

John C. Calhoun on Government and the Constitution

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John C. Calhoun, U.S. Senator from South Carolina and Vice President of the United States, was America's most prolific political philosopher, writer, and statesman. His defense of the Constitution as originally designed by the founding fathers and ratified by the Sovereign States brought down the wrath of Northern advocates of a centralized, supreme Federal government. Below are pertinent quotes regarding Calhoun's learned opinion about government and the U.S. Constitution.

[Man is a social creature]. Man is so constituted as to be a social being. His inclinations and wants, physical and moral, irresistibly impel him to associate with his kind; ...In no age or country has any society or community ever been found whether enlightened or savage, without government of some description.¹

[Calhoun notes that there is something within man that makes government necessary]

...it impels man to associate with his kind, renders it impossible for society to exist without government.²

[But while man is created for the social state, he is so constituted as to,] feel more intensely what affects him directly, than what affects him indirectly through others; or, to express it differently, he is so constituted, that his direct or individual affections are stronger than his sympathetic or social feelings.³

...our nature which makes us feel more intensely what affects us directly than what affects us indirectly through others, necessarily leads to conflict between individuals...hence, the tendency to a universal state of conflict...if not prevented by

¹ Calhoun, John C., *A Disquisition on Government in The Works of John C. Calhoun*, Vol I. (Appleton & Co., New York, 1851), 1-2.

² Calhoun, *A Disquisition on Government*, 2.

³ Calhoun, *A Disquisition on Government*, 3.

some controlling power... This controlling power, wherever vested, or by whomsoever exercised, is *government*.⁴

To the Infinite Being, the Creator of all... To man, he has assigned the social and political state, as best adapted to develop the great capacities and faculties, intellectual and moral, with which he has endowed him [*man*]; and has, accordingly, constituted him so as not only to impel him into the social state, but to make government necessary for his preservation and well-being.⁵

But government...has itself a strong tendency to disorder and abuse of its powers... [*Government*] must be administered by men in whom, like others, the individual [*feelings*] are stronger than the social feelings. And hence, the powers vested in them [*men in government*] to prevent injustice and oppression on the part of others, will, if left unguarded, be by them converted into instruments to oppress the rest of the community. That, by which this is prevented...is what is meant by *constitution*...when applied to *government*.⁶

Constitution is the contrivance of man, while government is of Divine ordination. Man is left to perfect what the wisdom of the Infinite ordained, as necessary to preserve the [*human*] race.⁷

⁴ Calhoun, *A Disquisition on Government*, 4.

⁵ Calhoun, *A Disquisition on Government*, 6-7.

⁶ Calhoun, *A Disquisition on Government*, 7.

⁷ Calhoun, *A Disquisition on Government*, 8.

How can those who are invested with the powers of government be prevented from employing them, as the means of aggrandizing themselves, instead of using them to protect and preserve society?⁸

Power can only be resisted by power—and tendency by tendency.⁹

[Here Calhoun demonstrates that no constitution is self-enforcing; no constitution by itself can prevent those who control government from abusing their powers to the detriment of common citizens. A counter tendency must be established to enforce the limits of a constitution or else the constitution becomes mere words on paper. Recall that the constitution of the Soviet Union guaranteed freedom to the people but those in power decided what would constitute the people's "freedoms."]

[The government of the United States means] a federal, in contradistinction to a national government.¹⁰

That the States, when they formed and ratified the constitution, were distinct, independent, and sovereign communities.¹¹

During their colonial condition, they formed distinct communities—each with its separate charter and government—and in no way connected with each other, except as dependent members of a common empire. ...voting and acting as separate and distinct communities—and not in the aggregate, as composing one community or nation.¹²

⁸ Calhoun, *A Disquisition on Government*, 8.

⁹ Calhoun, *A Disquisition on Government*, 12.

¹⁰ Calhoun, *On the Constitution and Government*, in *The Works of John C. Calhoun*, Vol I. 114.

¹¹ Calhoun, *On the Constitution*, 119.

