South Carolina Historical Magazine

Volume 82 Number 1

January 1981

(ISSN 0038-3082)

PUBLISHED QUARTERLY BY THE
SOUTH CAROLINA HISTORICAL SOCIETY
FIREPROOF BUILDING
CHARLESTON, SOUTH CAROLINA 29401

CONTENTS

THE ROAD NOT TAKEN: NULLIFICATION, JOHN C. CALHOUN, AND THE REVOLUTIONARY TRADITION IN SOUTH CAROLINA

PAULINE MAIER *

The history of early nineteenth-century American politics long traced a time without a past, a period scrutinized only for that which was in the process of becoming—for the origins of American democracy, the beginnings of a two-party system, the coming of the Civil War. The politics and politicians of the period were sometimes denied not just a past but even a distinctive historical present. John C. Calhoun's labored concern with nullification and the concurrent majority—issues of some importance in his day—was dismissed, for example, as "mainly of theoretical and historical interest," which was to say of no interest at all, or again as of "little more than antiquarian interest to the twentieth-century mind." Attention turned instead toward Calhoun's more prophetic qualities. His "deep allegiance to a way of life which he knew to be passing was expressed in terms of the future;" he was, Richard Hofstadter wrote, the "Marx of the Master Class." [1]

Even the term used to identify the early nineteenth century, the "antebellum period," is, in a sense, ahistorical, for people of the time could hardly know themselves by a Civil War that had not yet come to be. Instead they knew themselves as heirs of an event that had already happened, the American Revolution. And as historians restore to the early nineteenth century its revolutionary past, familiar events take on novel perspectives, and new issues arise over what were the standard events of traditional American history. The American Revolution, we now know, drew upon a tradition in English politics that reached a certain peak in the tumultuous seventeenth century. The ideas used to justify opposition to

* Professor of History, Massachusetts Institute of Technology, Cambridge.

This paper is drawn from the address given by Dr. Maier at the Annual Meeting of the Society, February 25, 1980.

[1] John M. Anderson, ed., *Calhoun: Basic Documents* (State College, Pa., 1952), pp. 9, 5; Richard Hofstadter, "John C. Calhoun: The Marx of the Master Class," in *The American Political Tradition* (New York, 1957), pp. 68-92, esp. 69.

George III after 1765 had been used by John Milton to justify the execution of Charles I and were later developed by John Locke, Algernon Sidney, and other opponents of James II. After the Glorious Revolution of 1688-1689 and the establishment of William and Mary on the British throne, however, Englishmen found it convenient to lay aside the principles as well as the practices of those earlier and more turbulent times. "Revolutionary ideas" or "Radical Whiggism" became historical, an ideology alien to the more stable Augustan age. They survived only among a handful of persons on the outer fringe of English politics and among the mainstream of politicians in provincial America, where they served to articulate colonial opposition to the Crown and its agents first in the day-to-day conflicts of the eighteenth century, and then in the colonies' common struggle against Britain, finding a new and eloquent statement in the Declaration of Independence.[2]

But did revolutionary ideology undergo an eclipse in post-revolutionary America similar to that in England a century earlier? And if so, did it again survive in the outposts of politics? To ask these questions is to move South Carolina once again to the center of historical attention. For if the revolutionary tradition survived anywhere, it must have been there, in a state of the old seaboard South that had played a critical role in the revolutionary struggle and then became the center of Southern resistance to federal authority. Secession above all would seem to confirm South Carolina's place as heir to an Anglo-American revolutionary tradition. The same is not so easily said of nullification, which had roots in the revolutionary past that were less obvious but equally as legitimate as those of secession. The nullification crisis reveals much of the process by which revolutionary principles were at once developed and rejected in the early nineteenth century. And that story, in turn, suggests further conclusions as to the place of John C. Calhoun and the state of South Carolina in the larger sweep of Anglo-American history.

[2] Caroline Robbins, *The Eighteenth-Century Commonwealthman* (Cambridge, Mass., 1959); J. H. Plumb, *The Origins of Political Stability; England, 1675-1725* (Boston, 1967); Bernard Bailyn, *Ideological Origins of the American Revolution* (Cambridge, Mass., 1966) and *The Origins of American Politics* (New York, 1970); Pauline Maier, *From Resistance to Revolution; Colonial Radicals and the Development of American Opposition to Britain, 1765-1776* (New York, 1972), esp. ch. 2.

It is important here to begin with the Revolution itself, to note how its message and so the revolutionary tradition itself shifted, taking new forms and directions in the final years of the eighteenth century. As of 1760 the Americans' revolutionary tradition had emerged from the struggle of their English ancestors to protect liberty from the power of kings and magistrates. Power, according to Whig tradition, came from the people and was granted to rulers only on a limited, contractual basis. When the terms of that contract or trust were violated—when rulers exercised powers that had not been given them, and became oppressors of the people they were meant to serve—they automatically forfeited their authority, which reverted to the people from whom it had originally come. The people could reclaim the whole of governmental power in acts of revolution where the constitutional order had been totally undermined. But the people could also reclaim governmental power in part, through acts of resistance to isolated wrongful acts of authority. This right of resistance, though founded upon the same theoretical foundation as the right of revolution and therefore a constituent part of the Anglo-American revolutionary tradition, was understood as a critical element in containing power and so in preserving a stable constitutional order and preventing the need for revolution. The readiness of a people to resist deterred rulers from attempting acts that would provoke their subjects. Resistance therefore served as a check on power comparable to the institutional divisions of authority within England's "mixed constitution." It was with this understanding of resistance as a conservative force that the American colonists rose up against Parliamentary taxation in 1765: they blocked execution of the Stamp Act, which was, they argued, unwarranted by the constitution and therefore null and void, and thereby sought to protect the established constitutional order, to discourage further violations of that order, and to prevent the establishment of grievances or precedents that might in time necessitate revolution.[3]

