

## ORESTES BROWNSON AND THE CONTRACT OF GOVERNMENT

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*Orestes Brownson's doubts about the social contract theory expressed in America's founding documents have been cited by some Catholic scholars against the legitimacy of The American Republic. Did Brownson reject the American experiment as an atheistic usurpation of legitimate authority—and if so, was he justified? This paper considers Brownson's critique of democracy in The American Republic in the context of his other writings. Brownson's organic vision of American politics, derived from Hegel, is of lasting value. But Brownson's attack on social contract theory ultimately founders because of its failure to distinguish the "contract of society" from the "contract of government."*

Throughout his career as a nineteenth-century public intellectual, Orestes A. Brownson was convinced of the providential nature of American institutions. Prior to his 1844 conversion to Catholicism, Brownson believed that "had not Jesus lived, and preached, and died for man, there...[would have] been no American Revolution."<sup>1</sup> By 1856 Brownson could assert that "the first realization of the Christian republic seems in divine providence to have been reserved for our New World."<sup>2</sup> Catholics would have a special role in "the glorious work of sustaining American civilization," becoming "the Americans of the Americans."<sup>3</sup> In Brownson's 1865 *magnum opus*, *The American Republic*, we learn that

the United States, or the American republic, has a mission, and is chosen of God for the realization of a great idea....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....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.<sup>4</sup>

The American republic reflects divine truth not by creating a uniformly Catholic society, but by conforming "the state to the order of reality, or so to speak, to the divine idea in creation."<sup>5</sup> But Catholics are in a better position to appreciate its virtues, because they can easily

recognize that its dialectical structure corresponds with metaphysical realities like the inner life of the Trinity.<sup>6</sup>

At first, the American Civil War convinced Brownson that America was “in the front rank of the grand army of civilization”<sup>7</sup>; the United States enjoyed a providential cultural hegemony.<sup>8</sup> Brownson urged Americans to “yield” to their world-historical destiny.<sup>9</sup> As Reconstruction progressed, however, he became bitter at Gilded Age corruption<sup>10</sup> and creeping centralization of government. After the Civil War destroyed state power, Brownson reflected bitterly in 1874, “the federal government became a consolidated republic, or centralized democracy, ‘one and indivisible.’”<sup>11</sup> Brownson had long realized that Americans’ individualism made them hostile to Catholicism. He criticized his friend Fr. Isaac Hecker in 1857 for believing that Americans would prove easy pickings for Catholic missionaries.<sup>12</sup> “There is no trait in the American character as practically developed that is not more or less hostile to Catholicity. Our people are imbued with a spirit of independence, an aversion to authority, a pride, an overweening conceit.”<sup>13</sup> “So far are Catholics from converting the country, they cannot hold their own.”<sup>14</sup> By 1873 Brownson believed that Americans’ “religiousness seems wellnigh to have become extinct.”<sup>15</sup> He went so far as to tell Hecker that Catholicism and democracy were “as mutually antagonistic as...Christ and Satan.”<sup>16</sup> The only hope for American society, albeit a dim one, was further Catholic evangelization.<sup>17</sup> “It is only in a thoroughly Catholic community that you have or can have any adequate guaranty of wise and just authority on the one hand, and of true and orderly liberty on the other.”<sup>18</sup>

Yet even in the disillusionment of his last years, Brownson could affirm that “I believed then [before Jacksonian democracy took over] and believe now that no purer government, indeed, no better government, existed under heaven.”<sup>19</sup> In 1873 Brownson wrote that

the American constitution is not founded on political atheism, but recognizes the rights of man, and, therefore, the rights of God...Something of Christian tradition lives among us and is kept alive by the common law and the judicial department of government.<sup>20</sup>

Thus, Brownson employed his pen in the defense of the original, providential American constitution until his dying day in 1876. Yet his more severe statements about democratic America may well give the impression that Brownson rejected the American system entirely. Brownson’s lifelong hostility to the notion of a social contract,

especially, may provoke misunderstanding. Did Brownson think that the American experiment was fatally flawed because of the Founding Fathers' reliance on social contract theory? By reconsidering Brownson's metaphysical, dialectical model of American society, as well as his view of social contract theory, I hope to prevent misreadings of Brownson's broader view of the American republic.

Brownson's dialectical vision of American society began as early as 1837; his "Society for Christian Union and Progress" or "Church of the Future" was supposed to effect the dialectical union of Catholic spirituality and Protestant materialism.<sup>21</sup> Soon, Brownson embraced the insight of Pierre Leroux that "man lives and can live only by communion with what is not himself."<sup>22</sup> Leroux propelled Brownson out of Transcendentalist solipsism and into the realization that the individual could only develop through a direct encounter with objective reality—a crucial milestone in Brownson's journey to Catholicism. By 1843 Brownson can state that

Man is an idea: his destiny is to actualize himself in individuals; the conditions of this actualization are expressed in one word, COMMUNION—communion with his kind, with nature, and with God; and the conditions of this communion are expressed also in one word, FREEDOM.<sup>23</sup>

Numerous writers have explained Brownson's debt to Leroux and other European thinkers including Victor Cousin, Vincenzo Gioberti, Heinrich Heine, and the Comte de Saint-Simon. In this passage, however, we see an obvious debt to G.W.F. Hegel—a debt which Robert Moffit was the first to explore adequately. By calling man an "idea," Brownson invokes Hegel's familiar triad of Idea, Nature, and Spirit.<sup>24</sup> Here Brownson flirts with the Hegelian notion—which he will later reject—that humanity is the actualization of God in the historical order.<sup>25</sup> For Hegel, the Absolute Idea—God—manifests itself through nature, and then, by entering human consciousness, returns to itself as Spirit.<sup>26</sup> Hegel's view clearly leads to pantheism<sup>27</sup> and thus suppresses the free will that Brownson is trying to defend. Brownson rejects Hegel's pantheism and latent Gnosticism,<sup>28</sup> but the telltale Hegelian triads recur often in his own thought. In 1856, for example, Brownson identified the three elements of society as "authority, liberty, and religion."<sup>29</sup> The state, the individual, and the Church are all vital to the constitution, and the Church represents the dialectical factor that can synthesize the state and the individual into a harmonious whole.<sup>30</sup> In general, Moffit explains, Brownson saw an epistemological "triplicity" of subject, object, and

their relation; in ontology, Brownson identified a triad of the ideal, the empirical, and their relation.<sup>31</sup>

