This Matter of Religious Freedom

There has been considerable speculation about the reasons for the postponement of a doctrinal decision on religious freedom at the last session of the Council. (It provoked the famous “Day of Wrath,” November 19.) The question is not, of course, the classical one: “Who done it?” This question is probably unanswerable, as often happens in Rome. The real question concerns the reasons, motives and feelings that lay behind the doing. It can be answered at least up to a point. First, however, it is necessary to give a brief sketch of the contents—the theme, methodology and argument—of the third draft Declaration on Religious Freedom submitted at the last session.

The Declaration made a simple and straightforward affirmation, namely, that coercion in religious matters—worship, observance, practice, witness—is, in principle, to be repudiated as offensive to the dignity of man. Primarily in view was legal coercion exercised by government; also in view were other forms of compulsion, direct or indirect, brought to bear by institutions or forces within society. In positive terms, the Declaration affirmed the free exercise of religion in society to be a basic human right that, in any society pretending to be well-ordered, should be furnished with a juridical guarantee so as to become a civil or constitutional right. Religious freedom, therefore, was clearly stated to be a juridical notion. Moreover, freedom here has the sense of “freedom from.” It is an immunity in a twofold sense. First, no man is to be forcibly constrained to act against his conscience. Second, no man is to be forcibly restrained from acting according to his conscience.

From the historical point of view, religious freedom in the sense of immunity from coercive constraints came to be recognized as a human right even during the post-Reformation era of confessional absolutism, as it is called. The principle was gradually established that even the absolutist prince may not compel a man to act against his conscience or punish him for reasons of conscience. The doctrine of religious freedom as an immunity from coercive restraints was, however, first effectively proclaimed in the First Amendment to the Constitution of the United States. It was considered to be an integral element of the doctrine of limited constitutional government. The Declaration affirmed religious freedom in both of these senses. The affirmation was doctrinal.

At the same time, the Declaration recognized that religious freedom, like other human and civil freedoms, is exercised within society and may therefore be subject to limitation. Two principles of limitation were stated. The first was the general moral principle of personal responsibility, which requires that all civil rights be exercised with a sense of responsibility toward society and its common good, toward the state and its just laws and authority, and toward one’s fellow men, who are equally persons and citizens. The second principle was that the exercise of religious freedom may in particular cases be subject to restraint by state intervention. As the criterion for this intervention, the Declaration posits the traditional jurisprudential norm, the necessities of the public order.

The public order is that limited segment of the common good which is committed to the state to be protected and maintained by the coercive force that is available to the state—the force of law and of administrative or police action. The public order thus comprises a threefold good—the political good, which is the public peace; the moral good, which is proper custody of public morality as determined by minimal and generally accepted standards; and the juridical good, which is harmony among citizens in the exercise of their civil rights. By this criterion, the exercise of religion is to be free unless, in some case, it seriously disturbs the public peace, violates public morality or results in infringement of the rights of others. The possibility of abuse of this broad criterion was obviated, as far as possible, by the inclusion in the Declaration of the basic principle of the free society, namely, that there is to be as much freedom as possible, and only as much restriction as necessary.

Furthermore, the Declaration articulates the concept...
of religious freedom in its corporate sense, in its application to religious communities, the family, and voluntary associations for various purposes. In its content, this corporate concept exhibited substantial agreement with the concept elaborated in official statements of the World Council of Churches. In particular, the Declaration recognized the right of religious communities to immunity from coercive interference, both in the conduct of their own internal affairs and in the bearing of public witness to their faith.

In accord with its basic premise, namely, that religious freedom is a juridical notion, the first section of the Declaration evolves and affirms the concept from the standpoint of reason and justice. In the second part, it affirms the harmony between the contemporary juridical notion of religious freedom and the revealed doctrine of the Church. Two doctrines are immediately relevant: 1) the freedom of the Church, both as a spiritual authority and as a spiritual community in its own right, and 2) the necessary freedom of the act of Christian faith. Thereafter, a brief section seeks to uncover the roots of religious freedom in the inspired words of God, the Scriptures.

The Declaration concludes with a pastoral exhortation to the faithful. It reminds them both of their duty of fidelity to Christian truth in its integrity and also of their duty of respect for human freedom in the pursuit and embrace of religious truth. The final paragraph is addressed to men and governments at large; it urges the rightness, value and necessity of religious freedom in the world of today.

The method followed by the Declaration in approaching its subject is governed by historical consciousness. The starting point is not abstract or ideological, but factual and historical. The initial appeal is to the fact that today man is growing more and more conscious of his own dignity, personal and civil. The Declaration does not lay as its premise the abstract truth of human dignity and then undertake to deduce from it the affirmation of religious freedom as a human right. In the general matter of human rights, this procedure is both logically perilous and also unconvincing. The truth of human dignity is as old as Christianity, and in a sense, even older. The new thing today, and the thing that matters for the argument, is the newly common human consciousness of this truth. Glenn Tinder, in his recent and remarkable book, *The Crisis of Political Imagination*, rightly asserts that mankind has reached a historical climax. Today, the free and transcendent character of the person has dawned more fully in the civilized consciousness than ever before in history. During approximately the past two thousand years, the irreducible reality and the final value of each individual have been among the fundamental premises of western civili-

zation. But it has taken a very long time for a deep and widespread awareness of these principles to develop. Man was sanctified in myth and thought. But in his social relations he was often openly and deliberately degraded.

