

Preface

My challenge to the historical profession in America and the misinterpretation of American and Southern history goes on. It began in the 1970s at the University of South Carolina where the author completed his Ph. D. The title of the dissertation and its subject was “The Union of the States: A Study of Radical Whig-Republican Ideology and its Influence upon the Nation and the South, 1776-1861.” Therein several new ideas were advanced: (1) that the central theme of Southern history was not slavery, race, or romanticism but republicanism; (2) that the South (along with the Old North) remained true to and consistent with the principles of 1776 and 1787; (3) that it was the North (or a revolutionary part of it) that changed beliefs; and (4) that the Lost Cause of the South and the Confederacy was an historically legitimate argument that needed to be re-examined as such.

The basis for my revolutionary conclusions was “the emergence of an understanding of republicanism” in the late 1960s and early 1970s and with it the recovery of our original beliefs as a people. To make a long story short (my dissertation is 800 pages in length), so-called Southern beliefs in states’ rights, strict construction, agrarianism, federalism, secessionism (really the right of revolution contained in the Declaration of Independence), and even slavery not to mention their continued opposition to democracy (majoritarianism), capitalism, industrialism, and urbanism were not just consistent with those of the founders of the American republic in the late eighteenth century but they were in fact the same radical Whig-republican ideology that had informed their world view. More important, here was proof that there was no Great Reaction in the South (or less of one than has been assumed) and that the ideas or ideology of Lincoln and the Republican party were in fact new “isms” of the day. Put another way, it was the North that had changed and not the South and therein is to be found the real origins of the Civil War.

My historical revolution, as it were, did not proceed very far. It was just too radical and too pro-Southern for a mostly liberal historical profession to accept. At the same time, a paradigm shift occurred within the American historical profession and the “emergence of an understanding of republicanism” became not a

hot topic to pursue but a dead one (or nearly so). Among many reasons, the problem of defining republicanism or rather not being able to define it clearly and distinctly or to distinguish it from “liberalism” or even radical Whig ideology itself led to its demise as a promising avenue of continued research and application beyond the 18th century. Did “classical republicanism” end in 1776 or 1787? What about the liberal republicanism of James Madison and *The Federalist*? How did the republicanism of Thomas Jefferson differ from that of James Monroe, the Old Republicans (John Taylor of Caroline, Nathaniel Macon, and John Randolph of Roanoke), and John C. Calhoun? (See Introduction, “Beyond Myths,” and “Republicanism Defined: A Typology and Chronology, 1776-1861,” in the Appendix to *Volume One: James Madison Not the Father of the Constitution: Other Framers, Different Intentions, and the Origins of Nullification, 1776-1787*).

Persisting in my efforts to reconstruct the past at least from the Revolution to the Civil War, despite being marginalized professionally, many neglected implications of radical Whig-Republican ideology were delineated in published research between 1978 and 2004: “The Central Theme of Southern History: Republicanism Not Slavery, Race, or Romanticism,” *Continuity: A Journal of History*, 9 (Fall 1984), 33-71; “Alexis de Tocqueville and the Myth of Democracy in America,” *Southern Studies*, New Series, 5 (Fall/Winter 1994), 1-18 (published in 1998); “What Happened to Republicanism, I: George Bancroft, the Myth of Democracy, and the Lost Causes of 1776, 1787, and 1861,” *Southern Studies*, New Series, 9 (Spring 1998), 37-69 (published in 2001); “In Defense of the Republic: John C. Calhoun and State Interposition in South Carolina, 1776-1833,” *Southern Studies*, New Series, 10 (Spring/Summer 2003), 9-48; and “The Misinterpretation of Frank L. Owsley: Thomas J. Pressly and the Myth of a Neo-Confederate Revival, 1930-1962,” *Southern Studies*, New Series, 10 (Fall/Winter 2003), 39-68; “Before Republicanism: Frank L. Owsley and the Search for Southern Identity, 1865-1965,” *Southern Studies*, New Series, 6 (Winter 1995), 65-78 (published in 1999); Wood, “Beyond Myths (Madisonian, Federal, Liberal, and Nationalist: The Constitutionality of Nullification and What the Framers Really Intended, 1787-1800,” *The Early America Review*, 5 (Winter-Spring 2004), 1-18 (an electronic journal); “Re-Writing Southern History: U. B. Phillips, the New South, and the Antebellum Past,” *Southern Studies*, 21 (Fall 1983), 217-243 [reprinted with other essays about Phillips in John David Smith and John C. Inscoe, eds., *Ulrich Bonnell Phillips: A Southern Historian and His Critics* (Westport, Connecticut, 1990), 57-78]; and “Republicanism, The Untold History of an Idea: Toward a Reconstruction of American and Southern History, 1776-1987” (unpublished book manuscript).

More optimistically, attention here is turned to Nullification. Besides being my Ph.D. dissertation updated, the hope that it would be published has been fulfilled especially with the additional and revolutionary conclusion that Nullification was constitutional! Once again radical Whig-republican ideology proves to be useful in distinguishing between reality (who the real framers were and what

their intentions were including Nullification) and myth (the unconstitutionality of Nullification derived from other intentions and different framers). Thus the need to go back to beginnings in 1776 and 1787 and, literally, to reconstruct the creation of the American republic (Gordon S. Wood's 1969 book of the same name is still excellent but it did not go far enough).

