# Western Carolinian.

It is even wise to abstain from laws, which however wise and good in themselves, have the semblance of inequality which find no response in the heart of the citizen, and which will be evaded with little remorse. The wisdom of legislation is especially seen in grafting laws on conscience.

*Dr. Channing.*

[BY JOHN BEARD, Jr.] SALISBURY, ROWAN COUNTY, N. C.... MONDAY JULY 22, 1833. [VOL. XIV....NO. 685.

**TERMS**

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## AN EXPOSITION

*of the Virginia Resolutions of 1798.*

[CONCLUDED.]

### TO THOMAS RITCHIE, ESQ.

### No. V.

You will be pleased to bear in mind, Sir, that I have endeavored, in my preceding letters, simply to prove, that the doctrine of nullification is fully warranted by the Virginia resolutions of 1798. If I have succeeded in this, I have at least shown that it is not so manifest a departure from these resolutions, as to warrant the denunciation which it has received, from the professed friends of State Rights. Still less warrant is there, for branding a whole State with treason, for adopting it. And now, Sir, permit me to remark *that nullification is not a distinct and substantive principle at all, but merely a mode in which well settled principles are carried out in practice.* It is absolutely necessary to bear this distinction in mind. The only principle involved in nullification, is the right of a State to decide whether an act of Congress is a breach of the compact or not; and if it shall decide that it is a breach to interpose without waiting for the co-operation of other States, for "arresting the progress of the evil," *in such mode as not to break the Union, nor interrupt the regular progress of Government within the Constitution.* No one, I think, can deny the correctness of this principle. Nullification professes to conform to it, whilst secession obviously disclaims it; because secession necessarily breaks the Union.—You will at once perceive, then, that there are a countless number of modes in which the principles of nullification may be carried out, and it by no means follows that the doctrine itself is false, because it may be abused in practice. Let us, then, forget, for the present, South Carolina and all her proceedings, and test the correctness of nullification by a hypothetical case.—Suppose that the present Congress should declare, by law, that the slave holding States shall no longer be entitled to representation in that body, for three-fifths of their slaves. The case is at least possible, be assured, and it would be so "palpable and dangerous" an assumption of power, as to call loudly for the most effective mode of "State interposition," warranted by the Virginia resolutions. How would you have us proceed? Would you appeal to the Federal Judiciary to say whether such a law was constitutional or not? I cannot perceive how it is possible to bring the case before them; and even if it could be brought there, it would be at least a year before it could be decided. In the mean time, Virginia would be *deprived of about one sixth part of her proper representation, and would continue to be so deprived until the Supreme Court might choose to take up the case.* She would thus be thrown on the mercy of that tribunal, for one of her clearest and most important rights. Besides, this would assuredly be directly in the teeth of Madison's Report, which reprobates the idea that the Supreme Court has any rightful power over such a question. Would you appeal to Congress to repeal the law? This Congress ceases to exist on the 4th of March, and our elections take place in April. There might not, then, be any Congress in session, to whom the appeal could be made; and even if there were, what hope could you have that the same men who showed themselves capable of such a palpable usurpation, would immediately disavow it? Besides, this would be recognizing the right of Congress to decide on the extent of its own powers, which is clearly against Madisons resolutions. But suppose that the appeal should be actually made, and that Congress should refuse to repeal the law—would you submit? The President's doctrines would force you to do so. Yet I cannot think that you would agree to such doctrines in a case involving the rights of your own State, although you advocate them in the case of South Carolina. No Sir, you would not submit. Then, what would you do? Would you agree to suspend the exercise of the essential right of representation until you had tried the slow process of an appeal to the other States, in their separate characters? You would be ashamed to countenance such a poor spirited surrender of the right of self-protection.