THE REAL OPUS UNDER LAW SINCE 1776

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INTRODUCTION & OVERVIEW

The "OPUS" in this essay's title is an acronym for "One People of the United States," not the Latin word for work. This homonym *opus* nevertheless gestures toward the maintenance of one unified people through shared pursuit of the political common good as an intergenerational project. The title thus refers to the main claim that I aim to adduce in this interpretive Essay: One People of the United States has really existed under law since 1776.

The principal distinction undergirding this interpretation is a distinction between the People of the United States and the Government of the United States. The Declaration of Independence gave rise to one People of the United States as an independent People under law. This one People of the United States is the political authority that made the later-promulgated Constitution of the United States. The body politic brought into independent existence via the division

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accomplished by the Declaration of Independence is an essential aspect of the unwritten or providential constitution of the United States of America.

This Essay continues a project begun in an article that I co-authored with Jeffrey Pojanowski, *Enduring Originalism*.[1] In that article, we explained how the classical natural law tradition supplied a framework for understanding the Constitution of the United States as positive law.[2] We relied on St. Thomas Aquinas's four-part definition of law as (1) an ordinance of reason, (2) for the common good, (3) made by one with care of the community, and (4) promulgated.[3] The third part of this definition refers to the making of law by one with authority; "care of the community" is the form that authority takes with respect to the body politic. We argued that "the People of the United States" is the political authority that made the Constitution of the United States.[4] The claim I advance in this Essay is that this political authority for the Constitution of the United States is real, not fictional.

The four main components of the claim that one People of the United States has really existed under law since 1776 call for some explanation at the outset. These components are (1) one, (2) People of the United States, (3) really existed under law, (4) since 1776. The most distinctive of these components is "People of the United States." This is the entity of sorts of which "one" and "really existed under law" and "since 1776" are predicated. What kind of thing can carry these predications? This is another way of asking what it means to say that the "People of the United States" is one and that it really exists.

When it comes to the modifier "one," we must make an important distinction. I have used the awkward phrase "entity of sorts" because the People of the United States is not an individual substance like a human person is. The People of the United States is "one" in the sense of possessing unity, but this unity is a unity of order rather than substantial unity. This unity of order is the unity proper to a group person.[5]

Now let us consider "really existed under law." When the People of the United States came into existence in 1776, what new thing or

1 Jeffrey A. Pojanowski & Kevin C. Walsh, *Enduring Originalism*, 105 GEO. L.J. 97 (2016).

2 *See id.* at 117–38.

3 *See id.* at 120.

4 *See id.* at 127; *see also* Jeffrey A. Pojanowski & Kevin C. Walsh, *Recovering Classical Legal Constitutionalism: A Critique of Professor Vermeule's New Theory*, 98 NOTRE DAME L. REV. 403, 429 (2022) ("To properly serve the political common good of one people, it was fitting to empower one government of, by, and for that people to make and administer supreme law of the land.").

5 *See infra* Part III.

state of affairs came into the world? The relevant distinction here is between a fictional person and a group person. The People of the United States, I affirm, is a group person rather than a fictional person.[6]

The phrase "under law since 1776," locating the People of the United States in time, seems to be the easiest attribute to understand. The attribute can be subdivided into the claims that the People of the United States (1) did not exist under law before 1776, (2) came into existence under law in 1776, and (3) has existed under law since then into the present. These are historical and legal claims, but historical and legal claims about a certain kind of social fact that lawyers are particularly well suited to understand. We make such claims about partnerships and corporations, for instance, even while recognizing that there are important differences between these two kinds of organizations, or "entities of a sort." The People of the United States could have come into existence, for example, by a kind of partnership agreement among the peoples of the various colonies that became states. If that kind of partnership agreement or compact is how the People of the United States came to be, then that People would not be "one" People in the same way as if that People came into existence as a single corporate entity. Whether the unity and existence of the People of the United States is more closely analogous to the unity and existence of a corporation or of a partnership depends on historical facts even while the proper understanding of those facts depends on metaphysics, epistemology, and action theory. It is explainable via theology, too, as we shall see.

This Essay's development of the case for the claim that one People of the United States has really existed under law since 1776 unfolds as follows. Part I opens with a fresh reading of the Declaration of Independence as the act of one People of the United States. This opening statement is then followed by testimony from President John Quincy Adams, President Calvin Coolidge, and Justice Clarence Thomas as character witnesses from three different centuries. Part II turns to the skeptical case in favor of treating the People of the United States as fictional rather than real, and then answers with Orestes Brownson's account of the one People of the United States as an historical fact. Part III draws on the scholarship of Russell Hittinger to sketch a Thomistic social ontology that explains the People of the United States as a group person rather than a fictional person.

6 *See infra* Part III.

I. ONE PEOPLE BEFORE AND AFTER 1776

The basic argument for the claim that one People of the United States has really existed since 1776 begins from the fact that the American people in the thirteen British colonies were part of one people with their British brethren under the King before independence. Through their united separation from the mother country, united victory in the war for American independence, and united self-government under law since, the division of one people into two legally warring camps by the Declaration of Independence resulted in the real existence of one People of the United States under law beginning in 1776 and continuing into the present.

A. An Angelic Framing Device

That the United States of America began in time, that the United States of America continues to exist, and that the United States of America has maintained corporate continuity from its origin to the present are all propositions whose truth I aim to affirm. To think more clearly about the origin, ongoing existence, and corporate continuity of the United States of America over time, I introduce as a framing device an investigation into the question: When did the United States of America receive its national guardian angel?

The claim that I consider here is that the United States of America providentially received its national guardian angel upon the Continental Congress's promulgation of the Declaration of Independence. I present this claim via analogy to the assignment of angelic guardians to human persons. According to St. Thomas Aquinas, following St. Jerome's interpretation of Matthew 8:10, each human person is assigned a guardian angel at birth.[7] The contrasting position that Aquinas considers and rejects is that a guardian angel is assigned at baptism.[8] Aquinas acknowledges that the child in the womb possesses a rational soul, but he focuses on birth as the time of full separation of the child with the rational soul from the mother:

> For as long as a child is in his mother's womb he is not totally separate from his mother, but still belongs to her in a certain sense because they are attached to one another—in the same way that a fruit hanging from a tree belongs to the tree. And so it is plausible to claim that the angel who guards the mother also guards the offspring in the mother's womb. But as Jerome says, when the child is

7 THOMAS AQUINAS, SUMMA THEOLOGIAE pt. 1, q. 113, art. 5 (Alfred J. Freddoso trans., 2009), https://www.freddoso.com/summa-translation/TOC.htm [https://perma.cc/4CMZ-4RZ5].

8 *Id.*

> separated from the mother at birth, an angel is assigned to guard him.[9]

We can already see where this is going and how the Declaration of Independence fits into it. If a nation, like an individual human person, receives its guardian angel at the time of its birth, then we need only to identify the time of a nation's birth to identify when that nation receives its guardian angel.

Before turning to the point in time analogous to human birth for the birth of a nation, let us first consider the angel side of things. The assignment of an angel to a nation is an aspect of God's providential government of the nations. The principal biblical source for the guardianship of angels over nations is the Book of Daniel, specifically the passage in which the angel Gabriel states that "[t]he prince of the kingdom of the Persians resisted me one and twenty days."[10] According to theological tradition, "this prince of the Persians was the angel assigned to guard the kingdom of the Persians."[11] Following Jerome and Gregory, Aquinas explains that "the prince of the kingdom of the Persians is an angel who had set himself in opposition to the liberation of the people of Israel, on whose behalf Daniel was praying, with Gabriel presenting his prayers to God."[12] In the course of explaining how it is that "one angel is said to resist another," Aquinas observes that "God's judgments concerning different kingdoms and different men are executed by the angels, and in their actions the angels are regulated by God's decrees."[13]

If there was a point in time at which an angel was assigned to the guardianship of the United States of America, and that point in time was the nation's birth—analogous to the appointment of a guardian angel to a human person at the time of that person's birth—what was that point in time? Aquinas's analogy in describing human birth is the separation of a fruit from the tree. That is a pretty good analogy for the people of the colonies in relation to the mother country. But how many fruits broke off the tree? Was it one or thirteen? The time when the united colonies separated from the mother country was upon promulgation of the Declaration of Independence. Was this the break of one people from another or the break of thirteen colonies? Or maybe we do not have to choose. Could the break be understood simultaneously as both the separation of one people and of thirteen colonies?

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9 *Id.*

10 *Id.* art. 8 (quoting *Daniel* 10:13).

11 *Id.*

12 *Id.*

13 *Id.*

B. Reading the Real OPUS in Law

With this angelic framing device in place for our inquiry into America's providential constitution, let us now turn to the Declaration itself, with specific focus on what "fruit" separated from the "tree." Insofar as the words of the Declaration accurately express the act of assuming independent existence that this Declaration accomplished, a close reading of this Declaration's words can help us to understand the act of separation accomplished through it. Following the mother-child analogy, let us consider first the separation of peoples.

The Declaration is unambiguous that "in the Course of human events," it has become "necessary for *one people* to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them."[14] Here we have the purported act of "one people" that simultaneously accomplishes two things. First, this one people's declaration of independence dissolves the political bands which have connected them to another people. Second, this one people's declaration of independence causes this people "to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them." The explanation of this act is given to one human race out of "a decent respect to the opinions of mankind."[15] This respect requires that "they"—the people dissolving their political bands and assuming a separate and equal station—"declare the causes which impel them to the separation."[16] The "them" separated is the "one people" separating from another people.

