[My personal highlights of]

NULLIFICATION

How to Resist Tyranny in the 21st Century

by Thomas E. Woods, Jr.

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[compiled by Ron Loney]

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CHAPTER 1: THE RETURN OF A FORBIDDEN IDEA

WHEN HOUSE SPEAKER NANCY PELOSI was asked by a reporter in 2009 where in the Constitution she found the authority to impose a health insurance mandate on Americans, she laughed and replied, “Are you serious? Are you serious?” The reporter answered that indeed he was. The Speaker just shook her head, and then took another question.

> *Woods. Jr., Thomas E. (2010-06-23). Nullification: How to Resist Federal Tyranny in the 21st Century (p. 1). Perseus Books Group. Kindle Edition.*

Nullification begins with the axiomatic point that a federal law that violates the Constitution is no law at all. It is void and of no effect. Nullification simply pushes this uncontroversial point a step further: if a law is unconstitutional and therefore void and of no effect, it is up to the states, the parties to the federal compact, to declare it so and thus refuse to enforce it. It would be foolish and vain to wait for the federal government or a branch thereof to condemn its own law. Nullification provides a shield between the people of a state and an unconstitutional law from the federal government.

The central point behind nullification is that the federal government cannot be permitted to hold a monopoly on constitutional interpretation. If the federal government has the exclusive right to judge the extent of its own powers, warned James Madison and Thomas Jefferson in 1798, it will continue to grow—regardless of elections, the separation of powers, and other much-touted limits on government power.

> *Woods. Jr., Thomas E. (2010-06-23). Nullification: How to Resist Federal Tyranny in the 21st Century (pp. 3-4). Perseus Books Group. Kindle Edition.*

The federal courts have, for all intents and purposes, ceased to police the federal government.

> *Woods. Jr., Thomas E. (2010-06-23). Nullification: How to Resist Federal Tyranny in the 21st Century (p. 4). Perseus Books Group. Kindle Edition.*

I hope to persuade you that the case for nullification is a strong one—logically, constitutionally, historically, and morally.

To my surprise, a significant number of Americans are already sympathetic to nullification, without necessarily having heard of the idea before or weighed the arguments for and against. According to a February 2010 Rasmussen Reports poll, 59 percent of likely voters believe the states should have the right to opt out of federal government programs of which they disapprove. Just 25 percent disagree, while another 15 percent are not sure. This is not exactly the same thing as nullification, which involves the refusal to enforce *unconstitutional* laws, not simply laws the states do not like. But these numbers are significant all the same.

This initial sympathy for nullification may be a product of the public’s inchoate sense that Washington, D.C., is where the least responsive level of government, significantly worse than its state and local counterparts, is to be found. The bank bailouts of 2008 are an instructive example: with constituent calls running fifty-to-one—or higher—against the bailout package, Congress eventually approved it anyway. Instead of concluding that the people had spoken,

political figures simply rewrote the bill until enough pressure groups got their bribes. This much worse bill was then pushed through the House of Representatives. Democracy in action.

There is likewise a sense that matters of great importance are rushed through Congress on the spurious grounds that desperate times call for reckless measures. Whatever the merits of these measures, items ranging from the North American Free Trade Agreement and the World Trade Organization to the bailout of the Mexican peso, the PATRIOT Act, the Wall Street bailouts, and the fiscal stimulus bill of 2009—to name only a few—were imposed on the country without sufficient deliberation and (perish the thought!) likely with interests other than the public good in mind.

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. . . The alleged chaos that would result should the states follow Jefferson's advice and defend themselves against unconstitutional expansions of federal power is where they pretend to detect such great danger. As usual, Jefferson had the correct reply to "the supporters of power." "I would rather be exposed to the inconveniences attending too much liberty," he said, "than to those attending too small a degree of it."

Our Founding Fathers took a deliberate stance against the centralizing trends that were already at work in the eighteenth century and which would explode in the nineteenth and twentieth. Americans admired the Dutch federation, which was organized as a federative polity, and which became something of an anomaly amid the trend toward centralized states, of which the French Revolution would give the world such a notable example. We have allowed this unique inheritance to be undermined and destroyed, such that the United States, once a federative polity, has become just another modern unitary state like France or Germany. We have been taught to celebrate this betrayal of our Founding Fathers. We have cheered what we ought to have mourned.

Woods. Jr., Thomas E. (2010-06-23). Nullification: How to Resist Federal Tyranny in the 21st Century (p. 20). Perseus Books Group. Kindle Edition.

