

## What is the Catholic doctrine of religious liberty?<sup>1</sup>

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### Part I: Religious liberty at Trent and Vatican II

#### *1. From a primacy of jurisdiction to the dignity of the person*

In 1965 the Second Vatican Council is commonly taken to have asserted, in the declaration *Dignitatis humanae*, a universal moral right, based on the dignity of the human person, to a complete freedom from coercion in respect of religious belief; and a further right to freedom from coercion in the public practice of religion, this right being subject only to the just limits of public order. Is the decree so understood a consistent development of earlier Catholic teaching on religious liberty; and is this common or conventional understanding of the declaration a correct reading of it?

There has been a controversy about the declaration ever since its passing. The debate has focussed on the public practice of religion, and on the consistency of Vatican II's teaching with that of the nineteenth century popes, such as Pius IX and Leo XIII. Those termed conservatives, such as most recently Cardinal Dulles,<sup>2</sup> claim a

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<sup>2</sup> See Avery Dulles's widely praised '*Dignitatis Humanae* and the development of Catholic doctrine' in *Catholicism and Religious Freedom: Contemporary Reflections on Vatican II's*

consistent development: though the assertion of an actual right not to be coerced from the public practice of non-Catholic religions is admitted to be new, this assertion is presented as entirely consistent with and a legitimate development of earlier teaching. Whereas liberals and traditionalists regard the teaching of 1965 as inconsistent with the earlier papal teaching, which seems to have required that Catholic states restrict the public practice of false religion.

Why all this concentration on the issue of the coercion of public religious practice as opposed to the coercion of belief; and why concentrate on the relation of *Dignitatis humanae* to nothing much earlier than nineteenth century papal teaching? The answer commonly given is that prior to the French Revolution there was little formal magisterial teaching directly on religious liberty; while post-Revolutionary papal teaching seems mainly concerned with restrictions on the public practice of non-Catholic religions, and not with the coercion of belief.<sup>3</sup>

Nevertheless, there was a long-standing Catholic theological consensus on religious liberty and coercion that preceded the nineteenth century papacy, and which was as much concerned with the coercion of religious belief as with that of public religious practice. This consensus was systematized after Trent by writers such as Robert Bellarmine<sup>4</sup> and Francisco Suarez<sup>5</sup> from the earlier medieval views of Aquinas<sup>6</sup> and others; and it must be a mistake for modern discussion of religious liberty to neglect it. For this medieval and counter-reformation view was endorsed and maintained for centuries at the highest levels of the Church, and informed the work of leading canonists until the twentieth century. Not only that, but, as we shall see, central parts of the view were asserted by the Conciliar magisterium, at Trent. This view of religious liberty, especially the interpretation of it given by Bellarmine and Suarez, is referred to as a touchstone of orthodox teaching on religious liberty by pillars of nineteenth century orthodoxy such as Cardinal Manning, Bishop Ketteler of Mainz and the leading Roman canonist Cardinal Tarquini.<sup>7</sup>

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*Declaration on Religious Liberty*, ed. K. Grasso and R. Hunt, (Lanham, Maryland: Rowman and Littlefield 2006), 43-67.

<sup>3</sup> This is true of the post-restoration nineteenth century papacy. But the late *ancien regime* papacy's immediate reaction to the French revolution was importantly concerned with the coercion of belief - see Pius VI's *Quod aliquantum* of 1791, discussed below.

<sup>4</sup> See especially Robert Bellarmine's treatise *De laicis* in his *De controversiis christianae fidei, adversus huius temporis haereticos* (Ingolstadt 1599)

<sup>5</sup> See especially, Francisco Suarez's treatise *De fide*, posthumously published in 1621, expanded from lectures on the supernatural virtues given at the Roman College in the 1580s, in volume 12 of his *Opera omnia* (Paris: Vives 1856-70) 8-594. See also his *Defensio fidei catholicae adversus anglicanae sectae errores*, published in 1613, comprising volume 24 of his *Opera omnia*.

<sup>6</sup> See especially Aquinas, *Summa Theologiae* 2a2ae question 10, article 8, *Utrum infideles compellendi sint ad fidem?*

<sup>7</sup> See Henry Edward Manning *The Vatican Decrees in their bearing on Civil Allegiance* (London 1875) discussed below; Camillo Tarquini *Iuris Ecclesiastici Publici Institutiones*

So it is of great interest and importance to determine the relation of this medieval and counter-reformation view both to the official teaching and theology of the nineteenth century and to the teaching of *Dignitatis humanae*. Taking the period from Trent to the present, has Catholic theology and teaching on religious liberty, though perhaps developing, remained at least consistent; or has there been actual inconsistency and so discontinuity, and if so at what level is the discontinuity to be found?

Catholic reflexion on a specifically religious liberty emerges from a broader concern with liberty itself. And it is very important that there has been one distinctive and consistent element to this Catholic teaching and theological reflexion on liberty in general. This is the doctrine that humans possess a metaphysical freedom - a free will that gives them some right not to be coerced. What does seem to change, and profoundly, at least at the level of non-magisterial theological discussion, is the view taken of what this right not to be coerced amounts to, and how it is generated by our metaphysical freedom. I shall argue that theological opinion within the Church has tended to move from a view of this question that is explicitly jurisdiction-centred towards a view that is, at least in rhetorical tendency, person-centred. And to the extent that this move has occurred, it does not seem to involve any consistent development. For the two intellectual models are profoundly opposed. There is no consistent development that would take us from a jurisdiction-centred model of liberty to a person-centred one.

For medieval and counter-reformation thinkers, the right of a person not to be coerced in matters of religion is variable, and depends on what kind of juridical authority is behind the coercion, and also on whether the person falls under that authority's jurisdiction. Whereas on the person-centred view the right not to be coerced is uniform in relation to all kinds of authority, being set directly, without any intervening juridical considerations, by the metaphysical freedom and dignity of the human person. In particular, liberty of belief is taken to be inviolable as for medieval and counter-reformation thinkers it was certainly not.

The person-centred view of religious liberty is surely the view of today's secular liberalism. And it has to be admitted that Catholic theology and even magisterial teaching has tended over time to shift in its expression towards the person-centred view - and certainly away from any very explicit endorsement of the pre-modern jurisdiction-centred view. This is a significant shift - but it arguably begins well before Vatican II. The theology or teaching of Cardinal Manning, of Bishop Ketteler or of Leo XIII is already beginning to express itself in terms that are naturally read as embodying key elements of the model of religious liberty presented in the common or conventional understanding of *Dignitatis humanae*. It looks then as though the post-conciliar debate has been far too narrow in its focus. The real issue may not be the alleged clash between the nineteenth century popes and Vatican II, but rather the relation of the modern church to the church of the middle ages and counter-reformation, with the nineteenth century that modern traditionalists are prone to

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(Rome, 1862 - 16th edition, Rome 1894), where, for example, on pp69-70 Tarquini teaches by appeal to Bellarmine that the fact of their baptism is sufficient to leave heretics subject to the coercive authority of the Church; and Wilhelm Emmanuel Freiherr von Ketteler, Bishop of Mainz, *Religionsfreiheit und die Katholische Kirche* in his *Freiheit, Autorität und Kirche*, (Mainz 1867), 132-71.

canonise being a way-station well on the way to modernity. While this discussion cannot resolve the post-conciliar debate, it does at least seek to widen it, putting nineteenth century magisterial teaching and theology in a broader historical context.

The jurisdiction-centred view may well prove immediately unattractive to many modern Catholics. In the restrictions on individual religious liberty that it licenses, it actually goes very far beyond the state restriction on the public practice of non-Catholic religions that traditionalists may still want to endorse. It cannot be said that any significant group within the modern church, even at the traditionalist end, would readily express or endorse the jurisdiction-centred view in its pre-modern form.<sup>8</sup> But we still need to understand the content of the jurisdiction-centred view on its own terms, as well as the unchallenged position this view once held, for a very long time, among the bishops and theologians of the Catholic Church. In particular, it is of the first importance that the jurisdiction-centred view in its original medieval and counter-reformation form not be watered down and confused with the far less stringent presentations of the question of religious liberty that date from the nineteenth century. For only when this is done will the full depth of the problem of doctrinal continuity in this area be understood, and a final solution to the problem be worked out.

There is one reason in particular why the jurisdiction-centred view has to be clearly identified and understood. Many in the modern Church may be reluctant to express or even clearly acknowledge the jurisdiction-centred view; indeed we shall later see plentiful evidence of a widespread culture of denial even about the Church's past espousal of the view, a culture of denial that includes very eminent traditionalists and conservatives alike. But nevertheless the jurisdiction-centred view may not only be a central feature of the Church's past; it may still be binding on modern Catholics. For if Vatican II appears, at least on a conventional understanding of *Dignitatis humanae*, to endorse the person-centred view, it will become evident that the Council of Trent clearly endorses the jurisdiction-centred view. Moreover the (apparently) competing Conciliar teachings are not evenly balanced in their authority. The teaching of Vatican II is that of a pastoral declaration that eschews any direct claim to its teaching being a dogmatic exposition of revelation. While the teaching of Trent seems to be *de fide* teaching of a dogmatic council on a matter of divine revelation - and in a field, on the obligations of the baptized, where Vatican II's declaration actually subordinates its own teaching to that of previous Catholic tradition.

This means that the force and interpretation of *Dignitatis humanae* is thrown open. The conventional understanding of *Dignitatis humanae* may be quite wrong. When integrated into the rest of the Church's teaching, to which the declaration itself refers and to which it expresses total fidelity, *Dignitatis humanae* may be very far from the doctrinal canonisation of the modern person-centred view of religious liberty that it is commonly taken to be. Indeed the availability of that person-centred view as an option for Catholic orthodoxy is left in doubt. The dogmatic teaching of the Catholic Church may well not allow for the existence of an absolute right of the person not to

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<sup>8</sup> For the clear rejection of a central element of the pre-modern view even by the Catholic traditionalism of today, see observations by Michael Davies and by Bishop Fellay of the SSPX cited below in footnote 32.

be coerced in religious belief or practice - a right that is supposed to apply unqualifiedly and equally to all, being determined, as the person-centred view supposes, immediately and directly by their human dignity.

## *2. Freedom of will and liberty of religion*

At all times Catholic views of religious liberty have taken as basic the reality, defended by the Council of Trent, of human free will as a power giving us control over how we decide and act, and over what, at the behest of our own decision, we religiously believe.<sup>9</sup> The act of faith in Christ that begins our justification, though the work of divine grace, must in particular also be an exercise of our metaphysical freedom - of our power to determine for ourselves what we believe.

What then of religious liberty? Given our metaphysical freedom, can religion legitimately be coerced? A classic statement of the jurisdiction-centred view is given by Suarez, whose account, in fundamentals, is really a development of and commentary on the earlier teaching of Aquinas.

For Suarez, baptism constitutes entry into the jurisdiction of the Church. Such a change of jurisdiction requires a metaphysically free act of commitment both to Christian practice and to Christian belief - whether, in the case of adult baptism, an act of the person baptized or, in the case of children, an act performed on their behalf by their godparents - and this act ought not to be coerced. But once baptism has occurred then, given that the person baptized is subject to the jurisdiction of the Church, they have no right to leave. For, as Aquinas had taught earlier, the Church has a juridical right to hold those subject to her to their baptismal commitment, and to do so, when necessary and practicable, through coercion or compulsion:

Others in truth are infidels who at some time received and professed the faith: as have heretics and apostates. And these are to be compelled, even physically [corporaliter], to fulfil what they promised and to hold what once they received. Aquinas *Summa Theologiae* 2a2ae q10, a8, resp.

Aquinas's conception of the coercive enforcement of a commitment or obligation is entirely representative of the Catholic tradition.<sup>10</sup> That is, an obligation is enforced coercively insofar as it is accompanied by the threat of penalties for its breach, with the intention that fear or dislike of the penalties motivate into conformity those who might otherwise have disregarded the obligation. The penalties are being threatened with the intention of pressuring into conformity those who might not otherwise be inclined to conform. The penalties may be physical or corporeal if their penal and dislikeable nature involves the threatened loss of some temporal or earthly good.

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<sup>9</sup> See especially the *Council of Trent*, Session VI, canon 5 of the decree on justification of 13 January, 1547: "If anyone says that, after the sin of Adam, human free will was lost and blotted out, or that its existence is purely nominal, a name without a substance, indeed a fiction introduced into the church by Satan: let him be anathema." *Decrees of the Ecumenical Councils* volume II, ed. Norman Tanner and Giuseppe Alberigo (Georgetown: Georgetown University Press, 1990) 679

<sup>10</sup> For a lucid discussion see Aquinas, *Summa Theologiae* 1a2ae q95, a. 1, resp.

In Suarez's view, as in Aquinas's, coercive pressure can be applied not just to direct external religious practice, but also to constrain inner belief. That is, the Church can properly use the threat of penalties and punishments to influence, over time, not only what people externally do, but what they believe. This may seem remarkable to us. For nowadays, since the Enlightenment and in great part due to the work of writers such as Hobbes and Locke, we incline to think that religious belief is not only sacrosanct *de iure*, but anyway impossible for authorities to coerce *de facto*. Hence the issue of religious liberty is now seen almost entirely as an issue about public cult and practice.

But this view of what it is *de facto* possible for authorities to coerce may well be naive. For it is difficult to maintain a religious conviction without in some way expressing it; and the coercion of external action, and centrally that of speech and expression, through threats of penalties, especially when the pressure is pervasive and relentless, may often constitute over time a very effective coercion of inner belief. In the early modern period decades-long state coercion did change once believing Protestant populations into Catholic, and vice versa. Not only could the passing on of beliefs to future generations be discouraged. Individuals could be pressured and weaned into abandoning their own beliefs over time, as the psychological cost to them of maintaining, in the face of much surrounding contrary opinion and propaganda, a perforce almost wholly unexpressed inner allegiance began to mount: witness the highly effective state strangulation in the early modern period of an initially widespread English Catholic recusancy. Certainly, Suarez and other Catholic thinkers of his day supposed it very possible, at least over time, for authorities to coerce belief as well as practice. Moreover, in Suarez's view authorities could coerce people without actually removing their freedom - their basic and continuing control over their belief and action.

The act of faith is indeed for Suarez a metaphysically free act - an act of the intellect commanded by a free will. But acts can be coerced, while still remaining metaphysically free or subject to the agent's power of control. Suppose it is only the threat of punishment aimed at discouraging lawbreaking that motivates someone to conform to a law. Their act counts then as coerced, since the act is one they would initially have preferred not to have to do; it is performed by them only because they have been subjected to a serious threat. But the act may still be free; it can still have remained up to the agent whether to risk the punishment and break the law or to avoid the punishment and conform. The law may have coerced them - but only as a punitive influence, not as a necessitating determinant robbing them of all control. So acts can be free, but still coerced; and acts of faith or willed or voluntary belief-formation are not seen as any exception. Moreover, not only is, over time at least, the coercion of people's belief possible; in Suarez's view, such coercion might under certain conditions be perfectly justified - as in the case of errant baptized Christians, the heretics and apostates:

The major premiss of this argument may be proved, first of all, from the example of heretics, on whom the Church imposes the faith. Suarez *De fide* disputation 18, section 3 para3

Suarez goes on to argue that the use of punitive coercion to motivate the act of faith in heretics is perfectly consistent with the metaphysical freedom required for faith.

Otherwise laws and punishments could never be used to direct metaphysically free action - which they can:

And further we say *free* is to be understood in two ways, meaning either free from the natural necessity (*necessitate naturali*) which is to be found in a naturally acting cause, or free from moral necessity (*necessitate morali*), that is from some obligation to act. The first kind of necessity is inconsistent with the act of faith...but in truth penal coercion [the threat of punishment] does not impose this kind of necessity, as is self-evident, and so is not inconsistent with the freedom required by faith; on the contrary, it aids that act, by leading the person to believe freely; and though at the beginning such coercion may appear in some way to diminish the indifference involved in freedom, nonetheless it leaves the act still strictly free, and it is less bad to believe through such coercion than not to believe at all. And then the pressure usually gives understanding, so that now the person believes with a perfect freedom. And if sometimes conversions are only simulated, that is accidental and because of human evil, and is put up with to avoid greater evils. Whereas in the second way of understanding freedom, faith is not free, especially not in the baptized, who in this differ from the non-baptized. Even in the latter faith is not altogether free, as they are obliged by divine precept to receive the faith; but this is only an obligation in respect of God. But in truth the baptized are under an obligation both to God and the Church by reason of baptism, and therefore can specifically be compelled by the Church to remain in the faith or to return to it. Suarez, *De fide* disputation 20, section 3, para 17<sup>11</sup>

So if entry into the faith by non-Christians cannot rightly be coerced, that is not simply because of the metaphysical freedom of the act of faith. Indeed, in Suarez's view, in one respect the opposite is true. The metaphysical freedom of the act of faith is actually part of what makes coercion of the act of faith licit in those cases where such coercion is justified. For penal coercion, when legitimate, involves the threat of just punishments - of penalties which, if applied, would be applied deservedly. And penalties can only be inflicted deservedly on those who are genuinely in control of and so responsible for whether they act in ways that would incur the penalties. Metaphysical freedom is not a simple block to the licit coercion of belief for Suarez, but part of its very basis.

