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**Orestes A. Brownson**

**“The Higher Law”**

**January 1851**

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*The passage of the Fugitive Slave Act as part of the Compromise of 1850 raised a furor in the North. The legislation strengthened the power of the federal government to pursue runaway slaves in the northern states (where slavery was illegal) and made it a federal crime to assist a runaway slave. On several high-profile occasions, abolitionist vigilantes in northern cities like Boston defied the law and attempted to rescue captured runaways. Orestes Brownson published this essay to respond to the notion, expressed by Senator William Henry Seward and others, that there was a higher law than the Constitution—namely, divine law—that Americans should obey. Some abolitionists and free-soilers (opponents of the western spread of slavery) used this doctrine of higher law as a justification for violating the Fugitive Slave Act (and other proslavery laws). From the abolitionist point of view, the law made all Americans complicit in the evil of slavery and thus had to be resisted. (Ralph Waldo Emerson, who publicly critiqued the law, declared in his journal that he would not obey the “filthy enactment.”) Brownson here argued that this logic would lead to anarchy. Brownson had converted to Roman Catholicism in 1844, and he also used this essay to critique Protestantism. —D. Voelker*

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[1] That slavery as it exists in our Southern States is an evil, we do not doubt; but it is so accidentally, not necessarily. The evil is not in the relation of slavery itself, but in the fact that the great body of the masters do not bring up their slaves in the Church of God, and train or suffer them to be trained to observe the precepts of the Divine law. The mass of the slaves in this country grow up in heresy or heathenism, to the everlasting destruction of their souls. Here is the evil we see and deplore, —an evil, however, which none but Catholics do or can feel with much vividness. It is an evil which does not and cannot weigh much with Protestants, for the slaves in general are as little heathen and fully as orthodox as their masters. If the masters were good Catholics, as they ought to be, and are under the condemnation of God for not being, and brought up, as they are bound to do, their slaves in the belief and practice of the Catholic religion, there would be no evil in negro slavery to disturb us. The only evils we see in it are moral and spiritual, inseparable from heresy and heathenism. The physical and sentimental evils, or pretended evils, about which Abolitionists and philanthropists keep up such a clamor do not move us in the least. We place not the slightest value on what the men of this world call liberty, and we are taught by religion that poverty and suffering are far more enviable than riches and sensual enjoyment.

[2] But conceding the evil of slavery as it exists in this country, it is far from certain that it is an evil that would be mitigated by emancipation, or that emancipation would not be even a greater evil. The

negroes are here, and here they must remain. This is a “fixed fact.” Taking the American people as they are, and as they are likely to be for some time to come, with their pride, prejudices, devotion to material interests, and hatred or disregard of Christian truth and morals, it is clear to us that the condition of the negro as a slave is even less evil than would be his condition as a freedman. . . .

[B]efore we talk of emancipation, before we can venture upon it with the least conceivable advantage to the slaves, we must train them, and train the white American people also, to habits of self-denial and moral virtue under the regimen of the Catholic Church, which alone has power to subdue the barbarous elements of our nature, and to enable men of widely different races, complexions, and characteristics to live together in the bonds of peace and brotherhood. . . .

[3] We write very deliberately, and are prepared for all the obloquy which may be showered upon us for what we write. The cry of liberty has gone forth; we, as well as others, have heard it; it has gone forth and been echoed and reechoed from every quarter, till the world has become maddened with it. The voice of law, of order, of wisdom, of justice, of truth, of experience, of common sense, is drowned in the tumultuous shouts of Liberty, Equality, Fraternity! —shouts fit, in the sense they are uttered, only for assembled demons declaring war upon the Eternal God. But this should be our shame, not our boast. It ought not to be, and, if the world is to continue, must soon cease to be. Society cannot subsist where the rights of authority are forgotten, and loyalty and obedience are foresworn. . . . Man is a social being, and cannot live without society; society is impracticable and inconceivable without government; and government is impossible where its right to command is denied, or the obligation to obey it is not recognized. It is of the essence of government to restrain, and a government that imposes no restraint, that leaves every one free to do whatever seemeth right in his own eyes, is no government at all. The first want of every people is strong and efficient government, —a regularly constituted authority, that has the right and the power to enforce submission to its will. No matter what the form of your government, no matter in whose hands the power is lodged, —in the hands of the king, of the lords, or the commons, —it must, in so far as government at all, be sovereign, clothed, under God, with supreme authority, and be respected as such, or society is only Bedlam without its keeper.