CHAPTER 2: "THE PROBLEM AND THE RIGHTFUL REMEDY"

IN MODERN AMERICA, the Constitution has become The Great Unmentionable. Where the federal government derives constitutional authorization for its various activities is hardly ever considered or discussed. The maverick journalist who does pose the forbidden question is laughed at or ignored. On the rare occasion in which a federal official deigns to answer, the response is nearly always an awkward and inane reference to one of three constitutional clauses we shall examine in the first part of this chapter, none of which grants the power whose exercise the official is trying to defend. When the Constitution was ratified, the people were assured that it established a government of limited powers (primarily related to foreign policy and the regulation of interstate commerce), that the states retained all powers not delegated to the new government, and that the federal government could exercise no additional powers without their consent, given in the form of constitutional amendments. This is not a peculiarly conservative or libertarian reading of the historical record. This is the historical record.

The three constitutional clauses that have most frequently been exploited on behalf of expansions of federal government power are the general welfare clause, the commerce clause, and the "necessary and proper" clause.1 Generations of hapless American high school students have been taught fantasy versions of these clauses, such that they graduate with the conviction that the federal government is duly authorized to do pretty much whatever it wants to do.

> *Woods. Jr., Thomas E. (2010-06-23). Nullification: How to Resist Federal Tyranny in the 21st Century (pp. 21-22). Perseus Books Group. Kindle Edition.*

The Constitution's commerce clause declares that Congress will have power to "regulate Commerce with foreign Nations, and among the several States, and with the Indian tribes." It is the part about regulating commerce "among the several States" that has caused the mischief. As with the general welfare clause, the original understanding of the commerce clause—the understanding that informed the decisions of the ratifying conventions, and thus the interpretation to which they believed they were committing the American people—is not so hard to uncover. "Commerce" meant only trade or exchange—not, as its more ambitious interpreters have tried to claim, all gainful activity. No reference to commerce at the Constitutional Convention, in the *Federalist*, or at the state ratifying conventions encompasses anything else. "Among the several States" meant exactly that: commerce between one state and another, not commerce that might happen to have an effect on another state. For that matter, "regulate" in the eighteenth century meant to "make regular"—that is, to cause to function in a regular and orderly manner—as opposed to the word's modern meaning that suggests micromanagement and control. . . .

> *Woods. Jr., Thomas E. (2010-06-23). Nullification: How to Resist Federal Tyranny in the 21st Century (p. 26). Perseus Books Group. Kindle Edition.*

. . . the federal government claimed the power to regulate the wages of a janitor in a building whose occupants happened to be engaged in interstate commerce. In *Wickard v. Filburn* (1942), the Court ruled that the federal government could regulate the amount of wheat grown on an individual's farm even though the wheat never left the state, and the farmer and his

livestock consumed it themselves. Had they not grown and consumed that wheat, the argument went, they might have purchased it from another state, and hence their abstention from this purchase indirectly affected interstate commerce.

> *Woods. Jr., Thomas E. (2010-06-23). Nullification: How to Resist Federal Tyranny in the 21st Century (p. 27). Perseus Books Group. Kindle Edition.*

. . . critics typically give up trying to argue the matter [of nullification]. They change the subject, proposing instead that none of this matters anyway, since what the Framers may have written over 200 years ago is of no import to modern-day Americans. Even if this argument were true, it is silent on the question that really matters: how exactly are we to know what the original Constitution should be replaced with, in accordance with people's supposedly different outlook today? Who decides? The implicit answer is that we let federal judges decide on the evolving meaning of the Constitution. But this would merely give a small group of politically well-connected lawyers a monopoly on determining how Americans will be governed. Such an arrangement sounds much less desirable when stated that way, which is why it never is stated that way.

> *Woods. Jr., Thomas E. (2010-06-23). Nullification: How to Resist Federal Tyranny in the 21st Century (pp. 37-38). Perseus Books Group. Kindle Edition.*

. . . Thomas Cooley, the distinguished Chief Justice of the Michigan Supreme Court, declared in 1868 that a court

> which should allow a change in public sentiment to influence it in giving construction to a written constitution not warranted by the intention of its founders, would be justly charged with reckless disregard of official oath and public duty….A Constitution is not to be made to mean one thing at one time, and another at some subsequent time when the circumstances may have changed as perhaps to make a different rule in the case seem desirable.

