Dimitri Novaković,
Pravni fakultet u Kragujevcu

UDK:342.24+342.4(73)
Pregledni naučni rad

THE HARTFORD CONVENTION AND THE NULLIFICATION CRISIS

Problemi nulifikacije, kao prava savezne države da proglasi ništavim akte federalne vlasti, i secesije najznačaniji su pravna pitanja prvih decenija postojanja SAD. Taj period obeležiće žestoka politička borba pristalica i protivnika prava saveznih država na nulifikaciju i secesiju. Autor u ovom članku analizira dva bitna događaja u ovoj borbi: konvenciju u Hartfordu i Nulifikacionu krizu. Iako se ova dva događaja razlikuju, oba imaju korene u rezolucijama Virdžinije i Kentakija. Secesija je u tom smislu shvatana kao poslednje pravno i političko sredstvo koje pripada saveznim državama protiv neustavnih akata federalne vlade kao odraz njihove suverenosti. Ta teorija će svoje pravno uobličenje dobiti u pisanjima Džona Kalhuna. S druge strane, teorija protivnika nulifikacije i secesije neće biti pravno formulisana sve do tridesetih godina devetaestog veka.

***Ključne reči**: federalizam, secesija, nulifikacija, konvencija u Hartfordu, Nulifikaciona kriza*

I. INTRODUCTION

The issue of state sovereignty and states' rights is one of the most controversial in the American Constitutional history. Or at least it used to be the most controversial in the first seventy years of United States' history. In the essence it is the question of the nature of the Union. Since the formation of the Union, the question has been raised and debated on numerous occasions. The first time the discussion had serious impact on American society was after the Alien and Sedition Acts passed by Congress in 1798. Seventeen years later, during the War of 1812, representatives of five New England states met in Hartford, Connecticut, to discuss possible actions of their states in reaction to Federal Government measures enacted during the war. In 1832, during the Nullification Crisis, South Carolina Convention passed Nullification Ordinance. Finally, and most significantly, the

issue of states rights, sovereignty and secession had its culmination in 1861-1865 during the Civil War. In every crisis the question of states' rights aroused from different interpretation of the various provisions of the Constitution. In the background of the Constitutional debates were tensions between the Northern and Southern states, and between different political parties. Although, the terms "states' rights", "sovereignty", "secession", "nullification" have different meanings, historically they were usually discussed together as inseparable. In a way, they were always connected- "nullification" and "secession" were forms of application of "states' rights" and "sovereignty" as the ultimate state right. It might be said that the question of states' rights is still raised from time but in a different form. The end of the Civil War has marked practical solution of "secession" and "nullification" issues.

The Supreme Court in *Texas v. White* in 1869 rejected the notion of states' right to secession. The Court said that the Union was never a purely artificial and arbitrary relation… It was confirmed and strengthened by necessities of war, and received definite form, character, and sanction from the Articles of Confederation.[1] That is the statement that many would not have agreed with before 1865. The opinion in *Texas v. White* came after the end of the Civil war and it gave a legal sanction to the outcome of the war. Abraham Lincoln in his inaugural address summarized the opinion of the opponents of secession, the side that finally prevailed, that legally, the Union is perpetual, confirmed by the history of the Union itself. According to this view, The Union is much older than the Constitution. It was formed in fact, by the Articles of Association in 1774. It matured and continued by the Declaration of Independence in 1776. It further matured and the faith of all the then thirteen States expressly plighted and engaged that it should be perpetual, by the Articles of Confederation of 1778. Finally, in 1787, one of the declared objects for ordaining and establishing the Constitution was "*to form a more perfect union*."

The theory of Union found in Lincoln's speech was not fully developed until the Nullification Crisis by Daniel Webster, Andrew Jackson and the others. Long before that, the defenders of states' rights, nullification and secession, have had already their ideas fully expressed and clarified. The idea of federation was not always the

[1] http://neuro.law.cornell.edu/supct/html/historics/USSC_CR_0074_0700_ZO.html

same. It evolved over time to get its final shape after 1865. It evolved into what is now known as modern federation. Before 1865, many Americans, or what was the majority in New England in 1814-1815, South Carolina in 1832, or Southern States in 1861, had different opinion about the nature of the Union. That opinion was closer to what is today thought to be "Confederation" than "Federation".

II. THE EMBARGO ACT AND THE NORTHERN REACTION

Thomas Jefferson won the presidential elections of 1800, defeating the Federalist candidate John Adams, thus started a quarter of a century long domination of the Republican party in the American politics. The main political base of the Federalists until the dissolution of the party in 1816, remained in the northern states, especially Massachusetts. Political struggle in the first decade of 1800, between Republicans and Federalist led some of the prominent Federalists in Connecticut and Massachusetts to consider secession from the South. One of the most aggressive advocates of secession of the northern states was Timothy Pickering, at the time senator from Virginia. He wanted the northern states to join Canada into a separate nation allied with Great Britain. Those ideas were just considerations and never any real step were taken to accomplish them.[2] Those secessionist tendencies that culminated in the Hartford Convention was Federalist attempts to keep themselves as a prominent political party.[3] Political struggle was accompanied by growing economic differentiation between the North and the South. The fact that the North was developing faster the South, was used by some northerners in their attempts to promote their secessionist ideas.

