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Freedom of Religion – An Unexpected Issue for Our Times

A Vignette

Recently the BBC's long-running flagship panel show on current affairs, Question Time, screened an episode which included some debate on the same sex marriage issue in the United Kingdom. I did not view this programme but one of my younger priests did. He said it made him afraid. It made him afraid because the studio audience took the view that for as long as same sex marriage was not yet legalised, opponents of same sex marriage had the right to their opinion. But as soon as it was legalised, dissenters should be pursued by the law. My priest was disturbed by the level of blatant intolerance which was on display and was concerned for the future.

When I was consecrated a bishop in November 2005, I was not fretting about religious freedom in Scotland or in the United Kingdom. Yet after only six years in office as a bishop, I can say with a concerned and fearful realism that the loss of religious freedom is now arguably the most serious threat which the Catholic Church and all people of faith in this country are facing. The way this issue of religious freedom unfolds will determine how the Catholic Church will present itself to society for the foreseeable future. Will society continue to afford the Catholic Church – and other religious bodies and groups – the oxygen and the vital space to be themselves and to express themselves in the public square? Or will my church and others be effectively driven to the margins of society if not actually underground, denied a legal right to be ourselves, to carry out our mission and to express our faith in public? The questions which present themselves are at least these: Firstly, how have we got to the point so rapidly where the question of religious freedom arises?

Secondly, what is at stake? Thirdly, what is the appropriate response as we go forward?

1. How has the question of religious freedom arisen in this country?

The question of religious freedom has arisen in this country stealthily and rapidly. Scholars of the history of ideas may be able to trace its remote origins. In a recent lecture in Washington D.C., George Weigel, the distinguished American Catholic writer and commentator on ethics and public policy, traced the roots of our problem to the atheistic humanism of nineteenth century European high culture and to the softer forms of 20th century secularism, although it would be too much to discuss the considerable merits of that analysis here. But I confess that in 2005 when I was consecrated a bishop I did not see a problem coming with religious freedom. But by February 2007, I was warning the people of my diocese in a Pastoral Letter that religious liberty was under attack.

I really never thought I would have to make such a statement as the one with which I opened that Pastoral Letter: “It is with growing concern that I raise with you the issue of the religious freedom of the Catholic Church in the United Kingdom.”

What occasioned this concern was the introduction to Parliament of new regulations that aimed to outlaw discrimination on the grounds of sexual orientation in the provision of goods and services. These new regulations were based on the Equality Act of 2006. It was evident that they would force Catholic adoption agencies to place children with same-sex couples, thereby going against the teaching of the Catholic Church, or else they would fall foul of the law.

As a result, some agencies complied with this legislation and renounced their Catholic character. Others closed down. Others, like the St. Margaret of Scotland Catholic agency, based in the city of Glasgow, and operating on behalf of the Archdiocese of Glasgow, the Diocese of Motherwell, the Diocese of Paisley and the Diocese of Galloway, has stood firm and, skilfully arguing its

case, continued to operate as a Catholic agency facilitating adoption by a suitable husband and wife.

It was then that I began to realise that the advance of the homosexuality agenda in concert with equality legislation was beginning to have a toxic effect on the freedom of the Catholic Church to operate in the public sphere. Subsequently the courts in England, in two landmark cases, ruled against the owners of a bed and breakfast facility who did not wish to accommodate homosexual couples under their roof and then disallowed a Christian couple from fostering because they could not guarantee that they would recommend homosexuality as a positive life choice for children in their care. It was clear by then that, with the connivance of courts and of the political establishment, that religious freedom and freedom of conscience could be sacrificed on the altar of the advance of the homosexual agenda.

There was also the clamorous case of the Englishman who mentioned on a social networking site that he was not in favour of same sex marriage and was subsequently demoted in his place of employment and had his salary slashed by almost half. This was before any consultation in England on same sex marriage and before any law has been passed. This really shows up the near-hysterical nature of the intolerance which is currently justified in our society towards people who question the homosexual agenda from any point of view, but especially from a Christian standpoint.

