ORESTES BROWNSON AND THE UNWRITTEN FOUNDATION OF AMERICAN CONSTITUTIONALISM

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Contrary to the concerns of many Tea Party types, we think the reality confronting the United States isn't the continual growth of progressivism understood as progress toward bigger and better government, but rather progressivism's coming demise, one that we should speed up. The good news is that the road to serfdom, apparently, never gets to serfdom. The demographic situation—too many old people and not enough young and productive ones—will only get worse from the view of sustaining our entitlements. And the various other safety nets that have been integral parts of our welfare state—such as pensions and unions—are also falling victim to the dynamic realities of the twenty-first-century global competitive marketplace. Persuasive evidence, notes John McGinnis, professor of constitutional law, can also be seen in the fragile legislative coalition of contemporary progressivism that can only dream of the congressional power it held under FDR and LBJ.

But if progressivism is receding, what is the alternative? The most commonly stated alternative to big-government progressivism is a Lockean natural rights constitutionalism, a doctrine that many of our Founders deployed in their own battle to secure American liberties. Now more than ever we have to ask whether a purely individualistic understanding of who each of us is by nature is really stable enough to sustain limited and representative (or generally democratic) government. That question, of course, has been a perennial conservative concern in our country.

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America is becoming more "Lockean," not less. As evidenced by Justice Kennedy's evolutionary understanding of the Constitution's view of liberty in *Lawrence v. Texas* and *Obergefell v. Hodges*, America is now more attuned than ever to the individualistic philosophical principles that guided some of the leading Founders. And by reconfiguring, against even the intention of Locke himself, every feature of human life, our individualism may be pushing us in the direction of a postpolitical, postfamilial, and postreligious fantasy that would make our free republic unsustainable.

The common sense of our country for most of our history has been to take the course defended most ably by our great (and very unjustly neglected) nineteenth-century political thinker Orestes Brownson. We Americans have embraced the self-evident truths of our Declaration, which proclaims that each of us has been created equal with inalienable natural rights, but we have slighted Locke's nominalist method of establishing those truths. Instead of the written Constitution, being grounded merely by abstract natural rights and autonomous individuals, we have looked to a prior, unwritten, "providential" constitution. Providential here, to be clear, has nothing to do with some intervention of Divine Providence into history. It has to do with the fact that no written constitution could emerge from nothing, but is necessarily dependent on the various "givens" that limit and direct what is possible for statesmen at any particular time. The "givens" from this view aren't oppressive constraints but civilizational accomplishments that make the written Constitution and constitutional order possible. "Providential," in this sense, means to be guided by what one is given by custom, tradition, philosophy, theology, and prior political experience.

In his 1865 book, *The American Republic*, Brownson rearticulates the principles of American constitutionalism. The Civil War and its horrific consequences showed that America's statesmen of his time had not grasped the full truth of the American Founding. To comprehend the guarantees of American constitutionalism requires the incorporation of its unwritten constitution as a historical and philosophical articulation of the meaning of the written constitutional order. As Brownson writes, "There must be for every state or nation 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."[1] The constitution of the state is given to a people who constitute a republic in a particular territory or geographically delimited place in the world.

This unwritten constitution is found in a people's political culture, mores, customs, disposition, and peculiar talents. The constitution of the government is built on this assemblage of order and is forever connected to it. Thus, the authoritative law of a particular country can't be viewed outside the context of the unwritten constitution. No government built to stand the test of time can be a merely willful construction that defies the historical, spiritual, and cultural materials that have been given to a people.

Notice that the constitution that emerges from Lockean contract theory is consented to by self-interested individuals, and it exists to secure their universal natural rights. Governments are monolithic in their origin, form, and purpose, because individuals are monolithic in their origin, form, and purposes as being uprooted from their particular inheritances and even their biological differentiation. This constitution devised solely in the interest of the rights of individuals is based on the unrealistic abstraction of unrelated

autonomous individuals, beings divorced from the privileges and responsibilities of being parents, creatures, and even citizens. Lockean thought isn't political enough to be the foundation of government, and it isn't relational enough to properly articulate the limits of governments with the family or organized religion in mind.