¹² Calhoun, *On the Constitution*, 123.

“We the people of the United States,” mean, We, the people of the several States of the Union. The inference is irresistible. And when it is consider that the States of the Union were then members of the confederacy [*The Union under the Articles of Confederation which preceded the Union under the Constitution*] and that, by the express provision of one of its articles, “each State retains its sovereignty, freedom, and independence,” the proof is demonstrative, that—“We, the people of the United States of America,” mean that people of the several States of the Union acting as free, independent, and sovereign States.¹³ [*The first draft of the Constitution contained a list of all thirteen States but that list was removed by the Committee on Style because it was not certain that all of the States would choose to join the new union under the proposed constitution.*]¹⁴

“United States” was used in a geographical and not a political sense.¹⁵

[*The*] constitution was ordained and established *by* the several States, as *distinct, sovereign communities*; and that it was ordained and established by them for *themselves*—for their common welfare and safety, as *distinct and sovereign communities*.¹⁶

That it [*the Constitution*] was not over *the several States*, is settled by the seventh article beyond controversy. It declares, that the ratification by nine States be sufficient to

¹³ Calhoun, *On the Constitution*, 128.

¹⁴ Calhoun, *On the Constitution*, 133.

¹⁵ Calhoun, *On the Constitution*, 134.

¹⁶ Calhoun, *On the Constitution*, 130.

establish the constitution between the States so ratifying. “Between” necessarily excludes “over” as that which is *between* States cannot be *over* them.¹⁷

But the question still remains, *over whom* was it [*the Constitution*] ordained and established? ...It was *over the government* which it created.¹⁸

It is an acknowledged principle, that sovereigns may, by compact, modify or qualify the exercise of their power, without impairing their sovereignty.¹⁹

The theory of the nationality of the [*United States*] government, is, in fact, founded on fiction.²⁰

The term, “federal” implies a league—and this, a compact between sovereign communities.²¹

Among them [*the powers retained by the people of sovereign states in the federal union under the Constitution*] is included the high sovereign power, by which they ordained and established [*government*] and by which they can modify, change or abolish them at pleasure. This, with others not delegated, are those which are reserved to the people of the several States respectively.²² [*As per the 9th and 10th Amendments of the U.S. Constitution*].

[*The*] act establishing the constitution is, itself, a federal and not a national act.²³

¹⁷ Calhoun, *On the Constitution*, 130.

¹⁸ Calhoun, *On the Constitution*, 131.

¹⁹ Calhoun, *On the Constitution*, 139.

²⁰ Calhoun, *On the Constitution*, 140.

²¹ Calhoun, *On the Constitution*, 141.

²² Calhoun, *On the Constitution*, 144.

²³ Calhoun, *On the Constitution*, 150.

If it [*the Union under the Constitution*] had been formed by the people as one nation...the will of the majority of the whole people of the Union would have bound the minority—that the idea of a national government involves in it, not only authority over individual citizens, but an indefinite supremacy over all persons and things, so far as they are objects of lawful government—that among the people consolidated into one nation, this supremacy is completely vested in the government; that State government and all local authorities, are subordinate to it and may be controlled, directed or abolished by it at pleasure.²⁴ [*“If” the Union had been originally established as a supreme national government over the states but as Calhoun demonstrates this was not the character of the government formed by the original Constitution*].

[*The constitution making powers*] ...emanating from the people, as forming a *sovereign community*—creates the government—the other, as a representative appointed to execute its powers, enacts laws to regulate and control the conduct of the people, regarded as *individuals*.²⁵

[*E pluribus unum*] Abroad—to the rest of the world—they are but *one*. It is only at home, in their interior relations, that they are *many*; and it is to this twofold aspect that their motto *E pluribus unum* appropriately and emphatically applies.²⁶

[*Describing the first 12 amendments to the Constitution*] ...they are intended to guard against improper constructions of the constitution, or the abuse of the delegated powers by the [*Federal*] government.²⁷

²⁴ Calhoun, *On the Constitution*, 151.

