

How the States Can Suppress Illegal Immigration



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No reader of this commentary needs to be reminded that the United States are reeling under a continuous mass influx across the southern borders of Texas, New Mexico, Arizona, and California

of aliens the vast majority of whom have no arguable, or even conceivable, legal right to enter let alone to remain in this country. Neither is any reader unaware of the superheated political controversy this situation now fuels—without, of course, any viable solution being bruted in the torrent of hot air emanating from Washington, D.C. Nor is any reader ignorant of the contention of those who promote unlimited immigration (both legal and illegal) that, notwithstanding the insouciance, fecklessness, or treachery of public officials in this Nation's Capital, the several States, and even the authors and guardians of the Constitution, We the People themselves, are powerless to do anything on their own initiatives to stem the tide in their own defense.

According to the latter argument in particular, by enacting various statutes pertaining to “immigration” pursuant to its constitutional authority “[t]o regulate Commerce with foreign Nations” (Article I, Section 8, Clause 3), “[t]o establish a uniform Rule of Naturalization” (Article I, Section 8, Clause 4), and “[t]o make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers” (Article I, Section 8, Clause 18), Congress has (as lawyers phrase it) “occupied the field” and “preëmpted” any contrary,

supplementary, or even perfectly consistent laws which the States may purport to enact—this perforce of the Constitution’s Supremacy Clause, which provides that “[t]his Constitution, and the Laws of the United States which shall be made in Pursuance thereof * * * shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding” (Article VI, Clause 2). Thus, because the present Congress and regime in the White House refuse to do anything effective to thwart “illegal immigration” under the laws of the United States (but instead are encouraging and facilitating it in defiance of those laws), nothing useful for that purpose can be done by the States through application of their own laws. Of course, this is a palpably perverse result, because the supposed “supremacy” of the Constitution is being twisted to frustrate every purpose of government set out in the Preamble to the Constitution. Ominously enough, however, this surreal line of reasoning actually finds support in the Supreme Court’s decision in *Arizona v. United States*, 567 U.S. 387 (2012), which held that the Supremacy Clause precluded Arizona from enacting her own laws aimed at the protection of her own citizens through suppression of “illegal immigration” within her own territory.

If, at first glance, it seems that the States and We the People have been outflanked with respect to “illegal immigration” by “preemption”, Americans should recall what French General Doumenc reputedly responded when informed that the German *Panzer* formations had broken through the French defenses at Sedan in 1940: “Every war has its routs. We must look at the map and see what can be done.” In this case, although perhaps temporarily defeated on the field of “preemption”, Americans can still look to the Constitution’s federal system of government to “see what can be done” elsewhere. And a calm review of the facts will reveal that, as a matter of law, the federal system is sufficiently

compendious and resilient in terms of “separation of powers” to provide an effective, even audacious, remedy for the problem.

FIRST. What are the facts? The salient characteristics of this situation are familiar to all. Not to disparage or denigrate any of these people as human beings, or to deny that as *legal* immigrants they might make positive contributions to American society, nonetheless the reality remains that whether denoted “illegal aliens”, “undocumented immigrants”, or otherwise, they are intentional intruders, entering in a lawless fashion into the domain of actual citizens who alone rightfully possess this country according to the Declaration of Independence, the Constitution, and a plethora of statutes enacted pursuant to those documents. These actions not only violate, but also manifest hostility—even disdain, defiance, and derision—towards, this country’s laws. For every sentient adult among these aliens knows, should know, is willfully blind to, or is in reckless disregard of the obvious reality that he is breaking numerous laws, initially by crossing the border, then repetitively by remaining within this country every day thereafter.

Obviously, “undocumented immigrants” care not a whit that they are trampling upon the right of every American to control the composition of the population of his own country, the basic prerogative of every citizen of every independent sovereign nation since independent sovereign nations first came into existence. This is not only illegal, but also illogical. For, in usurping the right to inhabit American territory—by trespass as their means of entry—they contemptuously deny the essential nationality of the very country in the nationality of which they presumably desire to share.

“Illegal aliens’” hostility extends beyond this country’s laws to her citizenry as well. In extenuation of their misbehavior, apologists insist that these people merely want to better their and especially their offsprings’ own lives, which in

principle is a praiseworthy endeavor. Special pleading of this sort, however, ignores the obvious retort that bettering one's own life is, in both principle and practice, blatantly blameworthy when undertaken in a *lawless* fashion which *worsens* the lives of others. The very purpose and necessary effect of "illegal immigration" is to gain for the aliens economic, social, and eventually political benefits and advantages to which they are not entitled, and which must come at the expense of Americans to whom those benefits and advantages rightfully belong.

Because everyone is familiar with them, the many deleterious consequences arising out of "illegal immigration" need not be rehashed here. The essential points are that: (i) the extent and intractability of these problems are directly proportional to the number of aliens entering the country; (ii) even were the present level of immigration entirely legal, America's socio-economic structure could not support it; and therefore (iii) a coldly realistic strategy for dealing effectively with the situation before it gets entirely out of hand demands, at the minimum, that the main source of the difficulty—the ingress of "illegal aliens"—be shut down.

SECOND. In light of these undeniable facts, how are Americans to describe this situation in the legally most relevant manner? Obviously, nouns such as "incursion", "influx", "inundation", and the like are not only figurative at best, but even evasive of the real issue. Because of the international character of the traffic, its mass nature, and the hostile intent of the actors, the term which best describes "illegal immigration" is "*invasion*".

