New Blackfriars

DOI:10.1111/nbfr.12139

Catholic Teaching on Religion and the State

John R.T. Lamont

In the course of the last few years Fr. Martin Rhonheimer and Prof. Thomas Pink have been engaged in an important debate on the teaching of the Second Vatican Council on religious freedom in its declaration *Dignitatis Humanae*.[1] The context of this debate is Benedict XVI's call for a 'hermeneutic of reform', rather than a 'hermeneutic of discontinuity and rupture', in the interpretation of that council. Fr. Rhonheimer presents the council's teaching on religious freedom as an example of reform. He describes it as rejecting the teaching of the 19th century popes on the right to religious freedom and the state's duties towards the true religion, but he denies that this rejection is a case of discontinuity, because these teachings do not involve 'an explicit assertion of wanting to present a definitive doctrine in a matter of faith and morals';[2] they are at the most 'a question concerning an aspect of the social doctrine of the Church.'[3]

Prof. Thomas Pink has criticised Fr. Rhonheimer, and presented his own interpretation of *Dignitatis Humanae*. This interpretation is based on the views of Suarez on coercion in matters of religion. Suarez held that the Church is the sole authority with jurisdiction over deeds that are opposed to religion and the salvation of the soul; the civil magistrate may only punish crimes that are contrary to the natural ends of the state, which are public peace and human justice. The Church has this jurisdiction over all validly baptised Christians in virtue of their baptism, whether they are Catholics or not. This jurisdiction entitles her to coerce Christians into carrying out the commitments they made at their baptism. The commitments that are rightful objects of coercion include the commitment to internal belief as well as to outward profession of the faith. Suarez points out that although punishment cannot

[1] See Fr. Martin Rhonheimer, 'L'"herméneutique de la réforme" et la liberté de religion', *Nova et Vetera,* no 4, 0ct.-Dec. 2010.; 'Benedict XVI's "Hermeneutic of Reform" and Religious Freedom', *Nova et Vetera* vol. 9, no. 4, English edition, (2011); Prof. Thomas Pink, 'Rhonheimer on religious liberty', at http://rorate-caeli.blogspot.com/2011/08/on-religious-liberty-and-hermeneutic-of.html#more; 'Suarez and Bellarmine on the Church as coercive lawgiver', https://www.academia.edu/8577465/Suarez_and_Bellarmine_on_the_Church_as_Coercive_Lawgiver; 'What is the Catholic doctrine on religious liberty?', https://www.academia.edu/639061/What_is_the_Catholic_doctrine_of_religious_liberty.

[2] Rhonheimer (2011), p. 1038.

[3] Rhonheimer (2011), pp. 1039–1040.

© 2015 The Dominican Council. Published by John Wiley & Sons Ltd. 2015, 9600 Garsington Road, Oxford OX4 2DQ, UK, and 350 Main Street, Malden MA 02148, USA.
https://doi.org/10.1111/nbfr.12139 Published online by Cambridge University Press

directly produce the act of belief, it is wrong to say that it cannot exert effective indirect pressure on a person's inner beliefs. The Church may use temporal as well as spiritual punishments to coerce the faithful into carrying out their baptismal promises, and these temporal punishments include the death penalty. When the Church uses the state to enforce coercion in matters of religion, she does so through the baptised rulers of the state carrying out their duties as Christians to enforce Church discipline. Neither the Church nor the state may coerce non-Christians into converting to Christianity, but the state has the authority not only to compel polytheists to abandon their religious practices, but also to compel them to inwardly believe in monotheism – although not to compel them to believe in divine revelation.

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

(1) The Church has the right and responsibility to compel baptized Christians to live up to the obligations of their baptism by means that are not limited to spiritual punishments, a right she continues to exercise in the 1983 Latin Code of Canon Law.

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

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

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

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

In order to judge the claims of Fr. Rhonheimer and Prof. Pink, and to determine what if anything is taught by *Dignitatis Humanae* about a right to religious freedom, it is necessary to set out the main components of the Church's teaching on religion and the state. This involves covering a huge period of time, but fortunately the historical evidence for the content of these components is readily available and quite clear. Its nature has been obscured in the past by controversy and the desire to place the Church's past in an acceptable light, but it can readily be

© 2015 The Dominican Council
https://doi.org/10.1111/nbfr.12139 Published online by Cambridge University Press

determined if we are willing to renounce the office of judging the past on this question, and to limit ourselves to the determination of what actually happened.

The Religious Jurisdiction of the State

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

Both Empire and Church brought to their confrontation ideas about how religion should relate to the state. For the Romans, the worship of the gods was a matter of first importance to the state. The emperor, as *pontifex maximus*, was the supreme head of the pagan Roman priesthood, and as such was responsible for their proper worship. The power of Roman rule was held to depend on and stem from Roman fidelity in worship of the gods. Horace expressed this view in his *Odes,* 3.6, where he asserts 'dis te minorem quod geris, imperas' – the Romans rule because they serve the gods. Cicero asserted that it was only in piety towards the gods that the Romans excelled all other peoples (*de Harusp. Resp.* 19), and that disappearance of this piety would entail the disappearance of justice and social union (*Nat. Deor.* 1.4). Dio Cassius, in the speech of Maecenas to Augustus recommending monarchy in book 52 of his *Roman History*, recommends that the monarch make the religion of state compulsory: 'do you not only yourself worship the divine Power everywhere and in every way in accordance with the traditions of our fathers, but compel all others to honour it'[4] – a view that followed Plato's position in *Laws*, book X, 907–912.

