**SECESSION AND THE MODERN STATE**

Donald W. Livingston, PhD.  
Department of Philosophy  
Emory University  
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*Secession filled me with hope, not as the destruction but as the redemption of Democracy....  
(Lord Acton to Robert E. Lee, November 4, 1866)*

The idea of a modern unitary state goes back to the philosophers of the seventeenth century, but its first appearance in the world was the work of the French Revolution. The unitary French republic has since been the model for would-be modern states throughout the world, including the United States after *1865.*The modern state was said to be one and indivisible, and so was conceived from the start as a state from which secession was impossible. From 1790 until 1990 there were only a few cases of successful peaceful secession. Belgium seceded from the Netherlands in 1830; Norway from Sweden in 1905; and Singapore from the Malaysian Federation in 1965. All were negotiated peacefully. But suddenly after 1990, the number of successful peaceful secessions surged. Fifteen republics seceded from the Soviet Union. A Czech and a Slovak republic were created out of Czechoslovakia through secession. With the exception of the secession of Eritrea from Ethiopia, all the successful secessions since 1990 occurred without violent resistance from the respective central governments. This was true even of Yugoslavia. There was only half-hearted resistance to the secession of Slovenia and Croatia from the central government, then dominated by Serbia. the present conflict is over the Serbian enclaves in Bosnia and Croatia who are not allowed to secede and join Serbia.

It is paradoxical and demands explanation why peaceful secession by referendum should have occurred in so-called totalitarian communist states whereas in western liberal states, during a period of two hundred years (1790-1990), there have been only two cases of peaceful secession, but a great number of cases in which secession attempts were brutally defeated by the central government. Unhappily the Confederacy did not have the Communist Party under Gorbachev to negotiate with; and mercifully the Soviet Republics did not have to negotiate with the Republican Party under Lincoln. As far as I can determine, the United States since 1865has initially resisted or failed to support every secession attempt in the world except the secession of Panama from Columbia which it engineered as a means of constructing the Panama Canal. The United States was among the last to recognize the seceding states of the Soviet Union. It did not recognize the secession of Slovenia and Croatia (as had a number of European states), and it persisted, long after it was unreasonable, to think of Yugoslavia as a unitary state. A top Croatian leader, responding to Secretary of State James Baker's arrogant and dark warning against secession, observed that Baker could not free himself from the "American tradition of demonizing the phenomenon of secession. He didn't have an ear for our proposal to establish a union of sovereign states."1This should not be surprising from a regime whose founding father is not the secessionist George Washington or Thomas Jefferson but the violent suppressor of secession Abraham Lincoln.

Today there are secession and devolution movements of all kinds occurring throughout the world. Indeed, political economists estimate that no more than twenty-five states in the United Nations are free of secessionist or territorial disputes.2And there are also many secession movements that stop short of claiming national sovereignty. The Eskimos and Cree Indians of Northern Quebec have gained new rights and territory. In January of 1992, twenty-seven northern counties of California introduced into the State legislature a plan to secede from California and form the fifty-first state. Staten Island recently voted to secede from New York, and Coconut Grove voted to secede from Miami.

How are we to understand the deeper philosophical implications of this new and apparently growing respect for secession and devolution? Richard Weaver wrote a famous book entitled*Ideas Have Consequences,*and indeed they do. In what follows I would like to examine the consequences of an idea framed by the great political philosophers of the modern era; such thinkers as Hobbes, Locke, Rousseau, Hegel, Mill, and Marx. The idea in question is that of a modern unitary state. For two centuries we have been living out the consequences of that idea. And if I am not mistaken, we are witnessing, if not the disintegration of the modern state, at least the most radical challenge to it ever posed.

But we cannot hope to understand the modern state unless we take a look at the sort of polity it sought to overturn and with which it has been, and still is, in a condition of constant struggle. I shall call this anti-modern form of political association a*federative polity.*

The English philosopher Thomas Hobbes, in his masterpiece *Leviathan (1651),*gives us the first account of the logic of the modern state. Marx was correct when he said that Hobbes is the father of us all. For Hobbes the state is composed of individuals who are thought of as having first existed in a non-moral and non-political state of nature where they were free to do anything they desired (including the greatest enormities) restrained only by the prudence of self-interest (which is the morality of a gang of thieves and murderers) and not sufficient to secure long term peace and security. This being an intolerable state, individuals contract with each other to form a sovereign political office that has the authority to rule over the actions of individuals. It makes no difference to Hobbes whether the state has the form of monarchy, aristocracy, or democracy. What is important is the *office of sovereignty*and that sovereignty be conceived as indivisible, irresistible, and infallible. Sovereignty must have these properties otherwise there could be two sovereign voices with no umpire above them, and so a return to the wild anarchy of the state of nature.

Now although the Hobbesian state is authoritarian, it is not totalitarian as some have thought. The Hobbesian sovereign functions like an umpire; and like an umpire his task is to *rule*not to give commands about substantial goods. Indeed Hobbes limits the sovereign's ability to slip into the corrupt mode of command by limiting his revenue. The sovereign office is funded by nothing other than an excise tax. The bloated bureaucracies of modern states with their huge public debts and vast revenues would have been unthinkable to Hobbes. Nevertheless, the Hobbesian theory of the state helped pave the way for the clumsy, inefficient and destructive leviathans that have ploughed the seas of the political world for the last two centuries. The feature that assisted in this consequence is the doctrine that sovereignty is indivisible, irresistible, and infallible.

