James Madison: On Nullification

Dec 1834

1. Altho' the Legislature of Virginia declared at a late Session almost unanimously, that S. Carolina was not supported in her doctrine of nullification by the Resolutions of 1798, it appears that those Resolutions are still appealed to as expressly or constructively favoring the doctrine
2. That the doctrine of nullification may be clearly understood, it must be taken as laid down in the Report of a Special Committee of the House of Representatives of S. C. in 1828. In that document it is asserted, that a single State has a Constitutional right, to arrest the execution of a law of the U. S. within its limits; that the arrest is to be presumed right & valid, and is to remain in force unless 3/4 of the States on a Convention, shall otherwise decide.
3. The forbidding aspect of a naked creed according to which a process instituted by a single State is to terminate in the ascendancy of a minority of 7, over a majority of 17, has led its partizans to disguise its deformity under the position that a single State may rightfully resist an unconstitutional & tyrannical law of the U. S., keeping out of view the essential distinction between a Constitutional right, and the natural & universal right of resisting intolerable oppression. But the true question is whether a single State has a constitutional right to annul or suspend the operation of a law of the U. S. within its limits, the State remaining a member of the Union, and admitting the Constitution to be in force.
4. With a like policy, the Nullifiers, passover the State of things at the date of the proceedings of Virga. and the particular doctrines and arguments to which they were opposed; without an attention to which the proceedings in this as in other cases may be insecure agst. a perverted construction.
5. It must be remarked also that the Champions of nullification, attach themselves exclusively to the 3d. Resolution, averting their attention from the 7th. Resolution which ought to be coupled with it; and from the Report also, which comments on both, & gives a full view of the object of the Legislature on the occasion.
6. Recurring to the epoch of the proceedings, the facts of the case are that Congs. had passed certain acts, bearing the name of the alien & Sedition laws, which Virga. & some of the other States, regarded as not only dangerous in their tendency, but unconstitutional in their text; and as calling for a remedial interposition of the States. It was found also that, not only was the Constitutionality of the acts vindicated by a predominant party, but that the principle was asserted at the same time, that a sanction to the acts given by the Supreme Judicial Authority of the U. S. was a bar to any interposition whatever on the part of the States, even in the form of a Legislative declaration that the acts in question were unconstitutional
7. Under these circumstances the subject was taken up by Virga. in her resolutions, and pursued at the ensuing Session of the Legislature in a Comment explaining & justifying them; her main & immediate object, evidently being, to produce a conviction every where, that the Constitution had been violated by the obnoxious Acts and to procure a concurrence and co-operation of the other States in effectuating a repeal of the Acts. She accordingly asserted and offered her proofs at great length, that the Acts were unconstitutional. She asserted moreover & offered her proofs that the States had a right in such cases, to interpose, first in their Constituent character to which the Govt. of the U. S. was responsible, and otherwise as specially provided by the Constitution; and further that the States in their capacity of parties to and creators of the Constitution, had an ulterior right to interpose, notwithstanding any decision of a Constituted authority; which, however it might be the last resort under the forms of the Constitution in

cases falling within the scope of its functions, could not preclude an interposition of the States as the parties which made the Constitution and as such possessed an Authority paramount to it.

8. In this view of the subject there is nothing which excludes a natural right in the States individually, more than in any portion of an individual State, suffering under palpable & insupportable wrongs, from seeking relief by resistance and revolution.
9. But it follows from no view of the subject, that a nullification of a law of the U. S. can as is now contended, belong rightfully to a single State, as one of the parties to the Constitution; the State not ceasing to avow its adherence to the Constitution. A plainer contradiction in terms, or a more fatal inlet of anarchy cannot be imagined
10. And what is the text in the proceedings of Virginia which this spurious doctrine of nullification claims for its parentage? It is found in the 3d. of the Resolutions of -98. which is in the following words.
11. "that in case of a deliberate, a palpable & dangerous exercise of powers not granted by the (Constitutional) **compact**, the States who are parties thereto have a right and are in duty bound to interpose for arresting the progress of the evil, & for maintaining within their respective limits, the authorities rights & liberties appertaining to them."
12. Now is there any thing here from which a single State can infer a right to arrest or annul an Act of the General Govt. which it may deem unconstitutional? So far from it, that the obvious & proper inference precludes such a right on the part of a single State; **plural number being used in every application of the term**.
13. In the next place, the course & scope of the reasoning requires that by the rightful authority to interpose in the cases & for the purpose referred to, was meant, not the authority of the States singly & separately, but their authority as the parties to the Constitution., the authority which in fact made the Constitution; the authority which being paramount to the Constitution was paramount to the Authorities constituted by it, to the Judiciary as well as the other authorities. The resolution clearly derives the asserted right of interposition for arresting the progress of usurpations by the Federal Govt. from the fact, that its powers were limited to the grant made by the States; a grant certainly not made by a single party to the grant but by the parties to the **Compact** containing the grant. The mode of their interposition, in extraordinary cases, is left by the Resolution, to the parties themselves; as the mode of interposition lies with the parties to other Constitutions, in the event of usurpations of power not remediable, under the in the forms & by the means provided by the Constitutions. If it be asked why a claim by a Single party to the Constitutional **compact**, to arrest a law, deemed by it a breach of the **Compact**, was not expressly guarded against the simple answer is sufficient that a pretension so novel, so anomalous & so anarchical, was not & could not be anticipated.
14. In the third place, the nullifying claim for a single State is palpably irreconcilable with the effect contemplated by the interposition claimed by the Resolution for the parties to the Constitution namely that of "maintaining within the respective limits of the States the authorities rights & liberties appertaining to them." Nothing can be more clear than that, these authorities of the States, in other words, the authority & laws of the U. S. must be the same in all; or that this cannot continue to be the case, if there be a right in each to annul or suspend within itself the operation of the laws & authority of the whole U. S. There cannot be different laws in different States on subjects within the **compact** without subverting its fundamental principles, and rendering it as abortive in practice as it would be incongruous in theory. A concurrence & cooperation of the States in favor of each, would have the effect of preserving the necessary uniformity in all which the Constitution so carefully & specifically provided for in cases where the rule might be in most danger of being violated. Thus the Citizens of every State are to enjoy reciprocally the privileges of the Citizens in every other State: Direct taxes are to be apportioned