Brownson always believed that political realities could not be separated from metaphysics; only “the acute intellects that frame lyceum constitutions”<sup>32</sup> would attempt to make the distinction. But Brownson’s attempt to harmonize politics and theology was hamstrung after 1837 by his allegiance to John C. Calhoun, who believed the origin of politics lay in human nature, not in metaphysics.<sup>33</sup> Brownson’s sympathy with labor led him to join the Democratic Party after the Panic of 1837 convinced him that major social reform was necessary. Brownson quickly realized that the Democratic Party’s only hope was an alliance of Northern democrats and Southern slave-holders against the plutocracy.<sup>34</sup> Thus, he embraced Calhoun’s theory of the “concurrent majority,”<sup>35</sup> in which a single state could veto or nullify an obnoxious federal law.<sup>36</sup> This type of antagonism of elements within society might have suited the Hegelian dialectic, but was foreign to Brownson’s version of dialectics, which is based on harmony rather than negation or contradiction.<sup>37</sup> Calhoun’s concurrent majority is also open to the objection that supplying each state with a veto power does not address social inequality at all, since each state contains diverse social classes; it represents a sectional interest, rather than a real social interest. Calhoun tried to elude the problem by arguing that although each state was internally diverse, it would achieve social unity relative to each action of the federal government that would come under its scrutiny.<sup>38</sup> Brownson’s worry that each state would split horizontally along class lines suggests that he saw the lameness of this response by Calhoun.<sup>39</sup> But during the 1840’s, Brownson had to bow to the political reality: only state sovereignty provided an effective counterpoise to the domination of the federal government by the money power. When, after the 1840 “hard-cider” election, Brownson realized the dangers of majority tyranny and distanced himself from pure democracy, this only drew him closer to Calhoun, since the states alone had enough power to check the national majority will and conserve the constitution.<sup>40</sup>

As early as 1845, Brownson realized that nullification was no longer a live political option and admitted that it had never served to prevent majority tyranny within the states themselves.<sup>41</sup> But Brownson remained a states’ rights man, he said later, because he thought the only other alternative was national consolidation.<sup>42</sup> Meanwhile, as he acquired a more profound grasp of Catholic theology, he strained toward a synthesis of metaphysics and politics. In 1853 Brownson argued that,

perfect equality of ranks and conditions is never found, is never to be expected, and is, indeed, incompatible with the very idea

of society itself....The entire universe, having its prototype in the Eternal Nature of God, in the ever-blessed Trinity, Unity in essence and distinction in persons, is hierarchically organized and governed.<sup>43</sup>

In 1856 Brownson claimed that “an original national character” was forming, making Americans “one family in the natural order, as Catholicity does in the supernatural.”<sup>44</sup> Brownson’s political philosophy could advance no farther, however, until the Southern states solved his dilemma by seceding from the Union in 1861. Brownson, whose commitment to states’ rights had to do primarily with his nationalistic desire to preserve the Constitution,<sup>45</sup> declared himself a staunch Union supporter. And upon reading John C. Hurd’s *The Law of Freedom and Bondage in the United States*, Brownson realized the way out of his impasse.<sup>46</sup> No longer would he be trapped between state sovereignty, which he now saw as a legacy of individualistic feudalism,<sup>47</sup> and centralized majority tyranny, which was merely individualism in the form of an oppressive coalition of individual wills. Instead, he would assert the organic and mystical unity of the American state, transcending all particularisms.

In 1864, Brownson announced that,

the constitution of the United States, or, as we prefer to say, the American state, is profoundly philosophical, and accords perfectly with that synthetic philosophy which we have for years defended....It is a complex state, and is founded neither on the simple idea of unity, nor on that of confederation, but on the two ideas dialectically united.<sup>48</sup>

With newfound enthusiasm, Brownson declared that the American state

is not a voluntary association....It is a real existence, not a mere abstraction; an organism, not a mere organization....They [individuals] must obey at once the law of national life, and of individual life, and have in them a national, no less than an individual element, so that every individual pertains partly to the State, and partly to himself....It is analogous to the mystery of the Church, what is called the mystic body of Christ, and, perhaps, is only a lower phase of that same mystery.<sup>49</sup>

Brownson had long before proclaimed himself a believer in the real existence of general concepts, thus coming down on the realist side in the debate against nominalism, or the idea that only individuals have a real existence.<sup>50</sup> But his states' rights position had thwarted Brownson's attempts to impose a conceptual unity on the United States as a whole. Triumphantly, in *The American Republic*, Brownson fleshed out his new constitutional doctrine, grounded in "the great, universal, and unchanging principles of the universe."<sup>51</sup>

Brownson finally emancipated himself from Calhoun's theory, arguing that "concurrent majorities" were only another version of the English system of checks and balances. The British constitution was based on the antagonism of social estates, not a real division of powers.<sup>52</sup> True statesmen should not sap the government's strength by introducing antagonisms, but rather "organize all the interests and forces of the state dialectically, so that they shall unite to add to its strength, and work together harmoniously for the common good."<sup>53</sup> Brownson states categorically, and counter-intuitively, that,

the American system...is in no sense a system of checks and balances....It does not pit section against section, the states generally against the general government, nor the general government against the state governments....The convention created no antagonistic powers; it simply divided the powers of government, and gave neither to the general government nor to the state governments all the powers of government, nor in any instance did it give to the two governments jurisdiction in the same matters. Hence each has its own sphere, in which it can move on without colliding with that of the other.<sup>54</sup>

The Founding Fathers, in allowing themselves to be governed by the structure of reality in designing the American system, established "the beginning of a new and more advanced order of civilization."<sup>55</sup>

The social contract, or the mere agreement of personal wills, was not adequate to "produce that mystic existence called a state or commonwealth."<sup>56</sup> A republic (*res publica*) or commonwealth is "government founded not on personal or private wealth, but on the public wealth, public territory, or domain."<sup>57</sup> The Romans favored territorial over personal rights by including in their Senate only those heads of households who lived within the "sacred territory"; thus, "territorial rights take the place of purely personal rights....the state is territorial, not personal...the citizen appertains to the state, not the state to the citizen."<sup>58</sup> In spite of this strong vindication of the nation as a

whole, Brownson had not abandoned his belief in the legitimate powers of the individual states. In an earlier article, he had explained that,

the sovereignty that governs with us is the sovereignty of the people, but of the people organized and existing in bodies called states. They exist as the sovereign people, or the American state, only in these states or organizations, and in these only as united as one political people; or the one political people, the political sovereign from whom all laws emanate, exists only as organized into states united.<sup>59</sup>

