OUR UNION UNCHECKED AND IMBALANCED: A HISTORICAL ANALYSIS IN DEFENSE OF FEDERALISM THROUGH THE LENS OF RELIGIOUS IDENTITY

A Thesis submitted to the Faculty of the Graduate School of Arts and Sciences of Georgetown University in partial fulfillment of the requirements for the degree of Master of Arts in Liberal Studies

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ABSTRACT

The United States of America has long been engaged in an increasingly bitter struggle to determine what is and what is not characteristic of American culture. Every citizen of the United States, Canada, and Mexico or for that matter, Iran, Tajikistan or the Republic of China has an opinion as to what constitutes American culture. Such is the nature of American culture.

A nation of immigrants, the United States was conceived during the enlightenment, born of revolution and built upon an entrepreneurial foundation of cotton, blood, sweat and steel. Two hundred thirty seven years after its foundation, despite having become the world’s lone super power, the question as to the true (nature or character) of American culture remains a divisive topic of debate throughout the United States.
First publicly uttered in a national political setting by Pat Buchanan at the 1992 Republican National Convention, the term “Culture War” has come to define the range of cultural and economic issues separating the more traditional conservative political right from the more progressive political left.

This thesis will seek to explain through a historical analysis of American culture how the erosion of federalism in the United States has removed from the Constitution an essential check which had been intended to prevent the general government from imposing its dominate culture on the states.
DEDICATION

The research and writing of this thesis is dedicated to the very last of my wife’s patience, thanks for hanging in there... and for everyone who helped along the way, especially Amelia Grace & Tristan Now, let’s go outside and play... SHAWN F. DOUGHERTY, B.A.
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INTRODUCTION

Throughout the 2012 campaign season and particularly since Barack Hussein Obama won re-election to the Presidency, the United States has begun to exhibit qualities similar to those former Illinois Representative Abraham Lincoln noted in 1858. In a short speech accepting his nomination to represent the Republican Party in the upcoming race for the United States Senate, Lincoln noted that the Union had become a “house divided against itself” (Basler 1953, 462). A little more than two years later, on November 10, 1860—just six days after Lincoln was elected President of the United States—the General Assembly of South Carolina would prove him correct, calling for a State Convention to consider secession from the Union. On December 20, the same day the Electoral College confirmed Lincoln’s victory, South Carolina seceded from the Union.

Less than a week after President Obama was re-elected, “nearly 700,000 Americans from all 50 states had signed 69 secession petitions” (Bandow 2012), each calling for their state’s immediate secession from the United States of America. “Many of the petitions cited America’s Declaration of Independence. Two state measures quoted Benjamin Franklin: 'They, who can give up essential liberty
to obtain a little temporary safety, deserve neither liberty nor safety.’ One petition spoke of the necessity of separating from ‘a tyrannical government’” (Bandow 2012). Though no state has (as of the printing of this paper) endorsed or in any way legitimized these secessionist threats, several politicians have seized the opportunity to raise their political profile and ratchet up the rhetoric.

On January 19th the day before the President was sworn into office for a second term, State Senator, Tom Davis from South Carolina, introduced legislation that would have nullified the federally mandated requirements “Obamacare”¹ had imposed on the States” (Collins 2013). That same month, Senator Rand Paul from Kentucky, whose name has been since banded about as a possible 2016 Presidential candidate, accused President Obama of having developed a “king complex.” “Dipp[ing] into [his] civil war era vocabulary” Senator Paul “vow[ed] to ‘nullify’... anything the president [might do] that smacks of

¹ “Obamacare” is a derogatory term referencing the 2010 Patient Protection and Affordable Care Act which President Obama has since embraced, announcing to a crowd in Manchester, NH, on October 18, 2012: “We passed health reform—yes, I like the name ‘Obamacare’—so your insurance companies can’t jerk you around anymore. . . . .”
legislation” (Whitaker 2013). The movement even prompted one GOP official from Texas to call for an “amicable divorce” from the United States (Lavender 2013, 1).

President Obama’s Director of Public Engagement Jon Carson responded to the secession petitions by citing Lincoln’s first inaugural address, explaining that “in contemplation of universal law and of the Constitution the Union of these States is perpetual” (Carson 2013). In the years that followed, Carson explained that “more than 600,000 Americans died in a long and bloody civil war that vindicated the principle that the Constitution establishes a permanent union between the States. And, shortly after the Civil War ended, the Supreme Court confirmed in Texas v. White that “[t]he Constitution, in all its provisions, looks to an indestructible Union composed of indestructible States” (Carson 2013).

Preceding Lincoln’s reference to “a house divided” in his 1858 speech he mused: “If we could first know where we are, and whither we are tending, we could then better judge what to do, and how to do it” (Basler 1953, 461). These questions remain as vital to the stability of our national Union in 2013 as they were in 1858.
The dismissive suggestion of Mr. Carson, that the Civil War established a permanent Constitutional order ignores both history and human nature and is symptomatic of a political order in decline. This paper reconsiders the questions Mr. Lincoln proffered in 1858 and seeks to apply them to the cultural polarization which has so politically divided the United States in 2013.

The regional and cultural diversity which necessitated the Framers of the Constitution to politically separate, check and balance the power of the general government in 1789 and to limit further its ability to invade the sovereign authority of the States in 1791 has only become more politically relevant and structurally essential over time. A political house—as ethnically, racially and culturally diverse as the United States of America has by 2013 become—must, if its union is to endure, restore balance to the Constitution.

THE AMERICAN "CULTURE WAR"

Twenty years ago, Patrick J. Buchanan, a former Nixon speech writer, who coined the phrase “silent majority,”

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2 According to the Cambridge Advanced Learner’s Dictionary (1995), the silent majority is an unspecified large majority of people in a country or group who do not express their opinions publicly. The term was popularized, though not first used, by U.S. President Richard Nixon
shocked the Republican convention in Houston when he boldly “declared there was a ‘cultural war’ taking place for the soul of America.” In his speech to nominated George H.W. Bush as the Party’s nominee, Buchanan explained as follows:

This election is about more than who gets what. It is about who we are. It is about what we believe and what we stand for as Americans. There is a religious war going on in this country. It is a cultural war, as critical to the kind of nation we shall be as the Cold War itself. For this war is for the soul of America.

When asked in a recent interview conducted by the New York Times, about the significance of that speech, Buchanan maintains that his “speech was then, and is now, consistent with the heart and soul of the Republican Party” (Nagourney 2012).

Christian conservative voters throughout the country have loyally supported the Republican candidates ever since Ronald Reagan endorsed the evangelical movement during his 1980 Presidential campaign for the Party’s nomination. Reagan’s endorsement politically legitimized the leaders of the evangelical Christian movement winning them greater

in a November 3, 1969, speech in which he said, “And so tonight—to you, the great silent majority of my fellow Americans—I ask for your support.”
public credibility and financial support from their congregations which in turn purchased Christian conservatives greater political access to their elected public servants in Washington D.C.

More than a decade later, Presidential Candidate Buchanan’s call for a practical legislative approach to outlaw abortion and to turn back the expansive anti-family, radical feminist and homosexual agenda of the Democratic Party was a clarion call for Christian Fundamentalists throughout the United States.

Though he failed to win the Republican nomination, Buchanan did succeed in uniting and reactivating this once silent majority. The darling of the Christian Conservative movement, Buchanan maintains that his culture war speech still represents the “heart and soul of the Republican Party” (Nagourney 2012). Explaining that his failure to secure his party’s nomination for President had been due to “the country-club and the establishment Republicans (who) recoil from the social, cultural and moral issues which many conservatives and evangelicals have embraced” (Nagourney 2012).

By 2012, Mr. Buchanan’s “culture war” speech had become the “heart and soul” of the Republican Party’s
official political platform. Easily the most culturally conservative agenda in the party’s history, the Republican platform reaffirmed the party’s opposition to gay marriage, referencing “God” ten times, “faith” and “abortion” nineteen times each and for the first time expressly referencing the existence of a “war on religion.” Citing President Obama’s “attempt to compel faith-related institutions, as well as believing individuals, to contravene their deeply held religious, moral, or ethical beliefs regarding health services, traditional marriage, or abortion,” accusing “liberal elites” of trying to “drive religious beliefs—and religious believers—out of the public square” (RNC 2012).

Beverly Caley, a Kansas Republican delegate to the party’s National Convention, believed it to be the most culturally conservative commitment in the party’s history. Caley, expounded as follows: “There is such a consensus within the party on opposition to abortion rights and same-sex marriage and on the importance of faith in public life. . . that raising them this year has created neither surprise nor backlash” (Nagourney 2012).

According to the Reverend Richard Cizik, who had lobbied the White House, Congress and the Supreme Court on
behalf of the National Association of Evangelicals from 1980 until his resignation in 2008, “Reagan knew how to please evangelicals without giving them anything in return” (Belton 2010). Since Reagan’s endorsement in 1980, the number of potential voters in the United States describing themselves as evangelical is estimated to have grown to “over one-third” (The Economist 2012).

In return, the Republican Party, despite having won a majority in the House of Representatives for the first time in forty years, winning the White House in three of the last five races and having achieved and maintained a majority of Republican appointed Justices to the Supreme Court, has made absolutely no meaningful progress in the past thirty three years on any issue of any significant importance to Evangelical Christians. By promising political miracles, Republicans have manipulated the cultural warriors of the Evangelical movement gaining their electoral and financial support without having to produce any meaningful results.

Following the November elections in 2012, despite having maintained a majority in the House of Representatives and having expanded their political influence within the States, the Republican Party’s failure
to capture the Presidency or the Senate has thrown the Party into a political identity crisis. In what has been called a political post-mortem, the Republican National Committee began meeting soon after the election to determine what went wrong and what they must do to remain viable in national elections.

Officially titled the “Growth and Opportunity Project,” the final report identified that the Republican Party’s traditional challenge of unifying economic conservatives, pro-defense hawks, and religious evangelicals has been further complicated by the emergence of an anti-Washington libertarian faction following the 2010 elections.

