Dignitatis humanae and the Development of Moral Doctrine: Assessing Change in Catholic Social Teaching on Religious Liberty

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Dignitatis humanae and the Development of Moral Doctrine: Assessing Change in Catholic Social Teaching on Religious Liberty

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Vatican II’s Declaration on Religious Liberty, Dignitatis humanae (DH), poses the problem of development in Catholic moral and social doctrine. This problem is threefold, consisting in properly understanding the meaning of pre-conciliar magisterial teaching on religious liberty, the meaning of DH itself, and the Declaration’s implications for how social doctrine develops. A survey of recent scholarship reveals that scholars attend to the first two elements in contradictory ways, and that their accounts of doctrinal development are vague.

The dissertation then proceeds to the threefold problematic. Chapter two outlines the general parameters of doctrinal development. The third chapter gives an interpretation of the pre-conciliar teaching from Pius IX to John XXIII. To better determine the meaning of DH, the fourth chapter examines the Declaration’s drafts and the official explanatory speeches (relationes) contained in Vatican II’s Acta synodalia. The fifth chapter discusses how experience may contribute to doctrinal development and proposes an explanation for how the doctrine on religious liberty changed, drawing upon the work of Jacques Maritain and Basile Valuet.

I argue that DH can be understood as a homogeneous development by clarifying the three elements of the problem in the following ways. First, two pre-conciliar developments in Catholic
social teaching prepared for DH, namely, Pius XI’s personalistic doctrine of the common good and Pius XII’s articulation of the new demands placed upon nation-states in an international juridical order. Second, I argue that DH preserves in a new modality doctrines that some scholars assume were discarded by Vatican II, such as the duty of civil authorities toward the Catholic Church and the place of the objective moral law in limiting free exercise. Third, I draw upon Maritain and Valuet to argue that the inherent elasticity of society, being an operational and not substantial unity, indicates the limits and possibilities of change in Catholic social doctrine. In the process I introduce to the English literature Valuet’s theory of a development in the ius gentium as a necessary condition for universal exercise of the natural right of religious liberty.
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Chapter 1
The Declaration on Religious Liberty and Doctrinal Development

In any event, the document is a significant event in the history of the Church. It was, of course, the most controversial document of the whole Council, largely because it raised with sharp emphasis the issue that lay continually below the surface of all the conciliar debates—the issue of the development of doctrine. The notion of development, not the notion of religious freedom, was the real sticking-point for many of those who opposed the Declaration even to the end. The course of the development between the *Syllabus of Errors* (1864) and *Dignitatis Humanae Personae* (1965) still remains to be explained by theologians. But the Council formally sanctioned the validity of the development itself; and this was a doctrinal event of high importance for theological thought in many other areas.¹

The fathers of the Second Vatican Ecumenical Council stated in the Declaration on Religious Liberty, *Dignitatis humanae* (hereafter *DH* or “the Declaration”), that they “intend[ed] to develop the doctrine of the more recent popes on the inviolable rights of the human person and the constitutional order of society” (n. 1). The Declaration is thus an instance of doctrinal development in the Catholic Church’s social doctrine. Scholarly consensus, however, on just what sort of development the Declaration contains is hard to come by. For one, the arguments and theological content of *DH* are sometimes obscured by historical accounts of the Second Vatican Council that characterize it as a clash of political factions attempting to outflank each other. Second—and important for this dissertation—scholars often differ in assessing *DH*

because they operate both with diverse explanations of how the Church’s moral and social
teaching develops in its content (development of doctrine); and also with diverse understandings
of what the modern popes have taught on religious liberty in civil society running up to Vatican
II (development of this doctrine). These two differences reinforce one another, for what one
believes about how social doctrine is capable of developing influences how one reads the
nineteenth-century papal documents, and how one reads nineteenth-century papal documents
influences how one believes doctrines to develop. A third factor is involved: accurately
interpreting the teaching of the Declaration itself. These three aspects are bound up in one
problematic: the meaning of prior Church teaching, the meaning of $DH$, and the nature of
doctrinal development. This opening chapter examines the work of scholars whose positions on
$DH$ display this dynamic of interplay between theories of moral doctrinal development and
interpretations of the Church’s teaching on religious liberty.

Although the scholars analyzed in this study do not take identical positions, the proximity
between positions makes it possible to recognize several groups among them. First, there are
those who hold $DH$ to be a heterogeneous development. A heterogeneous development is a
doctrinal change whose truth is contradictory to an earlier doctrinal teaching of the Church. Such
a change thus involves a rejection, reversal, or corruption of a previous teaching at the level of
doctrine. Those who claim or suspect a heterogeneous change in the case of $DH$ include John
Noonan, Brunero Gherardini, Michael Davies, and Martin Rhonheimer. These do not understand
$DH$ to be a mere exchange of an obsolete policy for one more up to date. Rather, they see in $DH$
a new doctrine in opposition to an old one. While their conclusions vary according to the weight they grant to the nineteenth-century documents of the Magisterium, these authors share the common assumption of the incompatibility of *DH* with papal documents such as Pius IX’s *Quanta cura* and *Syllabus errorum*, and Leo XIII’s *Immortale Dei*, insofar as these encyclicals seem to teach the ideal of a Catholic confessional state and the inappropriateness of public worship by non-Catholic religions. In contrast to the nineteenth-century popes, in the opinion of these scholars, *DH* affirmed modern liberal views of conscience, religious practice, and civil liberty which were previously condemned. These scholars’ consensus on *DH*’s heterogeneity does not extend to their understanding of the authority of the various teachings involved and the implications for the Church’s teaching authority. John Noonan, for example, sees both the previous nineteenth-century teaching and *DH* as authoritative and yet also contradictory. He then claims that this contradiction reveals that moral and social doctrine does not develop according to an intelligible rationale, but only according to the “deeper” criterion of increasing fidelity to the twofold commandment of charity promulgated by the Lord Jesus Christ. Gherardini and Rhonheimer, for their part, are mirror images of one another. Gherardini affirms the doctrinal authoritativeness of the nineteenth-century papal encyclicals; *DH* is therefore suspect insofar as it is incompatible with the former teaching, for the Church cannot contradict herself at the level of doctrine. Michael Davies can be grouped with Gherardini in this regard. Rhonheimer, however, sees the nineteenth-century encyclicals touching on religious liberty as an overextension of Church competency into political theory. For that reason, the contradiction
between \textit{DH} and those earlier documents would not be a threat to the Church’s teaching authority. The papal encyclicals in question were not valid insofar as they overreached into an area in which the Church does not have competence. \textit{DH} is the only authoritative document in the stack, for by it the Church promulgated an approach to religious liberty in keeping with the Church’s proper competency.

Another group of scholars hold that \textit{DH} was a homogeneous or organic development of the Church’s social doctrine. John Courtney Murray, Basile Valuet, Avery Dulles, Russell Hittinger, Ian Ker, and Thomas Pink each find in his own way that \textit{DH} is in continuity with prior Church teaching. Among them stand those whose approach to the development is mainly an apologetic response to other scholars, seeking to defend \textit{DH} from the charge of contradicting prior Church teaching (Dulles responding to Noonan, and Pink to Rhonheimer). What is often lacking in their exposition is an account of how moral and social doctrinal develops. It is one thing to attempt to show that two propositions are not contradictory, and thus not opposed in truth and falsity. It is another to explain how moral and social doctrine progresses under the guidance of the Magisterium and in conversation with historical events and progress in the human sciences. Preoccupied with a necessary but defensive task, these theologians do not consider what the Declaration may signify for the development of Catholic social doctrine generally. Other scholars have indeed begun to seek a deeper \textit{ratio} of change in Church teaching in this area, such as Valuet and Hittinger. Murray went furthest in attempting to sketch a theory of doctrinal development in social teaching. Yet Murray’s work leaves the theologian with more
questions than answers about how Murray’s program is supposed to help further theological development. On top of it all, questions about the nature of homogeneous developments loom: is a homogeneous development simply any development not logically opposed to prior teaching? Not opposed in contradiction to prior teaching? Does it develop according to a logical path or an intuitive, experimental one? Does the Church’s competency over revelation extend, by means of the secondary object of infallibility, to the political sphere? How do the exigencies of man’s developing political life affect the truth of past teachings on political theology and human rights?

The purpose of this study is to discover in what way the Fathers of the Second Vatican Council “intend[ed] to develop the doctrine of more recent popes,” in order to elucidate how Catholic social doctrine develops both with regard to religious liberty and the Church-state relationship, and also in general. In what follows, each section of this chapter will analyze one or more of the thinkers mentioned above. Two issues are topical: each scholar’s judgment about whether and how *DH* is a homogeneous development of the Church’s social doctrine, and what this judgment entails regarding a theory of social doctrinal development. This assessment of the literature prepares for the remainder of this dissertation’s investigation into the threefold problematic of searching for a theology of social doctrinal development (chapters two and five) amidst the meaning of Catholic doctrine on religious liberty prior to *DH* (chapter three) as well as the meaning of *DH* itself (chapter four).
John T. Noonan, a prominent Catholic historian and judge, has written a number of works on the development of Catholic moral teaching in marital, economic, and political ethics.\(^2\) One such topic on which he has written is the Catholic Church’s position on religious liberty as developed by *DH*. Noonan understands the Declaration as having reversed previous teaching, as he noted in a 1993 article for *Theological Studies*. Beginning with Augustine of Hippo and continuing throughout the medieval period, the Church used to employ the power of the political state to limit the activities of heretics, up to and including executing them. After the Protestant Reformation, the Catholic Church retained the notion of the confessional state as the ideal relationship between Church and state, wherein the state is “the physical guarantor of orthodoxy.”\(^3\) Due to the new political situation of post-Reformation and post-Revolutionary Europe, however, the Church allowed rulers to tolerate the presence of heretics in civil society for the sake of the common good, that is, in order to prevent greater evils from breaking out on account of the state suppression of the religious activities of large segments of the population. Since Vatican II, however, the Catholic Church now promotes not only the religious freedom of


\(^3\) Noonan, “Development in Moral Doctrine,” 668.
“infidels”, whose freedom from coercion to baptism was consistently respected in the tradition, but also “the religious freedom of heretics, once trampled on in theory and practice.” The “sacred right” to religious liberty was now a requirement of “the human person” and not merely a positive right in this or that political regime, according to Vatican II’s doctrine. The established practices of the past were “reclassified as conduct occurring through ‘the vicissitudes of history.’”

So it came to be that in the case of religious liberty, “what was required became forbidden (the persecution of heretics).” Noonan appeals to experience as the source of this change. “The negative experience of religious persecution” in Europe after the Reformation, he says, “was reinforced by the American experience of religious freedom, for America launched the great experiment of a nation committed to the nonestablishment of any national religion and the free exercise of religion.” The work of intellectuals articulated and theorized these deliverances of human experience, preparing the way for Vatican II to adopt the ideal of liberty. These included the Catholics Alexis de Tocqueville, Félicité Robert de Lamennais, and Jean-Baptiste-Henri Dominique Lacordaire in Europe, and John Courtney Murray in North America. The further negative experience of the twentieth century’s totalitarian regimes restricting the

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4 Ibid., 667-68.
5 Ibid., 669.
6 Ibid., 674.
Church’s freedom “seal[ed] all by fire” and gave the Church an existential push to adopt a new position.\(^7\)

In his 2005 book, *A Church That Can and Cannot Change*, Noonan supplements this earlier presentation with a 135-year history of the Church’s disapprobation of religious liberty leading up to *DH*. The case of priest-publisher Félicité Robert de Lamennais (1782-1854) receives prominent treatment, for his views on freedom in civil society led to his censure. His position was that individuals should be free to publish and to follow their consciences in civil society, especially in a secularized society such as post-Revolutionary France. This would allow Catholic books, such as Lamennais’s own apologetical works, to reach the average man through a kind of free market of ideas. Such an undetermined freedom in the public square would allow the Church to have a voice in the wilderness of godless society. Lamennais’s ideas were condemned in Gregory XVI’s encyclical, *Mirari vos* (1832). Noonan says that the condemnation had something to do with “indifferentism”, defined as the idea that “all could achieve eternal salvation provided their morals were good.”\(^8\) Noonan concludes that it “is incontestable … that in absolute terms, without qualification as to context, the pope pronounced freedom of conscience and freedom of religion to be pernicious errors.”\(^9\) The two popes following Gregory simply repeated his condemnation, and set the Church’s reactive approach to freedom in society for the remainder of the nineteenth century. Thus it happened that the “overwhelming weight of

\(^7\) Ibid.


\(^9\) Ibid., 149.
authority,” made all the heavier by the encyclicals of Pius IX and Leo XIII, “restrained any advance to the future.”

The next stage of Noonan’s narrative establishes the Church’s consistent support for the use of secular power to coerce baptized heretics. The example of Lactantius shows that the Church supported freedom of religion prior to Constantine, but in the medieval period the Church allowed for the execution of formal heretics. The danger was the contagion of obstinate theological error within society, and the application of force a tempting remedy. Noonan does not spend much time explaining the medieval situation save by appeal to the conversion of Constantine. The blame for the execution of heretics is placed solely at the feet of the Church, leaving the secular arm seemingly a mindless instrument of spiritual authority. Noonan’s lone intellectual voicing exception to this Church-State compact was Desiderius Erasmus in the sixteenth century. It was only later in the twentieth century that the “teaching of Augustine, of Thomas Aquinas, of Lucius III, of Leo X, of Leo XII, of Gregory XVI, of Pius IX, of Leo XIII, and of the magisterium for fifteen hundred years was to be definitively rejected by a general council of the Church.” The main development at Vatican II, then, was that “[n]o distinction was now drawn between the religious freedom of infidels, in theory always respected … and the religious freedom of heretics, once trampled on in theory and in practice.” Noonan describes the object of the human right declared at Vatican II as “the right to believe and to practice in

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10 Ibid.
11 Ibid., 154.
12 Ibid.
accordance with his or her belief.”\(^\text{13}\) Although Noonan hints at DH’s description of the right as a negative right of immunity from the state, only elsewhere does he express this clearly.\(^\text{14}\) DH’s main development was that “[t]he state’s interference with conscience was denounced,” as though the Church had ever taught that the state had the simple capability to interfere with conscience in religious matters.\(^\text{15}\)

As with other developments in Church moral doctrine, human experience in conjunction with the writings of brilliant individuals instigated the development. On the side of experience, the Church’s suffering from totalitarian regimes and Islamic fundamentalism on the negative side, and the “lustre of the American experience” on the positive side, impressed upon the bishops the need to free the Church from the state. The controversial intellectuals leading the charge were Jacques Maritain and John Courtney Murray.\(^\text{16}\) In consequence, the Second Vatican Council accepted the doctrine of religious liberty, despite the opposition of a conservative minority who were concerned about the contradiction between the Declaration and the teaching of Gregory, Pius, and Leo. Thus the Catholic Church vindicated the experience and ideas not only of the Church Father Lactantius, but also of “ex-Dominican Sebastian Franck, the ex-priest

\(^{13}\) Ibid.


\(^{15}\) Other scholars have also glossed the development of DH in ways foreign to the document. For example, Thomas Guarino simply says that DH taught “the objective right to worship God other than as revealed in Jesus Christ” (Vincent of Lérins and the Development of Christian Doctrine [Grand Rapids, MI: Baker Academic, 2013], 123). Kevin D. O’Rourke characterizes DH as proclaiming the “freedom of conscience in regard to religion” (“Reflections on the Papal Allocution Concerning Care for PVS Patients,” in Artificial Nutrition and Hydration: The New Catholic Debate, ed. Christopher Tollefsen [Dordrecht, Netherlands: Springer, 2008], 168). The first of these formulations is wrong and contradictory to the text of DH, while the second is ambiguous.

\(^{16}\) Noonan, A Church That Can and Cannot Change, 155.
Menno Simon, the Congregationalist minister Roger Williams, … the devout Protestant John Locke,” and James Madison. Even such secularists as Baruch Spinoza, “the French encyclopedists,” and Thomas Paine are among the proximate background thinkers to the development. \(^17\) In this way, Noonan interprets the triumph of \(DH\) as the triumph of liberal disestablishmentarianism. Hence, “the reasons for the change lay as much outside the Church as in the Church’s internal development of the Church’s own commitment to the freedom of the act of faith.” \(^18\)

For Noonan, the development in the Church’s teaching on religious liberty is a premier example of how malleable Church teaching on “fundamental” moral matters can turn out to be, for the teaching “bear[s] on the basic conditions of moral autonomy.” \(^19\) The change of doctrine in this instance is so forceful that it can only be considered a reversal, a startling event that reveals the unpredictable nature of moral doctrinal development. \(DH\) is an instance of how a later magisterial teaching has “displace[d] a principle … that had been taken as dispositive … [viz.] that error has no rights and that fidelity to the Christian faith may be physically enforced.” \(^20\)

That \(DH\) signifies a reversal of fundamental moral doctrine demonstrates that the tools of logic are insufficient or perhaps unnecessary for theologians in assessing or anticipating developments in Catholic moral teaching. “The test cannot be, Does Rule X contradict Rule

\(^{17}\) Ibid., 157.

\(^{18}\) Ibid.

\(^{19}\) Noonan, “Development in Moral Doctrine,” 664.

\(^{20}\) Ibid., 669.
The reason is that any historical investigation of the Church’s moral teaching on the topics covered by Noonan, especially religious liberty, would reveal that “[o]n the surface, contradictions appear.” Noonan thus holds that a doctrine may develop to the point that the later formulation opposes in truth and falsity previously taught Catholic doctrines. Note these two sentences: “The promulgation of Dignitatis personae [sic] was a triumph of development. It showed that the development could mean the flat rejection of propositions once taught by the ordinary magisterium.” Not only was the magisterium of recent popes rejected—despite what the document said about intending to develop their teaching—so also the Catholic theological tradition all the way back to Augustine was laid aside, as well. Those who stumbled upon the contradiction, such as Archbishop Marcel Lefebvre, fell into schism on account of the dilemma of the Church either being wrong “then” (when the Church allowed the state to curtail religious liberty) or the Church being wrong “now” (when the Church proclaimed the human right to religious liberty). Noonan circumvents the dilemma by denying that logic is a necessary criterion of authentic development.

21 Noonan, A Church That Can and Cannot Change, 221.
22 Ibid., 222.
23 A contradiction is a relation between two propositions opposed in truth and falsity. One proposition denies absolutely what the other affirms. For example, “Every theologian is male,” is not contradicted by the proposition, “No theologian is male,” but its contrary. Both propositions are opposed in truth (cannot both be true at the same time), but not in falsity (both may be false). The contradictory proposition would be, “Some theologian is not male,” for then both propositions are opposed in truth and falsity. One is necessarily true and the other false.
24 Ibid., 157. Noonan elides the first three words of the Declaration, Dignitatis humanae personae.
25 Ibid., 158.
Although Noonan posits that a contradiction can be the outcome of a doctrinal development, he also claims that later developments are not completely alien to the prior doctrine. The newer principles that replace the older moral rules are themselves “already part of Christian teaching.” Any contradiction therefore does not arise between equally valid principles. Rather, such a contradiction is a matter of “a course of development … [being] changed by a deeper course of development reversing the first.” The deeper course, having “consonance…with Christ’s commandments of love” would be founded then in revelation. The reversed teaching could apply throughout the greater share of the Church’s history—fifteen hundred years, in the case of “intolerance” toward religious liberty—and still not be an authentic expression of revelation. In regard to the emergence of superior principles in the course of a doctrine’s development, Noonan thinks that “the true principle has been hidden in the [earlier] exception” to any given moral rule. For example, the later doctrine of religious freedom for heretics in society comports with the earlier doctrine of the freedom of pagans from coercion to baptism. “Development,” he says, “has occurred as these inconsistencies were worked out in the case of usury, religious liberty, and slavery.”

Noonan speaks often of the principles themselves or the Church’s understanding of the principles having changed, rather than simply that their application has changed with changing

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27 Noonan, A Church That Can and Cannot Change, 158.
28 Ibid.
29 Ibid., 211.
30 Ibid.
social or political situations. With regard to usury, Noonan says that “the development of the [usury] rule was due not only to [economic] circumstances but to changes in the analyses made by theologians and to their acceptance of the experience of other human beings. The rise and fall of the usury rule is not merely an epiphenomenon of economics, but a reassessment based in part on experience.”31 The development in the Church’s teaching on religious liberty likewise came about not by applying a changeless doctrine to changing conditions, for adaptation to conditions is not sufficient to account for that doctrinal development. The teaching “corresponds to an insight into human aspirations and capabilities, confirmed by experience”; it depends on the foundational notions of “the nature and destiny of human beings.” In this way the development is possible only on “a new understanding of old human nature nourished by empathy.”32 Noonan is responding here to those who claim that human nature is itself a principle of and a limit on the possibilities of development. He argues that even our understanding of human nature has evolved, so that the Catholic conception of human nature is not itself a changeless principle.33

Nonetheless, Noonan does posit causes of doctrinal development. Since what changes is the Church’s “understanding of the revelation,”34 Noonan claims that development generally occurs first “by prayer, by meditation, by giving full attention to the revelation.” Such attention

31 Ibid., 213.

32 Ibid.

33 Ibid.: “There are those who say, when they hear about about the development of the usury rule, ‘That was an economic rule that changed with economic circumstances. If a rule involves human nature, it cannot change in this fashion’…. A new understanding of old human nature nourished by empathy is at the heart of the profound change [of the teaching on slavery]…. These four examples [of slavery, usury, religious liberty, and divorce] demonstrate that the development of moral doctrine can and does occur by human experience leading to a better understanding of human nature.”

34 Ibid., 215.
to revelation specifically requires “empathy with those seen as brothers and sisters lead[ing] to
the rejection of practices formerly considered to be compatible with Christianity such as the
enslavement of human beings and persecution for the sake of religion.”

Second, development
requires “empirical investigation” and “the observation of human practices.” Such empirical
observation of human practices could show that that which theologians had believed to be a
precept, deliverance, or permission of natural law is somehow unequal to reality. For example,
“the human experience of slavery and of religious persecution” refuted what was seen to be at
least permitted by natural law, namely, slavery and religious persecution.

The third factor of
doctrinal development is the “development, intellectual, moral, emotional, and social, of human
beings.”

What obstructed earlier generations of Christians—even the apostles—from attaining
the developments of today was their educational, social, linguistic, and experiential situation.
Thus they were able to receive what had been revealed only according to their situational
“mode.”

Even the individual theologians and scholars responsible for instigating particular
doctrinal change were men of their times, unable to see their own inconsistencies in matters
beyond their area of research.

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35 Ibid.
36 Ibid., 216.
37 Ibid.
38 Ibid. Noonan quotes the Thomistic principle *omne quod recipitur in aliquo recipitur in eo per modum recipientis.*
The main work of development, however, is done by means of the “tool” of human experience. Experience “includes empathy, identification with the experience of the other.” By “[l]ogic and empathy” a number of non-Catholics arrived at the conclusion that “persecution does not promote faith” long before Catholic theologians. While the Church’s doctrine of liberty creaked under the burden of inquisitions and confessional states, eventually the Church sloughed them off and empathized with the experience of others. The experience of the Church among the cultures of mankind allows her in this way to “[test] what is vital” in her doctrine, thereby fulfilling St. Paul’s injunction of Phil 1:9-10: “That your love abound more and more in knowledge and in insight of every kind, so that you test what is vital.” This is the necessary element of human sociality in Noonan’s theory. A doctrinal development is authentic if it comports with the experience of other humans insofar as they stem from subjective conscience, as worked out in their various societies and times in a kind of consensus. Such “experience, suffered or perceived in the light of human nature or the gospel” is the key to development. At the same time, Noonan carefully avoids saying that experience is self-interpreting, for “the light of human nature or the gospel” is necessary for reflection upon experience.

Correlatively, to lack experience is to hinder future moral doctrinal developments. Noonan explains the opposition of many moral theologians to changes in areas such as usury, marriage, slavery, and religious liberty. Modern “male, celibate, and ordained” moralists had

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39 Ibid., 220.
40 Ibid.
“limited experience of the world” and would teach mostly by the “precedent” of past moralists. This constrained “the range of experience” accounted for in the formulation of moral teachings. On the other hand, the experience of the faithful pushed development along its course, for they were in the world unlike the moralists. For example, the experience of Christian businessmen induced moralists to look again at the usury rule. Similarly the experience of Catholic citizens had already convinced them of the rightness of religious liberty “far in advance of the 1965 Declaration of Religious Freedom.”

Noonan draws the implications that moral theologians “are often catching up with what is already established” because of their lack of experience, and that “experience and empathy are necessary before a practice can be definitively known as good or bad.”

What allows someone to attend to experience by means of empathy is ultimately “the rule of faith.” This is not a creedal or dogmatic standard, as the regula fidei was for the Church Fathers. What Noonan means by the term “rule of faith” is simply the twofold commandment of love of God and love of neighbor.

In keeping this twofold love, one adheres to Christ Jesus: “The consistency to be sought [in doctrinal development] is consistency with Christ. … The great commandments of love of God and of neighbor, the great principles of justice and charity continue to govern all development.”

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42 Noonan, A Church That Can and Cannot Change, 209. Noonan does not differentiate between those who accepted it as a prudent article of peace in pluralistic societies and those who accepted it as a natural right whose exercise must be guaranteed to all.

43 Ibid., 211.

44 Ibid., 220-22.

unchanging principle of development is to follow the one who commanded it: “That rule depends upon the teaching of the Lord Jesus.”

Noonan’s approach to development in the Church’s moral and social teaching raises important questions for any account of moral doctrinal development. The role of experience, whether of Catholics or non-Catholics, is an important question for thinking about moral progress among mankind. Yet Noonan’s account, both in general and about religious liberty in particular, also places difficulties in the way of accepting his account as a method for moral theology. The next section outlines criticisms of Noonan’s presentation in this regard made by theologian Avery Cardinal Dulles.

Avery Cardinal Dulles: Theological Critique of Noonan’s Interpretation

That the “prince” of American Catholic theology, the late Avery Cardinal Dulles, responded to Noonan’s account of development in the Church’s moral doctrine proves that Noonan’s work raises important and controversial questions for theology. This section will display the key features of Dulles’s assessment. First, Dulles argues that Noonan tells the story of Church teaching on religious liberty incorrectly. Dulles observes that Noonan does not account

46 Noonan, A Church That Can and Cannot Change, 222.

for the difference in the references to “religious liberty” in the nineteenth-century magisterial documents Noonan deplores and the meaning of the term in the American experiment. The latter was compatible with the freedom of the Church, unlike the social monisms of continental Europe, where religious bodies were absorbed into the state. “As a historian [Noonan] might be expected to situate documents like the *Syllabus of Errors* in their historical context, as he fails to do.”48 Also, Dulles notes that *DH* leaves intact the traditional teaching and does not respect a right to error, but the right of persons in regard to the state. Noonan seems to evince little appreciation for the social aspect of religion in medieval religious life, with the social unit being emphasized over the individual. Thus in evaluating the rules of past ages through a more modern, individualistic lens, Noonan judges them by alien standards. In his assessment, Dulles highlights the relevance of the theologico-political problem as it emerged in the ages of the absolute monarchies and the later revolutionary liberal states. Both assigned sovereignty over spiritual matters to the temporal government, placing the Church firmly within the state.49 The revolutionary liberal states of the nineteenth century, fueled by Enlightenment notions of anti-supernaturalism and anti-clericalism, privatized religion and excluded the Catholic Church from the public life of society. This politico-social context produced a form of religious liberty suitable to the philosophy of the time: one focused on the individual’s right to believe whatever one wishes, so long as one respects the laws of the state. Such a conception of liberty left no room for

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49 Dulles, “*Dignitatis Humanae* and the Development of Catholic Doctrine,” 45.
the Church’s existence and rights, and it entailed the public permission of indifferentism toward revealed truth.

Next, Dulles assesses the charge that *DH* reversed doctrine under two headings: did the pre-conciliar popes teach that Catholicism must be established as the religion of the state, and did they “reject the religious freedom of non-Catholics, individually and corporately, to practice their religion publicly and to propagate their beliefs?” Many of the statements from nineteenth-century papal documents seem to call for the universal establishment of Catholicism. Yet statements to this effect found in Pius IX’s *Syllabus* had their origin in particular conflicts in New Granada, rural Italy, Spain, and Mexico, where state authorities had seized control of the Church’s property, violated a concordat with the Holy See, or subjected uneducated people to anticlerical statist propaganda. Nor is there a contradiction between Pius’s condemnation of religious liberty in his encyclical *Quanta cura* and the affirmation in *DH*. Pius condemned the proposition that “the best condition of society is that in which the duty of coercing by penal sanctions violators of the Catholic religion is not recognized by the government [Imperio], except insofar as the public peace requires.” On the other hand, *DH* affirms a religious liberty that demands that “all men ought to be immune from coercion on the part of individuals, social groups, and any human power whatsoever … within due limits” (n. 2). The “due limits” are specified in *DH* 3 and 7 as limits determined by the “public order,” which includes the “public

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50 Ibid., 51.

51 *Quanta cura* (1864) 3; ASS 3 (1867), 162, author’s translation. Unless indicated otherwise, all papal encyclicals are quoted translation and section numbering found in *The Papal Encyclicals*, Claudia Carlen, ed, 5 vols. (Wilmington, NC: McGrath Publishing Company, 1981). All other English translations of magisterial documents, unless otherwise noted and excepting *DH*, are the official Vatican translations available at www.vatican.va.
peace.” Despite using similar terms such as public peace or public order, therefore, the two documents refer to very different conceptions of religious liberty in society. Dulles, relying on Brian Harrison’s analysis of the official report given on the floor of Vatican II to explain the final draft of DH, also notes that DH 1 was meant to preserve the older teaching on the duty of not only society but also public powers, to acknowledge the Catholic Church.52 Dulles claims that DH indicates that establishment is not the only, nor the most effective, way for “the Church to have a social impact”; but clearly establishment remains a way. Indeed, the document’s “real advance” was “treating the dignity and freedom of the person as the common concern of civil and religious society.”53 Dulles places much emphasis in his narrative about DH on other developments within Catholic social teaching in response to twentieth-century totalitarianisms: the dignity of the human person, the main purpose of government being to safeguard the conditions allowing for individuals and societies to flourish, the need for religious liberty in order to pursue the duty of adherence to and worship of God in light of the truth, and that the “distinctive role of the state is to assure temporal peace and prosperity, not to decide questions of truth with reference to revealed religion.”54 Dulles then interprets DH as an effect of these four principles.


53 Ibid., 56.

54 Ibid., 47.
Under the heading of religious liberty, Dulles argues that there are different “degrees and forms” of religious liberty, and that only some are compatible with Catholic teaching.\(^{55}\) Gregory XVI and Pius IX both condemned the following proposition:

that liberty of conscience and cult is the proper right of every man, which ought to be proclaimed and preserved by law in every rightly constituted society, and that the right belongs to all the citizens to complete liberty, which should be restricted [coarctandum] by no ecclesiastical or civil authority, by which they may be capable of declaring and manifesting openly and publicly whatever their ideas may be, whether in speech, in print, or other method.\(^{56}\)

The popes were condemning a form of religious liberty that was incompatible with the rightful jurisdiction of the Church over the baptized, if not also the state over citizens.\(^{57}\) Furthermore, the nineteenth-century condemnations targeted a view of human reason entailed by such a form of religious liberty that required the human person to prescind from the truth about God in formulating a freedom to determine what is true for oneself. In contrast, the right to civil liberty proclaimed by *DH* stems directly from the human duty to find the truth about God and adhere to it. Leo XIII, perceiving the possibility of a rapprochement between Catholicism and the new political forms, distinguished between various senses of “liberty of conscience” in religious matters, marking which were compatible with the truth and which not. In the face of Italian totalitarianism, Pius XI later made a distinction between “‘freedom of conscience’ (i.e., the


\(^{57}\) Dulles, “*Dignitatis Humanae* and the Development of Catholic Doctrine,” 56.
independence of conscience with regard to God), which he condemned, ‘freedom of consciences’ (i.e., willing submission to the sense of duty).”

These papal distinctions came to fruition in $DH$, Dulles says, because the Declaration’s conception of religious liberty is not a right to determine whether one would live in accordance with the truth or a right to believe and proclaim whatever one wants (it is not a $ius\ agendi$, a right to “do”), but a right to non-interference from the state in fulfilling one’s natural duty toward the truth about God ($ius\ exigendi$, “a right to make a demand on the state”). Dulles believes that “[t]he recognition of this distinctive $ius\ exigendi$ is … one of the most significant advances of Vatican II. It is a true development that harmonizes with the traditional theology concerning human freedom and dignity, and also with the traditional teaching, reaffirmed by Bishop De Smedt in his final relatio on $DH$, that there can be no right to hold or disseminate error.” Dulles concludes that the best interpretation of $DH$ is that it is a development in continuity not only with the intentions of the nineteenth-century Roman pontiffs, but also with their express teachings.

Assessment of the Noonan-Dulles Exchange

Dulles’s treatment itself raises more questions by the way in which he identifies $DH$ as an authentic development. He says that the development is a change in emphasis in light of the new context of religiously pluralist societies, which is true, but that claim is not contested by critics of

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58 Ibid., 57-58.

59 Dulles owes these terms to Harrison, Religious Liberty and Contraception, 117-18.

the document. Dulles says that the traditional papal teaching allowed the Church to tolerate false public worship. Along these lines, Dulles notes that the development of *DH* coheres with the other developments at Vatican II on the respect due the elements of truth in other religions, rather than focusing on the erroneous aspects of these religions.\footnote{Ibid., 61.} But toleration of the public worship of non-Catholic religions implies that such religious groups were not strictly owed the opportunity to worship publicly. *DH*, on the other hand, seems to affirm the moral right of religious communities to public worship. The distance between “tolerance” and “*ius exigendi*” seems long.

Nonetheless, Dulles offers a plausible counter-narrative to Noonan’s portrait of a late-comer Church. The Church, says Dulles,

> did not take over a ready-made doctrine from any non-Catholic source, least of all from individualistic liberalism. It forged a new position in line with the “traditional Catholic doctrine on the moral duty of men and societies toward the true religion and the one Church of Christ” (*DH* 1). The Council proceeded on the understanding that all human persons are made for the truth and that the state itself has obligations toward the true faith.\footnote{Ibid., 62.}

The traditional principle-application scheme of development holds, according to Dulles’s view, but this does not mean the new growth of *DH* unfolded in a fully predictable manner. The historical evidence does not indicate a contradiction of past teaching. At the same time, the Church was able to take up new movements regarding human dignity and rights and to elevate them into something genuinely Catholic. Noonan holds that *DH* affirmed the American regime of
separation between Church and state. The American regime was the natural outgrowth of Continental and British theorists such as Spinoza, Locke, Williams, Paine, Madison, and so on. In opposing these thinkers, the Church opposed progress; in promulgating *DH*, the Church came late to what the world had already known. According to Dulles, this narrative simply conflates *DH* and the agnosticism of the Enlightenment, and therefore it cannot be an adequate explanation of the Church’s doctrinal development, which retained the teaching on Catholic establishment. What needs further explanation, even after Dulles’ assessment, is how *DH* is a specifically Catholic contribution to religious liberty.

