

Re-
CONSIDERATIONS

Historical (and often neglected) texts in the Catholic intellectual tradition with contemporary comment and reflection

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Orestes Brownson's
Freedom of the Church

Introducing Orestes A. Brownson's
Essay "Civil and Religious Freedom"

ORESTES BROWNSON'S WONDERFUL ESSAY "Civil and Religious Freedom" (1864) provides a remarkable philosophical and constitutional defense of religious liberty. The essay bears the particular merit of bridging the traditional American understanding of religious freedom as an individual right with the corporate notion of freedom of the church, which acts, Brownson argues, as the shield of religious liberty. First, permit me a few words on this figure who has not received in recent decades the rich scholarly and public discussion he deserves. Orestes Brownson was a fixture throughout much of the nineteenth century, writing at the intersection of that period's constitutional, religious, and social controversies. Born in 1803 in Ver-

mont, the New Englander migrated across Christian denominations and modern ideologies in early adulthood. He espoused a prototype of Protestant liberation theology that believed Christianity could recruit the sentiments of the masses for egalitarian social reform. He was also a significant member of the Transcendentalists, until he concluded that this school of thought's exaltation of spirit over nature and reason was sheer madness. Arthur Schlesinger, Jr., focused on Brownson's religiously informed social and political activism because Schlesinger believed it was crucial evidence of a deposit of progressivism in America well before the New Deal.¹ While Schlesinger can legitimately claim the young Brownson as an American progressive forerunner, what ultimately marks Brownson's mature path is a genuine quest for understanding the truth about the human person and our capacity to understand what we should do to flourish as created and relational beings.

Brownson rejected radical Leftist political theorizing after the 1840 elections. "Mugged by reality," as it were, Brownson wrote that the 1840 presidential campaign, which featured William Henry Harrison winning the presidency on a campaign appeal of a "log cabin and hard cider," revealed to him the mob-rule aspects of mass modern politics. In short, engaging in political activism to reach egalitarian ends was just as likely to produce dastardly results. A politically wiser Brownson soon arose. Political refinement in Brownson was indelibly linked to his conversion to the Catholic Church in 1844, which concluded his theological searching and his radical political thought and style. Finding his theological home in Rome liberated Brownson from the need to vindicate a Gnostic politics of perfection. He understood that politics could not bear the ideological weight that he had placed upon it, and this entailed understanding the tragic and limited nature of politics and human existence. There is no final progress or emancipation in this refined account, but a firm awareness of how the differentiated dimensions of human nature, albeit imperfectly, are realized in various social, political, economic, and religious contexts.

In this way, Brownson provided an original, robust defense of American constitutionalism and religious freedom. He saw our political order as fundamentally just because of its ability to balance and soothe the collectivist and anarchic instincts of political modernity. American constitutionalism was not perfect—Brownson articulated its own discontents quite well in *The American Republic* (1865)—but he also argued that it contained ample resources to uphold a dignified political order of freedom and responsibility. Brownson stated in 1853 that the question that dominated his mind and writing was articulating the proper relationship between the church and the state, or, as he frequently noted, the spiritual and temporal realms. This, he argued, “in one form or another is almost the only question discussed in our [Brownson’s Quarterly] *Review*, [it] is precisely this question as to the relation of the two orders, the rights and powers of the spiritual order in relation to the temporal, and of the church, as the representative of the spiritual, in face of the state, the representative of the temporal.”² Brownson was a profound critic of modern political ideologies that subsumed the church under the state. He opposed political atheism because of its complete divorce of the political order from religion and morality. The publicly enforced notion that the state faces no source of authority higher than its own that can provide ethical direction to its laws and actions easily supported the position that the state is virtually unlimited in its powers. The supreme example, of course, was the French Revolution’s murderous opposition to Catholicism, which led the church to oppose its totalizing vision in all of its forms.

The second error was Erastianism, a settlement that emerged out of the Protestant Reformation, whereby the Church is suffered to exist, and may even be accorded certain favors from the state, but owes its continued existence to grants of privilege by the government rather than being seen as having independent and God-given authority for its mission.³ The Church of England stood in Brownson’s mind as the supreme example of this church-state settlement. Throne and altar arrangements were equally unavailing to Brownson because the

Church, while accorded official status, respect, revenue, and protection by the state, was of necessity required to teach and speak in a voice compatible with the interests of particular governments. The Church had become a hostage to these situations, and this dependency, Brownson thought, had left it unable to think properly about the Church's proper relationship to the modern political world.

