RELIGIOUS FREEDOM

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I might possibly discuss the general problem of religious freedom from a theoretical point of view. Perhaps, however, it will be more interesting if I deal with the issue as it has arisen and been argued at the Council. Much detail has been reported in the press. Synthesis therefore will be my chief effort.

The first great achievement of the Council was to open the subject to full and free discussion. It is a well known fact that theological dialogue on the subject had been inhibited for more than a decade, since the removal from circulation of the symposium, *Tolérance et communauté humaine*. In consequence, certain differences of opinion within the Church were never clearly brought to light and argued out. This has now been done. The Council Fathers have publicly discussed three separate schemata or draft-texts. Hundreds of pages of comment and criticism have been sent in to the Secretariat for the Promotion of Christian Unity, and in them all shades of opinion have been stated, sometimes at considerable length. In addition, a number of useful books and a larger number of articles have been published. The subject therefore has received the thorough discussion that was necessary before a conciliar statement could be made.

The first schema was submitted to the conciliar Fathers at the beginning of the second session in 1963. It formed part of the schema on ecumenism composed by the Secretariat, whose membership at the time comprised less than a dozen bishops, together with a small number of *periti*. The chapter on religious freedom
was discussed only briefly and in general. And time ran out before a vote could be taken on the question of whether the text was in general acceptable as the basis of further discussion.

Between the end of the second session and the last days of January some three hundred and eighty interventions, as they are called, were sent in by the conciliar Fathers. After detailed study and analysis of these a new text was put together by the Secretariat, whose membership had now been increased to thirty bishops, the complement of a full conciliar commission. This text was no longer part of the schema on ecumenism; it assumed the form of a separate Declaration. At the outset of the third session, in 1964, it was submitted to a searching critique from every point of view in the aula itself. In addition, some one hundred and forty interventions were sent in to the Secretariat. The great majority of them supported the schema in principle, but there were many reservations and criticisms of detail.

In the light of this abundant critique a sub-committee of the Secretariat undertook the work of revision. It proved to be lengthy and arduous; it went through at least five major stages of change. Finally, the document was submitted to the Secretariat in several plenary sessions. The discussion was detailed and complete. At the end of it, the approval was unanimous. Moreover, as the press reported at the time, the text was also examined by a small mixed commission of bishops both from the Secretariat and from the Theological Commission. It was approved with one dissenting vote. Finally, the text was submitted to the full Theological Commission, which is the highest conciliar commission on matters of doctrine. The vote reported in the press was twenty-one in favor to six opposed.

Again the schema was not put to a vote in the aula. (The usual procedure is to call for a vote on the general tenor and content of a schema; if it is favorable, the Fathers submit in writing their reservations, called modi; these are examined by the commission that sponsored the schema, and are accepted or rejected, in each
case a reason being given in writing; the revised text is then resubmitted to the conciliar Fathers, who express by vote their satisfaction or dissatisfaction with the changes made.) The failure, for the second time, to come to a vote on the Declaration on Religious Freedom was, as is well known, the occasion for an outburst of indignation in the aula. (Some one called it dies irae, the day of wrath.) It can hardly be gainsaid, however, that the decision not to call for a vote was technically correct. In order to reckon with the criticisms made, it had been necessary to prepare what was, in fact, a substantially new text which, according to the rules of the Council, should not have been put to a vote without previous discussion, for which there was no time. Moreover, in retrospect (although not at the moment), it was generally recognized that the decision to postpone a vote was wise. One could hardly say that the discussion of the subject had not been adequate. The fact was that everyone had ample opportunity to express his views, either in public or in written interventions. On the other hand, the discussion had perhaps been too rapid, on a subject that had never been argued so fully before. It may be said, in consequence, that some of the Fathers had not had time properly to digest the issues and to come to clarity in the matter.

What were the issues? They had, of course, developed in the ongoing course of history, which always tends to put new questions by altering the manner of asking old questions. The first argument, therefore, was between the older theory of religious tolerance and the more contemporary theory of religious freedom. The former theory had assumed systematic form during the post-Reformation era of the national “confessional” states, which themselves took shape, both Protestant and Catholic, chiefly after the Peace of Westphalia (1648). This theory became the received opinion in the nineteenth century in the course of the conflict between the Church and Continental laicism. Leo XIII himself accepted the theory on one level of his doctrine, on which he was concerned with the defense of the Catholic nation-state against the inroads
of laicism. (On a deeper level of doctrine Leo XIII also undertook and achieved that *ressourcement*—that is, creative return to sources—which is always necessary in order to initiate vital development of the tradition.)

The theory of religious tolerance takes its start from the statement, considered to be axiomatic, that error has no rights, that only the truth has rights—and exclusive rights. From this axiom a juridical theory is deduced, which distinguishes between “thesis” and “hypothesis.” The thesis asserts that Catholicism, *per se* and in principle, should be established as the one “religion of the state,” since it is the one true religion. Given the institution of establishment, it follows by logical and juridical consequence that no other religion, *per se* and in principle, can be allowed public existence or action within the state (which normally, in this theory, is considered to be identical and co-extensive with society). Error has no rights. Therefore error is to be suppressed whenever and wherever possible; intolerance is the rule. Error, however, may be tolerated when tolerance is necessary by reason of circumstances, that is, when intolerance is impossible; tolerance remains the exception. Tolerance therefore is “hypothesis,” a concession to a factual situation, a lesser evil.