We're sometimes told that ours is a "living" Constitution that changes with the times. Again, this merely begs the question. *Who decides what these changes should be?* Judges? The Constitution does allow for amendment, which would secure the people's consent to any major changes, but this is not what advocates of the "living" Constitution have in mind. They mean the federal government will have a monopoly on deciding how the Constitution should be interpreted now and in the future. Suspicions that it might abuse this power, that it might suddenly discover a whole host of new powers for itself as it re-examines day by day what the Constitution really ought to mean, are a sign that we are being paranoid and unreasonable. We should instead adopt the tranquil outlook of Britney Spears, who told us: "I think we should just trust our president in every decision he makes and should just support that, you know, and be faithful in what happens."

Thomas Jefferson took the opposite view. Should there be a desire to grant the federal government additional powers, it is better to do so the right way, with popular consent through the amendment process, than for the government itself simply to go ahead and exercise the powers, stretching the meaning of the Constitution to do so. As he told a correspondent, "When an instrument admits two constructions [interpretations], the one safe, the other dangerous, the one precise, the other indefinite, I prefer that which is safe & precise. *I had rather ask an*

enlargement of power from the nation, where it is found necessary, *than to assume it by a construction which would make our powers boundless.*"

A "living" constitution is precisely what the American colonists fought against in the American Revolution. . . . This is why Americans insisted on a written constitution for their new country—they knew all too well what it was like to live under a "living" constitution whose meaning could not be definitively pinned down. If we'd like to spit in the faces of our ancestors who fought for American independence from the British, we should by all means advocate a "living Constitution."

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The judiciary was, for Jefferson, certainly *not* the answer to such problems. For one thing, the Supreme Court in his day was packed with Federalists who would surely have upheld the constitutionality of the Alien and Sedition Acts. For another, the Supreme Court was itself a branch of the federal government, and thus not an impartial arbiter. And finally, the judiciary was composed of human beings no different from the rest of mankind. "To consider the Judges of the Superior Court as the ultimate Arbiters of Constitutional questions," he argued, "would be a dangerous doctrine which would place us under the despotism of an oligarchy. They have with others, the same passion for party, for power, and for the privileges of their corps—and their power is the more dangerous as they are in office for life, and not responsible, as the other functionaries are, to the Elective control. The Constitution has elected no single Tribunal. I know no safe depositary of the ultimate powers of society but the people themselves."

Woods. Jr., Thomas E. (2010-06-23). Nullification: How to Resist Federal Tyranny in the 21st Century (p. 45). Perseus Books Group. Kindle Edition.

. . . Any measures the federal government should take beyond the powers delegated to it are absolutely void. The federal government, which the states themselves created, cannot hold a monopoly on constitutional interpretation and cannot decide for itself what the extent of its own powers are. That would mean the people were governed by the mere discretion of their rulers rather than by the Constitution. . . .

Woods. Jr., Thomas E. (2010-06-23). Nullification: How to Resist Federal Tyranny in the 21st Century (p. 48). Perseus Books Group. Kindle Edition.

CHAPTER 3: AMERICAN HISTORY AND THE SPIRIT OF ‘98

The merits of the constitutional arguments advanced by the states we have studied in this chapter, although interesting in themselves, are not what concern us. What is important is the history itself, the brute fact that the states once did resist the federal government when they believed it had gone beyond its legitimate powers. This is not a newfangled idea that emerged in the twenty-first century out of opposition to George W. Bush or Barack Obama. It is a regular feature of American history, employed for honorable purposes from the earliest days of the republic.

Woods. Jr., Thomas E. (2010-06-23). Nullification: How to Resist Federal Tyranny in the 21st Century (pp. 84-86). Perseus Books Group. Kindle Edition.

CHAPTER 4: WHAT IS (OR ARE) THE UNITED STATES, ANYWAY?

WHAT WAS THE UNITED STATES SUPPOSED TO BE, ANYWAY? That may sound like an odd question. It is, in fact, the most important question of all. The history of state resistance we reviewed in chapter three, as well as the idea of nullification itself, are based on a particular understanding of the nature of the Union that the Constitution brought into existence. Was the United States created by a group of independent political societies that established a federal government as their agent, reserving all undelegated powers to themselves? Or was the United States the creation of a single, undifferentiated American people? That may sound like a distinction without a difference to those new to the subject, but it amounts to perhaps the most significant controversy in early American history—and perhaps in all of American history. Was the United States intended to be just another run-of-the-mill centralized polity, of the kind that would appear with a vengeance in the nineteenth century, or did the Framers of the Constitution have something less formulaic in mind?

