

Southern New Hampshire University

Sowing the Seeds of Secession:

The Virginia and Kentucky Resolutions 1798, the Hartford Convention 1814,  
The South Carolina Nullification Crisis 1830-33.

A Capstone Project Submitted to the College of Online and Continuing Education in Partial  
Fulfillment of the Master of Arts in History

By

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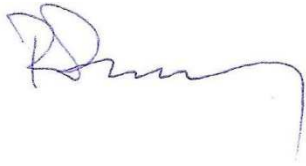
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## **Abstract**

This paper explores the development of secession as a response to federal laws in the United States. The main argument of the paper is the idea that secession could be used as a legitimate response for a state or states to unfavorable federal laws and policies was planted with the Virginia and Kentucky Resolutions and continued to develop during the Hartford Convention and South Carolina Nullification Crisis. The main primary documents used in this paper to support the thesis are the Virginia and Kentucky Resolutions, the Report of the Hartford Convention and the South Carolina Nullification document. Additional primary sources include newspaper reports, presidential speeches and annual messages to Congress, and the South Carolina Exposition and protest as well as John C. Calhoun's speech on the relationship between the federal government and the states.

The paper examines the preamble and ratification of the constitution relying on primary sources for discussion and secondary sources to provide additional information. The discussion then moves on to discussions of the Virginia and Kentucky Resolutions, the Hartford convention and South Carolina Nullification Crisis in separate chapters. The development of secession culminates in a chapter about the Civil War which explores the connection between the secession documents and the Virginia and Kentucky Resolutions. The final chapter discusses two Supreme Court decisions in which the majority opinions rule on the legality of secession. The epilogue briefly discusses present day secessionist movements in two states.

## **Dedication**

To Dr. Stephanie McConnell for believing I could write this paper long before I had written a single word.

To Dr. Stephanie Averill for continuing to encourage me long I after I had been your student.

To Peggy Lennon for your kindness and for continuing to inspire me long after I made that promise to you that I would finish school.

To my sister Roberta Bergeron for listening to me talk about every class I took and every paper I have written since I began graduate school.

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## Table of Contents

Abstract.....	iv
Acknowledgments.....	vii
Introduction.....	1
Chapter 1: The Constitution: Creating a “More Perfect” but not Perpetual Union? .....	11
Chapter 2: Sowing the Seeds of Secession: The Virginia and Kentucky Resolutions 1798 .....	21
Chapter 3: Watering the Seeds of Secession: The Hartford Convention 1814.....	33
Chapter 4: Seeds of Secession Sprouting: The South Carolina Nullification Crisis 1830-33 .....	43
Chapter 5: Abraham Lincoln and Southern Secession: Echoing the Founders .....	55
Chapter 6: The Supreme Court and Secession: The Final Answer? .....	63
Epilogue .....	70
Conclusion .....	72
Bibliography .....	77

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## Introduction

On 20 December 1860, South Carolina seceded from the Union in response to the election of Abraham Lincoln as the sixteenth President. Ten Southern states would follow South Carolina's lead and secede from the Union during the first six months of 1861. The secession led to the American Civil War. December 20, 1860 marked the first time any state severed ties with the Union, but not the first time that the idea of secession was considered by any state in the Union.

In 1798, James Madison wrote the Virginia Resolutions and Thomas Jefferson authored the Kentucky Resolutions as a response to the Alien and Sedition Acts of 1798, which created laws to enable the deportation of immigrants who had not yet become citizens as well as laws to silence critics of the President John Adams administration.<sup>1</sup> Jefferson and Madison's authorships of the Resolutions were initially unknown. Jefferson was John Adam's Vice President. The Resolutions were introduced and passed in their respective state legislatures with the hope that other state legislature would pass similar Resolutions. The primary purpose of the Virginia and Kentucky Resolutions was to put forth the idea that the states had the power to nullify federal laws. However, in the Virginia and Kentucky Resolutions, Jefferson and Madison "argued that the Constitution was merely a compact among the sovereign states by which the states had created a confederation."<sup>2</sup> The inclusion of the words "compact" and "confederation" imply that

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<sup>1</sup> Wendell Bird, "Reassessing Responses to the Virginia and Kentucky Resolutions." *Journal Of The Early Republic* 35, no. 4 (Winter 2015): 519. *Complementary Index*, EBSCOhost (accessed June 3, 2018), 519.

<sup>2</sup> Michael Les Benedict, *The Blessings of Liberty: A Concise History of the Constitution of the United States*. (Lexington: D.C. Heath Co., 1996), 102.



states that create a compact and form a confederation can leave the compact and confederation. "The conventional history of the Virginia and Kentucky Resolutions contends that they were abject failures" because other states did not support them.<sup>3</sup>

In New England, members of the Federalist Party met in Hartford Connecticut in December 1814 and January 1815<sup>4</sup> to discuss their grievances with President Madison's policies during the War of 1812. Representatives from the five New England states attended the Convention. The moderates in the Federalist Party were able prevent the radicals from calling for secession.<sup>5</sup> The idea of secession as a response to unfavorable federal government policies had been discussed. Historians have typically viewed the Hartford Convention as a failure that led to the demise of the Federalist Party.

John C. Calhoun anonymously authored the South Carolina legislature's "Exposition and Protest" as a response to the Tariffs of 1828 which were enacted to help northern manufacturers.<sup>6</sup> Calhoun's "Exposition" echoed the sentiments of the Virginia and Kentucky resolutions that the states entered into a compact and the states had the authority to determine the constitutionality of federal laws.<sup>7</sup> Calhoun put forth the idea that any state could nullify a law "within its borders" which would then "force the other states to confront the problem."<sup>8</sup> If the law was deemed

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<sup>3</sup> Bird, "Reassessing Responses," 520.

<sup>4</sup> Francis D. Cogliano, *Revolutionary America 1763-1815: A Political History*. (New York: Routledge, 2000,) 179.

<sup>5</sup> Benedict, *Blessings of Liberty* 106.

<sup>6</sup> Harry L. Watson, *Liberty and Power: The Politics of Jacksonian America*. (New York: Hill and Wang, 2006), 117.

<sup>7</sup> Watson, *Liberty and Power*.

<sup>8</sup> Watson, *Liberty and Power*.

constitutional, then "the aggrieved state could either live with this decision or secede."<sup>9</sup> Based on the fact that President Andrew Jackson did not agree with or support Calhoun's theory of nullification, the Nullification Crisis could be viewed as a failure.

What roles did the Virginia and Kentucky Resolutions, the Hartford Convention and the South Carolina Nullification Crisis play in making secession a viable response to unfavorable federal government policies? Were the Virginia and Kentucky Resolutions the beginning of secession? Was the Hartford Convention the continuing development of secession? Did the South Carolina Nullification Crisis further develop secession? These are the questions this Capstone paper will explore. The idea that secession could be used as a legitimate response for a state or states to unfavorable federal laws and policies was planted with the Virginia and Kentucky Resolutions and continued to develop during the Hartford Convention and South Carolina Nullification Crisis.

Why write a paper about the roles the Virginia and Kentucky Resolutions, the Hartford convention and the South Carolina Nullification Crisis played in making secession a viable response to unfavorable federal government policies? That is an aspect of early American history which has not been fully explored. Historians have written about the three events individually but have not attempted to connect the three events in the conception and development of secession. Additionally, historians have typically dismissed the Virginia and Kentucky Resolutions and the Hartford Convention as failures. This paper will demonstrate that far from being unsuccessful, those two events, along with the South Carolina Nullification Crisis,

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<sup>9</sup> Watson, *Liberty and Power*.

firmly established the idea that states could secede from the Union if they were unhappy with federal policies which led the secession of eleven Southern states and the Civil War.

What sets this research and findings apart from what historians have already written about the three events? The topic is the conception and development of secession in the Virginia and Kentucky Resolutions, the Hartford Convention and the South Carolina Nullification Crisis which is a topic that has not been explored by historians. William Freehling and Elisabeth Varon wrote books about disunion, a similar topic similar to mine. Freehling's book, *The Road to Disunion: Secessionists at Bay 1776-1854*, was primarily about "the tale of the various Souths' defining steps down the road to disunion."<sup>10</sup> His focus was only on the development of secession in the South, rather than tracing the development of secession through the Virginia and Kentucky resolutions, The Hartford convention and then the South Carolina Nullification crisis, which is what this paper will do. Varon's book, *Disunion!: The Coming of the American Civil War, 1789-1859*, was about disunion, not secession which Varon viewed as fundamentally different from secession. "The word 'disunion' was so jarring because it suggested that the beloved Union might be contingent—and even fatally flawed. . . . Secession referred to a specific mechanism whereby states could leave the Union, and it reflected constitutional theories on the boundaries of state and federal power."<sup>11</sup> Varon did discuss all three events in her book.

One of the obstacles in writing this paper has been the scarcity of primary source documents. While that does not make taking on this topic impossible, it does require more

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<sup>10</sup> William W. Freehling, *The Road to Disunion: Secessionists at Bay 1776-1854*. (New York: Oxford University Press, 1990), ix.

<sup>11</sup> Elisabeth R. Varon, *Disunion!: The Coming of the American Civil War, 1789-1859*. (Chapel Hill: The University of North Carolina Press, 2008), 5.

reliance on secondary sources than is ideal. Still this is a topic worth exploring. The essential primary source documents for this paper are the *Virginia and Kentucky Resolutions*, *the Report of the Hartford Convention*, and the *South Carolina Ordinance of Nullification*. Additional primary source documents for this paper are the *Alien and Sedition Acts 1798*, the *South Carolina Exposition and Protests*, John C. Calhoun's "States Rights and Nullification" and the South Carolina Ordinance of Nullification. They are the same sources used by historians who have written about any or all of the events.

*The History of the Hartford Convention: With a Review of the Policy of the United States Government Which Led to the War of 1812* is also a primary source for this paper. This book was written by Theodore Dwight who was the Secretary of the Convention. Dwight's involvement in the Convention suggests he may have written his account from a biased viewpoint. Two additional primary sources are articles about the Hartford Convention from two newspapers: *The Boston Spectator*, published in Boston Massachusetts, and *Niles Weekly Register*, published in Baltimore, Maryland. Coverage from two newspapers from different parts of the country instead of just the one newspaper from Boston is important in assuring that differing viewpoints are presented and illustrates the way in which the newspapers reported on the events taking place in Hartford.

The writings of James Madison and Thomas Jefferson are also important primary sources. Madison was involved in writing the Constitution and the decision as to how the Constitution would be ratified. He wrote the *Virginia Resolutions* in 1798. He was President during the Hartford Convention in 1814 and was alive during the South Carolina Nullification Crisis of 1830-33. Jefferson wrote the *Kentucky Resolutions* in 1798 and put forth the theory

that the thirteen states had entered into a compact. Madison's *The Debates in the Federal Convention of 1787 Which Framed the Constitution of the United States of America Vol. One and Two* and *Anti-Federalist Papers and the Constitutional Convention Debates* edited by Ralph Ketcham are invaluable primary sources for discussing the ratification of the Constitution and the preamble to the Constitution, both of which are necessary for any discussion about the conception and development of secession. Andrew Jackson's first three Annual Messages to Congress and his "Proclamation Regarding Nullification in South Carolina, December 10, 1832" provided important information as did John Quincy Adams writings.

As previously stated, there is no specific secondary scholarship about the roles the Virginia and Kentucky Resolutions, the Hartford Convention and the South Carolina Nullification Crisis played in the conception and development of secession as a viable response to unfavorable government policies. Although historians have written about three events individually, there is not an abundance of scholarship on a connection between the three events. Biographies of Thomas Jefferson, James Madison, Alexander Hamilton, Gouverneur Morris, Harrison Grey Otis, John C. Calhoun and Andrew Jackson provide supplemental information. Topical information about the founding of the, the early republic, ratification of the Constitution, the War of 1812 and Andrew Jackson's Presidency provide additional information and viewpoints. General histories of the United States constitution and general histories of the United States seldom devote more than a few sentences or paragraphs about each of the events.

Francis Cogliano, in his book *Revolutionary America 1763-1815: A Political History*, wrote that the Virginia and Kentucky Resolutions "were significant for ideological and political reasons: "[i]deologically" as the "foundation for the states' rights interpretation of the

Constitution" and politically as the "opening salvo of the 1800 election campaign."<sup>12</sup> Cogliano made no mention of the theory that the states had entered into a compact which they could leave. Gordon Wood, in his book *Empire of Liberty: A History of the Early Republic, 1789-1815*, wrote "[in the Kentucky resolutions] Jefferson described the Constitution as 'a compact' among the several states, with each state retaining the final authority to declare acts of the federal government . . . 'void'."<sup>13</sup> These examples are representative of the way in which Early American historians have written about the Virginia and Kentucky Resolutions. Constitutional historians have also written about the Virginia and Kentucky Resolutions. Alfred Kelly, Winfred Harbison and Herman Belz, in their book *The American Constitution: Its Origin and Development, Volume One*, wrote "[the] precise meaning of the compact theory as presented in the Virginia and Kentucky Resolutions was and remains problematic even today."<sup>14</sup>

James Banner Jr.'s book, *To the Hartford Convention: The Federalists and the Origins of Party Politics in Massachusetts 1789-1815*, is the only secondary source book available on the Hartford Convention. Banner 's book grew out of "an interest in the Hartford Convention" but "turned into an examination of the Massachusetts Federalist Party."<sup>15</sup> The book contains only one chapter about the Hartford Convention and only references the Virginia and Kentucky Resolutions in passing. Banner wrote "no convention member, nor for that matter many

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<sup>12</sup> Cogliano, 158.

<sup>13</sup> Gordon S. Wood, *Empire of Liberty: A History of the Early Republic, 1789-1815*. (New York: Oxford University Press, 2009), 268.

<sup>14</sup> Alfred H. Kelly, Winfred Harbison and Herman Belz, *The American Constitution: Its Origins and Development Volume One*. Seventh Ed. (New York: W.W. Norton and Company, 1991), 134-35.

<sup>15</sup> James M. Jr. Banner, *To the Hartford Convention: The Federalists and the Origins of Party Politics in Massachusetts*. (New York: Alfred A. Knopf, Inc., 1969), ix.

reflecting Federalists ever seriously contemplated disunion as an alternative in 1814."<sup>16</sup> Banner argues that Federalists did not support secession.<sup>17</sup> Donald R. Hickey, in his book *The War of 1812: A Forgotten Conflict*, also wrote one chapter about the Hartford Convention. Like Banner, Hickey viewed the Convention and its members as opposed to secession.<sup>18</sup> Hickey's assessment of the significance of the Hartford Convention was that the "New England Federalists called a meeting to let off steam and to ensure that the moderates in their party retained control."<sup>19</sup> Melvin Urofsky and Paul Finkelman, in their book *A March of Liberty: A Constitutional History of the United States Volume One: From the Founding to 1890*, wrote "[a]lthough the more extreme Federalist Essex Junto of Massachusetts, led by Timothy Pickering, wanted to secede, the moderates in control secured resolutions reminiscent of Madison's Virginia Resolutions."<sup>20</sup>

Chauncey Boucher, in his book *The Nullification Controversy in South Carolina*, wrote "the possibility that nullification might lead to secession caused many to hesitate" but "some openly broached the idea of peaceable secession."<sup>21</sup> Boucher noted that "States' Rights men appealed afresh to the Virginia and Kentucky resolutions" to justify nullification.<sup>22</sup> "They had used Madison as an authority until he denied that nullification was intended in any of the resolutions

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<sup>16</sup> Banner, *To the Hartford Convention*, 344.

<sup>17</sup> Banner, *To the Hartford Convention*.

<sup>18</sup> Donald R. Hickey, *The War of 1812: A Forgotten Conflict*. (Urbana: University of Illinois Press, 2012), 281.

<sup>19</sup> Hickey, *The War of 1812.*, 283.

<sup>20</sup> Melvin Urofsky and Paul Finkelman, *A March of Liberty: A Constitutional History of the United States Volume One: From the Founding to 1890*. (New York: Oxford university Press), 212.

<sup>21</sup> Chauncey Samuel Boucher, *The Nullification Controversy in South Carolina*. (New York: Russel and Russell, 1916, reissued 1968), 56-57.

