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Nullification

Nullification is a constitutional theory that gives an individual state the right to declare null and void any law passed by the United States Congress which the state deems unacceptable and unconstitutional. The concept is most well-known in the context of the sectionalist crisis that plagued the Union in the 40 years preceding the Civil War.

The origins of nullification are found in the Federalist-Republican debate of the late 1700s. James Madison and Thomas Jefferson in the Virginia and Kentucky Resolutions (1798) declared that the states had the right to nullify laws by which the federal government overstepped its limits of jurisprudence. When the Republicans gained the presidency in the "revolution of 1800," nullification became moot.

The "tariff of abominations" of 1828 revived the issue. By this time in the United States, the North had become economically dominant due to manufacturing, and the South was beginning to suffer from exhausted land. The government enacted tariffs on foreign manufactures to protect Northern business, which raised the price of goods to be sold throughout the US. South Carolinians in particular were upset by their inability to afford these goods which the South could not produce. South Carolina threatened to secede from the Union.

John Calhoun, then Vice-President in the Jackson administration, promoted nullification as a moderate alternative to secession. A state would be able to nullify a federal law and exist as part of the Union unless three-fourths of the states passed the law as a constitutional amendment. In that case, the state would secede from the Union. Calhoun's theory of "concurrent majority" essentially gave each regional interest an absolute veto.

Calhoun wanted to preserve the Union and intended to use the threat of nullification simply to force the federal government to reduce tariff rates, but the 1830 Webster-Hayne debate in Congress divided the nation over nullification. A North versus West controversy about public lands in the frontier turned into a Southern and Western ideological struggle against Northeastern "tyranny."

President Jackson considered nullification to be treasonous. Jackson stated his view with the following toast at a Democratic Party banquet: "Our *Federal Union-it must be preserved.*" John Calhoun responded: "The Union-next to our liberty most dear." Calhoun would resign as Vice-President and accept a Congressional seat from South Carolina.

In 1833, Congress passed a "force bill" which authorized Jackson to use violence to preserve the Union. A compromise on the tariff issue offered by Senator Henry Clay was passed in 1842, which gradually reduced rates to the 1816 level. Thirty years later in the Civil War (1861-1865), after the secession crisis was heightened by the slavery issue, violence would finally settle the matter of nullification.

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October 15, 1997

The Avalon Project



at Yale Law School

South Carolina Ordinance of Nullification, November 24, 1832.

An ordinance to nullify certain acts of the Congress of the United States, purporting to be laws laying duties and imposts on the importation of foreign commodities.

Whereas the Congress of the United States by various acts, purporting to be acts laying duties and imposts on foreign imports, but in reality intended for the protection of domestic manufactures and the giving of bounties to classes and individuals engaged in particular employments, at the expense and to the injury and oppression of other classes and individuals, and by wholly exempting from taxation certain foreign commodities, such as are not produced or manufactured in the United States, to afford a pretext for imposing higher and excessive duties on articles similar to those intended to be protected, hath exceeded its just powers under the constitution, which confers on it no authority to afford such protection, and hath violated the true meaning and intent of the constitution, which provides for equality in imposing the burdens of taxation upon the several States and portions of the confederacy: And whereas the said Congress, exceeding its just power to impose taxes and collect revenue for the purpose of effecting and accomplishing the specific objects and purposes which the constitution of the United States authorizes it to effect and accomplish, hath raised and collected unnecessary revenue for objects unauthorized by the constitution.

We, therefore, the people of the State of South Carolina, in convention assembled, do declare and ordain and it is hereby declared and ordained, that the several acts and parts of acts of the Congress of the United States, purporting to be laws for the imposing of duties and imposts on the importation of foreign commodities, and now having actual operation and effect within the United States, and, more especially, an act entitled "An act in alteration of the several acts imposing duties on imports," approved on the nineteenth day of May, one thousand eight hundred and twenty-eight and also an act entitled "An act to alter and amend the several acts imposing duties on imports," approved on the fourteenth day of July, one thousand eight hundred and thirty-two, are unauthorized by the constitution of the United States, and violate the true meaning and intent thereof and are null, void, and no law, nor binding upon this State, its officers or citizens; and all promises, contracts, and obligations, made or entered into, or to be made or entered into, with purpose to secure the duties imposed by said acts, and all judicial proceedings which shall be hereafter had in affirmance thereof, are and shall be held utterly null and void.