What most American children learn when they study American history in school is what might be called the nationalist theory of the Union, which was expounded by the likes of Daniel Webster and jurist Joseph Story, the latter of whom composed the influential *Commentaries on the Constitution of the United States* (1833). There was no systematic nationalist theory until Story's *Commentaries*. This version of American history and constitutionalism conceives of the United States as deriving from a single sovereign people rather than from an agreement among states and the various peoples thereof. In this view, the United States is just another modern unitary state, in which a monopolistic central authority is the source of all power, and any lesser bodies (in this case, the states) derive their own powers and privileges from this central authority.

What we hear much less about, and what our law students do not learn about at all, is the alternative and far more historically plausible compact theory of the Union, set forth by the likes of Thomas Jefferson, John Taylor, St. George Tucker, Spencer Roane, Abel Upshur, John C. Calhoun, Littleton Waller Tazewell, and others. Hardly anyone reads Judge Abel P. Upshur's book, *A Brief Enquiry into the True Nature and Character of Our Federal Government* (1840), a point-by-point refutation of Justice Story's *Commentaries* that is at least as serious a work as the one it opposes. The compact theory, which Upshur sought to uphold against the nationalist version put forth by Story, held that the United States had been formed when the peoples of each of the thirteen states, each acting in its sovereign capacity, ratified the Constitution in the months and years following its drafting in 1787. (The very fact that the states voted separately to ratify the Constitution, and that the Constitution was not ratified by a single, consolidated vote of all individuals in the original thirteen states, is an important piece of evidence to compact theorists that the states, rather than some single American people, created the federal Union.) They delegated to that government a small number of enumerated powers, reserving the remainder to themselves. As we have seen, Thomas Jefferson and others further proposed that the states may refuse to enforce a federal law that exceeded the powers they had delegated to the central government. According to the compact theory, therefore, the United States consists not of a single, aggregated people, but of particular peoples, organized into distinct states.

For compact theorists, therefore, nullification amounts to the legitimate exercise of sovereignty by sovereign bodies in defense of their liberties against a federal government that was supposed to be the agent, not the master, of the states. The nationalist view, by contrast, would condemn nullification as illegal and possibly treasonous. We leave to the student as an exercise to determine where the true spirit of treason was to be found: in the states that upheld the Constitution by resisting unconstitutional encroachments, or in politicians who imposed unconstitutional measures on the people.

The nationalist view denies that the states established the federal government or that the United States is a league or compact among states. The ratification of the Constitution by state holds no significance for the nature of the Union, according to this view. Ratification was an act not of the states but of the whole people, who alone are sovereign even if they happen to have expressed that sovereignty through the intermediary of state conventions. State resistance to federal power, according to this reading of the American tradition, can be conceived of only as insubordination. The states are essentially helpless to defend themselves against the federal government, and must instead depend for the maintenance of their liberties on such notoriously unreliable mechanisms as national elections—as if elections alone could prevent unjust or wicked federal legislation—or the Supreme Court.

Proponents of the nationalist view attempt to undermine the political and historical integrity of the states by suggesting that the peoples of the American colonies (the precursors of the states) had already become amalgamated into a single people before the Declaration of Independence was signed, and thus well before the Constitution was ratified. . . .

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When Andrew Jackson composed his proclamation during his 1832–1833 confrontation with South Carolina over nullification, he too advanced the weak “one people” argument with reference to the American colonies. “In our colonial state,” he wrote, “although dependent on another power, we very early considered ourselves connected by common interest with each other.” Littleton Waller Tazewell, in turn, whose career included service in the U.S. House, the U.S. Senate, and as governor of Virginia, composed a series of articles that amounted to a point-by-point refutation of Jackson’s proclamation. He said of Jackson’s “one people” argument:

> A more flimsy pretext, from which to infer the existence of a single community, could not easily have been selected…. Mark, no social connection of any sort, is affirmed to have actually existed; it is merely said, that we very early considered ourselves as connected. And by what was this imaginary connection constituted? Were we inhabitants of a common territory, the vacant and unoccupied parts of which were admitted to belong to all? No. Did we profess the same religious faith? No. Did there exist any one institution, which having been created or preserved by all, was therefore common to all? No. By what tie then did this People consider themselves to be connected, in their colonial state? Why, by the single tie of a supposed common interest. No man before President Jackson, ever thought of inferring the existence of a community from such a fact, which if believed to be sufficient to produce the effect, would consolidate, probably, one-half of the People of the whole world into one community, and by so

> doing, would dissolve more than the half of all the societies now existing, whose members do not even consider themselves connected by any such tie.

