THE DECLARATION ON RELIGIOUS FREEDOM

On December 7, 1965, in the section of his discourse directed to the statesmen of the world, Pope Paul VI spoke of the Declaration on Religious Freedom as "one of the major texts" of the Council. The characterization is correct, for a variety of reasons. It must be said, however, that the Declaration was, in the first instance, an exercise in aggiornamento in the strict sense. Its achievement was simply to bring the Church abreast of the developments that have occurred in the secular world.

The fact is that the right of man to religious freedom has already been accepted and affirmed by the common consciousness of mankind. Before the year 1947 it had been guaranteed in the constitutions of more than fifty nations. Since that time some fifty more nations—notably those which have recently emerged into statehood—have made constitutional acknowledgment of it. Moreover, the right was affirmed in the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations in 1948. The Declaration was not at the time a legally binding international instrument. However, as Egon Schwelb has pointed out, the "recommendations" of the Declaration have gradually been acquiring the force of law—a sort of customary law—by reason of their general acceptance in civilized political communities throughout the world. The Declaration has inspired some twenty-three other instruments of world-wide or regional significance; in par-

ticular, the Convention of the Council of Europe, adopted in Rome in 1950, and the Charter of the Organization of African Unity, adopted in Addis Ababa in 1963. Pope John XXIII was entirely right when he spoke of the Declaration as "an act of the highest importance," which "represents an important step toward the juridical-political organization of the world community. For in it, in most solemn form, the dignity of the person is acknowledged to all human beings" (Pacem in terris, 143-144). Finally, the World Council of Churches has long set the weight of its authority behind the affirmation of religious freedom as a human right, notably in the Amsterdam Declaration of 1948 and in the New Delhi Statement of 1961.

Securus iudicat orbis terrarum. One must surely agree with the conclusion reached by Msgr. Pietro Pavan, after a review of the constitutional evidence, in his book, Libertà religiosa et pubblici poteri: "One must regard it as legitimate to conclude that religious freedom, understood and exercised as a right, answers to a universal conviction. And one must consider it to be a universal persuasion that the emergence of this right in the human consciousness marks a step forward in civilization." By the Declaration on Religious Freedom the Church assembled in Council also took a step forward, matching the step already taken by the civilized world.

Hence the Declaration was a major text of the Council for the initial reason that it was a major act of humility on the part of the teaching Church—an act of the humility that is always inherent in a willingness to learn. The Declaration was, in fact, the most striking proof offered by the Council of the disposition of the Church, noted in the Constitution on the Church in the Modern World, to recognize "how richly she has profited by the history and development of humanity. Thanks to the experience of past ages, the progress of the sciences, and the treasures hidden in the various forms of human culture, the nature of man himself is more clearly revealed and new roads to truth are opened. These benefits profit the Church too" (art. 44). So Vatican Council II profited by the secular experience of religious freedom, whereby the exigencies of human dignity have been more fully disclosed.

It was high time, of course, for the Church to take the step forward. The need for it could be amply demonstrated from the first and longer draft-text of chapter 9 of the first schema on the Church, composed by the Theological Commission during the preparatory phase of the Council. The chapter was entitled "On the Relations between Church and State and on Religious Tolerance." (A shorter text appeared later, entitled simply "On the Relations between Church and State.") The first text proposed, in somewhat mild form, the opinion that had come to be accepted in the canonistic school. It was based on a doctrinal distinction between "thesis" and "hypothesis," which was itself based on the historical distinction between the "Catholic state" and the "non-Catholic state." In the Catholic state the right to reli-
The Declaration on Religious Freedom

Religious freedom in public life is neither acknowledged nor granted to those who do not belong to the one "religion of the state." Their lot is simply tolerance, or intolerance, in greater or lesser measure. In the non-Catholic state, on the other hand, the legal institution of religious freedom is defended as a lesser evil, to be accepted on grounds of necessity and expediency, in the interests of the Church, and for the sake of the public peace, which would be seriously disturbed by application of the thesis of legal intolerance.

The archaism of this opinion and its remoteness from the political-social realities of the present moment are entirely evident. It exhibits the thought of the Church as imprisoned in a particular segment of history and in a limited geographical area—in the nineteenth-century conflict with continental European laicism, which had become a corrosive force in the Catholic nations, so called. On the basis of this received opinion there could be no dialogue between the Church and the peoples of the contemporary world, in whose personal and political consciousness the principle of religious freedom has taken firm root. If this opinion were to be accepted as the permanent doctrine of the Church, Catholic thought would suffer its worst fate—that of being irrelevant to the world, and to that perennial problem of the world, which is the problem of the freedom of the human person.

Fortunately, in the early summer of 1963 the competence to draft a schema on religious freedom was finally accorded by Pope John XXIII to the Secretariat for the Promotion of Christian Unity. The move was made against strong opposition, at the courageous instance of Cardinal Augustin Bea, strongly seconded by the able secretary of the Secretariat, Msgr. Jan Willebrands.

The first two schemata prepared by the Secretariat were strongly influenced by the fact that they were conceived within the context of ecumenism. The first schema appeared as chapter 5 of the schema of ecumenism; the second, as a declaration appended to the schema. The result was a certain confusion between two distinct problems: the moral-ecumenical problem of relationships between Catholics and non-Catholics, and the juridical-political problem of religious freedom in its contemporary technical sense. Both schemata were, in effect, a declaration of the rights of conscience. They ventured into a treacherous problematic by asserting that the right to religious freedom is based on the dictates of conscience, and that its content is both positive and negative—action according to conscience and also immunity from coercion in such action. This doctrinal line was severely criticized by the Conciliar Fathers in the full discussion held September 23–25, 1964. In consequence, the third schema installed a new doctrinal line, which remained substantially unaltered through the three successive revisions of the schema.