Ensuing the war with Napoleonic France, Great Britain introduced a series of trade restrictions to disrupt American trade with France. In 1807, after the British ship Leopard fired on the American frigate Chesapeake, President Thomas Jefferson urged and Congress passed an Embargo Act banning all American ships from foreign trade. The Embargo Act was aimed to keep American neutrality in Napoleonic wars, demolished New England's foreign trade and hindered coastal commerce. The Federalists started debating about

[2] Buel Jr R, *America on the Brink*, New York, 2005, p. 49
[3] Norton E, *Nathan Dane's Role in the Hartford Convention of 1814-1815*, http://www.primaryresearch.org/PRTHB/Dane/Norton/norton.htm

calling a convention to discuss their refusal to accept the Act and even considering secession, but the Embargo Act was replaced by Non-Intercourse Act in March 1809, and the convention was not summoned.[4] The Federalist majority in Massachusetts' House of Representatives adopted a set of resolutions introduced by Laban Wheaton in 1808. They were response to the National Government interdicting the people of Massachusetts from using the ocean. Then they attacked the extent and unlimited duration of the embargo. Also, they questioned the constitutionality of embargo designated to "coerce foreign nations" and described it as "novel and dangerous experiment"[5]

The Connecticut Legislature also passed series of resolutions condemning embargo during 1808, and 1809. In February 1809, the Legislature declared the embargo "incompatible with the Constitution of the United States" and warned all the officers in the state to restrain from aiding or cooperating in its execution.[6] The Governor Jonathan Trumbul wrote in a letter to Secretary of War Henry Dearborn that he opinion of the great mass of citizens of this state was that the acts of the Congress for more rigorous enforcement of the embargo, was unconstitutional in many of its provisions, interfering with the state sovereignties, and subversive of the guaranteed rights, privileges, and immunities of the citizens of the United State.[7]

III. THE WAR OF 1812

On June 1, 1812, President James Madison delivered a speech to the Congress in which he asked for declaration of war against Great Britain. The official reason for the war was that British navy had boarded American ships and impressed from their crews seamen believed to be subjects of the King, while in fact many were American citizens. Formal declaration of war by Congress against Great Britain and Ireland and their dependencies followed. American attempts to invade Canada in 1812, and 1813, ended in failure. When Napoleon was defeated in 1814, Great Britain transferred its troops from Europe

[4] Norton E, *Nathan Dane's Role in the Hartford Convention of 1814-1815*, http://www.primaryresearch.org/PRTHB/Dane/Norton/norton.htm
[5] Buel Jr R, *America on the Brink*, New York, 2005, p. 45
[6] Id, p. 84
[7] Id

to Americas. They blockaded much of American coastline, though allowing exports from New England, which continued the trade despite the embargo.[8] In the end of August 1814, British won the Battle of Bladensburg, marched to Washington D.C. and burned the city. They turned then to Baltimore, but their advance was stopped by fierce American resistance. The same year, the United States faced bankruptcy, could not finance the war anymore and private bankers in the North were strongly opposing the war. Late in 1814, started the siege of New Orleans, but suffered a heavy defeat before the news of peace treaty reached America. With the fall of Napoleon in 1814, Great Britain ended trade restrictions and impressments of American sailors. Thus, the formal reason for war disappeared. Additionally, neither side could achieve a major victory, so the peace treaty was signed in Ghent on December 24, 1814.

IV. NEW ENGLAND BEFORE THE HARTFORD CONVENTION

The Congress passed the Act on April 10, 1812, to detach one hundred thousand of the militia into the service of the United States under the command of the officers of the United States. As the war broke out Massachusetts and Connecticut refused to furnish the detachments, since they believed it was against Constitutional provisions concerning militia, as provided in the Article I, Section 8, clause 15 "To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions". They argued that there were no prerequisites for calling forth the militia since there was no insurrection nor invasion. The militia are composed of the whole male inhabitants of the states, between the ages of eighteen and forty-five. The Art II, Section 2, provides that "The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any subject relating to the Duties of their respective Offices, and he shall have Power to Grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment".

[8] Id, p. 61

Therefore, the militia belongs to the states and the Federal Government does not have the authority over it, except in the cases of necessity and emergency, especially provided in the Constitution, for executing the laws of the Union; suppress insurrections and repel invasions. New England explicitly rejected as unconstitutional, the idea of Congress that it had the power to call forth the the militia "under apprehensions of invasions preceding war." The Secretary of War replied to New England contention that the Congress had a right by the Constitution, to raise regular armies and no restraint was imposed in the exercise of it, except in the provisions which were intended generally to guard against the abuse of power, with none of which does this plan interfere.[9] The idea of involuntary drafting the army was opposed not only in 1812, but also during the Civil War, as opposite to the idea of voluntary enlistments. New England states feared that if the President had the right to call forth the militia, under the Act of April 10, 1812, put them in command of the United States' officers and ordered them to march whenever necessary, that would have deprived the states of their legitimate means of defense and expose them to enemy invasion. That was not only the question of constitutionality, but also of self-security.