The colonists' common experiences as British subjects cannot render them one people, particularly when we recall, with Upshur:

> The people of one colony owed no allegiance to the government of any other colony, and were not bound by its laws. The colonies had no common legislature, no common treasury, no common military power, no common judicatory. The people of one colony were not liable to pay taxes to any other colony, nor to bear arms in its defence; they had no right to vote in its elections; no influence nor control in its municipal government, no interest in its municipal institutions. There was no prescribed form by which the colonies could act together, for any purpose whatever.

There was likewise no official capacity in which the colonies could act politically as one people. When intercolonial confederations *were* proposed during the colonial period, the colonists either resisted them entirely (as when they fought off the royally imposed Dominion of New England in the 1680s or refused to accede to Benjamin Franklin's Albany Plan of Union in 1754), or consented only after insisting on maintaining a veto power on what the confederation might do (as when Massachusetts insisted on a veto less than a decade after the defensive Confederation of New England was established in 1643).

Furthermore, Upshur wonders, if the thirteen states really had constituted "one people," what would have been the status of states that chose not to ratify the Constitution? Could the others have coerced them into the Union, or treated them as if they were already part of it—as the nationalist, "one people" theory seems to demand? As it turned out, Rhode Island did not ratify until 1790—two years after the document had gone into effect over other states. During that time it never occurred to anyone that the U.S. government, by virtue of all the states having become "one people," had any political power over that recalcitrant state. In Federalist #43, in fact, James Madison had noted that if some states refused to ratify, then "no political relations can subsist between the assenting and dissenting states."

Alexis de Tocqueville, the best-known foreign observer of the United States in the nineteenth century, in concluding that the compact theory was the correct one, dismissed the claim that the people of the states ever constituted "one people" in any politically relevant sense. The Union, he wrote in *Democracy in America*, was "formed by the voluntary agreement of the states; and these, in uniting together, have not forfeited their nationality, nor have they been reduced to the condition of one and the same people." The great British libertarian (or "classical liberal") Richard Cobden, in turn, adopted Tocqueville's view, citing him as "our highest European authority."

The people of the colonies were, therefore, separate and distinct. As Upshur put it, they were "separate and distinct in their creation; separate and distinct in the forms of their governments; separate and distinct in the changes and modifications of their governments, which were made from time to time; separate and distinct in political functions, political rights, and in political duties."

> *Woods. Jr., Thomas E. (2010-06-23). Nullification: How to Resist Federal Tyranny in the 21st Century (pp. 92-95). Perseus Books Group. Kindle Edition.*

The Declaration of Independence itself made clear how the original thirteen colonies, which became states when they declared independence from Britain, thought of themselves. Today, common usage has led most Americans to think of the word “state” as referring to a subordinate political entity within a larger union, as in the centralized United States of the present time. But when the states used the word “state” in the Declaration, they meant it in the same way that Spain and Italy are states—sovereign, independent political units. In the Declaration, the states referred to themselves in the plural, and not as constituting a single entity. . . . When the term “united States of America” was used, the word “united” was not capitalized, as if they were bestowing a name upon a united federation of states. To the contrary, these were the states of America, united in their determination to break their respective political bonds with Britain but not united in the sense of having somehow dissolved their various sovereignties into one.

Woods. Jr., Thomas E. (2010-06-23). Nullification: How to Resist Federal Tyranny in the 21st Century (pp. 96-97). Perseus Books Group. Kindle Edition.

. . . the people of the states sure *believed* they were sovereign: the Articles of Confederation, which gave legal sanction to the then-existing Congress, proclaimed in 1781 that “each state retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this Confederation expressly delegated to the United States, in Congress assembled.” There it is, as clear as anyone could ask for: *each state retains its sovereignty, freedom, and independence*. The states would have had to be sovereign in the first place in order for them to *retain* that sovereignty in 1781. Thus their status as separate and distinct sovereign states is officially acknowledged in the 1780s, meaning that any collapsing of the distinct peoples of the states into “one people” could not have occurred prior to that date.

Woods. Jr., Thomas E. (2010-06-23). Nullification: How to Resist Federal Tyranny in the 21st Century (p. 99). Perseus Books Group. Kindle Edition.

What of the fact that the Constitution itself begins with the words “We, the People” rather than “We, the States”? Does this not prove that the United States was founded by a single, aggregated American people rather than by the people as citizens of the various states? . . .

Woods. Jr., Thomas E. (2010-06-23). Nullification: How to Resist Federal Tyranny in the 21st Century (p. 100). Perseus Books Group. Kindle Edition.