That is all in the first paragraph, which is often passed over for the second paragraph, which in turn is vulnerable to being read in an excessively individualistic manner.[17] For present purposes, it is useful first to note the Declaration's affirmations (1) that the equality of "all men" is a function of their being "created," and (2) that the Rights that all men possess are "endowed by their Creator."[18] These affirmations highlight that the one people's acts of separation and of assumption of a "separate and equal station" among "the powers of the earth," are all part of the same ordered universe structured by "the Laws of Nature and of Nature's God."

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14 THE DECLARATION OF INDEPENDENCE para. 1 (U.S. 1776) (emphasis added).

15 *Id.*

16 *Id.*

17 This second paragraph begins: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness." *Id.* para. 2.

18 *Id.*

The Declaration continues with a distinction between People and Government. "Governments are instituted among Men" to secure the unalienable rights endowed by the Creator.[19] This paragraph includes the statement that Governments "deriv[e] their just powers from the consent of the governed."[20] Because the personal rights to be secured by government are unalienable, it remains "the Right of the People to alter or to abolish" government "whenever any Form of Government becomes destructive of these ends."[21] The "Right of the People" described here is a right held by that unitary "one people" whose separation and assumption of an equal station among the Powers of the world are identified in the Declaration's first paragraph as the acts to be justified in the remainder of the document. The "Right of the People" here claimed on behalf of this one people in their newly equal station among the Powers of the earth is not only to alter or abolish, but also "to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness."[22]

The next two sentences continue to focus on the forms of government being changed in connection with this separation of the people. The Declaration appeals to "Prudence," which counsels "that Governments long established should not be changed for light and transient causes."[23] Noting "a long train of abuses and usurpations," however, the Declaration asserts a "necessity which constrains [the Colonies] to alter their former Systems of Government."[24] The Declaration contends that "[t]he history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States."[25]

The next section of the Declaration catalogs these injuries in order to prove this claim of Tyranny. After an extensive catalog of injustices, the Declaration continues in the first-person plural: "In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury."[26] And just who is this (anti-Royal) "We"? The next sentence makes clear that this first-person plural refers to a singular collective people: "A Prince, whose character is thus marked by every act

19 *Id.*
20 *Id.*
21 *Id.*
22 *Id.*
23 *Id.*
24 *Id.*
25 *Id.*
26 *Id.* para. 30.

which may define a Tyrant, is unfit to be the ruler of *a free people*."[27] As with the opening paragraphs, this summation of the middle section addresses the act of one people separating from another and throwing off that tyrannical ruler in order to be ruled in a manner befitting "a free people."[28]

The next paragraph uses familial language to describe the relationship between the people separating and the people being separated from:

> Nor have We been wanting in attentions to our Brittish brethren. . . . We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which, would inevitably interrupt our connections and correspondence. They too have been deaf to the voice of justice and of consanguinity.[29]

The conclusion is one of separation: "We must, therefore, acquiesce in the necessity, which denounces our Separation, and hold them, as we hold the rest of mankind, Enemies in War, in Peace Friends."[30] This family separation is the closest analogy in the life of a people to the separation of mother and child resulting from the child's birth. This new people is in much greater need of a new guardian angel than a newborn child, though, because this new "free people" is born at war with the mother country, her tyrant King, and their former brethren.

The concluding paragraph of the Declaration makes clear that the signatories are making this Declaration of Independence as "the Representatives of the United States of America, in General Congress, Assembled."[31] Although the signatures that follow were grouped by State when they were later added, the Declaration is made as representatives of a single party, "the United States of America," operating within a unity of order, namely "in General Congress, Assembled."[32] These representatives of this single unity of order in turn appealed to "the

27 *Id.* (emphasis added).

28 *Cf.* Richard Ekins, *How to Be a Free People*, 58 AM. J. JURIS. 163, 164 (2013) ("In understanding the rule of a free people one has to explain first how it is that the people rules and second how this rule is consistent with the people remaining free.").

29 THE DECLARATION OF INDEPENDENCE para. 31 (U.S. 1776).

30 *Id.*

31 *Id.* para. 32.

32 For an explanation of how authenticated copies of the Declaration "with the names of the members . . . subscribing the same" were circulated to states only "after the long, disastrous military campaign of 1776 was over and the Americans had won victories at Trenton and Princeton," as well as many other important contextual details for understanding the Declaration of Independence, see PAULINE MAIER, AMERICAN SCRIPTURE: MAKING THE DECLARATION OF INDEPENDENCE 153 (1997) (quoting JOHN H. HAZELTON, THE DECLARATION OF INDEPENDENCE: ITS HISTORY 284 (1906)).

Supreme Judge of the world for the rectitude of our intentions."[33] The rule by which the rectitude of intentions was to be measured by this Supreme Judge of the world, in turn, could only be the "Laws of Nature's God" identified earlier as the basis of unalienable rights. With these representatives as advocates, the Supreme Judge of the world presiding, the Laws of Nature's God as the applicable law, the representatives making the Declaration acted "in the Name, and by Authority of the good People of these Colonies."[34] That Name was the United States of America; that Authority was the One People of the United States. It is through this Declaration that this One People of the United States separated from the people of the mother country and came into real legal existence as an independent nation.

C. Adams, Coolidge, and Thomas as Character Witnesses

The reading of the Declaration of the Independence offered above can be evaluated on its own. But its credibility can be enhanced by considering the testimony of three character witnesses from three different centuries. These are President John Quincy Adams, President Calvin Coolidge, and Justice Clarence Thomas. I will present testimony from these witnesses in chronological (and alphabetical by last name) order.

Three speeches by President John Quincy Adams that testify to his understanding of the Declaration of Independence as resulting in one People of the United States under law are July 4th orations delivered in 1821, 1831, and 1837.[35] In his July 4, 1821 speech, President Adams

33 THE DECLARATION OF INDEPENDENCE para. 32 (U.S. 1776).

34 *Id.*

35 *See* JOHN QUINCY ADAMS, AN ADDRESS DELIVERED AT THE REQUEST OF A COMMITTEE OF THE CITIZENS OF WASHINGTON; ON THE OCCASION OF READING THE DECLARATION OF INDEPENDENCE, ON THE FOURTH OF JULY, 1821 (Washington D.C., Davis & Force 1821) [hereinafter ADAMS 1821]; JOHN QUINCY ADAMS, AN ORATION ADDRESSED TO THE CITIZENS OF THE TOWN OF QUINCY, ON THE FOURTH OF JULY, 1831, THE FIFTY-FIFTH ANNIVERSARY OF THE INDEPENDENCE OF THE UNITED STATES OF AMERICA (Boston, Richardson, Lord & Holbrook 1831) [hereinafter ADAMS 1831]; AN ORATION DELIVERED BEFORE THE INHABITANTS OF THE TOWN OF NEWBURYPORT, AT THEIR REQUEST, ON THE SIXTY-FIRST ANNIVERSARY OF THE DECLARATION OF INDEPENDENCE, JULY 4TH, 1837 (Newburyport, Morss & Brewster 1837) [hereinafter ADAMS 1837]. On the forty-fifth anniversary of July 4, 1776, Adams was Secretary of State. *See* Margaret A. Hogan, *John Quincy Adams: Life Before the Presidency*, MILLER CTR., https://millercenter.org/president/jqadams/life-before-the-presidency [https://perma.cc/RC3U-VMKH] (last visited July 10, 2026). On the fifty-fifth anniversary, he was a candidate for Congress. *See* Margaret A. Hogan, *John Quincy Adams: Life After the Presidency*, MILLER CTR., https://millercenter.org/president/jqadams/life-after-the-presidency [https://perma.cc/NCY5-9LLC] (last visited July 10, 2026). Adams gave no July 4 oration for the fiftieth anniversary, when he was serving as sixth President of the United States. Perhaps providentially, however, July 4, 1826, was the day that the second President (his father John Adams) and third President (his predecessor as Secretary of State Thomas

stated that "[t]he Declaration of Independence pronounced the irrevocable decree of political separation, between the United States and their People, on the one part, and the British King, Government and Nation on the other."[36] Continuing his deliberate double description distinguishing the People from the Government, President Adams asserted that the Declaration "proclaimed the first principles on which civil government is founded, and derived from them the justification before Earth and Heaven, of this act of sovereignty: but it left the people of this Union collective and individual without *organized* Government."[37]

In his July 4, 1831 speech to the citizens of Quincy, Massachusetts, President Adams stated that the Declaration of Independence "announced the severance of the thirteen United Colonies from the rest of the British Empire, and the existence of their people from that day forth as an independent nation."[38] Ensuring ontological clarity about his personal understanding of the one People of the United States, President Adams asserted that "[t]he people of all the Colonies, speaking by their representatives, constituted themselves one moral person before the face of their fellow men."[39] Further distinguishing this "one moral person" from that moral person's governmental agents, President Adams asserted that "the States, united, and the States, separate, are both sovereign, but creatures of the people, and possess none but delegated powers."[40] Vividly depicting the "moral person" of the American people, President Adams described the Declaration of Independence as "the crown with which the people of the United America, rising in gigantic stature as one man, encircled their brows, and there it remains."[41] This imagery is simultaneously more extravagant and more precise in its insistence on the unity of the people that President Adams highlighted earlier in his description of the Declaration as "a manifesto issued to the world, by the delegates of thirteen distinct, but united colonies of Great Britain, in the name and behalf of their

Jefferson) died. *See* C. James Taylor, *John Adams: Life After the Presidency*, MILLER CTR., https://millercenter.org/president/adams/life-after-the-presidency [https://perma.cc/WKF3-U592] (last visited July 10, 2026).

