



JOHN C. CALHOUN, CONSTITUTIONALISM, AND SLAVERY

Welcome to our March 2021 edition of Liberty Matters. This month Keith Whittington has written our lead essay on [John C. Calhoun](#). Calhoun was one of the most formidable political thinkers of his era as well as a former Vice President, a member of the House and Senate, and a Secretary of State and War during the first half of the 19th century. He was also a Southerner and a defender of the institution of slavery. As Professor Whittington notes in his essay, Calhoun is fascinating because his writings address many of the issues we are facing about the nature of our Constitutional order today. Much like America during Calhoun's lifetime, we are deeply divided along regional lines in America today, and Calhoun's writings on state "nullification" and concurrent majorities speak to many of the discussions we have had about our divisive political landscape. However his defense of slavery was and is so deeply at odds with America's contemporary culture and values that re-examining Calhoun today helps us confront the question of whether or not we can still learn from the contributions of some historical figures even if we find some of their views repugnant and offensive.

JOHN C. CALHOUN, CONSTITUTIONALISM, AND SLAVERY

by Keith E. Whittington

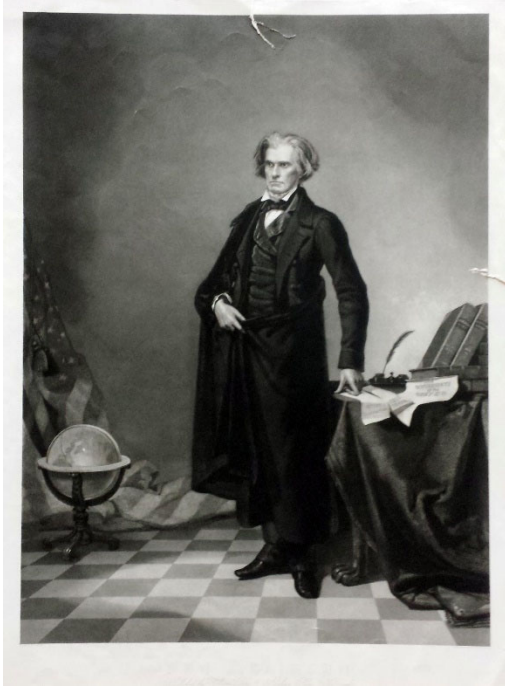
John C. Calhoun has proven to be a figure of enduring interest and controversy. It is hard to think of a writer who was simultaneously so much a part of the central currents of the American political tradition and so much at odds with core American tenets. He exemplified the contradictions of his age and in some ways of the American experience. In doing so he contributed ideas and arguments about the nature of democracy, constitutionalism, and liberty that continue to be worthy of reflection, even though he often bent his talents to defending an institution deeply at odds with liberal values.

Calhoun was a political titan of the Jacksonian era and one of the most serious American political thinkers between the founding and the Civil War. Raised on the western frontier of South Carolina, as a young Jeffersonian he distinguished himself as valedictorian at Yale College under the tutelage of the Federalist Timothy

Dwight. An ambitious young man, he married into the South Carolina planter elite and launched his own political career as an ardent nationalist on the eve of the War of 1812, soon rising into a position in James Monroe's Cabinet. Pining to be president himself, he got no closer than the vice presidency. He struggled to stay ahead of the political curve. He fluttered from Jacksonian to anti-Jacksonian politics. As politicians in South Carolina grew increasingly extreme in their defense of slavery and states' rights, Calhoun went with them. Like many politicians of the era, oratory was often his preferred form of communication, and his speeches in the House and particularly in the Senate were among his most substantial works. But unlike many of his peers, he also wrote for print. One of his posthumously published works, *A Disquisition on Government*, was also the most abstract and has defined his long-term legacy as a political thinker.^[1]

Beyond the many immediate political and policy disputes that occupied his attention, Calhoun is ultimately known for two contributions to American political thinking. The first is his theory of state nullification, or in more general form the idea of "concurrent majorities." The second is his full-throated defense of racial slavery as not merely a

“necessary evil,” as an earlier generation of Southern politicians thought it to be, but as a “positive good,” as his own generation of Southern politicians increasingly asserted. Of course, for Calhoun the first served as the procedural means for protecting the second. The two together helped form the foundation of the Southern secessionist movement a decade after his death as well as informing the long history of the sectional defense of Jim Crow after the Civil War.



The theory of state nullification had a short-lived burst of influence in the late 1820s and early 1830s, though it never fell into complete obscurity and was dusted off now and again over the course of subsequent decades. But it was in the context of developing this particular institutional mechanism for the defense of Southern institutions that Calhoun elaborated a much broader argument about the nature of the American union, the baneful influence of political parties, the ongoing threat of factions in an extended republic, and the proper design of checks and balances and of a constitutional democracy. The idea of state nullification, in a nutshell, is that any state within the Union has an independent authority to declare a federal policy to be in violation of the federal constitution and thus null and void within the jurisdiction of the state. To this extent, the concept is not unlike what

a state court might do in declaring that federal law is unconstitutional, but has a variety of important departures from the more familiar idea of judicial review. When this practice of the courts had become common enough by the end of the nineteenth century that it needed a name, some suggested that it be called “judicial nullification” before the name judicial review caught on.^[ii]

American-style judicial review occurs within the concrete context of an ordinary case or controversy appearing before a judge. In that context a judge might determine that a statute in question is either valid or invalid under the Constitution. If the latter, then the statute could not be constitutionally applied, at least in some circumstances.^[iii] By contrast, the theory of state nullification proposed something more akin to modern European-style constitutional review in which a statute can be declared invalid as a general matter abstracted from any particular application or context. State nullification did not wait for a case to arise or pose the constitutional question in the context of a particular application but simply declared that a statute on its face was void given its incompatibility with the Constitution. Of course, a state supreme court’s declaration that a federal law is unconstitutional can be reviewed by the U.S. Supreme Court, giving a federal institution the final say on constitutionality of a federal policy under the federal Constitution. Some states’ rights proponents, most notably the Jeffersonian Virginia state chief justice Spencer Roane, would have denied the U.S. Supreme Court the authority to review the actions a state supreme court, but neither Congress nor the Supreme Court were open to the idea that a federal law might be held invalid and unenforceable within the confines of a single state without the possibility of review by an outside entity.^[iv]

More distinctively, the theory of state nullification took such constitutional questions out of the hands of the courts.^[v] Calhoun traced his idea of state nullification back to the Virginia and Kentucky Resolutions, the protests drafted by James Madison and Thomas Jefferson respectively. Those resolutions contended that the Alien and Sedition Acts adopted by Congress in 1798 violated

the federal Constitution. Notably, the resolutions, adopted by the only two state legislatures with Jeffersonian majorities in both chambers, asserted that those bodies could assess the constitutionality of a federal law. The Kentucky Resolution went a bit further and declared that “nullification” by the “sovereign and independent” states was “the rightful remedy” to Congress taking actions “unauthorized” by the Constitution.^[vi]

Like the earlier resolutions, Calhoun’s argument turned, at least in part, on what has become known as the “compact” theory of the Union.^[vii] The theory held that the Constitution was the result of an agreement, or compact, of the several sovereign states, not dissimilar from an international treaty. As a result, the states had both the authority and the responsibility to monitor the federal government for potential violations of the federal compact, to identify and to call attention to any violations, and to take appropriate steps to secure their citizens from the effects of such constitutional violations. As the authors of the constitutional agreements, the states had a residual authority to interpret its meaning and take any necessary political responses to its violation. As its advocates frequently noted, those responses might extend up to and include secession from the Union itself.

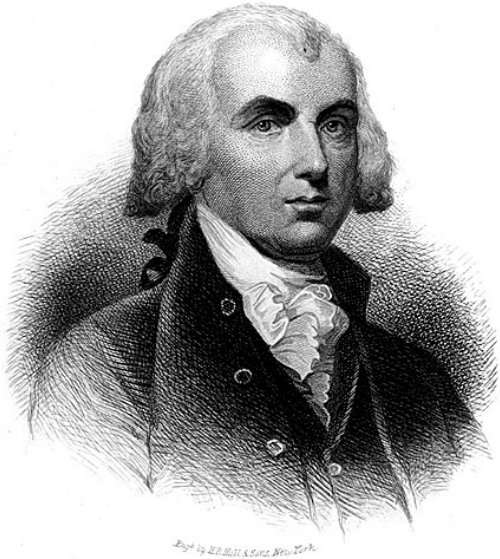
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Calhoun was not alone in embracing a theory of state nullification, but he added a great deal of detail about how it would work and a broader theory about why it was justified. Unlike the Jeffersonians, Calhoun urged that such a measure could not be exercised by the state legislature itself. It was not the state legislature that was the repository of the sovereign authority of the state, it was the people of state. Consequently, Calhoun

contended that a special popular convention should be called for such a purpose, comparable to the ratification conventions that adopted the federal Constitution or the constitutional conventions that drafted the state constitutions (or ultimately, the secession conventions that purported to take the Southern states out of the Union after the election of Abraham Lincoln).^[viii] Calhoun also contended that the sovereignty of the states, within the Union, had been abridged to the degree that such a state resolution of nullification could be overruled – but only by a comparable declaration of the three-quarters of the states that would be necessary to amend the federal Constitution.^[ix] A lone state, so long as it remained in the Union, was not the final authority on the meaning of the federal Constitution, even within its own borders, but there could be no appeal from a state nullification convention to any institution of the federal government.