<sup>22</sup> Boucher, *The Nullification Controversy*, 176.

he authored. They still clung to Jefferson."<sup>23</sup> William Freehling, in his book *Prelude to War: The Nullification Controversy in South Carolina 1816-1836*, wrote "[a]ny textbook on American history repeats the familiar—and uninspiring—story. . . . South Carolina nullified the tariffs of 1828 and 1832, defied President Andrew Jackson to enforce them and brought the nation to the verge of civil war."<sup>24</sup> Freehling acknowledged the influence the Virginia and Kentucky resolutions had on South Carolina's nullification crisis, but ultimately decided that "the Virginia and Kentucky resolutions were a precedent either for remonstrance or for secession, but not for South Carolina's version of nullification."<sup>25</sup> Michael Les Benedict wrote "[i]n November 1832, the people of South Carolina, led by Calhoun's political organization, acted on his ideas. They held a convention that passed an ordinance 'nullifying' the Tariff of Abominations."<sup>26</sup>

Historians have written about the Virginia and Kentucky Resolutions, the Hartford Convention and the South Carolina Nullification Crisis and reached various conclusions. But historians have paid less attention to the conception and development of secession in the Virginia and Kentucky Resolutions, the Hartford Convention and the South Carolina Nullification Crisis. The scarcity of scholarship on this topic has created a gap in Early American History. Secession did not happen in a vacuum. The Virginia and Kentucky Resolutions, the Hartford Convention and the South Carolina Nullification Crisis legitimized the secession as a viable option to

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<sup>23</sup> Boucher, *The Nullification Controversy*.

<sup>24</sup> William Freehling, *Prelude to Civil War: The Nullification Controversy in South Carolina 1816-1836*. (New York: Oxford University Press, 1966), ix.

<sup>25</sup> Freehling, 208.

<sup>26</sup> Benedict, 144-145.



unfavorable federal government policies. The legitimization led to the secession of eleven Southern States and the Civil War.

The paper will be divided into six chapters followed by the conclusion. Chapter One discusses the reasons for the decision as to how the Constitution would be ratified, the change in the wording of the preamble and its significance as well as the Founders' views on secession. Chapter two begins with a brief discussion about the presidential election of 1796. There will also be a discussion about Alien and Sedition Acts 1798 which were the reason for Jefferson and Madison authoring the Virginia and Kentucky Resolutions in the same year and then a discussion of the Virginia and Kentucky Resolutions and the responses of the states. Chapter Three begins with a brief discussion about the War of 1812 and the events which led to the Hartford Convention which began in December 1814 and ended in January 1815. The discussion then moves to the Hartford Convention and the reactions to the Convention, including those by Thomas Jefferson and James Madison. A brief discussion of the political ramifications of the Hartford Convention for the Federalist Party ends the chapter. Chapter Four begins with a brief discussion of the Tariffs of Abominations in 1828 which led to the South Carolina Nullification Crisis and then a discussion of the South Carolina Nullification Crisis. John C Calhoun's role in the nullification crisis is also discussed. Chapter Five will discuss Abraham Lincoln response to the secession of the Southern states. Chapter Six will examine the Supreme Court decision in and whether or not the question of secession has been settled. The Conclusion will then present a summary of the evidence presented to demonstrate that the concept of secession began with the Virginia and Kentucky Resolutions in 1798, and continued to develop during the Hartford Convention of 1814 and the South Carolina Nullification Crisis of 1830-33.

## Chapter 1: The Constitution: Creating a “More Perfect” but not Perpetual Union?

Were the framers creating a permanent Union as Abraham Lincoln believed or were they creating a confederation as Thomas Jefferson stated? Is there a definitive answer? In "The Concept of a Perpetual Union," Kenneth Stampp noted that, unlike the Article of Confederation, the Constitution said nothing about the Union being perpetual.<sup>1</sup>

If, as Stampp noted, there is nothing in the Constitution which specifically defines the Union as permanent, is there a way to determine the answer? Yes, there is and the answer is found in the decision as to how the new Constitution would be ratified and the preamble to the Constitution. The Constitution was ratified by special conventions of delegates chosen by the citizens of each state, not by state legislatures. The state legislatures were responsible for calling for the conventions, but had no power over ratification.<sup>2</sup> The driving force for ratification by special conventions rather than state legislatures was James Madison.<sup>3</sup>

In a letter written to Thomas Jefferson 19 March 1797, three months before the constitutional convention in Philadelphia, James Madison wrote “I think myself it will be expedient in the first place to lay the formation of the new system in such a ratification by the people of the several states.”<sup>4</sup> Madison’s reason for wanting ratification by the citizens was that doing so “would render it [the new government] clearly paramount to their Legislative

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<sup>1</sup> Kenneth M., Stampp. "The Concept of a Perpetual Union." *The Journal Of American History* no. 1 (1978): 5. *JSTOR Journals*, EBSCOhost (accessed July 13, 2018).

<sup>2</sup> Michael J. Klarman, *The Framers’ Coup: The Making of the United States Constitution*. (New York: Oxford University Press, 2016), 414.

<sup>3</sup> Klarman, *The Framers’ Coup*, 415.

<sup>4</sup> James Madison, *Writings*. Jack N. Rakove, Ed. (New York: Literary Classics of the United States, Inc., 1999), 64.

authorities.”<sup>5</sup> In a letter to George Washington 16 April 1787, Madison wrote “[t]o give the new System its proper validity and energy, a ratification must be obtained from the people, and not merely from the ordinary authority of the Legislatures.”<sup>6</sup> Prior to attending the convention in Philadelphia, Madison had already determined the importance of the citizens, not the state legislatures, approving the constitution and new federal government.

During the constitutional convention in Philadelphia, Madison “suggested that” if “the articles of Union were to be considered as a Treaty only of a particular sort, among the Governments of Independent States, the doctrine might be set up that a breach of any one article, by any” state “absolved” all states “from the whole obligation.”<sup>7</sup> Madison did not believe an agreement among states was the best way to ratify the Constitution. In a speech given 25 July 1787 in the convention, he said “it would be a novel and dangerous doctrine that a legislature could change the constitution under which it held its existence.”<sup>8</sup> In this observation, Madison suggested that the states could not exist without the Constitution and the federal government it created. That reasoning could be used to argue that the states had not created the Union, rather the Constitution had created the Union and the states which comprised it. In objecting to the “New Jersey Plan”, Madison stated that the Constitution’s “ratification was not to be by the people at large, but by the *legislatures*.”<sup>9</sup> Ratification by the legislatures would mean, according

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<sup>5</sup> Madison, *Writings*, 64.

<sup>6</sup> Madison, *Writings*, 83.

<sup>7</sup> James Madison, *The Debates in the Federal Convention of 1787 Which Framed the Constitution of the United States of America Vol. One and Two*. Gaillard Hunt and James Brown Scott, Eds. (New York: Prometheus, 2007), 59.

<sup>8</sup> Madison, *Writings*, 129.

<sup>9</sup> Madison, *Writings*, 104.

to Madison, that congressional acts would not be “legally paramount to the Acts of the States.”<sup>10</sup> Madison thought congressional Acts must superior to state legislative acts.

Madison “thought it indispensable that the new constitution should be ratified . . . by the supreme authority of the people themselves.”<sup>11</sup> Jack Rakove, in *Original Meanings: Politics and Ideas in the Making of the Constitution*, wrote “[a] federal constitution ratified through overt expression of popular sovereignty would rest on stronger foundations than all those state constitutions that had not been framed by special conventions or subsequently approved by the citizenry.”<sup>12</sup> George Mason “considered a reference of the plan to the authority of the people as one of the most important and essential of the Resolutions.”<sup>13</sup> Mason did not believe the state legislatures had the authority to ratify the Constitution.<sup>14</sup> Madison did not describe the ratification of the Constitution as an agreement among states to enter into a confederation. Rather Madison believed “ratification must of necessity be obtained from the people.”<sup>15</sup> Madison “considered the difference between a system founded on the legislatures only, and one founded on the people, to be the true difference between a *league* or *treaty*, and a *Constitution*.”<sup>16</sup>

In her book, *A Brilliant Solution: Inventing the American Constitution*, Carol Berkin wrote “[i]n his revision [of the preamble Gouverneur] Morris captured perfectly the nationalistic

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<sup>10</sup> Madison, *Writings*, 104.

<sup>11</sup> Madison, *The Debates in the Federal Convention of 1787*, 59.

<sup>12</sup> Jack Rakove, *Original Meanings: Politics and Ideas in the Making of the Constitution*. (New York: Alfred A. Knopf Inc., 1996), 101.

<sup>13</sup> Madison, *The Debates in the Federal Convention of 1787*, 305.

<sup>14</sup> Madison, *The Debates in the Federal Convention of 1787*, 305.

<sup>15</sup> Madison, *The Debates in the Federal Convention of 1787*, 308.

<sup>16</sup> Madison, *The Debates in the Federal Convention of 1787*, 308.

vision of a supreme central government capable of . . . overcoming the petty divisions among its competitive states.”<sup>17</sup> Berkin added that “where once the preamble did no more than declare that the Constitution was . . . established by the people of the thirteen states”, now “[t]he people of the United States . . . established this government.”<sup>18</sup>

Morris’s biographer, James J. Kirschke, stated that the revision in the preamble was due to the decision that the Constitution would go into effect once nine states had ratified it.<sup>19</sup>

Another Morris biographer, Richard Brookhiser, in *Gentleman Revolutionary: Gouverneur Morris The Rake Who Wrote the Constitution* which was published two years before Kirschke’s book, wrote “Morris’s Preamble names ‘the people’, rather than the thirteen states, as the source of legitimacy and power.” He added that “[l]ater historians dispute whether he [Morris] intended anything so meaningful.”<sup>20</sup> Still as Brookhiser noted “Gouverneur Morris changed ‘We the people of the states’ into ‘We the people’ he created a phrase that would ring through American history, defining every American as part of a single whole.”<sup>21</sup>

Alexander Hamilton began “Federalist Nine” with the words: “[a] firm Union will be of the utmost moment to the peace and liberty of the States as a barrier against domestic faction and

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<sup>17</sup> Carol Berkin, *A Brilliant Solution: Inventing the American Constitution*. (Boston: Mariner Books, 2002), 150.

<sup>18</sup> Berkin, *A Brilliant Solution*, 151.

<sup>19</sup> James J. Kirschke, *Gouverneur Morris: Author, Statesman, and Man of the World*. (New York: Thomas Dunne Books, 2005), 170.

<sup>20</sup> Richard Brookhiser, *Gentleman Revolutionary: Gouverneur Morris The Rake Who Wrote the Constitution*. (New York: Free Press, 2003), 91.

<sup>21</sup> Brookhiser, *Gouverneur Morris*, 91.

insurrection.”<sup>22</sup> James Madison in “Federalist Ten”, wrote “the same advantage that a republic has over a democracy in controlling the effects of faction is enjoyed by a large over a small republic—is enjoyed by the Union over the States composing it.”<sup>23</sup> Both men believed that the Union and the federal government were superior to the individual states and crucial to the survival of the country. Neither one discussed the possibility of a state or states leaving the Union.

In “Federalist Twenty-Two,” published 14 December 1787, Hamilton continued a discussion he had begun in “Federalist Twenty-One” which addressed the problems with the Articles of Confederation. He stated that “[i]t has not a little contributed to the infirmities of the existing federal system that it was never ratified by the PEOPLE. . . . The fabric of American empire ought to rest on the solid basis of THE CONSENT OF THE PEOPLE.”<sup>24</sup> In “The Address and Reasons for Dissent by the Minority of the Convention of Pennsylvania to Their Constituents” issued on 18 December 1787, four days after “Federalist Twenty-Two” had been published, those who did not want to ratify the Constitution provided their reasons. Among those reasons was “[t]he preamble begins with 'We the people' which is the style of a compact between individuals . . . not a confederation of states.”<sup>25</sup>

Pauline Maier, in *Ratification: The People Debate the Constitution, 1787-1788*, added additional information writing “[Robert] Whitehill also objected to the Constitution’s opening

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<sup>22</sup> James Madison, Alexander Hamilton and John Jay, *The Federalist Papers*. Isaac Kramnich, Ed. (New York: Penguin Books, 1987), 118.

<sup>23</sup> Madison, *The Federalist Papers*, 128.

<sup>24</sup> Madison, *The Federalist Papers*, 183-84.

<sup>25</sup> Ketcham, *The Anti-Federalist Papers*, 254.

words, ‘We the People’, which he said showed that the Constitution ‘destroyed the old foundation of the Union’—a confederation of states—and built on its ruins ‘a new unwieldy system of consolidated empire.’”<sup>26</sup> In “Federalist Thirty-Nine”, Madison addressed the objections to ratification by the people by explaining that “[i]t is to be the assent and ratification of the several States, derived from the supreme authority in each State, the authority of the people themselves. . . . Each State, in ratifying the Constitution, is considered as a sovereign body, independent of all others, and only to be bound by its own voluntary act.”<sup>27</sup> Madison seems to be saying that the states are ratifying the Constitution, not the people. But in “Federalist Forty-Three” Madison wrote “[t]he express authority of the people alone could give due validity to the Constitution.”<sup>28</sup>

Samuel Adams of Massachusetts, after reading a copy of the Constitution sent to him by Richard Henry Lee, “began his reply to Lee with a devastating comment on the preamble to the Constitution: . . . ‘I meet with a National Government, instead of a federal Union of Sovereign States.’”<sup>29</sup> The Virginia ratification convention met in June 1798.<sup>30</sup> Patrick Henry asked “what right had [the delegates in Philadelphia] to found its [the Constitution’s] authority on ‘We the People’ instead of ‘We the States?’”<sup>31</sup> Henry asked also asked “[h]ave they said, we the States?”

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<sup>26</sup> Pauline Maier, *Ratification: The People debate the Constitution, 1787-1788*. (New York, Simon and Schuster, 2010), 107.

<sup>27</sup> Madison, *The Federalist Papers*, 257.

<sup>28</sup> Madison, *The Federalist Papers*, 285.

<sup>29</sup> Maier, *Ratification*, 163.

<sup>30</sup> Maier, *Ratification*, 255.

<sup>31</sup> Maier, *Ratification*, 260.

Have they made a proposal of a compact between States?"<sup>32</sup> Answering his own questions, he said "[i]f they had, this would be a confederation. It is otherwise most clearly a consolidated government."<sup>33</sup> "Brutus", in an essay written 7 February 1788, wrote "this constitution, if it is ratified, will not be a compact entered into by any states, in their corporate capacities, but an agreement of the people of the United States, as one great body politic."<sup>34</sup> "Brutus" argued that the "more perfect union" being formed in the preamble was not a "union of states or bodies corporate. . . . But it is a union of the people of the United States."<sup>35</sup> "Brutus" believed that ratification by the citizens would ultimately lead to the elimination of state governments.

Historians have disagreed as to whether the preamble of the Constitution as written by Gouverneur Morris was a change necessitated because the required number of states for ratification was nine and not thirteen; or an acknowledgement that the people, not the states, had accepted the Constitution and the government it created. The anti-federalists which included Samuel Adams, Patrick Henry, the minority in the Pennsylvania ratification convention and "Brutus" clearly stated and believed that the citizens of the United States, not the individual states through their state legislatures or governors, ratified the Constitution.

The Constitution was ratified despite the protests of the anti-federalists and the reluctance of some of the states to do so. Massachusetts ratified the Constitution 6 February 1788 and New Hampshire ratified the Constitution 21 June 1788. Both ratification documents used the same

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<sup>32</sup> Ralph Ketcham, Ed, *The Anti-Federalist Papers and the Constitutional Convention Debates*. (New York: Signet Classics, 1986), 199.

<sup>33</sup> Ketcham, *The Anti-Federalist Papers*, 199.

<sup>34</sup> Ketcham, *The Anti-Federalist Papers*, 317.

