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The Untold History of Nullification: Resisting Slavery

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Last December, when Tennessee Rep. Susan Lynn, R-Mount Juliet, said she would introduce legislation which would declare null and void any federal law the state deems unconstitutional, some people were horrified. Rep. Lynn was specifically targeting the health-care reform legislation that was pending at that time. But the reaction that many people had to her language was not an expression of their support for Obamacare.

Too many Americans hear the terms "states' rights" or the word " nullification" and immediately think of racial prejudice, Jim Crow laws and school segregation. Honestly, if all I had to rely on was what I remember being taught in public school, I would probably tell you the history of it all went like this:

> The theory of nullification was first invented in the 1800s' by advocates of slavery. They used nullification of tarrifs as a test run in the 1820s. Of course, what they really had in mind was maintaining the institution of slavery against any possible attempt by the federal government to abolish it. Then America fought the Civil War in order to end slavery, but the ideas of states' rights and nullification were later revived in the 1950s' by belligerent white southerners in an attempt to block the racial integration of schools. The Civil Rights Movement started and the feds had to step in and force the southern states to treat everyone equally. THE END.

That's a rough, abbreviated version of the narrative that was handed to me, but it gives you an idea of what many Americans think they know about states' rights and nullification. Fortunately, thanks to people like Tom Woods, Thomas DiLorenzo, and many others, I know today that this was a gross misrepresentation of the classical liberal states' rights tradition. Then again, (and it's not my intention to be prideful here), I'm not like most Americans. And If you're reading this, you probably aren't either.

Civic Illiteracy

In 1798, Jefferson and Madison articulated the concepts of nullification and interposition in the Kentucky and Virginia Resolutions, which were passed in response to to the hated Alien and Sedition Acts. But the ideas which support nullification and interposition were actually expressed earlier during the ratifying convention of Virginia by the Federalists themselves!

Given the fact, however, that most Americans cannot even correctly name all three branches of our federal government, it's probably a safe bet that they have never heard of the Kentucky and Virginia Resolutions or the fact that nullification was used to assist runaway slaves.

So should it really come as any surprise that many people in Tennessee recoiled in horror at Rep. Susan Lynn's comments about nullification? Rep. Mike Turner of Tennessee's 51st District responded with a sarcastic and condescending comment that probably expressed the sentiment of many Tennessee's left-liberal elites:

> "Susan Lynn is yearning for times gone by," Turner said. "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."

Lynn responded to Turner's comment by saying:

> "I can't even imagine that's a serious comment."

Rep. Turner's comments resemble some of the incredibly ignorant and / or vicious comments directed against today's advocates of nullification that frequently appear in the bologoshpere. One particular blogpost I stumbled upon really embodies the either extremely ignorant or wholly deceptive attempt to associate today's proponents of states' rights and nullification with segregationists, white supremacists and domestic terrorists:

> "Why is it that the extremist teabaggers are not called traitors even though they are basically calling for an overthrow of the democratically elected U.S. government? There latest stunt should seal it. They are calling for a long rejected theory called Nullification, and at least one treasonous..blogger and teabagger is pushing it."

The Compromise of 1850 and How Abolitionists Used Nullification

In 1850, Congress compromised in order to hold the Union together against the divisive issue of slavery. Since the preservation of the Union (Northern control of the South's economy), rather than the abolition of slavery was foremost in the minds of influential Republican bankers, manufacturers and heads of corporations, this compromise made perfect sense.

Part of this compromise was the passage of more stringent fugitive slave legislation that compelled citizens of all states to assist federal marshals and their deputies with the apprehension of suspected runaway slaves and brought all trials involving alleged fugitive slaves under federal jurisdiction. It included large fines for anyone who aided a slave in their escape, even by simply giving them food or shelter. The act also suspended habeas corpus and the right to a trial by jury for suspected slaves, and made their testimony non-admissible in court. The written testimony of the alleged slave's master, on the other hand, which could be presented to the court by slave hunters, was given preferential treatment.

