

TOWARDS A NEW THEORY OF RELIGIOUS FREEDOM

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The Declaration on Religious Freedom *Dignitatis Humanae* of the Second Vatican Council grounds the right to religious freedom in men as persons rather than in truth as such. This shift of emphasis points to a movement in Catholic theology away from the long held tolerance-theory. Up to the early 1950's the "official" attitude of the Catholic Church, as represented in its text books of Canon Law and even in the unthinking spontaneity of the faithful in general, was one of religious tolerance. Till then, as such, the Church never countenanced the right of religious freedom. However, the tolerance-theory, as expressed in the distinction between "thesis" and "hypothesis", whereby the establishment of the Confessional Catholic State was claimed to be the transhistorical ideal situation for the Church, has been superseded by a doctrine of religious freedom expounded in the Declaration of Vatican II. In this study we would like to trace the theological and historical background which led to a new theory of religious freedom before the doctrinal development in the area could take place in the Catholic Church.

According to the Tolerance-Theory, the State had the right and duty in principle (**thesis**) to suppress public profession of false religions. In practice, however, i.e. (**hypothesis**) 'non-establishment' of the Catholic Church could be tolerated when legal and constitutional acknowledgement was morally impossible. Thus in practice (**in hypothesi**), since in most countries suppression of false religious creeds could cause more harm than good, religious tolerance on the part of the State was countenanced. It was only later, and gradually, that the problem altered into the wider area of religious freedom as a civil right in conjunction with the freedom of the Church as a God-given right. A transition from the notion of toleration to the positive right of religious freedom took place within the Church, concentrating not so much on the concept of religious freedom as it pertains to the free internal adherence of faith, but more on the juridical and political entitlement to profess publicly any form of religion, without being hampered or restricted in one's public life.

Later in this study there will be occasion to reflect on what religious freedom means today. But at the outset of our search for a new theory of religious freedom it is important for the theologian to realize that the immediate conceptual question is to understand religious freedom as a legal institution in the juridical order. As such, religious freedom is an aspect of contemporary historical experience, insofar as it presents itself

as a demand of the personal and political consciousness of contemporary men.

Obviously the religious freedom we are in search of is not the freedom wherewith Christ has set us free, referred to by St. Paul in Galatians 5:1; nor has it anything to do with the status of the member of the Church in the face of the authority of the Church. And it has nothing to do with the standing of the creature in relation to the dominion of God as Creator over his creatures. In our case, religious freedom is an affair of the social and civil order; it is an immunity that belongs to the human person within society and is guaranteed in civil law.

Certainly, religious freedom is not an altogether novel concept in the Roman Catholic Church, although it had never been proclaimed a doctrine of the Catholic Church in a solemn and authoritative way until the advent of the Second Vatican Council. However, before we attempt to trace, in this article, the theological and historical background of religious freedom in the Church, it is necessary for us to clarify two points.

First, although the Catholic Church appears to have upheld throughout her history the notion of the freedom of acceptance of faith, at any rate the public expression of such freedom often appeared to substantially coincide with the history of religious tolerance within Christianity over the centuries.

Second, the juridical concept of religious freedom is quite complex. From the very start, we draw up a distinction between religious freedom in its contemporary juridical meaning and "freedom of conscience" and "freedom of worship" in the sense of nineteenth-century continental laicism. We add here that with the juridical notion of religious freedom it became customary to make a general division between "freedom of conscience" and "the free exercise of religion". This terminology actually goes back to the sixteenth century and it has never been changed since.

In its juridical meaning, freedom of conscience is the human and civil right of the human person to immunity from all external coercion in his search for God, as well as in the investigation of religious truth, in accepting or rejecting religious faith, and in the living of his interior religious or non-religious life. In other words, it is essentially the freedom of personal religious decision — a freedom which is basically social. In making his religious decisions, man has the right to freedom from coercion by any human forces or powers within the social sphere.

In its turn, the free exercise of religion or religious freedom is commonly understood to include 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.

1. THEOLOGICAL AND HISTORICAL BACKGROUND OF RELIGIOUS FREEDOM

Christianity stressed in principle the importance of the human conscience. As a means of guidance in one's life and as a judge of one's action, St. Paul recommended to Timothy a love that issued from a pure heart and a good conscience and a sincere faith.¹ And in the Christian dispensation, conscience can only approach faith in freedom. Christ himself never coerced anybody. After he preached and taught, he invited people to follow his ways, while leaving every person free. One would presume that the ideal Catholic is the person who has given his adherence to the Church by a free and responsible act of faith, and that the Church herself has no right to compel such adherence which springs from a basic conscientious decision of the individual.

i. THE EARLY CHRISTIAN AND PATRISTIC PERIOD

Christianity came on the scene of the Roman Empire as a small community. At the initial stage the Christian community adopted a respectful and submissive attitude towards the pagan Roman State, provided the State's orders did not clash with God's and the Church's commands. As long as the Roman Empire was pagan, the Christian Church could at best only expect freedom from persecution. The refusal by Christians to recognise the divinity of the Roman Empire was considered to be political treason and, consequently, for the first three centuries of its existence, Christianity was pronounced a "**religio illicita**" (an unlawful religion).

The Christian apologists maintained that religion was a matter of free choice and no one was to offer sacrifice or worship against his will.² Tertullian held that it was a matter of both human and natural law that every man could worship as he wished. He claimed that it was not in the nature of religion to impose itself by force. The Edict of Milan, promulgated in 313, and the conversion of Constantine brought to the Church both freedom and power. It proclaimed the freedom of all religions to exist and granted freedom to all forms of worship without restrictions. The Edict stated that it suited the tranquillity which the empire enjoyed if all the subjects were completely free to adore the god of their choice and if no cult was deprived of the respect that was due to it.³ St. Augustine encapsulated his teaching that "no man can believe unless he wants to" in the Latin dictum: **credere non potest homo nisi volens**. Other contemporary fathers of the Church, like Athanasius and Hilary upheld that the proper character of religion was not to impose itself but to persuade. They maintained that since the Lord God did not want forced homage it would

1. 1 Tim. 1:5: whereas the aim of our charge is love that issues from a pure heart and a good conscience and a sincere faith. (R.S.V.)
2. J. Lecler, "Religious Freedom: An Historical Survey", *Concilium*, Vol. 8, No. 2, 1966, p. 4.
3. Cf. Eusebius, *Historia Ecclesiastica*, liber IX, cap. 9, and liber X, cap. 5.

have been against the Spirit of Christianity if violence were used to establish what was considered to be the true faith⁴.

By the edict *Cunctus Populus*⁵ in 380 A.D. Christianity, in the form of Catholic Orthodoxy, was established as the State religion of the Roman Empire. Those following the orthodox faith were to be known by the name of Catholic Christians. It is interesting to note how, towards the end of the fourth century, the situation within the Roman Empire was reversed and, in turn, it was 'Paganism' that was declared as the unlawful religion — '*religio illicita*' — instead of Christianity. At any rate it was not too long before the Roman Emperors were making arrogant claims to subjugate the Church and make decisions themselves when disputes arose in the ecclesiastical sphere⁶. Such authority came to be known as Caesaropapism.