It is not the metaphysical freedom of the act of faith alone that, for Suarez, blocks its coercion. The obstacle is jurisdictional. Coercion into the faith, to be legitimate, requires that the coercing power possess the appropriate jurisdiction over the coerced, a jurisdiction involving obligations of fidelity to the coercing power, and authority on the part of the power to enforce those obligations. Only the baptized have moral obligations of fidelity to the Church as well as to God - moral obligations which the Church is then entitled to enforce. So while coercion into the faith of the unbaptized might be perfectly possible and consistent with their metaphysical freedom, and indeed might prove to their eternal benefit, it would lack warrant. Without baptism the Church lacks the moral right to coerce belief.

Notice from the paragraph of Suarez just quoted that the obligations of the baptized are very clearly in respect of belief and not just in respect of external action. Moreover these obligations in respect of belief in particular are to the Church as well

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<sup>11</sup> For more brief assertion to the same effect, see Bellarmine *De laicis*, chapter 22 526-7, where too the metaphysical freedom of belief is held to be consistent with its legitimate subjection, among the baptized, to punitive coercion.

as to God, and the Church has a right to compel their fulfilment. Suarez is attributing to the Church a coercive jurisdiction over the belief as well as the external action of the baptized. True, the jurisdiction of the Church is only engaged when one of the baptized has in some way expressed their infidelity, such as through the assertion of some heresy. For until then the heresy is unknowable to other humans, and so not judiciable by the courts of the Church.<sup>12</sup> But once expressed, the offence is specifically in respect of belief, as a failure to meet an obligation to faith, and coercive punishment is to be applied by the Church to pressure the offender into right belief - the faith to which the person is obligated through their baptism.

Great emphasis is put on the Church's right to impose penalties that are temporal as well as spiritual. Not only can the Church punish spiritually, by excluding the baptized from the sacraments, but she has the right to fine, exile, imprison, and ultimately execute, all of which punishments the Church of the middle ages and counter-reformation actually imposes. Why the need for temporal penalties? Without them, it is argued, the Church would not be able effectively to coerce the baptized into meeting their obligations to her. Heretics, in particular, would only laugh at the purely spiritual penalties of the Church - these penalties, viewed through their heresy, being taken by them as of no account.<sup>13</sup> Fundamental then is the right and authority of the Church to use effective means of coercion to hold the baptized to their obligations. Now coercion, to be effective, must involve penalties that even the potentially recalcitrant, those whom the threat of punishment principally addresses, will dislike and be motivated to avoid. So if the Church has the authority to coerce at all, she must be able to use temporal penalties as well as spiritual. Nor are those born into heresy, such as those brought up as Protestants, exempt from this coercive jurisdiction. For where they too have been validly baptized, they too are subject through that baptism to the coercive jurisdiction of the Church. In the absence of proper instruction such people are merely material heretics, not formally heretical, because they are not freely and wilfully responsible for their errors. They ought initially to be excused punishment for their erroneous beliefs until they have received sufficient notice of the truth. But that is no bar to their being instructed; and once they have been given clear instruction in the true nature of Christ's Church, continued refusal to believe the Catholic faith will leave them too counting as wilful and obstinate heretics, by now freely and fully responsible for their rejection of the faith to which their baptism commits them, and liable through their baptism to just punishment to compel them into that faith.<sup>14</sup>

The existence of this coercive jurisdiction on the part of the Church is clearly fundamental to justifying the punitive repression of heresy. For no mere earthly state - a kind of authority whose coercive jurisdiction over its subjects is based just on the natural law, and not on any commitments made through baptism - can possibly have from natural law the authority to coerce anyone into belief in any supernatural revelation.

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<sup>12</sup> On this point see Suarez *De fide*, disputation 21, section 2, paragraph 4.

<sup>13</sup> See Suarez *De fide*, disputation 20, section 3, para 16.

<sup>14</sup> See Suarez *De fide*, disputation 19, section 5, para 1.



As Suarez argues:

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, so that the authority to make use of temporal penalties for the purposes of such correction must have been allotted in particular to this spiritual power, whether the penalties are to be inflicted directly by the said power, or whether it avails itself of the ministry of its temporal arm that all things may be done decently, in order and efficaciously. *Defensio* Book 3, chapter 23, para 19

A Christian state might rightly aid the Church in such coercion of the baptized, but only through a duty on the part of Christian rulers, themselves subject to the jurisdiction of the Church through their baptism, to aid her in her spiritual ends. The authority to coerce into faith must, however, attach to the Church, not to the state.

So it is important to show that the Church does have the authority to coerce the baptized, and through temporal as well spiritual penalties - and to show this is possible not just on the basis of past historical practice and tradition, but also on the basis of scripture. For in the view of Suarez whether the Church has this authority is an issue that falls firmly within the field of divine revelation, as part of revealed teaching both on baptism and on the obligations to the Church that baptism brings. One important passage appealed to in this connexion is from Acts, where, appealing to the authority of Augustine<sup>15</sup>, Ambrose and Gregory the Great, Suarez interprets the deaths of Ananias and Saphira as a punishment inflicted on them by St Peter - a just penalty imposed by the apostolic possessor of a coercive jurisdiction over the baptized:

And finally, lest this power [to use temporal means of coercion] be completely hidden at the beginning of the Church, since the Apostles could not then exercise it in the ordinary way because of the numbers and strength of the unbelievers, some miraculous signs were given of this power: such a sign was made through Peter in Acts 5, when at his command Ananias and Saphira died, about which Ambrose says (sermon 19), "While he punishes one, he corrects others, for he

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<sup>15</sup> Suarez refers to Augustine's anti-Donatist *Contra epistolam Parmeniani* (the reference to apostolic punishment of Ananias and Saphira is in book 3.3). Augustine explicitly refers in relation to the suppression of Donatism to a coercive power specifically of the Church over the baptized. See for example epistle 185 *de correctione Donatistarum*, especially 185.11 where Augustine speaks of a just and corrective prosecution of the wicked by the Church and 185.23 'Cur ergo non cogeret Ecclesia perditos filios ut redirent, si perditii filii coegerunt alios ut perirent.'

For an argument that Augustine conceived of the Church as the true coercive authority in relation to the baptized, and saw the Roman state's involvement in such coercion as no more than a fulfillment by baptized Christians of their duty to support the coercive authority of the Church, see R.A. Markus *Saeculum: History and Society in the Theology of St Augustine* (Cambridge: Cambridge University Press, 1970). According to Markus, in his dealings with imperial officials and in his writings in defence of religious coercion Augustine considered Christian rulers and officials primarily as baptized members of the Church; their role as state officers was secondary to that: see *Saeculum* 148.

wanted punishment to touch one and fear to touch the others." Suarez *De fide*, disputation 20, section 3, para 21.<sup>16</sup>

Other passages are cited by Suarez to establish the apostolic punitive authority not only of St Peter but also of St Paul, as in 1 Corinthians 5 where St Paul decrees that for the good of his salvation a member of the Church at Corinth guilty of incest be 'handed over to Satan for the destruction of the flesh' (that is, as Suarez understands St Paul's decree, subjected to a temporal punishment).<sup>17</sup>

So the baptized, and only the baptized, can be coerced into Catholic fidelity; and the authority to coerce them attaches, in Suarez's view, not to the state, but to the Church. However, there is still juridical warrant, in Suarez's view, for some coercion of unbaptized non-Christians.

The first form of coercion is under the authority of the Church herself. But this is not a coercion of belief. Since the unbaptized are outside the Church's jurisdiction, she has no authority in their case to coerce belief or force any conversion to the faith. Rather the coercion is to protect her jurisdiction and the supernatural end it serves, the Church's mission, from interference from without.

Arguably any sovereign authority with the right to enforce its jurisdiction on those subject to it, must also have the right to use force to prevent interference from without. Not only can states enforce laws on their own subjects; they can equally resist incursions on their authority from those who are not their subjects. Those not subject to a sovereign authority do not themselves have any general obligation to the authority to follow its directions. But the very legitimacy of that authority means that

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<sup>16</sup> Suarez repeats the interpretation in *Defensio fidei catholicae* Book 3, chapter 23, para 12-13, appealing not only to Gregory, but also to the authority of Bede. Suarez there concludes: 'According, then, to this Patristic interpretation of the said text, we find that ecclesiastical correction and punishment consist not in spiritual censure alone, but also, on occasion, in corporeal afflictions, so that the pastors of the Church may resort to temporal punishment for the sake of spiritual welfare.'

Notice that Suarez's view of St Peter's role in the deaths of Ananias and Saphira was not universal in the Catholic tradition. It had been challenged long before his time, not because of the interpretation's involvement of ecclesial authority in the infliction of a temporal penalty – canonical temporal penalties were not themselves a problem – but because of the specific infliction of the penalty of death. How could *death* be inflicted on the authority of and at the hand of a bishop, a minister of the New Testament? Aquinas, driven by concern on this point, in *Summa theologiae* 2a2ae q64, a. 4, resp, had mentioned the interpretation later assumed by Suarez, only to deny it, and claim that it was God rather than Peter who inflicted the penalty. It is immensely significant that despite the fame and immense weight of Aquinas as an authority in the counter-reformation Jesuit order, and despite the far from obscure location of Aquinas's discussion of this passage, Suarez no longer regards Aquinas's view as even worth mention. Priority is now given to an interpretation, claims to the patristic antiquity of which Suarez repeats and emphasizes, that locates firmly in scripture itself the right of ecclesial authority to enforce obligations on the baptized through not just any temporal penalty, but specifically through death; the only possible earthly bearer of any ultimate authority to enforce baptismal obligations by death being the only true bearer of jurisdiction over the baptized – the Church, not the state.

<sup>17</sup> As we shall later see, similar appeal to 1 Corinthians 5 has been made by the post-Vatican II papal magisterium.

they are not normally morally at liberty to intrude on its jurisdiction either, and the authority generally has the right to prevent that interference. The coercive measures used by the authority concerned, if really necessary and if employing proportionate means, need not breach the rights of those coerced.

As for the state, so also, according to Suarez, for the Church. The Church can forcibly prevent those outside her jurisdiction from interfering with her mission, or with the rights that her mission serves. The unbaptized may not be forcibly converted; but their religious activities may be restricted so as to limit their impact on the lives of Christians.

Baptism is still fundamental to the Church's use of such coercion. First because baptism and baptismal obligations constitute the very jurisdiction being protected; but also because baptism provides the Church's coercive power. For only the baptized have any obligation to the Church to help protect her jurisdiction and mission, when so directed. And among the baptized with a duty to provide such protection, on the traditional understanding, have been baptized state rulers. For Suarez, the coercive authority behind these restrictions is that of the Church, in the service of the Church's mission - the supernatural end that is the Church's peculiar concern - defending that mission against incursion from without. He distinguishes *direct* coercion to enforce the Church's jurisdiction on those subject to it, from *indirect* coercion, exercised to protect that jurisdiction and its mission and the rights served by that mission from interference from without.<sup>18</sup> To establish the Church's authority to use indirect coercion on the unbaptized, Suarez appeals to scripture: to the Acts of the Apostles chapter 13, and the temporary blinding, at the word of St Paul, of the non-Christian magician Elymas, who had been attempting to dissuade the Roman proconsul, Sergius Paulus, from accepting the faith. Suarez understands this blinding as St Paul, through his apostolic authority and with divine assistance, using legitimate force to defend the Church's mission against intrusion from without.<sup>19</sup>

Protection of the Church's jurisdiction and mission is seen by Suarez to involve two elements in particular - defending the Church's God-given mission to preach the gospel to all nations; and protecting those already baptized from exposure to religious error and attacks upon the faith. Christian rulers might be asked to prevent non-Christian rulers from impeding Christian missions; and they might be asked to restrict

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<sup>18</sup> For this see Suarez *De fide* disputation 18 *De mediis quibus ad convertendos vel coercendos infideles non apostatas uti licet*:

...that direct coercion be applied, two things are needed. One is that it be applied with power of jurisdiction [over the person coerced]; the other, that it be applied to bring someone into the faith. Coercion is indirect when it is not done with that intention, but in one's own defence, or in punishment of another's violence or crime; for which reason, the coercion can be applied without having one's own power of jurisdiction [over the person coerced]. *De fide* Disputation 18, introduction p436

<sup>19</sup> Suarez also argues in this connexion that the Church's authority to apply indirect coercion is a consequence of her directly coercive jurisdiction over the baptized and the mission which that jurisdiction serves:

...once jurisdiction is granted, all things must be granted that are morally necessary to its exercise, since otherwise the grant would be undermined and empty. *De fide* Disputation 18, section 1, §4. p438

non-Christian public worship or activity in their own lands in order to protect the faith of their own subjects.

Thus consider something that there was once much of - bans on places of non-Christian worship, such as synagogues, being located anywhere near churches, and severe restrictions on their number, or on the erection of new such places. These restrictions may be immediately imposed through state law. But the authority behind them, according to Suarez, is not that of the state and does not come from what bases state authority - natural law. For just as natural law gives the state no right to enforce belief in revelation on the baptized, so too it gives the state no right to move legally against a form of worship simply because it is not Christian.<sup>20</sup> A non-Christian religion such as Judaism or Islam might deny revealed truth. But for all that the religion might still be strictly consistent with the natural law, which, available to reason prior to any revelation, does not itself forbid religions other than Christianity. In which case such the religion's places of worship have to be permitted by the state, at least as far as the state's own authority is concerned. Any restrictions on such non-Christian worship are based instead on the authority of the Church, directing baptized rulers of the state to enforce those restrictions on the Church's behalf. And their function is not to forbid non-Christian public worship altogether - that would be tantamount to forced conversion of the unbaptized, which is beyond the Church's authority - but to reduce its impact and thereby to protect the integrity of Christian life.<sup>21</sup> The restrictions served to protect the Church's mission - to limit scandal to the faith and reduce the exposure of Christians to non-Christian religious life and influence.

Suarez also allows for a further form of religious coercion of some among the unbaptized - but this time of their belief, and on the authority of the state. By virtue of their subjection to the natural law and to state authority grounded in that natural law, the unbaptized may be coerced by the state into that form of religion dictated, independently of any revelation, by reason and the natural law. For the natural law teaches as a truth available to reason the existence of the one God, a God whom not only Christians but Jews and Moslems also worship, and a moral duty to love and worship that one God. Monotheism is thus that form of religion dictated by natural law, and so is to be enforced where practicable by any state on all those subject to its jurisdiction, if necessary through coercion. Any state has the authority under natural law to enforce monotheism on its subjects, be the state Christian or not.

So not only is atheism or a-religion contrary to reason and natural law, but so too is religion that involves polytheism or idolatry. Since polytheism is deeply irrational, natural law requires, in Suarez's view, the coercive suppression, if at all possible, by

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<sup>20</sup> The reason is that these [non-Christian] rites are not intrinsically bad in terms of natural law; so the temporal power of a ruler does not extend in itself to forbidding them; for no reason for forbidding the rites can be given other than their being against the faith; but this reason does not suffice for those who are not subject to the spiritual jurisdiction of the Church. *De fide*, Disputation 18, section 4, §10, p451.

<sup>21</sup> Regarding Jewish rites and places of worship, Suarez says:

It is to be added that the Church has permitted these rites with certain qualifications and limitations. The first and general is that the rites not be exercised with any scandal to the Christian faithful. *De fide* Disputation 18, section 4, §11 p452.

any state within its borders, not only of polytheistic practice, but also of polytheistic belief:

The confirmation of our argument is that the purpose of [state] power is to maintain the state in peace and justice, which cannot be done unless the state is also induced to live virtuously; but men cannot live according to moral and natural virtue, without true religion and the worship of the one God; therefore, natural power and the jurisdiction of a human state are extended to include this purpose...even a pagan—that is, a non-Christian—king, if he has a knowledge of the true God, may coerce his own subjects into believing that truth (*cogere subditos ad idem credendum*), either by their own reasoning if they are educated, or by putting human faith in more learned men, if they are ignorant; and consequently, he may compel those same subjects to cease from the worship of idols and from similar superstitions contrary to natural reason. The proof of this inference is that there resides in such a king all power which, according to natural reason, is suitable for a human state. Suarez *de Fide* disputation 18, section 4 para 7-8

It is clear, then, that once a person has entered, through baptism, under the jurisdiction of the Church, their metaphysical freedom may still permit the coercion into Catholic fidelity of their religious belief as well as their public practice. Similarly, the metaphysical freedom of a Hindu or Shinto polytheist does not protect them from coercion, by the state, into some form of monotheistic belief as well as practice. What permits this coercion in each case are the ends that Church and state respectively serve, and the right and duty of each authority to use coercive force, if necessary, to direct those subject to their jurisdiction into meeting their obligations in respect of those ends - in the case of the state a natural happiness requiring a natural religion that is monotheistic, in the case of the Church supernatural happiness requiring fidelity to one's baptismal commitment.

