AMERICAN CONSTITUTIONALISM
VOLUME I: STRUCTURES OF GOVERNMENT
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Supplementary Material

Chapter 5: The Jacksonian Era – Federalism

Andrew Jackson, **Proclamation on Nullification** (1832)[1]

In 1832, nullifiers swept the state elections in South Carolina, and the legislature called a state convention. In November of that year, the special convention endorsed a resolution denouncing the federal protective tariff as unconstitutional and unenforceable within the boundaries of the state. The convention set a deadline of February 1 for its resolution to take effect. All sides recognized that the position of President Andrew Jackson would be critical to how the nullification crisis would be resolved. Jackson was not a strong supporter of protectionist tariffs, but neither had he opposed them. For nearly a decade the federal government had 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, and Jackson's own attorney general had gone further still and endorsed South Carolina's actions as constitutional (see "The Negro Seamen's Acts": A Case Study, in our supplementary materials). Moreover, Jackson had publicly stood by while Georgia ignored Supreme Court decisions asserting federal supremacy over Indian tribes within the state borders. Perhaps Jackson would similarly look the other way during the nullification crisis. His state of the union message, delivered on December 4, included its usual praise of states' rights and a recommendation that tariffs be slashed, leading then-Congressman John Quincy Adams to declare it "a complete surrender to the Nullifiers of South Carolina."[2]

But to Jackson, nullification was different. The president was not going to sit out the crisis. Instead, he leaped into the fray. Nullification of the tariff directly challenged the president's responsibility to collect the federal revenue, and he took it as a personal affront by his spurned former vice president, John C. Calhoun. The South Carolina government also miscalculated in 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.[3]

Spurning his usual advisors (who were sympathetic to states' rights, even if critical of nullification itself), Jackson turned to Secretary of State Edward Livingston (who had denounced nullification during the Webster-Hayne debates in the Senate) to draft a boldly nationalist proclamation on nullification. This Jacksonian flirtation with the constitutional theories of John Marshall and Daniel Webster did not last, but it captured the president's mood at the moment. Nullification was equivalent to secession, and secession was equivalent to treason. Congress was to be checked by the presidential veto, not state nullification.

The crisis was resolved by compromise. Congress simultaneously passed a Force Bill authorizing the president to use military force to collect the revenue and the Compromise Tariff that gradually reduced tariff rates to a revenue-only basis. Meanwhile, South Carolina declared the Force Bill unconstitutional, but suspended its resolution on tariff. South Carolina had achieved its objective of shifting the country toward free trade—a position that would become a central feature of the Democratic Party platform—but there would be little support in the future for the doctrine of nullification.

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[1] Andrew Jackson, "Proclamation, December 10, 1832," in *A Compilation of the Messages and Papers of the Presidents*, ed. James D. Richardson, vol. 3 (New York: National Bureau of Literature, 1897), 1203–1219.
[2] John Quincy Adams, *Memoirs*, vol. 8 (Philadelphia: J. B. Lippincott & Co., 1876), 503.
[3] Chauncey Samuel Boucher, *The Nullification Controversy in South Carolina* (Chicago: University of Chicago Press, 1916), 235.

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.[4] . . .

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 t*he United Colonies of America*. That decisive and important step was taken jointly. We declared ourselves a nation by a joint, not by several acts . . . .

Under the Confederation . . . no State could legally annul a decision of the Congress or refuse to submit to its execution; but no provision was made to enforce these decisions. . . .

But the defects of the Confederation need not be detailed. Under its operation we could scarcely be called a nation. We had neither prosperity at home nor consideration abroad. This state of things could not be endured, and our present happy Constitution was formed, but formed in vain if this fatal doctrine prevails. . . .

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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[4] The "excise tax in Pennsylvania" refers to the federal whiskey tax that led to several tax "rebellions" in Pennsylvania during the Washington administration. The Jeffersonian "embargo and nonintercourse law" was upheld by a federal district judge in Massachusetts. The carriage tax refers to an excise tax on carriages, which was legally challenged and upheld by the Supreme Court in 1796.

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Fellow citizens of the United States, the threat of unhallowed disunion, the names of those once respected by whom it is uttered, the array of military force to support it, denote the approach of a crisis in our affairs on which the continuance of our unexampled prosperity, our political existence, and perhaps that of all free governments may depend. . . . I rely . . . on your undivided support in my determination to execute the laws, to preserve the Union by all constitutional means, to arrest, if possible by moderate and firm measures the necessity of a recourse to force; and if it be the will of Heaven that the recurrence of its primeval curse on man for the shedding of a brother's blood should fall upon our land, that it be not called down by any offensive act on the part of the United States….