In the Scriptures, the worship of all gods other than the God of Israel is forbidden. A rationale for this commandment is succinctly provided in Deuteronomy 32:17, which says of the rebellious children of Israel that 'they sacrificed to demons which were no gods'. The God of Israel is the only true god, and hence the only being who should be worshipped; the other gods are not real gods, but are instead demons – 'all the gods of the gentiles are demons' (Ps. 95:6),[5] a statement repeated in 1 Cor. 10:20, 'what pagans sacrifice they offer to demons and not to God'. The king has the duty

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

[5] All biblical citations are from the RSV.

© 2015 The Dominican Council

https://doi.org/10.1111/nbfr.12139 Published online by Cambridge University Press

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

Both Roman and Jewish approaches reflect the attitude to religion common to all states in antiquity (cf. Aristotle, *Politics* book 7 ch. 8 1328b10). It was held that correct religious worship was the responsibility of the state, and that the well-being of state and people depended on this responsibility being carried out. The conversion of the Empire to Christianity preserved this attitude, but introduced four new elements to it: i) the god adopted by the state was the Christian God, ii) the reality of all other gods was rejected, and the Christian claim that these other gods were in fact demons was accepted, iii) the notion of heresy and schism as evils possible within the framework of the worship of the one God was accepted, and iv) the Catholic Church was accepted as the true church, the arbiter of heresy and orthodoxy, and the body that carried on religious worship.

The position of the Christian empire with respect to the Catholic faith was given explicit legal form in the Theodosian Code, the sixteenth

© 2015 The Dominican Council
https://doi.org/10.1111/nbfr.12139 Published online by Cambridge University Press

book of which legislates on religious matters. The book begins by stating that 'It is Our will that all the peoples who are ruled by the administration of Our Clemency shall practice that religion which the divine Peter the Apostle transmitted to the Romans, as the religion which he introduced makes clear even unto this day.'[6] The rationale for punishing heresy is given in title 5, 39, which states 'We have recently published Our opinion in regard to the Donatists. Especially, however, do we prosecute with the most deserved severity the Manichaeans, and the Phyrgians and the Priscillianists. . . . it is Our Will that such heresy shall be considered a public crime, since whatever is committed against divine religion redounds to the detriment of all.'[7] This reference to the Manichaeans indicates an element of continuity between Roman policy before and after the acceptance of Christianity by the state, since Manichaeanism was forcibly suppressed under the pagan empire as a noxious religion. The policy of the Christian empire towards paganism did not in fact involve any great legal innovation besides the acceptance of the Christian claim that pagan religion was devil-worship, since Roman law under paganism was hostile to sorcery and the invocation of demons. Once idolatry was accepted as demon-worship, the spirit and probably even the letter of Roman law from before the conversion of the Empire could be used for its legal suppression. (It should be allowed however that the Deuteronomic commands to extirpate idolatry, insisted on by Firmicus Maternus in his *De errore profanarum religionum*, probably had more weight with the Christian emperors than these legal precedents; although these precedents are cited by Maternus as well.) The introduction of heresy and schism as categories of religious crime was the real legal development that came with the conversion of the Empire.

This legal innovation resulted from the fundamental innovation in the religious policy of the Empire consequent upon its acceptance of Christianity, which was the recognition of a body separate from the state – the Catholic Church – as the authority in religious questions. This authority was recognised even by emperors who wished to impose their own theological views, since these emperors never attempted to impose these views purely through an exercise of imperial power; they always convoked councils of bishops to rule that the theological position they favoured was correct, and presented their suppression of opposing positions as an implementation of these conciliar decisions. In questions concerning the faith or unity of the Church, the position of both the Catholic Church and the Christian Roman state was that the Church decides, and the Emperor enforces. The enforcement involved the suppression of heretical and schismatic

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

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

© 2015 The Dominican Council

https://doi.org/10.1111/nbfr.12139 Published online by Cambridge University Press

assemblies, the banning of heretical works and heretical preaching, and the imposition of various legal disabilities and other punishments on heretics and schismatics. It did not however include the imposition of the death penalty for heresy, a form of punishment that was condemned by the Church. St. John Chrysostom sums up the Catholic teaching on the punishment of heresy in the patristic era in his homily on the parable of the wheat and the tares in Matthew 13; '[Christ] does not therefore forbid our checking heretics, and stopping their mouths, and taking away their freedom of speech, and breaking up their assemblies and confederacies, but our killing and slaying them.'[8] St. Ambrose, in the western Empire, held the same view about the punishment of heretics. While condemning the imposition of the death penalty for heresy, he considered that idolatry and heresy should be suppressed by the state (letters 10, 11, 24, 26, 57, funeral orations for Valentinian and Theodosius). Indeed, in his dispute with the pagan Symmachus over the restoration of the Altar of Victory to the Senate-house in Rome, he encountered and rejected many of the arguments for religious toleration that were to be revived in the 16th and 17th centuries (letters 17, 18).[9]

As this citation from Chrysostom indicates, the policy of the Christian Empire towards paganism, heresy and schism was upheld by the Catholic Church, which taught that this imperial policy was demanded by the Christian faith. This enforcement was presented to the emperors by the Church as being their duty as rulers; Pope Leo the Great, writing to the emperor Leo in order to convince him to enforce the teachings of the Council of Chalcedon, stated that 'you ought unhesitatingly to consider that the kingly power has been conferred on you not for the governance of the world alone but more especially for the guardianship of the Church'[10] (letter 156). In this he repeats the teaching already pronounced to Theodosius II by Pope Celestine.[11] This teaching is not asserting that Christian emperors as individuals have acceded to the purple in order to use the imperial power for the guardianship of the Church. It is asserting that such guardianship is their responsibility precisely as emperors.

In addition to teaching that support of the true religion and suppression of false religion was a responsibility of the state, the popes gave a reason why the state had that responsibility on purely temporal grounds.

