

# THE POLITICAL PHILOSOPHY OF JOHN C. CALHOUN: AN ARGUMENT WORTH REFUTING

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## INTRODUCTION

In contemporary American political thought the notion of Constitutional interpretation seems relegated to discussions emanating from the revered benches of the Supreme Court or for the classrooms of reclusive academics. For John C. Calhoun, a lifelong politician, however, Constitutional interpretation is, in fact, fundamental to the ordinary discourse of “everyday” politics. In his speeches, both in the halls of Congress and back in his constituency, and through his writings Calhoun seeks to shape the American mind in regard to the Constitution in a strikingly similar way as Publius does through the *Federalist Papers*. In fact, after careful consideration of Calhoun’s construction of the Constitution it could be determined that Calhoun considers himself to be a founding father. Though clearly Calhoun was not at the Constitutional Convention of 1787 that actually framed the Constitution, for he was born in 1782, his speeches and writings transcend most evaluations of the sacred document that birthed the United States. Calhoun’s interpretation, and in fact what might rightly be called his construction, of the Constitution, however, actually begins with an inquiry into the nature of man. It is thus that Calhoun is not merely a politician viewing the Constitution established for the United

States as a political inevitability, but, rather, he is viewing the document as a political theorist contemplating the very necessity and good of government.

As mentioned, Calhoun’s extensive writing seems to be equal in effort to that of Publius in the *Federalist Papers*. Thus, as one reads the preliminary chapter of this thesis on Calhoun’s view of human nature it may be advantageous to bear in mind the words of Publius in *Federalist No. 51*, and especially in determining how it regards human nature. The renowned author writes, “But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary.” In this short excerpt it may be deduced that the author believes that the nature of a government, somehow, reflects the nature of man. Whatever vices men have the government will have, and the same can be said about the virtues of mankind. It is not without precedent, then, that both the *telos* and the structure of government must be reflective of the founders or lawgivers of that regime. The ends, or purposes, at which government ought to aim have been argued by various political philosophers, based upon their understanding of human nature, and, thus, the structure of the government, also of human convention, is specifically determined by the original founder or lawgiver given their conclusion of human nature. Publius partakes in the discussion of human nature and the subsequent formation

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of the government. In the same *Federalist Paper* he asserts that men are not angels, of course, but he also seems to imply that they are not “demons,” or perhaps inherently or universally malicious. This simple assertion seems to reflect, in some degree, the understanding of human nature that will influence Publius’ construction of government. From this simple assertion certain conclusions could be made regarding a government of men. For instance, Publius goes on to further his point by stating, “In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions.”<sup>1</sup> Although incomplete of course, one can already begin to see a “cause and effect” of human nature on the creation of government for Publius.

This is, again, important as one inquires into what Calhoun’s understanding of human nature is, and how that, in turn, effects his construction of government. It ought to be of interest to the careful reader to consider Calhoun may draw his understanding of human nature from, and whom he seems to reject as authoritative on the matter. Although both Publius and Calhoun may have interpretations regarding the more abstract concept of human nature, one would be remiss to think that their endeavors were confined to ethereal contemplation of the subject. In other words, both Publius and Calhoun apply their understandings of human nature to government in general, and their understanding of government to the Constitution of the United States, in the

particular. Again, the reader ought therefore to consider what conclusions each make in regard to human nature, the abstract questions regarding government, and their application to the American regime because, as mentioned, these are related within the confines of American political and Constitutional thought.

For example, in his “Fort Hill Address,” Calhoun asserts that the United States Constitution, and the government formed from it, fulfills the requirements of all constitutions worthy of the name. He states, “[T]he object of a constitution is, to restrain the government, as that of laws is to restrain individuals.”<sup>2</sup> Although the ramifications of this statement will be developed more fully later, it seems that such an axiom is in line with what Publius states in *Federalist* No. 51, and most specifically that governments must first be restrained and then be able to restrain the people in some way. Thus, both Publius and Calhoun seem to believe that the Constitution of the United States seeks to restrain the government of the United States by giving it particular ends to fulfill, and then, the laws enacted by the government seek to restrain the people. As mentioned, this seems agreeable to both Publius and Calhoun. To each, however, the ends for which government is instituted will necessarily determine what constraints are placed upon the government by the Constitution and what restraints are placed upon the people by the government.

At various times Calhoun ardently claims to adhere to the Constitution and favor the preservation of the union. It seems, therefore, that Calhoun’s instance on speaking and writing so frequently on the nature of the Constitution is, somehow,

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<sup>1</sup> Alexander Hamilton, James Madison and John Jay, *The Federalist* (No. 51), in *The Federalist Papers*, edited by Rossiter, Clinton (New York, Penguin Group (USA), 1961), pg. 319.

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<sup>2</sup> John C. Calhoun, “Fort Hill Address,” 1831, (hereafter FHA), in *Union and Liberty: The Political Philosophy of John C. Calhoun*, edited by Ross M. Lence (Indianapolis, Liberty Fund, 1992), pg. 372.

obligatory for him as a politician, and thus, is in accord with his desire to make Constitutional thought a part of everyday politics. On this note, it may be asserted that given Calhoun's seeming self-proclaimed obligation to consider Constitutional thought and interpretation in such a thorough manner the very purpose of his endeavor is of importance. For instance, if Calhoun's final understanding of the Constitution is in line with what Publius establishes in the *Federalist Papers*, with the Constitution itself, and with the understanding of many of the members of the Constitutional Convention of 1787 then Calhoun may justly be considered a loyal citizen, concerning himself with the preservation of the union as it was at its conception. If, however, it is determined that Calhoun's understanding of the Constitution is fundamentally different than that of the framers it may be said that John C. Calhoun is attempting a re-founding of the American regime. If this is true, his attempts ought to be thoroughly examined, not only to understand what he has changed, but also to determine for what purpose this is done.

The following thesis will clarify much of what has been presented in this introduction with the hope that the reader will, at its conclusion, be able to make some judgment regarding Calhoun's political philosophy. The thesis will begin with a chapter solely dedicated to Calhoun's understanding of human nature. The reader ought to note the effort Calhoun makes to show how the formation of government is effected by Calhoun's view of human nature. At the end of this first chapter, however, the reader will notice that government, even as Calhoun describes it, is, somehow, insufficient to meet the ends for which it is ordained. Thus, Calhoun introduces the notion of the Constitutional government. The discussion of the Constitutional government, the subject of the second chapter,

seeks to show how government may be perfected as an institution to meet the ends. The doctrines of the concurrent majority and the veto power are introduced and described, in some depth, so that the reader may understand the ideal government according to Calhoun. The third chapter begins the process of applying Calhoun's theoretical ideas of human nature and government to the political reality of the United States. First to be discussed is Calhoun's understanding of the political consequences of the Revolutionary War and the Declaration of Independence. This chapter brings the American colonies out of a State of dependence and into a state of political autonomy. Specifically, careful attention ought to be paid to the ideas surrounding sovereignty and power. These political notions will become increasingly important, though not always explicitly discussed, as Calhoun's thoughts regard the Constitution and the United States, in general, become more complex and, thus, understanding their foundation is crucial. The fourth chapter of this thesis discusses the inception of the Constitution and the political organization of what is known today as the United States. This chapter's concern for the Constitution illuminates Calhoun's own opinion on Constitutional thought and construction. If the thesis were to stop after this fourth chapter one may perceive that Calhoun's endeavor to construct Constitutional thought was a simple exercise of philosophic thought. The fifth chapter, however, shows that, for Calhoun, given the construction of the Constitution particular political conflicts, which inevitably arise when politics becomes a reality, can be resolved. This chapter is highlighted by the infamous doctrine of nullification and secession.

Once again, these five chapters describing Calhoun's political philosophy seek to answer the questions of how Calhoun views human nature, how that

understanding of human nature effects the nature of government, and how these, viewed first in the abstract, can be applied to the Constitution and government of the United States. As the reader moves through the thesis it would be advantageous to bear in mind the importance of each of the answers to each of these questions as they relate to each other. It does not seem irresponsible to proclaim that, at the very least, John Calhoun has offered a comprehensive political philosophy. This philosophy transcends many of the greatest topics in political thought, and thus, in turn, much of his specific philosophy builds upon itself. With the comprehensiveness of his philosophy in mind, one is also reminded that Calhoun's efforts ought to lead the reader to consider the purpose of his endeavor, and from that one should judge the status that John C. Calhoun should take among historical American figures.

## **CHAPTER I: Human Nature as the Foundation of Government**

John Calhoun, like most other political theorists, begins his treatise expounding his comprehensive theory of government with an investigation of human nature. Calhoun recognizes the essentiality in understanding what man is by nature, not necessarily for the sake of mere philosophic knowledge, but rather, because of the consequences that this nature will have in forming and maintaining society and government. Calhoun elaborates on this fundamental point in his aptly titled piece *A Disquisition on Government* when he writes, "In order to have a clear and just conception of the nature and object of government, it is indispensable to understand what that constitution or law of our nature is, in which

government originates."<sup>3</sup> For the purpose of investigating man's nature and then subsequently applying that knowledge to politics, Calhoun poses the above principle in a question. He asks what that law of human nature is, "without which government would not, and with which, it must necessarily exist." Thus it seems that for Calhoun that whatever constitutes the nature of man will also contribute to the foundation of government. Thus, it seems to Calhoun that government is a reflection upon human nature, much like Madison writes in *The Federalist No. 51*. This foundational principle cannot be forgotten at any time in Calhoun's discussion on political theory, for whatever he concludes man is or is not, likes or hates, or is sufficient in or deficient of, so too will have a profound effect on not only the mere form of government but also its legitimate aims and limitations.

In order to thoroughly investigate the question that Calhoun poses, as formulated above, he begins with the exposition of certain fundamental premises, which he claims are incontestable facts. The first of these incontestable facts is his belief that man is "so constituted as to be a social being."<sup>4</sup> For Calhoun, unlike other political philosophers such as John Locke, this assertion is a philosophical phenomenon. It is not up for debate or scrutiny; instead, it is simple reality. In fact, Calhoun argues that in no other time or place has man been found in any other condition than the social condition and living in proximity with his fellow man, thus clearly denying the notion of a "state of nature" proposed and supported by such philosophers as Thomas Hobbes and John Locke. Being in a "state of perfect freedom" or in a "state of equality" and not depending upon the will of

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<sup>3</sup> John C. Calhoun, "A Disquisition on Government," 1851 (posthumously) (hereafter DQG), in *Union and Liberty*, pg. 5.

<sup>4</sup> DQG, 5

any other man, as Locke proposes in his *Second Treatise*, is simply unnatural for man according to Calhoun, because the natural state of solitude as argued for by the proponents of the state of nature is so repugnant to man's natural wants and desires. The notion of the "social state," for Calhoun, however, is more defined and complex than a simple understanding that man likes to be found in the presence of his fellow man. Calhoun, in fact, understands the social state to be of such significance that he claims that man's "natural state is, the social and political- the one for which his Creator made him, and the only one in which he can preserve and perfect his race."<sup>5</sup> Calhoun also writes that it is the only place where man can attain "to a full development of his moral and intellectual faculties."<sup>6</sup> If it were even possible, which Calhoun protests it is not, for man to live outside of the social state it would be in such a degraded condition that man would be little more than a brute or a savage living contrarily to his potential to elevate his moral and intellectual faculties. It seems, therefore, that with the natural purpose of the social state, and the hypothetical condition of man outside the social state acting as a juxtaposition, the nature of man's relation to those around him is elevated beyond a mere, and accidental, existence with others, but rather, ought to be viewed as a natural inclination to be in constant community for a noble purpose. The social state, therefore, serves a perpetual function, and cannot be destroyed without also destroying that sacred function, and thus, it must always exist to preserve the noble purpose of perfecting man's moral and intellectual faculties.

Of interest, to this argument, is the implicit notion that man does not voluntarily enter into the social state, or community as it

may be called, he is simply there at the time of his birth, and his immutable social instinct keeps him within society as long as he may live. Calhoun writes that man is "born in the social and political state; and of course, instead of being born free and equal, are born subject, not only to parental authority, but to the laws and institutions of the country where born."<sup>7</sup> Thus, there is little reason to think that man would desire to be out of society, and out of his natural state of existence, and even less reason to think that upon searching, one could even find such a man that is there by accident. In other words, the community that man finds himself in is not consent-based. No man needs to agree to enter into the social state because he finds himself there already. Thus, because man cannot decide on what terms he will enter into society, due to the fact that he is there already, all other accompanying aspects of his nature, whether they be good or bad, are to be found bound to him in this social state as well. Although Calhoun believes the social state is to elevate the moral and intellectual faculties of man, it seems, that the actual overall condition of this state rests upon the overall nature of man.

For John Calhoun, man's natural existence in a community continues to retain great importance when he begins to discuss the second fundamental tendency of human nature. This second great principle of human nature, according to Calhoun, is that man is more concerned with the individual feelings over the social feelings. In the simplest of terms, Calhoun boldly states that man is "so constituted, that his direct or individual affections are stronger than his sympathetic or social feelings."<sup>8</sup> This is to say, that according to Calhoun, man is more concerned about what affects him, and

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<sup>5</sup> DQG, 44

<sup>6</sup> DQG, 5

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<sup>7</sup> DQG, 44

<sup>8</sup> DQG, 7

seems only secondarily concerned with what affects those around him. Calhoun writes, “Each, in consequence, has a greater regard for his own safety or happiness, than for the safety or happiness of others.” In simple terms, it seems that each man is doing enough, in all regards of his life, to promote only his own safety and happiness, while leaving all others to do the same for their own safety and happiness. Though, the terms “safety” and “happiness” are ambiguous in many regards, in large part because the specifics of these terms must certainly be defined by each individual, one can assume that Calhoun is describing at least men’s competing commercial interest. One can little doubt that man can and does derive some security and happiness from being financially stable, and there seem to be few other venues which highlight clear instances of “winning” and “losing,” especially in regards to financial transactions. This notion of financial self-interest is discussed in greater detail when Calhoun describes man as part of a political society, and in regards to the honors and emoluments bestowed by government. Other competing interests, however, may include but are not limited to, religious adherence, customs and mores of certain groups, and ideologies of particular people within a society. These, and other typical characteristics of a civilization, which are often studied in a sociological manner, represent for Calhoun the various things for which men have an individual attachment to, and seek to promote within a society for their individual happiness and safety.

Given the incontestable social nature of man and the diversity of competing interests found in communities, in even those few examples listed above, the consequence seems undeniable. Calhoun goes on to say, in regards to individuals with the same instinct to fulfill their individual feelings, that “where these come in opposi-

tion, is ready to sacrifice the interests of others to his own.”<sup>9</sup> There seems to be nothing extraordinary, or even unique, however, in this understanding of human nature as Calhoun calls it the “all-pervading and essential law of animated existence.”<sup>10</sup> Calhoun deliberately avoids using the word “selfish” to describe the nature of “individual” or “direct” feelings, because such a connotation denotes something vicious or depraved, but he does not go so far to say that man’s willingness to sacrifice the safety or happiness of others is inherently good; it simply is what it is. Instead of viewing this nature as moral or immoral, one ought to think of it as amoral. In fact, Calhoun connects this fundamental law of human nature with another fundamental law, that being the law of “self-preservation.” This means, that because man seeks to preserve himself he will do what is in his interest to fulfill that aim, even if it means sacrificing the interest of another. For Calhoun, therefore, the incontestable fact that the individual feelings of man are stronger than his social or sympathetic feelings is a simple, but all-pervading, law of nature. By comparison this law is similar to the law of gravity, which also seems neither inherently good nor bad because, again, it just exists outside of the influence of man or society.

This is not to say, that Calhoun believes that man does not have any sort of sympathetic feelings, he certainly would not believe that man is not completely callused toward all those around him, but it is sufficient to say that in each man nature has inclined the individual feeling to dominate the social feeling. Calhoun asserts the seemingly reasonable argument that man will feel “more intensely what affects him directly, than what affects him indirectly through others.”<sup>11</sup> Despite this fundamental

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<sup>9</sup> DQG, 7

<sup>10</sup> DQG, 7

<sup>11</sup> DQG, 6

principle, however, Calhoun does concede certain instances where the social or indirect feelings, may overpower the individual or direct feelings. For instance, the “peculiar relation” of a mother and her infant child can easily manifest a situation in which the social feelings of the mother toward her child will dominate her individual, or direct, feelings allowing her primary concern to be for someone else, in this case her infant child.<sup>12</sup> This situation seems clearly to arise from a very natural disposition of mothers’ love toward their children, and thus Calhoun calls these relationships “peculiar” because the specific nature of these relationships is contrary to the general nature of man. Calhoun also admits that force of education and habit may allow the social feelings to compete with the individual feelings. This sort of realignment of the respective “feelings,” as Calhoun would understand the term, seems to be done completely through the establishment of institutions, such as schools or churches, and is thus done by convention. While these two examples seem to run contrary to Calhoun’s fundamental principle that man will care first for his individual feelings before he attends to his social feelings, according to his own logic they actually help to reinforce his principle.

The first example mentioned, that of a mother caring more for her child than for herself, is not only a peculiar relationship according to Calhoun, but also an extraordinary one. In few, if any, other relationships, and especially those concerned with commercial or material matters, is this sort of altruism to be found. The bond between mother and child seems to be so extraordinary it is not to be found in almost any other time or place in society. Thus, the peculiar relationship of mother and child does not undermine the principle outlined by Calhoun, but rather reinforces it by being the

lone and extraordinary exception to this generally applicable rule. Calhoun notes that even the law of gravity is defied by some “minor powers of the material world.”<sup>13</sup> For instance, a tree that grows straight into the air is not acting according to the strict law of gravitation, but no one can claim that this phenomenon completely refutes the law of gravity. In fact, like the relationship of mother and child, its extraordinary exception reinforces the general applicability of the rule. Thus, because no other relationship rivals that of mother and infant child, it may be concluded that in no other relationship could the social feelings ever fully dominate the individual feelings, like it does in that peculiar relationship. One must also recognize that the relationship of mother and child, which leads to a seemingly reversal of human nature, is temporary. As a child grows into a man he begins to obtain the status of equal in a community and can defend his own interests unlike an infant child, and, therefore, the extraordinary bond of mother and child, which seems necessary for the survival of the child, begins to wane. Thus, the peculiar relationship of mother and child is strong enough to temporarily allow the social to dominate the individual feelings but it can last for only so long as the child is dependent upon the mother to serve his interests. Once an individual can fulfill his own interests the natural order of individual feelings dominating the social feelings will be preserved.

Just as the first example does not refute Calhoun’s original premise, that man is by nature more concerned with the individual and direct feelings over the social and indirect feelings, and in fact, actually seems to strengthen his argument, so too, does his second exception. Calhoun admits that through force of education and habit one may be able to expand his capacity to

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<sup>13</sup> DQG, 7

favor the social over the individual feelings, but this implies that *force* and *convention* must be used to override what is generally believed to be *natural*. It seems that unless acted upon by some unnatural or conventional force, the tendency of man to concern himself with the individual over the social feelings will remain intact and unimpaired. The mere fact that conventional methods of force and education must be relied upon to strengthen the tendency of the social feeling indicates that the natural disposition of man is, in fact, to be more concerned with the individual feelings rather than the social feelings. Yet again, therefore, the implication of the exception to the fundamental law, that it is only accomplished through unnatural means, actually seems to reinforce the natural origin of the law. Despite the influence that force of habit and education could potentially have on the social feelings, Calhoun seems to believe that even habit or education cannot fully expand the social feelings over the individual feelings. He writes, "His social feelings may, indeed, in a state of safety and abundance, combined with high intellectual and moral culture, acquire great expansion and force," but he then clarifies this statement by saying that even then the social feelings will never expand so much as to dominate the individual feelings.<sup>14</sup>

Relying heavily on his writings in *A Disquisition* Calhoun has, thus far, simply described the basic and fundamental laws that govern human existence. If, however, his stated belief that man is a social being always to be found in the social state is true and the fact that man is, by nature, willing to sacrifice the interests of others to his own is also true, then, there seems to arise an incontestable conflict. This conflict cannot persist long before inevitable chaos destroys any semblance of the social state. Again, if the social state is where man is to perfect his

intellectual and moral faculties then this conflict is extremely dangerous because it destroys the social state. In other words, if man is born into a state of community, and his instincts compel him to stay there, and while in such a state his individual feelings will compel him to sacrifice the interests of others, who will be no less willing to sacrifice his interests for their own, the undesirable but inevitable conflict will lead the eventual breakdown of the social state. While Calhoun may not explicitly consider man's tendency to favor the individual feelings over the social feelings to be inherently immoral, he does believe that with the destruction of the social state, the undeniable consequence of unchecked self-interest, comes the greatest of all political evils, universal discord, and finally anarchy. The forthcoming of anarchy seems possible only when man destroys the state of existence that he naturally finds himself in, and since that state is the social state, anarchy comes when the social state is destroyed. Thus, some form of restraint must be found and formed in order to ensure that man's tendency to favor the individual over the social feelings does not destroy the social state, which benefits him in the development of his moral and intellectual faculties. The controlling agent, which Calhoun perceives to be necessary in order to preserve the social state, is what is called "government."<sup>15</sup> He writes, "It follows, then, that man is so constituted, that government is necessary to the existence of society, and society to his existence, and the perfection of his faculties. It follows, also, that government has its origin in this twofold constitution of his nature." Because of the inevitability of an ever-present but dysfunctional social state, without a controlling power, Calhoun asserts that government, like the social state, arises by nature, and is,

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in fact, God-ordained.<sup>16</sup> Calhoun further states, in regards to government, “It is not even a matter of choice whether there shall be one or not. Like breathing, it is not permitted to depend on our volition. Necessity will force it on all communities in some one form or another.”<sup>17</sup>

Calhoun seems to have sufficiently illustrated the twofold foundation of man’s nature, his natural disposition to be in a social state and his willingness to sacrifice the interests of others for his own, and simultaneously shown why this condition leads to the necessity of government as a controlling agent. What must now be considered is how a government, which must be administered by men with a universal disposition toward their own individual happiness, can be constructed in such a way as to preserve the social state. John Calhoun’s first attempt to install a government that preserves the social state comes from his emphasis on the necessity of the right of suffrage. Calhoun asserts that a constitutional government, in contradistinction to an absolute government, “rests on the right of suffrage,” and ensures that those elected will remain responsible to those in the community who have elected them.<sup>18</sup> On this note, Calhoun states, that the purpose of suffrage is to “make those elected, the true and faithful representatives of those who elected them—instead of irresponsible rulers—as they would be without it.”<sup>19</sup> With an absence of suffrage in government, Calhoun believes that an individual or select body of individuals will eventually gain absolute ascendancy in the community, and such a formation of government will be plagued by irresponsible and uncontrolled rulers, and eventually with oppression and

injustice. With the right of suffrage, Calhoun believes that a government can be established that is faithful and responsible to the will of those who elected them. Calhoun enhances this practical, and fairly widely accepted, effect of suffrage by noting the subtle, politically philosophic benefits of suffrage within a community seeking to establish a truly responsible and free government.

