

Thomas Jefferson's Conception of States' Rights

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The term "states' rights" is inextricably linked with our notion of the American South. Depending on one's political orientation, it can be seen as either pejorative or positive. In its contemporary sense it carries connotations of segregation, the religious right, and right to work laws. When Ronald Reagan used the term during his presidential campaigns, it was interpreted as a code for many of these causes.

The greatest icon of states' rights is Thomas Jefferson. But how would Jefferson feel about what states' rights have come to symbolize in the American consciousness? Would he find himself in natural alliance with the proponents of states' rights today, or would he be repelled? He had a natural affinity for residents in western and rural America, and championed their rights against the east-coast elite. He was naturally distrustful of any metropolitan center of power and viewed states' rights as one of the most important defenses of civil liberties. But he was also a pragmatist however, recognizing the importance of federal power in many spheres, particularly trade and foreign affairs.

An in-depth discussion of the influences on Jefferson's thinking is beyond the scope of this article. Although there is much debate concerning these influences, it would not be all that fruitful to try and nail Jefferson down to one source of inspiration in any case. Jefferson read widely from a broad range of sources and was of sufficient intellect to synthesize these diverse inspirations into his own philosophy. The key word in Jefferson's philosophy is pragmatism. Merrill Peterson states that Jefferson "was distrustful of philosophical systems generally,"

regarding them as "prisms of the mind." Biographer Willard Sterne Randall added that "he regarded thought as a tool for reshaping life, not for absorbing some grand design."¹

It is important to bear in mind that the seminal event of Jefferson's life was the American Revolution. It was the yardstick against which he measured all other political issues that came in its wake. The terms of its struggle served as the paradigm for all future political debates in which he was involved. Other factors are often offered for his behavior, self-interest and hypocrisy being two that are usually given, particularly in the case of slavery. But as Peter S. Onuf so cogently demonstrates in *Jefferson's Empire, The Language of American Nationhood*, Jefferson does maintain a philosophy of government that is both consistent and coherent, which he adheres to throughout his life.

Even before the Revolution Jefferson found himself at the periphery of society, identifying with frontier expansion against the established elite of Virginia society. The son of a surveyor and speculator in western lands, Jefferson grew up on the Virginia frontier of the 1740's. Even though his status as a land owner placed him among the elite of colonial Virginia, his early legal career was devoted to representing the interest of frontier land seekers over that of the Virginia elite. Willard Sterne Randall stated that Jefferson was "shrewd" in catering to a frontier clientele, but in representing them against absentee landlords, he made himself the enemy of the Virginia gentry (Randall 102). Jefferson's defense of the rights of the common man was always just as much a domestic struggle as well as a struggle against imperial power. This struggle was carried on in an unbroken line, whether it be against the Virginia gentry, the British, or the Federalists.

Randall also makes clear that Jefferson's career was based on his representation of western frontier interest. He notes that due to his extensive experience on the frontier, he came to sympathize with the pioneers' hunger for land (Randall 99). Western expansion was always at the heart of his political program, envisioning an "empire of liberty." He rejected the view of Montesquieu and the Federalists that large republics were not practical and doomed to failure. The Federalists saw the American victory during the Revolution as confirmation that a large scale empire such as the British was not practicable, and that a more compact

1. Willard Sterne Randall. *Thomas Jefferson, a Life* (N.Y., Henry Holt & Co., 1993) 203.

nation state was advisable. Jefferson rejected this viewpoint, finding that size was not the problem. The word "empire" did not carry the pejorative connotation of today, and an empire of liberty carried great appeal for Jefferson. In his eyes the fatal flaw of the British Empire had been its failure to respect the rights and liberties of its constituent parts. An empire based on states possessing equal rights was theoretically unlimited in the extent to which it could expand. Jefferson envisioned just such an empire that would eventually encompass both North and South America.