But there is a further consequence. Sovereignty is said to be internal to territory. As sovereignty is indivisible, so is territory. And from this it follows that the secession of a people from a modern state is logically impossible, for secession would require the territorial dismemberment of a state, and that would be to deny that sovereignty is indivisible. It is for this reason that the great modern philosophers and those who follow in their steps today never so much as raise the question of whether secession is morally justified. Their main task has been to theorize and legitimate the modern state.

Just how deep this self-imposed ignorance about secession goes can be seen in the fact that there is only one book in English by a philosopher on secession (Allen Buchanan*, Secession From Ft. Sumter to Lithuania,*1991). And when we turn to the *Philosopher's Index,*which lists all articles published by philosophers in English, German, French, Italian, and Spanish, from 1940 to today, we find only seven articles on secession! Two are on Quebec and the rest are on Buchanan's book. The Jackdaw is a bird, like many others, that cannot see anything unless it is moving. Likewise the preconceptions of modern political philosophers make it impossible for them to perceive a legitimate act of secession even if one should occur.

It is not surprising, therefore, to find throughout critical literature acts of secession misdescribed as something else such as revolution or civil war. Let us briefly examine the difference between secession and revolution. Three conceptions of revolution have dominated modern political speech. The first derives from the Glorious Revolution of 1688. This is revolution as*restoration,*and its image is the turning of a wheel. According to eighteenth century whiggism, the Glorious Revolution was a bloodless restoration of a liberty loving Protestant regime from the attempted usurpations of the Catholic James II. The second form derives from John Locke. Here a sovereign people recall the powers they have delegated to a government that has violated its trust in protecting life, liberty, and property. The government is overthrown and a new government instituted. The third form has its source in the French Revolution and may be described as Jacobin revolution. Revolution in this sense is an attempt to totally transform an entire social and political order in accord with an egalitarian philosophical theory. In this sense Marxism is Jacobin revolution as are may other forms of contemporary political criticism. Gloria Steinem once said that to talk of reforms for women is one thing, to talk about the total transformation of society is feminism. So conceived, feminism is a species of Jacobin revolution. The same could be said of the egalitarian goal informing many actions of the Supreme Court from the 1950s down to the present. The Court has long since abandoned its traditional duty of interpreting the Constitution as law, and has usurped the role of being the most powerful social policy making body in the American federation.

All three conceptions of revolution presuppose the modern theory of sovereignty, and each is categorically different from secession. Secession is not revolution in the whiggish sense of the Glorious Revolution because it is not the restoration of anything within the frame of the modern state Secession is the dismemberment of a modern state in the name of self-government. Nor is secession Lockean revolution. A seceding people do not necessarily claim that a government has violated its trust. And even if the claim is made, there is no attempt to overthrow the government and replace it with a better one. Indeed, a seceding people may even think that the government is not especially unjust. What they seek, however, is to be left alone to govern themselves as they see fit. Finally, secession is not Jacobin revolution because it does not seek to totally transform the social and political order. Indeed, secession is conservative and seeks to preserve the social order through withdrawal and self-government.

Nowhere has this confusion between secession and revolution led to greater moral mischief than in the practice of describing the break with Britain in 1776 as the American Revolution The act of the British colonists was simply and solely an act of secession. It was neither whiggish, nor Lockean, nor Jacobin revolution. The colonists did not seek to overthrow the British government. Commons, Lords, and Crown were to remain exactly as before. They wished simply to limit its jurisdiction over the territory they occupied.

Nor were they, in Jacobin fashion, seeking to totally transform society. On the contrary they wished to preserve the order they had, and they succeeded; the social classes and members who successfully seceded lived to govern afterwards. But something very like a Jacobin reading of the Declaration of Independence was given by Lincoln, and is an essential part of the Lincoln myth that followed him.3To say that the regime is dedicated to the proposition that all men are created equal and that all inequalities are to be rectified is to launch the regime on the permanent and never to be completed project of totally transforming the social and political order. The project must be permanent because, in the Lincolnian rhetoric, equality is left underdetermined (anything from equality before the law, to equality of outcome, to equality of sexual orientation can and has been taken to be the content of equality) and because equality in any non-trivial sense is nowhere to be found in the human world. It is this project that Marx would call the "revolution in permanence" and that would be used by Lincoln to brutally destroy the social and political order of the South, and would be used by the Republican Party in its efforts to "reconstruct" the mangled parts in approximation to an egalitarian ideal-a project that was enormously profitable to the newly arrived Northern industrialists and financiers.4

The people of France were the first to suffer the horrors of modern totalitarian revolution at the hands of their own government; the people of the South would be second. From a perspective located in time after the French Revolution and after the European revolutions of 1848, Lincoln read the Jacobin meaning of equality into the Declaration of Independence, transforming by an act of philosophical alchemy, what was a legal brief addressed to a forum of international law justifying secession into a perpetual project of social and political transformation-a project that in principle, cannot be realized and would increase the scope of evil if it could be. Many Americans identify with the Lincolnian myth of the Declaration and are, consequently, burdened with a morally corrupting metaphysical guilt about inequality. I say because it is always morally corrupting to attempt to do or claim to have done what is impossible. Lincolnian Americans stand morally disarmed today before the charge leveled by our new egalitarians (there will *always*be a new form of egalitarianism) that America is a racist, sexist, classist, homophobic society and that massive transfers of power must be placed in the hands of the central government to effect the total transformation of society. They fail to see that every society that has every existed, including those that have achieved the highest level of human flourishing, have been (by today's impossible standards) racist, sexist, classist, and homophobic. The result of this self-imposed moral ignorance has been the progressive disintegration of the social fabric of the United States.