To be charitable to the aliens involved, what is transpiring today may not amount to a "*barbarian* invasion" in the sense that phrase is commonly used in relation to events during the decline and fall of the Roman Empire. Nonetheless, *it is, by definition, an "invasion" which is contributing significantly, if not decisively, to the decline and fall of the United*

States. For self-evidently it entails “[h]ostile encroachment upon the rights of another” [Samuel Johnson, *A Dictionary of the English Language*, First Edition (London, England: W. Strahan, 1755), and Fourth Edition (London, England: W. Strahan, 1773), definition 1 in both editions]–“hostile entrance” [Noah Webster, *A Compendious Dictionary of the English Language* (Hudson & Goodwin, Hartford, and Increase Cooke & Company, New Haven, Connecticut: 1806), at 164]–and “[t]he act of invading; the act of encroaching upon the rights or possessions of another; encroachment; trespass” [*Webster’s Revised Unabridged Dictionary of the English Language* (Springfield, Massachusetts: G. & C. Merriam Company, 1913), at 784]. Accord, *Black’s Law Dictionary* (St. Paul, Minnesota: Thomson Reuters, Tenth Edition, 2014), at 952 (definition 1). To “invade” is “to make an hostile entrance” (S. Johnson, definition 1 in both editions)–“to enter or seize in a hostile manner” (*Webster’s* 1806, at 164)–“[t]o go into or upon; to pass within the confines of; to enter * * * used of forcible or rude ingress”; “[t]o enter with hostile intentions; to enter with a view to conquest or plunder”; “[t]o attack; to infringe; to encroach on; to violate; as, * * * *invad[ing]* the rights of the people”; and “[t]o grow or spread over; to affect injuriously and progressively” (*Webster’s* 1913, at 784, definitions 1 through 4). Accord, *Black’s* 2014, at 951 (definition 2). Therefore, by both common and legal definition, each and every sentient adult among the masses of “illegal aliens” who have crossed, who now are crossing, or who will cross America’s borders is an “invader”–that is, “[o]ne who enters with hostility into the possessions of another” (S. Johnson, definition 1 in both editions); “an * * * encroacher, intruder” (*Webster’s* 1806, at 164, and *Webster’s* 1913, at 784).

Whatever the possibly innocent purposes of alien invaders as individuals, the inevitable, inexorable collective consequence of their invasion should be plain enough: namely, the destruction of the United States. For every country is defined

geographically by its borders—and its political, economic, and social character and integrity preserved by the security of its borders. Simply put, *no secure borders, no country*. America is no exception to that rule, but is well on her way to becoming an example of its operation.

THIRD. This peril extends, not only to the United States collectively, but to each of the several States individually. Not, to be sure, to the same degree and with the same immediacy. The southern borders of Texas, New Mexico, Arizona, and California are now the front lines, because ingress by “illegal aliens” is easiest there. But if the present invasion cannot be repelled at the threatened borders of those States, “illegal immigration” likely soon will become a major problem for the States along America’s northern border and along the Atlantic, Pacific, and Gulf coasts. In any event, every State is exposed to the same eventual outcome. For once “illegal aliens” gain entry across the international border of any State, they migrate into States which have no international borders, “grow[ing] or spread[ing] over” and “affect[ing] injuriously and progressively” every community throughout America by a complex of *inter-* and *intra-*State “invasions”. (See *Webster’s* 1913, at 784, definition 4).

Moreover, the numbers of “illegal aliens” already within the United States will constantly increase through the natural process of human reproduction—although the children of the original aliens, and their offspring as well, will doubtlessly claim to be actual citizens, under color of the constitutionally absurd theory of “birthright citizenship”: namely, that Section 1 of the Fourteenth Amendment to the Constitution confers on “illegal aliens”, *who enjoy no right to enter or to remain within the United States at all*, a privilege to bestow on their progeny the prerogatives of “citizens of the United States and of the States wherein they reside” by stealing into this country contrary to the laws thereof, and remaining long enough to bear those children on

American soil. As a practical matter, the only way to frustrate the application of this theory until the true meaning of the Fourteenth Amendment has been secured—whether by a decision of the Supreme Court, some Act of Congress promulgated pursuant to Section 5 of the Amendment, or otherwise—is to repel the invasion at the border or apprehend and deport the invaders as soon as possible, so that births within America do not occur and therefore “birthright citizenship” cannot be claimed.

FOURTH. Because “*illegal* immigration” inflicts palpable harms upon each of the several States, each and every one of them must enjoy a *legal right* to prevent, punish, and otherwise proceed against it. The ultimate source of this right is this country’s foundational law, from and upon which all of its other law derive and depend: namely, the Declaration of Independence.

In 1776, the Declaration established that the original thirteen “United Colonies are, and of Right ought to be Free and Independent States; * * * and that as Free and Independent States, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do”. By 1790, perforce of the Constitution all of them became components of a larger “Free and Independent State[]”, formed along federal lines, styled “the United States of America” (Preamble to the Constitution). As the initial conditions of membership among “the United States”, the founding States accepted certain constitutional limitations on their powers (particularly in Article I, Section 10, Clauses 1 through 3), while retaining all other powers which were neither delegated to the United States nor reserved to the people (Tenth Amendment). Later, other States were “admitted by the Congress into th[e] Union” (Article IV, Section 3, Clause 1) under the same terms as the original thirteen. Of consequence here, one of the inherent powers of “Free and Independent States” which

the original thirteen and then other States did *not* cede to the United States is the "Power to levy War" under certain circumstances (Article I, Section 10, Clause 3).

