

# **On Nullification and the Force Bill**

John C. Calhoun

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U.S. Senate, 15 February 1833

Mr. President:

At the last session of Congress, it was avowed on all sides that the public debt, as to all practical purposes, was in fact paid, the small surplus remaining being nearly covered by the money in the Treasury and the bonds for duties which had already accrued; but with the arrival of this event our last hope was doomed to be disappointed. After a long session of many months, and the most earnest effort on the part of South Carolina and the other Southern States to obtain relief, all that could be effected was a small reduction of such a character that, while it diminished the amount of burden, it distributed that burden more unequally than even the obnoxious Act of 1828; reversing the principle adopted by the Bill of 1816, of laying higher duties on the unprotected than the protected articles, by repealing almost entirely the duties laid upon the former, and imposing the burden almost entirely on the latter. It was thus that, instead of relief instead of an equal distribution of burdens and benefits of the government, on the payment of the debt, as had been fondly anticipated the duties were so arranged as to be, in fact, bounties on one side and taxation on the other; thus placing the two great sections of the country in direct conflict in reference to its fiscal action, and thereby letting in that flood of political corruption which threatens to sweep away our Constitution and our liberty.

This unequal and unjust arrangement was pronounced, both by the administration, through its proper organ, the Secretary of the Treasury, and by the opposition, to be a \*permanent\* adjustment; and it was thus that all hope of relief through the action of the general government terminated; and the crisis so long apprehended at length arrived, at which the State was compelled to choose between absolute acquiescence in a ruinous system of oppression, or a resort to her reserved powers powers of which she alone was the rightful judge, and which only, in this momentous juncture, could save her. She determined on the latter.

The consent of two-thirds of her Legislature was necessary for the call of a convention, which was considered the only legitimate organ through which the people, in their sovereignty, could speak. After an arduous struggle the States-rights party succeeded; more than two-thirds of both branches of the Legislature favorable to a convention were elected; a convention was called the ordinance adopted. The convention was succeeded by a meeting of the Legislature, when the laws to carry the ordinance into execution were enacted all of which have been communicated by the President, have been referred to the Committee on the Judiciary, and this bill is the result of their labor.

Having now corrected some of the prominent misrepresentations as to the nature of this controversy, and given a rapid sketch of the movement of the State in reference to it, I will next proceed to notice some objections connected with the ordinance and the proceedings under it.

The first and most prominent of these is directed against what is called the test oath, which an effort has been made to render odious. So far from deserving the denunciation that has been levelled against it, I view this

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provision of the ordinance as but the natural result of the doctrines entertained by the State, and the position which she occupies. The people of Carolina believe that the Union is a union of States, and not of individuals; that it was formed by the States, and that the citizens of the several States were bound to it through the acts of their several States; that each State ratified the Constitution for itself, and that it was only by such ratification of a State that any obligation was imposed upon its citizens. Thus believing, it is the opinion of the people of Carolina that it belongs to the State which has imposed the obligation to declare, in the last resort, the extent of this obligation, as far as her citizens are concerned; and this upon the plain principles which exist in all analogous cases of compact between sovereign bodies. On this principle the people of the State, acting in their sovereign capacity in convention, precisely as they did in the adoption of their own and the Federal Constitution, have declared, by the ordinance, that the acts of Congress which imposed duties under the authority to lay imposts, were acts not for revenue, as intended by the Constitution, but for protection, and therefore null and void. The ordinance thus enacted by the people of the State themselves, acting as a sovereign community, is as obligatory on the citizens of the State as any portion of the Constitution. In prescribing, then, the oath to obey the ordinance, no more was done than to prescribe an oath to obey the Constitution. It is, in fact, but a particular oath of allegiance, and in every respect similar to that which is prescribed, under the Constitution of the United States, to be administered to all the officers of the State and Federal governments; and is no more deserving the harsh and bitter epithets which have been heaped upon it than that or any similar oath. It ought to be borne in mind that, according to the opinion which prevails in Carolina, the right of resistance to the unconstitutional acts of Congress belongs to the State, and not to her individual citizens; and that, though the latter may, in a mere question of \*meum\* and \*tuum,\* resist through the courts an unconstitutional encroachment upon their rights, yet the final stand against usurpation rests not with them, but with the State of which they are members; and such act of resistance by a State binds the conscience and allegiance of the citizen. But there appears to be a general misapprehension as to the extent to which the State has acted under this part of the ordinance. Instead of sweeping every officer by a general proscription of the minority, as has been represented in debate, as far as my knowledge extends, not a single individual has been removed. The State has, in fact, acted with the greatest tenderness, all circumstances considered, toward citizens who differed from the majority; and, in that spirit, has directed the oath to be administered only in the case of some official act directed to be performed in which obedience to the ordinance is involved....