The connection made here for the first time between republicanism and federalism and states' rights and Nullification goes like this. Since 18th century radical Whig-republican thought taught that a republic was only suited for a small territory, the states in effect became the foundation of republican government in America. With the distinction made between rights delegated and reserved, then states' rights became important constitutionally as did the means to preserve them through a negative or veto that we know as Nullification! Thus the essence of the debate of 1787-1788 and the essential distinction between Federalists and anti-Federalists, i.e., what was the role and rights of the states? The anti-Federalists won the debate, by the way, which made them not mere opponents of the constitution but its perfecters. Besides, there was no constitution of 1787 but only a frame of government to be debated and ratified and amended. (See Chapter One below).

The indispensable and absolute clue to the constitutionality of Nullification, however, came from a most unexpected source: the *Notes of Debates* of 1787 by none other than James Madison that the author happened to read again during the Bicentennial of the constitution in 1987. Therein will be found, for those with eyes to read, many references (in the Federal Convention, that is) to a state negative or veto. This insight, in turn, led to others about who the real framers of our federal republic were. They were the anti-Federalists and not Federalists or *The Federalist*. Nor was James Madison the "Father of the Constitution." Not only did they win the debate of 1787-1788, their insistence upon the rights of states and of individuals led to amendments that gave us our Bill of Rights including the Tenth Amendment, which through a reservation of rights to the states implied the means to preserve them. Nullification as we know it was, then, an original principle of American constitutionalism (along with separation of powers, checks and balances, and federalism) and not something perverse or sectional or Southern invented after 1787. (See introduction, "Beyond Myths," and chapters one and two below).

When Nullification emerged again in Virginia in the 1790s (before 1798), it was by no means a new and alien idea beyond the constitution of 1787. It was just part of the continuation of republicanism and federalism (anti-Federal style) that coalesced under the new name of the Republican party in opposition to the policies of Alexander Hamilton and the Federalists who were not really federalists at all and who consciously ignored the constitutional consensus of 1787-1788. Critical in the revival of original intentions and Nullification itself was James Madison who, putting aside his nationalist views, joined Jefferson in forming the first opposition party. Using his *Notes of Debates*, moreover, he informed his fellow

Virginian of the right of Nullification and then wrote the Virginia Resolution of 1798 and the all-important Virginia Report of 1799-1800. (See introduction, “Beyond Myths,” and chapter two below).

This, essentially, is what volume two of *Nullification, A Constitutional History* is all about as indicated by the subtitle. In abbreviated and outline form, the following arguments are advanced in the text to follow:

I

1. The American Revolution was the first secession movement from the British Empire in defense of ancient English liberties and republican and limited government and had very little to do with democracy, nationalism, or liberalism. Eighteenth-century radical Whig-republican ideology and federalism were linked together early on with the establishment of the Articles of Confederation of 1781-1787. At this early stage, a federal government was defined simply as a league of independent and sovereign states and this ancient model worked well enough until the many problems of the 1780s (political and economic) revealed themselves. During the 1780s, proposed legislation was regularly negated or nullified by the states as a search of the *Journals of the Continental Congress* demonstrates (see <http://www.loc.gov> for these and other early governmental records). Nullification, it appears, was very much an American idea before it became something sectional and Southern.

2. The Federal Convention of 1787 at Philadelphia was ostensibly about correcting the defects of the Confederation government. Or was it? At issue was not the granting of more adequate authority to a federal government, but the role and rights of the states.

3. From the start, two quite different solutions emerged. There was the nationalist or Virginia Plan of James Madison designed to abolish state authority and influence altogether since its basis was proportional representation and an extended republic contemplating a direct relationship between the general government and individuals or citizens.

4. Opposed to the nationalist Virginia Plan (and Madison) were federalists, old style, who did not advocate a continuation of the old Articles of Confederation at all (as we've been misinformed by one of many myths about 1787), but who wanted some guarantees about the role and rights of states! A federal government, they insisted, somehow involved the sovereignty of its members as a check against the abuse of political power (one of the principal legacies of Whig-republican ideology).

5. After more than a month of debate, and when the Federal Convention had achieved very little, the Great Compromise of July 16, 1787 gave federalists what they most wanted: state representation in the Senate as a check against governmental usurpation on the part of the states.

6. With the Great Compromise, a new kind of federalism had been invented.

No longer independent and sovereign, the states were now represented in the structure of the government itself and armed with a negative of sorts. In a word, here was the constitutional origin of Nullification!

7. Modern federalism it was not, however. Nor was the proposed government truly limited without a Bill of Rights. With additional objections raised toward the end of the Federal Convention, the debate between Federalists and anti-Federalists had begun in earnest at Philadelphia and before adjournment (and here is yet another myth to be exploded). At issue were not only the rights of individuals to be protected from the general government, but the rights of states again.

8. As presented here, the subsequent ratification debate of 1787-1788 was not about a finalized Constitution and its proponents (all in the right) and its opponents (all in the wrong) as most scholars claim [see most recently, Saul Cornell, *The Other Founders: Anti-Federalism & The Dissenting Tradition in America, 1788-1828* (Chapel Hill: University of North Carolina Press, 1999)]. After September 17, 1787, there was only a proposed plan of government still to be ratified (and amended if need be) by the people of the states.

9. This debate was won by the anti-Federalists rather than the Federalists (including *The Federalist*) and it is to the former that we owe our Bill of Rights with its Tenth amendment and states' rights, modern federalism, and Nullification all as integral parts of other original intentions that have long been covered up by myth making on a grand scale.

10. *The Federalist*, it appears, was a failure. It was so because its authors remained the nationalists they had been including James Madison. When anti-Federalists reacted strongly to the proposed government between September and October 1787, because of its nationalist or "consolidated" nature, the first numbers of *The Federalist* (#s 1-8) responded in kind with fear tactics about the inherent weaknesses of federal governments and the need for a national polity to meet the exigencies of the time. (See chapters below and forthcoming articles by the author: "The Anxiety of Publius: Motive, Method, and Failure;" "States and Their Rights beyond the Confederation: A Research Note;" and "The Authority of Publius before 1860").