As would be expected, this new legislation outraged abolitionists, but also angered many citizens who were previously more apathetic. In 1851, 26 people in Syracuse, New York were arrested, charged and tried for freeing a runaway slave named William Henry (aka Jerry) who had been arrested under the Fugitive Slave Act. Among the 26 people tried was a U.S. Senator and the former Governor of New York! In an act of jury nullification, the trial resulted in only one conviction. "Jerry" was hidden in Syracuse for several days until he could safely escape into Canada.

The government of Wisconsin went even further and in 1854 officially declared the Fugitive Slave Act to be unconstitutional. The events that lead up to this monumental decision, which is a milestone in the history of the states' rights tradition, is one of the best stories most Americans have never heard.

In 2006, H. Robert Baker, assistant professor of legal and constitutional history at Georgia State University wrote a book called, " The Rescue of Joshua Glover: A Fugitive Slave, the Constitution, and the Coming of the Civil War". In its review of the book, The Journal of American History wrote:

> "Terribly conflicted about race, Americans struggled mightily with a revolutionary heritage that sanctified liberty but also brooked compromise with slavery. Nevertheless, as The Rescue of Joshua Glover demonstrates, they maintained the principle that the people themselves were the last defenders of constitutional liberty... "

Joshua Glover was a slave in Missouri who managed to escape from his master. In 1854, with the help of the Underground Railroad, he made his way north, all the way to Wisconsin. There he found work at a mill in Racine, a community in which anti-slavery sentiment ran high. Unfortunately for Glover, his former master, B.S. Garland eventually managed to find out where Glover had taken up residence.

Accompanied by two US Marshals, the three of them took Glover by surprise. In spite of his resistance, Glover was subdued with a club and handcuffed. Thrown into a wagon, he was surreptitiously transported to Milwaukee, where he was thrown in jail. Glover's abduction was discovered somehow or another, however, and in no time one hundred or so men landed by boat in Milwaukee.

The men marched towards the courthouse, which was adjacent to the jail, and crowds of people began to join their ranks or follow along as spectators. An abolitionist named Sherman Booth, who published a local daily newspaper there called the "Free Soil Democrat" rallied the supporters of the citizen army shouting:

> "All freemen who are opposed to being made slaves or slave-catchers turn out to a meeting in the courthouse square at 2 o'clock!"

When the meeting at the courthouse adjourned, those who had assembled eventually resolved that Joshua Glover was entitled to at least two things: A writ of habeas corpus and a trial by jury. A local judge concurred and delivered the writ to the US Marshals at the jail. As might be expected, the federal officers rejected the writ as invalid. After all, federal law trumps state judicial authority, does it not?

The assembly of citizens from Racine and Milwaukee must have decided that such was not the case in this instance. In fearless defiance, they broke down the doors of the jail and freed Joshua Glover. In an act that probably would have filled Sheriff Mack with joy, had he been there, the Racine County Sheriff arrested Glover's former slave master and the two US Marshals who had kidnapped him. They were charged with assault and put jail. In the meantime, the Underground Railroad assisted Joshua Glover as he crossed the border into Canada.

Although Glover escaped to freedom, it was not without a price. Glover's former master, B.S. Garland was released on a writ of habeas corpus and in the long run would sue Sherman Booth, turning him financially upside down.

In the short run, Booth and two other men were arrested and indicted by a grand jury. While Booth maintained that he had never incited the crowd to liberate Glover or that had helped Glover escape in any way, he did not mince words either. Speaking in his own defense in front of the US Commissioner, he proclaimed:

> "..I sympathize with the rescuers of Glover and rejoice at his escape. I rejoice that, in the first attempt of the slave-hunters to convert our jail into a slave-pen and our citizens into slave-catchers, they have signally failed, and that it has been decided by the spontaneous uprising and sovereign voice of the people, that no human being can be dragged into bondage from Milwaukee."

According to his account of these events, Henry E. Legler wrote in 1898:

> "Byron Paine made an argument in behalf of Booth that attracted attention all over the country. It was printed in pamphlet form and circulated on the streets of Boston by the thousands. Charles Sumner and Wendell Phillips wrote the author letters of hearty approval and commended his force of logic and able presentation of argument. This pamphlet is now excessively rare; but half a dozen copies are now known to exist."

