

Towards Interstate Federalism: The American Proposal

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 Ostrom¹

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 realised. This essay aims to fill that gap. The 18th 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.² 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]"³ that "gave a violent and hasty character to the formation of the laws."⁴ 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.⁵ To make matters worse, these excesses

¹ Ostrom 1978: 121

² Dietze 1999 (1960) is best on this dilemma, see pp. 70-102; also Hendrickson 2003: 7-64; Deudney 2007: 161-169

³ Madison 1982 (1788): *Federalist* No. 48

⁴ Tocqueville 2000 (1835): 145

⁵ 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 others' 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 confederal government of the Americans. 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 since 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 intra-federation wars. See Hayek 1960: 184; Hamilton 1982 (1788): *Federalist* Nos. 13, 22, 24;

encouraged men who did not belong to gentlemanly, internationalist culture to be a part of the political process, further provincializing democratic legislation.⁶ To put it bluntly, the excesses of democracy in the late 18th century were sovereign state legislatures and populist (anti-elite) rhetoric and policies; excesses that were all too eagerly being watched by foreign powers. In the early 21st century, these very same excesses of democracy are still the main threat to liberty 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, that:

“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.”⁷

Hayek’s remarks on interstate federalism have almost been an afterthought in liberal circles since he first wrote them in 1939.⁸ Hayek was not alone among 20th century liberal behemoths in yearning for a more integrated and liberal world. Ludwig von Mises also spilled considerable ink on an interstate federation, though, 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.”⁹

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

Dietze 1999 (1960): 236-254; Hendrickson 2003: 177-193, 211-219; Ostrom 2008 (1971): 90-99; Jay 1982 (1787): *Federalist* Nos. 3, 4.

⁶ “Wood 2010: 15-50

⁷ Hayek 1976 (1939): 269

⁸ “Almost” because of the scholarship of Kukathas 2006, Spieker 2014, and Reho 2017

⁹ Mises 1985 (1927): 148

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.”¹⁰ Mises argued that the first attempts at more political integration between liberal states, such as the League of Nations or the Kellogg-Briand Pact - did not go well, and that while 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.¹¹

For Hayek and Mises, the benefits they attributed to interstate federalism - expansion of the division of labor, clearer rule of law, more political equality - did not outweigh the costs in the world they lived in.¹²

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.¹³ 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

¹⁰ Hayek 2007 (1944): 226, fn 5

¹¹ Mises 1985 (1927): 142-151; 2000: (1941) 1-19, (1943) 43-49, (1941) 169-171.

¹² see also Hayek 2007 (1944): 224-231 on other problems associated with international political integration

¹³ Ostrom, too, recognized that the American federal interstate system is well-suited to branch out beyond its current borders. After analysing Madison’s *Federalist* Nos. 14 and 51 in the context of finding a republican remedy for a republican disease, Ostrom finds that “[t]he implication of this reasoning suggests that tasks of constitutional innovation being undertaken in 1787 and 1788 might be repeated in the future [...] If people are prepared to act upon the principle that *all* political experiments be based upon the capacity of mankind for self-government, then the larger the society participating in a federal system of government, the more duly capable mankind will become of governing human affairs on the basis of reflection and choice. A theory of federalism, in short, provides an alternative to either imperialism or the reign of mutually destructive conflict in governing human affairs. Hamilton, Madison, and Jay signified their zeal for the *federal principle* by naming their work *The Federalist* (emphasis in the original; 2008 [1971]: 85).

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.”¹⁴

Smith is known for being the father of economics, but his thoughts on trans-Atlantic federation are just as conceptually ground-breaking 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 trans-Atlantic option or a trans-continental 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,¹⁵ and none were interested in setting up their federations as constitutional orders that protected the individual from state power. On the left, a strong world state was the preferred option, and on the right, internationalists focused on loose associations of free states, aka military alliances and 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, 75 years after the end of World War II, we must continue where these great thinkers left off, mostly due to the democratic excesses described above and on the inability of the liberal world order as it stands to extirpate these excesses from liberal society. We must begin the long, hard push towards an interstate federalism *that is liberal* in its character and in its purpose.

