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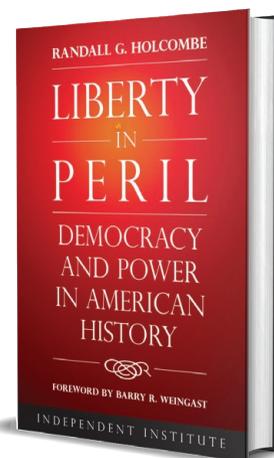
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# Reviving the Libertarian Interstate Federalist Tradition

## *The American Proposal*

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BRANDON L. CHRISTENSEN

As we enter the third century of the American experiment it is essential to recognize that we can draw upon two quite distinct intellectual traditions in shaping future patterns of organization. One possibility is to draw upon the intellectual tradition of this last century. If we follow the logic of that tradition—which I shall refer to as the second century—we run the risk of creating a new imperialism to be associated with Presidential Government. The other possibility is to draw upon the intellectual tradition of the first century and fashion an extended federalism.

—Vincent Ostrom, “The Third Century”

Vincent Ostrom’s words above were written to tackle the dilemma American federalists have faced for the past half century: how to tame an executive-run administrative state that has grown out of control. Yet his wording on an “extended federalism” has meaning that I think neither he nor other prominent liberal thinkers of Ostrom’s second and third centuries have seriously entertained or even yet realized. This essay aims to fill that gap by making four arguments:

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Brandon L. Christensen is the editor-in-chief of *Notes on Liberty*.

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1. Prominent classical liberals and libertarians have long recognized the importance of interstate federalism for not only individual liberty but also security for liberal polities in the international arena.
2. The American federalists of the late eighteenth century faced the same problems we face, and the distinct interstate order that they patched together to solve those problems is not an outmoded Leviathan; it is the missing piece of the puzzle to the libertarian and classical liberal tradition of interstate federalism.
3. The piecemeal federation of political units under the U.S. Constitution would achieve more freedom for more people, and this interstate federalism should be enthusiastically embraced as *the* foreign-policy principle for libertarians and classical liberals.
4. The American Proposal would solve the security (and cost-sharing) dilemma for liberal polities, but it would also contribute to a decline in the worrisome trend of presidential government in the United States.

## Intellectual Heritages

The eighteenth-century American federalists, whose intellectual tradition Ostrom encourages us to draw upon, were confronted with the following dilemma: how to counter the threats of despotism, conquest, and Balkanization with individual liberty, republican security, and federal union (Dietze [1960] 1999, 70–102; Hendrickson 2003, 7–64; Deudney 2007, 161–169). The clear problem for them was that the legislatures of the various states had, since the end of the war with the British Empire, morphed into “elective despotism[s]” (Federalist No. 48, in Hamilton, Madison, and Jay [1788] 1982) that “gave a violent and hasty character to the formation of the laws” (Tocqueville 2000, 145). These excesses of democracy were crushing individual liberty, threatening republican security, and pushing the polities of the North American continent into distinct blocs of potential geopolitical rivalries.<sup>1</sup> To make matters worse, these excesses encouraged men who did not belong to gentlemanly, internationalist culture to be a part of the politi-

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1. For the pro-federalists in Philadelphia, the tense geopolitical reality of postwar North America dictated the nature of the proceedings. The states and their legislatures—paragons of the excesses of democracy—were claiming each other’s land in the West, encroaching on the territory of the British and Spanish Empires, and outright seizing the lands of aboriginal polities that had secured their territorial and property rights with the British Crown and had tried to do so with the Americans’ confederal government. The postwar confederation also faced a free-rider problem. The states closest to the borders of the British and Spanish Empires as well as the Native polities were forced to harbor most of the costs associated with defense, and because the confederation could do no more than implement (but not enforce) a quota system, an inequality among the states in burden sharing appeared. This inequality, a bane faced by all confederacies and republics throughout history, is usually exploited by rival polities or is the source of intrafederation wars. See Hayek 1960, 184; Federalist Nos. 3, 4, 13, 22, and 24, in Hamilton, Madison, and Jay [1787–88] 1982; Dietze [1960] 1999, 236–54; Hendrickson 2003, 177–93, 211–19; Ostrom [1971] 2008, 90–99.

cal process, further provincializing democratic legislation (Wood 2009, 15–50). To put it bluntly, the excesses of democracy in the late eighteenth century were sovereign state legislatures and populist (antielite) rhetoric and policies—excesses that were all too eagerly being watched by foreign powers. In the early twenty-first century, these very same excesses of democracy are still the main threat to liberal and semiliberal polities worldwide.

Friedrich Hayek saw the connection that the American federalists drew between democratic excess and state sovereignty more clearly than most when he wrote in 1939, “Since it has been argued so far that an essentially liberal economic regime is a necessary condition for the success of any interstate federation, it may be added, in conclusion, that the converse is no less true: the abrogation of national sovereignties and the creation of an effective international order of law is a necessary complement and the logical consummation of the liberal program” ([1939] 1976, 269). Hayek’s remarks on interstate federalism have almost been an afterthought in liberal circles since he first wrote them,<sup>2</sup> and he was not alone among twentieth-century liberal luminaries in yearning for a more integrated and liberal world. Ludwig von Mises also spilled considerable ink on interstate federation, although, like Hayek’s work, these thoughts have been ignored or scantily examined. For instance, Mises pointed out that “for the liberal, the world does not end at the borders of the state . . . . The starting-point of his entire political philosophy is the conviction that the division of labor is international and not merely national . . . . The liberal therefore demands that the political organization of society be extended until it reaches its culmination in a world state that unites all nations on an equal basis. For this reason he sees the law of each nation as subordinate to international law” (1985, 148).

