

king has usurped our sovereignty!" probably became the cry of the multitudes. The idea was clear: "We no longer consent to George III."

The men aboard the *Mayflower* had been deeply instilled with the principles of sea-law which dictated an on-board compact. So it was that these first settlers drew up the so-called "Mayflower Compact," the first of a series of plantation covenants used in the small towns and communities of New England: "by virtue hereof to enact, constitute, and frame such just and equal laws, ordinances, acts, constitutions, and offices, from time to time, as shall be thought most meet and convenient for the general good of the Colony, unto which we promise all due submission and obedience."³²

Attempts were made to get the approval of as many inhabitants of the countryside as possible. This could only reflect the belief of those contractors that the unanimous consent was the ideal to be sought. It was furthermore made clear in Massachusetts that deputies chosen by the people were merely envoys, not legislators. The first American case of proxy was in Maryland and symbolizes the giant step between pure democracy and a representative system. Representation was at first not based upon principle. Indeed, in Maryland, it had been considered no more than a *convenience* to solve problems of transportation and communication.

With the development of representation, the idea of tacit consent becomes increasingly important. The constitution of Maryland was proclaimed on November 8, 1776, while the colonies were deeply involved in the Revolution.

³² From the *Mayflower Compact* (corrected to read in twentieth century spelling).

A convention had met in Maryland that August 14, and the resulting constitution became law without submission to the voters. Time was vital. The very success of the Revolution was at stake. Tacit consent was indeed a factor in the constitution's acceptance. A political consensus existed in the colonies at that time. Tories escaped by the hundreds to return to England. Other sympathizers of the Crown sought refuge in Canada. The remaining colonists were undoubtedly in political accord, at least in their desire for political independence from England. Tacit consent within the State of Maryland in regard to the ratification of her first constitution must well have played a major role.

The issues of original compact and tacit consent are of vital relevance to any study of state sovereignty, state's rights, and, more specifically, the secession of the southern states in America, which brought on the Civil War. Andrew Jackson stated the problem: "Because the Union was formed by compact, it is said the parties to that compact may, when they feel themselves aggrieved, depart from it; but it is precisely because it is a compact that they cannot. A compact is an agreement or a binding obligation."³³ It is noteworthy that Luther Martin, a Marylander, is the author of the federal Constitution's supremacy clause, which has been interpreted in two totally contradictory manners.³⁴

It is, however, beyond our scope to argue for or against nullification. With

³³ STATE PAPERS ON NULLIFICATION 87, 128, 206 (Boston, 1834).

³⁴ (Art. VI). On the one hand, that state courts have the last word in constitutional interpretation; on the other, the more obvious view, that the Supreme Court of the United States has this ultimate jurisdiction.