Calhoun claims that through the act of elections those of the community are simply commissioning their rulers to act as agents to represent them, which is, again, the principle of responsible ruling. It also, however, limits what the elected, government, actually represents. Calhoun asserts that by commissioning rulers, through the act of periodic elections, the community does not do anything more than establish an agency, or vehicle, to execute the laws that reflect the interests of the society. Calhoun writes in respect to government that, “by converting it into an agency, and the rulers into agents” they, the community calling forth the government, do nothing that would impair their sovereignty. While the government has particular duties, in the highest sense to preserve society, it is not a sovereign authority; it is, as Calhoun asserts an agent of the community. It is important to note, that since the government is instituted for the protection and perfection of the community, or the social state, it, the community, is the origin of sovereignty. Unlike other social compact political philosophers, Calhoun argues that an individual cannot contain original sovereignty to establish government, in a strictly individual capacity, because man was born into, and has always been a part of the social state. Thus, the social state, or the collective mass of individuals in community, is primary to government, because government is born out of the necessity of preserving the social state, and is a sovereign over the single

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<sup>16</sup> DQG, 6

<sup>17</sup> DQG, 9

<sup>18</sup> DQG, 29

<sup>19</sup> DQG, 14

individual because the single individual is naturally, and simply, a part of the community as a whole, which must naturally exist prior to the individual.<sup>20</sup> The idea that the community is sovereign over the individual comes from, as noted earlier, the fact that the individual does not consent to be in community, because he, by nature, is impelled into society. Thus the first indication of political independence and sufficiency is that of the social state, or community, and is thus, the first to be given political sovereignty. For this reason, and because the community never divests itself of the sovereign power to call government into existence, the community retains sovereignty in its entirety.<sup>21</sup>

As fundamental of a component as the right of suffrage might be to a government responsible to the people it is limited in its capacity to ensure that the social state is preserved from chaos and anarchy and the moral and intellectual faculties of the members of the community are perfected. This simple fact arises because no matter how perfectly the right of suffrage may be implemented it does not actually counteract the natural tendency of man, which has already been explained, that makes government necessary in the first place. It is undeniable that while the elected officials, acting as agents of the people, are to be faithful and responsible to those who have elected them they are no less prone to the same tendency to favor the individual feeling over the social and willing to sacrifice the interests of others. In regards to the effects of the right of suffrage on government, Calhoun states, “it only changes the seat of authority, without counteracting, in the least, the tendency of government to oppression and abuse of its

powers.”<sup>22</sup> Thus, the very government that has an origin in human nature and was implemented to control the harmful effects of that nature will now be used as a legitimate instrument for human nature to perpetuate its own tendencies and will eventually lead to abuse and oppression. Calhoun states that a government solely relying upon the right of suffrage to preserve the community will “leave the government as absolute, as it would be in the hands of irresponsible rulers.”<sup>23</sup> As mentioned, because the tendency of man is at least as strong in the form of government as it is in the individual it is obvious to see how the mechanism of government, if only formed through the right of suffrage, can be abused and will be used to oppress. In regards to the use of government for the purposes of abusing power, Calhoun writes, “That it *will* be so used, unless prevented, is, from the constitution of man, just as certain as that it *can* be so used.”<sup>24</sup>

With only the right of suffrage to sustain it, control of the government of any community of diversely interested individuals, and even those of a more homogeneous nature, will become contested for, and fought after, with great vigor because of the advantages that come from occupying the seat of government. Calhoun writes, “a struggle will take place between the various interests to obtain a majority, in order to control the government... When once formed, the community will be divided into two great parties—a major and minor.”<sup>25</sup> Once the major parties have been formed through periodic elections, a majority of persons within a society, serving a single interest or a coalition of similar interests, it will be entitled to all of the powers associated with controlling the government,

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<sup>20</sup> DQG, 8

<sup>21</sup> The idea of the “community” and exactly how it holds sovereignty will be discussed later.

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<sup>22</sup> DQG, 14

<sup>23</sup> DQG, 13

<sup>24</sup> DQG, 19

<sup>25</sup> DQG, 15

aggrandize to themselves the great benefits of government, and oppressing the minority of citizens with an opposing interest. Calhoun notes that while the majority party, representing a particular interest or coalition of interests, is in power the minority will always seek ascendancy and control of the government by becoming the new majority. Regardless, however, of what interest the majority represents, its tendency will always be to sacrifice the interests of the minority in favor of their own.<sup>26</sup> Although any of the numerous examples of the particular interests that may be found in any given community could adequately illustrate this contentious nature of government, which Calhoun is describing, the very structure of government itself may prove the validity of his argument.

In illustrating how a government may become the object of political aspiration Calhoun first describes the various establishments and institutions that must be created in order for a government to fulfill its responsibility of preserving the social state. Thus, Calhoun notes that civil and military offices must be filled by various members of the community. For instance, Calhoun notes that “fortifications, fleets, armories, arsenals, magazines, arms of all descriptions, with well-trained forces in sufficient numbers to wield them with skill and energy” must be provided for by a government seeking to defend the community from attack. Thus, this sort of management and administration requires the majority, which is effectually responsible for running the operations of such vast establishments, to offer these stations to members of the community. A naturally occurring system of patronage, therefore, must arise out of this situation. Those of the majority party will, obviously, seek to fill the offices necessary for the administration

of the government with those who have helped that party, or interest, ascend to the controlling party in the government. There is little reason to doubt that any interest seeking to obtain the control of the government will use the lure of “high and responsible trusts,” as Calhoun calls employees, agents, and officers of the government, to gain the support of those in the community who will use their right of suffrage for self-interested gain. Thus, the right of suffrage, which does create the foundation for a responsible government, can, and will be used, to sacrifice some interests in favor of others. Calhoun’s critique of a reliance solely on the right of suffrage to counter the tendencies of man extends, however, even further as one begins to formulate the necessary components of a government powerful enough to preserve the community, especially in regards to foreign threats.<sup>27</sup>

Although the honor and prestige which accompanies the “high stations” necessary for the organization of government are not of little significance, they are not of greater importance than the financial considerations that are also necessitous to the administration of government. First, Calhoun defines the fiscal action of the government as the collection of taxes and the distribution of those taxes on a particular part of the community. He writes, “What the one takes from the community, under the name of taxes, is transferred to the portion of the community who are the recipients, under that of disbursements.”<sup>28</sup> Clearly, the taxes collected from the community will be used to maintain the government, and is, therefore, almost entirely beneficial to the majority party, since, as mentioned earlier, it is the majority interest, or party, that will fill the necessary stations of government with

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<sup>26</sup> DQG, 16

<sup>27</sup> DQG, 16

<sup>28</sup> DQG, 17

those who exercised their right of suffrage in order to place that particular interest in the majority, or control of government. Even more striking, than this, is the fact that those who are directly benefited by the disbursement of taxes are those who are employees, agents, or officers within the government, and thus, the portion of the community that is actually benefited through taxation is even smaller than the whole that consider themselves to be of the majority party. Calhoun writes, “[I]t must necessarily follow, that some one portion of the community must pay in taxes more than it receives back in disbursements; while another receives in disbursements more than it pays in taxes.”<sup>29</sup> Thus, to Calhoun the process of taxation and disbursement is for the recipients of the taxes, those who receive more in taxation than they pay, a “bounty” to be collected, while those who pay more than they receive it is a “tax in reality.”<sup>30</sup> In the political reality of government those who receive the bounties of taxation will seek to enlarge the amount of taxes collected, while those who bear the burden of taxation will seek to diminish the amount of taxes collected to the smallest possible number. A new antagonistic relationship has, therefore, formed, because as Calhoun notes, “the greater the taxes and disbursements, the greater the gain of the one and the loss of the other—and *vice versa*.”<sup>31</sup> While it is certainly true that some taxation is necessary for the administration of government, one must not forget what purpose the government must serve, according to Calhoun. This inequality in taxes and disbursements, or the inequality in the fiscal action of the government, must ultimately manifest itself in the harm of some one portion of the community in favor of the other, and in fact, elevate one part of

the community to wealth and power, and the other to poverty and oppression.<sup>32</sup>

As noted earlier, the government is, in fact, God-ordained and does not rest upon man’s own volition. It has, wherever man can be found, always been in existence in some one form or another. The reason for this is because government, when operating correctly, is supposed to counteract the natural tendency of man to sacrifice the interests of others to his own individual and direct feelings. By this counteraction, the government is preserving the social state, or community, which man naturally finds him in. While it is important to note that the government is supposed to control the harmful effects of man’s natural self-interest it is in no way ordained to eliminate it. Thus, while the effects are to be controlled (that is to say the social state must not devolve into anarchy), the community and government may still rest upon the foundation and all pervading law, as Calhoun considered it, of self-interest. It seems, therefore, that while the government through the right of suffrage is a necessary first step in counteracting the harmful effects of self-interest it is wholly insufficient to do it on its own. In fact, in response to the inequality of the fiscal action of the government Calhoun writes, “The dominant majority, for the time, would, in reality, through the right of suffrage, be the rulers—the controlling, governing, and irresponsible power.”<sup>33</sup> Thus, it seems, that just as the social state needs a controlling power, the government, too, needs a controlling power to ensure that its actions act equally upon all parts of the community, allowing all to benefit from the actions of government that advance each self-interest, since self-interest is given to man by nature and cannot be parted with even while it is under the control

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<sup>29</sup> DQG, 17

<sup>30</sup> DQG, 18

<sup>31</sup> DQG, 19

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<sup>32</sup> DQG, 19

<sup>33</sup> DQG, 20

of government.<sup>34</sup> Calhoun thus boldly asks, “If those who voluntarily created the system cannot be trusted to preserve it, what power can?”<sup>35</sup> For Calhoun, the control over the government, which he alludes to in the previous question, is done through the act of “Constitution”-making, and from the introduction and incorporation in each constitution of the principle of the concurrent majority.

## CHAPTER II: The Constitutional Government According to Calhoun

After noting that the government, when unrestrained, will be used as a vehicle for the majority party to oppress the minority, Calhoun introduces the concept of a restraint on government by stating, “That, by which this is prevented, by whatever name called, is what is meant by CONSTITUTION, in its most comprehensive sense, when applied to GOVERNMENT.”<sup>36</sup> Constitutions, therefore, are the restraint on government meant to prevent consolidation and tyranny, and are the true instruments for controlling the self-interested tendencies of man that can and will lead to the dissolution of the social state. Thus, as Calhoun notes, there is a logical progression from the social state to the refined political state under a constitution. For Calhoun, man’s birth and subsequent inclination to stay in the social state, coupled with his individual feelings, makes government necessary. But government, enacted

through the right of suffrage alone, is inadequate to prevent further oppression of one group of persons over another, and thus it must be controlled by some “organism,” as Calhoun describes it. That organism is, of course, a constitution. It is therefore easy to see how a constitution would logically come into existence, but this is not to say that constitutions are of the same nature as governments. Calhoun notes in his *Disquisition on Government*, “There is no difficulty in forming government... Very different is the case as to constitution. Instead of a matter of necessity, it is one of the most difficult tasks imposed on man to form a constitution worthy of the name.”<sup>37</sup> Implied in this sentence seems to be two remarkable facts. The first of which is, that constitutions, unlike government, are contrivances of man. Indeed, Calhoun goes so far as to say, “Man is left to perfect what the wisdom of the Infinite ordained, as necessary to preserve the race,” thus, once again referring to the divine-ordination of government, and the conventionality of constitutions.<sup>38</sup>

The other remarkable fact of the above-mentioned statement is that despite the appearance of controlling government some “organisms” may not actually, or rightly, be considered constitutions. This is implied, of course, when he states that the man has found it difficult to establish constitutions “worthy of the name.” Calhoun, however, sees no need to examine, in any great detail, the contrivances, essentially constitutions, of other governments, because his solution is simple, clear, and effective. For Calhoun, the principle that must be incorporated into the “organism,” that is to say the constitution, of any community is to “furnish the ruled with the means of resisting successfully this tendency on the part of the rulers to oppression and abuse.”

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<sup>34</sup> John C. Calhoun, Exposition and Protest (hereafter EP) in *Union and Liberty: The Political Philosophy of John C. Calhoun*; Lence, Ross, M. Ed. pg. 344

<sup>35</sup> John C. Calhoun, The Fort Hill Address (hereafter FHA) in *Union and Liberty: The Political Philosophy of John C. Calhoun*; Lence, Ross M. Ed. pg. 377

<sup>36</sup> DQG, 9

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<sup>37</sup> DQG, 9

<sup>38</sup> DQG, 10

Calhoun goes on to say, quite bluntly, “Power can only be resisted by power—and tendency by tendency.”<sup>39</sup> Thus, remembering that government, like man, has the tendency to sacrifice the interests of one group in favor of their own, it is reasonable to give the ruled the power to protect themselves. To elaborate Calhoun writes, “Such an organism, then, as will furnish the means by which resistance may be systematically and peaceably made on the part of the ruled, to oppression and abuse of power on the part of the rulers, is the first and indispensable step towards *forming* a constitutional government.”<sup>40</sup> In fact, Calhoun notes that this is the principle that “*makes*” the constitution a constitution, in “its strict and limited sense.”<sup>41</sup> As has been shown, the right of suffrage, indelible to free government, is insufficient to construct a constitutional government, and thus, some other contrivance must be inserted in order to have a government worthy of being called constitutional. This is not to say, however, that the right of suffrage can be discarded, but, instead, that some other form of restraint must also be introduced. Calhoun notes, speaking of the ideal organism, “Such an organism as this, combined with the right of suffrage, constitutes, in fact, the elements of constitutional government.”<sup>42</sup>

Calhoun describes this new, and unique, contrivance in two ways, but ultimately the “organism” terminates in the same fundamental principle. Calhoun believes that the constitution must “give to each division or interest, through its appropriate organ, either a concurrent voice in making and executing the laws, or a veto on their execution.”<sup>43</sup> The first form of restraint is what Calhoun calls the “con-

current majority” or the “concurrent voice.” The remedy for the inevitable oppression of government is to ensure that the minor party can protect itself against the major or dominant party. But the process by which the concurrent majority operates is, in many regards, very complex. First, the concurrent majority requires that each community recognize a diversity of interests within the community. Calhoun writes, specifically in regards to the interests within the United States, “With us they are almost exclusively geographical, resulting mainly from a difference in climate, soil, situation, industry, and production; but are not, therefore, less necessary to be protected by an adequate constitutional provision, than where the distinct interests exist in separate classes.”<sup>44</sup> Next, each interest, class, or order must determine, through its own political mechanisms, what its agents or representatives will seek to promote on behalf of its interest, class, or order. For Calhoun, this is done in separate capacities, and in such a way that each interest can determine for itself what may be good or bad for its respective adherents, or constituents, within the community. According to Calhoun, the concurrent majority finally takes “the sense of each interest or portion of the community, which may be unequally and injuriously affected by the action of the government.”<sup>45</sup> This separation of interests will lead, obviously, to a multiplicity of opposing interests in a community, which may conceivably represent diverse classes of persons based on economics, customs, trades, or any other category that may be of a contentious nature. Without the following construction of a controlling “organism,” this would lead the community to divide into two great parties seeking to rule and oppress, as has already been explained. Fortunately, however, this outcome is mitigated because, as

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<sup>39</sup> DQG, 12

<sup>40</sup> DQG, 13

<sup>41</sup> DQG, 21

<sup>42</sup> DQG, 22

<sup>43</sup> DQG, 21

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<sup>44</sup> FHA, 574

<sup>45</sup> DQG, 21

Calhoun notes, when taking “the sense of each interest or portion of the community” all of the interests within the community must consent to either “put or keep the government in action.”<sup>46</sup> This is to say, the form that the government will take, the subsequent powers given to it, and the laws established under it are all subject to the unanimous consent of all prominent interests within the community.

It is clear, therefore, that dissenting, or withholding consent is a proper means of controlling the government from abusing its powers. This seems, therefore, to be the legitimate and fair beginning of good government, and the only way it can be maintained. There must be, as stated, unanimity among all concerned interests before the powers of government may even be enumerated, and as Calhoun indicates, that unanimity must extend in all cases where the government seeks to act. This great principle of unanimity is what the concurrent majority is based upon, and according to Calhoun, what every government seeking to attain an organism worthy of being called a constitution ought to adopt. In a public letter to Robert L. Dorr, Calhoun eloquently elaborates on the above-mentioned principle. He writes, “I am in favor of the government of the whole; the only really and truly popular republican government—government based on the concurrent majority—the joint assent of all the parts.”<sup>47</sup> There is, however, another alternative to ensuring the same principle of the concurrent majority, which is the principle of equality of government action in regards to all the interests of the community. It may seem that differences between the enactment and continuation of government relying exclusively upon unanimity, which has just

been discussed, and the alternative solution to be discussed next arise in their different approaches of ensuring the same principle. In regard to the principle of the concurrent majority, however, it will be seen that they are, in fact, similar in consequence.

For Calhoun, as logical as it is to implement the constitutional government within any enlightened community, it is just as reasonable to presume that accompanying this principle would be the formulation of the concurrent majority. Admittedly, the concurrent majority, however, is not in operation within every society that has a constitutional government. Fortunately the very principle of constitutional government furnishes another remedy. In fact, inherent within such a principle, is the right of any of the particular interests, as constituents to the government, to negative, veto, or nullify, any action of the government that would lead to the abuse of powers and subsequently cause the oppression of one interest in favor of another. Thus, although the government may enact laws that it believes to be good or just, if an interest perceives the law to be otherwise it can then nullify that law. The practical effect of nullification, or veto, is to make a law binding only on those who believe it to be just, and, contrarily, not binding on those who believe the law to be unjust. In reality, therefore, if the law is only binding on those who adhere to it, it is not, in the proper sense, a law. Laws, in their proper sense, are not to be considered advisories or, simply, voluntary guidelines. Thus, the veto power, in its highest conceivable sense, can determine what is and is not a law. In fact, Calhoun calls for the veto or nullification power to be given to each interest because, as he states, “It is the mutual negative among its various conflicting interests, which invests each with the power of

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<sup>46</sup> DQG, 21

<sup>47</sup> John C. Calhoun, Public Letter to Robert L. Dorr in *The Essential Calhoun*, Wilson, Clyde N., pg. 50

protecting itself.”<sup>48</sup> Calhoun goes on to say, in even greater praise of the veto power, “Without this there can be no systematic, peaceful, or effective resistance to the natural tendency of each to come into conflict with the others; and without this there can be no constitution.”<sup>49</sup> It seems, therefore, that with the power to negative all laws, an interest, party, or constituent body has the adequate power to restrain the tendency which plagues the government, and indeed the social state. Because this was the purpose of a constitution it is undeniable that it, or the concurrent voice, must be given to each interest in order for a community to rightly claim that it has a constitutional government.

While the concurrent majority and the right of each interest to veto or nullify an action of the government both ensure unanimity in government and a just operation of its powers, the difference between the two is very subtle. One is a positive right and the other a negative right; a positive right being one that is positively granted or found, and a negative right is one that is not expressly prohibited and therefore is implicitly granted.<sup>50</sup> Strictly speaking, the right to veto is a negative power, because in practice its immediate outcome is to restrain or deny an action. But in reality, if it is in effect within a community, it is a positive right given to each constituent body regardless of the form of government. As Calhoun claims in numerous instances each constituent body must be vested with this

power, and this positive investment is what makes this negating power a positive right. He writes in regards to several constitutions of antiquity, “[T]he rational constitutional provision is, that each should be represented in the government, as a separate estate, with a distinct voice, *and a negative on the acts of its co-estates: in order to check their encroachments*” [emphasis added].<sup>51</sup> Specifically, Calhoun notes that in England and all governments blessed with constitutions deserving to be called free, the mode adopted to restrain government was “to give to each co-estate the right to judge of its powers, with a negative or veto on the acts of the others, in order to protect against encroachments.”<sup>52</sup> Each of these examples shows that each constituent body must maintain an actual right to nullify a law. If, within the political system, the right to veto cannot be found and it may be assumed that this has not been positively granted, the subsequent power to negate oppressive laws is not in effect, and the government is not, in fact, one worthy of being called constitutional.

The veto power, however, is only as good as it is effective. Calhoun writes, “it is a great mistake to suppose, that the mere insertion of provisions to restrict and limit the powers of the government, without investing those for whose protection they are inserted with the means of enforcing their observance, will be sufficient to prevent the major and dominant party from abusing its powers.”<sup>53</sup> Thus, in an aristocracy each class (agrarian, industrial rich, poor, clergy, or layman) is vested with the right to negative all laws established by the “few,” whomever that may consist of in any specific instance. In a democracy each interest that may naturally form in regards to geography, climate, soil, or any of the others natural

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<sup>48</sup> DQG, 28

<sup>49</sup> DQG, 28

<sup>50</sup> The terms “positive right” and “negative right” are reflections of my own understanding of the technical, political consequences of both the concurrent majority and the veto power. Understanding the concurrent majority and veto power in regards to the terms I have used is increasingly important when the veto power is discussed in regards to the United States Constriction and government.

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<sup>51</sup> FHA, 371

<sup>52</sup> FHA, 376

<sup>53</sup> DQG, 26



advantages mentioned above, is also given the power to nullify all laws established. As the above quote mentions, the negative power must be found somewhere within the structure of the political system, and be of sufficient force to make any nullification or veto meaningful.

The concurrent majority, conversely, relies on a negative right, a right not expressly given, vested, or found in a government, but in its effect has the ability of a real power. The concurrent majority is, in its strictest sense, an actual formation of government, unlike the negative power, which seems simply to be a tool given to each interest. The concurrent majority takes the “sense of the community” in the manner already described, and it is this method that ensures that the laws established under it are not oppressive to any one portion or interest. This would be the same outcome if each constituent body were actually given a veto on the laws passed by the government. It is by an interest’s refusal to give consent, and therefore prohibiting enactment or execution of a law, that it utilizes its power to restrain the government from oppressing one portion of the society. No right to negative a law needs to be given or found within the system, therefore, because implied within the concurrent majority is the right to refuse to assent to a law. Thus, given this formulation of government under the concurrent majority, each interest must be considered equal in sovereignty and authority prior to the enactment of a law because each is required to consent to a law for the whole. Only when unanimity is needed to pass laws can an interest claim to have a power, because, again, the concurrent majority relies on a systematic approach to taking the sense of the whole to determine laws, rather than a simple mechanism used to prevent oppression, like the veto. Under this formulation the concurrent majority, understood as an entire system, is the positive power that

government relies upon for its animation. In its conclusion, however, like the veto power, the concurrent majority may fairly be considered a restraining power, because of its final effect of prohibiting action by the government that is oppressive. Thus the two forms of restraint, concurrent majority and the veto power, ought to be considered synonymous. Indeed, as has been asserted, the two are different forms of the same principle, and thus, as Calhoun writes, “[T]here can be no constitution without the negative power, and no negative power without the concurrent majority.” Both are incorporated within a constitutional government. Whether it is through the concurrent voice or the right to negative laws the principle is the same. It is the principle of self-protection, constituted through a correct organism that is indelible to any constitutional government.