In response, the report called for a wide range of political adjustments intended to help the Party better communicate its core values in what continues to be a shifting cultural environment. Acknowledging the importance of the evangelical movement to its political viability, the report also called for the establishment of a full-time faith-based outreach effort to ensure the Party’s political adjustments do not risk alienating its core constituency.
As the Republican Party seeks to harmonize the discordant factions of its national party, it will have to compromise; not with the Democratic Party, but with its own conflicted principles. In an interview with the Huffington Post, John Green, a professor of religion and politics at the University of Akron, explained the lackluster evangelical voter turnout in Ohio, Florida and Virginia. He said, “It’s easy to say on paper the parties have religious constituencies, but to make them work together effectively in a coalition requires a lot of effort.” “Evangelicals” he said “have told me the party has to change its image, but they don’t think their issues are the cause of the image problem.” The trick, Green surmised, was getting “religious social conservatives to work with the more assertive libertarian wing of the party” (Pulliam-Bailey 2013).

As the American “Culture War” continues into the twenty-first century giving rise to calls for secession and ever more bitter and absolutist rhetoric from both the right and the left of the political divide; it is as much an imperative for the American People today as it was for Lincoln in 1858 to “first know where we are, and whither we
are tending, (so that) we could then better judge what to do, and how to do it” (Basler 1953, 461).

LIFE, LIBERTY AND THE PURSUIT OF HOPE & CHANGE. . . AGAIN

In his second inaugural address, President Obama set out to find common ground between the cultural factions dividing the nation while establishing what he hoped to achieve during the final four years of his Presidency. Reminding the American people “what binds this nation together,” unlike most nations of the world, was not the promotion or protection of a particular religious, racial or cultural identity. Rather, our allegiance has been to “an idea, articulated in a declaration made more than two centuries ago.” “We hold these truths to be self-evident, that all men are created equal, endowed by their creator with inalienable rights that among those are life, liberty and the pursuit of happiness” (Becker 1922, 8).

With respect to the President and the American People, this proposition has never been self-evident nor have the rights it professes been inalienable. This revolutionary idea, so eloquently phrased in the Declaration of Independence, continues to be as salient and as elusive today as it was in 1776, or as it had been in 1861.
That the legitimacy of a government should be measured by its ability to protect life, liberty and property was by no means revolutionary in 1776. Following the Second War for Independence in 1814, then former-President John Adams, reflecting on the revolutionary spirit which had precipitated the first War for Independence in 1776, wrote that the real revolution had begun years before any conflict had become evident. For Adams, “the Revolution” had been “in the minds and hearts of the people.” The revolutionary “change,” Adams noted, had gradually manifested itself throughout the colonies, gradually affecting their “religious sentiments” toward “their duties and obligations” (Seldes 1985, 7) to the Crown.

The “real revolution,” according to Adams, had been about neither taxation, nor representation but rather “the radical change . . . in the principles, opinions, sentiments, and affections of the people” (Seldes 1985, 7). Long before opposition to the Stamp Act had united the American Colonies; or Parliament had declared its “authority to make laws and statutes of sufficient force and validity to bind the colonies and people of America... in all cases whatsoever” (Pickering 1799), each had separately grown as culturally distinct and politically
independent from one another as they collectively had become from Great Britain.

Although it would be the charge of “taxation without representation” that would rhetorically unite the colonies in resistance to the tyrant King George of Great Britain, in truth, it merely helped bring the real revolution in to focus. By 1776, the intellectual and moral shift in the minds and hearts of the colonists would prove to be so irreconcilable that it would take a bloody civil war to politically divided the Old World from the New. Had the colonists remained free to govern according to their own local “principles, opinions, sentiments, and affections,” unmolested by the direct foreign influence of Parliament or the King, perhaps separation from England would never have been considered.

These truths, rather than self-evidently binding the nation together, as President Obama has suggested, the practical definitions of these truths—equality, life, liberty and the pursuit of happiness—remain only self-evident to each citizen individually. We are bound together, generation after generation, in a constant struggle to define and refine our collective understanding of these individually self-evident truths. Rather than
presenting a self-evident truth, the Declaration of Independence presented a philosophical proposition begging several apparent, however, politically volatile questions. What is a person? When does life begin? When does it end? And are there any self-evident, natural, or God-given rights that a legitimate government cannot usurp? Moreover, and perhaps most relevant to this paper, can these concepts, which continue to be the source of such political and cultural division be, as Presidents Thomas Jefferson, Abraham Lincoln, and Barack Obama have each suggested, the core precepts of the nation’s founding creed and the source of its national purpose? Or, is there something else?

THE 112TH CONGRESS

The 112th session of the United States Congress has been maligned unfairly for having conducted the most partisan and least successful legislative session “since scholars began keeping tabs on congressional productivity” (Klein 2012). The Fighting 112th was not elected to legislate, but rather was sent to Washington in 2010 to represent their corporate and local constituents in the most important Presidential election of their lifetime. Taking this tired phrase further, one columnist called it
“the most important election since the Civil War, and possibly since America’s founding” (Friedersdorf 2012).

The members of the 112th Congress were not poor legislators; they were outstanding representatives. The minority leader of the nation’s more deliberative and contemplative body, Senator Mitch McConnell made this point clear when he announced “the single most important thing we want to achieve is for President Obama to be a one-term president” (Kessler 2012). In a legislative session where “sixty votes [were] required for just about everything” (Klein 2012), legislation was proposed, not to make law or to address public needs but to land political punches. Aside from a litany of failures, the 112th did have two noteworthy accomplishments; they united the nation’s hyper-partisan media in their condemnation of the 112th’s inefficiency and provided the nation with a disturbingly accurate representation of its own ever deepening cultural identity crisis.

If the truths, which were to have bound the American people as a nation, are not self-evident to the people or inalienable to them by their government, what then defines an American as an American? Can the United States of America be defined by a traditional understanding of
culture? At what point might a cultural division become so wide that secession might seem a reasonable or perhaps even an inevitable response? Could a cultural conflict once again dissolve the Union among the States? Ultimately, the question arises: can a house divided against itself stand?

In considering these questions I, like Lincoln, “do not expect the Union to be dissolved” nor do I “expect the house to fall...” but, unlike Lincoln, I do not expect that the nation “will cease to be divided,” nor do I believe it will or was ever meant to “become all one thing or all the other” (Basler 1953, 461).
CHAPTER I

FEDERALISM

The need to be connected is innate in human nature. Throughout all history, humans have joined in partnerships (Aristotle, Vol. 21 - trans 1944) to escape danger or to pursue their common goals. The ultimate success of these communities required among its members a mutual trust and commitment to the partnership. In the proper formation of a stable republic, Aristotle ranked partnerships “prior in nature to the household and to each of us individually,” for without the protection provided by these communities neither the individual nor his family would be secure (Aristotle, Vol. 21 - trans 1944).

Broadly defined, federalism describes the tendency of communities to seek out and form mutually beneficial arrangements with other communities. Although virtually no one contests the significance of federalism’s influence on the organization and operation of American government and politics, the precise meaning of federalism is contested endlessly. Federalism is a political concept in which groups of members are bound together by covenant with a governing representative. The term federalism is also used
to describe a system of government in which sovereignty is constitutionally divided between a central governing authority and constituent political units such as states or provinces. As for the rest, the devil is in the details.

According to Martin Diamond, a teacher and political theorist, the term federalism in the historic context of 1787 would have been synonymous with the term confederation. From the perspective of the Madison and his fellow delegates, both would have operated according to the same three principles: (1) the central authority does not govern individual citizens; (2) the central authority does not concern itself with the internal political problems of the member states; and (3) each member state has an equal vote in the operation of the central authority (Peterson 1985). From these standards, it is clear; the United States of America is no longer a Democratic Federal Republic.

Federalism is primordial. Driven by the intrinsic need for intimacy and security, the human race is uniquely hard wired to seek out and join or to form communities of like-minded individuals. Of all the creatures on the planet, human beings are the only one capable of engaging in “large-scale cooperation...without kinship” (Haidt 2012). Aristotle, in considering how best to order
society, ranked the importance of community, “prior in nature to the household and to each of us individually” (Aristotle, Vol. 21 - trans 1944). Without the protection provided by civil society neither the individual nor his family would be secure (Aristotle, Vol. 21 - trans 1944).

Social psychologist, Jonathan Haidt, attributes man’s ability to advance from “hunter-gatherers . . . to building gigantic cities in just a few thousand years . . . to his ability to circle around sacred values” (Haidt 2012). “Morality,” he explains, “binds individuals . . . around sacred values but . . . makes [them] blind to objective reality” (Haidt 2012). American political scientist William H. Riker explored how interest groups circle forming coalitions, offering to support each other for their mutual advantage in the political process.

Essentially, federalism is a compromise between “centripetal and centrifugal forces” that are operative at the same time” (Riker 1964). It is born only when a balance between these forces is reached, but because federation is essentially a bargain, the units merge only when the centripetal forces overwhelm the separatist ones, and the units see greater advantages in union than in separation. The basic problem of a federation has traditionally been
“'to keep the centrifugal and centripetal forces in equilibrium so that neither the planet States shall fly off into space nor the sun of the central government draw them into its consuming fire” (Bryce 1995). Essentially a halfway house between unity and separation” (Dikshit 1971, 12), federalism seeks to solve the question of how best to organize communities of men.

William C. Morey, an American scholar and veteran of the Civil War, described federalism as the “natural and almost spontaneous way in which the early integrations of society were affected by the differentiation and coalescence of elementary groups and the [nearly] universal tendency . . . to blend a qualified local independence with a qualified central authority” (Morey 1895, 10). Just as rational self-interest motivates individuals to seek out and join or to form communities with other likeminded or motivated individuals; rational self-interest motivates the political behavior of individuals within those communities to seek out or to form mutually beneficial arrangements with other communities.

The need to be connected, to seek out, or form partnerships with similarly motivated individuals, is an innate, rational human behavior. Established to escape
danger or to pursue common objectives, these partnerships are limited only by individual interest. As partnerships expand, so must social contracts. In Politics, Aristotle reasoned that since an individual or his family could not reasonably be secure outside of a community, therefore in the organization of a stable republic, he ranked the importance of community “prior in nature to the household and to each of us individually” (Aristotle, Vol. 21 – trans 1944). As a result, federalism is in some sense a normal principle in the growth and organization of political society. Indeed, “Federalism is a political organization in which the activities of government are divided between regional governments and a central government in such a way that each kind of government has some activities on which it makes final decisions” (Riker 1975).

