions since the Navigation Acts of the seventeenth century. Ultimately his position was that the British Empire consisted of a multiplicity of polities united in a common sovereign but independent of one another in regard to internal affairs.

Jefferson articulated a very similar conception of the British Empire in his *Summary View of the Rights of British America* (1774). He argues that the original settlers of the American colonies had acted upon the basic human right to emigration and had established new societies in the wilds of North America separate from England.³⁷

³⁴ Alexander Hamilton, “The Farmer Refuted,” in *The Revolutionary Writings of Alexander Hamilton*, ed. Richard B. Vernier, 1775, (Indianapolis: Liberty Fund, 2008), <http://oll.libertyfund.org/title/2121/164944> (accessed October 27, 2013).

³⁵ Ibid.

³⁶ Ibid.

³⁷ Thomas Jefferson, *A Summary View of the Rights of British America* (Williamsburg, 1774), 5-7.

These societies, presumed Jefferson, were under no obligation to maintain associations with England:

[but] the emigrants thought proper to adopt that system of laws under which they had hitherto lived in the mother country, and to continue their union with her by submitting themselves to the same common sovereign, who was thereby made the central link connecting the several parts of the empire thus newly multiplied.³⁸

Elsewhere in his pamphlet, Jefferson referred to both Parliament and colonial legislatures as “free and independent legislature[s].”³⁹ He also spoke of “the addition of new states to the British Empire [producing] an addition of new, and sometimes opposite interests;” he saw it as the King’s duty to act as a mediator between these interests.⁴⁰ More significantly the assertion of separate interests further supports the distinct nature of the multiple polities constituting the British Empire. Building on the concept of multiple communities existing within the British Empire, he asserted that, “from the nature of things, every society must at all times possess within itself the sovereign powers of legislation.”⁴¹ Jefferson concluded by arguing that the King was in fact the servant of the people in whom real sovereignty actually resided and calling upon the King to act as a fair mediator between the different peoples of the empire.⁴²

Hamilton and especially Jefferson articulated in these documents a theory of the British Empire that was thoroughly Althusian. As they saw it, each colony was equal to Britain and the empire was a sort of federated polity joined by a single executive power in the King. This stands in stark and obvious contrast to the position of empire articulated

³⁸ Ibid., 7.

³⁹ Ibid., 12.

⁴⁰ Ibid., 16.

⁴¹ Ibid., 19.

⁴² Ibid., 22-23.

by Whateley in 1765. The years of debate caused Americans to fully develop an Althusian position, and though this thoroughly federal view had to develop, the fact that it did develop logically from previously held positions suggests that the colonists had never been too fundamentally Hobbesian in their thinking. The underpinning belief that led Americans to accept this anti-Hobbesian theory of empire was that a people held certain powers upon which no other entity may infringe. Thus, their earliest rejection of Parliamentary taxation was an indication that they believed themselves different political communities, the seed of the fully developed Althusian conceptions presented by Hamilton and Jefferson.⁴³ In such a view, the recent Parliamentary incursions against colonial legislatures were completely unjustifiable.

The proliferation of the interpretation that placed colonial assemblies on par with Parliament ensured a continued struggle. It is critical to understand that there had been a shift in constitutional organization after the Glorious Revolution that was not embraced in the colonies. When Parliament replaced the king in the Glorious Revolution a precedent of Parliamentary supremacy was set. In English eyes Parliament assumed all prerogatives formerly held by the king. Thus Parliament now had every right to legislate for the colonies.⁴⁴ The colonists however, never accepted Parliamentary supremacy and maintained a remarkable attachment to the king.⁴⁵ In fact, the colonies held very high views of the king throughout the entire colonial period and appealed to him to protect

⁴³ Hamilton of course in the national period was the ardent nationalist and champion of a Hobbesian vision for America. However, the theory he articulated in "The Farmer Refuted" is quite Althusian in nature.

⁴⁴ Donald Lutz, *The Origins of American Constitutionalism* (Baton Rouge: Louisiana University State Press, 1988), 39, 63-64.

⁴⁵ Brendan McConville, *The King's Three Faces*. McConville thoroughly examines and proves this colonial attraction to the monarch.

them from the overreaching Parliament. The Declaration of Rights of the Stamp Act Congress began, “The members of this congress, sincerely devoted, with the warmest sentiments of affection and duty to His Majesty’s person and government, inviolably attached to the present happy establishment of the Protestant succession.”⁴⁶ The Olive Branch Petition addressed George III as “Most Gracious Sovereign,” and described the colonists as “Your majesty’s most faithful subjects.”⁴⁷ Though, to a degree these are stock phrases, their sincerity is suggested by the extremely high view of the king held by most colonists. The colonies had even come to hold a sort of “neodivine right” view of the king.⁴⁸ While he was understood to have limits on his prerogative, the king was thought of as the Lord’s anointed and somewhat above mere men.⁴⁹ A belief in the divine appointment of the king helped maintain his high esteem and perceived superiority to Parliament.⁵⁰ This veneration of the king undoubtedly helped with the proliferation of an Althusian view of imperial organization.

While historians can see that it was this dichotomy of constitutional interpretation that led to the war, colonists came to see the situation as more than a legal debate. Since colonist held that the king was at the top of the imperial institutional structure, they could not conceive of a justification for Parliamentary intervention in their affairs. The colonists’ deep seated fear of arbitrary power predisposed them to interpret the continued attempts by Parliament to tax and legislate for the colonies as a deliberate attempt to

⁴⁶*The Declaration of Rights of the Stamp Act Congress*, The Stamp Act Congress, 1765.

⁴⁷ *The Olive Branch Petition*, The First Continental Congress, 1774.

⁴⁸ Brendan McConville, *The King’s Three Faces*, 215.

⁴⁹ *Ibid.*, 214-215.