²⁵ Calhoun, *On the Constitution*, 192.

²⁶ Calhoun, *On the Constitution*, 201.

²⁷ Calhoun, *On the Constitution*, 211.

[Regarding the division of powers unique to the American system of government as designed by the Founding Fathers]. The great, original, and primary division, as has been stated, is that of distinct, independent, and sovereign States. It is the basis of the whole system. The next in order is the division into the constitutional-making *[we the people within our specific sovereign states]* and the law-making powers *[Congress and State legislatures]*. The next separates the delegated and the reserved powers, by vesting the one *[delegated powers]* in the government of the United States and the other in the separate governments of the respective States, as co-ordinate governments; and the last, distributes the powers of government between the several departments of each *[the so-called co-equal branches of government—executive, legislative, and judicial]*.²⁸

Two great parties, which arose with the formation of the constitution and which, finally, assumed the names of “*Federal*” and “*Republican*.”²⁹ *[Federalist being consolidationists who followed the thinking of Hamilton and Republican being strict constructionists who followed the thinking of Jefferson]*.

[No part of the Constitution is self-enforcing] ...the constitution of the United States is a written instrument; for this, of itself, cannot possibly enforce the limitations and restrictions which it imposes.³⁰

If, then, neither the constitution, nor any thing appertaining to it, furnishes means adequate to prevent the encroachment of the delegated on the reserved powers, they

²⁸ Calhoun, *On the Constitution*, 216.

²⁹ Calhoun, *On the Constitution*, 227.

³⁰ Calhoun, *On the Constitution*, 234.

must be found in some other part of the system, if they are to be found in it at all. And, further—if they are to be found there, it must be in the powers not delegated...But, if they are to be found in the reserved powers, it must be in those vested in the separate governments of the several States, or in those retained by the people of the several States, in their sovereign character.³¹

[Discussing the means available to those holding the reserved powers—the Sovereign States—to resist encroachment on its reserved powers by the government of delegated powers—the Federal Government—Calhoun noted the ultimate ineffectiveness of relying exclusively upon representation in the Federal Congress or the Federal Judiciary]. To rely upon them to counteract a tendency so strong and steady, would be as idle as to rely on reason and justice, as a means to prevent oppression and abuse of power on the part of government, without the aid of constitutional provisions. Nothing short of a negative, absolute or in effect, on the part of the government of a State, can possibly protect it against the encroachments of the government of the United States, whenever their powers come in conflict.³²

[If we accept the rejection of the principle that under our Constitution a Sovereign State has the right to nullify oppressive acts of its agent, the Federal Government, would] ...The effect would be to raise one from an equal to a superior—and to reduce the other from an equal to a subordinate; ...to sink it into a dependent corporation.³³

³¹ Calhoun, *On the Constitution*, 236.

³² Calhoun, *On the Constitution*, 241.

³³ Calhoun, *On the Constitution*, 242.

*[If the Federal Government can judge the extent of its power, then so can the Sovereign State. The two are equal—co-ordinate governments—and when a conflict arises, there arises a constitutional standoff in which neither has the Constitutional authority to compel the other.]*³⁴

The party, in the convention, which favored a national government, *[Hamilton, et al.]* clearly saw that the separate governments of the several States would have the right of judging of the extent of their powers, as between the two governments, unless some provision should be adopted to prevent it. This is manifested from the many and strenuous efforts which they made to deprive them *[the Sovereign States]* of the right, by vesting the government of the United States with the power to veto or overrule their acts, when they might be thought to come in conflict with its powers. These efforts were made in every stage of the proceedings of the convention, and in every conceivable form—as the journals will show.³⁵ ...they were all made but not one adopted.³⁶

The fact that they were proposed *[proposals in the Constitutional Convention to give the Federal Government veto powers over State legislation]* and so urged, proves, conclusively, that it was believed, even by the most distinguished members of the national party *[Federalist]*, that the former had no right to enforce its measures against the latter, where they disagreed as to the extent of their respective powers—without some express provision to that effect; while the refusal of the convention to adopt any

³⁴ See Hamilton's discussion/admission regarding this right in *Federalist* Number 31 and 32 regarding the Federal/State equilibrium.