What the Church had not considered, Brownson pointedly argued in "Civil and Religious Freedom," is a modern republican constitutionalism that placed itself at the service of securing the rights and duties of citizens, which are in nature by God's creative act.⁴ This was the real prospect offered by the American constitutional experience of self-government, Brownson observed. The American Constitution fundamentally limited the government, he approvingly noted, in providing for citizens to be free as a matter of inalienable right to choose their religion and for religious institutions to operate independently of government sanction.

We must repair to Brownson in our time, not only for a defense of religious liberty, but for his related and very needed defense of the freedom of the church. His 1864 essay crystallizes his thought on why a republican form of government must recognize "the freedom of the church in the freedom of the citizen." Brownson's "Civil and Religious Freedom" opens with a broadside shot on the legendary Jesuit journal *La Civiltà Cattolica* for its stern critique of the liberal Catholic thinker Charles de Montalembert. In the French journal *Le Correspondant*, Montalembert had called for the recognition in the Church's thinking of religious toleration under modern political conditions. On one level, Montalembert had only argued for certain concessions to be granted various religious minorities, as a result of certain realities that needed to be acknowledged in pluralistic countries. The Church was not going to obtain hegemony in countries like Britain, France, or America, among others, and should renounce any claim of seeking recognition as an official religion. His Jesuit respondents had replied that the Church already deemed it necessary to bend to such prevailing winds, but what it would not do is

acknowledge religious freedom as a natural right. Moreover, should social and political conditions change, then the Church in a particular country should resume the attempt to enthrone the Faith. On what point, then, did these two parties disagree? Montalembert's real crimes were in skirting too close to the edge of a natural right defense and, according to *La Civiltà Cattolica*, bringing shame upon the Church for its past stances. It was also not clear if Montalembert accepted the notion that Catholics should remain willing under favorable circumstances to achieve a state-backed Church.

Brownson defended Montalembert as a Catholic in full and, as one who, in a manner similar to Brownson, tried to limn a way forward for the Church in a modern pluralistic context. Montalembert had argued that the clergy should not be subjected in their spiritual duties to the state nor should the state in performing its temporal duties be governed by the clergy. According to Brownson, Montalembert contended for "a free church in a free state." In a more exacting formulation, Brownson reasoned that the Frenchman's principles amounted to the notion that the state

protects the religion of the citizen, not as approving or disapproving it, but as, before it, a natural and inalienable right. As before the state all citizens are equal in their rights, so all religions, not *contra bonos mores*, or incompatible with the public peace, embraced by its citizens, are equal before it, and entitled to equal and full protection. Hence a free church in a free state implies the liberty of false religions no less than of the true, the freedom of error no less than the freedom of truth,—the precise order which obtains in the United States.⁵

Brownson's defense of natural rights began first with the prudential judgment that the *oscurantisti* party in the Church, of which *La Civiltà Cattolica* was representative, had placed itself at odds with the democratic movement of Western social order and thus at odds with liberty. This was a pointless stance, Brownson noted, and one

that missed seizing the new opportunities that would secure the future freedom of the Church. In the modern world, civil freedom is the “necessary condition of religious freedom.” To the charge lodged against Montalembert that in practically asserting religious freedom he brought opprobrium upon the Church because of its past opposition to such a doctrine, Brownson noted that this was no part of the deposit of faith in the Church. The Church’s practice in this regard had been just that, a practice, and not some aspect of the infallible teachings and dogmas of the Church. Change needed to occur. As a prudential matter, the Church needed to acknowledge the different spheres and competencies of its office and that of the State. What the Church could no longer countenance was the joining of its theological and spiritual expertise to the organs of the state for coercive rule. The exercise of such power was an error of past circumstances and the practices it had seemed to require.

Brownson, though, ultimately provided in this essay a teaching that goes beyond calculated adjustment to contemporary circumstances that existed between church and state. He grounded religious freedom in the nature of the human person, because religion is the quintessential internal decision made by citizens; the state was “incompetent” to regulate this choice. Brownson clearly stated that he was not embracing theological tolerance or mere indifference to the varieties of religious choice. Error, Brownson observed, does not have rights, but human beings possess equal rights to err before the state on religious identification. The state’s chief concern is with regulating external acts to prevent violence and fraud and to order citizens’ acts towards the common good. The mission of the Church, however, is “a spiritual, not carnal one” and she directs persons through their conscience. To the extent the Church has an effect on the public order it is indirectly, through the impact her teaching has on her members or those who have heard her proclaim the Gospel and moral principles of the Church and whose thinking and behavior changes accordingly. This is, Brownson contended, “the precise order which obtains in the United States.” It

follows that “in all this she can address herself only to . . . moral nature, to . . . reason or understanding, his free will, his heart, and his conscience.”

