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Publius-Huldah's Blog

Understanding the Constitution

James Madison Rebukes Nullification Deniers

By Publius Huldah

This is **The Age of Ignorance**. Our "intellectuals" *can't think*. Our "scholars" parrot each other. The self-educated fixate on idiotic theories. Our People despise Truth and disseminate lies.

Nullification deniers such as Matthew Spalding of Heritage Foundation, Jarrett Stepman of Human Events, law professor Randy Barnett, David Barton of Wallbuilders, and history professor Allen C. Guelzo, say that nullification by States of unconstitutional acts of the federal government is unlawful and impossible. They make the *demonstrably false* assertions that:

♦ States don't have the right to nullify unconstitutional acts of the federal government *because* our Constitution doesn't say they can do it;

♦ Nullification is literally impossible;

♦ The supreme Court is the final authority on what is constitutional and what is not; and The States and The People must submit to *whatever* the supreme Court says; and

♦ James Madison, Father of Our Constitution, opposed nullification.

Their assertions contradict our Declaration of Independence, The Federalist Papers, our federal Constitution, and what James Madison, Thomas Jefferson, and Alexander Hamilton really said.

What are the Two Conditions Precedent for Nullification?

The deniers seem unaware of the two conditions our Framers saw must be present before **nullification** is proper and possible. These conditions are important – you will see why!:

♦ The act of the federal government must *be unconstitutional* – usually a usurpation of a power not delegated to the federal government in the Constitution; **and**

♦ The act must be something The States or The People can "**nullify**"- i.e., **refuse to obey (**the act must *order them to do something or not do something),* or **otherwise thwart, impede, or hinder**.

What is "Interposition" and What is "Nullification"?

A State "interposes" when it stands between the federal government and The Citizens of the State in order to protect them from the federal government. Interposition takes various forms, *depending on the circumstances*. Hamilton refers to interposition 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 [the Constitution] 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]

"Nullification" is merely one form of interposition.

Here are three *highly relevant* illustrations:

♠ When the act of the federal government is unconstitutional **and** orders The States or The People to do – or not do – something, *nullification* by direct disobedience is the proper form of interposition.

♠ When the act of the federal government is unconstitutional, **but** doesn't order The States or The People to do – or not do – something (the alien & sedition acts), The States may take various measures to thwart, impede, or hinder implementation of the federal act in order to protect The Member States, The People, and The Constitution from federal tyranny. (See the Virginia and Kentucky Resolutions of 1798.)

♠ When the act of the federal government is constitutional, **but** unjust (the Tariff Act of 1828), the States may not nullify it; but may interpose *by objecting* and *trying to get the Tariff Act changed*.

Our Founding Principles in a Nutshell

In order to understand **The Right of Nullification,** one must also learn the Founding Principles set forth in The Declaration of Independence (2nd para). *Then* one can see that "when powers are assumed which have not been delegated, a nullification of the act" [1] is **"the natural right, which *all* admit to be a remedy against insupportable oppression."** [2] These Principles are:

1. **Rights come from God**;

2. People create governments;

3. The purpose of government is to secure the rights God gave us; and

4. When a government We created seeks to take away our God given rights, We have the Right – *We have the Duty* – to alter, abolish, or throw off such government.

Let us look briefly at these Principles:

1. Our Declaration of Independence (2nd para) recognizes that **God is the grantor of Rights**. So Rights don't come from the Constitution, the supreme Court or the federal government.

2. The Preamble to our Constitution shows that WE THE PEOPLE **created** the federal government. It is our "creature". Alexander Hamilton says this in Federalist Paper No. 33 (5th para); and Thomas Jefferson, in his draft of The Kentucky Resolutions of 1798 (8th Resolution). As our "creature", it may lawfully do **only** what WE authorized it to do in our Constitution.

We created a "*federal*" government: An alliance of **Sovereign States** [3] associated in a "federation" with a national government to which is delegated supremacy over the States **in few and defined areas only**. James Madison says in Federalist No. 45 (9th para):

"The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce; with which last the power of taxation will, for the most part, be connected. **The powers reserved to the several States** will extend to all the objects which … concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State." [boldface mine]

Do you see? We delegated only "**few and defined**" powers to the federal government. These are the "enumerated powers" *listed* in the Constitution. [4]

These enumerated powers concern:

♦ Military defense, international commerce & relations;

♦ Control of immigration and naturalization of new citizens;

♦ Creation of 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, protect certain civil rights.

It is *only* with respect to the "enumerated powers" that the federal government has lawful authority over the Country at large!!! All other powers are "**reserved to the several States"** and The People.

3. Our Constitution authorizes the federal government to secure our God-given Rights in the following ways: [5]

It is to secure **our rights to life and liberty** by:

♦ Military defense (Art. I, Sec. 8, cl. 11-16);

♦ Laws against piracy and other felonies committed on the high seas (Art. I, Sec. 8, cl. 10);

♦ Protecting us from invasion (Art IV, Sec. 4);

♦ Prosecuting traitors (Art III, Sec. 3); and

♦ Restrictive immigration policies (Art. I, Sec. 9, cl. 1).

It is to secure **our property rights** by:

♦ Regulating trade & commerce so we can produce, sell & prosper (Art. I, Sec. 8, cl.3). The original intent of the interstate commerce clause is to prohibit States from levying tolls & taxes on articles of commerce as they are transported thru the States for buying & selling.

♦ Establishing uniform weights & measures and a money system based on gold & silver (Art I, Sec. 8, cl. 5) – inflation via paper currency & fractional reserve lending is theft!

♦ Punishing counterfeiters (Art I, Sec. 8, cl. 6);

♦ Making bankruptcy laws to permit the orderly dissolution or reorganization of debtors' estates with fair treatment of creditors (Art I, Sec 8, cl. 4); and

♦ Issuing patents & copyrights to protect ownership of intellectual labors (Art I, Sec 8, cl 8).

It is to secure **our right to liberty** by:

♦ Laws against slavery (13th Amendment);

♦ Providing fair trials in federal courts (4th, 5th, 6th, 7th, and 8th Amendments); and

♦ Obeying the Constitution!

***This* is how our federal Constitution implements The Founding Principle that the purpose of government is to secure the rights *God* gave us!**

4. The fourth Founding Principle in our Declaration is this: When government takes away our **God given rights**, We have the Right & the Duty to alter, abolish, or throw off such government. **Nullification is thus a natural right of self-defense:**

Thomas Jefferson said:

"… 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, (casus non foederis,) 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…"** [6] **[boldface mine]**

James Madison commented on the above:

"… **the right of nullification meant by Mr. Jefferson is the natural right, which all admit to be a remedy against insupportable oppression**…" [7]

Alexander Hamilton says in Federalist No. 28 (5th para from end):

"If the representatives of the people betray their constituents, there is then no resource 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 with infinitely better prospect of success …" [boldface mine]

Hamilton then shows how The States can rein in a usurping federal government:

"…**the State governments will, in all possible contingencies, afford complete security against invasions of the public liberty by the national authority**…"

Do you see?

But the nullification deniers do *not* see because, in addition to their apparent unfamiliarity with the *original source* writings on nullification (as well as The Federalist Papers), they reject, or do not understand, the Founding Principle that Rights pre-date & pre-exist the Constitution and come from God. **Nullification is not a paltry "constitutional right"! It has a hallowed status – it is *that natural right of self-defense* which pre-dates & pre-exists the Constitution**.

Now, let us look at the false assertions made by the nullification deniers.

False Assertion 1:

That States can't nullify unconstitutional acts of the federal government *because* the Constitution doesn't say they can do it.