Hayek and Mises were unclear on their version of an interstate federalism, though, mostly because they faced more urgent matters: the world had just suffered through two world wars fueled by nationalism, and interstate federalism was simply too much to fathom. Hayek himself pointed out the impossibility of interstate federation in 1944: “Until I find a sane person who seriously believes that the European races will voluntarily submit to their standard of life and rate of progress being determined by a world parliament, I cannot regard such plans as anything but absurd” ([1944] 2007, 226 n. 5). Mises argued that the first attempts at more political integration between liberal states, such as the League of Nations and the Kellogg-Briand Pact, did not go well and that although interstate federalism would be the best liberal outcome, the reality of Europe’s geopolitical situation would not permit a liberal federation to flower in his lifetime (see Mises 1985, 142–51; [1941] 2000a; [1943] 2000b; [1941] 2000c).

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2. “Almost” because of the scholarship of Kukathas 2006, Spieker 2014, and Reho 2017.

For Hayek and Mises, the benefits they attributed to interstate federalism did not outweigh the costs in the world where they lived.<sup>3</sup>

Like Ostrom, then, Mises and Hayek failed to consider the full implications of their respective trains of thought on the matter of interstate federalism, mostly due to more pressing matters at hand.<sup>4</sup> They also failed to notice that their trains of thought echoed those of their liberal forebear, Adam Smith, who wrote about interstate federalism in 1776. Smith, lamenting the inability of the colonists and the metropole to see eye-to-eye on taxation and representation, suggested that the way out of the quagmire that eventually led to the first Anglo-American War was for the North American colonies to federate with the British body politic in London:

[Were British America] to send fifty or sixty new representatives to parliament, . . . there is not the least probability that the British constitution would be hurt by the union of Great Britain with her colonies. That constitution, on the contrary, would be completed by it, and seems to be imperfect without it. The assembly which deliberates and decides concerning the affairs of every part of the empire, in order to be properly informed, ought certainly to have representatives from every part of it. That this union, however, could be easily effectuated, or that difficulties and great difficulties might not occur in the execution, I do not pretend. I have yet heard of none, however, which appear insurmountable. (1776, bk. IV, chap. 7, part 3)

Smith, of course, is known for being the father of economics, but his thoughts on transatlantic federation are just as conceptually groundbreaking as his insights into the division of labor.

For Hayek and Mises, though, a federated Europe—patched together by the states that had not been “liberated” from Nazi Germany by the Soviet Union—was too tall a task, much less a transatlantic option or a transcontinental option. Their Anglo-American contemporaries were no better. Foreign-policy discussions in the United States were framed around trying to cobble together an anti-Soviet coalition, and London’s foreign-policy debates were focused on holding its once-powerful empire together. Federation *was* brought up, but it was dismissed as easily as Adam Smith’s argument for the same in 1776. Even among federalists, liberalism took a back seat to supposedly pragmatic postwar realities. Few of them were *laissez-faire* enthusiasts, for example (see Hayek [1939] 1976, 265–72, and [1944] 2007, 232–33; Mises [1941] 2000c, 15–16, 19), and none was interested in setting up federations as constitutional orders that protected the individual from state power.

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3. See also Hayek [1944] 2007, 224–31, on other problems associated with international political integration.

4. See also Ostrom [1971] 2008, 85, on interstate federalism.

On the left, a strong world state was the preferred option, and on the right internationalists focused on loose associations of free states—for example, military alliances and intergovernmental organizations (IGOs). Hayek and Mises were correct, then, when they recognized that the idea of interstate federalism would be most conducive to individual freedom and democratic governance, but they were also correct in dismissing the idea as far too radical for a postwar world. Now, though, seventy-five years after the end of World War II, we must continue where these great thinkers left off. The democratic excesses described earlier and the inability of the liberal world order as it stands to extirpate these excesses from liberal society have emboldened illiberal factions around the world. We must begin the long, hard push toward an interstate federalism *that is liberal* in its character and in its purpose.

### The Missing Piece of the Puzzle

So what would a liberal transatlantic or transcontinental federation look like? How should it be ordered? How can it be accomplished? To answer these questions, I propose that we must look not to the unfinished thoughts of the great liberal thinkers mentioned earlier or to the technical, quantitative work of contemporary scholars of federalism but instead to the intellectual traditions of the eighteenth-century American federalists and the problems they faced. We must also temper our thoughts with the geopolitical realities of our world. The military alliances patched together by the United States after World War II are as unpopular as ever, and the administrative state bureaucracy of the European Union (EU) and the world's IGOs have predictably become labyrinths of fiat rule. These developments have bred resentments among populations that were and continue to be ignored or misunderstood or mischaracterized by elites, and the nationalistic responses to these slights now threaten to collapse the liberal world order into “pitiable multiplicities” (Mises 2006, 54) masquerading as sovereigns. Free trade and the doctrine of comparative advantage are being called into question not only by trade unions and politicians but by economists as well (N. Smith 2020). To further complicate matters, the world continues to get smaller thanks to technological advances and greater economic integration.

