

Dignitatis Humanae Colloquium

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Volume I

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Preface

Fr Thomas Crean OP

This volume contains the papers delivered at a colloquium on Vatican II's 'Declaration on Religious Liberty', *Dignitatis humanae*, held in Norcia, Italy, in the autumn of 2015, on the occasion of the 50th anniversary of that document's promulgation. The colloquium was organised by the Dialogos Institute, and was attended by His Eminence Cardinal Raymond Burke, whose opening address is the first paper in this collection.

The purpose of the colloquium was to understand the Church's teaching on religious liberty: to investigate the scope and limits of this right, and the 'the moral duty of men and societies toward the true religion and toward the one Church of Christ'.¹ We did not desire either to praise or to bury that most controversial document of the 21st ecumenical council, but rather to grasp its meaning and its degree of authority by studying it in a properly theological manner, that is, in conjunction with other relevant magisterial documents and in the light of the sources of revelation.

Since the promulgation of *Dignitatis humanae* on 8th December 1965, many studies on this document have appeared, and on the wider questions that it raises. These studies have often been marred by excessive simplification: either they have passed hastily over the great *prima facie* difficulty of reconciling Vatican II's document with Catholic tradition, or they have unduly belittled the authority of that tradition, or, on the contrary, they have assumed too quickly that *Dignitatis humanae* must be rejected in the name of tradition. Again, while other scholars have avoided such simplistic approaches, their answers to the principal question 'what does the Catholic Church teach about religious liberty?' have often been divergent or even incompatible. It was therefore providential that for three days in October and November of 2015, the Dialogos Institute was able to bring together scholars who had studied these complex questions deeply and with Catholic principles, but who had not reached common conclusions, and to give them the opportunity to discuss them face-to-face and at length. Although this volume does not contain a record of those discussions – which were a part of the colloquium perhaps as valuable as the talks themselves – the final paper ('An Augustinian Synthesis?') provides a good summary of the state of the

¹ *Dignitatis humanae* 1.

question at the end of the proceedings, as well as a bold proposal for uniting the disparate positions of the different speakers.

* * *

I should like to thank the Benedictine monks of Norcia for their hospitality during the colloquium. In particular, I should like to thank Fr Cassian Folsom, then the prior of the community, for his encouragement and his welcome, and Br Ignatius, then the guest-master, for the quiet but military efficiency with which he made it possible for so many priests to offer Mass in the Basilica of San Benedetto during our three days in the town. I should also like to thank the Benedictine nuns for providing rooms for many of the participants.

In illo tempore... Our colloquium opened on 30th October 2015, precisely one year before the earthquake that destroyed all the churches in Norcia, and made many of its houses uninhabitable. The basilica of St Benedict, built over the place of his birth, is today a pile of rubble. The monks have moved out of the town, and are living on the side of the mountain that overlooks it. Simple, but permanent, structures have been built there, serving as oratory and living quarters. There they intend to remain, praying for the inhabitants of Norcia, and for the world; and they hope in time to build a monastic church, and a monastery large enough to house a number of monks greater than would have been possible in their old site in the town. After all, if our home collapses, be it one monastery or the whole of Christendom, what else shall we do but build it again? *Magna gloria domus istius novissimæ plus quam primæ.*

Contributors

Dr John C Rao obtained his doctorate in Modern European History from Oxford University in 1977. His dissertation concerned nineteenth century Catholic reactions to the Enlightenment and the French Revolution. He is now Associate Professor of European History at St. John's University in New York City, and also director of the Roman Forum, a Catholic cultural organization founded by the late Professor Dietrich von Hildebrand. Many of his writings dealing with the relationship between Church and society throughout history can be found on a website entitled For the Whole Christ (jcrao.freeshell.org). Among his published works are *Removing the Blindfold, Americanism and the Collapse of the Church in the United States* and *Black Legends and the Light of the World*. Dr Rao is also editor of *Luther and His Progeny: 500 Years of Protestantism and Its Consequences for Church, State, and Society*.

Rev. Fr Brian W Harrison, OS, MA, STD was born in Australia and, after being raised as a Presbyterian, converted to the Catholic faith in 1972. He is a priest of the Society of the Oblates of Wisdom and is a retired Associate Professor of Theology of the Pontifical Catholic University of Puerto Rico. He is the author of three books and over 130 articles in Catholic books, magazines and journals in the USA, Australia, Britain, France, Spain and Puerto Rico. His special interest in theological and liturgical matters, in keeping with the charism of the Oblates of Wisdom, is upholding a 'hermeneutic of continuity' between the teachings of Vatican Council II and the bimillennial heritage of Catholic Tradition.

Professor Baron Roberto de Mattei has taught at the University of Rome-La Sapienza, the University of Cassino, and the European University of Rome. From 2003 to 2011, he was vice-president of the National Research Council of Italy (CNR), and from 2002 to 2006 he was a counsellor for international affairs to the Italian government. He is president of the Lepanto Foundation, director of the *Radici Cristiane* [Christian Roots] magazine, and editor-in-chief of the *Corrispondenza Romana* news agency. He is the author of more than twenty books translated into several languages.

Dr John R T Lamont is a Canadian Catholic philosopher and theologian, and a research fellow in the Faculty of Theology and Philosophy at Australian Catholic University. He studied philosophy and theology at the Dominican College in Ottawa and at Oxford University, and has taught philosophy and theology in Catholic universities and seminaries. He is the author of *Divine Faith* (Ashgate, 2004), and of a number of academic papers; his academic

website is at <https://acu-au.academia.edu/JohnLamont>.

Dr Thomas Pink is Professor of Philosophy at King's College London. He is the author of *Self-Determination* (Oxford University Press 2017) and has published articles on ethics, philosophy of law, on the history of philosophy and on the free will problem. He is editing *The Questions Concerning Liberty, Necessity and Chance* for the Clarendon edition of the works of Thomas Hobbes. He has also edited a collection of Francisco Suarez's moral, legal and political writings for Liberty Fund.

Fr Basile Valuet OSB is a Frenchman, born in 1961 in Athens. He has been a Benedictine monk since 1980, and a priest and prefect of studies of his monastery since 1985. In 1995 at the Pontifical University of Holy Cross (Rome), he received a doctorate in theology *summa cum laude* for his dissertation *La liberté religieuse et la Tradition catholique* (Le Barroux, 3rd ed., 2011, 6 volumes, 2525 pages, again available).

James Bogle Esq. TD MA BL KM ACI Arb is a barrister of the Middle Temple, practicing for 20 years. He has appeared in a number of high profile cases including the recent BREXIT case, the Dianne Pretty euthanasia case and the "morning after" pill case. He is a former Chairman of the Catholic Union of Great Britain, a former President of the International Una Voce Federation, a director of EWTN (UK), a trustee of Farnborough Abbey, and the author of a biography of the last Habsburg monarch, Emperor Blessed Charles I of Austria. A former cavalry officer, he is also a Knight of Malta and of the Constantinian Order of St George. He has appeared on British, US and other foreign media.

Rev. Fr Dominique-Marie de Saint Laumer FSVF was born on 13th May 1957. He is a graduate of the Ecole Polytechnique, and, along with Fr Louis-Marie Blignières, was one of the founding members of the Fraternity of St Vincent Ferrer, in 1979. He is a Master of Philosophy (Paris IV, Sorbonne), and was for a long time sub-prior of the Priory of St Thomas Aquinas. In 2011, he was elected prior of the Fraternity.

Introduction

HE Raymond, Cardinal Burke

It is a distinct pleasure to welcome you to the 'Dignitatis Humanae Colloquium' sponsored by the Dialogos Institute with its seat in this historic city of Norcia. First of all, I express deepest gratitude to the Dialogos Institute for its dedication to the renewal of Catholic philosophy and theology, and, therefore, to the renewal of the Christian social order, through fidelity to the united witness of the Fathers of the Church as that witness found a particular flowering in Scholasticism.

In a particular way, I wish to thank the Dialogos Institute for organizing the present colloquium on the Declaration *Dignitatis Humanae*, "On Religious Liberty", of the Second Vatican Ecumenical Council, which was promulgated some 50 years ago, on December 7th, 1965. While certainly not one of the principal documents of the Second Vatican Council, as is seen in its status as a declaration, not a constitution or decree, *Dignitatis Humanae* treats upon a matter which becomes ever more controversial in the various cultures in which the Church finds herself, and it treats it in a manner which generated a fundamental debate since the time of its promulgation. One of the great benefits of the present colloquium is to hear scholars who have studied the matter in depth and have reached different conclusions speak to each other's argumentation.

I recall the course in *ius publicum ecclesiasticum* which was one of the required courses for the attainment of the licentiate in Canon Law during my years of study in the Faculty of Canon Law of the Pontifical Gregorian University from September of 1980 to April of 1984. The professor made it clear that, in his judgment, *Dignitatis Humanae* represented a radical departure from the Church's classical understanding of her relationship to the state, as, for example, elaborated in the classical manual of the late renowned professor of the faculty, Father Felice M. Cappello, S.J. The professor's treatment of the subject matter took its leave from the thought of Father John Courtney Murray, S.J., especially as it was articulated in his best-known work, *We Hold These Truths: Catholic Reflections on the American Proposition*, a collection of his essays treating religion and public life. Murray himself, who had been significantly involved in the drafting of the third and fourth versions of *Dignitatis Humanae*, held the traditional understanding of the Church's relationship to the state to be inadequate for the Catholic of our time. His position is intimately connected with the understanding of religious freedom of the framers of the Constitution of the United States of America and particularly of the First Amendment to the Constitution. In any case, the

professor of the course on *ius publicum ecclesiasticum* certainly subscribed to what Pope Benedict XVI, in his 2005 Christmas discourse to the Roman Curia, described as the hermeneutic of rupture or discontinuity applied to the Second Vatican Council.

But the Church, which is not our creation but comes to us from Christ through the Apostolic Ministry, cannot accept any teaching which is not an organic development within the Apostolic Tradition. Whatever good is to be found in the thought of Father John Courtney Murray or others who have written and spoken about religious freedom must, by definition, be a development from what the Church has always taught and practised in the matter. One of the central contents of the Church's constant teaching is the Kingship of Christ, a teaching which was magisterially set forth by Pope Pius XI and to which Pope Saint John Paul II returns in his first Encyclical Letter *Redemptor Hominis*. The action of the Church in the civil order is an expression of the kingly mission of Christ and of the members of His Mystical Body, the Church.

In this regard, I recall the remark of a religious brother who was the librarian of the theological seminary at which I completed my studies before presenting myself for ordination to the priesthood. Reflecting upon the state of society in relationship to our Catholic faith in those years, the early 1970's, he remarked: "Raymond, the barbarians are no longer at the city gates, they are sitting with you at the dinner table." The timeliness of the present colloquium, on the correct understanding of the Church's teaching on religious freedom, escapes none of us, I am certain. The correct understanding of religious freedom has everything to do with a new evangelization and, therefore, with the transformation of society, in accord with the mind and heart of Christ the King. In a particular way, I think of the alarming diminution of the notion of the Catholic statesman. It pleased me, some months ago, to meet with a young Catholic member of the House of Representatives in the United States of America, representing a district of my home state of Wisconsin, who described for me the effort of certain faithful Catholic politicians to meet for the purpose of understanding more deeply what the Catholic faith demands of them, in order that they serve the common good, and for the purpose of encouraging and assisting one another to be truly Catholic politicians.

In the present time, I cannot fail to mention a question which is connected with another declaration of the Second Vatican Council, the Declaration *Nostra Aetate*, "On the Relation of the Church to Non-Christian Religions," also promulgated 50 years ago, on October 28th, 1965. I refer in particular to Islam, which has rightly been described as a nomocracy. Professor Umar F. Abd-Allah describes Islam as "nomocratic," that is, "ruled by law," and points out that "many questions – today including issues such

as abortion, environmental protection and interfaith relations – which Christians regard as theological, are, for Muslims, not matters of theology but fundamental questions of religious law.”¹

Islam is its law: the Shari’a. For Islam, therefore, the distinction between Church and state does not exist. Commenting on the relationship of Islam to Christianity, and noting significant differences between the two religions, Professor Emeritus Bernard Lewis of Princeton University finds the greatest difference “in the attitudes of these two religions, and of their authorized exponents, to the relations between government, religion and society.”² Regarding the great difference in the just-mentioned attitudes, he writes:

The Founder of Christianity bade his followers “render unto Caesar the things which are Caesar’s; and unto God the things which are God’s” (Matt. XXII:21) – and for centuries Christianity grew and developed as a religion of the downtrodden, until with the conversion to Christianity of the emperor Constantine, Caesar himself became a Christian and inaugurated a series of changes by which the new faith captured the Roman Empire and transformed its civilization. The Founder of Islam was his own Constantine, and founded his own state and empire. He did not therefore create – or need to create – a church. The dichotomy of *regnum* and *sacerdotium*, so crucial in the history of Western Christendom, had no equivalent in Islam. During Muhammad’s lifetime, the Muslims became at once a political and religious community, with the Prophet as head of state. As such, he governed a place and a people, dispensed justice, collected taxes, commanded armies, waged war and made peace. For the formative first generation of Muslims, whose adventures are the sacred history of Islam, there was no protracted testing by persecution, no tradition of resistance to a hostile state power. On the contrary, the state that ruled them was that of Islam, and God’s approval of their cause was made clear to them in the form of victory and empire in this world.³

¹ Umar F. Abd-Allah, “Theological dimensions of Islamic law,” *Classical Islamic Theology*, ed. Tim Winter, Cambridge: Cambridge University Press, 2008, p. 237.

² Bernard Lewis, *The Crisis of Islam: Holy War and Unholy Terror*, New York: The Modern Library, 2003, pp. 5-6.

³ *Ibid.*, p. 6.

For Muslims, religious law is, in reality, the only true law. While they may have to live, for a time, in a situation in which the sovereignty of Islamic law is not recognized, it is clear that they await the time when it will be sovereign in their particular situation, as in every place. One notes here that, while Christians await the transformation of the world at Christ's Second Coming, even as they work to prepare themselves and the world for the transformation to be worked by Christ at His coming in glory, Muslims await the sovereignty of their rule and its law to be accomplished in the here and now of the world in which we live. Fidelity to the Apostolic Tradition regarding the proper relation between spiritual and temporal authority will become ever more critical in responding rightly to an ever-growing Islamic presence in what has been a Christian society.

Finally, a proper understanding of the Church's Tradition regarding religious liberty is indispensable to a new evangelization of the Church Herself, in what pertains to her identity, and of society in general. Fundamental to understanding the radical secularization of our culture is to understand also how much this secularization has entered into the life of the Church Herself. Pope Saint John Paul II declared:

But for this [the mending of the Christian fabric of society] to come about what is needed is to *first remake the Christian fabric of the ecclesial community itself* present in these countries and nations.⁴

A new evangelization demands that the lay faithful fulfil their particular responsibility, that is, "to testify how the Christian faith constitutes the only fully valid response – consciously perceived and stated by all in varying degrees – to the problems and hopes that life poses to every person and society."⁵ This requires that they "know how to overcome in themselves the separation of the Gospel from life, to take up again in their daily activities in family, work and society, an integrated approach to life that is fully brought

⁴ "Id [consortium humanum spiritu christiano imbuendum] tamen possibile erit, si christianus communitatum ipsarum ecclesiarum contextus, quae his in regionibus et nationibus degunt, renovetur." Pope Saint John Paul II, Apostolic Exhortation *Christifideles laici*, 30th December, 1988, no. 34, *Acta Apostolicae Sedis*, vol. 81 (1989), p. 455.

⁵ "...testari quomodo christiana fides responsum constituat unice plene validum, ab omnibus plus minusve conscie agnitum et invocatum, ad quaestiones et expectationes, quas vita ipsa homini et societatibus imponit singularis", *ibid*.

about by the inspiration and strength of the Gospel.”⁶ Clearly, the right understanding of religious freedom, which pertains to the remaking of the fabric of the ecclesial community, is at the heart of the remaking of the fabric of Christian society in general.

I close these introductory remarks by expressing my heartfelt wish and prayer that the *Dignitatis Humanae* Colloquium will serve faithfully what the Church has always taught about the relationship between the Church and civil authority. In a particular way, I wish and pray that it will contribute to the right interpretation of the teaching of the Second Vatican Council, in fidelity to the Tradition. May God bless these important days of conversation in pursuit of the truth about religious freedom.

⁶ “...hiatum inter Evangelium et vitam in seipsis superare valeant, in quotidianis familiae navitatibus, in labore et in societate unitatem vitae componentes, quae in Evangelio lucem et vim pro sua plena invenit adimpletione”, *ibid.*

**He Who Loses the Past, Loses the Present: Putting
Dignitatis Humanae in its Full Historical Context**

Dr John Rao

Being neither a theologian nor a logician, my task here today is not that of entering directly into a discussion of whether the Declaration on Religious Liberty of the Second Vatican Council is or is not in contradiction to previous Church teaching on this topic of immense spiritual, political, and social significance. My role is merely that of laying out the historical background in which that Declaration came to life.

Nevertheless, I do think that a broad consideration of the modern revolutionary context in which the current discussion of the question of religious liberty emerged offers an absolutely essential preparation for the more substantive dialogue to come. On the one hand, such a study demythologizes the claim by the most vocal proponents of the Declaration that their position called attention to a fresh development of Catholic doctrinal insight dealing with a political situation very different from that faced by believers even in the recent past. It does so by making it clear that the battle leading up to *Dignitatis humanae* at Second Vatican Council was actually nothing other than the second part of a contemporary drama whose nearly identical first act began a century and a half earlier—although it ended on a quite different note. On the other hand, contemplation of this broad historical picture demonstrates that the proponents of the 1965 teaching reflected what was, at best, an appalling ignorance or naiveté regarding the political and intellectual conditions under which the Catholic Church was operating in the period after the Second World War, and, at worst, an active participation in the work of rendering the cause of Christ sociologically and even spiritually meaningless.

Moreover, at least as far as I am concerned, a knowledge of both the long-term as well as the more immediate historical setting of the Declaration on Religious Liberty leads to two further conclusions: first of all, that an orthodox interpretation of the final text stood no chance of obtaining any serious practical hearing whatsoever; and, secondly, that the task of the believing Catholic lies not so much in glossing this document to death as in uncovering the horrific obstacles that the *Zeitgeist* dominating our lives in 2015—as in 1965 and the nineteenth century beforehand—places in the path of learning and acting in accord with Faith and Reason on any substantive issue of political and moral importance.

Act One

Act One of the religious liberty drama began with that nineteenth-century Catholic renewal whose main French, German, and Italian-speaking centers were circles of clerics and laity seeking both to understand the reasons behind the disastrous attack on the faith in the French Revolution, as well as to find a means of reconstructing a new Christianity on the ruins of the old. All such circles came to confront a similar disappointment that greatly troubled them: the fact that the post-Napoleonic Restoration monarchies that prided themselves on their public support for religion, continued, in practice, to maintain frustratingly tight controls on Catholic evangelization.⁷

The hunt for an explanation of the restrictions muzzling full Church freedom by supposedly “Catholic” States led the circles in question to a deeper study of the tremendous complex of linguistic, psychological, political, and material influences that shape a given society and the individuals living within it. Their labors brought them to understand that the radical Enlightenment naturalism that had proven to be so devastating to the faith in the 1790’s had already gained an influence over both Catholic monarchies as well as the Church authorities working in union with them in a more moderate form well before the French Revolution. They then realized that the resulting changes had created a mesh of forces whose impact made it difficult for believers—the simple faithful and their leaders alike—to appreciate that there was something dreadfully wrong with what still in many outward respects looked traditional and good; that the positive-sounding words “Catholic monarchy” actually masqueraded the emergence of a secularized counterfeit of a Christian society. In short, proponents of Catholic renewal realized that a *Zeitgeist* had been created whose hold on life prevented Church authorities and believers in general from grasping what the Christian mission *really* entailed, and effectively diverted them away from a recognition and examination of the sources that they needed to consult in order to regain a complete sense of it.

A conscious dive into the fullness of the Catholic Tradition awakened in these thinkers’ minds and souls a theme that they perceived to have been put soundly to sleep by the relentless but measured advance of the eighteenth century naturalist *Zeitgeist* in its more moderate form. This was the basic truth that the Church’s role was not that of some “established” administrative

⁷ Much of this discussion comes from my two books, *Black Legends and the Light of the World: The War of Words with the Incarnate Word* (Remnant Press, 2011) and *Removing the Blindfold: Nineteenth Century Catholics and the Myth of Modern Freedom* (Angelus Press, 2014). For brevity sake, I will only footnote direct citations, points that I believe need special emphasis, and, of course, any other works used.

machine fulfilling her humdrum "spiritual" obligations by helping to defend the existing social order, keeping civil records, and promoting openness to agricultural improvements and smallpox

vaccinations. On the contrary, her task was that of being the Mystical Body of Christ, entrusted with the simultaneously supernatural-natural mission of continuing the life and work of the Incarnate Logos in a world deemed worthy of Redemption but badly wounded by sin. And this task she could only accomplish by seeking to make Christ the King of all of Creation— the very goal of all human existence.

God . . . has established one sole order composed of two parts: nature exalted by grace, and grace vivifying nature. He has not confused these two orders, but He has coordinated them. One force alone is the model and one thing alone the motive principle and ultimate end of divine creation: Christ. . . . All the rest is subordinated to Him. The goal of human existence is to form the Mystical Body of this Christ, of this Head of the elect, of this Eternal Priest, of this King of the immortal Kingdom, and the society of those who will eternally glorify Him.⁸

Moreover, the Christ who came to free men from the bondage of sin had shown that the sole way this sublime goal could be achieved was through individual submission to His authority; a submission possible only if men and women welcomed the authoritative guidance of His Mystical Body. But the men and women in question had to offer this submission through their daily lives in that natural world that God Himself had created and the Incarnation was intended to perfect rather than to abolish. Therefore, the Church had to recognize that all natural tools were intrinsically valuable to that work of saving and "divinizing" individual believers which was her primary responsibility. Everything natural had to be rescued—that is to say, corrected and transformed by Christ's message and grace—to help bring about the ultimate liberation of the individual from sin that was essential to his final perfection. This meant that all the natural, authoritative, social institutions so crucially important to daily human life—from the family to the not-so-Catholic Restoration monarchies as well—were also central to this corrective and transforming goal. To paraphrase a nineteenth century American orator: human freedom, individual dignity, and social authorities; now and forever;

⁸ "L'enciclica dell'8 dicembre", *La Civiltà Cattolica*, Series 6, Volume 1 (1865), 287-288.

one and inseparable.⁹

To fulfill her mission, the Church needed freedom: an internal, "psychological", self-liberation from enslavement to a *Zeitgeist* that blocked her from recovering and cherishing the whole of a Tradition that a progressive secularization had hidden in shadowy and vilified places; an external, physical freedom for her to work efficiently to correct and transform the natural world in its entirety; and, finally, an equally public liberty for the faithful, as individuals, to follow her authoritative social teaching concerning where she must lead them.

Such freedom to exercise her full corrective and transforming influence would, as St. Justin Martyr had already indicated in the second century, place every natural gift and institution in its proper place in the hierarchy of values. A truly free Church would give to the work of Reason - and especially to philosophy - the help that it desperately needed both to avoid its ancient limitation to the role of "parlor sport" for "boys" or sophistic justification of the powers-that-be, as well as its modern Enlightenment mobilization for purely materialist and utilitarian purposes. A truly free Church would help simultaneously both to exalt the State in her proper role as the indispensable coordinator of all social authorities laboring for the attainment of man's natural and eternal end, as well as to humble her historical tendency to self-divinization. In short, a truly free Church would remove the blindfold placed by sin upon man's eyes regarding how properly to use all natural goods for human perfection. Everything natural was calling for the "light" that could make it fully see, and this could ultimately only arrive "from above, coming down from the Father of Lights" (James 1:17), by means of union with and completion in the Incarnate Word. Separation of Christ and Reason, Christ and State, Christ and family, Christ and each and every aspect of life as a whole were all, therefore, an insult to nature's deepest longings and needs, parochializing and blinding every one of its manifold elements.¹⁰

The above argument slowly developed in the first half of the nineteenth century. It was ultimately refined in the years following the Revolutions of 1848 in the many circles inspiring the Syllabus of Errors of Blessed Pius IX (1864), and, perhaps most systematically of all, in the literally thousands of

⁹ Some characteristic articles to consider in this regard, all from *La Civiltà Cattolica*, are "Il restauro della personalità pel cristianesimo", 1, 2 (1850), 367-383; "Se la personalità umana abbia da temere dalla chiesa", 1, 2 (1850), 518-541; "L'autorità sociale", 2, 4 (1853), 19-37, 175-189, 291-304, and "Dell'elemento divino nella società", 2, 9 (1855), 129-140, 385-396.

¹⁰ Compelling in this regard are the Platonic themes emphasized by Werner Jaeger in *Paideia: The Ideals of Greek Culture* (Three Volumes, Oxford, 1986), and *Early Christianity and Greek Paideia* (Belknap Press, reprint of 1961 edition).

pages published between 1850 and 1864 by the editors of the internationally influential Roman Jesuit journal, *La Civiltà Cattolica*. That polishing took place with much reference to ideas emerging from among the very ranks of the forces of renewal themselves: first those of the Abbé Félicité de la Mennais (1782-1854) and his followers—the men we know of as the Mennaisians—and then by thinkers and activists who after 1848 began to call themselves Liberal Catholics.

Lamennais, disillusioned—like all those eager for true renewal—by the chains imposed upon the full expression of the Catholic spirit through existing governments, began to argue that only a clean separation of Church and State would put an end to the manipulative activity of fraudulent, “sacred monarchies” and the *de facto* secularization of the clergy that slavishly worked together with them. Only then would the local episcopacy and clergy, united under the international direction of the Pope, be able to dedicate themselves freely to unleashing that still vital Catholic spirit and energy of believing peoples that had been unnaturally repressed by secularists, both revolutionary and monarchical alike. Only then would the Christianization of all of life be brought about—a Christianization of the State enabling, finally, its proper reunification with the Church. “God and liberty”, the motto of his journal, *l’Avenir*, founded in 1830, neatly expressed the gist of the broad Mennaisian program. A godly unity was its ultimate aim.

But episcopal opposition and condemnation by Pope Gregory XVI in *Mirari vos* (1832) thwarted the progress of Lamennais’ vision. In consequence, he became convinced that hidebound Church authorities enchained Christ’s message just as willingly as those of the State. From this point on, Lamennais claimed that the only guide to the Faith and its meaning could be that which sprang from the Spirit of God operating in and through the faithful mass of believers. Unfortunately, the populace’s awareness of that Spirit active in its midst would remain unconscious and mute unless it were awakened by Lamennais’ own fully conscious prophetic witness. But once awakened, it would recognize the foolishness of its blind and ultimately impious leadership. It would realize that Christianity, as a variety of contemporary thinkers from the Saint Simonians to Polish nationalist poets exiled in Paris were insisting, was a *palingenesis* phenomenon—that is to say, a religion born anew in each age as the vital energy pouring forth from the believing population revealed to the world God’s ever-evolving message; a message that popes and bishops clearly did not wish to accept.¹¹

¹¹ See J. Rao, “Lamennais, Rousseau, and the New Catholic Order”, *Seattle Catholic* (1 February, 2005), http://www.seattlecatholic.com/article_20050201.html; also, J.M. Mayeur, ed., *Histoire du christianisme* (Desclée, Thirteen Volumes, 1990-2002), Mayeur, X, 427-477, 628-906.

Those reformers who rejected Lamennais' teaching but wanted to continue to work for freedom from the oppressive chains of supposedly Catholic monarchies, focused on the need for a division of competence to ensure the correction and transformation of all things in Christ. According to them, Catholic political and social action should be left in the hands of lay pressure groups; dogmatic and moral guidance in that of the clergy. If the laity conducting the politics of the movement still did not follow the dogmatic and moral guidance of the clergy, at least this would not compromise the Magisterium of the Church, confusing believers regarding the sacrality of this new kind of lay action the way that monarchies appealing to their impressive and long-lasting historical ties with Christianity might still do. The war cry of this post-Lamennais movement was "freedom of association". Freedom of association would guarantee the religious liberty necessary for understanding the mission of the Church and for teaching it accurately. It would assure a real chance for a Catholic transformation of State, society, and individuals in Christ, instead of seeing the Church's mission perverted by a fraudulent union of sacred and secular subjecting the former to the latter.

But given the difficulties of obtaining freedom of association in the Restoration Era, battle conditions seemed to require a pragmatic alliance with Enlightenment-inspired political forces who demanded such liberty for their own particular purposes: that is to say, cooperation with liberals, democrats, and nationalists—perhaps even with budding socialists. Lamennais had already looked to such collaboration with reference to the union of believers and liberals that had resulted in the creation of the Kingdom of Belgium in 1830. Still, those Catholics now working for "freedom of association" encouraged it from a practical as opposed to an ideological standpoint. Their hunt for non-Catholic allies made much progress, giving rise to the hope that mutual assistance might result in an honest dialogue revealing the intellectual differences with their pragmatic allies to be misunderstandings rather than real disagreements.

Such collaborative endeavors reached their peak in the first victorious stage of the Revolutions of 1848, especially in Italy and Germany. Still, it did not take long for bitter conflicts to arise among the victorious allies on the actual meaning of the freedom that had been won; conflicts that led very quickly to the suppression of religious orders, the call for a holy war of Catholic Italians against Catholic Austrians, and the exile from Rome of a pope who had committed himself sincerely to dialogue: all this in the name of obtaining "freedom".

One wing of the "cooperative movement" had as its most famous head the Count Charles de Montalembert (1810-1870), an ex-follower of Lamennais who had fought valiantly for Church freedom under the quite

difficult conditions of the Liberal Monarchy born in France in 1830. Montalembert claimed that despite setbacks, Catholics must recognize that continued work with the liberal system of government under the divided religious and intellectual conditions of modern times would be an absolute pragmatic necessity if freedom for the Church and individual believers were to be ensured. Yes, those who now came to be called "Liberal Catholics" argued, many non-believing liberals were ideologically hostile to religion, but this, to a large degree, was because the behavior of foolish believers had convinced them that the faithful were fawning admirers of an absolute monarchy that had not even been good for their own religious cause. Nevertheless, a truly liberal system could not help but guarantee the functioning of "a free Church in a free State". And if Catholics would only show that they respected such a system and had no desire to overturn it, even the fire-eaters' abusive anti-religious actions would eventually lose their appeal.¹²

Opponents of the Liberal Catholic approach included the above-mentioned editors of *La Civiltà Cattolica*. These were men who took the sad reality of contemporary religious and intellectual division as well as the appeal to pragmatic necessity to heart. A number of them, including their most famous member, Luigi Taparelli d'Azeglio (1792-1861), had vigorously supported cooperation with liberals at the beginning of the 1848 Revolutions, and were still willing to continue a dialogue with them. But given the disputes with liberals and supporters of other Enlightenment-inspired political movements that had once again been brought to the surface as the revolutions in question advanced, the *Civiltà* editors argued that any judgment regarding the possibility of substantive future interaction with such forces—liberalism included—had to be preceded by a much more systematic and critical study of the full meaning given to the words "individual", "freedom", "dignity", "social order", "dialogue", and "pragmatism" by all of the parties concerned. Moreover, it also had to be preceded by a more sober, rational examination of exactly how these words played out in practice under the form of government that Montalembert insisted was an *unquestionable* modern necessity and blessing for the Church.

Liberalism and the Liberal Catholic call to recognize the benefits of the "free Church in a free State" that ultimately went along with it did not come off well as the *Civiltà's* detailed study proceeded. It is important for the Second Act of our drama to note that they did not come off well because their critique identified problems that the editors perceived as being imbedded in liberalism in its original and supposedly friendly and moderate Anglo-American form—not in some radically anti-religious perversion of its

¹² C. de Montalembert, *Des intérêts catholiques aux XIX^e siècle* (Paris, 1852).

“true character”. Already in the 1850’s and 1860’s, these problems were said to destroy the possibility of possessing the religious liberty that liberalism was supposed to ensure and to open wide the gates to the radical abuses that Liberal Catholics like Montalembert themselves honestly abhorred. And the editors insisted that any hope for defining and attaining the individual freedom and dignity fully obtainable only under the Social Kingship of Christ was obliterated in the process.

Allow me briefly to outline just enough of the *Civiltà* critique to indicate its acute awareness of those innate difficulties that were to be either ignored or purposely dismissed with the reemergence of the questions of religious liberty and separation of Church and State in the second act of our drama, to which we will soon come. It is a tribute to the acuity of their judgment that the *Civiltà* editors put so many of the pieces of the problem together, even without a full knowledge of all of that extraordinary mélange of esoteric, gnostic, nominalist, protestant, utopian, pietist, and simply sinful, self-interested elements that played a role in the chaotic English Civil War era leading to the formation of the Whig Alliance, the Glorious Revolution, Locke, Newton, and Anglo-American liberalism.¹³

Once again, the *Civiltà* did not deny that religious division presented a real problem for achieving the common good that budding liberalism justly sought to address—and exactly as one had to address it under such circumstances, with reference to the natural law alone. Still, it believed that it was necessary to admit that at the very best this was a tragic situation. For the natural law was a “paper tiger” without the aid that divine wisdom and grace gave to men to marshal their rational faculties properly and instill in them the courage actually to believe consistently what their minds told them to be true.

Protestantism could not offer such assistance. It must always logically be suspicious of Reason, both because of its fundamental doctrine of the total post-lapsarian depravity of all things natural, as well as its dislike of the historic mobilization of Socratic Philosophy on behalf of Catholic doctrinal formulations. Neither could “religious liberty” do the cause of natural law a favor, even if it unengaged Catholics. All that this general liberation accomplished—as Moderate Enlightenment thinkers like Voltaire joyfully recognized¹⁴—was to encourage a cacophonous forum where competing

¹³ Especially important to this critique was L. Taparelli d’Azeglio’s *Esame critico degli ordini rappresentativi nella società moderna*, which first appeared as a series of articles in *La Civiltà Cattolica* and then was published separately (Rome, Two Volumes, 1854). See, also, C. Hill, *The World Turned Upside Down* (Penguin, 1984) on the ideological battles of the English Civil War era.

¹⁴ P. Gay, *The Enlightenment* (W.W. Norton, Two Volumes), I, 168-171.

voices from private religious “clubhouses” could babble ceaselessly, rendering what they had to say publicly impotent and, quite frankly, rather ridiculous to boot. When one added to the weakening of the mind brought about by this stripping away of religious help in forming the human mind the Enlightenment’s reduction of the work of Reason to purely scientific or purely banal utilitarian tasks, it became ever more obvious that any concept of a substantive natural law capable of making universally applicable judgments on issues of moral importance was doomed. Under these circumstances natural law could only survive as an historical memory, as a sociological codification of existing habits and customs, and one that was condemned to be eaten away at more and more under the pressure of contempt for non-scientific metaphysical thought.

But the *Civiltà* was convinced that liberalism gave the *coup de grace* to natural law in two other telling fashions. One was through the *theoretical* support that its Protestant and Enlightenment roots provided for an *individualist* vision of materialist life. This vision understood such “law” to be nothing other than the “right” of men to build their private personalities on the basis of the many sensual passions that they experience in shrapnel-like fashion in the course of a lifetime, along with their “liberty” to do what these passions told them that they must do. Such rights were limited, once again, only by conventional agreements based on what—for the moment—people generally still “felt” to be good and bad. Their number and content would expand as the growing demand for more “freedom” ate away at existing “custom”. That expansion was rendered even more inevitable due to liberalism’s seeming conviction that some mysterious hand would harmonize the unleashing of individual expressions of Original Sin in pursuit of an overriding “common good” —a common good whose definition was just as materialist, convention-bound, shaky, and doomed to spiral downwards into meaninglessness as everything else in this catastrophic system.

A second, *practical* blow to any serious use of natural law came through the opportunity that was given by the purposefully weak liberal State for the strongest and most willful individuals or groups of individuals to dominate society as they saw fit. This opportunity emerged as that same disdain for authority that had worked for the abandonment of public religious coercion was applied to the construction of a system of division of powers guaranteeing the semi-paralysis of the government. And given that whatever ethos is publicly dominant exercises its influence over the rest of society as well, the anti-social spirit of the liberal State sooner or later translated into denigration of and assaults on the internal authorities of the now “private” religious denominations, along with those of families and every other kind of community as well. Unfortunately, as legitimate social *authority* was withdrawn from the public and private sphere, the naked and illegitimate *force* of

powerful, immoral, irrational individuals and the passionate factions formed by them moved in to take its place. And these illegitimate forces, undeterred by their logical and moral savaging of the concepts of individual freedom and dignity that they always inscribed on their own banners, imposed new, self-interested, tyrannical controls upon the weaker elements of the community—precisely the sort of thing that liberal constitutionalism was supposed to prevent.

Although the editors realized just how much this system allowed the property owners and financiers historically active in creating it to manipulate defenseless society for their own private profit, it seemed logical to them that others would try to cash in on the golden opportunity provided by the emasculation of legitimate public and private authority. They thought that the liberal system gave all individuals and unnatural groupings of individuals dedicated to material and ideological passions of any type imaginable a chance to wreak their own special havoc.

All that these “others” had to do in order to press their advantage was to develop the innate logic of the liberal argument that worked to break down barriers to individual personality construction. After all, continued barriers were maintained solely by the mere habits and customs of the existing, illicit “powers-that-be”, who irrationally defended them as the “obvious” dictates of “common sense”. But in pursuing the satisfaction of their willful desires thoroughly, vigorously, and with tools that the current tyrants perhaps never imagined possible, the new oppressors would force their wishes upon a community lacking legitimate authority: either by violence, or by peaceful acceptance of their demands in the name of maintaining “public order”. Ironically, such individuals and factions might eventually demand reactivation and illegitimate exaggeration of the powers of the State for the purpose of obtaining goals that were actually inimical to the original anti-authoritarian liberal program. This, the *Civiltà* argued, was precisely what happened in the new Kingdom of Italy, where budding totalitarians with warmongering nationalist obsessions happily used the apparatus of the liberal State to pursue policies that Montalembert insisted the liberal State had been created to thwart—and, once again, all in the name of individual freedom and dignity.

Finally, it was quite clear to the editors that many liberals had a new, irrational, and ultimately unquestioningly “fiducist” faith in the ability of the political system they adored to guarantee each and every one of the benefits that the *Civiltà* denounced as precarious at the very best. The articles of faith of this system were legion, although somewhat varied by place and time, depending upon what worked, practically, to allow its writ to run in one country as opposed to another.

One should add that insofar as religious-minded elements played a role

in creating such fideism—as they very much did in Britain—its articles of faith included the pietist-inspired command to abandon “sterile” battles over doctrinal differences and replace them with efforts to find God through the practical exploitation of nature for the sake of that human material progress which was deemed the greatest aid to charity and public order. Such a policy was regarded as secure because it would be guided by an unchanging Christian morality that was by now unalterably rooted in men’s minds and hearts and clearly crowned by God with practical success. Besides, adopting it was said to procure the further benefit of allowing believers to stay united in fighting the real enemy threatening them all: the naturalist atheism of Baruch Spinoza (1632-1677). Be that as it may, it gave to those who followed this path absolutely no means of seeing just how much “unchanging Christian morality” actually was changing all around them. Such change proceeded as material “successes” in the natural order—in war, commerce, and sexual seduction—seemed to indicate God’s blessing on behavior that a consultation of “divisive” doctrine and the historical record of Church pronouncements would have revealed to have been regularly condemned as morally reprehensible.¹⁵

La Civiltà Cattolica, like Voltaire, thought that religious toleration under English historical conditions and in the materialist atmosphere of liberal Britain was sufficient to render Christianity gradually meaningless, without any violent assault upon it. This meant that there would be no need to press acceptance of the new liberal or liberal pietist faith forcefully in the United Kingdom. But wherever the memory of a “sacred government” might still be vivid, or where there were fewer religious divisions to exploit than in Britain, or where Catholic resistance to being rendered publicly impotent might still be vigorous, or where the ideological factions not yet in power felt the need to press their claims to control over rudderless society with every tool imaginable, the articles of this new faith would have to be more strictly preached and enforced. It was this that had happened in moderate form in the pre-revolutionary Kingdom of Prussia and the “sacred monarchies” that sought to combine the Enlightenment and Catholicism before 1789. And it was this that had happened much more radically in revolutionary France.

Unfortunately, I had no time to review the *Civiltà*’s articles dealing with Lamennais for this talk. Nevertheless, it is clear from the above comments that the editors would have thought that a prophet of his type who might gain an influence over a different kind of society than that of liberal Britain would be likely to *impose* his palingenesist view of a changed Christianity upon that community as a whole—and through the power of the State as well. For

¹⁵ Interesting in this regard is R. Gawthrop, *Pietism and the Making of Eighteenth Century Prussia* (Cambridge, 1993).

contrary to what people generally think, a genuine Mennaisian can *never* really be in favor of the separation of Church and State. Lamennais was upset with the *old* State, because it blocked the victory of the religion it hypocritically claimed to support. But a new, democratically guided State, where the voice of the Holy Spirit *must* infallibly be heard - once coaxed to the surface by a fully conscious prophet of ever-evolving Christianity - could not suffer from the same flaw. State, People, Prophet, and Spirit would be united in transforming society as Christ wished it transformed at that moment in time. And woe to those Pharisees and Sadducees - popes, bishops, and kings alike - who sought to maintain a faith in the Old Law when the New was now unmistakably upon them! They would ruthlessly be exposed as the enemies of God and "contemporary man" that they truly were.¹⁶

Reformed Mennaisian though he might have been in other respects, Montalembert also appeared to the *Civiltà* to be an irrational, fideist, Lamennais-like proponent of a liberalism that he proclaimed to be the infallible "pragmatic" tool for protecting the message of the Holy Spirit and Christ "in our time"; a tool against which the devil was himself somehow quite powerless. The editors repeatedly tried to explain to him why they believed that the only kind of "free Church" that liberalism permitted was one whose activity was limited to that of a private denominational clubhouse bickering impotently with an ever increasing number of similarly castrated communities, while whatever illicit private powers were momentarily manipulating the "free State" went forward, uncontested, to define the meaning of life, the "Christian" moral virtues required to live it fully, and the "spiritual" role religion might yet have to play in service of its particular ideological or material interests. But Montalembert prohibited any rational questioning of the value of liberal propositions for the protection of Catholicism through an irrational ideological sloganeering: by condemning opponents as "intransigent" enemies of social peace, prosperity, progress, individual freedom, human dignity, and Christianity itself rather than responding frankly to their critique. Adopting his approach, the *Civiltà* editors submitted, entailed nothing other than a return to the enslavement of the Catholic vision to a partisan ideological position against which the movement for renewal had rebelled when it was supporters of "sacred monarchies" who had demanded it. The only thing that this would definitely ensure was that there would once again be no freedom to work to effect the real changes in State, social, and individual behavior that must come along with construction

¹⁶ See J. Rao, "Lamennais", *Op. cit.*; on the Mennaisian spirit, see A. Gough, *Romantic Catholics: France's Postrevolutionary Generation in Search of a Modern Faith* (Cornell, 2014); *Paris & Rome: The Gallican Church and Ultramontane Campaign, 1848-1853* (Clarendon Press, 1996).

of the Social Kingship of Christ.¹⁷

Seeking the correction and transformation of all things in Christ was an innately daunting project even under extremely favorable conditions. Nevertheless, the editors of *La Civiltà Cattolica* were most troubled by the complex of problems posed for the whole endeavor by their own immediate and unfavorable *Zeitgeist*. This had now, for a century or more, taken control of the basic terms of all substantive debate, and had defined words like "Reason", "freedom", "individual dignity", "success", "progress", "authority", "tyranny", and even "peace", "Christian charity", and "pastoral efficacy" in reductionist and naturalist ways that soldiers for the Kingship of Christ would have to re-explain, from their most basic roots, in a fully Catholic manner. These definitions had been hammered into people's minds with all of the means that the *Zeitgeist* had at its disposal, including the press, the theater, and popular song; means that Catholics were far less adept in using, but would have to learn to master for success. Moreover, the political and socially dominant enemies of correction and transformation in Christ possessed another "convincing" argument: their power to break believers' lives, ruining their careers and destroying their families, should they go about the business of questioning the existing order and reacquainting the world with a truly Catholic *paideia*.

Nevertheless, the *Civiltà* and its allies set to work, employing all of the tools utilized by their opponents, and pressuring the Papacy to exercise its universal teaching authority to instruct believers clearly regarding the truth and morality of contemporary political and social visions. They insisted that if such teaching were to be effective, it had to be absolutely crystal clear, naming the names of enemies as it condemned their ideas and actions. Ambiguities would only afford the *Zeitgeist*, with its overwhelming verbal and physical power, an opportunity to interpret them in a manner that was advantageous to its worldview. Inaction was not an option, for a drama of incalculable significance was unfolding before modern eyes. As one *Civiltà* article put it: either God would be King of the world, with true individual freedom and dignity, or man would be King, guaranteeing an irrational, willful, forceful reign of Original Sin masqueraded as the victory of personal liberty and dignity.¹⁸ The Syllabus of Pius IX, the partial but interrupted work of First Vatican Council, and the development of Catholic Social Doctrine in the hands of the popes from Leo XIII onwards can be counted as confirmations of their work. And *nota bene!* It was this stiffening of the Catholic position, begun through the work of the laity and lower clergy earlier

¹⁷ See J. Rao, *Removing the Blindfold*, pp. 157-165.

¹⁸ "O Dio Re colla libertà o l'uomo Re colla forza", *La Civiltà Cattolica*, 2, 3 (1853), 609-620.

in the century, and only seriously involving the Papacy since 1848, that brought about the real “culture wars” of the nineteenth century—not some innate desire for battle on the part of a liberalism whose preference was always for work through subtle and subversive *palingenesis* rather than brutal straightforward assault.

The *Civiltà* was aware that fighting an existing *Zeitgeist* is always an uphill battle, and that the spirit of the times dominating the latter nineteenth century was in no way moribund. Worse still, the practical consequences of Enlightenment materialism in the form of its ever-increasing ability to divert the mass of the population away from consideration of substantive ideas to cheap entertainments or simplistic and demagogic arguments was rendering the problem of battling the enemy intellectually an infinitely more burdensome enterprise. And even if the reign of Pope St. Pius X might still be considered an integral part of Act One of our religious liberty drama, many of the new forces that would play an integral role in Act Two were already strongly present by that moment—the Mennaisian conception of a Catholicism built on vital energy as it translated into at least one branch of theoretical and political Modernism, and the Americanist flip on the basic liberal vision being chief among them.

What I would like to emphasize at this juncture, however, is the *demoralization* of those militants aroused to action by the drive to make Christ the King of the universe—a demoralization that was a primary factor in bringing an end to earlier, medieval efforts to achieve the Social Kingship as well.¹⁹ A contributing element to this more recent demoralization was the confusion sown by those Church authorities who, while seemingly promoting the concept of transformation in Christ, repeatedly tended to belie it through their practical decisions. One serious example of such moral demoralizing decisions may be found in repeated expressions of papal and episcopal willingness to compromise with existing liberal forces that were terrified by the growing power of the Socialist Movement. Such compromises, which involved attenuating criticism of liberal errors, made liberalism seem as though it were actually a conservative and pro-Catholic force. They also tended to affirm a conviction that protection of the cult and the position of the clergy were the sole issues of moment to believers, thereby giving the impression that the Church was uninterested in the fullness of the Social Kingship, which she perhaps held to be for all intents and purposes unattainable and therefore even utopian in character.²⁰

¹⁹ See G. Lagarde, *La naissance de l'esprit laïque au déclin du moyen âge* (Nauwelaerts, Five Volumes, 1958).

²⁰ See J. Rao, “All Borrowed Armor Chokes Us”, *Seattle Catholic* (9 July, 2005), <http://www.seattlecatholic.com/a050709.html>.

A second and perhaps much more powerful form of demoralization emerged from the recognition on the part of activists of their very slight impact on the world outside. This perception of insignificance was visible in innumerable settings: among leaders of Catholic political parties eager to escape from limitation to their narrow confessional base; amidst missionaries frustrated by their inability to make a dent in the cultural armor of some of the lands they wished to convert; in specialized Catholic Action organizations dealing with everything from youth to industrial workers, and shocked by confrontation of their meager numbers with the mass of the young, unchurched population in the trenches of the First World War; with men convinced that their nation must win the Great War, or that that war had given European populations the chance to purify their banal, materialist, prewar lives, and that one needed to bond with similar seekers of victory or war purification from non-Catholic backgrounds; in the company of enthusiastic liturgists aroused to find ways to attract modern men and women to a life of prayer after the ravages of the world conflict; among Russian émigrés as passionate to explain the reasons for the collapse of their Church in the aftermath of the Revolution as their Catholic counterparts had been a hundred years earlier; and, finally, in the ranks of all religious-minded observers of the successes of popular atheist and pagan communist and fascist movements, wondering how to stir up such energy in their own anemic confessional ranks, and ready to contemplate the ecumenical action of Christians everywhere to do so.²¹

Representatives of all the forces mentioned above took part in a more intellectual discussion of religious failure and what to do to reverse it that gave rise to the highly variegated phenomenon known as Personalism. Among those influential in Personalism's growth were Jacques Maritain (1882-1973), who served as host to debates on the subject for *soirées* at his home in Meudon in interwar France. These were attended by Russians like Nicholas Berdyaev (1874-1948), a representative of the Orthodox revival that placed a great deal of emphasis upon the nineteenth century Slavophile concept of the individual "finding himself" in community (*sobornost*), and Emmanuel Mounier (1905-1950), future editor of the Personalist journal, *Esprit*.

Catholic scouting groups were an important force for spreading concepts reflecting what Mounier called "Communitarian Personalism" before the Second World War, and the *École des cadres* at Uriage in Vichy France, which

²¹ See J. Rao, "The Good War and the Rite War", *Latin Mass Magazine* (Spring, 2001), pp. 34-38; "The Bad Seed: The Liberal-Fascist Embrace and its Postconciliar Consequences", *Latin Mass Magazine* (Fall, 2001), http://www.latinmassmagazine.com/articles/articles_2001_FA_Rao.html.

was created to prepare a new elite for a transformed European order, once that conflict seemed to indicate a Nazi victory. Under the guidance of men like Pierre Dunoyer de Segonzac and Hubert Beuve-Méry, the future founder of *Le Monde*, priests like Henri de Lubac, Jean Maydiou, Victor Dillard, and Paul Donceour were brought to Uriage to teach. These men, in turn, introduced students to thinkers connected with the so-called New Theology emerging from the Dominican and Jesuit centres of Le Saulchoir, Latour-Maubourg, and Fourvières. Writings of Lamennais, Henri Bergson, Maurice Blondel, Marie-Dominique Chenu, Yves Congar, Karl Adam, Romano Guardini, Charles de Foucauld and, perhaps more importantly than anyone else, Pierre Teilhard de Chardin (1881-1955), were examined here with care. Uriage also had links, direct and indirect, with Frs. Louis Joseph Lebreton and Jacques Loew, founders of the Catholic social movement *Economie et Humanisme*, and, at least in Lebreton's case, very influential in the genesis of *Gaudium et Spes*.²²

Transformation of the world, according to the doctrine taught at Uriage, was dependent upon the creation of "persons" as opposed to "individuals." "Persons" were defined as men who responded to the call of "natural values" through participation in a community life elevating them above narrow individual desires. One knew that he was dealing with a valid community dedicated to a natural value constructing true persons whenever he saw that that community possessed a discernible, energetic "mystique," and that that mystique led its individual members to creative, self-sacrificing activity. One day, the "convergence" of all such mystiques would result in the establishment of a community of communities producing, in effect, super-persons, "the greatest transformation to which humanity has ever submitted." The nightmare of the twentieth century was actually "the bloody birth of a true collective being of men," mysterious indeed, but providential and eminently Catholic.²³

Catholicism's role in this "convergence" was that of "giving witness" to the supernatural significance of every natural value, reflected in the mystiques of the active communities of self-sacrificing persons it saw around it, and helping each of them to come to its own innate perfection. It must not sit in judgment of them, because a "paligenesis" Catholicism itself could not fully know what it itself really was until everything natural had matured and converged through its witness. Catholicism was part of a multifaceted

²² On the historical development of the influence of Personalism see J. Hellman, *Emmanuel Mounier and the New Catholic Left, 1930-1950* (University of Toronto Press, 1981); *The Knight Monks of Vichy France: Uriage, 1940-1945*, McGill, 1997, p. 56); E. Poulat, *Les prêtres-ouvriers: Naissance et fin* (Cerf, 1999).

²³ Hellman, *Knight Monks*, p. 178.

pilgrimage to God, linked together by intuition and action, whose destination was unclear. What was important at the moment was encouraging deeply willed commitment to self-sacrifice of all sorts.

Hence Uriage's stunning ecumenism, testified to in a myriad of ways. It began with Segonzac's ability "to form friendly relations, on the spiritual plane, with Protestants, Catholics, Jews, Moslems, agnostics," since he "preferred (rooted) people...in their own setting, in their own culture"²⁴. It passed through the Uriage Charter's proclamation—reminiscent of pietist claims regarding an unchangeable Christian morality anchored firmly in European society—that "believers and non-believers are, in France, sufficiently impregnated with Christianity that the better among them could meet, beyond revelations and dogmas, at the level of the community of persons, in the same quest for truth, justice and love"²⁵. And it arrived, in Mounier, at full-fledged Teilhardian rapture over the strange growth of the "perfect personal community," where "love alone would be the bound, and no constraint, no vital or economic interest, no extrinsic institution"²⁶.

Surely [development] is slow and long when only average men are working at it. But then heroes, geniuses, a saint come along: a Saint Paul, a Joan of Arc, a Catherine of Siena, a Saint Bernard, or a Lenin, a Hitler and a Mussolini, or a Gandhi, and suddenly everything picks up speed...[H]uman irrationality, the human will, or simply, for the Christian, the Holy Spirit suddenly provides elements which men lacking imagination would never have foreseen.

May the democrat, may the communist, may the fascist push the positive aspirations which inspire their enthusiasm to the limit and plenitude.

As John Hellman explains, "Mounier's belief that there was an element of truth in all strong beliefs coincided with Teilhard's vision of the inevitable spiritualization of humanity."²⁷

Uriage's message was not a rational one. Its ultimate justification was intuition and strength of will leading to creative action. Any appeal to logic, either in support or criticism of strongly willed commitment to natural values, was dismissed as either belabouring the given, or as a dangerously decadent and individualistic scholastic pedantry. Better to bury the temptations of a

²⁴ *Ibid.*, p. 83.

²⁵ *Ibid.*, p. 59.

²⁶ Hellman, *Mounier*, p. 85, 90.

²⁷ Hellman, *Mounier*, p. 128.

sickly rationalism through the development of the obvious virtue of "manliness"—again, defined in completely anti-intellectual ways: the ability to leap onto a moving streetcar; to ride a bicycle up the steep hill to the École like Jacques Chevalier; to look others "straight in the eye" and "shake hands firmly"; to endure the sweat-filled regimen defined as *décrassage*, devised for Uriage students under the inspiration of General Georges Hébert; to sing enthusiastically around the evening fire in the Great Hall; to know how to "take a woman"; and, always, to feel pride in "work well done." Such manliness was said to have deep spiritual meaning, aspects of which were elaborated in lectures like de Lubac's *Ordre viril, ordre chrétien* and Chino's book, *Pour ere hereon, travaillons ensemble*.²⁸

Finally, let us note that Uriage's teaching was unabashedly elitist—the particular mystique of the École being that of developing the natural value of leadership. "The select youth of Uriage" were said to be "the first cell of a new world introduced into a worn-out one"²⁹, "entrusted with the mission of bringing together the elite from all of the groups that ought to participate in the common task of reconstruction in the same spirit of collaboration"³⁰. Since they were destined to reveal the eternal supernatural significance of the natural values witnessed to by the mystique of all virile communities, Uriage students were actually priestly figures as well. Each class was consecrated and given a great man's name as talisman. Segonzac especially "took upon himself a certain sacerdotal role, even regarding the wives and children of his instructors"³¹ This entailed also a "separation between the leaders, the lesser leaders, the lesser-lesser leaders, the almost leaders and the not-at-all leaders" irritating some of the interns. Members of the "central team," as one of them indicated, "were gods."³²

The Uriage gods at first saw fascism as the "monstrous prefiguration" of the new personalist humanity waiting to be born under their spiritual guidance. Nevertheless, Nazi racism never appealed to men who appreciated vitality in every people and culture, while fascism in general proved its supreme unworthiness by its very inability to succeed. Enthusiasm was then transferred to Marxism, another "monstrous prefiguration" promising a happier future. Here, the activity of the Uriage cadres was paralleled by the efforts of priests and bishops trying to understand the "mystique" of workers in labour camps and ordinary French factories, training for the latter purpose being offered under the patronage of the supra-diocesan *Mission de France*.

²⁸ Hellman, *Knight Monks*, pp. 71-76.

²⁹ *Ibid.*, p. 65.

³⁰ *Ibid.*, p. 63.

³¹ *Ibid.*, p. 90.

³² Hellman, *Knight Monks*, p. 75.

Uriage teachers were themselves involved in these priestly activities – Fr. Dillard, for example, canonizing the Soviets he encountered in the labor camps, and insisting that all workers were “born” into their tasks with specific virtues denied to other people. But an Uriage-like openness was everywhere in the air. After all, there were “riches in modern disbelief, in atheist Marxism, for example, which are presently lacking to the fullness of the Christian conscience”³³. Enlightened spirits had “to share the faith in and the mystique of the Revolution and the Great Day (that of the total Christ)”³⁴, as did one priest who asked to die “turned towards Russia, mother of the proletariat, as towards that mysterious homeland where the Man of the future is being forged”³⁵.

Communitarian Personalists employed familiar Mennaisian arguments to explain their desire to give witness to the work of the Holy Spirit in modern times through the triumphant energy of Marxism-Leninism. Still, the *Zeitgeist*-savvy nineteenth century editors of *La Civiltà Cattolica* would have understood that the mere physical victory of the Soviet Union in the Second World War was already an enormously powerful, non-intellectual, psychological weapon, fit for convincing the war-weary and demoralized European world—its Catholic population included—*unthinkingly* to attribute a superiority to the beliefs and system lying behind its success and the unquestionable necessity of making accommodations with them.

Neither would the *Civiltà* have been surprised that that same powerful but unthinking psychological reaction made itself apparent with respect to the other victor in the global conflict: the United States. When one adds to the by now ingrained and unconscious influence of the Enlightenment “gospel of natural success” over modern western man as a whole the especially uncritical appeal that America might have to those truly suffering persecution under her Soviet partner in victory, it becomes obvious that there would be a ready-made cheering squad for the politically stable and economically rich regime across the pond. But a rational analysis of the full impact of this second victorious force requires some mention of five particular themes and persons: the development of what by the late nineteenth century was called “Americanism”; the post-war ideological politics of the American government and Press; the role of John Courtney Murray, S.J. (1904-1967); the personalist Integral Humanism of Jacques Maritain (1882-1973); and, finally, the continuing impact of the demoralizing activity and inactivity of the Catholic clergy.

³³ Poulat, *Les prêtres-ouvriers*, p. 408.

³⁴ *Ibid.*, p. 386.

³⁵ *Ibid.*, p. 244.

Act Two

What is Americanism?³⁶ It is in one sense a by now all too familiar demand for an unquestioning *faith* in the *pragmatic* necessity of accepting the American system as the sole means of protecting liberty and public order *in our time*. Americanists addressing themselves to Christian believers build upon the anti-Spinoza arguments of earlier pietist promoters of doctrinal syncretism and tolerance. They insist upon their recognition that the American separation of Church and State and religious liberty are their best possible friend and indispensable defender versus contemporary atheism—something that after the Second World War was most clearly represented by Soviet Communism.