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

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

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

[11] For Celestine's letter and the teaching it contains, see F. Cavallera, 'La doctrine du prince chrétien', *Bulletin de literature ecclésiatique*, 1937, pp. 67–78, 119–135, 167–179.

© 2015 The Dominican Council

https://doi.org/10.1111/nbfr.12139 Published online by Cambridge University Press

They taught that enforcement of the true religion was presented as being a guarantee for the safety of rulers and the wellbeing of the state – a factor that obviously falls under the responsibility of rulers as such. This is clearly stated in the letter of Pope St. Agatho to the emperor Constantine IV, which was used as a confession of faith at the Second Council Constantinople in 681. In this letter, issued *ex cathedra* as teaching the faith of the Apostle Peter, Pope Agatho teaches not only that the emperor has the duty of upholding the true faith and suppressing heresy, but also that the suppression of heresy by the state is necessary 'for the stability of the Christian state, and for the safety of those who rule the Roman Empire'.[12] St. Agatho's general position in this letter reiterated the teaching pronounced in letters to emperors from Popes Leo the Great (letter 156), Simplicius (letters 8, 10), Celestine I (letter 22), Gelasius I (letter 8), and Symmachus (letter 10).

This presentation of Catholic teaching on church and state in the patristic era agrees with the general consensus of historians, who have accepted that there was no such thing as an ideal of toleration among either pagans or Christians in antiquity; this position is well exemplified by Sir Geoffrey Elton's assertion that 'religions organised in powerful churches and in command of the field persecute as a matter of course and tend to regard toleration as a sign of weakness or even of wickedness towards whatever deity they worship'.[13] However, this consensus has been challenged by Elisabeth DePalma Digeser and Hal Drake.[14] They have contended that there was a notion of tolerance in the ancient world, proposed by Christians in response to persecution by the state. They present Tertullian and Lactantius as characteristic representatives of this position. Tertullian asserted in *Ad Scapulam* 2,2 that religion must be adopted freely and not by force (see also his *Apology*, chs. 24, 28). In his *Epitome of the Divine Institutes*, 49,1, Lactantius states that

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

[13] Sir Geoffrey Elton, 'Introduction', *Studies in Church History 21: Persecution and Toleration*, W. J Sheils ed. (Basil Blackwell: Oxford, 1984), p. xiii; for this consensus see also Peter Garnsey, 'Religious toleration in classical antiquity', in Sheils (1984), p. 1; François Paschoud, 'L'Intolerance chrétienne vue et jugée par les païens,' *Cristianesimo nella Storia*, 11 (1990), pp. 545–77; Peter Brown, 'Christianisation and religious conflict', *The Cambridge Ancient History vol. 13: The Late Empire, A.D. 337–425* (Cambridge: Cambride University Press, 2008).

[14] H.A. Drake, *Constantine and the Bishops: The Politics of Intolerance* (Baltimore: Johns Hopkins University Press, 2000). Elizabeth DePalma Digeser, 'Lactantius, Eusebius and Arnobius: Evidence for the Causes of the Great Persecution', *Studia Patristica* 39 (2006): 33–46: 'Lactantius, Porphyry, and the Debate over Religious Toleration', *Journal of Roman Studies* 88 (1998), 129–46: *The Making of a Christian Empire: Lactantius and Rome* (Ithaca: Cornell University Press, 2000): 'Porphyry, Lactantius, and the Paths to God,' *Studia Patristica: Papers presented at the Thirteenth International Conference on Patristic Studies held in Oxford* 1999, vol. 34. M. F. Wiles and E. J. Yarnold eds. (Peeters: Leuven, 2001), 521–8.

© 2015 The Dominican Council

https://doi.org/10.1111/nbfr.12139 Published online by Cambridge University Press

'it is religion alone in which freedom has placed its dwelling. For it is a matter which is voluntary above all others, nor can necessity be imposed upon any, so as to worship that which he does not wish to worship.'[15] In his *Divine Institutes* 5,20, he says 'There is no occasion for violence and injury, for religion cannot be imposed by force; the matter must be carried on by words rather than by blows, that the will may be affected.'[16]

However, according to Digeser and Drake, after the Christians achieved power they repudiated this notion of tolerance and suppressed pagan religion. The pagan élite in their turn then argued for tolerance, using arguments borrowed to a great extent from the Christians, but to no avail. Drake's account of this alleged change in attitude is that the Church prevailed on the Roman state to apply to all non-Catholic religions the repressive attitude that the Church had previously taken to heretics, and that had been supported by the state since the time of Constantine.[17] This change in attitude, coupled with Christian religious and political success, led to the notion of religious toleration falling into oblivion. It was not however a change that was intrinsic to Christian belief, or a necessary consequence of Christian supremacy; a principled religious toleration was always in theory a possible option for Christians, because it had been accepted and argued for by some of their most eminent representatives in patristic times, and was in fact the policy originally adopted by Constantine, who intended to unite Christians and pagan monotheists by this means.

The appeal to Tertullian and Lactantius as champions of religious freedom has been current since the Enlightenment; it is found in Pierre Bayle.[18] It is not however sustainable when the actual views of these Christian apologists are examined. The context of their arguments was the state persecution of Christians who refused to sacrifice to the emperor. The goal of their arguments was to establish that it is wrong to coerce people into the practice of a religion other than their own, and hence that it was wrong to coerce Christians into the pagan religious practice of sacrifice. This position on religious coercion was upheld in theory and (usually) in practice by the Church, for non-Christians as well as for Christians; forced conversion to Christianity was always condemned by Catholic teaching. But the claim A), that it is wrong to force people to adopt a religion to which they do not

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

[16] *Ante-Nicene Fathers vol. VII* (1886), p. 156.

