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Federalism and Freedom: Orestes Brownson's Case for the Federal Constitution

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Abstract

Federalism is at the heart of American constitutional government. The U.S. Constitution, centered on the division of power between the national and state governments, simultaneously unites Americans as a national whole while protecting their freedoms as the citizens of particular states. During the Civil War, Orestes Augustus Brownson, one of America's premier political theorists, urged his fellow citizens to rededicate themselves to the federal Constitution when the American Republic was threatened by national dissolution. With the Republic today threatened by a relentless centralization of arbitrary and intrusive national power, Brownson's admonitions are newly relevant. Federalism is the central mechanism for preserving ordered liberty, which remains America's greatest legacy.

Over the past 100 years, conservatives and Progressives have battled over the meaning and relevance of the U.S. Constitution. Many of these disagreements have focused especially on the relationship between the federal government and the states.

Progressives old and new have long dismissed states' powers as annoying relics of a bygone era. Progressives assert that although states continue to exist, they should be properly consigned to aiding Washington's centralized policy agenda. The Progressives' commitment to an overarching vision of consolidated national power, executed through aggressive regulation, with key decision-making

powers entrusted to "expert" agency administrators, means that federal-state conflicts will only intensify in the coming decades.

Meanwhile, champions of decentralization call for a reinvigoration of states' powers; the revitalization of the Tenth Amendment (which specifies the powers reserved to the states and the sovereign people); and the adoption of new constitutional amendments to remedy or roll back expansive federal power. Some call for a return to the federalism of the Constitution, but they are not always clear about what exactly this means, offering different prescriptions about the kind of federalism that America's leaders should embrace.¹ Others even go so far as to try to resurrect the discredited doctrine of state nullification of federal laws.²

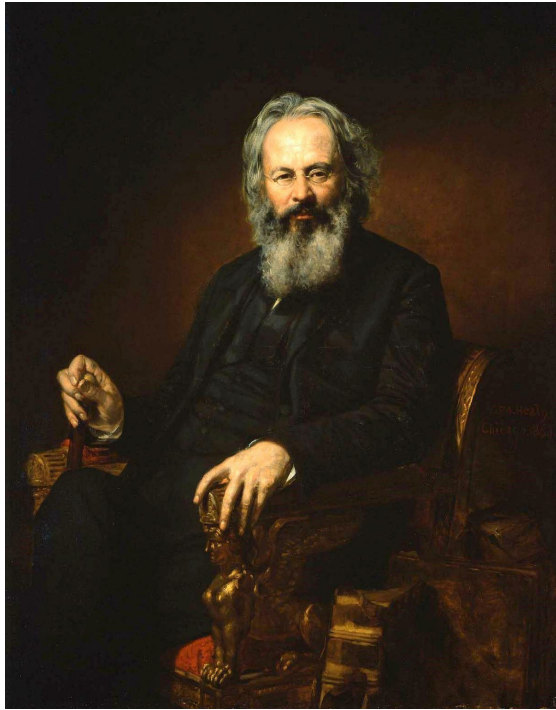
These debates summon us once again to deepen our understanding of and appreciation for our unique civic inheritance and to comprehend the rationale underlying our constitutional order. Americans must reexamine what it means to be a citizen of our federal republic.

This paper, in its entirety, can be found at <http://report.heritage.org/fp51>

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Orestes Augustus Brownson
(1803–1876)

By G.P.A. Healy (1863)
In the collection of the Museum of Fine Arts, Boston

In the nation's darkest hours, amidst the bloody Civil War, America's greatest constitutional crisis, such was also the mission of Orestes Augustus Brownson (1803–1876), one of America's premier political theorists. In 1865, Brownson published *The American Republic* not long after Confederate General Robert E. Lee's surrender.³ It was his masterwork on politics and government, the culmination of years of speculation on the subject.

In this book, Brownson argued that the states play, and must play, a crucial role in preserving individual liberty and protecting the independence of America's local communities. For Brownson, the Civil War was the greatest test for American federalism. As erroneous theories regarding state sovereignty took hold of the country, the nature of the federal-state relationship had to be rethought and the federal Union itself preserved by military force.

Yet the war's end did not terminate all threats. In fact, as Brownson correctly predicted, new threats to the Republic emerged in the form of two powerful ideological trends: radical individualism and humanitarian democracy, or what Brownson called "social despotism." They would compete for dominance of the American mind. The 21st century promises to be a battleground over similar intellectual trends, primarily "social despotism."

These threats could be arrested and reversed if Americans correctly understood and defended the Constitution in general and federalism in particular. According to Brownson, the federal Constitution simultaneously recognizes America's national unity and the diversity of its people, reflecting the deeper reality that man is both a social and an individual being. The dual role of government, which achieved its highest expression in the federal Constitution, is the protection of individual liberty and the preservation of social order.

Brownson's Life and Influence

Orestes Brownson was born in 1803 in the rocky back country of Vermont and grew up to become one of the most controversial and interesting figures in 19th century American intellectual life. Raised by strict New England Congregationalist foster parents and given little formal education, he subsequently became a Presbyterian, a Universalist, a Unitarian, and an atheist. His religious enthusiasm

1. For a brilliant account of today's competing views on the meaning of American federalism, see Michael S. Greve, "But What Kind of Federalism?" in *The Insider*, Winter 2013, pp. 5–13.
2. For a penetrating analysis of Madison's views on sovereignty, interposition, and nullification, see Christian G. Fritz, "Interposition and the Heresy of Nullification: James Madison and the Exercise of Sovereign Constitutional Powers," Heritage Foundation *First Principles* Essay No. 4, February 21, 2012, <http://www.heritage.org/research/reports/2012/02/interposition-and-heresy-of-nullification-james-madison-exercise-of-sovereign-constitutional-powers#>.
3. First appearing in 1865 from a New York publisher, the book has since been republished in various editions. The most recent is Orestes A. Brownson, *The American Republic: Its Constitution, Tendencies, and Destiny* (Wilmington, DE: ISI Books, 2003), edited with a fine introduction by Peter Augustine Lawler. The book is also included in Brownson's *Works*. See *The Works of Orestes A. Brownson, Volumes I–XX*, ed. Henry F. Brownson (New York: AMS Press, 1966). For citations in this essay, the author relies on the text published in Brownson's *Works*.

was revitalized in 1836, and he emerged in Boston as an independent preacher and founded his own congregation, the “Church of the Future.”

As a prominent Boston lecturer, Brownson became intimately involved with the New England Transcendentalists, the famed literary circle that included Ralph Waldo Emerson, George Ripley, Bronson Alcott, Margaret Fuller, and Henry David Thoreau. An ardent Democrat, he campaigned vigorously for President Martin Van Buren in the 1840 election but undercut his own standing with a hot-blooded assault on modern industrial capitalism that predicted a coming class struggle between those who owned and those who worked the means of production. Because of the force and originality of his early radicalism, historian Arthur M. Schlesinger, Jr., called Brownson a “Marxist before Marx.”⁴

Brownson argued that the excellence of any constitutional order rests in its capacity to balance the rights of the individual and the rights of society in a just harmony.