Resistance could, of course, occasion a licentiousness that itself threatened the constitutional order. Therefore Americans of the late colonial period, drawing upon earlier British political thought, stressed the limits upon its just implementation: resistance, like revolution, could only be undertaken against serious threats to freedom and the constitution; force could be used only

[3] Maier, *From Resistance to Revolution*, chs. 2-4.

after all peaceful means of seeking redress had been exhausted, and then only to the extent necessary to prevent the execution of a dangerous exercise of power. Finally, resistance could not be the work of an elite. It had to draw upon the "body of the people." Legitimate acts of resistance were consequently rare, but nonetheless essential: a submissive and docile people would not long remain free, so insistent, it seemed, were the natural tendencies of power to expand until despotism replaced the liberty upon which was built a people's happiness and welfare. To keep resistance within the bounds of legitimacy—to restrain licentiousness while protecting freedom—was a challenge met by the American revolutionaries in ways that had far-reaching consequences for the United States. It led them to organize carefully the resistance movement, and in that organization lay the beginnings of American self-government. From the Sons of Liberty of the Stamp Act crisis through the nonimportation associations of 1767-70 and the committees and congresses of the mid-1770s—or the "town meeting" that emerged to promote nonimportation and continued to govern Charleston until the city's incorporation in 1783—the governmental institutions born of the revolution assumed ever more strength and scope. As American grievances multiplied and resistance gave way to revolution, the ad hoc institutions of the resistance era yielded to the first formal governments of the new nation which, like their immediate predecessors, took their authority not from hereditary title but from the "body of the people," which is to say they were "republican." And in founding a republic the Americans made their struggle for independence a revolutionary event of considerable importance in the history of the Western World.[4]

By the late 1780s, some of the assumptions within the Anglo-American tradition had begun to shift. Experience with the powerful democratic legislatures of the late 1770s and early 1780s suggested that danger to liberty lay not only in kings and magistrates, but that the people themselves—the majority—was also prone to abuse its power at the cost of minorities. The institutions founded at the time of independence were therefore redesigned: senates and governors were revived as checks on popular legislatures, and the executive, judiciary, and legislative powers were separated to limit further the impact of simple majorities. Even the campaign to

[4] Ibid., passim.

strengthen national government, Gordon Wood has argued, was part of this effort to contain the tyranny of the majority within the separate states. The Founding Fathers hoped at first that the new federal government would have a veto on state laws, but on further reflection thought better of the idea. The federal government, they came to understand, need not and should not act directly upon the states but could enforce its authority on the people who, through their constitutional conventions, had set up both state and national governments with distinct and separate responsibilities. And that division of tasks between the states and the nation was of course itself a limit on power and so a means of protecting liberty.[5]

In this elaboration of republican institutions, it seemed to many that the right of resistance and of revolution had also become outmoded for Americans, at least in the forms they had taken in the past. Direct popular action could be no longer exercised legitimately by those who lived under a constitutional republic, and so could never exhaust the "peaceful means of redress." With the abolition of hereditary rule all persons in power became answerable, directly or indirectly, to the ballot box. And where the direct control of the electorate proved insufficient, office-holders remained subject to impeachment and to the surveillance of the courts. "No people can be more free [than] under a Constitution established by their own frequent suffrages," Governor Samuel Adams told the Massachusetts legislature in 1795. "What excuse then can there be for forcible opposition to the laws? If any law shall prove oppressive in its operation, the future deliberations of a freely elected Representative, will prove a constitutional remedy." [6]

The followers of Daniel Shays, or the farmers of western Pennsylvania—whose Whiskey Rebellion prompted Adams' remarks—apparently disagreed, and followed instead older patterns of popular insurgency. In South Carolina, too, the people continued to "rise up" as they had in colonial days, and provoked denunciations much like those of spokesmen for the new order elsewhere in the nation. Even partisan politics seemed dangerously licentious to many who were anxious to regain the "enduring internal harmony"

[5] Gordon S. Wood, *The Creation of the American Republic, 1776-1787* (Chapel Hill, 1969), passim.

[6] Ibid., and Adams to the Massachusetts legislature, Jan. 16, 1795, in Harry Alonzo Cushing, ed., *The Writings of Samuel Adams*, IV (Boston, 1908), p. 373.