The notion of self-protection, as an integral part of Calhoun’s constitutional government, arises from a philosophic understanding of the nature of government and community. It has already been shown that, according to Calhoun, man is born into the social state, that is to say he is part of a community from his birth, and his natural inclinations impel him to stay within society. Accompanying his inclination to remain in society is his natural tendency to sacrifice the happiness and safety of others for his own. From this arises the danger of destroying the social state, over such conflicts of interest, and entering into a very undesirable state of anarchy. Government, therefore, is instituted in order to ensure that at no time does the social state become endangered through one interest’s very natural desire to dominate and favor its own happiness and safety over all the others. This could lead to anarchy through the actual breakdown of society over conflicts of interest. As noted, however, the government, whatever form it may be, has its own

inherent vices that will lead to a seemingly legitimate oppression of one portion over another. The social state, therefore, is prone to the dangers of anarchy without government, and government is prone to the dangers of oppression without a proper constitution. To describe how the concurrent majority or the veto power prevents such a breakdown of society or a consolidation of government, Calhoun writes, "It is by means of such authorized and effectual resistance, that oppression is prevented, and the necessity of resorting to force superseded."<sup>54</sup> The "oppression" that Calhoun refers to is the tyrannical tendency of interests to use and abuse the powers government, and the "force" describes the tendencies of the oppressed to defend themselves against such oppressive machinations of the majority party. This is therefore a clear reference to the possibility of the breakdown of society and the lead up to a state of anarchy.

From this clear and logical progression it is understood that the ultimate goal of a constitution is to protect each natural interest within a community, because interests are natural to man and no man decides upon his birth whether he will or will not be a part of the community. The principle of self-protection, therefore, becomes a necessary component of constitution-making and the first principle of constitutional government. Calhoun writes, "By giving to each interest, or portion, the power of self-protection, all strife and struggle between them for ascendancy is prevented."<sup>55</sup> As noted, the original desire for control of the government was meant to ensure that one's own interest was favored over all others. However, with the advent of the constitutional government as Calhoun understands it, controlling the government is of little use if the power residing in the

majority party is going to be used solely for the betterment of one interest or portion to the disadvantage of some other portion. It is also important to note that while Calhoun undeniably believes in the notion of protection of each interest in a community he also believes it can only be accomplished by allowing each interest to protect itself. Describing the right of self-protection in the community, he writes, "It is the mutual negative among its various conflicting interests, which invests each with the power of protecting itself- and places the rights and safety of each, where only they can be securely placed, under its own guardianship."<sup>56</sup> It may be safely said that, according to Calhoun, the advancement of man's own interests, and those who combine with him to form a larger interest in community, lead to his happiness and security and these ought not, therefore, to be dependent upon the controlling majority in a government. If it was believed that the government, by its own volition, could safely protect each interest, or that every person had the same interest, then the concurrent majority, or mutual negative, would not be necessary. But since this is clearly not the case, the investment of each diverse interest with a power to protect itself is made indispensable. Preserving each man's interest, as the concurrent majority and negative power do, ensures that the community into which he is born will remain, and, in fact, enable him to perfect his moral and intellectual faculties, the most noble of all interests. Without it, however, comes either of the two greatest political evils, anarchy or tyranny.

Although self-protection is the first principle of true constitutional governments, it is not the only one inherent in a constitution, or at least the only one that is to be considered worthy of such a name. The second of these mighty principles is the principle of equality. Calhoun's use of the

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<sup>54</sup> DQG, 30

<sup>55</sup> DQG, 37

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<sup>56</sup> DQG, 28

word equality, especially in regards to the theory of government, is not to be considered applicable to individuals. Calhoun finds the notion that “all men are created equal” as described in the Declaration of Independence to be irrelevant. In fact, in his “Speech on the Oregon Bill” he harshly critiques the idea of all “men” being “born” “equal.” In fact, Calhoun’s understanding of equality and its relative importance to government does not precede government, but contrarily, emanates from the action of government. In discussing the role of government (in this instance the General Government of the United States), Calhoun writes in the “Exposition and Protest” that those who would adhere to his doctrine “would desire never to speak of our country, as far as the action of the General Government is concerned, but as one great whole, having a common interest, which all the parts ought zealously to promote.”<sup>57</sup> In even clearer language (again discussing the specific instance of the General Government of the United States), Calhoun writes, “One General Government was formed for the whole, to which were delegated all the powers supposed to be necessary to the interests common to all the states . . . It was thus that the interests of the whole were subjected, as they ought to be, to the will of the whole.”<sup>58</sup> It is possible to deduce from these quotes, on the specific example of the United States government, that because all interests maintain their right to self-protection within the system of governments that they, the interests, must all agree to the subsequent actions of the general, or common government. This is because the actions of the general government that will act upon each of these interests, ought to be considered as equally applicable to all, and therefore, should have an equal effect on all.

Without such an equality of effect the notion of self-protection is moot, and cannot be considered of any real importance to a political society, and the foundational principle of constitutional government is undermined.

Furthermore, the interested parties do not arrange constitutional government so that they may subjugate their interest to the rest. In fact, the exact opposite is true; they enter into constitutional compacts so that they may obtain a legitimate power to protect their interest. This protection of interest, while primarily concerned with domestic policies, also must be viewed in light of the threat of foreign invasions. An interest joins the other interests in part for the assurance that they will be able to defend themselves from encroachments by foreign governments. But as mentioned, the primary good of constitutional governments is the assurance that no local interest can dominate other interests. Inequality of action on behalf of the government, which seems to be a combination of local interests, is an infraction upon the justice sought for in establishing either the concurrent majority or giving each interest a right to negative all laws. To illustrate this point, and again citing specific examples in American history, Calhoun notes, “Formerly, the system was resisted mainly as inexpedient; but now, as unconstitutional, unequal, unjust, and oppressive.”<sup>59</sup> The specific “system” to which Calhoun refers is the “American System” introduced by Henry Clay. But the general principle that Calhoun contends was being violated by the government was that of equality of action by the government on all of the portions of the United State. To Calhoun, one section, or interest, was being subjugated in favor of another section in regard to fiscal policy, which seems to be the greatest tool used by parties to advance

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<sup>57</sup> EP, 315

<sup>58</sup> FHA, 375

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<sup>59</sup> FHA, 388

their own interest. Thus, because there was oppression on one portion of the society, the principle of equality was violated, meaning the government was acting unjustly, and perhaps unconstitutionally. It is obvious to note that the words “constitution,” “equality,” “justice,” and “oppression,” all mentioned in the quote above by Calhoun, are powerful words within any discussion of the theory of politics; it seems for Calhoun, however, that there is a clear connection between these ideas that fundamentally leads to the conception of a constitutional government.

First, oppression, especially when exacerbated by government, is the inherent catalyst for the establishment of constitutional government. This is to say, the purpose of the constitutional government is to restrain the tendencies within government that lead to the abuse of powers and ultimately to the oppression of some portion of the society. Calhoun defines oppression as the use of power, especially that of government, to advantage one portion of a community over another, or disadvantage one portion exclusive of another. It therefore becomes necessary that equality be the aim of government. All actions taken by government, either through taxation or other laws, ought to apply not only to every portion of the community, but also have a final effect that either advantages all portions or disadvantages all portions equally. Equality of action within a constitutional government is, therefore, the greatest aim of a constitutional government; it is the just aim of all governments worthy of praise. Conversely, any government that does not have an “organism” which effectively counters the tendencies of oppression—or that in fact embellishes this tendency—is not acting equally upon all portions of the community, and is, in consequence, not acting according to justice, as John Calhoun seems to understand it.

With the ends of constitutional government clearly exhibited, it must be shown how the means, either using the concurrent majority or the negative on the laws, sufficiently meet those ends. Looking at each of these “organisms” separately we see exactly how they offer each interest a power to protect their own interest, that is to say, it gives them the right of self-protection, and ensures the equality of government action. First, the concurrent majority accomplishes these ends through the unique construction of its organism. The concurrent majority ensures that all interested parties within a community must consent before a law is enacted and enforced. Calhoun writes, therefore, “The necessary consequence of taking the sense of the community by the concurrent majority is, as has been explained, to give to each interest or portion of the community a negative on the others.”<sup>60</sup> Though it is not the same as giving a veto power outright, the “consequence,” as Calhoun notes, of the concurrent majority is the same. If an interest perceives that it will be disadvantaged by a proposed law or tax it may simply dissent, or refuse to give its assent. In such cases, given the construction of the concurrent majority, the law cannot be considered as valid. Clearly, if the terminal result of the concurrent majority is the ability to arrest any oppressive government action, each interest is able to protect itself from the other portions of the community who may, when in control of the government, allocate to themselves the greatest pecuniary advantages. From this explanation it is evident that the concurrent majority does offer each portion of the community the ability to protect its own interest.

In a related way, the concurrent majority also offers a positive advantage to the advancement of the community under the constitutional government. This positive

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<sup>60</sup> DQG, 28

advantage is the assurance that all laws actually enacted will act equally upon all constituent members of the community. With another allusion to science, Calhoun explains the sentiment of equality of government action in the following terms. “[I]t is manifest,” Calhoun writes, “that, so long as this beautiful theory is adhered to in practice, the system, like the atmosphere, will press equally on all the parts.”<sup>61</sup> He quickly goes on to say, however, that “reason and experience teach us that theory of itself, however, excellent, is nugatory, unless there be means of efficiently enforcing it in practice.” This is, of course, the major test of the concurrent majority. The concurrent majority requirements that the consent of all be given prior to the enactment, and this is an obvious example of how it ensures that the action of the government will act equally upon all of the portions of the community. And because the concurrent majority stipulates that all laws receive unanimity before being enacted, it also adheres to the principle of equal action of the government even when the government is restrained by one, or more, of the interests. When an interest dissents on the enactment of a law it ensures that the government will not act, and this non-action applies, like laws agreed to by all parties, equally on all portions of the community. Thus, non-action, which applies equally to all constituent parties, is better than unequal action benefiting one portion over another, and upholds the principles named earlier. The concurrent majority satisfies the requirement of equality of action by the government, and the obvious link between self-protection and equality, as it pertains to constitutional governments, is illustrated.

Like the concurrent majority, the right to negative laws through a veto or nullification upholds the principles of

constitutional governments. First, it clearly upholds the right of self-protection by vesting each interest with a negative to be used when the enforcement of a law would become oppressive. The tendency of self-protection, which Calhoun claims to be just as strong in the community as it is in an individual, is given effectual power to counteract the tendency of oppression that is at least as strong within a community. Furthermore, equality of action by the government is enforced because any portion of the community that perceives inequality in the laws or taxes may simply veto or nullify that law. Thus, as is explained above, the oppressive law would not be binding, and therefore, not, in reality, a law. This ensures that the only laws that are of a binding nature are those that benefit all equally, or, in the case of taxation, impose on all equally. The right to negative laws, therefore, exhibits the principles of self-protection and equality of action that are inherent in a constitutional government, and is therefore an “organism” necessary for any government to be considered just.

While the concurrent majority and veto power are similar in principle, it seems that Calhoun favors the concurrent majority more. He writes, “It is, indeed, the negative power which makes the constitution—and the positive which makes the government. The one is the power of acting—and the other the power of preventing or arresting action. The two combined make constitutional governments.”<sup>62</sup> Clearly the veto power is important, because it ensures that the government will not be used to oppress, but the veto power is not able to make laws. The concurrent majority, contrarily, is an “organism” which allows for not only the establishment of laws, but also the establishment of the best laws for the community, and the prevention of those

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<sup>61</sup> EP, 344

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<sup>62</sup> DQG, 29

laws that are advantageous to one portion and oppressive to another. The concurrent majority, therefore, enacts laws without losing the principles of constitutional government. For this reason, Calhoun would prefer the concurrent majority over the simple and preventative “organism” of the veto power. Thus, when Calhoun discusses what is, and especially what is not, to be considered a constitutional government, he juxtaposes the concurrent majority with the numerical majority. In describing the systematic approach of taking the sense of the community through the numerical majority Calhoun notes that one relies solely on the right of suffrage, unaided, and “regards numbers only, and considers the whole community as a unit, having but one common interest throughout; and collects the sense of the greater number of the whole, as that of the community.”<sup>63</sup> This is, clearly, reminiscent of governments without the aid of constitutional organisms. The majority party or interest will control the government and have the legitimate authority to claim that it represents the whole, when in fact it merely represents a portion of the community. Thus, it may already be assumed that many of the problems inherent to governments, and especially those that lead to abuse of powers and oppression, are the result of relying on the numerical majority. The distinction between the numerical majority and concurrent majority is so vast according to Calhoun that he decrees, “The former of these I shall call the numerical, or absolute majority; and the latter, the concurrent, or constitutional majority.”<sup>64</sup> Calhoun has, therefore, already begun to establish the lens through which one is supposed to regard these two ways of taking the sense of the community. In describing the radical error of depending on the numerical majority, Calhoun writes,

“[R]egarding the numerical as the only majority, has contributed more than any other cause, to prevent the formation of popular constitutional government.”<sup>65</sup> He goes on to say in even stronger language, “So great is the difference, politically speaking, between the two majorities, that they cannot be confounded, without leading to great and fatal errors.” This becomes increasingly important to Calhoun, as will be shown later, as he discusses the particular establishment of the constitution and government of the United States. In the meantime, the examples given by Calhoun display in greater detail the advantages that the concurrent majority offers over the numerical majority.

After explaining the principles of constitutional government and its reliance on the principles found in the concurrent majority, Calhoun writes, “I shall next proceed to explain, more fully, why the concurrent majority is an indispensable element in forming constitutional governments; and why the numerical majority, of itself, must, in all cases, make governments absolute.”<sup>66</sup> Calhoun’s first example rests, again, on a principle that, at first glance, would seem incontestable. He writes, “I refer to their respective conservative principle—that is the principle by which they are upheld and preserved. This principle, in constitutional governments, is *compromise*—and in absolute governments, is *force*.”<sup>67</sup> It seems clear from the preceding statement that Calhoun’s desire is to show that the constitutional government rests upon a foundation that is of a higher caliber than that of an absolute government. Compromise will virtually always be the better alternative to force, as it seems to be the result of mature deliberation, while force rests upon mere desire and the ability to act

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<sup>63</sup> DQG, 23

<sup>64</sup> DQG, 24

<sup>65</sup> DQG, 25

<sup>66</sup> DQG, 28

<sup>67</sup> DQG, 30

upon that desire. Calhoun shows, therefore, that because the binding outcome of a vote (on an unequal implementation of a tax, for example) taken through the numerical majority requires only that a portion of the community be in the majority, the minor party is left only to acquiesce in that oppression or turn to force. He writes, "But absolute governments, of all forms, exclude all other means of resistance to their authority, than that of force; and of course, leave no other alternative to the governed."<sup>68</sup> Again, this is because the numerical majority rests upon the simple calculation of a majority of the community, considered in the aggregate, and assumes that it represents the good of the whole. This, however, is simply not so. In determining the majority opinion there is, obviously, the potential that a sizable minority will become subjugated to the will of the minority. One might object that the right of suffrage would allow the minority to eventually obtain control of the government, by becoming the majority, and then overturn the oppressive laws. This, however, is not an actual remedy to the problem according to Calhoun. He states, "The minor and subject party would become the major and dominant party, with the same absolute authority and tendency to abuse power."<sup>69</sup> He goes on to show that this is a cyclical problem, unable to be solved through the simple process of suffrage. He states, "The adaption, by the one, of any measure, however, objectionable, which might give it an advantage, would compel the other to follow its example."<sup>70</sup> Thus, if self-interest causes one portion to enact laws advantageous only to themselves it would be undeniable to assume that the other portions would do the same. Greater and more oppressive laws would be enacted until force

would finally be resorted to by one or the other; the minor party using force to overthrow the major party, or the major to restrain the minor. Either way, however, when force is involved the entire structure of government is weakened and the preservation of the community is put into danger.

This seemingly apocalyptic scenario, however, is not applicable when the concurrent majority, with compromise as its foundation, is in effect within a community. For Calhoun, the avoidance of unpleasant outcomes, and especially the outcome of anarchy, is the driving force to compromise. He writes, "No necessity can be more urgent and imperious, than that of avoiding anarchy."<sup>71</sup> Thus, the avoidance of anarchy becomes the impetus for parties to lay aside their most passionate interests and seek to conciliate others. If this is not done, however, all interests are disadvantaged by seeing the breakdown of government and the eventual collapse of the social state, which is where man is to perfect his moral and intellectual capacities. Though the above sentiment is true it is also in many regards insufficient to show the advantages of the concurrent majority. Avoiding anarchy is a good, but there are many forms of government that can sufficiently meet this end, not all of which are desirable. Calhoun, therefore, writes, in order "to form a juster estimate of the full force of this impulse to compromise, there must be added that, in governments of the concurrent majority, each portion, in order to advance its own peculiar interests, would have to conciliate all others, by showing a disposition to advance theirs."<sup>72</sup> This statement seems to embody both the principle of the concurrent majority and its tendency to promote compromise. It is clear that no party, under the concurrent majority, will be able to fully

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<sup>68</sup> DQG, 30

<sup>69</sup> DQG, 32

<sup>70</sup> DQG, 32

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<sup>71</sup> DQG, 31

<sup>72</sup> DQG, 51

advance only its own good at the expense of the other parties, and thus, it must acquiesce in some aspects to the desires of the other portions in order to ensure that its interest is advanced at all. This, again, is due to the fact that in order for any law to be passed it must be satisfactory to all parties. Laws passed, therefore, will be the product of the various interests seeking to advance their own particular interest, on the one hand, but also to be conciliatory enough to guarantee that the law will receive unanimous endorsement. Compromise must therefore be a principle under the constitutional government of the concurrent majority, but so advantageous is this tendency that Calhoun goes on to boldly write, “It is thus, that concession would cease to be considered a sacrifice—would become a free-will offering on the altar of the country, and lose the name of compromise. And herein is to be found the feature, which distinguishes governments of the concurrent majority so strikingly from those of the numerical.”<sup>73</sup> The advantage of compromise, found in the concurrent majority, over that of force found in the numerical majority, is not the only significant distinction between the two majorities.

Related to, but in reality furthering Calhoun’s illustration of the advantages of the concurrent majority over the numerical majority, is his emphasis on the right relationship between liberty and power within the community. Calhoun writes, “Liberty leaves each free to pursue the course he may deem best to promote his interest and happiness, as far as may be compatible with the primary end for which government is ordained,” which is the preservation and security of man within the social state.<sup>74</sup> Security for the community is only possible when the government is able to act, and in order to act it must be given

certain “powers,” as Calhoun describes them. Thus, a government must delicately balance the extension of liberty, often meaning less government, while protecting the community, often implying more government. Overextending either of these two “spheres” as Calhoun calls them would be detrimental to the individual in the social state.<sup>75</sup> By extending liberty beyond its limits the ability of the government to secure each individual from external and internal oppression is severely thwarted, and conversely, extending the sphere of government’s power over its citizens would prohibit “individuals in their efforts to better their conditions.”<sup>76</sup> Calhoun is, however, not so naïve as to think that determining the right amount of liberty and security in a community can be conducted through a simple formulation or calculation. In fact, he writes in regards to liberty and security, “But the principle, applied to different communities, will assign to them different limits. It will assign a larger sphere to power and a more contracted one to liberty, or the reverse, according to circumstances.”<sup>77</sup> Calhoun notes that when a people are self-governed, they will be capable, based upon their moral and intellectual capabilities, to assign to each of these spheres their proper limits for their own community. It is, therefore, necessary for Calhoun’s argument to show that the concurrent majority best aids the people of the community in assigning the limits for the spheres of “liberty” and “power.”

On this note Calhoun quickly points out, “The concurrent majority, then, is better suited to enlarge and secure the bounds of liberty, because it is better suited to prevent government from passing beyond its proper limits, and to restrict it to its primary end—

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<sup>73</sup> DQG, 52

<sup>74</sup> DQG, 40

<sup>75</sup> DQG, 40

<sup>76</sup> DQG, 40

<sup>77</sup> DQG, 41



the protection of the community.”<sup>78</sup> Calhoun’s logic in this assertion starts with the premise that government will always seek to extend beyond its limits in acquiring, using, and abusing power, and according to what has been discussed earlier regarding the tendency of government this seems to be an accurate assumption. Calhoun’s belief, therefore, that the concurrent majority is best suited to counteract the tendency of government to oppress also helps define the proper limit for which it may do good, which is, again, to provide security for its citizens. While the sphere of power is thus limited the sphere of liberty is, therefore, left “open and free to individual exertions.” This is to say, it seems that whatever is not given in terms of power to the government is left to the individual to use according to the dictates of his own self-interest. The concurrent majority’s role in this, besides simply restraining government power, is to ensure that the entirety of the community has an equal say in what power is given to the government, and the insurance that that power will act equally, and reciprocally, on each interest in the same manner.

Conversely, Calhoun notes that in the government of the numerical majority there is no counteraction to the tendency of the government to extend its power beyond its proper limit. In fact, Calhoun notes that the tendency is actually aggravated by the violent struggle for ascendancy and control of the government.<sup>79</sup> This struggle for power, as Calhoun fears will happen under the numerical majority, will result in leaving liberty exposed to the will of the majority. In such a grave scenario, the majority may apportion a greater amount of actual liberty to themselves, while leaving little or none to their rivals, and this runs contrary to the definition of liberty, which states, “Liberty

leaves each free to pursue the course he may deem best to promote his interest and happiness.” As Calhoun writes, “So great, indeed, is the difference between the two in this respect, that liberty is little more than a name under all governments of the absolute form, including that of the numerical majority.”<sup>80</sup> Finally, as has been noted, the distinction between the concurrent majority and the numerical majority is great not just in terms of function of the government, but also in terms of its primary ends. By allowing each individual to possess an equal and ample amount of liberty, Calhoun asserts that each is free to pursue whatever course is believed to ensure the greatest amount happiness. Man’s natural tendency to favor the individual over the social feelings is what made government necessary in the first place, and while government can preserve man in the social state its own tendencies are what brought upon the need for constitution. Constitution, however, is brought forth justly only through the concurrent majority, or by giving each interest a veto, and accomplishes the end of restraining government and preserving the social state with man, and his natural tendencies intact, within it. For Calhoun, this is the logical progression toward, and original institution of, political power within a community. All governments that seek the high name of free and just ought to act accordingly.