“The American states are all sovereign states united but, disunited, are no states at all,” Brownson wrote in *The American Republic*. “The Union is in each of the states, and each of the states is in the Union.”<sup>60</sup> This arrangement was part of America’s providential constitution. “The people are born states, and the states are born United States.”<sup>61</sup> Brownson insists on the convention’s self-identification in the preamble to the Constitution as “the people of the United States,” pointing out that the Founders chose this language instead of saying “We, the people” in general, or “We, the states.”<sup>62</sup> Indeed, the general government governs in each state, and each state governs in the general government.<sup>63</sup>

All this taken together is what Brownson (borrowing a term from Benjamin Disraeli) calls “territorial democracy,”<sup>64</sup> and in 1865 he believed that this is what the Northern armies were fighting for,<sup>65</sup> not the emancipation of the slaves<sup>66</sup> or “humanitarian despotism.”<sup>67</sup> Using a Pauline metaphor, the nation is the “body” and the states are the “members,” with an obvious priority to the overall “body”: “the life is in the body, not in the members, though the body could not exist if it had no members.”<sup>68</sup> It is important to realize, however, that by “body” Brownson does not mean the national government, but the “people of the United States.” In fact, both the national government and the state government have only delegated powers,<sup>69</sup> bestowed by the real sovereign, the people of the United States in convention.<sup>70</sup> Indeed, the “vital force” which makes each nation a living organism<sup>71</sup> does not reside in the written constitution at all, but in a prior, unwritten, providential constitution.

Is it asked, what is the constitution of the government? we answer, It is the written instrument before us. Are we asked? who made it?...we answer, the convention, or people of the United States acting through their several state organizations....In answer to the question, what is the rule of

interpretation or construction of the written constitution? We answer, The antecedent unwritten constitution, or providential constitution of the people of the United States.<sup>72</sup>

This idea of the organic constitution was inspired by the Comte de Maistre, to whom Brownson attributes the belief that constitutions are “generated, not made”; they are “the work of divine Providence....the expression of the divine will.”<sup>73</sup> Brownson holds that the unwritten constitution “is the essential and differential principle of a given people, and is generated and born with it. Hence we say constitutions are generated, not made.”<sup>74</sup> Lurking somewhere behind the influence of Maistre, however, we may discern the outlines of the Hegelian *volksgeist* or national spirit.<sup>75</sup>

I have dwelt on Brownson’s political system at some length because it tends to contradict our received knowledge about the foundations of our governments. Brownson realized that few Americans, including the Founding Fathers, would have agreed with his interpretation. He did find a quote from James Madison’s old age<sup>76</sup> which supported his theory, but even so Brownson had to admit that Madison accepted the social contract idea and believed the nation was formed when the Constitution was ratified.<sup>77</sup> The same belief had been advanced by Daniel Webster in his famous debate with Senator Hayne; according to Brownson, Webster’s failure to prove that the nation pre-existed the Constitution allowed “the subtile mind of Mr. Calhoun”<sup>78</sup> to show that the national government was only an agency of the states, which retained their sovereignty. Brownson goes to great lengths to demonstrate that the states were always already united. They had always acted under the general sovereignty of Great Britain, which passed to the United States at independence.<sup>79</sup> The states declared independence jointly and were treated as one nation by all other nations.<sup>80</sup> The individual states, which never exercised the functions of sovereign nations<sup>81</sup> (“barring a few irregularities not to be counted”<sup>82</sup>), were called “united” and not “confederated” states.<sup>83</sup> They felt the need to ask Congress for approval to draft their own constitutions.<sup>84</sup> Finally, they said their goal in adopting the federal Constitution was “to provide for a more perfect union,” which clearly implies that the union already existed.<sup>85</sup> The Articles of Confederation had failed since they did not correspond to the underlying reality of the providential national constitution.<sup>86</sup>

Even here, however, Brownson had to admit that the Founders did not really care whether the nation had pre-existed the Constitution, since they believed the American republic had come into being with the

adoption of the Constitution as a social compact.<sup>87</sup> The Fathers generally held “the now exploded doctrine of the origin of the state in the *contract social*,” even the great Adams, who in the Massachusetts constitution had defined the commonwealth as “a voluntary association or agreement of individuals.”<sup>88</sup> At this point, then, Brownson had to distinguish between the act of the Founders and their underlying theory. He had long since rejected the Declaration of Independence as a trustworthy political credo.

The declaration of independence by the congress of 1776, was a wise, just, and patriotic measure, deserving the warmest admiration and approval of every American citizen; but the principles laid down as self-evident truths in the preamble...were not only not called for as the ground of the justification of the measure, but were, to say the least, of questionable soundness.<sup>89</sup>

Based on the behavior of the states even prior to 1787, “the existence and constitution of the national sovereignty is an historical fact,”<sup>90</sup> and “the historical fact controls the law, not the law the fact.”<sup>91</sup> Brownson admits the existence of the “state of nature” prior to government as an abstraction,<sup>92</sup> but “this world is not governed by abstractions, for abstractions are nullities. Only the concrete is real, and only the real or actual has vitality or force.”<sup>93</sup> With this Burkean argument,<sup>94</sup> Brownson rejects *in toto* the Founders’ conviction that they were in fact forming a new social contract for the nation. Indeed, Brownson is dubious as to whether the Founders’ rebellion was actually justified as a resistance to tyrannical authority. He accepts the right of resistance<sup>95</sup> as originally formulated in medieval political theory, but the most he will say about American claims is that whether or not their resistance was justified, American independence became a fact when acknowledged by Britain in the peace treaty.<sup>96</sup>

We say not that every thing was done by a strictly legal authority, for we do not understand how any revolution can be effected by legal authority; but we do say that all was done constitutionally, or that what the people did they did in their constituted or organic character.<sup>97</sup>

This is the point at which Brownson hammered away. The “state of nature” idea was a myth; nowhere in history do we find people existing without some kind of government.<sup>98</sup> No government has ever been formed by contract, and the United States is no exception. In fact,

there has never been a period since the first settling of this country when we were without government. In each of the states there was, prior to the convention of the people, a government, to which the people owed allegiance, and by the authority of which the convention was called. Historically and legally considered, our present governments derive from the colonial governments, which in turn derive from the English government, through the royal charters creating them.<sup>99</sup>