—Would you resort to arms? Upon whom would you make war? Upon Congress alone, or upon all the other States? Not upon Congress the actual wrong doers, for that would be ridiculous—not upon the other States, because they might not sanction the usurpation of the Federal agent, and therefore might not be guilty of any intentional wrong. Would you *secede*? And if you did, *how would that redress the wrong, and restore you to your rights?* Besides, Sir, there would be in secession a *positive injustice to the other States.*—Each State is entitled to all the benefit which it can derive from the Union of all, and of course the withdrawal of any one State deprives the other States of all the benefit which they would derive from the presence of such State in the Union.—There is no doubt of the right of a State to withdraw, and we shall presently see when and how that right may be exerted. But for a State to resort to secession, as a primary means for redressing a wrong, done by the usurpations of the other States, not only defeats its own object, but does injustice to the other States. Moreover, it *ipso facto breaks the Union*, and, therefore, is clearly, as I have before shown, not within the letter or spirit of the Virginia resolutions. You would not adopt any of these modes and I will now show you how you would proceed. You would begin by declaring the law unconstitutional, & therefore, not obligatory. In other words, Sir, you would nullify the law. Of course, you would stand precisely as you did before the law was passed, and, therefore, you would not consider yourself as *out of the Union*, merely by this act of usurpation on the part of the Federal Government. You would proceed to elect your Representatives in Congress as heretofore, and direct them to take their seats in that body. If they were allowed to do so, the law would be thus virtually repealed, and all the wrong redressed. If they were not allowed to do so, you would still feel under no obligation to surrender your share in the Union; but you would appeal to the other States to say whether they would sanction the usurpation on the part of their common agent or not. If the other States should refuse to sanction the usurpation, you would be thus restored to your rights.—Otherwise you would determine for yours elf, whether it would be best for you to remain in the Union, with the loss of part of your rights, or go out of the Union altogether. Now, Sir, all these primary steps are, as you must in candor admit, precisely and strictly nullification; but they are nullification on a proper occasion, and asserted in a proper mode. There is not a State rights man on earth, who can object to it thus applied, and applied to such a case; and of course, as a doctrine, it is not wrong. Nullification and secession are both rights; and the difference between them is simply this: nullification proposes to preserve the Constitution, by annulling every act of the Federal Government, which the Constitution does not authorise: it proposes *to preserve the Union, by annulling those usurpations in some mode which shall not withdraw the State from the Union, nor embarrass the regular action of the Government within the Constitution.* Secession withdraws the State out of the reach of the usurped powers, when all other means of redress have failed. Nullification, therefore, is the primary right and the primary duty of the State; secession is the ultimate right, when nullification has failed.

