



## What Should States Do When the Federal Government Usurps Power?

*By Publius Huldah, Guest Columnist*

What can a State – or several States – do to resist encroachments & usurpations by the federal government? Here is advice from James Madison, Father of the U.S. Constitution.

**Federalist No. 46** (7th para) discusses how individual States or several States carry out resistance to the federal government’s unconstitutional encroachments. If a particular State takes an action which the federal government doesn’t like, but which has the support of the People of that State, the federal government can’t do anything about it unless it is willing to use force.

When several States oppose an unconstitutional encroachment by the federal government, Madison says they have powerful means of opposition: “the disquietude of the people, their repugnance [e.g., baby-killing enshrined into public policy], the Peoples’ refusal to co-operate with the officers of the federal government; the opposition of the State officials; and all those legislative devices State Legislatures can invent to thwart & impede the federal government in its unconstitutional schemes”.

So, in para 7, Madison contemplates that not all States will oppose unconstitutional encroachments by the federal government. But he shows that this need not impede the States who do. Such States need not implement in their States the federal government’s lawless usurpations. Have we forgotten how to just say, “NO! You have no authority under the Constitution to do this, and the Sovereign State of X and the Sovereign People of the State of X won’t permit this.” If we have taken the [Oath to support the Constitution](#) (Art. VI, clause 3), then we are bound by Honor to support it.

Note that Madison doesn’t say the States should file lawsuits in federal court. And WHY would Sovereign States, which formed a federation for the limited purposes enumerated in Art. I, Sec. 8, U.S. Constitution; ask one branch of

the federal government (judiciary) to opine on whether a “law” approved by the two other branches (legislative & executive) exceeds the enumerated powers of Congress or encroaches on the reserved powers of the States and the People (10th Amendment)? All three branches of the federal government have been unified against The Constitution, the States, and the People for a very long time! Why do States put themselves in the position of supplicants to a Court which has already shown itself to be contemptuous of the Constitution, and of the States’ and The Peoples’ reserved powers?

Furthermore, the Supreme Court is not even the ultimate authority on the meaning of the Constitution! Alexander Hamilton said federal judges may be impeached & removed for usurpations (**Federalist No. 81**, 8th para); the People are “the natural guardians of the Constitution” as against federal judges “embarked in a conspiracy with the legislature”; and the People are to become “enlightened enough to distinguish between a legal exercise and an illegal usurpation of authority.”(**Federalist No.16**, 10th para).

In para 8, Madison discusses a “general alarm” among the States as to encroachments by the federal government. Here, Madison contemplates concerted “plans of resistance” among the States; and Madison says it may come to a “trial of force” if a crazed federal government doesn’t back down. In para 10, Madison says that the federal government’s “schemes of usurpation will be easily defeated by the State governments, who will be supported by the people”. Madison continued, “...it would not be going too far to say, that the State governments, with the people on their side, would be able to repel the danger.”

When we quote James Madison and The Federalist Papers on what States may do when the federal government has encroached upon the powers reserved by the States and the People; we quote a high Authority on The Constitution. James Madison is the Father of the Constitution, and the author of many of the Federalist Papers. States act lawfully when they follow the guidance of James Madison. When the federal government descends into lawlessness & tyranny, The States and The People may protect and preserve their Constitution – as they are already sworn to do.

Yes, the ultimate authority resides in The People. But this does not mean that The People should—or need to—initiate a show of force. Remember the Rev. Dr. Martin Luther King. He put on his clerical collar and went out into the streets with others to protest State LAWS, which enforced segregation. They used non-violent civil disobedience: Black people sat down at “white’s only” lunch counters and sat at the front of buses when it was against the law. But

they did not initiate force. The moral superiority of their position could not be denied. And they won!

The most important concepts for Americans to learn are these:

1. **ENUMERATED POWERS**
2. Why neither the **GENERAL WELFARE**, the **INTERSTATE COMMERCE** nor the **NECESSARY & PROPER** clauses authorize Congress (or the President or the **FEDERAL COURTS** ) to exceed their enumerated powers
3. The true meaning of the **RULE OF LAW** and how that differs from the “Rule of Men”
4. What is **FEDERALISM**, and
5. The **ORIGIN OF OUR RIGHTS** and why they must NEVER be referred to as “constitutional” rights. Rights are not given to us by the constitution or by government, but come from God, or “are endowed by our creator”. The founders referred to rights as “inherent” or “inalienable”.

My papers on **RIGHTS** explain the moral superiority of this position. Americans must learn why it is morally superior to that of the statist, and must be prepared to explain it at all times.

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