The final Declaration has two essential doctrinal components, juridical and political. The juridical affirmation is that every man has a right to religious
freedom—a right that is based on the dignity of the human person, and is therefore to be formally recognized as a civil right and protected by an armature of constitutional law. The political affirmation is that the powers of government are to be employed in the safeguard of this right and are not to be used to limit its free exercise, except in cases of proved necessity.

Affirmation, however, is one thing. The conception embodied in an affirmation is a matter for distinct consideration. In the first place, the Declaration presents the content or object of the right to religious freedom as simply negative, namely, immunity from coercion in religious matters. Thus the Declaration moves onto the solid ground of the constitutional tradition of the West, whose development, in what concerns religious freedom, was first effected by the Constitution of the United States in 1789 and by the First Amendment in 1791. The fundamental freedoms of the First Amendment, including the “free exercise of religion,” were conceived to be not claims upon government or society, but assurances against government and society. They were, what the Fourteenth Amendment would later call them, certain specified “immunities of the citizens of the United States.”

This is good juridical philosophy. It is proper to a juridical formula—such as the constitutional formulas of freedom of speech, press, religion, assembly and civic protest—that it should define the outside limits of a sphere of human activity and guarantee the integrity of this sphere against coercive intrusion from without, but that it should not enter, as it were, into the sphere itself, there to pass moral or theological judgments on the beliefs expressed, or on the actions performed, within the sphere. Such judgments are “unconstitutional,” beyond the competence of purely juridical authority. In our case the juridical formula, “the free exercise of religion,” contains no positive evaluation of the religious phenomenon in any of its manifestations. It simply defines the immunity of these manifestations from interference, as long as they remain within the outside limits of lawful freedom. Therefore the only matters of juridical relevance are, first, the definition of the limits beyond which the exercise of freedom is socially unacceptable and unlawful and, second, the duty of others, including government, to respect the integrity of action that goes on within these limits.

Here, of course, it is possible to see the vast difference between religious freedom in its contemporary juridical meaning and “freedom of conscience” and “freedom of cult” in the sense of nineteenth-century continental laicism. These latter formulas were not simply juridical; they were ideological. Inherent in them was the moral judgment that the individual conscience is absolutely autonomous, and the further theological-social judgment that religion is a purely private affair, irrelevant to any of the public concerns of the political community. In the laicist view, freedom of conscience and freedom of cult were instrumental concepts—but concepts instrumental to an ideo-
REV. JOHN COURTNEY MURRAY, S.J.
The Declaration on Religious Freedom

logical negation of the public status and of the social function of religion. On the contrary, in the contemporary constitutional conception religious freedom is still an instrumental concept, but instrumental simply to the freedom of religion as a public phenomenon, whose manifestations are of a transcendent order, and consequently of such high personal and public interest that no repressive coercion may be brought to bear upon them, unless there be some transgression of penal statutes which are necessary for the protection of fundamental social values against abuses of freedom.

In the second place, the Declaration conceives religious freedom to be a twofold immunity. First, no man is to be coercively constrained into belief or action contrary to his own convictions; second, no man is to be coercively restrained from action—that is, from public witness, worship, observance and practice—according to his own convictions. In distinguishing this twofold immunity, the Declaration indicates the structure of the problem, both historical and also theoretical.

Historically, the right of man not to be compelled to believe or to act in a manner contrary to his own convictions came to be acknowledged in the post-Reformation era as the iniquity of the territorial principle—that the religion of the prince is to be a religion of his people—came to be commonly recognized. Historically, however, the right of man not to be forcibly restrained from acting in a manner conformable to his own convictions, in public as well as in private, has not been so readily recognized. Among the Conciliar Fathers at Vatican II there were those who were still unwilling to recognize this right. They wished to defend the historic religious prerogative of the Catholic state—its right to repress public manifestations of non-Catholic belief and worship in the name of the common good, of which the religious unity of the people is an integral element, to be protected by the coercive force of law and government.

At that, the theoretical aspect of the problem is the more important. If an authority exists that is empowered to restrain men from public action in accordance with their religious beliefs, this authority can reside only in government, which presides over the juridical and social order. Therefore, in order to prove the validity of the moral claim of the human person to immunity from such restraint, it is necessary to show that no valid counterclaim can be entered by government. Here the political issue in the question of religious freedom appears. It is the crucial issue. It concerns functions and the limits of government in the order of religion. It may perhaps be doubted whether the Declaration manifests sufficient awareness that this political issue is the crucial issue. Fortunately, however, it states the two principles which avail for the solution of the issue. This will appear.

As the foundation of the right of man to the twofold immunity just described the Declaration proposes the dignity of the human person, as
known by human reason and as more fully illuminated by the light of the Christian revelation. By this doctrine the Declaration makes contact with Catholic tradition. It also makes contact with the contemporary fact noted in the Introduction—that rising consciousness of human dignity which is prominent among the signs of the times. This new personal consciousness has shown itself particularly in the demand "that constitutional limits should be set to the powers of government, in order that there may be no encroachment on the rightful freedom of the person and of associations" (art. 1). Through the satisfaction of this political demand, religious freedom, as an idea and as an institution, became a reality in the modern world. Hence the dignity of the person is the primary locus of argument for the right of man to religious freedom. This brings us to the argument proposed in the Declaration. And two remarks are in order.