<sup>35</sup> Ketcham, *The Anti-Federalist Papers*, 318.



word to express their gratitude to “the goodness of the Supreme Ruler of the Universe in affording the People of the United States . . . an opportunity deliberately & peaceably without fraud or surprize of entering into an explicit & solemn Compact with each other by assenting to & ratifying a New Constitution.”<sup>36</sup>

When Virginia ratified the Constitution 26 June 1788, it did so by “declar[ing] and mak[ing] known 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.”<sup>37</sup> New York ratified the Constitution 26 July 1788 and Rhode Island, the last to ratify the Constitution 29 May 1790, used the same words stating “the powers of government may be reassumed by the people, whensoever it shall become necessary to their happiness.”<sup>38</sup> North Carolina ratified the Constitution 21 November 1789 and stated “all power is naturally vested in, and consequently derived from the people.”<sup>39</sup>

Massachusetts and New Hampshire used the word compact to describe the agreement between the citizens of the United States. New York, North Carolina, Rhode Island and Virginia expressed the belief that power belonged to the people. Connecticut, Delaware, Georgia,

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<sup>36</sup> Massachusetts Ratification Convention. “Ratification by the State of Massachusetts; February 6, 1788. *The Avalon Project*. [http://avalon.law.yale.edu/18th\\_century/ratma.asp](http://avalon.law.yale.edu/18th_century/ratma.asp) (accessed August 29, 2018). New Hampshire Ratification Convention. “Ratification by the State of New Hampshire; June 21, 1788.” *The Avalon Project*. [http://avalon.law.yale.edu/18th\\_century/ratnh.asp](http://avalon.law.yale.edu/18th_century/ratnh.asp) (accessed August 29, 2018).

<sup>37</sup> Virginia Ratification Convention, “Ratification by the State of Virginia; June 26, 1788.” *The Avalon Project*. [http://avalon.law.yale.edu/18th\\_century/ratva.asp](http://avalon.law.yale.edu/18th_century/ratva.asp) (accessed August 27, 2018).

<sup>38</sup> New York Ratification Convention. “Ratification by the State of New York; July 26, 1788. *The Avalon Project*. [http://avalon.law.yale.edu/18th\\_century/ratny.asp](http://avalon.law.yale.edu/18th_century/ratny.asp) (accessed August 29, 2018). Rhode Island and Providence Plantations Ratification Convention. “Ratification by the State of Rhode Island; May 29, 1790. *The Avalon Project*. [http://avalon.law.yale.edu/18th\\_century/ratri.asp](http://avalon.law.yale.edu/18th_century/ratri.asp) (accessed August 29, 2018).

<sup>39</sup> North Carolina Ratification Convention. “Ratification by the State of North Carolina; November 21, 1789. *The Avalon Project*. [http://avalon.law.yale.edu/18th\\_century/ratnc.asp](http://avalon.law.yale.edu/18th_century/ratnc.asp) (accessed August 29, 2018).

Maryland, New Jersey, Pennsylvania and South Carolina did not mention either a compact or power deriving from the people, but simply ratified on behalf of the people of their respective states. No state, in their ratifying documents, expressed the belief that their state was entering into a compact with the other states.

George Washington was unanimously elected the first President of the United State and John Adams was elected vice President. Washington and Adams served two terms. In his “Farewell Address” which was delivered two years before the he left office, Washington spoke to the citizens of his country. He advised them that he would not seek a third term as President. He wished for his fellow citizens “that your union and brotherly affection may be perpetual; that the free Constitution, which is the work of your hands, may be sacredly maintained.”<sup>40</sup> He stated that “[t]he unity of government which constitutes you one people is also now dear to you.”<sup>41</sup>

But Washington cautioned “that, from different causes and from different quarters, much pains will be taken, many artifices employed to weaken in your minds the conviction of this truth.”<sup>42</sup> Washington then discussed the factionalism and sectionalism already developing between the Northern and Southern states. He knew that rival political parties were forming and worried that those parties could hurt the Union. Washington cautioned that “[t]o the efficacy and permanency of your Union, a government for the whole is indispensable. No alliance, however strict, between the parts can be an adequate substitute.”<sup>43</sup> Washington believed that the only

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<sup>40</sup> George Washington, Writings. John Rhodehamel, Ed. (New York: Literary Classics of the United States of America, Inc., 1997), 963.

<sup>41</sup> Washington, “Farewell Address,” 964.

<sup>42</sup> Washington, “Farewell Address, 964.”

ones who could change the Constitution were the citizens of the United States and he advocated making any changes to Constitution only through the amendment process. He warned his fellow citizens that they must “discountenance irregular oppositions to [the federal government’s] acknowledged authority.”<sup>44</sup>

The Constitution had been ratified, not by state legislatures, but the citizens of the United States. Among the reasons anti-federalists objected to the Constitution was that there was nothing in the Constitution which said the states had agreed to it. Hamilton and Madison, in defending the Constitution and form of government it created, argued that a strong Union was vital to the survival of the country. Madison advocated for ratifying conventions comprised of delegates chosen by citizens to ensure that state legislatures did not attempt to exert their powers to demand changes to the Constitution. States either acknowledged a compact between all citizens of the United States, the grant of power to the federal government came from the citizens, or were silent, but none described a confederation of states.

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<sup>43</sup> Washington, “Farewell Address, 967.”

<sup>44</sup> Washington, “Farewell Address, 969.”

## Chapter 2: Sowing the Seeds of Secession: The Virginia and Kentucky Resolutions 1798

George Washington's decision not to seek a third term set the stage for an election between Jon Adams, who served as Washington's Vice President for eight years, and Thomas Jefferson, who had served as Washington's first Secretary of State. John Adams won the most electoral votes. Thomas Jefferson received the second highest number of votes. The way the Constitution had initially set up the presidential and vice-presidential elections, the candidate who received the most votes became president and the candidate who received the second highest number of votes became vice-president. The unforeseen problem in such a system was that two men who belonged to different political parties with differing political ideologies could become president and vice-president which is exactly what happened in 1796. John Adams was a member of the Federalist Party and Thomas Jefferson was a member of the Democratic-Republican Party.

The Federalist Party controlled congress and passed the Alien and Sedition Acts which were signed into law by President John Adams<sup>1</sup> The Alien Acts extended the requirements and lengthened the naturalization process. The Alien Acts also prohibited citizens from countries at war with the United States from becoming citizens.<sup>2</sup> The Alien Acts gave the President the authority to detain foreign-born citizens who were deemed a threat as well as those who were citizens any country at war with the United States. One of the objections to the Alien Acts was

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<sup>1</sup> Alfred H. Kelly, Winfred A. Harbison, and Herman Belz, *The American Constitution: Its origins and Development* Volume 1. 7<sup>th</sup> Ed (New York: W.W. Norton and Company, 1991), 130-31.

<sup>2</sup> Fifth Congress, Session Two. Chap. LVIII. "An Act concerning Aliens" 1798. "A Century of Lawmaking for a New Nation: U.S. Congressional Records and Debates, 1774-1875." (Library of Congress, Washington D.C. accessed July 23, 2018), 567. <https://memory.loc.gov/cgi-bin/ampage?collId=llsl&fileName=001/llsl001.db&recNum=690>

that the acts “were designed to deport or disenfranchise foreign-born residents . . . who were disposed to support the Republican Party”<sup>3</sup> which was Thomas Jefferson’s political party.

Sedition Act drew more outrage than the Alien Acts. Section one of the Act stated “if any person shall unlawfully combine or conspire together, with the intent to oppose any measure or measures of the government of the United States, which are or shall be directed by proper authority . . . he or they shall be guilty of a high misdemeanor.”<sup>4</sup> This stood in direct opposition to the First Amendment “right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”<sup>5</sup> That was not the only issue with the new legislation.

Section two of the Act was an attack on the First Amendment right of free speech and a free press. “If any person shall write, print, utter or publish, or shall cause or procure to be written, printed, uttered or published “anything which would “excite against” the President or either chamber of Congress “the hatred of the good people of the United States, or to stir up sedition within the United States,”<sup>6</sup> that person would be guilty of a high misdemeanor. The Sedition Act was set to expire on 3 March 1801.

The political party in control Congress and the White House attempted to silence critics of the party’s congressional members and the President of the United States by passing legislation which would make any criticism illegal. The Sedition Act not only threatened free speech and a free press but also posed a threat to Thomas Jefferson, himself. “In 1798

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<sup>3</sup> Joseph J. Ellis, *Founding Brothers: The Revolutionary Generation*. (New York: Vintage Books, 2000), 190.

<sup>4</sup> Fifth Congress, Chap. LXXIV “An Act in addition to the Act, entitled ‘An Act for the punishment of crimes against the United States,’” 596.

<sup>5</sup> Jack Rakove, *The Annotated U.S. Constitution and declaration of Independence*. (Cambridge: Belknap Press, 2009), 223.

<sup>6</sup> Fifth Congress, Chap. LXXIV, 596.

[Jefferson] commissioned James Callender, a notorious scandalmonger . . . , to write a libelous attack on Adams.”<sup>7</sup> When Jefferson’s role was discovered, he denied having any involvement and feigned surprise when “Callender published Jefferson’s incriminating letters.”<sup>8</sup> Jefferson had put himself in a precarious position. He could have been charged with violating the Sedition Act. However, he was not charged, arrested or prosecuted.

Ron Chernow, in *Alexander Hamilton*, noted that “[m]any Republicans thought it best to sit back”<sup>9</sup> rather than take action of the Alien and Sedition Acts, but “Jefferson and Madison were not that patient.”<sup>10</sup> In a letter to James Madison on 7 June 1798, Jefferson wrote “[t]hey have brought into the lower house a sedition bill, which among other enormities, undertakes to make printing certain matters criminal, tho’ one of the amendments to the Constitution has so expressly taken religion, printing presses etc out of their coercion.”<sup>11</sup> Jefferson and Madison decided “to spend the Virginia summer drafting countermeasures to the clearly unconstitutional Alien and Sedition Acts.”<sup>12</sup> The manner in which they chose to answer sowed the seeds of secession.

Jefferson’s response to the Alien and Sedition Acts was to write the “Kentucky Resolutions.” His authorship of the resolutions remained anonymous for several years. The first of the nine resolutions in the draft of the “Kentucky Resolutions” states “[t]hat the several States

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<sup>7</sup> Ellis, *Founding Brothers*, 198.

<sup>8</sup> Ellis, *Founding Brothers*, 198.

<sup>9</sup> Ron Chernow, *Alexander Hamilton*. (New York: Penguin Press, 2004), 573.

<sup>10</sup> Chernow, *Alexander Hamilton*, 573.

<sup>11</sup> James Morton Smith, Ed., *The Republic of Letters: The Correspondence Between Thomas Jefferson and James Madison 1776-1826* Volume Two 1790-1804. (W.W. Norton and Company, 1995), 1056.

<sup>12</sup> Andrew Burstein and Nancy Isenberg, *Madison and Jefferson*. (New York: Random house, 2010), 337.

composing the United States of America, are not united on the principle of unlimited submission to their General Government, but that, by a compact under the style and title of a Constitution.”<sup>13</sup>

This was Jefferson’s famous or infamous compact theory of states. Such a compact between the states is not mentioned in the Constitution. The preamble says “We the people of the United States”, not we the people of the individual states. As was discussed in Chapter One, Samuel Adams, Patrick Henry, the minority in the Pennsylvania ratification convention and “Brutus” did not believe the Constitution was an agreement among the individual states. They had objected to first seven words of the preamble precisely because the individual states were not the responsible parties agreeing to and accepting the document or allocating powers.

Having put forth the idea that the Constitution was a compact, Jefferson added that “each party has an equal right to judge for itself, as well as of the mode and measure of redress.”<sup>14</sup>

This was the introduction of the theory of nullification. If any state or states did not like a law enacted by the federal government, then the state or states had the right to decided what to do about the law. Jefferson made this assertion despite there being nothing in the Constitution which states or even suggests that any state or states have the authority to determine which federal laws are acceptable and which are not acceptable. Article VI Section Two states that “[t]his Constitution and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the Supreme Law of the Land.”<sup>15</sup>

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<sup>13</sup> Thomas Jefferson, *Writings: Autobiography, Notes of the State of Virginia, Public and Private papers, Addresses, Letters*, Merrill D. Peterson, Ed. (New York: Literary Classics of the United States, Inc., 1984), 449.

<sup>14</sup> Jefferson, *Writings*, 449.

<sup>15</sup> Rakove, *Annotated U.S. Constitution*, 213.

In the second resolution, Jefferson wrote that the Constitution did not authorize Congress to pass the Sedition Act because Constitution did not authorize Congress to pass laws regarding sedition and/or libel. Therefore, Jefferson declared the Act “altogether void, and of no force.”<sup>16</sup> Jefferson believed that only the states could pass those laws and only within their own states.<sup>17</sup> In the third resolution, Jefferson cited the First Amendment freedom of the press to argue that “libels, falsehood, and defamation . . . are withheld from the cognizance of federal tribunals.” Jefferson wrote the Alien and Sedition Act “which does abridge the freedom of the press, is not law, but is altogether void, and of no force.”<sup>18</sup> In resolutions four, five and six, Jefferson used the same logic to assert that the Alien Acts were also void.<sup>19</sup>

Madison’s response to the Alien and Sedition Acts was to write the “Virginia Resolutions Against the Alien and Sedition Acts.” Like Jefferson, Madison’s authorship remained anonymous for several years. He began by declaring “that the General Assembly of Virginia doth unequivocally express a firm resolution to maintain and defend the Constitution of the United States” and “most solemnly declares a warm attachment to the Union of the States.”<sup>20</sup> Madison took a different tone in his opening that Jefferson had. But the change in tone did not mark a change in the message. Like Jefferson, Madison promoted the compact theory of states,

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<sup>16</sup> Jefferson, *Writings*, 450.

<sup>17</sup> Jefferson, *Writings*, 450.

<sup>18</sup> Jefferson, *Writings*, 451.

<sup>19</sup> Jefferson, *Writings*, 451-52.

<sup>20</sup> Madison, *Writings*, 589.



writing "this Assembly doth explicitly and peremptorily declare, that it views the powers of the federal government, as resulting from the compact to which the states are parties."<sup>21</sup>

Eleven years after participating in the drafting of the Constitution, Madison agreed with Jefferson that the individual states had entered into a compact. But that was not what Madison thought during the Constitutional Convention. As Jack Rakove explained in *James Madison and the Creation of the American Republic*, Madison believed that "a constitution directly authorized by the people could be said to express supreme law in a way that would not be the case if approval came only from the legislatures. Under a well known rule of statutory interpretation, an action by one legislature could not bind its successors."<sup>22</sup> If the individual state legislatures accepted the Constitution, subsequent state legislatures could undo the ratification. Therefore having the citizens ratify the Constitution bound the states to the actions of their citizens. The citizens of the United States, not the state legislatures or the citizens of the individual states, had accepted the Constitution and the federal government it created.

Madison asserted that "in case of a deliberate, palpable and dangerous exercise of powers . . . the states who are parties thereto have the right, and are in duty bound, to interpose for arresting the progress of the evil."<sup>23</sup> While he did not use the word "void" as Jefferson had, the meaning was clear. Madison agreed with Jefferson that a state or states had the authority to nullify federal laws with which the state or states disagreed. Madison, in the resolutions, made an "appeal to the like dispositions of the other States in, in confidence that they will concur with

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<sup>21</sup> Madison, *Writings*, 589.

<sup>22</sup> Jack N. Rakove, *James Madison and the Creation of the American Republic*. Third ed. (New York: Pearson Longman, 2007), 82.

<sup>23</sup> Madison, *Writings*, 589.

this Commonwealth in declaring, as it does hereby declare, that the“ Alien and Sedition Acts “are unconstitutional.”<sup>24</sup>

George Washington, in a letter to Alexander Spotswood 22 November 1798 responding to Spotswood’s request for his opinion of the Alien and Sedition Acts, stated that laws pertaining to those who have “no allegiance to this Country . . . and are sent among us . . . for the express purpose of poisoning the minds of our citizens and to sow dissensions among them . . . thereby threatening to dissolve the Union.”<sup>25</sup> On a letter to Patrick Henry 15 January 1799, Washington discussed “the endeavor of a certain party among us, to disquiet the Public mind among us with unfounded alarms . . . to set the People against their government and to embarrass it at all measure.”<sup>26</sup> Washington addressed the Virginia and Kentucky Resolutions writing “[u]nfortunately, and extremely do I regret it, the State of Virginia has taken the lead in this opposition.”<sup>27</sup> Washington viewed the Virginia and Kentucky Resolutions as an attack on the federal government and a threat to the Union and wanted Henry’s help to stop it. “When measures are systematically, and pertinaciously pursued, which must eventually dissolve the Union or produce coercion . . . ought characters who are best able to rescue their Country from the pending evil to remain at home?”<sup>28</sup> Clearly Washington, in January 1799, believed the Virginia and Kentucky Resolutions could lead to the dissolution of the Union.