So what would a liberal trans-Atlantic, or trans-continental, federation look like? How should it be ordered? How can it be accomplished? To answer these questions, I propose that we must

¹⁴ Smith 1776: Book 4 Chapter 7 Part Third. At the end of this suggestion, Smith speculates that, were the colonies to federate with the metropole, the inevitable end would be the relocation of the British Empire’s capital away from London and to somewhere in North America, where power, wealth, and culture would eventually gravitate.

¹⁵ See Mises 2000 (1941): 15-16, 19; Hayek 2007 (1944): 232-233; Hayek 1976 (1939): 265-272

look not to the unfinished thoughts of the great liberal thinkers mentioned above, nor to the technical, quantitative work of contemporary scholars of federalism, but instead engage the intellectual traditions of the 18th century American federalists and the aforementioned problems they faced. We must also temper our thoughts with the geopolitical realities of our world. The military alliances and other IGOs patched together by the United States after World War II are as unpopular as ever, and the administrative state bureaucracy of the EU and the world's IGOs have predictably grown to become labyrinthes 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"¹⁶ masquerading as sovereigns. Free trade and the doctrine of comparative advantage are being called into question by not only trade unions and politicians but economists as well.¹⁷ To further complicate matters, the world continues to get smaller thanks to technological advances and greater economic integration.

Economic integration and political fragmentation

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. Instead, what we are seeing is greater interstate economic integration and more intrastate political fragmentation¹⁸. The IGOs that were cobbled together by the United States after 1945 have not evolved since their creations, and their abilities to integrate these political fragmentations into their systems is limited at best and can actually contribute to the inability to fragment - to exit - at worst. As an example, consider the United Nations, which was once a great response to the realities of the bipolar postwar world. The UN was an institution that 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. In order for the Americans and the Soviets to box each other in the way that they did, a series of formal rules had to be agreed upon and laid down in binding documents. One of these rules was a prohibition on interfering in the internal affairs of other states and

¹⁶ Mises 2006 (1919): 54

¹⁷ see Smith 2020 for a summary of the anti-free trade movement within the economics profession

¹⁸ Alesina and Spolaore 1995; Wittman 2000; Gancia, Ponzetti, and Ventura 2017

recognizing the sanctity of borders drawn up by European empires in the 19th century (this rule was based on the principles of the 17th century Peace of Westphalia and its commitment to national sovereignty).¹⁹ 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-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 Middle East, Africa, South Asia, China, Russia, and Southeast Asia has largely been a product of the inability of states to fragment, an inability which is encouraged by notions of Westphalian sovereignty and institutionalized by IGOs such as the United Nations or World Bank.²⁰

If states wish to break away, but are 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 which welcomes states into its union, and which is strong enough to deter aggression, would be a welcome, liberal development. The fragmentation created by economic integration could be institutionalized and the liberalization of the world could continue apace. 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, centralized hierarchical states have proven to

¹⁹ Another Mises quote is apt here: "It is impossible to build a real League of Nations, capable of assuring lasting peace, on the principle that the traditional, historically determined boundaries of each country are to be treated as inalterable fixed. The League of Nations retains the fundamental defect of all previous international law: in setting up procedural rules for adjudicating disputes between nations, it is not in the least interested in creating any other norms for their settlement than the preservation of the status quo and the enforcement of existing treaties" 1985 (1927): 149-150. See also Kukathas 2006: 196-203

²⁰ Jackson 1990: 39-49, 95-108, 139-163 and Badie 2000 (1992): 37-47, 77-83, 105-112, 146-156

be despotic, and radically decentralized orders are still untested utopias²¹, but the federal alternative of the United States has proven robust.

What would it look like?

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 failed European model of Westphalian state sovereignty as a guide of 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 18th century was tied up in balance of power politics that hampered the growth and flowering of individual liberty.²² The republic that the Americans built was based on the experiences of history, the yearning for a more free world, and the geopolitical realities of their time. It has survived a civil war, two world wars, and several episodes of alterations to its system, but it is now the clear alpha polity of the liberal world.²³

What is less clear is the role of the United States in the illiberal world. On one end of the spectrum, the US is expected to provide leadership over the free world and play the role of policeman in non-free societies, while on the other end of the spectrum it is lambasted as an aggressive imperial state. The ambiguous nature of the American role in the illiberal world has, while providing a stable system of wealthy liberal polities in Western Europe and East Asia, produced much of the strife facing us today and stems from the exhausted intellectual toolkit of academics (especially classically liberal academics) who still refuse to consider federation as a