♣ As we have just seen, Jefferson, Madison, and Hamilton saw nullification of unconstitutional acts of the federal government as **a "natural right" – *not* a "constitutional right**". And **since Rights come from God, *there is no such thing as a "constitutional right"!***

♣ The Right of Nullification, transcending as it does, the Constitution; and being nowhere prohibited by the Constitution to the States, is **a reserved power**. The 10th Amendment says:

"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."

Nothing in the federal Constitution prohibits The States from nullifying unconstitutional acts of the federal government. Thus, nullification is **a reserved power** of the States & The People.

♣ We saw where Madison says in Federalist No. 45 that the powers delegated to the federal government are "**few and defined**", and all other powers are "**reserved to the several States**".

Thus, it is the federal government which is supposed to look to the Constitution for the list of "enumerated powers" We The People delegated to it.

The States don't go to the Constitution to look for permission because t**hey retain all powers they didn't *exclusively*** [8] **delegate to the federal government,** or prohibit by Art. I, Sec. 10.

The nullification deniers have it backwards: They permit the federal government to ignore the "enumerated powers" limitations set forth in the Constitution; but insist The States can't do anything unless the Constitution specifically says they can!

Do you see how they **pervert** Our Constitution?

False Assertion 2:

That Nullification is literally impossible.

We saw above the two conditions which must exist before nullification is proper and possible:

♦ The act of the federal government must be unconstitutional, **and**

♦ The act must be something The People or The States can refuse to obey, or otherwise thwart, impede or obstruct.

Here are examples of unconstitutional federal acts the States can and should nullify:

The Constitution does not delegate to the federal government power to ban Christianity from the public square. But in 1962, the supreme Court first ordered The States to stop prayers in the public schools. That Court next banned the Ten Commandments from the public schools. Since those orders were usurpations of powers not lawfully possessed by the Court,the States ***should*** have nullified them by directing their Schools **to ignore them.**

If Congress by "law", or the President by "executive order", orders The People to turn in our guns, **We must refuse to comply**. The Constitution doesn't authorize the federal government to disarm us. So, The States and The People must nullify such law or order **by refusing to obey**.

Here are examples of unconstitutional & unjust *State* and municipal laws Rosa Parks and Martin Luther King nullified**:**

The Jim Crow laws required black people to sit at the back of the bus, and prohibited them from eating in public places and using public restrooms, water fountains, park benches, etc. Using non-violent civil disobedience, Rosa Parks and MLK led black people to refuse to obey these unjust and unconstitutional (Sec. 1, 14th Amdt.) laws. This was **nullification by brave Citizens!**

Now, I'll show you unconstitutional acts which couldn't be *directly* disobeyed because they weren't directed to anything The States or The People could refuse to obey:

In 1798, Thomas Jefferson wrote **The Kentucky Resolutions,** and James Madison wrote **The Virginia Resolutions.** These Resolutions objected to laws made by Congress which purported to grant *to the President* dictatorial powers over aliens and seditious words.

Kentucky and Virginia could object, but they couldn't prevent the President from enforcing the alien & sedition acts, because the President had the raw power to send out thugs to arrest aliens or people who had spoken or written "seditious" words; and then to persecute them.

So Jefferson and Madison showed why the alien & sedition acts were unconstitutional, protested them, and asked other States to join the protest and take whatever measures needed to be taken to protect The States, The People, and The Constitution.

Now! *Note Well*: Randy Barnett, *law professor*, and other deniers *crow* that the Virginia and Kentucky Resolutions prove there is no "literal power" of nullification in the States.

But Barnett should know better because he is a lawyer. *Every litigation attorney knows this*: At a motion hearing before the judge, opposing counsel whips out a court opinion which he cites as authority for a legal point. He gives the judge a highlighted copy and gives you (opposing counsel) an un-highlighted copy. While he is making his argument to the judge, you must listen to what he is saying, and at the same time, read the opinion and develop an argument which "distinguishes" the opinion opposing counsel is using from the case at bar. When opposing counsel finishes, the judge looks at you and says, "And how do you respond?" **You must be ready with your argument *right then*.**

Are we to believe that Randy Barnett, *law professor*, sitting in his ivory tower and under no pressure, is unable to distinguish between situations where a State does have a "literal power" to nullify *(by direct disobedience)* an unconstitutional act of the federal government [**when it orders The State or The People to do -or not do – something**]; and when The State does not have a "literal power" to *directly disobey* the act [**because, as with the alien & sedition acts, it does not dictate something The States or The People can refuse to obey**], and so they can only thwart, impede & obstruct the unconstitutional act?

False Assertion 3:

That the supreme Court is the final authority on what is constitutional and what is not; and The States and The People must submit to *whatever* the supreme Court says.

The federal government has become a tyranny which acts without constitutional authority.

This came about because we were lured away from The Founding Principle that the purpose of government is to secure the Rights *God* gave us; and were seduced into believing government should provide for our needs and protect us from the challenges of Life.

Progressives of the early 1900s [9] transformed the federal government ***into*** the Frankensteinian monster it is today. They imposed the regulatory welfare state where the federal government regulates business and commerce, natural resources, human resources, and benefits some people [e.g., welfare parasites, labor unions & obama donors] at the expense of others.

The Progressives claimed the power to determine what is in the "public interest" and have the federal government implement *their* notions of what advances the "public interest".

Under the Progressives, the federal government was no longer limited by the enumerated powers delegated in the Constitution; but would follow the "will of the people" *as expressed by their representatives in the federal government*. In other words, the Progressives gave the federal government a blank check to fill out anyway they want. People in the federal government now claim power to do *whatever they want to us*.

The federal government imposed by the Progressives is **evil**:

♦ In order to provide benefits to some; the federal government violates the **God-given property rights** of others. The federal government robs Peter to pay Paul.

♦ In order to protect us from the challenges of life (including made up problems such as "global warming" and "lack of medical insurance"), the federal government violates everyone's **God-given rights to Liberty**.

And thus today, the federal government:

♦ Usurps powers not delegated to it in the Constitution. Most of what it does is *unconstitutional* as outside the enumerated powers delegated in our Constitution.

♦ Has become an instrument of oppression, injustice, and immorality.

♦ Has taken away most of our **God given rights**, and is now conniving to take away our **God given right to self-defense**.

Now you know **how the federal government was transformed *from* being the securer of our God given rights *to* a tyranny which oppresses some of the people for the benefit of others; and takes everyone's Liberty away – except for those in the ruling class.**

So! What do We do? What ***can*** We do?

The nullification deniers insist We must obey whatever Congress and the President dictate unless five (5) judges on the supreme Court say We don't have to. They say the supreme Court is the final authority on what is constitutional and what is not.

<u>But think: Who created the federal government?</u>

We did! It is our "creature". **Is the "creature" to dictate to the "creator"?**

The nullification deniers say, "Yes!" They say that:

♦ Every law made by Congress [**the Legislative Branch of the federal government**] is "supreme"; and

♦ Every executive order issued by the President [**the Executive Branch of the federal government**] is binding; and

♦ The States and The People must obey, unless and until five (5) judges on the supreme Court [**the Judicial Branch of the federal government**] say the law or executive order is unconstitutional.

In other words, *only* the federal government may question the federal government; and NO ONE may question the supreme Court!

Under their vision, the federal government WE created with the Constitution is the exclusive and final judge of the extent of the powers WE delegated to it; and the opinion of five (5) judges, not the Constitution, is the sole measure of its powers.

Jarrett Stepman regurgitates the statist lie that "the ultimate decision maker in terms of America's political system is the Supreme Court."

Randy Barnett, *law professor*, chants the statist refrain, "…What has the Supreme Court said and meant? and … Are there now five justices to sustain the claim?".

Barnett selects two paragraphs from Madison's Report on the Virginia Resolutions (1799-1800) (which address the alien & sedition acts), and claims they show Madison "expressly denies, or at minimum equivocates about whether, there is a literal power of nullification in states".

