AMERICAN CONSTITUTIONALISM

VOLUME I: STRUCTURES OF GOVERNMENT

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Supplementary Material

Chapter 5: The Jacksonian Era – Federalism

**Andrew Jackson, Proclamation on Nullification** (December 10, 1832)

*President Andrew Jackson’s reaction to the nullification crisis was crucial and not easily predicted from his previous actions and pronouncements. Jackson was not a strong supporter of protectionist tariffs, but neither had he opposed them. For nearly a decade, the federal government tolerated South Carolina’s negro seamen’s laws, despite the opinion of a Supreme Court justice and an attorney general that they effectively nullified federal law and American treaties. Jackson publicly stood by while Georgia ignored such Supreme Court decisions as* Worcester v. Georgia *(1832), which asserted federal supremacy over Indian tribes within the state borders. These actions gave South Carolinians reason for thinking that Jackson might look the other way during the nullification crisis. His 1832 State of the Union message, delivered on December 4, praised states’ rights and recommended that tariffs be slashed. Now-Congressman John Quincy Adams declared the message “a complete surrender to the Nullifiers of South Carolina.”*[[1]](#footnote-1)

*Adams was almost immediately proven wrong. Jackson leaped into the fray a week later. He sharply condemned nullification. Nullification of the tariff directly challenged the president’s responsibility to collect the federal revenue. The South Carolina government also miscalculated when calling out the state militia to support the nullification ordinance, hoping a show of force would encourage the federal government to back down. Instead, the former general who lived in the White House denounced the action as “positive treason” and threatened to raise an army of “two hundred thousand men” that would crush the opposition. Spurning his usual advisors (who were sympathetic to states’ rights even if critical of nullification), Jackson drafted a boldly nationalist proclamation. Nullification was equivalent to secession, and secession was equivalent to treason. Congress was to be checked by the presidential veto, not state nullification. Why didn’t Jackson point to the courts as a check on national power?*

. . . .

The [state nullification] ordinance is founded, not on the indefeasible right of resisting acts which are plainly unconstitutional and too oppressive to be endured, but on the strange position that any one State may not only declare an act of Congress void, but prohibit its execution; that they may do this consistent with the Constitution. . . .

If this doctrine had been established at an earlier day, the Union would have been dissolved in its infancy. The excise law in Pennsylvania, the embargo and nonintercourse law in the Eastern States, the carriage tax in Virginia, were all deemed unconstitutional, and were more unequal in their operation than any of the laws now complained of; but, fortunately, none of those States discovered that they had the right now claimed by South Carolina.[[2]](#footnote-2) . . .

In our colonial state, although dependent on another power, we very early considered ourselves as connected by common interest with each other. Leagues were formed for common defense, and before the declaration of independence we were known in our aggregate character as the United Colonies of America. That decisive and important step was taken jointly. We declared ourselves a nation by a joint, not by several acts. . . .

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I consider, then, the power to annul a law of the United States, assumed by one State, incompatible with the existence of the Union, contradicted expressly by the letter of the Constitution, unauthorized by its spirit, inconsistent with every principle on which it was founded, and destructive of the great object for which it was formed.

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The Constitution has given, expressly, to Congress the right of raising revenue and of determining the sum the public exigencies will require. The States have no control over the exercise of this right other than that which results from the power of changing the representatives who abuse it, and thus procure redress. Congress may undoubtedly abuse the discretionary power; but the same may be said of others with which they are vested. Yet the discretion must exist somewhere. The Constitution has given it to the representatives of all the people, checked by the representatives of the States and by the Executive power. The South Carolina construction gives it to the legislature or the convention of a single State, where neither the people of the different States, nor the States in their collective capacity, nor the Chief Magistrate elected by the people have any representation. Which is the most discreet disposition of the power? I do not ask you, fellow-citizens, which is the constitutional disposition; that instrument speaks in a language not to be misunderstood. . . .

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 . . . [The nullification ordinance not only asserts] the right to annul the laws of which it complains, but to enforce it by a threat of seceding from the Union if any attempt is made to execute them.

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The Constitution of the United States . . . forms a government, not a league; and whether it be formed by compact between the States or in any other manner, its character is the same. It is a Government in which all the people are represented, which operates directly on the people individually, not upon the States; they retained all the power they did not grant. But each State, having expressly parted with so many powers as to constitute, jointly with the other States, a single nation, can not, from that period, possess any right to secede, because such secession does not break a league, but destroys the unity of a nation; and any injury to that unity is not only a breach which would result from the contravention of a compact, but it is an offense against the whole Union.

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1. . Quoted in Richard E. Ellis, The Union at Risk (New York: Oxford University Press, 1989), 83. [↑](#footnote-ref-1)
2. . The “excise tax in Pennsylvania” refers to the tax that led to several tax protests in Pennsylvania during the Washington administration, including the “Whiskey Rebellion.” On the Jeffersonian “embargo and nonintercourse law,” see United States v. The William, 28 F. Cas. 614 (D. Mass. 1808). On the Federalist carriage tax, see Hylton v. United States (1796). [↑](#footnote-ref-2)