And it is further ordained, that it shall not be lawful for any of the constituted authorities, whether of this State or of the United States, to enforce the payment of duties imposed by the said acts within the limits of this State; but it shall be the duty of the legislature to adopt such measures and pass such acts as may be necessary to give full effect to this ordinance, and to prevent the enforcement and arrest the operation of the said acts and parts of acts of the Congress of the United States within the limits of this State, from and after the first day of February next, and the duties of all other constituted authorities, and of all persons residing or being within the limits of this State, and they are hereby required and enjoined to obey and give effect to this ordinance, and such acts and measures of the legislature as may be passed or adopted in obedience thereto.

And it is further ordained, that in no case of law or equity, decided in the courts of this State, wherein shall be drawn in question the authority of this ordinance, or the validity of such act or acts of the legislature as may be

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Kentucky Resolution (1799)

Resolutions in General Assembly

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

We cannot however but lament, that in the discussion of those interesting subjects, by sundry of the legislatures of our sister states, unfounded suggestions, and uncandid insinuations, derogatory of the true character and principles of the good people of this commonwealth, have been substituted in place of fair reasoning and sound argument. Our opinions of those alarming measures of the general government, together with our reasons for those opinions, were detailed with decency and with temper, and submitted to the discussion and judgment of our fellow citizens throughout the Union. Whether the decency and temper have been observed in the answers of most of those states who have denied or attempted to obviate the great truths contained in those resolutions, we have now only to submit to a candid world. Faithful to the true principles of the federal union, unconscious of any designs to disturb the harmony of that Union, and anxious only to escape the fangs of despotism, the good people of this commonwealth are regardless of censure or calumination.

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

RESOLVED, That this commonwealth considers the federal union, upon the terms and for the purposes specified in the late compact, as conducive to the liberty and happiness of the several states: That it does now unequivocally declare its attachment to the Union, and to that compact, agreeable to its obvious and real intention, and will be among the last to seek its dissolution: That if those who administer the general government be permitted to transgress the limits fixed by that compact, by a total disregard to the special delegations of power therein contained, annihilation of the state governments, and the erection upon their ruins, of a general consolidated government, will be the inevitable consequence: That the principle and construction contended for by sundry of the state legislatures, that the general government is the exclusive judge of the extent of the powers delegated to it, stop nothing short of despotism; since the discretion of those who administer the government, and not the constitution, would be the measure of their powers: That the several states who formed that instrument, being sovereign and independent, have the unquestionable right to judge of its infraction; and that a nullification, by those sovereignties, of all unauthorized acts done under colour of that instrument, is the rightful remedy: That this commonwealth does upon the most deliberate reconsideration declare, that the said alien and sedition laws, are in their opinion, palpable violations of the said constitution; and however cheerfully it may be disposed to surrender its opinion to a majority of its sister states in matters of ordinary or doubtful policy; yet, in momentous regulations like the present, which so vitally wound the best rights of the citizen, it would consider a silent acquiescence as highly criminal: That although this commonwealth as a party to the federal compact; will bow to the laws of the Union, yet it does at the same time declare, that it will not now, nor ever hereafter, cease to oppose in a constitutional manner, every attempt from what quarter soever offered, to violate that compact:

AND FINALLY, in order that no pretexts or arguments may be drawn from a supposed acquiescence on the part of this commonwealth in the constitutionality of those laws, and be thereby used as precedents for similar future violations of federal compact; this commonwealth does now enter against them, its SOLEMN PROTEST.