36 ADAMS 1821, *supra* note 35, at 26.

37 *Id.* According to political theorist Justin Litke, this 1821 address by Adams is exemplary as "an explicit articulation of the general character of America's self-conception in the founding era." JUSTIN B. LITKE, TWILIGHT OF THE REPUBLIC: EMPIRE AND EXCEPTIONALISM IN THE AMERICAN POLITICAL TRADITION 140 (2013).

38 ADAMS 1831, *supra* note 35, at 20.

39 *Id.*

40 *Id.* at 35–36.

41 *Id.* at 20.

people."[42] Echoing the peroration of Webster's *Reply to Hayne* while substituting "Independence and Union" for Webster's "Liberty and Union," President Adams ends this 1831 address by contrasting his own eventual death with the future life of his audience and their country.[43]

In his July 4, 1837 speech, then-Congressman John Quincy Adams continued the lines of thought present in his 1821 address (delivered while sitting Secretary of State) and his 1831 address (delivered as ex-President and also running as a candidate for Congress).[44] This address, delivered to the citizens of Newburyport, Massachusetts, opens with a comparison of July 4th to December 25th. "Why is it," Adams asks, "that, next to the birth day of the Saviour of the World, your most joyous and most venerated festival returns on this day?"[45] Acknowledging that the distinctive claims of Christianity do not unite the citizens of the United States the same way that the United States itself does, Adams asks,

> [a]nd why is it that, among the swarming myriads of our population, thousands and tens of thousands among us, abstaining, under

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42 *Id.* at 6; *see also id.* at 6–7 ("It was a united declaration. Their union preceded their independence; nor was their independence, nor has it ever since, been separable from their union. . . . It was the act of one people. . . . The Declaration of Independence . . . was a proclamation to the world, not merely that the United Colonies had ceased to be dependencies of Great Britain, but that their people had bound themselves, before God, to a primitive social compact of union, freedom and independence."); *id.* at 18 ("[T]his was the first example of a self-constituted nation proclaiming to the rest of mankind the principles upon which it was associated, and deriving those principles from the laws of nature.").

43 *Compare* ADAMS 1831, *supra* note 35, at 39 ("In the course of nature, the voice which now addresses you, must soon cease to be heard upon earth. Life and all which it inherits, lose of their value as it draws towards its close. But for most of you, my friends and neighbors, long and many years of futurity are yet in store. May they be years of freedom—years of prosperity—years of happiness, ripening for immortality! But, were the breath which now gives utterance to my feelings, the last vital air I should draw, my expiring words to you and your children should be, INDEPENDENCE AND UNION FOREVER!"), *with* DANIEL WEBSTER, THE REPLY TO HAYNE (1830), *reprinted in* THE SPEECHES AND ORATIONS OF DANIEL WEBSTER 227, 269 (Edwin P. Whipple ed., 1902) ("When my eyes shall be turned to behold for the last time the sun in heaven, may I not see him shining on the broken and dishonored fragments of a once glorious Union; on states dissevered, discordant, belligerent; on a land rent with civil feuds, or drenched, it may be, in fraternal blood! Let their last feeble and lingering glance rather behold the glorious ensign of the republic, now known and honored throughout the earth, still full high advanced, its arms and trophies streaming in their original lustre, not a stripe erased or polluted, nor a single star obscured, bearing for its motto, no such miserable interrogatory as 'What is all this worth?' nor those other words of delusion and folly, 'Liberty first and Union afterwards'; but everywhere, spread all over in characters of living light, blazing on all its ample folds, as they float over the sea and over the land, and in every wind under the whole heavens, that other sentiment, dear to every true American heart,—Liberty *and* Union, now and forever, one and inseparable!").

44 *See* ADAMS 1837, *supra* note 35.

45 *Id.* at 5.

> the dictate of religious principle, from the commemoration of that birth-day of Him, who brought life and immortality to light, yet unite with all their brethren of this community, year after year, in celebrating this, the birth-day of the nation?[46]

Turning to an interpretation of the Declaration itself, Adams asserts that it had a "two-fold" object corresponding to the distinction between the People and their Government.[47] The first object was "to proclaim the People of the thirteen *United* Colonies, *one* People, and in their name, and by their authority, to dissolve the political bands which had connected them with *another* People, that is, the People of Great Britain."[48] The second object of the Declaration, Adams continued, was "to assume, in the name of this *one* People, of the thirteen *United* Colonies, among the powers of the earth, the separate and equal station, to which the Laws of Nature, and of Nature's God, entitled them."[49]

Moving forward now to a character witness with testimony from the twentieth century, let us consider President Calvin Coolidge's address on the 150th anniversary of the Declaration of Independence.[50] In this 1926 Address, President Coolidge (born on July 4,1872) describes the 1776 Declaration as "the product of the spiritual insight of the people."[51] President Coolidge observes that "[w]hile there were always among [our forefathers] men of deep learning, and later those who had comparatively large possessions, the mind of the people was not so much engrossd [sic] in how much they knew, or how much they had, as in how they were going to live."[52] Their primary text was the Bible,[53] and "[o]ver a period as great as that which measures the existence of our independence they were subject to this discipline not only in their religious life and educational training, but also in their political thought."[54] "No other theory," President Coolidge contends, "is adequate to explain or comprehend the Declaration of Independence."[55]

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46 *Id.*

47 *Id.* at 6.

48 *Id.*

49 *Id.*

50 CALVIN COOLIDGE, THE INSPIRATION OF THE DECLARATION (1926), *reprinted in* CALVIN COOLIDGE, FOUNDATIONS OF THE REPUBLIC: SPEECHES AND ADDRESSES 441 (2d prtg. 1968).

51 *Id.* at 454; *see also id.* at 453–54 ("Our forefathers came to certain conclusions and decided upon certain courses of action which have been a great blessing to the world. Before we can understand their conclusions we must go back and review the course which they followed. We must think the thoughts which they thought. Their intellectual life centered around the meeting-house. They were intent upon religious worship.").

52 *Id.* at 454.

53 *Id.* ("While scantily provided with other literature, there was a wide acquaintance with the Scriptures.").

54 *Id.*

55 *Id.*

Instead of presenting President Coolidge's testimony in more detail here, I refer interested readers to the transcript. In partial explanation of my choice of President Coolidge as a character witness, though, I leave note here of President Coolidge's assessment of certain truths announced in the Declaration of Independence as timeless. Coolidge singles out "[t]hree very definite propositions [that] were set out in [the Declaration's] preamble regarding the nature of mankind and therefore of government."[56] These three propositions are "the doctrine that all men are created equal, that they are endowed with certain inalienable rights, and that therefore the source of the just powers of government must be derived from the consent of the governed."[57] It is not to the truth alone of these propositions in the abstract that President Coolidge attributes the Declaration's historical significance. For President Coolidge, it is, rather,

> the fact that our Declaration of Independence containing these immortal truths was the political action of a duly authorized and constituted representative public body in its sovereign capacity, supported by the force of general opinion and by the armies of Washington already in the field, which makes it the most important civil document in the world.[58]

Like President John Quincy Adams, who theorized about the Union in opposition to the proto-secessionist likes of John Calhoun, President Coolidge's theorizing about the nature of the Union was also shaped by his opposition to a competing school of theorists. These theorists were not secessionists (who went extinct after Reconstruction[59]), but Progressives. Addressing Progressive thought directly, Coolidge notes that:

> It is often asserted that the world has made a great deal of progress since 1776, that we have had new thoughts and new experiences which have given us a great advance over the people of that day, and that we may therefore very well discard their conclusions for something modern.[60]

Answering this way of thinking, Coolidge contends that "[a]bout the Declaration there is a finality that is exceedingly restful."[61] This feature of finality comes from the timelessness of its fundamental propositional truths:

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56 *Id.* at 445.

57 *Id.* at 445–46.

58 *Id.* at 446.

59 For a description of "the death of secession in the crucible of the Civil War as the result of a trial by battle," see Cynthia Nicoletti, *The American Civil War as a Trial by Battle*, 28 LAW & HIST. REV. 71, 72 (2010).

60 COOLIDGE, *supra* note 50, at 451.

61 *Id.*

> If all men created equal, that is final. If they are endowed with inalienable rights, that is final. If governments derive their just powers from the consent of the governed, that is final. No advance, no progress can be made beyond these propositions. If anyone wishes to deny their truth or their soundness, the only direction in which he can proceed historically is not forward, but backward toward the time when there was no equality, no rights of the individual, no rule of the people.[62]

Turning now to our character-witness testimony from the twenty-first century, we see the continuing appeal over time of the finality that President Coolidge associated with propositional truth. President Coolidge's outlook informed a 250th anniversary address delivered a century later by Associate Justice Clarence Thomas of the Supreme Court of the United States.[63] In this address, Justice Thomas wielded President Coolidge's 150th anniversary address and President Lincoln's *Gettysburg Address* against President Woodrow Wilson's Progressivism. Justice Thomas quoted President Coolidge's language reproduced in the block quote directly above in contending that "Progressivism . . . is retrogressive."[64] Justice Thomas then turned to the conclusion of President Lincoln's *Gettysburg Address* to conclude his own remarks. In so doing, Justice Thomas exemplified exactly what he urged his audience to do, which was "to memorialize the past," but "to not do so with complacency."[65] Following President Lincoln's lead, Justice Thomas urged his audience to "look to the past as inspiration to take them to greater heights in the future."[66]

In considering addresses such as these, we must take care not to mistake uplift with insight. The rhetorical force of addresses like President Adams's, President Coolidge's, and Justice Thomas's is evident. But the rational attraction of these addresses is ultimately contingent on whether the Declaration's purported truths actually are true. The secessionists opposed by President Adams and the Progressives opposed by President Coolidge and Justice Thomas presented opposing claims about the truth of certain propositions announced in the Declaration. Which of these competing claims is true? Or are these competing claims the sorts of claims about which there is no truth of the matter?