Apropos Noonan, one must grant the legitimacy of the questions his work raises for the moral theologian attempting to come to grips with doctrinal development. The role of experience and the capacity of various levels of Church teaching to change are two of the most important, and later chapters of this dissertation will address them. Yet as indicated, there are also difficulties to accepting Noonan’s account. The first of these is the adequacy of his historical narrative concerning the development on religious liberty, especially given Dulles’s counter-narrative. Noonan does at times seem to pit post-Enlightenment philosophers completely on the side of true freedom against repressive post-Constantinian male celibates. As a result, Noonan finds the text of *DH* to be dishonestly silent on the Church’s “long record” of coercing baptized

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64 Dulles even charges that “Noonan manipulates the evidence to make it seem to favor his own preconceived conclusions” (“Review of *A Church That Can and Cannot Change*,” 60).
heretics. Dulles’s case seems plausible: Noonan elides into one the liberty claimed by various deistic or atheistic thinkers and that taught by the Catholic Church in *DH*. The main difficulty, however, is posed by Noonan’s general theory of moral and social doctrinal development. How the conjunction of principles (Christ himself, the twofold love commandment) and factors (prayer/empathy, empirical investigation, and general human development) fit together to bring about doctrinal development lacks clarity, whether in explaining past developments or in anticipating future ones. Indeed, Noonan’s presentation tends toward special pleading: his presentation of each doctrine accords with the twofold love commandment, whereas those who hold otherwise are out of accord with that command. This is susceptible to an obvious counter-reply by those who, in the case of religious liberty, held to the ideal of the Catholic state and repression of public expression of religious error. They would say that repressing the public communication of religious error is the best way to love one’s neighbor for it protects the common good and the rights of the true religion by which he may be saved. In contrast, they would add, Noonan offers a sentimental interpretation of the twofold love commandment that does not hold the neighbor’s genuine good in view.

At the same time, Noonan expresses himself clearly on other points. For one, development is not adequately explained by appealing to “the logical implications of

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66 Agreeing with Dulles on this point is Heinrich A. Rommen, *The State in Catholic Thought: A Treatise in Political Philosophy* (St. Louis, MO: Herder, 1945), 335n4: “The much vaunted ‘tolerance’ of the Enlightenment does not grow out of a reverence for the individual conscience, but is a mere principle of political expediency. Neither Montesquieu nor Voltaire nor Rousseau, nor the Puritans and other nonconformists in England and in New England demanded tolerance or gave it to dissenters as a basic human right.”
Scripture.” The reasons for the inadequacy of logical implication theories, in Noonan’s mind, are that the later developments are not in fact logically contained in the earlier ones. For example, “the endorsement of religious persecution did not entail respect for religious freedom.” Logic cannot explain the later positions of the Church. Noonan commends John Henry Newman’s theory in the main, which he views as seeing later developments being implicit in divine revelation, but more like the man is in the boy or the verse of the poet in the poet’s mind. Noonan highlights that Newman’s theory holds to the objectivity of revelation while also accounting for how development arises from conflict within the Church. Newman’s theory is best because it does not deny change and is not committed to the unworkable “logical implication” theory. The next chapter of this dissertation will assess this portrayal of Newman. It is enough now to say that Noonan has grasped profoundly that there has been change, but one should ask whether he has also penetrated deeply into what change is and how it occurs.

More positively, Noonan is confident that change is catalyzed by the Church’s openness to experience, for experience “furnishes data for moral judgment,” whether one’s own experience or the vicarious experience which is made present to the moralist by means of empathy. It is the Church, led by the Holy Spirit, which can then “select, preserve, and judge”—and these actions lead to development in moral and social teaching. Noonan seems correct to emphasize

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68 Ibid., 671.
69 Ibid., 672.
70 Noonan, A Church That Can and Cannot Change, 13.
71 Ibid.
experience as a condition of doctrinal development, for experience itself seems to be a function of the historicity of persons and communities, including the Church herself.

The difficulty with experience, of course, is that experience is does not self-illuminate. Noonan heartily agrees: “the teaching of experience is not self-verifying,” and viewing it as so much sociological phenomena is “chaos”. Yet despite Noonan’s disclaimer about “bare experience” being insufficient for guiding development, and the “light of human nature and the gospel” being necessary, Noonan writes as though people simply know that what they are doing in modern societies is right, given the general progress of the human race. And so he expects the Church to adopt mankind’s preferences based on the “experience” of modern people. What is the point of the Church’s ability to discern, if she cannot do it effectively and the fallen race of Adam is better able to judge rightly? The Church becomes superfluous for progress in human flourishing. Take the issue of religious liberty:

It took the Catholic Church over fifteen hundred years of experience to acknowledge that this kind of reasoning in morals is folly far different from the folly of following Christ; that abstractions such as error do not reflect the rights of human beings; that the use of force to control ideas or govern thought violates the very conditions on which any advance in truth depends.

Noonan holds that the Church taught and lived in folly for a millennium and a half. The heretics, deists, and skeptics were the ones who rightly divined what was right in accord with the person of Christ and his teaching about the twofold nature of charity. Noonan does not offer a convincing Catholic account of development in this instance. On this point, Dulles notes that

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72 Ibid., 12.

73 Noonan, A Church That Can and Cannot Change, 153.
Noonan holds the same understanding of *DH* as Archbishop Marcel Lefebvre, the founder of the schismatic Society of St. Pius X, that *DH* was the Church’s adoption of rationalist, Enlightenment principles in contradiction with the Church’s teaching.\(^7^4\)

Another difficulty raised by Noonan’s account of development is whether one can even count on *DH* to remain a stable teaching. Noonan tends to interpret the political reality of religious liberty from a mid- to late-twentieth-century liberal perspective, seeing it as the natural end of progress. He regards certain kinds of experience as preparing the way for this development, and he considers *DH* to be the normative position, the *terminus ad quem*. Yet is *DH* not as relative as prior moments? How does Noonan know that the teaching of *DH* will not be reversed in its own time, perhaps after later ages demonstrate the mistakes of our own? Noonan takes for a principle that only infallible teaching cannot be reversed, but *DH* does not set forth any new doctrine as infallibly defined. His answer:

> If fifteen hundred years of doctrine could be cancelled by one council and pope, why could the new teaching not be trumped in return? The question could only be successfully answered by believers who saw the consonance of the new teaching with Christ’s commandments of love. For them, there was as little chance of reversing *Dignitatis humanae personae* as there was of an oak tree turning into an acorn or a flowering mustard plant reverting to a seed.\(^7^5\)

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\(^7^4\) Avery Cardinal Dulles, “Review of *A Church That Can and Cannot Change,*” 59. Cf. Lefebvre’s speech during one of the debates at Vatican II about *DH* (*Acta Synodalia Sacrosancti Concilii Oecumenici Vaticani II*, 32 vols. [Vatican City: Typis Polyglottis Vaticanis, 1970-1999], IV/1, 409): “Where, as a matter of fact, did this conception begin to prevail? In the tradition of the Church or outside of the Church? Evidently it began to be among the so-called philosophers of the eighteenth century: Hobbes, Locke, Rousseau, Voltaire, who in the name of the dignity of rational man were trying to destroy the Church.” All translations of the *Acta synodalia* in this dissertation are the author’s own. Hereafter this collection will be cited as AS. Noonan himself cites this oration (*A Church That Can and Cannot Change*, 156).

\(^7^5\) Noonan, *A Church That Can and Cannot Change*, 158.
For those with eyes to see and ears to hear, the teaching is definitive because it is most compatible with the twofold commandment of charity. The conundrum remains, however, because of Noonan’s other statements about the nature of doctrinal development in moral and social matters. Noonan says elsewhere that it is impossible to predict whether a course of development will become more or less rigid, more or less lenient. It would seem to follow from this, therefore, that it is impossible to predict whether the Church’s stance toward coercion may become “more rigid” in the future. Finally, some of those involved in the very drafting of the document did not think that DH represented an unchanging terminus ad quem. Bishop Ernest Primeau, an American who served on the subcommission responsible for drafting the declaration, said after the council that he did not think the Church’s position was finished developing on the matter of religious liberty.76

Noonan’s account, then, creates some doubt regarding whether progress is even possible. On the one hand, new rules such as the religious liberty represent the concrete achievement of doctrinal progress. On the other hand, no one can be sure about what changes will come or which moral rules will persist. If the concept of human nature changes with each culture and age, then ethical values based on natura will also necessarily evolve.77 Noonan’s permanent principle of development is the twofold commandment of charity, which he states in a manner abstract

76 The Right Reverend Ernest J. Primeau to the Reverend Monsignor Vincent A. Yzermans, May 16, 1966, Box 6, Folder 32, Ernest J. Primeau Vatican II Collection, Catholic University of America Library, Washington, DC: “My conviction is that the declaration of the Council on religious liberty will not be the final position of the Catholic Church on this subject. There will be continued development on the theology of religious freedom and its implications. Your introduction gives the impression that the definitive and final decision of the Church is contained in the declaration.” Primeau unfortunately does not amplify his point beyond this.

enough to survive the warp and woof of historical change. In this principle of charity Noonan
claims thereby to have a general foundation underneath his historicizing approach to particular
moral issues. Since the twofold love commandment comes from the Lord Jesus Christ, the
Word Incarnate, the objectivity of the person of Jesus himself somehow undergirds all the
various changes in moral doctrine that have and will have happened. How Church’s teachings
about Jesus Christ resist the same vicissitudes of history is a question not even raised by Noonan,
let alone answered.

The result of all this seems to be an implicit denial that doctrinal development has a ratio
discernible by the theologian, a plan by which developments proceed and in light of which
theologians can speculate on how the Church’s moral teaching can and cannot change in the
future. This is ironic given Noonan’s praise for Murray as a theologian who “discern[ed] the
growing end” of the Church’s tradition. If development does not have a principled way of
proceeding or stable limitations on its possibilities, then a theologian cannot “discern the
growing end” of the Church’s tradition at all. Indeed, after surveying the developmental paths in
the teachings on slavery, usury, divorce, and religious liberty, Noonan explicitly disavows any
pattern or plan. “Development may be in the direction of greater liberality or greater strictness in

78 In parallel with Noonan’s articulation of charity as the fundamental principle, Felicité de Lamennais after
his apostasy said to a certain Baron de Hübner that only charity is immutable of all Christian truths: “…qu’est-ce
qu’un dogme religieux? C’est le résultat obtenu par la science de Dieu et de l’homme. Elle ne saurait être immuable.
Au contraire, tout nous prouve qu’elle est progressive de sa nature, et qu’elle change sans cesse… Ce qu’il y a
d’éternal, de vrai, d’immuable dans le Christianisme, c’est la charité.” Found in Dudon, Lamennais et le Saint Siege
(Paris, 1911), 368, 370, cited in Mark G. McGrath, C.S.C, “The Vatican Council’s Teaching on the Evolution of
Dogma” (S.T.D., Pontificum Athenaeum Angelicum, 1953), 61n62.

79 Noonan, Lustre of Our Country, 343-44.
morals,” he concludes. In fact, perhaps those who want a ratio of development desire unattainable certainty in the matter: “The human desire for mental repose is not to be satisfied in this life. One cannot predict future changes; one can only follow present light and in that light be morally certain that some moral obligations will never alter.”

Traditionalist Doubts

Brunero Gherardini: “The Big Problem of Religious Freedom”

If Noonan represents a view of development that assents to all things, even contradictions, in their own time, then the view of Brunero Gherardini measures every present development strictly by the formulations of the past. Since Gherardini understands DH as a contradiction of past formulations, it is all the more objectionable as a rupture with the Church’s tradition. The difficulty with DH, he says, is that “there is neither continuity nor development of the previous Magisterium in [it].” He thus agrees with Noonan in arguing that the development of DH is incompatible with the papal encyclicals of the nineteenth century. What the encyclicals deny, the Declaration affirms. This agreement between the two scholars is precisely why Gherardini disagrees with Noonan’s acceptance of DH. In Gherardini’s view the contradiction

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80 Noonan, A Church That Can and Cannot Change, 221.
81 Noonan, “Development in Moral Doctrine,” 676, emphasis added.
requires a Catholic faithful to the traditional notion of the Magisterium to adhere to the previous teaching and to challenge the novel doctrine of Vatican II. Noonan approves of DH; Gherardini hesitates. What is most puzzling about Gherardini’s treatment of DH is that he analyzes the nineteenth-century papal condemnations of Liberalism in their historical settings, only to omit the same historical sensitivity in his analysis of DH. To see this, I will summarize Gherardini’s presentation of the Magisterium of the pre-conciliar popes, followed by a summary of his argument regarding DH.

Gherardini’s presentation of the nineteenth-century Magisterium’s teaching on the duties of the state toward the true religion is clear and textually-based. He finds it necessary to prepare the interpretation of those papal documents by noting the tolerance of the Church throughout her history toward Jews and other unwilling converts. The Church consistently taught that to baptize against someone’s will is a violation of the dignity of the human person. After the cuius regio, eius religio of post-Reformation modern nation-states and especially after the secularizing French Revolution, the Church attempted to defend herself against a state-centered and -enforced idea of tolerance. This idea of tolerance was tightly associated with a moral and political insouciance toward supernatural religion, manifesting itself in the liberty of worship proclaimed by the French Republic. That is to say, “the Church at a certain point has perceived the incumbent danger of a minimalism concerning matters of faith united with that of religious indifferentism,”83 both resulting from the pressures of conforming to the new civil tolerance.

83 Ibid., 202.
In light of this historical contextualization, Gherardini understands the nineteenth-century popes as being rather restrained in their attack, for they were attacking modern liberalism’s radical ideas. For example, Gregory XVI could only condemn Lamennais’s idea that any religious allegiance is capable of leading an adherent to eternal life, for this idea is essentially indifferentism. Gherardini similarly interprets Pius IX to have been attacking the idea of indifferentism in its various forms. Further, the popes were eager to defend the Church’s rights and jurisdiction over matters of faith, ecclesiastical property, sacramental marriage, and so on. The Church was attempting to keep the secular governments of modern Europe from regulating the worship, interfering in the internal communication, and confiscating the property of the Catholic Church.

Gherardini also notes that the traditional doctrine of conscience did not contradict the concern not to coerce pagans to faith. Pius X in *Pascendi dominici gregis* taught that “conscience must be submitted to divine revelation,” but he has in mind here “the Christian situation” of a conscience converted and properly formed by God’s Word. When the popes spoke of freedom of conscience in the state, they were regarding a narrow civil sense of this term, not a moral sense that conscience is free to embrace error. None of the pre-Vatican II popes, not even Pius

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84 Ibid., 203-5.
85 Ibid., 206.
86 Ibid., 206-7.
XII, taught that all consciences were equally justified in their belief. Pius XII still spoke of toleration for the sake of the common good, not the right affirmed by *DH*.\(^\text{87}\)

On the other hand, Gherardini’s criticisms of *DH* often lack a clear connection to the history or final form of the Declaration itself. For example, he accurately identifies the right proclaimed in *DH* as a negative right of immunity in regard to the state. But then he speaks in vagaries when comparing the Declaration’s doctrine with traditional Catholic teachings on conscience, the state, and the Church. For Gherardini, the problem with *DH* is its focus on the individual’s conscience and choice apart from other factors, such as objective truth and the social nature of the human person. The Declaration considers conscience apart from its subjection to binding forces outside of itself, such as the Church or the political authorities. What results is an “absolute solipsism” evinced by *DH*’s tendency to say that “there does not exist anything other than *this* subject, *this* choice—supreme, autonomous, uprooted from any interference, withdrawn from any intervention.”\(^\text{88}\) Gherardini does not cite any part of *DH* in making such assertions. Instead, his claims seem to derive more from his overall concern about the ambiguities he sees in Vatican II’s texts than a careful interpretation of the Declaration in particular. Typical is this convoluted passage:

> But, given this exaltation of freedom over and above the natural and revealed boundaries, it becomes very problematic to respond to this duty [of belief in the Word of God]. Thanks to such freedom, the subject finds himself as the absolute arbitrator of his choices; his *religious freedom* is withdrawn from the necessary verification regarding the truth of individual religions and the ‘duty of belief in

\(^{87}\) Ibid., 208.

\(^{88}\) Ibid., 210.
the Word of God’ which would lead to embracing the one true religion. I will not add anything about the ridiculous judgment which this insinuates in public opinion where all religions are equally valuable, where one is as good as another.\textsuperscript{89}

These conclusions far outstrip anything that could be found by a textual analysis of DH, Unitatis redintegratio, or Nostra aetate.

When Gherardini does begin to interpret closely the text of the Declaration, he raises the question of the text’s omission of tolerance as the motive of granting civil protection for non-Catholic public religious observance. Tolerating non-Catholic public religious observance is no longer a lesser evil, it is “a good to be upheld, safeguarded, and defended, and this in order to protect the inter-subjective right of self-determination.”\textsuperscript{90} Gherardini claims that prior popes, such as Leo XIII, only permitted religious liberty as a civil right when it was necessary to attain a greater good in the social body, such as peace among rival religious groups. Yet DH declares this liberty to be a natural human right and not a mere civil right. Gherardini judges DH by the older standard of toleration, assuming that the Catholic teachings on human rights and the juridical order of the state have not changed such that the toleration standard has obsolesced. Here a review of the developments in these other papal social teachings could illuminate the issue, along with an investigation of how DH was explained by the Declaration’s drafting commission to the Fathers of Vatican II as a development in continuity with the older teaching. For this reason, chapters three and four of this dissertation conduct these two investigations, respectively.

\textsuperscript{89} Ibid., 214-15, emphasis original.

\textsuperscript{90} Ibid., 212.
Gherardini has allowed his questions about other conciliar texts or the post-conciliar application of those texts to develop into a general suspicion about the entire enterprise of Vatican II. He posits a “bad fruit, bad tree” argument, not a closely-argued textual one. This general suspicion has done most of the work in his analysis of *DH* as a heterogeneous doctrinal development. Here he shares with Noonan the same narrative of rupture, despite their obvious difference in assessing whether this doctrinal rupture is authentic progress. *DH* cannot be characterized as continuous with prior authoritative Church documents “on the level of the historically concrete.” Nonetheless, Gherardini’s theological integrity and historical sensitivity challenge any theologian who wants to discuss *DH* as an authentic development of Catholic doctrine to explain that development with the same integrity and awareness of context. In turn, Gherardini’s challenge requires the theologian to articulate a general *ratio* of development which maintains both that Catholic truth does not change, given by God the First Truth speaking and protected by a Spirit-guided Magisterium; and also that truth is formulated and defended within changing times and places.

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Michael Davies: The Traditional Norm for Repression

The Englishman Michael Davies has expressed a perplexity similar to Gherardini regarding the authenticity of the Declaration as a doctrinal development. Davies is careful to say that he will “not claim that a contradiction exists” between *DH* and the teaching of popes such as Pius IX and Leo XIII. He only states that he “do[es] not see how the traditional teaching and that

*9* Ibid., 218.
of DH can be reconciled” and asks the Magisterium to clarify DH’s continuity with prior teaching. The main difficulty for Davies is understanding how prior popes could teach that non-Catholics do not have “a natural right not to be prevented from public expression of error, limited only by the just requirements of public order” while DH teaches the contrary, that non-Catholics do have a natural right not to be so prevented. Through Harrison’s work, Davies is aware that the drafting committee of DH explained that the right is not a permission to spread religious error. The right to religious liberty is an immunity, or as Harrison puts it, a ius exigendi and not a ius agendi. To Davies, it is but a “semantic quibble” to insist that there is a difference between non-Catholic religions having a right to non-interference from the state in publicly worshipping and propagating their religion, and non-Catholic religions having a right to propagate religious error. The nineteenth-century popes condemned religious liberty precisely on the grounds that freedom of conscience and worship would allow non-Catholic religions to spread their errors in Catholic countries. For example, Leo XIII said in his encyclical Libertas that “lying opinions… should be diligently repressed by public authority, lest they insidiously work the ruin of the State.” In contrast, DH demands an immunity for all citizens and religious communities from

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90 Ibid., 219-20. Remember that contraries are opposed in truth, but not falsity.
95 Davies, Second Vatican Council and Religious Liberty, 230.
96 Ibid., 226.
being impeded in religious matters, including in the public propagation of their religion (cf. *DH* 3 § 3 on the right of individuals; 4 § 4 on the right of communities).

Davies sees a connection between what appears to be a heterogeneous development in declaring a natural right to spread error and *DH*’s abandonment of the public or common good as the traditional norm of governmental repression, adopting instead the norm of public order. The reason why these two changes cohere is that in the past the public exercise of non-Catholic religion could be tolerated by a Catholic state according to the demands of the common good, but this did not entail a natural right to be tolerated on the part of the non-Catholics. Davies’ objection avoids any facile elision of *DH*’s term public order with the term public order or peace as used by the French Declaration of the Rights of Man and Citizen and condemned by Pius IX’s *Quanta cura*. Davies accepts the argument of Harrison that Archbishop Karol Wojtyla’s suggestion that *DH* be amended to say that the public order is based upon the “objective moral order” was decisive for making the Declaration’s concept different from that of the naturalist politics of the French Revolution.97 Even so, for Davies, in contrast to Harrison, observing the lack of contradiction between *Quanta cura* and *DH* regarding the term public order does not solve the problem of *DH*’s abandoning the broader norm of the common good for the more narrow norm of public order. Hence Davies is perplexed by the development.

Davies raises important questions for any account of *DH* as a homogeneous development. Later chapters of this dissertation will attempt to solve the perplexity by attention to points Davies does not explicitly consider. For example, Davies does not bring to bear on the problem

97 Ibid., 196-97, 272-73.
the later developments in the papal teachings on human rights and their exercise in civil society, the personalistic nature of the political common good, and the need for an international community of nations to avoid war. These changes in papal teaching arose from the Church’s early twentieth-century struggle with totalitarian regimes and the international attempts to protect human rights by law subsequent to the World Wars. These developments brought about various precisions in the nineteenth-century teachings and indicate that by the time of Vatican II a more advanced stage of doctrine had been attained. It is necessary to discuss these developments alongside the older encyclicals of Leo XIII. The third chapter of this dissertation will argue that such precisions are necessary to understand the path of development leading to DH. John Courtney Murray was certainly correct to note that the experience of the first half of the twentieth century yielded a new political situation unlike that of the absolute rationalism and naturalism of the French Revolution. Therefore the conditions were ripe for Church to achieve conceptual breakthroughs that “became available only within twentieth-century perspectives created by the ‘signs of the times’.”

At present one can make some preliminary observations in response to Davies’ main arguments. The first is in regards to his difficulty of a there being a mere “semantic quibble” between a natural right not to be impeded in religious matters and a natural right to propagate error in civil society. Before accepting that there is no real distinction here, one ought to consider

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the following reasons for the contrary position. It is not clear that the two are identical, for one is an immunity and another is a permission; Brian Harrison’s application of the distinction between *ius exigendi* and *ius agendi* to this case appears valid. Now rights are specified by their objects. The object of the right declared in *DH* is an immunity from state coercion in following one’s conscience in religious matters, within just limits, a matter discussed in greater detail in chapter four. It is not a right to proclaim error in public. One could deny that such a right exists, but that does not mean that conceptually it would be identical to a right to propagate error.

This lack of conceptual identity is perhaps best seen in an example given by Davies. He acknowledges that parents have a right to immunity from governmental interference in providing for the religious education of their children, within just limits.\(^9\) Now one could criticize such a right by characterizing it as a right to teach one’s children error, the right to stunt their maturity by remaining just emotionally aloft that the state could not intervene on the basis of harm to the children, or the right to inculcate in one’s children hatred for Chinese immigrants. Yet these characterizations would be absurd. Davies characterizes the right of parents correctly as “a natural right to educate their children,” and yet he says the right of *DH* is “a natural right not to be prevented from propagating error in the public forum.”\(^10\) If *DH* should say that every man has the natural right not to be impeded by the state in religious matters, within just limits, this may be a new formal declaration, but it is hardly alien to the Catholic tradition, as the section below on the work of Thomas Pink will show.

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\(^10\) Ibid., 235.
Davies attempts to escape this objection by appealing to the state’s lack of jurisdiction over the home, whereas the state has jurisdiction over public matters. 101 This is a good point that leads to his more formidable difficulty, namely, Davies’ charge that the Declaration abandons the common good as the norm guiding the state’s regulation of religious free exercise. Davies claims a conflict between the older toleration view, in which the state sometimes may tolerate evil in order to preserve the common good, and the newer public order view, in which the state has a duty to tolerate evil. 102 This difficulty will be addressed in the arguments of the fourth and fifth chapters based upon the studies of Charles Journet and Basile Valuet, and partly introduced below in the section on Valuet in this chapter. In addition, the argument of chapter three bases itself on the teaching of Pius XII’s Ci riesce (1953), wherein the pope discussed the necessary changes to the political common good of individual sovereign nations upon entering into an international juridical order of states.

Finally, Davies expresses concern about the civil establishment of Catholicism and argues that DH appears to contradict or simply abandon prior teaching on that point as well. 103 He takes Murray’s interpretation of DH on this point as dispositive, whereas chapter four will show why DH does not reject some kind of establishment for the Church as an ideal.

101 Ibid., 217.

102 Ibid., 228, especially Davies’ antinomy consisting of (a) “A false religion may be allowed to propagate its teaching (tolerated) only to avoid some evil or to obtain some greater good,” and (b) “A false religion may be prevented from propagating its teaching only to avoid some evil or to obtain some greater good.”

103 Ibid., 176-89.
The Rhonheimer-Pink Exchange

Martin Rhonheimer: “There is No Timeless Catholic Doctrine of the State”

Where Gherardini sees the contradiction between DH and the nineteenth-century papal teachings as raising a doubt about the authenticity of DH, Rhonheimer sees DH as calling into question the authenticity of the nineteenth-century papal teachings. Unlike Gherardini, however, Rhonheimer proposes a more sustained line of argumentation. He argues that DH is contradictory with Pius IX’s Quanta cura. This contradiction in turn indicates a deeper problem: that the nineteenth-century Magisterium had overextended itself by treating matters of political philosophy distal to the basic principles of natural law over which it does have competency.

Rohonheimer begins his argument with Benedict XVI’s address to the Roman Curia on December 22, 2005. Benedict explained that a proper hermeneutic of the Second Vatican Council is not a “hermeneutic of discontinuity and rupture” but a “‘hermeneutic of reform,’ of renewal in the continuity of the one subject-Church that the Lord has given to us.”104 Furthermore, “it is precisely in this combination of continuity and discontinuity at different levels that the very nature of true reform consists.”105 It does not take Rhonheimer long to grasp the nettle: true

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105 Ibid., xiii.
reform in the Church involves substantial continuity and accidental discontinuity.\textsuperscript{106} This change would not involve a contradiction, for the two facets exist at different levels. This distinction between different levels within Church teaching sets the stage for Rhonheimer’s interpretation of DH’s continuity and discontinuity with the pre-conciliar period.

The contradiction between DH and previous papal teaching is obvious, says Rhonheimer. Rhonheimer then argues that this contradiction requires a re-assessment of the authority of the latter, not the former. To show the contradiction Rhonheimer argues that it is enough to observe that “what the first Christians asked during the age of persecutions”—namely, a freedom of conscience and of worship—is “precisely the teaching of the Second Vatican Council” and “what Pius IX condemned in his encyclical Quanta Cura.”\textsuperscript{107} These teachings have already been juxtaposed above in the section devoted to Dulles.

Given what Rhonheimer takes to be a contradiction between Quanta cura and DH, the two levels of continuity and discontinuity in DH must be identified in order to understand the doctrinal force of the papal disapprobation of religious liberty in the nineteenth century. Having completed his own analysis, Rhonheimer believes that the former teaching was not definitive or even authoritative. He argues on the basis of two reasons. First, Pius IX and the other popes’ teaching was issued under the assumption that religious liberty and religious indifferentism were necessarily intertwined. Rhonheimer says that “Gregory XVI and Pius IX—to mention just these two popes—considered that the modern fundamental right to freedom of religion, conscience,


\textsuperscript{107}Ibid., 1032.
and worship was necessarily joined to the denial of the existence of a true religion." That assumption being false, contends Rhonheimer, the older teaching ceases to bind *simpliciter*, only binding at the level of the condemnation of the doctrinal error of religious indifferentism (putting the Church of Christ on the same level as any other religious community or tradition). Second, the popes overreached in teaching an immutable Catholic doctrine on the nature of the state, for the competence of the Magisterium extends only to moral principles revealed by God and to the precepts of the natural law. That competency does not extend to the contingent field of political regimes, whether in Christendom or the post-Enlightenment era. Thus, those who today search for a “timeless dogmatic Catholic doctrine on the state” do so in vain. Attempts to harmonize *DH* with prior teaching are similarly inappropriate and doomed to failure.

Next, Rhonheimer gives two further reasons why his position on *DH* does not undermine the doctrine of the infallibility of the Magisterium. First, Rhonheimer alleges that the mistaken correlation of religious liberty with religious indifferentism in the nineteenth-century papal condemnations calls into question the legitimacy of those condemnations as perduring Catholic doctrine. This is not to say that Rhonheimer finds the papal statements simply false or even disposable. On the contrary, he delineates the level of continuity along with that of discontinuity. The continuity is found in the condemnation of religious indifferentism, which *DH* also condemns by adverting to the Catholic faith as the one true religion and to the moral duty of

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108 Ibid., 1031.

109 Ibid.

110 Rhonheimer mentions in particular Basile Valuet and Bertrand de Margerie, without explaining why these attempts fail (Ibid., 1034).
every person to seek and adhere to the truth about God (DH n.1). The discontinuity is that this condemnation of indifferentism extended to a condemnation of civil liberty in matters religious. The popes had believed the two to be inseparable, whereas DH defends the civil liberty without affirming religious indifferentism.

Second, the doctrine of the confessional state is a historically contingent teaching that is less consistent with the respective autonomies of the Church and the state than the teaching of DH. Therefore, DH is an example of the Magisterium purifying its own teaching. DH “does not imply a new dogmatic orientation, but it does take on a new orientation for the Church’s social doctrine—specifically, a correction of its teaching on the mission and function of the state.”¹¹¹ The confessional state and the use of the state as the “secular arm of the Church falls outside of [dogmatic] principles, which in fact suggest a separation between the political and religious spheres.”¹¹² Rhonheimer argues that the intertwining of the ecclesial and political spheres came as “a later development, the result of specific historical circumstances.”¹¹³ He cites the adoption of Christianity as the Roman Empire’s official religion and the medieval “integration” of Church and empire which led to the idea “that the Church had the right to use coercion to protect Catholics from apostasy.”¹¹⁴ Rhonheimer thus sees Vatican II as consistently harmonizing “a doctrine on the functions and limits of the state” with “a doctrine on the Church’s freedom, based

¹¹¹ Ibid., 1032.
¹¹² Ibid.
¹¹³ Ibid., 1033.
¹¹⁴ Ibid., 1035.
on the corporate right to religious freedom, to exercise its salvific mission without hindrance.”

The teaching of *DH* further comports with the traditional understanding of faith, that no one may be coerced to baptism.

One may object that Rhonheimer’s interpretation involves a contradiction within the ordinary universal teaching of the Church, since the nineteenth-century teachings involve the repetition by several popes of what seem to be doctrinal principles. Rhonheimer’s position would then undermine the infallibility of the Magisterium, since ordinary universal teaching is held to be irreformable. Rhonheimer denies this objection as follows. He concedes that infallibility is a charism that extends to the whole of the Church’s teaching in faith and morals, “including the interpretation of the natural moral law.” He also acknowledges that the Magisterium’s ordinary universal teaching enjoys infallibility. Rhonheimer denies, however, that ordinary universal teaching is involved in the condemnation of religious liberty, for it “was rather the case of a few isolated popes, over a span of about a hundred years.” Moreover, the social teaching of the Church is “not at all of a purely theological nature” and thus not matter for the full protection of infallibility. The nature of the state and the civil right to religious liberty fall under the Church’s social teaching, which is not infallible. The contradiction between *Quanta cura* and *DH* is over the instantiation of a civil right (an application of the natural law), and thus does not result in a

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115 Ibid., 1033.
116 Ibid., 1038.
117 Ibid.
118 Ibid., 1039-40.
“contradiction at the level of the natural law, but at the level of natural law’s legal-political application in situations and in the face of concrete problems.” Rhonheimer holds, then, that infallibility extends to the principles of the natural moral law, but not to the “application in situations,” the latter comprising Catholic social teaching. The older teaching on the confessional state was not a matter purely of natural law or divine faith. Rhonheimer’s position elicits a question similar to one elicited by Noonan: why does _DH_ afford a surer position than prior teaching? Rhonheimer has a principled answer to the question where Noonan did not: the development of _DH_ will endure because it regards a natural human right and thus a principle of natural law reasoning. Natural law reasoning is proper matter for Magisterial teaching. The prior teaching involved the Magisterium in mixed matters over which it had no strict competency.

An important issue in Rhonheimer’s article is whether the state has the competence or the duty to recognize the true religion, even while preserving the freedom of its citizens in matters religious. It would seem not for Rhonheimer, for the teaching that there is a duty to recognize the true religion was bound up with the spurious link between religious indifferentism and civil liberty in the nineteenth-century. The state was seen as an instrument of the Church, and this would be possible only if the state could recognize itself as being subordinate to a supernatural institution. In fact, the separation between the political and the spiritual is an original Christian “dualism”. Bringing the Church into synergy with the “secular, liberal, constitutional, and democratic state, which is neutral with respect to religious truth claims” is the authentic harvest

119 Ibid., 1042.
120 Ibid., 1031.
of Vatican II. Vatican II chastened the confessionalist orientation of nineteenth-century Catholic political theology and “tacitly shelved by the act of solemn magisterium of an ecumenical council” the thesis/hypothesis teaching of Pius IX. This is why Rhonheimer interprets the statement in DH n. 6 about the constitutional recognition of one religious community in a political state not as subtly maintaining the thesis/hypothesis paradigm, but instead as “address[ing] those states in which historical vestiges of privileges accorded to a particular religion still survived,” while advocating for the civil right of religious liberty for all.