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<sup>24</sup> Madison, *Writings*, 591.

<sup>25</sup> Washington, *Writings*, 1016.

<sup>26</sup> Washington, *Writings*, 1016-117.

<sup>27</sup> Washington, *Writings*, 1017.

<sup>28</sup> Washington, *Writings*, 1018.

Alexander Hamilton believed “the Virginia and Kentucky Resolutions threatened to undo his lifelong goal of molding the states into a single, indivisible nation.”<sup>29</sup> Jack N. Rakove, in *James Madison and the Creation of the American Republic*, underscored the fact that “Madison knew how far he had come since 1789, and he knew the dangerous conclusions to which the positions of 1798 [the Virginia and Kentucky Resolutions] led.”<sup>30</sup> Madison was worried that “the Kentucky resolutions” might be “a formula not for opposition but for disunion—and disunion was the absolute evil Madison could never imagine.”<sup>31</sup> Noah Feldman, in *The Three Lives of James Madison: Genius, Partisan, President*, noted that for Madison “whatever the constitution was, it had to be far more than a compact among ‘co-states’” because “Madison had designed a form of government that operated on the individual citizen, not the state.”<sup>32</sup> Madison understood, just as Washington and Hamilton did, that the Virginia and Kentucky Resolutions could be used to tear apart the Union.

The Kentucky Resolutions and the Virginia Resolutions were passed by their respective state legislatures and submitted to the other states. The Massachusetts Senate provided the lengthiest response to the Virginia and Kentucky Resolutions on 9 February 1799. The Senators wrote “that they cannot admit the right of State Legislatures to denounce the administration of that Government to which the People themselves, by a solemn compact have exclusively committed their national concerns.”<sup>33</sup> The Massachusetts Senate did not agree with Madison and

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<sup>29</sup> Chernow, *Alexander Hamilton*, 574.

<sup>30</sup> Rakove, *James Madison*, 153.

<sup>31</sup> Rakove, *James Madison*, 153.

<sup>32</sup> Noah Feldman, *The Three Lives of James Madison: Genius, Partisan, President*. (New York: Random House, 2017), 419.

Jefferson's view that states could declare laws unconstitutional nor did they agree that the states had entered into a compact, citing the people, not the states as having made a compact.

In a short, terse reply dated February 1799, Rhode Island's General Assembly stated "vest[ed] in the federal courts, exclusively, and in the Supreme Court of the United States, ultimately, the authority of deciding on the constitutionality of any act or law of the Congress of the United States."<sup>34</sup> Additionally, the General Assembly affirmed that "these laws [the Alien and Sedition Acts] are within the powers delegated to Congress, and promotive of the welfare of the United States."<sup>35</sup> The legislatures in New Hampshire, Vermont and Connecticut echoed similar sentiments to those of Rhode Island that the states had no authority to declare federal laws unconstitutional. One might expect the New England states to support laws enacted by the Federalists because New England was a Federalist stronghold. New York and Delaware also had similar responses.<sup>36</sup>

According to an article published 20 August 1834, the *Examiner & Journal of Political Economy: Devoted To The Advancement Of the cause Of States Rights and Free Trade*, "[n]o answers were given by New Jersey, Pennsylvania, Maryland, North Carolina, South Carolina, Georgia."<sup>37</sup> William Bird, in "Reassessing Responses to the Virginia and Kentucky

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<sup>33</sup> "ANSWERS OF THE SEVERAL STATE LEGILSTURES TO THE Resolutions of Kentucky and Virginia." *Examiner & Journal of Political Economy: Devoted To The Advancement Of the cause Of States Rights and Free Trade* 2. No 2. (August 20, 1834): 23-24. *American Antiquarian Society (AAS) Historical Periodicals Collection: Series 2*. EBSCOhost (accessed July 27, 2018).

<sup>34</sup> "ANSWERS OF THE SEVERAL STATE LEGILSTURES TO THE Resolutions of Kentucky and Virginia," 23-28..

<sup>35</sup> "ANSWERS OF THE SEVERAL STATE LEGILSTURES TO THE Resolutions of Kentucky and Virginia," 23.

<sup>36</sup> "ANSWERS OF THE SEVERAL STATE LEGILSTURES TO THE Resolutions of Kentucky and Virginia," 23.

Resolutions," asserted that Georgia and Tennessee did pass "the resolves the resolutions invited."<sup>38</sup> Bird also asserted that the lack of responses from the other states demonstrated a lack of opposition from those states.<sup>39</sup> Bird's assessment differed from the majority of historians who have viewed the lack of responses and evidence of opposition to the Virginia and Kentucky Resolutions. Frank Maloy Anderson, in "Contemporary Opinion of the Virginia and Kentucky Resolutions," found responses from Pennsylvania and Maryland. Both responses were similar in their objections to the Virginia and Kentucky Resolutions.<sup>40</sup>

In a letter to James Madison dated 23, August 1799 in which he discussed the responses of some states and the lack of responses of other states, Thomas Jefferson hoped for an acceptable outcome to the objections he and Madison raised to the Alien and Sedition Acts. However, should that desired outcome not be realized, Jefferson wrote "determined, were we to be disappointed in this, to sever ourselves from that union we so value."<sup>41</sup> Madison responded to the responses and lack of responses from the other states by writing a "Report on the Alien and Sedition Acts" 7 January 1800 in which he reaffirmed "that the Constitution is a compact to which the states are parties."<sup>42</sup>

Since the majority of the states had either rejected or not formally responded to the Virginia and Kentucky Resolutions, historians have been correct in declaring the Resolutions a

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<sup>37</sup> "ANSWERS OF THE SEVERAL STATE LEGILSTURES TO THE Resolutions of Kentucky and Virginia," 23.

<sup>38</sup> Bird, "Reassessing Responses to the Virginia and Kentucky Resolutions," 524.

<sup>39</sup> Bird, "Reassessing Responses to the Virginia and Kentucky Resolutions," 524.

<sup>40</sup> Frank Maloy Anderson, "Contemporary Opinion of the Virginia and Kentucky Resolutions." *The American Historical Review* no. 2 (1899): 225. *JSTOR Journals*, EBSCOhost (accessed June 17, 2018).

<sup>41</sup> Smith, *The Republic of Letters*, Volume 2, 119.

<sup>42</sup> Madison, *Writings*, 609.

failure. That seems like a reasonable statement to make based on the evidence. The Alien and Sedition Acts remained in effect and the majority of states did not join together to declare the laws unconstitutional. Nor, for that matter, had a majority of states agreed that the states had the power to decide whether federal laws were unconstitutional. Of the states who had responded, the predominant view was that the federal courts were the only ones with that power.

Why, then, do the Virginia and Kentucky Resolutions matter? The answer lies in Jefferson's theory that the individual states entered into a compact under the Constitution and Madison's assent to that theory. In *Alexander Hamilton*, Ron Chernow wrote "[n]either Jefferson or Madison sensed that they had sponsored measures as inimical as the Alien and Sedition Acts themselves. . . . The theoretical damage of the Kentucky and Virginia Resolutions was deep and lasting."<sup>43</sup> Jefferson had already, in a letter to Madison, suggested secession as a last resort if a majority of the states did not join with Kentucky and Virginia to nullify the Alien and Sedition Acts.

Why would Jefferson think that a state could secede was a viable response to federal laws with which it disagreed? Once again, the answer can be found in his compact theory. If a state had consented to join the Union, then that state could withdraw its consent and leave the Union. Although Jefferson, in the Kentucky Resolutions never explicitly said that a state could leave the Union, the idea that a state could leave is implied by the nature of entering into an agreement which does not specifically state that the agreement is perpetual.

James Madison had travelled a long way ideologically from his views prior to and during the constitutional convention. In 1787 Madison had been convinced that congressional acts, and

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<sup>43</sup> Chernow, *Alexander Hamilton*, 574.

therefore federal law, had to be above state legislative acts and state laws. Eleven years later in 1798, Madison wrote a document calling for the states to declare a congressional act unconstitutional and void. In 1787, Madison believed that having ratification by the people was crucial to providing a solid foundation for the new government and preventing states legislatures from exerting too much control over the federal government. Eleven years later, Madison, in the Virginia Resolutions, called on states to intervene to end a federal law.

Madison and Jefferson had just cause to object to the Alien and Sedition Acts. The Federalist Party was targeting and attempting to silence the opposition in a clear violation of the First Amendment's freedom of speech. Madison and Jefferson's attempt to overturn the Acts did not result in the Alien and Sedition Acts being declared unconstitutional by the states or by Congress. Rather, the Virginia and Kentucky Resolutions provided the origin for secession through Jefferson's compact theory of states. The next development of secession happened during James Madison's presidency.

### Chapter 3: Watering the Seeds of Secession: The Hartford Convention 1814

James Madison won the presidential election of 1808. He was the fourth president and the second member of the Democratic-Republican party to be elected. Years of agitation between the United States and Great Britain including “impressment—the taking of seamen from American ships on the high seas”<sup>1</sup> happened during Thomas Jefferson’s presidency. Tensions continued to escalate during first three years of Madison’s presidency. President James Madison “summoned Congress to an early session to consider” a war with Great Britain.<sup>2</sup> The House of Representatives and Senate approved a declaration of war on 18 June 1812.<sup>3</sup>

The Federalist Party did not support the war. Congressman Josiah Quincy, in a speech in the House of Representatives in November 1812 accused the Madison and his party of conducting a war to guarantee that the fourth President would be the third from Virginia.<sup>4</sup> The response from Democratic-Republicans was to label Quincy a secessionist.<sup>5</sup> Federalists objected to the war was that they did not believe that attacking and attempting to annex Canada was a worthwhile endeavor.<sup>6</sup> Federalists also voiced their opposition in newspapers just as the Democratic-Republicans had voiced their opposition to the Alien and Sedition Acts and President Adams in newspapers. In Baltimore Maryland, Federalist opposition was met with

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<sup>1</sup> Donald R. Hickey, *The War of 1812: A Forgotten Conflict*. (Urbana: University Illinois Press, 2012), 11.

<sup>2</sup> Hickey, *The War of 1812*, 27.

<sup>3</sup> Hickey, *The War of 1812*, 43.

<sup>4</sup> Hickey, *The War of 1812*, 43.

<sup>5</sup> Hickey, *The War of 1812*, 108.

<sup>6</sup> Hickey, *The War of 1812*, 51.



violence and riots because opposition to the war was seen as treasonous and heretical.<sup>7</sup> Some Republicans advocated bringing back the Sedition Act as a way to silence the opposition.<sup>8</sup> Madison, having written the Virginia Resolutions which had called for the nullification of the Alien and Sedition Acts, did not agree that silencing the opposition was necessary.<sup>9</sup>

The United States and Great Britain had been engaged in war for nearly two and half years when delegates from the New England states made the decision to hold a convention in Hartford, Connecticut. However, the idea of having a convention had its origins six years earlier. President Thomas Jefferson had instituted an embargo against Great Britain which had failed. Samuel Eliot Morison, in *Harrison Gray Otis: 1795-1848 The Urbane Federalist*, reprinted a letter from Otis to Josiah Quincy in which Otis called for a meeting of the New England states to determine the best course of action into oppose the embargo.<sup>10</sup> Morrison also explained that while Otis's letter "has given him credit for fathering the Hartford Convention . . . the project had already been a matter of common conversation in Washington."<sup>11</sup>

The upcoming Hartford Convention was public knowledge. On 26 November 1814, in a letter to Wilson Cary Nicholas, President James Madison wrote that Wilson was correct in stating that the New England states were "the source of our greatest difficulties in carrying out the war."<sup>12</sup> Madison believed the leaders in New England states were only after power and that

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<sup>7</sup> Hickey, *The War of 1812*, 39-65.

<sup>8</sup> Hickey, *The War of 1812*, 64.

<sup>9</sup> Hickey, *The War of 1812*, 64.

<sup>10</sup> Samuel Eliot Morison, *Harrison Gray Otis 1765-1848: The Urbane Federalist*. (Boston: Houghton Mifflin Co., 1969), 305-06.

<sup>11</sup> Morison, *Harrison Gray Otis*, 307.

<sup>12</sup> Madison, *Writings*, 706.

the states would never secede without help from another country.<sup>13</sup> On the same day, the Niles Weekly Register, published in Baltimore, Maryland, began a five part series of indictments against the men responsible for organizing the Hartford Convention. In Niles' opinion, "the madness of these Jacobins shews (sic) the superior power of ambition to avarice."<sup>14</sup> Niles believed that the future delegates were acting from a position of greed, and he maintained this belief throughout the entire series.

Niles thought the New Englanders were "depraved", but nonetheless had "a better opinion of their intellect than to suppose they possess an idea, that Massachusetts, or, the 'nation of New England' if they please would be benefited by the revolution they aim at."<sup>15</sup> After all, how would the New England states survive economically outside the Union? Questions such as this were posed by Niles. His purpose, of course, was to show the folly of the egotistical New Englanders who overestimated not only their ability to be self-reliant, but also their importance in the Union.

On 3 December 1814, Niles instructed the "Men of New England" to "Put down these base men . . . Redeem yourselves from the sins of those wicked persons--obey Washington."<sup>16</sup> Clearly Niles felt neither comradeship with nor empathy for the Hartford delegates. They were sinners, and equally important, they were leading others down the same evil path. However, to the men whom he hoped would seek redemption, he said "our interests are not separate."<sup>17</sup> But

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<sup>13</sup> Madison, *Writings*, 706-07.

<sup>14</sup> Niles Weekly Register, 26 November 1814, 185.  
<https://babel.hathitrust.org/cgi/pt?id=nnc1.cu04016521;view=2up;seq=1> (accessed August 1, 2018).

<sup>15</sup> *Niles Weekly Register*, 26 November 1814, 185.

<sup>16</sup> *Niles Weekly Register*, 9 December 1814, 197.

<sup>17</sup> *Niles Weekly Register*, 9 December 1814, 197.

he disputed the fact that the New England states somehow suffered differently than other states. He asked the people of New England to "Give us the hand of fellowship--we are men, flesh and blood like yourselves."<sup>18</sup> The rest of Niles's articles on the Hartford Convention were filled with more condemnations. He used statistics to demonstrate his opinion that New England had not suffered nearly as much commercial loss or hardship as the "Jacobins" said. He also argued that New England and the Federalist Party had not suffered from a loss of power, but actually had too much power with respect to their place in the Union.

Twenty-six men from the New England states met in Hartford Connecticut began 15 December 1814 and concluded 5 January 1815. "The official objectives" were the "drafting of constitutional amendments to protect New England interests, and an agreement with the Federal Government to let the states conduct their own defense."<sup>19</sup> That does not seem to be an agenda that could lead to secession or that even supports secession. The cause for concern was that talk of secession had been commonplace in New England for years. John Quincy Adams, in a letter to Ezekiel Bacon dated 17 November 1808, wrote "an organized insurrection against the national government by State authorities" was the only way "the project of disunion can alone be accomplished."<sup>20</sup> Adams then added "this has been a serious project of those, whom you describe as being called in England Colonel P[ickering]'s party, for several years I know by the most unequivocal evidence."<sup>21</sup>

<sup>18</sup> *Niles Weekly Register*, 9 December, 197.

<sup>19</sup> Morison, *Harrison Gray Otis*, 307.

<sup>20</sup> John Quincy Adams, *Writings of John Quincy Adams Volume III 1801-1810*. Worthington Chauncey Ford, Ed. (New York: MacMillan and Company, 1914), 250-51.  
<https://babel.hathitrust.org/cgi/pt?id=hvd.hwiidf:view=2up:seq=6> (accessed August 2, 2018).

<sup>21</sup> Adams, *Writings of John Quincy Adams Volume III*, 251.