⁵⁰ *Ibid.*, 216-217.

usurp authority, rather than the outworking of constitutional changes begun by the Glorious Revolution.⁵¹

The *Declaration of the Causes and Necessity of Taking Up Arms* (1775) plainly articulates such a belief: “The legislature of Great-Britain ... stimulated by an inordinate passion for a power not only unjustifiable, but what they know to be peculiarly reprobated by the very constitution of that kingdom... attempted to effect their cruel and impolitic purpose of enslaving these colonies by violence.”⁵² Clearly for the colonists, the struggle moved past a mere legal debate. The *Declaration* includes a list of offenses such as unjust taxation and the abolishment of trial by jury as evidence of Parliament’s dastardly designs. It took greatest issue with the Declaratory Act because of its claims of absolute power over the colonies.⁵³ The colonists clearly believed that the Parliament was trying to infringe upon American liberties.

However, even after the colonists had taken up arms against the army in Boston, reconciliation was still desired. The colonists took a strong stance, but promised, “we assure them that we mean not to dissolve that union which has so long and so happily subsisted between us, and which we sincerely wish to see restored.”⁵⁴ The colonists saw themselves as having to choose between, “an unconditional submission to the tyranny of irritated ministers, or resistance by force.”⁵⁵ This document clearly revealed a colonial

⁵¹ Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge, Massachusetts: The Belknap Press of Harvard University Press, 1967), 95.

⁵² *Declaration of the Causes and Necessity of Taking up Arms*, The Second Continental Congress, 1775.

⁵³ *Ibid.*

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

belief in a deliberate Parliamentary effort to destroy liberty in the colonies, but loyalty to the king had not yet been shaken.

The patriots, while intent upon defending their rights, did not seek independence before, to their horror, they became convinced of the king's complicity in the conspiracy. His support of the Quebec Act, which established Catholicism in Quebec, was very troubling to the vociferously anti-Catholic, Protestant colonies. The historical context of Catholic Stuart tyranny and Catholic Jacobite conspiracies caused colonists to see this act as a dangerous flirtation with Catholicism and tyranny.⁵⁶ However, the final straw came when the king considered his colonies to be in rebellion and employed "foreign mercenaries" to subject them while they still beseeched him for protection.⁵⁷ Convinced that the king had joined with Parliament to usurp power and destroy liberty, the colonies finally resorted to independence as they could conceive of no other way to preserve their freedoms and rights. The Americans expressed their belief that the King-in-Parliament had violated their constitutional rights in the Declaration of Independence.⁵⁸ The Declaration states, "When a long train of abuses and usurpations, pursuing invariably the same object evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government."⁵⁹ The colonists firmly believed that such was their situation and listed myriad complaints against the king in the Declaration of Independence.

⁵⁶ Brendan McConville, *The King's Three Faces*, 265, 288.

⁵⁷ *Ibid.*, 282, 286-287.

⁵⁸ James McClellan, *Liberty, Order, and Justice: An Introduction to the Constitutional Principles of American Government* (Indianapolis: Liberty Fund, 2000), 137.

⁵⁹ *The Declaration of Independence*, The Second Continental Congress, 1776.

Independence from Britain did not bring with it consensus on constitutional order.⁶⁰ Rather, Hobbesian and Althusian conceptions of political order continued to be pitted against each other. These two views waxed and waned in power as they struggled against each other. During the early national period led by Hamilton, a centralized conception of the union was ascendant. The Federalist implementation of the Alien and Sedition Acts gave opportunity for a reassertion of Althusian doctrines. Though no other states adopted them, the Kentucky and Virginia Resolutions of 1798 along with the subsequent Virginia Report articulated a conception of union consistent with the Althusian order described in Jefferson's *Summary View of the Rights of British America*. Though there are some exceptions, the presidency of Jefferson ushered in a time when the Althusian conception as articulated in the Kentucky and Virginia Resolutions was dominant. However, the Supreme Court propagated nationalistic policies throughout the period, especially in the eighteen-teens. In the 1820's with the election of John Quincy Adams and the increase of federally funded internal improvements, nationalism again seemed to be dominating.

In response to nationalistic policies, a significant distrust of the central government grew steadily in the south during the 1820s. The internal improvements pushed during the Adams administration and nationalist decisions of the Marshall court convinced many that the Constitution had become meaningless and that the federal government would now do whatever it pleased.⁶¹ During this time, the south, was becoming especially nervous of northern intentions and came to conceive of the north as

⁶⁰ Jack Greene, *Peripheries and Center*, 182, 198.

⁶¹ Richard Ellis, *The Union At Risk: Jacksonian Democracy, States' Rights, and the Nullification Crisis* (New York: Oxford University Press, 1987), 6-7.

a permanent majority bent on using the south for its own economic aggrandizement.⁶² The implementation of high tariffs in 1828 and 1832 convinced many in South Carolina that centralization had gone too far. These attitudes of distrust and apprehension prompted action. Though there were a multitude of leaders in the South Carolina nullification movement, among them Thomas Cooper, George McDuffie, and William Smith, the most prominent of these was John C. Calhoun. Calhoun was Jackson's Vice President until 1832, immediately before the nullification of the tariffs, and was immediately elected Senator upon his resignation of the Vice Presidency. As the greatest articulator and political theorist of the nullification movement, Calhoun authored an official enumeration of grievances and a plan for nullification passed as resolutions by the South Carolina legislature.⁶³ Clarifying his positions and adding to the body of thought on South Carolina's grievances and proposed remedy, Calhoun also published an open letter, remembered as "The Fort Hill Address", explaining his position.