Thomas Pink: Only the Church Has Power to Coerce in Religious Matters

Thomas Pink has challenged Rhonheimer’s interpretation by disputing Rhonheimer’s claims about the Church’s former teaching on the state’s authority to coerce in matters religious. Pink’s basic point is that the state had authority to coerce the baptized by means of a commission from the Church; the state had no authority of itself to coerce anyone in matters religious. The underlying doctrinal continuity of DH with previous teaching, Pink contends, is not merely the falsity of indifferentism (pace Rhonheimer), but the Church’s jurisdictional authority to levy spiritual and temporal penalties against her members in matters involving their baptismal vows. In Pink’s interpretation, then, DH is not a doctrinal development at all, at least not in the sense of “any reform of underlying doctrine.” It is merely a change “at the level of policy” due to a

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121 Ibid., 1034.
122 Ibid., 1047.
123 Ibid., 1047-48n11. Here Rhonheimer’s position aligns with that of Murray.
“change in religious and political circumstance.” To be sure, *DH* is a “historic reform” because it is “the first time since late antiquity [that] the Church is now refusing to use the coercive power of the state to support her mission.”¹²⁴ A sufficient explanation of *DH* is to understand it as an adaptation of perennial doctrinal principles to a new secularized, pluralist age. *DH* is thus prudent policy in light of the fact that state favor for Catholicism would today push more and more people away from membership in the Church of Christ.

Pink backs his position with a variety of texts, including the canons of the Council of Trent and canon law. Pink’s analysis indicates that the Church has traditionally regarded the state as not having any authority on its own to interfere in religious matters. When it came to protecting the baptized and coercing heretics and apostates, the Church delegated the power to coerce to state, the former alone having original jurisdiction over the faithful. As such, then, the previous doctrine of the Church was rooted in revelation, not merely in an application of natural law to contingent political and social circumstances. On Pink’s view, the right to inflict “temporal penalties in religion” does not belong to the state except as “the Church’s agent.”¹²⁵ Pink marshals texts from Leo XIII and the 1917 *Code of Canon Law* to show that the Church has taught that she holds exclusive rights to legislate in matters religious. He also notes Suarez’s interesting interpretation of the natural law, namely, that the state has no competence to interfere in religions which are not forbidden by the natural law. Hence “the temporal power of a ruler

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¹²⁵ Ibid., 82.
does not extend in itself to forbidding” non-Christian public worship.\footnote{126 Ib. 85n5.} The state is responsible for “public peace,” says Suarez, while the Church is responsible for “the salvation of the soul.”\footnote{127 Ibid., 86.} This theory entails that it is especially the \textit{baptized ruler}, the Christian prince, who is bound to enforce the Church’s temporal power over the baptized. He does this not simply \textit{qua} ruler, but \textit{qua} member of the Church by virtue of baptism. Pink seems to say that the ruler acts in such cases not as one responsible for the common good, but only as the Church’s instrument of violence, from whom he receives a borrowed authority to coerce in religious matters.

Pink also defends the notion that the Church herself has the authority to mete out temporal penalties apart from the political state. This traditional teaching was codified in the 1917 \textit{Code of Canon Law}, which stated that “[t]he Church has the native and proper right, independent of any human authority, to coerce those offenders subject to her with both spiritual and temporal penalties” (2214 §1).\footnote{128 Ibid., 90.} Pink points out that this is still contained in the 1983 \textit{Code}, which states at c. 1312 §2: “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.”\footnote{129 See also c. 1311: “The Church has the innate and proper right to coerce offending members of the Christian faithful with penal sanctions.”} Assistance by Christian rulers in enforcing said penalties would have been a function of their obligation to obey and assist the Church as baptized members who were also public officials. Examples of temporal penalties would include
the “removal of earthly goods,” such as the “moral liberty to move about,” property, or enforcing “job loss”. Pink’s evidence, which covers hundreds of years, seems to indicate that the teachings of the nineteenth-century popes were not an exceptional overreaching, contra Rhonheimer.  

Pink contends that *DH* preserves this traditional doctrine “integer” (n. 1), even though it avoids discussing it altogether. If *DH* had addressed the Church’s right to coerce the Christian faithful by means of the Christian prince, the Declaration would “have [had] to address the authority not of the state, but of the Church.” On the contrary, *DH* is a declaration treating of matters external to the Church regarding of a general right of individuals and communities within the juridical framework of modern civil society, not the specific right of the Church to discipline her members.

Pink supports his claim with interesting evidence from *DH* itself and from the *Acta synodalía* of the council. At the same time, this evidence is not conclusive. First, *DH* n. 1 says that it “leaves unchanged [integram] the traditional Catholic teaching on the moral obligation of individuals and societies towards the true religion and the one Church of Christ.” He claims that this statement implicitly preserves the Church’s authority to coerce the baptized, including her instrumental use of political power possessed by baptized rulers subject to her jurisdiction.

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130 Ibid., 93-103.

131 Ibid., 103.

132 Ibid., 103-4.


Yet the passage speaks only of a “moral obligation of men and societies” (*morali hominum ac societatum officio*), which is to say something less definite than a liability to be coerced to keep baptismal promises by a baptized political leader acting as the Church’s instrument. In fact, the 1997 *Catechism of the Catholic Church* interprets “the traditional Catholic teaching” of *DH* 1 as “the duty of offering authentic worship to God [that] concerns man individually and socially.”

Nonetheless, the *Catechism* does not wholly prevent Pink’s interpretation either, for it calls in the same paragraph for men to imprint Christianity upon “laws and community structures” (citing Vatican II’s *Apostolicam actuositatem* 13). Further, “the social duty of Christians … demands that they hold out for recognition the cult of the one true religion [*ut cognoscendum praebeant cultum unicae verae religionis*], which subsists in the Catholic and apostolic Church. … In this way the Church manifests the reign of Christ over all creation and especially over human societies.” On the other hand, the *Catechism* does not directly address the claim of the instrumentality of the state in the coercion of the baptized.

A second set of evidence provided by Pink is a reply of the conciliar drafting commission to an amendment raised by some council fathers concerning the Church’s power to coerce. Although Pink does not state the objection, the *Acta synodalia* records it as asking the drafters to reconcile better the declaration’s doctrine on the human person’s right to immunity from

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135 *Catechismus Catholicae Ecclesiae* (Vatican City: Libreria Editrice Vaticana, 1997), n. 2105. Hereafter cited as CCC followed by paragraph number. Translations are the author’s, unless otherwise specified.

136 CCC 2105. For the use of the gerundive to express purpose after verbs of giving, including *praebere*, see Allen and Greenough, *New Latin Grammar*, rev. ed. (Boston: Ginn, 1931) § 500, 4.
coercion in religious matters with passages of the Bible. An reasonable guess as to what the amendment had in mind is that in both Testaments, God expected his people to adhere to the truth and gave his appointed religious leaders the power to levy penalties against apostatizing members. The commission replied that such matters “either concern the internal life of the religious community of Israel […] or the intra-ecclesial life of the early Christian community. And the declaration does not treat of this life.” Likewise, the commission also rejected a specific proposal to mention the Church’s authority to impose sanctions on the baptized, saying that DH does not treat “the question of liberty in the Church herself.” These two pieces of evidence, however, are inconclusive, for they also leave room for a development in the nature of the Church’s coercive power over the baptized, as Murray and others observed. Read in light of Pink’s “hermeneutic of continuity” approach, they are stronger pieces of evidence. Read with a “hermeneutic of rupture” like Noonan’s or a “hermeneutic of reform” like Rhonheimer’s, the evidence could just as well support the view that Church has learned from her past mistakes in

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137 AS IV/6, 762: “…sed potius explicare quomodo sua doctrina cum fere toto Vetere Testamento et innumeris in Novo textibus componi potest.” This reply and another are analyzed in greater detail in chapter four of this dissertation.


regard to the coercion of heretics and schismatics and she now recognizes such coercion as inconsistent with the Gospel.

Therefore Pink believes that *DH* represents a “policy” change, not a change in doctrine. In Pink’s mind, *DH* speaks only of the freedom of the human person with regard to the state, on the analogy of the freedom an unbaptized human person has in coming to accept the Catholic faith. After all, *DH* in its eighth footnote appeals to canonical sources that “condemn the use of coercion to evangelize the unbaptized.” The unbaptized person has a “metaphysical freedom” with regard to the Church, though he or she possesses a “moral obligation to God.” In this vein, *DH* does not ground the right not to be coerced in human nature as such, but in human nature vis-à-vis the state’s jurisdiction. The human person is free in matters religious from *cuiusvis potestatis humanae*, “all human power” (*DH* n. 2). The Church, however, is no merely human power. Pink accounts for the statement that the state has no right to prevent people from entering and leaving a religious community (*DH* 6 § 5) by appealing to the historical practice of the baptized prince acting as an instrument of the Church in enforcing her penalties.

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141 Pink, “Right to Religious Liberty and the Coercion of Belief,” 431.
142 Ibid., 435.
143 Ibid., 436.
144 Ibid., 436-37.
145 Ibid., 438.
Evaluation of the Rhonheimer-Pink Debate

The exchange between Rhonheimer and Pink helpfully brings to light the kinds of questions involved in researching the process of doctrinal development in the Church’s social teaching. On the one hand, both agree that the Church does not teach and did not teach that the state has a native competence in religious matters. Also, Rhonheimer concedes to Pink that the Church has the authority to levy temporal penalties, such as the divestment of ecclesiastical office, but Rhonheimer denies that this coercive power depends upon or may utilize instrumentally the state’s temporal power. Hence Pink’s quotations of canon law and of the responses of the drafting commission are beside the point.146 This dissertation, without concurring with Rhonheimer’s analysis of the nineteenth-century Magisterium, agrees that Pink’s objections do not answer Rhonheimer’s argument. On the other hand, the two thinkers disagree most about whether DH signals a development or a rupture in how the Church envisions her jurisdiction in relation to the autonomy of the state. In considering the historical record, Pink seems strong, for popes, bishops, and religious orders did turn over persistent and dangerous heretics to the “secular arm” for many years. Yet Rhonheimer is arguing about a purification of the Church’s historical practice and teaching that would not negate defined dogmas.

At the same time, Rhonheimer’s denial of the competency of the Magisterium in these matters is unusual, for the popes have repeatedly claimed otherwise. Take Leo XIII’s Diuturnum

(1881), wherein Leo solemnly claims that the Magisterium’s competency extends to matters of social and political duties: “Wherefore, being, by the favor of God, entrusted with the government of the Catholic Church, and made guardian and interpreter of the doctrines of Christ, We judge that it belongs to our jurisdiction, venerable brethren, publicly to set forth what Catholic truth demands of every one in this sphere of duty” (n. 3). Later popes have likewise defended the Church’s competency over social matters in subsequent encyclicals, insofar as social matters are governed by the moral law. In fact, the Church’s competence extends not only to divine revelation itself (the primary object of infallibility), but also to any matter that touches on the truth of divine revelation, whether historically or logically (the secondary object of infallibility). The Church would seem able, therefore, to define truths that touch on the relationship between the Church and the state, or the nature of civil society. Perhaps Rhonheimer means something more specific by his denial of competence. As it stands, his comments seem incompatible with the Church’s understanding of her own authority in delineating the principles of the moral science known as politics and of the relation between the Church and civil governments. Rhonheimer’s denial of the Magisterium’s competence seems to be what creates the confusion that he seeks to avoid, insofar as it renders the Magisterium unable to apprehend accurately its proper sphere of action.

Pink’s position can be a kind of alternative hypothesis that can be tested by further attention to the Council’s own deliberations, for Pink himself provides only two short responses

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out of many of the subcommission’s evaluation of the Fathers’ animadversiones. If Pink is correct, there should be something more in the deliberations and relationes of the Council indicating that the type of change in DH is merely a “policy” change and does not effect a development of doctrine. Pink’s contention that the use of integer in the text of DH 1 preserves his reconstruction of the previous teaching should be traceable to specific interventions, speeches, and comments. If Pink were found correct, then DH represents a mere policy change of the Church addressing the exigencies of the modern global political situation. If DH were a mere policy change, then the rejection of DH by some people would be even more tragic, for they did not perceive that DH changes no doctrine. Yet if it were true that DH is a mere policy change, then certain claims made by the Declaration would become more obscure, such as, “This holy Synod intends to develop [evolvere] the teaching [doctrina] of the more recent popes regarding the inviolable rights of the human person and regarding the constitutional ordering of society” (n. 1). If Pink were found correct in highlighting the perduring value of doctrina in the preceding sentence due to its character as Catholic teaching, then the doctrina developed by the Council in DH is likely to be more weighty than the mere policy change Pink alleges. Further, Pink discusses the Church’s ability to coerce in terms univocal to the state’s ability to do so. It is as though the Church, having power to execute in the name of religion, were merely waiting for temporal princes to be converted before she used it. But if the Church has the ability to deal death in the name of coercing the baptized to their baptismal promises, there does not seem to be

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149 Unless otherwise indicated, translations from DH are the author’s own from the Latin text found in Norman Tanner’s edition of Decrees of the Ecumenical Councils (Washington, DC: Georgetown University Press, 1990), 2:1001-11.
any reason—other than squeamishness—why the Church needs the state to coerce at all. Yet Pink wants to say otherwise.\textsuperscript{150}

Other Arguments for Homogeneous Development

Ian Ker: \textit{Dignitatis humanae} Tested by Newman’s Notes

Another group of interpreters aim to show how \textit{DH} is consistent with prior Church teaching on the nature of the Church, the state and society, and religious liberty. Even if this group of authors is correct, demonstrating the consistency of \textit{DH} with past teaching does not as such uncover principles or parameters of the development of social doctrine understood by the Church as applicable in this case. Ian Ker, a well-known scholar of John Henry Newman, has written an article against the “hermeneutic of rupture” interpretations of “progressives” such as Noonan and traditionalists such as Lefebvre. Ker defends \textit{DH} against the charge of being an

\textsuperscript{150} After writing this section I discovered Rhonheimer had responded to Pink with another article (Martin Rhonheimer, “\textit{Dignitatis Humanae}—Not a Mere Question of Church Policy: A Response to Thomas Pink,” \textit{Nova et Vetera} 12 [2014]: 445-70). There Rhonheimer rightly points out that \textit{DH} is not mere policy, further discusses the nature of Church coercion, and notes Pink’s selective use of the \textit{Acta synodalia}. This agrees the fourth chapter below, which presents texts from the final written \textit{relatio} that contradict Pink’s position. For this reason, I will not modify my initial assessment here, but will wait until that chapter and the fifth to show why Pink’s approach to the issue is opposed to the meaning of \textit{DH}, the analogous natures of Church and state as perfect societies (and hence their analogous possession of coercive powers), and the greater plausibility of the explanation that the political authorities of the early medieval period often saw themselves as acting according to their own proper concern for the public order when repressing heresy, not merely as instruments of the Church who happened to posses political power. This view is advanced by Charles Journet, \textit{The Church of the Word Incarnate: An Speculative Theology, vol. 1: The Apostolic Hierarchy}, trans. A. H. C. Downes (London: Sheed and Ward, 1955), and Basile Valuet, OSB, \textit{La liberté religieuse et la tradition catholique. Un cas de développement doctrinal homogène dans le magistère authentique}, 3 vols. (Le Barroux, France: Éditions Sainte-Madeleine, 1995).
inauthentic development—and therefore a corruption—of Catholic teaching. He approaches the document using Newman’s seven “tests” or “notes” of development from his *Essay on the Development of Christian Doctrine*: preservation of type, continuity of principles, power of assimilation (unitive power), logical sequence, anticipation of the future, conservative action upon its past, and chronic vigor. Ker holds DH up to the light of each criterion and finds the Declaration to be an authentic development. It would be tedious to assess his argument from each note, so only the stronger points from his presentation follow.

The note of preservation of type, argues Ker, helps us to see that the doctrinal content of DH is substantially the same as the Church’s prior teaching, despite the superficial appearance of contradiction. Ker observes that neither the nineteenth-century Magisterium nor the text of DH understands legitimate religious liberty as the right to adhere to whatsoever religion one pleases. Rather, men have the obligation “to seek the truth … and to embrace the truth … and to hold fast to it.” Nor does DH abrogate past teaching about the necessity of acting with an informed, upright conscience, for man is bound to “form for himself right and true judgments of conscience.”

If the Church had not embraced religious liberty, her teaching would have been corrupted by failing to allow her doctrine on conscience to attain a new stage of development (civil expression of a natural right of the human person). Here Ker relies on Newman, who said that

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152 DH n. 1; Ker, “*Dignitatis Humanae* and Authentic Doctrinal Development,” 150.

153 DH n. 3; Ker, “*Dignitatis Humanae* and Authentic Doctrinal Development,” 151.
“one cause of corruption … is the refusal to follow the course of doctrine as it moves on, and an obstinacy in the notions of the past.”¹⁵⁴ By not changing, a think can die. In this case, the Council recovered the aboriginal Catholic teaching on conscience and found in it a civil implication, all the while retaining the traditional teaching on the Catholic faith being the true religion to which all men are bound to adhere. For Ker, this is one of the key insights of *DH*, for he repeats this twofold teaching under Newman’s second note of continuity of principles, phrasing the teaching as “the duty of all men to seek the true religion that is Catholicism and the sovereignty of conscience.”¹⁵⁵ Ker says, apropos the “continuity of principles” test, that *DH*’s twofold recovery of the Church’s authentic doctrine was “to take account of changing circumstances and to apply her doctrines accordingly,” much like the Church’s teaching on usury.¹⁵⁶ One may question the adequacy of a straightforward principles/application framework for understanding doctrinal development. After all, to use Ker’s example of usury, did not the development of the doctrine approving various contracts with interest require a better understanding of the very principle prohibiting usury, so that the prohibited action was recognized to be not simply charging interest, but charging interest without a just claim?

In fact, Ker’s application of Newman’s third note of “power of assimilation” seems to indicate that Ker believes the modern situation to have given a new experience to the Church, through which she has been able to articulate her doctrine in a more consistent way. This seems


¹⁵⁵ Ker, “*Dignitatis Humanae* and Authentic Doctrinal Development,” 152.

¹⁵⁶ Ibid.
to go beyond a new application of principles to changing circumstances, instead requiring a
deeper understanding of the principles and their implications provided by a new experience (not
merely their application). For instance, Ker believes that DH incorporates a growing
understanding of “the dignity of the human person and the importance of responsible freedom as
opposed to state coercion” in the modern world.\(^\text{157}\) Is a growing understanding of the dignity of
the human person merely a historical exigence? Perhaps this aligns Ker’s position more closely
with Noonan than Ker realizes, for Noonan finds in this assimilation a correction of the Church’s
prior error. Nonetheless, Ker’s argument raises the question of the Church being able to articulate
her own doctrine clearly and inerrantly. Perhaps a lack of attention to the historical details of this
development makes it difficult for Ker’s argument to tackle the implications for a theory of
social doctrinal development. His article lacks grounding in the historical realities of the
Church’s past teachings, such as Pius IX’s Quanta cura and Syllabus errorum. For example,
Ker’s application of Newman’s sixth note of “conservative action upon the past” to DH is
unsubstantiated by any evidence whatsoever.\(^\text{158}\) DH certainly preserves the teaching that man is
not absolutely free to worship God howsoever he wishes, and DH identifies the Catholic faith as
the true one which men are bound to find and hold. Whether DH conserves the teachings of the
nineteenth-century popes on the relation and duties between the Church and political power is
not even asked, let alone answered by Ker. This avoidance of a key issue leads one to ask
whether “conservation of type” and other notes are liable to presuming what the interpreter of the

\(^\text{157}\) Ibid., 153.

\(^\text{158}\) Ibid., 154.
development wants to show, that is, organic or homogeneous development. By virtue of this avoidance, accounts similar to Ker’s would fall under Rhonheimer’s critique of those who find in *DH* a preservation of the teaching of popes who condemned religious liberty. To say that Pius IX really meant to condemn only religious indifferentism is to posit a difficult to define relation between a straightforward reading of the words of a papal condemnation, and a supposed deeper current of development lurking underneath the meaning of those words.

Ker alternatively could say that *DH* is an application of the Church’s teaching to new historical, social, and political realities. In fact, Ker takes this application route when he criticizes Noonan. Ker links *DH* to the modern circumstance of “pluralistic societies”, which of course differs from medieval ones in which there existed one religion that “provided the moral and cultural framework in which the society functioned.” The prince enforced adherence and respect for this one religion as if it were a civil-social duty and a mark of political allegiance. The modern context, in which society does not have one religion undergirding it, is pluralistic and thus state enforcement is inappropriate. Here Ker is, conversely, closer to Pink’s *DH*-as-prudent-policy-change argument. Ker’s explanation does not account well for the fact that *DH* demands that even in traditionally Catholic countries (i.e., non-pluralist societies), the religious liberty of all citizens vis-à-vis the state must be respected: “If in view of particular demographic conditions special civil recognition is given in the constitutional ordering of the political body to one

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159 Ibid., 155.
religious community, the right of all citizens and religious communities to religious liberty must at the same time be recognized and upheld” (n.6).  

Ker’s contribution to this topic is to point to Newman’s notes of development as having potential for explaining developments in moral and social doctrine, which is discussed further in the second chapter of this dissertation. At the same time, Ker’s intervention lacks sufficient engagement with the historical realities of the nineteenth-century papal teaching prior to *DH*. This lack of contact leads him to criticize Noonan while advancing an argument that at times approximates Noonan’s own assumptions about the content of *DH* and the warp and woof of development. The important question to raise for now is what does it mean for a later teaching to conserve the type of a previous teaching? Can a later teaching contradict an earlier teaching, and still be a homogeneous development?

**Basile Valuet: The Elasticity of Public Order and of *Ius Gentium***

The prodigious work of Benedictine scholar Basile Valuet offers a more successful apology than Ker’s for *DH*’s continuity with prior magisterial teaching. Valuet’s assessment is replete with historical evidence drawn from the entire history of the Church, maintains contact with modern legal treatments of civil rights, and attends to the conciliar deliberations. Valuet moreover offers a sustained theological argument tying together these various threads.  

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160 Trans. modified from Tanner, *Decrees of the Ecumenical Councils*, 2:1005.

Essentially, Valuet’s defends *DH* from the charge of contradicting past Church teaching by delineating both the past teaching and also the right of religious liberty contained in *DH*. Hence his work is centered on answering affirmatively the question, “La doctrine de *DH* sur le droit à la liberté sociale et civile en matière religieuse est-elle un développement doctrinal homogène effectué par le magistère authentique dans la Tradition de l’Église?”162 The first part of his book, *Théologie positive*, tackles the “predicate” of the thesis, the notion of what the prior teaching is and what authentic development requires. The second part of his book, *Théologie spéculative*, tackles the “subject” of the thesis, the nature of the right enjoined by the Council in the declaration *DH*.163

Valuet’s historical survey, before assessing the post-revolutionary modern period, includes illuminating sections on the patristic and medieval sources of the Catholic teaching on religious liberty. Valuet explicates various appeals to the secular power by Ambrose, Augustine, Leo the Great, and Gregory the Great as efforts to protect the rights of the Church and to restore public order and good morals.164 The tradition clearly denounces forced conversion of pagans to the Catholic faith, and even heretics ought to be coerced only insofar as they trouble the rights of the Church or threaten the public order. Jews ought to be allowed to worship, so long as they do not interfere with Catholic celebrations. Thomas Aquinas’s development of the concept of ignorant conscience excusing from sin set the foundation for later developments. Valuet distances

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163 Ibid., 21-22.

164 Ibid., 93-127.
himself, however, from Thomas’s position on the legitimacy of turning over heretics to the secular arm, arguing that, excepting cases violating the public order, heretics should be restrained only by the spiritual authority of the Church.\textsuperscript{165} Similarly, ecclesiastical inquisitions dealt with heretics who threatened the public order and the Church with a violence reminiscent of the Donatists \textit{circumcelliones}. For example, the Cathars, one group of heretics subject to inquisition proceedings, not only urged military campaigns against Catholics, but they also propagated disruptive teachings on matters pertaining to public order, such as the legitimacy of civil government, the nature of marriage, and the morality of homicide and suicide. But the Church’s use of the secular arm to protect herself is “contingent” and that use can become unjust in other circumstances.\textsuperscript{166}

Valuet contends that the past magisterial condemnations of religious liberty target not merely an accidental conjunction of indifferentism with religious liberty, but that the condemnations have for their object a specific type of religious liberty essentially linked to “liberal” political theories. This nineteenth-century notion of religious liberty was a “liberty of conscience and cult”; the modern notion as treated by \textit{DH} goes by the name “liberty of religion”. Valuet demonstrates how the 1789 French \textit{Déclaration des droits de l’homme et du citoyen} (DDHC) involves an Enlightenment understanding of human freedom as defined by civil law, itself an expression of the general will of society. In the framework of the Revolution, there is no moral limitation on freedom apart from the individual’s choice as constrained by the infallible

\textsuperscript{165} Ibid., 159-61; cf. 154-55.

\textsuperscript{166} Ibid., 175-80.
collective will enforced by the all-sovereign state, for “[l]e principe de toute souveraineté réside essentiellement dans la nation; nul corps, nul individu ne peut exercer d’autorité qui n’en émane expressément” (DDHC a. 3). No divine or ecclesiastical rights are recognized, especially not an ecclesiastical right to restrict the publication of blasphemous or heretical books. The DDHC specifically states that “[n]ul ne doit être inquiété pour ses opinions, même religieuses, pourvu que leur manifestation ne trouble pas l’ordre public établi par la loi” (a. 10). In this light, Pius IX’s condemnation of this proposition in Quanta cura is obvious, for the Revolution’s political philosophy is not merely agnostic about, but positively excludes, the truth of the Catholic faith; likewise it excludes the truth of a duty to discover the truth about God and worship him accordingly. On the contrary, one’s citizenship in the state determines one’s rights and liberties, not one’s baptism. The supremacy of earthly citizenship above all was evidenced by the National Assembly’s La Constitution civile du Clergé of 1790. Both documents, along with the resulting schism of Tallyrand, precipitated an unequivocal protest from Pius VI. Napoleon’s oath of 1804 and the Constitution of 1814 furthered this political insouciance toward truth in religion by recognizing explicitly the freedom and rights of error, which Pius VII condemned.

Valuet’s attention to the evolving nineteenth-century political situation highlights that the concept of religious liberty opposed by the popes of the period was not merely a right of “civil immunity” or “de-penalization.” Rather, the civil right to religious liberty in this period was a

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167 Ibid., 191-93. See also Jean-Jacques Rousseau, Social Contract, bk. II, ch. 3.
168 Ibid., 192. Cf. Art. 11 cited at the same place.
169 Ibid., 201-5.
“positive authorization” to do what one wills in religious matters, apart from any standard surpassing the law of the state. It was a positive legal institution derived from political naturalism, essentially the legal approval of religious indifferentism.\(^{170}\)

Valuet’s analysis of the relevant pre-conciliar popes and their teachings adds a specificity to the discussion unattained by other contributions. Valuet’s chapter on Gregory XVI, for example, indicates that Gregory understood his condemnation of Lamennais’s ideas to be definitive, including the essential link between Lamennais’s “liberty of conscience” and indifferentism.\(^{171}\) In other words, the kind of unlimited civil liberty that Lamennais demanded would be possible only on the supposition of indifferentism or dogmatic tolerance, and so it was condemned. After all, Gregory said that the kind of civil liberty called for by Lamennais flowed from the “cesspool” of indifferentism: “From this foulest source of indifferentism there flows the absurd and wrong view, or rather insanity \([deliramentum]\), according to which freedom of conscience must be asserted and vindicated for everybody.”\(^{172}\) Similarly, Valuet’s exposition of Pius IX’s \textit{Quanta cura} helps the reader appreciate the historical context of that encyclical’s condemnations. Valuet explains the various terms and meaning of the political naturalism condemned by Pius by means of a careful reading of the text coupled with historical evidence, for example, the interpretation of a consultor at the Holy Office involved in drafting the

\(^{170}\) Ibid., 240.

\(^{171}\) Ibid., 207-18.

encyclical. Pius’s condemnation of naturalism entails that it is the best condition of society wherein the civil authorities recognize a duty to suppress violators of the Catholic religion. Pius therefore affirms only a positive precept, and positive precepts can be dispensed under various circumstances. Furthermore, the phrase “violators of the Catholic religion” in the condemned proposition does not apply universally to non-Catholics, but only to people directly attacking the rights of the Catholic Church. The position of naturalism in France and elsewhere meant that one could mistreat the Catholic Church “as much as one liked, provided that one would not trouble the public peace as established by the law.” The fact that “public peace” was defined by the law of the state, expressing a Rousseavian volonté générale, meant that attacks on the Catholic Church would not disturb the public peace. For example, the state could expropriate parochial schools and ecclesiastical property without harming the Church, for the state decreed the general will in regard to what entered into religion and what did not. The law of the state—the French state in particular—was meant to be drafted and promulgated as though religion did not exist or had any value. Hence, the only limitations on liberty—and immunities from coercion—were those introduced by the state’s laws. That the French did so despoil the Church of her property bears witness to this nature of nineteenth-century naturalism’s pax publica or ordre public. It is enough to note here that Valuet examines detailed excerpts from the primary political and

173 Valuet, Le droit à la liberté religieuse, 224n1182.
174 Ibid., 225.
175 Ibid., 226; cf. 223.
176 Ibid., 226nn1196-97.
ecclesial texts that are not discussed by others, and his precision in discussing the concepts represented by the terms surpasses many others. It is for this reason that Valuet’s work merits a closer look in the later chapters of this dissertation.

The charge of contradiction between the religious liberty affirmed by *DH* and the liberty of conscience and cult condemned in *Quanta cura* is false, Valuet contends, because the latter is a product of a political theory which recognizes no other limit on freedom than “la paix-publique-respect-de-la-loi-expression-de-la-volonté-générale.” In other words, the religious liberty of nineteenth-century “liberalism” was granted by the state’s concession, limited only by the general will as enshrined in law, and lacked a proper object. That “liberty of conscience and cult” was what was condemned by Gregory XVI and Pius IX. On the contrary, *DH* recognized the “objective just moral order”—expressed in a modern constitutional state as the “just public order”—as the limit on religious liberty, including the human’s person natural duty to pursue the truth about God and true religion. Since the kind of religious liberty promoted in *DH* and “the liberty of conscience and worship” condemned in *Quanta cura* are diverse in foundation, object, and limits, there is no contradiction between the two teachings. Furthermore, the “public peace” or “public order” of the nineteenth-century French and English legal systems is more narrow than the robust concept of “public order” found in *DH.\(^{179}\)

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177 Ibid., 227.

178 Ibid., 223-33.

Moreover, Valuet argues that these past condemnations and the current promotion of religious liberty are compatible insofar as when the Catholic Church opposed civil liberty for non-Catholic religions, she was asking political leaders in states with Catholic majorities to protect the moral and religious freedom of Catholics. After all, Protestants agitated for divorce and other social ills, and secularists were attempting to suppress the Church by gaining control of the government through popular vote or outright revolution.\footnote{Valuet, Le droit à la liberté religieuse, 236: “Enfin, l’Église estimait avec raison que l’expansion d’une religion non catholique en pays catholique était contraire à la moralité publique objective, exigeante alors au point de requérir la répression de toute manifestation publique immorale. En effet, le protestants, par exemple, n’admettent-ils pas le divorce?”} The rights of Catholics and the freedom of the Church were part of the common good of any Catholic society and thus would be grounds for limiting the natural right to religious liberty in those countries. Hence the Church was confronting the forced secularization of Catholic countries and societies during the nineteenth century. Another, complementary reason for the opposition is that in an era where majorities did not yet grant religious liberty to minorities, attempts to make Catholics a religious minority by propagating other religions was to destroy the religious liberty of Catholics and the Church.\footnote{Ibid.: “2° Toute propagande non catholique en pays catholique, du fait qu’elle cherchait à créer une majorité non catholique à une époque où les majorités religieuses ne reconnaissaient pas la LR [liberté religieuse] aux minorités religieuses, constituait ipso facto une menace pour la liberté religieuse des catholiques.” Emphasis original.} Since \textit{DH} also admits that the state can limit the right to religious liberty in light of the just public order, there is no contradiction or doctrinal change on this point.

Secondly, however, Valuet appeals to a difference in the moral and political development between the nineteenth century and the twentieth. In the former time, the right to religious liberty had not yet achieved reciprocity in the \textit{ius gentium}, the law of nations, while in the latter, such
reciprocity was desired and achievable. This latter rationale moves beyond a mere change in policy to a development within the *ius gentium* itself, a complicated notion that covers matters “added to” or “derived from” the natural law, such as the private ownership of property. In fact, this idea of the reciprocity of the civil expression of the right to religious liberty is perhaps the most valuable contribution of Valuet. It is the key to his explanation of why on the one hand the Church’s use of the secular arm in the medieval period was justified, while on the other hand the Church proclaimed the right to religious liberty at Vatican II. The lack of reciprocity in the *ius gentium* meant that any allowance for religious liberty in Catholic societies endangered the religious liberty of Catholics, as Valuet notes happened in the case of Maryland’s transformation from a Catholic haven to a state limiting the liberty of Catholics after Protestants attained a majority. The Church, solicitous for her members’ salvation, and the state, solicitous for social unity and for public order, could not proclaim a universal expression of religious liberty without threatening the failure of their own goals. Thus, Valuet distinguishes between the natural right and the exercise of that right contingent upon historical and social realities on the ground.

Valuet adds something about the nature of social doctrinal development in light of that historical progression to reciprocity: “We reckon that this *absence of reciprocity* was the principal factor that not only impeded the *discernment* of the *principle* of religious liberty by this or that party when face to face, but also allows us to recognize that the *principle* itself had been *inapplicable*

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182 See *STh* IIaIIae.57.3; cf. IaIIae.94.5 ad 3, 95.4. This notion was developed by later Thomistic commentators, for example, the School of Salamanca in the sixteenth and seventeenth centuries.

183 Valuet, *Le droit à la liberté religieuse*, 183-84.
then.”184 It was the situation after the Protestant schisms that “made necessary the elaboration of an international and inter-religious recognition of reciprocal religious liberty, by which the law of nations would show to be current a new aspect of the natural right.”185 In other words, Valuet says that the natural right to religious liberty was known somewhat confusedly, but that there was no way to apply this civilly in a Catholic society without having the freedom of Catholics and of the Church protected. The civil expression pertains to the law of nations, which itself would require the reciprocity in light of the political history of the modern period. One may liken this to other developments of the law of nations, such as sparing captives in war from execution or enslavement, or the various rights elaborated by Vitoria (e.g., right to communication), but requiring reciprocity for their harmonious exercise.

In the end, Valuet’s interpretation of the right taught by DH is that it has for its object a natural right to non-interference from the state, not to be forced in any religious matter nor to be impeded from a religious action, which should be expressed and enforced in civil society, within the limits of the objective moral order and what makes for public peace. This right differs entirely from the “liberty of conscience and cult” condemned by the Church in the nineteenth century, for that freedom was based on the “absolute sovereignty of the nation-state,” was a positive permission “to do as one wills in religious matters,” and is limited only by the law qua expression of the general will of the people. On the other hand, the right of DH is based on the sovereignty of God and the human person’s moral duty to worship the true God according to the

184 Ibid., 183.
185 Ibid., 184.
true religion, has the different object as stated above, and is limited by the moral law of God, especially as it pertains to public morality. Valuet’s study is historically sensitive and analytically rigorous. It will be a guide for further chapters dealing with the Magisterium’s teaching prior to Vatican II and with the exegesis of the Declaration itself.