²¹ see especially MacDonald 2019; also Wiener-Smith 2014; Friedman 1973; Huemer 2013; Rothbard 1994, 2000 (1963)

²² Hendrickson 2003: 63-64, 161-176; Deudney 2007: 161-163, 179-181

²³ Of all these shocks to the American federation, the Civil War represents the strongest challenge to my argument. Hummel 2013 (1996) 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. Engerman 1997 argues that Hummel's work leaves open the question of "how much time would pass before emancipation would be voluntarily agreed upon," and several authors (see especially Blanks 2012, Sandefur 2006, and Oliver 2001) have argued explicitly in favor of the Union on classical liberal/libertarian grounds. None of these works are as concise and cogent as Deudney 2007: 171-176, who argues that the civil war had two causes: rapid geographical expansion into a "power vacuum at the frontier" (2007:172) and slavery ("a radically antiliberal relic of a preliberal society" 2007: 173). Frontier expansion and chattel slavery are, of course, irrelevant for today's world and for the architecture of the American interstate system (Allen & Ostrom 2008: 153-167 provide rich supplementary support to Deudney's view).

viable alternative to empire, isolation, and the status quo.²⁴ This intellectual exhaustion is illustrated deftly in one of the more influential articles on free riding and military alliances, 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.²⁵ 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, including by the authors of the article, not because it's incorrect but because it still seems to be so completely unimaginable.

How should it be ordered?

For all its faults, the United States possesses the blueprint for interstate federalism in its constitutional DNA. I propose, then, that a Hayekian interstate federal project not only be pursued, but that it be built upon, in Hayekian fashion,²⁶ the constitution that currently protects the liberties of the American people, rather than around the Westphalian notion of state sovereignty.²⁷

The path of least resistance towards this goal is fairly straightforward. Unlike the Americans who had to chart new territory with their republic (while still relying heavily on the past for guidance), we have an example of how to move forward. In order for 18th 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

²⁴ "Federalism is, of course, nothing but the application to international affairs of democracy." Hayek 2007 (1944): 232

²⁵ Olsen and Zeckhauser 1966

²⁶ Hayek 1960: 1-8; Hayek 1945: 519-530; Kukathas 2006: 192-193; Madison was also interested in building upon an already existing foundation rather than creating a new order from scratch (see Madison 1982 [1788]: *Federalist* no. 40; Dietze 1999 [1960]: 261, 306-307).

²⁷ Hayek himself labelled the American constitution "[a] constitution of liberty, a constitution that would protect the individual against all arbitrary coercion" (1960: 182).

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.²⁸

By placing the constitution above the federal union, the Americans added an innovative approach to constitutionalism²⁹ (Madison termed the federal union a “compound republic,”³⁰) and 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.³¹ 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 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, creating the democratic excesses the American interstate federalists sought to extinguish from the continent.³² A comparison between the EU’s legislative bodies and the American Senate is useful here. The American constitutional 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 for the argument proposed in this paper. The American Senate has thrown out dozens of treaties over the centuries, with most of them coming after the American Civil War and almost 20% of the rejections coming after World War II,³³ and it has used its power to impeach judges, presidents,

²⁸ 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 it as “the most perfect of all known federal constitutions” even though, or perhaps because, it rested “almost wholly on legal fictions” (2000 [1835]: 155).

²⁹ Deudney 2007: 162, 165-166;

³⁰ Madison 1982 (1787): *Federalist* no. 51

³¹ Deudney 2007: 177; Madison 1982 (1788): *Federalist* Nos. 62-63; Hamilton 1982 (1788): *Federalist* nos. 65-67

³² Dietze 1960: 250-251, Jay 1982 (1788): *Federalist* no. 64; Hamilton 1982 (1788): *Federalist* nos. 69, 75; Tocqueville 2003 (1835): 112-114; Allen & Ostrom 137-151