Towards the end of the fourth century it was St. Ambrose, Bishop of Milan, who had become the first churchman to speak up against the allegation that everything had to be subjugated to the power of the emperor. He declared that where matters of faith were concerned it was the custom of Bishops to judge Christian emperors, not for emperors to judge bishops⁷. He upheld that the emperor was within the Church, not above the Church. In 390, St. Ambrose went to the extent of excommunicating the Emperor Theodosius himself, and Theodosius eventually performed public penance in acknowledgement of his faults in order to be readmitted to communion. It is relevant here to refer briefly to the 'Gelasian' theory propounded by Pope Gelasius I (492-496). It envisaged two powers governing Christianity, namely spiritual papal authority and secular civil power, each with its own independent sphere of action. This theory held sway for almost six hundred years.

In 633, referring in particular to the Jews, the Fourth Council of Toledo⁸ taught that it was unlawful to use physical coercion to force them to embrace the Christian religion. Rather than by way of coercion they

4. J. Lecler, *op. cit.*, p. 5.

5. On February 27, 380 A.D., Catholic Orthodoxy was established as the State religion of the Roman Empire by the Edict *Cunctus Populus* of the Emperors Gratian, Valentinian II and Theodosius I. The text of the Edict is given in I. B. Lo Grasso, *Ecclesia et Status, Fontes Selecti Historiae Iuris Publici Ecclesiastici*, Pontificia Universitas Gregoriana, Rome, 1952, N. 63. Concerning those who followed the orthodox Christian doctrine the document says in part: *Hanc legem sequentes Christianorum Catholicorum nomen subemus amplecti.*

6. J. Hamer and C. Riva, *La Libertà Religiosa nel Vaticano II*, Elle Di Ci, Torino, 1966, 18-20.

7. B. Tierney, *The Crisis of Church and State, 1050-1300*, Prentice Hall, Englewood Cliffs, New Jersey, 1964, p. 9.

8. Migne, *Patrologia Latina* (PL), LXXXIV, col. 379.D, Canon LVII, referring to the Jews, states: *Non enim tales inviti salvandi sunt, sed volentes, ut integra sit forma iustitiae ... Ergo non vi, sed liberi arbitrii facultate ut convertantur suadendi sunt, non potius impellendi.*

were to be persuaded to be converted out of their own free will. Over two centuries later, in 866, Pope Nicholas I, in a rescript to King Boris of Bulgaria concerning those who were unwilling to accept the Christian message, protested against coercive methods, while extolling the principle that each person ought to be left free to accept or reject the faith⁹.

ii. THE MIDDLE AGES

As has already been said, the Catholic Church had never, before the Second Vatican Council, embraced a doctrine of religious freedom; and the development of the notion of religious freedom within the Church had often substantially coincided with the history of religious tolerance. And it is in this spirit of tolerance that Pope Innocent III in 1199 wrote concerning the toleration of those having different religious persuasions, as he refers to the Jews. "No Christian", he affirms, "should compel them to receive baptism, while reluctant and unwilling"¹⁰.

Tracing out the basic Catholic doctrine on religious tolerance, St. Thomas had summed up the current doctrine that no violence was to be done to non-believers to be brought to the faith. This was the doctrine passed into the canonical collections of the eleventh and twelfth centuries. Hence although Aquinas was directly teaching a doctrine of tolerance he was also implicitly espousing the general concept of religious freedom while asserting that among the non-believers there were those like the Jews and the Gentiles who never received the faith; who as such were not to be forced into the faith, because "to believe is a matter of free-will"¹¹.

iii. THE SIXTEENTH CENTURY

During the later Middle Ages, there accumulated many long-standing tensions as a result of manifold abuses within the Church. This was brought into the open by the challenge of Martin Luther (1483-1546), who attacked Catholic authority at the roots, particularly the Papacy as the seat of that authority. The Reformation eventually brought about serious rifts in Christendom, as it began to break up into nations on the political level. Through the rise of Protestant Churches it soon started to break up in

9. *Enchiridion Symbolorum*, eds. H. Denzinger et A. Schonmetzer, Herder, Rome, 1965 (Hereafter referred to as DS, along with the marginal number) DS, No. 647, Resp. *Ad Consulta vestra, ad Bulgaros: De his (iis autem), qui christianitatis bonum suscipere renuunt ... nihil aliud scribere possumus vobis, nisi ut eos ad fidem rectam monitis, exhortationibus et ratione illos potius quam vi, quod vane sapiant, convincatis ... Porro illis violentia, ut credant, nullatenus inferenda est.*
10. DS, N. 773, Const. *Licet perfidia Iudaeorum: Statuimus enim (etiam), ut nullus Christianus invitos vel nolentes eos ad baptismum per violentiam venire compellat.*
11. *Summa, Th., II-II, q. 10, art. 8, ad. 3: Accipere fidem est voluntatis.* (What is being maintained here is the necessary freedom of the act of faith.)

the religious and spiritual field as well. Meanwhile, the problem of conscience became more urgent in the sixteenth century with the progress and consolidation of the Reformation. J.M. Todd¹² affirms in his biography of Martin Luther that Luther himself stood up for the expression of religious conscience and that the term "freedom of conscience" had already figured in his work. In the meantime, however, Pope Leo X had immediately seen to the solemn condemnation of Luther's theological doctrines by the Bull **Exsurge Domine** on June 15th, 1520, as heretical, scandalous and false¹³. As in the case of Sebastian Franck and Sebastian Castellio¹⁴ the Protestants took the first steps towards establishing religious groups¹⁵. At this stage, as 'Reformation' princes were holding claims to remain autonomous in their beliefs in the then disunited Western Christendom, the nature of secular authority in individual States became a factor of paramount importance while the Catholic Church worked out its relationship with the different secular powers. After thirty years of struggle between the old and the new faith in Germany, the most significant success towards autonomy in religious belief was achieved through the Peace of Augsburg, by which in 1555 each German prince was allowed to decide the religious allegiance of his territory¹⁶. As it stood then, the German empire lacked real political unity, and the Religious Peace of Augsburg resulted in September 25th, 1555, from preliminary negotiations between the Lutheran and Catholic princes¹⁷. Thus after several unsuccess-