In the first place, it was altogether necessary that the Declaration should make an argument. Some of the Conciliar Fathers were unwilling that it should do so, chiefly on the ground that it is the function of a Council simply to affirm, not to argue. In this case, however, a simple affirmation of the right to religious freedom would not do. It was necessary to make clear that the affirmation was being made in principle, as a matter of truth, not as a concession, motivated by expediency, to historical circumstances. Furthermore, it was necessary to indicate that an argument for religious freedom can be made in terms of rational and Christian principle. Other men, in other times, and even today, have made the argument otherwise—in terms of skepticism with regard to religious truth, or of moral relativism, or of religious indifferentism, or of laicist or secularist conceptions of the functions of government. The Christian cannot acquiesce in these arguments; he must have his own argument, if his affirmation of religious freedom is to be authentically his own. Hence the Council made an argument. The first part of it was directed to the intelligent world at large, whether religious or nonreligious. The other part was directed to those who believe in God.

In the second place, however, it is not necessary to believe that the Conciliar argument is the best one that can be made. It did not pretend, in fact, to be apodictic. The Conciliar intention was simply to indicate certain lines that an argument might validly follow. Moreover, the doctrinal authority of the Declaration falls upon its affirmation of the human right to religious freedom, not on the arguments advanced in support of this affirmation. This has been traditional conciliar custom.

Hence it is legitimate to raise questions about the Conciliar argument. One might question, for instance, the prominence given to man's moral obligation to search for the truth, as somehow the ultimate foundation of the right to religious freedom. The notion occurs four times in the text. But behind this insistence on it, one may suspect, there lay a preoccupation that was rather
more pastoral than theoretical. The concern was lest a divorce seem to be
instituted between the juridical order of man's relationship to other men and
to political authority and the moral order of man's relationship to the tran-
scendent order of truth and to the authority of God. More briefly, the concern
was lest religious freedom be misunderstood to mean a freedom from the
claims of truth—in particular, as these claims are declared by the Church.
This pastoral concern may well have been legitimate. But it seems to reveal
that some of the Conciliar Fathers were still living in the long shadow of the
nineteenth century. The fact is that this misunderstanding of religious free-
dom is impossible for anyone who grasps the twentieth-century state of the
question.

The real difficulty, however, is that the argument from man's duty to
search for the truth, whatever its value, does not deserve the fundamental
place in the structure of a demonstration of the right to religious freedom.
The reason is that it fails to yield the necessary and crucial political conclu-
sion, namely, that government is not empowered, save in the exceptional
case, to hinder men or religious communities from public witness, worship,
practice, and observance in accordance with their own convictions. The clas-
sical Catholic government, for instance, or the contemporary communist
government, for another instance, does not greatly bother about man's duty
to search for the truth. They simply maintain that they already have the
truth; that they represent the truth, which is also the good of the people; that
consequently they are empowered to repress public manifestations of error.
Against this conception of government as the representative of the truth, the
argument from man's duty to search for the truth can make little headway.

A more cogent argument for the right to religious freedom can be con-
structed from the principles of the Declaration itself, assembled into an
organic structure. The argument begins from the dignity of man as a moral
subject. Man is intelligent. Therefore he is capable of, and called to, an
understanding of the sense of his own existence—its meaning and purpose,
as these are accessible to reason in the total reality of human existence itself,
and as they are more luminously declared in divine revelation. Man is free.
Therefore he is called personally to realize, in love and through a lifelong
process of choice, the sense of his own existence. Hence the mark of man as
a person is his personal autonomy. Inseparable, however, from personal
autonomy is personal responsibility. This is twofold. First, man is responsible
for the conformity between the inner imperatives of his conscience and the
transcendent order of truth. Second, man is responsible for the conformity
between his external actions and the inner imperatives of conscience. These
responsibilities are moral and altogether stringent. Man bears them as a
moral subject, as he confronts, so to speak, his vertical relationship to the
transcendent order of truth. However, on the horizontal plane of intersub-
jective relationships, and within the social order, which is the order within which human rights are predicated, man's fulfillment of his personal moral responsibilities is juridically irrelevant. The major reason is that no authority exists within the juridical order that is capable or empowered to judge in this regard. This is a matter of traditional jurisprudence. (It is recognized in the Declaration, where it is said that the right to religious freedom does not have its foundation "in the subjective disposition of the person"; subjective dispositions are juridically irrelevant.)

What is juridically relevant, however, and relevant in the most fundamental sense, is the personal autonomy which is constituent of man's dignity. More exactly, resident in man's dignity is the exigence to act on his own initiative and on his own responsibility. This exigence is of the objective order; it is simply the demand that man should act according to his nature. And this exigence is the basic ontological foundation, not only of the right to religious freedom, but of all man's fundamental rights—in what concerns the search for truth, the communication of opinions, the cultivation of the arts and sciences, the formation and expression of political views, association with other men for common purposes, and, with privileged particularity, the free exercise of religion.