³⁵ Calhoun, *On the Constitution*, 244.

³⁶ Calhoun, *On the Constitution*, 246.

such provision, under such circumstances, proves, equally conclusively, that it was opposed to the delegation of such powers to the *[Federal]* government.³⁷

[Calhoun notes that the founding fathers and ratifying States feared a supreme Federal Government] It was well known, that there was a powerful opposition to the adoption of the constitution of the United States. It originated in the apprehension, that it would lead to the consolidation of all power in the government of the United States. ...The alarm became so great as to threaten the defeat of the ratification by nine States...it was particularly great in Virginia.³⁸ *[That opposition being led by Patrick Henry.]*

*[To obtain Virginia's ratification it was necessary to include a provision in her ratification document specifically reserving the right to withdraw from the compact of the Union based solely upon the will of the people of Virginia.]*³⁹

*[Ratifying States, North and South, recommend an amendment with wording similar to the Tenth Amendment proving that States' Rights was not just a "Southern thing" conjured to defend first slavery.]*⁴⁰

[The Supremacy Clause—Article IV, Sec. 2—Calhoun's reply to those who would claim that the supremacy clause grants the Federal Government unlimited authority over the Sovereign States composing the Union]. It is sufficient, in reply, to state, that the clause is declaratory; that it vests no new power whatever in the government, or in any of its departments. ...And, hence, the supremacy of laws and treaties is expressly restricted to such as are made in pursuance of the constitution, or under the authority of the

³⁷ Calhoun, *On the Constitution*, 246.

³⁸ Calhoun, *On the Constitution*, 247.

³⁹ Calhoun, *On the Constitution*, 248-9.

⁴⁰ Calhoun, *On the Constitution*, 251.

United States; which can, in no case, extend beyond the delegated powers.⁴¹ *[This is in perfect agreement with the writings of High Federalist Hamilton as expressed in the Federalist Papers:*

But it will not follow from this doctrine that acts of the larger society [Federal] which are *not pursuant* to its constitutional powers, but which are invasions of the residuary authorities of the smaller societies [States], will become the supreme law of the land. These will be merely acts of usurpation and will deserve to be treated as such.⁴²

It will not, I presume, have escaped observation, that it *expressly* confines this supremacy to laws made *pursuant to the Constitution*.⁴³

There is no position which depends on clearer principles than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void. No legislative act, therefore, contrary to the Constitution can be valid.⁴⁴

The operative words in the Supremacy Clause are “pursuant to the Constitution” not “supreme law of the land” the latter being merely the effect of the former. The question remains as to who decides if the Federal government is acting in a manner that is not “pursuant to the Constitution?” Should the actor (the Federal government) be allowed to judge whether its acts are constitutional or should the final judge be the principles who created the Federal government—we the people within our respective Sovereign State? Which method would be most likely to prevent the encroachment upon reserved rights?]

[Calhoun discusses the supremacy of Federal and State governments in our Federal system of government] In this respect, as well as their supremacy in regard to each

⁴¹ Calhoun, *On the Constitution*, 252-3.

⁴² Hamilton in *Federalist Papers* No.33, page 108; in *The Federalist, Great Books of the Western World*, Robert M. Hutchins, Ed., (The University of Chicago: 1952).

⁴³ Hamilton in *Federalist Papers* No.33, page 109.

