

## Analyzing Constitutive Rhetorics *The Virginia and Kentucky Resolutions and the "Principles of '98"*

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In his seminal 1925 essay "The Literary Criticism of Oratory," Herbert Wichelns contrasted the avocations of literary and rhetorical criticism. He concluded that rhetorical criticism's "point of view is patently single. It is not concerned with permanence, nor yet with beauty. It is concerned with effect." Wichelns's next sentence indirectly inserted an adjectival modifier before the word effect which narrowed its semantic potential. He wrote: Rhetorical criticism "regards a speech as a communication to a specific audience." By emphasizing that public discourse always addresses specific audiences, and suggesting that the rhetorical critic should focus his or her analytic attention on "the orator's method of imparting his [*sic*] ideas" to the specific audience, Wichelns circumscribed the range of discursive effects which the critic might examine. For example, focusing on how a message affects the specific or extant audience diminishes the temporal reach of discursive action. Wichelns appears to have assumed that discourse exhausts its rhetorical potential, its ability to exert influence, in the moment of immediate audience reception.<sup>1</sup>

Surveying the metacritical literature in rhetorical studies in the mid-twentieth century, we find a handful of essays questioning the restricted approach to discursive effect that Wichelns's essay helped instigate.<sup>2</sup> We also discover essays such as Lloyd Bitzer's influential "The Rhetorical Situation" that provided conceptual reinforcement for an emerging "instrumental" critical paradigm organized around a circumscribed view of effect. Through concepts such as "exigence" and "constraint," Bitzer's reconstruction of rhetorical situations included more factors than immediate audience; he nevertheless buttressed an instrumental approach to discursive effect. According to Bitzer's formulation, discourse engaged or resolved urgent, objective problems (exigencies) while managing or negotiating various obstacles (constraints). Public discourse, Bitzer insisted in 1968, functioned instrumentally, enabling individuals and groups to respond to preexisting situations.<sup>3</sup>

While Bitzer's account of rhetorical situations advanced an instrumentalist critical orientation, other scholars began developing concepts such as "rhetoric is

epistemic,” the “ego-function” of rhetoric, and “fantasy-theme analysis,” which indirectly challenged a narrow account of discursive effect.<sup>4</sup> Indebted to these internal conceptual developments as well as to developments in other disciplines, rhetoricians began urging the discipline to rethink the concept of effect in the early 1980s.<sup>5</sup> In his review of the 1984 University of Iowa conference on “The Rhetoric of the Human Sciences,” John Lyne suggested that the “constitutive function of rhetoric ... should probably get more attention in our literature than it does, since it helps explain why the study of discourse is important independent of whether it can be demonstrated to have ‘caused’ events.”<sup>6</sup> In his review, Lyne contrasted a narrow, “causal” model of effect with one that is more capacious, and like others, he urged scholars to embrace a more expansive understanding of discursive effect. Lyne’s contrastive terminology – the idea of rhetoric’s “constitutive function” – has become an important part of the contemporary rhetorical lexicon.<sup>7</sup>

Two scholars in particular helped popularize what we might call a constitutive framework for rhetorical criticism and public address scholarship. Maurice Charland and James Boyd White developed their conceptualizations of “constitutive rhetoric” independently, drawing largely on different theoretical traditions. Charland was heavily influenced by Kenneth Burke as well as by various strands of continental philosophy and social theory (especially Louis Althusser);<sup>8</sup> in one of his early books White identified a number of writers who influenced his approach to language and rhetoric, including so-called “New” Critics and reader-response scholars in American literary studies, language philosophers such as Wittgenstein, Austin, and Searle, and of course Kenneth Burke.<sup>9</sup> While the different intellectual traditions from which they draw will allow us to contrast Charland and White’s perspectives, at this point we would like to highlight their shared assumptions. Reflecting on a variety of contemporary theoretical traditions, including language philosophy, literary and philosophical deconstruction, and poststructuralism, we contend that Charland and White’s versions of “constitutive rhetoric,” as well as the various critical studies which have tried to develop and expand on their perspectives, share basic social constructionist assumptions about the contingency of human beliefs and institutions and the generative potential of discursive action.<sup>10</sup>

Jasinski suggests that the constitutive “turn” in contemporary rhetoric is “both a return to a neglected aspect of the rhetorical tradition and an encounter with a broader ‘constructivist’ or structural agenda in the humanities and social sciences.” He identifies the rejection of “the once traditional view that language is principally a medium of representation” as a crucial assumption shared by social constructionists. Constructivism and constitutive rhetoric, he continues, advance the somewhat paradoxical position that “linguistic or discursive practices create what they describe as they simultaneously describe what they create.” As a brief summary description of the constitutive potential inherent in discursive practice, Jasinski endorses Louis Montrose’s statement that “representations of the world in ... discourse are engaged in constructing the world, in shaping the modalities of social reality, and in accommodating their writers, performers, readers, and audiences to multiple and shifting subject positions within the world they both constitute and inhabit.”<sup>11</sup>

In his 1998 essay in *Doing Rhetorical History*, Jasinski modifies Michael Leff's distinction between two senses of persuasion – intentional and extensional – in order to locate two distinct trajectories of constitutive influence or effect.<sup>12</sup> Jasinski's effort, we believe, is consistent with recent attempts to distinguish between a “rhetoric of interiors” and a “rhetoric of exteriors.”<sup>13</sup> In the next section of the chapter, we draw on Charland, White, and other examples of constitutive critical analysis to outline important themes and questions that might guide interior and exterior modes of constitutive critical inquiry. In the third section of the chapter, we illustrate each analytic trajectory in an extended discussion of the Virginia and Kentucky *Resolutions* drafted in 1798 by, respectively, James Madison and Thomas Jefferson. Examining their constitutive legacy is appropriate since the *Resolutions* were an instrumental failure in their immediate historical context, yet they rather quickly became canonized as the “principles of '98.”

### **Interior and Exterior Trajectories of Constitutive Analysis**

Jasinski initially adumbrates the two trajectories in the following terms: “Intentionally, texts exhibit constitutive potential through the invitations inscribed in various discursive forms (tropes, arguments, etc.). Extensionally, texts exhibit constitutive force through the cultural circulation and discursive articulation of its textual forms in ways that enable and constrain subsequent practice.”<sup>14</sup> While we find this initial formulation useful, we will organize our discussion in terms of interior and exterior constitutive rhetorics because the term “intention” often connotes an instrumental critical logic. Beginning with Charland and White and continuing through more recent studies by Vanessa Beasley, Nathaniel Cordova, and Dexter Gordon,<sup>15</sup> critics have examined textual interiors – the various discursive forms which inhabit or reside in the text – in various ways, thereby uncovering a text's constitutive capacity (or capacities) and its potential to shape audience identity, communal values, and social reality.<sup>16</sup>

Charland's 1987 study of Quebec nationalism concentrates on the Parti Québécois White Paper “Quebec-Canada: A New Deal,” released in November 1979. He focuses on the White Paper's historical narrative of oppression combined with “a teleological movement towards emancipation,” arguing that “within the formal structure of a narrative history ... it is possible to conceive of a set of individuals as if they were but one.” He continues a paragraph later: “Form renders the ‘Québécois’ a real subject within the historical narrative.” Charland qualifies this claim a few paragraphs later, remarking: “The ideological effects of constitutive rhetoric that I have outlined are not merely formal effects inscribed within the bracketed experience of interpreting a text. In other words, these do not only permit a disinterested understanding of a fictive world.” In our reading, Charland attempts to transcend an analysis of textual interiors – reconstructing the White Paper's historical narrative of oppression – by suggesting that such an analysis of

interior form only provides access to “a fictive world.” He insists that his analysis of “[t]he White paper’s constitutive rhetoric, as it articulates the meaning of being ‘Québécois,’ is not a mere fiction. It inscribes real social actors within its textualized structure of motives, and then inserts them into the world of practice.” From our perspective, Charland’s effort to link interior form with fiction, thereby exceeding an interior mode of analysis, represents a canard. Despite claims to the contrary, Charland’s analysis concentrates on narrative form, making no effort to trace the White Paper’s circulation or to disclose the way Quebec citizens used it to shape their “practices” or their understanding of social reality. It remains a conceptually sophisticated, but nevertheless interior, mode of constitutive analysis.<sup>17</sup>

Charland’s conceptual sophistication stems from the way he employs the work of Louis Althusser to describe a “rhetoric of interpellation.” By following “the radical edge of Burke’s identificatory principle,” Charland attempts to surmount the model of instrumental persuasion, and in so doing, he discovers Althusser’s concept.<sup>18</sup> According to Charland, interpellation is not the result of rhetorical appeal; it emerges in “the very act of *addressing*,” and “occurs at the very moment one enters into a rhetorical situation ... as soon as an individual recognizes and acknowledges being addressed.” By “participat[ing] in the discourse that address[es]” them, people are “inscrib[ed] ... into ideology,” inserted into specific “discursive position[s].” Rhetorical interpellation, Charland concludes, is the principal apparatus of constitutive rhetoric, and “collective identities” are the primary “ideological effect” of rhetorical interpellation.<sup>19</sup>

A number of rhetorical scholars have followed Charland’s lead in probing the way various discursive forms – narrative in particular – function to constitute identities. For example, Beasley draws upon Charland’s discussion of Burke and Althusser, arguing that “to find evidence of how presidents have promoted certain forms of American national identity within their discourse, we need not look for overt appeals in which chief executives have told their listeners what to think or which policy to support. Instead, critics can look at ways that presidential discourse subtly reinforces the audience’s presumed collective identity as national subjects.” While locating a variety of “constitutive themes of American nationalism,” she concludes that presidents have “most commonly associate[d] American national identity with Puritan notions of an American civil religion.” Americans are linked by a providential narrative that has positioned them “as God’s chosen people.”<sup>20</sup> Similarly, Cordova examines the way the *Catecismo del Pueblo*, produced by Puerto Rico’s Popular Democratic Party in the late 1930s, relied on “an historical Christian narrative of oppression” as well as “the traditional catechism form of question and answer” to “interpellate a subject.” According to Cordova, the *Catecismo* provided Puerto Ricans with a collective identity; it “summon[ed] a people to take up their appointed role in history [which included] upholding a Christian duty to advance social justice by voting for the PPD.”<sup>21</sup> In his study of nineteenth-century black nationalist discourse, Gordon traces the interpellative process, “rhetoric’s construction of individuals into a collective subject,” from David Walker’s *Appeal* and Robert Young’s *Ethiopian Manifesto* published in 1829 through key performances in the 1840s and 1850s by Martin Delany, Frederick Douglass, and Henry Highland

Garnet. In a chapter devoted to Walker and Young, Gordon describes the way “black nationalism’s narrative structure ... interpellated blacks into a collective identity by articulating nineteenth-century blacks in [a] rich, militant black history.”<sup>22</sup> The analytic trajectory from Charland through Beasley, Cordova, and Gordon<sup>23</sup> reveals two principal features: (1) analyses of textual interiors (particularly narrative structures) which warrant interpretive claims regarding presumed discursive effect that (2) emphasize identity constitution.

