The Declaration on Religious Freedom

The Declaration on Religious Freedom is a document of very modest scope. It is concerned only with the juridico-social order and with the validity, in that order, of a human and civil right to the free exercise of religion. The right is founded on the dignity of the human person; its essential requirement is that man in society should be free from all constraint or hindrance, whether legal or extra-legal, in what concerns religious belief, worship, witness and practice, both private and public. The structure of a rational argument for this right is briefly sketched; norms for legitimate limitation of the exercise of the right are laid down; the duty of government to protect and foster the free exercise of religion in society is affirmed. Then the implications of religious freedom for all Churches and religious communities are set forth in some detail. Thereafter the human right to religious freedom is considered under the light of revelation.

The intention of this section is simply to show that a harmony exists between religious freedom in the juridico-social sense, and Christian freedom in the various senses of this latter concept as they emerge from Scripture and from the doctrine of the Church. The Declaration merely suggests that the two kinds of freedom are related; it does not undertake to specify more closely what their precise relationship is. The conclusion of the Declaration
is a pastoral exhortation to the faithful and a respectful appeal to the conscience of mankind, urging the value of religious freedom, and of religion itself, in the world today.

The Declaration therefore does not undertake to present a full and complete theology of freedom. This would have been a far more ambitious task. It would have been necessary, I think, to develop four major themes: (1) the concept of Christian freedom—the freedom of the People of God—as a participation in the freedom of the Holy Spirit, the principal agent in the history of salvation, by whom the children of God are “led” (Rom. 8, 14) to the Father through the incarnate Son; (2) the concept of the freedom of the Church in her ministry, as a participation in the freedom of Christ himself, to whom all authority in heaven and on earth was given and who is present in his Church to the end of time (cf. Matt. 28, 18. 20); (3) the concept of Christian faith as man’s free response to the divine call issued, on the Father’s eternal and gracious initiative, through Christ, and heard by man in his heart where the Spirit speaks what he has himself heard (cf. John 16, 13-15); (4) the juridical concept of religious freedom as a human and civil right, founded on the native dignity of the human person who is made in the image of God and therefore enjoys, as his birthright, a participation in the freedom of God himself.

This would have been, I think, a far more satisfactory method of procedure, from the theological point of view. In particular, it would have been in conformity with the disposition of theologians today to view issues of natural law within the concrete context of the present historico-existential order of grace. Moreover, the doctrine presented would have been much richer in content. There were, however, decisive reasons why the Council could not undertake to present this full theology of freedom.

1. The Declaration is the only conciliar document that is formally addressed to the world at large on a topic of intense secular as well as religious interest. Therefore, it would have been inept for the Declaration to begin with doctrines that can be known only by revelation and accepted only by faith.
2. What the world at large, as well as the faithful within the Church, wants to know today is the stand of the Church on religious freedom as a human and civil right. It would be idle to deny that the doctrine of the Church, as formulated in the 19th century, is somewhat ambiguous in itself, out of touch with contemporary reality and a cause of confusion among the faithful and of suspicion throughout large sectors of public opinion.

3. The theological structure of the argument, as proposed above, would give rise to historical and theological problems which are still matters of dispute among theologians. There is, for instance, the problem of the exact relationship between Christian freedom and religious freedom. There is, furthermore, the whole problem of the development of doctrine, from *Mirari vos* to *Dignitatis humanae personae*.

4. Christian freedom, as the gift of the Holy Spirit, is not exclusively the property of the members of the visible Church, any more than the action of the Spirit is confined within the boundaries of the visible Church. This topic is of great ecumenical importance, but the discussion of it would have to be nice in every respect, and therefore impossible in a brief document.

5. Finally, there was a serious consideration of pastoral prudence. Christian freedom is indeed asserted over against all earthly powers (cf. Acts 4, 19-20; 5, 29); in this sense it prompted the witness of the martyrs. It is, however, also asserted within the Church; in this sense it is the warrant for charismatic ministries, and it is also the basis of prudent protest when the exercise of authority goes beyond legitimate bounds. As everyone knows, however, the issue of freedom within the Church is neuralgic today, as indeed it was when Paul wrote to the Galatians (cf. Gal. 5, 13). The issue is also highly complicated. It would have been imprudent, therefore, to raise this issue directly in a brief conciliar document. Hence the Declaration is at pains to distinguish sharply the issue of religious freedom in the juridico-social order from the larger issue of Christian freedom. The disastrous thing would be to confuse the two distinct issues. Obviously, the issue of Christian freedom—its basis, its meaning,
its exercise and its limits—will have to be clarified by free dis­
cussion, conducted carefully and patiently in a sustained dialogue
between pastors and people over many years. However, this dia­
logue will be the more successful now that the Declaration has
settled the lesser issue of the free exercise of religion in civil
society.