Brownson tried to show that it was logically impossible for individuals or states to form a nation by contract. To say they can is like saying that body parts can join together to form a body<sup>100</sup>; but it was typical of the atheistic Enlightenment philosophy to have “effects without causes, or for things to make or create themselves.”<sup>101</sup> If representatives are to be elected to a constitutional convention, or if the people are to ratify the document, there must be procedures already in place defining who is eligible to vote, which implies a pre-existing government.<sup>102</sup> Thus the people in America who drew up and voted on the new constitutions were “the electoral people of the colonies, by virtue of the colonial charters or colonial legislation.”<sup>103</sup> The English common law, for Brownson, was always the “real ground and support of our liberties.”<sup>104</sup> Brownson went so far as to claim, counterfactually,<sup>105</sup> that the colonists never claimed their “natural rights as men,” only their common-law rights as Englishmen under the charters.<sup>106</sup> He dared to question the sacredness of the Americans’ written constitution itself:<sup>107</sup>

when we speak of the American constitution, our readers must not imagine that we mean the written instrument usually denominated the constitution. The written Constitution may sometimes be a memorandum of the real constitution, but it is never that constitution itself; and it is always a mere cobweb, save so far as it is also written on the hearts, and in the habits, the manners and customs of the people....The constitution is the living soul of the nation....You can no more write it out on parchment, and put it in your pocket, than you can the soul of man. It is no dead letter...it is a living spirit, a living power, a living providence.<sup>108</sup>

What are we to make of the very obvious disjuncture between Brownson’s views of the American government, and the beliefs of those who actually framed that government? Oliver Wolcott’s statement during the debates on independence is both emphatic and typical of the

Founders' ideas: He hoped the Americans would provide "an instance Real not implied or Ideal of a Government founded in Compact Express and Clear."<sup>109</sup> Brownson dismissed such clear statements of purpose as mere "*obiter dicta*"<sup>110</sup>; when considering the 1787 Convention, "it is necessary to distinguish between its act and its theory. Its act is law, its theory is not."<sup>111</sup> Indeed, Brownson's claim becomes more plausible when we look more closely at the actions of the Founders. They did, indeed, accept much as "given" from the era of the colonial charters, including, most vitally, the common law. Though in their rhetoric they often claimed to be in a "state of nature,"<sup>112</sup> they generally frowned on resistance to authority by individuals, as opposed to the community as a whole.<sup>113</sup> The New England town governments continued into the new dispensation,<sup>114</sup> and attempts to argue that state boundaries had lapsed with independence were ignored.<sup>115</sup> One telling incident took place in Massachusetts, where the "Berkshire Constitutionalists" refused to cooperate with the state government from 1775 until 1780, saying they were in a state of nature because no state constitution had been adopted. In response, Dr. William Whiting argued that "destruction of the bonds of government did not destroy the prior contract of society."<sup>116</sup>

This brings us to a very important point about the social contract theory. It is true that the more individualistic Enlightenment thinkers, like Hobbes and Locke,<sup>117</sup> believed in a single contract that established both society and government at once. But, as Whiting suggests, there was another widely held theory, that there were in fact two contracts, a contract of society and a separate contract of government.<sup>118</sup> Most thinkers recognized that the "state of nature" prior to the contract of society was not an historical fact, but, as Kant put it, an "idea of reason."<sup>119</sup> The "single contract" approach implies that human beings originated as completely isolated individuals, but the "two contracts" theory allowed political theorists to keep the traditional Catholic idea that men are made to live in society, even where no legitimate government exists. The idea of a dual contract also accounted for those "contracts of government" which had been made in recorded history: for example, the 1581 Dutch agreement at the time of their revolution against the Hapsburgs,<sup>120</sup> not to mention the Mayflower Compact. Examining Brownson's account of the American government in light of the "two contracts" theory, we find some remarkable similarities: "The unwritten constitution...[is] distinguished from the constitution of the government, which, whether general or particular, is the ordination of civil society itself."<sup>121</sup> "The constitution of government is the constitution by the sovereign authority of the nation of an agency or ministry for the management of its affairs."<sup>122</sup>

But Brownson's "two constitutions" theory is different from the "two contracts" theory in one crucial aspect: He does not accept the possibility of a social compact even for the constitution of government. Brownson came close to acknowledging an element of contract in the formation of government in 1864:

The constitution of civil society, or the sovereign state, is providential, and, as the illustrious Maistre maintains, generated, not made; but the constitution of the government originates in convention, and is founded in compact expressed or implied. The constitution of the government may be said to be made, but not the constitution of civil society itself.<sup>123</sup>

But in *The American Republic*, he backs away. "The constitution is two-fold: the constitution of the state or nation, and the constitution of government. The constitution of the government is, or is held to be, the work of the nation itself."<sup>124</sup> By "the nation" he does not mean "the people of the United States" coming together in a social contract. Although Brownson admits that "a nation can alter its constitution by deliberate and voluntary action,"<sup>125</sup> he refuses to place this "voluntary action" at the level of individual will. "There is no contract or mutual stipulation between the state and the government. The state, under God, is sovereign, and ordains and establishes the government, instead of making a contract, a bargain, or covenant, with it."<sup>126</sup>

Obviously, the power that solemnly "ordains and establishes," as opposed to covenanting or making a contract, is the mystic commonwealth as a whole. Brownson will not allow individual free will any role in the matter. "It is absurd to suppose that the creature creates its creator...none but a sovereign political people can ordain and establish a constitution."<sup>127</sup> Earlier in his career as a Catholic apologist, Brownson had emphasized the role of individual free will in faith and society. "I have wholly mistaken the spirit of the Church," Brownson wrote in 1857, "if an enlightened obedience...is not more grateful to her maternal heart than the blind, unreasoning, and cringing submission of those who are strangers to freedom."<sup>128</sup> The younger Brownson credited the Christian doctrine of free will as the fountainhead of social freedom.<sup>129</sup> "Human agency must have its share in every wise and just, in every *legitimate*, government,"<sup>130</sup> Brownson wrote in 1843.

If by our social arrangements, we prevent this individual from preserving, and, so to speak, acting out his individuality, we not

only prevent him from fulfilling his own individual destiny, but humanity herself from actualizing that aspect of her being, which it was the mission of this individual, in his life, to actualize....if we take enlarged views of the solidarity of the race, all individual men and women are thereby injured.<sup>131</sup>

By 1865, however, Brownson's rugged Vermont individualism had apparently vanished. The most he could manage was a dismissive wave in the direction of the individual: "Though the constitution of the people is congenial, like the constitution of an individual....it must not be supposed that it is wholly withdrawn from the action of the reason and free-will of the nation, nor from that of individual statesmen."<sup>132</sup> Society is now supreme: "it was man, the generic and reproductive man, not the isolated individual, that was created in the image and likeness of his Maker....'male and female created he them.'"<sup>133</sup>

The obvious retort is that this is only one version of the Creation story, the one given in Genesis chapter 1. Chapter 2, however, emphasizes the solitary creation of Adam (Genesis 2:7); even in Chapter 1, the full passage reads

Then God said, 'Let us make man in our image, after our likeness; and let them have dominion over the fish of the sea, and over the birds of the air, and over the cattle, and over all the earth, and over every creeping thing that creeps upon the earth.' So God created man in his own image, in the image of God he created him, male and female he created them (Genesis 1: 26-27, RSV).