This, Sir, is nullification, as I understand it, and as it is undoubtedly contemplated in the Resolutions of 1798. I should be glad to know what objections you can urge against it. Permit me, now, to examine its practical results, & to compare them with those of the opposite doctrine, as contended for by the President.

It is perfectly true, as the President contends, that if a State may declare *one* law to be unconstitutional, it may declare any and every *other* law to be so; and by the same rule, each State may, in the exercise of the same right, select a particular law or laws as unconstitutional, and thus utterly destroy the uniform operation of the system. But while this is certainly *possible*, it is in no degree *probable*, and cannot possibly occur, except in such a state of public feeling, in regard to the Union, as would, at all events, dissolve it by other means. If the States no longer wish to remain in the Union, they will of course separate. But if they are really desirous to *preserve* the Union, *their own interest* affords a sufficient pledge that they will not endanger it, by throwing themselves upon their reserved rights, except in extreme cases, which require it. If one State, or two States, should be mad enough to do so, it cannot be imagined that such a number of them will do so as to afford any ground for the President's fears, or any application for the argument which he derives from them. The Government of the United States is the mere agent of the States, for specified purposes, and it is inconceivable that the States who appointed that agent, for their own use and advantage, would, without cause, so embarrass its action, as to render its agency of no value. In practice, therefore, this argument of the President is not entitled to any consideration. And even if it were otherwise, is it more consistent with principle, that the agent should control the constituent, or that the constituent, should control the agent? These views of the subject, however, are worth nothing.—We cannot judge for the practical operation of the Government, by any such extreme case.—Human sagacity cannot foresee, nor human prudence provide for, all possible contingencies;—nor can human language define and limit every possible modification of social rights. Although Governments are primarily founded in distrust, yet there is, of necessity some degree of confidence in all of them. The wisest statesmen can do no more than repose that confidence in the safest hands, while at the same time he surrounds it with all practical guards against abuse. If the States may abuse their reserved rights in the manner contemplated by the President, the Federal Government, on the other hand, may abuse its *delegated* rights. There is danger from *both* sides, and as we are compelled to confide in the one or the other, we have only to inquire which is most worthy of our confidence. In the first place, as I have already remarked, the States cannot have *any interest* to abuse their reserved rights. Besides, the right for which they contend, is not a *right of action* at all, but merely a right to *check unauthorized action* in the other party. The *abuse* of this right can be found in nothing but the interposition of the State to check its own agent, in doing what it expressly authorized its own agent to do, for its own advantage. The right itself is indispensable to self preservation, while the abuse of it is not to be contemplated as sufficiently probable, to found any argument against the right itself. On the other hand, the Federal Government has a direct interest to enlarge its own powers, by encroaching on the rights of the States. The constituent can rarely, if ever, have an interest in contracting the powers of his agent, but, *prima facia*, the agent always has an interest in making them greater. And when we reflect on the strong love which most men feel for patronage and power, the influence of this interest upon the *mere men* who wield the Federal Government, (and who, as to this argument, must be identified with it,) affords much cause for distrust and fear. It is, therefore, much more probable that the Federal Government will abuse its power, than that the States will abuse theirs. And if we suppose a case of actual abuse on either hand, it will not be difficult to decide which is the greater evil. If a State should abuse its rights of interposition, by arresting the operation of a *constitutional* law, the worst that could come of it, would be to suspend the operation of the law for a time, as to that State, while it would have all its effects within the other States. This would certainly be unjust, but, in most cases, would be attended with very little practical evil. In some cases, it is true, the consequences might be serious; such, for instance, as might arise in a time of war; but it is precisely in such cases that the State would have the least motive for coming into collision with her sister States.—Besides, according to the doctrine for which I am contending, this evil would be temporary only; it must cease, in some way or other, as soon as the other States act upon the subject. I acknowledge, however, that it is at best an evil, but it is an evil inseparable from our system, and one which cannot be avoided except by submitting to a *greater* evil.—It is perfectly evident that this right must exist in the States, unless it be incompatible with the rights of the Federal Government. Supposing this incompatibility to exist, there must be a right in that Government to control the States in this respect, and to enforce a law which the States may have pronounced to be unconstitutional.—Let us now suppose an *abuse* of this right. It would consist in an attempt, by the Federal Government, to coerce obedience to an *unconstitutional* law. This, Sir, it seems to me, is *despotism in its very essence*. If the Federal Government may enforce *one* unconstitutional law, it may enforce *every* unconstitutional law, and thus all the rights of the States and the people may fall, one by one, before the omnipotence of that Government. This consequence is too manifest to escape even the most superficial observation. The worst possible result of nullification, even in the opinion of its bitterest opponents, is to dissolve the Union—and this result does not legitimately flow from it; while the alternative which they propose, establishes an absolute despotism, which not only *dissolves the Union, but establishes the worst possible form of Government upon its ruins.*—Thus it appears that nullification is much less apt to be abused, than the alternative remedy, and when abused, its consequences are infinitely less to be deprecated.—Of the two evils, I choose the least. I prefer the remedy which, although in its extreme abuse it may lead to disunion, may be peaceful in its results, to one which necessarily dissolves the Union, and whose direct object and tendency are to *violence and blood, and absolute power.*

And now, Sir, you have a full view of nullification, as I understand it. As I sincerely desire to be right in politics, as well as in morals and religion, I submit myself, with all deference, to the correction of your greater wisdom. At all events, you ought to relieve your own principles from the cloud which now hangs over them, and renders them somewhat obscure to the general vision. In my next letter, I shall say something to you in reference to South Carolina.