The Jacobin reading of the break with England in 1776 is a self-serving fiction of late nineteenth-century American liberalism, and is of a piece with the Jacobin style revolutions that had been and were sweeping through Europe in the heyday of the Industrial Revolution. That reading has nothing to do with the arguments deployed in a pre-industrial age by the orderly patricians George Washington and Thomas Jefferson. They were secessionists, and the Declaration of Independence was and is no more and no less than a document justifying secession.

Much has been made of the Lockean idiom of self-government in the speech of the Founders. But it is important to understand that, though Locke allows the overthrow of a corrupt regime, he does not allow secession. Indeed, for citizens who have given their explicit consent, he does not even allow the right to exit, much less take territory with them.5Locke might have been sympathetic with the colonists' demands for representation but, if consistent, he, like George III, would have had to stop short of secession.

So it is a miscategorization to describe the break with Britain in 1776 as the American Revolution. Likewise, it can only lead to moral confusion to describe the conflict arising from the secession of eleven contiguous American States in 1861 as the Civil War. The primordial meaning of the expression "civil war" is the English Civil War. That was a conflict between two factions seeking to control the same government of a state. The Confederates, however, were not seeking to control the central government of the United States; rather, they were seceding from that government. Consequently, there was no American Civil War. Likewise there was no Nigerian civil war in 1967-70, but the secession of the industrious people of Biafra in an attempt to govern themselves. Biafra with twenty-two percent of the population contributed thirty-eight percent of total revenues, but received back only fourteen percent.6To describe secession as "civil war" begs every important moral question on behalf of the modern unitary state and necessarily taints the seceding part with the brush of treason. The current moral confusion of secession with revolution and civil war is simply another subtle way in which the modern unitary state legitimates itself

Secession is, of course, a serious matter, and it is not always morally justified. But the moral considerations that would justify secession are categorically different from those that would justify revolution and civil war.

But if the idea of a modern state rules out the possibility of secession, the idea of a federative polity does not. It was in this sort of polity, in the middle ages, that the western practice of liberty began; and although it has been challenged by the idea of the modern state, it has never, in some form or another, ceased to exist. The idea of a federative polity was theorized by St. Thomas Aquinas and other medieval philosophers; modern versions are to be found in Johannes Althusius, David Hume, John C. Calhoun, and Lord Acton. The modern state begins with individuals in a state of nature who give up the unlimited exercise of natural rights in favor of a limited excise of them in a polity endowed with an office of indivisible sovereignty. In contrast, the idea of a federative polity rejects entirely the notion of natural rights. It begins, not with individuals devoid of social and political identity, but with individuals shaped by such identities. We may use as an example of a federative polity the theory of political order framed by Johannes Althusius in his work *Politica*published in 1603 and revised in editions of 1610 and l6l4.7

Althusius was the theorist of the Dutch federation which David Hume described in the mid-eighteenth century as the most illustrious government in the world. Althusius teaches that the family is the primordial *political*entity, and it is political because it contains the relations of authority and subordination. Families may form a village and generate another political authority in the form of the village council. Villages may form provinces and the authority of provincial councils. Provinces may form a commonwealth of provinces and the office of state authority. Individuals may form voluntary associations which Althusius calls collegia: guilds, trade associations, universities, the church, and corporations of all kinds, including cities.

The state is the symbiotic relation of these corporate bodies ranging from the family to the commonwealth. Each corporate body is conceived as a substantial moral community with something of its own to excel in, to enjoy, and to defend Each is an independent social authority. Sovereignty resides in the people, but not the people conceived as an aggregate of individuals pursuing their natural rights, but as incorporated into independent social existences. From this it follows that sovereignty is not indivisible, but is jointly shared by those independent social authorities whose symbiotic relation constitutes the state. Consequently, Althusius argues that a province, an estate, or any other corporate entity having the means and dignity to do so may *legally*secede from the polity to join another political association or to remain independent. Similar arguments for secession are to be found in Hume, Calhoun, and Lord Acton.8

To the modern response that divided sovereignty is absurd and must lead either to political impotence or to violent strife, David Hume replied in an essay entitled "Of some Remarkable Customs" that the most energetic and illustrious republic in history (the Roman republic) functioned quite well with a system of divided sovereignty. The *comitia centuriata*and the *comitia tributa*were distinct legislative bodies; both were sovereign; neither was subordinate to the other; and both were capable of giving laws that could contradict the laws of the other. Yet such contradictions never occurred. Hume goes on to show that what cannot be reconciled in an abstract theory can be united in the soul of an amiable character or in the soul of a loyal and skillful participant in an inherited political tradition.9The Swiss republic is over six hundred years old, and it operates with a system of divided sovereignty; indeed, it perfectly exemplifies what Calhoun called the principle of concurrent majority.10