As the Catholic tradition has always held, man is a social being, but he is also an individual, with certain prerogatives that pertain to his personal conscience. He also may hold dominion over nature in the form of personal property rights. Brownson accepts the rights of conscience and of property as rights of man as opposed to rights of society, and that government must protect these rights.<sup>134</sup> But he tries to use the existence of these rights as another club with which to beat social contract theory, which he sees as depending on the surrender of personal rights to society. Religion and property rights are unalienable, he writes, therefore "the only rights individuals could delegate or surrender to society...are hers already, and those which are not hers are those which cannot be delegated or surrendered."<sup>135</sup>

Here is Brownson's error. The "surrender of rights" was part of the theory of the original social contract. In a system of "two contracts,"

however, the second contract, or contract of government, involves no surrender of rights. Rather, the government is a contract designed to protect those unalienable rights, as Jefferson put it in the Declaration: “to secure these rights, Governments are instituted among men.” That the Framers of the Constitution shared this view is suggested by Hamilton’s remark in *Federalist* 84, arguing against the need for a Bill of Rights: “Here, in strictness, the people surrender nothing; and as they retain everything they have no need of particular reservations.”<sup>136</sup> If governments are indeed instituted to secure natural rights, and individual people are the subjects of those rights, then Brownson is wrong to say that citizens cannot will to create a contract of government.

From the historian’s point of view, it is one thing to say that men may at times act without fully reflecting on their motives, or that their actions may have unintended results. It is quite another to dismiss entirely the practically unanimous opinion of an entire generation of men. At some point, unless we are to adopt a Marxist viewpoint that belittles the role of the “superstructure,” we must admit that “historical consciousness” becomes “historical fact.” If all the Founders believed that they were establishing a social contract of some sort—which we can now identify as a contract of government, not an original contract of society—in order to protect individual rights, we could hardly accept the validity of the republic they created if we thought their intentions were completely delusional. Another factor tends to blur Brownson’s sharp distinction between organic tradition and social contract. As we have seen, Brownson relies greatly on the colonial charters as an organic link to the English common law. But those charters were also, in large part, contracts, defining the rights and duties of the monarch and the proprietor or the people. For example, the Maryland charter had a clause in which the Crown promised never to levy taxes in the colony.<sup>137</sup> Although Brownson’s appeal to American tradition is certainly valid, we must remember that contract was inscribed in this tradition from the beginning.

Brownson’s theory not only fell afoul of the Founders by refusing to admit the contract of government, it also, I believe, falls somewhat short of Catholic social teaching on the subject. Since Brownson was first and foremost a religious thinker, we could hardly do justice to his own preoccupations without considering this question. Brownson admitted that all the great political teachers of the Church including Augustine, Gregory the Great, Thomas Aquinas, Bellarmine, and Suarez “hold that princes derive their power from God through the people, or that the people, though not the source, are the medium of all political authority.”<sup>138</sup> But he hastened, in *The American Republic*, to hedge this statement with an important qualification.

The moral theologians of the church have generally spoken of government as a social pact or compact, and explained the reciprocal rights and obligations of subjects and rulers by the general law of contracts; but they have never held that government originates in a voluntary agreement between the people and their rulers, or between the several individuals composing the community....They have simply meant, by the social compact, the mutual relations and reciprocal rights and duties of princes and their subjects....The compact itself they held was not voluntarily formed by the people themselves, either individually or collectively, but was imposed by God, either immediately, or mediately through the law of nature.<sup>139</sup>

Brownson is here trying to correct a common misapprehension about the Christian doctrine of “popular sovereignty.” He is right to insist that it does not mean “majority rule,” and that it does involve adherence to the natural law. But Brownson goes too far when he says that in the Catholic political tradition, the social compact is merely “imposed by God” without reference to the free will of the people. Indeed, it is hard to imagine how the natural law could possibly work in this fashion. Brownson is quite right to emphasize that the natural law is divine law,<sup>140</sup> but it is not divine positive law. It is a collection of impulses which God has implanted in man, which are harmonized, in the individual and in society, by overarching ethical precepts like the Golden Rule. Brownson writes as if the only two options were to accept the natural law or reject it, but in fact the implementation of natural law, especially in the field of politics, requires a certain amount of dialogue—of communion, if you will. The “compact of government” is another name for this process of adjustment that must occur whenever the natural law is applied in the real world to create a government. In traditional Catholic teaching, when there is a vacuum of political authority, sovereignty reverts to the people, who—acting on behalf of God as a second cause—then establish a new regime.<sup>141</sup> For this reason, Suarez was able to argue that although individuals create the new contract of government, the ruler does not derive his power from the people as individuals, but from God.<sup>142</sup> It is important that the sovereign people act according to natural law, and consult the universal reason of mankind,<sup>143</sup> but the decision they make is their personal and freely-willed choice.<sup>144</sup>

Having adopted a Hegelian dialectical approach to the State, Brownson enthusiastically jumped on the bandwagon of the *volksgeist*.<sup>145</sup> But Brownson could not fully adopt Hegel’s view because

of its implicit pantheism. He was able to accept the collectivist side of Hegel's dialectic, but had to reject the individual side, because it made the individual God.<sup>146</sup> Nor, in his own thought, did Brownson have many resources with which to shore up the individual. Most thinkers in the natural law tradition, beginning with St. Thomas, were empiricists; thus, it was easy for them to offer individuals access to the natural law—they only had to interact with physical reality (with a little help from grace). But Brownson rejected empiricism; his own philosophical outlook was a sort of “ontological realism,” in which individuals are able to intuit the existence of Absolute Being. This approach had the potential to empower individuals—indeed, it bears more than a passing resemblance to Transcendentalism—but precisely for that reason, Brownson could not go too far in affirming it. His philosophical master, Vincenzo Gioberti, was arraigned at Rome and several of his propositions were condemned under the rubric of “ontologism,” the idea that the individual could directly encounter the divine essence.<sup>147</sup> Thwarted both internally and externally, Brownson does not really have a way to provide the individual with access to the natural law, except through Magisterial teaching and the *jus gentium* or law of nations. Already in *The American Republic*, Brownson subjects the natural law to national law.