Jefferson was a died-in-the-wool Whig – or more precisely, a Real Whig. He believed to his death that the rights and liberties of the English Constitution had been passed down through the generations from the pre-Norman Anglo-Saxons. The Real Whigs viewed history as an incessant battle for the preservation of liberties against their usurpation by a corrupt central government. The Revolution was just one more battle to preserve the rights and liberties under the ancient English constitution against the abuses of the metropolitan center. The fear of dominance by a corrupt metropolitan center became Jefferson's great *bête noire*.

Jefferson strove to justify the right of the colonies to declare themselves independent on legal grounds. Among these were the original charter of Virginia. He argued that the granting of the original charter had established Virginia as a sovereign state. Its residents enjoyed the equal protection of the English constitution. In essence the British Empire was a sort of federation. The crime which justified a break with the Empire was the usurpation of the sovereign rights of the colonies by the corrupt metropolitan center of London.

It would therefore be wrong to consider Jefferson as being against federalism, and this is not merely based on his first inaugural address where he stated "We are all Republicans, we are all Federalists" – a statement which should not be dismissed as empty political rhetoric. Not only did he appreciate the need for a federal system of government, he imagined that one already existed prior to the Revolution. It was the failure of the king to protect Virginia and other colonies, who in Jefferson's eyes were co-equal states in a British confederation, against the abuses of a corrupt Parliament that was the final straw necessitating the severing of ties. Due to this view, Jefferson indicted the king directly in the Declaration of Independence and not Parliament.

Jefferson welcomed a new federal constitution after the shortcomings of the Articles of Confederation became abundantly clear. As a diplomat in Paris, he witnessed first-hand how the impotence of Congress undermined the American position in foreign affairs. He welcomed the Constitutional Convention as an opportunity to give the Federal Government the authority to raise money to pay foreign debts and to act in a unified manner in trade negotiations. His Whig inclinations were apparent, however, in his two major reservations about the new constitution; the lack of a bill of rights, and a lack of a limit on the term of office for the president. He did not share Madison's faith that a bill of rights was unnecessary. In both instances he saw the danger of a repeat of the excesses which led to the Revolution.

It was Jefferson who was most instrumental in insuring that a bill of rights was included in the new constitution. Madison was less concerned about the necessity for such guarantees and originally had agreed with the position of Alexander Hamilton that a bill of rights was both unnecessary and potentially problematic. Since the Constitution granted the Federal Government only limited expressed powers, it was superfluous to restrict it against using powers which it did not have. Secondly, by listing express rights, it might be conjectured that those rights not expressed were not protected. Jefferson was able to bring Madison around to his way of thinking. Adrienne Koch, has observed that in his arguments in favor of a bill of rights, Jefferson proved that the Declaration of Independence had not been mere hyperbole written "for the sake of expediency."² Just as a corrupt centralized metropolitan government in London had been the greatest threat against colonial liberty, so too would the Federal Government become a threat in Jefferson's view.

Madison did share Jefferson's conviction that state governments provided the essential bulwark against possible excesses of the Federal Government. Madison believed that "our state governments, by dividing the power with the Federal Government, and forming so many bodies of observation on it, must always be a powerful barrier against dangerous encroachments."³ The Republicans saw the common protection of the

2. Adrienne Koch, *Jefferson and Madison, The Great Collaboration* (London, Oxford Univ., 1950) 41.

3. Peter S. Onuf, *Jefferson's Empire, The Language of American Nationhood*, (Charlottesville, Va., University Press of Virginia, 2000) 96.

Constitution as their prime unifying force. One of Jefferson's supporters, George Nicholas, went so far as to say "that constitution cannot be long preserved, unless it is considered as sacred" (Onuf 96). For Republicans states' rights, interestingly enough, became the central factor of nation unification. Only through equality of individuals and states could there be truly free assent to a national union, and only through mutual consent could it be sustained.

