

Antiquities of the Republic

by Samuel Francis

“The United States shall guarantee to every state in this Union a republican form of government.”

—Constitution of the United States, Article IV

**States' Rights and the Union:
Imperium in Imperio, 1776-1876**
by Forrest McDonald
Lawrence: University of Kansas Press;
296 pp., \$29.95

Until the triumph of the civil-rights movement at the end of the 1960's, probably the most disruptive and recurrent conflict in American politics came from the struggle between central authority in the federal government and local authority at the level of the states. Since the 1960's, the issue seems almost to have vanished, although states' rights are periodically trotted out by one side or another to score a debating point. While the defense of local community and authority has historically been associated with the political right, last year liberal columnist E.J. Dionne wrote a column challenging the Supreme Court's ruling that made George W. Bush president by arguing that the ruling violated states' rights.

It is not surprising, given the political

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football that the concept of states' rights has often been in our history, that few historians have seemed to take it very seriously—especially since the civil-rights movement, when its invocation by segregationists supposedly “discredited” the concept. In the 1950's, journalist James J. Kilpatrick published an explicitly segregationist book, *The Sovereign States*, that remains one of the best defenses of states' rights ever published, even though Kilpatrick later repudiated the book and the positions he defended. Forrest McDonald's most recent work of scholarship is largely free of polemic and is certainly

not a tract for segregation, although he does recapitulate much of what Kilpatrick wrote in his long-out-of-print book.

McDonald's book is a history of the use of the idea of states' rights and its implications in such doctrines as interposition, nullification, and secession, as well as a compact and highly informative (if sometimes rather dry) history of the United States in terms of states' rights and the legal and political conflicts centered on the concept. Since much of what really shaped our constitutional and political history is now being lost because of ideological teaching and deliberately inculcated falsehoods and illiteracy, what he has to tell us in this book is invaluable. Those who, for either political or scholarly reasons, are seriously interested in the concept of states' rights and the federalism it informed will find McDonald's excellent little book irreplaceable.

McDonald rightly sides with the proponents of the compact theory of the formation of the U.S. Constitution, holding that Lincoln was wrong to claim in his message to Congress of July 4, 1861, that “the Union is older than any of the States, and, in fact, it created them as States.” This “nationalist” interpretation, as it has

been called, is untenable,” McDonald writes, and he treats sympathetically the various conflicts in American history that involved the rights of the states that follow from the compact theory. This position places him—with respect to states’ rights, if not to other issues—on the side of the Confederacy as opposed to Lincoln, Calhoun and Hayne as opposed to Webster and Jackson, and Jefferson and Madison as opposed to Hamilton and John Adams. McDonald seems to harbor an intense dislike of Jackson, blaming his crusade against the Bank of the United States for the economic collapse of 1837 and the destruction of the American financial system and finding him responsible as well for the weakness of the presidency during most of the 19th century. Jackson failed to “embody the spirit of the nation” and “brought such disrepute to his office that that vital function of the presidency could scarcely be performed again for the remainder of the century.” McDonald allows that Jackson “believed in states’ rights,” as his Supreme Court appointments show, even though he boldly asserted the “nationalist” theory in his proclamation against nullification in South Carolina, and “his eight years in office saw the triumph of the states’ rights doctrine.”

But McDonald’s account of King Andrew pales beside his portrayal of Father Abraham. His summary of the constitutional deprivations of Abraham Lincoln is the most concise and comprehensive I have seen in a mainstream work of scholarship, although McDonald rather incongruously claims that Lincoln “took seriously” his oath of office to uphold the Constitution while writing that, “If it proved necessary, in his judgment, to break a host of minor laws or constitutional provisions and to trample on the rights of loyal citizens in the doing, so be it.” By 1862, Lincoln’s administration had imprisoned some 14,000 citizens in military prisons under martial law and held them without trial and without habeas corpus, which the President had summarily suspended. (Jefferson Davis, McDonald notes, suspended habeas corpus in the Confederacy; he did so, however, with the consent of the Confederate Congress, while Lincoln acted without congressional approval.) By 1863, Lincoln also controlled most of the governors of the unionist states. “The governors could no longer claim that Lincoln was their creature; now it was Lincoln who had elected the governors. They

could offer only token resistance during the remainder of the war.” Had it not been for the sheer corruption of the Republican Party under Grant and his cronies and their indifference to radicalism—probably also for the death of Lincoln himself—the Lincoln era would have seen the permanent destruction of republican government in the United States. As it was, although the congressional and executive branches ceased exercising the enhanced powers they had seized during the war, the Supreme Court revived states’ rights in the postwar period and enabled constitutional government to survive.