In Massachusetts, the Governor Caleb Strong asked the state Supreme Court for advisory opinion about whether the commanders of the several states have a right to determine whether any of the circumstances prescribed by the Constitution exist, so as to require them to place the militias in the service of the United States, at the command of the President, to be commanded by him; and whether the militia can be commanded by officers outside from militia, except by the President of the United States. The Court responded positively to the first question and therefore questioned the constitutionality of the act.[10] Furthermore, contestants to the measures of the Federal Government attacked the provision that allowed conscription of the persons under the age of twenty-one without permission of their parents and guardians as directly opposed to legislative authority of the states, by assuming powers not granted by the Constitution. Conscription was seen as illegal intervention of the Congress not only in the jurisdiction of the states, but also as an attack on parental rights

[9] Dwight T, *History of the Hartford Convention*, New York, 1833, p.274
[10] Id, p. 255

and therefore on basic social and moral principles.[11] On the other hand, the War of 1812 got its defenders and strong proponents in the South. One of the most enthusiastic was John Calhoun, who at the time served as a Representative in the Congress and the President of Congress' Foreign Committee.

The Embargo of 1813, strengthened New England's opposition to the war. In January 1814, the Governor Caleb Strong addressed the Legislature questioning the acts constitutionality. That was a signal for mobilization of Federalist towns and counties.Following month, the committee of the Legislature produced a report authored by Harrison Grey Otis, one of the leading Federalist, and important members of the Hartford Convention. At that time, he was a member of Massachusetts' House of Representatives. Otis was designated by the Republicans as "leader of the rebel army.[12] In his report, he pointed out that the basics of the Union had been destroyed by practical neglect of Constitutional principles that resulted in abuses and oppressions. He saw calling a convention as the best way for amending the Constitution.[13]

Senator William Gilles introduced a bill which would have authorized formation of the militia of the several states into new classes and each was to provide one man for two years' service by contract or draft. The militia organized in that way was to be under the command of officers appointed by several states and they could never be used outside boundaries of their states. Daniel Webster attacked the bill in the House of Representatives arguing it is calling out the militia by draft, not for purposes of repelling invasion, suppressing insurrection or executing the laws, but for general objects of war. The bill, though amended passed the Congress on December 14.[14]

As situation on the battlefield changed in 1814, New England was threatened by the British invasion, since the British captured Castine, small town on Pebiscot and turned to the Federal Government for help, but it said there was nothing they could do. This was the final straw. Harrison Grey Otis wrote another report in which he concluded that the Constitution of the United States had failed to secure to the

[11] Id, p. 335
[12] Lyman T, *A short account of the Hartford Convention : taken from official documents, and addressed to the fair minded and the well disposed ; To which is added an attested copy of the secret journal of that body*, Boston, 1823, p. 1
[13] Buel Jr R, *America on the Brink*, New York, 2005, p. 192
[14] Graham J.R, *A Constitutional History of Secession*, Gretna, 2005, pp. 136-137

Commonwealth and the eastern section of the Union, equal rights and benefits. He saw the remedy in amending the Constitution, but since the effort of a single state would have been unsuccessful, he called for an appointment of delegates to meet representatives from other New England states to discuss about their mutual defense and "to make measures for procuring a convention of Delegates from all United States to revise the Constitution thereof."[15] On October 16, the Massachusetts Legislation passed the resolution that twelve delegates be appointed to the convention of New England states to advice to the states necessary measures; to suggest eventually to all other states to call organizing conventions in order to revise the Constitution and "more effectually to secure the support and attachment of all the people, by placing all upon basis of fair representation".[16]

Connecticut and Rhode Island responded favorably to Massachusetts call, their legislatures adopted similar reports and delegates were elected. However, New Hampshire was against the convention and Vermont Legislature even voted unanimously against the proposition. Nevertheless, in New Hampshire two delegates were appointed by Federalist counties and attended the Hartford Convention independently. One county from Vermont also sent a delegate. The main ideologists and organizer of the Hartford Convention made sure that radical Federalists such as John Lowell Jr., Timothy Pickering and Josiah Quincy Adams do not attend the convention.[17]

V. THE HARTFORD CONVENTION

The delegates from the Legislatures of the states of Massachusetts, Connecticut, and Rhode Island, and from the counties of Grafton and Cheshire in the state of New Hampshire and the county of Windham in the State of Vermont, assembled in the convention in Hartford, Connecticut on December 15, 1814. On December 16, Two committees were selected. One to check qualification of the members of the convention, and the other to

