The Southern Tradition and Limited Government

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What can we learn from the Southern tradition about limiting the disposition of the modern state to centralize power? At first glance very little. The defeat of the Confederacy meant that the principles of state sovereignty and its corollaries, state nullification and secession, would be repudiated as heresies. If so, they form no part of the American political tradition. The trouble with this view is that these principles are thoroughly Jeffersonian, and if anyone is an American Jefferson is. Moreover, the principles of state sovereignty, nullification, and secession were invoked in every section of the Union throughout the antebellum period. To demonize these as "un-American" or as "Southern heresies" as post-Lincolnian historiography does is to deprive Americans of a large part of their political tradition, and the part with the most to say about limiting modern centralization.

The essential outline of this Jeffersonian tradition was succinctly stated by Madison in the Virginia Resolutions (1798) and the Virginia Report (1799) and by Jefferson in two Kentucky Resolutions (1798 and 1799). These came to be known later as "the principles of 98." The Constitution, Jefferson said, is a compact between sovereign states designed to create a central government endowed with only enumerated powers, mainly to provide for defense, regulate commerce, and make foreign treaties. All powers of sovereign states not delegated to the central government remain with the states as they did prior to entering the federation. Since the states are the principals to the compact and the central government the agent, the states have the final say on whether the central government has reached beyond its enumerated powers into the reserved powers of the states. To deny this, yields the absurdity that the agent (the central government) can tell the principals (the sovereign states) what the limit of their powers are which contradicts the notion of a compact.

Being sovereign, each state has the right and—Madison said in the Virginia Resolutions—the *duty* to protect its citizens from unconstitutional acts of the central government. Jefferson went further and said in the second Kentucky Resolutions that a state could *nullify* unlawful acts of the central government. Nullification by one of the sovereigns to the compact opens three possibilities: (1) Upon the remonstrance of the other states the nullifying state might yield. (2) The other states might be willing to allow a suspension of the federal law in that

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state. (3) The states or Congress could call a convention of the states to amend the Constitution against the nullifying state in which case its claim that an act of the central government was unconstitutional would be decisively refuted. If the state found this unacceptable, it would have to secede from the federation or the federation from it. States can secede because they are sovereign political societies. Everyone in 1789 understood this, as a matter of international law, but it is worth noting that New York, Virginia, and Rhode Island stipulated in their ordinances ratifying the Constitution the right to withdraw the powers they had delegated to federation and secede.

Neither the central government nor the states have the Constitutional authority to coerce a non-complying or a seceding state. The central government can coerce *individuals* in any state of the federation under its enumerated powers, but not a State itself, and certainly not one that has recalled its representatives and senators and left the federation. Hamilton raised this question in the New York Ratification Convention, and said: "Suppose Massachusetts or any large State, should refuse, and Congress should attempt to compel them.... What picture does this idea present to our view? A complying State at war with a non-complying State; Congress marching the troops of one State into the bosom of another.... Can any reasonable man be well disposed towards a Government which makes war and carnage the only means of supporting itself—a Government that can exist only by the sword? ... But can we believe that one State will ever suffer itself to be used as an instrument of coercion? The thing is a dream; it is impossible."[1] The Americanism expressed here is thoroughly "Jeffersonian," and quite different from the Americanism that would emerge only 70 years later when Lincoln would march the armies of some States into the bosom of others, and cobble together a Union by force. Whether this was a good or bad thing cannot be explored here. The point is simply to observe two incommensurable Americanisms within the space of 70 years.

State nullification was a vital part of the American federal system up to 1860. In his first inaugural, Jefferson said the Tenth Amendment was the "foundation of the Constitution," and urged "the support of the State governments of all their rights, as the most competent administration for our domestic concerns and the surest bulwark against anti-republican tendencies." State nullification was exercised everywhere in the federation to protect republicanism by checking unconstitutional centralization of power. In Chisholm vs. Georgia (1793), two executors of a deceased Georgia loyalist whose estate had been confiscated sued for a bond issued before the Revolution. The matter eventually went to the Supreme Court. Georgia refused to acknowledge the jurisdiction of the Supreme Court on the ground that in international law a sovereign state cannot be sued by individuals without its consent. Georgia refused to appear in court, and the plaintiff won by default. Georgia promptly nullified the Court's order as unconstitutional, and the state House of Representatives passed a resolution declaring that any agent attempting to execute the Court's decision would be "guilty of felony and shall suffer death, without benefit of clergy, by being hanged."[2] Georgia explained its actions to the other states; they agreed and promptly passed the Eleventh Amendment that makes the states immune from suits by individuals.