The nation holds not from the law, but the law holds from the nation. Doubtless the courts of every civilized nation recognize and apply both the law of nature and the law of nations, but only on the ground that they are included, or are presumed to be included, in the national law, or jurisprudence.<sup>148</sup>

This statement must be highly problematic from the Catholic point of view. Natural law must remain binding on the individual conscience, even where the law of a particular nation fails to recognize it.

In Brownson's theory, the individual has little access to, and consequently little recourse to, the natural law except as mediated through the Magisterium<sup>149</sup> and the positive law of a particular nation. As a result, Brownson's social dialectic hops along on one collectivist leg. As a very young man, Brownson had for a time embraced Calvinism, and his later writings are filled with fervent renunciation of the intellectual tyranny of that deterministic system.<sup>150</sup> “The Calvinistic spirit has no confidence in moral power; and conscious of its lack of the grace of God, it places all its reliance on the secular government.”<sup>151</sup> Yet Brownson, it must be confessed, had a certain attraction to Calvinist theocracy that never left him. After he left Calvinism, but before his conversion to Catholicism, Brownson had called for “one uniform

theocratico-democratic commonwealth.”<sup>152</sup> In his old age, he absorbed natural law into Divine command, and one cannot help but notice the recurring theme.

I would attribute the distortion in Brownson’s political theory not to intellectual carelessness on his part, but rather to his overwhelming sense of moral responsibility for the nation. Brownson took his role as a journalist very seriously; as an intellectual, he was always a “public” intellectual. Brownson remembered vividly the 1840 election, when he was widely blamed for weakening the Democratic effort with his incendiary essay “The Laboring Classes.” During the Civil War, he visited the White House to lobby President Lincoln on behalf of emancipation. Having done much to abet the Calhoun nullification doctrine, and lost two sons in the war that resulted, Brownson wanted to drive the last nail into the coffin of secession. He would no longer allow any element into his political theory—no unruly individual or collective wills—which might destabilize the constitutional system. Primarily, however, Brownson saw a nation in which individualism had run rampant. All communal identity and common assumptions were rapidly being sacrificed to the religion of “looking out for number one.” Brownson wanted to provide a theoretical basis for organic, communal, traditional, and objective reality against the “me first” culture. And this is a lesson which we would do well to heed, even if, in good conscience, we cannot go quite so far toward the suppression of the individual as Brownson did. There is no need to reject Brownson’s insights, but we should build on them by recognizing the validity of the contract of government as a legitimate development of Catholic political theory, which has always held that when a tyrant abdicates his authority, sovereignty reverts to the people. The concept of a governmental contract provides a useful account of how the people can reestablish a just government when there is a vacuum of legitimate authority.

Orestes Brownson, was beyond a doubt, the greatest American Catholic thinker. His insight into the structure of American government was unmatched. If there is a blind spot in his theory of American society, this should not discourage us from using his genius to help correct the deficiencies in our political system and bring our nation more into line with transcendent ethical norms. But it should make us wary of attempts to misuse his ideas. Most especially, Brownson’s thought should not be employed in any effort to deny the legitimacy of the American Republic which he loved so well.

## Notes

1. Thomas R. Ryan, C.P.P.S. *Orestes A. Brownson: A Definitive Biography* (Huntington, IN: Our Sunday Visitor, 1976), 220.
2. Henry F. Brownson, ed. *The Works of Orestes A. Brownson* [hereinafter *Works*] (New York: AMS Press, 1966) XII, 8.
3. *Works* V, 199.
4. *Works* XVIII, 8.
5. *Ibid.*, 209.
6. *Ibid.*, 192.
7. *Works* XVII, 248.
8. *Works* XVIII, 220.
9. *Ibid.*, 198.
10. *Ibid.*, 240.
11. *Ibid.*, 257.
12. Patrick Allitt, *Catholic Converts: British and American Intellectuals Turn to Rome* (Ithaca, NY: Cornell University Press, 1997), 92.
13. Gregory S. Butler, *In Search of the American Spirit: The Political Thought of Orestes Brownson* (Carbondale, IL: Southern Illinois University Press, 1992), 215.
14. Hugh Marshall, S.T. *Orestes Brownson and the American Republic: An Historical Perspective* (Washington: Catholic University of America Press, 1971), 284.
15. Richard M. Leliaert, "The Religious Significance of Democracy in the Thought of Orestes A. Brownson," *Review of Politics* 38:1 (January, 1976), 24.
16. Allitt, 99-100.
17. *Works* XVIII, 267.
18. *Ibid.*, 264.
19. *Ibid.*, 240.
20. *Ibid.*, 226.
21. *Works* V, 86-87.
22. *Ibid.*, 129.
23. *Works* XV, 363.
24. Robert E. Moffit, *Metaphysics and Constitutionalism: The Political Theory of Orestes Brownson* (Ph.D. dissertation, University of Arizona, 1975), 1:218.
25. *Ibid.*, 214.
26. Frederick Copleston, S.J. *A History of Philosophy, Volume 7: Part I, Fichte to Hegel* (Garden City, NY: Image Books, 1965), 208.
27. Moffit, 1:229.
28. *Ibid.*, 224-225.

29. *Works* XII, 4.
30. Marshall, 102-103.
31. Moffit, I:160.
32. *Works* XV, 355.
33. *Ibid.*, 362.
34. *Ibid.*, 131.
35. see, for example, *Ibid.*, 241.
36. John C. Calhoun, *A Disquisition on Government* (New York: Poli Sci Classics, 1947), 25, 28, 35.
37. Moffit, I:232.
38. Calhoun, 60.
39. *Works* XV, 252, 255-256.
40. In 1840, the Whig Party shed its effete image by nominating a political novice, General William Henry Harrison, and distributing hard cider at election rallies. This appeal to the masses worked, dashing Brownson's almost messianic hopes for a definitive Democratic mandate in that particular election [Leliaert, 10-11]. Indeed, Brownson's 1840 article "The Laboring Classes," which called for the abolition of inheritance among other radical reforms, was widely blamed for turning the populace against Democratic President Martin Van Buren [Marshall, 25]. At his inaugural, Harrison proclaimed that government rests on the majority will "which a breath of the majority has made and has unmade" [Ryan, 194]. One wonders whether Brownson saw Harrison's death a month later, from a cold he caught at the inaugural, as poetic justice. In any case, Brownson spoke throughout his life about the 1840 election in terms reminiscent of the Fall of Man. "Since then," he wrote in 1843, "we have pretty much ceased to speak of, or to confide in, 'the intelligence of the people'" [*Works* XV, 259]. Brownson recalled in 1873 that 1840 served "to break the idol I had worshipped, and shook to its foundation my belief in the divinity of the people" [*Works* XVIII, 224].
41. *Works* X, 9.
42. *Works* XVII, 584.
43. William J. Atto, *Visions of Order: Orestes Brownson and American Society* (Ph.D. dissertation, University of Arkansas, 2000), 110.
44. Marshall, 93.
45. *Ibid.*, 35.
46. Paul R. Conroy, "The Rôle of the American Constitution in the Political Philosophy of Orestes A. Brownson," *Catholic Historical Review* 35:3 (October, 1939), 279; *Works* XVIII, 3.
47. see, for example *Works* XVIII, 85.
48. *Works* XVII, 499.