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<sup>78</sup> DQG, 45

<sup>79</sup> DQG, 45

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<sup>80</sup> DQG, 45

### CHAPTER III: The Nature of the Union before the Constitutional Convention

The historical realities that John Calhoun was writing in the midst of undoubtedly had an enormous impact on how individuals viewed the Constitution, and indeed the union, Federal Government, and the states themselves. These same historical, and in fact political conditions, prompted much of Calhoun's own writings. Hence, the Constitution, and subsequent government established under it, must not be viewed as singular phenomena, abstracted from time and history. It is therefore proper to view the historical context that led to the establishment of the Constitution, though perhaps only briefly in regards to chronological events, and, primarily to discuss the philosophic and political nature of the Union before and after its ordination, at least according to Calhoun's understanding. Of his own endeavor Calhoun writes, "What I now propose is, to trace briefly downwards, from the beginning, the causes and circumstances which led to the formation, in all its parts, of our present peculiar, complicated, and remarkable system of governments."<sup>81</sup> Though it is certainly true that others, including many of Calhoun's own contemporaries, have differing views on the philosophic history of the United States and the Constitution, it is in fact necessary to fairly describe Calhoun's interpretation of the philosophic origin of the United States, as such an understanding will lead to certain conclusions. His historical account is found most succinctly in his *A Discourse on the Constitution and Government of the United States*. Despite the differing opinions on the matter Calhoun

starts his history as many others do in the period when the colonies were under the authority of the British Crown and government. For John Calhoun the substantive and political relationship that the colonies enjoyed with each other during this time is characteristic of much of his later thoughts on the development of the union between the states. Thus, Calhoun's argument in support of his understanding of the political origin of what was to be later called the Constitution of the United States begins when the colonies were in a state of dependence. Calhoun will also make an argument that supports his own understanding of the political development of the colonies into States and of the eventual conception of the Constitution. But his argument begins not at the point when the colonists threw off the authority of the British Crown, and became States, but actually prior to this event.

In reference to the colonies under the Crown, Calhoun writes, "During their colonial condition, they formed distinct communities—each with its separate charter and government- and in no way connected with each other, except as dependent members of a common empire."<sup>82</sup> From this short explanation of the "colonial condition" Calhoun seems to be laying the foundation of later arguments pertaining to the government and Constitution of the United States. But what must first be acknowledged, according to Calhoun, is that the colonies "formed distinct communities." This assertion by Calhoun seems to indicate that the communities existed prior to the states. Calhoun's assertion here is consistent with his description of the condition of the colonies in his *Disquisition*. There Calhoun writes, "It is known to all, in any degree familiar with our history, that the region embraced by the original States of the Union appertained to the crown of Great Britain, at

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<sup>81</sup> Calhoun, *A Discourse on the Constitution and Government of the United States* (Hereafter DCG). In *Union and Liberty: The Political Philosophy of John C. Calhoun*; Lence, Ross, M. Ed. Pg. 134

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<sup>82</sup> DCG, 89

the time of its colonization.”<sup>83</sup> Thus, whatever political relationship they (the states) found themselves in after throwing off the rule of the British Crown will be the same as when they were under the Crown (unless somehow altered). In the previous quote Calhoun emphasizes that the colonies were largely distinct from each other, connected only by mutual dependence upon the Crown. This, however, is not a political connection between the colonies because each was given a separate charter and government from the King of England. The only connection the colonists had, politically speaking, was between their own colony and the Crown. He states, “[T]he colonies had no political connection with each other, except as dependent provinces of the same crown.” But Calhoun also notes that if any connection could be surmised, it is based solely upon a similarity of religions, laws, customs, and language; all things that cannot be rightly called political.<sup>84</sup> Calhoun concludes from this that the colonies were independently dependent upon the Crown. Based upon this historical evidence, the colonies were politically independent of each other and would remain that way unless some express alteration in their relationship with any of the other colonies took place. And this alteration would have to be made by whoever had the legitimate authority to do so.

Indeed, legitimate authority (often described as “sovereignty” by Calhoun) is of an extremely important nature when discussing the historical, and political, evolution of the United States. And it is imperative that one understand the nature of sovereignty in order to have a clear account of the actual colonial condition. Calhoun notes that while the colonies enjoyed the “general rights of British subjects,” and even had a portion of

their colonial governments popularly elected by the members of each colony, true sovereignty was left in the British Crown.<sup>85</sup> He also states that the general power of supervision remained with the Crown. Calhoun has established an outline of sovereignty and power by noting the sovereignty of the Crown, admitting that it chartered each colony, and stipulating that the general power of oversight was reserved to the Crown. The British Crown was able to act, or use its power, for the general supervision of the colonies because it retained that power when establishing the colonies. Thus, this ability to act is only made legitimate because the Crown established the colonies, stipulated certain reservations during this establishment process, and, retained sovereignty over them. If it had not been for the Crown’s creation of the colonies it could have no legitimate authority to act and administer on their behalf in general. Though Calhoun does not explicitly define the relationship between “sovereignty” and “power”, he offers good evidence in regards to the British Crown. The true sense of sovereignty may be understood when Calhoun discusses the importance of the Declaration of Independence, and the political implications that arise from that document. In effect, sovereignty, especially as Calhoun understands it as appertaining to the United States, may best be understood when it is lost by one entity and granted by another. This is exactly what happened during the Revolutionary War. The King lost his sovereignty and the people gained it. Furthermore, by defining and developing the relationship between sovereignty and power Calhoun continues to construct his political theory of the United States Government, Constitution, and union, which he has begun with his remarks on the colonial condition.

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<sup>83</sup> DCG, 132

<sup>84</sup> DCG, 135

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<sup>85</sup> DCG, 135

Calhoun's discussion on sovereignty, however, must be discussed only after several connected issues are examined.

Just prior to the issuance of the Declaration of Independence Calhoun remarks that the colonies partook in their first joint effort in defending themselves against the encroachments on their sacred charters by the British Crown. He remarks, "Their first union amongst themselves was, in resistance to the encroachments of the parent country on their chartered rights—when they adopted the title of—'the United Colonies'."<sup>86</sup> This remarkable event seems to be the first time the colonies acted in unison for a common goal. According to Calhoun acting in "unison" means only that each colony decided, individually, to partake in the struggle against Great Britain, and the common goal fought for was only "common" because each was affected by the outcome of the struggle. Because they were independently dependent under the Crown, the colonies acted in rebellion against the Crown "always, in their joint councils, voting and acting as separate and distinct communities," and not in the aggregate as one community or nation.<sup>87</sup> This first political relationship between the colonies, occurring even prior to the Declaration of Independence, seems to perpetuate itself throughout the history of the United States, at least according to John Calhoun.

Before one investigates the political consequences of the Declaration of Independence we must consider why the colonies sought to declare their independence from the British Crown. Although Calhoun never offered a definitive answer to justify the war against the Crown by the colonies, a plausible explanation may be deduced from the logic of his previous arguments. Calhoun admits that the British Crown granted the colonies their charters and,

therefore, seems to have had some authority over the colonists. As previously stated, Calhoun writes, "that the thirteen colonies... were established under charters which, while they left the sovereignty in the crown, and reserved the general power of supervision to the parent country, secured to the several colonies... the general rights of British subjects."<sup>88</sup> By this statement, Calhoun indicates that there was in fact a compact between the Crown and the colonists of each colony. However, this compact was not made among equals, since the Crown retained sovereignty and the right of general supervision, and the colonies were placed in a dependent state. But according to Calhoun, the colonists deserved to be treated no differently than any other British subject. All of this, it would seem, is implicit with the contract agreed to by the Crown and her dependent colonies. For Calhoun the egregious error, or breach of contract, committed by the Crown was in its unfair treatment of the colonies, and, in fact, the overt favoritism the British Crown showed the subjects of the home country over their fellow subjects in the colonies. Calhoun also vindicated independence by a more philosophic understanding of the proper treatment due to the colonists. In his *Disquisition on Government* Calhoun writes, in regards to liberty, "It follows, from what has been stated, that it is a great and dangerous error to suppose that all people are equally entitled to liberty. It is a reward to be earned, not a blessing to be gratuitously lavished on all alike—a reward reserved for the intelligent, the patriotic, the virtuous and deserving."<sup>89</sup> If, as Calhoun asserts, the colonists retained their status as British subjects then it logically follows that they are just as deserving of liberty as those who remained in England. Calhoun also writes, "The principle, in all communities,

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<sup>86</sup> DCG, 89

<sup>87</sup> DCG, 89

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<sup>88</sup> DCG, 135

<sup>89</sup> DQG, 42

according to these numerous and various causes, assigns to power and liberty their proper spheres.”<sup>90</sup> Again, it seems only logical to assume that whatever ratio of liberty to power that the British subjects in Great Britain enjoyed under the Crown ought to be enjoyed by the colonists in the colonies, because no reason can be assigned why they are not as deserving of liberty as the rest of the Crown’s subjects. When, therefore, the Crown began to act in an unequal and injurious manner toward the colonists, the original spheres of liberty and power were breached, and the British Crown began to act in an unjust manner. Thus, Calhoun concludes that injustice was at the foundation of the Revolutionary War.

Even though Calhoun justified the Revolution, he believed that the meaning of the Declaration of Independence must be carefully evaluated. For Calhoun, the Declaration of Independence had a very specific and political use for the colonies. He remarks, “The revolution, as it is called, produced no other changes than those which were necessarily caused by the declaration of independence.”<sup>91</sup> We must consider therefore what “changes” were made by the Declaration of Independence. Of course, Calhoun seems to have an explanation for this too. Calhoun states in regards to the Declaration of Independence, “Its first and necessary effect was, to cut the cord which had bound the colonies to the parent country - to extinguish all the authority of the latter.” This simple and clear first premise seems agreeable to most, and seems to be reinforced by the actual historical consequence of the war. The Declaration asserted that Great Britain could no longer claim the colonies as her own. Citing the final paragraph of the Declaration of Independence Calhoun remarks, “The act

was, in fact, but a formal and solemn annunciation to the world, that the colonies had ceased to be dependent communities, and had become free and independent States.”<sup>92</sup> Again, this sentiment seems to be in line with most historical accounts, and is not, therefore, a highly contestable assertion. But it is a necessary first premise for Calhoun to make as he begins to add more layers to his philosophic understanding of the Union.

Although Calhoun begins with a seemingly non-controversial premise he advances his argument by asserting a more contestable opinion. In reference to their state as “United Colonies” in their struggle against the British Crown, as it is described above, Calhoun asserts, “They acted in the same character in declaring independence.”<sup>93</sup> Of course, this “same character” that Calhoun refers to is defined by independent communities acting together, for a common purpose, but without losing their independent character. He immediately goes on to say, “[B]y which act they passed from their dependent, colonial condition, into that of free and sovereign States.” This assertion is for Calhoun of greater importance than even the dissolution of the bond between colonies and Crown, and the most often misunderstood purpose, of the Declaration of Independence. It is his understanding that through the Declaration of Independence the colonies broke the bond between themselves, individually, and the British Crown. Thus, one ought to view the Declaration as a document issued thirteen separate times, and from thirteen separate States; although for convenience sake there was only one confederated congress convened for the purpose. On this point, Calhoun notes that the Declaration was announced by the colonies “without

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<sup>90</sup> DQG, 42

<sup>91</sup> DCG, 134

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<sup>92</sup> DCG, 90

<sup>93</sup> DCG, 89

involving any other change in their relations with each other, than those necessarily incident to a separation from the parent country.” He goes on to say, “So far were they from supposing, or intending that it should have the effect of merging their existence, as separate communities, into one nation.”<sup>94</sup> It seems, therefore, for Calhoun, that given the colonies paradoxical state under the Crown, in which they were both dependent on the Crown and independent of each other, that since no change was made in regards to the colonies exterior and independent relationship with each other that aspect of their condition remained the same. Thus, the only change in the condition of the colonies would be that of their dependence on the Crown. Calhoun expressly denies the unification of the colonies into a single union, or nation, and in a sincere moment of clarity he claims that the consequence of the Declaration of Independence was to “convert them into thirteen independent and sovereign States” and that “the regions occupied by them, came to be divided into as many States as there were colonies, each independent of the others.”<sup>95</sup> Although it may seem that Calhoun belabors this point, it is imperative to his understanding of the foundation of the United States under the present constitution. Calhoun, therefore, not only makes the above claims, in regards to the independence of the States, he also attempts to offer conclusive evidence in support of his supposition.

The evidence that Calhoun offers in support of his assertion that the colonies were converted from dependent colonies into free and Independent “States” arises, mainly, from his evaluation of the Continental Congress that produced the Declaration of Independence. The forthright point-by-point analysis that Calhoun offers

seems to prove that the colonies acted independently of each other and on their own volition. Calhoun first states, “The declaration was made by delegates appointed by the several colonies, each for itself, and on its own authority.”<sup>96</sup> Thus, the individual colonies decided, each for themselves, first whether or not to send a delegation, and then to send that delegation by its own individual, authority. The congress established by these individual delegations did not combine their individual commissions into one, but rather, according to Calhoun, retained the authority of their respective and independent colony throughout the entire process and deliberation in this congress. To reaffirm this notion, Calhoun writes, “The vote making the declaration was taken by delegations, each counting one. The declaration was announced to be unanimous, not because every delegate voted for it, but because the majority of each delegation did.”<sup>97</sup> Calhoun advances even this argument by asserting that the Declaration was announced to be unanimous not because every delegate was in favor of the proposed declaration, which could imply that the vote was taken by the aggregate sentiment of the colonists. Rather, Calhoun wants to claim that there was unanimity because when the delegates were considered in their colonial capacity (each delegate was part of a colonial delegation) all of the thirteen delegations were in favor of its adoption. He notes, in reference to the Declaration, that the “act is styled- ‘The Unanimous Declaration of the thirteen United States of America.’”<sup>98</sup> He then adds, for further clarification, that the declaration also states, “that these United Colonies are, and of right ought to be, free and independent States.” He does this so that no one may be confused about the condition

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<sup>94</sup> DCG, 90

<sup>95</sup> DCG, 135

<sup>96</sup> DCG, 90

<sup>97</sup> DCG, 90

<sup>98</sup> DCG, 84

that the colonies would be placed in, especially in regards to each other, after the declaration was announced and the war had ended in their favor. Calhoun's final analysis, therefore, is that the congress established to draft a declaration announcing independence was brought together by individual authorities. Each delegation maintained this independence during the entire process of drafting, deliberating, and voting. The final product, the Declaration of Independence itself, therefore, was a manifestation of the desire of thirteen different communities, each seeking its own independence from the Crown. Calhoun, therefore, seems convinced that the independently dependent colonies, which were only united by their mutual dependence on the Crown and then by their mutual struggle against it, gained their political existence, as "free and independent" States, as Calhoun notes the Declaration calls them.<sup>99</sup> The ramifications of statehood, and especially in regards to the nature of the union as Calhoun understands it, must not be underestimated. For Calhoun's purposes, however, the Declaration of Independence must also be characterized in its entirety in a particular, political, manner. This is because subsequent attacks, especially in regards to the moral components of Calhoun's argument could present particular problems in his logic. Precise formulations of ideas and documents, therefore, seem to be the only way to overcome these possible attacks.

Referring back to the *Disquisition on Government*, Calhoun offers an elaborate critique of the philosophic foundation of the Declaration of Independence, in contradistinction to its political foundation, and especially its often-cited second paragraph. Calhoun states, "These great and dangerous errors have their origin in the prevalent

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<sup>99</sup> DCG, 90

opinion that all men are born free and equal than which nothing can be more unfounded and false," thus critiquing a fundamental pillar of that sacred document.<sup>100</sup> Calhoun goes on to state that there is simply no evidence to support such a claim, and that making such a dangerous assertion contradicts "universal observation". Some have truly believed in this notion despite the fact, as Calhoun asserts, that the opposite is true. That all men are not born free and equal, Calhoun argues, is discernable from "universal observation." In his "Speech on the Oregon Bill," delivered in 1848, Calhoun notes that it is unfortunate that such a "fallacious notion" (i.e., that all men are born free and equal) "had strong hold on the mind of Mr. Jefferson, the author of that document, which caused him to take an utterly false view of the subordinate relation of the black to the white race in the South."<sup>101</sup> Clearly, therefore, the signers of the Declaration of Independence, and all those who look to it as a moral document, commit a great error in doing so, and any subsequent action built upon that error is no less fallacious than the original error. For Calhoun, the great truth is that men are placed into ranks within a society based upon their race, and the government instituted for that particular race must be adapted for the benefit of that specific race.<sup>102</sup> Of course, Calhoun regards the white race as being superior to that of the African race. With this unfortunate understanding, Calhoun builds yet another layer upon his philosophic understanding of society and his critique of the Declaration of Independence as a moral document.

In his *Disquisition* Calhoun writes, "To force the front rank back to the rear, or

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<sup>100</sup> DQG, 44

<sup>101</sup> Calhoun, "Speech on the Oregon Bill", in *Union and Liberty: The Political Philosophy of John C. Calhoun*. Lence, Ross M. Ed. Pg. 569

<sup>102</sup> DQG, 45

attempt to push forward the rear into line with the front, by the interposition of the government, would put an end to the impulse, and effectually arrest the march of progress.”<sup>103</sup> Government, therefore, must act according to the condition that the various races are naturally in. This is not, however, to say that governments ought to protect natural rights. Because he rejects the false notion that “all men are born free and equal,” it is therefore obvious to Calhoun that any notion of natural rights (in particular those enumerated by Jefferson in the Declaration) must also be discarded for their fallacies. Furthermore, they can have no actual force on government because the mere assertions of “Mr. Jefferson” do not make the propositions right, according to Calhoun. Stating that all men are endowed by their Creator with certain inalienable rights, or natural rights, is equal to any other assertion not founded on “universal observation.” Again, Calhoun’s observation of the world around him is one based not on natural rights or the state of nature, but rather, on the protection of self-interest and the preservation of the social state. The only force, therefore, that the Declaration of Independence may rightly have is contained within its political capacity, because these things can be verified by empirical observation and can be used for the political preservation of society. Again, the political issues determined by the Declaration were that each colony was to be free from the British Crown, and also free and independent from each other. Though this political consequence is, indeed, very great there is yet another, greater consequence for each newly separated State. This greater consequence also helps propel the States into their fullest political capacities.

For Calhoun one of the greatest political ideas, and most difficult to understand, is the idea of sovereignty.

When Calhoun discusses the importance of the Declaration of Independence he notes that the colonies became “free” States, not just from the British Crown, but also from each other. Calhoun also affirms that with their independence the States also gained their sovereignty. Indeed, sovereignty in any political discourse is a powerful notion, but for Calhoun it seems to be the foundation for all of American politics. As mentioned, Calhoun believes that the British Crown, prior to the Declaration of Independence, held sovereignty over the colonies because it, alone, had issued the charters that birthed each colony. When the Declaration was announced Calhoun claims that the necessary effect was to “devolve the sovereignty” of the Crown “on to each respectively,” meaning of course on each colony.<sup>104</sup> While the sovereignty was held in its plentitude by the British Crown over the colonies, when they freed themselves from it each colony was vested with the same sovereign power that the Crown had. Thus, Massachusetts, New York, Virginia, South Carolina, and indeed every other colony, could now claim to have the same sovereign status that the British Crown had had over each of them independently of the others. This is so, of course, because according to Calhoun the Declaration separated each colony not only from the Crown, but also from each other. All of the powers that a sovereign enjoys, therefore, were now enjoyed by each colony respectively.

Still, we must be clear about exactly who the sovereignty of the Crown “devolved” to in the first place. Calhoun argues that sovereignty after the Declaration was transferred “not to the *governments* of, but to the *people* composing the several States.”<sup>105</sup> They must be called the “states” because gaining independence necessarily takes them out of their colonial condition.

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<sup>103</sup> DQG, 44

<sup>104</sup> DCG, 135

<sup>105</sup> DCG, 136



Calhoun next states that, “It could only devolve on them,” the people of each state, because the Declaration of Independence had completely demolished the tie between the colonies, now referred to as States, and the government of the British Crown. Thus, all governments instituted by the Crown within each State were extinguished. Furthermore, those parts of the colonial governments that rested upon the people, for instance the House of Burgesses in Virginia, were merely agents of the people. As agents created by the people they could not, therefore, hold sovereignty because their power rested upon another authority. Though the representative agents of each respective state could not be the executor of sovereignty they did, in fact, play an important role in ensuring that each State could use its own sovereignty to its own advantage. Each community (that is, the people of each separate community) was not organized in a mere mass of individuals, due to their previous colonial condition, but rather, in a manner that allowed them to “express their sovereign will” and to “carry it into effect,” which means a government for each state was readily erected and a constitution speedily ordained.<sup>106</sup> Again, this comes partly from the pre-existing structure of representative government, based upon the right of free suffrage, in each colony. It ought not to be overlooked that these circumstances were of great advantage for the newly formed States, because, as Calhoun notes, it allowed them to pass from dependency to independence without the shock or convulsion that usually accompanies a transfer of sovereignty.<sup>107</sup> Although it is clear to Calhoun, and those who strictly adhere to his doctrine, that sovereignty rested with the people of each State Calhoun makes a concerted effort to

ensure that this is properly understood by all who would concern themselves with understanding the nature of the Union, at least in the manner Calhoun would prefer that it be understood.

Calhoun remarks that “there are few subjects on which the public opinion is more confused” as that subject regarding the nature of “State” and “sovereignty.” In a public letter to South Carolina Governor James Hamilton, dated 1832, Calhoun attempts to ensure that no person who honestly evaluates his doctrine confounds “State” with any other meaning than the people of an individual State. He writes, “By a State, may be meant, either the Government of a State, or the people, as forming a separate and independent community; and by the people, either the American people taken collectively, as forming one great community, or as the people of the several States.”<sup>108</sup> When Calhoun discusses the sovereignty of a State it is not to be believed that it is the government of that State that retains the sovereignty. From the devolution of sovereignty from the Crown to its only possible source, the people, Calhoun has shown that when discussing “State sovereignty” he is discussing the sovereignty held by a community, and not a government. Furthermore, “people,” or the people of a state must never be confounded with a single nation or union. As many of his above quotes indicate State must refer to the separate groups of persons, establishing distinct communities, because that is how they were at their very inception as colonies and then sovereign States. It seems that this conclusion, at least for Calhoun, may be entirely inferred from his historical account of the American revolution and Declaration

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<sup>106</sup> DCG, 136

<sup>107</sup> DCG, 136

<sup>108</sup> John Calhoun, “From a Public Letter to Governor James Hamilton”, in *The Essential Calhoun*, Wilson, Clyde N. Ed. Pg. 61

of Independence, but with such a clear enunciation of his doctrine none ought to consider the term State, especially in regards to its sovereignty, in any other character than as the collected group of people comprising separate, distinct, and independent communities.

With an accurate understanding of who holds sovereignty, where it came from, and how it came to be held, it ought to be considered what “sovereignty” actually means, especially in regards to political matters. In regards to the States, acting as sovereigns, Calhoun notes, “The mere will of the sovereign communities, aided by the remaining fragments... speedily ordained and established governments, each for itself.”<sup>109</sup> This act by each State, for itself, seems to encapsulate Calhoun’s complex definition of sovereignty. Calhoun also writes that the supreme ultimate power, called sovereignty, is “the power by which they ordained and established the constitution; and which can rightfully create modify, amend, or abolish it, at its pleasure. Wherever this power resides, there the sovereignty resides.”<sup>110</sup> It seems that to Calhoun the ultimate power of sovereignty is the power of the sovereigns to establish, ordain, alter, amend, or abolish a constitution for themselves. Though it seems circular, Calhoun believes that in order to be considered sovereign, or to have the right owed to all sovereigns, one must have the power of sovereignty, which again is the power to ordain, establish, alter, amend, or abolish a constitution. When, therefore, the people of each State obtained the power of sovereignty from the Crown they also obtained the right to be considered sovereign.