In like manner, Jefferson argued that a State could nullify opening a branch of the national bank in its territory. He advised the Virginia legislature to reason as follows: "The power of erecting banks & corporations was not given to the general government, it remains then with the state itself. For any person to recognize a for-

eign legislature in a case belonging to the state itself, is an act of treason against the state," and any person acting under the "authority of a foreign legislature—whether by signing notes, issuing or passing them, acting as director, cashier or in any other office relating to it shall be judged guilty of high treason & suffer death accordingly."[3]

In 1808, 1813, and 1814 New England States invoked the "principles of 98" and nullified the embargo acts, the war with Britain, and conscription as unconstitutional. Governor Jonathan Trumbell of Connecticut said that Congress had exceeded its Constitutional authority, and it was the duty of state legislators "to interpose their protecting shield between the rights and liberties of the people and the assumed power of the general government."[4] The Massachusetts legislature passed a resolution declaring the Embargo Act "unjust, oppressive, and unconstitutional, and not legally binding on the citizens of this state."[5] John Quincy Adams cited 40 cases in which juries and judges, following the resolution of their legislatures, nullified enforcement of the Act. New England states nullified conscription and refused to place their state troops under national control. Daniel Webster argued that the draft was unconstitutional and that it was "the solemn duty of the State Governments to protect their own authority over their own militia, and to interpose between their citizens and arbitrary power. These are among the objects for which the State Governments exist; and their highest obligations bind them to the preservation of their own rights and the liberties of their people."[6] New Englanders withdrew from supporting the war financially. *The Boston Gazette* warned that "any man who lends money to the government at the present time will forfeit all claim to common honesty and common courtesy among all true friends of the country."[7] New Englanders continued trade with Canada and Britain, and turned their surplus into British bills of exchange to keep funds out of the central government's hands.

Article 25 of the Judiciary Act of 1789 gave the Supreme Court appellate jurisdiction over cases where the constitutionality of state action was concerned. A number of states throughout the federation argued that Congress had overstepped its bounds and that Article 25 was unconstitutional. A number of them nullified actions of the Supreme Court. In 1825 the Kentucky legislature advised the governor that it might be necessary to "call forth the physical power of the State" in order "to refuse obedience to the decisions and mandates of the Supreme Court of the United States considered erroneous and unconstitutional."[8] Wisconsin repeatedly nullified Supreme Court decisions as unconstitutional down to 1861. New England states nullified the Mexican War and Fugitive Slave laws. Horace Greeley, abolitionist editor of the *New York Tribune*, urged state nullification to followers of the Republican Party, which "naturally stand on the States-Rights doctrine of Jefferson."[9] When Northern Democrats sought legislation to give federal courts jurisdiction over suits brought in state courts against federal officers, they were resisted by abolitionists such as Samuel Chase who invoked the "principles of 98." Such legislation he said would serve to "establish a great, central, consolidated Federal Government. It is a step—a stride rather—towards despotism." And another abolitionist, Benjamin Wade, also repaired to the "principles of 98": "according to the true interpretation of our institutions, a State, in the last resort, crowded to the wall by the General Government seeking by the strong arm of its power to take away the rights of the State, is to judge of whether she shall stand on her reserved rights."[10] Horace Greeley said with approval that: "the North is just now taking lessons in Southern

jurisprudence...."[11] In saying this he was referring to South Carolina's nullification of the tariff in 1832. It is true that the principles of 98 were framed by Southerners, Jefferson and Madison, but there was nothing especially Southern about them.