³³ 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

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 system, looks more like the presidential government Ostrom sought to avoid, while the democratic excesses that Madison, Hamilton, and Jay found in the sovereign states and sought to extinguish with a federative body are tearing the European Union, based as it is on the Westphalian notion of state sovereignty, apart. 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 pact³⁴ - the European Union finds itself weak, ineffectual, and prone to charges of corruption, clientelism, and tyranny.³⁵

Hayek was largely quiet on the subject of the American Senate, preferring to focus instead on his ideal version of a bicameral legislature³⁶ and on the American constitutional contribution to judicial review.³⁷ 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 he faced, why he never considered a Smithian, trans-Atlantic option, or at least that those thoughts went unfinished.³⁸ In fact, praise

subject to fundamental alteration in the form of the 17th Amendment, and while this Amendment has served to benefit national political parties, and especially the Democratic Party (Stewart & Schiller 2011), at the expense of third parties ostensibly devoted on local problems (Schleicher 2014), the Amendment has had no discernible effect on the power of the Senate *relative to the lower house or the other branches of the federal government* (Allen & Ostrom 2008: 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 17th Amendment (see the main text below for a discussion on Presidential Government and interstate federalism's republican remedy.) Furthermore, Buchanan 2005 makes no mention of the 17th Amendment in a rare public thought experiment on constitutional amendments, thus implying that the 17th Amendment's alteration of the Senate is not as influential as its detractors make it out to be, and Allen & Ostrom 2008: 167-179 show how the 17th Amendment actually *complements* the compound republic and its mode of polycentric governance.

³⁴ Deudney 2007: 91-113, 161-167; Madison 1787 (1787) *Federalist* Nos. 18-20; Dietze 1999 (1960): 290-308

³⁵ This charge also applies to the United Nations and other IGOs (see Ostrom 2008 [1971]: 11-12 on Hamilton's view of "the minimal defining characteristics of government" and why the American federalists would consider bodies like the United Nations claiming to be governments an "absurdity").

³⁶ Hayek: 1979 v.3: 111-117

³⁷ Hayek 1960: 176-192; for more treatment of judicial review, see Hulsebosch 2006; Mittal and Weingast 2010

³⁸ Hayek at least noted the possibility of trans-Atlantic or trans-oceanic federations in several places (see Hayek 2007 [1944]: 233-234 and, as a thought experiment, Hayek 1976 [1939]: 261-266).

for the American Senate as an institution is sparse in our circles,³⁹ a deep failing that can be remedied by using a different conceptual approach towards that much-maligned body: the Madisonian senate as an institution of diplomacy, which in turn would make interstate federalism an alternative to Westphalian state sovereignty and the always unstable balance of power treaty system it has produced.

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, and the fact that intrastate quarrels within the American federation have never been based on size should give pause to anti-federalist camps worldwide.⁴⁰ Yes, national sovereignty will be abrogated, but this is exactly what Hayek argued was necessary for security and freedom, 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 Hayekian interstate federalism⁴¹ we must push this argument forward and into the face of the idea of national sovereignty and of nationalistic sentiment. The US constitution says nothing on nationalism, unlike the constitutions of Westphalian nation-states and confederations, and the American experience shows how polities "as different as Russia and Turkey"⁴² were able to form an interstate federation that focused solely on preventing despotism and Balkanization at home and achieving republican security abroad.⁴³ The American federal project as a whole was not a nationalist project;⁴⁴ rather, it was a novel and

³⁹ Buchanan & Tullock praised it briefly in *Calculus of Consent's* "bicameral" chapter, by noting that the presidential veto *over* the Senate helped to improve the overall constitutional system (1962: 248).

⁴⁰ Bryce 1995 v.1 (1888): 88-89

⁴¹ 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: 265); see also Buchanan & Tullock 1962: 300-306.

⁴² Hendrickson 2003: 27

⁴³ The U.S. constitution's lack of Westphalian credentials fits in nicely with Hayek's explicitly anti-nationalist internationalism, a distinct variant of liberalism that set him apart from more popular 20th century liberals like Rawls (Kukathas 2006: 192-194).