on all, according to a fixed rule: Indirect taxes are to be the same in all the States: The duties on imports are to be uniform: No preference is to be given to the ports of one State over those of another. Can it be believed, that with these provisions of the Constn. illustrating its vital principles fully in view of the Legislature of Virginia, that its members, could in the Resolution quoted, intend to countenance a right in a single State to distinguish itself from its co-States, by avoiding the burdens, or restrictions borne by them; or indirectly giving the law to them.

15. These startling consequences from the nullifying doctrine have driven its partizans to the extravagant presumption, that no State would ever be so unreasonable, unjust & impolitic as to avail itself of its right in any case not so palpably just and fair as to ensure a concurrence of the others, or at least the requisite proportion of them.
16. Omitting the obvious remark that in such a case the law would never have been passed, or immediately repealed; and the surprize that such a defence of the nullifying right should come from S. C. in the teeth & at the time of her own example, the presumption of such a forbearance in each of the States, or such a pliability in all, among 20 or 30 Independent Sovereignties, must be regarded as a mockery by those who reflect for a moment on the human character, or consult the lessons of experience, not the experience only of other Countries & times, but that among ourselves; and not only under the former defective Confederation, but since the improved system took place of it. Examples of differences, persevering differences among the States on the constitutionality of Federal Acts, will readily occur to every one; and which would e'er this, have defaced and demolished the Union, had the nullifying claim of S. Carolina been indiscriminately exerciseable. In some of the States, the Carriage tax would have been collected, in others unpaid. In some the tariff on imports would be collected; in others openly resisted. In some, lighthouses wd. be established; in others denounced. In some States there might be war with a foreign power; in others peace and commerce. Finally, the appellate authority of the supreme Court of the U. S. would give effect to the Federal laws in some States, whilst in others, they would be rendered nullities by the State Judiciaries. **In a word the nullifying claims if reduced to practice, instead of being the conservative principle of the Constitution, would necessarily, and it may be said obviously, be a deadly poison.**
17. Thus from the 3d. Resoln. itself, whether regard be had to the employment of the term States in the plural number, to the argumentative use of it, or to the object namely the "maintaining the authority & rights of each, which must be the same in all as in each, it is manifest that the adequate interposition to which it relates, must be not a single, but a concurrent interposition.
18. If we pass from the 3d. to the 7th. Resolution, which, tho' it repeats and reinforces the 3d. and which is always skipped over by the nullifying commentators, the fallacy of their claim, will at once be seen. The resolution is in the following words.
19. "That the good people of the commonwealth having ever felt and continuing to feel the most sincere affection to their brethren of the other states, the truest anxiety for establishing and perpetuating the union of all, and the most scrupulous fidelity to that Constitution which is the pledge of mutual friendship and the instrument of mutual happiness, the General Assembly doth solemnly appeal to the like dispositions in the other states, in confidence that they will concur with this commonwealth in declaring, as it does hereby declare, that the acts aforesaid are unconstitutional, and that the necessary and proper measures will be taken by each for co-operating with this state in maintaining unimpaired the authorities, rights, and liberties reserved in the states respectively or to the people."
20. Here it distinctly appears as in the 3d Resoln., that the course contemplated by the Legislature, "for maintaining the authorities, rights, & liberties, reserved to the States respectively," was not a solitary or separate interposition, but a co-operation in the means necessary & proper for the purpose."