Although subject to various constitutional limitations on her autonomy, each of the several States today remains "a free State" empowered in principle to guarantee—and, one would hope, capable in practice of providing for—her own "security" through "[a] well regulated Militia" predicated upon "the right of the people to keep and bear Arms", as the Second Amendment attests. In particular, the "security" of each State's own borders being an (if not *the*) essential component of "the security of a free State", as "free State[s]" the States are entitled and may insist upon the right to preserve, protect, and maintain the existence and efficacy their own borders—and, insofar as some of their borders coincide with the borders of the United States, to preserve, protect, and maintain the existence and efficacy of those borders, too. Indeed, the States are not only *entitled*, but also are *required* to do so. For no State can stop being "a free State" within the federal system without repudiating not only the Constitution but also the Declaration of Independence. And such a dereliction of duty on the part of a State's public officials would justify recourse to (in the Declaration's words) "the Right of the People to alter or to abolish [the existing government], and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness".

After all, it is the absolute duty of public officials within each State to enforce the laws which maintain her physical, legal, political, economic, and social integrity—the laws relating to her borders being first and foremost among them. True enough, rogue officeholders forfeits their legitimacy whenever they fail, neglect, or refuse to enforce those laws. But, at least for a while, a country can muddle through,

although burdened with a governmental apparatus populated by fools, knaves, poseurs, and kindred political riffraff. By definition, however, no country can exist at all without enforceable borders. Is it worse to be ground under the heel of "absolute Despotism" in one's own country, yet with some chance (no matter how slim) that some day "the People" might finally exercise what the Declaration described as "their right, * * * their duty, to throw off such Government", or to have one's country destroyed entirely and irretrievably?

FIFTH. Vindication of each State's *legal right* to secure her own borders requires the existence of a *legal remedy*. That is, there must be a means by which this right can and will actually be *enforced* against the "*illegal* aliens" who are—by definition *unlawfully*—"invad[ing] the rights of the people". (See *Webster's* 1913, at 784, definition 3.) Obviously, "[a] right without a remedy is as if it were not. For every beneficial purpose it may be said not to exist." *United States ex rel. Von Hoffman v. City of Quincy*, 71 U.S. (4 Wallace) 535, 554 (1867). *Accord*, *Poindexter v. Greenhow*, 114 U.S. 270, 303 (1885); *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 163 (1803). In theory, this remedy could be provided by the United States on behalf of the States, or by each and every one of the several States on her own, or in the final analysis even by We the People themselves.

In what should be the normal course of events, the government of the United States would protect the borders of the United States, and of each of the States as well, without any separate involvement of the States acting on their own. Conversely, when (as today) rogue public officials of the government of the United States fail, neglect, or refuse to enforce in an effective manner, if at all, the laws of the United States which pertain to "illegal immigration", it is left to each of the States to secure her own borders by asserting her own right to do so. In that event, because the borders of one or more States form parts of the borders of the

United States, in protecting their own borders those States protect the borders of the United States, too. Under such factual circumstances the legal question becomes: "What specific constitutional authority—not subject to 'preemption' or some other form of interference emanating from officialdom in the government of the United States—do the States enjoy to deal with this situation?"

The answer comes from recognition that the danger which confronts the States today is an actual "invasion" of their territories, and that the Constitution explicitly addresses the matter of "invasion" as far as the powers of the States are concerned—to wit, "No State shall, without the Consent of Congress, * * * engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay" (Article I, Section 10, Clause 3). Observe the precision of the constitutional language: "*engage in War*", not "*declare War*", so that no conflict can arise between the exercise of the States' power in this regard, on the one hand, and the power of Congress (Article I, Section 8, Clause 11), on the other. Plainly enough, a State can "engage in War" without a "declar[ation of] War", just as the United States has engaged on massive scales in undeclared wars in Korea, Vietnam, Iraq, and Afghanistan. To "engage in War" means simply to employ operations and techniques justified by, suitable for, and familiar in "War" (although not necessarily all of them at the same time, or any of them to a particular degree). This is a broad mandate indeed. How far it might extend one may judge for himself by bringing to mind the precedents the government of the United States has established in its decades-long prosecutions of "the war on terror" and "the war on drugs".

Also, observe that the Constitution does not limit the reach of the phrase "actually invaded". The States on the southern border of the United States could be "actually invaded" by the regular armed forces of Mexico herself; by figurative armies of Mexican nationals intent upon the re-conquest of the

southwestern United States through unlimited immigration; by cartels based in Mexico (whether or not in collusion with rogue officials there) which transport "illegal aliens" into the United States with as much facility and impunity as they smuggle illicit drugs; or by hordes of aliens from all over the world who somehow traverse the length and breadth of Mexico to arrive at, and then illegally traverse, the border of the United States without the Mexican government's significantly interfering with the traffic. To the Constitution, it would all be of one and the same import.

Moreover, as the Constitution makes clear, no State needs "the Consent of Congress", or is subject to a prohibition from Congress (a denial of its "Consent"), to "engage in War" when "actually invaded, or in such imminent Danger as will not admit of delay". And logically Congress cannot withhold its "Consent" (whether by some explicit prohibition or the implicit restraint of "preemption") when its "Consent" is not necessary in the first place. So, because the Constitution explicitly reserves to the States the right, power, privilege, and duty to "engage in War" *as an exception to and exclusion from every power of Congress*, the States' authority in that regard is supreme within its field of operation.