### No. VI.

You have been, Sir, exceedingly unsparing in your denunciation of nullification, but I do not recollect that you have ever offered a single argument against it. You have, indeed, abused Mr. Calhoun, until even his worst enemies are ready to take sides with him, from mere sympathy with the persecuted and oppressed. That such a man should be borne down before an intelligent people, by a man of Andrew Jackson's pretensions, is a moral anomaly, worthy the especial notice of the future historian. You appear to have thought, that it was enough to destroy John C. Calhoun, and nullification must fall of course. This is a mistake. The doctrine did not originate with him, does not depend on him for its support, and will not die with the death of his influence. You may, therefore, spare him, without fear that such a tribute to decency will effect nullification either one way or the other. It would certainly have been much more worthy of your standing among our public journals, if you had attempted to enlighten our understandings, instead of appealing to our partizan feelings. The bazzas of man worship are alike degrading to the press and insulting to its supporters. Instead of proving that nullification is wrong, you have wisely, perhaps but not generously, it is certain, contented yourself with efforts to prove that the nullifiers are wrong. This was beyond all doubt much the easier task of the two, but, unfortunately, the mass of your readers have not so understood you. Your paragraphs have been so contrived as to be generally received as an utter denunciation of South Carolina, and her whole doctrines and proceedings together, at the same time that their strict letter will allow you to say hereafter, that your reproaches were meant, not for the doctrine, but only for the particular mode of asserting it. It always gives me pain to see an influential public journal dealing with its readers in this unfounded way. Whenever the press yields itself wholly to party, it becomes, instead of a blessing, the worst possible curse, to a free country. It is getting dangerous in such proportion to its influence. Wherever the liberties of this country shall be overturned, a corrupt and hireling press will be the chief agent in the mischief. This, however, is a digression, and it will certainly make no impression upon you. I was going to say, that while the principles upon which South Carolina has proceeded are undeniably right, I agree with you, that she has fallen into some very great errors, in her course of proceeding. On one point, I will agree with the President of the United States, an approximation to error at which I cannot but feel uneasy. I think that the tariff laws, although clearly against the spirit of the Constitution, by the gross inequality of their burthens, are yet not so "palpably" unconstitutional as to call for nullification, nor so "dangerous" as to demand secession, until *every* hope shall be lost, that Congress will modify them. I, therefore, may well censure South Carolina in this respect, but you cannot; for you profess to consider those laws altogether and unequivocally unconstitutional. I think also that South Carolina appointed too early a day for the operation of her ordinance. I think, also, that some of her enactments for enforcing that ordinance are too rigorous, and probably are themselves unconstitutional. And I have another objection which I have not yet seen stated in any newspaper. The principles upon which nullification proceeds, demand that the nullifying State shall refer her decision to conventions of the other States—and that she shall give way, if such Conventions overrule her. In every case, therefore, which will admit of it, she ought to take care that the other States sustain no injury from the suspension of the law by her, in case her decision should be overruled. In the present case, the injury would consist in the loss of duties, and, therefore, South Carolina would merely have *suspended* the payment of duties, and should have guaranteed the ultimate payment of every cent of them, in case the other States—and a bare majority ought to be sufficient—should decide the tariff laws to be constitutional, and should thereupon determine not to secede. In all these respects, and perhaps in others, South Carolina appears to me to have acted unadvisedly. Suppose, however, that she had avoided all these errors, would it not have been nullification still? And with what could you then have reproached her? Suppose, that, instead of the tariff laws, she had *nullified a law declaring all her slaves to be free?*—Would you not have commended her extraordinary moderation, and her scrupulous respect for her co-States, in submitting to them the question of the constitutionality of such a law, involving directly the highest of her rights? You certainly would; Sir; and wherein, then, consists the difference? Simply, Mr. Ritchie, in the application of the doctrine, and not in the doctrine. Hereafter, Sir, when you denounce nullification, you should say, in unequivocal terms, that it is not nullification in itself, but *South Carolina nullification*, which you mean to condemn. You may then come back (as come back you must, and shortly, too,) to the true doctrines of the Constitution, with a better grace.

