Nullification or Interposition (i.e. Republic Review)

Preface

Okay you know this is going to be a long read just because it has a preface? Prefaces have a function, so to the point. This article is not a "take our word for it" type of article. This article is academic in nature for that very reason the reader does not have to take our word for it. Instead the challenge is to prove us wrong. Not with the analysis or conclusions of others but give us an academic argument that proves us wrong point for point.

The Constitution is a Limited and Defined Compact Written For and By the States

To provide absolute clarity on the necessary actions of the States when they are confronted with unconstitutional government and laws and even outright tyranny, one must first define the Constitution as it was defined by the delegates who wrote the Constitution at the Constitutional Convention to the States during the Ratification Debates. Why? Because the Constitution is a compact the definitions and clarification of the Constitution during the ratification process are legally binding definitions and terms. Consequently, as the Constitution was defined to the States, in a sundry of ways the States were told that the general (i.e. federal) government's jurisdiction and powers were limited to the enumerated objects. Because of its enumerated design it was argued that there was no need for a Bill of Right's. This concept was spelled out in several ways that clarify exactly how limited the general government is by the Constitution.

Even more importantly, there is no evidence whatsoever in the Ratification Debates that the Constitution was defined as a living document or anything contrary to the fact that the Constitution is a hard fast compact limited to the enumerated powers. To ensure no one takes my word for this here are a few examples:

The Massachusetts Debates

We start with Massachusetts because Massachusetts was the first state to set precedents in the ratification process. Since, along with the "ratifying" of the Constitution, they also forwarded recommended Amendments to the Constitution, in a "want for a Bill of Rights." To be clear, the Constitution was not a general grant of powers; within it were the listed powers that were delegated to the federal government. If the power was not listed, the federal government had no business "messing with it." Below, George Nicolas of Virginia uses a different term; he uses meddle instead of "messing."

Mr. Samuel Adams Massachusetts Debates: "It removes a doubt which many have entertained respecting the matter, and gives assurance that, if any law made by the federal government shall be extended beyond the power granted by the proposed Constitution, and inconsistent with the

constitution of this state, it will be an error, and adjudged by the courts of law to be void. It is consonant with the second article in the present Confederation, 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."

The North Carolina Debates

These debates were fascinating but the stark comparison Mr. Iredell uses in placing the Constitution, which is a contract into context to a power of attorney is very powerful because today most people understand a power of attorney and how it is a contract that empowers someone with either general powers or specific powers. Mr. Iredell makes one of the best arguments that a Bill of Rights is not needed. Nonetheless we have one, and that will be important to this argument a little later.

Mr. Iredell North Carolina Debates: "Did any man ever hear, before, that at the end of a power of attorney it was said that the attorney should not exercise more power than was there given him? Suppose, for instance, a man had lands in the counties of Anson and Caswell, and he should give another a power of attorney to sell his lands in Anson, would the other have any authority to sell the lands in Caswell? — or could he, without absurdity, say, "'Tis true you have not expressly authorized me to sell the lands in Caswell; but as you had lands there, and did not say I should not, I thought I might as well sell those lands as the other." A bill of rights, as I conceive, would not only be incongruous, but dangerous. No man, let his ingenuity be what it will, could enumerate all the individual rights not relinquished by this Constitution. Suppose, therefore, an enumeration of a great many, but an omission of some, and that, long after all traces of our present disputes were at an end, any of the omitted rights should be invaded, and the invasion be complained of; what would be the plausible answer of the government to such a complaint? Would they not naturally say, "We live at a great distance from the time when this Constitution was established. We can judge of it much better by the ideas of it entertained at the time, than by any ideas of our own. The bill of rights, passed at that time, showed that the people did not think every power retained which was not given, else this bill of rights was not only useless, but absurd. But we are not at liberty to charge an absurdity upon our ancestors, who have given such strong proofs of their good sense, as well as their attachment to liberty. So long as the rights enumerated in the bill of rights remain unviolated, you have no reason to complain. This is not one of them." Thus a bill of rights might operate as a snare rather than a protection. If we had formed a general legislature, with undefined powers, a bill of rights would not only have been proper, but necessary; and it would have then operated as an exception to the legislative authority in such particulars. It has this effect in respect to some of the American constitutions, where the powers of legislation are general. But where they are powers of a particular nature, and expressly defined, as in the case of the Constitution before us, I think, for the reasons I have given, a bill of rights is not only unnecessary, but would be absurd and dangerous."