The economic integration that has brought about greater prosperity for most, if not all, people in the world today has not been followed by greater political integration. What we are seeing instead is greater interstate economic integration but more intrastate political fragmentation (Alesina and Spolaore 1997; Alesina, Spolaore, and Wacziarg 2000; Wittman 2000; Gancia, Ponzetto, and Ventura 2017). The IGOs cobbled together by the United States after 1945 have not evolved since their creations, and at best their abilities to integrate these political fragmentations into their systems are limited, and at worst they may actually contribute to the inability to fragment—to exit. As an example, consider the United Nations, which brought the United States and the Soviet Union together voluntarily and in the presence of other

states to engage in what was essentially parliamentary debate. The Americans and the Soviets drew up a series of agreed-upon formal rules, one of which was a prohibition on interfering in the internal affairs of other states and recognizing the sanctity of borders drawn up by European empires in the nineteenth century (this rule was based on the principles of the seventeenth-century Peace of Westphalia and its commitment to national sovereignty).<sup>5</sup> What this meant in practice was that separatism and secession were to be frowned upon by both of the superpowers, and, with few exceptions, Washington and Moscow kept their word.

When socialism collapsed in the late 1980s and early 1990s, many debates and contentions were settled, but the issue of sovereignty has only grown in importance thanks in large part to more economic integration. The European attempt at federation, undertaken after the fall of socialism, has not gone well precisely because it cannot close the Westphalian sovereignty gap. The bloodshed in the nonliberal world has largely been a product of states' inability to fragment, an inability that is encouraged by notions of Westphalian sovereignty and institutionalized by IGOs such as the United Nations and the World Bank (Jackson 1990, 39–49, 95–108, 139–63; Badie 2000, 37–47, 77–83, 105–12, 146–56). If a state wishes to break away but is prohibited from doing so by enormous costs (such as violent aggression from the state it wishes to break away from or hostility from illiberal states that can use IGOs as mediums to act on those hostilities), then a federation that welcomes states into its union and that is strong enough to deter aggression would be a welcome, liberal development. Steps to counter the sovereignty gap have been taken since 1945, of course, but they have been unsuccessful. Westphalian confederations have shown themselves to be weak and ineffectual,<sup>6</sup> centralized hierarchical states have proven to be despotic, and radically decentralized orders are still untested utopias (see Friedman 1977; Rothbard 1994; Huemer 2013; and especially MacDonald 2019), but the federal alternative of the United States has proven robust.

The robustness of the American federal model in the face of so many failures should not come as a surprise. After all, the American republic was patched together using the European model of Westphalian state sovereignty as a guide for what *not* to do. Westphalian sovereignty logically entails wars and a balance-of-power mechanism to sort through problems of diplomacy, and Europe in the late eighteenth century was wracked by wars that hampered the growth and flowering of individual liberty (Hendrickson 2003, 63–64, 161–76; Deudney 2007, 161–63, 179–81). The republican alternative that the Americans built has survived a civil war, two world

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5. See also Mises 1985, 149–50, and Kukathas 2006, 196–203.

6. See Gancia, Ponzetto, and Ventura 2020 for empirical support on the ineffectualness of the world's most famous Westphalian confederation, the European Union.

wars, and several episodes of alterations to its system, but it is now the clear alpha polity of the liberal world.<sup>7</sup>

What is less clear is the role of the United States in the illiberal world. On one end of the spectrum, the United States is expected to provide leadership over the free world and to play the role of policeman in nonfree societies, but on the other end it is lambasted as an aggressive imperial state. The ambiguous nature of the U.S. role in the illiberal world has produced much of the strife facing us today and stems from an exhausted intellectual tool kit that is still unable to fathom federation as a viable alternative to empire or the Westphalian status quo.<sup>8</sup> This intellectual exhaustion is illustrated deftly in one of the more influential articles on free riding and military alliances, “An Economic Theory of Alliances” (1966) by Mancur Olson and Richard Zeckhauser, which argues that free riding within military alliances can best be dealt with either through a cost-sharing arrangement based on agreed-upon percentages or through a more durable union with greater unification, meaning a federation between the members of the alliance. So influential has this article been that several generations of North American and European elites have called for and pursued a percentage-based system even though it has never worked. The alternative to percentage-based models, greater unification, has to my knowledge been completely ignored, not because it’s incorrect or incoherent but because it still seems to be so completely unimaginable. This trend of confronting the question of how to share costs without violating national-state sovereignty places the eighteenth-century American federalists at odds with twentieth- and now twenty-first-century conventional wisdom in that the American federalists sought to abrogate the state sovereignty that our contemporaries, including those in libertarian and classical liberal circles, take as sacrosanct.

When more durable unions are discussed in works on military alliances and interstate economic confederations, the usual answer to the collective-action problems faced by states in the international arena is constitutional, but because constitutional bargains among sovereign states are so difficult to achieve,<sup>9</sup>

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7. Of all these shocks to the American federation, the Civil War represents the strongest challenge to my argument. Jeffrey Rogers Hummel ([1996] 2013) points out that several policies other than total war could have been pursued to end slavery but that the North chose to preserve the federation via total war, thus emancipating slaves and enslaving free men. Stanley Engerman argues that Hummel’s work leaves open the question of “how much time would pass before emancipation would be voluntarily agreed upon” (1997), and several authors (see especially Oliver 2001; Sandefur 2006; Blanks 2012) have argued explicitly in favor of the Union on classical liberal/libertarian grounds. None of these works is as concise and cogent as Deudney 2007, 171–76, which argues that the civil war had two causes: rapid geographical expansion into a “power vacuum at the frontier” (172) and slavery (“a radically antiliberal relic of a preliberal society” [173]). In a world where chattel slavery and frontier power vacuums are sparse and getting sparser, the inability of national majorities to overturn local majority preferences—a common criticism of federal systems—is much less of a problem than it was when slavery’s brutality tore the compound republic asunder (see also Allen and Ostrom 2008a, 153–67).

8. “Federalism is, of course, nothing but the application to international affairs of democracy” (Hayek [1944] 2007, 232).