The first serious political exploration of nullification as a constitutional right was cultivated in the New England nullification and secession movement that seized the region from 1804 to 1814. For a decade, New England states protected their citizens by nullifying what they judged to be unconstitutional legislation of the central government. A convention of New England states was called at Hartford in 1814 which used the authority of state nullification as a ground for putting forth constitutional amendments, and as a policy of moderation in the face of a public that was serious about seceding and forming a New England federation. By the time their commissioners arrived in Washington, the war with Britain had ended and with it most of the grievances that had led to the nullification and secession movement. The commissioners were treated with ridicule.

Post-Lincolnian historians have not been kind to the Hartford Convention, but it was a thoughtful exploration of timeless problems inherent in the nature of any federal system, and of problems peculiar to the American version of federalism. The level of discussion was very high and gave to the Jeffersonian doctrine of state interposition and nullification a political prominence that it did not have before.[12]

Next in philosophical importance to the Hartford Convention was South Carolina's nullification of the tariff in 1832. The tariff of 1816 was designed to protect Northern manufacturing interests. To this end it was a great success. Profits on manufacturing climbed as high as 25 percent whereas agriculture yielded no more than 4 percent. South Carolina's economy depended mainly on trading agricultural staples on an unprotected world market. In 1824 the tariff was raised to a stunning average of 37 percent. A year later, the price of cotton fell from 21 cents a pound to 12 cents, and the next year dropped to 8.8 cents a pound.[13] During this period the wholesale price index for all South Carolina export staples dropped from 133 to 77.[14] Not satisfied with these profits, and in full knowledge of the baneful effect it would have on the Southern export economy, the tariff was raised to an average of around 50 percent in 1828. South Carolina nullified enforcement of the tariff of 1828 and 1832, arguing that the constitutional point of the tariff was to raise revenue for the federal government, not to enhance the economy of one section at the expense of another.

South Carolina's nullification of the tariff was carried out with greater constitutional rectitude than the nullifications of New England that led to the Hartford Convention in 1814. Those nullifications were enacted by legislatures and by juries. But it was argued that a greater authority is needed to nullify the constitutionality of federal legislation and that would be a convention of the sovereign people of the state. So a convention of the people was called to vote on an ordinance of nullification—the same authority that had brought South Carolina into the Union. In response, Congress passed the Force Bill authorizing coercion of the state. In doing so, it crossed the line Hamilton had said was unthinkable. But force was not used. A compromise was reached for an average tariff of around 19 percent where it remained until Lincoln again proposed raising it to a high of around 50 percent in the election of 1860. In the meantime, South Carolina kept the constitutional record clear by nullifying the Force Bill as unconstitutional.

Post-Lincolnian historians have not been friendly to the Jeffersonian doctrine of nullification, viewing it as a threat to the Union. Far from being a threat, it is a

means to the Union's preservation—if by the Union we mean a federation of distinct political societies each with a valuable way of life of its own to pursue and enjoy. The problem with *any* federal system is that the center is disposed to hollow out the independent political authority of its federal units and consolidate them into a mass unitary state. The only way a political society can preserve its own valuable way of life in a federal system is with some form of corporate state veto. This can come in many forms. The Canadian Constitution allows a Province to nullify federal legislation in the area of civil rights; the Swiss federation allows various forms of Cantonal nullification. The ubiquitous practice of nullification in antebellum America is testimony to a dynamic federal system, operating on a continental scale in which the agents are not individuals, but corporate entities called States, each seeking to preserve its own valuable way of life in a constitutional *modus vivendi* with the other States. The Hartford Convention, *The South Carolina Exposition and Protest*, and numerous other acts of state interposition and nullification were not threats to the Union but valuable experiments demanded by the first large scale federation in history to be cast in a republican idiom—and one resolved not to imitate the pattern of Europe by becoming a consolidated unitary state.