All of this helps to explain why the Scottish bishops responded so emphatically at the end of last year to the Scottish Government's consultation on same sex marriage which was prefaced by the Government's own admission that they were minded to legalise same sex marriage. Bad enough that the Government is prepared to change the nature of marriage to include what marriage had never ever been in any civilisation or culture, namely a union of persons of the same sex, and to re-cast the nature of parenting in such a way that children would no longer have the natural right to have a mother and a father, but the legalisation of same sex marriage would bring with it a lessening of religious freedom.

In my Pastoral letter to my own diocese, promulgated in October of last year, "In Defence of Marriage – A Response to the Scottish Government

Consultation on Same Sex Marriage”, I wrote as follows: “The redefinition of marriage to include same sex unions will bring with it State-sponsored discrimination and penalties in the courts and in the workplace against anyone who dares to question the rightness of same sex marriage, thereby riding roughshod over freedom of speech, freedom of religion and freedom of conscience.”

I accept that it is always risky to argue from likely consequences because consequences cannot always be foreseen exactly. But the concerns I have raised about the threat to religious freedom in the wake of the legalisation of same sex marriage are justifiable because religious freedom has already been set aside both formally by the courts and informally by others in the promotion of the homosexual agenda.

And the Scottish bishops are in no doubt that if the Government legalises same sex marriage, we will have a fight on our hands to preach and teach the true nature of marriage both from the pulpit and in Catholic schools, and we fear that Catholic men and women will be discriminated against in the workplace and in society. The danger is that the Catholic community will be forced into pariah status by aggressive secularism as it was in the past by aggressive Protestantism.

So to the question of how we have arrived so swiftly at the point where religious freedom is a live issue for the Catholic Church, the answer lies in the effect of the alliance of equality legislation with the furtherance of the homosexual agenda, and both of these appear to

It is true that there are other issues currently associated with the matter of religious freedom, such as the wearing of crosses in places of employment and the saying of prayers in council chambers and in public places. But I doubt if these would have found much public traction were it not for the homosexual/equality issue and the momentum which it has gathered in limiting the scope of religious freedom.

It is instructive to broaden our perspective here. Across the Atlantic in the USA, the question of religious freedom is going nuclear, and for the largely the same reasons as here in the United Kingdom. In the face of the intrusion of the Obama administration on the religious freedom until now enjoyed by the

American Catholic community and by other stateside religious bodies and groups, the USCCB has seen fit to take the largely unprecedented step of establishing an Ad Hoc Committee for Religious Liberty, under the chairmanship of Bishop William Lori, formerly of Bridgeport, now Archbishop-elect of Baltimore.

In the evidence he gave on 26th October 2011 before the before the Judiciary Committee of the United States House of Representatives, Subcommittee on the Constitution, Bishop Lori complained of infringements of religious freedom, which parallel our own recent experience in the United Kingdom in regard both to same sex marriage and to adoption. Here is an excerpt from his testimony and a flavour of what perhaps we can expect here:

“At the state level, religious liberty protections associated with the redefinition of marriage have fallen far short of what is necessary. In New York, county clerks face legal action for refusing to participate in same-sex unions, and gay rights advocates boast how little religious freedom protection individuals and groups will enjoy under the new law. In Illinois, Catholic Charities has been driven out of the adoption and foster care business, because it recognizes the unique value of man-woman marriage for the well-being of children.”

And more recently, the Archbishop of Philadelphia, Charles Chaput, gets to the heart of the culture war which the Obama administration is waging on the Catholic Church in the USA, when he said: “At its heart is a seemingly deep distrust of the formative role religious faith has on personal and social conduct, and a deep distaste for religion’s moral influence on public affairs.” And if you think “culture war” is too dramatic a term, let me refer you to a piece in *The Telegraph* online by Tim Stanley with a date of 9th February 2012 which had the title “Obama’s war on the Catholic Church in America isn’t just insensitive - it’s un-American.” This was because the Obama healthcare policies were, in the view of the writer, infringing freedom of conscience and freedom of religion.