Notice that this jurisdiction-centred view of religious liberty, unattractive to many as it may now appear, cannot be dismissed by modern Catholics as just so much dead theological opinion that never reached the level of the magisterium. Such a dismissal might apply to the Suarezian theory of the state's authority under natural law to enforce rational monotheism - an issue to which we shall return. But Suarez's view of the Church's coercive authority is a different matter.

Immediate backing for Suarez's theory of the indirect coercive power of the Church in relation to the unbaptized comes at the level of past canon law. Suarez's views are based on extensive reference to the pre-1917 *Corpus iuris canonici*, which contains many decrees and instructions that clearly assume the Church's possession of such an authority, and an obligation on the part of baptized rulers to aid her, when so directed, in its exercise. Consider one very important canonical collection in this area, to which he refers, from the decretals of Gregory IX, liber 5, titulus 6, *De iudaeis, sarracenis, et eorum servis*. This material places a whole variety of restrictions on Jewish and Moslem worship and behaviour. Besides restrictions on places of worship, Jews and Moslems are forced to wear distinctive dress, are restricted from moving about on Good Friday, are restricted from having Christian slaves or servants, from holding political office over Christians, and so forth.

It is important that in this canonical material there is no reference to the theory, current among many modern Catholic traditionalists, of a supposed native authority on the part of the state to forbid the public practice of false religions. Suarez, as we have seen, certainly did not believe in such a form of state authority. Unless a

religion violated natural law, and a non-Christian monotheism need not, the state had no authority of its own legally to move against it just as false or non-Catholic. All these canonical restrictions are being very explicitly imposed under the authority of the Church, and specifically under papal or conciliar authority, often in instructions to bishops, sometimes with explicit instructions to Christian rulers just to do as they are told by the Church in this matter.

These canonical regulations are of course defunct, and in respect of their overall morality may appear deeply repugnant to us now. Their significance lies in the view of Church authority that they presuppose, especially in relation to the baptized, who are supposed to be under an obligation to aid the Church in her enforcement of such directives. It is in relation to this view of Church authority that we would need to consider the encyclicals of nineteenth and twentieth century popes, in which Catholic states are encouraged to restrict public practice of and proselytization by false religions. Though these encyclicals are often viewed by modern traditionalists as assuming an authority on the part of the state to restrict the public practice of false religion, this interpretation is not obvious, and - as we shall later see - runs contrary to a view of the respective legislative authorities of Church and state taught in that most juridically explicit of nineteenth century political encyclicals - Leo XIII's *Immortale dei*, 'on the Christian constitution of states'. These encyclicals seem equally interpretable in terms of the view of Church authority assumed in earlier canon law - namely as extending to protecting those within the Church's jurisdiction from exposure to non-Christian practice or proselytization, and as involving a right to call on Christian rulers to aid her in providing that protection.

There is even more institutional and magisterial backing for the Church's direct coercive authority over the baptized, and in particular for her authority to coerce the errant baptized back into Catholic fidelity. And it is this direct coercive authority over those within the Church's jurisdiction that will be central to the rest of the paper.

For one thing, the Church's authority to coerce the baptized into faith was taught in terms that seem very binding, not just by private theologians, but as Church teaching in official diocesan catechisms and compendia of Catholic doctrine.<sup>22</sup> The view was endorsed not just by eminent bishops and Cardinals, of whom Bellarmine was only one, but was a very well established part of canon law, and long governed the proceedings of Church bodies and the deliberations and verdicts of canonists. Canonical material in support of such coercion goes far back. For example one very frequently cited authority for such coercion from the *Corpus iuris canonici* is the fourth council of Toledo of 633. This provincial council forbids coercion of the unbaptized into the faith, and does so on the basis that the act of faith must be an act of free will. But this metaphysical freedom of the act of faith only blocks the coercion of those outside the Church's jurisdiction. For the council, and with equal force, requires coercion (where necessary) of the faith of those who have been

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<sup>22</sup> See for example the catechetical *Thesaurus doctrinae christianae* of Nicolas Turlot, vicar general of Namur, approved by the Bishop of Namur, and reprinted in both French and Latin editions in France, Italy and in the Low Countries from 1630s through to the 1730s, in which the right to coerce heretics back into fidelity to their baptismal commitments is taught with great emphasis on the basis of citations not only from Aquinas but from Church fathers such as Tertullian and from Scripture (see 167-8, Antwerp 1700 edition).

baptized; free will is no block at all to enforcement of baptismal obligations on those already within the Church's jurisdiction.<sup>23</sup> It is very clear that Aquinas's teaching on the compulsion of the act of faith was very much in line with long-standing principles of canon law. Nor is this coercive jurisdiction of the Church over the faith of the baptized a mere relic of the pre-1917 *Corpus*. As we shall see, the existence of a coercive jurisdiction of the Church over the baptized - a jurisdiction extending to belief as well as practice - is still taught officially today as part of modern 1983 Code of canon law for the Latin Church.

Furthermore the view governed the conduct of the Church with secular rulers, to the point that cooperation with the Church's coercive policies towards the baptized was treated as a condition of communion.<sup>24</sup> The view was taught emphatically, with explicit reference to Aquinas's 2a2ae q10 a8 defence of the coercion of the faith of baptized apostates and heretics, by Pius VI in *Quod aliquantum* of March 1791, as part of his condemnation of the French Civil Constitution of the Clergy as involving a straightforwardly heretical denial of the Church's rightful jurisdiction over the baptized. But finally, and at the highest level of the conciliar magisterium, and in contexts that are clearly doctrinal rather than merely disciplinary, and in passages that are consistently interpreted by commentators thereafter not only as doctrinal, but as dogmatic and *de fide*, the Council of Trent formally endorses key elements of the jurisdiction-centred view in two crucial decrees. In its decree on penance, the Council restricts the scope of the Church's jurisdiction to the baptized.<sup>25</sup> And in its decree on baptism, the Council teaches that the obligation to obey Church authority applies to and binds the baptized irrespective of their own will and consent in the matter<sup>26</sup>; and then specifically that individuals' baptismal commitment to the faith may be coercively enforced, even on those adults baptized without their personal consent as children. Baptism not only subjects the baptized to ecclesial jurisdiction; this jurisdiction comes, it seems, with coercive teeth.

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<sup>23</sup> See Friedberg, *Corpus iuris canonici* (I, 161-2)

<sup>24</sup> The Fourth Lateran Council had declared a penalty of excommunication for those Christian rulers who disregarded what the Council expressly declared as the authority over them of the Church in this matter, and who, despite episcopal instruction to the contrary, dared to tolerate heretics – see Constitution 3, *De haereticis*, in *Decrees of the Ecumenical Councils* volume 1, ed. Norman Tanner and Giuseppe Alberigo (Georgetown: Georgetown University Press, 1990) 234. Excommunication was still being applied by the Church against powerful and otherwise loyal Catholic princes in the period after Trent. The Habsburg archduke Karl was excommunicated by Gregory XIII in 1579 for conceding toleration to Protestantism in his territories (see Peter Wilson, *Europe's Tragedy: A History of the Thirty Years' War*, London: Allen Lane, 68).

<sup>25</sup> *Council of Trent*, Session XIV, Decree on penance, chapter 2, 25 November 1551: "The church passes judgment upon no man who has not first entered it through the gate of baptism." (Tanner and Alberigo, *Decrees of the Ecumenical Councils*, volume II, p704)

<sup>26</sup> *Council of Trent*, Session VII, decree on baptism, 3 March 1547, canon 8: "If anyone says that those baptized are exempt from all the precepts of holy church, whether they are in writing or handed down, so that they are not bound to observe them, unless of their own free will they wish to submit themselves to them: let him be anathema" (Tanner and Alberigo, volume II, p686).

Erasmus in his preface to his *Paraphrases on Matthew*<sup>27</sup> had proposed that those baptized as children be asked on growing up publicly to reaffirm their baptismal promises; and that they not be subjected to any punitive coercion back into fidelity save exclusion from the sacraments if they were unwilling to provide the reaffirmation. This Erasmian challenge to the use of temporal penalties to coerce the baptized into fidelity had already been criticized well before Trent by Spanish theologians meeting at Valladolid in 1527 to review Erasmus's works. Whatever else the individual theologians varyingly thought about the public reaffirmation of baptismal promises, all were hostile to Erasmus's proposed rejection of any coercive enforcement of fidelity on the unwilling - one theologian expressing the view that a threat of death for the unwilling would be a suitable sanction.<sup>28</sup> Trent specifically cites Erasmus's proposal, and in canon 14 of the decree on baptism imposes an anathema upon it. And as at Valladolid, the condemnation is not of the simple proposal that people be asked to reaffirm their baptismal commitment; but of Erasmus's linkage of this proposal to a disavowal of any real coercion of the baptized - his suggestion that those unwilling to make the requested affirmation should be left uncoerced to their own decision:

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.<sup>29</sup> *Council of Trent*

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<sup>27</sup> Erasmus *In evangelium Matthei paraphrasis* (Basle 1522).

<sup>28</sup> For more on the universally hostile reception already given at Valladolid to Erasmus's rejection of a punitive coercion of the recalcitrant baptized back into faith - a hostility shown even by those theologians otherwise well disposed towards Erasmus - see 'Erasmus as hero, or heretic? Spanish humanism and the Valladolid assembly of 1527', Lu Ann Homza, *Renaissance Quarterly*, 1997.

Notice that in his *In acta apostolorum paraphrasis* in discussing Acts chapter 5, Erasmus rather unsurprisingly also targets and very deliberately opposes any interpretation of the deaths of Ananias and Saphira as the imposition of a temporal penalty by St Peter, based on ecclesial authority over the baptized. St Peter's role, according to Erasmus, is entirely prophetic, and the punishment is directly imposed, on divine authority alone, by God: 'Peter did not however inflict any punishment, but simply a bitter and health-giving rebuke. He (Ananias) in truth neither broke down in tears nor expressed any penitence, and was struck down by divine vengeance.' And again, in relation to Saphira: 'although Peter, than whom no one was milder, did not inflict punishment here...' Notice that, unlike Aquinas, Erasmus does not dwell on possible juridical issues specific to the death penalty arising from St Peter's clerical state. Erasmus appealed instead to St Peter's alleged personal disposition, and a connected ideal of Christian life and conduct as entirely non-coercive in its relation to others. We have, it seems, a far more fundamental challenge to Suarez's conception of St Peter's role. As a Christian St Peter's character must exemplify a certain pacific ideal, and so he must deal with his flock non-coercively.

<sup>29</sup> Paolo Sarpi gives an account in his *History* of the discussion by the fathers of Trent relating to this canon. There he reports the argument amongst the Council fathers that since circumcised Jews were rightly coerced into fidelity to the Old Law, how much more



Session VII, Decree on baptism, canon 14, 3 March 1547 Tanner and Alberigo, volume II, p686.

Theologians subsequently view this decree as *de fide*, and as defining the legitimacy of the use of coercion to enforce baptismal obligations, including the central baptismal obligation to faith. Thus to take one example, the eminent Dominican theologian, Billuart, writing around 1750. In his famous commentary on Aquinas, *Summa Sancti Thomae*, in the *Tractatus de fide*, dissertation V, article II, *Utrum infideles cogendi ad fidem?* Billuart asserts it to be clear Church teaching that the faith of heretics and apostates, but not of the unbaptized, may rightly be coerced. What authority does Billuart cite for this? Besides Aquinas's teaching in the *Summa Theologiae* 2a2ae question 10, article 8, he cites the canon law on heresy, specifically including the fourth council of Toledo on the coercive retention in the faith of the baptized. For dogmatic teaching by a general council, Billuart then appeals to canon 14 of Trent's decree on baptism.<sup>30</sup>

How great is the contrast when we pass to the modern person-centred view of the right to religious liberty. So natural is it to read the person-centred view into *Dignitatis humanae*, that we can easily illustrate the view by selective quotation from that very conciliar declaration. Let us consider just how far this modern view differs from the earlier jurisdiction-centered view. The person-centred view contains a number of distinctive elements.

First, it supposes a private religious sphere, of inner belief and inner devotion, where coercion is never justified. The metaphysical freedom of the act of faith or religious belief is now held - as it certainly was not held before - to rule out any coercion:

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appropriate, given the greater efficacy and dignity of the New Law, that baptized Christians be coerced into fidelity to the New Law. Erasmus's proposal in the *Paraphrases on Matthew* is regarded by the fathers of Trent as pernicious precisely because he opposed the evident legitimacy of such coercion. For Sarpi's account and further important commentary on it, see Le Courayer's edition of Sarpi, *Histoire du Concile de Trente* (Amsterdam 1751) p436. Pierre-Francois Le Courayer, canon regular and librarian of the Abbey of Sainte Genevieve in Paris, was a defender of the validity of Anglican orders, and had taken refuge in England from prosecution for his opinions in France, becoming a Doctor of Divinity of the University of Oxford. He provides a footnote of his own to this passage of the *History*. In it Le Courayer opposes the use of coercion to enforce Christian orthodoxy in terms that are nowadays very familiar: without coercion there would be fewer Christians, but this would be amply compensated for by the fact that the fewer Christians would be better ones. There is an interesting contrast of attitude to coercion with his contemporary, the eminent and undoubtedly orthodox Catholic Billuart, whose views are discussed below.

<sup>30</sup> Canon 14 is still given unembarrassed discussion in a standard and widely used text by that very central figure of Restoration Roman theology, Giovanni Perrone: *Praelectiones theologicae quas in Collegio Romano SJ habebat* (Milan 1845) – see volume 7 *tractatus de baptismo*, 103-11. Unsurprisingly Perrone regards the canon as *de fide*, and as supporting the coercive or punitive enforcement of baptismal obligations on the baptized. See also another standard manual, Hurter *Theologiae Dogmaticae Compendium* (Innsbruck 1908) volume 3, Tract IX §§315-16, pp281-2 where canon 14 is similarly discussed - Perrone's earlier discussion is referred to - and the Tridentine argument, mentioned by Sarpi, from the case of the Jews and the Old Law is again used.

For the practice of religion, of its very nature, consists principally in internal acts that are voluntary and free, in which one relates oneself to God directly; and these acts can neither be commanded nor forbidden by any merely human power. *Dignitatis humanae* para 3, Tanner and Alberigo, volume II p1003

And again:

Human beings...can only respond to God as he reveals himself if, with the Father drawing them, they give to God a free and rational allegiance of faith. It is therefore entirely in accordance (consonum) with the nature of faith that every kind of human coercion (quodvis coercionis ex parte hominum) be excluded from religion. *Dignitatis humanae* para 10 Tanner and Alberigo p1007

Secondly public religious practice is primarily seen not in juridical but in personal terms - in terms of its expressing a freely chosen commitment of the person. And on that basis it is taught that such practice should never be coerced, at least unless public order requires. In particular, there seems to be no explicit mention in *Dignitatis humanae* of limits to this right to non-coercion arising from any special form of jurisdiction attaching to a specific authority such as the Church.

The social nature of human beings, however, requires that they should express these interior religious acts externally, share their religion with others, and witness to it communally. Hence wrong is done to the human person and to the order established by God for people, if they are denied the free and social practice of their religion, provided just public order is observed (iusto ordine publico servato). *Dignitatis humanae* para 3 Tanner and Alberigo p1003

The discontinuity between these two models of permissible religious coercion is obvious and deep. And it involves a straight disagreement about the way in which our metaphysical freedom limits how we may be coerced. This disagreement is not just about the extent of permissible coercion, but the very relevance of ecclesial jurisdiction. For the Church of the middle ages and counter-reformation, coercion could be of belief as well as of practice; and the limits to permissible coercion were importantly juridical, and were not set simply by the nature or dignity of the person. And these are things that, on a natural and very conventional reading of *Dignitatis humanae*, the modern Church now denies - or so, at any rate, it seems.

### *3. The nineteenth century theology of liberty and coercion*

The Church's historical commitment to an uncompromisingly jurisdiction-centred view of religious liberty may have been obscured by the church of the nineteenth century and the views that, especially as the century progressed, were increasingly encouraged within official circles both of religious liberty and of the Church's own medieval and counter-reformation past. For reasons I shall touch on later, the nineteenth century magisterium and official nineteenth century Catholic theology were involved, over time, in what is, at least in appearance and at the level of rhetoric and emphasis, something of a shift towards the modern person-centred view.