. . . According to John Taylor of Caroline, the great Virginian political pamphleteer, “The confederation is not a compact of individuals; it is a compact of states.” It was therefore the responsibility of the state legislatures to monitor the federal government and, if necessary, to prevent the enforcement of laws that violated the Constitution. Constitutions are violated, Taylor said, and it would be absurd to expect the federal government to enforce the Constitution against itself. If the very federal judges the Constitution was partly intended to restrain were the ones exclusively charged with enforcing it, then “America possesses only the effigy of a Constitution.” The states, the very constituents of the Union, had to do the enforcing.

Woods. Jr., Thomas E. (2010-06-23). Nullification: How to Resist Federal Tyranny in the 21st Century (pp. 109-110). Perseus Books Group. Kindle Edition.

Jefferson then had Virginia protest her loyalty to the Union, while at the same time noting that there was but one thing worse than disunion:

> Whilst the General assembly thus declares the rights retained by the states, rights which they never have yielded, and which this state will never voluntarily yield, they do not mean to raise the banner of disaffection, or of separation from their sister-states, co-parties with themselves to this compact. They know and value too highly the blessings of their union as to foreign nations and questions arising among themselves, to consider every infraction to be met by actual resistance; they respect too affectionately the opinions of those possessing the same rights under the same instrument, to make every difference of construction a ground of immediate rupture. They would indeed consider such a rupture as among the greatest calamities which could befall them; but not the greatest. There is yet one greater, submission to a government of unlimited powers.

To my mind, Jefferson's compact theory, and the long tradition of thinkers who supported and amplified it, are immediately persuasive to anyone approaching the subject without prejudice. And it is in light of their exegesis of the American experience that the tradition of nullification makes the most sense and can be most readily defended. As we noted at the beginning of this chapter, few Americans have ever been exposed to it. No law student learns about it. Almost no undergraduates encounter it at any length, since their professors tend to be unfamiliar with the relevant texts. But if we are to make sense of American history, the Constitution, and the options before us as we confront Jefferson's nightmare—namely, a government that acknowledges no fixed limits to its power—we have an obligation to understand it.

Woods. Jr., Thomas E. (2010-06-23). Nullification: How to Resist Federal Tyranny in the 21st Century (pp. 112-114). Perseus Books Group. Kindle Edition.

CHAPTER 5: NULLIFICATION TODAY

. . . We have been taught to believe in the modern state; in political centralization. Nearly all modern political philosophers defend some form of it. Instead, we should give the moral benefit of the doubt to movements for political decentralization in the United States and around the world, which challenge the absorption of all power by an irresistible central authority. There has been no more destructive force in the history of the world than the modern state. There is nothing sinister about thinking in different ways. To the contrary, it is probably the most intellectually and politically liberating thing we can do.

That this is a morally and philosophically serious position should be obvious. But try advancing it in modern America, where generations of students are never given the opportunity to consider it. They are instead imbued with the principles of the modern state, their great and glorious protector. Because they accept these premises so unthinkingly, and are usually not even aware of their own assumptions, it becomes impossible for them to respond to alternatives other than with a string of clichés in defense of the status quo. You would have better luck debating a zombie.

. . . A lot of people were taken in by the American politician who promised that he and his party

> would totally eliminate states' rights altogether: Since for us the state as such is only a form, but the essential is its content, the nation, the people, it is clear that everything else must be subordinated to its sovereign interests. In particular we cannot grant to any individual state within the nation and the state representing it state sovereignty and sovereignty in point of political power.

Whoops—that wasn't an American politician. My mistake. That was Adolf Hitler in *Mein Kampf*. The future dictator went on in that book to promise that the "mischief of individual federated states…must cease and will some day cease…. National Socialism as a matter of principle must lay claim to the right to force its principles on the whole German nation without consideration of previous federated state boundaries." No nullification for him.

> *Woods. Jr., Thomas E. (2010-06-23). Nullification: How to Resist Federal Tyranny in the 21st Century (pp. 119-121). Perseus Books Group. Kindle Edition.*

. . . there *is* something wrong with the Constitution as it exists today: the Seventeenth Amendment, to name just one such problem. The direct election of U.S. senators, instituted by the Seventeenth Amendment, is routinely described as a glorious and progressive advance over the backward, stupid system of the Framers, whereby U.S. senators were to be chosen by the state legislatures. In fact, that amendment has played a central role in advancing the centralization of power in Washington, D.C. I do not recall, in my own high school social-studies class, being encouraged to consider *why* the Framers decided to elect senators this way, and why they deliberately chose not to elect them as we do today. Today, senators get elected by holding fundraisers in major U.S. cities and collecting donations from all over the country. This does not exactly make them beholden to their states. To the contrary, it makes them beholden to their donors. As the Framers envisioned it, the state legislatures' power to choose U.S. senators would limit the extent to which the latter could be bought off, and maximize the

influence that the states would exercise over them. Thus Fisher Ames of Massachusetts referred to U.S. senators as “ambassadors of the states.” It was taken for granted that the state legislatures would instruct their senators, and thereby keep them on relatively short leashes.