So both here and in the USA and indeed across the globe, it seems clear that religious freedom is the new key issue in Church-State relations. This matter is well summarised by a report at the beginning of March 2012 that the Vatican’s representative at the UN Headquarters in Geneva, Archbishop Silvio Tommasi, speaking to the UN’s Human Rights Council should say that “rising restrictions on religion affect more than 2.2 billion people” around the world and that while virtually all nations claim to respect religious freedom, “the gap is

growing between widely accepted stated principles, and their daily application on the ground.”

2. The Issues at Stake

As I see it, the issues at stake are at least two: the notion of religious freedom, and the notion of the state.

- **The Notion of Religious Freedom**

In October 2011, I took the opportunity to write directly and personally to Scotland’s First Minister, Mr Alex Salmond, about one or two Government policies which impinged on the freedom and good of the Catholic community. Because my letter was released into the public domain, this provoked an immediate reaction and I was invited to urgent discussions with the First Minister. One of the issues I had raised was the question of same sex marriage. In our conversation that day, I raised concerns about the likely impact on religious freedom of the legalisation of same sex marriage, fearing that such a step would infringe the Church’s freedom to preach and teach about the nature of marriage as the union solely of a man and a woman. In his response to me, he assured me that a law introducing same sex marriage would not restrict the freedom of Catholics to practice their faith. I am not sure if he understood the difference between freedom of worship and freedom of religion, or if he understood it only too well, and was hedging his bets, knowing full well that once legislation permitting same sex marriage was on the statute books, equality zealots and gay rights activists would be calling for sanctions against people who publicly expressed dissent from the new orthodoxy. I was worried especially for Catholic teachers who had to deliver an RE programme in Catholic primary and secondary schools in which marriage is defined explicitly as a union between a man and woman. It is doubtful if any government would sign up to legislation and regulations which restrict the freedom of worship, but we are already at the point where a broader and fuller notion of freedom of religion is under duress. If same sex marriage is

legalised, I have no doubt that we will need to campaign for the legislation to safeguard the religious freedom to dissent from the new orthodoxy in public and in private, in religious worship and preaching, in the Church's public declarations, in education and in teaching, and in the upbringing of children. Given the way things are in the UK presently, I have no confidence that any such guarantees will be forthcoming.

In December 2011, David Cameron, the British Prime Minister, gave an address here in Oxford which commemorated the King James Bible. In that address, he confirmed the place of Christianity in British history and life. I had once written to the PM in critical vein when he had favourably hypothesised the legalisation of same sex marriage even before the same matter had been raised by the Scottish Government. That letter provoked a disapproving rebuke from one of the PM's equality guardians. Nonetheless I thought it was only fair to write a letter approving of his Oxford comments on the essential place of Christianity in British life and culture. In that letter, I said this:

"I was pleased to read news reports of a speech you gave recently in Oxford marking the 400th anniversary of the King James Bible in which you acknowledged the fundamental contribution of Christianity to British society, called for a revival of Christian values, and acknowledged the importance of the Christian faith and of other religious faiths to the majority of people in Britain today. I welcome your words at a time when many of us are concerned that freedom of religion, understood not simply as freedom to worship, but also as freedom to express and teach our faith, is in danger of being eroded in the United Kingdom by illiberal limitations being placed on what Christians can say and do. I hope that your wise words will be reflected in the decisions reached by Parliaments and Assemblies, by the courts and by regulatory bodies up and down the land."

In that letter, I described religious freedom as not simply as freedom of worship, but also as freedom to express and teach our faith. I am not sure how significant it is that this time I received no reply to my letter to the Prime Minister either from him or from one of his departments or aides. But my recent experience of dealing with Government on both sides of the border tells me that, while freedom of worship may not be not in question, freedom of religion in its full sense is something they are not prepared explicitly to underwrite.