It is next objected that the enforcing acts have legislated the United States out of South Carolina. I have already replied to this objection on another occasion, and will now but repeat what I then said: that they have been legislated out only to the extent that they had no right to enter. The Constitution has admitted the jurisdiction of the United States within the limits of the several States only so far as the delegated powers authorize; beyond that they are intruders, and may rightfully be expelled; and that they have been efficiently expelled by the legislation of the State through her civil process, as has been acknowledged on all sides in the debate, is only a confirmation of the truth of the doctrine for which the majority in Carolina have contended.

The very point at issue between the two parties there is, whether nullification is a peaceful and an efficient remedy against an unconstitutional act of the general government, and may be asserted, as such, through the State tribunals. Both parties agree that the acts against which it is directed are unconstitutional and oppressive. The controversy is only as to the means by which our citizens may be protected against the acknowledged encroachments on their rights. This being the point at issue between the parties, and the very object of the majority being an efficient protection of the citizens through the State tribunals, the measures adopted to enforce the ordinance, of course, received the most decisive character. We were not children, to act by halves. Yet for acting thus efficiently the State is denounced, and this bill reported, to overrule, by military force, the civil tribunal and civil process of the State! Sir, I consider this bill, and the arguments which have been urged on this floor in its support, as the most triumphant acknowledgment that nullification is peaceful and efficient, and so deeply entrenched in the principles of our system, that it cannot be assailed but by prostrating the Constitution, and substituting the supremacy of military force in lieu of the supremacy of the laws. In fact, the advocates of this bill refute their own argument. They tell us that the ordinance is unconstitutional; that it infracts the Constitution of South Carolina, although, to me, the objection appears absurd, as it was adopted by the very authority which

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adopted the Constitution itself. They also tell us that the Supreme Court is the appointed arbiter of all controversies between a State and the general government. Why, then, do they not leave this controversy to that tribunal? Why do they not confide to them the abrogation of the ordinance, and the laws made in pursuance of it, and the assertion of that supremacy which they claim for the laws of Congress? The State stands pledged to resist no process of the court. Why, then, confer on the President the extensive and unlimited powers provided in this bill? Why authorize him to use military force to arrest the civil process of the State? But one answer can be given: That, in a contest between the State and the general government, if the resistance be limited on both sides to the civil process, the State, by its inherent sovereignty, standing upon its reserved powers, will prove too powerful in such a controversy, and must triumph over the Federal government, sustained by its delegated and limited authority; and in this answer we have an acknowledgment of the truth of those great principles for which the State has so firmly and nobly contended....

Notwithstanding all that has been said, I may say that neither the Senator from Delaware (Mr. Clayton), nor any other who has spoken on the same side, has directly and fairly met the great question at issue: Is this a Federal Union? a union of States, as distinct from that of individuals? Is the sovereignty in the several States, or in the American people in the aggregate? The very language which we are compelled to use when speaking of our political institutions affords proof conclusive as to its real character. The terms union, federal, united, all imply a combination of sovereignties, a confederation of States. They never apply to an association of individuals. Who ever heard of the United State of New York, of Massachusetts, or of Virginia? Who ever heard the term federal or union applied to the aggregation of individuals into one community? Nor is the other point less clear that the sovereignty is in the several States, and that our system is a union of twenty-four sovereign powers, under a constitutional compact, and not of a divided sovereignty between the States severally and the United States? In spite of all that has been said, I maintain that sovereignty is in its nature indivisible. It is the supreme power in a State, and we might just as well speak of half a square, or half of a triangle, as of half a sovereignty. It is a gross error to confound the \*exercise\* of sovereign powers with \*sovereignty\* itself, or the \*delegation\* of such powers with the \*surrender\* of them. A sovereign may delegate his powers to be exercised by as many agents as he may think proper, under such conditions and with such limitations as he may impose; but to surrender any portion of his sovereignty to another is to annihilate the whole. The Senator from Delaware (Mr. Clayton) calls this metaphysical reasoning, which he says he cannot comprehend. If by metaphysics he means that scholastic refinement which makes distinctions without difference, no one can hold it in more utter contempt than I do; but if, on the contrary, he means the power of analysis and combination that power which reduces the most complex idea into its elements, which traces causes to their first principle, and, by the power of generalization and combination, unites the whole in one harmonious system then, so far from deserving contempt, it is the highest attribute of the human mind. It is the power which raises man above the brute which distinguishes his faculties from mere sagacity, which he holds in common with inferior animals. It is this power which has raised the astronomer from being a mere gazer at the stars to the high intellectual eminence of a Newton or a Laplace, and astronomy itself from a mere observation of isolated facts into that noble science which displays to our admiration the system of the universe. And shall this high power of the mind, which has effected such wonders when directed to the laws which control the material world, be forever prohibited, under a senseless cry of metaphysics, from being applied to the high purposes of political science and legislation? I hold them to be subject to laws as fixed as matter itself, and to be as fit a subject for the application of the highest intellectual power. Denunciation may, indeed, fall upon the philosophical inquirer into these first principles, as it did upon Galileo and Bacon, when they first unfolded the great discoveries which have immortalized their names; but the time will come when truth will prevail in spite of prejudice and denunciation, and when politics and legislation will be considered as much a science as astronomy and chemistry.