21. If a further elucidation of the view of the Legislature, could be needed, it happens to be found in its recorded proceedings. In the 7th. Resolution as originally proposed, the term "unconstitutional," was followed by null void &c
22. These added words being considered by some as giving pretext for some disorganizing misconstruction, were unanimously stricken out, or rather withdrawn by the mover of the Resolutions.
23. An attempt has been made, by ascribing to the words stricken out; a nullifying signification, to fix on the reputed draftsman of the Resolution, the character of a nullifier. Could this have been effected, it would only have vindicated the Legislature the more effectually from the imputation of favoring the doctrine of S. Carolina. The unanimous erasure of nullifying expressions, was a protest by the H of Delates, in the most emphatic form against it.
24. But let us turn to the "Report," which explained and vindicated the Resolutions; and observe the light in which it placed first the third, and then the 7th.
25. It must be recollected that this Document proceeded from Representatives chosen by the people some months after the Resolutions had been before them, with a longer period for manifesting their sentiments, before the Report was adopted; and without any evidence of disapprobation in the Constituent Body—on the contrary, it is known to have been recd. by the Republican party, a decided majority of the people, with the most entire approbation. The Report therefore must be regarded as the most authoritative, evidence of the meaning attached by the State, to the Resolutions. This consideration makes it the more extraordinary, and let it be added the more inexcusable, in those, who in their zeal to extract a particular meaning from a particular resolution, not only shut their eyes to another Resolution, but to an authentic exposition of both.
26. And what is the comment of the Report on that particular resolution? namely the 3d.
27. In the first place, it conforms to the resolution in using the term, which expresses the interposing authy of the States, in the plural number States, not in the singular number State. It is indeed impossible not to perceive that the entire current & complexion of the observations explaining & vindicating the Resolns. imply necessarily, **that by the interposition of the States, for arresting the evil of usurpation, was meant a concurring authy. not that of a single State; whilst the collective meaning of the term, gives consistency & effect to the reasoning & the object**.
28. But besides this general evidence that the Report in the invariable use of the plural term States, withheld from a single State, the right expressed in the Resoln. a still more precise and decisive inference, to the same effect, is afforded by several passages in the document.
29. Thus the Report observes "The States then being the parties to the Constl. **Compact**, and in their highest sovereign Capacity, it follows of necessity, that there can be no tribunal above their authy, to decide in the last resort, whether the **Compact** made by them be violated; and consequently that as the parties to it, they must themselves decide in the last resort such questions as may be of sufficient magnitude to require their interposition".
30. **Now apart from the palpable insufficiency of an interposition by a single State, to effect the declared object of the interposition namely, to maintain authorities & rights which must be the same in all the States, it is not true that there would be no tribunal above the authority of a State, as a single party; the aggregate authority of the parties being a tribunal above it to decide in the last resort.**
31. Again, the language of the Report is, "If the deliberate exercise of dangerous powers palpably witheld by the Constitution could not justify the parties to it, in interposing even so far as to arrest the progress of the evil, & thereby preserve the Constitun. itself as well as to provide for the safety of the parties to it, there wd. be an end to all relief from usurped power"—apply here

the interposing power to a single State, and it would not be true that there wd. be no relief from usurped power. A sure & adequate relief would exist in the interposition of the States, as the co-parties to the Constitution, with a power paramount to the Constn. itself.

32. "But, (continues the Report) it is objected that the Judicial authy. is to be regarded as the sole expositor of the Constn. in the last resort". In answering this objection the Report observes that "However true it may be that the Judicial Dept. is in all questions submitted to it by the forms of the Constn. to decide in the last resort, this resort must neessarily not be the last—in relation to the rights of the parties to the Constl. **compact** from which, the Judicial as well as the other Departments hold their delegated trusts. On any other hypothesis, the Delegation of Judicial power, wd. annul the authy. delegating it, and the concurrence of this Dept. with the others in usurped power, might subvert for ever and beyond the possible reach of any rightful remedy, the very Constitn which all were instituted to preserve"
33. Here is a direct proof, that the Authority of the Supreme Court of the U. S. was understood by the Legislature of Virginia, to have been < > to an interposition of the States agst. of the Al: & Sed; laws.
34. Who can avoid seeing the necessity of understanding by the "parties" to the Constl. **compact**, the authority, which made the **Compact** and from which all the Depts. held their delegated trusts. These trusts were certainly not delegated by a single party. By regarding the term parties, in its plural, not individual meaning, the answer to the objection is clear and satisfactory. Take the term as meaning a party, and not the parties, and there is neither truth nor argument in the answer. But further, on the hypothesis, that the rights of the parties, meant the rights of a party, it wd. not be true as affirmed by the Report, that "the Delegation of Judl. power wd. annul the authy. delegating it, and that the concurrence of this Dept with others in usurped power it might subvert for ever & beyond the reach of any rightful remedy, the very Constitution wch all were instituted to preserve". However deficient a remedial right in a single State might be to preserve the Constn agst usurped power, an ultimate and adequate remedy wd. always exist in the rights of the parties to the Constn. in whose hands the Constn. is at all times but clay in the hands of the potter; and who could apply a remedy by explaing amendg, or remakg it, as the one or the other mode might be the most proper remedy.
35. Such being the Comment of the Report on the 3d. Resolution, it fully demonstrates the meaning attached to it by Virginia when passing it, and rescues it from the nullifying misconstruction into which the Resolution has been distorted.
36. Let it next be seen, how far the comment of the Rept. on the 7th. Resoln, above inserted accords with that on the 3d. and that this may the more conveniently be scanned by every eye, The Comment is subjoined at full length.
37. Here is certainly not a shadow of countenance to the doctrine of nullification; Under every aspect, it enforces the arguments and authority agst. such an apocryphal version of the text.
38. From this view of the subject, those who will duly attend to tenor of the proceedings of Virga and to the circumstances of the period when they took place will concur in the fairness of disclaiming the inference from the undeniableness of a truth, that it could not be the truth meant to be asserted in the Resoln. The employment of the truth asserted, and the reasons for it, are too striking to be denied or misunderstood.
39. More than this, the remark is obvious, that those who resolve the nullifying claim into the natural right to resist intolerable oppression, are precluded from inferring that to be the right meant by the Resoln., since that is as little denied, as the paramountship of the authy., creating a Constn; over an authy derived from it.
40. The true question therefore is whether there be a Constitutional right in a single state to nullify a law of the U. S. We have seen the absurdity of such a claim in its simple naked and suicidal

form. Let us turn to it as modified by S. C. into a right in every State to resist within itself, the execution of a Federal law, deemed by it to be unconstitutional; and to demand a Convention of the States to decide the question of Constitutionality, the annulment of the law to continue in the mean time, and to be permanent, unless 3/4 of the states concur in over-ruling the annulment.