[15] Buel Jr R, *America on the Brink*, New York, 2005, pp. 215-216
[16] Lyman T, *A short account of the Hartford Convention : taken from official documents, and addressed to the fair minded and the well disposed ; To which is added an attested copy of the secret journal of that body*, Boston, 1823, p. 6
[17] Buel Jr R, *America on the Brink*, New York, 2005, p. 219

determine what subjects were to be discussed, and report propositions on: the calling out the militia of the states into the service of the United States and dividing United States into military districts with an army officer with discretionary authority to call for the militia to be under command of such an officer; the refusal of the United States to supply, or pay the militia of certain states, called out for their defense, on the grounds they were not called into the service of the United States; the failure of the Government of the United States to supply and pay the militia of the states in the United State's service; the failure of the United States to provide for common defense; a bill before Congress providing for classing and drafting the militia.[18] The committee reported on December 24, and everything that took place at the convention was based on its report. The convention adopted the final report on January 4, 1815. The report begins with stating the reasons for calling a convention were abuses by the Federal Government. Similar to Declaration of Independence and Virginia and Kentucky Resolutions. Then, the ultimate remedy to those abuses is expressed- the secession. It was explained that secession has to be the result of profound consideration in the times of peace and some other *confederacy* can substitute the Union. Therefore, the separation by equitable arrangement was declared to be a preferable solution to an alliance by constraint. The most terrible of all abuses was thought to be perversion of the original idea of the Union, seen as a confederacy, and it was considered that those states that wanted to preserve the original idea of the framers, could create new union based on those principles.[19]

Then, the authority of the Federal Government over the militia was challenged. It was declared to be against the clauses in the Constitution which give power to the Congress "to provide for calling forth the militia, to execute the laws of the Union, suppress insurrections and repel invasions" and "to provide for organizing, arming and disciplining the militia, and for governing such parts of them as may be employed in the service of the United States, reserving to the States respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress.", since besides those circumstances, the

[18] Lyman T, *A short account of the Hartford Convention : taken from official documents, and addressed to the fair minded and the well disposed ; To which is added an attested copy of the secret journal of that body*, Boston, 1823, p. 19

[19] http://en.wikisource.org/wiki/Report_and_Resolutions_of_the_Hartford_Convention

authority belongs to the states. Otherwise, the Federal Government can exercise its powers only in cases explicitly mentioned, “to execute the laws of the Union, suppress insurrections and repel invasions". The power to compel citizens by conscription was not power delegated in the Constitution. It was repeated that the only way of raising army has always been by contract, not by conscription and that creating standing army was derogation of the power of the states. Also, enlistment of minors without the consent of parents and guardians were found to be implicitly in contradiction with the Constitution.

It was then declared, in the manner of Virginia and Kentucky Resolutions, that acts of Congress are of no effect, and stated that in the cases of gross transgressions on the Constitution by the Federal Government, the states have the right to defend their citizens and their authority, to act as sovereign entities, however they should not openly resist every infraction of the Constitution, but only in cases of deliberate, dangerous, and palpable infractions of the Constitution, affecting the sovereignty of a state and liberties of their citizens.

Since the Federal Government had left parts of the country without means of defense, states were left to adopt measures for their own defense. Therefore, states were advised to assume their own defense and keep portion of taxes raised to achieve that goal. Here again, we see the idea of the sovereignty, since the right to wage war is one of the attributes of the sovereign states. If they were not to be allowed to take steps toward their defense, it was suggested that common action was to be undertaken until a change of administration. It seems, that even the revolutionary measures were alluded. Finally, it was resolved to make recommendations to the legislatures: to adopt measures to protect the citizens from forcible drafts not authorized by the Constitution; that states separately or in consent assume the defense of their territories; to form voluntary militia units for defense; to call a new convention in case no this one was to be unsuccessful and peace not signed; and to propose to the amendments to the Constitution to be adopted by a convention chosen by the people of each state. The main purposes of proposed amendments were to secure commercial interest of New England states within the Union, as well as to limit the influence of the Southern states by restricting presidential term and requiring that successor to the office be from the different state. The Northerners also feared eventual alliance between Southern states and new states in the West against the interest of the

North, so they required that new states be admitted to the Union only if two thirds concurrence in both Houses of the Congress, which meant that New England approval would have to be needed. On February, 10, a senator from Virginia, introduced a Bill titled "An Act to authorize the settlement and payment of certain claims for services of militia". It was sent to House of Representatives, but before the discussion , the news of peace arrived.[20] Apologists of the Hartford Convention use this fact as the acknowledgment of convention's proceedings, but that was only one of their propositions. At the meeting of Massachusetts legislature in the winter of 1815, a report was made concerning the Hartford Convention and few resolutions were proposed. Complying with one of the resolutions of the Legislature, the Governor Caleb Strong appointed three commissioners who were to go to Washington D.C. with the requests of the state of Massachusetts.[21] They arrived in Washington one day after the news of the peace reached the capital.