Though complex in its formation sovereignty to Calhoun seems to be both a right, which is the legitimate authority to

act, and a power, which is the ability to act. Thus, a sovereign has both the right and ability to make, alter, or abolish a constitution, according to Calhoun. Though it pertains to the States and the eventual Federal Constitution, Calhoun seems to make the above claim when he states, “But that they did not intend, by this, to divest themselves of the high sovereign right (a right which they still retain, notwithstanding the modification) to change or abolish the present constitution and government at their pleasure, cannot be doubted. It is an acknowledged principle, that sovereigns may, by compact, modify or qualify the exercise of their power, without impairing their sovereignty.”<sup>111</sup> In this instance one ought to note, first, that Calhoun refers to a “high sovereign right”, in contradistinction to a high sovereign power, and thus seems to have at least two uses for sovereignty, as just alluded to, depending on how it is used. As is noted in the above quote the question in dispute is whether or not the States modified or qualified the exercise of their power of making, altering, or abolishing a constitution. Clearly, for Calhoun the simple answer is, no, but what is of more interest is the fact that in whatever action the States partook in they also did not divest themselves of the right to be sovereign. As Calhoun notes a sovereign, or the right to be considered a sovereign, is not impaired if said sovereign decides by its own volition to modify the powers it retains, which have already been discussed, by all sovereigns. To further this point, one needs only to look at the numerous examples of Calhoun’s unwavering belief that each State ought to be considered “sovereign and independent”. Why they should be considered independent has been fully explained, and now the term sovereignty becomes clear under Calhoun’s definition of the term. A State can claim the right of sovereignty because it has the power

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<sup>109</sup> DCG, 136

<sup>110</sup> DCG, 99

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<sup>111</sup> DCG, 100

to establish, ordain, alter, amend, or abolish a constitution for its own sake, which was once held by the Crown, but was divested to the people of each State after the Declaration of Independence. So long as a State, or any other community, retains its sovereign power, even in a modified form, it must be considered as sovereign and given the authority of all other sovereigns.

The “sovereign right” which promotes the “sovereign power,” as mentioned, both reside with the people of the State, and therefore, and when taken together form the highest and fullest form of political sovereignty according to Calhoun. For instance, Calhoun writes, “the people of the several States, in their sovereign capacity, agreed to unite themselves together, in the closest possible connection that could be formed, without merging their respective sovereignties into one common sovereignty.”<sup>112</sup> He also states, “For it was the several States, or, what is the same thing, their people, in their sovereign capacity, who ordained and established the constitution.”<sup>113</sup> Though rather abstract, these references reinforce that for Calhoun the right of a sovereign is the power to make, amend, or abolish a constitution for itself, and when this is actually done that sovereign is acting in its “highest sovereign capacity.” In other words, the “highest sovereign capacity” seems to be the culmination of a sovereign’s use of its sovereign power, because sovereignty allows for the legitimate use of power, and therefore when acting together this seems to form the highest political stature attainable, at least according to Calhoun. According to John Calhoun States are sovereign with the right to use the power vested to all sovereigns, and when they do this they act in their highest sovereign capacity, and thus, reach their fullest

potentials as political communities. After reiterating that sovereigns have the power to establish and ordain, alter, or abolish a constitution for themselves, he writes, “A power which can rightfully do all this, must exist in full plenitude, unexhausted and unimpaired; for no higher act of sovereignty can be conceived.”<sup>114</sup>

Clearly, the concept of sovereignty, especially as it regards States, will become increasingly important as Calhoun discusses the formation of the United States Constitution and Federal Government, but it also plays a role in the establishment of the individual State’s constitutions and governments. Calhoun writes, “That the people of the several States, acting in their separate, independent, and sovereign character, adopted their separate State constitutions, is a fact uncontested and incontestable.”<sup>115</sup> This seemingly simple, and for Calhoun incontestable statement, is in fact important in understanding the nature of the Union before the establishment of the Constitution for the Federal Government. First, like every other action taken by the State the ratification of their own constitutions was done in their separate and independent character. Thus, every provision or power vested to a particular State government, for instance South Carolina, is applicable only to that government, and the people so establishing it. It would seem, therefore, due to their completely independent relationship, that when a State government is vested with powers to deal political communities outside of their own territory they are, in fact, vested with the powers to enter into treaties, compacts, contracts, alliances, or leagues with the other States, because these States, according to Calhoun, stood in the same relationship that foreign nations do to each other. Although Calhoun was writing after

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<sup>112</sup> DCG, 195

<sup>113</sup> DCG, 94

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<sup>114</sup> DCG, 194

<sup>115</sup> DCG, 86

the ratification convention, but discussing a topic prior to it, it would seem that he would agree with the remarks of Luther Martin, a delegate from Maryland at the Federal Convention, when he stated that the separation from Great Britain had placed the thirteen colonies, which would soon become States, into a state of nature toward each other.<sup>116</sup> This important idea terminates in the understanding that if each State created, for itself, its own constitution and government, and stood in the same relation as foreign nations do to each other, they stand on the foundation of equals. Despite geographic size, population, or wealth, sovereignty, when utilized by the people must be considered as an equal right and power. In no way, therefore, could any person rightfully claim that at this point in the course of the history of the United States did the States intend to, or actually, change the relationship that they had with each other before and immediately after the Declaration of Independence. Of course, a cursory view of the history of the United States would show that the newly formed governments of the States did not stay in the “state of nature” that, John Calhoun most certainly believed they were in. He states, “The governments of the several States were thus rightfully and regularly constituted. They, in the course of a few years, by entering into articles of confederation and perpetual union.”<sup>117</sup>

It is, however, again necessary to understand exactly how the states came to form the Articles of Confederation. If Calhoun’s assertion that each State, meaning the people of each State, gained sovereignty when it broke from the British Crown and that each stood in a relationship of independence from every other State before, during, and after the establishment of each State

constitution and government is correct, then, according to Calhoun, there is little doubt that this relationship changed upon the establishment of the Articles of Confederation. Calhoun writes, “in order to leave no doubt as to the relation in which the States should stand to each other in the confederacy about to be formed,” the first article “declared—‘Each State retains its sovereignty, freedom and independence; and every power, jurisdiction, and right, which is not, by this confederation, expressly delegated to the United States in Congress assembled.’”<sup>118</sup> Thus, the Articles of Confederation, according to Calhoun, initiated no change the substantive relationship that the States had toward each other, because they agreed to the articles based upon their equal sovereignty, and retained that sovereignty completely, as the first article of the Articles of Confederation mentions. Calhoun presses on, stating that the States formed, under the Articles something, “more nearly allied to an assembly of diplomatists, convened to deliberate and determine how a league or treaty between their several sovereigns, for certain defined purposes, shall be carried into execution”, rather than an actual seat of government, as described in his *Disquisition*.<sup>119</sup> Though the States entered into a confederation but retained their sovereign right, Calhoun notes, “in the course of a few years, by entering into articles of confederation and perpetual union, established and made more perfect the union which had been informally constituted, in consequence of the exigencies growing out of the contest with a powerful enemy.”<sup>120</sup> This attempt to make “more perfect the union” must not be considered as an attempt to make a consolidated political union, for the reasons mentioned above, and because as Calhoun notes the States were exceed-

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<sup>116</sup> James Madison, “The Debates in the Federal Convention of 1787,” June 19<sup>th</sup>.

<sup>117</sup> DCG, 137

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<sup>118</sup> DCG, 83

<sup>119</sup> DCG, 117

<sup>120</sup> DCG, 137

ingly jealous “and watchful in delegating power, even to a confederacy.”<sup>121</sup> The Articles of Confederation, however, as history shows proved to be wholly inadequate to ensure the mutual happiness of the States in their newly acquired independent and sovereign character. Although history undeniably proves the failures of the Articles of Confederation Calhoun seems to imply that the constitutions and governments established by the people of each State for themselves, independently of each other, are still applicable and valid. He writes, “Their first act was, to ordain and establish their respective separate constitutions and governments- each by itself, and for itself-without concert or agreement with the others; and their next, after the failure of the confederacy, was to ordain and establish the constitution and government of the United States.”<sup>122</sup> Thus, the States, individually, had established for themselves constitutions and governments, with all the powers necessary for governance, prior to the establishment of the Federal Government and Constitution.

#### **CHAPTER IV: The Creation of a Constitution and Federal Government**

Calhoun believes that the relationship of the people of the several States to each other after their “colonial condition” is based almost entirely upon their seemingly conscious desire not to unite themselves in a single nation or aggregated union. Thus, when he describes the union as the “providential territorial division of the country, into independent and sovereign States, on which our entire system of government rests,” he seems to be projecting unto later historical and political contexts

the same substantive formation of the union between the States, that was established with regards to the Declaration of Independence, which has just been discussed.<sup>123</sup> In other words, Calhoun believes the nature of the union immediately after the Declaration of Independence is the same as under the Constitution of the United States. Support for this supposition is immediately offered when Calhoun notes the “glaring” inadequacies and failures of the Articles of Confederation. It is reasonable to assume, according to Calhoun’s logic, that the States, which never had any other relationship than the one described as sovereign and independent, would be in this original political state when the Articles were replaced by the Constitution and the Federal Government of the United States unless some alteration was made.<sup>124</sup> It would seem, however, necessary to understand exactly what this new constitution and the federal government it outlined were, according to Calhoun, since he states, “a federal government, though based on a confederacy, is, to the extent of the powers delegated, as much a government as a national government itself,” in contradistinction to a pure confederacy, which as Calhoun notes, is merely a council, congress, or assembly of diplomatists.<sup>125</sup> This new bona fide government, therefore, is for Calhoun the unique consequence of the Constitution, and though based upon the foundation of the confederacy it ought to be carefully considered to ensure that no political misconceptions, either willful or otherwise, could be concluded from its inception. Calhoun’s supposition that the nature of the union did not change when the States replaced the Articles of Confederation with the Constitution and Federal Government must, therefore, be evaluated and

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<sup>121</sup> DCG, 90

<sup>122</sup> DCG, 194

<sup>123</sup> DCG, 135

<sup>124</sup> DCG, 137

<sup>125</sup> DCG, 116

Calhoun's evidence in favor of the supposition must be thoroughly examined.

Similar to his particular historical account of the creation and announcement of the Declaration of Independence John Calhoun begins his philosophic construction of the Constitution and Federal Government with evidence emanating from the convention called with the purpose of establishing the document and government under consideration. Plainly, Calhoun asserts, "That the delegates who constituted the convention which framed the constitution, were appointed by the several States, each on its own authority; that they voted in the convention by States; and that their votes were counted by States—are recorded and unquestionable facts."<sup>126</sup> Calhoun's proclamation that the States sent their delegates to the convention by their own authority and that while in the convention the delegates voted by State delegation, and not merely as individual and autonomous delegates, is strikingly similar to his understanding of the process in which the Declaration of Independence was born. Similarly, Calhoun relies on simple historical evidence to propagate this assertion. Because each State sent its own delegation based on its own authority it ought to be determined, according to Calhoun's logic, that each delegation represented only the State that had the authority to send it. Calhoun also notes that, once again, the delegates of each individual community, or State, voted within their delegation and that the "sense of the whole" was taken by counting each independent delegation, or community, as one vote. Each State, then, seems to have been represented on an equal basis without regard to individual citizens of a nation that did not, according to Calhoun, even exist. The only difference, it seems, between the conventions called forth to ratify the Declaration of Independence and the Constitution is that

while drafting the Declaration the delegates represented rebellious colonies, and while drafting the Constitution they represented States, acting in their highest political and sovereign capacities. It seems, therefore, that the similarities in the substantive relationship between the people of these political communities, both as colonies and then as States, is of greater importance to Calhoun than even the fact that in one they were subordinate and the other sovereign. Though, clearly independence for the States is important for Calhoun, highlighting the relationship they had to each other becomes increasingly important as Calhoun continues his argument that the States remain the basis of the union and their relationship to each other was not altered by the Constitution. Again, this relationship is of independent and sovereign communities, or States, voluntarily acting in accordance with the other communities to accomplish a specific purpose without relinquishing either their independence or sovereignty.

Furthermore, by insisting that it be understood that the State delegations at the convention acted as individual, independent, and sovereign States Calhoun reaffirms the notion of a confederacy, and that no action taken during the convention contradicts this notion is further proof that the foundation of the union has not changed. Reason and logic, if not convincing enough, would be supplemented by the lack of evidence to support the belief that the confederation, as the foundation of the union, was destroyed. In fact, Calhoun asserts that every action taken during the formation of the Constitution reaffirms the confederacy as the political basis of the union. Calhoun notes that the Constitution received the assent of the people of the States at every possible stage during the ratification process. He writes that the States assented to the Constitution, "first in their confederated character, through its only appropriate

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<sup>126</sup> DCG, 87

organ, the Congress; next... through their respective State governments... and finally, in their high character of independent and sovereign communities, through a convention of the people, called in each State, by the authority of its government.”<sup>127</sup> He also notes that at any time the people of the States, meaning the people of each State, could have withheld their assent to the Constitution, and either brought down the entire project or simply refrained from entering into the compact. The importance of this distinction, for Calhoun, is to ensure that no one could misinterpret the function of the Constitutional convention and subsequently to erroneously assume that a single nation was formed either at the convention or after. By doing this he ensures that the State’s maintain their sovereign character.

On this point, Calhoun also remarks that if the framers of the present constitution had intended to change either the relation of the States to each other or the entire basis and foundation of the union that was enjoyed under the confederacy without changing the “style” (meaning the name “United States” which was given to them during their mutual struggle against the British Crown), they would “have practised a deception, utterly unworthy of their character, as sincere and honest men and patriots.”<sup>128</sup> The name, “United States” signified an understood relationship between the States during and immediately after the revolution, and thus by retaining the name Calhoun asserts that the framers also retained the understood meaning of the name. According to Calhoun, therefore, one cannot assume that the substantive or foundational structure of the union changed from that of a confederation of independent and sovereign States to that of a single,

unified nation. What did change, however, was the superstructure of the government itself. He notes, “It follows, also, that the changes made by the present constitution were not in the foundation, but in the superstructure of the system.”<sup>129</sup> This will, however, be discussed by Calhoun later when he elaborates on the nature of the Federal Government in contradistinction to the Congress of the Articles of Confederation. The fact that the foundation of the union, and the relationship of the States, is the same under the new constitution and government is reinforced, according to Calhoun, by the very preamble of the Constitution which came out of the 1787 convention.

According to Calhoun, and in fact the preamble itself, one of the purposes of the Constitution was to establish a “more perfect Union.” Of course, this sentiment can be found in the preamble of the Constitution which outlines the purposes of the Federal Government. Calhoun remarks, “But it is proper here to remark, that it could not have been intended, by the expression in the preamble—‘to form a more perfect union’—to declare, that the old was abolished, and a new and more perfect union established in its place.”<sup>130</sup> It would seem, according to Calhoun’s understanding of the purpose of the constitutional convention, that to create a more perfect union would be antithetical to the fallacious hypothesis that the Constitution destroyed the foundation that the Union stood upon during the Articles of Confederation. Instead, it is only logical to presume that in order to establish a “more perfect union” there must already be a union in place to perfect and, of course, the union that was in place was that of the confederacy. Perfecting the “union,” which was the confederacy, could not entail

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<sup>127</sup> DCG, 91

<sup>128</sup> DCG, 84

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<sup>129</sup> DCG, 85

<sup>130</sup> DCG, 98

destroying it and then replacing it because that would be a new union, not a “more perfect union.” Thus, each State delegation entered the convention not to abandon its current relation with the other States, but rather, to somehow perfect it

In order to fully make the claim that the States are the foundation of the union, and not individuals, comprising a single nation, Calhoun ardently professes the State’s active role in forming the union under the Constitution and then claims that they have a continual role within the union, which will be discussed later. For John Calhoun the importance of the States, as the first political communities known to and recognized by the rest of the world, is second only to their functions as the organism established to preserve the social state, as noted earlier in his *Disquisition*. It is, therefore, incumbent upon him to thoroughly show that the States retained this responsibility after the ordination of the Constitution. In order to do this, Calhoun must satisfactorily prove that the States, or rather the people of the States, retained their sovereign character after the ordination of the Constitution since sovereigns are responsible for the establishment of constitutions and governments, which in turn preserve the social state. This is accomplished when Calhoun announces that the confederated people of the several States are the parties to the Constitutional compact, and not all the American people. The States, as parties to the Constitutional compact, signifies that they ordained it for their own good, and thus they retain the responsibility of preserving the social state. In referring to the territories of the United States, Calhoun announces his fundamental equation of how the States ought to be conceived, in regard to their compact. He notes, “[T]he constitution expressly declares the territory to be the property of the United States- that is, the States united, or the States of the Union,

which are but synonymous expression.”<sup>131</sup> Thus, the States are indeed united, but not as a single nation or union, but rather as a multitude of nations. This indicates that the States have retained their character as sovereign States, as previously noted, and lays the foundation to prove that they are, indeed, the participants in a political compact. As parties to the contract, therefore, it must be understood that it was established for their good, and not the good of any other, particularly individuals of a single nation.

This conclusion, however, is fully reflected, and then confirmed, when the Union, Constriction, and Federal Government are understood correctly. As mentioned, it is necessary for Calhoun to prove that the State’s are parties to the contract formed at the convention, and although significant proof for this has already been submitted, for instance the method in which the Constitution was drafted, ordained, and established, Calhoun offers still more evidence in its favor. For instance, Calhoun notes, “By turning to the seventh article of the constitution, and to the preamble, it will be found what was the effect of ratifying. The article expressly provides, that, ‘the ratification of the conventions of nine States, shall be sufficient for the establishment of this constitution, between the States so ratifying the same.’”<sup>132</sup> For Calhoun, the key term in the Seventh Article, quoted above, is “between.” The Constitution, itself, clearly notes that the States ratifying the compact ratify it between, or amongst, themselves and, therefore, the State’s stand as parties to the contract. They, according to Calhoun, are the creators of the Constitution because what was done was done between, or

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<sup>131</sup> John Calhoun, “Speech at the Meeting of the Citizens of Charleston” found in *Union and Liberty: The Political Philosophy of John C. Calhoun*; Ed. By Ross M. Lence, pg. 526.

<sup>132</sup> DCG, 92



amongst, them. Relying, again, on the term “between” Calhoun notes that the States, “ordained and established it for their welfare and safety, in the like character; that they established it as a compact *between* them, and not as a constitution *over* them; and that, as a compact, they are parties to it, in the same character.”<sup>133</sup> According to this notion, and the evidence offered in regards to the convention, Calhoun believes it is undeniable that the States are parties to the compact. The importance of the States as parties to the compact is twofold. It seems that the States, according to Calhoun, as parties to the compact, establish a unique form of government for their mutual “welfare and safety,” and retain their sovereign character. This understanding of Calhoun’s culminates in the belief that the States are the foundation of the union, as has already been discussed, and in a particular view of the government erected through the joint compact established by the States. Calhoun writes in regards to the newly established government, “To express it more concisely, it is federal and not national, because it is the government of a community of States, and not the government of a single State or nation.”<sup>134</sup> This, again, reinforces that it is the States that are parties to the constitutional compact and, thus, the foundation of the union. Though it seems clear from the evidence presented by John Calhoun that the states are parties to the compact it must also be understood who, in fact, is not a part of the constitutional compact. Though seemingly insignificant, to Calhoun, understanding this will ensure that none of the many errors regarding the constitution and the nature of the union are perpetuated.

It is important to note, in order to understand Calhoun’s political philosophy,

that the Federal Government, established by the Constitution, is not, in fact, a part of the constitutional compact. Calhoun writes, in regards to the State’s involvement in ordaining and establishing the Constitution and government, “From the latter the whole system emanated. The relation, then, in which the States stand to the system, is that of the creator to the creature.”<sup>135</sup> Thus, from this understanding it is to be deduced that the Federal Government, or the “system” to which Calhoun refers, is actually subordinate to the States, because the States are the creator and the Federal Government is the mere creation. The Federal Government took no part in its own establishment, according to Calhoun, and, therefore, has no vested interest in the constitutional compact except to carry out the duties that have been vested to it by the several States. In more convincing language Calhoun notes of the compact that, “It was *over the government* which it created, and all its functionaries in their official character—and the individuals composing and inhabiting the several States, as far as they might come within the sphere of the powers delegated to the United States.”<sup>136</sup> Thus, referring to Calhoun’s interpretation of the word “between,” used in the seventh article of the Constitution, it would seem that if the compact is “between” the States, but “over” the government, the States enjoy an equality with each other, as co-contractors, that is not enjoyed by the Federal Government. The intentional use of the words “between” and “over” by Calhoun indicate a clear disposition to exclude the Federal Government, as well as the people in the aggregate as the above quote mentions, from being parties to the Constitutional contract. This important distinction makes clear that the Federal Government is the mere agent of the States, and established

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<sup>133</sup> DCG, 94

<sup>134</sup> DCG, 82

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<sup>135</sup> DCG, 268

<sup>136</sup> DCG, 94

for whatever purpose they jointly decide.

The notion that the States are the sole parties to the contract is also reinforced by Calhoun's understanding of how the Federal Government is actually comprised and, therefore, who it actually represents. On considering the nature of the Union, and in particular its confederated character, Calhoun notes, "On its decision, the character of the government, as well as the constitution, depends. The former must, necessarily, partake of the character of the latter, as it is but its agent, created by it, to carry its powers into effect."<sup>137</sup> In his *Discourse on the Constitution and Government of the United States* Calhoun meticulously describes how each branch of the Federal Government of the United States is elected. Though it may seem unnecessary, since most have some understanding of basic American civics, for Calhoun the purpose is to illustrate that the States, meaning the people of each individual State, and not the individuals of the entire union, elect the Federal government, and the government, likewise, represents the States, or at least a majority of the States, and not a nation. Thus, a careful consideration of the government which was enacted through the Constitution must take place. Throughout his discussion on the Federal Government Calhoun simultaneously constructs a Federal Government, worthy of the name government, while also ensuring that the confederated basis of the union is preserved. Calhoun, therefore, accomplishes his goal of differentiating the Federal Government from the Congress under the Articles of Confederation without compromising the principle of a confederated union.

