NULLIFICATION:

ITS ORIGIN, DEVELOPMENT AND INFLUENCE.

A THESIS PRESENTED TO THE FACULTY OF SCIENCE, LITERATURE AND THE ARTS, UNIVERSITY OF MINNESOTA, FOR THE DEGREE OF MASTER OF ARTS.

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April, 1896.

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I. INTRODUCTION.

The broad outlines of American history since the Revolution may be tersely expressed in two words, Union and the West. Other topics -- slavery, the tariff, internal improvements -- can be regarded as phases of one or both of these questions. Nullification is a part of the problem of Union.

Contemporaneous estimation of a political theory is seldom fair and adequate. The attention is directed so exclusively to the results that the origin, development and purpose of the doctrine are obscured. Frequently the contemporaneous opinion passes almost unmodified into history; the outcome is a popular misconception. Such has been the treatment accorded to nullification. It was described as originating in opposition to the tariff of 1828,[1] as developed from groundless assumptions[2] by a factious minority. Its purpose was variously estimated. Some believed that its only object was to secure a repeal of the obnoxious tariff

1. I. Benton 95. "The tariff of 1828 is an era in our legislation, being the event from which the doctrine of 'nullification' takes its origin.". . .
2. Webster: Reply to Hayne.

of 1828 -- the act of abominations. Others ascribed to the supporters of nullification the ulterior object of dissolving the Union.[1] All its opponents agreed in denouncing the doctrine as political anarchy.[2] These opinions have been in large measure adopted and reiterated by subsequent historians.[3] The problem proposed for this paper is to investigate the correctness of these views.

1. Webster VI. Congressional Debates, Part I.,38.
2. The best statement of the effects of nullification is in I. Story, Section 380.
   Weed: Autobiography, 422, describes nullification as the device of the slave power, designed to secure its demands or to divide the Union.
3. Views essentially like these are presented in nearly all of the general histories; viz. Schouler.

II. THESIS.

Nullification, as a political dogma, did not spring into being fully developed, nor was it the invention of John C. Calhoun. Like other political theories it was a growth; the germs from which it developed will be found in the habits of thought and action among the colonists before the separation from England. These habits are revealed in the debates over the formation and ratification of the Constitution; and this study may well begin at that point.

From the germs revealed in the constitutional debates the nullification doctrine was gradually -- and to many who assisted, unconsciously -- developed by a series of events, the Virginia and Kentucky resolutions of 1798-9; the opposition of New England to the policy of the Federal government beginning with resistance to the Louisiana purchase and culminating in the Hartford Convention, and finally the South Carolina opposition to the tariff.

If the genesis just given be correct, our opinion of nullification and the great nullifier must be somwhat modified. We cannot, with Schouler, describe nullification as "having no just connection with the resolutions of 1798-9;"[1]

1. III. Schouler, 491.

nor can we regard Calhoun as inculcating the doctrine of a school of his own creation.[1] On the contrary we must hold that nullification was the natural and inevitable result of certain tendencies implanted in the American political and social structure, and that Calhoun was only the voice that gave them utterance.

With our ideas of its genesis thus altered the doctrine of nullification appears somewhat more reasonable and we are in a better position to estimate its influence. That "political anarchy" would have resulted, had nullification been put into practice, must be admitted; but this should not blind us to what did result from the doctrine. The advocacy of a political theory by a body of men of any considerable numbers or influence will always leave an effect, traceable long after the theory and its advocates have been forgotten. Nullification was no exception to this rule. The effects were of two kinds:

1. Results springing from the doctrine at the time of

1. III. Schouler, 491.

its most emphatic assertion.

2. Results from the doctrine in the course of development; i.e., results, other than nullification, traceable to the same series of events which developed the doctrine.

III. THE CONSTITUTIONAL DEBATES.

During the troubled period before the Revolution British writers often declared that the colonies could not act in concert, even in defense of their rights.[1] The event proved them mistaken; but when the necessity of united action against a foreign foe had been removed, the old inclination of each colony to act independently seemed unabated. Some national sentiment -- as yet only a hope -- animated a small but influential part of the people; these we may call the Nationalists or National party. But the bulk of the people were still attached to their old colonial ways and with them the independent state governments alone inspired respect, confidence and affection. The word Separatist best describes this party. These two parties existed under one form or another until the close of the Civil War.[2]

When grinding necessity forced from an unwilling people their assent to the Constitution, the Nationalists won a great victory; but the Separatists did not on that account give up their political convictions.[3] Only a most reluctant consent

1. Several cited in III. Lecky, 292,293.
2. For a statement of the views of the two parties see Pollard: Lost Cause, 41.
3. Von Holst brings this out frequently in his first volume.

had been extorted and the new government had but a small place in the affections of the people. National sentiment was deplorably lacking, nor had the agitation during the ratification campaign done much to create such sentiment. Hamilton had vehemently declared "We are one people," yet the federal features of the Constitution, as the guaranties of state independence, had received the most attention in the ratification campaign, while the national features which were destined to make them one people were but half understood. This was at once the price of the Constitution and the opportunity of the Separatists.

Nationality was involved in two debatable questions:

1. How was the Constitution made? By the states or by the people of the United States in the aggregate?

2. In case of a conflict of authority between the federal and state authorities, which must give way and permit the other to nullify its action?

Neither of these problems had been definitely settled in the Constitution or the debates over it. The first question was not often squarely raised; in the second case the power had been claimed for the federal judiciary,[1] but the

1. Madison: Federalist, 39 (Edition of Albert, Scott & Co., p.214).

Constitution is not explicit upon the point.[1] The claim then advanced for the federal judiciary had not been made frequently enough to receive general recognition and thus put it beyond dispute. Upon the first question the compact dogma contains the views of the Separatist party; the logical extreme of this view is secession. Upon the second question decision by some form of state authority is the logical result of the views held by the Separatists. Nullification asserted the constitutional views of the Separatists upon both points but attempted to prevent the logical outcome of them, secession; by limiting their operation to the second question. Careful examination will show that in each of the three movements under consideration this was the main contention of those opposed to the Federal government. We have chosen to call them all nullifiers and their cause nullification; for their actions were in effect the same, their purpose the same, their views based on the same ideas of the Constitution, and one led naturally up to the other. A brief discussion of the two constitutional questions involved will assist in estimating arguments and aims.

1. For the two different interpretations of the constitutional provision upon this point compare Webster: Reply to Hayne (Nationalist) and Judge Bibb in the Senate on the Force Bill (Separatist), IX. Congressional Debates, Part I.

When the question of how the Constitution was made became of vital importance Webster, as the champion of the National party, declared that it was made by the people of the United States in the aggregate.[1] As authority for this view Webster cited the "Constitution itself, in the very front:"[2] "We, the people of the United States" . . . "do ordain and establish this Constitution."[3] That this expression meant the people of the United States in the aggregate, and not the people of the states severally, Webster thought was clear from "contemporary history," the Federalist, "the debates in the conventions of the states" and "the writings of friends and foes." Webster did not, however, make any considerable use of these contemporary authorities which he claimed in support of his interpretation.

Webster's magnificent oration carried conviction to the masses in the North, but the Separatists still held to the opposite view, that the Constitution is a compact made by sovereign states. The portion of the preamble cited by Webster was explained to mean the people of the states <u>severally</u>; this claim the Separatists asserted was fully sus-

1. Reply to Hayne and speech on the Calhoun resolutions, IX. Congressional Debates, Part I.
2. Reply to Hayne.
3. Preamble.

tained by contemporary exposition. This difference of opinion can be settled, if settled at all, only by a careful examination of the contemporary evidence. The writer is of the opinion that decision is impossible, in the sense of declaring one party wholly right and the other wholly wrong. The constitutional debates left the question open[1] -- referred

1. The writer has arrived at this conclusion after a careful study of the constitutional debates, chiefly for the following reasons.
   a. The wording of the preamble cannot be interpreted to mean the people in the aggregate since Madison's Journal fails to show that such was the intention of the convention; moreover it seems almost unquestionable that "We, the people" was substituted for "We, the states" of Moss, etc., for the reason that only nine states were required for ratification.
   b. The question was squarely raised and answered but twice, i.e., where its significance was not obscured by confounding it with other questions. In the Federalist, Number 39, Madison discusses the matter and this discussion can leave no doubt that the people of the states severally was meant. His language is as follows: "That it will be a Federal, and not a National "act, as these terms are understood by the objectors, "the act of the people, as forming so many independent "states, not as forming one aggregate nation, is obvious "from this single consideration that it is to result "neither from the decision of a majority of the people "of the Union, nor from that of a majority of the states. "It must result from the unanimous assent of the several "states that are parties to it, differing no otherwise "from their ordinary assent than in its being expressed, "not by the legislative authority, but by that of the "people themselves. Were the people regarded in this "transaction as forming one nation, the will of the ma-"jority of the whole people of the United States would "bind the minority, in the same manner as the majority "of each state must bind the minority; and the will of

for decision to the logic of events. If the question was thus left undecided, is it strange that the Separatists of 1787-9 regarded the states as the makers of the Constitution? Jefferson Davis[1] and B. J. Sage[2] have collected a large number

> "the majority must be determined; either by a comparison "of the individual votes; or by considering the will of "the majority of the States as evidence of the will of a "majority of the people of the United States. Neither "of these rules has been adopted. Each state, in rati- "fying the Constitution; is considered as a sovereign "body independent of all others; and only to be bound by "its own voluntary act." (Albert, Scott & Co. edition; pp. 212-213) This would seem to be conclusive as to Madison's opinion; especially since he reiterated this same position in the Virginia convention in reply to Patrick Henry (See III. Elliot, 94). But we must remember that the prominence of Madison is not proof that this view was generally understood and accepted.
>
> c. Elsewhere than the two cases just mentioned the point is entirely neglected, so far as we know, or else confounded with other questions. In the Pennsylvania convention the question was squarely raised by the opponents of the Constitution, but its friends in replying always confound the question of aggregate or individual states with the question of the people as opposed to the government. A close examination of the passage bearing upon this point as given in McMaster and Stone: Pennsylvania and the Federal Constitution, will support the statement just made.

1. Rise and Fall of the Confederate Government, Vol.I., Part II., Chaps. IV.-VII.
2. Republic of Republics, Chap. VII.

of excerpts to prove that this view was universally held. Several of them will not sustain the given interpretation,[1] but a strong enough case is made out to stamp the view as eminently fair and reasonable.

In addition to the evidence collected by Davis and Sage -- this includes the unequivocal declaration of Madison cited in a previous note -- two other points may be worthy of notice as evidence for this same opinion.

1. In 1799 Edmund Randolph, who appears to have been neutral upon the Virginia resolutions, in a letter to Madison remarked: "It seems to me that nothing could have been more "unimportant, at least as to subject matter, than to announce "that the people of the States were parties to the Constitu- "tion. Everybody acknowledged it."[2]

2. For the next fifteen or twenty years after the adoption of the Constitution nobody appears to have denied the right of a state to secede.[3] The right of secession is not sustainable on any other grounds than that the states made the Constitution, hence from the general recognition of the right to secede it follows that the states must have been regarded as the makers of the Constitution.

1. For example, that from Theophilus Parsons, cf. Memoir, 97.
2. This letter is published in Conway's Edmund Randolph, 368.
3. Lodge: Webster, 176-177; I.Stephens, Col.XI. and citations; Debates in Congress over the Louisiana purchase.

Touching the right of decision in case of conflict of authority between the Federal and state governments Webster held that the Constitution vested that power in the Supreme Court of the United States.[1] Reading from the Constitution: "This Constitution and the Laws of the United States" . . . "shall be the supreme Law of the land;"[2] "The judicial Power "shall extend to all cases in Law and Equity, arising under "this Constitution;"[3]--"These two provisions, sir, cover the "whole ground."[4] This assertion the Nullifiers denied and declared that in such a case the decision should be made by the states or ultimately by three-fourths of the states assembled in convention. The question here is whether the Nullifiers of 1830 -- Separatists by a different name -- could find any ground for their position in the constitutional views of the Separatists of 1787-9. The problem is an extremely difficult one, for the case which did arise does not seem to have been anticipated, except by Madison. In the thirty-ninth number of the Federalist he declares: "It is "true, that in controversies relating to the boundary between "the two jurisdictions, the tribunal which is ultimately to

1. Reply to Hayne: VI. Congressional Debates, 77-78.
2. Article VI., Section 2.
3. Article III., Section 2.
4. Reply to Hayne,

"decide, is to be established under the General Government." Hamilton wrote most of the Federalist articles dealing with the judiciary and he seems to have been so impressed with the probability of state encroachment upon the powers of the Federal government that he does not discuss the case of a state claiming that the Federal government was encroaching on its powers. In the state conventions the point was not often raised, and when discussion of it was approached the real question was obscured by other considerations or else evaded.[1] Against the one instance where Madison definitely expressed the subsequent national view the Separatists could bring the opinion expressed by Marshall in the Virginia convention, that a state could never be brought to the bar of the Supreme Court.[2] A fair conclusion upon the question, as regards the evidence furnished by the constitutional debates, would be that neither Separatist nor Nationalist could find much to justify his position, but that the claim of the Separatist was as well sustained as that of his opponent. A

1. For example see the speeches of Marshall in the Virginia convention, as given in Magruder's Marshall, 82-86, and those of Wilson and McKean in the Pennsylvania convention as given in McMaster and Stone (see index for judicial powers and judiciary).
2. Quoted in Magruder's Marshall, 84: "I hope that no gentleman will think that a state will be called at the bar of the federal court."

stronger argument for the view of the Separatist is that his position logically followed from his view upon the parties to the Constitution, as being sovereign states. These considerations warrant the belief that in the opinion of the Separatists of 1787-9 the powers of the Federal government were not extensive enough to make possible further extension of its power, through the judiciary, to a point beyond the limits recognized by the state governments. If the Nationalists gave to the provisions of the Constitution as interpretation which made this possible, certainly the Separatists did not realize it when they gave their assent to the Constitution.

The constitutional views held by the Separatists in 1787-9 were retained after the ratification of the Constitution and were reasserted at the first opportunity. Their views may be thus summarized: The states retain all powers not expressly delegated to the Federal government; nor did they anticipate that the Federal government, under the cloak of its own interpretation of the two undecided points, might extend the field of its activity until it passed beyond the control of the states. But this unanticipated movement began at once and in opposition to it the Separatists soon reappear as a distinct party in the support of the Virginia and Kentucky resolutions.

IV. THE VIRGINIA AND KENTUCKY RESOLUTIONS.

A statement of the political condition of the United States in 1789 and until 1798 forms the best introduction to the Virginia and Kentucky resolutions. In 1789 the Federal government was an experiment with untried powers and its relations to the states not precisely determined. It was in the hands of its framers, the Federalists, but the Separatists, retaining their old principles essentially unchanged, looked upon it with distrust. While the Continental Congress was still the only bond of union between the colonies Hamilton had set forth the doctrine of implied powers.[1] When he became Secretary of the Treasury Hamilton immediately discovered in the Constitution a magnificent opportunity to use this doctrine and upon it were based the leading features of his financial policy.

The financial measures of Hamilton strengthened the Federal government by developing its powers, but a not less important result was the gradual transformation of the old Separatist party into an organized opposition bearing the name Republican, with Thomas Jefferson as leader. The prin-

1. Shea's Hamilton: Preface to the second edition, citing the well-known letter to Duane in 1780.

ciples of this party were in the main those of the old Separatists. It looked with suspicion upon the employment by the Federal government of powers not expressly named in the Constitution. During the administration of Washington, public confidence in his integrity, lack of organization and failure to perceive at once the full scope of Hamilton's policy account for the absence of any considerable Republican opposition. When John Adams became President all was changed. The character of the President inspired distrust. Republican organization proceeded with remarkable rapidity when the full extent of Hamilton's policy began to be recognized. Under such circumstances the slightest indiscretion on the part of the Federalists was certain to call forth strenuous opposition to the government which they controlled. Nor was this opposition long delayed; for the Alien and Sedition laws furnished the occasion and the result was the Virginia and Kentucky resolutions.

It would be a serious mistake to regard the Alien and Sedition laws as the resolutions of '98; those laws were the occasion, not the cause, of the resolutions.[1] The causes

1. For a good brief statement of the causes of the Virginia and Kentucky resolutions from the standpoint of their supporters see Adams: Randolph, 34-39.

were numerous, and may be thus stated:

1. The Republican party, which now embraced both the membership and the principles of the old Separatists, looked with deep distrust upon the Federal government and its supporters, the Federalists.

2. This natural distrust had been inflamed by the various measures of the Federalists -- chiefly Hamilton's financial policy -- designed to enlarge the powers of the Federal government; to the Republicans these measures appeared to encroach upon the reserved rights of the states and even to threaten their ultimate overthrow.

3. The Republicans were thoroughly alarmed for the future integrity of the states by the views which they ascribed to the Federalists. That this apprehension was not entirely groundless may be shown by a short survey of some of the views and proposals of leading Federalists, put forth at about that time. These views naturally fall into two classes according to subject matter:

a. Upon the nature of the Union. Some of the Federalists were beginning to ~~regard~~ hold -- or if they had so believed before, to declare unequivocally -- that the Constitution was made by the people of the United States taken in the aggre-

gate.[1] The Republicans had accepted it as the work of the individual states, and looked upon this new conception as being wholly without warrant.

b. Upon the powers of the Federal government. These powers the Federalists had enlarged and sought to enlarge still further. Among the numerous propositions advanced for this purpose, the following are noteworthy:

(1) Certain powers which the Federal government enjoyed but had not yet exercised should be immediately pressed into service. Hamilton proposed[2] that internal improvements in the matter of communication should be undertaken by the Federal government, that a society be established under the patronage of the government to encourage agriculture and the arts; that more indirect taxes be levied in order to maintain the present military force[3] and enlarge the navy.

1. See the opinions of Jay and Wilson in Chisholm vs. Georgia, 2 Dallas, 464, passim; the language employed by Wilson admits of but one interpretation, that the people of the United States as a single body made the Constitution; Jay's language while inclining towards this opinion is not so unequivocal. Cooley: Constitutional History of the United States as seen in the development of American Law, pp. 48-49, has some instructive comments on this decision.
2. Hamilton to Dayton, January, 1799; the letter is given in II. Randall's Jefferson, 458-461, and in VII. Hamilton's Hamilton. 280-285
3. The army had just been considerably enlarged owing to the danger of war with France.

(2) Many of the leading Federalists asserted that not only the Constitution and the laws of Congress, but the common law were sources of jurisdiction for the federal courts.[1] This doctrine was truly alarming,[2] for if established it might, and in time probably would, bring before the federal courts all causes at common law, leaving to the state courts only causes arising under the state statutes.[3] Nor was this assertion confined to individuals; for several decisions of the federal courts affirmed or inclined towards this strange doctrine.[4]

1. Jefferson in the Anas (IX.Works,198-9 and 203) speaks of Tracy, Read and Lawrence as advocating this theory in the Senate and of Bayard of Delaware publishing an elaborate article to the same effect in the Wilmington Mirror.
2. In a letter to Edmund Randolph, August 18, 1799, Jefferson (IV.Works,301-304) pronounces this doctrine the most dangerous of all those advanced in behalf of the Federal government. His feelings can be best appreciated from his own words: "But, great heavens! Who would have conceived, in 1789, that within ten years we should have to combat such windmills."
3. See the argument of Dallas for the defendant in United States vs. Worral (2 Dallas,390).
4. In U.S. vs. Worral (2 Dallas,284) Chase, the Circuit judge, held that the federal courts did not have a common law jurisdiction, but Peters, the District judge, did not concur. Hildreth, 2 Series,II., pp.317-318, refers to a case wherein Ellsworth decided that the federal courts have common law jurisdiction. No citation, and the writer has not been able to find the decision.

(3) Hamilton also proposed to make the federal judiciary still more efficient by subdividing the state into districts with a federal court for each and by the appointment of a large number of federal justices of the peace.[1]

(4) Various constitutional amendments were suggested in order to enlarge the powers of the Federal government; among these the one proposed by Hamilton[2] that Congress be permitted, upon the petition of a hundred thousand from a locality, to subdivide the great states, was best calculated to excite Republican alarm.

4. The Supreme Court was fulfilling in large measures the predictions of Patrick Henry[3] and Mason[4] by assuming the right to decide upon all matters involving the constitutionality of powers exercised by the Federal government, regardless of the parties to the suit.[5] If this power should obtain recognition it would make that court the final arbiter in

1. See his letter to Dayton last cited.
2. Letter to Dayton.
3. See his remarks on the judicial powers in the Virginia convention; his speeches in the convention are published in III. Life, Correspondence and Speeches, 434-600.
4. See his remarks on the same subject and occasion, published in Life, Correspondence and Speeches
5. The decision in Chisholm vs. Georgia amounted to claiming this power in all cases, and the eleventh amendment only took away the power in one.

all cases of conflict between the state and Federal governments; a condition of affairs which the old Separatists had not anticipated and which the Republicans of '98 were not prepared to allow.

5. The Alien and Sedition laws complete the list of causes and furnish the immediate occasion for vigorous opposition to the Federal government.

The consensus of subsequent opinion has pronounced the Alien and Sedition laws unwise and contrary to the spirit, if not to the letter, of the Constitution.[1] The Republicans denounced them as unconstitutional, dangerous to popular liberties and blows aimed directly at some of their prominent leaders.[2] From all sides petitions poured in requesting Congress to repeal these laws. In Virginia they formed the main topic of debate in the county courts and vigorous resolutions were adopted calling upon the Legislature to protect the people against them. Doubtless these debates -- begun, perhaps, while these laws were still under discussion in Congress -- were what prompted John Taylor of Caroline to inquire of Jefferson whether it was not time for

1. Hildreth seems to stand entirely alone in support of these laws -- Second Series, II.
2. Jefferson: IV. Works, 237,239.

Virginia and other Southern states to consider the advisability of withdrawing from the Union to form a new confederation.[1] Jefferson, with his usual moderation in action, disapproved of the plan;[2] but some time later expressed his own views of the laws and of the proper measures against them. These laws, he declares, are the first step towards a monarchy,[3] and the state legislatures will take strong ground upon them.[4] As Jefferson predicted the legislatures of Virginia and Kentucky did take strong ground upon them -- or rather against them. Nor is the reason far to seek. After consultation with Madison, George and W. C. Nicholas, Jefferson drew up a set of resolutions which formed the basis of those subsequently adopted by both Virginia and Kentucky.[5] Madison, from a copy of Jefferson's resolutions, drew up a new set, embodying similar ideas but set forth in more moder-

1. Jefferson: IV. Works, 245-248.
2. Ibid.
3. McMaster thinks that the firm conviction of the truth of this statement takes from Jefferson all claim to the title of statesman; with this opinion the writer cannot agree.
4. Jefferson: IV. Works, 257-258; Oct. 11, 1798, to S.T.Mason.
5. Jefferson: IV. Works, 258; Nov. 11, 1798, to Madison; see also his letter to Breckenridge, Works, 229-230. Warfield: Kentucky Resolutions, has discussed the question of authorship and shown clearly the relation of Jefferson to both sets of resolutions to be that stated above.

ate and precise language; these were intrusted for introduction into the Virginia legislature to John Taylor of Caroline.[1] Another copy of Jefferson's resolutions was sent to W. C. Nicholas, who likewise altered them somewhat and laid them before the Kentucky legislature.[2]

In both Virginia and Kentucky the resolutions were speedily passed, for the opposition though vigorous and able was representative of only a small minority. Virginia after expressing attachment for the Union[3] declares its attitude upon three important constitutional questions.