The nineteenth century Church's account of its own previous history is especially important in its long-term effects. Many modern Catholics, even those who see

themselves as liberals but certainly those who are conservatives or traditionalists, tend to view the medieval and counter-reformation church through the lens of its official portrayal within the nineteenth century Catholicism - a nineteenth century Catholicism that was having to adjust to a new world of religious pluralism. But the nineteenth century Church's view of its own past is often misleading. Nineteenth century theology celebrated continuity just as much as modern theology is apt to celebrate development; but that did not prevent nineteenth century writers from being subtly innovative in their interpretation of tradition, and from redefining the earlier pre-modern theology in nineteenth century terms. Our understanding of the medieval and counter-reformation view is as a result framed and determined by nineteenth century theology's creative re-interpretation of its own inheritance - a re-interpretation that deeply obscures, in particular, the jurisdiction-centred character of that view. It is not that the earlier jurisdiction-centred view is ever straightforwardly and unambiguously denied. It is just never accurately characterised or explicitly presented in its full force; and the omissions all tend to be in a person-centred direction.

Thus in *Immortale dei*, Leo XIII's encyclical of 1885 on the Christian constitution of states, we find the pope stating the traditional requirement that the act of faith be free and voluntary; but in so doing he seems to make from this a direct inference to the illegitimacy of the coercion of belief, an inference which neither earlier Catholic theology nor canon law would have directly made. That is, no explicit discrimination is made by Leo between unbaptized non-Christians outside the jurisdiction of the Church, whose belief cannot properly be coerced, and baptized apostates and heretics, whose faith, because they lie within the Church's jurisdiction, can be coerced. Rather the metaphysical freedom and voluntariness of belief is presented as if it excluded directly and of itself any coercion into Catholic belief:

And, in fact, the Church is wont to take earnest heed that no one shall be forced to embrace the Catholic faith against his will, for, as St. Augustine wisely reminds us, "Man cannot believe otherwise than of his own will." *Immortale dei* (on the constitution of states) para 36<sup>31</sup>

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<sup>31</sup> Aquinas noted this very observation of Augustine's as a possible objection to the licit coercion of belief - only to draw, laconically, a very different conclusion: that it did nothing to show that baptized heretics, at least, could not licitly be coerced into faith: 'vowing in the first place is a matter of one's own choice; but fulfilling the vow is a matter of (moral) necessity. And so heretics are to be compelled to hold the faith.' *Summa Theologiae*, 2.2ae, q10, a8, ad secundum.

Of course, it is not clear that Leo XIII really is specifically opposing all coercion of the belief of the baptized - especially given the Catholic Church's historical and, indeed, continuing canonical provision for just such coercion, as discussed below. Aspects of the Church's historical teaching are being omitted in this passage; but they are not being explicitly addressed and contradicted. The jurisdiction-centred model is hardly being clearly presented; but nor is it clearly being denied.

*Immortale dei* is referenced, along with older canonical sources forbidding forced baptism, in the 1917 code's canonical prohibition, in canon 1351 in a section on missions, of forced conversion to the Catholic faith - the ancestor of the similar 748 §2 in the 1983 code. Leo XIII's teaching is referred to and repeated by Pius XII, in an address to the Roman Rota of 1946, and in §104 of *Mystici corporis* of 1943. Canon 1351 and the statements of Pius XII are referenced by *Dignitatis humanae*, but - as discussion later in this paper will make clear - in the context of an account of the Church's consistent opposition to the coercion into the faith of the *unbaptized*.

It might seem, especially to any modern reader who interprets the encyclical in a way that detaches it from earlier tradition, that we have here the same person-centred model of faith and belief as constituting a sacrosanct inner forum that is so naturally read into Vatican II.<sup>32</sup>

Again, though Leo XIII teaches a clear duty on the part of the state to foster and support the true religion, which is of course Catholic monotheism, his main concern is with the public realm, and a prudent limitation, for the common good, of the public practice and preaching of religious error. There is certainly no proposal for the coercion of the belief or private practice of the errant baptized.

This might lead many to read Leo XIII as actually meaning to state an early and less liberal version of the modern, person-based model. On this reading,<sup>33</sup> the dignity and nature of the person protects them directly from any coercion of belief and private practice, but the public interest may warrant some restrictions of freedom in the public sphere - which is really the same model that is so naturally and conventionally read into Vatican II. Though a more favourable view seems to be taken in *Immortale dei* than at Vatican II of the use of coercion to prevent the public practice of non-Catholic religions, this could be read as a matter of degree, and as reflecting an earlier more pessimistic view, from within a shared person-centred model, of the adverse effect on the interests of individuals generally of the public teaching of, or evangelisation on behalf of, religious error. On this reading there may indeed be a basic continuity of development between *Immortale dei* and *Dignitatis humanae*.<sup>34</sup>

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<sup>32</sup> Modern traditionalists, following the Church of the nineteenth century, surely take from the Church of that period their consistent opposition to the coercion of belief or private religious practice. They would get little support for their opposition from the Church of earlier periods.

Thus Michael Davies, who maintains that nineteenth century papal teaching is inconsistent with that of Vatican II, and who defends the continuing validity of that nineteenth century teaching, can regard all coercion of belief as clearly excluded by Catholic teaching - and does so by appeal to the authority of the nineteenth century popes. He claims that it is the unanimous teaching of the nineteenth century popes that 'Nobody may ever be coerced into embracing the Catholic faith, since the act of faith must be free; or prevented from practising their false religion in private' - see his *The Second Vatican Council and Religious Liberty* (Neumann Press 1992) p166.

Again, when questioned recently by a Swiss newspaper about his view of religious liberty, Bishop Fellay of the Society of St Pius X clearly excluded all coercion of belief - without making any exception for the belief of the errant baptized: 'Regarding religious liberty, it is necessary to distinguish two situations: the religious liberty of the person, and the relations between Church and State. Religious liberty implies liberty of conscience. We agree with the fact that there is not a right to force anyone to accept a religion.' (Interview with *Le Temps*, 26 January 2009.)

<sup>33</sup> A person-centred reading which may well not be accurate, especially when Leo XIII's encyclical is read - as it should be read - in the context of the Church's wider tradition and teaching.

<sup>34</sup> Whether there really is such a continuity between the teaching of such nineteenth century popes as Leo XIII and the teaching of Vatican II is the focus of most of the post-conciliar debate about religious liberty between figures such as Michael Davies, Brian Harrison and

If we look at the past through the filter provided by an encyclical such as *Immortale dei*, especially when read nowadays in person-centred terms, the precise character of the medieval and counter-reformation Church's teaching on religious liberty is hidden, precisely because in that encyclical the medieval and counter-reformation advocacy of the enforcement of baptismal commitment through the coercion of belief is unexpressed, as is the pre-modern view's relentless emphasis on jurisdictional considerations.<sup>35</sup>

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Avery Dulles. This paper does not immediately aim to resolve this familiar debate, but rather to suggest that the issue it addresses is of secondary importance to a far deeper problem, a problem that the participants in this familiar debate almost completely ignore - the Church's historical commitment to a jurisdiction-centred view of religious liberty and coercion, and the stark contrast between that jurisdiction-centred view and the modern person-centred view. As we shall see this more fundamental problem has implications not just for the relation between the baptized individual and the Church, but also for the possible role of the state in matters of religion.

<sup>35</sup> It is noteworthy how, thanks to the nineteenth century, the Church's historical view is often read nowadays through a person-centred filter. Thus there results a modern culture of widespread effective denial about the real character of the Church's doctrinal and intellectual past. We have already seen this among modern traditionalists. But conservatives are similarly influenced. Thus in his '*Dignitatis Humanae* and the development of Catholic doctrine' Cardinal Dulles notes rightly that the saving act of faith must be metaphysically free, and that this is *de fide*, and a constant feature of Catholic teaching. He infers that therefore there can never be any question of coercing faith or belief. But this was never taken to follow by earlier theology, and exhibits a profound, and very person-centred, misunderstanding of Catholic theology's past understanding of the normative implications of metaphysical freedom.

This misreading of the past clouds Dulles's reading both of earlier Conciliar statements and earlier theology. Thus on p49 Dulles takes Vatican I to have defined in *Dei Filius* Chapter 3 canon 5 that faith is free and so cannot be coerced. But all that Vatican I actually defines is that the act of faith is free in that it is not produced by some metaphysical necessity, such as that imposed by an overwhelming proof. The Council itself adds nothing explicit about coercion; the addition about coercion is Dulles's own interpretation. Dulles also claims that Suarez opposed forced conversions, and that in doing so he was faithful to a long-established Catholic tradition that faith must be metaphysically free. But, as we have seen, this misrepresents Suarez's actual position, which is based on juridical considerations. What Suarez specifically opposes is the forced conversion of the *unbaptized* to Christianity.

Modern Catholic writers are too apt to read into Catholic history a general and outright ban on compelling or coercing faith - despite overwhelming evidence to the contrary, and even when presenting some of this contrary evidence themselves. Thus in *Aquinas* (Oxford: Oxford University Press, 1998) John Finnis claims that compulsion of belief was a form of compulsion 'which Aquinas (like the Church) always vigorously rejected.' (292-3) - before reporting, as a supposed inconsistency, Aquinas's own clear teaching in the *Summa* that baptized heretics are to be compelled into faith. But there was no inconsistency here. It is quite obvious that Aquinas did not always 'vigorously reject' compelling belief, any more than did the medieval and counter-reformation Church. The canonical background, going back long before Aquinas to at least the time of Isidore of Seville, is very clear. What the Church taught as universally true of faith was its metaphysical freedom, not the wrongness in all cases of its coercion. It was only compulsion of the belief of the unbaptized that was vigorously rejected.

Jurisdictional considerations are not wholly ignored in the more detailed nineteenth century non-papal theological discussions. There was too much commitment to fidelity to canon law and its theological presuppositions and to continuity with past official theologians such as Suarez and Bellarmine for the jurisdiction-centred model actually to be abandoned. The model is still clearly taught in technical theological manuals.<sup>36</sup> But the case is different in official theology of a less technical form, especially in apologetic work directed at a non-Catholic or liberal audience. Despite much lip-service paid even in general apologetics to the authority of Suarez and Bellarmine in particular, their views are often reinterpreted in a person-centred direction.

An heroic example of such determined reinterpretation is to be found in Cardinal Manning's controversy with Gladstone after Vatican I. In his *The Vatican Decrees* of 1875, Manning sought to distance the Church from memories of the fires of Smithfield and from any commitment to a coercive re-Catholicisation of England. The Church's jurisdiction over all baptized Christians is admitted - but not so as to permit coercion.

Two quite different methods are employed by Manning to this end. First, Manning argues that, at least at a communal or collective level, the will of the people can trump jurisdictional considerations. If the English people's will is not to be subject to papal jurisdiction, then the pope must just respect that will, and not enforce his jurisdiction:

The first principles of morals forbid the exercise of the supreme judicial power of the Church on such a civil order as that of England. When it was *de facto* subject to the Church, England had by its own free will accepted the laws of Christendom. It can never be again subject to such laws except on the same condition – namely by its own free will. Till then the highest laws of morality render the exercises of such Pontifical acts in England impossible... Manning *The Vatican Decrees in their bearing on Civil Allegiance* (1875) p80

Manning acknowledges that the pope does still have jurisdiction over the English people, since that jurisdiction is based on baptism. But given 'moral conditions' - the will of the English people not to recognize that jurisdiction - papal jurisdiction must be notional. It cannot properly be exercised through coercion:

The ancient world was without the unity of the Christian Church *de facto* and *de jure*. The modern world is without *de facto*; and this has changed all the moral conditions of the subject. The Church never, indeed, loses its jurisdiction *in radice* over the baptized, because the character of baptism is indelible; but unless the moral conditions justifying its exercise be present, it never puts it forth. Manning op. cit. p89

What Manning terms 'moral conditions' allow the limits to coercion to be determined, at least at the communal level, not by the Church's jurisdiction, but directly and in a manner overriding of that jurisdiction, by human free will - in a person-based way. Because of their own free will, a people of baptized Protestants can no more be coerced back into Catholic faith and practice than can the non-baptized. Manning is already adhering to a modern theory of religion that takes as primary its character as a free personal commitment. Whereas the middle ages and counter-reformation, while certainly understanding religion as a metaphysically free personal commitment, for

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<sup>36</sup> See the works by Perrone and Hurter mentioned above in footnote 31.

the purposes of explaining the limits of religious coercion took as primary the juridical character of religious identity, and especially its involvement of a juridical subjection. Manning for his part still fully admitted this juridical aspect to religion. But for him this juridical aspect was now quite secondary; indeed, where religious liberty was in question, it was ceasing to count for so much.

At other times Manning slips into a quite different line of thought. Here it is not the voluntary and wilful rejection of Catholic jurisdiction and teaching by the English people that protects them from papal coercion, but rather that rejection's by now inherited and relatively involuntary nature. We have noted the traditional distinction between the formal or obstinate heretic who wilfully rejects the authority of the Church, and the merely material heretic, who believes error but without yet having received sufficient notice of the Church and its teaching. The material heretic is not yet sufficiently free to believe and so is blameless and, for as long as he remains blameless, even though baptized is not to be punished or coerced. In practice, by the late nineteenth century as much heresy as is possible is made out to be in one way or another effectively material, no matter how long the heretic persists in it, and no matter what information and opportunity for abandoning it he has been given - and the coercion of heretics turns into a merely notional possibility:

Our older writers, such as Bellarmine and Suarez, when treating of this subject, had before their eyes a generation of men who all had been in the unity of the faith. Their separation therefore was formal and wilful. Their separation from the unity of the Church did not release the conscience from its jurisdiction. But if Bellarmine and Suarez were living at this day, they would have to treat of a question differing in all its moral conditions. What I have here laid down is founded upon the principles they taught, applied to our times. Manning op cit p94

Thus Manning sought to recruit Suarez and Bellarmine into a nineteenth century culture of toleration. But the recruitment was fairly forced. By the time of Suarez and Bellarmine the unity of shared Catholicism in Europe had already been ended for over two generations.<sup>37</sup>

We have seen that no real exemption from coercion into the Catholic faith was granted by Suarez even to those merely material heretics born, baptized and brought up as Protestants. At most actual punishment would be postponed until they had been instructed - at which point continued refusal of the faith, because by now free and wilful, could rightly be met by punishments. Bellarmine's view was no different. At the very end of the sixteenth century, roughly eighty years after the initial establishment of the first Protestant states, it was still beyond doubt for Bellarmine that any Christian ruler was obliged to use their power to ensure that all their baptized subjects hold the Catholic faith - the faith taught by the Catholic bishops and

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<sup>37</sup> Manning was not alone among the Catholic bishops of his time, when addressing an audience of concerned liberals and Protestants, in trying to use the Reformation's effective ending of the unity of the Faith as a 'magic bullet' that supposedly precludes all further state coercion of heretics into the Catholic belief. We find the same ploy in Ketteler of Mainz, in an assertion in *Religionsfreiheit und die Katholische Kirche* that would have startled Suarez and Bellarmine: 'Heresy as a violation of civil law presupposed unity in Faith, and with the disappearance of that unity it too has become a dead letter.'

especially by the pope<sup>38</sup>. Liberty of belief (from coercion) is, for Bellarmine, 'a most pernicious error'. A special liberty of belief for those many whose heresy was by that time quite obviously entirely inherited is simply not considered. In particular, the liberty of belief afforded those born and brought up as Jews supported, in Bellarmine's view, no like liberty for heretics, as the Jews had never received baptism as heretics had done.<sup>39</sup>

Not only did the official theology of the nineteenth century Church strive to minimise the number of those counting as formally and culpably heretical. Even the punishment of formal heretics turns, in the hands of a nineteenth century Catholic bishop Ketteler addressing worried German liberals and Protestants, into a 'spiritual force', which in its presentation is very deliberately and carefully made to appear something quite different from any coercion of belief:

As regards the use of spiritual force against heretics...the Church has always affirmed the authority to use such punitive force on those who are by belief and by baptism her own members. But such force consists in spiritual and ecclesiastical penalties which have as their special purpose to bring about their spiritual improvement. The most severe of these punishments is excommunication. The Faith is the foundation of the Church. Therefore, as every organisation which wishes to survive has the right to protect its basic constitution by expulsion of those members who attack that constitution, so the Church too must have the right to expel members who make an assault against her foundations. Even when the Church used external means of compulsion, this too was done for improvement and enlightenment purposes, and not on the basis of any opinion that the Faith could be internally compelled or that it is not by its very nature a wholly internal act. *Religionsfreiheit und die Katholische Kirche* in Ketteler *Freiheit, Autorität und Kirche* (152-3)

But the enlightenment of heretics that Aquinas and Suarez had in mind most certainly involved the coercion of Faith as an internal act - which punitive coercion, as we have seen, they thought perfectly consistent with faith's occurrence as a metaphysically free act of inner conviction. And in fact, Ketteler is not so rejecting of the coercion of belief as he wishes to appear. For how else do ecclesiastical punishments effect 'spiritual improvement' or 'enlightenment' in the heretic subjected to or threatened with them except by helping to pressure them away from the heretical belief being penalised? And if the belief is being deliberately discouraged through a policy of condemning and penalising expression of it, is this not precisely a policy of coercion of belief of the sort that Aquinas and Suarez endorsed? But Ketteler's emollient rhetoric is artfully designed to distract the reader from such a train of thought; and the

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<sup>38</sup> See Robert Bellarmine, *De laicis* 497. Note again the 1579 papal excommunication of the archduke Karl for his failure adequately to fulfill this duty. Bellarmine's disparaging reference to the Speyer Interim in this part of *De laicis* expresses his coolness about what he clearly views as the excessive tendency of the Emperor and other German Catholic princes to tolerate by then often long-established Protestant belief and practice within the Empire, rather than endure the risk and expense involved in dutifully suppressing it. The papacy remained officially committed through 1620s to the coercive conversion (through threats of expropriation and expulsion) of Protestants both in territories taken from the Calvinist Elector Palatine and his allies and in the by then long Protestantized majority of Habsburg Austria - see Wilson, *Europe's Tragedy: A History of the Thirty Years' War* 357-61.

