

Nullification: The Original Right of Self-Defense

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What did our Framers say we must do when the federal government usurps power? They *never* said, “When the federal government violates the Constitution, *amend* the Constitution”; and they *never* said, “File a lawsuit and let federal judges decide.”

Instead, they advised two *manly* remedies. We’ll look at one of them – nullification – in this paper. ¹

Now, let’s look at our Constitution.

1. Our Federal Government has *Enumerated Powers Only*

With our federal Constitution, we created a *federal* government. It is:

- A federation of sovereign States united under a national government **ONLY** for those limited purposes itemized in the Constitution;
- With all other powers reserved by the States or the People.

We listed every power we delegated to the federal government: Most of the powers delegated over the Country at large are listed at Article I, §8, clauses 1-16.

All our Constitution authorizes the federal government to do over the Country at large falls into four categories:

- Military defense, international commerce & relations;
- Immigration & naturalization;
- Domestically, create a uniform commercial system: weights & measures, patents & copyrights, money based on gold & silver, bankruptcy laws, mail delivery & some road building; and
- With some of the amendments, secure certain civil rights.

[THIS Chart](#) lists the enumerated powers. If a power is *on the list*, Congress may make laws about it. But if it’s *NOT on the list*, Congress usurps power and acts unlawfully when it interferes.

So what do we do when the federal government usurps powers not on the list?

¹ The other remedy is to elect *faithful* representatives. At the [Virginia Ratifying Convention on June 20, 1788](#) at [223], James Madison said **our Constitution depends on the people having the “virtue and intelligence to select men of virtue and wisdom” to office.** In [Federalist No. 44](#) [12th para from end], he says when Congress usurps powers, and the executive and judiciary departments go along with it,

“...a remedy must be obtained from the people who can, *by the election of more faithful representatives*, annul the acts of the usurpers...” [emphasis mine]

So *our* Duty is to elect people who know the Constitution. But before *we* can distinguish between those who know it and those who don’t; *we* must learn it - or else be continually deceived by fakes who tell us what we want to hear.

2. Don't Submit to Unconstitutional Laws – Nullify Them!

Our Framers said the federal government is our “creature” and must obey our Will as enshrined in our Constitution. And when it doesn't, we must defend the Constitution by invoking *our natural right of self-defense*:

Alexander Hamilton said in [Federalist No. 28](#) (last 5 paras): [I'm condensing]

“If the representatives of the people betray their constituents, **there is no recourse left but in the exertion of that original right of self-defense which is paramount to all positive forms of government**, and which against the usurpations of the national rulers, may be exerted ... [by] ... State governments [which] will ... afford complete security against invasions of the public liberty by the national authority...” [emphasis mine]

Hamilton says in [Federalist No. 33](#) (5th para):

“If the federal government should overpass the just bounds of its authority and make a tyrannical use of its powers, **the people**, whose *creature* it is, must appeal to the standard they have formed, **and take such measures to redress the injury done to the Constitution as the exigency may suggest and prudence justify.**” [emphasis mine]

Thomas Jefferson said in his draft of [The Kentucky Resolutions of 1798](#), 8th Resolution:

“...where powers are assumed which have not been delegated, **a nullification of the act is the rightful remedy**: that *every State has a natural right* in cases not within the compact ... to nullify of their own authority all assumptions of power by others within their limits: that without this right, they would be under the dominion, absolute and unlimited, of whosoever might exercise this right of judgment for them...” [emphasis mine]

James Madison commented on this in his [Notes on Nullification \(1835\) \(p.573-607\)](#):

“... the right of nullification meant by Mr. Jefferson is *the natural right*, which all admit to be **a remedy against insupportable oppression...**” [emphasis mine]

Note that Hamilton, Jefferson, and Madison said nullification is a *natural right* – it is NOT a “constitutional right”. Rights don't come from the Constitution – they come from God.²

² So when those who insist that **an Article V convention** is the only solution *disparage* nullification as an “extra-constitutional doctrine”, the proper response is: **Nullification is NOT a “constitutional right or remedy” – it is that NATURAL RIGHT of self-defense which pre-dates and pre-exists the Constitution.**

[HERE](#) is Madison’s “Report of 1799-1800 on the Virginia Resolutions”. He said under his discussion of the 3rd Resolution [I’m condensing]:

The States, in their sovereign capacity, are the parties to the constitutional compact; and are thus the final authority on whether the federal government has violated the Constitution. There can be no tribunal above the authority of the States to decide whether the compact made by them has been violated by the federal government. (p192)

That if, when the federal government usurps power, the States don’t stop the usurpation, and thereby preserve the Constitution; *there would be no relief from usurped power*. This would subvert the Rights of the People as well as betray the fundamental principle of our Founding. (p195)