All these rights are immunities from coercion. Given the exigence of the person to act on his own initiative and responsibility, coercion appears as a thing of no value to the person. No man can be endowed with moral worth from the outside, as it were, and under compulsion. What is more important, man's fundamental exigence to act according to his nature makes coercion an injury, an attempted intrusion into the sanctuary of personality, a violation of the inviolability that attaches to the moral subject. Hence the basic exigence of the person is for immunity from coercion, chiefly, as the Declaration says, in what regards the quest for the values proper to the human spirit, and more particularly, in what regards the free exercise of religion in society. Religion has to do with man's relation to God. And this relation is personal. That is to say, it is immediate, directly between the finite moral subject and the infinite moral Subject; consequently, it is to be freely entered upon by both parties—by man in free response to the free and imperative initiative of God. Therefore, man himself must bear the responsibility for the acceptance or rejection of the divine demand of love, knowing that the penalty for rejection is the eternal loss of his own identity.

The argument so far is only preliminary and partial. It does not yet avail to constitute the right to religious freedom or to any other fundamental human right. It merely lays the foundation for a moral claim on others, that they should abstain from coercive action with regard to the human subject and respect his inner exigence to act on his own initiative and responsibility. To speak of a right, however, is to imply a juridical relationship, within
which to the right of one there corresponds a duty on the part of others with regard to whatever the object of the right is—in our case, immunity from coercive action. A right, as a moral claim on others, is not fully constituted, until it is established that no one else may validly enter a counterclaim—in our case, legitimately to invade an asserted immunity.

This further step in the argument is easily taken with regard to the first immunity claimed by the human person in religious matters, that is, immunity from compulsion to believe against one’s will or to act in a manner contrary to one’s religious beliefs. Obviously, no human power can rightfully compel such action. The assertion of an empowerment to do so would instantly be rejected by the common consciousness of mankind. The first immunity is absolutely inviolable, and to the moral claim to it there corresponds a universal duty on the part of others, including government, to respect the claim.

A difficulty, however, arises with regard to the second immunity: not to be forcibly restrained from acting in accordance with one’s religious beliefs. The fact is that in so acting a man may, in all good faith, be doing what is wrong—spreading religious errors or performing religious actions that are not consistent with the divine law. Here the political dimension of religious freedom comes to view. The question is, whether some special characteristic or attribute attaches to government that empowers it to repress erroneous religious opinions or practices from public life. And if not, on what principle is this power denied to government?

The Declaration supplies two principles. Both of them are rooted in the dignity of the person, and each of them is intimately related to the other. The first is the political principle of the free society: “Let there be as much freedom as possible, and only as much restraint as necessary.” Or as the text puts it, “The usages of society are to be the usages of freedom in their full range. These require that the freedom of man be respected as far as possible, and curtailed only when and insofar as necessary” (art. 7). This principle follows directly from the conception of the human person as a moral subject, who can achieve his perfection only by love of the truth and by free obedience to its demands, not by coercive constraints or restraints. By incorporating this principle the Declaration importantly fulfills its promise to advance still further the development of the Church’s socio-political doctrine that has been going on under recent popes.

It has always been traditional doctrine that human society is to be based on truth, directed toward justice, and animated by love. Pius XII brought the tradition to a new perfection of understanding and statement by his teaching that the truth upon which human society is to be based is the truth about the human person; that justice to the human person is the goal of society; that love is the basic principle of social unity, since it is the proper bond among
persons, which alone can lift their living together above the level of sheer coexistence. Then to the traditional trinity of social values John XXIII added the fourth—freedom. The truth about the human person is that his fundamental exigence is to act on his own initiative and responsibility. The truth therefore requires that in society there should be as much freedom as possible. Moreover, that which is primarily due in justice to the human person is his freedom—as much freedom as possible. Finally, love of the human person and love among human persons require that the freedom of each and of all should be respected as far as possible, and not curtailed except when and insofar as necessary.

Freedom, therefore, is the political method par excellence. Only by the usages of freedom in their full range can society, like the human person, make progress toward the equal justice that is its goal, toward that “more human equality (of rights)” of which Pacem in terris speaks. Furthermore, freedom is not only the primary method of politics; it is also the highest political goal. So it was once most truly written: “We, the People . . ., in order to . . . secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution. . . .”

Cognate with the political principle of the free society, and inseparable from it, is the juridical principle of equality before the law. As the Declaration puts it, speaking of the duties of government: “Finally, government is to see to it that the equality of citizens before the law, which is itself an element of the common welfare, is never violated for religious reasons, whether openly or covertly” (art. 6). The principle of equality before the law has its foundation in the metaphysical and theological truth stated in Pacem in terris, that “all men are equal by reason of their natural dignity” (articles 44, 48, 89, 132). This truth, the Pope notes, has come to pervade, and to be firmly established in the consciousness of men today. Its juridical consequence—what the Fourteenth Amendment calls the “equal protection of the laws”—has always been capital in the constitutional tradition of the West, as the complement of the principle of the free society. There is no freedom in society unless there is equal freedom for all, recognized as equally due in justice to all, and equally protected by law.

These two principles, political and juridical, furnish the solution to the political issue raised by the question of religious freedom as the immunity of the person from coercive restraint of action in accordance with his own beliefs. Together they require that government should be “constitutional.” In the case, this means four essential things.