However, the Democrats’ electoral defeat in 1840 profoundly demoralized Brownson and left him disillusioned with partisan politics and the overblown promises of popular democracy. Brownson came to distrust not only his own reformist zeal, but also the misty optimism of his liberal friends.

Over the next four years, he slowly drifted toward conservatism, both in politics and religion. By 1844, his intellectual transformation was complete, and he converted to Roman Catholicism and became a

formidable Catholic apologist. During this period, he also championed a new breed of American conservatism that would elevate individual liberty, baptized by Christianity and enriched by classical political philosophy.⁵ Brownson argued that the excellence of any constitutional order rests in its capacity to balance the rights of the individual and the rights of society in a just harmony.

In 1865, Brownson published his magnum opus, *The American Republic*. In it, Brownson elaborates upon the Founders’ genius, celebrates the novelty of their work, and exalts the federal Constitution as the greatest single achievement in self-government in political history.⁶

Brownson was an unabashed proponent of what today is called “American Exceptionalism.” His book also contained an innovative philosophical justification of the federal Constitution and its role in securing Americans’ freedom and advancing America’s providential mission of expanding ordered liberty. With the notable exception of such works as John Adams’s *Defense of the Constitutions of Government of the United States of America* and *The Federalist*, such a philosophic American treatise on politics was uncommon.

Brownson became a giant at a time when America was teeming with giants. After spending three days visiting with Brownson, Great Britain’s Lord Acton wrote to a colleague, “Intellectually, no American I have met comes near him.”⁷ The late Russell Kirk declared that “As a political thinker and a master of polemic, Brownson belongs in the first rank of American writers.”⁸

Even among the first rank of America’s Progressive political scientists, Brownson’s work elicited genuine respect and even grudging admiration. Charles Merriam, a central figure in the Progressive movement,

4. Arthur M. Schlesinger, Jr., “Orestes Brownson: An American Marxist Before Marx,” *Sewanee Review*, Vol. XLVII, No. 3 (July–September 1939), p. 319.

5. “Calhoun and Brownson were the first American public men to use the term *conservative* as a word of praise—as early as the 1840s.” Russell Kirk, *The Politics of Prudence* (Bryn Mawr, PA: Intercollegiate Studies Institute, 1993), p. 53.

6. For a discussion of *The American Republic* within the broader context of Brownson’s political theory, see Robert Emmet Moffit, “Constitutional Politics: The Political Theory of Orestes Brownson,” *The Political Science Reviewer*, Vol. VIII (Fall 1978), pp. 135–172. See also Thomas Ira Cook and Arnaud Levealle, “Orestes Brownson’s American Republic,” *Review of Politics*, Vol. IV (January 1942), pp. 173–193; Paul Conroy, “The Role of the American Constitution in the Political Philosophy of Orestes A. Brownson,” *Catholic Historical Review*, Vol. XXV, No. 3 (October 1939), pp. 271–286; Hugh Marshall, *Orestes Brownson and the American Republic* (Washington: Catholic University Press, 1971); and Gregory S. Butler, *In Search of the American Spirit: The Political Thought of Orestes Brownson* (Carbondale, IL: Southern Illinois University Press, 1992).

7. Cited in Roland Hill, *Lord Acton* (New Haven: Yale University Press, 2000), p. 66.

8. Orestes Brownson, *Orestes Brownson: Selected Essays*, ed. and intro. Russell Kirk (Chicago: Henry Regnery Company, 1955), p. 9.

described *The American Republic* as a “careful exposition of American political doctrines.”⁹ Professor Schlesinger identified him as one of America’s “best prose stylists,” observing that “His philosophy was an attempt to wrestle with the relation of faith and reality. His observations on society had a profundity no other American of the time approached.”¹⁰

Unwritten and Written Constitutions

Brownson argues in *The American Republic* that a dual constitutional order exists in every nation-state: that is, there is a constitution of the state and a constitution of the government. The constitution of the state is the organic or unwritten constitution of a territorial people. The unwritten constitution is comprised of the customs, habits, sentiments, and temper of the inhabitants in their domain—or, put another way, the whole cultural, linguistic, moral, and religious life of the territorial people: “The constitution of the state is the intrinsic or inherent or actual constitution of the people or political community itself; that which makes the nation what it is, and distinguishes it from every other nation, and varies as nations themselves vary from one another.”¹¹

The unwritten constitution of the United States was republican insofar as it consisted of immigrants from the English commons rather than the British aristocracy. Americans were congenitally hostile to feudal titles or privileges. Rather, they were animated by the ideal of equality under law.¹² Americans carried with them the traditional legal rights of Englishmen and the Common Law, interpreted and applied in the manner of a “plain and practical” people mostly unsympathetic to abstract theorizing. Thus, America’s unwritten constitution was, by popular habit and disposition, grounded in the principle of popular sovereignty and was therefore democratic.

The constitution of the government, on the other hand, or the written constitution, is the fundamental law of a territorial people, promulgated by the sovereign or the sovereign’s representatives:

That sovereign power must exist before it can act, and cannot exist, if vested in the people or nation, without a constitution, or without some sort of political organization of the people or nation. There must, then, before every state or nation be a constitution anterior to the constitution which the nation gives itself, and from which the one it gives itself derives all its vitality and legal force.¹³

The harmony of the written and the unwritten constitutions is what makes possible and maintains the stability of the Republic. Incongruity between the written and unwritten constitutions invites civil disorder with potentially catastrophic consequences.¹⁴

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In their written Constitution, according to Brownson, Americans fashioned their charter of government as federal, reflecting the pre-existing reality of their rich and varied civic life in the several states: “It is the original and inherent constitution of the American people as a Federal republic, or existing in several state organizations, united in one general organization, as one people in many, and many in one.”¹⁵ America’s written Constitution—the product of the Philadelphia Convention of 1787—is thus a

9. Charles Merriam, *American Political Ideas 1865-1917* (New York: The Macmillan Company, 1929), p. 373.

10. Arthur M. Schlesinger, Jr., *A Pilgrim’s Progress: Orestes A. Brownson* (Boston: Little, Brown and Company, 1966), p. 294.

11. Brownson, “The American Republic,” Vol. XVIII of *The Works of Orestes A. Brownson*, p. 81.

12. *Ibid.*, p. 178.

13. *Ibid.*, p. 77.

14. “In fact, if we may credit at all the lessons of history, the change of the original constitution of a state, if fundamental and permanent, is always and inevitably the destruction of the state itself.” Brownson, “Political Constitutions,” Vol. XV of *The Works of Orestes A. Brownson*, p. 566.

15. Brownson, “The Federal Constitution,” Vol. XVII of *The Works of Orestes A. Brownson*, p. 495.

true reflection of America’s unwritten constitution: “There is evidently a profound logic in the Constitution, and there is not a single provision in it that is arbitrary, or anomalous, or that does not harmonize dialectically with the whole, and with the real constitution of the American people.”¹⁶

The Founders calibrated and thus harmonized the fundamental law of the land with the national life of the people.¹⁷ Their work would thus endure.

In contemporary parlance, Brownson can best be categorized as a “constitutionalist.”