11. In response to the anti-Federalist charge of nationalism and "consolidation," *The Federalist* attempted to reassure Americans of the federal and limited nature of the proposed government beginning with essays #9 by Alexander Hamilton and others thereafter mostly by Madison (thus the origins of the "split personality" of Publius).

12. With no clear message about a Bill of Rights or about states and their rights, the anti-Federalists finally demanded amendments as the price of the union. The rights of individuals and of states had to be guaranteed. The two went together as the final ten amendments, reduced from hundreds and then to twelve, clearly indicate.

13. As of the inauguration of the government in April of 1789, and pending the final ratification of the Bill of Rights, the intentions of the framers (the anti-

Federalists) were clear. In America, government would be republican, federal, and limited. Neither national nor like the old Articles of Confederation, it was to be a new kind of federal republic of a compound nature (technically, a confederate republic) and a union of states rather than the states united. (See chapters one and two below and Wood, “The Union of the States”).

14. At this point, the myths of *The Federalist* and of James Madison have been exposed for what they are. There were different framers and other original intentions including the constitutionality of Nullification.

15. The basis for these startling revelations (and other to come) is James Madison’s very own *Notes of Debates*. Therein is to be found the real intentions of the framers (not Federalists) and from this consensus, North and South, in favor of republicanism, federalism, a compact view of the union, states’ rights, strict construction, and Nullification, the various movements of that name become not manifestations of early sectionalism and disunionism (as many myth makers would want us to believe), but defenses of the republic against different efforts to undo original intentions beginning with Alexander Hamilton in the 1790s, the liberalization of the Republican party in the early 1800s, and the neo-Hamiltonian revival of the post-War of 1812 era as seen in the American system of John Quincy Adams and Henry Clay. (See chapters three and four below).

II

If Nullification were constitutional and James Madison was the “Father of Nullification,” then the next issue to be addressed at least for the period 1800-1828 is what happened to it? How did it come to be viewed as an unconstitutional doctrine that was beyond 1787 and sectional and disunionist in intent and why was it revived a third time in South Carolina in light of its preceding negative history? Part of the answer is to be found in the silence of Jefferson and Madison about their roles in the first Nullification movement in Virginia. (See chapters three and four below).

16. After 1800, either Madison or Jefferson or both could have revealed their authorship of the Virginia-Kentucky Resolutions of 1798-1799 and the Virginia Report of 1800 and the historical basis for their views. They did not for several reasons. First, having triumphed in the election of 1800, there was no need to press the constitutional issue further. Second, as the young republic became imperiled after 1803 with the revival of Napoleon’s wars that in turn led to the San Domingo revolt and a second war with Great Britain, old-fashioned radical Whig-republican-anti-Federalist-libertarian-notions of government became irrelevant in a new age of liberal Jeffersonianism and expansive policies to preserve the nation. Third, the timing if not the ideas of New England Federalists as expressed in their ill-fated Hartford Convention further discredited Nullification and secession as legitimate principles of republican and federal government in America. (See chapters three and four below).

17. As in 1800, Madison and Jefferson each hoped that their constitutional defense of Nullification would not be revived again. They were wrong and their silence caught-up with them in later years as evidence surfaced identifying them to the public at large as the architects of the principles of 1798-1800. Rather than admit the truth about 1787-1791 (the Constitution as amended versus the Constitution of 1787), by publishing his *Notes* or by revealing his collusion with Jefferson, Madison instead chose to keep these matters to himself much to his discredit in what has to be one of the greatest cover-ups in American history. Harsh as this judgment may be, its accuracy is confirmed by what Madison himself did. Having already broken the convention's pledge of secrecy with his 1790s activities, he continued to hide behind this deceit long after the veil of secrecy had been lifted and even after historical evidence mounted in the later 1820s and early 1830s linking himself and Jefferson directly to Nullification in Virginia. (See chapters three and four below and *In Defense of the Republic: John C. Calhoun and State Interposition in South Carolina, 1816-1833*, volume three of *Nullification, A Constitutional History, 1776-1833*).

18. Another answer is to be found in myth-making on the part of the Federalists against Virginia, Southerners against New England (aided by the ill-timing of the Hartford Convention of 1814-1815), and later by James Madison against John C. Calhoun and the South Carolina Nullifiers. This myth-making early on took the form of Nullification and states' rights being seen as nothing more than the revival of the old Articles of Confederation. Contributing to this myth-making and Nullification's negative image was a lack of authentic historical evidence about original intentions that can be traced to the earliest days of the new government. Conducted in secret as they were, the debates in the Federal Convention were kept hidden long after 1789 and the inauguration of the republic. Indeed, early on the records of the Federal Convention were almost destroyed before a consensus was reached to leave them in the care of William Jackson, the secretary of the convention. When the Federalists won the elections of 1789 for Congress, they along with their leader Alexander Hamilton consciously ignored the constitutional consensus of 1787-1788 as they had to do in order to implement their ambitious fiscal-economic program. The debate about original intentions had begun, which would not end until the Civil War. With enough anti-Federalists continuing to serve in state and national government, original intentions (Whig-republican-federal style) continued to be voiced until an opposition party was formed led by Jefferson and Madison. (See Rakove, ed., *Madison: Writings*, 828-842; James M. Smith, ed., *The Republic of Letters*, II, 932, 1094-1095; and chapters below).