Brownson, though, did not merely restate America’s defense of religious freedom to the editors of *La Civiltà Cattolica*, but also stressed that American constitutionalism is really the form of government that most approximates a Christian anthropology and provides an example of how modern republics can realize the Christian idea of the integral development of the human person. On this point, Brownson observed that the First Amendment’s religion clauses were a specific limitation on the state’s power, reminding it that it stood under a higher order of law. The right of citizens to situate themselves before God was anterior to political society, thus the supremacy of the spiritual order fundamentally limited the federal government. A core aspect, then, of freedom is grounded in personal communion with God.

Brownson next turned in “Civil and Religious Freedom” to the very nature of Christian revelation to defend his civic doctrine of religious freedom. He stated forthrightly that “the spirit of Christ is the spirit of Liberty,” that God everywhere governs the moral world by moral power and not divine coercion. The Church’s teachings must be proposed, not imposed, and be received and responded to by voluntary assent. But what was true for the Church was even truer for the state. The operations of government are entirely incompetent to prescribe any spiritual truths to the heart of man. The state’s province is in the temporal acts of governance and here it reigned supreme. The Church, however, Brownson argued, retained the authority to declare the natural law to any state that acted unjustly in its duties, but, Brownson seemed to stress, this is more of an exhortatory action by the Church.

God, Brownson reminded, does not govern his followers as slaves, but as beings who possess and analogously share with God free will and reason and who are able to be self-governing persons under the natural law. The great error of the editorial line of *La Civiltà Cat-*

tolica is the displeasure it had for such freedom both in the Church and in government. They would keep us, Brownson stated, in leading strings. Such an authoritarian course would turn the denizens of modernity fundamentally against the Church, Brownson predicted, for being an institution unwilling to embrace the modern republican spirit. And this spirit was not necessarily atheistic or opposed to Christianity, but must be properly cultivated and grounded by the deep truths of God and man as articulated in the full Western inheritance.

Accompanying Brownson's defense of religious liberty throughout the essay is the notion of corporate worship as the fundamental way we participate in religion. And this demands not merely freedom of conscience for merely private religious beliefs, but the full freedom of the Church as the entity whereby our thoughts and beliefs achieve their full expression in concert with others. Brownson recognized that reducing religious liberty to merely private conscience is to reduce greatly any vital public significance that it might have. He stated, "All that is to be asked for the Church is, that she be free, by appeals to the reason, intelligence, and conscience of her . . . subjects, to convert them . . . and that they be free, in the face of all external authority, to return to her communion if they see proper." The Church must not face sanction from the government in any of its efforts to teach or form its members, and citizens should be free to follow their faith as taught by churches. This freedom, Brownson continued, the Church demanded "not on the ground that she is the Church of God, but on the ground that she is our church, our religion, our conscience, and we are men and citizens." Such equality entailed "equal liberty and protection for the Church and the sects, and for truth and error."⁶

The significance of Brownson's assertion of the freedom of the church should be compared to the widely cited defense of conscience rights found in James Madison's "Memorial and Remonstrance against Religious Assessments." Madison's claim here is absolute and a powerful bulwark against state interference with religious

belief. He argued, “In matters of Religion, no man’s right is abridged by the institution of Civil Society and that Religion is wholly exempt from its cognizance.” Madison further held that the person possesses a fundamental duty derived not from government but from nature to “render the Creator such homage and such only as he believes to be acceptable to him. This duty is precedent, both in order of time and in degree of obligation, to the claims of Civil Society.” Madison’s strong language could easily limit, in theory, the overreaching acts of a monistic state. The “Memorial and Remonstrance” exemplifies, however, the modern replacement of the very corporate notion of freedom of the church with freedom of conscience.

In his book *American Compact*, Gary Rosen argued that the apparent radical teaching of Madison that government was limited by the citizen’s duty to God, is hedged by both its individualist context and Madison’s need to separate the things we do corporately with the body and the things we do privately with our minds. Madison, Rosen noted, looks to “the privileges enjoyed by individuals. . . . It is highly personal, so it discourages both collective action and deference to religious authority. . . . And it is resolutely other-worldly, so it manifests itself not in ritual observance or faith-inspired works—messy and quasi-political matters that involve our bodies—but in “conviction,” in the “opinions” that depend on our minds.”⁷ If Rosen is accurate that Madison’s document “does not so much trump the social compact,” as hew to the notion that religious belief is an experience, not a doctrine, then such subjectivity places sincerity at the forefront and downplays “right-thinking and acting.” Our duty to God comes first in the “Memorial and Remonstrance,” but, Rosen concluded, it is a weak one.