It is true that Locke's social contract teaching was for many Founders the way they justified their independence from Great Britain and the formation of the American union. It is a fact, however, tempered by the statesmanlike compromises they made to secure political unity. The content of those compromises made, from Brownson's view, what they built better than what they knew through their theory, insofar as they took into account the political, religious, familial, and other relational dimensions of the human persons that are slighted by Locke's individualism. The process of political deliberation gave our country's foundation particular or providential content that fleshed out Locke's otherwise abstract or denatured theory.

Brownson affirms the equality of human persons as a fact, but one that entered the world through Christian revelation and was later affirmed as self-evident by philosophers. Equality, as Lincoln says, is our proposition that inspires our devotion. It was brought to America, as Tocqueville says, by our Christian Puritans. That self-evidence, Brownson contends, is undermined by the pure Lockean dimension of the Declaration, where individual sovereignty becomes the foundation of government. Every man, as Locke says, has property in his own person, and, for Brownson, that assertion of absolute self-ownership is, in effect, "political atheism." But, with the providential constitution in mind, the Declaration really does become about the equality of all men by nature under God:

> under the law of nature, all men are equal, or have equal rights as men, one man has and can have in himself no right to govern another; and as man is never absolutely his own, but always and everywhere belongs to his Creator, it is clear that no government originating in humanity alone can be a legitimate government. Every such government is founded on the assumption that man is God, which is a great mistake—is, in fact, the fundamental sophism which underlies every error and sin.[2]

Brownson's deep-seated rejection of the implicit atheism of the Lockean effort to transform all of human life in terms of contract and consent is based on his observation that such misguided liberationism or individualistic "secession" inevitably led to the interlocking vices of modern political life: anarchism and consolidation. Social contract thought lacks an external standard higher than man's will that could limit, shape, and condition it. As such, the highest being is man, who would self-create government by consent as a protection against death and to secure property rights.

Brownson contends that the transformational project of self-sovereignty or political atheism as laid out by Thomas Hobbes, John Locke, and Jean Jacques Rousseau aims, with a misguided conception of human liberty, to displace the complex relationship between the nature of the human person and political order with a world full of self-consciously autonomous individuals. The goal is the scientific or enlightened deconstruction of the free and relational human person in order to reconstruct political order as consciously utilitarian or representing the truth about free and contracting individuals to themselves.

Here's how Brownson describes the pure

Lockean doctrine concerning the institution of government among men: "The state is held to be a voluntary association of individuals. Individuals create civil society, and may uncreate it when they judge advisable." Government depends simply on individual will, and not at all on the relational virtues of citizens, beginning, as Brownson says, with the indispensable virtue of loyalty. That means, for example, that the "secessionism" of the Confederates was a necessary consequence of Lockeanism. And that's why Brownson claimed that the Confederates couldn't be charged with treason or civic disloyalty. They may have ultimately misinterpreted the Constitution, but in a way that corresponded to the theory prevalent among its framers.

Brownson's opposition to this theory emerged from his deep reading of the Western political tradition that had articulated the naturalness of political authority, our inbuilt need for society, and with Christian revelation, man's relational capacity and his end in God, which gives his life a purpose beyond government, forever circumscribing its powers.

Brownson contends that the deficiencies in modern political theory are evident in both liberalism and socialism insofar as they reduce man's social and political existence to abstract doctrines of popular sovereignty or egalitarianism without asking what is true and false in both of these conceptions and fully reckoning with the complex requirements necessary for free societies to endure. Brownson criticizes a Continental European liberalism that insisted upon the natural rights of the sovereign individual possessed separately apart from any authoritative preliberal traditions. The problem with this liberalism, Brownson thinks, is its constricted belief that the individual and the state are the only two political realities of modern society needed for a free and decent political order.