41. Thus, during the temporary nullification of the law, the results wd. be the same with those proceeding from an unqualified nullification; and the result of a convention might be, that 7 out of the 24 States, might make the temporary results permanent. It follows, that any State which could obtain the concurrence of six others, might abrogate any law of the U. S. whatever, constructively and give to the Constitution any shape they please, in opposition to the construction and will of the other seventeen, each of the 17 having an equal right & authority, with each of the 7. **Every feature in the Constitution, might thus be successively changed, and after a scene of unexampled confusion & distraction, what had been unanimously agreed to as a whole, would not as a whole be agreed to by a single party. The amount of this modified right of nullification is, that a single State may arrest the operation of a law of the U. S. and institute a process which is to terminate in the ascendancy of a minority over a large majority, in a Republican System, the characteristic rule of which is that the major will is the prevailing ruling will**. And this newfangled theory is attempted to be fathered on Mr. Jefferson, the apostle of Republicanism, and whose own words declare that "acquiescence in the decision of the majority is the vital principle of it." See his inaugural address.
42. Well might Virga. declare as her Legislature did by a Resolution of 183 that her Resolutions of 98-99, gave no support to the nullifying doctrine of S. C. And well may the friends of Mr. J—n disclaim any sanction to it or to any Constitutional right of nullification from his opinions. His memory is fortunately rescued from such imputations, by the very Document procured from his files and so triumphantly appealed to by the nullifying partizans of every description. In this Document, the remedial right of nullification is expressly called a natural right, and consequently not a right derived from the Const. but from abuses or usurpations, releasing the parties to it from their obligation.
43. No example of the inconsistency of party zeal can be greater, than is seen in the value allowed to Mr Jeffersons authority by the nullifying party; whilst they disregard his repeated assertions of the Federal authority, even under the articles of Confederation, to stop the Commerce of a refractory state, whilst they abhor his opinions & propositions on the subject of slavery, & overlook his declaration, that in a republick, it is a vital principle that the minority must yield to the majority--they seize on an expression of Mr. Jefferson that Nullification is the rightful remedy, as the Shiboleth of their party, & almost a sanctification of their cause. But in addition to yr. inconsistency, their zeal is guilty of the subterfuge of droping a part of the language of Mr. Jefferson, which shews his meaning to be entirely at variance with the nullifying construction. His words in the document appealed to as the infallible test of his opinions are:
44. Thus the right of nullification meant by Mr. Jefferson is the natural right, which all admit to be a remedy against insupportable oppression. **It cannot be supposed for a moment that Mr. Jefferson would not revolt at the doctrine of South Carolina, that a single state could constituonly resist a law of the Union, whilst remaining within it**, and that with the accession of a small minority of the others, overrule the will of a great majority of the whole, & constitutionly annul the law everywhere.
45. If the right of nullification meant by him had not been thus guarded agst. a perversion of it, let him be his own interpreter in his letter to Mr. Giles in Decr 1826. **in which he makes the rightful remidy of a state in an extreme case to be a separation from the Union, not a resistance to its**

authority while remaining in it. The authority of Mr. Jefferson therefore, belongs not to, but is directly opposed to, the nullifying party who have so unwarrantably availed themselves of it.