The Virginia Debates

Out of the original 13 States the one that best supports the limited and defined federal government was the Virginia Debates. Clearly Madison is the most succinct and to the point with this statement.

Mr. James Madison Virginia Debates: "the powers of the federal government are enumerated; it can only operate in certain cases; it has legislative powers on defined and limited objects, beyond which it cannot extend its jurisdiction."

Here is the testimony referred to above by Mr. George Nicolas.

Mr. George Nicholas Virginia Debates: "But it is objected to for want of a bill of rights. It is a principle universally agreed upon, that all powers not given are retained. Where, by the Constitution, the general government has general powers for any purpose, its powers are absolute. Where it has powers with some exceptions, they are absolute only as to those exceptions. In either case, the people retain what is not conferred on the general government, as it is by their positive grant that it has any of its powers. In England, in all disputes between the king and people, recurrence is had to the enumerated rights of the people, to determine. Are the rights in dispute secured? Are they included in Magna Charta, Bill of Rights, &c.? If not, they are, generally speaking, within the king's prerogative, In disputes between Congress and the people, the reverse of the proposition holds. Is the disputed right enumerated? If not, Congress cannot meddle with it."

One of the most powerful statements comes from the future Chief Justice of the Supreme Court Mr. John Marshall whose statement aligns with and supports the limited jurisdiction with the federal court is that if the law or case is regarding something that is not within the enumerated powers the court would deem it unconstitutional and or not in their jurisdiction…

Mr. John Marshall Virginia Debates: "Has the government of the United States power to make laws on every subject? Does he understand it so? Can they make laws affecting the mode of transferring property, or contracts, or claims, between citizens of the same state? Can they go beyond the delegated powers? If they were to make a law not warranted by any of the powers enumerated, it would be considered by the judges as an infringement of the Constitution which they are to guard. They would not consider such a law as coming under their jurisdiction."

Obviously, many of John Marshall's rulings contradict his testimony here. In the cases he reviewed though the verdicts were correct, what he uttered utterly contradicted what he said here. So which of his words are correct? The words he used to "sell" the compact to the delegates at the Virginia Ratification Debates or his later opinions? The only thing that matters it what was said and how the Constitution was defined at the time of ratification. These are the only legal definitions that can be used just as all contracts within the bounds of contract law.

This is why Marshall has become one of our most nefarious framers with Alexander Hamilton. Both used duplicity and soothsaying to obtain the changes they were seeking. Marshall was a self-admitted protégé of Hamilton as pointed out by Russell Kirk in his book *The Conservative Mind: From Burke to Eliot.* Marshall's damage to the Constitution as defined came in these hallmark cases:

- Marbury v Madison, 1803
- Fletcher v Peck, 1810
- Sturges v. Crowninshield, 1819

- Dartmouth College v. Woodward, 1819
- McCulloch v. Maryland, 1819
- Cohens v. Virginia, 1821
- Gibbons v. Ogden, 1824

In each case Marshall's opinions are hoodwinking the aggrandizement of federal government and supporting the principles of centralizing powers. The reason Madison and many other framers never wrestled with Marshall, was his rulings were correct and his opinions were just that opinions. Madison and the framers knew the Constitution gave no allowance for case law or precedence. The Constitution was a hard fast compact that can only be altered through the Article V process.

