NOVATE VOBIS NOVALE

The FURROW

A JOURNAL FOR THE CONTEMPORARY CHURCH

Patrick Hannon

Religious Freedom - Then and Now

February 2021

Religious Freedom - Then and Now

Patrick Hannon

Ireland, France, and the United States are but three of the countries around the globe in which religious freedom is at present at issue in public discussion and/or in the courts. Here, a High Court action was initiated in November which challenges restrictions on worship introduced owing to Covid-19, asserting an infringement of a constitutional right. In France there is recurrent controversy around the impact of the doctrine of *laïcité* on the religious freedom of adherents of the Islamic faith, the second biggest religious grouping in that country. In the United States there is a virtually continuous litigation, as religious groups and secularists for their respective reasons oppose policies and laws which involve the freedom of religion guaranteed by the Constitution. And there are countries where people are put to death because they practise a religious faith.

Little of this could have been anticipated when on 7 December 1965, the day before the Council concluded, Pope Paul VI promulgated *Dignitatis humanae*, a Declaration which has shaped Catholic thinking on religious freedom since then. The document's character was described by John Courtney Murray SJ, a key influence on its drafting: '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'[1]. Underlying theological questions remained to be tackled, as did questions about the concrete application of the document's principles. And who then anticipated such developments as the migrations that our times are witnessing, or the kind of religious pluralism now globally evident?

The Declaration's progress through the Council was not trouble-free. Questions were raised as to its continuity with earlier church

1 'The Declaration on Religious Freedom', in *War, Poverty, Freedom: The Christian Response,* (Concilium 15, ed. Franz Böckle), New York: Paulist Press, 1966, pp 3-16.

Patrick Hannon is a priest of the Diocese of Cloyne. He is Emeritus Professor of Moral Theology at St. Patrick's College, Maynooth.

doctrine, including that of the self-understanding of the Catholic Church, and the claims encapsulated in the formula 'Error has no rights'. Other contributions wondered about the structure of a theological document which opened with an argument from reason, only later introducing theological considerations, and only as confirmatory of what was already established by rational argument. Yet the Declaration was passed by a vote of 2,308 to 70, and its passage was applauded by the Council Fathers when the result was announced.[2]

And the general reaction, inside and outside the Church, was positive. Catholic commentators saw its letter and spirit as reflecting the desire for *aggiornamento* expressed by Pope John XXIII when he convoked the Council, and its coherence with documents such as the Decree on Ecumenism, the Declaration on the Relation of the Church with Non-Christian Religions, and the Constitution on the Church in the Modern World, itself promulgated on the same day. There was also negative criticism, predictably from traditionalist fringe-groups but also from more moderate quarters, reiterating misgivings of some of the Council Fathers and adding to them; and the criticism continues more than fifty years later. Still, the Declaration has held its own, providing a starting-point and a framework for further thought and discussion, and it is the starting-point of an important document from the International Theological Commission which appeared early in 2019, *Religious Freedom for the Good of All*[3].

An earlier article provided an overview of that document's content, and an intimation of its spirit and intendment[4]. In summary one could say that whilst recognising the signal value of the Declaration, the document points to changes in society and in the Church which necessitate fresh reflection upon the principles which the Council provided. It refers especially to 'a new focus on religious and national traditions in the Middle East and Asia [which] has significantly changed the perception of the relationship between religion and society'; the religious radicalisation known as fundamentalism; a political culture which, while professing ideological neutrality, marginalises or even excludes religious expression in the public sphere; and what it calls an 'on-going post-modern removal of the commitment to truth and the transcendent

2 A scholarly account of the conciliar debates, with useful documentation and commentary, together with a new translation is in David L. Schindler and Nicholas J. Healy Jr., Freedom, Truth, and Human Dignity, Grand Rapids, Michigan: Wm. B. Eerdmans Publishing Company, 2015.

3 Hereinafter *RFGA*. The translation used here, lightly edited for clarity, is accessible at http://www.vatican.va/roman_curia/congregations/cfaith/cti_documents/rc_cti_20190426_liberta-religiosa_en.html

4 *The Furrow*, November 2020.

[which] poses in new terms the theme of religious freedom in both a political and juridical context'.[5]

All of these developments call for a new approach, and they are the focus of the Theological Commission's treatment of the topic. But first, what did Vatican II say? The Commission's document opens with a chapter entitled 'The Perspective of *Dignitatis Humanae* in its Time and Today', elaborated in four sections dealing with, respectively, the situation before the Council, what the Council said, religious freedom after Council, and offering some reflections under the heading 'On the Threshold of Renewal'.

BEFORE THE COUNCIL.