[4] This is the great truth the American people, in their insane clamor about the rights of man and the largest liberty, that is to say, full license to every man, lose sight of, or in reality deny; and it is on this truth, not on liberty, for which all are crying out, that it is necessary now to insist, both in season and out of season. There may be times and countries when and where the true servants of God must seek to restrict the action of government, and lessen the prerogatives of power; but assuredly here and now our duty is not to clamor for liberty or emancipation, but to reassert the rights of authority and

the majesty of law. . . .

[5] But we are straying from the point we had in mind when we set out. Our purpose was, to offer some remarks on what is termed “the higher law” to which the opponents of the recent Fugitive Slave Law appeal to justify their refusal to execute it. The Hon. Mr. [William Henry] Seward, one of the Senators from New York, in the debate in the Senate during the last session of Congress on the Fugitive Slave Bill, refused to vote for the measure, although necessary to carry out an express constitutional provision, on the ground that to give up a fugitive slave is contrary to the law of God; and the Abolitionist and Free Soilers refuse to execute the law, and even in some instances resist its execution, on the same ground. . . .

[6] We agree entirely with Mr. Seward and his Abolition and Free Soil friends, as to the fact that there is a higher law than the Constitution. The law of God is supreme, and overrides all human enactments, and every human enactment incompatible with it is null and void from the beginning, and cannot be obeyed with a good conscience, for “we must obey God rather than men.” . . .

[7] But the concession of the fact of a higher law than the Constitution does not of itself justify the appeal to it against the Constitution, either by Mr. Seward or the opponents of the Fugitive Slave Law. Mr. Seward had no right, while holding his seat in the Senate under the Constitution, to appeal to this higher law against the Constitution, because that was to deny the very authority by which he held his seat. . . .

[8] What we have said is conclusive against the honorable Senator [Seward] from New York, but it does not precisely apply to the case of those who resist or refuse to obey the Fugitive Slave Law now that it has been passed. These persons take the ground that the law of God is higher than any human law and therefore we can in no case be bound to obey a human law that is in contravention of it. Such a law is a violence rather than a law, and we are commanded by God himself to resist it at least passively. All this is undeniable in the case of every human enactment that really does command us to act contrary to the law of God. To this we hold, as firmly as man can bold to any thing and to this every Christian is bound to bold even unto death. This is the grand principle held by the old martyrs, and therefore they chose martyrdom rather than obedience to the state commanding them to act contrary to the Divine law.

[9] But who is to decide whether a special civil enactment be or be not repugnant to the law of God? Here is a grave and a perplexing question for those who have no divinely authorized interpreter of the Divine law. The Abolitionists and Free Soilers, adopting the Protestant principle of private judgment, claim the right to decide each for himself. But this places the individual above the state,

private judgment above the law, and is wholly incompatible with the simplest conception of civil government. No civil government can exist, none is conceivable even, where every individual is free to disobey its orders whenever they do not happen to square with his private convictions of what is the law of God. The principle of private judgment, adopted by Protestants in religious matters, it is well known, has destroyed for them the church as an authoritative body, and put an end to every thing like ecclesiastical authority; transferred to civil matters, it would, equally put an end to the state, and abolish all civil authority, and establish the reign of anarchy or license. Clearly, if government is to be retained, and to govern, the right to decide when a civil enactment does or does not conflict with the law of God cannot be lodged in the individual subject. Where then shall it be lodged? In the state? Then are you bound to absolute obedience to any and every law the state may enact; you make the state supreme, absolute, and deny your own principle of a higher law than the civil law. You have then no appeal from the state and no relief for conscience, which is absolute civil despotism.