James Boyd White elaborates his framework for analyzing the constitutive potential of textual interiors in two collections of essays: *When Words Lose Their Meanings* and *Heraclides’ Bow*. White begins with the assumption that “text-making” is a “kind of ‘action with words.’” He continues by maintaining that texts come into existence “whenever any of us acts with words in our own lives to claim meaning for experience or to establish a relation with another.”<sup>24</sup> We’ll begin with White’s conceptualization of the way texts establish or create relationships with readers since this analytic path most closely parallels Charland’s sense of constitutive rhetoric.

White invites his readers to consider that the “interaction between mind and text ... works like an interaction between people.” A text, White continues, “asks its reader to become someone and ... by doing so it establishes a relationship with him [*sic*].” He offers this example:

Think ... of what happens when a person opposed to racism is told a successful racist joke: he laughs and hates himself [*sic*] for laughing; he feels degraded, and properly so, because the object of the joke is to degrade. ... Nor should he be ashamed that these possibilities are realized in him against his will, for a great work of literature might evoke such possibilities against the will of the reader in order to help him understand and correct them, and this would be an act of the deepest friendship. But the one who responds to the joke is ashamed of having this happen at the instigation of one who wishes to use those possibilities as the basis for ridicule or contempt; he is ashamed at who he has become in this relationship with this speaker.<sup>25</sup>

We think it useful to consider how Charland’s sense of constitutive rhetoric might be used to explain White’s example. Charland’s framework emphasizes a cluster of verbs – inscribe, insert, interpellate – that might elucidate how the joke positions the person to whom it is told. These verbs invoke a world where agency resides primarily in texts (or, perhaps more precisely, in the moment someone recognizes that they are being addressed), and effects are presented as a *fait accompli*. In contrast, White’s typical verbs – ask, invite, offer<sup>26</sup> – envision a world of shared agency and self-conscious readers (and speakers/writers) capable of considering – perhaps accepting, but also potentially rejecting – textual solicitations. In short, White’s understanding of discursive action is more dialogic than Charland’s.

Charland and White both concentrate on textual interiors as they seek to disclose the way discourse shapes individual and communal identities. Their respective versions of constitutive rhetoric differ in that each approach has been formulated in a different conceptual register. In the present context, we do not believe it necessary to engage the broader conversations concerning agency, identity, and subjectivity

which these different registers facilitate; we do, however, think it important to note that because of its conceptualization of agency, White's version of constitutive rhetoric encourages critics to move beyond textual interiors to examine exterior trajectories of reception and circulation – a position that is reinforced by a second mode of textual action that White highlights.

White argues that when people “claim meaning for experience,” they “must speak a language that has its existence outside” of their individual selves. “This language,” he continues, provides a person with “his [*sic*] terms of social and natural description, his words of value, and his materials for reasoning; it establishes the moves by which he can persuade another, or threaten or placate or inform or tease him, or establish terms of cooperation or intimacy; it defines his starting places and stopping places and the ways he may intelligibly proceed from one to the other.” The linguistic resources that “establish the possibilities of expression” both enable and constrain discursive performance. But this realization, White insists, does not lead to a deterministic conceptualization of language for as people claim meaning for experience, they “both act with and upon the language ... at once employing and reconstituting its resources.”<sup>27</sup> Extending White's observations, Jasinski suggests that “[t]he idioms of public life (for example, liberalism, conservatism, free market capitalism, pro-choice or pro-life, etc.) and the specific concepts that organize, link, and separate these idioms are continually reconstituted through quotidian interaction as well as more nuanced textual practices. Charting such alterations in ‘usages’ is a central aspect of a constitutive rhetorical history.”<sup>28</sup>

Drawing on White's more expansive understanding of discursive constitution as well as other strands of contemporary language and social theory, Jasinski has proffered additional loci for constitutive analysis. For example, he argues that J. Robert Cox and Robert Hariman's respective studies of King's “I Have a Dream” speech illustrate “the constitution of [a community's] temporal experience.” Cox reveals the ways King's “metaphoric critique of gradualism” sought to constitute time as urgent, while Hariman more fully describes King's complicated persuasive field in order to uncover King's “subtle reconstitution of gradualism.”<sup>29</sup> In addition to the discursive constitution of temporal experience, Jasinski suggests that “the ongoing discursive negotiation of the spatial categories ‘public’ and ‘private’” merited the attention of rhetorical scholars. He encourages scholars to examine how “a plethora of discursive forces (e.g., legal, feminist, children's advocates, bureaucratic)” reconfigure our experience of the categories public and private. Jasinski's final analytic locus is communal reconstitution. He observes:

Communal reconstitution can take a variety of discursive forms and rely on different textual practices as specific questions of social and political authority, power, bonds of affiliation, meaning, value, and institutional practice are confronted and negotiated. A history of American public discourse is, in part, the reconstruction and analysis of specific moments wherein an American community, and its constituent sub-communities, confronted threats to its existence (internal as well as external) and engaged in its own reconstitution.<sup>30</sup>

Charland, White, and the many scholars who have drawn upon and extended their respective versions of constitutive rhetoric demonstrate the myriad strategies for examining rhetorical interiors. In our judgment, analytic explorations of the constitutive nature of rhetorical exteriors are not as robust, but nevertheless point in some extremely promising directions.<sup>31</sup> Three concepts are, we believe, central in any effort to track rhetorical exteriors: reception, circulation, and articulation.

At first glance, Leah Ceccarelli's effort to unpack various senses of polysemy and Davis Houck and Mihaela Nocasian's discussion of Franklin Roosevelt's "First Inaugural" appear to have little in common, but in our judgment each of these essays illustrates how the examination of rhetorical exteriors – in each case how listeners and readers respond to a message – can help critics document a text's constitutive potential as well as its instrumental situational impact.<sup>32</sup> Ceccarelli observes that "[m]ost critics do not currently focus on how texts were received by their contemporary audiences, choosing instead to imagine how an audience in a particular rhetorical situation *might* have responded to the text's invitation" (emphasis in original). She continues: "By engaging a close analysis of both the primary text and the texts that are produced in response to it, the critic can recognize both polysemic potential and the actualization of that potential by audiences."<sup>33</sup> In addition to providing evidence of the way readers and listeners actualize semantic possibilities, we suggest extending Ceccarelli's insight to examine how actual audiences engage a text's constitutive invitations to, for example, inhabit a particular subject position, embrace a certain memory of the past, or employ the culture's vocabulary of key terms in a certain way. Houck and Nocasian specifically draw on Ceccarelli's insight and, in so doing, indirectly demonstrate this analytic possibility. For example, based on a careful reading of newspaper accounts of Roosevelt's First Inaugural, as well as letters written to the new president, they observed that "[o]ne dominant interpretive pattern by which the public (and the press) reacted to the speech involved confidence."<sup>34</sup> The reception evidence they uncovered helps reveal, we would argue, the way many Americans in 1933 accepted Roosevelt's invitation to reconstitute and re-embrace this communal attitude.

While Ceccarelli and Houck and Nocasian urge scholars to examine text reception, scholars of visual rhetorics encourage rhetoricians to broaden their analytic vision by tracing processes of image and "text" (e.g., specific arguments, tropes, ideographs) circulation. Extending on the work of Benjamin Lee and Edward LiPuma, Michael Warner, and Bruno Latour, Cara Finnegan and Jiyeon Kang argue that conceptual reflection has moved beyond a "passive transmission" model of circulation and has been replaced by a sense of "circulation as a constitutive process." Following Finnegan and Kang's recommendation to make "circulation a theme [in] our study of discourse" will force critics to recognize that, however powerful a particular rhetorical performance (and resulting text) may be, constitutive rhetorics do not enter the public sphere fixed and fully developed.<sup>35</sup> Public utterances issue constitutive invitations that are, in Ceccarelli's terms, realized in acts of reception and subsequent circulation; those acts, in turn, define, shape, and even transform the utterance's initially inchoate constitutive potential.<sup>36</sup> Over time,

circulation practices produce a constitutive legacy that critical analysis can reconstruct. Existing studies that trace the career of a specific trope or pattern of argument exhibit a proto-circulatory critical logic and, as such, illustrate some ways critics might analyze the process of constitutive circulation and the production of constitutive legacies.<sup>37</sup>

While the concept of circulation foregrounds the collaborative production of constitutive rhetoric, it does not provide an adequate framework for analyzing the way rhetorical exteriors actualize constitutive potential. When advocates shift a trope, an argument, or a visual image from one historically particular rhetorical situation into a new context or connect it to a new controversy, circulation occurs via specific articulatory practices.<sup>38</sup> In some cases these articulatory practices will highlight a diachronic dimension (the case in 1848 when the women at Seneca Falls appropriated the language of America's Declaration of Independence and inserted it into their Declaration of Sentiments) while in other cases articulation moves synchronically (the case in 1967 when Martin Luther King, Jr. defended his decision to speak out against the war in Vietnam by identifying the ideological threads that connected his civil rights and antiwar positions). We also believe it worth noting that accepted articulations can be resisted, and efforts to disarticulate sutured concepts are part of the concepts' ongoing circulation (e.g., Emma Goldman's efforts in the early twentieth century to sever the link between the concept of "love" and the institution of heterosexual marriage).

In tracing the two trajectories of constitutive criticism, we have shown how the interior trajectory, marked by a predominant interest in identity formation, is well established. We believe it appropriate to expand interior analysis to include examinations of how texts invite listeners and readers to modify the meaning of a culture's key terms, to reconceptualize a culture's experience of public time (including the past), to reaffirm or reconfigure accepted demarcations of social space, and to affirm as well as challenge established sources of cultural authority, bonds of affiliation, and institutional relationships. The exterior trajectory is, as our discussion suggests, much less fully realized at present. By drawing on extant scholarship, we have tried to convey a sense of how critics might extend that mode of analysis. The case study that follows illustrates both analytic trajectories.