Given, today, man's new consciousness of his dignity, this contradiction is no longer tolerable. Man demands civil liberties that he may lead in society a life worthy of a man. And this demand for freedom from coercion is made with special force in what concerns religion. Hence it is that a juridical guarantee of religious freedom is contained in the constitutions of all civilized states today.

This approach to the subject from the standpoint of historical consciousness has three major advantages. It avoids the fallacy of a false "objectivism," as if truth could somehow be divorced from the possession of truth. It also avoids the pragmatist and positivist fallacy, which would regard today's demand for religious freedom as no more than a brute fact in the face of which one must simply give way. On the contrary, the Declaration accepts the present-day emergence of the human self into the clear light of consciousness as the term of a genuine intellectual and moral progress in man's understanding of his nature. The consequent demand for religious freedom therefore appears as an exigency of man's own true nature, as the truth about man's nature has historically penetrated into consciousness. Hence the Declaration can affirm the validity of the demand—the validity of religious freedom as a human right of man today. No shadow of opportunism or expediency clouds this argument. It frankly recognizes that progress has taken place in the understanding of an ancient truth, in itself and in its implications for social and civil life.

There is no need to set forth here, in detail, the grounds that the Declaration advances for its affirmation of religious freedom. They are metaphysical (the integrity of human person), moral (the nature of religion and the role of conscience in religious life), political (the limits of governmental competence) and legal (the nature of human law). Sufficient it is to say that it would be difficult to raise serious objections against the case made. One might indeed say that the case is incompletely made. It was not, however, the intention of the Declaration to make the case with all completeness. As a conciliar utterance, the Declaration was content to indicate the structure and lines of an argument and to leave its further development to philosophers and theologians.

In sum, the Declaration would seem to commend itself, not only to Catholics, but to all men of good will,
by the solid substance of its affirmation, by the cor-
rectness of its method, and by the strength of its rea-
soning. Why then the postponement of conciliar deci-
dion, which seemed to some to suggest the existence of
doctrinal doubts or pastoral difficulties?

The suggestion has been made that "they" were to
blame—meaning, of course, the Roman Curia. But the
suggestion is too facile. It would be more adequate to
say that a series of interrelated factors was at work.

In the first place, in its method and doctrine, the
Declaration rejected the theory of religious tolerance
and the related theory of governmental competence in
religious matters that began to be developed in the
post-Reformation era, assumed form in the 19th cen-
tury, and subsequently became the received opinion
among canonists. This theory rests on the abstract
juridical maxim that error has no rights and on the
correlative abstract political maxim that government is
to repress error whenever possible and tolerate it only
when necessary, as a concession to circumstances of
religious pluralism. This theory was presented by a few
conciliar Fathers. It impressed the assembly chiefly
by its archaism. It obviously stands in dependence on
a sociological situation, not so much of religious unity
as of religious illiteracy. It also rests on the concept
of government as paternal in character, charged with
duty toward the religious welfare of the "illiterate
masses," to use the phrase of Leo XIII. It was not con-
sidered necessary at the Council to refute the theory;
it was sufficient quietly to bid it good-by. Certain ad-
versaries—as Santayana pointed out—are better treated
thus. In any case, the theory was seen to be irrecon-
cilable with the exigencies of the personal and civil
consciousness at its contemporary height. Nevertheless,
the classical theory of tolerance still has adherents,
who are few indeed but tenacious of their view. They
would represent the hard core of opposition to the
draft Declaration. At that, they oppose, not so much
the institution of religious freedom as such, but rather
the affirmation of progress in doctrine that an affirma-
tion of religious freedom necessarily entails.

The second factor was probably of greater signifi-
cance. The advocates of religious freedom were di-
vided among themselves. This has happened not sel-
dom within the so-called "progressive" majority of the
Council. To understand the division, one would have
to note the difference in methodology and focus of
argument between the first two drafts of the Declara-
tion and the third draft.

The first two drafts followed a line of argument com-
mon among French-speaking theologians. The argu-
ment began, not in the order of historical fact, but in
the order of universal truth. The truth is that each
man is called by God to share the divine life. This
call is mediated to man by conscience, and man’s re-
sponse to it is the free act of faith. The essential dig-
nity of man is located in his personal freedom of con-
science, whereby he is truly a moral agent, acting on
his own irreducible responsibility before God. Thus
religious freedom was conceived to be formally and
in the first instance an ethical and theological notion.
The effort then was made to conclude, by inference,
to the juridical notion of religious freedom—man’s
right to the free exercise of religion in society. The
trouble was that this structure of argument seemed
vulnerable to the advocates as well as to the adver-
saries of religious freedom. It is not obvious that the
inference from freedom of conscience to the free ex-
ercise of religion as a human right is valid. Neverthe-
less, many French-speaking theologians and bishops
considered their view to be richer and more profound.
They were therefore displeased by the third draft De-
claration, which relinquished their line of argument
in favor of a line more common among English- and
Italian-speaking theorists.