⁴⁴ This is hotly contested, of course, especially by those who are in Ostrom's "Presidential Government" camp, but see Dietze 1999 (1960): 268-275 for an excellent overview of the tensions between Madison and Hamilton on the national question and the federalist answer; see also Wood 2010: 103-110 for the many challenges that nationalists faced in trying form a sense of nationalism in the new republic; Deudney 2007: 171; Hendrickson 2003: 153-157;

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 non-nationalistic character of American interstate federalism is to hold it up for comparison.

How can it be accomplished?

The unifications of Germany and Italy in the late 19th century provide the best pathways for explaining why the American federation is not based upon nationalist principles, and also for imagining what would likely happen if the US and its wealthy allies finally moved towards interstate federalism.⁴⁵ The regions of Germanic and Italian cultures were, at the time of the unifications of Germany and Italy, sandwiched between French, Dutch, and British empires to the west and 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 18th 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 1870,⁴⁶ while Germany's federal system ran roughshod over the rights of individuals before succumbing

Tocqueville 2000 (1835): 116; see Jay 1982 (1787): *Federalist* no. 5 and Hamilton 1982 (1787): *Federalist* nos. 6, 7 for a discussion on the threat of Balkanization and neighbors as natural rivals rather than as friends and on the necessity of union to offset the postwar North American predicament that the former colonies found themselves in; for an interesting argument on political union as a remedy to divisive cultural clashes within an economic union, see Guiso, Herrea, and Morelli 2015.

⁴⁵ Daniel Ziblatt's *Structuring the State* (2006), a book that grew out of his PhD dissertation at Berkeley, does just this. Ziblatt's work answers the questions of how nation-states are made and whether nation-state formation leads to the creation of federal or unitary systems of governance, but it also, perhaps inadvertently, provides us with a clear picture of what Hayekian interstate federation would look like.

⁴⁶ Felice 2017

to a violent death at the hands of its enemies. Both states today are embedded uneasily within a Westphalian confederation that is unable and unwilling to close the sovereignty gap.

So how did these attempts at federalism end so differently than those of the American one? The strongest explanation stems from the Westphalian notion of state sovereignty that the American founders sought to extinguish from their political system. 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 19th century and it inevitably led the push towards federation within the Italian world. However, Piedmontese federalists were confronted with an Italian realm that had too much institutional diversity; there were some Italian states that 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.⁴⁷ In the American experience, Virginia - a large, rich state - shared with the likes of Delaware and New Hampshire - small, poor states - a set of mutually intelligible, though not identical, institutions. Thus, the bargains to be made in the name of federation were more easily understandable on all sides.

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 system. 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

⁴⁷ Ziblatt 2006: 57-108

Piedmont-Sardinia dominated its neighbors. This is all the more peculiar upon first glance because blocs still formed between pro- and anti-unification 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, non-coercive - 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, 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.⁴⁸ The German federal system's balance of power focused on the states and the federal government to the detriment of the people.⁴⁹ As a result, it failed to flower in the same manner as the American republic.

The failed attempts at federalism undertaken by the Italians and the Germans of the 19th century do not explicitly show that Westphalian state sovereignty works mostly to the detriment of interstate federation,⁵⁰ but they do highlight the fact that some basic similarities 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 suffer the petty jealousies of the smaller states along the way,⁵¹ 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, it 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 international regimes that is less like [...a] state system of hierarchies and more like the domestic spheres of earlier republics."⁵² This is the

⁴⁸ Ziblatt 2006: 32-56, 109-140; see also Mises 2006 (1919): 80-109

⁴⁹ 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: 292-296.

⁵⁰ An argument I leave to the example of the EU

⁵¹ "Because Prussian political leaders were confident they would dominate a federal structure, they advocated granting concessions to the other states" (Ziblatt 2006: 136) even though Prussia was powerful enough to conquer the German realm militarily.

⁵² Deudney 2007: 271; see also Ikenberry 2006 (1998): 126-134

much-maligned, much-misunderstood, and increasingly fraught liberal world order that the United States has built out of the ashes of World War II,⁵³ and federating it under the American constitutional order would achieve Hayekian interstate federalism.