Well, ***We*** saw above that States couldn't ***directly*** **disobey** the alien & sedition acts because they purported to grant dictatorial powers *to the President*; and did not require The States or The People to do – or not do – something.

And the two paragraphs Barnett claims are so "telling" as to The States' lack of "literal power" to nullify anything, and as to the ultimate authority of the Judicial Branch, appear under Madison's discussion of the last two Resolutions (the 7th & 8th) where Virginia had asked other States to join them in taking measures to protect The States, The People and The Constitution from the federal government. In his discussion of the 7th

Resolution, Madison merely responded to the objection that only federal judges may declare the meaning of the Constitution: **Of course Citizens & States may declare acts of the federal government unconstitutional! When they do so, they are not acting as judges – they are acting as Citizens and as Sovereign States to take those measures which need to be taken to protect themselves from unconstitutional acts of the federal government**.

Now! ***Note Well*****:** Madison **says**, *in the same Report Barnett cites,* that **it is "a plain principle, founded in common sense"** that **The States are the final authority on whether the federal government has violated our Constitution!** Under his discussion of the 3rd Resolution, Madison says:

"It appears to your committee to be *a plain principle, founded in common sense*, illustrated by common practice, and essential to the nature of compacts; that **where resort can be had to no tribunal superior to the authority of the parties, the parties themselves must be the rightful judges in the last resort, whether the bargain made, has been pursued or violated.** The Constitution of the United States was formed by the sanction of the States, given by each in its sovereign capacity. It adds to the stability and dignity, as well as to the authority of the Constitution, that it rests on this legitimate and solid foundation. **The States then being the parties to the constitutional compact, and in their sovereign capacity, it follows of necessity, that there can be no tribunal above their authority, to decide in the last resort, whether the compact made by them be violated; and consequently that as the parties to it, they must themselves decide in the last resort,** such questions as may be of sufficient magnitude to require their interposition." [emphasis mine]

A bit further down, Madison explains that if, when the federal government usurps power, the States cannot act so as to stop the usurpation, and thereby preserve the Constitution as well as the safety of The States; *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:

"…**If the deliberate exercise, of dangerous power, palpably withheld by the Constitution, could not justify the parties to it, in interposing even so far as to arrest the progress of the evil**, and *thereby to preserve the Constitution itself as well as to provide for the safety of the parties to it*; **there would be an end to all relief from usurped power, and a direct subversion of the rights specified or recognized under all the State constitutions,** as well as a plain denial of the fundamental principle on which our independence itself was declared." [emphasis mine]

A bit further down, Madison answers the objection "that the judicial authority is to be regarded as the sole expositor of the Constitution, in the last resort".

Madison explains that when the federal government acts outside the Constitution by usurping powers, and when the Constitution affords no remedy to that usurpation; then **the Sovereign States who are the Parties to the Constitution must likewise step outside the Constitution and appeal to that original natural right of self-defense**.

Madison also says that the Judicial Branch is as likely to usurp as are the other two Branches. Thus, *The Sovereign States, as The Parties to the Constitution, have as much right to judge the usurpations of the Judicial Branch as they do the Legislative and Executive Branches***:**

"…**the judicial department, also, may exercise or sanction dangerous powers beyond the grant of the Constitution; and, consequently, that the ultimate right of the parties to the Constitution, to judge whether the compact has been dangerously violated, must extend to violations by one delegated authority as well as by another — by the judiciary as well as by the executive, or the legislature.**"

Madison goes on to say that all three Branches of the federal government obtain their delegated powers from the Constitution; and they may not annul the authority of their Creator. And if the Judicial Branch connives with other Branches in usurping powers, our Constitution will be destroyed. So the Judicial Branch does **not** have final say as

"…to the rights of the parties to the constitutional compact, from which the judicial as well as the other department hold their delegated trusts. **On any other hypothesis, the delegation of judicial power, would annul the authority delegating it; [10] and the concurrence of this department with the others in usurped powers, might subvert forever**, and beyond the possible reach of any rightful remedy, **the very Constitution, which all were instituted to preserve**."

Shame on you nullification deniers who misrepresent what Madison said, or ignorantly insist that Madison said the Judicial Branch is the Final Authority!

False Assertion 4:

That James Madison opposed Nullification by States of Unconstitutional Acts of the Federal Government.

Matthew Spalding (Heritage Foundation) and David Barton (Wallbuilders) cite South Carolina's Nullification Crisis of 1832 as "proof" that James Madison "vehemently opposed" nullification.

What Spalding and Barton say is *not true*. Did they read what Madison wrote on S. Carolina's doctrine of nullification? Are they so lacking in critical thinking skills that they can't make the distinction between the nullification doctrine Madison (and Jefferson & Hamilton) embraced, and the *peculiar* doctrine of nullification advanced by S. Carolina?

We saw in Madison's Report on the Virginia Resolutions (1799-1800) that in a proper case, "**interposing even so far as to arrest the progress of the evil**" is essential "**to preserve the Constitution itself as well as to provide for the safety of the parties to it".**

And we saw above that the condition which must be present before nullification is *proper*, is that the act of the federal government must be **unconstitutional.**

Now, let's look at The Tariff Act of 1828 and the S. Carolina Nullification Crisis:

The South was agricultural. During the 1820's, the Southern States bought manufactured goods from England. England bought cotton produced by the Southern States.

However, "infant industries" in the Northeast were producing some of the same manufactured goods as England; but they were more expensive than the English imports. So they couldn't compete with the cheaper imports.

So! In 1828, Congress imposed a high tariff on the English imports. The Southern States called this the "tariff of abominations", because the tariff made the English goods too expensive to buy; and since the Southern States stopped buying English goods, the English stopped buying Southern cotton. The Southern States had to pay more for manufactured goods, they lost the major buyer of their cotton; and their economy was weakened.

Now! *Note Well*: Our Constitution delegates specific authority to Congress to impose tariffs on imports, *and the tariff must be the same in each State* (Art. I, Sec. 8, cl. 1).

Thus, the Tariff Act of 1828 was constitutional! [11]

So! Can you, dear Reader, see something which Matthew Spalding, *Ph.D.*, and David Barton are unable to see? **South Carolina wanted to nullify a constitutional law!** ***Of course*, Madison opposed S. Carolina's peculiar doctrine of nullification!** Madison (and Jefferson & Hamilton) always said the act nullified must be unconstitutional!

In his Notes on Nullification (1834), [12] Madison addressed S. Carolina's peculiar doctrine. He said that in **the Report of a special committee of the House of Representatives of South Carolina in 1828**, a doctrine of nullification was set forth which asserted that:

♦ A State has a "**constitutional right**" to nullify ***any*** federal law; and

♦ The nullification is presumed valid, and is to remain in force, unless ¾ of the States, in a Convention, say the nullification isn't valid.

What Madison opposed was **the *particular* doctrine of nullification set forth by S. Carolina; and what Madison actually said about the S. Carolina doctrine is this:**

♦ The federal government has delegated authority to impose import tariffs;

♦ The Constitution requires that all import tariffs be uniform throughout the United States;

♦ States can't nullify tariffs which are 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;

♦ Nullification is not a "*constitutional right*";

And near the end of his Notes, Madison quoted *with approval* Thomas Jefferson's 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, (casus non foederis,) 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…**" [boldface 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 is saying that:

♦ S. Carolina couldn't nullify the Tariff Act of 1828 because the Act was constitutional.

♦ Nullification is a "natural right"- it is not a "constitutional" right. *Rights don't come from the Constitution*.

♦ **All agree** that when the federal government acts outside of the Constitution, nullification by the States is the proper remedy.

Application Today

When WE THE PEOPLE ratified our Constitution, and thereby ***created*** the federal government, WE did not delegate to ***our "creature"*** power to control our medical care, restrict guns and ammunition, dictate what is done in the public schools, dictate how we use our lands, and all the thousands of things they do WE never gave them authority in our Constitution to do.