This, of course, makes perfect sense, because a State's right of self-defense against an "invasion" by hordes of "illegal aliens" is no less absolute than an individual's right of self-defense against an attack by a lone criminal. As Sir William Blackstone observed, if an individual be forcibly attacked in his person or property, it is lawful for him to repel force by force; and the breach of the peace, which happens, is chargeable upon him only who began the affray. For the law, in this case, respects the passions of the human mind; and (when external violence is offered to a man himself, or those to whom he bears a near connection) makes it lawful in him to do himself that immediate justice, to which he is prompted by nature, and which no prudential motives are strong

enough to restrain. It considers that the future process of law is by no means an adequate remedy for injuries accompanied with force; since it is impossible to say, to what wanton lengths of rapine or cruelty outrages of this sort might be carried, unless it were permitted a man immediately to oppose one violence with another. *Self-defence, therefore, as it is justly called the primary law of nature, so it is not, neither can it be in fact, taken away by the law of society.*

Commentaries on the Laws of England (Philadelphia, Pennsylvania: Robert Bell, American Edition, 4 Volumes & Appendix, 1771-1773), Volume 3, at 3-4 (footnote omitted) (emphasis supplied). Thus, because her right of self-defense cannot be “taken away by the law of society”, a State does not need “the Consent of Congress” to exercise it against an invasion, perhaps the most serious threat to a State’s *political* life which can be imagined. Neither does a State need the permission of the President, judges, or any other public officials, the powers of which depend upon “Laws [enacted by Congress] which shall be necessary and proper for carrying into Execution the * * * Powers vested by th[e] Constitution in the Government of the United States, or in any Department or Officer thereof” (Article I, Section 8, Clause 18). Inasmuch as Congress cannot withhold “Consent” on its own behalf (because its “Consent” is unnecessary), it cannot enact “Laws” which purport to allow others to withhold such unnecessary “Consent” by proxy.

Moreover, the reserved right and power to “engage in War” when “actually invaded, *or in such imminent Danger as will not admit of delay*” (Article I, Section 10, Clause 3), obviously entitles a State not situated along an international border of the United States to assist another State which is so situated and is being “actually invaded” by “illegal aliens”, so as to protect the former State against the “imminent Danger” of an “invasion” mounted by aliens from within the latter State. After all, under present conditions “illegal aliens” who

“invade” (say) Texas can, within a matter of days (if not just hours) from the dates and times of their original incursions into that State, be transported to any location across the United States, “invading” not only the States of their initial entries and then final destinations, but sequentially all other States along the way.

To be sure, the Constitution does provide that “[t]he United States * * * shall protect each of th[e States in the Union] against Invasion” (Article IV, Section 4). But this duty cannot be performed in the absence of some “Laws * * * necessary and proper for carrying [it] into Execution” (Article I, Section 8, Clause 18). And no such “Laws” can impose upon the States the constitutionally prohibited requirement to obtain explicit or implicit “Consent” from Congress before they “engage in War” when “actually invaded, or in such imminent Danger as will not admit of delay” (Article I, Section 10, Clause 3). So the power of the States to “engage in War” in the event of invasion remains separate from and independent of the duty of the United States to “protect” the States “against Invasion”. Although parallel in purpose, that duty supplements, rather than supplants or constrains, the right, power, privilege, and duty of the States to defend themselves.

This must be self-evidently true when rogue public officials within the government of the United States fail, neglect, or refuse to perform their duty to “protect each of the[States] against Invasion” (Article IV, Section 4) adequately, let alone at all. Such an abrogation of constitutional duty cannot be the product of “[t]his Constitution, and the Laws of the United States which shall be made in Pursuance thereof”, but is quite the opposite—cannot pretend to be “the supreme Law of the Land” (Article VI, Clause 2), or any “Law” for that matter—and therefore cannot “preëempt” any State from protecting herself.

If such is plain enough at the constitutional level, how much

more obvious is it when mere statutes are the subjects of concern? For purposes of argument, it may be conceded that, by statute, Congress has "occupied the field"—and thereby "preempted" any conflicting, or even merely supplementary, laws of every State—within the domain of "immigration". But Congressional "immigration law" is not, and does not even pretend to be, "invasion law" of any sort—indeed, it presumes that "immigration" must proceed *according to law*, not in the lawless fashion of an "invasion". So it is hard to see how any part of "immigration law" could "preempt" any State's laws dealing with "invasion" enacted pursuant to a constitutional power explicitly reserved to the States for that purpose. Surely the Constitution prohibits rogue officials of the United States from deceitfully and surreptitiously misusing the laws related to "immigration" to enable, facilitate, promote, or even countenance an "invasion" of any State by "illegal aliens", or to prevent any State from "engag[ing] in War" to resist such an "invasion" when the victimized State determines that such resistance is necessary. (Presumably, a State could "engage in War" if invaded even by alien forces openly supported by Congress, led in person by the President, and blessed by the Judiciary.)

SIXTH. How, in practical terms, might a State "engage in War" when "actually invaded, or in such imminent Danger as will not admit of delay"? Doubtlessly the first and foremost operation would be to secure the frontiers, and police the interior, of the State against the invaders. No invasion can succeed if the invaders are repelled at the border, or (if they somehow succeed in gaining entry) are subsequently apprehended within and then expelled from the State.

Such tasks, however, are "labor-intensive": that is, they require for their performance the deployment of forces of sufficient size—and with adequate organization, armament, training, logistical support, and so on—to overwhelm the invaders. As these must be the State's own forces, they must

be raised within the State from amongst the State's own citizens. But the constitutional authority to "engage in War" does not limit, nor in the nature of things could it constrain, a State's right to employ *any* appropriate establishment already at hand or capable of being mobilized for that purpose.