Before proceeding to the case study, one final observation is in order. As some scholars have already observed and as our case study will further illustrate, a constitutive rhetoric does not exist in a vacuum. Its textual vehicles emerge and circulate within a world of alternative, frequently competing, constitutive rhetorics. For pragmatic reasons critics will typically need to limit the scope of inquiry. Nevertheless, critics must recognize the multiplicity of constitutive rhetorics and the impact that they might have on each other. As we discuss more fully in the next section, the constitutive potential of the "principles of '98" would be embraced by many Americans, but the *Resolutions* were never able to circulate with sufficient force to displace completely an alternative "nationalistic" constitutive rhetoric. Tracing the subsequent circulation of the "principles" also reveals



how divisions and disagreements emerged within the political collectivity that the “principles” helped constitute.

### The “Principles of ’98”: Interior Constitutive Invitations and Exterior Constitutive Legacy

Historians employ a variety of terms to describe the ideological conflicts that shaped American political discourse in the late eighteenth and early nineteenth centuries: cosmopolitan versus localist, federalist versus anti-federalist, nationalist versus states’ rights, consolidation versus anticonsolidation, and liberal versus strict construction are some of the more common. While the terminology varies, the scholarly consensus is clear: During the nation’s formative period, the Constitution came to occupy a central place in the nation’s political imagination. But many Americans nevertheless imagined fundamentally different political regimes, with different visions of citizenship, different terms of value, and different accounts of the nation’s development.<sup>39</sup> In his study of slavery and the US Constitution, Mark Brandon observes: “[A]t the level of ... constitutive narrative, from the very start of the constitutional order there were two prominent competing accounts of the Constitution – what it *meant* and what it *was*.”<sup>40</sup>

These two competing narratives – or constitutive rhetorics – began to take shape during the 1787–1788 ratification debates as advocates committed to a more localist political regime challenged the centralizing thrust that they perceived in the proposed Constitution. Their development continued in the 1790s as a congressional coalition emerged to oppose Alexander Hamilton’s aggressive program for economic expansion. According to Larry Kramer, by 1800 “lines [were] clearly drawn between a Republican Constitution and a Federalist one.”<sup>41</sup> Countless public advocates and a considerable body of discourse brought these competing constitutive rhetorics into existence and were responsible for their continuing circulation and transformation. Resolutions adopted by the Virginia and Kentucky state legislatures in 1798 and 1799 along with a report issued by the Virginia legislature in 1800 whose content is often referred to collectively as “the principles of ’98” imagined the most significant alternative to the nationalist vision. Uncovering the constitutive invitations (or constitutive vision) and reconstructing the constitutive legacy of these four pivotal documents helps reveal the way discursive performances shaped the development of the nation’s constitutional order and allows us to demonstrate how discourse continues to constitute political thought and action long after its immediate instrumental situation.<sup>42</sup>

Thomas Jefferson’s Kentucky *Resolutions* and James Madison’s Virginia *Resolutions* were prepared to protest the 1798 Alien and Sedition Acts which Federalist President John Adams and his congressional supporters promoted. According to William Watkins, “[o]stensibly aimed at securing the home front as the [nation] braced for French invasion, the acts served the much broader purpose of Federalist political hegemony. Through this legislation, the Federalists sought to

restrain democratic-minded foreigners and silence all criticism of the national government.”<sup>43</sup> The Alien and Sedition Acts consisted of four laws: The Naturalization Act drastically limited citizenship and suffrage rights; the Alien Act gave the president the power to evict any alien “he shall judge dangerous to the peace and safety of the United States”; the Alien Enemies Act allowed the president to arrest, imprison, and deport any alien subject to an enemy power during wartime; and the Sedition Act defined sedition in such narrow terms that the law could be used to prosecute anyone who published anything negative about the federal government. According to Hartnett and Mercieca, congressional opponents attacked the acts on the grounds that they would augment executive power and endanger the Constitution’s balance of powers, were vague and invited abuse of the newly granted powers, and were potentially unconstitutional.<sup>44</sup>

President Adams’s congressional supporters discounted these concerns, and Congress adopted the acts during June and July 1798. Once enacted, the opponents’ situational exigencies changed: They now had to decide whether and how to continue their opposition. Watkins observes that “[t]hrough the details of the planning phase of the Kentucky and Virginia *Resolutions* elude us, the choice of state legislatures as the vehicles of protest is not shrouded in mystery.” “A custom of turning to state legislatures to rally opposition to an overreaching central government was,” Kramer avers, “well established” by the late eighteenth century, having been endorsed by both of the *Federalist Papers*’ principal authors: Hamilton and Madison.<sup>45</sup> Jefferson’s Kentucky *Resolutions* were introduced in the state legislature by John Breckinridge and adopted in November 1798; Madison’s Virginia *Resolutions* were introduced by John Taylor of Caroline and adopted the following month.<sup>46</sup> The *Resolutions* denounced the acts as inexpedient and unconstitutional, and they invited Kentucky and Virginia’s sister states to endorse their vision of the nation’s constitutional order.

### Analyzing textual interiors/reconstructing constitutive invitations

We want to identify four ways that the *Resolutions* invited readers to imagine the nation’s situation and emerging constitutional order. First, the texts located the Alien and Sedition Acts within an ominous narrative structure. Virginia’s *Resolutions* asked readers to accept the claim that “a spirit has in sundry instances been manifested by the Federal Government to enlarge its powers by forced constructions of the constitutional charter.” The acts, Virginia legislators intimated, were part of “a design to expound certain general phrases ... so as to destroy the [Constitution’s] meaning and effect”; they represented a “spirit” whose “obvious tendency and inevitable consequence ... would be to transform the present republican system of the United States into an absolute, or, at best, a mixed monarchy.” The *Resolutions* established a narrative trajectory in which the “states by degrees” will be “consolidate[d] ... into one sovereignty.”<sup>47</sup> Kentucky’s 1799 *Resolutions* predicted that “if the general government be permitted to transgress the limits fixed by” the Constitution, “an annihilation of the state governments, and the creation upon

their ruins of a general consolidated government, will be the inevitable consequence.” The shared fear of inevitable consolidation led Kentucky to conclude in its 1798 *Resolutions* that the assumption of “unlimited powers” by the federal government must be “arrested on the threshold.”<sup>48</sup> The “threshold” image, a manifestation of the commonplace locus of the irreparable, constituted the situation as precarious and urgent and invited readers, especially legislators in the other states, to ratify that definition of the situation through decisive action.

Second, the resolutions offered readers a narrative account of the constitutional order’s emergence. Kentucky’s 1798 *Resolutions* began by foregrounding the states syntactically as the sentence’s subject and as the primary narrative agent: “[T]he several States composing the United States of America ... constituted a general government for special purposes [and] delegated to that government certain definite powers, reserving each State to itself, the residuary mass.”<sup>49</sup> A decade earlier, many of Jefferson and Madison’s republican allies had attacked the proposed Constitution because they perceived it as a threat to state sovereignty. Thanks to the Tenth Amendment, prominently featured in Kentucky’s first five Articles, Jefferson repositioned the states and reimagined their role in the Constitution’s development. Rather than victims of a nationalist coup, Jefferson imagined the states as primary players in the new constitutional order. They constituted, they delegated, they reserved, and now – Jefferson and Madison suggested – they were authorized “to oppose in a constitutional manner, every attempt ... to violate that compact.”<sup>50</sup> As Virginia explained in 1798: “[T]he states ... have the right and are in duty bound to interpose for arresting the progress of the evil, and for maintaining within their respective limits the[ir] authorities, rights, and liberties.”<sup>51</sup>

Perhaps even more important than reimagining the states’ role in the constitutional narrative, Jefferson and Madison reimagined the new constitutional order contractually as a compact.<sup>52</sup> In so doing they adjusted old concepts to the new order: As Powell suggests, the traditional compact between “the governed and the governors ... by which freedom was maintained” was “converted” into a new “political ontology” in which the states constituted and controlled national power.<sup>53</sup> In the 1790s the states attempted, not always successfully, to exert control over national power via their representatives and a variety of expedience arguments. As early as the 1791 debate over Hamilton’s proposed national bank, the emerging Jeffersonian opposition invented a new argument practice – constitutional interpretation – in their effort to frustrate Hamilton’s agenda and control national power. As Powell observes, “Americans have become so accustomed to associating constitutional debate with discussions about the meaning of texts that it is easy to overlook the significance of Madison’s [and Jefferson’s] textualism. English constitutional argument, with which the founding generation grew up, was not fundamentally textual.”<sup>54</sup> In short, the republican opposition imagined “constitutional debate” to be “essentially a legal discussion of the proper interpretation of a written instrument.”<sup>55</sup>

Beginning in the early 1790s, Madison and Jefferson began inviting their fellow citizens to embrace a “radically textual understanding of the constitutional

enterprise.”<sup>56</sup> This “rigorous textualism” was, Powell argues, “a central feature of the principles of ’98” and is, we suggest, a third constitutive feature of the *Resolutions*’ rhetorical interior.<sup>57</sup> As Powell observes, the *Resolutions* “supported their claim that the Alien and Sedition Acts were unconstitutional with specific textual arguments.”<sup>58</sup> For example, in its fifth resolution, the Kentucky legislature sought to subvert both the Alien and Alien Enemies Acts by citing Article One, Section Nine, which stated: “the migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year 1808.” The resolution then argued that since “a provision against prohibiting their migration is a provision against all acts equivalent thereto,” giving the president the power “to remove them when migrated is equivalent to a prohibition of their migration, and is therefore contrary to the said provision of the Constitution, and void.”<sup>59</sup>

Republican textualism was, as Powell notes, decidedly “protestant.”<sup>60</sup> While Jefferson and Madison understood the interpretive potential of precedents (and that understanding helps explain their determination to “arrest ... on the threshold” the unconstitutional expansion of federal power), they typically adopted a Protestant fixation with the text and only the text.<sup>61</sup> Precedents were pernicious precisely because they led interpreters away from the authoritative text. The *Resolutions* also manifested the common Protestant commitment to “the legitimacy of individualized (or at least nonhierarchical communal) interpretation.”<sup>62</sup> In its 1799 response to its sister states, the Kentucky legislature maintained that allowing “the general government [to be] the exclusive judge of the extent of the powers delegated to it” was “despotism.” In good Protestant fashion, the legislature invited its sister states to embrace the proposition “that the several states who formed that instrument ... have the unquestionable right to judge of the infraction.”<sup>63</sup> The states, and ultimately the people – not the federal courts – were the Constitution’s authorized interpreters.<sup>64</sup>

While Kentucky and Virginia summoned their sister states and the citizenry at large to constitute a Protestant community devoted to upholding “the plain intent and meaning” of the “federal Compact,” their resolutions invited readers to assume a rather uncharitable attitude towards those citizens entrusted with the reigns of federal power. The *Resolutions*’ fourth significant constitutive invitation focused on the relationship between the practices (and texts) of those entrusted with power and the citizenry at large. Kentucky’s *Resolutions* insisted that “free government is founded in jealousy and not in confidence.” Confidence, the Kentucky legislature suggested, invites consolidation and “the destruction of all ... limits” on power. Kentucky’s *Resolutions* continued: “[I]t is jealousy and not confidence which prescribes limited Constitutions to bind down those whom we are obliged to trust with power. ... In questions of power then let no more be heard of confidence in man, but bind him down from mischief by the claims of the Constitution.”<sup>65</sup> Jealousy, suspicion, or – in Powell’s terms – “ceaseless vigilance” were revealed as the hermeneutic norms appropriate for a republican regime.<sup>66</sup> Virginia and Kentucky invited their sister states, and ultimately all Americans, to emulate their

hermeneutic posture and constitute a national community that distrusted those selected to govern.