9. “The venerable problem of dual sovereignties” (Bailyn [1967] 1992, 360).

especially if starting from scratch, scholars and statesmen are left to pursue other options, such as cost-sharing arrangements based on percentages. Yet the American interstate order's answer to the age-old problem of the sovereignty gap is hidden in plain sight.

## **How Should It Be Ordered? Federating under the U.S. Constitution**

For all its faults, the United States possesses the blueprint for interstate federalism in its constitutional DNA. I propose, then, not only that a libertarian interstate federal project be pursued but also that it be built upon, in Hayekian fashion (Hayek 1945, 1960, 1–8; see also Kukathas 2006, 192–93),<sup>10</sup> the constitution that currently protects the liberties of the American people rather than around the Westphalian notion of state sovereignty.

The path of least resistance toward this goal is fairly straightforward. In order for eighteenth-century proponents of a federal union in what would become the United States to convince skeptics and outright opponents, they had to do two things: convince the states that they wouldn't be extinguished and convince the people that they wouldn't be oppressed. To answer these objections, the pro-federalists presented to the states a senate and to the people a constitution to be placed above the federal union and directly responsible to the sovereignty of the people.<sup>11</sup>

By placing the Constitution above the federal union, the Americans added an innovative approach to constitutionalism (Deudney 2007, 162, 165–66) (Madison termed the federal union a “compound republic” [“Federalist No. 51,” in Hamilton, Madison, and Jay (1787) 1982]), and the polycentric nature of their federal union guaranteed that “highly unstable” and “shifting coalitions” would be the norm in governance, which would in turn make it unlikely that “long-term dominance over the prerogatives of government” should occur. Indeed, the assortment of checks and balances found within the federal union has made it prohibitively difficult for any faction, including states within the union, to tip the scale of any

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10. Madison was also interested in building upon an already-existing foundation rather than creating a new order from scratch (see Federalist No. 40, in Hamilton, Madison, and Jay [1787–88] 1982; Dietze [1960] 1999, 261, 306–7).

11. Hendrickson explains that “this was a double sleight of hand: it elevated the general government by making it subordinate to the constitution, and it incorporated both ‘the people’ and ‘the states’ in the formula that located the ultimate possessors of sovereignty” (2003, 246). Tocqueville described the U.S. Constitution as “the most perfect of all known federal constitutions” even though, or perhaps because, it rested “almost wholly on legal fictions” (2000, 155; see also Ostrom and Allen 2008, 237–47).

sort of political balance in their favor or to transfer massive amounts of resources to their citizen-clients—so difficult, in fact, that egregious transfers of wealth to specific states have never happened in the two centuries since the compound republic was ratified (Ostrom 1999, 63–69). This fact alone should give pause to fiscally sensitive skeptics of interstate federalism since the U.S. taxpayer has borne and continues to bear the *fiscal* costs of the liberal world order.<sup>12</sup> Federation under the compound republic would ensure that no more massive transfers of resources go to allies or trading partners who cannot reciprocate with anything other than risk and expedient platitudes. Indeed, by filling the sovereignty gap, the American constitutional order also solved the burden-sharing problem of fiscal costs that had crippled the postwar confederation.

Many polities have since tried to emulate the American model and failed precisely because of the distinctiveness of the American Senate and confusion over *why it was created* in the first place. The Senate was and is a work of interstate diplomacy; it replaced the sovereignty of the states with an equal allotment of seats in a legislative body that was given more oversight of executive functions than usual (Federalist Nos. 62–63 and 65–67 in Hamilton, Madison, and Jay [1787–88] 1982; Deudney 2007, 177). The sovereignty-for-equality bargain also helps to explain the American Senate’s unique treaty power. The American federalists were more concerned with democratic despotism than with monarchical despotism, and the treaty power was a concession given to the sovereigntists despite misgivings about leaving the executive branch weaker relative to the legislative body, a situation that numerous states found themselves in after the Anglo-American war, which created the democratic excesses the American interstate federalists sought to extinguish from the continent (Federalist Nos. 64, 69, 75 in Hamilton, Madison, and Jay [1787–88] 1982; Dietze [1960] 1999, 250–51; Tocqueville 2003, 112–14; Allen and Ostrom 2008a, 137–51).<sup>13</sup> A comparison between the EU’s legislative bodies and the American Senate is useful here.

The Philadelphian interstate order explicitly traded state sovereignty for Senate seats, an attempt that was aimed at solving the Westphalian sovereignty gap that has plagued confederations for thousands of years, whereas the EU’s legislative bodies are designed to nurse state sovereignty within an international confederation. The results could not be more apt. The American Senate has thrown out dozens of treaties over the centuries, with most of the rejections coming after the American Civil War and

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12. For nonfiscal cost–benefit analyses, see Sandler and Hartley 2001; Chiang and Mahmud 2008; Norloff and Wohlforth 2019.