The federal Constitution, the fundamental law of the Republic, ordained by the people of the United States, divides power between two distinct agencies of government, a federal or general government of the nation and the particular governments of the individual states. In doing so, it simultaneously recognizes the national unity and popular diversity that exist as historical facts in the American Republic. Each of these agencies of government is supreme in its own sphere.

Moreover, change in the written constitution must be consistent with change in the unwritten constitution. Whether by amendment or by convention, the legally prescribed means of constitutional change are available, and these means secure a full and open debate and deliberation by the whole people. This process guarantees the Constitution’s social vitality.¹⁸

In contemporary parlance, Brownson can best be categorized as a “constitutionalist.” As described by Charles Krauthammer, “Constitutionalism as a *political* philosophy represents a reformed, self-regulating conservatism that bases its call for

minimalist government—for reining in the willfulness of presidents and legislatures—in the words and meaning of the Constitution.”¹⁹ This is in sharp contrast to the modern, Progressive ideal of a “living Constitution” as perpetually reinvented by ambitious politicians and intemperate judges, dancing to the fleeting rhythms of changing social fashions.

Constitutional Order and Federalism

With the success of the American Revolution, sovereignty passed from the British Crown to the people of the United States of America: the American people as they exist, organized territorially in the states, and *only* in states and not as an undifferentiated mass population. In this sense, Brownson viewed the Union as an “organic” whole:

The simple fact is that the political or sovereign people of the United States exists as United States, and only as united states. The Union and the states are coeval, born together, and can exist only together. Separation is dissolution—the death of both. The United States are a state, a single sovereign state; but this single sovereign state consists in the union and solidarity of the states instead of individuals. The Union is in each of the states, and each of the states is in the Union.²⁰

The life of the American Republic, as Brownson argues, is in its entire body, not merely its members. Just as the political life of the body cannot exist without its members, so its members have no political life outside of union with the whole body. Just as there is no sovereign people of the United States outside of the individual states, there are no individual states outside of the Union: Without union, their legal authority as states dissolves.

Moreover, according to Brownson, it is in and through the Union that a state is a state, as a political

16. Brownson, “The American Republic,” Vol. XVIII of *The Works of Orestes A. Brownson*, p. 138.

17. “The merit of the statesmen of 1787 is that they did not destroy or deface the work of Providence, but accepted it, and organized the government in harmony with the real order, the real elements given them. They suffered themselves in all their positive substantial work to be governed by reality, not by theories and speculations.” *Ibid.*, pp. 139-140.

18. “Both his theory of territorial democracy and of the written constitution as arising from and dependent on the unwritten constitution provided a barrier against wild interpretation, a perennial temptation.” Robert A. Herrera, *Orestes Brownson: Sign of Contradiction* (Wilmington, DE: ISI Books, 1999), p. 191.

19. Charles Krauthammer, “Constitutionalism,” in *Things That Matter: Three Decades of Passions, Pastimes and Politics* (New York: Crown Forum, 2013), pp. 139-141. Emphasis in original.

20. Brownson, “The American Republic,” Vol. XVIII of *The Works of Orestes A. Brownson*, pp. 139-140.

body with full political rights and obligations. If one eliminates the Union, one no longer can have the American states. If one destroys the American states, one also destroys the American Union. The sovereign people of the United States exist organically within the states and never outside of them: “The key to the mystery is precisely in their appellation United States, which is not the name of the country, for its distinctive name is America, but a name expressive of its political organization.”²¹

American sovereignty, the supreme power of the Republic, inheres in the territorial people of the United States. Thus, the people of the United States—the people of the states *united*—jointly declared independence, waged war, entered into international agreements, and in 1782 secured independence from Britain. In *Federalist* No. 2, John Jay reaffirms this fact.²²

Later, acting in and through the Philadelphia Convention of 1787, the sovereign people of the United States ordain the federal Constitution, the constitution of government. In convention, the people of the United States do not delegate, surrender, or alienate any part of their sovereignty; they fully retain it. In fact, sovereignty is inalienable. “The Convention is supreme and can modify, in the prescribed way, the powers now possessed by either the general government or the several state governments, or by any branch of either.”²³

Acting in convention, the sovereign people authorize a dual system of government, federalism, which assures national unity and yet secures their liberty and diversity:

This division of the powers of government ... rendered possible and practicable by the original constitution of the people themselves, as one people existing and acting through state organizations, is the American method.... The American

method demands no ... antagonism, no neutralizing of one social force by another, but avails itself of all the forces of society, organizes them dialectically, not antagonistically, and thus protects with equal efficiency both public authority and private rights.²⁴

This unique division of governmental authority, a division founded on the distinctions between general and particular interests and relations, is the essence of American federalism:

The general government governs supremely all of the people of the United States and territories belonging to the Union, in all their general relations and interests common alike to them all; the particular or state government governs supremely the people of a particular state ... in all that pertains to their particular or private rights, relations and interests. The powers of each are equally sovereign, and neither is derived from the other. The state governments are not subordinate to the general government, or the general government to the state governments. They are coordinate governments, each standing on the same level, and deriving powers from the same sovereign authority. In their respective spheres neither yields to the other. In relation to the matters within its jurisdiction, each government is independent and supreme in regard to the other, and subject only to the convention.²⁵

Acting through the convention to establish national unity in government, the sovereign people grant powers to the general government to achieve that end, most notably the legislative power under Article I, Section 8 of the federal Constitution, which is confined to 18 items: “They give the government no jurisdiction of questions which affect individuals

21. *Ibid.*, p. 115.

22. In *Federalist* No. 2, Jay declares, “To all general purposes, we have uniformly been one people. Each individual citizen is everywhere enjoying the same national rights, privileges and protection. As a nation, we have vanquished our common enemies; as a nation we have formed alliances and made treaties, and entered into various compacts and conventions with foreign states.”

23. Brownson, “The Federal Constitution,” Vol. XVII of *The Works of Orestes A. Brownson*, p. 494.

24. Brownson, “The American Republic,” Vol. XVIII of *The Works of Orestes A. Brownson*, p. 139.

25. *Ibid.*, p. 132. Brownson thus mirrors Madison’s account of federalism. In *Federalist* No. 10, Madison writes, “The federal constitution forms a happy combination in this respect; the great and aggregate interests, being referred to the national, the local and particular to the state legislatures.”

or citizens only in their private and domestic relations which lie wholly within a particular state.”²⁶ In this context, Brownson warns of the potential abuse of the “general welfare” clause of the federal Constitution:

In granting but limiting the general government’s enumerated powers over general concerns, the federal Constitution secures the unity of the nation. In affirming the plenary or residual powers of the particular governments of the states over all domestic relations, the federal Constitution also secures the liberty and diversity of the American people.

The private welfare of each is, no doubt, for the welfare of all, but not therefore is it the general welfare. For what is private, particular in its nature, is not and cannot be general. To understand by general welfare that which is for the individual welfare of all or the greater number would be to claim for the general government all the powers of government, and to deny that very division of powers which is the crowning merit of the American system.²⁷

The sovereign people in convention also explicitly deny certain governmental powers—sovereign powers—to the several states: the power to coin money, to make treaties with foreign nations, or to declare or conduct war. These are the powers of the general government alone. Other state powers, such as imposing duties on imports or exports or maritime tonnage, can be legally exercised only with the consent of Congress.