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62 *Id.* at 451–52.

63 *See* Clarence Thomas, *Remarks on the 250th Anniversary of the Declaration of Independence*, CIVITAS INST. (Apr. 15, 2026), https://www.civitasinstitute.org/research/justice-clarence-thomas-remarks-on-the-250th-anniversary-of-the-declaration-of-independence [https://perma.cc/AMQ9-TECL].

64 *Id.*

65 *Id.*

66 *Id.*

II. FICTION OR FACT?

Well-accepted scholarly accounts of popular sovereignty in the United States treat the Constitution's purported author—"We the People of the United States"—as fictional. If these theorists are right, then the fictional nature of "the People of the United States" may help explain the historical reality of the disagreements about the Constitution and constitutional interpretation. Edmund S. Morgan is representative of historians. His Bancroft Award-winning history of Anglo-American popular sovereignty is titled *Inventing the People*.[67] It purports to tell the Humean story of how a few invented a fictional people to govern the many.[68]

Among law professors, a leading skeptical account is supplied by Professor Steven D. Smith in his book *Fictions, Lies, and the Authority of Law*.[69] Smith argues that "the 'We the People' that established the Constitution and conferred authority on the new government, and then persisted to maintain the continuity of that document and that frame of governance, . . . *that* 'We the People' was and remains a majestic fiction."[70] Smith explains further that "[w]e can even say with some precision when the fiction of [this] 'We the People' came into being, and how, and by whom."[71] This attribution of authority happened in the second week of September 1787, through edits on the draft Constitution made by the Committee on Style, most likely by Gouverneur Morris as principal draftsman.[72] "This attribution," Smith writes "was not only rhetorically exhilarating; it was also necessary, in a very practical and also technical sense."[73] Amendment of the Articles of Confederation required approval of the Congress and unanimous consent of the States.[74] It was unlikely these conditions could be met, Smith reasons, "so the delegates circumvented legal requirements by inventing and

67 EDMUND S. MORGAN, INVENTING THE PEOPLE: THE RISE OF POPULAR SOVEREIGNTY IN ENGLAND AND AMERICA (1988).

68 *See id.* at 13 ("Nothing is more surprising . . . than to see the easiness with which the many are governed by the few . . . . When we enquire by what means this wonder is brought about, we shall find, that as Force is always on the side of the governed, the governors have nothing to support them but opinion. 'Tis therefore, on opinion only that government is founded; and this maxim extends to the most despotic and military governments, as well as to the most free and most popular." (quoting DAVID HUME, *Of the First Principles of Government*, *in* ESSAYS AND TREATISES ON SEVERAL SUBJECTS 26 (new ed. 1758))).

69 STEVEN D. SMITH, FICTIONS, LIES AND THE AUTHORITY OF LAW (2021). Smith's book is from the Catholic Ideas for a Secular World series of the University of Notre Dame Press.

70 *Id.* at 43.

71 *Id.* at 39.

72 *Id.*

73 *Id.*

74 ARTICLES OF CONFEDERATION of 1781, art. XIII, para. 1.

then appealing to a more primal authority: 'We the People of the United States.'"[75]

Smith acknowledges that there were real flesh-and-blood human beings who could have been considered as aggregated together to make up the people when mentally classed together.[76] But for such an attribution to hold true, Smith argues, the entity making up this group needed to have three features that no entity possesses. The first of these features is "to be able to represent and reflect the will of *all* of the human beings living in the region."[77] Second is "to be capable of speaking in a unitary voice."[78] Third is "to be capable of persisting over decades and centuries."[79]

With respect to the first feature, Smith writes that "insofar as millions of Americans were not permitted to participate in the creation and approval of the Constitution, the claim that the document and the new government were the creation of 'We the People of the United States' traded on a fiction."[80] Smith points also to people who were capable of participating in governance but did not so participate, and those who participated but were outvoted.[81] Then, of course, all these people eventually died: "[M]any generations separate them from us. None of those 'people' were around when the Fourteenth Amendment—or the Twenty-Seventh—was ratified."[82]

Smith supplies two analogies to bolster his argument. One analogy is to a ventriloquist, Lester, and his dummy, Frank the Magnificent. Audience members watching Lester and Frank perform might think Frank listens to and answers their questions, they might find Frank is funny, and they might even be "not merely entertained but . . . inspired to follow Frank's advice."[83] Even though there is a wooden dummy, and even though "nothing prevents us from calling that something by whatever name we choose," Smith writes,

> the fact is that this something cannot actually hear and understand questions, cannot actually give intelligent responses, cannot actually deliver messages from heaven or hell. *The dummy* is real, we might say, but "Frank the Magnificent" *as he is presented* is a fiction in the important sense that he is presented as possessing qualities

75 SMITH, *supra* note 69, at 40.
76 *Id.*
77 *Id.* at 42.
78 *Id.*
79 *Id.*
80 *Id.* at 43.
81 *See id.*
82 *Id.*
83 *Id.* at 41.

> and powers that the real entity—the dummy—does not actually possess.[84]

Smith's second analogy is to a self-appointed group of "the residents of Capitoline Subdivision."[85] This subset of this subdivision's residents hold a meeting, and the attendees who stick around to the end "draft and sign a document in the name of 'We the Residents of Capitoline Subdivision,' covenanting that everyone in the neighborhood will mow every other day and that any violators of this covenant will be subject to a five-hundred-dollar fine."[86] Some of the covenant's drafters and signers see a stray dandelion in the yard of one Julia—a resident who did not attend the fateful meeting and has not "followed the plan."[87] They confront her as a resident of Capitoline Subdivision who has failed to follow the rules adopted by "We the Residents of Capitoline Subdivision."[88] Smith argues that Julia may rightfully respond that the "We the Residents of Capitoline Subdivision" in the document that is being presented as an authority "is nothing more than a fiction."[89] Julia is indeed a resident of Capitoline Subdivision, she may explain, but the document's "ostensibly authoritative 'We the Residents of Capitoline Subdivision' is plainly not the same thing as the empirical class of residents of Capitoline Subdivision, of which Julia *is* a member."[90]

Smith develops the argument of his book by attributing deep and pervasive disagreements in American constitutional law to the fictional nature of this "We the People."[91] Smith's lead example is the debate over the nature of the Union: "Is it a unitary political community, with ultimate sovereign authority lodged in the *nation*? Or is it something closer to a confederation of *states* which retain their separate sovereignties?"[92] Smith identifies several ways in which the nature of the Union figured into debates over several more specific issues, such as the power of Congress to punish seditious speech, the authority of the Supreme Court of the United States to review decisions of state high courts, the power of a state to "nullify" legislation deemed to exceed Congress's power, and the ability of a state to secede.[93] Smith accurately observes that all of these questions turned in some way on the nature of the Union, and "[b]oth interpretations mustered the

84 *Id.*
85 *Id.* at 44.
86 *Id.*
87 *Id.*
88 *Id.*
89 *Id.*
90 *Id.*
91 *Id.* at 44–45.
92 *Id.* at 45.
93 *Id.* at 46.

support of a distinguished group of advocates: John Marshall and Joseph Story (among others) for the nationalist position; Thomas Jefferson, James Madison, and later John C. Calhoun (among others) for the federation or state sovereignty side."[94] The advocates of these competing positions "presented their positions as interpretations of the Constitution, and these interpretations forced the advocates to make claims about the nature and the doings of 'We the People.'"[95]

This is where the purportedly fictional nature of that entity comes into play. After we are done collecting, arranging, analyzing, and expounding the competing arguments on the nature of the Union, can we move on to evaluating them for truth or correspondence to reality? In Smith's words, "was there—or *is* there—any way in which an impartial observer might examine this debate and determine which side was right and which was wrong? What kind of fact or facts might settle this dispute?"[96]

Smith contends that "[t]he question, at bottom, was not one about truth, or fact."[97] There is no fact of the matter to resolve debates over the nature of the Union, Smith contends, because arguments about the fundamental authority that established the Constitution are arguments about a fictional entity.[98] "There were to be sure people living in the United States, and in each of the states; but the authoritative 'We the People'—whether of the nation or of the separate states—transcended those mere mortals. It was a fictional construction."[99] Smith explains that "[a]dvocates on both sides naturally constructed that fictional entity so as to generate the conclusions they favored."[100] And he concludes that "there was no actual fact that could determine which of these fictional constructions was the true or correct one."[101]

Whether fundamentally fictional or factual, the account of American nationhood that many Americans now have internalized is the one offered by President Abraham Lincoln in his 1863 *Gettysburg Address*.[102]

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94 *Id.*
95 *Id.*
96 *Id.* at 49.
97 *Id.* at 51.
98 *Id.*
99 *Id.*
100 *Id.*
101 *Id.*
102 The interpretive bona fides of President Lincoln's interpretation of the Declaration of Independence have been the subject of much dispute and are likely to remain so. *See, e.g.*, WILLMOORE KENDALL & GEORGE W. CAREY, THE BASIC SYMBOLS OF THE AMERICAN POLITICAL TRADITION xv–xxi, 84–85, 88–95 (2d ed. 1995) (discussing what the book's index describes as "heresies" and Lincoln's "misuses of [the] Declaration of Independence," *id.* at 167); LITKE, *supra* note 37 at 140 (stating that "a recasting of the role of America in the

Delivered at the dedication of a cemetery for soldiers killed in a fight over the future life of the Union, Lincoln then and there resolved "that these dead shall not have died in vain—that this nation, under God, shall have a new birth of freedom, and that government of the people, by the people, for the people, shall not perish from the earth."[103] President Lincoln opened this address by looking back to the Declaration of Independence as a decisive event in the nation's history.[104] "Fourscore and seven years ago our fathers brought forth, on this continent, a new nation, conceived in liberty, and dedicated to the proposition that all men are created equal."[105] With these words, President Lincoln asserted as true—looking backward eighty-seven years from when he was speaking in 1863—that it was in 1776 that "our fathers brought forth on this continent, a new nation." Does this contention state a fact or a fiction? When Lincoln resolved "that government of the people, by the people, for the people, shall not perish from the earth," was he resolving to continue a government of, by, and for a people who existed in fact or only in fiction? If government "of the people, by the people, for the people" is as fictional as the people this formulation supposes, then perhaps we should ask what it might even mean to worry whether that kind of government might "perish from the earth."