Narrow though its scope may be, the Declaration is nonethe­
less a document of considerable theological significance. This will
become apparent if the document is considered in the light of
the two great historical movements of the 19th century, both of
which were bitterly opposed by the Church.

I

THE SECULARITY OF SOCIETY AND STATE

The first movement was from the sacral conception of society
and State to the secular conception. The sacral conception had
been the heritage of medieval Christendom and, in a far more
ambiguous form, of the ancien régime. For our purposes here,
two of its characteristics should be briefly noted. First, the Chris­
tian world—or at least the Catholic nation—was considered to
be somehow enclosed within the Church, which was herself the
one Great Society. Second, the religious prerogative of the prince
extended to a care of the religion of his subjects and a care of
their religious unity as essential to their political unity. (This
religious prerogative of political rule was interpreted in a variety
of more or less arbitrary ways, but these details need not detain
us here.)

The 19th century saw the break with this conception of the
sacrality of society and State, and a movement toward their
secularity. As everybody knows, the Church—both in Rome and
in the so-called Catholic nations—opposed this movement with
all the forces at her command. The reason was obvious. After
the revolution in continental Europe (the new Federal Republic
of the United States presents an altogether different case), the
term of the historical movement was not a proper secularity of society and State. What emerged was the laicized State of rationalist or atheist inspiration, whose function was the laicization of society. In effect, what emerged was the ancien régime turned upside down, as Alexis de Tocqueville noted at the time. One might properly regard the Law of Separation (December 9, 1905) of the Third French Republic as the legislative symbol of the new order.

The Church could not in principle accept this new order in its premises, in its ethos, or even in its institutions, primary among which was the institution of the so-called "liberty of cult". Furthermore, the Church did not in fact do a work of discernment of the signs of the times in order to discover, beneath the transitory historical forms assumed by the new movement, the true and valid dynamisms that were at work.

The overt revolt was against the sacrality of society and State as symbolized by the union of throne and altar. Few historians today would deny that this conception and its institutional symbol, for all their venerable antiquity, had become archaistic in the world of modernity. However, the true underlying direction of the new movement was toward a proper and legitimate secularity of society and State. In the depths, where the hidden factors of historical change were operative, what was really going on was a work of differentiation, which is always a work of growth and progress. Civil society was seeking differentiation from the religious community, the Church. The political functions of secular rule were being differentiated from the religious functions of ecclesiastical authority. The trouble was that this work of orderly progress was disrupted and deflected, as so often happens in history.

Chiefly to blame was the disastrous law of contradiction—that desire to deny and destroy the past which was the very essence of Enlightenment rationalism (whereby it aroused the bitter antipathy, for instance, of Edmund Burke). What appeared on the surface, therefore, was not progress but simply revolution. Society as civil was not simply being differentiated from society
as religious; the two societies were being violently separated, and civil society was being stripped of all religious substance. The order of civil law and political jurisdiction was not simply being differentiated from the order of moral law and ecclesiastical jurisdiction; a complete rupture was made between the two orders of law and the two authorities, and they were set at hostile variance, each with the other. Society and State were not invested with their due secularity; they were roughly clothed in the alien garments of continental laicism. At this horrid specter, stalking across the Europe of the Middle Ages, the Church in the person of Pius IX hurled her unmitigated anathema.

Leo XIII first began to discern whither the deep currents of history were setting. In response, he restored to its proper centrality, and also developed, the traditional truth that Gelasius I had sought to enforce upon the Emperor Anastasius in 494 A.D.: “Two there are, august Emperor, whereby this world is ruled by sovereign right (principaliter), the sacred authority of the priesthood and the royal power.” However, Leo XIII transcended the historically conditioned medieval conception of the two powers in the one society called Christendom—a conception that, in debased form, had persisted under the ancien régime, with its Gallicanism and its famous device: “One faith, one law, one king.” In a series of eight splendid texts, stretching from Arcanum (1880) to Pervenuti (1920), Leo XIII finally made it clear that there are two distinct societies, two distinct orders of law, as well as two distinct powers. This was the ancient affirmation in a new mode of understanding—an authentic development of doctrine. On this basis, Leo XIII was able to accomplish a second development. In scores of texts—more than a hundred in all, of which about one-fourth had to do with the Roman Question—he reiterated that the essential claim which the Church makes on civil societies and their governments is stated in the ancient formula, “the freedom of the Church”. It was not possible for him to complete these two developments with a third—the affirmation of the freedom of society and of the duty of governments toward the freedom of the people. In any event,
his doctrinal work cleared the way for further progress in understanding the rightful secularity of society and State, as against the ancient sacral conceptions.