46. It is said that in several instances the authority & laws of the U. S have been successfully nullified by particular States. This may have occurred possibly in urgent cases, and in confidence that it would not be at variance with the construction of the Fedl. Govt. or in cases where, operating within the Nullifying State alone it might be connived at, as a lesser evil than a resort to force; or in cases not falling within the Fedl. jurisdiction; or finally in cases, deemed by the States, subversive of their essensial rights, and justified therefore by the natural right law of self-preservations. Be all this as it may, examples of nullification, tho' passing off witht. any immediate disturbance of the public order, are to be deplored, as weakeng. the **Compact** on Govt. and as undermining the Union. **One thing seems to be certain, that the States which have exposed themselves to the charge of nullification, have with the exception of S. C. disclaimed it as a Constitutional right,** and have moreover protested agst. it as modified by the process of S. C.
47. The conduct of Pena. and the opinions of Judges McKean & Tilgman have been particularly dwelt on by the Nullifiers. But the final acquiescence of the State in the authy of the Fedl. Judiciary transfers the authy. to the other scale, and it is believed that the opinions of the two judges, have been superseded by those of their brethren; which have since been & at the present time, are opposed to them.
48. Attempts have been made to shew that the Resols. of Va. contemplated a forcible resistance to the alien & Sedt. laws, and as evidence of it the laws relating to the armory and a Habs. corpus for the protection of members of her Legislature, have been brought into view. It happens however, as has been ascertained by the recorded dates that the first of these laws was enacted prior to the Al. & Sedn. laws. As to the last, it appears that it was a general law providing for other emergencies as well as federal arrests and its applicability never tested by any occurrence under the Al. & Sedn. laws. The law did not necessarily preclude an acquiescence in the supervising decision of the Fedl. Judy. shd. that not sustain the Habs. corps. which it might be calculated would be sustained. And all must agree, that cases might arise, of such violations of the security & privileges of representatives of the people, as would justify the state in a resort to the natural law of self-preservation. The extent of the privileges of the fedl. & State representatives of the people, agst. criminal charges by the 2 authorities reciprocally, involves delicate questions which it may be better to leave for those who are to decide on them unnecessarily to discuss them in advance. The moderate views of Va. on that critical occasion of the Al. & Sed.laws, are illustrated by the terms of the 7th. Resol. with an eye to which, the 3d. Resol; ought always to be expounded; by the unanimous erasure of the terms "null void &c from the 7th. art is it stood; and by the condemnation & imprisonment of Callender, under the law, without the slightest opposition on the part of the state. So far was the State from countenancing the nullifying doctrine, that the occasion was viewed as a proper one for exemplifying its devotion to public order, and acquiescence in laws which it deemed unconstitutional, whilst those laws were not constitutionally repealed. The language of the Govr. in a letter to a friend, will best attest the principles & feelings which dictated the course pursued on the occasion (See J. Monroe to J. M.)
49. It is sometimes asked in what mode the States could interpose in their collective character as parties to the Constiution agst. usurped power? It was not necessary for the object & reasoning of the Resolns. & Report, that the mode should be pointed out. It was sufficient to shew that the authy. to interpose existed, and was a resort beyond that of the Supreme Court of the U. S. or any authy derived from the Constn. The authy being plenary, the mode was of its own choice, and it is obvious, that if employed by the States as coparties to the & creators of the Constn. it

might either so explain the Constn. or so amend it as to provide a more satisfactory mode within the Constn. itself, for guarding it agst. constructive or other violations.

50. It remains however for the nullifying expositors to specify the right &. mode of interposition, which the Resolution meant to assign to the States individually. They can not say it was a natural right, to resist intolerable oppression; for that was a right not less admitted by all that the collective right of the States as parties to the Const: the non denial of which was urged as a proof that it could not be meant by the Resoln.
51. They can not say that the right meant was a Constl. right to resist the Constitutional authy: for that is a contradiction in terms, as much as a legal right to resist a law.
52. They can find no middle ground, between a natural and a Constitutional right, on which a right of nullifying interposition can be placed; and it is curious to observe the awkwardness of the attempt, by the most ingenious advocates (Upsher & Berrian)
53. They will not rest the claim as modified by S. C. for that that has scarce an advocate out of the State, and owes the remnant of its popularity there to the disguise under which it is now kept alive; some of the leaders of the party admitting its indefensibility in its naked shape.
54. The result is that the Nullifiers, instead of proving that the Resoln. meant nullification, prove that it was altogether without meaning.
55. It appears from this comment, that the right asserted & exercised by the Legislature, to declare an act of Congs. unconstitutional had been denied by the Defenders of the Alein & Sedition Acts; as an interference with the Judicial authority; and consequently, that the reasonings imployed by the Legislature, were called for by the doctrines and inferences drawn from that Authority, and were not an idle display of what no one denied; by the Legislature due to the occasion
56. It appears still further that the efficacious interposition contemplated by the Legislature; was a concurring and co-operating interposition of the States; not that of a single State.
57. It appears that the Legislature expressly disclaimed the idea that a declaration of a State, that a law of the U. S. was unconstitutional had the effect of annuling the law.
58. It appears that the object to be attained by the invited co-operation with Virgina, was, as expressed in the 3d. & 7th. Resol: to maintain within the several States their respective auths. rights & liberties, which could not be constitutionally different in different States, nor inconsistent with a sameness in the Authy. & laws of the U. S. in all & in each.
59. It appears that the means contemplated by the Legislature for attaining the object were measures recognized & designated by the Constitution itself.
60. Lastly it may be remarked that the concurring measures of the States, without any nullifying interposition whatever did attain the contemplated object; a triumph over the obnoxious Acts, and an apparent abandonment of them forever—
61. It has been said or insinuated that the proceedings of Virga in 98-99, had not the influence ascribed to them in bringing about that event triumph result. Whether the influence was or was not such as has been claimed for them, is a question that does not affect the meaning & intention of the proceedings. But as a question of fact, the decision may be safely left to the recollection of those who were co-temporary with the crisis and to the researches of those who were not, taking for their guide the reception given to the proceedings by the Repubn. party every where, and the pains taken by it, in nullifying republications of them in Newspapers and in other forms.
62. What the effect might have been if Virga had remained patient & silent, and still more if she had sided with S. Carolina, in favor of the Alien & Sedition acts, can be but a matter of conjecture.
63. What would have been thought of her if she had recommended the nullifying project of S. C. may be estimated, by the reception given to it under factitious gloss, and in the midst of the

peculiar excitement of which advantage has been taken by the partizans of that anomalous conceit.