I will conclude this point by briefly quoting a homily of mine from November 2011 at a parish anniversary in my diocese: *“We need to be aware that we are living now in a particular and uncertain cultural moment, and I sense that religious freedom, the freedom to practice, express and spread our faith, is becoming a significant matter of concern for the future of Catholic and Christian communities here in our own country and throughout the world. Our future in this parish and elsewhere will be marked by the extent to which religious freedom continues to be recognised in our country as a primary and inalienable human right.”*

- **The Notion of the State**

In February of this year, the Baroness Warsi, the Conservative Party Vice Chairman, as a follow-up to Pope Benedict XVI’s 2010 visit to Britain, led a UK ministerial delegation to the Vatican to have talks with representatives of the Holy See on matters of mutual concern. The Baroness, herself a Moslem, had been quoted in the media expressing concerns that religion in Britain was being squeezed and edged out. There were lots of column inches in the media on the subject. One comment which achieved prominence came from the Equality and Human Rights Commission Chief, Trevor Phillips, who said that religious beliefs and rules end “at the door of the temple”. This appeared to apply as much to those who would introduce sharia law in the UK as to Christians who declined to give a child for adoption to same sex partners.

It is worth noting in passing the striking incoherence between the Prime Minister’s praise of Christianity and its positive role in public life to which I referred before and the view expressed by EHCR Chief Trevor Phillips, with its marked tendency towards restricting, diminishing and even banishing religious discourse from providing any inspiration or guidance or role in the formation of public policy. How can Christianity, one wonders, have a positive role in public life, as the PM seems to wish, if it begins and ends at the door of the temple? If religious freedom is limited to the doors of the temple, effectively freedom of worship, how much different will that be from the situation which holds in somewhere like Saudi Arabia where there is freedom of worship

behind closed doors. Is that really what Trevor Phillips is advocating on behalf of the EHRC?

The modern theory of religious freedom forged by progressive Catholic thinkers around and during the Second Vatican Council advocates the compatibility of the values of the Judeo-Christian tradition with democracy. This doctrine, while asserting the supremacy of God, has no problem giving to Caesar what is rightfully Caesar's, and there is no chance of this kind of religious freedom trying to replace the law of the land with a religious code that recognises no difference between the secular and the sacred. The secular autonomy of the State is safe with this Christian and Catholic theory of religious freedom because it works on the basis of a legitimate separation of Church and State such that the virtues which are generated by religious freedom will underpin and encourage democracy while the democratic system will support and protect due religious freedom.

So, while it may seem to some superficially enlightened to hold the view expressed by Trevor Phillips that religious faith should not be allowed to enter the public square, such an approach, in banishing the religious from public discourse, raises huge questions about the nature of the state. In his comments, the ECHR chief appears to endorse a notion of a state which fills all civic space and reaches out to control and regulate other institutions which are present within the state. It is a notion of the state with a rather limited understanding of subsidiarity. It is Big Government at its scariest. It appears to have no respect for institutions, such as the family and the Church, which pre-exist the state, which straddle the private-public domain, and which have their own internal constitution. This is a state that is over-reaching itself and is moving towards a kind of soft totalitarianism. The combination of unlimited state and limited religious freedom adds up to big problems, as we have seen from two very different situations, mid-20th century Poland and present day Iran. And it is perhaps instructive to point out that the robust assertion of religious freedom was what helped liberate Poland and other Eastern European countries from communism and put them on the road to becoming viable democracies.

A state with a healthy understanding of subsidiarity will recognise and encourage free associations and institutions, especially the family, the

churches and religious groups. The State should recognise these groups as goods in themselves because they normally encourage the kind of friendship and discipline which is important for human flourishing and for the development of the virtues which are vital for a healthy democracy. A state that recognises human associations that exist prior to the state, not just chronologically but in terms of the truths of the human condition and recognises the legitimate prerogatives of the free associations found within the civic space, has recognised the limits of its own competence and the boundaries of its authority.