The Hartford Convention provided the means for the New England states to gather to discuss their grievances over the Madison administration's conduct of the war. John Quincy Adams, in a letter to his wife Louisa dated 25 November 1814, wrote "[t]he Massachusetts legislature have appointed twelve delegates to meet others from the rest of the New England states, on the 15<sup>th</sup> of December, at Hartford in Connecticut, to organize a separate system of defense, and a new confederation of their own" which Adams described as "a dangerous measure" and he "hope[d] it will not have all the pernicious effects to be apprehended from it."<sup>22</sup>

Whether secession was actually discussed remains unknown. James Banner, Jr., in *To the Hartford Convention: The Federalists and the Origins of Party Politics in Massachusetts 1789-1815*, noted that "little is known about the day-to-day sessions of the convention . . . . Pledged to secrecy, the members" never publicly discussed what happened.<sup>23</sup> However, as Banner also explained, prior to attending the convention, the delegates were inundated with recommendations as to what the outcome should be. Gouverneur Morris, who had revised the preamble of the Constitution, had "argued in early November for an autonomous New England confederacy" as did some others including Timothy Pickering.<sup>24</sup> There were also advocates of a more moderate approach.

The *Boston Spectator*, published weekly in Boston, MA, presented a different perspective, endorsing the Convention while denying that the delegates had any malicious or

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<sup>22</sup> John Quincy Adams, *Writings of John Quincy Adams Volume V 1814-1816*. Worthington Chauncey Ford, Ed. (New York: MacMillan and Company, 1914), 215.  
<https://babel.hathitrust.org/cgi/pt?id=hvd.hwiiidh:view=2up:seq=250:size=300> (accessed August 3, 2018).

<sup>23</sup> James M. Banner, Jr., *To the Hartford Convention: The Federalists and the Origins of Party Politics in Massachusetts 1789-1815*. (New York: Alfred A. Knopf, Inc., 1970), 335.

<sup>24</sup> Banner, *To the Hartford Convention*, 330.

radical intentions. On 7 January 1815, two days after the Hartford Convention ended but before the Report was made public, the periodical published an editorial which offered a reflection on the Convention. The editors believed that the "New England Convention . . . grew out of the alarm and sufferings of the community."<sup>25</sup> Sufferings which the *Boston Spectator* believed were a direct result of the actions of President Monroe and Congress and placed undue hardship on the citizens of the New England states.

The decision to send delegates to a convention was not, as Niles asserted, the work of "Jacobins" seeking to undermine the Republic. "The people in several states, without consultation, spontaneously expressed their convictions that something must be done", not a group of greedy self-interested politicians eager to regain their power. "The Hartford Convention was appointed by" the people "to inquire, what" measures should be taken." Because the delegates were chosen by the citizens of the New England states, the editors were "persuaded that this body, so constituted, is our LAST HOPE"<sup>26</sup> of resolving what New Englanders believed was a crisis.

Aware that "a sort of epidemick (sic) alarm seems to have pervaded all classes of politicians at the southward," the editors tried to allay the fears of their fellow countrymen by citing the "well known discretion of the gentlemen composing the convention" which guaranteed that "they will recommend, no demand, that shall not be seen as strictly just and reasonable."<sup>27</sup>

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<sup>25</sup> *The Boston Spectator*, 7 January 1815, 1.  
<https://play.google.com/books/reader?id=b2Z6AAAIAAJ&printsec=frontcover&pg=GBS.PP8> (accessed August 1, 2018).

<sup>26</sup> *The Boston Spectator*, 7 January 1815, 1.

<sup>27</sup> *The Boston Spectator*, 7 January 1815, 1.

The editors stated that the "epidemick alarm" had been caused, not by the actions of the New England states in calling for a convention, but by "the guilty consciences of many" who "have excited apprehensions which have no just foundation." These "excited apprehensions" had led to "misrepresentations of the designing" of the convention and its delegates. The result of which had led "some of our friends to mistrust our prudence."<sup>28</sup> Therefore, the citizens of New England were being unfairly judged based on inaccurate facts.

The *Niles Weekly Register* portrayed the leaders of the Hartford Convention as evil and wicked. The editors of *The Boston Spectator* provided a considerably different picture. Contrary to the opinion of people such as Niles, the delegates were "not actuated by a vindictive policy," but rather had "kept a steady eye upon the interests of the whole republick (sic)."<sup>29</sup> Far from being the "Jacobins" described by Niles in his searing commentaries, the editors viewed these men as being the guardians of the Union, calling attention to misuses of Presidential and Congressional power just as the Kentucky and Virginia Resolutions had previously done.

The Report of the Hartford Convention stated that "if the Union be destined to dissolution, by reason of the multiplied abuses of bad administration, it should, if possible, be the work of peaceable times, and deliberate consent."<sup>30</sup> The members of the Hartford Convention, while not openly calling for the New England states to secede, described the circumstances in which secession would be a legitimate and acceptable response to federal government policies.

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<sup>28</sup> *The Boston Spectator*, 7 January 1815, 1.

<sup>29</sup> *The Boston Spectator*, 7 January 1815, 1.

<sup>30</sup> Hartford Convention, *Public documents: containing proceedings of the Hartford convention of delegates; report of the commissioners while at Washington; letters from Massachusetts members in Congress. Letter from the governor of Pennsylvania; report and resolutions of Pennsylvania state. Letter of governor of New-Jersey, inclosing sundry papers. Letter of governor of New-York, inclosing sundry papers, relating to amendments of the constitution, proposed by Massachusetts* (Boston: Massachusetts Senate, 1815), page., 5. [https://babel.hathitrust.org/cgi/pt?id=uc1.\\$b309572;view=2up;seq=6](https://babel.hathitrust.org/cgi/pt?id=uc1.$b309572;view=2up;seq=6) (accessed August 4, 2018).

Thomas Jefferson had discussed secession privately in a letter, but the members of the Convention wrote it in public report which was sent to other states.

The Report called for legislature to enact laws so that individual states provided their own defense and state governors were to be the head of state militias. The Report proposed seven amendments to the Constitution. Three amendments were intended to curb Congressional power to enact embargo laws. One amendment proposed barring naturalized citizens from holding any public offices. The last amendment called for a one-year term limit on presidents and a prohibition of two consecutive presidents being elected from the same state. The report also called for a second convention if the federal government did not respond to the grievances of the New England states.<sup>31</sup>

After the Report of the Hartford Convention had been made public, the editors of the *Boston Spectator* defended the report and the members of the Convention. The editors wrote on 14 January 1815 that they had "ever been decidedly of opinion . . . that a dissolution of the union of the states would be one of the greatest evils that could befall us."<sup>32</sup> In the early part of 1815, the editors had written an eight part series on the importance and necessity of keeping the union intact. However, the editors also stated that dissolving the union was not the worst evil. Dissolution "would be less evil than to endure forever, that destructive system of policy under which we have been sinking."<sup>33</sup>

The question, then, was whether to choose secession, "which in its nature, would be an

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<sup>31</sup> Hartford Convention, *Public Documents*, 21.

<sup>32</sup> *The Boston Spectator*, 14 January 1815, 2.  
<https://play.google.com/books/reader?id=b2Z6AAAIAAJ&printsec=frontcover&pg=GBS.PP8> (accessed August 1, 2018).

<sup>33</sup> *The Boston Spectator*, 14 January 1815, 2.

interminable evil" or accept the current policies and hardships "which may possibly be removed."<sup>34</sup> The editors advocated remaining in the union and believed in "adhering to the principles of union, until we have used the last means for redress, and manfully given our ultimatum to the authors and abettors of our wrongs."<sup>35</sup> The Report of Hartford Convention, as interpreted by the editors of *The Spectator* demonstrated that the delegates and leaders had decided "against a rash attempt to dissolve the federal compact."<sup>36</sup> The editors also believed that the actions taken by the Convention should not have been subjected to such harsh criticism. "Unconstitutional, oppressive, dangerous measures of administration may be opposed, even to forcible resistance, without disloyalty to the constitution or federal government."<sup>37</sup>

Thomas Jefferson did not approve of the actions of the New England states or the delegates at the Hartford Convention despite having authored the Kentucky Resolutions which called for states to nullify federal laws. In a letter to Lafayette on 14 February 1815, Jefferson expressed his belief that the British were involved in the Hartford Convention. He accused the leaders in Massachusetts of being on the British payroll. He asserted that if the British, "in any state, even Massachusetts itself, to raise the standard of separation . . . the citizens will rise in mass."<sup>38</sup> Rather than view what happened in Hartford as similar to the actions he and Madison took in writing the Virginia and Kentucky resolutions, Jefferson chose to blame Great Britain. Thus absolving him and Madison of any connection.

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<sup>34</sup> *The Boston Spectator*, 14 January 1815, 2.

<sup>35</sup> *The Boston Spectator*, 14 January 1815, 2.

<sup>36</sup> *The Boston Spectator*, 14 January 1815, 2.

<sup>37</sup> *The Boston Spectator*, 14 January 1815, 2.

<sup>38</sup> Jefferson, *Writings*, 1364.



In 1799, the New England states had rejected the Virginia and Kentucky Resolutions. The Massachusetts legislature had provided the lengthiest response and denied Jefferson's premise that the states had formed a compact. In 1814, the Massachusetts legislature had led the call for the Hartford Convention. In 1815, The Massachusetts legislature endorsed the Report of the Hartford Convention, a Report which not only accepted Jefferson's premise of a compact between the states, but explained the conditions for a state or states to secede from the Union. The Massachusetts legislature submitted the Report to the other states. The Pennsylvania, New Jersey and New York legislatures rejected the amendments.<sup>39</sup> Delegates from the Hartford Convention brought the Report to Washington D.C. and arrived after the peace treaty with Great Britain had been signed. The Federalists were branded traitors and their already wavering power was nearly extinguished.

In 1820 a series of letters written by Harrison Gray Otis in which he defended the Hartford Convention were published. In 1823 Theodore Lyman wrote *A short account of the Hartford convention, taken from official documents, and addressed to the fair minded and the well disposed. To which is added an attested copy of the secret journal of that body*. Lyman stated that "the unfounded and unceasing accusations thrown broad-cast up[on the members of that body, and renewed at every election during eight years, have now become insipid and worthless, and are utterly worn to thread."<sup>40</sup> Otis and Lyman's words fell on deaf ears. The Federalist Party never recovered from being seen as the party of treason and secession.

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<sup>39</sup> Hartford Convention, *Public Documents*, 36-54.

<sup>40</sup> Theodore Lyman, *A short account of the Hartford convention, taken from official documents, and addressed to the fair minded and the well disposed. To which is added an attested copy of the secret journal of that body*. (Boston: O. Everett, 1823), 4.  
<https://babel.hathitrust.org/cgi/pt?id=yale.39002006197769;view=2up;seq=8;size=300> (accessed August 5, 2018).

## Chapter 4: Seeds of Secession Sprouting: The South Carolina Nullification Crisis 1830-33

The South Carolina Nullification Crisis, like the Virginia and Kentucky Resolutions and the Hartford Convention, was a response to a federal government policy. In 1828 Congress enacted and President John Quincy Adams signed the Tariff of 1828. The tariff had been the handiwork of Martin Van Buren as a way to deliver votes in Western states to Andrew Jackson in the upcoming election.<sup>1</sup> The Tariff “gave generous protection to the Western products of molasses, hemp, and wool, but imposed higher prices on the iron, rope and sailcloth purchased by New England shipping interests.”<sup>2</sup> While “New England leaders acquiesced . . . even though their section bore heavy portion of its costs,” those in “[t]he South, however, were outraged and called the bill a ‘tariff of abominations.’ . . . Southern planters could get no benefit from the protection of manufactures but had to pay the costs in higher prices for retail items and in lower foreign demand for their staples.”<sup>3</sup> Southerners depended on free trade with European countries to sell their crops and viewed the Tariff as protectionist in nature and harmful to their economy.<sup>4</sup>

South Carolina responded with an “Exposition and Protest”. The document was produced by the Special Committee of the House of Representatives on the Tariff on 19 December 1828 and published in 1829. The Virginia and Kentucky Resolutions and the Report of the Hartford Convention had appealed to other states to address their grievances, so too did

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<sup>1</sup> Harry L Watson, *Liberty and Power: The Politics of Jacksonian America*. (New York: Hill and Wang, 2006), 88.

<sup>2</sup> Watson, *Liberty and Power*, 89.

<sup>3</sup> Watson, *Liberty and Power*, 89.

<sup>4</sup> William Freehling, *Prelude to Civil War: The Nullification Controversy in South Carolina 1816-1836*. (New York: Oxford University Press, 1966), 95.

the “Exposition and Protest.” The opening paragraph stated that they “wanted to make a public exposition of our wrongs and of the remedies within our power, to be communicated to our sister states, with a request that they will co-operate with this state in procuring a repeal of the Tariff.”<sup>5</sup> The paragraph also called upon the states to “co-operate in such measures as may be necessary to arrest this evil” if the tariff was not repealed.<sup>6</sup>

Following in the footsteps of the Virginia and Kentucky Resolutions, the “Exposition and Protest” declared “[t]he Act of Congress in the last session . . . is unconstitutional” and that states had the authority to declare laws unconstitutional.<sup>7</sup> There is also an interesting similarity between the “Exposition and Protest” and the Kentucky Resolutions. The Kentucky Resolutions were written anonymously by Thomas Jefferson in reaction to the Alien and Sedition Acts signed into law by President John Adams while Thomas Jefferson served as Adams’ Vice President. The “Exposition and Protest” were written anonymously by John C. Calhoun in reaction the Tariff of 1828 signed into law by President John Quincy Adams while John C. Calhoun was serving as Adams’ Vice President. The one significant difference is that the Alien and Sedition Acts were aimed at silencing Thomas Jefferson’s party and his supporters, but the Tariff actually hurt John Quincy Adams’s supporters in New England.

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<sup>5</sup> Special Committee of the House of Representatives on the Tariff, *Exposition and Protest Reported by the Special Committee of the House of Representatives on the Tariff*. (Columbia: Special Committee of the House of Representatives on the Tariff, 1829), 1.  
[https://dc.statelibrary.sc.gov/bitstream/handle/10827/21911/HOUSE\\_CR\\_Exposition\\_and\\_Protest\\_1828-12-19.pdf?sequence=1&isAllowed=y](https://dc.statelibrary.sc.gov/bitstream/handle/10827/21911/HOUSE_CR_Exposition_and_Protest_1828-12-19.pdf?sequence=1&isAllowed=y) (accessed August 6, 2018).

<sup>6</sup> Special Committee of the House of Representatives on the Tariff, *Exposition and Protest*, 1.

<sup>7</sup> Special Committee of the House of Representatives on the Tariff, *Exposition and Protest*, 5, 36.

Andrew Jackson defeated John Quincy Adams in the 1828 election prior to the “Exposition and Protest” being published. The members of the Special Committee had hoped President Jackson would correct the wrong that had been done by the “Tariff of Abominations” so the legislature did not take any action.<sup>8</sup> Unfortunately, the South Carolinians did not find an ally in President Andrew Jackson. Unlike his Vice President, John C. Calhoun, Jackson did not believe that the Tariff of 1828 violated the Constitution. Nor did Jackson share Jefferson, Madison and Calhoun’s belief that a state could nullify a federal law.<sup>9</sup>

In his “First Annual Message to Congress” on 8 December 1829, Jackson briefly discussed the tariff, saying “[t]he operation of the tariff has not proved so injurious to the two former or as beneficial to the latter as was anticipated. Importations of foreign goods have not been sensibly diminished, while domestic competition, under an illusive excitement, has increased the production much beyond the demand for home consumption.”<sup>10</sup> Jackson also stated that the tariff could be modified, but did not address any specifics as to what those modification or modifications might be.<sup>11</sup>

George McDuffie, a member of the House of Representative from South Carolina, led an effort to modify the “Tariff of Abominations” in Congress in February 1830 and introduced the forty-bale theory. McDuffie’s theory represented the dollar amount of bales per one hundred that Southerners paid to customhouses because of the tariff.<sup>12</sup> Although, as William Freehling

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<sup>8</sup> Special Committee of the House of Representatives on the Tariff, *Exposition and Protest*, 39.

<sup>9</sup> Freehling, *Prelude to Civil War*, 189.

<sup>10</sup> Andrew Jackson, “First Annual Message to Congress” December 8, 1829. <http://www.presidency.ucsb.edu/ws/?pid=29471> (accessed August 8, 2018).

<sup>11</sup> Jackson, “First Annual Address.”