Valuet’s handling of the historical context of past teaching and his interpretation of the Declaration itself are detailed and tightly argued. His treatment of the grades of teaching, the assent required of the Church’s members, and so forth, adds a crucial element of Catholic theological method to his investigation. That he adds such a treatment helps harmonize his historical and theological approach to the question with Catholic beliefs about the Church’s divine nature and possession of a divinely-protected teaching office (Magisterium). Lacking from Valuet’s treatment is a discussion of how doctrinal development in the Church’s social doctrine fits in with the grades of assent. Valuet’s section on the nature of doctrinal development is brief and seems to bear no relation to or make any difference for the rest of his study. Valuet gives a helpful category for understanding development in social doctrine. He sometimes refers to the civil expression of the right to religious liberty for all citizens as contained within the *ius gentium*. Ostensibly, the natural right to religious liberty could be strongly curtailed in a country with a religious majority, but mutuality of civil religious freedom is a feature of the *ius gentium*.

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186 Ibid., 570.

187 Ibid., 48-52.
F. Russell Hittinger: *Dignitatis* as Historically-Conditioned Social Teaching

Among those who appreciate the work of Valuet is American Thomistic philosopher, F. Russell Hittinger.\(^{188}\) Hittinger notes the document’s limited focus on religious liberty from the vantage point of the dignity of the human person and the state’s duty to respect this dignity. Moreover, the primary aspect through which one should read *DH* is its own nature as a *declaratio*, that is, a document addressing not the internal order of the Church but a matter involving those outside the Church.\(^{189}\) To view the document in this aspect should preempt the error of expecting *DH* to speak definitively and systematically to the historically complicated issue of the relationship of the Church to political power. The terse *declaratio* touches on the civil expression of the natural right to religious liberty, not directly on the nature of the Church or even the political state. Nevertheless, as far as the historical order of the development is concerned, the second part of *DH* (the argument from divine revelation) came first in the Church’s assertion of her liberty in relation to civil power. That development culminated in the dogmatic definition of the pope’s infallibility and universal jurisdiction at Vatican I.

Hittinger understands *DH* to be a “‘middle-level’ position that unifies principle and policy.”\(^{190}\) This was in response to a new epoch in which the Church had unprecedented exercise of her freedom vis-a-vis the Western powers, but also remained restricted by new monistic

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\(^{190}\) Hittinger, “Declaration on Religious Liberty,” 362.
regimes (atheistic Communist and Muslim polities) and by theories of religious liberty left over from nineteenth century liberalism’s refusal to acknowledge anything special about the freedom of religious communities, especially the Church herself. Hittinger is right to note the insufficient attention of many interpreters of DH to the document’s genre as declaratio and their nescience of the actual political facts on the ground, so to speak, in the Church’s various relationships with modern powers. Hittinger also shows why it is an error to characterize DH as an unqualified endorsement of the American vision of religious liberty, especially in light of the growing tendency of the U.S. Supreme Court to treat the First Amendment protection of religious liberty as a species of free speech or the right to association. Many interpreters make DH say something definitively about the establishment of religion, and thus make the declaration say more than it does.

Seeing DH as merely a “mid-level” document presents a difficulty, however, in that the document highlights the fact that “intends to develop the doctrine of recent pontiffs on the juridical nature of the state and the rights of the human person” (n. 1), and solemnly declares the right of religious liberty and its foundation in human dignity in n. 2. This would seem to entail more than the deployment of theological principles in a new context or even the exclusive relevancy of the Church’s struggles with regard to her own freedom, although DH also pertains to that. Hittinger is undoubtedly right if doctrine means the third-level of magisterial teaching. Yet the declaration of a human right seems to touch directly on the natural law, as Rhonheimer observes. For this reason, DH is a new doctrinal moment, in addition to being a prudential

191 Ibid., 369.
rearrangement of previous teachings into a new policy. Closely tied to the relationship of political authority to religion is the issue of the right of each man to worship God according to conscience both in private and also in public, both individually and also corporately. Although the Council did not mean to treat systematically the establishment of Catholicism or the competency of states and societies in religious matters, by speaking to the individual and corporate right not to be impeded, *DH* enshrines a “principled pluralism” based on the social nature of man.¹⁹² Hittinger is more interested in the Church-state implications than in the teaching on the religious liberty of individuals and communities taken generically, as his three conclusions about the document in one article deal with the relationship between the Church and political states: *DH* replaced the concordat policies of the Holy See; *DH* re-positioned the Church in the modern, pluralist world; and *DH* further detached the Church from reliance upon the political state.¹⁹³ Hittinger’s focus on the Church-state issue is the fruit of another background issue that he highlights where others do not: that the Catholic understanding of the state underwent a dramatic development in its own right prior to *DH*.¹⁹⁴ In reaction to totalitarian regimes, Catholic thinkers such as Maritain and Murray, and popes such as Pius XI, Pius XII, and John XXIII articulated a social pluralism that so restricted the power of the state that it could be viewed as a “quasi-instrumental” good or a merely “juridical” order. This development in the Catholic

¹⁹² Hittinger, “Political Pluralism and Religious Liberty,” 47.

¹⁹³ Hittinger, “Declaration on Religious Liberty,” 374-75.

doctrine of the state coheres with the second part of DH and, for that matter, Gaudium et spes, in calling for a grassroots Catholic formation of the social order, rather than a top-down legal formation inappropriate for such juridically-limited democratic states. The problem this all raises, of course, is what the state must know about human nature and about religion in order to heed DH’s admonition to favor the religious life of citizens (n. 3).

Hittinger’s analysis places the Declaration in historical context and corrects under- and over-readings. He does this by evaluating DH as a “middle-level” teaching in a long history of the Church’s struggle to realize her natural configuration within the social and political world. In order to do this, Hittinger need only to explain briefly why DH does not contradict previous teaching and then expound the actual teaching of the declaration. This is sufficient to make room for the narrative of the Church’s developing understanding of her liberty and the liberty of the human person with regard to the state. Having created room for his readers to appreciate the larger dynamics of development in any politico-theological discussion of DH, Hittinger touches upon the development of the Church’s social doctrine in general, and hence the topic of this dissertation.

For instance, take one of Hittinger’s conclusions on the significance of DH, that it “represents a broader spirit of detachment [on the part of the Church] from the problem of the state.” Hittinger’s attention to the historical quest of the Church for the freedom to pursue her mission, despite the various ancient and modern political entanglements of ius patronatus, veto-

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195 Ibid., 25.
powers over papal elections (*ius exclusivae*), present or veto episcopal ordinands, concordats, and so forth, helpfully situations *DH* in the larger picture of modern politics. By this attention to the larger history, Hittinger is able to see an open-endedness of the political theological problem in globalized world. Compare this to Noonan, who writes as though *DH* is an arrival, a *terminus ad quem* in the tradition, which will never be surpassed or modified. Perhaps Noonan’s confidence on this issue has more to do with a presupposition that the American model of constitutional democracy is also a *terminus ad quem*, an ideal political type that the human race has achieved. But the modern popes have challenged this presupposition when it refers to a government apart from the question of the religion of the people, which is precisely something that is at stake in understanding the development of *DH*.197

For his part, Hittinger has noted that the principles of *DH* exclude some forms of government, namely, any monistic regimes, those which “effectively cancel the distinction between society, church, and state.”198 The reason is that such monistic regimes collapse the “social pluralism” assumed by modern Catholic social teaching, namely, that the distinctions between society, state, and the Church are genuine distinctions. Hence social pluralism entails that the individual human person has (or should be able to have) membership in many social unities, such as marriage-family, religious associations, citizenship, membership in the Catholic Church, and others. Now the distinction between state, society, and Church is original to

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197 E.g., Pius IX, *Quanta cura* (1864) 4.

Catholicism, not paganism.\textsuperscript{199} Other regimes Hittinger sees as precluded by \textit{DH} would be any softer forms of state absolute sovereignty, whether with the establishment of a religion (\textit{cuius regio}) or with some hostility to the religious identities of the citizens (Paul VI and John Paul II’s “negative confessionalism”). These regimes either relapse into the “religion in the state”/“state in religion” model, or into a model wherein religion is conceived of as a fundamentally private phenomenon not bearing on the public lives of the citizens.

\textit{John Courtney Murray: American Theorist of Religious Liberty}

Considering Murray within a temporal ordering of the literature would place Murray much earlier in the order of this chapter. The reason for treating Murray here is that underlying much of the scholarly treatments of \textit{DH} is the assumption that Murray’s contribution to the Declaration was decisive and foundational, and that the promulgation of \textit{DH} was a vindication of Murray’s theological opinions regarding the Church-state problem, for which he had been practically silenced by Jesuit censors.\textsuperscript{200} For this reason, Murray’s work has been taken by some to have been retroactively legitimated on the basis of his alleged primary role in forming \textit{DH}’s


teaching. Moreover, Murray himself identified the issue of doctrinal development as the central issue at stake in the passing of *DH*, if not in the event of Vatican II as a whole, as the quote opening this chapter shows. This twofold importance situates Murray last. At the same time, scholars from diverse positions have observed important respects in which the final draft and subsequent magisterial reception of *DH* relativized Murray’s approach to the question of religious liberty. Instead, the “ontological” approach of bishops and theologians of the “French school” to the question of religious liberty was and remains an important foil for some of Murray’s exclusively juridical approach. The ontological approach, in contrast, grounds religious liberty first in the human person’s relationship and obligation to the First Truth, God.

Placing Murray along the homogeneous-heterogeneous spectrum of scholarly opinion is difficult. Murray is more akin to those who see *DH* as a homogeneous development of prior

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201 Leslie Griffin, “Commentary on *Dignitatis humanae* (Declaration on Religious Freedom),” in *Modern Catholic Social Teaching: Commentaries and Interpretations*, ed. Kenneth R. Himes, OFM et al. (Washington, DC: Georgetown University Press, 2005), 244-65. Griffin’s commentary on *DH* relies almost entirely on Murray or a certain strand of Murray’s interpreters (e.g., Pelotte, *John Courtney Murray: Theologian in Conflict*; J. Bryan Hehir, “*Dignitatis Humanae* in the Pontificate of John Paul II,” in *Religious Liberty: Paul VI and Dignitatis Humanae*, ed. John T. Ford [Brescia: Istituto Paolo VI, 1995], 169-83; Noonan, *Lustre of Our Country*) in interpreting the declaration and its significance. The separation evinced in Murray’s work between the juridical/legal and moral orders is developed to such an extreme by Griffin that she charges John Paul II with contradicting *DH*’s commitment to “autonomous civil government” because he demanded that the Church’s teaching on abortion be given civil expression (259a). The text of *DH* itself, however, points to the necessity of civil freedom being tied to the “objective moral order” and that civil authority could limit freedom in the name of “the rights of others” and “public morality” (n. 7). These interventions, significantly, were placed in the document in part because of interventions by Archbishop Karol Wojtyla (the future John Paul II).

teaching. This is what he himself claimed after the council. At other times, however, Murray’s argument for continuity acknowledges “surface” contradictions in the teaching of the Church, there being only a “deeper” continuity at the level of intention among the nineteenth-century popes and DH. In contrasting Leo XIII’s and Pius XII’s respective teachings, Murray often speaks of Leo’s “polemical” confrontation with “sectarian Liberalism”, while Pius was concerned with the international community of nations, itself the fruit of human progress. The polemical context of Leo inhibited elements of the Catholic political tradition from blossoming into DH, as well as led some theologians into the rigid thesis-hypothesis position. Murray would eventually appeal to Bernard Lonergan’s idea of “historical consciousness” in opposition to the “classicist worldview” in order to explain this transition from the nineteenth to the twentieth centuries in magisterial teaching. In this regard, Murray’s derivation of controversial conclusions from an intentionalist reading of magisterial teachings evinces similarity with the heterogeneous side of the scholarly spectrum. Further, “historical consciousness” seems at first glance akin to historicism. Yet the identity of historical consciousness with historicism remains to be proved, for noting the influence of the historical situation on what a pope may say is not to claim that a pope cannot speak from perduring principles.

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The remainder of this chapter will examine some of Murray’s more influential writings before and during the Second Vatican Council, then examine some of Murray’s post-conciliar explanations of the development of the Church’s doctrine on religious liberty. The chapter closes with a consideration of Murray’s approach to doctrinal development in the Church’s social teaching.

Writings before and during the Council

Murray’s argumentative line prior to Vatican II went through several stages.205 His first arguments from the mid-1940s only yielded the conclusion of toleration, no different in principle from the argument of those who would later oppose his view. For this reason, this section will consider the general lines of Murray’s argument from the 1950s through the end of the Council itself in 1965. Murray’s basic criticism of the prevailing Catholic theological opinion on the state’s cura religionis is that it collapsed moral and juridical questions into one. Though Murray avoids mentioning his opponents’ names, this prevailing view was defended by a variety of scholars, most notably Ottaviani in Rome and Fenton, Connell, and Shea in America.206 According to this view, as seen above, the state should constitutionally establish the true religion as the sole recognized religion of the state, for the state is bound to recognize not only the validity of natural law but also positive divine law. The state should therefore recognize the Church’s divine right. The obverse should also obtain: that the state should remove false

religions from the public life of society. In this way, the question of morality and the question of
the constitutional or juridical order of society are settled under the same principle, namely, that
“error has no rights.” This is not to say that the proponents of this view would urge the state to
force consciences in religious matters, only that erroneous consciences have no right to public
exercise. Hence, this view logically couples the political establishment of Catholicism with the
political suppression of public non-Catholic religious activity (“intolerance”). This twofold
establishment-intolerance principle would then lead Catholics to the adoption of the practical
thesis-hypothesis program. When Catholics are in a minority position, tolerance of false religions
is the norm (hypothesis), but Catholics should strive to establish the Catholic religion as the
religion of the state when they attain a majority (thesis). The decision to tolerate false religions is
more or less directly a question of whether Catholics are a demographic majority of the country.
Failure to tolerate public non-Catholic displays of religion in other socio-political situations
could instigate worse evils in the state, threatening the common good of society. Thus for the
Catholic state to tolerate in such circumstances is to choose the lesser evil (hypothesis).207

In contrast, Murray based his own view on the distinction between the juridical and moral
orders of the religious liberty question. The validity of the distinction stems from the exigencies
of modern politics. The modern constitutional democracy is a new human achievement,
responding to the human desire for limitations on the state’s power, in order to preserve a
rightfully desired sphere for human freedom. Not only the monism of the nineteenth-century

Religious Freedom,” in Religious Liberty: Catholic Struggles with Pluralism, ed. J. Leon Hooper, SJ (Louisville,
Liberal state evoked this response, but even more so the progeny of Liberalism, the twentieth-century totalitarianism dictatorships. Murray understood the modern question of religious freedom to occupy a new situation than the one in which the Church had combatted “sectarian Liberalism,” that is, Revolutionary political monism. In sectarian Liberalism, religious liberty was a positive authorization of indifference, and the state deliberately excluded any right on the part of the Church to a role in civil society and refused to recognize the Church as a true society. In contrast, religious liberty in constitutional democracies would be an immunity of citizens from state interference in their religious activity, excepting violations of the public order. This is why Murray insists in his earlier work that the First Amendment of the United States Bill of Rights should be interpreted minimally as a juridical “article of peace” rather than integrally bound with a Protestant or Enlightenment political theory (“sectarian”).

To Murray, then, the experience of the United States validates the efficiency (and thus the desirability) of a constitutional approach and the practical separation between the juridical and moral orders of society. The distinction between the juridical and moral orders is the distinction between usefulness and truth. The juridical order is concerned with establishing civil peace between men, while the moral order asks how one should live in light of the truth. Hence Murray writes as though the question of whether only truth has rights or whether error has any rights were a question laboring under a category mistake obviated by the modern constitutional movement. The modern constitutional movement conceives of civil government in such a way as to prescind from any consideration of

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religious truth. Instead, the government of a state preserves the civil peace which allows the citizenry to pursue the good of religion according to the dictates of conscience. In contrast to the simplistic principle of toleration in the prevailing hypothesis-thesis view, Murray argues in this way that the religious liberty of all citizens is itself part of the common good to be preserved by government. There is no question of toleration in this conceptual frame, for one is not permitting a lesser evil (religious pluralism for the sake of avoiding civil strife).  

The proper object of government, according to Murray, is not the common good directly but the “narrower” idea of “public order.” Public peace is just one component good of this juridical device, along with the additional goods of public morality and justice. Murray means by public morality something “determined by moral standards commonly accepted among the people.” Justice means securing “what is due to” the people, primarily “their freedom, the due enjoyment of their personal and social rights.” Securing these three goods—public peace, morality, and justice—enables the state to serve the broader common good by creating the social conditions necessary for the citizens to pursue other the good life. The public order is juridical, but oriented to preserving the other principles of constitutional governance. These other principles are “the distinction between the sacred and the secular orders of human life,” “the distinction between society and state,” and “the freedom of the people [as] a political end.”

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211 Ibid., 144-45.
This limitation on state interference in religious matters was impossible under the monism of Liberalism, which conflated the juridical and moral issues pertaining to religion in society. Instead, the constitutional state exists to ensure public peace and maximize human freedom. The collapse of the distinction between morality and law in sectarian Liberalism had disastrous theological implications for the concept of conscience, freedom, and the nature of religion. These theological errors are what to Murray’s mind explain Leo XIII’s disapprobation of religious liberty and religious disestablishment (“separation of Church and state”). Murray says, “For the sake of emphasis I repeat that in Leo XIII’s analysis the legal aspect of these institutions was indivisible from their explicit premises—the false religious philosophy that conceived conscience to be *ex lex*, and the false ecclesiology that conceived the Church to be one among many voluntary associations of believers.”

Murray’s sources for his argument range from the constitutional elements of medieval political thought to Pius XII’s 1953 allocution to Italian jurists, *Ci riesce*. In this way, Murray constructs a plausible argument from tradition for the promulgation of religious liberty conceived as the human person’s civil immunity from coercion in religious matters. The main difficulty for Murray’s argument from tradition is the nineteenth-century papal documents responding to sectarian Liberalism after the French Revolution, for these documents seem to condemn in principle any juridical separation between Church and state (Pius IX, *Quanta cura* [1864] 3), or at least identify separation as sometimes tolerable, but falling short of a universal ideal (Leo XIII, *Longinqua* [1895] 6). Further, Leo in particular continued to demand that societies and

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212 Ibid., 71.
states recognize the Catholic Church’s identity as the true religion and to respect her authority in spiritual matters. In response, Murray takes an “intentional-historical” approach to the development of the doctrine, especially in interpreting the encyclicals of Leo XIII. Murray interprets the significance of Leo’s teaching in light of his polemical engagement with godless Liberalism. Leo could not say anything other than what he said given what his enemies were saying and doing. This historical situation prevented the Catholic tradition’s favorable disposition toward constitutionalism from emerging in a context where the priority of God and the true religion were being denied. Thus was Leo XIII’s teaching determined and somewhat deformed by his time. Leo also wrote in a time when the masses were illiterate and it was thought that the prince had a moral obligation to protect his subjects from deleterious moral and religious influences.  

Murray attributed to John XXIII an important development in the Catholic understanding of the conditions necessary for a flourishing society. John added the “fourth term” of freedom to the traditional triad of truth, justice, and charity found in the works of Leo and Pius XII. The articulation of the fourth term is an example of how the Church’s teaching can be both new and old, progressive and traditional. It is accurate to say that Murray finds in John XXIII’s *Pacem in terris* the complementary principle to the *libertas ecclesiae*, born of historical consciousness and doctrinal development: “The tradition has always asserted that the human quality of society depends on the freedom of the Church. In a new and more profound understanding of the

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tradition, John XXIII affirms that the human quality of society depends on the freedom of the people.” These two freedoms cannot be separated, for they are “identical” and thus “stand or fall together.” To put it in my own terms, the freedom of the Church exists for the sake of the salvation of souls in accordance with the truth of the Triune God’s plan of salvation; the freedom of the citizenry exists for the same reason, in order to ensure that the state serves the human person in accordance with the truth about the human person, the nature of religion, and the existence of the First Truth.

It is only during the council that Murray begins to clarify the conceptual framework to his theory of development. Using advance copies of Lonergan’s work on the difference between the world-views of “classicism” and “historical consciousness,” Murray began to speak of his own position in these terms in his mimeographed article, “The Problem of Religious Freedom.” There Murray describes man’s progress in understanding: “the nature of man is a historical nature, whose rational exigencies manifest themselves progressively, under the impact of the continually changing social-political context, and in response to the growing personal and political consciousness.” The standard thesis-hypothesis view of the Roman theologians is stuck in a “classicist” world-view, wherein the arguments tend to ignore the impact of history on the development of the Church’s teaching. This blindness to history manifests itself in two

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216 Ibid., 197n75.
“theological fallacies” that Murray calls “archaism” and “anachronism”. Murray asserts that archaism denies the possibility of future authentic developments in the Church’s teaching, for the Church’s teaching “can and ought to be halted in some particular stage” of history, ignoring the historical precedents to the contrary. Hence the Roman theologians who “would fix the doctrine of the Church … in its nineteenth-century stage of conception and statement” fall into archaism, for their position “refuses to consider the fact that the state of the question has been altered and the nineteenth-century answer is inadequate.” Instead, that human political realities evolve and that man grows in his “understanding of himself as a free man in a free society” requires the Church to evolve in her own teaching.

Anachronism, meanwhile, is the fallacy of taking the Church’s teaching in one concrete historico-political setting and making it “a theory conceived with full abstractness.” Thus the Roman theologians mistakenly defend as the Church’s unchanging doctrine “an apologetic for the nation-state of largely Catholic population which began to take shape, under more or less absolutist rule, in the post-Tridentine era, and then felt the religious and political shock of the French Revolution.”

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219 Ibid., 181, 187. See also Murray, “Vers une intelligence,” 147: “Le Councile lui-même a démontré, commen jamais peut-être on ne l’avait fait dans l’histoire, que l’Église elle-même n’accepte pas l’erreur de l’archaïsme, qui réside dans le désir d’arrêter la croissance de la pensée de l’Église à l’un quelconque de ses niveaux d’évolution—scripturaire, patristique, médiéval, moderne, contemporain—et de refuser la possibilité d’une nouvelle croissance.”


221 Ibid.

222 Ibid., 182. Murray elsewhere calls this the fallacy of “misplaced abstractness”.

223 Ibid.
Roman theologians astray. In such a political setting, the older view could not appreciate the Catholic distinction between “society (or the people) and state (or the order of public law and administration).” Perceiving this distinction allows for the traditional teaching on the religious duty of society to be fulfilled without leaving the direct care of religion to the state. Bound by the historically concrete setting of the Catholic absolutist state, the Roman theologians hold that the state is responsible for establishing and protecting the Church as the state religion, to the exclusion of all other public religion.

Post-conciliar Commentary on DH

After the Council itself, Murray devoted his work to interpreting DH in accordance with his understanding of the agnosticism of the state with regard to the true religion, given the state’s bare juridical character. This section will examine three pieces by Murray published in the two years after the promulgation of DH at the final session of Vatican II in late 1965: his Abbot commentary (1966), his French article on the development of doctrine (1967), and an article for Theological Studies (1966).

Abbott Commentary. In his 1966 commentary on DH, Murray contends that while the Declaration had a practical motivation, it is “properly doctrinal” in content. Murray identifies three doctrinal loci involved in DH: the human right to religious liberty, the limitations on the political state in matters religious, and the freedom of the Church in regard to the “socio-political

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224 Ibid., 183.
order”. Note that each falls within the competency of the Church’s social teaching, and hence moral theology, for the Church’s social teaching falls under moral theology (cf. John Paul II, *Sollicitudo rei socialis* [1987] 43). Murray does not list the freedom of the act of faith, but perhaps that is subsumed under the *libertas ecclesiae*. In general, Murray characterizes the Declaration as the Church coming lately to what the world has already recognized, namely, the juridical wisdom of religious freedom. The real issue at work, Murray contends, is doctrinal development. Despite his own work documented above, Murray says that “the course of the development between the *Syllabus of Errors* (1864) and *Dignitatis Humanae Personae* (1965) still remains to be explained by theologians.” Whatever that course may be, Murray finds *DH*, in tandem with *Gaudium et spes*, to teach the new position that the “Church does not deal with the secular order in terms of a double standard—freedom for the Church when Catholics are a minority, privilege for the Church and intolerance for others when Catholics are a majority.”

Murray’s commentary on the text is found in the footnotes to his translation. Much of the material can be found in his earlier articles expounded above, for example, that the public order consists of justice, peace, and morality, or that John XXIII added “freedom” to the Catholic notion of a free society. The establishment of the Catholic faith as the religion of a political

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226 Ibid., 673.
227 Ibid.
228 Ibid.
229 Ibid., 686n20.
230 Ibid., 687n21.
state “is a matter of historical circumstance, not of theological doctrine.” The state has no obligation to the Catholic Church beyond its care for the public order. Indeed, the “Declaration is a final renouncement and repudiation by the Church of all means and measures of coercion in matters religious.” The latter statement by Murray raises the further question of whether $DH$ would also tend to dissolve the Church’s coercive authority over her own members. Murray acknowledges that $DH$ does not touch upon this issue, as Pink also noted. Yet Murray believes the issue is open: “Undoubtedly, however, $[DH]$ will be a stimulus for the articulation of a full theology of Christian freedom in its relation to the doctrinal and disciplinary authority of the Church.” One should notice that this issue is at the heart of the debate between Rhonheimer and Pink, and is also raised by La Soujeole in his review of Valuet. It is thus not incidental, and indicates the need for theologians to discern the parameters of development in this area.

Murray posits a rough theology of doctrinal development in order to explain the historical causes of $DH$. First is the Church gaining at Vatican II “a sense of history, an awareness of the concrete world of fact, and a disposition to see in historical facts certain ‘signs of the times.’” Thus, the Church was able to update her doctrine in accordance with a growing awareness among mankind of the dignity of the human person and the need for constitutional limits on the state (cf. $DH$ 1). The doctrinal development in Catholic theology centers, according to Murray,

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231 Ibid., 685n17.
232 Ibid., 693n51.
233 Ibid., 695n58.
on the idea of man as “citizen”, stemming from popes Leo, Pius, and especially John. The citizen freely accounts for his own dignity and that of others, and thus acts in such a way as to fulfill his duties and to respect the freedom of his fellow citizens. The negative immunity from state interference in religious matters extends not only to freedom from coercion but also to freedom from being impeded in acting according to one’s conscience—this latter side of the right is the “new thing, which is in harmony with the older affirmation of the former immunity.”

Eventually, Murray addresses the issue of historical experience and doctrinal development: “Only through centuries of experience, as the Declaration says, have the exigencies of the human dignity disclosed themselves to reason.” The theological arrival at the human right to religious liberty is not logical, however, but “historical”. Murray claims that the “constitutional principle of religious freedom is not a conclusion from [the] Christian dogma” of the freedom of the act of faith. It is not clear, however, what a historical connection is, as opposed to a logical one, or whether historical connections yield logical ones. Murray only says that “given the Christian doctrine of the freedom of faith, men would gradually come—as over the centuries they have come—to realize that man’s religious life is an affair of responsible freedom, from which all coercion is to be excluded.” Murray leaves the nature of “responsible freedom” undefined, and thus its requirement of freedom from coercion is left unexplained.

236 Ibid., 677n4.
237 Ibid., 678n5.
238 Ibid., 688-89n24.
239 Ibid., 689n26.
Respecting a neighbor’s life is a matter of responsible freedom, as is the choice to marry. Yet the state rightly prosecutes murder and ought to forbid divorce. Here the need for a deeper theology of development is again apparent, for Murray does not argue by logical rationale for why “men could not fail to become increasingly conscious that religious freedom is an exigency of the dignity of the person.” The connection between the *libertas ecclesiae* and the civil right to religious liberty was said to be “identical” before, in which case there should be a conceptual connection between the doctrines beyond the historical process that led to its articulation.

Whatever the connection, Murray ends (ironically) at what he sees as a timeless doctrine: that the civil institution of religious liberty is the “thesis”, while establishment of the Catholic Church is the “hypothesis” contingent upon the historical conditions of certain nations. Murray implies that establishment in any form is fundamentally incompatible with a civil guarantee of religious liberty for citizens of non-established religions. Murray seems to say that the Church has contradicted herself in his statement that “the Church herself has countenanced institutions [that] have appealed to the coercive instruments of power in the supposed interests of the faith.” What Murray seems to mean is that the Magisterium had endorsed the use of coercion in matters religious, contrary to the teaching of *DH*.

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240 Ibid.


243 Ibid., 693n51.
Issue of Church and State at Vatican II. In this postconciliar article, Murray interprets the significance of DH and Gaudium et spes for the perennial issue of the relation of the Church to political power. Vatican II was able to surmount the modern problematic by “relinquish[ing]” the retrospective Christendom hermeneutic of Leo XIII. The Christendom hermeneutic looks back at a golden age of cooperation between ecclesial and political power, especially as developed under Catholic monarchs after the sixteenth century. In such a view, Murray argues, religious pluralism could only be seen as a dangerous to the harmony of society, requiring state constraints on religious practice. The Catholic prince was the political guardian of ecclesial unity within his land. At the same time, the Council was profoundly Leonine in emphasizing the central importance of religion for human society and the independence of the Church from political power. Murray likens Leo to a new Hildebrand, emancipating the Church from slavery to the nation-state and its interests. Despite this Leonine recovery of the libertas ecclesiae, Murray’s Roman opponents insisted on “the unity of the Church” as the main principle of Church-state relations. That latter principle tends to enlist the Catholic ruler as the instrument of the Church and entails the thesis-hypothesis program.

DH developed the Leonine heritage by incorporating the Pian and Johannine elements of a non-sacral, juridical state serving the human person by means of the common good. An additional assumption of DH is that society is no longer religiously homogeneous but pluralistic. The state cannot be the judge of religious truth, because religion is of the “transtemporal” order

244 Murray, “Church and State at Vatican II,” 203.
of man’s relation to God and thus religion is beyond the state’s competency. For this reason the Church’s “unique theological title” to religious liberty, founded as it is on the divine mandate of Christ Jesus the Lord, “cannot be urged in political society and against government.” Secular power simply does not have the capability to evaluate such a claim. To expect secular power to judge the claim invites state intrusion into religious matters: “if the theological title is asserted against secular powers … the way is opened to a confusion of the two orders of human life to a negation of the transcendence of the Church and to a violation of the due autonomy of the secular order.” This would contradict the council’s own teaching on the autonomy and limitations of the state (cf. Gaudium et spes 76). Murray argues consequently that the Church should only seek her liberty under the “secular” argument of DH grounded in the dignity of the human person. Hence Murray elsewhere interprets Paul VI’s December 9th, 1965, “Address to Rulers,” as literally asking from the state “only freedom” in the negative sense. As Murray puts it, the Church’s “claim is freedom, nothing more.” The state literally cannot comprehend a divine claim to freedom, and thus the Church must offer a natural law claim. This puts the Church in the same position as every other religious community before the juridical state. Murray would have it no other way, for the state deals with what is useful, not with what is true.

245 Ibid., 206, 209.
246 Ibid., 209.
247 Ibid., 210.
Vers une intelligence du développement de la doctrine de l’Église sur la liberté religieuse. In this essay Murray directly addresses the issue of doctrinal development. It is Murray’s best work on the subject. Murray’s argument is that organic or authentic developments in Catholic social doctrine are possible, but that this development is complicated by the fact that the Church must grow in her understanding of the very principles of social doctrine. This development in understanding occurs through the same historical contingencies that led to the change in doctrine. For this reason, it is not possible to predict a course of development, and such courses can only be traced after the fact. Murray prosecutes this argument through a particular interpretation of Leo XIII’s encyclicals. Murray finds in Leo a contradiction between the pontiff’s deeper development of the Gelasian dualism of spiritual and temporal power, and Leo’s defense of the confessional state. DH completed Leo’s development of the Gelasian position by complementing the freedom of the Church with the freedom of the human person. In what follows, I will first explicate Murray’s interpretation of Leo XII’s encyclicals. Second, I will describe Murray’s account of the historicity of social doctrinal development after Leo. Finally, I will criticize Murray’s theory of social doctrinal development.

To begin with, it should be noticed that Murray grants that there is no contradiction between Pius IX’s Quanta cura and DH. Murray follows lines similar to Valuet: the former condemnation of “la liberté de conscience et des cultes” stems from the underlying rationalistic atheism of nineteenth-century political Liberalism. Thus, when the popes condemned religious liberty, the signification of that concept can only be understood within the logic of the French
revolutionary state. The popes were not treating the juridical institution of religious liberty as such. Of course, Murray is disappointed that the ideological battle of the nineteenth century prevented the Church from later recognizing the legitimacy of religious liberty under a different conception of the state. Nonetheless, he explains how the Church’s teaching changed.249

1. First, Murray’s interpretation of Leo XIII’s teaching on the Church-state problem attempts simultaneously to find a lasting contribution to Catholic social thought and to discard elements of Leo’s teaching that conflict with Murray’s particular theory of the modern juridical state. To accomplish this, Murray attempts to elucidate two levels of teaching in Leo’s encyclicals: a deeper level that develops the Gelasian doctrine of two powers, and a surface level commending the confessional state as the Catholic ideal. Ultimately, Leo’s polemical engagement with Liberalism led to this contradiction in his thought, and prevented the great pope from arriving at consistent position.250

Leo’s development of the Gelasian division of two powers, spiritual and temporal, is to posit not only two powers, but two autonomous societies correlative with the powers. Just as one man could be subject to both powers in one society under the original Gelasian configuration, so in Leo’s development a man would have dual citizenship in the two societies of the Church and political society. No longer is there one society, Christendom, integrating the two powers. What necessitated this development was that the French Revolution had engendered a new political form that was “the final corruption” of the Christian constitutional tradition, following upon the

250 Ibid., 118.
earlier corruptions of absolute monarchy in a nation-state emerging in the fifteenth and sixteenth centuries. It took the idea of the Church being in the state from the absolute monarchies of the early modern period, and simply purified it. Therefore the French state was monist, omnipotent, unique and indivisible. The Church was imprisoned in this new structure, and making a distinction between the two societies reasserted her rightful freedom. Correlative to the distinction of two societies is the fact of their respective autonomies and proper liberty. In other words, not only was the Church free from the state, but the state was free from the Church. Leo’s doctrine of the two societies, combined with the freedom and “transcendence” of the Church’s salvific activity, “leads to a new affirmation of civil society’s own autonomy,” given civil society’s possession of full liberty in virtue of its own law and right.