12. J. M. Todd, *Martin Luther, A Biographical Study*, Burns & Oates, London, 1964, p. 161.
13. DS, N. 1492: omnes et singulos articulos seu errores tamquam, ut praemittitur, respective haereticos, aut scandalos, aut falsos, aut piarum aurium offensivos, vel simplicium mentium seductivos, et veritati catholicae obviantes, damnamus, reprobamus, atque omnino reicimus.
14. Along with other humanists, Sebastian Franck and Sebastian Castellio decried religious repression and urged religious toleration. They both lamented the severe persecution suffered by the Anabaptists at the hands of the Calvinists. The execution of Spanish-born Michael Servetus in Geneva in 1553 for heresy and sedition had put the question of religious freedom in a dramatic and tragic manner. Michael Servetus had the unique distinction to be burned by the Catholics in effigy and by the Protestants in actuality. In France, Michael de Hospital, chancellor under King Charles IX, 1560-1561, reminded the members of the traditional axiom: "One faith, one law, one king", while in the same speech he stated that it was not the difference in language which separated the kingdoms but the difference in religion and in law which broke one kingdom into two. (See J. Lecler, "Religious Freedom and Historical Survey", *Concilium*, Vol. 8, No. 2, (1966), p. 7.)
15. L. W. Spitz (ed.), *The Protestant Reformation*, Prentice Hall, New Jersey, 1966, p. 9.
16. S. Z. Ehler and J. B. Morrall, *Church and State Through the Centuries*, Burns & Oates, London, 1954, pp. 166-173.
17. Although it was the Lutheran canonist Joseph Staphani who, forty years after the Statement of Augsburg, enunciated the formula: *cujus regio, ejus religio*, according to which religion was determined by the prince of the region, the

ful attempts at a religious settlement between the Catholics and Lutheran partisans, the Emperor Charles V gave power to his brother Ferdinand in his capacity as King of the Romans, to make arrangements with the Protestants in order to secure peace, even at the cost of making concessions to the Lutherans. Disputed questions of faith could be settled later with tranquility in a peaceful atmosphere. In the Peace of Augsburg, Calvinism had been excluded, as the only recognised religions, Lutheranism and Catholicism. If a subject chose a religion that was different from that of the prince, he was constrained to emigrate to a State where his religion was accepted without prejudice to his well-being. In any case, the Peace of Augsburg brought the religious conflict in Germany to a temporary halt.

Pope Paul IV (1555-1559), however, disapproved of the attitude of the German King Ferdinand's conclusion of the Religious Peace of Augsburg. In 1559 he promulgated the Bull *Cum ex Apostolatus officio*¹⁸, which in a way was a protest against the religious settlement of Augsburg as a great concession to the new ideology of State control over religion and the Papacy. The Bull served also as a general formulation of the papal attitude to this question. He threatened all those who had fallen into heresy, fomented or ordered schism, that they would incur excommunication, together with the heaviest censures and penalties reserved for heretics and schismatics. But despite the harsh words and severe reprimands of the Papal Bull, the purely spiritual sanctions of the Pope did not seem to affect the secular powers who adhered to Protestantism; and in actual fact hardly had any influence on their political status. Pope Paul IV was of course, seeing happen a complete reversal of the old, long-established medieval formula of putting the unity of faith first, i.e., it was the faith that imposed itself on the prince rather than vice-versa. In the case of the '*cujus regio ejus religio*' policy it was the prince who was imposing his faith. The prince, too, practically, became the religious leader and could change his mind at will, especially if political motivation was involved.

From the beginning of the reign of Charles IX (1560-1574), in France, a party of so-called 'Politiques'¹⁹ started to show concern, firstly, for the respect of conscience and, secondly, for a need to distinguish better between the aims pursued by the Church and the State respectively. In France, once again, at the meeting of the States-General of 1560-1561,

principle can already be found in the Statement of Augsburg. It was contained in Articles 2, 3 and 10, where freedom of worship was granted to the heads of territorial units directly subordinated to the head of the Empire (See S. Z. Ehler and J. B. Morrall, *op. cit.*, pp. 167, 168 and 169).

18. Paul IV, Bull *Cum ex Apostolatus officio* in *Bullarium Romanum*, Turin, Augusta (eds.) S. Franco and H. Dalmazzo, 1860, 552.
19. J. Lecler, "Religious Freedom: An Historical Survey", *Concilium*, Vol. 8, No. 2, 1966, p. 8.

Jacques Bienassis, Abbot of Bois-Aubry, affirmed that there was no point in wanting to use force in matters of conscience and religion. Thus the demand for freedom of worship was being based on the argument against the policy of violence, namely, that one could not force the conscience.

In January, 1562, Charles IX signed the first edict of tolerance, the Edict of Saint-Germain²⁰, granting toleration to the Huguenots. Although this did not prevent the wars of religion in France, it contributed towards the efforts of pacification. Eventually it was the Edict of Nantes in 1598 which brought about limited but genuine freedom of worship for Protestants in France²¹. The wars of religion in France had come to an end after the formerly Calvinist (Huguenot) Henry IV became king. He had actually changed from Calvinism to Catholicism to obtain his throne, putting political stability before religious concerns. Thus, as a solution for the internal problems of France, he abandoned the hope of enforcing uniformity of faith and agreed to grant toleration to the Protestants.

Meanwhile, in Poland as well, during the reign of Sigismund II (1548-1572), Protestantism had become well established²². Poland, in fact, became a haven not only for Lutherans and Calvinists but also for several other radical religious sects such as the Anabaptists and the Anti-Trinitarians. Even before the sixteenth century Poland had already been a refuge for various persecuted sects such as the Waldenses, the Fraticelli and the Flagellantes. But, particularly in the fifteenth century, Poland had become the home of the Hussite heresy²³. So even before the Edict of Nantes Poland had already, legally and with some success, applied in practice the principle of freedom of worship.

The political and religious problems arising in Europe at the beginning of the seventeenth century were of great moment. But the religious situ-

20. See the Chronology on page XIV in the book edited by J. H. M. Solomon, *The French Wars of Religion*, D. C. Heath & Co., Boston, 1967.

21. Article XXVII of the Edict of Nantes says in part: In order to reunite more effectively the wills of our subjects, as is our intention, and to remove all future complaints, we declare that all those who profess, or shall profess, the aforesaid so-called Reformed religion are capable of holding and exercising all public positions, honours, offices and duties ... (S. Z. Ehler & J. B. Morrall, *op. cit.*, p. 187). The Edict puts into practice a political ideology ensuring peaceful co-existence of two religious creeds within one kingdom, quite unique at the time. As a matter of fact it was much more conducive to religious tolerance than was the Peace of Augsburg which after all only granted religious freedom to the princes, in view of the principle '*cujus regio ejus religio*', by virtue of which the prince who owned the land also in a sense owned its religion. The Edict of Nantes gives Henry IV's solution towards a religious '*modus vivendi*' for the restoration of political harmony in his kingdom.