First, the powers of government are limited by a higher order of truth and justice—the truth about the human person, the justice due to the human person and the respect or love also due to the human person—which requires reverence for the basic exigence of human dignity, which is to act on one's
own initiative and responsibility. This exigence, therefore, brings into being a juridical relationship. The immunity of the person from coercive restraint emerges as the object of a strict right, to which there corresponds on the part of government a strict duty to recognize the right and to respect its free exercise. Second, not only are the powers of government limited by the higher order of the rights of the person; they are also to be primarily employed “to secure these rights” (in the phrase of the Declaration of Independence) against invasion by others. Third, the protection and vindication of these rights are to be carried out by government in accord with the principle of equality before the law. This principle forbids classification of citizens according to their religious beliefs or lack thereof. Hence government may not recognize the right of some citizens to immunity from coercive restraint of action in accordance with their religious beliefs, and deny this right to other citizens. Fourth, the equal freedom of the people in the exercise of their rights in religious matters is to be respected as far as possible, and is not to be restricted except when and insofar as necessary. In principle, the freedom of the citizen is in possession. It is not to be restricted except in cases of proved necessity. And the onus rests on government to prove the necessity in the particular case. This requires a legal showing that there is question in the case of a violation of public order, a civil offense which the force of law must necessarily prohibit or punish.

In its quest for a juridical criterion narrow enough to warrant limitations of the free exercise of religion the Declaration finally adopted, after some hesitation and in spite of some opposition, the concept of public order. The concept of the common good, and—what is much the same—the concept of the purpose of society, had been advanced in the first two Conciliar schemata. Neither of them was acceptable, given the notion of society and government adopted in the Declaration from the doctrine of Pius XII. In this doctrine the common good itself and the purpose of society require the fullest possible free exercise of all human and civil rights, and government has the primary duty, not of limiting, but rather of promoting the freedom of the human person as far as possible.

In principle, the criterion for the restriction of freedom must be the necessity of such restriction. And the concept of public order meets this test of principle. The formula itself has broad constitutional status, even though it seems to lack full constitutional definition, commonly agreed on. The Declaration, therefore, gives it as clear and precise a definition as may be possible. Public order is the fundamental component of the common good. The common good is the broader concept that embraces the totality of those conditions of social life and the entire complex of those realized social values whereby men, as human persons, may achieve their proper perfection with all possible fullness and ease. Public order, in contrast, embraces only those
fundamental social values that are necessary for the sheer coexistence of the citizenry—values without which society would cease to be an order and verge toward conditions of chaos. Three such socially necessary values are commonly distinguished in the constitutional tradition: the value of justice, which consists in the effective safeguard of the equal rights of all citizens; the value of public peace, which is the work of justice, achieved when means are available for the pacific settlement of conflicts among the citizenry; and the value of public morality, in the measure in which morality can be realized by the coercive discipline of law. In three cases, therefore, the exercise of the right of religious freedom may be legitimately restrained by coercive measures, mainly, when there is a violation of the rights of others, or a serious disturbance of the public peace, or a grave offense against public morality. In these three cases the exercise of freedom becomes in fact an abuse of freedom, and restraint becomes a matter of public necessity. The concept of public order, thus defined, satisfies the demands of moral, political and juridical principle.

The conclusion is that the doctrine of the Declaration forms an organic whole. All of it hangs suspended from the supreme principle of the dignity of the human person. Inherent in this dignity is the exigence that a man should act on his own initiative and responsibility, not under coercion, but from inward motivation, by his sense of duty toward the transcendent order of truth and morality. This exigence in turn founds the political principle that the freedom of the person is to be respected as far as possible and restricted only in cases of necessity. The equality of this exigence in all men, who are equal in their dignity as human persons, founds the further juridical principle of the equality of all citizens before the law. And from these two principles in conjunction two sets of conclusions follow with equal immediacy. The first juridical conclusion is that the full immunity of the human person from coercion in religious matters is the object of a genuine human right. The corresponding first political conclusion is the duty of government itself to respect this right and to ensure respect for it in society. The second juridical conclusion is that the exercise of the right to religious freedom is to be as free as possible. And the second political conclusion is that governmental or legal limitation of the exercise of the right is warranted only by the criterion of necessity.

Much further comment would need to be made on the Declaration. It raises a number of serious issues. And it is fraught with theological significance in ways that go far beyond the narrow context of the single problem with which it deals. This essay, however, was concerned simply with showing the organic wholeness of its central doctrinal content.
Wolf: I would just like to raise the question of the right of disbelief, which I believe the document never quite admits. And I wonder whether in the fullness of a statement on the right to religious freedom there ought to be included—not only because of expediency, say, for dialogue with secular man, but simply because it is part of the dignity of the human person—an affirmation of the right of disbelief, not only because it is a fundamental right, but because, from the point of view of revelation, the fullness of the free act of faith may require the possibility of disbelief.

Murray: This question was argued at considerable length in the Secretariat. Some of you at least know there were petitions made by many bishops, notably among the French hierarchy, that explicit mention should be made of the atheists. It was very carefully considered. There were many reasons for it, but the reasons against it seemed to be decisive. I don't know that I can remember all that they were; I wouldn't want to put words in the mouths of anybody else. One reason, of course, was the change of state of the question between the eighteenth century and now. In the happy days—if they were happy—of the Enlightenment, freedom of religion was proclaimed in the name of freedom of unbelief. It was considered today that things have
come round: freedom of religion now has come in favor of those who wish to believe. The other people on the whole, by and large, are doing fairly well, I would think at the moment. The other question was whether or not it would be appropriate in a conciliar statement of an ecumenical council thus to single out the atheists. And the third reason is that the atheists are properly provided for in the principles of the Declaration itself, because the phrase that is used in the definition of religious freedom is used with great breadth. Indeed, in the Latin text of article 2 the word conscientia is used, not in a technical sense of the moral faculty of judgment, but rather in its broad sense, namely, a man's whole inner world, the inner forum as such, the fullness of a man's own beliefs, desires, hopes, wishes, and so on. That is why it was translated in English "in accordance with his own beliefs," not "conscience," because that would be misleading.