America's career as a redemptive and liberating faith—with a country accidentally attached to it—began in seemingly purely Christian form through the Pilgrim Fathers' description of their flight from an evil Catholic Europe to a New Jerusalem across the Atlantic. The Pilgrims saw the "city on a hill" that they were to construct in the New World as a beacon light that might eventually illuminate the entire globe religiously. New England preachers stirring up their parishioners to dramatic expressions of faith in Christ saw this light growing ever brighter under the direct impetus of the Holy Spirit in the Great Awakening of the 1700's.³⁷

Many of these migrants soon lost their faith in the Christian God, but not their religious fervor. That fervor they transferred to the Enlightenment concepts that also had begun to exercise an influence over them, perceiving God's hand through His providential action in the natural world—that is to say, in the birth of the American version of the Glorious Revolution and its secularized vision of redemption through the spread of individual "freedom". Abraham Lincoln added immeasurably to the divinization of the American experiment by emphasizing earlier calls for a civil religion that would underline its peculiarly sacred character. Lincoln envisaged enshrining the Founding Fathers and the nation's foundation documents—the Declaration of Independence and the Constitution—in secular temples with eternal flames burning in their honor. His civil religion preached the message that through America, God and the Founders had provided the "last, best hope of mankind" for both peaceful social order and individual freedom.³⁸

³⁶ For the following, see J. Rao, "Le mirage américain", in B. Dumont, ed., *Église et Politique, Changer de paradigme* (Artéges, 2013), pp. 227-257; also *Americanism and the Collapse of the Church in the United States* (Tan Books, 1995).

³⁷ M. Marty, *Pilgrims in their Own Land* (Penguin, 1985), pp. 107-128.

³⁸ Marty, *Pilgrims*, pp. xiii, 154-164, 221-224, 280-284; W. J. Wolf, *Lincoln's Religion* (Pilgrim Press, 1959), pp. 9, 98, 116-120, 143-144, 152-159, 193-194; P. F. Boller, Jr.,

Unfortunately, faith in America hid the disturbing facts that the *Civiltà* had already brought to light in discussing the mélange of Moderate Enlightenment and liberal ideas that this system also enshrined: that the "free" and peaceful social order established by it was one in which the most passionate and most willful individuals and factions had the advantage over anyone continuing to play by the supposedly unchanging "Christian-common sense" rules that the regime always claimed to defend and obey. Freedom and peace were reconciled under its aegis, but by ensuring the construction of a *pseudo-order* guaranteeing the victory of the strong over the weak—with the weak expected to praise the liberty that oppressed them, and limit their own use of it in the interests of the strong. The will of the strongest—whose representatives could, of course, always change, should those on the hunt for power press their demands in ways that the "common sense" of the current elite would not have dreamed possible—thereby also came to interpret the "will" of the Founders and the "original intent" of the foundation "scriptures" along with "freedom", "social order", and what was considered to be acceptable "pragmatic action" in the public sphere. And given the need to placate a continuing American religious feeling unwilling to believe that the "unchangeable Christian moral code" was actually being subverted, the strong defined what the true wishes of God were as well.

Uncovering the variety of contradictory influences behind this victory requires precisely the complex doctrinal, philosophical, historical, sociological, and psychological study of the *Zeitgeist* that the *Civiltà* editors encouraged. Unfortunately, "truly free and pragmatic citizens", living under the guidance of this spiritually and intellectually stifling American Liberation Theology, are pressured by means of all the public and private tools available to manipulators of the spirit of the times to avoid just such an investigation. Besides condemning any thoughtful critique as unpatriotic and even downright treasonous, the spokesmen for the new civil religion say that it represents a divisive, impious, uncharitable, and utterly impractical obstacle to the success of "the last, best hope of mankind" for peace and freedom. Moreover, they argue that it simultaneously displays the misanthropic spirit of men and women envious of the material successes of their more energetic brethren, whose enrichment works charitably for the benefit of all. As always with "religious" defenders of the Moderate Enlightenment, they insist that it is only through the pragmatic exploitation of material nature that social peace, the fruits of liberty, and the blessings of the Christian God Himself are to be obtained; not through a harping on spiritual and intellectual abstractions dear

George Washington and Religion (Southern Methodist University Press, 1963), pp. 66-115; Mayeur, *Histoire du christianisme*, X, 479-538, XI, 853-932; Gay, *The Enlightenment*, II, 555-568.

to the hearts of sterile, unproductive “losers” who bring all serious practical religion into disrepute.

One cannot underline this Americanist fideist approach strongly enough. Anyone opposing its pragmatically ideological civil religion is vilified as an enemy of public order, freedom, the practical material success that is the fruit of “real Christian virtue”, and the only effective religious response to the evils of unbelief as well. He is, in short, branded as a “hater of mankind”, both cynical and naïve at one and the same time. Sustained attempts to point out the contradictions in this heap of conflicting arguments do nothing but bring down upon the wretched critic yet another round of the usual exasperated invectives further peppered with the accusations of outright mental illness.³⁹

A quantum leap in the preaching of the American civil religion and its self-conscious Liberation Theology took place in the 1890's. The need to “integrate” an enormous and highly diverse immigrant population that might not easily be able to digest what was, after all, a basically English medley of pietist, Newtonian, and Lockean contributions to a new and “pragmatically ideological” Christianity dictated this more intense evangelization. Various pronouncements of President Woodrow Wilson concerning American goals of the First World War in 1917 and 1918 made the worldwide scope of such evangelization clear enough to anyone with ears to hear. True, American devotion to the international spread of the national Liberation Theology slowed in the 1920's and 1930's, due chiefly to a desire to purge it from any contamination that involvement with a war-torn, revolutionary (and, in “Christian” eyes, impious) Europe might have entailed, as well as to a domestic need to finish the massive immigrant population's incomplete indoctrination. But all that changed by the end of the Second World War, when Americans in general finally took the nation's global role as practical guide to the liberation of the universe as an unquestionable given, and prepared themselves to bring the light definitively into each and every dark foreign cave.

Americanists told Catholics—as they did the members of each and every religious denomination—that the nation's sacred system gave all of them a freedom to pursue their faith that was incomparably greater and more beneficial than ever known beforehand. How could it not do so, given that the regime's providential charism enabled them to come to grips with and understand the true meaning of their own specific teachings with more clarity than popes, councils, and scriptures could ever have provided? But what the Americanists did not openly admit was that the “freedom” that this

³⁹ J. Rao, “Why Catholics Cannot Defend Themselves: The Religious and Cultural Suicide of a Conquered People”, *Diocesan Report* (3/19/03 www.diocesereport.com/guest_col/rao_cannot_defend_march03.shtml).

providential system offered did not permit individual members of religious denominations freely to link their personal convictions with the public actions they required, since these were contrary to the self-interests of the dominant materialist oligarchy that defined what liberty really meant.

Leo XIII's attacks upon Americanism and its errors in the last decade of the nineteenth century were quite accurate. Nevertheless, they failed to halt the civil religion's progress among believers. The many reasons for this failure include the fact that Rome's attention was swiftly turned away from the United States to the battle against the Modernists, whose intellectual errors were—as more intellectual arguments always are—an easier target to identify than those of the Moderate Enlightenment. Americanism, which was rooted in just this moderate approach, could always hide behind a deceptive outward appearance of a “purely pragmatic” concern for solving “immediate practical problems”. In the meantime it had the opportunity to go about its more subversive work on behalf of its infallible and ironclad ideology, “defending religion” by castrating or transforming it beyond recognition.

A reading of the *Handbook* discussing the task of the National Catholic War Council created in 1917, subsequent NCWC documents, and the comments of Cardinal Gibbons in the copies of the New Testament given to soldiers going off to battle in the War to End All Wars all show how an uncritical commitment to “national principles” of democracy and freedom, as well as to ecumenical activities in pursuit of patriotic goals, inexorably advanced. A Catholic wartime ecumenical cooperation potentially “disturbing to pious ears” continued to be praised in popular interwar films. And the call for fraternal union of Catholics and non-Catholics on behalf of the American Liberation Theology, resurrected in the Second World War in the battle against National Socialism, reached a peak of frenzy due to the post-war conflict with Soviet Communism.⁴⁰

Eager to guarantee a militant commitment of all men of faith to the primary battle against the Red Menace, Americanists sought to calm continued religious squabbling inside the United States. A major source of this bickering was the terror felt by a number of Protestant leaders at the high American Catholic birth rate. These Protestants feared that a future papist majority would forge a traditional Catholic union of Church and State, the anti-American evils of which they illustrated by pointing to the authoritarianism of the Spain of General Francisco Franco. Spanish

⁴⁰ See *The Handbook of the National Catholic War Council* (NCWC, 1918); M. Williams, *American Catholics in the War: National Catholic War Council, 1917-1921* (Macmillan, 1921); see Pat O'Brien as Fr. Duffy in *The Fighting Sixty Ninth* (1940); Marty, *Pilgrims*, p. 409; Mayeur, *Histoire du christianisme*, xiii, 833-924. Fr. John Ryan (1869-1945) is an interesting and much more nuanced critic of many aspects of the American system.

authoritarianism was identified as a threat to the individual liberty central to the American system in everything from religious to economic matters, revealing a basic, inescapable truth: freedom was endangered by Catholic tyranny in a manner analogous to that of Soviet Communism.⁴¹

Americanist anti-communists could not escape the conclusion that such debilitating divisions had to be put to rest in a fashion that allayed Protestant fears: by making it clear that neither the union of Church and State nor Spanish authoritarianism could remain a praiseworthy model for Catholics. The Church had to be taught that her anti-communism must be the American form of anti-communism, and that since the “pragmatic” American system was the “last, best, hope” for the Church as well as everyone else to be free and really come to grips with her own message, adoption of the tenets of the American civil religion could not help but be beneficial to Catholicism.

Since Moderate Enlightenment methodology dictated a gentle rather than a violent path to impotence, this teaching had to proceed by means of seduction - preferably with the enthusiastic help of Catholics themselves.⁴²

Anyone interested in pursuing a study of this seductive emasculation has a variety of sources that he can consult. One of the most interesting is the recent work of David A. Wemhoff: *John Courtney Murray, Time/Life, and the American Proposition—How the CIA's Doctrinal Warfare Program Changed the Catholic Church*. Here, Wemhoff discusses in great detail the American government's creation of such agencies as the “Psychological Strategy Board” (1951) and the “Operations Coordinating Board” (1953), as well as the development of a “Doctrinal Warfare” program (1953) designed to destroy all *non-American* as well as anti-Soviet communist outlooks—with as much internal Catholic assistance as possible.⁴³

Doctrinal warfare's propaganda campaign began appropriately enough by identifying America's “fundamental characteristic”: Lockean liberalism. This revealed that she “values the individual as an end in himself”.⁴⁴ An appreciation of individualism was said to explain America's “deep tolerance” and “the diversity of its doctrines and philosophies”. Such dedication to individual freedom made the United States “a revolutionary nation” from its very birth. That revolution in the name of personal liberty continued globally in the postwar world, and “America, as the leader of the Free World, leads

⁴¹ D.A. Wemhoff, *John Courtney Murray, Time/Life, and the American Proposition: How the CIA's Doctrinal Warfare Program Changed the Catholic Church* (Fidelity, 2015), pp. 143-149, 168-169.

⁴² *Ibid.*, pp. 52-53, 116-120, 143-149, 168-169, 235.

⁴³ Wemhoff, *John Courtney Murray*, pp. 151-318.

⁴⁴ *Ibid.*, pp. 305, 297.

this revolution" because she "still is in the business of revolution".⁴⁵ Following the typical palingenesist pattern, however, the "revolution" in favor of individual liberty was simultaneously identified as being totally traditional in character. In truth, it was more traditional than Christian Tradition itself, which, once again, needed the aid of the American Way to achieve its full development and self-understanding. For American individualism began with the "Christian-Judaic religion which, in its very concept, recognized the dignity, worth, and right to freedom of the individual, as do most of the other major religions of the world".⁴⁶

It was unfortunate that there were dangerous forces that did not realize that Christian, Jewish, and most major religions were all of them in one way or another nothing other than embryonic protagonists of Lockean individualism. These elements had to be destroyed by employing the method that James Madison in *The Federalist* indicated as being central to the standard operating procedure of the American regime: by multiplying factions inside the enemy's ranks. Hence, "{t}he program was to give voice to 'new and stimulating ideas, even contradictory ideas' because these 'have self-generative powers and are desired.'" Doctrinal Warfare had to "{c}reate, when advisable, deviationist movements designed to split organizations promulgating hostile ideologies", and "{e}xploit local divergences, heresies or policy disagreements within opposition systems". But, once again, this was for the ultimate benefit of the "opposition systems" in question, which could not help but prosper should they rid themselves of their own "totalitarian" tendencies and tap into the American vision that could truly set them free.⁴⁷

Wemhoff's discussion of the personnel at work on these specific projects, as well as those active in the broader enterprises of the Central Intelligence Agency of the 1950's, also indicates clearly just how much government agencies interacted with the private world of the American Press on behalf of Doctrinal Warfare. Staff members regularly communicated with one another and moved back and forth in the employment of both. Henry R. Luce's (1898-1967) *Time/Life* network stands out in particular relief with respect to the program's concern for convincing religious denominations that the ethos of Locke Land enabled them to understand the inner striving of their visions better than by consulting their own history, thinkers, and heroes.

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Luce personally emphasized all of the themes indicated above. "The founding purpose of the United States", as he wrote in one article in *Time*,

⁴⁵ *Ibid.*, 449, 450-451.

⁴⁶ *Ibid.*, p. 449.

⁴⁷ *Ibid.*, pp. 304-306.

⁴⁸ Wemhoff, *John Courtney Murray*, pp. 151-180, and *passim*.

“was to make men free, and to enable them to be free and to preach the gospel of freedom to themselves and to all men”.⁴⁹ Reiterating the ever-useful palingenesisist concept, he insisted that America “is at once revolutionary and conservative, traditional and progressive”.⁵⁰ Because America was so rooted in traditional religion, she was deeply concerned for fighting off atheism; for forging a “Holy Alliance with God”.⁵¹ Still, her advanced knowledge of what was best for believers showed her that this Holy Alliance had to unite “all people who believe in a Supreme Being” for “the promotion of confidence of people everywhere in religious truth”.⁵² Christian dogma, as Doctrinal Warfare also firmly agreed, could not enter into the redemptive picture.⁵³

American wisdom also taught that the fight against atheism was equivalent to the battle for individual freedom, whose chief purpose Luce was candid enough to identify: the ability “to make all the money you can and ‘to do as you damn please with your own’”—apparently, as his wife noted, without any concern for moral questions or right and wrong.⁵⁴ Luce’s understanding of the real purpose of freedom was confirmed by a speaker at a conference he organized in Princeton on behalf of a “World Economic Plan” (1954) who defined it as “the capacity of the individual to produce more per capita, and to enjoy a greater degree of pleasure”.⁵⁵ Meanwhile, the real purpose of the Holy Alliance was underlined at the 1955 meeting of the Luce-backed Foundation for Religious Action in the Social Order:⁵⁶

{O}ur Christian religion and our competitive business system {are} in themselves the two most revolutionary forces in the world today. Communism and socialism, which we frequently think of as revolutionary, are, in fact, reactionary movements---leading man back to the bondage from which he has only so recently emerged. What we call ‘free enterprise’ or ‘competitive capitalism’ or ‘the American way of life’...upsets the old established order. Christianity endowed the individual with spiritual dignity; our American Constitution endowed the individual with political dignity; but it has remained for American industry to endow the

⁴⁹ *Ibid.*, p. 576.

⁵⁰ *Ibid.*, p. 393.

⁵¹ *Ibid.*, p. 373

⁵² *Ibid.*, p. 465.

⁵³ *Ibid.*, p. 294.

⁵⁴ *Ibid.* pp. 172, 465, 551.

⁵⁵ *Ibid.*, p. 433

⁵⁶ *Ibid.*, pp. 467, 53.

individual with economic dignity.

One of the main participants at this same Foundation conference was John Courtney Murray, S.J., editor of *Theological Studies*, based in Woodstock College in New York. Murray, who in his earlier life had made rather vehemently anti-Americanist statements, became deeply involved with the whole governmental-*Time/Life* project, and an intimate friend of Henry and Claire Booth Luce as well. His career as apologist for the American Liberation Theology and the Catholic Church's duty to accommodate it - in the name of a pragmatic historical necessity that providentially assured her a more complete understanding of her own teachings and best interests - began through those wartime ecumenical stimuli central to many believers' "conversion" to the cause of "religious freedom" and syncretism everywhere.

Particularly significant in Murray's case was a Church and State symposium organized by the National Conference of Christians and Jews at the Biltmore Hotel in New York on April 26th, 1948. It was only after that date that he began publicly to propagate the argument on the relationship of Church and State and religious liberty for which he became famous, along with those themes so dear to the hearts of Doctrinal Warfare and Henry Luce. Once again, these themes were individualism, the religious syncretism required to defend it, and the exaltation of America as the sole key to a global solidarity essential for the defeat of atheistic evil-- communism--and the victory of God and the good--free enterprise capitalism.⁵⁷

Murray attacked the "historical union" of Church and State as an unfortunate, accidental product of circumstance, and one that had had the consequence of enchainning Catholicism, hindering its true mission of transforming all society in Christ. American constitutionalism had given the faith the chance to set itself free, permitting the Church to return to "the true Christian Tradition". He insisted that the American political system, with its division of powers and a still more clear separation of Church and State than in Britain, limited the competence of the government over social life, leaving Catholicism totally free to go about its work of evangelization. It thereby differed intrinsically from that nineteenth century Liberalism that had militantly worked against Christianity.

And how could it not so differ? After all, the Founding Fathers of the United States took for granted that basic Christian morality that no one could call into question precisely because it was an uncontestable given; an integral part of the natural law that every right-thinking man relying on human

⁵⁷ Wernhoff, *John Courtney Murray*, pp. 122-276, 467, 505-509, 575, 746; Marty, *Pilgrims*, pp. 417-422.

Reason could grasp.⁵⁸ Anyone with eyes to see could judge just how fruitful their system had been for the American Church. Adoption of the same approach by the Universal Church must bring about similar results elsewhere. For the contemporary world, burned by horrible experiences with ideological and tyrannical states, would then realize that Catholicism had nothing to do with governmental coercion. Modern man was more “sensitive”, with “deeper insights into the needs of the human person”, and ready to hear the message of the Church that historically guided him on his first shaky steps to the realization of his individuality and dignity under the only political conditions suitable to their fulfillment: those established by the Founders. Besides, America and America alone could fight the good fight against atheistic Soviet Communism. “For {the} Catholic Church cannot with full effectiveness oppose Communism as long as it is itself regarded as being in opposition to the American political system”, “man’s best, and possibly last, hope of human freedom”, “that stands out most strongly against the spread of Communism.”⁵⁹

Most of this is very old indeed, beginning with Murray’s complaints regarding the *abuses* of Church-State unions, which recall those of the militants of the early nineteenth century. The appeal for a defense of religion against the one common atheist enemy by means of a reliance upon natural reason rather than doctrine, the insistence on the uniqueness of the practical-minded American experience for allowing all traditional forces their sole chance to reinvigorate their real roots in modern times, and the focus on an individual freedom that ends up supporting the interests of the dominant group in society all recall Pietist, Whig, Palingenesisist, Mennaisian, Liberal Catholic, and, of course, early Americanist themes and their consequences. Similarly familiar is Murray’s contemptuous distortion and dismissal of criticism and his failure honestly to confront certain basic practical problems: his *Time/Life* and Doctrinal Warfare allies’ praise of the dangerously revolutionary movements of the eighteenth and nineteenth century that he attacked, and Leo XIII’s critique of precisely this supposedly “fresh” and “different” American manifestation of liberalism among them.⁶⁰ All that is really different in Murray is the extent to which he as a Catholic priest became involved in the nexus of powerful governmental and private forces active in promoting principles destructive of true Catholic freedom.

Part of this nexus was Fr. Felix Morlion, O.P., the founder, with financial assistance from “all the usual suspects” of governmental and private

⁵⁸ Wemhoff, *John Courtney Murray*, pp. 133-142, 182-207, 220-221, 719.

⁵⁹ *Ibid.*, pp. 228, 235, 223, 147-148.

⁶⁰ Wemhoff, *John Courtney Murray*, pp. 52, 245-25, 270, 369-370, 418, 449, 488, 637-641.

background, of the *Pro Deo* University (1944) in Rome.⁶¹ Morlion used *Pro Deo* to apply “the solid and balanced work of the American Founding Fathers as expressed by their correspondence (1773-1776), by the Federalist papers, the Declaration of Independence, and the Constitution of the U.S.A.” to European practice. He did so because this “most realistic way of establishing a free but God-centered way of life” was “an inspiration for the Italian and other democracies”.⁶² Of course that faith-friendly way of life was not to be taken as specifically Catholic in character, for American principles were “profoundly united with the principles of living faith in God common to all authentic religious denominations”.⁶³ And there could be little surprise in the fact that *Pro Deo* understood that promotion of a system dear to freedom and to God very much entailed a “spreading of the philosophy of American Business”.⁶⁴

Luce, inevitably one of the main supporters of Morlion’s project, gave a speech before 4,000 persons, including Alcide de Gasperi, at the opening of the *Pro Deo* academic year on November 29th, 1953 entitled “the American Proposition”. He consulted John Courtney Murray to ensure intellectual depth to his comments and admitted that he lifted much of the content directly from his response. Forgive me if I summarize one last time aspects of the Doctrinal Warfare-*Time/Life*-Murray effort to seduce Catholics with reference to this address.⁶⁵

The “American Proposition” presented for *Pro Deo* was one that Luce summarized more succinctly in a *Time* article of 1963; namely one that “consists of a word, a tendency and a method. The word is liberty. The tendency is equality. The method is constitutionalism.”⁶⁶ Its most practical element was said to be that of getting rid of governmental obstacles to personal belief and action, thereby making men ever more free. American freedom, in consequence, could “support much pluralism in religious beliefs, political opinions, and local customs”, as well as, *mirabile dictu*, economic freedom and the encouragement of “business”. Luce read from “our National Scriptures”—the Gettysburg Address—to back his argument, discussing various American governmental institutions, such as the Supreme Court—which he called the “Keeper of the Ark of the Covenant”—with the same hushed, sacred awe.

Lest Catholics think that the individualist, anti-social authority approach

⁶¹ *Ibid.*, pp. 366-372.

⁶² *Ibid.*, p. 368.

⁶³ *Ibid.*, p. 376.

⁶⁴ *Ibid.*, p. 371.

⁶⁵ *Ibid.*, pp. 374-382.

⁶⁶ *Ibid.*, p. 381.

of the American Way was somehow opposed to the Catholic Faith, Luce assured them that it was based upon the obvious dictates of the natural law and therefore could not be in any way anti-Catholic. In fact, it could not be anti-anything natural. The "intelligent American can legitimately long for a world in which all men will think his political thoughts and talk his political language", he explained, because insofar "as the American way of life rests upon these principles, understood in their Western traditional sense, it is exportable, but only because it is, or ought to be, indigenous everywhere".⁶⁷ And besides the natural law, the Founding Fathers had a deep commitment to God, reflected in the thoughts of the "Christian" John Adams (he was a Unitarian) and the Deist Thomas Jefferson, both of whom agreed that "God reigned and, directly or indirectly, ruled".⁶⁸ But why refer to these sources when one could calm Catholic fears by citing the blessings of America as proclaimed by the Third Council of Baltimore in 1887, also mentioned by the *Handbook* of the NCWC in 1917: "We consider the establishment of our country's independence, the shaping of its liberties and laws, as a work of special Providence, its framers building better than they knew, the Almighty's hand guiding them."⁶⁹ In short, the Enlightenment understanding of man, enshrined most securely in America, was that of the traditional natural law and the best means of fulfilling Catholic along with all other human values. And anyone present at the talk knew from its tenor that the only possible alternative to the American Proposition was atheistic communism.

Murray, Luce, *Time/Life*, and presumably those behind the Doctrinal Warfare Program as well were very pleased with Jacques Maritain's influence in spreading openness to the American Liberation Theology.⁷⁰ Although closely connected with the development of the personalist approach, Mounier's Communitarian Personalism did not appeal to Maritain. He believed that its total embrace of vital energy as a guide to the presence of the Holy Spirit meant abandonment of the unique significance of Catholicism, so much so that its supporters would find themselves helpless before *any* superficially vibrant phenomenon; spiritually "barren in the face of a Ramakrishna".⁷¹

Nevertheless, Maritain's Integral Humanism, and his treatment of the "person" as an ineffable being whose full spiritual dignity would be injured by coercion in that socio-political realm where man operated as a mere "individual", did call for a Mounier-like dialogue with others. The need for

⁶⁷ *Ibid.*, p. 379.

⁶⁸ *Ibid.*, p. 377.

⁶⁹ *Ibid.*, p. 378.

⁷⁰ *Ibid.*, pp. 220, 225, 235, 269, 506, 518, 627, 882, 943.

⁷¹ Hellman, *Mounier*, p. 42.

dialogue was confirmed by reading the “signs of the times”. The signs of the times indicated that that indefinable creature known as “modern man”, whose deep sense of “dignity” was ultimately rooted in the Christian heritage, and who still needed the witness of Catholic Truth, had perhaps temporarily leaped ahead of the Church in his longing to fulfil his destiny as a person. Contemporary perceptions and strengths must therefore be cultivated.

Dialogue with sensitive modern man could involve many groups, from Marxists to previously antagonistic but now chastened, anti-totalitarian liberals. Maritain’s experiences while living in the United States, expressed in his *Reflections on America* (1958), encouraged the conviction that her pluralist system represented another great leap forward whose appreciation would work for the benefit of Christianity. For the American Way permitted that free, non-coerced dialogue among all manner of sensitive “individuals” through which men unconsciously waiting for Christ could be opened up to the faith, certain that they would be getting the message of Jesus rather than that of Constantine manipulating religion through the power of the State. The unchanging project of Christianization could finally advance under the historically changed socio-political framework of liberating American Pluralism.

Maritain’s apparent ignorance or naiveté regarding just how open to dialogue and true religion American society actually was in practice is regrettable. Among the peculiar benefits that he claimed came from it—benefits that slaves, Indians, Mexicans, exploited Latin American economies, and anyone familiar with the Christmas shopping season might well have contested—was America’s total freedom from any and all Machiavellianism, as well as a possession of many consumer “gadgets” that freed men to pursue more spiritual goals.⁷² But no one can deny that, along with Father Morlion, *Pro Deo*, Luce, Murray, and the American security apparatus, this great philosopher helped mightily in smoothing European acceptance of the American Way as the “last, best hope of Catholics”. Just how much Maritain’s book might have helped the Communitarian Personalists—who were initially very suspicious of American individualism

—to see how a worldwide spread of liberal pluralism in Church and State might provide opportunities for prophets who were usurping control of the various “energetic mystiques” to which they supposedly “gave witness” to seize control of the authoritative vacuum it guaranteed I cannot right now say.

One last element that needs briefly to be mentioned before summarizing the *Zeitgeist* at the time of the Council and its aftermath is the ever more

⁷² Maritain, *La fin de machiavellisme* (NV, 1942), p. 125; Wemhoff, *John Courtney Murray*, p. 518.

vociferously expressed anger over the inaction of the Roman and American ecclesiastical establishment in the face of the Americanist onslaught coming from the chief enemies of Murray and the *Time/Luce* project in the 1950's and 1960's. Chief among these opponents were the two most important American theologians of the pre-Murray era, Mgr. Joseph Fenton (1906-1969), editor of the *American Ecclesiastical Review*, and Fr. Francis J. Connell (1888-1967), the main founder of the Catholic Theological Society of America.

Fenton and Connell understood that what actually was being promoted through the call for a rejection of the union of Church and State and an embrace of the principle of religious liberty was a divinization of a materialist American attitude towards life.⁷³ They were furious with the incessant propaganda for these ideas in the American Press, and even more so with the way in which the *Time/Life* position was devoured and then slavishly copied by Catholic newspapers in the United States as well. Nevertheless, what most irritated both men was the increasingly obvious fact that nothing could arouse the vast majority of bishops to do anything serious about the subversion of the Faith. Fenton's diaries in particular indicate his ever greater demoralization; a demoralization similar to that discussed earlier, based upon a conviction that there was no real belief in the concept of the Social Kingship of Christ in Rome and America alike, and this because of a practical acceptance of the precepts of the same old liberalism in its latest and only deceptively new clothing. He finally came to the conclusion that Rome was run "by vain and money hungry cowards who are afraid of the manifest opponents of the true faith within the ranks"; men who were easily seduced and bullied by materialist society in all its forms.⁷⁴

The inner circle here lives on a diet of steady promotion.... They go to foreign lands as diplomats mixing with and living like the richest of the rich. They occupy archbishoprics or fill-in posts. Then they return and drive around Rome in super-sized chauffeur driven German cars, and, at the top of the ladder there is always the big prize.... Here are members of the Church who are obviously in a state of mortal sin. Some of them do not believe Our Lord's message at all...What nonsense!

In short, two Americans themselves felt that the *Blitzkrieg* on behalf of a "free Church in a free State" providing a Catholic future brighter than any

⁷³ Wernhoff, *John Courtney Murray*, pp. 514-516.

⁷⁴ *Ibid.*, p. 625; also pp. 191, 245, 247, 418, 425, 493-494, 514-516, 607, 685-686.

past was resulting in an enslavement of the authorities of the Mystical Body of Christ to exactly that hunt for purely material benefits that the illegitimate powers *really* guiding life in a pluralist system defined as both paramount and “spiritual”. Supporters of Catholic renewal in the early nineteenth century would have understood what was happening. The freedom of the Church and Catholics was being subverted, and the pathway to true liberty and human dignity obscured by the *Zeitgeist*.

By the time the Council was called and met, pressure for a discussion of “religious liberty” was very strong indeed. This pressure can be divided into three parts—Communitarian Personalist, Integral Humanist, and Americanist—and the greatest of these was the Americanist. That immense Americanist pressure was to be backed at the Council by a *Time/Life* press campaign of staggering consistency. Correspondents like Robert Blair Kaiser and Michael Novak were urged to take sides in this monumental battle of the “good guys” versus the “bad guys”, with the good guys—Personalists, Americanists, Palingenesists, and Modernists in general—rewarded with adulation not just in print but also through triumphal speaking tours of American universities. They were aided in their lobbying activities by inside information leaked through *periti* breaking conciliar rules of secrecy, and, to Fenton and Connell’s horror, by the every more obvious collaboration of the Catholic Press at home and the American bishops present at the Council itself.⁷⁵

This meant that whatever the text of *Dignitatis humanae* itself eventually said, it was the “rising expectations” of a *Zeitgeist* shaped by well-funded and self-proclaimed prophetic forces interpreting the “signs of the times” outside the Council - expectations to which Bishop Emile-Joseph de Smedt made passionate reference in pleading for a swift completion of work on the religious liberty decree - that would dictate what it was *permitted* to mean. It was the servants of the *Zeitgeist* who would mobilize “the spirit of Vatican Two” - a favourite Novak phrase - in righteous opposition even to the most obvious words of the Council’s clearest documents, not to speak of its more ambiguous ones. And it was this *Zeitgeist* to which Church authorities with eyes and ears open to the “signs of the times” would submit again and again in the future.⁷⁶

All this was totally predictable. Playing carelessly with the word “liberty” - of whose *Catholic* sense very few “sensitive”, “dignified” modern men possessed any inkling whatsoever—was like riding on the back of a monster. One needed only to consult the evidence from Act One of our drama to have an appreciation of what would happen by mounting this beast. But such

⁷⁵ Wernhoff, *John Courtney Murray*, pp. 659-901.

⁷⁶ *Ibid.*, pp. 726-729, 797-798.

rational consultation, under the "freedom" allowed by the "signs of the times" interpreted by those prophetic spirits awakening Catholics to their full dignity in a totally new stage in human history, was strictly prohibited. And the result was that the predictable did indeed come to pass.

Opening the Church to liberalism's innate tendency to treat social authority as dangerously suspect worked first of all to break down the authority and morale of the old Roman Curia, turning real power to implement the Council's decrees over to commissions, study groups, and journals dominated by those possessing the requisite spirit. Under these circumstances, *any* strong-willed forces with a clear agenda gained a tremendous advantage in taking control of a Church apparatus left bereft of legitimate authorities.

Equation of the principles of the *Zeitgeist* with those of Christianity itself in the giddy atmosphere of "joy" and "hope" characterizing the end and immediate wake of the Council gave all of those forces which Maritain deemed eager to enter into a "dialogue" with Catholics a chance to do exactly what those "dialoguing" with the faithful did in 1848: demand a Catholic surrender on whatever issue was of deepest concern to them as the sole means of proving the Church's good will. The Integral Humanist project lacked a sufficient number of non-Catholic individuals prepared to respect believers' "personhood", and believers were easily cowed by their opponents' all too familiar strength of will. The reader will remember that it was precisely this sort of problem that *La Civiltà Cattolica* sought to address in that call for greater Catholic clarity that Montalembert labelled as hopelessly "intransigent".

Meanwhile, the Communitarian Personalist approach bared its teeth. Bishops and episcopal conferences that failed to respond to the "teaching" of the energetic local community were quickly condemned. Other corporate institutions, reduced by pluralism and personalism to being mere channels for "mystiques" instead of truly authoritative societies, came to understand that they could not perfect the "natural messages" they nurtured on their own steam alone. They had to be guided by the "witness" provided through prophetic, elitist activists. The spiritual superiority of these witnesses was in turn made manifest by their abandonment of traditional Catholic teaching and their wilful proclamation of its latest "reborn" lessons.

The formerly Catholic social movements of Europe and Latin America were now expected to continue their labours only on the basis of perfecting "natural values" that could be shared by believers and non-believers alike. Distinctly Catholic elements were not to be allowed to interfere with the development of social action in Africa and Asia where they had had little or no influence before, lest they somehow distort a Seed of the Logos in the process of development. Popular forces that dared to resist the abandonment

of Catholic ideas or contest the shape that social action was taking had to have their consciousness raised in base communities and encounter groups by palingenesis guides appealing to the “spirit of the Council”. How else could those trapped in the past come to know what God wished, and what their own deeper aspirations really were?

Disastrous is the only word that can be applied to the post-conciliar consequences of this new “evangelization”. In so far as there was an unprejudiced dive into the vital, active milieu in which the spirit of Christ was supposedly taught, this permitted no contact with the Christ of history outside and above it. The objective reality of the Incarnate God-Man was thus ultimately called into question, with the very concept actually being identified as merely a “western” understanding of the work of “the Spirit” in human life. Catholicism was indeed left spiritually “barren in the face of a Ramakrishna”, as Maritain, much too wedded to his Aquinas to go the whole Mennaisian personalist route, had predicted it would be.⁷⁷

“Aggiornamento means getting the Church of 1965 up to where the US Constitution was in 1789”, Murray had happily explained.⁷⁸ If this judgment were accurate, as the masters of the *Zeitgeist* were determined that it was to be - and as Pope Benedict XVI, speaking in 2005, apparently concurred⁷⁹ - then there was no surprise that the American Catholic experience after the Council would parallel that of the country as a whole. This meant that if anything in pre-existing Catholic theology and the rational philosophy traditionally utilized in union with it stood in opposition to the American Way, it was these discordant theological and philosophical elements that had to disappear. The Council’s “clearer understanding of ecclesiology” was indeed called upon to justify such a surrender. A pilgrim Church’s learning process had to be carried to its obvious conclusions, as, bit by bit, the deeper spirituality of the American experience taught her what Christ really expected from her: a structural democratization favourable to baptizing as Catholic the dictates of individual “free consciences”; and a condemnation of the use of coercive social authority of any sort—even that of purely internal impact on the faithful and devoid of physical penalties—as offensive to human dignity.

Both the Catholic Church and her Christianization of the world at large thus came to be guided by supposedly Christ-like, but actually John Locke-shaped individual consciences; individual consciences whose “liberation” was proven by their slavish repetition of the demands of the latest wilful interpretation or competing interpretations of the will of the wilful Founding Fathers. And as believers’ rational abilities deteriorated, the “obvious,

⁷⁷ Hellman, *Emmanuel Mounier*, p. 42.

⁷⁸ Wemhoff, *John Courtney Murray*, p. 819.

⁷⁹ *Ibid.*, pp. 900-901.

common sense dictates” of the natural law disappeared with them, all of these now seen as nothing other than private religious options rejected by large numbers of sensitive modern men with a deeper awareness of their individual dignity; discarded because unacceptable to the consensus needed to maintain public order. The drab, pragmatic, utilitarian, and downright silly crochets of an over-bloated fur trapping settlement that was now the Master of the Universe became the only “spiritual” elements that the individual on his way to his full dignity as a “person” was allowed to take seriously in the course of his daily life. “Evangelization” of the social order under these circumstances became a code word for a conscious, determined burial in fallen natural desires and perceptions. These *might* have been lifted up to God, had the tools for accomplishing that goal not been rejected, and an opening not been given instead to all the gross, banal and frequently inane fantasies to which human beings always feel their deepest pull.

No wilful assertion of spiritual superiority could save those prophets attempting to “witness” to such a false spiritualization from a depressing fall to earth along with the “vital energies” closest to their hearts. Hence, the once deeply pious Fr. Dillard ended by concluding that his work in the factory was more important than his Mass, and, indeed, that the machine on which he laboured itself actually had a soul⁸⁰. Similarly, Mounier’s Ascent of Mount Carmel led him to jettison prayer for psychoanalysis. Meanwhile, the *Monde* milieu of Beuve-Mery helped mightily to build a technocratic Europe which is now marked by the same bland, materialist “diversity” of the American pluralist circus it so readily condemned at the end of the Second World War.

Murray’s own “spiritual” trajectory could serve as a key to the whole downward spiral of American society. Already before the Council’s end, he began to reject a Catholic right to intervene in the public square by means of verbal condemnations and economic boycotts of indecent films and literature. Any open Catholic opposition to socially divisive issues such as birth control and abortion stood next in line for stigmatization. Daily contact with LSD started to look to Murray as though it might provide a definitive pathway to true sanctification. Both he and Clare Booth Luce occasionally took the drug with the blessing of an intimate friend and spiritualist guru, Gerald Heard, who not surprisingly lamented the nefarious influence of morality on business freedom and saw homosexuality as a sign of creative evolutionary development.⁸¹

And yet despite his descent into 1960’s madness, Murray still felt his undegenerated religious and philosophical tendencies working upon him. Hence, he anxiously admitted the swift dissolution of that common

⁸⁰ Poulat, *Les prêtres-ouvriers*, p. 327; Hellman, *Mounier*, pp.190-193, 255.

⁸¹ Wemhoff, *John Courtney Murray*, pp. 483-491, 535, 537-549, 858-895.

understanding of the natural law which he once argued would be sufficient for preservation of a moral social order. "The thing we have not yet proved in the United States", he said in 1966 shortly before his death, "is that the social consensus, as at least moral, can be maintained in the absence of religious unity, in the presence of radical divisions. There are signs that the consensus is eroding."⁸² But he was wrong. The underlying American pluralist consensus was stronger than ever. The American Church was linked more closely to the American State and society than ever before in her demonstration of a willingness to bless whatever it was that the strongest forces controlling them all demanded that she accept and proclaim as integral to the Catholic Tradition.

Conclusion

Numerous statements coming from the Vatican during the reigns of Pope John Paul II and Benedict XVI attempted to explain the Council's "true meaning" on a variety of subjects, including both religious liberty as well as the Church's relationship with the State and outside world in general. All these sought to correct the horrible consequences for the Social Kingship of Christ stemming from the victory of the pluralist and personalist mentalities, making it clear that concern for "public order" could never be permitted to justify public and individual immorality. Nevertheless, the stigma attached to statements suggesting possible recourse to the use of any form of social authority in the life of "free, dignified, individual modern man", has rendered such valuable theological corrections utterly meaningless in practice. They are not backed up by serious consistent action.

How could they be? Accusations of everything from "opposition to the will of the Holy Spirit" to "cultivation of innate fascist sympathies" regularly bring closure not just upon effective action but coherent argument as well. And that coherent argument never seems to emerge. The root refusal to critique the pluralist vision of political and social life and to make an effort to understand whence it came remains painfully apparent. Fenton and Connell themselves do not appear to have understood the origins of the Americanist problem in the mesh of forces giving birth to the Glorious Revolution and the Whig interpretation of man and society. Nor could they bring themselves to admit that a Catholic order would alter the American Way of Life. Contemporary popes, bishops, priests, and laity show almost no knowledge of Act One or Act Two of the drama outlined above. A mere expression of concern for gaining that knowledge would itself be a crime of lèse-majesté against the glories of the contemporary *Zeitgeist*.

⁸² Wernhoff, *John Courtney Murray*, p. 869.

Without the root problems being tackled, the tree that grows therefrom cannot be destroyed. That tree, once again, supports a society in which Church and State have never been more united in their common commitment to allow fallen nature to have its way against the dictates of Faith and Reason. Both illustrate a conscious or unconscious subservience to “the Promethean lust for material power that serves as the deepest common drive behind all modern Western cultures”.⁸³ Neither Church nor individual Catholic believers nesting in this tree possess true Christian freedom.

Yes, the Church is still a “sign of contradiction”, but, unfortunately, contradiction of her own divine character and mission, which has become enslaved in a much deeper and complete sense than when abused by sacred monarchies still nurturing at least some flicker of Faith. A false tradition has become *the* Tradition. As Louis Veillot indicated during Act One of our religious liberty drama, this false tradition, destructive of all Church and individual Catholic freedom, seeks irrationally to silence Christ’s full message. Our true liberation can never come by following its pragmatic guidelines, defined in such a way as to fix a blindfold permanently over our own eyes. It can only be effected through a return to a full knowledge of Christ and the demands of His Social Kingship. All borrowed armour chokes us.⁸⁴

...{F}erocious pride is correctly the genius of the Revolution; it has established a control in the world which places reason out of the struggle. It has a horror of reason, it gags it, it hunts it, and if it can kill it, it kills it. Prove to it the divinity of Christianity, its intellectual and philosophical reality, its historical reality, its moral and social reality: it wants none of it. That is its reason, and it is the strongest. It has placed a blindfold of impenetrable sophisms on the face of European civilization. It cannot see the heavens, nor hear the thunder.

The right tactic for us is to be visibly and always what we are, nothing more, nothing less. We defend a citadel that cannot be taken except when the garrison itself brings in the enemy. Combating with our own arms, we only receive minor wounds. All borrowed armour troubles us and often chokes us.

⁸³ R. Gawthrop, *Pietism and the Making of Eighteenth Century Prussia*, p. 284.

⁸⁴ L. Veillot, *Mélanges, Oeuvres complètes* (Paris, iii series, 1933) x, 45-46; v, 276.

Reading *Dignitatis Humanae* within a hermeneutic of continuity¹

Rev. Fr Brian W Harrison OS

One of the thorniest and most important controversies in the half-century since Vatican Council II issued its Declaration on Religious Liberty, *Dignitatis Humanae* (DH), is the topic to which this Colloquium is dedicated: *Can this conciliar document be reconciled with the traditional Catholic doctrine on the rights of non-Catholics in civil society?* This traditional doctrine was classically expounded in such papal encyclicals as *Mirari Vos* (1831) of Gregory XVI, *Quanta Cura* and the accompanying *Syllabus* of Bl. Pius IX (1864), *Immortale Dei* (1885) and *Libertas* (1888) of Leo XIII, and *Quas Primas* (1925) of Pius XI.

My own position, which I wish to explain in today's talk, is that the Vatican II Declaration can, and therefore should, be read as embodying a harmonious, non-contradictory development of traditional Catholic doctrine on this question. Nevertheless, at the level of mutable policy or ecclesiastical public law, I believe DH also undeniably implies a new and more liberal prudential judgment of the Church regarding the extent to which, under modern circumstances, governments – even those in predominantly Catholic countries – may justly repress the public expression of error in matters of religion ("faith and morals").

I will begin with two general hermeneutical considerations that I think need to be kept in mind in order to arrive at a correct understanding of DH.

Before all else, it is important to clarify that the burden of proof lies squarely upon those who claim that the doctrine of DH is incompatible with that of Catholic tradition. This is the case because, after all, the whole purpose of the Church's post-Apostolic teaching authority is to guard and preserve the faith "delivered once and for all to the saints" (Jude 3), not to invent new doctrines out of whole cloth, and much less to contradict that faith, whether directly or indirectly. Hence, there must be a strong *a priori* presumption of continuity in the doctrinal teaching of an ecumenical council, even when (as I and most commentators hold) the doctrinal developments of Vatican II that have proven to be controversial have not been proposed *infallibly* by either the ordinary or extraordinary magisterium. The same presumption also

¹ This paper is an adaptation of the author's article, "*Dignitatis Humanae*: A Non-Contradictory Doctrinal Development", in *Living Tradition*, No. 151, March 2011.

implies that any ambiguities or obscurities in the text should be resolved by interpretations that harmonize with, rather than contradict, existing doctrine.

Also of great hermeneutical relevance is the closely related question of whether Paul VI and the Council Fathers had the *intention* of contradicting any part of the existing doctrine on religious freedom. This could theoretically have been possible if there had been a consensus that some authentic, but non-infallible, doctrine on this subject was in error and so needed correction. I have argued in detail elsewhere that the Fathers certainly had no such intention.² Briefly, my reasons are: (a) no such proposal to “correct” any supposedly mistaken doctrine was ever officially presented to the Fathers on the floor of the Council; (b) on the contrary, the *relator* assured them that the schema they were being asked to approve did not contradict existing doctrine; (c) the Preamble (article 1) of the final text of *DH* says the Declaration intends to “develop” existing doctrine (a word which in the standard theological vocabulary means change of a harmonious, non-contradictory sort); (d) article 1 also says that as the Church in this Declaration draws “old things and new” from her “sacred tradition and doctrine”, the new is “always in harmony” with the old; and (e) the Preamble also insists that the religious freedom taught in this document “leaves intact” (*integram*), the “traditional Catholic doctrine on the moral duty of men and societies toward the true religion and the one Church of Christ”. Moreover, as regards (d) and (e) above, nothing is said to the effect that it is only *infallible* traditional doctrine that is guaranteed to be in harmony with, or “left intact” by, the new Declaration. Now, it would clearly make no sense to claim that the Pope and Council Fathers validly contradicted some existing Catholic doctrine, not only without any intention of doing so, but with a positive intention *not* to do so! The Church surely cannot reverse her teaching inadvertently, or ‘by mistake’! So, we must conclude that any interpretation of *DH* that would make it contradict any pre-conciliar doctrine – whether infallible or merely ‘authentic’ – could not express the Declaration’s true meaning.

We must now consider several more specific interpretative criteria that will be necessary for a correct understanding of this conciliar document.

I. First of all, certain important distinctions need to be kept in mind:

² Cf. Arnold T. Guminski & Brian W. Harrison, *Religious Freedom: Did Vatican II Contradict Traditional Catholic Doctrine? A Debate*, (South Bend, IN: St. Augustine’s Press 2013), 74, 158-162).

(a) between Church doctrine (teaching proposed as true for all times and places) and ecclesiastical public law or prudential policy judgments (adaptable according to different historical/cultural circumstances);

(b) between a Vatican II *Declaration* such as *DH* and more authoritative conciliar documents, such as Dogmatic Constitutions. Conciliar declarations (of which there are two others, *Nostra Aetate* and *Gravissimum Educationis*, on inter-religious dialogue and Catholic education respectively) are not meant to be read as if they proposed universal, timeless, and unchangeable doctrine from start to finish.³ All three of them begin with a few basic general doctrinal principles of this sort, and then go on to give practical applications of those principles that the Church considers appropriate for our own times. All too often, those who claim a doctrinal contradiction between *DH* and traditional doctrine adduce as evidence statements found in articles 3 or subsequent articles. But the strictly *doctrinal* statements specific to *DH* are to be found only in article 2, and are identifiable by the more formal wording employed (“The Vatican Council declares” that such-and-such is the case). The document’s subsequent articles are essentially explanations and justifications of the doctrine enunciated in article 2, as well as specific applications and determinations thereof which the Fathers judged to be appropriate for the contemporary pluralistic world the Council is addressing – a vastly different world from the enclosed society of European Christendom which provided the historical context for the formulation of the traditional doctrine.

(c) A third crucial distinction to be kept in mind is that between affirming a right *to do X* and affirming a right *to immunity from coercion* in doing X. In a purely juridical or legal document setting out only what is and is not to be prohibited and punished *by human positive law*, the validity and/or relevance of this distinction might not perhaps be too obvious. But certainly, in a theological, doctrinal document such as *DH*, which in the first place considers *moral* rights and duties, and only secondarily their implications for human law codes, the distinction is crucial. *DH* carefully specifies that what it affirms as the natural right to religious freedom is only the second kind of right specified above. A *theological* affirmation that there is a human right *to do*

³ The Index to the 1966 *Acta Apostolicae Sedis* begins with a list of the conciliar documents promulgated at the final session of Vatican II in the autumn of 1965. They are ranked in order of importance: Constitutions first, then Decrees, and finally, Declarations.

X simply means that X is itself a kind of action which is objectively morally upright and justifiable. But to affirm a right to immunity from human coercion in doing X – that is, a right *not to be prevented by human authority* from doing X – does not necessarily imply that X is objectively good behaviour. It is simply a reflection of the important distinction between sin and crime; that is, it recognizes the limited jurisdiction of government when it comes to penalizing the errant behaviour of citizens. St. Thomas recognized long ago that it is not the function of human law (civil authority) to outlaw and punish any and every kind of sin.⁴ And he answered negatively the question as to whether Muslim or Jewish parents could justly be prevented by Catholic governments from teaching their children their respective non-Christian religions.⁵ Does that mean St. Thomas is saying or implying that there exists a “right to teach one’s children false doctrine” – doctrine contrary to the revealed truths such as the Incarnation and Trinity? Not at all. There is only a right *not to be prevented by government* from doing so.

Other clear examples would be our Lord’s warning to avaricious souls who lay their treasure up on earth instead of in heaven, and to those who sin by omission in neglecting the poor. These sins can be *mortal*: they lead to eternal punishment. But that doesn’t mean Jesus was implying that government can justly punish a man for his ‘thought crime’ of being inwardly too attached to this world’s goods, or that it would be just to send us to jail, not only for failing to pay our debts or taxes, but also for failing to donate enough of our income to charitable causes. Extending to government the authority to punish every kind of sin – even every kind of *grave* sin – would in practice be a recipe for totalitarian tyranny. So, coercion can be unjust – and thus violate another person’s rights – not only when it is inflicted on the innocent, but also when it’s inflicted on a wrongdoer *by someone who oversteps his own authority* by inflicting it.

(d) Finally, we need to avoid the fallacy of assuming that if we say a government should *tolerate* a certain activity, we are implying or presupposing that it also has a *right, in justice, to repress* that same activity if it wishes to do so. Saying that a ruler *tolerates* activity A simply means that, while disapproving of A, he decides not to repress it even though he disposes of enough physical force (police or military), and perhaps legal permission, to do so. Whether or not he would also have a true *right* (i.e., the *moral* authority) to repress A is a

⁴ Cf. *Summa Theologiae*, Ia IIae, Q. 96, a. 2.

⁵ Cf. *Summa Theologiae*, IIa, IIae, Q. 10, a. 12.

distinct question. In some cases he would, in others he wouldn't. So critics of Vatican II are setting up a false dichotomy when – as often happens – they claim to discern an implicit contradiction between *DH*'s language of “rights” in civil society for those practicing various different religions and the traditional papal language that spoke of mere civil “tolerance” for non-Catholic religious activity. The distinction made in (c) above also needs to be kept in mind here. It follows from all this that the respective concepts of having a *right not to be prevented* by the State from carrying out religious activity A (which is the language of *DH*), and of *being tolerated* by the State in carrying out A (the language of the pre-conciliar magisterium) are not at all logically incompatible.

II. Note also that, according to *DH* 1, the religious freedom affirmed in this document leaves “intact”, or “whole and entire” (Latin *integram*) the “traditional Catholic doctrine concerning the moral duty of individuals *and societies* toward the true religion and the one Church of Christ”. Now, the word “societies” here certainly includes civil or political communities as such. This was clarified in words that were personally approved and mandated by Pope Paul VI, and then read out by the *relator* (official spokesman for the drafting committee) to the assembled Fathers who were about to vote on this final draft of *DH*. The *relator* told them that this and other last-minute additions to the text were meant to express more clearly the doctrinal coherence of the declaration they were being asked to approve with “ecclesiastical documents up till the time of the Supreme Pontiff Leo XIII”, especially the “insistence” of these documents on “the moral duty of public authority (*potestas publica*) toward the true religion”. As a result, he said, “it is manifest that this part of the doctrine has not been overlooked”.⁶ Hence, any interpretation of *DH* that places it in contradiction with the doctrine of previous popes cannot, according to the mind of the Church, express the Declaration's true meaning.

III. Keeping in mind the above interpretative criteria, we can now set out very briefly a case for non-contradiction. What troubles dissident traditionalists about *DH* is mainly its assertion in article 2 that, “within due limits”, no one may be *prevented from acting publicly in accord with* their conscience in religious matters. This assertion, they claim, is unorthodox and irreconcilable with previous papal teaching, notwithstanding the proviso “within due limits”.

⁶ “. . . *ex quo patet hanc doctrinam partem non praetermitti*” (*Acta Synodalia*, IV, VI, 719).

Now, taking into account the elaboration of those “due limits” which we find in article 7 of the Declaration, this *controverted* teaching of *DH* can be synthesized as the following proposition:

P: It is *unjust* for human authority (Catholic or non-Catholic) to prevent people from publicly acting in accord with their conscience in religious matters, *unless* such action violates legal norms, based on the objective moral order, that are necessary for safeguarding: (a) the rights of all citizens; and/or (b) public peace; and/or (c) public morality. (These three benefits are said to make up collectively “the basic component of the common good”, otherwise termed “a just public order”. It is important to be aware that *DH* defines “public order” in terms of these three factors.)

Now, if indeed **P** *contradicts* traditional Catholic doctrine in the way dissidents claim it does (i.e., by allowing too much civil freedom in religious matters) then, logically, the pertinent traditional doctrine would have to have been the following:

P¹ It is *sometimes just* for human authority (Catholic or non-Catholic) to prevent people from publicly acting in accord with their conscience in religious matters *even when such activity does not* violate any of the three general norms (a), (b) and (c), specified in **P**.

But **P¹** was not in fact the Church’s traditional doctrine. It cannot be found – in those words or others implying the same thing – in the pre-conciliar magisterium, ordinary or extraordinary. For the popes of earlier times who sometimes exhorted Catholic rulers to repress all public manifestations of non-Catholic religions would certainly have answered affirmatively, had they been asked whether such manifestations violated one or more of the three norms set out in proposition **P** above. (We will return to this point below.)

Ergo, *DH* does not contradict the Church’s traditional doctrine.

It might be objected, however, that **P** conflicts with the traditional doctrinal maxim that “error has no rights”. Not so. The maxim is of course a figure of speech; for, clearly, only persons, not ideas in abstraction, can really possess “rights”. What it means is that error can never be either the object of any human right (i.e., that to which the right entitles us), or the foundation of any human right (i.e., its reason, grounding, or justification). But *DH* says nothing contrary to that. It just emphasizes that government

should only exercise a carefully limited role in restricting the religious practice of citizens: it teaches that the object of the natural right to religious freedom is precisely *immunity from coercion by government* (or other human powers), and not belief in, or propagation of, the doctrinal content of this or that religion. The *Catechism of the Catholic Church*, which gives us an authentic commentary on the meaning of *DH*, reinforces this by asserting, with a footnote reference to Leo XIII's encyclical *Libertas*, that "[t]he right to religious liberty is neither a moral license to adhere to error, nor a supposed right to error" (#2109).

Those who claim discontinuity may still object that in any case, the pre-Vatican II Church often allowed – indeed, exhorted – governments to repress all public religious activity except that of the *true* religion, Catholicism, and that this has now been disallowed by *DH*. Such legal restrictions did indeed obtain in such nations as Spain and Colombia right up till Vatican II. In other words, the traditional ethical line between legally permissible and legally repressible religious activity in public was the *line between truth and error*, not the three limiting criteria specified by Vatican II (see **P** above), which prescind from the whole truth-versus-error question.

Is this a real doctrinal contradiction? No. To prescind from a former doctrinal position, or to avoid restating it, does not mean contradicting it. And in any case, traditional doctrine left it an open question as to whether that line between truth and error should *always and everywhere* be the ethical line between legally permissible and legally repressible public activity. Indeed, the pre-conciliar magisterium was practically silent about where that line should be drawn by *non-Catholic* governments. And since Vatican II very much wanted to address that issue, it unavoidably found itself in the position of having to break some new doctrinal ground. In keeping with Vatican II's aim of reaching out to all humanity, this Declaration was directed to the rulers of all nations, not just those with Catholic governments and/or majorities.

The key to appreciating this non-contradiction lies in taking note of certain nuances which 'soften the edges', as it were, of both the old and the new doctrinal positions, thereby enabling their reconciliation. This means taking note of what they *abstain* from saying, as well as what they actually say:

First: Traditional doctrine was never so rigorous as to affirm (though neither did it deny) that *in all countries and at all times* – from Pentecost to Judgment Day – it would be within the bounds of justice for civil authority (whether in predominantly Catholic or non-Catholic societies) to suppress all public non-Catholic religious manifestations. (Those who have never been members of the Church, we charitably presume, are in most cases probably

not violating their own consciences by continuing as non-Catholics.) Some conservative theologians, including Archbishop Marcel Lefebvre, have held that such suppression would never under any circumstances be unjust, and that at worst it would sometimes be imprudent or uncharitable. *But that unqualified assertion of the universal justice of such repression never reached the status of Church doctrine – either of the ordinary or extraordinary magisterium.* Indeed, the essential new doctrinal development embodied in *DH* can be seen as its authoritative (though not infallible) resolution of this question, which remained unsettled by previous magisterial documents. By teaching in article 2 that (within due limits) people have a natural right not to be prevented from publicly acting in accord with *their conscience* in religious matters, the Council has effectively rejected the view that, always and everywhere, it is only those who adhere to religious *truth* who have a natural right not to be prevented by those in power from publicly manifesting their religion. For it is evident that there are always myriads of people whose conscientiously held religious beliefs do not coincide with religious truth. They have an erring conscience.

Some approved traditional theologians (e.g., Suárez, Von Ketteler, and even Pope Gregory the Great) foreshadowed Vatican II to some extent by saying that Catholic civil authorities are obliged by the requirements of *justice* (not merely of prudence) to tolerate the worship of at least *unbaptized monotheists* – mainly Jews and Muslims – carried out in synagogues, mosques, or other places of public worship.⁷ Once again, we need to recall that

⁷ According to such theologians, neither civil nor ecclesiastical Christian authorities have any jurisdiction over the unbaptized in their religious activities, as long as these do not include practices contrary to what is knowable by reason and natural law, such as idolatry and polytheism. The Jews were considered 'off limits' for Christian authorities for an additional reason, namely, that their providential continued existence as a distinct religious community left them as living witnesses – independent of, and even hostile to, the Church herself – to her own historical origins and to the historical truth of both Old and New Testaments. Professor Thomas Pink has claimed that this traditional rationale for requiring tolerance for the cults of unbaptized monotheists, based as it was on a *legal* idea – the limited *jurisdiction* of Christian princes over such folks – sets no precedent for Vatican II's rationale for their right to religious freedom, namely, their *dignity as human persons*. But it seems to me that the Council's rationale can be seen as a legitimate and harmonious development of the older one. Decisions about where legal jurisdiction begins and ends are surely based on the perception that justice itself requires definite limits to the authority of rulers, military commanders, and others who wield power, over against the relatively powerless. And that perception in turn seems to presuppose the

penalizing someone can be unjust under two titles: (a) when he is innocent or when the penalty is disproportionate to his offence; or (b) when he is guilty and deserves the imposed penalty, but it is being imposed by someone who has no authority to impose it. (If I succeed in overpowering a burglar who has broken into my house, and manage to keep him imprisoned in my basement for three years, I am doing him an injustice. He may well deserve *four years'* imprisonment; but I as a private citizen have no right to decide on and administer any such penalty. That is, the burglar, guilty though he is, has a right to immunity from punishment *by me.*)

Second: Vatican II's position is not so liberal as to deny that *under certain past circumstances*, the public manifestation of erroneous religious ideas and practices could have been, *as such*, a justly punishable threat to the common good of society (that is, it would jeopardize the rights of other citizens, and/or public peace, and/or public morality).

In short, the pre-conciliar and conciliar doctrines respectively are not so 'absolute' as to exclude and contradict each other. The perennial *common thread* in the Church's doctrine, from ancient times until now, has been that, on the one hand, those persons outside the Church, especially those presumed to be invincibly ignorant of the truth of Catholicism, have a right to *some* degree of civil religious freedom (e.g., at the very least, non-Christians should never be coerced into baptism and Church membership, and should enjoy civil freedom to teach their religion privately to their own children), but that on the other hand, the State also has the right to impose *some limitations* on the spread of harmful and dangerous ideas in the interests of the common good of society. So there are two poles here, 'positive' and 'negative', that need to be kept in equilibrium: respect for erring consciences (toleration) and the need to prevent the spread of the most dangerous propaganda.