In 1832, South Carolina leaders acted upon the nullification theory they had been developing for the last two years and nullified the federal tariffs of 1828 and 1832 they believed unconstitutional and detrimental to South Carolina's interests. This in turn sparked a great deal of debate and caused both sides to begin posturing for a violent clash. The ultimate resolution of this conflict is of little interest to the current question. What matters here is the degree to which the nullifiers, and especially Calhoun as their

⁶² Robert Turnbull, *The Crisis: Or Essays on the Usurpations of the Federal Government* (Charleston; Printed by A.E. Miller, 1827). John Taylor, *Tyranny Unmasked* (Indianapolis: Liberty Fund, 1992), 23. William Harper, *The Remedy by State Interposition or Nullification Explained and Advocated: in His Speech at Columbia, S.C. on the Twentieth of September 1830* (Charlestown: The State Rights and Free Trade Association, E.J. Van Brust, 1832), 14-18.

⁶³ Remembered as the "Exposition and Protest" these were actually two documents. The "Exposition" was an essay and the "Protests" were resolutions passed by the South Carolina General Assembly. John C. Calhoun, "Exposition and Protest" in *Union and Liberty: The Political Philosophy of John C. Calhoun*, ed. Ross M. Lence, (Indianapolis: Liberty Fund, 1992), 311.

greatest member, were true to their historical tradition. A careful examination of their arguments and position in the context of the history already presented will demonstrate that the nullification movement, while novel in the details of its plan, enjoyed the support of tradition, precedent, and history.

Calhoun and South Carolina's plan of action demonstrates an Althusian and decentralized conception of the union. The *South Carolina Exhibition*, Calhoun argued that in the event that the central government exercises powers not granted to it by the Constitution, the states may legitimately counter that usurpation of power. This state intervention was to be accomplished by a special convention.⁶⁴ This convention acting as the organ of the people of the state could choose to nullify, within the state's borders, the federal act in question. After such a convention, Calhoun propounded that the other states may either affirm the act of nullification or affirm the nullified act by amending the constitution to explicitly allow for the questioned power.⁶⁵ This mechanism was how Calhoun proposed protecting states from central government usurpation of power.

Calhoun grounded his nullification doctrine in an Althusian philosophy of the state. In his masterwork, *A Disquisition on Government*, written in the 1840s, he expressed his long held belief that man was a social being:

I assume, as an incontestable fact, that man is so constituted as to be a social being. His inclinations and wants, physical and moral, irresistibly impel him to associate with his kind; and he has, accordingly, never been found, in any age or country, in any state other than the social. In no other, indeed, could he exist; and in no other—were it possible for him to exist—could he attain to a full

⁶⁴ John C. Calhoun, "Exposition and Protest" in *Union and Liberty: The Political Philosophy of John C. Calhoun*, ed. Ross M. Lence, (Indianapolis: Liberty Fund, 1992), 351.

⁶⁵ *Ibid.*, 355-357.

development of his moral and intellectual faculties, or raise himself, in the scale of being, much above the level of the brute creation.⁶⁶

To be in isolation from other humans was an unnatural state. This presupposition led him to believe that governments were the creation of societies. Society maintained power over the government in this view and never gave up the sovereignty it possessed in delegating to government powers necessary to accomplish certain functions for the good of society.⁶⁷ Thus, he held an essentially Althusian conception of the state. In *Politica*

Althusius wrote:

Necessity therefore induces association; and the want of things necessary for life, which are acquired and communicated by the help and aid of one's associates, conserves it. For this reason it is evident that the commonwealth, or civil society, exists by nature, and that man is by nature a civil animal who strives eagerly for association. If however, anyone wishes not to live in society, or needs nothing because of his own abundance, he is not considered a part of the commonwealth.⁶⁸

Also in *Politica*, Althusius asserted "The Public association exists when many private associations are linked together for the purpose of establishing an inclusive political order."⁶⁹ The similarities between Althusius and Calhoun's position are obvious. Both placed sovereignty in organic societies and subjected government to society and its interests. This conception of society combined with a belief that the American union was a collection of separate peoples each maintaining their own sovereignty made it corollary in Calhoun's thought that any one state may authoritatively counter an action of the

⁶⁶ John C. Calhoun, *A Disquisition on Government in Union and Liberty: The Political Philosophy of John C. Calhoun*, ed. Ross M. Lence, (Indianapolis: Liberty Fund, 1992), 5.

⁶⁷ *Ibid.*, 5-6. John. C. Calhoun, "Speech Introducing Resolutions Declaratory of the Nature and Power of the Federal Government in the Senate." January 22, 1833, 21.

⁶⁸ Johannes Althusius, *Politica* (Indianapolis: Liberty Fund, 1995), 25.

⁶⁹ *Ibid.*, 39.

central government. However, he should not be seen as an opponent to popular sovereignty. Rather he supported popular sovereignty at the level of the community rather than simple majority rule by the entire population of the union. A majority of political communities would provide for the protection of community rights, but simple majoritarianism allowed for the abuse of minorities too easily and ignored the existence and rights of communities.⁷⁰

Nationalists viciously attacked this theory. They held that sovereignty resided in the people as a whole.⁷¹ This view was essentially similar to that expressed by the Parliament in the struggle for independence. While different in the trappings, it was a Hobbesian conception of the state. Proponents of this centralized position claimed Americans were all one people, just as Thomas Whateley had claimed regarding subjects of the British Empire. A basic tenet of social contract theory is that once individuals have entered into the social compact, no minority may legitimately resist the will of the majority.⁷² Thus, if ultimate power rested in the people as a whole, then the central government was supreme and the states were essentially administrative districts of the government in Washington, incapable of acting independently against oppressive federal actions. Calhoun and the other nullifiers though denied that a single American people joined by social contract existed. If, as they argued, the constitution only established a strong confederation of several peoples, each maintaining sovereignty within itself, then

⁷⁰ H. Lee Cheek, *Calhoun and Popular Rule: The Political Theory of the Disquisition and Discourse* (Columbia: University of Missouri Press, 2001), 118-121.