19. Remaining unpublished during Madison's lifetime, along with other documentary evidence from 1787-1788, what original intentions were or not remained very much an open question. This unusual situation changed in 1819 with the publication at long last of the *Journal of the Federal Convention*. With the veil of secrecy of 1787 lifted, real documentary evidence began to see the light of

day beginning with the notes of Robert Yates in 1821 and the early volumes of Eliot's *Debates* in 1827 and 1830. Not coincidentally here is to be found the origins of the third Nullification movement in America in South Carolina led by John C. Calhoun. If the lack of history helps explain the rejection of Nullification along with the silence of Jefferson and Madison after 1800 and the Hartford Convention, its recovery in part explains its revival in South Carolina notwithstanding its negative image between 1800 and 1818 and Calhoun's own rejection of the principles of 1798! (See "What Happened to Nullification, 1800-1828?" below).

20. In the end, John C. Calhoun was absolutely right about the constitutionality of Nullification. In the midst of the Nullification controversy in South Carolina from 1828-1833, John C. Calhoun penned a letter to James Hamilton, Jr. in which he accurately described the fundamental problem confronting the Nullifiers. In his words, "The great difficulty in determining whether a State has the right to defend her reserved powers against the General Government, or, in fact, any right at all. . . is to bring the public mind to realize plain historical truth, connected with the origin and formation of the Government. . . .Till they are fully understood, it is impossible that a correct and general view can be taken of the subject." [August 28, 1832 in Clyde N. Wilson, ed., *The Papers of John C. Calhoun* (28 volumes, Columbia, South Carolina, 1959-2003), XI, 613-649 quote on 614].

21. Mr. Madison again, ironically and paradoxically, becomes the central figure in the history of Nullification presented here. Assuming the role of the leading anti-Nullifier after 1828, Madison not only reversed course, he also invented still other myths of Nullification that persist to this today. I refer here first to the distinction original with Madison between Nullification Virginia-style and that of Calhoun and the South Carolina Nullifiers (although Nullification had been insisted upon as a general principle of federalism and republicanism!). Secondly, there is the myth also original with Madison of Calhoun and the South Carolina Nullifiers merely reviving the old Articles of Confederation. (See chapters below and *In Defense of the Republic: John C. Calhoun and State Interposition in South Carolina, 1816-1833*, volume three of *Nullification, A Constitutional History, 1776-1833*).

22. Without his *Notes*, however, who could say which side, Nullifier or anti-Nullifier, was correct historically and constitutionally? This has always been the historical problem all along as noted by Calhoun in 1832. Now that a complete documentary record is available (only in the 20th century by the way), is it not time to set the historical record straight about the Constitution and Nullification and to get beyond the myths of Madison and *The Federalist* that historians have perpetuated for too long now? (See chapters three and four below and *In Defense of the Republic: John C. Calhoun and State Interposition in South Carolina, 1816-1833*, volume three of *Nullification, A Constitutional History, 1776-1833*).

23. Given the critical importance of the debate about the nature of the union that continued to bedevil the young republic, why did Madison not publish his

Notes? If his views were in fact the truth, what did he have to fear? As it turns out, the assumption that Madison spoke the truth about the Constitution and the first Nullification movement of 1798-1800 (as he remembered it) is a false one. Despite Madison's later pronouncements to the contrary at the end of his career, literally amounting to a one-man crusade to re-write early national history, his own *Notes* proved otherwise. Perceived as "the Father of the Constitution," because he was at Philadelphia in 1787 and because he was the co-author of *The Federalist*, Madison has been taken at his word literally albeit misleadingly. If Nullification was unconstitutional, and if South Carolina's and New England's later actions were different from what had happened earlier in Virginia, then what Madison said must be the gospel truth. Likewise with those scholars who have also presumed *The Federalist* to be the genuine explication of the Constitution then and now. (See introduction, "Beyond Myths," and chapters below. A critical analysis of *The Federalist* is in progress as is "James H. Hutson and the Records of the Federal Convention: A Reply.")

24. Here we have, too, the reasons for the posthumous publication of the *Notes*. Besides providing support for the opposite side in the Nullification controversy, Madison's *Notes* would have also revealed him for what he had always been: a nationalist and consolidationist in the guise of a republican whose views in the Federal Convention were largely rejected (including his much misunderstood theory of the extended republic). He was not the "Father of the Constitution" as he himself admitted and would not be regarded so again until the twentieth-century following years of neglect after 1836. For that matter, the Madisonian analysis of the Constitution that enjoys popularity today is in fact a recent creation. (See introduction, "Beyond Myths," and *In Defense of the Republic: John C. Calhoun and State Interposition in South Carolina, 1816-1833*, volume three of *Nullification, A Constitutional History, 1776-1833*).

25. In 1798, when the movement began in Virginia advocating state action to protest the Alien-Sedition Acts and other high-Federalist policies in general, Madison was confronted with a serious dilemma: How could he remain a nationalist yet support the movement for Nullification? To publish his *Notes*, on the one hand, would help the Virginia cause but, on the other hand, result in his political death, so to speak. The "Madisonian moment" had arrived. He would try to serve two masters, as it were, by pursuing a path of secrecy. By anonymously authoring two of the key documents in the "Revolution of 1800," the Virginia Resolutions of 1798 and the Virginia Report of 1800, Madison was thus able to support Jefferson and the cause of republicanism without revealing his strong nationalistic tendencies. (See chapters two and three below).