The *difference* between old and new has basically been a gradually changing emphasis in the Church's position. Traditionally she emphasized more the 'negative' end of the spectrum - the State's right to repress error; and from the mid-20th century on, she emphasizes more the human person's right to immunity from coercion. Changes of emphasis, however - even to the extent of making the rule what was once considered the exception - are not contradictions. What we have here, rather, are changing *prudential judgments* as to where to find the right balance between necessary freedom and just restraint. By the new prudential judgment implied in the conciliar declaration,

personal human dignity of the latter - a dignity which generates for them certain rights in the face of earthly might.

the Church gives *more weight* now than she previously did to subjective sincerity and the need to respect erring consciences in civil society, especially under the religiously pluralistic conditions that predominate in today's world. But a shift in emphasis is not a doctrinal contradiction.

We can draw a parallel here with the Church's developing position on capital punishment. She continues to teach that this is not *intrinsically* (always and everywhere) unjust; but she now makes the prudential judgment that it can rarely if ever be justified under modern circumstances (cf. CCC #2267). Similarly, Vatican II does not teach that it is or was *intrinsically* (always and everywhere) unjust for a Catholic State to repress all public manifestations of non-Catholic religion on the grounds that they are *per se* a danger to fundamental elements of the common good. (Remember, those "fundamental elements" are what Vatican II means by "a just public order"). But the Council does clearly imply, by what it says and what it conspicuously *fails* to say, the prudential judgment that *under modern circumstances*, such repression would, in any country on earth, violate the natural right to religious freedom of those concerned. (The significance of the Council's failure to say that predominantly Catholic countries would be an exception to this rule is obvious.)

When the highest Church authorities in former times often urged the State repression of public non-Catholic religious activity as such, they certainly judged that the propagation of such errors constituted threats to at least one, and often all three, of the social values which *DH #7* says must be legally protected against abuses of religious freedom (see our proposition **P** above).

1. *Rights of other citizens*: The spread of seductive religious errors among a Catholic populace – especially those with little education – was certainly regarded as a grave danger to their eternal salvation, and thus, a violation of their right to live in a Christian society that helped, rather than hindered, their battle against Satan and their pilgrimage toward Heaven. (For a Catholic to lapse into heresy or apostasy is mortally sinful, and still results in automatic excommunication.⁸)

2. *Public morality*: Sad experience in Western culture has shown repeatedly – and with increasing clarity in recent decades – that once the socially and legally recognized authority of the Catholic Church as the unique authentic interpreter of the natural moral law is rejected as a result of anti-Catholic propaganda, public morality eventually takes a catastrophic plunge as well:

⁸ Cf. *Catechism of the Catholic Church*, #2089, and *Code of Canon Law*, c. 751.

we get legalized divorce, abortion, artificial procreation, unnatural birth control, so-called gay “marriage”, adoption rights for homosexual couples, “transgender” rights, etc. And those who promote these deviations, while denouncing the “hate” and “bigotry” of those who dare to voice disagreement, are now increasingly violating the right to religious freedom of traditional believers (cf. #1 above).

3. *Public peace.* In many periods of history, the spread of heresy was very often in fact a menace to the public peace. (The same can be said today of those mosques and *madrassas* wherein Islamist imams preach the duty of armed *jihad* against the West.) Heresy led to disastrous wars of religion. Early Protestants were no more tolerant than Catholics were at that time, and frequently persecuted the Church once they attained power by force of arms. Again, that violated the Catholics’ right to freedom of worship (cf. #1 above) as well as public peace.

Since Vatican II, given that religious pluralism is increasingly the *de facto* reality throughout the world, the new norm of the Church’s public law or policy in her relations with States is that not even in states with a Catholic majority may simple public dissent from Catholic doctrine, without any aggravating factors, be considered any longer a sufficiently serious threat to the common good as to warrant legal repression. But again, this is not a contradiction of previous *doctrine*. The *relator* at Vatican II explained officially to the Fathers just before they voted on the final draft of *DH* that the requirements of the common good itself can change considerably over time; and he pointed out that this fact was relevant in addressing the concerns of some Fathers who said they did not want the Council to pass a sweepingly harsh judgment on the Church’s own previous doctrine and practice.⁹ Indeed, an appreciation of how changing historical conditions can reasonably and legitimately influence the formulation and practical application of Catholic doctrine is arguably the most important element in showing its essential diachronic continuity across the centuries, in cases where this is not immediately apparent.

⁹ Bishop De Smedt, the *relator*, expressed agreement with the Fathers who had raised this concern, and who had urged that “one should take into account the fact that human society itself has exhibited different modes of thinking and living in different ages.” “This”, responded the *relator*, “is quite true, but it is equivalently expressed when we affirm that the norm for the care of religion is the common good. The common good, as everyone knows, is something relative: it is linked to the cultural evolution of peoples and has to be judged according to that development” (*Acta Synodalia*, IV, VI, 723, n. 15, present writer’s translation).

Religious Liberty from a Historical Perspective

Prof. Roberto de Mattei

1. The interpretation of *Dignitatis Humanae*: Two texts compared

Dignitatis Humanae was one of the most controversial texts of the Second Vatican Council¹. It is a simple declaration, which as such does not have the cogency of other texts, placing itself, as the Relator, Mons. De Smedt, explained in the hall, on the level not of doctrine, but of pastoral practice.² An authorized history by Card. Walter Brandmüller has recently emphasized its purely pastoral character.³ *Dignitatis Humanae*, however, acquired, on the level of the media, a superior importance compared to the other documents, as is demonstrated by the interest and passion with which, for 50 years from its publication, it is still discussed.

No other conciliar text has received such diverse interpretations. There are many reasons for which some authors interpret it as a text in full continuity with the Tradition of the Church,⁴ while others do so in open

¹ Cfr. Roberto de Mattei, *The Second Vatican Council. An unwritten story*, Loreto Publications, Fitzwilliam 2012, pp. 387-397, 458-469.

² Cfr. *Acta Synodalia Sacrosancti Concilii Vaticani II*, Polyglottis Vaticanis, Città del Vaticano 1978, vol. IV/1, p. 433.

³ Walter Brandmüller, *Il Vaticano II nel contesto della storia conciliare*, in Aa. Vv., *Le "chiavi" di Benedetto XVI per interpretare il Vaticano II*, Cantagalli, Siena 2012, pp. 54-55. On the lack of cogency in *Dignitatis humanae*, cfr. Walter Florian Kolffhaus, *Un insegnamento pastorale: motivo fondamentale del Vaticano II. Ricerche su Unitatis redintegratio, Dignitatis Humanae e Nostra Aetate*, in Aa. Vv., *Concilio Ecumenico Vaticano II. Un concilio pastorale. Analisi storico-filosofico-teologica*, Casa Mariana, Frigento 2011, pp. 231-242.

⁴ Among the supporters of the continuity of *Dignitatis Humanae* with the Tradition of the Church, cfr. Victorino Rodríguez o.p., *Estudio histórico-doctrinal de la declaración sobre la libertad religiosa del Concilio Vaticano II*, in "La Ciencia Tomista", n. 93 (abril-junio 1966), pp. 193-339; André Vincent, o.p., *La liberté religieuse, droit fondamental*, Têqui, Paris 1976; Brian W. Harrison, *Le développement de la doctrine catholique sur la liberté religieuse*, Dominique Martin Morin, Paris 1988; Fr. Basile (Valuet) o.s.b., *Liberté religieuse et Tradition catholique*, Abbaye Sainte-Madeleine, Le Barroux 1995-1998, 6 vol.; reworked in Id., *Le droit à la Liberté religieuse dans la Tradition de l'Église. Un cas de développement doctrinal homogène par le magistère authentique*, préface Cardinal Jorge Arturo Medina Estévez, Éditions Sainte-Madeleine, Le Barroux 2011; Id. *Dignitatis humanae contraire à la Tradition ?*, "Bulletin de Littérature ecclésiastique", CXIV/3 (juillet-septembre 2013), pp. 289-302; Jehan de Belleville, o.s.b., *Le droit objectif dans Dignitatis Humanae*, Thèse de licence en droit canonique, Roma 2004; Massimo Introvigne, *La libertà religiosa nel pensiero di Giovanni Cantoni*, in PierLuigi Zoccatelli and Ignazio Cantoni (ed. by), *A maggior gloria di Dio, anche sociale. Scritti in onore di Giovanni Cantoni*

contradiction with it.⁵ The author who has made the greatest study of the argument is Fr. Basile Valuet, who has dedicated six volumes to it: two, then another four of sources, documents, bibliographies, and indices. His impressive work, however, has not managed to arrive at a convincing conclusion. I am among those who do not share the positions of Fr. Basile, and I ask that I might be permitted a critical response to his *Liberté religieuse et Tradition catholique*, especially given the objective importance which this work has, among the studies dedicated to this question.

I grant also that my primary interest in *Dignitatis Humanae* is not hermeneutical, but historical. That which above all interests me is not so much the interpretation of the conciliar text, as the teaching of the Catholic Magisterium in the matter of religious liberty and of the relation between Church and State.

2. The liberty of Christians in the first centuries of the Church

The first point on which I would pause for consideration regards the religious liberty of Christians in the first three centuries. The thesis of Fr Basile is that, in the pre-Constantinian era, there was a perfect accord of the first Fathers “*sur le droit à ne pas être contraint*” and that “*il n'existe aucun auteur*

nel suo settantesimo compleanno, Cantagalli, Siena 2008, pp. 101-113; Pietro Cantoni, *Riforma nella continuità. Riflessioni sul Vaticano II e sull'anti-conciliarismo*, Sugarco, Milano 2011, pp. 55-78; Bernard Lucien, *Vatican II et « l'herméneutique de la continuité ». Le cas crucial de la liberté religieuse*, “*Sedes Sapientiae*”, n. 96 (juin 2006), pp. 3-22.

⁵ Among the critics of *Dignitatis Humanae*, cfr. *Lettre à quelques évêques sur la situation de la Sainte Eglise e il Mémoire sur certaines erreurs actuelles, suivies d'une annexe sur la liberté religieuse*, Société Saint Thomas d'Aquin, Paris 1983 (work redacted by p. Louis-Marie de Balignières (two first parts) and by Abbé Bernard Lucien, signed by Mons. Antonio de Castro Mayer and by thirty intellectual Catholics); Michel Martin, *Le Concile Vatican II et la liberté religieuse*, special issue of “*De Rome et d'ailleurs*”, (January 1986), pp. 1-106; Marcel Lefebvre, *Ils l'ont découronné*, Fideliter, Brout-Venner 1987; Bernard Lucien, *Grégoire XVI, Pie IX et Vatican II. Etudes sur la liberté religieuse dans la doctrine catholique*, Forts dans la Foi, Tours 1990 (the author changed his mind afterwards); Michael Davies, *The Second Vatican Council and Religious Liberty*, The Neumann Press, Long Prairie (Minnesota) 1992; Mgr Bernard Tissier de Mallerais, *Mes doutes sur la liberté religieuse*, Clovis, Étampes 2000; Brunero Gherardini, *Concilio Ecumenico Vaticano II. Un discorso da fare*, Casa Mariana Editrice, Frigento (AV) 2009, pp. 163-188; Paolo Pasqualucci *Unam Sanctam. Studio sulle deviazioni dottrinali nella Chiesa cattolica del XXI secolo*, Solfanelli, Chieti 2013; Jean-Michel Gleize, *Vatican II en débat*, Courrier de Rome, Versailles 2012, pp. 107-124, et alia, Id., *Dignitatis humanae est contraire à la Tradition*, “*Courrier de Rome*” (mars 2014), p. 1-7; Id., *Liberté religieuse, Réponse au Père Basile du Barroux: Une impossible continuité*, “*Courrier de Rome*”, (novembre 2014).

soutenant la liberté comme droit de seuls chrétiens".⁶

This affirmation ought, however, to be turned around in this way: in the first three centuries "il n'existe aucun auteur soutenant le droit à la liberté religieuse". This has to be emphasized because for the Christians, it would have been very easy to defend themselves from the persecutors by invoking a natural right to religious liberty, rather than always reaffirming the unique truth of the Catholic faith. The works of the apologists of the first three centuries are, instead, dedicated in the first place to defending Christians, on the juridical level, from unfounded accusations put forward against them; in the second place, and above all, to explaining Christian doctrine in order to demonstrate its superiority over Paganism.⁷

In the well-known passage of the *Apologeticum*, often quoted, Tertullian does not claim a right, but seeks to make evident the contradictions of imperial legislation on religious matters.⁸ You all – he says – are preoccupied here with suppressing religious liberty as regards us, while authorizing all other religions possible and imaginable. Only to us is the right to our own religion contested! But for him, the liberty of the other religions is the liberty of superstitions as those of the Egyptians, who went as far as declaring birds and animals sacred. Against these false religions he opposes the truth of the Christians: "*Apud vos quodvis college ins east praeter Deum verum*". "With you, one has the right to worship whatever one wants except the true God."

"Tertullian," Prof. Paolo Pasqualucci rightly observes, "tries above all to make known the absurdity of a legislation that permits liberty of cult to all religions, even the most strange, and all the cults of the *genius loci*, while forbidding the only one dedicated to the true God, and thus the one intrinsically superior to all the others".⁹ Rejecting the accusation of "lèse-majesté" because of the refusal to sacrifice to the emperor, Tertullian replies that the Christians pray for the emperor by invoking upon him the protection of the true God. "But what does that mean, if not that one desires that the emperors should have the awareness of the just, divine origin of their power, with the realization that they could only have this by means of their conversion to Christ?"¹⁰

And when, in the *Ad Scapulum*, Tertullian affirms that "a religion ought

⁶ Fr. Basile (Valuet) o.s.b., *La liberté religieuse et la tradition catholique*, tome I, fasc. 1, p. 252.

⁷ Cf. the classic Johannes Quasten-Angelo Di Berardino, *Patrologia*, Casale Monferrato 1967-1996, 4 vol.

⁸ Tertullian, *Apologeticum*, 24, 5-10.

⁹ Pasqualucci, *Unam Sanctum*, p. 316.

¹⁰ *Ibid*, p. 317.

to be adopted voluntarily, not by means of constraint”,¹¹ he asserts the liberty of the interior act of faith, not the State’s duty of ensuring religious liberty. For Christianity, from the beginning, the distinction is clear between the internal act of faith, which must be made freely, and the public cult of the false religions, which no apologist considers as having liceity.

Not even in rereading the Acts and the Passions of the Martyrs¹² does one find any reference to religious liberty. Not for the other religions, but for their own did the martyrs seek liberty, since they considered only the Catholic religion to be true and testified to this truth with their blood. Pionius, while he was being led to execution, cried out to the persecuting crowd “I could persuade you all to become Christians”, rejecting the pressing invitation to recant in order to save his life. And in the fullness of the persecutions of Marcus Aurelius, Melito, Bishop of Sardis, had the courage to affirm that “the Christian faith ought to become the philosophy of the Roman Empire.”¹³ This was the dream of the martyrs: not a secular or neutral State, but a Christian Empire.

3. The controversy over the Altar of Victory

The principle of religious liberty, understood as the natural right of every man not to suffer constraint from the State in religious matters, was never claimed in the first centuries, by the Christians who, in the age of persecutions, claimed liberty for their own religion, but did not ever profess religious pluralism. It was, if anything, a Pagan voice, that of the Prefect of the City, Quintus Aurelius Symmachus (c.340-402/403), that claimed in the first place the principle of religious liberty, in the celebrated controversy concerning the Altar of Victory,¹⁴ in which one sees him opposed to St. Ambrose, Archbishop of Milan from 374 to 397.¹⁵

In the 4th century, between the Edict of Milan-Nicomedia (313) and the

¹¹ “*Sed nec religionis est cogere religionem, quae sponte suscipi debeat, non nisi, cum et hostiae ab animo libenti expostulentur*” (*Ad Scapulam*, 2,1-3). Scapula, Proconsul of Africa, was a bitter enemy of the Christians.

¹² Pasqualucci, *Unam Sanctam*, pp. 315-316.

¹³ *Ibid.*

¹⁴ Cfr. the texts of the controversy in *La maschera della tolleranza*, ed. Luciano Canfora, Bur, Milano 2006.

¹⁵ Jean-Rémy Palanque, *Saint Ambroise et l'Empire romain*, E. de Boccard, Paris 1933; Marta Sordi, *I rapporti di Ambrogio con gli imperatori del suo tempo*, in L. F. Pizzolato e M. Rizzi (ed. by), *Nec Timeo Mori*, Atti del Congresso internazionale di studi ambrosiani, nel XVI centenario della morte di S. Ambrogio, Milano 1998; Luigi Franco Pizzolato, *Ambrogio e la libertà religiosa nel IV secolo in Chiesa e Impero. Da Augusto a Giustiniano*, a cura di Enrico dal Covolo e Renato Uglione, Las, Roma 2001, pp. 281-293.

Edict of Thessalonica (380) one sees the passage of Christianity from *religio non licita* to the religion of the State. Constantine did not limit himself to giving liberty to the Church, but protected it and promoted its development. The moral law of the Gospel penetrated into the institutes of Roman Law, transforming institutions and ways of thinking. The Church itself was juridically recognized and integrated into the public law. The Emperor Theodosius brought the “Constantinian shift” to completion with the edict of Thessalonica, of 380 AD, in which Christianity was declared the official religion of the Empire and the public cult of Paganism was proscribed.

In the 4th century, the centre of Pagan resistance was the Senate, where, at the entrance of the *Curia Julia*, one found the Altar of Victory, placed by Augustus on the day of his return from Egypt (August 28th, 29 BC.) This altar was the public symbol of Paganism. The senators, entering, would there make an act of worship, burning a grain of incense to the Emperor.

When the Emperor Gratian (375-383) ordered its removal, the Senate protested and sent the Pagan Symmachus to Milan, in order to obtain the revocation of the order, but the Emperor would not give it. After the assassination of Gratian in 383, Symmachus renewed the request to Valentinian II (382-392), but the new Emperor also, persuaded by St. Ambrose, denied the permission to replace the Altar in the Senate (384). On this occasion Symmachus wrote a celebrated *Account concerning the Altar of Victory* (*Relatio tertia de repetenda aru Victoriæ*), to which St. Ambrose responded with two letters, equally famous.

The Pagans, by the mouth of Symmachus, asked for the liberty of continuing the public celebration of their cult, and they asked it in the name of religious liberty, affirming that there is only one God, who is manifested in the diversity of religions.¹⁶ The response of St. Ambrose is cutting. Somehow – he says – you all profess relativism, because do you not believe in the existence of only one true God. And yet, when you all had the power, then you harshly persecuted, acting in a way that was completely incompatible with your relativism. Today, since you no longer have the power, you beseech us to be incoherent. Because we are Christians, different from you all, we do not believe in the equality of religions, but in the absolute truth of the Christian religion and in the existence of one sole and true God, that we are not able to disown. We did not disown it yesterday, confronting martyrdom for testifying to the truth; today we would cease testifying to the truth, if we would accept your principle of religious liberty. And writing to the young Emperor Valentinian, Ambrose threatened him with

¹⁶ Quinto Aurelio Simmaco, *Relatio de aru Victoriæ*, III, 10 («Eadem spectamus astra, commune coelum est, idem nos mundus involvit. Quid interest qua quisque prudentia verum requiratur? Uno itinere non potest perveniri ad tam grande secretum»).

excommunication if he should ever accede to the request of Symmachus. "You cannot serve two masters" (Mt 6: 24): The "one true God", affirms the Bishop of Milan, "is that of the Christians": "ipse enim solus verus est deus".¹⁷

St. Ambrose does not proclaim religious liberty, but the duties of the Catholic State. He imposes these duties upon the Emperor Theodosius, requiring a public penance from him, after the slaughter ordered by him at Thessalonica. In his fundamental work on St. Ambrose and the Roman Empire, Jean-Rémy Palanque dedicates a chapter to the duties of the State and a chapter to the duties of the citizen, but no chapter to their rights. Christianity, from the beginning, is presented as a religion of duties and not of rights.

In the *De obitu Theodosii*, delivered in front of the Court of Milan, St. Ambrose joins the *Inventio Crucis* of St. Helena to the crown of Theodosius and of Honorius, which is that of the Roman Empire. One considers here, as Marta Sordi has explained, the sacral legitimization of the Roman Empire.¹⁸ In this climate is situated the *Collatio legum mosaicarum et romanarum*, compiled by St. Ambrose or by St. Jerome, and the *leges saeculares*, attributed to the same St. Ambrose, which contains the regulations of the Christian emperors from Constantine onward, in order to be able to judge "in iustitia et timore Dei".¹⁹

It should be made clear that, after the Constantinian shift, the State protected the public worship of the Church, but never forced anyone to commit acts against their own conscience. The Church and the Christian Civilization generated by it accurately distinguished between the internal forum, which is the conscience of individuals, and the external forum, which is the public expression of their religious convictions. That which Theodosius and his successors forbade was the public cult of Paganism, but the Pagans, the infidels, and those following religions other than Christianity were never put into a choice between apostasy and death, because the Constantinian Church always respected the private liberty of their conscience. The Pagan temples were closed and their sacrifices forbidden, but there was not a Christian persecution against the Pagans, even one remotely resembling that suffered by the Christians. The Christians were victims for three centuries, and they are still so today, throughout the whole world, though they were never persecutors. They intervened against the public worship of the false religions, but never violated the internal forum of the conscience.

4. "Religious Liberty" in the Middle Ages

¹⁷ Ambrogio, *Epistula*, 17, 1.

¹⁸ Marta Sordi, *L'impero romano-cristiano al tempo di Ambrogio*, Medusa, Milano 2000, p. 18.

¹⁹ B. Biondi, *Il Diritto romano*, Cappelli, Bologna 1957, pp. 55-56.

In the Medieval period, the essence of the problem has to do with the Inquisition and the Crusades, above all those against the Albigenian heretics. Fr. Basile tries to demonstrate the compatibility of this repression with the declaration *Dignitatis Humanae*, on the basis of the concept of “just public order”. He sets about this delicate task by reducing the Inquisition and the Crusades to initiatives simply directed to combating the social consequences of the heretical doctrines. The heretics were “*perturbateurs de l’ordre public juste*”;²⁰ they were supposedly repressed by the Inquisition inasmuch as “*l’ordre public implique la répression de toute erreur religieuse*”;²¹ “*ceux qu’elle (l’Inquisition) poursuivait constituaient un danger pour ce que nous nommons l’ordre public juste*”.²²

Even with regard to the Crusade against the Cathars, the temporal authorities supposedly intervened in order to defend civil society against the antisocial threats of heresies. The repressive intervention was allegedly compatible with *Dignitatis Humanae*, because it was justified by the threat to public order posed by the Cathar doctrine. “*L’hérésie cathare représentait-elle une menace voire une violation en acte de l’ordre public juste tel que le conçoit Dignitatis Humanae? La réponse est affirmative*”.²³ “*Lorsque l’Etat punissait de mort les hérétiques, ce droit de glaive ne lui était pas conféré par l’Eglise. En effet, l’Eglise ne pouvait pas déléguer un pouvoir dont elle n’a jamais disposé. Or, après des nombreuses discussions, il semble que tout le monde soit desormais d’accord que l’Eglise n’a jamais eu le jus gladii*”.²⁴

Now, that heretics constituted a social threat to the whole of Christendom is indubitable, but to limit the activity of the Inquisition and that of the Crusades to a social repression means ignoring the right and duty of the Church, antecedent to that of the State, to repress heresy, not inasmuch as it perturbs society, but inasmuch as it offends God, denies the divine truth and care for the health of souls. It means, in a word, to deny the Church its character as a *societas perfecta*.

From the character of the Church as perfect society derives, as a logical consequence, the Church as having a twofold coercive means for carrying out its mission. Not only the spiritual means (ecclesiastical censures) but even material ones, *ad expugnandum haereticos*, called *jus gladii materialis*. The *gladius materialis* expresses, in the medieval language, the coercive power of the

²⁰ F. Basile, *La liberté religieuse*, p. 330.

²¹ *Ibid.*, p. 333.

²² *Ibid.*, p. 347.

²³ *Ibid.*, p. 303.

²⁴ *Ibid.*, p. 352.

Church *in temporalibus*, albeit exercised *mediate tantum seu virtualiter*.²⁵

On the problem of the *ius gladii*, the numerous studies of Cardinal Stickler,²⁶ carried further by his student, Cardinal Castillo Lara in the volume on *Coacción eclesíastica y Sacro Romano Imperio*,²⁷ arrived at definitive conclusions. The Church has always exercised the *ius gladii*, or rather the ecclesiastical *vis armata*, as the expression of her *potestas coactiva*. Cardinal Castillo Lara explains that "it is a native right that flows from the juridical nature itself of the Church and is independent from any human power."²⁸

Carl Erdmann, in a chapter that constitutes the heart of his foundational study on *The Origin of the Idea of Crusade*, emphasizes how in the 11th century the use spread of the *vexillum Sancti Petri*, the insignia conferred by the Pope on a commander selected by him in advance to fight for the good of the Church.²⁹ The *vexillum* is a sign of temporal investiture bound to a warlike enterprise.³⁰ This, above all during the Pontificate of Gregory VII, was affirmed as a symbol both Papal and Imperial, and so represented what was considered at that time essential to the crusade, conceived, even if not carried out, by the great Pontiff. This insignia is the symbol of the *gladius materialis* of the Church, of its power of coercion even *in temporalibus*.

The Crusades are a typical expression of this coercive power of the Church. These are military enterprises, directly dependent upon the Roman

²⁵ Alfredo Ottaviani, *Institutiones Iuris Publici Ecclesiastici*, vol. I, Typis Polyglottis Vaticanis, Città del Vaticano 1958, p. 302.

²⁶ Card. Alfonso Maria Stickler, *Magisteri Gratiani sententia de protestate Ecclesiae in statum*, "Apollinaris" 21 (1948), pp. 94-96; Il potere coattivo materiale della Chiesa nella Riforma gregoriana, secondo Anselmo di Lucca, in "Studi Gregoriani", II (1947), pp. 235-285; id., Il "gladius" nel Registro di Gregorio VII, in "Studi Gregoriani", III (1948), pp. 89-103; Il "gladius" negli atti dei concili e dei R. R. fino ai pontefici sino a Graziano e Bernardo di Clairvaux, "Salesianum", 13 (1951), pp. 414-445; Sacerdozio e regno nelle nuove ricerche attorno ai secoli XII e XIII nei decreti e decretalisti fino alle decretali di Gregorio IX, in Sacerdozio e regno da Gregorio VII a Bonifacio VIII, Pontificia Università Gregoriana, Roma 1954, pp. 1-26. On the theory of the two "swords", cfr. also H. X. Aquillière, *Origines de la théorie des deux glaives*, "Studi Gregoriani", I (1947), pp. 501-521.

²⁷ Card. Rosalio Castillo Lara, *Coacción eclesíastica y Sacro Romano Imperio*, Pontificio Ateneo Salesiano, Augustae Taurinorum 1956.

²⁸ *Ibid.*, p. 7.

²⁹ Carl Erdmann, *Alle origini dell'idea di crociata*, tr. it., CISAM, Spoleto 1996, pp. 149-200.

³⁰ Roberto de Mattei, *Il "Dictatus Papae" di Gregorio VII nella storia della Chiesa in II Papato e i normanni. Temporale e spirituale in età normanna*, ed. Edoardo D'Angelo and Claudio Leonardi, Sismel - Edizioni del Galluzzo, Firenze 2011, pp. 9-22.

Pontiff.³¹ Not only does the Pope promulgate the Crusade, but the Church intervenes efficaciously in levying troops and takes an active part in the military operations, generally by means of a Papal Legate.³² The military leaders, always dependent upon ecclesiastical authority, operate in virtue of a power received through delegation.³³ This – explains Cardinal Castillo Lara – makes it clear that the crusader army was a manifestation of the coercive material ecclesiastical power. The reason is the defence of the faith, not the defence of the public order from the social consequences of heresy. The end that is proposed for the crusader army is strictly ecclesiastical, and therefore of the exclusive competence of the Church.³⁴

In the case of the Crusades and of the Inquisition, the Church delegates this coercive material power to the temporal authorities. This concept of delegation of coercive material power, one can explain as the ecclesiastical *vis armata*, compatible with the prohibition of clerics both to carry arms and to shed blood (*effusio sanguinis*). Card. Castillo Lara states: “The Church really possesses a supreme coercive material power under the form of *vis armata*. Not being able to exercise it through itself, seeing as it would be incompatible with the meekness proper to the clerical state, she delegates its exercise, in a transitory or habitual form, to lay people”.³⁵

The thesis will be enunciated, in different ways, by Honorius of Autun in the *Summa gloria*,³⁶ by John of Salisbury in the *Polycraticus*,³⁷ by Hugh of St. Victor in the *De sacramentis*³⁸, by St. Bernard of Clairvaux in a passage of the treatise *De consideratione* in which the *Doctor Mellifluus* reminds Pope Eugenius III how both the swords, as much the spiritual as the material, belong to the Pope and to the Church.³⁹

The thought of the two greatest Doctors of the Church of the Medieval era were not different. St. Thomas Aquinas, considering the doctrine of the two powers in his commentary on the fourth book of the *Sentences*, affirmed

³¹ Rosalio Castillo Lara, *Coacción eclesiástica*, p. 90.

³² *Ibid.*, p. 96.

³³ *Ibid.*, p. 128.

³⁴ *Ibid.*

³⁵ *Ibid.*, p. 157.

³⁶ Honorius of Autun, *Summa gloria*, in *Romanorum Libelli de lite imperatorum et pontificum*, ed. H. Dieterich, M.G.H., Hannover 1897, vol. III, p. 9.

³⁷ John of Salisbury, *Polycraticus*, IV, 3.

³⁸ Hugh of St. Victor, *De Sacramentis christianaе fidei*, lib. II, p. II, cap. IV, in PL, 217, 418.

³⁹ “*Uterque ergo Ecclesiae, et spiritualis scilicet gladius et materialis, sed is quidem pro Ecclesia, ille vero et ab Ecclesia exerendus; ille sacerdotis, is militis manu, sed sane ad nutum sacerdoti set insum imperatoris*” (San Bernardo, *De Consideratione*, IV, 3, in PL, 182, 776). Explained in similar words by Egidio Romano (*De Ecclesiastica potestate*, lib. I, cap. 3).

that to the Pope belongs *in apice* the possession of the two powers, because he is the Vicar of Jesus Christ.⁴⁰

St. Bonaventure, considering the question *De oboedientia Summo Pontifici debita*, in his treatise *De Romano pontifice*, writes in turn that the Pope being “*summus sacerdos secundum ordinem Melchisedech, qui fuit rex: Salem et sacerdos Dei altissimi, et Christus utrumque habuerit: vicarius Christi in terris utramque a Christo potestatem accepit: unde et sibi uterque gladius competit*”.⁴¹

These were, between the 13th and 14th centuries, the basis of the pontifical doctrine and praxis. Innocent III, Honorius III and above all Gregory IX clarified, before Boniface VIII, who would take up this doctrine in *Unam Sanctam*, how the Pope has obtained from God the twofold power: *Uterque igitur gladius ecclesiae traditur: sed ab Ecclesia exercetur unus; alius pro ecclesia, manu saecularis principis est exercendus; unus a sacerdote alius ad nutum sacerdotis administrandus a milite*.⁴²

On the basis of this position, in 1535, Paul III declared the King of England, Henry VIII, already excommunicated by Clement VIII and deprived of the kingdom;⁴³ on February 25th, 1570, St. Pius V pronounced a sentence against Queen Elizabeth I in which, in the name of the power conferred upon him, he declared her guilty of heresy and of promoting heresy, incurring excommunication, and therefore fallen from her pretended right to the English crown: her subjects were not bound by the juridical bond of fidelity towards her, and under pain of excommunication, they were not able to give her their obedience.⁴⁴ St. Robert Bellarmine, in the fifth book of the *De Romano Pontifice*, examines with clarity the problem of the temporal power of the Pope. The Roman Pontiff – he affirms – does not have, of divine right, a direct temporal jurisdiction, because this has been reserved to the temporal power, but possesses an extended indirect jurisdiction, which the Jesuit Doctor founded, on the theological plane, by using the passages which we have cited of Hugh of St. Victor and St. Bernard, as well as the *Bull*

⁴⁰ “*Nisi forte potestati spirituali etiam saecularis potestas coniungatur, sicut in papa, qui utriusque apicem tenet, scilicet spirituali set saecularis, hoc illo disponente qui est sacerdos et rex in aeternum secundum ordinem Melchisedech, rex: regnum et dominus dominantium*” (St. Thomas Aquinas, *In II Sententiarum*, d. XLIV, q. II, a. III, ad 4).

⁴¹ St. Bonaventure of Bagnoregio, *De Perfectione evangelica*, q. IV, a. III.

⁴² *Ecclesia et Status Fontes selecti* ed. Ioannes B. Lo Grasso, Pontif. Universitas Gregoriana, Roma 1952, p. 212.

⁴³ *Ibid.*, pp. 250-254.

⁴⁴ *Bullarium Romanum*, S. Franco, H. Fory et H. Dalmazzo editoribus, Augustae Taurinorum 1857-1872, vol. VII, pp. 810 sgg.; Ludwig von Pastor *Storia dei Papi dalla fine del Medioero*, Desclée, Roma 1942, vol. VIII, pp. 413 sgg.

of Boniface VIII, *Extravaganti* and *Unam Sanctam*.⁴⁵

On the basis of this principle was created, on the 31st of July 1542, the Holy Roman and universal Inquisition,⁴⁶ with the bull *Licet ab initio* of Paul III, whose end was “the glory of God, the conservation and augmentation of the Catholic faith, and the care of souls.” It is true that the sentence of death was required from the secular arm, but the condemnation was pronounced by the Holy Office, often in the central See of Rome. The civil authority obeyed the rules of the Holy Inquisition, which ensured that the death of the heretic occurred.⁴⁷

The right to the *ius gladii*, spiritual and material, was considered the doctrine of the Church by two eminent canonists, Fr. Luigi Cappello and Cardinal Alfredo Ottaviani, in their manuals of Ecclesiastical Public Law, which were used for the instruction of the clergy until recent times.

Remembering the words with which Gregory VII excommunicated and deposed Henry IV,⁴⁸ Fr. Cappello explains that the Church has the power of deposing a prince, power that does not, however, come from direct power⁴⁹ but from the indirect power *in temporalibus* of the Church, founded on its power of loosing and of binding.

Cardinal Ottaviani recalled, in his time, the doctrine of the two swords on the proper basis of the passage of *De Consideratione* of St. Bernard which Cardinal Stickler demonstrated to express “the double form of coercion and jurisdiction, namely the spiritual and the ‘armed’, material intervention in the name of the Church and with its proper authority”⁵⁰ and of the lapidary formula of Boniface VIII in the Bull *Unam Sanctam*: “*Uterque gladius est in*

⁴⁵ St Roberto Bellarmino, *De Romano pontifice*, cap. VII.

⁴⁶ Cfr. among others: *L’Inquisizione: atti del simposio internazionale*, 29-31 October 1988, ed. Agostino Borromeo, Biblioteca Apostolica Vaticana, Città del Vaticano 2003 and the *Dizionario storico dell’Inquisizione*, in IV volumes directed by Adriano Prosperi, Edizioni della Normale, Pisa 2010, useful for bibliography references, but extremely tendentious.

⁴⁷ Adriano Garuti, *La Santa Romana e Universale Inquisizione: struttura e procedure*, in *L’Inquisizione: atti del simposio internazionale*, cit., p. 382 (pp. 381-418).

⁴⁸ “*Ex parte omnipotentis Patris, et l’illi, et Spiritus Sancti, per tuam potestatem et auctoritatem, Henrico regi... regni... gubernacula contradico et omnes christianos a vinculo iuramenti quod sibi fecerunt vel facient, absolvo et, ut nullus ei sicut regi inserviat, interdicto*” (*Excommunicatio et depositio Henrici IV Imperatoris*, in Lo Grasso, p. 132).

⁴⁹ Felice Cappello s.j., *Summa Iuris publici Ecclesiastici*, editio sexta, Apud Aedes Universitatis Gregoriana, Roma 1954, p. 189. “*Quam potestatem RR. Pontifices exercentur non modo in imperatores romanos qui peculiari vinculo obedientiae et obsequii erga Sedem Apostolicam tenebantur, et in principes qui se vasallos S. Sedis proclamaverant, verum etiam in alios*”.

⁵⁰ A. M. Stickler, *Il “gladius” negli atti dei concili*, cit., p. 443.

potestate Ecclesiae, spiritualis scilicet gladius et materialis. Sed is quidem pro Ecclesia, ille vero ab Ecclesia exercendus. Ille sacerdotis, is manu regum et militum, sed ad nutum et patientiam sacerdotis".⁵¹

The Church has the *ius gladii* because it is a *societas perfecta*. The affirmation of this truth ought not to lead to the opposed error which is to consider the State a *societas imperfecta*. Prof. Pink claims that only the Church, and not the State, has the right to "religious coercion": the State, it seems to him, is able to exercise this power only on the mandate of the Church, and the Church interdicts such power to the modern State.⁵²

However, if the State may not claim to enter into the life of the Church, as Joseph II (1741 - 1790) put it, or as the modern totalitarian States do, the State is not merely the "secular arm" of the Church. The State, as Pius XII affirms, "is of natural origin, not less than the family"⁵³, and it is able to be defined, as the Catholic thought has always defined it, as a perfect society.⁵⁴ As *societas perfecta*, it has some rights that derive from its duties. The State has the natural duty of rendering a public worship to God, and its *potestas coactiva* for protecting the true religion is not conferred upon it by the Church, but directly by God. Leo XIII affirmed this in the encyclicals *Humanum Genus* and *Immortale Dei*, and in the letter *É giunto* to the Emperor of Brazil, of the 19th July 1889, in which he reiterates the condemnation of "those who under the seductive name of liberty of worship, proclaim the legal apostasy of society from its divine Author".⁵⁵

⁵¹ A. Ottaviani, *op. cit.*, p. 303. "*Hinc communis fuit – Ottaviani writes – in Medio Aevo, etiam apud Ecclesiae Doctores et Pontifices, usus analogiae, de duobus gladiis: scilicet, in gladiis de quibus sermo est in Evangelio (Luc., XXII, 38) dixerunt figuratam duplicem potestatem coërcitivam Ecclesiae, alteram per poenas spirituales ab Ecclesia immediate exercendam, alteram vero, per vim physicam, ministerio principum civilium inferendam*".

⁵² Cf. Thomas Pink, *The Interpretation of Dignitatis Humanae: A Reply to Martin Rhonheimer*

(https://www.academia.edu/2911284/The_Interpretation_of_Dignitatis_Humanae_A_Reply_to_Martin_Rhonheimer). According to Prof. Pink, *Dignitatis Humanae* "is not a statement about religious liberty in general but about a specifically civil liberty: religious liberty in relation to the state and other civil institutions. It does not oppose religious coercion in general, but coercion by the state. The state is forbidden to coerce in matters of religion, not because such coercion is illicit for any authority whatsoever, but because such coercion lies beyond the state's particular competence" (<http://www.firstthings.com/article/2012/08/conscience-and-coercion>).

⁵³ Pius XII, *Discorsi e Radiomessaggi*, Discourse of 21 June 1955, XII, p. 354.

⁵⁴ Antonio Messineo s.j., *Stato* in *Enciclopedia Cattolica*, vol. XI (1953), col. 1262 (coll. 1259-1266).

⁵⁵ *Les enseignements Pontificaux. La paix intérieure des nations*, ed. by the Monks of Solesmes, Desclée, Paris 1952, n. 237.

“God” – affirms St. Pius X – “is not only Lord and Master of men considered individually, but also of the nations and of the States; it is necessary, then, that the nations and those that govern them recognize Him, respect Him, and venerate Him publicly”.⁵⁶

The duty of the State of rendering public worship to God, with all the rights that are involved, was invoked by St. Pius X in his discourse of February 21st, 1906, which does not refer to the confessional States, but to a secularized and anti-Christian State, which the Third French Republic was in the first years of the twentieth century. The State is not incompetent as regards religion. Or, better, as Fr. Matteo Liberatore well observed: “The State is incompetent with regard to religion as far as regulating it, not as regards discerning it”.⁵⁷

5. The Church in the 19th Century

The idea of the natural right of every man to religious liberty does not belong either to the doctrinal patrimony nor to the historical practice of the Church. The first modern formulation of the principle of religious liberty dates back to the most radical sects of the Protestant Reformation, such as the Anabaptists and the Socinians,⁵⁸ who denied, like demoniacs, the bond between spiritual authority and the temporal power which had constituted the foundation of Medieval Christendom, the first in the name of an illumination received from the Holy Spirit, the second in the name of the illuminating role of reason.⁵⁹

The Socinian dogma of religious liberty was brought to its coherent state in England by Deist authors like John Locke (1632-1704) and John Toland (1670-1722), and it was an operative force in the birth of the Grand Lodge of London of 1717. Freemasonry is the mother of the modern principle of religious liberty. Thanks to the influx of Freemasonry, in the course of the

⁵⁶ St Pius X, Allocution to the Consistory, 21 February 1906, in *Les enseignements Pontificaux: La paix intérieure des nations*, ed. by the Monks of Solesmes, Desclée, Paris 1952, n. 393.

⁵⁷ Matteo Liberatore, *Del diritto pubblico ecclesiastico*, Giachetti, Prato 1887, pp. 360-361.

⁵⁸ Cfr. R. de Mattei, *A sinistra di Lutero. Sette e movimenti religiosi nell'Europa del '500*, Città Nuova, Roma 2001.

⁵⁹ Fr. Valuet justly emphasizes the importance of the book by Joseph Lecler, *Histoire de la tolérance au siècle de la Réforme*, Aubier, Paris 1955 (2 vol.). Roland H Bainton, *The reformation of the sixteenth century*, The Beacon Press, Boston 1959 (1952); Henri K. amen, *The rise of toleration*, Weidenfeld & Nicolson, London 1967; Massimo Firpo, *Il problema della tolleranza religiosa nell'età moderna*, Loescher, Torino 1978; see also Heinrich Schmidinger, *Weg zur Toleranz: Geschichte einer europäischen Idee in Quellen*, Wissenschaftliche Buchgesellschaft, Darmstadt 2002.

1700s, the idea of tolerance and of liberty of conscience began to escape from the philosophical disputes, reaching in France, and in all of Europe, public opinion.⁶⁰ The Enlightenment took up the inheritance of Masonic Deism and theorized, with the *Traité de la Tolérance* (1763) of Voltaire,⁶¹ a society founded upon the principle of religious “tolerance”: tolerance extended to all the sects, except to the Catholics, considered an evil to extirpate.

This conception had its political-juridical expression in the *Declaration of the Rights of Man and of the Citizen* of the French Revolution, whose tenth article declared: “Nul ne doit être inquiet pour ses opinions, même religieuses, pourvu que leur manifestation ne trouble pas l'ordre public établi par la loi”.⁶² The public order, the secularized version of the common good, is substituted for the truth as the criterion of common life. The inheritance of the French Revolution was collected up by the liberalism of the 19th century, which included liberty of conscience, of religion, and of worship.

The Church reacted with vigour towards the propagation of religious liberty, with various documents, among which were the Encyclical *Mirari Vos*⁶³ of Gregory XVI, of August 15th, 1832, and the Encyclical *Quanta Cura*⁶⁴ and the *Syllabus*⁶⁵ of Pius IX.

One of the main theses of the supporters of the continuity between *Dignitatis Humanae* and the Tradition of the Church, is that the words employed by these Popes had, in the 19th century, “un sens différent de celui que les mêmes termes pourraient prendre à la fin du XX siècle”⁶⁶ and thus that the religious liberty to which *Dignitatis Humanae* refers is not the “liberty of conscience” condemned in the 19th century: this “does not have the same foundation, nor the same object, nor the same limits, nor the same scope”.⁶⁷ *Dignitatis Humanae*, for Fr. Basile, does not refer to just any form of the State, but to the modern lay State: it regards the “immunity from coercion in the civil society”, but does not admit in some way the right to error.

⁶⁰ Daniel Mornet, *Le origini intellettuali della Rivoluzione francese (1715-1787)*, tr. it. Jaca Book, Milano 1982, pp. 155, 392 and passim.

⁶¹ Cfr. Germana Carobene, *Tolleranza e libertà religiosa nel pensiero di Voltaire*, Giappichelli, Torino 2000 and R. Pomeau, *La religion de Voltaire*, Librairie Nizet, Paris 1974.

⁶² Cfr. Stéphane Rials, *La déclaration des droits de l'homme et du citoyen*, Hachette, Paris 1988, p. 24.

⁶³ Gregory XVI, Encyclical *Mirari vos de liberalismo et religioso indifferentismo*, in *Acta Gregorii Pp. XVI*, pp. 169-174

⁶⁴ Pius IX, Enc. *Quanta Cura*, in ASS, 3 (1866-67), pp. 160-167.

⁶⁵ Cfr. Pius IX, *Syllabus*, in ASS, 3 (1866-67), pp. 168-176. Cfr. also *Il Sillabo di Pio IX*, ed. Luca Sandoni, Introduction by Daniele Menozzi, CLUEB, Bologna 2012.

⁶⁶ *La liberté religieuse et la tradition catholique*, t. I, fasc. 2, p. 677.

⁶⁷ *Ibid*, pp. 676-677; <http://chiesa.espresso.repubblica.it/articolo/134-48041>.

However, the Catholic-liberal thesis of immunity from the interference of the modern lay State was not born in the 20th century, but in the 19th, and it is the first object of the condemnation of Pius IX in different documents. Martin Rhonheimer has replied well to Fr. Valuet, explaining that “the condemnations of ‘*Quanta cura*’, while certainly being addressed ‘a fortiori’ also against ‘radical liberalism’, had targeted the Catholic liberals directly and immediately, who did not share the ‘radical’ positions of the liberalism of the 1800s, but positions practically identical to those of Vatican II”.⁶⁸ We limit ourselves here to one example.

At the end of March 1848, Rev. Antonio Rosmini Serbati (1797-1855)⁶⁹ published, at Milan, a brochure, the *Constitution according to Social Justice*, with an appendix *On the Unity of Italy*.⁷⁰ This work represents the conclusion of the political thought of Rosmini, carried out in the *Philosophy of Politics* (1839) and in the *Philosophy of Law* (1841-44). The foundation of the rights of liberty is, for Rosmini, religious liberty which, in his projected constitution, is explicitly sanctioned by the third article, in which we read: “The liberty of action is guaranteed to the Catholic Church: the direct communication with the Holy See in ecclesiastical matters may not be impeded: Councils are a right of the Church: the elections of Bishops will be made by the clergy and people according to the ancient discipline, pending the confirmation of the Supreme Pontiff”.⁷¹ Rosmini does not profess religious indifferentism, but supports the immunity of the Church from interference by the State, and refuses the principle welcomed by other constitutions such as the Albertine Statute, of the same March 1848, according to which “the Catholic religion is the only

⁶⁸ Martin Rhonheimer, *A mistaken harmonization*, in <http://chiesa.espresso.repubblica.it/articolo/1348041>. The Abbé Gleize has well reviewed, under this aspect, the contradiction which exists between *Quanta cura* and *Dignitatis Humanae*. “Pour *Quanta cura*, la norme est la répression du culte public des fausses religions, même limité par les exigences de l’ordre public; pour *Dignitatis Humanae*, la norme est la liberté du culte public des fausses religions, tel que limité par les exigences d’ordre public” (*Dignitatis humanae est contraire à la Tradition?*, cit., p. 2).

⁶⁹ Antonio Rosmini Serbati (1797-1855), founder in 1828 of the “Institute of Charity” society, was a significant exponent of a “third way” between the two poles of liberal and intransigent Catholicism. For a bio-bibliographical panorama, cfr. Gianfranco Radice, *Annali di Antonio Rosmini-Serbati*, Marzorati, Milano 1967-70, 3 vol.

⁷⁰ A. Rosmini, *La Costituzione secondo la giustizia sociale*, in *Progetti di Costituzione. Saggi editi e inediti sullo Stato*, with introduction by Carlo Gray, Milano 1952, pp. 65-242. *La Costituzione secondo la giustizia sociale*, appeared in March of 1848 from the publisher Redaelli, had several reworkings unpublished by the author.

⁷¹ *Ibid*, p. 88.

religion of the State.” To the religion of the State, Rosmini opposes the liberty of conscience of the citizens, with these words: “The liberty of conscience ought to be inviolable: one ought not, then, to do violence to the conscience of a Jewish worker, who, if he is truly Jewish, should feel an absolute repugnance in associating with the acts of Catholic worship. Simultaneously, one ought not to do violence to the conscience of Catholics, who are not able without sin to admit those not Catholic to their acts of worship. One does not give liberty of conscience if one does not permit to all to exercise the laws of their own religion in all their extension. Forcing them to break them with force, with laws, with acts of government, is intolerance, is persecution, is despotism”.⁷²

The *Constitution according to Social Justice* of Rosmini was put on the Index of Pius IX on the 30th of May, 1849,⁷³ not for its religious indifferentism,⁷⁴ but properly for its Catholic-liberal positions.⁷⁵ Rosmini, in fact, claims for the Church the right of being free, and certainly the Church has this right; but the right of the Church to be free is not the only and supreme right of the Church: according to her Magisterium, she has also the right of seeing the Catholic religion be publicly recognized by the State.

The constitutional project of Rosmini implies a separation between the civil sphere and the religious one, which will be condemned in Proposition 77 of the Syllabus (“In our time, it is no longer fitting to have the Catholic religion as the only religion of the State, to the exclusion of all other cults”) and indirectly in n. 55, according to which “the Church ought to be separate from the State and the State from the Church”. The Popes, before and after Rosmini, have constantly taught that the State ought to, at least in thesis, recognize the true religion: it is able to practise religious tolerance if grave

⁷² Ibid, p. 89.

⁷³ The successive conversation between Pius IX and Rosmini at Gaeta, on 9 June 1849, is very significant. “He found me anti-constitutional,” declared Pius IX and, faced with the insistence of Rosmini, he replied categorically that the constitution is irreconcilable with the government of the Church and that, “when one thing is intrinsically bad one is not able to make any pact with it, come what may.” (Cfr. R. de Mattei, *Pio IX*, cit., p. 64.)

⁷⁴ The best criticism that was made was that of a lesser-known counter-revolutionary Italian writer, the Count Emiliano Avogadro della Motta (1798-1865), member of Parliament from 1853 to 1860, in his *Saggio intorno al Socialismo e alle dottrine socialistiche*. Cfr. Vittoria Valentino, *Il Conte Emiliano Avogadro della Motta 1798-1865. Un'introduzione alla vita e alle opere*, Vercelli 2001. R. de Mattei, *La Rivoluzione Italiana nel giudizio di Avogadro della Motta*, “Nova Historica”, 9 (2004), pp. 62-72.

⁷⁵ J. M de Bujanda, *Index Librorum prohibitorum, 1600-1966*, Centre d'Etudes de la Renaissance, Université de Sherbrooke, Médiaspaul, Montréal - Librairie Droz, Genève 2002, p. 785.

circumstances impose it, but the model of the Catholic is not able to be that of the religious neutrality of the State.

Rosmini's equivocation lies in his confusing a situation in which Catholics may in fact find themselves, as occurs in countries where the Church can do no more than claim liberty of action, with the situation of countries of ancient Catholic tradition, where the Church does not only have the right to claim liberty, but also that of seeing the truth that she announces recognized publicly. The fact that in the first case Catholics are constrained to demand liberty for the Church does not mean that that constitutional regime represents their model for society.

Count Emiliano Avogadro della Motta, from whom we have the best refutation of the work of Rosmini, writes that "where the true religion does not obtain anything other than liberty, and parity with false sects, the State is in the most anti-natural position that it is able to achieve, and the most inconsequential (...). This principle of atheism and of not caring about divinity is at the root of the theory which reduces all the rights of religion, in the universal sense, to a mere right to liberty, and believes satisfied the religious duties of the civil power when it does not profess either cult nor faith, and it takes away all as if all were error, or approves all as if all were true even if contradictory, retaining for itself the privilege of sitting *ex lege*, and emancipated from every duty toward God".⁷⁶

The condemnation of the religious neutrality of the State was reaffirmed by Leo XIII in the encyclicals *Diuturnum Illud*⁷⁷ of June 29th, 1881, *Immortale Dei*⁷⁸ of November 1st, 1885, and *Libertas*⁷⁹ of June 20th, 1888. In the Encyclical *Immortale Dei*, Leo XIII affirms: "In religious matters, to hold that there is no difference between various and opposite forms of worship, is equivalent to not wanting to recognize or practise any religion. Now if this is not atheism in name, it is so in reality"⁸⁰; and in the Encyclical *Libertas*, he reaffirms that "reason and justice condemn equally the atheist State, or that which would be in practice atheist, by being indifferent towards the various cults, recognizing their equal rights".⁸¹

⁷⁶ Ibid, p. 431.

⁷⁷ Leo XIII, Enc. *Diuturnum Illud* of 29 June 1881, EE, *Leone XIII*, pp. 170-195.

⁷⁸ Leo XIII, Enc. *Immortale Dei* of 1 November 1885, EE, *Leone XIII*, pp. 330-375.

⁷⁹ Leo XIII, Enc. *Libertas* of 20 June 1888, EE, *Leone XIII*, pp. 432-477.

⁸⁰ Leo XIII, Enc. *Immortale Dei* of 1 November 1885, in *Acta Sanctae Sedis* (ASS), 18 (1885), p. 172. "Gli Stati – affirms again Leo XIII – non possono senza empietà condursi come se Dio non fosse, o trascurare la religione come di cosa estranea e di nessuna importanza, e adottarne indifferentemente una fra le molte: essi hanno invece l'obbligo di onorare Iddio in quella forma e in quel modo che Egli stesso mostrò di volere" (Ibid, p. 164).

⁸¹ Leo XIII, Enc. *Libertas* of 20 June 1888, in ASS, 20 (1887), p. 604.

St. Pius X, for his part, beginning in the Encyclical *E Supremi Apostolatus*,⁸² summarizes the plan of his pontificate; in his motto *Instaurare omnia in Christo* (*Eph.* 1:10), he introduced the theme of the social Kingship of Christ. The social Kingship of Christ has been denied by liberal Catholicism, but all the authentically Catholic authors see in this an ideal that cannot be renounced and the principal remedy to the crisis of our time.⁸³

6. *Quas primas* or *Dignitatis humanae*?

Two anniversaries occur this year: the ninetieth anniversary of the Encyclical of Pius XI, *Quas primas*, and the fiftieth anniversary of the conciliar declaration *Dignitatis Humanae*.

In the Encyclical *Quas primas*,⁸⁴ published by Pius XI on December 11th, 1925, the Pope developed the Scriptural, liturgical, and theological foundation of the social Kingship of Christ, affirming that “it would be a grave error to say that Christ has no authority whatever in civil affairs”⁸⁵ because, as Leo XIII had already affirmed,⁸⁶ all humankind is under the power of Jesus Christ and “men, united in society, are not less under the power of Christ than when they are individual men”.⁸⁷

On the 7th December 1965, during the concluding day of the Second Vatican Council, Paul VI promulgated the declaration *Dignitatis Humanae* on religious liberty. According to *Dignitatis Humanae*, the human person has the right, in the name of his dignity, not to be impeded from carrying out his proper religious worship, of whatever kind this may be, in private or in public, as long as it does not disturb public tranquillity and morality; it does not treat of an “affirmative” right to the liberty of conscience, but of a “negative” right not to be impeded from exercising it: or a right to “immunity from every coercion in religious matters” in public or private worship (n. 4). No reference is made to the social Kingship of Christ.

Forty years separate *Dignitatis Humanae* from *Quas primas*, two documents that are both placed on the historical horizon of the twentieth century.

When Pius XI published his Encyclical, Communism and Fascism had

⁸² Pius X, Enc. *E supremi apostolato* of 4 October 2003, EE, *Pio X*, pp. 21-39.

⁸³ Cfr., for example, Fr. Denis Fahey (1883-1954), Hamish Fraser (1913-1986), and Jean Ousset (1914-1994), who dedicated a programmatic work to *Pour qu'il règne, La Cité Catholique*, Paris 1959.

⁸⁴ Pius XI, Enc. *Quas Primas*, of 11 December 1925, AAS, 17 (1925), pp. 593-610 ; tr. It. EE, *Pio XI*, pp. 158-193.

⁸⁵ *Ibid.*, pp. 173-175.

⁸⁶ Leo XIII, Enc. *Annum Sacrum* of 25 May 1899.

⁸⁷ Pius XI, Enc. *Quas primas*, cit., p. 175.

taken power, but Nazism had not yet emerged.

Pius XI believed that the social Kingship of Christ would not be a utopia: and that it would constitute the principal remedy to the crisis of modern society. In an article in the "Osservatore Romano", Fr. Vicente Cárcel Ortí wrote that "Christ the King serves also to combat the political doctrines of our time, Communism, Nazism, and Fascism, because if Christ is King, and thus the only foundation of life in common, a clear breach is thereby made with the totalitarian theories of public life. The vast majority of the martyrs of our century were killed in the name of the divine Kingdom. The Spaniards and the Mexicans, above all, were killed invoking the kingship of Jesus and pronouncing the cry of 'Viva Cristo Rey!'. In Spain, Christ the King represents for Catholics the symbol of opposition to a lay and secularist Republic, antireligious and anticlerical. The supreme hour arrived, the martyrs confronted death with unconquered resolve and patience for the love of God and of Jesus Christ, the Martyr of Martyrs. In fact, the militiamen themselves said that many fell with crucifixes in their hands crying out 'Viva Cristo Rey!' It was the glorious cry of opposition to 'Viva el comunismo; viva la Russia!' the executioners claimed would save one's life if they cried it out before the capital execution".⁸⁸

When *Dignitatis Humanae* appeared, Communism was at the apex of its power in the world, but the Second Vatican Council did not confront it with any word of condemnation: *Dignitatis Humanae* did not contribute to the collapse of Communism, which underwent an internal implosion, and instead accelerated the disappearance of the last Catholic States, as happened with Spain and with Italy, which stipulated new concordats inspired by the principle of religious liberty.⁸⁹ Religious liberty was invoked, after *Dignitatis Humanae*, in order to suppress every form of "protection" by the State for the Catholic Church, but the renunciation by the civil authority of recognizing the mission and the role of the Church and the existence of a natural law, objectively to be protected, has opened the way, contemporaneously, to the diffusion of relativism and of other religions, beginning with Islam. And today, while 56 officially Muslim countries adhere to the OCI, the international Islamic conference, not only are there no longer Catholic States, but the European Union has even refused to insert, in its constitutional Treatise, even the most general reference to the Christian roots of Europe. Relativism has established itself, denying to States, in the name of religious liberty, the possibility of any form of religious and moral censure in confrontation with rampant de-Christianization. Islamism, in the name of the

⁸⁸ Vicente Cárcel Ortí, *Elevati agli onori degli altari 286 martiri del nostro secolo*, "L'Osservatore Romano", 17 October 1998.

⁸⁹ Cfr. R. de Mattei, *L'Italia cattolica e il Nuovo Concordato*, Fiducia, Roma 1985.

same religious liberty, has advanced the construction of mosques and minarets, destined to overcome, through numbers, the construction of churches, abandoned or transformed into hotels and supermarkets.

7. Tradition of the Church and *Dignitatis Humanae*

My conclusive judgment on *Dignitatis Humanae* diverges from that of Fr. Basile and of other illustrious orators here present, for the following reasons.

Dignitatis Humanae is a confused and contradictory document, because it ignores, deliberately, the capital distinction between the “*forum conscientiae*”, in which, as St. Thomas affirms, “*causa agitur inter hominem et Deum*” and the “*forum exterioris iudicii*”, in which “*causa agitur hominis ad hominem*”.⁹⁰ In the external forum one examines what might be just *in facie Ecclesiae*, in front of the Church considered as a visible and juridical society; in the internal forum, one considers what might be just *coram Deo*, between God and the individual conscience. The external forum has a social nature and regards the public good; the internal forum has an individual nature and is referred to the private good of individuals. Concerning the Church, the first pertains to the power of jurisdiction, the second to the power of orders. For this, Catholic doctrine distinguishes between the sin, which contradicts the divine order and pertains to the moral sphere, and the delict, which transgresses against the law of the Church and pertains to the juridical order.⁹¹ The sin in the external forum is graver than the individual sin, properly because it does not pass from the moral level to the juridical unless it represents a public offense against God and a peril for the community of the faithful. The Church has always taught religious liberty in the internal forum, because no man is able to be constrained to believe. But this interior liberty which, as such, no external force is able to coerce, does not imply religious liberty in the external forum, which is to say the right of publicly practising any kind of worship and diffusing any kind of error.