<sup>39</sup> *De laicis* 518



reader's attention is carefully drawn away to another and not inherently religiously coercive project of 'protecting the institution', where the point is not to use pressure to change what heretical people religiously think and do, but simply to exclude them from membership and prevent them from polluting the institution.

On religious liberty and coercion the Catholic theology of the nineteenth century underwent an immense but largely silent transformation - and arguably a transformation greater than any that was to occur, with so much publicity, at the Second Vatican Council. Lip-service was still paid to the jurisdiction-centred theology of the past. But that theology was increasingly unasserted in its detail, or presented in terms that effectively neutered it - terms which are very far from giving a fair representation of the actual theology and teaching of the Church of the middle ages and of Trent.<sup>40</sup> It was thanks to this silent transformation that by 1962 the Church's pre-modern teaching had become forgotten and ignored by theologians interested in religious liberty, so that in all the heated controversy over *Dignitatis humanae* at the Second Vatican Council, the issue of the coercion of belief and private religious practice was no longer a matter for debate. So Russell Hittinger can say of the discussion at Vatican II:

The truly groundbreaking argument, however, did not concern the idea of rightful immunity from coercion of interior acts, for this issue was never in serious dispute.<sup>41</sup>

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<sup>40</sup> Though the significance of Trent for the issue of religious liberty was not wholly forgotten, at least within the footnotes of the scholarly. Pick up a copy of the 1948 Marietti edition of the *Secunda Secundae* of Aquinas's *Summa*, and turn to question 10 article 8 - Aquinas's argument for the coercion of baptized heretics into the faith. You will see that the thorough editors, in tracking magisterial endorsement of Aquinas's conclusions, pertinently attached a citation of Trent's canon 14 on baptism - the condemnation of Erasmus.

<sup>41</sup> See Russell Hittinger 'Introduction to modern Catholicism', in ed John Witte Jr and Frank S. Alexander *The Teachings of Modern Roman Catholicism on Law, Politics and Human Nature*, (New York: Columbia University Press 2007), 24.

## Part II: The coercive powers of Church and state

### *4. Trent or Vatican II?*

What are we to conclude? First, that the focus of the post-conciliar debate about religious liberty needs to move. The most profound conflict seems no longer to be between Vatican II and the nineteenth century magisterium. For there now seems to be a more fundamental conflict between these together on the one hand, and the theology and teaching of the middle ages and counter-reformation period on the other. And here the conflict seems to divide the Conciliar magisterium against itself. The Second Vatican Council teaches in *Dignitatis humanae* that:

It is therefore entirely in accordance (consonum) with the nature of faith that every kind of human coercion (quodvis coercionis ex parte hominum) be excluded from religion.

But it seems that the Council of Trent, in canon 14 to its decree on baptism, specifically teaches the licitness, at least in principle and under some conditions, of using coercive penalties to pressure even those adults baptized as children into continued fidelity to their baptism. This is a position that is enshrined in canonical material dating from at least the very early middle ages, and taught as a matter of divine revelation, by appeal both to scripture and tradition, and without any serious controversy, by theologians until modern times, and that permits a coercion of belief as well as of public practice, a coercion of belief and practice to which the Church of the middle ages and counter-reformation was committed at every level. By contrast such coercion seems now to be forbidden by *Dignitatis humanae* (in the case of belief, without any exceptions) - and forbidden not merely as imprudent under present conditions but as always wrong in principle, because inconsistent with the dignity and rights of the human person.

It is important not to be distracted by our justified horror at the past persecution of Protestants or at past Inquisitorial procedures. For these things can be objected to on many grounds not directly at issue here. For one thing, massive cruelty was used, and in ways which surely could not be justified either by any plausible view of the interests of any of those involved or by the supernatural ends served by the Church. A complete account of the morality of religious coercion in all its possible forms would be an immensely difficult matter. We would have to discuss all the questions surrounding permissible means and occasions and the like. Our present subject is much more limited: namely, whether it could *ever* be licit for the Church to use some proportionate means of coercion to pressure at least some baptized into meeting their baptismal commitment to Catholic belief and practice. Trent seems dogmatically to assert the possible licitness of at least some such coercion, and its licitness as involving means beyond and more coercively substantial than mere exclusion from the sacraments. But Vatican II seems to deny that *any* such coercion of religious belief and private practice could ever be licit.

The magisterium of the Church can hardly be supposed to be recreated or reinvented brand new at Vatican II. Catholics are inescapably committed to the teaching of the

magisterium in its entirety. This means that we cannot simply interpret *Dignitatis humanae* without reference to previous magisterial teaching. Indeed, as we shall see, the content of *Dignitatis humanae* itself does not permit us to do that. But that then presents us with a massive interpretive problem. Indeed it is one that initially seems insoluble, as if what one Council taught to be white the other now teaches to be black. So what is the doctrine of the Catholic Church on religious liberty?

### 5. The coercive jurisdiction of the Church

It is important that just as she did at Trent, the Church still conceives of herself as having a coercive jurisdiction over the baptized. The present code of canon law for the Latin church states as canon 1311:

The Church has the innate and proper right to coerce (coercere) offending members of the Christian faithful (christifideles) with punitive sanctions (poenalibus sanctionibus).

And the Christian faithful (christifideles) are defined within the Code in canon 204 §1, and in a way fully continuous with Trent, as the baptized:

The Christian faithful are those who, inasmuch as they have been incorporated in Christ through baptism, have been constituted as the people of God.

So the 1983 code of canon law, the 'code of Vatican II' undoubtedly maintains the traditional Tridentine teaching that the Church possesses a coercive jurisdiction over the baptized.<sup>42</sup> Moreover the penalties applied are not restricted to the spiritual. For

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<sup>42</sup> Canon 11 of the 1983 code decrees that 'merely ecclesiastical laws' are imposed by the Church as binding only on those specifically baptized *as Catholics*. And this limitation of the application of 'merely ecclesiastical laws' to those baptized as Catholics is new. It was not part of the 1917 code. But this limitation is very importantly not cited in canon 1311's statement of the general coercive authority of the Church, which is still held to extend over *christifideles* without further qualification. Obviously there is an important distinction between those the Church has a right to coerce, and those (as under canon 11) she actually chooses to coerce and hold accountable.

We anyway need to be clear about what is meant by 'merely ecclesiastical laws'. For among laws that apply to the baptized alone, there is an important distinction between obligations that are merely canonical or ecclesial in the sense of being the specific creations of human ecclesial legislation, and obligations under divine positive law i.e. obligations specially imposed on the baptized, such as under the terms of the new covenant, by God himself. For it is only with the former - obligations of ecclesial creation - that canon 11 is concerned.

The baptismal obligation to Christian fidelity, though an obligation to the Church as well as to God, is still an obligation under divine positive law. It is not simply, as for example the obligation to Friday penance, a creation of man-made canon law that can be humanly and canonically revised. It is not a 'merely ecclesiastical law' of ecclesiastical creation, the application and binding force of which is for canon law to fix or - as happened in 1983 - to revise. Since the obligation to baptismal fidelity is not covered by canon 11, nor is the Church's authority to enforce it. So the 1983 code can consistently with canon 11 still teach in canon 1311 exactly what the Church taught at the time of Trent, and as a matter not of her own revisable legislation, but of divine revelation - that the Church has a coercive authority over the baptized in general.

example, expiatory penalties (penalties that serve both to deter and to repair harm done) can include those that are temporal, as canon 1312 §2 affirms:

The law can establish other expiatory penalties which deprive a member of the Christian faithful of some spiritual or temporal good and which are consistent with the supernatural purpose of the Church.

Along with apostasy and schism, heresy, which is defined as

the obstinate denial or obstinate doubt after the reception of baptism of some truth which is to be believed by divine and Catholic faith (canon 751)

is still punishable under canon law by the medicinal penalty, oriented towards cure of the offender, of excommunication. But it is also, in the case of those baptized who are Catholic clerics, punishable by expiatory penalties beyond exclusion from the sacraments, such as restriction of movement and loss of office and privilege (see canons 1364 and 1336). One can be punished by being forbidden to travel or by the loss of one's job. Granted this is far from the combustion of Protestants that we are familiar with in the pre-modern Church. But to be threatened with, say, the loss of one's job is not a trivial matter either. And remember that the issue is not about this or that past form of coercion and its morality, many cases of which may indeed have been grossly immoral, but the very legitimacy of the punitive coercion of anyone, including any of the baptized, in matters of religion.

If these penalties are deliberately being imposed for, amongst other purposes, that of directing and influencing people either into remaining religiously faithful in the first place, or, through the disliked effects of actual imposition, into returning to fidelity,

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Canon 11 does not then restrict the Church's coercive authority to those baptized as Catholics, but only the application of a restricted category of purely canonical obligations - those of human rather than divine creation. And this is a reading I share with the very thorough University of Navarre Commentary on the 1983 code – (my thanks to Fr Paul Hayward for his canonical advice, and for pointing this agreement out.) But liberal misreading of this point is all too common. A standard but perhaps more liberal commentary on canon law, the Canon Law Society of America's *New Commentary on the Code of Canon Law* (eds J.P. Beal, J. A. Coriden, T.J. Green, Paulist Press 2000) provides a notably thin discussion of canon 11. Rather amazingly the issue of divine positive law is never raised, the discussion talking lazily and vaguely only of a contrast between 'merely ecclesiastical laws' and 'divine laws that bind everyone' (see p63). But this disjunction is not exhaustive. As we now see, there can be obligations that are in their origin positive rather than natural, binding not on humans in general but only on some humans such as the baptized; but which at the same time are divine in origin and not merely ecclesiastical. And the obligations constitutive of baptismal commitment to the faith are surely just such obligations.

The liberal *New Commentary* is notably purse-lipped about canon 1311 and its official teaching of the Church's possession of a coercive authority over the baptized in general. We read:

'This formulation reflects an overly institutional, perfect society ecclesiology, which highlights the Church's distinctive governmental competencies. [One might wonder how a canon on the Church's coercive authority to punish could really do anything else.] Conciliar themes such as the Church as a divine-human mystery and a communion of believers seem not to have influenced this formulation.' *New Commentary on the Code of Canon Law* p1533.

then it might look as though we have a coercive structure, however mild compared to any in the past, that in the case of some of the baptized is being applied to pressure religious belief and practice.

And indeed Ketteler himself admitted such a coercive structure still existed in the modern Church. As he said:

the Church has always affirmed the authority to use such punitive force on those who are by belief and by baptism her own members. But such force consists in spiritual and ecclesiastical penalties which have as their special purpose to bring about their spiritual improvement.

In so far as 'spiritual improvement' in heretics or potential heretics must by its very nature include avoidance of heresy or return from it, it looks as though we do have here some sort of system of coercive penalties on religion of the kind that, apparently, *Dignitatis humanae* opposes.

Could the penalties be too mild to engage the prohibition of *Dignitatis humanae*? But that is not plausible. If governments threatened loss of employment as the penalty for expressing certain religious beliefs, and did so as part of a general policy of deliberately discouraging people from holding them, then surely this would be quite enough to violate *Dignitatis humanae*'s teaching.

It might be suggested that the Church's insistence on orthodoxy in its membership and clergy is merely a form of membership or employment condition, to protect the integrity of the institution, (rather as we already saw Ketteler to imply in relation to excommunication), and is not actually intended as part of a coercive structure to deter offenders or to reform them. On this view, the canon law on heresy is not aimed at coercively influencing what beliefs certain people hold and express. It is no more coercively intended than any other simple membership or job qualification.

But this fails to take into account the penal language. The code specifically addresses infidelity or heresy not as a simple failure to meet conditions on membership or employment, but as a wrong or crime - a *delictum* - deserving punishment - *poena*. And the loss of communion or office or privilege that follows is described in explicitly punitive terms. And for the Church to threaten a clearly unwelcome outcome such as job loss specifically as a punishment for wrong-doing, is precisely to act like any authority seeking coercively to regulate and influence what people believe and do and to pressure them away from whatever is being classed as wrong. By attaching real costs to heresy, and describing those costs as punishment for what is presented as a crime, the Church is conveying the very same coercive message that states do when they attach similarly penal costs to actions classed by them criminal - namely that what has been penalised really is wrong, and so is not to be done. The Church is doing exactly what she describes herself in canon 1311 as having the right to do, namely to give coercive direction to the baptized - in this case to use the threat of punishment to influence what the baptized believe, directing them away from the crime of heresy.

It might also be suggested that these penalties are supposed to direct or influence the baptized only on the supposition that they anyway have a prior and fundamental

commitment to the faith as such and to the Church. That fundamental commitment is not itself to be coerced. But that interpretation cannot make sense of the fact that schism (refusal of submission to the Pope and of communion with the Church) and apostasy (total repudiation of the Christian faith) precisely involve the abandonment of such a fundamental commitment; and these are also forbidden by the code by the same canons as are directed against heresy, as crimes threatened with the same penalties as heresy. So people are being coercively directed to remain faithful to the faith as such and to the Church, and not simply directed to particular beliefs in the context of a more fundamental uncoerced fidelity.

If the Church treats heresy, schism and apostasy as punishable wrongs, and punishable by outcomes materially unwelcome to the offender, then it seems she is morally committed to what follows from this - the licitness in at least some cases and under some circumstances of using some form of penal coercion, beyond mere exclusion from the sacraments, as a means to holding people to their baptismal obligations. Which is precisely what Trent commits the Church to doing. At issue behind Trent's condemnation of Erasmus is the seriousness with which the Church means what she says in the formulations of her own canon law.

#### *6. Religious liberty as a political liberty*

The common reading of *Dignitatis humanae* is that it asserts a universal right of all not be coerced in the belief and practice of religion. It is on that assumption that the declaration clashes with Trent's endorsement, at least in principle, of coercion into fidelity of the baptized.

On this very natural and wide understanding of it, there are at least two kinds of coercive authority that *Dignitatis humanae* would have to address. It would have to address the authority and coercive power of the state and of other civil institutions. And the nature and extent of that authority is determined just by the natural law, and is primarily a matter for reason to determine. Then it would have to address the authority and coercive power of the Church, both over people in general, and more specifically and especially over the baptized. And that would be a matter not just for reason to determine, but for revelation. That holds true especially for the relation of the Church to the baptized. For baptism is a sacrament bringing with it membership of an institution that is not merely human. That institution is the Body of Christ and new People of God, governed by a law of the New Covenant that is divine and the content of which is a matter for revelation, serving ends that are supernatural. Any comprehensive treatment of religious liberty in relation both to Church and state would then need to proceed at two levels: immediately at a level of natural reason, in relation to the state and civil institutions; and then immediately at a level of the dogmatic exposition of revealed truth, in relation to the authority of the Church. And in relation to the Church the treatment would have to address with particular care the case of the baptized and their obligations to the Church. For it is precisely through baptism and its obligations, according to the traditional theology, and indeed according to modern canon law, that the Church possesses coercive authority at all.

But this is not the form that *Dignitatis humanae* takes at all. For it plainly declares at the outset that its purpose is to address the rights of individuals and groups in civil

society, and, in particular, in relation to the state. The declaration is entitled: *On the right of persons and communities to social and civil liberty in religious matters*. And the declaration further announces in the first paragraph that since its concerns are with civil liberty, nothing in the declaration affects traditional teaching concerning people's obligations to the Church, including those of the baptized:

Indeed, since people's demand for religious liberty in carrying out their duty to worship God concerns freedom from compulsion in civil society, it leaves intact the traditional catholic teaching on the moral obligation of individuals and societies towards the true religion and the one Church of Christ. §1, Tanner and Alberigo, p1002.