In his 1865 book, *The American Republic*, Orestes Augustus Brownson expounded on the significance of the Declaration of Independence in a way that coheres with President Lincoln's dating of the nation's birth while also providing a broader account of the origin, tendencies, and destiny of the United States of America.[106] Let us now consider Brownson's account of American popular sovereignty as a fact by way of contrast with Smith's account of "the People of the United States" as a fiction.

Brownson discusses the Declaration of Independence in Chapter IX, "The United States."[107] This chapter is preceded by an Introduction (Chapter I), a chapter on Government generally (Chapter II), four chapters on the Origin of Government (Chapters III–VI), and two chapters on the Constitution of Government (Chapters VII–VIII).[108] It is followed by two chapters on the Constitution of the United States

world required first a recasting of the nature of America in general," and that "[s]uch was Lincoln's accomplishment").

103 President Abraham Lincoln, Gettysburg Address (Nov. 19, 1863) (transcript available at https://exhibits.library.cornell.edu/gettysburg/feature/cornell-university-s-copy [https://perma.cc/LLN6-5V73]).

104 *See id.*

105 *Id.*

106 ORESTES A. BROWNSON, THE AMERICAN REPUBLIC: ITS CONSTITUTION, TENDENCIES AND DESTINY (ISI Books 2003) (1865).

107 *Id.* at 125–40.

108 *Id.* at VII.

(Chapter X–XI), a chapter each on Secession and Reconstruction (Chapters XII–XIII), then Political Tendencies (Chapter XIV), and finally Destiny—Political & Religious (Chapter XV).[109]

Brownson's analysis of the Declaration of Independence begins with the preexisting unity of the people as British subjects.[110] He continues by drawing on familial imagery and the need to throw off allegiance to the King on the ground of tyranny, as found in the Declaration of Independence.[111] Brownson next addresses the significance of the wording that declares the states to be independent states. The key distinction he identifies here is between declaring independence jointly or severally. Brownson asserts that "[i]n the Declaration of Independence they declared themselves independent states indeed, but not severally independent. The declaration was not made by the states severally, but by the states jointly, as the United States."[112] The united action of the states that followed in their pursuit of joint independence was consistent with this original joint act of declaration.[113] The acts and facts could have been otherwise, and if they were, sovereignty would have been otherwise.[114] But the decisive acts and facts all reveal united action in pursuit of political common goods.[115]

Brownson singles out John Quincy Adams as "almost alone among our prominent statesmen [who] maintains the unity of the colonial people."[116] As evidence of the correctness of Adams's understanding on this point, Brownson points to "community of origin, of language, manners, customs, and law."[117] Brownson emphasizes the colonists'

109 *Id.*

110 *See id.* at 135 ("The colonists, before separation and independence, were British subjects, and whatever rights the colonies had they held by charter or concession from the British crown.").

111 *See id.* ("The colonists never pretended to be other than British subjects, and the alleged ground of their complaint against the mother country was not that she had violated their natural rights as men, but their rights as British subjects—rights, as contended by the colonists, secured by the English constitution to all Englishmen or British subjects.").

112 *Id.*

113 *See id.* at 135–36 ("They unitedly declared their independence; they carried on the war for independence, won it, and were acknowledged by foreign powers and by the mother country as the *United* States, not as severally independent sovereign states.").

114 *See id.* at 136 ("Colonies are initial or inchoate states, and become complete states by declaring and winning their independence; and if the English colonies, now the United States, had separately declared and won their independence, they would unquestionably have become separately independent states, each invested by the law of nature with all the rights and powers of a sovereign nation.").

115 *See id.* ("They declared and won their independence jointly, and have since existed and exercised sovereignty only as states united, or the United States, that is, states sovereign in their union, but not in their separation. This is of itself decisive of the whole question.").

116 *Id.*

117 *Id.*

being "under the Common Law, because they were Englishmen, and subjects of the English sovereign" as proving that the colonial people "were really one people with the English people, though existing in a state of colonial dependence, and not a separate people having nothing politically in common with them but in the accident of having the same royal person for their king."[118] From this Brownson goes on to argue that "[t]he people of the several colonies being really one people before independence, in the sovereignty of the mother country, must be so still, unless they have since, by some valid act, divided themselves or been divided into separate and independent states."[119]

Here Brownson points to another question of fact, this one regarding the transfer of sovereignty: "Did the sovereignty, which before independence was in Great Britain, pass from Great Britain to the States severally, or to the States united? It might have passed to them severally, but did it?"[120] Brownson answers that "[t]he sovereignty as a fact has been assumed and exercised by the United States, the States united, and never by the States separately, or severally."[121] It is because, "as a fact the sovereignty that before independence was in Great Britain, passed on independence to the States united," that the United States—as of Brownson's writing in 1865—was "the only successor to Great Britain known to or recognized by the civilized world."[122] This language of succession can be understood by analogy to a family relationship in which the United States of America is one nation born of one mother country, while the People of the United States is one people of the two that resulted from dividing the People of the United States (a.k.a. "the American People") from the People of the British Empire.

The accuracy of these analogies at the level of social realities depends on, and cannot be assessed separately from, historical acts and facts. Understanding the social reality of the one People of the United States is particularly important for understanding the operation of popular sovereignty in American law and history. Writing in 1865, Brownson acknowledged that it may be very inconvenient if the United States were only a confederation of states, for then "the government has had no right to make war on the secessionists as rebels, or to treat them, when their military power is broken, as traitors, or disloyal persons."[123] To be clear, though, Brownson's account of American

118 *Id.* at 137.

119 *Id.*

120 *Id.*

121 *Id.* at 137–38.

122 *Id.* at 138.

123 *Id.* at 130; *see also id.* (acknowledging that "[t]he honor of the government, and of the people who have sustained it [would be] deeply compromised," but asserting that

popular sovereignty as lodged in one People of the United States is not a matter of reasoning backward from the consequences of the competing positions of popular sovereignty and state sovereignty for the right to secession. Brownson's understanding of American popular sovereignty instead rests on what he understands to be a question of fact.

Brownson's position here is so at odds with what we may think a fact is, but is also so central to his argument, that it is worth quoting his position at length:

> What then is the fact? Are the United States politically one people, nation, state, or republic, or are they simply independent sovereign states united in close and intimate alliance, league, or federation, by a mutual pact or agreement? Were the people of the United States who ordained and established the written constitution one people, or were they not? If they were not before ordaining and establishing the government, they are not now; for the adoption of the constitution did not and could not make them one. Whether they are one or many is then simply a question of fact, to be decided by the facts in the case, not by the theories of American statesmen, the opinion of jurists, or even by constitutional law itself. The old Articles of Confederation and the later Constitution can serve here only as historical documents. Constitutions and laws presuppose the existence of a national sovereign from which they emanate, and that ordains them, for they are the formal expression of a sovereign will. The nation must exist as an historical fact, prior to the possession or exercise of a sovereign power, prior to the existence of written constitutions and laws of any kind, and its existence must be established before they can be recognized as having any legal force or vitality.[124]

Brownson's perspective on the existence of the nation "as an historical fact, prior to the possession or exercise of a sovereign power" contextualizes the Declaration of Independence as one act in the broader drama that included as a later act the formation of the government of the United States of America under the written Constitution.

The act in this drama that came between the act containing the Declaration and the act containing the Constitution is largely composed of scenes from the War for Independence. Understanding the existence of any nation as "a purely historical fact" means that the Declaration of Independence could not have brought a *sovereign* nation into existence unless the *Declaration* of Independence was actually

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"[e]ither the states are one sovereign people or they are not" and that "[i]f they are not, it is undoubtedly a great disadvantage; but a disadvantage that must be accepted, and submitted to without a murmur").