SMITH: Father Murray, you state that the protection and vindication of the rights named in the Declaration of Independence is to be carried out by government in accord with the principle of equality before the law, and this principle forbids classification of citizens according to their religious beliefs or the lack thereof. I recall two cases before the Supreme Court: the Everson and Sherbert cases. The New Jersey law in the Everson case, the bus transportation law, was written to benefit the children in Catholic parochial schools. If you recall Justice Jackson was opposed to the law on that ground. That was a case of classification according to religion in vindication of free exercise and the protection of children on the streets.

The Sherbert case, more recently, is completely distinct. It was directed that the South Carolina Social Security Commission should pay social security benefits to Mrs. Sherbert, who is a Seventh-Day Adventist and had refused work on her Sabbath, Saturday. She was singled out for this benefit, because her reasons for refusing to work on that day were religious, and it was expressly stated that if her reasons had had to do with family care that the case would not have gone favorably to her. The second and more telling instance of classification according to religion in vindication of free exercise.

Now my question is: Does your principle stand when it applies to the vindication of free exercise, so that it favors religion, and not stand when the case is opposite?

MURRAY: First of all, my recollections of the Everson case are vague. It was in 1947 that it was decided. I seem to recall that one of the lawyers was trying to make the point that the law should be struck down, precisely because it was an unreasonable classification according to religious beliefs. The court decided to play it the other way: that not to admit Catholic children to enjoy these benefits, transportation by buses, would have been to classify them out on grounds of religion. I would want my principle to hold in full universality.
SMITH: Professor Kurland has argued this same point: classification according to religion should never be done, and that would have meant that Mrs. Sherbert would have been out of work and out of social security because her religious principles forbade her to work on her Sabbath day. So the Court went against that general counsel contained in this principle in order to vindicate her freedom of exercise against the indirect pressure of denial of unemployment compensation.

MURRAY: The problem of classification is a delicate and needed one, in its thrust, in its direction, and then of course in verifying the famous adjective that goes with it, “reasonable” classification. You are saying then that if this principle were to be held with full universality, then the Court was wrong in the second case that you are mentioning. Is this right?

SMITH: I think that is the impression I would draw. I myself think that maybe we ought to go this far: the universality of this rule can be broken when a free exercise matter is in question. But that also is a delicate matter.

MURRAY: Yes, very delicate at the moment in American courts, because it is not entirely clear whether or not the presumption today does stand for free exercise, or for no aid to religion.

CROSSEN: I would like to ask two brief questions. The first is whether you think that the substance of the argument you have presented here could be translated adequately into the language of “what is right” as distinguished from what is “rights”—for example, to speak of the “rightness” of following one’s own conscience, and consequently the obligation of others to acknowledge one’s response to “rightness.”

And the second question concerns what seemed to me possible limitations on the sense of freedom in your remarks and perhaps in the document. You speak of the obligation of government to safeguard the freedom of the religious conscience. Is “safeguard” here taken as a minimal term, or as a term that would exclude a positive action on the part of government to promote the free exercise? What I am concerned with here is the negative cast of the conception of freedom in your relating it to the obligations of the state. I think you probably know what I’m driving at here.

MURRAY: Yes, I was afraid somebody might head toward difficult and somewhat troubled waters, that the Declaration itself tried to skate around. It wanted to insist, in the first instance, that the content or object of the right was an immunity. On the other hand, one of the great preoccupations of the Council as well as the Secretariat was that this Declaration might be construed as somehow, rather belatedly, canonizing what is usually known as laicism, or what—I don’t like to use the term because it is so ambiguous—some call an exaggerated conception of the separation of Church and state. In order to avoid this possible misinterpretation of the Declaration, that rather general and somewhat enigmatic phrase was put in at the end of
article 3. It says: "Government, therefore, ought indeed to take account of the religious life of the people and show it favor, since the function of government is to make provision for the common welfare. However, it would clearly transgress the limits set to its power were it to presume to direct or inhibit acts that are religious."

You see, here is the difficulty, at least my difficulty. I don't see how you can promote an immunity—making somebody more and more immune. This just doesn't make any sense to me; it never has. Therefore, as I understand the doctrine of the Declaration, it is this: the right to religious freedom, its content, is simply an immunity. However, government has not done its full duty to society when it has guaranteed this immunity and protected it with the legal armature of law. There is the further fact of religion in society, and this fact, as a sheer religio-social fact, claims the attention of government; it is not to be denied, certainly, is not even to be disregarded, but is to be taken account of and indeed shown favor on grounds that are mentioned later on, namely, that society itself may benefit in terms of justice and order, and so on. Therefore, the duty of government to favor religion in society does not derive from the rights to religious freedom, but from another root. So at least I understand the matter. But, you see, one of the difficulties with the whole declaration is that it did not want to get into the broader problem of Church and state; it simply wanted to prevent such a Declaration from appearing to favor an older laicist or secularist conception of the problem of Church and state. That is why this little sentence was put in.