In back of this novel constitutional arrangement was an argument about the essence of a constitutional democracy itself. Like James Madison, Calhoun thought the central challenge of republican government was how to allow the people to govern for the common good without enabling a part of the people to capture the government so as to advance their partial and private interests.^[x] Where Madison thought the extended republic could make it difficult for factions to organize and coordinate to securely hold political power, Calhoun thought experience had shown that to be too optimistic. “[T]he necessary tendency of all governments, based upon the will of an absolute majority, without constitutional check or limitation of power, is to faction, corruption, anarchy, and despotism; and this, whether the will of the majority be expressed directly through an assembly of the people themselves, or by their representatives.”^[xi] Mass political parties, of the type that had emerged in the Jacksonian era, provided the means for narrowly majoritarian national majorities to form stable governing coalitions that could systematically oppress minority interests. “[P]arty ties,” Calhoun thought, had proven stronger than a commitment to constitutional fidelity.^[xii] A dominant party will not hesitate to violate the terms of the constitutional compact

so as to advance its own interests, and the formal checks and balances that Madison had valued would be overwhelmed by partisanship.



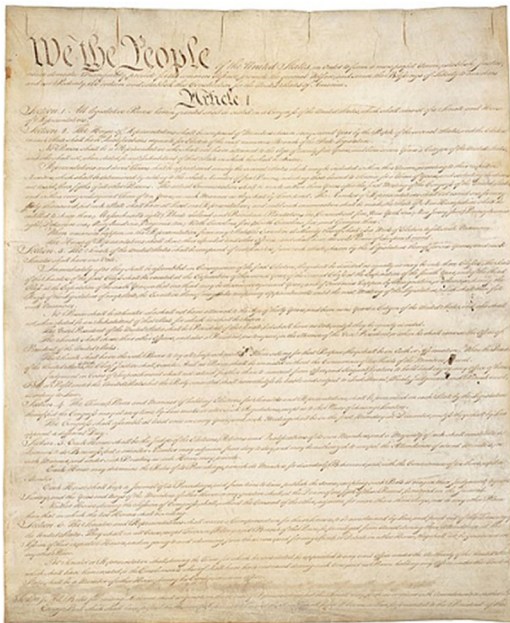
James Madison

An effective system of checks and balances must truly match the ability to check power with the interest to check power. Madison had wanted to create a system by which ambition could counteract ambition, but he hoped to do so by connecting “the interest of the man” with “the constitutional rights of the place.”^[xiii] Calhoun doubted whether that could be sufficient. Only genuine checks on power could counter “the naked principle that the majority ought to govern.”^[xiv] And a genuine check required arming core societal interests with a “veto” power that they could wield against other assembled interests.^[xv] State nullification was one such check.

In advocating for nullification, Calhoun contended that the diverse states of the Union embodied those diverse, core societal interests. He subsequently questioned whether that was generally true. The states themselves included their own internal divisions that similarly must check one another.^[xvi] The Union, he eventually asserted, was divided along a single overriding fissure, that between slave states and free states, and thus new constitutional arrangements were necessary to formally account for that divide.

“The nature of the disease is such, that nothing can reach it, short of some organic change—a change which shall so modify the constitution, as to give to the weaker section, in some form or another, a negative on the action of the government. Nothing short of this can protect the weaker, and restore harmony and tranquility to the Union, by arresting, effectually, the tendency of the dominant and stronger section to oppress the weaker. When the constitution was formed, the impression was strong, that the tendency to conflict would be between the larger and smaller States; and effectual provisions were, accordingly, made to guard against it. But experience has proved this to have been a mistake; and that, instead of being, as was then supposed, the conflict is between the two great sections, which are so strongly distinguished by their institutions, geographical character, productions and pursuits. Had this been then as clearly perceived as it now is, the same jealousy which so vigilantly watched and guarded against the danger of the larger States oppressing the smaller, would have taken equal precaution to guard against the same danger between the two sections. It is for us, who see and feel it, to do, what the framers of the constitution would have done, had they possessed the knowledge, in this respect, which experience has given to us—that is—provide against the dangers which the system has practically developed; and which, had they been foreseen at the time, and left without guard, would undoubtedly have prevented the States, forming the southern section of the confederacy, from ever agreeing to the constitution; and which, under like circumstances, were they now out of, would forever prevent them from entering into, the Union.”^[xvii]

As this final argument in his posthumous *Discourse on the Constitution and Government of the United States* emphasized, the core “minority” interest that Calhoun was so keen to defend was ultimately the interest of slaveholders.



U. S. Constitution

It is quite possible to separate Calhoun's analysis of democratic constitutional politics from his motivation for developing such an analysis. His argument that party loyalties would overwhelm constitutional loyalties could hardly be more prescient. His worry that the separation of powers would not sustain effective checks and balances in the context of organized partisan politics has been a staple of American constitutional thought since the Progressives. His belief that a politically appointed federal judiciary would not reliably stand as a countermajoritarian check on power but would instead mirror the beliefs and interests of the same majority that won national elections has been shared by judicial analysts for decades. His analysis of the American constitutional scheme through the lens of his theory of "concurrent majorities" – the idea that constitutional power should not be exercised by simple majorities but by the agreement of the majorities of the multiple interests in society – can be illuminating.^[xviii]

What has borne the test of time less well are his prescriptions. There are, of course, advocates of majoritarian democracy in our day as there was in his, and they would disagree with his normative starting point. But even those who might be sympathetic to his diagnosis of the populist threat in democratic politics have found his efforts to institutionalize a system of political vetoes

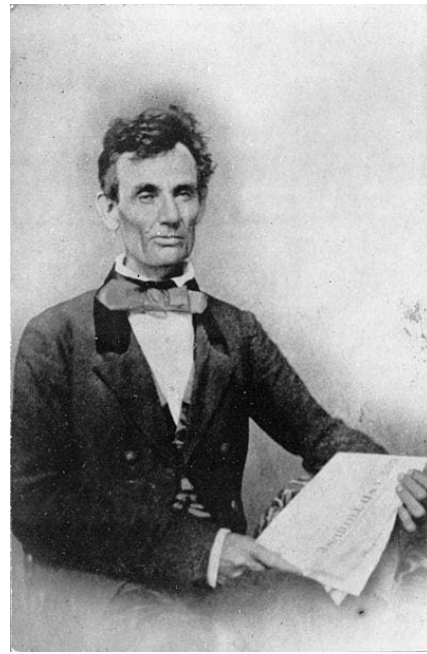
difficult to work in practice. Calhoun was optimistic that a widespread system of vetoes would lead to compromise and consensus-building around genuine shared interests.^[xix] We might worry that it is more likely, for better or for worse, to lead to gridlock. Calhoun was hopeful that acceptance of state nullification would stave off secession and disunion. We might think that unlikely, and the cost might be too high in any case. Even his contemporaries wound up abandoning both the theory and the practice of state nullification, though the broader state compact theory remained influential at least through the Civil War. As his moving the goalposts throughout his lifetime suggests, the quest to find a stable set of core interests that would provide the foundation for his system of concurrent majorities has seemed fruitless.

Of course, the aspect of Calhoun that has most negatively affected his historical reputation is his explicit defense of slavery. It might have been one thing if Calhoun had simply been motivated in his actions to defend and advance the parochial interests of South Carolina, but he went much further than that. An important part of his intellectual legacy is his role as a pro-slavery theorist. He figures prominently among those who did not merely accept slavery but insisted that slavery should be celebrated. That commitment led him far outside the mainstream, as it had once been understood, as he worked to shift what America was understood to be. It ultimately led him to reject central tenets of the American ideal and of liberalism itself as he articulated a genuinely illiberal American political theory.