124 *Id.* at 130–31.

followed by success in the *War* for Independence.[125] On the side of the former sovereign, the fact of independent nationhood in such a circumstance must be recognized from the fact that the former sovereign has "practically abandoned the effort to reduce them to submission, or to bring them back under his authority."[126] Additionally, on the side of the new would-be sovereign vying for recognition, "the postulant must have proved his ability to maintain civil government, and to fulfil within and without the obligations which attach to every civilized nation, before it can be recognized as an independent sovereign nation; because before it is not a fact that it is a sovereign nation."[127]

Before one projects onto this analysis the impression that Brownson is some sort of proto-Holmesian positivist, it is essential to bear in mind that Brownson understands the existence, absorption, and extinction of peoples in nations and empires as unfolding within Providence and an ordered, created universe.[128] The extinction or continued existence of nationalities and empires that once had a right to exist is not a matter of human justice or injustice; "it is the secret of Providence."[129] Within this created order, the very possibility of national law depends on the fact of there being a nation.[130] This ordering is essential for understanding the relationships among national law, natural law, and the law of nations.[131] Brownson writes that "[d]oubtless the courts of every civilized nation recognize and apply both the law of nature and the law of nations, but only on the ground that they are included, or are presumed to be included, in the national law, or jurisprudence."[132] The law of nature prescribes that "the nation holds from God," but this is "only by virtue of the fact that it is a nation; and when it is a nation dependent on no other, it holds from God all the rights and powers of any independent sovereign nation."[133] Within the law of nature in God's providential ordering, "[t]here is no right behind the

125 *See id.* at 131 ("A people hitherto a part of another people, or subject to another sovereign, is not in fact a nation, because they have declared themselves independent, and have organized a government, and are engaged in what promises to be a successful struggle for independence.").

126 *Id.*

127 *Id.*

128 *See id.* at 132 ("A hundred or more lost nationalities went to form the Roman empire, and who can tell us how many layers of crushed nationalities, superposed one upon another, serve for the foundation of the present French, English, Russian, Austrian, or Spanish nationalities?").

129 *Id.* at 133.

130 *See id.* ("In the political order, the fact, under God, precedes the law. The nation holds not from the law, but the law holds from the nation.").

131 *See id.*

132 *Id.*

133 *Id.*

fact needed to legalize the fact, or to put the nation that is in fact a nation in possession of full national rights."[134] Again, to be clear, the fact of "sovereignty is, under God, in the nation, and the title and the possession are inseparable."[135]

Brownson's arguments for the actual existence of one, collective, continuous-in-being People of the United States since 1776 do not turn on the language of the Constitution describing its author as "We the People of the United States." Brownson rejects the idea that independent sovereign states could have formed themselves by convention or mutual into a single sovereign state or nation.[136] Drawing on his philosophical arguments made in "refutation of the theory of the origin of government in convention, or the so-called social compact," Brownson contends that "[s]overeign states are as unable to form themselves into a single sovereign state by mutual compact as are the sovereign individuals imagined by Rousseau."[137] The conclusion of this section of the argument is that

> [t]he convention, either of sovereign states or of sovereign individuals, with the best will in the world, can only form a compact or agreement between sovereigns, and an agreement or compact, whatever its terms or conditions, is only an alliance, a league, or a confederation, which no one can pretend is a sovereign state, nation, or republic.[138]

The logical implication of this line of thinking for analyzing the United States of America as a historical fact in relation to the Declaration of Independence, the War for Independence, the Constitution of the United States, and the Civil War or War Between the States is to focus on the nature of the Union at its origin. This is exactly where Brownson trains his focus, writing: "The question, then, whether the United States are a single sovereign state or nation, or a confederacy of independent sovereign states, depends on the question *whether the American people originally existed as one people or several independent states.*"[139]

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134 *Id.*

135 *Id.* The overlap of fact and right in the political order, for Brownson, does not carry over to what he calls "the economical order." *Id.* at 134. In the economical order, "the fact and the right are distinguishable, and the actual occupant may be required to show his title-deeds." *Id.* The distinction between fact and right in private ordering is what explains that a "proprietor may be dispossessed in fact of his estate by violence, by illegal or unjust means, without losing his right, and another may usurp it, occupy it, and possess it in fact without acquiring any right or legal title to it." *Id.* If sovereignty were a private estate, then it would make sense to distinguish between governments de facto and de jure, and to argue "that violent dispossession of a prince does not invalidate his title." *Id.*

136 *Id.* at 126.

137 *Id.* at 126–27.

138 *Id.* at 127.

139 *Id.* (emphasis added).

According to Brownson, then, "[t]he sovereignty of the United States as a single or political people must be established before any thing in the constitution can be adduced as denying the right of secession."[140]

Relying on his arguments about the origin of government supplied earlier in *The American Republic*, Brownson writes that "sovereignty, it has been shown, is not in the government, but in the state, and the state is inseparable from the *public* domain."[141] By "the state," Brownson means "[t]he people organized and held by the domain or national territory," as distinct from "[t]he government."[142] He writes that "[t]he people organized and held by the domain or national territory, are, under God, the sovereign nation, and remain so as long as the nation subsists without subjection to another."[143] This distinction between the state or nation, on the one hand, and the government, on the other hand, supports Brownson's claim that the government possesses only delegated authority.[144]

Applying this set of understandings to the United States, Brownson writes that

> [i]n the case of the United States there is only the question of fact. If they are in fact one people they are so in right, whatever the opinions and theories of statesmen, or even the decisions of courts; for the courts hold from the national authority, and the theories and opinions of statesmen may be erroneous.[145]

The question whether the war that took place in the United States from 1861 to 1865 is best understood as the "Civil War" or the "War Between the States" thus comes down—for Brownson—to a question of fact. And he believes that the facts leave no room for doubt, with united existence and action supplying the decisive criteria: "Certain it is that the States in the American Union have never existed and acted as severally sovereign states. Prior to independence, they were colonies under the sovereignty of Great Britain, and since independence they have existed and acted only as states united."[146]

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140 *Id.*

141 *Id.* at 134 (emphasis added).

142 *Id.*

143 *Id.*

144 *See id.* ("The government, as distinguished from the state or nation, has only a delegated authority, governs only by a commission from the nation."). Brownson's use of "state" as equivalent to "nation" or "[t]he people organized and held by the domain or national territory" can be confusing because of the way that "state" has later come to be understood as more equivalent to "government." This is not a criticism of Brownson or of later usage, but a reminder to those shaped by this later understanding not to misunderstand Brownson on this point.

145 *Id.* at 135.

146 *Id.*

With Brownson's account of the unity of one People of the United States since 1776 in place as a claimed historical fact, let us return to Smith's contention that the "We the People" that serves as the authority for the Constitution is fictional. Brownson presents his account of the nature of the Union as "simple historical fact that precedes the law and constitutes the law-making power."[147] Smith asserts, seemingly in clear contradiction of Brownson, that "[t]he question, at bottom, was not one about truth, or fact."[148] For Smith, the question is "about what sort of nation (or 'imagined community') Americans would imagine for themselves, . . . and would therefore ascribe to the Constitution, . . . and would therefore project back onto an authoritative, imagined 'We the People' constructed so as to have chosen in favor of such a nation."[149] To get a handle on whether Brownson is engaged in the kind of projection backward described by Smith, or is instead describing something factual about "the People of the United States" that is missing from Smith's account of the Constitution's purported author as a confected fiction, it is helpful to step back from the particulars of American history and consider as a matter of social ontology just what it is that Brownson and Smith seem to be talking past each other about.

III. GETTING REAL ABOUT SOCIAL WHOLES

A beginning observation about Smith's skeptical arguments is that the only ontological categories he makes use of in classifying "We the People" as fictional are substances and aggregates of substances. The reality that is "the Union" has unity of a sort, I contend, but it is neither the unity of a substance nor is it only an aggregate. It is the unity of order of a group person. To fill in the ontology of social wholes, it is helpful to have recourse to the scholarship of Russell Hittinger. In his recent book, *On the Dignity of Society: Catholic Social Teaching and Natural Law*, Hittinger brings together a series of essays that enable us to better understand what kind of social whole "We the People of the United States" really is.[150] In an exploration of "how we can speak of social entities imaging God," Hittinger finds "a toehold into a solution" by offering an affirmative answer to the question: "Are social unions real without being substantial?"[151]

147 *Id.* at 143.

148 SMITH, *supra* note 69, at 51.

149 *Id.* at 51–52 (footnote omitted).

150 F. RUSSELL HITTINGER, ON THE DIGNITY OF SOCIETY: CATHOLIC SOCIAL TEACHING AND NATURAL LAW (Scott J. Roniger ed., 2024).

151 *Id.* at 56.

Hittinger begins with philosophical anthropology. "A unity of order," he explains, "stands between unity of substance (a man, bird, or plant) and a unity of mere aggregation (a heap of sand, or a queue waiting for the tram)."[152] A key distinction among these categories is that "[i]n a social unity of order (a marriage, family, college, or church) each individual retains his own identity and operations; yet the social whole is more than the sum of its parts."[153] One way in which a social whole is more than the sum of its parts is that the social whole "counts as a subject, person, and agent in its own right."[154] Hittinger adds that "[l]awyers and philosophers call this kind of entity a 'moral person' or a 'legal person,' or even a 'mystical body.'"[155]

"So far, so good," Smith might respond, "but are these things really *real*? Aren't 'legal persons' a textbook example of 'legal fictions'?" The "reality" of a unity of order is formal rather than material, according to Hittinger.[156] The terms "legal person" or "interpersonal subjectivities . . . designate the unity of members in a nonsubstantial 'body.'"[157] This unity has a formal cause and a final cause, both of which are common goods: "A social entity has not only a common end, but also an intrinsic common good. Thomas calls it *communicatio in forma*—a shared form that marks its distinctive kind of union. In this case, the 'form' is nothing other than an 'order' of common action."[158]

For evaluating the competing merits of Brownson's and Smith's accounts of the nature of the Union, it is particularly helpful to focus on the way in which "[*f*] *orm* of order distinguishes a [true] society from other kinds of human intersubjectivity."[159] "A crowd at the shopping mall, or an audience at the opera," Hittinger explains, "exhibits intersubjectivity without pursuing a common end through united action."[160] This pursuit of a common end through united action is precisely the kind of fact that Brownson relies upon as establishing the reality of "We the People of the United States" as a unitary, collective entity.