Accordingly, each State has **a natural right** to nullify these unconstitutional dictates within its borders. These dictates are outside the compact **The Sovereign States** made with each other –WE never gave our "***creature***" power over these objects.

As Jefferson and Madison said, without Nullification, The States and The People would be under the absolute and unlimited control of the federal government.

And *that*, dear Reader, is where these nullification deniers, with their *false* assertions and *shameful* misrepresentations, would put you.

To sum this up:

♦ Nullification is **a natural right of self-defense**.

♦ Rights don't come from the Constitution. Like all Rights, the right of self-defense comes **from God** (The Declaration of Independence, 2nd para).

♦ Nullification is **a reserved power** within the meaning of the 10th Amendment. The Constitution doesn't prohibit States from nullifying, and We reserved the power to do it.

♦ God **requires us to disobey** civil authorities when they violate God's Law. That's why the 2nd para of the Declaration of Independence says we have the **duty** to overthrow tyrannical government. See: The Biblical Foundation of our Constitution.

♦ **Nullification is required by Oath of Office: Article VI, cl. 3** requires all State officers and judges to "support" the federal Constitution. Therefore, when the federal government violates the Constitution, the States *must* smack them down.

Conclusion

Our Founders and Framers were a different People than we of today. They were *manly men* who knew statecraft & political philosophy and could think. But our "experts" of today have been indoctrinated with statism and *can't think*. They lie, or they just ignorantly repeat what they hear without checking it out to see if what they are repeating is true.

So WE need to *man up*, throw off the indoctrination and the phony "experts", learn our Founding Documents including The Federalist Papers, and stop repeating the lies we are told. Trust no one. And repudiate **cowardice** as the proper response to the evil which is overtaking our Land. ***Man up, People!*** PH

Post script added October 2, 2013:

Something is rotten in the Cato Institute: Robert A. Levy, Chairman of the Cato Institute, recently wrote an article published in the New York Times, "The Limits of Nullification", where Levy regurgitates the same fabrication Randy Barnett told to the effect that Madison said in his Report of 1800, that all the States can do is

express their opinion that a federal law is unconstitutional. The kindest thing one can say about Levy's article is that it is "childishly ignorant".

Endnotes:

[1] Thomas Jefferson, The Kentucky Resolutions of 1798, 8th Resolution.

[2] James Madison, Notes on Nullification (1834). The quote is near the end. Use "find" function.

[3] The deniers seem unaware that The States retained *sovereignty* in all matters not *exclusively* delegated to the federal government. Alexander Hamilton says in Federalist No. 32 (2nd para):

"An entire consolidation of the States into one complete national sovereignty would imply an entire subordination of the parts; and whatever powers might remain in them, would be altogether dependent on the general will. But as the plan of the convention [the Constitution] aims only at a partial union or consolidation, **the State governments would clearly retain all the rights of sovereignty which they before had, and which were not … EXCLUSIVELY delegated to the United States**…" [caps are Hamilton's; boldface mine]

Federalist No. 62 (5th para):

"…the equal vote allowed to each State [each State gets two U.S. Senators] is …a constitutional recognition of **the portion of sovereignty remaining in the individual States and an instrument for preserving that residuary sovereignty**… [in order to guard] … against an improper consolidation of the States into one simple republic." (Madison or Hamilton) [boldface mine]

See also Federalist No. 39 (Madison) (6th para, et seq.)

In Madison's Report on The Virginia Resolutions (1799-1800), he several times refers, in his discussion of the 3rd Resolution, to the States acting "**in their sovereign capacity**" when, as "the parties to the constitutional compact" ***they decide*** "in the last resort, whether the compact made by them be violated":

"…The states, then, being the parties to the constitutional compact, and **in their sovereign capacity**, it follows of necessity that there can be no tribunal, above their authority, to decide, in the last resort, whether the compact made by them be violated; and consequently, that, as the parties to it, they must themselves decide, in the last resort, such questions as may be of sufficient magnitude to require their interposition…." [boldface mine]

[4] Contrary to the misconstructions long and unlawfully applied by the federal government, the federal Constitution is one of ***enumerated powers*** only. E.g.:

"…the proposed government cannot be deemed a national one; **since its jurisdiction extends to certain enumerated objects only**, and leaves to the several States a residuary and inviolable **sovereignty** over all other objects…" (Federalist No. 39, 3rd para from end) (Madison) [boldface mine]

"…the general [federal] government is not to be charged with the whole power of making and administering laws. **Its jurisdiction is limited to certain enumerated objects.**.." (Federalist No. 14, 8th para) (Madison) [boldface mine]

"…It merits particular attention … that the laws of the Confederacy [Congress], as to the ENUMERATED and LEGITIMATE objects of its jurisdiction, will become the SUPREME LAW of the land…Thus the legislatures, courts, and magistrates, of the respective members [the States], will be incorporated into the operations of the

national government AS FAR AS ITS JUST AND CONSTITUTIONAL AUTHORITY EXTENDS…" [caps are Hamilton's] (Federalist No. 27, last para)

[5] Our Constitution authorizes the federal government to secure our God-given rights in the ways appropriate for the national government of a Federation. The States secure them in other ways.

[6] The Kentucky Resolutions of 1798,8th Resolution.

[7] Madison's Notes on Nullification (1834). The quote is near the end. Use "find" function.

[8] This explains the *limited* "exclusive jurisdiction" of the federal government, and the areas where the federal government and The States have "concurrent jurisdiction".

[9] Teddy Roosevelt ran on the Progressive Platform of 1912. Both major parties have been dominated by progressives ever since.

[10] Hamilton says, respecting the Legislative Branch (Federalist No. 78, 10th para):

"…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. To deny this, would be to affirm,** that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; **that men acting by virtue of powers, may do not only what their powers do not authorize, but what they forbid**." [emphasis mine]

[11] The Tariff Act of 1828 was constitutional; but benefited the Northeast at the expense of the South. **It thus violated our Founding Principle that governments exist to secure the rights *God* gave us.** ***God*** never gave us the right to be free of competition in business! Since the tariff was constitutional, but unjust, the remedy was to get Congress to fix it.

[12] Madison's Notes on Nullification (1834) are long & rambling. Copy to Word, enlarge the type, & color-code to sort out the strands of arguments. Keep in mind that what Madison is addressing is S. Carolina's peculiar doctrine where they wanted to nullify *a constitutional tariff!* PH

January 31, 2013; revised October 23, 2013

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27. I guess I didn't express myself very clearly. Educating ourselves on the objective meaning of the Constitution.

    Isn't picking up a text book and studying it for application a form of education? Am I not educating myself on a particular subject? Did not the framers do a similar thing when they came up with a Constitutional Republic?

    At any rate, my point is that a population ignorant of the objective meaning of the Constitution is more likely to elect those who would support a corrupt government which always ends badly.

    The main reason that attracted me to your blog was the fact that you made sense. Leaning about our form of government from anyone else was like studying psychology, worthless, IMHO.

    Like

    Comment by Peabody | May 5, 2013 | Reply

28. South Carolina House passes bill making 'Obamacare' implementation a crime

    The state's Freedom of Health Care Protection Act intends to "prohibit certain individuals from enforcing or attempting to enforce such unconstitutional laws; and to establish criminal penalties and civil liability for violating this article."

    The measure permits the state Attorney General, with reasonable cause, "to restrain by temporary restraining order, temporary injunction, or permanent injunction" any person who is believed to be causing harm to any person or business with the implementation of Obamacare.

    http://www.washingtontimes.com/news/2013/may/2/south-carolina-house-passes-bill-making-obamacare-/

    Like

    Comment by Peabody | May 4, 2013 | Reply

29. I can't find the words adequate enough to thank you for the exquisite article you have written on nullification and the depth of research you undertook. I wrote briefly on the subject about a year ago but not nearly as thoroughly as you have. It is always satisfying to find a comrade in arms and see that some states are actually taking action. I will be sure to link this article to my friends.