[17] Drake (2000), pp. 346–350,416, 481.

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

© 2015 The Dominican Council

https://doi.org/10.1111/nbfr.12139 Published online by Cambridge University Press

belong, does not imply the claim B) that it is wrong to force people to stop practicing their own religion, or the claim C), that it is wrong to force people to conform to the religion to which they do belong. The religious coercion that was practiced by the Roman Empire under ecclesiastical guidance was either suppression of false religions, which falls under B), or coercing Christians who adhere to heresy or schism to conform to the true Christian faith, which falls under C). Prior to the conversion of Constantine, Christian apologists did not openly urge the suppression of pagan religion by the state, but their insistence that such religion was devil-worship and should be abandoned by the state does not leave much doubt about the course they believed should be taken towards it, especially since the suppression of such worship was commanded by the Scriptures. The assertion of claim A) by the Christian apologists and the teaching of the Church is thus not incompatible with Catholic teaching on the state's duty to suppress idolatry, heresy, and schism.

Drake is also wrong about Constantine's initially planning a policy of principled religious toleration, and understanding why this is so is crucial to understanding why Digeser and Drake are wrong about Christian views on religious toleration. Drake, for all his valiant attempts to avoid anachronism, nonetheless fails to do so on a vital issue. He assumes that the constituencies that Constantine had in mind in his political decisions about religious toleration were simply human ones. This assumption is incompatible with the fact that Constantine and all the other political actors of the day believed in the existence of spiritual powers whose actions played a determining role in human affairs – a fact that Drake elsewhere acknowledges. Any political decision in the fourth century had therefore to take these spiritual powers into account – and not only the relations of these spiritual powers to human agents, but also their relations to each other. If one of these spiritual powers was at war with another, an alliance with one of these powers meant war with the other.

The war between Christ and the pagan gods was a tenet of Christianity from the beginning.[19] It is a central feature of the New Testament, where Christ's teachings and exorcisms announce and prosecute a war on the demons with whom the pagan gods are identified. The chorus of pagan oracles denouncing Christians around the turn of the third century was accepted by both pagans and Christians as a declaration of war by the pagan gods in turn.[20] Constantine's adoption of the labarum at the battle of the Milvian Bridge was an enlistment on one side of this war, in the hope that Christ would be the stronger ally; his victory in that battle was the confirmation of his hope. His rejection of sacrifice was

[19] See Brown (2008) on this conception of war between spiritual powers.

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

© 2015 The Dominican Council

https://doi.org/10.1111/nbfr.12139 Published online by Cambridge University Press

a rejection of the act that was needed to declare allegiance to the pagan gods, and to enlist them as allies – an understanding of sacrifice that is reflected in the first five books of Augustine's *City of God*, which are aimed at the pagan claim that abandonment of sacrifice to the pagan gods meant abandonment of the means to ensure their favour and consequent worldly success. Allegiance to Christ was understood by Constantine and everyone else at the time to mean rejection of pagan sacrifice and war with the pagan gods, and this meant that an alliance with pagans on the basis of a vague shared belief in a supreme God was impossible. The embrace of a 'religiously neutral public square' was never dreamed of by Constantine or his successors, as it would have been a policy they would have judged to be suicidal – one that left them with no superhuman allies at all. The terms of the Edict of Milan, which grant freedom to Christians and to all others to follow what religion they please, do not constitute evidence for Constantine's support for a religiously neutral public square; since the edict was issued by Constantine's pagan co-emperor Licinius as well as by Constantine, it could not have said anything else. Constantine's frequent references to the supreme God, rather than specifically to Christ, can legitimately be seen as an effort to placate pagans, but they do not add up to a policy of religious toleration.

Papal Teaching on Religion and the State in the 19th and 20th Centuries

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

© 2015 The Dominican Council
https://doi.org/10.1111/nbfr.12139 Published online by Cambridge University Press

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

Leo XIII is by far the most significant figure in the development of papal teaching on religion and the state. His contribution to it formed part of a complete and systematic program that was set forth in his encyclicals. This program was the response to the challenge of the Enlightenment thought and political movements that opposed the faith; it presented the Catholic intellectual position in reply to this challenge, and proposed to Catholics a plan of action to combat this challenge. Leo XIII's endorsement of the philosophy of St. Thomas in *Aeterni Patris*, his teaching on the unity of the Church in *Satis Cognitum*, his social teachings in *Rerum Novarum* and *Quod Apostolici Muneris*, his teaching on marriage in *Arcanum*, his condemnations of Freemasonry in *Humanum Genus* and *Inimica Vis*, and his condemnation of Americanism in *Testem Benevolentiae*, are other parts of this program. His teaching on the relations of Church and state took the form it did because of the role it played in the program, a role that demanded an extensive treatment of the subject that went back to first principles. His encyclical *Libertas* is the keystone of this teaching on religion and the state, containing as it does a systematic exposition of the philosophical and theological principles upon which the teaching is based.

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

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

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

© 2015 The Dominican Council
https://doi.org/10.1111/nbfr.12139 Published online by Cambridge University Press

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

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

(D) This submission to the Catholic faith does not exceed the power of the state, because it does not require the state to adjudicate questions of religious truth as such; it only requires that the state be able to identify the true authority in religious matters, which is the Catholic Church. This identification is possible using natural reason alone, so it does not surpass the nature of the state. (This teaching is not meant to claim that as a matter of fact the true religious authority will be identified using natural reason alone, rather than through the exercise of the virtue of faith on the part of Christian rulers of the state; it is instead meant to address the philosophical point that the state, as a natural entity with a natural end, must be capable of using natural means to identify the true religious authority.) (Leo XIII, *Immortale Dei*, 7: *Libertas*, 20).