The individual armed with a bevy of rights before the state is likely to be swallowed, Brownson observes, by a collectivism made possible by the elimination of various types and scales of communities that stand between the individual and that state. There would, it follows, be no context and content for being a truthfully free and relational person. Only if the person is understood to be more than a consenting individual can the limits to government be more than "negative" or empty. To be sustainable, they must correspond to the whole truth about who we are. Brownson, for this reason, wrote of humanitarian liberals as "abolitionists" about the business of abolishing the real human distinctions that make up the world of particular persons in favor of the leveling of humanity.

The unwritten or providential constitution replaces the social contract in order to ground the actual Constitution by limiting the range of potentialities it can develop and manifest. These limits also provide reasons for affirmation of an architecture of devotion to a country's actual constitution, its way of life. This particular or political way of thinking recaptures something of the Greek polis, but with the Christian addition that each of us is more than a citizen through our relational devotion as creatures to the church. The American republic is also to be distinguished from the tribe in its devotion to a common good that's much more than collective selfishness. The American idea of the providential constitution places our particular country under the universal yet still relational and personal God.

Thus, America's written Constitution of 1787 has to be understood by the unwritten order of its common law heritage, the colonists' practice of self-government, religious pluralism, the colonies as separate and then unified political actors in war, largely demo-

cratic emigration patterns, and colonial resistance to and gained independence from an empire that had abused historic common law rights and its own tradition of limited government. Our framers built as statesmen, and as such they drew from all the sources that history, philosophy, political precedent, religion, and the rest of our civilized tradition had given them.

In the United States, the citizen is a member of both the state and the nation. This dual status reflected, in part, the preexisting political settlement of the colonies. Brownson believes that two facts are salient: the colonies had instinctually united in their push for independence from the British Empire, and as subjects of the Crown they had voiced their political grievances through their colonial political bodies. The colonies themselves, Brownson notes, had united both as a protest against abuses of their English liberties and then to declare independence. Once independence was achieved, America soon jettisoned the Articles of Confederation, its wartime constitution. This rejection, Brownson argues, was an affirmation of experience in favor of a political articulation more suited to the actual unity of the colonies during their war for independence.

The constitutional framework of 1787 properly expressed the dialectical form of national and state political organization in America. In their ideal relationship, Brownson urges, the national (general) and state (particular) governments are not inevitable competitors and are called to realize in their work man's natural requirements that move from the local community outward to larger spheres of interaction:

> 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.[3]

Complementing the unwritten constitution is the notion of territorial democracy that Brownson recommends as the correction to the modern political temptation of either hyper-centralization or excessive individualism. Territorial democracy is Brownson's way of expressing the irreducibly republican dimension of every free political order. Political loyalty pertains to the way of life shared by a particular people occupying a particular part of the world. The idea of natural rights, as so many contemporary libertarians contend, makes the very idea of legal borders seem unjust. Free individuals should be directly open to each other in an unmediated marketplace freed up from the "rent seeking" of political force and fraud. The truth is, however, that we embodied beings necessarily find ourselves at home in particular places, and even natural rights, to become effective, have to be secured by a particular order. Political order, Brownson adds, is about justice understood as a good shared in common, as opposed to the selfish loyalties demanded by tribes, tyrants, and dislocated individuals.

Brownson dismisses from republican government abstractions like the sovereignty of society or of individuals creating government from a putative state of nature, making government an artificial rather than a natural institution that flows from man's sociability. Power, Brownson responds, is a public trust, not a form of obedience to either majoritarian suppression of particular liberties, or to

the endless rights-claims lodged by autonomous individuals against society. Instead, it is ordered to the demands of a shared political enterprise that emerges from man's social nature.