64. It has been sufficiently shewn from the language of the Report as has been seen, **that the right in the States to interpose declarations & protests, agst. unconstitutional acts of Congress, had been denied**; and **that the reasoning in the Resolutions, was called for by that denial, into the triumphant tone, with which it is affirmed & reiterated, that the resolutions, must have been directed agst. what no one denied, unless they were meant to assert the right of a single State to arrest and annul Acts of the federal Legislature**, makes it proper, to adduce **that a proof of the fact that the declaratory right was denied** which if it does not silence the advocate of nullification, must render every candid ear indignant at the repetition of the untruth.
65. The proof is found in the recorded votes of a large & respectable portion of the House of Delegates, at the time of passing the Report
66. A motion [see the Journal] offered at the closing scene affirms "that protests made by the Legislature of this or any other State, agst. particular acts of Congs. as unconstitutional accompanied with invitations to other States, to join in such protests, are improper & unauthorized assumptions of power not permitted, nor intended to be permitted to the State Legislatures. And inasmuch as correspondent sentiments with the present, have been expressed by those of our Sister States, who have acted on the Resolutions of 1798, Resolved therefore that the present General Assembly convinced of the impropriety of the Resolutions of the last Assembly, deem it inexpedient further to act on the said Resolutions".
67. On this Resolution, the votes, according to the yeas & nays were 57. of the former 98 of the latter
68. Here then within the H. of Delegates itself more than 1/3 of the whole number, denied the right of the State Legislatures to proceed by declaratory acts merely agst. the constitutionality of acts of Congs and affirmed moreover that the States who had acted on the Resolns of Va. entertained the same sentiments.*
69. With this testimony under the eye it may surely be expected, that it will never again be said that such a right had never been denied, nor the pretext again resorted to that without such a denial, the nullifying doctrine alone could satisfy the true meaning of the Legislature.
70. (See the Instructions to the members of Congs. passed at the same Session, which do not squint at the nullifying idea; see also the protest of the minority in the Virga. Legislare. and the Report of the Comee. of Congs. on the proceedings of Virginia) to be examined for in Journals—
71. It has been asked whether every right has not its remedy, and what other remedy exists under the Govt. of the U. S. agst. usurpations of power, but a right in the States individually to annul and resist them.
72. The plain answer is that the remedy is the same under the Govt. of the U. S. as under all other Govts. established & organized on free principles. **The first remedy is in the checks provided among the Constituted Authorities**: that failing **the next is in the influence of the Ballot boxes**, & Hustings; that again failing, **the appeal lies to the power that made the Constitution, and can explain amend or remake it.** Should this resort also fail, and the power usurped be sustained in its oppressive exercise on a minority by a majority, the final course to be pursued by the minority, must be a subject of calculation in which the degree of oppression, the means of resistance, the consequences of its failure, and consequences of success must be the elements.
73. Does not this view of the case, equally belong to every one of the States; Virginia for example:
74. Should the Constituted Authorities of the State unite in usurping oppressive powers; Should the Constituent Body fail to arrest the progress of the evil thro' the elective process according to the forms of the Constitution; and should the authority which is above that of the Constitution, the majority of the people, inflexibly support the oppression inflicted on of the minority, nothing

would remain for the minority, but to rally to its reserved rights (for every Citizen has his reserved rights, as exemplied in Declarations prefixed to most of the State Constitutions) and to decide between acquiescence & resistance, according to the calculation above stated.

75. Those who question the analogy in this respect between the two cases, however different they may be in some other respects, must say, as some of them, with a boldness truly astonishing do say, that the Constitution of the U. S. which as such, and under that name, was presented to & accepted by those who ratified it; which has been so deemed & so called by those living under it for nearly half a Century; and as such sworn to by every Officer State as well as federal, is yet no Constitution, but a Treaty, a league, or at most a Confederacy among nations, as independent and sovereign, in relation to each other, as before the Charter which calls itself a Constitution was formed.
76. The same zealots, must again say, as they do, with a like boldness & incongruity, that the Govt. of the U. S. wch. has been so deemed & so called from its birth to the present time; which is organized in the regular forms of Representative Govts, and like them operates directly on the individuals represented; and whose laws are declared to be the supreme law of the land, with a physical force in the Govt. for executing them, is yet no Govt, but a mere agency, a power of Attorney, revocable at the will of any of the parties granting it.
77. Strange as it must appear there are some who maintain these doctrines, and hold this language; and what is stranger still, denounce those as heretics and apostates who adhere to the language & tenets of their fathers, and this is done with an exulting question whether every right has not its remedy; and what remedy can be found against federal usurpations, other than that of a right in every State to nullify & resist the federal acts at its pleasure?
78. Yes it may be safely admitted that every right has its remedy; as it must be admitted that the remedy under the Constitution lies where it has been marked out by the Constitution; and that no appeal can be consistently made from that remedy, by those who were and still profess to be parties to it, but the appeal to the parties themselves having an authority above the Constitution or to the laws of nature & of nature's God.
79. It is painful to be obliged to notice such a Sophism as that by which this inference, is assailed. Because an unconstitutional law is no law, it is alledged that it may be constitutionally disobeyed by all who think it unconstitutional. The fallacy is so obvious that it can impose on none but the most biassed or heedless observers. It makes no distinction where the distinction is obvious, and essential, between the case of a law confessedly unconstitutional, and a case turning on a doubt & a divided opinion as to the meaning of the Constitution; on a question, not whether the Constitution ought or ought not to be obeyed; but on the question what is the Constitution. And can it be seriously & deliberately maintained that every individual or every subordinate authy—or every party to a **compact**, has a right to take for granted, that its construction is the infallible one, and to act upon it, agst. the construction of all others, having an equal right to expound the instrument, nay against the regular exposition of the Constituted authorities, with the tacit sanction of the Community. Such a doctrine, must be seen at once, to be subversive of all Constitutions, all laws, and all **Compacts**. The provision made by a Constn. for its own exposition, thro' its own Authorities & forms, must prevail whilst the Constitution is left to itself by those who made it; or until cases arise which justify a resort to ultra constitutional interpositions.
80. The main pillar of Nullification is the assumption that Sovereignty is a unit, at once indivisible & unalienable; that the States therefore individually retain it as they originally held it, and consequently that no portion of it can belong to the U. S.
81. But is it not the Constn. itself, necessarily the offspring of a Sovn. Authy? What but the highest pol: Authy. a sovereign Authy: could make such a Constn.; a Constn. wch. makes a Govt. a Govt.