It should be noted that this insistence that religious liberty is to be understood as a liberty specifically in relation to civil institutions, principally including the state, is repeated by the 1992 Catechism:

§2108 The right to religious liberty is neither a moral licence to adhere to error, nor a supposed right to error, but rather a natural right of the human person to *civil liberty*, i.e. immunity, within just limits, from external constraint in religious matters *by political authorities* (my emphases). *Catechism of the Catholic Church*

The part of the Declaration entitled 'The general principle of religious freedom' that states and argues for this principle then relies primarily on appeal to natural reason. For as the Council admits:

...revelation does not expressly affirm the right of immunity from external coercion in religious affairs. §9, Tanner and Alberigo, p.1006

Indeed after having stated and argued for 'The general principle of religious freedom' the declaration states:

The statements made by this Vatican synod on the right of people to religious freedom have their basis on the dignity of the person, the demands of which have come to be more fully known to human reason from the experience of centuries. §9, Tanner and Alberigo, p1006

It is only then in a final section entitled 'Religious freedom in the light of revelation' that the Council does make some appeal to revelation, and to the history and past teaching and official conduct of the Church. But this is certainly not to enunciate a comprehensive doctrine about the authority of the Church. The appeal is being made only at the end of the declaration, and only to support and reinforce a case that has already been made from reason. And the case is certainly not built on any overall account of the history, conduct and past teaching on coercion generally of the Church. Rather two points are emphasised alone. First, emphasis is placed on what is a clearly revealed doctrine - the metaphysical freedom of the act of faith:

And first and foremost religious freedom in the social order is fully congruent (*congrua*) with the freedom of the act of christian faith. §9, Tanner and Alberigo, p1006

Secondly the conduct of the Church in relation to those already baptized is not explicitly discussed. Rather, having announced as one of the chief catholic doctrines

that no one must be forced to embrace the Catholic faith against their will,<sup>43</sup> the declaration then emphasizes the fact that from the apostles on, the Church never, at least officially, relied on coercion to evangelise the unbaptized. The declaration's account of Church history in relation to the non-coercion of faith is entirely centred on the Church's constant opposition to any coercion of the non-baptized:

The apostles, taught by Christ's word and example, followed the same course. From the very beginning of the Church the followers of Christ strove to convert people to the confession of Christ as Lord, not by any coercive measures or by devices unworthy of the Gospel, but chiefly by the power of God's message. §11, Tanner and Alberigo, p1008.

There is, it is true, the following rather more general statement about past Church teaching on coercion:

Although at times in the life of the people of God, as it has pursued its pilgrimage through the vicissitudes of human history, there have been ways of acting less than in conformity to the spirit of the gospel, indeed contrary to it, nevertheless it has always remained the teaching of the Church that no one's faith is to be coerced. §12, Tanner and Alberigo, p1009

But this statement occurs at the end of a general account of evangelization of non-Christians, and is plausibly to be understood as referring to the communication of faith in the context of such evangelization. For read as an account of Church teaching regarding coercion of the faith of the baptized, and given her own continuing imposition of penal sanctions on the baptized for the crimes of heresy and apostasy, this statement about 'what has always remained the teaching of the Church' would be a plain falsehood. There is certainly no more detailed account given of the Church's past teaching on and policy in relation to coercion generally, and especially with respect to coercion of those already baptized. But such an account would be deeply relevant to - indeed a compulsory feature of - any serious account of the jurisdiction specifically of the Church.

*Dignitatis humanae* supports its account of Church history by references, in footnote 8, to the *Corpus iuris canonici*. This canonical material is cited by the declaration to support the claim that the Church historically forbade coercion into the faith. The material from the *Corpus* cited is very exact. It specifically condemns the use of coercion to evangelize the unbaptized, such as forbidding the coercive baptism of Jews and Moslems. Indeed, one canonical authority referenced is the fourth council of Toledo - as we have already seen a central canonical plank for earlier theological defence of the coercion of the faith of the baptized. Having condemned coercion into baptism, then, and in exactly the same passage referred to by *Dignitatis humanae*, that council actually and in the same terms and with the same force, demands coercive measures to retain within the faith those who, having been baptized, then attempt to leave.<sup>44</sup> The declaration is clearly not telling some story about how Church teaching has always opposed the coercion of religious belief as such - a story that would anyway be utterly false. The non-coercive story told is very clearly restricted to the case of the unbaptized.

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<sup>43</sup> Here the declaration refers to canon 1351 of the 1917 code and to Pius XII's teaching following on from Leo XIII's *Immortale dei*, discussed above in footnote 31.

<sup>44</sup> See again Friedberg, *Corpus iuris canonici* (I, 161-2)



Why then in the second section on revelation did the Council concentrate just on two specific points - the metaphysical freedom of the act of faith and the Church's teaching and conduct concerning the evangelisation of the unbaptized? The answer is that though such a selective treatment both of revelation and of the past is dangerously misleading for any general account of the jurisdiction of the Church - and obviously so since the history of non-coercion given precisely addresses only the conduct of the Church towards those *not yet within her jurisdiction* - it is deeply relevant to what was the Council's true and immediate concern, which is the coercive authority (or rather lack of it) in matters of religion of the state and other civil institutions.

Why might the policy of the Church towards those not yet baptized be peculiarly relevant to an argument concerned with a specifically civil liberty of religion? After all, it might be thought, states may well be able licitly to do lots of things not open to, or not the business of the Church. Why should limits to what the Church can rightly do, and in one specific case, be relevant to determining limitations on state action? In fact the answer is fairly obvious. According to perfectly traditional teaching, the metaphysical freedom of the act of faith leaves the unbaptized believer standing in relevantly the same normative relation to the Church as all people, baptized or unbaptized, stand in relation to the state. So if revealed teaching rules out coercion into the faith of the unbaptized by the Church, that supports the case initially made at the level of reason against religious coercion by the state.

Why is the relation of the metaphysically free believer to Church or to state in these two cases in relevant respects normatively the same? Because in both cases the bearer of authority is dealing with a being in possession of metaphysical freedom who is not yet bound by any specifically religious obligation to that authority. Why cannot the Church coerce the unbaptized into Christianity? Because, the traditional answer would go - we have seen Suarez give it - although the metaphysically free believer has a moral obligation to God to believe the true divine revelation, being unbaptized he has as yet no such obligation to the Church. Therefore given the person's metaphysical freedom and the lack of any such obligation binding him specifically to the Church, the Church simply has no authority to coerce him into Catholic fidelity. But the same would hold of the state, and whether or not the person is baptized. He is metaphysically free, has an obligation to God in respect of the true religion - but whether baptized or not has no specifically religious obligations to the state. So given that no one has any religious obligations to the state, the state has no specifically religious authority, and so no authority of its own to coerce or direct anyone in any way in religious matters. The parallel between limits to the coercive powers of the Church and those of the state is in this particular case exact. The incompleteness of the declaration's account of Church teaching and history is not a problem; or, at least, it is not a problem as part of an argument that is primarily based on natural reason, and that specifically concerns the coercive jurisdiction not of the Church herself but of the state and other like civil institutions.

There is a further reason for thinking that *Dignitatis humanae* does not address the coercive authority of the Church, and that comes from outside the text of the declaration itself. This is that the Conciliar Commission for the declaration actually indicated this at the Council. For it was objected to the declaration that there were examples of coercion exercised on the baptized that could be drawn from the New

Testament itself. Indeed, we have seen Suarez and the official Roman theology of the time of Trent allege just such cases. In reply the Commission noted:

Examples and statements brought against the text taken from the New Testament (and also many from the Old Testament) either concern the internal life of the religious community of Israel, in which Jesus and the Apostles lived, or the intra-ecclesial life of the early Christian community. And the declaration does not treat of this life.<sup>45</sup>

And again, in reply to the suggestion that the Declaration affirm as compatible with religious liberty that the Church use sanctions to impose her doctrine and discipline on those subject to her, the commission replied:

This (proposal) is not admitted, since ecclesial obligation or right are not treated here, nor is the question of freedom within the Church herself.<sup>46</sup>

One thing is now clear. *Dignitatis humanae* does not address the coercive jurisdiction of the Church over the baptized. All it addresses is the authority of states and other civic institutions to coerce religion. And so on this ground, by virtue of its very subject-matter, Vatican II's declaration cannot directly contradict Trent's teaching on coercion of the baptized, if we take that teaching as Suarez and Bellarmine would have understood it - to concern the coercive authority of the Church. The Councils are simply teaching about different kinds of authority: Vatican II is setting limits to the coercive authority of the state, while Trent is addressing the very different coercive authority of the Church. But there are also two further grounds why Vatican II cannot contradict Trent.

The second ground is internal to the declaration *Dignitatis humanae*, and it is something which we have already noted. This is the commitment made at the very beginning of the declaration to preserving intact traditional teaching concerning the obligations to the Church of the baptized. The declaration says of itself that it

leaves intact the traditional catholic teaching on the moral obligation of individuals and societies towards the true religion and the one Church of Christ.

It is the baptized that have moral obligations of fidelity to the Church; and it is precisely obligations on the baptized, according both to traditional Church teaching and modern canon law, that base and constitute such coercive jurisdiction that the

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<sup>45</sup> *Acta Synodalia Sacrosancti Concilii Oecumenici Vaticani II*, vol 4, part 6, p763.

<sup>46</sup> See the same *Acta* p770. The Commission further and slightly pointlessly, though surely rather charmingly, asks that such use of sanctions by the Church not be called 'coercion'. Advice which was not taken in canon 1311 by the framers of the 1983 code of canon law - and understandably so given the codifiers' expressed intent to impose sanctions to punish crimes and enforce obligations, and to use the threat of such sanctions to encourage compliance with Church law.

Shortly after the Council, Pope Paul VI clearly taught that the Church has the right and authority to use sanctions to coerce the baptized, and repeated Suarez's appeal to 1 Corinthians 5 for an example of St Paul exercising that very coercive authority: 'The coercive power is also founded on the experience of the primitive Church, and already St Paul was applying it to the Christian community at Corinth (cf I Co 5)'. (Address, 29 January 1970).

Church possesses. By this passage, then, the Council expressly ring-fences its own declaration against interpretations that seek to change that traditional teaching and so in particular our view of the authority of the Church to coerce which that teaching defines.

The third reason why *Dignitatis humanae* cannot impact the teaching of Trent is that Trent's teaching is given on a matter firmly within the scope of divine revelation - the obligations on the faithful generated by the sacrament of baptism - in an anathematizing canon attached to a dogmatic decree on the same sacrament, as part of a series of canons condemning what the Council Fathers clearly regarded as a range of heresies concerning baptism. Erasmus is a target of dogmatic condemnation along with Calvin and the Anabaptists. There is nothing of comparable dogmatic weight in *Dignitatis humanae*, a declaration on a question of natural law about the authority of the state and about which, it appears, no direct revelation has been given, and issued as a pastoral or non-dogmatic declaration. It looks by contrast as though Trent's condemnation of Erasmus is infallibly binding and irreformable. But if Trent's condemnation is dogmatic and irreformable, it follows that *Dignitatis humanae* can only bind us as interpreted to accommodate that condemnation. The condemnation and what it implies cannot be ignored just to accommodate *Dignitatis humanae*.

It might be claimed though that the Vatican II declaration must still conflict with Trent. Granted, the declaration does not in so many words specifically address the coercive jurisdiction of the Church. But still, the way in which *Dignitatis humanae* addresses the authority of the state and civil institutions implies, directly and unavoidably, comparable conclusions concerning the authority of the Church. The terms in and grounds on which the state is denied the authority to coerce in matters of religion must in logic apply to the Church too, and must do so with respect to the Church's authority over the baptized.

First, does not the declaration talk in many places of limits to the coercive authority in relation to religion of *human* authority? To take an example:

Such freedom consists in this, that all should have such immunity from coercion by individuals, or by groups, or by any human power [ex parte ... cuiusvis potestatis humanae], that no one should be forced to act against his conscience in religious matters, nor prevented from acting within his conscience, whether in public or private, whether alone or in association with others, within due limits. *ibid* para 2 p1002

And is the Church not a human authority - an institution maintained and governed, at least on earth, by humans? So does not the declaration apply to it?

But a number of things can be said about this passage. First, the coercive jurisdiction of the Church has centrally and historically been aimed at using pressure to form and change consciences, not at getting people to *betray* them.<sup>47</sup> Secondly the qualifying 'due limits' referred to in the declaration should surely include any set by people's

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<sup>47</sup> The Church has always forbidden people from betraying or going against their consciences. But ecclesial coercion of belief and practice has always aimed at using the threat of penalties to induce people into reforming and enlightening their consciences, not into acting against them. This conscience-enlightening and informing function is, arguably, also a function of the penalties of modern criminal law, as I discuss below.

obligations under baptism to the Church. For the declaration commits itself to respecting traditional teaching concerning these obligations.

But in any case and most importantly, the term 'human power' is fairly obviously ambiguous. Is the declaration in this and other like passages to be understood as talking of any authority involving humans in its exercise; or is it talking of authority that is human in its nature, in that it serves and is defined in terms of ends that are natural to humanity? If the former, then the declaration would surely be committed by its fundamental terminology to teaching about all forms of coercive authority on this earth, including that of the Church. But then the structure and argumentation of the declaration becomes a nonsense. For the declaration itself expressly states that it is concerned with specifically political or civil coercion. And it relies primarily on natural reason to give that teaching, which it could not straightforwardly afford to do if ecclesial authority and its limits were to be included in its subject. Moreover the incompleteness of the account given of the past exercise of ecclesial authority and of past teaching concerning that authority would then be objectionable, as seriously dishonest and misleading.

Moreover besides its explicit references to political or civil liberty, there are other uses of terminology that show that when talking about 'human' authority, the declaration is concerned specifically with authority that serves ends natural to humanity, to wit authority that is civil or political. Thus we read:

For the practice of religion, of its very nature, consists principally in internal acts that are voluntary and free, in which one relates oneself to God directly; and these acts can neither be commanded nor forbidden by any *merely* human power [a potestate mere humana]... (my emphases)

Now there is not much point to this qualification 'mere' if it were to refer to the personnel making up the coercing institution. For there are none on this earth staffed other than by humans. The reference must be to the basis of the authority and the ends it serves. In which case it is the state that is concerned, not the Church, which serves ends that are supernatural, transcending human nature. And it cannot anyway be denied that as an authority the Church precisely commands and requires of the baptized that they maintain and remain true to their baptismal faith. The Church actually does what the declaration states to be impossible for any 'merely human' power. That requirement on fidelity in belief remains, as we have seen, a prominent feature of the Church's present code of canon law.<sup>48</sup>

But what of the Council's frequently repeated claim that the limits on the state's power to coerce derive from human nature and its dignity: does not this dignity ground the same liberty in relation to the Church, if it grounds the liberty at all? The difficulty with this line of thought is that it assumes the person-centred conception of religious liberty in the very strategy it employs to read that conception into the declaration. The dignity of the person involves their metaphysical freedom and rationality. And of course if - as the person-centred conception supposes - those features of our humanity are sufficient *on their own*, and apart from any juridical considerations, to base the

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<sup>48</sup> See the 1983 Code's canon 750, in which we are directed to believe certain truths, subsequent canons then characterizing heresy as a punishable crime involving obstinate denial or doubt of such truths.

right to religious liberty, they suffice to establish that right for the baptized, even against the Church. But that of course is the very point at issue. Is the fact that human nature gives us a right not to be coerced in religion by the state dependent just on our metaphysical status; or does the generation of this right also depend on the kind of authority involved and the basis and extent of its jurisdiction, such as the further fact that we have a different juridical relation to the state than that we have, through baptism, to the Church?

The traditional teaching of the Church is that our right to religious liberty is juridically conditioned, and is not a simple and direct function of our metaphysical status. The liberty of the baptized is limited and conditioned by baptismally generated obligations to the Church. Since *Dignitatis humanae* can be interpreted - indeed itself *demand*s that it be interpreted - so as to respect and leave intact traditional teaching concerning these obligations, then everything in it has then to be read with the appropriate qualification. Whenever the right to liberty is grounded by the declaration on considerations X and Y, it must be left open that X or Y might not strictly be enough - that also necessary must be an absence of the kind of normative or juridical relation that a baptized person has to the Church. What would follow for the baptized given the presence of that relation must remain up to the traditional teaching to determine.

And that holds for all the ringing affirmations that pepper *Dignitatis humanae* about the value of unconstrained enquiry, about how coercion of belief and conduct goes against our free and rational nature, and such like.

But people are only able to meet this obligation [to truth] in ways that accord with their own nature, if they enjoy both psychological freedom and freedom from external coercion. Thus the right to religious freedom is based on human nature itself, not on any merely personal attitude of mind. Tanner and Alberigo p1003.