1. The Constitution is a compact to which the states are parties.[4]

2. The powers of the Federal government are limited to those clearly conveyed by the plain sense and intention of the instrument that created it.[5]

3. In case of a deliberate, palpable and dangerous exercise of powers not granted to the Federal government, the states have the right and are in duty bound to interpose for arresting the progress of the evil and for maintaining the authorities, rights and liberties of the states.[6]

1.
2. III. McMaster. 412
3. Preston, 284.
4. Ibid.
5. Preston, 284-285.
6. Ibid, 285.

The Alien and Sedition laws are pronounced dangerous and unconstitutional, and the Government is requested to transmit a copy of the resolutions to the executives of the other states to lay before the legislatures.[1]

The Kentucky resolutions are longer and more argumentative than those of Virginia. Attachment for the Union is expressed,[2] but the idea is not made so prominent. Upon constitutional matters similar positions are taken, but in more unequivocal language.

1. The states are not united on the principle of unlimited submission to their General Government, but by compact for special purposes.[3]

2. Certain well-defined powers were granted by the states to the General Government; all other powers not so delegated were retained by the states.[4]

3. Whenever the General Government assumes undelegated powers, its acts are unauthoritative, void and of no force. The General Government was not made[5] the exclusive or final judge of the extent of its powers, "since that would make its

1. Preston, 285-287.
2. Ibid, 292, Resolution IX.
3. Ibid, 287, Resolution I.
4. Ibid.
5. This plainly implies further "and, therefore, cannot be."

discretion, and not the Constitution, the measure of its powers;"[1] but each party to the compact, there being no common judge, "has an equal right to judge for itself, as well of infractions as of the mode and measure of redress."[2]

Protests and arguments are set forth to prove that not only the Alien and Sedition laws, but also an act of July 14, 1798, to punish certain crimes against the United States and one to punish frauds against the United States Bank are unconstitutional.[3] The policy of the Federal government is denounced as amounting to "an undisguised declaration that the Compact is not meant to be the measure of the powers of the General Government, but that it will proceed in the exercise over these states of all powers whatsoever."[4] A protest is recorded against the use of implied powers; correction of this can be reserved, however, for a time of greater tranquility, but the other grievances demand immediate redress.[5]

1. Preston, 287, Resolution I.
2. Ibid, Taken in connection with the previous statement of the same Resolution (I.) this must be interpreted to mean that <u>each</u> state has the right to pass judgment since each state is declared to be a party.
3. Ibid, 287-291, Resolutions II. - VI.
4. Ibid, 294, Resolution IX.
5. Ibid, 291, Resolution VII.

These resolutions, from their later importance, evoked innumerable interpretations, but for the purpose of this paper two observations will be sufficient.

1. It will not escape notice that the constitutional questions raised in both sets of resolutions are the same; that both states hold practically identical views of them and that the questions are exactly the ones which the constitutional debates had left unsettled.[1] The three questions raised in the resolutions may be reduced to two, (a) the nature of the Union and (b) the final arbiter.[2]

(a) Is the Constitution the expression of the sovereign will of the people of the United States taken in the aggregate; or is it a compact entered upon by sovereign states?

(b) In case of a conflict of authority between the

1. After the writer had turned over to the typewriter the copy for the earlier pages, he was pleased to discover among his notes the following admirable statement upon the open questions from Shaler's Kentucky, 142-143: "No "candid person can read these debates without rising "from his task with the conviction that the delegates to "the constitutional convention failed to determine the "precise relation between the States and the Federal "government."
2. This admirable expression "final arbiter" is the one used by Story: Commentaries, to mean that tribunal whose right and duty it is to decide all cases of conflict, if of a judicial nature, between the Federal and state governments. It will be used in that sense in the rest of this thesis. Judge Story in his chapter by that title presents brilliantly the Nationalist view upon that question.

Federal and state governments; which is to have the right of decision?

These ~~resolutions~~ questions had secured, comparatively, but scant attention in the constitutional debates; had seldom been squarely raised and had never been fully understood and decided.[1] Now the issue between the Nationalist and Separatist is squarely raised for the first time under the Constitution; and we find the authors of the Virginia and Kentucky resolutions holding precisely identical views with those Separatists of 1787-9 who had sufficient acumen to perceive in the Constitution the presence of these questions. It is equally clear that those Separatists who were not aware of the questions acted on the supposition that the Separatist view was the only possible one. The Federalists had placated the former class by explaining or obscuring the questions and in that manner ratification had been secured.[2] But the questions arose and the Separatists naturally believed their position the only correct one.

1. Supra p.10
2. The opinions expressed in this and the preceding sentence are general deductions from the study of the constitutional debates. It is impossible to cite specific references that prove these assertions, and adequate discussion of them would double the size of this thesis.

2. Both sets of resolutions are declaratory of a principle to be put into practice in the event of a conflict of authority between a state and the Federal government. This principle though not fully developed amounts to nullification of the action of the Federal government by a state government. It should be further noted that it is a logical deduction from their views of the nature of the Union.[1]

The Governor of Virginia immediately sent a copy to each of the states and from seven received replies; Massachusetts, Rhode Island, Connecticut, New Hampshire, Vermont, New York and Delaware. All expressed general disapproval and with this action Delaware was content.[2] Connecticut "explicitly disavows the principles contained in the aforesaid resolutions.[3] The other states are more specific and explain the reasons for their disapproval.[4]

Virginia and Kentucky had declared that the Constitu-

1. The writer means logical in the sense that a state has that right. Other states would have a right to complain that it amounted to a dissolution of the compact and they therefore would dissolve it. But in that case the dissolution would be their action.
2. IV. Elliot, 532.
3. Ibid, 538.
4. Ibid, 533-539.

tion is a compact between sovereign states. It is noteworthy that in none of the replies is this fundamental argument answered. Not one distinctly denies that the Constitution is a compact and that the thirteen states made it. The reply of Massachusetts seems to foreshadow the arguments of Webster when it speaks of the "compact" which the people have "declared to be the supreme law of the land,"[1] and again in describing the Federal government as "that government to which the people themselves, by a solemn compact, have exclusively committed their national concerns."[2] But there is no distinct assertion that the Constitution was made by the people of the United States in the aggregate, nor is the compact dogma of Virginia and Kentucky denied. Silence on the part of the other states,[3] and failure by Massachusetts to expressly deny, cannot be taken in this case as acquiescence in the compact dogma of Virginia and Kentucky. But it does

1. IV. Elliot, 534.
2. Ibid.
3. Of the other states only the reply of New York affords the slightest clue to their position upon the nature of the Union. New York opens with these words: "Whereas, the "people of the United States have established for them-"selves a free and independent national government." Does this mean in the aggregate or of the states separately? The point is not clear, though certain things seem to indicate that possibly the former was meant.

show, at the least, that the compact dogma was not then regarded by the Nationalists as entirely unfounded. It certainly indicates still further that the nature of the Union problem had not been an issue in the ratification of the Constitution and was still an open question.

If the replies of the states were indefinite upon the first of the open constitutional questions -- the nature of the Union -- they atoned for that failure by being explicit on the second question -- the final arbiter. The Supreme Court of the United States was in their opinion created for the purpose of acting as final arbiter. Rhode Island declared that Article Three, Section Two, of the Constitution of the United States "vests in the federal courts exclusively, and in the Supreme Court of the United States ultimately, the authority of deciding on any act or law of the Congress of the United States; . . . "that for any state legislature to assume that authority would be" . . . "an infraction of the Constitution of the United States expressed in plain terms."[1] Massachusetts is equally plain to the same effect: "That this legislature are persuaded that the decision of all cases in law and equity arising under the Constitution of the United States and the construction of all

1. IV. Elliot, 533.

laws made in pursuance thereof are exclusively vested by the people in the judicial courts of the United States."

"That the people, in that solemn compact which is de-"clared to be the supreme law of the land, have not constitut-"ed the state legislatures the judges of the acts or meas-"ures of the federal government."[1] . . . .

Vermont is more concise than Massachusetts and equally plain. "It belongs not to the state legislatures to decide on the constitutionality of laws made by the general government; this power being exclusively vested in the judiciary courts of the Union."[2] The language employed by New York and New Hampshire is not so explicit but the intention is plain enough: New York quotes the Constitution upon the powers of the federal judiciary and adds, "whereby the interference of the legislatures of the particular states in those cases is manifestly excluded."[3] New Hampshire declares "that the state legislatures are not the proper tribunals to determine the constitutionality of the laws of the general government; that the duty of such decision is properly and exclusively confided to the judicial department."[4] Whether

1. IV. Elliot, 534.
2. Ibid, 539.
3. Ibid, 537.
4. Ibid, 538-539.

"the judicial department" means the state or the federal judiciary is not beyond possible question, but it seems plain that the latter is intended.

Virginia and Kentucky had declared their views upon the two open constitutional questions; the first, involving the nature of the Union, was fundamental; the second, upon the matter of final arbiter, was not less important and only less fundamental because it depended for its solution on the first. The replying states had neglected the first and disapproved the second. But, if the views of either party upon the second question could be put into practice, the whole ground would be covered for all practicable purposes on ordinary occasions; and the ordinary practice would be much more likely to prevail than any theory, however well grounded, when the time came for final decision in some extraordinary conflict of authority. The position of Virginia and Kentucky amounted to a nullification of national action by some form of state authority; the replying states by pressing forward the claim of the Supreme Court as final arbiter, asserted the supremacy of national authority in no uncertain tones.

If Jefferson was surprised or disappointed at the reception with which the resolutions of Virginia and Kentucky met at the hands of the other states, he was not dismayed, for we find him urging their supporters to reply with

vigor.[1] By Jefferson's influence Madison was induced to exchange his seat in Congress for one in the Virginia House of Delegates in order to participate in the debates upon a proper reply. When the Virginia legislature met it still contained a large majority favorable to the resolutions, although the Federalists had waged a vigorous campaign upon that issue, and had made considerable gains.

Madison was made chairman of the committee to draft a reply; the report of this committee, generally known as Madison's Report, divides with Calhoun's letter to Governor Hamilton the honor of being the most able and authoritative argument for the state rights doctrines. The Report[2] is lengthy and only those parts relating to the two constitutional questions raised in the resolutions of '98 demand our attention. Upon the nature of the Union Madison reiterates the doctrine of the resolutions passed the preceding year, that the Constitution is "a compact to which the states are parties."[3] In commenting on this proposition Madison explains the various uses of the word <u>state</u> in the Constitution and makes it plain that in his opinion the Constitution was the creation of states completely sovereign.[4]

1. IV. Works, 304-305, To W.C.Nicholas; August 26, 1799.
2. IV. Elliot, 546-580.
3. A quotation used by Madison, from the Virginia resolutions of the previous year.
4. IV. Elliot, 547.

The correctness of Virginia's position upon the matter of final arbiter had been flatly denied by the replying states: Madison, in replying to them, defends the position of his state with great force and ability. Regarding the Constitution as a compact and that dogma as established, he declares it is "essential to the nature of compacts, that, where resort can be had to no other tribunal superior to the authority of the parties, the parties themselves must be the rightful judges, in the last resort, whether the bargain has been pursued or violated."[1] . . . . "The states, then, being the parties to the constitutional compact, and in their sovereign capacity, it follows of necessity that there can be no tribunal, above their authority, to decide, in the last resort, whether the compact made by them be violated; and consequently, that, as the parties to it, they must themselves decide, in the last resort, such questions as may be of sufficient magnitude to require their interposition."[2] This must be so, he declares, otherwise "there would be no relief from usurped power."[3]

1. IV. Elliot, 548
2. Ibid.
3. Ibid, 549.

Madison is not content, however, with merely establishing his position from the premises with which he started. He states the views of his opponents and brings against them three objections which he considers conclusive.

1. "There may be instances of usurped power, which the forme of the Constitution would never draw within the control of the judicial power."[1]

2. "If the decisions of the judiciary be raised above the authority of the sovereign parties to the Constitution, the decisions of other departments, not carried by the forms of the Constitution before the judiciary, must be equally authoritative and final with the decisions of that department."[2]

3. "Not only the other departments, but even the judicial department itself may assume and exercise dangerous powers beyond the grant of the Constitution."[3]

These objections are, in Madison's mind, so strong that he believes himself warranted in his position for "on any "other hypothesis, the delegation of judicial powers would "annul the authority delegating it, and the concurrence of "this department (the judiciary) with others in usurped pow-

1. IV. Elliot, 549.
2. Ibid.
3. Ibid.

"ers, might subvert forever, and beyond the possible reach of "any rightful remedy, the very Constitution, which all were "instituted to preserve."[1] The legislature adopted the Report, indorsing its own resolutions of '98"as consonant with the Constitution and conducive to its preservation."[2]

Kentucky replied to the states in a set of brief and pointed resolutions.

1. Federal Union upon the terms specified in the compact "is conducive to the liberty and happiness of the several states;" and to such a union Kentucky is attached;[3] but

2. "That the principle and construction contended for "by sundry of the state legislatures, that the general gov- "ernment is the exclusive judge of the powers delegated to it, "stop not short of <u>despotism</u> -- since the discretion of those "who administer the government and not the <u>Constitution</u>, would "be the measure of their powers: That the several states who "formed that instrument, being sovereign and independent, "have the unquestionable right to judge of the infraction; "and, That a nullification, by those sovereignties, of all "unauthorized acts done under color of that instrument, is "the rightful remedy:"[4] but for the present Kentucky is con-

1. IV. Elliot, 549,550.
2. Ibid, 580.
3. Preston, 297.
4. Ibid.

tent to save the principle by protest.[1]

Both states thus adhere to their original position and Kentucky goes beyond her mother-state only in giving to the remedy which both avow a name; for nullification is exactly what the Virginia resolutions and Madison's report advocate.[2] And this is not surprising for it is the only remedy, short of secession, to which consistent adherence to their constitutional views would lead.

1. Preston, 298.
2. This conclusion the writer thinks cannot be avoided if candid consideration is given to the matter. The resolutions declare that a state has the right "to interpose;" this expression cannot be explained to mean anything else than a right to nullify. In the Report Madison does not attempt to explain it away, but remarks of the resolution which contains it: "They have scanned it not merely with a strict but a severe eye;" . . . "it is unquestionably true in its several positions, as well as constitutional and conclusive in its inferences." (IV. Elliot, 547.)

In the discussion of political doctrines it is always somewhat hazardous to risk an opinion about the motives which animated their advocates or upon the results which they hoped to accomplish. Their motives may be gathered only from a study of their characters, declarations, actions and the circumstances which confronted them. The results which they hoped to achieve are even more difficult to ascertain; for we must consider, in addition to the elements just mentioned, that even statesmen frequently act without any very definite ideas of what results will follow. The most carefully studied opinions upon these subjects cannot be anything more than shrewd guesses; but when such eminent men as Jefferson and Madison are the leaders of so important a movement as that of 1798-9 there is a demand for some expression of opinion upon these matters.

It is certain that both men acted from patriotic motives; but whether these were of the local or national, revolutionary or constitutional sort are questions apparently beyond finding out. Jefferson was naturally a Separatist and, therefore, usually strenuous for state rights. While the constitutional debates were in progress he was in France and for that reason he could not fully appreciate upon his return the evils from which the Constitution had saved the

country. All that had yet taken place had served to advance a growing conviction that too much power had been given to the Federal government. Naturally of a somewhat suspicious nature he became possessed by the idea that there was in existence an organized party intent upon consolidating the states under one government and possibly even aiming to establish a monarchy. Entertaining such opinions, strong and emphatic protest, even to a threat of separation, was the least that could be expected from Jefferson. Madison was originally a Nationalist, but not of a very pronounced type.[1] Under the influence of Jefferson's more marked personality he was easily persuaded into a sincere belief that the state governments were in danger of destruction. In consequence Madison furnished the first example of the Nationalist who, in opposition to the party controling the government, becomes the champion of state rights.

What did the promoters of the Virginia and Kentucky resolutions expect to effect by them? No positive answer is possible. The writings of both Jefferson and Madison, whenever results come up for discussion, are extremely vague and indefinite. Neither seems to have had any anticipation

1. This view seems correct although he did advocate state veto and other extreme Nationalist measures in the Federal convention.

of a definite result. Each seemed to feel that the occasion demanded a strong protest, and such protests both drew up with the vague hope that some good would be accomplished.

There is some evidence of an intention to employ force in resisting the enforcement of the hated Alien and Sedition laws, but it is far from conclusive. John Randolph of Roanoke, whose eccentricities approached so closely to madness[1] that he cannot be relied upon unless verified, declared in 1817 that military preparation had been made to resist the Federal authority.[2] Nobody appears to have denied the statement, but this failure to enter denial cannot, in this case, be taken as conclusive of its truth. The only other evidences of this are similar contemporary statements of leading Federalists,[3] so far from the scene that they cannot personally know; they may report their fears or mere hearsay. The fact that the Sedition law was enforced in Virginia at Richmond would seem to indicate that violent opposition was not seriously meditated.

The contemporary correspondence between the promoters of the resolutions and the debates in both legislatures, so

1. Adams: Randolph, 295-296,305-306.
2. I. Benton.
3. Hamilton: Letter to Dayton, Jan.,1799; VII. Hamilton's Hamilton, 280-285.

far as reported[1] are very moderate in tone -- for that day. Jefferson, in November, 1798, advises strong resolves in order to influence other states but not to "do anything at this moment which should commit us further, but reserve ourselves to shape our future measures, or no measures, by the events which may happen."[2] In the following September after the replies of the states had been received Jefferson wrote to W. C. Nicholas urging further action by Kentucky. Protest is recommended, "reserving the right to make this palpable violation of the federal compact the ground of doing in the future whatever we might now rightfully do, should repetitions of these and other violations of the compact render it expedient."[3] These letters seem conclusive that Jefferson had no definite result in mind. In the letter last quoted Jefferson remarks that Madison does not concur

1. The debates in the Virginia legislature have been published (Richmond: J.W.Randolph,121 Main Street: cited by I. Foster in the Constitution,121,note) but the writer has not been able to get a copy. I. Benton,349-354, prints some very instructive excerpts. The debates in the Kentucky legislature have not been published, but Warfield: Kentucky Resolutions,87-95, prints from newspapers of the day probably about all that can now be obtained.
2. IV. Works, 260, to John Taylor of Caroline.
3. IV. Works, 305, September 5, 1799.

in the reservation which shows that Madison would not go beyond protest under any circumstances.[1]

The Federalists naturally discovered in the resolutions and the actions of their supporters evidences of some ulterior design. Hamilton charges actual preparation for war and declares that the movement can be regarded "in no other light than an attempt to change the government."[2] Theodore Sedgwick describes the Address to the People of Virginia written by John Taylor of Caroline as little short of a declaration of war.[3] Both Washington[4] and Patrick Henry[5] were of the opinion that unless the Virginia and Kentucky resolutions could be met and overcome the Union would be destroyed.

From this conflicting evidence, considering all the circumstances, the writer feels certain that few, if any,

1. Madison in his Report described the resolutions of Virginia in '98 as "expressions of opinion; unaccompanied with any other effect than what they may produce on opinion by exciting reflection." (IV. Elliot,578) At the time of the South Carolina nullification troubles Madison denied that even nullification of a federal law had been contemplated. Taylor, Mercer, Barbour and Daniels substantially agreed in the debates in the Virginia legislature that protest only was intended. I. Benton, 351-352.
2. Letter to Dayton, VII. Hamilton's Hamilton,280-285.
3. II. Rufus King's Life and Correspondence,517-518, Sedgwick to King.
4. XI. Works: Appendix, 387-391, to Patrick Henry.
5. III. Life and Correspondence, 591-594.

of those who promoted and supported the Virginia and Kentucky resolutions thought of separation from the Union, even as a remote possibility. Only protest was designed and nullification slipped out because it was the logical conclusion of their constitutional views when pushed to a certain point.

The Virginia and Kentucky resolutions summarize so much of the earlier and foreshadow so much of the later American history that any brief statement of their results must be incomplete; but a few among the more immediate and obvious may be noted.

1. An opportunity had been offered the Separatists to restate their political ideas. The statement, contained in the resolutions, further showed that the Separatists did not regard the adoption of the Constitution as the death blow to their ideas, but, on the contrary, looked upon it as embodying them.

2. The first contest, under the Constitution, between Separatist and Nationalist had been waged and the ultimate results which would follow the success of either had been at least indicated. Victory for the National views of the Constitution meant ultimately the attainment of a vigorous nationality in all of its manifold aspects: government, interest -- both social and economic -- and affections. Separation into a number of confederacies was indicated as a not

remote possibility if the Separatists should become completely triumphant.

3. The Separatists had, in the same breath, declared attachment to the Union and to constitutional views, which, if pursued to their logical outcome, would result in its destruction. With instinctive recognition of the inevitable conflict between these two inconsistent attachments, nullification had been suggested as the only means of harmonizing them. Nullification was thus early stamped with its true label, an attempt by the Separatists to harmonize the conflicting principles of the Union and of complete state sovereignty.

4. The Nationalists had in effect replied that nullification would not perform the office expected of it, and their response was the more effective because it was emphatic, while the assertions of the Separatists were upon the whole somewhat tentative and uncertain. The truth of this statement will be more apparent after a somewhat detailed consideration of the constitutional views of both parties upon the two open questions, even though the first one seems to contradict it in some respects.

Upon the nature of the Union the Separatists declared themselves emphatically, while the Nationalists did not; but

this does not detract from the statement of the preceding paragraph, for the real issue was nullification, which was involved in the problem of final arbiter. It should be noted in passing, however, that the outcome of the Virginia and Kentucky resolutions does not seem to have done much towards developing the ultimate Nationalist theory that the Constitution was made by the people of the United States in the aggregate. But, on the other hand, the emphatic assertion of the compact dogma in the resolutions, and the failure to meet and deny it, did much towards establishing the Separatist view regarding the nature of the Union.