Peter Onuf succinctly states the core of Jeffersonian Republicanism as "the vindication of individual rights depended on securing the jurisdictional autonomy of the state-republics that constituted the federal union" (Onuf 85). By tying states' rights to the libertarianism of the American Revolution, in the election contest of 1800, they framed the Federalists, as being inimical to the legacy of the Revolution. In particular, they pounced upon the excesses of the Alien and Sedition Acts to bring about the Jeffersonian revolution of 1800.

Jefferson established a precedent during the battle against the Alien and Sedition Acts which would haunt the nation a half-century later. The acts were passed by the Federalist Congress during the administration of John Adams during the fever of impending war with France. Ostensibly written to defend the government against foreign influences, Jeffersonians clearly saw them as a direct political assault on their freedom of speech. In his draft for the Kentucky Resolutions, which he wrote anonymously out of fear of prosecution, he expressed that states had the right to declare acts of Congress null and void if they felt they violated the Constitution (Koch 191). Although Madison was able to argue successfully against such strong language, he also adhered to the belief that Alien and Sedition Acts "encroached on the reserved rights of the states" (Onuf 95). Madison prevailed in getting Jefferson to delete the sentence: "But determined, were we to be disappointed in this, to sever ourselves from that union we so much value, rather than give up the rights of self government which we have reserved, & in which alone we see liberty, safety and happiness" (Koch 200). Although it was deleted, it served as a model for nullification and secession in South Carolina, which led to the Civil war.

Jefferson would invoke states' rights in another political controversy two decades later. It is possible to dismiss Jefferson's opposition to restrictions on slavery in Missouri purely on the grounds of states' rights

as being disingenuous and hypocritical. Many historians point to Jefferson's ownership of slaves, arguing that his main purpose was to preserve the institution. But researchers such as Onuf insist that they miss point, claiming that he was being consistent on both the issue of states' rights and on slavery.

When Virginia eventually ceded its western land claims to the national government while Jefferson was governor, it was careful to make it understood that Virginia was voluntarily ceding its title to these lands, and that it was not the national government which was appropriating them. The lands cessions were thus an affirmation of states' rights rather than a precedent for federal power. In his original draft for the Northwest Ordinance in 1784, he made certain to establish the principle that new states would enter the confederation on an equal footing with the original states. This was not done in the spirit of magnanimity, but was based on the wisdom he had earned representing backwoods pioneers against tide-water land speculators. He did not want western lands to be controlled by a central government, where they could be disbursed to the benefit of federal officials. He wanted them controlled locally where they would be disposed of fairly.

He felt that Congress's attempt to dictate that Missouri's Constitution ban slavery was a fundamental intrusion on states' rights. Jefferson is open to criticism on this point, as he had attempted to use the Northwest Ordinance to ban slavery in the new states it would create. The final article of his draft stated: "That after the year 1800 of the Christian era, there shall be neither slavery nor involuntary servitude" (Randall 363). Only the opposition of southerners prevented this article from being adopted. His position on Missouri seems to be a complete about-face. One justification put forward by Onuf is that Jefferson placed the overall success of his political program ahead of the importance of abolishing slavery. Limiting slavery would have limited the Republican Party and strengthened the Federalists to the detriment of Jeffersonian principles.

The question of slavery in Missouri prompted Jefferson to write the famous line: "This momentous question – like a firebell in the night, awakened and filled me with terror, I consider it at once as the knell of the Union." Jefferson saw northern attempts at limiting the geographical limits of slavery as being an attack on the South. What the South needed

was northern co-operation in dealing with the peculiar institution. "We have the wolf by the ear," said Jefferson, "and we can neither hold him, nor safely let him go." Like many southerners, Jefferson feared the possibility of race war, with Haiti serving as a stark warning. He believed that the existence of a large population of emancipated slaves would increase the risk of such violence. In *Notes on the State of Virginia* he wrote that "deep rooted prejudices entertained by whites; ten thousand recollections by blacks, of the injuries they have sustained ..." were reasons for doubting the prospects for successfully emancipating and integrating African Americans into American society.⁴

Jefferson believed that expansion of slavery into new western states would actually help end slavery. Although this idea seems far-fetched today, it makes sense when judged in its historical perspective. Jefferson's experience with slaves involved their use in the cultivation of tobacco. By the early nineteenth century tobacco was in relative decline. King cotton was only just emerging as the prime employer of slave labor, and Jefferson failed to appreciate how many slaves the cultivation of cotton would demand. He naively believed that demand for slave labor would remain static or fall. He did not think the export of slaves to the west would result in a net increase in their numbers, but rather that it would result in their being spread more thinly. Being spread less densely, many of the problems inherent in emancipation would be mitigated, making abolition more likely.