This progress reaches its inevitable term in the Declaration on Religious Freedom. The sacrality of society and State is now transcended as archaistic. Government is not defensor fidei. Its duty and rights do not extend to what had long been called cura religionis, a direct care of religion itself and of the unity of the Church within Christendom or the nation-state. The function of government is secular: that is, it is confined to a care of the free exercise of religion within society—a care therefore of the freedom of the Church and of the freedom of the human person in religious affairs. The function is secular because freedom in society, for all that it is most precious to religion and the Church, remains a secular value—the sort of value that government can protect and foster by the instrument of law. Moreover, to this conception of the State as secular, there corresponds a conception of society itself as secular. It is not only distinct from the Church in its origin and finality; it is also autonomous in its structures and processes. Its structural and dynamic principles are proper to itself and proper to the secular order—the truth about the human person, the justice due to the human person, the love that is the properly human bond among persons and, not least, the freedom that is the basic constituent and requirement of the dignity of the person.

This is the true Christian understanding of society and State in their genuine secularity which appears in Pacem in terris. The Declaration on Religious Freedom adds to it the final clarity in the essential detail, namely, that in the secular society, under the secular State, the highest value that both State and society are called upon to protect and foster is the personal and social value of the free exercise of religion. The values of religion itself for men and society are to be protected and fostered by the Church and by other religious communities availing themselves of their freedom. Thus the Declaration assumes its primary theological significance. Formally, it settles only the minor issue of
religion. In effect, it defines the Church's basic contemporary view of the world—of human society, of its order of human law and of the functions of the all too human powers that govern it. Therefore, the Declaration not only completes the Decree on Ecumenism, it also lays down the premise, and sets the focus, of the Church's concern with the secular world, which is the subject of Chapter XIII. Not nostalgic yearnings to restore ancient sacralizations, not futile efforts to find new forms of sacralizing the terrestrial and temporal order in its structures and processes, but the purification of these processes and structures and the sure direction of them to their inherently secular ends—this is the aim and object of the action of the Church in the world today.

In its own way, the Declaration is an act in that lengthy process known today as consecratio mundi. The document makes clear that the statute of religious freedom as a civil right is, in reality, a self-denying ordinance on the part of government. Secular government denies to itself the right to interfere with the free exercise of religion, unless an issue of civil offense against public order arises (in which case the State is acting only in the secular order, not in the order of religion). On the other hand, the ratification of the Declaration by Vatican Council II is, with equal clarity, a self-denying ordinance on the part of the Church. To put the matter simply and in historical perspective, the Church finally renounces, in principle, its long-cherished historical right to auxilium brachii saecularis (the phrase in Canon 2198 remains for the moment an odd bit of archaism). The secular arm is simply secular, inept for the furtherance of the proper purposes of the People of God. More exactly, the Church has no secular arm. In ratifying the principle of religious freedom, the Church accepts the full burden of the freedom which is the single claim she is entitled to make on the secular world. Thus a lengthy, twisting, often tortuous development of doctrine comes to a term.

Like all developments, this one will initiate a further progress in doctrine, that is, a new impostazione of the doctrine of the Church on the problem of Church and State, as it is called, in
order to restore, and to perfect in its own sense, the authentic tradition. This, however, is a subject in itself, not to be dealt with here.

II

HISTORICAL CONSCIOUSNESS

The second great trend of the 19th century was the movement from classicism to historical consciousness. The meaning of these two terms would require lengthy explanation, both historical and philosophical. Suffice it to say here that classicism designates a view of truth which holds objective truth, precisely because it is objective, to exist “already out there now” (to use Bernard Lonergan’s descriptive phrase). Therefore, it also exists apart from its possession by anyone. In addition, it exists apart from history, formulated in propositions that are verbally immutable. If there is to be talk of development of doctrine, it can only mean that the truth, remaining itself unchanged in its formulation, may find different applications in the contingent world of historical change. In contrast, historical consciousness, while holding fast to the nature of truth as objective, is concerned with the possession of truth, with man’s affirmations of truth, with the understanding contained in these affirmations, with the conditions—both circumstantial and subjective—of understanding and affirmation, and therefore with the historicity of truth and with progress in the grasp and penetration of what is true.