26. What was good for Madison nevertheless proved fatal to the interpretation of the Constitution. Lacking the imprint of legitimacy that the debates of 1787-1791 could have given them, the strange doctrines emanating from Virginia and Kentucky became just that, something beyond the constitution and therefore highly suspect. Now that we know the truth, the time has come to set

the historical record straight about the Constitution (and who the real framers were) and Nullification and to get beyond the myths of James Madison and *The Federalist* that historians have been perpetuated for too long now. (See chapters three and four below and *In Defense of the Republic: John C. Calhoun and State Interposition in South Carolina, 1816-1833*, volume three of *Nullification, A Constitutional History, 1776-1833*. A fourth volume is being planned: "Nullification: The Misinterpretation of American and Southern History, 1865-1995.")

III

What is new here in 2006-2007 is to carry 18th century radical Whig-republican ideology in America forward to its logical conclusions beyond 1776 and as manifested in federalism, states' rights including Nullification, and the union of the states that America the federal republic was in reality, North and South, until the Civil War of Northern origins. In that conflict, which was about more than slavery as a moral concern, the South (and the other North as embodied in the Democratic party) remained republican in character and spirit which constituted its real central theme as opposed to slavery, racism, and romanticism. In a very real sense, the South remains republican in politics and ideology today. It may be Republican with a capital "R," but states' rights, strict construction, and suspicion of the judiciary and the federal government remain following the fourth Nullification movement of the 1950s and 1960s. [See recent issues of the *Southern Partisan* published in Columbia, South Carolina and Earl and Merle Black, *The Rise of Southern Republicans* (Cambridge, Massachusetts: Harvard University Press, 2002)]. That doctrine along with secession no longer has much traction today, but it is significant that the Supreme Court has back-tracked on Affirmative Action and integration and now openly espouses states' rights as an important part of federalism and original intentions. (See Michael Greve, *Real Federalism: Why It Matters, How It Could Happen* [Washington, D.C.: AEI Press, 1999]; "The Federalism Project" and related articles at the home page of the American Enterprise Institute; and listings one can obtain by a Google search using the key words of "Supreme Court, Federalism, and States' Rights." For example, see Daniel Elazar, "What Are Federal Solutions?" at Jewish Center for Public Affairs, <<http://www.jcpa.org/dje/index-fs.htm>>, Dr. David J. Bodenhamer, "Federalism & Democracy," USINFO.STATE DEPARTMENT paper at <<http://usinfo.state.gov/products/pubs/democracy/dmpaper4.htm>>, and Dr. Greg Russell, "Constitutionalism: America and Beyond," USINFO.STATE DEPARTMENT paper at <<http://usinfo.state.gov/products/pubs/democracy/dmpaper2.htm>>.

The campaign of liberal-nationalist-minded scholars against the South, the constitution and Nullification, and in favor of Brown versus Board of Education that involved a deliberate distortion of the historical record in testimony before Congress, was just another example of myth-making about American origins and original intentions that began with the Civil War of Northern origins the predicate

of which was a new national history which made the framers and founders into confirmed democrats, nationalists, and abolitionists and the end of the old union of the states in favor of the states united (with nation-making coming first and the perfection of America to follow). One only has to read what Peter Novick has written in *That Noble Dream: The 'Objectivity Question' and the American Historical Profession* (Cambridge and New York: Cambridge University Press, 1988) to see just one example of professional academic bias:

When committed scholars enter the legal arena, they uphold the highest academic standards when circumstances allow; when circumstances don't, they fudge. Until the Sears case [of 1986 and discrimination against women] the best known example of historians' involvement in the legal process was in *Brown v. Board of Education*. The Supreme Court asked the attorneys for both sides to address the question of the 'intentions of the framers'; whether those who proposed and ratified the Fourteenth Amendment had intended to outlaw school segregation. Henry Steele Commager, when approached by the NAACP, told them to drop the point, since the unhelpful answer to the Court's question was 'no.' John Hope Franklin, Vann Woodward, and Alfred Kelly were among those who helped the NAACP respond. The principal contribution of the historians was to devise ways of evading a direct answer to the question. Kelly recalled: The problem we faced was not the historian's discovery of truth, the whole truth and nothing but the truth. . . . It is not that we were engaged in formulating lies; there was nothing as crude and naïve as that. But we were using facts, emphasizing facts, bearing down on facts, sliding off facts, quietly ignoring facts, and above all, interpreting facts in a way to do what [Thurgood] Marshall said we had to do—'get by those boys down there'. . . . By the highest standards of academic rectitude, Franklin et al. were no doubt in scholarly honor bound to submit an amicus curiae brief which cut through the NAACP's evasions. They should have informed the Court that if it wished to interpret the Fourteenth Amendment according to the framers' intentions, segregation must remain (pages 507-508).

(Inevitably, myth-making may have helped de-segregation, but the notion of the Supreme Court legislating beyond the scope of its powers begot over time a constitutional correction and another lesson of the past: what the Supreme Court giveth it can also taketh away).

Revolutionary as was the formation of the new Republican party of 1854-1860, and it was so regarded North and South with its more liberal-nationalist principles of 19th origins (democracy, egalitarianism, capitalism, abolitionism along with many other "isms" of the day, and the union as absolute), what has been missed to date is the process of historical revisionism or myth-making by which Lincoln and the Republican party (and others) reinterpreted the past to make them rather than the South and the Confederacy the real heirs of 1776 and 1787. Indeed, the name of the party itself was expropriated for precisely this historical effect [agreeing with the author is Susan Mary- Grant, *North over South: Northern Nationalism and American Identity in the Antebellum Era* (Lawrence,

Kansas: University Press of Kansas, 2000)]. Thus the triumph of the myths of democracy and a reactionary South (begun before 1860) and the still popular view more than a century after 1865 that it was the South rather than the North that had changed beliefs before the Civil War. Crucial to the former, of course, was the identification of the South with slavery and the conflation of Nullification and secession as one and the same thing. These spurious doctrines, it went without saying, were nothing more than the off-shoots of the South's defense of slavery.

