

Can States Rein in the Federal Government?



By Paul Engel

March 14, 2022

- Are the states sovereign or vassals of Washington, D.C.?
- What role do the states and the idea of nullification have in our constitutional republic.
- Could nullification be the best method to restore the republic?

With all of the unconstitutional laws, executive orders, and regulations coming out of Washington, D.C. lately, people often wonder what can be done. An out of control federal government was nothing new in America. At the end of the 18th century, two of our Founding Fathers wrote about keeping the federal government in check. Let's look at how these two men expected the states to rein in the federal government.

People who study the Constitution of the United States readily see that the government in Washington, D.C. is out of control. The Tenth Amendment clearly states:

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.

[U.S. Constitution, Amendment X](#)

It is unfortunate that all three branches of the government of the United States routinely and frequently violate this

amendment without any repercussions. Congress passes laws that exercise powers not delegated to the United States by creating executive agencies to execute those illegal powers. They also issue executive orders that violate the rights protected by the Constitution, making the Tenth Amendment among the most frequently abused clauses of the Constitution. Even the Supreme Court has assumed the power to place their opinions above the supreme law of the land. While researching my book, I found a government website, [A-Z Index of U.S. Government Departments and Agencies](#). While reviewing that list of departments and agencies, I found two very disturbing facts. First, of the over 500 agencies listed, I could not find a power delegated to the United States to justify the existence of 90% of them. Second, the federal government listed all of the fifty states as departments or agencies of the United States. Not only does the federal government claim the power to do what is not authorized by the Constitution, but those in the government appear to believe that the states are vassals of Washington, D.C. This dereliction of duty is nothing new.

In July of 1798, Congress passed the [Alien](#) and [Seditions](#) Acts. In the Alien Act, Congress claimed the power to apprehend and detain as alien enemies any adult man who was a native or citizen of a country the United States was at war with. The Sedition Act claimed that anyone who opposed any measure of the government of the United States or attempted to impede the operation of any law of the United States, could be imprisoned and/or fined. Furthermore, the act claimed that anyone who wrote, printed, or published false, scandalous, or malicious writings against the United States, defamed and brought contempt or disrepute against the Congress or the President. They could be fined and imprisoned. The fact that both of the "laws" of the United States violated multiple clauses of the supreme law of the land apparently didn't bother Congress one bit.

Does this sound familiar? Has not Congress authorized the

permanent detention of aliens merely accused of supporting terrorism? While not calling for imprisonment, the Biden administration did call for social media companies to deplatform anyone who posted what they considered “misinformation”. The City of Washington, D.C., is still holding those who entered the capitol on January 6, 2021, accusing them of disrupting the work of Congress and the House of Representatives. They are holding hearings, claiming those who demonstrated against the 2020 elections were calling for an insurrection.

So how did the states react in 1798? Let’s look at what two of our Founding Fathers did to deal with this conflict.

Virginia Resolutions – Alien and Sedition Acts

Resolved, that the General Assembly of Virginia doth unequivocally express a firm resolution to maintain and defend the constitution of the United States, and the Constitution of this state, against every aggression, either foreign or domestic, and that they will support the government of the United States in all measures, warranted by the former.

Virginia Resolutions

On December 21, 1798, James Madison submitted what became known as the Virginia Resolutions to that state’s House of Delegates. In it he states that Virginia resolves to maintain and defend the Constitution of the United States against every aggression, foreign or domestic. He clearly recognized that not all aggression against the Constitution would come from foreign actors.

That this Assembly most solemnly declares a warm attachment to the Union of the States, to maintain which, it pledges all its powers; and that for this end, it is their duty, to watch over and oppose every infraction of those principles, which constitute the only basis of that union, because a faithful observance of them, can alone secure its existence, and the

public happiness.

Virginia Resolutions

According to James Madison, it's the duty of the governments of the several states to watch over and oppose every infraction of the Constitution. Why? Because having the states oversee the actions of the federal government is the only way we can insure the union's existence and the public's happiness. In other words, the Supreme Court is not the ultimate protector of your rights guaranteed under the Constitution; the states are. Mr. Madison goes on:

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 farther valid than they are authorised 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 there-to have the right, and are in duty bound, to interpose for arresting the pro(gress) of the evil, and for maintaining within their respective limits, the authorities, rights and liberties appertaining to them.