Approved December 3rd, 1799.

author: [Thomas Jefferson](#)

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THE VIRGINIA & KENTUCKY RESOLUTION

by Thomas Jefferson, 1798

INTRODUCTION

Opposition to the tyranny of the American Federal government goes back a long way -- at least as far back as 1798 when Thomas Jefferson drafted what became, after slight amendment, the Virginia & Kentucky Resolutions. Jefferson wrote these documents in opposition to the Alien & Sedition Acts, which made it a federal crime to criticize the government ("sedition") and gave the federal government the power to deport people living in America as long as they weren't citizens. In many ways, President Clinton's "anti-terrorist" legislation (recently enacted as the "USA Patriot Act" by the Bush Administration) was/is a close contemporary equivalent to the Alien & Sedition Acts. In his original draft, Jefferson articulated his theory of the limits of the constitutional authority of the federal government, which was far more restrictive than the Federalist interpretation (and, it should go without saying, infinitely more narrow than most contemporary views). He warned against trusting rulers on the grounds that they had been elected to public office rather than having inherited their positions (as with Kings). He proposed that the states defend their people against federal usurpation of power -- in much the same way as the current wave of 10th Amendment Resolutions are doing today. If this 20th century 10th Amendment movement needs a foundation in political philosophy for their actions, they can find one in this document. The text that follows is Jefferson's original. The versions which were passed by the legislatures of Virginia and Kentucky were slightly watered down. Both are available on the World Wide Web at URL: <http://www.pacifier.com/~matte> if anyone is interested. Tim Starr -- former Assistant Editor, [Freedom Network News](#) (ISIL)

OCTOBER, 1798

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

2. Resolved, That the Constitution of the United States, having delegated to Congress a power to punish treason, counterfeiting the securities and current coin of the United States, piracies, and felonies committed on the high seas, and offences against the law of nations, and no other crimes whatsoever; and it being true as a general principle, and one of the amendments to the Constitution having also declared, that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to

the States respectively, or to the people," therefore the act of Congress, passed on the 14th day of June, 1798, and intituled "An Act for the punishment of certain crimes against the United States," as also the act passed by them on the -- day of June, 1798, intituled "An Act to punish frauds committed on the bank of the United States," (and all their other acts which assume to create, define, and punish such other crimes is reserved, and, of right, appertains solely and exclusively to the respective States, each within its own territory.

3. Resolved, That it is true as a general principle, and is also expressly declared by one of the amendments to the Constitution, that "the powers not delegated to the United States by the Constitution, nor prohibited to it by the States, are reserved to the States respectively, or to the people;" and that no power over the freedom of religion, freedom of speech, or freedom of the press being delegated to the United States by the Constitution, not prohibited by it to the States, all lawful powers respecting the same did of right remain, and were reserved to the States or the people: that thus was manifested their determination to retain to themselves the right of judging how far the licentiousness of speech and of the press may be abridged without lessening their useful freedom, and how far these abuses which cannot be separated from their use should be tolerated, rather than the use be destroyed. And thus also they guarded against all abridgment by the United States of the freedom of religious opinions and exercises, and retained to themselves the right of protecting the same, as this State, by a law passed on the general demand of its citizens, had already protected them from human restraint or interference. And that in addition to this general principle and express declaration, another and more special provision has been made by one of the amendments to the Constitution, which expressly declares, that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press:" thereby guarding in the same sentence, and under the same words, the freedom of religion, of speech, and of the press: insomuch, that whatever violated either, throws down the sanctuary which covers the others, and that libels, falsehood and defamation, equally with heresy and false religion, are withheld from the cognizance of federal tribunals. That, therefore, the act of Congress of the United States, passed on the 14th day July, 1798, intituled "An Act for the punishment of certain crimes against the United States," which does abridge the freedom of the press, is not law, but is altogether void, and of no force.

4. Resolved, That alien friends are under the jurisdiction and protection of the laws of the State wherein they are: that no power over them has been delegated to the United States, nor prohibited to the individual States, distinct from their power over citizens. And it being true as a general principle, and one of the amendments to the Constitution having also declared, that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people," the act of Congress of the United States, passed on the -- day of July, 1798, intituled "An Act concerning aliens," which assumes powers over alien friends, not delegated by the Constitution, is not law, but is altogether void, and of no force.