In responding to abolitionist petitions submitted to Congress, Calhoun advocated a gag rule excluding them from the possibility of congressional debate and response. It was not enough that the Congress adhere to a limited theory of its constitutional authority nor that slaveholding states be accepted as equal partners in the Union. He insisted on taking the "higher ground." Where "two races of different origin" are "brought together, the relation now existing in the slaveholding States between the two, is, instead of an evil, a good – a positive good." It was inevitable, he contended, that in a "wealthy and civilized society" some would "live on the labor of the

other.” Calhoun suggests that the “African race” is better off in the condition of slavery than it would otherwise be. That race, he contends, has never “attained a condition so civilized and so improved” as they had as slaves on a Southern plantation. But more important than whatever benefits the institution of racial slavery might provide the enslaved, Calhoun thought it was in the long-term interest of whites to continue it. It was in their interest not because they had the “wolf by the ear” and could not “safely let him go,” as Jefferson said.^[xx] Rather, Calhoun contended that enslaved blacks benefited whites because slavery addressed the inevitable and revolutionary conflict between labor and capital. Someone must rule, and Calhoun thought it was preferable, for him and his community, that it be the European race and not the African race. In the “disorders and dangers” to come, it is not clear that Calhoun imagines that liberal democracies will survive.^[xxi]

At the end of his life, Calhoun reached his perhaps inevitable conclusion of rejecting the Jeffersonian embrace of Lockean liberalism. In his *Disquisition*, he denounced the “great and dangerous error” that “all people are equally entitled to liberty.” Liberty was “a reward reserved for the intelligent, the patriotic, the virtuous and deserving.”^[xxii] As Thomas Hobbes might have recognized, Calhoun posited that the purpose of government was to overcome the human “tendency toward a universal state of conflict.” The government provided security, not because everyone had or would enter into an equal social contract that would respect their equal individual rights but because government was necessary “to preserve and perfect society.” It was “necessary to the existence and well-being of our race.” Although it was an abuse of government for some to use the instruments of government “to oppress the rest of the community,” it was no longer the end of government to secure the blessings of liberty. Government is to protect the community from “plunder and conquest,” which required governmental strength that could not be easily limited and constitutional mechanisms to prevent the distinct communities within society from plundering each other.^[xxiii]



Abraham Lincoln (1854)

Calhoun was a sophisticated theorist of constitutional government, but his was an illiberal form of constitutionalism. The foundations and ends of government were not based on the premise that all men were created equal and should be willing to consent to the form of government in which they found themselves. The purpose of his government is not to secure individual liberty but to secure communities, communities that were in an important sense part of the natural order and potentially highly inegalitarian. The Declaration of Independence was valuable to him only for how it was styled as from the “thirteen United States of America,” not for the principles that Americans had long taken as commonplace and that Abraham Lincoln took as those upon which the nation was conceived and dedicated. As a result, Calhoun simultaneously advanced and departed from the traditions of American political thought. He continued forward the Madisonian project of attempting to reconcile republicanism and constitutionalism, but he renounced the Jeffersonian project of trying to realize a government that secured to all the right of life, liberty, and the pursuit of happiness.

^[i] John C. Calhoun, *Union and Liberty: The Political Philosophy of John C. Calhoun*, ed. Ross M. Lence (Indianapolis: Liberty Fund,

1992). https://oll.libertyfund.org/title/calhoun-union-and-liberty-the-political-philosophy-of-john-c-calhoun#lf0007_head_003

[ii] Charles Grove Haines, “The Conflict over Judicial Powers in the United States to 1870,” *Studies in History, Economics and Public Law* 35 (1909): 36; Edward S. Corwin, *The Doctrine of Judicial Review* (Princeton: Princeton University Press, 1914).

[iii] Keith E. Whittington, *Repugnant Laws* (Lawrence: University Press of Kansas, 2019).

[iv] Mark A. Graber, “James Buchanan as Savior? Judicial Power, Political Fragmentation, and the Failed 1831 Repeal of Section 25,” *Oregon Law Review* 88 (2009): 95.

[v] See also, Keith E. Whittington, *Constitutional Construction* (Cambridge: Harvard University Press, 1999); Keith E. Whittington, *The Political Foundations of Judicial Supremacy* (Princeton: Princeton University Press, 2007).

[vi] Jonathan Elliot, ed., *The Virginia and Kentucky Resolutions of 1798 and '99* (Washington, D.C.: Jonathan Elliot, 1832).

[vii] https://oll.libertyfund.org/title/calhoun-union-and-liberty-the-political-philosophy-of-john-c-calhoun#lf0007_head_010

[viii] https://oll.libertyfund.org/title/calhoun-union-and-liberty-the-political-philosophy-of-john-c-calhoun#lf0007_head_008

[ix] https://oll.libertyfund.org/title/calhoun-union-and-liberty-the-political-philosophy-of-john-c-calhoun#lf0007_head_008

[x] Federalist No. 10. <https://oll.libertyfund.org/title/jay-the-federalist-gideon-ed>

[xi] https://oll.libertyfund.org/title/calhoun-union-and-liberty-the-political-philosophy-of-john-c-calhoun#lf0007_head_008

[xii] https://oll.libertyfund.org/title/calhoun-union-and-liberty-the-political-philosophy-of-john-c-calhoun#lf0007_head_008

[xiii] Federalist No. 51. <https://oll.libertyfund.org/title/jay-the-federalist-gideon-ed>

[xiv] https://oll.libertyfund.org/title/calhoun-union-and-liberty-the-political-philosophy-of-john-c-calhoun#lf0007_head_008

[xv] https://oll.libertyfund.org/title/calhoun-union-and-liberty-the-political-philosophy-of-john-c-calhoun#lf0007_head_008

[xvi] John C. Calhoun, “Letter in Relation to the Mode of Appointing Electors of President and Vice-President, November 1846,” in *The Works of John C. Calhoun*, ed. Richard K. Cralle, vol. 4 (New York: D. Appleton and Company, 1856), 254.

[xvii] https://oll.libertyfund.org/title/calhoun-union-and-liberty-the-political-philosophy-of-john-c-calhoun#lf0007_head_004

[xviii] https://oll.libertyfund.org/title/calhoun-union-and-liberty-the-political-philosophy-of-john-c-calhoun#lf0007_head_004

[xix] https://oll.libertyfund.org/title/calhoun-union-and-liberty-the-political-philosophy-of-john-c-calhoun#lf0007_head_004

[xx] Of course, Jefferson thought the “wolf” could not be safely held either, and thus slavery was a tragic reality presenting no good options.

[xxi] https://oll.libertyfund.org/title/calhoun-union-and-liberty-the-political-philosophy-of-john-c-calhoun#lf0007_head_014

[xxii] https://oll.libertyfund.org/title/calhoun-union-and-liberty-the-political-philosophy-of-john-c-calhoun#lf0007_head_003

[xxiii] https://oll.libertyfund.org/title/calhoun-union-and-liberty-the-political-philosophy-of-john-c-calhoun#lf0007_head_003

JOHN C. CALHOUN AND THE MERITS OF MINORITY RIGHTS

by James H. Read

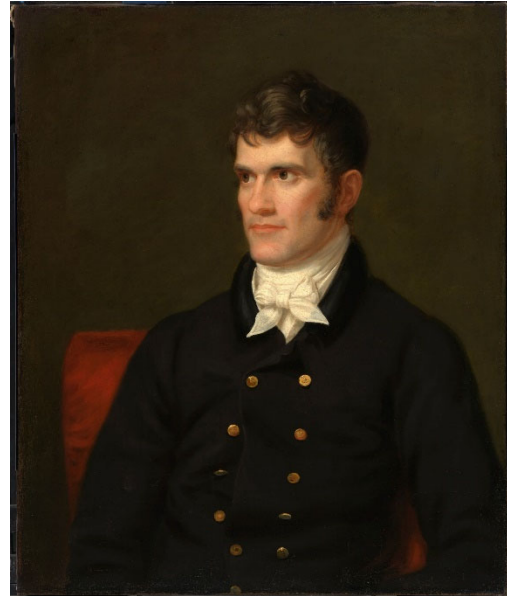
I want to thank Liberty Fund for inviting me to participate in this forum on [John C. Calhoun](#). I agree with Keith Whittington's observation at the beginning of his thoughtful essay: that Calhoun is a figure of "enduring interest and controversy" because he "exemplified the contradictions of his age and in some ways of the American experience."

I believe the contradictions Calhoun exemplified are still with us, despite the transformations wrought by the Civil War. Calhoun's thought merits attention not only for what is perceptive in it, but also for its blind spots. Both his acuity and his blindness are relevant to our deeply polarized age.

Because I agree with most of Keith's essay, my response is not a counterpoint, but instead extends some lines of thought initiated in the essay, and expands on some themes it treated briefly. I share Keith's judgment that Calhoun's analysis of the way in which democratic politics can degenerate into the selfish pursuit of narrowly partisan or sectional interests holds up better than his prescribed remedy: state nullification of federal law, and more generally, arming each "portion" or "interest" of the society with veto rights over decisions affecting all.

I also agree that it is possible, to a degree, to separate "Calhoun's analysis of democratic constitutional politics" from "his motivation for developing such an analysis" – which was principally to defend the interests of slaveholders. Calhoun's analysis of how a self-interested majority consolidates its power at the expense of a minority with distinctly different interests can illuminate the political dynamics of societies where slavery is not practiced at all, and where entrenched majorities and minorities, unlikely ever to alternate in power, are divided by religion, language, ethnicity, or something else other than slavery. In transplanting Calhoun's political science to these other contexts, however, we should also ask why,

for him, white slaveholders counted as a minority whose rights and interests merited protection, and black slaves did not.