Virginia Resolutions

Not only does James Madison state that powers of the federal government are limited by the Constitution, but as parties of the compact that is that document, the states are duty-bound to interpose and stop the progress of any government actions that go beyond it. The states are supposed to maintain the federal government within its limited jurisdiction and to protect the rights and liberties of their citizens from its encroachment.

That the General Assembly doth also express its deep regret that a spirit has in sundry instances, been manifested by the

federal government, to enlarge its powers by forced constructions of the constitutional charter which defines them; and that indications have appeared of a design to expound certain general phrases (which having been copied from the very limited grant of powers in the former articles of confederation were the less liable to be misconstrued) so as to destroy the meaning and effect of the particular enumeration, which necessarily explains and limits the general phrases; and so as to consolidate the states by degrees into one sovereignty, the obvious tendency and inevitable consequence of which would be, to transform the present republican system of the United States, into an absolute, or at best a mixed monarchy.

Virginia Resolutions

Deliberate misinterpretation of the Constitution in an effort to expand the powers of the federal government is nothing new. The General Assembly of Virginia saw those in the federal legislature coming up with twisted and contorted readings of the Constitution to allow them to do what the document plainly forbids. It's rather like Congress claiming anything that might impact interstate commerce falls under their authority to regulate or that their power to tax for the general welfare of the union can be expanded into anything they can pass.

That the good people of this Commonwealth having ever felt and continuing to feel the most sincere affection for their bretheren of the other states, the truest anxiety for establishing and perpetuating the union of all, and the most scrupulous fidelity to that Constitution which is the pledge of mutual friendship, and the instrument of mutual happiness, the General Assembly doth solemnly appeal to the like dispositions of the other States, in confidence that they will concur with this Commonwealth in declaring, as it does hereby declare, that the acts aforesaid are unconstitutional, and that the necessary and proper measures will be taken by each, for cooperating with this State in maintaining unimpaired the

authorities, rights, and liberties, reserved to the States respectively, or to the people.

Virginia Resolutions

Notice that while the Commonwealth of Virginia declared that these acts were unconstitutional, they did not attempt to nullify them on their own. The House of Delegates asked other states to cooperate with them in defending the rights and authorities of both their state and their people.

Kentucky Resolution – Alien and Sedition Acts

While there appears to be some debate whether or not Thomas Jefferson authored the Kentucky Resolution, what was approved on December 3, 1799 helps us understand the proper role of the states to restrain the actions of the federal government.

THE representatives of the good people of this commonwealth in general assembly convened, having maturely considered the answers of sundry states in the Union, to their resolutions passed at the last session, respecting certain unconstitutional laws of Congress, commonly called the alien and sedition laws, would be faithless indeed to themselves, and to those they represent, were they silently to acquiesce in principles and doctrines attempted to be maintained in all those answers, that of Virginia only excepted. To again enter the field of argument, and attempt more fully or forcibly to expose the unconstitutionality of those obnoxious laws, would, it is apprehended be as unnecessary as unavailing.

Least however the silence of this commonwealth should be construed into an acquiescence in the doctrines and principles advanced and attempted to be maintained by the said answers, or least those of our fellow citizens throughout the Union, who so widely differ from us on those important subjects, should be deluded by the expectation, that we shall be deterred from what we conceive our duty; or shrink from the principles contained in those resolutions:

Kentucky Resolution – Alien and Sedition Acts

While the resolution does not give specifics, it appears that several of the states, in response to the Virginia Resolutions, were not prepared to support Madison's position. This however, did not deter Kentucky from entering into the fray.

RESOLVED, That this commonwealth considers the federal union, upon the terms and for the purposes specified in the late compact, as conducive to the liberty and happiness of the several states: That it does now unequivocally declare its attachment to the Union, and to that compact, agreeable to its obvious and real intention, and will be among the last to seek its dissolution: That if those who administer the general government be permitted to transgress the limits fixed by that compact, by a total disregard to the special delegations of power therein contained, annihilation of the state governments, and the erection upon their ruins, of a general consolidated government, will be the inevitable consequence:

Kentucky Resolution – Alien and Sedition Acts

Again we see a state committed to the Constitution and the union of states. We also see that Kentucky believes that those in Washington, D.C. go too far. If those in the federal government were allowed to exercise powers beyond the limits described in the Constitution, the governments of the states would become meaningless and effectively destroyed. Furthermore, the erection of a consolidated government would be inevitable. The power this government would wield would allow it to run roughshod over not only the states, but the people as well.

