





Written by [Selwyn Duke](#) on February 19, 2015

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Yet no matter how egregious, un-American, unconstitutional, and despotic the federal or judicial usurpations, the conservative response is typified by what Utah governor Gary Herbert [said](#) — feeling oh-so principled, I'm sure — after the federal faux-marriage ruling: "Ultimately we are a nation of laws and we here in Utah will uphold the law." Yes, we're supposed to be a nation subject to the rule of law. Not the rule of lawyers.

And our governors are allowing subjection to the latter, feeling noble playing by rules the Left laughs at.

It's not surprising that revolutionary spirit has been cornered by liberals. The only consistent definition of "liberal" is "desire to change the status quo" — it is revolutionary by definition. In contrast, the only consistent definition of "conservative" involves something antithetical to revolution: the desire to maintain the status quo. Of course, it completely eludes conservatives that today's status quo was created by yesterday's liberals. And one modern status quo is to lose culture-war and political battles to the Left. And, boy, do conservatives ever maintain that one. They're like a guy who goes into a fight, gets poked in the eyes and kicked in the kneecaps, loses, and then the next time still thinks he's got to follow Queensbury rules.

We hear a lot of talk about "states' rights." Ex-Texas governor Rick Perry was a good example of a big talker. But where's the beef? Merely flapping lips doesn't sink big-government ships. There have been nullification efforts by state legislatures, mainly regarding federal gun-control law, and many sheriffs across the country have vowed not to enforce such law. And Alabama's Judge Roy Moore is currently defying a federal faux-marriage ruling. This is laudable, but why are the chief executives MIA? If only we had a governor with the guts of a good sheriff.

We're meant to be a nation of states, not a nation state. But rights mean nothing if you're not eternally vigilant in their defense, if you don't *actively* stand against those who would trample them. In 2013, Attorney General Eric Holder [threatened Kansas](#) with legal action over a new anti-federal-gun-control state law. If the courts ruled against the state, what would Governor Sam Brownback do? Make some "principled" comments about the rule of law(lessness) and then assume the prone position?

This is why I say not one governor is truly qualified to be president: If a chief executive will not oppose federal tyranny while the head of a state government, why should we think he'd oppose federal tyranny once head of the federal government?

History teaches that entities don't willingly relinquish power; it didn't happen in 1776 and it won't happen now. People are generally quite zealous about increasing their power, though. This returns us to the courts' usurpations. Do you know where the power of "judicial review" came from? It was declared in the 1803 *Marbury v. Madison* decision — by the Supreme Court.

That's right: the Supreme Court gave the Supreme Court the Supreme Court's despotic power.

Of course, unilateral declarations of power are not at all unusual historically. It's what happened whenever an agent of tyranny — whether it was a conquering king, communist force, or crime syndicate — took over. But these despotisms were enforced, as Mao put it, "through the barrel of a gun." It wasn't usually the case that the subjects rolled over like trained dogs lapping up lawyer-craft. Oh, it's not that I don't see the crafty lawyers' position. I might like to crown myself Emperor of America, but, should I insist I possess this unilaterally-declared status with enough conviction, I may get a stay in a mental institution. The courts get to dictate to everyone else and spread insanity all the way around.



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Perhaps it needn't be stated, but the power of judicial review isn't in the Constitution. So is it any wonder that a federal court, concerned about Barack Obama's comments relating to the judiciary, [asked his administration](#) in 2012 to submit a formal letter indicating whether or not it recognized the power? Judicial review, being an invention, is dependent upon *the acquiescence of the other two branches of government*.

Oh, and what is Obama's actual position? He believes in the court's power — when it serves his agenda. Otherwise, he's willing to ignore court rulings himself, as he did [when suing Texas](#) over voter ID in 2013. (In fact, never mind the courts. Obama [ignores](#) duly enacted federal law he doesn't like.)

The lesson?

We can even learn from Obama.

The idea of judicial review is thoroughly un-American. As Jefferson also [pointed out](#), judges are not morally superior to anyone else, having “with others the same passions for party, for power, and the privilege of their corps.” Despite this, he wrote in his letter to Roane, while we're meant to have “three departments, co-ordinate and independent, that they might check and balance one another,” judicial review has given “to one of them alone, the right to prescribe rules for the government of the others”; moreover, he continued, this power was given to the very branch that “is unelected by, and independent of the nation.” Jefferson then warned that this has made the Constitution “a mere thing of wax in the hands of the judiciary, which they may twist, and shape into any form they please.” And our country is being twisted along with it as patriots twist in the wind.

Jefferson's position is just common sense. We cannot be a government of, by, and for the people if nine unelected Americans in black robes can act as an oligarchy and impose their biased vision of the law on 317 million Americans. That is not what the Founding Fathers intended.

Nonetheless, most conservatives are waiting for the next election or the next court ruling or the next president to right the ship, but they and their republic will die waiting when remedial action can be taken now. Nullification — when properly exercised, it's a fancy way of saying “standing up for the law of the land.” Were I a governor, I'd tell the feds to pound sand and that if they didn't like it, to send in the troops. I might ultimately end up in federal prison, but I'd light a fire and spark a movement — and become a hero and martyr to millions.

It's waiting there for you, governors, glory and God's work. We just need a leader, someone with greater passions for principle than “for party, for power.” It's waiting.

Rise, American hero, rise.

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