Written by **Joe Wolverton, II, J.D.** on May 11, 2012

The Case for Nullification

As the United States of America is manipulated closer and closer to an economic and social abyss, the concomitant consequences of this decline are becoming familiar to all citizens. In fact, many of the youth, whose future is being mortgaged by those determined to perpetuate never-ending war and ever-expanding national debt, are awakening to a sense of this dire situation. And they are recurring to the brief history of our nation to locate a lever for braking the runaway train hurtling toward the ruin of our Republic.

This generation is subjected as none before them to the painful injection of government into every fiber of the body politic. On what seems like a daily schedule, the Congress passes and the President signs into law measures ostensibly permitting the manhandling of people at airports, the suspension of the requirements of due process, and the monitoring by the never-blinking eye of a surveillance state into the virtual and actual behavior of anyone believed to one day possibly pose a threat to the security of "the homeland."

As they sift among the various legal methods available to them for the civil combat against economic enslavement and the federal government's intrusions into every aspect of our lives, they have stumbled across a timeless principle of self-defense used by our Founding Fathers to fight their own battle against the forces of federal oppression — nullification.

Simply stated, nullification is a concept of legal statutory construction that endows each state with the right to nullify, or invalidate, any federal measure that a state deems unconstitutional. Nullification is founded on the assertion that the sovereign states formed the union, and as creators of the compact, they hold ultimate authority as to the limits of the power of the central government to enact laws that are applicable to the states and the citizens thereof.

What the Founders Thought

Or, as was so authoritatively explained by Alexander Hamilton in *The Federalist*, No. 33:

> If a number of political societies enter into a larger political society, the laws which the latter may enact, pursuant to the powers intrusted [sic] to it by its constitution, must necessarily be supreme over those societies and the individuals of whom they are composed.... But it will not follow from this doctrine that acts of the larger society which are *not pursuant* to its constitutional powers, but which are invasions of the residuary authorities of the smaller societies, will become the supreme law of the land. These will be merely acts of usurpation, and will deserve to be treated as such. [Emphasis in original.]

Here, Hamilton (notably one of the Founders often claimed by proponents of an all-powerful central government as their philosophical progenitor) responds to the charges by those opposed to the Constitution, particularly in this instance to the clause in Article VI known as the "Supremacy Clause."

This clause reads in relevant part: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof … shall be the supreme Law of the Land."

A plain reading of the black letter of this provision leaves no doubt that when the federal government acts within the scope of its constitutionally established powers, those acts are to be accepted as the supreme law of the land. Or as Hamilton expressed in an earlier letter in *The Federalist*: "The laws of the Confederacy as to the *enumerated* and *legitimate* objects of its jurisdiction will become the SUPREME LAW of the land." (Emphasis in original.)

The corollary to this clear statement of constitutional distribution of power would be that whenever the federal government enacts laws not provided for in the roster of enumerated powers, those acts are not laws at all. Instead, they are "merely acts of usurpations" and do not merit the respect and adherence due to other, constitutionally sound measures. Put simply, acts of Congress are the supreme law of the land if they are made in pursuance of its constitutional powers, not in defiance thereof.

As if the foregoing weren't sufficient evidence of the Founders' view on not only the proper role of the federal government, but of the adherence due to any act perpetrated by it that reaches beyond its limited constitutional grasp, Hamilton wrote very plainly in *The Federalist*, No. 78: "There is no position which depends on clearer principles, than that every act of a delegated authority contrary to the tenor of the commission under which it is exercised, is void. No legislative act, therefore, contrary to the constitution, can be valid."

Nullification in Action

Nowhere is the concept and application of nullification more firmly secured to sure footings of constitutionality and morality than in the Kentucky and Virginia Resolutions of 1798 and 1799.

The Kentucky and Virginia Resolutions were terse statements written in 1798 and 1799 proposing the proper response by states to the passage by the federal government of the Alien and Sedition Acts. The drafters of these resolves insisted that as the powers to be exercised by the federal government under the authority of the Alien and Sedition Acts were not given to it in the Constitution, the legislatures of the several states had not only the right but the moral and legal obligation to disregard these acts and brand them as unconstitutional.

After their distribution among the various state governments, it was revealed that the Kentucky and Virginia Resolutions were in truth the product of a collaboration by Thomas Jefferson and James Madison. Jefferson penned the former while Madison wrote the latter.