John C. Calhoun (c. 1823)

Though I agree with Keith, both about the perceptiveness of Calhoun's analysis of democratic politics, and about the unworkability of his proposed remedy, I believe it is important to ask *why* Calhoun believed a system of constitutionally-guaranteed mutual vetoes would lead to "compromise and consensus-building around genuine shared interests," as Keith phrases it, rather than to gridlock, paralysis, and disunion. If an ill person persists in demanding treatments that worsen the disease, it is not enough to inform the patient that those treatments are ineffective. We might also ask why this particular disease disposes patients, including those who are intelligent and well-informed, to place their faith in counterproductive remedies.

Calhoun spoke and acted within a deeply polarized United States. It did not appear this way at the beginning of his career, when he trusted statesmen from all sections of the United States to comprehend and work for the good of the whole country. He believed that he himself, as a political leader, had done so. But increasingly divergent sectional interests, first over trade policy (pitting the protectionist interests of northern manufacturers against the free trade interests of southern

planters), then even more sharply over slavery, combined with the readiness of politicians to exploit sectional divisions, led Calhoun to conclude that such gulfs *could not* be bridged through any decision process that left the final decision to majority vote – even if all of the regular constitutional rules were followed.



Citizens living in one region of the country, with their own regional economic interests and distinct way of life, would have little understanding of the interests and lives of fellow citizens residing thousands of miles away. (Plantation slavery in Calhoun’s view exemplified a very different mode of production than northern capitalism, a distinct way of resolving “the inevitable and revolutionary conflict between labor and capital,” as Keith notes.) If one section enjoyed a numerical majority, it would not hesitate to use the machinery of government to promote its own sectional interests even if this deeply harmed the interests of another section. Each would increasingly view the other as foreign to itself, even as enemies.

Calhoun did not believe such deep divisions could be bridged at the popular level. He did, however, believe they could be overcome by negotiation and compromise among the elected leaders of each section – but only with the right kind of decision process. Under any system that allowed a numerical majority to make the final decision, Calhoun maintained, elected representatives would simply mirror the selfish demands of their constituents, and majority tyranny in the society would be reproduced within the legislative process. Statesmen from different sections could converge on a true common good only under the constraint of a very different decision rule.

Here is where Calhoun’s constitutional doctrine of nullification enters the picture, and more generally, his theory of the concurrent majority, whereby every significant “portion” or “interest” of the society is armed with veto rights to employ at its own discretion. Calhoun believed that the urgent need for common action, combined with the fact that nothing could be accomplished unless leaders from every section consented, would produce an accommodation acceptable to all. “When something must be done – and when it can be done only by the united consent of all – the necessity of the case will force to a compromise – be the cause of that necessity what it may.”^[1]

It was this genuine, but in practice deeply flawed, vision of how to realize a common good transcending all sections and interests that distinguished Calhoun from most other defenders of states’ rights and slavery. Keith observes that “Calhoun was not alone in embracing a theory of state nullification”; what distinguished him was the detail he provided about “how it would work and why it was justified.” Calhoun did not view himself as opposing protective tariffs and defending slavery simply because these were the special interests of his state and section. He saw both free trade, and the perpetuation of slavery, as good for the entire United States. His theory thus gave slaveholders a good conscience about their uncompromising defense of slavery.

Calhoun insisted that states had an unquestionable right of secession. Yet he viewed the prospect of secession with dread. He believed that nullification, and the *threat* of secession, by forcing Northerners to recognize the error of their ways, would make actual resort to secession unnecessary and thereby preserve the Union to the benefit of all.

This was one of his blindnesses. But I do not believe this particular blind spot was limited to Calhoun, or to the issue of slavery. Instead I would suggest that deep and long-lasting political polarization (which we also experience today) generates the fear that, if the party or group to which one belongs loses even one political contest, all is lost forever. In this frame of mind, one may resort to extreme measures to forestall *any* loss of power.

Nullification is one such extreme measure. There are others.

Calhoun's greatest blindness was slavery, which he insisted was a positive good. This placed him "at odds with core American tenets," as Keith observes, and led him to renounce "the principles that Americans had long taken as commonplace and that Abraham Lincoln took as those upon which the nation was conceived and dedicated."

But a "commonplace" can refer to something voiced without active thought. Calhoun knew that the signers of the Declaration, and many though not all who signed the Constitution, spoke of slavery as wrong in principle. But he suspected that many did not deeply believe this; actions spoke louder than words. Calhoun argued that delegates to the Federal Convention of 1787, including Northerners, by affirming the final document had accepted "the most solemn obligations, moral and religious" to protect and defend the institution of slavery.^[2]

Moreover, Calhoun judged that his fellow slaveholders were mouthing empty platitudes. When Calhoun proclaimed in the Senate in 1837 that slavery was not an evil at all but "a good – a great good," Senator William Cabell Rives of Virginia, a slaveholder, reaffirmed the commonplace that slavery was "a misfortune and an evil in all circumstances, though in some, it might be the lesser evil." Calhoun replied that if Rives considered slavery an evil, then "as a wise and virtuous man" he "was bound to exert himself to put it down."^[3] In short: you don't believe your own words.

What we today, echoing Lincoln, regard as America's settled principles were in 1850, when Calhoun died, anything but settled. It was not predetermined that Lincoln's republican vision would triumph over Calhoun's. Nor do I believe that Lincoln's version is beyond reversal today -- though if reversed, what would take its place would horrify Calhoun as well as Lincoln.

^[1] Calhoun, *A Disquisition on Government*, in Ross M. Lence, ed., *Union and Liberty: The Political Philosophy of John C. Calhoun* (Indianapolis: Liberty Fund, 1992), 49.

^[2] Calhoun, "Resolutions on Abolition and the Union," December 27, 1837. In Clyde N. Wilson, ed., *The Papers of John C. Calhoun*, Vol. XIV (Columbia, S.C.: University of South Carolina Press, 1981), 32.

^[3] Calhoun, "Speech on the Reception of Abolition Petitions," February 6, 1837. Lence, ed., *Union and Liberty*, 467-468.

CONSOLIDATION AND DISUNION, TYRANNY AND ANARCHY

by John G. Grove

Long considered to be one of early America's most impressive political theorists, John C. Calhoun has become almost untouchable. This is thoroughly unsurprising given the dynamics of contemporary public discourse, but it is also quite unfortunate, as his understanding of constitutional, republican government has much to teach us in an age of centralized democracy and dysfunctional politics.

Keith Whittington's fine essay highlights some of the value of Calhoun's thought, as well as the great stain on his legacy—his association with and defense of Southern slavery—which often complicates and sometimes distorts the understanding of his ideas. In this reply, I will attempt to elaborate upon some of Whittington's observations and push back on a few points in hopes of sparking some useful conversation.

Whittington focuses mostly on Calhoun's elaboration of state nullification and the compact theory of the union which underpinned it, making only occasional forays into his more comprehensive political ideas presented most systematically in the *Disquisition on Government*. I will, therefore, try to fit some of Whittington's observations into that broader theory, which I think is most useful for understanding the relevance of Calhoun's constitutionalism.

Though Calhoun vigorously took part in the political wrangling of his tumultuous age, I also read him as a theorist capable of looking beyond the surface and seeing general, underlying tendencies and forces at work in political life. These observations, more than the immediate goals he pursued, are what retain power and usefulness today.

In the *Disquisition*, Calhoun argues that healthy constitutional governments navigate between the Scylla and Charybdis of tyranny and anarchy, consolidation and disunion. And this middle ground derives from the sort of middle that defines human nature: On the one hand, human beings are inherently social—they have need of one another, have inherent moral obligations to one another, and must have a healthy society in order to “attain to a full development of [their] moral and intellectual faculties.”^[1] On the other hand, they tend to value their own interests above those of others, and invariably make use of others for their own benefit.

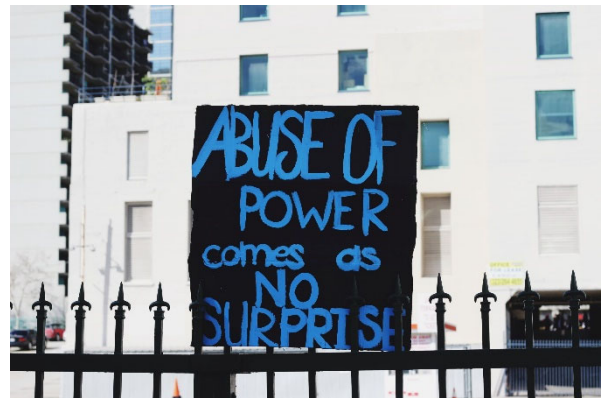
“BUT IT WAS JUST AS MUCH AN
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DISUNION.”