> *Woods. Jr., Thomas E. (2010-06-23). Nullification: How to Resist Federal Tyranny in the 21st Century (pp. 126-127). Perseus Books Group. Kindle Edition.*

. . . We need an institutional structure in which another force within the United States may say no after the federal government has said yes. Anyone who doesn’t think the federal government has been saying yes to itself a teensy bit too much might consider, just for starters, the $100 trillion in unfunded liabilities for which our wise leaders, who continue to hand out “free” benefits as if nothing is wrong, have made absolutely no provision.

> *Woods. Jr., Thomas E. (2010-06-23). Nullification: How to Resist Federal Tyranny in the 21st Century (p. 128). Perseus Books Group. Kindle Edition.*

Nothing is more certain than the demonization of this worthy cause and those who support it. Even though they are following in the footsteps of eminent Americans, they will be portrayed as cranks with sinister motives. Note that our wise public servants are not portrayed as having sinister motives. From time to time they may make “mistakes,” but their intentions are good and they seek only to serve us. Those who resist them, on the other hand, are wicked and perverse. They must be crushed. They must be smeared and made into objects of hatred. Government is supposed to grow, our wise public servants and their favored constituencies are supposed to enrich themselves, and the rest of us are supposed to sit back and take it. The natural right of Ivy Leaguers to try out their theories on the American public shall not be infringed.

Demonization of those who favor nullification has already begun to occur at the state level. When, in late 2009, State Representative Susan Lynn introduced a nullification resolution into the Tennessee legislature in anticipation of the federal government’s health care legislation, she was met by the usual hysteria with which the political establishment greets deviations from the narrow range of allowable opinion. According to the *Nashville City Paper*, “Rep. Mike Turner, chairman of the House Democrats’ political caucus, said Tuesday Rep. Susan Lynn’s comments harkened back to Civil War-era arguments.” Representative Turner himself went on to unbosom his own thoughts: “Susan Lynn is yearning for times gone by. Maybe we could put the poor people back to sharecropping and slavery and let the people up at the big house have all the nice things. We’ve already had that fight about states’ rights.”

That’s one seriously convoluted remark, but the best I can make out, Turner is saying something like this: since Susan Lynn questions the federal government’s constitutional authority on health care, she is an enemy of the people who is living in the past. If we listen to her, we may as well bring back slavery!

Listen again to Turner’s *non sequitur*: “We’ve already had that fight about states’ rights.” In other words, we’ve already established that the experts who rule us in Washington know what’s best. We’ve already decided that it’s better for the federal government to exercise whatever powers it wants, and for the states to content themselves as administrative units dictated to by an imperial capital. You think the states might instead need to protect themselves from

Washington, that perhaps the federal government just might overstep its constitutional bounds? What are you, a supporter of slavery?

Now even if, as I suspect is the case, Turner didn't know anything about the use of nullification on behalf of human freedom time and again in American history, and even if he'd never heard the name of Joshua Glover, what could justify such a vicious and absurd attack on the inoffensive Susan Lynn? What kind of numbskull would think she or her supporters favored *slavery*?

Turner does not actually believe what he is saying. He knows it, we know it, and he knows we know it. He is engaged in the familiar ritual of smearing the good name of anyone who dares to deviate from that glorious continuum from Hillary Clinton to Mitch McConnell that we laughingly call the "mainstream." He hopes that by associating someone with slavery, he can make that person odious in the minds of those who don't bother to investigate the matter for themselves.

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Nullification is a principle that defends the freedom of all Americans, who are equally threatened by a government that acts without limits. And it is not Birmingham 1963 any longer. Demographic trends of the past several decades show blacks moving in large numbers to the South, the only section of the country where a majority of blacks polled say they are treated fairly. Times have changed. *Federal* policies, especially but not exclusively related to the "war on drugs," have helped turn black communities into war zones. Under the present system of federal supremacy, states are forbidden to adopt humane alternatives. Are we so pleased with the outcome that such alternatives are really unthinkable?