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federal Constitution secures the unity of the nation. In affirming the plenary or residual powers of the particular governments of the states over all domestic relations, the federal Constitution also secures the liberty and diversity of the American people. Thus, Brownson argues:

Remove the principle of unity and the state is dissolved; take away the principle of plurality, and the Union would be a simple, centralized despotism. The true American statesman, who loves and resolves to maintain American freedom, either for the nation or the citizen, will guard with equal vigilance against consolidation and against disintegration—against encroachments on the rights of the states by the central government, and against encroachment on the powers of the central government by the states, or state governments.²⁸

While federalism secures the liberty of the people of the individual states from a concentration of power in the general government, within the states, the liberty of the people is or can be further secured from the abuses of state government by the countervailing powers of strong local governments:

In what are called the New England states, the best-governed portion of the Union, each town is a corporation, having important powers and the charge of all purely local matters, chooses its own officers, manages its own finances, takes charge of its own poor, of its own roads and bridges, and of the education of its own children.²⁹

Strong local government, directly accountable to the people, is another bulwark of American liberty and that last layer of the nation’s federal and democratic political order.

In ordaining the federal Constitution in convention, the sovereignty of the people of the United States was understood and explicit from the very beginning. Even before the Philadelphia Convention of 1787, in replacing their colonial charters

26. *Ibid.*, p. 134. For example, states and states alone have legal authority over all matters relating to marriage and domestic relations, the disposition of private property, contracts, wills, inheritance, and education.

27. *Ibid.*, p. 135.

28. Brownson, “The Federal Constitution,” Vol. XVII of *The Works of Orestes A. Brownson*, p. 499.

29. Brownson, “The American Republic,” Vol. XVIII of *The Works of Orestes A. Brownson*, p. 141.

with state constitutions, states asked “permission” of Congress to do so: “This proves that the states did not regard themselves as sovereign states out of the union, but as completely sovereign only in it,” Brownson notes.³⁰ With the adoption of the federal Constitution itself, no territorial people can organize itself as a sovereign state with full political rights and simply “join” the Union without congressional permission; their civic life is thus dependent on the explicit permission of the sovereign: the people of the United States.³¹

Strong local government, directly accountable to the people, is another bulwark of American liberty and that last layer of the nation’s federal and democratic political order.

The federal Constitution recognized, through its direct authorization of the powers of the particular governments of the states, defining and limiting those powers, the diversity of the American people in their particular geographically defined political communities. The federal Constitution also recognized, through its establishment of a general government, the unity of Americans as a single national and territorial people. The preservation of both the unity and the diversity of America is fully authorized in the federal Constitution, the legal expression of the formal will of the American sovereign: the people of the states united.

The Federal Constitution and the Civil War: The Debate over Sovereignty

The cataclysmic Civil War was, among other things, the greatest crisis between the competing claims of federal and state authority in U.S. history. According to Brownson, the Civil War was not traceable to some defect inherent in federalism or the federal Constitution, but rather to the failure

of political leaders to understand it properly or to adhere to it.

While American political leaders generally agreed on the federal division of governmental powers, many disagreed over the meaning and source of American sovereignty. The Founders, including James Madison, treated practical questions of federalism and the constitution of government, but they and the generation of political leaders that came after them did not articulate a unified and coherent theory of sovereignty, according to Brownson.³² Many believed at the time that sovereignty inhered in the individual states, and the various conventional theories accordingly reflected:

- That sovereignty was originally and continually invested in the individual states;
- That sovereignty was a divisible quality of the Republic itself;
- That sovereignty was invested in “governments,” either the national or the state governments; or
- That sovereignty was a supreme power that was somehow alienable or that could be discretely delegated or safely surrendered through compact.³³

None of these theories, in Brownson’s analysis, was compatible either with the preservation of the federal Union or with the terms of the Constitution itself. Indeed, the failure of American political leaders to resolve this crucial problem of political theory in a generally satisfactory way contributed to the Civil War.

To accept the premise of state sovereignty, Brownson argued, one must also therefore accept the death of the federal Union:

If we suppose that the states entered the Union as sovereigns, and that each remains after the Union a sovereign state, it will be hard to say that any state has not the inherent right to secede,

30. *Ibid.*, p. 117.

31. *Ibid.*

32. *Ibid.*, pp. 123-124.

33. While it is beyond the scope of this essay, Brownson devotes a large portion of *The American Republic*, as well as his wartime essays, to a closely reasoned dissection of the alternative theories of American sovereignty, including those of President Abraham Lincoln, Senator Daniel Webster of New Hampshire, and Senator John C. Calhoun of South Carolina.

when she judges it for her interest to do so; and equally hard to say, that, if she so judges and secedes, the remaining states have the right to use force to compel her to return to the Union. Moreover, if she remains a sovereign state, she can, by revoking her act of accession to the Union, absolve all her citizens from their allegiance to the United States, and require them to take the oath of allegiance to herself. You have no right to call the seceders or the confederates rebels, or to treat them as rebels or traitors, if you concede their doctrine of state sovereignty. In fact, there are few, if any, among them who regard themselves as traitors or rebels. In their view of the case, they are as loyal and as patriotic as we are in ours.³⁴

Slavery was an institution ordained only by state law and in stark contradiction to the principles of liberty and equality enshrined in the Declaration of Independence. Southern aggression in attempting to extend and maintain slavery in the territories was thus inherently illegitimate. Even if Congress had no legal right to exclude slavery from the territories as Southern partisans had argued, Southern migrants would still have had no right to hold slaves in those territories: “But slavery being a local institution, sustained neither by the law of nature nor the law of nations, no citizen migrating from a slave state could carry his slaves with him, and hold them as slaves in the territory.”³⁵

Under the federal Constitution, slavery was solely a domestic institution established and protected under state and local ordinances alone. “The whole controversy on slavery in the territories, and which culminated in the Civil War, was wholly unnecessary, and never could have occurred had the Constitution been properly understood and adhered to by both sides,” said Brownson.³⁶

Under the exigencies of war, Brownson believed that the executive power was a formidable constitutional weapon with which to strike a mortal blow

against slavery. In October 1861, Brownson argued that President Lincoln should emancipate the slaves as a war measure under the executive’s constitutional powers as commander in chief:

“The whole controversy on slavery in the territories, and which culminated in the Civil War, was wholly unnecessary, and never could have occurred had the Constitution been properly understood and adhered to by both sides,” said Brownson.