A federal system of states is a difficult system to maintain. There are two ways in which it can die. One is for a faction to control the central government, hollow out the distinct cultures of the states, and consolidate its deracinated "citizens" into a mass unitary state. This was the path opened up after the invasion and reconstruction of the Southern states. Indeed *all* the states were reconstructed after 1865. The other death of a federation is secession. For those with Jeffersonian souls, attuned to the virtues of a federative polity, the latter is to be preferred to coercion. A division of the federation into two polities at least holds open the probability of federative life continuing in one or both polities. And secession is peaceful; whereas the consolidation of distinct states into a unitary state is usually violent whether it be the unification of France in the French Revolution, of Germany, Italy, the Soviet Union, or the violent transformation of the United States from a federation of states into an artificial nation-state "one and indivisible."

Since a coerced consolidation was repugnant to Framers such as Hamilton, it should not be surprising that secession was understood to be an option available to an American state from the beginning. The first work on the Constitution was St. George Tucker's *Commentaries on the Laws of England, with notes of reference to the Constitution and laws of the federal government of the United States, and of the Commonwealth of Virginia* (1803); in it he argues that an American State can secede from the Union because it is a sovereign political society.[15] Another early work, *A View of the Constitution* (1825), by William Rawle, a Pennsylvania Federalist, argues that "The states may wholly withdraw from the Union...." And "The secession of a state from the Union depends on the will of the people of such state."[16] Rawle's work, which was favorably and widely received, was the text on the Constitution at West Point until 1840.

Another factor encouraging secession was the American commitment to classical republicanism which demanded that republics should be small and of a human scale. The sheer size of the Union suggested that secession was inevitable. Richard Lee argued in the Virginia House of Burgesses that the vast northwest territory Virginia had conquered from Britain that stretched to Canada should be ceded to the Union on the ground that Virginia could not both remain a republic and govern territory of that scale. Caleb Strong, governor of Massachusetts, said: "the ter-

ritory of the U.S. is so extensive as to forbid us to indulge the expectation that we shall remain many years united."[17] As states filled up in population, secession and division would be a natural process to be pursued until the right scale was reached. Kentucky seceded from Virginia, Tennessee from North Carolina, and Maine from Massachusetts. And Jefferson argued that Virginia itself was too large and should be divided into small republics in a fashion similar to the federation of Swiss Cantons.[18] Switzerland is a country about half the size of South Carolina composed of 27 small states in federation.

But if the sheer size of the Union was a problem for republican self government in 1790 it was exacerbated after the Louisiana Purchase in 1803 which more than doubled the size of the Union and even more so after the Mexican war when the Union was stretched to the breaking point all the way to the Pacific. Jefferson thought that, as Americans went West and formed new states, the same logic of secession and division that had characterized American conduct so far would be carried out on an even larger scale. New *Unions of states* would be formed which would secede from the mother Union just as the colonies had seceded from the mother empire. Jefferson wrote Joseph Priestley in 1804 that he would welcome a Mississippi Confederacy on the West bank of the Mississippi alongside the old Atlantic Confederacy. And he imagined that still other Unions of states would form as Americans moved to the Pacific. These would constitute what he called an "empire of liberty." "Free and independent Americans, unconnected with us but by the ties of blood and interest, and employing like us the rights of self-government."[19]

The section that most often considered secession was New England: in 1804 over the Louisiana Purchase; in 1808 over the Embargo Act; and in 1814 over war with England at the Hartford Convention. The editor of a Baltimore Federalist paper said this of the Hartford Convention: "The plan as we understand it, is to make the convention of 1788 the basis of their proceedings and to frame a new government, to be submitted to the legislatures of the several states.... The new constitution to go into operation as in the former case, as soon as two, three, or more of the states named shall have adopted it."[20] Notice the model for the Hartford Convention is the Philadelphia Convention, which turned into a secession convention. Article 7 of the Constitution proposed at Philadelphia said that only nine states were needed to form the United States which would leave the remaining four under the Articles, or independent as they chose. In short, they proposed a dissolution of the Union, just as many New Englanders hoped the Hartford Convention would.