These affirmations certainly establish that coercively to pressure people in the exercise of their metaphysical freedom and their rationality is, considered in itself, something very undesirable - indeed that given our rational and free nature, such coercion is an injury and wrong done to the person coerced unless, of course, the coercion has some special and weighty justification. The text of the declaration also states, very clearly, that when the coercion is applied on political or civic authority, and when moreover it occurs to pressure someone's religious belief, then such justification is always lacking. The metaphysical freedom of the believer does in that case give him an absolute right not to be coerced, a right he has given the state's lack of any authority to coerce him. But whether the coercion would be equally wrong when the person is baptized and the authority behind the coercion is the Church - that cannot be assumed to follow; and certainly, given the declaration's self-proclaimed subject-matter and the self-imposed restrictions on its interpretation, it is not expressly claimed by the declaration itself to follow.

So when the Council says, for example, that:

Human beings, redeemed by Christ their saviour and called to adoptive sonship through Jesus Christ, can only respond to God as he reveals himself if, with the Father drawing them, they give to God a free and rational allegiance of faith. It is therefore entirely in accord with the nature of faith that every kind of human coercion should be excluded from religion. Tanner and Alberigo p1007

it all depends what human coercion is involved and on what grounds. This passage could be read to mean that any coercion applied by humans on any authority whatsoever is excluded, because of the freedom and rationality of the believer considered in itself. Or it could mean coercion is excluded as an exercise of merely state or civic authority; and it is excluded given the absence of the juridical authority such coercion would require. And it is the latter sense that seems to give the proper interpretation of the declaration.

It might be claimed that the act of faith would not be free or rational at all if coerced, and this would be so whatever the coercing authority. But that is not what Vatican II actually claims. It says that the freedom and rationality of the believer is a justification, or part of a justification for not coercing faith; not that the freedom and rationality of the believer makes faith impossible to coerce. Nor is the last obviously true in any case. For Suarez, as we have seen, the use of coercive law to direct the faith of the baptized is no different from any other legitimate use of coercive law. Such fair use of coercive law involves threatening penalties that, if actually inflicted, would be deserved. So, as we noted already, for Suarez the legal coercion of faith presupposes faith's metaphysical freedom; as with ordinary state law, the legal threat of punishment serves to direct metaphysical freedom without removing it.

But for Suarez the fair coercive use of law also presupposes a capacity for rationality in the person coerced and does not remove or bypass that capacity. The law is not just a brute force, like a kick or a shove. Pre-modern theology saw coercive penalties as part of a wider strategy of persuasion that addressed the agent's reason as well as their freedom. It is often lazily assumed that intellectual persuasion and the threat of coercive punishment are quite opposed strategies for altering behaviour. But that was not Suarez's opinion. Where an authority does have the right to punish, then in his view, as we have seen, the bearer of that authority can legitimately combine argumentative persuasion with the threat of coercive pressure. Now the pressure is indeed intended to motivate compliance through exploiting dislike of the penalties; but dislike of the threatened penalties is supposed to work by engaging the attention of those threatened, and motivating and directing them seriously to consider what is being argued, thereby facilitating right understanding. This is precisely how Suarez models the coercion of believers; as we have already seen him put the matter, coercion is supposed to help deliver understanding:

And then the pressure usually gives understanding, so that now the person believes with a perfect freedom. Suarez *De fide*

This means that in relation to belief the function of coercion is not to replace argument and evidence, but to reinforce them.

Consider again how Suarez describes the coercion of belief. A very clear example is his illuminating discussion, which we noted earlier, of the state coercion of belief in rational monotheism - in natural religion. Though natural religion raises many special questions, to which we shall be returning, the model of the coercion of belief that Suarez deploys is both extremely insightful and quite general in its application. The threat of punishment is not designed to ram home a blank command that comes quite detached from the normal bases of belief - from normal evidence or testimony. We

are not being commanded, with threats, to believe something quite without support, such as that two plus two equals five - a command that would be wholly ineffective. Rather the threat of punishment is precisely designed to direct people's attention to the standard epistemic bases for or routes into holding a belief - either to direct evidence or reasoning, or to the witness and testimony of those who know. These ordinary supports for belief are assumed by Suarez to be available. It is just that some people may wilfully be failing to consider them. The threatened punishments are supposed to remedy this problem, by directing people's attention back to the genuine grounds for the belief - grounds they should have attended to and been moved by.

Thus in the case of monotheism, the state's threatened sanctions are supposed to direct more intellectually able subjects to attend for themselves to the arguments for belief in God and against idolatry; or if they are less able, to do what we all do in matters where we have no intellectual expertise ourselves, or where other arguments and evidence are just unavailable to us - to rely on the authority and testimony of those who are likely to know:

even a pagan—that is, a non-Christian—king, if he has a knowledge of the true God, may coerce his own subjects into believing that truth (*cogere subditos ad idem credendum*), either by their own reasoning if they are educated, or by putting human faith in more learned men, if they are ignorant; and consequently, he may compel those same subjects to cease from the worship of idols and from similar superstitions contrary to natural reason. Suarez *De fide*

Suarez's account of the coercion of belief is not new. It is exactly the same as is given by Augustine in his account of the use of legal coercion to end the Donatist schism. Augustine clearly describes coercion as corrective and instructional in just this way - as fostering right belief through directing the attention of those coerced.

... no one can be good against his own will [a state of faith or charity is not possible *per violentiam*, in opposition to the person's then will]; but still, through fear of some unwanted suffering [the coercive penalties], someone may either lose his spirit of prejudice, or be compelled to acquaint himself with previously unknown truth; so that through his fear he should reject the error he once defended or attain the truth that he did not know before, and now hold willingly what once he did not wish to hold...[Coercion directs attention to the truth and thereby motivates a change of will]....We see that not just these or those persons, but many whole communities, once Donatist, now are Catholic, and vehemently renounce devilish schism, and ardently love unity. Augustine *epistola* 93.16<sup>49</sup>

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<sup>49</sup> Aquinas, in a discussion of the coercion of heretical belief that preceded his famous and regularly cited *Summa* treatment - a discussion to be found in his *Sentences* commentary, book 4 d.13 q.2 a.3 - seems to make the same point as Augustine. The faith is not imposed *per violentiam*, against the then will of the believer - for, as he cites Augustine to observe, *nullus credit non volens*. But successful coercion by the Church of some heretics is still possible - *tamen potest singulariter hunc vel illum coercere*.

Clearly, then, the faith cannot be imposed without a change of will on the part of a heretic, so that they make the act of faith willingly - a change of will, Augustine's own discussion suggests, that the coercion can only bring about through a redirection of the heretic's attention to a case for the belief that the heretic had hitherto been wilfully disregarding.

The laws imposed by modern states arguably work in just the same way in relation to the various kinds of non-religious action which those states justly coerce and direct. The function of penal coercion in the criminal law is often to use the threat of a penalty to engage attention and help communicate a message that there are anyway prior grounds to believe - that the action threatened by punishment really would be seriously wrong.<sup>50</sup> The punishment of crime is accompanied, in particular, by public witness given by judges and other representatives of the state for the prior and genuine wrongness of what is being punished - and it is this witness, and not an arbitrary command, that the punishment is designed to ram home. Sentencing is characteristically accompanied by moral criticism of the criminal - criticism that is revealed as seriously meant by the gravity of the punishment. Hence the failure to punish a crime with a penalty of any seriousness can convey the opposite message: namely that what was done was not, after all, so seriously wrong. Which is why in such cases of leniency the outrage of the victim and their friends may not betoken a desire for vengeance, but rather resentment at what they take to be a literal understatement of their rights. The function of sanction-backed criminal law is in part to drive home an argument and change what people - not non-rational animals but beings equipped with reason - actually believe. No matter how terrible and unwarranted the means adopted by the sixteenth century Church's agents, their conception of the use of law to coerce the baptized into meeting their obligations was not so very different. The canonical punishments for heresy and the like threatened by the counter-reformation Church, or by the modern Church, are no different in general function from those threatened by today's liberal state: to communicate testimony or witness to the truth given by representatives of the coercing authority - witness or testimony that should anyway be enough to support and warrant assent; and by impelling attention to the message and its grounds, to pressure those subject to the authority into believing it.

So when *Dignitatis humanae* says in its first introductory paragraph that 'truth imposes itself solely by the force of its own truth' this cannot sensibly be understood to rule out the use of coercive penalties to communicate truth and to persuade. The modern liberal state makes such use of penalties the whole time. Of course coming to believe a claim, whether through uncoerced enquiry or after being subject to coercive pressure, is indeed always to come to see the claim as true. Coercive pressure cannot bypass this essential feature of belief. One cannot come to believe a claim just as a strategy for avoiding a punishment, but without *ipso facto* coming to see that claim as true. So coercive pressure to be effective in communicating belief must operate exactly as Suarez envisaged. It must affect how the truth appears, and do so by leading people to attend to genuine grounds for the belief by way of evidence or testimony. And certainly in so far as the truth does then actually 'impose itself' on one's belief, one will indeed come to believe the truth because it is the truth - just by the force of its own truth, because that is how the truth now appears.

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<sup>50</sup> For an influential defence of a communicative or expressive theory of the function of punishment in recent secular philosophy see Joel Feinberg *Doing and Deserving: Essays in the Theory of Responsibility*, Princeton University Press, 1970. The idea that *liberal* punishment cannot seek to change people's thoughts and beliefs - to direct and form their conscience as well as their external actions - is, I would submit, naive both about liberalism and about punishment.



But is the Church not herself called upon by *Dignitatis humanae* to respect and protect religious liberty? In which case after all the declaration does directly address the coercive authority of the Church. For we read:

Hence protection of the right to religious freedom lies with individual citizens and with social groups, with the civil authorities, with the Church and other religious communities, each in their own way in view of their obligations to the common good. para 6 p1005

However this sort of passage settles nothing. For determining the content of this passage quite plainly presupposes an understanding of the nature of the right to be protected, and against whom the right is held. Is it a right not to be coerced in religion by anyone on any authority? But that right is not the subject-matter of the declaration. Or is it a civic or political right - a right of citizens not to be coerced by the state or other forms of civic authority? That plainly is the subject-matter of the declaration, and of course the Church is committed to the protection of that right. But that commitment would not preclude the Church from exercising coercive power over the baptized on her own authority.

Of course much coercion of the faithful, at least of the more distantly historical sort, has been imposed or threatened through officials of the state. Heretics were not only often handed over to the secular arm to meet their punishment. Their initial prosecution, conviction and sentencing might even be under state or civil heresy laws. At least this sort of state procedure, it might be thought, must be excluded by the declaration. The state should not be involved in any way in the deliberate coercion of religion.

And certainly, this is something that *Dignitatis humanae* very clearly asserts:

It follows from this that it is wrong for a civil power to use force or fear or other means to impose the acceptance or rejection of any religion, or to prevent anyone from entering or leaving a religious body. p1005 para 6.

But here we come across a certain deep irony. Given its subject matter and the self-imposed restrictions on its scope, even on this issue the true ground of the declaration is not so obvious. For there are two quite distinct bases on which the state might seek to coerce religion: either on its own authority, or acting out of a delegated competence, through obligation to another competent authority and on its say-so. The distinction is very important.

For as we have seen official Roman theology never viewed coercion of the baptized as a legitimate exercise of state authority. Rather such coercion was legitimate only because it involved some baptized Christians - rulers and officials of Christian states - fulfilling their baptismal obligations to the Church in lending her their power and resources to hold other baptized Christians to their baptismal obligations. As regards any form of authority native to the state, the coercive enforcement of fidelity to the true religion was always *ultra vires* - quite beyond the state's own competence. So when *Dignitatis humanae* declares:

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 (*sed limites suos excedere dicenda est, si actus religiosos dirigere vel impedire praesumat*). (my emphases) Tanner and Alberigo p1004

it turns out that as regards the coercion of heretics, Suarez thought no different:

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, so that the authority to make use of temporal penalties for the purposes of such correction must have been allotted in particular to this spiritual power, whether the penalties are to be inflicted directly by the said power, or whether it avails itself of the ministry of its temporal arm that all things may be done decently, in order and efficaciously. *Defensio fidei catholicae*

What licensed the state's involvement in the repression of heresy was always the authority of the Church and her coercive jurisdiction over the baptized, both over officials acting as agents bound through baptism to aid her in her supernatural ends, and over the subjects being penally coerced. Since *Dignitatis humanae* does not, and cannot, directly address this jurisdiction and the traditional teaching about it, the precise basis of the illicitness of the state's involvement in religious coercion is left open.

It is clear, according to *Dignitatis humanae*, that (save to protect just public order) the state cannot coerce in matters of religion on its own authority. Moreover the Church, in issuing *Dignitatis humanae* with its denunciations of any coercion of religion by the state, is, at the very least, now denying the state any delegation of the Church's own authority to coerce. And given that refusal to delegate, any involvement of the state in the deliberate coercion of religious belief must indeed be quite wrong, just as *Dignitatis humanae* asserts. But does that mean that the Church lacks even the authority to delegate the exercise of her own coercive power, by commanding the assistance of baptized officials in the enforcement of her own jurisdiction over the baptized? If circumstances ever changed, so that the modern western state with its commitment to pluralism in matters of religion ceased to function as a political paradigm - and perhaps such a development could not be ruled out for future centuries - could the Church ever once again call upon the secular arm as she once did, and do so licitly? That would all depend on how the baptized, including baptized rulers and officials, are bound to the Church and what obligations they have to her, and this aspect of traditional Catholic teaching would have to be examined further. But Vatican II expressly does not address the obligations to the Church of the baptized, and expressly leaves traditional teaching about that subject quite untouched. Clearly the matter cannot be answered by simple recourse to Vatican II's declaration about another subject - the authority of the state itself.

One thing is clear. It is evident that for the foreseeable future the modern Church would always refuse to involve the state in religious coercion in the ways that, in Ancien Regime Europe, she once did. And given this refusal to delegate authority on the part of the Church, the state will indeed have no justification for involvement in the coercion of religion. Moreover there may also be compelling moral grounds for the Church's refusal to call upon the state as she once did, even apart from the fact that no state would now respond to such a call. But it is not obvious that the text of

*Dignitatis humanae* is what blocks the Church from ever so employing its authority. And that, again, is because *Dignitatis humanae* simply does not directly engage with the Church's own authority and with the extent of and limits to her coercive jurisdiction over the baptized.

## 7. Conclusion

The person-centred view of religious liberty is that all people have a uniform right not to be coerced in religious belief or practice - a right generated immediately by the metaphysical dignity of the person, and in particular by the person's metaphysical freedom and rationality. And it is generally taken for granted that the person-centred view is straightforwardly taught by *Dignitatis humanae*, which certainly does express itself by appeal to human nature and its dignity. But such a reading assumes that the subject-matter of the declaration is religious liberty and coercion in all their forms. And that is not the subject-matter which the declaration itself claims to address. Instead the declaration proposes to address a specifically political or civil liberty, and its argument and structure make no sense on any other assumption. Moreover traditional teaching on the obligations that base ecclesial jurisdiction and coercion is expressly left intact. This leaves it open for us to give *Dignitatis humanae* a jurisdiction-centred reading. And that reading seems forced on us by the dogmatic nature of Trent's decree on baptism; as arguably it is also forced on us by the canon law of the Church in its present as in its earlier forms. The Church's canon law forms a structure of laws and penalties coercively directing the baptized; and what this structure aims coercively to enforce on the baptized, however restrained and limited in its present application and methods it has become, is, quite unsurprisingly, fidelity to Catholic belief and practice.<sup>51</sup>

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<sup>51</sup> That the Church has the authority to coerce those subject to her jurisdiction is of course in no way denied by *Dignitatis humanae*. As we have seen, the question of the Church's authority to coerce the baptized into fidelity is simply not addressed by the Council. But it is a deeply important fact that one of that declaration's most tireless supporters simply did not really believe in the Church's identity as a coercive power. John Courtney Murray constantly denied or downplayed this identity. Consider these assertions, in which coercion, whether legitimate or otherwise, is constantly assumed to be something the state does. The Church may put obligations on inner belief and conscience. But she does not and cannot coercively enforce those obligations.