So we need society, but also need a government with power sufficient to protect that society if we are to get any good out of it. And though we need government, it will invariably be misused by those in power unless it too is controlled by the society it governs. Whittington’s discussion takes us through the insufficiency of majority rule and the need for a set of mutual checks and concurrent voices that serve to give a more complete “sense of the whole” that ought to control government.^[2]

The version of state interposition (the term he preferred to nullification) that Calhoun articulated is one practical example of the balance between consolidation and disunion. It is easy to see how it was a response to what he saw as dangerously consolidated, unaccountable power. But it was just as much an attempt to steer away from disunion. Secessionists were all around Calhoun throughout the latter half of his career, but—contrary to common understandings—he invariably rejected their

calls. In an 1838 letter to his daughter, for instance, he warned her that prominent voices minimized “the many bleeding pores which must be taken up in passing the knife through a body politic.”^[3]

That Calhoun did not want interposition to be a revolutionary act is evident from the differences between his and earlier versions (like that of Jefferson) to which Whittington calls our attention. As much as it was designed to offer a remedy to irresponsible power, interposition was equally designed to convince secessionists that there was a stable, ordered, and institutional remedy to the perceived abuse of power, one which did not stray too far in the opposite direction.



Whittington’s discussion of political parties is also quite useful, and one that points back to Calhoun’s more theoretical understanding of political life, specifically the dangers of consolidation. The more unchecked power there is to be won through a majority-rule election, the more we should expect parties to resort to lies, corrupt promises, bad faith, and “corrupt appeals to the appetites” in order to attain a majority.^[4]

But it was not just a concern about the emergence of one “dominant” and “stable” party (which Whittington emphasizes) that Calhoun articulated. As parties use such corrupt tactics and adjust to reach new voters, government will eventually “vibrate between the two factions . . . at each successive election . . . [until] confusion, corruption, disorder, and anarchy, would lead to an appeal to force.”^[5] This seems remarkably prescient at a time when political leaders vocally affirm their desire to use any means necessary to attain power, use that power to immediately undo every policy of the

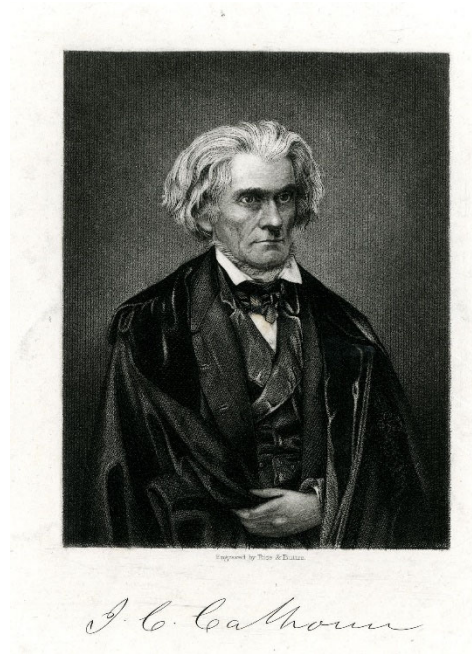
previous government, and now sometimes even make open appeals to force.

I now offer three critiques of Whittington’s essay that I hope may open some avenues of discussion—on Calhoun’s conservatism; on slavery; and on the moral foundations of his thought.

I highlight Calhoun’s conservatism because I think Whittington understates the extent to which Calhoun presented concurrent, constitutional mechanisms as imperfect devices that emerge from within a society, adapted to the particular circumstances that it faces. As such, the “prescriptions” he offered for the crises America found itself in during his time were primarily ones he believed were already embedded in the institutions that the system had already developed (the states).

The case of the dual executive proposal in the *Discourse* (which, coming up only once in an unfinished work, I generally think is over-emphasized), I don’t think is so much a “moving of the goalposts” as another inevitably imperfect, but targeted suggestion springing from what he saw to be the underlying cause of the crisis: sectional disaffection and the concentration of presidential power.

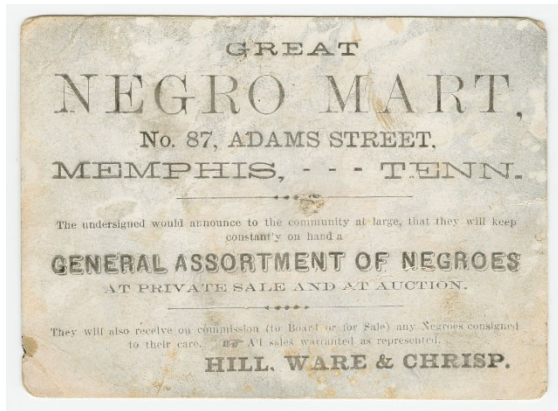
On slavery, Whittington is right to observe that “it is quite possible to separate Calhoun’s analysis of democratic constitutional politics from his motivation for developing such an analysis,” a point that is not always conceded. He also notes that Calhoun was not the originator of such positive defenses of slavery, being part of an ongoing shift of views in the lower South. I would go a step further and question the characterization of Calhoun as a “pro-slavery theorist.” He was, of course, pro-slavery, and he was a theorist. But he was not a theorist *of* slavery.



I think this is a reasonable characterization because, despite being a man who rigorously analyzed political questions on his own, and typically formulated them in a new, advanced way, his slavery arguments were all second-hand. As historian Irving Bartlett observed, Calhoun simply “was never as interested in studying or discussing [slavery] as he was in analyzing political and constitutional issues.”^[6] This is evidenced by his personal correspondence as well as the comparatively minimal amount of time spent in his speeches and public writings on the actual moral status of slavery as opposed to, say, presidential patronage, banking, free trade, the political effect of abolitionism (a distinct question), and of course constitutional interpretation. Most strikingly, slavery is entirely absent from the *Disquisition*, a work he described as the “solid foundation” of his political theory, and absent from the *Discourse*, except as the historical cause of sectional discord.^[7]

The arguments he did use to defend the moral status of slavery partook in a paternalistic strand of thought that had been brewing since at least the turn of the century, and probably earlier. The idea that slaves were healthier, safer, and more advanced than freed blacks in Northern cities; the idea that the interests of the slave and the master were mixed in the plantation household, thereby avoiding the social frictions of Northern free labor; the

idea that slaveholders were benevolent masters, making the slave a part of the “community” or “family”: All of these were common assertions by 1837, when Calhoun began to publically speak on the moral rectitude of slavery.^[8] He spoke in this language, but his comments on such questions never approached anything close to the systematic treatment given them by political men like Thomas Dew and Edward Brown, or men of the cloth like Richard Fuller and George Freeman. And he never used the language of the new racial “science” which began to develop near the end of his life.



There are also some important contradictions between his political theory and his instinctive defense of slavery, which I outline in my book.^[9] It is true that his general view on the expansion of liberty—that every person ought to be free “to pursue the course he may deem best to promote his interest and happiness, as far as it may be compatible with the primary end for which government is ordained [the peaceful ordering of social life]”—does carve out a space in which slavery may exist, but only on his specious grounds that slavery was actually beneficial to the slave.^[10] Take away the misguided racial assumptions, and the principle itself does not allow for the kind of exploitation that slavery actually was.

Finally, and relatedly, I think Whittington is wrong to suggest (by the association with Hobbes), that Calhoun’s vision of constitutional government has an amoral character to it. His rejection of natural rights theory (which, as his comments about the European revolutions of 1848 make clear, was not simply or even primarily about race and slavery), did not mean that politics was grounded simply in the avoidance of violence and

anarchy—constitutionalism would be unnecessary for this, as Hobbes makes clear.

Rather, he posits that society and a government which protects it in whole, allow for the full flourishing of human potential, made possible by ordered liberty: moral and intellectual development, along with physical protection and material well-being. So we arrive back at my initial theme: Man cannot flourish in a state of anarchy, but neither can he flourish in a state of arbitrary government, or in a disfigured political system squinting toward absolutism.

Claes Ryn captured the moral element of Calhoun’s constitutionalism by analogizing the checks required of concurrent constitutionalism to the ethical conscience, the primary responsibility of which is to curb morally arbitrary action. The checks “do not in themselves have any moral worth. But paradoxically they greatly facilitate the task of those who are striving to give politics a higher direction.”^[11] Constitutionalism, as Calhoun understood it, creates fertile ground for human flourishing, and offers practice and habituation in the art of living well together.

^[1] https://oll.libertyfund.org/title/calhoun-union-and-liberty-the-political-philosophy-of-john-c-calhoun#lf0007_head_003

^[2] https://oll.libertyfund.org/title/calhoun-union-and-liberty-the-political-philosophy-of-john-c-calhoun#lf0007_head_003

^[3] JCC to Anna Maria Calhoun, 1838.

^[4] https://oll.libertyfund.org/title/calhoun-union-and-liberty-the-political-philosophy-of-john-c-calhoun#lf0007_head_003

^[5] https://oll.libertyfund.org/title/calhoun-union-and-liberty-the-political-philosophy-of-john-c-calhoun#lf0007_head_003

^[6] Irving H. Bartlett, *John C. Calhoun: A Biography* (New York: W.W. Norton, 1993), 218.