One of the points of contention in the conciliar debates and in the Declaration's reception in the Church at large was the question of its continuity with earlier magisterial teaching and theological thinking. A key to that thinking lies in the principle 'Error has no rights', a notion that at its worst had led to the torture and death of people known as heretics and infidels; at its best to a toleration of other faiths, pending the eventual establishment of 'the one true religion' in a global Christendom. As will be seen shortly, the teaching of the Declaration could hardly be further from such a position, and most attempts at arguing for any continuity between the two are less than convincing.

Not so, however, that of the Theological Commission's document, which explains the change in terms of an interplay between societal changes and a development in church doctrine. At first glance this might look like blaming society for mistakes on the part of church authority, as when it is said that in the past, 'a certain ideological configuration of the State, interpreting the modernity of the public sphere as an emancipation from the religious sphere, caused the Magisterium to condemn freedom of conscience, understood as legitimate indifference and subjective arbitrariness vis-à-vis ethical and religious truth'[6]. But the document's account is nuanced. Earlier reaction of church authority is put in context: 'Christianity represented the State religion and was the de facto dominant religion within western society. The aggressive establishment of a State secularism which repudiated the Christianity of the community was first theologically read as

5 *RFGA* §5

6 *RFGA* §15. 'Provocato' is the verb used in the Italian version in reference to the Magisterium's reaction, and on the Vatican's website this is translated as 'provoked', a word which in English usage often suggests anger in the response of the one provoked. Since in Italian it may mean no more than 'caused' or even 'prompted', and looking at tenor of the passage as a whole, it seems preferable to avoid the more loaded word.

a sort of "apostasy" from the faith, rather than as a "legitimate separation" between Church and State'. This information is not offered as though an excuse, and it is pointed out that another consequence of the events thus summarised was 'a better self-understanding of the authority of the Church vis-à-vis political power, and a gradual broadening of the reasons for the Church's freedom within the framework of fundamental human freedoms'[7]. The section concludes with a note on the particular contribution of Pope St John XXIII, whose thinking as expressed in the encyclical *Pacem in terris* and elsewhere had, as the document puts it, paved the way to the Council. Pope John had described the rights and responsibilities of persons from the perspective of the Universal Declaration of Human Rights, and he taught that the harmonious coexistence of peoples presupposes freedom. A brief synthesis of Pope John's thought draws on several of his writings and addresses: 'The person's vocation is found within a God-given capacity to seek the truth with one's own intelligence, choose the good with one's own will, and assent wholeheartedly to the divine promise of salvation, a promise of God's love that redeems and completes the human being. And the disposition to freedom must be defended from every type of abuse, intimidation, or violence'[8]

DIGNITATIS HUMANAE[9]

There follows an account of the Declaration's content in terms of four arguments justifying the belief that religious freedom is a right founded upon the dignity of the human person, arguments 'fully revealed by the light of divine revelation, freely welcomed in the act of faith, and clarified by the reflections of the Church'. This is an orderly approach, and the material selected furnishes the background to the document's later treatment of themes requiring attention in the changed circumstances of our time. But the density of the writing makes paraphrase or summary difficult and, rather than rehearsing the arguments in anything like due detail, our purposes may be served by a short account of the Declaration's thinking which goes to its essence, followed by an indication of some particular emphases in the Theological Commission's treatment.

The core of the teaching can be put briefly: it is an affirmation of a right to religious freedom, founded upon the dignity of the human person, and seen in the light of the nature of the search for truth. The right is formulated in the second paragraph: 'This

7 *Ibid.*
8 *RFGA* §16.
9 Hereinafter *Dh*

freedom means that all are to be immune from coercion on the part of individuals or of social groups and of any human power, in such wise that no one is to be forced to act in a manner contrary to his or her own beliefs, whether privately or publicly, whether alone or in association with others, within due limits'. The due limits are later specified as 'the just requirements of public order', and the concept of public order is explicated in paragraphs 6 and 7.

The dignity of the person resides in the twin gifts of reason and freedom (*Dh* §2), and it is of the nature of the search for truth that 'the inquiry is to be free, carried on with the aid of teaching or instruction, communication and dialogue, in the course of which people explain to one another the truth they have discovered, or think they have discovered, in order thus to assist one another in the quest for truth' (§3). Everyone has the duty, and therefore the right, to seek the truth in matters religious, but 'people cannot discharge these obligations in a manner in keeping with their own nature unless they enjoy immunity from external coercion as well as psychological freedom' (§3); 'The freedom or immunity from coercion in matters religious which is the endowment of persons as individuals is also to be recognized as their right when they act in community' (§4); and, critically: 'the right to religious freedom has its foundation not in the subjective disposition of the person, but in his or her very nature. Hence the right to this immunity continues to exist even in those who do not live up to their obligation of seeking the truth and adhering to it and the exercise of this right is not to be impeded, provided that just public order be observed' (§ 6)