13. See Federalist Nos. 64, 69, and 75, in Hamilton, Madison, and Jay [1787–88] 1982; Dietze [1960] 1999, 250–51; Tocqueville 2000, 112–14; Allen and Ostrom 2008a, 137–51.

almost 20 percent of them coming after World War II,<sup>14</sup> and it has used its power to impeach judges, presidents, members of the executive's cabinet, and fellow senators. The legislative chamber in the EU that most resembles an upper body, the Council of the European Union, has no such political power. Indeed, as an institution designed to protect the sovereignty of the various states participating in the EU, the Council of the European Union is limited to amending and approving legislation proposed by the *executive* branch of the EU. The European Union's legislating executive branch, when compared to the American federal order, looks more like the presidential government Ostrom sought to avoid, and the democratic excesses that the American federalists found in the sovereign states and sought to extinguish with a federative body are tearing apart the EU, based as it is on the Westphalian notion of state sovereignty. Contrary to conventional libertarian wisdom, which assumes nation-state sovereignty is a bulwark against world government tyranny, the EU now faces the worst of both scenarios—centralized decision making by fiat and democratic tyranny—due to the Westphalian confederation's inability to abrogate national-state sovereignties. By failing to identify and confront the bane of leagues, confederacies, and federations throughout thousands of years of human history—state sovereignty within an interstate pact (Federalist Nos. 18–20 in Hamilton, Madison, and Jay [1787–88] 1982; Dietze [1960] 1999, 290–308; Deudney 2007, 91–113, 161–67)—the EU finds itself weak, ineffectual, and prone to charges of corruption, clientelism, and tyranny. In spite of this, Westphalian assumptions about nation-state sovereignty continue to guide plans and arguments for and against world order and international relations.

Hayek was largely quiet on the subject of the American Senate, preferring to focus instead on his ideal version of a bicameral legislature (Hayek [1979] 1982, 111–17) and on the American constitutional contribution to judicial review (Hayek 1960, 176–92).<sup>15</sup> The absence of the American Senate in Hayek's constitutionalism, coupled with the fact that the Senate replaced the sovereignty of the states in the American republic, helps to explain further, beyond the contemporary problems

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14. Though the American constitutional order has undergone several alterations due to wars and, more ostensibly, to economic crises, the power of its Senate has not much weakened, a fact that contributes to the robustness of the American federalists' attempts to fill the sovereignty gap with a federal union. Indeed, the Senate itself has been subject to fundamental alteration in the form of the Seventeenth Amendment. Yet although this amendment has served to benefit national political parties, especially the Democratic Party (Stewart and Schiller 2011), at the expense of third parties ostensibly devoted to local problems (Schleicher 2014), it has had no discernible effect on the power of the Senate *relative to the lower house or to the other branches of the federal government* (Allen and Ostrom 2008b, 187). The growing threat of presidential government, of course, does not mean that the Senate is in a perfect federal equilibrium with the other branches of government, but this problem cannot be attributed to the Seventeenth Amendment (see the last section in this paper for a discussion on presidential government and interstate federalism's republican remedy). Furthermore, James Buchanan (2005) makes no mention of the Seventeenth Amendment in a rare public thought experiment on constitutional amendments, thus implying that the amendment's alteration of the Senate is not as influential as its detractors make it out to be. Barbara Allen and Vincent Ostrom show how the Seventeenth Amendment actually *complements* the compound republic and its mode of polycentric governance (2008a, 167–79).

15. For more treatment of judicial review, see Dietze [1960] 1999, 342–48; Hulsebosch 2006; Mittal and Weingast 2010.

Hayek faced, why he never considered a Smithian, transatlantic option or at least that those thoughts went unfinished.<sup>16</sup> In fact, praise for the American Senate as an institution is sparse in our circles,<sup>17</sup> a deep failing that can be remedied by using a different conceptual approach toward that much-maligned body: the Madisonian senate as an institution of diplomacy.

The ultimate aim of the Senate—to compensate states for their loss of sovereignty—has been and continues to be a rousing success. The institution of the American Senate untangled federalism’s Gordian Knot. Yes, national sovereignty will be abrogated, but this is exactly what Hayek argued was necessary for security and freedom in a world characterized by unfree and unequal states, and an equality among the states within the federation will be guaranteed via seats in the Senate.

The American Senate and the American Constitution are the missing pieces of Hayek’s interstate federalism puzzle, and to achieve interstate federalism<sup>18</sup> we must push this argument forward and into the face of nationalistic sentiment and the idea of national sovereignty. The U.S. Constitution says nothing on nationalism, unlike the constitutions of Westphalian nation-states and confederations, and the American experience shows how politics “as different as Russia and Turkey” (Hendrickson 2003, 27) were able to form an interstate federation that focused solely on preventing despotism and Balkanization at home and on achieving republican security abroad.<sup>19</sup> The American federal project as a whole was not a nationalist project;<sup>20</sup> rather, it was a novel and successful attempt to fill the sovereignty gap, and the fear that the American Proposal would lead inevitably to nationalism is unwarranted. Perhaps a better way of illustrating the nonnationalistic character of American interstate federalism is to hold it up for comparison.

16. Hayek at least noted the possibility of transatlantic or transoceanic federations in several places (see Hayek [1944] 2007, 233–34, and, as a thought experiment, Hayek [1939] 1976, 261–66).

17. James Buchanan and Gordon Tullock praised the U.S. Senate briefly in *Calculus of Consent*’s “bicameral” chapter by noting that the presidential veto *over* the Senate helped to improve the overall constitutional order (1962, 248).

18. I am under no illusions about what “achievement” means in this context. Following Buchanan: “In reality, no existing political structure comes close to the ideal. Any constructive effort must therefore commence with an understanding of and appreciation for the politics that is observed to exist” (1995–96, 265; see also Buchanan and Tullock 1962, 300–306).

19. The U.S. Constitution’s lack of Westphalian credentials fits in nicely with Hayek’s explicitly antinationalist internationalism, a distinct variant of liberalism that set him apart from more popular twentieth-century liberals such as John Rawls (Kukathas 2006, 192–94).