    Like

    Comment by Tony Rubolotta | May 3, 2013 | Reply

- Thank you, Tony!

  That is the paper I always wanted to write – and it is the one I put my whole heart into.

  But I am bewildered as to how the establishment "conservatives" either lie about nullification, or write about it when they haven't bothered to read the original source writings of our Framers on the subject.

  If you would like to publish it in your paper, feel free to do so. It needs to get out there and be read more.

  Thank you again. I worked on it for a very long time.

  Like

   *Comment by Publius Huldah | May 4, 2013 | Reply*

  - I do have a question for you apart from this topic to which I honestly don't know the answer but question the law. Does the Constitution permit the House of Representatives to limit the number of representatives to a fixed number? I have contended, perhaps wrongly that it does not and that the House should be much larger. I think that would destroy the artificial aristocracy and put representatives much closer to their constituents, but I'm very uncertain about being on solid Constitutional ground.

    Like

     *Comment by Tony Rubolotta | May 4, 2013 | Reply*

    - Interesting question!

      1. **Article I, Sec. 2, clause 3** is the applicable constitutional provision. That clause provides for the Census – from which the apportionment of Representatives [and direct taxes assessed on the States] will be computed. It also caps the number of Representatives at no more than ONE Representative for 30,000. people.

      2. The key Federalist Papers on this issue are No. 55 http://avalon.law.yale.edu/18th_century/fed55.asp and No. 58 (**next to last para**) http://www.foundingfathers.info/federalistpapers/fed58.htm

      The gist of what they say is this: That if the Representatives are too few – that is not a good thing. But if the Representatives are too many, that is also a bad thing – b/c the larger the number of Representatives [after the optimal number], the more easily swayed by emotion and passion the Representatives would be. Also, the larger the number, the greater the likelihood that weak-minded people would be elected. [We have some colossally STUPID people in the House.]

      These Papers warn us not to think that the greater the number, the better – b/c a large body is easily manipulated by demagogues.

      Also, they point out that the influence of the larger States increases the more numerous the number of Representatives.

So our Framers would NOT agree that the House should be much larger.

Congress has the lawful authority to fix by law the number of Representatives (subject to the cap at Art. I, Sec. 2, cl. 3). Congress fixed the total number of Representatives at 435 during the 1920s or so.

Congress could LAWFULLY increase the number of Representatives above the current cap of 435 (up to no more than 1 for every 30,000); but our Framers say that would NOT be a good idea. The Representatives in the House are controlled by their party leadership. It's all about getting campaign funds and committee memberships and chairmanships.

Like

 *Comment by Publius Huldah | May 5, 2013 | Reply*

- Thank you for the references to the Federalist Papers. While I have read those my memory is not quite as sharp as it once was. I understand the point they are making but this may be one case where I dispute the wisdom of our Founders. What I am reading is more Goldilocks than Locke. But nonetheless, my questions remains; by what authority does the House fix its number? Article I, Sec. 2, clause 3, as my limited understanding permits me, merely fixes the census as the basis for adjustment, but the "not more than" one per 30,000 rule sets the UPPER, not lower, threshold of representation. I see no authority to change that ratio. As a state I can't send more than one representative per 30,000 to the House, but I could voluntarily send less as permitted by the Constitution. Why would I? The balance of big state versus small state interests was to be in the Senate. Yes, I know the 17th Amendment crippled that intent but that is an argument against the 17th Amendment, not for a high ratio of representation in the House.

  Having read our Founder's thoughts (thanks to the reference you provided), I have to go by observation since what they expressed was clearly an opinion without substantive evidence supporting those contentions. Is there any doubt that with one representative for every 700,000 people, the House operates more as a two party oligarchy than the "peoples house?" My voice as one of 700,000 is certainly less consequential than one in 30,000. If, as the Federalist Papers warn that big numbers are opportunities for demagogues, than certainly the opportunities arise when dealing with 700,000 more so than in the House itself. With an audience of 700,000 it takes more effort (translation: money) to reach the electorate than with 30,000, favoring special interests above any shoe leather or writing I could ever do. I would further suggest this high ratio favors two parties whereas a low ratio would allow smaller parties to arise, perhaps even a party of Constitutional Originalists. They may have a small voice in a large House, but that is certainly better than no voice at all.

  I have written about this extensively but my concern was always being on solid Constitutional ground despite any arguments I could make for a

larger House. Unfortunately, I'm still not sure but I certainly appreciate your opinion.

Like

 *Comment by Tony Rubolotta | May 5, 2013*

- **The HOUSE has no authority to act alone in this.**

  CONGRESS (the House & the Senate) has authority to determine by Law the number of Representatives (subject to the Constitutional limit of no more than one Representative per 30,000). The source of that Authority is Art. I, Sec. 2, cl. 3, and the "necessary & proper" clause at Art. I, Sec. 8, last clause.

  Art. I, Sec. 2, cl. 3 does NOT require that there be one representative for every 30,000 people. That clause merely says there will be no more than one representative for every 30,000. people. Read No. 55 carefully.

  Federalist Papers No. 55 & 58 make brief mention of the ancient republics and democracies; but they presuppose that the reader is familiar with their earlier discussions of the evils of democracy. The larger the group, the more susceptible it is to demagogues and to mob rule. It is true that in order to fully understand one Paper, one must understand them all – b/c each one must be read in the light cast by the other.

  If the number of representatives were increased proportionately to the population, the largest States like California & New York would flood Congress with Representatives! Both papers discuss the advantage which the larger States would gain in the House by increasing the number of Representatives.

  I NEVER offer my opinions – I don't have any when it comes to matters of polity. B/c polity deals with issues of Fact, and there is little room for subjective opinion.

  So I always set forth what *our Framers* said. They were wiser than I. When Hamilton & Madison & Jefferson say something, I defer to them.

  And do not forget that the State political parties determine redistricting. You may live in an enclave of constitutionalists; but if your enclave becomes a threat to either party, they will redistrict you to split your enclave up so as to neutralize the threat.

  Like

 *Comment by Publius Huldah | May 5, 2013*

- I can buy the "necessary and proper" clause. From here on I'll base my arguments for a larger House on that.

California and New York already flood the House but would under any formulation since their ratio of representation would be no different than any other state. That is just simple mathematics, it is supposed to work that way and I have no objection to that.

To the Founder's point, which is more susceptible to manipulation by a demagogue, a district of 700,00 (not all voters of course) or a House of say 5,000, each responsible to a smaller number of voters? Under the Founder's theory, districts of 700,000 will elect nothing but demagogues leaving us to rely on which demagogue in the House can out demagogue all the others.

I would also ask is it "necessary and proper" to have a House capable of passing massive amounts of unread legislation? That certainly is efficient and look where it has gotten us.

You have convinced me the House has the power to adjust its size (with the Senate and President concurring). Now, what is that "optimal" number?

Like

 *Comment by Tony Rubolotta | May 5, 2013*

- I explain the "necessary & proper" clause here: https://publiushuldah.wordpress.com/2009/09/08/congress-enumerated-powers/ see para 10.

  Our Framers discuss "optimal number" in Federalist No. 55 & 58! The real issue is whether we of today have a reasonable basis for thinking we know better than our Framers. I know I don't.

  No, the House doesn't have the authority to adjust its size. CONGRESS does (subject to the constitutional limitation at Art. I, Sec. 2, cl. 3)! It is important to be clear on this.