<sup>12</sup> Freehling, *Prelude to Civil War*, 193.

explained in *Prelude to Civil War: The Nullification Controversy in South Carolina 1816-1836*, Congress had no intention to repeal the tariff, “the national debate, by giving publicity to the forty-bale theory, inspired greater antitariff excitement in South Carolina.”<sup>13</sup> McDuffie’s forty-bale theory, a little more fiction than fact, proved to be an effective political tool in South Carolina in drumming up support for nullification.<sup>14</sup>

President Jackson and Vice President Calhoun attended the Jefferson Day Dinner on 13 April 1830. Their schism took center stage when Jackson, “glaring at Calhoun . . . toasted ‘Our Federal Union—It must be preserved.’”<sup>15</sup> Calhoun responded with his own toast: “The Union—Next to our liberties the most dear.”<sup>16</sup> George McDuffie offered his own toast, not to the Union or Thomas Jefferson, but to Patrick Henry. McDuffie called Henry “[t]he first American statesman . . . to have the courage to declare . . . that there is no treason in resisting oppression.”<sup>17</sup> The lines of division had now been clearly drawn and there would be no turning back for either Jackson or Calhoun.

Nullification was an important part of the political debate in South Carolina in the 1830 elections between “the radicals, in their determination to nullify the tariff, and the moderates, in their determination to stop radical action.”<sup>18</sup> The nullifiers found the basis for their convictions in the Virginia and Kentucky Resolutions because those Resolutions said that states had the

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<sup>13</sup> Freehling, *Prelude to Civil War*, 193.

<sup>14</sup> Freehling, *Prelude to Civil War*, 194-5.

<sup>15</sup> Freehling, *Prelude to Civil War*, 192.

<sup>16</sup> Freehling, *Prelude to Civil War*, 192.

<sup>17</sup> Freehling, *Prelude to Civil War*, 192.

<sup>18</sup> Freehling, *Prelude to Civil War*, 205.

power to declare federal laws unconstitutional and, in particular, the Kentucky Resolutions because that Resolution had the word nullify in it.<sup>19</sup>

James Madison, in a letter responding to Edward Everett's request for Madison's opinion on nullification 28 August 1830, wrote that the Constitution "was formed, not by the Governments of the component States . . . nor by a majority of the people of the U.S. as a single community . . . It was formed by the States –that is the people of the States."<sup>20</sup> As such, according to Madison, the Constitution was "a compact among the States in their highest sovereign capacity, and constituting the people thereof one people for certain purposes, it cannot be altered or annulled at the will of the States individually."<sup>21</sup> Madison's words could be taken as repudiating nullification or they could be taken as stating that a majority of the states had to agree to nullify a law, not just one state.

Andrew Jackson addressed the tariff issue again in his "Second Annual Message" to Congress on 6 December 1830. Just as he had done one year earlier, he affirmed his belief that the tariff was constitutional, citing former Presidents Washington, Jefferson, Madison and Monroe as all have supported the right of congress to impose tariffs.<sup>22</sup> Jackson again discussed a modification on the tariffs stating "there can be little danger of wrong or injury in adjusting the tariff with reference to its protective effect" and that "the people have a right to demand, and

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<sup>19</sup> Freehling, *Prelude to Civil War*, 207.

<sup>20</sup> Madison, *Writings*, 843.

<sup>21</sup> Madison, *Writings*, 843.

<sup>22</sup> Andrew Jackson, "Second Annual Message to Congress." December 6, 1830. <http://www.presidency.ucsb.edu/ws/index.php?pid=29472> (accessed August 8, 2018).

have demanded, that it be so modified as to correct abuses and obviate injustice.”<sup>23</sup> He then cautioned Congressional members against allowing their own views to prevent them from finding a solution.

Just as the South Carolina legislature had chosen to take no action in 1828, the South Carolina nullifiers chose to take no action 1830 after realizing that running a campaign on nullification would not get their candidates elected.<sup>24</sup> But their decision did not mean that the crisis was over or that they would not continue to demand a response to the “Tariff of Abominations.” Congress in 1831 did not repeal or modify the tariff. Andrew Jackson briefly addressed the issue in his third message to Congress on 6 December 1831 and once again called on Congress to modify the tariff.<sup>25</sup>

On 26 July 1831, Calhoun delivered an Address “On the relation which the States and General Government bear to one another.” In his speech, Calhoun explained that the relationship between the states and federal government had been unclear during the constitutional convention and continued to be after the Constitution had been ratified. He believed “the doctrines and arguments on both sides were embodied and ably sustained; - on the one, in the Virginia and Kentucky Resolutions, and the Report to the Virginia Legislature; - and on the other, in the replies of the Legislature of Massachusetts and some of the other States.”<sup>26</sup> Calhoun believed the Virginia and Kentucky Resolutions with the report provided the “true doctrine” on the

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<sup>23</sup> Jackson, “Second Annual Message.”

<sup>24</sup> Freehling, *Prelude to Civil War*, 213.

<sup>25</sup> Andrew Jackson, “Third Annual Message to Congress.” December 6, 1831. <http://www.presidency.ucsb.edu/ws/index.php?pid=29473> (accessed August 9, 2018).

<sup>26</sup> John C. Calhoun, Address, “On the relation the States and General Government bear to one another.” <http://history.furman.edu/benson/alpha/www/docs/calhounfh.htm> (accessed September 14, 2018).

relationship between the states and the federal government.<sup>27</sup> Calhoun, restated Jefferson's theory that "the Constitution of the United States is, in fact, a compact, to which each State is a party, in the character already described; and that the several States, or parties, have a right to judge of its infractions." The Virginia and Kentucky Resolutions formed the basis for Calhoun's belief that a state could nullify a federal law.

In 1832, the divisions between Jackson and Calhoun resulted in Jackson choosing Martin Van Buren as his Vice Presidential running mate in his bid for re-election.<sup>28</sup> In that same year, Congress modified the tariff which was not an acceptable solution for South Carolinians who would only be satisfied with a full repeal.<sup>29</sup> The South Carolina nullifiers were successful in winning their elections, control of the legislature and called for a convention in November 1832.<sup>30</sup> John C. Calhoun wrote "States Rights and Nullification" for the convention. Calhoun addressed his speech to both the people of South Carolina and the people of the other states.<sup>31</sup>

Once again, using words similar to the Kentucky Resolutions as he had four years earlier when he authored the "Exposition and Protest", Calhoun echoed Jefferson's compact theory, saying "We, the people of South Carolina . . . as one of the parties to the compact, which formed the Constitution of the United States, have declared the act of Congress, approved the 14th of July, 1832" which modified the Tariff of 1828 as well as the Tariff of 1828 "to be

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<sup>27</sup> Calhoun, Address.

<sup>28</sup> Hickey, *Liberty and Power*, 126.

<sup>29</sup> Hickey, *Liberty and Power*, 126.

<sup>30</sup> Hickey, *Liberty and Power*, 127.

<sup>31</sup> John C. Calhoun, "States Rights and Nullification." *States Rights and Nullification* (August 2017). 193 *History Reference Center*. EBSCOhost (accessed June 17, 2018).



unconstitutional, and therefore null and void.”<sup>32</sup> Calhoun’s words differed from Jefferson’s in that Calhoun asserted that the people, not the state legislature had taken this action. Calhoun took Jefferson’s nullification theory an extra step by declaring that a single state could nullify a federal law within in its own borders.

The “South Carolina Ordinance of Nullification” was issued on 24 November 1832. The Ordinance stated that “the people of the State of South Carolina, in convention assembled, do declare and ordain and it is hereby declared and ordained, that” the tariffs of 1832 and 1828 “are unauthorized by the constitution of the United States, and violate the true meaning and intent thereof and are null, void, and no law, nor binding upon this State, its officers or citizens.”<sup>33</sup> The Ordinance warned that any attempts to force South Carolina to comply with the tariffs by any means would be considered an act of war. Such actions would be viewed as “as inconsistent with the longer continuance of South Carolina in the Union; and that the people of this State will henceforth hold themselves absolved from all further obligation to maintain or preserve their political connection with the people of the other States.”<sup>34</sup> The Ordinance, like the “Report of the Hartford Convention” had described reasons for justifying secession.

On 10 December 1832, Andrew Jackson issued a proclamation denying the right of South Carolina to nullify a federal law. Jackson stated “I consider, then, the power to annul a law of the United States, assumed by one State, *incompatible with the existence of the Union, contradicted expressly by the letter of the Constitution, unauthorized by its spirit, inconsistent*

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<sup>32</sup> Calhoun, “States Rights and Nullification.”

<sup>33</sup> South Carolina Convention, “South Carolina Ordinance of Nullification, November 24, 1832.” *The Avalon Project*. [http://avalon.law.yale.edu/19th\\_century/ordnull.asp](http://avalon.law.yale.edu/19th_century/ordnull.asp) (accessed August 10, 2018).

<sup>34</sup> South Carolina Convention, “South Carolina Ordinance of Nullification.”

*with every principle on which It was founded, and destructive of the great object for which it was formed.*”<sup>35</sup> Jackson also addressed the issue of secession at length. He argued that the people, not the states, had entered into a compact. “The Constitution of the United States, then, forms a government, not a league, and whether it be formed by compact between the States, or in any other manner, its character is the same. It is a government in which all the people are represented, which operates directly on the people individually, not upon the States.”<sup>36</sup> Jackson argued that although the Constitution was a compact, it was not one that could be broken because no state or states had the right to break the compact.

James Madison, in a letter written to Nicholas P. Trist on 23 December 1832, responded to the South Carolina papers which Trist had sent him.<sup>37</sup> Madison’s provided an interesting observation about secession: “[i]f one state can at will withdraw from the others, the others can at will withdraw from her.”<sup>38</sup> Madison also defended the Virginia and Kentucky Resolutions, arguing that neither one of those documents justified a single state have the authority to declare laws unconstitutional.<sup>39</sup> Madison accused the “nullifiers” of “mak[ing] the name of Mr. Jefferson the pedestal for their colossal heresy,” and ignoring the fact that Jefferson’s “authority is ever so clearly and emphatically against them.”<sup>40</sup> Madison hoped that the idea of secession would be disputed by a majority of the citizens of the United States.

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<sup>35</sup> Andrew Jackson, “President Jackson’s Proclamation Regarding Nullification in South Carolina, December 10, 1832.” [http://avalon.law.yale.edu/19th\\_century/jack01.asp](http://avalon.law.yale.edu/19th_century/jack01.asp) (accessed August 9, 2018.)

<sup>36</sup> Jackson, “President Jackson’s Proclamation Regarding Nullification in South Carolina.”

<sup>37</sup> Madison, *Writings*, 861.

<sup>38</sup> Madison, *Writings*, 861.

<sup>39</sup> Madison, *Writings*, 862.

<sup>40</sup> Madison, *Writings*, 862.

President Jackson decided to deal with South Carolina through Congress and the result became known as the Force Bill. The bill authorized President Jackson to use the military force, if necessary, to get South Carolinians to comply with the tariffs. Jackson requested and was given power to demand cash payments for duties, prosecute violators in federal courts and build jails for violators.<sup>41</sup> The South Carolinians who supported nullification ultimately decided not to follow their Ordinance and a crisis was averted.<sup>42</sup>

The “Report of the Hartford Convention” marked the first time the idea that states could secede from the Union was discussed in public report. The “South Carolina Ordinance on Nullification,” issued nearly eighteen years later, went one step further and declared that an individual state could secede from the Union. The comparisons between the men in South Carolina and the men who attended the Hartford Convention had been raised by Unionists as well as a newspaper in South Carolina and a newspaper in Hartford in 1831.

Theodore Dwight, who had served as Secretary of the Hartford Convention, wrote *History of the Hartford Convention with a Review of the Policy of the United States Government, which Led to the War of 1812* which was published in 1833. Dwight defended the men who attended the Convention. Dwight began his book with the words “[n]o political subject that has ever occupied the attention, or excited the feelings of the great body of the people of these United States, has ever been the theme of more gross misrepresentation, or more constant reproach, than the assembly of delegates from several of the New England states which met at” the Hartford Convention.<sup>43</sup>

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<sup>41</sup> Freehling. *Prelude to Civil War*, 284-85.

<sup>42</sup> Freehling, 285.

Dwight wrote his defense of the Hartford Convention during the South Carolina Nullification Crisis. In the appendix, he chastised those who had been critical of the New England states, but supported South Carolina. He addressed his words directly to Robert Hayne, then the governor of South Carolina. Hayne had previously “represented the conduct of the eastern states, in relation to the war, in as reprehensible light” as he could.<sup>44</sup> Dwight included the South Carolina Ordinance of Nullification in his book.

Dwight offered a contrast between the Hartford Convention and the South Carolina Ordinance. The Report of the Hartford Convention proposed amendments to the Constitution which had to be approved by Congress and two-thirds of the states. The South Carolina Ordinances denied that the federal government could exercise control over them. The Report requested that each state be given authority to defend itself. The Ordinance advocated the having a militia to engage in a war against the federal government.<sup>45</sup> Dwight asked “[i]f Mr. Hayne thought the conduct of the authors of the Hartford Convention ‘utterly indefensible,’ what must he think of the authors of the South Carolina Ordinance?”<sup>46</sup> The answer was that Hayne had supported the South Carolina Ordinance.

James Madison, in a letter to William Cabell Rives written 12 March 1833, once again discussed nullification, secession and the Virginia Resolutions. Madison declared that even if the Constitution was silent on the perpetuity of the Union, that perpetuity was implied. The

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<sup>43</sup> Theodore Dwight, *History of the Hartford Convention: With a Review of the Policy of the United States Government, Which Led to the War of 1812*. (Freeport: Books For Libraries Press, 1970), 3.

<sup>44</sup> Dwight, *History of the Hartford Convention*, 436.

<sup>45</sup> Dwight, *History of the Hartford Convention*, 447.

<sup>46</sup> Dwight, *History of the Hartford Convention*, 447.

states had given up powers to the federal government and those powers were given perpetually.<sup>47</sup> In 1834, Madison wrote, in “Advice to My Country,” that “[t]he advice nearest to my heart and deepest in my convictions is that the Union of the States be cherished and perpetuated.<sup>48</sup> The Union would be perpetuated, but not without a bloody Civil War. The seeds of secession had been sowed, watered and started to sprout and, twenty-six years later, would tear the young Union apart.

In his book, *Prelude to Civil War: The Nullification Controversy in South Carolina 1816-1836*, William Freehling stated that “Calhoun always considered nullification a way of preserving the South *in* the Union, the South *and* the Union” because Calhoun never wanted South Carolina or any southern states to secede.<sup>49</sup> But Calhoun, like the delegates meeting at Hartford, used language which contributed the further development of secession which had been sown by Jefferson and Madison.

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<sup>47</sup> Madison, *Writings*, 864.

<sup>48</sup> Madison, *Writings*, 866.

<sup>49</sup> Freehling, *Prelude to Civil War*, 292.

## Chapter 5: Abraham Lincoln and Southern Secession: Echoing the Founders

On 27 February 1860, Abraham Lincoln delivered the “Cooper Union Address” in New York. Lincoln spoke directly to the Southerners who were contemplating secession on the basis of protecting slavery and wanting to take slaves to territories owned by the federal government. Lincoln argued that the constitutional right to take slaves onto government owned lands did not exist.<sup>1</sup> Lincoln added “[y]our purpose, then, plainly stated is that you will destroy the Government, unless you be allowed to construe and enforce the Constitution as you please, on all points in dispute between you and us.”<sup>2</sup> Lincoln’s argument was that slavery was protected where it was and could not be abolished based on the Constitution, but slavery was not protected on federal territories.

He also advised his fellow Republicans to seek ways to reconcile with the South. But in the first line of his last paragraph Lincoln said to Republicans “[n]either let us be slandered from our duty by false accusations against us nor frightened from it by menaces of destruction to the Government nor of dungeons to ourselves.”<sup>3</sup> He called on his fellow Republicans to HAVE FAITH THAT RIGHT MAKES MIGHT, AND IN THAT FAITH, LET US DO OUR DUTY AS WE UNDERSTAND IT.”<sup>4</sup> The last words, the idea that they and Lincoln must “dare to do” their “duty,” would form the fundamental core of Lincoln’s approach to Southern secession.

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<sup>1</sup> Abraham Lincoln, *Speeches and Writings 1859-1865: Speeches, letters, and Miscellaneous Writings, Presidential Messages and Proclamations*. Don E. Fehrenbacher, Ed. (New York: Literary Classics of the United States, Inc., 1989), 125-26.

<sup>2</sup> Lincoln, *Speeches and Writings 1859-1865*, 126.