The most important opinion was how the States understood the definitions given to the States at the time or Ratification. In 1821, Mr. John G Jackson asked James Madison for his notes on the Constitutional Convention. This is because Robert Yates a delegate to the Constitutional Convention wrote notes on the Convention; however Yates was only in attendance from May 25th to July 10th never to return. It became common knowledge that Madison had the most detailed notes on the Convention; consequently, Mr. Jackson requested a copy. Madison points out the biases of the author and possibly his own; however, it did not matter what he or anyone in attendance of the Convention understood the Constitution to mean. As he states:

"But whatever might have been the opinions entertained in forming the Constitution, it was the duty of all to support it in its true meaning as understood by the Nation at the time of its ratification. No one felt this obligation more than I have done; and there are few perhaps whose ultimate & deliberate opinions on the merits of the Constitution, accord in a greater degree with that obligation."

Clearly Madison understood the fundamental tenants of contract law. This is why he insisted on pointing to the States understanding "at the time of its ratification."

Whose Constitution is it Anyway?

So the stage or foundation was set. The Constitution was a compact/contract and the shareholders were the States. To verify this read Article VII to see who has to "buy in" to this contract and read Article V to see who has the final say over changes to the Constitution, which is three-fourths of the States. Thus, the Constitution falls under contract law and does not create law itself.

Only Congress has the power to makes laws and there are two types of laws Congress can make. Laws that apply only to the District of Columbia (see Article I Section 8 subsection 17) and laws that are in pursuance of or congruent with the Constitution, which applies to the Republic. What does "laws in pursuance of or congruent to the Constitution mean?" These laws MUST be based upon one of the few enumerated powers in the Constitution. To illustrate, when Congress created an Act like the Civil Rights Act of 1964, was this Act based upon any power enumerated in the Constitution? Right, wrong, or indifferent there is no power delegated to the general government to protect, race, color, religion, gender, or national origin. Consequently this Act only applies to the District of Columbia and unless they

move they to pass this Act with two-thirds majority of both houses and then send it to the States for Ratification making it an Amendment, the Act is only applicable in the District of Columbia. This is a Constructional fact that cannot be sidestepped and yet we treat this Act as if it is the Law of the Land. This is because the federal government believes there are no bounds to what it can do in – because the States have failed to use their authority over the Constitution and challenge the federal government on this and so many other laws, roles, responsibilities, and powers the federal government has self-created or assumed without following the codified process in Article V of the Constitution.

Let's focus on the stage or foundation. The Constitution was ratified based upon the arguments provided by the proponents, who were "selling" the Constitution along with creating definitions and clarifications to the Constitution. The opponents made two attacks. Most were making accusations that there was a need for a Bill of Rights and another attack was arguing the meaning of clauses or "lines" meant something else. Consequently, how the proponents or Federalists defined the lines such as the necessary and proper clause became the legal definition moving forward and these definitions are still valid today. If one has gone through contract negotiations the items agreed upon in the negotiations become appendages to the contract. Just like in a divorce case today, what the parties agree upon with a mediator is legally applicable and appended to the final divorce decree. In other words this is one way to amend the contract without having to change the contract. To be very clear, these definitions and clarifications were set in stone and legally binding, back then as they are today.

So the States Failed in Erecting Barriers

First and foremost, the States failed in protecting themselves from the federal government drifting outside the boundaries of the Constitution by making these definitions and clarifications more readily known. They should have made copies of these debates and shared them among themselves. Because there is no mechanism in the Constitution to allow the federal government to treat States differently, as something is defined in one of Ratification Debates that definition applies to all States. Furthermore all new States joining the union would be given a full copy of these Debates so that they too could be valiant guardians of the Constitution.

Another way the States failed is they relied too much on the honor of those who went into the new seats and positions in the newly created federal government. No doubt many of those that were either sent to the Senate or elected to the House of Representatives were the best and brightest the States had to offer. Creating the barriers that Madison and others referred to would have sent a message that those serving in the federal government were not to be trusted. As Madison said in Federalist Papers #51:

"If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions. This policy of supplying, by opposite and rival interests, the defect of better

motives, might be traced through the whole system of human affairs, private as well as public." (Madison 1788 para 3&4).