New England abolitionists argued that secession of the North from the South was the best way of eliminating slavery, and John Quincy Adams in 1843 signed a document declaring that the annexation of Texas would mean the dissolution of the Union.[21] Jefferson said of the New England secession movements in his time: "If any state in the Union will declare that it prefers separation...to continuance in union... I have no hesitation in saying, 'let us separate.'"[22]

So when eleven states seceded from the Union in 1861, they were following a well-understood American tradition. Abolitionist Horace Greeley said in the *New York Tribune* February 23, 1861, after the seven states had formed the Confederacy: "We have repeatedly said...that the great principle embodied by Jefferson in the Declaration of Independence, that governments derive their powers from the consent of the governed, is sound and just; and that if the...cotton States, or the gulf States only, choose to form an independent nation, they have a clear moral right to do so. Whenever it shall be clear

that the great body of Southern people have become conclusively alienated from the Union, and anxious to escape from it, we will do our best to forward their views."[23]

It is as plausible as any counter factual in history that had Jefferson lived into the next generation, he would have followed his state out of the Union. Like Lee he would have preferred the Union remain intact. Indeed Virginia (along with North Carolina, Arkansas and Tennessee) voted initially not to join the Confederacy, but reversed course when Lincoln ordered an invasion and crossed the line Hamilton had drawn 70 years earlier. The counter factual, but plausible, image of Jefferson in Gray will be profoundly disorienting to many and reveals how successful post-Lincolnian historiography has been in purging the Southern tradition—and more generally the Jeffersonian "principles of 98" (including their New England instantiation)—from public discourse.

To appreciate just how deep this purge goes we need only look briefly at the reforms designed to block centralization of power in the Confederate Constitution, which is very much a Jeffersonian instrument.[24] As Hamilton saw (and applauded) and Jefferson feared, the best way, in the long run, to centralize power and to hollow out the states as independent political societies is through patronage and corruption at the center. And this requires the government borrowing from and subsidizing large-scale business corporations. To prevent this, the Confederate Constitution requires a two-thirds majority of each house for a spending bill. Second, federal subsidies for business corporations are prohibited. Third, federal funding for internal improvements is prohibited with the exception of facilities to improve commerce such as lighthouses and the like. And the central government is to be reimbursed by a tariff on those who actually use the facility, so that an improvement cannot be made in one section at the expense of another.

Fourth, each bill must be for one item designated in the title. Tacking on pork spending which has nothing to do with the supposed public good of the bill is constitutionally prohibited. Failure to have such a provision has made Washington a scene of plunder and corruption of such scope that we have become, understandably, desensitized to the enormity of it. We cannot, in our wildest dreams, imagine our current political elites erecting a constitutional barrier to it. But Southerner political elites—who could have benefited from such corruption as well as anyone else—could and did.

Fifth, a form of state nullification appears in that two thirds of each house of a state legislature can impeach any federal agent in the state, which agent would then be tried in the Confederate Senate. Sixth, an indirect form of state nullification also appears in the ease with which the Confederate Constitution can be changed. Any *three states* can propose a constitutional amendment which the other states must vote up or down. And only *two thirds* of the states are necessary to ratify the amendment. By contrast, the U.S. Constitution requires either two thirds of the states or two-thirds vote of both houses of Congress to propose a constitutional amendment for ratification. And three fourths of the States are needed to ratify. Given fifty States strung out on a continent and beyond, it is virtually impossible to get two thirds of the states needed to force a vote on a constitutional amendment. How responsive has Congress been to constitutional initiatives? Over 10,000 amendments have been proposed since 1790. Most of these have been aimed at limiting the central government. Of this great number only 30 have gotten through Congress, and 27 have passed.

The Constitution, however, has changed rapidly and radically over the past 80 years or so, but the changes have

come not from the people of the sovereign states but from the Supreme Court. As Charles Evans Hughes, who became chief justice in 1930, declared: "the Constitution is what the judges say it is."[25] Had the Confederate Constitution been in place, it is unlikely that the Supreme Court could have reached into the reserved powers of the states to make social policy regarding law enforcement, abortion, school prayer, education, and other powers reserved to the states. Three states alone could have forced a vote, amending the Constitution to block such judicial usurpation. Indeed, the knowledge that such a state referendum could be easily mustered would dampen any ambitions the Supreme Court might have to legislate social policy.