<sup>3</sup> Lincoln, *Speeches and Writings 1859-1865*, 130.

<sup>4</sup> Lincoln, *Speeches and Writings 1859-1865*, 130.

Lincoln was chosen to be the Republican Party candidate 18 May 1860. Although there was nothing in the Republican Party platform that called for the abolishment of slavery, Republicans were viewed by pro-slavery Southerners as the abolitionist party. There were abolitionists in the Republican Party and the party had been formed and existed only in Northern states. Lincoln and other moderates never called for slavery to be abolished. But that was not enough to stop southern states from threatening secession if Lincoln was elected.

“As the election neared, the increasing likelihood that a solid North would make Lincoln president brewed a volatile mixture of hysteria, despondency and elation.”<sup>5</sup> The specter of John Brown’s attempt to bring about a slave uprising and the way some Northerners hailed his efforts convinced the Southern slave owners that Northerners were determined to end slavery by any means, including violence. Republicans tried to distance themselves from John Brown and his supporters without success. “The mass hysteria caused even southern unionists to warn Yankees that a Republican victory meant disunion.”<sup>6</sup> Unionists in the border states also warned of that southern states would secede if Lincoln became president.<sup>7</sup>

Lincoln faced three opponents in the 1860 election. John Bell represented the new Constitutional Union Party. The constitutional union Party had no platform and did not take a stand on slavery. Instead the Party had one goal: keeping the Union whole. John Breckinridge represented the Southern Democrats who had split with Northern Democrats. Southern Democrats wanted federal protection of slavery so that slavery could not be abolished in a territory once it became a state. Stephen Douglas represented the Democratic Party, but his

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<sup>5</sup> James McPherson, *Battle cry of Freedom: The Civil War Era*. (New York: Ballantine Books, 1988), 228.

<sup>6</sup> McPherson, *Battle Cry of Freedom*, 229.

<sup>7</sup> McPherson, *Battle Cry of Freedom*, 230.

support was primarily in the northern states. Douglas and his supporters believed in popular sovereignty which allowed each state to determine whether slavery would be legal. Lincoln and Republicans wanted to restrict slavery to those areas in which it already existed.

In 1860, as in previous years, presidential candidates did not make speeches or campaign themselves. They relied on surrogates to campaign for them.<sup>8</sup> Douglas broke with tradition and gave speeches. He threatened to hang those who attempted secession and portrayed himself as the only candidate capable of saving the Union.<sup>9</sup> Bell, Breckinridge and Douglas split the Democratic vote. Lincoln's name did not appear on the ballot in ten Southern states, Virginia being the exception. Although Lincoln received slightly less than forty percent of the vote, his electoral vote was more than double the amount of Breckinridge who received the second highest electoral vote total.

On 3 December 1860, Buchanan delivered his fourth and final State of Union Address. He harkened back to George Washington's "Farewell Address" saying "the different sections of the Union are now arrayed against each other, and the time has arrived, so much dreaded by the Father of his Country, when hostile geographical parties have been formed."<sup>10</sup> Buchanan, like the leaders in the Southern states, placed the blame for the tensions in the Union on the North's desire to end slavery and agitation in the South. Buchanan's solution was for the citizens of the United States to allow the individual states to make their own decisions about slavery. Buchanan denied he could prevent secession, saying, "[a]part from the execution of the laws, so far as this may be practicable the Executive has no authority to decide what shall be the relations between

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<sup>8</sup> McPherson, *Battle Cry of Freedom*, 231.

<sup>9</sup> McPherson, *Battle Cry of Freedom*, 231-32.

<sup>10</sup> James Buchanan, "Fourth Annual Message to Congress." *Fourth Annual Message to Congress (Buchanan)* (August 2017): 1. *MasterFILE Premier*, EBSCOhost (accessed August 13, 2018).



the federal government and South Carolina. He has been invested with no such discretion.”<sup>11</sup>

Buchanan also asserted that the federal government could not use military force to compel a state to remain in the Union.

One month and sixteen days after Abraham Lincoln was elected the sixteenth President of the United States, South Carolina seceded from the Union. The “Declaration of the Immediate Causes Which Induce and Justify the Secession of South Carolina from the Federal Union” was written in April 1852 and adopted on 20 December 1860. The “Declaration” used words which can be traced through the “South Carolina Ordinance of Nullification”, Calhoun’s “States Rights and Nullification” and South Carolina “Exposition and Protest” all the way back Thomas Jefferson, James Madison and the Virginia and Kentucky Resolutions. Those words were “[t]hus was established, by compact between the States, a Government with definite objects and powers.”<sup>12</sup>

Texas in “A Declaration of the Causes which Impel the State of Texas to Secede from the Federal Union,” referred to the Union as “the Confederated Union.”<sup>13</sup> While not an exact match for Jefferson and Madison’s words, the same sentiment was implicit. Jefferson’s compact theory expressed in the Kentucky Resolutions, which Madison agreed with and repeated in the Virginia Resolutions, paved the way for a state or states to argue that any state which entered the compact could leave the compact.

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<sup>11</sup> Buchanan, “Fourth Annual message to Congress.”

<sup>12</sup> South Carolina Convention, “Declaration of the Immediate Causes Which Induce and Justify the Secession of South Carolina from the Federal Union.” *The Avalon Project*. [http://avalon.law.yale.edu/19th\\_century/csa\\_scarsec.asp](http://avalon.law.yale.edu/19th_century/csa_scarsec.asp) (accessed August 13, 2018).

<sup>13</sup> Texas Convention, “A Declaration of the Immediate Causes which Impel the State of Texas to Secede from the Federal Union.” *The Avalon Project*. [http://avalon.law.yale.edu/19th\\_century/csa\\_texsec.asp](http://avalon.law.yale.edu/19th_century/csa_texsec.asp) (accessed August 13, 2018).

James Buchanan was still President when South Carolina, Mississippi, Florida, Alabama, Georgia, Louisiana and Texas seceded from the Union. Believing he lacked the constitutional authority to act when the Southern states seceded, Buchanan did nothing. President-elect Abraham Lincoln, in a letter to Thurlow Weed 17 December 1860, wrote “my opinion is that no state can, in any way lawfully, get out of the Union without the consent of the others.”<sup>14</sup> Lincoln’s opinion, in this letter, seemed to be that all the states must agree to allow one state to leave the Union. As Kenneth Stampf explained in “The Concept of a Perpetual Union,” the Articles of the Confederation, which the Constitution replaced, did have the words “perpetual Union” in both the title and Article XIII.<sup>15</sup> The preamble of the Constitution used the words “more perfect Union”, but said nothing about the perpetuity of the Union it created. However, in his “First Inaugural Address” 4 March 1861, Lincoln said that “the Union is perpetual, confirmed by the history of the Union itself. The Union is older than the Constitution”<sup>16</sup> Lincoln then explained that Articles of Association created the Union thirteen years before the Constitution was written and that “the declared objects for ordaining and establishing the Constitution was ‘*to form a more perfect Union.*’”<sup>17</sup>

Therefore “if destruction of the Union, by one, or by a part only, of the States, be lawfully possible, the Union is *less* perfect than before the Constitution, having lost the vital element of perpetuity.”<sup>18</sup> Lincoln, at least in his inaugural address, could not conceive of the

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<sup>14</sup> Lincoln, *Speeches and Writings 1859-1865*, 192.

<sup>15</sup> Kenneth Stampf, "The Concept of a Perpetual Union," 5.

<sup>16</sup> Lincoln, *Speeches and Writings 1859-1865*, 217.

<sup>17</sup> Lincoln, *Speeches and Writings 1859-1865*, 218.

<sup>18</sup> Lincoln, *Speeches and Writings 1859-1865*, 218.

Union as being anything but perpetual or that the founders would have created a Union that was temporary. Lincoln “consider[ed] that, in view of the Constitution and the laws, the Union is unbroken”<sup>19</sup> despite the secession of seven states. Lincoln stated he would make sure, to the best of his ability, that all federal laws were “faithfully executed in all the States.”<sup>20</sup> Near the end of his speech, Lincoln, addressing Southerners, said “[y]ou have no oath registered in Heaven to destroy the government, while *I* shall have the most solemn one to ‘preserve, protect, and defend’ it.”<sup>21</sup>

James Buchanan believed the Constitution did not grant him the power or authority to act when the Southern states seceded in the last months of his term. Abraham Lincoln believed that the presidential oath of office bound him to ensure that the Union remained whole. But Lincoln was not willing to be the aggressor. In the last lines of his inaugural address he appealed to all the citizens of the United States to not become enemies and said “[t]hough passion may have strained, it must not break our bonds of affection.”<sup>22</sup> A little over a month after Lincoln gave his Inaugural Address and called for reconciliation, the Civil War began when the Confederate Army attacked Fort Sumter in South Carolina. Southerners did not believe Lincoln’s assurances that he had no intention of interfering with slavery where it already existed because he lacked the power and authority constitutionally to end what he referred to as the “peculiar institution.”

Virginia seceded 17 April 1861 becoming the eighth state to leave the Union. The Virginia Ordinance of Secession stated that the citizens of Virginia “declared that the powers

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<sup>19</sup> Lincoln, *Speeches and Writings 1859-1865*, 218.

<sup>20</sup> Lincoln, *Speeches and Writings 1859-1865*, 218.

<sup>21</sup> Lincoln, *Speeches and Writings 1859-1865*, 224.

<sup>22</sup> Lincoln, *Speeches and Writings 1859-1865*, 224.

granted them under the said Constitution were derived from the people of the United States, and might be resumed whensoever the same should be perverted to their injury and oppression.”<sup>23</sup>

The justification for secession was the stipulation put forth during the ratification process that the citizens had the right to leave the Union if the federal government acted in a way they determined was harmful to them. But as Pauline Maier noted in *Ratification: The People Debate the Constitution, 1787-1788* the citizens of the United States could take such action, not the citizens of a state.<sup>24</sup>

Arkansas and North Carolina both seceded in May 1861 and Tennessee was the last Southern state to secede on 8 June 1861. Six days after Tennessee joined the Confederacy, a group of Unionists in Virginia, who had been meeting in Wheeling in the western part of the state, effectively seceded from both the state of Virginia and the Confederate States of America by declaring the actions of the Convention in Richmond void. In late December 1862 Lincoln advocated the admission of West Virginia as a state. He addressed the issue of West Virginia’s secession writing “[i]t is said that the admission of West-Virginia, is secession, and tolerated only because it is our secession. Well, if we call it by the name, there is still difference enough between secession against the constitution, and in favor of the constitution.”<sup>25</sup> While that might seem hypocritical on Lincoln’s part, he was driven by his belief that the Union must remain whole and was created to be perpetual.

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<sup>23</sup> Virginia Convention, “Virginia Ordinance of Secession April 17, 1861.” (West Virginia Cultural Archives, 2018.) <http://www.wvculture.org/history/statehood/ordinanceofsecession.html> (accessed August 15, 2018).

<sup>24</sup> Maier, *The People Debate the Constitution*, 308.

<sup>25</sup> Lincoln, *Speeches and Writings 1859-1865*, 422.

The union defeated the Confederacy and secession was viewed as failure. The defeat of the South also seemed to definitively answer the question as to whether a state or states could secede from the union. The answer was no. The federal government had the ability to stop secession. Perhaps that is why, in the aftermath of the civil War, when Republicans had control of Congress, no attempt was made to pass a constitutional amendment to prohibit secession in the future. But did the Union victory really settle the question about whether secession was a legitimate response to unfavorable federal laws and policies? The Supreme Court, after remaining silent during the Civil War, would address the legality of secession.

## Chapter 6: The Supreme Court and Secession: The Final Answer?

Did the Union victory in the Civil War answer the question as to whether a state or states could secede from the Union? One might think the answer is, not just “yes”, but a resounding “yes.” The Confederacy had been defeated and the Southern states had suffered significant losses of life and property. However, four years after the Lee surrendered to Grant and the war ended, the Supreme Court heard the *Texas v. White* case. The case was not directly about secession, but about United States bonds which the state of Texas had in its possession at the time it seceded from the Union. In order to raise funds near the end of the Civil War, the Confederacy sold the bonds to two individuals. The case involved the Reconstruction government in Texas attempting to void the sale and force the return of the bonds.<sup>1</sup>

The Chief Justice of the Supreme Court was Salmon P. Chase. Chief Justice Chase had served as President Lincoln’s Secretary of the Treasury until Lincoln appointed him Chief Justice of the Supreme Court in December 1864. In rendering a six-three decision in *Texas v White* voiding the sale of the bonds, the Court, through Chase’s opinion, also addressed the issue of secession. Chase stated that “[t]he Union of the States never was a purely artificial and arbitrary relation.”<sup>2</sup> Chase provided a brief history of the Union from the colonies, through the War of Independence, to the creation of the Articles of Confederation. Chase noted that in the Articles “the Union was solemnly declared ‘to be perpetual.’”<sup>3</sup> When the weak federal government the Articles created could not adequately govern the new country, “the Constitution

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<sup>1</sup> Kelly, *The American Constitution*, 354.

<sup>2</sup> Melvin Urofsky and Paul Finkelman, *Documents of American Constitutional and Legal History Volume One: From the Founding to 1896*. (New York: Oxford university Press), 522.

<sup>3</sup> Urofsky, *Documents of American and Constitutional; and Legal History*, 522.

was ordained ‘to create a more perfect Union.’ . . . What is indissoluble if a perpetual Union, made more perfect, is not?”<sup>4</sup>

The sentence from Chase’s opinion that is most often quoted in constitutional law and history books is “[t]he Constitution, in all its provisions, looks to an indestructible Union composed of indestructible States.”<sup>5</sup> Those are the words which historians cite as Chase’s and the Court’s ruling on secession which has been interpreted to mean that states cannot secede from the Union. But is that interpretation correct? In discussing Texas specifically, Chase stated that “[t]he act which consummated her admission into the Union was something more than a compact; it was the incorporation of a new member into the political body. And it was final.”<sup>6</sup> Those words, more than the ones most often cited, dispel Jefferson’s concept of the compact theory of states and provide the most solid argument against the ability of a state to secede. Since Texas could not legally or constitutionally secede from the Union and the rebel state government was not recognized by the federal government, the actions of the rebel government were void.<sup>7</sup>

Chase then wrote “[t]he union between Texas and the other States was as complete, as perpetual, and as indissoluble as the union between the original States. There was no place for reconsideration or revocation, except through revolution or through consent of the States.” Secession was possible if the states agreed to it, though Chase did not specify how many states needed to agree. Therefore the Supreme Court in *Texas v White* did not provide the final answer

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<sup>4</sup> Urofsky, *Documents of American and Constitutional; and Legal History*, 522.

<sup>5</sup> Urofsky, *Documents of American and Constitutional; and Legal History*, 522.

<sup>6</sup> Urofsky, *Documents of American and Constitutional; and Legal History*, 522.

<sup>7</sup> Urofsky, *Documents of American and Constitutional; and Legal History*, 522.

on secession. Quite the contrary, Chief Justice Chase explained how secession could happen. Perhaps he did not conceive of a moment in time when all the states or even a majority of the states would consent to allowing either one or some of the states to secede or agreeing to the dissolution of the Union after having been part of President Lincoln's cabinet for much of a Civil War that had ended a mere four years earlier.

Justice Grier, a Democrat from Pennsylvania who had been appointed by President Polk, wrote a dissent. Justice Grier began his dissent by questioning whether the Supreme Court had jurisdiction to decide the case. He answered his own question stating that "if I regard the truth of history for the last eight years, I cannot discover the State of Texas as one of these United States."<sup>8</sup> Justice Grier, with one sentence, refuted Chief Justice Chase's claim that secession never happened and noted that Texas was still not part of the Union. Justice Grier argued that "the case is to be decided as a *political fact*, not as a *legal fiction*. This court is bound to know and notice the public history of the nation."<sup>9</sup> The Supreme Court could not ignore the fact that Texas, along with ten other states, had seceded from the Union regardless of the outcome of the Civil War.

Justice Grier continued his argument by pointing out that the United States Congress had declared that Texas was still in rebellion and made arrangements to govern Texas until Texas had a proper government. He also stated that Texas was under military control rather than under the control of elected officials and was not recognized as a state under the Constitution. Grier refused "to join in any essay to prove Texas to be a State of the Union when Congress have

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<sup>8</sup> Urofsky, *Documents of American and Constitutional; and Legal History*, 525.