When Virginia and Kentucky requested other states to ratify their vision of the nation's constitutional order, they were rebuked. The legislatures of New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, Pennsylvania, Delaware, and Maryland each sent replies to Kentucky and Virginia rejecting their resolutions. No state legislature sent a reply concurring with Kentucky and Virginia. In short, the states that chose to reply to Virginia and Kentucky's *Resolutions* abjectly rejected them as erroneous, dangerous, and hostile to the Constitution and nation. In their immediate context, the *Resolutions* were instrumental failures.

### Analyzing rhetorical exteriors/uncovering constitutive legacies

For pragmatic reasons, our case study focuses on how the *Resolutions* circulated in the period from the end of the War of 1812 (the beginning of the "era of good feelings") to the end of the "nullification crisis" in the early 1830s. Our analysis is thus illustrative and not exhaustive. While our discussion concludes with the nullification crisis, the "principles of '98" continued circulating in antebellum America (culminating in southern secession). The "principles" were also appropriated by Northerners opposed to the war of 1812 (during the Hartford Convention) and federal government policies regarding fugitive slaves (through the efforts of state courts in Ohio and Wisconsin). They reemerged during the twentieth century in various contexts, perhaps most notably in Southern resistance to *Brown* and federal court-mandated desegregation.<sup>67</sup> Efforts to rearticulate the "principles" in the early twenty-first century continue. William Watkins concludes his study of the *Resolutions* by observing: "If Americans embrace the Resolves' lessons about ultimate sovereignty and divided legislative sovereignty, then a renewal of federalism and a restoration of our Constitution is possible."<sup>68</sup> A comprehensive circulation study would need to examine the efforts of myriad advocates from antebellum America to the present day who have sought to rearticulate the "principles" into new contexts.<sup>69</sup>

The 1815 Treaty of Ghent concluded the War of 1812 and allowed Americans to refocus their energies on economic development. Congressmen such as John Calhoun and Henry Clay began to encourage the federal government to adopt various national economic development policies. At President Madison's urging, the Fourteenth Congress quickly approved legislation enacting a protective tariff and creating a second Bank of the United States. But opposition to nationalist "consolidation" emerged among Virginia's "old republicans" who claimed to remain committed to the unadulterated "principles of '98." These Jeffersonian purists led the opposition to Calhoun's plan to commit the 1.5 million dollar bonus due the federal government from the new national bank to a permanent fund for building roads and canals throughout the nation (the "Bonus bill"). Rediscovering his own constitutional scruples, Madison surprised Calhoun and Clay by vetoing the "Bonus

bill” the day before he left office. Echoing sentiments he expressed nearly 20 years earlier, Madison’s “Veto Message” insisted that (1) Congress could not exercise powers not specifically enumerated in the Constitution, (2) no “just interpretation” of relevant constitutional provisions (the “necessary and proper” clause, the “commerce” clause) could authorize the “Bonus bill’s” provisions, and (3) the “Bonus bill” threatened “the permanent success of the Constitution [which] depends on a definite partition of powers between the General and the State Governments.” While it reanimated important aspects of the earlier “principles,” Madison’s veto could not eradicate the reemerging nationalist (or consolidationist) constitutional heresy.<sup>70</sup>

In his first message to Congress, new President James Monroe endorsed Madison’s recommendation that Congress adopt and send to the states a constitutional amendment explicitly granting the federal government the power to institute a range of internal improvements. In response Henry St. George Tucker, a Virginian opposed to the “old republicans,” helped to draft and then presented an ad hoc House committee report which argued that no amendment was needed because Congress already possessed adequate power to fund a system of internal improvements. In the subsequent debate, Speaker Henry Clay defended Tucker’s report after it had been criticized by Virginia “old republican” Philip Barbour. Clay began by insisting that “he had imbibed his political principles from the same source” as Barbour: “[f]rom the celebrated production of Mr. Madison, when a member of the Virginia Legislature, of the period 1799.” According to Clay, he and “old republicans” like Barbour “professed to acknowledge the same authority”; their differences were “not as to principles, but as to the application of them.” He explained: “At the period which gave birth to those papers ... [Virginia] bore a conspicuous part in arresting the career of a mad administration. The attempt then was to destroy the Constitution. ... [Clay] begged the gentleman from Virginia to reflect, that that was not the only malady by which the Constitution could be afflicted; another complaint, equally dangerous to that Constitution, was an atrophy. ... I do not go along with them in the water-gruel regimen they would administer to the Constitution, in constructing it to a dead letter, and reducing it to an inanimate skeleton.” But, Clay insisted, just because he sought to protect the Constitution from a different kind of danger, “let me not be charged with abandoning principle.”<sup>71</sup>

Clay’s 1818 performance, we suggest, merits attention for the way he both articulated the “principles of ’98” into a new context and reaccentuated their meaning. Old republicans drew upon the “principles” to accuse Clay and other nationalists of abandoning “true” republican constitutionalism (America’s unique “federal” system which privileged states’ rights) by trying to erect a consolidated national government via constitutional interpretation. Public suspicion and vigilance, Barbour and his “old republican” colleagues agreed, was necessary to thwart the nationalists’ consolidationist plot. On behalf of republican nationalists, Clay accused “old republicans” of abandoning “true” republican constitutionalism by trying to reintroduce the “water-gruel regimen” of the Articles of Confederation

via constitutional interpretation. When republican nationalists and old republican states' rights advocates debated Joseph Hemphill's General Survey Bill in 1824, Clay would more explicitly reject a narrow reading of the "principles of '98" by articulating them to the failed Articles and, in so doing, reaccentuate the "principles," rendering them compatible with the nationalists' policy objectives.

Again responding to Barbour, Clay endorsed, as he had in 1818, "the old, 1798, republican principles (now become federal, also), by which the Constitution is to be interpreted." Employing the rigorous textualism that characterized the 1798 *Resolutions*, Clay appropriated a textual strategy Madison employed in the 1800 *Report*, suggesting that "a better rule than that which [Barbour] furnished for interpreting the Constitution might be deduced from an attentive consideration of the peculiar character of the Articles of Confederation, as contrasted with ... the present Constitution." Juxtaposing the respective texts, Clay observed:

It ought to be borne in mind that this power over roads was not contained in the Articles of Confederation, which limited Congress to the establishment of post offices; and that the general character of the present Constitution, as contrasted with those articles, is that of an enlargement of power. But, if the construction of the opposite side be correct, we are left precisely where the Articles ... left us, notwithstanding the additional words contained in the present Constitution.<sup>72</sup>

While the clash between states' rights and nationalist republicans over internal improvements and constitutional construction was significant in its own right, in retrospect it served as a prelude to the massive struggle over federal tariff policies and state resistance to those policies. In 1816 Georgia Representative Thomas Telfair refined republican textualism when he challenged the tariff's constitutionality by distinguishing between tariffs designed to raise revenue and those designed explicitly to protect domestic manufactures.<sup>73</sup> Virginian Barbour extended Telfair's distinction in 1824, arguing that while the Constitution granted Congress "the power to impose taxes and duties ... [that power] was given to us for the purpose of raising revenue, which revenue is to be applied to the ends pointed out in the Constitution." Given the Constitution's explicit language, Barbour conceded that a federal tariff was not "a violation of the letter of the Constitution," but he nevertheless insisted that a protective tariff "violate[d] the spirit of the Constitution." "[A]pplying a power for a different purpose from that for which it was given" might, Barbour feared, cause "the whole Constitution ... to swing from its moorings."<sup>74</sup> As Jefferson and Madison had suggested in 1798, Barbour believed that the nation's constitutional experiment depended on vigilant opposition to unauthorized federal power.

In the decade following Barbour's speech, the tariff's constitutional status – and individual states' ability to resist purported unconstitutional federal policies – would generate one of the early republic's most significant crises. Throughout the crisis, the "principles of '98" continued to circulate as anti-tariff advocates described the growing threat of nationalist consolidation and urged state legislatures to attack

the tariff's constitutionality.<sup>75</sup> In South Carolina, proponents of nullification sought to declare it unconstitutional and void within the state's borders. At the same time, nullification opponents sought to deny that doctrine's constitutional foundation and disarticulate such extreme modes of state resistance from Jefferson and Madison's resistance to the Alien and Sedition Acts.