According to Murray, what Leo ought to have said in light of this “new affirmation” of the state’s proper autonomy, was that the state had no competency in religious matters, and that the rights of man in civil society demand religious liberty. The threat of continental laïcism was simply too great for Leo to commit to the autonomy of the civil sphere from religion (healthy secularity). For Murray, the transcendence of the spiritual or religious order demands as much as its complementary principle. As Murray repeatedly claims, the principle of libertas ecclesiae

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251 Ibid., 120-21.

252 Ibid., 123: “L’insistance sur la distinction entre les deux sociétés, sur la liberté de l’Église, et sur la transcendance de son ministère, conduisit à une nouvelle affirmation de l’autonomie propre de la société civile, qui est une société de plein droit, possédant sa propre liberté.”

253 Ibid., 125.

254 Ibid., 124.
ought to find as its complement the freedom of the human person in matters religious. Murray’s argument on this point is never clear, but it seems obvious enough that he thinks this follows based on the supposition of there being an equal footing in the two autonomies of Church and state. The difficulty with any assumption of the equal standing of Church and state, however, is that Leo explicitly teaches that the ordering between the two societies is analogous to the ordering of body and soul, even while the pontiff affirms their proper ends and jurisdiction. In other words, while the two societies have their own proper ends and hence jurisdictions, Leo understands there to exist a form-matter relationship between them such that the Church can be called the soul and the state the body. This ordering and harmony is the principle that ought to govern the resolution of clashing jurisdictional claims between the two powers. Murray does not explain such comments of Leo. Murray likewise does not discuss Leo’s expectation that the state recognize true religion. Murray himself minimizes the relevance of the motives of credibility, the traditional avenue by which the pope expected societies and states to recognize which religion is the true. The “motives of credibility” are a technical term for those ways by which a non-Catholic comes to recognize the truth of the Catholic faith and the divine origin and

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255 Ibid., 121-22. Yet the incompatibility of legal inferiority for non-Catholic religions in a Catholic state with the two societies doctrine does not follow. It would only follow on something like the *ius gentium* hypothesis. Without that development in the *ius gentium*, it seems that the Church could in fact demand the legal suppression of certain public religious exercise for the sake of the religious liberty of Catholics.

256 Cf. *Immortale Dei* (1885) 14.
authority of the Catholic Church. Hence Murray raises a doubt about Leo’s statements in *Libertas* and *Immortale Dei* regarding Catholicism being easy to recognize as the true religion.

Whatever the case, in Murray’s interpretation of Leo XIII the two levels of teaching emerge as incompatible. The strand of development culminating in *DH* is contained implicitly in the deeper level (“au niveau le plus profond”) of Leo’s teaching, and hence *DH* has only drawn this out and purified what was implicit and obscure in Leo. The “other level” in Leo’s teaching is a defense of “the confessional state of the traditional type.” Perhaps Murray would simply appeal to his two levels in response to his omission of the conflicting Leonine positions mentioned above: that these teachings are vestiges of the post-Reformation Catholic monarchical Christendom model of Church-state relations. What needed to happen in order for the Church to see the incompatibility of these two levels was the historical development of the believing conscience of the dignity of the human person and the changes in political philosophy and experience in the twentieth century.

In the end, then, Murray must say that Leo contradicted himself by asking for the state to care not only for the liberty of the Church but also for the Church, her doctrine, and her moral teaching. Due to the external pressures of the time, “Leo did not perceive [the contradiction].”

Leo’s teaching that the true religion is an essential element of the political common good is a

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258 Murray, “Vers une intelligence,” 131: “que la reconnaissance sociale de la religion catholique comme seule véritable soit une question sans difficulté, c’est là une opinion sur laquelle on pourrait discuter de nos jours.” Cf. *Immortale Dei* (1885) 6; *Libertas* (1888) 21.


260 Ibid., 131.
“political proposition of which the validity is relative to a particular context and to a political mode of thought.” Murray says that Leo passes in this way too quickly from theological and moral truth to juridical truth, ignoring the intervening problems and principles of jurisprudence. Given that jump, Leo can only teach a doctrine of toleration of false religions in society for the sake of avoiding a greater evil or obtaining a greater good. Since _DH_ does not teach a doctrine of toleration, Murray therefore retrospectively identifies that tolerance doctrine as inauthentic and in need of being excised. Leo’s choice to offer the confessional state as a model arrangement is “in contradiction with the implications of the more fundamental leonine doctrine, which was an issue of pure principle, not historically conditioned, but drawn from the authentic sources of the Catholic tradition and developed in organic continuity with them—that is, the leonine development of the Gelasian thesis.”

At the same time, Murray insists that the contradiction in Leo’s thought does not destroy a proper “theology of the Magisterium,” for the surface level in Leo’s thought involves a historically-conditioned “political” premise beyond the scope of infallibility. That political premise is not a truth of faith or proximate to a truth of faith, and thus not properly matter for magisterial teaching. The obligation of the state to protect the true religion arises in Leo from

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261 Ibid., 132.

262 Leo certainly did teach this proposition often. It even shows up in his encyclical elevating the Feast of the Sacred Heart of Jesus to a first-class solemnity (Annun sacrum [1899] 10).


264 Ibid., 126-27.
“prémisses historiques et politiques particulières,” namely, those of the modern, Catholic monarchies and their secular, monistic offspring after the French Revolution. Thus, when the conditions changed, the conclusion no longer followed. Given the situation at the time, Leo’s policy regarding Liberalism was prudent, but this prudence would be shown to be incompatible with the deeper course of development. By this Murray tries to avoid saying that Leo was in error, and *DH* not in error on the confessional state, by appealing to religious establishment as a function of the particular history of European peoples, a mere historical exigency. This is precisely how Murray interprets *DH* 6. The particular history of Catholic countries then involved illiterate masses, religiously ignorant and ground down by the economic conditions, whose salvation was threatened by the growing influence of secular liberalism. Leo feared an apostasy of the masses, the destruction of Catholic culture, and the establishment of totalitarian atheism. Murray again argues that Leo’s historical construction of the ideal of the Catholic confessional state shows Leo’s “strong historical consciousness,” for he recognized his times and wrote for them. Therefore, Leo unwittingly affirmed something like *DH* 6: “If, in reason of the particular circumstances in which are found the peoples, a special civil recognition is accorded in the juridical order of a city to a given religious community…” Murray claims that for Leo, the confessional state ideal “was never more than a hypothesis.”²⁶⁵

In sum, Murray finds three seeds of *DH* in Leo’s doctrine.²⁶⁶ First, in the Leonine development of the Gelasian thesis that holds to a harmony between the two powers generating

²⁶⁵ Ibid., 134.

²⁶⁶ Ibid., 134ff.
two orders of law in two societies. The “harmony” of the two orders is what Murray claims is the development, though Murray ignores Leo’s body-soul analogy for the nature of that harmony.

The need for harmony emerges because both powers concern the same man, citizen and Christian. The distinction between the two orders is the seed of the Pian development that the human person is the foundation and end of every social order. The second seed of *DH* in Leo is that the dignity of man is the foundation of human rights. What Leo did for man economically in *Rerum novarum*, the Second Vatican Council did for man politically with *DH*. The third seed is Leo’s departure in *Rerum novarum* from his political concept of “the State-society unity, ruled by the *patria potestas* of government.”

Leo clearly distinguishes in *Rerum novarum* for the first time between civil society and the state. He also develops a juridical notion of the constitutional state, whose “primordial function is the protection and promotion of the rights of man.”

The complex concept of the rights of man exercised in the juridical state is central to the development of *DH*.

2. Second, Murray traces the growth of these seeds from Leo to *DH* in order to establish that historical developments enabled the Church to grasp the full implications of Leo’s Gelasian contribution. Crucial was the rise of the twentieth-century totalitarian governments. The pre-counciliar popes Pius XI and Pius XII taught that totalitarianism’s central vice was the denial of human rights given by God and the human person’s freedom, both of which are derived from the

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267 Ibid., 137.
268 Ibid.
269 Ibid., 139f.
dignity of the human person. Pius XII in his radio messages accepts the juridical notion of the state, thereby “totally forsak[ing] the old leonine concept of the ethical State-society, with its double notion of the common good and of the quasi-paternal function of its power.” Murray says that the constitutional ideal is the political corollary to religious liberty, human and civil. Here he is claiming that the juridical notion of the state has been achieved as a new, irreversible stage in Catholic political theory. The older notion of the state, where the state represents both transcendent religious truth and the people, is pagan in origin and absolutist in tendency. Attending such a juridical point of view is the state’s abstention from judging the truth of religions. The civil right to worship publicly as an extension of the human person’s dignity and freedom follows.

3. Third, Murray’s treatment of the particular issue of religious liberty reveals his general approach to development in the Church’s social doctrine. This approach requires a critical reception, for its power to address the dynamics of change may also destroy Catholic theological method. We are now in a position to grasp the basic aspects of Murray’s theory. The first aspect of Murray’s theory is that developing doctrines are clarified by the historical process of development itself. This clarification is not only a making consistent the implications or applications of the doctrinal principles proximate to the developed doctrine. The clarification also includes the improvement of the Church’s understanding of the very principles themselves. From what Murray affirms, it appears that he would also affirm that what was a perfectly logical

270 Ibid., 141.
271 Ibid., 142-43.
or reasonable application of a principle in one age would be an invalid application in a later age. The reason is that the very principle from which the logical implication or application was derived had been purified and therefore changed. To make the same application in a later age would be to negate the historical process of purification in the Church’s consciousness of the principles themselves. This claim treats the end of the Church’s understanding, and thus is internal to the doctrinal development itself. In contrast, changes in external social, political, or economic conditions could simply entail a change in application, and thus a change at the other end of doctrine’s encounter with social realities. This latter would not be a purifying of the Church’s awareness of principles. This point would go beyond Murray’s claim that popes such as Leo XIII simply failed to grasp the contradiction between two levels of teaching, the superficial application and the deeper principle. It would entail that the deeper level of principle was itself held confusedly by the Magisterium in a given age, and that the contingencies of history are required for the Magisterium to understand the principles themselves.

On the other hand, there is no clarification of doctrinal principles for theology without the theologian grasping the concrete historical changes in the world relating to that area of theology. This deals with the external factor of development. There is no “a priori” theory of social doctrinal development that will give the theologian an understanding of development so as to help him discern how Church social doctrine may change, apart from grasping the external, concrete social changes. So Murray says that the “intelligibility” of the Church’s doctrinal development on religious liberty “is not accessible a priori, or simply by the game of applying
some general theory of development of doctrine.” Instead, he says that “at present” theologians “do not have a general theory of this type.” Indeed, he says that only by studying each doctrine in particular can the theologian discern which doctrinal principles, social movements, and historical influences move the Church along a particular path of development.

Changes in political and social realities enables the Church to make new, genuine distinctions. The Church is able and must “make the distinction that Leo XIII was unable to make in his times—between religious liberty as a juridical notion and legal institution in a free society under a government having limited powers, and the false laïcist ideology that formerly invalidated the notion and institution, with the form of totalitarian political regime in which it resulted.” In fact, Murray identifies the making of “necessary and appropriate distinctions … where no one had made them previously” in response to the exigencies of history as “the ordinary way by which doctrinal progress is accomplished.” Following this way is DH, for the Declaration developed the Church’s social doctrine by “adopting the novel state of the question, the fruit of history, situating it in a new perspective, and in making the necessary and appropriate distinctions.” This way of making genuine distinctions seems the most fruitful of Murray’s thoughts on development, and this view will be explored at the theoretical level in chapters two

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272 Ibid., 113: “Cette intelligibilité n’est pas accessible a priori, ou simplement par le jeu de l’application de quelque théorie générale du développement de la doctrine. Pour l’heure, nous n’avons pas de théorie générale de ce genre.”

273 Ibid., 113-14.

274 Ibid., 145.

275 Ibid., 146-47.
and six. The Church does not so much propound error as further clarify moral principles, partly by means of her own experience as a historical subject.276

That the Church has been able to achieve such developments during the Second Vatican Council by making new, genuine distinctions reveals something further about the Church as a knowing subject. Since DH contested the error of “archaism” (not allowing doctrine to develop in response to future problems and ages), the Declaration has a further “theological significance” about the Church herself. DH discloses the “significance of the whole Council, which witnesses to the multiple ways of the Church’s growth: growth of her historic consciousness, of her human consciousness of the dignity of man, of the ecumenical consciousness from her ministry of reconciliation, and above all of the evangelical consciousness which she has of herself.”277 The Church achieves awareness not only of her doctrine through history, she achieves awareness of herself as a changing subject in the midst of human history.

Another basic aspect of Murray’s theory of development that is related to the making of distinctions is the possibility of distinguishing between (at least) two levels or elements of ordinary magisterial teaching, one of which is “deeper” than the other and which represents the more authentic principles in the course of a doctrine’s development. For example, Leo XIII’s development of the Gelasian dualism from two powers into two societies is an instance of the


deeper level; his practical teaching on the confessional state is an instance of the surface level. In that example, the surface level would be sloughed off in time, indicating that for Murray doctrines on that level may not be simply historically contingent in some neutral way, but actually erroneous due to uncriticized assumptions seeping into the Church’s teaching from the epoch in which it was given. Murray is here at least partly in accord with how the Church understands the operation of the third level of magisterial teaching, that of the ordinary non-universal type. As the CDF instruction Donum veritatis notes, the interventions of the Magisterium may contain, “in addition to solid principles, certain contingent and conjectural elements” that can only be recognized “with the passage of time.” Indeed, the instruction even says that “the theologian, who cannot pursue his discipline well without a certain competence in history, is aware of the filtering which occurs with the passage of time.” But the theologian may take an active role in assisting the Church distinguish between the “necessary and contingent” elements in such Magisterial interventions, for “[o]nly time has permitted discernment and, after deeper study, the attainment of true doctrinal progress.”278 On the other hand, Murray does not successfully show that Leo’s teaching on the duty of the state to profess the true religion is entirely “polemical,” that is, entirely explainable as a contingent reaction to atheistic Liberalism. One need only say that Liberalism’s attacks on establishment constituted the occasion of Leo’s teaching, which is also clearly involves a doctrinal principle (see ch. 3 below), to see that Murray’s historicizing interpretation is not required by the evidence.

At the same time, it is not clear how to reconcile the historicizing aspect of Murray’s account of development with his contention that a course of development is impossible to understand without grasping its term. Murray states that theologians cannot grasp the course of development before a doctrine has reached its term, and even then “only after a long time” and “after a serious work of reflection by a number of thinkers.” The problem here is that Murray assumes that the Church’s teaching has reached its term in DH, and thus theologians are able to begin studying the course of development. How does a theologian perceive that a course of development has achieved its term? Murray does not explain why a Roman theologian in the late nineteenth century or early twentieth who taught the thesis/hypothesis structure would have been in a different epistemological state from a theologian after DH. Murray’s position here makes it seem as though intentional, rational attempts to develop doctrine are paradoxes, whether the theologian’s own or that of the Magisterium. Furthermore, if two levels can exist in Church teaching, as Murray himself argues, with a “deeper” level being the authentic one, perhaps theologians in a later age will dissect DH in a similar manner, showing how the document was flawed by some contingent assumption of the age, yet contained a deeper truth that is conserved by subsequent magisterial interventions. If one cannot know whether a doctrine has reached its term, then theologians will view the document as a flawed attempt at development.

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279 Cf. Karl Rahner, SJ, Theological Investigations, Volume 1: God, Christ, Mary and Grace, trans. Cornelius Ernst, OP (London: Darton, Longman and Todd, 1965), 39-41: “[W]hatever the general meaning, possibility and limits of a development of dogma may be, they cannot be deduced with the necessary exactness and precision from general theological considerations alone but must be arrived at inductively from the actual facts of such a development.”

280 Murray, “Vers une intelligence,” 118: “De même qu’aucun développement ne peut être vraiment compris avant d’être parvenu à son terme, un développement ne peut être pleinement compris que longtemps après sa conclusion, et après un sérieux travail de réflexion, par de nombreux penseurs, sur son déroulement.”

281 Cf. DH 1: “Insuper, de hac libertate religiosa agens, sacra synodus recentiorum summorum pontificum doctrinam de inviolabilibus humanae personae iuribus necnon de iuridica ordinatione societatis evolvere intendit.”
term, one cannot preclude the possibility of reversal. The difficulty here is the same with Noonan: the argument is unable to bear simultaneously the notions of an intelligible, progressively improving course of development, of recurring errors in magisterial teachings from an earlier age that were masked by the historical circumstances (and in the stick-in-the-mud theologians who defended theological propositions contained in or derived from that teaching), and of the current magisterial formulation being an unchanging doctrinal term. What is needed to show the compatibility of these elements is a better categorization of the levels of magisterial teaching, in order to show the principled means by which a theologian may discern “the growing end” of the tradition in the relative weight and solemnity of inherent in the magisterial teachings themselves, without arbitrarily declaring his own theological opinions as irreformable doctrine.

The problem put in the foreground by Murray’s theory is how a theologian can affirm the competence of the Magisterium in doctrinal matters, while acknowledging the role of historical process in the course of doctrinal development. The second element apparently entails, in Murray’s estimation, the honest acknowledgment that the Magisterium is capable of embracing and propounding error in doctrinal matters. This tension inherent Murray’s theory is no better illustrated by the following quote:

It remains only to add that the [doctrinal] progress [from Leo to DH] is not able to be explained by the easy categories of “principles” and “applications”. The principles of faith—and even more, those of reason—are not of the type of platonic ideas, eternally immutable, given all at one time in a perfection of understanding, only waiting for occasions to be applied in history. To the contrary, the Church increases in her understanding of the principles themselves. And a principle newly understood is new as a principle. Moreover, the new growth of
this understanding is normally accomplished under the tutelage of experience, as much religious as secular.  

Murray extends the development of doctrine to a development of the Church’s understanding of the principles of faith. He also asserts the “tutelage” of both religious and secular experience in eliciting the new understanding of the principles within the Church. Murray then concludes that “a principle newly understood is new as a principle.” One might draw the implication, if it is true that a principle newly understood is new as a principle, that the Magisterium did not know clearly the principles of the faith in deciding the issue in a previous age, and in consequence propounded judgments mixed with error.

In contrast to Murray’s approach, John Paul II appears to have held to a straightforward principles-application scheme in the unfolding of Catholic social doctrine. In *Sollicitudo rei socialis* (1987) he says,

> On the one hand [Catholic social doctrine] is constant, for it remains identical in its fundamental inspiration, in its ‘principles of reflection,’ in its ‘criteria of judgment,’ in its basic ‘directives for action,’ and above all in its vital link with the Gospel of the Lord. On the other hand, it is ever new, because it is subject to the necessary and opportune adaptations suggested by the changes in historical conditions and by the unceasing flow of the events which are the setting of the life of people and society. (4)

In *Veritatis splendor* he likewise writes that because development in the Church’s moral teaching is analogous to development in her dogmas of faith, future formulations of doctrine must conserve “the same sense and judgment” of previous magisterial teachings. Murray would undoubtedly agree with that maxim of Vincent of Lerins, but with the added caveat that history

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283 *Veritatis splendor* (1993) 53; cf. n100.
affords a fuller understanding to the Church about precisely what she meant in proposing the moral and social doctrine of the Gospel. Of course, Murray does not deny that the principle-application scheme is valid, only that it insufficiently expresses the influence history has on how moral doctrine develops.

*Problematic and Prospect*

In what preceded, this chapter surveyed the various issues debated by scholars in the particular development of the doctrine on religious liberty. That specific debate involves what the scholars explicitly or implicitly hold regarding the general issue of doctrinal development in the Church’s moral and social teaching. Some scholars, such as Noonan, Rhonheimer, and Gherardini, see no way in which earlier teachings prepared the way for *DH*. For them, then, either contradiction can be a course of development (Noonan) or one of the two ends of the course of development is not authentic magisterial teaching (Rhonheimer and Gherardini). Other scholars see in *DH* a mere policy change on the prudential order (Pink). On this understanding, there has been no development on the idea of a natural right, only on the civil expression. While Hittinger speaks of *DH* as “mid-level policy,” he recognizes deeper dynamics in the Church-state question at work, namely, the gaining of complementary principle to *libertas ecclesiae*. 
Underlying these debates is the issue of what the development of *DH* entails for the process of doctrinal development generally. For all the debate over *DH*, however, little work has been done on a theory of development in the Church’s social teaching. One question is whether the Church’s own understanding of the principles at play changes over time, or only the application of the principles. Another question, raised by Valuet’s use of the concept *ius gentium*, is whether limiting the Church’s awareness to natural law principles and political applications is sufficient to account for the Church’s doctrinal progress. Valuet’s suggestion is that the addition of reciprocity to the *ius gentium* in regard to religious liberty allowed the Church to call for civil freedom in the *exercise* of the natural right of immunity. In other words, there was a change in policy, but that change in policy simultaneously clarified a natural right of the human person and also constituted an adaptation of the Church’s social doctrine to new political realities. Perhaps an appropriate analogy would be additions to the natural law contained in the *ius gentium* such as private property, the practice of not enslaving prisoners of war, the right to immigrate, and the abolition of most or all forms of slavery. All these are based in natural rights, and yet their exercise depended upon certain social progress, and to have not allowed the exercise before then was not to have violated the dignity of the human person.

The remainder of this dissertation will unfold according to the following plan. The second chapter surveys outlines some basic parameters for an account of doctrinal development, drawing upon Vincent of Lérins and John Henry Newman. Then the chapter proposes a clarification regarding doctrinal progress in non-definitive Church teachings. It also briefly
discusses the historicist and Modernist challenges to the claim that doctrine can develop homogeneously, that is, that the Church progressing in her understanding of divine revelation while preserving her previous judgments (cf. *Dei Verbum* 8; *Veritatis splendor* 27-29, 53).

The third chapter summarizes the social teaching of the modern popes on the juridical order of the state, the competency and duties of the state in religious matters, and the personal and communal right to religious liberty, including public worship and propagation. The chapter focuses on the historical-political setting and theological content of the teachings of Gregory XVI, Pius IX, Leo XIII, Pius X, Pius XI, Pius XII, and John XXIII, as found in the germane encyclicals, allocutions, and radio addresses. What the chapter will argue is that two other developments in papal teaching prepared for *DH*, namely, Pius XI’s personalistic and rights-centered doctrine of the political common good forged in the conflict with twentieth-century totalitarian regimes, and Pius XII’s doctrine of the new claims in the matter of religious liberty made on the common good of member nation-states within an international order.

The fourth chapter analyzes the genre, authority, history, and final form of *DH*, employing especially the official explanatory speeches (*relationes*) and drafts found in Vatican II’s *Acta synodalía*. When necessary, important post-conciliar commentaries on *DH* are used. Hence the fourth part seeks to better understand how the authors and council Fathers understood *DH* to be a homogeneous development. The Council’s deliberations are rarely cognized by moral theologians, who tend to examine the final text of *DH* without utilizing primary sources in the textual and reception history of the document. The fourth chapter argues that many assertions
made about *DH* by those scholars who see it as a heterogeneous development are inaccurate, for example, on the object of the right of *DH* 2, on the meaning of the term “societies” in *DH* 1, and on the issue of civil establishment of Catholicism. At the same time, while *DH* reiterates or preserves traditional teachings, it also do so under a new modality appropriate to modern conditions. The chapter also looks at John Paul II’s reception of *DH* 7’s teaching on the limitations of religious exercise.

The fifth chapter addresses the question of how the doctrine was capable of developing in three steps. First, using the work of Robert Sokolowski and Francisco Marín-Sola, the chapter outlines an ecclesial psychology of development that accounts for the role of experience. Then, drawing upon the “secular Christendom” theory of Jacques Maritain and Charles Journet, and Basile Valuet’s *ius gentium* theory of development, a Christian social form’s capacity for different configurations is explained. Society is a social unity, not a substantial unity, and as such is liable to various instantiations. Third, this inherent elasticity of society indicates for moral theology the limits and possibilities of change in Catholic social doctrine.
Chapter 2

The Theology of Doctrinal Development

The previous chapter showed that any interpreter of DH explicitly or implicitly assumes a certain notion of doctrinal development in order to judge whether and how DH may be an homogeneous development in Catholic doctrine. Yet we have only shown that there is something called doctrinal development; we have not yet shown what it has been thought to be. It is necessary to answer this question in order to evaluate the path of magisterial teaching from the nineteenth century until DH. This chapter, therefore, undertakes a general examination of the nature and parameters of doctrinal development. The examination will enable this dissertation to argue two points: first, that doctrinal development in moral and social teaching proceeds similarly to doctrinal development in matters of faith, but with more attention to changing human realities; and second, that the specific doctrinal development in moral and social teaching constituted by DH is a homogeneous one. The second question is left to the fifth chapter of this volume, building as it will upon chapters three (course of modern papal teaching on religious liberty and the relation of the Church to the state) and four (the history, content, and reception of DH). The first point, however, will be dealt with in this chapter and again in chapter five. This chapter will examine the problem of doctrinal development using the work of Vincent of Lérins, John Henry Newman, and important magisterial teachings in order to investigate how they apply
to the more specific problem of the development of moral and social doctrine. Moral doctrine is different than dogmas pertaining to faith only, for these latter deal with the truth about God and what he has done. Moral doctrine is practically oriented, however, for it deals with the norms of human conduct. It is also more historically conditioned on account of change in the historical and political circumstances that bear upon human action. The similarity between dogmatic and moral doctrine stems from the unchanging nature of God and human nature made in God’s image and redeemed by Jesus Christ. Thus, doctrinal development in moral and social teaching will also have as essential criteria the preservation of type and conservation of principles noted by Newman, while also assimilating new knowledge gained through advances in the human sciences and experience.

*The General Problem of Doctrinal Development*

The problem of doctrinal development arises in Catholicism because of the theological tradition’s commitment to two seemingly opposed ideas comprising the mystery of the Church’s faith. The first idea is that God has revealed himself to mankind in a definitive way through the life, death, and resurrection of Jesus of Nazareth, the Son of God. The first chapter of the Letter to the Hebrews, for example, argues for superiority of the revelation made through Jesus Christ, who is superior to Moses, the prophets, and even to the angels. Moreover, because Jesus himself
is the “exact imprint of God’s nature” (charaktēr tēs hupostaseōs autou; v. 3), Jesus reveals God in a way that no intermediary could or ever will. Hebrews continues to argue that Jesus fulfills the various types laid down through Moses (e.g., temple and priesthood), showing that they were imperfect and preparatory for the coming of Christ. Jesus is thus the final, consummate word in a series of preparatory communications made by God to the patriarchs and prophets of Israel.¹ Thus the person of Jesus, what he accomplished and what he taught, remains the unchanging foundation of the entire Catholic faith. The apostles transmitted this revelation orally and in written form, constituting Sacred Tradition and Sacred Scripture. In this way, there is no public revelation after the death of the last apostle. ²

Yet to this idea of the definitiveness of the revelation made through Jesus Christ is added another, namely, that Catholic faith develops over the course of the Church’s pilgrimage through time as she journeys toward the heavenly Jerusalem. In general, this involves making explicit what is implicitly contained in the deposit of faith. Such development can take the specific form of declaring as reveled propositions that are somehow analytically contained within previous defined dogmas. For example, the dogma of the Third Council of Constantinople (AD 680-81) clarifies the symbol of Chalcedon (AD 451), that because Jesus Christ is true God and true man in one person, he has two wills, one the divine will and the other his human will, each with its own proper operation. The homoousios of Nicea (AD 325), describing the consubstantiality of

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¹ See also Dei Verbum (1965) 4: “To see Jesus is to see his Father also (see Jn 14.9). This is why Jesus completes the work of revelation and confirms it by divine testimony” (trans. Tanner 2:972).

² Dei Verbum 4: “…no new public revelation is to be expected before the glorious manifestation of our Lord Jesus Christ” (Tanner 2:973); cf. Lumen gentium (1964) 25; Vatican I, Pastor aeternus (1870) 4, 26.
the Son with the Father in the Godhead, is not a term found in Sacred Scripture, yet it was meant to clarify what Sacred Scripture and Tradition had already said about Jesus Christ. The Church, assisted by the Holy Spirit who animates her, further penetrates the mysteries contained with divine revelation. Other developments might arise from the contemplation and knowledge of the Church’s members of the Word of God, not taking propositional form initially. One thinks of the Marian doctrines and their history.

How these two ideas of givenness and progress are reconciled is the task of the theology of doctrinal development. Divine revelation is complete with the coming of Jesus Christ; the articles of faith explicitly believed by the Church increase in number. Divine revelation itself not only communicates mysteries, but its growth is likewise a mystery. If all heresy stems from denying one side of a mystery as a result of the human inclination to know the cause of things, then the human mind will be tempted to systematize the problem of doctrinal development in such a way as to mitigate the force of one of the two aforementioned ideas. To mitigate the notion of revelation’s definiteness is to open inadvertently the way to new revelation, perhaps to point of abrogating previous revelations, but at least regarding current revelation as in need of perfection. On the other hand, to assert the finality of revelation in such a way as to deny doctrinal progress denies that the legitimacy of the definitions of the Magisterium in faith and morals as binding according to the logic of divine faith. In moral and social teaching, such a collapsing of the mystery of revelation neglects the fact that the Church is on pilgrimage through history. Being on the way necessitates the constant application and re-application of the

3 *Dei Filius* (1870) ch. 4; *Dei Verbum* 8.
principles of her faith to the changing times and conditions. It may even involve a growing awareness of the principles and facts contained in the deposit of faith on the part of the Church, as Murray himself surmised.

An early example of a theologian exhibiting these two elements of definitive revelation in Christ and doctrinal progress in the Church is Vincent of Lérins, whose *Commonitorium* (c. AD 434) provides a method for distinguishing between orthodox and heretical interpretations of Sacred Scripture regarding christological and trinitarian faith. The problem is not with Scripture, but with the heretics who find so many ways of abusing it (*Comm. 2*). The basic way to judge between an orthodox and a heretical interpretation is to test an interpretation of Scripture by the tradition of interpretation established throughout the Catholic Church. The famous Vincentian canon comes early in the work: “In the Catholic Church itself, every care should be taken to hold fast to what has been believed everywhere, always, and by all” (*Comm. 2*). This yields the threefold criteria of “universality, antiquity, and consent [of the Church’s teachers]” in evaluating any teaching. Vincent is primarily concerned with identifying “innovations” and “deviations” in the *Commonitorium*, and the solution is to “hold fast” to what has been handed down. Any new doctrine is *ipso facto* illegitimate: “to announce to Catholic Christians a doctrine other than that

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4 For dating, see ch. 29 of the *Commonitorium* itself and discussion in Demeulenaere’s introduction Vincentii Lerinensis, *Commonitorium, Excerpta*, ed. R. Demeulenaere, CCSL, vol. 64 (Turnholt: Brepols, 1985), 129.

5 Unless otherwise stated, the translation used is Vincent of Lérins, *Commonitories*, trans. Rudolph E. Morris, in Fathers of the Church, vol. 7 (New York: Fathers of the Church, 1949), 270. Latin from Vincentii Lerinensis, *Commonitorium, Excerpta*, 149: “In ipsa item catholica ecclesia magnopere curandum est, ut id teneamus quod ubique, quod semper, quod ab omnibus creditum est.”
which they have received was never permitted, is nowhere permitted, and never will be permitted” (Comm. 9).

At first glance, the Vincentian canon excludes any doctrinal progress by the criterion of antiquity. Vincent himself raises and responds to this objection later in the Commonitorium.

Before looking at that response, however, it should be noticed that Vincent himself wrote the Commonitorium in part to assist the reception of the Council of Ephesus (AD 431) on the unity of Christ.⁶ It is inconceivable that Vincent would exclude by his rule any formally new doctrine, so long as this doctrine was an expression of what Catholics had already previously received “by the divine Canon [of Scripture]… and the tradition of the Catholic Church” (ch. 29).⁷ Thomas Guarino comments that the entirety of the Commonitorium is an explication of this rule, and that the utilization of the judgments of ecumenical councils is therefore not a supplement to the canon but a further explication of it.⁸ To the teacher of Catholic doctrine, Vincent says, “do not say new things even if you say them in a new manner” (Comm. 22).

Later in the twenty-third chapter, Vincent responds to the objection that his method destroys progress in the faith. He asks whether there “is no progress of religion possible within the Church of Christ?” Vincent distinguishes between “progress in faith” and “change in faith,” using an analogy drawn from organic life: “progress means that each thing grows within itself,

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⁶ The now lost second book of the Commonitorium is what specifically vindicates the judgment of the Council of Ephesus against Nestorius and for Cyril (ch. 29). This second book is recapitulated along with the first in chs. 29-33 of the Commonitorium as a kind of appendix. For discussion, see Vincentii Lerinensis, Commonitorium, Excerpta, 130-31; Guarino, Vincent of Lérins, xix-xx.

⁷ Yet eminent theologians such as Joseph Ratzinger and Yves Congar have criticized that rule precisely for its uselessness and its “static” approach to tradition. See Guarino, Vincent of Lérins, 2.

⁸ Ibid., 6.
whereas change implies that one thing is transformed into another” (*Comm.* 23.2). In apparent contrast with his conservative method, Vincent says that both individual Catholics as well as the entire Church must increase in “understanding, knowledge, and wisdom… according to age and history.” Lest such change be a corruption, however, that growth should be “in the limits of its own kind, in accordance with the same kind of doctrine, meaning, and judgment” (*sed in suo dumtaxat genere, in eodem scilicet dogmate, eodem sensu eademque sententia*) of the Church in believing (*Comm.* 23.3). According to Guarino, Vincent is “the only early Christian writer to treat historicity [of doctrine] *ex professo*, and he does so with a positive tone.”

Developments in doctrine thus do not necessarily contradict the criterion of antiquity. Vincent elaborates further the analogy from organic growth: later stages of development in a man do not contradict earlier stages, for “nothing new is later produced in old men that has not previously been latent in children.” Unless something unnatural be added to the thing in question, making him either another creature or a monster, the substantial form of the man remains identical throughout the changes in stage. Vincent states both formal and efficient causes of doctrinal development. Formally, what may be added to doctrine is *species*, “appearance” or “species”; *forma*, “figure”; and *distinctio*, “distinction” or “clarity” (*Comm.* 23.11). The efficient cause of such change might be the work of an individual theological doctor, who like the artisan of the Tabernacle, Beseleel, arranges the beliefs of the Catholic religion so as to make “that

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9 Vincentii Lerinensis, *Commonitorium*, Excerpta, 178. Guarino identifies the immediate biblical reference as 1 Cor 1:10: “I implore you, brothers, that all of you agree in what you say, and that there be no divisions among you, but that you be united in the same mind and in the same judgment [Vulg. *in eodem sensu et in eadem sententia*]” (Guarino, *Vincent of Lérins*, 19).