<sup>9</sup> Urofsky, *Documents of American and Constitutional; and Legal History*, 525.



decided that she is not.”<sup>10</sup> Although Justice Grier would not attempt to prove that secession could not happen, he was willing to prove that secession did happen and secession had been recognized by Congress. He wrote “[i]t is a question of fact, I repeat, and of fact only. *Politically*, Texas is not a *State in this Union*.”<sup>11</sup> He then stated that the Supreme Court did not have the authority to rule as to whether a state could or could secede from Union.

The majority ruling of the Supreme Court in *Texas v. White* was that the sale of the bonds was void because the rebel government in Texas was an illegal government because secession was illegal. Therefore, the majority opinion written by Chief Justice Chase determined that secession was unconstitutional. But neither the ruling nor the opinion represented the unanimous decision of the Supreme Court. Not only did Justice Grier argue that the Supreme Court lacked the jurisdiction to hear the case. He also recognized the right of Texas to secede. Justice Grier was joined in his dissent by Justices Swayne and Miller. Justices Swayne and Miller were Republicans who, like Chief Justice Chase, had been appointed by President Lincoln.

In writing a brief concurring dissent, Justice Swayne stated that Texas, “in her present condition,”<sup>12</sup> was incapable of bringing the lawsuit. Yet Swayne also “agreed with the majority on the merits of the case”<sup>13</sup> and said that Justice Miller agreed with him. Justices Swayne and Miller, in agreeing that Texas could not bring the lawsuit, tacitly agreed with Justice Grier that Texas has seceded and was still not part of the Union. In agree with the majority, Justices Swayne and Miller agreed that the suit could be filed if Texas was a state. With three Justices

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<sup>10</sup> Urofsky, *Documents of American and Constitutional; and Legal History*, 525.

<sup>11</sup> Urofsky, *Documents of American and Constitutional; and Legal History*, 525.

<sup>12</sup> Urofsky, *Documents of American and Constitutional; and Legal History*, 526.

<sup>13</sup> Urofsky, *Documents of American and Constitutional; and Legal History*, 525.

acknowledging that Texas had seceded from the Union and Chief Justice Chase explaining how secession could be achieved, *Texas v. White* did not provide the final answer that secession was unconstitutional.

In their book, *Creating New States: Theory and Practice of Secession*, Aleksandar Pavkovic and Peter Radan noted that state constitution, such as those which govern each of the fifty states within the United States, do not have clauses in those documents which address secession.<sup>14</sup> They discussed *Texas v. White* and Chief Justice Chase's ruling and his statements about the indestructibility of the Union as well as the ways in which a state could secede, either through consent of the states or revolution. Pavkovic and Radan only briefly mentioned revolution and noted that the United States had seceded from Great Britain through revolution.

In discussing consent among the states, they wrote "[t]aken literally, the 'consent of the States' requirement would mean the unanimous consent of all of the states of the United States."<sup>15</sup> They quickly pointed out that would never happen based on the fact that unanimous consent was not required for the Constitution. They discussed the idea of a constitutional amendment which would allow secession but determined that, based on the requirement for approving constitutional amendments such an amendment would be difficult to pass.

The authors briefly discussed *Williams v. Bruffy* which was ruled on in 1877 to point out that the majority opinion included remarks about secession. In *Williams v. Bruffy*, the plaintiff lived in Pennsylvania and the defendant lived in Virginia during the time the plaintiff sold goods to the defendant in March 1861 prior to Virginia seceding from the Union. The defendant owed

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<sup>14</sup> Aleksandar Pavković and Peter Radan. *Creating New States : Theory and Practice of Secession*. Aldershot, (Hampshire, England: Routledge, 2007.) *eBook Collection (EBSCOhost)*, EBSCOhost (accessed August 23, 2018), 221.

<sup>15</sup> Pavkovic, *Creating New States*, 223.

money to the plaintiff. The defendant died during the war while Virginia was member of the Confederate States of America. The plaintiff filed suit against the deceased estate. In the initial case, the plaintiff won, but the decision was then reversed in appellate court. The plaintiff then appealed the decision to the Supreme Court. The defendant argued that the debt was void because “on the 30th of August, 1861, the Confederate States enacted a law sequestrating . . . every right and interest therein, held by or for any alien enemy since the 21st of May, 1861.”<sup>16</sup> Therefore the defendant did not owe the debt.

Attorneys for the plaintiff argued that the sequestration of the debt was done “by Virginia, through her unlawful acts and combinations with other States.”<sup>17</sup> Attorneys for the defendant argued that the “court has no jurisdiction. No question arose touching the validity of a statute of any State, or of an authority exercised under it.”<sup>18</sup> The defendant’s attorney also argued that “[t]he Confederate government was a government in fact, exercising supreme authority over the people of the States composing it, and its acts controlling their conduct must be their legal vindication.”<sup>19</sup>

Associate Justice Field, a California Democrat appointed by Abraham Lincoln, wrote the majority opinion. He said “the Constitution of the United States prohibits any treaty, alliance, or confederation by one State with another. The organization whose enactment is pleaded cannot,

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<sup>16</sup> *Williams v. Bruffey*, 96 U.S. 176 (1877). FindLaw. <https://caselaw.findlaw.com/us-supreme-court/96/176.html> (accessed August 23, 2018).

<sup>17</sup> *Williams v. Bruffey*.

<sup>18</sup> *Williams v. Bruffey*.

<sup>19</sup> *Williams v. Bruffey*.

therefore, be regarded in this court as having any legal existence. . . . We have no doubt of our jurisdiction, and we proceed, therefore, to the merits of the case.”<sup>20</sup>

Justice Field explained the difference between a country which gained its independence from another country and the Confederate States of America which declared its independence but never really achieved independence. An independent country drove out the government of the mother country and created its own government. The new government was recognized by other countries as having control of its country. The Confederate States of America “never represented the nation . . . [i]t collected an immense military force, and temporarily expelled the authorities of the United States from the territory over which it exercised an usurped dominion.”<sup>21</sup> But the United States fought back and ultimately regained control of the territory. Was Justice Field’s opinion the final answer of the question of secession? Did his opinion remove all doubts that the Constitution was just a compact between the states which the states were free to leave at any time?

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<sup>20</sup> *Williams v. Bruffy*.

<sup>21</sup> *Williams v. Bruffy*.

## Epilogue

In 2017 Robert Shriner, in “A Brief History of Secession: Why Calexit Might Not Be as Crazy as You Think,” argued that secession in the United States is possible “although the prevailing assumption is clearly in favor of the view that the Union cannot be dissolved and is perpetual.”<sup>1</sup> Stiner stated that the perpetuity of the Union no longer existed once the Articles of Confederation were replaced with the Constitution and “perpetual union would appear to have been broken for a while by the loss of two states” because Rhode Island and North Carolina did not ratify the Constitution when the other states did.<sup>2</sup> Shriner argued that a new Union had been created and that Union was not perpetual because it did not initially include all the states. Therefore, he asserted secession is possible.

His argument is certainly plausible. After he had been inaugurated, Washington wrote a letter to Gouverneur Morris on 13 October 1789. He stated that “the new federal government is organized . . . it is hoped and expected it will take strong root, and that the non acceding States will very soon become members of the union.”<sup>3</sup> However, prior to ratifying the Constitution, the governments of North Carolina and Rhode Island never stated that they had seceded from the Union created under the Articles of Confederation. Nor was either state recognized as a sovereign nation. North Carolina objected to ratifying the Constitution because there was no bill

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<sup>1</sup> Richard Striner, "A Brief History of Secession: Why Calexit Might Not Be as Crazy as You Think." *The American Scholar* no. 2 (2017): 20. *Literature Resource Center*, EBSCOhost (accessed August 24, 2018), 22.

<sup>2</sup> Shriner, “A Brief History of Secession,” 24.

<sup>3</sup> Washington, *Writings*, 746.

of rights. Rhode Island wanted the Articles of Confederation amended rather than a new central government.

Some Californians discussed the possibility of secession after the 2016 elections as means of voicing their disapproval about the policies of the current President of the United States. But Californians were not the first ones to threaten secession since the end of the Civil War. Some Texans had already been talking about secession during the previous presidential administration. In her article “The Texas secession debate is getting kind of real” which was published in the *Washington Post* in April 2016, Amber Phillips wrote “[w]hen Texas Republicans assemble for their state convention next month, it’s possible they will discuss whether Texas should secede from the United States.”<sup>4</sup> Phillips explained that the majority of the Texas Republican party would not vote for and did not support secession. But the fact that secession could be discussed at the state convention demonstrated that “the once fringe movement has become a priority for at least some conservative grass-roots Texans.”<sup>5</sup>

That neither the Texas nor California secession movements have been taken seriously or received widespread support does not diminish the reality that for some, the question of secession has never been definitively answered. The Virginia and Kentucky Resolutions, the report of the Hartford Convention, the South Carolina Nullification document and the secession documents provide the foundations upon which to continue the argument for secession. Had the founder realized secession would be possible would they have chosen to describe the Union as perpetual? Or were they certain that was what they created?

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<sup>4</sup> Amber Phillips, "The Texas secession debate is getting kind of real." *The Washington Post*, 2016., Business Insights Global, EBSCOhost (accessed September 15, 2018).

<sup>5</sup> Phillips, “The Texas secession debate.”

## Conclusion

The thesis set forth in the Introduction was that the seeds of secession as a legitimate response for a state or states to unfavorable federal laws and policies were planted in the Virginia and Kentucky Resolutions and continued to develop during the Hartford Convention and South Carolina Nullification Crisis. Could the argument be made that the Declaration of Independence was the original seed of secession and the Virginia and Kentucky Resolutions, the Hartford Convention and the South Carolina Nullification Crisis contributed to its development? Perhaps that argument would be valid if the citizens of the thirteen colonies had ratified a document with the Monarchy and Parliament in Great Britain granting the Monarchy and Parliament control over the colonies. But that was not the nature of the relationship. The colonies had not joined together with Great Britain to form a union. Rather, the colonies were the possessions of Great Britain. Thomas Jefferson, author of both the Declaration of Independence and the Kentucky Resolutions did not use the same wording for both documents. The Southern states did not use the language from the Declaration of Independence in their secession documents.

During the fight for the Constitution, one of the objections raised by Samuel Adams, Patrick Henry, George Mason and the minority in the Pennsylvania ratification convention was in the wording of the preamble because the people, not the states, were accepting the Constitution and granting power to the new federal government. In defending the Constitution, Hamilton and Madison wrote about the need for a strong Union and made no mention of a strong agreement between states. Two states, in their ratification documents, discussed a compact between the citizens of the United States, not the states. Four states, in their ratifying documents,

said that power comes from and reverts back to the people, not the states. In his “Farewell Address”, George Washington spoke of the need for citizens to preserve the Union. At the end of George Washington’s two terms in office in March 1799, the people, not the states, were thought to be the ones who agreed to accept the Constitution.

The Virginia and Kentucky Resolutions changed the way the state legislatures, if not the citizens of the United States, thought about the relationship between the states and the Constitution. In the Kentucky Resolutions which were written in 1798 in response to the Alien and Sedition Acts, Thomas Jefferson introduced the concept that the states had entered into a compact under the Constitution to accept a centralized federal government. Jefferson’s point in developing the compact theory and Madison’s in agreeing with Jefferson in writing the Virginia Resolutions in 1798 also in response to the Alien and Sedition Acts was to use it as the basis for an argument that states could declare federal laws void. The Virginia and Kentucky Resolutions were deemed a failure by many historians because the other states either responded by refusing to agree that states could declare federal laws void or not responding. But the reality was that in forming the compact theory, Jefferson, with Madison’s assistance, planted the seed which would lead to eleven Southern states seceding from the Union from December 1860 through June 1861. Hamilton, Madison and Washington recognized the danger the Resolutions presented to the Union.

From Late December 1814 to early January 1815, delegates from three New England states and representatives from counties in two New England states met in Hartford Connecticut to discuss their objections to the War of 1812 and President James Madison’s policies. Although no original records of the day to day discussions at the Convention exist, the official report of the



Convention, while not recommending that the New England states secede, laid out the conditions under which secession would be an acceptable choice. The Hartford Convention has been deemed a failure and credited with bringing about the demise of the Federalist Party. The reality is that the Hartford Convention Report using language similar to the Virginia Resolutions watered the seeds of secession planted by the Virginia and Kentucky Resolutions by openly discussing secession in a public report.

The South Carolina Nullification Crisis began with enactment of the Tariff of 1828, quieted for two years then resumed from 1830 through the beginning of 1833. John Calhoun based his written oppositions on the compact theory of states expressed in the Virginia and Kentucky Resolutions. Relying particularly on the Kentucky Resolutions, Calhoun pushed the theory of nullification to the point where South Carolina passed a document to nullify the Tariff of 1828. While Jefferson had argued that the states could nullify a federal law, Calhoun argued that an individual state could nullify a law within its borders.

James Buchanan stated that he had no power to prevent states from leaving the Union prior to South Carolina's secession after Abraham Lincoln was elected President. Jefferson's compact theory of states was cited in the South Carolina Convention's explanation as to why the state was leaving the Union. Abraham Lincoln, in his First Inaugural Address argued that the Union was perpetual. Lincoln believed the Presidential oath of office authorized him to take action to stop secession. The Union troops defeated the Confederate troops and every Southern state rejoined the Union.

The Union victory seemed to provide the answer to whether a state or states could secede from the Union: no. The Union had been preserved. In 1869, Chief Justice Salmon P. Chase

also seemed to provide a definitive answer in his majority opinion in *Texas v. White* in which he said the Union could not be broken and had not been broken. But then Chief Justice Chase provided two scenarios in which a state or states could leave the Union: rebellion or the approval of all the states. In dissenting, Justice Grier argued that while secession might not be legal, it did happen. Eight years later, Justice Field writing the majority opinion in *Williams v. Bruffy* stated that secession was constitutionally illegal.

The concept of secession as a legitimate response to unfavorable federal laws and policies began with Jefferson's compact theory of states in the Kentucky Resolutions and supported by Madison in the Virginia Resolutions. The language of the Virginia and Kentucky Resolutions formed the basis for the report published by the delegates of the Hartford Convention. The report also discussed the conditions under which secession was possible. The documents written by John C. Calhoun during the South Carolina Nullification Crisis were based on the Kentucky Resolutions in particular. Like the Hartford Convention report, the South Carolina Nullification document also discussed the conditions under which secession was possible.

George Washington, Alexander Hamilton and even James Madison recognized the inherent threat to the Union in the Virginia and Kentucky Resolutions. But Madison still wrote the Virginia Resolutions and supported Thomas Jefferson's premise that the states had entered into an agreement when the Constitution was ratified. Jefferson had privately discussed the state of Virginia leaving the Union if the other states did not agree to declare the Alien and Sedition Acts void. The moderate delegates who attended the Hartford Convention understood that allowing the radical delegates to push for secession was dangerous. But the delegates still

approved a report which, while not calling for secession, provided the framework for justifying secession. John C. Calhoun and the South Carolina nullifiers also understood the threat secessionist language posed to the young Union. But the nullifiers explained the conditions under which secession would be justified.

The Virginia and Kentucky Resolutions provided the foundation for secession. The Hartford Convention and the South Carolina Nullification Crisis added more layers until secession finally happened. Historians have seen viewed the Virginia and Kentucky Resolutions and the Hartford Convention as failures. The South Carolina Nullification Crisis was seen as a precursor to South Carolina's secession. Little if any attention has been paid to the connection between the three events which were all responses to unfavorable federal laws. Understanding the connection can provide a better understanding of the political and constitutional history of the United States in its early years.

Why explore the origin and development of secession from 1798 to 1833? There are still lessons to be learned. Words have consequences. Political leaders driven by partisan political views make choices that can be divisive. Although talk of secession in Texas and California can be dismissed as inconsequential, the language used must be taken seriously. What began as responses to unfavorable federal laws in 1798, 1814 and 1830-33 resulted in a nation being torn apart and a bloody civil war between the Northern states and the Southern states. Understanding the past can help avoid a similar fate when partisan politics threaten the solvency of the Union. The Civil War and two majority Supreme Court opinions did not answer the question as to whether states can secede if the discussion is still taking place. Those types of dialogues can, just as they did in the past, lead to war and bloodshed.

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