Calhoun begins by describing the manner in which the United States Senate is comprised. He writes, "The Senate is composed of two members from each State, elected by the legislature thereof, for the

term of six years."<sup>138</sup> He also notes that when the members vote on legislative matters, or on those matters they share with the executive, a minimum of a majority vote is needed for passage in that body, depending on what matter is being deliberated. This seemingly agreeable statement is the first example, for Calhoun, of how the States comprise the Federal Government. It is essential to understand that because the State legislatures elect the members of the Senate, at least at the time in which Calhoun wrote, and the passage of all legislative matters requires at least a majority of senators, what is actually being represented is a majority of the States. Assuming that each senator from the same State would vote in a similar manner each State may be viewed as a single voting agent, much like the delegations at the Constitutional convention. It would then, therefore, be necessary for a majority of the States to assent to any legislative matter, assuming it needs only a majority for passage, before that legislative matter could be adopted. Furthermore, it would be of little importance whether the two senators from the same State would actually disagree on any given piece of legislation because then the State would simply not factor into the final passage of the bill; it would be tantamount to a State simply "abstaining" from the vote. Again, all of this is important to consider for Calhoun because his understanding is that the States, in contradistinction to the people of a single nation, are the foundation of the Union, partake in the election of the Federal Government, and are, therefore, represented by it. As will be seen, this notion appertains to all aspects regarding the formation of the Federal Government.

This same principle observed in the United States Senate can be applied to Congress's lower house. Although the people of each district of a State elect their

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<sup>137</sup> DCG, 88

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<sup>138</sup> DCG, 125

representative, and not the State legislatures, the members of the House of Representatives are elected within political districts incorporated within the boundaries of each State, and not the entire homogenized Union. By confining the constituencies of each member of the House of Representatives to his particular State Calhoun notes that each member represents a constituency based not upon the entire national population, but rather based on federal populations of each State. He writes, "They are apportioned among the several States, according to their population, estimated in federal numbers; but each State is entitled to have one."<sup>139</sup> Viewing the election of congressmen in this manner seems to closely resemble, again, the manner in which the delegations operated Constitutional convention. Although, in the House of Representative, unlike the Constitutional convention, the final vote is not determined by a unified State delegation it seems that by viewing the congressional districts as part of a State the essential, or meaningful, constituent is the State itself, and not the individual people of each separate district. Thus, again, since a minimum of a majority of representatives are needed to pass legislation the members representing that majority are actually agents of the States, this time estimated not as an entire State but as a district of a State.

The final two departments of the Federal Government, executive and judiciary, are elected by a principle similar to that of Congress with, of course, the States as the foundation and constituent members, according to Calhoun. The President is elected by the Electoral College, which is merely a combination of the election processes for each of the legislative bodies. It must also be noted that the President must obtain a majority of the electoral votes from

the States of the union, without regard to the national popular vote and, thus, represents a majority of the States of the union. Finally, the judiciary is filled by the joint operation of both the President and the Senate, which are elected in the manners described above. Though the judiciary is one step removed from the direct assent of the States their rightfully elected agents are entrusted to select the best individuals for that particular department. Thus, every department of the Federal Government is elected or filled with regard to the States, and the government as a whole is, therefore, a representative of those States. In reference to this, Calhoun writes, "ours is a federal government- a government made by the several States; and that States, and not individuals, are its constituents."<sup>140</sup> All of the evidence presented by Calhoun, again, seeks to build a Federal Government with a distinctly, and undeniable, confederated basis; the same foundation that the State had known during and immediately after the revolution.

There is, however, an unfortunate but unavoidable consequence to majority rule, even with the States as the basis. Referring back to the *Disquisition* Calhoun notes that the various interests, parties, or constituents of a society will join together to form two major parties, and these parties can be accurately described, based on their particular circumstances, as the dominant party, or that party which is in control of the government, and the weaker party, or that party subject to the actions of the dominant party. The United States, according to Calhoun, is no exception to this political principle. He writes, "There must then be at all times- except in a state of transition of parties, or from some accidental cause- a majority of the several States, and of their people, estimated in federal numbers, on the

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<sup>139</sup> DCG, 126

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<sup>140</sup> DCG, 124

side of those in power.”<sup>141</sup> The federal government, therefore, is not a political entity in the same manner that the States are. They do not, for instance, share in the sovereign power; they simply serve as an agent, or tool, of the States for particular ends. Whatever actions the Federal Government takes may fairly be considered the will of at least a majority of the States of the union because, as mentioned above, it takes at least a majority of the States, in all three departments of the Federal Government, to fill or fulfill the duties invested in each. He also writes, that in regards to the powers of the Federal Government we “find all under the control of the will of a majority, compounded of the majority of the States, taken as corporate bodies, and the majority of the people of the States, estimated in federal numbers.”<sup>142</sup> Despite the common conception, it would seem that according to Calhoun the Federal Government has no expressed will of its own, but acts only as it is told through the agents of the States in the various branches of the government. As mentioned, the actions of the government are to seek particular ends, expressed in the Constitution, and those ends are, of course, accomplished through the powers granted to the Federal Government. Since a majority of the States will be in control of the powers of the Federal Government it ought to be discussed what exactly those powers are, according to Calhoun’s understanding of the Constitution, and for what ends they ought to be used. By doing this, one may see what restrictions Calhoun’s construction of the Federal Government actually places upon the majority party.

To begin his discussion on the powers of government, which again are only legitimately used because the sovereign people have ordained a constitution enumerating the powers, Calhoun writes,

“The idea, indeed, of a federal constitution and government, necessarily implies reserved and delegated powers—powers reserved in part, to be exercised exclusively by the States in their original separate character- and powers delegated, by mutual agreement, to be exercised jointly by a common council or government.”<sup>143</sup> Thus, already one can determine that for Calhoun there are two classes of powers within the complex system of governments established through the nature of the Constitutional compact. On the principle of “delegated” versus “reserved” powers Calhoun writes that the Constitution left “subject to the exclusive control of the several States in their separate and individual character, all powers which, it was believed, they could advantageously exercise for themselves respectively—without incurring the hazard of bringing them in conflict with each other,” and those particular powers that could not be advantageously exercised were granted to the Federal Government.<sup>144</sup> In regards to the first type of powers, those referred to as delegated powers and enumerated in the first, second, and third articles of the Constitution which define the particular powers of Congress, the President, and the Judiciary respectively, Calhoun writes, “It is only by considering the granted powers, in their true character of trust or delegated powers, that all the various parts of our complicated system of government can be harmonized and explained.”<sup>145</sup> First, therefore, it must be noted that to Calhoun those powers delegated to any of the three departments of the Federal Government are done in “trust,” or merely granted to that department. To make this clear, Calhoun states, “[T]he powers in the constitution called granted powers, are, in fact, delegated powers—powers granted in trust—and not

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<sup>141</sup> DCG, 163

<sup>142</sup> FHA, 380

<sup>143</sup> DCG, 102

<sup>144</sup> DCG, 140

<sup>145</sup> DCG, 104

absolutely transferred.”<sup>146</sup> Because of this, Calhoun understands that every power given to the Federal Government, through the joint sovereign capacities of the people of the States, are not irrevocably given, but entrusted to those executing the joint will of the States through their agents in the government.

To help understand the nature of “trust,” “delegated,” or “granted” powers, which all seem to be synonymous, Calhoun notes the intent of the framer’s in giving the Federal Government powers at all. He writes, “In deciding what powers ought, and what ought not to be granted, the leading principle undoubtedly was, to delegate those only which could be more safely, or effectually, or beneficially exercised for the common good of all the States, by the joint or general government of all.”<sup>147</sup> It would seem, therefore, that whatever powers were delegated to the Federal Government were originally held by the State’s governments, but through the act of constitution-making the people of each State voluntarily, and mutually, created a political body to carry out the functions that were less effectually carried out by themselves, individually. Regarding the actual use or purpose of the powers delegated to the Federal Government, Calhoun writes, “The greater part of the powers delegated to Congress, relate, directly or indirectly, to one or the other of these two great divisions; that is, to those appertaining to the foreign relations of the States, or their exterior relations with each other.”<sup>148</sup> Calhoun also notes that the powers granted to the other two departments, executive and judiciary, were done so along a similar principle. Thus, the enumerated powers of the Federal congress, executive, and the judiciary, are used either to secure

the several States against foreign threats, as it would be nearly impossible for each State to defend itself, or to ensure the mutual happiness of each State as it is in relationship with every other State in the compact. Thus, for instance, the Federal Government’s power to make treaties with foreign nations, raise and maintain a military, and declare war, among others, appertain to the first category, Congress’s power to regulate commerce, coin money, and establish uniform laws of naturalization, again among others, appertain to the second category of powers.<sup>149</sup> These two categories, again, combine to encompass all of those powers that were delegated to the Federal Government to execute on behalf of the joint interest of the States. This second purpose, regulating the exterior relations of the States with each other, coupled with the very nature of the compact among the several States, is uniquely important for Calhoun’s understanding of the function of the Federal Government. He notes that the rest of the world had always viewed the several States as one, even during the time of the Articles of Confederation, and thus the Federal Government’s role in dealing with foreign relations is not entirely new, but it seems that its role as regulating the exterior affairs of the States with each other is new.<sup>150</sup>

The nature of the union and the compact that binds the States politically, according to Calhoun’s understanding, is done by equally independent and sovereign States, establishing a government for the sole purpose of fulfilling political ends that the States themselves could not effectually fulfill, or fulfill at all. This formulation of the union and government is important, therefore, when discussing exactly how the Federal Government operates in regards to its role as arbiter for the various States

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<sup>146</sup> DCG, 103

<sup>147</sup> DCG, 142

<sup>148</sup> DCG, 145

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<sup>149</sup> DCG, 146

<sup>150</sup> DCG, 143

exterior relations with each other. It becomes clear, that according to Calhoun, because each State enters the compact as an equal to all of the other States it should be treated in like manner as a constituent member of the compact. The subsequent actions of the Federal Government, therefore, as it fulfills its duties ought to act equally upon all constituent members, the States, of the union. In regards to this notion Calhoun states, “Looking to facts, the Constitution has formed the States into a community only to the extent of their common interests; leaving them distinct and independent communities as to all other interests, and drawing the line of separation with consummate skill, as before stated.”<sup>151</sup> Thus, the granted powers that have just been discussed represent the common interest of all the States. For instance, it is in their common interest to have a uniform system of naturalization, and it is also in their mutual interest to have a well-regulated military supported by all members of the union, and thus the Federal Government, or joint government of all the States, is charged with fulfilling these ends.

The understanding that the States ratified the Constitution and established the government for their own interest is, of course, of vital importance to Calhoun. According to the *Disquisition* governments are instituted for the preservation of the community and, although, the State governments are perceived to be the primary protector of each State the Federal Government, as has been shown, supplements the efforts of the State governments by fulfilling the political duties that are considered to inopportune for the states to fulfill. On this point, Calhoun writes that the governments of the States and that of the Federal Government “stand as principal and supplemental.”<sup>152</sup> To further the point that the Federal Govern-

ment is simply supplementary to those of the States’, he writes that, “One General Government was formed for the whole, to which were delegated all the powers supposed to be necessary to regulate the interests common to all the States.”<sup>153</sup> Thus, as mentioned, the promotion of the common interests of the States is the responsibility of the Federal Government. But the very fact that they are common to all of the States, coupled with the equality that each State enjoys in relation to the other States of the compact, demands that when the government acts, its actions effect and benefit each constituent, or each State, equally. In particular, and of specific interest to Calhoun, is that of taxation. In his *Disquisition* Calhoun noted that the major, or dominant party, would be in control of the government’s ability to tax in order to sustain its administration and carry out all of the functions that it has been required to perform. Given the nature of the union, however, despite the fact that the dominate party obtains the power to tax, given its position within the government, it ought to use that power only so far as it is necessary to fulfill some common interest of all the States, and only in a way that ensure that all States are effected equally. Calhoun, therefore, offers a scientific analogy to help clarify his proposition. He writes, “It is manifest that, so long as this beautiful theory is adhered to in practice, the system, like the atmosphere, will press equally on all the parts.”<sup>154</sup> To Calhoun the nature of the compact, and the composition of the Federal Government itself, demand that its subsequent actions benefit no particular interest over another, because this would be unequal and, therefore, antithetical to the very purpose of the Federal Government which is to promote the common interest of all the States. An equality of the positive action by

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<sup>151</sup> EP, 344

<sup>152</sup> DCG, 141

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<sup>153</sup> FHA, 375

<sup>154</sup> EP, 343

the government relies upon a proper understanding of the nature of the union, Constitution, and Federal Government, and thus, Calhoun's efforts to construct an understanding of these things must not be considered superfluous, or unnecessarily tedious.

If properly understood and acted upon, the notion that the delegated powers of the Federal Government are restrained to those interests that are common to all States necessarily implies that each State has a concurrent voice on matters regarding the entire union. Ideally, then, the system established under the Constitution of the United States incorporates the doctrine of the "concurrent majority." Each State may offer legislation promoting its own interest, but if it does not simultaneously promote the interest of the other States, or worse harms the interest of any State, then it ought not to be promoted by the Federal Government. Again, this is because the Federal Government is only to promote those interests that are common to all States. Despite the fact that there is to be a majority and minority party within the system of government it is of little threat to the minority if the majority refrains from partaking in any measures that do not consider the benefit of all, and each, of the parties. Calhoun states, "It is, also, apparent, that the government, regarded apart from the constitution, is the government of the concurrent, and not of the numerical majority."<sup>155</sup> This notion, however, seems to be, at least for Calhoun, the result of a seemingly perfect and proper understanding of the construction of the union, constitution, and governments, that comprise the entirety of the political system in the United States.

As noted earlier, for Calhoun there are two types of powers incorporated within the overarching system of government in the

United States. The first is, of course, the delegated powers, which have just been discussed, but the second type are the reserved powers. The enumeration of the delegated powers within the Constitution logically restricts the Federal Government to perform only those actions, and, as mentioned, those powers that were delegated were done so only because they could be more effectually administered through the joint agency of the States. What this seems to imply, therefore, for Calhoun's construction of the Constitution and government of the United States is that each State retains every power that has been vested to it by its people, on an independent basis, unless it has been given, in trust, by that State, and every other State, to the Federal Government. Calhoun notes that the nature of the compact between the States leaves "subject to the exclusive control of the several States in their separate and individual character, all powers which, it was believed, they could advantageously exercise for themselves respectively."<sup>156</sup> Particular domestic interests that seem to affect only a particular State, therefore, are left to be administered by that State. Of course, this includes slavery, but as a more abstract doctrine of political philosophy it incorporates every other economic, social, or political consideration within the social state, so long as it does not conflict with what has been transferred to the Federal Government to administer. Thus, unless such interests are somehow incorporated within the common interests of all the States the States' governments have the exclusive right to regulate their own industries, like, for instance, agriculture and farming.

Though the reserved powers encompass a wide variety of powers none is greater than the sovereign power that each State retains. He writes, "it will be found...

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<sup>155</sup> DCG, 129

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<sup>156</sup> DCG, 140

that the people of the several States, acting in the same capacity and in the same way, in which they ordained and established the federal constitution, can, by their concurrent and united voice, change or abolish it, and establish another in its place,” and of course, this is the definition of sovereign power that has already discussed.<sup>157</sup> According to Calhoun the State, meaning the people of the State, *must* retain this power because it cannot reside in any other place than in the people. For instance, he notes that it cannot reside in a government because the government is simply a result of the people using their sovereign power, and thus, it is merely a representation of the sovereign people. Though it may be argued that sovereignty could reside in the American people, or rather the people of a single, united nation, Calhoun notes that no such formation of a nation took place. As noted, the Declaration of Independence necessarily devolved the sovereignty of the British Crown unto the people of each State, and because at no time did any of the States take any measure to unite themselves as one people the sovereignty must remain there. The nature of the compact, which recognizes each State as an equal party to the contract forbids such a construction of sovereignty that would permit one to believe the entire people of the union shared sovereignty. Calhoun states, “They stand then, as to the one, in the relation of superior to subordinate- the creator to the created. The people of the several States called it into existence, and conferred, by it, on the government, whatever power or authority it possesses.”<sup>158</sup> He goes on to write, in reference to the Constitution, “The case however is different as to the relations which the people of the several States bear to each other... Having ratified and adopted it, by mutual agreement, they stand to it in the relation of parties to a

constitutional compact.” Again, this powerful, but concise, sentiment regards each State as independent from each other, reaffirms that each State retains its sovereignty, and places the people of each State over the Constitution.

Though Calhoun believes the nature of the compact is clear enough to support this supposition he also offers additional proof deriving its authority from the Constitution itself, and from a prominent State ratification convention. Calhoun notes that the Tenth Amended Article to the Constitution and the ratifying convention of Virginia both pronounce an understanding of the constitution that recognizes the importance of the reserved powers to each State. Of course, Calhoun notes that Virginia was only one of the original ratifying States, but he also notes that it was one of the “leading” States of the union at the time, thus, when it announced, “that the powers granted under the constitution, being derived from the people of the United States, may be resumed by them, whensoever the same shall be perverted to their injury or oppression; and that every power not granted thereby, remains with them and at their will” the other States of the Union must have necessarily accepted this doctrine in order that Virginia ratify the compact under deliberation.<sup>159</sup> It is also of importance to note that so strongly did all of the States regard this sentiment that it was, in fact, incorporated into the Constitution as the Tenth Amended Article clearly illustrates, by reserving to the State or the people of each State all of the powers not vested to the Federal Government. As alluded to Calhoun notes that the purpose of the Tenth Amendment and the construction of the Constitution that the Virginia ratifying convention placed on the Constitution was to ensure that the reserved powers were placed “beyond the possible interference and

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<sup>157</sup> DCG, 194

<sup>158</sup> DCG, 194

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<sup>159</sup> DCG, 176



control of the government of the United States,” and, of course, the most sacred political power is that which the sovereign enjoys.<sup>160</sup> Finally, by doing this Calhoun has also established yet another foundational principle for the construction of the union and Federal Government.

As mentioned, the people of the States rightfully established constitutions and governments for themselves, and then establish a single, joint constitution and government for the benefit of each. Also mentioned, both government were given particular powers, “delegated” to the Federal Government and “reserved” to the State governments, and the people retained the power owed to all sovereigns. By doing this, therefore, the people of each State established appropriate spheres of power for each government to act in. In the very opening remarks of his *Discourse* Calhoun states, “Each, within its appropriate sphere, possesses all the attributes, and performs all the functions of government.”<sup>161</sup> Again, the “appropriate spheres” are determined for the Federal Government by the enumeration of powers within the Constitution, and for the States by whatever powers are granted by the people for their own State, so long as they are not prohibited by the Constitution or vested to the Federal Government. In regards to the respective governments, which are in fact fully ordained governments, Calhoun writes, “Neither is perfect without the other. The two combined, form one entire and perfect government.” Thus, it may be fairly assessed that according to Calhoun the system of governments, which he sometimes calls the union, combines into a perfect whole political system established for the purposes noted in his *A Disquisition on Government*.

Upon this foundation, Calhoun

proposes that the government of each State is equal, in regards to its station in this political system, to that of the Federal Government. Calhoun notes, “Both governments—that of the United States and those of the separate States, derive their powers from the same source, and were ordained and established by the same authority,” and he goes on to note that in ordaining the Constitution and Federal government the States acted in “concert or mutual understanding—while, in ordaining and establishing the others, the people of each State acted separately, and without concert or mutual understanding.”<sup>162</sup> Thus, with the same source of authority each government may justly claim that it is the agent of the people, but only insofar as it’s particular powers allow. The Federal Government, therefore, may legitimately use its authority to raise an army to defend the union, pursue treaties with foreign nations, and lay taxes for the purposes established in the Constitution, and no State may encroach upon these powers. Simply put, these powers are outside the sphere of power established by the framers of the Constitution and agreed to by the people of each separate State. In a similar manner, each State may determine particular laws for its own interests without the Federal Government encroaching upon them in any way that is not sanctioned by the Constitution. So important is this understanding of the co-equal nature of the governments established by the people for Calhoun that he writes, “On the preservation of this peculiar and important division of power, depend the preservation of all the others, and the equilibrium of the entire system. It cannot be disturbed, without, at the same time, disturbing the whole, with all its parts.”<sup>163</sup> It seems that Calhoun established this conclusion due to his

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<sup>160</sup> DCG, 177

<sup>161</sup> DCG, 81

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<sup>162</sup> DCG, 119

<sup>163</sup> DCG, 160

understanding of the nature of the union and compact, which has just been discussed.

It would seem that because the State government was established first it would be primary in importance to the people. It, for example, would be the first government established to preserve the social state, and allow each man to pursue his self-interest. The Federal Government, conversely, was established only after it was determined that the States needed a unified voice, especially in regards to foreign affairs and interstate relations. Because of the supplemental role of the Federal Government, doing only what each State could not do as well separately, the government must act equally upon all parts of that it represents. Each State entered the compact that established the Federal Government as an equal, and with the purpose of the government previously stated, one must conclude, then, that each state ought to benefit, or be disadvantaged equally. Despite, however, the primary and supplementary roles of the governments each is, in fact, supreme, over its own powers because it has received those powers, in trust, from the sovereign people of each State. This formulation, for Calhoun, represents the political system enjoyed by the States united in compact. As Calhoun notes, any disruption in this system, by either the State or Federal Governments, would disturb the equilibrium that has been established by the Constitution and lead to the destruction of “the system by consolidating all its powers in the hands of the one or the other.”<sup>164</sup> The consolidation of power in the hands of either the State or Federal Governments ought to be considered the primary concern of any true “unionist”, and thus, when the two governments come into conflict there ought to be some remedy that preserves the union, at least as Calhoun understands it, and of course, according to Calhoun there is.

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<sup>164</sup> DCG, 184

## **CHAPTER V: The Federal Government and States in Conflict**

Although John Calhoun establishes what is, in his opinion, the correct construction of the entire system of government in the United States he seems to forecast likely problems in maintaining the balance of power between the State governments and that of the Federal Government. Indeed, Calhoun remarks that the notion of conflict between the States and the Federal government is not entirely new. He writes, “No question connected with the formation and adoption of the constitution of the United States, excited deeper solicitude—or caused more discussion, than this important partition of power” and that the “ablest of men” divided themselves in regards to what the source of conflict would be and how best to resolve it.<sup>165</sup> As Calhoun also notes, once divided the framers of the Constitution assumed the name of “Federal” and “Republican,” the former feared dissolution and the latter feared consolidation. These preliminary fears arose from the suspicion that either the State governments or the Federal government would begin to encroach upon, and finally absorb, all the powers of its co-ordinate government. In other words, Calhoun asserts that the framers feared that either the delegated powers would be absorbed into the reserved powers, and thus lead to dissolution, or that the reserved powers would be usurped by the Federal Government, and be consolidated among the delegated powers. Although Calhoun may credit the framers with accurately foreseeing a conflict amongst the delegated and reserved powers it seems that the solution that was offered by these men is wholly inadequate. He writes, “Both looked to the co-ordinate governments, to control each

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<sup>165</sup> DCG, 161

other; and by their mutual action and reaction, to keep each other in their proper spheres.”<sup>166</sup> The supposition of the founders, according to Calhoun, was the administrators of the State governments and those administering the Federal Government would stand in antagonistic relation to each other. This relationship would ensure that each partition of power, reserved and delegated, would be jealously guarded by those who are placed in charge of them, and thus, the relationship “would prove so well balanced as to be sufficient to preserve the equilibrium, and keep each in its respective sphere.”<sup>167</sup> This outlook, according to Calhoun at least, inaccurately describes the solution to the conflict, and also seems to indicate a misunderstanding of the actual substantive formation of the union.