5. Resolved, That in addition to the general principle, as well as the express declaration, that powers not delegated are reserved, another and more special provision, inserted in the Constitution from abundant caution, has declared that "the migration of importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year 1808;" that this commonwealth does admit the migration of alien friends, described as the subject of the said act concerning aliens: that a provision against prohibiting their migration, is a provision against all acts equivalent thereto, or it would be nugatory: that to remove them when migrated, is equivalent to a prohibition of their migration, and is, therefore, contrary to the said provision of the Constitution, and void.

6. Resolved, That the imprisonment of a person under the protection of the laws of this commonwealth, on his failure to obey the simple order of the President to depart out of the United States, as is undertaken by said act intituled "An Act concerning aliens," is contrary to the Constitution, one amendment to which has provided that "no person shall be deprived of liberty without due process of law;" and that another having provided that "in all criminal prosecutions the accused shall enjoy the right to public trial by an impartial jury, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence," the same act, undertaking to authorize the President to remove a

person out of the United States, who is under the protection of the law, on his own suspicion, without accusation, without jury, without public trial, without confrontation of the witnesses against him, without hearing witnesses in his favor, without defence, without counsel, is contrary to the provision also of the Constitution, is therefore not law, but utterly void, and of no force: that transferring the power of judging any person, who is under the protection of the laws, from the courts to the President of the United States, as is undertaken by the same act concerning aliens, is against the article of the Constitution which provides that "the judicial power of the United States shall be vested in courts, the judges of which shall hold their offices during good behavior;" and that the said act is void for that reason also. And it is further to be noted, that this transfer of judiciary power is to that magistrate of the General Government who already possesses all the Executive, and a negative on all legislative powers.

7. Resolved, That the construction applied by the General Government (as is evidenced by sundry of their proceedings) to those parts of the Constitution of the United States which delegate to Congress a power "to lay and collect taxes, duties, imports, and excises, to pay the debts, and provide for the common defence and general welfare of the United States," and "to make all laws which shall be necessary and proper for carrying into execution the powers vested by the Constitution in the government of the United States, or in any department or officer thereof," goes to the destruction of all limits prescribed to their power by the Constitution: that words meant by the instrument to be subsidiary only to the execution of limited powers, ought not to be so construed as themselves to give unlimited powers, nor a part to be so taken as to destroy the whole residue of that instrument: that the proceeds of the General Government under color of these articles will be a fit and necessary subject of revisal and correction, at a time of greater tranquillity, while those specified in the preceding resolutions call for immediate redress.

8. Resolved, That a committee of conference and correspondence be appointed, who shall have in charge to communicate the preceding resolutions to the legislatures of the several States; to assure them that this commonwealth continues in the same esteem of their friendship and union which it has manifested from that moment at which a common danger first suggested a common union: that it considers union, for specified national purposes, and particularly to those specified in their late federal compact, to be friendly to the peace, happiness and prosperity of all the States: that faithful to that compact, according to the plain intent and meaning in which it was understood and acceded to by the several parties, it is sincerely anxious for its preservation: that it does also believe, that to take from the States all the powers of self-government and without regard to the special delegations and reservations solemnly agreed to in that compact, is not for the peace, happiness or prosperity of these States; and that therefore this commonwealth is determined, and consequently unlimited powers in no man, or body of men on earth: that in cases of an abuse of the delegated powers, the members of the General government, being chosen by the people, a change by the people would be the constitutional remedy; but, where powers are assumed which have not been delegated, a nullification of the act is the rightful remedy: that every State has a natural right in cases not within the compact, (*casus non foederis*,) to nullify of their own authority all assumptions of power by others within their limits: that without this right, they would be under the domination, absolute and unlimited, of whosoever might exercise this right of judgment for them: that nevertheless, this commonwealth, from motives of regard and respect for its co-States, has wished to communicate with them on the subject: that with them alone it is proper to communicate, they alone being parties to the compact, and solely authorized to judge in the last resort of the powers exercised under it, Congress being not a party, but merely the creature of the compact, and subject as to its assumptions of power to the final judgment of those by whom, and for whose use itself and its powers were all created and modified: that if the acts before specified should stand, these conclusions would flow from them: that the General government may place any act they think proper on the list of crimes, and punish it themselves whether enumerated or not enumerated by the Constitution as cognizable by them: that they may transfer its cognizance to the President, or any other person, who may himself be the accuser, counsel, judge and jury, whose suspicions may be the evidence, his order the sentence, his officer the executioner, and his breast the sole record of the transaction: that a very numerous and valuable description of the inhabitants of these States being, by this precedent, reduced, as outlaws, to the absolute dominion of one man, and the barrier of the Constitution thus swept away from us all, no rampart now remains against the passions and the powers of a majority in Congress to protect from a like