The concept of public order as that expression is used in the Declaration is not the same as that of common law legal systems such as our own, where it refers to behaviour in public places and is violated by, for example, being drunk and disorderly in the street. Rather is it a version of a concept familiar in continental civil codes, where it has a more ample connotation, indicated here in the Declaration's characterisation of it as a 'fundamental constituent of the common good'. 'Common good' is a term of art in Catholic social teaching, and the Declaration reproduces a well-known general description: '[it] consists in the entirety of those conditions of social life under which persons enjoy the possibility of achieving fulfilment in a certain fullness of measure and with some relative ease'[10]. It is also expressed in terms of the requirements of public peace, justice, and public morality.

Turning to the four arguments which provide the framework for the Theological Commission's account of the thought of *Dignitatis humanae*, and given the density already mentioned, what follows

10 *Dh* §6

here cannot capture the rich content of the passages in which the arguments are elaborated, but the essence and something of the style of the presentation may be seen.[11]

The *first* argument concerns the integrity of the person, by which is meant, in the words of the document, the impossibility of separating one's internal freedom from its public manifestation. Human beings are endowed with reason and will, by virtue of which they are called into a relationship with goodness, truth and justice, in reality a relationship with God; and this is the radical foundation of religious freedom. And 'the central point is that the sanctity of each individual's freedom cannot be coerced or hindered in the exercise of authentic religion.'

The *second* argument starts from the duty to seek the truth which, the Commission says, 'demands and presupposes dialogue between human beings in accord with their nature as social beings.' Moreover, 'religious freedom is not restricted to the individual but involves the whole community, and in a particular way the family'; and here the document draws attention to the special role of the family, in the Council's words: 'The family, since it is a society in its own original right, has the right freely to live its own domestic religious life under the guidance of parents. Parents, moreover, have the right to determine, in accordance with their own religious beliefs, the kind of religious education their children are to receive. Civil powers, in consequence, must acknowledge the right of parents to make a genuinely free choice of school and other means of education'.

The *third* argument echoes the first when it speaks of the person as *homo religious,* for in the first argument it has been said that the relationship with the good to which human beings are called is in reality a relationship with God. And the human being is by nature social, so that it is natural for men and women to manifest their religiosity not only by internal acts but also in public worship. Free exercise of this relationship in society must be immune from any external coercion that would impinge upon this freedom, the Commission says, and civil and political authorities, have no right to interfere in questions related to the domain of personal religious freedom. 'The State must also respect the public manifestation of one's religious freedom as long as it does not impact negatively on the just public order of society, based, in any case, on proven facts and correct information'.

The *fourth* argument concerns the limits of purely human, civil and legal power in matters of religion, implicit in what has already

11 In order to obviate a proliferation of footnotes, it might be noted here that the remaining quotations are from *RFGA* §§22-28, which also contain the references to the sources of quotations used in the document.

been made very clear. An important addition is in the attention called also to religion's responsibility to be fully aware of the legitimacy or not of its public manifestation – a point touched on in the document's opening chapter. 'Indeed, the clarification of the limits of religious freedom, with a view to the safeguarding of justice and peace, are integral parts of the common good.'

AFTER THE COUNCIL

The section is introduced by recalling what the Council said about the then contemporary scene: that although a right to religious freedom is recognised by most constitutions, there are regimes in which the recognition is not matched in the practice of the public authority. To which the Commission adds: 'Fifty years on new threats against religious freedom have acquired global dimensions. These threats place various moral values at risk, as well as the interpretation of the important international speeches, discourses, and teachings of the papal magisterium. The Popes of our time clearly indicate that this theme… poses anthropological, political, and theological questions regarding the fate of the common good, and peace between peoples of the world'.

Drawing on various addresses and writings, the Commission recalls certain themes in the teaching of the popes from St Paul VI to Francis, as they reflect upon or elaborate themes of the Declaration. For Pope Paul a key insight was the importance of dialogue, which in today's context, he noted, must also involve other religions; and such dialogue 'must have the attitude of openness with regard to others without the temptation to condemn a priori, combined with the imperative to avoid harmful polemics which unduly offend other believers.' For Pope John Paul, religious freedom, 'the foundation of all other freedoms', is not just a right among others but '[the] guarantee of all freedoms that ensure the common good of persons and peoples'. And 'this right is the basis of peaceful civil coexistence, it is intrinsic to true democracy, a necessary guarantee of life, justice, truth, peace, and the mission of Christians and their communities'.