The Federal Government recognized the Hartford Convention and its possible consequences as a serious threat to the Union. It withdrew the troops from New York's border with Canada and stationed them at Greenbush, near Albany, from where they could move into Massachusetts or Connecticut if necessary.[22]

The Hartford Convention was probably the greatest challenge to the Union's survival, maybe even bigger than the Nullification Crisis, most importantly because it took place during the war that threatened the very existence of the new nation. Although, no propositions were made to dissolve the Union, to organize New England into a separate state, but the secession was suggested as a possible measure against the grievances. Throughout the report, the Union was referred to as "confederacy" and states as "confederate states" On the other hand the absence of legislative representatives from New Hampshire and Vermont seriously puts into question their claimed legitimacy to speak for New England as a whole. The ultimate failure of the convention due to signing of the peace treaty was one of the reasons that led to dissolution of the Federalist party in 1816.

---

[20] Lyman T, *A short account of the Hartford Convention : taken from official documents, and addressed to the fair minded and the well disposed ; To which is added an attested copy of the secret journal of that body*, Boston, 1823, p. 12

[21] Id

[22] Buel Jr R, *America on the Brink*, New York, 2005, pp. 219-221

VI. THE NULLIFICATION CRISIS

South Carolina was struck by two major economic crisis in the period after the War of 1812. First, from 1819 until 1822, resulted in great decline of prices and income, and second that followed and lasted until 1829, resulted in even lower prices because of overproduction. In 1816, the Federal Government passed for the first time a set of tariffs to defend the protect domestic production. Nationalists from South Carolina supported the Government's measures since they thought they were necessary for national defense. Four years later, though, new tariffs that were supposed to raise the cotton and woolen duties ad valorem were met with resistance by the same politicians.

In 1822, the question of nullification was raised for the first time in South Carolina. That year South Carolina Legislature enacted Negro Seamen Acts, requiring free seamen of African descent to be seized and jailed while their ships were in Charleston harbor. The Acts were in violation of treaties between United States and Great Britain that allowed each country free access to other's harbors. Harry Elkinson, was imprisoned while his ship was in Charleston harbor. He sought a writ of habeas corpus from the Supreme Court. South Carolina Act was deemed unconstitutional since it was in violation of the treaty and the treaties entered into by the United States were supreme law of the land, and also against Congress' power to regulate interstate commerce, but the Court rejected to issue the writ on the ground that writ can be issued only for federal prisoners. South Carolina denied to apply the writ and counter argued that the treaty itself was against the Constitution, reasoning that Federal authority to make treaties extend only to delegated powers.[23]

At the time when Nullification Crisis culminated, there was another case of "nullification". In 1829, Georgia enacted laws that extended its authority over the the Cherokees, invalidated laws their laws, and divided the land they claimed. The Cherokees filed a suit in the United States Supreme Court seeking injunction to prevent Georgia from executing Indian laws. The Court, in *Cherokee Nation v. Georgia*, in 1831, rejected their petition on the grounds that it was

[23] Hamer P.M, *Great Britain, the United States, and the Negro Seamen Acts, 1822-1848*, 3-10, *The Journal of Southern History*, Vol 1, N. 1, 1935, pp. 3-10

political not legal question. Georgia also adopted a law that prohibited white men to leave Cherokee territory without permission from the state. A number of missionaries refused to obtain a permission and were arrested. Two of them, Samuel Worchester and Elizor Butler, appealed to the Supreme Court. The court ruled, in *Worchester v. Georgia*, that the Indians were a sovereign nation and within its boundaries Georgian laws had no force. Both Georgia and the President Jackson declined to enforce the judgment.[24] Although, Georgia did not formally declared the court decision void, their defiance to do so, had practical effects of nullification. Cherokee case gave South Carolina's nullifiers excellent argument in their campaign.[25]

American industrialists, concerned with the defeat of the 1820 tariffs pressed the Congress to adopt new new set of protectionist measures. Leading politicians from South Carolina, and future nullifiers, George McDuffie, James Hamilton and Robert Hayne strongly opposed new duties in the Congress. Despite the opposition from the South, the Congress passed new tariffs that increased the duties on woolen and cotton from 25% to 33,3%.[26]. The tariffs were seen as measure helping developing industrial North at the expense of agricultural South. The tariffs' enemies protests were based on the two principle ideas: that Congress could regulate commerce, but did not have the power to impose taxes with the purpose to regulate manufacture or agriculture and that tariffs were not constitutional since their goal was not to promote general welfare or common defense.[27]

The duties increased to 50% by the Tariff Act of 1828, which became known as "Tariff of Abominations", further aggravated South Carolinians. Leading opponents of tariffs, McDuffie and Hamilton, led anti-tariff campaign in the fall of the same year. Although, they exposed the ideas of state veto and nullification, they did not have a systematic theory. Therefore, William Campbell Preston asked John Calhoun to write an essay on the nullification for the purposes of explaining the idea to the South Carolina Legislature. Calhoun, who was Vice President of the United States under John Quincy Adams