Although branded by some advocates of a stronger central government as the "infernal plan of exciting insurrections and tumults," as one can see from the arguments laid out over a decade earlier in the *Federalist Papers*, these measures were nothing more radical or incendiary than a restatement of well-settled tenets of constitutional federalism. As Thomas E. Woods wrote in his inestimable analysis of states' rights, *Nullification: How to Resist Federal Tyranny in the 21st Century*, in the Kentucky Resolution:

> Jefferson was merely building upon an existing line of political thought dating back to Virginia's ratifying convention and even into the colonial period. Consequently, an idea that may strike us as radical today was well within the mainstream of Virginian political thought when Jefferson introduced it.

In order to appreciate the simplicity and sensibility of the proposed nullification of any federal act

expanding upon the slate of its specifically delegated powers, one need only read a sample of the resolutions comprising these proposals.

Kentucky's Resolution 1 declares:

> That the several states composing the United States of America are not united on the principle of unlimited submission to their general government; but that, by compact, under the style and title of a Constitution for the United States, and of amendments thereto, they constituted a general government for special purposes, delegated to that government certain definite powers, reserving, each state to itself, the residuary mass of right to their own self-government; and that whensoever the general government assumes undelegated powers, its acts are unauthoritative, void, and of no force; that to this compact each state acceded as a state, and is an integral party, its co-States forming, as to itself, the other party; that this government, created by this compact, was not made the exclusive or final judge of the extent of the powers delegated to itself, since that would have made its discretion, and not the Constitution, the measure of its powers; but that, as in all other cases of compact among powers having no common judge, each party has an equal right to judge for itself, as well of infractions as of the mode and measure of redress.

The second of the Kentucky Resolutions was intended to specifically set forth the legal and constitutional basis for the denial to the Congress of the power to punish crimes not explicitly listed in the Constitution. Congress had assumed this authority, so Jefferson averred, by passing various of the provisions of the Alien and Sedition Acts, which were signed into law by John Adams. Of particular importance is the reliance of this provision on the 10th Amendment. Resolution 2 states:

> That the Constitution of the United States, having delegated to Congress a power to punish treason, counterfeiting the securities and current coin of the United States, piracies, and felonies committed on the high seas, and offenses against the law of nations, and no other crimes, whatsoever; and it being true as a general principle, and one of the amendments to the Constitution having also declared, that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people," therefore the act of Congress, passed on the 14th day of July, 1798, and intitled [sic] "An Act in addition to the act intitled [sic] An Act for the punishment of certain crimes against the United States," as also the act passed by them on the — day of June, 1798, intitled [sic] "An Act to punish frauds committed on the bank of the United States," (and all their other acts which assume to create, define, or punish crimes, other than those so enumerated in the Constitution,) are altogether void, and of no force watsoever [sic].

In his resolution (there were two Kentucky Resolutions, but only one in the Old Dominion), Madison echoed Jefferson's reasoning, asserting that the states were justified (in fact, required) in serving as arbiters of constitutionality. The Virginia Resolution took the additional step of labeling as legitimate the interposition of states to the passing by Congress of unconstitutional acts. Madison wrote:

> That this Assembly doth explicitly and peremptorily declare, that it views the powers of the federal government as resulting from the compact to which the states are parties, as limited by the plain sense and intention of the instrument constituting that compact, as no further valid than they are authorized by the grants enumerated in that compact; and that, in case of a deliberate, palpable, and dangerous exercise of other powers, not granted by the said compact, the states, who are parties thereto, 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 authorities, rights and

liberties, appertaining to them.

Similar Spirit

Thankfully, the spirit of Jefferson's and Madison's resolutions lives on in several present-day state legislators. As has been reported in The New American, a handful of state and local lawmakers have passed resolutions of their own designed to (in some degree or another) nullify the National Defense Authorization Act (NDAA) and its ostensible grant of authority to the President of the United States to deploy the military to apprehend and indefinitely detain American citizens he suspects of posing some sort of vaguely defined threat to national security.