^[7] JCC to Anna Maria Calhoun Clemson, 15 June, 1849.

[8] See Lacy K. Ford, *Deliver Us from Evil* (Oxford: Oxford University Press, 2009), 505-536; Elizabeth Fox-Genovese and Eugene D. Genovese, *The Mind of the Master Class* (Cambridge: Cambridge University Press, 2005), 201-224.

[9] *John C. Calhoun's Theory of Republicanism* (Lawrence: University Press of Kansas, 2016), 170-175

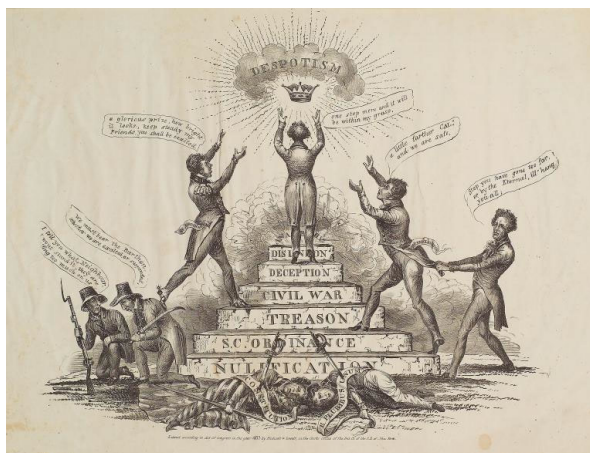
[10] https://oll.libertyfund.org/title/calhoun-union-and-liberty-the-political-philosophy-of-john-c-calhoun#1f0007_head_003

[11] Claes G. Ryn, *Democracy and the Ethical Life* (Washington, D.C.: Catholic University of America Press, 1993), 169

JOHN C. CALHOUN: SLAVEHOLDER FIRST, REPUBLICAN SECOND

by Jay Cost

My thanks to Liberty Fund for inviting me to participate in its discussion about the theories and legacy of John C. Calhoun. In his excellent essay, Professor Whittington characterized Calhoun's intellectual project as a continuation of the Madisonian effort to "reconcile republicanism and constitutionalism," even at the expense of the liberalism of Jefferson. This is a very apt description and prompts from me a few observations.



While Calhoun was trying to push forward the Madisonian project, he was not very Madisonian. Indeed, the Nullification Crisis brought on by Calhoun drew an aged James Madison out of retirement to write a series of letters rebuking the project. Madison's efforts probably dissipated support for nullification in Virginia, isolating South Carolina and helping President Andrew Jackson to squash the incipient uprising.

The divide between Madison and Calhoun parallels the differences between Madison's Virginia Resolutions and Jefferson's Kentucky Resolutions, and ultimately gets down to a question of faith in the politics of an extended republic. Following Jefferson, Calhoun wanted to establish the right of the states to strike down federal laws — although Calhoun's position was more extreme. Jefferson was grasping for a way to overturn the Sedition Act, a manifestly unconstitutional law, in an era before the Supreme Court had established the power of judicial review. Calhoun, on the other hand, was objecting to protective tariffs, an exercise of the federal taxing authority that had generations of legal precedent behind it. He was essentially asserting that the states could determine the boundaries of national politics.

Madison's Virginia Resolution did not suggest any right to nullification. Instead, Madison's purpose was to rally the states to focus public opinion on the crisis of the moment. From Madison's perspective, the purpose of the Virginia Resolution was not legal, but political. The Virginia Resolutions were a specification of Madison's extended republic theory. Minority rights and the general welfare were best protected in a large, diverse republic that takes on a variety of interests. In such a society, the political process could be trusted to generally respect justice and the general welfare. Calhoun, in calling for nullification, was explicitly trying to limit the scope of political debate, fearful that Madisonian nationalism threatened the welfare of his state.

The historical context helps illuminate Calhoun's motives. The United States enacted its first avowedly protective tariff in 1815. The purpose was distinctly national, with a particular eye to foreign affairs. Having fought two wars with Great Britain in the last 30 years, the Americans had

no idea that the Treaty of Ghent would inaugurate a durable peace with its old imperial master. The tariff rates of the 1815 tariff were a mild and temporary expedient to boost critical industries in anticipation of future economic or martial conflicts. While most Southern congressmen voted against it, a majority of the South Carolina delegation, including Calhoun, backed the measure.



The Signing of the Treaty of Ghent (December 24, 1814)

The protective rates offered by the government were, in effect, bounties to private industries, which began clamoring for more. The census of 1820 redistributed political power in the House northward toward the industrializing areas of the country, resulting in the Tariff of 1824. Unlike the 1815 tariff, this measure was decidedly sectional in character, amounting to a transfer of wealth to the industrialists of the North and West from the planters of the South. As a region whose economy was dominated by the exportation of staples, the South drew few benefits from higher tariff rates, and instead was burdened by higher prices on the manufactured goods it imported. The industrialists struck again in 1828, with another tariff that raised rates as high as they would go until the Great Depression.

Calhoun and other Southern politicians, such as John Randolph of Roanoke and John Taylor of Caroline, identified in the 1824 tariff a novel danger to the republic. The bill was essentially a logroll, yoking together a variety of interests that had no point of commonality beyond a mutual desire for personal enrichment. Madison's vision

of an extended republic seemed to offer no protection against such a minority-majority coalition. It was this crisis for his home region that prompted Calhoun to develop the theory of the concurrent majority, which was in effect an effort to save republican government from the errors of Madisonianism.

Calhoun would never have characterized his project in this way, and he made a political mistake by denying that his innovations were exactly that — innovations. Instead, he framed them as being consistent with the original vision of the founding. Unfortunately for the Nullifiers, Madison was still alive, able to point out the heterodoxy of their views. Embarrassed that the Nullifiers had appropriated the memory of his late friend to their radical cause, Madison lamely asserted that Jefferson originally never intended to assert a right to nullification — although he most certainly did.

Still, Calhoun's critique of the theory of the extended republic has validity, and in fact he anticipated the challenge that industrialization and its attendant concentrations of wealth would pose to republicanism over the course of the next 200 years. Economic groups that receive government subsidies have proven themselves to be skillful at organizing, mobilizing, and crafting strategies to maximize their bounties, despite the political hurdles placed in their way by the extended republic. Calhoun, in eyeing suspiciously the growing power of the cordage and woolens industries in the 1820s, anticipated in a way the rise of Carnegie Steel and Boeing — not just as economic forces but as political players as well.

Where Calhoun erred was not in his diagnosis of the problem, but his prescription. The idea of the concurrent majority is simply unworkable. It would have taken the United States back to the era of the Confederation, when a single state could thwart any national endeavor it disliked. Today, the United Nations Security Council mimics the design of Calhoun's system, where each member gets a veto over resolutions of the rest. History has shown that, while the Security Council remains an important place for debate and deliberation, it is no venue for resolving differences between the member nations.



Henry Clay (1843)

Calhoun likewise underestimated the potential for politics to secure equitable treatment in the Madisonian system. If the protective tariffs of the 1820s were primarily bargains among diverse factions of the North and West, it should be possible for outside groups to crack the coalition via counteroffers — which is exactly what the South did. Calhoun himself negotiated a lower tariff schedule with Henry Clay in the early 1830s. And while Andrew Jackson was generally indifferent to the tariff issue, the Democratic party over the subsequent generation advocated for lower rates. It became the dominant political coalition by combining advocacy of lower tariffs with expansionary land policy — joining the West with the South at the expense of the New Englanders, who opposed expansionary policies for fear it would drain their regions of population. This South-West alliance lasted until the Civil War and reemerged afterwards to become the foundation of Democratic power through the 1940s.

Ultimately, I think the manner in which Calhoun abandoned the Madisonian nature of the founding and embraced such a radical alternative can only be explained by his commitment to the institution of slavery. I'm not sure I agree with Professor Whittington's claim that it is

“quite possible to separate” Calhoun's constitutionalism from the matter of slavery. The slaveholders were asking not merely for more favorable economic policies — that could be, and in fact was, secured through the kind of bargaining envisioned under the extended republic. What Calhoun really wanted was to force the rest of the nation to accept the lie that the South was republican in any meaningful sense of the word.

The institution of slavery is feudalistic — and by the 1830s it had taken on industrial qualities that exacerbated this attribute, thanks to the invention of the cotton gin. Wealth and power in the South were increasingly concentrated in just a handful of slave owners. The overwhelming majority of the South — the enslaved blacks and the politically free but economically impoverished whites — were losers in what really was an agrarian oligarchy that prospered by denying others the opportunity to enjoy their rights or govern themselves.