20. This assessment is hotly contested, of course, especially by those who are in Ostrom’s “presidential government” camp, but see Dietze [1960] 1999, 268–75, for an excellent overview of the tensions between Madison and Hamilton on the national question and the federalist answer; see Wood 2009, 103–10, for the many challenges that nationalists faced in trying to form a sense of nationalism in the new republic; see Federalist Nos. 5, 6, and 7 for discussions on the threat of Balkanization and on neighbors as natural rivals (in Hamilton, Madison, and Jay [1787–88] 1982); and for an interesting argument on political union as a remedy to divisive cultural clashes within an economic union, see Guiso, Herrera, and Morelli 2016.

## How Can Interstate Federalism Be Accomplished? Abrogating Nationalisms and Nationalist Sovereignties

The unifications of Germany and Italy in the late nineteenth century provide the best pathways for explaining why the American federation is not based on nationalist principles and for imagining what would likely happen if the United States and its wealthy allies finally moved toward interstate federalism. The regions of Germanic and Italian cultures were at the time of the unifications of Germany and Italy sandwiched between the French, Dutch, and British Empires to the west and the Russian, Hapsburg, and Ottoman Empires to the east. As a result of this geographic reality, German and Italian lands faced constant security threats from abroad and constant political strife on the domestic front. The German and Italian regions of Europe were Balkanized, and leaders were those who could seize and wield power. The Germans and the Italians, then, were in the exact position that the Americans sought to avoid with their federal union in the late eighteenth century.

When the German and Italian federalists made their push for unification, they did so under assumptions that were far different from those of the American Founders, even though their geopolitical realities were essentially the same. The results speak for themselves. Italy today has a two-country system, with increased internal divergence in living standards since at least 1870 (Felice 2017), and Germany's federal system ran roughshod over the rights of individuals before succumbing to a violent death at the hands of its enemies.

So how did these attempts at federalism end so differently than the American attempt? The strongest explanation stems from the Westphalian notion of state sovereignty that the American Founders sought to extinguish from their political order. In Germany and Italy, federalists wanted to build nation-states out of the Balkanized Germanic and Italian polities rather than federal unions aimed explicitly at protecting individual rights, tempering foreign threats, and preventing domestic anarchy.

Italy's two-country system today can be traced back to Piedmont-Sardinia's role in uniting Italy by force of arms after several failed attempts at federation. Piedmont-Sardinia was the Italian world's alpha polity in the nineteenth century, and it inevitably led the push toward federation within the Italian world. However, Piedmontese federalists were confronted with an Italian realm that had too much institutional diversity; some Italian states had relatively similar institutional capacities as Piedmont-Sardinia, but others within the Italian realm lagged far behind in terms of state capacity. As factions formed around unification proposals, two blocs emerged: large, rich states and small, rich states formed a pro-unification bloc, but large, poor states allied with small, poor states, and the result was deadlock on the question of unification through federation. Piedmont-Sardinia's elites then resorted to conquest in the name of nation-state sovereignty, and the balance of power between the states,

the people, and the national government of Italy became skewed from the outset (Ziblatt 2006, 57–108).

Germany's process of building a nation-state was more of a success than Italy's, but it, too, succumbed to the dangers that the American federalists sought to extinguish from their constitutional order. Prussia, despite its justified reputation as a militarily aggressive state, preferred to cooperate with the other states in the German realm rather than dominate them in the same manner that Piedmont-Sardinia dominated its neighbors. This choice is all the more peculiar upon first glance because blocs still formed between pro- and antiunification forces, and these blocs were exactly the same as those found in Italy: rich states large and small were in favor of unification, and poor states large and small were against unification. What allowed Prussia to proceed with its federalist—that is, noncoercive—program was the fact that the German polities shared mutually intelligible institutions, and the language of federation could be understood by all sides. The German federation failed in the end, though, because the constitution that Prussia cobbled together was not focused on individual liberty so much as it was on containing Prussian ambitions and assuaging the fears of the smaller German states (Ziblatt 2006, 32–56, 109–40; see also Mises 2006, 80–109). The German federal system's balance of power focused on the states and the federal government to the detriment of the people.<sup>21</sup> As a result, it failed to flower in the same manner as the American republic.

### **What Would It Look Like? The Liberal World Order and the Philadelphian Interstate Order**

The failed attempts at federalism undertaken by the Italians and the Germans of the nineteenth century do not explicitly show that Westphalian state sovereignty works mostly to the detriment of interstate federation (which the example of the EU does show), but they do highlight the fact that some basic features are needed in order for federation to effectively take root among polities: (1) the units federating must have relatively similar institutional capabilities; (2) there must be a stronger polity within the realm of the potential republic willing to initiate federal discussions and to suffer the petty jealousies of the smaller states along the way (see Ziblatt 2006, 136); and (3) there must be a healthy fear of being dominated by both the largest polity within the federation-to-be and by polities outside of the potential federative realm. In other words, federation must look like what Daniel Deudney has described as the postwar economically developed world of today, the one that the United States has built in order to counter anarchy abroad and despotism at home: “a complex of constitutional and federal states, confederal alliances, transnational relations, and

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21. The federal government was dependent on the states for tax revenue, for example, something that the Americans confronted explicitly and early on in their deliberations. See Dietze [1960] 1999, 292–96.

international regimes that is less like ... [a] state system of hierarchies and more like the domestic spheres of earlier republics” (2007, 271; see also Ikenberry 1998). This is the much-misunderstood and increasingly fraught liberal world order that the United States built out of the ashes of World War II (Ikenberry and Deudney [1999] 2006, 91–101), and federating it under the American constitutional order would achieve Hayekian interstate federalism.