[10] Here is a sad dilemma for our uncatholic countrymen, which admirably demonstrates the unsuitableness of Protestant principles for practical life. If they assert the principle of private judgment in order to save individual liberty, they lose government and fall into anarchy. If they assert the authority of the state in order to save government, they lose liberty and fall under absolute civil despotism, and it is an historical fact that the Protestant world perpetually alternates between civil despotism and unbridled license, and after three hundred years of experimenting finds itself as far as ever from solving the problem, how to reconcile liberty and authority. Strange that men do not see that the solution must be sought in God, not in man! Alas! reformers make a sad blunder when they reject the Church instituted by God himself for the express purpose of interpreting his law, —the only protector of the people, on the one hand, against despotism, and of government, on the other, against license!

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[11] Now it is clear that Mr. Seward and his friends, the Abolitionists and Free Soilers, have nothing to which they can appeal from the action of government but their private interpretation of the law of God, that is to say, their own private judgment or opinion as individuals; for it is notorious that they are good Protestants, holding the pretended right of private judgment, and rejecting all authoritative interpretation of the Divine law. To appeal from the government to private judgment is to place private judgment above public authority, the individual above the state, which, as we have seen, is incompatible with the very existence of government, and therefore, since government is a divine ordinance, absolutely forbidden by the law of God, —that very higher law invoked to justify resistance to civil enactments. There is an important consideration, which condemns, on the

authority of God himself, the pretended right of private judgment, the grossest absurdity that ever entered the heads of men outside of Bedlam, and proves that, in attempting to set aside on its authority a civil enactment, we come into conflict not with the human law only, but also with the law of God itself. No man can ever be justifiable in resisting the civil law under the pretence that it is repugnant to the Divine law, when he has only his private judgment, or, what is the same thing, his private interpretation of the Sacred Scriptures, to tell him what the Divine law is on the point in question, because the principle on which he would act in doing so would be repugnant to the very existence of government, and therefore in contravention of the ordinance, therefore of the law, of God.

[12] Man's prime necessity is society, and the prime necessity of society is government. The question, whether government shall or shall not be sustained, is at bottom only the question, whether the human race shall continue to subsist or not. Man is essentially a social being, and cannot live without society, and society is inconceivable without government. Extinguish government, and you extinguish society; extinguish society, and you extinguish man. Inasmuch as God has created and ordained the existence of the human race, he has founded and ordained government, and made it absolutely obligatory on us to sustain it, to refrain in principle and action from whatever would tend to destroy it, or to render its existence insecure. They who set aside or resist the Fugitive Slave Law on the ground of its supposed repugnance to the law of God are, then, no more justifiable than we have seen was the honorable Senator from New York. In no case can any man ever be justified in setting aside or resisting a civil enactment, save on an authority higher than his own and that of the government. This higher authority is not recognized by the Abolitionists and Free Soilers; they neither have nor claim to have any such authority to allege; consequently, they are bound to absolute submission to the civil authority, not only in the case of the Fugitive Slave Law, but in every case, however repugnant such submission may be to their private convictions and feelings, or what they call their conscience, for conscience itself is respectable only when it is authorized by the law of God, or is in conformity with it.

[13] That this is civil despotism, that is, the assertion of the absolute supremacy of the state, we do not deny; but that is not our fault. If men, by rejecting the divinely authorized interpreter of the law of God, voluntarily place themselves in such a condition that they have no alternative but either civil despotism or resistance to the ordinance of God, the fault is their own. They must expect to reap what they sow. They were warned betimes, but they would heed no warning; they would have their own way; and if they now find that their own way leads to death, they have only themselves to blame. It is not we who advocate despotism, but they who render it inevitable for themselves, if they wish to

escape the still greater evil of absolute license.