Although this part of the history of Nullification and its constitutionality more rightfully belongs in volume three, *In Defense of the Republic*, readers of volumes one and two are entitled to know the rest of the story about how the constitutionality of Nullification became unconstitutional and very much a Southern theory associated with John C. Calhoun and South Carolina more so than New England and Jefferson and Madison and Virginia. Although the process of Northern-nationalist historical misinterpretation of Nullification and the South had begun before 1860, it was the final Northern victory in 1865 that made the myths of democracy and a reactionary South more or less the official version of American and Southern history. Nullification and secession were one and the same and indicative of a long disunionist sentiment in America particularly below the Mason-Dixon line. The new historical consensus against Nullification (that followed a similar rejection of secession) was clearly evident in Caleb William Loring's *Nullification, Secession, Webster's Argument and the Kentucky and Virginia Resolutions Considered in Reference to the Constitution and Historically* (New York: G. P. Putnam's Sons, 1893). Professional historical opinion followed suit from David F. Houston in 1896 to William W. Freehling in 1965 [see *Prelude to Civil War: The Nullification Controversy in South Carolina, 1816-1836* (New York: Harper and Row, 1965 and New York: Oxford University Press, 1992)].

Without the "emergence of an understanding of republicanism," all of this myth-making would have persisted to confuse original intentions and stymie different lessons of the past from being learned about the Constitution, James Madison, *The Federalist*, and the Civil War of Northern not Southern origins with its Lincolnian misreading of the Declaration of Independence as the founding document of the nation beyond the Constitution and its being more egalitarian that it was [as noted by Pauline Maier, *American Scripture: Making the Declaration of Independence* (New York: Alfred A. Knopf, 1997), Garry Wills, *Lincoln at Gettysburg: The Words That Remade America* (New York: Simon and Schuster, 1992), and George P. Fletcher, *Our Secret Constitution: How Lincoln Redefined American Democracy* (New York: Oxford University Press, 2001)].

Slavery is not neglected here. Nor does it determine everything about American and Southern history between 1776 and 1833. Imposed upon the English colonies in America by the economic necessities of mercantilism and British empire-building after the Glorious Revolution of 1688, the inhabitants of America would have preferred, if they could have had their 'druthers, not to have had

slavery at all. (The reference to slavery being imposed in the Declaration of Independence was deleted because Jefferson blamed George III personally). Problems with indentured non-black servitude, the passing of the multi-cultural “Charter Generation” (that had facilitated the international slave trade via African middle men and women and resulted in early black slaveowners in Virginia and Maryland), and more direct imports from Africa beginning early in the 1700s (supported and encouraged by Africans, the international powers of the day, and New England merchants) led to a problem of class as well as race. Perpetuated by the British Empire and extended to the point of colonial economic dependence, and given the crude climatic theory of the day, the options for emancipation on a large-scale were limited at best. [See Maier, *American Scripture*; Ira Berlin, *Many Thousands Gone: The First Two Hundred Years of Slavery in North America* (Cambridge, Massachusetts: Harvard University Press, 1998), Hugh Thomas, *The Slave Trade: The Story of the Atlantic Slave Trade* (New York: Simon and Schuster, 1997); and Robert W. Fogel, *Without Consent or Contract: The Rise and Fall of American Slavery* (New York: W. W. Norton and Company, 1989)].

The Declaration of Independence of July 4, 1776 for all of the idealism of its preamble, was still limited to citizens or a few white males with property to the exclusion of other whites (male and females). Whatever promise there was of black freedom (male) was dealt a serious blow with Lord Dunsmore’s War that made the War of Independence in defense of antient English liberties into an internecine social conflict as well. Between 1776 and 1787, the preoccupation of the founders and framers centered, first, on securing the liberty of a few against arbitrary and corrupt government. After trials and errors, and practical experience informed by ideology and knowledge of the past, the principles of 1776 were finally secured on a more permanent basis with the Constitution of 1787 as amended. [See Maier, *American Scripture*; Carla G. Pestana and Sharon V. Salinger, eds., *Inequality in Early America* (New Hanover, New Hampshire: University Press of New England, 1999) and <<http://homer.providence.edu/wcb/schools>> for Lord Dunsmore and documents related to his war and its impact].

In keeping with the reaction to the “emergence of an understanding of republicanism” in American history, it is become fashionable once again to re-emphasize the importance of slavery in the founding of the American republic. The modifier “again” is used appropriately because what is believed to be new today is no more than old-fashioned abolitionism of the early 19th century. This is the point of Gordon S. Wood’s lengthy review in *The New York Review of Books* for June 28, 2007 of Lawrence Goldstone’s *Dark Bargain: Slavery, Profits, and the Struggle for the Constitution* (New York: WalkerBooks, 2005) and Robin L. Einhorn, *American Taxation, American Slavery* (Chicago: University of Chicago Press, 2006). To Goldstone, writes Wood, “few historians have paid proper attention to the importance of slavery. Instead of describing the politics of slavery in the Constitutional Convention of 1787, most present day scholars of the Constitution . . . have been too caught up in philosophical abstractions.”