Responding to the pro-tariff, protectionist movement which culminated in the July 1827 Harrisburg convention, President John Quincy Adams and Secretary of State Henry Clay supported tariff revisions during Congress's spring 1828 session. But since it was an election year, the political machinations of Clay and Adams's rivals – Martin Van Buren and those allied with Andrew Jackson – helped to produce what would become known as the “Tariff of Abominations.” Remonstrances against protectionism, the American System, and the Tariff of 1828 poured in from numerous states. When South Carolina's congressional delegation and state legislature requested that he help develop a formal statement of grievances, Vice President John Calhoun agreed, and in the summer and early fall of 1828 he drafted what would become the South Carolina *Exposition and Protest*. Calhoun was concerned that extremists might urge rash action, so he sought, in the words of biographer John Niven, “to present [South Carolina's] case in a cool, considered manner that would dampen any drastic moves yet would set in motion the machinery for repeal of the tariff act.” Calhoun borrowed his machinery from the Virginia and Kentucky *Resolutions*: interposition and nullification.<sup>76</sup>

With Calhoun as his running mate, Andrew Jackson's election in 1828 led many Americans to believe that authentic republican, states' rights constitutionalism had been restored. But Jackson's decisions did not always please republican purists, especially in South Carolina. When, in the face of known opposition from many Southern states, Jackson signed the Tariff of 1832, South Carolina responded. Drawing on his *Exposition and Protest* as well as his 1831 “Fort Hill Address,” Calhoun sent a lengthy and often reprinted letter to South Carolina Governor James Hamilton in August which rehearsed South Carolina's emerging position on the constitutionality of the tariff and of a state's right to nullify federal law. On November 19, 1832, South Carolinians convened a convention and, after five days in closed session, emerged with a Nullification Ordinance that echoed Calhoun's 1828 interpretation of the “principles of '98.” Responding to what they perceived was an effort to subvert the Constitution and violate states' rights, South Carolina declared the tariffs of 1828 and 1832 unconstitutional and unenforceable within its borders after February 1, 1833. On December 10, 1832, President Jackson issued a special *Proclamation* which addressed South Carolina's threat of nullification. In his *Proclamation*, Jackson unequivocally insisted that South Carolina had no right to nullify a federal law and that any state officials who attempted nullification would be considered traitors and treated as such by the federal government. Undeterred by the tepid response from her sister states, South Carolina began enforcing its Nullification Ordinance on February 1, 1833, and made preparations to defend its right to do so with military force. On March 2, 1833, Congress authorized Jackson to employ military force against South Carolina if necessary



while also adopting a new tariff that it hoped would appease South Carolinian nullifiers. Responding to these moves by the federal government, the South Carolina convention reconvened on March 11, 1833, and repealed its Nullification Ordinance.<sup>77</sup>

Virtually all of the significant rhetorical performances during the nullification crisis – from Calhoun’s various statements, to the public documents issued by South Carolina’s Convention, to Jackson’s *Proclamation* and the various state responses to South Carolina – were vehicles through which the “principles of ’98” circulated. Each of the participants in the constitutional drama defended his or their position as sound Jeffersonian republicanism. Advocates rearticulated a story of the nation’s founding, considered what role – if any – states could or should play in determining the constitutionality of federal legislation, and explicitly considered whether and how the “principles” applied to the issues which produced the crisis. Our examination of the way the “principles” circulated during the nullification crisis demonstrates precisely how complicated the question of tracing and assessing constitutive legacy can be – both for historical actors and for scholars of public address.

In his letter to Governor Hamilton, Calhoun positioned nullification upon the “plain historical facts connected with the origin and formation of the Government.” Calhoun believed that the “formation and adoption of the Constitution” were events “so recent ... that it would seem impossible that there should be the least uncertainty in relation to them.” But when he surveyed what had been “constantly heard and seen,” it became clear that “there are few subjects on which the public opinion is more confused.”<sup>78</sup> This confusion prevented Americans from recognizing that “the Constitution is the work of the people of the States, considered as separate and independent political communities; that they are its authors – their power created it, their voice clothed it with authority; that the government formed is, in reality, their agent; and that the Union, of which the Constitution is the bond, is a union of States, and not of individuals.”<sup>79</sup> Drawing on the “journals and proceedings of the Convention which formed the Constitution,” Calhoun reanimated Jefferson’s earlier origin narrative. He pointed to comments made by Edmund Randolph, James Madison, and others during the Constitutional Convention to support his account that states were the primary agents in the Constitution’s development and, as such, enjoyed primacy in their relationship with the federal government. Calhoun maintained that his narrative demonstrated “in a manner never to be reversed, that the Convention which framed the Constitution, was opposed to granting the power to the General Government in any form, through any of its departments ... to coerce or control a State.”<sup>80</sup> Calhoun insisted that the convention debates “ought to settle for ever the question of the surrender or transfer of the power under consideration; and such, in fact, would be the case, were the opinion of a large portion of the community not biased, as, in fact, it is, by interest.”<sup>81</sup> In his rendering of the Constitution’s development, Calhoun rearticulated the “principles of 1798” to constitute the people of South Carolina as the dominion of South Carolina alone, the states as perpetually sovereign governments, the people of the

United States as a fiction because “no such political body either now or ever did exist,” the United States Constitution as a “treaty,” and the federal government as a confederation of equal, sovereign states.<sup>82</sup>

Calhoun’s narrative shaped four public statements crafted by South Carolina’s convention: its *Report*, *Nullification Ordinance*, *Address to the People of the United States*, and *Address to the People of South Carolina*. Each of these documents further circulated Calhoun’s description of the nation’s founding and the relationship between the states and the federal government and invited Americans to emulate South Carolina’s vigilant defense of the Constitution and states’ rights.<sup>83</sup> In his *Nullification Proclamation*, President Jackson explicitly rejected this narrative.<sup>84</sup> Jackson argued that Calhoun’s position constituted a “new doctrine” that transformed the Constitution into no more than an “airy nothing,” a “wretched, inefficient, clumsy contrivance.” Jackson insisted that no matter how much Calhoun and South Carolina wanted to believe otherwise, “our Constitution does not contain the absurdity of giving power to make laws, and another power to resist them.”<sup>85</sup> Not satisfied with simply subverting Calhoun’s narrative, Jackson constructed his own. If Americans “search[ed] the debates in all [the states’] Conventions,” Jackson maintained, if they “examine[d] the speeches of the most zealous opposers of Federal authority,” and “look[ed] at the amendments that were proposed,” they would discover that these documents “are all silent – not a syllable uttered, not a vote given, not a motion made to correct the explicit supremacy given to the laws of the Union over those of the States – or to show that implication, as is now contended, could defeat it.”<sup>86</sup> According to Jackson, “the people of the United States formed the Constitution, acting through the State Legislatures [and] in making the compact ... we [became] one people.”<sup>87</sup> Although Jackson’s origin narrative echoed the Preamble’s “We the People,” he nevertheless maintained that his account remained consistent with the states’ rights position of Jeffersonian constitutionalism.

“I do not claim for a State the right to abrogate an act of the General Government,” Calhoun wrote to Hamilton,

[i]t is the Constitution that annuls an unconstitutional act. Such an act is of itself void and of no effect. What I claim is the right of the State, as far as its citizens are concerned, to declare the extent of the obligation, and that such declaration is binding on them – a right, when limited to its citizens, flowing directly from the relation of the State to the General Government on the one side, and its citizens on the other.

Consistent with the “principles,” Calhoun imagined a political world in which states were supreme; they controlled the actions of their common agent and reserved the right to reject the agent’s reading of the founding compact. In short, each state, “has a right, in her sovereign capacity, in convention, to declare an unconstitutional act of Congress to be null and void.”<sup>88</sup> Calhoun described the states’ right to judge an act of the federal government as “the great conservative principle of our system.” That principle, he explained, was “known under the various names of nullification,

interposition, and State Veto.”<sup>89</sup> According to Calhoun, every state had the right, power, and obligation to be vigilant in its self-defense.

President Jackson responded that Calhoun’s argument was a “strange position”: strange in that it was new, unfamiliar, and odd. Jackson positioned Calhoun’s doctrine as novel while claiming the mantle of tradition for his version of Jeffersonian constitutionalism. He noted that “our social compact in express terms declares, that the laws of the United States, its Constitution, and treaties made under it, are the supreme law of the land.”<sup>90</sup> Jackson argued that “the doctrine of a State veto, upon the laws of the Union, carries with it internal evidence of its impracticable absurdity” and that the nation’s “constitutional history” provided “abundant proof that it would have been repudiated with indignation, had it been proposed to form a feature in our Government.”<sup>91</sup> He insisted that nullification was an “absurd and dangerous doctrine,” and he denied that it represented the nation’s constitutional tradition.<sup>92</sup>

While Calhoun’s *Exposition and Protest* and “Fort Hill Address” frequently referred to the Virginia and Kentucky *Resolutions* and Madison’s *Virginia Report*,<sup>93</sup> his 1832 letter to Hamilton did not mention them by name. Whatever Calhoun’s reason for omitting explicit reference to the “principles of ’98,” the South Carolina Convention’s *Report, Ordinance*, and its *Addresses to the Citizens of the United States* and the *Citizens of South Carolina* explicitly articulated the Virginia and Kentucky *Resolutions* to South Carolina’s nullification doctrine. For example, its *Report* justified nullification by calling upon “the clear and emphatic language of Mr. Jefferson” and quoted at length from the Kentucky *Resolutions* to argue that Jefferson understood “the true nature of the Federal Compact.”<sup>94</sup> The *Report* claimed the authority and borrowed the narrative structure of both the Virginia and Kentucky *Resolutions* to imagine a plot to subvert states’ rights and argue that “when the rights reserved to the several States are deliberately invaded, it is their right and their duty” to defend them.<sup>95</sup> Furthermore, South Carolina maintained that “in asserting the principles, and adopting the course, which they are about to recommend, South Carolina will be carrying out the doctrines which were asserted by Virginia and Kentucky in 1798, and which have been sanctified by the high authority of Thomas Jefferson” – from “the pen of the great apostle of liberty.”<sup>96</sup> Likewise, South Carolina’s *Address to the People of South Carolina* liberally invoked Jefferson and the Virginia and Kentucky *Resolutions* to support its arguments.<sup>97</sup> South Carolinians insisted that nullification was consistent with the “principles of ’98.”