It was to be expected that this theory would be presented to the Council, and it was. It is further to be expected that this theory will, in the end, be rejected by the Council, which has taken seriously, here as elsewhere, the issue of *aggiornamento*, in accordance with the mind of John XXIII. It was evident—and the fact has been reported—that the conciliar Fathers in general took the view that, here as elsewhere, a development of doctrine has taken place and that its term is to be accepted and affirmed as valid. This term is the affirmation of religious freedom as a human and civil right. John XXIII noted the root of the development, as well as its term, when he pointed to man’s contemporary growth in the consciousness of his own dignity, both personal and civil, in consequence of which men today demand civil liberties—primary among
them, religious freedom—and such due limitation of the powers of
government as will guarantee and foster in society that civil free-
dom which is a constituent of man's dignity. Religious freedom is
an exigence of human dignity. It is therefore a human right. And it
requires sanction as a civil right, guaranteed by human law.
This is, in brief, the second view of the matter that was presented
to the conciliar Fathers, as might again have been expected. Moreo-
ver, in this view the concept of religious freedom is altogether
definite. It is understood to be an immunity, a freedom from
coercion, whether legal or extralegal. Moreover, the immunity is
twofold. A man may not be forcibly constrained to act against his
conscience, and he may not be forcibly restrained from acting ac-
cording to his conscience. Furthermore, in this view the extension
of the concept is not in doubt; it is a matter of agreement not only
among jurists but among theologians, both Protestant and Catho-
lic. Religious freedom is immunity from coercion in what concerns
religious worship, observance, practice, and witness—in all cases,
both private and familial and also public and social.

It is one thing to agree on what religious freedom means; this
agreement is today widespread. It is quite another thing to agree on
the grounds for asserting that religious freedom is a human right;
this agreement has not been reached so generally. In 1958, for
instance, the World Council of Churches established a special
study-commission on religious freedom. Its premise was the ad-
mitted fact that, while the Protestant community was universally
in favor of religious freedom, there was no consensus with regard to
the reasons for being in favor of it. The situation was hardly better
five years later, when A. F. Carrillo de Albornoz published his
useful little book, The Basis of Religious Liberty. It contains a
competent summary and analysis of the differences of opinion
among ecumenical theologians, not on the concept of religious
freedom, but on the manner of making the argument for its
validity. Very briefly, three questions were a matter of continuing
discussion. First, what is the relation between the contemporary
technical concept of religious freedom and the evangelical notion of Christian freedom? “For freedom,” Paul writes to the Galatians, “Christ has set us free” (Gal. 5:1). In what sense is civil freedom of religion to be considered an exigence of Paul’s “freedom”? Second, in arguing for religious freedom, what place should be allowed for arguments of the political and legal order? Third, how are rational arguments and more directly Christian-theological arguments to be combined in the full statement of the case?

It was not surprising that comparable differences of opinion should have arisen among the conciliar Fathers within the vast majority who stood in favor of religious freedom. It might be fair to distinguish four general lines of thought.

First, there were those who were a bit dismayed by the theoretical complexities of the matter and therefore thought it better for the Council to make a brief statement of a practical character, without entering into argument. The objection to this position was obvious. The Council would leave itself open to the old charge of opportunism, to the oft-repeated complaint that the Church does not support religious freedom in principle but only as a practical solution for a practical problem. Hence this position won little support.

Second, there were those who wished to begin the argument with the notion of freedom of conscience. All men are called by God to a destiny beyond this world. This divine vocation is mediated by conscience; man therefore must be left free to follow his conscience and thus fulfill God’s will for him. In this structure of argument the juridical notion of the free exercise of religion appears as a conclusion or deduction from the freedom of personal interior religious decision. Against this position a variety of objections could be launched, and they were.

The argument—it was said—contains an inference from the subjective order of conscience to the objective order of rights. But this inference is valid only in the case of the conscience that is rightly formed according to norms that are objectively true. In
contrast, the erroneous conscience has no rights. So runs the objection. To meet it, one would have to enter the whole issue of the rights of the erroneous conscience. Not only is the issue complicated; it is also irrelevant to the concrete problem of religious freedom, for the simple reason that it is neither within the power nor within the competence of government to judge whether conscience be erroneous or not, in good faith or in bad faith. This too was pointed out, but the fact leaves the theoretical argument still in the air. The argument, others therefore said, fails to reach a conclusion that is broad enough. From the necessary freedom of a man's interior religious decision it does indeed follow that a man may not be coerced into acting against his conscience. This, however, is no longer a controversial issue. It was settled, both among Protestants and among Catholics, in the post-Reformation era, as the wars of religion ran out and the folly as well as the injustice of coerced religious worship or observance became apparent. The real issue remains; it concerns man's right to freedom from restraint or impediment in acting according to his conscience. Does religious freedom in this sense follow from the freedom of conscience or even from man's duty to follow conscience? There were those who thought that it did not.