South Carolina had achieved in the mid-eighteenth century. Christopher Gadsden, who once helped mobilize Charleston's mechanics in the cause of their country, argued in the mid-1780s that all men should fall "cheerfully into the ranks again," acquiescing *"peaceably without doors* in what the majority had *agreed* upon and *fairly* carried within." That was *"true genuine Republicanism"* for him and, it would seem, for those lowcountry planters whose "artistocratic" domination of South Carolina politics in the late eighteenth century was continued thereafter as the spread of cotton culture placed many inland districts under the power of a planting elite.[7]

And yet it was members or representatives of that planting elite who in the late 1820s and 1830s evoked their revolutionary ancestors and revolutionary precedents in an empassioned campaign against federal "tyranny." As George C. Rogers has noted, a great revival of Carolinians' interest in the revolutionary past occurred in the 1820s, which saw, for example, the publication of Major Alexander Garden's *Anecdotes of the Revolutionary War* and a wave of name-changing as South Carolina families revived the surnames of their revolutionary ancestors. Robert Barnwell Smith (later Rhett), whose Colleton district became "the Faneuil Hall where the cradle of Southern sovereignty" was "constantly rocked," similarly stressed his political descent from earlier English and American revolutionaries—from "Samuel Adams, Patrick Henry, Jefferson, Rutledge," all of whom were, he claimed, "disunionists and traitors." And at the Jefferson Day dinner of April 1830, George McDuffie toasted "the memory of Patrick Henry: the first American statesman who had the soul to feel, and the courage to declare, in the face of armed tyranny, that there is no treason in resisting oppression." Members of the Nullification Convention of 1832 followed suit when they wore crepe on their arms in mourning for Charles Carroll of Carrollton, the news of whose death arrived soon after the convention convened, and when they specified that their Nullification Ordinance be first signed by those "Patriots of '76, yet abiding with us," veterans of the Revolution-

[7] Pauline Maier, "The Charleston Mob and the Evolution of Popular Politics in Revolutionary South Carolina, 1765-1784," *Perspectives in American History* IV (1970), pp. 171-96; Gadsden as "A Steady and Open Republican," May and July 1784, in Richard Walsh ed., *The Writings of Christopher Gadsden* (Columbia, 1966), pp. 206, 225-27.

ary war, in a ceremony modelled on that of "those who proclaimed our Independence." [8]

The purpose of these ritualistic invocations of 1776 was clear: they served to glorify intransigence and to legitimize the Carolinians' more extreme threats of disunion by linking that resort with the "secession" of colonists from the British Empire. Accordingly Andrew Jackson condemned nullification as an effort "to destroy the union," as tantamount to secession or treason, part of a scheme to "form a southern confederacy bounded, north, by the Patomac river," as an example of "wickedness, madness and folly" without parallel "in the history of the world." For him, as later for Lincoln, the Union was—in Daniel Webster's words of 1830—"now and forever, one and inseparable," a marriage without possibility of divorce.[9]

In fact, however, the more conservative advocates of nullification—who developed that device as a way of containing the extremists in their midst—were nearer the cautious ways of their ancestors than firebrands like Rhett or McDuffie, and built more firmly upon American political and constitutional precedents while remaining truer to the nationalistic enthusiasms of their time than either Jackson or Webster were prepared to recognize. Nullification, or "state interposition" as it was more often called at the time, was not in the hands of John C. Calhoun a plea for revolution on the model of 1776; it was instead a revival of the old right of resistance, with all of its conservative connotations. Secession, Calhoun stressed, was an act of revolution which sought "*to free* the withdrawing member from the *obligation* of the association," and so, in effect, to dissolve the union. But in 1832, Calhoun argued, Carolinians were contending for "a very different and . . . far less revolutionary right; the right not of setting aside the provisions

[8] Rogers, "South Carolina Federalists and the Origins of the Nullification Movement," this *Magazine* 71 (1970): 28-32; Laura A. White, *Robert Barnwell Rhett: Father of Secession* (New York, 1931), pp. 18, 3, 20; McDuffie quoted in William H. Freehling, *Prelude to Civil War: The Nullification Controversy in South Carolina, 1816-1836* (New York, 1968), p. 192; *Journals of the Conventions of the People of South Carolina Held in 1832, 1833, and 1852* (Columbia, 1860), pp. 21, 27.

[9] Jackson quoted in Richard B. Latner, "The Nullification Crisis and Republican Subversion," *The Journal of Southern History* XLIII (1977): 21; Webster in *Webster and Hayne's Speeches in the United States Senate, on Mr. Foot's Resolution of January, 1830* . . . (Philadelphia, [1878?], p. 84.

of the Constitution . . ., but the right to maintain and preserve them in their full force, by arresting all attempts on the part of the General Government to violate them." Nullification was therefore—like the Stamp Act resistance of 1765 and 1766—conservative in conception: South Carolina sought "reformation, and not revolution; a reformation essential to the preservation of the Union, the Constitution, and the liberty of the country." [10] Nullification was of course capable of being abused; if unchecked, it could serve to "debilitate the Government." And so, like earlier British and American spokesmen of resistance, Calhoun emphasized that the states could not invoke their "high power of interposition" except where the constitution was clearly and dangerously violated, when "all reasonable hope of relief, from the ordinary action of the government" had failed, and when "if the right to interpose did not exist, the alternative would be submission and oppression on one side, or resistance by force on the other." [11]