CROSSON: Let me just add one remark to that. I wonder if some of this problem is not smuggled into your remark about freedom being the highest political goal, and you quote the preamble to the Constitution of the United States, though of course dropping out the other political goals which the Constitution enumerates. I wonder if the ambiguity here isn't hidden in whether we take freedom in the sense of immunity or in the sense of freedom for certain goals, and understand government to be concerned, not with coercion, but with the making accessible to its people the means for the exercise of the guaranteed immunities.

MURRAY: I am not at all sure that that second interpretation was in the minds of our founding fathers. When they wanted to insure the blessings of equal liberty to ourselves and our posterity, they were thinking in terms of immunity; they had not yet got on to the days of the Great Society in which we live; wherein the criterion of governmental action seems to be providing the possibility. I am perfectly willing to admit that this is progress; I am not, therefore, sneering at the Great Society by any means. You may have noticed as I was talking I left out highest political goal, because I am
not at all sure freedom is the highest political goal. I would fully accept your interpretation of that freedom as a goal in society as inclined, the duty on the part of government being to supply the fullest possible measure of what Mortimer Adler, for instance, would call the freedom of self-realization, by providing a multitude of opportunities in terms of which people could pursue, through their own choice, their own higher perfection.

COTTRELL: Father Murray, one afternoon at the American Bishops' press panel in Rome last fall, I believe you made the suggestion that the Declaration on Religious Freedom might be considered a first step in the direction of religious freedom, implying that other steps might be taken. I wonder if you could suggest what further steps in this direction might well be taken.

MURRAY: Well, there was one suggested by Dr. Wolf here in a paper that he gave me and as a matter of fact was suggested in what, I take it, was the official report on Vatican Council II made by the World Council of Churches. In the section on religious freedom they mentioned this possibility: namely, that now that this Declaration is out, would it not be possible to have a joint declaration made by the World Council of Churches, through some appropriate organ, and the Catholic Church, again through some appropriate organ, in order that they might be a common Christian witness in the world today, a world in which religious freedom is still so largely flouted. This was actively discussed in Rome, as a matter of fact. This would be one further step. There is the possible second further step, namely, ecumenical dialogue with regard to the bases of religious freedom. This was discussed, you remember, at a meeting of the observers when we were all in Rome in those good old nostalgic days. What are we all going to do next fall, by the way? I would consider a joint declaration almost a certainty. I don't know just when it would happen. We are all sort of catching our breath at the moment.

COTTRELL: I believe that afternoon at the Bishops' press panel the suggestion had been made that there might be further steps in the direction of internal religious freedom within the Church. Would you care to comment further on that as an outgrowth of the present Declaration?

MURRAY: This is most important. I certainly believe that the problem of freedom within the Church is one of the theological implications of the Declaration on Religious Freedom, one of the four that I mentioned. The second is the secularity of the secular. The third is the development of this particular doctrine. And the fourth is the transition from classicism to historical consciousness which is the broadest problem of all. Having declared religious freedom in the civil and social order, we've got simply to face up to the problem of freedom within the Church. I see no reason why, mutatis mutandis, the principles of the Declaration itself—notably the dignity of
man and that there be as much freedom as possible and only as much restriction as necessary—should not also be valid within the Church as well as within civil and social society.

Cooke: I simply wanted to raise that same question about the application of these principles to the situation within the Church and to ask more specifically if that implication arose at the Council in the discussion of this matter?

Murray: Very much so; so much so that it was the express wish of Pope Paul himself, that the Declaration should make a clear distinction between two distinct problems: the problem of religious freedom in the technical sense, and the problem of freedom within the Church. And that is why certain changes were made within the text—notably the omission of a proemium on freedom in the history of salvation, which at one time occupied a place within the text. They very seriously considered this matter and the decision was that the Declaration would confine itself to the narrower issues and clear up, first of all, this dreadful ambiguity in Catholic doctrine, before we get on to the other shopping.

Litell: When the discussion starts with the political issue on the matter of separation of Church and state, it inevitably ends in the ditch. Either we argue that separation is impossible because some kind of ideological Christianity is necessary to shore up a society, or we argue that separation is essential because we want that kind of a state. In the last years we certainly learned that you can have separation without having religious liberty; that is the lesson from the Third Reich, and the lesson now from communist areas. The great strength of this Declaration is that it puts the whole claim on higher ground, but it puts it on the ground chiefly of the dignity of the human person, of natural law, rights, dignities and immunities of the person. I would like to know what your conviction is as to the dignities and immunities and rights of groups, if you will? The General Board of the National Council of Churches discussed this matter recently. In Protestant thinking, too, there is a great deal more certainty about the integrity of the individual conscience than there is about the autonomy or integrity of groups of dissenters. How would you feel on that point?

Murray: Well, it seems to me that the Declaration is extremely explicit and also extremely detailed with regard to the religious rights of religious groups, churches, or whatever they choose to call themselves. That section was composed with considerable care in order that it might be the charter of the freedoms that the Catholic Church considers herself entitled to, and also that it might cover the substantially identical social freedoms, collective corporate freedoms, which the great statements of the World Council of Churches speak of. And it has been acknowledged that, by and large, give or take a freedom or two, the two things do pretty much cover the same list.
LITTELL: But then may I press the real point? Doesn't this have very clear ecclesiological implications? Isn't a certain doctrine of the Church, or a set of doctrines, implied, that emphasizes voluntaristic membership (not voluntarism) rather than the traditions of establishment? At the time of the founding fathers there was the natural law tradition which comes through very clearly, it seems to me, in terms of the integrity of the human person. There was also very strong free Church that argued on entirely different grounds than the state Church and the establishment, argued that the true Church is, by its very nature, a voluntary association, one separate from Church support or control of any kind. Now in this Declaration the one tradition comes through loud and clear and is elaborated in terms of wisdom accumulated subsequently. But when we speak of the immunities, rights and dignities of groups of religious conscience and concern and discipline, isn't there a very clear implication as to the doctrine on the Church?