The first truly modern unitary state was that framed by the French Revolution. Prior to that, Europe was an order of federative polities. At the time of William the Conqueror there were thousands of independent political units. By the beginning of the eighteenth century there were still hundreds left: principalities, dukedoms, bishoprics, papal states, small republics, city states, margraves, free cities. Even so-called absolute monarchies were highly federated polities. The great number of titles the monarch had was not due to vanity, but was a recognition of the independent orders over which he ruled, whose titles were as good as his own, with whom he had to negotiate, and who hedged in his power. An absolute monarch could not impose an income tax on his people, and he could not enact universal conscription. Wars tended to be short and casualties light because troops had to be paid for out of the King's purse or by powerful independent proprietors, who had an economic interest in limiting the scope of war. All of this abruptly changed with the appearance of the modern state. The French Revolution destroyed all independent social authorities: the monarchy, nobility, the Church, provincial and local authorities, the States General, and even an independent judiciary. The people were now free of the oppressions these independent social authorities could impose, but they were also without their protection. The people collapsed into an aggregate of individuals under an all-powerful government ruling in the name of the natural rights of individuals, and determined to spread this doctrine throughout Europe.

On the eve of the Revolution the French monarch had a military force of around I 80,000, Frederick the Great had a force of 190,000, and Austria of 200,000. What no absolute monarch had dared to dream of, the French Republic now did. It ordered universal conscription, and suddenly placed in the field an army of a million men, which rolled back the frugal monarchies of Europe. New aggressive tactics were developed by Napoleon, which brought victory but required high casualties; something the monarchs could not have afforded. This, however, did not bother the Republic because the cost was born by an abstraction known as the "public" and not by proprietors. Through conscription the French would eventually raise three million troops, the largest army ever gathered in the world.

In response to the French Revolution other European states began to take on the form of the modem unitary state; more and more independent social authorities were destroyed, marginalized, or corrupted by becoming agents of the state which engrossed ever more power to the center. By the twentieth century that state could not only conscript troops, it could impose an income tax on individuals. Endowed now with a formidable revenue, its wars would become spectacular barbarisms. World War I resulted in eight million battle deaths and six million wounded. (This was more than were killed in all wars in Europe during the previous two centuries of "civilized warfare," gradually instituted after the barbarism of the Thirty Years War of 1618-1648.)

Before World War I Germany imported a third of its food. By 1918 the allied blockade had reduced Germany to the edge of mass starvation. In desperation Germany surrendered November, 1918 with the assurance from Article 26 of the Armistice that the blockade would be lifted. But the blockade was continued for nearly a year to ensure compliance with the impossible demands of the Treaty of Versailles. Nearly a million Germans are documented to have died of forced starvation, mostly women and children; and a generation would suffer from physical and mental deformities due to malnutrition during the formative period of infancy.11 This was the first of the great twentieth century holocausts that the modern state now had the power to inflict on civilians. To around a million Germans starved by the Allies would be added six million Jews killed by the Nazis. From 1930-1933 Stalin killed, by forced starvation, over 14 million in the area of the Ukraine and Caucasus. World War II resulted in over 50 million deaths. But even this barbarism was dwarfed by the totalitarian revolutions carried out by modern states against their own people in the name of the Marxist ideal of equality, resulting in, by a conservative estimate, 100 million deaths. R.J. Rummel, in his important study of the mass murder of peoples by the modern state, has argued that governments in pursuit of ideological goals have killed nearly *four times*as many people as all the battle deaths in all wars, domestic and foreign, fought since 1900. The greatest threat to human life in the twentieth century has not been war (and not even nuclear war), but the governments of modern unitary states.12

Now what must be stressed here is that this enormous destruction was due primarily not to advanced technology nor to the wickedness and madness of certain leaders (as important as both of these were) but to the *structure*of the modern state itself: the destruction of independent social authorities and the massive concentration of power at the center. Had Hitler and Stalin been absolute monarchs in the eighteenth century, they could not have carried out the destruction they did, simply because they would not have had the *authority*to do so. They would have been hedged in by powerful independent social authorities whose titles were as good as their own and who could be expected to resist.

Nor can we say that the influence of evil ideologies such as fascism or Marxism caused such destruction. We must keep in mind that the first totalitarian state was a *liberal state,*the French Republic, ruling in the name of the natural rights of individuals. And it was a liberal regime, the United States under Abraham Lincoln, that broke with the European code of civilized war by demanding unconditional surrender and launching total war against the civilian population of the South, resulting in 1,500,000 killed, missing, and wounded. 13 It was liberal regimes that transformed what could have been a limited war in Europe into World War I, a holy crusade to entirely restructure Europe and make the world safe for democracy. And it was liberal regimes in pursuit of that crusade that imposed starvation on Germany after the Germans had surrendered and were helpless. It is the *structure*of the modern state itself, independent of whether it wears the mask of liberalism, fascism, or Marxism, that has a lot to answer for and must be called into account. If the destruction done by the modem state had been carried out by the Church or by an aristocratic class, judgment would have been clear, and it would have been severe. As it is, the modem state masks itself in moral ideologies which obscure its actual conduct.