Federation under the American interstate system would logically entail decentralization, too, as adding, say, 15 more “states” to the 50 “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,⁵⁴ and efforts at decentralization can actually lead to a *recentralization* of power if self-government is not the ultimate aim of such measures.⁵⁵ The compound republic of the United States, and especially its Madisonian Senate - an institution of sovereignty-subsuming diplomacy within the American interstate system - has largely prevented both decentralized despotism and the concentration of power in one branch of government for centuries.⁵⁶ 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 state system. 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, as 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.⁵⁷ Poorer states - or secession-minded regions within states - that would like

⁵³ Deudney and Ikenberry 2006 (1999): 91-101; Ikenberry 2006 (1996): 175-185

⁵⁴ Mamdani 2018 [1996] and Dalrymple 2019 both provide examples of decentralized despotisms, the former using the informal colonialism of the British Empire as an example and the later using the British East India Company to argue his point; Treisman 2007 doesn't liken decentralization to despotism but he does point out that decentralization as government has not been as vigorously scrutinized as other concepts in the sociopolitical sciences, especially in elite circles, and that this can create severe problems relating to poverty and authoritarianism for societies on the receiving end of elite aid.

⁵⁵ Grossman & Lewis 2014; Ziblatt 2006: 106-107; Badie 2000 [1992]: 142

⁵⁶ There are exceptions, of course. Chattel slavery and ethnic cleansing are both notable examples, as are the numerous examples of religious persecution, wartime censorship and imprisonment, anti-immigration Nativism, and post-Civil War racism. Despite all this, the compound republic has allowed for remarkably “creative responses” to “the issues raised by life in a self-governing community” Allen & Ostrom 2008: 179. See also Ostrom 1999: 63-69.

⁵⁷ Maseland and Spruk 2020

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” within the American union today that is not from 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.⁵⁸

Conclusion

Embracing interstate federalism as a foreign policy doctrine would bring a much-needed Hayekian-Ostromian distinction to academic studies on International Relations; it would refresh the stale dichotomy between isolationism and the status quo found in classical liberal circles and, by offering up the American constitutional order as an alternative to the Westphalian order, it would instigate much-needed discourse within diplomatic corps worldwide. 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 Madison for that matter.⁵⁹ “What the liberal must ask, first of all, is not how fast or how far we should move, but where we should move.”⁶⁰

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 (including various Caribbean island states and

⁵⁸ Tocqueville 2000 (1835): 33-41; Maseland and Spruk 2020: 22-26; for an interesting take on Hawaiian statehood, see Merry 1999: 26

⁵⁹ The best defense of the status quo is, by far and somewhat ironically, still Van de Haar 2011. Spruyt 1994: 188-194, Deudney and Ikenberry 2012, and Ikenberry 2006 (1998): 117-124 offer up alternatives for more political union without sovereignty-subsuming federation (indeed, a compound republic is never even considered), choosing instead to propose or endorse more of the same administration-heavy options based upon Westphalian national sovereignty. In the case of Gancia *et. al.*, the United States is brought up as an example of a successful political union, but the idea of joining it escapes the authors (2017: 36-37); Hardt & Negri (2000: 206-218, 393-411) have the most sophisticated illiberal approach to world order, while Chase-Dunn 1990 and Chase-Dunn & Inoue 2012 are representative of a world-systems approach to world order; Deudney 2007: 262-264 also argues for a federal alternative to the status quo, but he uses Calhoun as a point of reference instead of Madison, Hamilton, & Jay, Hayek, Smith, or Ostrom. For Deudney’s interstate federation, “the clear starting point must be union as an expression of sovereignties rather than as their abridgement” (263).

⁶⁰ Hayek 1960: 398

Mexican states in the north of the country). The most logical places to avoid will be the Asiatic borders of China and Russia (i.e. Tibet, or 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. the small Baltic republics, or Japan) join the union. Potential strategies for the rest of Asia, as well as Africa, would do best to rest on the assumption that most of these states are artificial,⁶¹ and that recognizing secessionist movements in these places would be the most liberal way forward. India's states, which now have half a century of experience with a type of federalism, might go willingly as is, and the former French colonies in west Africa have at least some experience (albeit failed) with trans-continental federalism after attempting to create a union of equal states with France.⁶² In Latin America, where the republics serve as prime examples of polities that attempted but failed to mimic American federalism, sub-states or provinces like Antioquia or La Libertad could join instead of whole countries, with major cities like Buenos Aires or Rio de Janeiro simply becoming independent or quasi-independent a la Singapore or Hong Kong. The bottom line is to go slowly (but not too slowly), and patch it together rather than force the pieces, much like Madison did with the initial sovereign American states and much like Hayek repeatedly stated was a necessary component for the rule of law to establish itself.