That the Judicial Branch is as likely to usurp as are the other two Branches. Thus, *the Sovereign States have as much right to judge the usurpations of the Judicial Branch as they do the Legislative and Executive Branches*. (p196)

That all 3 Branches of the federal government obtain their delegated powers from the Constitution; and they may not annul the authority of the States. And if the Judicial Branch connives with other Branches in usurping powers, our Constitution will be destroyed. (p196)

So the Judicial Branch does not have final say as to the rights of the parties to the constitutional compact. Otherwise, the delegation of judicial power would annul the authority delegating it; and the concurrence of the judicial branch with the other branches in usurping powers, would subvert the Constitution forever. (p196)

In [Federalist No. 46](#), Madison says, respecting unconstitutional acts of the federal government:

- The People can refuse to cooperate with federal officers [7th para];
- State officials can oppose the feds [7th para];
- State Legislatures can invent legislative devices to impede & obstruct the federal government [7th para];
- States can cooperate in concerted plans of resistance [8th para];
- States can easily defeat the federal government’s schemes of usurpation [10th para]; and as the last resort,
- States must defend themselves from the federal government – that’s why the People are armed.

So Jefferson, Hamilton and Madison tell us: When the federal government asks or directs States to do things which *aren’t on the list*, the proper response is, “No!”³

³ The States are not victims of federal tyranny. The States collaborated in federal tyranny by taking federal funds to implement unconstitutional federal programs in their States. [The PEW Report](#) shows what percentage of each *State government’s* revenue (for FY 2017) came from federal funds. In addition to the funds paid by the fed gov’t to the State gov’ts; billions in additional funds are paid by the fed gov’t into each State to local gov’ts, non-governmental organizations, research grants, price supports, food stamps, rent subsidies, utility subsidies, free cell phones, Medicare, social security, etc., etc., etc. And our “currency” is now being wildly inflated to continue these payments.

3. State Governments Must *Man Up* and Preserve our Constitution.

The Declaration of Independence says at the 7th para that the colonials “opposed with manly firmness” the King’s “invasions on the rights of the people”.

We need today that same manly opposition to tyranny. *This is already going on in many of our States!* Go to the website of the Tenth Amendment Center and look for [their Annual Report](#), “State of the Nullification Movement 2019-20”.

Nullification is not complicated: James Madison’s advice in Federalist No. 46 is golden: *Don’t cooperate with the federal government – don’t enforce their unconstitutional acts!* Without the cooperation of the States, the federal government can’t enforce their laws and rules, executive orders, or Supreme Court Opinions.

Sometimes noncooperation alone suffices to effectively nullify an unconstitutional federal dictate.

At other times, States will find it helpful to pass laws for the benefit of their Citizens: Consider **prayer in the public schools**: When, in 1962, the Supreme Court began its war against Christianity by banning prayers in the public schools, State Legislatures should have passed laws directing their public schools to **ignore** the unconstitutional opinion of the Supreme Court. “Religion”, “prayers”, and “public schools” are *not on the list* of delegated powers; and their ban violates the 1st Amendment by “prohibiting the free exercise of religion”.

The same goes for abortion. When, in 1973, the Supreme Court began its war against human life with its unconstitutional opinion in *Roe v. Wade* (1973); the States should have nullified it by ignoring it. Federal courts have no jurisdiction over this issue. This paper ⁴ shows States what they must do respecting litigation filed in federal court against States which nullify unconstitutional acts of any Branch of the federal government.

Consider attempts to disarm the American People: If Congress *by law*, or a pretended president *by executive order*, or the BATF *by rule*, or the Supreme Court *by opinion*, or the UN *by Treaty*, orders The People to turn in our arms, **we must refuse to comply**. The Constitution doesn’t authorize the fed gov’t to disarm us. It’s not an enumerated power, and such would violate Article I, §8, clauses 15 & 16, and the 2nd Amendment. [This may well soon be an issue in this Country - the States need to get ready.]

Consider the unconstitutional National Voter Registration Act of 1993 (NVRA): Pursuant to Article I, §2, clause 1, US Constitution, the States retained their pre-existing power to determine the qualifications for voters. But with the NVRA, the federal government usurped the States’ retained power to qualify voters by promulgating a federal voter registration form; demanding that States register anyone who filled out the federal form; and prohibiting the States from demanding any information from applicants for voter registration which was not demanded on the federal form. This paper ⁵ shows that the way States can enforce the qualifications for voting set forth within their State Constitutions is to *man-up and reclaim* the power they reserved at Article I, §2, cl. 1, US Constitution, to determine qualifications for voting.