Dignitatis Humanae does not affirm the natural right to profess a religion of any kind, namely, the liberal error of religious indifferentism, but the right to not undergo constraint from the State in the public practice of one's own religious creed. It does not discuss a liberal position, which maintains the natural right to error, but the Catholic-liberal one, according to which there is a political-juridical right to exercise every religion publicly before the civil authority. Even this position, however, like the preceding, has been condemned by the Magisterium of the Church. In fact, according to the

⁹⁰ St. Thomas Aquinas, *In IV^a Sententiarum*, d. 18, q. 3, a. 2.

⁹¹ Guido Saraceni, *Riflessioni sul foro interno nel quadro generale della giurisdizione della Chiesa*, Cedam, Padova 1961, pp. 99-104.

traditional doctrine, the State is not able to constrain anyone to act publicly against their own conscience, but is able to impede people from acting publicly according to their own conscience. This attitude of the State is founded on the obligation that every civil authority has to profess the truth. The Roman Empire imposed upon the Christians a duty to act publicly against their consciences, constraining them to adore idols. The Church has never constrained someone to act publicly against their conscience, for the respect it has always had for the internal forum, but in the external forum, when it has had the possibility, it has always prohibited the public profession of false religions.

This distinction is capital, because if it is ignored, the external forum risks collapsing not only the juridical dimension of the Church, but even the objectivity of its moral law, denying the words of St. Paul: "I would not have known known sin, if not through the law" (*Rom 7:7*).

The ambiguity of the *Relatio finalis* of the 14th Assembly of Bishops gives birth also to this confusion. The *Relatio* does not affirm the right of the divorced and remarried to receive Communion (and thus the right to adultery), but it negates for the Church the right of publicly defining as adultery the condition of the divorced and remarried, leaving the responsibility for this evaluation to the conscience of the pastors and of the divorced and remarried themselves. To resume the use of the language of *Dignitatis Humanae*, we have here not an 'affirmative' right to adultery, but a "negative" right not to be impeded from exercising it, or else of a right to the "immunity from every coercion in moral matters." As in *Dignitatis Humanae*, the fundamental distinction is eliminated between the "internal forum", which regards the eternal salvation of the individual faithful, and the "external forum" relative to the public good of the community of the faithful. Communion, in fact, is not a solely individual act, but a public act completed in front of the community of the faithful. The Church, without entering into the internal forum, has always prohibited Communion to the divorced and remarried because it concerns public sin, committed in the external forum. The moral law is absorbed by the conscience, which becomes a new place, not only theological and moral, but canonical.

Further, *Dignitatis Humanae* is a document which departs from the doctrinal pastoral Tradition of the Church, because this, in the presence of a concrete situation that is presented as a lesser evil to be tolerated, always presents the good to which it tends. The good is not able to be integrally attained, and Catholics are able to tolerate a lesser evil for which they are not responsible, but they are not able to accept it as an irreversible historical given, and even less to elevate it to a principle. Even under this aspect *Dignitatis Humanae* recalls the final *Relatio* of the Synod, when in the first part of the document the situation of the contemporary family is described in

purely sociological terms, borrowed from Marxism and from historicism. The Church, however, is not able to present as an impracticable ideal either indissoluble marriage or the Catholic State.

The indifference of the State in religious matters is not a given irreversible fact, but remains a public sin, which the Catholic ought not to cease denouncing. Religious neutrality of the State ought to be a cause for suffering and it cannot be accepted, even more since it is destined to transform itself into open anti-Christian hostility. Against secular liberalism and Catholic liberalism, the Church has opposed the doctrine the doctrine of the social Kingship of Christ, which represents the homogeneous development of the medieval doctrine of the two powers.

As Plinio Corrêa de Oliveira justly observes, "The proper place of Christ the King is the throne, and whichever other situation may be attributed to him is false, illegitimate, improper".⁹² Catholics ought not to become tired of criticizing every form of liberalism, both radical and moderate, showing the consequences to which it leads; they ought to refute the false concept of religious liberty, including that which has been proposed by the Catholic liberals; they ought to be inspired, without being embarrassed, by the great lesson of Medieval Christianity; they ought to consider legitimate only the thesis of an officially Catholic State; they ought to propose anew the model of the social Kingship of Christ; they ought to fight to restore a Christian society founded upon this principle; they ought above all to have the supernatural trust that, with the help of God, the social restoration of the social Kingdom of Jesus and Mary is possible.

Fifty years after *Dignitatis Humanae*, the true doctrinal and pastoral problem is this: to abandon *Quas primas*, or to forget *Dignitatis Humanae* and propose again with force the principle of the social Kingship of Christ? I hope to have clarified how for a Catholic this last may be the right choice.

⁹² Plinio Correa de Oliveira, *La Comunità degli Stati secondo le norme di Pio XII*, tr. it. in "Cristianità", n. 70 (January-February 1981), p. 13.

Catholic Teaching on Religion and the State¹

Dr John Lamont

Catholic teaching on religion and the state

In the course of the last few years Fr. Martin Rhonheimer and Prof. Thomas Pink have been engaged in an important debate on the teaching of the Second Vatican Council on religious freedom in its declaration *Dignitatis Humanae*.² The context of this debate is Benedict XVI's call for a 'hermeneutic of reform', rather than a 'hermeneutic of discontinuity and rupture', in the interpretation of that council. Fr. Rhonheimer presents the council's teaching on religious freedom as an example of reform. He describes it as rejecting the teaching of the 19th century popes on the right to religious freedom and the state's duties towards the true religion, but he denies that this rejection is a case of discontinuity, on the grounds that these teachings do not involve 'an explicit assertion of wanting to present a definitive doctrine in a matter of faith and morals';³ they are at the most 'a question concerning an aspect of the social doctrine of the Church'.⁴

Prof. Thomas Pink has criticised Fr. Rhonheimer, and presented his own interpretation of *Dignitatis Humanae*. This interpretation is based on the views of Suarez on coercion in matters of religion. Suarez held that the Church is the sole authority with jurisdiction over deeds that are opposed to religion and the salvation of the soul; the civil magistrate may only punish crimes that are contrary to the natural ends of the state, which are public peace and human justice. The Church has this jurisdiction over all validly baptised

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² See Fr. Martin Rhonheimer, 'L'"herméneutique de la réforme" et la liberté de religion', *Nova et Vetera*, no 4, Oct.-Dec. 2010; 'Benedict XVI's "Hermeneutic of Reform" and Religious Freedom', *Nova et Vetera* 9/4 (2011); 'Dignitatis Humanae—Not a Mere Question of Church Policy: A Response to Thomas Pink', *Nova et Vetera* 12/2 (2014); Prof. Thomas Pink, 'The interpretation of Dignitatis Humanae', *Nova et Vetera* 11/1 (2013); 'Suarez and Bellarmine on the Church as coercive lawgiver', https://www.academia.edu/8577465/Suarez_and_Bellarmino_on_the_Church_as_Coercive_Lawgiver; 'What is the Catholic doctrine on religious liberty?', https://www.academia.edu/639061/What_is_the_Catholic_doctrine_of_religious_liberty.

³ Rhonheimer (2011), p. 1038.

⁴ Rhonheimer (2011), pp. 1039-40.

Christians in virtue of their baptism, whether they are Catholics or not. This jurisdiction entitles her to coerce Christians into carrying out the commitments they made at their baptism. The commitments that are rightful objects of coercion include the commitment to internal belief as well as to outward profession of the faith. Suarez points out that although punishment cannot directly produce the act of belief, it is wrong to say that it cannot exert effective indirect pressure on a person's inner beliefs. The Church may use temporal as well as spiritual punishments to coerce the faithful into carrying out their baptismal promises, and these temporal punishments include the death penalty. When the Church uses the state to enforce coercion in matters of religion, she does so through the baptised rulers of the state carrying out their duties as Christians to enforce Church discipline. Neither the Church nor the state may coerce non-Christians into converting to Christianity, but the state has the authority not only to compel polytheists to abandon their religious practices, but also to compel them to inwardly believe in monotheism – although not to compel them to believe in divine revelation.

Prof. Pink accepts Suarez's view far enough to enable him to advance the following theses:

1. The Church has the right and responsibility to compel baptized Christians to live up to the obligations of their baptism by means that are not limited to spiritual punishments, a right whose existence was infallibly taught by the council of Trent, and that the Church continues to exercise in the 1983 Latin Code of Canon Law.

2. The state as such does not have the right or responsibility to punish religious error, but Christian rulers, in their capacity as baptized Christians rather than as rulers, may enforce the Church's temporal punishment of baptized Christians.

3. State punishment of heretics in the past was the result of such enforcement of Church discipline by Christian rulers.

4. The Church, although she cannot relinquish the right to punish religious error on her own account, can as a matter of policy withdraw from secular authorities the right to enforce Church discipline.

5. This withdrawal was the step taken in *Dignitatis Humanae*. Since it was a matter of policy not of principle, it was not a repudiation of the Church's past teachings or of every part of her history of persecution of heretics.

In order to judge the claims of Fr. Rhonheimer and Prof. Pink, and to

determine what if anything is taught by *Dignitatis Humanae* about a right to religious freedom, it is necessary to set out the main components of the Church's teaching on religion and the state. This involves covering a huge period of time, but fortunately the historical evidence for the content of these components is readily available and quite clear. Its nature has been obscured in the past by controversy and the desire to place the Church's past in an acceptable light, but it can readily be determined if we are willing to renounce the office of judging the past on this question, and to limit ourselves to the determination of what actually happened.

The religious jurisdiction of the state

There are two periods that were decisive for the formulation of Church teaching on religion and the state; the persecution and then the adoption of the faith by the Roman Empire, and the abandonment of the faith in Europe in the 19th century. The former period saw the development of a clear teaching on the way in which the state should assist the Church, while the latter period produced systematic papal teaching on the principles underlying the relations of Church and state.

Both Empire and Church brought to their confrontation ideas about how religion should relate to the state. For the Romans, the worship of the gods was a matter of first importance to the state. The emperor, as *pontifex maximus*, was the supreme head of the pagan Roman priesthood, and as such was responsible for their proper worship. The power of Roman rule was held to depend on and stem from Roman fidelity in worship of the gods. Horace expressed this view in his *Odes*, 3.6, where he asserts 'dis te minorem quod geris, imperas' – the Romans rule because they serve the gods. Cicero asserted that it was only in piety towards the gods that the Romans excelled all other peoples (*de Harusp. Resp.* 19), and that disappearance of this piety would entail the disappearance of justice and social union (*Nat. Deor.* 1.4). Dio Cassius, in the speech of Maecenas to Augustus recommending monarchy in book 52 of his *Roman History*, recommends that the monarch make the religion of state compulsory: 'do you not only yourself worship the divine Power everywhere and in every way in accordance with the traditions of our fathers, but compel all others to honour it'⁵ – a view that followed Plato's position in *Laws*, book X, 907-912.

In the Scriptures, the worship of all gods other than the God of Israel is

⁵ Dio Cassius, *Loeb Classical Library, Roman History*, vol. VI (Cambridge, Mass.: Harvard University Press, 1917), 36:1, p. 173. The speech is of course not historical, and expresses Dio's own political ideas, but these ideas were characteristic of the senatorial class to which he belonged.

forbidden. A rationale for this commandment is succinctly provided in Deuteronomy 32:17, which says of the rebellious children of Israel that 'they sacrificed to demons which were no gods'. The God of Israel is the only true god, and hence the only being who should be worshipped; the other gods are not real gods, but are instead demons – 'all the gods of the gentiles are demons' (Ps. 95:6),⁶ a statement repeated in 1 Cor. 10:20, 'what pagans sacrifice they offer to demons and not to God'. The king has the duty to not only worship the true God alone, but also to suppress the worship of these demons. Josiah destroyed and defiled every idol that he could lay his hands on, and he 'slew all the priests of the high places who were there, upon the altars, and burned the bones of men upon them. ... Before him there was no king like him, who turned to the Lord with all his heart and all his soul according to all the law of Moses; nor did any like him arise after him.' (2 Kings 23: 20, 25.) In this he was obeying the command of Exodus 34:12-13: 'Take care not to make a covenant with the inhabitants of the land to which you are going, or it will become a snare among you. You shall tear down their altars, break their pillars, and cut down their sacred poles.' He was also following the example of Moses in Exodus 32, who has the worshippers of the golden calf put to death. The banning of idolatry is not restricted to Jews: the worship of idols by Gentiles is condemned in the Old Testament (Isaiah 45:20, Psalm 115), and the commandment against idolatry is stated to apply to Gentiles in the New Testament (e.g. in 1 Cor. 6:9-10, with reference to Exodus 32:1, and Acts 15:20). Not only the worship of idols, but also any attempt to persuade Jews to worship idols, is to be punished by death; and any community that gives in to such persuasion is to be utterly destroyed (Deut. 13). The commandments of the first tablet of the Decalogue are held to apply not only to individuals, but also to societies and rulers; and the obligations to God that they refer to bind all rulers, not just Jewish one, and apply specifically to the God of Israel. This is clearly expressed in Psalm 2:10-12: 'Now therefore, O kings, be wise; be warned, O rulers of the earth. Serve the Lord with fear, with trembling kiss his feet [rejoice unto him with trembling' in other translations], or he will be angry, and you will perish in the way; for his wrath is quickly kindled. Blessed are all who take refuge in him.' The authority of God in the Old Testament is extended to Jesus in Revelations 1:5, where he is described as 'the ruler of kings on earth'.

Both Roman and Jewish approaches reflect the attitude to religion common to all states in antiquity (cf. Aristotle, *Politics* book 7 ch. 8 1328b10). It was held that correct religious worship was the responsibility of the state, and that the well-being of state and people depended on this responsibility

⁶ Douay Bible, following the Vulgate. All other biblical citations are from the RSV.

being carried out. The conversion of the Empire to Christianity preserved this attitude, but introduced four new elements to it: i) the god adopted by the state was the Christian God, ii) the reality of all other gods was rejected, and the Christian claim that these other gods were in fact demons was accepted, iii) the notion of heresy and schism as evils possible within the framework of the worship of the one God was accepted, and iv) the Catholic Church was accepted as the true church, the arbiter of heresy and orthodoxy, and the body that carried on religious worship.

The position of the Christian empire with respect to the Catholic faith was given explicit legal form in the Theodosian Code, the sixteenth book of which legislates on religious matters. The book begins by stating that 'It is Our will that all the peoples who are ruled by the administration of Our Clemency shall practice that religion which the divine Peter the Apostle transmitted to the Romans, as the religion which he introduced makes clear even unto this day.'⁷ The rationale for punishing heresy is given in title 5, 39, which states 'We have recently published Our opinion in regard to the Donatists. Especially, however, do we prosecute with the most deserved severity the Manichaeans, and the Phrygians and the Priscillianists. ... it is Our Will that such heresy shall be considered a public crime, since whatever is committed against divine religion redounds to the detriment of all.'⁸ This reference to the Manichaeans indicates an element of continuity between Roman policy before and after the acceptance of Christianity by the state, since Manichaeism was forcibly suppressed under the pagan empire as a noxious religion. The policy of the Christian empire towards paganism did not in fact involve any great legal innovation besides the acceptance of the Christian claim that pagan religion was devil-worship, since Roman law under paganism was hostile to sorcery and the invocation of demons. Once idolatry was accepted as demon-worship, the spirit and probably even the letter of Roman law from before the conversion of the Empire could be used for its legal suppression. (It should be allowed however that the Deuteronomic commands to extirpate idolatry, insisted on by Firmicus Maternus in his *De errore profanarum religionum*, probably had more weight with the Christian emperors than these legal precedents; although these precedents are cited by Maternus as well.) The introduction of heresy and schism as categories of religious crime was the real legal development that came with the conversion of the Empire.

This legal innovation resulted from the fundamental innovation in the religious policy of the Empire consequent upon its acceptance of Christianity,

⁷ *The Theodosian Code*, tr. Clyde Pharr (New York, N.Y.: Greenwood Press, 1952), book XVI, title 1, 2, p. 440.

⁸ *The Theodosian Code* (1952), book XVI, title 5, 39, p. 457.

which was the recognition of a body separate from the state – the Catholic Church – as the authority in religious questions. This authority was recognised even by emperors who wished to impose their own theological views, since these emperors never attempted to impose these views purely through an exercise of imperial power; they always convoked councils of bishops to rule that the theological position they favoured was correct, and presented their suppression of opposing positions as an implementation of these conciliar decisions. In questions concerning the faith or unity of the Church, the position of both the Catholic Church and the Christian Roman state was that the Church decides, and the Emperor enforces. The enforcement involved the suppression of heretical and schismatic assemblies, the banning of heretical works and heretical preaching, and the imposition of various legal disabilities and other punishments on heretics and schismatics. It did not however include the imposition of the death penalty for heresy, a form of punishment that was condemned by the Church. St. John Chrysostom sums up the Catholic teaching on the punishment of heresy in the patristic era in his homily on the parable of the wheat and the tares in Matthew 13; '[Christ] does not therefore forbid our checking heretics, and stopping their mouths, and taking away their freedom of speech, and breaking up their assemblies and confederacies, but our killing and slaying them.'⁹ St. Ambrose, in the western Empire, held the same view about the punishment of heretics. While condemning the imposition of the death penalty for heresy, he considered that idolatry and heresy should be suppressed by the state (letters 10, 11, 24, 26, 57, funeral orations for Valentinian and Theodosius). Indeed, in his dispute with the pagan Symmachus over the restoration of the Altar of Victory to the Senate-house in Rome, he encountered and rejected many of the arguments for religious toleration that were to be revived in the 16th and 17th centuries (letters 17, 18).¹⁰

As this citation from Chrysostom indicates, the policy of the Christian Empire towards paganism, heresy and schism was upheld by the Catholic Church, which taught that this imperial policy was demanded by the Christian faith. This enforcement was presented to the emperors by the Church as being their duty as rulers; Pope Leo the Great, writing to the emperor Leo in order to convince him to enforce the teachings of the Council of Chalcedon,

⁹ St. John Chrysostom, *Library of the Nicene and Post-Nicene Fathers, vol. X: Homilies on the Gospel of St. Matthew*, tr. G. Prevost, rev. M. B. Riddle (New York: Christian Literature Publishing Co., 1886), p. 289.

¹⁰ See J. H. W. G. Liebeschuetz, *Ambrose of Milan: Political Letters and Speeches* (Liverpool: Liverpool University Press, 2010), and *Ambrose and John Chrysostom: Clerics between Desert and Empire* (Oxford: OUP, 2011).

stated that 'you ought unhesitatingly to consider that the kingly power has been conferred on you not for the governance of the world alone but more especially for the guardianship of the Church'¹¹ (letter 156). In this he repeats the teaching already pronounced to Theodosius II by Pope Celestine.¹² This teaching is not asserting that Christian emperors as individuals have acceded to the purple in order to use the imperial power for the guardianship of the Church. It is asserting that such guardianship is their responsibility precisely as emperors.

In addition to teaching that support of the true religion and suppression of false religion was a responsibility of the state, the popes gave a reason why the state had that responsibility on purely temporal grounds. They taught that enforcement of the true religion was presented as being a guarantee for the safety of rulers and the wellbeing of the state – a factor that obviously falls under the responsibility of rulers as such. This is clearly stated in the letter of Pope St. Agatho to the emperor Constantine IV, which was used as a confession of faith at the Second Council Constantinople in 681. In this letter, issued *ex cathedra* as teaching the faith of the Apostle Peter, Pope Agatho teaches not only that the emperor has the duty of upholding the true faith and suppressing heresy, but also that the suppression of heresy by the state is necessary 'for the stability of the Christian state, and for the safety of those who rule the Roman Empire'.¹³ St. Agatho's general position in this letter reiterated the teaching pronounced in letters to emperors from Popes Leo the Great (letter 156), Simplicius (letters 8, 10), Celestine I (letter 22), Gelasius I (letter 8), and Symmachus (letter 10).

This presentation of Catholic teaching on church and state in the patristic era agrees with the general consensus of historians, who have accepted that there was no such thing as an ideal of toleration among either pagans or Christians in antiquity; this position is well exemplified by Sir Geoffrey Elton's assertion that 'religions organised in powerful churches and in command of the field persecute as a matter of course and tend to regard toleration as a sign of weakness or even of wickedness towards whatever deity they worship'.¹⁴ However, this consensus has been challenged by Elisabeth

¹¹ *Nicene and Post-Nicene Fathers: Second Series, Volume XII Leo the Great, Gregory the Great*, Philip Schaff and Henry Wace eds. (Grand Rapids: Eerdmans, 1997), p. 100.

¹² For Celestine's letter and the teaching it contains, see F. Cavallera, 'La doctrine du prince chrétien', *Bulletin de littérature ecclésiastique*, 1937, pp. 67-78, 119-135, 167-179.

¹³ *Nicene and Post-Nicene Fathers, Second Series, Vol. 14: The Seven Ecumenical Councils*, Philip Schaff and Henry Wace eds. (Buffalo, NY: Christian Literature Publishing Co., 1900), p. 337.

¹⁴ Sir Geoffrey Elton, 'Introduction', *Studies in Church History 21: Persecution and Toleration*, W. J. Sheils ed. (Basil Blackwell: Oxford, 1984), p. xiii; for this consensus

DePalma Digeser and Hal Drake.¹⁵ They have contended that there was a notion of tolerance in the ancient world, proposed by Christians in response to persecution by the state. They present Tertullian and Lactantius as characteristic representatives of this position. Tertullian asserted in *Ad Scapulam* 2.2 that religion must be adopted freely and not by force (see also his *Apology*, ch. 24, 28). In his *Epitome of the Divine Institutes*, 49.1, Lactantius states that 'it is religion alone in which freedom has placed its dwelling. For it is a matter which is voluntary above all others, nor can necessity be imposed upon any, so as to worship that which he does not wish to worship.'¹⁶ In his *Divine Institutes* 5.20, he says 'There is no occasion for violence and injury, for religion cannot be imposed by force; the matter must be carried on by words rather than by blows, that the will may be affected.'¹⁷

However, according to Digeser and Drake, after the Christians achieved power they repudiated this notion of tolerance and suppressed pagan religion. The pagan élite in their turn then argued for tolerance, using arguments borrowed to a great extent from the Christians, but to no avail. Drake's account of this alleged change in attitude is that the Church prevailed on the Roman state to apply to all non-Catholic religions the repressive attitude that the Church had previously taken to heretics, and that had been supported by the state since the time of Constantine.¹⁸ This change in attitude, coupled with Christian religious and political success, led to the notion of religious toleration falling into oblivion. It was not however a change that was intrinsic to Christian belief, or a necessary consequence of Christian supremacy; a

see also Peter Garnsey, 'Religious toleration in classical antiquity', in Sheils (1984), p. 1; François Paschoud, 'L'Intolérance chrétienne vue et jugée par les païens,' *Cristianesimo nella Storia*, 11 (1990), pp. 545-77; Peter Brown, 'Christianisation and religious conflict', *The Cambridge Ancient History vol. 13: The Late Empire, A.D. 337-425* (Cambridge: Cambridge University Press, 2008).

¹⁵ H.A. Drake, *Constantine and the Bishops: The Politics of Intolerance* (Baltimore: Johns Hopkins University Press, 2000); Elizabeth DePalma Digeser, 'Lactantius, Eusebius and Arnobius: Evidence for the Causes of the Great Persecution', *Studia Patristica* 39 (2006): 33-46; 'Lactantius, Porphyry, and the Debate over Religious Toleration', *Journal of Roman Studies* 88 (1998), 129-46; *The Making of a Christian Empire: Lactantius and Rome* (Ithaca: Cornell University Press, 2000); 'Porphyry, Lactantius, and the Paths to God,' *Studia Patristica: Papers presented at the Thirteenth International Conference on Patristic Studies held in Oxford 1999*, vol. 34. M. F. Wiles and E. J. Yarnold eds. (Peeters: Leuven, 2001), 521-28.

¹⁶*The Ante-Nicene Fathers, vol. VII: Fathers of the Third and Fourth Centuries*, Alexander Roberts, James Donaldson, and A. Cleveland Coxe eds. (Buffalo, NY: Christian Literature Publishing Co., 1886), p. 244.

¹⁷ *Ante-Nicene Fathers vol. VII* (1886), p. 156.

¹⁸ Drake (2000), pp. 346-350, 416, 481.

principled religious toleration was always in theory a possible option for Christians, because it had been accepted and argued for by some of their most eminent representatives in patristic times, and was in fact the policy originally adopted by Constantine, who intended to unite Christians and pagan monotheists by this means.

The appeal to Tertullian and Lactantius as champions of religious freedom has been current since the Enlightenment; it is found in Pierre Bayle.¹⁹ It is not however sustainable when the actual views of these Christian apologists are examined. The context of their arguments was the state persecution of Christians who refused to sacrifice to the emperor. The goal of their arguments was to establish that it is wrong to coerce people into the practice of a religion other than their own, and hence that it was wrong to coerce Christians into the pagan religious practice of sacrifice. This position on religious coercion was upheld in theory and (usually) in practice by the Church, for non-Christians as well as for Christians; forced conversion to Christianity was always condemned by Catholic teaching. But the claim A), that it is wrong to force people to adopt a religion to which they do not belong, does not imply the claim B) that it is wrong to force people to stop practicing their own religion, or the claim C), that it is wrong to force people to conform to the religion to which they do belong. The religious coercion that was practiced by the Roman Empire under ecclesiastical guidance was either suppression of false religions, which falls under B), or coercing Christians who adhere to heresy or schism to conform to the true Christian faith, which falls under C). Prior to the conversion of Constantine, Christian apologists did not openly urge the suppression of pagan religion by the state, but their insistence that such religion was devil-worship and should be abandoned by the state does not leave much doubt about the course they believed should be taken towards it, especially since the suppression of such worship was commanded by the Scriptures. The assertion of claim A) by the Christian apologists and the teaching of the Church is thus not incompatible with Catholic teaching on the state's duty to suppress idolatry, heresy, and schism.

Drake is also wrong about Constantine's initially planning a policy of principled religious toleration, and understanding why this is so is crucial to understanding why Digeser and Drake are wrong about Christian views on religious toleration. Drake, for all his valiant attempts to avoid anachronism, nonetheless fails to do so on a vital issue. He assumes that the constituencies that Constantine had in mind in his political decisions about religious

¹⁹ See Pierre Bayle, *Nouvelles de la république des lettres*, in *Oeuvres diverses de Pierre Bayle* (La Haye, 1727-1731), vol. 1, p. 576. Bayle here follows Sebastian Castellio, who makes a similar appeal to Tertullian and Lactantius in his *Concerning heresies*.

toleration were simply human ones. This assumption is incompatible with the fact that Constantine and all the other political actors of the day believed in the existence of spiritual powers whose actions played a determining role in human affairs – a fact that Drake elsewhere acknowledges. Any political decision in the fourth century had therefore to take these spiritual powers into account – and not only the relations of these spiritual powers to human agents, but also their relations to each other. If one of these spiritual powers was at war with another, an alliance with one of these powers meant war with the other.

The war between Christ and the pagan gods was a tenet of Christianity from the beginning.²⁰ It is a central feature of the New Testament, where Christ's teachings and exorcisms announce and prosecute a war on the demons with whom the pagan gods are identified. The chorus of pagan oracles denouncing Christians around the turn of the third century was accepted by both pagans and Christians as a declaration of war by the pagan gods in turn.²¹ Constantine's adoption of the labarum at the battle of the Milvian Bridge was an enlistment on one side of this war, in the hope that Christ would be the stronger ally; his victory in that battle was the confirmation of his hope. His rejection of sacrifice was a rejection of the act that was needed to declare allegiance to the pagan gods, and to enlist them as allies – an understanding of sacrifice that is reflected in the first five books of Augustine's *City of God*, which are aimed at the pagan claim that abandonment of sacrifice to the pagan gods meant abandonment of the means to ensure their favour and consequent worldly success. Allegiance to Christ was understood by Constantine and everyone else at the time to mean rejection of pagan sacrifice and war with the pagan gods, and this meant that an alliance with pagans on the basis of a vague shared belief in a supreme God was impossible. The embrace of a 'religiously neutral public square' was never dreamed of by Constantine or his successors, as it would have been a policy they would have judged to be suicidal – one that left them with no superhuman allies at all. The terms of the Edict of Milan, which grant freedom to Christians and to all others to follow what religion they please, do not constitute evidence for Constantine's support for a religiously neutral public square; since the edict was issued by Constantine's pagan co-emperor Licinius as well as by Constantine, it could not have said anything else. Constantine's frequent references to the supreme God, rather than specifically to Christ, can legitimately be seen as an effort to placate pagans, but they do not add up to a policy of religious toleration.

²⁰ See Brown (2008) on this conception of war between spiritual powers.

²¹ On this chorus see Elizabeth Digeser, 'An Oracle of Apollo at Daphne and the Great Persecution', *Classical Philology* 99 (2004): 57-77.

Papal teaching on religion and the state in the 19th and 20th centuries

In the 19th and 20th centuries, the second foundational period for Catholic teaching on religion and the state after the first foundational period in the patristic era, the teaching of the first era was reiterated by the popes. The main focus of this papal teaching was however different from that of earlier periods. With the Enlightenment and the French Revolution, a new situation had developed, where the main threat to the faith was an aggressive attempt to undermine belief and to persecute the Church through the state. In this new situation, the focus of Catholic teaching on religious coercion became the duty of states to suppress anti-religious propaganda, and to respect the rights of the Church. The problem of heresy was not ignored in this period; it was consistently taught that the Protestant Reformation was at the root of the Enlightenment rebellion against God and Christ, a teaching authoritatively stated by Vatican I in its dogmatic constitution *Dei Filius* and in a number of papal encyclicals of the era (e.g. Gregory XVI, *Mirari Vos*, 5; Leo XIII, *Immortale Dei*, 23; *Diuturnum*, 4, 23; *Quod Apostolici Muneris*, 3; Pius XII, *Summi Pontificatus*, 29), but one not much discussed by contemporary ecumenists. However, the attack on Christianity and the Church was presented as the main danger, and papal teaching on religion and the state addressed this danger rather than heresy or schism.

There is a logical progression in the teaching of this epoch. The first stage, that of the teachings of Gregory XVI and Pius IX, is principally concerned with the condemnation of errors that asserted alleged rights of freedom of conscience, speech, and religion. The next stage is the teachings of Leo XIII, which provide a positive account of the nature of freedom, the state, and the relations of Church to state. This positive account gives the rationale for the negative condemnation of errors, a condemnation that Leo XIII extends.

Leo XIII is by far the most significant figure in the development of papal teaching on religion and the state. His contribution to it formed part of a complete and systematic program that was set forth in his encyclicals. This program was the response to the challenge of the Enlightenment thought and political movements that opposed the faith; it presented the Catholic intellectual position in reply to this challenge, and proposed to Catholics a plan of action to combat this challenge. Leo XIII's endorsement of the philosophy of St. Thomas in *Aeterni Patris*, his teaching on the unity of the Church in *Satis Cognitum*, his social teachings in *Rerum Novarum* and *Quod Apostolici Muneris*, his teaching on marriage in *Arunum*, his condemnations of Freemasonry in *Humanum Genus* and *Inimica Vis*, and his condemnation of Americanism in *Testem Benevolentiae*, are other parts of this program. His

teaching on the relations of Church and state took the form it did because of the role it played in the program, a role that demanded an extensive treatment of the subject that went back to first principles. His encyclical *Libertas* is the keystone of this teaching on religion and the state, containing as it does a systematic exposition of the philosophical and theological principles upon which the teaching is based.

The final stage is the teachings of St. Pius X and Pius XI, which ground the teachings of Leo XIII concerning Church and state on the social kingship of Christ, insist on the necessity of this kingship for the well-being of society, and predict that its rejection will bring catastrophe. Pius XII and John XXIII repeat and extend this structure of teachings, without adding anything fundamentally new.

The main tenets of 19th and 20th century papal teaching on religion and the state are the following:

A). The state has the proximate end of promoting the temporal good of man, but since the temporal good of man is subordinate to the eternal good of man, the state must subordinate its pursuit of temporal good to that of eternal good, and promote the pursuit of eternal good insofar as it can. (Pius IX, *Qui Pluribus*, 34; *Quanta Cura*, 8; Leo XIII, *Au Milieu des Sollicitudes*, 6; *Immortale Dei*, 6, 7; *Libertas*, 18, 20; *Rerum Novarum*, 40; *Sapientiae Christianae*, 1, 2, 6-7, 30; St. Pius X, *Vehementer Nos*, 3; John XXIII, *Pacem in Terris*, 57-59).

B). The eternal good which the state must respect and promote is not determined by the moral and religious truths knowable by natural reason alone, but is given by the true religion, which is the Catholic faith. The state must therefore accept the authority of the Catholic faith, and conform its actions to that faith. (Leo XIII, *Immortale Dei*, 7; *Libertas*, 17, 20, 38-40; *Annum*, 36; *Exeunte Iam Anno*, 8; *Sapientiae Christianae*, 20; *Tametsi Futura Prospicientibus*, 11; St. Pius X, *E Supremi*, 8-9; *Vehementer Nos*, 3).

C). The sole judge of the Catholic faith, which is the pathway to the eternal good for man, is the Catholic Church. Therefore, the state, in respecting and promoting eternal goods, must be ruled by the Catholic Church. (Leo XIII, *Immortale Dei*, 8-13, 25-27, 35; *Libertas*, 26, 27; *Sapientiae Christianae*, 27; *Satis Cognitum*).

D). This submission to the Catholic faith does not exceed the power of the state, because it does not require the state to adjudicate questions of religious truth as such; it only requires that the state be able to identify the true authority in religious matters, which is the Catholic Church. This identification is possible using natural reason alone, so it does not surpass the

nature of the state (this teaching is not meant to claim that as a matter of fact the true religious authority will be identified using natural reason alone, rather than through the exercise of the virtue of faith on the part of Christian rulers of the state; it is instead meant to address the philosophical point that the state, as a natural entity with a natural end, must be capable of using natural means to identify the true religious authority.) (Leo XIII, *Immortale Dei*, 7: *Libertas*, 20).

E). The claim that there exist natural rights to freedom of conscience and freedom of speech, rights that make it unjust for the state to punish the practice or propagation of religious error on the grounds of its being religious error, is false. The state has a duty to suppress everything that promotes moral or religious error. It can only refrain from such suppression when the harm caused to the common good by suppressing error would be greater than the benefit. (Pius VI, *Quod Aliquantulum*; Gregory XVI, *Mirari Vos*, 14, 15, 16; Pius IX, *Syllabus of Errors*, 15, 79; *Quanta Cura*, 3-6; Leo XIII, *Immortale Dei*, 25-27, 30-32, 36-38, 42; *Libertas*, 2, 7-11, 14-42; *Au Milieu des Sollicitudes*, 28; Pius XII, *Ci Riesce*.)

F). The source of the authority of the state is God, not popular consent. If the state fails to uphold the Catholic faith, it violates the rights of God, and thus attacks the basis of its own authority. There can be no such thing as a religiously neutral state; a state that fails to uphold religion commits itself to atheism. (Pius VI, *Quod Aliquantulum*; Gregory XVI, *Mirari Vos*, 17; Pius IX, *Quanta Cura*, 4; Leo XIII, *Diuturnum*, 5-16, 23-24; *Immortale Dei*, 3-14, 23-38; *Libertas*, 7-11, 14-22, 36-41; *Au Milieu des Sollicitudes*, 5-6, 18, 28; *Sapientiae Christianae*, 5-11; *Exeunte Iam Anno*, 8; *Tametsi Futura Prospicientibus*, 7-8, 11-12; St. Pius X, *Notre Charge Apostolique*, *Incunda Sane*, 19; *Vehementer Nos*, 3; Pius XI, *Ubi Arvano Dei Consilio*, 27-28; *Divini Illius Magistri*, 51-13; John XXIII, *Pacem in Terris*, 51-52.)

G). Although the Catholic Church is the source of the religious truth that the state promotes and respects, the religious authority that the State obeys is not the Church as such, but Jesus Christ, whose kingship is not only over individuals, but over all families, societies, and states. (Leo XIII, *Tametsi Futura Prospicientibus*, 7-8; St. Pius X, *E Supremi*, 8-9; Pius XI, *Ubi Arvano Dei Consilio*, 48; *Quas Primas*, 18; *Mit Brennender Sorge*, 10).

H). Acknowledgement and promotion of the true religion and the social kingship of Christ by the state serves the well-being of society and is necessary for it; states that reject the social kingship of Christ will suffer disaster and collapse. (Gregory XVI, *Mirari Vos*, 14, 20; Pius IX, *Quanta Cura*,

4, 8: Leo XIII, *Au Milieu des Sollicitudes*, 5-7; *Inscrutabili Dei Consilio*, 2-8, *Libertas*, 15-16, 22; *Diuturnum*, 25; *Nobilissima Gallorum Gens*, 2; *Rerum Novarum*, 27; *Exeunte Iam Anno*, 8-9; *Sapientiae Christianae*, 3, 39; *Tametsi Futura Prospicientibus*, 7-9, 11-13; *Praeclara Gratulationis Publicae*; St. Pius X, *E Supremi*, 2; *Veementer Nos*, 3; Benedict XV, *Ad Beatissimi Apostolorum*, 5; Pius XI, *Ubi Arcano Dei Consilio*, 27-31, 45-48; *Quas Primas* 1, 18-19, 24; Pius XII, *Summi Pontificatus* 21-22, 30; John XXIII, *Mater et Magistra*, 217).

The degree of authority of these teachings should be considered. The teachings in A) to H) are all repeated several times in papal encyclicals addressed to the universal Church. The content of these teachings is explicitly described as being part of Catholic doctrine itself, not as a contingent application of doctrine to particular circumstances, and it is reiterated over a period of more than a century, during which time the issues it addresses were thoroughly examined and debated. It is thus hard to see how they could be rejected without discrediting the whole idea of the papal magisterium.

The most authoritative teachings on this subject are however to be found in the encyclical *Quanta Cura*. Of the numerous errors condemned in the encyclical, the most important ones for Catholic teaching on religion and the state are the following claims:

- i) the best constitution of public society requires that human society be governed without any distinction being made between the true religion and false ones;
- ii) the best condition of civil society is that where the civil power is not recognised as having the duty of restraining offenders against the Catholic religion by enacted penalties, except insofar as public peace may require;
- iii) liberty of conscience and worship is each man's personal right, which ought to be legally proclaimed and asserted in every rightly constituted society;
- iv) ecclesiastical power is not by divine right distinct from, and independent of, the civil power.

These condemnations are more narrowly formulated than the teachings in A) to H); they are thus carefully stated because they are taught infallibly, and bind the faith of Catholics. This encyclical is addressed to all the bishops of the Catholic church with the stated intention of protecting the salvation of souls. It provides a final condemnation of a list of specified errors, states that these condemnations are undertaken for the defence of doctrine and religion and are an exercise of the apostolic authority of the pope, and

commands that all Catholics accept them.²² These condemnations thus satisfy the criteria for infallible papal teachings, and they were generally accepted as infallible at the time of their promulgation;²³ Newman, who minimises the authority of the *Syllabus of Errors* in his *Letter addressed to the Duke of Norfolk*, speaks in that *Letter* of 'that infallible teaching voice which is heard so distinctly in the *Quanta cura* and the *Pastor Aeternus*'.²⁴

This review of Catholic teaching on church and state shows that Fr. Rhonheimer is straightforwardly mistaken in holding that the teaching of the 19th century popes on this topic did not explicitly present a definitive doctrine on faith and morals. It also shows that Prof. Pink is mistaken in upholding Suarez's view that the right to punish sins against revealed religion belongs solely to the Church, and is not part of the function of the state as such.

The problem of interpreting *Dignitatis Humanae*

The above description of Catholic teaching on religion and the state prior to the Second Vatican Council does not present many difficulties. Although it spans an enormous period, it is based on historical data that are well established and clear in their purport. It is however much more difficult to arrive at an account of the teaching of the Second Vatican Council on religious freedom.

The fundamental reason for this difficulty is that three incompatible understandings of this teaching were entertained at that council. The majority of the bishops followed the progressive leaders at the Council, who agreed

²² 'In tanta igitur depravatorum opinionum perversitate, Nos Apostolici Nostri officii probe memores, ac de sanctissima nostra Religione, de sana doctrina, et animarum salute Nobis divinitus commissa, ac de ipsius humanae societatis bono maxime solliciti, Apostolicam Nostram vocem iterum extollere existimavimus. Itaque omnes et singulas pravas opiniones ac doctrinas hisce Litteris commemoratas Auctoritate Nostra Apostolica reprobamus, proscribimus atque damnamus, easque ab omnibus catholicae Eccelsiae filiiis, veluti reprobatas, proscriptas atque damnatas omnino haberi volumus et mandamus.' Herbert Vaughan, *The year of preparation for the Vatican Council: including the original and English of the encyclical and syllabus, and of the papal documents connected with its convocation* (London: Burns, Oates and Co, 1869), pp. xiii-xiv.

²³ The assertion that the encyclical did not contain infallible teaching was dismissed as 'manifestly improbable', *plane improbabile*, by canonists; see F.-X. Wernz, *Jus decretalium ad usum praelectionum in scholis textus canonici sive juris decretalium* (Romae: ex Typographia polyglotta S. C. de propaganda fide, 1898-1914), Vol. 1 (1905), not. 58, p. 385.

²⁴ John Henry Newman, *Letter addressed to the Duke of Norfolk, on occasion of Mr. Gladstone's Expostulation of 1874*, in *Certain Difficulties Felt by Anglicans In Catholic Teaching Considered* (London: Longmans, Green and Co, 1900), vol. 2, p. 317.

with Fr. Rhonheimer in rejecting the Church's earlier teaching on religion and the state. However, these leaders held two different positions on the basis and nature of the right to religious liberty that they wished the Council to endorse.

One position was that of Fr. John Courtney Murray, who dealt with the above papal teachings in a straightforward way, by stating that they are false. Murray rightly identified the teaching of Leo XIII as the most significant component of these teachings. He claimed that the teaching of Leo XIII contained two inconsistent positions; the traditional position of separation between Church and state supposedly taught by Pope Gelasius, according to which the Church demanded no more than freedom from interference from the state, and a view of the state that saw its leaders as responsible for all the elements that constitute the common good. The former position implied that the state is incompetent in matters of religion, and hence that there is a right for religious belief of any kind to be free of state coercion provided that it does not infringe on others' rights. This according to Murray is the teaching of *Dignitatis Humanae*, a teaching that is a development of the former, Gelasian position of Leo XIII. The latter position on the state's responsibility extending to the whole of the common good is the logical basis of Leo XIII's claim that the state must uphold the true religion. However, this position is wrong; and Catholics need not accept it. They should instead accept the sounder teaching that sees the state as having the functions of respecting the dignity of the human person and the integrity of conscience, and protecting and promoting socio-economic human rights. This teaching, enshrined in *Dignitatis Humanae*, does not entitle the state to uphold religious truth or punish religious error as such.²⁵

Murray was involved in drafting earlier versions of *Dignitatis Humanae*, and he was followed by the American bishops, who had long chafed at Catholic teaching on religion on the state on the grounds of its incompatibility with the American constitution. However, the fact that Murray wrote in English, and that most of the Council Fathers could not understand that language, limited his influence at the Council. When his views were presented, they were far from winning acceptance in the conciliar majority; Jan Grootaers notes the 'profound dissatisfaction of the most representative figures of the Conciliar majority at the proposed Murray-

²⁵ See John Courtney Murray S.J., 'Vers une intelligence du développement de la doctrine de l'Église sur la liberté religieuse', in *Vatican II: La liberté religieuse* (Paris: Éditions du Cerf, 1967), J. Hamer and Y. Congar eds.; see esp. pp. 118-121, 128, 131-132, 137-38. The English original of this paper has not been published, but can be found in the Murray Archives, file 7-517.

Pavan draft text'.²⁶

The influence of Jacques Maritain was much more significant.²⁷ Giuseppe Alberigo and Joseph Komonchak remark: 'Vatican II drew inspiration for its own decisions from an awareness that the phase known as Christendom was now past, that is, the time when Christianity and, above all, Catholicism, in the West was lived as a social system that was self-sufficient inasmuch as it embodied the faith and was ruled by the secular arm. (Footnote; Many bishops were able to accept this perspective because they knew the *Humanisme intégral* of Jacques Maritain.)' His ideas had a much broader currency in the Church than those of Murray's, and they were especially important because he was the intellectual mentor of Paul VI,²⁸ who later declared that 'the Church agrees to recognize the world as "self-sufficient," she does not seek to make the world an instrument for her religious ends...' (*L'Osservatore Romano*, August 24, 1969.) Maritain was in fact consulted by Paul VI on the question of religious freedom during the Council.²⁹ Unlike Murray, Maritain held that the state had the promotion of the common good as its purpose. But he claimed that the common good which the state exists to subserve is purely temporal in nature, and has no supernatural element. The state is thus entitled to suppress religious activity that harms the common temporal good, but it has no right to act to uphold the supernatural good.

The difference between Murray and Maritain's positions has practical consequences for the character of religious freedom. For example, on Maritain's view it is possible to argue that there is no right to profess and promote atheism, because such a belief can be shown by natural reason to be false and harmful to the temporal good of the state. On Murray's view, it is possible to defend a right to the profession and promotion of atheism on the grounds that no-one's rights are violated by such action. No agreement on these issues was arrived at by the drafters and supporters of the document. In addition to this fundamental question, the members of the progressive majority disagreed on the scriptural basis or lack thereof for a right to religious freedom, and on the role of conscience in religious freedom.³⁰

²⁶ Jan Grootaers, *Actes et acteurs à Vatican II* (Leuven: Leuven University Press, 1998), p. 285.

²⁷ Giuseppe Alberigo and Joseph Komonchak, *History of Vatican II*, vol. V (Maryknoll: Orbis, 2006), pp. 545-46, 548.

²⁸ See Philippe Chenaux, *Paul VI et Maritain: Les Rapports du 'Montinianisme' et du 'Maritanisme'* (Brescia: Istituto Paolo VI, 1994), and Grootaers (1998), ch. 3.

²⁹ See Jacques and Raïssa Maritain, *Oeuvres complètes* vol. XVI (Fribourg: Éditions universitaires, 1999), p. 1086.

³⁰ These disagreements are chronicled by Grootaers (1998); see esp. pp.178, 369.

In addition to the various wings of the progressive majority at Vatican II, there was a substantial conservative minority that adhered to the papal teachings given in A)-H) above. The progressive leaders at Vatican II acted systematically to prevent them from making their case at the Council. An attempt to have the draft of *Dignitatis Humanae* document examined by a commission that included supporters of the traditional view was thwarted by Cardinal Bea.³¹ When Archbishop Lefebvre and other supporters of papal teaching wrote to Paul VI on July 25th, 1965 requesting that they be permitted to put their objections to the proposed draft of the document, the request was refused. A similar request made by them to the moderators of the Council on Sept. 18th, 1965 was also refused.³² The relator of the document, Bishop Émile de Smedt, who was charged with presenting and explaining it to the council fathers, took the further precaution of introducing an important amendment to the text that favoured the progressive position, without drawing the attention of the Council Fathers to the change. (The amendment stated that the right to religious freedom was enjoyed even by those who 'do not fulfill their obligation of seeking and adhering to the truth.')³³ Nonetheless it was found necessary to conciliate the conservative minority by inclusion of a clause stating that the document 'leaves untouched traditional Catholic doctrine on the moral duty of men and societies toward the true religion and toward the one Church of Christ.'³⁴

The fundamental unresolved disagreements among the Council Fathers on religion and the state resulted in a document that is unclear on concepts that are central to the subject it is addressing. There is no definition of religion itself in the document, which is sometimes described in terms that apply only to Christianity or even to Catholicism; as e.g. in para. 3, 'the exercise of religion, of its very nature, consists before all else in those internal, voluntary and free acts whereby man sets the course of his life directly toward God' (see also para. 6). The key concepts of conscience and right are not defined, although they have been given radically different meanings in Catholic tradition.³⁵ The recognition of the Church by the state is supposed to be the

³¹ See *Vatican II: La liberté religieuse* (1967) p. 81, and Grootaers (1998), p. 285.

³² See Ralph Wiltgen, *The Rhine Flows into the Tiber* (Chawleigh: Augustine Publishing, 1978), pp. 247-49.

³³ See the council's *Acta Synodalia* IV, V (Roma: Typis Polyglottis Vaticanis), pp. 79, 102-102, 116.

³⁴

http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decl_19651207_dignitatis-humanae_en.html.

³⁵ On conscience see footnote 40 below. On right ('ius') see the important work of Michel Villey; references in John Lamont, 'In defence of Villey on objective right',

product of peculiar circumstances (para. 6), but it is also stated that 'in human society and in the face of government the Church claims freedom for herself in her character as a spiritual authority, established by Christ the Lord' (para. 13), a claim that presupposes recognition by the state of the divine origin of the Church.

The result of these disagreements and this unclarity is a document whose teaching is hard to identify. The disagreements between Rhonheimer and Pink witness to this; here are two knowledgeable scholars who give interpretations of the document that are not even vaguely similar. One could conclude that there is in fact no coherent teaching in the document, and that Catholic teaching on religion and the state remains where it was prior to the Second Vatican Council.

Dignitatis Humanae and Catholic tradition

But this conclusion is itself unsatisfactory. There is after all a conciliar document on the topic of religious freedom; and the intent of this document can at least be said to be to teach some sort of right to religious freedom. We should attempt to extract some intelligible teaching on religious freedom from the document if that is at all possible.

This task is in fact possible. The first step in carrying it out is to keep in mind the general principles for interpretation of magisterial documents. These documents have a legislative character, since they establish norms that Catholics are obliged to follow on pain of legal sanctions. They resemble civil legislation in that they are intended to agree with other legislation and to be interpreted in harmony with it, unless they explicitly state that previous legislation is to be suppressed and replaced by them. They also use an official vocabulary that is to be interpreted according to the received meaning that the vocabulary has acquired in legislative acts. The principal norms for interpretation of magisterial teachings are thus other teachings and the established meaning of official terminology. They are not to be interpreted primarily in terms of the personal views and purposes of the theologians and bishops responsible for drafting and passing them.

The next step in determining the teaching of *Dignitatis Humanae* is to follow a suggestion of John Courtney Murray. He was removed from the drafting process early in the history of the document, and found the arguments given in the final version unsatisfactory. He dismissed them with the claim that 'the Council's teaching authority falls upon what it affirmed,

in *Truth and Faith in Ethics* (St Andrews Studies in Philosophy and Public Life), Hayden Ramsay ed. (Exeter: Imprint Academic, 2011), 177-98.

not upon the reasons it adduced for its affirmation'.³⁶ Yves Congar tentatively proposed a similar view, questioning whether the authority of the Council is engaged to the same degree in the document's explanation of its declarations (paras. 3 to 15) as it is in the declarations themselves (paras. 1 and 2).³⁷ Murray's position is supported by the lack of clarity of the argument in the document, and by the fact that it belongs to a less authoritative category of conciliar document. In a dogmatic constitution, the most authoritative type, all the assertions about faith and morals can be said to have some teaching authority. *Dignitatis Humanae* is simply a declaration; in such a document, the passages that demand assent are solely those that are explicitly stated as being taught by the Church.

The actual magisterial teaching in *Dignitatis Humanae* is thus contained in its paragraphs 1 and 2, not in the unclear explanations of paragraphs 3 to 15. The essential declaration in these paragraphs, the declaration in which the authority of the council is invoked, is the following:

2. This Vatican Council declares that the human person has a right to religious freedom. This freedom means that all men are to be immune from coercion on the part of individuals or of social groups and of any human power, in such wise that no one is to be forced to act in a manner contrary to his own beliefs, whether privately or publicly, whether alone or in association with others, within due limits. The council further declares that the right to religious freedom has its foundation in the very dignity of the human person as this dignity is known through the revealed word of God and by reason itself. ... The right to this immunity continues to exist even in those who do not live up to their obligation of seeking the truth and adhering to it and the exercise of this right is not to be impeded, provided that just public order [iustus ordo publicus] be observed.³⁸

The footnote to this passage refers to Leo XIII, *Libertas*, 30; Pius XI, *Mit Brennender Sorge*, 30-31; Pius XIII, radio message of Dec. 24th, 1942; and John

³⁶ John Courtney Murray, 'Arguments for the Human Right to Religious Freedom', at <http://woodstock.georgetown.edu/library/murray/1968.htm>.

³⁷ Yves Congar, 'Que faut-il entendre par "Déclaration"?', in *Vatican II: La liberté religieuse* (1967), p. 51.

³⁸

XXIII, *Pacem in Terris*, 14. These references are concerned with the right to practice the true religion, with the exception of the passage from John XXIII, which does not clarify whether or not it is the true religion that is in question.³⁹ The right to practice the true religion was the understanding of the right to religious freedom taught by the Church prior to *Dignitatis Humanae*. These references thus do not help with the new element of the document's teaching on the right to religious freedom, which is the declaration that there is a right to practice religions other than the true one.

The declaration asserts that there is a right to practice false religions unless such practice violates due limits, and it describes these due limits as being set by the requirements of just public order, *iustus ordo publicus*. To understand the teaching of *Dignitatis Humanae*, we therefore need to know what is meant by just public order. The document itself does not enable us to do this, because it describes public order in vague generalities such as 'an adequate care of genuine public peace, which comes about when men live together in good order and in true justice' (para. 7).

Fortunately, this vagueness does not pose a problem for interpretation of the document, because the term 'public order', 'ordo publicus', has an established meaning in canon law. It was introduced into canon law in the 1917 Latin Code of Canon Law, Canon 14, §1, '2. This canon was introduced to settle the question of the obligation of a traveler to obey the local ecclesiastical laws in an area he is passing through on his travels – laws such as those concerning the forms of marriage, which varied according to whether the canons of the Council of Trent had been promulgated in a given area. Prior to the 1917 Code, there were two schools of thought on this question; the school of Suarez, which held that the traveler was bound to obey all the local laws, and the school of Thomas Sanchez (1551-1610), which held that the traveler is not bound to obey all the local laws, but only those laws that concerned contractual formalities, or whose violation would cause harm to the local community. The 1917 Code took the side of the school of Sanchez, and ruled that travelers were not bound by local laws 'iis exceptis quae ordini publico consulunt', 'excepting those laws that secure public order'. This was the first occurrence of the term 'ordo publicus' in canon law, although it had an established meaning in civil law when it was introduced into the 1917 Code. The authoritative works on its meaning are John Leo

³⁹ See *Vatican II: La liberté religieuse* (1967), pp. 69-71, on this passage. The passage does not specify whether, in referring to the right of following the just rule of conscience, 'ad rectam conscientiae suae normam', it understands 'just rule of conscience' in the Thomist sense as a conscience that conforms to the objective norms of truth, or in the Suarezian sense as a conscience whose judgment can morally be followed, even if the judgment is false.

Hamill, *The Obligations of the Traveler According to Canon 14* (Washington, D.C.: Catholic University of America Press, 1942), and John Henry Hackett, *The Concept of Public Order* (Washington, D.C.: Catholic University of America Press, 1959). The fact that Hackett could write a book on the meaning of the expression indicates its established status as a canonical term.

There are two views on the meaning of 'ordo publicus' among canonists. One view takes it to refer simply to the common good as such. The other view interprets it more narrowly as referring to the essential elements of the common good. Hackett describes the latter view thus; 'Laws that protect the public order are only those that have for their direct object the protection of a good that is indispensable to society as such. ... Only a law that clearly is characterized by social necessity is one that safeguards the public order.'⁴⁰ The narrower view is the one more favoured by canonists, and it is the one we will take to be correct. It is worth noting that although the 1917 Code was the one in force when *Dignitatis Humanae* was promulgated, and is thus the appropriate reference for the interpretation of 'ordo publicus', the term was retained in the 1983 Code (canon 13 §2 °2), and canonists agree that its meaning in the later code is that of the earlier code.⁴¹

The teaching of *Dignitatis Humanae* on the right to religious freedom should therefore be understood as asserting that there is always a right to practice the true religion, and that there is a right to practice false religions unless such practice infringes on laws that uphold the essentials of the common good. This of course raises the further question of the nature of the common good for human society, but this question is answered by John XXIII in *Pacem in Terris*:

57. In this connection, We would draw the attention of Our own sons to the fact that the common good is something which affects the needs of the whole man, body and soul [*bonum commune ad integrum hominem attingere,*

⁴⁰ ⁴⁰ Hackett (1959), p. 52. This meaning of 'ordo publicus' in canon law also discussed in C. Antoine, 'Étrangers', *Dictionnaire de théologie catholique* t. 5.1, col. 986; A. Molien, 'Lois', *Dictionnaire de théologie catholique* t. 9.1, col. 894-95; *New Commentary on the Code of Canon Law*, John P. Beal, James A. Coriden, Thomas J. Green eds. (New York: Paulist Press, 2000), p. 66; R. Le Picard, 'La notion d'ordre public en droit canonique', *Nouvelle revue théologique*, 55 (1928), pp. 364-67, and 'Bien public, bien privé', dans *Dictionnaire de droit canonique*, t. II, éd. R. Naz, (Paris: Librairie Letouzey et Ané, 1937), cols. 829-831; A. van Hove, 'Leges quae ordini publico consulunt', *Ephemerides theologicae Lovanienses*, 1 (1924), pp. 153-55.

⁴¹ See *Code of Canon Law Annotated*, Ernest Caparros, Michel Thériault, and Jean Thorn eds. (Montréal: Wilson & Lafleur, 2004), p. 41.

hoc est ad eius tam corporis quam animi necessitates] That, then, is the sort of good which rulers of States must take suitable measure to ensure. They must respect the hierarchy of values, and aim at achieving the spiritual as well as the material prosperity of their subjects. (42 Cf. Pius XII, *Summi Pontificatus*, 58-59.) ...

59. Consisting, as he does, of body and immortal soul, man cannot in this mortal life satisfy his needs or attain perfect happiness. Thus, the measures that are taken to implement the common good must not jeopardize his eternal salvation; indeed, they must even help him to obtain it. (44 Cf. Pius XI, *Quadragesimo anno*, 118-119.)⁴²

The common good for which the state is responsible thus includes man's spiritual well-being as well as his temporal well-being. This follows, as the encyclical says, from the assertion that the common good includes the needs of the whole man, as is stated by *Gaudium et Spes* 74. Since eternal salvation is not only a need of the whole man, but is the principal and ultimate need of the whole man, what pertains to eternal salvation also pertains to the essentials of the common good.

Since i) the right to practice false religion is limited by the obligation to respect public order, ii) the obligation to respect public order is the obligation to respect the essentials of the common good, and iii) the wellbeing of the true religion is essential to the common good, it follows that the right to practice false religions is limited by the requirement to respect the wellbeing of the true religion, that is, of Catholicism. Any religious practice that harms the belief, practice or propagation of the Catholic faith thus can and ought to be repressed by the state, unless such repression would damage the common good more than it would promote it. But everyone has a right to religious practice, even the practice of a false religion, if such practice does not harm the temporal good or the true religion.

This interpretation of *Dignitatis Humanae* might seem to be based on a canonist's quibble. It is therefore important to grasp that it emerges from decisive developments in the history of the Church in the 20th century. These developments took their beginning from Action Française, the French nationalist movement led by Charles Maurras. Maurras was an atheist and a follower of Auguste Comte, the 19th-century founder of positivism. He hated Jews, whom he loathed for having spread monotheism, and made anti-Semitism a central part of the message of Action Française. Catholicism, in

⁴² http://www.vatican.va/holy_father/john_xxiii/encyclicals/documents/hf_j-xxiii_enc_11041963_pacem_en.html.

his view, effectively abolished monotheism by replacing God with the Church, and as a result was acceptable and indeed valuable.⁴³ He rejected democracy and advocated a return to an absolute monarchy in France, and wooed French Catholics with the object of gaining their support for his political programme. Many French Catholics, at odds with the Third Republic, were receptive to Maurras's proposal of an alliance. To justify accepting the leadership of a man who considered monotheism to be a disastrous evil, they appealed to the analysis of Pedro Descoqs S.J., a convinced Suarezian.⁴⁴

Descoqs argued from Suarez's view that grace involved the gift not only of the power to merit eternal salvation, but also the gift of a supernatural end to human nature, an end that found its fulfillment in the Beatific Vision. Suarez held that without this gift of a supernatural end, human happiness would consist in achieving natural, this-worldly goods. He accordingly held that the state had a purely temporal end independent of the supernatural.⁴⁵ Descoqs argued that since the natural end of man was independent of his supernatural end, it is possible for Catholics to cooperate in temporal affairs with unbelievers, since agreement on the nature of temporal goods was independent of agreement on the supernatural. It was thus legitimate for Catholics to cooperate with Maurras, an unbeliever, in pursuing temporal goods. French Catholics who rejected Liberal Catholicism welcomed this conclusion, and many of them enthusiastically supported Action Française.⁴⁶

Descoqs' defence of Action Française was greeted with revulsion by one of his students, Henri de Lubac. de Lubac felt that Catholic cooperation with the anti-religious and bigoted Maurras was immoral, and this led him to reject the theology of grace that was used to justify it. In a series of books – *Surnaturel*, *Le mystère du surnaturel*, *Augustinisme et théologie moderne* – he argued against the view that grace involved the gift of a new, supernatural end, and claimed that the supernatural happiness of the Beatific Vision was the end of human nature as such. de Lubac's view gained prestige in France as a result

⁴³ This sounds like a caricature, but it is in fact an accurate account of Maurras's views (whose expression he fudged or softened at times in order not to wound Catholic sensibilities). It is documented in Victor Nguyen, *Aux origines de l'Action française* (Paris: Fayard, 1991), and Michael Sutton, *Nationalism, Positivism and Catholicism: The Politics of Charles Maurras and French Catholics, 1890-1914* (Cambridge: CUP, 1982).