⁷¹ Benjamin Romaine, *State Sovereignty and a Certain Dissolution of the Union* (New York: J. Kennaday, 1832), 16; William W. Freehling, *Prelude to Civil War: The Nullification Controversy in South Carolina, 1816-1836* (New York: Cambridge University Press, 1989), 163-64.

⁷² Jean-Jacques Rousseau, *The Social Contract* (London: Penguin Books, 1968), 74

the central government was merely a creature of the states.⁷³ In such an arrangement the states were justified in nullifying acts of the central government that violated the Constitution.

All attempts to settle the question of whether America was constituted by a single or by several peoples, and thus discover the answer to that question's corollary implications on state power, began with historical inquiry of the nation's founding.⁷⁴ President Jackson took an ardently nationalistic stance on this issue.⁷⁵ He issued a formal declaration to the people of South Carolina in which he laid out a nationalist interpretation of American history. It stated, "the people of the United States formed the Constitution, ... the terms used in its construction show it to be a government in which the people of all the states collectively are represented," thus implying that there existed a single American people.⁷⁶ Jackson's understanding of the United States as a single nation rather than a confederation stems from his belief that as far back as the colonial period, the colonies had viewed themselves as a single nation and had entered into alliances together as a unit.⁷⁷ He believed strongly that the implicit unity of colonial America was made explicit by the Constitution and that any attempt at secession or nullification was completely illegitimate, as it would require one part of the nation to violate its obligations

⁷³ John C. Calhoun, "The Fort Hill Address" in *Union and Liberty: The Political Philosophy of John C. Calhoun*, ed. Ross M. Lence, (Indianapolis: Liberty Fund, 1992), 371, 378, 382; Benjamin Romaine, *State Sovereignty*, 16; William W. Freehling, *Prelude to Civil War: The Nullification Controversy in South Carolina, 1816-1836* (New York: Cambridge University Press, 1989), 163-64.

⁷⁴ Benjamin Romaine, *State Sovereignty*, 3.

⁷⁵ Richard Ellis, *The Union At Risk*, 83-87.

⁷⁶ Andrew Jackson, "Proclamation to the People of South Carolina," in *A Century of Lawmaking for a New Nation: U.S. Congressional Documents and Debates, 1774-1875*, <http://memory.loc.gov/cgi-bin/ampage> (accessed November 21, 2013), 589.

⁷⁷ *Ibid.*, 591.

to the whole.⁷⁸ Given Jackson's strongly nationalistic interpretation of the union's origin, he obviously could not allow Calhoun's doctrines.

Among the many other nationalist sources that could be cited Benjamin Romaine an attorney and native New Yorker is one of the most interesting since he was a veteran of the War for Independence and a prominent New York politician. He expressed views similar to Jackson's, arguing that the states had sought to replace the sovereignty of England with a new body during the struggle for Independence, and that the "Whole People" was the body upon which such power had come to rest. He also emphasized the transition from the Articles of Confederation, which had recognized state power, to the Constitution of 1787, which begins, "We The People of the United States."⁷⁹ Romaine argued that if there had been a common understanding that states had a veto prerogative, state Constitutions would mention this power, and since none did, no such power existed.⁸⁰

An authority on the historical development of the United States, James Madison was likely the nullifier's loftiest opponent. He did not believe in a single, organic American people, but rather that the Constitution had acted as a sort of social contract to create a single people for certain purposes out of the separate political communities of the several states. However, he believed that this compact left the states independent for purposes regarding internal concerns. He believed that nullifiers were attempting to redefine the nature of the regime and asserted that the Constitution, and with it the new

⁷⁸ Jackson, "Proclamation to the People of South Carolina," 589.

⁷⁹ Benjamin Romaine, *State Sovereignty and a Certain Dissolution of the Union*, 16.

⁸⁰ *Ibid.*, 26-27.

federal republic, was created not by the states but by the people.⁸¹ Madison held that the adoption of the Constitution by conventions indicated that the people, not the states, established the Constitution; if the states had created the central government, then the state legislatures would have ratified the Constitution.⁸² According to Madison, nullification theory was unconstitutional and unnecessary, because the Constitution already established a system of arbitration in the judiciary. Essentially, he believed that if the nullifiers had their way, the nation would be returned to the unstable and dangerous condition it had been in under the Articles.⁸³

This nationalistic onslaught did not dissuade the nullifiers, though. Calhoun wrote that his nullification doctrine “rest[ed] on facts historically as certain as our revolution itself.”⁸⁴ Nullifiers believed their position regarding sovereignty was consistent with the development of the nation from colonial times through the struggle for independence and the eventual adoption of the Constitution of 1787. They especially and rightly identified with the colonies struggle for independence. Thus, despite the naysaying of many influential and powerful individuals, they saw their position as consistent with history and tradition.

This sense of connection with history stretched back at least to the era of the struggle for independence. While describing what he believed was the permanent, sectional majority that the north had become in Congress, William Harper wrote, “propose to the people of the South ... that the States and people North of the Potomac

⁸¹ Drew McCoy, *The Last of the Fathers: James Madison and the Republican Legacy* (New York: Cambridge University Press, 1989), 132.

⁸² *Ibid.*, 134-35.

⁸³ *Ibid.*, 135,132.