Under present political conditions, though, it would be problematical for a State to call upon her National Guard or any so-called "defense force" she had established. Each State is allowed to "keep [these] Troops * * * in time of Peace", but only "with[] the consent of Congress" (Article I, Section 10, Clause 3). See 32 U.S.C. § 109(a) through (c). Presumably, though, "in time of [War]" when "actually invaded, or in such imminent Danger as will not admit of delay", the States could not only "keep" but could actually deploy these "Troops" without "the Consent of Congress". Yet it is conceivable—most likely to be expected—that the present régime in the District of Columbia would prevent the use of these "Troops" for that purpose, by removing them from the States' control under color of the statutes of the United States which (through "the Consent of Congress") provide for their existence, lay out their duties, and regulate their operations. The Army National Guard and the Air National Guard are "reserve component[s]" of the regular Army and Air Force. See 32 U.S.C. § 101(3) through (7). As such, under the Constitution they are subject to be coöpted by the government of the United States at almost any time (Article I, Section 8, Clause 14). The States' "defense forces" are in a somewhat ambiguous position. See 32 U.S.C. § 109(d) and (e). But, even were they left to the States to command, the complements of most of them are too small to be of much use against an "invasion" as extensive as "illegal aliens" are mounting today. See, e.g., Va. Code § 44-54.4 ("the Virginia Defense Force" has "a targeted membership of at least 1,200" volunteers).

Similar practical considerations militate against the States'

employment of their ordinary police forces. For were the police assigned in adequate numbers to repel an "invasion" by "illegal aliens" on the scale now taking place, too few would likely be left to secure thousands of Localities against ordinary crime.

The obvious solution for these difficulties derives from the precept of political science that the survival of any polity depends upon the successful defense of its borders, and from the axiom of American constitutional law that "necessary to the security of a free State" in all respects, including especially the integrity of her borders, is "[a] well regulated Militia" composed of "the people" who exercise "the right * * * to keep and bear Arms" (Second Amendment). These forces are what the Constitution denotes as "the Militia of the several States" (Article II, Section 2, Clause 1). So today there are now fifty of them, one in, of, and for each State. Various States' statutory codes call them "the unorganized militia", "the reserve militia", or some other kindred term which describes their largely inactive status. Yet, of critical importance to the problem of "illegal immigration", among other constitutional authorities and responsibilities "the Militia of the several States" are assigned the duty to "repel Invasions" (Article I, Section 8, Clause 15), an authority explicitly vouchsafed by the Constitution to no other establishment. For this purpose, Congress may call them forth to be "employed in the Service of the United States" (Article I, Section 8, Clause 16). Or, of more interest here (because of the unreliability and fecklessness of Congress), the States may deploy them to that end in the States' own service—without needing to obtain any "Consent" from Congress, because the Militia are "the Militia of the several States" not "of the United States", and are "Militia" not "Troops". So, for the purpose of repelling invasions of their territories, the States may raise their "unorganized militia" or "reserve militia" to, and maintain them in a condition of, readiness at all times (whether in

peace or war), and may call forth whatever parts (or the entireties) of them they deem suitable for that task.

To be sure, one can imagine that the rogue Congress in session these days might attempt to prohibit the States' use of their Militia for the particular purpose of "repel[ing] Invasions" by "illegal aliens". Any such move, however, would be laughably unconstitutional, for at least two reasons: First, Congress's power is to "provide for", not against, "calling forth the Militia"; and to do so in order to "repel", not promote, "Invasions". Plainly enough, "the affirmative words of [a] clause [in the Constitution] giving one sort of jurisdiction, must imply a negative of any other sort of jurisdiction, because, otherwise, the words would be totally inoperative". *Cohens v. Virginia*, 19 U.S. (6 Wheaton) 264, 401 (1821). Whether by verbal trickery or otherwise, "'no Act of Congress can authorize a violation of the Constitution'". *United States v. Brignoni-Ponce*, 422 U.S. 873, 877 (1975). And "[a]n unconstitutional act is not a law; * * * it is, in legal contemplation, as inoperative as though it had never been passed." *Norton v. Shelby County*, 118 U.S. 425, 442 (1886). Second, the States' exercise of their reserved power to employ their Militia to "engage in War" when "actually invaded, or in such imminent Danger as will not admit of delay" (Article I, Section 10, Clause 3) cannot be thwarted by the exercise of any power of Congress, including its power to "provide for calling forth the Militia to * * * repel Invasions" (Article I, Section 8, Clause 15), because no one constitutional power can be misused to negate any other constitutional power. "These fundamental principles are of equal dignity, and neither must be so enforced as to nullify or substantially impair the other." *Dick v. United States*, 208 U.S. 340, 353 (1908).

One can also imagine that a rogue President might order the Militia not to interfere with "illegal immigration", under color of his status as "Commander in Chief * * * of the

Militia of the several States, when called into the actual Service of the United States" (Article II, Section 2, Clause 1). This, too, would be risible. For allowing "illegal immigration" to proceed unhindered could not, by any rational constitutional calculus, constitute "the *actual Service* of the United States"—not least because the President's order would violate both his constitutional duty to "take Care that the Laws be faithfully executed" (Article II, Section 3) and his "Oath or Affirmation" that he "will faithfully execute the Office of President of the United States, and will to the best of [his] Ability, preserve, protect and defend the Constitution of the United States" (Article I, Section 1, Clause 7). Indeed, for betraying the United States by aiding and abetting an "invasion" of illegal aliens" when hostile foreign nations were involved, a rogue President might be "removed from Office on Impeachment for, and Conviction of, Treason" (Article II, Section 4, and Article III, Section 3, Clause 1), and thereafter become "liable and subject to Indictment, Trial, Judgment and Punishment, according to Law" (Article I, Section 3, Clause 7), pursuant to the power of Congress "to declare the Punishment of Treason" (Article III, Clause 3, Section 2).