This slaveocrat faction dominated southern politics, economics, and culture, but owing to its small size it was vulnerable in any political arrangement where power was housed in a numerical majority. So, they were always dependent on the indulgence of a national majority. This position was tenable in 1787 — the moral conscience of the North had not yet been stirred by abolition, the South remained mildly embarrassed by slavery, and it was even possible to imagine a post-slavery South. But by 1830s the emancipation movement had already garnered successes in Europe and was beginning to pick up steam in the North. Meanwhile, slavery was spreading rapidly throughout the South, and planters like Calhoun were now calling the institution a positive good.

No political process could possibly reconcile such vastly different moral visions of the public good. Charles Sumner was right to call it the irrepressible conflict. And insofar as that conflict would be resolved through republican means, the ultimate result was bound to be a loss for the South. Thus, Calhoun was ultimately seeking to preempt this defeat by radically redesigning the nature of American constitutionalism — stripping it of its Madisonian republican qualities.



Charles Sumner

This signifies to me the tragedy of the life of John C. Calhoun. A man of extraordinary intellectual gifts, he was in the final analysis a slaveholder first and a republican second.

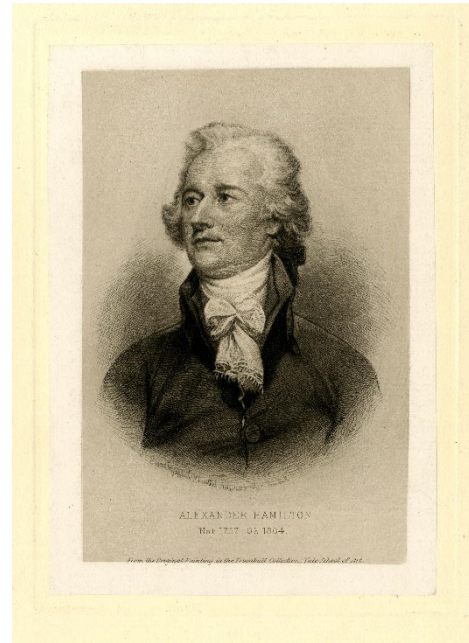
REPLY TO READ, GROVE, AND COST

by Keith E. Whittington

It is delightful to have helped create an opportunity for such an insightful set of essays not merely on [John C. Calhoun](#) but on the American political experience. I'm happy to be able to help keep the conversation going.

[James Read](#) puts his finger on an important issue in Calhoun's thought, and one that makes Calhoun seem particularly naïve from our perspective. Calhoun asserted that a system of vetoes would serve to take some issues off the table while forcing compromises on others. Our experience instead suggests gridlock would be the likely outcome. Certainly the prospect of gridlock would have worried Federalists like [Alexander Hamilton](#), who was all too aware that local self-interests could throw up obstructions to even the most urgent of national crises, such as the war for American independence. For Hamilton, a streamlined, powerful government would be

necessary to make the hard choices and take the decisive actions that the country sometimes needed. Calhoun himself had entered into politics worried about an enfeebled federal government barely able to preserve American independence, and yet such worries seem to have faded into the background over the course of his long career.



Alexander Hamilton

If the threat of foreign enemies receded in Calhoun's mind, the threat of domestic enemies became central to his thought and to that of his political allies. Read's suggestion that Calhoun was responding to his own version of intense political polarization is illuminating. We are now surrounded by partisans who catastrophize every election, insisting that this one is really the most important one in the history of the republic and that electoral loss would mean the loss of America itself. It is perhaps predictable that in such an environment, especially combined with significant geographic sorting of political partisans, the idea of secession is casually thrown about and remarkable proportions of the public seem at least receptive to the idea. Calhoun too, and with him substantial portions of the slaveholding class, imagined that electoral loss might end the country as they knew it. (Interestingly, this aspect of the polarization of the antebellum era was distinctly asymmetrical. Relatively

few of those who stood on the other side of the slavery line cast the prospect of electoral loss in such cataclysmic terms. The [antislavery movement](#) knew what it was like to lose elections and they set about building a broader constituency that would help them win elections in the future.)

“THE VETO POWER NEEDED TO BE
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If the stakes were so high, the demand for ever more insurance against the possibility of loss became intense. Political scientists have examined bills of rights and independent judiciaries as examples of such insurance against electoral loss so as to persuade potential political minorities to play the game of democratic politics, but Calhoun was unimpressed by such offerings. The likelihood of such a judiciary being captured by the same political majority that would dominate elected institutions was just too great. (On this point, modern political science tends to echo his judgment.) The veto power needed to be immediately in the hands of the interests who most felt the need to use it. Elections had to be made less consequential if political minorities were going to be willing to abide by their results. Calhoun never found a way to provide the necessary assurances to prevent the slaveholders from bolting the Union once an antislavery party showed itself capable of winning national elections. Calhoun’s preferred solution might have made the government unworkable, but the national rift that he perceived might have been so great that there was no way to bridge it in any case.

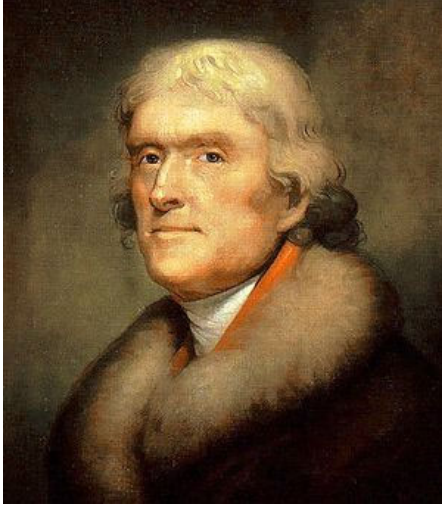
[John Grove offers three critiques](#) of my initial essay, and I think they are all well taken. Calhoun was highly creative, and he contended that the constitutional system could not stand in place if it were to perform its larger purpose. He was willing to innovate, sometimes dramatically. But there is a deep conservatism to Calhoun’s thought as well. Most basically, Calhoun’s efforts are all aimed at preserving union. To be sure, the union to be preserved

is one that exists on the slaveholders’ terms, but it is the effort to preserve the country as he understood it that drives his innovations. Even while innovating, however, Calhoun argued that the underlying principles that he was hoping to build upon were already woven deep into the constitutional fabric. The concurrent majorities principle, he argued, was not something he had invented but was central to the spirit of the inherited Constitution. His arguments tended to be interpretive at their core. The forms he proposed might be new, but the substance was old. His proposals were also intended to be conservative in their operation. He wanted mechanisms that would operate as routine features of ordinary politics. Where some called for disunion and revolutionary action, Calhoun hoped for something more familiar and more peaceful.

I think Grove is right on his other points as well. Calhoun was an advocate of pro-slavery ideology, but it is fair to question how much of a pro-slavery *theorist* he was. His arguments about constitutionalism and democracy were bold, innovative, and original. His arguments about slavery were all too conventional, borrowed from his contemporaries who were more invested in elaborating on that particular issue. Calhoun was a staunch defender of the slave system, but he did not add very much to the arguments justifying it. I likewise think Calhoun took his philosophical bearings from a desire to cultivate human flourishing. He was not alone in thinking that chattel slavery was compatible with an advanced civilization, but he was distinctive in reaching back to classical theorists to ground his political philosophy on a vision of human family and community.

I am grateful to [Jay Cost](#) for bringing to the fore the shifting politics of tariffs in the late Jeffersonian period and James Madison’s efforts to beat back the nullifiers by reading them out of the Jeffersonian movement. As he notes, Madison was not entirely persuasive. Calhoun’s project was closer to Jefferson’s than Madison wanted to let on. At the same time, Calhoun’s project was more Madisonian than Madison himself might have appreciated. At least from Calhoun’s perspective, if not from Madison’s own, political developments had

demonstrated the inadequacy of Madison's theories about how to construct a republican solution to the republican problem of faction.



Thomas Jefferson

Of course, Cost is right that it was the defense of slavery that ultimately drove Calhoun to such extreme innovation. The tariff controversy that initially spurred the nullifiers was resolved, at least in part, through ordinary politics (though I am not so certain that the Jacksonian Democrats would have prioritized free trade if not for the insistence of the nullifiers).^[1] Regardless, Calhoun continued to believe that ordinary politics would not be enough to protect Southern interests, or at the least the central interest that defined the final two decades of his life – slavery. When it came to that interest, negotiation and compromise were not acceptable options. With the growth of the abolitionist movement, electoral defeat loomed as a potential existential threat to the peculiar institution. Some reacted by threatening, or demanding, disunion. Calhoun reacted by abandoning the details of nullification but continuing to pursue a system of political vetoes that could block Northern majorities.

[1] See Keith E. Whittington, *Constitutional Construction* (Cambridge: Harvard University Press, 1999).

RESTORING TRUST IN THE DEMOCRATIC PROCESS

by James H. Read

Thank you to Keith Whittington, John Grove, and Jay Cost for their thoughtful observations on Calhoun's political theory, the extent to which it was or was not separable from his defense of slavery, and its relevance to our own troubled times. Some thinkers resonate with us because their arguments reinforce our own assumptions and judgments. Other theorists -- and for me this includes Calhoun -- are valuable because they challenge our assumptions and judgments, forcing us to see and think more clearly even if we remain unpersuaded.