Seventh, the President has a non-renewable six-year term. Eighth, each Confederate state is explicitly said to be sovereign, and as such has the rights of state interposition and secession that Jefferson affirmed for the states under the U.S. Constitution. The knowledge that a state can secede will have a chilling effect on ambitions to centralize power, and because of that it is a right that will probably not have to be exercised. But if exercised, it exhibits the principle that a minority *political society* has rights that can be lawfully enforced against the majority.

Finally, the Confederate Constitution allowed the entrance of non-slave holding states, and outlawed the slave trade. And unlike the U.S. Constitution, it required Congress to pass legislation to enforce it. Failure to pass legislation allowing British and French officers to inspect American ships made possible a lucrative illegal slave trade between New York, Latin America and Africa that flourished from 1808 to 1861.[26] Jefferson Davis' first veto was an act of Congress that allowed sale of slaves from a captured Yankee slave ship. The sale, he said, violated the constitutional prohibition of the slave trade.

In summary, we have inherited two incommensurable Americanisms: a Jeffersonian and a Lincolnian. The Jeffersonian tradition postulates society prior to government. The task of government is to make matters safe for the general arrangements of society, and the task of the government in a federation is to make matters safe for the distinct political societies within the Union. Constitutional protection for these distinct cultures requires the right of nullification and secession. This Jeffersonian Americanism was subverted by the Lincolnian revolution. In this view the states are not and never were sovereign political societies. The American people in the aggregate are sovereign; the states are administrative units of the central government through which the general will of the American people is expressed. And the task of the federal government is not merely to make matters safe for the general arrangements of the distinct political societies of the states, it is also to mold and shape a national society in accord with an ideology.

There have been right-wing Lincolnians who have urged an ideology of individual rights in respect to economic activity and left-wing Lincolnians who have urged an ideology of individual rights in respect to moral activity, and those even further on the left who have urged an ideology of equality. Even Jefferson—who was a defender of individual natural rights—has been put in the service of left- and right-wing Lincolnianism. But Jefferson also believed in the natural rights of "societies," and without the "principles of 98" (state nullification and secession) a Lincolnian Jefferson, whether in a left or right wing idiom, is not a historical reality but a fantasy conjured up for a political agenda. In Lincolnian Americanism there is no place for those principles since the states are not sovereign and the Union is indivisible.

To this it might be said that today there

is and can only be one Americanism; that Lincoln's refounding of the Union is irrevocable and that what I have called Jeffersonian Americanism is an earlier stage of America that has been superseded by history. Lincolnian centralization is certainly a historic fate. Yet this is a case of special pleading which, moreover, betrays a failure to understand the historicity of traditions. Nothing that was a substantial part of a tradition is ever lost. If circumstances and imagination permit, any part of a tradition can be recalled and refashioned into a topic informing current thought and conduct. Indeed what we call a renaissance, reformation, or even a revolution is usually a renewal of something in a tradition that had been neglected or was thought to have died.

The "principles of 98" are American instantiations of timeless principles of natural law. They animated the secession from Britain as well as the dissolution of the Soviet Union, the most centralized regime in history. Americans are free to explore what the Jeffersonian inheritance intimates for our current discontents if they choose to do so. But they must first know that there is such an inheritance, and this knowledge has been largely occluded by post-Lincolnian historiography.

The Lincolnian tradition of centralization, by its own criteria, has been quite successful, but there are signs that it may have exhausted its resources for addressing our discontents. There is a natural law limit as to how far centralization can go and how much of human life can be managed by the center; otherwise one falls under the punishment reserved for the builders of the Tower of Babel. Shortly before his death George Kennan, architect of the Cold War containment policy and a political realist with a good eye for power relations, argued that the United States has grown simply *too large* for the purposes of self government and that we should begin a public debate on how to divide the Union. Kennan's point is about *size as such*. Just as a committee of 500, though composed of intelligent and well meaning people, is too large for the function of a committee, and just as a club ceases to be a club if it has too many members, so a government—quite independent of its constitutional form, ideals, and the merits of its rulers—can grow to such a size as to become dysfunctional. He suggests division of the current monster regime into twelve Unions that would constitute an American commonwealth of Unions.[27] This is more or less what Jefferson proposed should be the future of a continental America expanding to the Pacific—that it should devolve, through peaceful and lawful secession, into a number of Unions of states.