⁸⁴ John C. Calhoun, “Fort Hill Address,” 371.

and North-West of the Ohio, have right and power to make laws to bind them in all cases whatsoever—and they foretell us the duration of ... the Union.”⁸⁵ This was language borrowed from the Declaratory Act passed by Parliament in 1766, which declared that Parliament had power “to make laws and statutes of sufficient force and validity to bind the colonies and people of America, subjects of the crown of Great Britain, in all cases whatsoever.”⁸⁶ Calhoun also alluded to the Revolution in his phraseology. Speaking of nullification, he said it would only be appropriate to resort to nullification if, “the alternative would be submission and oppression on one side, or resistance by force on the other.”⁸⁷ This is the same language employed in the *Declaration of the Causes and Necessity of Taking Up Arms* (1775): “We are reduced to the alternative of choosing an unconditional submission to the tyranny of irritated ministers, or resistance by force.”⁸⁸ By such language these South Carolinians were deliberately identifying with their forbears who struggled against parliamentary abuses in the 1760s and 1770s.

An analysis of the nullifiers’ argument reveals that the struggle for independence provided more than phrases and a surface-level association. Rather, the nullifiers had a deep-seated ideological association regarding principles of representation and protection with the colonists who threw off British rule. The essence of the colonial argument against parliamentary taxation is summed up in *The Declaration of Rights of the Stamp*

⁸⁵ William Harper, *The Remedy by State Interposition or Nullification Explained and Advocated: in His Speech at Columbia, S.C. on the Twentieth of September 1830* (Charlestown: The State Rights and Free Trade Association, E.J. Van Brust, 1832), 15-16.

⁸⁶ An Act for the Better Securing the Dependency of His Majesty’s Dominion in America upon the Crown and Parliament of Great Britain, 1766, 10 Geo. 3, c. 12.

⁸⁷ John C. Calhoun, “The Fort Hill Address,” 384.

⁸⁸ *Declaration of the Causes and Necessity of Taking up Arms*, The Second Continental Congress, (July 6, 1775).

Act Congress (1765): “That it is inseparably essential to the freedom of a people, and the undoubted rights of Englishmen, that no taxes should be imposed on them, but with their own consent, given personally, or by their representatives.”⁸⁹ The right to no taxation without representation recognized that if an interested party was not acting as representative, then there was nothing to prevent abusive taxation that would endanger liberty.

Similarly, Calhoun stated, “It is a fundamental political principle, that the power to protect can safely be confided only to those interested in protecting, or their responsible agents.”⁹⁰ He observed that the majority shapes and entirely controls the federal government because the majority either directly or indirectly elects every member of the government.⁹¹ Thus, the central government, if dominated by a permanent majority, did not qualify as a protective institution since it was not in the central government’s interest to protect the minority. Essentially, if instead of sharing common cause with their constituents, “protectors” stood to benefit by an exploitation of their charge, then disregard for rights could be expected. There is a common thread to these two assertions. Both demand representation of the people in the affairs of government by agents having common interests with their constituents.

Calhoun and many other southerners were convinced that the north had in fact become a permanent sectional majority and therefore the federal government was unable

⁸⁹ *The Declaration of Rights of the Stamp Act Congress*, The Stamp Act Congress, (October 19, 1765).

⁹⁰ John C. Calhoun, “The Fort Hill Address,” 379-380.

⁹¹ *Ibid.*, 380.

to protect the south's rights.⁹² Though the colonists literally had no representatives in Parliament and southerners did have representation in Congress, the same principle inspired the nullifiers that animated the founders. Just as the colonists could not be taxed without representation, the south could not be protected without representation, and since southerners were a permanent minority, they were in essence unrepresented in what was supposed to be a protective body. Thus nullifiers saw themselves as having common cause, that of being un-represented with the Patriots of Seventy-Six.

Clyde Wilson, professor emeritus at the University of South Carolina and editor of *The Papers of John C. Calhoun*, observes the similarity between the situation of the colonists' struggle for independence and the perceived situation of South Carolinians. He notes that Robert Turnbull convinced South Carolinians that they were being oppressed by the central government; by oppression he meant "the taking from the citizens of what was theirs by abuse of the authority that was delegated for the purpose of protecting the citizens in the enjoyment of what was theirs." He notes that the same belief motivated Americans to pursue independence in response to a "trifling tax."⁹³ Speaking of South Carolinians' belief in their own oppression, Wilson states, "This was exactly the kind of situation in which tradition called upon freemen to resist."⁹⁴ Just as their forefathers faced unjust taxation at the hands of a distant power and thrown off the burden in an effort to preserve liberty from power, South Carolinians roused themselves to counter this intrusion of their sovereignty and danger to their liberty and prosperity. Thus the

⁹² William Harper, *The Remedy*, 14-15. Freehling, *Prelude to Civil War*, 199. John C. Calhoun, "The Fort Hill Address," 386, 388.

⁹³ Clyde Wilson, introduction to *The Papers of John C. Calhoun* vol. 10, ed. Clyde N. Wilson and W. Edwin Hemphill (Columbia: University of South Carolina Press, 1977), xliii.

⁹⁴ *Ibid.*

nullifiers acted consistently with historical precedent when they, believing themselves to be oppressed by a legislative body in which they were essentially not represented, took steps to protect their liberties and sovereignty.

Issues of protection and representation were inherently interwoven with the broader contest between Hobbesian and Althusian conceptions of the constitution. The Nullifiers were well aware of the similarity between their situation and that of their forbears in the Revolution era. Their sense of connection to their history was both a motivation of their actions and the source of many of their most compelling arguments against the nationalists. Thus no matter the accusation, this republican theory must be treated as a legitimate option to be tested rather than a mere chimera invented to meet selfish ends. There is the simple and incontrovertible fact that as of the 1770s thirteen distinct political communities existed in what would become the United States. During the colonial era, these communities had never been a single entity either politically or culturally.⁹⁵

There is also plenty of room within the historical record to support the position that these separate political communities of the colonies had never been merged into a single political community throughout the founding era. The Declaration of Independence did not indicate a common nationality as some argued but rather “the new states were only united in the sense of an informal and non-legally binding collaboration meant to achieve various common goals such as fighting for and recognizing their

⁹⁵ David Hackett Fischer, *Albion's Seed: Four British Folkways in America* (New York: Oxford University Press, 1989). Fisher has demonstrated thoroughly the existence of four primary and thoroughly different folk cultures in the English speaking colonies.

sovereign independence.”⁹⁶ In the 18th century all nouns were still capitalized, and the Declaration capitalized “States” but not “united.” Thus “united” was an adjective describing the newly independent states’ solidarity in opposing their common foe, England.⁹⁷ As completely independent nations the states would have of course exercised full sovereignty at this time.