exportation, or other more grievous punishment, the minority of the same body, the legislatures, judges, governors, and counselors of the States, nor their other peaceable inhabitants, who may venture to reclaim the constitutional rights and liberties of the States and people, or who for other causes, good or bad, may be obnoxious to the views, or marked by the suspicions of the President, or be thought dangerous to his or their election, or other interests, public or personal: that the friendless alien has indeed been selected as the safest subject of a first experiment; but the citizen will soon follow, or rather, has already followed, for already has a sedition act marked him as its prey: that these and successive acts of the same character, unless arrested at the threshold, necessarily drive these States into revolution and blood, and will furnish new calumnies against republican government, and new pretexts for those who wish it to be believed that man cannot be governed but by a rod of iron: that it would be a dangerous delusion were a confidence in the men of our choice to silence our fears for the safety of our rights: that confidence is everywhere the parent of despotism -- free government is founded in jealousy, and not in confidence; it is jealousy and not confidence which prescribes limited constitutions, to bind down those whom we are obliged to trust with power: that our Constitution has accordingly fixed the limits to which, and no further, our confidence may go; and let the honest advocate of confidence read the alien and sedition acts, and say if the Constitution has not been wise in fixing limits to the government it created, and whether we should be wise in destroying those limits. Let him say what the government is, if it be not a tyranny, which the men of our choice have conferred on our President, and the President of our choice has assented to, and accepted over the friendly strangers to whom the mild spirit of our country and its laws have pledged hospitality and protection: that the men of our choice have more respected the bare suspicions of the President, than the solid right of innocence, the claims of justification, the sacred force of truth, and the forms and substance of law and justice. In questions of power, then, let no more be heard of confidence in man, but bind him down from mischief by the chains of the Constitution. That this commonwealth does therefore call on its co-States for an expression of their sentiments on the acts concerning aliens, and for the punishment of certain crimes herein before specified, plainly declaring whether these acts are or are not authorized by the federal compact. And it doubts not that their sense will be so announced as to prove their attachment unaltered to limited government, whether general or particular. And that the rights and liberties of their co-States will be exposed to no dangers by remaining embarked in a common bottom with their own. That they will concur with this commonwealth in considering the said acts as so palpably against the Constitution as to amount to an undisguised declaration that that compact is not meant to be the measure of the powers of the General Government, but that it will proceed in the exercise over these States, of all powers whatsoever: that they will view this as seizing the rights of the States, and consolidating them in the hands of the General Government, with a power assumed to bind the States, (not merely as the cases made federal, (*casus foederis*),) but in all cases whatsoever, by laws made, not with their consent, but by others against their consent: that this would be to surrender the form of government we have chosen, and live under one deriving its powers from its own will, and not from our authority; and that the co-States, recurring to their natural right in cases not made federal, will concur in declaring these acts void, and of no force, and will each take measures of its own for providing that neither these acts, nor any others of the General Government not plainly and intentionally authorized by the Constitution, shall be exercised within their respective territories.

9. Resolved, That the said committee be authorized to communicate by writing or personal conferences, at any times or places whatever, with any person or persons who may be appointed by any one or more co-States to correspond or confer with them; and that they lay their proceedings before the next session of Assembly.

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