It must be remembered that Jefferson throughout his life proposed legislation to restrict slavery. His writings indicate a never-changing opposition to the institution. During his first term in the House of Burgesses, he pushed legislation to limit the importation of slaves. In 1774 in his *A Summary View of the Rights of British America* he wrote that the colonist in Virginia wanted to abolish slavery, but due to a veto of their legislation by the king, the institution had been preserved (Randall 213). In his original draft of the Declaration of Independence, he held the king personally responsible for the slave trade writing: "He waged cruel war against human nature itself, violating its most sacred rights of life and liberty in the persons of a distant people who never offended him, capti-

4. Thomas Jefferson, William Peden ed., *Notes of the State of Virginia* (Chapel Hill, N.C., University of North Carolina Press, 1955) 256.

vating and carrying them into slavery ...” Further into the text he conspicuously capitalizes the word MEN, when writing "... where MEN should be bought and sold” According to Jefferson, it was due to South Carolina and Georgia that this condemnation of slavery did not remain in the Declaration (Randall 276-77).

It is well-remembered that Jefferson in *Notes on the State of Virginia* questioned the innate abilities of blacks. It is less well-remembered that this was only a "suspicion," and that he was happy to refute this claim only five years after *Notes* was published. In *Notes* he remarked "in memory they are equal to the white," in "reason (they are) much inferior" (*Notes* 139). He went on to state "I think one could scarcely be found capable of tracing and comprehending the investigations of Euclid." But then he qualifies these statements by saying: "The opinion that they are inferior to whites in the faculties of reason and imagination must be hazarded with great diffidence." In 1792 Benjamin Banneker, a free black planter, self-taught mathematician and astronomer, sent Jefferson a manuscript ephemerides, a table of the position of the planets at various times of the year. Jefferson responded by writing, "No body wishes more than I do to see such proofs as you exhibit, that nature has given to our black brethren talents equal to those of the other colors of men." He forwarded a copy of the work to the Marquis de Condorcet to whom he wrote that he wished to see this example "so multiplied as to prove that the want of talents observed" in black people "is merely the effect of their degraded condition" and does not proceed "from any difference in the structure of the parts on which the intellect depends."⁵ Jefferson's thinking was consistent with the Enlightenment belief in the universal equality of mankind.

Where would Jefferson stand today on the question of states' rights? To venture speculation on this question requires knowledge of how he would weigh a number of issues which were not relevant to the political debate of his own time. A critical new dimension to the debate is environmental science, a factor germane to the question of western land use which he did not have to consider. He would naturally be suspicious of federal power centered in Washington, but as a scientist, would he not have to concede that federal control provides a much surer safeguard of

5. Bernard I. Cohen, *Science and the Founding Fathers*, (N.Y., Norton & Co.,1995) 299.

the environment than state control; or would he be as dogmatic as he was concerning the Missouri Compromise?

And where would he choose to stand on the civil rights debate? With the question of slavery settled, and the transportation of African Americans to distant, segregated colonies no longer an option, would his position be one of fear or hope? Would he still fear that the two races would never be able to live in harmony, or would he instead look hopefully towards African Americans assuming an equal place in American society? Some might wager that even if he had opposed integration in the 60's based on states' rights, he would have been like George Wallace, eventually coming to recognize the righteousness of the civil rights movement and the errors of the segregationists.

