AMERICAN CONSTITUTIONALISM

VOLUME I: STRUCTURES OF GOVERNMENT

Howard Gillman • Mark A. Graber • Keith E. Whittington

Supplementary Material

Chapter 5: The Jacksonian Era – Federalism/State Authority to Interpret the Constitution

*John C. Calhoun*, “**Fort Hill Address”** (1831)[[1]](#footnote-1)

John C. Calhoun of South Carolina started his career as a “War Hawk” during the War of 1812. He made common cause with other young nationalists such as Henry Clay and Daniel Webster. The three supported federal policies such as protective tariffs and internal improvements aimed at building national strength. By the 1820s, tariff rates had been raised to unprecedented levels. They were no longer justified as short-term measures to nurture “infant industries” but as permanent features of American political economy. South Carolina turned hostile to federal economic policies that subsidized Northern manufacturing interests. Calhoun turned as well. He became the leading spokesman and theorist of conservative Southern constitutionalism and compact theory.

The “Fort Hill Address” was Calhoun’s first public statement on nullification. He presented nullification as the natural extension of the Virginia and Kentucky Resolutions of 1798. In contrast to Jefferson, Calhoun’s theory required a special, popular state convention (rather than the state legislature) to determine whether the federal law in question was unconstitutional and to determine the appropriate action that the state could make. Is nullification a natural extension of the Virginia and Kentucky Resolutions of 1798? Is state nullification a less reasonable inference from the constitutional scheme than the power of judicial review?

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The great and leading principle is, that the General Government emanated from the people of the several States, forming distinct political communities, and acting in their separate and sovereign capacity, and not from all of the people forming one aggregate political community; that the Constitution of the United States is, in fact, a compact, to which each State is a party, in the character already described; and that the several States, or parties, have a right to judge of its infractions; and in case of a deliberate, palpable, and dangerous exercise of power not delegated, they have the right, in the last resort, to use the language of the Virginia Resolutions, “to interpose for arresting the progress of the evil, and for maintaining, within their respective limits, the authorities, rights, and liberties appertaining to them.” This right of interposition, thus solemnly asserted by the State of Virginia, be it called what it may—State-right, veto, nullification, or by any other name—I conceive to be the fundamental principle of our system, resting on facts historically as certain as our revolution itself, and deductions as simple and demonstrative as that of any political, or moral truth whatever; and I firmly believe that on its recognition depend the stability and safety of our political institutions.

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It has been well said by one of the most sagacious men of antiquity, that the object of a constitution is, to restrain the government, as that of laws is to restrain individuals. The remark is correct; nor is it less true, where the government is vested in a majority, than where it is in a single or a few individuals—in a republic, than a monarchy or aristocracy. No one can have a higher respect for the maxim that the majority ought to govern than I have, taken in its proper sense, subject to the restrictions imposed by the Constitution, and confined to objects in which every portion of the community have similar interests; but it is a great error to suppose, as many do, that the right of a majority to govern is a natural and not a conventional right; and, therefore absolute and unlimited. By nature, every individual has the right to govern himself; and governments, whether founded on majorities or minorities, must derive their right from the assent, expressed or implied, of the governed, and be subject to such limitations as they may impose. Where the interests are the same, that is, where the laws that may benefit one, will benefit all, or the reverse, it is just and proper to place them under the control of the majority; but where they are dissimilar, so that the law that may benefit one portion may be ruinous to another, it would be, on the contrary, unjust and absurd to subject them to its will; and such, I conceive to be the theory on which our Constitution rests.

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Should the General Government and a State come into conflict, we have a higher remedy: the power which called the General Government into existence, which gave it all of its authority, and can enlarge, contract, or abolish its powers at its pleasure, may be invoked. The States themselves may be appealed to—three-fourths of which, in fact, form a power, whose decrees are the Constitution itself, and whose voice can silence all discontent [by amending the Constitution]. . . . [T]o avoid the supposed dangers of [appealing to the states], it is proposed to resort to the novel, the hazardous, and, I must add, fatal project of giving to the General Government the sole and final right of interpreting the Constitution—thereby reversing the whole system, making that instrument the creature of its will, instead of a rule of action impressed on it at its creation, and annihilating, in fact, the authority which imposed it, and from which the Government itself derives its existence.

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In examining this point, we ought not to forget that the Government, through all its departments, judicial as well as others, is administered by delegated and responsible agents; and that the power which really controls, ultimately, all the movements is not in the agents, but those who elect or appoint them. To understand, then, its real character, and what would be the action of the system in any supposable case, we must raise our view from the mere agents to this high controlling power, which finally impels every movement of the machine. . . . The judges are, in fact, as truly the judicial representatives of this united majority, as the majority of Congress itself, or the President, is its legislative or executive representative; and to confide the power to the Judiciary to determine finally and conclusively, what powers are delegated, and what reserved, would be, in reality, to confide it to the majority, whose agents they are, and by whom they can be controlled in various ways; and, of course, to subject (against the fundamental principle of our system and all sound political reasoning) the reserved powers of the States, with all of the local and peculiar interests they were intended to protect, to the will of the very majority against which the protection was intended. Nor will the tenure by which the judges hold their office, however valuable the provision in many other respects, materially vary the case. Its highest possible effect would be to retard, and not finally to resist, the will of a dominant majority.

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. . . 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; a form of government, as in all other unlimited ones, in which injustice, and violence, and force must finally prevail. Let it never be forgotten that, where the majority rules, the minority is the subject; and that, if we should absurdly attribute to the former, the exclusive right of construing the Constitution, there would be, in fact, between the sovereign and subject, under such a government, no Constitution; or, at least, nothing deserving the name, or serving the legitimate object of so sacred an instrument.

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1. Excerpt taken from John C. Calhoun, “Address on the Relation Which the States and the Federal Government Bear to Each Other,” July 26, 1831, in Richard C. Cralle, Works of John C. Calhoun, vol. 6 (New York: D. Appleton and Company, 1855), 59. [↑](#footnote-ref-1)