Four millions of people in the slave states, feeling that the suppression of the rebellion and the triumph of the Union secures to them and their children forever the *status* of free citizens, are more than a hundred thousand men taken from the forces of the enemy, and twice that number added to our own; for they would not only compel the rebels to keep a large force, that might otherwise be employed, at home, to protect their wives and children, but would deprive them of the greater portion of that labor by which they now subsist their armies. Now slavery is to them a source of strength; it would then be to them a source of weakness. Its abolition would, in our judgment, be striking the enemy at his most vulnerable point, precisely where we can best Sunder the sinews of his strength, and deal him the most fatal blow.³⁷

Although Lincoln initially demurred, he issued the Emancipation Proclamation on January 1, 1863, confirming that such a power indeed was vested in the executive in wartime, though it was applied only to those states that had resorted to rebellion. The Civil War was thus transformed, as Brownson had

34. Brownson, “What the Rebellion Teaches,” Vol. XVII of *The Works of Orestes A. Brownson*, p. 277.

35. Brownson, “The American Republic,” Vol. XVIII of *The Works of Orestes A. Brownson*, p. 136.

36. *Ibid.*

37. Brownson, “Slavery and The War,” Vol. XVII of *The Works of Orestes A. Brownson*, pp. 173-174.

urged, into a great national fight for freedom as well as a struggle to preserve the federal Union.³⁸

Secession and Slavery

Beyond this exercise of executive war power, the federal government gained a second constitutional avenue of attack against slavery through a correct understanding of, and response to, state secession.

Brownson's point that political authority is coextensive with its territory might seem at first glance a banal truism, but within the context of federalism, its implications are profound: The truth of the territorial principle at once invalidates the case of the secessionists and justifies the cause of the United States in crushing the rebellion.

States' powers were authorized in 1787 through the federal Constitution. States can, of course, commit "suicide" as states, which is what the secessionists accomplished during the Civil War, but they logically change their legal character in rebellion: When states secede from the United States, they do not and cannot remain as states with the full powers of states under the federal Constitution. Since their territory belongs to the sovereign people of the United States, they cannot legally take either that territory or its population out of the federal Union governed by the federal Constitution. The territory of each and every state is also part of the national territory, the domain of the United States. Individual states, as states in the Union, hold their domain jointly in the Union, not separately outside of it, and have no individual right to dispose of that domain separately from the United States.³⁹

Brownson's point that political authority is coextensive with its territory might seem at first glance a banal truism, but within the context of federalism, its implications are profound. The truth of the territorial principle at once invalidates the case of the secessionists and justifies the cause of the United States in crushing the rebellion.

By taking a population and territory out of the United States by force, the rebel states were no longer states in the Union with the full rights and obligations of states under the Constitution, but rather rendered themselves territories subject to the federal government of the United States. By their very acts of secession and rebellion, the seceding states thus destroyed the legal status of slavery in each of the individual states:

The state by the act of rebellion lapses, and consequently the rebellion of the states abrogates the only law by which negroes are held to service, either to persons loyal or to persons disloyal to the federal government; for the federal government never guaranteed to any man property in slaves after it had ceased to be property by state law.... Consequently all that depends on its existence for vitality ceases to live, and nothing lives except the natural law, and the constitution and laws of the United States; but as no one has under either of them any title to slaves, slavery necessarily lapses with the state authorizing it.⁴⁰

Thus, Brownson argued that the Lincoln Administration erred in its assumption that the rebellious states were still states in the Union and that the rebellion was the work of a treasonable minority. As a matter of constitutional law, the Administration's position was confused and pregnant with practical problems for prosecuting the war in a constitutionally correct fashion. Specifically, since state secession reduces the state, as a constitutional matter, to a territory of the United States subject only to the

38. On August 24, 1862, Brownson visited President Lincoln at the White House and pleaded the cause of emancipation directly. Brownson was justly proud of his high-profile role in being among the first major public figures to campaign vigorously for the emancipation of black slaves as a war measure: "It is a legacy we leave to our children." Cited in Thomas R. Ryan C.P.P.S., *Orestes A. Brownson: A Definitive Biography* (Huntington, IN: Our Sunday Visitor Press, 1976), p. 620.

39. On the specific question of the legal status of the seceded states—that state secession was state suicide—Brownson's position was indistinguishable from that of Republican Senator Charles Sumner of Massachusetts, whom he credited with the concept.

40. Brownson, "State Rebellion, State Suicide," Vol. XVII of *The Works of Orestes A. Brownson*, pp. 234–235.

sovereign people of the United States, it must, insofar as the general government can govern that territory in the military task of suppressing the rebellion, be governed only as a territory.

To assume that the state is still a state and not a territory legally subject to the United States is to render the Civil War a “war between the states” as Southern secessionists had argued. In fact, said Brownson, the Civil War was no such thing; it was, in point of fact and law, a “territorial war” between the United States and the Southern rebels. Brownson’s position was validated by the United States Supreme Court, which ruled that the Civil War was indeed a “civil, territorial war.”⁴¹

Territorial government is under the jurisdiction of Congress, not the President. Congress and Congress alone therefore had the constitutional authority to readmit the territorial populations of the South back into the federal Union, reorganized as states with the full constitutional powers of states, under regular order as prescribed by the Constitution.⁴² Congress must pass the enabling acts and set the conditions for such territories to be readmitted to the Union as full states. In so doing, it could simply exclude the reintroduction of slavery as a condition of readmission. In 1865, Brownson warned Congress not to cede any of its authority in this matter to the executive branch: “Congress of late years has been too chary of assuming the responsibility that belongs to it under the constitution, and has shown itself quite too ready to be governed by the policy of the administration.”⁴³

The Twin Threats to Freedom and Federalism: Radical Individualism and Secular Socialism

Toward the end of the Civil War, Brownson astutely predicted the emergence of new threats to the Union and to federalism specifically—this time in the form of flawed theories of man and government. Ideas, Brownson believed, shaped history. In general discourse, ideas would be popularized. They would manifest themselves as popular intellectual “tendencies,” and these would set the tone, the terms, and the ends of popular discourse. The

broadly accepted premises of an argument, he insisted, would sooner or later, in one form or another, be driven to their logical conclusion.

All variants of radical individualism have a common thread: exaggeration of the individual powers of man and disparagement or disregard of his social or political nature.

Brownson celebrates the Union victory as a victory for the federal Constitution, the triumph of republicanism, and the ordered liberty of America’s unique “territorial democracy.” But, he warns:

To this territorial democracy, the real American democracy, stand opposed two other democracies—the one personal and the other humanitarian—each alike hostile to civilization, and tending to destroy the state and capable of sustaining government only on principles common to all despotisms.⁴⁴

The federal Constitution was democratic, of course, inasmuch as it was rooted in the principle of popular sovereignty, the territorial democracy of the people of the United States, but what kind of democracy, exactly? The answer to that question would shape the future of the American Republic. If either of these alternative concepts of democracy, reflecting the competing intellectual tendencies of the age, were to triumph over time among large portions of the American population, Brownson believed, they would do irreparable damage to the federal Constitution and the principle of federalism that is at the very heart of it.

Radical Individualism. In speaking of the first tendency, Brownson uses the phrases “personal democracy,” “pure individualism,” “pure egoism,” and “egoistical democracy,” often interchangeably. All variants of this intellectual phenomenon, however, have a common thread: exaggeration of

41. Brownson, “Return of the Rebellious States,” Vol. XVII of *The Works of Orestes A. Brownson*, p. 454. See also 67 U.S. 635.

42. *Ibid.*, p. 459.

43. *Ibid.*, p. 460.