As natural and intuitive as federalism might appear to be, its apparent simplicity belies the true complexity of its practical application. Unlike the monarchical tyranny of an autocrat or the democratic tyranny of a majority faction, “federalism seeks to identify and govern from a humane middle ground” (Dikshit 1971, 97). Providing liberty and security, federalism is a dynamic process driven by a realpolitik understanding of the complexities and dynamism
of the human experience. “The organic nature of the human condition necessitates federalism; it may require one type of instrumentality at one time and another type at some other time” (Dikshit 1971, 97). In fact, “as the nature of the society changes, demands for new instrumentalities are created and these demands are met by changing or abolishing old instrumentalities and establishing new ones in their place” (Livingston 1952, 93).

RE-EMERGENCE OF FEDERALISM

Peter Riesenberg was the first historian to identify the reemergence of federalism prior to the fifteenth century. Largely developed from the cultural remnants of the Roman Empire, these basic civic patterns emerged in support of the regional trade routes established during the Middle Ages. As profit and stability followed, a renewed interest in Roman law and order and sense of civic consciousness began to form throughout Europe, the Middle East and Northern Africa (Riesenberg 1969, 241).

John Pocock, a British historian of political thought, traced the development of federalism as a modern political structure. Beginning in Western Europe during the sixteenth century, Pocock, draws a corollary between Florentine
political thought and the Atlantic republican tradition. Focusing on Niccolò Machiavelli’s The Prince, Pocock explains how federal patterns began to develop. Not seeking an ideal society or stability beyond his own utility, Machiavelli saw the republican virtue of civic humanism as a vehicle for the accumulation of greater power and influence within his society (Pocock 1975).

The spirit of the Renaissance and Reformation gave rise to new, imperial and universal claims of church and state. In a shifting cultural environment, smaller, more discrete, political communities of place, work, and worship led to the desire for increased local liberty. For protection, these early modern Federalists “looked largely to the past, to the confederations of the tribes of Israel and to the medieval vision of communitas communitatum. The past, both real and mythic, [were] resurrected [in their] defense” (Kincaid 1990, 3). In kinship, religion, social class, local community, region, guild, monastery, university and various other types of community lie, then, the medieval system of federalism, one that can be truly described as a community of communities (Nisbet 1976, 399).
All social groups, regardless of size or complexity have developed a unique sense of identity. That said; the existence of a definitive, authentic American character, culture or national identity is a myth that has been asserted ever since our national independence (Karst 1984, 25). American culture, by necessity, defies traditional definition. What it is to be an American cannot be defined by a set of core values or limited by a foundational creed but rather, by design, it exists in a perpetual state of flux. Though each American may individually hold equality, life, liberty, and the pursuit of happiness to be self-evident, these principles were never intended to be self-executing or self-defining truths.

American culture, by design, is intended to be shaped and reshaped by each successive generation, each struggling to define and defend their unique understanding of American culture and national purpose. The cohesiveness of the States in the American federal system has benefited in no small part to its abundance of natural resources, and general lack of any legitimate military threats to its sovereignty. But, as the American Jesuit and theologian, John Courtney Murray, recognized in his most famous work,
We Hold These Truths: Catholic Reflections on the American Proposition: “The distinctive bond of a civil multitude is reason, or more exactly, it is the exercise of reason which is argument” (Murray 1960, 8).

This process of societal self-discovery is a normal, necessarily contentious, inherently democratic, social phenomenon that has taken place in all communities regardless of size throughout all of human history. In essence, culture is nothing more than a construct of the individual mind shaped and reinforced by the environment it observes. The environment, therefore the culture in New York is nothing like that of Anchorage nor is it like either San Diego or Austin. Culture is how a society identifies itself to itself. The literary, musical, political and even religious traditions of a society are mere manifestations of culture rather than culture itself.

The broader characteristics of a society’s culture are shaped, moment by moment, by individuals interacting within groups which are simultaneously interacting and overlapping with other groups all informally participating in an organic and continuous struggle for inclusion and acceptance in their society’s understanding of its authentic culture. In a democratic society, such as the
United States, the fluid and free-market driven nature of this process makes it virtually impossible to comprehensively and definitively say what is or is not a feature of American culture.

This concept of culture, traditionally driven by race, religion and ethnicity, becomes further complicated when the rapidly advancing frontier of social media is considered. In the “new” new world, where individuals belong to several virtual communities, each with their own on-line social identities, existing outside all traditional boundaries and conforming to cultural norms found nowhere in the real world, traditional notions of culture and patriotism become increasingly difficult to maintain. As societies expand and the interests of their community become increasingly complex, groups of individuals with common interests divergent or in conflict with the larger society have always sought recognition, accommodation, separation or revolution.

Here, the strength of Murray’s fluid definition of American culture as both a national heritage and a public philosophy is evidenced by its durability.
Though writing in 1960 Murray captures well the tone of the political discourse in 2013 writing as follows:

... the American consensus needs to be constantly argued. If the public argument dies from disinterest, or subsides into the angry mutterings of polemic, or rises to the shrillness of hysteria, or trails off into positivistic triviality, or gets lost in a morass of semantics, you may be sure that the barbarian is at the gates of the City. (Murray 1960, 13)

“Civilization,” Murray explains quoting moral theologian, Thomas Gilby, “is formed by men locked together in argument” and from their dialogue “a community becomes a political community” (Gilby 1953, 25).

Federalism is an attempt to solve the problem of human organization. As a national heritage and a public philosophy, federalism unlike unitary systems, “does not force unity out of diversity, but allows the two to coexist” (Dikshit 1971, 12). The particular problem of federalism is to find solutions to governmental questions in a complex interaction of spatial differences and similarities. Essentially federalism has been a product of geography. As Professor Dikshit, explains, “[t]he essence of federalism lies not in its constitution but in the geography of the society itself” (Dikshit 1971, 12).
Modern scholarship has invented an arbitrary distinction between federal, where neither level of government is dependent on the other, and confederal where the central government is now subordinate to its States. Etymologically this distinction did not exist prior to the twentieth century (Dikshit 1971, 4). Each of the two terms “implies a covenant, compact, or treaty among independent States. The oldest meaning of the expression federal government appears to refer to loose linking together by treaty of sovereign States for specific military or economic purposes” (Dikshit 1971, 3). Examples of federation in this form can be found as far back in history as confederacies of Ancient Greece (Watts 1966, 10).

In 1960, John Courtney Murray’s analysis of the intersection between religion and culture offers compelling insights into “Civil society,” in the United States. Murray observed that this type of ordered society “is a need of human nature before it becomes the object of human choice” (Murray 1960, 8). For Murray, “every particular society is a creature of the soil; it springs from the physical soil of earth and from the more formative soil of history” (Murray 1960, 8).
After three hundred and fifty years of expansion, Rome struggled to maintain its cultural continuity in the face of growing ethnic and racial diversity. Emperor Constantine mitigated this challenge by expanding the traditional sources of culture to include religious identity. In 313 A.D., he issued the Edict of Milan, formally ending the religious persecution of Christians and declaring Roman neutrality with regard to religious worship. Constantine recognized that “Christians [were] not differentiated from other people by country, language, or customs . . . they [did] not live in cities of their own, or speak some strange dialect, or have some peculiar lifestyle yet they all identified themselves as Christian” (Dunning 2009, 68). By co-opting the rituals and traditions of Christianity, Rome was able to expand its empire while maintaining a cohesive sense of Roman identity.

The Framers of the United States Constitution adapted and pioneered both of these mechanisms for establishing and retaining its subnational governments. Evidence for this is found first in the basic design premises of federalism, which was conceived as a mechanism to protect liberty through the institutionalization of permanent intergovernmental competition for popular favor. Because,
According to Madison, “[t]he accumulation of all power . . . in the same hands may justly be pronounced the very definition of tyranny” (Carey 2009), liberty can be secured so long as power remains divided. Yet power divided solely by means of constitutional endowment need not stay divided: “power is of an encroaching nature,” and cannot be confined by “parchment barriers” (Carey 2009).

Just as the United States Constitution separated and balanced the national government’s authority by horizontally dividing its functions into distinct legislative, executive, and judicial branches; federalism prevents the unwarranted accumulation of government authority by separating and balancing in to each level of the state only those powers necessary to check and balance the abuses of the other. “Ambition” Madison noted, in such a system is thus leveraged to “counteract ambition,” “[t]he different governments will control each other, at the same time that each will be controlled by itself” (Carey 2009).

So strongly had the Framers of the Constitution believe in this principle of federalism, that they explicitly contemplated the possibility of armed conflict as a method of resolving intergovernmental disputes. In his defense of the Constitution’s proposed federal structure,
Madison estimated for his fellow delegates the size of a military force the national government might muster, arguing that “it would be a small fraction of the armed militia forces available to the states” (Carey 2009).

Hamilton went further, imagining the military scenarios where state and national forces might clash, arguing in favor of the proposed constitution that the “states would have important tactical advantages over any national army called up to suppress them” (Carey 2009). In developing the Constitution’s federal structure, “the Framers apparently saw little distinction between the structure they were designing,” which divided power internally within a single political society, “and the structure of power relations among independent nations, such as rival European great powers. In each case, a sphere of power was conceived territorially, as something political actors would attempt to invade or defend” (Gardner 2005). According to Madison, government’s power would not remain divided unless “[t]he interest of the man [is] connected with the constitutional rights of the place” (Carey 2009). Those who hold political office must be given the same kind of stake in defending their allotted plot of power as monarchs have in defending their realms.
CHAPTER II

THE NECESSITY OF AMERICAN FEDERALISM

The ubiquitous presence of federalism throughout American Colonial history and the vast continental scale of the American frontier inspired Madison (and through him, his fellow delegates) to design their Constitution around a federal structure. A colonial pattern of federalism development layered of one or more overlapping social groups, intra-colonial, inter-colonial, and colony-imperial, each serving the overlapping interests of individuals, local communities and the imperial interest of the Realm.