Calhoun remarks that the history of confederacies, which the current government is based upon, accurately shows what the true source of conflict would be in the complex system of government in the United States. He notes, “Had this been fully realized, they would never have assumed that those who administered the government of the United States, and those of the separate States, would stand in hostile relations to each other; or have believed that it would depend on the relative force of the powers delegated and the powers reserved.”<sup>168</sup> This is not to say, however, that the co-ordinate governments have no role in halting the absorption of powers, but simply that the relationship that they stand to each other is not a hostile one. The true nature of the union clearly shows why the two governments cannot stand in antagonistic relationship with each other. As described earlier, the Federal Government, though an actual government, is

merely a composition of a majority of the states in the union. Thus, the Federal Government is not an isolated entity with a will and interest of its own, but rather a vehicle for the interest and will of a majority of the States. Calhoun writes, “[T]he result has shown that, instead of depending on the relative force of the delegated and reserved powers, the latter, in all contests, have been brought in aid of the former, by the States on the side of the party in the possession and control of the government of the United States.”<sup>169</sup> This means that the conflict will arise once one portion of the States, constituting a majority, will take possession of the Federal Government and use its powers, coupled with the reserved, to dominate the political policies of the entire union. The true conflict will be, therefore, amongst one portion of the States, constituting a majority, and the other portion, constituting the minority, and thus, the reason why one cannot rely on the whole of the State governments to stop the encroachment of the Federal Government on its powers. Calhoun must, therefore, offer an alternate explanation as to the true remedy for the conflict over the reserved and delegated powers, because the simple reliance upon those who administer the two co-ordinate governments is simply not useful.

With the true nature of the conflict between the reserved and delegated powers understood, Calhoun could offer his theoretical remedy, however, it would bear far less authority without the context of the actual abuse of the system of governments. Thus, readily available examples accurately illustrate the need for the remedy to be discussed. It is important to remember in the abstract, or broader view of Calhoun’s political theory, the encroachment or absorption of power may occur from either the reserved or the delegated powers. It is,

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<sup>166</sup> DCG, 161

<sup>167</sup> DCG, 162

<sup>168</sup> DCG, 162

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<sup>169</sup> DCG, 162

however, remarkable that almost all of Calhoun's examples of an infraction of the equilibrium of the system established by the Constitution come from the side of the Federal Government. Referring back to the *Disquisition*, Calhoun notes, "Being the party in possession of the government, they will, from the same constitution of man which makes government necessary to protect society, be in favor of the powers granted by the constitution, and opposed to the restrictions intended to limit them."<sup>170</sup> Because, therefore, man has a natural tendency to favor himself over his fellow man, so to will a majority of the States have a tendency to favor their own interest over the other States. When this natural tendency is supplemented by the fact, already discussed, that the States in control of the Federal Government are in control of both the delegated and reserved powers there is little reason to doubt that Calhoun's implicit assertion that the danger of consolidation is of greater concern than disunion seems plausible.

The matter of the protective tariff, so often cited by Calhoun and by those discussing his political era, accurately portrays the problem of a majority of the States using the Federal government to infringe upon the reserved rights of the minority of the States. In the "Exposition and Protest" Calhoun bluntly states in regards to the tariff, that "Our complaint is, that we are not permitted to consume the fruits of our labor."<sup>171</sup> Though not overtly rooted in legal language Calhoun's charge against the tariff as a violation of the Constitution seems to emanate from his understanding of the nature of the constitutional compact agreed to by the States. It would seem that in this instance the "fruits of our labor", as he describes it, pertain to a State's ability to produce goods and then

profit as much as possible from selling them. It would seem, therefore, that because the "fruits of labor", and in fact the labor itself, is different in the various States of the union the profit from such labor is of a local interest. In fact, Calhoun notes, this time using an argument grounded in his interpretation of the Constitution, "Looking to facts, the Constitution has formed the States into a community only to the extent of their common interests; leaving them distinct and independent communities as to all other interests, and drawing the line of separation with consummate skill."<sup>172</sup> Thus, the Federal Government, supported by a majority of the States, has wrongly used the power of taxation to advantage one portion of the community over the other, in direct violation of the Constitution and the nature of the compact. To further his point, Calhoun writes, "[T]hey have stripped us of the blessings bestowed by nature, and converted them to their own advantage."<sup>173</sup> As noted in the above quote, all interest that are not common are reserved to the States to administer, and it would seem that unless nature has bestowed every State of the Union with the exact same blessings each State would have a unique and sovereign authority of whatever particular "blessings" may be found within its borders. The protective tariff is, for Calhoun's argument, a key example of how the Federal Government can violate the equilibrium established between the delegated and reserved powers. In order to be thorough, however, it must be understood that Calhoun does not deny the power of the Federal Congress to tax, but what will be shown is how the Federal Congress abused that power by initiating the protective tariff of the American System.

So striking is this example offered by Calhoun that it sufficiently shows how the Federal Government can infringe upon the

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<sup>170</sup> DQG, 26

<sup>171</sup> EP, 326

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<sup>172</sup> EP, 344

<sup>173</sup> EP, 329

nature of the compact in such a manner that is not at first easily perceived because one may claim that the Federal Government is acting rightly because it is acting within its sphere of power. In fact, however, a high standard is placed upon the government, and when that standard is not met by the government it becomes a violation of the compact establishing it. Specifically, this violation occurs when the Federal Government perverts or abuses one of its own powers. It is clear, that despite the fact that the powers to be implemented by the Federal Government, in this case the power to tax, are delegated to it for its use they must be used in such a way that it does not violate the Constitution expressly or the nature of the compact, and as noted earlier, the compact was established among equal sovereigns. The subsequent actions of the government established under that compact ought, therefore, to equally benefit or disadvantage the sovereign constituents, the States. As expressed earlier, by Calhoun, the protective tariffs established under the "American System", sought to benefit one portion of the union only, and of course, that portion was the manufacturing industries of the North. Calhoun writes, "The assertion, that the encouragement of the industry of the manufacturing States is, in fact, discouragement to ours, was not made without due deliberation. It is susceptible of the clearest proof."<sup>174</sup> He goes on to say, "Their object in the Tariff is to keep down foreign competition, in order to obtain a monopoly of the domestic market. The effect on us is, to compel us to purchase at a higher price, both what we obtain from them and from others, without receiving a correspondent increase in the price of what we sell."<sup>175</sup> It would seem, therefore, that the Federal Government's advocacy of the protective

tariffs of the American System violates the nature of the compact because it is using a power, rightly given to it, but for unequal and, therefore, unjust ends. If the Federal Government is to use its power to lay and collect taxes it ought to do so in a manner that is equally advantageous or disadvantageous to all of the equally sovereign States of the union. Although according to Calhoun it is clear that this represents a blatant abuse of power delegated to the Federal Government further evidence may be offered when one looks to the Constitution itself.

Calhoun writes that the act passed by the Federal Congress which established the protective tariff was "not for revenue, but the protection of one branch of industry at the expense of others- is unconstitutional, unequal, and oppressive, and calculated to corrupt the public virtue and destroy the liberty of the country."<sup>176</sup> The key aspect of this statement is the fact that Calhoun notes that the tariff passed by Congress was "not for revenue, but the protection of one branch of industry." Looking to the Constitution, Calhoun remarks, "It is true that the third section of the first article of the Constitution authorizes Congress to lay and collect an impost duty, but it is granted as a tax power for the sole purpose of revenue."<sup>177</sup> The actual language of the Constitution reads, "The Congress shall have Power To lay and collect Taxes, Duties, Imposts, and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States."<sup>178</sup> Although Calhoun seems most concerned with the infraction of the tariff as it regards raising revenue to pay the debt, it would not be hard to show how Calhoun would argue that a protective tariff does not fulfill any of the ends established in that particular article or section of the

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<sup>174</sup> EP, 329

<sup>175</sup> EP, 329

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<sup>176</sup> EP, 313

<sup>177</sup> EP, 313

<sup>178</sup> United State Constitution, Article I, Section 8

Constitution. First, and most obvious, it does not raise revenue in order to pay off the debt. In his “Fort Hill Address”, delivered only three years after the “Exposition and Protest” was announced, Calhoun notes that the public debt is almost paid off, and thus it is unlikely that such a massive tariff, as Calhoun seems to perceive that it is, could not be used to pay of such a small amount of debt.<sup>179</sup> This is further shown as Calhoun repeatedly calls it a “protective tariff” used to harbor the fledgling industries of the North from foreign competition. It would seem, therefore, that the claim that the protective tariff was used to raise revenue would be a delusion.

Next, it is of little use arguing that the protective tariff established under the American System was used for the defense of the union, and thus Calhoun would almost not have to offer any evidence to dismiss that claim. No part of the tariff, according to the evidence presented by Calhoun, seems to be used directly for military expenditures. Finally, it would seem that one could argue that the protective tariff is good for the general welfare because it is good for a constituent member of the union. One may claim that what is good for a particular is good for the whole, because the particular is part of the whole. This, however, seems easily refuted by Calhoun’s insistence that the actions taken by the Federal Government apply equally upon all members of the union, just like the atmosphere is applied equally to all parts of the universe.<sup>180</sup> Thus, because one portion of the union bears the burden of the tariff, while the other reaps the benefits, it may not be justly said that the Federal Government is acting in accordance with the common interest, or as the Constitution states, the general Welfare. Instead, therefore, of the whole benefiting when a particular benefits one must consider

that the whole is only comprised of the common interests of the particulars. Unless all the particulars benefit, therefore, the whole does not benefit. For these reasons, the tariffs enacted through the American System can be, according to Calhoun, classified as an example of the Federal Government abusing a power delegated to it.

Although the abuse of power by the Federal Government is certainly dangerous and jeopardizes the nature of the compact established through the Constitution it is not the only way that the nature of the compact can be violated. Of course, the other way it may be violated is when either the State governments or the Federal Government seeks to absorb one of the powers delegated to its co-ordinate government. Again, it is more likely that the Federal Government will seek to absorb the reserved powers given the circumstances that result from its composition. A prime example of this, at least for Calhoun, is the Federal Judiciary Act of 1789. In brief, this act allowed for the appeal of decisions made by the highest court in each State to go directly to the Supreme Court if such cases regarded the validity of treaties, statutes, or construction of Constitutional provision by the Federal Government. Specifically, this would occur when the decision of the State court went against the Federal Government’s authority, or when a State Court rules in favor of its own authority in regards to statutes or the construction of its powers.<sup>181</sup> After citing the 25<sup>th</sup> Section of the Judiciary Act, approved by the first Congress in 1789, Calhoun writes, “The effect, so far as these cases extend, is to place the highest tribunal of the States, both of law and equity, in the same relation to the Supreme Court of the United States, which the circuit and inferior courts of the United States bear to it.”<sup>182</sup>

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<sup>179</sup> FHA, 398

<sup>180</sup> EP, 343

<sup>181</sup> Federal Judiciary Act of 1789, September 24, 1789, 25<sup>th</sup> Article

<sup>182</sup> DCG, 324

Plainly, this act, according to Calhoun, placed the highest court of each State in the same relationship which is enjoyed by the inferior courts of the Federal Government; in particular, the Circuit and District Courts, thus relegating it to a subordinate position. Calhoun goes on to further criticize the implications of this act by noting, “To this extent, they are made equally subordinate and subject to its control; and, of course, the judicial departments of the separate governments of the several States, to the same extent, cease to stand, under these provisions, in the relation of coequal and coordinate departments with the federal judiciary.”<sup>183</sup> It is clear that through this act the Federal Congress has altered the nature of the compact by subordinating one department of one of the coordinate governments, those of the States judiciaries, to that of the other, the Federal judiciary, and thus altered the entire relationship established by the Constitution. Although clearly dangerous for this, however, is not the only dramatic implication of this act. The major political consequence of the Federal Judiciary Act is that the Federal Congress has used a power not given to it by the Constitution to make the aforementioned alteration. Although it is undeniable that the Federal Congress has the power to establish inferior courts, it does not have the power to actually make the State courts inferior to the Supreme Court.<sup>184</sup> The Federal Congress, therefore, has used a power not delegated to it and, thus, in consequence has taken from the State the power to offer judgments in the last resort on particular cases of “law and equity” and stand as coequal to the Federal Government. Calhoun claims, “It results, of course, that if the right of appeal from the State courts to those of the United States, should be extended as far as the government

of the United States may claim that its powers and authority extend, the government of the several States would cease, in effect, to be its coequals and co-ordinates.”<sup>185</sup> Though the logic of Calhoun’s philosophy would seem to be sufficient enough to condemn this act, as an example of the Federal Government absorbing a power of the State governments, he also explicitly asks, “[D]oes the constitution vest Congress with the power to pass an act authorizing such appeals?” He then promptly answers, “It is certain, that no such power is expressly delegated to it: and equally so, that there is none vested in it which would make such a power, as an incident, necessary and proper to carry it into execution.”<sup>186</sup> If unchecked, the Federal Congress has assumed for itself, therefore, the power of determining when a State Court’s decision can be reviewed by the Supreme Court, and has, thus, taken from the States the right to judge for themselves the extent of power that they had seemingly enjoyed under the Constitution. For Calhoun, this act is so egregious, and dangerous to the sacred equilibrium of the Constitution, that it cannot stand without also corrupting the very nature of the system established in the Constitution. It remains to be discussed, therefore, what remedies the States have to combat both the abuse of power, as in the protective tariffs, and the absorption of power, as in the Federal Judiciary Act.

The absorption of power by either a State or the Federal Government is, as has been mentioned, a violation of the compact established by all of the States of the union. It is, therefore, to the nature of the compact that Calhoun looks for the remedy to combat the infraction. Again, while in theory it is possible that either the Federal or State governments may be guilty of absorbing a

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<sup>183</sup> DCG, 324

<sup>184</sup> US Constitution, Article III, Section 1

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<sup>185</sup> DCG, 324

<sup>186</sup> DCG, 325

power of its coordinate it seems that to Calhoun in practice the fear is of the desire of the majority of the State's comprising the Federal Government to absorb all power to itself. Thus, Calhoun states, "I shall begin with considering—what means the government of a State possesses, to prevent the government of the United States from encroaching on its reserved powers."<sup>187</sup> Calhoun goes on to boldly proclaim, "Nothing short of a negative, absolute or in effect, on the part of the government of a State, can possibly protect it against the encroachments of the government of the United States, whenever then powers come in conflict."<sup>188</sup> Calhoun also notes in his "Fort Hill Address," that the protecting power, by whatever name it may be called, and he names, for example, interposition, State-right, veto, and nullification, is conceived, "to be the fundamental principle of our system, resting on facts historically as certain as our revolution itself, and deductions as simple and demonstrative as that of any political, or moral truth whatever; and I firmly believe that on its recognition depend the stability and safety of our political institutions."<sup>189</sup> Thus, a negative, which is another name for any of the previous terms alluded to, given to all of the States is to Calhoun the only way to ensure that the Federal Government is kept within the sphere of authority described in the Constitution, and the stability and integrity of the union is preserved. What this negative is, where it comes from within the compact itself, and the consequences of its use, however, ought to be further examined and explained in terms of Calhoun's broader political philosophy.

First, it ought to be recognized that the negative is "mutual" between the various State governments of the union, and thus,

Calhoun often refers to it simply as the "mutual negative". In other words, each State government is given a negating power that allows it to nullify a law of the Federal Government when it, the Federal Government, seeks to absorb one of the powers of the State government. After reiterating his earlier point, that State governments must have a way of protecting their reserved powers, Calhoun goes on defend the supposition that the governments of each State actually do possess the mutual negative by stating, "But the several States, as weaker parties, can protect the portion not delegated, only in one of two ways; either by having a concurrent voice in the action of the government of the United States; or a negative on its acts, when they disagree as to the extent of their respective powers."<sup>190</sup> He then immediately goes on to say, "Why the latter was preferred by the convention which formed the constitution, may, probably, be attributed to the great number of States, and the belief that it was impossible so to organize the government, as to give to each a concurrent voice in its action, without rendering it too feeble and tardy to fulfil the ends for which it was intended." Thus, because, according to Calhoun, the reserved powers of the States must be protected, and can only be protected in two ways, the concurrent majority or a mutual negative, and the concurrent majority was not adopted the mutual negative must have been the method chosen. Furthermore, as has been discussed earlier the negative that is given to each State government is equal in effect to a concurrent voice, thus implying that each State is given a power, to be enacted, when the other States, forming the Federal Government, begin to encroach upon their sovereign and reserved powers.

Further evidence of the necessity, and in fact the existence of the mutual negative in the system of government

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<sup>187</sup> DCG, 170

<sup>188</sup> DCG, 171

<sup>189</sup> FHA, 371

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<sup>190</sup> DCG, 188



established by the Constitution, is offered when Calhoun explicitly states, in regard to the mutual negative, “The effect of this is, to make each, as against the other, the guardian and protector of the powers allotted to it, and of which it is the organ and representative. By no other device, could the separate governments of the several States, as the weaker of the two, prevent the government of the United States, as the stronger, from encroaching on that portion of the reserved powers.”<sup>191</sup> The mutual negative, therefore, of each State government ensures that no combination of the other States, comprising the Federal Government, seek to absorb the reserved powers adding them to the delegated and, therefore, establishing a portion of the union with control of all the powers vested to government. Inherent in this logic is the exclusion of both the State governments and the Federal Government ability enforce their laws upon their co-equal government. Calhoun writes, “If one, then, possess the right to enforce its decision, so, also, must the other. But to assume that both possess it, would be to leave the umpirage, in case of conflict, to mere brute force; and thus to destroy the equality, clearly implied by the relation of coordinates, and the division between the two governments.”<sup>192</sup> Thus, the mutual negative is only valid when it seeks to stop the Federal Government from using a power it does not have. It is, as Calhoun notes previously, a protecting power, In the example of the Federal Judiciary Act of 1789, therefore, the State government’s could only make that law null and void within their own borders.

As mentioned, the mutual negative vested to each State is only useful in restraining the action of the Federal Government when it seeks to absorb a

power that is of right given to the State governments. It is, therefore, not only the right but the duty of the State government to protect what has been given to it by the people. As described earlier, the people of each State gave their particular State government’s powers that it could most effectually execute while giving to the Federal Government those powers or duties that the State’s could not effectually or beneficially execute. Through this, as has been mentioned, the people of each State, acting once in concert and once independently, established a perfect equilibrium between the two coordinate governments that effectively protect and serve the people. It is right, therefore, for the State governments to be a guardian of their own powers since, after all, they were rightly given to them by the sovereign act of the people of each State. Since the issue of absorption of powers deals directly with powers vested, or distributed, the veto, then, on an act of the Federal Government may come directly from the administrators of the State government, for instance the State legislature, executive, or judiciary officers. Again, this happens only when a Federal act seeks to enlarge the delegated powers at the expense of the reserved powers. Calhoun writes, “[T]he only means furnished by the system itself, to resist encroachments, are, the mutual negative between the two coordinate governments, where their acts come into conflict as to the extent of their respective powers.”<sup>193</sup> Again, it is permissible for the State government to issue a negative, or veto, on the Federal acts that seek to deprive it of its powers because as a legitimate government it has the right to guard itself against the encroachments of the other governments, acting most often through the vehicle of Federal Government, and because its powers were vested for the benefit of the people.

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<sup>191</sup> DCG, 188

<sup>192</sup> DCG, 172

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<sup>193</sup> DCG, 213

In regards to the notion that the State government's are to be the guardians of their own powers, Calhoun notes, "[I]t may be alleged... that a negative on the part of the governments of so many States, where either might disagree with that of the United States, as to the extent of their respective powers, would lead to such embarrassment and confusion."<sup>194</sup> In stating this, Calhoun reaffirms the notion that the State government's do, in fact, obtain the right to nullify a law, when it believes the Federal Government is seeking to absorb one of its powers, and also allows him to defray criticism of his doctrine regarding nullification. He writes, "It may be laid down as a fundamental principle in constructing constitutional governments, that a strong government requires a negative proportionally strong, to restrict it to its appropriate sphere; and that, the stronger the government—if the negative be proportionally strong, the better the government."<sup>195</sup> Calhoun, in brief, illustrates the point that the Federal Government, unlike the Congress of the Articles of the Confederation, is indeed a formal and powerful government with legitimate authority within its sphere of power. Added to this, the Federal Government, according to Calhoun, receives its authority from a majority of the States of the union. He writes, "Combining, habitually, as it necessarily does, the united power and patronage of a majority of the States and of their population estimated in federal numbers, in opposition to a minority of each, with nothing but their separate and divided power and patronage."<sup>196</sup> It seems, therefore, that when a majority of the States, acting through the Federal Government, takes action there is the appearance, at the very least, of legitimate political authority. Thus, truly, the only way to ensure that the

reserved power of each equal and independent State is protected is to issue to each an effective mutual negative upon all the other States that could potentially combine to comprise the Federal Government. In order for the protection to be substantial, however, Calhoun recognizes the need to distinguish between when the Federal Government seeks to absorb a power of the State and when the Federal Government begins to abuse one of its own powers. What has been discussed thus far is when the Federal Government seeks to absorb a power of the State governments. Calhoun writes in regards to the powers of the Federal Government, "The limitation of their supremacy, *in degree*, is not less strongly marked, than it is *in extent*. While they are supreme, within their sphere, over the constitutions and laws of the several States—the constitution of the United States, and all that appertains to it, are subordinate to the power which ordained and established it."<sup>197</sup> It seems, therefore, that there is a difference between "degree" and "extent", in regards to the Federal Government's use of power. It has been shown that the Federal Government contains a fixed amount of powers, including those that fall under the purview of necessary and proper, and when these powers are considered together they establish the degree to which the Federal Government may act. In cases regarding the degree of power held by the Federal Government the State governments are justified in taking action to ensure that the Federal Government does not attempt to enlarge its own power. The extent of power, referred to in the latter part of the above quote, however, denotes a limitation upon the overall effect of each individual, enumerated power. Thus, according to the above quote, even while the Federal Government may act within its sphere of authority, thus leaving the State govern-

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<sup>194</sup> DCG, 190

<sup>195</sup> DCG, 190

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<sup>197</sup> DCG, 182

ments without recourse, it is not the case that there is no recourse from any quarter at all. In fact, the recourse sought after by Calhoun when the Federal Government begins to abuse one of its own powers is of the highest character: the sovereign people of the several States.

