STATES’ RIGHTS VERSUS FEDERAL TYRANNY

By
Strom Thurmond, United States Senator

The greatest domestic issue facing the American people today is the problem of preserving the rights of the several States against ever-increasing Federal encroachment -- States’ Rights versus Federal tyranny.

Some would have us believe that States’ Rights is no more than a time-worn cliche' which a hundred years ago was used to promote Southern separatist aspirations and which now is employed as a device to facilitate the exploitation of racial minorities. We know that this is not so. States’ Rights is an enduring and valid principle which transcends the issue of race and which has existed since long before there was a South.

For States’ Rights is but the American term for the principle of local self-government, a fundamental and inalienable human right for which, over the centuries, our ancestors, both in Europe and in America, have fought and struggled and died. In the establishment of our Union, we recognized this right of self-government, we incorporated it in our written Constitution, and we gave it its American name of States’ Rights.

But, important as this principle of local self-rule is, States’ Rights is more than that. In our American constitutional system, States’ Rights is the keystone of Individual Liberty. States’ Rights is one of the two main principles which the Founding Fathers built into the Constitution to insure that Americans would be
forever free.

The other principle relied upon by the Founders was, of course, the principle of Separation of Powers -- the independence of the three coordinate branches of the Federal government. These two devices, the Federal-State division of powers and the separation of the judicial, legislative and executive functions, constitute the basic framework of our system of checks and balances.

The ultimate objective of this checks-and-balances system, indeed the highest purpose of government, is the protection of the rights and freedom of the individual citizen -- the promotion and preservation of individual liberty. "Liberty," said Lord Acton, "is not a means to a higher political end. It is itself the highest political end."

Therefore, in order for us to evaluate the importance of States' Rights in our political system, it is necessary that we examine States' Rights, not simply as a slogan or an interesting Southern political tradition, not simply as something in itself, but rather in relation to the ultimate political objective, which is individual liberty.

This is, of course, what the Founders had in mind. They were seeking means to insure that the newly-won individual liberties of the American people would be preserved. They knew full well that the greatest potential threat to the liberty of the individual lay in government. That is why they were insistent that the government they were setting up be limited and decentralized. They were determined not to create a power-apparatus which, however well it might work and however beneficent it might prove while in their hands, would someday become an instrument of tyranny over the people should it fall into
the hands of evil or power-hungry men.

And, being realists, they knew that the power of government would -- on many occasions, at least -- fall into the hands of evil men of boundless ambition. They knew that the idea of benevolent government, without checks, is a delusion. They knew the utter folly of setting up a government without limitations, in the reliance that good men would control it. Listen to the words of Patrick Henry:

"Would not all the world," he asked, "from the eastern to the western hemisphere, blame our distracted folly in resting our rights upon the contingency of our rulers being good or bad? Show me that age and country where the rights and liberties of the people were placed on the some chance of their rulers being good men, without a consequent loss of liberty! I say that the loss of that dearest privilege has ever followed, with absolute certainty, every such mad attempt."

Or as Thomas Jefferson was later to express it:

"In questions of power, then, let no more be heard of confidence in man, but bind him down from mischief by the chains of the Constitution."

That is just what the Framers sought to do. By means of these two governmental devices, Separation of Powers and States' Rights, they sought to prevent that concentration of centralized power which they knew would be the death-knell of individual liberty in America. Liberty would be safe so long, and only so long, as these two principles remained intact and were scrupulously upheld.

We may express the Framers' thinking graphically in this way: The structure of our liberty rests upon these two supports, the twin pillars of States' Rights and Separation of Powers. So long as both these pillars stand, unimpaired, our liberties stand also. But if either one of these pillars be destroyed, or slowly eroded away, then,
surely and inevitably, the temple of liberty will come crashing down.

We are nearer to that eventuality than is generally realized. We are very near, dangerously near, to it. By processes which at first were gradual, but which in recent years have assumed a progressively increasing rate, the pillar of States' Rights has been almost completely eroded away, until what was once a sturdy and massive support of American freedom has been whittled down to a very tenuous column indeed.

Some people may rely on the idea that it is safe to destroy the rights of the States and create a centralized government so long as, within this centralized government, the principle of Separation of Powers is strictly enforced; that the latter principle is all that is really necessary to guarantee individual liberty.

Nothing could be more wrong. The two pillars, States' Rights and Separation of Powers, are complementary to each other. Destroy or remove one, and the other will soon collapse. Jefferson warned that:

"...When all government, domestic and foreign, in little as in great things, shall be drawn to Washington as the centre of all power, it will render powerless the checks provided of one government on another, and will become as venal and oppressive as the government from which we separated."