Federalism was not derived from a particular political philosophy, nor was it organized by a formal declaration. Rather, the Framers had recognized that federalism had existed organically within and among colonies since their foundation. Each colony was an intentional gathering of culturally related subgroups. Whether they are counties, communities or congregations all chose to adhere to the locally established social norms rather forming a single undifferentiated union.
Each of the religious communities that braved the vast untapped potential of the North American continent contributed to the highly factious, yet remarkably stable, degree of cultural diversity that developed throughout the British Colonies in America. Separately founded over the course of one hundred and twenty five years, each colony, shaped by its geographic circumstance and informed by its unique religious experience, developed its own distinct and fiercely independent colonial identity. From Puritan Congregationalists in New England to William Penn’s Holy experiment in Pennsylvania to the Presbyterians, Baptist, and Methodists battering against the wall of Anglican establishment in the South—the colonies provided an open market for religious migrants and itinerant ministers.

This informal process of individuals and groups seeking to more fully express their own slight variations of religious identity allowed Americans the freedom to sort themselves within and throughout the colonies each according to their own unique set of personal convictions or religious beliefs. This expansive pattern of religious diversification was driven not by religious tolerance, but by religious persecution. An outgrowth of the Protestant Reformation, the religious wars which had plagued Europe
for more than two centuries and drove religious pilgrims of all denominations to the shores of the New World was now being honored by the religious intolerance in the American Colonies. According to Kenneth C. Davis, “from the earliest arrival of Europeans on America’s shores, religion has often been a cudgel used to discriminate, suppress, and even kill the foreign, the “heretic” and the “unbeliever” including the “heathen” natives already here” (Davis 2010). Moreover, while it is true that most American colonists were Christian, the “pitched battles between various Protestant sects and, more explosively, between Protestants and Catholics,” belies the popular myth that America was originally a “Christian nation” (Davis 2010).

While the freedom to express variant religious beliefs was strictly limited to particular communities, they were more broadly accepted in the more remote regions so long as they were not too offensive to the prevailing cultural norms of each colony. The pursuit of individual religious freedom and competition among religious ideologies drove successive generations of Americans to press the physical and cultural bounds of the American frontier, establishing as they did the fluid and distinctly American sense of
relational identity which, oddly enough became a unifying feature of American cultural identity.

Just as Frederick J. Turner, would later observe in his essay on The Significance of the Frontier in American History, “The existence of . . . free land, its continuous recession, and the advance of American settlement westward, explain[s] American development” (Turner, 1893, 1). The vast scale and varied geography of the continent made it possible for religious, racial or cultural groups to find their place in America. Driven west by persecution and perseverance, the frontier provided a safety valve for the cultural catalyst of religion.

The most important aspects of American culture as well as the nature of our political institutions were shaped by the availability of land, economic opportunity, and religious intolerance. The frontier necessitated a reliance on an informal human process rather than a rigid set of dogmatic standards. By allowing a religious free market to thrive alongside a commercial free market, an effective federal pattern of colonial expansion and development emerged.

This organic growth of Federalism would later prove instructive for James Madison as he considered how best to
structure a nation that could join an unprecedented degree of cultural and religious diversity on a geographic scale not seen since the height of the Roman Empire.
CHAPTER III

THE ARCHITECT, JAMES MADISON

Although the United States Constitution as ratified in 1787 and amended by the Bill of Rights in 1791 was undoubtedly a political product of debate, James Madison continues to be recognized as the “Father of the Constitution.” For the purposes of this paper, and in the interest of a better understanding of American history, James Madison was the primary Architect of the Constitution. No delegate to the Constitutional Convention arrived in Philadelphia better prepared for the challenges that would develop than James Madison.

Only twenty-five years old when his mentor and compatriot, Thomas Jefferson, penned the Declaration of Independence in 1776, James Madison served in the state legislature of Virginia throughout most of the war and became the youngest delegate to the Continental Congress. He served in that body from 1780 until the war’s end in 1783.

Madison attained prominence in 1785, working with Jefferson drafting the Virginia Statute for Religious Freedom. In an essay titled “Memorial and Remonstrance
against Religious Assessments,” Madison eloquently laid out reasons why the state had no interest in supporting any Christian or other religious instruction. Madison’s argument became a fundamental piece of American political philosophy that any believer of any religion should understand: that the government sanction of a religion was, in essence, a threat to religion. “Who does not see,” he wrote, “that the same authority which can establish Christianity, in exclusion of all other Religions, may establish with the same ease any particular sect of Christians, in exclusion of all other Sects” (Frohnen 2002)?

Not having participated in fermenting the revolution or serving in the war, Madison was eager in 1787 to participate in the reconstitution of the United States. As pockets of civil unrest threatened to spread into larger regional conflagrations throughout the Union, Madison opined “a crisis had arrived which was to decide whether the American experiment was to be a blessing to the world or to blast forever the hopes which the republican cause had inspired” (Rutland 1997, 14). Recognizing the systemic weaknesses of the Articles of Confederation, Madison worked
behind the scenes as early as 1785 to prepare the nation for the impending collapse of the confederation.

Madison was the key in both instigating Congress to call for a national convention and for persuading George Washington, the only truly indispensable delegate, to attend the meeting and thus compel broad participation. As the summer of 1787 approached, twelve of the thirteen states dispatched delegates to Philadelphia where they were to consider recommendations for how best to form a nation from their clearly imperfect union. Each of the delegates having witnessed their former and fellow countrymen pitted in a bloody Civil War defending the independence they themselves had fermented in their States or declared from this same hall eleven years ago, well understood the poignant nature of the task before them.

As the delegates gathered in Philadelphia, to consider what would become their third Constitution in twelve years, each brought his own regional predisposition, state loyalty, religious conviction, and personal perspective on how best to structure a union among the States. None arrived better informed or more prepared than James Madison. A keen political observer and first-rate scholar of the Enlightenment, Madison’s academic approach to the
classic republican proposition of self-governance led him to analyze the rise and fall of every comparable nation-state throughout all of western civilization absorbing and blending his classical understanding of philosophy with the deluge of political writing pouring out of Europe. Madison’s commitment to the principles of the revolution and his realpolitik approach to the proposition of self-governance led to the establishment of a nation far beyond even his comprehension.

In his preparation for the Constitutional Convention, Madison came to understand federalism as an inherent human quality present in the formation and maintenance of stable political associations. If suppressed, patterns of federalism would inevitably emerge to become a source of division within those societies. Accordingly, Madison concluded that communities, not individuals, were the most essential unit to consider when constructing a political structure that was to remain both stable and free.

Federalism was essential, beyond the political calculus of ratification; it had become a “mixture of behavior and belief that infuse[d] [their] law and [their] institutions, transcending race, religion, and ethnicity,
allowing individual citizens to preserve their separate cultural identities and still identify themselves as Americans” (Karst 1984, 1). Kenneth Karst identified this sense of identity as American civic culture.

Purposely limited and balanced to synthesize into government action both the active and passive will of the American electorate, Madison’s design allowed the States of would-be-nations to unite without surrendering their local autonomy or state identity. “To be or to become an American,” historian Philip Gleason explained “a person did not have to be of any particular national, linguistic, religious, or ethnic background. All he had to do was to commit himself to a political ideology centered on the abstract ideals of liberty, equality, and republicanism” (Gleason 1980, 62).

Defying the notion that federalism was merely a transitional phase between anarchy and a consolidated state, Madison parted from Montesquieu and others, holding that federalism would not only work in a large republic, but if properly structured and balanced, would produce countervailing forces among the States that would prevent a tyrannical faction from dominating or destabilizing the union. “American federalism contemplates that states will
retain a significant degree of autonomy so that state power can serve as a meaningful counterweight to national power” (Gardner 2012, 2).

By allowing a sufficient degree of ambiguity within the framework of the federal government, the Constitution held the States and the American people in tension, institutionally bound by their mutual interests in maintaining a maximum degree of national, state and individual independence. Federalism struck the necessary balance between the separate and competing ambitions among the states and the tyrannical centralizing tendencies of a unitary authority.

By delegating to the new federal government supremacy over a limited set of functions, while reserving all other authority to the states, Madison fractured the traditional concept of sovereignty. Admiring the simplicity and balance of Madison’s design, the political observer Alexis de Tocqueville noted as follows:

... one can hardly imagine how much [the] division of sovereignty contributes to the well-being of each of the states that compose the Union. In these small communities ... all public authority [is] turned toward internal improvements ... [as] the ambition of power yields to the less refined and less dangerous desire for well-being. (Tocqueville 1863, 144)
By balancing the impractical democratic ideal of unanimity with the realpolitik necessity of union, Madison constructed a Union he hoped could last the test of time. Established by the Constitution and later re-enforced by a Bill of Rights, federalism was among the few features the delegates agreed to be as essential for ratification as to be beyond compromise.

Beyond the basic political calculus of ratification, they understood that the expectation of individual political participation, inherent in a federal structure of government, had become so ingrained in Colonial society that it had become an essential feature of legitimate government. Thus the development of a deliberative federal structure was considered as essential to the sustainability of a free society as democracy was to the preservation of individual rights or the republic was to the integrity of the nation.
While campaigning to serve in the inaugural session of the United States Congress, James Madison underwent a “campaign conversion” (Rakove 1991), relenting to the demands of his fellow Virginians and promising if elected to propose and support the addition of a Federal Bill of Rights to the Constitution. During the campaign, Madison confided in a letter to Thomas Jefferson that he found no reason to support a Bill of Rights other than the fact “that it is anxiously desired” by the public. From Madison’s perspective a bill of rights would be no more than a “parchment barrier” (Carey 2009), unable to conform or control the States any more successfully than the Articles of Confederation.