If an authority exists that is empowered to restrain men from public action in accord with their religious beliefs, this authority can reside only in government, which presides over the juridical and social order. John Courtney Murray 'The Declaration on religious freedom' in *Vatican II: An Interfaith Appraisal*, edited by John H. Miller. Notre Dame: Association Press, 1966, pp565–76

And again

The theological argument [for liberty of inner belief or conscience] is the tradition with regard to the necessary freedom of the act of faith which runs unbrokenly from the text of the New Testament to the Code of Canon Law. This tenet of Catholic doctrine is held no less firmly by all who bear the name of Christian. In fact, even the atheist holds it. It is part of the human patrimony of truth, embedded in the common consciousness of mankind. The ethical argument is the immunity of conscience from coercion in its internal religious

What is the force of Trent's condemnation of Erasmus, understood within its theological context? We cannot deal with all the questions that this condemnation raises here. But at the very least it must serve to give dogmatic force to a fundamental claim about the Catholic Church. Part of the authority she has from God to bind and loose is the authority coercively to hold the Christian faithful true to baptismal obligations - obligations to belief and practice that they can have incurred at baptism without their personal consent, and that continue to bind them once baptized irrespective of whether they still consent.

How far this coercive authority might extend and how and under what conditions the Church might with strict right give it expression in various possible canonical obligations or penalties - that must be a question for dogmatic and moral theology. And this question has largely been ignored by modern Catholic theology, though it was, rightly, a central concern for Suarez. One obvious failing in the modern Church is a lack of any serious reflection, informed by an honest and comprehensive attention to Catholic tradition, on the dogmatic basis for and true extent of her own authority to coerce. The *New Commentary on the Code of Canon Law* plaintively complains of the section of the 1983 code that asserts the Church's authority to impose punishments:

Despite requests for a statement of the theological-canonical foundations of the Church's penal authority, the code simply affirms the Church's innate and proper right to penalize lawbreakers. Generally the code commission avoided dealing with foundational theological-canonical issues. p1533

But addressing such issues is not the peculiar responsibility of ecclesiastical codifiers, or even of canon lawyers. Certainly the authors of the *New Commentary* do nothing much to supply the theological lack of which they themselves complain. For canon law certainly exhibits how the Church has actually chosen to exercise her coercive authority at a given period. But canon law does not, on its own, resolve all doctrinal issues concerning the scope and limits of that authority. For very good and compelling reasons the Church might sometimes choose not to exercise an authority that is hers of strict right, and choose not to impose coercive sanctions that strictly she might have legitimately imposed. She might even come, and for very good reasons, canonically to forbid forms of coercion that once, at earlier times, she permitted and even legitimately encouraged, and that she retains the authority one day to apply again. The Church's true coercive authority, and the actual content and character of the Church's canon law at any given time in history - these might turn out to be

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decisions. Even the Church, which has authority to oblige conscience, has no power to coerce it. John Courtney Murray, 'The problem of religious freedom' in *Theological Studies* 25 1964, pp503-75

That the last passage is a person-centred misreading of the normative implications of faith's metaphysical freedom, and has no basis in the teaching of the Church or in Catholic tradition, and is the purest fiction as history, must by now be clear. But Courtney Murray's view was clearly shared by much theological opinion by the 1960s, and is still very general within the Church; and this has greatly coloured public perception of Vatican II's declaration, and explains much about current misreading of its content and misunderstanding of the subject.

significantly different things. The question of the Church's full authority to direct and authorize coercion is then a dogmatic issue, not a purely canonical one.<sup>52</sup>

What then is the force of *Dignitatis humanae*? This declaration, we have shown, is about political or civil authority. And at the very least when understood (as it must be) in the context of Catholic teaching as a whole, the declaration of Vatican II tells us that the human state possesses no authority to coerce religious faith and practice as does the Church. And it is plain why that should be so. The limits to state authority are fixed by natural law, since the ends natively served by the state are ones specific to human nature. While the Church serves supernatural ends and so ends that transcend human nature; and it is this fact which prevents the nature and extent of the human right to liberty from being fixed in the same way for every kind of authority by human nature on its own. For the point to our exercise of metaphysical freedom lies in a destiny beyond anything human nature can of itself attain or to which 'merely human' political and civic institutions can direct us. Which is why subjects of the state have no obligations to it in matters of religion comparable to those that the baptized have to the Church. It is that supernatural destiny - the life not under nature but under grace to which baptism admits us - that fixes both the nature and extent of the right to liberty of the baptized, and the authority of the Church legally and so coercively to govern and guide the baptized to that end.

*Dignitatis humanae* does not, after all, present a quite general theory of the human right to religious liberty, constraining the Church's authority coercively to direct the baptized on the same basis as it constrains the state in relation to the citizen. To misread the declaration in these person-centred terms is in fact a form of Pelagianism - a reduction of life through and according to grace down to the level of life through and according to nature. It is to treat the Church as if she were just another political or civic institution, serving natural ends and directing us in the exercise of merely natural capacities to those ends.

*Dignitatis humanae* has often been seen, both by celebrants and by detractors, as a text in which the Catholic Church finally absorbed and internalised the Enlightenment - as a marriage deed between Catholicism and liberalism. And certainly the declaration's description of the human person in relation to the state is profoundly marked by the outlook of the Enlightenment. But it is a gross mistake to see the declaration as anything even approaching a marriage with modern liberalism. For the

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<sup>52</sup> A full treatment of the Church's right to coerce would have to address not only direct coercion, the penal enforcement of obligations of fidelity on the baptized, but also indirect coercion - the Church's historically claimed right to apply force to protect her mission from interference from without, such as by protecting the baptized from exposure to non-Catholic religious teaching and practice. As we have seen, this too was traditionally seen as a legitimate exercise of the Church's authority, and as involving consequent obligations on the baptized, including baptized rulers, to assist the Church in such coercion. *Dignitatis humanae*, by bracketing traditional teaching about people's obligations to the Church, ring-fences traditional teaching on obligations of the baptized in relation to this authority also. As for the possible content of this traditional teaching, one would obviously have to consult past canon law, including the pre-1917 *Corpus iuris canonici*, but also past conciliar and papal decrees and encyclicals, and also catechisms and the like, as well as past theological commentary on all this material. I shall be addressing this use of Church authority and the juridical and moral questions that it raises in further work.

language and argumentation of secular liberalism is used - but to state authoritatively limitations on state authority in religion that, if the distinctively supernatural function and authority of the Church is to be respected, cannot have a purely secular liberal rationale. And *Dignitatis humanae* itself reveals the true rationale. Human nature imposes restrictions on state authority in religion - but not just because human freedom and rationality would impose those restrictions on any authority. In so far as humans are religious, their freedom and rationality are involved in an orientation to a supernatural end with respect to which the state has no legislative competence. And that is what bars the state from presuming to coerce religious belief and practice. As *Dignitatis humanae* says:

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.

But as we have seen, it was precisely on this ground - that the state's own authority to coerce serves only natural ends - that the counter-reformation theology of Suarez also denied the state any authority to coerce the baptized into fidelity to their baptism.

The Church remains dogmatically committed to her possession of a coercive power over the baptized unlike any that liberals would accord the state over its citizens. The Church is given, by virtue of a mission that transcends nature, a coercive authority over her members to hold them to the faith - though how extensive this authority might be and how it might properly be exercised we have not yet determined; and this authority is of a kind that no earthly state can possess over anyone, and which (as Trent clearly indicates) the individual, once baptized, cannot throw off at will.

Further defence of the Church's possession of this authority and discussion of its true limits is a task for another place. What must be clear is that Catholicism is as dogmatically committed to the existence of this authority as in the days of the counter-reformation, however brutally or excessively that authority was then applied.

*Dignitatis humanae* is not then, when read carefully and in the context of the rest of Catholic teaching, a charter for some liberal New Pentecost that subordinates ecclesial authority to the same limitations to coercive direction in matters of religion that would apply to the state. Like so much else that occurs at and after Vatican II, the declaration is rather a working out of trends and developments within the Ultramontane theology of the nineteenth century and of Vatican I. At Vatican I *Pastor aeternus* claimed on behalf of the papacy a juridical authority over the Church that was supreme - and hence denied the state any ultimate authority over the Church. In *Dignitatis humanae* the state is now denied any authority over religion as such. The religious capacity of man, precisely because it orients him to a supernatural end transcending nature, removes him in matters specific to religion from coercive direction by the state. But it does not follow at all that the religious capacity of the baptized is in exactly the same way removed from coercive direction by the Church - the divine institution that, once someone is baptized into the new life of Christ under grace and so to into her jurisdiction, directs them to that same supernatural end.

It is in relation to the supernatural orientation of religion as such that we should understand what is an important aspect of *Dignitatis humanae*, namely its implications for coercion by the state of subjects into a natural law-based rational monotheism. Suarez, we saw, attributed a native right and duty to the state under natural law to coerce the belief of its subjects, not into any revealed religion, but into rational monotheism. This specific element to Suarez's view of religious coercion was not, of course, endorsed by Trent, which deals with coercion of the baptized into Catholic fidelity. And it is now denied by Vatican II, at least by direct implication. The state has no more business coercing its subjects into monotheism than it has coercing them into Catholicism.

But this denial to the state of any native authority legislatively to direct and coerce in matters of religion is not obviously just a development of Vatican II. It was already being taught in the magisterium of Leo XIII. And it was taught by that Pope in relation to what seems to be an important and further assumption - that religion as such is in some way related to, at least in function or preparation, what is the Church's peculiar concern, namely the supernatural end that only Catholic faith can finally deliver, which is the attainment of heaven

In truth Jesus Christ gave his Apostles free authority in matters sacred, together with a true power to legislate and what follows therefrom, the twofold power to judge and to punish... Hence, it is the Church, and not the State, that is to be man's guide to heaven: and it is to the same Church that God has assigned the charge of seeing to, and legislating for, what concerns religion. Leo XIII *Immortale dei* §11

And again:

The Almighty, therefore, has given the charge of the human race to two powers, the ecclesiastical and the civil, the one being set over divine, the other over human, things... While one of the two powers has for its immediate and chief object care of the goods of this mortal life, the other provides for goods that are heavenly and everlasting. 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, is subject to the power and judgment of the Church. Whatever is to be ranged under the civil and political order is rightly subject to the civil authority. Leo XIII *Immortale dei* §13-§14

The divine or sacred as such, including any worship of God, is related or referred by Leo XIII to something beyond merely natural happiness. It is referred to the attainment of heaven, a good that only the Church can provide, and so to a supernatural end within the directive competence of the Church rather than the state. There is in these passages of Leo nothing quite like what is very much part of Suarez's conception of religion: a distinct category of religion that is the native concern of the state rather than the Church, and that is entirely natural rather than supernatural in its orientation, but that is still directed at and involving of the divine.

*Dignitatis humanae's* implied denial of a native state authority to legislate for and coerce into rational monotheism may then involve neither the absorption of secular liberalism, nor a development entirely novel to Vatican II. What it may involve instead is a certain view of the proper orientation, at least in the context of the New Covenant, of human religious activity.

Given Vatican I's dogmatic teaching of the natural knowability of God's existence, it is at least very arguable that there is indeed such a thing as rational religion - a cult of the one God that is available to natural reason, and so a form of religion that can exist at the level of the natural reason, just as Suarez supposed. But even if this is so, and whatever might have been the case had Providence not quite gratuitously destined us for a supernatural end, it does not follow that, given the actual offer of supernatural redemption through the Church, the state still has the native authority to direct and enforce religion even at this natural level. This still does not follow if, given the free offer of divine grace to salvation, the divinely willed orientation of all human religious activity is now towards the supernatural end proclaimed in Catholic revelation and offered through the Church. But that supernatural orientation to all religion is arguably the view taken of religion in general by Vatican II. For in the decree on non-Christian religions *Nostra aetate* Christ is described as he

'in whom people find the fullness of religious life (plenitudinem vitae religiosae)' *Nostra Aetate* §2, Tanner and Alberigo p969.

Religion, though it may exist at a form available to reason alone, is now, even in that rationally available form, fundamentally re-oriented, through Christ, towards an end beyond the purely natural happiness that is the state's concern. As far as religion is concerned, its proper direction is no longer to be determined by reference to a purely natural order for which the state can be responsible on its own authority in the way that Suarez supposed. The ultimate orientation of any form of religion, even irrational polytheism, is always towards the supernatural happiness offered and revealed in Christ. And it is for that reason, and not because of some perfectly general right to freedom from religious coercion by authorities in general, that the state cannot coerce people even into monotheism. It cannot intrude on an activity oriented towards a supernatural end proper to the Church and served by her ecclesial authority - albeit an ecclesial authority that obligates fidelity to the Church only on the baptized, and that can be exercised therefore only over or through the baptized.<sup>53</sup>

The problem of religious liberty, it now appears, is considerably more complex than we at first supposed. It combines a problem about coercive political authority under natural law with a problem about coercive ecclesial authority under divine law. This was fully realised in the counter-reformation Church, where in treatments of the subject what we would now view as political philosophy was combined with extensive theological commentary on canon law. Indeed, if anything, at that date the problem of religious liberty was often treated as very centrally, even primarily, a canon law problem, especially in the Roman College theology of a writer such as

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<sup>53</sup> Leo XIII's teaching is that the Church rather than the state has the authority to legislate in matters of religion. This teaching is hard to reconcile with the common, and modern, traditionalist view - very importantly rejected by a counter-reformation theologian such as Suarez - that the state has a native authority to legislate against and restrict the public practice of false religion. On the Leonine and Suarezian view, the authority to coerce in the name of revealed truth would belong to the Church, not the state - and beyond enforcing baptismal obligations would be limited to protecting the Church's mission from interference from without. The state's involvement in either case could only be as the Church's agent, through a duty to the Church of baptized rulers to aid her, when so directed, in the exercise of her authority. And clearly, since 1965, the Church is no longer directing any such assistance.



Suarez. In this view, it is to a very large extent the law of the Church which settles the required treatment at the hands of the state of baptized Christians and even - such as by forbidding their coercion into the faith, but by allowing restrictions of their worship to distance it from the lives of Christians - of non-Christian monotheists such as Jews and Moslems. For the state is supposed to function in relation to Christianity mainly as an agent of the Catholic Church. This supposition was never shared in full by many Gallicans and regalists, and it was in practice anyway often more hope than reality, as numbers of Catholic princes, such as in important parts of the Holy Roman Empire, often preferred to pursue social peace through toleration than attempt a rigorous enforcement of baptismal commitments on their Protestant subjects.

The counter-reformation papacy's policy was to use the Church's jurisdiction over the baptized to repress Protestantism through an aggressive policy of coercive conversion. Although successful locally and for a time - witness the recovery of much of a previously Protestantized Habsburg Austria and Bohemia - this policy failed in its global objective, and the methods applied in its pursuit came to be seen, by Catholics themselves, as offensive. At the same time the vision of the state as being the Church's agent in the enforcement of her ecclesial jurisdiction became increasingly obviously unattainable. Even in the Catholic world, the state's action in the religious sphere would increasingly have to be considered on its own terms - principally as the exercise of its own authority, and justified or not as so considered.

By the nineteenth century the papacy had moved to that distinctively modern policy which the Church of Vatican II is simply continuing - a policy of living in peace with and alongside Protestantism, as opposed to seeking to coerce it out of existence. And so began to die the conception of religious liberty as being principally a canonical problem. As a practical concern, the coercive jurisdiction of the Church became increasingly an internal matter, its extension to the Protestant baptized of decreasing practical relevance. Ultimately, by the twentieth century, the pressing problem facing the Church was becoming that of states that were either indifferent to the Church and her teaching, or that in increasing numbers aggressively directed their authority against her. That the Church is herself a coercive authority would increasingly be talked down or just ignored - at least outside the discipline of canon law itself, in which the coercive regulation of the faithful by the Church is of course the very object of study. The problem of religious liberty could from now on be taken as a problem primarily about reaffirming the limits to the authority of the state in matters religious. It was inevitable that sooner or later what in fact are broadly traditional limits to native state authority in religious matters - how traditional they are we have seen from the Jesuit theology of the counter-reformation - would indeed be reaffirmed, but in the convenient and attractive new packaging of the language of a liberal conception of the state. And indeed, though *Dignitatis humanae* was very carefully formulated to be consistent with past tradition, it was also bound to happen that the declaration would be misinterpreted, and a liberal conception of the state should, thanks to this misreading, infect conceptions of the Church and her authority too, and in a way disconnected from canonical reality. The political would annexe the ecclesial.

But the political case does not exhaust the subject, as the dogmatic teaching of Trent has shown. And deep theological principles are at stake. Although the language of Vatican II's declaration is often that of secular liberalism, when integrated into tradition the fundamental structure really is quite different. Faith is free from

coercion by the state not because of some secular doctrine of simple respect for persons owed equally by all authorities, but because, as *Dignitatis humanae* itself states, our metaphysical freedom is oriented toward an end that transcends nature, an end to which the baptized are directed through the authority of the Church. And this being the true basis of limitations to state authority over religion, there is no reason why the authority of the Church should be limited in exactly the same way. Religious liberty is a topic which we shall only fully understand once we extract ourselves from the perspective of our immediate political context, and reintegrate Vatican II and its decrees into the teaching of the magisterium as a whole and into a richer view of the theological tradition. And so I have tried here to begin to do.

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