It is important to point out that there were no (i.e. zero) conflicts in the different debates regarding how the Federalists testified, defined and clarified the Constitution. Had there been conflict in the different Debates such as in one Debate the Federalist claimed that the Constitution was a living document left to the interpretation of the court and the federal government alone then this would throw a wrench into the whole thing making a real mess. Overall the Debates were harmonious with each other in defining a limited and enumerated Constitution; thus, making very tight boundaries for the federal government in what they could do and how they were to act. The only thing required was for the States to stay vigilant in keeping the federal government in check. In remaining vigilant and relying upon these definitions, this would have elevated the awareness in each of the States of their role, responsibility, and power over the Constitution to keep the federal government in check. Alexander Hamilton stated: "We may safely rely on the disposition of the State legislatures to erect barriers against the encroachments of the national authority" (Federalist No. 85 Alexander Hamilton 1788).

Even though the framers knew men were not to be trusted, the States for whatever reason never took the precautions mentioned by the framers. So what happened was a large window of opportunity for anyone who had machinations in growing the powers of the federal government. Today, the federal government believes they have no bounds and can do what they wish to the States and the people with full immunity. The facts as we know are different than what the federal government believes.

What Do Shareholders Do When Their Compact Is Violated?

Let's start with what they don't do. The one thing that is absolutely absurd and not necessary is trying to amend the Constitution; the problem is compliance not a defect with the Constitution. Whether the amendment is initiated by Congress or the States no amendment written and ratified can obtain compliance to the Constitution. Compliance only comes when the Shareholders are serious enough to use extraordinary measures within the Constitution.

On to answering the subtitle question, in most cases people and institutions typically go to court to remedy the problem. But the problem is jurisdiction. Who has jurisdiction over things not delegated to the federal government like healthcare? Remember a few of the citations above from the Ratification Debates actually answer this question. John Marshall who became Chief Justice stated above "If they (i.e. Congress) were to make a law not warranted by any of the powers enumerated, it would be considered by the judges as an infringement of the Constitution which they are to guard. They would not consider such a law as coming under their jurisdiction."

Okay, so who has jurisdiction over things not delegated? If one uttered the words "the States" then one would be correct. There is a slight problem. When the federal government assumes a role, responsibility, or power that has not been properly delegated a single State can not apply enough force to obtain cooperation from the federal government. This is why it requires a simple majority of the States to step up and apply due pressure using the powers within the Constitution. Those powers will

be discussed in a different article. Suffice it to say the process is what we refer to today as Republic Review and how this works is available at the http://reclaimingtherepublic.org/ domain.

The concept of Republic Review can be found in the actions of Thomas Jefferson and James Madison, in 1798 in the Kentucky Resolutions (Oct 1798) and the Virginia Resolutions (Dec 1798). These resolutions were in response to the federal government passing four acts that violated the Constitution. The acts were collectively called The Aliens and Sedition Acts, which gave the federal government "new powers" for deporting immigrants and regulating speech. The Kentucky Resolutions can be found in Section 11 of 1798 of this document. As one reads these resolutions one can see how Jefferson is legally auditing the Constitution as to how each of the acts violated the Constitution and its amendments. In Resolution 8, Jefferson calls for the organizing of committees of correspondence to be organized for initiating communication as the Colonies did when Britain shuttered each Colony's legislative body. The Kentucky Resolution was promulgated to each of the States and Virginia quickly responded in kind two months later.

Madison instead of auditing the Constitution like Jefferson did, provided arguments for the States' responsibility as the Shareholders of the Constitution, that their duty is to take action by stating in paragraph 3 "that in case of a deliberate, palpable, and dangerous exercise of other powers, not granted by the said compact, the states who are parties thereto, have the right, and are in duty bound, to interpose for arresting the progress of the evil, and for maintaining within their respective limits, the authorities, rights and liberties appertaining to them." Too many people refer to these Resolutions as calls of State "nullification." It is very clear that these men were moving towards a "Convention" as Madison cited Jefferson's words from his book The Notes on the State of Virginia in Federalist Paper article #49, as a Convention in dealing with encroachments of the federal government upon the States' rights. However, in Jefferson's book the call for a Convention was in respect to one branch of government encroaching upon another power (i.e. violating the separation of powers). For Jefferson stated in his book "that a convention is necessary for altering the constitution, or CORRECTING BREACHES OF IT," and again as one reads both of these Resolutions there is not a mention of an Article V application for a Convention to amend the Constitution, their intentions are very clear – they are seeking a Convention to enforce compliance.