In considering a Bill of Rights, Madison was far less interested in determining what rights should be included and far more concerned with identifying how the federal government, empowered to protect those specific rights, might become destructive to the general liberties of the people. Hamilton, with whom Madison had collaborated in writing the Federalist Papers, agreed that the reservation
of particular rights should remain a function of the states, going further to assert that a national Bills of Rights, would not only be “unnecessary in the proposed constitution, but would even be dangerous” (Carey 2009). In a somewhat prophetic observation, Hamilton suggested that a bill of rights might “contain various exceptions to powers which [had] not [been] granted” in the Constitution as noted below:

    Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . .” (U.S. Constitution, amend. 1). and “. . . on this very account, would afford a colourable pretext to claim more [Federal authority] than [was] granted.” (Carey 2009)

In a letter written to the Baptist Association of Danbury, Connecticut in 1801, fourteen years after the Constitution had first been amended, then, President Thomas Jefferson addressed this very concern. The Danbury Baptists asserted as follows:

    Religion is at all times and places a matter between God and individuals - That no man ought to suffer in name, person, or effects on account of his religious Opinions - That the legitimate Power of civil government extends no further than to punish the man who works ill to his neighbor: . . .and therefore what religious privileges we enjoy (as a minor part of the State) we enjoy as favors granted, and not as inalienable rights. (Jefferson 1904)
Their concern amplifies Hamilton’s earlier warning, that an “unalienable right endowed by the Creator” once legally protected and framed in a Federal Bill of Rights would of necessity be legally defined and could then become legally regulated or even prohibited by the government. “Believing . . . that religion is a matter which lies solely between man and his God,” President Jefferson wrote in response...

I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should “make no law respecting an establishment of religion or prohibiting the free exercise thereof,” thus building a wall of separation between Church and State . . . .(Frohnen 2002)

When first proposed, Thomas Jefferson was in France. He had no part in drafting or debating the First Amendment. Nevertheless, his famous statement about a “wall of separation between Church and State” has become the colorable pretext with which the federal government has expanded its authority over questions of religious establishment and free exercise among the states.

Hamilton’s observation proved to be Freudian in nature when he successfully argued that Article I, Section VIII, Clause XVIII, of the Constitution, most commonly known as the elastic or necessary & proper clause,” was an express power “delegated to the United States by the Constitution”
(U.S. Constitution, art. 1 sec. 8). This broad interpretation completely debased the tenth amendment’s reservation of powers to the states, providing the colorable pretext necessary to establish a National Bank. Though debated and rejected at the Constitutional Convention, Hamilton remained convinced that a National Bank was essential to the financial well-being of the United States and the stability and unity of the new government. Though Madison and Hamilton had shared the pseudonym “Publius” while collaboratively writing the Federalist Papers, in 1790, it is apparent that their understanding of human nature and thus their rationality for supporting the Constitution had been at odds from the start.

For Madison, man was virtuous, guided in his choices by informed reason and moral conscience. He believed in the great republican principle “that the people will have virtue and intelligence to select men of virtue and wisdom. Is there no virtue among us? If there be not, we are in a wretched situation. No theoretical checks, no form of government can render us secure. To suppose that any form of government will secure liberty or happiness without any virtue in the people is a chimerical idea. If there be
sufficient virtue and intelligence in the community, it will be exercised in the selection of these men; so that we do not depend on their virtue, or put confidence in our rules, but in the people who are to choose them” (Carey 2009).

Alexander Hamilton rejected the liberal view that the affection and benevolence of a republican citizenry without state coercion could form a sustainable society. Rather, it was Hamilton’s opinion that the will of man could act as follows:

... be governed by one of two motives only, force or interest: force he observed, in this country, was out of the question; and the interests therefore of the members must be laid hold of, to keep the legislature in unison with the Executive. And with grief and shame it must be acknowledged that his machine was not without effect. That even in this, the birth of our government, some members were found sordid enough to bend their duty to their interests, and to look after personal, rather than public good. (Jefferson 1904)

Both Madison and Hamilton recognized the need for the institutions of government to reflect and balance the nature of man, but where Madison sought to counteract man’s ambitions, Hamilton sought to align them with his own. Hamilton’s public goal was to consolidate the war debt of the States and to establish a national bank to bind the Union and stabilize the nation’s finances.
Throughout the Constitutional Convention and the ratification debates, Hamilton’s concern that the new government had been granted too little authority over the States was well known. Fear for what further public debate might yield fueled his support for the Constitution’s ratification. Privately Hamilton believed that the arrangement among the states if not soon altered would become as ineffective as it had been before the Convention of 1787.

Hamilton’s political objective was to strengthen and increase “the number of ligaments between the government and the interests of individuals” (Lodge 1904), to align the economic interests of privately held wealth with his political agenda to strengthen and centralize the national authority, establishing a “system of mercantilism and big government similar to that in Great Britain” (DiLorenzo 2011, 2).

In the opinion of Thomas Jefferson, Hamilton’s plan had an even more subversive objective. Jefferson wrote that Hamilton remained “bewitched & perverted by the British example, as to be under thoro’ conviction that corruption was essential to the government of a nation” (Jefferson 1904). Hamilton’s pessimistic view of human nature led him
to believe Members of Congress had to be “bought off,” by aligning their economic interests with the economic agenda of the nation.

Jefferson saw the creation of a national bank as the “financial vehicle” through which Hamilton hoped to establish “a permanent system of corruption, vote-buying and influence peddling” (DiLorenzo 2011, 8). By relegating their debt obligations to the national government, the States further compromised their individual sovereignty, rendering them and their citizens increasingly dependent on the largess of the national government to fund their state and private initiatives.

To align legislative and private capital in support of his legislative agenda, Hamilton informed key members of Congress and the nation’s creditors, prior to the general public that the government had agreed to assume the antebellum debts of the states. Speculating on this private disclosure, Jefferson lamented as follows:

This paper was bought up at 5 and even as low as 2% in the pound, before the holder knew that congress had already provided for its redemption at par. Immense sums were thus filched from x poor & ignorant, and fortunes accumulated by those who had themselves been poor enough before. (Jefferson 1904)
The members of Congress and businesspersons who benefitted from this scheme in turn supported Hamilton’s agenda for the new government. Writing in his retirement, Jefferson accused Hamilton of expanding the size and scope of the government far beyond what the Constitution had intended. By leveraging the blessing of a large National debt Hamilton had corrupted the legislative process to gain support for the establishment of a more permanent system of “organized corruption” through which the States and the American people could be effectively governed. Jefferson identified this “engine of influence” as the First National Bank of the United States (Jefferson 1904).

All of this supports President Andrew Jackson’s later the contention that the Bank of the United States was “subversive of the rights of the States and dangerous to the liberties of the people” (Jackson 1897). Jackson recognized, “every monopoly, and all exclusive privileges are granted at the expense of the public,” and that “the many millions which this act (re-chartering of the Bank of the United States) proposes to bestow on the stock-holders of the existing Bank must come directly or indirectly out of the earnings of the American people” (Jackson 1897). These stockholders, said Jackson, were profiting from
“their connection with the government” only and not any productive efforts on their part.

Hamilton and Madison’s disagreement in the Federalist Papers centered on the question of what the public’s role in the new republic was to become. Specifically, they differed over when, and to what extent, it would be desirable for the public to participate in resolving constitutional questions. This led them to disagree on how federalism should operate and how to cultivate public interest in the constitution. Hamilton favored a broad interpretation of the Constitution that would give the national government significant powers to pursue favorable public policies. “Hamilton’s objective was to develop a powerful American national consciousness as quickly as possible” (Walling, 1999, 14).

Preventing Hamilton from achieving his objective was public opposition to the strong, national government he proposed. By cultivating the public through policies and programs endorsed by public support when necessary, Hamilton planned to sway public sentiment to favor the national government. The consequence, if he was right, was an American empire (Smith 2007, 25).
One of the first significant attempts to resist Hamilton’s political consolidation following the ratification of the Constitution was the Virginia and Kentucky resolutions of 1798. Secretly drafted by James Madison and Thomas Jefferson, the resolutions were passed by the Virginia and Kentucky legislatures in response to the centralizing policies of the Federalist administrations.

From the premise that the Constitution’s Tenth Amendment specifically guaranteed the limited nature of the general government’s authority over the states, the resolutions declared the Alien and Sedition Acts of 1798 to be unconstitutional and invited other states to join their condemnation and “require” their repeal.

Rather than rallying to support Virginia and Kentucky, several states responded by denying they or any State had the authority to judge the constitutionality of federal actions, pointing out that the judiciary was the proper forum for such interpretative efforts. Standing their ground, Virginia and Kentucky responded in a second set of resolutions adopted in 1799, and in a report drafted by Madison in 1800.
Despite the subtle differences between the Virginia and Kentucky resolutions, their logic flows from the same assumption, that the federal Constitution is a compact among the states and that as the parties to that compact, the states have a right and duty to interpret and enforce its laws. Further, the federal government could not be “the exclusive or final judge of the extent of the powers delegated to itself” (Jefferson 1904), for that would undermine the very notion of a limited government.

Drawing from John Locke and English common law, Jefferson contended that “as in all other cases of compact among powers having no common judge, each party has an equal right to judge for itself, as well of infractions as of the mode and measure of redress” (Frohen 2006). In what became known as the “sentinel” role of the states, the state governments were to serve as guardians against the general government, “‘jealous’ of liberty and unwilling to show any ‘confidence’ in national officeholders.” The state governments contended for the need for a disinterested judge to protect the parchment barriers of the constitutional text from aggressive actions by the United States Congress or the president. To these arguments for limited government, proponents of states’ rights added
particular historical considerations that favored the states as constitutional creators and emphasized the close political relationship between state officials and their constituents” (Whittington 1996).

The resolutions carried an implicit threat of the use of state political power to “interpose” the state government between a citizen and the federal government that had “marked him as its prey” in order to prevent the operation of acts that are “unauthoritative, void, and of no force.” Jefferson’s draft resolution specifically supplemented the suffrage with the “natural right” of each state “to nullify on their own authority all assumptions of power by others within their limits” (Jefferson 1904). The influence of the Kentucky and Virginia resolutions’ doctrine of states’ rights would reverberate right up to the Civil War and beyond (Knott 2005, 47).

The price to be paid for early federalism became more evident with the passage of time; the Whiskey Rebellion, Hartford Resolves and now the Kentucky and Virginia Resolutions. To achieve the blessings of liberty, early federalism divided sovereign power. “When Virginia and Kentucky nullified the Alien and Sedition Acts, they preserved liberties only by threatening national unity”
(Peterson 1995). The Louisiana Purchase temporarily allowed tensions to subside but as questions of how the land would be organized began to surface in debates, regional tension would soon begin to flare.

