

Second, government would have every incentive to trumpet a visit from outer space. Imagine the money that could be shoveled out to favored interest groups. Every scientist in the country could be given a grant to study the beings.

It would be a huge boost to NASA. The political class would be agitating to spend the entire national product on space exploration. Forget Mars. We're talking about inter-galactic boondoggles to make the space shuttle look like the welfare state under Coolidge.

And hasn't Washington been fishing around for a foreign enemy recently? It's tried making devils out of a whole series of foreign countries, most recently China, but without much success. The military-industrial complex would seize the chance to fight off the "extraterrestrial threat."

From the government's point of view, the Cold War was good for a few trillion in tax dollars and military welfare. What would the Space War be worth?

There would be something in it for everyone. Secularists in the judicial branch would use proof of alien life to try to discredit the Western religious tradition. So we're not the center of the universe after all.

Immigration officials would have a field day. We'd better get used to swarms of Haitians on boats, they'd say, because they're nothing compared to the coming wave of spacebacks, all of whom will need medicaid, affirmative action, and bilingual education.

It would be big government's biggest day in the sun since Pearl Harbor. In fact, it's more plausible that the government is secretly behind the movement that claims there's a cover-up. After all, what better way to get the people to believe something than to issue an official denial entitled "Case Closed"? Now there's a conspiracy theory worth taking seriously.

RRR

## THE CONSTITUTION AND STATES RIGHTS

L. H. R., Jr.

Governor Fob James of Alabama is an unusual chief executive: he's interested in fundamental questions of political philosophy. In a sweeping and passionate 34-page memo now being circulated in the U.S. Congress—where it was hand delivered to every member—he explains the legal logic and moral imperative of states rights.

Nationalists believed that they had killed states rights long ago. But in a series of recent decisions, the Supreme Court has given a boost to the idea that the states retain some degree of political autonomy. Questions still remain: how much autonomy, and over what?

In a federalist system, states are not regional enforcement arms for the central government. In fact, states rights are, in Antonin Scalia's phrase, "one of the Constitution's structural protections of liberty." They are also, said Lord Acton, America's one great contribution to the political philosophy of freedom, something Mr. James recognizes.

The Court's recent opinions bolstering this view—most of them winning by a single vote—have been greeted with alarm by media commentators, historians, and law professors. Why are we talking about states rights 132 years after Appomattox?

In fact, the debate is far from over. After all, the states created the federal government, not visa versa. In the original republic, everyone used the term United States as a plural noun. Yet thanks to almost a century of bad court decisions, the states have been stripped of the right to decide basic questions of economic regulation,

education, welfare policy, or the impact of religious symbols and rites on public life.

It was this last point that stirred Mr. James. Federal district judge Ira DeMent argued in a church-state matter that the U.S. Bill of Rights is "equally applicable as against the States." This is the infamous "incorporation doctrine," which permits the central government—the chief threat to individual rights—to presume to enforce these rights against the states.

Predictably, Mr. DeMent celebrates a very loose interpretation of the Constitution. He and his fellow judges, he said, are "disinterested, rational, and deliberate," and it is their business to "redefine" rights for "every generation." That goes especially for prayer in school, a right the courts have "re-defined" out of existence.

**The incorporation doctrine is at odds with the system the framers established, and even contrary to the intentions of those who imposed the 14th amendment under military rule.**

In fact, the incorporation doctrine—as Mr. James explains—by spinning out wild implications of the 14th amendment, has enabled big government to get ever bigger. The doctrine is at odds with the system the framers established, and even contrary to the intentions of those who imposed the 14th amendment under military rule.

The Bill of Rights ("Congress shall make no law...") is a restraint on the power of the central government. To allow the feds to remove this strait-jacket, and fit it on the states, is a sure recipe for tyranny, as the framers understood. They had answered

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the ancient question of "who guards the guardians?" with decentralized power among the states instead of a unitary leviathan.

As James Madison said, "the powers reserved to the several States will extend to all objects" that "concern the lives, liberties, and properties of the people," while the central government can only do what the Constitution says it can do, as restricted by the Bill of Rights.

Patrick Henry worried that the new Constitution would not explicitly protect religious freedom in the states against the federal government. But Madison answered that "there is not a shadow of right in the general government to intermeddle with religion. Its least interference

with it would be the most flagrant usurpation."

That's why, argues Mr. James, the federal government didn't dare interfere with the religious liberty of the states for so many years. As late as 1959, the Court noted that the 14th amendment is not "a short-hand incorporation of the first eight amendments." But in 1962 and 1963, the Supreme Court discovered an "implicit" federal right to regulate prayer at the state level, as if the first amendment had said "The states shall make no law...."

The issue isn't the law as such; it's the agent of enforcement. The fifty states also have Bills of Rights, and indeed the federal version was modeled on Virginia's. In the name of enforcing rights, the feds have grabbed power that doesn't belong to them. As Mr. James argues with poignant historical detail, the Bill of Rights does not apply to the states. It was not intended to, and judges who say otherwise are imposing a constitution of their own invention.

But now the contrary tradition has a spokesman again, and in a state with a history of resistance. The unraveling of consolidated government may begin once again in Alabama.

**RRR**

# DIXIE IN BEIJING

L. H. R., Jr.

**I**n a glorious testament to free trade, the firecrackers we lit to celebrate Independence Day were all made in China. One of my favorites is the "Dixie Whistler." It's beautifully decorated with a Confederate flag, a symbol that is still beloved in the South and anywhere liberty is valued, but which has become so politically incorrect that U.S. companies fear putting it on their products. Praise be to China for keeping Dixie a living memory.

Yet once again, U.S. trade relations with China are coming under fire. This time the issue isn't human rights, trade deficits, or China's supposed regional military ambitions. The issue is campaign finance, specifically the Republican allegation that China conspired to influence the course of the 1996 elections by channeling money through the Commerce Department to the Democratic Party.

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