which makes laws; laws which operate likes the laws of all other Govts, by a penal & physical force, on the individuals subject to the laws; and finally laws declared to be the supreme law of the land; any thing in the Constn. or laws of the individual State notwithstanding.

82. And where does the Sovy. which makes such a Constn. reside? It resides not in a Single State but in the people of each of the several States, uniting with those of the others in the express & solemn **compact** which forms the Constn. To the extent of that **Compact** or Constitution, therefore, the people of the several States must be a sovereign as they are a United people.
83. In like manner, the Constns. of the States, made by the people, as separated into States, were made by a sovereign Authy, by a Sovereignty residing in each of the States, to the extent of the objects embraced by their respective Constitutions. And if the States be thus sovereign tho' shorne of so many of the essential attributes of Sovereignty, the U. States by virtue of the sovereign attributes with wch. they are endowed, may to that extent be sovereign, tho' destitute of those attributes of which the States are not shorn.
84. Such is the polit: System of the U. S de jure & de facto. And however it may be obscured by the ingenuity and technicalities of Controversial commentators, its true character will be sustained by an appeal to the Law & the testimony of the fundamental charter.
85. whereas a system formed by the people, as one Comunity, would on its dissolution, throw the people into a state.
86. A just inference from a survey of this polit: System is that it is a division and distribution of pol: power, no where else to be found a non descript to be tested and experienced by itself alone; and that it happily illustrates the diversified moderations of which the representative principle of republicanism, is susceptible with a view to the conditions, opinions, and habits of particular communities.
87. That a Sovereignty should have even been denied to the States in their United Character, may well excite wonder; when it is recollected that the Constn: which now unites them, was announced by the Convn. which formed it, as dividing Sovereignty between the Union & the States; [see letter of the Presidt. [W.] of the Convention to the old Congs.] that it was presented under that view, by Contemporary expositions recomendg. it to the ratifying Authorities [see Federtn. and other proofs] that it is proved to have been so understood by the language which has been applied to it constantly & notoriously; that this has been the doctrine & language, until a very late date even, by those who now take the lead in making a denial of it the basis of the novel notion of nullification [see the Report to the Legisl: of S. Carola, in 1828] So familiar is the Sovereignty in the U. S. to the thoughts views & opinions even of its polemic adversaries, that Mr. Rowan, in his elaborate speech in support of the indivisibility of sovereignty, relapsed before the conclusion of his argument into the idea that Sovereignty was partly in the Union, partly in the States [see his speech in the Richmond Enquirer of the] Other Champions of the Rights of the States, among them Mr. J—n might be appealed to, as bearing testimony to the Sovereignty of the U. S. If Burr had been convicted of acts defined to be treason, wch it is allowed can be committed only agst. a Sovern. Authy. who wd. then have pleaded the want of Sovy. in the U. S. Quer. if there be no Sovy. in the U. S. whether the crimes denominated treason might not be committed, without falling within the jurisdiction of the States, and consequently, with impunity!
88. What seems to be an obvious & indefensible proof that the people of the indivual States, as composing the U. States must possess a sovereignty, at least in relation to foreign Sovereigns is that in that supposition only, foreign Sovs. would be willing or expected to maintain international relations with the U. S. Let it be understood that the Govt. at Washington was not a national Govt. representing a Sovereign Authy; and that the Sovereignty resided absolutely & exclusively, in the several States, as the only sovereigns & nations in our political System, and

the diplomatic functionaries at the seat of the Fedl. Govt would be obliged to close their communications with the Secy. of State, and with new Commissions repair to Columbia in S. C. and other Seats of the State Govts. They could no longer as the Reps. of a Sovereign Authy. hold intercourse with functionary who was but an Agent of a self called Govt. which was itself but an Agent, representing no Sovereign Authority not that of the U. States as separate sovereignties nor a sovereignty in the U. S. For a like reason, the Plenipotentiaries of the U. S. at foreign Courts, would be obliged to return home unless commissioned by the individual States. With respect to foreign nations, the "Confederacy" of the States, was held de facto to be a nation, or other nations would not have held national relations with it.