The protective tariffs initiated through the American System, as mentioned, offer an explicit example of the Federal Government's abuse of its power to lay imposts, duties, taxes, and tariffs. It remains to be seen, however, what recourse can be made when this, and other similar violations, occur. To begin this inquiry, Calhoun writes, "While they are supreme, within their sphere, over the constitutions and laws of the several States—the constitution of the United States, and all that appertains to it, are subordinate to the power which ordained and established it."<sup>198</sup> It seems, therefore, remarkable to note that the State governments cannot check the Federal Government's power in regards to "extent" because they cannot cognize an abuse of power within another government's own sphere of power, and thus, Calhoun must look within his own understanding of the system of government to find the appropriate authority that may check the Federal Government when it abuses one of its own powers. Of course, the appropriate authority to do this is that authority which delegated, in trust, the power to the Federal Government in the first place, and this is, as has been explained, the people of each State. As noted, the people of each State, acting in concert with the people of every other State, entrusted to the Federal Government certain powers that they believed could be most effectively and beneficially carried out through that particular government. Because of this temporary vestment of power the people stand, in relation to the Constitution, as creator and

creature. The people, therefore, have the legitimate authority to check what they themselves created. In order to effectively "check" an abuse of power from the Federal Government, the people of each State must be vested with the power to interpose, or, more clearly, stopping the action of the Federal Government from taking place within their borders. Calhoun writes, "That our system should afford, in such extreme cases, an intermediate point between these dire alternatives, by which the Government may be brought to a pause, and thereby an interval obtained to compromise differences, or, if impracticable, be compelled to submit the question to a constitutional adjustment, through an appeal to the States themselves."<sup>199</sup> Of course, the "dire alternatives" Calhoun alludes to in the previous quote are that of consolidation or disunion, and thus Calhoun truly sees the interposition of the States as the legitimate means to preserving the union, as he understands it.

Given the above assertions, it is clear that it is incontrovertible that the States have the right to interpose, but what remains to be seen is how they are to interpose. Because the people of each State are to be considered an equal party to the constitutional compact it would seem that no uniform rule of how the people of the State should use the power of interposition could be offered. In fact, Calhoun writes, "Nor is this right more certain, than that of the States, in the same character and capacity, to decide on the mode and measure to be adopted to arrest the act."<sup>200</sup> He reaffirms this notion in his "Fort Hill Address," by stating, "How the States are to exercise this high power of interposition, which constitutes so essential a portion of their reserved rights that it cannot be delegated without an entire surrender of their sovereignty, and convert-

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<sup>198</sup> DCG, 182

<sup>199</sup> FHA, 384

<sup>200</sup> DCG, 197

ing our system from a federal into a consolidated Government, is a question that the States only are competent to determine.”<sup>201</sup> The idea that each State must decide for itself exactly how to adequately respond to a violation of the Federal Government, in regards to an abuse of one of its delegated powers, becomes increasingly important when the final outcome between the State’s interposing and the Federal Government’s reaction is discussed. For now, however, it is adequate to infer from the nature of the right of interposition that it must, in some manner, be done by the people of each State. Though Calhoun does not explicitly outline the steps to be taken by the people of each State it may be deduced that State conventions may be called to interpose on behalf of the citizens. For Calhoun, the conventions of each State were called forth to vest powers to both the State and then to the Federal Government, thus these conventions carry with them the sovereign authority held by the people to ordain and establish governments, and ought, therefore, to carry that same authority when arresting the actions of either one of those governments. Conventions, therefore, called by the people seem to be a legitimate method of recourse for the people in order to arrest an action of the Federal Government when they determine that it has abused one of its delegated powers. What is certain, however, is that the action of the people of the State must be adequate to effectively arrest the action of the government. In other words, when the people of the State, in whatever mode they choose, nullify a law of the Federal Government that law is, undeniably, void within the borders of that State.

It seems that for Calhoun, the differences between the people of the State interposing and the government of the State nullifying is concerned mainly with the

nature of the infraction by the Federal Government. Again, the State government can nullify a Federal act through any of its departments if that particular act seeks to absorb a power reserved to the State, or, what is the same thing, uses a power not given to the Federal Government by the Constitution. It cannot, however, nullify an act of the Federal Government that only abuses a rightly granted power because it was not the State governments that delegated the power in the first place. Its arresting power may only be considered a protecting power, and used only when a reserved right is placed in danger, and no power of the State governments are necessarily placed in danger when the Federal Government abuses one of its own powers. In cases of an abuse of a power by the Federal Government, however, the people of the State must, in some manner, interpose between the desired action of the Federal Government and the enforcement of that action within the boundaries of the State. Unlike the State governments, the people are, in fact, politically authorized to arrest an action of the Federal Government because they, after all, were the ones to originally delegate the powers. The people gave the Federal Government particular powers that are to be carried out in pursuit of the common interest, and when that is abused, then the people of the several States have the right to restrain their government. Calhoun summarizes this sentiment by stating, “the only means furnished by the system itself, to resist encroachments, are, the mutual negative between the two coordinate governments, where their acts come into conflict as to the extent of their respective powers; and the interposition of a State in its sovereign character, as a party to the constitutional compact, against an unconstitutional act of the federal government.”<sup>202</sup> As Calhoun asserts in many

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<sup>201</sup> FHA, 184

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<sup>202</sup> DCG, 212

places, these two modes are necessary to preserve the equilibrium that was established by the people of each State.

Although the arresting power of the State is effectual in mitigating an infraction of the Constitution it does not, for Calhoun, necessarily represent the end to the inevitable conflicts between the Federal Government and the States. Upon reaffirming that the people of the State have the right and duty to determine whether or not an act of the Federal Government is consistent with the Constitution he writes that the right of the State extends, “if decided to be inconsistent, of pronouncing it to be unauthorized by the constitution, and, therefore, null, void, and of no effect. If the constitution be a compact, and the several States, regarded in their sovereign character, be parties to it, all the rest follow as necessary consequences.”<sup>203</sup> This may, in fact, settle the question in consideration, but if the Federal Government truly believes it has a particular power, or needs to use one of its own in a particular manner, it can call for an amendment to the Constitution. Calhoun notes that because it is the Federal Government that seeks to enlarge either the degree or extent of its own powers it, and not the State nullifying or interposing, must be the one to call for the amendment to the Constitution. In other words, the burden is on the Federal Government to seek an amendment that would move the contest beyond a shadow of a doubt. Calhoun explicitly states, “[I]t is the duty of the federal government to invoke its aid, should any dangerous derangement or disorder result from the mutual negative of the two co-ordinate governments, or from the interposition of a State, in its sovereign character, to arrest one of its acts.”<sup>204</sup> According to John Calhoun, the reason that it is the duty of the Federal Government to

invoke the aid of the amending power is obvious and incontrovertible. It must be noted, however, that the reason to be given does not necessarily, or explicitly, derive its authority from the Constitution itself, but rather from the nature of the compact. It would seem illogical, according to Calhoun, to even look to the Constitution for such an express order because the Constitution itself is concerned only with shaping the sphere of authority in which the Federal Government should operate, and not the resolution of conflicts when the Federal Government oversteps that sphere.

After reiterating that the delegated powers of the Federal Government are specifically enumerated in the Constitution and the rest of the powers, those called the reserved powers, are held by the States, Calhoun writes, “Hence, in a conflict of power between the two, the presumption is in favor of the latter, and against the former; and, therefore, it is doubly bound to establish the power in controversy, through the appointed authority, before it can rightfully undertake to exercise it.”<sup>205</sup> Thus, the *prima facie* principle is that the Federal Government does not have the power it claims when contested by the people or government of a State and, therefore, it must appeal to the amendment process to claim that power. To add to this first principle, Calhoun also notes that given the nature of the system of government established, and specifically the fact that a majority of the States will always be in favor of the Federal Government’s actions, “The federal government never will make an appeal to the amending power, in case of conflict, unless compelled- nor, indeed, willingly in any case, except with a view to enlarge the powers it has usurped by construction.”<sup>206</sup> Immediately after, Calhoun notes that if the

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<sup>203</sup> DCG, 196

<sup>204</sup> DCG, 208

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<sup>205</sup> DCG, 209

<sup>206</sup> DCG, 210

duty were transferred to the States, the Federal Government would do everything within its capacity to delay the process of amending, and continue to use its usurped or abused power. From these arguments it would seem that given the inevitability of conflict between the Federal Government and States coupled with the nature of the compact compel the Federal Government to seek the amendment to the Constitution.

It is also of note that because it is the Federal Government that seeks to use a power not granted or abuse one actually granted it would become incumbent upon a minority of the States to propose an amendment to restrict a majority of States, an effect that Calhoun claims “would be a revolution in the character of the system. It would virtually destroy the relation of coordinates between the federal government and those of the several States, by rendering the negative of the latter, in case of conflict with it, of no effect.”<sup>207</sup> Thus, added to the weight of evidence in favor of demanding the Federal Government making the appeal to amend the Constitution is the illogical, and potentially dangerous, assertion that a minority of States bear the brunt of the power of the Federal Government. It seems, therefore, clear that it is the sole duty of the Federal Government to call for an amendment if a State, either its people or its government, nullifies or interposes against its actions. Again, the proposal of an amendment to the Constitution by the Federal Government would, if agreed to, alter the division of power within the system of government and enlarge the scope of power given to the Federal Government either in degree or extent; conversely, if the amendment once proposed by the Federal Government was not agreed to the nullification or interposition of the State would conclusively restrain the Federal Government, and any other action taken by the

Federal Government to further use the power in contention would simply be a heinous example of oppressive rule by one portion of the union over the other.

As alluded to, if the amendment proposed by the Federal Government was accepted and incorporated into the Constitution through the valid process outlined in the fifth article of the Constitution the conflict would be settled, but only in regards to the scope of power given to the Federal Government. Due to the fact that the arrestment of the government may be done in different modes, either by the government of a State or the people of the State, the acceptance of an amendment, which seeks to settle the conflict, also has a dual consequence. Calhoun writes, “[S]hould it succeed in obtaining the amendment, the act of the government of the separate State which caused the conflict, and operated as a negative on the act of the federal government, would, in all cases, be overruled; and the latter become operative within its limits.”<sup>208</sup> In other words, if the Federal Government offers an amendment to enlarge its powers and that amendment is accepted the nullification of the State government is now reversed by the revised authority of the Constitution. This notion for Calhoun seems unmarred by any ambiguity; if the Constitution, either in its original or revised form, gives a power to the Federal Government the State governments are bound by the authority on which they rest, the people, to respect it. Again, the State governments may only nullify a law when the Federal Government seeks to absorb one of the reserved powers, or in other words use a power not enumerated by the Constitution. If, then, by the valid procedure of the amendment process, sanctioned by the people of each State during the ratification of the Constitution, an amendment enumerates a new power the State govern-

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ment becomes politically incompetent to resist that power. It is admitted by Calhoun that the Federal Government is supreme in its sphere of authority and, thus, to enlarge its authority is to make it supreme over more portions of the powers inherent to all governments. As mentioned, the State governments can do no more than protect what has been given to them by the people, but if an amendment, obtained through the process sanctioned by the people, is obtained the State government must abide by this new division of power. This culminates, as mentioned, in the overturning of the State government's nullification and the validation of the act that originally caused the conflict.

The case is different, however, when the people of the State interpose to arrest the Federal Government from abusing a power that has been rightfully delegated to it. On this point, Calhoun writes of such an amendment that, "if it come fairly within the scope of the amending power, the State is bound to acquiesce, by the solemn obligation which it contracted, in ratifying the constitution."<sup>209</sup> Calhoun notes, in a very politically technical manner, that the State must rescind the act that made the original act of the Federal Government null and void, and this also must be done by the same authority that authorized the negative on the Federal Government.<sup>210</sup> Calhoun notes, "The reason is, that, until this is done, the act making the declaration continues binding on her citizens."<sup>211</sup> The State, therefore, as the creator of the Federal Government has the duty to ensure that the creature is both kept within its limits, by the negative interposition, and also charged with allowing the Federal Government to fulfill the ends that are authorized by the Constitution and

consistent with the nature of the compact.

Calhoun, however, also states, in regards to a successful amendment to the Constitution, that, if said amendment "transcends the limits of the amending power- be inconsistent with the character of the constitution and the ends for which it was established- or with the nature of the system- the result is different. In such case, the State is not bound to acquiesce."<sup>212</sup> It seems, therefore, that if the accepted amendment is not antithetical to the nature of the system, compact, or union the State is bound by its "solemn obligation" to abide by the new authority. It does seem, however, that this would not be the case in most instances. If a State finds itself in such a condition that it considers it absolutely necessary to use its right of interposition, even though a majority of the States are against it, it would seem that validating the abuse of power through constitutional means would not actually bring it in accordance with the justice established by the original compact, at least as far as that State would understand it. It seems much more likely that the State causing the original conflict would judge for itself that the amendment does not come within the "scope of the amending power" and is, rather, inconsistent with the Constitution. Calhoun writes, "In such case, the State is not bound to acquiesce. It may choose whether it will, or whether it will not secede from the Union. One or the other course it must take."<sup>213</sup> Because, for Calhoun, an amendment that is inconsistent with the Constitution is also inconsistent with the nature of the compact a State is not bound to remain in that altered contract. It may, as he notes, secede without any consequence from the other States that desire to remain in the union. The only consequence would be that the seceding

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<sup>209</sup> DCG, 211

<sup>210</sup> DCG, 212

<sup>211</sup> DCG, 212

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<sup>212</sup> DCG, 211

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State would now be considered a foreign nation to the remaining States of the union. Calhoun explicitly states in regards to this doctrine of secession, “That a State, as a party to the constitutional compact, has the right to secede—acting in the same capacity in which it ratified the constitution—cannot, with any show of reason, be denied by any one who regards the constitution as a compact,” and this only “if a power should be inserted by the amending power, which would radically change the character of the constitution, or the nature of the system; or if the former should fail to fulfil the ends for which it was established.”<sup>214</sup> He goes on to say, “This results, necessarily, from the nature of a compact- where the parties to it are sovereign; and, of course, have no higher authority to which to appeal.” If, as Calhoun has asserted, each State enters the compact as an equally independent sovereign it can leave that compact when it judges, again based upon its sovereignty, that the terms of the compact are being violated with no other recourse except to its own sovereign nature. It was the people of each State, absolutely independent of the other States, that brought their State into the union, and by entering into the union the people demanded certain terms be agreed to by all the other States, especially those that would eventually comprise the Federal Government. If those demands are not upheld, or worse perverted, then the union becomes dangerous to the protection of interests of particular States, and antithetical to the reason why a State joined the union in the first place. All of this culminates, according to Calhoun, in a justification for the political reality that is known as secession. It is important to note, however, that the doctrine of secession seems only justifiable when the preceding process is followed. This is to say, the Federal Government must have abused a power

delegated to it, the people of the State interposed to arrest that action, the Federal Government appeals for and obtains an amendment validating its action, and again the people of the State judging for themselves that this amendment dangerously alters the nature of the compact that they originally agreed to. The final step is, of course, secession.

## CONCLUSION

Through the five preceding chapters Calhoun’s political philosophy has been thoroughly described. Its culmination in the right of a State to secede from the union seems to be, in regards to Calhoun’s own logical formulation, a natural and incontrovertible political fact. Resting upon the foundation of earlier arguments Calhoun’s “State’s rights” doctrine may be viewed as an inherent part of nature of government established by the people of each State, both for themselves individually and for the governance of the United States. First, Calhoun asserts that man has a two-fold characteristic to his nature. He is, in one regard, a social being always to be found in a state of society. This state of society is where man develops and perfects his moral and intellectual faculties. The social state, also called community, is, therefore, a very advantageous place for man to be. Unfortunately, however, the second aspect of man’s nature, according to Calhoun, jeopardizes the sanguinity with which man ought to view this social state. Calhoun proclaims that man, by nature, is also a self-interested being, always willing to sacrifice the safety and happiness of others for his own safety and happiness; since this is a natural part of man it may be deduced that all men will act this way toward each other in the social state. Thus, the security of the social state is far from certain as man,

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<sup>214</sup> DCG, 212



unrestrained by any other force, seeks to promote his own good at the expense of others. In order to preserve the social state, where man perfects his moral and intellectual faculties, some convention of restraint needs to be enforced. Of course, that restraint is to be known as “government.”

Calhoun quickly notes that while the duty of government is to ensure that the social state is preserved it alone is not the full remedy for the problem described earlier. Unrestrained government will encounter the same problems faced by individuals in the social state. Specifically, those in control of the government will seek to advance their own interests while subverting the interests of those who are not in power. Thus, some controlling agent is needed for the government, and that controlling agent, according to Calhoun, is called “constitution.” As mentioned previously, Calhoun’s construction of a constitution “worthy of the name” derives its structure from his abstract theory of man and the social state. In particular, because man, by nature, seeks to advance his own happiness and well-being the constitution and government designed to protect that society wherein man may do this ought to facilitate such advancements. Calhoun, thus, insists that the constitution of every government operate upon the principle of the concurrent majority, or, at the very least, give to each interested party a veto over the laws. While this is true, or at least harmless, in the abstract Calhoun also seems to apply these principles to the American regime.

In his understanding of the practical effects of American politics, Calhoun seems to note that the States of the union are the primary social states that each individual finds himself in at birth, and that the union of States is the secondary social state that each State places itself in voluntarily. In order to make this claim, however, Calhoun tediously articulates the history of the

political implications of the American Revolution to prove that each State gained its sovereignty and independence from the Crown and from each other State after the issuance of the Declaration of Independence. After establishing that the individual States are sovereign and independent from each other Calhoun begins to apply the aforementioned abstract political principles. First, he seems to note that each State has an interest in advancing its own particular happiness. The particular station that each State enjoys, especially in regards to industry and economics, is what that State will seek to promote, even if it must sacrifice the interest of the other States. Thus, the social state that the States find themselves in is insecure, as is evidenced by the utter failure of the Articles of Confederation. Thus, a government is needed to preserve the social state. Calhoun then notes that some claim that the government of the United States is based upon a simply majority allowing, as Calhoun notes, one portion of the union to dominate the other portion, depending upon which portion is in power. Calhoun seems to reject this notion, insisting that, in fact, the United States does have a Constitution, worthy of the name, if only it is understood correctly.

In brief, Calhoun asserts that each State entered into the constitutional compact to ensure that it would be protected from threats and that those interests that it could not beneficially conduct could be satisfactorily accomplished through the joint agency of all the States. Thus, like man in the social state, each State agrees to join a compact so that it can advance its own interests without the fear of invasion from a foreign threat or oppression from another self-interested entity. It is important to note that since Calhoun seems to claim that the Constitution of the United States is a legitimate constitution then either the principle of the concurrent majority, or the right of each

State to veto laws, must be inherent in the system. Calhoun explicitly denies that the concurrent majority is in practice, as it is nowhere to be found in the Constitution, but insists that the right of a state to veto laws is, in fact, an incontrovertible aspect of politics in the United States. Finally, if the original compact creating the Constitution of the United States is altered Calhoun asserts that each State may choose for itself whether it will, or will not, remain a part of the union. This right of secession emanates from the original purpose of the constitutional compact, and once that purpose is altered or discarded then the contract becomes binding only upon those States that voluntarily stay within the compact. In other words, if the compact becomes disadvantageous toward the safety or happiness of a State then that State may freely exit that union.

As mentioned in the introduction to this thesis Calhoun's endeavor may fairly be deduced to be one of rearticulating the principles of the American Founding if the understanding of those principles is the same for both Calhoun and the American Founders. It is clear that Publius has an understanding of the Constitution and government of the United States, as can be seen in the *Federalist Papers*, and thus, one must look to these papers in comparison to what has been said here about Calhoun's political philosophy to determine the potential similarities or differences between the two. While no fair estimation of Calhoun's efforts can be offered, at this time at least, one may speculate that Calhoun's endeavor was not, in fact, a simple rearticulation of the American Founding. In fact, using the logical progression of Calhoun's argument one may deduce that his purpose in writing and articulating the particular doctrines that he does is drastically different than that of a majority of the Founders. If it is to be believed that the Constitution and government are, as Lincoln

asserts and the Founding seems to reinforce, to serve as a "frame of silver" around the principles of the Declaration of Independence, also referred to as "an apple of gold", then certain political principles may be understood to be the purpose of American government

In particular, the Declaration notes, "that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed." At no time, however, does Calhoun seem to advocate on the behalf of this claim for just government. In fact, in several places Calhoun seems to reject the notion that the Declaration of Independence serves as an "apple of gold."

What then could be the actual purpose of the government of the United States according to Calhoun? It has already been asserted that the government of the United States was enacted to do those things that the States could not do, or could not do as effectually, on their own and that no action of the Federal Government could harm the interest of one State in favor of the interest of another. Thus, instead of a security of rights for each citizen the Federal Government was established to protect the local interests of each State, whatever they may be. Of course, it is impossible to consider the time in which Calhoun wrote without thinking of the dreadful institution of slavery which was an established part of many of the States of the union, and of particular note in South Carolina where Calhoun was from. Though many, even today, would like to claim that "State's rights" and the Civil War were somehow fought in defense of economics or for a seemingly noble defense of limited, local self-government at the root of all of these

issues for a slaveholder is his particular interest in maintaining his slaves. It seems that the economic prosperity of the South and the idea of limited, local self-government is inherently tied to the preservation of this “peculiar interest” of the South. It seems, therefore, that through the notion of State’s rights, including nullification and secession, Calhoun has insulated the institution within the borders of each State and out of the reach of any other State or government. Despite the fact that at almost no time in the *Disquisition* or *Discourses*, or in many of his other pieces, does Calhoun mention the institution of slavery it is not unreasonable to conjecture that Calhoun’s political philosophy does not come from a sincere desire for true Constitutional interpretation or governance but rather, as Lincoln accuses Stephen Douglas, from a “covert zeal” for the preservation, and perhaps the spread, of slavery.

Perhaps it is entirely fitting that Calhoun seems to found his philosophy on the principle of self-interest since it may be that his endeavor is entirely self-serving. Though there is the possibility of a completely honest attempt at understanding the American founding and Constitution as the actual founders and framers did if one begins to interject the particular interest of slavery into Calhoun’s philosophy and view it in the context of the history in which that philosophy was formulated it is entirely reasonable to see why nullification and secession were concluded as necessary political consequences for American politics. The threat of the abolition of slavery in the territories and then in the States themselves demanded a defensive mechanism for those desiring to protect their self-interest. The entirety of Calhoun’s philosophy seems perfectly capable of defending this interest of slavery in an argument of logic, but is it necessarily the

view of American government that is most correct and just? Again, that question is answered most completely when one views the documents surrounding the conception of the American government and Constitution. It has already been shown, in a very brief summation of Lincoln and the Declaration of Independence, that the purpose of government is different for Calhoun and those who ascribe to the natural rights doctrine outlined in the Declaration of Independence, and thus the only question that remains is whether or not the new purpose of government, according to Calhoun, is just. This seems to be answered when one, again, looks to Lincoln to determine whether or not an interest like slavery ought to be defended. It would seem that if slavery were just then so too would the defense of it be, but if it is unjust then the defense of it would also be unjust. As the question of slavery goes, therefore, so too does the question of Calhoun’s political philosophy.