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

(F) The source of the authority of the state is God, not popular consent. If the state fails to uphold the Catholic faith, it violates the rights of God, and thus attacks the basis of its own authority. There can be no such thing as a religiously neutral state; a state that

© 2015 The Dominican Council
https://doi.org/10.1111/nbfr.12139 Published online by Cambridge University Press

fails to uphold religion commits itself to atheism. (Pius VI, *Quod Aliquantulum*: Gregory XVI, *Mirari Vos*, 17: Pius IX, *Quanta Cura,* 4: Leo XIII, *Diuturnum,* 5–16, 23–24; *Immortale Dei,* 3–14, 23–38: *Libertas,* 7–11, 14–22, 36–41: *Au Milieu des Sollicitudes*, 5–6, 18, 28: *Sapientiae Christianae*, 5–11: *Exeunte Iam Anno*, 8; *Tametsi Futura Prospicientibus*, 7–8, 11–12: St. Pius X, *Notre Charge Apostolique*; *Iucunda Sane*, 19; *Vehementer Nos*, 3: Pius XI, *Ubi Arcano Dei Consilio,* 27–28; *Divini Illius Magistri*, 51–13: John XXIII, *Pacem in Terris,* 51–52.)

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

(H) Acknowledgement and promotion of the true religion and the social kingship of Christ by the state serves the well-being of society and is necessary for it; states that reject the social kingship of Christ will suffer disaster and collapse. (Gregory XVI, *Mirari Vos*, 14, 20: Pius IX, *Quanta Cura*, 4, 8: Leo XIII, *Au Milieu des Sollicitudes*, 5–7: *Inscrutabili Dei Consilio*, 2–8, *Libertas*, 15–16, 22; *Diuturnum*, 25; *Nobilissima Gallorum Gens*, 2; *Rerum Novarum*, 27; *Exeunte Iam Anno*, 8–9; *Sapientiae Christianae*, 3, 39; *Tametsi Futura Prospicientibus*, 7–9, 11–13; *Praeclara Gratulationis Publicae;* St. Pius X, *E Supremi*, 2; *Vehementer Nos*, 3: Benedict XV, *Ad Beatissimi Apostolorum*, 5: Pius XI, *Ubi Arcano Dei Consilio*, 27–31, 45–48; *Quas Primas* 1, 18–19, 24: Pius XII, *Summi Pontificatus* 21–22, 30: John XXIII, *Mater et Magistra*, 217).

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

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

© 2015 The Dominican Council
https://doi.org/10.1111/nbfr.12139 Published online by Cambridge University Press

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

These condemnations are more narrowly formulated than the teachings in A) to H); they are thus carefully stated because they are taught infallibly, and bind the faith of Catholics. This encyclical is addressed to all the bishops of the Catholic church with the stated intention of protecting the salvation of souls. It provides a final condemnation of a list of specified errors, states that these condemnations are undertaken for the defence of doctrine and religion and are an exercise of the apostolic authority of the pope, and commands that all Catholics accept them.[21] These condemnations thus satisfy the criteria for infallible papal teachings, and they were generally accepted as infallible at the time of their promulgation;[22] Newman, who minimises the authority of the *Syllabus of Errors* in his *Letter addressed to the Duke of Norfolk*, speaks in that *Letter* of 'that infallible teaching voice which is heard so distinctly in the *Quanta cura* and the *Pastor Æternus'*.[23]

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

[22] The assertion that the encyclical did not contain infallible teaching was dismissed as 'manifestly improbable', 'plane improbabile', by canonists; see F.-X. Wernz, *Jus decretalium ad usum praelectionium in scholis textus canonici sive juris decretalium* (Romae: ex Typographia polyglotta S. C. de propaganda fide1898–1914), Vol. 1 (1905), not. 58, p. 385.

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

© 2015 The Dominican Council
https://doi.org/10.1111/nbfr.12139 Published online by Cambridge University Press

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

The Problem of Interpreting Dignitatis Humanae

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

The fundamental reason for this difficulty is that three incompatible understandings of this teaching were entertained at that council. The majority of the bishops followed the progressive leaders at the Council, who agreed with Fr. Rhonheimer in rejecting the Church's earlier teaching on religion and the state. However, these leaders held two different positions on the basis and nature of the right to religious liberty that they wished the Council to endorse.

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

© 2015 The Dominican Council
https://doi.org/10.1111/nbfr.12139 Published online by Cambridge University Press

This teaching, enshrined in *Dignitatis Humanae*, does not entitle the state to uphold religious truth or punish religious error as such.[24]

Murray was involved in drafting earlier versions of *Dignitatis Humanae*, and he was followed by the American bishops, who had long chafed at Catholic teaching on religion on the state on the grounds of its incompatibility with the American constitution. However, the fact that Murray wrote in English, and that most of the Council Fathers could not understand that language, limited his influence at the Council. When his views were presented, they were far from winning acceptance in the conciliar majority; Jan Grootaers notes the 'profound dissatisfaction of the most representative figures of the Conciliar majority at the proposed Murray-Pavan draft text'.[25]

The influence of Jacques Maritain was much more significant.[26] Giuseppe Alberigo and Joseph Komonchak remark: 'Vatican II drew inspiration for its own decisions from an awareness that the phase known as Christendom was now past, that is, the time when Christianity and, above all, Catholicism, in the West was lived as a social system that was self-sufficient inasmuch as it embodied the faith and was ruled by the secular arm. (Footnote; Many bishops were able to accept this perspective because they knew the *Humanisme intégral* of Jacques Maritain.)' His ideas had a much broader currency in the Church than those of Murray's, and they were especially important because he was the intellectual mentor of Paul VI,[27] who later declared that 'the Church agrees to recognize the world as "self-sufficient," she does not seek to make the world an instrument for her religious ends . . . ' (*L'Osservatore Romano*, August 24, 1969.) Maritain was in fact consulted by Paul VI on the question of religious freedom during the Council.[28] Unlike Murray, Maritain held that the state had the promotion of the common good as its purpose. But he claimed that the common good which the state exists to subserve is purely temporal in nature, and has no supernatural element. The state is thus entitled to suppress religious activity that harms the common temporal good, but it has no right to act to uphold the supernatural good.