These courageous men and women are motivated by more than just a jealousy for the sovereignty of states. They understand that there is more at stake than the accurate delineation of borders between the jurisdiction of the states and the federal government. In statements released by these sponsors of state-sovereignty-saving acts, there is expressed an appreciation for the moral obligation imposed upon all Americans to steadfastly demand that the federal government not exceed its constitutional authority.

One of these legislators, when interviewed by The New American, explained the source of his insistence on the securing of the restraints placed on federal power. Speaking of the eternal vigilance that is the price of liberty, Virginia Delegate Bob Marshall said:

> You can't let them get away with exceptions because they won't stop with one. The procedural guarantees for liberty are there for a reason. Go back in the New Testament. When the Pharisees were trying to find something to charge Christ with, they wanted to catch him violating the Mosaic Code, so they find a woman who had committed adultery and brought her to Christ. We assume that this woman was caught in the act. What did Christ do? He wrote in the sand and said, "Which of you will accuse her?" This is so important because according to Jewish law, you couldn't accuse another of a crime unless you had clean hands. Any death penalty decree had to be in writing and the Pharisees knew it, but thought they could get away with violating that provision of the law. Christ wrote in the sand, thus fulfilling the requirements of Mosaic due process. The Pharisees probably got the message and we should too. If Christ, who was God, was concerned about due process, we mere humans must be as well.

Turning to Marshall's fellow Virginian James Madison, we learn that the requirement that the enumeration of powers to the central government be rigidly and faithfully observed is not just laudable — it is that "which can alone secure its [the Union's] existence, and the public happiness thereon depending."

Once it is widely understood that any unconstitutional law passed by Congress is without legal effect, then it is easy to accept that the states are uniquely situated to perform the function described by James Madison in a speech to Congress in 1789: "The state legislatures will jealously and closely watch the operation of this government, and be able to resist with more effect every assumption of power than any other power on earth can do; and the greatest opponents to a federal government admit the state legislatures to be sure guardians of the people's liberty."

Nullification is commendable principally because its persistent practice engenders trust between the elected and the electorate and encourages the recognition of reliable patterns of interaction between the state and local authorities and the federal government. By consistently demanding that Washington confine itself to its small sphere of influence, everyone — citizen, state lawmaker, U.S. President, and Congressman — knows where they stand and can act knowing they enjoy the good will of those by

whom they were chosen to serve.

If the people will not allow deviance from the terms of the compact, then legislators at last will be disabused of their commonly perceived illusion that the people can be easily lulled into a lethargic stupor rendering them unwilling and eventually unable to withstand the steady herding of our nation into the corrals of despotism.

Finally, of all the legal verities and moral virtues of nullification, there is one that sits at the pinnacle of them all. Nullification, as defined by Jefferson and Madison and as being proposed and practiced by contemporary Americans, is a fail-safe protection of popular sovereignty and limited government. Chiefly this is because the keys to these fetters are kept by the people.

A growing number of concerned citizens of this Republic are no longer willing to recur to Congress to repeal unconstitutional laws or to file legal complaints in the hope that the courts will strike down offensive measures. They understand that while perhaps commendable, these tactics are futile and offer no guarantee of the restoration of constitutionally ensured freedom. They refuse to wait on this or that President, this or that Congressman, or this or that political party to acknowledge their pleas for relief from federal oppression. Instead, they unashamedly will assume their right and their duty to derail the "long train of abuses and usurpations" and "provide new Guards for their future security" — the states and themselves.

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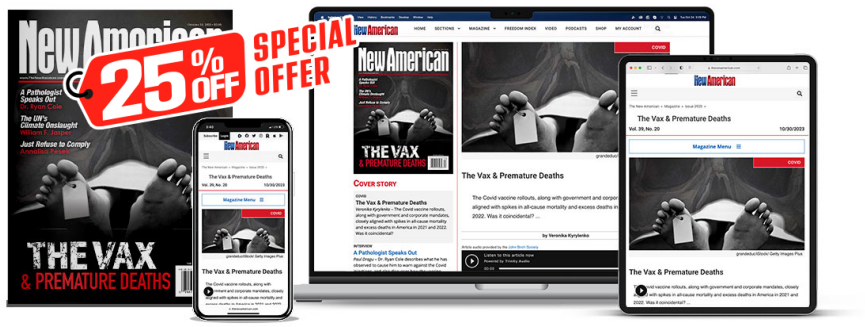

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