89. The more the pol: System of the U. S. is fairly examd. the more necessary it will be found, to abandon the abstract and technical, modes, of expounding & designating its character; and to view it as laid down in the Charter which constitutes it, as a system, hitherto without a model; as neither a simple or consolidated Govt., nor a Govt. altogether Confederate; and therefore not be so explained as to make it either but to be explained and designated, according to the actual division and distribution of political power on the face of the instruments.
90. There is one view of the subject which ought to have its influence on those who espouse doctrines which strike at the authoritative origin and efficacious operation of the Govt. of the U. States. The Govt. of the U. S. like all Govts. free in their principles, rests on **compact**, a **compact** not between the Govt. & the parties who formed & live under it; but among the parties themselves, and the strongest of Govts. are those in which the **compact**s were most fairly formed, and most faithfully executed.
91. Now all must agree that the **Compact** in the case of the U. S was duly formed, and by a Competent Authority. It was formed, in fact by the people of the several States in their highest sovereign authority; an authority which cd. have made the **compact** a mere league, or a consolidated of all entirely into one community. Such was their authy. if such had been their will. It was their will to prefer to either the Constitutional Govt. now existing: and this being undeniably establd. by a competent and even the highest human Authy., it follows that the obligation to give it all the effect to which any Govt. could be entitled; whatever the mode of its formation, is equally undeniable. Had it been formed by the people of the U. S. as one Society, the authority could not have been more competent, than that which did form it; nor wd. a consolidation of the people of the States into one people, be different in validity, or operation if made by the agregate Authy. of the people of the States, than if made by the plenary sanction, if given concurrently as it was in their highest sovereign capacity. The Govt. whatever it be resulting from either of these processes would rest on an authy. equally competent; and be equally obligatory & operative on those over whom it was established. Nor would it be in any respect, less responsible theoretically & practically, to the Constituent body, in the one Hypothesis than in the other; or less subject in extreme cases to be resisted and overthrown. The faith pledged in the **compact**, being the vital principle of all free Govts. that is the true test by which pol: right & wrong are to be decided, and the resort to physical force justified, whether applied to the enforcement or the subversion of political power.
92. Whatever be the mode in which the essential Authy. estabd. the Constn. the structure of this, the powers of this, the rules of exposition, the means of execution, must be the same; the tendency to consoln. or dissolution the same. The question, whether We the people means the people in their aggregate capacity acting by a numerical majy. of the whole or by a majy. in each of all the States, the authy being equally valid & binding, but a particular fact the question is merely speculative. Whether the centripetal or centrifugal tendency be greatest is a problem which experience is to decide, and depends not on the mode [& effect of the powers granted.] The only distinctive circumstance, is the effect of

93. In conclusion, those who deny the possibility of a political System, with a divided Sovereignty like that of the U. S. must chuse between a Government purely consolidated, & an Association of Govts. purely federal. All Republics of the former Character, ancient or modern, have been found inefficient for order & justice within, and for security without. They have been either a prey to internal convulsions or to foreign invasions. In like manner all Confederacies, ancient or Modern, have been either dissolved by the inadequacy of their Cohesion, or as in the modern examples, continue to be monuments of the frailties of such forms. Instructed by these monitory lessons, and by the failure of an experiment of their own; an experiment wch. whilst it proved the frailty of mere Federalism, proved also the frailties of republicanism without the controul of a Federal co-organization.* The U. S. have adopted a modification of political power, which aims at such a distribution of it as might avoid as well the evils of Consolidation as the defects of federation, and obtain the advantages of both.
94. Thus far, throughout a period of nearly half a Century, the new and compound System, has been successful beyond any of the forms of Govts. ancient or modern, with which it may be compared; having as yet disclosed no defects which do not admit remedies, compatible with its vital principles and characteristic features. It becomes all therefore who are friends of a Govt. based on free principles to reflect, that by denying the possibility of a System partly federal and partly consolidated, and who would convert ours into one either wholly federal or wholly consolidated, in neither of which forms have individual rights, public order, and external safety, been all duly maintained, they aim a deadly blow at the last hope of true liberty on the face of the Earth. Its enlightened votaries, must perceive the necessity of such a modification of power as will not only divide it between the whole & parts, but provide for occurring questions as well between the whole & the parts as between the parts themselves. A political system which does not contain an effective provision, for a peaceable decision of all controversies arising within itself, would be a Govt. in name only. Such a provision is obviously essential; and it is equally obvious that it cannot be either peaceable or effective by making every part an authoritative Umpire; The final appeal in such cases, must be to the authority of the whole, not to that of the parts separately & independently. This was the view taken of the subject, whilst the Constitution was under the consideration of the people (see Federalist No.) It was this view of it which dictated the Clause declaring that the Constitution & laws of the U S. should be the supreme law of the Land, any thing in the Constn or laws of any of the States to the Contrary not with standing (see Art:) It was the same view which specially prohibited certain powers and acts to the States, among them any laws violating the obligation of contracts, and which dictated the appellate provision in the Judicial Act passed by the first Congress under the Constitution (see Act) And it may be confidently foretold, that notwithstanding the clouds which a patriotic jealousy or other causes, have at times thrown over the subject, it is the view which will be permanently taken of it, with a surprize hereafter that any other should ever have been contended for.

Draft (DLC).