In connection with this part of the subject, I understood the Senator from Virginia (Mr. Rives) to say that sovereignty was divided, and that a portion remained with the States severally, and that the residue was vested in the Union. By Union, I suppose, the Senator meant the United States. If such be his meaning if he intended to affirm that the sovereignty was in the twenty-four States, in whatever light he may view them, our opinions will not disagree; but according to my conception, the whole sovereignty is in the several States, while the exercise of

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sovereign power is divided a part being exercised under compact, through this general government, and the residue through the separate State governments. But if the Senator from Virginia (Mr. Rives) means to assert that the twenty-four States form but one community, with a single sovereign power as to the objects of the Union, it will be but the revival of the old question, of whether the Union is a union between States, as distinct communities, or a mere aggregate of the American people, as a mass of individuals; and in this light his opinions would lead directly to consolidation....

Disguise it as you may, the controversy is one between power and liberty; and I tell the gentlemen who are opposed to me, that, as strong as may be the love of power on their side, the love of liberty is still stronger on ours. History furnishes many instances of similar struggles, where the love of liberty has prevailed against power under every disadvantage, and among them few more striking than that of our own Revolution; where, as strong as was the parent country, and feeble as were the Colonies, yet, under the impulse of liberty, and the blessing of God, they gloriously triumphed in the contest. There are, indeed, many striking analogies between that and the present controversy. They both originated substantially in the same cause with this difference in the present case, the power of taxation is converted into that of regulating industry; in the other the power of regulating industry, by the regulation of commerce, was attempted to be converted into the power of taxation. Were I to trace the analogy further, we should find that the perversion of the taxing power, in the one case, has given precisely the same control to the northern section over the industry of the southern section of the Union, which the power to regulate commerce gave to Great Britain over the industry of the Colonies in the other; and that the very articles in which the Colonies were permitted to have a free trade, and those in which the mother-country had a monopoly, are almost identically the same as those in which the Southern States are permitted to have a free trade by the Act of 1832, and in which the Northern States have, by the same act, secured a monopoly. The only difference is in the means. In the former, the Colonies were permitted to have a free trade with all countries south of Cape Finisterre, a cape in the northern part of Spain; while north of that, the trade of the Colonies was prohibited, except through the mother-country, by means of her commercial regulations. If we compare the products of the country north and south of Cape Finisterre, we shall find them almost identical with the list of last year. Nor does the analogy terminate here. The very arguments resorted to at the commencement of the American Revolution, and the measures adopted, and the motives assigned to bring on that contest (to enforce the law), are almost identically the same.

But to return from this digression to the consideration of the bill. Whatever difference of opinion may exist upon other points, there is one on which I should suppose there can be none; that this bill rests upon principles which, if carried out, will ride over State sovereignties, and that it will be idle for any advocates hereafter to talk of State rights. The Senator from Virginia (Mr. Rives) says that he is the advocate of State rights; but he must permit me to tell him that, although he may differ in premises from the other gentlemen with whom he acts on this occasion, yet, in supporting this bill, he obliterates every vestige of distinction between him and them, saving only that, professing the principles of '98, his example will be more pernicious than that of the most open and bitter opponent of the rights of the States. I will also add, what I am compelled to say, that I must consider him (Mr. Rives) as less consistent than our old opponents, whose conclusions were fairly drawn from their premises, while his premises ought to have led him to opposite conclusions. The gentleman has told us that the new-fangled doctrines, as he chooses to call them, have brought State rights into disrepute. I must tell him, in reply, that what he calls new-fangled are but the doctrines of '98; and that it is he (Mr. Rives), and others with him, who, professing these doctrines, have degraded them by explaining away their meaning and efficacy. He (Mr. R.) has disclaimed, in behalf of Virginia, the authorship of nullification. I will not dispute that point. If Virginia chooses to throw away one of her brightest ornaments, she must not hereafter complain that it has become the property of another. But while I have, as a representative of Carolina, no right to complain of the disavowal of the Senator from Virginia, I must believe that he (Mr. R.) has done his native State great injustice by declaring on this floor, that when she gravely resolved, in '98, that "in cases of deliberate and dangerous infractions of the Constitution, the States, as parties to the compact, have the right, and are in duty bound, to interpose to arrest the progress of the evil, and to maintain within their respective limits the authorities, rights, and liberties appertaining to them," she meant no more than to proclaim the right to protest and to remonstrate. To suppose that, in putting forth so

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solemn a declaration, which she afterward sustained by so able and elaborate an argument, she meant no more than to assert what no one had ever denied, would be to suppose that the State had been guilty of the most egregious trifling that ever was exhibited on so solemn an occasion.