44. Brownson, “The American Republic,” Vol. XVIII of *The Works of Orestes A. Brownson*, p. 178.

the individual powers of man and disparagement or disregard of his social or political nature. Thus, he writes:

In every man there is a natural craving for personal freedom and unrestrained action—a strong desire to be himself, not another—to be his own master, to go when and where he pleases, to do what he chooses, to take what he wants, wherever he can find it, and to keep what he takes.... It takes different forms in different stages of social development, but it everywhere identifies liberty with power.⁴⁵

If man's individual character, his intellect and will, is supreme above all other considerations, then government becomes merely his agent, but no agent is or can be logically superior to his principal. The only legitimate power that government would have, then, would be the power that is voluntarily ceded to it by free and equal individuals through their personal choice or consent. In such an arrangement:

[T]here can be no state, no social rights or civil authority; there can be only a voluntary association, league, alliance or confederation, in which individuals may freely act together as long as they find it pleasant, convenient, or useful, but from which they may separate or secede whenever they find it for their interest or their pleasure to do so.⁴⁶

Ideas neither exist nor develop in a vacuum. They take shape and are realized within the peculiar cultural, historical, and social circumstances of their time: the “different forms in different stages of social development.” In the case of the United States, this tendency of “personal democracy” was current among educated classes of Americans, both in the North and in the South, who had long accepted the notion that all legitimate government “originates in compact”⁴⁷ as John Locke, Thomas Jefferson, and Thomas Paine had argued.

In the American South, however, personal democracy took on a peculiar character that reflected the region's social life and institutions, including slavery. There, in the breasts of the Southern slaveholding aristocracy, Brownson observed a “fierce” sense of independence, with each and every landed master a power unto himself.⁴⁸ In exalting the truth of individual liberty, however, the Southern slaveholding aristocracy effectively denied or obscured the truth of the solidarity of the human race: “Liberty, said they, is the right of only those who have the ability to assert and maintain it.”⁴⁹ Black slaves, of course, had no such right.

Ideas neither exist nor develop in a vacuum. They take shape and are realized within the peculiar cultural, historical, and social circumstances of their time: the “different forms in different stages of social development.”

In its Southern incarnation, personal democracy held the Union to be a purely voluntary association of sovereign states, just as civil society was held to be an association of sovereign individuals. The federal Union would pay a high price for this conception: “State sovereignty and secession are based on the same democratic principle applied to the several states of the Union instead of individuals.”⁵⁰ With the defeat of the Confederacy, the influence of “personal democracy” declined and was never to regain its previous prominence in American political life.

Of course, neither the Northern intellectuals nor the Southern aristocrats who adhered to Locke's political theory were anarchists. For them, sovereignty was, as Locke posited, invested in civil society. Brownson deeply appreciated Locke's enormous influence and his doctrine of natural law and natural rights. It was, he affirmed, the “political tradition

45. Ibid.

46. Ibid., pp. 178-179.

47. Ibid., p. 179.

48. Ibid.

49. Ibid., p. 180.

50. Ibid., p. 179.

of the country.” According to Brownson, however, Locke’s account of civil society based on compact was nonetheless defective because his “consent doctrine” was insufficient for a viable theory of political authority: a moral right to command coeval with a moral obligation to obey. Brownson feared that this gap in Locke’s theory would be filled by a logically relentless radical individualism that would undermine the authority of government and destroy liberty itself.

In other words, radical individualism as a matter of political theory, not merely its manifestations in the political culture of the American South or anywhere else, posed an ineluctable intellectual problem for political authority. For Brownson, the famous 18th century British anarchist William Godwin supplied the intellectual firepower for radical individualism in *An Enquiry Concerning the Principles of Political Justice* (1792).⁵¹ Godwin argues that the rational individual is mentally and morally supreme. In other words, the individual is “sovereign,” and all agreements among free and equal individuals can be secured only by rational persuasion, not by force. Inasmuch as all existing political order is based not on rational persuasion but on coercion, all extant political order is contrary to “natural justice.”

In *The American Republic* and other essays, Brownson dissects the premises of radical individualism as articulated by Godwin and kindred spirits such as Paine. If one accepts the basic premise of radical individualism, Brownson argues, as long as free and equal individuals give their consent to establish civil society and political authority, then and only then does political authority retain an existential legitimacy.⁵² But if civil society is to be legitimate for every individual in civil society, as Godwin argues, then every individual, free and equal, would logically have to give his solemn consent.

The problem, Brownson observes, is that they don’t. As a practical matter, few would be willing to

collect the appropriate signatures from their fellow citizens to solemnize a social agreement to legitimize legislatures, courts, police, or (in today’s terms) agencies of public administration like the Environmental Protection Agency or the Internal Revenue Service. The simple fact that most people did not and do not give their consent to civil society and political authority is more than a practical inconvenience.

Godwin’s challenge, Brownson believed, was intellectually serious, and it would be a weak response to Godwin to argue that among free and equal individuals, explicit consent of the government is somehow unnecessary and then retreat to the Lockean doctrine of “tacit consent,” which presumes consent based on taking advantage of the benefits of civil society. According to Brownson, even if one has used publicly funded bridges or roads, parks or playgrounds, and has simply kept quiet about it, then that is not *prima facie* evidence that one has, in point of fact, really given his “consent” to civil society and thus agrees to obey political authority.

On the premises of radical individualism, which absolutizes the individual’s intellect and free will, the “tacit consent” option fails. One’s mere silence, insists Brownson, is not one’s “consent”; it is nothing of the sort and, whatever else it is, should not be equated with the kind of solemn agreement to be obtained among free and equal and rational individuals that would determine the quality and character of their current and future lives. Most persons, as a matter of fact, may simply have never given the legitimacy of the authority of civil society a moment’s thought. Brownson found it ironic that an existential justification of modern government, posited on the primacy of individual human rationality, could ever be grounded in either simple silence or pure thoughtlessness.

In the end, proponents of the personal consent doctrine must logically adopt a “love it or leave it” position for dissenters. If a dissenter cannot abide his

51. Brownson’s focus on Godwin was right on target. As Basil Willey, a University of Cambridge fellow, writes, “If (J.S.) Mill was right in calling the eighteenth century ‘innovative, infidel, abstract, metaphysical and prosaic,’ then Godwin, though he lived until 1836, must be its living embodiment, for he had all of these characteristics in a high degree....” Godwin was “the writer who enunciated the extreme conclusions of eighteenth century rationalism at the very moment of incipient reaction, and who thereby, in his own life story and his influence upon his contemporaries, acquired a certain symbolic importance.” Basil Willey, *The Eighteenth Century Background: Studies on the Idea of Nature in the Thought of the Period* (London: Chatto and Windus, 1957), pp. 205–239.

52. In other words, government is an agent, and the individual is the principal. The agent cannot logically be superior to his principal: “He is free at any time he pleases to recall the powers he has delegated, to give new instructions or to dismiss him. The sovereignty of the individual survives the compact, and persists through all of the acts of his agent, the government. He must then be free to withdraw from the compact whenever he judges it advisable.” Brownson, “The American Republic,” Vol. XVIII of *The Works of Orestes A. Brownson*, p. 37.

society's political authority, Brownson observes, then he must give up "hearth and home"—the private property that the dissenter holds by natural right prior to any social contract—and pack up and go somewhere else more accommodating. Forced removal from hearth and home, the loss of places and things dear, would be a paradoxical ending for a resident of a society formally based on personal freedom.