The freedom of the person that territorial democracy supports accounts for the richness of personhood as seen in man's spiritual, political, familial, and economic relations, which must be supported and protected by the authority of the state. For Brownson, a good polity will connect and reconcile the free and relational person with self-government and law and thereby engender devotion to the common good. Citizens' occupying a particular part of the world, joined together by borders, law, and defined accountability of rulers to ruled—this is what makes republican government possible. Brownson's territorial democracy, as a political order, is not open to ongoing redefinition by majorities nor is it created purely by contractual consent. Principles of popular sovereignty, equality, and majority rule operate within the context of territorial democracy.

Brownson reconciles the particularity of the states with national unity in a way that makes federalism compatible with republican loyalty. Sovereignty inheres in the American people only as they exercise power in their membership in the States United, Brownson argues, and not in the singular states as is demanded by the compact theory of John Calhoun, whereby the Union was created by the separate states, with the consent of the states replacing the consent of the people as the principal of the Union. The individual states in their particularity are completed, Brownson urges, through union with their opposite, the United States. This dialectic of order helps us understand the difficult relationship of dual sovereignty, and also justifies Brownson's opposition to Southern secession.

Of course the idea of the States United entails the legitimate identity of the states within the republic and fully affords them their rightful authority under the Constitution. For this to occur, however, the states must acknowledge that their legitimacy is in their union. These United States authorize the political existence both of each state and of the national government. Brownson corrects both the secessionists who deny the reality of the nation and the abolitionists who do away with the states in favor of a consolidated union:

> 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 . . . will guard with equal vigilance against consolidation and against disintegration—against encroachments on the rights of states by the central government, and against encroachment on the powers of the central government by the state governments.[4]

Brownson's project does not entail constructing a new philosophical basis for American government so much as putting the Founders' philosophic views in the larger context of the magnificent accomplishments of their deliberative statesmanship. Our country's self-understanding finds the mean between "humanitarian" political centralism and "secessionist" atomism in the limited but real political unity of citizens who are both more than and less than citizens. The American republic isn't to be confused with the comprehensive republicanism of the *polis*, although it is richly deserving of civic loyalty. American citizens are also free economic actors responsible for taking care of their material needs. They also flourish as spiritual

beings who find their home in a corporate religious body.

Providential constitutionalism, in one sense, means bringing together in one comprehensive self-understanding the partial truth of all the understandings of human freedom that have been discovered in the whole of the history of the West. In Brownson's eyes, taking responsibility for the American republic is in the service of the truthfully differentiated dimension of the real free and relational person. This real, relational person with economic, familial, political, and religious dimensions to his being is more truthfully differentiated than the ideological depictions of individuals who either understand themselves solely as a part of some social or political order or as sovereigns or self-sufficient individuals who proclaim their rights at the expense of any obligations they might owe to others around them. The privilege of liberty can't be divorced from relational responsibilities because no individual flourishing occurs outside a relational context. As Brownson claims, the teaching of the state of nature at the foundation of sovereign individualism is obviously a fiction that's been authoritatively discredited by philosophers.

But now it seems that Locke's individualistic method is at the foundation of a converging political elite composed of our industrialists, Silicon Valley, various experts and their foundations, activist bureaucrats, and members of both political parties. One result is an elitist or sophisticated consensus on the proper resolution of contentious issues: open immigration, same-sex marriage, a relative indifference to mass-based prosperity, and little resistance to the concentration of power in the federal judiciary and a Green and crony-capitalist administrative state. This individualistic new class, not surprisingly, is supremely confident of its right to rule as a genuine meritocracy that issues commands on the basis of its innovative mental labor, and insofar as it associates its earned privileges with corresponding responsibilities, it's with a kind of technocratic condescension that comes with the intention both to uproot and rescript the lives of those without their brains, accomplishments, and social enlightenment.

Not helping matters is an inept Republican political class that either won't or can't make arguments once believed to be fundamental to political constitutional wisdom. Where this leaves the majority of Republican voters who aren't part of the liberationist zeitgeist is not clear. How will they respond in politics, economics, education, and in religious practices to the movement for their marginalization is similarly ambiguous. We already see the "secessionist" expansion of homeschooling across the country, as well as traditionalists exercising the "Benedict option" of forming countercultural communities indifferent to the fate of our political life.