⁴⁴ Pedro Descoqs, S. J., *A travers l'œuvre de M. Ch. Maurras*, 3rd ed. (Paris: Beauchesne, 1913).

⁴⁵ See Suarez, *De Legibus*, lib. I: *De Natura Legis*, 7:4, and lib. III: *De Civili Potestate*, 11:4, 11:9.

⁴⁶ See Jacques Prévotat, *Les Catholiques et l'Action française, histoire d'une condamnation 1899-1939* (Paris: Fayard, 2001).

of the Vichy régime. Action Française was deeply committed to this régime, and some of its prominent Catholic members, such as Raphaël Alibert, were involved in its worst crimes. Alibert introduced the first Vichy Statut des Juifs, which stripped Jews of the rights of citizenship; subsequently Vichy France was to round up French Jews and hand them over to the Germans to be murdered, prior to any request to do so from the occupiers.⁴⁷ de Lubac meanwhile took part in campaigns against anti-Semitism, and had to go into hiding to escape the Gestapo.

The majority of the French clergy and hierarchy had eagerly supported Pétain. The victory of de Gaulle and the Allies, and the shame of Vichy crimes, gave them a strong incentive to distract attention from their Vichy past by enthusiastically endorsing those who had opposed it. de Lubac's theological views thus acquired unassailable progressive credentials, which were enhanced when Pius XII's encyclical *Humani Generis* seemed to criticize his position. Thus it was that the nonexistence of a natural end of man became accepted into the catechism of progressive theologians. This led to its consequence, the nonexistence of an autonomous temporal end for the state, being asserted in *Pacem in Terris*, which was intended to incorporate progressive elements as a counterbalance to the policy of the previous papacy. Some credit for the success of this view should also be given to de Lubac's powerful arguments against the secularising effect of the Suarezian position, which no doubt had an effect on those bishops and theologians who read through his lengthy books.

The teaching that the state must promote the supernatural as well as the natural good thus has a solid theological basis in de Lubac's work. Indeed this teaching makes it necessary to adopt the view of religious freedom presented here as the teaching of *Dignitatis Humanae*, regardless of the content of that document itself. If something is essential to the common good, the state must repress any attacks on it. The only other alternative would be to accept Murray's view of the state as not having responsibility for the common good. But such a view would be too discordant with the rest of Catholic teaching and tradition on the role of the state, and would be too hard to defend on purely rational grounds. Denial of a natural end of man is not necessary for this view of the state, since even on Suarez's view the end of man is *de facto* supernatural; and it is not clear why the state on this view should not exist to promote the actual end of man, rather than the end that humanity would have had under circumstances that do not in fact obtain. But denial of a natural end of man makes this view of the state necessary.

⁴⁷ On Vichy anti-Semitism, see Michael Marrus and Robert O. Paxton, *Vichy France and the Jews* (Stanford: Stanford University Press, 1995).

When *Dignitatis Humanae* is read in the light of *Pacem in Terris* in this fashion, it can be seen to be an important clarification of doctrine that upholds a right to religious freedom that was rejected by important Catholic theologians in the past. It entails that the Church does not have the right to use the state to coerce the baptised into fulfilment of all their baptismal promises, and that the state does not have the right to attempt to influence the inner act of belief through coercion. For such an inner act is by its nature independent of the common good, and the state is thus not entitled to demand it or to seek to produce it by coercive means. Suarez's position on the legitimacy of the coercion of the inner act of belief is morally outrageous, and foreshadows the vilest crimes of later totalitarian states. Its repudiation by the Church is a real progress in the defence of human freedom and dignity.

Moreover, this repudiation is a position of principle. On Pink's interpretation, the Church has only made a pragmatic decision to not claim her right to use the state to coerce the baptised into the belief and practice of the faith. She has not denied the existence of this right, and it is not hard to see that if the Suarezian position were to be generally accepted and officially endorsed, and the Church were ever to regain the influence on society that she possessed in the Middle Ages, such coercion would be practised. Pink's interpretation presents *Dignitatis Humanae* as doing little more than acknowledging the implications of the Church's impotence over modern society, and conceding a licence to engage in behaviour that she could rightly suppress if she had the power – rather like Giant Pope in the *Pilgrim's Progress*, grinning at non-Catholic Christians as they go by, and biting his nails because he cannot come at them. The interpretation of *Dignitatis Humanae* proposed here is a more attractive as well as a truer understanding of the Church's position on religious freedom.

Dignitatis Humanae: continuity after Leo XIII

Prof. Thomas Pink

1. The problem of magisterial self-contradiction

The nineteenth-century popes called for the state to coerce - to issue legal directives backed up by threats of punishment - in support of religious truth and against religious error and to enforce the laws of the Church.

But in 1965, in *Dignitatis Humanae*, Vatican II taught something that appears quite opposite - that we have a right not to be coerced in our religious activities by the state, except where the state needs to protect just public order.

Why have we a right to religious liberty against the state? Because the good of religion transcends the authority of the state:

Furthermore, those private and public acts of religion by which people relate themselves to God from the sincerity of their hearts, of their nature transcend the earthly and temporal levels of reality. So the state, whose peculiar purpose it is to provide for the temporal common good, should certainly recognise and promote the religious life of its citizens. With equal certainty it exceeds the limits of its authority if it takes upon itself to direct or prevent religious activity.¹

This is a radical right to religious liberty against the state. Contrast our right to liberty of movement. We also have a right to liberty of movement against the state; but no one would say that we have it because movement is a good that entirely transcends the state's authority to regulate. The state clearly has a role in the coercive regulation of movement and travel, which is why our right to liberty of motion is subject to limitations - in traffic regulations and the like. But because the good of religion does altogether transcend the authority of the state, our right not to be coerced by the state where the good of religion alone is at stake admits of no exceptions. The state cannot restrict our liberty for specifically religious ends, to protect religious truth, or simply for people's religious good.

But then the clash with the pre-conciliar magisterium looks total. The nineteenth-century popes were very clearly demanding state legal protection of Catholicism not just to preserve just public order of a civil kind but for

¹ *Dignitatis Humanae* §3.

specifically religious ends, because Catholicism is true, and for the spiritual good of the Church and of the state's citizens. In *Immortale Dei* Leo XIII made this very clear:

All who rule, therefore, would hold in honour the holy name of God, and one of their chief duties must be to favour religion, to protect it, to shield it under the credit and sanction of the laws, and neither to organize nor enact any measure that may compromise its safety.²

And the purpose of this state legislation is a specifically religious and supernatural good – the salvation of the people:

For one and all are we destined by our birth and adoption to enjoy, when this frail and fleeting life is ended, a supreme and final good in heaven, and to the attainment of this every endeavour should be directed. Since, then, upon this depends the full and perfect happiness of mankind, the securing of this end should be of all imaginable interests the most urgent. Hence, civil society, established for the common welfare, should not only safeguard the well-being of the community, but have also at heart the interests of its individual members, in such mode as not in any way to hinder, but in every manner to render as easy as may be, the possession of that highest and unchangeable good for which all should seek. Wherefore, for this purpose, care must especially be taken to preserve unharmed and unimpeded the religion whereof the practice is the link connecting man with God.³

However, *Dignitatis Humanae* condemns state coercion for specifically religious ends as wrong because beyond the state's authority. This condemnation follows directly from *Dignitatis Humanae's* claim that religious life transcends state authority. But the condemnation is also made very explicit in the official *relationes* that interpreted the declaration to the council fathers before they voted on it, for or against. Consider this *relatio* from 19th November 1964. Having noted that the state can limit religious liberty to protect just public order, the *relatio* continues:

² *Immortale Dei*, §6.

³ *Immortale Dei*, §6.

But the public power so acts in the civil order, not however in the order of religion as such. On the other hand it is not permissible for the public power to restrict the public exercise of any religion by law or governmental action on the basis that this or that religion is judged to be false or that its exercise proceeds from an erroneous conscience or that it harms the good of the Church. For then the public power's coercive action would intrude into the order of religion as such, which is unlawful (*nefas*).⁴

Yet, it seems, in *Immortale Dei* of 1885 Leo XIII requires, in clear magisterial teaching, that the state legislate 'in the order of religion as such', to protect and privilege Catholicism for specifically religious ends. Take Leo XIII and Vatican II together, and it very much appears that we have directly opposed teaching: in 1965, at the Second Vatican Council, the Catholic magisterium seems to have rather dramatically contradicted itself.

2. The appeal to the just public order exception

We have already stated that *Dignitatis Humanae* makes one exception to its condemnation of religious coercion by the state. The declaration permits state coercion of religious activity if this is needed to protect just public order:

Therefore the right to religious freedom has its foundation not in the subjective disposition of the person, but in his very nature. In consequence, the right to this immunity continues to exist even in those who do not live up to their obligation of seeking the truth and adhering to it and the exercise of this right is not to be impeded, *provided that just public order be observed*.⁵

Later the declaration repeats and expands on the just public order exception:

Furthermore, society has the right to defend itself against possible abuses committed on the pretext of freedom of religion. It is the special duty of government to provide this protection. However, government is not to act in an

⁴ Vatican II *Acta Synodalia* 3.8 pp. 462-63.

⁵ *Dignitatis Humanae* §2 (my emphasis).

arbitrary fashion or in an unfair spirit of partisanship. Its action is to be controlled by juridical norms which are in conformity with the objective moral order. These norms arise out of the need for the effective safeguard of the rights of all citizens and for the peaceful settlement of conflicts of rights, also out of the need for an adequate care of genuine public peace, which comes about when men live together in good order and in true justice, and finally out of the need for a proper guardianship of public morality. These matters constitute the basic component of the common welfare: they are what is meant by public order.⁶

We have also seen that the November 1964 *relatio* told the council fathers to vote on a certain understanding of what just public order involves – that, as referred to in the declaration, it is to be understood as to do with ‘the civil order’, which the *relatio* insists be understood as quite distinct from ‘the order of religion as such’.

This just public order exception must therefore have to do with religious activity that is damaging goods that are other than religion itself and that, by contrast to religion, do fall under the authority of the state. Examples might include religious activity that is objectionable not simply because it draws people away from salvation, which is a matter transcending state authority, but because it involves damage at the temporal level, such as to the lives and property of the state’s citizens or to general morals. It should be clear, then, that this just public order exception does nothing to remove the appearance of contradiction between *Dignitatis Humanae* and the pre-conciliar magisterium, which has to do with contrasting views of the permissibility of state coercion ‘in the order of religion as such’ – to protect religious truth and the spiritual good.

It is therefore remarkable that so many authors attempt to reconcile *Dignitatis Humanae* with the pre-conciliar magisterium by appealing to the just public order exception. These authors claim that in the Catholic societies of the past, non-Catholic religious activity and proselytization in the public sphere – activity and proselytization that the pre-conciliar magisterium certainly called on the Catholic state to restrict – did once threaten just public order as it might not be threatened now; and then suggest that the Catholic magisterium was calling on the state to restrict such activity just on that account.

We find this strategy adopted by Fr Brian Harrison. Thus in recent writing on this topic he summarises his position:

⁶ *Dignitatis Humanae* §7.

Readers may perhaps welcome a thumb-nail summary of my overall thesis. My basic position is that the big difference between the Church's stance on religious liberty before and after Vatican II lies not in her old and new *doctrinal* teachings; for these, though certainly not identical, are quite compatible, thanks largely to their very general (non-specific) content. Rather, it lies in the Church's very different pre- and post-conciliar prudential judgments as to *how much* restriction on false and immoral propaganda is *in fact* required by a just public order, given the dramatic social and political changes of recent centuries.⁷

Thomas Storck has similarly appealed to the just public order exception:

The “just requirements of public order,” the “due limits,” and considerations of the rights of others and of the common good vary considerably from society to society, and in a society overwhelmingly and traditionally Catholic they could easily include restrictions, and even an outright prohibition, on the public activities of non-Catholic sects, particularly on their proselytizing activities.⁸

Likewise, Fr Basile Valuet sees in *Dignitatis Humanae* no abandonment of the doctrinal basis for the Church's past reliance on the state. For the Church's past principle had been to rely on state coercion in matters of religion only when just public order had been in danger – a role for the state that *Dignitatis Humanae* still leaves open.

Has the doctrine of the secular arm been abandoned?
Reply: The Church, according to *Dignitatis Humanae*, commits herself to not calling on the state to use coercion except in cases where just public order is in danger. And we think we have shown that this was the principle followed in the Constantinian era.⁹

⁷ Arnold T. Guminski and Brian W. Harrison, O.S., *Religious Freedom: Did Vatican II Contradict Traditional Catholic Doctrine? A Debate* (South Bend: St Augustine's Press, 2013), p87 (author's emphases).

⁸ Thomas Storck, *Foundations of a Catholic Social Order*, (Four Faces Press, 1998), pp28-9.

⁹ Basile Valuet, *Le Droit à la Liberté Religieuse dans la Tradition de l'Église* (Le Barroux: Éditions Sainte-Madeleine 2005), 520.

And Valuet sums up:

If more often than not the Church in the past has refused the (morally wrong) exercise of their right to religious liberty to certain categories of persons (apostates, heretics, and schismatics) in certain situations (especially when the rights of Catholics were not being respected) this can be amply explained by the fact that these cases involved the crossing of the limits to religious liberty as expressed in *Dignitatis Humanae* §7, [i.e., the cases involved breach of just public order] notwithstanding many abuses committed by Catholics in their use of their own right to protect themselves: notwithstanding also the common error of thinking that truth could be imposed by means of coercion.¹⁰

But this is to misunderstand the Church's past conception of the state's role when privileging Catholicism – which was primarily to protect the spiritual good of its citizens, and not simply to protect just public order under civil and social conditions very different from those of the present. The state's coercive role was to protect the Church and her mission as essential to the supreme spiritual good of salvation, and not just to protect the civil order. We need not rely on Leo XIII alone to establish this. Early on in the 'Constantinian era', Pope Leo the Great taught the Emperor Leo:

You ought unhesitatingly to consider that the kingly power has been conferred on you not for the governance of the world alone but more especially for the guardianship of the Church. (*Letter 156*).

Valuet's reference to the state's role as *secular arm* or *brachium saeculare* involves an especially important case of this misunderstanding. He views the state's role as the secular arm as about the protection of just public order. But the 1917 *Code of Canon Law* in canon 2198 takes a different line. The canon requires the state to act, at the Church's request, as *brachium saeculare*; but in so doing, it does not use the term *brachium saeculare* to refer to the state's protection of civil order. The canon refers to the state as protector of the civil order simply as *civilis auctoritas*. The canon only speaks of the state as *brachium saeculare* in relation to specifically religious offences – offences that

¹⁰ *Le Droit à la Liberté Religieuse dans la Tradition de l'Église*, 521.

are the peculiar concern of the law of the Church, and of which the Church is the proper judge, but where the state may be called on by the Church to help enforce her law:

An offence that is against the law of the Church alone, is, by its nature, proceeded against by the ecclesiastical authority alone, which, when the same authority judges it necessary or opportune, can claim the help of the secular arm.¹¹

The state's role as *brachium saeculare* primarily concerns, as the term 'secular arm' so clearly suggests, the use of coercion in support of the Church and at her request for the Church's spiritual ends, and not civil coercion to preserve just public order.

The 1917 *Code* cites, among the considerable magisterial authority for this canon, the Council of Trent, Session 25, *Decretum de Reformatione Generali*, chapter 20, which calls on Catholic rulers to enforce ecclesiastical laws generally. In the passage cited by the 1917 *Code*, Trent takes the same position as Pope Leo the Great. The end served by this state coercion is not the preservation of civil order, but religious truth and a spiritual good, and involves a duty that lies on rulers not just as rulers but as baptized members of the Church - the preservation of the faith and the Church that serves it, because this faith is holy and true:

The holy council desires Church discipline not only to be restored among the Christian people but also to be perpetually protected and preserved safe from all obstructions. Hence over and above its rulings about ecclesiastical persons, it has thought it right to warn secular princes too of their responsibility, trusting that they, *as Catholics whom God has wished to be protectors of the holy faith and of the Church*, will not merely allow a restoration of the Church's law, but will also recall their subjects to due reverence towards the clergy, both parish priests and those in higher ranks.¹²

By contrast, as officially approved pre-conciliar theology made very clear, the state's activity in the civil order was not to protect the good of the Church and her mission. A standard theological text of the immediately post-Leonine

¹¹ 1917 *Code of Canon Law*, can. 2198.

¹² *Decrees of the Ecumenical Councils*, ed. Tanner and Alberigo, vol. 2, 795.

period, published in three editions in 1907, 1913 and 1928, and part of the theological training of the francophone Fathers of Vatican II, is Lucien Choupin's *Valeur des Décisions Doctrinales et Disciplinaires du Saint-Siège*. Following Leo XIII, Choupin demands that the state recognize and protect religious truth by supporting the Church in her spiritual mission – the fostering of a specifically religious good:

To fulfil this duty the leaders of the temporal society must necessarily take account of the prerogatives accorded by Christ to his Church, respect her doctrine, her laws and institutions, and provide legislation that *far from hindering the spiritual government's action, supports that action and extends it*. To act in this way is not to confound the two powers, but to establish harmony between them.¹³

Choupin distinguishes this coercive action of the state that serves to support the Church's spiritual mission and action, from any further punishment of religious crimes that is to protect just public order in civil society. In the former case the state is coercing for specifically religious ends; in the latter case the state is coercing for the good of the civil order:

One thing to note here: in this case the lay judge is not punishing the religious offence *just because it wrongs religious society*, but also because it opposes civil society, and so the punishment is inflicted not in the name of the Church but in the name of the state.¹⁴

Choupin is very clearly making the distinction already made above, by the *relatio* of November 1964 – between religious activity that offends against a specifically religious good, such as breach of obligations to the Church and her mission, and religious activity that damages goods of the civil order. Pre-conciliar magisterial teaching and theology made exactly the same clear distinction as the 1964 *relatio* – between two coercive orders, an order of religion and a civil order. The contrast lies in the fact that pre-conciliar teaching and theology envisaged the state as legislating and punishing in the order of religion as well as the civil order, whereas *Dignitatis Humanae* now forbids state coercion in the order of religion as *nefas* or morally wrong. Choupin's theology of the division between the two coercive orders is exactly

¹³ Lucien Choupin, *Valeur des Décisions Doctrinales et Disciplinaires du Saint-Siège* (Paris: Beauchesne 1913), 270 (my emphases).

¹⁴ *Valeur des Décisions Doctrinales et Disciplinaires du Saint-Siège*, 526.

reproduced in the 1964 *relatio* – but this time to forbid the state to coerce at all for religious ends. Hence the problem of apparent magisterial self-contradiction, which Harrison, Storck and Valuet are doing nothing to solve. Their appeals to the just public order exception, which was officially presented to the Council fathers as applying to coercion in the civil order only, are irrelevant to the central question, which is the legitimacy of state coercion in the order of religion, for specifically religious ends, and fail to do justice to the pre-conciliar Church's teaching – that the Catholic state should protect the Church and her mission for the sake of that very mission, as involving a higher spiritual good of supreme importance, and not just to preserve civil order.¹⁵

There is only one way the appearance of contradiction can be removed; and the conception of two coercive orders invoked by Choupin reveals what way that is. The state, Choupin envisages, can act in more than one legal and coercive order, in a civil order in its own name but not for specifically religious ends, and in an order of religion for religious ends, but in the name of the Church and not its own. According to pre-conciliar teaching, then, when the state was involved in coercion for religious ends, this was only under a borrowed authority – under an authority other than the state's own. There

¹⁵ In 'Catholic teaching on religion and the state', (*New Blackfriars*, November 2015) John Lamont has also sought to exploit the just public order exception to establish the continuity of *Dignitatis Humanae* with past Church teaching. Lamont claims that the just public order exception does permit state coercion to defend a specifically religious good. But this claim is contradicted by the 19th November 1964 *relatio* which insists that, for the purposes of voting for the declaration or against, the protection of public order be understood to involve protection of goods of the civil order only. Lamont's reading is also opposed by another *relatio* of 15th September 1965 that appeals to a canon law text to interpret the key notion of just public order to those about to vote – Vermeersch's *Epitome Iuris Canonici*. This *relatio* cites Vermeersch to establish that just public order does not involve the specifically religious good of the sanctification of the people – the very good that Leo the Great, the Council of Trent, and Leo XIII all required the state legislatively to favour, and which *Dignitatis Humanae* forbids the state legally and coercively to privilege because a matter of religion transcending state authority:

The words 'public order' are not very well defined from the will of the lawgiver, and receive their interpretation from received usage. Authors are sufficiently in agreement that those laws have to do with public order that do not only have the public or common good for their end (which all law does) but have it as their immediate object. These are laws which unless kept by everyone situated in a territory, that community will suffer damage. Laws that aim at the sanctification of the faithful are not of this class. Citation of Vermeersch, *Epitome Iuris Canonici* in a *relatio* of 15th September 1965, Vatican II *Acta Synodalia* 4.1 pp194-5.

is another authority - the Church - that can coerce for specifically religious ends; and the pre-conciliar magisterium must have been calling on the state to coerce for religious ends, not on its own authority, but only as an agent of and in the service of the Church. While, by contrast, in 1965 *Dignitatis Humanae* must be addressing the state in a new context - as acting no longer as an agent of the Church, but on its own native authority, an authority that in Catholic teaching, before Vatican II as well as after, did not extend to the direction of religion as such.

To see that this is indeed how to understand *Dignitatis Humanae*, and thereby remove the appearance of magisterial contradiction, we need to turn to the political teaching of Leo XIII. We have seen from the November 1964 *relatio* that Choupin's clear distinction between coercion in the order of religion and coercion in the civil order was also made by the commission drafting *Dignitatis Humanae*. This is no coincidence. In fact Choupin and the commission were equally reliant on the magisterium of Leo XIII - in Choupin's case to endorse state involvement in religious coercion, and in the commission's case to condemn it. Remarkably, in this they were not being inconsistent in their view of the state, deploying the same basic understanding of state authority and its relation to religion - a Leonine understanding, as this paper will now explain.

3. The two-powers political theology of Leo XIII

It is easy for us to assume, like Weber, that the state is the coercive authority par excellence, the only true *potestas*, the only sovereign authority entitled to enact laws and enforce those laws with the threat of coercive force. But this is not historical Catholic teaching.

In *Immortale Dei* of 1885, Leo XIII teaches that there are in fact two coercive *potestates*, Church and state, each with its own sovereign authority to legislate and punish, each governing its own distinct coercive order, the order of religion and the civil order:

The Almighty, therefore, has given the charge of the human race to two powers (*potestates*), the ecclesiastical and the civil, the one being set over divine, and the other over human, things...¹⁶

The Church alone has the authority to coerce in matters of religion. The state, which has the authority to coerce in the civil order, has no coercive authority whatsoever of its own in religious matters:

¹⁶ *Immortale Dei*, §13.

Whatever, therefore, in things human is in any way of a sacred character, whatever belongs either of its own nature or by reason of the end to which it is referred, to the salvation of souls or to the worship of God, falls wholly within the power of the Church and is wholly subject to her judgment (*id est omne in potestate arbitrioque Ecclesiae*). Whatever is to be ranged under the civil and political order is rightly subject to the civil authority. Jesus Christ has Himself given command that what is Caesar's is to be rendered to Caesar, and that what belongs to God is to be rendered to God.¹⁷

So the view that religion is a good transcending the authority of the state is not a novelty of Vatican II. It was already the teaching of Leo XIII in 1885, and it was not new even then. Leo XIII in turn took his teaching from the Jesuit political theology of the Counter Reformation. In his *Defence of the Catholic Faith* of 1613 against James I of England, a work commissioned by Pope Paul V, Suarez was already denying the state any coercive authority over religion in terms as total as *Dignitatis Humanae*.

Punishment of crimes only belongs to civil magistrates in so far as those crimes are contrary to political ends, public peace and human justice; but coercion with respect to those deeds which are opposed to religion and to the salvation of the soul, is essentially a function of spiritual power [the power of the Church], so that the authority to make use of temporal penalties for the purposes of such correction must have been allotted in particular to this spiritual power...¹⁸

So there are two coercive *potestates*, Church and state. Since both have authority from God, it must be possible for there to be harmony between them. Two forms of authority that are divinely sanctioned must be able to work together for the good of all. The need for, and the possibility of harmony between Church and state is a fundamental presupposition of Catholic political doctrine. What does this cooperative harmony require? For Catholics, Church-state harmony surely requires at least this: respect by the state for religion as it was understood by all of Suarez, Leo XIII and *Dignitatis Humanae* - as a higher good than any good of the civil order, and as a good

¹⁷ *Immortale Dei*, §14.

¹⁸ Suarez, *Defensio Fidei Catholicae adversus Anglicanae Sectae Errores*, book 3, chapter 23 §19 in *Opera Omnia*, volume 24, pp. 320-21.

transcending the state's own authority. Only such respect will guarantee the Church's freedom to pursue her mission. To reach a right Catholic understanding of the proper relation of Church and state, then, we need to determine the conditions under which the state will respect religion in a way that protects the Church's freedom - that does respect religion as a higher good in which the state has no authority to interfere.

In Leo XIII's teaching, for reasons we shall be examining in much more detail later, this respect and harmony will only be guaranteed if Church and state are united, and if, where religion is at issue, the state subordinates itself to the Church. What form must the required union take?

Here Leo XIII appealed to a venerable model of Church-state union - a model that goes back to the patristic age. This is the model of soul-body union.

There must, accordingly, exist between these two powers [of Church and state] a certain orderly connection, which may be compared to the union of the soul and body in man.¹⁹

The analogy is obviously rough, but clear enough. The body is sovereign, so to speak, in matters specific to corporeal flourishing, such as regulating the heart rate and the like. But in the higher matters that are of concern to the intellectual soul, such as whether to go to the library to get that interesting book, the body acts at the direction of the soul, and on the soul's authority. So, likewise, where the religious good is at stake, the state must be prepared to follow the direction of the Church, and to act on her authority in support of religion and religious truth, just as the body acts in intellectual matters at the direction of the soul. The whole point of the analogy is to communicate a principal-agent relation between Church and state in specifically religious matters. Where the good of religion is at stake, the Christian state is to act within the religious order as an agent of the Church. Hence, in the *Defensio*, having denied the state any authority of its own to coerce in matters of religion, and reserved all such authority to the Church, Suarez allotted the state an agency role under the Church's direction:

¹⁹ *Immortale Dei* §14. The soul-body model of Church-state goes back to Nazianzen, but is a central feature of the counter-reformation Jesuit political theology that lies behind Leonine political teaching. For a classic exposition, much cited in manual theology after *Immortale Dei*, see Bellarmine *Tractatus de Potestate Summi Pontificis in Rebus Temporalibus, adversus Gulielmum Barclay*, translated in *On Temporal and Spiritual Authority*: Robert Bellarmine, ed. Stefania Turtino (Indianapolis: Liberty Fund, 2012).

...the authority to make use of temporal penalties for the purposes of [religious] correction must have been allotted in particular to this spiritual power, whether the penalties are to be inflicted directly by the said power, or whether it avails itself of the ministry of its temporal arm (*brachium temporale*) that all things may be done decently, in order and efficaciously.²⁰

How more precisely does the state come to act as the Church's agent in religious matters? Through baptism - the sacrament that bases the jurisdiction of the Church as coercive *potestas* within the order of religion.

The state's authority in the civil order is based on natural law; and the state is under a natural-law duty, just as we are too, as individuals, to recognize revealed truth, should God ever give such revelation. Once the political community acknowledges Catholicism as true, its members, rulers and citizens alike, then become subject through baptism to the jurisdiction and coercive authority of the Church. Where a state publicly identifies itself as Christian, and publicly aspires to be a political community of the baptized, then baptismal obligations take political form, committing rulers and citizens alike to make the coercive resources of the state available to the Church, to serve the good of religion under the authority of the Church. As Bellarmine put it in 1610, invoking the political constitution, monarchy, characteristic of his time:

In fact, since kings through baptism have subjected themselves to the spiritual authority of the Pontiff, they are

²⁰ Suarez *Defensio* pp320-21. Suarez presents the Church's right to use the secular power as her religious agent as an important part of, though not exhaustive of, the Church's authority to enforce her laws by the use of temporal penalties. We find the same view in twentieth century Catholic theology in the period after Leo XIII. The Church has a right to use the temporally coercive resources of the Catholic state for spiritual ends. This right remains even when the modern state is undisposed to play its part, as the author of the article on 'Peines ecclésiastiques' in the *Dictionnaire de Théologie Catholique* insists. If the Church in the 1917 *Code* gives such temporal punishments a lesser role than in the past: 'That shows at least that the legislator judges these penalties less opportune in current circumstances; but this is without prejudice to the Church's fundamental right; this remains intact, even though she does not believe herself obligated to make extensive use of it...' It is without doubt because the secular power is nowadays generally little enough inclined to provide coercive force by way of support that, and to her greater advantage moreover, the Church has further evolved her penal system in the direction of constraint that is mainly moral and spiritual', DTC vol. 12 (Paris: Librairie Letouzey et Ané, 1933), 636-37 (my emphases).

considered to have subjected also their kingdoms and their political authority to the same spiritual authority.²¹

That is why canon 2198 of the post-Leonine 1917 *Code of Canon Law* could require the state, as the secular arm, to enforce the laws of the Church. Canonical obligation is founded on baptism, the sacrament which places the faithful under the authority of the Church. And it is through baptism as bringing with it specifically political obligations that the Church can place canonical requirements on the state.²²

The role of the state as a specifically religious coercer is entirely based on the authority of the Church over the faithful based on baptism. And baptism and its nature is a matter not of natural law or its application, but of revelation and in particular of a positive law that is revealed, the divine positive law of the New Covenant. Historic Church teaching concerning this authority concerns a matter of revelation and faith - the nature of a sacrament of supernatural grace and the obligations, under a supernaturally revealed law, which that sacrament can impose.²³ So the authority of the Church in the order of religion, though that of a sovereign *potestas*, has a very different basis from the authority of the state in the civil order. The authority of the state is based on natural law, a law immediately available to reason and governing human beings by virtue of their human nature. But the authority of the Church depends on revelation and a positive law given by God through revelation.

Indeed, the very existence of a *potestas* that is other than the state and that exists specially to direct religion seems not only to depend on revelation, but to depend on a revelation of a very particular kind - revelation of a gracious redirection of religion to an end above nature and so above the authoritative competence of the state. We shall return to this issue, which has important implications for the coherence of the theological project behind *Dignitatis Humanae*.

²¹ Bellarmine *Tractatus*, 266.

²² Among the authorities cited for this canon by the 1917 *Code* is one that we have already mentioned: Trent, Session 25, *Decretum de Reformatione Generali*, chapter 20, which, we should remember, when it calls on rulers to enforce ecclesiastical law, addresses them in their character as baptized members of the Church.

²³ Hence Martin Rhonheimer is quite wrong to claim that pre-conciliar papal teaching that called on the state to coerce on behalf of religious truth was merely teaching about the application of principles of natural law (see Martin Rhonheimer, 'Benedict XVI's "Hermeneutic of Reform" and Religious Freedom', *Nova et Vetera*, English Edition, vol. 9, no. 4 (2011): 1029-54, especially 1042, 1045, and 1048). Whether you believe the teaching or not, it was clearly teaching about the content of divine revelation - about a matter of divinely revealed law.

Leo XIII taught that a soul-body union was required for harmony between Church and state. In such a union the state functions in religious matters as an extension of the authority of the Church as *potestas* in the order of religion. In this context the Leonine model entitles and indeed requires the state, at the Church's behest, to protect the good of religion through state law. But supposing the state is no longer a community of the baptised, even in public aspiration. Supposing the state no longer publicly identifies itself as Christian, and no longer forms a soul-body union with the Church. Then the Leonine model will still apply - but now to deny the state any authority to coerce religiously. For now, detached from the Church, the state functions merely as *potestas* of the civil order - and as such has no authority to coerce in matters of religion.

Our natural right to liberty, based on our human dignity, gives us a right not to be subject to coercive direction - to directives backed by punitive threats - save those issued by a competent authority. Once it is detached from the Church, the state entirely lacks competent authority to coerce us in matters of religion; and so our human dignity gives us a right not to be coerced religiously by the state - exactly as *Dignitatis Humanae* says.

This means that the Leonine model is Janus-faced. In certain contexts, where the state is able to act as the Church's agent, the state can be required to coerce religiously. Such coercion is not unjustified, or a violation of human rights, because it is based on a legitimate authority to coerce in matters of religion - an authority belonging to the Church. But in other contexts, where the Church no longer asks the state to act on her behalf, or where the state is in any case not in a position so to act, because no longer even in public aspiration a community of the baptized, then the implication of the Leonine model is quite opposite. The state is then forbidden to coerce religiously, because such coercion would be a violation of a right to liberty based on human dignity. Such coercion would violate our rights in the same way as does much coercive pressure that is morally oppressive of our liberty - because lacking the required authority for its imposition.

The Leonine model can therefore explain why religious coercion by the state might, in modern circumstances, be morally wrong and a violation of the human right to liberty. This implication was obscured for as long the Church remained publicly committed to the Leonine ideal that Church and state should be united as soul and body, and while the Church continued to address the state as in religious matters functioning as her agent. But by the mid-twentieth century theological opinion was increasingly moved by the ever-widening gap between this Leonine ideal and modern political reality. As Maritain put it:

The supreme, immutable principle of the superiority of the

Kingdom of God over the earthly kingdoms can apply in other ways than in making the civil government the secular arm of the Church, in asking kings to expel heretics, or in using the rights of the spiritual sword to seize upon temporal affairs for the sake of some spiritual necessity (for instance in releasing the subjects of an apostate prince from their oath of allegiance). These things we can admire in the Middle Ages; they are a dead letter in our age.²⁴

The Church should therefore adapt to political modernity and address the state as it increasingly really was - a *potestas* of the civil order only, detached from any agency role in the order of religion. But if the state was exercising only a civil authority, then, as Leonine political teaching clearly implied, it would have to respect a moral right to religious liberty on the part of its citizens. The state would entirely lack the required authority to do otherwise.

At Vatican II, in the course of 1964, the proposed conciliar declaration of a human right to religious liberty was being redrafted. Such a declaration in some form was seen by that eminent admirer of Maritain, Pope Paul VI, and by his progressive allies, as urgently required to situate the Church and her mission within the modern world. But the declaration was highly contentious. Some way had to be found to meet objections that such a declaration threatened a rupture in the Church's magisterium. To the astute members of the drafting commission, it was suddenly no longer obscure what the Leonine model might imply for a religious liberty that was 'civil and social' - that was to be respected by all those exercising authority within the civil order.

4. The declaration and the official relations

We could read *Dignitatis Humanae* as it is read by so many nowadays - in thoroughly anti-Leonine terms. There is no *potestas* on earth for the order of religion, and the Church is an authoritative teacher, but not a truly coercive lawgiver. Religion is a field of human life that simply does not admit of genuinely coercive pressure, by any authority. We are left with an importantly anti-Leonine view of religion as a distinctive good altogether transcending coercive authority as such.

Or we can read *Dignitatis Humanae* in Leonine terms. On this view, in denying the state a coercive role in religion, the declaration is basing its teaching not on an exclusion from religion of coercion as such, but on a

²⁴ Jacques Maritain, *Man and the State* (Washington: Catholic University of America Press, 1998), chapter 6, 'Church and state', 62-63.

distinction of two coercive orders, the religious and the civil. On this second, Leonine reading, religion does not transcend coercive authority as such, but only authority as exercised in the civil order. And it is with coercion in the civil order only that *Dignitatis Humanae* is concerned.

These are two radically different interpretations of the declaration. It is very important that the Leonine reading was presented to the council fathers in the official *relationes* as the way they were to interpret the declaration, and on that basis vote, for it or against. Through late 1964 and 1965 the *relationes* become increasingly clear - that the declaration and its teaching on religious liberty is to be read and understood in Leonine terms.

On 19th November 1964, the declaration is presented as entirely consistent with Leo XIII's political doctrine:

Some have complained that traditional doctrine has been abandoned in this declaration, especially as stated by Leo XIII. But this is not true if the nature of Catholic tradition on this matter is properly examined.²⁵

Rather Leo XIII's teaching is being extended, to apply it to the new situation of the present:

For a new question of religious liberty has arisen in our times which did not obtain in the nineteenth century, with a change in the state of the question. This declaration is a response to this new question.²⁶

The new question concerns the rights of the individual and clearly involves addressing the state as acting detached from the Church, and not as her agent. In responding to this new question, the *relatio* insists, the declaration gives up nothing that Leo XIII once taught, but simply expands on his teaching:

Neither does it give up old things, but rather adds to them, perfecting the doctrine of Leo XIII in respect of its meaning and content.²⁷

By 1965, in the debates before the declaration's final passing, the

²⁵ Vatican II *Acta Synodalia* 3.8, 464.

²⁶ Vatican II *Acta Synodalia* 3.8, 464.

²⁷ Vatican II *Acta Synodalia* 3.8, 464.

insistence on a Leonine reading is forceful and explicit. The written *relatio* of 15th September roundly proclaims:

For the schema rests on the traditional doctrine between a double order of human life, that is sacred and profane, civil and religious. In modern times Leo XIII has wonderfully expounded and developed this doctrine, teaching more clearly than ever before that there are two societies, and so two legal orders, and two powers (*potestates*), each divinely constituted but in a different way, that is by natural law and by the positive law of Christ. *As the nature of religious liberty rests on this distinction of orders*, so the distinction provides a means to preserving it against the confusions which history has frequently produced.²⁸

So the nature of religious liberty in relation to the state rests not on a general exclusion of coercion from the field of religion, but on the Leonine distinction between two coercive orders - each with its own governing *potestas*. It's just that the state is now functioning only in its native character, as a civil *potestas*, and so entirely outside the order of religion.

According to Leonine doctrine the true coercive player where religion is concerned is the Church, not the state. So what is the coercive role of the Church? What can the Church really and legitimately do to direct and punish those subject to her jurisdiction through baptism, the faithful? How do baptismal obligations bind the faithful to the Church, and, in particular, could they do so politically, so that a Christian state could be bound to act not within the civil order only, but as an extension of the Church as *potestas* within the order of religion? The declaration is careful not to say. It is repeatedly affirmed, and in the most explicit terms, in official *relationes*, that the authority of the Church over the faithful, crucial to the Church's past use of the state as her coercive secular arm in matters of religion, is a theological problem to do with faith and revelation, not reason, which the declaration will not address *at all*.

The *relationes* make this point with especial clarity in the autumn of 1965, just before the final vote. Thus the theological and revealed question of liberty within the Church is dismissed by the official *relator* Bishop de Smedt in his *relatio* of 15th September 1965 as beyond the remit of the declaration:

Some fathers, moved by pastoral concerns, proposed that at the beginning of the Declaration there should be given a

²⁸ Vatican II *Acta Synodalia* 4.1, 193 (my emphasis).

general exposition of Catholic doctrine about liberty within the Church... A theological treatment would no doubt have added much to the object of our declaration... But our secretariat has declined the task of proposing a schema to this Holy Synod in which the Catholic doctrine of freedom in general is expounded.²⁹

It is further emphasized that same September that the liberty addressed by the declaration is of the civil order. The declaration is not therefore addressing the order of religion and the exercise, by the Church or her agents, of authority in the service of that order. That specifically religious authority is a matter of revelation and so is for theology to determine. The declaration is addressing religious liberty in the civil order only – the kind of liberty that could be argued for by reason unaided by revelation:

There this question of religious liberty, since it has to do with the civil order, is to be distinguished from other questions which are of a theological order. The first of these is of the nature and extent of that evangelical liberty by which Christ has liberated us (Galatians 5,1); the other has to do with relations between freedom and authority within the Church herself. This being supposed, the schema primarily derives its argument for religious liberty from reason... [from the dignity of the human person as this is now better understood].³⁰

The point is repeated, most emphatically and explicitly, by Bishop de Smedt at that crucial final stage of the debate on 25 October 1965, just before the final vote, and in relation to an important change in the declaration's subtitle:

The subtitle now reads "On the right of the person and of communities to a *social* and *civil* liberty in religious matters". The liberty or immunity from coercion which the declaration addresses does not have to do with the relation of man to the truth or to God, *nor does it have to do with relations between the faithful and authorities within the Church*: it really has to do with relations between people in human and civil society, that is relations of people with other individuals, with social groups and with the civil power. For these

²⁹ Vatican II, *Acta Synodalia* 4.1, 196.

³⁰ Vatican II, *Acta Synodalia* 4.1, 185 (my emphases).

reasons the freedom is termed *social and civil*.³¹

So, as a Leonine reading of it would require, and the declaration's subtitle now explicitly records, the declaration is addressing freedom and coercion in the civil order only.

Dignitatis Humanae deals with coercion within a specific legal order – the natural-law based civil order – for which the state is *potestas*. It is very natural to infer that therefore *Dignitatis Humanae* is a declaration only about the state and other civil institutions. But this would be a mistake. For it is a key principle of Leonine political theology that each of Church and state can act outside the order in which it is a sovereign *potestas*. The state, after all, can act as an agent of the Church. When the state does so, it is no longer acting in the civil order, but as an extension of the revealed authority of the Church in the order of religion. But the Church too can operate within the civil order. For the Church may interact with people and other institutions in ways that simply do not engage the revealed authority which she possesses in the order of religion. She may be contracting with another party in some non-religious matter. Or she may be interacting with another party in a religious context, as when evangelizing someone unbaptized, where there is no question of enforcing her religious jurisdiction, which is over the baptized, or even of protecting that jurisdiction from interference. In such cases she can invoke no more coercive rights over others than any other non-sovereign entity within the civil order.

There was contention among the council fathers about whether and how the declaration might address the question of religious liberty in relation to the Church. That is why, in the autumn of 1965, just before the final vote, de Smedt and his colleagues were so careful to issue official *relationes* that restricted the declaration to addressing liberty and coercion in the civil order, and that ring-fenced the Church's revealed authority in the order of religion. Now many council fathers expressed themselves, very naturally but imprecisely, as if the debate were not about which legal order the declaration was to address, the civil only or the religious as well, but rather about what institutions the declaration should address – the state and civil institutions only, or the Church as well. Those who wanted the declaration to be revisionary of Leonine teaching wanted the declaration expressly to apply to the Church as well as the state. Others, conscious of the Church's traditionally taught authority to coerce religiously, wanted it made clear that the Church was entirely excluded from the declaration. The declaration referred to the right to religious liberty as holding against coercion on the part of any human authority ('*cuiusvis potestatis humanae*'). Some fathers

³¹ Vatican II *Acta Synodalia* 4.5, 99 (my emphases).

wanted 'potestatis humanae' qualified by 'civilis' or 'mere' so as expressly to exclude the declaration from applying to the Church in any way.

Just as de Smedt's *relatio* was making it unambiguous that the declaration applied to coercion and liberty in the civil order only, and not to the order of religion, retitling the declaration to express this, his commission also refused to limit the kinds of institution to which the declaration applied. In the November 1965 replies to *modi* the proposal for qualifiers such as 'mere' and 'civilis' was dismissed as 'nimis restrictiva' (see *Acta Synodalia* 4.6, 733). That would be too restrictive, the commission observed; and plainly so, as in contexts where her revealed authority was not engaged, the Church would indeed have no more licence to coerce religiously than would the state or any distinctively civil power. We have here a precise and consistent exercise in Leonine political theology. The right to religious liberty exists as a right of the civil order only – but must be respected by any person or institution interacting with others within that civil order. The Church is no more excepted from the declaration when acting in the civil order, than the state would be included when acting as an agent of the Church within the order of religion.

This possibility of the state acting as agent of the Church brings us to nineteenth-century papal teaching on the duties of the state toward the true religion. How did the declaration leave this teaching? It is clear, from the final *relationes*, that, again in a way faithful to a declaration in Leonine form, this teaching on the state's duty to the true faith was not being denied, but was being preserved intact (*integer*). Key is that famous clause, added at Pope Paul VI's insistence so late in the day, shortly before the final vote:

Religious freedom, in turn, which men demand as necessary to fulfil their duty to worship God, has to do with immunity from coercion *in civil society*. Therefore it leaves intact (*integer*) traditional Catholic doctrine on the moral duty of individuals and societies toward the true religion and toward the one Church of Christ.³²

On the 19th November 1965, again just before the final vote, commenting on this passage, de Smedt emphasised that the teachings preserved *integer* or intact specifically included nineteenth-century papal teaching on the duties to the true religion of the *state*.³³

³² *Dignitatis Humanae* §1 (my emphasis).

³³ De Smedt was acting on the specific instructions of Paul VI: see Basile Valuet, *Le Droit à la Liberté Religieuse dans la Tradition de l'Église*, (Le Barroux: Éditions Sainte-Madeleine 2005), 396.

Some Fathers maintain that the declaration does not sufficiently show how our doctrine is not opposed to ecclesiastical documents up to the Supreme Pontiff Leo XIII. As I already said in the last *relatio*, this material must be fully explained in future theological and historical studies. As regards the substance of the problem these things must be said: while pontifical documents up to Leo XIII emphasised the moral duties *of the public power* to the true religion, the last supreme pontiffs, *while retaining this doctrine*, complete it by expounding another duty of the public power, namely the duty of respecting the demands of the dignity of the human person as a necessary element of the common good. The text presented to you today *recalls more clearly the duties of the public power towards the true religion*; from which it is clear that this part of the doctrine *is not omitted*.³⁴

These duties on the state, we have seen, included a duty coercively to protect religious truth and the good of salvation. As is quite clear by now, there is only one way in which this duty to coerce for religious ends can be consistent with *Dignitatis Humanae's* denial of the state's own authority to coerce in this way. The traditionally taught duty to coerce religiously must involve an authority other than the state's and which *Dignitatis Humanae* simply does not address – an authority belonging to the Church in the order of religion. Hence the new clause that preserves traditional Catholic doctrine duly re-emphasizes that the declaration is concerned with liberty and coercion at the civil level only, not with liberty and coercion in the order of religion:

Religious freedom, in turn, which men demand as necessary to fulfil their duty to worship God, has to do with immunity from coercion *in civil society*.

³⁴ Vatican II *Acta Synodalia* 4.6, p719 (my emphases). Jérôme Hamer, involved in the commission preparing the declaration, also emphasized immediately after it was passed that the reference to 'societies' was intended to include the preservation *integer* or untouched of traditional teaching about duties to the true religion of the *state*. The clause was 'further to mark the fact that the doctrine on liberty does not involve any rupture in the magisterium of the Church. So the *traditional* doctrine remains intact...Moreover the declaration underlines that this duty (*officium*) applies not only to individuals but to collectives, that is to men acting together. It applies to all social groups from the most modest and spontaneous to nations and to states...' *Vatican II: La Liberté Religieuse*, eds. J. Hamer and Y. Congar, (Paris: Cerf, 1967), 99.

So nothing affects the traditional doctrine, which when it called on the state to coerce religiously, was addressing the state as the Church's agent in the order of religion. De Smedt's *relatio* preserving traditional doctrine on the moral duties of the state toward Catholicism entirely presupposes the *relationes* that deny that the declaration addresses the revealed authority of the Church over the baptized. Unsurprisingly all these *relationes* arrive together – just before the final vote in the autumn of 1965.

5. Religious coercion - the silence of *Dignitatis Humanae*

The declaration addresses the exercise of power within the civil order only, and addresses persons and institutions only as exercising power within this order. So, as officially presented, the declaration provides no challenge whatsoever to traditional teaching on the Church as coercive *potestas* within the religious order. And we find an explicit retention of traditional teaching regarding the duties to the true religion of the state - duties that in so far as they extended to coercion for specifically religious ends, involved a delegated exercise within the order of religion of the Church's own authority. A Leonine understanding of religious liberty is built into the declaration - and one which does nothing doctrinally to condemn the Church's use, at least in the past, when states could function as communities of the baptized, of the Christian state as her secular arm in matters of religion. True, the declaration seems to celebrate the modern state's detachment from the Church. But the desirability of that detachment – which is very debatable, as we shall see below - is not expressly taught. What is expressly taught comes to no more than what follows from Leonine political teaching in the context of that detachment – a moral right to religious liberty against the state.

The declaration might perhaps have taken overtly anti-Leonine form, and actually denied or at least qualified the traditional doctrine of a coercive religious order served by the Church as *potestas*. The declaration began, after all, as a proposed chapter within the decree on ecumenism, with an account of religious freedom in relation to the Church, moving on to treat of religious freedom in society.³⁵ Such an approach, in a decree on unity between baptized Christians, including baptized non-Catholics, would inevitably have had to address the Church's nature as religious *potestas*, and in particular her

³⁵ See Schema 2 of April 1964, Vatican II, *Acta Synodalia*, 3.2, 317-27. In §29, this schema moves from an account of freedom in relation to the Church to an account of religious freedom in society: 'The Council declares that religious freedom must be observed not only by Christians and for Christians, but by all men and for all men and religious groups in human society.'

historical and continuing doctrine that she possesses a coercive jurisdiction over the baptized in general.³⁶ To be ecumenically acceptable, the pressure would have been on to challenge or qualify this traditional doctrine - to move in an anti-Leonine direction.

But this was not the final form taken by the declaration, which in the course of 1964 began its careful transformation into a stand-alone declaration addressing coercive authority in the civil order only, and one that clearly operated within a Leonine framework. The official story behind this transformation is the Council's desire to address the modern world generally, not just believing Christians, and to do so on the basis of an argument from reason. But an anti-Leonine declaration, the natural direction for a chapter on religious liberty in an ecumenical decree, would anyway have exposed serious disagreements about the possibility of coercion in the Church, and it would not have received Conciliar approval with any ease. As Yves Congar noted immediately after the declaration was passed:

Some would have wished that the declaration had contained a paragraph on liberty in the Church. [This question was excluded.] Not only would it have added to motives for opposing the declaration, not only would it have involved engagement in a delicate question which does not admit of simplification, not only would one have added to the pastoral difficulties that the text already brought with it, but one would have again confused distinct questions. One must not on any account merge questions to with civil and social liberty and highly complex questions of conduct within the Church. That would have been deeply imprudent and dangerous.³⁷

It is tempting to suppose that the declaration's Leonine framework was adopted simply to sell the declaration to conservatives generally at odds with the true 'spirit of the Council'; and then it becomes tempting to go further, and treat this supposed fact as if it were a licence to reinterpret the declaration retrospectively, in the same 'spirit of the Council' as the anti-Leonine declaration 'that it should have been'. But even supposing the need to placate conservatives had been the sole reason for the Leonine approach, that would

³⁶ In the 1983 *Code of Canon Law* the Church still claims in canons 1311 and 1312 to possess jurisdiction over baptized Christians, with the right punitively to enforce her jurisdiction, for crimes such as heresy and apostasy, with temporal as well as spiritual punishments.

³⁷ *Vatican II: La Liberté Religieuse*, eds J. Hamer and Y. Congar, (Paris: Cerf, 1967) p13.

not license the reinterpretation. Conservatives were as fully members of the Council as their progressive brothers, and changes to documents made to secure the support of one party at a general council are no less doctrinally weighty than changes made to please another.

But in any case the tempting supposition is simply not true. It was not just that a conservative opposition had to be satisfied. For it was not only conservatives at the Council who demanded the preservation of doctrinal continuity. An overtly anti-Leonine declaration would not have carried all the Vatican II progressives with it. Maritain, whose followers included figures of great importance, such as Pope Paul VI himself, really did believe in a coercive authority belonging to the Church - a coercive authority that, at least in what Maritain termed the sacral period of the middle ages, did once legitimately extend (in Maritain's view) to use of the state as the Church's coercive arm in the order of religion. That use by the Church of the state might be regarded by Maritain as a stage of history we have passed. But nevertheless, in Maritain's view, such historical use by the Church of the state as her secular arm should not be condemned as based on doctrinal error - and nor did *Dignitatis Humanae* so condemn it.³⁸

Attention has centred on *Dignitatis Humanae*'s strict magisterial teaching - on the much-disputed right to religious liberty against the state. But this teaching about a right to religious liberty should not have proved so controversial among traditionalists. This right just follows from Leonine political teaching once the Church adopts Church-state separation as a presupposition - as framing the terms in which she will now address the state. The theological commission preparing the declaration was shrewd enough to see this, thoroughly Leonine in their intellectual formation as de Smedt and his colleagues were; and they took full advantage of their insight.

Attention should really centre on what the declaration does not say. Besides preserving it *integer* or intact, the declaration says nothing further about the content of the traditional Catholic doctrine about duties of people and the state to the true religion and the one Church of Christ. In a declaration paraded as a vindication of religious liberty, this is something of an omission, no matter how convenient discretion might have been. For the doctrine preserved *integer* is all the Church's magisterial teaching in clear support of religious coercion - teaching from revelation about a distinctively religious coercive order and about the Church herself as this order's specially

³⁸ Note again Maritain's phrase when referring to the Church's past use of the state as her secular arm: 'These things we can admire in the Middle Ages'. For more on Maritain's view that such ecclesial use of the state was indeed legitimate once, see Thomas Pink, 'Jacques Maritain and the Problem of Church and State', *The Thomist*, vol. 79, no. 1 (2015), 1-43.

religious *potestas*. What is the basis of this teaching, and is it really worth our attention now?

If there really is, revealed in Catholic doctrine, an order of religion governed by the Church as a *potestas*, that suggests that religious coercion – religiously directive law backed by threats of punishments that are temporal as well as spiritual – has a place in Christian life so important as to help define the very nature of the Church. But you really would not guess this just from reading *Dignitatis Humanae*. Indeed most readers miss the Leonine qualifications and small-print, and infer quite otherwise, concluding that true religion and coercion are opposed. But if the doctrine preserved intact is true, and genuinely worth preserving, these readers are making a profound mistake.

It is clear that in *Dignitatis Humanae* something very new has happened. The Church is no longer choosing to address the state as her religiously coercive agent, inviting it to act in defence of Catholic truth. She is now addressing it as detached from such a role – as *potestas* of the civil order only. But at the same time, and even in so doing, the doctrine that the Church has a right to treat the state as her agent, at least under certain conditions, is still being carefully preserved. The traditional doctrine, after all, is that baptism can bring with it *political* obligations to the true religion and to the Church. That seems to raise a very important question, which *Dignitatis Humanae* does not openly address. If the Church has a divinely given right, under certain conditions, to use the state as her secular arm, and if, as the tradition holds, this use is made possible by the very nature of baptism, such use of the state as the Church's secular arm must potentially be desirable and good. As divinely provided for, through the very nature of baptism, its possibility is, after all, part of the very gospel. In fact popes and councils did indeed teach, over many centuries, that such a role for the state was not only desirable and good, but, once the state was Christian, actually mandatory. In this case the idea of the state as the Church's secular arm cannot be alien to Christianity, but – based as this possibility is on baptism – must be a faithful expression of it. Though this, of course, is again not something that the ordinary reader of *Dignitatis Humanae* would realize at all.

For Leo XIII, only if the state was in a soul-body union with the Church would there be Church-state harmony. In particular, only a soul-body union of Church and state would guarantee what that harmony requires – that the state not seek to interfere in matters of religion on its own account, but respect religion as a good transcending its own authority. Now clearly there is a theology behind *Dignitatis Humanae* that suggests a very different view, not so much about whether the state should respect religion as a higher good – *Dignitatis Humanae* calls for the state to respect religion as a matter transcending civil authority in just the same terms as Leo XIII – but of the

conditions under which the state will respect religion in this way. Supporters of the declaration such as Maritain and Cardinal Journet thought that in the modern world Church-state harmony no longer required a juridical privileging of Catholicism by the state. States would still respect religion as a higher good lying beyond their authority to direct even if they no longer publicly recognized and privileged Catholicism as true. In fact Church-state harmony, they thought, would now be better attained by political secularization. It is now better for the state to act as civil *potestas* only, and be neutral in matters of religion. So who is right? Leo XIII or Journet and Maritain?

Dignitatis Humanae's magisterial teaching concerns a right against the state considered as functioning detached from the Church and as civil *potestas* only. It does not provide magisterial teaching about when it is better for the state to function in this way and when not, or correspondingly, about when a soul-body union of Church and state might be desirable and when not. Leo XIII of course was defending soul-body union as required for Church-state harmony not in the middle ages, but in 1885, when political secularization was already a dominant reality. His papal defence of soul-body union is very much part of modernity, not a distant feature of Maritain's long past medieval 'sacral age'. And that might be because Leo XIII was in fact importantly right about what Church-state harmony might require at all times, even under conditions of modernity.

6. The right to religious liberty and the nature of religion

That *Dignitatis Humanae* leaves open the possibility of a religious *potestas* and a coercive religious order is not a peripheral feature of the declaration. It has a profound effect on what the declaration says about coercion in the civil order, and in a way that greatly distances the declaration from any secular liberal theory. The right to religious liberty that the declaration defends is not a secular liberal right at all. It is something very different - a Leonine right.

Dignitatis Humanae bases the right to religious liberty on a claim that religion transcends the authority of the state, and presents this claim as if it were rationally available to all persons of good will, as something that a mere appeal to reason could establish. But this is not obviously true. This particular conception of a right to religious liberty against the state is largely absent from contemporary secular political thought. And that is because it involves a distinctively religious view of religion, and indeed a specifically Catholic one.

Earlier Catholic theology was fully aware of this fact. It allowed that but for the revelation of the Catholic faith, religion could have taken the form of a natural good within the civil order; and in fact, prior to the coming of Christ,

it once did.³⁹ For prior to any revelation of a supernatural end - a revelation that nature allows for, but which is gratuitous, and which is not guaranteed to nature - we are capable of religion in natural form. We can know by natural reason of God's existence as our creator whose image we bear. In fact the communal practice of religion is a distinctive and vital part of natural human flourishing. As rational monotheism, it is obligatory under natural law, and obligatory because essential to the purely natural happiness and justice that is served, at the level of the community, by the authority of the state. Or so Catholic natural law theory has historically supposed.

Such a theory of religion as involving natural worship does not rule out a right to religious liberty against the state. As we have already observed, it is true of natural goods generally, such as education or movement and the like, that they involve rights to liberty. The authority of the state to direct and regulate natural goods is not unlimited. But just because education and transport or motion are natural goods, they fall within the general jurisdiction of the state, and so the state can regulate them, with due respect for liberty, for the general good. State regulation will attend to the nature of the goods regulated, and criteria of better or worse that come with them as distinctive forms of good. Sufficiently defective forms of education or transport may be restricted, or they may be denied forms of state support given to less defective versions. We have a general right to liberty in respect of where we go. But that does not remove human travel and transport from being subject to fairly extensive state regulation and direction. We may be called upon by the state to sacrifice some liberty of movement if movement itself would be better enabled, or if some other good, such as efficient commerce, might benefit thereby.

Because religion can rationally be understood, prior to any revelation of a supernatural end, as a natural good, it can accordingly be understood to fall within the general jurisdiction of the state as do other natural goods. In this case the state might properly seek to support good religion over bad. The state might favour rational monotheism just as it favours the better forms of education and transport, especially when having to balance various forms of religion against other goods. Overt state approval and recognition might definitely be given to monotheism, and to the worthier forms of monotheism at that. Such positive support or approval would be refused to atheism, polytheism, or pantheism, even if basic liberty for them was not denied; and in state decisions about balancing goods, such alternatives to monotheism, being defective at the natural level, would consequently lose out.