Finally, and most importantly, embracing Hayekian interstate federalism via the American compound republic would help to slow the efforts of rampant "state-building at home"⁶³ that we have all come to detest. Hayek dedicated much of his life to combating nationalism, and within the American alliance system today, nationalism is not only a threat to individual liberty and republican security but also the most obstinate obstruction on the path towards interstate federalism. An embrace of Hayekian interstate federation would mean attacking the root cause of nationalism as Hayek identified it: national state sovereignties, which, again, were also

⁶¹ Michalopoulos and Papaioannou 2016; Alesina, Easterly, and Matuszeski 2011

⁶² see Cooper 2014

⁶³ Deudney 2007: 176

considered by the American federalists to be the chief cause of despotism within the colonies that had seceded from the United Kingdom.⁶⁴

Yet nationalism, in accordance with both its founding vision and its current role as alpha polity in the liberal world order, poses few problems for the United States, and while 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. The United States is slowly evolving into an imperial presidency.⁶⁵ The architects of the American interstate system dwelled deeply on the dangers of executive power,⁶⁶ but their main focus was on extinguishing the excesses of democracy that state sovereignty encouraged. The myriad of ways in which the executive branch of the US Federal government has gradually imposed itself on the legislative rule-making process in the United States over the last century has produced well-founded fears.⁶⁷ Yet Congress has *ceded* these responsibilities to the executive. Contrast the legislative branch's late 20th-century acquiescence to executive prerogative with that of the judicial branch in the 1930s and 1940s, which was vigorous and combative towards the Roosevelt administration, so much so that the federation's highest federal court was often accused of "legislating from the bench."⁶⁸ It is clear through this contrast that the legislative branch is not powerless relative to the executive branch, but lifeless. 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 new position within the interstate federation, and this would make it difficult for the presidency to continue with its legislative fiat. The compound

⁶⁴ The scholarship on nationalism is vast, and my task here is to address national sovereignties, but I must nevertheless recommend the short work of Kaplan & Kelly 2001 for an insightful overview of the concept of nationalism and how it has been abused and misunderstood thanks to the overtly ideological work of Benedict Anderson's *Imagined Communities*. The study also delves into the nation-state's place in the world today and why it is largely a tool of oppression rather than true representation (such as you would find in the American interstate system's compound republic). If you find my argument convincing, or at least worthy of further study, you will find Kaplan & Kelly's work to be worth your while.

⁶⁵ Ostrom 1978

⁶⁶ Hendrickson 2003: 249-256; Dietze 1999 (1960): 243-254; Hamilton 1788 (1788): *Federalist* Nos. 67, 69-77; Ostrom (2008 (1971): 112-130; Bailyn 324-379; Tocqueville 2003 (1835): 120-124, 661-665; Allen & Ostrom 2008: 198-204

⁶⁷ Allen & Ostrom 2008: 187-211

⁶⁸ Hayek 1960: 186-192

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.⁶⁹⁷⁰

By touting untested utopias or defending the status quo and its resentments (or worse still, embracing illiberal nationalist sovereignties), libertarians and classical liberals are rejecting their intellectual heritage, “which is above all else a modest and even humble creed,”⁷¹ and as a result are removing themselves from serious academic and public policy conversations about the world we live in. 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,”⁷² 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.”⁷³

⁶⁹ On Madison’s compound republic as a polycentric order, and on entrance and exit in a polycentric system, see Ostrom 1999: 57-60

⁷⁰ The question of exit is of course unaddressed in this article, and exit is an important topic in political economy and 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 [1919]: 32). The answer to exit, especially now that the “power vacuum at the frontier” and the “radically antiliberal relic of a preliberal society” (Duedney 2007: 172-173) 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.

⁷¹ Hayek 1960: 8; see also Ostrom 2008 (1971): 61-62 on ideal types and presumptions of infallibility as they relate to the compound republic of the Americans

⁷² Hayek 1960: 409

⁷³ Madison 1982 (1787): *Federalist* No. 10

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