And now, Sir, as South Carolina is undeniably right in her *principles*, and merely wrong in some of the measures by which she has endeavoured to assert them, does she for this deserve the sword or not? I have heard the lawyers say, that you do not forfeit your claim in a court of justice by suffering a non-suit for bringing your action wrong: and I imagine that this would be equally true, if the non-suit subjected your adversary to be costs. It is perfectly clear that you cannot coerce South Carolina, without placing the authority of Congress above that of the States, in deciding on the extent of the powers of *Congress itself;* and, of course, you thus destroy the right of the State altogether. This seems to me to be altogether too high a forfeiture to be incurred for a mere error in the forms of asserting a right. And besides, Sir, do you perceive no danger to the Constitution in the extraordinary powers which you are asking Congress to confer upon the President? It is not enough to say that these powers are only to be exerted contingently—since the bill now before Congress leaves it to the President himself to determine when the contingency may arise. Is there no danger that, if it should not arise in the ordinary course of events, he will *make it for himself?* Nothing is easier than to do this, and thus you put the whole matter at his discretion. I know how unbounded your confidence in the President is; but you ought to recollect that this very confidence is the principle upon which *dictatorships* are made. You cannot but know that if blood is shed by the Federal arm in South Carolina, the Union is dissolved, and a general civil war will be the result. Is there any degree of confidence which can justify the submission of such an issue to the discretion of any one man? Do not tell me that if the President abuses the trust reposed in him he is amenable to punishment. Will an impeachment of Andrew Jackson restore the Union—bring back to the Union the blood which he has shed, and bring the dead to life? The same argument would prove that he ought to be clothed with ALL power, restrained by PENAL enactions that he shall exert it for the public good. It is *not* in this way that a vigilant guardian of public liberty ought to act. There is too much reason to fear that the confidence which confers such a power, may easily be brought to sanction an abuse of it. For my part, I consider it infinitely better that South Carolina should nullify any law in the code, than to trust any man's discretion with the issue of union and peace, on the one hand, and disunion and civil war on the other. Moreover, Sir, do you not consider it as utterly opposed to all correct notions of constitutional law, that the Federal Government should make war upon the citizens of a State for an act done by that State in its sovereign character? I am sure that nothing can be found in the columns of the Enquirer, before it embraced the cause of Andrew Jackson, to countenance such an idea as this. What has changed you Mr. Ritchie? Perhaps you have changed because Andrew Jackson himself has changed. This would not be at all surprising in you, Sir, since the whole commonwealth (*prodi pudor!*) appears to have been revolutionized in a single hour for the same reason. Let us, however, in order that we may know hereafter how inconsistently it is possible for a man to act, without forfeiting his character, see what this stout General Jackson has said on a former occasion. In his "talk" to the Indian delegation from Georgia, in 1829, he holds this language: "The sword of the United States might be looked to as the arbiter, &c. But this can never be done. The President cannot and will not beguile you with such an expectation. *The arms of this Government can never be employed to stay any State of the Union from the exercise of those legislative powers which belong to her sovereign character.*" This is truly republican—and what a pity it is that he did not adhere to it! Surely, the right to declare that an unconstitutional act of Congress *really is so*, is acknowledged by you to be a "legitimate power" belonging to every State "in her sovereign character," and this is the power which South Carolina has exerted. Do you think, then, that the President can consistently "employ the arms of this Government to stay her?" The case in 1829 involves the rights of Georgia—that in 1833 involves the rights of South Carolina. This is the only difference, be assured. Do you recollect, Mr. Ritchie, what a clamor of denunciation you raised against Mr. Adams for *threatening*—and he only *hinted* at it, too—to enforce the authority of the Federal Government against Georgia? Do you remember how strongly you then denounced the idea of making war on a sovereign State of this Union? Georgia has been in the regular habit of "bullying the Union"—that is the phrase at present—from that time to this, and you have neither disapproved of her course, nor has General Jackson threatened her with the rod. A fact so glaring as this cannot fail, sooner or later, to make its due impression upon the public mind, to the everlasting shame of General Jackson and his press.