[24] Harris R.E., *The Union at Risk*, New York-Oxford, 1985, pp. 27-29
[25] Freehling W.W, *Prelude to Civil War*, New York-Oxford, 1965, p. 234
[26] Id, p. 107
[27] Graham J.R, *A Constitutional History of Secession*, Gretna, 2005, p. 199

and candidate for Vice President under Andrew Jackson, accepted under condition that his authorship be kept confidential.[28]

The South Carolina Exposition and protest" was presented to the South Carolina State House of Representatives on December 19, 1828. Calhoun began his exposition stating the reasons why the tariffs were unconstitutional in his opinion. The Federal Government is one of limited powers and can exercise only what is expressly granted to it, and those powers necessary and proper to carry them into effect.[29]

Further, he made a difference between "Government" and "Sovereignty". For Calhoun, the emanations of the Government, both State and Federal, are Legislature, Executive and Judiciary, while the sovereignty belongs to the people of the states, since all powers are delegated to the people. The Government is only the agent of the people. The states created the Federal Government, which has delegated sovereign powers.

He also explained his view on the amending procedure. The three-fourths of states could change the Constitution without the consent of every sovereign state. Therefore, he concluded, the state that ratified the Constitution gave up part of its sovereignty. Later, the defenders of the secession changed these premises and declared that in the case of amending Constitution, if state remains in the Union, it gave its implicit approval, and vice versa, if it leaves the Union, it means it rejected the amendments. Calhoun argued that the power of deciding infractions on their authority cannot be denied to the states, since the sovereign powers are delegated to and divided between Federal Government and the state. If they are denied, the state looses the most important attribute of its sovereignty. The Constitution has left appropriate remedy to keep the balance of authority between the states and the Federal Government. That remedy was found in the right of the state to veto the acts of the Federal Government.

On December 29, 1829, Senator Foote from Connecticut introduced a resolution calling for an inquiry into limiting the sale of public lands. In the background of the resolution was, once again the clash between the North and the South, this time over land in the West. The Northern States feared that the South might expand into the West, and secure its domination in the Union. The resolution gave rise to probably one of the most famous debates in the American

[28] Freehling W.W, *Prelude to Civil War*, New York-Oxford, 1965, p. 158
[29] http://en.wikisource.org/wiki/South_Carolina_Exposition_and_Protest

history, between Robert Hayne and Daniel Webster. Webster's reply shifted the topic from the issue of public lands to nullification. Hayne brought up the question of the Hartford Convention. He made a defense of state right to nullify Federal Legislation in case of "gross, deliberate, palpable violations", but unlike Calhoun, Hayne implied that the state legislatures, rather than people of the states, are sovereign and could nullify the Federal Laws. In his second reply, Webster stressed the national character of the Constitution. He argued that the colonies separated from England as united, not as separate states.[30]

Webster contested that by accepting the Constitution, the people divided sovereignty between state and Federal Government. The Constitution Law is supreme. The Constitution grants of powers to Congress, and restrictions on these powers. There are, also, prohibitions on the States. Some authority must, therefore, necessarily exist, having the ultimate jurisdiction to fix and ascertain the interpretation of these grants, restrictions, and prohibitions. It has itself pointed out, ordained and established that authority by declaring that *"the Constitution, and the laws of the United States made in pursuance thereof, shall be the supreme law of the land, any thing in the constitution or laws of any State to the contrary notwithstanding."* From that notion, the supremacy of the Federal Judiciary is derived. Therefore, he concluded states could neither nullify Federal Laws nor secede from the Union.[31]

In summer 1831, Calhoun wrote another essay on nullification, in which he further expanded his ideas expressed in "Exposition and Protest". "Fort Hill Address" is considered to be the ultimate argument for States' rights and nullification. In the Address, Calhoun gave the summary of the general principles of his theory. The great and leading principle is, that the General Government, emanated from the people of the several States, forming distinct political communities and acting in their separate and sovereign capacity, and not from all of the people forming one aggregate political community.[32] He argued that the assumption that the Federal Government is a party to the constitutional compact is erroneous. The

[30] http://www.constitution.org/hwdebate/hayne2c.htm
[31] http://www.constitution.org/hwdebate/webstr2d.htm

[32] http://pages.prodigy.net/krtq73aa/calhoun.htm

States are parties of the compact, acting as sovereign and independent, which created Federal Government. Further, he explained the manner in which the States were to use their power of nullification or interposition. Since that power is essential to their sovereignty, it cannot be delegated "without an entire surrender of their sovereignty, and converting our system from a federal into a consolidated Government…". But the States that is an exceptional remedy that is to be used only in cases of dangerous violations of the Constitution and only when all other remedies failed. If the remedy is denied, it would result in the submission and oppression or might lead to revolutionary resistance.[33]