One of the most compelling and insidious of these ideologies is the doctrine of natural rights. It was to secure these rights that the modern state was invented in the first place, and it is impossible, especially for Americans, not to be seduced by the doctrine. But it is nonetheless a philosophical superstition.

The reason is this. Whatever they might be, natural rights are universal and apply to all men. Further, they are known by reason, independent of any inherited moral tradition. From the point of view of natural rights, moral traditions are tainted with particularity even when they make universal claims. For example, Christianity is a moral tradition that makes universal claims; it is open to all men, and it applies to all men. But its ground is the incarnation of God in one man, which is a scandalous particularity that logically contradicts the abstract universality of natural rights. Now all inherited moral traditions that give life to those communities that cultivate the goods of human excellence are tainted with this sort of scandalous particularity. It follows, therefore, that the doctrine of natural rights must be in a condition of permanent hostility to *all*inherited moral tradition. Any such tradition, no matter how noble the goods of excellence cultivated in it, can always be seen as violating someone's natural rights under some interpretation or another.

A modern state obsessed with the doctrine of natural rights, if consistent, will attempt to destroy, suppress, or otherwise remove from public life all independent social authority. This was the force of the doctrine when it made its first appearance in the French Republic. Benjamin Constant, a keen observer of the French Revolution, put his finger on the tendency to totalitarianism of *all*modern states (including liberal regimes): "The interests and memories which spring from local customs contain a germ of resistance which is so distasteful to authority that it hastens to uproot it. Authority finds private individuals easier game; its enormous weight can flatten them out effortlessly as if they were so much sand.14Tocqueville gave melancholy witness to the process since repeated over and over: "The old localized authorities disappear without either revival or replacement, and everywhere the central government succeeds them in the direction of affairs.... Everywhere men are leaving behind the liberty of the Middle Ages, not to enter a modern brand of liberty, but to return to the ancient despotism; for centralization is nothing else than an up-to-date version of the administration seen in the Roman empire."15By "medieval liberty" Tocqueville meant what I have called a federative polity of independent social authorities, and he hoped in vain for a modern version of such a polity. The French revolutionary leader Sieyes explains that such cannot be tolerated in a modern state: "France must not be an assemblage of small nations each with its own democratic government; she is not a collection of states; she is a single whole, made up of integral parts; these parts must not have each a complete existence of its own, for they are not whole joined in a mere federation but parts forming a single whole.... Everything is lost once we consent to regard the established municipalities, the districts, or the provinces as so many republics joined together only for the purposes of defense and common protection."16

If natural rights transcend all inherited moral traditions, then there will be no non-arbitrary way to know what those rights are. When the doctrine first appeared the rights called "natural" were few: life, liberty, and property. The United Nations Declaration of Human Rights includes, among many others, the right to a job and a paid vacation. And there is, of course, a right to equal opportunity, from which it follows that there must be a right to equal outcomes, since failure to achieve equal outcomes can always be interpreted as a sure sign that equal opportunity has not been satisfied. And so there must be affirmative action; racial, ethnic, and gender quotas; and now the Supreme Court tells us that there is a special set of civil rights that gays have which the state of Colorado failed in its constitution to recognize. Today anything one desires could become a natural or human right if one has sufficient political power and lack of shame to demand it.

This promiscuous explosion of individual rights has been at the expense of those independent social authorities and communities that cultivate the goods of human excellence that go into the formation of noble and virtuous character. It is for this reason that public moral discourse today is the discourse of *rights*and seldom ever the discourse of *virtue.17*Indeed, the United States has become what is proudly, but foolishly, called a culture of rights. But it is in fact a regime in a condition of chronic low-grade civil war; an endless number of new rights generating an endless number of new victims and oppressors; strident protest and counter-protest that one's rights have been violated; a country held together not by the obligations and sympathies of a common vision of human excellence but by *legalism.*Our rulers are Supreme Court judges, our parish priests are lawyers, and our entertainment watching trials and talk shows about trials on television.

We can no longer say that the social fabric of the United States is in danger of coming apart; it is coming apart. The most fundamental of those independent social authorities that make possible the goods of excellence is the family. The Supreme Court's recent ruling against the amendment to the Constitution of Colorado, which denies that homosexuals are endowed with a special set of civil rights, would appear to make it impossible for a state to prohibit gay marriages and so to uphold the dignity and special status of the family.

The wild absurdities we are now living through are in large part the result of trying to transform what began as a federative polity on a continental scale into a modern unitary state, the goal of which is to establish an egalitarian ideology. The Southern Confederacy was an attempt to block that move. It presented the world with the first case of a vast-scale federative union with a strong central government that nevertheless allowed the secession of member states. The next such constitution would be that of the Soviet Union, which in Article 17 allowed the secession of member republics. And it was Marxist international jurists, not liberal ones, that were the strongest advocates of self-determination and secession during the cold war.18This was viewed as hypocrisy on behalf of Soviet influence (as indeed it often was), but it was no more hypocritical than Lincoln's "Gettysburg Address," which presented the Union as fighting to preserve self-government when it was in fact engaged in a total war against the people of the South to destroy self-government. And the irony is complete when we consider that the Soviet regime did allow peaceful secession of its fifteen member republics. With the experience of hindsight we can see that the Confederate Constitution was well ahead of its time.