The South Carolina Convention of 1832 followed Calhoun's lead when it called for "prompt and efficient measures . . . to stay the hand of oppression, to restore the Constitution to its original principles, and thereby to perpetuate the Union." The Convention also implicitly recognized the limits upon resistance when it stressed the seriousness of the Congressional "usurpations" that it opposed—if submitted to they would "entirely change the character of the Government, reduce the Constitution to a dead letter, and on the ruins of our confederated republic, erect a consolidated despotism." Repeated protests from South Carolina and other Southern states brought only "repeated injuries and insults"—the tariffs of 1824, 1828, and 1832—such that "it would be idle to remonstrate, and degrading to protest further," and a "decisive course of action" had become the only alternative to submission.[12] The proponents of nullification did, however, pay less honor than their revolutionary ancestors to the old Whig demand that resistance and revolution draw their power and legitimacy from the "body of the people." Not that the movement was without a con-

[10] Calhoun to James Hamilton, Jr., Aug. 28, 1832; his draft report on federal relations, Nov. 20, 1831, and to William Campbell Preston, Jan. 6, 1829, in Clyde N. Wilson, ed., *The Papers of John C. Calhoun*, XI, *1829-1832* (Columbia, 1978), pp. 631 and 489, and X, *1825-1829* (Columbia, 1977), p. 545.

[11] Calhoun to James Hamilton, Jr., Aug. 28, 1832, and to Frederick W. Symmes, July 26, 1831, ibid. XI, pp. 636, 425-26.

[12] *Journals of the Conventions*, pp. 33-34, 41, 45.

cern for popular participation: the South Carolina Association, organized in 1823 to ensure the enforcement of Negro laws, was transformed by James Hamilton into a powerful organization that mobilized small slaveholders and even Charleston's mechanics for the cause of nullification; only yeoman farmers in mountain districts and East Bay merchants remained impervious to its appeal. But the Convention of 1832 was—like the state legislature—malaportioned, giving weight to property as well as persons; and when the Unionist Henry Middleton moved that the convention deem itself "incompetent . . . to wield the sovereign authority of the people it unequally represents" and so open the way for the legislature to call a new convention with a "full and equal representation of the people," the delegates simply refused to consider his proposal. Policy-making would remain the work of an elite, though the preservation of freedom demanded, for the proponents of nullification as for earlier participants in the Anglo-American revolutionary tradition, an aroused people "jealous" for their rights.[13]

In other ways, too, nullification constituted something more than a simple revival of the old, pre-1776 right of resistance—of the people's right, that is, to judge their rulers and to block "unconstitutional" or unlawful acts of power. Resistance had traditionally served to limit the power of kings and magistrates, but nullification built instead upon the fears of majoritarian tyranny that emerged after Independence and shaped American constitutional development in the 1780s. "No government, based on the naked principle, that the majority ought to govern . . . ever preserved its liberty even for a single generation," Calhoun wrote; and he cited with approval the Fifty-first Federalist Paper where—as earlier in Federalist Number Ten—James Madison had addressed himself to the problem of securing minority rights under popular governments. Madison argued that the very multiplicity of interests within the United States made "an unjust combination of a majority of the whole very improbable," such that the extent and diversity of the country served to protect minority interests. But history did not bear him out: the nation had become divided into sections that differed "on the great and vital point, the industry of the country, which comprehends almost every interest." And there, Calhoun claimed, the South's opponents "act and feel . . . as sov-

[13] Freehling, *Prelude to Civil War*, esp. pp. 113, 128-31, 241; *Journals of the Conventions*, pp. 17, 18.

ereigns, as men invariably do, who impose burdens on others for their own benefit." That the South's industry was "controlled by many, instead of one, by a majority in Congress elected by a majority in the community, having an opposite interest, instead of hereditary rulers," served not to mitigate but to aggravate the evil. And so Calhoun turned again to that "diversity of interests" within the nation which was for Madison the salvation of popular government, but which for Calhoun—as for the spokesmen of traditional eighteenth-century political wisdom whom Madison had attacked——was a major obstacle to the formation of "free and just Governments" and "the door through which despotick power has . . . ever entered, and through which it must ever continue to do till some effectual barrier be provided." The barrier he advocated, state interposition, was for him, moreover, but another of a series of checks on power that characterized the American system of constitutional government.[14]

Here again nullification modified resistance as practiced and understood by Americans before Independence, for Calhoun attempted in effect to reconcile resistance with the more recent demand that the people act only through regular, constitutional procedures and within established institutions. An effort to "institutionalize" an insurgent people may well characterize post-revolutionary eras: in eighteenth-century England the jurist William Blackstone denied that the people retained a Lockean right "to remove or alter the legislative, when they find the legislative act contrary to the trust reposed in them," because for him, as for other supporters of the British standing order, the people had yielded their right to Parliament, which after the Revolution of 1688 became "absolute and without control." In early nineteenth-century America, many argued that the people had similarly yielded to the Supreme Court their role as guardian of the constitution, as an agency empowered to declare null and void those acts of authority that contravened the constitution. Here Calhoun dissented. He was willing to grant the Court considerable authority in deciding constitutional issues, but not plenary power. It could not above all hold final authority over conflicts of constitutional jurisdiction between

[14] Calhoun's draft of the South Carolina Exposition, 1828, in Wilson, ed., *Papers of Calhoun* X, 492, 488, 490, 526, 528; Madison in Clinton Rossiter, ed., *The Federalist Papers* (New York, 1961), p. 324. Calhoun erroneously attributed the Fifty-first Federalist Paper to Alexander Hamilton.

