Dignitatis Humanae: continuity after Leo XIII

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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 specifically religious ends,

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[1] *Dignitatis Humanae* §3

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:

> 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.

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[2] *Immortale Dei*, §6

[3] *Immortale Dei*, §6

[4] Vatican II *Acta Synodalia* 3.8 pp462-3

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 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

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[5] *Dignitatis Humanae* §2 (my emphasis)

[6] *Dignitatis Humanae* §7

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:

> 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 postconciliar 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]

And Valuet sums up:

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[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), p520

> 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 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

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[10] *Le Droit à la Liberté Religieuse dans la Tradition de l'Église*, p521

[11] 1917 *Code of Canon Law*, Canon 2198.

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 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 outside the civil order 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* -

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[12] *Decrees of the Ecumenical Councils*, ed. Tanner and Alberigo, vol. 2, p795.

[13] Lucien Choupin, *Valeur des Décisions Doctrinales et Disciplinaires du Saint-Siège* (Paris: Beauchesne 1913), p270 (my emphases)

[14] *Valeur des Décisions Doctrinales et Disciplinaires du Saint-Siège,* p526

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 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 is another authority - the Church - that can coerce for specifically religious ends; and the pre-conciliar magisterium must have been calling on the state

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[15] In 'Catholic teaching on religion and the state', (*New Blackfriars*, March 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 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

to coerce for religious ends, not on its own authority in the civil order, 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:

> 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

[16] *Immortale Dei*, §13

> 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 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 away 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]

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[17] *Immortale Dei*, §14

[18] Suarez, *Defensio Fidei Catholicae adversus Anglicanae Sectae Errores,* book 3, chapter 23 §19 in *Opera Omnia*, volume 24, pp320-21

[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*

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 intellectual 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:

> …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

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in Rebus Temporalibus, adversus Gulielmum Barclay, translated in *On Temporal and Spiritual Authority: Robert Bellarmine,* ed. Stefania Turtino (Indianapolis: Liberty Fund, 2012).

[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) pp636-7 (my emphases)

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 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 humans 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

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[21] Bellarmine *Tractatus*, p266.

[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 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', pp1042, 1045, 1048, *Nova et Vetera*, English Edition, vol. 9, no. 4 (2011): 1029-54). Whether you believe the teaching or not, it was clearly teaching about the content of divine revelation – about a matter of divinely revealed law.

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*.

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 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 relationes

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 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

[24] Jacques Maritain, *Man and the State* (Washington: Catholic University of America Press, 1998), chapter 6 'Church and state', pp62-3

> 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 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

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[25] Vatican II *Acta Synodalia* 3.8, p464

[26] Vatican II *Acta Synodalia* 3.8, p464

[27] Vatican II *Acta Synodalia* 3.8, p464

[28] Vatican II *Acta Synodalia* 4.1 p193 (my emphasis)

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

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29 Vatican II, *Acta Synodalia* 4.1 p196

30 Vatican II, *Acta Synodalia* 4.1 p185 (my emphases)

31 Vatican II *Acta Synodalia* 4.5 p99 (my emphases)

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 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 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, p733). 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]

> 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]

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[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), p396.

[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

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*.

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

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and spontaneous to nations and to states...' *Vatican II: La Liberté Religieuse*, eds J. Hamer and Y. Congar, (Paris: Cerf, 1967) p99.

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 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 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 not license the reinterpretation. Conservatives were as fully members of the Council as their progressive brothers, and changes to documents

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[35] See Schema 2 of April 1964, Vatican II, *Acta Synodalia*, 3.2 pp317-27. 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.

[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

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 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,

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[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

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 which 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

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

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 which 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 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 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 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

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[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', p152

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 humans, 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]

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[42] Suarez *De Legibus* book 4, chapter 3, §1, in *Opera Omnia*, volume 5, p334

[43] Robert Bellarmine, *Tractatus*, p318

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 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

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[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, p686.

The condemned proposition in favour of toleration is taken from the preface to Erasmus *In Evangelium Matthei 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, Tractatuum,* ed. Societas Goerresiana, in volume 5, ed. S. Ehses, (Freiburg im Breisgau: Herder 1911), pp838-995; and Hubert Jedin, *Geschichte des Konzils von Trient*, volume 2, (Freiburg im Breisgau: Herder 1957), pp316-332.

[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, pp281-2; Choupin, *Valeur des Décisions Doctrinales et Disciplinaires du Saint-Siège*, (Paris 1913) p265; 'Peines ecclésiastiques: légitimité', *Dictionnaire de Théologie Catholique*, vol 12 (Paris 1933) pp635-6; Ottaviani, *Institutiones Iuris Publici*

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 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]

Ecclesiastici, (Rome 1935) volume 1, §170; Merkelbach, *Summa Theologiae Moralis*, (Paris 1938) volume 1, §740

[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) p110

[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) pp522-3.

[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 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

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 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

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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 Lefebvrism 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.

[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)

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 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 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:

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[51] *Immortale Dei* §1

[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.

> …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 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

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[53] Pius IX, *Quanta Cura* §4

[54] Leo XIII, *Tametsi futura* §8

with the civil *potestas* of the state:

> 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 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.

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

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 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 – a authority that is religiously coercive, but that is supernatural

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[56] *Vatican II: La Liberté Religieuse*, eds J. Hamer and Y. Congar, (Paris: Cerf, 1967) p99

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 uncomprehendingly 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.