SEVENTH. Of course, for any of the foregoing to be more than merely theoretical, the States would have to call forth their "unorganized militia" or "reserve militia". Generally, though, the States' laws already provide for their Militia to repel invasions. See, e.g., Va. Code §§ 44-86 ("[t]he commander in chief [*i.e.*, the Governor] may at any time, in order to * * * repel invasion, * * * order out * * * the whole or any part of the unorganized militia"), and 44-87 ("[t]he Governor shall, when ordering out the unorganized militia, designate the number to be so called" and "may order them out either by calling for volunteers or by draft"). So the problem would center around the practical fitness of the Militia for that assignment at that time, not their legal authority to perform it at the States' behest, in their own interest, and pursuant

to their own laws.

Obviously, the Militia would need to be suitably organized, armed, trained, and supplied *before* they could be deployed to deal with the "invasion" of "illegal aliens" under the particular circumstances which then obtained in each State. In principle, though, this should not be terribly difficult, because "the organized militia" or "the reserved militia" in most States are composed of the vast majority of the people. See, e.g., Va. Code §§ 44-1, 44-2, 44-4, 44-5, and 44-54.6 ("the unorganized militia" consists of "all able-bodied residents of the Commonwealth who are citizens of the United States and all other able-bodied persons resident in the Commonwealth who have declared their intentions to become citizens of the United States, who are at least 16 years of age and [with certain exceptions] not more than 55 years of age", other than members of the National Guard and the Virginia Defense Force, and those few persons exempted by statute). And surely among the general population of able-bodied residents of suitable age could be found innumerable patriotic, enthusiastic, and talented individuals who already possessed some basic training, equipment, and even experience which could be put to work bringing the revitalized Militia "up to speed" in short order.

Unfortunately, in the normal course of events the general population of a State cannot call forth the Militia on its own recognizance. Statutes would need to be interpreted and applied, or perhaps amended or even enacted, by public officials in order to prepare "the unorganized militia" or "the reserve militia" to repel the "invasion" of "illegal aliens".

In every State, public officials should already be taking action to extract "the unorganized militia" or "the reserve militia" from an "unorganized" or "reserve" status, and not just to repel the "invasion" by "illegal aliens" either (as vital as that task is at this time). Indeed, they should have

been revitalizing the Militia during many decades past. To the present author's knowledge, however, *nothing* along those lines is now being done, or even proposed, in any State. One can speculate about the reasons for this deplorable state of affairs. At base, of course, it must be attributed to most public officials' abysmal ignorance of the Constitution—although how they could possibly square such an excuse with their mandatory “Oath[s] or Affirmation[s], to support th[e] Constitution” (Article VI, Clause 3) passes understanding. Beyond that, its cause might be traceable to officials' insouciance, sloth, or indolence; incompetence sinking to the level of fecklessness; cowardice in the face of political or other pressure from powerful factions and special-interest groups which stand to gain, economically or politically, from unlimited immigration; desires to advance their careers in and out of politics by prostituting their offices to such groups; or even adherence to some goofy ideology which extols “open borders” as the quintessence of “libertarian” principles, but really serves the interests only of globalists and other avowed enemies of Americans' independence, freedom, and prosperity.

Not to be overlooked, either, is the possibility of some rogue public officials' criminal complicity with parties engaged in “illegal immigration”, particularly where trafficking in human beings is allied with smuggling of drugs. Most careful students of the subject recognize that “illegal immigration” serves various subversive political purposes. But to arguably an even greater degree so do illicit shipments of dangerous drugs into America (as they have for quite a long time already). See, e.g., Joseph D. Douglass, Jr., *Red Cocaine: The Drugging of America and the West, an exposé of long-term Russian and Chinese intelligence operations aimed at achieving the demoralisation and ultimate control of the West through drugs as a dimension of the continuing Leninist World Revolution* (New York, New York: Edward Harle Limited, 1999). On the scales at which they exist today, both “illegal

immigration" and the importation of illegal drugs constitute "invasions"—the first by aliens whose entry into this country destabilizes American society (even though that may not be their own avowed purpose), the second by chemicals the criminal commerce in which is surely intended to destroy society dose by dose. The combination of the two in a coöperative racketeering enterprise is explosively synergistic, especially when foreign nations promote, protect, participate in, and perhaps even plan these operations. Which would make rogue American officials' involvement in the joint traffic sink to the level of "Treason", through their "adher[ence] to the[] Enemies [of the United States], giving them Aid and Comfort" (Article III, Section 3, Clause 1).

Whatever the explanation for the present sorry situation may be, the continuation (let alone the chronic exacerbation) of such a mess can no longer be tolerated. Unrelenting pressure must be brought to bear on honest public officials who can be educated and prodded into taking constitutionally correct and effective action as soon as possible. Unfortunately, to carry out what will amount to the political equivalent of the labor of Hercules with the Augean Stables, Americans will have to rely largely on themselves.

EIGHTH. At the present point in the tortuous course of human events, it should be painfully apparent that Americans cannot depend upon either or both of the "two" major political parties (or any other party, for that matter), their leadership, or their most prominent figures (or figureheads, as the case may be) to serve as instruments for the performance of such a daunting task.

On the subject of political parties, George Washington's *Farewell Address*—arguably the greatest compendium of practical political wisdom and foresight ever penned by an American statesman—should be every patriot's guide. Warning his fellow countrymen "in the most solemn manner against the baneful effects of the spirit of party", he pointed out that "[i]t

serves always to distract the public councils and enfeeble the public administration. It agitates the community with ill founded jealousies and false alarms, kindles the animosity of one part against another, foment occasionally riot and insurrection. It opens the door to foreign influence and corruption, which find a facilitated access to the government itself through the channels of party passions. Thus the policy and will of one country are subjected to the policy and will of another." *Washington's Farewell Address to the People of the United States*, Senate Document No. 106-21, 106th Congress, 2nd Session (Washington, D.C.: U.S. Government Printing Office, 2000), at 16, 17-18.