Pope Benedict's thought is presented by way of a summary of ideas from his message for World Day for Peace 2011. Benedict, with Pope Paul, sees the right to religious freedom to be founded upon the dignity of the human person 'in as much as he or she is a spiritual being, one who is relational and open to the transcendent'. Importantly he adds: **'**[I]t is not therefore a right reserved to believers alone but is shared by all people, since it is the synthesis and summit of all other fundamental rights'. When respected by all, religious freedom is 'the sign of a political and legal society that guarantees the realisation of authentic and integral human

development'. With Paul also, he is conscious of the importance of dialogue, and with all the popes from Paul onwards, of the connection between religious freedom and societal stability and peace. The promotion of justice, unity, and peace for the human family, favours the search for truth that focuses on God, and ethical and spiritual values that are shared and universal. This search ultimately encourages dialogue between all for the common good in the construction of a peaceful social order.

On the contrary, a lack of respect for religious freedom at any level of life: individual, common, civil, or political, offends both God and human dignity, creating situations of social disharmony. Such disrespect is evident in religious sectarianism and fundamentalist violence, but also in various forms of religious discrimination and in militant ideological secularisms. Benedict speaks again here of a 'positive secularism' which, according to the document, includes the notion that State institutions should promote religious education as 'the highway which leads new generations to see others as brothers and sisters and work together'. But, again, a correlative responsibility on the part of the religions is indicated: they 'must insert themselves in a dynamic of purification and conversion, [a] task of right reason illuminated by right religion'.

Pope Francis thought it necessary to stress that religious freedom does not aim at preserving a 'subculture', a fear sometimes voiced, and a criticism made by a certain kind of secularism; rather it 'constitutes a precious gift of God for all, a fundamental guarantee of every other expression of freedom, a bulwark against totalitarianism, and a decisive contribution to human fellowship'. Francis has pointed out that some of the classical texts of the religions have a motivating power that stimulates thought and increases understanding and sensitivity. He joins his predecessors in calling on governments to protect and defend freedom of conscience and religious freedom as foundational among human rights. He often refers to the martyrs of our day, victims of persecution and violence for religious reasons, as well as criticising ideologies that exclude God from the life of individuals and communities. But he adverts, too, to the religions' responsibilities: 'authentic religion, starting from its own interiority, must arrive at an account of the existence of the other in order to foster a common space, an environment of collaboration with all, in the determination to walk together, to pray together, to work together, together to establish peace'.

A NOVELTY THRESHOLD?

This somewhat opaque expression heads the concluding section of the document's treatment of *Dignitatis humanae*. It returns to the question of the continuity of the Declaration's teaching with

earlier Magisterial and theological teaching and thinking, and to difficulties in its reception, and it characterises the post-Conciliar Magisterium as concerned to underline 'the dynamics intrinsic to the process of the homogeneous evolution of doctrine'. The concern seems to resonate with the authors of our document, and their response touches on both the issue of development of doctrine and on the significance of the 'new orientation' in thinking about religious freedom.

As regards the former, they quote from the Declaration itself: 'This doctrine, received from Christ and the Apostles, the Church has therefore, in the course of time, kept and transmitted. Although at times in the life of the People of God, journeying through the vicissitudes of human history, there have been ways of acting which are not in conformity - even contrary - to the spirit of the Gospel, the Church has always taught that no one can be compelled to faith'. And as to what the new way of thinking might imply for evangelisation, it says: 'This is the dynamic of the inculturation of the Gospel, which is a free immersion of the Word of God in cultures, in order to transform them from within, illuminating them in the light of Revelation, in such a way that faith itself allows itself to be challenged by contingent historical realities – interculturality – as a starting point for discerning deeper meanings of revealed truth, which in turn must be received in the culture of the context'. So much for the Declaration on Religious Freedom, its essence, its novelty, its impact upon the life of the Church over more than half a century. It was an extraordinary achievement: its essential principles remain valid, and its insights will continue to illuminate the way ahead. But much has changed, and the Theological Commission was charged with a study of the changes, and with identifying future needs and challenges. What is offered in their document is, in their own words, a theological-hermeneutical reflection which will suggest a reasonable renewal of the reception of *Dignitatis humanae*, and present a basis for the integration – anthropological and political – between the personal and communal application of religious freedom.

What light is shed by the Commission's thinking on current issues of the kind listed in the paragraph which opens this piece? An answer would require three separate articles, for in each case the issues are different, but the document does in fact contain the makings of an approach to at least some of the questions. What these makings are should emerge as, in a couple of further articles, we look at the rest of *Religious Freedom for the Good of All.*