The Articles of Confederation was the first legally binding combination of the states. However, it scrupulously maintained the sovereignty of each member. Article II stated: “Each State retains its sovereignty, freedom and independence, and every Power, Jurisdiction and right, which is not by this confederation expressly delegated to the United States, in Congress Assembled.”⁹⁸ Hayworth notes that the listing the name of each state in the document indicates that this was viewed as an international treaty amongst independent nations.⁹⁹ The nullifiers had a great deal of historical evidence from the struggle for independence to support their belief that sovereignty resided in the people of the several states.

Informed by this perception of American development, Calhoun believed that the Constitution of 1787 had not changed the nature of the states nor their relation to each other. He held that since the states preceded the central government, it “was created by

⁹⁶ Peter Hayworth, “The Confederal Constitution of the United States: A Review of John C. Calhoun and the Confederation Thesis,” *The Political Science Reviewer* 39, no.1 (Fall 2010): 47.

⁹⁷ *Ibid.*, 47-48.

⁹⁸ The Articles of Confederation, Article II.

⁹⁹ Hayworth, “The Confederal Constitution of the United States,” 50. He also notes that treaties with European powers from this period were actually several treaties between the power and each individual American State.

their [the states'] agency."¹⁰⁰ He expressly rejected the idea that the states had forged themselves into a single nation by ratifying the Constitution, since the convention deliberately rejected the term "National" for the title of the Constitution and kept the terminology of "United States."¹⁰¹ Tracing the employment of the name "United States of America" through the Declaration of Independence, the Articles of Confederation, and the Constitution of 1787, he stated, "The retention of the same style, throughout every stage of their existence, affords strong, if not conclusive evidence that the political relation between these States, under their present constitution and government, is substantially the same as under the confederacy and revolutionary government."¹⁰² Also, he believed "the changes made by the present Constitution were not in the foundation but in the superstructure of the system."¹⁰³ Calhoun's interpretation of the historical fact that the Constitution was ratified by state conventions differed significantly from Madison's. Whereas Madison and other nationalists believed that these conventions evidenced ratification by the people as a whole, Calhoun put great emphasis upon the fact that they were held at the state level. This meant to him that the people of the several states, the same authority that had called the state government into existence, had given their consent to the federal government.¹⁰⁴

This last point is important in its details as it is often misunderstood and thought to be a critical weakness in Calhoun's theory. An insufficiently careful reading of

¹⁰⁰ John C. Calhoun, "Discourse," 81.

¹⁰¹ *Ibid.*, 82-83.

¹⁰² *Ibid.*, 83-84.

¹⁰³ *Ibid.*, 85.

¹⁰⁴ *Ibid.*, 86-87.

Calhoun's position can lead one to believe that he argued that the state governments had created the central government as they had under the Articles of Confederation; it seems Madison may have had this misunderstanding.¹⁰⁵ Contributing to this conclusion is that the compact theory of the union, in positing that the states created the union, can sound very much like a simple confederacy, and indeed Calhoun regularly referred to the union with such terminology. The fact that the people had in fact given sovereignty directly to the central government was often proffered as a rebuttal of Calhoun's theory that a single state could nullify a federal law. However, Calhoun never asserted that the state government and not the people had created the central government. Rather, he affirmed the sovereignty of the people in creating the central government: "The people of the States have, indeed, delegated a portion of their sovereignty, to be exercised conjointly by a General Government, and have retained the residue to be exercised by their respective States Governments."¹⁰⁶ On those occasions when Calhoun spoke of the States creating the government he meant the people of the states, the true political community that is the state, not the internal government each community established. If the union were a simple confederacy, the state governments would have created the central government; however, his recognition that the people directly invested authority in the central government when they called it into being brings him closer to the Madisonian doctrine of split sovereignty.

Where Madison and Calhoun differ is not in their positions on the source of authority but rather on the effect the Constitution had upon the sovereignty of the people.

¹⁰⁵ McCoy, *The Last of the Fathers: James Madison and the Republican Legacy*, 134.

¹⁰⁶ John C. Calhoun, "Speech Introducing Resolutions Declaratory of the Nature and Power of the Federal Government in the Senate," January 22, 1833, in *The Papers of John C. Calhoun* Vol. 12, ed. Clyde N. Wilson (Columbia: University of South Carolina Press, 1979), 21.

Madison believed that the Constitution created out of the several peoples, a single people for “certain purposes.” Thus a single state could not nullify a national law, because it was not the entire sovereign people that had created the union.¹⁰⁷ Calhoun maintained that the people of each state, in imparting authority to the central government and entering into a pact with peoples of other states, had never surrendered their individual identity to become part of a corporate whole. Therefore, each state never lost its individual sovereignty: “to delegate is not to part with or to impair power. The delegated power in the agent is as much the power of the principal as if it remained in the latter, and may, as between him and his agent be controlled or resumed at pleasure.”¹⁰⁸ Against the idea that the Constitution itself had created a single people, he stated:

No such community ever existed as the people of the United States, forming a collective body of individuals in one nation; and the idea that they are so untied by the present Constitution as a social compact, as alleged by the proclamation, is utterly false and absurd. To call the Constitution the social compact, is the greatest possible abuse of language. No two things are more dissimilar; there is not an expression in the whole science of politics, more perfectly definite in its meaning than the social compact. It means that association of individuals, founded on the implied assent of all its members, which precedes all Government, and from which Government or the constitutional compact springs.¹⁰⁹

Calhoun’s conception of the nature of a social compact made it impossible to suppose that the Constitution was the social compact creating a single American people. Clearly, Calhoun and the nullifiers were correct in their understanding of the historical source of the central government’s power—otherwise Madison was also wrong. The differences between the Father of the Constitution and Calhoun were thus on technical questions of political science and the definitions of *constitution* and *social contract*. These are

¹⁰⁷ Drew McCoy, *The Last of the Fathers*, 135.