That the principle and construction contended for by sundry of the state legislatures, that the general government is the exclusive judge of the extent of the powers delegated to it, stop nothing short of despotism; since the discretion of those

who administer the government, and not the constitution, would be the measure of their powers:

Kentucky Resolution – Alien and Sedition Acts

Jefferson calls out the other states for their unwillingness to challenge the federal government. The idea that the federal government was the judge of the limits of its powers is nothing short of despotism. If Congress, the President, and the federal courts, get to decide what their powers are, there is nothing to stop them from doing whatever they want. That's exactly the state the union is in today.

That the several states who formed that instrument, being sovereign and independent, have the unquestionable right to judge of its infraction; and that a nullification, by those sovereignties, of all unauthorized acts done under colour of that instrument, is the rightful remedy:

Kentucky Resolution – Alien and Sedition Acts

This is a fundamental point in America, or at least it should be. The states are sovereign and independent. The states created the federal government, not the other way around. And the states are the unquestionable and rightful judge of any infraction of the Constitution.

Of course, here is where we find that word that so many in our country are afraid of: Nullification. As parties to the compact that is the Constitution, it's not only the unquestionable power of the states to judge the unauthorized acts of the federal government, but to nullify them as well. Here we see the true and rightful remedy of an out of control federal government: State governments willing to uphold the Constitution of the United States.

That this commonwealth does upon the most deliberate reconsideration declare, that the said alien and sedition laws, are in their opinion, palpable violations of the said

constitution; and however cheerfully it may be disposed to surrender its opinion to a majority of its sister states in matters of ordinary or doubtful policy; yet, in momentous regulations like the present, which so vitally wound the best rights of the citizen, it would consider a silent acquiescence as highly criminal: That although this commonwealth as a party to the federal compact; will bow to the laws of the Union, yet it does at the same time declare, that it will not now, nor ever hereafter, cease to oppose in a constitutional manner, every attempt from what quarter soever offered, to violate that compact:

Kentucky Resolution – Alien and Sedition Acts

Kentucky declares that the Alien and Sedition Acts unconstitutional. Jefferson makes the point that while disagreements about ordinary or doubtful policies can be tolerated, it would be criminal for the Commonwealth of Kentucky to surrender to the opinions of the rest of the states.

Conclusion

Look at how your state legislators act when the federal government exceeds its just powers. Do they comply, submitting to their creation as if it were their master? Do they complain, but do nothing to stand in the way of federal despotism? Or are they limited to begging the federal government to protect them from itself? This is the weak and submissive actions of most of our state legislators. As Jefferson warned, the state governments are all but annihilated as the federal government claims the authority to regulate every aspect of our lives.

Compare how our states today deal with federal overreach with those of Virginia and Kentucky back in 1798/99. Those who hold office in our states today are pale, anemic, and weak compared to Jefferson and Madison. Sure, most of the other states were

willing to submit to these federal power grabs so I guess we shouldn't be that surprised, but at least the legislators debated the issue. When was the last time a resolution was brought to the floor of your state legislature declaring an act of the federal government unconstitutional? When has your state government stood up to Washington, D.C. and told them they've gone too far? And don't talk to me about suing the federal government in federal court. As I've said, that's nothing more than a vassal state begging their master to protect them from itself. When was the last time your state representatives or senators submitted a resolution denouncing the infringement on the rights of the people they were hired to represent? When was the last time you met with your state legislator and demanded they do so?

If, as Jefferson said, the rightful remedy to the unlawful acts of the federal government is for states to nullify those actions, then it is up to We the People to hold our elected representatives' feet to the fire. If, as Madison said, it is the duty of the states to watch over and oppose every infraction of the Constitution, if the states are duty bound to interpose themselves between their citizens and an ever growing federal government, and to arrest the progress of that evil, then all fifty states are derelict in their duty.

Since We the People formed those state governments and elected those who hold office, then we are derelict in our duty as well. If freedom and liberty fall in America, if despotism and tyranny are allowed to continue, if this experiment in self government has failed and the sacred fire of liberty should go out, it's because We the People have been derelict in our duties. When asked what type of government the Constitutional Congress had given the people, Benjamin Franklin answered "A republic, if you can keep it." It appears that the American people were not up to the task.

E-Mail Paul Engel: paul@constitutionstudy.com