Surely one conclusion that can be drawn is that these families and communities, rather than participating in national politics in order to "take back America" or reclaim the public schools, are focusing intently on their children and congregations. There is less of a Christian right evident these days and more of a religious and relational conservatism that is building in their faithful members doctrine and instruction, even classical learning, in preparation for the secularist standardization imposed by the apolitical elitism of our corporatist, Silicon Valley cognitive elite, the administrators of higher education, government bureaucracies, and media outfits of every stripe. And here the larger concern is the potential loss of devotion to the country at large. For example, religiously devout Americans are

also our most patriotic citizens. Will they now be alienated from the country they love so much, but only so much? If so, who or what takes their place?

Generally, we can see that the abandonment of the providential constitution has spawned a variety of secession movements in our country these days. What we've lost is our sense of common citizenship, our shared morality that comes from the experience of being equally under God. One way to begin to return to our reliance on the providential constitution is to add to Brownson's analysis by remembering that even the source of our abstract principles, the Declaration of Independence, was the product of a legislative compromise driven by the multiple sources of our written Constitution.

Here we do well to recall the French Catholic priest (and chaplain to the French Resistance in World War II) Father Raymond-Leopold Bruckberger's scholarly account of our Declaration of Independence with its unique mixture of natural theology (in its second paragraph) and the providential God (featured in the last section). Bruckberger reminds us that our Independence Day is not owned by philosophers but by the Continental Congress, which added to Jefferson's deistic formulation of "Nature's God" two descriptions of God: as a creator and as a judge—as a personal God.

Their dry public argument reconciled the difficulty "that Congress and Jefferson had different concepts of God" leading them to "two profoundly different philosophies." Jefferson's Lockean philosophy was grounded in an impersonal, past-tense God, more of a "what" than a "who." The fundamentally Christian members of Congress thought of God as a personal and relational "who." Their Christian contribution produced a founding compromise between a Jeffersonian God of nature and a personal, judgmental, relational, and providential (and so loving) God.

"The greatest luck of all for the Declaration," Bruckberger claims, was its compromise of the Puritan tradition and what Jefferson wrote, giving America a "philosophy that most manifests the equality of all men in their natural and supernatural dignity." As such it truthfully relies on appeals to both Lockean and Christian anthropology, thus serving as an intermediary for individual freedom, political and religious devotion, and personal sacrifice on behalf of our fellow citizens and creatures. Are we still capable of preserving and developing this constitutional consensus with political deliberation? The evidence that would support an affirmative answer is, however, dim in certain crucial respects.

Not only are the shared middle-class values that once united almost all Americans rapidly atrophying; so too is any confidence in democratic deliberation or political liberty. The new elitist view says that our burgeoning future of liberty should be increasingly detached from the constraints of both (biological) nature and civic prejudice and even that this is what our framers originally had in mind. These days we have reasons to fear that the future planned by our visionaries will not be in any politically recognizable sense constitutional. Just as progressivism in one sense, the sense of Woodrow Wilson, FDR, and LBJ, comes to an end, are we now in the thrall of an unbounded and potentially boundlessly manipulatable progressivism based on the detachment of individuals from all relational and other natural ties that bind?

Let's return to what our framers actually said about the relationship between our Constitution and progress. Publius in *Federalist* no. 9 prominently argues that American constitutionalism is built on a "science of politics" that, "like most other sciences, has

received great improvement." This elevation of republicanism is exemplified in a written document, Publius contends, that both invites and limits power in a system of national and state sovereignty. The members of the state-ratifying conventions debating the proposed Constitution have the opportunity to act "from choice and reflection," Publius states in *Federalist* no. 1, and approve a document that would more effectually guarantee their individual rights and republican happiness than do the Articles of Confederation. This unprecedented republican political order will then rise above the "force and fraud" of the ordinary run of governments throughout history, because it will be built on true principles of constitutional liberty, unavailable to the ancient legislators of republican governments.