22. J. Lecler, *Toleration and the Reformation*, (translated by T. L. Westow), Longmans, London, 1960, Vol. 1, p. 277.

23. *Idem*.

ation was particularly confused, as things were moving towards a serious confrontation between the two religious ideologies. The Bohemian Revolt, breaking out unexpectedly on the 23rd May, 1618, began the Thirty Years War²⁴ which, starting with the dispute over the throne of Bohemia, rapidly developed into a struggle between Catholicism and Protestantism in Germany. The Thirty Years War did not remain a purely religious war, as eventually it turned into a political affair, in which France and the House of Augsburg fought out yet another round of their age-old feud²⁵.

iv. THE PEACE OF WESTPHALIA

However, for Germany, the Peace of Westphalia in 1648²⁶, brought to an end most of the quarrels which had arisen from the religious revolution of the sixteenth century and the peace of Augsburg in 1555, together with those which had complicated an already confused situation during the course of thirty years of warfare. The Peace of Westphalia, attests the historian G.R. Cragg, ended a generation of war and a century of strife²⁷. It actually was the first truly European settlement in history, taking the form of two treaties — one drawn by the Catholic princes and States at the Congress of Münster, and the other by the Imperial Ambassadors who negotiated with the Protestant princes and States at the Congress of Osnabrück. A number of disputes settled by the peace affected both Protestants and Catholics. The articles of the treaty of Osnabrück confirmed the agreement over Church property and freedom of

24. G. Pagès, *The Thirty Years War 1618-1648* (translated into English by D. Baland and J. Hooper), Adam & Charles Black edition, London, 1970, p. 41.
25. G. Pagès, in the above cited book, (particularly p. 17) is of the opinion that the Thirty Years War was one of the final symptoms of the much greater crisis of the transition from medieval to modern times in Western and Central Europe. Pagès contends that this transition was politically characterised by the formation of the first modern states, while from a religious point of view it witnessed, at the hands of Protestantism, the destruction of the united Christendom which the Catholic Church had laboriously established in the Middle Ages.
26. See S. Z. Ehler & J. B. Morrall, *op. cit.*, pp. 189-193. N.B. One important religious provision contained in the Treaty of Osnabrück between the Emperor and Sweden was Section 34 of Article V, stating: It has been decided that these adherents of Augsburg who are subjects of Catholics, as also Catholics who are subjects of Estates of the Confession of Augsburg, who did not enjoy before 1624 at any time the public or private practice of their religion or who after the publication of peace at any time in the future shall profess and embrace a different religion from the lord of their territory shall be allowed patiently and with a free conscience to frequent privately their place of worship without being subjected to enquiry or disturbed; and they shall not be prevented from taking part in the public exercise of their religion in their neighbourhood where and as many times as they wish or to send their children for education in schools belonging to their religion or to private tutors at home. (Ehler & Morrall, p. 191.)
27. G. R. Cragg, *The Church and the Age of Reason, 1648-1789*, Penguin Books, Australia, 1960 p. 9.

worship, which were also referred to in Article 50 of the Treaty of Münster. Both Treaties must of necessity be taken together. Pope Innocent X (1644-1655) objected to the clauses of the Treaty which affected Catholics. He vehemently protested, denying any validity to the Treaties of Westphalia²⁸, in a Bull he issued on November 20th, 1648, called *Zelo Domus Dei*²⁹. This papal document was a thorough denunciation and formal condemnation of the religious clauses of the Peace Treaty. In it the Pope stated that he had applied himself with particular care to preserve the integrity of the orthodox faith and the dignity and authority of the Catholic Church. He attacks the two treaties, accusing them both amongst other things of very grave prejudice against the Catholic religion and worship³⁰. Particular objection was taken as well to the placing of Protestant denominations on the same social and political level with Catholicism by granting them toleration and freedom of worship³¹.

The Pope declared the offending provisions of the Treaties of Westphalia to be legally null and void, stipulating that his condemnation should have perpetual force³². However, the political influence of the papacy at this stage appeared to have decreased to a great extent. The Catholic powers themselves, who were involved with the Treaties, paid little attention to the Pope's condemnation of the allegedly offending clauses in the treaties. In this regard, perhaps, the Peace Treaties of Westphalia in 1648 marked the end of an era in which the Catholic Church, through the

28. The Treaties contained various clauses which disposed of Church property and of civil jurisdictions which belonged to ecclesiastical princes. The Treaty of Münster, although concluded between two Catholic powers, France and the Emperor, rejected outrightly in advance protests against the peace made on the basis of Canon Law, Concordats with the Papacy or papal privileges. Moreover, these dispossessions of the Church were carried through without any reference at all to the wishes or opinion of the Pope. The papacy for long had sought an end to the Thirty Years War and actively tried to facilitate negotiations for peace, and through the Nuncio Chigi (later to become Pope Alexander VII) played a prominent part as mediator as the final Peace of Westphalia was arrived at in 1648. When the agreement was drawn up, however, the papacy was unable to approve of it, on the grounds that the treaty acceded to an official admission of toleration and accepted schism in the Church as a *fait accompli*.
29. Pope Innocent X, Bull *Zelo Domus Dei*, November 20th, 1648, in *Bullarium Romanum*, Turin, Augusta, S. Franco & H. Dalmazo (eds.), Tomus XV. (This Bull is a declaration of nullity of the Treaties of Westphalia and comes under the following title: *Declaratio nullitatis articulorum nuperae pacis Germanianae.*)
30. *Ibid.*, p. 603: gravissima religioni catholicae, divino cultui, sedi Apostolicae, et Romanae ac inferioribus ecclesiis, ordinique ecclesiastico, ac iurisdictionibus, privilegiis, rebus, bonis, ac iuribus illorum illata fuerunt praeiudicia.
31. *Ibid.*, loc. cit.: liberum suae haereseos exercitium in plerisque locis permittitur.
32. *Ibid.*, p. 605: damnamus, reprobamus, irritamus, cassamus, annullamus, viribusque et effectu evacuamus, et contra illa, deque eorum nullitate, coram Deo potestamus.

Pope, was acknowledged as a force in the public affairs of Europe. Thus, after more than a thousand years, the State once again was conducting its affairs as if the Church did not exist. And this new epoch seems to have started with the eclipse of international prestige of institutional religion in matters of religious belief, as the Peace of Westphalia recognised within each state the increased power of secular princes³³. It appeared that religious differences were no longer a justification for contention between nations and ceased to divide fellow citizens. Consequently an increasing religious tolerance became a characteristic of the age although this was not always apparent, as when Louis XIV of France on the Catholic side, revoked the Edict of Nantes in 1685, the safeguard of Huguenot liberties³⁴; while on the Protestant side, in England, the Toleration Act of 1689 excluded the radical Anti-Trinitarians and Catholics from civil tolerance³⁵, despite the fact that in England, so far as Catholics were concerned, James II³⁶, himself a devout Catholic, had shown an interest to free the Catholic Church from the oppression of Penal Laws against its members. Increasingly then, the Church was no longer being considered as "the Church" but a church, just an association of people holding similar beliefs in religious matters.

v. THE LATE EIGHTEENTH AND EARLY NINETEENTH CENTURIES

The United States of America is the first instance where a political community has abandoned the principle of supporting an 'established' state religion, despite the fact that individual states of the Union carried over established churches from colonial days. The Virginia Bill of Rights in 1776 included an article providing for religious toleration and denouncing the notion of coercion in religious matters for any reason whatsoever³⁷. The very first instance where the rights to "freedom of conscience" and

33. G. R. Cragg, *op. cit.*, p. 10.

34. See *Revocation of Edict of Nantes by King Louis XIV of France*, October, 1685, in S. Z. Ehler and J. B. Morrall, *op. cit.*, especially p. 211.