Future president James Garfield, at the close of the Civil War, said that Jefferson’s Kentucky Resolution “contained the germ of nullification and secession, and we are today reaping the fruits” (Knott 2005, 48).
CHAPTER V

JACKSONIAN DEMOCRACY

For more than three decades, the fundamental nature of the Union has been challenged by local partisans from all regions of the country seeking to advance their own particular local, state, and sectional interests. Indeed, “the paradox of American democracy is that as America has become more democratic, public distrust of government has increased” (Steuerle 1998, 95). With every threat of nullification, there has been a possibility of secession. In 1824, the political supporters of Andrew Jackson accused President-elect John Quincy Adams of having been the benefactor of voter nullification, having won the Presidency despite having fewer popular and electoral votes than Andrew Jackson. Though technically true, Jackson did have the most electoral and popular votes, their claims were constitutionally false since no one candidate had won a majority of the electoral votes.

Although the popular will of the American people had been clear, it had not been constitutionally conclusive. And so, the selection of the President fell to the House of Representatives who in turn selected John Quincy Adams. The
nature and purpose of the federal government would again be a central question in the election of 1828 as the national political dialogue shifted from the old Hamilton and Jefferson—a debate between State sovereignty and the supporters of Federal supremacy—to a new dichotomy between those latter-day men in Washington who run the government and the rugged individuals who built the nation. The election of 1828 and the Jackson Era which followed embrace the radically democratic idea of individual sovereignty or radical federalism.

While serving as vice president, John C. Calhoun secretly wrote the Exposition and Protest, in opposition to the Tariff of 1828, which had become known as the Tariff of Abominations. The document stated that if the tariff was not repealed, South Carolina would secede from the Union embracing the idea of radical state sovereignty, that a state has the right to reject federal law, first introduced by Thomas Jefferson and James Madison in their Kentucky and Virginia Resolutions.

Printed and read into the record of the South Carolina legislature at the end of 1828, Calhoun elaborated on his theory of nullification. In several public statements and on the floor of the United States Senate, Calhoun’s defense
of nullification led to a division in the popular understanding of federalism. In response, Daniel Webster developed his own nationalist conception of federalism and Andrew Jackson, carved out a third distinct position.

The conflict among these three views of federalism peaked during the winter of 1832 to 1833, when the nullifiers proved only partially successful in establishing their vision while managing to defer part of the issue. As a result, the industrial economy crashed, and Southern states gave up plans to acquire industry and abolish slavery. A cheap-labor (“free-trade”) alliance of plantation slaveholders and their British cotton customers fostered anti-national radicalism in the South.

Jackson destroyed the previous American consensus behind nationalist economics, in which Southern leaders such as Jefferson, James Madison, James Monroe, and John C. Calhoun had all participated. This political catastrophe is the origin of the Slave Power and of the Civil.
CHAPTER VI

THE RE-CONSTITUTION OF THE UNITED STATES

In the wake of the Civil War, the Congressional Republicans seeking in earnest to join the industrial revolution already in progress were persuaded not only to reconstruct the Union, but also to reconstitute it. Concerned they would lose their governing majority once Northern Democrats were reunited with their estranged political partisans in the south, the Republican Party sought to consolidate their political advantage before readmitting the former Confederate States to the Union.

Elected President without appearing on the ballot throughout the South, Lincoln’s inauguration was viewed by those seeking a pretext for secession to have been constitutionally illegitimate. Secessionist agitators claimed that Lincoln would “instigate slave rebellion through unlimited, if as yet unknown, exercises of the executive power,” and that his election should serve as a preemptive “act of war” against the regional interests of the South (Belz 2006).

Whether the United States of America was in fact a federal union of states or a unified nation of men had
remained a largely philosophical question since the founding of the nation. Following the secession of South Carolina, that fundamental question suddenly became a very practical matter—irreparably altering what had been a contentious but stable working relationship among the States.

Even after secession, many Americans faithfully believed that the Union would prevail. In addition, they had great faith in Divine Providence, working through the democratic process of the Constitution, would ultimately resolve all issues according to God’s plan—allowing the Northern and Southern states to remain united even as they became ever more culturally, economically and politically divergent.

Like no prior act of protest against the national government, secession shattered the bond which had psychologically unified the states bringing the long anticipated crisis of American nationality to the brink. Lincoln’s rhetorical question regarding a House divided would have to be answered, the nation could no longer remain half slave and half free.

During his first term in office, President Lincoln, prompted by the spread of secession throughout the southern
states, engaged the nation in a necessary but terrible Civil War. By refusing to compromise or negotiate on the question of secession, Lincoln embraced his role as Commander and Chief and led the nation through a tragic and costly act of creative destruction. Lincoln allowed the war to come because he understood that only through the scourge of Civil War could the divisive thorn of slavery be removed from the Union.

THE THIRTEENTH AMENDMENT

By the time of his second inaugural address, President Lincoln had all but resolved through Civil War what had been created by constitutional concession, expanded through short-sighted sectional Congressional compromises and exasperated by the impending close of the Western frontier. Following his re-election, the war continued to grind toward what had become its inevitable conclusion, and southern forces had begun planning their resistance. Lincoln committed himself to rooting the institution of slavery through formal Constitutional process of Amendment.

Lincoln had set aside the Constitutional restraints of the Presidency on several occasions throughout the war when exigent circumstances had demanded his executive action; but in this endeavor, he recognized the need for overt
legitimacy and executive restraint in purging slavery from the Constitution. Though he had already issued the Emancipation Proclamation, liberating the slaves in the rebelling states, Lincoln would need to strong-arm what would later become the Thirteenth Amendment through a divided Congress.

Though Lincoln would not live to see the Thirteenth Amendment ratified nor the Union among the states restored, his second inaugural address suggests how he envisioned the process of national reconstruction should proceed, encouraging the nation, to continue on:

. . .with malice toward none, with charity for all...to finish the work we are in, to bind up the nation’s wounds, to care for him who shall have borne the battle and for his widow and his orphan, to do all which may achieve and cherish a just and lasting peace. (Basler 1953, 461)

A beautiful sentiment that, unfortunately, neither Lincoln nor the American people would see come to fruition.

The Civil War had changed the United States of America. Its people, economy, culture and Constitutional structure would all be unalterably affected by the experience of war. Leaderless and traumatized following Lincoln’s assassination, the American people and their institutions floundered as they struggled to reconstruct
the Union. The Constitution—containing no language regarding Civil War or the formal separation of the states—hence, no provision for reforming a Union once it had been dissolved—offered no guidance. From this tumultuous power void a new Union among the American States would ultimately be forged by those who recognized and seized opportunity amid the disorderly struggle to reconstruct the nation.

Working without the guidance of the Constitution or the leadership of Lincoln, the United States Congress was beset with the monumental task of reconstructing the Union. This as of yet undefined process would seek not only to restore the former Confederate States to the Union and to integrate the former slaves, now citizens, into the mainstream of American society. All of this as the Western frontier was opening and industrialization was rapidly sweeping the nation.

THE FOURTEENTH AMENDMENT

Though the Thirteen Amendment had formally “abolished slavery and involuntary servitude” throughout the United States in 1865, the provisional governments of the former Confederacy responded by passing Black Codes and selectively enforcing existing laws in order to restore the racial hierarchy of the antebellum south. In 1866, after
twice being vetoed by President Andrew Johnson, Congress
overcame his third veto, and enacted the Civil Rights Act
of 1866. Intended to prevent the states from subverting the
Thirteenth Amendment, the legislative struggle to pass the
Civil Rights Act served as cautionary tale for the
Republican Party reminding them that any statutory law they
may get pass Johnson’s veto would surely be overturned by a
simple majority vote once the southern states are restored
to the union and their representatives return to Congress.

It was this realization—in the face of unrepentant
southern obstruction and subversion—that inspired
Congressional Republicans to first suggest elevating the
provisions of the Civil Rights Act from a mere statutory
law into a Constitutional Amendment. As such, the civil
rights protections of the Fourteenth Amendment would be
more secure if and when a Democratic majority returned to
Washington, D.C.

Though not controversial at the time the states were
considering its ratification, the first section of the
Amendment has become, perhaps the most significant section
of the United States Constitution in the twentieth century.
Section one of the Fourteenth Amendment provides as follows:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. (U.S. Constitution, Amendment 14)

Both critics and supporters of the ratification suggested that “‘its first section was not controversial in the least.’ The New York Times reported: ‘To this, the first section of the amendment, the Union party throughout the country will yield a ready acquiescence, and the South could offer no justifiable resistance.’ The Brooklyn Daily Eagle, a Democratic paper opposed to the amendment, called the due process and equal protection provisions ‘entirely unobjectionable and entirely unnecessary’” (Hardy 2009, 5).

Though the Fourteenth Amendment to the Constitution, ratified in 1868, had empowered Congress “to enforce, by appropriate legislation” any State from . . . abridg[ing] the privileges or immunities of citizens [which now included former-slaves . . . nor . . . depriv[ing] any person of life, liberty, or property, without due process
of law; nor deny[ing] . . . the equal protection of the laws," (U.S. Constitution, amend. 14, sec. 2) the United States remained “a society divided by a racial apartheid and seething with ethnic pluralism” (Blight 1993, 394) throughout most of the twentieth century. The Fourteenth Amendment, which ostensibly was intended to affirm and insure that former Confederate States, once reconstructed and returned to the Union, would not deny former-slaves their full legal protection as “citizens of the United States and of the State wherein they reside,” seemed to offer corporations an opportunity to advance their own interests.

When first considered before the Supreme Court in the Slaughter House cases, Justice Samuel Miller construed the Fourteenth Amendment’s legislative intent to be abundantly clear, writing as follows:

. . . the most cursory glance at these articles discloses a unity of purpose, when taken in connection with the history of the times . . . no one can fail to be impressed with the one pervading purpose found in them all, lying at the foundation of each, and without which none of them would have been even suggested; we mean the freedom of the slave race, the security and firm establishment of that freedom, and the protection of the newly made freeman and citizen from the oppressions of those who had formerly exercised unlimited dominion over him. (Graham 1938, 31)
Despite its seemingly clear intent, corporate lawyers successfully argued, citing precedent dating back to *Dartmouth College v. Woodward* in 1818, that corporations were entitled to some protection under the Fourteenth Amendment through the persons of their shareholders. Ultimately successful in their argumentation, by the time the first one hundred fifty cases appealing to the Fourteenth Amendment had been heard before the Supreme Court, fifteen involved the rights of former slaves while one hundred thirty five involved corporations (Hammerstrom 2002).