Now the Catholic view, so clearly magisterially taught by Leo XIII and

³⁹ As, for example, argued by Francisco Suarez in his book 4 discussion of canon law in *De Legibus*, discussed further below.

by *Dignitatis Humanae* alike, is that such direction of worship and the sacred as such – direction of a specifically religious good, by criteria specific to religion - is not within the competence of the state. But what makes this true is a particular kind of revelation, not reason. Christ has revealed to us the promise of an end that transcends nature - and this revelation involves a transforming reorientation of religion that profoundly affects its very nature. Instead of taking the form of a worship of God centred on the happiness of a natural human community served by the authority of the state, religion is now to involve a worship of God that participates in sacraments imparting supernatural grace, and that is directed to attaining the beatific vision of God in heaven. The offer of the supernatural life does not radically transform the nature of other goods, such as fidelity to promises, so as to remove these from the civil order. But it does transform the good of religion, to remove religion as such from the civil order, and locate it in a separate coercive order of its own, with its own *potestas* - the Church.

Notice how clear Leo XIII is that religion as such, as concerned just with the worship of God, and not simply with salvation through the beatific vision, now falls within the directive competence of the Church not the state.

Whatever, therefore, in things human is in any way of a sacred character, whatever belongs either of its own nature or by reason of the end to which it is referred, to the salvation of souls or to the worship of God, falls wholly within the power of the Church and is wholly subject to her judgment.

Suarez, that counter-reformation Jesuit political theologian to whom Leo XIII seems to have owed so much, explicitly linked the withdrawal of the good of religion from the civil order to the coming of Christ.

As regards this area [of religion], civil authority is more limited now within the Church, than it was before the Christian religion; for once the care of religion was oriented towards to the virtue and happiness of the commonwealth, as we noted above from St Thomas; but now religion itself and spiritual salvation and spiritual happiness are the priority, and the rest for their sake; and therefore while once the care of religion either belonged to the authority of the ruler, or was joined with that authority in one and the same person, or was subordinated to the authority of the ruler: now however the care of religion is specially given to the

shepherds of the Church.⁴⁰

And we find the same view of Christ as liberator of religion from the civil order long after Suarez - in Maritain:

Here we are confronted with the basic distinction, stated by Christ himself, between the things that are God's and the things which are Caesar's. From the advent of Christianity on, religion has been taken out of the hands of the State; the terrestrial and national frameworks in which the spiritual was confined have been shattered; its universality together with its freedom have been manifested in full bloom.⁴¹

But then the complete right to religious liberty against the state taught by *Dignitatis Humanae* - a right based on religion's transcending state authority - is unlikely to be recognized by a religiously pluralistic state. It will only be recognized by those states that publicly recognize revealed religion in its supernatural form as true. We have a view of the authority, or lack of it, of the state in matters of religion that is only really at home in the world of the Leonine Catholic state - a state that does not just give some polite recognition to Catholicism as 'local colour', a mere feature of its population's culture, but which, as Leo XIII taught was obligatory, actually acknowledges Catholicism as true, and because true as properly determining what religious rights and obligations the state will legally enact.

7. Coercive authority and the Fall

Modern secular states do not treat religion as a distinctive good transcending their authority. In fact secular states decreasingly treat religion - worship of the divine - as a distinctive good at all. Religion as a distinctive good, whether of the natural or the supernatural order, requires a very specific conception of human nature - as divinely created image. But secular political theory does not conceive of humanity in these terms. And this connects with a further element of Leonine political theology that the progressive supporters of *Dignitatis Humanae* crucially ignored. This is something central to the historical Catholic endorsement of coercive authority in matters of religion as elsewhere - the implications of the Fall for the life of human communities in all their forms, and in particular for the

⁴⁰ Suarez *De Legibus*, book 4, chapter 11, §10, in *Opera Omnia*, volume 5, p372.

⁴¹ Jacques Maritain, *Man and the State*, (Washington: Catholic University of America Press, 1998), chapter 6, 'Church and state', 152.

communities of Church and state.

The Fall is a constant concern of nineteenth-century papal teaching on Church and state. Modern Catholics, assuming as they generally now do a fundamentally anti-Leonine conception of religion and religious liberty, generally see coercion as less at home, if at home at all, in matters of religion than in other areas of human life. But the Fall led the nineteenth-century popes, and their counter-reformation Jesuit predecessors, Suarez and Bellarmine, to see coercive pressure as if anything even more vitally required within religion, under the authority of the Church, than anywhere else in human life. Not only was religious coercion required to protect the supreme good of salvation; but it was also required to ensure the justice of coercion in the civil order.

Coercive authority in the order of religion is required, first and foremost, to direct the faithful towards the supreme and supernatural end. Counter-reformation theology appealed to revelation, on this point, as it plainly had to. A principal argument was from specific words of Christ understood as directly establishing the coercive nature of the authority of St Peter and of the later popes as his successors. The fundamental text, and one that was seen as implying coercion directly, was St John's gospel, chapter 21, in which Christ commissions St Peter to be a shepherd, with the faithful as his sheep - sheep who as fallen have gone or are liable to go astray, and need to be rescued by the divine shepherd Christ and his earthly vicars.

In a still profoundly agricultural world early modern theologians did not easily forget, as we now do forget, the intensely coercive nature of the shepherd's role. To protect and regulate their flock shepherds do regularly apply or threaten highly temporal forms of force. The coercive nature of shepherding is typified by the shepherd's staff or crook, which is written of as a disciplinary *virga* or rod. The image in the catacombs of Christ the shepherd clasping a wandering sheep about his shoulders portrays a sheep that has been physically picked up and is being forcibly held. Baptized wanderers are compelled by the shepherd to remain faithful to their baptism - to their membership of the flock.

At the heart of the New Testament is a pastoral metaphor drawn from nature, of the shepherd and the sheep, that concerns our predicament as fallen rational beings who are to be rescued through membership of the Church. This metaphor has coercive implications to which early modern Catholicism was very sensitive. The idea of the shepherd was readily interpreted as licensing the use by pope and bishops of temporal force for spiritual ends. In the case of human beings, the sheep are actually rational, though waywardly so. So the force licensed is not brute, but involves law and legal coercion. The shepherd must be able to direct the sheep by legislation - by the imposition of legal obligation:

...and then [Christ] added [to St Peter]: Feed my sheep (John 21) where by the word *feed* is meant the authority to govern and to make laws.⁴²

Force therefore takes the form of threats of legal punishment - to protect the sheep from predators from without, to maintain order within, and to ensure that the flock is adequately maintained:

When Peter was told 'Feed my sheep' (John, last chapter), he was given every authority that is necessary for a shepherd to protect his sheep. To the shepherd a threefold authority is necessary: one concerns wolves, so that he may keep them away in any way he can; the second concerns the rams, so that if they ever hit the flock with their horns he may be able to confine them; the third concerns the rest of the sheep, so that he may provide each one of them with the proper forage. And therefore the Supreme Pontiff has this threefold authority.⁴³

So coercion addresses us as rational and as bearing the image of God - but as fallen too, so needing to be subjected to temporal penalties for religious ends, for our own spiritual good and the spiritual good of the flock of which we form a part.

Where the baptized were concerned, not even the act of faith was immune from the threat of coercive pressure. Indeed it was especially not immune. Trent was understood to have defined this, in canon 14 of the decree on baptism, its condemnation of Erasmus. In terms taken to be *de fide* thereafter, Trent taught that since those subject to the coercive jurisdiction of the Church, the baptized, are obligated by their baptism to fidelity, this obligation can be coercively enforced by temporal as well as spiritual punishments, through penalties for heresy and apostasy.

If anyone says that when they grow up (*cum adoleverint*), those baptized as little children should be asked whether they wish to affirm what their godparents promised in their name when they were baptized; and that, when they reply that they have no such wish, they should be left to their own decision and not, in the meantime, be coerced by any penalty into the

⁴² Suarez *De Legibus* book 4, chapter 3, §1, in *Opera Omnia*, volume 5, 334.

⁴³ Robert Bellarmine, *Tractatus*, 318.

Christian life (*suo esse arbitrio relinquendos nec alia interim poena ad christianam vitam cogendos*), except that they be barred from the reception of the eucharist and the other sacraments, until they have a change of heart: let him be anathema.⁴⁴

Uniformity of opinion on the force and binding nature of this teaching reigned from the counter-reformation to the period of Vatican II.⁴⁵ Immediately after Trent we have Francisco de Toledo, the first Jesuit to be made a Cardinal, and prefect of studies at Gregory XIII's new Roman College, who stated:

Fifth conclusion: those baptized as infants before the use of reason are certainly to be compelled when they reach the age of reason to retain the faith... This is against Erasmus, who in a certain preface to a version of the New Testament says it would be more advisable if these infants once they reached the age of reason were questioned about the faith; and if they did not wish to remain in it, were left

⁴⁴ *Council of Trent*, Session 7, Decree on baptism, canon 14, 3 March 1547, in Alberigo and Tanner eds., *Decrees of the Ecumenical Councils*, volume 2, 686.

The condemned proposition in favour of toleration is taken from the preface to Erasmus *In Evangelium Matthaei Paraphrasis* (Basle, 1522). Of the theologians at Trent who specifically addressed Erasmus's proposal, all condemned it as *damnandus*, or as *falsus*, or as *haereticus*. There is no record of any opposition to the condemnation of Erasmus: see *Concilium Tridentinum Diariorum, Actorum, Epistularum, Tractatum*, ed. Societas Goerresiana, in volume 5, ed. S. Ehses, (Freiburg im Breisgau: Herder, 1911), 838-995; and Hubert Jedin, *Geschichte des Konzils von Trient*, volume 2, (Freiburg im Breisgau: Herder, 1957), 316-332.

⁴⁵ There really was no dissension in the mainstream Catholic theological tradition after Trent until Vatican II on the licitness of punishing heresy and apostasy in the baptized by temporal penalties. For a sample of notable theological discussions appealing to Trent, session 7, canon 14, a sample which could be expanded with some ease: Cardinal Francisco de Toledo, *In Summam Theologiae Sancti Thomae Aquinatis Enarratio*, volume 2, question 10, article 8, *An infideles sint ad fidem impellendi* (written 1560-90 – Rome, 1869); Billuart *Summa Sancti Thomae* (Liege, 1746-51), in the *Tractatus de fide*, dissertation V, article II, *Utrum infideles cogendi ad fidem?*; Giovanni Perrone, *Praelectiones Theologicae quas in Collegio Romano SJ habebat* (Milan, 1845), volume 7, *Tractatus de baptismo*, pp103-11; Hurter, *Theologiae Dogmaticae Compendium* (Innsbruck, 1908) volume 3, Tract IX §§315-16, 281-82; Choupin, *Valeur des Décisions Doctrinales et Disciplinaires du Saint-Siège*, (Paris, 1913) 265; 'Peines ecclésiastiques: légitimité', *Dictionnaire de Théologie Catholique*, vol. 12 (Paris, 1933) 635-36; Ottaviani, *Institutiones Iuris Publici Ecclesiastici*, (Rome, 1935) volume 1, §170; Merkelbach, *Summa Theologiae Moralis*, (Paris, 1938) volume 1, §740.

free, being deprived only of participation in the sacraments. But this view is heresy, and the conclusion is Catholic. First, this heresy is condemned in the Council of Trent session 7, canon 14.⁴⁶

Merkelbach was still proposing the same teaching in 1938 in a standard manual of moral theology:

Baptized infidels can be compelled by spiritual and temporal penalties to return to the faith and to the Church, since by baptism they were made subject to the Church (Council of Trent, session 7, canon 14).⁴⁷

The dependence of salvation on unmerited grace was seen as no more removing the possibility and need for threats of punishment to inculcate the supernatural virtue of faith than it removed the need for threats of punishment to inculcate other virtues:

The twelfth argument [that faith cannot be coerced]. Faith is a gift of God, and so no one can be compelled to faith. I reply, just as faith is a gift of God, so too it is an act of free will, and moreover so too chastity and the other virtues are gifts of God, and yet adulterers, murderers and thieves are punished and compelled to live chastely and justly. Wisdom too is a gift of God, and yet it is written in Proverbs 29 that the rod and reproof bring wisdom. Finally faith is a gift of God, but God bestows this gift by various means, one of which is reproof.⁴⁸

All that distinguished faith, once *Immortale Dei* made the matter unambiguous, was that as a specifically religious virtue, its temporal enforcement must be on the authority of the Church, not the state.⁴⁹

⁴⁶ Francisco de Toledo, *In Summam Theologiae Sancti Thomae Aquinatis Enarratio*, volume 2, question 10, article 8, *An infideles sint ad fidem impellendi* (Rome, 1869), 110.

⁴⁷ Benedict Merkelbach, *Summa Theologiae Moralis*, I, §740 (Paris, 1938).

⁴⁸ Robert Bellarmine *Quinta Controversia Generalis: De Membris Ecclesiae Militantis*, book 3, *De Laicis*, chapter 22 (Ingolstadt, 1599), 522-3.

⁴⁹ We should remember that until *Immortale Dei* Catholic theology outside Rome itself and outside papally-oriented orders such as the Jesuits did not always conceive of religion in Leonine terms - as a good transcending state authority. French Gallican theology, especially, tended to suppose that an authority to coerce in matters of

Coercion in the order of religion was not just seen as necessary to the direction of the flock towards the supernatural end. It was viewed as required for the proper functioning of the state as civil *potestas* as well - to ensure that the state exercised its own authority to coerce in conformity with natural justice.

In a fallen world we cannot reliably attain the natural end without the help of divine grace. Grace is required not just to sanctify but to heal. We need grace not only as *gratia sanctificans* to raise us to a supernatural level but, even before that, as *gratia sanans* to repair the damage done to human nature by the Fall. Without such grace we can no longer reliably attain a complete

religion did belong to the state, and possibly to the state alone at least in so far as imposition of temporal punishments was involved. So though discussion of Trent's teaching in canon 14 always recognized the legitimacy of the enforcement of baptismal obligations by temporal punishments, there was often unclarity about where the authority for this lay, with Church or state. The Dominican Billuart, writing in the France and the Low Countries in the mid-eighteenth century, is an example of rather studied vagueness on this point. But after *Immortale Dei* this changes, and writers standardly assert Trent in canon 14 to be defining an authority to use temporal punishments that belongs to the *Church* - see on this, for example, Ottaviani, Choupin and the *Dictionnaire* article on ecclesiastical punishments cited above.

Modern Lefebvristism seems to have inherited the pre-*Immortale Dei* outlook of French Gallicanism. As someone sympathetic to the particular theology of the SSPX insisted to me, dismissing my understanding of Leonine teaching: 'In religion, the Church regulates, but the state defends.' But this is to disregard what is a key feature of Leonine political teaching as it was of the Jesuit political theology of the counter-reformation: the authority to legislate and the authority to punish, to enforce the laws coercively, always come together. They always belong to the same bearer, since the authority to coerce to enforce law is an expression of the authority to make law. As Leo XIII puts it:

In very truth, Jesus Christ gave to His Apostles unrestrained authority in regard to things sacred, together with the genuine and most true power of making laws, as also with the twofold right of judging and of punishing, which flow from that power. *Immortale Dei*, §11

And this has to do with a point frequently made by supporters of the Leonine model. In a fallen world, the directive force of law - its function to ensure that people do what is right and avoid what is wrong - is heavily dependent on coercive back-up. To deny a legislator the authority to coerce, or to qualify it, is to deprive them of the right to use law effectively to *direct*. It is to deny them the right to function as a genuine law-giver. That right will substantially be transferred to whatever other body does decide which laws are to be enforced and which not, and how. Some opposition to *Dignitatis Humanae* may, at a fundamental level, be Gallicanizing opposition to the teaching of *Immortale Dei* that the declaration presupposes.

conception of the content of the natural law, let alone reliably adhere to it.⁵⁰ Reliably to understand and attain even the natural good we now need the special help of divine grace – the grace provided to a fallen world by the Church and her sacraments. Thus one of the reasons there should be Church-state union, as Leo XIII magisterially taught, is that the state needs to be civilized at the level of nature, through being informed by a higher and supernatural authority, namely, by the soul of the Church. In *Immortale Dei* Church-state union is celebrated by Leo XIII as providing just such a civilizing influence. The encyclical begins:

Though the Catholic Church, that imperishable handiwork of a merciful God, by her very nature has as her purpose the saving of souls and the securing of happiness in heaven; yet, in regard to things temporal, she is the source of benefits as manifold and great as if the chief end of her existence were to ensure the prospering of our earthly life.⁵¹

These benefits come about through the establishment and juridical favouring of Christianity, and so especially Catholicism, as the religion of the state:

And, lastly, the abundant benefits with which the Christian religion, of its very nature, endows even the mortal life of man are acquired for the community and civil society. And this to such an extent that it may be said in sober truth: 'The condition of the commonwealth depends on the religion with which God is worshipped; and between one and the other there exists an intimate and abiding connection.' . . . There was once a time when states were governed by the philosophy of the Gospel. Then it was that the power and divine virtue of Christian wisdom had diffused itself throughout the laws, institutions, and morals of the people, permeating all ranks and relations of civil society. Then, too, the religion instituted by Jesus Christ, established firmly in befitting dignity, flourished everywhere, by the favour of princes and the legitimate protection of magistrates; and Church and state were happily united in concord and friendly interchange of good offices. The state, thus

⁵⁰ See for example Thomas Aquinas, *STh* 1.2, q. 109, a. 2: *Utrum homo possit velle et facere bonum absque gratia* (Whether man can will or do good without grace).

⁵¹ *Immortale Dei* §1.

constituted, bore fruits important beyond all expectation, whose remembrance is still, and always will be, in renown, witnessed to as they are by countless proofs which can never be blotted out or ever obscured by any craft of any enemies.⁵²

A central magisterial teaching of Leo XIII is that the state as body should be informed by the Church as soul, not only to serve the supernatural end, but to serve the natural end as well.

In so far as political secularization detaches the body of the state from the soul provided by the Church, so, as the popes saw it, that detachment would limit transmission within the political community not only of sanctifying grace but healing grace as well, and so diminish the Church's civilizing influence on the political order. In particular, political secularization was likely to diminish grasp of the natural law at the level of the state itself - just as we are now witnessing in matters concerning the defence of life and marriage. As Pius IX already observed:

...where religion has been removed from civil society, and the doctrine and authority of divine revelation repudiated, the genuine notion itself of justice and human right is darkened and lost...⁵³

Leo XIII developed the point. United to the soul that is the Church and under the Church's direction, the state must help the Church to bring us to our supernatural end, because otherwise the state will likely fail in bringing us even to our natural end:

Therefore the law of Christ ought to prevail in human society and be the guide and teacher of public as well as of private life. Since this is so by divine decree, and no man

⁵² *Immortale Dei* §§19-21. This teaching does not imply that all forms of state establishment of Catholicism have been benign, for not all have corresponded to Leo XIII's ideal. One form, especially common since the Reformation, and highly problematic in its effects on Church and state alike, clearly has not. This is *ancien regime* Gallicanism or various kinds of 'state' or 'national' Catholicism. This form of establishment is highly damaging insofar as it reduces the Church to acting as, in effect, an agent of the state - rather than the state acting in specifically spiritual matters as genuinely the agent of the Church. This form of establishment is obviously not Leo XIII's model, but its opposite.

⁵³ Pius IX, *Quanta Cura* §4.

may with impunity contravene it, it is an evil thing for any state where Christianity does not hold the place that belongs to it. When Jesus Christ is absent, human reason fails, being bereft of its chief protection and light, and the very end is lost sight of, for which, under God's providence, human society has been built up. This end is the obtaining by the members of society of natural good through the aid of civil unity, though always in harmony with the perfect and eternal good which is above nature. But when men's minds are clouded, both rulers and ruled go astray, for they have no safe line to follow nor end to aim at.⁵⁴

The nineteenth century papal view was clear. Separation of state from Church would imperil public understanding of natural justice and right. The state would degrade within the civil order, and violate natural law - as states detached from official commitment to Christianity now do.

The secularization of the state has indeed been accompanied by a rapid collapse in understanding, in the political community, of natural justice and right concerning such fundamental goods as life and marriage. Not only that, the secularization of the political community has corrupted public conceptions of religion itself. Political secularization now threatens the very idea of religion as a distinctive good, even at the natural level, let alone one taking supernatural form.

The idea of religion as a distinctive natural good requires respect for natural law and, in particular, a rationally based belief in God as naturally known creator and an understanding of human nature as bearing the image of God as that naturally known creator. But with the darkening of human reason within the secularized political community and the consequent diminishment of general understanding of natural law, that basic understanding is no longer common property; indeed, it has effectively disappeared from political life.

Religion may remain - but as just another form of personal commitment or identity, to be balanced ruthlessly against other forms of commitment and identity, such as those involved in modern conceptions of sexual expression and choice. As my London colleague Cecile Laborde so recently put it: religion involving worship of a deity should no more exist as a distinctive good of modern political theory than the Church should exist as the legitimate religious *potestas* in a 'two-realm' coercive space shared with the civil *potestas* of the state:

⁵⁴ Leo XIII, *Tametsi futura* §8.

If religion really is only a sub-set of a broader class of beliefs, identities or practices, which should be treated on a par with them, then large areas of existing law (which carve out special protections or special prohibitions for religion) become normatively indefensible. Fortunately, normative philosophers, by contrast to legal scholars, are not beholden to constitutional coherence. So they can bite the bullet and argue that the special treatment afforded religion *qua* religion in the law has lost any normative purchase in contemporary society. This would allow them to explain away constitutional tenets such as the special ban on state aid to religion and the ministerial exception as archaic remnants of the discredited 'two-realm' theory. Instead, they would start from the idea that the liberal state must be decidedly post-secular and take account of the deep pluralism of values, ideas and identities, both religious and non-religious, in contemporary societies.⁵⁵

8. Conclusion

Dignitatis Humanae has been controversial since its passing. And this is not surprising. It speaks of a right to liberty in terms that appear to come straight from the world of secular or enlightenment liberalism - and has been the object of much traditionalist suspicion just on that account. This is especially not surprising as, whatever the official account of the declaration given to the council fathers, and no matter how carefully qualified its formulations, an anti-Leonine understanding of the declaration's content has effectively prevailed within much of the Church.

But once we consider the careful structuring of the declaration and the terms in which it was officially explained at the time of its passing, the reality is rather different. The declaration derives its juridical assumptions and framework from a theological view of Church and state that is very far from secular, and that comes from nineteenth-century Leonine teaching - a teaching that was in turn derived from the Jesuit political theology of the counter-reformation. There is a clear Leonine ladder from *Immortale Dei* into *Dignitatis Humanae*, and at Vatican II, from the autumn of 1964 onwards, the commission deliberately directed the Council fathers along this ladder to get them to pass the declaration.

What is the authority of the *relationes* that establish *Dignitatis Humanae* so

⁵⁵ Cecile Laborde 'Equal liberty, non-establishment and religious freedom', *Legal Theory* (forthcoming).

clearly as a Leonine declaration – perhaps the most important recent expression at the level of the magisterium of Leonine political theology? The *relationes* are not themselves magisterial teaching. But they provide an official interpretation of the declaration given by those drafting its content to the council fathers about to vote. The declaration's content is technical, and contains terms subject to a variety of possible interpretations. From 1964 to the declaration's passing, the *relationes* are very consistent and explicit in giving a Leonine reading to the relevant terms. It follows that a Leonine reading of the declaration must be a legitimate interpretation of it. It becomes the only legitimate interpretation if, in addition, only a Leonine reading leaves *Dignitatis Humanae* consistent with the previous magisterium.

This Leonine framing of the declaration was designed to meet a real concern not just of Vatican II conservatives but of many Vatican II progressives too, including Pope Paul VI himself - the avoidance of any contradiction of previous magisterial teaching. Remember what Jérôme Hamer, on the commission preparing the declaration, so clearly emphasized - that the famous clause preserving traditional Catholic doctrine on the moral duty of individuals and societies to the true religion was (at the Pope's insistence) put in for just this purpose of preserving doctrinal continuity. The clause was further to mark the fact that the doctrine on liberty does not involve any rupture in the magisterium of the Church. So the *traditional* doctrine remains intact.⁵⁶

Without a Leonine reading, doctrinal contradiction and rupture is inevitable. How else to render consistent the declaration's clear condemnation of state coercion for religious ends and the previous equally clear magisterial endorsement of it? There does seem to be only the Leonine solution. While lacking any authority over religion of its own, the state must be able, at least under some conditions, to act on another, religiously coercive ecclesial authority that the declaration does not address; correspondingly the Church must herself be a genuine *potestas*, with a capacity to use the state as her religiously coercive arm.

Dignitatis Humanae was carefully designed to accommodate the Church's historical endorsement of religious coercion. But the accommodation was discreet. The declaration was certainly not written so as to advertise that past endorsement through actual rehearsal of its content. Hence, under the conditions of the nineteen-sixties, the rapid dominance of anti-Leonine readings - a dominance which meant that this weight of earlier magisterial teaching in favour of coercion was forgotten or dismissed as if somehow disposed of, both magisterially and theologically. Trent session 7 canon 14 passed almost instantly from being a seminary manual platitude to something

⁵⁶ *Vatican II: La Liberté Religieuse*, eds. J. Hamer and Y. Congar, (Paris: Cerf, 1967), 99.

that just never happened - like the non-person politically erased from the state photograph. The canon was now a non-canon. But what really legitimized this sudden disappearance? Certainly it could not be *Dignitatis Humanae* - a declaration that avoided proposing any new teaching about the Church's authority over the baptized.

The magisterial authority attaching to historical teaching about the authority of the Church as *potestas* is no less than, and in many cases arguably greater than that attaching to a pastoral declaration such *Dignitatis Humanae*. Moreover the steps taken within *Dignitatis Humanae* to preclude a clash with that historical teaching are, on examination, obvious and effective. The positive teaching of *Dignitatis Humanae*, its understanding of the right to liberty, is not that of secular liberalism, just because the declaration so carefully respected the earlier Leonine theology. The state is denied authority over religion, not on the basis of a liberal right to religious liberty - that would not remove the state's authority so radically as *Dignitatis Humanae* teaches - but because all authority over religion has been given to another *potestas*. The right to religious liberty is the hole made in the authority of the state to allow into coercive space a new authority - an authority that is religiously coercive, but that is supernatural rather than natural.

We are left then with a considerable body of past magisterial teaching supporting both the legitimacy of religious coercion under the authority of the Church and, with that authority, Church-state union as its extension. *Dignitatis Humanae* did not contradict this teaching at all. Nor can the teaching easily be dismissed as the irrelevance of another age. True, a soul-body union of Church and state may not be available as a political structure for our time. But that is not the point. Leo XIII presented the idea of soul-body union as the only proper mode of relating Church and state, but not because such a union was necessarily practicable - already by 1885 in much even of the Catholic world it was rapidly ceasing to be so. He was insisting on the ideal because, in his view, only soul-body union could guarantee Church-state harmony and what that harmony plainly requires - the state's recognition of religion as a higher good in which it has no authority of its own to interfere. And on this issue, far from leaving Leo XIII's teaching an irrelevance, political modernity is proving Leo XIII entirely right.

Secular states do not now respect religion as a good transcending their own authority. They do not remotely share the Catholic conception of religion and rights relating to it; and as they secularize they degrade within the civil order at frightening speed, becoming ever more incomprehensibly hostile not only to the Church's supernatural mission but to natural law. This is just as Leo XIII would have predicted. Events are vindicating his pessimism, and not the optimism of the progressive fathers of the second Vatican Council.

Dignitatis Humanae – contrary to tradition?

Rev. Dom. Basile Valuet OSB

The Vatican II declaration *Dignitatis humanae* (DH) on religious liberty (LR) covers “a scope of wide philosophical, theological, juridical, historical, social extent”.¹ This complexity explains probably the long resistance of a rather large conciliar minority, and the subsequent misunderstandings. Now, Blessed Paul VI refused to approve any document which did not reach a near-unanimous vote. Therefore, only after six official drafts, could eventually the promulgation vote take place, on December 7th, 1965, with 2,308 voices pro (nearly 97%), 70 against, and 8 spoilt papers.² Even apart from the “opposing minority”, some have the impression that DH contradicted the position of the Church prior to Vatican II. I have analysed elsewhere in a detailed way this apparent antinomy,³ and I must here be content with discerning what is the authority, and then the content, of DH, and, starting from there, I’ll answer the objections of the “contradictionists”. In order to do so, I undertake the task of “going back to the genuine texts of the genuine Vatican II”,⁴ in our case, that of DH.

First of all, an introductory formula expresses who are the authors of the document: “Paulus episcopus servus servorum Dei una cum Sacrosancti Concilii Patribus ad perpetuam rei memoriam”. That formula is to be found as an introduction to all 16 documents of Vatican II. And it points out to us also of which kind of *authority* it has been endowed, not the authority of such and such expert,⁵ but indeed that of the 21st ecumenical council. And Paul VI,

¹ Cardinal A.-M. STICKLER, S.D.B., preface to our doctoral dissertation in theology, Fr. Basile [VALUET], O.S.B., *La liberté religieuse et la Tradition catholique. Un cas de développement doctrinal homogène dans le magistère authentique*, Le Barroux, Abbaye Sainte-Madeleine, 3 t., 6 vol., 21998, 3050 p. (here p. LIV); 2011, 2525 p.

² Then 2369 Conciliar Fathers attending the session (including Archbishop Marcel Lefebvre) signed after the pope the 4 documents voted on that day, besides the 110 signatures as proxies.

³ It was the task of our doctoral thesis, of which was also published a summarized edition: ID., *Le droit à la liberté religieuse dans la Tradition de l'Église*, Le Barroux, éd. Sainte-Madeleine, 2011, 1 vol., 676 p.

⁴ Cardinal J. RATZINGER, *Entretien sur la foi*, [The Ratzinger Report] avec V. Messori, Paris: Fayard, 1985, p. 32. Cf. JOHN PAUL II, 1st June 1980, Speech in Issy-les-Moulineaux; *Insegnamenti di Giovanni Paolo II III/1* (1980), § 2, p. 1595-1596.

⁵ Cf. cardinal J. RATZINGER, Lettre to Archbishop Marcel LEBEVRE, July 20th, 1983; French orig.: *Fideliter*, 45 (mai-juin 1985), p. 6-20: “§ II. Après les entretiens qui se sont déroulés entre nous, je pensais personnellement qu’il n’y avait plus d’obstacles à propos du point I, c’est-à-dire l’acceptation du deuxième concile du Vatican

referring to the declarations of the conciliar theological commission on the authority of conciliar documents, explicitly on three occasions explained the magisterial authority of the Council at large.⁶ However, the magisterium of

interprété à la lumière de la Tradition catholique et compte tenu des déclarations mêmes du Concile sur les degrés d'obligation de ses textes. Aussi le Saint-Père est-il étonné que même votre acceptation du Concile interprété selon la Tradition demeure ambiguë, puisque vous affirmez immédiatement que la Tradition n'est pas compatible avec la Déclaration sur la Liberté religieuse. Au troisième paragraphe de vos suggestions, vous parlez d'"affirmations ou expressions du Concile qui sont contraires au Magistère de l'Église". Ce disant, vous enlevez toute portée à votre acceptation antécédente ; et, en énumérant trois textes conciliaires incompatibles selon vous avec le Magistère, en y ajoutant même un "etc.", vous rendez votre position encore plus radicale. Ici comme à propos des questions liturgiques, il faut noter que — en fonction des divers degrés d'autorité des textes conciliaires — la critique de certaines de leurs expressions, faites selon les règles générales d'adhésion au Magistère, n'est pas exclue. Vous pouvez de même exprimer le désir d'une déclaration ou d'un développement explicatif sur tel ou tel point. Mais vous ne pouvez pas affirmer l'incompatibilité des textes conciliaires — qui sont des textes magistériels — avec le Magistère et la Tradition. Il vous est possible de dire que personnellement, vous ne voyez pas cette compatibilité, et donc de demander au Siège Apostolique des explications. Mais si, au contraire, vous affirmez l'impossibilité de telles explications, vous vous opposez profondément à cette structure fondamentale de la foi catholique, à cette obéissance et humilité de la foi ecclésiastique dont vous vous réclamez à la fin de votre lettre, lorsque vous évoquez la foi qui vous a été enseignée au cours de votre enfance et dans la Ville Éternelle. Sur ce point vaut du reste une remarque déjà faite précédemment à propos de la liturgie : les auteurs privés, même s'ils furent experts au Concile (comme le P. Congar et le P. Murray que vous citez) ne sont pas l'autorité chargée de l'interprétation. Seule est authentique et autoritative l'interprétation donnée par le Magistère, qui est ainsi l'interprète de ses propres textes : car les textes conciliaires ne sont pas les écrits de tel ou de tel expert ou de quiconque a pu contribuer à leur genèse, ils sont des documents du Magistère."

⁶ 1^o PAUL VI, 7 December 1965, Homily during the ceremony of approval of the last four documents of the Council, including *DH : AAS* (= *Acta Apostolicae Sedis*), 1966, 51-59 : "Nunc vero animadvertere iuvat, Ecclesiam per suum magisterium, quamvis nullum doctrinae caput sententiis dogmaticis extraordinariis definire voluerit, nihilominus circa plurimas quaestiones cum auctoritate doctrinam proposuisse suam, ad cuius normam homines hodie tenentur conscientiam suam suamque agendi rationem conformare" (*AAS*, 1966, 57). 2^o PAUL VI, January 12th, 1966, General Audience: Ital. orig: *Insegnamenti di Paolo VI* (= *IPVI*) 4 (1966), 698-699 : "Bisogna fare attenzione : gli insegnamenti del Concilio non costituiscono un sistema organico e completo della dottrina cattolica ; questa è assai più ampia, come tutti sanno, e non è messa in dubbio dal Concilio o sostanzialmente modificata ; ché anzi il Concilio la conferma, la illustra, la difende e la sviluppa con autorevolissima

the Church gives various types and levels of authority to its different documents, and, within a given one, it depends also on the wording used for individual sentences. As far as the specific authority of *DH* particularly goes, it should first be noted that Paul VI, when approving the document, gave it the official final title of "declaration", clearly making it a doctrinal document, and not just a disciplinary decree.⁷ Its degree of authority has been determined officially, to my knowledge, only in the following paragraph of an official letter written on behalf of the pope to Archbishop Marcel Lefebvre in 1978 by cardinal Šeper, Prefect of the Sacred Congregation for the Doctrine of the Faith (= SCDF):

"The affirmation of that right to religious liberty, is in the line of the previous pontifical documents, which, facing the excesses of the power of the State, and modern totalitarianism, have asserted the rights of the human person. Through the conciliar declaration, this point of the doctrine enters clearly into the teaching of the Magisterium, and though it is not the object of a definition, it requires docility and assent. Therefore, it is not licit for a Catholic to reject it as if it were erroneous; rather, he must accept it according to the meaning and the exact significance given to it by the Council, taking into account the traditional doctrine about the moral duty of man and of the societies towards the true religion and the one Church of Christ".⁸

apologia, piena di sapienza, di vigore e di fiducia. Ed è questo aspetto dottrinale del Concilio, che dobbiamo in primo luogo notare per l'onore della Parola di Dio, che rimane univoca e perenne, come luce che non si spegne, e per il conforto delle nostre anime, che dalla voce franca e solenne del Concilio sperimentano quale provvidenziale ufficio sia stato affidato da Cristo al magistero vivo della Chiesa per custodire, per difendere, per interpretare il "deposito della fede" (cf. *Humani generis*, *AAS*, 1950, p. 567). Non dobbiamo staccare gli insegnamenti del Concilio dal patrimonio dottrinale della Chiesa, si bene vedere come in esso si inseriscano, come ad esso siano coerenti, e come ad esso apportino testimonianza, incremento, spiegazione, applicazione. [...] Esso [il Concilio] è un grande atto del magistero ecclesiastico; e chi aderisce al Concilio riconosce ed onora con ciò il magistero della Chiesa; [...] Non sarebbe perciò nel vero chi pensasse che il Concilio rappresenti un distacco, una rottura, ovvero, come qualcuno pensa, una liberazione dall'insegnamento tradizionale della Chiesa, oppure autorizzi e promuova un facile conformismo alla mentalità del nostro tempo, in ciò ch'essa ha di effimero e di negativo piuttosto che di sicuro e di scientifico, ovvero conceda a chiunque di dare il valore e l'espressione che crede alle verità della fede"; 3° PAUL. VI, 21 September 1966, Letter to cardinal Pizzardo : *AAS*, 1966, 877-881 (I quote this letter below, in the body of my pages).

⁷ Indeed, in a decree, you decide something, whereas in a declaration, you state something you have not decided, i.e. a doctrine.

⁸ My English translation of the original French: SCDF, Jan. 28th, 1978: Prot. N. 1144/69; *Itinéraires*, n° 233 (May 1979), 13-14: "L'affirmation de ce droit à la liberté

According to the vocabulary chosen here, the doctrines *specific* to *DH*, are therefore not definitions, but the exercise, by the whole College of Bishops, of an ordinary, but not “definitive” Magisterium, which is called “authentic Magisterium”.⁹ They are summarized in two sentences which start with the formula “the Council declares that...”.¹⁰ The three other major teachings of *DH* repeat teachings which were already definitively acquired by the Church, and which the Council declares it “professes” or “believes” them.¹¹ The rest of *DH* makes up an interpretative context.

Now the title, *De libertate religiosa*, required (and it was an exception) a subtitle, in order to clarify its meaning: “on the right of the person and of communities to social and civil freedom in religious matters”. After that group of introductory formulas, *DH* starts with a preamble, i.e. # 1. Then, the 1st chapter (# 2 to 8) exposes the general notion of religious liberty, *qua* known through natural powers of the mind. The 2nd chapter (# 9 to 14)

religieuse est dans la ligne des documents pontificaux antérieurs qui, face aux excès de l'étatisme, et aux totalitarismes modernes, ont affirmé les droits de la personne humaine. Par la déclaration conciliaire ce point de doctrine entre clairement dans l'enseignement du magistère, et bien qu'il ne soit pas l'objet d'une définition, il réclame docilité et assentiment. Il n'est donc pas licite au fidèle catholique de le rejeter comme erroné mais il doit l'accepter selon le sens et la portée exacte que lui a donné le concile, compte tenu de la doctrine traditionnelle sur le devoir moral de l'homme et des sociétés envers la vraie religion et l'unique Église du Christ”.

⁹ PAUL VI, on 12 Jan. 1966, has said that the Council at large had the authority of the “Supreme ordinary magisterium”; Ital. orig.: *IPVI* 4 (1966), p. 700. “Authentic magisterium” at large means authoritative teaching of the Church; strictly speaking, it means a teaching not yet presented as being “definitively” presented, therefore not yet presented as infallible (which does *not* mean that it is presented as *non*-infallible). For details and bibliography about the doctrine of the Church on such teachings, see the specific chapter of my doctoral dissertation, quoted above, a chapter published again in A.A. VV., LI: PIVAIN Bruno (ed.), *L'Église, servante de la vérité: regards sur le Magistère / essais réunis sous la dir. de Bruno Le Pivain*; préf. du card. Georges Cottier. - Genève: Ad solem, 2006. - 412 p. See also the recent book by Fr. AUBRY Augustin-Marie, *Obéir ou assentir?: de la soumission religieuse au magistère simplement authentique*, Préf. DONNIAUD Henry, O.P., Paris / Perpignan, Desclée de Brouwer, 2015, 373 p.

¹⁰ “Hæc Vaticana Synodus declarat personam humanam ius habere ad libertatem religiosasam. [...] Insuper declarat ius ad libertatem religiosasam esse revera fundatum in ipsa dignitate personæ humanæ [...]” (*DH* 2) (my emphasis).

¹¹ “Primum itaque proficitur Sacra Synodus Deum Ipsum viam generi humano notam fecisse per quam, Ipsi inserviando, homines in Christo salvi et beati fieri possint. Hanc unicam veram Religionem subsistere credimus in catholica et apostolica Ecclesia, [etc.]” (*DH* 1, § 2). “Pariter vero proficitur Sacra Synodus officia hæc hominum conscientiam tangere ac vincere, [...]” (*DH* 1, § 3) (my emphasis).

explains the relationships between religious liberty and divine Revelation. The conclusion (# 15) is an exhortation to apply the doctrine. Only numbers 1, 2 and 7, the key articles, can be analysed today with you.

DH 1: The Historical and Doctrinal Context

DH 1 comprises three paragraphs. The first one deals in 3 sections with the historical circumstances of the text: 1° “A sense of the dignity of the human person has been impressing itself more and more deeply on the consciousness of contemporary man, (1) and the demand is increasingly made that men should act on their own judgment, enjoying and making use of a responsible freedom, not driven by coercion but motivated by a sense of duty.” This last idiom (*officii conscientia ducti*) imitates *ex conscientia officii*, a phrase used by Leo XIII (1878-1903) about the true right of “liberty of conscience”, by means of which, “man has in the society the permission to follow the will of God and to fulfil His commandments according to the conscience man has of his duty, and nothing can prevent him from doing so”.¹² 2° Then comes the claiming of a constitutional State: “The demand is likewise made that constitutional limits should be set to the powers of government, in order that there may be no encroachment on the rightful freedom of the person and of associations”. 3° Last of all, is expressed the good that is specially to be protected: “This demand for freedom in human society chiefly regards the quest for the values proper to the human spirit. It regards, in the first place, the free exercise of religion in society”.

The Council indicates then clearly its *intention* and its *method*: “This Vatican Council takes careful note of these desires in the minds of men. It proposes to declare to what extent they be in accord with truth and justice.”^a To this end, it searches into the sacred tradition and doctrine of the Church the treasury out of which the Church continually brings forth new things that are in harmony with the things that are old.”

The two following paragraphs of *DH 1* give us then the *doctrinal* background, together with two complementary poles: A) on the one hand, the Declaration denies the existence of a *freedom from moral obligation*; B) and on the other, it declares the existence of a *right to civil liberty*.

¹² My translation of LEO XIII, 20 June 1888: *Encycl. Libertas praestantissimum*, *Acta Leonis XIII* 8 (1888), 212-246 (here 237-238), or *Acta Sanctae Sedis (= ASS)* 20 (1887-1888), 593-613 (here 608).

^a Here, the English translation offered by the website of the Vatican is clearly misleading and tendentious; it runs: “It [the Council] proposes to declare them to be greatly in accord with truth and justice.” We don’t know which source for this translation was used by the Vatican webmaster.

A) So, in the first place, the second paragraph of *DH* 1 deals with the religious *duty* of man and societies, and as far as are concerned, 1° its object, 2° its existence, and 3° its terms.

1° As far as its object is concerned, here two data of faith are recalled : a) *the existence* of a path to salvation : “First, the council professes its belief that God Himself has made known to mankind the way in which men are to serve Him, and thus be saved in Christ and come to blessedness”; and b) the *specification* of that way : “We believe that this one true religion subsists in the Catholic and Apostolic Church, to which the Lord Jesus committed the duty of spreading it abroad among all men. Thus He spoke to the Apostles: “Go, therefore, and make disciples of all nations, baptizing them in the name of the Father and of the Son and of the Holy Spirit, teaching them to observe all things whatsoever I have enjoined upon you” (Matt. 28: 19-20). [...]”¹³

2° In the light of this data, therefore, there rises an objective moral *obligation* of the human person: “On their part, all men are bound to seek the truth, especially in what concerns God and His Church, and to embrace the truth they come to know, and to hold fast to it.”

B) Then, the 3rd paragraph of 1 meets the other side of the question, namely the *right* to civil *liberty*, a necessary *condition* to fulfil the aforesaid duty: “This Vatican Council likewise professes its belief that it is upon the human conscience that these obligations fall and exert their binding force. The truth cannot impose itself except by virtue of its own truth, as it makes its entrance into the mind at once quietly and with power”. This 3rd assertion of faith (which by the way is twofold) affirms the impossibility of forcing religious truth into the mind of man. And in fact, as a kind of minimal right to religious freedom, Tradition unanimously recognized already for the non-baptised the right not to be compelled to adhere to the faith, even though it is in fact true that many Christians have violated that principle (cf. *DH* 12). It is mistaken to say that that principle was based only on “tolerance” towards the non-baptised, and also to say that it was based only on the nature itself of supernatural faith.¹⁴ Already, Tertullian,¹⁵ and Lactantius,¹⁶ against pagan

¹³ For an explanation of the phrase “subsistit in”, which comes from the main document of the Council, *Lumen gentium*, 8, see the two documents where the Congregation for the Doctrine of the Faith explains it: 1° *Dominus Jesus*, August 6th 2000, and 2° the *Nota doctrinalis* of 29 June, 2007.

¹⁴ The nature of faith seems to be the only argument used by IRIENAEUS OF LYONS, s., 0180/0190: *Adversus Haereses*, IV, 37, 3-4-5.

¹⁵ TERTULLIAN, *Apologeticus*[mj], XXIV, 5 and 6; *Ad Scapulam*, cap. 2.

¹⁶ LACTANTIUS, *Divinae Institutiones*, V, 19-20-21 (= V, 19, 22-23 according to some editions); *PL* 6, 616; *Epitome divinarum institutionum*, LIV (*PL* 6, 1061) or 49, 1

persecutions, had taught religious liberty as a natural right and not only as an “ad hominem” argument.¹⁷

“Religious freedom, in turn, which men demand as necessary to fulfil their duty to worship God, has to do with immunity from coercion in civil society. Therefore¹⁸ it leaves untouched traditional Catholic doctrine on the moral duty of men and societies toward the true religion and toward the one Church of Christ”.

The translations of “*societatum*” in German, English, Italian, Spanish, etc., as well as the document already quoted of the SCDF (1978, to Archbishop Lefebvre), have always “of societies”. However, nearly all the French translations (but one) had written before 1992: “of associations”. During a private audience in March 1990, I managed to draw that deficiency (orally and in writing) to the attention of Cardinal Ratzinger. Later on, I was happy to read the French translation “and of societies”, e.g. in the French editions of the *Catechism of the Catholic Church* (= CCC), # 2105 (1992 and 1998 editions).¹⁹ Besides that, Cardinal Hamer (1916-1996), who had supervised the drafting of *DH*, on leaving the ceremony of the defence of my doctoral dissertation on June 8th, 1995, invited me to make an inventory of his archives on religious freedom. And there I found the first inaccurate translation, made hastily in December 1965, by an anonymous expert of the Secretariat for the Unity of Christians, which was the drafting commission for *DH*. Nevertheless, Fr. Hamer himself was not the culprit, for already in

(numbers used by the *Sources Chrétiennes* edition) ; or CSEL 19, 728, with both types of numbers.

¹⁷ Saint JUSTIN and ATHENAGORAS indeed used it as an “ad hominem” argument, as I have shown in my dissertation. See JUSTIN, *Apol.*, I, 24 ; PG 6, 363 ; ATHENAGORAS, *Legatio pro christianis*, 1 : PG 6, 890-894. For any other detail about what major authors like saints AMBROSE and AUGUSTINE actually thought and taught, I must be content here to refer to my aforesaid dissertation, where the texts are quoted at length, often in the original Latin, and at least in a French translation. It is clear that Augustine changed his mind about repressing the Donatists once he had seen them acting against what we call just public order. The same applies to medieval popes acting against Albigensians only once their Legate (Pierre de Castelnau) had been murdered by the Cathars.

¹⁸ We know that our friend Fr. Brian W. HARRISON has criticized the translation of “*Quum...*” by “since”. He prefers to read “*Quum*” in the adversative meaning “although”. I don’t think I can agree with him on this minute detail.

¹⁹ The same in G. ALBERIGO (dir.), *Les conciles œcuméniques : les décrets*. II-2, Trente à Vatican II. - Paris: Cerf, 1994, p. 2033; et Chr. THÉOBALD, S.J. (éd.), *Vatican II : l’intégralité*. - Paris: Bayard, 2002.

1966 he wrote: "It is a question here of all social groups, starting from the smallest and most spontaneous ones up to the nations and States"²⁰.

As a matter of fact, on November 19th, 1965, Paul VI had given the order that the relator read a sort of "Nota praevia" at the beginning of his report on the 6th and last draft of DH, a note written probably by his private theologian, Msgr. Carlo Colombo, of which I quote the essential part: "While the papal documents up to Leo XIII insisted more on the moral duties of public authorities (*potestas publica*) toward the true religion, the recent Supreme Pontiffs, while retaining this doctrine, have complemented it by highlighting another duty of the same authorities, namely, that of observing the exigencies of the dignity of the human person in religious matters, as a necessary element of the common good. The text presented to us today clearly recalls more clearly (see ## 1 & 3) the duties of the public authority towards the true religion (*officia potestatis publicae erga veram religionem*); from which it is manifest that this part of the doctrine has not been overlooked. However, the special object of our Declaration is to clarify the second part of the doctrine of recent Supreme Pontiffs – that dealing with the rights and duties which emerge from a consideration of the dignity of the human person".²¹

That last intention can be seen in the following sentence of *DH* 1, § 3: "Over and above all this, the council intends to develop the doctrine of [the most] recent popes on the inviolable rights of the human person and the constitutional order of society."

²⁰ My English translation of : J. HAMER, O.P., *Histoire du texte de la Déclaration*, in *La Liberté religieuse. Déclaration "Dignitatis humanae personae"*, Paris, Cerf, 1967 (*Unam Sanctam*, 60), p. 99-100: "Il s'agit ici de tous les groupes sociaux depuis les plus modestes et les plus spontanés jusqu'aux nations et aux États [...]". Therefore it is not lawful to interpret *DH* as if the Church as such, in its Magisterium, had given up the duties of States (at least headed by Christians) towards her. Simply, *DH* clarifies that these duties cannot imply to coerce somebody when they do not infringe "justus ordo publicus". On the other hand, nowadays, very few and small States are still inhabited by an overwhelming majority of unanimous Catholics and in which it would be possible to demand that such duties be applied in such a detailed way as before. A negative duty, such as to avoid repressing religious freedom is always applicable and to be applied, like any other negative precept; whereas, e.g. the profession of faith by the institutions of the State are an affirmative obligation, which is not valid *semper et pro semper*, some circumstances making it impossible and inopportune to claim such an obligation.

²¹ English translation: B. W. HARRISON, *Religious liberty and contraception*. - Melbourne: John XXIII fellowship Co-op, 1988, p. 75, very slightly "corrected" by me according to the orig. Lat. *A.S.* (= *Acta Synodalia Concilii Oecumenici Vaticani II*), IV/V1, p. 719; French translation: It., *Le Développement de la doctrine catholique sur la liberté religieuse*, Chémeré / Bouère, Société Saint-Thomas d'Aquin / DMH, 1988, p. 82-83.

Indeed, Leo XIII is the pope who launched that doctrine of the fundamental rights,²² based on the “dignity of the human person”, intelligent and free, and especially, the right to the liberty of conscience (see quotation above).

Pius XI (1922-1939) developed that doctrine, declaring that: “The believer has an absolute right to profess his belief and live according to its dictates. Laws which impede this profession and practice of that belief are against natural law.”²³ There is no doubt that he meant the believer at large (*der gläubige Mensch* = “the believing human being”), and his “belief” (*seinen Glauben*), in the general meaning of a religious conviction, and not only the faith of the Catholic: the scope was to protect all human beings, especially Christians and Jews.

Venerable Pius XII (1939-1958) enormously developed the doctrine of the fundamental rights of the human person,²⁴ “whom God has placed at the summit of the visible Universe, making [the person], in economics as well as in politics, the measure of all things”;²⁵ because “the human immortal soul created to the image of its maker gave him an inherent dignity and rights, that no earthly power dare challenge in justice”.²⁶ Therefore, man is the “subject, the foundation, and the end”, “the origin and the goal”, the “centre of the whole social order”,²⁷ and of the State. “Civil society is also of divine origin

²² Cf. LEO XIII, 21 April, 1878 : *Encycl. Inscrutabili Dei* ; *Acta Leonis XIII* 01, 46-47 = *AAS* 10, 586-87; — 5 May, 1888 : *Lettre In plurimis* ; *Acta Leonis XIII* 8 (1888), 169-192 = *AAS* 20 (1887-1888), 545-559 ; — 20 June, 1888: *Encycl. Libertas cit., passim* ; — 20 November, 1890 : *Encycl. Catholicae Ecclesiae*, *Acta Leonis XIII* 10 (1891), 312-318 = *AAS* 23, 257-260 ; — 15 May, 1891: *Encycl. Rerum novarum*; *Acta Leonis XIII* 11 (1891), 97-144, *passim* (in particular p. 123) ou *AAS* 23 (1890-1891), 641-670.

²³ PIUS XI, 14 March, 1937: *Encycl. Mit brennender Sorge*, *AAS*, 1937, 160: English translation from the Vatican website, # 31, corrected about “belief” instead of “Faith”; for the meaning of “believer” see also the context given before (namely # 7): “Take care, Venerable Brethren, that above all, faith in God, the first and irreplaceable foundation of all religion, be preserved in Germany pure and unstained. The believer in God is not he who utters the name in his speech, but he for whom this sacred word stands for a true and worthy concept of the Divinity. [...]”

²⁴ Cf. amongst many others: *AAS*, 1944, 250; 1949, 597-604 (especially 600) ; 1953, 183 ; *Discorsi di Pio XII* 6 (1944), 221-222 ; with various formulas (for any detail, please see my dissertation referred to above).

²⁵ PIUS XII, 14 July, 1945 : *Apost. Letter Nous avons pris* ; *AAS*, 1945, 211: “que Dieu a placée au faite de l’univers visible, la faisant, en économie comme en politique, la mesure de toutes choses”.

²⁶ PIUS XII, 4th December 1949: Speech given to Congress Members of the USA; English orig: *Discorsi di Pio XII* 11, 299-301; here Vatican website.

²⁷ Cf. mainly: PIUS XII, 24 December 1944 : *RM Benignitas et humanitas... Già per la sesta volta*, *AAS*, 1945, 12 : “quanto all’uomo, come tale, che, lungi dall’essere l’oggetto

and indicated by nature itself; but it is subsequent to man and meant to be a means to defend him and to help him in the legitimate exercise of his God-given rights".²⁸ According to him, the State has mainly the office of "preserving the untouchable field of the rights of the human person, and to facilitate the fulfilment of his duties".²⁹ Last of all, although error can be neither the subject, the ground, nor the object of a right, Pius XII testifies that human law sometimes not only does not have the *permission* to forbid evil and error, but also that in some circumstances, that law doesn't even have *any right (nessun diritto)* to do so.³⁰ Then, it can be inferred rigorously, that sometimes, Man can have a right not to be prevented from acting, even when he does so in an erroneous manner.

According to Saint John XXIII, in *Pacem in terris*: "Any well-regulated and productive association of men in society demands the acceptance of one fundamental principle: that each individual man is truly a person. His is a nature, that is, endowed with intelligence and free will. As such he has rights and duties [...] universal and inviolable, and therefore altogether inalienable. [...]".³¹ The Encyclical specifies: "man has a right to freedom in investigating the truth, and – within the limits of the moral order and the common good – to freedom of speech and publication [# 12] [...]. Also among man's rights is that of being able to worship God in accordance with the right dictates of his own conscience, and to profess religion³² both in private and in public³³. "With this teaching we had reached nearly *DH* 2 and 7.

e un elemento passivo della vita sociale, ne è invece, e deve esserne e rimanerne, il soggetto, il fondamento e il fine". And also: *AAS*, 1943, 12 ; 1945, 12 ; 1946, 145-146, etc.

²⁸ PIUS XII, August 26th, 1947: Message *We have just*, to President Harry Truman; English orig: *AAS*, 1947, 381. Cf. already PIUS XI, 15th May, 1931: Encycl. *Quadragesimo anno*, *AAS*, 1931, 193, quoting LEO XIII, *Rerum novarum*, cit., 6 & 10.

²⁹ PIUS XII, June 1st, 1941: RM to the whole world *La solennità della Pentecoste*; our English translation of the Ital. orig: *AAS*, 1941, 200: "Tutelare l'intangibile campo dei diritti della persona umana e renderle agevole il compimento dei suoi doveri vuol essere ufficio essenziale di ogni pubblico potere." Cf. too *AAS*, 1953, 739-740.

³⁰ Cf. PIUS XII, 6th December 1953: Allocution *Ci riesce*; *AAS*, 1953, 798-799.

³¹ JOHN XXIII, April 11th, 1963: Encycl. *Pacem in terris*; Latin orig.: *AAS*, 1963, 259; here English translation of the Vatican website; quoted later by Saint JOHN PAUL II, in his message to the UN of December 2nd, 1978; *AAS*, 1979, 122-123.

³² The translation (both French and English) has "his religion" instead of "religion" *tout court*. It's not accurate. The original Latin has: "In hominis iuribus hoc quoque numerandum est, ut et Deum, ad rectam conscientiae suae normam, venerari possit, et religionem privatim publice profiteri."

³³ *Ibid.*, *AAS*, 1963, 260-261.

DH 2: The nature and ground of the right to religious liberty

Now DH 2 consists of two paragraphs. The first starts by declaring the *existence* of the right, its active *subject* (the person), and its *object* (religious freedom): “This Vatican Council declares that the human person has a right to religious freedom.” Here, the Council is using its magisterial authority. According to the second sentence, “This freedom means that all men are to be immune from coercion (*immunes esse a coactione*) ...”. So, the benefit which is demanded in justice, which is the *object* of the right, is not an action nor a religion of the holder of the right, nor a positive help, nor an approval, nor a place to worship granted for free. No, it is an *omission* of something by the other human beings, in other words, an *immunity*. And it is an immunity from *coercion*, either physical (violence), or moral (threats of violence). It is not an immunity from *evangelization*, good advice, or the teaching of the *Church’s Magisterium* (cf. DH 14) ...³⁴

The text continues: “... on the part of individuals or of social groups and of any human power ...”: that’s the *passive subject of the right*, i.e. those who are supposed to abide by the *right*, and to recognize and grant it, and they are *all* other human beings.

The consequence is – note that it is expressed by a consecutive clause³⁵ starting with: “in such wise that... (*et ita quidem ut...*)”, – it indicates the minimum which should result from that exemption, i.e. the fact that the *values which should be protected* in a juridical way are covered, and these are the *goal* (not the object) of the right. Of these actions which are thus “sheltered”, the text first describes their *field* (“in religious matters”), then specifies the two types : 1° “... no one is to be forced to act in a manner contrary to his own beliefs...” : e.g. nobody should be constrained to embrace the Christian faith against his conscience.³⁶ And the popes of the Middle Ages, especially

³⁴ It must be emphasized here that popes after Vatican II have always taught religious freedom as a negative right (“not to be prevented to act”), a right “to the freedom to act”, and never as “a right to act”, except when it’s about the Catholic Church. That such documents as the Message *L’Église catholique*, of St John Paul II of Sept. 1st, 1980 to the Madrid Conference of the Heads of States; French orig.: *ALIS*, 1980, 1252-1260, *DC* (= *Documentation catholique*), 1980, 1172-1175, and Vatican website. The same is true of BENEDECT XVI, Dec. 9th, 2006: Speech to the Union of Catholic Italian jurists; French translation: *DC*, 2006, 214-215.

³⁵ Until now, I have not seen any author who noticed the importance of the fact that this clause is a consecutive one.

³⁶ Cf. Saint THOMAS AQUINAS, *Summa theologiae*, I-II, q. 19, a. 5.

Innocent III,³⁷ often underscored that one didn't have the right to constrain the Jews to do so;³⁸ 2° "... nor impeded from acting according to one's conscience..."³⁹ This way, the *active subject* of that right – i.e. the person possessing it –, is protected in his or her actions – or omissions – in religious matters: "whether privately or publicly, whether alone or in association with others...". All this can create dangers for the common good,³⁹ hence the necessary final clause: "within due limits".

Note too that to act *according to* one's conscience is not necessarily to act according to a conscience that adheres *to the truth*, and not necessarily even a *sincere* one, since a conscience may very well be objectively *mistaken* and sometimes through one's own *fault*. Now it is immoral to act when one *knows* that one is ignorant or doubts the moral rectitude of a choice.⁴⁰ Besides that, the Conciliar Fathers have understood that *the sincerity of a mistaken religious conscience* cannot be the source of rights *which could be claimed in front of other people*, because somebody can sincerely fancy that they have duties which in fact are actually appalling.⁴¹ Therefore, the Council does not *base* the right to religious freedom on the *sincerity of the conscience* (a concept which does not appear in the text). And, if man has the right, it is not even *because he follows his conscience*, or *only if he does in fact follow his conscience*; rather it seeks to guarantee that he be given the *opportunity* [cf. "in such wise that..."] to follow his conscience.