[24] See John Courtney Murray S.J., 'Vers une intelligence du développement de la doctrine de l'Église sur la liberté religieuse', in *Vatican II: La liberté religieuse* (Paris: Éditions du Cerf, 1967), J. Hamer and Y. Congar eds.; see esp. pp. 118–121, 128, 131–132, 137–138. The English original of this paper has not been published, but can be found in the Murray Archives, file 7–517.

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

[26] Giuseppe Alberigo and Joseph Komonchak, *History of Vatican II*, vol. V (Maryknoll: Orbis, 2006), pp. 545–6, 548.

[27] See Philippe Chenaux, *Paul VI et Maritain: Les Rapports du 'Montinianisme' et du 'Maritanisme'* (Brescia: Istituto Paolo VI, 1994).

[28] See Jacques and Raïssa Maritain, *Oeuvres completes* vol. XVI (Fribourg: Éditions universitaires, 1999), p. 1086.

© 2015 The Dominican Council

https://doi.org/10.1111/nbfr.12139 Published online by Cambridge University Press

The difference between Murray and Maritain's positions has practical consequences for the character of religious freedom. For example, on Maritain's view it is possible to argue that there is no right to profess and promote atheism, because such a belief can be shown by natural reason to be false and harmful to the temporal good of the state. On Murray's view, it is possible to defend a right to the profession and promotion of atheism on the grounds that no-one's rights are violated by such action. No agreement on these issues was arrived at by the drafters and supporters of the document. In addition to this fundamental question, the members of the progressive majority disagreed on the scriptural basis or lack thereof for a right to religious freedom, and on the role of conscience in religious freedom.[29]

In addition to the various wings of the progressive majority at Vatican II, there was a substantial conservative minority that adhered to the papal teachings given in A)-H) above. The progressive leaders at Vatican II acted systematically to prevent them from making their case at the Council. An attempt to have the draft of *Dignitatis Humanae* document examined by a commission that included supporters of the traditional view was thwarted by Cardinal Bea.[30] When Archbishop Lefebvre and other supporters of papal teaching wrote to Paul VI on July 25th 1965 requesting that they be permitted to put their objections to the proposed draft of the document, the request was refused. A similar request made by them to the moderators of the Council on Sept. 18th 1965 was also refused.[31] The relator of the document, Bishop Émile de Smedt, who was charged with presenting and explaining it to the council fathers, took the further precaution of introducing an important amendment to the text that favoured the progressive position, without drawing the attention of the Council Fathers to the change. (The amendment stated that the right to religious freedom was enjoyed even by those who 'do not fulfill their obligation of seeking and adhering to the truth.')[32] Nonetheless it was found necessary to conciliate the conservative minority by inclusion of a clause stating that the document 'leaves untouched traditional Catholic doctrine on the moral duty of men and societies toward the true religion and toward the one Church of Christ.'[33]

[29] These disagreements are chronicled by Grootaers (1998), who notes the 'profound dissatisfaction of the most representative figures of the Conciliar majority at the proposed Murray-Pavan draft text'; p. 78.

[30] See *Vatican II: La liberté religieuse* (1967) p. 81, and Jan Grootaers, *Actes et acteurs à Vatican II* (Leuven: Leuven University Press, 1998), p. 285.

[31] See Ralph Wiltgen, *The Rhine Flows Into the Tiber* (Chawleigh: Augustine Publishing, 1978), pp. 247–249.

[32] See the council's *Acta Synodalia* IV, V (Roma : Typis Polyglottis Vaticanis), pp. 79, 102–102, 116.

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

© 2015 The Dominican Council

https://doi.org/10.1111/nbfr.12139 Published online by Cambridge University Press

The fundamental unresolved disagreements among the Council Fathers on religion and the state resulted in a document that is unclear on concepts that are central to the subject it is addressing. There is no definition of religion itself in the document, which is sometimes described in terms that apply only to Christianity or even to Catholicism; as e.g. in para. 3, 'the exercise of religion, of its very nature, consists before all else in those internal, voluntary and free acts whereby man sets the course of his life directly toward God'[34] (see also para. 6). The key concepts of conscience and right are not defined, although they have been given radically different meanings in Catholic tradition.[35] The recognition of the Church by the state is supposed to be the product of peculiar circumstances (para. 6), but it is also stated that 'in human society and in the face of government the Church claims freedom for herself in her character as a spiritual authority, established by Christ the Lord'[36] (para. 13), a claim that presupposes recognition by the state of the divine origin of the Church.

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

Dignitatis Humanae and Catholic Tradition

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

This task is in fact possible. The first step in carrying it out is to keep in mind the general principles for interpretation of magisterial documents. These documents have a legislative character, since they establish norms that Catholics are obliged to follow. They resemble civil legislation in that they are intended to agree with other legislation and to be interpreted in harmony with it, unless they explicitly state that previous legislation is to be suppressed and replaced by them. They also use an official vocabulary that is to be interpreted according to the

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

[35] See footnote 40 below.

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

© 2015 The Dominican Council

https://doi.org/10.1111/nbfr.12139 Published online by Cambridge University Press

received meaning that the vocabulary has acquired in legislative acts. The principal norms for interpretation of magisterial teachings are thus other teachings and the established meaning of official terminology. They are not to be interpreted primarily in terms of the personal views and purposes of the theologians and bishops responsible for drafting and passing them.