Jefferson's draft of Kentucky Resolutions was found in 1832, and it gave nullifiers additional arguments. In June 1832, Congress passed new tariff, which retained 50% rates on cotton and woolen. On October 22, the special session of South Carolina Legislature convened. Governor Hamilton demanded an immediate convention. The proposal passed House and the Senate and it was decided that elections for convention delegates were to be held on November 12, the Convention to convene in Columbia on November 19.[34] The Convention passed the Ordinance of Nullification on November 24, 1832. It contains explanation of unconstitutionality of Tariffs of 1828 and 1832 and declared them null and void. It proclaimed that any efforts to enforce the payments of duties were to be considered unlawful. Further, it was ordered that all State officers had to take an oath to execute the ordinance. Finally, it was stated that any attempts by the Federal Government to enforce the annulled laws, other than in courts, would lead to secession of South Carolina from the Union.[35] It was decided that the Ordinance becomes effective on February 1, 1833. Although, South Carolinians, only announced secession if the Federal Government uses force, they were prepared for that scenario. Robert Hayne, Hamilton's successor as a Governor, recruited a two thousand strong brigade of mounted minutemen and a volunteer army of 25.000 men.[36]

---

[33] Id
[34] Freehling W.W, *Prelude to Civil War*, New York-Oxford, 1965, p. 260
[35] http://avalon.law.yale.edu/19th_century/ordnull.asp
[36] Freehling W.W, *Prelude to Civil War*, New York-Oxford, 1965, p. 2

VII. JACKSON'S RESPONSE AND RESOLUTION OF THE CRISIS

After the adoption of the Ordinance, Federal troops stationed in Charleston had been asked by South Carolina Government to leave the city. They moved to island forts. Until the Ordinance of Nullification, the President Jackson was silent on the matter, but during summer and fall of 1832, he made preparations for action. He checked out the loyalty of officers and other officials in South Carolina and alerted naval authorities in Norfolk to be prepared to send aid to unionists in the state. He also ordered General Winfield Scott to supervise military preparations of the nullifiers.[37] Jackson was reelected President in 1832. On December 10, he issued a special proclamation. He declared that the doctrine of state veto had no legitimacy in the Constitutional history of the United States. Decisive and important step of separation from the Great Britain was taken jointly by United Colonies of America. We declared ourselves a nation by a joint, not by several acts and when the terms of that confederation were reduced to form, it was in that of a solemn league of several States, by which they agreed that they would, collectively, form one nation, for the purpose of conducting some certain domestic concerns, and all foreign relations.[38]

As we have seen, the idea of nullification had its defenders, almost from the beginning of the Union. Moreover, it had its proponents among Founding Fathers of the United States, among United States' Presidents. Jackson did not think so. He argued that the Founding Fathers would have never agreed upon "so palpable absurdity". On the other hand, nullifiers did not deny supremacy of Federal legislation, supremacy of those laws enacted according to the delegated powers, but constitutionality of those laws that meant to extend those powers.

For Jackson, the power to nullify a law of the Federal Government was "*incompatible with the existence of the Union, contradicted expressly by the letter of the Constitution, unauthorize by its spirit, inconsistent with every principle on which It was founded, and destructive of the great object for which it was formed.*"[39]

---

[37] Harris R.E., *The Union at Risk*, New York-Oxford, 1985, p. 79
[38] http://avalon.law.yale.edu/19th_century/jack01.asp
[39] Id

He opposed the idea that the laws can be attacked for their alleged purpose. If a right to decide "unconstitutional purpose" is given to the States, it would give them uncontrolled right to decide, and every law might be annulled. According to him, people of The United States as whole, as "*one people*", formed the Constitution acting through the State legislatures and ratifying it in state conventions. The Constitution of the United States, then, formed a government, not a league, and whether it was formed by compact between the States, or in any other manner, its character is the same. It is a government in which all the people are represented, which operates directly on the people individually, not upon the states. Each state having expressly parted with so many powers as to constitute jointly with the other States a single nation, cannot from that period possess any right to secede, because such secession does not break a league, but destroys the unity of a nation, and any injury to that unity is not only a breach which would result from the contravention of a compact, but it is an offense against the whole Union. Arguing that a state may at pleasure secede from the Union, is to say that the United States are not a nation.

Then, he pointed out the most important distinction between confederation and federation, which became *differentia specifica* of two forms of union. The only occasion when secession, as a revolutionary act, has legitimacy is in the case of extreme oppression. "Oppression" or as nullifiers formulated "dangerous, palpable, deliberate". The government that does not obey the laws is oppressive. The only real difference is that for nullifiers secession was legitimate right, not as Jackson saw it as extralegal, revolutionary act.