Madison provides the clarity to the fact that he and Jefferson were not taking these efforts to simply nullify these Acts, they were calling for action by all the States. This clarity comes in paragraph 8 (just like the Kentucky Resolutions) when Madison states that the General Assembly of the State of Virginia

"doth solemnly appeal to the like dispositions of the other states, in confidence that they will concur with this commonwealth in declaring, as it does hereby declare, that the acts aforesaid, are unconstitutional; and that the necessary and proper measures will be taken by each, for co-operating with this state, in maintaining the Authorities, Rights, and Liberties, referred to the States respectively, or to the people."

Had Jefferson and Madison been seeking nullification then they would have simply called for all States to nullify these laws, but the fact of the matter is that the Shareholders of the compact are obligated to

keep their contract pure and intact as they had all agreed upon, which is why Madison used the term "interpose" in paragraph 3 and in paragraph 8 they were seeking "necessary and proper measures will be taken by each, for co-operating with this state." This goes much further than what others have espoused regarding nullification. In other words, calls for cooperation with the committees of correspondence that Jefferson had called to be organized were the mechanism of moving forward. If one understands the history of committees of correspondence, these were the formal communications between the States as they prepared for war with Britain.

What these Resolutions did not do and what Jefferson and Madison did not provide was an operational guideline as to what would happen if enough of the other States had joined their efforts, what would they then do? The best speculation for this is simple. At the time of ratifying the Constitution, contract law was simple; the contract was based upon the words in the contract and the words stated in the ratification process. More specifically, in context to clarifications, elucidations, and definitions of each word and clause within the Constitution the words stated by those proponents (i.e. the Federalists) supporting the ratification are legally binding clarifications, elucidations, and definitions. In contract law even then, how a contract is defined and clarified during the ratification process, if written down is legally binding. Subsequently, the words the Federalists used that clarified and defined the compact to specific terms that convinced the States to accept this compact are appendages to the Constitution.

Therefore, the clarifications, elucidations, and definitions asserted by these proponents were not just applicable to that State where they were used; these definitions were applicable to all State's. This is because this compact created a new polity and how this polity was to act or engage with all the States. This is because the federal government was required to act in a uniform matter with regard to the State's. Article I Section 8 Subsection 1, also referred to as the uniformity clause makes the a hard fast requirement upon the federal government. Stated differently, there is no mechanism in the Constitution to allow the federal government to differentiate in how it was to tax or serve one State differently than the rest; therefore, the words, definitions, and arguments asserted in one States' Ratification Debates are applicable to the application of the Constitution to "all States."

Even more of a miracle and less of a coincidence, throughout all of the Debates, as stated before, one will not find any conflicting definitions from the proponents of the Constitution, in each of the States that debated the Constitution to whatever degree. The overwhelming conclusion was that our Constitution was an enumerated Constitution and not a general Constitution. A general Constitution grants general powers and allows the government to discern what it can do and how to exert its powers. In contrast, our enumerated Constitution only delegates to the federal government specific powers that are listed within it. If it is not listed, then the federal government does not have the true authority or power to exercise these powers.