49. *Ibid.*, 501.
50. *Works* XV, 364.
51. *Works* XVIII, 4.
52. *Ibid.*, 130.
53. *Ibid.*, 87.
54. *Ibid.*, 131.
55. *Ibid.*, 140.
56. *Ibid.*, 39.
57. *Ibid.*, 21-22.
58. *Ibid.*, 20.
59. *Works* XVII, 480.
60. *Works* XVIII, 114.
61. *Ibid.*, 144.
62. *Ibid.*, 115.
63. *Works* XVII, 497. That this is a rather difficult concept to grasp only shows the justice of Brownson's remark that Americans tend to live "the irreflective life of the child" [*Works* XVIII, 7] when it comes to their political system. As an example of how each state governs in the nation, one might consider that it makes laws that potentially affect any other American citizen who happens to enter its boundaries [Charles R. McCarthy, C.S.P., *The Political Philosophy of Orestes A. Brownson* (Ph.D. dissertation, University of Toronto, 1962), 201]. As this author once painfully discovered, four-lane rural roads in Georgia have a 55 mile per hour speed limit, and the visitor from more liberal Tennessee must conform to Georgia's laws; indeed, as a member of the national "convention," that Tennessean has indirectly authorized Georgia to set its own traffic laws (with the proviso that the federal courts may handle disagreements resulting from any law of another state which may affect my own state's sovereignty, e.g. the Massachusetts gay marriage law). Another example, of course, is the more obvious fact of representation by states in Congress and the Electoral College.
64. *Works* XVIII, 178.
65. *Ibid.*, 181.
66. "We have never urged emancipation on the ground of the natural equality of all men—never on the ground that slavery is a moral wrong, a crime against society, and a sin against God...we have demanded emancipation only under the war power as a military necessity...It is true, in attempting to reconcile the public to the measure, and to persuade the military authority to adopt it...we have urged the natural equality of all men, the detestable character of slavery itself, and all the considerations of humanity bearing on the subject—not as giving the right to emancipate, but as a reason why the government should not

hesitate to exercise its belligerent right to emancipate” [*Works* XVII, 581-582].

67. *Ibid.*, 184.

68. *Ibid.*, 115; see also 127.

69. *Ibid.*, 132.

70. see *Works* XV, 332.

71. *Ibid.*, 374.

72. *Works* XVII, 495.

73. *Works* XV, 560.

74. *Works* XVII, 493. For a discussion see Butler, 179.

75. Moffit, I:212. Hegel wrote that “a constitution *develops* out of the spirit of a nation *only* in identity with this spirit’s own development....It is the indwelling spirit and the history of the nation (and, indeed, the history is simply the history of this spirit) by which constitutions have been and are made” [Copleston, 257].

76. “the error, not uncommon, must be avoided of viewing it through the medium either of a consolidated government or of a confederated government, whilst it is neither the one nor the other, but a mixture of both....It was formed by the states; that is, by the people in each of the states, acting in their highest sovereign capacity, and formed subsequently by the same authority which formed the state constitution” [*Works* XVIII, 118-119].

77. *Ibid.*, 119.

78. *Ibid.*, 124-125.

79. *Works* XVII, 492.

80. *Ibid.*, 573.

81. *Works* XVIII, 109.

82. *Works* XVII, 485.

83. *Works* XVIII, 112.

84. *Ibid.*, 117.

85. *Ibid.*, 120.

86. *Ibid.*, 113.

87. *Works* XVII, 487.

88. *Works* XVIII, 486.

89. *Works* XV, 329.

90. *Works* XVIII, 568.

91. *Ibid.*, 567.

92. *Ibid.*, 30.

93. *Ibid.*, 81.

94. “I cannot stand forward, and give praise or blame to any thing which relates to human actions, and human concerns, on a simple view of the object, as it stands stripped of every relation, in all the nakedness and

solitude of metaphysical abstraction” [Edmund Burke, *Reflections on the Revolution in France*, J.C.D. Clark, ed. (Stanford, CA: Stanford University Press, 2001)].

95. *Works* XV, 348-349; *Works* XVII, 587.

96. *Works* XVIII, 112-113.

97. *Works* XVII, 491.

98. *Works* XV, 311.

99. *Ibid.*, 312.

100. Leliaert, 21.

101. *Works* XVII, 561.

102. *Ibid.*, 570.

103. *Ibid.*, 572.

104. Marshall, 51.

105. As one example among many, Jedidiah Morse said that oppressive actions on the part of Great Britain “would be inconsistent with the British constitution and an infringement on [Americans’] natural and essential rights” [quoted in Lester H. Cohen, “The American Revolution and Natural Law Theory,” *Journal of the History of Ideas* 39:3 (July-September 1978), 499]. Morse’s comment is typical in that it invokes both common law rights and the natural rights that underlay them.

106. *Works* XVIII, 109-110.

107. see Conroy, 275.

108. *Works* XV, 561. In the same article, Brownson attributes the idolization of written constitutions to “demoniacal agency” [*Ibid.*, 560].

109. Thad W. Tate, “The Social Contract in America, 1774-1787,” *The William and Mary Quarterly* 3rd series, 22:3 (July, 1965), 386.

110. *Works* XVIII, 125.

111. *Ibid.*, 121.

112. Tate, 376.

113. *Ibid.*, 378.

114. *Ibid.*, 379.

115. *Ibid.*, 389-391.

116. *Ibid.*, 387-388.

117. In an excellent study called *God, Locke, and Equality* (Cambridge, UK: Cambridge University Press, 2002), Jeremy Waldron establishes that John Locke’s ideas of citizenship and equality cannot be separated from the dignity of the human person, made in the image and likeness of God, who is in fact God’s servant and God’s property. That is why Jefferson, following Locke, saw rights as “unalienable”—we cannot alienate them, because they belong to God. Locke’s philosophy would not be sufficient to build a church on, but as a means of protecting the natural law in a pluralistic society like ours, it may still prove useful.