This overly broad interpretation of the Fourteenth Amendment “cleared the way for the modern development of due process of law and the corresponding expansion of the Court’s discretionary powers over social and economic legislation” (Graham 1938, 3). Ultimately, this expansion allowed the federal government to obliterate the jurisdictional integrity of the states and to establish a single national marketplace. Though the erosion of state rights has been primarily accomplished by corporations for corporations, most Americans continue to view these rights
solely through the racially distorted lens of segregation and bigotry.

The same Supreme Court Justices, which had been persuaded that the Fourteenth Amendment expand the traditional definition of person to include corporations, construed the equal protection clause of the Fourteenth Amendment to also constrict the political rights of former slaves. In 1896, the Supreme Court upheld a lower Court’s ruling in Plessey v. Ferguson, which legitimized separate but equal protection under the law. This shortsighted application of the Fourteenth Amendment emboldened the states to expand their existing segregation laws and to further marginalizing the citizens it had been intended to protect. Ultimately, the Court’s misrepresentation of the Fourteenth Amendment allowed corporations to break state-based worker protections and for the expansion of segregation throughout the Union.

Even after the Fourteenth Amendment had been applied to the majority of the Bill of Rights, the Supreme Court in United States v. Cruikshank still held that the First and Second Amendment did not apply to states. However, beginning in the 1920, the Supreme Court began to expand its reading of the Fourteenth Amendment, gradually
inverting many of the expressed protections guaranteed in the Bill of Rights. As the national government began to experiment with the imposition of federal laws, “respecting an establishment of religion [and] prohibiting the free exercise thereof” (U.S. Constitution, amend. 2, sec. 1), it found itself on unfamiliar ground, as many states and large regions of the country became increasingly alienated from their government by laws promoting a national culture alien from their own.

By interpreting the Fourteenth Amendment to incorporate under the authority of the national government rights which had been expressly reserved to the states, the Supreme Court structurally diminished the integrity of the Constitution’s federal design. Without the states to counterbalance such national ambition, the Bill of Rights would become, as Madison feared they would, a mere “parchment barrier against the encroaching spirit of power” (Carey 2009).

Though corporations had primarily accomplished the erosion of state rights for corporations, most Americans who continue to decry the government’s invasion of state sovereignty continue to misplace their animosity. Distracted by numerous political challenges that have
sought to undermine our way of life, the American people have consistently surrendered their liberty and their lives in the face of what they perceive to be legitimate threats to their way of life.

Though the Framers of the Constitution hoped for the nation to be governed by reason, the most successful political rhetoric has relied on fear and seduction. Though reason is theoretically the most desirable, throughout its history, the government of the United States has clearly relied on fear. Speaking before the Virginia Convention in favor of the Constitution’s ratification James Madison was keenly aware of this inherent danger stating that “I believe there are more instances of the abridgment of freedom of the people by gradual and silent encroachments by those in power than by violent and sudden usurpations” (Carey 2009).

THE BLAINE AMENDMENT

In a speech addressing Civil War veterans in 1875, President Ulysses S. Grant called for a Constitutional amendment that would mandate free public schools and prohibit the use of public money for sectarian schools. Laying out his agenda for “good common school education,” Grant called for the defense of public education “unmixed
with sectarian, pagan or atheistic dogmas.” Declaring that church and State should forever be separate, Grant proposed that “Religion should be left to families, churches, and private schools devoid of public funds” (DeForrest 2003).

In reaction to Grant’s speech, Congressman James Blaine, who had actively sought Catholic voters when he running for president in 1874, proposed an amendment to the Constitution in December of 1875 which would have prohibited any state from prohibiting the following:

. . . any law respecting an establishment of religion, or prohibiting the free exercise thereof; and no money raised by taxation in any State for the support of public schools, or derived from any public fund therefor, nor any public lands devoted thereto, shall ever be under the control of any religious sect; nor shall any money so raised or lands so devoted be divided between religious sects or denominations. (DeForrest 2003)

In 1875, the proposed amendment passed in the House of Representatives by a vote of 180 to 7, but failed by four votes to achieve the necessary two-thirds vote in the Senate. Though it never became law, the Blaine Amendment, sought to apply the first amendment’s religion clauses directly to state actions, to prohibit the disbursement of public funds for parochial education, and to forbid the exclusion of the Bible from the nation’s public schools.
Had the Blaine Amendment passed and been ratified by the states it would have radically altered the development of constitutional law in the United States. The near passage of the Blaine Amendment reveals that the members of the 44th Congress did not believe the Fourteenth Amendment applied the first amendment to state actions.

That Congress so nearly passed the Blaine Amendment within seven years of the Fourteenth Amendment’s ratification—and that several lawmakers voted for both amendments—suggests that “none of the lawmakers understood the protections of the first amendment to be included within the concept of liberty under the Fourteenth Amendment’s due process clause” (Meyer 1951). As many members of the Congress which considered the Blaine Amendment had sat in the Congress which voted for the Fourteenth Amendment seven years earlier, “it is unlikely they overlooked its possible significance” (Meyer 1951).

After twelve years of haphazard Congressional then military efforts to overcome the political obstruction and subversive militant resistance throughout the former Confederate States, this process came to an abrupt end in 1877. Settling the intensely disputed presidential election of 1876, Samuel Tilden, the Democratic candidate for
President, purportedly conceded the race to Rutherford B. Hayes on the stipulation that the remaining federal troops stationed in the States of Louisiana, South Carolina, and Florida be recalled upon his inauguration.

Almost true to his word, President Hayes, a month after his inauguration, concluded the government’s military reconstruction of the former confederate states by ordering the federal troops to withdraw from the state capitols of New Orleans, Columbia and Tallahassee. Though several military units remained encamped throughout the South, the federal government’s direct involvement in reconstructing the former confederate states had come to an end.
CHAPTER VII

MYTH—UNDERSTANDING: THE CIVIL WAR

By the turn of the century, freed from the economic shackle of slavery, the United States began to industrialize on a scale and pace never before achieved. The immigration and labor unrest, which accompanied the industrial growth and urban expansion led to a popular desire to downplay the lingering divisiveness of the Civil War. This market-driven industrial reconstruction of the Union sought to alter the collective memory of the war, recasting it as either “the painful but necessary forge” from which would emerged a “single, unshakable American national identity” or, downplaying the “slave power” conspiracy, as merely an institutional problem, which the war purged in the interest of unifying the nation (Anderson 1999, 140-141).

As the history of the war was passed on and taught to the next generation, the regional bias of both the North

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1 The italicized and hyphenated prefix “myth” is intended to explain the effect of politically constructed mythologies on the collective memory. For example: myth-information, myth-understood and myth-construed.

2 The “slave power” conspiracy or slaveocracy: The argument was that this small group of rich men had seized political control of their own states and was trying to take over the national government in an illegitimate fashion in order to expand and protect slavery.
and South were reinforced as historians determined not only what and how the war would be remembered, but also what would be forgotten. Most Northern historians characterized the Civil War as having been a righteous crusade to end the moral depravity of slavery while others explained the War as having been instigated by the southern “slavocracy” which sought to subvert republican virtue and destroy the Union.

Throughout the Southern States, the Civil War has been most commonly rationalized and recast as having been a War of Northern Aggression. Diminishing the issue of slavery to a mere pretext to justify Northern aggression, southern historian promoted the confederate view that the war had been a legitimate political action taken by the States in a noble effort to resist the Federal government’s unconstitutional consolidation of power (Schwartz 1997, 478).

In 1913, Civil War veterans from around the nation gathered in Pennsylvania to commemorate the fiftieth year since the Battle of Gettysburg. The accounts and speeches from the celebration reveal a new generalized myth-understanding of the Civil War. In an act of subconscious reconciliation the American people seem to have
collectively myth-remembered what had actually caused the Civil War. In just over fifty years, “the role of slavery and the challenge of racial equality had been actively suppressed and subtly displaced” (Blight 1993, 402). Professor David Blight of Yale University explains in his book, *Race and Reunion*, a new historical mythology has overwritten the national trauma in our collective memory writing as follows:

> The Civil War had become a tragedy that led to greater unity and national cohesion, and as a soldier’s call to sacrifice in order to save a troubled, but essentially good Union, not as the terrifying crisis of a nation deeply divided over slavery, race, competing definitions of labor, liberty, political economy, and the future of the West.” (Blight 1993, 403)

In of the tremendous industrial success of the United States over the past fifty years, all could agree (without dispensing their regionally manufactured mythology) that the ends had in some way justified the mean. By diminishing or dismissing the central importance of slavery as the key factor in the Civil War, the American people continue to myth-understand their national history and struggle with their national identity and ignore the degree to which the Civil War continues to influence the social and political ideologies of today.
With the divisive memories of the Civil War buried and the dream of conquering the Western frontier fulfilled, the United States found itself moving forward, developing at a rate never before conceived. The dual processes of industrialization and urbanization inalterably transformed the United States from the “King of Cotton” into “a giant of corporate capitalism” (Blight 1993, 394). As the nation, its economy and population shifted from rural agricultural communities to an emergent urban industrial society, so too shifted the cultural rifts which had divided the Union North from South in 1860. Over time, the repressed memory of the Civil War faded further from national consciousness, as the myth was transmitted and transformed from one generation to the next.
CHAPTER VIII
THE EROSION OF STATE RIGHTS

Article I, Section 3 of the United States Constitution established that “the Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one vote.”

The Seventeenth Amendment in part states that “The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, as opposed to Article I, Section 3 which established that a state’s senators would be “chosen by the Legislature thereof (U.S. Constitution, amend 17). In the years following the Civil War, that system became increasingly subject to bribery, fraud, and deadlock. As Congress took on a greater role in shaping an industrializing nation, those with a major business stake in that development believed they could best exert their influence on the U.S. Senate by offering financial incentives to the state legislators who selected its members.