On the premises of radical individualism, Brownson observes, there can also be no political stability. The consent of one generation of free and equal individuals could not have any morally or legally binding authority on the next, thus disrupting the continuity of any and all existing political order.

On the premises of radical individualism, Brownson observes, there can also be no political stability. Needless to say, on those premises, the consent of one generation of free and equal individuals could not have any morally or legally binding authority on the next, thus disrupting the continuity of any and all existing political order. Logically, under these premises, the great work of the Founders is not to be revered, but rather to be reratified by succeeding generations.

In essence, Brownson argued, this was especially the doctrine of Thomas Paine.⁵³ Once again, if the just powers of government are dependent on the consent of free and equal individuals and the free and equal individual is free to give his consent to civil society and political authority, then, logically, that individual is also free to withdraw that consent.

Moreover, if the federal Union itself is merely a product of compact and not a product of America's pre-existing organic constitution, as Brownson

argued, then it must be the creation of sovereign individuals who in turn delegate sovereignty to states. No creation is logically superior to the creator, Brownson observes, just as an agent cannot logically be master of his principal. The consequence of the doctrine of "individual sovereignty" is anarchy. Applied to the federal Union, the consequence of "state sovereignty" is secession and the death of the American Republic.

The radical individualists are surely right to argue that man is an individual with freedom of intellect and will and that the proper condition of man is life in a free society; but they are wrong, according to Brownson, in emphasizing individual freedom and will while ignoring the truth that man is also social by nature. In the end, they break the natural unity of society, a unity grounded in reality itself, and their individualism runs relentlessly toward anarchy, which is the doom of all good order and the end of all true freedom.

Secular Socialism. In the North's victory over the South, Brownson saw an additional and even greater threat to American federalism and freedom: "humanitarian democracy." Under the rubric of social reform, moral rejuvenation, and "uplift," the "humanitarian democrat" was marked by a "tendency to exaggerate the social element, to overlook the territorial basis of the state, and to disregard the rights of individuals."⁵⁴ Unlike the radical individualism that exaggerated the power of the individual, secular socialism tended to diminish almost completely the powers of individuals in order to consolidate power in the national government, negate or nullify the authority of the states, and suppress personal and political liberty.

Brownson observed that the humanitarian democrat is enthralled by the idea of the solidarity of the human race bound together by the sacred principle of equality in some future egalitarian condition. In this, individuals are lost in the human race, and the rights of men are sacrificed to the "rights of man." The result is a relentless agitation aimed at the destruction of human individuality:

53. In writing of Paine, *National Affairs* Editor Yuval Levin remarks, "Consent requires that every generation see the world as fully open before it, rather than taking as given what existed when it arrived. Free men must be able to live freely in the present, and they cannot do so if they are obliged to obey the edicts of their predecessors. Paine makes this point remarkably explicit in essentially all of his political writings—before, during, and after the French Revolution." Yuval Levin, *The Great Debate: Edmund Burke, Thomas Paine, and the Birth of Right and Left* (New York: Basic Books, 2014), p. 101. See also, Brownson, "The American Republic," Vol. XVIII of *The Works of Orestes A. Brownson*, p. 64.

54. *Ibid.*, p. 181.

Having obliterated all distinctions of sex in politics, in social, industrial and domestic arrangements, he must go further, and agitate for the equality of property. But since property, if recognized at all, will be unequally acquired and distributed, he must go further still, and agitate for the total abolition of property, as an injustice, a grievous wrong, a theft....⁵⁵

New England, the Puritan home base, nurtured humanitarian democracy. Those imbued with the Puritan spirit may have lost their sense of supernatural mission, but they have lost none of their religious fervor in the hurried task of improving their fellow citizens. Foreseeing the fantastical demands made by their egalitarianism, Brownson observed that:

[Injustice based on any inequality] can be remedied only by the abolition of all individualities, and the reduction of all individuals to the race, or humanity, or man in general. He can find no limit to his agitation this side of vague generality, which is no reality, but a pure nullity, for he respects no territorial circumscriptions, and must regard creation itself as a blunder.⁵⁶

In its practical application, humanitarian democracy becomes “social despotism” or “socialism.” In Brownson’s language, socialism is not simply the political control of the means of production and distribution, though it will assuredly include economic reorganization of society along those lines. Rather, socialism, as a matter of principle, is the exaltation of society over and above the particular individuals who necessarily comprise it.

Though it is a grotesque distortion of human reality, the socialist appeal is deeply rooted in our social nature, and that appeal is dangerous and deadly:

Veiling itself under Christian forms attempting to distinguish between Christianity and the Church, claiming for itself the authority and the immense popularity of the Gospel, denouncing Christianity in the name of Christianity, discarding the Bible in the name of the Bible, and defying God in the name of God, Socialism conceals from the indiscriminating multitude its true character, and, appealing to the dominant sentiment of the age and to some of our strongest natural inclinations and passions, it asserts itself with terrific power, and rolls on its career of devastation and death with a force that human beings, in themselves, are impotent to resist. Men are assimilated to it by all the power of their own nature, and by all their reverence for religion. Their very faith and charity are perverted, and their noblest sympathies and their sublimest hopes are made subservient to their basest passions and their most groveling propensities. Here is the secret strength of Socialism, and here is the principal source of its danger.⁵⁷

Not only is the person to be subordinated to society, but society will determine what is good for that person and secure that good. Thus, says Brownson, “the essence of socialism is in this very assumption that our good lies in the natural order, and is unattainable by individual effort.”⁵⁸

The Civil War had dramatically strengthened the general government, most notably by an expansion of executive power. Congressional acquiescence and popular approval of this executive expansion, Brownson warned, was the chief danger to American liberty.⁵⁹ Congress had a solemn duty to reassert its authority and curb the enthusiasms of ambitious Presidents, even great Presidents such as Abraham Lincoln.

Humanitarian democrats, originating in the ranks of fervent abolitionists, were the chief

55. *Ibid.*, p. 185.

56. *Ibid.*, p. 186.

57. Brownson, “Socialism and the Church,” Vol. X of *The Works of Orestes A. Brownson*, p. 92. Note that during the 1912 campaign, Woodrow Wilson, the successful Democratic presidential candidate, said, “When you do socialism justice, it is hardly different from the heart of Christianity itself.” Cited by Fred Siegel, *The Revolt Against the Masses: How Liberalism Has Undermined the Middle Class* (New York: Encounter Books, 2013), p. 29.