But Publius can't prove that this new Constitution is the final word on good government; his particular brand of progressivism suggests otherwise. So he's stuck with insisting in *Federalist* no. 49, quite incoherently, that his Constitution must be accorded the veneration time bestows on everything, whether it's worthy of enduring rational respect or not. All good government, it seems, depends on both reason and tradition, and it's unreasonable to believe that one can do without the other.

The American Constitution is enduringly vulnerable according to the terms the scientific Publius uses to justify it. The belief of the Founders in their superior, technical approach to politics, as Harvey Mansfield provocatively notes in *America's Constitutional Soul*, almost invites further theoretical improvements to its handiwork. An innovative system for securing political liberty might be superseded by rising generations that believe themselves possessed of higher levels of constitutional wisdom. On scientific grounds they might feel compelled, in order to pursue their happiness, to move beyond the written Constitution's original ordering principles in favor of the most recent discoveries in political science.

Many observe, with great evidence, that the Progressive movement in the administrations of Woodrow Wilson and Franklin Delano Roosevelt claimed to achieve this kind of innovation, by detaching our constitutional principles from their obsolete foundation. The progress of political science—"the light of science" in general—requires that American constitutionalism incorporate new data, techniques, and learning for it to embody the rational form of modern social, economic, and legal developments. Justice Anthony Kennedy, in his innovative form of autonomy-grounded progressivism, even says that our Founders left the word *liberty* deliberately open-ended in order that it become progressively more inclusive for each generation of Americans.

In opposition to this increasingly successful Progressive redefinition, persuasive appeals to the Constitution have been made by scholars ranging from Harry Jaffa to Randy Barnett, who ably incorporate in their constitutional interpretation the natural or scientific truths of our Declaration of Independence that continue to be self-evident. Natural-rights constitutionalism has not, in fact, been superseded by any credible advance in science. The true science of the Founding is mainly the theory of the sovereignty or irreducible identity of the free person articulated by John Locke.

One problem among many with having the "science" of our Constitution so dependent on a Lockean understanding of the self-evident Declaration is that Locke's understanding of the free or unrelational or "autonomous" person abstracts from the real, relational human virtues on which rest any devotion to constitutionalism, any loyalty to a particular way of life shared by any particular people. Barnett's or even Jaffa's understanding of

what the true political science is fails to do justice to the legislative deliberation and the statesmanship that produced our great and enduring founding documents. The unwritten constitution in all its complexity guided deliberation that produced the compromises that were our Declaration of Independence and Constitution.

To move away from the person who is free by nature to govern his own life with others through contract and consent—by either placing the person under the direction of "History" or reducing that person to part of some progressing political whole—is to move away from the truth about who we are and about the permanent limits of government in the direction of ideologies that give an opening to despotism. Real science and philosophy were displaced in the world of thought by the lie of ideology, and so the defense of the original Constitution and its framing intentions is a defense of truth and liberty.

Still, a problem remains: the true science of the Constitution doesn't evolve, but it still has a "History" in its gradual transformation of every feature of American life, guided, as Justice Kennedy says, by the court that registers verdicts each generation about which laws once deemed necessary and proper now seem needlessly oppressive. This view of the "living Constitution" is the opposite of the view that once guided big-government progressives; the movement is not toward a bigger and better state, but to the state's withering away in the direction of our natural condition as free or unencumbered individuals.

It goes without saying that the whole that is a particular human person living in light of the universal truth about the equality of all men under God is not free of tensions. Brownson, for example, says that the Catholic Church has the freedom it needs in America to fulfill its mission of evangelization. But it still remains the case that "the free exercise of religion" can clash, at times, with the imperatives of political loyalty and even those of the globalized competitive marketplace. Brownson would not be surprised to see that, in the proudly particularistic American South, some of our most ferociously devoted citizens have been our most observant Christians, but that's not to say that proud particularism still doesn't stand in tension with being dedicated to the universal political proposition that all men are created equal.