Although McDonald’s book is a much needed account of both the theory (political and legal) of states’ rights and its history, it has two shortcomings. In the first place, it fails to bring the history up through the 20th century; instead, it stops at 1876, when an increasingly conservative court used states’ rights theories to gut Radical Republican legislation enacted during Reconstruction. McDonald does offer a thumbnail sketch of the revival of the Tenth Amendment in recent years, but a closer discussion of who has used states’ rights and who has rejected them in the 20th century would have given his book a completion that it seems to lack.

The other shortcoming is McDonald’s refusal to examine the larger forces that, at various times in our history, have pushed or resisted states’ rights. The most obvious such force, of course, has been the South, but McDonald does show that, in the 1850’s, when the federal government was mainly friendly to Southern interests, “the attitudes of many southerners came more nearly to approximate the constitutional views of John Marshall than those of Jefferson and Jackson, even as Yankees were adopting a Jeffersonian and Jacksonian suspicion of the federal government and the Supreme Court.” Earlier, of course, New England’s dislike of the War of 1812 led to the secessionism of the Hartford Convention. While McDonald does show that different political forces have used states’ rights as they proved convenient for their interests and abandoned or muted their use of them as they proved inconvenient, an account of the eventual demise of states’ rights as the result of the triumph of a centralizing economy and technology and the demand of those who control them for political uniformity and central-

ization would have been instructive. Writing that history, of course, would have carried McDonald well beyond 1876 into the Progressive Era and the 20th century.

McDonald ends his book on a cautiously optimistic note, concluding that, “in the 1990’s, as in the 1870’s, states’ rights had found a powerful friend, but, given the five-to-four majority, a fickle one.” He is more optimistic than I. It is reasonable to expect from the Supreme Court occasional invocations of defunct constitutional doctrines like states’ rights, just as we can occasionally expect similar reflexes from political forces that dislike or see themselves threatened by centralization and national unity. But the brute fact is that the concept of states’ rights is as dead as the Old Republic it animated, slain by the conjuncture of the centralizing economic and technological imperatives of the last century and their political expression in the architects of the leviathan state in both political parties. The real origins of the Constitution, the truth of the compact theory, and the nature of “federalism” itself are today merely arcana suitable to antiquarians; they are virtually unknown in law schools and public discussion, and even conservative officeholders in Washington usually harbor only an inchoate idea of them, when they entertain any sympathy at all. Moreover, states’ rights and the localism they are supposed to protect cannot thrive in a political order in which the local has become simply an appendage of the central and looks to the central government for the fodder it devours, and when even the champions of the states’ rights legacy prove too ignorant to know the difference. Last year, the Southern Party, which advocates the secession of the South from the United States, fielded its first candidate and won its first political victory. The candidate’s name was Wayne Willingham, and he was elected mayor of West Point, Alabama, by the whopping margin of one vote. Should the reader conclude the Willingham landslide is evidence of the coming resurrection of states’ rights, at least in the South, and the rejection of the federal leviathan that smothers them, he ought to be disabused. As the Florence, Alabama, *Times Daily* reported in September, “Willingham said he campaigned not on Southern nationalism but on getting more state and federal grant money to help West Point . . .”

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“Psst—Can We Talk?”

by Richard D. Lamm

The Race to the Bottom: Why a Worldwide Worker Surplus and Uncontrolled Free Trade Are Sinking American Living Standards

by Alan Tonelson
Boulder, CO: Westview Press;
222 pp., \$25.00

There is a story, perhaps apocryphal, about a Chinese scholar who was asked by a student, “What is the long-term impact of the French Revolution?” His answer: “It’s too early to tell, it’s simply too early to tell.”