So today in spades with respect to "illegal immigration". Only "the baneful effects of the spirit of party" in its most malignant form can explain: (i) the hysterical agitation for what amounts to "open borders", which denies Americans the right to a sovereign nation of their own with "full Power * * * to do all * * * Acts and Things which Independent States may of right do" (Declaration of Independence)–(ii) the refusal to enforce long-standing statutes to secure the borders, which negates their existence–(iii) the creation of what are brazenly styled "sanctuary cities", which asserts a right of secession from the Constitution's goal of "form[ing] a more perfect Union" (Preamble), in aid of fomenting disarray and dissension within the citizenry–and, perhaps worst of all, (iv) for the willingness to countenance the support which certain other countries and *supra*-national organizations provide for "illegal immigration" into the United States, thus enabling foreigners to affect the size and composition of America's population and the direction of her political devolution, tending inexorably unto her destruction. If anything could, this experience teaches that America's "two" major political parties are not merely snares and delusions, veritable cornucopiae of conflicts and confusion amongst the citizenry, and ultimately the bane of constitutional government, but are actual existential threats to everything

for which this country stands.

NINTH. Fortunately, the Constitution supplies common Americans with a potent means to take the initiative themselves, through its protection of “the right of the people peaceably to assemble, and to petition the Government for a redress of grievances” (First Amendment). This embodies the understanding drawn from the first principles of American political science that “the Government” is initially the creation and then the continuing responsibility of “the people” themselves—indeed, that “the people” are their “Government” because they are the force controlling “the Government”, from beginning to end and from top to bottom. But this situation obtains only when their “petition[s]* * * for * * * redress of grievance[s]” are “redress[ed]”, quickly and completely, either by public officials or by “the people” themselves whenever officials fail, neglect, or refuse to act.

As the Declaration of Independence teaches, “whenever any Form of Government becomes destructive of the[proper] ends [of government], it is the Right of the People to alter or to abolish it”. How, though, are “the People” to know that “any Form of Government” has become so “destructive”? Surely, one key indicium of such a degenerate condition is that officialdom refuses to redress the grievances which “the People” bring to its attention through various forms of “petition”—including the electoral process, lobbying of legislators, litigation in the courts, exposure and criticism of rogue officials by way of free speech and a free press, mass demonstrations, and even “civil disobedience” against unconstitutional “laws” (which actually is “civil obedience” to the Constitution). But, for this process to be effective, “the People”—not public officials—must decide what constitutes a “grievance”, what form a “petition” concerning it should take, how “the people” should “peaceably * * * assemble” to present their “petition”, what provides adequate “redress” for their “grievance”, and whether officialdom proves sufficiently

responsive to their demands for its behavior not to constitute yet a further "grievance". Today, the efficacy of freedom to petition will be put to a severe test where the "invasion" of "illegal immigration" is concerned.

To be sure, Americans' "grievances" are self-evident: namely, (i) the existence of the "invasion" itself, uncontrolled by the powers-that-be within the government of the United States, which have no viable plan (and apparently no intent, either) to control it; (ii) no understanding on the part of public officials of the States as to what effective constitutional action their States may take (and, hardly surprising in light of that ignorance, no commitment by those officials to take any such action); and especially (iii) the States' lack of sufficient forces properly organized, armed, trained, and ready for deployment against the "invasion", because most of their citizens eligible for service in their Militia are consigned by various statutes to the oxymoronic (indeed, constitutionally idiotic) and basically useless "unorganized militia" or "reserve militia".

In contrast, setting out the means of "redress" for these "grievances" will require no little insight and effort on the part of "the people". After all, to be taken seriously (let alone successfully to be put into practice), their "petitions" must present specific, detailed plans for "redress" which focus on exactly how "the unorganized militia" or "the reserve militia" are to be dissolved, on the one hand, and the true Militia of each State revitalized, on the other. Obviously, these plans must be devised, tested, and proved to be, not simply advisable in principle, but also workable in practice *before* "the people" submit their "petitions" to "the Government". To that end, "the people" will need to "peaceably * * * assemble" for the purpose of determining through deliberation and discussion, and then by actual experimentation in the field, exactly what their "petitions" should demand by way of "redress". The present author has set

out one possible course of action in his book *Constitutional "Homeland Security", Volume One, The Nation in Arms: A Call for Americans To Revitalize "the Militia of the several States"* (Ashland, Ohio: Bookmasters, Inc., 2007), Chapters 3 through 12. Were some such approach adopted on a sufficiently expansive scale by citizens willing to put in the necessary time, effort, and expense, revitalized Militia could be largely ready for deployment to repel the "invasion" of "illegal aliens" almost as soon as amended or new statutes suitable for that purpose were enacted.

An important part of the "redress" "the people" will demand must be, not simply vague promises from typically two-faced spokesmen for "the Government", but instead a schedule of specific steps to be carried out by particular officials within a set, and short, period of time, by which steps "the unorganized militia" and "the reserve militia" will be replaced, once and for all, by true constitutional Militia, as described in Article 13 of Virginia's Declaration of Rights (June 12, 1776): that is, "a well regulated militia, composed of the body of the people, trained to arms". (See *now* Va. Const. art. I, § 13.) The point of decisive importance being *actually* "trained to arms"—so as to be ready to be deployed with "arms" for every purpose to which "arms" might be relevant.