(“Reading the Founders’ Minds,” p. 63). This is also the point of Einhorn’s analysis. Slavery was ‘the elephant in the room’ that no one wanted to notice.” If it were everywhere, “the evidence for such influence is hard to come by.” To Einhorn, “The evidence is scarce . . . because the Southern political leaders hid their real motives—to defend slavery—beneath their ‘romantic idiom’ of republicanism.” (66)

Professor Gordon Wood goes on to say that “No one can deny the importance of slavery to the development of early America.”

It is also important, however, to provide some historical setting for understanding the omnipresence of slavery in colonial America. We need to know just how cruel and brutal the eighteenth-century *ancien régime* was in the years before the Revolution—cruel and brutal in a multitude of ways. Not only was there black slavery, but many whites were denied freedom and kept in various degrees of dependency. Indeed, the ubiquity of servitude in that patriarchal age tended to blur the conspicuousness of black slavery, especially in the North. Many masters regarded their white servants as ‘filth and scum,’ ‘miserable wretches,’ and ‘insolent young Scoundrels,’ and sometimes treated them as harshly as masters treated their African slaves. . . .

To Wood, “If we are to understand accurately the role of slavery in the making of the Constitution, we have to try to rid ourselves of our knowledge of what happened in the succeeding decades. The founders did not know the future. . . . Slavery was undoubtedly important in the making of the Constitution, but unfortunately it was not as important to most of the delegates as we today think it ought to have been.” (63, 64). At the same time, the Southern influence could not have been what it was without a Northern-New England acquiescence (as this author notes reinforced by David O. Stewart’s *The Summer of 1787: The Men Who Invented the Constitution* [New York and London: Simon & Schuster, 2007]).

The fate and future of slavery was now a local matter subject to state jurisdiction and legislation for or against. So it proceeded as expected with abolition in the North and its continuance in the South modified by private manumission, colonization back to Africa, and the dispersion argument most associated with Thomas Jefferson. What changed later on was the attitude of the North beginning with the Missouri controversy of 1819-1820 and the insistence (by the fading Federalist party) upon exclusion from the territories not only of slaves but of blacks! The Northern path to Civil War had begun. It came in 1861-1865 because another sectional party captured the presidency in 1860 based upon the same principle of exclusion of slavery (and blacks) from the territories. [See Jon Kukla, *A Wilderness So Immense: The Louisiana Purchase and the Destiny of America* [New York: Random House, 2003]; Peter S. Onuf, *Jefferson’s Empire: The Language of Nationhood* (Charlottesville, Virginia: University Press of Virginia, 2000); Eric Foner, *Free Soil, Free Labor, Free Men: The Ideology of the Republican Party on the Eve of the Civil War* (New York: Oxford University Press, 1970); James

M. McPherson, *Battle Cry of Freedom: The Civil War Era* (New York: Oxford University Press, 1988); Michael Morrison, *Slavery and the American West: The Eclipse of Manifest Destiny and the Coming of the Civil War* (Chapel Hill: University of North Carolina Press, 1997); and Don E. Fehrenbacher's myth-busting *The Slaveholding Republic: An Account of the United States Government's Relations to Slavery* (New York: Oxford University Press, 2001)].

Viewed as defenses of republicanism and federalism as they are presented here, the Nullification movements in Virginia, New England, and South Carolina cannot be ascribed to anxiety about slavery or the fear of slave revolts. First, Nullification as a state negative or veto was raised within the Federal Convention of 1787 and the state ratification debates of 1787-1788 well before the black independence movement in Haiti and the fears it generated in the 1790s. Second, the first Nullification movement in Virginia was well underway before Gabriel's revolt of 1800. Third, Nullification in New England had nothing to do with the defense of slavery. Fourth, Nullification in South Carolina commenced in 1828 long after the Denmark Vesey conspiracy and well before the Nat Turner affair of 1831 and the publication of the first issue of *The Liberator*. [See Herbert Aptheker, *American Negro Slave Revolts* (New York: Columbia University Press, 1943; International Publishers, 1983); Tim Matthewson, "Jefferson and Haiti," *Journal of Southern History*, 61 (May, 1995), 209-248; Peter Charles Hoffer, *The Great New York Conspiracy of 1741* (Lawrence, Kansas: University Press of Kansas, 2003); Douglas Egerton, *He Shall Go Out Free: The Lives of Denmark Vesey* (Madison, Wisconsin: University of Wisconsin Press, 1999); Edward A. Pearson, ed., *Designs Against Charleston: The Trial Record of the Denmark Vesey Slave Conspiracy of 1822* (Chapel Hill: University of North Carolina Press, 1999); Douglas R. Egerton, "Forgetting Denmark Vesey; Or, Oliver Stone Meets Richard Wade," *William and Mary Quarterly*, 3rd series, 59 (January 2002), 143-152; Edward A. Pearson, "Trials and Errors: Denmark Vesey and His Historians," *William and Mary Quarterly*, 3rd series, 59 (January 2002), 143-152; Philip D. Morgan, "Conspiracy Scares," *William and Mary Quarterly*, 3rd series, 59 (January 2002), 159-166; Kenneth S. Greenberg, ed., *Nat Turner: A Slave Rebellion in History and Memory* (Boston, 1996); Stephen B. Oates, *The Fires of Jubilee: Nat Turner's Fierce Rebellion* (New York, 1975); Eugene D. Genovese, *Roll, Jordan, Roll* [New York: Random House, 1974]; and Genovese, *From Rebellion to Revolution: Afro-American Slave Revolts in the Making of the Modern World* (Baton Rouge: Louisiana State University Press, 1979, 1992)].