To delve further into the reality (or not) of a social whole, it is helpful to distinguish between "fictional persons" and "group persons." The nub of the disagreement between Brownson and Smith may come down to whether this distinction maps onto something that exists

152 *Id.* at 57.
153 *Id.*
154 *Id.*
155 *Id.*
156 *See id.*
157 *Id.*
158 *Id.* (footnote omitted).
159 *Id.*
160 *Id.*

in intersubjective reality. I rely again on Hittinger for this distinction. His exposition begins with the use of "person" to denote "whoever and whatever is a locus of rights and responsibilities."[161] Within this category, Hittinger distinguishes among natural persons, fictional persons, and group persons. A natural person "possesses a unity of a rational substance: human persons, angelic persons, or divine persons sharing the unity of a single substance."[162] We can put this category to the side for now. A fictional person is a person only by "a *fictio legis*, the construction of law."[163] Hittinger quotes Hobbes for the claim that "[t]here are few things that are incapable of being represented by fiction."[164] This fiction explains how "[i]nanimate things like bridges, hospitals, and houses can receive endowments, and thus bear interests and rights at law" (this is also, Hittinger notes in passing, how Caligula's horse could be a Roman senator).[165] Fictional persons are distinct in dignity only by "construction of law," and "not on account of their own nature, virtue, or power."[166] A group person, by contrast with a natural person and a fictional person, possesses a unity that is "neither the unity of a substance, nor a unity merely imposed upon things in the fashion of a legal or mental fiction."[167] This is the kind of unity that we need to understand in order to differentiate Brownson's position from Smith's.

Are there *really* group persons as distinct from natural persons and fictional persons? Hittinger turns to Aquinas's example of an army to illustrate the unity of order in action characteristic of a group person:

> It must be known that the whole which the political group or the family constitutes has only a unity of order . . ., for it is not something absolutely one. A part of this whole, therefore, can have an operation that is not the operation of the whole, as a soldier in an army has activity that does not belong to the whole army. However, this whole does have an operation that is not proper to its parts but to the whole.[168]

On this understanding that Aquinas adopts from Aristotle, the operation of the whole as proper to the whole characterizes a unity of order. Aquinas's examples of an operation of the whole are "an assault of the

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161 *Id.* at 8.

162 *Id.*

163 *Id.*

164 *Id.* (quoting THOMAS HOBBES, LEVIATHAN pt. I, ch. 16 (Richard Tuck ed., Cambridge Univ. Press rev. student ed. 1996) (1651)).

165 *Id.*

166 *Id.*

167 *Id.*

168 *Id.* (quoting THOMAS AQUINAS, COMMENTARY ON ARISTOTLE'S NICHOMACHEAN ETHICS 2–3 (C.I. Litzinger trans., Dumb Ox Books 1993) (c. 1271)).

entire army," and "the movement of a boat" as "a combined operation of the crew rowing the boat."[169] Aquinas did not prophesy the Continental Army's escape from New York City, its later crossing of the Delaware, or its victory in the Battle of Trenton. But each of these historical "facts" is an example of the action proper to a "group person."

An additional way that Hittinger supplies to distinguish a unity of order from an aggregation comes from recognizing a unity of order as a "non-extensional set."[170] This is a set that "does not necessarily change its identity whenever the constituent bits or pieces change."[171] An "extensional set," by contrast, is one in which "the addition or subtraction of one constituent changes the identity of the set."[172] Hittinger explains that "[f]or France, or the Catholic Church, or the local labor union, change of constituents can *sustain* rather than *destroy* the identity of the group."[173] The fact that a true society or true unity of order is a non-extensional set is why, "[o]rdinarily, the law will assume the perpetuity of a society for the good reason that it does not have the mortality of a natural substance."[174]

Summarizing the distinction of a society or group person from a natural person and from a fictional person, Hittinger writes, "Wherever there are plural rational agents, aiming at common ends, through united action, *and where the unity is one of the intrinsic goods aimed at*, we have a society—something distinct in dignity."[175] Hittinger further explains that "[a] group will hold itself out to the rest of the world as something distinct in dignity, possessing rights and responsibilities."[176] The example of this kind of group person holding itself out "as something distinct in dignity" that he points to here is found in the concluding paragraph of the Declaration of Independence.[177] The words from this paragraph that Hittinger highlights are "free and independent states," but an even better illustration of a group person in this

169 AQUINAS, *supra* note 168, at 3.

170 HITTINGER, *supra* note 150, at 10.

171 *Id.*

172 *Id.*

173 *Id.*

174 *Id.* at 11.

175 *Id.*

176 *Id.* (footnote omitted).

177 *Id.* at 11 n.16 ("We, therefore, the representatives of the United States of America, in General Congress assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the name and by the authority of the good people of these colonies solemnly publish and declare, that these United Colonies are, and of right ought to be, *free and independent states*." (quoting THE DECLARATION OF INDEPENDENCE para. 32 (U.S. 1776))).

paragraph is "the good people of these colonies" by whose authority the signers of the Declaration of Independence purported to act.[178]

With Thomistic social ontology as expounded by Hittinger supplying an account of the group person that declared independence, let us now return to Smith's contention that the Constitution's purported author—"We the People of the United States"—is a fiction. This group person possesses two of the three features that Smith identified as necessary for this entity to possess "in order to perform its political and legitimating functions."[179] This one People of the United States was not only "capable of speaking in a unitary voice,"[180] but did so in the Declaration. And this same People has shown itself "to be capable of persisting over decades and centuries,"[181] with Justice Thomas's 250th-anniversary address providing recent evidence.

This group person may not, however, satisfy a third feature Smith identified. "[T]o satisfy the 'consent of the governed' condition for authority," Smith argued, "the Constitution's 'We the People' needs to be able to represent and reflect the will of *all* the human beings living in the region."[182] This feature is not satisfied if all the human beings are understood as an aggregate who are understood to have each consented individually.[183] This is the kind of consent that Smith shows to be missing with his "We the Residents of Capitoline Subdivision" example.[184] This is not, however, the understanding of the "consent of the governed" in play when the People of the United States collectively withdrew their consent via the Declaration of Independence. The "Right of the People" being exercised there to abolish their form of government under the King was a collective right, I have argued. And so too, I contend, is that same People's later exercise of their collective right through the Constitution "to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them [seemed] most likely to effect their

178 *Id.* (quoting THE DECLARATION OF INDEPENDENCE para. 32 (U.S. 1776)).

179 SMITH, *supra* note 69, at 42.

180 *Id.*

181 *Id.*

182 *Id.*

183 *See id.* ("All of those human beings, after all, will be treated as subject to—and thus, inferentially, as having consented to—the Constitution.").

184 *See id.* at 44 ("The ostensibly authoritative 'We the Residents of Capitoline Subdivision' is plainly not the same thing as the empirical class of residents of Capitoline Subdivision, of which Julia *is* a member. Thus, Julia can rightly respond to their claims by explaining that while there are indeed residents of Capitoline, and while *some* actual residents of Capitoline may have agreed on the mowing requirement, the 'We the Residents of Capitoline Subdivision' that is being presented as an authority for the mowing requirement is nothing more than a fiction.").

Safety and Happiness."[185] Reversing the significance of Smith's "Frank the Magnificent" example, we might treat each of the ratification conventions as a "dummy" of sorts representing the "ventriloquist" People of the United States on behalf of whom these conventions are to be understood as having acted. This kind of claim is not any more farfetched, after all, than President Jefferson's claim that his draft of the Declaration "was intended to be an expression of the american mind, and to give to that expression the proper tone and spirit called for by the occasion."[186]

As it turns out, the "consent proposition" that Smith targets through *Fictions, Lies, and the Authority of Law* is modern social-contract theory of the sort exemplified by "Locke, Hobbes, Rousseau, and (more recently) Rawls."[187] Later in this book, Smith expresses openness to St. Augustine's acceptance of the more modest Ciceronian understanding of a republic as "an assembly of people bound together by common agreement on their shared interests."[188] This understanding bears a close resemblance to Hittinger's Thomistic account, according to which "[w]herever there are plural rational agents, aiming at

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185 THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

186 Letter from Thomas Jefferson to Henry Lee (May 8, 1825), *reprinted by* NAT'L ARCHIVES: FOUNDERS ONLINE, https://founders.archives.gov/documents/Jefferson/98-01-02-5212 [https://perma.cc/GP77-QD54]. It seems unnecessarily deflationary, and potentially obtuse, to object to President Jefferson's assertion that there is no "american mind." As President Jefferson explained to Lee, the Declaration's authority

> rests . . . on the harmonising sentiments of the day, whether expressed, in conversns [sic] in letters, printed essays or in the elementary books of public right, as Aristotle, Cicero, Locke, Sidney Etc. the historical documents which you mention as in your possession, ought all to be found, and I am persuaded you will find, to be corroborative of the facts and principles advanced in that Declaration. *Id.*

This corroborating evidence is of the sort that needs to be intellectually assimilated in order to give rise to "harmonising sentiments," which sentiments might then be thought to exist as harmoniously present in individual minds that can be united in their intentions in what might be described as an American mind. *Id.* For a cautionary note against treating President Jefferson rather than the Continental Congress as the author (rather than initial drafter) of the Declaration of Independence, see the discussion of the Continental Congress's improvements to President Jefferson's draft in R.L. BRUCKBERGER, IMAGE OF AMERICA 89–93 (C.G. Paulding & Virgilia Petersen trans., 1959).