¹⁰⁸ John. C. Calhoun, “Speech Introducing Resolutions Declaratory of the Nature and Power of the Federal Government in the Senate.” January 22, 1833, 21.

¹⁰⁹ *Ibid.*, 21.

questions that simple historical inquiry cannot answer. What historical analysis does show us though, is that Calhoun's edifice of political science rested upon a solid historical foundation.

The above observations do not exhaust the historical incidents Calhoun cited in defense of his position. He noted that North Carolina and Rhode Island had refused to ratify the Constitution till much later than the other states and for a time were considered independent, foreign nations.¹¹⁰ If the people as a whole had ratified the Constitution then even those states that had not ratified would have been compelled to join the union. Since this historically was not the case, though, nullifiers believed that the states had maintained sovereignty even under the Constitution of 1787. The fact that Virginia, New York, and Rhode Island had provisions for secession in their ratification bills also supports Calhoun's belief that the states had maintained sovereignty.¹¹¹ Calhoun's theory was not as radical as some believed; it flowed logically from certain premises that were historically verifiable.

The nullifiers also saw their doctrine as being in the vein of Jeffersonian Republicanism, rather than as a radical diversion from precedent. William Harper appealed to Madison's Report of 1799.¹¹² The Report stated that sovereignty resided in the people of the several states. It defined a state as "the people composing those political societies, in their highest sovereign capacity" and declared, "the Constitution was

¹¹⁰ John C. Calhoun, "Discourse," 87.

¹¹¹ Donald W. Livingston, "The Very Idea of Secession," *Society* 35, no. 5 (July 1998): 42. This entire article is excellent background to the thought of the nullifiers. Livingston traces the concept of secession and nullification throughout the colonial and antebellum period providing far more historical examples than can be included in this paper.

¹¹² William Harper, *The Remedy*, 16.

submitted to the ‘states,’ ... the ‘states’ ratified it; and, ... they are consequently parties to the compact, from which the powers of the federal government result.”¹¹³ Harper esteemed Jefferson even higher than Madison, calling Jefferson the “master” of “a true and thorough comprehension of the genius and working of our confederate system.”¹¹⁴ In the Kentucky Resolutions, Jefferson expressed ideas incredibly similar to those espoused by nullifiers:

... Where powers are assumed which have not been delegated, a nullification of the act is the rightful remedy: that every State has a natural right... to nullify of their own authority all assumptions of power by others within their limits: that without this right they would be under the dominion, absolute and unlimited, of whosoever might exercise this right of judgment for them: ... [the States] alone being parties to the compact, and solely authorized to judge the last resort of the powers exercised under it, Congress being not a party, but merely the creature of the compact, and subject as to its assumptions of power to the final judgment of those by whom, and for whose use itself and its powers were all created and modified...¹¹⁵

In the same document the Kentucky Legislature declared the Alien and Sedition Acts, “not law, but ... altogether void and of no force.”¹¹⁶ Here was the same idea of sovereignty expressed by the nullifiers.¹¹⁷

Calhoun not only found justification for his position in these documents, he believed a general and great constitutional crisis was already underway due to an abandonment of the doctrines propounded in them. On January 12, 1833, he wrote to

¹¹³ Virginia House of Delegates, “Report of 1799” (Richmond, 1799).

¹¹⁴ William Harper, *The Remedy*, 16.

¹¹⁵ Thomas Jefferson, “Fair Draft of the Kentucky Resolutions” in *The Works of Thomas Jefferson, Federal Edition* Vol. 8 (New York and London: G.P. Putnam’s Sons, 1904-5) <http://oll.libertyfund.org/title/805/87162> (accessed November 20, 2013).

¹¹⁶ *Ibid.*

¹¹⁷ John C. Calhoun, “The Fort Hill Address,” 378, 382.

Bolling Hall, a former Representative from Georgia, “ Never did I dream that I would live to see a change so great and deplorable. The Constitution is a dead letter; and in its place is substituted the will of an unchecked, unlimited and interested majority.”¹¹⁸ The next day he wrote to Samuel D. Ingham a former Secretary of the Treasury:

Who can look at this great and growing country, and not weep to see it sinking into the lowest stage of political degeneracy? The fault is not with the people. They are honest, industrious, intelligent and patriotic. It is to be found in our departure from the great republican principles of [17]98; and thereby practically converting our confederative system into a great consolidated government, without limitation of powers or constitutional check.¹¹⁹

Calhoun expressed the belief that the nation had experienced a similar crisis in the 1790s and believed the American experiment would have failed long before had not the election of Jefferson set things to right. Calhoun said, “ But the time had at length come when we are required to decide whether this shall be a confederacy any longer, or whether it shall give way to a consolidated Government.”¹²⁰ He believed that a reassertion of the sovereignty and separateness – which he believed to be expressed in the Virginia and Kentucky resolutions – of the several states was necessary to the preservation of the liberty of the nation. Thus, not only did the nullifiers find support for their position in the history of the nation’s founding but also in more recent history and republican tradition.