⁴ “How states can man-up and stop abortion” <https://publiushuldah.wordpress.com/2019/06/30/how-states-can-man-up-and-stop-abortion/>

⁵ “Why the States must Nullify the National Voter Registration Act Now!” <https://publiushuldah.wordpress.com/2020/02/27/why-the-states-must-nullify-the-national-voter-registration-act-now/>

4. Brave Citizens Must Man up Also.

As noted above, Madison says in Federalist No. 46 that the People can refuse to cooperate with federal officers.

Rosa Parks, Martin Luther King, and the other Civil Rights activists showed us spine some 60 years ago when they nullified the State & local Jim Crow laws - by refusing to obey those unconstitutional laws.

Several years ago in Connecticut, Citizens refused to obey an unconstitutional State law which pretends to require them to register their firearms. Art. I, §15, Connecticut Constitution says:

“Every citizen has a right to bear arms in defense of himself and the state.”

If you are a “Citizen”, you have the right to bear arms – that’s all you need in Connecticut. So the Connecticut Statute making it a felony to possess guns which are not registered is unconstitutional as in violation of Art. I, § 15 of the State Constitution.

And The People – as the **creators** of the State government – are the ones to ultimately decide!

All nullification requires is a spine. And Rosa Parks & MLK showed us what spine looks like: You say, “No more!”

5. The “we lost the civil war” objection to Nullification.

Those who chant this objection seem to have in mind the “nullification crisis of 1832”. Let’s debunk it:

The southern States were agricultural. They bought manufactured goods from England. England bought southern cotton. Infant industries in the North East were producing some of the same manufactured goods as England; but because they were more expensive than the imports, they couldn’t compete.

So in 1828, Congress imposed a high tariff on the imports. The Southern States called this the “tariff of abominations”, because it made the English goods too expensive to buy; and when the Southern States stopped buying English goods, England stopped buying Southern cotton. This devastated the Southern economy.

Note that Congress has specific authority to impose tariffs on imports: Art. I, § 8, cl. 1. So the Tariff Act of 1828 **was constitutional**.

The nullification crisis of 1832 was brought on because South Carolina wanted to “nullify” the Tariff Act of 1828 – a constitutional law! South Carolina developed a peculiar theory that

- A State has a “**constitutional right**” to nullify *any* federal law; and
- The nullification is presumed valid unless $\frac{3}{4}$ of the States say it isn’t valid.

In James Madison’s [Notes on Nullification \(1835\) \(p. 573-607\)](#), he debunked *South Carolina’s* theory. He said:

- The federal government has delegated authority to impose tariffs;
- The Constitution requires that tariffs be uniform throughout the United States;
- States can’t nullify tariffs authorized by the Constitution;

- ¼ of the States don't have the right to dictate to ¾ of the States on matters within the powers delegated to the federal government; and
- Nullification is not a *constitutional right*.

Near the end of his Notes, Madison quoted Thomas Jefferson's famous statement:

“...but where powers are assumed *which have not been delegated*, a nullification of the act is the rightful remedy: that every State has a natural right in cases not within the compact ...to nullify of their own authority all assumptions of power by others within their limits ...”
[emphasis mine]

Madison then says:

“Thus the right of nullification meant by Mr. Jefferson is *the natural right*, which *all* admit to be a remedy against insupportable oppression.” [emphasis mine]

Do you see? Madison's points are:

- States may not properly nullify *constitutional acts* of the federal government; and
- When an act of the federal government is *unconstitutional*, nullification is a NATURAL RIGHT – not a “constitutional right”.

6. Two Common objections to Nullification

Those who claim that Madison opposed nullification are confused about the distinction between constitutional acts and unconstitutional acts. Madison was clear that when the fed gov't usurps powers not delegated, the States have the right to nullify *of their own authority* all such acts. Madison opposed South Carolina's *peculiar doctrine* because South Carolina wanted to nullify a *constitutional* law, the Tariff Act of 1828.

Some resort to the idiotic smear that if you support nullification, you support slavery, Jim Crow and segregation. Such people display their ignorance: The first significant use of Nullification was when Northern States nullified the unconstitutional federal Fugitive Slave Laws: See this valuable paper by Mike Maharrey, *Personal Liberty Laws: A Nullification History Lesson*”.⁶

7. Start Doing YOUR Duty

Your Duty is to learn our Declaration of Independence and Constitution. Beware of candidates who carry a pocket Constitution in their shirt pocket, but can't tell you what it says. Question them on their knowledge! But before you can do that, *you* must learn it.

We must also renounce **cowardice and appeasement** as the response to evil. If we continue to fail, hell on Earth is just around the corner.

[For the online edition with live links, email me at publiushuldah@gmail.com]

⁶ <https://tenthamentcenter.com/2013/03/06/personal-liberty-laws-a-nullification-history-lesson/comment-page-1/>