35. J. Lecler, "Religious Freedom: An Historical Survey", *Concilium*, Vol. 8, N. 2, 1966, p. 11.

36. James II of England: *Declaration of Indulgence*, May 7, 1688, in S. Z. Ehler and J. B. Morrall, *op. cit.*, p. 217: James II made no attempt to disguise his Catholic allegiance and also extolled the principle that conscience could not be constrained in religious matters. His exact words are: conscience ought not to be constrained nor people forced in matters of mere religion.

37. Article 16 of *The Virginia Bill of Rights*, June 12, 1776, states: ... That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and therefore all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practise Christian forbearance, love and charity towards each other. (See S. Z. Ehler and J. B. Morrall, *op. cit.*, p. 222.)

"religious liberty" are specifically mentioned in a constitution is in the case of the State of Pennsylvania on September 28th, 1776³⁸, when the United States of America were being constitutionally established.

Meanwhile in France, until 1789, the juridical union between the Church and the State was very close, and the State still professed the Catholic faith. In fact, just before the Revolution the Church in France appeared to be in a solid position. But the French Revolution (1789-1800) was a great dividing-line in the political history of Europe, the sign of the downfall of the Ancien Régime. "It was", writes A.R. Vidler, "the beginning of a series of attempts to build new structures to take the place of the system that had collapsed"³⁹. In the old system, the Church, along with the Monarchy, was an integral element.

The events that followed the outbreak of the French Revolution in 1789 destroyed, once and for all, the old world of dynastic monarchies, while there arose instead the new concept of the national state, based on the political tenet of popular sovereignty. However, concerning the freedom of religious worship, during the Revolution in France, the decree of 15-22 July, 1791 (Section II, art.2) contained the provision that: "Those who outrage the objects of any religious cult, whether in a public place, set up for the practice of religious worship, or the ministers while they are performing their religious duty, or who causes a public disturbance so as to interrupt the religious ceremonies of any cult, shall be punished..."⁴⁰

In the wake of the French Revolution, various 'rights of man' were being proclaimed. It was becoming a matter of either favouring a love for freedom as opposed to a defence of authority; or else one could opt for unfettered progress as a contrast to following traditional doctrines⁴¹. Of course, along with the 'Revolution' there were other less remarkable, yet very effective, transforming factors of society, which contributed towards

38. A Declaration of the Rights of the Inhabitants, of the Commonwealth or State of Pennsylvania, in *The Constitution of Pennsylvania*, September 28th, 1776. Article II says in part: That all men have a natural and inalienable right to worship Almighty God according to the dictates of their own consciences and understanding, and that no man ought or of right can be compelled to attend any religious worship ... against his own free will or consent (See S. Z. Ehler and J. B. Morrall, *op. cit.*, p. 223.) N.B. The principle of the complete separation of Church and State was enunciated by the Virginia Statute in Oct., 1785 (Art. II). "... our civil rights have no dependence on our religious opinions". (See S. Z. Ehler and J. B. Morrall, *op. cit.*, p. 224.)
39. A. C. Vidler, *The Church in an Age of Revolution* Penguin Books, Middlesex, U.K., 1961, p. 11.
40. The English version is given in F. D. Galea, *Religious Freedom, A Study of its Historical and Legal Development in France*, Tipografa Tomassetti, Rome, 1964, p. 73.
41. Cf. P. Vallin, "La Inglesia y Los Derechos Del Hombre en el Siglo Pasado" in *Libertad Religiosa, Una Solucion Para Todos*, Studium Madrid, 1964, pp. 365-378.

the formulation of thought patterns of the nineteenth century. It was not only an intellectual and political upheaval but also a scientific and technical one. Thus, for instance, in a sense, the steam-engine and the Declaration of the Rights of Man combined to speed up the change in values and principles. It was in such a climate that the Catholic Church developed its teaching in the nineteenth century regarding human rights⁴².

vi. PAPAL TEACHING IN THE NINETEENTH CENTURY

The Pontifical Magisterium in the nineteenth century did raise some difficulties, at one stage, against the legitimacy of democratic freedom. Pope Gregory XVI complained, in fact, in his Encyclical *Mirari Vos*, in 1832, that "from the source of repugnant indifferentism derives that absurd and erroneous opinion, or rather the insanity, that freedom of conscience has not only to be upheld but even guaranteed to each individual"⁴³. Gregory XVI used strong words against the errors which he thought were being publicly taught in his time, such as, for instance, the ideas that no preference was to be shown for any particular form of worship; that it was right for individuals to form their own personal judgements about religion; that each man's conscience was his sole and allsufficing guide; and that it was lawful for every man to publish his own views, whatever they may have been.

It is beyond the scope of this article to study in detail the mind of Pope Pius IX, particularly as expressed in his encyclical *Quanta Cura* and the *Syllabus Errorum*. His views in these documents, as was said earlier, reflected the Church's attitude towards certain contemporary theories about the nature of man and his role in society as well as certain censures against the "modern democratic state". However, in *Quanta Cura* he also speaks specifically of "that erroneous opinion most pernicious to the Catholic Church and to the salvation of souls, which was called by our predecessor, Gregory XVI, an insanity (**deliramentum**): namely that liberty of conscience and of worship is an inalienable right of every man, which should be proclaimed by law"⁴⁴.

However, in justification of both Gregory XVI and Pius IX (despite their apparent condemnation of "freedom of conscience"), Cardinal Newman draws a distinction between the Catholic sense of the word "conscience" and that sense in which the two Popes condemn it. "Both Popes certainly scoff at the 'so-called liberty of conscience'", says Newman,

42. V. Grogan and L. Ryan, *Religious Freedom*, Scepter Books, Dublin, 1967, p. 16.

43. Gregory XVI, Ep. encycl. *Mirari Vos*, 1832, DS, N. 2730: ... ex hoc putidissimo indifferentismi fonte absurda illa fluit ac erronea sententia seu potius deliramentum, asserendam esse ac vindicandam cuilibet libertatem conscientiae.

44. Pius IX, *Quanta Cura*, 1864: haud timent erroneam illam fuere opinionem a Gregorio XVI deliramentum appellatum, nimirum 'libertatem conscientiae' esse proprium cujuscunque hominis jus.

"but there is no scoffing of any Pope in formal documents addressed to the faithful at large, at that most serious doctrine, the right and the duty of following that Divine Authority, the voice of conscience, on which in truth the Church herself is built"⁴⁵. Newman's distinction will have to be elaborated upon (as we shall have occasion to do) in the light of later papal teaching and of recent Catholic theology on religious freedom.

Pope Leo XIII eventually came to admit that civil society and the ecclesiastical community might actually have different needs. In *Immortale Dei* he states: "there is no reason why anyone should accuse the Church of being wanting in gentleness of action, of largeness of view, or of being opposed to real and lawful liberty"⁴⁶.

2. THE BREAKTHROUGH OF PIUS XII

We have stated at the beginning of this study that religious freedom was not a novel concept in the Roman Catholic Church. We may also add at this stage that Catholic doctrine has always taught that adherence to the faith is essentially a free human act. Pope Pius XII, in 1943, summarises in his encyclical *Mystici Corporis* this traditional teaching by saying "that if it ever were to happen that contrary to the unvarying teaching of the Church, a person was compelled against his will to embrace the Catholic Faith we could not, for the sake of our office and our conscience, withhold our censure"⁴⁷. Of great significance to our study, however, is the introduction by Pius XII of the notion of "good conscience", as he suggested a formula of religious and moral toleration, in an address to the Italian Catholic Jurists, in 1953⁴⁸.