Federation under the American interstate order would logically entail decentralization, too, because adding, say, fifteen more “states” to the fifty “states” already under the U.S. Constitution would necessarily decentralize federal choices and reflections. However, decentralization by itself is not a means to a liberal society. Decentralization can be just as despotic or predatory as centralized hierarchical government (Treisman 2007; Mamdani [1996] 2018; Dalrymple 2019), and efforts at decentralization can actually lead to a *recentralization* of power if self-government is not the ultimate aim of such measures (Badie 2000, 142; Ziblatt 2006, 106–7; Grossman and Lewis 2014). The compound republic of the United States, especially its sovereignty-subsuming Madisonian Senate, has largely prevented for centuries both decentralized despotism and the concentration of power in one branch of government.<sup>22</sup> Thus, there is no reason to assume that formalizing the republican liberal world order through Hayekian interstate federalism would somehow centralize the polycentric nature of the American interstate order. Indeed, an influx of senators from newly admitted states might provide the spark needed in the Senate to rein in the growing power of the executive branch, a significant problem that is dealt with in the final section of this article.

There is no need to restrict membership in the federation to wealthy free-riding allies, either, because there is evidence that federating with the United States (as opposed to being forcefully annexed by it or subservient to it within the Westphalian international system) leads to freer and wealthier societies (Maseland and Spruk 2020). Poorer states—or secession-minded regions within states—that would like to join the American interstate project need not worry about undertaking a series of harsh or painful institutional reforms prior to joining the union. Although these places may initially be institutionally incompatible with the American federation, in the same way that poorer Italian states were incompatible with Piedmont-Sardinia, this was also the case with every current “state” in the American union today that is not in New England. Once the non–New England states joined the interstate federalist project, they adopted the region’s institutions, and these institutions were permitted to take root and flower across the North American continent and into the Pacific Ocean under the protective umbrella of the United States of America (Merry 1999, 26; Tocqueville 2000, 33–41; Maseland and Spruk 2020, 22–26).

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22. There are exceptions, of course, but, despite them, the compound republic has allowed for remarkably “creative responses” to “the issues raised by life in a self-governing community” (Allen and Ostrom 2008a, 179; see also Ostrom 1999, 63–69).

“What the liberal must ask, first of all, is not how fast or how far we should move, but where we should move” (Hayek 1960, 398). The most logical place to start will be the core of the current liberal world order: Europe, East Asia, the Pacific Rim, and North America. The most logical places to avoid will be the Asiatic borders of China and Russia (i.e., Tibet, Georgia), two illiberal states that will feel threatened by deeper ties among their enemies, especially if countries on their Pacific and European borders (i.e., Japan and the small Baltic republics) join the union. Potential strategies for the rest of Asia and for Africa would do best to rest on the assumption that most of these states are artificial (Alesina, Matuszeski, and Easterly 2011; Michalopoulos and Papaioannou 2016) and that recognizing secessionist movements in these places would be the most liberal way forward. India’s states, which now have more than half a century of experience with a type of federalism, might go willingly, and the former French colonies in West Africa have at least some experience (albeit failed) with transcontinental federalism after attempting to create a union of equal states with France (see Cooper 2014). In Latin America, where the republics serve as prime examples of polities that attempted but failed to mimic American federalism, substates or provinces such as Antioquia or La Libertad could join instead of whole countries, with major cities such as Buenos Aires and Rio de Janeiro simply becoming independent or quasi-independent, à la Singapore and Hong Kong. The bottom line is to go slowly (but not too slowly) and to patch the federation together rather than force the pieces to fit.

### **Confronting the Imperial Presidency with an Extended Federalism**

Although much of this article has focused on the concepts, benefits, and costs associated with joining the American compound republic, the consequences of interstate federalism would flow in both directions. Indeed, embracing Hayekian interstate federalism via the American compound republic would help to slow the efforts of rampant “state-building at home” (Deudney 2007, 176) that liberals of all stripes have come to detest.

The United States is slowly evolving into an imperial presidency (Ostrom 1978). The architects of the American interstate order dwelled deeply on the dangers of executive power,<sup>23</sup> but their main focus was on extinguishing the excesses of democracy that state sovereignty encouraged. The myriad ways in which the executive branch of the U.S. federal government has gradually imposed itself on the legislative rule-making process in the United States over the past century have produced well-founded fears

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23. Federalist Nos. 67, 69–77, in Hamilton, Madison, and Jay [1787–88] 1982; Bailyn [1967] 1992, 324–79; Dietze [1960] 1999, 243–54; Hendrickson 2003, 249–56; Tocqueville 2003, 120–24, 661–65; Allen and Ostrom 2008b, 198–204; Ostrom [1971] 2008, 112–30.

(Allen and Ostrom 2008b, 187–211). Yet Congress has *ceded* these responsibilities to the executive. Contrast the legislative branch’s late-twentieth-century acquiescence to executive prerogative with the judicial branch’s vigorous and combative resistance toward the Roosevelt administration in the 1930s and 1940s, so much so that the federation’s highest federal court was often accused of “legislating from the bench” (Hayek 1960, 186–92). It is clear through this contrast that the legislative branch is not powerless relative to the executive branch, but rather lackluster. The addition, in piecemeal fashion, of several “states” to the compound republic would certainly reanimate Congress, especially the upper house’s diplomatic function. Senators from new “states,” for example, could be counted on to jealously guard their state’s (and their own) new position within the interstate federation, which would make it difficult for the presidency to continue with its legislative fiat. The compound republic still has a solution to the problem of presidential government, especially if we recognize the vital role that both exit *and* entrance play in polycentric orders.<sup>24</sup>