In all of these cases of black revolt (and rumors of uprisings were more the rule rather than the exception), local and state authorities in the South soon had events under control due to loyal slaves and free blacks who risked much to expose such conspiracies. This is not to say that slaves or free blacks ever accepted their status. Their revolution continued in another form with the creation of an African-American culture by which Africans in America could resist and still hold out some hope for a future in America. [See John Blassingame, *The Slave*

Community (New York: Oxford University Press, 1972 and revised editions) and Genovese, *Roll, Jordan, Roll* (New York: Pantheon, 1974]). They succeeded very well against insuperable odds to the point that even before the Civil War there was already a thriving black middle class, North and South. See also Willard B. Gatewood, *Aristocrats of Color: The Black Elite, 1880-1920* (Fayetteville, Arkansas: University of Arkansas Press, 2000); Ken Hamblin, *Pick A Better Country: An Unassuming Colored Guy Speaks His Mind About America* (New York: Simon and Schuster, 1996); Larry Elder, *The Ten Things You Can't Say in America* (New York: St. Martins, 2001); Thomas Sowell, *A Conflict of Visions: Ideological Origins of Political Struggles* (New York: Basic Books, 2002); Sowell, *Race and Culture: A World View* (New York: Basic Books, 1995), and bibliography and articles in *American Legacy*, a magazine of African-American History].

The connection between slavery and Nullification, then, proves not to be an equation at all with the former automatically determining the latter or even secession in 1860-1861. Over time, however, myth-making about Nullification and much more has triumphed over history. That dissertation of old proved even more prescient than I could have imagined. A reconstruction of the past was needed then and even more so today after another 25 years of historical misinterpretation informed by postmodernism and multiculturalism that has made America into the victimizer of the world with its racism and imperialism (the reactionary South writ large, so to speak). [See bibliography and Keith Windschuttle, *The Killing of History: How Literary Critics and Social Theorists Are Murdering Our Past* (New York: Free Press, 1996); Daniel J. Flynn, *Why the Left Hates America* (Roseville, California: Prima Publishing, 2001); Dinesh Dsouza, *The End of Racism* (New York: Free Press, 1995); and David Horowitz, *Hating Whitey and Other Progressive Causes* (Dallas, Texas: Spencer Publishing, 1999)].

In the almost thirty years since the completion of "The Union of the States," the author has continued his research into republicanism and what happened to it not as an end in itself but as the key to understanding the misinterpretation of American and Southern history. If the South was right all along about the Revolution, the Constitution, and the Northern origins of the Civil War, why is the reverse accepted as historical truth? As it turns out, the idea or myth of a Great Reaction was itself the by-product of another myth of democracy by which the founders and framers were reinterpreted during the course of the 19th century (and beyond) to be more democratic, egalitarian, nationalistic, and anti-slavery than they really were. The impetus here, of course, was the need to legitimize the many radical causes in the North including that of Lincoln and the Republican party (as in war against the South) by linking them to 1776 and/or 1787 while the Southern claim thereto was de-legitimized and associated more and more with slavery. And the war of Northern origins came in large part because history had been revised above the Mason-Dixon line. [See Wood, "The Union of the States" and other published articles already cited. See also "Republicanism, the South, and the Civil War: An Old-Fashioned View" and "American and Southern History

Rewritten, 1815-1965,” unpublished papers to be included in “Republicanism, The Untold History of an Idea: Essays Toward a Reconstruction of American and Southern History, 1776-1865 (or the Northern Origins of the Civil War and the Not So Lost Cause of the South)”].

Simple as this brief summary of different original intentions is, which informs the introduction “Beyond Myths” and chapters on “From Republicanism to Federalism, III: The Anti-Federalists, States’ Rights, and a New Federal Republic” and “From Nationalist to Republican: James Madison and the Constitutionality of Nullification,” it is only the beginning of research into myths about the constitution, James Madison, and *The Federalist*. In progress are these additional studies: “The Anxiety of Publius: Motive, Method, and the Failure of *The Federalist*”; “The Authority of Publius before 1860”; “Federalists, Anti-Federalists, and Federalisms: New Definitions and Other Original Intentions”; “The Rights of States after 1787: A Research Note”; “James Madison, Not the Father of the Constitution”; “No Miracle at Philadelphia”; “James H. Hutson, Jonathan Elliot, and the Debates in the State Conventions: A Reply”; and “Abraham Lincoln, James Madison, and *The Federalist*.”

Immense as the bibliography of each of these related subjects is, it has also taken time to master a vast documentary record and historiography related to the major Nullification movements in early American history (Virginia, New England, and South Carolina) that historians have studied separately apart from the creation of the American republic from 1776-1787. Reconstructing the past also involved the delineation of the process of myth-making and explaining how American and Southern history were literally re-written over time and by whom. Again, Nullification (whether in Virginia, New England, or South Carolina) could not be divorced from changing interpretations of the Revolution and the Constitution as the republic itself began to be transformed early in the 19th century. History, art, and literature likewise became politicized necessitating further attention to these aspects of the party struggles of the time all of which reflected the ongoing and great debate about the nature and the fate of the union: would it remain a federal republic or not?

Here was the real “prelude to Civil War” that was about history and which side, Nullifier and anti-Nullifier (before later secessionists and anti-secessionists) was the real heir to the Whig-republican principles of 1776 and 1787. There was no Civil War between 1800 and 1833 because Northern and nationalist myth-making had only just begun. What changed by 1860 was the rise of a new Republican party that now had a new and fully developed American history to justify its war against the South. And the war came because of history as much as anything else. A new nation in the making needed a new history to justify it. And the War of Northern origins came to make the states united. The rejection of the constitutionality of Nullification is just one example of historians’ later nationalist biases toward the Constitution which can be followed in the many 19th century studies of that subject and of the Revolution as well included in the Appendix.