These letters, Sir, have already been extended much beyond what I originally proposed, as their utmost limit. They have been very hastily written, never revised, and are altogether unpretending in their character. They have been designed merely to revive in the minds of those who may read them, the almost forgotten principles of 1798, and to call public attention to the absolute and total overthrow of those principles, which is already well nigh effected by General Jackson. Of course, like other newspaper paragraphs upon the same subject, they will be forgotten with the hour. This is exactly the fate which I wish them to experience if they can make the desired impression as they are read. I shall now conclude them, with another view of the subject before us, which is certainly worthy of your consideration.

South Carolina is a southern State, having the same interest with ourselves in all respects; and for ten years she has been our best help in this very tariff contest. Is it not shameful in us to desert her now, in her utmost need? And besides, is it not *our* obvious *interest* to sustain her, particularly in the present position of the tariff and anti-tariff parties? You know perfectly well, that more than half the tariff delegation came to Washington in December, prepared to reduce the system to the revenue standard; and you also know that *they changed their purpose as soon as the proclamation was issued.* They saw that the President, although he professed a desire to modify those laws, would, nevertheless, *enforce them by the sword if they were not repealed.* What better encouragement can they want, to persevere in their system? Nay, what better precedent can they have, for enforcing any other law, which a majority of the *people of the U. States* may find it to their interest to pass? The northern interest already possesses that majority, and is in no danger of losing it. Is it not, then, our obvious interest to pursue such a course as will strengthen, instead of breaking, that bond which now binds the southern States together? What shall *we* gain by *driving* South Carolina out of the Union, or by weakening her influence while she remains in it? We should be led to a stain her, by every consideration of justice, because she is abused and oppressed; by every consideration of generosity, because she is the weaker party; by every consideration of prudence and wisdom, because we must stand or fall along with her.

I can scarcely permit myself, Sir, to ask you what we ought to think of the part which Gen. Jackson is acting in this eventful drama? He knows that any modification of the tariff laws, will, of itself, whether it raise or reduce the duties, defeat all measures of South Carolina at once.—The Ordinance relates only to the existing laws, and cannot apply to any other. He knows this, and he also knows that a change of influence *can cause those laws to be modified in four and twenty hours.* What motive is there then—what reason *can there be* for this alarming and perilous recourse to force? He stands before the people of this country as a President of the United States, making war upon the people, without necessity; as a southern man, strengthening the arm of northern power, against southern interests; as a son of South Carolina, turning his wrath against his native State, and encouraging a civil war among her people, for the gratification of a false pride, or a vindictive feeling!! History does not present a worse picture of the worst forms of human character. You, Mr. Ritchie, have long ago said that his election would be "a curse upon the country." I know not, Sir, how you will better soften the reproaches which attach to your manifest tergiversation and inconsistency, than by throwing yourself upon your reputation as a true prophet. LOCKE.

*From the Raleigh Register.*

## ON OUR STATE CONSTITUTION.

### NO. VII.

"All political power is vested in and derived from the people only."

*Bill of Rights.*

*To the Editors:*

I propose now, to meet the objections which have been urged against a change of our Representation, and if they do not turn out to be pretexts, I am greatly deceived in their character and in the facts on which they are attempted to be founded. In order that I may avoid all imputation of personal disrespect to the individuals who have adopted them, & the government of their conduct, I remind you of the ordinary effects of party spirit upon the minds of men, and the readiness with which they adopt conclusions that suit their side, without ever examining into the *facts*. To escape the charge of unfairness in stating these objections, I have confined to the printed Debates on this subject in our General Assembly of 1831, and to the report of a minority of the Committee to our Legislature, in 1832.

Because I heartily detest any *geographical party divisions* in the State, I should prefer to avoid all reference to "the East" and "the West;" but the opposition to a *change of the Constitution is rested on these*