It is on the issue of religion that it is most difficult to imagine Jefferson reconciling himself with the right-wing ideologues of today. It would take a very long stretch of the imagination to believe that Jefferson would be a supporter of the Christian right, yet this is exactly what some are contending. One Republican congressman has gone as far as to say that freedom of religion does not mean the freedom not to have a religion. Yet we need only look to Notes on the State of Virginia to see how untrue this claim is. Jefferson wrote: "It does me no injury for my neighbor to say there are twenty gods, or no god. It neither picks my pocket nor breaks my leg" (Notes 158). Jefferson clearly regarded religion as a private matter, and not one where civil law should intrude. It is ironic that it was the Baptists of western Virginia Jefferson was attempting to protect when he first introduced motions for religious protection in 1776 (Randall 291). Baptists, or rather Southern Baptists, who Harold Bloom calls the new Catholic Church of America,⁶ are among the organized religions which advocate some degree of dismantling of the separation of church and state. Unlike the question of race relations, there is no record of inconsistency on this issue which will allow one to argue that Jefferson could find himself in league with the Christian right.

A century of Federal domination from the Civil War to the War on Poverty reduced states' rights to the shrill cry of a minority of racial extremists. It would be difficult to find many analysts from the 1960's who foresaw the radical shift which America embarked on during the

6. Harold Bloom, *The American Religion*, (N.Y., Simon & Schuster, 1992) 231

second half of the 1970's, and which is still taking place today. That states' rights would become the mainstream ideology leading the nation into the 21st century is astounding when compared with the federal activism of the 1960's.

This change has come about in no small degree due to the re-emergence of the South as a center of power in the United States. The shift has been both demographic and economic. The growth of the Sunbelt in proportion to the Northeast and Midwest, and the willingness of southern whites to vote for the Republican Party, beginning with Nixon's southern strategy in 1968, have been critical forces in the massive paradigm shift. Resistance by westerners to what they deem to be excessive federal control of their lands has also played its part. That the Federal Government is still the largest landholder west of the Mississippi, controlling over 50 percent of some states such as Alaska, was not what Jefferson had in mind when he first drafted the Northwest Ordinance. Jeffersonian states' rights have an obvious appeal to westerners who want more local control of land and resources. ,

The return of states' rights to center stage in American politics makes it critical that its historical and philosophical foundations are studied and more clearly understood. First and foremost, it must be understood that for Jefferson, states' rights were the surest guarantee for the ideals expressed in the Declaration of Independence. He looked to state and local governments as the prime agents for the protection of civil rights against the abuses of a powerful and corruptible central government. This model was turned on its head during the civil rights movement of the 1950's and 60's, where it was the Federal Government which protected African Americans against the abuses of state and local governments. As power is returned to the states, it is essential that we understand why Jefferson wanted power to reside there in the first place.

The contemporary application of states' rights seems only to serve as a justification for such policies as overturning environmental protection, as in the case of the Alaska National Wildlife Refuge, or in so-called right to work laws, especially in the South, which have contributed to the emasculation of the American labor movement. It might seem to many that states' rights is just a poor excuse for environmental exploitation, corporate greed, religious fanaticism, and white supremacy. The efficacy of states' rights as guarantor of individual liberty needs to be debated. We

to ask the question: can a political ideal, born in a naive pre-industrial era of seemingly unlimited resources, still serve us in the atomic era, with its standing armies, multi-national corporations, and impending environmental catastrophe?

Would Jefferson today be an intransigent ideologue concerning states' rights, as he was during the debate on the Missouri Compromise, or would the pragmatic Jefferson accept the need for greater Federal action, as he was willing to be pragmatic in the use of federal power concerning issues such as his embargo and the Louisiana Purchase? The epithet Jefferson chose for himself provides the best signpost for conducting a search of his values. He wanted his gravestone to read "'author of the Declaration of American Independence, of the Statute of Virginia for religious freedom, and Father of the University of Virginia" because these, as testimonials that I have lived, I wish most to be remembered."