AMERICAN CONSTITUTIONALISM
VOLUME I: STRUCTURES OF GOVERNMENT
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Supplementary Material

Chapter 5: The Jacksonian Era – Federalism

South Carolina Exposition and Protest (1828)[1]

In the final days of the John Quincy Adams administration, Congress passed the Tariff of 1828, which soon became known in the South as the "Tariff of Abominations." The tariff bill established high protectionist duties on a wide range of goods and was justified by its supporters as an appropriate and essential part of national economic policy to develop and protect northern manufacturers and agricultural goods produced in the North and West. These duties were no longer defended as temporary expediencies to nurture infant industries or respond to short-term crises, but as permanent features of American political economy. The South, by contrast, was heavily invested in raising crops for export, particularly cotton and tobacco, and consuming imported goods. For southerners, free trade was essential to the continued success of the regional economy. After years of southern complaints about protectionism, the Tariff of Abominations seemed to set federal policy at war with southern economic success.

The national tariff policy was denounced by southern politicians and writers as both bad policy and bad constitutional law. Anti-protectionist sentiment was particularly strong in South Carolina and elevated a group of radical "fire-eating" politicians who strongly denounced the federal government. Vice President John C. Calhoun tried to get ahead of the movement in his home state by secretly working with state legislators to draft the South Carolina Exposition and Protest in the winter of 1828. These documents explained why the protectionist tariff was in conflict with the U.S. Constitution and asserted the right of the states to judge the constitutionality of the law and block the enforcement of unconstitutional federal statutes within their borders. They were then sent to Congress and distributed to the other states. The state legislature also adopted resolutions of protest, which the state's senators were instructed to present in Congress. South Carolina subsequently "nullified" the tariff, declaring it unenforceable within the states. President Andrew Jackson threatened to use military force to collect the imposts in South Carolinian ports. The issue was resolved when Congress adopted the Compromise Tariff of 1833, which moved the United States to a free trade policy. What is Calhoun's argument for the unconstitutionality of protective tariffs?How does he justify nullification?

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The general government is one of specific powers, and it can rightfully exercise only the powers expressly granted, and those that may be "necessary and proper" to carry them into effect; all others being reserved expressly to the States, or to the people. It results necessarily that those who claim to exercise a power under the constitution, are bound to show that it is expressly granted, or that it is necessary and proper as a means to some of the granted powers. The advocates of the Tariff have offered no such proof. It is true, that [the Constitution] authorizes Congress to lay and collect an impost duty, but it is granted as a tax power, for the sole purpose of revenue; a power in its nature essentially different from that of imposing protective or prohibitory duties. The two are incompatible; for the prohibitory system must end in destroying the revenue from impost. It has been said that the system is a violation of the spirit and not the letter of the constitution. The distinction is not material. The constitution may be as grossly violated by acting against its meaning as against its letter. . . . The facts are few and simple. The constitution grants to Congress the power of imposing a duty on imports for revenue, which power is abused by being converted into an instrument for rearing up the industry of one section of the country on

[1] Excerpt taken from *Statutes at Large of South Carolina*, ed. Thomas Cooper, vol. 1 (1836): 247–272.

the ruins of another. . . . It is, in a word, *a violation of perversion*, the most dangerous of all, because the most insidious and difficult to resist. . . .

In the absence of arguments drawn from the constitution itself, the advocates of the power have attempted to call in aid of precedent. . . . If they were strictly in point, they would be entitled to little weight. Ours is not a government of precedents, nor can they be admitted, except to a very limited extent, and with great caution, in the interpretation of the constitution, without changing in time the entire character of the instrument. The only safe rule is the constitution itself, or, if that can be doubtful, the history of the times. In this case, if doubts existed, the journals of the [Philadelphia] convention would remove them. It was moved in that body to confer on Congress the very power in question, to encourage manufactures; but it was deliberately withheld, except to the extent of granting patent rights for new and useful inventions. . . .

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. . . . We consider all powers as delegated from the people and to be controlled by those who are interested in their just and proper exercise; and our governments, both state and general, are but a system of judicious contrivances to bring this fundamental principle into fair practical operation. Among the most permanent of these is the responsibility of representatives to their constituents, through frequent periodic elections. Without such a check on their powers; however, clearly they may be defined and distinctly prescribed, our liberty would be but a mockery. The government, instead of being devoted to the general good, would speedily become but the instrument to aggrandize those who might be entrusted with its administration. On the other hand, if laws were uniform in their operation; if that which imposed a burden on one, imposed it alike on all; or that which acted beneficially for one, should act so for all, the responsibility of representatives to their constituents, would alone be sufficient to guard against abuse and tyranny, provided the people be sufficiently intelligent to understand their interests, and the motives and conduct of their public agents. But if it be supposed that from diversity of interest in the several classes of the people and sections of the country, laws act differently, so that the same law, though couched in general terms and apparently fair, shall in reality transfer the power and prosperity from one class or section to another; in such case, responsibility to constituents . . . must prove wholly insufficient to preserve the purity of public agents, or the liberty of the country. . . . The disease would be in the community itself; in the constituents, not in the representatives. . . . Liberty comprehends the idea of *responsible power*, that those who make and execute the laws should be controlled by those on whom they operate; that the governed should govern. . . . No government based on the naked principle, that the majority ought to govern, however true the maxim in its proper sense and under proper restrictions, ever preserved its liberty. . . . Constitutional government, and the government of a majority, are utterly incompatible, it being the sole purpose of a constitution to impose limitations and checks upon the majority. An unchecked majority is a despotism. . . .

. . . . [O]ur political system, recognizing the opposition of geographical interests in the community, has provided the most efficient check against its dangers. Looking to facts and not mere hypothesis, the constitution has made us a community only to the extent of our common interest, leaving the States distinct and independent, as to their peculiar institutions, and has drawn the line of separation with consummate skill. The great question, however, is, what means are provided by our system for the purpose of enforcing this fundamental provision. . . . But the protection, which the minor interest ever fails to find in any technical system of construction . . . it may find in the reserved rights of the States themselves, if they be properly called into action; and there only will it ever be found of sufficient efficacy. The constitutional power to protect their rights as members of the confederacy, results, necessarily . . . from the very nature of the relation subsisting between the States and general government. . . . [T]he existence of the right of judging of their powers, clearly established from the sovereignty of the States, as clearly implies a veto, or control on the action of the general government, on contested points of authority; and this very control is the remedy, which the constitution has provided to prevent the encroachment of the general government on the reserved rights of the States . . . and thus afford effectual protection to the great minor interest of the community, against the oppression of the majority.

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