⁴⁴ Hamilton in *Federalist Papers* No.78, page 231.

other [*Federal and State*], in their respective spheres, they stand on the same level. Neither has any advantage, in either particular, over the other.⁴⁵

...no legal principle is better established than that, a government, though it may be plaintiff in a case, or controversy, cannot be made defendant, or, in any way, amenable to the process of the courts, without its consent.⁴⁶

[*Answering those who advocate the principle of Federal supremacy*] It is manifest, that they who contend for this right to its full extent, overlook the distinction, in this respect, between *single* governments [*national or a supreme Federal government*], vested with all the powers appertaining to government, and *co-ordinate* governments, in a system where the powers of government are divided between two or more, as is the case with us.⁴⁷

[*On nullification*] But the several States, as weaker parties, can protect the portion not delegated...a negative on its [*the Federal government's*] acts, when they disagree as to the extent of their respective powers.⁴⁸

[*On the relationship between the Federal and State governments in our co-ordinate system of government*] The effect of this is, to make each, as against the other, the guardian and protector of the powers allotted to it, and of which it is the organ and representative.⁴⁹

⁴⁵ Calhoun, *On the Constitution*, 258.

⁴⁶ Calhoun, *On the Constitution*, 260.

⁴⁷ Calhoun, *On the Constitution*, 265.

⁴⁸ Calhoun, *On the Constitution*, 266.

⁴⁹ Calhoun, *On the Constitution*, 266.

[Evidence of the equality between Federal and State governments is seen in the way in which the founding fathers treated suggestions of Federal supremacy at the Constitutional Convention and during the ratifying conventions in each Sovereign State.]

By refusing to vest the government of the United States with a veto on the acts of the separate governments of the several States, in any form or manner whatever.⁵⁰

[The Constitution was created] as a constitution for the United States not over them; and established, not over, but *between* the States ratifying it; and hence, a State acting in its sovereign capacity, and in the same manner in which it ratified and adopted the constitution, may be guilty of violating it as a *compact*, but cannot be guilty of violating it as a *law*.⁵¹

[Those who deny that the Constitution is a compact do so because if the true nature of the Constitution as a compact remains it would destroy their unconstitutional theory of Federal supremacy] And hence, those who are unwilling to admit the consequences, have been found to deny that the constitution is a compact; in the face of facts as well established as any in our political history, and in utter disregard of that provision of the constitution, which expressly declares, that the ratification of nine States shall be sufficient to establish it "*between the States so ratifying the same.*"⁵² *[Article VII, Sec. 1 demonstrates that the Constitution is a compact between mutually equal sovereign states.]*

⁵⁰ Calhoun, *On the Constitution*, 267.

⁵¹ Calhoun, *On the Constitution*, 277.

⁵² Calhoun, *On the Constitution*, 278.

[On why the amending process was intentionally set to require such a large number of States to constitute a constitutional majority—three fourths of the States] I say, as large a proportion as *three fourths*—for the larger the proportion required to do an act *[amending the Constitution]*, the less is the danger of the power being used for the purpose of oppression and aggrandizement.⁵³

The federal government never will make an appeal to the amending power, in a case of conflict *[with States regarding reserved powers]*, unless compelled—nor, indeed, willingly in any case, except with a view to enlarge the powers it has usurped by construction.⁵⁴

It *[Federal supremacy]* would be a revolution in the character of the system. It would virtually destroy the relation of co-ordinates between the federal government and those of the several States, by rendering the negative of the latter *[State nullification]*, in case of conflict with it *[Federal government]*, of no effect...thereby, elevate the federal government to the absolute and supreme authority of the system, with liberty to assume, by construction, whatever power the cupidity or ambition of a dominant party or section might crave.

It would, in a word, practically transform the federal, into a consolidated national government, against the avowed intention of its framers—the plain meaning of the constitution itself—and the understanding of the people of the States, when they ratified and adopted it.⁵⁵

⁵³ Calhoun, *On the Constitution*, 293.

⁵⁴ Calhoun, *On the Constitution*, 298.

⁵⁵ Calhoun, *On the Constitution*, 299.