[14] As Catholics we wash our hands of the consequences which they cannot escape, and which any man with half an eye might have seen would necessarily follow the assertion of the absurd and ridiculous, not to say blasphemous, principle of private judgment. We have never been guilty of the extreme folly of proclaiming that principle, and of superinducing the necessity of asserting civil despotism as the only possible relief from anarchy. We are able to assert liberty without undermining authority, and authority without injury to liberty; for we have been contented to let God himself be our teacher and our legislator, instead of weak, erring, vain, and capricious men, facetiously ycleped [called] *reformers*. . . . We have an infallible Church to tell us when there is a conflict between the human law and the Divine, to save us from the necessity, in order to get rid of despotism, of asserting individualism, which is the denial of all government, and, in order to get rid of individualism, of asserting civil despotism, that is, the supremacy of the state, the grave of all freedom. We have never to appeal to the principle of despotism nor to the principle of anarchy. We have always a public authority, which, as it is inerrable, can never be oppressive, to guide and direct us, and if we resist the civil law, it is only in obedience to a higher law, clearly and distinctly declared by a public authority higher than the individual, and higher than the state. Our readers, therefore, will not accuse us of advocating civil despotism, which we abhor, because we show that they who reject God's Church, and assert private judgment have no alternative but despotism or license. They are, as Protestants, under the necessity of being slaves and despots, not we who are Catholics. We enjoy, and we alone enjoy, the glorious prerogative of being at once freemen and loyal subjects.

[15] There is no principle on which the Abolitionists and Free Soilers can justify their resistance to the Fugitive Slave Law. They cannot appeal to the law of God, for, having no authority competent to declare it, the law of God is for them as if it were not. It is for them a mere unmeaning word, or meaning only their private or individual judgment, which is no law at all, and if it were would at best be only a human, and the lowest conceivable human law. The highest human law is unquestionably the law of the state, as the state is the highest human authority conceivable. No appeal can then lie from the state to another human authority, least of all to the individual; for appeals do not go downwards, do not lie from the higher to the lower, as ultra democracy would seem to imply. The highest conceivable human authority has passed the law in question, and in so doing has declared it compatible with the law of God; and as its opponents have only a human authority at best to reverse the judgment of the state, nothing remains for them but to yield it full and loyal obedience.

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[16] Protestantism is clearly not adapted to practical life, and its principles are as inapplicable in

politics as in religion. There is no practical assertion of true liberty or legitimate authority on Protestant principles, and neither is or can be asserted but as men resort, avowedly or otherwise, to Catholic principles. Hence the reason why we have been unable to discuss the question presented, and give a rational solution of the difficulty, without recurring to our Church. In recurring to her, we have, no doubt, offended the friends of the Constitution and the Union, the party with whom are our sympathies, as much as we have their enemies; but this is no fault of ours, for we cannot go contrary to what God has ordained. He has not seen proper so to constitute society and endow government that they can get on without his Church. She is an integral, an essential element in the constitution of society, and it is madness and folly to think of managing it and securing its well-being without her. She is the solution of all difficulties, and without her none are solvable.

[14] For us Catholics, the Fugitive Slave Law presents no sort of difficulty. We are taught, as we have said, to respect and obey the government as the ordinance of God, in all things not declared by our Church to be repugnant to the Divine law. The law is evidently constitutional . . . . Nobody really regards it as unconstitutional, and the only special objection to it is, —what is no objection at all, that it is likely to answer its purpose. Now as the law is necessary to secure the fulfilment of the obligations imposed by the Constitution, and as our Church has never decided that to restore a fugitive slave to its owner as per se contrary to be law of God, we are bound to obey the law, and could not, —without resisting the ordinance of God and purchasing to ourselves damnation, refuse to obey it. This settles the question for us.

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### **Discussion Questions:**

1. What position does Brownson take regarding the existence of a “higher law”?
2. How and why does Brownson deny that abolitionists have a moral right to disobey the Fugitive Slave Act? According to Brownson, where will their doctrine lead?
3. Why does Brownson bring the rivalry between Catholics and Protestants into this essay? What role does he promote for the Roman Catholic Church? Does his position seem convincing?
4. If accepted, where would Brownson’s logic leave the abolitionists? What could they do to oppose slavery?

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