Pius XII asserts, firstly, that it is irrational to argue that it is right to teach what is not true or to promote policies which are wrong. Secondly, forbearance from the use of state laws and coercive measures can nonetheless be justified in the interest of a higher and more extensive good.

45. J. H. Newman, *A Letter addressed to His Grace the Duke of Norfolk on occasion of Mr. Gladstone's Recent Expostulation* (B. M. Pickering), London, 1875, pp. 59-60.

46. Cf. Leo XIII, *Immortale Dei*, in *Acta Leonis XIII*, Akademische Druck - U - Verlagsanstalt, Graz - Austria, 1971, Vol. V, p. 141.

47. Pius XII, *Mystici Corporis*, 1943.

48. The original text enunciating Pius XII's formula of religious and moral toleration is found in *Ci Riesce* in *Acta Apostolicae Sedis*, 45 (1953) 799: .. i due principi, dai quali bisogna ricavare nei casi concreti la risposta alla gravissima questione circa l'atteggiamento cattolico riguardo ad una formula di tolleranza religiosa e morale ... Primo: ciò che non risponde alla verità e alla norma morale, non ha oggettivamente alcun diritto né all'esistenza né alla propaganda, né all'azione. Secondo: il non impedirlo per mezzo di leggi statali e di disposizioni coercitive può nondimeno essere giustificato nell'interesse di un bene superiore e più vasto. Se poi questa condizione si verifici nel caso concreto è la "questio facti" ... deve giudicare innanzi tutto lo stesso statista cattolico.

Certainly one has to consider what Pius XII says in *Ci Riesce* in the light of the principle that it is never lawful to use unjust means, even in order to secure a good end or prevent a great evil — a principle used so firmly by St. Thomas against the proposal to baptise the children of unbelievers contrary to their parents' wishes, where he argues that:

... injury should be done to no one. Now injury would be done the Jews were their children baptised against their will, since they would thereby lose parental rights over their children as soon as these became Christians. Therefore these should not be baptised without their parents' consent⁴⁹.

In his Allocution, the Pope considers the existence of various religious beliefs within one community. He maintains that it is possible. He also affirms that, although it is in God's power to repress all error and moral deviation, still God's infinite perfection does not require him to do so and he goes on to say that:

God has not given to human authority any such absolute and universal command in the field either of faith or of morals. Such a command is unknown to the common conviction of mankind, to the Christian conscience, to the sources of revelation, and to the practice of the Church⁵⁰.

M.P. Fogarty was later to argue that, in the case where different opinions arise and are so held in good faith, it may be quite logical that the way to direct back to the truth those who hold wrong views is to grant them a chance to argue their case⁵¹.

Pius XII does insist that error is error as much as evil is evil, and that the Church will always be ready to contest it as such. However, the Pope denies that one ought to use repressive measures in doing so, but out of respect for conscience he refuses to call on "*forze maggiori*" to restrain error or evil even if such power, he adds, lies within the hands of Catholic statesmen. Thus out of respect for those who are in good conscience — mistaken indeed, but invincibly so — and of a different opinion, the Church has felt herself prompted to act, and has acted, along

49. *Summa Th.* II-II, q. 10, art. 12: ... nemini facienda est injuria, fieret autem Judaeis injuria, si eorum filii baptizarentur eis invitis; quia amitterent jus patriae potestatis in filios jam fideles; ergo eis invitis non sunt baptizandi.

50. *Ci Riesce* in *op. cit.*, p. 799: Dio non ha dato nemmeno all'autorità umana un siffatto precetto assoluto e universale, ne' nel campo della fede ne' in quello della morale. Non conoscono un tale precetto ne' la comune convinzione degli uomini, ne' la coscienza cristiana, ne' le fonti della rivelazione, ne' la prassi della Chiesa.

51. M.P. Fogarty, *Christian Democracy in Western Europe*, (1820-1953), London, 1957, p. 43.

the lines of tolerance⁵².

This leads us to a more comprehensive assessment of Pius XII's contribution towards a new concept of religious freedom. First of all what had been only implicit in Leo XIII's time had become very explicit in Pius XII's time in the form of totalitarian tyranny in the shape of Communist governments. In a sense the full implications of the omnicompetent State delineated in Proposition 39 of the *Syllabus* has been verified. Meanwhile, Pius XII pointed out the rise of the personal and political consciousness of the people who were opposing with increasing vehemence the monopolistic reaches of a power that was dictatorial. People were demanding a system of government that was more in accord with the dignity and freedom of citizens⁵³.

Pius XII developed Leo XIII's revived and clarified traditional doctrine of the dyarchy into a new philosophy of society and its juridical organization. This was later to receive a more systematic formulation by John XXIII in *Pacem in terris*. In contrast with Leo, who considered the function of government as primarily ethical which acted in a paternal way towards the citizen-subject (considered more subject than citizen), Pius saw the main function of government as juridical, namely, the protection and promotion of the exercise of human and civil rights. The citizen is fully citizen, i.e. not just subject to, but also taking part in, the process of government. Thus Pius XII made his first contribution to the development of doctrine in the issue of religious freedom. He stated this new development in his radio message of December 24th, 1944: "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"⁵⁴. While in Leo's conception the role of government was dominant, in Pius's view society is to be built and made sound from the bottom up, as it were. In the latter conception the role of government is subordinate, a role of service to the human person. The relationship between ruler and ruled is a civil relationship.

Therefore Pius XII relinquished Leo XIII's concept of government as paternal. The citizen is no longer considered as a child but as an active participant in the fashioning of his own social and political destiny. He sees the public powers as representative of the people, united with the people in the political effort to achieve an ideal of freedom and equality. In this sense, he directed the Church towards the developments in the

52. *Ci Riesce*, in *op. cit.*, p. 801: in circostanze determinate, alla supportazione anche in casi in cui si potrebbe procedere alla repressione, la Chiesa — già per riguardo a coloro, che in buona coscienza (sebbene erronea, ma invincibilmente) sono di diversa opinione — si è vista indotta ad agire ed ha agito secondo quella tolleranza. (my emphasis).

53. See Radiomessage, Dec. 24th. 1944; *Acta Apostolicae Sedis*, 37, 1945, 11-12.

54. Radio Message, Dec. 24th, 1944; *Acta Apostolicae Sedis*, 37, 1945, 12.

constitutional tradition that were required by the new personal and political consciousness.

Leo XIII had opened a way towards a change in the state of the question of public care of religion. Pius XII moved along this way by advancing the doctrine of constitutional government, limited in its powers, dedicated to the defence of the rights of man and to the promotion of the freedom of the people. Significantly, this was the correlate of religious freedom as a juridical concept, a civil and human right, personal and corporate.