[On the impact of state nullification] ...where a State acting in her sovereign character, and as a party to the constitutional compact, has interposed, and declared an act of the federal government to be unauthorized by the constitution—and, therefore, null and void....In such case, the State is not bound to acquiesce. It may choose whether it will, or whether it will not secede from the Union.⁵⁶

*[The acknowledged right of the Sovereign State to nullify unconstitutional acts of the Federal government is the only effectual means available to prevent encroachments by the Federal government upon the reserved rights of Sovereign States.]*⁵⁷

*[The Constitution as a parchment barricade]*⁵⁸ The written restrictions and limitations of the constitution, would oppose no effectual resistance. They would all be gradually undermined by the slow and certain process of construction; which would be continued until the instrument itself, would be of no more force or validity than an ordinary act of Congress—nor would it be more respected. The opposing construction of the minority would become the subject of ridicule and scorn—as mere abstractions—until all encroachments would cease to be opposed.⁵⁹ *[Calhoun here describes the living constitution that is used as a thing of clay to be molded in any manner that fits the modern trends, social fads, and isms promoted by activist Justices of the Federal Supreme Court].*

[Calhoun notes that mutual respect is the key to maintaining a Constitutional Union]
They *[States]* freely and voluntarily created it, for the common good of each and of all—

⁵⁶ Calhoun, *On the Constitution*, 300.

⁵⁷ Calhoun, *On the Constitution*, 302-3.

⁵⁸ Madison's words in *Federalist* No, 48, 157.

⁵⁹ Calhoun, *On the Constitution*, 305.

and will cherish and defend it so long as it fulfils these objects. If its safe-keeping cannot be entrusted to its creators, it can be safely placed in the custody of no other hands.⁶⁰

[Those favoring a supreme Federal Government] They assume that the courts of the States are always *right* when they decide in *favor* of the government of the United States, and always *wrong* when they decide in *favor* of the power of their respective States.⁶¹

But if the State courts should have a strong leaning in favor of the powers of their respective States, what reason can be assigned, why the Supreme Court of the United States should not have a leaning, equally strong, in favor of the federal government? If one...cannot be trusted in making decisions...on what principle can the other be trusted in making a decision adverse to the reserved powers?⁶²

The Federalist, maintained that the government was partly federal and partly national, notwithstanding it calls itself “the government of the United States” and notwithstanding the convention repudiated the word *national* and designated it by the name of “*federal*” in their letter laying the plan before the old Congress⁶³ [*the Congress under the Articles of Confederation*].

[Calhoun gives us a prophetic view to the origin of the Deep State, a bureaucratic ruling elite and its crony capitalist allies] Another of its effects [*Federal supremacy*] has been to engender the most corrupting, loathsome and dangerous disease, that can infect a popular government—I mean that known by the name of “*the Spoils*.” It is a disease

⁶⁰ Calhoun, *On the Constitution*, 312.

⁶¹ Calhoun, *On the Constitution*, 326.

⁶² Calhoun, *On the Constitution*, 327.

⁶³ Calhoun, *On the Constitution*, 342.

easily contracted under all forms of government—hard to prevent, and most difficult to cure, when contracted; but of all the forms of governments, it is, by far, the most fatal in those of a popular character.⁶⁴

...the Alien and Sedition acts, and other measures of the government having a tendency to change its character from a federal to a national government.⁶⁵

The more the powers of the system are centralized in the federal government, the greater will be its power and patronage; proportionate with these, and increasing with their increase, will be the desire to possess the control over them, for the purpose of aggrandizement; and the stronger this desire the less will be regard for principles, and the greater the tendency to unite for sectional objects—the stronger section with a view to power and aggrandizement—the weaker, for defense and safety.⁶⁶

[Calhoun describes the type of government given to us by the founding fathers, created by Sovereign States, and sanctified by the blood of the patriots of 1776. This is the type of government the Confederate States of America created when they drafted and adopted the Constitution of the Confederate States of America.]⁶⁷

⁶⁴ Calhoun, *On the Constitution*, 347.

⁶⁵ Calhoun, *On the Constitution*, 353.

⁶⁶ Calhoun, *On the Constitution*, 371.

⁶⁷ See, DeRosa, Marshall L., *The Confederate Constitution of 1861* (University of Missouri Press: 1991).