Brownson doesn't provide any fail-safe recipe for resolving the conflict today between our devotion to "nondiscrimination" and, say, his Catholic Church's defense of the sacramental understanding of marriage between a man and a woman. Libertarians and others, following the lead of Justice Kennedy, say the American idea of liberty has evolved, in accord with the intention of the Founders, toward an ever more expansive individualism; but conservatives emphasize the violence that a progressively more abstract or abstracted understanding of liberty does to our relational lives. The natural tendency of providential constitutionalism is to look for truth on both sides of such conflicts, but that's not to say that the result can be some doctrine that authoritatively resolves partisan conflict on the level of high principle.

The providential emphasis is resolution through civic deliberation that often produces compromises that capture the whole truth about each of us better than either of the parties to the compromise. We've seen how that was true with the Declaration of Independence. It was equally true with the religion clauses of the First Amendment. As Steven Smith notes in his important new book, *The Rise and Decline of American Religious Freedom*, there was no magical or grand philosophical moment produced

in the First Congress by the members that debated and drafted the religion clauses. They merely affirmed the consensus that the federal government wouldn't establish a national church, but that states would be free to regulate morals with legislation that (*gasp*) was informed by a religious argumentation and belief. It was a legislative compromise crafted by Congressman James Madison that produces a result better than the anti-ecclesiasticism that deformed even his *Memorial and Remonstrance*.

And today it's natural for us Brownsonians to be in favor of a kind of judicial restraint that curbs enthusiastic natural-rights nationalism based on the presumption of liberty and leaves as much space as possible for civic deliberation on issues as diverse as abortion and the future of our entitlements. It's especially important in defending the dialectic between universality and particularity that is the genius, Brownson explains, of American federalism to create a larger "safe space" for always-tentative legislative resolutions of issues that should be illuminated by the whole of our providential constitutionalism—and not by efforts at definitive resolution by judges spinning high principles from the single word *liberty* in the due process clauses of the Fourteenth Amendment.

Let's conclude with what might seem to be a surprising bit of praise of part of Justice Kennedy's opinion in *Obergefell*. According to Kennedy, marriage is a wondrous relational institution that transforms the lonely individual in futile pursuit of happiness in the direction of happiness itself through a loving and dignified relational life, one that promises to stand the test of time, even save us from much of the sting of death. Marriage tells a part of the truth about who each of us is, which is not found in individualistic theory. We note Kennedy's seeming dissent from the libertarian proposition that the question of what marriage is can be resolved by the theory of consent, contract, and property rights.

Marriage, from this view, is part of our providential constitution, and it owes something to both our republican and our Christian inheritances. And marriage, from this providential view, is demeaned and degraded when its content is determined by the state. We notice, although Kennedy has not yet done so, that organized religion or the church is a quite similar relational institution, one that corresponds to the free and relational truth about who we are as creatures open to the whole truth about who we are. Religion, like marriage, saves us from our individualistic isolation and self-obsession, the sting of death, and reveals the loving truth about who we are as dignified beings.

There's something Brownsonian or providential in Kennedy's opinion. But not nearly enough! He detaches the government's conferral of the privilege of dignity through marriage from all the corresponding traditional and natural responsibilities. He detaches rights from virtues, and so the loving, relational being quite mysteriously also remains a basically autonomous being. Being in love doesn't necessarily require anything of us! That's our new form of secessionism, and is no way to ground the relational institutions that are indispensable for our flourishing as beings born to know, love, and (at least as biological beings) die. ✝

1 Orestes Brownson, *The American Republic* (1865; rprt., Wilmington, DE: ISI Books, 2003), 94–95.
2 Ibid., 76.
3 Ibid., 142.
4 Orestes Brownson, "The Federal Constitution," vol. 17, *The Works of Orestes A. Brownson* (New York: AMS Press, 1966), 499.