In summary, one could say that in his vast corpus of teaching Pius XII expressed a large amount of principles which could be marshalled in support of a theory of religious freedom viewed as a concrete and historical problem. These principles can be considered under various headings. Firstly, he enunciated theological principles concerning the dyarchy or the two powers, the freedom of the Church, the freedom of the act of faith. He pronounced the ethical principles that religious freedom was the rightful demand of the modern personal and political consciousness. He also provided the insight that the free man, bound by duties and endowed with rights, was the origin and end of the social order. So far as political principles were concerned he stated that the public power is not the judge of religious truth or of the dictates of conscience. He asserted that the main function of the public powers was to safeguard human and civil rights, as well as to foster the freedom of the people. Pius XII also established the juridical principle that the criterion for public restriction of religious freedom was some necessary requirement of public order. He further taught the jurisprudential principle that it was necessity and not possibility which was the further criterion for coercive curtailment of the free exercise of religion.

3. POPE JOHN XXIII

But even if it was Pius XII who made the unique breakthrough in this regard, the ultimate step in the transition from a doctrine of toleration to the teaching concerning a positive right of religious freedom, was made by Pope John XXIII in his encyclical *Pacem in terris*, in 1963, where he teaches that "every human being has the right to honour God according to the dictates of an upright conscience, and the right to profess his religion privately and publicly"⁵⁵. Following the inspiration of Pope John XXIII, the Catholic Church adopted a new attitude in her relations with other Christians and with the world at large. The Second Vatican Council, especially in *Dignitatis Humanae* not only sanctioned the Catholic view that looked to freedom of conscience as the basis of religious freedom, but even went beyond this contention and located the foundation of the right to such freedom in the dignity of the human person. This, of course, has been a twentieth-century insight.

55. John XXIII, *Pacem in Terris*, in *Acta Apostolicae Sedis*, 55 (1963) 260.

4. RELIGIOUS FREEDOM TODAY

It is our task to trace this insight insofar as it contributed towards the shaping of a new or modern theory of religious freedom, which finally led the Second Vatican Council to reject the Tolerance-Theory based on the Thesis-Hypothesis distinction and adopt a doctrine of religious freedom as a human and civil right.

Rather than being a theory expressed in univocal terms, the approach of religious freedom in modern Catholic theology has embraced within itself various trends, all of which have shared, however, an aspiration to adopt within the Christian context a democratic way of life. In this context, Catholic theology was not concerned directly with the theological notion of the grace of Christ which makes man free, but rather with religious freedom as a social and civil right, rendering the person immune from coercion and ideally to be guaranteed by constitutional and civil law. Thus, today, the concept of religious freedom includes both freedom of conscience and the free exercise of the religious conscience or decision⁵⁶.

The modern age, and especially the twentieth century, has proved to be a secular age, where the temporal order is completely differentiated and fully autonomous from the Church and religion. This was happening under the rise of the power of the national state as the sacral age fell apart and the Church lost its social and political power and prestige. And while the Church strove to maintain its unity, the nation-state was no longer able to base citizenship on unity of faith. In some instances the secularization process involved not only the rejection of the Church but also the denial of religion or any religious inspiration that could in any way influence temporal society or the body politic.

But, in spite of certain negative attitudes, a return to a sacral society nowadays is not desirable. For our purposes, however, as we study the movement towards a new theory of religious freedom, it is important to understand the dominant moulding ideas of the modern secular age, namely, the conquest of freedom and the realisation of the dignity of the human person. In addition, in the twentieth century, the independent body politic could no longer be accepted as an extension of the Church; and while every citizen is considered equal before the law, religion does not seem to play a part in discriminating between one citizen and another in the secular society of today.

In 1945, the French Catholic bishops were advocating (in their Declaration issued in November) that in the religious area itself one had to create an atmosphere of absolutely open and efficacious dialogue with all men. Such attitudes in the religious sphere, the French bishops were

56. D. J. Wolf, *Towards Consensus: Catholic-Protestant Interpretation of Church and State*, Doubleday, New York, 1968, p. 17.

suggesting, would point out to the creation of a 'Lay State' as a more congenial atmosphere to the present-day historical situation and consciousness. They were of the opinion that, in general, such an approach would conform, far more than the 'confessional state', with the principle of religious freedom⁵⁷.

Within the context of the new theory of a positive right of religious freedom the 'Lay State' recognises the dignity of the separate aims of the temporal civil order and its claims as a primary source of action. It is worth noting that when the theory of the 'Lay State' was being proposed by some Catholic theologians concerning the relation between Church and State, it aroused great interest among Catholic scholars⁵⁸. One of its chief proponents was Father John Courtney Murray, who wrote several articles in explanation and support of it between 1948 and 1951. Courtney Murray asserts that the legal institution of religious freedom in its contemporary sense is not a positive authorisation of either truth or error. It does not 'grant' rights or confer empowerments in the matter of religion. On the contrary, the essential premise of such an institution is that civil authority is not competent to confer these empowerments.

According to the theory of the 'Lay State', the evangelical values ought to make their imprint on public life by permeating the private domain of one's conscience, through the activity of the believing members of the Church within society. Thus, the 'Lay State' does not demand of its individual members a common religious creed and does not condemn non-believers to a situation of political inferiority.

5. HISTORICAL CONSCIOUSNESS AND THE DIGNITY OF THE HUMAN PERSON

One very important feature which has pervaded almost every aspect of current Catholic theology, especially over the last thirty or forty years, is a renewed sense of history. "The first of the traits which even a casual observer cannot help noticing in Catholic theology today", says D.J. O' Hanlon, "is a sense of movement, which is another name for a sense of history"⁵⁹.

However, very significant in terms of theological development has been the twentieth-century experience of a new sense of awareness of the real nature of the human personality — an awareness far more profound

57. See passim: *The Declaration of the French Bishops of November, 1945*, as quoted by T. Goffi, "Tolerancia Y Libertad Religiosa", in *Libertad Religiosa, Una Solucion Para Todos*, op. cit., pp. 246-7.

58. F. J. Connell, "The Theory of the 'Lay State' ", *American Ecclesiastical Review*, 1951, p. 7.

59. D. J. O'Hanlon, "Concluding Reflections" in *Current Trends in Theology*, (eds.) D. J. Wolf and J. V. Schall, Doubleday, New York, 1965, p. 271. (Theology is normally assumed to be, in this context, a function of the life of the

than existed in the nineteenth century. It involves a sensitivity to the rights of conscience; the idea of a living personal faith as a goal towards which pastoral work had started to be directed within the Catholic Church. There grew also an increasing distrust of coercive methods in matters of religious faith. Constraint in this area of human life also began to be considered in the wider context of its sociological and psychological effects. Hence the concept of the 'freedom of faith' was demanding a more precise definition and breadth of vision.

In this light, there arose a common realisation that the problem of religious freedom and of the relations between Church and State had to be stated in new terminology. John Courtney Murray⁶⁰ suggested in 1949 that one could see rising in this area the same problem that was central to all other areas of theological thought already, namely, not so much a problem of 'faith and reason' but rather one of 'faith and history'.