It was further objected that the methodology inherent in the argument from conscience was too abstract, deductive, unsuited to a problem in human rights. Whatever the recent direction of the so-called "moral curve" in other areas, in the area of human and civil rights it has been slowly upward. The dignity of man has always been a truth. In modern times, however, there has been a growth in consciousness of the truth and in sensitivity to its exigences—not least perhaps in consequence of the brutal insensitivities to these exigences that recent history has displayed. Therefore argument about human rights, including religious freedom, has to be informed by historical consciousness, by an awareness that demands inherent in the nature of man manifest themselves and come to recognition in history, under the impact of developing
human experience. Deductive argument therefore is not enough. Good moral philosophy, like all good philosophy, must begin with man's historical experience and undertake to discern in it the intentions of human nature, the rational imperatives that rise from the depths of the concrete human person, the dictates of reason that claim affirmation as natural law.

A third line of thought therefore appeared, influenced by respect for historical consciousness, unwilling to lose sight of the heart of the matter through involvement in subtle dialectics concerning the rights of conscience. In this third line it is granted at the outset that rights may not be founded on error, but only on truth. The first immediate affirmation, however, is that rights are inherent in persons. Rights are founded on the dignity of the person, which is the first truth of the social order—the order in which rights are affirmed and exercised. The dignity of the person is a basic constituent element of the objective moral order, the order on which society itself and its laws and processes must be based. Beginning, therefore, with the dignity of the person, the argument begins in the objective order of truth and moves wholly in it.

The ensuing affirmation is that the dignity of the person requires, as Pacem in terris asserted, that in the conduct of his life a man should act on his own judgment, with freedom, out of an inner sense of duty, under immunity from outside pressures or coercions. The uses of freedom therefore are not to be limited unless there be a legitimate reason for their limitation. In the social order, freedom is the principle, the rule, the method. If freedom is to be limited, warrant must be shown. Such warrant does not exist antecedently or in the abstract. And it is not created by the sheer fact that a man's life or action is based on some manner of error or falsity. Before any duty and right to limit freedom can come into existence and be invoked, even by government, it must be shown that the use of freedom has resulted in some manner of serious social transgression—some violation of the rights of others, some offense against generally accepted standards of public morality,
some grave disturbance of the public peace. These general principles set the line of thought of the third school. In their application to the issue of religious freedom they sharply accent the notion itself as a juridical notion whose immediate foundations are in the order of reason.

At this juncture, a fourth line of thought appears. It does not collide in contradiction to the third line. On the contrary, it presents itself as complementary. Its proponents are not content to defend religious freedom simply as a juridical notion. To do this, they say, would be to fail to pursue the matter à fond. (The advocates of this line are mostly French-speaking.) They wish, therefore, to radicate religious freedom in religion itself—concretely, in the Scriptures, and in the traditional doctrine of the necessary freedom of Christian faith. Moreover, they feel—perhaps a bit confusedly—that a conciliar statement on the subject should be theological in tone. It should draw primarily on the sources of faith, not be content simply with rational argument, and not assign the primacy to rational argument.

It should be said here that the difference of opinion between the third and fourth lines of thought had not a little to do with the postponement of a vote on the Declaration at the third session. The difference was not so much of opinion as of perspective. But it served to confuse the issue and render judgment uncertain. In particular, it was the cause of a division within the ranks of the supporters of religious freedom. This was the more true for the reason that those who wish to “theologize” religious freedom are not themselves agreed on the way to do it.

There are those who simply “quote and argue.” They quote the texts of St. Paul and the Gospels texts in which the message of salvation is presented to man for his free acceptance, and from these texts they draw conclusions. To others, however, this technique is simplistic and unconvincing. It also runs the risk of “triumphalism,” which to this Council is anathema. That is, it runs the risk of presenting religious freedom as somehow a purely Christian
invention, whereas every student of history knows that the idea has been developed and brought to realization also, and quite importantly, by the force of purely secular dynamisms. Therefore these others wish to make a more historical argument. The Gospel, they say, is indeed a message of liberation to man. It represents a long leap forward in God’s gradual education of man to freedom—to the freedom that consists in man’s submission to the “law of the Spirit which gives life” (Rom. 8:2), whereby man is freed from all worldly enslavements that are unworthy of him. This message of freedom was deposited as a leaven in the mass of history, which throughout the centuries has worked hiddenly, and far beyond the visible confines of the Christian Church herself. The slow movement of mankind to a sense of human dignity and freedom, and to institutional expressions of this sense, has been due not least to the hidden spiritual power of the Gospel’s message of liberation. So, in brief, runs the argument.

Perhaps I may leave the whole subject here. I have simply undertaken to indicate the lines of thought that have crossed and completed one another in the course of the conciliar argument on religious freedom. It has been a high argument, carried on with great seriousness and complete freedom. For my part, I do not think its outcome is in doubt. None of the differences of opinion or perspective are, in the end, irreconcilable. I think the outcome will be consensus in support of religious freedom in its most solid and generous sense.