58. Brownson, “Socialism and the Church,” Vol. X of *The Works of Orestes A. Brownson*, p. 92.

59. “There is a growing disposition on the part of congress to throw as much of the business of government as possible into the hands of the executive.” Brownson, “The American Republic,” Vol. XVIII of *The Works of Orestes A. Brownson*, pp. 189–190.

champions of this trend toward national consolidation and centralization of power, studiously indifferent to prescription, as well as to the Republic's unwritten Constitution, and disposed to undermine or destroy the federal order of the states. Liberty Fund Fellow Richard Reinsch notes that Brownson's prescient warnings thus anticipated the emergence of Progressivism:

While the rising humanitarians of Brownson's day wanted to emancipate people from the circumscriptions of territory, property, local law, and the requirements of republican citizenship, the progressive movement joined many of these ideas to a coherent body of political thought that directly contradicted the historical and philosophical basis of the Constitution. Progressivism emphasized a consolidationist federal power that must, of necessity, supplant the individual and civil society, and to a large measure the states, if social justice were to be achieved. The competition in markets and in politics, particularly at the state and federal congressional levels of government, was to be suppressed in service of a higher commitment to national progress.⁶⁰

Humanitarian democracy—socialism in practice—would erect a superstate preoccupied with identifying and punishing various social “sins”: a powerful and intrusive regime ready to root out all distinctions and differences and make wayward men “good” according to the latest secular fashions.⁶¹ Shorn of religious restraint, such a secularized state, ignoring or denying the natural law, the law ordained of God, would become absolute. In recognizing nothing above itself, the state would become a law unto itself and thus amoral and lawless. There would be, Brownson predicted, an inevitable progression from “political atheism” to “political

absolutism.” Absolutism, or what is today often called “statism”—the triumph of untrammelled government power—would also spell the end of all liberty and the death of all genuine authority.

The Civil War had dramatically strengthened the general government, most notably by an expansion of executive power. Congressional acquiescence and popular approval of this executive expansion, Brownson warned, was the chief danger to American liberty.

While humanitarian democrats are certainly right to affirm the social nature of man, a solidarity grounded in humanity's created nature, they are utterly wrong to emphasize the social nature of man at the expense of each person's uniqueness and individual freedom, which, equally with man's social nature, is likewise a gift of God. In the end, humanitarian democrats crush diversity and sacrifice individual freedom on the altar of abstract equality. In so doing, they would impose a dull, drab, and tyrannical uniformity on the human race.⁶²

Federalism and Ordered Liberty

The federal structure of the Constitution, the division of power between the general and state governments, is the guarantor of republican order and individual liberty: the unity of the nation and the diversity of its inhabitants.

America's national power, the guarantor of national unity, is greater today than ever. America's political order, for Brownson, reflects the inherent unity and diversity embodied in human nature itself,

60. Richard Reinsch, “A Constitution in Full: Modern Political Tendencies and the American Departure,” *Anamnesis Journal*, 2013, <http://www.anamnesisjournal.com/issues/2-web-essays/80-a-constitution-in-full-modern-political-tendencies-and-the-american-departure>.

61. Indeed, the socialist state would usurp the role of the church as a teacher of morals, defining right and wrong in the private lives of individuals and imposing its punishments for state-defined “sin.” Commentators on Brownson's political theory, focusing on his preoccupation with the origin and ground of authority, tend to overlook his genuinely libertarian predisposition. Put simply, the state had absolutely no right punishing “sin,” enacting laws, for example, that would prohibit the sale or use of alcohol: “The state cannot punish the simple vice of drunkenness; it can punish drunkenness only when it interferes with the rights of others or disturbs the public peace.” Brownson, “Liberalism and Socialism,” Vol. X of *The Works of Orestes A. Brownson*, p. 542.

62. “Orestes Brownson's post-conversion writings clearly demonstrate his conviction that the modern world, once it is dominated by a secularized socialist ideology, is condemned to a period of unmitigated tyranny.” Gregory S. Butler, *In Search of the American Spirit: The Political Thought of Orestes Brownson* (Carbondale, IL: Southern Illinois University Press, 1992), p. 133.

for man is neither a purely individual nor a purely social being. Neither the abolition of life in civil society in anarchic individualism nor the destruction of individuality in secular socialism finds sanction in America's unique constitutional order. Unchecked, radical individualism and secular socialism must end in either solitary misery or statist oppression.

America's political order, for Brownson, reflects the inherent unity and diversity embodied in human nature itself, for man is neither a purely individual nor a purely social being.

America's diversity is also greater than ever, making the Founders' rationale for the self-government embodied in the federal order more compelling than ever. Likewise, there is a profound need to assimilate and educate new immigrants into the mainstream of American life, inculcating in them an appreciation of the unique constitutional order that preserves individual freedom and perpetuates national unity. The question for Americans is whether they can recognize this reality and adopt a new and better politics that is compatible with it.

If Americans rise to the occasion, they will fulfill what Brownson believed to be their providential mission. They are the beneficiaries of the practical wisdom of America's Founders and the fortunate citizens of an unprecedented federal, democratic, and republican Constitution that has no "proto-type" in history. Thus, America's providential mission:

In the state, in law, in jurisprudence, it must continue and surpass Rome. Its idea is liberty, indeed, but liberty with law, and law with liberty. Yet, its mission is not so much the realization of liberty as the realization of the true idea of the state, which secures at once the authority of the public and the freedom of the individual—the sovereignty of the people without social despotism, and individual

freedom without anarchy. In other words, its mission is to bring out in its life the dialectic union of authority and liberty, of the natural rights of man and those of society. The Greek and Roman republics asserted the state to the detriment of the individual freedom; modern republics do the same, or assert individual freedom to the detriment of the state. The American republic has been instituted by Providence to realize the freedom of each with advantage to the other.⁶³

In 1865, when Orestes Brownson urged his fellow citizens to reexamine the roots of their own civic order, the American Republic was threatened by a bloody rebellion that promised national dissolution and death. The American people endured the struggle, saved the Union, and thus ushered in what President Lincoln called a "new birth of freedom."

Today, the Republic is threatened not by literal death in a bloody civil war, but by a relentless centralization of power in a national government that is increasingly arbitrary and intrusive, expensive, and unaccountable. This trend toward centralization, however, had already begun during the Civil War.⁶⁴ There is, Brownson reminds us, a remedy: "The Constitution, in the distribution of the powers of government, provides the states severally with ample means to protect their individuality against the centralizing tendency of the general government, however strong it may be."⁶⁵

To rebalance the scales, revitalizing the particular governments of the states and restraining the general government in Washington, Americans should encourage their governors and state legislators to understand that they are, under the Constitution, indeed supreme in their exercise of their own constitutional authority, and resist in a collegial fashion the federal government's excesses through the courts. State officials should also work in close concert on these common concerns with their colleagues who represent the states as civil entities in the House of Representatives and the United States Senate. Beyond that, Americans should reacquire themselves with the genius of the Founders and

63. Brownson, "The American Republic," Vol. XVIII of *The Works of Orestes A. Brownson*, p. 8.

64. "The war has, no doubt, had a tendency to strengthen the general government, and to cause the people, to a great extent, to look upon it as the supreme and exclusive national government, and to regard the several state governments as subordinate instead of coordinate government." *Ibid.*, p. 189.

65. *Ibid.*, pp. 188-189.

appreciate the gravity of what Orestes Brownson identified as their great historical mission.

Orestes Brownson contributed greatly to the cause of freedom, federalism, and the American idea. He deserves, as Russell Kirk so strongly recommended, a renewed national appreciation: “No man ever was bolder than Brownson in his criticism of American smugness and cant; no man ever loved this country more.”⁶⁶

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66. Brownson, *Orestes Brownson: Selected Essays*, p. 10.