Upon the matter of final arbiter exactly the opposite result occurred. The Nationalists declared themselves unmistakably: The Supreme Court of the United States is the final arbiter. In this matter the Nationalists had the great advantage, that from their point of view there was but one possible arbiter, and accordingly all gave to it their support. But from the Separatist point of view there were several possible ways in which this power of ultimate decision might be exercised: It might be done by the state judiciaries, or the state legislatures; or the people of each state in convention; or by a convention of all the states. Each plan had its adherents; but almost all of the Separatists

were undecided between them; agreeing among themselves only that the Supreme Court ought not to have the power.[1] It is impossible to doubt that this unanimity among the Nationalists and the lack of agreement among the Separatists had an important influence in the development by the Supreme Court of their power as final arbiter. The claim which they had already advanced in the case of Chisholm vs. Georgia was not again seriously disputed until the time of the Embargo; and at that time the opposition of New England was in a very large degree neutralized by her earlier position, while the claim of the Supreme Court had been gaining strength from constant reassertion.

From the standpoint of national development it is scarcely possible to overestimate the importance of the victory for the Supreme Court. The whole problem of nationality was, so far as we can see, involved in its decision. If the Supreme Court be the final arbiter, nullification becomes impossible, and the ultimate triumph of the Union over Separation is assured. But the importance of the victory thus gained is liable to induce overestimation of its decisiveness; with the unfortunate result of causing us to pass false judgment upon later champions of the defeated cause. The

1. Madison was not certain that the state legislatures had such power. II. Works, 151-153.

plain fact is that the victory for the Supreme Court was far from complete: the Separatist yielded in practice but was not convinced. This is a point of the utmost importance; if it be not thoroughly appreciated, much of the remainder of this thesis might as well remain unwritten; let it be at all times remembered that the victory of the Supreme Court in 1799 was only the first of a long series of victories, which must be won before its position as final arbiter became assured. In 1798-9 Jefferson asserted as good constitutional doctrine that the Supreme Court ought not to be the final arbiter and that nullification is a proper remedy. To the end of his life he never ceased to denounce the federal judiciary for usurpation of that power;[1]

1. Jefferson's views upon the federal judiciary are exceedingly instructive in tracing the Separatist movement of Virginia and Kentucky and that of South Carolina. In 1799 Jefferson wrote to Monroe (IV. Works, 199-201) advocating the issue by the state courts of a writ similar to the English writs of praemunire, forbidding the transfer or appeal of a case to the federal courts. This certainly was practical nullification, though lacking the name. From that time on he does not repeat the suggestion, but his denunciations of the "usurpations" of the federal judiciary are vehement and frequent enough to justify Calhoun in his claim that by denying the pretension of the Supreme Court to act as final arbiter he is only repeating what had always been the doctrine of Jefferson. For these opinions of Jefferson see VII. Works, 192,199,216,256,278,293,321, 403.

is it any wonder then that his disciples should reassert his doctrine on the proper occasion and prepare to put his remedy into practice?

5. Among the reasons for Republican alarm in 1798 was the position of some of the prominent Federalists in regard to the use of the common law by the federal courts. Their views upon the subject are often vaguely expressed and one is at a loss to know exactly how far they contemplated its use by the federal tribunals.[1] Some of them certainly held that the common law should be regarded as a source of jurisdiction. Against this view Jefferson vigorously protested, and upon his suggestion Madison discussed the question at length in his Report, showing conclusively the error of the doctrine.[2] The practice of the federal courts upon the point was for some time not uniform but has finally come to be that for which Madison contended. While it might be rash to claim for the Virginia and Kentucky resolutions any definite share in this result, they certainly contributed towards it.

6. During the constitutional debates the probability

1. For example see II. Gibbs, 78; from this passage it seems evident that Wolcott regarded the common law as a source of jurisdiction for the federal courts.
2. IV. Elliot, 566-567.

of conflicts of authority between the Federal and state governments had been foreseen, but encroachments by the states had been the case generally anticipated. The Virginia and Kentucky resolutions dispelled that illusion and showed that future conflicts would come as this one had, from the use by the Federal government of implied powers. By the failure of the resolutions to secure the approval of the other states the doctrine of implied powers received a tacit recognition and strict construction a corresponding blow.

7. The reception of the resolutions showed that both the sentiment and constitutional principles of nationality had already made great progress; and the discussion of them contributed to further the same result.[1]

From the later importance of the Virginia and Kentucky resolutions it would be very easy to overestimate the contemporaneous attention which they received. One of the most remarkable features of their history is the lack of interest manifested in them at the time of their issue and shortly

1. F. A. Walker: Forum, June, 1895.

afterwards.[1] Apparently both friend and foe were ready to consign them to oblivion. But this obscurity was not destines to be permanent, for the principles upon which the resolutions rested were those entertained by a large part -- perhaps a majority -- of the American people. Nor was the remedy which they suggested regarded as entirely unreasonable, but the occasion was not such as to call for its use. At some future day the reassertion of the principles would be certain to call renewed attention to the remedy.

1. Some of the most savage campaign attacks on Jefferson do not even mention the Kentucky resolutions, although their authorship was quite generally suspected.

V. THE NEW ENGLAND SEPARATIST MOVEMENT, 1803 - 1815.

Laws which bore with equal severity upon all parts of the Union were the immediate occasion of the Virginia and Kentucky resolutions; this feature of the laws was, doubtless, the reason why nothing more immediately serious than the enunciation of the nullification doctrine resulted. The interest of Virginia and Kentucky was not of such a character as to warrant an attempt to put the doctrine into practice and the episode was for the moment fortunate, since the Union was undoubtedly strengthened by overcoming the danger.

But if the immediate outcome of the Virginia and Kentucky resolutions was fortunate, there was no such guarantee for the future; two features of the nullification doctrine, as set forth in the resolutions, made attempts to put it into practice almost certain.

1. It was based upon a theory about the nature of the Union quite generally held, and therefore any state, or section, having interests at variance with the policy of the Federal government might readily appeal to the doctrine.

2. The refusals of Virginia and Kentucky to put the doctrine into practice were based wholly upon the ground of

expediency; and, therefore, any state or section might attempt to apply the doctrine, if, in their opinion, the occasion warranted such action.

Acting in concert with the two features of the nullification doctrine just noted, two peculiar circumstances converted the probability of nullifying movements into certainty.

1. Any policy which may be adopted by the government of a widely extended country will, at times, bear harshly upon particular sections of it. If the evil be serious enough the section which suffers will make vigorous efforts to effect a change of policy, or, failing in that, to bring about a separation.

2. To this danger the United States was peculiarly susceptible both from its wide extent and the diversity of interests between the different sections, especially New England and the South. Furthermore, the federal form of government and the nullification doctrine offered peculiar advantages to a section desiring to assert itself. Under such circumstances is it any wonder that a new nullifying movement soon appeared or that New England, the former stronghold of Nationalism, became the centre of a movement which aimed at nullification or separation?

The limits of this paper do not permit of a full discussion of the New England Separatist movement -- a task which would involve the consideration of almost the entire field of American history from about 1800 to 1815. One phase of the subject is, however, of vital importance, viz: the connection of that movement with the similar movements of Virginia and Kentucky in 1798-9 and of South Carolina in 1828-1833. In the solution of this problem a number of questions are involved.

1. What was the origin of the movement? Was it due to scheming politicians, or did it originate in popular clamor at real grievances?

2. What was its aim? Was it for separation from the Union; or for some less extreme measures? If the latter, upon what principles were these measures based, and to what did they amount?

3. If it be discovered that the New England movement, like that of Virginia and Kentucky, was in fact a nullifying movement, what effect did it have on the development of the nullification doctrine?

During the presidential campaign of 1828 a publication in the National Intelligencer [1] disclosed the fact that in

1. New England Federalism, 23-27.

November, 1808, John Quincy Adams had indirectly communicated to Jefferson[1] his knowledge of a plan, which had been in existence in New England for several years, looking towards "a dissolution of the Union and the establishment of a separate confederacy."[2] This, Adams declared, "he knew from unequivocal evidence, although not provable in a court of law."[3]

The publication just alluded to led to a demand for proof by thirteen prominent citizens of Massachusetts, who considered themselves or their fathers included in Adams' charge.[4] To this demand Adams replied[5] declining to furnish the proof but reiterating and amplifying his disclosures to Jefferson. The charge as finally made by Adams involved the following points.

1. In the winter of 1803-4 certain leaders of the Federal party had formed the design of effecting a dissolution of the Union and the formation of a Northern confederacy.[6]

2. The occasion for the formation of the project was:

1. New England Federalism, 50-53.
2. Ibid, 52.
3. Ibid, 144.
4. Ibid, 43-46.
5. Ibid, 46-63.
6. Ibid, 52.

"That the annexation of Louisiana to the Union transcended "the constitutional powers of the government of the United "States; that it formed, in fact, a new confederacy, to "which the States, united by the former compact, were not "bound to adhere; that it was oppressive to the interests "and destructive to the influence of the Northern section "of the confederacy, whose right and duty it therefore was "to secede from the new body politic, and to constitute one "of their own."[1]

3. The project had gone to the length of fixing upon a military leader[2] but the circumstances of the times had not permitted an attempt to put it into execution nor even for its full development.[3]

4. This project "is the key to all the great movements "of these leaders of the Federal party in New England, from "that time forward, till its final catastrophe in the Hart-"ford Convention."[4]

This last statement is rather indefinite but is as far

1. New England Federalism, 52-53.
2. Ibid, 53 and 56.
3. Ibid, 56.
4. Ibid, 56.

as Adams went for publication at the time.[1] He left, however, among his papers an elaborate reply[2] in which he substitutes for this rather indefinite assertion one which is much more definite and precise. "The embargo," (1807) he declares, "was the signal for the resumption of the project of 1804, for the separation of the States and the formation of a new confederacy."[3]

5. At that time (1807) "the projectors of the Northern confederacy of 1804 recommenced their operations."[4] In the interval several other New England grievances, besides the embargo, had sprung into prominence; among these were the slave representation of the South, the rapidly growing population, power and influence of the West; the apparent coalition of those two interests against the interests of commerce, and especially of New England; the immense accession to their power by the acquisition of Louisiana, and its consequences.[5] All of these contributed to the hope that the project might now succeed.

6. The project now takes the form of a proposal to

1. For his reasons see his Diary in VIII.Works,109,121,132, 136,141-142,145-146,150-151; also preface to New England Federalism,VII.
2. New England Federalism, 107-330.
3. Ibid, 191.
4. Ibid, 194.
5. Ibid, 192.

hold a convention of the commercial or at least of the New England states. This proposal was contained in a letter to George Cabot from Timothy Pickering, the same individual who had ineffectually urged Hamilton and Rufus King to take part in the project of 1804.[1] Cabot published the letter about March 10, 1808.[2] The scheme proposed "was the project of 1804"[3] and "was, both in form and substance, an appeal from the government of the Union to the government of the State of Massachusetts, with the avowed purpose of stimulating the power of the separate State to a resistance of force against a law of the Union; and it contained the first proposal for a concert of the commercial States for the same purpose."[4]

7. This first proposal to assemble a convention of the New England States was made, upon the suggestion just alluded to, in the Massachusetts legislature in 1808 but was not successful.[5] In 1812, the proposition was renewed, but failed owing principally to a speech at Faneuil Hall by Samuel Dexter who "denounced it as the forerunner to the disso-

1. New England Federalism, 195.
2. Ibid, 196.
3. Ibid, 195.
4. Ibid, 195.
5. Ibid, 240.

lution of the Union."[1] In 1814 a convention was again proposed; this time the project succeeded, and the Hartford Convention was the result.[2]

8. One of the main objects of the Hartford Convention was to direct and develop the popular excitement against the Federal government until a majority would call for "a separation, a separate peace, and a New England confederacy."[3] The report of the Convention contains no formal proposition to this effect, but it is "flagrant in every page of the journal and of the final report."[4] [5]

Such is the indictment of the most bitter and malignant opponent of the New England Separatist movement. Adams certainly had reason to make his charges as strong as the facts would warrant, and for that reason an examination of his indictment is the best answer to the first two of the questions raised, the origin and aim of the movement.

The first two counts of Adams' indictment seem, by implication at least, to convey the idea that the formation

1. New England Federalism, 240.
2. Ibid, 241.
3. Ibid, 265.
4. Ibid, 265.
5. For a somewhat similar summary of Adams' charges see Lodge's Cabot, 412-413.

of a Northern Confederation was first broached by certain Federalist leaders in the winter of 1803-4 upon the occasion of the Louisiana purchase. In addition there is an implication that such a plan was not suggested or supported by anything in the earlier or prevailing sentiment of New England. These implications, whether designed or not, give a false color to the remaining charges; it is therefore necessary to examine them briefly. A very few facts will show the error of the implication. The debates on the ratification of the Constitution show clearly that in New England the Separatist sentiment was scarcely less intense than elsewhere. Nationality had made rapid progress there during the interval -- much more rapid than elsewhere -- but expressions of Separatist sentiment had not been lacking at any time. In 1793 Oliver Wolcott, Jr., writing to his father, had pronounced the union with the Southern states an experiment which ought to be conclusively tried but abandoned forever if unsuccessful.[1] This was only an expression of opinion in regard to a possibility of the remote future, but is significant, coming from a prominent Federal official. Shortly after this, while Jay's treaty with England was awaiting ratification, threats of secession if the treaty

1. I. Gibbs, 86.

should be rejected were quite common in New England.[1] In 1796 the proper occasion for separation seemed to some New England men close at hand. The threatened election of Jefferson over Adams brought forth a series of articles in the Hartford Courant over the signature of Pelham. These articles advocated, in the event of Adams' defeat, that New England separate from the Union and form a Northern confederacy.[2] Additional facts to the same purpose might be cited, but these are sufficient to show that the scheme of a Northern confederation, which had been frequently suggested during the constitutional debates, had not passed entirely from the minds of New England men, nor did it lack some supporters. The old Separatist ideas and the lack of unity of interest between the North and the South had kept the idea alive and secured for it a considerable support.

The first three points of Adams' indictment, aside from the ~~indications~~ implication just disposed of, are probably correct,

1. See the speech of Mr. Fisk in 1812 in Congress over the disclosures of John Henry. "This division of the Union "is not a new subject. As early as the time Jay's "treaty agitated this country, I saw two Nos. in the "Centinel, printed at Boston, holding out the idea of a "separation of the states." 2 Niles, 28.
2. Extracts from these articles are printed in:
   III. Randall's Jefferson, Appendix.
   III. Parton's Jackson, 441-442.

although vigorous denials were made in 1828-9 by all the survivors.[1] But a very erroneous idea of the New England movement would result if nothing further were added. Henry Cabot Lodge has pointed out the significant fact that on Adams' own showing the project was formed at Washington by certain Federalist Senators and Representatives and no evidence is adduced to prove that it ever received any sanction elsewhere, or by any but its projectors.[2] On the contrary there is ample evidence to show that the cold reception which it encountered caused its projectors to speedily abandon it. No prominent Federalist outside of Congress is known to have approved of the plan[3] and there is strong presumptive evidence that the disapproval of certain leaders caused its abandonment. Rufus King, Adams tells us,[4] disapproved entirely of the project and reported that Hamilton, who had been selected as the military leader, was of the same opinion.[5] The attitude of Cabot is clearly perceptible from his letters to Pickering and King.[6] He objects to

1. New England Federalism, 93-107.
2. Lodge's Cabot, 313.
3. Ibid, 313.
4. New England Federalism, 148.
5. Ibid, 148.
6. Printed in Lodge's Cabot, 341-345.

the experiment as impracticable and, if practicable, not calculated to remove the evils which it is designed to remedy. Plumer found the leading Federalists of New Hampshire and of Massachusetts, as far as he could learn, decidedly opposed to the measure.[1] The death of Hamilton, Plumer tells us, prevented a meeting which had been called at Boston, but that the failure of this meeting did not mean that the plan had been dropped.[2] Here is one of the weak points in Adams' argument. Plumer asserts that from one of the projectors of the plan he learned that it had not been abandoned, but does not give us the name of his informant.[3] Adams cites this as evidence that the plan was still adhered to, fails to show any trace of its existence until the time of the Embargo (1807), and then denounces the opposition to that measure as the revival of the old project of separation and formation of a Northern confederation.[4]

Upon this vital point, the connection of the project of 1803-4 with the opposition to the Embargo in 1807-8, Lodge has observed "that all mention of the plot of 1804 ceases with that year;"[5] that with more ample material than

1. New England Federalism, 145.
2. Ibid, 146.
3. Ibid, 146.
4. Ibid, 194.
5. Lodge's Cabot, 479.

Adams possessed, he has not been able to find a shred of evidence to substantiate Adams' assertions that the plot of 1804 was continued and that the opposition to the Embargo was a revival of that project.[1] This statement of the case the writer thinks is fully established by the materials to which he has been able to get access. In preparing the paper he happened to read New England Federalism entire before turning to Lodge's Life and Letters of George Cabot; while perusing the letters in the appendix to the former work he was struck with a remarkable difference in tone between the letters of 1803-4 and those of 1808-9. The letters of 1803-4, especially those of Pickering, speak freely and openly of separation as being highly desirable and, if the proper course of action be pursued, immediately attainable; but those of 1808-9 are of a very different spirit. Allusions to separation are not so frequent and when made are couched in vague and uncertain terms. Separation is apparently regarded not as an object immediately attainable, but as an event possible only in the remote future, if at all. This difference of tone is so marked as to impress the writer strongly with the belief that the project of 1803-4 had been permanently abandoned even by its projectors.

1. Lodge's Cabot, 479-480.

The conclusion then seems plain, that the project of 1803–4 was abandoned for lack of support, that it was not afterwards revived in 1807-8 and therefore Adams' indictment is unwarranted and it is necessary to account for the assemblage of the Hartford Convention in some other way.

The real origin of the New England Separatist movement is not to be traced in the operation of a single cause but to a great variety of causes extending over a period of several years. Certain of these causes were peculiar to the New England movement, but the fundamental cause was essentially the same as that which had done so much to produce the Virginia and Kentucky resolutions. The exact relations between the Federal and state governments had not been determined by the adoption of the Constitution, the ratification had been secured by persuading the Separatists that in it their political ideas were incorporated in large part. In New England the Separatist party had been about as strong as elsewhere, but until 1803 the policy of the Federal government had agreed so well with the political and economic interests of that section that no occasion had arisen for a display of Separatist views. In 1803, however, a series of events began which not only called forth all of the old Separatist feeling but enlisted on that side all of the political and economic interests of New England.

The annexation of Louisiana appeared to New England in a light which it is difficult to appreciate today, when conditions are so altered. By all the standards of constitutional interpretation then accepted it was an unconstitutional act and was so pronounced by friend and foe.[1] The settlement of the tract meant the loss to New England of its relative political importance which had been so carefully provided for by the Federal Convention. The equilibrium between the different sections of the country had been one of the features of the Constitution which recommended it to all; now that the equilibrium was destroyed it seemed to many as if the Union itself had disappeared.[2] The concession of slave representation to the South had already been a source of regret to New England and the annexation of Louisiana

1. For Jefferson's views upon the constitutional questions involved in the Louisiana purchase see IV. Works, 500-508; for those of J. Q. Adams, New England Federalism, 53; Pickering, New England Federalism, Correspondence of 1803-4; for an excellent account of the debates in Congress upon the subject see Adams
   It is well to remember that according to the accepted constitutional interpretation the treaty could not have been fulfilled without the passage of a constitutional amendment, and had such an amendment been proposed its defeat would have been almost inevitable.
2. Letters of Pickering, et al., in 1803-4, published in Appendix to New England Federalism.

forced it into new prominence.[1] Apparently there would be no limit to the extension of slave territory, and every five negroes would neutralize the votes of three New England freemen. From the New England standpoint of 1803-4 both the acquisition of Louisiana and slave representation were undoubted evils, but they were wholly of political and future interest and for that reason the mass of the people could not be aroused to take strong grounds against them. The Federal leaders at Washington could see in these measures the ultimate loss of New England's old political importance; but the people of New England were not so quick of perception and in consequence the project of 1803-4 was abandoned for lack of popular support.

The project of 1803-4 failed because the general prosperity of New England precluded the possibility of popular support, and for the next two years this prosperity continued and even increased, owing to the renewal of war in Europe. May, 1805, brought the first of a long series of mis-

1. Many political pamphlets of the time indicate this. The writer has in his possession an unsigned pamphlet published at Boston, 1804, entitled "Defense of the Legislature of Massachusetts or the Rights of New England Vindicated." It is in defense of a proposed constitutional amendment adopted by the Massachusetts legislature, to apportion representatives among the states according to number of free inhabitants.

fortunes, which American commerce encountered, in the shape of a decision of the British court of admiralty that goods which had started from the ports of a French colony, although landed in the United States and reshipped, were subject to capture. About the same time Napoleon inaugurated his Continental system by declaring the ports of France and her allies closed to importation of English goods. The British Order in Council of May 16, 1806, followed and by it the whole coast of Europe from Brest to the river Elbe was declared blockaded. Napoleon retaliated with the Berlin decree, which declared the British Islands blockaded. In January, 1807, another Order in Council declared all the ports of France in a state of blockade and forbade all trade between ports of France and her allies, even in neutral vessels. Napoleon again retaliated in December, 1807, by the Milan decree which ordered the capture of all neutral ships that had submitted to search by an English vessel.[1] These unjustifiable measures would have been sufficient cause for a declaration of war against both France and England, and by

1. For a brief account of these measures see Hart: Formation of the Union, 191-192. For a detailed account from the standpoint of a contemporary New Englander see the earlier pages of Dwight. He discusses at length the policy of the United States government towards these measures.

the hardships which they imposed on commerce evoked strenuous complaint in New England, where nearly the entire shipping interest was owned. But the restrictions could not be vigorously enforced, the profits were large enough to permit of an occasional loss by capture, and accordingly, in spite of these hardships, the commerce of New England still flourished for a time. The change came all too soon for New England, and was of a peculiarly aggravating character. In December, 1807, the commerce of New England, then greater in amount than ever before, was annihilated at a single blow, and that, too, by the action of the Federal government. The Non-Importation Act had not been a serious interference, but the Embargo Act amounted to a prohibition of commerce, thereby destroying the chief industry of New England and seriously affecting all the other interests of that section. Other parts of the United States were injured by the operation of the Embargo but not so quickly, nor to the same extent as New England, where vigorous opposition to the Federal government now became natural and inevitable.