And even the arch-Federalist Alexander Hamilton saw clearly that the fate of individual liberty was inextricably tied up with the fate of the States. Said Hamilton:

"The States can never lose their powers till the whole people of America are robbed of their liberties. They must go together; they must support each other, or meet one common fate."

Actually, the process of infringing on the rights of the States is not new. It began early in our history. Thomas Jefferson
saw the beginning of this process of usurpation by the Federal judiciary; he feared its ultimate result, and he expressed his fears as follows:

"...There is no danger I apprehend so much as the consolidation of our government by the noiseless, and therefore un alarming, instrumentality of the Supreme Court."

With prophetic vision, the great Virginian warned further that the germ of dissolution of our federal system lay in the Federal judiciary.

"...working like gravity by night and by day, gaining a little today and a little tomorrow, and advancing its noiseless step like a thief, over the field of jurisdiction, until all shall be usurped from the States, and the government of all be consolidated into one."

This process, which Jefferson depicted, was beginning even in his own day. Nevertheless, despite this considerable degree of judicial usurpation over the early years; despite the War Between the States and the subsequent force-imposed amendments which radically altered the original structure of the Union; despite even the nationalizing influence of the commercial expansion of the post-War period, with the concomitant growth of the due process concept and the stretching of the interstate commerce clause -- despite all these assaults and encroachments, the basic principle of States' Rights remained fundamentally intact, remained a sturdy support of the constitutional liberties of the American people. The North, the nation as a whole, might have rejected the Southern contention that States' Rights included the right to secede and dissolve the Union; but within the framework of Union the country was still dedicated to the principle of local self-government, or States' Rights. Chief Justice Chase in 1868 echoed the prevailing popular
view when he characterized the United States as "an indestructible Union composed of indestructible States." (Emphasis added)

Thus, until the 1930's our governmental system was still fundamentally based on States' Rights, both in principle and in practice. Not to the extent that some of us had desired, to be sure; not to the extent that the Framers had recommended; but still to the extent that the great majority of those vital economic, political and social activities most closely affecting the lives of the people were the subjects of State control only, and were outside the province of the Federal government.

In the last quarter-century, however, we have seen assaults on States' Rights at every point. We have seen the national government in Washington expanded to its present swollen size, to the accompaniment of a steady diminution of the reserved powers of the States. It is not my purpose to attempt to fix the blame for this development. Suffice it to say, that all three branches of the Federal government participated in it, and that a people rendered fearful and timid by economic depression acquiesced in it. The Supreme Court resisted the trend until 1937, but in that year, as the Honorable Hamilton A. Long of the New York Bar explains in his brilliant study, USURPERS: FOES OF FREE MAN, the Court underwent a major policy-revolution. From that time forward, the Supreme Court's role has been one of willing, and then eager, collaboration in the process of aggrandizing the Federal government at the expense of the States.

With the school segregation decision of 1954, the Supreme Court really went into high gear against the States and the Constitution. It stepped up its drive with the subsequent Steve Nelson
and Girard College decisions. In 1957, the Congress and the Executive joined in the attack. The passage -- in an atmosphere of bogus sanctity and mock legality -- of the mis-called Civil Rights Bill was shortly followed by the subjection of a once-sovereign State to bayonet rule, which still continues.

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We are indeed at a late hour to defend our liberties. The process of usurpation has gone so far that it is difficult to resist. Already tremendous pressure is building up to take from the States one of the most vital functions still remaining in their hands -- public education. Massive Federal aid to education, which is being promoted in the guise of a national security measure, will surely and inevitably result, in a very few years, in total Federal control of the public schools -- not only control over who attends them and how they are run, but control over what is taught in them. It need scarcely be said that once the usurpers gain control over the minds of our youth, the fight for freedom is lost.

With all the resources at our command, we must combat and defeat this subtle attempt to transfer control of our public school systems from the States to the Federal government. Further, we must firmly and unceasingly resist any and all attempts on the part of the Federal government to encroach in any way on any of those fields of activity still under State jurisdiction. In so doing, we must realize at all times what it is for which we are ultimately fighting.

In keeping up a constant struggle to preserve the principle of States' Rights, we are not fighting for any mere slogan. We are not interested in States' Rights simply as a name. We are interested -- and vitally interested -- in the principle of States' Rights, because it is an essential support of Liberty: the highest political end.

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