For a plethora of reasons we have lost these definitions and understandings – a primary reason for this loss was that we failed to remember and focus on these words of clarity. It was not due to the fact that the words were not captured, but the lack of maturity in contract law and understanding the importance of those words that elucidated the intent and limitations to this compact. Consequently, when Madison was asked for his notes by John George Jackson, which he took during the Constitutional

Convention, he refused to share them and those notes were not published until after his death by his wife Dolly Madison by his request. Instead he stated this in his letter to Mr. Jackson:

"But whatever might have been the opinions entertained in forming the Constitution, it was the duty of all to support it in its true meaning as understood by the Nation at the time of its ratification. No one felt this obligation more than I have done; and there are few perhaps whose ultimate & deliberate opinions on the merits of the Constitution, accord in a greater degree with that obligation" (Dec 27, 1821).

Therefore, Madison recognized and pointed to the contractual standing that Constitution's true "meaning as understood by the Nation at the time of its ratification," was how it was to be defined moving forward.

Probably more important to contract maturity and not following these definitions in these documents – enemies of the design of the Constitution such as John Marshall, Alexander Hamilton, and others thrived on obscuring the Ratification Debates so they could spend their career in ambiguity and the farther away from the Ratification of the Constitution the more people forgot the original definitions or those people we call the framers died. This was the beginning of the perversion of the Constitution and what opened the doors for the limited government to begin granting itself more and more powers, in violation to the compact.

The best part about our problem is there has never been an amendment to allow violations to become legitimate after so long. In addition, there was never an Amendment to allow any entity other than the States to delegate power to the federal government. This means that as the States step in and as the States coalesce, they are the only entity with jurisdiction over all things not delegated to the federal government. We have the problem because of the States not doing their job and until this changes or we lose the Constitution altogether, the States are the only entities with the authority to clean up this mess by using the process referred to as Republic Review. When one reads the details of the argument and the details on the process of Republic Review one will recognize how this follows exactly what Madison and Jefferson were attempting in 1798.

Why the Lamenting?

It is clear, if one looks at the Kentucky Resolution of 1799, Jefferson was not happy that the other States failed to do their job. Why should he care if he was only seeking to nullify an unconstitutional law? Why even call for a "committee of conference and correspondence be appointed" if he was only out to nullify? In his Resolution of 1799 Jefferson does not pull any punches in stating:

"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."

James Madison, in his Report on the Virginia Resolutions in 1800 was clear that he too believed the other States failed in stating:

"Whatever room might be found in the proceedings of some of the states, who have disapproved of the resolutions of the General Assembly of this commonwealth, passed on the 21st day of December, 1798, for painful remarks on the spirit and manner of those proceedings, it appears to the committee most consistent with the duty, as well as dignity, of the General Assembly, to hasten an oblivion of every circumstance which might be construed into a diminution of mutual respect, confidence, and affection, among the members of the Union.

The committee have deemed it a more useful task to revise, with a critical eye, the resolutions which have met with their disapprobation; to examine fully the several objections and arguments which have appeared against them; and to inquire whether there can be any errors of fact, of principle, or of reasoning, which the candor of the General Assembly ought to acknowledge and correct."

Madison goes on to reaffirm his correctness in the original 1798 Resolutions.

Clearly Madison and Jefferson had no intention to simply nullify these laws, they were looking to rebuke the federal government. At the time of the framing of the Constitution nullifying illegal laws was automatic. The terms null and void were commonly used as an automatic application not a formal process. If one reads the Ratification Debates and even the Federalist Papers one will find the use of both null and void in a few States as standard application not a formality.

The conclusion is academic if one reviews the macro view of these documents from the Ratification Debates to the Kentucky and Virginia Resolutions. They applied the necessary review to identify these Acts as Null and Void and then called upon the States to assert their authority to interpose and rebuke the federal government for going beyond the terms of the compact (The Constitution). One who clings to the "Nullification" concept may not have the capacity to see the Macro or they may be one who has vested interests in relying upon Nullification. As proven throughout the history of this Republic "Nullification" is tantamount to using a flyswatter to kill an elephant. It is utterly useless. Especially with the powers the federal government has assumed over the past 150 years. This is why if one is seeking the real solution and not a paper tiger one will find that trying to formalize Nullification is just a red herring. Republic Review is the only process that will permanently force the federal government back into the boundaries of the Constitution.