In fact, "The Council further declares that the right to religious freedom has its foundation in the very dignity of the human person as this dignity is known through the revealed word of God and by reason itself." That's the second of the fundamental and distinctive magisterial teachings of *DH*. The following conclusion is drawn: "This right of the human person to religious

³⁷ INNOCENT III, 15 September 1199: Constitution *Licet perfidia Judaeorum*; Lat.-French. : DIENZINGER – HÜNIERMANN [or D.S.], *Symboles et définitions de la foi catholique*, Paris, Cerf, 1996, # 772-773.

³⁸ There had been indeed some severe abuses, e.g. in Spain, hence lots of political as well as religious problems.

³⁹ Strangely enough, the Vatican website forgets to provide, in the English translation, this part of the sentence. My translation here therefore.

³⁹ Just think of some immoral religious practices, such as the sacred prostitution in pagan cults, or of some methods of propaganda in some cults, which are "infringing the right of others" (cf. *DH* 4).

⁴⁰ Cf. SAINT THOMAS AQUINAS, *Summa theologiae*, I-II, q. 19, a. 6.

⁴¹ The "duty" of offering the first-born child to be eaten by a sow, amongst Papues; the necessity to constrain the widow to be burnt alive with the corpse of her husband, in the case of the Hindu *suttee*, and so on.

freedom is to be recognized in the constitutional law whereby society is governed and thus it is to become a civil right.”

The second paragraph of section 2 enunciates the *goal*, then the ontological *foundation* of the right⁴²: “It is in accordance with their dignity as persons – that is, beings endowed with reason and free will and therefore privileged to bear personal responsibility – that all men should be at once impelled by nature and also bound by a moral obligation to seek the truth, especially religious truth. They are also bound to adhere to the truth, once it is known, and to order their whole lives in accord with the demands of truth.” So, the *goal*, the *finality*, is to accomplish the *duty* towards truth. Nevertheless, this presupposes some specific *procedures*; “However, men cannot discharge these obligations in a manner in keeping with their own nature unless they enjoy immunity from external coercion as well as psychological freedom”. Psychological freedom, free will, the capacity the *will* has to choose to act or not to act, without necessity, does not suffice: it is necessary to have the external freedom of *Man*, in other words, liberty from coercion.

Then is expressed the *foundation* of the right, which is the *ontological (not moral)* dignity of the human being: “Therefore the right to religious freedom has its foundation not in the subjective disposition of the person, but in his very nature. In consequence, the right to this immunity continues to exist even in those who do not live up to their obligation of seeking the truth and adhering to it and the exercise of this right is not to be impeded, provided that just public order be observed”. Indeed, the *moral* abuse of a right does not automatically take away the usage of it.⁴³ That structure of an abuse which does not destroy the use can already be found in the situation described by Saint Thomas Aquinas, for which he declared it was contrary to natural justice (*contra justitiam naturalem esset*) to baptise or bring up infants of non-Christian parents against the will of the latter. That natural right of parents was due to the fact they were human beings and parents, and was not conditional upon

⁴² Later in # 3 there is explained and developed an argumentation about the reasons why this right exists (especially the juridical – though notgnoseological–incompetence of the State in religious matters, an incompetence already taught by... the *Syllabus*, # 44, and PIUS XI, June 29th, 1931, Encycl. *Non abbiamo bisogno*, *AAS*, 1931, 303; and PIUS XII, Sept. 7, 1955, Speech to the 10th congress of historical sciences, *AAS*, 1955, p. 677). Therefore it is mistaken to say that there can be seen no metaphysical ground to that right. The main ground is obviously the natural obligation to seek religious truth as a human being does, and that ground is already stated here, in # 2. Like any other *right*, the right to religious freedom exists in order to make it possible to accomplish a *duty*.

⁴³ Cf. *A.S.* IV/VI, p. 736.

their adherence to the true religion.⁴⁴ Pius XI confirmed that teaching.⁴⁵ So, although, obviously, such parents don't have a *right to teach religious error* to their children, they have a *right to demand from others* (within due limits) *not to be impeded from bringing up their children even if it is according to error*. They therefore have that right despite the fact they are committing a (*moral*) abuse of their parental right.⁴⁶ It is then contrary to evidence to say – as some do – that it

⁴⁴ They are "Jews or other infidels", according to the title itself of the article by THOMAS AQUINAS, *Summa theologiae*, I-II, q. 10, a. 12.

⁴⁵ PIUS XI, 31 December 1929: *Encycl. Divini illius Magistri*; *AAS*, 1930, 62.

⁴⁶ Cf. already CAJETAN, *Commentaria in Secundam Secundae* (finished on Feb. 26th, 1517); I have studied thoroughly: *In 2-2*, q. 10, a. 8.10.11.12, etc.; Leonine ed., vol. 8 (1895), 89-90, 93, 95, etc. I am referring myself here to the following *In 2-2*, q. 10, a. 8; Leonine ed., 8 (1895), 89-90, §§ III à VI, especially: "tota praesens difficultas in hoc pendere videtur, an sit contra naturalem iustitiam huiusmodi pueros auferre a cura parentum infidelium volentium eos in infidelitate nutrire, an non. Si enim est contra naturalem iustitiam, constat quod illicitum est: quia non sunt facienda mala ut veniant bona. Et si non est contra naturalem iustitiam, nulla videretur iniuria parentibus fieri, quibus naturale ius curam filiorum dedit. Et Auctor quidem in littera super parte affirmativa se fundavit: Scotus autem super negativa. [...] Et nota quod non est dissensio in hoc, an secundum naturalem iustitiam pueri infidelium subsint eorum curae quoad divina exercenda in puero: hoc enim manifestum est esse verum, quoniam sicut naturali ordine adultus per propriam rationem, ita puer per parentum rationem ordinatur ad Deum. Sed quaestio est an propter abusum huiusmodi iuris naturalis privati possint aut debeant parentes ipsi abutentur tali iure. Scotus siquidem ad hoc tendit quod, quia parentes abutuntur iure suo, quia nutriunt filios ad cultum infidelitatis contra Deum, ideo princeps debet eos privare tali iure: quia faciendum est quod conservetur ius Dei contra ius parentum abutentium illo contra Deum, potius quam e converso, ut scilicet servetur ius parentum cum contumelia Dei; hic enim ordo perversus est. [...] Ex his autem, adiuncta illa maxima, *Gratia perficit, non destruit naturam*; et, *Ordo gratiae perficit, non dissolvit ordinem naturae*; Manifeste apparet, primo, quod dominium parentum supra filios non est tam ipsorum quam naturae ac Dei, qui illam instituit. Ac per hoc, comparatio non est facienda inter parentes et Deum: sed inter Deum institutorem naturae, et seipsum Deum institutorem fidei; uterque enim ordo ab ipso et ipsius est. [...] statuit ut adultus media propria ratione ac voluntate legem fidei impleat, quia suae curae naturaliter commissus est, puer autem media ratione et voluntate parentum, quorum curae naturaliter commissus est." [...] "VI. Et si diceretur quod, licet Deus instituerit legem fidei non ad solvendam sed perficiendam legem naturae, absolute et simpliciter; tamen in casu quo habentes ius naturale illo abutuntur, quia merentur privati illo, statuit legem fidei habere locum ablato ab abutentibus iure suo. — advertant sic dicentes quod hoc nihil aliud est quam dicere quod Deus statuit legem fidei servandam non obstante lege naturae. Quoniam cum lex naturae secundum se non obstat fidei, quia *verum vero non contrariatur*; ad hoc solum dicitur *non obstante lege naturae*, propter casum in quo ob stare potest propter admixtam abusionem. Idem est ergo dicere quod statuit legem fidei

was not a question of right, but only of “tolerance” (meaning here “not repressing that which one has the physical power to repress”) in Saint Thomas, Cajetan and Pius XI.

DH 7: The limits of the exercise of the right to religious liberty

The *limits* within which the right to religious freedom may be exercised are determined by # 7 of *DH*. This section does that by means of three paragraphs. The first one explains the *existence* of such limits: “The right to religious freedom is exercised in human society: hence its exercise is subject to certain regulatory norms.” Paragraph 2 enumerates the *moral rules* which man must follow *when he uses* his right of religious liberty: “In the use of all freedoms the moral principle of personal and social responsibility is to be observed. In the exercise of their rights, individual men and social groups are bound by the moral law to have respect both for the rights of others and for their own duties toward others and for the common welfare of all.” Nobody has the *moral permission* to use their right in a wrong way. However, to use one’s right in a morally wrong way does not always imply that one infringes the virtue of justice itself.⁴⁷

Coercion may – and sometimes has to – take place *only* when the holders of the right make a *juridical abuse* of their right, i.e. one which infringes the *just public order*. This is dealt with by the third paragraph: “Furthermore, [since] society has the right to defend itself against possible abuses committed on the pretext of freedom of religion [, it] is the special duty of government to provide this protection.” Here a precise detail is inserted: “However, government is not to act in an arbitrary fashion or in an unfair spirit of

implendam non obstante etiam lege naturæ, absolute ; et in casu quo propter admixtum abusum obstat. Et propterea si primum est falsum, secundum quoque erit falsum. Unde evasio hæc nulla est. Et confirmatur. Quia in parentibus infidelium concurrunt duo : scilicet ius naturale respectu filiorum curæ ; et admixta infidelitas, qua nutriunt eos ad suum ritum. Et licet secundum sit malum, et in eo peccent mortaliter ; et propter hoc non solum filiis, sed vita et seipsis privari possint, ita quod possent iuste annihilari : primum tamen iustum est naturaliter. Et propterea Deus, statuens ordinem gratiæ ad perfectionem ordinis naturæ, illud iustum naturale violari non vult, quamvis ipsi abutentes hoc mereantur.”

⁴⁷ E.g. to get drunk with a bottle of vodka which belongs to you, and inside your own garden, is a bad usage of your right to property, but that does not create for the police the right to deal with the matter, unless some juridical limits are being trespassed, as has been often and well explained by Fr. B. W. HARRISON.

[†] I change here slightly the English translation of the Vatican website, because it omits the logical link between the two phrases, making of them erroneously two independent sentences.

partisanship. Its action is to be controlled by juridical norms which are in conformity with the objective moral order." So, in order for the State to repress what it deems to be an abuse of religious freedom, it is necessary (not sufficient however), that it follow juridical norms, based on the *objective* moral order, a rule which was added, seemingly, under request of Bishop Karol Wojtyła (the future John Paul II), in the name of several Fathers.⁴⁸ The text goes on to give the three types of criteria of these norms.

a) The specifically *juridical* criterion is "... the need for the effective safeguard of the rights of all citizens and for the peaceful settlement of conflicts of rights..." E.g., if somebody, in the way that he practised his religion, were to be a threat to the rights of others, the State would have the right to repress him. Now, before the 20th century, every time that in some country where religion A was a majority, the influence of religion B was increasing, the believers of B, like most people in those days, were convinced that once they became a majority themselves, they would have at least the *right* to crush the liberty of believers of other religions, such as A, which would have become a minority, even though between the 16th and 19th century, the necessity of a *de facto* tolerance had appeared. Therefore, most people⁴⁹ thought that the State had at least as a matter of principle the right to restrain the expansion of B. In such a situation, the Catholic Church claimed her supernatural right to teach the truth and to defend herself against such aggressors, but in front of others She could not base her claim to freedom on a natural right, which in those days was not applicable, for the aforesaid reason.

However once in 1948 the principle than one must respect the religious liberty of "the others" had been proclaimed in a reciprocal, international,⁵⁰ and even inter-confessional,⁵¹ if not interreligious forum, , the Catholic Church had to make a statement about the change that had occurred between a situation of "defensive war" and a treaty of mutual respect. So, although

⁴⁸ The mention of "objective moral order", added into the *textus recognitus* of DH 7, was explained by the drafting commission in the following way: "Legitur: 'in ordine morali objetivo fundati'. Est additio magni momenti. Introducta est ad mentem Patrum qui rogant ut in aestimando ordine publico, ratio habeatur non solum ad historicas situaciones sed etiam et in primis ad ea quae morali ordine obiectivo postulantur [...].'" (*Relatio [oralis de textu recognito]*, 25th October 1965, Pars altera: *Mutationes textus remendati iuxta proposita patrum factae*, § III A.S. IV/V, p. 154). Cf. too the CCC (= *Catechism of the Catholic Church*) # 2109: "The right to religious liberty can of itself be neither unlimited nor limited only by a "public order" conceived in a positivist or naturalist manner (cf. Pius IX, Encycl. *Quanta cura*). [...]"

⁴⁹ Except for some rare groups, such as the Mennonites.

⁵⁰ *Déclaration universelle des droits de l'homme*, 1948, art. 18.

⁵¹ WCC, Amsterdam, July 1948.

the Catholic Church, being a *societas perfecta*, as I have always professed, has a right to use all the lawful means necessary to reach her goal, including coercion in a defensive situation, it can become unlawful for her to use coercion when such a situation does no longer occur. Hence the Declaration *DH*, which gives a principle more general than the ones used in the “war situation” described above, and valid in *all circumstances*, due to a hypothetic condition: “within due limits”. These remarks make it possible for us to understand the unfortunate phenomena of the past – and also maybe of the present day, since, alas, some religions (and the States which profess officially those religions) have still not accepted the principle of religious liberty, to say nothing of States which are still militantly atheistic.

b) The *political* criterion is the following “... also out of the need for an adequate care of genuine public peace, which comes about when men live together in good order and in true justice...”. This last phrase was aiming at avoiding the ambiguity of juridical positivism, which comes from the [French] Declaration of the Rights of Man and of the Citizen of 1789, where public peace or tranquillity was understood only as the application of the civil law, which itself was defined as expressing “the general will”.⁵²

c) Last criterion, the *moral* one: “... and finally out of the need for a proper guardianship of public morality.” The practice of a religion which would lower the level of public morality could be restrained by a society which would live according to more demanding general standards of morals.

The document then summarizes: “These matters constitute the basic component of the common welfare: they are what is meant by public order.” Why “public order” instead of “common good”? Because Conciliar Fathers persecuted in their own country were prophesying that, to restrain religious liberty, totalitarian (either anti-religious or confessional) States would allege their own “common good”. Besides that, the drafting commission emphasized that the true “common good” comprises two parts: 1° one *useful* for the well-being of the society, and which the State should *promote* by helping positively – though in a subsidiary manner – the various intermediate bodies, families, and so on; 2° another part *necessary* for the very existence of the society, which was defined as a “*just public order*”. This “basic component” of the common good the State has the *right* — and sometimes the duty — to *enforce through coercion*.⁵³

And *DH* 7 ends as follows: “For the rest, the usages of society are to be the usages of freedom in their full range: that is, the freedom of man is to be

⁵² When the French State robbed the Church of all her belongings, in 1790-91 and 1905, the police were enforcing “public peace”, but that was not according to a true justice.

⁵³ Cf. *A.S.* IV/v1, p. 755, 756 et 758.

respected as far as possible and is not to be curtailed except when and insofar as necessary".⁵⁴

Conclusion: Reply to those who think that DH contradicts the Tradition of the Church

Thanks to the analyses above, we are in a position to reply to those who deny that *DH* can be reconciled with Tradition. I'll do this in two steps: 1° first, I'll reply to the three main arguments claiming there is *in fact* a contradiction; then, 2° I'll quote some magisterial documents that imply the *impossibility* of such contradiction *de jure*.

No contradiction de facto

1st objection: *DH* is proclaiming an absurd right of error, or right to error, or right for error. *Reply.* *DH* recalls the existence of a religious truth and a specific religious obligation, objective and revealed, and it precludes any *moral permission* for error. Then, religious freedom is a *right to demand the immunity of coercion*, and not a right to act in such-and-such a way. Therefore it is not a *right to error*.⁵⁵ It is a right of the person to immunity from constraint, aiming at adherence to the truth, even when the person holds an error, error which is therefore protected *per accidens*. This right exists *in order* to make it possible for the person to act according to his conscience in religious matters, and eventually, one hopes, to adhere to the mandatory truth. The right does not exist *so that the person* may act without any conscience or at whim. Nevertheless, if man does not follow his conscience or if he is in error, these defects are not *in themselves* sufficient reasons for preventing him coercively from exercising his right, because the moral abuse of a right does not always preclude the usage of it.

2nd objection: *DH* is accused of contradicting the condemnation of the "liberty of conscience and worship" (LCW) of the 19th century. *Reply.* The LCW born in "1789", and condemned by all popes from Pius VI to Pius XII, had neither the same foundation, nor the same finality, nor the same object,

⁵⁴ This sentence was added on the suggestion of the *peritus* (now Cardinal) J. A. Medina Estévez. Cf., for a similar doctrine, THOMAS AQUINAS, *Summa theologiae*, I-II, 96, 2.

⁵⁵ Cf. CCC 2108: "The right to religious liberty is neither a moral license to adhere to error (cf. LEO XIII, enc. "Libertas præstantissimum"), nor a supposed right to error (cf. PIUS XII, Allocution *Ci riesse*, 6th December 1953, to Italian jurists), but rather a natural right of the human person to civil liberty, i.e., immunity, within just limits, from external constraint in religious matters by political authorities. [...]"

nor the same limits as the religious liberty in *DH*. a) Its *foundation* is the absolute sovereignty of the Nation and of the general will, expressed in the positive civil law, and not the ontological dignity of the human nature received from God. b) The finality of the LCW is to free man and the societies from the power of God, of natural law, of Revelation and of the Church, whereas *DH* aims at providing for man the best set of conditions in which to accomplish his obligation (individual as well as collective) to follow his conscience and to adhere to the one true Church. In the meantime, *European* political philosophy had partly come closer to the *American* model of religious freedom, where it's not a question for the State of being *hostile* to religion, but of being *neutral*, in order to ease life in common, in a *de facto* pluralistic society.⁵⁶ This remark however does not mean that *DH*, on the other side, claims that the State has always the obligation to be neutral. c) LCW was not only an immunity from coercion, but it was also presented as *an affirmative right*, the *object* of which was to think, express and do whatever one wants, except for being a nuisance to other people, a limit defined only by *positive law*. "Civil liberty", in the European context, meant in the 19th century a *right to act*, which presupposes a *moral permission to act*. Whereas in Vatican II, "social and civil liberty" means only a *negative* right, not to be constrained to act or prevented from acting; it is "a need that derives from human coexistence".⁵⁷ To designate the fact of not impeding a *bad* action, the Church had previously used the term "civil tolerance". However, besides the very restrictive meaning that concept had taken in the course of history (a temporary thing, which could be later suppressed), the possibility has appeared more clearly in the meantime that there can exist, under certain circumstances, a *right not to be impeded from acting, even were one to act wrongly*.⁵⁸ d) LCW, as far as *limits* of the exercise of the right are concerned, acknowledged only safeguarding public peace, understood as the respect for positive law that expressed the general will, and not an *objective* and "just public order".

All in all, we must say that there occurred a homogeneous doctrinal deepening, and not a contradiction, between, on the one hand, the condemnation of the LCW, a supposed right to act according to one's whim,

⁵⁶ In our 21st century, alas, Western culture tends to go back to an aggressively anti-religious and positivist relativism.

⁵⁷ BENEDICT XVI, 22 December, 200: Allocation to the Roman Curia ; Italian orig. : *AAS*, 2006, 46.

⁵⁸ Cf. PIUS XII, 6th December 1953: Allocation *Ci riesce*, cit., *ibid*.

and a “conscience deprived of law”,⁵⁹ and on the other hand the affirmation of the right to religious freedom in *DH*.⁶⁰

3rd objection: *DH* seems to claim a right opposed to the *praxis* of the Church in the past with non-Catholics, except when the common good obliged her to tolerate them to avoid a greater evil. *Reply*. Besides the insufficient awareness of the dignity of the conscience, the fact that there was no juridically recognized international and inter-denominational reciprocity before 1948 made it impossible to know and even to apply the principle of religious liberty as universal; since nearly everybody thought it permissible to suppress that freedom among those who did not share their own religious beliefs, everybody was a potential threat to the religious freedom of those beliefs other than their own. It followed from this (even in the eyes of *DH* 7, § 3) that the State had a right to repress the expansion of a new denomination. Experience has proven that that system was imperfect, and destroyed civil peace, especially in a society which *de facto* had become pluralistic.⁶¹ This made it clear that reciprocity had become a necessity. That reciprocity in turn creates a new situation of the *jus gentium*, and obliged Vatican II to discover a more general principle of natural right: namely, that in religious matters, when a just public order (*DH* 7, § 3) is not infringed, the circumstances exist in which, amongst other things, to use Pius XII’s words, “human law has no right to repress what is false”.⁶² The discontinuity lies in the change of situation, not of principles.

This last remark is inspired by a sentence of the speech where Benedict XVI also remarked: “If religious freedom were to be considered an expression of the human inability to discover the truth and thus become a canonization of relativism, then this social and historical necessity is [= would be] raised inappropriately to the metaphysical level and thus stripped of its true meaning. [...] It is quite different, on the other hand, to perceive religious freedom as a need that derives from human coexistence, or indeed, as an

⁵⁹ Cf. LEO XIII, 1st novembre 1885, *En cycl. Immortale Dei, Acta Leonis XIII* 05, 134-135: “exlex uniuscuiusque conscientiae iudicium”.

⁶⁰ See above the quotation of Leo XIII, *Libertas*, about the two meanings of the idiom “liberty of conscience”.

⁶¹ I underscore the difference between a “de facto” pluralistic society, which is just a fact, and a “de jure” pluralistic society, which is contrary to the revealed truth that there is only one true Church, as recalled by the CDF on December 3rd, 2007.

⁶² PIUS XII, *Allocution Ci nese*, 6th December 1953, to Italian jurists, cit., *ibid*.

intrinsic consequence of the truth that cannot be externally imposed but that the person must adopt only through the process of conviction.”⁶³

De jure, a contradiction would have been impossible

On a more general basis, it is time to make a conclusion about the impossibility, *de jure*, of a contradiction between Vatican II and Tradition, with the help of some other magisterial documents, first that of Paul VI writing to the first colloquium about the theology of Vatican II:

“Arduum igitur immensaeque molis opus theologorum studio proponitur, ad quod quidem rite aggrediendum, II omnes, qui proximo Congressui intererunt, semper ob oculos habeant auream illam normam: *In necessariis unitas, in dubiis libertas, in omnibus caritas.*”

In primis unitas necessaria est in doctrina universa a Concilio tradita religiose servanda. Quae, cum Oecumenicae Synodi auctoritate sit comprobata, ad magisterium ecclesiasticum iam pertinet; ac propterea, ad fidem et mores quod attinet, norma proxima et universalis veritatis existit, a qua theologis viris in suis peragendis studiis numquam discedere fas est. In eadem autem doctrina aestimanda atque interpretanda, cavendum est, ne quis eam a reliquo sacro doctrinae Ecclesiae patrimonio disiungat, quasi inter haec discrimen aut oppositio intercedere possit. At vero, quaecumque a Concilio Vaticano II docentur, arcto nexu cohaerent cum magisterio ecclesiastico superioris aetatis, cuius continuatio, explicatio atque incrementum sunt dicenda.”⁶⁴

By the way, since it seems appropriate to emphasize here that “the living Magisterium is the proximate and universal rule of truth”, let us recall that that principle was declared by Pius XII in *Ad Caeli Reginam* and *Humani Generis*⁶⁵. Notice that by Magisterium, he understood there not only the

⁶³ BENEDICT XVI, 22 December 2005: Allocation to the Roman Curia, already quoted; *AAS*, 2006, 46. English translation: Vatican website, very slightly corrected by B. W. Harrison [inside square brackets].

⁶⁴ PAUL VI, September 21st, 1966: Letter *Cum iam*, to Card. Giuseppe PIZZARDO, Prefect of the S. Congr. for Seminaries and Universities, for the 1st international meeting on the theology of VATICAN II; Lat. orig. & Ital. transl.: *OR*, 26-27 Sept. 1966; official Latin: *AAS* 58/13 (24 Novembris 1966), p. 877-881; http://w2.vatican.va/content/paul-vi/la/letters/1966/documents/hf_p-vi_let_19660921_cum-iam.html.

⁶⁵ PIUS XII, 1954.10.1: Encycl. *Ad Caeli Reginam*, # 45; English translation on http://w2.vatican.va/content/pius-xii/en/encyclicals/documents/hf_p-xii_enc_11101954_ad-caeli-reginam.html: “For the rest, in this as in other points of Christian doctrine, “the proximate and universal norm of truth” is for all the living

infallible Magisterium, but also the ordinary Pontifical Magisterium.⁶⁶ *A fortiori*, Paul VI is therefore right to apply that principle to the Magisterium of all the Bishops united to the pope in an Ecumenical Council.

Saint John Paul II, following in his footsteps, hence declared that at the root of the rupture by Archbishop Marcel Lefebvre in 1988, there was

"[...] an incomplete and contradictory notion of Tradition. Incomplete, because it does not take sufficiently into account the *living* character of Tradition, [...]".⁶⁷ But especially contradictory is a notion of Tradition which

Magisterium of the Church, which Christ established "also to illustrate and explain those matters which are contained only in an obscure way, and implicitly in the deposit of faith." Original Latin: *AAS*, 1954, p. 637: "Ceteroquin hoc etiam in christianae doctrinae capite, sicut in aliis, "proxima et universalis veritatis norma" vivum Ecclesiae Magisterium omnibus prostat, quod Christus constituit "ad ea quoque illustranda et enucleanda quae in fidei deposito nonnisi obscure ac veluti implicite continentur". The footnote there refers to "PIUS XII, Litt. Enc. *Humani generis* : A. A. S., XLII, 1950, p. 569." The text of *Humani generis* is the following: "Una enim cum sacris eiusmodi fontibus [= les saintes Lettres et la "tradition" divine] Deus Ecclesiae suae Magisterium vivum dedit, ad ea quoque illustranda et enucleanda, quae in fidei deposito nonnisi obscure ac veluti implicite continentur. Quod quidem depositum nec singulis christifidelibus nec ipsis theologis divinus Redemptor concedit authentice interpretandum, sed soli Ecclesiae Magisterio." So, if Scripture has to be interpreted by Tradition, Tradition itself needs to be interpreted authoritatively by the Magisterium. In turn, the extract of *Humani generis* about "the proximate and universal norm of truth" is to be found in *AAS*, 1950, p. 567: "hoc sacrum Magisterium, in rebus fidei et morum, cuilibet theologo proxima et universalis veritatis norma esse debet, utpote cui Christus Dominus totum depositum fidei — Sacras nempe Litteras ac divinam "traditionem" — et custodiendum et tuendum et interpretandum concedit".

⁶⁶ Cf. PIUS XII, 1950.08.12: Encycl. *Humani generis*; orig. lat. *AAS*, 1950, p. 568: "Neque putandum est, ea quae in Encyclicis Litteris proponuntur, assensum per se non postulare, cum in iis Pontifices supremam sui Magisterii potestatem non exercent. Magisterio enim ordinario haec docentur, de quo illud etiam valet: "Qui vos audit, me audit" [*LUC.* 10, 16]; ac plerumque quae in Encyclicis Litteris proponuntur et inculcantur, iam aliunde ad doctrinam catholicam pertinent. Quodsi Summi Pontifices in actis suis de re hactenus controversa data opera sententiam ferunt, omnibus patet rem illam, secundum mentem ac voluntatem eorumdem Pontificum, quaestionem liberae inter theologos disceptationis iam haberi non posse."

⁶⁷ The sentence continued as follows: "which, as the Second Vatican Council clearly taught, "comes from the apostles and progresses in the Church with the help of the Holy Spirit. There is a growth in insight into the realities and words that are being passed on. This comes about in various ways. It comes through the contemplation and study of believers who ponder these things in their hearts. It comes from the intimate sense of spiritual realities which they experience. And it comes from the preaching of those who have received, along with their right of succession in the

opposes the universal Magisterium of the Church possessed by the Bishop of Rome and the Body of Bishops. [...]”⁶⁸

A contradiction between the divine and Apostolic Tradition and the authentic universal Magisterium of the Church, expressed in the directly doctrinal teachings of Vatican II *in fact* does not exist, and *de jure* is impossible; in particular this applies to the formal, directly doctrinal, non-contingent teachings of *Dignitatis humanae*.

episcopate, the sure charism of truth.”(5) (Note 5: [Conc. Vatican II. DV 8; cf. Conc. Vatican I. Constitution *Dei Filius*, ch. 4: DS 3020]).

⁶⁸ JOHN PAUL II, 2 July 1988, *Motu proprio Ecclesia Dei*, § 4.

***Dignitatis Humanae*: authority, tradition and context –
finding the right balance**

James Bogle Esq.

I first essayed to deliver a paper on this subject as long ago as the 1970's when I had not long been a Catholic, having been brought up Anglican.

Attending that conference in the country districts of NSW, Australia, was gathered a group of Catholic scholars and others, under the aegis of the John XXIII Fellowship, and among those giving papers were Rev Fr Brian Harrison OS, then a layman, now a distinguished international theologian and present at this Colloquium, my former school companion, Rev John Parsons, now a priest living here in Norcia, and in the chair was his Excellency John McCarthy QC, now HM Australian Ambassador to the Holy See.

We had, of course, not then foreseen such a serendipitous re-encounter such as we are having today here in Norcia at the convent of the Benedictine sisters in this most delightful home town of St Benedict himself.

At that time, my paper focused on the power of the State to police only the natural law, having, as I then thought, no power or competence to police matters of Catholic faith, a position also adumbrated, at that time, by John Parsons.

Both he and I subsequently changed our view after reading more deeply into the encyclicals of Pope Leo XIII, not least *Immortale Dei* and *Libertas Humana*, after which we both separately concluded that the State did, indeed, have a legitimate power and competence of its own, albeit limited, to recognise and even regulate matters of Catholic faith in a Catholic state.

You can thus imagine my interest was much piqued when I read the papers of my good friend, also, like Fr Brian, a pre-eminent scholar and teacher, Professor Tom Pink, whose paper we heard earlier today, for he seems also to be a partisan of the view that the State only has competence in matters pertaining to the natural law, save where otherwise directed and delegated by the Church.

It does, at first blush, appear that there was, in the days when Catholic states were the norm in Europe, surprisingly little Magisterial teaching on the subject.

Indeed, to some extent at any rate, one must look back at the historical praxis of the Church to understand what the Church and the Catholic community considered to be the basis of relations between the Church, the State and those subject to the authority of the State.

I perhaps might also add, by way of reminder rather than caveat, that we ought to be careful to remind ourselves that the expression "the Church" has

a wider meaning than simply popes and bishops and that kings and emperors, as well as their subjects, were and are “the Church”, also.

All of the baptised share in the triune role of Christ as prophet, priest and king and thus in the teaching, sanctifying and governing roles in the Church, and it is as well to remind ourselves of this from time to time, not least today, the last day, as it were, of the Octave of the Feast of Christ the King.

That long list of the saints of the Church holds within it no small number of sainted Christian princes, kings and emperors who exercised governance over the Christian Faithful.

In their days, the role of the State, in the person of the monarch, enjoyed a greater spiritual status than it does today. Monarchs were considered to be the Vice gerent of God, the Roman Emperor (or Christian Caesar) was considered to be the Vicar of Christ in a temporal sense (the Pope being the spiritual Vicar of Christ) and their persons and position sacred.

It has been left to our time, when popes are derided and emperors even more so, to discourse about politics whilst nevertheless having a somewhat diminished view of political leaders and politics generally.

This has not left the Church unaffected and scholars such as Maritain, and prelates such as the late Archbishop Bugnini, seem to have developed a rather low view of lay political leadership and even of the political dimension of Christendom, sometimes to the extent of considering government to be but a necessary but undesirable locus of law enforcement and administration, rather than a reflection of the power and majesty of God.

Symbolically, Bugnini, in his wholesale reform of the Holy Week Triduum liturgy in 1955, removed the prayers for the Roman Emperor, replaced them with prayer for “moderators of republics” and then, later, placed them in the Great Intercessions of Good Friday last in the list of those prayed for, positioning them after pagans and atheists in that somewhat hierarchical list which used to begin with the Pope and the Emperor.

The significance of this change speaks for itself, given our common belief that *lex orandi statuit legem credendi* (the law of prayer determines the law of belief).

So now let us briefly consider the historical context as it bears upon our question today.

Historical praxis and a reality check – the Investiture Contest

The Investiture Controversy or Contest is said by some scholars to have been the most significant conflict between Church and State in medieval Europe. In the 11th and 12th centuries, a series of popes challenged the right of kings, and particularly the Roman Emperor, to appoint popes and bishops.

Let us not forget that, for the first 1,000 years of Christian history, every

single Ecumenical Council of the Church (with, of course, the exception of the first, the Council of Jerusalem), was not only called by, but presided over by, the Roman Emperor, not the Pope or his legates, and, for the most part, popes often did not even attend.

Catholics of those days, including almost all popes and bishops, would have been astonished by the modern notion that the temporal arm had no power or competence to involve itself in matters of Catholic faith, or of the Church or ecclesiastical affairs.

This competence, however, was not always coterminous with the power to "invest" popes and bishops. That power had developed, over time, during long periods when the Church was being harassed and persecuted by invading heathens or, interiorly and subversively, by the heterodox sects, some very powerful.

First, Emperor Constantine, then Theodosius, much later Charlemagne, and thereafter Otto the Great, were all regarded by the Church as its primary and urgent protector, not least when Otto the Great saved the Church from the corruption engendered by the papacy of the 10th century, under Pope John XII.

Cardinal Hildebrand, later Pope Gregory VII, believed that legitimate power had been exceeded in the matter of "investing" popes and bishops.

The investiture issue concerned whether pope or monarch had the primary right and power to invest powerful bishops and abbots with their sacred offices.

The conflict ended in 1122, when Emperor Henry V and Pope Calixtus II agreed on the Concordat of Worms. It distinguished between the royal and spiritual powers but kings and emperors retained a legitimate role in selecting bishops and there is no doubt that the power of kings and emperors over matters spiritual remained, as it had for centuries past, very considerable.

Yet this was a concordat, mutually agreed between pope and monarch, and was not held then, or later, to be an abuse or contrary to Catholic doctrine or practice by popes or theologians.

The investiture controversy began as a power struggle between Pope Gregory VII (1072–85) and Henry IV, Holy Roman Emperor (1056–1106). A brief but significant struggle over investiture also occurred between Henry I of England and Pope Paschal II in the years 1103 to 1107, and the issue played a minor role in the struggles between Church and State in France, as well.

The imperial power established by the Salian emperors, although now more qualified in the matter of episcopal investiture, nevertheless remained great and it continued to be so under the later Hohenstaufen dynasty and thereafter.

Pope Gregory VII, who died in exile, not unreasonably wished to

preserve the Church from becoming a mere creature of the State such as was later to happen under King Henry VIII of England in the Protestant Reformation.

This, however, did not mean that Pope Gregory believed that kings and emperors had no power whatever in matters spiritual or of Catholic faith and he would surely have been surprised, if not astonished, by such a suggestion.

Let us also not forget that successive emperors and kings had given immense privileges to bishops and prelates within the State and senior bishops and prelates were princes in the State, not least, for example, the ecclesiastical Prince-Electors of the Empire, the Prince-Elector Archbishops of Cologne, Mainz and Trier.

Let us also not forget that the Roman Emperor and the principal kings of Catholic Christendom always retained, until shortly before the First World War, the power to veto any candidate for the Papacy elected by the College of Cardinals.

This veto *imperialis et regalis* was used twice by the Christian Caesar and Roman Emperor, Francis Joseph I of Austria, and so gave to the Church two saintly popes, Blessed Pope Pius IX, vetoing Cardinal Severino, and Pope St Pius X, vetoing, Cardinal Rampolla.

Let us also not forget, as was re-affirmed in 1075 in *Dictatus Papae* of Pope Gregory VII, that popes retained the power to censure – spiritually not temporally – an unbelieving or heterodox emperor or king.

It is often said that Emperor Henry IV was humiliated by the Pope when he travelled to Canossa in northern Italy, wore a hair shirt and stood in the snow barefoot in the middle of winter in what has become known as the Walk to Canossa. The fact, however, is that the Emperor chose, of his own free will, to do this and it was thus a free act of his own and a demonstration as much of imperial power as papal. There was no sense in which the Pope sent some kind of police force to arrest the Emperor and force him to walk to Canossa (although it is true that subordinate German aristocrats had seized the opportunity of the contest to rebel against their lawful suzerain).

In nomine Domini

Earlier, Pope Nicholas II - and a canon of the Council of Rome - gave us the Bull *In Nomine Domini*, issued on 13 April 1059, establishing the cardinal-bishops as the sole electors of the pope, with the consent of the minor clergy and nobility of Rome.

The cardinals, let us not forget, were the parish priests and deacons of the Diocese of Rome and the bishops of the adjoining suburbicarian sees. It had always been their right, together with the nobility and free men of the

city of Rome, to elect both pope and emperor¹. After *In Nomine Domini* the remainder of the clergy and laity retained the right of acclamation and of veto.

The College of Cardinals came fully into force with the election of Innocent II in 1130 but even then acclamation and veto remained but they gradually devolved to the lay sovereign to exercise on behalf of the laity.

Imperial prayers

Such was the involvement of the lay monarchs of Christendom and so it remained for most of the Church's history.

Indeed, the Roman Emperor was prayed for as such, directly after pope and clergy, in the Easter Triduum, right up until, in 1955, Archbishop Bugnini removed the imperial prayers from the Church's most ancient liturgy, that of the Holy Week Triduum, a service that goes back, in essence, to the time of the Apostles, even to retaining elements of the Jewish Temple worship.

But that was of small account to the liturgical axe-wielding of the late Archbishop Bugnini.

In those imperial prayers, the Emperor is described as "the power of Thy right arm". Note that: the right arm of God – not the right arm of the Church.

The prayer read:

Oremus et pro Christianissimo imperatore nostro
[Nomen] ut Deus et Dominus noster subditas illi faciat
omnes barbaras nationes ad nostram perpetuam pacem....

Omnipotens sempiterne Deus, in cujus manu sunt
omnium potestates, et omnium jura regnorum: respice ad
Romanum benignus imperium; ut gentes, quae in sua
feritate confidunt, potentiae tuae dexteræ comprimantur.
Per Dominum.

"Let us pray also for the most Christian Emperor
[Name] that the Lord God may reduce to his obedience all
barbarous nations for our perpetual peace....

O almighty and eternal God, in whose hands are all the
power and right of kingdoms, graciously look down on the
Roman Empire that those nations who confide in their own

¹ Viscount Bryce, *The Holy Roman Empire*, Macmillan, 1925, pp.233-6.

haughtiness and strength, may be reduced by the power of Thy right hand. Through the same Lord..."

De Monarchia

Dante's *De Monarchia* is also helpful to our understanding since, in it, he shows that the imperial power, being prior to that of the Papacy, derives from God directly and not from the Church or the Pope.

In Book 3, chapter XIII, verse 2, Dante tells us:

"That ecclesiastical authority is not the source of imperial authority is thus verified.... But before the Church existed, or while it lacked power to act, the Empire had active force in full measure. Hence the Church is the source neither of acting power nor of authority in the Empire, where power to act and authority are identical."²

Moreover, St Robert Bellarmine teaches in his work on the temporal power of the Supreme Pontiff against the notion that the Pope is the master of the whole Christian world, citing Hugh of St. Victor, thus:

" 'Earthly power has as its head the King, spiritual power, the Supreme Pontiff'. And, even more clearly, John Driedo, in his work on Christian Liberty, chapter 2: 'Christ' he says, 'when He placed Peter as Pastor over the universal Church, did not at the same time give him temporal power over the whole Church, nor did He withdraw from emperors and kings their domains, nor did He will that all regal power as well as ecclesiastical power be derived and descend from the power of Peter.' The same view is that of many others... Moreover, Christ did not withdraw, nor does he take kingdoms from those to whom they belong; for Christ did not come to destroy those things that are in good condition but to perfect them; therefore, when a king becomes a Christian, he does not lose the earthly kingdom which he rightfully obtained but acquires a new right to an eternal kingdom: otherwise, the bounty of Christ would be a burden to kings, and grace would destroy nature. And this

² Dante Alighieri, *De Monarchia*, Book III, chapter XIII: "The Authority Of The Church Is Not The Source Of Imperial Authority".

view is confirmed by the hymn of Sedulius: 'What do you fear, enemy Herod, from Christ's coming? He who bestows heavenly kingdoms does not wrest away earthly kingdoms'.³

Bellarmino goes on:

"Finally, there is proof from the declarations of Pontiffs. Leo, in a letter to the Emperor Martianus, confesses that the Emperor Martianus was chosen by God for imperial rule, and in his letter 43 to the same man he declares that the Author of the imperial rule of Martianus is God. And similar statements he makes in nearly all the letters he writes to the emperors Theodosius, Martianus, and Leo, as they succeed one another. Gelasius, in a letter to Anastasius: 'There are two, August Emperor', he says, 'by whom this world is principally ruled, the sacred authority of the pontiffs and royal power'."

Let us also not forget sacred Scripture, and the very words of the first pope in his first encyclical when he says, at 1 Peter 2:17:

"[13] Be ye subject therefore to every human creature for God's sake: whether it be to the Emperor as excelling... [εἶτε βασιλεῖ ὡς ὑπερέχοντι] [14] Or to governors as sent by him for the punishment of evildoers, and for the praise of the good: [15] For so is the will of God, that by doing well you may put to silence the ignorance of foolish men: [16] As free, and not as making liberty a cloak for malice, but as the servants of God. [17] Honour all men. Love the brotherhood. Fear God. Honour the Emperor. [πάντας τιμήσατε, τὴν ἀδελφότητα ἀγαπάτε, τὸν θεὸν φοβεῖσθε, τὸν βασιλέα τιμᾶτε.] "

and βασιλέα here means the Roman Emperor.

That then suffices for some background to the question of Church and

³ St Robert Bellarmine SJ, *De Potestate Summi Pontificis in Rebus Temporalibus* (On the Power of the Supreme Pontiff in Matters Temporal), chapter III, citing Hugh of St. Victor, *De Sacramentis*, Book II, Part II, chapter 4.

State which is at the heart of *Dignitatis Humanae*.

One might conclude with the words of Dr John Healy, Archbishop of Tuam in Ireland in the 19th century, when he wrote:

“The character of kings is sacred; their persons are inviolable; they are the anointed of the Lord, if not with sacred oil, at least by virtue of their office. Their power is broad - based upon the will of God, and not on the shifting sands of the people's will... They will be spoken of with becoming reverence, instead of being in public estimation fitting butts for all foul tongues. It becomes a sacrilege to violate their persons, and every indignity offered to them in word or act, becomes an indignity offered to God Himself. It is this view of kingly rule that alone can keep alive in a scoffing and licentious age the spirit of ancient loyalty; that spirit begotten of faith, combining in itself obedience, reverence, and love for the majesty of kings which was at once a bond of social union, an incentive to noble daring, and a salt to purify the heart from its grosser tendencies, preserving it from all that is mean, selfish and contemptible.”⁴

The teaching of the Popes on religious liberty

I need not re-iterate what has been so ably adumbrated by Dr John Lamont regarding the teaching of the Patristic era and of the 19th and 20th century popes on the subject of religious liberty save, perhaps to emphasize some of them.

From *Immortale Dei*:⁵

“32. So, too, the liberty of thinking, and of publishing, whatsoever each one likes, without any hindrance, is not in itself an advantage over which society can wisely rejoice. On the contrary, it is the fountain-head and origin of many evils. Liberty is a power perfecting man, and hence should have truth and goodness for its object. But the character of goodness and truth cannot be changed at option. These

⁴ P J Joyce, *John Healy*, Dublin 1931, pp. 68-69.

⁵ Pope Leo XIII, *Immortale Dei*, 1885, paras 32 and 36.

remain ever one and the same, and are no less unchangeable than nature itself. If the mind assents to false opinions, and the will chooses and follows after what is wrong, neither can attain its native fullness, but both must fall from their native dignity into an abyss of corruption.”

“36...The Church, indeed, deems it unlawful to place the various forms of divine worship on the same footing as the true religion, but does not, on that account, condemn those rulers who, for the sake of securing some great good or of hindering some great evil, allow patiently custom or usage to be a kind of sanction for each kind of religion having its place in the State.”

From *Libertas Humana*⁶:

“10. From this it is manifest that the eternal law of God is the sole standard and rule of human liberty, not only in each individual man, but also in the community and civil society which men constitute when united. Therefore, the true liberty of human society does not consist in every man doing what he pleases, for this would simply end in turmoil and confusion, and bring on the overthrow of the State; but rather in this, that through the injunctions of the civil law all may more easily conform to the prescriptions of the eternal law.”

“21...Justice therefore forbids, and reason itself forbids, the State to be godless; or to adopt a line of action which would end in godlessness—namely, to treat the various religions (as they call them) alike, and to bestow upon them promiscuously equal rights and privileges. Since, then, the profession of one religion is necessary in the State, that religion must be professed which alone is true, and which can be recognized without difficulty, especially in Catholic States, because the marks of truth are, as it were, engraven upon it.”

“23... For right is a moral power which - as We have

⁶ Pope Leo XIII, *Libertas Humana*, 1888, paras 10, 21, 23, 30 and 34.

before said and must again and again repeat - it is absurd to suppose that nature has accorded indifferently to truth and falsehood, to justice and injustice. Men have a right freely and prudently to propagate throughout the State what things soever are true and honourable, so that as many as possible may possess them; but lying opinions, than which no mental plague is greater, and vices which corrupt the heart and moral life should be diligently repressed by public authority, lest they insidiously work the ruin of the State.”

“30...every man in the State may follow the will of God and, from a consciousness of duty and free from every obstacle, obey His commands. This, indeed, is true liberty, a liberty worthy of the sons of God, which nobly maintains the dignity of man and is stronger than all violence or wrong - a liberty which the Church has always desired and held most dear.”

“34... One thing, however, remains always true - that the liberty which is claimed for all to do all things is not, as We have often said, of itself desirable, inasmuch as it is contrary to reason that error and truth should have equal rights.”

Now let us remind ourselves of the relevant parts of *Dignitatis Humanae* (DH)⁷:

“2. This Vatican Council declares that the human person has a right to religious freedom. This freedom means that all men are to be immune from coercion on the part of individuals or of social groups and of any human power, in such wise that no one is to be forced to act in a manner contrary to his own beliefs, whether privately or publicly, whether alone or in association with others, within due limits. The council further declares that the right to religious freedom has its foundation in the very dignity of the human person as this dignity is known through the revealed word of God and by reason itself.”

⁷ The Second Vatican Council, *Dignitatis Humanae*, 7 December 1965, articles 2, 3 and 4.

“3... Nor, on the other hand, is he to be restrained from acting in accordance with his conscience, especially in matters religious. The reason is that the exercise of religion, of its very nature, consists before all else in those internal, voluntary and free acts whereby man sets the course of his life directly toward God. No merely human power can either command or prohibit acts of this kind. The social nature of man, however, itself requires that he should give external expression to his internal acts of religion: that he should share with others in matters religious; that he should profess his religion in community. Injury therefore is done to the human person and to the very order established by God for human life, if the free exercise of religion is denied in society, provided just public order is observed. There is a further consideration. The religious acts whereby men, in private and in public and out of a sense of personal conviction, direct their lives to God transcend by their very nature the order of terrestrial and temporal affairs. Government therefore ought indeed to take account of the religious life of the citizenry and show it favour, since the function of government is to make provision for the common welfare. However, it would clearly transgress the limits set to its power, were it to presume to command or inhibit acts that are religious.”

“4... Provided the just demands of public order are observed, religious communities rightfully claim freedom in order that they may govern themselves according to their own norms, honour the Supreme Being in public worship, assist their members in the practice of the religious life, strengthen them by instruction, and promote institutions in which they may join together for the purpose of ordering their own lives in accordance with their religious principles.”

It seems difficult to reconcile such teaching with the traditional Catholic position expressed by Pope Leo XIII in *Libertas Humana* when he teaches that: “Lying opinions should be diligently repressed by the public authority lest they insidiously work the ruins of the state”⁸ This is a general

⁸ Pope Leo XIII, *Libertas Humana*, *op. cit.*, para 23.

encouragement for Catholic states to use their God-given power to suppress falsehood, of course subject to the traditional yardstick of the common good.

DH2 seems out of harmony with this and with the other teachings of the popes.

Leo XIII in *Libertas Humana* also taught:

“...the tolerance of evil which is dictated by political prudence should be strictly confined to the limits which its justifying cause, the public welfare, requires.”⁹

Note, too, that Pope Leo nowhere qualifies this general encouragement by adding that this may only be done when a bishop or pope directs that the State may do so. It is a statement of a general authority or power inherent in states for their own defence which Pope Leo is exhorting them to use. He is not deputing them or directing them to do so, in particular circumstances, as if he were the temporal commander of the Faithful or King of the World, *rex mundi*.

But it is also difficult to see how Leo’s teaching is compatible with DH3 which, let us remember, states:

“...It would clearly transgress the limits set to its [the State’s] power were it to presume to direct or inhibit acts that are religious”.¹⁰

How are these genuinely compatible? Perhaps by distinguishing the type of “right” of which one here speaks. Perhaps, it must be a contingent or qualified right, not an absolute one, even though the right somehow inheres in the personhood of the beneficiary of the right.

Or is it a natural right such as, say, the right to life? Seemingly, if it inheres in the human person, then it would appear to be more than a merely contingent right. Therein lies the conundrum and the contradiction, real or apparent.

One might also ask, if this is a natural right, inherent in the human person, then what is the metaphysical basis of this right, the right not to be coerced, or interfered with, in the public exercise of one’s religion, however false, within due limits?

One cannot answer that question by reference to the exceptions, the “due

⁹ *Ibid.*, para 34.

¹⁰ The Second Vatican Council, *Dignitatis Humanae*, *op. cit.*, article 3.

limits” of DH2. That would be like trying to explain cricket to an Italian by explaining obscure aspects of the “leg before wicket” (LBW) rule. Your cricket-unfamiliar Italian will simply be baffled by such an explanation since it is so incomplete.

One needs, first, to address the meat of the question and explain what cricket is, and how it works, *in toto*.

Likewise, one cannot explain how the right to be free from coercion in religion is a right, in and of itself, by reference to the exceptions to such a right, real or alleged.

We understand, for example, the basis of the right to privacy, and the integrity of home, correspondence and family (that subsist, for example, in the European Convention on Human Rights) and that seems to provide a basis for not interfering with the practice of one’s false religion privately, however that still does not explain what is the metaphysical basis for the right to freedom from coercion in religion (rather than simply the right to private home life); nor, even less, the metaphysical basis for freedom from coercion against public, rather than purely private, expressions of false religion.

What can be the basis for a right to be free from being prevented from a public expression of a false religion such as, for example, a demonstration in the street of a Jihadist version of Islam, or a Zoroastrian celebration, or, say, of a belief in a monotheist moon God.

How is this a right inherent in the nature of the human person? The Council does not say.

It is not enough to say, for example “Ah, now the State can step in and suppress because it is contrary to the Natural Law to worship idols and worshipping the moon is idolatrous”.

Yes, that is no doubt correct, but it is not what DH teaches. It is, rather, to revert, again, to the exception to the right, without ever condescending to describe the right itself.

DH says that we have the right to religious freedom and to manifest our false religion, no matter how wrong we are, subject only to the “due limits” exceptions in DH2 and DH7.

I understand the exceptions. But how are we first to explain the “right”? We cannot do so merely by reference to the exceptions.

One cannot have exceptions, if one does not first establish the basis for our rule. This brings us back to explaining cricket to Italians by reference to the LBW rule, or, for that matter, baseball to a Greek, by reference to the 3 strikes rule. You first have to explain baseball as a game.

Does this right mean there is a natural right, inherent in the person, to one’s place of worship, community centre and public manifestations of erroneous religion (absent, of course, any infringement of the due limits criteria)?

Does this mean freedom for moon-worshippers so to manifest their faith? And Zoroastrians? Or Parsees? What about Buddhists, remembering they worship no personal God at all? Or monotheistic Indian shamans? Or polytheists?

If polytheists are ruled out, since there is reference in DH to the worship of the one God, then presumably Hindu places of worship may be closed down in a Catholic state under this rubric of DH?

And yet we might be obliged to ensure that monotheistic moon-worshippers and Indian shamans are protected as of natural right, since they worship "one God"? Where is the metaphysical consistency in this?

What about the Mormons? Or the Scientologists? Or the Jim Jones cult in Guyana? What about the Branch Davidian Sect on their compound at Waco in Texas?

Branch Davidians

This strikes me as illustrative of the problem.

The ideas contained in DH emanated from the endeavours of Rev John Courtney Murray SJ to infiltrate Americanist ideas of religious liberty into the Catholic Church. He clearly had in mind the First Amendment to the US Constitution, among other things. How did that work out with the Branch Davidians?

Not unlike DH, the US Constitution allows religious freedom within exceptions, chiefly so long as no civil law or right is infringed.

In the case of the Davidians there was initially no breach of US law, Federal or State. Likewise, there appears to have been, initially, no infringement of DH's due limits. Thus:

- No breach of the rights of citizens (children are, all agree, allowed to be taught the religion of their parents, in this case Davidianism);
- No breach of the *pax publica*;
- And, at least to start, no breach of public morality (unless one interprets this so widely that propagating a false religion is necessarily contrary to public morals which, of course, entirely defeats the whole point and purpose of DH).

Under DH, and the US Constitution, the Davidians must be left alone until they breached the due limits of the law - in this case US Federal or State law.

What happened?

Eventually, they broke the law (and doubtless infringed DH's due limits). Attorney-General, Janet Reno, then authorised the use of tanks and helicopter gunships, flame throwers, FBI and other agencies, police, troops and infantry and, by the end, something like 21 children were dead and many more adults¹¹. It was an appalling tragedy.

In a well-regulated, traditional Catholic state the result would have been safer, fairer and better, I suggest – and quicker.

Faced with a bizarre cult or sect teaching bizarre religious doctrines which, on any view, were bound to lead to breaches of the law and the peace sooner or later, the Catholic state would have sent the police in much earlier, closed the sect down, sent everyone safely back to their homes (or provided homes for them) and, if any one tried to resist with force, put them safely behind bars for a while until they cooled down.

No tanks, guns and rockets; no dead adults; and, above all, no dead children.

Which result would have been better? Need one even ask? Moreover, which result served liberty better? Need one ask that question either?

But both Fr Murray and DH say no, they had a “right to be tolerated” until the “due limits” exceptions were engaged.

But what does a “right to be tolerated” mean, given that “toleration”, by

¹¹ Gennaro Vito, Jeffrey Maahs, *Criminology: Theory, Research, and Policy*, Edition 3, revised, Jones & Bartlett, 2011, p.340. In all, 76 Branch Davidians died and nine survived the fire on April 19 (five others had been killed in the initial ATF raid and buried on the grounds, one had been killed by ATF after the raid, and 35 had left during the FBI standoff). The children's fatalities included: Chanel Andrade, 1, American, Jennifer Andrade, 19, American, Vanessa Henry, 19, British, Bobbie Lane Koresh, 2, American, Cyrus Koresh, 8, American, Star Koresh, 6, American, unborn infant of Nicole Gent Little, 24, Australian, Dayland Lord Gent, 3, Australian, Paiges Gent, 1, American, Sheila Martin, Jr., 15, American, Abigail Martinez, 11, American, Audrey Martinez, 13, American, Crystal Martinez, 3, American, Isaiah Martinez, 4, American, Joseph Martinez, 8, American, Melissa Morrison, 6, British, Mayanah Schneider, 2, American, Aisha Gyrfas Summers, 17, and her unborn infant, both Australian, Startle Summers, 1, American, Hollywood Sylvia, 1, American, Rachel Sylvia, 12, American, Chica Jones, 2, American, Michelle Jones Thibodeau, 18, American, Serenity Jones, 4, American, Little One Jones, 2, American (26 in total if one includes those under 20). How this can, on any reasonable criteria, be described as any sort of success for liberty, religious or otherwise, or the US Constitution, is a mystery.

definition, seems to mean to “put up with, despite something potentially offending in that which is tolerated”.

One cannot have a right to offend against the good. One might have a contingent right, arising out of the duty to tolerate for prudential reasons or risk of greater harm to the common good.

But DH2 calls it a right inherent in the person, not a merely contingent right. Can a right be merely contingent and yet inherent in the person, at one and the same time? It is difficult to see how.

Can one have a personal, natural right arising from toleration mandated by risk otherwise to the common good? If so, what is its metaphysical basis?

John Locke in his *Essay Concerning Toleration*¹² was unable satisfactorily to frame a proper metaphysical basis because he had to admit that he excluded Catholics and atheists from his universal toleration thus self-defeatingly compromising its very universality.

We not infrequently hear or see media programmes entitled something like “should we tolerate the intolerant?” the producer and presenter both missing the obvious self-contradiction in such a question. If we are intolerant to the intolerant then clearly we must stop tolerating ourselves, a manifest self-contradiction.

Rights, to have any legitimate purchase, must also have concomitant duties – duties in the same person or actor. Thus if there is a right to life, then there is a concomitant duty to live (i.e. not to commit suicide) and let live (i.e. not to commit murder).

One might have a duty to tolerate, if one has a right to tolerate, but it is hard to see how in any rational sense, if one has a right to be tolerated, the same actor can also have a “duty” to be tolerated.

It is easy to see that one has a right not to have one’s conscience forced into accepting a religion – but that does not represent a right merely to be tolerated, nor does it deny a right for parents to teach their children their faith.

They are much wider rights, one predicated upon the interior nature of faith assent, the other on the right of parents to educate their own children. Neither is merely a “right to be tolerated”.

Perhaps the expression “right inhering in the human person” is to be interpreted in a certain manner so as to allow contingent rights to come under

¹² John Locke, *An Essay Concerning Toleration*, 1667: “Papists are not to enjoy the benefit of toleration because where they have power they think themselves bound to deny it to others. For it is unreasonable that any should have a free liberty of their religion, who do not acknowledge it as a principle of theirs that no body ought to persecute or molest another because he dissents from him in religion”.

its rubric and this is to be distinguished from natural rights.

That would then allow the right to freedom from coercion to remain a contingent right, resulting from toleration by the authorities to avoid a greater risk to the common good.

But this, again, seems to be stretching meaning a little and it is very hard to see, given what the Relator, Bishop de Smet, expounded during the course of the Council, how that can be what the Fathers of Vatican II were voting for.

The difficulty lies, in part, with the concept of “rights-based law” the favourite tool of secular fundamentalists in getting their particular agenda onto the legislative books or into the law via judges. Why?

Because rights-based law tends to depend upon what the judge in any case thinks is the prevailing “right”.

For example, In the *Bideford Town Council* case¹³ in England, a judge of the Administrative Court of the Queen’s Bench Division of the English High Court, Mr Justice Ouseley, held that a centuries-old tradition of prayer was illegal.

He decided that it was not a matter of human rights but, nonetheless, using a line of precedents entirely based upon human rights law, re-interpreted s.112 of the Local Government Act 1972 to make it mean something entirely different from what everyone (including other judges) had always thought it meant – and all because one atheist objected to 1 minute of prayer at the start of a town council meeting. Such is the elasticity of so-called “rights-based” law.

Summarising the various analyses of DH

May I attempt to summarise the various approaches to DH, as I have heard them at this Colloquium today? I am merely summarising and so do not do full justice to each contribution:

Rev Prof Brian Harrison OS – DH is a clarification of the Church’s traditional doctrine, a true development, not infallibly taught but nonetheless magisterial of the 3rd class of teaching described by *Ad Tuendam Fidem* of Pope St John Paul II and the attached note and *Professio Fidei* of the Congregation for the Doctrine of the Faith (CDF). This is quite a high claim, I suggests.

Prof Roberto di Mattei – DH is not obviously or clearly compatible with Tradition;

¹³ *The Queen (on the application of the National Secular Society and Clive Bone) v Bideford Town Council* [2012] EWHC 175 (Admin), 10 Feb 2012, QB, per Ouseley J.

Dr John Lamont – reading DH in the light of *Pacem in Terris*, it is compatible with Tradition but now teaches more clearly that the Church does not have a right to coerce the baptised into the fulfilment of their baptismal promises;

Prof Thomas Pink – The State is an agent of the Church in enforcing matters of Faith but cannot be so in our secular times, therefore DH, seeking to appeal to the good will of modern secular fundamentalism (a dangerous enterprise at best), admits this can no longer be done, the body-soul relationship being ruptured, and so sets out minimum criteria for the Church's survival in our times.