Europeans at the time of the War for Southern Independence recognized that the Union was engaged in a Jacobin *revolution*to create a unitary state Marx and Mill rejoiced in the project of destroying the federative order, as did the British liberal journal *The Spectator*which declared in December, 1866: "The American Revolution marches fast towards its goal-the change of a Federal Commonwealth into a Democratic Republic, one and indivisible."19The so-called "Civil War" was in fact America's French Revolution.

But Lord Acton (famous for his maxim that power tends to corrupt and absolute power corrupts absolutely) viewed what he too called "the American Revolution" with alarm. He had admired the federative character of the original American polity as the best example of how an ethic of individual liberty could be reconciled with the independence of substantial moral communities, and he admired the Confederacy as the most advanced expression of such a polity. He thought the triumph of the Union was a disaster because it would encourage the trend toward consolidationism and nationalism that was transforming Europe into an order of French revolutionary style republics. Of the Union victory, he wrote prophetically in January of 1866: "The cause that was to triumph comes forth from the conflict with renovated strength and confirmed in the principles which must react dangerously on the other countries of the world. The spurious liberty of the United States is twice cursed, for it deceives those whom it attracts and those whom it repels. By exhibiting the spectacle of a people claiming to be free, but whose love of freedom means hatred of inequality, jealousy of limitations of power, and reliance on the State as an instrument to mold as well as to control society, it calls on its admirers to hate aristocracy and teaches its adversaries to fear the people. The North has used the doctrines of Democracy to destroy self-government. The South applied the principle of conditional federation to cure the evils and to correct the errors of a false interpretation of Democracy. "20

What Acton said about the condition of *both*fearing the people and hating aristocracy has come to pass. The current central government of the United States hates inequality, but it also fears the people. We cannot govern ourselves today within that vast domain of unenumerated powers the States reserved to themselves in the Ninth and Tenth Amendments because, in the new would-be unitary state, these amendments are considered a dead letter. There is no law an American state can pass that cannot be overturned by the arrogant social engineers of the Supreme Court, who in the last fifty years have played with the inherited moral traditions and federative polity of the American people like a quack with a hapless patient.

The modern unitary state is only two hundred years old. Its great achievement is to have produced a condition of unparalleled material prosperity. But it has also been one of the most destructive forces in history. Its wars and totalitarian revolutions have been without precedent in their barbarism and ferocity. But in addition to this, it has persistently subverted and continues to subvert those independent social authorities and moral communities on which eighteenth-century monarchs had not dared to lay their hands. Its subversion of these authorities, along with its success in providing material welfare, has produced an ever increasing number of rootless individuals whose characters are hedonistic, self-absorbed, and without spirit. We daily accept expropriations, both material and spiritual, from the central government which our ancestors in 1776 and 1861 would have considered non-negotiable.

The modern state absolutely prohibits secession, but places no limit on the *expansion*of its territory and sovereignty. And in this we catch a glimpse of its imperialistic character. In principle there is nothing to prevent the modern state from becoming a world government, ruling in the name of the natural rights of individuals, or approximating such a government. The modern state is a reenactment of the impiety of Ninrod in the Biblical story of the Tower of Babel.21 And in the many secession and devolutionary movements in the world today, we may be witnessing the action of Divine Providence that in the story confounded the languages of mankind and sent each back to his own nation.

How do we restore the character of a federative polity in the wreckage of American society? This is a topic for another day, but I would like to close with a few suggestions. History shows that the logic of the modern state is such that every attempt to limit its growth by reforming the center leads to an increase in its power. French revolutionaries were sincere in their claims to limit the centralized administration built up by absolute monarchy, but they vastly increased it and even created a reign of terror. Marx was sincere in his hope that the state would wither away. Reagan and Margaret Thatcher sought to reduce the size of the central government; but when they left, its powers were much greater than before. If the current Republican budget had been passed, it would have generated a fifty billion dollar *increase*in spending.

What we must begin to do is throw into question the legitimacy of the modern consolidated state itself. We must stop working on the Tower of Babel. Constitutionally, this means that the states must reassert their sovereignty under the Ninth and Tenth Amendments and recall those powers they have allowed to slip out of their hands to the central government. We must restore the Jeffersonian and Madisonian tradition of state interposition.22The States must once again become constitutional members of a genuine federative polity as they were during the ante-bellum period and beyond when states throughout the union interposed their authority and even nullified actions of the central government that they judged unconstitutional. History textbooks present nullification as a wild and unpatriotic policy of John C. Calhoun. But a genuinely federative polity, designed to preserve distinct social and political societies, must allow some form of *legal*corporate resistance. Calhoun is distinguished only in having provided the deepest philosophical justification by an American for a federative polity and for some form of nullification.23

The Canadian Federation allows Provinces to nullify actions of the central government in the area of civil rights.24As some northern states nullified the Dred Scott decision, so Colorado should nullify the recent Supreme Court decision overturning its constitutional amendment prohibiting special civil rights for homosexuals, invoking the Ninth and Tenth Amendments for its authority to do so No American state has ever delegated to the central government the authority to determine its sexual morality. We must counter unconstitutional runaway judicial activism with the constitutional remedy of state activism.