MURRAY: If you get into the problem of separation of Church and state, obviously ecclesiological presumptions become vastly important. However, if you stay simply arguing the question of the free exercise of religion, I am not so sure that ecclesiology gets into it all that much. You can afford to leave it aside. When you talk about separation of Church and state it matters terribly what you mean by the Church. But it doesn't matter so terribly much what you mean by the Church when you are talking about religious freedom—not in the first instance; in the farthest instance, of course, it matters like mad, like anything in the world.

LITTELL: I don't talk about separation of Church and state, because it seems to me when you start with a political issue you inevitably end up with the wrong solution of one kind or another. But if you start with the question of the nature of religion, and the integrity and dignity of group conscience and witness, as well as the rights of the person, then you are going to end up with a certain kind of a church as over against other kinds of churches, aren't you?

MURRAY: I suppose so. It all depends, however, on how you read, not any political tradition, but the word of God. Doesn't it?

GREMILLION: What are the implications of the Declaration for the whole system of concordats and diplomatic relations and ambassadorial apparatus in the Catholic Church?

MURRAY: That calls for prognosis. I don't know. I haven't really thought about it too profoundly, but my guess is that concordats don't have much of a future.

HÄRING: The question was proposed: if the state must promote religious liberty, why then not the Church? In your short answer I saw some difficulty, Father Murray. One of the reasons in the Council was that the state has no competence whatsoever in declaring what is truth. The Church does have.
Can there therefore be a comparison of religious freedom in the state with that within the Church? Therefore, must there not be a very profound distinction between the kind of freedom there is within the Church and within the state?

MURRAY: Of course. We are not confronted here with univocity, but only with analogy. The Church is a society only in a sense analogous to the way in which civil society is a society. So too the Church is an order of law; the Church has authority. So your beginning of discussion of the problem of freedom in the Church must lay down these theological premises for the institution. In other words, we are here confronted with a situation which is somewhat the same and yet completely different from that which obtains in civil society.

HÄRING: I think just the opposite: because the Church has competence in truth, she must give the greatest freedom where she cannot definitely propose the truth. Since the fundamental obligation of the Church is to seek truth, when she cannot speak the truth infallibly, she must promote the greatest liberty for the search for truth. Would you agree with this?

MURRAY: I would surely agree with that. It is not only the in dubiis libertas of St. Augustine that you are asserting, but something more. I would include this under the principle I mentioned before, namely, as much freedom as possible should obtain within the Church, under the guidance, obviously, of prudence. I think that one of the great effects of the Council has been precisely that there was no great preoccupation with the authority of the documents, nor with the degree of certainty that attaches to them. We've been plagued for years in the schools with deciding is this certa et Catholica, is it certa communis, is it proxima heresi. What matters is that the thing is true. A lot of this goes back to the Cartesian era, to the pursuit of the clear and distinct idea, and to the quest of certainty; this was the human quest, more inspired by rationalism than by Catholicism. Now, however, we are in the era of understanding; these affirmations are made and the affirmations are true. It is not a question of how certain they are; what is true is true, and why don't we leave it at that at the moment and get on to something more important, which is to understand what has been said.

SISTER JACQUELINE: If Catholic children are baptized in infancy and educated both in formal schooling and in their family situation with the conviction that they have the faith, and are in danger of losing the faith and have a responsibility for keeping the faith, do they possess the psychic freedom to place a free act of disbelief?

MURRAY: The answer is yes. I don't see how one's psychological freedom is in any sense diminished by the fact that one has been baptized in infancy and brought up a Catholic.

HYSLOP: In the last paragraph of article 4, it is stated: “It comes within
the meaning of religious freedom that religious bodies should not be prohibited from freely undertaking to show the special value of their doctrine in what concerns the organization of society and the inspiration of the whole human activity.” I read it to be a magnificent charter for Christian social action, and I am going to quote it in our next issue of *Social Action*, in answer to all of our critics who are many, I assure you. But I now wonder if it could not be stated in support of the continuing freedom of the exponents of the very doctrine you have exposed and discredited to continue to advocate that doctrine, and freely to do so in the future, both Catholics and Protestants. Would this not be a necessary part of the freedom which is assured to religious bodies, that they continue to advocate a doctrine which you feel is opposed to proper understanding of religious freedom?

**Murray:** That would seem to me a highly arbitrary interpretation of this particular statement of the Declaration. The intention of this statement was to make sure that it was well understood that while the message of the Church is religious, indeed theological, a message of faith, the Church has, nonetheless, a word to say on all social issues in which a religious issue arises. Now it seems to me that would take a good bit of straining to use this principle as the premise to get some action to restore the old thesis.

**Hyslop:** No, I certainly don’t want to see it restored, but I think it should continue to be discussed. That might be an option that your Declaration would make possible. Is that not the fact?

**Murray:** Oh, the discussion would certainly go on, lively, blissfully!