Among the formal state responses to the *Report* and *Ordinance*, Virginia most explicitly rejected South Carolina’s effort to rearticulate the “principles of ’98.” In its *Resolves* the Virginia legislature affirmed that:

they continue to regard the doctrines of State Sovereignty and States Rights, as set forth in the Resolutions of 1798, and sustained by the Report thereon of 1799, as a true interpretation of the Constitution of the United States, and of the powers therein given to the General Government; but that they do not consider them as sanctioning the proceedings of South Carolina, indicated in her said Ordinance.<sup>98</sup>

Virginia urged South Carolina to reconvene its Convention and reconsider its *Ordinance* and dispatched the Honorable Benjamin Watkins Leigh to South Carolina to help its citizens discover the real meaning of the “principles of ’98.”<sup>99</sup>

While South Carolina’s Convention rescinded its nullification *Ordinance*, it nevertheless crafted a *Report* responding to Virginia’s *Resolves*. While denying that it desired to promote the “invidious spirit of controversy,” South Carolina’s Convention continued to insist that it had read Virginia’s 1798 *Resolution* as announcing “nothing more or less” than “the remedy which South Carolina has resorted to, through her State interposition.” Yet Virginia’s “recent Resolutions” declared “that she does not regard the *Resolutions* of 1798 and ’99, as sanctioning the proceedings of South Carolina, as indicated in the Ordinance of her Convention.” “[W]ith all proper deference” to Virginia, in good Protestant fashion, the Convention announced that South Carolina would adhere “to her own construction” of the “principles of ’98.” The Convention’s *Report* insisted that “it is within the providence of God that great truths should be independent of the human agents that promulgate them. Once announced, they become the subjects and property of reason, to all men and in all time to come.”<sup>100</sup>

The Convention’s acknowledgment of “human agents that promulgate” great truths was most likely a reference to James Madison. Both sides in the nullification crisis actively solicited his support. Shortly after his debate with Daniel Webster in early 1830, South Carolina Senator Robert Hayne sent the former president a copy of his speeches. To Hayne’s surprise, Madison responded by attempting to separate the circumstances which provoked the 1798 protests from those which generated South Carolina’s theory of nullification. He also distinguished between the principles involved in each protest. During the summer of 1830, Madison revised his response to Hayne, which he sent to Edward Everett who, with Madison’s blessing, had it published in the *North American Review*. In the letter Madison acknowledged that “the nullifying claim for states” might rest upon the “proceedings of the Legislature of Virginia, in ’98 and ’99, against the alien and sedition-acts.” But such a claim, he continued, was a result of “erroneous constructions, not anticipated, [and] not ... sufficiently guarded against, in the language used.” “[D]istinguished individuals,” Madison insisted, “have misconceived the intention of those proceedings.”

While Madison sought to disarticulate nullification from the “principles of ’98” by appealing to intentionalist hermeneutics, other advocates reanimated Madison and Jefferson’s Protestant textualism to reaffirm the link. During an 1833 debate in the Virginia legislature on whether Madison’s 1830 letter to Everett should be circulated in conjunction with a reprinting of Virginia’s 1800 *Report*, William Brodnax maintained: “Nothing can be more improper, instead of looking at the document itself ... to be enquiring, thirty years after, on one of the body who adopted it.” As we noted above, the Virginia legislature refused to sanction South Carolina’s effort to articulate nullification to the “principles of ’98.” Yet the delegates reaffirmed their commitment to republican textualism by recirculating the 1800 *Report* without Madison’s explanatory letter.<sup>101</sup>

## Conclusion

In this chapter's first two sections, we described how rhetoricians initially conceptualized constitutive analysis as a way of broadening the idea of rhetorical effect. Drawing on a variety of examples, we noted that critics have been concerned primarily with the way discourse constitutes individual and group identities. We suggested that critics consider expanding constitutive inquiry in two ways. First, in addition to exploring discourse's capacity to constitute identity, we urged critics to consider how texts invite listeners and readers to modify the meaning of a culture's key terms, to reconceptualize a culture's experience of public time (including the past), to reaffirm or reconfigure accepted demarcations of social space, and to affirm as well as challenge established sources of cultural authority, bonds of affiliation, and institutional relationships. Second, in addition to examining constitutive invitations that appear in the text (that inhabit textual interiors), we urged critics to examine textual exteriors by tracing the text's reception, circulation, and articulation. Doing so enables critics to sketch the way constitutive invitations become realized, and constitutive legacies established.

We sought to illustrate many of our analytic recommendations through our case study of the Virginia and Kentucky *Resolutions* and the "principles of '98." Because public advocates can always engage in the practices of accentuation and articulation, the "principles of '98" and the specific constitutive invitations we identified – American citizens constituted as suspicious of and vigilant with regard to national power, the dangers of consolidationism, and the economic and political factions which promoted this brand of constitutional heresy; the states depicted as sites for organizing political resistance to national policy, for critiquing federal law, and for adjudicating constitutional controversies; constitutional argument represented as a form of Protestant textualism; and the founding remembered as a compact between independent and sovereign states – continued to circulate and shape the nation's political imagination well into the twentieth century and have remained resources for (re)constituting our political imagination.<sup>102</sup>

While the Virginia and Kentucky *Resolutions*' ultimate constitutive legacy has not (and given our argument cannot be) produced, our account of the *Resolutions*' circulation in the nineteenth century supports some provisional observations. When advocates accentuated the "principles" as a form of extreme state sovereignty and articulated them to demands for robust resistance to federal power, they failed to energize a national constituency or constitute the nation's understanding of constitutional government. But despite the apparent rejection of this mode of accentuation and articulation, a vibrant tradition of states' rights and state sovereignty persisted. And despite the best efforts of eloquent advocates such as John Marshall and Daniel Webster, Americans remained suspicious of national power and worried about consolidationist tendencies.<sup>103</sup> If Americans rejected the constitutive invitations offered by *über* nationalists and the advocates of nullification, the constitutive invitations that Americans did embrace are much less clear. Professing

their adherence to the “principles of ’98,” some political leaders tried to imagine a middle course between Robert Hayne and Daniel Webster.<sup>104</sup> In so doing, Edward Livingston, James Madison, and others sought to imagine a federal constitutional system that represented a *tertium quid* between extreme nationalism and nullification. The constitutive legacy of the Virginia and Kentucky *Resolutions* and the “principles of ’98” consists, at least in part, in our continued efforts to stabilize and inhabit this constitutional tradition.

## Notes

- 1 Herbert A. Wichelns, “The Literary Criticism of Oratory,” in *Studies in Rhetoric and Public Speaking in Honor of James Albert Winans*, ed. A. M. Drummond (1925; rpt. New York: Russell and Russell, 1962), 209. For a more extensive analysis of Wichelns’s essay and the instrumentalist tradition it helped inaugurate, see James Jasinski, “Instrumentalism, Contextualism, and Interpretation in Rhetorical Criticism,” in *Rhetorical Hermeneutics*, ed. William Keith and Alan G. Gross (Albany: State University of New York Press, 1997).
- 2 For example, see Wayland Maxfield Parrish, “The Study of Speeches,” in *American Speeches*, ed. Wayland Maxfield Parrish and Marie Hochmuth (New York: Greenwood Press, 1954); and Thomas R. Nilsen, “Criticism and Social Consequences,” *Quarterly Journal of Speech* 42 (1956): 173–178.
- 3 Lloyd Bitzer, “The Rhetorical Situation,” *Philosophy & Rhetoric* 1 (1968): 1–14.
- 4 In his essay “Cicero’s *Pro Murena* and the Strong Case for Rhetoric,” Michael Leff observed that many of the disparate concepts and research programs in contemporary rhetorical studies are linked in an at least implicit conceptualization of public discourse as a constitutive or generative medium. See Leff, “Cicero’s *Pro Murena*,” *Rhetoric & Public Affairs* 1 (1998): 61–88. For a review of these and other relevant concepts and associated literatures, see James Jasinski, *Sourcebook on Rhetoric: Key Concepts in Contemporary Rhetorical Studies* (Thousand Oaks, CA: Sage, 2001).
- 5 For example see Stephen E. Lucas, “The Schism in Rhetorical Scholarship,” *Quarterly Journal of Speech* 67 (1981): 1–20; and Richard A. Cherwitz and John Theobald-Osborne, “Contemporary Developments in Rhetorical Criticism: A Consideration of the Effects of Rhetoric,” in *Speech Communication: Essays to Commemorate the Seventy-Fifth Anniversary of the Speech Communication Association*, ed. G. M. Phillips and J. T. Wood (Carbondale: Southern Illinois University Press, 1990).
- 6 John Lyne, “Rhetorics of Inquiry,” *Quarterly Journal of Speech* 71 (1985): 68.
- 7 While contrasting these different “models of rhetorical effectivity” has, we believe, become common (e.g., see Ronald Greene, “Another Materialist Rhetoric,” *Critical Studies in Mass Communication* 15 [1998]: 21–41), we do not want to suggest the existence of a rigid binary opposition between instrumental and constitutive effects. We maintain that discourse functions instrumentally when designed to address situational exigencies. In these cases, potential constitutive effects are epiphenomenal to the discursive resolution of exigencies. For example, in an effort to secure votes and win elections, conservative politicians might invite audiences to consider themselves “real Americans.” Typically, rhetoricians hold identity construction to be a form of constitutive rhetoric,