John Quincy Adams characterizes the opposition of Massachusetts to the Embargo as a renewal of the plot of 1803-4, but his argument is weak since he offers no conclusive proof of the continuity of the plot, or that the Massachusetts leaders -- except those who had been in Congress during 1803-

4 -- had any knowledge of the former plot, or that the present opposition amounted to an attempt at separation. A proposition for holding a convention of the New England states failed to pass; but for what purpose was such a convention proposed? In the absence of all direct evidence, no positive answer can be returned; but from the letters of the Massachusetts Federalists the inference seems plain that separation was not designed. What then was the object of the convention? Again, inference is all that the evidence will justify. The conclusion of the writer is that in all probability the Massachusetts leaders did not have any very definite ideas of what such a convention would accomplish, but hoped that in some way it would nullify the action of the Federal government. How this should be accomplished apparently they did not know, yet hoped for some such result. In other words, the opposition to the Embargo in 1808 was, in its most extreme proposal, that of a convention, a nullification movement; but like the project for separation in 1803-4 it failed for lack of popular support.

Slave representation, the annexation of Louisiana and the Embargo had not been enough to induce Massachusetts in 1808 to entertain a proposal for holding a convention of the New England states. But by 1812 new grievances -- the admission of Louisiana to the Union, the continuation of the

restrictive measures which had been at first only designed as temporary expedients and finally the declaration of war against England -- had been added and a convention was again proposed. This time the proposition was defeated through the influence of Samuel Dexter[1] and was not brought forward again for two years more.

In 1812 slave representation and the accumulated grievances of ten years[2] would not induce Massachusetts to call a convention; but these with the conduct of the war and its effect on New England finally brought about a third and successful attempt in 1814. Besides the additional grievances there was another reason why this third demand for a convention succeeded, while the others had failed; it originated with the people, or to say the least had that appearance, and was backed by the support of a majority of the voters of the commonwealth.[3] Fortunately we may trace each step of the movement which finally resulted in the convention and on authority which ought to be unquestioned. Noah Webster tells us that the call for the Hartford convention originated in old Hampshire County, Massachusetts, and from personal knowl-

1. New England Federalism
2. For a good statement of the attitude of New England towards the war of 1812 see I. Goodrich, 445 and 448.
3. For this idea from the standpoint of an apologist for the Hartford convention see I. Goodrich, 449-450.

edge and documents traces the growth of the movement.[1] On January 19, 1814, he was at the home of Col. Chapman in Northhampton to attend a meeting of men from Hampshire, Hampton and Franklin Counties.[2] This gathering had met upon the call of Joseph Lyman[3] to determine upon the proper course to be pursued by the friends of peace. The result of the meeting was an address to the towns of the three counties urging them to prepare memorials to the General Court, petitioning that body to propose a convention of the Northern and commercial states. The address[4] sets forth as the reasons for such a step slave representation, the destruction of the constitutional equilibrium by the admission of new Southern states, the Embargo and the slight chance of immediate peace. The object in holding the convention is "to consult upon measures in concert, for procuring such alterations in the federal constitution as will give to the Northern states a due proportion of representation, and secure them from the

1. All of the facts cited on the authority of Webster and the documents furnished by him are from his essay entitled Origin of the Hartford Convention in 1814. This essay is published in "A Collection of Papers on Political, Literary and Moral Subjects," Philadelphia, 1843, pp.311-316. II. Goodrich reproduces Webster on this topic.
2. Webster, 311-312.
3. Ibid, for a copy of the call.
4. Given in Webster, 312-314; also II. Goodrich, 20-23.

future exercise of power injurious to their commercial interests."[1]

Memorials from thirty-seven[2] Massachusetts towns were presented to the General Court and in February a joint committee of both houses reported upon them.[3] This report is of more than ordinary interest. It sounds much like an echo of the Virginia and Kentucky resolutions. "The sover-"eignty reserved to the states was reserved to protect the "citizens from acts of violence by the United States." . . . "We spurn the idea that the free sovereign and independent "state of Massachusetts is reduced to a mere municipal cor-"poration, without power to protect its people and to defend "them from oppression, from whatever quarter it comes. When-"ever the national compact is violated, and the citizens of "this state are oppressed by cruel and unauthorized laws, "this legislature is bound to interpose its power and wrest "from the oppressor its victim."[4] Continuing to the same effect the report shows beyond question the influence of

1. Webster, 314.
2. 6 Niles gives a list of the towns and estimates their population at about one-eleventh of the state. Probably the estimate is too low.
3. For the report see 6 Niles, 7.
4. Ibid.

the Virginia and Kentucky Separatist movement: "This is the "spirit of our union, and thus has it been explained by the "very man who now sets at defiance all the principles of "his early political life."[1]

The memorialists have suggested three possible courses of action:

1. Remonstrance should be made to Congress especially against the Embargo.[2]

2. "That laws should be passed tending directly to se- "cure the citizens of this commonwealth in their persons, "property and rights; and providing for the punishment of all "such persons as should violate them."[3]

3. "That delegates should immediately be appointed by "the legislature to meet delegates from such other states as "shall elect any, for the purpose of devising proper meas- "ures to procure the united efforts of the commercial states; "to obtain such amendments or explanations of the constitu- "tion as will secure them from future evils."[4]

The first course, the Report declares, is undignified and useless. The second course is really a proposal to nul-

1. 6 Niles, 7.
2. Ibid.
3. Ibid.
4. Ibid.

lify the action of such Federal laws as, in the opinion of the legislature, are unconstitutional. It was probably aimed against the law regulating coast trade within the same state. The report evades the issue by declaring that the present securities furnished by both state and national constitutions are "so plain that no action of the legislature can afford any additional security." Upon the third course the committee remark that there can be no doubt of the right to call a convention and that it is a very proper procedure whenever the construction given to the Constitution by the rulers is contrary to its spirit and injurious to the interests of their constituents. This course is the best possible way to prevent hostility to the union and is the one which Madison once proposed, though in an unjustifiable cause.[1] The legislature ought to act in concert with other states in an irresistible movement to secure "such alterations as will tend to preserve the union, and restore violated privileges,"[2] but two reasons render such action at present inexpedient.

1. There is some hope that the present negotiations will result in a treaty of peace.

1. 6 Niles, 7.
2. Ibid.

2. A new legislature is soon to be elected which will clearly express the views of the people on the subject, and to their decision all action may be referred.[1] The question of a convention was thus made the issue of the approaching election.

The election resulted in a large Federalist majority, and thereby the proposal for a convention received popular indorsement. When the General Court met in May, Governor Strong laid before it the petitions of the towns but without any recommendation save that it "adopt such measures for their safety and relief as your wisdom shall dictate, and the constitution of our country justify."[2] The General Court, however, adjourned without action, but was called together again in October for a special session.[3] Governor Strong opened the session with a message in which he arraigned the policy of the Federal government in general and especially the lack of adequate measures to defend Massachusetts. He details the measures which he has taken for the defense of the State, presumes that there can be no doubt of their right to defend themselves, and calls upon the General Court to pass the necessary measures.[4] The message of

1. 6 Niles, 7.
2. Ibid, 250-251.
3. Special session was due to the threatened British invasion of the state.
4. 7 Niles, 113.

the Governor was referred to a committee which reported a set of resolutions authorizing the Governor to raise an army of ten thousand men for the defense of the State, to negotiate a loan of one million dollars, to appoint a military commission, and for the General Court to select a delegation to meet the representatives of other New England states. The task proposed for this convention was to confer upon the subject of their public grievances, the best means of preserving their resources and of defending themselves against the enemy, and, if it be thought proper, to procure a convention of delegates from all of the United States to revise the Constitution and thereby secure more effectually "the support and attachment of all the people by placing all upon the basis of fair representation."[1]

The resolution for the holding of a convention passed after a vigorous debate by a vote of 260 - 90.[2] A few days later the joint convention of the two houses elected seven delegates by a vote of 215, the Republicans refusing to vote.[3] An invitation to elect delegates was sent to the other New England states, detailing the object of the convention and justifying the action by the purity of its movers'

1. 7 Niles, 153.
2. Ibid.
3. Ibid. Lodge's Cabot, 507, says that the delegates were elected by a vote of 226 - 67.

motives and their well-known attachment to the Union.[1] Connecticut and Rhode Island accepted the invitation, each like Massachusetts asserting its devotion to the Union and limiting the power of their delegates to a course consistent with their obligations to the United States.[2] New Hampshire failed to accept and Vermont declined to do so unanimously.[3] The former was represented by two and the latter by one irregularly chosen delegate.

The convention met at Hartford on December 15th, and remained in secret session until January 5th, when it published its report and adjourned. Probably no body of men that ever met in America have received the amount of abuse which has been heaped upon the heads of the unlucky indiyiduals who composed that ill-starred assembly. Yet they were men of the most eminent respectability, and it is doubtful whether another assembly of equal talent and public esteem could have been gotten together at the same time, had all

1. For the invitation of Massachusetts to Rhode Island see 7 Niles, 179.
2. For the accepting resolutions of Connecticut see 7 Niles, 164-165, and of Rhode Island, 7 Niles, 181-182; the latter state evidently regards the convention as due to a suggestion of its own, made during the preceding year.
3. 7 Niles, 167.

New England contributed its best.[1] Above all things else it was a body of conservative men and this characteristic was displayed in its report.[2]

The convention, in its report, declares that the evils under which New England labors are so burdensome that many believe the time for a change at hand. But such a course must always be painful to the good citizen, and several considerations show the propriety of extreme caution: the prosperity of the country during the earlier years of the Constitution was remarkable;[3] unsuccessful attempts have been made to induce the country to return to the earlier policy of the government, but always under discouraging circumstances; now, however, there is hope of an immediate change;[4] if the Union be dissolved it should be done in time of peace.[5] The subjects for complaint and apprehension are of two kinds, those of immediate pressure and those of a more remote and general character.

1. Among those of the former kind may be reckoned New England's destitution in means for defense despite the

1. For estimates of the character of the convention see Lodge's Cabot, 506-507; Dwight, 423-434, gives brief biographical sketches of all the members. See also II. Goodrich, 35-49.
2. For the report see Dwight, 352-379.
3. Ibid, 353-354.
4. Ibid, 354.
5. Ibid, 355-356.

heavy taxation and the pretension of the Federal government to control of the militia. That government has no control over the militia, except that expressly given to it by the Constitution which only provides that the President may call forth the militia in three cases, to execute the laws of the Union, to suppress insurrection and to repel invasion. The whole series of Federal measures for raising troops has been in disregard of these limitations imposed by the Constitution.# However, it is not wise to fly to open resistance upon every infraction of the Constitution. "But in cases "of deliberate, dangerous and palpable infractions of the "Constitution, affecting the sovereignty of a state, and the "liberties of the people, it is not only the right but the "duty of such a state to interpose its authority for their "protection in the manner best calculated to secure that end. "When emergencies occur which are either beyond the reach "of the judicial tribunals, or too pressing to admit of the "delay incident to their forms, states which have no common "umpire must be their own judges and execute their own decis-"ions."[1] This certainly is equivalent to declaring that the states have the right to nullify the action of the Federal government; but the conservative character of the convention

1. Dwight, 361.

is vindicated in the next sentence. "It will thus be proper "for the several states to await the ultimate disposal of "the obnoxious measures recommended by the Secretary of War, "or pending before Congress, and so to use their power ac- "cording to the character these measures shall finally assume, "as effectually to protect their own sovereignty, and the "rights and liberties of their citizens."[1] This course of reasoning leads the convention to a resolution that the legislatures of the several states "adopt all such measures as "may be necessary effectually to protect the citizens of "said states from the operation and effects of all acts which "have been or may be passed by the Congress of the United "States, which shall contain provisions, subjecting the mil- "itia or other citizens to forcible drafts, conscriptions or "impressments, not authorized by the Constitution of the "United States."[2]

The dictum of the Hartford convention upon the militia includes its position upon the doctrine of nullification, and may be thus summarized.

(1) States have the right to nullify the action of the Federal government in some cases.

1. Dwight, 361-362.
2. Ibid, 376.

(2) The militia matter is a case in point.

(3) But it is not expedient to attempt it as yet.

(4) No way of putting nullification into practice is suggested.

In the discussion of New England's destitution in the means of defense the convention suggests as the proper remedy that each state be allowed to undertake its own defense, and for this purpose a reasonable portion of the Federal taxes collected in each state be turned over to the state government.[1] Each state is urged to apply to Congress for permission to put this plan into operation.[2] The convention professes to entertain a hope that the request will be granted.[3] But in case the request is not granted, what then? Such a contingency the convention declines to contemplate, but its declaration shows that, in such a case, nullification was the logical outcome of the position which it had assumed. The words of the report sound like a stray sentence from an address of Calhoun, although lacking his definite plan of action. "In a state of things so solemn and "trying as may then arise, the legislatures of the states, "or conventions of the whole people, or delegates appointed

1. Dwight, 365-366.
2. Ibid, 376-377.
3. Ibid, 366.

"by them for the express purpose in another convention, must "act as such urgent circumstances may then require."[1]

2. The evils of a more remote and general character from which New England suffers are numerous; and the report of the convention, after discussing them at length, proposes as a remedy for each a constitutional amendment. The proposed amendments are:

(1) Representation and direct taxes shall be apportioned among the states according to free population.

(2) New states shall be admitted only upon the concurrence of two-thirds of both houses.

(3) Congress shall not have power to lay an embargo for more than sixty days.

(4) Congress can interdict foreign trade only by a two-thirds vote of both houses.

(5) Congress can declare war or authorize hostilities against a foreign nation only upon a two-thirds vote of both houses, except in case of actual invasion.

(6) Foreigners hereafter naturalized shall not be eligible to hold a civil office under the United States government.

(7) The President shall not be eligible for re-elec-

1. For these amendments see Dwight, 377-378; for the discussion of their necessity, ibid, 366-376.

tion; nor shall the presidency be held by the same state twice in succession.

Two more resolutions complete this famous report. One recommends that each state empower its Governor to loan the services of the militia to either of the other states, upon their request, for the purpose of repelling invasion "by the public enemy."[1] The other authorizes George Cabot, Chauncey Goodrich and Daniel Lyman to call another meeting of the convention at Boston, "if in their judgement the situation of the country shall urgently require it."[2]

While the convention was in session, and almost before it had fairly gotten down to business, the commissioners of England and the United States had signed a treaty of peace at Ghent (Dec. 24, 1814). The receipt of this unexpected news brought the New England Separatist movement to a sudden close and the report was not even presented to Congress.

The foregoing consideration of the New England Separatist movement has left many noteworthy features untouched. Several of them are worthy of extended treatment; but, since the limit which this paper allows for the subject has already been exceeded, brevity will excuse the statement of the most important in the form of a general summary.

1. Dwight, 377.
2. Ibid, 378-379.

1. Although the New England Separatist movement and that which produced the Virginia and Kentucky resolutions seem, at first sight, very different, yet, when the remote but fundamental causes of each are searched out, they will be found the same. Among these causes -- already pointed out in the case of Virginia and Kentucky -- are these:

(1) The Separatist ideas which prevailed so generally among the colonies were not eradicated to any considerable extent by the Revolution or the Critical Period following.

(2) These ideas -- due to the generally accepted economic belief[1] and the political history of the colonies[2] -- were endowed with a remarkable vitality. Probably a majority of that generation never ceased to hold them; all were more or less influenced and, on occasion, might embrace them.

(3) The failure of the Constitution and the constitutional debates to draw the line precisely between the Federal and state authority furnished the opportunity and the policy of the Federal government offered repeated occasion for resort to these Separatist principles.

1. For the influence of the current opinions upon economics in developing Separatist ideas see Sumner's Hamilton, Chap. II.
2. For the influence of the political history of the colonies in the development of Separatist ideas see I. Von Holst.

2. When we turn from the more remote to the immediate causes of the two movements, we find each due, in large part, to the policy of the Federal government. But with that the agreement ceases, for in other respects the immediate causes were entirely different. Most of the important differences in this respect have been already developed or else arise naturally in connection with other matters; it will be sufficient to call attention to but one of the most important. The New England movement was in behalf of a section of the Union because its interests were assailed, but Virginia and Kentucky had fought their battle in behalf of the entire Union. This feature of the New England movement made that contest more intense and -- as it was so long continued -- more dangerous. At the same time, the chief defect of the Union, sectional animosity, was more clearly revealed than ever before, and, for the first time under the Constitution, the North and the South were definitely arrayed against each other.

3. Neither Virginia and Kentucky or New England pushed their movements far enough to secure their immediate object. The reasons in each case are instructive. Each drew forth a strong expression of national sentiment; this Virginia and Kentucky did not have sufficient interest to combat. New England, however, was not lacking in inter-

ests at stake; and why did her movement not go farther? The answer is that it was lacking in almost all of the elements of strength, except selfish interest. Waged almost exclusively for financial and selfish political reasons, it could not gain any very strong moral support. The movement was developed too slowly to admit of strong measures and at its height, in 1814, the existence of war with a foreign nation precluded the possibility of its securing anything like unanimous support. Furthermore, it was not directed against palpably unconstitutional measures, nor was it waged wholly within accepted constitutional lines. The semblance of separation which lurked around the movement was a fatal weakness, for it antagonized all of the considerable national sentiment of the section, and developed a distrust of it as aiming at an untried experiment. For such an untried experiment New England was not ready, since among those not inspired by national sentiment there was a strong instinctive feeling that, however well a separate confederation might work in some respects, on the whole it would not be advantageous to part company with the other states.

4. The objects of the New England movement, so far as a study of its origin will incidentally reveal them, have been already set forth. It has been shown that the promoters in originating the movement did not plan for separation.

But the question still remains whether at any subsequent time separation was designed. Those who participated strenuously denied such intention[1] and the burden of proof lies upon their accusers. John Quincy Adams connects the Hartford convention with the proposal for a convention in 1812 -- connecting this in turn with the proposal for a convention in 1808 and that proposal with the project of 1803-4, a connection which we have shown did not exist -- and charges some of the leading Federalists with entertaining in 1812 the design of effecting a separation.[2] The only proof advanced, aside from the connection with the other plans already disposed of, is the series of letters which John Henry sold to Madison for fifty thousand dollars. A candid examination of these documents[3] will show that the charge is unwarranted.

1. See the sworn statement of Roger Minot Sherman, I. Goodrich, 26-28, and the inaugural address of H. G. Otis as Mayor of Boston in 1829. In the course of this address he declared: ". . at no time in the course of my "life, have I been present at any meeting of individu- "als, public or private -- of the many or the few; or "privy to correspondence of whatever description, in "which any proposition, having for object the dissolu- "tion of the union or its dismemberment in any shape, or "a separate confederacy, or a possible resistance to the "government or laws was ever made or debated. That I "have no reason to believe that any such scheme was ever "meditated by distinguished individuals of the old Fed- "eral party." 35 Niles, 353-354.
2. New England Federalism
3. These letters are in 2 Niles.

No individuals are implicated and nothing is conclusively shown but a strong feeling against the policy of the Federal government.[1] There remains then the final movement of 1814, and of this we can judge only by the documents relating to the call of the convention, its report and journal and the testimony of its members. Careful scrutiny of the messages of the Governors to the legislatures and of the reports of the committees fails to show anything conclusive of a design at separation. The nearest approach to such a purpose is the assertion of the Massachusetts legislature already quoted that "this legislature is bound to interpose its authority and wrest from the oppressor its victim."[2] All of these documents abound in expression of attachment to the Union and the delegates appointed are expressly restricted to measures "consistent with our obligation to the United States."[3] The report of the convention Adams has subjected to a most masterly and searching analysis.[4] All of his keenest powers

1. For the feeling of New England see Carey: The Olive Branch, 449-453. Threats of separation were doubtless freely made from the press, pulpit and stump. But such utterances are not evidence of a plan for separation. Upon this point see the comment in Lodge's Cabot. 480
2. 6 Niles, 7.
3. 7 Niles, 165. Report to the Connecticut legislature of the resolutions to appoint delegates.
4. New England Federalism, 277-326.

are concentrated in an attempt to extract from it evidence of his oft-repeated assertion that separation was designed though not openly expressed.[1] The effort is highly ingenious and creditable to his ability as an advocate, but is nevertheless a failure. At best, he is able to show only a possibility that secession was designed. Against this possibility there is much that might be urged; the sworn statement of Roger Minot Sherman and repeated denials of other members are most emphatic;[2] but the documents themselves are the best proof. When compared with the pamphlets, sermons and public addresses of the time they will be found of remarkably moderate tone. As in the case of the Virginia and Kentucky resolutions the aims of the leaders were not very definitely formulated even in their own minds. Certainly the majority of the convention contemplated nothing more extreme than the concerted adoption by the states of a policy which would practically, if not openly, nullify the action of the Federal government and thereby compel a change of course. The conservative character of the convention's aim is shown in the failure to recommend the measures of

1. New England Federalism, 288.
2. I. Goodrich,

such a policy.

5. When a comparison is instituted between the documents of the Virginia and Kentucky and New England movements, some interesting features are discovered. Virginia and Kentucky deal almost entirely with the fundamental principles of the American political system. They speak in the tone usually employed in the reiteration of generally accepted truths, and arrive at their conclusions with confidence. The remedy is always clearly indicated, if not expressly named, but the occasion for its use is determined only in general terms. The New England documents, with one exception,[1] avoid all reference to the Virginia and Kentucky movement; this was doubtless due to the emphatic disapproval of it which New England had once expressed. Fundamental questions about the structure of the Federal government are seldom dealt with and when they do arise are generally disposed of without any definite treatment. The burden of all the documents is denunciation of the policy of the Federal government and an enumeration of the evils resulting from it. The proper remedy is only occasionally alluded to and in uncertain language. It amounts in each case to nullification, but the manner and occasion of its use is never clear.

1. Report of the joint committee of the Massachusetts legislature upon the petitions of the towns, 6 Niles, 7.

6. Decidedly the most important result of the New England movement was its effect upon the two opposing ideas of nationality and separatism. Before undertaking this discussion, however, a number of other results demand attention.

(1) The Federalists had all tacitly, if not openly, approved of the Hartford convention,[1] and under the odium cast upon that assembly, after the treaty of peace, the party as a national organization disappears.

(2) With the disappearance of the Federalist party the distrust of Democracy ceased to be an active political principle, and the "Revolution of 1800" became complete by the universal acceptance of its principles.

(3) From the movement New England had learned well two lessons which henceforth, though not always clearly recognized, were instinctively acted upon. (a) New England can best secure its interests by making them conform, as rapidly as possible, to the policy of the Federal government. Acting on this lesson New England had already begun to engage in manufactures. (b) But these interests must be permanently maintained, and this can be accomplished in but one way, not by opposing the Federal government, but by controlling its policy. During the next twenty years New England learned

1. VIII. Adams, 301.

how to do this by forming alliances with other sections of the country.