### Inevitable Objections

There are, of course, many drawbacks to the American interstate order, and several generations of libertarians and classical liberals have been able to forge well-respected and well-deserved careers out of their skirmishes with these (quite surmountable) drawbacks. James Madison himself, as the compound republic’s chief architect, brooded over several drawbacks, and he experienced them as the fourth president of the republic (Wood 2009, 147–50, 400–468, 659–700). The goal of this argument, however, is Smithian in nature: it is not meant to be a detailed or pragmatic approach to making the system a little bit better; specific policy goals are not its aim. It is methodological. It is meant to foment a “shift in vision” among classical liberals and libertarians that is essential to our understanding of international relations and political economy. I want you “to accept a new *principle* for social order” (Buchanan [1975] 2000, 214–15). I want you to comprehensively reject Westphalian national-state sovereignties and embrace instead the counterintuitive logic of the Philadelphian federal order and its abrogation of national-state sovereignties.

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24. The question of exit is of course unaddressed in this article, and exit is an important topic in political economy, especially among libertarians and classical liberals. To quote Mises: “When a part of the people of the state wants to drop out of the union, liberalism does not hinder it from doing so” (2006, 32). The answer to exit, especially now that the “power vacuum at the frontier” and the “radically antiliberal relic of a preliberal society” (Deudney 2007, 172–73) are gone, is to establish a procedure for exit: find a negotiated medium between simple majoritarianism and constitutional amendments. The more difficult task is, somewhat counterintuitively, to convince you of the necessity of entrance.

*How does more government get us to more liberty?* Interstate federalism, whether pursued under the American constitutional order or not, does not translate into “more government.” There would be more geographic territory and more people, but not more government. Interstate federalism would lead to more concurrent governments (thus contributing to the decentralization of choices and reflections that is discussed earlier), but not “more government.” Hayekian interstate federalism is merely “a republican remedy for the republican disease” (Ostrom [1971] 2008, 73–85).

*Isn't this just imperialism under a different name?* Federalism has long been recognized, especially by prominent classical liberals, as an alternative to empire and Balkanization (Elazar 1987, 115–53; Dietze [1960] 1999, 290–331; Hendrickson 2003, 24–69; Deudney 2007). The main geopolitical fear for classical liberals was Balkanization up until the advent of the postwar American-led liberal world order, but the Cold War, the subsequent collapse of the Soviet Union, and the inability of Russia and China to project power too far beyond their vast borders have fed fears of (and garnered praise for) an American empire (Lal 2004; Hendrickson 2005; Coyne and Blanco 2016). Yet the likelihood of the United States attempting to dominate its clients and allies through blunt imperial coercion is incredibly low due to the high costs associated with such a policy (Ikenberry 2002, 2005). I suggest our attention be refocused on Balkanization, not on empire, and remember that federation “provides an alternative to either imperialism or the reign of mutually destructive conflict” (Ostrom [1971] 2008, 85) characterized by Balkanization.

*What about adopting federation in the abstract as a foreign-policy principle rather than the Philadelphian order?* Embracing the federal interstate order of the United States as a foreign-policy principle may be too bitter a pill to swallow for some libertarians and classical liberals at first. I offer up the American Proposal because it may prove difficult to shop around a new, ideal, and untested constitution to the world. While the Swiss federal order is certainly an attractive option, it does not currently have the security credentials most polities would demand in exchange for sovereignty. That being said, embracing interstate federalism in the abstract is certainly a step in the right direction.

*This is clearly unrealistic.* Yes, perhaps, but this is what many, if not most, observers in the eighteenth century said about the American experiment with interstate federalism, too.

## Conclusion

Embracing interstate federalism as a foreign-policy principle would bring a much-needed libertarian distinction to academic studies on international relations, and by offering up the Philadelphian constitutional order as an alternative to the Westphalian sovereigntist order, it would refresh the stale dichotomy between Rothbardian noninterventionism and the status quo found in our circles. The timing for such an

embrace could not be better, either. Illiberal alternatives to the status quo now dwarf the latter's many defenses, and neither side is quoting Smith or Hayek—or even Madison, for that matter.<sup>25</sup>

By touting untested social orders or defending the status quo and its resentments (or, worse still, by embracing illiberal nationalist sovereignties), libertarians and classical liberals are rejecting their intellectual heritage. Let us focus on fashioning our foreign policy around an extended federalism that turns Ostrom's third American century into another episode in history where national sovereignties are abrogated so that individual liberty may flourish. Hayekian liberalism "in its pure form . . . is represented in the United States . . . by the ideas of James Madison" (Hayek 1960, 409), and so I wish to end this argument with both a reiteration—that the world is getting smaller thanks to technological advances—and a quote from the chief architect of the American compound republic:

The smaller the society, the fewer probably will be the distinct parties and interests composing it; the fewer the distinct parties and interests, the more frequently will a majority be found of the same party; and the smaller the number of individuals composing a majority, and the smaller the compass within which they are placed, the more easily will they concert and execute their plans of oppression. Extend the sphere, and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength, and to act in unison with each other. (James Madison, Federalist No. 10, in Hamilton, Madison, and Jay [1787–88] 1982)

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25. The best defense of the status quo is, by far and somewhat ironically, still Edwin Van de Haar's article "Hayekian Spontaneous Order and the International Balance of Power" (2011); Antonio Negri and Michael Hardt have the most sophisticated illiberal approach to world order (2000, 206–18, 393–411); Daniel Deudney argues for a federal alternative to the status quo, but he uses Calhoun as a point of reference instead of *The Federalist Papers*, Hayek, Smith, or Ostrom (2007, 262–64).

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