On January 16, Jackson sent to Congress a special message, also called "The Force Bill". It contained measures that would allow the President to enforce the tariff laws and bypass the South Carolina Ordinance, and also a request that Congress revise and update laws concerning President's rights to use militia and the army to enforce the Federal Laws. The Congress passed the Bill.[40] The crisis was finally resolved when Henry Clay proposed a compromised new tariff. The new Tariff Bill that slightly amended Clay's proposal, was passed by Congress on March 1. The tariffs over 20% would be reduced one tenth gradually to 20% level by1842.[41] South Carolina convention resumed their session on March 11 and repealed

[40] Harris R.E., *The Union at Risk*, New York-Oxford, 1985, p.94
[41] Freehling W.W, *Prelude to Civil War*, New York-Oxford, 1965, p.293

the Ordinance of Nullification. Few days afterwards, it also symbolically repealed the Force Bill.[42]

VIII. CONCLUSION

Nullifiers and secessionists always argued that their actions have historical background. First, the idea of sovereignty of the people in the United States has its roots in English Civil War 1641-1651, Glorious Revolution of 1688, writings of Lock, Rousseau, and finally and most important the American War of Independence. All these events, more or less, proclaimed the idea that the the sovereign power belongs to the people and that they can oppose, forcibly if peacefully is not possible, the oppressive government. Second, the idea of states' rights was derived from the of American Colonial period, American Revolutionary War, and events that followed up till The Philadelphia Convention. The Kentucky and Virginia Resolutions, Hartford Convention, South Carolina Ordinance of Nullification, and later secession of Southern states in 1860/1861 all share similar characteristics. They all followed almost the exact pattern in their application of state rights and exercise of sovereignty of the people of those states. First remedy against the oppressive government was protest, a warning to the Federal Government as in the case of Hartford Convention. Second, was nullification of unconstitutional laws practiced in Kentucky and Virginia Resolutions, and in South Carolina in 1832. Third, was the secession, the conclusive exercise of sovereignty of the people. The fact that many spoke of the Union as "confederacy", the states as "confederate states" before 1865, was not a mere consequence of secessionist propaganda, as some suggest[43], but more likely, the honest feeling and belief of XIX century Americans. The work of unionists such as Jackson, Story, Webster, Lincoln was great step toward forming "The Union", but decades had to pass and bloody civil war before the American unity was forged, and the United States has become "One and Indivisible"

The Union victory in 1865 marked the beginning of a new era. A new era not only in the interpretation of the Constitution, but also a new era for the Federal Government, that gave rise to New Deal in 1930's and more recently to the Patriot Act. Unfortunately, the most important legal and constitutional question in the American history was not resolved in the court, nor in Congress nor in any other political institution, but on the battlefield. The same manner in which the question of state right to secession from the

[42] Graham J.R, *A Constitutional History of Secession*, Gretna, 2005, p.215
[43] Stampp K.M, *The Imperiled Union*, New York-Oxford, 1980, p. 30

federation was decided, the question of self-determination was decided more recently, in the case of Serbian province of Kosovo. The victors decided.

BIBLIOGRAPHY

1. Buel Jr. R, *America on the Brink*, New York, 2005
2. Dwight T, *History of the Hartford Convention,* New York, 1833
3. Freehling W.F, *Prelude to Civil War*, New York-Oxford, 1965
4. Hamer P.M, *Great Britain, the United States, and the Negro Seamen Acts*, *1822-1848*, *The Journal of Southern History*, Vol 1, N. 1, 1935
5. Harris R.E, *The Union at Risk*, New York-Oxford, 1985
6. Graham J.R, *A Constitutional History of Secession*, Gretna, 2005
7. Lyman T, *A short account of the Hartford Convention: taken from official documents, and addressed to the fair minded and the well disposed; To which is added an attested copy of the secret journal of that body*, Boston, 1823
8. Norton, E, *Nathan Dane's Role in the Hartford Convention of 1814-1815*
9. Stampp K.M, *The Imperiled Union*, New York-Oxford, 1980
10. http://neuro.law.cornell.edu/supct/html/historics/USSC_CR_0074_0700_ZO.html
11. http://www.bartleby.com/124/pres31.html
12. http://en.wikisource.org/wiki/Report_and_Resolutions_of_the_Hartford_Convention
13. http://en.wikisource.org/wiki/South_Carolina_Exposition_and_Protest
14. http://www.constitution.org/hwdebate/hayne2c.htm
15. http://www.constitution.org/hwdebate/webstr2d.htm
16. http://pages.prodigy.net/krtq73aa/calhoun.htm
17. http://avalon.law.yale.edu/19th_century/ordnull.asp
18. http://avalon.law.yale.edu/19th_century/jack01.asp

DIMITRI NOVAKOVIĆ, LL.M.
Faculty of law, University of Kragujevac
Assistant Lecturer

THE HARTFORD CONVENTION AND THE NULLIFICATION CRISIS

The issues of nullification, as a right of the states to nullify the acts of Federal Government, and secession are the most important legal questions in the first decades of the U.S. That period was marked by fierce political struggle between followers and opponents of nullification and secession. In this article the author analyzes two important events in this struggle: The Hartford Convention and the Nullification crisis. Although these events are different, both had roots in Virginia and Kentucky Resolutions. Secession was thought to be the ultimate legal and political instrument that the states have as sovereign bodies against unconstitutional acts of the Federal Government. That theory got its legal shape in the writings of John Calhoun. On the other hand, the theory of opponents of nullification and secession was not drafted until 1830s.

***Key words**: federalism, secession, nullification, the Hartford Convention, the Nullification crisis*