Let me make this concrete. According to this theory of the nature of the state in its relationship to the family and the Church, the state would have no business changing the nature of marriage to accommodate same sex unions and no business regulating Catholic adoption agencies, both of which have happened or are likely to happen in the countries of the United Kingdom as it presently exists.

And this is the fundamental understanding of the state that lies behind the relationship of Church and State in Catholic social doctrine. Speaking to a group of bishops from the United States in January of this year, here is Pope Benedict XVI's understanding of the Church's role in a modern democratic state: "The Church's witness, then, is of its nature public: she seeks to convince by proposing rational arguments in the public square. The legitimate separation of Church and State cannot be taken to mean that the Church must be silent on certain issues, nor that the State may choose not to engage, or be engaged by, the voices of committed believers in determining the values which will shape the future of the nation."

How can this vision of church-state relations be accommodated or respected if the dominant ideology is one which decrees that the Church's faith and values must be left at the door of the temple? I submit that this is a huge emerging question for church-state relations, and it will not be addressed or resolved by the quintessentially saving British virtues of decency, fairness and bumbling along. I sense that the Christian roots of these national "virtues" have been eradicated. The anti-religious agenda has a hard edge and is in no mood to compromise.

3. A Christian Response

How should Christians respond to this growing scenario of official and judicial intolerance of religious freedom? I would like to offer four observations for which I am indebted to two eloquent contemporary advocates of the cause of religious freedom: Cardinal George Pell and George Weigel. George Weigel, as I have mentioned before, is a well-known American Catholic author who writes extensively on matters of religion and public policy. Cardinal George Pell, the Archbishop of Sydney, pursued post-graduate studies here at the University of Oxford and is very familiar with the situation here in the United Kingdom. In these final remarks, it seems appropriate that I should draw freely on an address he gave on religious freedom here in Oxford in March 2009.

1. I completely agree with the Cardinal when he says that there is an urgent need to deepen public understanding of the importance and nature of religious freedom. As I have said already, religious freedom is more than freedom to worship, but is also the freedom to express and teach religious truth. Thus religious freedom must include the freedom to evangelise, catechise, and serve the needy according to a religious community's own precepts. Religious freedom is also intertwined with other important freedoms, such as the rights to freedom of expression, thought and conscience. Believers should not be treated by the government and the courts as a tolerated and divisive minority whose rights must always yield to the secular agenda, especially when religious people are part of society in substantial number. The opportunity to contribute to community and to the public good is a right of all individuals and groups, including religious ones. The application of laws within democracies should facilitate the broadening of these opportunities, not their increasing restraint.
2. As Cardinal Pell goes on to observe, there is a related need to lay bare the real nature of modern liberalism. Modern liberalism has strong totalitarian tendencies. It tends to imply that Institutions like the family, the Church and other agencies, exist only with the permission of the state, and, to exist lawfully, they must abide by the dictates or norms of the state. This totalitarian liberalism is quite different from traditional

liberalism, which sees the individual, the family and the association as prior to the state, with the state existing only to fulfil functions that are beyond the means of individuals and families to function.

This principle of priority is clearly embedded in the UN's Universal Declaration of Human Rights (1948), for example, which provides that parents have "a prior right to choose the kind of education that shall be given to their children." And in the International Covenant on Economic and Social and Cultural Rights (1966), which provides that the state is to respect the liberty of parents "to ensure the religious and moral education of their children in conformity with their own convictions." These are the kinds of prior rights which are currently endangered by the spirit of intolerance which animates so-called equality and anti-discrimination chatter, and even policy, in our country at this time.

It is accepted discourse now for activists to respond to any critique of homosexuality or the homosexual agenda by invoking the term "homophobic" or "homophobic bigotry", which of course has the effect of intimidating the opposition and closing down the debate. There seems little awareness that by classifying any critique of homosexuality as hate speech is already an illiberal intolerance. I read an article recently in which the author suggested that those who use this language of homophobic bigotry to intimidate the opposition and close down the discussion are actually acting against one of the cardinal tenets of modernity. Modernity holds that every creed or set of values is up for discussion and debate. This is the basis on which the homosexual agenda itself gained ground in the modern Areopagus. How dissonant it is then, for such a modern movement to use the discredited tactics of the past, namely terror and intimidation, to advance their cause and close down the discussion!