- but in this case we would argue that conservative efforts to constitute audiences as “real Americans” functions instrumentally to resolve the primary exigence of their electoral situation. But as a number of critics have illustrated, the relationship between the two forms of effect can be fluid. For example, in his study of Theodore Roosevelt, Leroy Dorsey demonstrates that in the late nineteenth and early twentieth centuries the issue of American national identity was a significant public “crisis” or exigence. Roosevelt’s discursive efforts, as Dorsey suggests, responded instrumentally to a perceived exigence by deploying a constitutive rhetoric encouraging adherence to a particular vision of “Americanism” (Leroy G. Dorsey, *We Are All Americans, Pure and Simple: Theodore Roosevelt and the Myth of Americanism* [Tuscaloosa: University of Alabama Press, 2007]). On the fluid relationship between instrumental and constitutive effects, see also Michael Leff and Ebony Utley, “Instrumental and Constitutive Rhetoric in Martin Luther King Jr.’s ‘Letter from Birmingham Jail,’” *Rhetoric & Public Affairs* 7 (2004): 37–51.
- 8 Maurice Charland, “Constitutive Rhetoric: The Case of the *Peuple Québécois*,” *Quarterly Journal of Speech* 73 (1987): 133–150.
  - 9 James Boyd White, *When Words Lose Their Meaning: Constitutions and Reconstitutions of Language, Character, and Community* (Chicago: University of Chicago Press, 1984), 286–291.
  - 10 “Social constructionism can be thought of as a theoretical orientation which to a greater or lesser degree underpins all of these newer approaches” (Vivien Burr, *An Introduction to Social Constructionism* [London: Routledge, 1995], 1).
  - 11 Louis A. Montrose, “Professing the Renaissance: The Poetics and Politics of Culture,” in *The New Historicism*, ed. H. Aram Veeser (New York: Routledge, 1989), 16. See James Jasinski, “A Constitutive Framework for Rhetorical Historiography: Toward an Understanding of the Discursive (Re)constitution of ‘Constitution’ in *The Federalist Papers*,” in *Doing Rhetorical History: Concepts and Cases*, ed. Kathleen J. Turner (Tuscaloosa: University of Alabama Press, 1998), 74.
  - 12 Michael Leff, “Things Made By Words: Reflections on Textual Criticism,” *Quarterly Journal of Speech* 78 (1992): 223–231.
  - 13 See Joshua Gunn, “Refiguring Fantasy: Imagination and Its Decline in US Rhetorical Studies,” *Quarterly Journal of Speech* 89 (2003): 41–59.
  - 14 Jasinski, “Constitutive Framework,” 74.
  - 15 Vanessa B. Beasley, *You, the People: American National Identity in Presidential Rhetoric* (College Station: Texas A&M University Press, 2004); Nathaniel I. Cordova, “The Constitutive Force of the *Catecismo del Pueblo* in Puerto Rico’s Popular Democratic Party Campaign of 1938–1940,” *Quarterly Journal of Speech* 90 (2004): 212–233; and Dexter B. Gordon, *Black Identity: Rhetoric, Ideology, and Nineteenth-Century Black Nationalism* (Carbondale: Southern Illinois University Press, 2003).
  - 16 Our focus on textual interiors, the arguments, narratives, and/or tropes which inhabit or reside in texts, should be distinguished from efforts to elaborate a “rhetoric of the interior” in which interior is roughly synonymous with psychological. See Thomas S. Frentz, “Reconstructing a Rhetoric of the Interior,” *Communication Monographs* 60 (1993): 83–89.
  - 17 Charland, “Constitutive Rhetoric,” 144, 140–142.
  - 18 But as we have just argued, we are skeptical that Charland has effectively transcended interior analysis of rhetorical form.

- 19 Charland, "Constitutive Rhetoric," 137–139.
- 20 Beasley, *You, the People*, 9, 44, 47.
- 21 Cordova, "Constitutive Force," 221, 225, 215.
- 22 Gordon, *Black Identity*, 33, 98.
- 23 See also Jacqueline Bacon, "'Acting as Freemen': Rhetoric, Race, and Reform in the Debate over Colonization in *Freedom's Journal*, 1827–1828," *Quarterly Journal of Speech* 93 (2007): 58–83; Mary E. Stuckey, *Defining Americans: The Presidency and National Identity* (Lawrence: University Press of Kansas, 2004); and Kenneth S. Zagacki, "Constitutive Rhetoric Reconsidered: Constitutive Paradoxes in G. W. Bush's Iraq War Speeches," *Western Journal of Communication* 71 (2007): 272–293.
- 24 White, *When Words*, 5. White's use of the coordinate conjunction "or" in this passage is, we believe, misleading because it seems to suggest that one *or* the other type of action will take place. But as White's readings of various texts demonstrate, both forms of action frequently emanate from a single text.
- 25 White, *When Words*, 18, 15.
- 26 Wayne Booth, in *The Company We Keep: An Ethics of Fiction* (Berkeley: University of California Press, 1988), relies on a similar cluster of verbs to unpack the "text as friend" metaphor.
- 27 White, *When Words*, 6–8.
- 28 Jasinski, "Constitutive Framework," 78. Jasinski argued that Condit and Lucaites's ideographic study of the reconstitution of "equality" represented one way rhetorical scholars might analyze linguistic reconstitution. See Celeste Michelle Condit and John Louis Lucaites, *Crafting Equality: America's Anglo-African Word* (Chicago: University of Chicago Press, 1993). Drawing on White's work, Trevor Parry-Giles makes a similar point, arguing that the "public debates about Supreme Court nominees ... are moments of constitutive formation for American conceptions of law, justice, and democracy." See Trevor Parry-Giles, *The Character of Justice: Rhetoric, Law, and Politics in the Supreme Court Confirmation Process* (East Lansing: Michigan State University Press, 2006), 3.
- 29 The discursive (re)constitution of memory is an aspect of a community's temporal experience that Jasinski neglected in his "Constitutive Framework" essay. On this topic, see the discussion and sources cited in Jasinski, *Sourcebook*, 193, 355–363. See also M. Lane Bruner, *Strategies of Remembrance: The Rhetorical Dimensions of National Identity Construction* (Columbia: University of South Carolina Press, 2002). In this series of case studies Bruner links memory construction and identity formation. On the relationship between rhetoric and memory, see Kendall R. Phillips, ed., *Framing Public Memory* (Tuscaloosa: University of Alabama Press, 2004).
- 30 Jasinski, "Constitutive Framework," 76–77. For a recent case study of such a reconstitution, see Mary E. Stuckey, *Slipping the Surly Bonds: Reagan's Challenger Address* (College Station: Texas A&M University Press, 2006). Both Bruner (in *Strategies of Remembrance*) and Stuckey demonstrate the way eulogies function to reconstitute communities.
- 31 We are not suggesting that rhetorical scholars have not engaged a range of critical objects (e.g., congressional debates, public controversies, social movements) longitudinally. Our point is that charting the temporal evolution of a controversy or debate need not involve, and typically has not involved, careful attention to the reception and circulation of specific texts, arguments, or other rhetorical strategies.
- 32 Leah Ceccarelli, "Polysemy: Multiple Meanings in Rhetorical Criticism," *Quarterly Journal of Speech* 84 (1998): 395–415; and Davis W. Houck and Mihaela Nocasian,



- “FDR’s First Inaugural Address: Text, Context, and Reception,” *Rhetoric & Public Affairs* 5 (2002): 649–678.
- 33 Ceccarelli “Polysemy,” 407.
- 34 Houck and Nocasian, “FDR’s First Inaugural Address,” 655.
- 35 Cara A. Finnegan and Jiyeon Kang, “‘Sighting’ the Public: Iconoclasm and Public Sphere Theory,” *Quarterly Journal of Speech* 90 (2004): 393, 396. See also Cara A. Finnegan, *Picturing Poverty: Print Culture and FSA Photographs* (Washington, DC: Smithsonian Institution Press, 2003).
- 36 We think it worth noting that the “chaining process” described by fantasy-theme critics anticipates the emergence of a collaborative and constitutive understanding of circulation. See Jasinski, *Sourcebook*, esp. 252.
- 37 For example, see Ronald H. Carpenter, “America’s Tragic Metaphor: Our Twentieth-Century Combatants as Frontiersmen,” *Quarterly Journal of Speech* 76 (1990): 1–22; Robert L. Ivie, “The Ideology of Freedom’s ‘Fragility’ in American Foreign Policy Argument,” *Journal of the American Forensics Association* 24 (1987): 27–36; and Kathryn M. Olson, “The Role of Dissociation in Redeeming Knowledge Claims: Nineteenth-Century Shakers’ Epistemological Resistance to Decline,” *Philosophy & Rhetoric* 28 (1995): 45–68.
- 38 We draw here on Jasinski, *Sourcebook*, esp. 65–67.
- 39 Our use of the term “imagine” here and elsewhere in this section extends L. H. LaRue’s interest in examining “what sort of world does [a text] imagine?” LaRue’s perspective is, as he acknowledges, informed by James Boyd White’s version of “constitutive rhetoric.” See LaRue, *Constitutional Law as Fiction: Narrative in the Rhetoric of Authority* (University Park: Pennsylvania State University Press, 1995), 21.
- 40 Mark E. Brandon, *Free in the World: American Slavery and Constitutional Failure* (Princeton, NJ: Princeton University Press, 1998), 37 (emphasis in original).
- 41 Larry D. Kramer, *The People Themselves: Popular Constitutionalism and Judicial Review* (New York: Oxford University Press, 2004), 137.
- 42 While our analysis focuses on the tension between nationalists and localists, we do not want to suggest that these were the only constitutive rhetorics circulating in antebellum America. In addition to the black nationalist vision that Dexter Gordon has analyzed, various religious sects, moral reform organizations, labor groups, and women’s organizations developed constitutive rhetorics as they negotiated various situational exigencies. On the constitutive rhetoric of antebellum women, see Alisse Portnoy, *Their Right to Speak: Women’s Activism in the Indian and Slave Debates* (Cambridge, MA: Harvard University Press, 2005).
- 43 William J. Watkins, Jr., *Reclaiming the American Revolution: The Kentucky and Virginia Resolutions and Their Legacy* (New York: Palgrave Macmillan, 2004), 27.
- 44 Stephen John Hartnett and Jennifer Rose Mercieca, “‘Has Your Courage Rusted?’: National Security and the Contested Norms of Republicanism in Post-Revolutionary America, 1798–1801,” *Rhetoric & Public Affairs* 9 (2006): 79–112.
- 45 Watkins, *Reclaiming*, 56; and Kramer, *People Themselves*, 136. *The Federalist Papers* #26 (Hamilton), #51 (Madison), rpt. in *The Federalist Papers* (New York: New American Library, 1961), esp. 172, 323–325.
- 46 Watkins, *Reclaiming*, 55.
- 47 *Virginia Resolutions*, December 24, 1798, rpt. in *Documents of American History*, ed. Henry Steele Commager, 7th ed. (New York: Appleton-Century-Crofts, 1963), 182.