In addition, it would not be amiss for "the people" to make crystal clear that public officials' failure, neglect, or refusal to act immediately and effectively to obviate these "grievances" in exact accordance with the proposals for "redress" presented by the citizenry will constitute further "grievances", leading inexorably to "redress" in the form of those officials' removals from office—to be followed in due course by appropriate punishments for their derelictions of duty.

TENTH. True it may be that "the people" who at first might engage in this activity these days would not constitute a

majority of America's adult population. That possibility, though, is of no moment.

The Declaration of Independence was promulgated "in the Name, and by the Authority of the good People of the[] Colonies", not on behalf of all of the Colonists (many of whom maintained their allegiance to the British Crown). Shortly thereafter, "the good People" became "We the People" who, as the Preamble to the Constitution attests, "ordain[ed] and establish[ed] this Constitution for the United States of America". Today, "the good People" are those Americans who adhere to the precepts of the Declaration, and "We the People" those same Americans who continue to "ordain and establish th[e] Constitution" every day, and therefore are entitled to its protection, by being as faithful to its principles as ever were their forebears. And, just as in the past, when a political crisis casts their society into turmoil, it is inconsequential that "the good People" might not constitute a majority of the citizenry at a decisive moment. Or that "We the People" might find themselves confronted by a majority intent upon disregarding, perverting, or even setting aside the Constitution as well as the Declaration.

Legitimate "government", after all, is not a matter of mere numbers. America is not an unfettered "democracy" in which "the majority *rules*". As the Declaration makes clear, consistent with "the Laws of Nature and of Nature's God" even an overwhelming majority cannot invest "any Form of Government" with "[un]just powers", either explicitly by delegation in so many words, or implicitly by tacit acquiescence in rogue public officials' usurpation of such illicit authority. If nonetheless it purports to do so, that majority degenerates into a "faction"—what James Madison described as "a number of citizens, *whether amounting to a majority or minority of the whole*, who are united and actuated by some common impulse of passion, or of interest, *adverse to the rights of other citizens, or to the permanent and*

aggregate interests of the community". *The Federalist* No. 10 (emphasis supplied). A "faction" composed of "a majority * * * of the whole" is more dangerous than any other, because it can easily imagine itself entitled by dint of numbers alone to ride roughshod over everyone else, and in the grip of that hubristic delusion be willing to support what the Declaration described as "a long train of abuses and usurpations" by rogue public officials who aim at "reduc[ing] the[entire community] under absolute Despotism". When it does so, such a majority exposes and condemns its members as "the bad people", and forfeits whatever legitimacy to which it might once have laid an arithmetical claim.

Conversely, "the good People" (whatever their numbers) can never be a "faction", because they represent "the permanent and aggregate interests of the [entire] community", and respect "the rights of [all] other citizens", including "the bad people" who might reside among them. And, inasmuch as "faction" is another word for "party" (perhaps always the more descriptive word, in light of the nature of the beast), in contrast to "the bad people" "the good People" are always antithetical to "the spirit of party", transcend every political party, and are superior in moral, political, and legal authority to any party or system of parties.

ELEVENTH. Yet the question remains: Exactly *who* are "the good People" in this day and age, particularly with respect to repulsion of the on-going "invasion" of this country by "illegal aliens"? Just as in the Founding Era, "the good People" are defined by their beliefs and discerned by their actions.

On the one hand, among "the good People" in principle are all those Americans who want to live in "a free State", with sovereignty, independence, liberty, and justice for every citizen—who adhere to the goals of the Preamble to, and the powers and disabilities of, the Constitution—who realize that, as the Second Amendment declares, "[a] well regulated Militia"

is “necessary to the security of a free State”—who recognize an “invasion” by “illegal immigrants” as a frontal attack on that “security”—and who support the absolute right of the States to “engage in War” through the deployment of their Militia in order to repel such an “invasion”.

On the other hand, to be *effective* constituents of “the good People” in practice, Americans must actually reassert the authority of the Militia, revitalize the Militia, and then repel the “invasion” of “illegal aliens” by means of the Militia. This, because the Militia are the *only* establishments which physically embody and exert, and in the final analysis *legally* enforce, the will of “the good People”. The Militia are entrusted with the ultimate right, power, and duty to “execute the Laws of the Union”—which “Laws” include both the Constitution and the Declaration of Independence, and ultimately “the Laws of Nature and of Nature’s God” upon which “the good People” depend for their authority. So the Militia are the only institutions which can, to the “necessary” degree, provide “the good People” with “the security of a free State” against “illegal immigration” or any other threat. Because, after all, *in “a free State” the Militia and “the good People” are the very same people.*

“The good People” need to stop waiting for some rapturous event (whether of heavenly or human origin) the timing of which even the Scriptures deny that any man can predict. They must come to grips with the admonition that “God helps those who help themselves”. And, with that as their guide, they need to shoulder their responsibility, to organize themselves, and to plan, prepare, and act to save this country. No one else will do it for them.

A POSTSCRIPT. The present author has been publishing commentaries on NewsWithViews about the general subject of revitalizing the Militia since 6 May 2005. More than sixteen years is a long time. Too long. Among other calamities besetting this country, the on-going “invasion” by “illegal

aliens” should inform anyone who cares to study the matter that America does not have another sixteen years to wait—and to waste—and throughout that time to wonder what should be or could be done, without doing what the Constitution makes very plain needs to be done. The way things are going, sixteen years from now this country will not exist as Americans know it today. And if you, the reader, will not be alive to witness it, your children will be. Be forewarned.

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