10 Ibid., 15.
which was formerly believed with difficulty… more understandable in the light” (Comm. 22.6).

A more authoritative efficient cause of development, however, is an ecumenical council through its decrees, through which the Church “condens[es] weighty matters in a few words [and] present[s] in new words the old interpretation of the faith” (Comm. 23.19). In addition to an ecumenical council, the bishops of Rome are invoked a special examples of doctrinal authority throughout the Commonitorium (6.4-6, 30.5, 32.1-6, 33.2-6).\footnote{See ibid., 1-42, for a detailed exposition of these themes of the Commonitorium, including the proper role of the laity, doctors, bishops, popes, and councils to doctrinal progress.}

Even in this cursory glance at Vincent’s theology of doctrinal development, the two poles of the mystery of revelation are clear: the Church’s vigilance to guard the unchanging deposit of faith and the Church’s growth in understanding what is contained within the deposit. What is left unresolved by Vincent’s account is whether the development consists only in an advance by formal or analytical logic. McGrath cautions against extrapolating from Vincent’s account to a more complete system, saying, “To seek to develop a theory of dogmatic progress from the words of Lerins, in themselves or as quoted by Pius IX, seems to us to extend unduly their meaning.” \footnote{McGrath, “Vatican Council’s Teaching,” 80. Pius IX cites Vincent in the encyclical Singulari quidem, in explaining that doctrinal progress is possible (cf. Acta Pii IX 1/2, 510-30).} On the other hand, a Spanish scholar of Vincent, José Madoz, has argued that Vincent allows only for “rigid conservatism” in dogmatic development because of the strictness of quod ubique, quod semper, quod ab omnibus.\footnote{José Madoz, El concepto de la tradición en S. Vicente de Lérins (Rome: Gregorian University Press, 1933), 189, 191, cited in Guarino, Vincent of Lérins, 82.} Guarino insists, against the position of Madoz, on the ecclesial context of Vincent’s canon from the second chapter of the Commonitorium,
allowing for a harmonizing of the canon with the later chapter twenty-three on progress in religion.\textsuperscript{14} Indeed the images selected by Vincent are highly suggestive against the merely logical theory attributed to him by Madoz. In looking at the child, one does not yet perceive the man, and in looking at seed grain, one does not yet detect the fruit of wheat. In retrospect there is a certain “logical” connection between the man and the child and the wheat and the grain, but this connection is perceptible to reason only by experience of the object of knowing and not by formal or analytical logic alone.

Now divine revelation is something above the natural apprehension of man. Even Vincent seems aware of this when he says that the “depth” of Scripture is so full of meaning that it can be exploited by heretics offering now this, now that erroneous interpretation (\textit{Comm. 2}). Divine revelation is not the natural object of human knowing as wheat or even the human body are, and thus revelation all the more requires a divinely-instituted teaching authority in the Church to guide the process of doctrinal development, along with the virtue of divine faith and the gifts of the Holy Spirit in the faithful.\textsuperscript{15}

Vincent’s image of growth in understanding “in individuals and in the whole Church,” with its key condition—\textit{sed in suo duntaxat genere, in eodem scilicet dogmate, eodem sensu eademque sententia}—has quite the reception history. John Henry Newman uses it as a complement to the Vincentian canon in his \textit{Essay on the Development of Christian Doctrine}

\textsuperscript{14} Ibid., 81-82. Guarino goes on to argue in his third chapter for a fuller, modern account of development based on the \textit{Commonitorium}.

\textsuperscript{15} For an account of doctrinal development that embraces both the logical method of theology and the affective way of the spiritual life, both founded upon the faith as protected by the Magisterium, see Francisco Marín-Sola, OP, \textit{L’Évolution homogène du Dogme catholique}, 2nd ed., 2 vols. (Fribourg: L’Œuvre de Saint-Paul, 1924).
(1845), and Vatican I (1870) cites Vincent verbatim in *Dei Filius*, ch. 4 (*de fide et ratione*), echoing Pius IX’s multiple citations of the *Commonitorium* more than a decade earlier. But Vatican I did not enshrine any particular theology of development; it merely excluded the semi-rationalist notion of development offered by Günther and others. The semi-rationalist notion of development accepted rationalism’s premise that reason is the autonomous judge and source of all truth. Semi-rationalism merely transposes this premise into the discipline of Catholic theology. Reason is the *norma normans*, dogma the *norma normata*. Doctrinal progress would then consist in modifying the sense of doctrine in accordance with reason’s progress in the various modern sciences. Contrary to this scheme, Vatican I emphasized that God is the source of dogmatic truth, and that the motive (formal object) of faith is God himself revealing, not reason’s autonomous comprehension of the meaning of the doctrine. The Church herself is the guardian of revelation, and the sense which she gives to dogma is the immutable norm. In this context, one can see that the citation from the *Commonitorium* at the end of the final paragraph of chapter four of *Dei Filius* is meant to underline the immutability of dogma and the superior certainty of faith, not to outline a complete theology of doctrinal development. A more advanced consideration of doctrinal development is necessary. Among the most important modern figures

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17 Ibid., 123-32.
18 Ibid., 129.
is John Henry Cardinal Newman, whose work helped Catholic theology break through the impasse created by a strict reliance on logical theories of development.\textsuperscript{19}

*Newman’s Approach to Development: The Church Knows Revelation as an Idea*

There are basically three approaches to the question of doctrinal development. The approaches attempt to explain how later formulations of the Church do not destroy the integrity of the definitive revelation given once for all in Christ. Excluded from this taxonomy would be those theories of development which tolerate such destruction, called heterogeneous or inauthentic in contrast to homogeneous or authentic development. Chadwick categorizes the basic theories of homogeneous development as “clearer explanation,” associated with Bossuet; “logical explication,” associated with the late medieval scholastic theologians; and Newman’s theory, which Chadwick characterizes as the Church’s gradual apprehension of the idea of

\textsuperscript{19} Since this dissertation is not a history of the theology of doctrinal development, it passes by any consideration of the medieval period. For a recent treatment of incipient ideas of doctrinal development in the thought of Thomas, see Christopher Kaczor, “Thomas Aquinas on the Development of Doctrine,” *Theological Studies* 62 (2001): 283-302; Guarino, *Vincent of Lérins*, 86-87. Kaczor suggests that there are elements of an “historically conditioned” approach to doctrinal change in Thomas (pp. 293-97), but his examples can be assimilated to what Kaczor calls the “logical” and the “organic” models of development, as comparison with Guarino shows. Furthermore, as Francisco Marín-Sola points out (and with more examples from Thomas’s corpus), the issue of doctrinal development and clarification of doctrine in response to heresy are two distinct things in Thomas’s thought. Kaczor treats the clarification of faith in light of heresy as part of the “historically conditioned” model of development in Aquinas. See Marín-Sola, *L’Évolution homogène du Dogme catholique*, 2:135-36, 139-41. Both Kaczor and Marín-Sola agree that Thomas holds the faith always believed to be one, but the higher number of articles in later ages merely draw out what was implicit in the faith of previous ages.
Christianity. Bossuet’s theory is that the Church has never developed in her explicit understanding of divine revelation, but has simply reformulated or clarified that understanding in response to heresies. One could fairly say that Bossuet held to a naive interpretation of the Vincentian canon that lacks an appreciation of Vincent’s own qualification of that canon in chapter twenty-three of the Commonitorium.

In the late medieval or early modern period, especially in the Spanish scholastic theology of Suarez and de Lugo, the question of development was answered with accounts of logical explication. These theories discuss whether a theological conclusion derived from a revealed premise and a premise known by reason would be itself revealed. If so, those conclusions should then be believed by divine faith. This prompted an additional question of whether such conclusions ought to be believed by divine faith even before a formal definition of the Church. Avery Dulles relates an example of this approach used by a more modern theologian, Matthias Scheeben: “God the Father and the Son have the same nature in common [revealed]; but nature is the proximate principle of activity [naturally known]; hence they have a common activity *ad extra*.” Dulles characterizes this debate as one over “whether the Church can dogmatically define what is only ‘virtually’ rather than ‘formally’ revealed.” What is virtually revealed would

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21 See ibid., 1-20, for more on Bosseut’s polemic against the “Protestant variations” and his concept of doctrinal progress.

22 Ibid., 21-48.

be a conclusion elicited with the help of natural reason. Dulles argues that propositions virtually contained in revealed premises could not be objects of divine faith, given the principle of the syllogism that the conclusion always follows the weaker part.\textsuperscript{24} Thus the conclusion could only have as much certainty as the premise supplied by reason. Dulles notes that such a debate assumes that revelation entirely consists in propositions. Hence, accompanying this approach is the correlative opinion that “the apostles knew explicitly all the doctrines which the Church would later draw from the teaching passed from the apostles to the Church implicitly.”\textsuperscript{25} This belief was coupled with another revealed doctrine, that of the Holy Spirit’s assistance to the Church in guarding the Word of God, in order to overcome the weaker propositions drawn from human reason in syllogisms that had formally new Church doctrines as their conclusions (e.g., the two wills of Christ). Thus Suarez and de Lugo in particular struggled to articulate how the Church’s definition is formally new and yet does not add materially to revelation; it was somehow a new revelation and somehow not. In them the tension between logical implication and the binding nature of Church definitions became manifest.\textsuperscript{26} The theologian’s work preparing for a new Church definition could later be found insufficient, while the definition his work

\textsuperscript{24} Ibid. Chadwick also notes this difficulty while surveying the late medieval, especially when one of the premises has only a moral certainty, such as “this baby is validly baptized.” See Chadwick, \textit{From Bossuet to Newman}, 27-30. Marin-Sola argues to the contrary, at least for premises of reason derived from metaphysics, in Marin-Sola, \textit{L’Évolution homogène du Dogme catholique}, 1:134-71. For Marin-Sola, the metaphysically sure premise stands instrumentally to the revealed one, so the conclusion retains the character of revealed truth.

\textsuperscript{25} Chadwick, \textit{From Bossuet to Newman}, 43.

\textsuperscript{26} Ibid., 44-45.
influenced would remain something as infallibly defined proposition contained implicitly in revelation.  

Dulles points to an alternative approach to revelation drawn from “a broader theory of communication, which admits that a speaker may in the act of speaking communicate more than is propositionally contained in the meaning of the words used.” In such an approach, reason or experience may help the Church define infallibly something that truly but virtually was in “the original event of revelation.” One observes that this understanding of implicit meanings of revelation is essential to any exegesis of scripture according to different senses. God, the formal object of faith, communicates through signs, the words and deeds comprising revelation. Even the words and deeds of the Christ the Incarnate Word contain implicit meanings to be drawn out by the Church in contact with new questions. This latter theory proposed by Dulles stems ultimately from the approach to revelation and subsequent doctrinal development propounded by John Henry Cardinal Newman.

While an Anglican, Newman was leader of the Oxford or Tractarian Movement, which sought to purify the Church of England of liberal, evangelical, and experimental elements in favor of a sacramental and liturgical focus based upon the purported apostolic succession of Anglican bishops. The Tractarian Movement was to be a “via media” between the liberal-

27 Ibid., 47.

28 Dulles, Magisterium, 75. Dulles cites Karl Rahner as an adherent of this theory. For more on Rahner’s approach, see Rahner, Theological Investigations, Volume 1: God, Christ, Mary and Grace, chapter three, “The Development of Dogma.”

29 My thanks to Russell Hittinger for this point.
evangelical and the Roman Catholic manifestations of the Christian faith. As Newman continued to study the Church Fathers, he came to hold that the true Church was not found in a via media, but at one of the extremes, and that that extreme remained alive in the Catholic Church. Newman began the *Essay on the Development of Christian Doctrine* to explain to the public and to himself that the additions in doctrine and practice found in the modern Catholic Church are explainable as having organically developed from earlier ages.\(^{30}\) The following explication is not concerned with interesting historical questions regarding Newman’s sources, nor with the historical cogency of Newman’s examples. That would require a separate work, and is quite different from the question of Newman’s theory or method. As Lash notes, Newman’s general idea is what has had the most influence on later theological discussions of development.\(^{31}\)

Newman’s theory at its basic level is that, although the Church has received and guarded the divine revelation given completely and consummately in Jesus Christ, the Church does not consciously or explicitly know everything in divine revelation until historical factors provide occasion for her to make explicit the relevant content of the deposit of faith. Hence Christianity is an “idea” that develops in a variety of ways, while remaining the same idea. In this way, the knowledge of the Church is like that of the apostles, who knew the entirety of divine revelation in the sense of having an intellectual habit which is *in potentia* or “unconscious” at any given


moment, but becomes actual in a particular circumstance when the mind is directed to a specific question.

Newman argues that a process of doctrinal development exists, and supports the identity of the Catholic Church with the primitive one. Before discussing his seven “notes” of development, Newman lays out his general apologetic case and supports it with historical illustrations. His argument is threefold: that it is natural for ideas in general to develop, that doctrinal development is to be expected in the Christian religion after the givenness of revelation, and that this doctrinal progress requires an infallible teaching authority. The first part of Newman’s argument is simply to show how natural it is for ideas to develop in their contact with human minds in history. Newman’s point anticipates his application of this general theory to the question of Catholicism: “The development then of an idea is not like an investigation worked out on paper, in which each successive advance is a pure evolution from a foregoing, but it is carried on through and by means of communities of men and their leaders and guides; and it employs their minds as its instruments, and depends upon them, while it uses them.”32 Thus while an idea’s development is certainly rational, the ramifications of that development are not always accessible to the minds holding that idea.

Developments may fall into various types, each a function the encounter of an idea with different aspects of human life. “As to Christianity,” Newman writes, “development will be one or other” of the following kinds: political, logical, historical, ethical, and metaphysical.33

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33 Ibid., 54.
Importantly for this dissertation, several of these regard the outworking of an idea in a social body, and thus concern development in practical and moral norms. The metaphysical is already known to anyone familiar with the logical extension of ideas by reason in the sciences of metaphysics or theology. At the same time, Newman does not mean a merely logical type of development, but an intuitive one. Nonetheless, the metaphysical path of development results in a “body of dogmatic statements” extracted from the original idea.\textsuperscript{34} The development of the Athanasian Creed from the Incarnation is one of Newman’s examples.\textsuperscript{35} Although the “logical” kind of development would seem identical with the metaphysical, Newman means here a type of social development in the application of a principle to a society’s practice or discipline. His example is the “Royal Supremacy” of the British monarch over the Church of England, and the ways in which this principle manifests itself “with a consistency and minute application” in the liturgy and administration of the Anglican Church, sometimes not foreseen but nonetheless demanded by the logic of the principle.\textsuperscript{36} The development is of an idea that precedes the practical unfolding that follows. In contrast are those developments of the “political” type, where external pressures cause a society’s development to follow the circumstances rather than ideas, or rather, ideas to be put into practice are developed more from the circumstances than from some a priori intellectual position.\textsuperscript{37} Newman alludes to the fact that the religion of a sovereign has

\textsuperscript{34} Ibid., 52-53.
\textsuperscript{35} Ibid., 54.
\textsuperscript{36} Ibid., 45-46.
\textsuperscript{37} Ibid., 42-44.
determined the religion of the people. Here I note parenthetically that not all historical examples of the repression of free exercise in Catholic countries are pure applications of the Church’s doctrine, but are often echoes of authentic doctrine mingled with the political exigencies of the time, even Church-state relations that are somewhat deformed from the ideal of *libertas ecclesiae*. One thinks here of the unusual imperial oversight and control of the Spanish Inquisition during the sixteenth-century and onwards. The “historical” development is one that owes its course to the passage of time that leads to “the gradual formation of opinion concerning persons, facts, and events” throughout a population.\(^{38}\)

Most important, at least judging by the length of Newman’s treatment, is the “ethical” or “moral” type of development.\(^{39}\) Newman has in mind the kinds of developments that occur given the connection between the human intellect and will, between the mind and the affections. The development may arise from either direction. An example of a development moving from knowledge to love would be the worship shown to the Son and the Holy Spirit when one realizes their consubstantiality with the Father, or toward the Eucharist when one understands that the Son is sacramentally present therein.\(^{40}\) In the other direction, the arousal of an affection will lead one to grasp a doctrine with greater precision. The fact of conscience’s judgment leads one to deduce a “Judge and Judgment to come,” prayers for the dead points to the doctrine of Purgatory, and from the tendency of religious adherents to form religious society one understands the

\(^{38}\) Ibid., 46.

\(^{39}\) Ibid., 47-52.

\(^{40}\) Ibid., 47-48, 54.
necessity of authority in religious society.\textsuperscript{41} The import of the ethical type for this dissertation is that the historical process leading to \textit{DH} depended in part on the utility of religious toleration for civil peace, especially when one’s fellow citizens are seemingly innocent in their errors, and the painful experience of the allegiance demanded by absolutist states that trumped the priority and teachings of true religion. Hence while a natural right to religious liberty does not strictly follow from the freedom of the act of faith, there remains an ethical connection.\textsuperscript{42}

The second part of Newman’s apologetic argument is to show the antecedent probability of development in Christian doctrine after revelation.\textsuperscript{43} This part argues by analogy from the unfolding of revelation from the Patriarchs to the Apostles, noting how what came first anticipated in an obscure way what came after.\textsuperscript{44} In a similar fashion, the beliefs of the early Church Fathers are based on Scripture verses that are “definite, even though sometimes obscure” (e.g., “Absolution to ‘Whosesoever sins ye remit, they are remitted’”).\textsuperscript{45} Now revelation would continue to be read in new circumstances as the Church grew and spread throughout the

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\item \textsuperscript{41} Ibid., 48-51.
\item \textsuperscript{42} Cf. \textit{DH} 9, author’s translation: “For although revelation does not expressly affirm a right to immunity from external coercion in religious matters, it does however make manifest the dignity of the human person in all its fullness, shows Christ’s respect for the freedom of man in carrying out the duty of believing the Word of God, and teaches us about the spirit which disciples of such a master ought to acknowledge and follow in all things.”
\item \textsuperscript{43} Antecedent probability in Newman is an epistemologico-moral principle: that prior to a consideration of matters of fact, one can show from other sources of knowledge that one interpretive framework or conclusion will be more likely, and thus should enjoy the presumption of validity. It should be understood as Newman’s own contribution to understanding how best to attain moral certainty in identifying and following the motives of credibility. Lash explains: “an argument from antecedent probability is not the imposition of a ‘preconceived theory’ upon the evidence… but a more or less well-founded claim that it is reasonable to expect that, in a particular case, the data bear witness to one state of affairs rather than another. Indeed, unless the data are examined in the light of that heuristic anticipation set up by the judgment of antecedent probability, they are unlikely to be recognized as evidence” (Lash, \textit{Newman on Development}, 31).
\item \textsuperscript{44} Newman, \textit{Essay on Development}, 55-75.
\item \textsuperscript{45} Ibid., 72-73.
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world, requiring at the least new applications of revelation, if not outright new understandings as the “idea” of Christianity entered so many minds. Newman is therefore arguing that development in doctrine is reasonable given the natural course of ideas in communities.

The next step of the argument proceeds from the antecedent probability of doctrinal development to the antecedent probability that the Church would have an infallible teaching office. The basic thrust is that given the variance of minds encountering the Christian idea (in education, personal attachments, state of life, prejudices, etc.), it is impossible apart from an infallible authority to determine which developments are authentic. In fact, Newman says that his “notes” of development are “rather … answers to objections brought against the actual decisions of authority, than are proofs of the correctness of those decisions.” An external authority is necessary in the case of a revelation because the revelation concerns knowledge which cannot be known by human reasoning alone. That this authority is the Catholic Magisterium is supported by the fact that no other body claims to have the divine gift of infallibility in teaching and preserving the revelation. Scripture alone is not sufficient for infallibly sifting the opinions of men in regard to the revelation, for Scripture would then be “used for a purpose for which it was not given.” Rather, “a revelation is not given, if there be no authority to decide what it is that is given.” Furthermore, an authority in doctrinal matters is necessary in order to preserve the social unity of the Christian body, for time, place, and culture dispose individuals to read the

46 Ibid., 78.
47 Ibid., 88-89.
Scriptures in opposing ways.\textsuperscript{48} In sum, the process of development from the original idea requires a faculty for confirming some development as authentic. In the case of supernatural revelation, this cannot be something internal to the human person, such as conscience in the order of natural reasoning, but must be an external faculty.\textsuperscript{49}

Finally Newman arrives at his seven “notes” of doctrinal development, which he uses to interpret the historical evidence for various Catholic doctrines.\textsuperscript{50} The “notes” of a genuine development, as opposed to a corruption, are preservation of type, conservation of principles, power of assimilation, logical sequence, anticipation of its future, conservative action upon its past, and chronic vigor. The entire battery of notes has an organic tone to it because the terms “development” and “corruption” come from organic life. A corruption is “the breaking up of life” and a “dissolution”, a loss of “vigor and powers of nutrition, of assimilation, and of self-reparation.”\textsuperscript{51} One recalls Vincent’s analogy from the growth of a man. Indeed, Newman cites the \textit{Commonitorium} on the next page under the first note of preservation of type.\textsuperscript{52} Christianity is a living idea, or progresses according to a living tradition.\textsuperscript{53} Newman spends the bulk of the rest of

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\textsuperscript{48} Ibid., 90. \\
\textsuperscript{49} Other aspects of Newman’s argument deal more specifically with how a Protestant, having accepted the suitability of development, should see Catholicism as being the authentic heir of the early Church. The Protestant will fall into inconsistency if he were to reject one later doctrine while holding to another (e.g. papal infallibility versus the consubstantiality of the Son), for they all hang on the same principles of development (Ibid., 104-65). \\
\textsuperscript{50} Ibid., 169-206. \\
\textsuperscript{51} Ibid., 171. \\
\textsuperscript{52} Ibid., 172. \\
\textsuperscript{53} For more on the organic element of Newman’s theory, see Lash, \textit{Newman on Development}, 71-75.
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the book applying his arguments from antecedent probability and the seven notes of development to the evidence from the first six centuries of the Church.

Under preservation of type, the organic analogy does not prevent significant external changes in doctrine or practice within the Church, just as a change in stage does not destroy the identity of an organism. Newman uses the example of the butterfly being identical to the caterpillar and the resurrected body to the corruptible. Likewise, a corruption may involve only a slight external variation that disguises the loss of an essential principle or doctrine. A fresh corpse, for example, is not unlike a sleeping man’s body. Under conservation of principles, Newman clarifies that a “development, to be faithful, must retain both the doctrine and the principle with which it started.” In contrast, heresies follow principles while changing doctrines, such as Calvinists becoming Unitarians on account of the principle of private judgment. Logical development for Newman, in contrast to the premium placed upon it by those Spanish scholastics described by Chadwick, is not a prerequisite for the process of development itself. After all, “the holy Apostles would without words know all the truths concerning the high doctrines of theology, which controversialists after them have piously and charitably reduced to formulae, and developed through argument.” Rather, the logical connection of a development to divine revelation is more often shown after the fact.

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55 Ibid., 181.
56 Ibid., 192.
Newman’s theory has been criticized by some scholars for articulating a theory of development that is no different from continuing revelation.\textsuperscript{57} That is to say, whatever new doctrines are produced by the line of development are equivalent to newly revealed doctrines. This is opposed to the idea of the definitive revelation being made in Christ Jesus. This charge has some basis in Newman’s own arguments for the antecedent probability of doctrinal progress. For example, Newman argued from the progress of prophecy in the Old Testament or from the fulfillment of Old Testament typologies in Christ’s own life. These are developments within revelation from one stage to another, not developments in the Church’s understanding of revelation. Further contributing to the confusion was Newman’s tendency to speak of the “idea” of Christianity as a “feeling”. Now definite doctrine does not come about through an inference from a feeling. In the end, it seems as though Newman is saying that the Church somehow knows more than the apostles knew themselves about what God has revealed, by means of drawing out what is implicit in a feeling. This is not a logical deduction (as with Suarez or de Lugo), nor is it a restatement of what the Church has always believed (as with Bousset). It seems to be material added to the deposit of faith.\textsuperscript{58}

In response, Newman’s thought does not make future ecclesial developments akin to new revelation, and the notion that the Church knows more than the apostles is only true in a qualified


\textsuperscript{58} For more discussion of this charge against Newman, see Aidan Nichols, OP, \textit{From Newman to Congar: The Idea of Doctrinal Development from the Victorians to the Second Vatican Council} (Edinburgh: T & T Clark, 1990), 52-59.
sense. The classic article arguing this response is by Ian Ker.\(^{59}\) There Ker uses not only the *Essay*, but a relatively obscure letter written by Newman on doctrinal development published in 1958.\(^{60}\)

It is best simply to go straight to Newman, though in expounding his letter I follow Ker’s interpretation. Newman’s view is that the apostles, inspired by the Holy Spirit, had the entirety of the “philosophy” of Christianity as a “habit” in their divinely-assisted minds. In this sense, each apostle knew more about the faith, and with supreme reliability, than any doctor or theologian or bishop. This is not to say that the apostles had articulated explicitly or consciously the entire deposit of faith. Rather, “the Apostles had the fullness of revealed knowledge, a fullness which they could as little realize to themselves, as the human mind, as such, can have all its thoughts present before it at once.” What contributes to the knowledge becoming explicit? “They are elicited according to the occasion.”\(^{61}\) Thus Newman argues that had the subsequent controversies and difficulties of the Church been posed directly to an apostle, he “would have been fully able to answer and would have answered, as the Church has answered, the one answering by inspiration, the other from its gift of infallibility.”\(^{62}\) Newman makes an analogy to Aristotle and a modern master of Aristotelean philosophy: the master could answer as Aristotle would, though more slowly and with the aide of a more developed philosophical vocabulary. Aristotle’s mind


\(^{61}\) Ibid., 333.

\(^{62}\) Ibid.
had its creative genius as its bulwark against error.\textsuperscript{63} In a similar way, the Church makes use of a more technical theological vocabulary in expressing the faith, which the apostle would have to learn to understand modern questions.\textsuperscript{64} That aside, however, “an Apostle could answer questions at once, but the Church answers them intermittently, in times and seasons, often delaying and postponing, according as she is guided by her Divine Instructor.”\textsuperscript{65} More of Newman’s treatment could be brought out here, but one immediately understands in which sense the apostles knew the entirety of revelation and knew it in a superior way, and in which sense the Church knows the entirety of the same revelation, but only collectively, in time, and as she is divinely protected from error. In this treatment, Newman therefore sets up the “mind of the Church” as analogous to the mind of the apostles.\textsuperscript{66}

To answer the objection, then, one must observe that Newman did not conceive of the deposit of faith as a set of propositions, but as a philosophy or total idea impressed upon the minds of the apostles by God through the Incarnation and Pentecost.\textsuperscript{67} Newman thus avoids the problem of explaining how the conclusions of theological reasonings could be definable, seeing as he rejects the view that sees revelation as only a set of propositions. Rather, the Church in defining a dogma under the requisite conditions considers the deposit of faith with the mind of an apostle, and thus has a “vision” of revealed truth made possible by the gift of the Holy Spirit’s

\textsuperscript{63} Ibid., 331-32.
\textsuperscript{64} Ibid., 333-34.
\textsuperscript{65} Ibid., 333.
\textsuperscript{66} Ibid., 334.
\textsuperscript{67} Ibid., 332.
protection from error. This is not necessarily a logical deduction, even if “theologians afterwards can reduce them to their relations to other doctrines, or give them a position in the general system of theology.” Newman emphasizes several times that the deposit is a unitary thing, so that new dogmatic definitions “are original parts of it,” while “to such theologians they appear as deductions from the creed.” The deposit never changes, though the Church’s awareness of it through new questions and new situations results in answers that the apostles themselves never gave, though would have given, had they faced precisely the same question or situation. As Ker explains, Newman conceives of the knowledge of revelation as an intuition that can later be expressed propositionally. “Newman’s point,” he writes, “is that original ideas are essentially simple intuitions, all of which are ultimately and in theory susceptible to comprehension in propositional form.” Thus Newman can account both for the givenness of revelation, as well as the Church’s growth in explicit comprehension.

The advantage of Newman’s theory for considering development in Catholic moral doctrine, especially in regard to religious liberty, is clear. Moral and social doctrine is more in

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68 Ibid., 334. In fact, the potential of a doctrine to be logically connected to other elements of the deposit must be a necessary feature of a true development, for otherwise the “idea” of Christianity would not be one.


70 For more on how implicit ideas become explicit, see Newman’s sermon, “The Theory of Developments in Religious Doctrine” (Fifteen Sermons Preached before the University of Oxford between A.D. 1826 and 1843 [Westminster, MD: Christian Classics, 1966], 312-51), which was written just two years before the Essay. Newman preached on the text relating the Blessed Virgin Mary’s developing understanding: “But Mary kept all these things, and pondered them in her heart” (Luke 2:19). This is the text alluded to in Dei Verbum 8, which mentions the process of doctrinal development. Francisco Marin-Sola later assimilated Newman’s intuitive way of doctrinal development to an “affective way” that proceeds by virtue of one’s connaturality with God by grace, the theological virtues, and the gifts of the Holy Spirit. Marin-Sola likewise agrees that all developments will be logically connected to prior dogma. He also provides texts from the later Newman that clarify his earlier, ambiguous formulas in the Essay. See Marín-Sola, L’Evolution homogène du Dogme catholique, 1:347-92.
contact with changing human realities than dogmatic theology, properly speaking. The apostles never faced the socio-political situation that the Church faced in the nineteenth century and then in the twentieth. According to Newman’s thought, had the terms of the question been explained thoroughly to them, the apostles would have affirmed that a human right of immunity in religious matters along the lines of *DH* truly exists. Another advantage of Newman’s theory is its capability for incorporating the *sensus fidelium* or sense of the faith present in all the faithful into the process of development without losing the necessary judgments of magisterial teaching.  

Since only the Magisterium under certain conditions is capable of a “vision” of the deposit of faith, the whole Church depends on the Magisterium for guiding the course of development. At the same time, the presence of the gifts of the Holy Spirit in all living members of the Church enables the faithful to contribute to a doctrine’s development prior to a definition, for all are capable through knowledge and wisdom to contemplate the original “idea” in response to new circumstances and questions.

Newman’s impact can be seen both in the theologians he influenced and even in how the Magisterium today expresses itself. Pius XII characterized the vocation of theologians as “point[ing] out how the doctrine of the living Magisterium is to be found either explicitly or implicitly in the Scriptures and in Tradition.” Vatican II’s view of doctrinal development is

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72 For a good survey of theologians tackling the issue of development after Newman, both well and poorly, see Nichols, *From Newman to Congar*.

found primarily in the Dogmatic Constitution on Divine Revelation, *Dei Verbum*. After explaining the integral connection of Sacred Tradition, Sacred Scripture, and Apostolic Succession, the Constitution teaches that “tradition which comes from the apostles progresses in the Church under the assistance of the Holy Spirit.” This is a “growth in understanding of what is handed on, both the words and the realities they signify.”\(^7\) The Church’s understanding of revelation progresses, even in understanding the meaning of the saving events of Christ’s life.

Tradition is both content and process. Furthermore, *Dei Verbum* states that development comes about through contemplation and study by believers, who ‘ponder these things in their hearts’ (see Luke 2:19 and 51); through the intimate understanding of spiritual things which they experience; and through the preaching of those who, on succeeding to the office of bishop, receive the sure charism of truth. Thus, as the centuries advance, the Church constantly holds its course towards the fullness of God’s truth, until the day when the words of God reach their fulfillment in the Church.\(^8\)

Here the spiritual experience of the whole Church, in conjunction with the teaching office, contributes to the development of doctrine. This experience cannot contradict the Magisterium’s teaching, and yet it supplies an intimate knowledge of God which is not limited to magisterial teaching, and which magisterial teaching may later confirm and formalize. An example of experience calling the Church’s mind to a contemporary problem is on display in Pius XII’s 1944 Christmas address, *Benignitas et humanitas*, which refers to the “experience” of totalitarian regimes as driving the search for new political structures that better respect the dignity of the

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\(^7\) *Dei Verbum* (1965) 8 § 2. The distinction between words and realities is a reference to the typological sense of Scripture, and thus to the distinction between the literal and spiritual senses.

\(^8\) *Dei Verbum* 8 § 2 (trans. Tanner 2:974).
human person. This address is cited in the footnote to the first line of *DH: Dignitatis humanae personae homines hac nostra aetate magis in dies consci fiant*, “In this age of ours, men are becoming daily more aware of the dignity of the human person.” *Dei Verbum* offers an account of experience in moral and social doctrinal development that harmonizes the parts of the Church into a living whole. This is not to say that there would never be tension within the body, but this account both gives the *sensus fidelium* its due, while acknowledging the essential guidance and final say of the Church’s teaching authority.

This balance between the experience of the faithful and the Magisterium’s guardianship of the immutable doctrinal principles is present in John Paul II’s 1993 encyclical on moral theology, *Veritatis splendor.* He speaks briefly about the nature of doctrinal development in the Church’s moral teaching being “similar” (*similis est*) to that of progress in “things to be believed” or “the doctrine of faith”. These two types of development are similar insofar as they both concern knowledge arising from the one font of revelation adhered to by divine faith. They differ insofar as that knowledge is ordered to different ends. Matters of faith concern the truth about God for its own sake, while matters of morals concern the application of that truth to human action. Dogmatic and moral theology are therefore united in explicating the same formal object consisting in the truth revealed by God and adhered to by faith, but the two branches of theology are diversified *ex fine*, by their respective ordination of that knowledge to a speculative

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*76 AAS 85 (1993), 1133-1228.*

*77 Ibid., 1156, 1177.*
or a practical end. In the following quote John Paul mentions the similarity in object alongside the dissimilarity in ends: “She [the Church] indeed has faithfully preserved what the word of God teaches, not only concerning truths which must be believed but also concerning upright moral action, concerning action that is approved by God (cf. 1 Th 4:1), by following a doctrinal progress that is similar to the progress of truths that must be believed.” Moral matters include the application of revelation to changing human circumstances, whereas matters of faith do not change in application but in deeper understanding.

Interestingly, John Paul says that the Church has preserved the moral doctrine of the Gospel precisely by progressing in understanding within that doctrine. The reason is that moral doctrine is meant to be applied to human acts, and so a continually refreshed knowledge of changing human circumstances is necessary for moral theology to fulfill its proper end. It is precisely in view of the difference in ends that the importance of circumstances and experience in the course of doctrinal development emerges properly for moral theology. John Paul can even state that the Church’s reflection on the natural moral law undergoes a kind of development,

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78 The object of moral theology is speculative knowledge obtained in the light of faith about how to order human actions to the ultimate end. Moral theology is an intellectual discipline, a *scientia*. The distinction between dogmatic theology and moral theology consists in the distinction *ex fine* (knowing simply versus knowing for the sake of action). Hence a science can be speculative or practical, to use Thomas’s terms. This is not to say that the speculative end concerns God and the practical end concerns neighbor. Indeed, the precepts of charity fall under moral theology. Rather the end of a speculative discipline such as dogmatic theology is to attain a knowledge of God and of creatures in their relation to God for its own sake, and the end of the practical science of moral theology is to attain knowledge for the sake of loving and serving God and creatures in relation to God.