Madison was repulsed and disturbed however, to see his name brandished as an authoritative propounder of the nullifiers’ position. His positions on political issues in the 1790s as a Democratic Republican party leader and especially his statements in the

¹¹⁸ Calhoun to B[olling] Hall, Washington, January 12, 1833, in *The Papers of John C. Calhoun*, ed. Clyde Wilson, (Columbia: University of South Carolina Press, 1979), 7.

¹¹⁹ Calhoun to S[amuel] D. Ingham, Washington, January 13, 1833, *The Papers of John C. Calhoun*, ed. Clyde Wilson, (Columbia: University of South Carolina Press, 1979), 8.

¹²⁰ John C. Calhoun, “Remarks on the President’s Message on South Carolina,” January 16, 1833, in *The Papers of John C. Calhoun* Vol. 12, ed. Clyde N. Wilson (Columbia: University of South Carolina Press, 1979), 13.

Virginia Resolutions of 1798 seemed to indicate that he was a supporter of the same positions as the Nullifiers. However, Madison is a sort of enigma. Contrasting with some of his incredibly states' rights positions, he was ardently nationalist during the creation and adoption of the Constitution of 1787 and again in the 1830s in response to Nullification doctrine. This apparent undulation on Constitutional issues is a dominant theme in Madisonian historiography. Many have found Madison to be at least fundamentally consistent in his stance on these issues, but the historical community has yet to reach consensus on this point.¹²¹

It is even harder to judge whether Jefferson would have actually supported such policies because unlike Madison, he had died before his name was invoked by the nullifiers and thus was unable to weigh in himself. Madison attempted to save his friend from accusations of supporting such policies, but John Quincy Adams did indeed see him as responsible for the nullification doctrine.¹²² He explicitly wrote to Edward Everett, "Jefferson was the father of South Carolina Nullification, which points directly to the dissolution of the union."¹²³ Not only did Jefferson appear to support strong states rights doctrines in the Kentucky Resolution, but also late in life he had written letters to Governor Giles of Virginia in which he spoke of secession from the union as a viable option in cases of extreme need. In fairness to Jefferson he also stated within the same

¹²¹ For an overview of Madisonian historiography dealing with his consistency and nationalism see, Alan Gibson, "The Madisonian Madison and the Question of Consistency: The Significance and Challenge of Recent Research," *The Review of Politics* 64, no. 2 (Spring 2002): 311. Kevin Gutzman's *James Madison and the Making of America* (New York: St. Martin's Press, 2012) is the strongest recent representation of scholarship asserting contradictions in Madison's positions.

¹²² Drew McCoy, *The Last of the Fathers*, 143-147.

¹²³ John Quincy Adams to Edward Everett, Charlestown, October 10, 1836, in Ralph L. Ketcham and John Quincy Adams, "Jefferson and Madison and the Doctrines of Interposition and Nullification: A Letter of John Quincy Adams," *The Virginia Magazine of History and Biography* 66, no. 2 (Apr. 1958): 182.

letter that “the States should be watchful to note every material usurpation on their rights . . . to protest against them as wrongs to which our present submission shall be considered, not as acknowledgments or precedents of right, but as a temporary yielding to the lesser evil, until their accumulation shall outweigh that of separation.”¹²⁴ This suggests that perhaps such a protest is what he envisioned the Kentucky and Virginia Resolutions to be. However, this is not certain, especially considering the strong language of those documents. Jefferson’s statements in this letter, while leaving no doubt that he thought secession legitimate in extreme circumstances, leave open the possibility that he thought of secession not as a constitutional right, but as an undeniable natural right integrally related to the natural right to rebellion. If the latter was his intention, Jefferson was in essential agreement with Madison on this topic.¹²⁵ His talk of enduring usurpation with peaceful protest seems to weaken claims the nullifiers have on him as a supporter of their doctrine.

However, despite the outright denunciation of Madison and the questionability of Jefferson’s support, the nullifiers were not out of order to believe the Virginia and Kentucky Resolutions and Reports supported their position. If nothing else, the premises of those documents and Calhoun’s theory of Nullification were the same at least in so far that they held to a compact nature of the union. The Kentucky and Virginia Resolutions expressed the same Althusian conception Jefferson had argued for in *The Summary View of the Rights of British America* and ensured that such conceptions were firmly carried into the national period. The structure of the premises and arguments of the documents of

¹²⁴ Jefferson to William Branch Guiles, Monticello, December 26, 1825, in *Thomas Jefferson: Writings*, ed. Merrill D. Peterson, (New York: The Library of America, 1984), 1,511.

¹²⁵ Drew McCoy, *The Last of the Fathers*, 136.

'98 left room for an honest interpreter to come to Calhoun's conclusions from them.¹²⁶ In that Madison, Jefferson, and Calhoun all started with the same foundational historical facts, the nullifiers' reliance on the Spirit of '98 was reasonable and legitimately added a degree of historical support to their position even if it only provided an authoritative refutation of the sort of nationalism that claimed the people of the United States formed the nation as a single people.

In the early 1830s Calhoun summarized the entire nature of the question before the United States when he stated, "Stripped of all its covering, the naked question is, whether ours is a federal or a consolidated government; a constitutional or absolute one; a government resting ultimately on the solid basis of the sovereignty of the States, or on the unrestrained will of a majority..."¹²⁷ As demonstrated, this position was grounded in a political theory fundamentally different from that of the unitary political theory of nationalists. That the same dichotomy of political theory between the Hobbesian and Althusian state existed in the 1760s and 1770s demonstrates a continuity of this struggle between dispersed and consolidated political theories in American politics. This obvious chain releases the nullifiers from accusations of being mere reactionaries and places them in the same tradition as Jefferson and the American Revolution.

¹²⁶ Richard E. Ellis, *The Union at Risk: Jacksonian Democracy, States' Rights and the Nullification Crisis* (New York: Oxford University Press, 1987), 4-5.

¹²⁷ Calhoun, "The Fort Hill Address", 383.

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