Is Kennan right? How has size as such become a problem for self-government? The classical republican tradition of self government requires as much as possible a face to face relation between rulers and citizens, or failing that at least a human scale in the ratio of representatives to citizens. When the Constitution was ratified in 1789, there was one representative in the House for every 59,000 people (which included non-voting women, slaves, and unpropertied males). By 1910 the population had risen to 90 million, and Congress capped representation in the House at 435 where it remains today. However, at present there are some 300 million people in the U.S. that yields a ratio of 1 representative for every 690,000 citizens. Such a ratio is not remotely within a republican human scale. And in the not too distant future, there will be 435 million people, yielding a meaningless ratio of one representative for every million persons. Something has to give. Nor can the problem be solved by increasing the number of representatives in Washington. To do so would violate the proper scale for a legislature. Judging from the size of legislatures around the world, 435 is about right.

Or to put the problem of human scale in a different light: If we had the ratio of representatives to population that obtained in 1789, (one for every 59,000) we would have over 5,000 representatives in the House, a size entirely out of scale for a legislative body. But does that mean the Framers' ratio was wrong or that, as Kennan says, the regime has grown too large for the purposes of self-government? The only solution to a regime that is out of scale for republican government is the Jeffersonian one of secession and division.

We can appreciate the classical republican problem of human scale in another way by considering how large the states themselves have become. If California were an independent country it would have the seventh largest GNP in the world. The GNP of Texas would be larger than Brazil; that of Florida larger than Argentina or larger than Australia; that of Illinois and Ohio together larger than Canada. New York State would be the fifth largest economy in Europe, and I have mentioned only six of the fifty states. Lincoln conceived of the states as counties in a unitary state, but they look more like *countries* than counties, and some very large countries at that.

If Texas were an independent state, it could control its border with Mexico. So could California. Congress and Federal courts require states to pay billions of dollars in welfare payments to illegal immigrants. Traditional American cultures are melting away in the Southwest and turning into third world enclaves through demographic changes initiated by a central government that will not, and—given its out of scale bureaucracy—perhaps cannot enforce its own immigration laws. But if the center will not or cannot enforce them, then the states have a duty to protect their citizens by taking on the task themselves.

A persuasive argument has been made that the Supreme Court has usurped the police powers of the states through its "incorporation" doctrine which selectively reads the Bill of Rights into the Fourteenth Amendment. Further, the Supreme Court has assumed (and many believe) that it has the final say on what the Constitution means.[28] But there is no traditional warrant for this. The states have a duty, as Madison said, to "interpose" their authority to protect their citizens from judicial usurpation and force a debate among the states on the constitutionality of the Court's action. And if it is said that nullification leading to such a debate is not workable in a regime of fifty states (as it probably is not) that only confirms Kennan's judgment that the regime has grown too large for the purposes of self-government and should be divided. Nullification worked quite well in antebellum America to contain the central government, and it works well today in Canada and Switzerland.

The revival of the "principles of 98" in some contemporary form (of which I have taken George Kennan's suggestion to be an instance), will be disorienting to those with Lincolnian souls. But we must consider that we are living in what the Chinese proverb calls "interesting times." Our political elites are shifting their allegiances to supra national and sub national entities. Everywhere the nineteenth-century nation state (declared to be "one and indivisible" in its heyday) is fracturing. The Lincolnian paradigm of centralization with its Platonic noble lie of an "indivisible" Union—though compelling in the nineteenth century when centralization seemed the wave of the future—is no longer credible. The "indivisible" Soviet Union peacefully dissolved through secession. A recent poll showed that 52 percent of Scots want to secede from Britain, and 59 percent of the English approve.[29] And Britain is one of the oldest modern unitary states. Indeed the American colonies chose to secede rather than be consolidated into it.