The Framers having agreed to allow the people to directly select their representatives in the national legislature clearly and purposefully designed the senate to
insulate their elected representatives from their electors. The Framers of the Constitution understood, as did Supreme Court Justice John Marshall, that the United States Senate was to serve as “representatives of the state sovereignties.” James Madison had hoped that indirect elections would “refin[e] the popular appointments by successive filtrations” through the state legislatures (Madison 1836). Madison discussed the interdependency of the state and national governments in Federalist No. 45: The State governments may be regarded as constituent and essential parts of the federal government; whilst the latter is nowise essential to the operation or organization of the former (Carey 2009).

Madison later advocated the appointment of senators on the grounds that it would give “to the State governments as must secure the authority of the former, and may form a convenient link between the two systems” (Carey 2009). The only direct check the states had to counterbalance the power of the national government was their separate ability to decide the make-up of the Senate. Federalist No. 63, addressed public doubts in the new system delineating the principle of American democracy, as compared to Athenian
democracy, “lies in the total exclusion of the people in their collective capacity” (Carey 2009).

In Federalist No. 10, Madison debased those advocating greater democracy in the new system of government explaining that historically democracy have been a “spectacle of turbulence and contention . . . incompatible with personal security or the rights of property” (Carey 2009). “In general,” Madison surmises democracies “have been as short in their lives as they have been violent in their deaths” (Carey 2009). Even Thomas Jefferson, the champion of democracy, described it as “nothing more than mob rule, where fifty-one percent of the people may take away the rights of the other forty-nine” (Jefferson 1904).

Former President John Adams seems to have been the most prophetic, reminding his friend, John Taylor, in a letter that “democracy never lasts long. It soon wastes, exhausts, and murders itself. There never was a democracy yet that did not commit suicide” (Adams 1856). Since 1789, the United States Senate had been the bulwark standing in the way of any democratic excess or popularly elected would-be-tyrants who wield their popularity or extreme partisanship to undermine the Constitution.
Despite the nearly universal condemnation from the founding generation, the Progressive campaign for the direct election of senators took on new energy in 1906, following conviction of two senators charged with corruption for accepting “contributions” from corporate interests. Congressman, publisher and owner of *Cosmopolitan* magazine William Randolph Hearst capitalized on the negative publicity, commissioning an investigative journalist to pursue the story and to build a case for direct election of senator. In February 1906, *Cosmopolitan* published an article by David Graham Phillips, “The Treason of the Senate.” “Treason is a strong word,” Phillips wrote, “but not too strong to characterize the situation in which the Senate is the eager, resourceful, and indefatigable agent of interests as hostile to the American people as any invading army could be” (Phillips 1906, 628).

The organizer of this treason Phillips identified as Nelson W. Aldrich, the senior senator from Rhode Island. According to Phillips and Progressive political leaders, like William Jennings Bryan, Robert La Follette and Hearst, the United States Senators no longer served the interests of their state or of their nation or of the Constitution they swore to uphold. Rather, they had become beholden to
Aldrich and the “campaign contributors” who supply the money for “keeping the party together,” and for “getting out the vote” (Phillips 1906).

The nature of his investigation led Phillips to overly rely on innuendo and extrapolation to arrive at many of his conclusions earning him the scorn of other reformers, including President Theodore Roosevelt, who coined the term “muckraker” to describe Phillips’ overstated and sensationalist account (Martin and Glass 2008).

A product of the Progressive Era, the Seventeenth Amendment fundamentally debased the federal structure of the United States Constitution by removing the corrupted institution rather than the viral source of its corruption. The states, lacking an advocate in the national government, increasingly found themselves at the mercy of Washington, whose policies had become ever more intrusive. Rather than decreasing the influence of corporations by making the House and the Senate more accountable to the people, special interests have been able to fleece the nation in new and ever more effective ways.

The federal government can now be found in nearly every corner of life: education, religion, health care, communication, and law enforcement. Where these all had
once been reserved for the dominion of the states, today, they are heavily influenced by the national government. As such, states now carry much of the economic burdens of unfunded mandates and programs they often find morally reprehensible.

Where thin “parchment barriers” remain intact, preventing the national government from invading the sovereignty of a State, Congress may still use its control over the national budget to blackmail state governments into doing as it’s told. An example of this is found in the national drinking age. In order to get around the Twenty-First Amendment, which expressly forbid federal regulation of alcohol, the Congress ordered the Department of Transportation to withhold five percent of any state’s federal highway funds if it had not enacted a minimum drinking age of twenty-one. When South Dakota sued, the Supreme Court affirmed Congress’ authority to use its spending power in *South Dakota v. Dole* to indirectly influence the states even if expressly forbidden to do so.

No longer beholden to their corrupt and arbitrary state legislatures, the Senate joined the House of Representatives in implementing popular reforms. Judge Jay Bybee, a legal scholar from Louisiana State University, has
argued that the amendment led to complete “ignominy” for state legislatures without the props of a state-based check on Congress. Progressive measures were enacted to enable the federal government to supersede the discredited states repeatedly over decades (Bybee 1997). The rapid expansion and lax regulation during the first twenty-nine years of the century drove the nation to the brink of calamity by 1930. The States sapped of revenue by the sixteenth amendment and without loyal representation in Washington due to the seventeenth, had little recourse but to embrace President Franklin Roosevelt’s New Deal programs.

Dramatic expansions of federal regulation over local state interests such as coal, oil, corn and cotton further impoverished the States (Rossum 1999). Now, Senators are not only free to ignore their individual state’s interests—they also “have incentive to use their advice-and-consent powers to install Supreme Court justices who are inclined to increase federal power at the expense of state sovereignty” (Kochan 2003). Over the first half of the twentieth century, with a popularly elected Senate confirming nominations both Republican and Democratic, the Supreme Court began to apply the Bill of Rights to state
law, overturning it wherever it harmed individual state citizens by applying the Fourteenth Amendment.

Although the Fourteenth and Seventeenth Amendments undermined the “Supreme Law of the Land,” they both in their own ways affirm “the law of unintended consequences” and a variation on this familiar theme that we may call “the law of undetected causes” (Rossum 2001).
CHAPTER IX

CONCLUSIONS & PREDICTIONS

Though a clearly a counterfactual assertion, would United States of America have had a similar degree of national success, while achieving a greater sense of national unity, had federalism remained an integral feature in the governance of the United States?

The goal of this paper has not been to argue for the full restoration of antebellum state sovereignty but to identify the root cause of the growing cultural divide, which has polarized the American people and rendered their legislative representatives beholden to the most partisan and well-funded extremes of the electorate.

Federalism has been the primary structural catalyst for the unparalleled degree of religious pluralism and cultural diversity which has developed throughout the history of the United States. By allowing the cultural distinctions of local and regional groups to develop quietly without demanding national conformity, federalism had necessitated voluntary civic engagement at all levels of government. The racial, cultural, and economic diversity of this political competition has knit together an otherwise schismatic population of immigrants into a
unified nation of citizens bound together by their active participation in the ongoing process of determining who they are.

Scapegoated and demonized as the true underlying cause of the Civil War, this inherently human, safeguard of the Constitution, was largely discredited and dismantled in its wake. Handicapped by the institution of slavery, the carefully separated, checked and balanced political tensions of the United States Constitution were fatally compromised from their inception. The economic practice of chattel slavery and the malformed culture it produced caused the American Civil War.

Politically used as a principled rational for nullification and later secession, federalism brought to the nation’s attention the looming crisis western expansion would cause if the expansion of slavery was not addressed. Ultimately never resolved, as Congress opted for expedient compromise and rapid expansion, the national dialogue broke down as ministers of the same bible, soldiers of the same army, and sons of the same mother allowed the issue of slavery to stymie debate.

Prior to the Civil War, federalism had been actively asserted by no less than Madison and Jefferson in state-
federal disputes advocating nullification and at times threatening secession. Since the Civil War, the Constitution has been amended and broadly interpreted, expanding federal authority over the states and functionally inverting the First Amendment’s commitment to due process and free exercise, effectively releasing the federal government from its Constitutional restraints.

The result has been the gradual but persistent effort by the national government to impose its cultural influence over the states. By championing the public’s desire for a more perfect sense of security, justice, equality, and efficiency the Supreme Court, President, and their popularly elected representatives in Congress have increasingly imposed (beyond their constitutionally limited authority) their own culturally homogenized increasingly secular definitions of security, justice, equality, and efficiency.

The true nature of federalism and its role in establishing and maintaining the structural stability of the American Constitutional system has been misunderstood and undervalued throughout history. Though disorderly and inefficient, the federal structure of the Constitution was
intended to be just that, disorderly and inefficient in the face of efforts to consolidate authority.

Just as acts of nullification are the states’ ultimate weapon (short of secession) to defend their sovereignty and local cultural identities, the freedoms articulated in the Constitution’s First Amendment (speech, religion, press, assembly and petition) are the weapons individuals have to defend their sovereignty and individual sense of identity short of utilizing their second amendments right to keep and bear arms. The only way to preserve liberty in a free society is to maintain balance and to check authority. When the government becomes unchecked or out of balance, perhaps it is for the people to restore the balance by threatening national unity.

Where we are now is on the cusp of a revolutionary shift so monumental that it is difficult for the human mind to conceptualize. Like the agricultural and industrial revolutions before, the digital revolution is a phenomenon unto itself, expanding into all facets of our existence at a rate exponentially faster than its predecessor.

Culturally, in the United States of America, this shift has allowed individuals to seek out and find communities of like-minded individuals. These virtual
communities of the digital age have gradually begun to undermine and fracture both the active (Religious & Political) and passive (Mass Media) social institutions which had unified and increasingly come to define American culture throughout the twentieth century.

Where we are tending is toward crisis, conflict, or consolidation. The digital revolution has blurred traditional definitions of culture spawning a virtual community spanning the globe. In this world, where the basic definitions which have defined human interactions for thousands of years are now organically evolving online each day, is the maintenance of a national cultural identity even possible? Is it still necessary—or has it become more essential than ever?
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