Let me take Prof Thomas Pink's position first. I agree with his analysis of the minimalist tendency in DH. I agree with the body-soul analogy and that it is ancient and traditional. I agree that Church and Catholic State should be conjoined in a special and unique union. Indeed, I would say that the body-soul analogy fits well, also, with the marriage analogy – husband and wife – since they, too, represent to some extent the marriage of body and soul.

But I do not see anywhere in Pope Leo, or any other pope, or even in Francisco Suarez himself (who is much quoted by Tom Pink) anything resembling the claim that the State must act, in spiritual matters, only as the agent of the Church and has no competence whatever of its own in spiritual matters, save insofar as is compatible with the Natural Law.

Where does Pope Leo teach this? It seems tolerably clear that he doesn't, whether in *Immortale Dei* or at all. Indeed, in *Immortale Dei*, he seems to teach the very opposite: states have the right and duty to suppress heterodoxy, on their own authority, subject to the common good. Indeed, this is precisely the encyclical that caused me (and others) to change my view so long ago, when, before, I shared Tom Pink's view.

However, it is true that Suarez comes closer to saying this. He says this:

“Punishment of crimes only belongs to the civil magistrates insofar as those crimes are contrary to political ends, public peace and human justice; but coercion with respect to those deeds which are opposed to religion and to the salvation of the soul, is essentially a function of spiritual power, so that the authority to make use of temporal penalties for the purposes of such correction must have been allotted in particular to this spiritual power, whether the penalties are to be inflicted directly by the said power, or whether it avails itself of the ministry of its temporal arm that all things may be done decently, in order and

efficaciously.”¹⁴

Yet even this does not state Tom Pink’s thesis that the State is but agent of the Church and has no competence, as a perfect society, of its own, in matters spiritual, beyond the Natural Law.

Suarez says “in particular” and not much more. And spiritual crimes can indeed be “crimes contrary to political ends, public peace and human justice”.

Unsurprisingly, most kings and magistrates in Catholic states, and most popes, including Pope Leo XIII, thought that Catholic states did have such power.

Even Popes Innocent III and Boniface VIII, two champions of the papal power, would have been very surprised to learn that Catholic kings and emperors had no inherent power whatever to suppress heterodox sects in a Catholic state, however dangerous. Pope Innocent III wrote:

“No one, therefore, may suppose that we intend to disturb or diminish the jurisdiction or power of the illustrious king of the French just as he himself does not want to and should not impede our jurisdiction and power; as we are insufficient to discharge all our jurisdiction, why should we wish to usurp that of someone else? [...] For we do not intend to render justice in feudal matters, in which the jurisdiction belongs to him, unless something may be detracted from the common law by some special privilege or contrary custom, but we want to decide in the matter of sins, of which the censure undoubtedly pertains to us and we can and must exercise it against any one. In this, indeed, we do not lean on human constitutions, but much more on Divine law, because our power is not from man but from God: anyone who has a sound mind knows that it belongs to our office to draw away any Christian from any mortal sin and, if he despises the correction, to coerce him with ecclesiastical penalties.”¹⁵

¹⁴ Francisco Suarez SJ, *Defensio Fidei Catholicae*, 1608-9, Book 3, chapter 23, para 19.

¹⁵ Innocent III, *Sicut universitatis conditor*, 3 November 1198, in Sidney Z. Ehler and John B. Morrall (ed. and trans.), *Church and State Through the Centuries: A Collection of Historic Documents with Commentaries*, London: Burns and Oates, 1954, p. 73, since cited in Pater Edmund von Waldstein OCist, “Integralism and Gelasian Dyarchy”, private paper, Heiligenkreuz Abbey, Wienerwald, 29 February 2016.

Pope Boniface VIII wrote:

“We have been learned in the law for forty years, and we know very well that the powers established by God are two. How should or can anyone suppose that anything so foolish or stupid [as the contrary] is or has been in our head? We declare that we do not wish to usurp the jurisdiction of the king in any way... But the king cannot deny that he is subject to us *ratione peccati* ...”¹⁶

This is not to say that there are not times when kings and popes have the right and conscientious duty to act in accordance with the requirements of the Spiritual Arm. They certainly do, at times, and it is right that they should do so since the Spiritual Arm is superior to the Temporal, as the spirit is superior to the body, and the higher power ought, therefore, to be obeyed, provided its requirements are just.

And, at times, it is within the competence of the king or emperor to determine whether they be just, in precisely the same way that it is within the competence of all the Faithful to reject damaging demands of their priest or bishop or even of a misguided pope.

This is the essence of the “Two Swords” doctrine of Scripture, predicated upon Luke 22:21, when St Peter said to our Lord, “here are two swords” and our Lord replied “it is enough”.

The two swords should work in harmony, respecting each other’s sphere, the one temporal and other spiritual, but recognising that each has a portion of both within them.

To be sure, the Spiritual power is higher, but it is still a “spiritual”, not a “temporal” power.

Nevertheless, even the Spiritual Arm has some temporal power of its own, not confined merely to the governance of prince-bishoprics, like the Pontifical States.

I agree with almost everything else Tom Pink said in his robustly and efficaciously delivered paper, but not the view that the State is merely the agent of the Church in spiritual matters.

As Fr Brian Harrison so rightly observed of the body-soul analogy, the

¹⁶ Boniface VIII, *Licet haec verba*, 1302, translation in: R.W. Dyson (ed and trans), *Giles of Rome’s On Ecclesiastical Power: A Medieval Theory of World Government*, New York: Columbia University Press, 2004, p. xv-xvi, since cited in Pater Edmund von Waldstein OCist, “Integralism and Gelasian Dyarchy”, private paper, Heiligenkreuz Abbey, Wienerwald, 29 February 2016.

body consists not merely of the vegetative or animal parts but also of the brain and the mind. The mind can apprehend the spiritual good and yet still reject it – it is not vegetative or even animal. The conscience can be spurned. Thus the brain, part of the body, can exercise judgement of its own. So, too, can Catholic states in matters spiritual and of conscience.

Moreover, as Fr Brian also observed, if the State is merely the agent of the Church in spiritual matters then the Church rules all, even that which is not spiritual. The Church need only play the spiritual “card” for it to have everything ordered as it directs, even that which is not spiritual but temporal. This kind of clericalist theocracy is not the vision of Catholic government that the Church teaches.

Tom Pink’s analysis, I suggest, makes of the Pope, rex mundi and not rector mundi, king of the world, not simply spiritual director of the world.

This essentially fideist-clericalist view (as Prof di Mattei has described it) has some potentially serious, but unforeseen, consequences.

If the Pope is king of the (Catholic) world, or CEO of Catholic Church Inc., he becomes vulnerable to much political and juridical criticism as various agitators are beginning to argue in the USA.

Hence, in the USA, Terry Kohut (via his attorney, Jeff Andersen) filed the first sex-abuse lawsuit against the Vatican, naming Pope Benedict as a defendant, both predicating themselves on the very same false belief that the Pope is rex mundi Catholici and thus is responsible for the policing of priests, both spiritually and temporally, so as to prevent them from abusing children. Accordingly, they argue, he should be held vicariously responsible, like a political leader or the chairman or president of a corporation.¹⁷

¹⁷ *John V. Doe v Holy See*, US Court of Appeals (Ninth Circuit), Case nos 06-35563, 06-35587. The lawsuit was brought in federal court in Oregon; the plaintiff alleged, *inter alia*, “that the Archdiocese and the Order were vicariously liable for Ronan’s abuse of Doe, and that...the Holy See was vicariously liable for Ronan’s abuse of Doe and for the negligent actions of the Archdiocese, the Order, and the Chicago Bishop, and that the Holy See was itself negligent in its retention and supervision of Ronan and in failing to warn of his propensities”. The Holy See moved to dismiss the claims against it, invoking its immunity under the Foreign Sovereign Immunities Act (FSIA). When the District Court rejected that motion, the Defendant took an interlocutory appeal. A divided ninth circuit Court of Appeals panel partly affirmed, and partly overturned, the District Court, and in June 2010, the Supreme Court of the United States denied *certiorari*, sending the case back to the District Court for further proceedings. As to the Holy See’s vicarious liability for the acts of the Archdiocese, the Chicago Bishop, and the Order, the Appeals Court concluded that Doe had not alleged facts sufficient to overcome the

Those who adopt the *rex mundi* school of thinking about papal power are in danger of playing directly into the hands of those who wish to bring such law suits against the Supreme Pontiff, particularly a retired pope who no longer has Head of State immunity.¹⁸

presumption of separate juridical status for governmental instrumentalities, so the negligent acts of those entities could not be attributed to the Holy See for jurisdictional purposes. However, the court held that, because Doe had sufficiently alleged that Ronan was an employee of the Holy See acting within the "scope of his employment" under Oregon law, Ronan's acts could be attributed to the Holy See for jurisdictional purposes. They also re-affirmed that Ronan's acts came within the FSLA's tortious act exception, so that the Holy See is not immune from suit thereby. The case was only later dismissed because it was shown that the Holy See had, in fact, acted promptly once informed of the abuse, laicising Ronan within 3 weeks thereof. Nevertheless, the potential for the liability of the Holy See has now been established in US law, in this case.

¹⁸ In English law, religious ministers are not normally employees but only "office-holders" (see *President of the Methodist Conference v Preston* [2013] UKSC 29; [2013] 2 WLR 1350; [2013] 4 All ER 477, SC (Lord Hope DPSC, Lady Hale JSC, Lord Wilson JSC, Lord Sumption JSC, Lord Carnwath JSC) and so a diocese is not normally an employer vicariously liable for individual parish priests, unless there is an employment contract. Nevertheless, the English Court of Appeal, in 2012, seemed to find an exception, making a diocese liable for sexual abuse by individual clergy. See: *Maga (By his Litigation Friend the Official Solicitor) v Trustees of the Birmingham Archdiocese of the Roman Catholic Church* [2010] EWCA Civ 256; [2010] 1 WLR 1441, CA (Civ Div) (Lord Neuberger MR, Longmore LJ, Smith LJ). Significantly, the Archdiocese accepted that the parish priest should be treated as its employee for the purposes of this case, but tried to argue that this should not be taken as a general admission that a priest is, or is in the same position as, an employee of the Archdiocese. In *JGE v Trustees of the Portsmouth Roman Catholic Diocesan Trust* [2012] EWCA Civ 938; [2013] 2 WLR 958; [2012] 4 All ER 1152, CA (Civ Div) (Ward LJ, Tomlinson LJ, Davis LJ), the court held that the relationship between a Roman Catholic parish priest and a bishop was sufficiently close in character to that of employee and employer to make it just and fair to hold a diocese vicariously liable for the wrongful acts of one of its priests. Lord Justice Ward expressly said that the Roman Catholic Church looked like a business and operated like one. The Pope was in the head office; there were "regional offices" with appointed bishops; and the "local branches" were parishes with their appointed priests (para.77) and, further, that the role of the parish priest was wholly integrated into the organisational structure of the Church's enterprise. He

In fact, fortunately, the Pope is not king of the Catholic world. He is the spiritual director of the Catholic world. He is not CEO of Catholic Church Inc. Even the Emperor did not enjoy that role in the full political sense.

In his excellent paper on Jacques Maritain¹⁹, Tom Pink quotes Can. 2198 of the 1917 Code as saying that the State is “the Church’s right arm”. In fact, that is not actually what the canon states. It reads as follows:

Can 2198. Delictum quod unice laedit Ecclesiae legem,
natura sua, sola ecclesiastica auctoritas persequitur, requisito
interdum, ubi eadem auctoritas necessarium vel
opportunum iudicaverit, auxilio brachii saecularis;

I tested my Latinity against a powerful yardstick in the form of historian and classicist, Mr Henry Sire, who is in the audience today, and we agreed that this part of the canon means:

was part and parcel of the organisation, not only accessory to it. It was therefore akin to an employer-employee relationship. In *Catholic Child Welfare Society & Ors v (1) Various Claimants (2) Institute of the Brothers of the Christian Schools & Ors* [2012] UKSC 56, [2012] 3 WLR 1319; [2013] 1 All ER 670, SC (Lord Phillips JSC, Lady Hale JSC, Lord Kerr JSC, Lord Wilson JSC, Lord Carnwath JSC), the UK Supreme Court held that vicarious liability attached to the Institute of the Brothers of the Christian Schools, a religious order, in respect of sexual abuse perpetrated or allegedly perpetrated by brother teachers at a residential school for boys, even though the Institute had not managed the school. In *JL v (1) Michael George Bowen (2) Scout Association* (2015) CC (Manchester) (Judge Platts) unreported, an archbishop and the scout association were found to be vicariously liable for the actions of a priest and scout chaplain who had befriended a child and sexually abused him. As regards the Pope’s authority, which is moral only, the courts seem to have been somewhat misinformed. Canon law is not enforced by police or bailiffs (save indirectly where it coincides with civil law). The only sense in which the Pope has any kind of “real” power over the clergy is that he can withdraw their licence to preach, teach and act as clergy, but this, too, is a moral power which only has force because Catholics world-wide recognise it. The Pope cannot send a police force, or civil enforcement officer, to enforce his decisions, as a court or temporal government can. The only exception is the Pontifical States or Vatican City State but, in those cases, the Pope is acting as a temporal, not a spiritual, sovereign.

¹⁹ Thomas Pink, “Jacques Maritain and the Problem of Church and State”, *The Thomist*, 1 January 2015, pp.1-42.

“A crime which only offends the law of the Church, by its nature, is punished only by ecclesiastical authority, relying on the help of the secular arm, where the same authority [ecclesiastical] judges it necessary or opportune;”

Heterodoxy in a Catholic state doesn't “only offend the law of the Church” but also the law of the State and this canon certainly does not stop the State from protecting itself in the usual way by punishing delicts that are ecclesiastical but also contrary to the law of the state. Nothing in this canon prevents that, I suggest.

Dr John Lamont – I have probably covered in what I already said the position of Dr Lamont so will say no more thereon, given the time. Likewise, Prof di Mattei. I largely agree with both of them, as well.

Rev Fr Brian Harrison OS and Dom Basile Valuet OSB – This leaves the position of Fr Harrison and Dom Basile OSB. I have already raised the objections to the position that DH is in conformity with the Tradition.

Whether Fr Brian's distinctions hold depends upon accepting his primary thesis that there has been a non-contradictory, rational and consistent development of doctrine.

I have already highlighted the problems with this sanguine view but, if they can be overcome, then Fr Brian's thesis seems the more tenable of any that argues that DH is consistent with a hermeneutic of continuity. I say this particularly after he responded to a question (mine, as it happens) confirming his view that:

- Regarding the due limits criteria, these are not necessarily Magisterial and might be incomplete; and
- Criterion (a), namely the infringement of the rights of citizens and their just settlement, could encompass the right for Catholics not to be subject to heterodox proselytism in a Catholic state.

Many, however, would interpret DH rather differently and with some justification.

Many will, moreover, continue to argue that Fr Brian's proposition, P1, is, in fact, traditional teaching i.e.:

“P1 – It is sometimes just for said authority to prevent people from publicly acting in accord with their conscience in religious matters, even when such activity does not violate (a), (b) and (c) above [the due limits criteria of DH2 &

DH7].”

Fr Brian argues a strong pre-supposition that there will be continuity between what the Church said yesterday and what it says today but that goes without saying, if the Catholic faith is true. The real issue is what authority should properly be accorded to DH. Is it Magisterial or merely prudential?

If the latter, then there is no issue of continuity – it is merely a time-bound document that can be later abandoned.

If, on the other hand, it does not change the teaching, then there being no change, there remains no difficulty.

So argues Dr Chris Ferrara, of the American Catholic Lawyers’ Association, and he does have something of a point.

The difficulty arises when one argues that there is a change, and an issue of continuity, and the Declaration is not time-bound but timeless and authoritative.

Furthermore, it is not enough to rely upon the essentially self-serving statement of Bishop Emil de Smet that DH is in harmony with Tradition. Proof is needed beyond a mere self-serving assertion.

Conclusion

Let me conclude with a few other short points. There is no real authority for asserting that DH must be in conformity with Tradition. It could be just a prudential statement for our times, as Tom Pink suggests.

All (or almost all) agree that the Declaration is not infallibly taught. That being so, we ought to remember that those teachings which are not infallibly taught still thus have some potentiality for error.

Let us take care not to fall for the error of “creeping infallibility” and invest a declaration that is not infallibly taught with the authority of infallibility.

True, the *Professio Fidei* speaks of a 3rd category of teaching which is not infallibly taught but must be submitted to with “religious submission of mind and will” but implied therein is the exception “unless it not be in accord with previous infallibly taught or authoritative teaching, whether of the Ordinary or Extraordinary Magisterium.” Undoubtedly the yardstick of the common good as the test for tolerance has been taught diachronically by the Ordinary Magisterium time out of mind, investing it with considerable, and possibly infallibly taught, authority.

The idea of “new” or novel doctrine is simply un-Catholic and, anyway, expressly ruled out by *Lumen Gentium* 25 of Vatican II.

Previous General Councils, e.g. Constance, have had decrees removed; likewise pontifical legislation e.g. Pope Boniface VIII annulled all the

legislation of his predecessor Pope St Celestine V, except that which allowed Celestine to abdicate.

We must also ask why it is that we recognise that there can be just and even condign punishment for lesser offences e.g. jail for serious traffic offences, and thus no right to be free from coercion in respect thereof but, seemingly, there is a right to be free from coercion for much more serious offences such as the propagation of seriously anti-social and damaging falsehood.

Lastly, let us not take an entirely negative view of the possibilities for the modern world. Tom Pink suggested that the body-soul relationship of Church and State is no longer possible. I wonder if that is true everywhere. The Principality of Liechtenstein and the Grand Duchy of Luxemburg are still formally Catholic states with a body-soul relationship, albeit attenuated, between Church and State, thanks largely to the late previous rulers, HSH Prince Franz Joseph of Liechtenstein and HRH Grand Duke Jean of Luxemburg.

Let us also not forget that these two formally and officially Catholic countries are two of the richest countries in Europe, in terms of *per capita* capital and income, outstripping even Sweden and Switzerland, and these latter two countries are increasingly facing a major population shift as a result of immigration, in part permitted by a crisis of confidence as to their real identity and as to their Christian roots.

There may be a lesson there for us all as regards the proper view to be taken of the Conciliar Declaration, *Dignitatis Humanae* and of too wide a licence for the propagation of anti-social religions and belief-systems.

Does the Declaration *Dignitatis humanæ* contradict the previous magisterium?¹

Rev. Fr Dominique-Marie de Saint-Laumer FSVF

The Declaration *Dignitatis humanæ* is one of the texts that was most discussed both during the Second Vatican Council and afterwards. Many people, both in the 'progressivist' and the 'traditionalist' camps have considered it to constitute a break with Tradition.

For the progressivist camp, it has been a matter of satisfaction to think that the former doctrine has now been overturned. However, on this side of the debate there has often been little interest in studying the question in a systematic way, to see whether certain propositions are in contradiction with each other or not. After all, when one accepts historical relativism, one is not bothered by the idea that what was true in the past should not be true today: "Things have changed". On this view, there is no universal and unchanging truth which holds good in every age. It is thus not surprising that doctrine should evolve in accord with the times, so as to leave only a very few absolutely unchangeable doctrinal principles. In this way, a change of doctrine on religious freedom sets a precedent for other doctrinal changes, for example concerning artificial contraception.

On the traditionalist side, people have deplored an opposition between the new doctrine and the old one: for a new doctrine is necessarily erroneous if it is opposed to a doctrine which has been infallibly defined and therefore is absolutely true.

Something considerable is therefore at stake: does *Dignitatis humanæ*, in its authoritative teaching, contradict an earlier, infallible teaching of the Church, or does it not?

In the Fraternity of St Vincent Ferrer (founded by Rev. Fr Louis-Marie de Blignières in 1979 at Chémeré-le-Roi in France, and of which I am also a founding member), we maintained for several years that there had been a doctrinal rupture, but we later retracted this position as itself erroneous, and changed our position. We say now that in regard to the fundamental principle at issue, *Dignitatis humanæ* is compatible with the earlier, infallible doctrine (this does not exclude the possibility of criticising the text in regard to several secondary points, for example the explanations which it gives of the main principle, its analysis of the basis of the right to religious freedom, the account it gives of its own relation to earlier teaching etc.)

I shall first briefly sketch the history of the Fraternity of St Vincent

¹ Translated from French by Thomas Crean OP, and reviewed by the author.

Ferrer in regard to this question. After this I shall explain the key difficulty, and then set forth both our own interpretation and that of Rev. Bernard Lucien, both of which show the essential compatibility of the earlier and later magisterial teachings. Finally we shall consider some further reasons why *Dignitatis humanae* has caused difficulties.

Chémeré-le-Roi: historical overview

With the exception of a few individuals, such as Rev. Georges de Nantes, there was no clear and fundamental opposition to *Dignitatis humanae* immediately after the council. Archbishop Lefebvre himself signed the acts of the Council, including *Dignitatis humanae*.² It was only around 1975 that he began to protest publicly against this declaration and against the council as a whole.³

The thesis of a formal contradiction of *Dignitatis humanae* with the traditional doctrine, more precisely with that given by the encyclical *Quanta cura* of Blessed Pius IX, was set forth in 1976 by Michel Martin (a pseudonym for Georges Salet) in an article in the *Courrier de Rome*.⁴ He considered that the 'right to religious freedom' affirmed by *Dignitatis humanae* was identical to the 'freedom of conscience and worship' condemned by *Quanta cura*. I remember that I was convinced of the truth of this apparent demonstration of a contradiction. Father de Bliognières, Fr Guérard des Lauriers OP (who supported our community in its early days) and several other priests, including Rev. B. Lucien, shared this position.

These observations, well-founded as they appeared to us to be, led us not only to reject *Dignitatis humanae*, but also to analyse the state of the Church. For we held that *Dignitatis humanae*, if it was a document of an ecumenical council, would pertain to the universal and ordinary magisterium, and that its express teaching on a matter of faith or morals would come under the infallible magisterium. Thus the central teaching of *Dignitatis humanae* - the affirmation of a right to religious freedom based on the dignity of the human person as known by revelation and nature - could not be false without bringing into question the authority of the magisterium that upheld it. Fr Guérard des Lauriers therefore set forth a position concerning the situation

² Cf. *Sedes Sapientiae*, n°31, 1990-I, pp. 41-44; and n°35, 1991-I, pp. 33-45.

³ Jusqu'en 1975, Mgr Lefebvre se garde d'attaquer le concile et le pape' ['until 1975, Archbishop Lefebvre held back from criticising the council and the pope'] (Bernard Tissier de Mallerais, *Marcel Lefebvre*, éd. Clovis, Etampes, 2002, p. 523). Archbishop Lefebvre's book, *J'accuse le Concile*, appeared in September 1976.

⁴ Michel Martin, « Vatican II et les erreurs libérales », in *Courrier de Rome*, n°157, 15th May, 1976, pp. 2-24.

of the Church, known as the 'Cassiciacum thesis', to explain how this was possible. According to this, the authority of Pope Paul VI (who had promulgated *Dignitatis humanae*), subsisted materially (this thesis is thus distinct from sedevacantism), but did not subsist formally.⁵

This analysis led us to seek to persuade those in authority in the Church of the need to re-examine the teaching of *Dignitatis humanae* and to revoke it as erroneous. In 1980, therefore, we began a very extensive work on the question of religious freedom. Our aim was to produce a thorough demonstration of the incompatibility between *Dignitatis humanae* and the traditional doctrine, which would convince theologians and ecclesiastical authority. We sought to come into contact both with theologians who were aware of the question, meeting for example with theologians from Solesmes in 1981, and also with bishops. In 1983 we produced a study of the points in Vatican II and the post-conciliar period which seemed to us disputable, and we sent it to several hundred bishops.⁶ We also studied the discussions that took place during the Council, having acquired the *Acta Synodalia*, the last volume of which was published in 1978.

In 1987, Fr Brian Harrison, an Australian priest studying theology in Rome, sent to us several key pages from the dissertation which he was writing for the licentiate. This made a considerable impression on several of us, because it suggested to us the possibility of a reconciliation between *Dignitatis humanae* and the Church's tradition. We then spent several months examining his thesis in greater depth, to see if it could be substantiated, considering it in particular in the light of the *Acta Synodalia* and the research that we had done into *Quanta cura* (in late 1987 and early 1988 we were able to have access not only to the Vatican's secret archives, but also to those of the Congregation for the Doctrine of the Faith, thanks to the kind permission of Cardinal Ratzinger.)

In December 1987, we had become convinced that we had been mistaken on the key question of whether there was a contradiction between *Dignitatis humanae* and *Quanta cura*. We published a retraction, in the form of a four-page letter, and also a study entitled: 'Le droit à la liberté religieuse et la liberté de conscience'.⁷ We also helped to translate and publish Fr Harrison's licentiate dissertation, which appeared under the title: 'Le développement de

⁵ Cf. *Cahiers de Cassiciacum*, Association Saint-Herménégilde, Nice, n°1, May 1979; and supplement to n°2, November 1979.

⁶ *Lettre à quelques évêques sur la situation de la Sainte Eglise* and *Mémoire sur certaines erreurs actuelles, suivies d'une Annexe sur l'opposition entre le Concile Vatican II et l'Encyclique 'Quanta cura'*, Société Saint-Thomas-d'Aquin, Paris, January 1983.

⁷ In supplement to n°22 of *Sedes Sapientia*, Winter 1988 (December 1987).

la doctrine catholique sur la liberté religieuse'.⁸

Our study was seen by Cardinal Ratzinger, who spoke of it to Pope John Paul II. On 22nd February 1989, along with some other superiors of communities under the jurisdiction of the Pontifical Commission *Ecclēsia Dei*, the pope granted us a private audience. On that occasion he congratulated us and spoke of our study as 'first-rate' [*fameux*].

Our change of position prompted a variety of responses in the traditionalist world. Fr Basile Valuet, a monk of Le Barroux, was charged by his abbot, Dom Gérard Calvet, to study the question. He began an exhaustive study, which led to the defence and publication of his magisterial thesis on the subject. In regard to the essential point of whether or not there was a contradiction between the earlier and later teaching, he reached by a slightly different route a conclusion that was similar to our own.

Rev. Bernard Lucien was not convinced by our new position, and published a work of three hundred and fifty pages which argued in greater detail for the existence of a contradiction.⁹ However, a little later, at the end of December 1991, he found an interpretation of the texts which was somewhat different from ours, but which led him also to retract his previous position. This new position was set forth by him first in private correspondence, in March 1992, and then in two articles of our journal, *Sedes Sapientiae*.¹⁰ Despite being different from our own, his position appears to be compatible with it, and even to bring out more exactly the precise nature of the difference between *Dignitatis humanae* and *Quanta cura*. I shall return to this point.

The *Catechism of the Catholic Church (CCC)*, published in 1993, contains certain things in its teaching on religious freedom which show more clearly how this teaching is consistent with the earlier magisterium: for example, its insistence on the just limits of this freedom and on the common good, and its mention of Pius XI's encyclical *Quas primas*, on the social kingship of Christ.

Despite all this, the question of the right to religious freedom remains a difficult one, and the Fraternity of St Pius X in particular still treats this point as "one of the main errors of Vatican II". Hence the importance of clearing up the difficulties and of clearly showing what the essential teaching of the Council is, and how it is compatible with the traditional teaching. At stake is

⁸Société Saint Thomas d'Aquin – Dominique Martin Morin, October 1988; original edition: *The Development of Catholic Doctrine on Religious Liberty: a Precedent for Change in Regard to Contraception*, John XXIII Fellowship Cooperative, Australia, 1988.

⁹ Abbé Bernard Lucien, *Grégoire XVI, Pie IX et Vatican II, Etudes sur la liberté religieuse dans la doctrine catholique*, éd. Forts dans la Foi, Tours, 1990.

¹⁰ *Sedes Sapientiae*, nos. 96 and 97, June and September 2006.

the credibility of the Magisterium, which cannot contradict itself on essential matters.

Statement of the problem

The essential teaching of *Dignitatis humanae* is clearly contained in its second paragraph:

This Vatican Council declares that the human person has a right to religious freedom. This freedom means that all men are to be immune from coercion (*omnes homines debent immunes esse a coercitione*¹¹) on the part of individuals or of social groups and of any human power, in such wise that no one is to be forced to act in a manner contrary to his own beliefs, whether privately or publicly, whether alone or in association with others, within due limits.

The Council further declares that the right to religious freedom has its foundation in the very dignity of the human person as this dignity is known through the revealed word of God and by reason itself. This right of the human person to religious freedom is to be recognized in the constitutional law whereby society is governed and thus it is to become a civil right.¹²

Pope Pius IX's encyclical *Quanta cura* (8th December 1864), which certainly seems to fulfil the criteria for an infallible teaching of the Magisterium, condemned the following proposition: "Freedom of conscience and worship is a right that belongs to every man". Here is the complete text of the passage:

Against the doctrine of Scripture, of the Church, and of the holy Fathers, they do not hesitate to assert that (A) "that is the best condition of civil society, in which no duty is recognized, as attached to the civil power, of restraining by enacted penalties, offenders against the Catholic religion,

¹¹ We can note that the Latin text says "from coercion" whereas the French version has "de toute contrainte" ["from all coercion"]; cf. *DH*, n°2, in *Concile Œcuménique Vatican II*, translation of Editions du Centurion, Paris, 1967.

¹²

http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decl_19651207_dignitatis-humanae_en.html [footnote added by translator]

except so far as public peace may require." From which totally false idea of social government they do not fear to foster that erroneous opinion, most fatal in its effects on the Catholic Church and the salvation of souls, called by Our Predecessor, Gregory XVI, an 'insanity' (*Mirari Vos*, 15th August 1832), viz., that (B):

(a) "liberty of conscience and worship is each man's personal right,

(b) "which ought to be legally proclaimed and asserted in every rightly constituted society;

(c) "and that a right resides in the citizens to an absolute liberty, which should be restrained by no authority whether ecclesiastical or civil, whereby they may be able openly and publicly to manifest and declare any of their ideas whatever, either by word of mouth, by the press, or in any other way."

But, while they rashly affirm this, they do not think and consider that they are preaching "liberty of perdition" (St Augustine, letter 105).¹³

Pius IX thus condemns proposition A and proposition B, the latter comprising three clauses (a, b and c). He says that proposition B has already been condemned by Gregory XVI in *Mirari Vos* as "insanity". He is clearly indicating this passage of *Mirari Vos*:

This shameful font of indifferentism gives rise to that absurd and erroneous proposition, or rather that *insanity* [*seu potius deliramentum*], which claims that liberty of conscience must be maintained for everyone [*asserendam esse ac vindicandam cuilibet libertatem conscientiae*].¹⁴

Thus, on the one hand *Dignitatis humanae* states: "The human person has a right to religious freedom". On the other hand, *Quanta cura* condemns the following proposition: "Liberty of conscience and worship is each man's personal right".

Are these two propositions equivalent, so that there is a contradiction between *Dignitatis humanae* and *Quanta cura*, the one affirming what the other

¹³*Quanta cura*, 3; <http://www.papalencyclicals.net/Pius09/p9quanta.htm> [footnote added by translator]

¹⁴*Mirari Vos*, 14; <http://www.papalencyclicals.net/Greg16/g16mirar.htm#par14>. The translation on this web-site omits the clause, "or rather that insanity" [translator's note].

condemns? There is a contradiction if, but only if, the religious freedom declared to be a right by *Dignitatis humanae* is the same as the freedom of conscience and of worship in *Quanta cura*.

Our position

In our 1987 study, we distinguished first of all moral freedom and civil freedom.¹⁵ Moral freedom is the moral power of acting; the power to perform a certain action. Moral freedom can only exist in regard to a good act. Civil freedom is the power to be able to act, to perform a certain action, with the guarantee of not being hindered by the State or by a human authority in civil society. One may enjoy a civil freedom, that is, a power in regard to the State to perform certain actions, even if these actions are bad (one of course does not for this reason have the moral power to perform these bad actions.) Thus, Pius XII teaches that "in certain circumstances, [God] does not give to men any commandment, nor does He impose on them any duty, nor does He even give to them any right of preventing and repressing that which is false and erroneous".¹⁶ Therefore, in certain circumstances, the State has the duty not to prevent that which is false and erroneous; and this is justified in view of 'obtaining a greater good'.

We then established the following points:

"From reading *Dignitatis humanae* and the Council's *Acta Synodalia* (AS), it is clear that the phrase 'right to religious freedom' denotes a natural right to a civil freedom, and not a moral freedom." Moreover, *Dignitatis humanae* firmly asserts the duty of each man to seek the truth and to adhere to it (DH 1). Again, the right to religious freedom is described as a right to act "according to one's conscience".

On the other hand, when one reads *Quanta cura* and the other papal documents condemning liberalism in the 19th century, it is much less clear that 'freedom of conscience and worship' denotes *simply* the right to *civil* freedom of conscience and worship. In the context of the liberalism and rationalism of the 19th century, the expression 'freedom of conscience' can also have a moral sense: it was a claim to be free to think, believe and act as one wishes, without any moral obligation. The assertion of freedom of conscience condemned by Gregory XVI is described as flowing from indifferentism. Pius XI, in his encyclical *Non abbiamo* (29th June 1931), distinguished between 'freedom of consciences', which he supported, and 'freedom of conscience' (*liberta di coscienza*), which he described as "an ambiguous expression, which is too often used improperly to claim an

¹⁵Cf. *supra*, in supplement to *Sedes Sapientiae* n°22, December 1987.

¹⁶Pius XII, Discourse to Italian Catholic lawyers, 6th December 1953.

absolute independence for conscience, something which is absurd in regard to a soul created and redeemed by God”.

However, even if one supposes that ‘freedom of conscience and worship’ does signify simply the right to civil freedom in religious matters, and that it is this right as such which is condemned, one must then still note that the limits of this freedom are not the same in *Quanta cura* and in *Dignitatis humanae*.

Quanta cura condemns an unlimited freedom of propaganda, whereas *Dignitatis humanae* affirms a right to freedom “within just limits”, these limits being described as those necessary to preserve “a just public order”.

We therefore concluded:

In using the expressions ‘freedom of conscience’, ‘freedom of worship’ etc., the Popes have condemned:

1. *Moral freedom (internal and external)* to think and do what one wishes, i.e. an autonomy of conscience and action in regard to God, truth and goodness;

2. *An unlimited right to civil freedom*, or even an excessive right, which would not respect the just demands of the social order.

Vatican II, on the other hand, affirmed a right to civil freedom in religious affairs which is intrinsically *limited* by the just requirements of the social order.

The ‘right to religious freedom’ is therefore essentially different from the freedom of conscience condemned in the 19th century. There is thus no contradiction between *Dignitatis humanae* and *Quanta cura* on this point.

The position of Rev. B. Lucien

Rev. B. Lucien summarised his position in the following words:

In my opinion, the essential difference between the right affirmed by *Dignitatis humanae personæ* and that condemned by Gregory XVI and Pius IX consists in this:

Dignitatis humanae personæ affirms the existence of a natural right to a freedom to act (externally) in religious matters *according to one's conscience*,

The two aforementioned popes deny the existence of a natural right to act externally in religious matters *as one wishes*.

Now it is perfectly possible, and unfortunately rather common, for a man to act ‘as he wishes’ without acting

‘according to his conscience’. The sinner often acts against his conscience, even though in other cases he may act in accordance with a culpably erroneous conscience. It can even happen that a man acts without any judgement of conscience, having become hardened to any idea of good and evil.¹⁷

It follows that a right to act ‘as one wishes’ does not only differ formally from a right to act ‘according to one’s conscience’, but that it also, at least in certain conditions of society, would in practice imply a much greater freedom from constraint. There is therefore no contradiction between condemning the former and asserting the latter.¹⁸

Fr Lucien’s position rests on the classic Catholic doctrine concerning conscience as expressed by St Thomas Aquinas and John Paul II (*Veritatis Splendor*). He writes:

In every man, the judgement of conscience is performed by the practical reason which perceives first of all the general principles of morality. This knowledge of universal principles is accessible *per se* to every human mind. Likewise, because the divine revelation that reached its conclusion in Jesus Christ is accompanied by motives of credibility which are most certain and suited to the mind of every man, the *fact* of revelation is also objectively accessible to all.¹⁹ Men doubtless differ in their knowledge of these general principles of morality and religion, according to the differences in the societies in which they live, their education and other more personal factors. But these diverse conditions, which shape the way in which one attains a knowledge of general, universal principles, are themselves *observable by others*.

Therefore, at least in part and in certain cases, it is possible to make a prudent judgement – supposing that one has a good reason to do so – about whether another person is acting according to his conscience or not.

He adds: “Although this statement conflicts with modern subjectivism, it

¹⁷*Sedes Sapientiae*, n° 96, pp. 7-8.

¹⁸ *Ibid.*, pp. 9-10.

¹⁹Cf. Vatican I, *Dei Filius*, ch. 3, § 2, Dz. 3009.

forms a part of Christian realism, and in particular of the philosophical and theological doctrine of St Thomas, as well as of the teaching and practice of the Church.”²⁰

Fr Lucien's position allows one to do justice to the way in which the Church acted during the times of Christendom. When the whole of society was Christian, the marks of credibility of the truth of the Christian religion were sufficiently clear for everyone, so that whoever declared himself to be acting without regard to these general, objective moral truths, available to all, could be presumed not to be acting according to his conscience. “The Church, therefore, was able legitimately to presume that those who acted without regard to these truths (whether it was a question of heretics and other similar people, or on the contrary of infidels seeking to spread their errors in a Catholic nation), did not act according to their conscience.” “One can moreover judge that even in the ‘context of Christendom’, such a presumption was too systematic, or insufficiently nuanced. But that is another question, which pertains to prudence and not to doctrine simply as such.”

A comparison of these two positions

Our position put more emphasis on the ‘just limits’ of the right to religious freedom, in comparison to the unlimited freedom of conscience and worship condemned by the popes of the 19th century. But it also showed further how this unlimited freedom also implied the claim to moral liberty. For the freedom of conscience and worship was said to flow from an indifferentism and liberalism which freed the conscience of its obligation to follow the truth; it rested on the idea that man has a natural right to act ‘as he wishes’, and therefore that the State may not in any way prevent the citizen from acting according to his free will. *Dignitatis humanae*, on the other hand, states that the right to religious freedom is limited ‘by just limits’. We insisted on the fact that these just limits are set by the requirements of the common good, something which has been fully confirmed by the *Catechism of the Catholic Church*. But we did not sufficiently emphasise that the proper object of this right to religious freedom is immunity from coercion for acts performed in religious matters ‘according to one's conscience’. It is this which intrinsically limits this right, even though it is also of course limited by all the other requirements of the common good.

Let us summarise the difference between the two rights, that is, those which are at issue in *Dignitatis humanae* and in *Quanta cura*.

Both have to do with a right to immunity from coercion exercised by human authorities, in regard to religious acts. However, while *Quanta cura*

²⁰*Sedes Sapientiae*, n°9 6, p. 9, n. 14.

condemns a right that would hold good for all religious acts, simply as such and independent of any further considerations (one has the right to act as one wishes), *Dignitatis humanae* only ascribes a right to actions performed 'according to one's conscience'. *Quanta cura* condemns an excessive right, one which would be 'unlimited', in that it would hold good for any religious action, even one that was not in conformity with one's conscience (for it is only limited by the minor factor of 'public peace'). *Dignitatis humanae* only attributes a right to religious acts performed 'according to one's conscience', and which, of course, also observe the requirements of the common good.

The reasons why *Dignitatis humanae* appears problematic

Why has *Dignitatis humanae* appeared to be in opposition to traditional teaching? There are several factors.

Profession of religion by the State

Dignitatis humanae has appeared to be opposed to the profession of religion by the State, and to the doctrine of Christ's reign over society, as taught by Pius XI's encyclical *Quas primas*. This doctrine affirms that the State as such must recognise the truth of the Catholic religion, worship God in accordance with this religion, and help and support the Church in her work of salvation.

It is true that many of the bishops and theologians who helped to prepare the document, for example John Courtney Murray SJ, were unfavourable to confessional States, and desired that the State should be neutral in religious matters. Moreover, the whole of the first part of *Dignitatis humanae* (para. 2-8), which describes the "general doctrine of religious freedom" from the point of view of natural right, abstracts from revelation and thus from the truth of the Catholic religion, and so places itself in the context of a purely natural society. Nevertheless, the notion of a confessional State is not rejected, and is mentioned as a possibility (DH, 6). Furthermore, the "traditional Catholic doctrine on the moral duty of man and societies (*societatum*) in regard to the true religion and the one Church of Christ" is affirmed as still valid (DH, 1). The Church also asserts her own spiritual authority notwithstanding every other power:

In human society and in the face of every human power, the Church claims freedom for herself as a spiritual authority, established by Christ the Lord and charged by divine mandate to go out into the whole world and preach the Gospel to every creature (DH, 13).

The *Catechism of the Catholic Church*, in its interpretation of *Dignitatis humanae* (CCC 2105) recalls that “the duty of offering God genuine worship concerns man both individually and socially”, and makes a reference to the encyclicals *Immortale Dei* of Leo XIII and *Quas primas* of Pius XI.

What is the meaning of "according to one's conscience"?

The phrase ‘according to one's conscience’, in the relativist context of the modern world, can easily appear to mean that everyone may act as he wishes in religious matters - which would imply that the right asserted by *Dignitatis humanae* would fall under the condemnation of *Quanta cura*. After all, many people today believe that in religious matters, objective truth either does not exist or else cannot be reached. In order to grasp the meaning of *Dignitatis humanae* correctly, one must understand ‘conscience’ in the classic, realist sense of Catholic doctrine, that of St Thomas, which was put forward again by John Paul II in *Veritatis Splendor*. Conscience puts us into contact with objective truth. One may therefore suppose that the most important moral and religious principles are available to all people, in varying degrees in different societies, and one may therefore presume that someone who acts without taking these principles into account is not acting according to his conscience.

Every society, in fact, takes certain moral values to be self-evident and obligatory for all, so that whoever acts contrary to these values is not to be tolerated. For example, in our modern western societies, racism is considered as bad, and people are not at liberty to spread racist views. One may suppose that the totality of these values constitutes ‘public morality’, which is one of the three elements of the just public order, along with the safeguarding and reconciliation of the rights of all, and public peace in justice (DH 7). For example, in certain societies, the existence of God was considered so certain that the propagation of atheism was considered a crime. The same applies to polygamy and other practices contrary to moral truth, from the moment that these truths were sufficiently clear for the citizens as a whole. Anyone denying these truths would not have been considered as acting according to his conscience.

The manner of seeking the truth

Dignitatis humanae says this about the basis of the right to religious freedom:

It is in accordance with their dignity as persons - that is, beings endowed with reason and free will and therefore

privileged to bear personal responsibility - that all men should be at once impelled by nature and also bound by a moral obligation to seek the truth, especially religious truth. They are also bound to adhere to the truth, once it is known, and to order their whole lives in accord with the demands of truth. However, men cannot discharge these obligations in a manner in keeping with their own nature unless they enjoy immunity from external coercion as well as psychological freedom (DH 2).

Truth, however, is to be sought after in a manner proper to the dignity of the human person and his social nature. The inquiry is to be free, carried on with the aid of teaching or instruction, communication and dialogue, in the course of which men explain to one another the truth they have discovered, or think they have discovered, in order thus to assist one another in the quest for truth (DH 3).

This manner of seeking the truth is certainly very fine as an ideal. However, one may consider it to be somewhat lacking in realism, when one thinks of the actual possibilities of attaining religious truth in the majority of societies. This description may apply to an academic discussion between scholars at a conference, but it is rather remote from the way in which human beings in practice receive religious truth. Moreover, the phrase 'immunity from coercion' (the standard French translation has 'from all coercion', which is not in the original text, thus presenting it as an absolute right to immunity from coercion), is somewhat unrealistic. In every society, man undergoes coercion of many kinds, some greater and some lesser, ranging from physical persecution to psychological pressure, and these may direct him either toward what is good or toward what is bad. The consequences of original sin are such that evil must often be held in check, and there will often be a need for coercion in favour of a good which is threatened by bad influences, precisely in order to safeguard a just freedom.

The basis of the right

One may also make the following objection. At the end of section 2 of *Dignitatis humanae*, we read the following:

The right to religious freedom has its foundation not in the subjective disposition of the person, but in his very nature. In consequence, the right to this immunity continues to exist even in those who do not live up to their obligation of

seeking the truth and adhering to it, and the exercise of this right is not to be impeded, provided that just public order be observed.

It may seem that this passage contradicts the claim that the right in question is a right to act according to one's conscience, since we see here that the right applies also to those who do not follow their conscience; for conscience tells us to seek the truth and to adhere to it. In fact, however, one must understand it to mean that those persons who do not follow their conscience (in the internal forum), nevertheless retain the right to immunity from coercion in acting according to their conscience. They abuse this right if they make a bad use of it by not acting according to their conscience, but the fundamental right remains. This passage from the *Declaration* simply indicates that the right to religious freedom is based on the very nature of the person, and not on the uprightness of the conscience, something which is in any case generally difficult to determine.

Dignitatis humanae thus correctly bases the right to religious freedom not on the individual conscience, as if one had always a (positive) right to act according to one's conscience, even if this is in error, but on the nature of the person, who must be able to enjoy a certain immunity from coercion in seeking the truth, provided that he follows the dictates of his conscience and does not harm the common good.

A right to spread error is always harmful to the common good

Is not this right to religious freedom always contrary to the common good, since this latter is affected whenever falsehood or evil is spread?

Every evil is as such harmful to the common good, yet the repression of evil is not necessarily good in all cases, as we learn from the parable of the wheat and the tares (cf. Mt. 13:24-43; cf. also the discourse of Pius XII from 6th December 1953).

Every man is morally obliged to act according to his conscience. By preventing someone from acting according to his conscience, or *a fortiori* by obliging him to act against his conscience, one risks making him commit a sin, which would be good neither for him nor for the common good. On the other hand, the propagation of error is harmful to the common good. There are therefore both advantages and disadvantages in repressing error. *Dignitatis humanae* judged that it is better on the whole to grant freedom for actions performed according to conscience than to forbid them simply because they are objectively erroneous.

If one takes the opposite view and maintains that the simple fact that a given act is erroneous means that there is no right to perform it, then one

will be favouring a tendency toward totalitarianism. If the State has as such the right to repress every error, then one opens the way to the imposition of a single truth, the State truth, which will not necessarily be that of Catholic orthodoxy, since the State can be mistaken about the truth. Totalitarian States, for example Communist and Islamic ones, would be able to make use of the principle that there can be no freedom for error in order to deny Christians themselves all religious freedom.

Moreover, those who oppose *Dignitatis humanae* on the ground that there can be no freedom for error do, in general, allow a right to religious freedom in the sense of a right not to be forced to act against one's conscience, or not to be prevented from acting in accord with one's conscience in private, or the right of parents to raise their children according to their religious convictions. For these people, the difficulty comes from the right not to be prevented from acting in accord with one's conscience in public; yet if we are simply concerned with the abstract principle of whether there can be freedom for error, it makes no difference whether we speak of public or private error.

A conflict with an established teaching?

Dignitatis humanae asserts a universal right to religious liberty both in private and in public. However, until Vatican II, the standard teaching was that in a Catholic State, one should allow the practice of non-Catholic worship in private only, and that in principle one should forbid the public practice of non-Catholic worship, except where the common good required toleration. Several concordats agreed between Catholic States and the Holy See in the 19th and 20th centuries were based on this view. There thus seems to be an opposition between the earlier and the later teaching; the modifications made to certain concordats, for example in Spain, appear to suggest the same thing.

The question arises of whether this standard teaching, often expressed in the language of 'thesis' and 'hypothesis', is a teaching which is absolutely and universally valid, or whether it is a practical application of a deeper principle. We should note that it was never taught infallibly. It is possible to think that this teaching was one particular form of the more general principle that the State must procure the common good and therefore favour religious truth while yet respecting the rights of all. The view was taken that in an overwhelmingly Catholic society, the common good required that the exercise of non-Catholic religions be permitted only in private. This was a prudential judgement, which reconciled the protection of the common good and religious truth with the respect due to the consciences of those who did not adhere to the Catholic faith.

Dignitatis humanae, taking into account the situation of the world, and the

considerable changes that had taken place in the 20th century, judged that this position would no longer favour the common good. This was for several reasons: the great increase of relations between different States (globalisation) meant that it was scarcely possible any longer that one State should be isolated from others; the number of fully Catholic States in the modern world had become very small; on the other hand, there were many Communist and Islamic States which could make use of the Church's prohibition on non-Catholic worship in order to ban the Christian religion or all religion. *Dignitatis humanae* thus took the view that the truth of the Christian faith can no longer be considered as obvious for all in the modern world, and that one must therefore grant the freedom to act in accord with one's conscience, within the just limits that are in conformity with the objective moral order.

Difference between what is taught with authority and the common opinion

It is important to distinguish clearly between what is defined precisely by the magisterium, and the common opinion which may at a given moment be accepted by nearly everyone, yet without being an infallibly defined doctrine. In the 19th century, many people doubtless thought that there was no right to civil freedom for any error at all, even in regard to people who were acting in accord with their conscience. This position probably arose because people did not clearly distinguish between the right to act and the right to a civil freedom to act (that is, a right not to be prevented from acting); or perhaps because the two rights seemed necessarily connected.

However, the popes only made an infallible condemnation of "freedom of conscience and worship" when understood in the sense of a total freedom to act as one wishes.

In a similar way, many at Vatican II doubtless supposed that the State should be neutral, that the idea of a confessional State should be entirely given up, and that the right to religious freedom gave full freedom in the same sense to all religions. But the authoritative teaching is more limited than this.

Dignitatis humanae and the magisterium

An ecumenical council is infallible, not only when it proclaims dogmas in a solemn manner, but also when, with full authority, it teaches as revealed a certain doctrine of faith or morals. In such a case, it expresses the teaching

of the ‘ordinary, universal magisterium’ of the Church.²¹ In *Dignitatis humanae*, the existence of a ‘right to religious freedom’ is taught with authority, and this right is said to “have its foundation in the very dignity of the human person as this dignity is known through the revealed word of God and by reason itself”. It therefore seems to us that this affirmation rests on the infallible authority of the Church, since the Council appeals to the word of God, and thus to revelation. Nevertheless, one should note that it is the dignity of the human person – the basis of the right – and not the right itself which is said to be made known by the word of God. One can therefore discuss what exactly is being taught in an infallible way in this text.

Nevertheless, this affirmation of the council pertains at least to the authentic magisterium, which requires from the faithful a “religious submission of mind and will”.²² One may therefore not reject this teaching unless one is absolutely certain that it is entirely incompatible with the certainly infallible teaching of the Church. A simple probability, or difficulties in seeing the compatibility of the teachings, would not be enough.

On the other hand we must of course distinguish between the central teaching of *Dignitatis humanae* – that which is taught with full authority – and the considerations and explanations that accompany this teaching, and which could show a lack of precision or even contain some errors. A theologian who has studied the question in depth may therefore approach the explanations which the document gives of its own central teaching in a critical manner, since these considerations are not presented in the text as being normative.²³

Conclusion

It has to be acknowledged that the explanation that *Dignitatis humanae* gives of the right to religious freedom, and in particular of the basis of this right, shows at times a certain idealism or irenicism. It speaks in terms of an ideal, pure human nature, and of men who must make their choices while free from all coercion. In real life, there are many forms of coercion, and it is sometimes necessary to use force to counter the unjust forms of coercion by which human beings are oppressed. For example, what is one to do in regard to violent and expansionist religions which themselves do not admit

²¹ Cf. Abbé Bernard Lucien, *L’infaillibilité du Magistère ordinaire et universel de l’Eglise*, Nice, 1984.

²² *Lumen Gentium*, n°25. Cf. P. Augustin-Marie Aubry, *Obeïr ou assentir ? de la soumission religieuse au magistère simplement authentique*, DDB, collection Sed contra, October 2015.

²³ Cf. the remarks of Mgr. De Smedt, the relator, at Concile Vatican II: “It is obvious that the argumentation is not proposed with authority” (A. S., IV. VI. 735).

the principle of religious freedom? Should one allow them full freedom to act, in the name of the right to religious freedom, or should one rather limit the exercise of their right in the name of the common good, since this is threatened by the encroachments of a religion that does not respect certain fundamental rights of the human person? To us it seems obvious in this case that a correct interpretation of *Dignitatis humanae* in the light of Tradition would allow one to defend the common good while at the same time being respectful of persons, and so to use legitimate force against unjust violence in order to promote true freedom.

Vatican II's *Declaration on Religious Freedom* no doubt exhibits certain deficiencies both in its manner of expression and in its manner of argumentation. "But, as regards its central teaching. . . *Dignitatis humanae* does not contradict the earlier magisterium, and indeed is a homogeneous development of doctrine on the social order."²⁴ We uphold this conclusion as that which seems to us to be correct.

²⁴ "Mais, en son affirmation centrale (...) *Dignitatis humanae* ne contredit pas le magistère antérieur et présente même un développement homogène de la doctrine sur l'ordre social", *Nouvelles de la Société Saint Thomas d'Aquin*, Hiver 1988, supplément au n°22 de *Sedes Sapientiae*, p. 3.

An Augustinian Synthesis?

Dr Alan Fimister

The Colloquium on *Dignitatis Humanae* held in Norcia over All Saints 2015 presented all the main orthodox views on the document. By orthodox I mean that no one accepted that an authoritative and binding document of the Church's magisterium could overthrow the teaching of a previous document of the same or a higher authority. There was of course plenty of room for discussion as to the relative authority of the various texts in question. Broadly there were two approaches to the problem: the playing down of the extent or level of the authority of *Dignitatis Humanae*, or the construction of the text in such a way as to remove the apparent contradiction with the previous magisterium. Fr Brian Harrison, Fr Dominique De Saint-Laumer and Dom Basile were 'constructionists' while John Lamont and James Bogle were 'minimalists'. While neither man exuded approval for the Declaration, John Rao and Roberto de Mattei's approach was historical. Thomas Pink really stands alone with his, what might be called, 'gordian' solution. Consensus was tricky especially (as so often happens) as the time for discussion at the end was too short (*mea culpa*). Of course, the minimalist contention does not touch *per se* upon whether the document can be reconciled with the preceding magisterium only on whether it needs to be. It might be that it does not need to be and yet it can be. However, it would be fair to say that the minimalists were both unconvinced that it can be.

Although there were subtle differences between the readings of the three constructionists their approaches were compatible and in the case of the two Frenchmen very similar. One area in which Frs Basile and Dominique seemed to part company was the question of conscience. In section 3 of the Declaration it asserts "In all his activity a man is bound to follow his conscience in order that he may come to God, the end and purpose of life. It follows that he is not to be forced to act in a manner contrary to his conscience. Nor, on the other hand, is he to be restrained from acting in accordance with his conscience, especially in matters religious." This may be taken as an explanation of the earlier line "no one is to be forced to act in a manner contrary to his own beliefs" in the most authoritative sounding passage of the Declaration. The role of conscience is crucial because, while the Declaration maintains that immunity from coercion persists even for those whose err in their beliefs, it makes no mention of those who

deliberately act contrary to their beliefs. A formal heretic *ex hypothesi* acts contrary to his conscience not merely on the basis of an erroneous conscience. Thus the punishment of formal heretics by the temporal power in former times would seem not to fall under the censure of the Declaration (whether by accident or design).

A similar question arises in regard to the meaning of the term 'religion'. Section 4 of the Declaration states:

Provided the just demands of public order are observed, religious communities rightfully claim freedom in order that they may govern themselves according to their own norms, honour the Supreme Being in public worship, assist their members in the practice of the religious life, strengthen them by instruction, and promote institutions in which they may join together for the purpose of ordering their own lives in accordance with their religious principles.

It would seem from this passage that 'religion' only extends to monotheism. While the ability to diagnose formal heresy is beyond the power of the state and thus the scenario arising from the construction of the phrase "in accordance with his conscience" arises only in the context of a Catholic state recognising the jurisdiction of the Church, the ability to recognise idolatry and to proscribe it belongs to reason alone. The constructionists have on their side, therefore, the claim that the Declaration when read correctly allows for the punishment of formal heresy (as identified by the ecclesiastical tribunal) in a Catholic state and of idolatry in any state. All it does not permit is the forcible conversion of the un-baptised to Catholicism or the proscription of erring monotheism among them. Neither of these prohibitions are novelties.

John Lamont, on the other hand, might well deny that the latter is no novelty. In this regard the October 598 letter of St Gregory the Great to Fantinus, Administrator of Palermo in which St Gregory Dialogos asserts that the removal from Jews of their places of worship is "contrary to justice and equity" assumed a particular importance. John Lamont also alleges that the weight of patristic authority is behind an inherent right on the part of the state to suppress religious error. This claim brings him up against the gordian position of Thomas Pink that the Declaration refers only to the abstract competence of the state *qua* state and so does not touch upon the powers of the state as instrument of the Church. Pink's case for this is very strong both in terms of the discussions and statements surrounding the drafting of the

text and the fact that Paul VI and a significant proportion of the council fathers were Maritainians and did indeed demonstrably deny such competence to the state *qua* state. The problem posed for this interpretation by Lamont is that it would seem that the fathers do indeed attribute such competence to the civil power and so the gordian solution merely exchanges one error for another.

It seems to me that this objection to Pink is easily overcome by reference to St Augustine's doctrine in *De Civitate Dei*. It is part of the essence of a true polity that it worships the one true God in the manner which He has appointed. Every state is thus obliged to discover the true religion and embrace it corporately. As it happens the true religion is Catholicism and part of the revelation upon which Catholicism is founded is the reservation of judgement in religious matters to the spiritual power. The state does indeed have of its own nature competence in religious matters but the only true polity without qualification is the City of God, the Catholic Church.¹ It is through adherence to the Catholic Church that temporal polities receive their perfection as human societies.² As Pink often emphasises, Leo XIII teaches that the proper relationship between Church and state is that of soul and body. It is the nature of the body to be united to the soul. Without the soul there is no human body.³ Thus it is part of the essence of the state to coerce in religious matters but in this order of providence it is also part of the essence of the state to exist within the Catholic Church; a civil power that is not united to the Church thus lacks *de facto* this right that belongs in the abstract to the state. As St Augustine says "there is no justice save in the commonwealth whose founder and ruler is Christ" and "kingdoms without justice are but criminal gangs".⁴

¹ St Augustine, *De Civitate Dei*, XIX:21.

² St Thomas Aquinas, *De Regno*, 107-111.

³ Leo XIII, *Sapientiae Christianae* (1890) "But what applies to individual men applies equally to society - domestic alike and civil. Nature did not form society in order that man should seek in it his last end, but in order that in it and through it he should find suitable aids whereby to attain to his own perfection. If, then, a political government strives after external advantages only, and the achievement of a cultured and prosperous life; if, in administering public affairs, it is wont to put God aside, and show no solicitude for the upholding of moral law, it deflects woefully from its right course and from the injunctions of nature; nor should it be accounted as a society or a community of men, but only as the deceitful imitation or appearance of a society." Leo XIII also pointedly endorses the central thesis of *De Civitate Dei* in *Immortale Dei* (1885) §2 and at length in *Humanum Genus* (1884) §2.

⁴ St Augustine, *De Civitate Dei*, II:21.

The error of the Maritainians lies not their analysis of the competence of the state in abstraction from the Church but in their contention that the realisation of this separation in reality could be legitimate or desirable.⁵ This contention is not made in the Declaration however much its authors may have assumed it. For the body when separated from the soul does not become some other sort of body it perishes and decomposes.⁶ There are other living bodies than human ones but the human body cannot turn into them directly. It must first be slain and then devoured. Thus the states of Christendom had to be overthrown by revolution in order to be transformed into the bestial *latrocinia* of secular modernity.⁷

With a healthy dose of St Augustine there was therefore, it seems to me at least, a virtual if not an actual consensus underneath the great diversity of views expressed at the colloquium. Whether the participants would agree or not is another question entirely.

⁵ J. Maritain, *Integral Humanism: Temporal and Spiritual Problems of a New Christendom* (Scribner, 1968) 71.

⁶ St Thomas Aquinas, *Summa Theologiae*, IIIa, 50, 5.

⁷ This concept is exemplified in Daniel 7 where the 'saints of the most high' are 'one like a son of man' and the pagan empires are described as beasts. The Babylonian empire after the conversion of Nebuchadnezzar is described as "like a lioness, and had the wings of an eagle: I beheld till her wings were plucked off, and she was lifted up from the earth, and stood upon her feet as a man, and the heart of a man was given to her." The wings one presumes represent the pagan state's pretensions to divinity and the semi-hominisation of the lioness the conversion of the ruler without that of the polity itself.