7. Chief among the immediate results of the New England movement was the strong impulse given toward nationality, -- using that word in the largest and broadest sense. From the first danger encountered in the Virginia and Kentucky movement, the Union had emerged with increased strength. But the second occasion of peril had been of longer duration and of much more serious appearance. Over that danger the triumph of the Union was sudden and complete; and in proportion as its danger had been greater, so was its victory the greater. Again the Union emerged from danger stronger than ever before. This increased strength was acquired in many ways and displayed itself on every hand. A great change of sentiment towards the Union was immediately apparent. The war of 1812 had made us one nation in the eyes of the world, and among ourselves the New England movement had helped in the same direction. The subsequent attacks upon the Hartford convention by its enemies and the apologies of its friends rivalled each other in strong expressions of attachment for the Union and denunciation for secession. In this unanimity of sentiment we may note the slow disappearance of the original idea of the Union and the gradual unfolding of a new and better conception. While the old idea held sway the states

were nations and the Union was a league for definite ends. The new conception regarded the Union as the nation, and as an end in itself. This change of conception was, of course, not accomplished in a moment, yet in many ways the new idea displays itself almost instantly. Under the old conception secession was a recognized right which might be condemned only on the ground of expediency; but in the new conception secession had no place save as a revolutionary expedient. Perhaps the best register of this alteration of conception is to be found in the correspondence of Thomas Jefferson, the most strenuous advocate of state rights, yet unconsciously -- and for that reason more conclusively -- participating in and reflecting the changed view. Frequent references occur to the New England movement and to the Hartford convention, in particular; the charge of aiming at separation is often made; the movement is condemned for it; but their right to separate is not denied until the news of the peace is received. Then comes a sudden change and the projectors of the movement are charged with treason! Evidently Jefferson had acquired a new idea of the Union,[1] and in this new idea

1. Upon this subject see his letter of September 20, 1813, to James Martin (V.Works,213-214), but especially the one of February 14th to Lafayette begun before the news of peace had arrived but completed afterwards. This letter shows a distinct change of feeling toward separation from the Union.

almost all men participated; secession was no longer universally admitted as a right.

The altered conception of the Union may be traced in many ways other than the disappearance of the original right of secession. Among the most fundamental features of the Constitution, at the time of its adoption, was the equilibrium which it established between the various sections of the Union, especially the North and the South. New England had protested that the acquisition of Louisiana destroyed the equilibrium, therefore the Union was dissolved. The failure of the New England movement demonstrated that the latter part of the proposition was not true, but this failure should not blind us to the truth of the former part of the assertion. In truth, the equilibrium was thereby destroyed, but the failure of the New England movement was evidence that the Union had grown strong enough to survive its destruction. But this destruction was not complete and final, for later the Missouri compromise and other similar measures restored to the working Constitution what the acquisition of Louisiana and the failure of the New England movement had by construction eradicated from the written Constitution. Not until the issue of the Civil War had pronounced its decision could the principle of equilibrium be said to disappear again as a constitutional principle; a disappearance which it is to

be hoped is final.

Closely connected with the principle of equilibrium was the matter of constitutional amendment. The Fathers of the Constitution had not contemplated the possibility that the Constitution in operation would remain unaltered in form, and New England, although knowing that its amendments would not be accepted, was but insisting on the old idea of the Constitution. The decision with which they were treated showed that amendment was impossible, unless by civil war. Since amendment must be by the states, this diminished the importance of the states and correspondingly enhanced the strength of the Union.

The feature of the New England movement which elicited the strongest and most reasonable condemnation was the concerted action of several states in opposition to the Federal government. This condemnation was so strong that it made concerted action of a similar character impossible for the future, and thereby deprived any opposition to the Federal government of a large part of its strength.

8. But besides the strength which the New England movement gave to the Union it contributed to the development of the old Separatist ideas into the doctrine of nullification. Under the new conception of the Union which it engendered, state sovereignty, if preserved, must be maintained

by other means than secession. This all now admitted, even if the right of ultimate secession was still maintained. If secession be not a right of practical use, nullification is the only resort for a sovereign state; and during the New England movement this had been asserted almost, if not quite, as emphatically as by Virginia or Kentucky. The passages have been already quoted, but parts will bear repetition. Massachusetts had declared, "Whenever the national compact "is violated and the citizens of this state are oppressed by "cruel and unauthorized laws this legislature is bound to in-"terpose its power and wrest from the oppressor its victim."[1] The Hartford convention declared, "But in cases of a delib-"erate, dangerous and palpable infraction of the Constitu-"tion, affecting the sovereignty of a state, and the liber-"ties of the people, it is not only the right but the duty "of a state to interpose its authority for their protection "in the manner best calculated to secure that end."[2] The emergency and the manner of its use were not clearly pointed out; but a more definite assertion that nullification is a proper remedy and there is a proper occasion for its use could scarcely be desired.

1. 6 Niles, 7.
2. Dwight, 361.

More important than the assertion of the right to nullify was the treatment by New England of the premises upon which nullification rested. The Virginia and Kentucky resolutions and Madison's Report had declared that the Constitution is a compact between sovereign states and therefore there could be no final arbiter superior to the parties. From these premises either secession or nullification -- an assertion by each state of its own construction of disputed points -- logically followed. Under the new conception of the Union the Nationalists held that secession was entirely forbidden, while the Separatists regarded it only as a last resort in a most extreme case -- as almost, but not quite, identical with the right of revolution. Henceforth secession would not be attempted until all else had failed, but nullification was much more likely to be tried. Accordingly the interesting question remains: How did New England affect the development of the doctrine of nullification by its treatment of the fundamental questions of the nature of the Union and the final arbiter?

The answer to this question is that New England by its treatment of these questions assisted in the development of the doctrine. The fact has been already noted that New England did not dispose of fundamental constitutional questions in a conclusive manner. The problem of the nature of

the Union was never, so far as the writer has been able to ascertain, squarely raised. When it came up incidentally the declaration seems to be that the people made the Constitution and that by the people the aggregate is meant. But the language is not unequivocal.[1] This failure of New England to be precise upon the point left the question still open and thereby gave the nullifier good occasion to claim that his interpretation had always been the accepted one, or at least that the contrary had never been strongly asserted. One more important result of the failure to be precise about the nature of the Union should be noticed. Had the question become vital New England, at the time thoroughly Separatist, would naturally have recurred to the old Separatist doctrines and pronounced the Union a compact. This would probably have led to their opponents -- who were more naturally Separatists -- changing position and denying the complete sovereignty of the states. But the failure to be precise left their opponents with a record of consistent adherence to the compact dogma which could be pushed to nullification, if oc-

1. Occasionally the compact dogma is hinted at: Massachusetts' report to the legislature in October, 1814, speaks of "the compact entered into between this state and the United States." 7 Niles, 151.

casion arose.[1]

The problem of final arbiter came up more distinctly and upon this question New England exhibited a complete change of position. To the Virginia resolutions New England had replied that the Supreme Court of the United States was the final arbiter. The Massachusetts legislature and the Hartford convention in passages already twice quoted had declared in effect that there are cases when the Supreme Court should not be the final arbiter. This doctrine was not pushed forward prominently, doubtless in view of their former contradictory position. As a result many of their opponents who had originally denied the right of the Supreme

1. The opposition in the Massachusetts legislature may be cited as a good example of the opposition to the Hartford convention on constitutional grounds. The protest of the minority shows that supporters of the Virginia and Kentucky resolutions were not in the least driven from their original position about the nature of the Union. It declares (7 Niles,153-154) that the Constitution was "established upon the broad principle of the sovereignty of the states." The only departure from the strict compact of the Virginia and Kentucky resolutions was in the speech of Holmes who declared that: "the states are parties to the Compact, "and so are the people. Our Constitution is a com- "pound. It is a contract in which all the states "agree with each state, and also in which all the citi- "zens with each citizen." (7 Niles,Supplement,51) This it will be observed is a very slight departure from the original position.

Court to be final arbiter could still adhere to that position.[1] Thus the South Carolina Nullifiers were able to point to their own record and that of their usual allies as consistent in opposition to the claims of the Supreme Court. More than this, they could point to New England as having in a similar situation agreed with them, despite an earlier contradictory position.

From the foregoing considerations the writer thinks it clearly established that the New England Separatist movement had stimulated Nationality and Separatism at the same time. It had made Nationality stronger by the new conception of the Union which it had developed in conjunction with the war of 1812. But it had assisted Separatism in two ways: by preserving and in some respects developing the premises of nullification; and by pointing to it as a proper and

1. Holmes, in the speech referred to in the last note, showed the truth of this statement. He read from the journal of the Massachusetts senate the reply of Massachusetts to the Virginia resolutions, and commenting upon the part relating to the final arbiter said: "I "am not clear, sir, that the doctrine of this report "does not go too far. I apprehend that a case may "happen when it would be proper for the legislature of "a state to declare a law of Congress unconstitutional." . . . "In the case in which a citizen may resist a law "as unconstitutional, a state might perhaps do the "same." (7 Niles, Supplement, 51)

rightful remedy in some cases. It only remained for South Carolina to complete the work which Virginia and Kentucky had begun and New England had continued.

VI. THE SOUTH CAROLINA NULLIFICATION MOVEMENT.

During the interval between the peace of Ghent, which brought the New England Separatist movement to a sudden end, and the appearance of nullification in South Carolina, the Union was but once threatened with dissolution. The exciting struggle which resulted in the passage of the Missouri Compromise has been likened to a thunder storm, and the employment of that simile is indeed appropriate. Like a thunder storm the struggle came on almost in a moment, when the sky had given no indication of a conflict of the elements. While the struggle lasted the edifice of Union seemed almost certain of destruction, but the danger was soon over leaving everything apparently as before. Some few remarked that this conflict was only the first of a long series which would culminate in a storm infinitely more dangerous to the Union, but to the casual observer there was no such indication. Mutterings of disunion had been common, but they were thought to be nothing but idle threats, springing from the excitement of the moment. These threats had but slight connection with the preceding Separatist movements, --- exerted but little influence upon nullification in South Carolina and hence need not tax our attention.

In the opening pages of this paper the writer has stated as his thesis that nullification was not the invention of John C. Calhoun, but was a growth from certain political and social conditions handed down from colonial times. The word separatist has been selected as most adequately describing the tendency of these conditions. An attempt has been made, in the discussion of the Virginia and Kentucky resolutions and the New England opposition to the Federal government, to show how these germs surviving from colonial days were developed into a theory closely approaching that of the South Carolina nullifiers. It only remains to show the intimate connection between these two movements and nullification in South Carolina.

In the establishment of this intimate connection the first point of supreme importance is that all three movements were of separatist character and attained their strength from the survival of separatist sentiments, ideas and habits among the mass of the people. On its constitutional side the South Carolina movement was closely allied to that of Virginia and Kentucky. The nullifiers of South Carolina claimed that the tariff of 1828 conformed to the description of "a deliberate, palpable and dangerous exercise of

"other powers not granted"[1] by the Constitution and therefore, in the language of the Kentucky resolutions of 1799, "that the several states who formed that instrument, being "sovereign and independent, have the unquestionable right "to judge of the infraction; and that a nullification . ." is the rightful remedy.[2] The arguments adduced in support of the constitutional right of nullification were the same, or of the same character, as those which had been urged in support of the Virginia and Kentucky resolutions. The South Carolina leaders took their stand squarely upon the resolutions of 1798. This position, in the opinion of the writer, was not as between the principles of '98 and the premises of nullification; nor was it only for the purpose of obtaining countenance from the great authority of Jefferson and Madison, but because nullification was a reasonably fair and logical deduction from the principles of '98.

Upon the social and economic side there exists a most remarkable identity of origin in the case of the New England and South Car lina movements. Both were in behalf of sectional interests, and originated in sectional opposition to the policy of the Federal government. In each case the oc-

1. Virginia resolutions of 1798, Preston, 285.
2. Preston, 297.

casion was the adoption by the Federal government of a policy which -- whatever its ultimate advantages for the whole Union might be -- was at variance with the immediate interests of a section. Both sections, with good reason, claimed that this policy deprived them of a large part of their natural advantages. Both recognized the advantages of union and professed the warmest affection for it, but each asserted that the evils which it suffered more than offset any possible gain.

A fairly complete inquiry into the effects of the tariff policy of the United States previous to 1833 -- especially the acts of 1824, 1828 and 1832 -- would constitute a desirable and entertaining feature of this paper. But the magnitude of the subject and the space at command preclude any such investigation; for our purpose it will be sufficient to ascertain how that policy affected the South and in what light it appeared to Southerners. Protection to manufacturing interests was an incidental feature of all the early tariffs;[1] but not until 1816 did protection become a purpose clearly and distinctly avowed. The act of that year was framed with the double object of raising revenue to pay the national debt and to protect the manufacturing

1. I. Benton, 32; see also the preamble to the act of 1789.

interests developed during the period of commercial restriction following 1807. The number of protected articles was comparatively small and the average rate low, ranging from about twenty to thirty-five per cent.[1] Protection was more clearly avowed than before but was still subordinate to the raising of revenue. Support for the bill was secured in all parts of the country; Calhoun and the South Carolina delegation were prominent among its supporters. When the nullification days came Calhoun and South Carolina had to meet the charge of inconsistency. Calhoun tried to explain his speech of 1816 in such a manner as to show that his earlier and later positions were in harmony. This explanation has been pronounced satisfactory by his admirers and by advocates of a low tariff;[2] but his opponents and the supporters of protection have usually ridiculed it as failing to explain.[3] He is charged with having advocated protection as a permanent system to which there could be no "decisive objection."[4] One thing, however, is plain: if Calhoun

1. The estimate followed is that of Carl Schurz: Henry Clay.
2. See the interesting comment of Hon. L.Q.C.Lamar in his oration at the unveiling of the Calhoun monument, in Cunningham's History of the Calhoun Monument, 81-82.
3. Von Holst may not belong to either of these classes but he expresses the opinions of the fairest of both classes in his Calhoun, 33-35.
4. Ibid.

and the South favored protection as a permanent system in 1816 it was not the protective system of 1828 which they favored. Nothing could be plainer than that the increase in the number of protected articles and the amount of protection for each was not foreseen or even dreamed of as a possible contingency.

The protection accorded by the act of 1816 did not result in any marked benefit to manufactures, for the reason that the rate was not high enough to enable Americans to produce as cheaply as could their better established English rivals. This led to a strong demand for more protection, which after a number of ineffectual attempts was obtained by the act of 1824. Upon this act Benton remarks, "Revenue the object, protection the incident, had been the "rule in the earlier tariffs: now the rule was sought to be "reversed, and to make protection the object of the law, and "revenue the incident."[1] The bill passed by a close vote in both houses;[2] this majority was only secured by the concession of high duties upon the products of several states which otherwise would not have been in favor of the principle.[3] The South was nearly unanimous in opposition to the

1. I. Benton, 32.
2. In the Senate 25-21, in the House 107-102.
3. I Benton, 32-3.

measure.

In 1828 came the climax of the protective tariffs in the"tariff of abominations," so called from the extreme measure of protection which it furnished, but more especially from the inconsistent manner in which the protective principle was applied. This act Benton has described as "the work of manufacturers and politicians," "commenced for the benefit of the woolen interest," the passage of which "was only to be obtained by admitting other interests into the benefits of the bill."[1] To make a bad matter worse, the Southern members, who were ~~particularly~~ practically unanimous in opposition, tried the desperate expedient of loading the bill with objectionable amendments, in the hope of making it so extreme that its defeat might be secured. This expedient failed and the bill became thereby worse than ever. This act drew forth a wail of execration from the South, particularly South Carolina, and it is from this event that the origin of the doctrine of nullification is quite generally dated.[2] Let us turn to South Carolina and find how the tariff measures had been received there.

The action of South Carolina in regard to the tariff policy can be best described in her own words taken from the

1. I. Benton, 95.
2. Ibid.

report of the committee that drew up the ordinance of nullification. "Against this system South Carolina has remon- "strated in the most earnest terms. As early as 1820, there "was hardly a district or parish in the whole state from "which memorials were not forwarded to Congress, the general "language of which was that the protecting system was 'utter- "ly subversive of their rights and interests.' Again, in "1823 and 1827, the people of this state rose up almost as "one man, and declared to Congress and the world 'that the "protecting system was unconstitutional, oppressive and un- "just.' But these repeated remonstrances were answered only "by repeated injuries and insults; by the enactment of the "tariffs of 1824 and 1828. To give greater dignity, and, "if possible, more effect to these appeals, the Legislature, "in December, 1825, solemnly declared 'that it was an uncon- "stitutional exercise of power on the part of Congress to lay "duties to protect domestic manufactures;" and in 1828 they caused to be presented to the Senate of the United States, "and claimed to have recorded on its journals, the solemn "protest of the State of South Carolina, denouncing this system as 'utterly unconstitutional, grossly unequal and op- "pressive, and such an abuse of power as was incompatible "with the principles of a free Government, and the great ends

"of civil society; and that they were 'then only restrained "'from the assertion of the sovereign rights of the state, "'by the hope that the magnanimity and justice of the good "'people of the Union would effect an abandonment of a sys- "'tem partial in its nature, unjust in its operation, and not "'within the powers delegated to Congress.' "[1]

In some of these discussions prior to 1828 the doctrine of nullification reappeared, but in what manner and on what occasion we cannot be certain. Du Bose, in his Life and Times of W. L. Yancey, tells us that at one of these anti-tariff meetings at Columbia in 1826 Dr. Thomas Cooper, President of South Carolina College, suggested that it was time for the South to calculate the value of the Union. This proposition, however, was not received with favor but in the course of these discussions nullification was proposed as the proper remedy and the suggestion was eagerly taken up.[2] The first occasion on which the doctrine of nullification was publicly explained and advocated, so far as the writer has found, was at Walterborough, South Carolina, in the fall of 1828. After his return from Congress James Hamilton, Jr., delivered an address[3] to a meeting of his constituents, in

1. IX. Congressional Debates, Part II., Appendix, 159.
2. Du Bose: Life and Times of W. L. Yancey, 44-45.
3. For this address in full see 35 Miles, 203-208.

which after denouncing the tariff just passed he propounded the question if there was a remedy. Answering his own query, he declared that there was none in their opponents but there existed one in themselves: "in the sacred Aegis of the "Constitution itself; in the sovereignty of this state -- in "the high and insuperable obligations of our legislature to "protect each and all of its citizens from the injustice and "oppression of an unconstitutional law." A little later in the same address Hamilton remarked, "On the reserved rights "of this state you may build as upon a rock which the tem- "pests and billows may beat but cannot shake;" this, he explained, is not revolutionary enthusiasm but the doctrines of the Virginia and Kentucky resolutions. "But how are we "to interpose for the purpose of arresting the evil? Let "Mr. Jefferson answer this question." The speaker then read the nullification clause from the Kentucky resolutions of 1799 (incorrectly attributing it to the 1798 resolutions). "But the question is who is to determine whether the act is "unauthorized?" Then Hamilton read from Madison's report that the parties to a compact must themselves be the judges.

The question which naturally arises here, how Hamilton came to make this address, is a highly interesting one. Was it delivered on his own motion, or in pursuance of a widely

concerted plan? If the latter, when and by whom was the plan formed? What did its projectors hope to accomplish by it, and how far were they willing to go for that end? Probably none of these questions can be satisfactorily answered from the materials at hand, perhaps cannot be answered at all, but some tentative answers may be given.

Shortly after the passage of the tariff act of 1828 the South Carolina delegation held an informal meeting at the house of Hayne in Washington to decide upon the proper course of action relative to the tariff. The transactions of this meeting have been variously reported by different participants. Mitchell, a member of the House, upon his return home made some ugly charges against Hayne, Hamilton and McDuffie. He endorsed as substantially correct a charge[1] that a proposition had been made for the entire delegation to abandon their seats and return home, intending thereby to bring about a severation of the connection between the State and the Federal government. This proposal the writer declared was rejected, chiefly through the opposition of

and in its stead an agreement was adopted to make every effort to inculcate such doctrines and principles as

1. This charge was made in an open letter to Hayne published in the fall of 1828 in the Winyah Intelligencer; reprinted in 35 Niles, 183-185.

would induce the people of the states to agree to and advocate a separation of the states. In the course of a newspaper controversy[1] which followed, Hayne established by the evidence of Martin, Drayton, Hamilton and Carter that no formal proposition had been made to return home; that Hamilton had spoken of doing so, because there was no use of his staying; that the dissolution of the Union had been incidentally alluded to in conference, whereupon Drayton expressed strong attachment to it, while Hamilton and McDuffie expressed the opinion that the Federal government had no right or power to coerce South Carolina, and that North Carolina and Virginia would not permit it.[2] The only determination arrived at was to allay excitement as much as possible, in order to insure the election of Gen. Jackson. It is evident that Hamilton's address had no connection with this meeting. But the character of the address, a carefully prepared one, irresistibly leads one to hypothecate another meeting of those whose views were known, at which some plan of concerted action had been agreed upon. Whether such a meeting ever took place doubtless will never be known,

1. The letters appeared in various South Carolina papers during the fall and winter of 1828; they are in 35 Niles 183-185,199-203,283-284.
2. 35 Niles, 199-203.

but it seems quite probable that Hamilton's address was prepared in pursuance of a plan arranged before leaving Washington, and that some form of popular agitation for nullification must have been planned. It will be remembered that this is only an hypothesis and that the evidence will justify nothing more.

But it is quite as probable that no plan of agitation had been formed and that Hamilton acted upon his own motion. The opinions which he expressed at the meeting of the South Carolina delegation would stamp him as a more radical man than most of his colleagues. Upon his return, when he found that the temper of his constituents was ripe for such a course, he may on his own motion have delivered the address from which we have just quoted. If this hypothesis be correct, Calhoun must be acquitted of responsibility for the initiation of the South Carolina nullification movement and should be regarded as the advocate who finds an argument for a device which his clients have suggested to him. There is no positive evidence to show that Calhoun had not advocated the nullification idea as early as the summer of 1828, but we have a letter[1] of July 1, 1828, to

1. 35 Niles, 61. But see later explanation of certain mistakes in this letter as originally published.

Duff Green in which he expresses very fully his ideas of the tariff of 1828. In this letter he denounces the tariff as unconstitutional, but apparently the only course of action which he has in mind is a repeal by Congress. Not until the appearance of the South Carolina Exposition in December have we any advocacy of nullification from his pen or any evidence of his connection with the movement. This Exposition was probably written during November and December and seemingly in response to an appeal for arguments to support a device which had been extensively agitated in the community. During the summer anti-tariff meetings had been held in all parts of the state, and at these meetings appeals had been made to the legislature which practically amounted to demands for nullification.[1] At a meeting held in St. Helena Parish resolutions were passed demanding that the state legislature "interpose in their behalf, by measures calculated effectually to resist or defeat the operation of the tariff bill in South Carolina."[2] At Abbeville Court House, on the 25th of September, four thousand people, after being harangued by McDuffie, Hayne and Hamilton, resolved: "That we look to our state sovereignty for relief and commit the sub-

1. For an account of some of these, including the resolutions adopted, see 35 Niles, 60-61.
2. 35 Niles, 60-61.

ject to the wisdom of our Legislature."[1] Certain peculiarities of Hamilton's address at Walterborough and of the resolutions adopted at these meetings indicate that Calhoun did not inspire them and was not yet connected with the movement. Calhoun always expressed himself definitely, and urged his supporters to do likewise, but these resolutions were expressed in very indefinite terms. Hamilton had advocated nullification by the convention or legislature; this last expedient Calhoun expressly rejected.