As we join together against a common foe, it is long past time that we started treating each other as human beings, rather than as categories. We ought to recall Murray Rothbard's refusal to accept that "our enemy today is the poor, who are robbing the rich; the blacks, who are robbing the whites; or the masses, who are robbing heroes and businessmen." To the contrary, he said, it is the government that is "robbing all classes, rich and poor, black and white, worker and businessman alike" and "ripping us all off."

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When the issue of nullification arose in the 2010 Texas gubernatorial race, with both Texas governor Rick Perry and challenger Debra Medina making reference to the compact theory of the Union, the Establishment went berserk. MSNBC's Chris Matthews, who knows nothing of the history in this book, exploded that these were the principles of Jim Crow (Jim Crow, of course, having been validated by the U.S. Supreme Court!), and demanded to know if Medina thought she was John Calhoun, whatever that was supposed to mean. This is the media's standard procedure. Never actually deign to tell us where our arguments are wrong; just point and shout, "Eek! An unapproved opinion!" Matthews then told the two other middle-aged white men on his program that the Tea Party demonstrations weren't "diverse."

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Nullification is not a silver bullet, of course. It cannot solve all problems, and carrying it through effectively will be difficult. But is that so surprising? The economic and political interests that benefit from the current system, in which the federal government does as it wishes without effective check from any quarter, swarms of federal employees line their pockets in the name of serving the public good, and countless pressure groups win lucrative special privileges for themselves, are formidable. *Any* attempt to reverse the process is going to be an uphill battle. If we are waiting for a remedy that will work like magic, we will be waiting a long time.

The federal courts will never allow the states to get away with nullification, skeptics may say. Perhaps so, but is this any different from saying that the federal government as a whole will object to nullification? No one doubts that the federal courts will object. The question is whether this should matter. Not for nothing did Jefferson describe the federal judiciary as "working like gravity by night and by day, gaining a little today and a little tomorrow, and advancing its noiseless step like a thief over the field of jurisdiction, until all shall be usurped from the states, and the government of all be consolidated into one." The federal courts have done nothing, at least since the 1930s, as the rest of the federal government has dismantled the restraints on its power that the Framers of the Constitution clearly and obviously instituted. It would be farcical even by the federal courts' standards for them to decide that the one thing they will condemn is the states' efforts to restore these constitutional limitations. Whether or not one particular branch of the federal government is unhappy with state resistance is beside the point; as we've seen in the case of medical marijuana and are about to see in other aspects of American life, when the people of a state have determined to stand up to the federal government, merely being handed a declaration by that same government ordering them to cut it out is unlikely to divert them. Any such pronouncement by a federal court should itself be nullified, if not simply ignored.

Nullification efforts can play an important educational role even when unsuccessful. The very idea that the federal government might do something unconstitutional hardly enters into political discussion today. The vast bulk of Americans proceed through twelve years of government-funded education that (by an interesting coincidence) teaches them all about the wonders of the federal government, how lost they'd be without it, and how foolish it would be to worry that the Constitution might not authorize most of what it does. The very attempt at nullification and the ensuing controversy and debate can give rise to a veritable seminar in American history and constitutionalism, thereby filling the gaps that remain in most Americans' formal education.

> *Woods. Jr., Thomas E. (2010-06-23). Nullification: How to Resist Federal Tyranny in the 21st Century (pp. 138-139). Perseus Books Group. Kindle Edition.*

In earlier times, advocates tried to make nullification more palatable to skeptics by assuring them that it would be used only infrequently and as an absolutely last resort. Today this assurance hardly seems necessary. The regime in Washington has grown so destructive and parasitic, its activities so inimical to the welfare, liberties, and prosperity of the people and so remote from any conception of constitutionally limited government, that supporters of nullification need not apologize for disrupting its plans. That, in fact, is the point. They should be congratulated for doing what they can to slow it down. Again, *nothing else has worked*.

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We have been helpless spectators long enough. Even if some opponents of government growth might have blanched at nullification a few decades ago, they can hardly reject it out of hand now. How much longer do we have to fail before we admit that maybe something different, something we might have scorned years ago, but that has been used to good effect and for honorable purposes in the past, might now be necessary? If anything is going to change, we must employ every mechanism of defense that Thomas Jefferson bequeathed to us, not just the ones that won't offend Katie Couric or the *New York Times*.

Nullification is about learning to exercise our rights, whether the courts or the politicians want us to or not. Instead of waiting for our liberties to be handed back to us, we in our states can follow Jefferson's noble example and take the lead in saying no to the ambitions of a government that would have horrified the founding generation. For, as Lord Byron said, "Who would be free, themselves must strike the blow."

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