79 Author’s translation of AAS 85 (1993), 1156: “Ea nimirum fideliter servavit quae Dei verbum docet, non modo de veritate credenda, verum etiam de recta actione morali, de actione scilicet quae a Deo probatur (cf. 1 Th 4, 1), doctrinalem progressum consequendo, qui similis est progressui veritatum credendarum.”
acknowledging “the great concern of our contemporaries for historicity and for culture” (n. 53).

John Paul says,

This truth of the moral law—and equally the ‘deposit of faith’—unfolds through the ages. Now the norms that express the same truth are lasting in substance, yet they must be defined and determined ‘eodem sensu eademque sententia’ (St. Vincent of Lérins, Comm. c. 23) according to historical circumstances by the Church’s Magisterium, whose judgment is preceded and accompanied by the efforts of study and formulation which are nearer to the role of the faithful and of theological inquiry.

The role of the whole faithful, including theologians, is to prepare for and assist the Magisterium in applying the moral law to new historical situations, without at the same time derogating the final authority of the Magisterium’s judgment. They have a “more proper” role in being closer to the ground, so to speak. On account of moral questions having the note of application to changing human affairs, moral theology develops as much as human circumstances develop in multiple ways. Any familiarity with the field of social teaching, which regards changing political, social, familial, associational, and economic circumstances; or bioethics, which regards changing technological procedures, professional standards, and social and legal assumptions, knows how necessary is the task of a renewed investigation and application of the teaching of moral theology. What is more, new questions allow the theologian to see aspects of prior teaching previously unnoticed. Yet all the while, the principles applied remain firm, “lasting in substance.”

Within this basic commitment to the enduring truth of divine revelation in matters moral and

80 Author’s translation of AAS 85 (1993), 1177: “Haec legis moralis veritas—aequae ac ‘fidei depositi’—per saecula explicatur: normae autem quae eandem exprimunt sunt substantialiter firmae, sed sunt definiendas et terminandae ‘eodem sensu eademque sententia’ (S. VINCENTII LIRINENSIS Commonitorium primum, c. 23: PL 50, 668) ad historica adiuncta ab Ecclesiae Magisterio, cuius iudicium antecedunt et comitantur nisus lectionis et formulationisque proprius rationis fidelium atque theologicae inquisitionis.”
social, the Church herself has also adverted to the special character of the development of moral theology’s exposition of the truth about man and the moral life. For example, in the 1990 instruction *Donum veritatis*, the CDF has stated that “a consultation of the ‘human sciences’ is also necessary to understand better the revealed truth about man and the moral norms for his conduct, setting these in relation to the sound findings of such sciences” (n. 10). Correctly determining the demands of the moral law in a new situation requires knowledge of the new situation to which the determination will be made.

Returning to Newman, his theory overcomes the difficulties inherent in the strictly logical theory of the early modern scholastics and the restatement approach of Bousset, yet Newman does not do this by abandoning the priority of faith and intellect. Rather, Newman focuses on the implicit aspects of the idea of Christianity, which allows him to say simultaneously that Church knows nothing more than the apostles, but also that the Church draws out from revelation different things in response to the exigencies of later historical and social situations. Hence she says more than the apostles. There is no new revelation, just as there is only one Lord Jesus Christ. As the Blessed Virgin contemplated the one Christ, her Son, and grew in her understanding, so also the Church, beholding the Word Incarnate and “pondering in her heart,” grows in understanding and thereby brings revelation to completion “in herself” (cf. *Dei Verbum* 8). It is no knock against the “once for all” nature of Christ’s atonement to recognize that Christ’s sufferings are “filled up” in the lives of his members (cf. Col 1:24). In the same way, it does not take away from Christ being God’s final word to say that this very Word is fulfilled in
his body, the Church. This is nothing other than the doctrine of *Dei Verbum* 8, which proceeds on the analogy of the Blessed Virgin as a knowing subject who receives the Word and then brings him forth into the world.

Before moving on, an objection must be addressed, namely, whether Newman does not in the end help us address the problem of anticipating developments in Catholic doctrine. This objection arises from Newman’s own words. If the “notes” of development serve better as answers to objections than a priori proofs for a doctrine, it would seem that moral theologians therefore cannot work at the “growing ends” (to use Murray’s phrase) of the tradition. Instead, they must wait for an authoritative decision from the Magisterium, and then apply the “notes” when explaining the new development to the laity or to non-Catholic inquisitors. This objection, however, would make Newman’s words imply more than they do. His point is not that theologians cannot anticipate developments in their work using the notes, but that the notes help explain why a decision of the Magisterium (already accepted from obedience to authority) is a development and not a corruption. To my mind, the theologian can make an analogous use of the notes in testing his own work or the experience of the faithful as much as in interpreting the judgments of the Magisterium. To see how this could be the case, notice how Newman’s theory coheres with what Sokolowski says is the task of philosophy, to bring out genuine distinctions in response to new experience.\(^81\) The apostles, for example, in light of new questions, would make the correct distinction based on the deposit of faith. Part of the mission of the Magisterium of the Church, then, would be to formulate new, genuine distinctions that introduce precisions into prior developments.

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teaching. The theologian could then give assistance to the Magisterium by looking for potential openness in Church teaching to further precisions, even in light of new circumstances, while at the same time submitting his work to the final judgment of the same teaching office. This is simply to distinguish between the scientific competency of the theologian, who is not a part of the Magisterium but who is enlightened by the same faith, and the authoritative teaching of the successors of the apostles in union with the successor of Peter.

*The Status and Development of Non-Definitive Magisterial Teaching*

Recent attempts to articulate the *ratio* of moral doctrinal development have met to a greater or lesser degree the requirements unearthed by my analysis. The first chapter showed how John Noonan’s approach to moral doctrinal development is inadequate as a theory of doctrinal development. To repeat the general reason, Noonan’s approach attempts to make the two courses of development dissimilar in essence rather than in the quality of application to human action. This is why he regarded the christological dogmas as having a timelessness unattainable by moral doctrine, while moral doctrine is susceptible to any change whatsoever that does not contradict his interpretation of the twofold love commandment. Fidelity to the deposit of faith and to the previous judgments of the Church is of the essence of authentic development, and thus to lack this essential quality is to destroy the similarity between the two
kinds of development. Noonan points out that the Church’s proclamations are free from error only under certain circumstances. Would he not have good reason for holding that non-definitive doctrines of the Church are entirely and unpredictably mutable and mutating, that heterogeneous development is possible in non-definitive moral or social teaching? This section comments on the type of change one should expect in the case of non-definitive Church teaching.

E. Christian Brugger, in his study of the Church’s teaching on capital punishment, has also argued for the possibility of heterogeneous development in non-definitive moral teaching. His proposes two modes by which moral doctrine may develop: “development as filtering and reformulating” and “development as specification.”\(^{82}\) The second mode says magisterial teaching may become more precise in terminology or communication. Although Brugger does not say it, this mode would seem to correspond to what John Paul II said about definitive teaching being reformulated in order to better convey its meaning.\(^{83}\) John Paul II’s meaning is not that the formulas are erroneous or that the Church’s earlier understanding of the teaching can be discarded, but that in the course of dialogue with non-Catholic Christian communities that misunderstand the Church’s meaning, the Church may reformulate her teaching to convey her mind under a different formula more suited to the dialogue partner’s reception. The essential conceptual content of the doctrines remains identical, even as the verbal formulation can be adapted to various communities, times, or modes of thought.\(^{84}\)

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83 *Ut unum sint* (1995) 38.

Brugger, however, means by his first mode of “filtering and reformulation” attaining a reversal in the conceptual content of a teaching, as opposed to a refinement or restatement in the formula itself. Brugger characterizes this mode as the negation of “complex assertions” made by the Magisterium, because one part of the complex assertion, previously believed to be true, is now understood to be false. He imagines the process thus:

[W]e begin with ethical question X; the longstanding answer to X, namely, complex assertion A, is suspected of being false; a process of examination brings to light the fact that A presupposes false proposition Z. Why, then, we ask, was A taken to be true in the first place? We determine that (among other reasons) it was because complex assertion A not only presupposes false proposition Z, but also true proposition(s) Y (and K, L, M, … [sic]). By way of correction, Z is filtered out and new assertion B is adduced in answer to X.

Brugger also holds that definitive teaching “may also have false presuppositions” but that these “would be merely contingent elements of the assertion,” leaving the definitive formulas irreformable in themselves. Brugger therefore means by “reformulation” that non-definitive teachings would be changed conceptually in the reformulated assertion, after the elimination of

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It is important to notice that John Paul II’s idea of “reformulation” is not what Brugger means by that term in his own work. The difference is that John Paul II is talking about new formulas to convey teaching already definitive, while Brugger is speaking about the progress of a doctrine from being taught non-definitively to being taught definitively.

Brugger employs this mode in support of his thesis that the Church will eventually teach that the death penalty is intrinsically evil as an attack against the good of life (Capital Punishment, 161-162). The Church not only has not taught this before, but has assumed and openly taught the licitness of capital punishment (e.g., the formulas of reunion for the Waldensians and other historical teachings that Brugger catalogues in his study). As Brugger himself admits, the teaching of the Church today is not that capital punishment is morally illicit, but that the circumstances of modern societies makes its exercise imprudent.

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Ibid., 159.

Ibid.
the false proposition in the teaching. The Magisterium would then be capable of teaching false complex assertions later requiring correction.

Brugger bases his position on the CDF’s 1990 Instruction on the Ecclesial Vocation of the Theologian, *Donum veritatis*. The Instruction says in the twenty-fourth paragraph that “some judgments of the Magisterium could be justified at the time in which they were made, because while the pronouncements contained true assertions and others which were not sure [*minus tutae*], both types were inextricably connected. Only time has permitted discernment and, after deeper study, the attainment of true doctrinal progress.” This statement seems a straightforward acknowledgement that non-definitive doctrines contained “less safe” elements that were later transcended. This is the basis for Brugger’s assertion that “the verity of [non-definitive] acts is not guaranteed.” This is basically the common teaching of the manualists before Vatican II, that the assent owed to non-definitive teaching has the aspect of only a moral or conditional certainty. Instead of the infallible assent of divine faith, such non-definitive teaching calls for *religiosum intellectus et voluntatis obsequium*, “the religious submission of intellect and will.” At the same

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time, one senses that some element of the problem has not been fully captured by Brugger’s analysis. Brugger argues that *Donum veritatis* has in mind a reversal in the teaching itself, rather than a specification or refinement that preserves some lasting doctrinal core. One cannot neglect the connection between Brugger’s theory of doctrinal “filtering and reformulation” and his conclusion that the death penalty is intrinsically evil, involving as it does the will to end the life of another person.91 As evidenced by Brugger’s own study, the assertion that the state has no power to execute the guilty is difficult to square with centuries of Church teaching. Hence Brugger’s approach entails the possibility of reversal, for the teachings on capital punishment before and after the supposed development are opposed per se, and not as a function of changing circumstances demanding that principles be applied in a new way. The opposition between “all

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91 See Brugger, *Capital Punishment*, 164-89. The reasoning here depends on the account of an agent of the state’s intention in causing death propounded by the “new natural law” school (e.g., John Finnis, Germain Grisez, and Joseph Boyle, “‘Direct’ and ‘Indirect’: A Reply to Critics of our Action Theory,” *The Thomist* 65 [2001]: 1-44). This school holds that it is intrinsically evil for even an agent of the state to intend directly the death of any enemy combatant in a just war. All such killings must instead be unintentional, *praeter intentionem*. 

intentional killing is intrinsically evil” and “some intentional killing is not intrinsically evil” is contradictory and thus absolute. No amount of “filtering” erases that fact.⁹²

Missing from treatments of non-definitive teaching such as Noonan’s or Brugger’s is the distinction at the level of non-definitive teaching between what may be called doctrinal teachings and prudential interventions.⁹³ A consideration of this distinction leads to a different position than Brugger’s on how “less safe” elements may be bound up with a non-definitive teaching. A careful reading of Donum veritatis 24 and the later 1998 “Doctrinal Commentary on the Concluding Formula of the Professio fidei” show that there are actually two basic kinds of non-definitive teaching. Gaillardetz and Dulles differentiate these into distinct levels of Church teaching, calling the first level the “nondefinitive, authoritative doctrine.”⁹⁴ The second level Gaillardetz calls “prudential admonitions and provisional applications of doctrine,” while Dulles call it simply “disciplinary interventions.”⁹⁵ The first level pertains to non-definitive judgments regarding the truth of a matter, while the second level pertains to the prudence or safety of a position. Hence the 1998 “Doctrinal Commentary” distinguishes the two levels according to this

⁹² Brugger see his argument as one of “continuity in a developmental reasoning process which can otherwise look terribly discontinuous” (Brugger, Capital Punishment, 163). One wonders what doctrinal core remains to make it a homogeneous development. If on the other hand, Brugger were to argue that the state has the power to mete out capital punishment, but that modern conditions make the exercise or application of that power today immoral, that would be a different argument altogether. For an expression of this other argument, see Avery Cardinal Dulles, SJ, “Catholic Teaching on the Death Penalty: Has It Changed?” in Religion and the Death Penalty: A Call for Reckoning, ed. Erik C. Owens, John D. Carlson, and Eric P. Elshtain (Grand Rapids, MI: Eerdmans, 2004), 23-30. Dulles views Brugger’s position as reversing traditional teaching, not developing it in the traditional sense of the word (pp. 26-27).

⁹³ The following discussion omits a theological treatment of the assistance of the Holy Spirit to the magisterial acts of the Church. See Journet, The Church of the Word Incarnate, 331-80; Gaillardetz, Teaching with Authority, 131-58.

⁹⁴ Gaillardetz, Teaching with Authority, 120-23; Dulles, Magisterium, 91-94.

⁹⁵ Gaillardetz, Teaching with Authority, 123-24; Dulles, Magisterium, 94.
rationale when explaining the third paragraph of the *Professio fidei* and the *religiosum obsequium* owed by the theologian to non-definitive teaching. The Commentary says that to such level of teaching “belong all those teachings – on faith and morals – presented as true or at least as sure, even if they have not been defined with a solemn judgement or proposed as definitive by the ordinary and universal Magisterium” (n. 10, emphasis original). Now “as true” pertains to the first level and “or at least as sure” pertains to the second more prudential level, what *Donum veritatis* had previously called “prudential interventions” of the Magisterium. This distinction between judgments of truth and judgments of safety or prudence is further confirmed by the Commentary’s characterization of their contradictory propositions: “A proposition contrary to these doctrines can be qualified as *erroneous* or, in the case of teachings of the prudential order, as rash or dangerous and therefore *‘tuto doceri non potest.’*” The opposite of a truth is an error, and the opposite of a prudent or safe judgment is a rash or unsafe one.

The goal of both types of non-definitive teaching is the same, though they accomplish the goal under these two different aspects of truth or safety. The Magisterium issues such teachings, according to the CDF’s 1998 Commentary, “in order to arrive at a deeper understanding of revelation, or to recall the conformity of a teaching with the truths of faith, or lastly to warn against ideas incompatible with those truths or against dangerous opinions that can lead to error” (n. 10). The purpose is to assist the faithful in adhering to the Word of God, but this is done by identifying a teaching as true or false in a speculative judgment, or by identifying a teaching as safe or dangerous in a practical one.

*Cf. Donum veritatis* 23.
In paragraph 10 of the 1998 Commentary, the CDF says that both levels fall under the ordinary Magisterium and that both require religious submission of mind and will.\footnote{This clarifies the ambiguity of \textit{Donum veritatis} appearing to distinguish prudential interventions (n. 24) from non-definitive doctrinal teaching (n. 23). The obligation to give religious submission of mind and will is mentioned explicitly only in regards to the latter (n. 23). The distinction in \textit{Donum veritatis} seems to be that between judgments concerning the truth or falsity of a doctrine, in contrast to those concerning safety or lack of safety in holding or teaching a doctrine. It is not that submission of mind and will is owed only to doctrine; rather, the type of religious submission of mind and will owed to each differs on account of the different type of judgment involved.} Although it is obvious how religious submission of mind and will can be given to a speculative judgment of truth or falsity, it is less clear how a theologian is to submit his mind and will to a judgment of prudence. Perhaps for this reason, Gaillardetz and Dulles say that the disciplinary or prudential level does not demand religious submission of mind and will, since such a judgment regards the presence of safety or danger in holding a certain opinion.\footnote{E.g. Dulles, \textit{Magisterium}, 94: “They require external conformity in behavior, but do not demand internal assent.” Again, this could be due to the ambiguity in \textit{Donum veritatis} 23-24.} These authors, however, conflate purely juridical decisions with those judgments about teachings that are prudential.\footnote{Journet calls such purely disciplinary decisions “decisions of the biological order,” for they pertain more to “the daily life which the Church has among men” rather than to the task of defining or protecting the revealed deposit (Journet, \textit{The Church of the Word Incarnate}, 371-78). He gives as an example of an error at this level the decisions of Gregory XVI regarding the Polish insurrection of 1830, where Gregory commanded the Poles to submit to Nicholas I of Russia (p. 373). His example of a success at this level was Leo XIII’s policy of reconciling French Catholics to the French Third Republic (pp. 373-74).} Thus Gaillardetz and Dulles seem to err in their denial that the faithful owe a submission of mind and will to the Magisterium’s judgments of prudence in doctrinal matters. The submission in such a case is not merely disciplinary, for the judgment is proximate to doctrinal truth and for the sake of guarding the truth. Yet to what the theologian submits is the Magisterium’s prudential judgment about the doctrine’s safety, not to a judgment about the doctrine’s verity. To use an example from the anti-Modernist decisions of the Pontifical Biblical Commission, the theologian...
would not be submitting to the proposition that Moses wrote the Pentateuch. Rather, he would be submitting to the prudential judgment that it is not permitted to teach as sure that Moses did not write the Pentateuch. In fairness to Gaillardetz and Dulles, this is a subtle distinction and more research needs to be completed in this area. Salaverri helpfully notes that the submission of the theologian to such prudential acts is to the safety or practical truth of the judgment, for the judgment pertains properly to the practical truth of the safety of holding an opinion and not to the speculative truth of that opinion itself. He says, “when the Magisterium pronounces some doctrine to be safe or not safe, it ought to be held and affirmed to be so, safe or not safe; but when they propose a doctrine as certain or erroneous, as true or false, then it ought to be held and affirmed by us to be a doctrine certain or erroneous, true or false.”

It is important to realize, too, that submission to a prudential judgment does not prevent the theologian from carrying out further research on the very question. That the submission to such prudential judgments is “conditioned,” to use the word of some manualists, is because one submits to the decision without prejudice to any future judgment of the Church reversing the prior judgment. A reversal in such a judgment does not necessarily change doctrine, but only the prudential decision itself, whether in light of new evidence, new methods, or changed social conditions.

100 DS 3394-97. One example of reversal in this kind of prudential decision is the safety of teaching that the so-called Johannine comma is not original to the text of 1 John 5:7. The Holy Office had originally ruled in 1897 that the verse’s authenticity could not be safely denied, but later reversed this decision (DS 3681-2).

Salaverri, “De Ecclesia Christi,” 726. See also Journet, The Church of the Word Incarnate, 347-71. In distinction from Salaverri, however, Journet placed the entirety of non-definitive teaching under the prudential assistance of the Holy Spirit and the canonical power of the Church, as opposed to the declaratory power, making all such judgments “safe” or “unsafe,” even if the words “certain” or “erroneous” were used. He was criticized for this move by Salaverri, “De Ecclesia Christi,” 726.
In light of the foregoing, the assumption that non-definitive teachings are capable of reversal in their core element is not grounded in the Church’s own teaching on these matters, and the assumption that non-definitive teaching can be reversed as such requires making the precision between doctrinal and prudential teachings. The Holy Spirit gives a general protection to the Magisterium in order to protect the faithful’s adherence to the Word of God. This gives a general veridical reliability to the authority of the Magisterium. Even more, when the Church teaches non-definitively, such teaching is especially safe in its core elements. When Joseph Cardinal Ratzinger, head of the CDF, introduced *Donum veritatis* to the press, he clarified that in regard to non-definitive teachings “[t]heir core remains valid, but the individual details influenced by the circumstances at the time may need further rectification.”102 Such “magisterial decisions … cannot be and are not intended to be the last word on the matter as such, but are a substantial anchorage in the problem.” Ratzinger is speaking primarily about a teaching which is “first and foremost an expression of pastoral prudence, a sort of provisional disposition.” This seems to correspond to the second level of non-definitive teaching identified in this chapter. Ratzinger tentatively advances the example of papal rulings against religious freedom and, more confidently, the teachings against Modernism, especially “the decisions of the Biblical Commission of that time.” The reason why the “the details of the determinations were later superseded” was that they had fulfilled “their pastoral duty at a particular moment.” The pastoral purpose of the anti-Modernist decisions of the Biblical Commission was to prevent the Church

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“from sinking into the liberal-bourgeois world.” This interpretation of *Donum veritatis* highlights that non-definitive teaching retains its authority on account of its core truth element deployed in a pastoral or prudential role by the Magisterium, in order to guard the deposit of faith and protect the faithful from manifest errors. That prudential interventions in particular are capable of reversal—the particular rulings of the Biblical Commission are a case in point—the later obsolescence of these decisions of the Magisterium cannot be construed in such a way as to lose that lasting “valid” core.

This interpretation of non-definitive teaching offers a better reading of the documents than the positions that do not make the distinctions made above. The core concerns of non-definitive teaching are not capable of reversal, even if the concrete prudential judgment is reversible. Rather, in matters of non-definitive doctrine per se, theologians should expect to participate in the refinement—in contrast to outright contradiction—of a teaching prior to any later formal definition by the Magisterium. Part of the theologian’s participation will involve identifying what kind of third-level teaching is involved in a particular case. Even in the case of more properly doctrinal teaching, the theologian still has the scientific and moral capability of criticizing magisterial teaching. That a certain instance of non-definitive teaching will be capable only of refinement and not reversal will be apparent to the theologian from “the authoritativeness of the interventions which becomes clear from the nature of the documents, the

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103 Ibid., referencing Johann Baptist Metz.

104 *Donum veritatis* 24: “The willingness to submit loyally to the teaching of the Magisterium on matters per se not irreformable must be the rule. It can happen, however, that a theologian may, according to the case, raise questions regarding the timeliness, the form, or even the contents of magisterial interventions.”
insistence with which a teaching is repeated, and the very way in which it is expressed.” The more solemn, direct, or repetitive a judgment of the Magisterium, the more confidence the theologian may have that the “core” of the doctrine is permanently valid. To take this approach helps us to understand why Pius XII noted that if an issue were directly addressed by a papal encyclical, that issue is no longer matter for discussion by theologians, not merely the laity in general. Now such a ruling would typically be a non-definitive act of teaching, and yet Pius understood such acts to settle the issue such that private theologians would not rightly call into question the decision itself. Noonan and Brugger, in contrast, would have theologians continue to discuss even doctrinal teachings at this level precisely to change the doctrine.

At the same time, one should make clear that doctrine at the third level is capable of refinement or completion. Papal teaching on the penal sterilization would be one example of this. Both Pius XI and Pius XII, in the course of their ordinary teaching, condemned forced sterilization as intrinsically evil by means of what seemed to be global formulas, only later to make precisions stating that what they had said applied to innocents only. The faithful, including the theologian, would owe submission of mind and will to the non-definitive teaching,

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105 Donum veritatis 24; cf. 1998 Doctrinal Commentary 11; Lumen gentium 25.

106 Humani generis (1950) 20: “Nor must it be thought that what is expounded in Encyclical Letters does not of itself demand consent, since in writing such Letters the Popes do not exercise the supreme power of their Teaching Authority. For these matters are taught with the ordinary teaching authority, of which it is true to say: ‘He who heareth you, heareth me’; and generally what is expounded and inculcated in Encyclical Letters already for other reasons appertains to Catholic doctrine. But if the Supreme Pontiffs in their official documents purposely pass judgment on a matter up to that time under dispute, it is obvious that that matter, according to the mind and will of the Pontiffs, cannot be any longer considered a question open to discussion among theologians.”

but as such this still would leave open questions such as whether the pope had meant to include penal sterilization in the prohibition. Although the teaching was given with the general assistance of the Holy Spirit, or perhaps because of it, the teaching is open to later precisions or qualifications. Ford and Kelly write, “The very fact that popes themselves have gone out of their way to clarify or restrict their moral pronouncements indicates that a theologian is not necessarily irreverent or disloyal in supposing that other such statements may need clarification or restriction or rephrasing.” The theologian ought to know that popes do not always express themselves “with sufficient clarity,” and that papal pronouncements should always be read not only on the level of words but also accounting for the historical context and other indications of papal intention bound up with the words. The theologian’s work in this regard could assist the movement from an imperfect form of a teaching to a more perfect form, rather than from a false statement to a true one. In either case, the proper delineation of the authority of the types of non-definitive teaching should be seen “not as an impediment, but as a stimulus to theology.”

If so the foregoing analysis is correct, then this distinction between doctrine and prudence posits two parameters in interpreting DH. First, the proclamation of the right of the human

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108 Ibid., 30-31. Of course, Murray made use of the distinction between intention and words, but in such way as to separate them, for he found it necessary to distinguish between two intentions of Leo XIII in his teaching on the Christian nationstate. So Ford and Kelly’s distinction would not exculpate Murray’s method here. For an example of the opposite error, where a moral theologian reads too much into the words of papal teachings such that they settle questions not intended to be settled, see Janet Smith’s survey of papal teaching on living donor organ donations (“Organ Transplants: A Study on Bioethics and the Ordinary Magisterium,” in The Ethics of Organ Transplantation, ed. Steven Jensen [Washington, DC: Catholic University of America Press, 2011], 272-304).

109 For an analogous approach to the formulas of definitive teaching, see CDF, Mysterium ecclesiae (1973) 5 § 2-5.

person to the double-immunity from coercion in matters religious will not be reversed, for it is
not a prudential intervention but a doctrinal teaching on faith and morals proclaimed by an
ecumenical council, albeit not in a definitive way. Second, *DH* must be interpreted as somehow
continuous with previous magisterial doctrinal teaching on faith and morals. It may be a
refinement of a previous teaching or re-application of principles to a new situation, but it cannot
be a reversal of prior teaching in its doctrinal core, as is sometimes assumed. Correlatively, if a
previous magisterial teaching is found to be only a prudential intervention, *DH* may contradict or
reverse that teaching with changing circumstances or additional information. For example, a
prudential ruling against the possibility of religious free exercise for all citizens within a Catholic
country may change given a change in the original circumstances that led to the judgment. These
principles will be employed in the work of chapters three and four.

Perhaps it will be objected that imposing these theoretical and methodological constraints
on the historical investigation is invalid, for it prevents one from an open historical investigation
of a topic. In reply, one may compare the approach of this dissertation to the action of a pair of
scissors which any research brings to his task. The upper blade are methodological commitments,
while the lower blade is the historical data. In order to make a straight cut, the researcher must
have both blades, and they must align. Admittedly, this is a process involving a hermeneutical
cycle of interpreting documents through the theoretical analysis and adjusting the theoretical
understanding in light of the documents and the concrete teaching of the Church. An “open
historical investigation” is never just that, but every researcher begins with a pair of scissors in
hand, irrespective of whether the scissors cut clean and true. This is merely to be explicit about one’s reasonable Catholic commitment, born of natural theology, the motives of credibility, and faith in God’s Word. This section has simply unearthed the antecedent probability that doctrinal development will not even reverse non-definitive teaching on faith and morals (upper blade). In any investigation, antecedent probabilities enjoy the burden of the doubt in informing the investigation *ceteris paribus*. Antecedent probabilities are not infallible or immune to modification in light of overwhelming evidence to the contrary.

*Historicism and Modernism*

There is another challenge to the position that moral doctrinal development, that of doctrinal development in matters of faith, retains an unchanging core throughout time and culture. This objection is that of historicism, which holds that morality and the language used to discuss it is so bound to the cultural moment in which it is practiced that morality must be continually updated and the definitions of prior ages regarded as inoperative in one’s own. Historicism, according to Iggers, is “the recognition that all human ideas and values are historically conditioned and subject to change.”111 If this were merely a matter of recognizing the necessity of historical knowledge for receiving an idea, it would not pose a problem for any

branch of Catholic theology, as the Church has recognized the role of historical situation in shaping a doctrine’s formulation.\(^{112}\) As John Paul II notes in *Fides et ratio*, “To understand a doctrine from the past correctly, it is necessary to set it within its proper historical and cultural context.”\(^{113}\) Historicism does not stop there, however, but goes on to claim that “the truth of a philosophy is determined on the basis of its appropriateness to a certain period and a certain historical purpose.”\(^{114}\) As John Paul II concluded from this commitment, historicism implicitly denies the “enduring validity of truth.” Historicism as a methodological commitment can apply to any truth, including truth about morals.

Historicism transposed into the discipline of theology becomes the early twentieth-century heresy of Modernism. Modernism was a variety of semi-rationalism, that is, theological rationalism. The basic impetus of modernism was a critical reception and reinterpretation of the Catholic tradition, including infallibly-defined doctrines, in light of modern human experience and the conclusions of modern, critical approaches to history, biblical studies, and epistemology. Modernism was a diverse movement that included Alfred Loisy and George Tyrrell, which nonetheless can be briefly summarized.\(^{115}\)


\(^{114}\) Iggers, “Historicism,” 133.

Modernism is a theological method predicated upon a certain doctrine of revelation. Having accepted the post-Kantian reduction of reason’s scope to the *phenomena*, Modernism denied the value of natural theology and the motives of credibility for arriving at natural or supernatural knowledge of God. Instead of dismissing religion altogether, however, the Modernist recognizes something living in religion and subsequently seeks to explain that vitality. With reason’s pathway to God via abstraction from created things cut off, the Modernist seeks an explanation of religion from the internal experience of the human person (“vital immanence”). Pius X draws the Modernist conclusion from vital immanence, that the nature of faith, “which is the basis and foundation of all religion, consists in a sentiment which originates from a need of the divine.”

The Sacred Scriptures become in this scheme the highest testimony to the exalted sentiments of the historical man Jesus, which continues to shape and guide modern experience. Tyrrell, for example, defined the meaning of revelation “primarily to denote an experience, and derivatively to denote the record or expression by which that experience is retained and

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116 *Pascendi* (1907) 7.

117 Tyrrell held that revelation is ongoing in “every soul that is religiously alive and active,” but also that the experience of Christ is “classical and normative” (*Through Scylla and Charybdis*, 292).
communicated to others.” Theology and dogma are a result of the intellect’s secondary role in attempting to give formulation to the soul’s religious experience of the vital immanence of God. Dogmatic symbols are entirely reformable, bound completely to the intellectual thought-world of the time of their formulation, and thus are ultimately inadequate and instrumental to the individual believer’s experience of God. The Church’s dogmatic formulas live only insofar as they are reinterpreted to accommodate man’s evolving experience of the inner religious dimension of his being. Doctrinal development in Modernism consists in an unending process of revaluation of dogma in light of man’s experience of the divine through his consciousness. “For man, truth is an unending process of adequation, not a finished result,” Tyrrell relates. “His understanding and analysis can never do more than outline the growing masses of his experience.” The “symbols” of the Church (that is, her dogmas and creeds) are approximations and will be understood differently in different stages of the Church in accordance with the progress of man’s experience.

Modernism issues in a new theology of doctrinal development diverging from that analyzed in this chapter’s previous section. While the Modernists claimed inspiration from

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118 Ibid., 268.
119 Ibid., 284: “Thus revelation is simply [the theologian’s] subject-matter, the experience on which his science is founded, and which it endeavors to understand and explain.”
120 Pascendi 12.
121 Pascendi 13.
122 Tyrrell, Medievalism, 157.
Newman in discussing doctrinal development, their difference from Newman is clear. Newman posited Christianity as an idea that grows in the Church’s understanding. The intuition of faith is therefore intellectual or rational, and thus doctrinal development is a growth in knowledge. That knowledge can be formulated with unchanging truth in propositional form, and future Church definitions cannot reverse or abandon the sense of previous definitions. As seen above, Newman regarded authentic developments as conservative of both previously held principles and doctrines, whereas a corruption may preserve a principle while discarding a doctrine.

In contrast, the Modernists posited a pre-rational or a-rational intuition of faith, an experience of the soul before the divine. In positing a new basis for doctrinal development in personal experience and non-intellectual intuition, the Modernists understood themselves to be pressing beyond Newman. Doctrinal development for the Modernist derives from their peculiar doctrine of revelation and faith. The resultant theology of development is naturalistic, for faith itself springs naturally from the intuition of man. The refining and expanding of the primordial religious feeling arising within the human person’s conscience or subjective experience is a result of nature’s own powers apart from any supernatural assistance. Hence the dogmas of the Church, while useful for expressing one stage of this development, are in need of constant updating, revising, or even dismissal in order to better reflect man’s progress in understanding his own religious sentiment. The Magisterium is tasked with guarding the former definitions,

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124 Tyrrell, Medievalism, 146.
while consciences are charged with pressing on to new meanings and definitions arrived at through historical science and collective consciousness. Development is a result of this dialectical process.\(^{126}\) Hence for Newman, new doctrines were a new explicit proposition regarding what had always been in revelation objectively and defined by the Magisterium. For the Modernist, development is a new interpretation of what the Church had previously declared arising through a conflict or ongoing negotiation between individual consciences and the Magisterium.

The basic problem with historicism is its internal incoherence; with Modernism, its violation of the *in eodem sensu et in eadem sententia* of Vincent’s *Commonitorium*.\(^{127}\) Historicism makes the claim that the truth of propositions is determined by their practical value for a certain time period, which does not necessarily apply for earlier or later periods or alien cultures. This elevates the affections over the intellect, the pragmatic over the speculative. One should ask, however, whether this proposition expressing the truth of historicism is likewise completely determined by its time and place, for example, its origin among male, Caucasian, Euro-American proponents. If the answer is yes, one has reason to doubt that historicism can claim intellectual superiority over its rivals, for it denies that truth has universal validity. If no, then what allows the historicist to assert the universal truth of historicism itself? He is committing the *ad hoc* fallacy, as the intellect suddenly issues a universal and theoretical

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\(^{126}\) *Pascendi* 27.

\(^{127}\) This latter point is made by Pius X, *Pascendi* 28, citing chapter four of Vatican I, *Dei Filius*. 
judgment in determining the truth of historicism, but this is not valid in judging and adhering to other truths downstream from the commitment to historicism itself.

John Finnis has illustrated this problem while tracing the origins of Lonergan’s phrase “historical-mindedness” to the thought of Carl Becker. Becker’s thought was mediated to Lonergan by Alan Richardson, who said, “Because we are nowadays historically minded, we can understand an idea or a doctrine only when we relate its history; we can identify a concept only by regarding it, not as something static… but as living, developing entity.” Finnis correctly notes that Richardson’s assertions destroy themselves.