The next step in determining the teaching of *Dignitatis Humanae* is to follow a suggestion of John Courtney Murray. He was removed from the drafting process early in the history of the document, and found the arguments given in the final version unsatisfactory. He dismissed them with the claim that 'the Council's teaching authority falls upon what it affirmed, not upon the reasons it adduced for its affirmation'.[37] Yves Congar tentatively proposed a similar view, questioning whether the authority of the Council is engaged to the same degree in the document's explanation of its declarations (paras. 3 to 15) as it is in the declarations themselves (paras. 1 and 2).[38] Murray's position is supported by the lack of clarity of the argument in the document, and by the fact that it belongs to a less authoritative category conciliar document. In a dogmatic constitution, the most authoritative type, all the assertions about faith and morals can be said to have some teaching authority. *Dignitatis Humanae* is simply a declaration; in such a document, the passages that demand assent are solely those that are explicitly stated as being taught by the Church.

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

> '2. This Vatican Council declares that the human person has a right to religious freedom. This freedom means that all men are to be immune from coercion on the part of individuals or of social groups and of any human power, in such wise that no one is to be forced to act in a manner contrary to his own beliefs, whether privately or publicly, whether alone or in association with others, within due limits. The council further declares that the right to religious freedom has its foundation in the very dignity of the human person as this dignity is known through the revealed word of God and by reason itself. . . . The right to this immunity continues to exist even in those who do not live up to their obligation of seeking the truth and adhering to it and the exercise of this right is not to be impeded, provided that just public order [iustus ordo publicus] be observed.'[39]

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

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

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

© 2015 The Dominican Council

https://doi.org/10.1111/nbfr.12139 Published online by Cambridge University Press

The footnote to this passage refers to Leo XIII, *Libertas*, 30: Pius XI, *Mit Brennender Sorge*, 30–31; Pius XIII, radio message of Dec. 24th 1942; and John XXIII, *Pacem in Terris* 14. These references are concerned with the right to practice the true religion, with the exception of the passage from John XXIII, which does not clarify whether or not it is the true religion that is in question.[40] The right to practice the true religion was the understanding of the right to religious freedom taught by the Church prior to *Dignitatis Humanae*. These references thus do not help with the new element of the document's teaching on the right to religious freedom, which is the declaration that there is a right to practice religions other than the true one.

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

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

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

© 2015 The Dominican Council
https://doi.org/10.1111/nbfr.12139 Published online by Cambridge University Press

introduced into the 1917 Code. The authoritative works on its meaning are John Leo Hamill, *The Obligations of the Traveler According to Canon 14* (Washington, D.C.: Catholic University of America Press, 1942), and John Henry Hackett, *The Concept of Public Order* (Washington, D.C.: Catholic University of America Press, 1959). The fact that Hackett could write a book on the meaning of the expression indicates its established status as a canonical term.

There are two views on the meaning of 'ordo publicus' among canonists. One view takes it to refer simply to the common good as such. The other view interprets it more narrowly as referring to the essential elements of the common good. Hackett describes the latter view thus; 'Laws that protect the public order are only those that have for their direct object the protection of a good that is indispensable to society as such. ... Only a law that clearly is characterized by social necessity is one that safeguards the public order.'[41] The narrower view is the one more favoured by canonists, and it is the one we will take to be correct. It is worth noting that although the 1917 Code was the one in force when *Dignitatis Humanae* was promulgated, and is thus the appropriate reference for the interpretation of 'ordo publicus', the term was retained in the 1983 Code (canon 13 §2 °2), and canonists agree that its meaning in the later code is that of the earlier code.[42]

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

> 57. In this connection, We would draw the attention of Our own sons to the fact that the common good is something which affects the needs of the whole man, body and soul ['bonum commune ad integrum hominem attinere, hoc est ad eius tam corporis quam animi necessitates.'] That, then, is the sort of good which rulers of States must take suitable measure to ensure. They must respect the hierarchy of values, and aim at achieving

[41] Hackett (1959), p. 52. This meaning of 'ordo publicus' in canon law also discussed in C. Antoine, 'Étrangers', *Dictionnaire de théologie catholique* t. 5.1, col. 986: A. Molien, 'Lois', *Dictionnaire de théologie catholique* t. 9.1, col. 894–895: *New Commentary on the Code of Canon Law,* John P. Beal, James A. Coriden, Thomas J. Green eds., (New York: Paulist Press, 2000), p. 66: R. Le Picard, 'La notion d'ordre public en droit canonique', *Nouvelle revue théologique*, 55(1928), pp. 364–367, and 'Bien public, bien privé', dans *Dictionnaire de droit canonique*, t. II, éd. R. Naz, Paris, Librairie Letouzey et Ané, 1937, cols. 829–831: A. van Hove, 'Leges quae ordini publico consulunt', *Ephemerides theologicae Lovanienses*, 1 (1924), pp. 153–155.