This line, as I have indicated, addresses the problem
where it concretely exists—in the legal and political
order. It considers religious freedom to be formally
and in the first instance a juridical notion, whose
validity, however, is to be established by a conver-
gence of theological, ethical, political and legal argu-
ment. To the French-speaking school, this view of
the matter seemed "superficial" (I heard the adjective
often). This division of opinion was not, indeed, re-
garding the affirmation of religious freedom as a human
right, but rather the manner of making the case for
the affirmation. None the less, the division of opinion
itself somewhat affected the climate of the Council.
And the root of it—the new methodology adopted by
the third draft—lent color to the complaint, made by
the opposition, that the Fathers had been confronted
with a "new schema" which should not be voted on
before discussion.

A third factor was a confusion that begot a fear.
The Declaration dealt with religious freedom as
a constitutional issue, a problem in the juridical order
of civil society. But in the minds of some, this issue
was confused with another—the presently sensitive
question of freedom and authority within the Church.
This confusion gave rise to a vague fear that a conciliar
declaration in favor of religious freedom would some-
how be misinterpreted by the faithful and either cause
trouble of conscience or possibly even undermine the
authority of the Church. This confusion of two alto-
gether separate issues was lamentable, and the ensu-
ing fear was irrational. Fear, however, though it rarely
furthered good purposes, is a potent weapon. Post-
ponement of the issue could have been made to seem
a good idea.
The decisive factor remains to be noted. In the end, a doctrinal decision on religious freedom was postponed for a year because it had already been postponed for some two hundred years. The remark may seem paradoxical. In the 19th century, the Church did indeed make a doctrinal decision on the notion of religious freedom that was advanced by Continental laicism. Its premises were the absolute autonomy of the individual conscience and the juridical omnipotence of the state. The notion itself implied that man is free from any dependence on God. It also implied that the state is the power superior to the Church, competent to make a theological judgment on what the Church is and to determine by legislation what role the Church is to play in society. As everybody knows, the thesis was that the Church is to play no role in society. It contended that religion is a purely private matter. The Church condemned this notion of religious freedom and its premises. The condemnation, however, left the real issue of religious freedom untouched. Only a historically urgent, but theoretically false, issue had been decided. The real issue was not faced by the Church until Vatican Council II. Even then, however, the conciliar Fathers and their theologians were not entirely prepared to face it. The reason was that free discussion of the real issue had been inhibited within the Church by the power of the Holy Office. The fact was well known and widely lamented. We have now come to lament also its consequences, the failure to develop a consensus within the Church. This can be done only through free discussion.

The failure was more lamentable because religious freedom is not the most important issue before the Council, nor the most difficult, except insofar as it raises the issue of development of doctrine, which is the issue underlying all issues at the Council. More noteworthy is the fact that religious freedom is not the most urgent issue in the world at large today. On the contrary, despite deplorable violations of the principle of religious freedom today, the principle itself is accepted by the common consciousness of men and civilized nations. Hence the Church is in the unfortunate position of coming late, with the great guns of her authority, to a war that has already been won, however many rear-guard skirmishes remain to be fought. An argument about religious freedom might almost be called a distraction from the real issues at the moment.

I felt obliged to be critical of the view taken by my French-speaking friends on the narrow issue of religious freedom. On the other hand, I entirely share the preoccupations that gave rise to their view. I mean the need to go to the depths of the religious problematic of our age, of which atheism is an important integral part, not only as a personal conviction but as a social force. I mean also the need to center all attention on the problem to which Leo XIII pointed at the deepest and most enduring level of his doctrine. It concerns, broadly, the problem of religious truth in its relation to human society in its full sweep.

The state can and should do no more than guarantee freedom of religion. It remains for religion itself, by the force of its own truth alone, to recover its public standing and its social influence in an industrial society to which religion has become largely irrelevant and even insipid. Leo XIII had to be content with an effort to inaugurate a dialogue between the Church and the rulers of society in his time, who were estranged from religion. Today, the estrangement has spread throughout society itself, so as to profoundly affect the human person as such, whose religious consciousness is necessarily social and historical. Today, as Paul VI has pointed out, the problem is to broaden the dialogue until its ever widening circles embrace the whole of humanity and include all human concerns, both personal and social.

It is to be hoped that the Council will quickly conclude its distracting debate on religious freedom, finish the Church's long unfinished business, and get on to the deeper issue of the effective presence of the Church in the world today.

---

Tidewater

Ospreys poke along the sunlit beach for some vestige of the undersea.

Gulls careen above spray and shell. Here, where every wall becomes sand and history, word is foreign and pain.

Ocean, ocean—where the young and the noble are dissolved, blood and fire turned to temperate gold, all radiance to half-light and dark. The ruby lips of the child are caught in the silken water leaves, heart and spirit, loved and lover alike are become the sea.

Clouds toss, and screech of bird comes ringing down the tide. Water and mind are flowing together where each clump of driftwood is jewel and stone.

In the white surf doves and peacocks lead home the sea.

MARTIN