I remember reading during the bicentennial period about a New England town (the name of which I have forgotten) that, in the 1770s, passed a resolution declaring the British Parliament a public nuisance. The public debt of the central government is five and a half trillion dollars, but its unfunded liability, if one includes such things as social security, is in excess of fifteen trillion dollars. If these serious obligations are met, the next generation must be taxed in excess of 84 percent of income.25The savings and loan bailout cost five hundred billion dollars. Assuming 6 percent interest, the generation of males born after 1990 have inherited a debt of $9.4 thousand each. Had mismanagement of this scale occurred in a European Parliamentary regime, it would have brought the government down. But Washington is so remote and abstract that moral accountability is not to be expected. The politicians that created the catastrophe did not fall. Little Vermont had no failed savings and loan institutions. But its share of the bailout is over a billion dollars. Should we not expect a resolution from the legislature of Vermont (echoing the virtue of their eighteenth-century ancestors) declaring the central government of the United States a public nuisance?

Sadly such resolutions are not forthcoming from the States. There is a profound lack of political imagination in America. We still look *superstitiously*to the central government as the object of all our hopes and fears. Many Americans do not know their own constitutional history; they do not know the constitutional authority States have exercised and can exercise again. For over a hundred years we have been taught the ideology of the modern state in the version that Lincoln seared into the national consciousness with a writ of fire and sword. It teaches that divided sovereignty is a horror; that consolidation is a good thing and that secession is a bad thing. It tells us that sovereignty originally resided in the American people in the aggregate and not in the people of the several states, and that the central government created the states as administrative units of itself. All of these teachings are false.26

The Lincolnian myth must be refuted with the Jeffersonian account that the constitution is a compact between the people of the states creating a central government as their agent and endowing it with only enumerated powers; and, further that the central government is not and cannot be the sole authority in determining what powers were delegated and what reserved. The Jeffersonian story is one of dynamic federalism and the self-government of distinct political societies. The Lincolnian story is one of increasing centralization, consolidation, and political ossification. That we have fallen under its sway explains the surprising lack of political imagination in America today.

As part of expanding this imagination, we must work to remove the moral and philosophical prejudice against the very idea of secession. America was born in secession; secession is essential to the idea of a self-governing people; and until 1865 was widely considered an option available to an American state in all parts of the union.27But secession short of national sovereignty is also possible. Parts of cities and counties may secede. A part of a state may secede and form another state as twenty-seven counties in northern California proposed to do in 1992. The mere discussion of the merits of such proposals, whether or not they succeed, will serve to detoxify the idea of secession and re-awaken in Americans the long slumbering notion of self-government induced by the opiate of the Lincolnian ideology of a modern unitary American state.

Lord Acton hoped the Confederacy would serve as a model to the world of what a vast scale federative order should be. he wrote to Robert E. Lee November 4, 1866: "I deemed that you were fighting the battles of our liberty, our progress, and our civilization; and I mourn for the stake which was lost at Richmond more deeply than I rejoice over that which was saved at Waterioo."28Such was not to happen. But something of what Acton had in mind can be discerned in the European Union which has incorporated into its treaties the principle of "subsidiarity," a doctrine framed by medieval philosophers in an era when Europe was an order of federative polities. The principle states that as much social and political policy as possible should be carried out by the smallest unit. The larger the unit the less there will be to do. The final story on the European Union is yet to be told, and the doctrine of "subsidiarity" appears to be as much a mask for consolidating power as a genuine federative practice. Nevertheless, the Union has unleashed centrifugal forces of devolution9 transforming what were once modern unitary states into something approximating federative polities. For example, the highly centralized state of Spain has devolved power to seventeen autonomous provinces which negotiate with the center about their rights and obligations. This has moved the Basque provinces and Catalonia closer to independence. Indeed the European Union has now recognized Catalan as an official European language. Belgium, once a unitary state, has devolved power to four states in an order called asymmetrical federalism, meaning that the states have unequal rights, privileges, and obligations. And it is highly likely that we will soon see a new Scottish Parliament in Edinburgh. The Nobel Laureate James Buchanan has urged that the European Union include in its constitution the right of a member state to secede; so far this has not been done, and its omission will probably one day cause serious problems. But as things stand now, the trend to devolution brought on by divided sovereignty, which is made possible by a supra-national authority with which the member states must negotiate, is transforming Europe into the morally superior condition of a federative polity. The danger, of course, is that a powerful faction may one day seize the central authority (as happened with the United States, 1861-1877) and attempt to transform the whole into a unitary state.

Finally, the modern state, from the very first, was thought of as a large state. Hobbes rightly called it "Leviathan." Its main goal was what Hobbes called commodious living, and it was thought that economic integration required political integration into a larger polity. But economic viability should not be confused with self-sufficiency. Few if any states are self-sufficient. Japan is not self-sufficient. It imports ninety-eight percent of its oil, and it cannot feed itself. Little Singapore is a city state that seceded from the Malaysian federation, but it is integrated into a world economy and is not only viable, but flourishing.

Even the United Nations now understands this. Upon its founding, it insisted that member states have a certain size. Today it has abandoned that requirement. There are fifty-five member states with populations under a million, and a number of these have populations under 100,000. There are twenty-three states smaller than New York City, and some smaller than Central Park.29 There is no reason today why, here and there, an order of city states cannot again flourish. The little city state of Athens, in three generations, produced such a flourishing culture that much of Western civilization may be said to be a series of footnotes to it. The city state of Medici Florence produced the Renaissance; the free cities of Germany produced Goethe, Hegel, Mozart, and Beethoven.