the states and the central government, he argued, because the Court was itself part of the central government and therefore a party to such conflicts. Because no impartial agency of government existed to decide such disputes they had to be resolved by the people themselves, acting through conventions—those extraordinary institutions by which the people of the several states had exercised sovereign power in establishing both state and national governments. But to say the people were to act in conventions was itself to institutionalize the popular uprisings that had played so important a role in constitutional crises of the Anglo-American past. Constitutional conventions were in fact so established a part of American constitutional processes by the 1820s, and their implementation to preserve as well as to write or ratify constitutional law seemed so logical an extreme of American constitutional procedures that Calhoun and the South Carolina Convention of 1832 insisted that nullification through state conventions was not a natural but a "constitutional" right.[15]

Interposition was limited in effect because a state could nullify a federal law only within its own borders. And if three-quarters of the states so chose, they could, by the explicit provisions of the federal constitution, resolve the dispute by amending the constitution so as to grant the contested power to the federal government. Then, it seemed, a recalcitrant state could only withdraw from the Union; but the whole of Calhoun's procedures were designed to

[15] Blackstone citations in Maier, *From Resistance to Revolution*, pp. 46-47. Calhoun took up the question of the Supreme Court's jurisdiction and made clear his position that the people of the various states exercised their sovereign power through conventions, not, as some advocates of state rights assumed, through the regular institutions of state government, in his draft of the South Carolina Exposition of 1828. The issue was complicated, which is perhaps why the relevant section of his draft was so extensively rewritten. Much of Calhoun's argument, however, came from the Fifty-first Federalist Paper and from Madison's Report of 1799. See Wilson ed., *Papers of Calhoun* X, esp. 496-510, and also 526, 528. The power of state conventions to declare federal laws null and void was not of course specified in the federal constitution, but neither, Calhoun argued, was the Supreme Court's right to declare laws unconstitutional. For him both the Court's power of judicial review and that of states to interpose rested on "mere inference, but an inference so clear . . . no express provision could render it more certain," and could therefore justly be considered constitutional. See ibid., 512. For a later discussion of the issue, see his letter to Symmes, July 26, 1831, ibid., XI, esp. 421-26, and also 432, where Calhoun refers to state interposition as an "extraordinary" but yet "constitutional" and "safe" resort for an afflicted people.

obviate that end, to reduce the danger of insurrection and disunion. The "great number" of persons necessarily involved, "the solemnity of the mode, a convention specially called for the purpose, and representing the State in her highest capacity, the delay, the deliberation" were all "calculated to allay excitement, to impress on the people a deep and solemn tone, highly favourable to calm investigation and decision." Nullification provided a means of correcting those constitutional "aberrations to which all political systems are liable, and which, if permitted to accumulate, without correction, must finally end in a general catastrophe." Acknowledgment of the states' right to interpose would, Calhoun argued, make the general government moderate in the exercise of doubtful powers, and so render the exercise of that right unnecessary. Establishment of the right of state interposition would also enhance the states' sense of security within the union, "put down jealousy, hatred and animosity, and . . . give scope to the natural attachment to our institutions, to expand and grow in the full maturity of patriotism." The doctrine of nullification was therefore "evidence of . . . high wisdom, . . . not of anarchy . . ., but of peace and safety," and suggests that Calhoun's development and support of interposition marked less an abandonment of his earlier nationalism, as historians have often assumed, than an adaptation of it to altered circumstances.[16]

The extent of the nullifiers' commitment to minority rights may be questioned given their severe repression of their Unionist opponents, and the fact that nullification was designed in part to protect the institution of slavery. The military preparations that accompanied South Carolina's advocacy of interposition along with the forceful response of President Andrew Jackson and the United States Congress to the Nullification Ordinance made clear, moreover, that what was for Calhoun a safe and peaceful "constitutional" resort would in fact have resulted in bloodshed had his state persisted in its course. And yet the proposal had non-revolutionary precedents apart from the immediate circumstances of South Carolina in the 1820s and 1830s that confirm its significance in the development of American constitutionalism. Calhoun and his sup-

[16] Calhoun's draft of the South Carolina Exposition, 1828, in ibid., X, 516, 518, and also 520, 522; to Symmes, July 26, 1831, ibid., XI, 426, and also 415-16 where Calhoun explicitly connects his advocacy of interposition with his longtime devotion to the Union.

porters looked back to the Virginia Resolutions of 1798, which asserted that "in case of a deliberate, palpable, and dangerous exercise" of powers not granted by the constitutional contract, "the States, who are parties thereto, have the right, and are in duty bound to interpose for arresting the progress of the evil, and for maintaining within their respective limits the authorities, rights, and liberties appertaining to them." And they recalled the Kentucky Resolutions of 1798, which denied that the Federal Government was "the exclusive or final judge of the powers delegated" under the federal constitution, asserted that in disputes "among parties having no common judge, each party had "an equal right to judge for itself as well as of infractions as of the mode and measure of redress," and went on to declare the Alien and Sedition Acts "not law, but . . . altogether void and of no force." [17]