  Like

   *Comment by Publius Huldah | May 5, 2013*

- Let's not forget that the anti-Federalist were Founders too and had different opinions. I grant that our Founders were wise but not infallible and had differences among themselves. As to an "optimal number", they allude to it but it is never stated and no attempt is made to postulate how we may arrive at that number. They do toss around numbers based on how they expected the population may grow, but only several decades to the future. It is really up to us to determine a rational basis for that number and an act of congress in the 1920s does not set it in stone.

  Finally, my apologies. I did not mean to hijack this thread with my Constitutional question, which you have answered to my satisfaction.

Like

Comment by Tony Rubolotta | May 5, 2013

- The Constitution which was ratified has an objective meaning. **That meaning** is shown by The Federalist Papers, Madison's Journal of the federal convention of 1787, an old American dictionary, Thomas Jefferson's writings, etc.

  We either have THAT Constitution – the original intent – or we have a "living, breathing, evolving" Constitution which means whatever 5 judges on the supreme Court say it means.

  Right, The Federalist Papers don't tell us **how many** representatives we should have as our population grows. But they set forth timeless PRINCIPLES to guide us.

  Like

  Comment by Publius Huldah | May 5, 2013

- The issue I raised concerning the number of representatives is not one of understanding the Constitution or the Founder's intent. We don't get off the hook that easily on this one. They best advice they could offer on the number of representatives was not too many, not too few, but just right, hence my reference to a Goldilocks solution. Nor did our Founders have the experience of dealing with the problem of an oligarchic legislative body during their time. What they warned would happen, has happened. This is not a matter of a living constitution, which I reject, but of following their advice to solve the problem ourselves. So the problem of determining this "optimal number" remains and is probably worthy of a separate lengthy analysis and discussion on its own merits.

  Like

  Comment by Tony Rubolotta | May 5, 2013

- Seems to me that the optimal number of representatives in the House would be a majority of sane, rational persons who understood and could apply the principles of our Constitution, Declaration of Independence, and the Federalist Papers. And that, my friends, places the burden of making that happen on We the People.

  That can only happen if We the People get very busy educating ourselves and each other in a hurry. It should be most obvious, to the most casual of observers, to see where this country is going. It will be difficult enough to turn it around from where we are, but impossible when it hits rock bottom.

  Like

  Comment by Peabody | May 5, 2013

- Educating ourselves on …… what?

  We either look *outside ourselves* and learn **the objective meaning** of the Constitution (as shown primarily by The Federalist Papers); or,

  We continue our course of the last 100 years of looking into our own precious selves and going with that (subjective interpretation). And of course, when THIS is done, those with the power get to decide – i.e., 5 judges on the supreme Court decide. YOUR opinion won't be considered. Only the opinion of The Five counts.

  That is why I say we must return to the original intent – the objective meaning. B/c we can all ascertain THAT meaning if we are willing to look outside our precious selves to the objective standard furnished by The Federalist Papers.

  Like

   *Comment by Publius Huldah | May 5, 2013*

30. […] James Madison Rebukes Nullification Deniers ~Publius Huldah […]

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     *Pingback by NC Stands for Religious Liberty – Press Lies, Belittles – Nothing New | SubConch | April 17, 2013 | Reply*

31. Could you address the argument that the right to nullification was rescinded after the civil war?

    Like

     *Comment by RS | March 26, 2013 | Reply*

    - Well, RS, let me ask you:

      In view of what our Framers said about nullification (which I explained in the above paper), can you explain to me just how the War for Southern Secession (or the "War Between the States") changed or repealed the **PRINCIPLES** OF CONSTITUTIONAL GOVERNMENT our Framers embraced and wrote about and which I quoted in the paper?

      I am asked this question a lot! But no one can tell me how & why the War for Southern Secession changed what our Framers said.

      Like

       *Comment by Publius Huldah | March 26, 2013 | Reply*

      - No I cannot tell you that. That is why I am asking. I don't believe it did, nor do I believe the gov't has the power to do that. But, It is apparently believed by many that it was done by law and that the change is constitutional and such. So I thought it might be worth addressing since many people do believe that it was done and it was right. Just saying

what you said in your article will not stop the belief that many have. Some even think it was written into the constitution.

I am asking because I have been approached with that argument and gave the same information you wrote above. And I answer exactly like you did to me. So as you said above no one can give you an answer. But no one can give them an answer either. Just saying what you said does not do away with the civil war argument. They see the arguments as distinct and separate from each other. So until we are able to give them an answer it does not matter that they cannot give them an answer. Something to think about.

Like

 *Comment by RS | March 26, 2013 | Reply*

- You are right in what you say.

  The South's losing the War for Southern Secession has nothing to do with whether States have a "natural right" to nullify unconstitutional acts of the federal government! As I have proved in the above paper, Hamilton, Jefferson, and Madison said the States had this natural right.

  "Natural rights" are not lost b/c a War is lost. One regroups and lives to fight another day. In one of the quotes I gave from Madison, he says it is a plain principle founded in common sense that the creators have the natural right to judge the acts of their creature. [I paraphrased, but this is the gist.]

  Like

   *Comment by Publius Huldah | March 26, 2013 | Reply*

- RS, I came across this saying attributed to Jefferson Davis, and immediately thought of you:

  …that a question settled by violence would inevitably arise again, though at a different time and in a different form.
  http://confederatelegion.com/Constitution.html

  Like

   *Comment by Publius Huldah | March 30, 2013 | Reply*

32. […] socialist dude! The 10th Amendment clearly states that we CAN nullify unconstitutional federal law! False Assertion 1: That States can't nullify unconstitutional acts of the federal government because the […]

    Like

    Pingback by I Just LOVE My State Rep!! , An Ol' Broad's Ramblings | March 21, 2013 | Reply

33. Reblogged this on Cmblake6's Weblog and commented:
    More from Publius, most excellent article on how to deal with what we face. Should we take it upon ourselves to do so, these are the undeniable reasons and legal justification. Legal. Now there's a funny word. Mao said"power comes from the barrel of a gun". Is it right? No. BUT, it is the hardest fighter that wins. Choose to submit, you lose. You lose, you die. Or you might as well die. What is spoken of in this article is the true legal facts of right and wrong as relates to the Constitution. What we suffer is the government having decided to violate those laws as was spoken of in that video 2 back.We are right, we are following the laws of God and Nature, but the government oppresses us through the power of fear. They are wrong. They are in violation of the law. Yet they rule through fear and dependency. You've seen the voting maps. The districts that voted D are all city districts. The country, where the food comes from, and the oil, vote R. What they don't realize is that the Rs are just as guilty, by and large. Some have held strong, most have swallowed the power spooge and revel in it. We, mostly, vote R because it is SUPPOSED TO BE conservative. The left is counting on taking back the House in 2014, and then the last 2 years of Ovomit's reign will be in their total control. IF that happens we are …. *****
    ……beyond recovery sans v2.0.

    Like

     *Comment by cmblake6 | March 6, 2013 | Reply*

34. […] Continue reading from a Constitutional lawyer's blog […]

    Like

     *Pingback by State Legislators Ask About Nullification of Federal Laws- Who Decides | How A Conservative Thinks | March 5, 2013 | Reply*

35. […] Read More… […]

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    Pingback by James Madison Rebukes Nullification Deniers | Veteran Patriot | March 5, 2013 | Reply

36. Reblogged this on The American Resolution Newsblog.

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     *Comment by TheAverageJoe | February 28, 2013 | Reply*

37. […] James Madison Rebukes Nullification Deniers […]

    Like

     *Pingback by UPDATED: Tennessee: Federal Gun Law Nullification Debated, Delayed | How A Conservative Thinks | February 27, 2013 | Reply*

38. There are a couple of significant examples in the offing, not mentioned. 1) Arizona in enforcing Fed law regarding illegal aliens, despite a frivolous lawsuit filed by Obama to deny this need. 2) A small contingent of states contemplating secession from the union. (I heard of one interesting variation on this theme…all of us should seceed from California (I might add DC, and northern Illinois (Chicago)…and perhaps a few others.