[John observed](#) (and Keith agreed in response) that Calhoun was least original when he defended slavery, where his arguments “were all second hand,” in contrast to the rigor and originality with which he analyzed political and constitutional questions. I believe John's observation is correct, but in a tragic sense. For it was precisely because Calhoun was a political leader of national stature, and a force to be reckoned with in constitutional debate, that he magnified the political impact of a second hand “positive good” defense of slavery. His endorsement – to a much greater degree than the lesser-known proslavery theorists he borrowed from -- helped give Southern political leaders a good conscience to engage in an uncompromising defense of slavery.

Where Calhoun was most original and penetrating was in his critique of the “normal” democratic process. He had a keen eye for the corruption, the partisanship, and the winning coalition's indifference to the interests of everyone else that so frequently characterizes our policymaking. When I first looked into the political process that produced the 1828 “[Tariff of Abominations](#)” (which originally motivated Calhoun's nullification remedy), what struck me was how unsurprising that process appears from our contemporary perspective. We might be inclined to respond, “that is how the sausage is made, get over it.” Calhoun was not satisfied with that

answer. He believed that fidelity to republican principles demanded something better. In this sense I agree with John Grove that Calhoun's vision of politics was not amorally Hobbesian.

“...TO TRUST THAT THE ERRORS AND INJUSTICES OF MAJORITY RULE CAN BE REMEDIED BY ASSEMBLING OR ELECTING A DIFFERENT MAJORITY IN THE FUTURE.”

[Jay Cost](#) wrote in his post that Calhoun underestimated the potential of democratic politics “to secure equitable treatment in the Madisonian system.” To trust in the Madisonian constitutional vision, which excludes extreme remedies like nullification, means in practice to rely upon our regular political and electoral processes to replace bad laws with better ones; or for that matter, to replace bad presidents with better ones. This may seem merely a civics textbook platitude. But I believe it requires great faith and restraint, when one finds oneself on the losing side on matters of great importance, to trust that the errors and injustices of majority rule can be remedied by assembling or electing a different majority in the future.

If, then, we reject Calhoun's nullification (not to mention even more extreme responses to the imperfections of our democracy), then I believe we must commit ourselves to restoring trust in the democratic process, and patiently working to improve that process, at a time when this is no easy task.

SHOULD WE TRY TO FIX POLITICAL PARTIES...OR IMPROVE THEM?

by Jay Cost

My thanks again to Liberty Fund for inviting me to participate in this illuminating conversation. I greatly

appreciated [Professor Whittington's essay](#), as well as the responses from professors Read and Grove.

Reading through our conversation once more, I am struck by a recurring theme — the worry that politics is no longer capable of producing results consistent with justice and the general welfare. This concern undoubtedly was a primary motive for Calhoun in the 1820s and 30s, and I noticed all of the respondents in this discussion shared a similar anxiety. Keith notes Calhoun's worry “that party loyalties would overwhelm constitutional loyalties;” James points to the tendency “in which democratic politics can degenerate into the selfish pursuit of narrowly partisan or sectional interests; John indicates the tendency of parties to “use such corrupt tactics.”

I think it is fair to say that, while all of us have different views of Calhoun, we would agree that party politics today has become worryingly dysfunctional — the modus operandi of party conflict in 2021 seems not to be promoting a vision of the collective interest, but rather a celebration of the defeat of reviled opponents. To “own the libs” or “own the cons,” as they say on Twitter.

This, of course, opens up a whole new line of consideration, but I thought it might be worth sharing an insight from [Martin Van Buren](#) — Calhoun's great bête noire during the Jacksonian era. Whereas Calhoun thought parties were a problem with politics, Van Buren believed them to be integral to it. The question, to Van Buren's mind, was whether the parties were well designed. In his Autobiography, Van Buren wrote:



Martin Van Buren

Political parties are inseparable from free government ... Doubtless excesses frequently attend them and produce many evils, but not so many as are prevented by the maintenance of their organization and vigilance. The disposition to abuse power, so deeply planted in the human heart, can by no other means be more effectually checked; and it has always therefore struck me as more honorable and more in harmony with the character of our People and of our Institutions to deal with the subject of Political Parties in a sincerer and wiser spirit — to recognize their necessity, to give them the credit they deserve, and to devote ourselves to improve and to elevate the principles and objects of our own and to support it ingenuously and faithfully.^[1]

Van Buren anticipated the party theory literature of the mid-20th century, particularly E.E. Schattschneider’s argument that the health of a democracy can be estimated by the health of its parties.

The impulse behind Calhoun’s political theory was outrage to the Tariff of 1828, which was a product of excessive politicking for the presidency (and to which, it must be admitted, Van Buren violated his own

protestations cited above). The Jackson men turned tariff policy into an electoral tool to get their candidate elected, with disastrous results for the South.

That must sound more than a little familiar to contemporary ears. We today likewise have political parties that seem more intent on victory than good governance, or even civilized discourse. It is fair therefore for us to ask whether and how our parties are in need of reform. Party politics is an inescapable feature of democratic life, but when the parties are dysfunctional, that life can seem intolerable. So, should we fix our parties? And if so, how so? Calhoun thought a virtue of the concurrent majority would be to check parties. What if, rather than checking parties, we endeavor to improve them?

^[1] Martin Van Buren, “Autobiography,” in Annual Report of the American Historical Association for the Year 1918, Vol. 2, ed. John C. Fitzpatrick (Washington, D.C.: Government Printing Office, 1920), 125.

PRIORITIZING THE PRACTICAL

by John G. Grove

Three themes strike me as I read all of the contributions to this enjoyable discussion. I touched on the first one in my previous contribution, but I have been spurred on by all three subsequent essays to think more about it. That first theme is how we approach Calhoun as a political thinker. My approach has always been to start with the *Disquisition*, which he presented as the culmination of his life’s intellectual endeavors, and then look to his various writings and speeches to help elucidate the ideas found there, find examples, and discern how he arrived at his conclusions. Most, however, prioritize the practical, sometimes finding the *Disquisition* and the other more theoretical writings to be a grandiose cover for ulterior motives. I gather we four fall along a spectrum on this point with myself at one end, Whittington and Read in the middle, and Cost at the other end.

I don't claim to have any definitive proof that my approach is right (though, of course, I think there are good reasons for it). Here, I will merely note its importance to the second theme: the question of practicality. Cost says, for instance, that "the idea of the concurrent majority is simply unworkable" because state nullification would result in a paralyzed federal government. Even if he's right about nullification, "the idea of the concurrent majority" is much broader than simple state nullification. Calhoun noted in several writings that all concurrent institutions must be "made to fit" the society and circumstances. If it wasn't possible for every social interest to hold a veto without paralysis, then the best government would be the one that "ma[de] the nearest approach to it, by requiring the concurrence . . . of the greatest possible number consistent with the great ends for which Government was instituted."^[1] Looking only at the specific political issues of the 1830s fails to capture the broader principle or the extent to which that principle was to be adapted to practical necessity.

The third theme is republicanism. Read highlighted an important point when discussing sectional differences and how they were to be worked out: "Calhoun did not believe such deep divisions could be bridged at the popular level. He did, however, believe they could be overcome by negotiation and compromise among the elected leaders of each section—but only with the right kind of decision process." I think this is relevant to Cost's general view that Calhoun was markedly less republican than Madison. He was certainly no democrat, but he did place great value on a process through which the public could, through proper institutions, deliberate and compromise to arrive at the common good.

Nullification, as he conceived it, was one such institution. It was to be used sparingly, no doubt, but it was not extraneous to the normal process of politics. He described it as an "intermediate point" between abject submission and forceful resistance "by which the Government may be brought to a pause, and thereby an interval obtained to compromise differences, or, if impracticable, be compelled to submit the question to a

constitutional adjustment, through an appeal to the States themselves . . ."^[2]



"Union" (1852)

By contrast, Cost treats nullification as a kind of full stop that puts an end to normal political negotiation. For instance, he cites the Calhoun-Clay compromise as an example of normal "Madisonian" politics, in contrast to nullification. But the Calhoun-Clay compromise tariff was precisely the result of South Carolina's nullification, as Whittington alludes to in his reply. After the nullification ordinance had passed, as Jackson started raising troops and fire-eaters prepared to secede, Calhoun went to the bargaining table the way he always said the nullification process should proceed: Controversy, nullification, compromise, resolution. It was this political compromise, not Jackson's Force Bill, that ended the episode.

A sincere thanks to the OLL staff for organizing this discussion and to the three other participants, especially Keith Whittington for setting up the issues so well for us. Even those points on which I disagree prompted much fruitful reflection on my part.

^[1] "Speech on the Veto Bill," in *Union and Liberty*, 495.

^[2] "Fort Hill Address," in *Union and Liberty*, 384.

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