[17] Virginia resolutions in Gaillard Hunt, ed., *The Writings of James* Madison, VI (New York, 1906), esp. 326, and, with the Kentucky Resolutions of 1798, in Henry Steele Commager, *Documents of American History* (6th ed., New York, 1958), I, 182, 178-79. The Virginia and Kentucky Resolutions were republished at Charleston in 1828 under the title *The Resolutions of Virginia and Kentucky; Penned by Jefferson and Madison in Relations to the Alien and Sedition Laws.* Madison denied that the Virginia and Kentucky Resolutions provided a valid precedent for state interposition as advocated by Calhoun and the South Carolinians. In 1798 interposition did not, he said, imply forcible opposition to federal law on the part of a state: Virginia sought only to appeal to other states for support in fighing the objectionable laws through measures clearly specified in the federal constitution. See for example Madison's letter to Robert Y. Hayne, April 3 or 4, 1830, in Hunt ed., *Writings of Madison,* IX, *1819-1836* (New York, 1910), pp. 387-88n. In the Virginia Report of 1799 Madison similarly argued that legislative denials of the constitutionality of federal laws were only "expressions of opinion, unaccompanied with any other effect than what they may produce on opinion by exciting reflection." Ibid., VI, 402. The Resolutions of 1798 were, however, at best ambiguous on that point, and it should be remembered that Madison's Report of 1799 was written after the Virginia Resolutions had come under intense criticism and was meant in part to explain away those implications of the Resolutions that other states had found objectionable. Calhoun was directly indebted to Madison for his understanding that sovereign power resided in the people of the states, not in the institutions of state government, and was therefore exercised through conventions, and for his belief that the states in this sense—the states as the sovereign people within states—constituted an ultimate constitutional tribunal. He built upon those understandings a doctrine of nullification and, more important, developed a set of regular procedures for state interposition that went far beyond anything Virginia or Kentucky had done. In that sense, Madison was of course correct in saying that the Carolinians' position was distinct from that of 1798, though there was also a kinship he refused to acknowledge.

The Carolinians might well also have cited the Hartford Convention of 1814, which argued again that it was the right and duty of a state to "interpose its authority" where the federal government was guilty of "deliberate, dangerous, and palpable infractions of the Constitution." The Hartford Convention shared fully the Carolinians' distrust of what the New Englanders called the "sudden and injudicious decisions of bare majorities." It sought government by what would later be called the "concurrent majority" because it feared New England's commercial interests would otherwise become those of an oppressed minority as southern states joined their "new confederates" in the west "to govern the east." But history took another course. By the 1830s Calhoun found the South "in a permanent and helpless minority" on the important issues of the day, and South Carolina took up the cause of state interposition.[18] The defense of state prerogatives in constitutional disputes was not therefore—as Arthur Meier Schlesinger observed nearly sixty years ago—confined to any one section or, as he also noted, to any one political party. The doctrine's widespread appeal in the opening decades of the new nation confirms its cogency to a generation of Americans fully emersed in the revolutionary and constitutional traditions of the Anglo-American world, for whom power evoked not hope but fear, and who considered the division of authority between state and nation a critical safeguard of their freedom.[19]

Yet nullification remains a constitutional road not taken. Members of the Hartford Convention, for the most part moderate men who proposed a series of amendments to the federal constitution "to strengthen, and if possible to perpetuate, the union of the states, by removing the grounds of existing jealousies" and to undercut the overt calls for disunion that preceded their meeting,

[18] "Report of the Hartford Convention" in Albert Bushnell Hart and Edward Channing, eds., *American History Leaflets*, No. 35 (New York, 1906), 11, 21, 20; Calhoun's draft report on federal relations, November 20, 1831, in Wilson ed., *Papers of Calhoun*, XI, 498.

[19] Schlesinger in *New Viewpoints in American History* (New York, 1922), ch. X ("The State Rights Fetish"), pp. 220-44. Schlesinger, one of the progressive historians, argued that the state rights doctrine never had "any real vitality independent of underlying conditions of vast social, economic or political significance" (243). Lewis O. Saum disputed that conclusion and suggested the interpretation offered here in "Schlesinger and 'The State Rights Fetish'; A Note," *Civil War History* XXIV (1978), 351-59.

were branded traitors; and South Carolina's call for state interposition evoked no more support than had the Virginia and Kentucky Resolutions over three decades earlier, which makes clear how anachronistic even so modified a version of popular resistance had become in the new republic. Southern states were no less vocal than those of the North in condemning the "Carolina doctrine" as "neither a peaceful, nor a constitutional remedy," as "tending to civil commotion and disunion," "rash and revolutionary;" and many stated that issues of constitutionality were the province not of states or of conventions, but of the Supreme Court.[20] Americans did not, however, reject the *fact* of resistance to federal authority: as Charles Sydnor noted, Alabama continued to resist efforts on the part of the United States to enforce its treaty of March 1832 with the Creek Indians against squatters on Indian lands, much as New Englanders had resisted Jefferson's embargo, and South Carolina had continued to enforce its Negro Seamens Act despite the opposition of federal courts. Americans rejected, Sydnor suggested, only the possibility of resisting federal law through established civil processes. And with the failure of nullification—of Calhoun's intermediate step between submission and disunion—"it was the opinion of some of the wisest men of South Carolina" that the leading nullifiers "had turned into secessionists." [21]

Calhoun's arguments for nullification, which constitute the fullest development of that doctrine, have a particular importance for those who would understand his place in the American past. They indicate that he was far more the last of the Founding Fathers, the last of a generation of creative constitutional statesmen, than an early Marxist. Certainly his roots were firmly based in the eighteenth century, in which he was born (in 1782), and in which his fundamental political assumptions were formed. It was from the eighteenth century that he first acquired his enduring conviction that power bred corruption and was a universal antagonist of liberty. His suspicions of class domination, as of unchecked majorities, followed logically from that assumption: un-

[20] State responses quoted in Charles S. Sydnor, *The Development of Southern Sectionalism, 1819-1848, A History of the South,* V (Baton Rouge, 1948), pp. 218-19; and see also the compendium of state responses in *State Papers on Nullification* (Boston, 1834), pp. 98-280.