Like

Comment by Edgar A Martin | February 13, 2013 | Reply

- Secession is certainly a retained right of the Sovereign States.

  BUT we can't fix our Country until we return to **God** and our Founding Principles.

  Calif., the DC, and Illinois may be lost causes. I say move out if you are there, and let those who stay have what they asked for.

  Like

  Comment by Publius Huldah | February 13, 2013 | Reply

39. […] how the same basic template was used in order to bring about the 21st amendment. Can the nullification deniers continue to bury their heads in the sand when nullification has played a role in not one, but two […]

    Like

    Pingback by Yet Another Nullification Success Story – Tenth Amendment Center | February 11, 2013 | Reply

40. […] how the same basic template was used in order to bring about the 21st amendment. Can the nullification deniers continue to bury their heads in the sand when nullification has played a role in not one, but two […]

    Like

    Pingback by Yet Another Nullification Success Story – Pennsylvania Tenth Amendment Center | February 10, 2013 | Reply

41. Thank you for sharing your extraordinary and research on the Constitution, and nullification in particular. Our group, Sumner United for Responsible Government, looks forward to hearing from you at our April 4th meeting! I hope you don't mind I shared this post on our website, http://www.sumnerunited.org, and have added an RSS feed of your blogs to our page.

    Like

    Comment by Eric Stamper | February 8, 2013 | Reply

    - I'm looking forward to it, Eric.

      Ask your People to "prepare" for my presentation by following the instructions I gave to Homeland Security on my home page, right column!

      If we can just get People to understand that in Our Constitution, we delegated only a FEW "enumerated powers" to each branch of the federal government, we can win this.

      Like

 *Comment by Publius Huldah | February 8, 2013 | Reply*

- The principle of enumerated powers is SOOO simple. It would be great if we could just get our people and especially our elected representatives at all levels to understand it.

  Like

   *Comment by Eric Stamper | February 8, 2013 | Reply*

42. So from your article, and especially from your replies to comments, it becomes clear that the 'stare decisis' and 'res judicata' things (I am not law-schooled) get all jumbled up and politicized. Is this why, when we hail a great victory such as Heller or MacDonald, the statists smoothly go on putting up infringements in DC and Chicago because they understand better than we do that those were just individual cases? It is a sorry state when we have to build up case law over decades and centuries to affirm the Second Amendment. Conversely, the liberals are smart enough to know that if they claim Roe v.Wade settled everything, our side will nod their assent. If people would take a look at the 3 separate *but equal* branches of government doctrine, maybe it would dawn on them that the Supremes aren't supreme.

    Like

     *Comment by bobmontgomery | February 2, 2013 | Reply*

    - For strategic reasons, WE MUST NEVER, NEVER, NEVER, NEVER, NEVER, rely on SCOTUS opinions.

      B/c it is just a matter time before they are overturned. DC v. Heller and the MacDonald case out of Chicago will be reversed so fast your head will spin if Scalia, Thomas, Alito, or Kennedy die while zero is president.

      Do you see?

      WE MUST GO BY THE CONSTITUTION and the Federalist papers.

      Ask any gun control statist to show you where our Constitution permits the federal government to restrict our guns & ammo. He can't, b/c gun control is not a power which we delegated to the federal government. And ask the statist to explain the 2nd half of Federalist Paper No. 46.

      Be sure to read my latest post on "Daily Commentary" where I explain why we must not rely on the 2nd Amdt.

      And do click on the link to the **Burn Barrel** post! His post is GREAT!

      Like

       *Comment by Publius Huldah | February 2, 2013 | Reply*

    - I'm attempting to reply to bob's post, but I find the reply format somewhat confusing. Your point is well taken, and I believe it emphasizes a condition that exists within the Constitution itself. There is no recourse for attempts to usurp powers.

The risk lies on the shoulders of the individual or the State that attempts to nullify these acts, but no risk is evident in the legislation of unconstitutional law. In other words, nullification, like any other right, carries with it risk and possible recourse for exercise of rights under the current conditions of our law de jure, legal or not, the law of the day appears much as the law of Henry VIIIth, is what I say it is. Law is validated through enforcement rather than by agreement.

Individually I don't recognize the laws or legal basis for those laws, for instance the PPACA which by punitive measure forces an involuntary purchase of insurance. However, my refusal to acknowledge this government as legal is of no consequence in view of a government which by force will rule in spite of my willingness. So I do what I must to survive.

Even as we may find some victory in Heller or MacDonald, we have paid the cost of the theater presentation, and indeed some pay a higher cost than others when such decisions are upheld and they risk prison time. Bradley Manning is a clear example of one who will pay a dear price for nullification of unconstitutionally classified information law/practice. So while the cost to defend our rights is great, the cost to infringe on those rights is marginal. I see no means for a solution to this problem without severely hampering our ability to maintain an amendable Constitution. Without levying a more developed system of punitive action toward those who would illegally legislate against us, we have very little of hope of witnessing a movement in an appropriate direction.

I think the US Constitution is too good for the simple minds of our era, and we are in the process of destroying it.

Like

 *Comment by styersbd | March 2, 2013 | Reply*

- Styersbd,

  Nullification is not a right which arises from the Constitution. Instead, it is that NATURAL RIGHT OF SELF-DEFENSE which pre-exists & pre-dates the Constitution. James Madison is very clear, emphatic & precise on this point.

  When the federal government steps outside of the Constitution by exercising powers not delegated to it; then the States must likewise step outside of the Constitution and revert to that "natural right of self-defense."

  We need to get this burned into our minds. Do study carefully my latest paper, "James Madison Rebukes Nullification Deniers", where I prove by quotes, that Madison, Jefferson & Hamilton all said this.

  I hope to get skilled assistance on improving the technical side of my website. We are amateurs here, and just muddle thru the 'puter stuff.

  Like

   *Comment by Publius Huldah | March 2, 2013 | Reply*

43. […] Publius-Huldah's Blog | James Madison Rebukes Nullification Deniers […]

Like

Pingback by [Saturday Links | What Would The Founders Think?] | February 2, 2013 | Reply

44. Appreciate your making clear that just because an action is extra-constitutional or supra-constitutional doesn't mean it's UNconstitutional. You say that the 1962 abomination SHOULD have been nullified and any gun .grabs now MUST be voided. Agree, but once we make it clear we will retain the means to resist, how do we go back 50 years? Or do we? Do you adhere to the 'long-standing precedent' convention, or even 'precedent' in general? Among the High Information Voters, the notion that a federal law is supreme, or the Supremes are supreme, constitutional or not, may erode if we repeat it often enough in our circles that if it's unconstitutional it doesn't even trump a parking ticket, but are there enough HIV's to overcome the ambulance-chasing upholders of the revenue stream that is the fed. Gov't?

    Like

    Comment by bobmontgomery | February 1, 2013 | Reply

    - I am not sure what you mean!

      Like

      Comment by Publius Huldah | February 1, 2013 | Reply

      - I mean, just because a Supreme Court ruling of 50 years ago has not been overturned, does that set it in stone? Also, since health, education, agriculture, food and drugs, not to mention 'the environment' and social justice, are not mentioned in the Constitution, but are totally federally ingrained into our daily lives, how do we get them out of our lives? Sorry about the 'ambulance chasing' quip. .

        Like

        Comment by bobmontgomery | February 2, 2013 | Reply

        - Now it's clear what you mean – thanks for rephrasing. If you read my papers, you will see that I NEVER cite a federal court opinion as authority. NEVER. Why? B/c they are not supposed to be authoritative. What they are supposed to be is mere decisions in particular cases.