- 48 Kentucky *Resolutions*, February 22, 1799, in *Documents*, 183; and Kentucky *Resolutions*, November 16, 1798, in *Documents*, 181.
- 49 Kentucky *Resolutions*, November 16, 1798, in *Documents*, 178.
- 50 Kentucky *Resolutions*, February 22, 1799, in *Documents*, 184.
- 51 Virginia *Resolutions*, December 24, 1798, in *Documents*, 182.
- 52 See especially H. Jefferson Powell, "The Principles of '98: An Essay in Historical Retrieval," *Virginia Law Review* 80 (1994): esp. 715–722. Powell notes that "[I]ate eighteenth-century usage did not distinguish 'compact' and contract" (716n.107). Our discussion here and the next few paragraphs draws on and extends Powell's analysis of the "principles of '98."
- 53 Powell, "The Principles of '98," 716–717.
- 54 Powell, "The Principles of '98," 707.
- 55 Powell, "The Principles of '98," 722.
- 56 Powell, "The Principles of '98," 707.
- 57 Powell, "The Principles of '98," 714.
- 58 Powell, "The Principles of '98," 713.
- 59 Kentucky *Resolutions*, November 16, 1798, in *Documents*, 179–180.
- 60 Powell, "The Principles of '98," 739. See Sanford Levinson, *Constitutional Faith* (Princeton, NJ: Princeton University Press, 1988), esp. 27–53.
- 61 In its 1799 *Resolutions*, the Kentucky legislature voiced its concern that "a supposed acquiescence on the part of this commonwealth in the unconstitutionality of those laws ... [might] be thereby used as precedents for similar future violations of the federal compact." In *Documents*, 184.
- 62 Levinson, *Constitutional Faith*, 29.
- 63 Kentucky *Resolutions*, February 22, 1799, in *Documents*, 184.
- 64 As Powell and other scholars have observed, the resolutions of '98 and '99 and Virginia's 1800 *Report* "did *not* underwrite a clear theory of state autonomy or supremacy" because "Jefferson and Madison ... presented significantly different accounts of what sort of contract the Constitution was" ("The Principles of '98," 736).
- 65 Kentucky *Resolutions*, November 16, 1798. in *Documents*, 181.
- 66 Powell, "The Principles of '98," 727.
- 67 For one example, see James Jackson Kilpatrick, *The Sovereign States: Notes of a Citizen of Virginia* (Chicago: Henry Regnery, 1957).
- 68 Watkins, *Reclaiming*, 163.
- 69 On April 1, 2009, by a 43:1 vote, the Georgia State Senate adopted resolution 632 reaffirming "states' rights based on Jeffersonian principles" (S.R. 632). In early May a blogger at *Washington Monthly* noted that most of the resolution plagiarized Jefferson's draft for the 1798 Kentucky *Resolutions* (see [www.washingtonmonthly.com/archives/individual/2009\\_05/018093.php](http://www.washingtonmonthly.com/archives/individual/2009_05/018093.php)). The circulation and attempted rearticulation of the "principles of '98" continues. We thank John Murphy for drawing this episode to our attention.
- 70 Madison, "Veto Message," March 3, 1817, in *A Compilation of the Messages and Papers of the Presidents, 1789–1897*, ed. James Richardson (Washington, DC: N.P., 1897), 1: 584–585. Numerous historians have recounted the nation's postwar constitutional politics. We have relied on John Lauritz Larson, *Internal Improvements: National Public Works and the Promise of Popular Government in the Early United States* (Chapel Hill: University of North Carolina Press, 2001), esp. 63–69, 109–148; Charles Sellers,

*The Market Revolution: Jacksonian America, 1815–1846* (New York: Oxford University Press, 1991), esp. 70–102.

- 71 Henry Clay, Speech in House of Representatives, March 7, 1818, in *Annals of Congress*, 15th Congress, 1st Session, 1165.
- 72 Henry Clay, Speech in House of Representatives, January 14, 1824, in *Annals of Congress*, 18th Congress, 1st Session, 1026, 1030, 1034. Both Madison and Clay relied on the Blackstonian distinction between declaratory and remedial statutes (and the strategies for interpreting these different types of statutes). As James Stormer explains, “regarding the remedial character of the Constitution ... suggests that we read the document in comparison to the Articles of Confederation.” See Stormer, *Common Law and Liberal Theory: Coke, Hobbes, and the Origins of American Constitutionalism* (Lawrence: University Press of Kansas, 1992), 216.
- 73 Thomas Telfair, Speech in House of Representatives, April 3, 1816, in *Annals of Congress*, 14th Congress, 1st Session, 1316–1317. The type of distinction which Telfair proposed was common during the colonists’ struggle with Great Britain over the Stamp Act and other British efforts to raise revenues via colonial taxation.
- 74 Philip Barbour, Speech in House of Representatives, March 26, 1824, in *Annals of Congress*, 18th Congress, 1st Session, 1918–1919. As Powell suggests, dissociative appeals to the Constitution’s “spirit,” and eventually appeals to the framers’ intentions, helped reshape nineteenth-century constitutional argument. See H. Jefferson Powell, “The Original Understanding of Original Intent,” *Harvard Law Review* 98 (1985): 885–948.
- 75 For example, on March 4, 1826, the Virginia General Assembly adopted resolutions that, after quoting extensively from Madison’s earlier Report, concluded that “the imposition of taxes and duties ... for the purpose of protecting and encouraging domestic manufactures, is an unconstitutional exercise of power.” The following year the Assembly again went on record arguing that because “the protection of manufactures [was] not ... amongst the grants of power to [the federal] Government, specified in the Constitution ... [it was] unconstitutional, unwise, unjust, unequal, and oppressive.” The 1826 and 1827 Resolutions are reprinted in *State Documents on Federal Relations: The States and the United States*, ed. Herman V. Ames (Philadelphia: University of Pennsylvania, 1906), 140–144. Ames’s volume reprints a number of state legislative protests against the 1824 tariff.
- 76 John Niven, *John C. Calhoun and the Price of Union* (Baton Rouge: Louisiana State University Press, 1988), 161. Similarly, Keith Whittington maintains that Calhoun “was actually concerned to defend his version of federalism against both more nationalist sentiment from the North and West and extreme disunionist sentiment from the South.” See Whittington, *Constitutional Construction: Divided Powers and Constitutional Meaning* (Cambridge, MA: Harvard University Press, 1999), 79.
- 77 In what historians typically regard as a face-saving gesture, the South Carolina convention refused to abandon its understanding of the “principles of ’98” and therefore nullified Congress’s “Force Bill.”
- 78 John C. Calhoun to James Hamilton, August 28, 1832, in *The Works of John C. Calhoun*, vol. 6, ed. Richard K. Crallé (New York: D. Appleton and Company, 1854), 144–193, 145.
- 79 John C. Calhoun to James Hamilton, August 28, 1832, in *Works*, 148.
- 80 John C. Calhoun to James Hamilton, August 28, 1832, in *Works*, 155.
- 81 John C. Calhoun to James Hamilton, August 28, 1832, in *Works*, 156.
- 82 John C. Calhoun to James Hamilton, August 28, 1832, in *Works*, 147.

- 83 For example, see South Carolina's *Report*, 8, 11–12; *Address to the People of South Carolina*, 38–41, 47–48, 51–52; *Address to the People of the United States*, 60, all collected by the General Court of Massachusetts, *State Papers on Nullification: Including the Public Acts of the Convention of the People of South Carolina, Assembled at Columbia, November 19, 1832 and March 11, 1833; the Proclamation of the President of the United States, and the Proceedings of the Several State Legislatures Which Have Acted on the Subject* (Boston: Dutton and Wentworth, 1834). Although many of these documents are available elsewhere, we have used the versions in this collection because it provides an excellent and convenient repository for the various state and federal documents.
- 84 Andrew Jackson, *Nullification Proclamation*, December 10, 1832, in *State Papers on NULLIFICATION: Including the Public Acts of the CONVENTION OF THE PEOPLE of South Carolina, Assembled at Columbia, November 19, 1832 and March 11, 1833; the Proclamation of the President of the United States, and the Proceedings of the Several State Legislatures Which Have Acted on the Subject* (Boston: Dutton and Wentworth, 1834), 75–97.
- 85 Andrew Jackson, *Nullification Proclamation*, December 10, 1832, in *State Papers*, 81.
- 86 Andrew Jackson, *Nullification Proclamation*, December 10, 1832, in *State Papers*, 82.
- 87 Andrew Jackson, *Nullification Proclamation*, December 10, 1832, in *State Papers*, 85–86.
- 88 John C. Calhoun to James Hamilton, August 28, 1832, in *Works*, 144–193, 149–150.
- 89 John C. Calhoun, in *Works*, 159–160.
- 90 Andrew Jackson, *Nullification Proclamation*, December 10, 1832, in *State Papers*, 77–78.
- 91 Andrew Jackson, *Nullification Proclamation*, December 10, 1832, in *State Papers*, 78–79.
- 92 Andrew Jackson, *Nullification Proclamation*, December 10, 1832, in *State Papers*, 81.
- 93 As Keith Whittington notes, “Repeatedly invoking the memory of Jefferson and the ‘spirit of ’98,’ Calhoun portrayed nullification as the logical extension of the state interposition that lay at the base of Republican politics” (*Constitutional Construction*, 80).
- 94 South Carolina Convention's *Report, Ordinance, Address to the Citizens of the United States, Address to the Citizens of South Carolina*, in *State Papers*, 9.
- 95 South Carolina Convention's *Report*, in *State Papers*, 24.
- 96 South Carolina Convention's *Report*, in *State Papers*, 25.
- 97 South Carolina Convention's *Address to the People of South Carolina*, November 24, 1832, in *State Papers*, 1–71.
- 98 Virginia *Resolves*, January 26, 1833, in *State Papers*, 195–197.
- 99 See the correspondence between Virginia and South Carolina, in *State Papers*, 322–358.
- 100 South Carolina Convention's *Report on the Mediation of Virginia*, March 16, 1833, in *State Papers*, 355–358.
- 101 James Madison to Edward Everett, August 1830, *The Virginia Report of 1799–1800, Touching the Alien and Sedition Laws; Together with the Virginia Resolutions of December 21, 1798, the Debate and Proceedings Thereon in the House of Delegates of Virginia, and Several Other Documents Illustrative of the Report and Resolutions* (Richmond: J. W. Randolph, 1850), 249–256. Among the many excellent discussions of Madison's rhetorical efforts during the nullification crisis, see Drew McCoy, *The Last of the Fathers: James Madison and the Republican Legacy* (Cambridge: Cambridge University Press, 1989), esp. 119–170. McCoy quotes Brodnax's comments on 154.

- 102 Efforts to rearticulate the “principles” in early twenty-first-century American politics are growing. “Tentherers,” proponents of “state sovereignty resolutions” and members of what many identify as the “Tenth Amendment Movement,” frequently refer to Jeffersonian constitutionalism and the Virginia and Kentucky *Resolutions*. For example, visit: [www.thetenthamendmentcenter.com](http://www.thetenthamendmentcenter.com).
- 103 We would need an essay at least as long as this one to sketch the nationalists’ constitutive vision and trace its circulation. But as we have suggested, constitutive rhetorics cannot be examined in isolation.
- 104 Our discussion here draws from and seeks to extend observations by Richard Ellis and Drew McCoy. See Ellis, *The Union at Risk: Jacksonian Democracy, States’ Rights and the Nullification Controversy* (New York: Oxford University Press, 1987); and McCoy, *The Last of the Fathers*.