[21] Sydnor, *Development of Southern Sectionalism,* pp. 218-19.

limited power wherever found would lead to the abuse and impoverishment of those subject to it. But he considered class to be a European phenomenon, something that might emerge in America's manufacturing states, but which generally depended upon artifiicial distinctions between people that had been ended in the United States with the Revolution. The American republic therefore had interests rather than classes, interests which were for the most part economic in character and had unfortunately taken on geographical identities. But the conflict of those interests, and the victory of one over another played no inevitable part in his sense of history—which was a major difference between Calhoun and Marx, but linked him with his intellectual mentor, James Madison, who, like Calhoun, believed in the possibility of achieving both liberty and harmony through the design of political institutions.[22]

In his search for institutional solutions to political problems Calhoun was again a son of the eighteenth century. Unlike many other Americans of the post-revolutionary era, he doubted that all the great advances in political engineering lay in the past. How could that be when the science of politics had yet to make its last discovery? "We have yet much to learn," he wrote in 1832, as to the "practical operation" of the American system of government, and even as to how the "entire scheme" could be kept from proving "abortive." [23] His experience confirmed the critical importance of compromise to a free society, for compromise provided an alternative to the simple domination of majoritarian interests over those of minorities. The great compromises of his day were the work of politicians whose skill at that art would not be carried over into the next generation. But Calhoun, true to his eighteenth-century origins, was not content to depend upon the fortuitous appearance of such men in each generation; he wanted the imperative to compromise built into the nation's institutions. Nullification was therefore for him a constitutional means of forcing majorities to respect the minority interests represented by the various states, as was his later proposal for a sectional veto on national policy.

[22] See Calhoun's comments on class in his draft of the South Carolina Exposition of 1828 in Wilson ed., *Papers of Calhoun*, X, p. 480, and also his relevant statement on the lack of "artificial and separate classes of society" in his letter to Symmes, July 26, 1831, ibid., XI, p. 418.

[23] To Hamilton, Aug. 28, 1832, ibid., p. 644.

These were innovations, efforts to establish what Calhoun called a concurrent majority or what the eighteenth century called the "commonweal" or "res publica," all of which terms suggested a public interest more comprehensive than that of a numerical majority alone. An effort to achieve a concurrent majority in this sense was critical to the federal constitution, Calhoun argued in 1842, and explained the existence within that document of institutional constraints on simple majoritarian rule such as the presidential veto, bicameralism, the Supreme Court. Those restrictions had, however, become inadequate with the unexpected emergence of sectional interests. But to yield to the dangers of sectionalism and abandon the Founders' effort to establish the common welfare through the mechanism of American government would be to admit what Madison had labored to refute in the Federalist Papers —that free, popular government could not be sustained in large countries containing a diversity of interests, that the freedom and welfare of minorities would always be victim to the power of the majority. To yield would be to cast a "deep shade on the future, and falsify all the glorious anticipations of our ancestors" while weakening their "high reputation for wisdom." [24] To save the Founders' achievements, to adapt them to more recent developments in American politics, demanded innovation, but innovation of a peculiar sort that would become familiar in the history of American constitutional law—innovation that justified itself by claiming consistency with the work of the Founding Fathers. Calhoun once commented that he had but "to look back to the past to see to what point I ought to go forward," that he was governed by principles embodied in the Declaration of Independence, the constitution, and also Madison's "Report" of 1799 which explained and defended the Virginia Resolutions of the previous year. Even when Madison, who lived to see the nullification crisis, joined Webster and Jackson in denouncing the Carolinians' version of state interposition, Calhoun insisted that he had not gone "an inch" beyond "the opinions of the Republican party of '98," that a "rigid adherence" to their principles was "the Rock of our political salvation." [25]

[24] To Symmes, July 26, 1831, ibid., p. 431. See also Calhoun's speech on the veto power, 1842, in Anderson ed., *Calhoun: Basic Documents*, p. 229ff.