Rosen compared this right with the significance of the body in Madison’s political thought. The body is the source of social compact because its desires and needs “were the only legitimate basis for the most authoritative human association”: that of political society. These “promptings” held surety unlike the words of the prophets or apos-

tles, which were ambiguous for Madison, who denied “the human capacity to know the nature and existence of the commands of—and thus the duties toward—revelation’s God.” Perhaps what is foremost for Madison is to make religion safe for political society.

I come not to argue that America is ill-founded with regard to religious liberty, but to note certain limitations of principles present at our founding. Madison’s document, after all, is only one of many other significant defenses of religious liberty in American history. We need Brownson’s work to help our country in its ongoing quest to be republican and constitutional with regard to the high callings placed on the human soul by religion and faith. That is, the constitutional order, as Brownson recognized, to be itself must be located in relation to the soul and the vertical callings that citizens believe they have received from religion. Brownson argued in his essay “Union of Church and State” that “religion without the church is a theory or a vague sentiment; religion concentered in the church is a living reality.” And this living reality, to use Brownson’s term, is more effectively able to vindicate and provide support for liberty and authority of religion in the social order. Absent this real and effective armature of the church interposing its authority against state edicts, Brownson posited that religion will be merely tolerated by the state. But can an individual right divorced from any corporate freedom of the church have an enduring legal substance, or will the individualized right of religious freedom be swallowed by the rapacious modern state? A reflection on modern political power discloses that the state will likely circumvent the weakness of individualized conscience rights, because the prospect is too tantalizing of stepping into the shoes of religion and thereby achieving comprehensive control over its citizens.

Brownson argued that religious freedom was part of America’s providential or unwritten constitution, which consisted of certain givens that constituted America. On this point, he said, “It is one of the mysteries of Providence that what the popes for ages struggled

for and still struggle for . . . should be for the first time in history be fully realized in a society founded by the most anti-papal people on earth, who held the church to be the Scarlet Lady of the Apocalypse. Surely, they builded better than they knew.”⁸ This statement would find its way into a report issued by the Third Plenary Council of Baltimore in 1884: “We consider the establishment of our country’s independence, the shaping of its liberties and laws, as a work of special Providence, its framers ‘building better than they knew,’ the Almighty’s hand guiding them.”⁹ This assemblage of Catholic bishops understood that in providing a wide scope of constitutional protection to liberties of many kinds, the American republic had created the most favorable terrain for the growth of Catholicism in the world. As Brownson presciently observed, “The church has, so far as civil society is concerned, all that she has ever claimed, all that she has ever struggled for. Here she is perfectly free.”¹⁰

Such freedom, however, was the real test for the Catholic Church in America. She could pursue her real mission to evangelize and proclaim the Word of God to those near and far without hindrance. The fate of the republic hinged, Brownson believed, on how America and the Catholic Church worked out their dynamic tension in relation to each other. The Church’s failure to proclaim the Good News and to declare the natural law when need arose would doom our country to a nominalist fate of either Lockean individualism or humanitarian leveling. American freedom without proper grounding or purposes would wind its way into the paradoxical clutches of political modernity, and all of its anarchy and stultifying equality.

Notes

1. Arthur M. Schlesinger, Jr., *Orestes A. Brownson, A Pilgrim’s Progress* (Little Brown and Company, 1939).
2. Orestes Brownson, “Temporal Power of the Popes,” *Brownson’s Quarterly Review* 11 (1854): 187–219, 194.
3. Orestes Brownson, “Bishop Hopkins on Novelties,” in *The Works of Orestes Brownson*, (Detroit: H. F. Brownson, 1900), 4:527–41, 530.

4. Orestes Brownson, "Civil and Religious Freedom," in *The Works of Orestes Brownson*, (Detroit: H. F. Brownson, 1900), 20:308–14, 313.
5. *Ibid.*, 313.
6. *Ibid.*, 383.
7. Third Plenary Council of Baltimore 1884 as cited by John Courtney Murray in *We Hold These Truths: Catholic Reflections on the American Proposition* (Rowman & Littlefield, 1988), 46.
8. Orestes Brownson, "Union of Church and State," in *The Works of Orestes Brownson* (Detroit: H. F. Brownson, 1900), 13:127–45, 143.
9. James Rosen, *American Compact: James Madison and the Problem of Founding* (University Press of Kansas, 1999), 23.
10. Brownson, "Union of Church and State," 127–45, 142.