It was, therefore, not so much a question of essential categories of philosophy as one of the **existential category of time** that theologians were starting to be preoccupied with. Hence the concrete situation facing theologians in the sphere of religious freedom and consequently Church-State relationships, in the twentieth century, was different from that which the nineteenth century had to confront.

6. A CHANGE IN PERSPECTIVE

Jacques Leclercq⁶¹ called attention to a change of perspectives amongst Catholic theologians in which the problems of religious freedom and Church-State relations could be viewed. He asserts that the late nineteenth and early twentieth centuries were preoccupied with a defence of the "thesis", in the classical thesis-hypothesis distinction. Thereafter followed a period occupied with different "hypothesis", which ushered in an era of pragmatism or perhaps utilitarianism, which sought the good of the Church in concrete circumstances. At any rate, "thesis" and "hypothesis" were the basic categories of argument, and in practice it was a question of whether a particular nation-state warranted the application of the "thesis" or else the "hypothesis". In a case where "the ideal Confessional Catholic State" of the "thesis" could be implemented, the constitutional concept 'religion of the State' could be applied. On the other hand, the constitutional guarantee of religious freedom towards the Catholic Church was the expected rule if the application of the "hypothesis"

Church, which is a historical community. In this sense, theology would purport to capture the effects or movement of the life of the Church, between the first and second coming of Christ on earth.)

60. J. Courtney Murray, "Current Theology on Religious Freedom", *Theological Studies*, March, 1949, p. 422.

61. See J. Leclercq, "Etat Chrétienne et liberté de l'Eglise" *Vie Intellectuelle*, February, 1949, pp. 99-111.

was the only possible solution. At the early stage, of course, the framework of the whole issue was the European continental nation-state; while against the traditionally Catholic nation-state there was still militating from within a form of liberalism. This was a system of liberalism which proposed to battle with all the evils that afflicted man; and although it sought to avail itself of the spiritual system which the Catholic Church was (as in the case of Pope Pius IX, in the middle of the nineteenth century), at the same time it attempted to deny the Church all legal existence, just consenting to tolerate the profession and practice of Catholicism by the private citizen.

The emphasis, however, changed. First of all there was a growing realisation — already incipiently operative in the nineteenth century — of the dechristianisation of society. As a matter of fact ancient lands of Christendom were, to some extent, becoming once again 'missionary countries', while different movements arose that were hostile to liberty. But consequent to the threat of the rising totalitarian state, there ensued a struggle to secure the right of the human person as the centre and source of civil society.

The Church was slowly but surely becoming independent of political forms. This had already become apparent in the thought of Leo XIII (especially in his encyclical *Libertas*, promulgated in 1888).

In addition, an increase in religious pluralism became more obvious, causing the old difficult problem to reappear in a new form, namely, as to what should be the relationships between the different religious confessions within the same territory. Catholics were being urged to consider it their unique task to achieve in this matter an agreement in theory as well as in practice. Certain Catholic theologians of calibre, like Max Pribilla⁶², established the undisputed point that indifference or indifferentism could not form the basis of social peace and religious freedom in the civil order. Pribilla maintained that the fact of religious disunity among men (regardless of God's will that they all should be one in the truth) would always create problems in civil relationships.

But, despite the fact that some of these factors, like the dechristianisation of society, were in themselves regrettable, still their effect on the thinking of the Catholic Church in the direction of religious freedom has been good⁶³, in the sense that dechristianisation of society brought about the realisation of the need of a spiritual effort working from within, rather than pressure being brought about from the top by the State. It was also being realised that such spiritual change could only be achieved in freedom⁶⁴. Furthermore, insofar as the problem of religious freedom

62. Cfr. M. Pribilla, "Dogmatic Intolerance and Civil Tolerance", *The Month*, New Series, 4 (1950) 252-260.

63. J. Courtney Murray, "Current Theology on Religious Freedom" in *op. cit.*, p. 421.

64. *Ibid.*, *loc. cit.*

also became a very urgent ecumenical issue, at a time when totalitarian threats made their inroads on personal and corporate freedom, it became necessary for different religious faiths to strive for a common purpose against suppression in the temporal order. Thus, the concerted effort of men of good will was given new impetus to the question of inter-faith relationships within the Catholic Church, striving to replace the post-reformation Catholic-Protestant attitude of rivalry and perhaps enmity, with the common Christian good of freedom. It was quite obvious that the 'Constantine' era had become a thing of the past, and while democratic feeling became a widely-spread phenomenon, "wars of religion", as E Balducci put it, "had come to an end in every sense"⁶⁵. Moreover, the past few decades have been a historical moment for human freedom, because it became an absolute duty of all Christians to unite efforts and forces in defending their treasured good of freedom. Individual citizens and peoples had to strive to live in peace together, despite their differences in religious faith.

7. SIGNS OF THE TIMES

The problem of religious freedom presents itself as concrete and historical and, as such, one has to scrutinise the "signs of the times" in order to construct the issue in the form of a new or modern theory. In this regard we have already considered to some extent the growth of contemporary man's personal and political consciousness. And by way of growth in his personal, political and social freedom, allied with the necessary freedom for responsible personal decision and action in society, modern man was becoming consciously averse to forms of social or legal constriction in the area of religious matters, unless demanded by the general good of the community.

Thus, in our day and age, it was no longer a question of legal tolerance, or intolerance nor was it the matter any more of the Catholic religion as the official creed of the State. Thus, for instance, the condemned Proposition 77 of the **Syllabus Errorum** concerning the treatment of the Catholic religion as the sole State Religion,

In the present day it is no longer expedient that the Catholic religion should be held as the only religion of the state, to the exclusions of all other forms of worship⁶⁶,

sounds quite obsolete. This Proposition was, as a matter of fact, pro-

65. E. Balducci, "Aspetti delle trasformazioni religiose": *Il Nuovo Osservatore*, 2(1963) 180. The text says: le guerre di religione, si sono state terminate in tutti i sensi.

66. DS, N. 2977, Error 77: Actate hac nostra non amplius expedit, religionem catholicam haberi tamquam unicam status religionem, ceteris quibuscumque cultibus exclusis.

nounced in 1885 by Pius IX in his Allocution **Nemo Vestrum** and later incorporated into the **Syllabus Errorum** in 1864, and since that time quite a few events have taken place (as we have had occasion to observe), which have changed the world in a substantial manner. The **Syllabus** is now seen to be in error on this point. No one would assert nowadays that a Catholic majority ought to deny the free exercise of religion to non-Catholic confessions, which would be an obvious violation of right.

Discrepancies of this nature were all pointing to the need of a development or free approach of doctrine within the Catholic Church in the area of Church-State relations and a consequent improvement on the Tolerance-Theory. Hence any new theory of religious freedom could not lie in a question of numbers or majorities of believers, a freedom that is tolerated as a lesser evil or that is withdrawn, depending on whether the Catholic Church is in a situation where it can exercise power⁶⁷. In a special sense, religious freedom has actually proved to be a human problem concerning the esteem and respect for a person, as expressed within the realm of conscience.

67. See J. Hamer, "Le Catholique, réclame la liberté religieuse?", *La Revue Nouvelle*, 6(1950) 325ff.

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