The Church in the 19th century, and even in the 20th, opposed this movement toward historical consciousness. Here, too, the reason was obvious. The term of the historical movement was modernism, that “conglomeration of all heresies”, as Pascendi dominici gregis called it. The insight into the historicity of truth and the insight into the role of the subject in the possession of truth were systematically exploited to produce almost every kind of pernicious “ism”, unto the destruction of the notion of truth itself—its objective character, its universality, its absoluteness.
These systematizations were false, but the insights from which they issued were valid. Here again a work of discernment needed to be done, and was not done. To be quite summary about it, this work had to wait until Vatican Council II. (I am not here speaking of the work of scholars.)

The sessions of the Council have made it clear that, despite resistance in certain quarters, classicism is giving way to historical consciousness. Obviously, neither of these theories has been debated, and perhaps they are not even understood as theories. The significant thing is that the Council has chosen to call itself "pastoral". The term has been misunderstood, as if the Council were somehow not concerned with truth and doctrine but only with life and practical directives for living. To so contrast the pastoral and doctrinal would be disastrous. The pastoral concern of the Council is a doctrinal concern. However, it is illuminated by historical consciousness: that is, by concern for the truth not simply as a proposition to be repeated but more importantly as a possession to be lived; by concern, therefore, for the subject to whom the truth is addressed; hence, also, by concern for the historical moment in which the truth is proclaimed to the living subject; and, consequently, by concern to seek that progress in the understanding of the truth demanded both by the historical moment and by the subject who must live in it. In a word, the fundamental concern of the Council is with the development of doctrine. The scholarly concern of the 20th century has become also the pastoral concern of the Church in the 20th century.

Viewed in this light, the second theological significance of the Declaration on Religious Freedom appears. The Declaration is a pastoral exercise in the development of doctrine. (This, it may be said in passing, is why it met some opposition; classicism—if not as a theory, at least as an operative mentality—is still with us, here and there.) Briefly, the Declaration bases itself on a progress in doctrine that has, in fact, occurred since Leo XIII. It also carries this progress one inevitable step further by discarding an older theory of civil tolerance in favor of a new doctrine of religious freedom more in harmony with the authen-
tic and more fully understood tradition of the Church. Only a bare outline of this progress can be suggested here.

The remote theological premise of the Declaration is the traditional teaching of the Church, clarified by Leo XIII, with regard to the two orders of human life, the sacred and the secular, the civil and the religious. The immediate premise is the philosophy of society and its juridical organization—in this sense, a philosophy of the State—developed by Pius XII and given a more systematic statement by John XXIII in *Pacem in terris*. This philosophy is deeply rooted in tradition; it is also, by comparison with Leo XIII, new.

The Leonine doctrine, more Aristotelian and medieval in inspiration, rested on the conception of the common good as an ensemble of social virtues and values, chiefly the value of obedience to the laws. The Pian and Joannine doctrine, more profoundly Christian in inspiration, rests on the conception of the common good as consisting chiefly in the effective exercise of the rights, and the faithful discharge of the duties, of the human person. Correlatively, in the Leonine conception the function of government was primarily ethical, namely, the direction of the citizen-subject—who was considered more subject than citizen—toward the life of virtue by the force of good laws reflecting the demands of the moral order. In the Pian and Joannine doctrine, on the other hand, the primary function of government is juridical, namely, the protection and promotion of the exercise of human and civil rights, and the facilitation of the discharge of human and civil duties by the citizen who is fully citizen, that is, not merely subject to, but also participant in, the processes of government.

The insight of Pius XII, which lay at the root of the new development, was stated thus: "Man as such, so far from being regarded as the object of social life or a passive element thereof, is rather to be considered its subject, foundation and end." In contrast, the customary focus of Leo XIII's doctrine was on the *principes* (his favorite word), the rulers who wielded in society the power they had received from God. In this latter conception,
society is to be built and rendered virtuous from the top down, as it were; the role of government is dominant. In the former conception, however, society is to be built and rendered virtuous from the bottom up, as it were; the role of government is subordinate, a role of service to the human person. Moreover, in Leo XIII's conception (except in *Rerum novarum*), government was not only personal but paternal; the "prince" was *pater patriae*, as society was the family writ large. In Pius XII's conception, on the other hand, government is simply political; the relation between ruler and ruled is a civil relation, not familial. This was a return to tradition (notably to Aquinas), after the aberrations of continental absolutism and the exaggerations of the Roman-law jurists.