          As Authority, I cite The Federalist Papers, and sometimes other original source works of our Framing Era to prove the original intent of Our Constitution.

          Note also that Art. VI, cl. 1 does not include SCOTUS opinions as part of "the supreme Law of the Land".

          BUT IN LAW SCHOOL, all we read were SCOTUS opinions. I never knew a lawyer who read Our Constitution in law school. I never heard, "Federalist Papers" mentioned in law school. Instead, we are all told – and this has been going on for a very long time and continues to this day – that "the Constitution means what the supreme Court says it means."

That is why Randy Barnett, *law professor*, and all those other nullification deniers, chant the statist refrain, "What has the supreme Court said?".

This is why that idiot U.S. Senator from Utah chants and re-chants the same stale refrain about "stare decisis".

How do we get back to original intent? That depends on the American People. I am finding that a great many of them are incredibly stupid and morally corrupt. Not just the welfare parasites – the moral problem is deeper than that. They are shallow – they prefer to repeat what they hear and so appear "knowing", rather than do the work to actually obtain Knowledge. They are not concerned with the "Truth" of what they say – THEY believe it, and that is enough. The ignorant conceit of many of our people is staggering. I get mass emails from people which contain information which is ignorantly stupid. But when I point it out to the sender of this mass email of disinformation, they typically get insulted. How some ignorant person who has never troubled him/her self to read our Founding Documents can believe that he/she is an expert in all this is beyond my comprehension.

So what is needed is a MORAL REGENERATION of our People. It sure would help if our Pastors would wake up – but it seems that our pastors have become mere CEOs of 501 (c) (3) organizations.

Like

Comment by Publius Huldah | February 2, 2013 | Reply

- Ms. Huldah,
  I believe most of the problem is that most attorneys are indoctrinated in statutory law, and cannot properly or are unwilling to understand common law.
  James Everett……

  Like

  Comment by James Everett | February 2, 2013

- Dear, I assume that your heart is in the right place.

  However, you are relying on some "patriot myths" which are nonsense. **There is as much misinformation about the Constitution in patriot circles as among the hard left progressives**.

  1. You focus, e.g., on "statutory law" vs. "common law"; but (with all due respect), you don't know what you are talking about! In law school, all students do is read SCOTUS opinions, and they are told that SCOTUS decides what The Constitution means. SCOTUS, we are told, is "supreme" over Congress (the purveyor of "statutory law"). SCOTUS doesn't go by "statutory law" – SCOTUS judges go by their own personal likes & dislikes. If 5 (five) ***of them*** want homosexual "marriage", then ***they*** will make it so.

2. Our problem is NOT the democrats, the progressives, zero and his henchmen, or the republican party. THE PROBLEM IS THE IGNORANCE & MORAL CORRUPTION OF THE AMERICAN PEOPLE.

We can't fix that moral corruption by **amending the Constitution** (which 99.999% of the American People are to busy or "important" to read – even though TP people spout off about it as if they knew all about it); by seceding (b/c the People in the States which secede will be as ignorant and corrupt after secession as they were before); or by forming a new party (b/c the people in the new party will be as ignorant and corrupt in the new party as they are in their present party).

One of the worst impediments to fixing our problems is all the IGNORANT RUBBISH which is put out by people who claim to be on our side! THEY KNOW NOTHING, UNDERSTAND NOTHING, yet think they have all the answers. This is a philosophical/moral problem.

With my constant appeals to FIXED & TRANSCENDENT PRINCIPLES, to objective fixed Standards; and my constant attacks on the subjectivism of the ignorant ones who claim to be on our side, I am addressing The Basic Problem. For more on how we got to where we are, read https://publiushuldah.wordpress.com/2011/03/06/how-progressive-education-and-bad-philosophy-corrupted-the-people-undermined-the-constitution-of-the-united-states/

You "know" an awful lot which just ain't so. I urge you to lay it all aside – for a time at least – and open your mind. And if Pride prevents you from doing this …. well, that would be another illustration of why our Land is sinking into tyranny. B/c People value their own *amned egos more than TRUTH.

As a People, we really do despise Truth and disseminate misinformation (b/c of our own moral corruption).

Like

 *Comment by Publius Huldah | February 2, 2013*

45. The Declaration of Indpendence is clear "…that they are endowed by their Creator with certain unalienable Rights.." Our founding fathers know who G__ was and they know how to spell it. They used Creator for a purpose. Our rights come from our Creator.

    Like

     *Comment by theaton | February 1, 2013 | Reply*

46. Wow Thank you ! Got to save this one.

Like

Comment by James Preston | February 1, 2013 | Reply

47. Your vast familiarity with the constitution and the Federalist Papers coupled with your impeccable application of logic are unique and mind Boggling. Thank you for investing so much time and energy into training us in critical thinking and correcting other so-called experts that would lead us astray. I stand in awe of your wisdom and persistence. Thank you.

    Like

    Comment by George Gianopulos | January 31, 2013 | Reply

48. Add a few more to your Nullification deniers.
    Said often enough, it becomes true via agreement.

    Wyoming House votes to block proposed federal firearms regulations
    Published January 31, 2013
    Associated Press

    Faced with the prospect of new federal gun restrictions, the Wyoming House gave initial approval Wednesday to bills that sponsors say would exempt guns in the state from new regulations while possibly taking the fight to criminals who might choose to attack public schools.

    The House voted in favor of a bill that would seek to block the federal government from restricting assault weapons and high-capacity magazines. It amended the bill to specify that federal officials who tried to enforce any ban would be subject to state misdemeanor charges instead of felony charges.
    .
    .
    .
    Rep. Mary Throne, a Democrat and attorney in Cheyenne, said some states have tried such nullification laws in the past. She said such efforts were common in the years before the civil war and then during the civil rights movement, when some segregationist states tried to ignore federal law and practice nullification of federal laws.

    “If we want to make a statement we can do it, but let’s not let’s not pretend that it’s consistent with the Constitution, because it’s not,” Throne said.

    The non-partisan Legislative Service Office has issued a legal analysis of Kroeker’s bill that notes the U.S. Supreme Court recognizes federal laws as the supreme law of the land.
    .
    .
    .
    foxnews.com/politics/2013/01/31/wyoming-house-votes-to-block-proposed-federal-firearms-regulations/

    Like

    Comment by Peabody | January 31, 2013 | Reply

- Well, I hope people in Wyoming will study my paper and go turn on some lights in their State. I smacked down the nullification deniers in my paper – so people in Wyoming can go do the same to the deniers in their State.

  Like

   *Comment by Publius Huldah | January 31, 2013 | Reply*

49. Good job PH.

    I love the way Paine categorized the whole thing…and he did have a way for doing that:

    A constitution is not the act of a government, but of a people constituting a government; and government without a constitution is power without a right. All power exercised over a nation, must have some beginning. It must be either delegated, or assumed. There are not other sources. All delegated power is trust, and all assumed power is usurpation. Time does not alter the nature and quality of either. ~Thomas Paine, Rights of Man [1791-1792]

    So, let us just label things, and their supporters, as they are, and deal with them accordingly.

    Thanks as always.

    God bless

    MK

    Like

     *Comment by mk.svm | January 31, 2013 | Reply*

50. Of course you make perfect sense and are absolutely correct.

    And, also of course, it makes no difference because there isn't a single solitary soul in power who would lift a finger to take away power from the federal gov't, even if that power is usurped.

    And that is plain for anyone to see.

    Like

    Comment by calvin harris | January 31, 2013 | Reply

    - No, some State are nullifying federal acts. People need to take the ammo I have given them and teach other people and explain nullification to their State representatives!

      YOU, and others need to go talk to people, explain nullification to them, and get our States legislatures to nullify these usurpations coming from the federal government.

      Like

       *Comment by Publius Huldah | January 31, 2013 | Reply*