When the legislature met, a large number of proposals in regard to the tariff were introduced into both houses. Almost all of them amount to nullification, but there is little agreement as to the manner of effecting it.[2] One set of resolutions introduced into the senate by Mr. Wilson pronounced the tariff of 1828 "unconstitutional, void and "inoperative; and not binding upon the citizens of this "state, and they are discharged from all obedience to the "same." It further proposed: "That the Governor of this state "be instructed and required to protect the citizens of this "state from the unconstitutional control or oppression of "all such laws as may be attempted to be enforced against

1. 35 Niles, 60-61.
2. The resolutions containing about a dozen proposals are published in 35 Niles, 303-310. Elsewhere in the same volume other proposals are given.

"them from any and every foreign authority."[1] A proposal that "a convention of the people should be called to nullify any and all obnoxious laws" was made,[2] but failed as did another for a convention on December 1, 1829, to decide whether the tariff was unconstutitional or not, and if so to devise means and measures to protect the state.[3] The vote in the House was decisive, 41 to 80.[4] Instead of a convention order was made for a "public exposition of our wrongs and the remedies within our power."[5] This exposition was the work of Calhoun, and in it the South Carolina nullification theory was for the first time clearly stated.[6]

The "Exposition," although dealing with the protective system in general, is aimed directly at the tariff of 1828 which it denounces in unequivocal language as "unconstitutional, unequal and oppressive.[7] To prove each and all of these assertions Calhoun presents an imposing array of facts so skilfully arranged and colored as to display the most odious features of the protective system.[8] After thus exhibit-

1. 35 Niles, 251.
2. See the proposal of Mr. Dunkin, 35 Niles, 303-310.
3. Proposal of Mr. Butler, 35 Niles, 306.
4. 35 Niles, 306.
5. Ibid.
6. Known as the South Carolina Exposition, published in VI. Calhoun's Works, 1-59.
7. VI. Calhoun's Works, 2.
8. Ibid, 2-29.

ing the oppressive operation of the system upon Southern interests Calhoun next discusses "its tendency to corrupt the Government, and to destroy the liberty of the country."[1] The discussion which follows is an attempt to demonstrate that the conditions of the country demanded, and secured for the states, in the Constitution, the right to protect the powers which they reserved for themselves. The line of argument is about as follows:

1. A uniform policy in all matters cannot operate fairly in this country owing to the diversity of interests existing in different parts. To this diversity of interests the Constitution owes one of its most characteristic features, "the division of the delegated powers between the State and General Governments."[2] The activity of the General government is limited to those matters in which there is a community of interests among the states; and in order that there may be no occasion for dispute over them, the powers which the General government may exercise are <u>expressly</u> delegated. The distinct and separate interests of the states are served by their respective state governments; to these governments have been delegated all the powers not <u>expressly</u> granted to the General government. The line which

1. VI. Calhoun's Works, 29
2. Ibid, 34-35.

separates matters of general and of local interest is not readily distinguishable and this made the distribution of powers between the General and State governments a very difficult task. But this hard problem was so successfully solved "that, to this day, there is an almost entire acquiescence in the correctness with which the line was drawn."[1] This line is the very basis of the system, and the particular enumeration of the powers delegated to the General government is designed to prevent its obliteration by the majority.[2]

2. It will be observed that the powers of both the General and state governments are delegated. The reason for this is that neither is sovereign; government and sovereignty are entirely distinct. Sovereignty in America belongs to "the people of the several states."[3] By the ratification of the Constitution, each state modified its original sovereignty, but only so far as is required by the amending clause of that instrument. The Constitution may be amended by the vote of three-fourths of the states, while under the old system the consent of each state was required for any change of political condition; in all other re-

1. VI. Calhoun's Works, 35.
2. Ibid, 35-36.
3. Ibid, 36.

spects the original sovereignty of each state is unchanged.[1]

3. Theoretically neither the General nor state government can interfere with each other; but experience shows that a theory is inavailing without a remedy to enforce it.[2] Usurpations of power by one or the other will occur and the question of the proper remedy arises. Experience has shown that encroachment always comes from the General government. Calhoun then proceeds to the discussion of three proposed remedies.

(1) The right of decision in conflicts of authority between the General and state governments has been claimed for the Federal judiciary;[3] this claim is disputed and the correctness of the denial is supported by quoting from Madison's Report those passages with which we are already familiar.[4]

(2) Strict construction of the powers of the General government has been regarded as the rightful remedy against encroachment from that direction. But constitutional construction is a power which lies in the hands of the majority and it is against that very majority that the states

1. Calhoun's Works, 36-37.
2. Ibid, 37.
3. Ibid, 38.
4. Ibid, 38-40.

demand protection. It is evident that even strict construction of the Constitution will not remedy the evil of usurpation by the General government.[1]

(3) This protection for the states "may be found in the reserved rights of the states themselves, if they be properly called into action;" and this is the only sufficient remedy.[2] The argument for the constitutionality of this remedy is that if the states are sovereign, they alone must have the right to pass judgment upon the exercise of disputed powers by the General government. The right to pass judgment imposes the duty of applying the needful correction, which is the veto. In Calhoun's own words, "the existence of the right of judging of their powers (those of the General government), so clearly established from the sovereignty of the states, as clearly implies a veto or control, within its limits, on the action of the General government, on contested points of authority."[3] This remedy is further recommended by the fact that "this very control (state veto) is the remedy which the Constitution has provided to prevent encroachments by the General government on the reserved rights of the states; and by which the distribution of power

1. VI. Calhoun's Works, 40-41.
2. Ibid, 41.
3. Ibid, 42.

between the General and state governments may be preserved forever inviolate, on the basis established by the Constitution."[1]

The remedy here advocated, state veto, amounts to nullification and Calhoun afterwards identified them, but it is significant that in this "Exposition" Calhoun does not use the term nullification to describe his remedy, nor does he even quote the nullification clause from the Kentucky resolutions of 1799. At this time Calhoun appears to simply repeat the arguments and theories of Jefferson and Madison in as moderate a tone as was employed in their first assertion. The arguments and theories of '98-9 are neither further developed nor pushed further towards their logical extreme. A comparison of the "Exposition" with the documents of 1798-9 on the one hand and with the later nullification papers on the other hand firmly convinces the writer that there is a logical connection between the principles of '98-9 and those of South Carolina in the nullification movement.[2] Originally the movement simply amounted to an appeal to the principles and arguments of '98-9 -- a careful study of the Exposition will go far towards showing this; but as the evil

1. VI. Calhoun's Works, 42.
2. In this position the writer takes issue with III. Schouler, 491.

complained of continued the South Carolina leaders were forced further; and then they commenced to develop the principles and arguments to which appeal had been made; when pushed still farther towards the logical extreme, the nullification ordinance was the result.

4. If state veto be a constitutional right the next question is "How is the remedy to be applied by the states?"[1] Veto by the state legislatures is rejected as open to possible objections, but a convention which fully represents the sovereignty of the state will "remove every objection as to form, and leave the question on the single point of the right of the states to interpose at all"[2] -- and of this right Calhoun has no doubt. When assembled the convention will first decide for the state whether or not the acts complained of are unconstitutional. If the acts be found unconstitutional, the next question will be whether they are of so dangerous a character as to require the use of the state veto. If the violations of the Constitution be pronounced "deliberate, palpable and dangerous,"[3] the convention will declare the acts "null and void within the limits of the state."[4] This decision will be binding not only upon the citizens of the

1. VI. Calhoun's Works, 44.
2. Ibid, 44-45.
3. Ibid, 45.
4. Ibid.

state but also upon the General government.[1]

5. The remainder of the Exposition is concerned with answering possible objections to this remedy. The most noteworthy of these objections -- Calhoun characterizes them all as "destitute of solidity"[2] -- are that the veto rests upon inference and that its use would rob the General government of the necessary authority. But, Calhoun replies, the power to declare a law unconstitutional must be exercised; the power of the Supreme Court in this respect rests upon inference, but for that reason is none the less undoubted. The right of the states to exercise a similar power "rests upon clearer and stronger grounds than that of the Court."[3] The failure to expressly grant to the Federal judiciary the power pronouncing a law unconstitutional constitutes a presumption against the use of such authority since the Constitution professes to enumerate the powers assigned to the General government. It was not necessary to expressly reserve such a power to the states since they retain all rights not expressly delegated. State veto is then a reserved right.[4] The objection that the use of state veto would render the General government powerless, leading to

1. VI. Calhoun's Works, 45.
2. Ibid.
3. Ibid, 46.
4. Ibid, 45-46.

"feebleness, anarchy and finally disunion,"[1] -- Calhoun meets by attempting to show that state veto is simply one of the numerous checks upon the General government which can be safely used. Like the other checks, the state veto may be abused, but nowhere else has this checking power "been lodged where it was less liable to abuse."[2] The force of public opinion, delay in calling a convention, the solemnity of the procedure, reverence for the General government, the existence of parties within the state, all of these and numerous others are safeguards against abuse of the veto. But if all of these fail, the power of three-fourths of the states to pass amendments will effectually prevent abuse. The use of the veto will not place the minority in control, it only secures for that minority their constitutional rights. Its aim is to prevent the assumption of powers by the General government through constitutional construction. It amounts to compelling the General government to secure an express grant of a disputed power through constitutional amendment or else abandon the power. If state veto be not allowed, "the amending power must become obsolete,"[3] since otherwise any desired power can be acquired by the General

1. VI. Calhoun's Works, 46-47.
2. Ibid.
3. Ibid, 51.

government through constitutional construction.[1] State veto is then an appeal to the highest authority known to the Constitution, the decision of three-fourths of the states.

6. The Exposition concludes with the question, "When would it be proper to exercise this high power?"[2] If the magnitude of the interests involved was the only question, an immediate call for a convention should be issued, but numerous considerations recommend delay; among them are "respect for the other members of the confederacy," "the necessity of great moderation and forbearance in the exercise even of the most unquestioned right," "the hope of a returning sense of justice on the part of the majority," and the expectation that the approaching political revolution which will place an eminent citizen in the presidential chair "may be followed up under his influence with a complete restoration of the pure principles of our government."[3] The final word is of solemn warning, that "if the present usurpations and the professed doctrines of the existing system be persevered in"[4] it will be the sacred duty of South Carolina to interpose and arrest the progress of a usurpation which

1. VI. Calhoun's Works, 51.
2. Ibid, 55.
3. Ibid, 55-56.
4. Ibid, 56-57.

threatens to destroy the liberty of the country.[1]

Von Holst, commenting on this Exposition,[2] points out that the entire argument springs from the perception of a permanent conflict of interest between the rest of the Union and the "staple states." This conflict was occasioned by the exclusive devotion of the "staple states" to agriculture and will be perpetual owing to their "climate, soil, habits and peculiar labor." The perception of this conflict Von Holst regards as the wizard's wand which transformed Calhoun, the ardent Nationalist, into the champion of sectional interests,[3] or in other words, into a Separatist. The proof that Calhoun was now a complete Separatist lies in the fact that in the entire fifty-six pages there is not a line bearing directly upon national interests.[4] This feature of the Exposition undoubtedly exhibits Calhoun as a devoted champion of Separatist principles, and from the entire document we may easily see that this position was due to a perception of distinct sectional interests. But does it

1. VI, Calhoun's Works, 57. I. Curtis: Webster, 352-353, note, gives an interesting analysis of the Exposition left by Webster among his papers. It will be noticed in this analysis that the conclusions, not the premises, attract Webster's attention.
2. For his discussion of the Exposition see his Calhoun, 76-84.
3. Von Holst: Calhoun, 77.
4. Ibid.

follow that a transformation had been wrought in Calhoun? The question is of more than biographical interest, for what is true of Calhoun in this respect is equally true of others, though in a different degree. The Constitution was intended to form a more perfect Union and it contained a principle of development destined to render the Union still more perfect.[1] Was Calhoun familiar with the principle of development? Von Holst is strongly of the affirmative opinion and cites as evidence Calhoun's advocacy of measures calculated to have a favorable effect upon "the consolidation of the Union."[2] But is it not possible that too much emphasis has been accorded to this "favorite" argument of Calhoun? Does the employment of the "consolidation" argument really show that Calhoun was familiar with and endorsed the principle of development contained in the Constitution? Is it not true that the discovery of this principle of development was reserved for a later time? The writer is of this opinion, and the reason for his belief is this: In all of the constitutional discussions before that time and for some years later, there is no direct appeal -- so far as the writer has been able to discover, and he has looked carefully -- to the

1. Von Holst: Calhoun, 79.
2. Ibid.

principle of development. Frequently men act upon it and even base arguments upon it, but always without clear recognition of the premises. The debates upon constitutional questions, from the establishment of the Federal government through the nullification controversy, are a continuous illustration of this fact. A certain constitutional construction is never advocated simply for the reason that it has been necessarily developed in practice from the principles laid down in the Constitution. All parties are agreed that the Constitution is what its framers made it. In all constitutional controversies the question is, not what has become an accepted principle by development, but what was the principle of the framers. Between Calhoun and Webster there is the greatest possible difference as to what the Constitution is, but both agree as to the method of interpretation, namely, to discover what its framers designed. In short, neither school was familiar with the principle of development.[1] What follows from this conclusion?

1. Remembering that originally the Separatist princi-

1. Webster's method of argument was, in general, to interpret the words of the Constitution in such a manner as to meet all of the demands upon it of a constantly enlarging national life; then to find in the constitutional debates evidence for his interpretation. In almost every case the greater part of his force was expended upon the former feature, the latter being comparatively

ples and habits had been more prevalent than those of the National sort, and that these old principles and habits had not yet been entirely outgrown, we will see that for many years advocacy of measures designed to effect "consolidation of the Union" was not the natural course.

2. Into such a course of action those usually Separatists might be led for a short time, from some peculiar circumstances; but this would not in the least prevent, on the proper occasion, a quick return to their original and more natural attitude. In this new position they may appear to their opponents inconsistent and even false; but to themselves the inconsistency was in the former attitude, and the consciousness of their own rectitude increased their devotion to their original principles.

neglected. Calhoun, on the other hand, usually began with certain principles which he discovered among the constitutional debates, and developed these to their logical extreme with inexorable logic, utterly oblivious of the possible evil effects of his conclusions. Generally he made some attempt to defend the operation of his conclusions, but this feature, like Webster's citations of evidence from the constitutional debates, was comparatively neglected. Naturally the results are as widely apart as possible, because they begin at opposite ends, and each develops one half of the method to the exclusion of the other half; but the method is essentially the same; growth is not consciously recognized by either.

3. Calhoun was naturally of the Separatist party -- this will be disputed, but the writer is convinced of its truth, chiefly for the reason that almost all men of that day -- especially of the South -- were by nature Separatists and only became Nationalists from interest or experience.[1] During his early career Calhoun acted with the Nationalists, but this was due to the peculiar position in which he was placed. When the interests of his state brought it into collision with the Federal government Calhoun was recalled to the support of his natural principles. This change was readily accomplished with the utmost rectitude and but slight inconsistency -- and that in his former actions. What is true for Calhoun is true also for his followers.

4. Such being the case, what under the circumstances was more natural than an appeal to the principles of the earlier Separatists?

The resolutions of 1798-9 were doubtless well-known to Calhoun and all of the South Carolina leaders. To the principles expressed in these resolutions they had never dissented, although at times acting contrary to their spirit in

1. Hamilton, alone among the early statesmen, was a born centralizer. All of the others came by their national views from a perception of interest, developed by experience. When we recall this and the comparative isolation in which men lived before the time of railroads, is it too much to say almost all men were born Separatists?

the support of some extreme national measures. As has been already shown the principles of the original resolutions were not further materially developed upon the first appeal to them. The only reasonable objection, then, to such an appeal would be that it was not fairly made, or that the principles had, in the meantime, been outgrown. Let us ascertain to what extent these objections were valid.

The most important questions left open by the constitutional debates were the two about the nature of the Union and the final arbiter. The Virginia and Kentucky resolutions first fairly disclosed the existence of these questions, expressing at the same time the Separatist views of them. In developing the connection -- or lack of connection -- between these resolutions and the nullification movement in South Carolina we cannot pursue our investigations upon better lines than these two questions.

Calhoun, in the Exposition, claimed that nullification was a logical and necessary deduction from the compact theory of the nature of the Union. The theory, as asserted by him, involved two distinct propositions:

1. That the Constitution was made by the states, as opposed to the people of the United States in the aggregate.[1]

1. VI. Calhoun's Works, 43.

2. That the states remained sovereign except as their original sovereignty was modified by the amending clause of the Constitution.[1]

As regards the first of these assertions, nobody will deny that Calhoun was simply repeating the resolutions of 1798. But there still remains the interesting question whether this theory had been outgrown in the interval.

In the solution of this problem we must distinguish between the later Separatist and Nationalist views of the Constitution, and endeavor to ascertain which view was generally accepted before 1830. In 1798 we find the Separatists in the resolutions of that year strongly asserting that the states made the Constitution, but the Nationalists in the replies of the states refrained from any definite expression of opinion, apparently acquiescing or not appreciating the importance of the question.[2] In the interval there had been no change of opinion among the Separatists. Jefferson until the end of his life continued to hold the view expressed in the Kentucky resolutions.[3] Madison, while strenuously combating the deductions made by the nullifiers of South Car-

1. VI. Calhoun's Works, 36-37.
2. IV. Elliot, 534-539, and supra.
3. The proof of this is of a negative character, but is none the less conclusive.

olina, still declared that the states were the parties to the compact.[1] Numerous citations might be adduced to show that untillabout 1830 the Separatist view was the one generally held, but one fact will be sufficient. While the South Carolina movement was in its most alarming stage and there was the greatest possible temptation to deny the premises of the nullification argument, even then Webster stood almost alone in his position that the people of the United States, taken in the aggregate, made the Constitution. There were others present equally ardent in opposition to nullification, but almost all conceded to Calhoun the first statement in his argument, that the states were the parties to the Constitution.[2]

The Nationalist theory, advocated by Webster, in the great debate over the Foot resolutions,[3] and repeated in 1833

1. IV.Works,293, letter to Daniel Webster,March 15,1833. Statements to the same effect are found in nearly all of his letters from 1830 - 1836.
2. See the debates in the Senate over the revenue collection bill and Calhoun's resolutions; IX.Congressional Debates,Part I.,174-785. Especially see the speeches of Dallas,414-430, Rives,492-518. (495 Rives says,"Now, "sir,in regard to the first proposition laid down by the "honorable Senator from South Carolina it gives me "pleasure to say that I am entirely of accord with him.") Sprague,777-783,et al.
3. Congressional Debates, Part I.

in his speech upon the revenue collection bill[1] and upon Calhoun's resolutions,[2] was first given definite form in the opinion of James Wilson in the case of Chisholm vs. Georgia.[3] Judge Story in a number of opinions delivered by the Supreme Court elaborated the view despite the hostility with which it had been at first received. In 1816 while delivering the opinion of the court upon the case of Martin vs. Hunter's Lessee, Judge Story thus emphatically asserted the view for which Webster contended: "'The Constitution of the "United States was ordained and established, not by the States "in their sovereign capacities, but emphatically, as the pre-"amble of the Constitution declares, by 'the people of the "'United States.'"[4] That the aggregate people was intended other parts of the decision clearly show. But it should be remembered that this theory was new and thoroughly unfamiliar to the public ears[5] until the force of Webster's eloquence won recognition for it.

1. IX. Congressional Debates, Part I., 553-587, especially 553-558.
2. Ibid, 774-777.
3. Supra. 18-19
4. Thayer, Part I., 123.
5. Madison's letter to Webster of March 15, 1833 (IV. Works, 293) previously cited shows this beyond all possible doubt. The use of the theory by the Supreme Court had not made it familiar to any very considerable portion of the community.

The result of our investigations upon the first part of Calhoun's statement about the nature of the Union may be thus summarized.

1. In asserting that the states are parties to the Constitution Calhoun was only repeating the Virginia and Kentucky resolutions.

2. To this view the Separatists of 1798 and their disciples had continually adhered.

3. This view was the one generally accepted -- save by the Supreme Court -- until the South Carolina movement was well under way.

4. Even then a large part -- probably a majority -- of those opposed to nullification admitted the correctness of this position.

The second proposition in Calhoun's statement about the nature of the Union declares that in adopting the Constitution the states retained their original sovereignty unaltered, except as modified in the amending clause. The obvious conclusion from this position is that any state may do whatever can be constitutionally done by all of the states -- at least until the Constitution is amended, forbidding the action. This position assumed by the South Carolina nullifiers Madison pronounced utterly untenable, denying that either

the proposition or conclusion could find the slightest justification in fact or in the language either of the Virginia resolutions or the Report explanatory of them.[1] With unerring precision Madison uncovered the position of the nullifiers: "The main pillar of nullification is the assumption "that sovereignty is a unit at once indivisible and inalien-"able; that the States, therefore, individually retain it "entire as they originally held it, and, consequently, that "no portion of it can belong to the United States."[2] This "main pillar of nullification" Madison tried to destroy by showing the idea of indivisible sovereignty to be a late doctrine developed by the nullifiers.[3] The true doctrine hitherto understood, Madison asserts, is that sovereignty is "in its nature divisible, and was, in fact, divided according to the Constitution of the United States, between the states in their united and the states in their individual capacities."[4] This view of the matter was announced to the old

1. IV. Works
2. Ibid.
3. Ibid, 391,421.
4. Ibid,390. Upon this subject Madison had previously remarked (Ibid,61,February 15,1830 to N.P.Trist): "If sov-"ereignty cannot be thus divided, the political system "of the United States is a chimera, mocking the vain "pretensions of human wisdom."

Congress by the Federal Convention,[1] was presented in the Federalist and other contemporary expositions[2] and is the view constantly held by all parties until very lately, even by those who are now the advocates of nullification.[3] As a proof of this last assertion, Madison cites the report to the legislature of South Carolina in 1828. The Virginia resolutions and the Report Madison defended by explaining that the third resolution -- the one which Hayne read in the senate as defining the position of the nullifiers -- was never meant to "assert a right in the parties to the Constitution of the United States individually to annul within themselves acts of the Federal government, or to withdraw from the Union."[4] Thus, in Madison's opinion, the twin heresies of indivisible sovereignty and nullification fall to the ground together.