Judge Smith of the Wisconsin Supreme Court made the following declaration, that ought to inspire and motivate champions of the Tenth Amendment and state sovereignty today. Speaking not only for Wisconsin, but of all the states, he said that they would never accept the idea that:

> "..an officer of the United States, armed with process to arrest a fugitive from service, is clothed with entire immunity from state authority; to commit whatever crime or outrage against the laws of the state; that their own high prerogative writ of habeas corpus shall be annulled, their authority defied, their officers resisted, the process of their own courts contemned, their territory invaded by federal force, the houses of their citizens searched, the sanctuary or their homes invaded, their streets and public places made the scenes of tumultuous and armed violence, and state sovereignty succumbparalyzed and aghastbefore the process of an officer unknown to the constitution and irresponsible to its sanctions. At least, such shall not become the degradation of Wisconsin, without meeting as stern remonstrance and resistance as I may be able to interpose, so long as her people impose upon me the duty of guarding their rights and liberties, and maintaining the dignity and sovereignty of their state."

The United States Supreme court eventually reversed the action of the Wisconsin's courts. Booth and one other man accused of helping to liberate Joshua Glover were found guilty. Both spent months in jail in addition to having to pay stiff fines. This was the price that was paid for Joshua Glover's freedom.

Rather than being deterred, however, Wisconsin, along with several other states, such as Connecticut (1854), Rhode Island (1854), Massachusetts (1855), Michigan (1855), Maine (1855 and 1857), and Kansas (1858) all went on to pass even more personal liberty legislation designed to neutralize federal enforcement of the Fugitive Slave Act of 1850.

It was no coincidence that the 1859 statement of the Wisconsin Supreme Court borrowed words directly from the Kentucky Resolutions of 1798:

> "Resolved, That the government formed by the Constitution of the United States was not the exclusive or final judge of the extent of the powers delegated to itself; but that, as in all other cases of compact among parties 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.
>
> Resolved, that the principle and construction contended for by the party which now rules in the councils of the nation, 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 which formed that instrument, being sovereign and independent, have the unquestionable right to judge of its infractions; and that a positive defiance of those sovereignties, of all unauthorized acts done or attempted to be done under color of that instrument, is the rightful remedy."

The End, or Just the Beginning?

Few Americans have ever heard the heroic story of how the people of Wisconson and several other states stood up to the federal government's tyrannical, unconstitutional slave laws with the help of their elected state officials.

Today state sovereignty and the Principles of 1798 are being invoked again, for a variety of reasons, just as they were invoked for a variety of reasons all throughout American history, in spite of what you may have been taught or are being told today.

States legislatures all over the Union today are standing up and re-asserting their sovereignty, which is guaranteed by the 10th Amendment. They are proposing and passing legislation which would nullify a whole host of unconstitutional federal laws including: The federally mandated national " REAL ID" card, restrictions on the use of Medical Marijuana, unconstitutional deployments of State National Guard units, federally mandated health insurance, unconstitutional regulations of state manufactured firearms and much more...

It is tragic that left-liberals have seemingly abandoned the classical liberal states' rights tradition in favor of nationalism and the centralization of power. It is also shameful that they have made a concerted effort to associate nullification with slavery in the minds of average Americans. As Josh Eboch, State Chapter Coordinator for the Virginia Tenth Amendment Center observes:

> "Of course, even though activists on the left supported nullification for Real ID and also for medical marijuana, those calling for state sovereignty with regard to health care will have to deal with the standard cries of racism and references to the Jim Crow... But just because nullification was used [unsuccessfully] in the past to deny rights to certain groups doesn't mean it can't be used to regain our rights today. In the end, ‘for desperate people whose freedoms are being systematically usurped by all three federal branches and both political parties, nullification may be the key to restoring our republic'."

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"Educate and inform the whole mass of the people... They are the only sure reliance for the preservation of our liberty."

Thomas Jefferson

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