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

© 2015 The Dominican Council

https://doi.org/10.1111/nbfr.12139 Published online by Cambridge University Press

> the spiritual as well as the material prosperity of their subjects. (42 Cf. Pius XII, *Summi Pontificatus*, 58–59.) . . .
>
> 59. Consisting, as he does, of body and immortal soul, man cannot in this mortal life satisfy his needs or attain perfect happiness. Thus, the measures that are taken to implement the common good must not jeopardize his eternal salvation; indeed, they must even help him to obtain it. (44 Cf. Pius XI, *Quadragesimo anno*, 118–119.)[43]

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

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

This interpretation of *Dignitatis Humanae* might seem to be based on a canonist's quibble. It is therefore important to grasp that it emerges from decisive developments in the history of the Church in the 20th century. These developments took their beginning from Action Française, the French nationalist movement led by Charles Maurras. Maurras was an atheist and a follower of Auguste Comte, the 19th-century founder of positivism. He hated Jews, whom he loathed for having spread monotheism, and made anti-Semitism a central part of the message of Action Française. Catholicism, in his view, effectively abolished monotheism by replacing God with the Church, and as a result was acceptable and indeed valuable.[44] He rejected democracy and advocated a return to an absolute monarchy in France, and wooed French Catholics with the object of gaining their support for his political programme. Many French Catholics, at odds with the Third Republic, were receptive to Maurras's

[43] http://www.vatican.va/holy_father/john_xxiii/encyclicals/documents/hf_j-xxiii_enc_11041963_pacem_en.html.

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

© 2015 The Dominican Council

https://doi.org/10.1111/nbfr.12139 Published online by Cambridge University Press

proposal of an alliance. To justify accepting the leadership of a man who considered monotheism to be a disastrous evil, they appealed to the analysis of Pedro Descoqs S.J., a convinced Suarezian.[45]

Descoqs argued from Suarez's view that grace involved the gift not only of the power to merit eternal salvation, but also the gift of a supernatural end to human nature, an end that found its fulfillment in the Beatific Vision. Suarez held that without this gift of a supernatural end, human happiness would consist in achieving natural, this-worldly goods. He accordingly held that the state had a purely temporal end independent of the supernatural.[46] Descoqs argued that since the natural end of man was independent of his supernatural end, it is possible for Catholics to cooperate in temporal affairs with unbelievers, since agreement on the nature of temporal goods was independent of agreement on the supernatural. It was thus legitimate for Catholics to cooperate with Maurras, an unbeliever, in pursuing temporal goods. French Catholics who rejected Liberal Catholicism welcomed this conclusion, and many of them, including Jacques Maritain, enthusiastically supported Action Française.[47]

Descoqs' defence of Action Française was greeted with revulsion by one of his students, Henri de Lubac. de Lubac felt that Catholic cooperation with the anti-religious and bigoted Maurras was immoral, and this led him to reject the theology of grace that was used to justify it. In a series of books – *Surnaturel*, *Le mystère du surnaturel*, *Augustinisme et théologie moderne* – he argued against the view that grace involved the gift of a new, supernatural end, and claimed that the supernatural happiness of the Beatific Vision was the end of human nature as such. de Lubac's view gained prestige in France as a result of the Vichy régime. Action Française was deeply committed to this régime, and some of its prominent Catholic members, such as Raphaël Alibert, were involved in its worst crimes. Alibert introduced the first Vichy Statut des Juifs, which stripped Jews of the rights of citizenship.[48] de Lubac meanwhile took part in campaigns against anti-Semitism, and had to go into hiding to escape the Gestapo.

The majority of the French clergy and hierarchy had eagerly supported Pétain. The victory of de Gaulle and the Allies, and the shame of Vichy crimes, gave them a strong incentive to distract attention from their Vichy past by enthusiastically endorsing those who had opposed

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

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

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

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

© 2015 The Dominican Council

https://doi.org/10.1111/nbfr.12139 Published online by Cambridge University Press

it. de Lubac's theological views thus acquired unassailable progressive credentials, which were enhanced when Pius XII's encyclical *Humani Generis* seemed to criticize his position. Thus it was that the nonexistence of a natural end of man became accepted into the catechism of progressive theologians. This led to its consequence, the nonexistence of an autonomous temporal end for the state, being asserted in *Pacem in Terris*, which was intended to incorporate progressive elements as a counterbalance to the policy of the previous papacy. Some credit for the success of this view should also be given to de Lubac's powerful arguments against the secularising effect of the Suarezian position, which no doubt had an effect on those bishops and theologians who read through his lengthy books.

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

When *Dignitatis Humanae* is read in the light of *Pacem in Terris* in this fashion, it can be seen to be an important clarification of doctrine that does confer a kind of religious freedom that was rejected by important Catholic theologians in the past. It entails that the Church does not have the right to use the state to coerce the baptised into fulfilment of all their baptismal promises, and that neither Church nor state has the right to attempt to influence the inner act of belief through coercion. For such an inner act is by its nature independent of the common good, and the state is thus not entitled to demand it or to seek to produce it by coercive means. Suarez's position on the legitimacy of the coercion of the inner act of belief is morally outrageous, and foreshadows the vilest crimes of later totalitarian states. Its repudiation by the Church is a real progress in the defence of human freedom and dignity.

Moreover, this repudiation is a position of principle. On Pink's interpretation, the Church has only made a pragmatic decision to not claim her right to use the state to coerce the baptised into the belief and practice of the faith. She has not denied the existence of this right, and it is not hard to see that if the Suarezian position were to be generally accepted and officially endorsed, and the Church were ever to regain the influence on society that she possessed in the Middle Ages, such coercion would be practised. Pink's interpretation presents *Dignitatis*

© 2015 The Dominican Council
https://doi.org/10.1111/nbfr.12139 Published online by Cambridge University Press

Humanae as doing little more than acknowledging the implications of the Church's impotence over modern society, and conceding a licence to engage in behaviour that she could rightly suppress if she had the power – rather like Giant Pope in the *Pilgrim's Progress*, grinning at non-Catholic Christians as they go by, and biting his nails because he cannot come at them. The interpretation proposed here is a more attractive as well as a truer understanding of the Church's position on religious freedom.

John R.T. Lamont
john.lamont@acu.edu.au

© 2015 The Dominican Council
https://doi.org/10.1111/nbfr.12139 Published online by Cambridge University Press