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The Poisoning of “States’ Rights” by Sheldon Richman

Schadenfreude. That’s what I felt watching former Senate majority leader Trent Lott twist in the wind over his expressed wish that Strom Thurmond had won the presidency in 1948. “A malicious satisfaction in the misfortunes of others.”

Lott is a typical Republican leader. He occasionally talks about limiting government power, but his actions are those of a conservative big-government wheeler-dealer politician in the Robert Dole mold. Why should any lover of liberty care what happens to him? I didn’t. I don’t. Who cares if he falls and takes the whole blasted phony big-spending war-mongering Republican Party with him?

We’ve all heard the story a million times by now. At Senator Thurmond’s 100th birthday party, smarmy Lott thought he would offer the ultimate suck-up tribute by saying that the country would have been better off had Thurmond been elected president. The trouble is that Thurmond ran on the Dixiecrat ticket, formally known as the States’ Rights Democratic Party. Its key platform plank was this: “We stand for the segregation of the races and the racial integrity of each race.”

The appropriate libertarian reaction to Lott’s predicament might have remained *schadenfreude*, except for one detail. The Lott incident reopened the “states’ rights” issue — a sticky issue, as I intend to explain. To begin with, it’s a bad term. States have no rights. Individuals do. But that doesn’t mean the term is empty. It denotes the decentralization of power and competing legal jurisdictions — what used to be known as federalism. It comes out of the view that the United States was a confederation of people acting through several pre-existing states, rather than a homogeneous group spread along the eastern part of the North American continent.

More fundamentally, it comes out of the view that political power is not to be trusted. This is why as august a figure as Lord Acton endorsed “states’ rights,” Southern secession, and the Confederacy during the Civil War.

The essence of government is violence (or the threat of it) against people who themselves have not broken the peace. If government is going to exist, at least it should be limited, with power divided among branches and across jurisdictions. The alternative is tyranny waiting to happen.

Libertarians understand that the “miracle of the West” is attributable to the decentralization of power. Europe was fragmented, and the transnational church was a rival contender for people’s allegiance. It was at least possible to flee one polity for another to escape tyranny. Out of this, emerged vital zones of freedom, eventually becoming formalized into the ideology of liberty, property, and commerce known originally as liberalism.

“States’ rights” and segregation

Unfortunately, in the United States “states’ rights” was hijacked by illiberals, who hitched it to slavery and then Jim Crow — that is, stated-mandated and state-enforced servitude, segregation, and degradation. This was key in helping to discredit the liberal cause.

That should make libertarians angry. A lovely liberty-serving principle was disfigured and virtually destroyed by being twisted into a defense of slavery and racism. Every apologist for slavery and Jim Crow who defended his irrational ideas in the language of “states’ rights” did a grave disservice to the cause of freedom. (Similarly, the southern slaveocracy stained the principle of property by claiming property rights in human beings.) We live with the poisonous consequences every day. Try defending the decentralization of power in nonlibertarian company and see what happens. If you’re not suspected of racism and segregationism, I’ll be surprised.

The Dixiecrats objected not to Washington’s power grab per se, but to the ostensible *purpose* of the grab: the abolition of forced segregation. Thurmond did not proclaim that he favored repeal of the Jim Crow laws and that his only beef was with Washington’s violation of the Constitution’s Tenth Amendment. On the contrary, his party defended Jim Crow. It vowed to perpetuate government’s forced separation of people on the basis of race.

Note the rank collectivism. Races cannot be separated. Only individuals can be. As Ayn Rand wrote in 1963,

Racism is the lowest, most crudely primitive form of collectivism. It is the notion of ascribing moral, social or political significance to a man's genetic lineage — the notion that a man's intellectual and characterological traits are produced and transmitted by his internal body chemistry. Which means, in practice, that a man is to be judged, not by his own character and actions, but by the characters and actions of a collective of ancestors.

Jim Crow of course required government interference with private property, freedom of association, and freedom of contract, that is, with capitalism. Some white property owners objected to the state's imposition on the running of their businesses. The landmark 1896 case *Plessy v. Ferguson*, which unsuccessfully challenged a Louisiana law mandating black and white railway cars, was a test case cooked up by, among others, a white railroad owner.

Jim Crow not only dictated how people may use their own property, it also entailed a constellation of tax-funded state facilities, including schools. Democrat states-righters were enthusiastic champions of state facilities and services because they were sources of power and patronage. They were also an effective way to keep black Americans "in their place." Those champions of states' rights were not libertarians.

It is no doubt true that many of those who helped destroy the Tenth Amendment in the name of "civil rights" were insincere and that their real purpose was not to end segregation, but to clamp, as a matter of principle, a centralized Leviathan down on us. That doesn't change the fact that forced-segregationists subverted the honorable principle of decentralized power by enlisting it in their vile cause. If I were a conspiracy buff, I'd suspect that segregationist states-righters were really socialists out to subvert a key libertarian principle. I sometimes doubt that the cause of liberty will ever recover from that abominable feat.

It is worth knowing that alleged champions of "states' rights" weren't so loyal to their principle when it was inexpedient. As Jeffrey Rogers Hummel pointed out in his history of the Civil War, *Emancipating Slaves, Enslaving Free Men*, southern apologists for slavery protested to Washington when several northern states passed personal-liberty laws, which effectively nullified the federal fugitive-slave act. The act was essential in socializing the slaveocracy's enforcement costs and keeping it afloat.

I am not arguing, as some might, that the destruction of federalism was necessary to rid the land of race-based socialism administered from state capitals. Counterfactual history is risky. But just as one can see how slavery could have been abolished after secession without Mr. Lincoln's war, so one can see how Jim Crow could have been destroyed without federal intrusion. Perhaps in response to forced segregation a genuine libertarian civil-rights movement would have arisen to

oppose all violations of property rights. Perhaps in reaction to the government's decrepit segregated schools, a mass black-operated private-school campaign would have been launched. We know that such things happened on a small scale; black entrepreneurship was on the rise, although it is rarely discussed. Did Washington's intervention keep the many small efforts from coalescing into a large-scale movement to set up private self-help institutions? We'll never know. But necessity is the mother of invention.

Not that genuine self-help would have been easy. With government connivance, private individuals opposed to black freedom and progress terrorized and murdered people who resisted Jim Crow. Richard Epstein has written that some businessmen privately supported the 1964 Civil Rights Act, complete with its public-accommodations provisions, because if they had opened their stores, restaurants, and hotels to blacks on their own initiative, they would have been subjected to violence and the local authorities would not have protected them. We know that the mutual benefits of trade are powerful enough to encourage bigots to put aside their animosities and do business with all comers with green in their hands. I suspect that in time commerce and libertarian ideology would have integrated north and south without the de facto repeal of the Tenth Amendment that has had so many malign consequences.

Libertarians are justified in despising those who, in the name of civil rights, would abolish private property and all its institutional safeguards. They should also feel contempt for those who have also jeopardized those things by placing them in the service of racial collectivism.

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This article was originally published in the March 2003 edition of *Freedom Daily*.