187 SMITH, *supra* note 69, at 6–7. There are differences among these four theorists, to be sure, but it is also accurate to classify them together as "modern" in the way that Smith does. For a social-contract theory compatible with moral realism and Thomistic social ontology, and for those reasons not vulnerable to the same critiques Smith levels against modern social-contract theory, see PAUL R. DEHART, THE SOCIAL CONTRACT IN THE RUINS: NATURAL LAW AND GOVERNMENT BY CONSENT (2024). Another account in which Brownson figures prominently, and from which one can learn a great deal about the overlap between political theology and social-contract theory, is KODY W. COOPER & JUSTIN BUCKLEY DYER, THE CLASSICAL AND CHRISTIAN ORIGINS OF AMERICAN POLITICS: POLITICAL THEOLOGY, NATURAL LAW, AND THE AMERICAN FOUNDING (2022).

188 SMITH, *supra* note 69, at 223.

common ends, through united action, and where the unity is one of the intrinsic goods aimed at, we have a society—something distinct in dignity."[189] And if my Thomistic analogy of the birth of the United States as a nation to the birth of a human person carries through, then the separation of the American people into one group person in their own right via the Declaration was coupled with the assignment of an angelic person as guardian. As Smith notes, albeit for a different reason, "it is perhaps still open to us to hope that the shadows of authority that flicker about us are cast by something, or by Someone, that for the most part we can only intuit or infer or learn of through rumor, but that is somehow real and substantial."[190]

Having by a kind of spiral movement returned near the end here to the opening framing device of angels, one might reasonably step back and ask whether it is necessary to "believe" in angels in order to accept the account I am offering about the existence of one People of the United States under law since 1776. The short answer is "no," but the longer answer is "it's complicated." In keeping with the inquiry framed by Aquinas's understanding of the assignment of guardian angels, I have also used the analogies of the birth of a child from a mother, and the separation of a fruit from a tree. It is not necessary to "believe" in immaterial angels to appreciate the force of these analogies from the physical world of space and time. Indeed, one would miss the force of the mother/child and tree/fruit analogies if one assimilated the reality of the separation of the American people from the British people too closely to these comparisons. To experience the force of the argument from angelic assignment, however, it *is* necessary, to think in terms that allow one to understand that a new political entity of sorts came into existence through the Declaration of Independence. This political entity is of a spiritual sort; it has no weight, shape, or color, even while it is tied to individual human persons and specific territory.

We have difficulty understanding spiritual realities in the dominant "social imaginary" most us inhabit.[191] It is therefore worth coming at the spiritual reality of the unity of order known as the People of the United States by means of a more down-to-earth comparison than the assignment of a national guardian angel. Let us, consider, then, the birth and survival of this People in comparison with the life and death of Orestes Brownson. Brownson's mortal remains are interred in the Crypt Church beneath the Sacred Heart Basilica at the University of

189 HITTINGER, *supra* note 150, at 11 (emphasis omitted).

190 SMITH, supra note 69, at 224.

191 On the idea of a "social imaginary," see CHARLES TAYLOR, A SECULAR AGE (2007).

Notre Dame.[192] Inscribed in Latin on the stone marker are words that may be translated as follows:

> Here lies Orestes A. Brownson,
>
> Who humbly acknowledged the true faith.
>
> He lived a life of integrity.
>
> With tongue and pen he strongly defended both church and country,
>
> And although his body has passed over into death,
>
> The works of his mind survive.
>
> Immortal monuments to his genius.[193]

Are all of these statements true? It is the case that "his body has passed over into death," but is it true that "[t]he works of his mind survive"?[194] The centrality of Brownson's thought to the interpretation offered in this essay supports a "yes" answer of a certain sort.[195] But this just raises the question of what it means for the works of a human mind to "survive."

To address this question, let us consider another stone engraving on the campus that is home to the *Notre Dame Law Review*: "God, Country, Notre Dame." These words are chiseled into the east doors of the Sacred Heart Basilica as part of a war memorial for Notre Dame alumni who died fighting in World War I.[196] The words purport to designate realities that identify for historical memory what those former Notre Dame students were fighting for. But do "God," "Country," and "Notre Dame" designate actual realities, or do they point only to fictions? Taken as signs, do these words signify anything that actually exists?

In this essay I have offered an account of the reality of the "Country" in these words. That account began, though, and has now begun

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192 I visited these remains and took pictures the morning of the Symposium at which I presented some of the ideas in this Essay. But for a more "citeable" authority, see Staci Stickovich, *Here Lies Orestes A. Brownson: But Why Here?*, UNIV. OF NOTRE DAME: STORIES (Jan. 29, 2024), https://stories.nd.edu/stories/here-lies-orestes-a-brownson/ [https://perma.cc/LH4J-MF8P].

193 *Orestes Brownson*, FIND A GRAVE (June 28, 2008), https://www.findagrave.com/memorial/27725958/orestes-brownson [https://perma.cc/HN49-ULEJ].

194 *Id.*

195 Note, however, that a Westlaw search of this journal's archives for previous citations to Orestes Brownson returned only one result, which was a speech by Russell Kirk. *See* WESTLAW, adv: Orestes /3 Brownson, 1 result (July 19, 2026) (on file with the Notre Dame Law Review) (filtered by "Secondary Sources", "Law Reviews & Journals", "Notre Dame Law Review").

196 *See World War I Memorial Door*, UNIV. OF NOTRE DAME ARCHIVES (May 30, 2016), https://sites.nd.edu/ndarchives/world-war-i-memorial-door/ [https://perma.cc/8LFA-E2UH].

to end, by reference to a national guardian angel, which in turn has led to consideration of how an immaterial entity might really exist. Let us bring this home, then, by putting aside "God" and "Country," and considering the reality of "Notre Dame." This is a shorthand for the institution's official name, University of Notre Dame du Lac. What kind of reality does this name point to? Let us consider this question from the point of view of a Notre Dame skeptic from Columbus who arrives for a campus tour. He wants the guide to show him *the* "University of Notre Dame." The guide shows him all the buildings and points out people like faculty, students, staff, and administrators, talking all the time about the history and goals of the institution. But the skeptic is not satisfied. He objects that the guide is showing him buildings and people, but he wants to see the university itself. Depending on how diligently our undergraduate tour guide may have satisfied the core curriculum's philosophy requirements, he or she might have some difficulty answering the skeptic from Columbus. But the skeptic's objection is misguided whether or not the tour guide has the ability to explain why. "The university itself" is not a discrete thing that one can look at. There is no stop on the campus tour where one can lay eyes on "Notre Dame itself." This does not mean that Notre Dame is a fake school or some sort of imaginary entity. The university is real. It has parts that exist in time and space. But the University of Notre Dame du Lac is not a material reality with spatial extension or weight or color. Although Notre Dame exists now, it has not always existed. It came into being at some point in the past and continues in existence through the present. It grants degrees, hires and fires, teaches, governs, and acts in many other ways. It is a community to which one can belong or not.

Understanding the way in which Notre Dame is real rather than fictional, I will argue, helps us to understand the way that the United States of America is real rather than fictional. The United States of America is a nation, not a university. But this nation is not identical with its form of government. Indeed, the nation came into existence through an unwritten constitution before it came to be governed under its written Constitution. The nation was, in one sense, spoken into being. But it was also fought into being. And whatever alteration in intersubjective reality may have been accomplished by the words of the Declaration of Independence, the alterations in intersubjective reality accomplished in the War for Independence that continued after the Declaration was promulgated were essential in bringing the nation's reality as it has endured from that time through the present. The consequence of the separation of one people from another with whom it was previously one, after all, was division into two warring camps. Each of these camps was a social whole unified by pursuit of the extrinsic common good of victory in war and the intrinsic common good of

governmental order required to accomplish that victory. One camp consisted of the British people unified under King George III; the other camp consisted of the one People of the United States unified behind the Continental Army commanded by General George Washington. Although this People was organized in thirteen states, the facts of their intrinsic political unity as evidenced in the Declaration and their shared pursuit of victory precisely as the United States of America are exactly the kind of facts that distinguish a collective group person from a fictional person.

CONCLUSION

We conclude. In following Hittinger's example of looking to the concluding paragraph of the Declaration of Independence for an example of how "[a] group will hold itself out to the rest of the world as something distinct in dignity, possessing rights and responsibilities," we find ourselves in a position to end by attending to the concluding sentence of the Declaration.[197] It is here, in conclusion, that the Declaration shifts back to the collective first-person plural in whose Name and by the Authority of which People this Declaration is made: "And for the support of this Declaration, with a firm reliance on the protection of divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor."[198] One's rights to life, liberty, and pursuit of happiness cannot be alienated, but one's life, fortune, and honor can be mutually pledged. This is better understood in terms of mutual covenant than social contract, for it was made not only on trust in each other but with "firm reliance on the protection of divine Providence." This God was not—is not—impersonal, but the maker of Laws, the endower of rights through Creation, the Supreme Judge of the World, and Divine Providence. When the United States of America came into existence, "We the People of the United States" truly were one nation under God.

197 HITTINGER, *supra* note 150, at 11 (footnote omitted).

198 THE DECLARATION OF INDEPENDENCE para. 32 (U.S. 1776).