[25] Speech at Pendleton, Sept. 7, 1826; to Samuel L. Gouveneur, Aug. 8, 1831, and to Bolling Hall, Sept. 8, 1831, in Wilson ed., *Papers of Calhoun*, X, p. 202; XI, 453 and 466. Madison's position on the South Carolina version of state interposition in the 1830s was to a considerable extent like that of the

This insistence on claiming the authority of the Founding Fathers indicates again how much Calhoun was working within the American constitutional tradition. It is in fact striking how few authorities he cited. Calhoun might refer to antiquity, he might mention the English constitution, but he rarely cited political authorities from other countries or from before the American revolutionary era. Where his countrymen had once drawn upon Milton, Sidney, Locke, where they had cited the Scottish philosopher Frances Hutcheson and even Lord Bolingbroke, they now turned to the Philadelphia debates of 1787 or the writings of the Founding Fathers; where "Cato's Letters" by John Trenchard and Thomas Gordon, English political writers of the early eighteenth century, had once been their handbook, they now turned to the Federalist Papers. Once the federal constitution had been drafted and ratified, it seemed, all earlier authorities became anachronistic. "Our political system is admitted to be a new Creation—a real nondescript," Madison observed in March 1833. "Its character therefore must be sought within itself; not in precedents, because there are none; not in writers whose comments are guided by precedents." The constitution became, in a sense, its own and the only relevant precedent. And so a people who were once students of political theory became instead laborers in constitutional thought, as if all the liberal traditions of Britain and indeed of the West had been telescoped into the United States, whose government was their greatest achievement, and where alone further progress in the understanding and perfection of government might be realized for the good of mankind.[26]

That the person most anxious to realize that progress, not just to honor but to add to the heroic accomplishments of the past, a man who was "probably the last American statesman to do any primary political thinking," came from South Carolina was, finally,

---

state's Unionists. If a people were miserably oppressed, the governmental compact, he understood, would be dissolved. He therefore apparently believed that the people retained their right of revolution, as did the Hon. William Drayton, a Unionist, who described secession as the "ultima ratio republicae." Drayton, *An Oration Delievered in the First Presbyterian Church, Charleston, on Monday, July 4, 1831* (Charleston, 1831), p. 26. Short of that resort, however, the people were confined to actions under the constitution, which did not, for Madison, include state interposition in the mode of South Carolina.

[26] Madison to William Cabell Rives, Mar. 12, 1833, in Hunt ed., *Madison Writings*, IX, p. 511.

appropriate and even necessary. The "remarkable intellectual leadership" of the American Revolution had been nurtured in a world where gentlemen ruled, where statesmen "believed that their speeches and writings" need influence only "the rational and enlightened part" of the population. A "decline in the intellectual quality of American political life and an eventual separation between ideas and power" was, according to Gordon Wood, the price paid for "what we have come to value most—our egalitarian culture and our democratic society." [27] But the old ways had lived on in the elitist and deferential politics of South Carolina, whose economy allowed planters time both for politics and for study and whose political system encouraged "the felicitous debates of disinterested aristocrats" who had often first come to know each other at the South Carolina College in Columbia. In such a society, and perhaps only there, a man could rise in influence unhindered by the jealousies of a deTocquevillian democracy; there a man could, like Calhoun, still aspire to the approbation only of the "intelligent and disinterested." [28] There, in short, in the increasingly anachronistic politics of South Carolina, ideas and power could remain united, as they had been in what was rapidly becoming for Americans elsewhere only the heroic days of a revolutionary past.

[27] Hofstadter, *American Political Tradition*, p. 69; Gordon S. Wood, "The Democratization of Mind in the American Revolution," in *Leadership in the American Revolution* (Washington, 1974), pp. 64, 67.

[28] Freehling, *Prelude to Civil War*, p. 14; Calhoun to Samuel D. Ingham, Sept. 8, 1831, in Wilson ed., *Papers of Calhoun*, XI, p. 468.

HENRY MIDDLETON AND THE ARBITRAMENT OF THE ANGLO-AMERICAN SLAVE CONTROVERSY BY TSAR ALEXANDER I

HAROLD E. BERQUIST, JR. *

Early in 1820 it became necessary for President Monroe to accept the resignation of George Washington Campbell of Tennessee, the American minister in St. Petersburg, Russia. Because Alexander I, the Russian Tsar, had recently been selected by both the British and American governments as the "friendly sovereign" who would arbitrate the dispute which then existed between England and the United States over the slaves taken by the British during and after the War of 1812, it became highly desirable to replace Campbell with another southerner who "would be expecially vigilant regarding the slave-owners' interests." [1] Henry Middleton, a wealthy South Carolinian slave-owner, former governor and congressman of that state, and scion of the great Middleton family of South Carolina, was suggested by John C. Calhoun, Secretary of War in the Monroe administration, and became Monroe's final choice.[2]

Secretary of State John Quincy Adams was surprised by Monroe's selection of Middleton, though it is quite apparent that Adams had no misgivings about Middleton's qualifications for this important post. Adams thought, in fact, that Middleton was a fine writer—equal to Henry Clay, then Speaker of the House of Representatives, who had objected to the appointment (which might explain Adams' surprise over Monroe's selection), but inferior to Clay as a speaker.[3]

Adams' wife, Louisa Catherine Adams, was herself pleased with Middleton's appointment. Shortly after Middleton's confirmation by the Senate on April 6, 1820, she wrote her aged father-in-law, ex-President John Adams, that

* A resident of Winchester, Mass., Mr. Berquist is the author of a number of articles on the history of early Russian-American relations.

[1] Samuel F. Bemis, *John Quincy Adams and the Foundations of American Foreign Policy* (New York, 1949), p. 263.

[2] John Quincy Adams, *Memoirs*, ed. by Charles F. Adams, 12 vols., (Philadelphia, 1875), 4: 505.

[3] Ibid., 5: 132.