The modern state is not a fated existence; it is a human artifact only two hundred years old. And it no longer has the authority it once had. The secession and devolution movements in the world today, along with the demonstrated viability of small states, raises new and exciting possibilities. Americans have not rejected these possibilities; they simply have never occurred to them. The reason is that they are still under the spell of the centralized modern state founded in the Lincoln myth. Ours is the uphill task of refuting that myth both as an historical account of the American polity and as a *moral and philosophical*account of the best form of political association. That form is and has always been some form of federative polity with the right of secession. Its primal symbol is the Exodus from Egypt. And, as Mel Bradford has taught us, we must refute also the blasphemous puritan ideology of the Lincoln myth which pretends to speak the speech of God and, in the Cromwellian "Battle Hymn of the Republic," teaches slaying and laying waste in the name of the Lord. The Union was not in 1861 and is not now the last best hope on earth. We must teach Americans to lay down their tools, stop building the Tower of Babel, and return to their respective homes. For as the poet said:

Those who in fields Elysian would dwell,  
Do but extend the boundaries of Hell.30

http://www.lrainc.com/swtaboo/images/rainbo.gif

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8. Althusius, pp.197-8; Hume defended the right of the Colonists to secede and was the only major British thinker to take this view, a position he adopted as early as 1768 and maintained to his death August *25,*1776. I discuss the reasons for his position in "Hume, English Barbarism and American Independence," in *Scotland and America in the Age of Enlightenment,*ed. Richard Sher and Jeffrey Smitten (Princeton: Princeton University Press, 1990), pp.133-47; Acton, pp.216-279, 361-7. John C. Calhoun, *A Disquisition on Government* *and A Discourse on the Constitution and Government of the United States* in *The Essential Calhoun*, ed. Clyde Wilson New Brunswick: Transactions Press, 1991). See also *Union and Liberty, The Political Philosophy of John C. Calhoun*, ed. Ross Lence (Indianapolis: Liberty Classics, 1992). Reprints of the first edition of Calhoun's *Disquisition and Discourse* will soon appear in *The Southern Renaissance Collection*, a series of Southern classics published by Fletcher and Fletcher of North Charleston, South Carolina. Lord Acton, *Essays in the History of Liberty*, 2 vols. (Indianapolis: Liberty Classics, 1985), Vol.1, essays 19-24.

9. David Hume, Essays Moral, Political, and Literary, ed. Eugene Miller (Indianapolis: Liberty Classics, 1985), pp.366-76.

10. In the Swiss federation decisions are reached not by majority vote but by Calhoun's "concurrent majority," i.e., by a kind of consensus. This principle operates at each level of government: parish, canton, and central government. And even when the central government enacts a law, it is subject to veto in a referendum. Though the central government has repeatedly tried to bring Switzerland into the European Union and into the United Nations, it has failed because the people have vetoed the legislation by using the referendum. The Swiss government, like any other, seeks to cut an expensive figure in the world; its power to do so has been checked by the veto of the referendum. It is no accident that the Swiss people who have all this power also have a militia army.

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14. Quoted in Bertrand De Jouvenel, *On Power*(Indianapolis: Liberty Classics, 1993), p.253.

15. De Jouvenel, *p.285.*

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17. Alasdair MacIntyre has launched a devastating criticism of what happens when liberalism seeks to found a society on the philosophical basis of *rights*alone at the expense of virtue. See*After Virtue*(Notre Dame: University of Notre Dame Press, 1988); *whose Justice, which Rationality?*(Notre Dame: University of Notre Dame Press, 1988) and *Three Rival Forms of Moral Enquiry*Notre Dame: University of Notre Dame Press, 1990).

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19. *The Spectator,*December22, 1866, p.1420.

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21. This identification of the modern state with the Tower of Babel was inspired by Michael Oakeshott who wrote two essays entitled "The Tower of Babel." One appears in *Rationalism in Politics and Other Essays*(Indianapolis: Liberty Classics, 1991); the other in *On History and other Essays*(Totowa: Barnes and Noble, 1983).

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23. Calhoun's *Disquisition*and *Discourse*cited above.

24. Section 33 of the Constitution Act of 1982, known as the "notwithstanding clause." The use of this section has enabled Quebec to nullify legislation by the central government in the area of civil rights which was intended to consolidate it into a Canadian version of the "melting pot."

25. See Laurence J. Katlikoff, "Generational Accounting," *NBER Reporter*(Winter, *1995/6),*pp. 8-14; and "Working Paper #9103," Federal Bank of Cleveland (March, 1991), p.34.

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27. The best defense of secession as a legal right available to an American state was given by Albert Taylor Bledsoe, *Is Davis a Traitor?*This southern classic has long been out of print. It should be read by every American; it will shock most to discover what the Constitution of the Framers really was. Happily a new edition in now available, issued by Fletcher and Fletcher Publishing North Charleston, S. C., 1995).

28. Acton, p. 363.

29. See Buchheit on microstates, p.233; and Robert W. McGee, "Secession Reconsidered," *Journal of Libertarian Studies,*11:1 (Fall, 1994), pp. 11-33.

30. This verse is the ending of Oakeshott's essay, "The Tower of Babel," in *On History and Other Essays*.