Leo XIII's paternal conception owed much to historical fact and to the political culture of his day. The pivotal fact was the *imperita multitudo*, the illiterate formless masses which reappear time and again in his text. In contrast, Pius XII's political conception was a return to tradition, to the noble idea of "the people", a structured concept at whose root stands, as he said, "the citizen [who] feels within himself the consciousness of his own personality, of his duties and rights, and of his due freedom as joined with a respect for the freedom and dignity of others". This return to the tradition of "the free man under a limited government" (as someone has summarized the basic political insight of Aquinas) was likewise a progress in the understanding of the tradition.

Finally, in Leo XIII the traditional distinction between society and State was largely lost from view; its disappearance from history had been, in fact, part of the *damnosa haereditas*—the fateful heritage—of the ancien régime. It is a noteworthy fact that nowhere in the immense body of Leo XIII's writings is there to be found a satisfactory philosophy of human law and jurisprudence. He was always the moralist, not the jurist. His concern was to insist that the juridical order of society must recognize the imperatives of the objective moral order. This emphasis was indeed necessary against the moral antinomianism and juridical
positivism of continental laicism. However, in consequence of this polemic necessity, Leo XIII gave little if any attention to the internal structure of the juridical order itself—the structure, that is, of the State.

This became the preoccupation of Pius XII, as the menace of totalitarianism loomed large, threatening the basic dignity of the human person, which is his freedom. Pius XII revived the distinction between society and State, the essential barrier against totalitarianism. He also made it a pillar of his concept of the juridical State (the phrase is alien in English; we speak of "constitutional government"). The powers of government are not only limited to the terrestrial and temporal order. Since Leo XIII this had been clear doctrine, however much it may have been disregarded in practice. But even within this limited order, the powers of government are limited by the higher order of human rights, defined in detail in *Pacem in terris*, whose doctrine is completed by the *Declaration on Religious Freedom*. The safekeeping and promotion of these rights is government's first duty to the common good.

Even this rapid comparison may help to make clear that, although Leo XIII's theory of civil tolerance was coherent with his conception of society and State, it is not coherent with the more fully developed philosophy of Pius XII and John XXIII. For Leo XIII the power of the ruler was *patria potestas*, a paternal power. The ruler-father can, and is obliged to, know what is true and good—the true religion and the moral law. His primary duty, as father-ruler, is to guide his children-subjects—the illiterate masses—to what is true and good. His consequent function is to protect them against religious error and moral aberration—against the preachments of the "sects" (that favorite Leonine word). The masses are to be regarded as children, *ad instar puerorum*, who are helpless to protect themselves. They must look to the ruler-father, who knows what is true and good and also knows what is good for them. In these circumstances, and given this personal conception of rule, the attitude of government toward what is error and evil could only be one of toler-
Government permits by law what it cannot prevent by law. Moreover, this civil tolerance is no more than a dictate of necessity; it is practiced for the sake of a greater good—the peace of the community. This theory of civil tolerance may indeed be regarded as a counsel of practical wisdom. It can hardly be regarded as permanent Catholic doctrine, any more than the theory of government, with which it is correlative, may be so regarded. The roots of both theories are in the contingencies of history, not in the exigencies of abiding truth.

Therefore, the Declaration on Religious Freedom puts aside the post-Reformation and 19th-century theory of civil tolerance. The fault is not error but archaism. A new philosophy of society and State has been elaborated, more transtemporal in its manner of conception and statement, less time-conditioned, more differentiated, a progress in the understanding of the tradition.

Briefly, the structural elements of this philosophy are the four principles of social order stated, and developed in their exigencies, in Pacem in terris—the principles of truth, justice, love and freedom. The declaration of the human and civil right to the free exercise of religion is not only in harmony with, but also required by, these four principles. The foundation of the right is the truth of human dignity. The object of the right—freedom from coercion in religious matters—is the first debt due in justice to the human person. The final motive for respect of the right is a love of appreciation of the personal dignity of man. Religious freedom itself is the first of all freedoms in a well-organized society, without which no other human and civil freedoms can be safe.