However, the centrality of Locke to the Founders has been much exaggerated. The Scottish Common Sense philosophy was equally influential in interpreting natural law for the American Founders. This was an attempt to reconcile Christian ethics with the new science, by positing a common “moral sense” which gives individuals access to the Divine and natural moral law. This school of thought had two wings. The more optimistic and enthusiastic group was led by Francis Hutcheson and Thomas Reid, who had a particularly great influence on Thomas Jefferson. The more realistic and skeptical side of the Scottish philosophy had its spokesman in David Hume, who was admired by Federalists like John Adams and Alexander Hamilton. But taken all together, the Scottish Enlightenment retained the idea of a Divine personal lawgiver, something many French Enlightenment figures threw out in favor of a materialistic, pantheistic conception [see Margaret C. Jacob, *The Radical Enlightenment: Pantheists, Freemasons and Republicans* (London: George Allen and Unwin,) 1981, 86, 113].

The Scottish Enlightenment grew out of, and effectively destroyed, Calvinism as a living force. By freeing the individual conscience from determinism, post-Calvinist thought unleashed massive social energies in America. Especially after the Great Awakening of the mid-eighteenth century, people began to experience the power of their freely willed actions in shaping the external world [see Mark A. Noll, *Princeton and the Republic, 1768-1822* (Princeton, NJ: Princeton University Press, 1989), 70]. From the theological point of view, this brought Presbyterianism and Congregationalism much closer to Catholic teaching. Calvinism had emphasized the will of God; the Common Sense thinkers focused on the reason of God. In Calvinism, grace overcomes nature; in Common Sense, grace builds upon nature.

Giving individuals unmediated access to the Divine did have the effect of pushing natural law in a still more individualistic direction. Wisely, however, the Founders opted to channel the newfound power of the individual through a complex framework of checks and balances. And this is where the real intellectual forebear of our federal system comes in—the Baron de Montesquieu, who died in the Catholic Church. In 1984, Prof. Donald Lutz of the University of Houston published a study entitled “The Relative Influence of European Writers on Late Eighteenth-Century American Political Thought” [*American Political Science Review* 78:1 (March, 1984), 189-197] which showed that the Founders quoted Montesquieu more than any other source, except, of course, the Bible. Locke was well behind Montesquieu on Lutz’s list, for obvious reasons. Locke’s emphasis on the primacy of the legislature had little in common with the structure we ended up with, a limited and

mixed government with a divided and tiered sovereignty. Montesquieu, on the other hand, was the great theorist of mixed government.

118. for the two contracts theory, see Otto Gierke, *Natural Law and the Theory of Society*, 1500 to 1800, Ernest Barker, trans. (Boston: Beacon Press, 1957), 39, 44, 48; also J.W. Gough, *The Social Contract: A Critical Study of Its Development*, 2nd edition (Oxford: Clarendon Press, 1957), 3, 42, 122. According to Gough, one of the earliest examples of a dual contract theory is found in a text by Aeneas Piccolomini, later Pope Pius II (reigned 1458-1464) [Gough, 44].

119. Gierke, 109.

120. Gough, 65.

121. *Works* XVIII, 126.

122. *Ibid.*, 92.

123. *Works* XVII, 496.

124. *Works* XVIII, 74.

125. *Ibid.*, 75.

126. *Ibid.*, 99.

127. *Works* XVII, 489.

128. *Works* V. 196.

129. *Works* XII, 7.

130. *Works* XV, 393.

131. *Ibid.*, 369.

132. *Works* XVIII, 88.

133. *Ibid.*, 41.

134. *Ibid.*, 46.

135. *Ibid.*, 34.

136. Clinton Rossiter, ed. *The Federalist Papers* (New York: Mentor, 1999), 481.

137. See Scott McDermott, *Charles Carroll of Carrollton: Faithful Revolutionary* (New York: Scepter Publishers, 2002), 21.

138. *Works* XVIII, 61-62.

139. *Ibid.*, 27.

140. *Ibid.*, 53-54, 266; Ryan, 345.

141. see McDermott, 16-17.

142. Gierke, 46, 51, 105.

143. McCarthy, 128.

144. The Magisterium since Brownson's day has increasingly emphasized the personal element in political participation. "Those who belong to a political community, although organically united among themselves as a people, maintain an irrepressible *autonomy* at the level of personal existence and the goals to be pursued" [Pontifical Council for Justice and Peace, *Compendium of the Social Doctrine of the Church*

(Washington: United States Conference of Catholic Bishops, 2004)], no. 385, p. 166.

145. see Copleston, 263. To be fair, Brownson did not see the organic national existence in terms of race or ethnicity: “no political rights are founded on the law of nature on relations of blood, kindred, or family” [*Works* XVIII, 106]. However, he continually harped on the nation as a *territorial* reality.

146. see Moffit, I:227-228.

147. For a fuller treatment of the issue of ontologism, which lies well outside the scope of this essay, see Armand A. Maurer, “Orestes Brownson: Philosopher of Freedom” in Leonard Gilhooley, ed. *No Divided Allegiance: Essays in Brownson’s Thought* (New York: Fordham University Press, 1980), 95-97; and A. Robert Caponigri, “European Influences on the Thought of Orestes Brownson: Pierre Leroux and Vincenzo Gioberti,” in *Ibid.*, 111-121.

148. *Works* XVIII, 107. By 1873, Brownson had largely ceased referring to the natural law and spoke almost exclusively of the *jus gentium* [*Ibid.*, 230, 231, 243]. This “law of nations” was supposed to have been passed down by primitive revelation from the days of Adam and Eve. Primitive revelation escapes some of the epistemological difficulties Brownson faced in regard to the natural law, but is open to other objections which are too obvious to list here.

149. Of course, the Magisterium is the authentic interpreter of natural law. But this does not mean that natural law fails to bind in a particular situation on which the Magisterium has not issued a pronouncement. Indeed, on the principle of *de notoriis non judicatur* [see Ryan, 239], it is not necessary for the Magisterium to endorse explicitly all actions that may be in keeping with natural law, or to forbid all actions that are clearly contrary to its principles. For sound pragmatic reasons, Pope Pius XII did not issue a call for armed insurrection against the Nazi regime in Germany; but surely nobody would argue that those who conspired against Hitler lacked justification. Individuals are empowered to interpret natural law according to right reason, where no positive ecclesial command has been issued.

150. E.g. *Ibid.*, 31; Schlesinger, 146; *Works* V, 16.

151. *Works* XII, 28.

152. *Works* XV, 361.