A fair verdict upon the foregoing argument by Madison would be that, if all of the positions assumed therein are well taken, nullification has no just and logical connection with the early constitutional views in general and the Virginia resolutions in particular. But are all of the posi-

1. IV. Works, 390.
2. Ibid.
3. Ibid, 421.
4. Ibid, 61.

tions well taken? The following criticisms of the argument will show that all of the positions are not conclusively established; it follows, therefore, that in proportion as these positions fail of demonstration, by so much are the premises of the nullification arguments justified in the earlier constitutional views and the Virginia resolutions.

1. The vital point, upon which all of Madison's positions depend, is his assertion that the doctrine of divided sovereignty was thoroughly appreciated and established during the constitutional debates. Madison is certainly wrong in this and ascribes to others familiarity with a conception which he was almost alone in grasping at that time. Nothing seems plainer than that the nature of the Union formed under the Constitution was not appreciated during the constitutional debates.[1] If this be true, how could the question of divided or indivisible sovereignty, the most subtle feature of that problem, have been appreciated? If it was not clear who were the makers of the Constitution, how could it be known whether the states gave up a part of their independence or retained it all? All of the arguments which go to prove that the nature of the Union was not understood apply with more than double force to show that the question of divided or indivisible sovereignty was not settled.

1. Supra. /0

2. Assuming, however, as Madison does, that the states made the Constitution, does it follow that the doctrine of divided sovereignty was generally recognized? Madison cites the letter of Washington, as president of the Federal Convention, to the old Congress;[1] but that document, properly interpreted, is not proof of his assertion; in fact, it is the best of evidence that the point in dispute was left undecided. The letter speaks of the impracticability of securing "all rights of independent sovereignty to each (state), and yet provide for the interest and safety of all." These rights must be surrendered and the object is to consolidate the Union. This seems quite strong for divided sovereignty, but it will not escape notice that only the rights (powers) of sovereignty are spoken of, and these as "delegated" and a "trust." Reference is made to the Federalist, and though no citation is given, doubtless the thirty-ninth number is meant. In that article the proposed government is described as of a mixed character, partly federal, partly national; "but the act, therefore, establishing the Constitution, will not be a National, but a Federal act." The next paragraph the Federalist devotes to showing that this

1. IV. Journal of Congress, 782.

act is wholly federal, and nowhere in that paper -- or in any of the others so far as the writer knows -- is there any definite explanation that the sovereignty of the states is in the least abridged.[1]

3. Supposing that the letter of the Federal Convention and the Federalist do explain that sovereignty is divided, does it follow that this idea was generally comprehended? Madison claims the authority of contemporary pamphlets but cites none of them. It is extremely doubtful whether he could cite any, for the point seems not to have been discussed in them or the state ratifying conventions. In order to establish Madison's assertions it would be necessary to point to numerous explanations of the character which he describes; this cannot be done. It should be further noted that the Federalist was not known in all of the states and the expression of an idea in it is not proof that the idea was generally understood.

4. Neither the Virginia resolutions nor the Report recognize the doctrine of divided sovereignty. In neither document does the matter come up for express discussion, but

1. The Federalist abounds in explanations of why the exercise of certain rights is denied to the states and vested in the Federal government; but it never explains, so far as the writer knows, that any portion of the sovereignty which creates and controls these rights is to be surrendered.

in both the implication for complete state sovereignty seems very strong. The states are declared to have the right to interpose in the case of unconstitutional assumption of powers by the Federal government. It would seem as if this must mean each state, since each state is a party to the Constitution, unless there is some explanation that such interposition must be the work of all the states. The nearest approach to such an explanation is in the use of the plural, states. But is not the other interpretation at least equally fair? When we come to examine this question by the help of the Kentucky resolutions -- and the two sets of resolutions were understood in 1798-9 to mean the same thing -- we find the interpretation of the nullifiers amply justified. In the Kentucky resolutions of '98 the plural states is replaced by the expression each state.[1] In the resolutions of 1799 Jefferson describes the several states as sovereign and independent and having the right to nullify.[2]

From these considerations our verdict upon the argument of Madison must be that he has failed to show that divided

1. Preston, 287: "The several states" are united by compact, "reserving each state to itself" certain rights; "to "this compact each state acceded as a state, and is an "integral party, its co-states forming as to itself, "the other party" etc.
2. Ibid, 297.

sovereignty was the accepted conception. It follows, therefore, that the nullification conception of the nature of the Union -- as composed of states completely sovereign save as restrained by the amending clause -- is a fair and reasonable interpretation of the constitutional views of the earlier Separatists, of the Kentucky resolutions and the current notions of what the Virginia resolutions meant.

One further point connected with the matter of divided or indivisible sovereignty must be discussed in order to complete the survey of the connection between the nullifiers' conception of the nature of the Union and that entertained at an earlier time. Had the conception of divided sovereignty become established in the interval? Undoubtedly some progress towards that conception had been made but it would be extremely difficult to show any proofs of a general change of public opinion in that respect. Such proof to be of any real value against the historical position of the nullifiers must show that the idea of divided sovereignty had become practically universal as a distinctly necessary conception. No proof could be adduced to show that the idea of divided sovereignty had become universal,[1] and the nullifier claimed

1. The opinion of the writer upon this important question is exactly expressed in the words of Woodrow Wilson, Division and Reunion, 45, "Indeed, the doctrine that the

that sovereignty was of its nature indivisible. In an attempt to divide sovereignty, the powers must be divided between the two bodies which are both to be sovereign; but conflicts of authority will come and one must yield to the other, or in other words lose its independence of the other; and thus the more powerful becomes sovereign and the less powerful subordinate, exercising certain powers during the pleasure of that body which is sovereign.

From this lengthy consideration of the connection between Calhoun's conception of the nature of the Union and that set forth in the Virginia and Kentucky resolutions our conclusion must be that, however dangerous may be the deductions made from it, the position was consistent with those resolutions and had not been outgrown, in the sense of being generally cast aside, in the interval. With our view thus clarified as regards the foundation upon which nullification rested, we may proceed in like manner -- though it is to be

> "States had individually become sovereign bodies when "they emerged from their subjection to Great Britain as "colonies and that they had not lost their individual "sovereignty by entering the Union, was a doctrine ac- "cepted almost without question, even by the courts, "for quite thirty years after the formation of the gov- "ernment."

hoped at less length -- to ascertain the connection -- or lack of connection -- between Calhoun's view about the final arbiter and that of the Virginia and Kentucky resolutions upon the same subject.

The only valid objection against an appeal by Calhoun to the Virginia and Kentucky resolutions for support in his position about the final arbiter would be that the appeal was not fairly made, or was useless since the theory of those resolutions had been outgrown. Was the appeal fairly made? Both Virginia and Kentucky were understood by the replying states as asserting a doctrine which was equivalent to the declaration that in cases of a conflict of authority between the Federal and state governments the decision must lie with the states. Evidently Calhoun and the replying states put upon these resolutions the same interpretation. But can there be any doubt this was the right interpretation? Evidently not in the case of Kentucky, for that state retorted by asserting the right of the "several" states to nullify.[1] This certainly means that in the opinion of Kentucky the Supreme Court is not the final arbiter, but that each state has the right to nullify.[2] Virginia, in the Report drawn by

1. See the resolutions of 1799 in Preston, 297.
2. See the debates as given in Warfield.

Madison, reaffirmed the right of the states to interpose. The nature of this right was discussed in a lengthy passage from which we have already freely quoted. The burden of this explanation was to reaffirm and defend the right of state interposition, but to leave the proper occasion for its use very ill-defined. Madison, at the time of nullification in South Carolina, emphatically declared that the Supreme Court is the final arbiter under the Constitution.[1] He denied that a fair interpretation of state interposition as used in the Virginia resolutions would construe them as claiming such an office for any individual state. Thus nullification could find no support in the Virginia resolutions.[2] This sincere and patriotic protest from Madison reveals one of the most interesting features of our early constitutional history. Madison was not conscious of any marked change of opinion, perhaps had undergone none. But thirty-five years had elapsed and now he finds his opponents giving to his resolutions an interpretation exactly the opposite of his

1. IV. Works, 19,62-63 and frequently throughout that volume.
2. Almost all of IV. Works, from 18 - 425, deals with South Carolina and nullification. The opinions cited from Madison are frequently reiterated in these pages. As a rule but one citation has been given.

own. This difference does not spring from perversion by his opponents, but is due to the different interpretations of which the resolutions are susceptible. It is but scant justice to Calhoun and South Carolina to say that the nullification interpretation of the Virginia resolutions upon the matter of the final arbiter is that of 1798-9, in spite of Madison's explanation. The replies of the states show this as plainly as could be desired and the Report of the following year was regarded as simply affirming the resolutions. Since that time Massachusetts had in 1814 regarded them in a similar light and had urged Madison's authority in extenuation of her own conduct. Even Madison could not be accounted successful in explaining what was meant.[1] He urged with some success that the right of interposition by the states did not mean the right of a single state to interpose. This distinction between the states and the several states has already been considered in another connection and need not be again stated. It is to be observed that this is the only strong argument that can be brought against the fairness of Calhoun's interpretation, that it is not strong enough to overthrow his interpretation, supported, as we find it, by

1. See his letter of August, 1830, to Edward Everett, IV. Works, 95-106, especially 104.

the language of the resolution and contemporary opinion and that of Massachusetts in 1814.

There still remains the important question of how far the doctrine of the Virginia and Kentucky resolutions about the final arbiter had been outgrown since 1798. In entering upon the discussion of this interesting question it may be well to recall a number of familiar facts. The Constitution does not expressly grant to the judiciary any power to declare a law unconstitutional. But this power was soon exercised and from it grew the doctrine that the Supreme Court of the United States is the final arbiter. We have seen how the replies of the states to Virginia and Kentucky contributed towards the growth of the doctrine,[1] but that on the other hand it is equally important to remember that the victory of the Supreme Court was not at once complete.[2] By the Court itself the doctrine was only developed one step at a time; not until 1821 was the ground wholly covered in the decisions of the Court. In that year Marshall delivered his celebrated opinion in the case of Cohens vs. Virginia, asserting for the Supreme Court the right to decide upon all causes involving the Constitution and laws of the United

1. Supra. 31-33, 47-49
2. Supra. 47-49

States regardless of the character of the parties interested.[1] It is clear that the development of this doctrine was in response to the demand of a constantly growing national sentiment and interest, but was this strong enough to completely overthrow the Separatist sentiment which had denied such a right?

The reply to the question just raised must be that such a complete abandonment of the Separatist opinion in the matter had not been secured. It was impossible for so complete a change to take place in so short a time. The complete revolution of opinion which must be effected can be seen from a single fact. In December, 1798 -- while the resolutions were under discussion in the Virginia assembly -- the Supreme Court of Pennsylvania declared the Supreme Court of the United States is not the final arbiter; that "there is no common umpire but the people who should adjust the affair by making amendments in the constitutional way, or suffer from the defect." McKean who rendered this decision had been one of the strongest supporters of the Constitution in the Pennsylvania convention; in it he doubtless reflected

1. Thayer, Part I.,285-292. See his construction of the "parties" to a suit involving the Constitution or a law of Congress, 287.
2. 3 Dallas, 473.

the sentiment of a very large portion of the community.

It is undeniable that the Supreme Court did win considerable support for its position. The replies of the states to Virginia and Kentucky have been already cited. In 1810 Virginia, replying to a proposal made by Pennsylvania to establish by constitutional amendment an impartial tribunal to decide all matters of dispute between the Federal and state courts, declared that this power belongs to the Supreme Court of the United States, a tribunal eminently qualified for that duty.[1] Madison, if he had ever really intended to depart from his position originally expressed in the thirty-ninth Federalist, experienced a change of heart and declares in favor of the Supreme Court. In many ways the power of the Court received a practical recognition far beyond any theoretical acknowledgment which it could have secured.

It would be a serious mistake to conclude from the facts just stated that the claim of the Supreme Court to act as final arbiter ever received -- at this time -- anything approaching universal recognition. Many of the Separatists of 1798-9 continued to retain their original views.

1. The documents relative to the action of the Virginia legislature in this matter are published in I.Foster, 143-145, notes.

Jefferson expressly denied in 1823 that the Supreme Court could be the final arbiter, that power belonging to the convention of the states.[1] In 1824 he repeated this same declaration and argued at length that it must be so.[2] If further evidence is desired that Jefferson adhered to his original opinion, that each state has the right to judge of infractions of the Constitution for itself, the proof is forthcoming in a letter of March 25, 1825, to Livingston[3] wherein the Constitution is described as a compact of many independent powers, every single one of which claims an equal right to understand it and require its observance. The letter closes with a vigorous denunciation of the decision in Cohens vs. Virginia as leading directly to the dissolution of the Union. In the denial of the claim asserted for the Supreme Court Jefferson was not alone, for we have seen that the Massachusetts towns, legislature and the Hartford Convention countenance if they do not openly endorse his position. And in the debates Holmes, the leader of the Massachusetts Republicans, expressly endorses Jefferson's position. Numerous other proofs might be adduced to show what seems so clearly proven by those already cited, that the

1. VII. Works, 298.
2. Ibid, 358.
3. Ibid, 403-404.

right of the Supreme Court to act as final arbiter was not yet so thoroughly established (in that capacity) as to make a denial of its claim to act unreasonable, for in politics, no great apparent change having taken place, how can we account that unreasonable which a few years before had been an open question?

From the foregoing review of the two questions, about the nature of the Union and the final arbiter, the following conclusions seem inevitable:

1. That Calhoun's statement of them in the South Carolina Exposition was a fair interpretation and appeal to the principles of the Virginia and Kentucky resolutions.

2. That the doctrine of these resolutions and of Calhoun about the nature of the Union had not been outgrown in the interval, but on the contrary was still quite generally accepted.

3. That upon the matter of the final arbiter, the doctrine of these resolutions had continuously received a strong enough support to justify Calhoun upon historical grounds in adhering to it, despite some strength manifested by the opposing doctrine.

4. That in both positions he was simply declaring the original views of the Separatists to which a fairly consist-

ent attitude had been constantly maintained by that party.

The hopes which South Carolina had built upon the election of Gen. Jackson were soon dissipated. In some of the Northern states many votes had been cast for Jackson as the friend of the protective system. His first message to Congress was explicit and straightforward upon all the topics treated but one, the tariff; about that important subject it spoke with uncertain sound. The composition of Congress and the uncertain attitude of the President precluded any radical revision. Early in the session, however, nullification became a question of absorbing national interest, but in a rather unexpected manner. Mr. Foot of Connecticut introduced a set of resolutions to institute an inquiry into the policy of the Federal government in the matter of the Western lands. The debate opened tamely enough and at first gave but little promise of excitement or interest. But gradually one topic after another was introduced into the discussion and finally the speeches became of decidedly acrimonious and sectional character. Hayne made a brilliant but bitter attack on New England, charging an illiberal attitude towards the South and West.[1] Webster quickly picked up the gage which Hayne had thrown at his feet.

1. VI. Congressional Debates, Part I., 31-35.

He repelled the charge of illiberality and claimed for New England the credit for the passage of the Northwest Ordinance and other measures beneficial to the West.[1] In conclusion Webster tried to dispose of the whole matter by moving an indefinite postponement, but other senators were anxious to express their opinions upon the new topics which had been introduced and the debate continued.

When the Senate met the following day Hayne began his great speech which, owing to adjournment, was not completed until the following Monday.[2] Then Webster delivered his great Reply.[3] That grand oration is undoubtedly one of the most remarkable ever delivered, whether viewed in the light of its intrinsic merits or of the effects which it produced. History counts Webster the victor, but that was not the verdict of the South in 1830. Of the immediate results from the Great Debate the most important were Hayne's open avowal of nullification, which Webster drew forth, the public attention given to the doctrine and the determined front presented to it, as shown in the public acclamation of Webster's speech.

Within the year following the Great Debate the nulli-

1. VI. Congressional Debates, Part I.,35-41.
2. Ibid, 43-48.
3. Ibid, 58-80.

fication movement developed rapidly. The characteristic toast, which Jackson had carefully prepared[1] and given as if on the spur of the moment, at the Jefferson anniversary banquet in April showed that nullification of the revenue laws in South Carolina would not be accorded the same treatment as nullification of the decrees of the Supreme Court in Georgia. The breach already opened between Calhoun and Jackson became total during the following year owing to the disclosure of Calhoun's early antagonism towards the military hero. Calhoun seems quickly to have concluded that nullification must be tried, unless at the following session of Congress the obnoxious tariff should be materially modified. But of this, apparently, he had little hope, for we find him at work with characteristic energy developing nullification sentiment. For this purpose, before returning to his duties at Washington, Calhoun wrote three able nullification papers,[2] but one of which appeared over his own sig-

1. I. Sargent: Public Men and Events, 176.
2. The one which appeared over his own signature (VI. Works, 59-94) is entitled "Address (to the people of South Carolina): On the Relation which the States and General Government Bear to Each Other." It is dated at Fort Hill, July 26, 1831. The second, in point of time, was a "Report: Prepared for the Committee on Federal Relations of the Legislature of South Carolina, at Its Session in November, 1831 (VI. Works, 94-123). The third is an "Address: To the People of South Carolina. Prepared for the Members of the Legislature, at the Close of the Session of 1831." It was issued by the Legis-

nature, an address to the people of South Carolina, dated from his home at Fort Hill, July 26, 1831. In these papers Calhoun presents the argument for nullification with remarkable ability and skill. Starting from well-known views about the nature of the Union and the final arbiter -- for these he discovers the most ample support in the constitutional debates and the Virginia and Kentucky resolutions -- he deduces nullification with "inexorable logic." Decidedly the most interesting feature of these papers is one which can scarcely be indicated by citations but which becomes very real after a careful study and comparison of the documents; the feature referred to is the gradual unfolding of the nullification doctrine in Calhoun's own mind. His contemporaries speak of him as a man who had been taken possession of by an idea; this idea consumes shortly all of his marvelous energies and finally exhausts his vitality. In these documents we perceive the growth of that idea; they form the connecting link between the Exposition, which was simply an appeal to principles of 1798, and his greatest production, the letter to Hamilton, written the following year. The conclusions of the Exposition are reargued and established more firmly than ever; state interposition, state veto

lature (VI. Works, 124-144.).

and nullification are identical;[1] the permanent character of the opposition between North and South is more strongly developed;[2] but his abiding love for the Union is shown by the care with which he guards against the identity of secession and nullification.

During the winter of 1831-1832 the attention of Congress was directed almost exclusively to the revision of the tariff. Everybody agreed that the tariff must be rid of the "abominations" due to the inconsistent application of the protective principle, and in the act finally passed this was quite effectually accomplished. But that was about all, for the session ended "without any sensible amelioration of the system."[3] The truth of this statement can be readily verified by examining the principles upon which the bill was constructed. Fortunately we have the material for ascertaining these principles, in the Diary of John Quincy Adams. A conversation between Clay and Adams on December 26,1831, and a meeting of the leading supporters of the American system, two days later, at which Clay was the leading spirit, show much better rows of figures the principles upon which the act of 1832 was constructed. In the conversation

1. VI. Calhoun's Works, 61.
2. Ibid, 77.
3. I. Benton, 275.

alluded to Clay remarked to Adams that, besides abolishing some duties, a point for consideration was "the expediency of increasing the duty upon some of the protected articles, so as to make them nearly prohibitory."[1] Two days later in the meeting of the protectionists "Mr. Clay laid down the law of his system. He said the policy of our adversaries "was obvious -- to break down the American system by accumu- "lation of revenue. Ours, therefore, should be specially "adapted to counteract it, by reducing immediately the reve- "nue to the amount of seven or eight millions this very com- "ing year. He would hardly wait for the first of January "to take off the duties; and he would adhere to the protec- "tive system, even to the extent of increasing the duties on "some of the protected articles."[2] Adams, who had suggested in the conversation two days before that such a policy would only aggravate the evils of which the South complained, objected on the ground that it would be a defiance of the South, the president and the entire administration party.[3] To this "Mr. Clay said he did not care who it defied. To preserve, maintain and strengthen the American system, he

1. VIII. Adams' Works, 443.
2. Ibid, 444-445.
3. Ibid, 446.

would defy the South, the President and the devil."[1]

Such were the lines upon which the act of 1832 was framed and, though the bill was somewhat modified before its final passage, there was no material departure from the principles laid down by Clay. To the South the tariff of 1832 was even more obnoxious than that of 1828, for by it the advocates of the American system sought to announce that protection "has become incorporated in our political system as the settled policy of the country."[2] The light in which the bill appeared to the South is well expressed in the words of Dr. Joseph Johnson, one of the prominent Union men of South Carolina during the nullification struggle: "It (the act of 1832) indeed altered some of the imposts by increasing those on articles consumed in the South, and reduced those only that were mostly used in the North. It was still more oppressive on the South and rendered the dissatisfied desperate."[3] In the debates Hayne had made an eloquent but unavailing plea for moderation;[4] but the majority were not to be moved, and the South Carolina leaders returned to their homes to wage an active campaign for nullification.

1. VIII. Adams' Works, 446.
2. Report of the committee of twenty-one to the South Carolina convention, IX. Congressional Debates, Part II., App. 155.
3. Poinsett Papers, 12 Pennsylvania Magazine, 263.
4. See the extract and comment in I. Benton, 274-275.

Long before 1828 the people of South Carolina had become thoroughly aroused against the protective system, and in the four years following that date nullification had been commonly talked of as the remedy. Each year proposals for a convention were made in the legislature, but failed for lack of the necessary two-thirds vote. In 1830 Poinsett, one of the most prominent of the Union men, told John Quincy Adams that the people had been wrought into a frenzy against the tariff and that there was a party determined to nullify the law.[1] When the act of 1832 turned this frenzy into desperation some genuine attempt at nullification became assured. Nullification became the issue of the approaching election, and to assist the nullifying party Calhoun, during the month of August, wrote his famous letter to Gov. Hamilton.[2] Von Holst well describes it as "the final and classical exposition of the theory of state sovereignty. Nothing new has ever been added to it. All the later discussions of it have but varied the expressions and amplified the argument on particular points."[3]

The fundamental question is about the formation and adoption of the Constitution. If the Constitution was the

1. VIII. ~~Calhoun's~~ Adams' Works, 237, August 30, 1830.
2. VI. Calhoun's Works, 144-193.
3. Von Holst's Calhoun, 98.

work of the people collectively, there is no argument for the right of a state to defend her reserved power.[1] But such is not the case, for no such political body as the collective people exists. The Constitution is the work of the people of the states considered as separate and independent political bodies.[2] From this results:

1. There is no connection between the citizens of a state and the General government;[3] therefore, the declaration of a state in the case of a dispute with the General government is binding upon its citizens.[4]

2. The true relation between the states and the General government is that of principals and joint agent.[5] The construction of a principal is conclusive as against the joint agent, but not as against its fellow principals.[6] In case of a dispute between the joint agent (the General government) and one of the principals (a state), it is the duty of the joint agent (General government) to abstain from enforcing its construction until the matter can be referred to the principals (the states) according to the terms of the contract (Constitution), i.e., by a proposal to amend in the

1. VI. Calhoun's Works, 146.
2. Ibid, 147.
3. Ibid, 148.
4. Ibid, 149.
5. Ibid, 151.
6. Ibid, 153.

manner prescribed in the Constitution.[1] A refusal to recognize the construction of the joint agent (the General government) is the result, if it attempts to enforce its own construction of a disputed power upon a principal (state). This refusal of a state to accept the construction of the General government is nullification.