3. As we have seen in the genesis of the current facing religious freedom in the UK, the great question that exercises modern culture is the meaning of human autonomy and especially sexual freedom. But Cardinal Pell advises that Christians need to be aware of and make others aware of the fact that this struggle is fundamentally a struggle over a religious question – a question that revolves around the reality of a transcendent

order. One way of putting it is: “Did God create us or did we create God?” The limited scope that secularism is prepared to concede to religious beliefs is based on the assumption that we created God. As long as the supremacy remains with man, as long as faith is understood as a private therapeutic pursuit, it is permissible. But when people insist that faith is more than this and the supremacy is not ours (such as when we say that adoptive parents should be husband and wife, or that marriage is a union of a man and a woman, although these can be argued also from reason) religion must be resisted, increasingly through the law.

The use of anti-discrimination law to advance the autonomy project is not new, but the withholding or the retrenchment of protections for church agencies and conscience provisions for individuals is a dangerous trend. A number of factors are at play here, but the broad effect is to force conformity. It seems that, just as the faith and convictions of individual believers have to be privatized and excluded from public life, the service that church agencies provide to society have to be secularized. The service the Church gives has always been a source of its growth and strength, and church agencies working in the areas of welfare, education, family and health bear witness to the values that Christian leaders put forward in public debate. Part of the logic in attacking the freedom of the Church to serve others is to undermine the witness these services give to powerful Christian convictions. The goal is to neutralize this witness to divine revelation.

Coming back to sexuality, the question of autonomy, freedom and supremacy plays itself out, among other places, in the contest between religious and sexual freedom. Absolute sexual freedom lies at the heart of the modern autonomy project. Well beyond preferences about sexual practices or forms of relationship, it extends now to preferences about the method and manner of procreation, family formation, and the uses of human reproduction in medical research. Cardinal Pell hit the nail right on the head when he observed that the message from the earliest days of the sexual revolution, always barely concealed behind the talk of “free love”, “live and let live”, and creating space for “different forms of

loving”, was that limits on sexual autonomy will not be tolerated. This is generating the pressures against religion in public life.

It is difficult for Christians to know how to respond in this situation. We are in the midst of something of a cultural revolution. Phenomena of this kind can be uncompromising and brutal. In my experience of the recent debate, Christians have the more promising vision for the human project and the more convincing arguments about the nature of human beings in their need of God; about the nature of the family; about the place of faith and religion in public life; and about the relationship of faith to science and progress. However the cultural mood is to dismiss these arguments and insights in summary fashion. Christians are riding the tiger at this time in history, and, if the present cultural trajectory towards radical secularism goes unchecked, I fully expect to be prosecuted in the courts in the coming years. But Christians need to be patient and steadfast and always ready to engage. Evil may well have its time but eventually it consumes itself, and it will not have the last word. We may need to be there to pick up the pieces of a shattered civilisation, broken and exhausted by its extreme adventure with radical godlessness.

4. In making this fourth and final point, which will serve as the conclusion to this address, I am indebted to George Weigel, who in the present day debate on religious freedom represents the line on Church-State relations pioneered by Father John Courtney Murray who was the architect of the Decree on Religious Freedom of the Second Vatican Council. According to this doctrine, robust religious freedom is the guarantor both of an authentic pluralism which recognises the presence in modern society of what Murray called ‘creeds in conflict’ (although peacefully and intelligibly rather than violently) and of an authentic democracy in which the sources, including religious sources, of people’s most cherished convictions about human dignity, about marriage, about the family, are not ruled out of bounds in the public square but are welcomed as an essential contribution to the common good. Whatever happens in the next few years, the Catholic Church has only one choice: to be herself by being true to Jesus Christ, whatever the cost. What kind of nation and what kind of democracy will we be? That is another question.