Those borrowed words would be my response to the question of the impact of the globalization of trade on America and the American worker. It is too early to tell; and the answer is bound to be a mixture of positives and negatives rather than a simple, single answer. I believe we can say that economic history has shown that international trade generally has made the world wealthier, but that begs the larger, more complete question. Who benefits from the new global trade order? Who pays? Who sets the rules? What will be the effect of current global trading patterns a decade or two from now? How do we distribute the fruits of global trade in a fair and just manner?

Many experts don’t even consider these issues open to debate. Paul Krugman, a usually thoughtful economist and columnist, dismisses critics of global trade as “entirely ignorant men” who are “startlingly crude and ill-informed.” Paul Krugman, meet Alan Tonelson, author of *The Race to the Bottom: Why a Worldwide Worker Surplus and Uncontrolled Free Trade Are Sinking American Living Standards*.

In his articulate, passionate, yet thoughtful book, Tonelson argues that globalization has undermined American wages by greatly expanding the pool of workers potentially available to American business. The whole world is now one vast labor market for most industries,

which therefore can insist upon low wages and enforce their insistence by moving production abroad. The result is a race to the bottom for wages, but not *only* wages: The same dynamic lowers standards in worker and environmental protection. Wealth-generating entities can shop the world to find people or governments, desperate for economic advancement, who can be exploited—or corrupted.

Tonelson documents in great detail how the indiscriminate and unequal opening of America’s markets to world trade has undermined the typical American’s earning power and standard of living, despite the fact that the United States has recently experienced the longest economic expansion in the nation’s history.

Tonelson considers current trade rules to be a Faustian bargain by which many governments sell their national souls (i.e., compromise just wages, worker safety, and environmental health) to gain some short-term economic benefit. He warns America against confusing temporary success in trade with long-term success and maintains that we are paying a much higher price for global trade than most Americans know—or admit. The “race to the bottom” was inevitable and will continue, with great danger to a majority of Americans.

Tonelson demonstrates how the benefits of global trade flow unequally to those in the upper-income brackets. A few benefit, while the majority of American workers pay the price. He claims that, taking inflation into account, global trade for the last 25 years has helped cause the living standards (as measured by compensation received for every hour of work) of an overwhelming majority of Americans either to stagnate or decline. For the first time in the nation’s history, a generation of Americans is, on the whole, doing worse economically than its predecessors, despite many years of solid American economic performance. Not only have low-income workers seen their living standards deteriorate, but, between 1973 and 1998, real hourly wages fell for the bottom 60 percent of the entire workforce in the United States. For another 10 percent, real hourly wages rose a miniscule seven cents during this 25-year period, while virtually all of the gain went to those in the top five or ten percent of

American households. Hardest hit by this trend are low-income workers, on whom the impact of uneven trade is far greater and whose skill levels make them the most vulnerable. If Tonelson is correct, that means that, for 25 years, seven out of ten American workers failed to keep up, or merely kept even, with living costs, though most of these years saw solid national economic growth. It is almost impossible to find a category of production worker that has stayed significantly ahead of living costs since the early 1970’s. Tonelson quotes Lester Thurow of MIT as remarking that not since 1929 have real wages fallen for most American workers at the same time that output per worker was rising. For most of us, regardless of political philosophy, there is something wrong with this picture.

In 1994, every American was essentially competing with 21 people from all over the world (as opposed to fewer than three people in 1989); this number can only expand, and expand dramatically, with the increased globalization of trade. American workers at many levels, either by outsourcing or by the effects of immigration, will find themselves competing with workers throughout the world who are willing to work for far less than American wages. In a world where about two billion people live on less than \$700 a year, this cannot be good news to the American wage earner.

Tonelson claims that the impact of the trade deficit is larger than generally estimated by official trade statistics, many multinational companies having established production facilities abroad that used to be located in the United States. As a result, when parts and raw materials are shipped to foreign facilities by parent companies in the United States, they are counted as “exports” under official U.S. trade figures, even though they reenter the country as imports after most of the added high-value work has been done abroad. The process cannot possibly produce the kind of job-creating and wage-boosting effects in the United States that most Americans assume exports have accomplished. Quite the contrary: In many instances, these exports deserve to be equated with displaced American jobs as surely as do imports that compete with American-made goods. This is not “ex-