3. The only possible objection to this is that the states have surrendered this right of decision. This is not the case. Several such proposals were made in the Federal Convention but were negatived. The powers of the Supreme Court do not extend to such decisions, for the reason that such a power is not expressly granted, but was expressly refused;[4] nor does it follow by construction, for such cases are not of law and equity, nor can a state be a party.[5]

4. The practical effect of nullification is to present to the General Government three alternatives:[6] to abandon the power claimed; to compromise the difficulty; or to submit the matter to the states in the form of a constitutional amendment embodying its construction of the disputed power, and then abide by the decision.

1. VI. Calhoun's Works, 153-154.
2. Ibid, 153.
3. Ibid, 153-156.
4. Ibid, 156.
5. Ibid, 156-158.
6. Ibid, 160.

5. Nullification and secession are not identical, are, in fact, totally dissimilar.[1] Secession is withdrawal, a matter between the principals. Nullification is simply the exercise of control over an agent transcending the powers granted. The object of secession is to destroy, but of nullification to preserve, the Union, by compelling the agent to fulfill the object for which it was created.[2] Both nullification and secession have their appropriate occasion, and the former may lead to the latter, but it would be for a different reason.[3]

6. In our political system there is a perpetual conflict between those in control of the governments exercising the reserved and the delegated rights. The weapon of the former is secession, of the latter, constitutional construction. Nullification endeavors to preserve the Union by preventing secession on the one hand and consolidation, through construction, on the other.[4]

7. The only danger from nullification is its abuse.[5]

1. VI. Calhoun's Works, 167-168.
2. Ibid, 168-169.
3. Ibid, 169.
4. Ibid, 174-176.
5. Ibid, 177. The utmost extent of abuse is that one-fourth of the states may resume a delegated power, under the pretext of protecting a reserved one. This is a danger which it would be desirable to avoid or lessen but that cannot be done, for, "If the right be denied to a

But anything may be abused, and nullification, the protection of the minority and of the reserved rights, is much less liable to abuse than is the power of the majority.

8. In our admirable political system two kinds of majorities are recognized, the absolute or law-making majority, and the concurrent or constitution-making majority.[1] But the system can continue only by preserving the ascendency of the latter over the former, and this nullification will effect.[2]

No epitome can convey an adequate idea of an argument from the pen of Calhoun. The letter to Hamilton is a remarkable example of logical deduction from given premises. In South Carolina it was regarded as entirely unanswerable, and exerted a wonderful effect in the campaign then being waged. The legislature which met in October contained an overwhelming majority for a nullification convention. The call was speedily issued and the convention met November 19th. The act calling the convention and the obnoxious tariff laws were referred to a committee of twenty-one with instructions

"state to defend her reserved powers, for fear she
"might resume the delegated, that denial would, in ef-
"fect, yield to the General government the power, un-
"der the color of construction, to assume at pleasure
"all of the reserved powers." Ibid, 177.

1. VI. Calhoun's Works, 181.
2. Ibid, 186.

to report the proper measures. The report of the committee[1] contained a long arraignment of the tariff policy of the Federal government and a brief defense of nullification: "South "Carolina claims to be a sovereign state. She recognizes "no tribunal upon earth as above her authority. It is true "she has entered into a solemn compact of Union with other "sovereign states, but she claims, and will exercise, the "right to determine the extent of her obligations under that "compact, nor will she consent that any other power shall ex-"ercise the right of judgment for her."[2] The discussion of this claim is reserved for an address which is to be submitted to the convention, but the committee cannot dismiss the subject without remarking that South Carolina in the course which she is about to pursue "will be only carrying out the "doctrines which were asserted by Virginia and Kentucky in "1798, and which have been sanctified by the high authority "of Thomas Jefferson."[3] The report concludes with a quotation from the Kentucky resolutions of '99 and an expression of veneration for the Constitution, acting under the authority of which the nullification ordinance is recommended for

1. IX. Congressional Debates, Part II., Appendix, 154-162.
2. Ibid, 161.
3. Ibid, 161.

adoption.[1]

The proposed ordinance[2] was passed November 24th to go into effect February 1, 1833. It recites that Congress has levied certain duties on imports for the purpose of protecting domestic manufactures, thereby giving a bounty to individuals, and has wholly exempted certain articles to afford a pretext for such high duties.[3] Both of these courses of action are in excess of the powers granted by the Constitution and in violation of its true meaning and intent.[4] In a similar manner Congress has exceeded its powers in raising unnecessary revenue for objects unauthorized by the Constitution.[5] Accordingly the tariff acts of 1832 and 1828 are declared void within the state;[6] the state legislature is required to pass the necessary legislation;[7] appeals or transfer of records to the federal judiciary in cases covered by the ordinance are forbidden;[8] all state officials, except members of the legislature, are required to take oath to sup-

1. IX. Congressional Debates, Part II., Appendix, 161-162.
2. Ibid, 162-163. Given in Preston, 300-303.
3. Preston, 300.
4. Ibid, 300.
5. Ibid, 300. The allusion is to the expenditure upon internal improvements of the surplus revenue derived from the tariff.
6. Ibid, 300-301.
7. Ibid, 301.
8. Ibid, 301-302. This action was exactly what Jefferson had once suggested to Monroe as the proper course. Supra 48 note 1

port the ordinance.[1] The ordinance concludes with the warning that South Carolina is determined to support the ordinance at every hazard.[2]

In addition to the ordinance the convention issued two addresses in justification of its course, one to the people of South Carolina by Trumbull,[3] the other to the sister states by Calhoun.[4] Both are able documents and enter quite fully into the discussion of the controverted points. Governor Hamilton at once assembled the legislature again and in a very characteristic message[5] laid before it the ordinance. Three acts[6] were passed to give effect to the ordinance. Hayne was elected Governor and Calhoun, who had resigned the vice-presidency, selected as senator in his place. Preparation was made to put the state in a position to repel invasion and to enforce the ordinance.

1. Preston, 302-303.
2. Ibid, 303.
3. IX. Congressional Debates, Part II., Appendix, 163-168. Dr. Joseph Johnson in Poinsett Papers attributes this address to Trumbull.
4. Ibid, 168-172. Dr. Johnson attributes this address to McDuffie, but the original (VI. Calhoun's Works, 193-209) shows the authorship of Calhoun. It was considerably altered before publication.
5. Ibid, 172-176.
6. Ibid, 177-181.

If any of the South Carolina nullifiers were still of the opinion that Jackson would not interfere, they were soon disabused of that illusion. On December 10th appeared his famous nullification proclamation.[1] This document is decidedly characteristic of the man, yet one is constantly surprised as he reads it. As early as July, 1831, Jackson had written to J. A. Hamilton that the nullifiers had begun operations at Charleston and that he was "determined to meet the crisis with deliberation and energy."[2] When the crisis came the proclamation shows energy but not deliberation. It sounds as if dashed off in the manner recorded by tradition. The doctrines are decidedly "ultra,"[3] and it was received with great delight at the North where the theories of Webster were so rapidly becoming a part of the common political vocabulary. South Carolina received it in a spirit of haughty defiance and elsewhere in the South it encountered a cold reception owing to the doctrines which it contained.[4]

1. IX. Congressional Debates, Part II., Appendix, 181-187.
2. J.A.Hamilton:Reminiscences,226,gives the letter. Similar expressions occur in letters of Nov.12,1831,p.231,and of Nov.2,1832,pp.247-248.
3. The description is that of Clay.
4. Madison (IV.Works,229), writing to N.P.Trist on Dec.23, 1832--only thirteen days after the appearance of the proclamation--says: "You were right in your foresight of the effect of the passages of the late proclamation. They have proved a leaven for much fermentation there (Richmond) and created an alarm against the danger of consolidation, balancing that of disunion."

Hayne replied in a counter proclamation,[1] and the South Carolina legislature adopted a series of resolutions denouncing the proclamation of Jackson.[2] Both of these show defiance and there is no indication in them that Jackson's determined attitude had begun to affect the nullifiers.

During all of this time the House of Representatives was actively engaged upon a tariff bill reported by Verplanck which was understood to be an administration measure. Practically it was a return to the tariff of 1816, but it made slow progress. On January 16th President Jackson sent to Congress a message[3] including the documents relative to the South Carolina trouble and a request that he be granted certain discretionary powers. Six days later a bill was reported to grant him the powers requested. Before the bill could come to a vote, unless South Carolina receded, nullification would be actually put in practice; and we may turn aside to ascertain what was happening at Charleston.

Fortunately we are in possession of an exceedingly interesting and vivid account from a participant who had unus-

1. IX. Congressional Debates, Part II., Appendix, 190-196.
2. These resolutions were presented in the Senate by Miller. IX. Congressional Debates, Part I., 80-81.
3. Ibid, Part II., Appendix.

ual facilities for being well-informed.[1] Dr. Joseph Johnson describes the military preparation actively conducted by the officials of the South Carolina government and the semi-military organization of the Union party under the leadership of Joel R. Poinsett. The South Carolina government spent two hundred thousand dollars, lately received as a balance from the Federal government, for the purchase of arms and other maintenance of war.[2] The Union party established ward guards, and concerted signals with the officers of the United States army and navy to be used in case of attack by the nullifiers.[3] Both parties adopted distinguishing badges, which led to a few street fights, but in general each party was content with closely watching the other. During all of this time Poinsett was in constant communication with Jackson. Eight interesting letters from Jackson written between November 7, 1832 and March 6, 1833, show clearly the determination of the man to put down nullification, whether as-

1. See the account written by Dr. Joseph Johnson, a prominent Union man, published in the Poinsett Papers, 12 Pennsylvania Magazine.
2. Appropriated by act of the legislature. See Poinsett Papers, 12 Pennsylvania Magazine, 266-267.
3. Ibid, 271.

sisted by Congress or not.[1] These letters also show the manner in which Jackson's influence was exerted. It was not so much the proclamations and threats of the president which overawed the nullifiers as the determined attitude of the Union party which in turn owed their boldness, in large measure, to the firm support of the president.[2] The determined attitude of the Union men secured its reward on January 21st when an informal meeting of the nullifiers decided that "resistance was inexpedient at that time and must be postponed" for the present.[3]

The day after this informal but important decision had been arrived at, the Senate, all unconscious of the turn which

1. January 24,1833,Jackson wrote to Poinsett (12 Pennsylvania Magazine,286) that if Congress fails to pass the revenue collection bill and the nullifiers assemble an armed force to oppose the execution of the laws he would "call into the field, such a force as will overawe re-"sistance, put treason and rebellion down without blood, "and arrest and hand over to the judiciary for trial and "punishment, the leaders, exciters and promoters of this "rebellion and treason." In this same letter Jackson expresses his determination to arrest the Governor of Virginia if opposition is offered to the passage of Federal troops.
2. January 16, 1833, shows the policy of the President: "My "great desire is that the Union men may put down nulli-"fication and secession in South Carolina themselves "and save the character of the state, and add thereby "to the stability of our Union -- you can rely on every "aid that I can give." 12 Pennsylvania Magazine, 285.
3. Ibid, 272.

affairs at Charleston had taken, turned its attention to the revenue collection or Force bill. Until February 21,1833, the Senate devoted nearly its entire time to the bill. The records of the debate cover over six hundred pages of Gales and Seaton's Register. Over half of the senators participated and some able speeches were made. Nullification was strongly condemned. Decidedly the most interesting feature of the debates is to discover the number of senators who agree with the fundamental position of Calhoun but refuse to follow him to the end where his inexorable logic leads. The greater number make a compromise between the extreme nationalist views of Webster and the equally extreme state sovereignty dogmas of Calhoun. Divided sovereignty is generally the refuge that shelters them. On February 12th Clay interrupted the debate long enough to introduce and explain his compromise tariff bill.[1] On February 25th Letcher secured the consideration of Clay's bill in the House of Representatives by moving to strike out all of Verplanck's bill after the enacting clause. The next day the bill as thus amended was hurried through the House. March 1st the House passed the revenue collection bill and upon the following day the

1. For Clay's speech see IX. Congressional Debates, Part I., 462-473.

tariff compromise secured the approval of the Senate.[1] Thus almost simultaneously, in the words of Calhoun, "it was necessary to present the olive branch with one hand, and the sword with the other."[2]

Governor Hayne assembled the South Carolina convention on March 11, 1833. There were some warm discussions and some intemperate expressions, but the majority readily agreed to accept the compromise of Clay. The presence of Mr. Leigh, the commissioner appointed by Virginia to offer its mediation, made the repeal of the nullification ordinance easier. After passing an ordinance nullifying the revenue collection bill -- for the enforcement of which there was now no occasion -- the convention adjourned, and the South Carolina nullification movement was at an end.

1. The bill is in the Appendix containing the laws of the United States, IX. Congressional Debates, Part II., 10-11. The main feature of the bill is the gradual reduction to twenty per cent. basis, i.e., the standard of 1816. January 1, 1834, all duties in excess of twenty per cent. are to be reduced one-tenth of the excess; another tenth is taken off two years later, and the same amounts in 1838 and 1840; Jan. 1, 1842, one-half of the residue is removed and on July 1, 1842, the other half is taken away.
2. IX. Congressional Debates, Part I., 773.

The magnitude of the subject has already compelled the writer to extend this paper far beyond the limits originally designed. Yet there are many interesting and important features of the subject as yet quite unnoticed. Other topics already discussed somewhat demand a final word. Only a few of the more important features can be briefly treated.

1. The first question which naturally suggests itself is: In what degree was the South Carolina nullification movement a success or a failure? The true answer must be that the movement was neither an unqualified success or a total failure. South Carolina did gain for herself and the South a great victory so far as the original cause of the quarrel, the tariff, was concerned. Throughout the South the victory was generally considered as belonging to South Carolina. But in this regard even the victory was not complete. The compromise was not as favorable a bill to Southern interests as the Verplanck bill for which it was substituted. Nor was the principle of the bill incorporated into the permanent policy of the Union. The North, on the other hand, with considerable reason regarded South Carolina as vanquished. Nullification as a constitutional remedy had been overwhelmed. This was a victory of far more importance to the North than could be the most unqualified victory for the South upon the tariff question. But, like the victory for

South Carolina, it was not complete. Nullification was no longer a possible resort, but the premise, state sovereignty, from which it was deduced, remained quite unshaken. From state sovereignty might be deduced a still more dangerous heresy, secession. Viewed from whatever point, the outcome of the South Carolina movement was not an unqualified triumph, for its friends or foes.

2. Nullification as a constitutional measure utterly failed, and we must account for its failure. This cannot be done by reference to a single cause, but the one most important reason can be easily and quickly stated. Nullification, when viewed entirely apart from the peculiar form and history of the American government, is an absurdity. Webster had no difficulty in showing the truth of this statement, and all of Calhoun's "inexorable logic" was not equal to the task of concealing that fact. A government must fulfill the ends for which it was created and meet the new demands upon it, or else cease to exist. This idea Webster thoroughly grasped and then developed an argument to sustain it. Calhoun, on the other hand, began with a conception of the frame of the government which was at least reasonable, upon historical grounds, if not entirely correct, and beyond the mere form was not able to go. Apparently he could not realize that, whatever the form, a government must

accomplish the ends of government. The other causes are of a historical nature, and the most important of them may be gathered from the preceding pages. Bare mention may be given to a few, the strong personality of the anti-nullification leaders, of Poinsett, Webster and Jackson; the lack of unanimity in South Carolina and of endorsement in the other states; the strong position to which the Supreme Court had attained; the many changes which had taken place at the North, in industry and constitutional views for example, all these imperatively demanded that the growth in power of the Federal government should still continue.

3. The failure of nullification as a constitutional remedy raises the question of the constitutional results of the attempt to apply it. These results are of two kinds, immediate and remote. The former consist of those alterations, immediately perceptible in the prevailing constitutional views which can be traced to the influence of nullification. The latter may be described as tendencies -- in distinction from the views actually maintained by individuals -- which either originated in nullification or in the course of their development were shaped by it.

In dealing with the immediate constitutional results we may consider again and for the last time the two questions of so frequent occurrence in these pages, the final arbiter

and the nature of the Union. In the course of the Great Debate both Webster and Hayne emphasized the fact that the great practical question was, in the words of Webster, "Whose prerogative is it to decide on the constitutionality or unconstitutionality of the laws?"[1] The nullifiers, in common with the earlier Separatists, claimed the right of decision for the states, on the ground of their sovereign character, and justified the claim by asserting that the states must have such a right, otherwise their reserved powers were at the mercy of the Federal government. The claim for the Federal government had been first made by Madison in the thirty-ninth Federalist, and now that the question was up for decision we cannot do better than to quote his last expressed opinion upon the subject. "A political system which does "not contain an effective provision for a peaceable decision "of all controversies arising within itself, would be a gov-"ernment in name only. Such a provision is obviously essen-"tial, and it is equally obvious it cannot be either peace-"able or effective by making every part an authoritative em-"pire. The final appeal in such cases must be to the au-"thority of the whole, not to that of the parts separately "and independently."[2] The failure of nullification as a

1. VI. Congressional Debates; Part I., 73.
2. IV. Madison's Works, 425.

constitutional resort confirmed to the Supreme Court by the decision of events the claim which it had made at an early time and had most broadly asserted in Cohens vs. Virginia. The Supreme Court was now the final arbiter under the Constitution. The writer cannot leave this important and interesting question without making one suggestion with which the American citizen seldom troubles himself now. Is not the at a time assertion of the Separatists, of Madison in 1799 and of Hayne and Calhoun in 1830 -- that with the Supreme Court as final arbiter, the continuance of the reserved powers to the states practically depends wholly upon the integrity of the judges? With constitutional amendment practically impossible and constitutional construction practically unlimited, what is there, but public opinion, to prevent the Federal government from gradually reducing the states to mere election districts?

The victory of the Nationalists in the matter of final arbiter was now complete. How about the nature of the Union? In this respect the outcome of the nullification struggle was peculiar. Both Nationalists and Separatists might claim a great victory, but in each case it was limited to the section which naturally and from interest supported their views. In the North the influence of Webster and the Su-

preme Court rapidly secured acceptance of the view that the Constitution was made by the people in the aggregate. But in the South state sovereignty became more strongly intrenched than ever. In August, 1834, Madison writes that President Jackson "is evidently and rapidly sinking under the unpopularity of his doctrines;"[1] that nothing is more evident than the progress of nullification in its original shape or under assumed guises[2] and that it is "propagating itself under the name of state rights."[3] In short, nullification gradually developed into the later dogma of state sovereignty and one of the most important results of the nullification movement of South Carolina was to secure for state sovereignty almost universal recognition as the only means of protecting the states against the Federal government.[4] Nullification had been an attempt to reconcile Union and complete state independence, but now that the attempt had resulted in failure, the Separatists, whether nullifiers or not, rapidly became the supporters of state sovereignty, whose only weapon, since the Supreme Court had become the final arbiter, was secession. It should further be noted that at an earlier time there had been no strong anti-secession sentiment in the North and that such sentiment was developed largely

1. IV. Madison's Works, 357.
2. Ibid, 357.
3. Ibid, 367.
4. Ibid. Cf. 367 and 357.

in opposition to nullification. Thus in two ways nullification preserved the Union at a critical time.

Some of the more remote constitutional results of nullification are plainly perceptible in the shape of well-defined political tendencies of the present day. Of these the most important is the spirit of consolidation, specially manifest since the Civil War. The states; in a political sense; no longer inspire the old-time affection or interest. This tendency, so marked at the present day, first became clearly manifest in the North when the interest of the great body of Northern citizens was drawn away from their states to the Union, in connection with the nullification struggle. The process had begun before and many other influences have contributed in a larger degree; but the share of the nullification struggle should not be overlooked. This process, it should be remarked, has extended from constitutional to industrial matters and seems to be rapidly extending to all fields of human activity. It seems to be taking possession of the people themselves, and on every hand the cry is for consolidation. Even intellectual interests are not exempt and we find the desirability of an intellectual capital urged as a reason for the establishment of a national university. This tendency must excite alarm among thoughtful men, and the problem is where and how to draw the line. The old

problem still, but in a more complex and difficult form.

5. In the Senate and in the South Carolina convention which repealed the nullification ordinance the debates closed ominously. Throughout the nullification debates there was comparatively little mention of slavery. Calhoun closed his speech on his resolutions by declaring that a far less bold construction of the Constitution would warrant the Federal government in interfering with the peculiar domestic institution of the South. He thought there was no hostile feeling to the institution now, but could imagine the danger that would come unless such feelings be guarded against.[1] Col. Rhett in the South Carolina convention declared: "There is a question pending between the North and "the South, resulting from the difference in the political, "mental and social organism of the two sections, which no "party measure can settle -- which cannot be settled save by "treaty or by revolution. The convention should understand "that when the present dispute, which disturbs the Union and "divides it into hostile sections, is pacified, the quarrel "will be found to have only changed to slavery."[2] The struggle did change almost immediately to slavery, and the nullification movement by consolidating Southern interests, senti-

1. IX. Congressional Debates, Part I., 774.
2. Quoted in Du Bose: Life and Times of W. L. Yancey, 60.

ments and opinions had placed the South in the best possible position for the struggle.

VII. CONCLUSION.

In conclusion the writer desires to reaffirm and restate the idea expressed in his thesis. Nullification was not the desperate expedient of John C. Calhoun. On the contrary, it was a natural development of Separatist tendencies distinctly traceable to colonial days. The questions left open by the constitutional debates offered to these tendencies an opportunity for development. That development was accomplished by the Virginia and Kentucky resolutions and the New England Separatist movement, finally culminating in nullification in South Carolina. From this development spring two sets of results, one at its culmination, into the state sovereignty dogma and ultimately into secession; the other in the course of the development; by the opposition aroused the consolidation of the Union was effected, chiefly by making the Supreme Court final arbiter and by effecting a change of conception in the North in regard to the nature of the Union. Under the new conception secession was not possible.