The left, as well as the Wall Street right,

talk of a world "without borders," not realizing that such a world would be one without modern states. For a modern state is essentially a territorial monopoly on coercion. Take the borders of the territory away, and the rationale for the monopoly on coercion vanishes. The elimination of the unitary state, of course, is not what the "no borders" advocates have in mind. They very much wish to retain the monopoly on coercion in a territory. What they wish to do away with, or at least weaken, are those independent and quasi-independent social and political authorities within the territory. And the only protection for these in the American tradition are the "principles of 98" in one or other of their incarnations.

1. Quoted in Alexander H. Stephens, *A Constitutional View of the Late War Between the States*, Vol. 1 (Philadelphia, 1868); reprinted (Harrisonburg, 1994), 281-282. **2.** Quoted in Forrest McDonald, *States Rights and the Union, Imperium in Imperio, 1776-1876* (Lawrence, KS, 2000), 35. **3.** *Ibid.*, 33. **4.** *Ibid.,* 65-66. **5.** James M. Banner, Jr., *To the Hartford Convention: The Federalists and the Origins of Party Politics in Massachusetts, 1789-1815* (New York, 1970), 305. **6.** Quoted in McDonald, 69. **7.** *Ibid.,*68. **8.** *Ibid.,* 84. **9.** *Ibid.,* 174. **10.** *Ibid.,* 175. **11.** *Ibid.,* 174. **12.** An excellent study of the Hartford Convention is James M. Banner, Jr., *To the Hartford Convention: The Federalists and the Origins of Party Politics in Massachusetts, 1789-1815* (New York, 1970), 305. See also Samuel Eliot Morrison, *The Life and Letters of Harrison Gray Otis, Federalist 1765-1848,* 2 vols. (Boston and New York, 1913). **13.** Charles M. Wiltse, *John C. Calhoun, Nationalist* (New York, 1944), 286, 108, 120, 134, 352, 370. For technical information on tariff rates, see Richard B. Norris, *Encyclopedia of American History* (New York, 1961), 511-517. **14.** McDonald, 103. **15.** St. George Tucker's constitutionalism and other writings are available in *A View of the Constitution of the United States, with Selected Writings* and with a foreword by Clyde Wilson (Indianapolis, 2002). On secession see xv, 85-86. **16.** William Rawle, *A View of the Constitution* (Philadelphia, 1825), 297, 302. **17.** Banner, 112. **18.** Roy J. Honeywell, *The Educational Work of Thomas Jefferson* (Cambridge, 1931), 228-229. **19.** Daniel Boorstin, *The National Experience* (New York, 1965), 270-271. **20.** Samuel Eliot Morrison, *The Life and Letters of Harrison Gray Otis, 1765-1848*, Vol. 2 (Boston and New York, 1913), 118n. **21.** See Jeffrey Rogers Hummel, *Emancipating Slaves and Enslaving Freemen: A History of the American Civil War* (Chicago, 1996). **22.** Thomas Jefferson, letter to W. Crawford, June 20,1816, in *The Writings of Thomas Jefferson*, Albert Bergh, ed., Vol. 15 (Washington, DC, 1905), 27. **23.** Quoted in Albert Taylor Bledsoe, *Is Davis a Traitor?* (Baltimore,1866), 146. **24.** The following discussion owes much to Marshal DeRosa's work on the Confederate Constitution. See *The Confederate Constitution of 1861* (Columbia, MO, 1991), and *Redeeming American Democracy: Lessons from the Confederate Constitution* (Gretna, LA, 2007). **25.** McDonald, 224. **26.** Anne Farrow, Joel Lang, and Jenifer Frank, *Complicity, How the North Promoted, Prolonged, and Profited from Slavery* (New York, 2005). See Chapter Six, "New York's Slave Pirates." **27.** George Kennan, *Around the Cragged Hill: A Personal and Political Philosophy* (New York, 1993). See the chapter "Dimensions." **28.** See Raoul Berger's classical argument in, *Government by Judiciary: The Transformation of the Fourteenth Amendment* (Indianapolis, 1997). **29.** The results of the poll appeared in the *Sunday Telegraph,* March 6, 2007.