If these doctrines could only be understood by relating their history… that historical relation would only lead us back to other doctrines, and indeed could only be understood if we could get back to other doctrines which could only be understood if… and so on: a doubly vicious regress. And if a concept could be identified only by regarding it as developing, we could not now identify what Richardson meant when he uttered this statement 25 years ago or Becker his similar statement 35 years earlier still.

Whatever is true in historicism’s critique of static reiterations of the philosophies, historical methods, or theologies of past ages, the abandonment of the intellect’s primacy undermines the cogency of the critique itself. Why should one think it true? As Christopher Kaczor has said, historicism jumps illogically from a legitimate point “that language cannot capture the entire

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129 Finnis, ‘Historical Consciousness,’ 7.

130 Ibid., 17-18.
reality of a thing” to the statement that “irreformably true statements cannot be made.”¹³¹ Likewise, one should acknowledge the limits of dogmatic formulas in communicating the entirety the divine mysteries assented to by faith. God is an inexhaustible mystery beyond comprehension, even to those enjoying the vision of his face. On the other hand, the mystery of God does not entail that dogmatic formulas cannot communicate an aspect of the truth with a universal, timeless validity.¹³²

Modernism takes its valid point about necessary change in the articulation of revealed truth in light of ongoing experience to such an extreme that it denies any enduring conceptual core to the Church’s dogmas. That, too, is changeable in light of later human experience, according to Modernism. It was no surprise that Modernism would be condemned by Pius X in his encyclicals Lamentabili and Pascendi in 1907. Later popes have followed Pius X in explicitly mentioning the dangers and errors of historicism and Modernism.¹³³ Another problem with Modernism related to the development of doctrine is that Modernism proposes a change in system—a corruption—under the heading of development. Now a change in system involves the corruption of the old and the generation of a new system. This violates Newman’s principle of conservation of type, the fundamental principle that is also presupposed by Vincent of Lérin’s


¹³² John Paul II, Fides et ratio (1998) 95: “The word of God is not addressed to any one people or to any one period of history. Similarly, dogmatic statements, while reflecting at times the culture of the period in which they were defined, formulate an unchanging and ultimate truth.” Cited in Kaczor, “Moral Theology, Development of Doctrine, and Human Experience,” 199.

¹³³ John Paul II, Fides et ratio (1998) 87; Pius XII, Humani generis (1950): “There is also a certain historicism, which attributing value only to the events of man’s life, overthrows the foundation of all truth and absolute law, both on the level of philosophical speculations and especially to Christian dogmas”; Benedict XV, Ad beatissimi Apostolorum (1914) 25.
growth metaphor from Commonitorium 23. As a result, the Modernist cannot claim fundamental continuity with what he calls Catholicism and that Catholicism practiced by the Church of previous centuries. Catholicism would need to die, that is, undergo corruption, in order to become another a better religion, that is, a new generation. Indeed, Tyrrell mused, “May not Catholicism like Judaism have to die in order that it may live again in a greater and grander form?” Once a things dies, it ceases to be. In reverting to this analogy of corruption and generation, Tyrrell belies the rhetoric of growth in the same organism common to earlier Modernist literature. While the conflict of historicism and Modernism with Catholicism is complex, and involves questions of how the Catholic faith encountered modernity, one can see both the fundamental incompatibility of the two systems.

Conclusion

134 George Tyrrell, A Much-Abused Letter (London: 1906), 89, cited in Nichols, From Newman to Congar, 121. See also Tyrrell, Through Scylla and Charybdis, 129: “Christianity is usually viewed… as the so far highest and fullest development of the religious spirit; but Christ’s revelation was but one of many that have been and may yet be. It was a great stride forward, but how many greater may remain to be made? Like Judaism, like every great religion, Christianity fancies itself the final and universal form… Yet vainly. For, after a certain series of transformations, identical only as parts of the same process, it must die in order to rise again and live in some other form. Death and decay, no less than growth and development, are the universal law of life. The organism at last reaches the limits of its power of self-adaptation; and can hope to survive only in its offshoot, its progeny; as Judaism survived in Christianity.”

135 Kaczor argues that the question of a conceptual or doctrinal contradiction in the Church’s teaching is only possible once one has rejected Tyrrell’s account of revelation (“Moral Theology, Development of Doctrine, and Human Experience,” 201). In Tyrrell’s account, the dogmatic formula are symbols which help the believer understand his own experience. There can be no contradiction between ages simply because the dogmatic formula are symbolical, not representative of timeless concepts and thoughts.
This chapter has investigated the nature of doctrinal development within Catholic teaching both generally and as applied to moral theology in particular. The chapter has determined that Newman’s theory of doctrinal development in dogma can be applied to development in moral and social teaching, given the essential similarity between the two. The two kinds of development are identical in object, but differ in their ends. Insofar as moral doctrine is knowledge for the sake of action, it is more exposed to changing historical, social, and political conditions encountered in the task of the practical application of knowledge. Hence the two are “similar” to one another. The similarity between the two kinds of development entails conservation of the meaning of prior doctrine, and that later developments must be interpreted in terms of organic or homogeneous progression from earlier doctrines. Thus the theologian should not expect to find complete doctrinal corruption or reversal in non-definitive doctrinal teachings. Even in the reversibility of prudential interventions, an essential doctrinal core must be identified and conserved. This does not require that the application or the external practice of a moral or social doctrine remain pristine or primitive, but it does put the burden on theologians to interpret past developments and to look for future developments in continuity with prior doctrine. This chapter has also discussed the historicist and Modernist objections to an intelligible continuity in doctrine across times and cultures.

One final comment is appropriate on the relation of the Modernist view of doctrinal development with that of John Courtney Murray’s claim that a doctrinal principle newly
understood works as a new principle. Here again is Courtney’s statement from his 1967 French article tracing development from Leo to Vatican II:

It remains only to add that the [doctrinal] progress [from Leo to DH] is not able to be explained by the easy categories of “principles” and “applications”. The principles of faith—and what is more, those of reason—are not of the genre of platonic ideas, eternally immutable, given all at one time in a perfection of understanding, only waiting for occasions to be applied in history. To the contrary, the Church increases in her understanding of the principles themselves. And a principle newly understood is new as a principle. Moreover, the new growth of this understanding is normally accomplished under the tutelage of experience, as much religious as secular.136

Murray is in line with Newman, for Murray is speaking about the Church’s understanding of the deposit of faith when he speaks about there not being a “perfection of understanding.” And it is true that the Church can answer some new questions only after the passage of time. Furthermore, the Magisterium can teach “dogmatic truth … incompletely but not falsely,” and with terms derived from the “changing conceptions of a given epoch.”137 Thus, it is possible for a principle of the Catholic faith to attain a more complete understanding later in the life of the Church.

On the other hand, however, Murray’s phrase “new as a principle” is in need of clarification. If Murray meant that a principle can be understood in a way that makes past magisterial teaching erroneous, this would falsify the assistance given to the Magisterium even in matters consistently repeated and even taught as Catholic doctrine at the third level of teaching. This would seem to violate the criterion of maintaining the Church’s mind and judgment across the centuries in interpreting the teaching of the faith. Unfortunately, many of Murray’s comments


137 CDF, Mysterium ecclesiae (1973) 5 § 2.
implicate him in this denial at the level of propositional teaching. Dulles correctly connects this element in Murray’s analysis to Lonergan’s transcendental Thomism, as “historical consciousness” replaces the “classicist” attachment to the importance of words over history. If Murray means—or were taken to mean by the theologian wanting to appreciate the prominence of his figure in the field of American Catholic moral theology—that historical and social changes can make the Church aware of new questions to which the faith can be applied, and that this results in a fuller understanding of certain principles of faith, without contradicting previous teaching but instead bringing it to full maturity, then Murray is in accord with the Magisterium. The principles are eternally immutable, but the Church grows in her understanding of those principles.

This worry about the ambiguity in Murray’s theory of the development of doctrine is not my own. Dulles found Murray’s account unsatisfactory since it left no way to distinguish dissent from faithful assistance to the Magisterium, for both depart from the words of the Magisterium. Dulles himself thinks that “the most satisfactory position” on the matter of the Church’s development on religious liberty is “that there has been true progress without reversal, even on the plane of propositional declarations.” The results of this dissertation will confirm this judgment. Other scholars would disagree with this judgment, as has been seen in the first chapter. To add one more voice, Charles Curran agrees with Dulles, holding that Murray’s theory

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139 Ibid., 61. Dulles agrees that the paragraph from Murray’s French essay that begins this section is crucial for understanding Murray’s own approach to development.

140 Ibid.
of development must appeal to the intention of the popes against the words used to convey that intention. At the same time, Curran disagrees with Dulles that the actual teaching of the popes prior to Vatican II contained error, and furthermore that those teachings stand in contradiction to DH. Curran’s position hinges a rather loose interpretation of the texts of the popes, for example, that Leo XIII condemned the American system in Longinqua oceana. The text, however, only claims that the American system is not the ideal and that the American Church would do better if it had the favor of law. Only if one assumes that DH’s right to religious liberty is incompatible with Catholic establishment (which the relator and the text of DH explicitly denied, as will be shown in chapter four) does this “condemnation” by Leo become proof of a heterogeneous development of doctrine.

In other words, the Church teaches truly the Gospel of Christ amidst the changing world of human affairs. As circumstances change, that teaching may not only apply differently, but the new experiences may evoke from the Magisterium refinements or additions to a teaching that were not relevant in earlier situations. This should not, however, be expected to contradict or falsify the previous pronouncements. In light of this analysis, then, the antecedent probability points to accounts of the development of DH that better preserve continuity in the Church’s doctrine while at the same time acknowledging the importance of experience and changing circumstances to draw out a new application of the principles of the Gospel. Hence, the antecedent probability favors theories such as Valuet’s ius gentium hypothesis, on account of

142 Ibid., 233.
their ability to explain the development homogeneously. Valuet’s theory says that the Church’s
teaching is a new application of the principles of the faith made possible by a change in the *ius
gentium*, namely, the mutual recognition of the *exercise* of the natural human right to immunity
from the state in matters religious, now regulated by a new approach to the common good arising
from a growing awareness of the dignity of the human person and the failure of statist regimes to
respect that dignity.
If the previous chapter sharpened the upper blade of theory by providing a theology of doctrinal development in moral teachings, then the next two chapters constitute the lower blade of historical moral theology by looking at the specific teaching of popes and council. In particular, this chapter looks at the doctrinal progress leading up to Vatican II and the text of *Dignitatis humanae*. The next chapter then examines the formation, text, and post-conciliar reception of *Dignitatis humanae* itself. The fifth chapter of this dissertation then defends the straightness of the cut from this scissors formed by these two blades, that *DH* is a homogeneous development. This chapter of the dissertation therefore will trace various strands of the Catholic teaching on religious liberty within the modern nation-state from Gregory XVI until John XXIII. *Dignitatis humanae* refers above all to Popes Pius XII and John XXIII as the proximate source for the doctrine pertaining to the “the inviolable rights of the human person and the juridical constitution of society” (n. 1).\(^1\) The drafters of *DH* understood that the Declaration needed to comport with the doctrine of pontiffs from before Pius XII (continuity); the popes’ prudential teachings, containing as they do a mixture of dogmatic and contingent matter, needed not be preserved (discontinuity). Not every facet of the doctrine of *DH* will be traced in this history, nor

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\(^1\) Even if this is not obvious from the reference to “the more recent popes,” of the twenty-five references in the final draft to modern papal teaching, eight are to Pius XII and nine are to John XXIII. The remainder include four references to Leo XIII, two to Pius XI, and two to Paul VI.
will this history simply recapitulate what has been pointed out by others. Instead, this chapter will focus on some important but neglected factors in the development of the Church’s doctrine on religious liberty in this period. The establishment of Catholicism as the official religion of a nation-state and the subsequent public status of minority religious communities was a contested issue in the doctrinal development leading up to DH. The proclamation of a human right to immunity from any interference by political authority in public religious activities was the fruit of that doctrinal development. The question, then, is primarily about how the Church developed her mind on the relation of state authority to the public religious lives of citizens.

Two simultaneous doctrinal developments enabled the achievement of DH. These are the personalist nature of the political common good found in Pius XI and Pius XII, and the liberty demanded within an international ordering of nation-states, found preeminently in Pius XII. The precisions made by the popes were occasioned by the experience of the totalitarian states, themselves the final growth of European political absolutism and naturalism, and the collapse of human confidence in such rationalistic governance following the two world wars. Popes Pius XI and Pius XII countered the totalitarian impulse of subordinating the person to the state, and Pius XII became increasingly aware of the need for a juridical ordering of international society in the modern world. These popes adopted a personalist politics that limited the state according to the dignity of the individual human person as someone who possessed by nature and grace an origin common to all men prior to the state and a destiny in God higher than the state.
Precisely because of the lack of attention to the development regarding the nature of the political common good, the work of Jacques Maritain played a critical role in influencing the papal response to modern conditions. Maritain, along with his lifelong intellectual companion Charles Journet, perceived the passing away of the “sacral Christendom” and the arrival of an opportunity for a “secular Christendom”. These authors anticipated that a new world order of states, while constituted from immutable principles of social and political ethics, would usher in new kinds of regimes with a different configuration of the common good. The social unity of the secular Christendom would be a minimal but a true unity, at once pluralistic and free, yet always assuming basic Catholic distinctions about the contours of the social fabric. In considering the development of doctrine in the case of religious liberty, what most treatments lack is an attendant consideration of the other moving parts in the development. After all, when a thing grows, several parts must accommodate the growth, lest the growth itself incapacitate the thing. Whether

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2 Maritain’s relationships with Pius XI and Paul VI were personal and collaborative. See Jean-Luc Barré, *Jacques and Raïssa Maritain: Beggars for Heaven*, trans. Bernard E. Doering (Notre Dame, IN: University of Notre Dame, 2005), passim.

3 These concepts are advanced in works such as Jacques Maritain, *Humanisme intégral* (1936), *True Humanism*, trans. M. R. Adamson, 4th ed. (London: Geoffrey Bles, 1946); and Charles Journet, *L’Église du Verbe Incarné: Essai de théologie spéculative*, 3rd ed., vol. I (Brouge: Desclée de Brouwer, 1962). Later at the council Journet, having been recently elevated to cardinaleate, was asked by Paul VI to speak in approval of *Dignitatis* during the final session of the council. That speech, found in AS IV/I, 424-25 (21 Sept 1965), makes use of two distinctions developed by Jacques Maritain and extended by Journet to explain the possibilities contained in the modern political order: first, the distinction between the human being as “individual” and as a “person,” in order to explain the development on the political common good; second, between “consecrational Christendom” and “secular Christendom,” in order to highlight the diversity of possible social configurations under the influence of Christianity. Consequently, Journet argued, the obligation of civil authorities to recognize God and care for religion can be fulfilled in a diversity of ways corresponding to the new societies. Nonetheless, Journet’s intervention at the Council was received with attention and had a lasting impact. See Jean-Pierre Torrell, OP, “Présence de Journet à Vatican II,” in Charles Journet (1891-1975). *Un théologien en son siècle*, ed. Philippe Chenaux (Fribourg: Editions Universitaires Fribourg Suisse, 1992), 52-53; Giuseppe Alberigo and Joseph Komonchak, eds., *History of Vatican II*, trans. Matthew J. O’Connell, 5 vols. (Maryknoll, NY: Orbis, 1995-2006), 5:102-3.
one is considering the more dramatic change of metamorphosis in a butterfly or the growth of a boy into a man, no one thing changes, unless something has gone very wrong.

The conclusions of this chapter will be the following. The Catholic Church maintained a consistent understanding of the political common good throughout the period leading up to DH, an understanding that stressed the responsibility of temporal power (the state) to account for social conditions required by the spiritual nature of the human person for achieving temporal wellbeing, and in a way compatible with the person’s destination for eternal happiness in God. This understanding of the political common good, however, undergoes a shift in emphasis after the emergence of the totalitarian regimes of the early twentieth century. This shift adopts the language of personalism, a philosophical movement justifiably associated with Catholic intellectuals such as Jacques Maritain and correlative with the post-WWII secular emphasis on natural human rights and juridical safeguards for those rights. The discontinuity in the teaching on the common good relates to the popes’ acceptance of the modern demand for the citizen to be understood as an active participant in the very political process that serves him, and not part of a “mass” of men. That being said, papal attitudes toward democracy as such is not the topic of this dissertation.

The second important factor is the papal desire for an international order among states. This international order would focus states on the unity of the human race by nature, and therefore would protect pre-political human rights. Here the two developments converge in a commitment to establishing the full exercise of human rights. In this way, the right to religious
liberty was the capstone in the Catholic denial that the human person is destined for the earthly city in all that he is as a human being. Rather, there is something about man that transcends politics, and this includes his highest destiny: to worship the God who made him and who has invited him into God’s own happiness, the freedom of the brothers of Jesus Christ. The international order of states is possible, according to the popes, when the juridical order establishing the international community is at least tacitly based upon the twofold unity of the human race in respect to nature and to destiny. Yet such an international order would de facto contain a plurality of religions. In seeking to avoid sectarian violence and attain peace, the international order would need to recognize the right to religious liberty. The natural and international character of this new order would then require of the political common good states new social space for religious exercise.

In regard to the place of the true religion in civil society, this study further concludes two things. First, that when the Church advocated for civil protection for the Church, even to the exclusion of other cults in some countries, she did so on the understanding that this was necessary for the preservation of the rights of the Church and of the Catholic citizens who comprised the majority of the population of those countries. The concrete existence of the common good in traditional and majority Catholic nation-states created an obligation for rulers to respect this social reality and thereby uphold traditional privileges and protections for the Church. This was not entirely done away with by DH, as will be seen in the next chapter. To anticipate that chapter, two points of continuity will be seen: both prior papal teaching and DH
allow for state establishment of religion, and identify the one rationale by which the state may ever interfere in religious matters, the protection of the public order of civil society. The change with *DH*, however, seems clear insofar as prior papal teachings on the relation between Church and state do not mention a human right of non-Catholic citizens to practice their religion in public, and even seem to imply a denial of such a right. Second, and following from the first, the unchanging moral requirement enunciated by the popes is that religion or the Church not be separated from civil society and the state. If religion is necessary for human flourishing, and the state is ultimately ordered to promoting the conditions of the person’s flourishing, the state cannot ignore religion but must create conditions favorable to it. How this unchanging principle is “incarnated in facts,” to employ a phrase of Leo XIII, depends on historical and cultural factors particular to any given period. While separation of Church and state is evil, the concord of Church and state may be achieved in a variety of arrangements. One does find, however, that the popes repeatedly say that because political power comes from God indirectly through the body politic, civil society gravely neglects its Maker when it does not pay homage to God in some way.⁴

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⁴ This dissertation does not treat the related topic of the adoption by the more recent popes of the “translation” or “transmission” account of political power. This theory, developed by the early modern Spanish scholastic theologians, argued that political power comes from God to the ruler mediately through the body politic. The power is vested in the people first, who then determine the structure or political form by which the power will be exercised. This theory is thus contrary to any notion where the ruler receives political power over the body politic directly or immediately from God (see Hittinger, “Introduction to Modern Catholicism,” 19). This issue is intimately bound up with the Church’s evolving attitude toward modern democratic political forms.
The eighteenth and nineteenth centuries saw the early modern European absolute monarchies transmogrified by means of revolution into secular, liberal nation-states. What the new regimes conserved from their predecessors, however, was the assumption that the Catholic Church, considered in its visible, social, propertied, and juridical aspects, would be under the control of temporal power.\(^5\) Even the militantly anticlerical, anti-Catholic French prime minister Émile Combes could claim that Leo XIII was violating French rights by refusing to accept Combes’s nominees to the episcopate.\(^6\) While such control of Church property and activity by the state would seem to violate the separation of Church and state, it made sense given the logic of the naturalistic political theory of the time. If all sovereignty resides in the state, then any social modality falls within that sovereignty. If the government is agnostic about the existence of God and therefore about the value of religion, then the state will go about its activity with a practical denial of the transcendent end of the human person or of the truth of any religion, including Catholicism. The Church would not appear before the law as being a perfect society with a legal code of her own, but as a voluntary association of citizens subject to regulation. To this naturalistic, total authority of an agnostic state the popes objected, as can be seen in two propositions condemned in Pius IX’s *Quanta cura* (1864) 3-4:

\(^5\) Ibid., 4-11.

The best constitution of public society and (also) civil progress altogether requires that human society be conducted and governed without regard being had to religion any more than if it did not exist; or, at least, without any distinction being made between the true religion and false ones.

The people’s will, manifested by what is called public opinion or in some other way, constitutes a supreme law, free from all divine and human control; and that in the political order accomplished facts, from the very circumstance that they are accomplished, have the force of right.  

The internal life of a religious society such as the Church is therefore something over which the state claimed competence. There is only civil society in such a scheme, with other societies existing with the permission of the state and as measured by the state.

Pius VI, Pius VII, and Gregory XVI were rocked by the liberal revolutions and by violent attacks against ecclesial institutions and persons. Elected to achieve some kind of conciliation, Pius IX’s early attempt to update the papal states with a liberal constitution died with the 1848 revolution. When his lay prime minister Rossi was assassinated by an Italian revolutionary in November 1848, and Pius had to flee to Gaëta, the pope understandably took a negative stance toward “progress”.

With Vatican I in 1870, the break between the Church and modern European political regimes became absolute with the formal declaration of the universal jurisdiction of the pope. Not even Catholic monarchs were invited to the council, for the Curia considered there no longer to be any exclusively Catholic countries.

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7 See also proposition 39 from the Syllabus errorum (1864): “The State, as being the origin and source of all rights, is endowed with a certain right not circumscribed by any limits.” Leo XIII also denounced this error in Immortale Dei (1885) 24.

8 Cf. Syllabus errorum, proposition 80.

In 1878, however, Gioacchino Pecci became Pope Leo XIII. Drawing on Thomas Aquinas’ scholastic thought, Leo exerted a quarter-century-long effort to stabilize the Church’s relations with modern states and to develop Catholic teaching on political society. This campaign of *ralliement* had several components which would shape papal teaching for over a hundred years to come. The chief concern was the freedom of the Church (*libertas ecclesiae*) to pursue her mission of preaching the Gospel of Jesus and administering the sacraments to the peoples of the world. In order to do this, the Church needed a free hand in her own internal affairs, unimpeded by the temporal powers. One important element in Leo’s strategy was to articulate in a clear manner the respective authorities and jurisdictions of the state and of the Catholic Church. In truth, the distinction between the two competencies of the Church and the state was not something new, for one finds it not only among Leo’s immediate predecessors, Pius IX and Gregory XVI, but also in the eleventh-century battle for the freedom of the Church under Gregory VII.

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10 For the former, see the following proposition condemned in *Quanta cura* (1864) 5: “Ecclesiastical power is not by divine right distinct from, and independent of, the civil power, and that such distinction and independence cannot be preserved without the civil power’s essential rights being assailed and usurped by the Church.” For the latter, see *Commissum divinitus* (1835) 5: “Christ established this system not only so that the Church would in no way belong to the civil government of the state, but also so that it would be totally free and not subject in the least to any earthly domination.”

Leo put his own distinctive stamp on this traditional precision by giving it a new grounding in the doctrine of the Church as a perfect society.\textsuperscript{12} The Leonine doctrine is as follows. In caring for the human creature, who is simultaneously a creature of this world and yet also destined for the world to come, God has established by his providence two ultimate powers over humankind. These are temporal or political power, manifest in modern civil society as the state; and the spiritual or ecclesiastical power, manifest in Church as the apostolic hierarchy with the pope possessing supreme and universal power. These two societies ruled by the two powers are distinguished properly by their two respective ends.

To have two necessary, complete societies existing at the same level, each providing an identical set of members all that is necessary for living well, is a contradiction, especially when one considers the possibility of two independent political authorities set over the same group of men.\textsuperscript{13} This is the problematic from the point of view of those states in the history of the Church that considered the Church as an interloper or competitor.\textsuperscript{14} Leo resolved the contradiction by appeal to the diverse ends of the Catholic Church and civil society. The ends distinguish the two such that they have two distinct jurisdictions and powers, and are capable of being ordered in a

\textsuperscript{12} Hittinger, “Declaration on Religious Liberty,” 371.

\textsuperscript{13} Cf. Rousseau, \textit{The Social Contract} (1762), IV.8: “There is a third, more bizarre sort of Religion which, by giving men two legislations, two chiefs, two fatherlands, subjects them to contradictory duties and prevents their being at once devout and Citizens. Such is the Religion of the Lamas, such is that of the Japanese, such is Roman christianity. One may call it the religion of the Priest. It results in a sort of mixed and unsociable right which has no name”(Jean-Jacques Rousseau, \textit{The Social Contract and other later political writings}, trans. Victor Gourevitch [Cambridge: Cambridge University Press, 1997], 146-47). One also thinks of Hobbes’ \textit{Leviathan} (1651), which comprises an extended argument against the indirect power of the Catholic Church in civil matters.

\textsuperscript{14} This absolute state sovereignty view is implied in the following proposition condemned in \textit{Quanta cura} 5: “Ecclesiastical power is not by divine right distinct from, and independent of, the civil power, and that such distinction and independence cannot be preserved without the civil power’s essential rights being assailed and usurped by the Church.”
complementary way. The two ends are the common good of civil society, namely, that which pertains to temporal happiness; and the common good of the Church, namely, that which pertains to the Church’s social order and to souls attaining eternal life in the common good of the entire creation, God. That the two social orders correlate with different ends is the basis of the claim that the two orders are capable of co-existence in the lives of the same human beings.

One of Leo’s summaries of this teaching comes from his 1884 encyclical to the French bishops, *Nobilissima gallorum gens*:

For, as there are on earth two principal societies, the one civil, the proximate end of which is the temporal and worldly good of the human race; the other religious, whose office it is to lead mankind to that true, heavenly, and everlasting happiness for which we are created; so these are twin powers, both subordinate to the eternal law of nature, and each working for its own ends in matters concerning its own order and domain. (4)

Leo develops this teaching further in his encyclical on the Christian constitution of states, *Immortale Dei* (1885). In contrast with the state, which is essentially bound up with the notion of territoriality,\(^{15}\) the Church has “for its aim and end the eternal salvation of souls, and hence it is so constituted as to open wide its arms to all mankind, unhampered by any limit of either time or place” (8). The Church is thus a

society made up of men, just as as civil society is, and yet is supernatural and spiritual, on account of the end for which it was founded… Hence it is distinguished and differs from civil society, and, what is of highest moment, it is a society chartered as of right divine, perfect in its nature and in its title, to possess in itself and by itself, through the will and loving kindness of its Founder, all needful provision for its maintenance and action. (10)

Leo goes on to draw the inference that the Church is not dependent on civil power for its activity, nor is civil power superior to the Church in the sphere of religion.

The two orders, then, are by their nature the necessary means to the achievement of their respective ends. Since God is the author of nature, this entails that political power is a creature of God. For this reason the popes of the revolutionary period urge the moral necessity of submitting to legitimately constituted political authorities, frequently citing Romans 13 that “all power is from God” or 1 Peter 2 that everyone should “be subject to rulers”. Yet the same argument applies to the Church, which possesses an integrity and power independent from the state. The freedom of the Church is therefore an essential characteristic of any healthy relationship between the spiritual and temporal spheres. The two powers are each supreme in ordine sua.

Regarding the role of public power in the papal magisterium leading up to Vatican II, three essential stations in the course of development are identifiable. The first is the distinction between two societies and the two powers. The second is the twofold insistence against liberalistic and totalitarian conceptions of the state that the state is responsible for the common good through law, but that this responsibility is shared with the individuals and groups making up civil society. Furthermore, the state cannot violate the dignity of the members of society as intelligent and free creatures in the course of fulfilling its responsibility. Therefore, properly speaking, the state is responsible directly for the essential features of society, what is called in DH the public order. Third, the application of the previous two moments to the question of

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16 E.g., Gregory XVI, Cum primum (1832) 3; Pius IX, Nostis et nobiscum (1849); Leo XIII, Quod apostolici muneris (1878) 6; Diuturnum (1881) 9; Immortale Dei (1885) 3.
religion yielded the formal articulation, beginning explicitly with Pius XII’s Christmas speeches but implicitly with Leo XIII and Pius XI, that there was a human right to freedom of worship. This flowed from the fact that the good of religion pertains more to the common good and not the public order of civil society.

To tell the story of the development of various principles in Catholic social teaching would be tedious, especially since others have already done so. What follows in the rest of this section is an account of how the distinction between society and state emerges from a Catholic approach to the nature of the state as found in papal teaching of the period under consideration. This story also will relate how various papal pronouncements from the nineteenth-century that favor the confessional state and seem to forbid the public religious acts of non-Catholic religions hinge on particular historical circumstances that would have rendered the exercise of the right to religious liberty as defined by DH impracticable.

Methodological Considerations

Before discussing the magisterial texts in particular, it is important to discuss how the insights of the previous chapter will be brought to bear on them. The previous chapter showed how magisterial teaching at the third level (non-definitive teaching) contains both sure doctrinal principles but also contingent elements, especially when “interventions of the prudential order”

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are in view. One should not expect reversal in the principles, but reversal is possible as one considers a teaching in its contingent and prudential aspects. Although some interpretations of this third level take all such non-definitive teachings as simply reversible, it was argued above that this is too simplistic. A prudential intervention is liable to change when the circumstances determining it change, or the progress of human knowledge renders a previous judgment of “safe” or “unsafe” moot. The theologian’s task in mediating between the Magisterium and the world necessarily demands that he correctly identify what kind of teaching is expressed in any given document and to what extent contingent or prudential elements are contained within it.\textsuperscript{18}

Following the standard rules for interpreting papal texts, one must not read more meaning, precision, or authority into a document than is required by the manifest intention of the pope. In a condemnation, for example, the pope affirms not the proposition contrary to the condemned one, but the contradictory. This is the difference between propositions being opposed to each other only in truth, versus propositions being opposed to one another both in truth and also falsity. The contrary of “All animals are blue” (a universal affirmative) is “no animal is blue” (a universal negative), while the contradictory is “some animal is not blue” (a particular negative). The first two propositions can both be false, but cannot both be true. The contradictory propositions cannot be both true or both be false; one is necessarily true and one is necessarily false. One example of how this works is found in Leo X’s condemnation by the papal bull \textit{Exsurge Domine} (1520) of Luther’s proposition, \textit{haereticos comburi est contra voluntatem}.

\textsuperscript{18} Cf. \textit{Lumen gentium} 25. One must adhere to the pope’s teaching “…in accordance with his manifest mind and will which is communicated chiefly by the nature of the documents, by the frequent repetition of the same doctrine or by the style of verbal expression” (trans. Tanner, 2:869).
Spiritus, “that heretics be burned is against the will of the Holy Spirit.”¹⁹ What did Leo intend to impose on the faithful with this condemnation? That Luther’s doctrine contradicts dogma and is a heresy, that the contradictory of Luther’s statement is a Catholic doctrine, that his statement is imprudent as a practical judgment, or misleading because liable to create misunderstanding? It is impossible to tell, because Leo condemns all forty-one propositions contained within the bull with the broad statement, “All and each of the above-mentioned articles or errors, as set before you, We condemn, disapprove, and entirely reject as respectively heretical or scandalous or false or offensive to pious ears or seductive of simple minds and in opposition to Catholic truth.”²⁰ Leo does not say why the proposition is condemned, only that it is to be avoided. Indeed Luther’s statement could be true or prudent in some sense, and false or imprudent in some other sense, with the result that the statement would be too ambiguous to put before “simple minds” or “pious ears.” The statement could be true if one were to consider a non-contumacious heretic in a Catholic country (or a non-contumacious Catholic in a Lutheran one). It is not the will of the Holy Spirit that such a one be burned, but that he be instructed patiently. On the other extreme, what if a contumacious heretic understands his heresy to require sedition of some kind, the overthrow of civil authority, the destruction of Catholic churches, or the killing of Catholic priests, as historically has been the case with certain heresies? In such a case, it undoubtedly would be the will of the Holy Spirit that such a heretic be burned by public authority with a view to protecting the public order of a Catholic nation. Under such a qualification, one possible

¹⁹ DS 1483.

meaning of the contradictory of Luther’s statement is true: “That some heretic be burned is not against the will of the Holy Spirit.” Vermeersch advances this position, both as regards the ambiguity of the proposition and also in assigning responsibility for executing some heretic in some circumstance to temporal power.\(^1\) Journet thinks that Leo X meant the proposition to be censured as rash, not as heretical, for it is a matter of political prudence within a regime that was part of Christendom. Hence it would be condemned alike to Luther’s other proposition, “To fight against the Turks is to fight against God who, through them, punishes our iniquities.” The imprudence of these two positions is shown in the fact that Luther himself would later voluntarily abandon both.\(^2\)

One part of the theologian’s task is to perceive what is demanded by a papal teaching. While ascertaining whether the papal encyclicals that comprise the matter of this chapter are contradictory to the doctrine of \(DH\), it is necessary to assess accurately what is taught or demanded by the papal teaching and in what historical context. Charges of reversal or contradiction are quite serious in a matter as weighty as the authority of the Magisterium. Before proceeding to a positive account of the development (common good and international order), let us first examine the question negatively, explicating the texts that are frequently brought forward as contradicting \(DH\).

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\(^1\) A. Vermeersch, SJ, *La Tolérance*, 2nd ed. (Louvain: Librairie Universitaire, 1922), 199.

Troublesome Papal Interventions

These texts include Gregory XVI’s *Mirari vos*, Pius IX’s *Quanta cura* and *Syllabus errorum*, and Leo XIII’s *Immortale Dei*. Yet there are many other encyclicals that mention the confessional state or the duty of civil society to profess Catholicism, including a number from the reigns of Pius X and Pius XI originating in the aftermath of the 1905 French law of separation, or from similar situations in Portugal and Mexico. It will not be enough simply to note the polemical context of these papal documents, for this does not meet the charge of a contradiction in the doctrine of the popes and that of *DH*. Recall that Murray appealed to the embattled mindset of the nineteenth-century popes in order to allow the theologian to disregard somewhat their actual positions. This then freed him to perceive a deeper course of development embedded underneath their intention to fight atheistic liberalism. Leo XIII could not perceive the contradiction, according to Murray, between calling for the freedom of the Church in principle and calling for legal privilege for the Church as a prudent measure.²³

There are two strands of teaching that need to be distinguished in the papal encyclicals. The first is where the popes teach something as pertaining to Catholic doctrine, the second is where the popes teach prudential judgments based on the doctrinal principles. Now the work of Basile Valuet sufficiently disposes of objections based on Gregory XVI’s *Mirari vos*, as seen in the first chapter. The “liberty of worship and conscience” condemned as *deliramentum* by Gregory, a condemnation repeated by Pius in *Quanta cura* and Leo in *Immortale Dei*, was a positive authorization from the state to hold to whatever one wishes in religious matters, as

granted by a government that is officially agnostic and functionally atheistic. The result was a civil regime that acted as though God did not exist, religion were not true, and the Church nothing more than a voluntary society within the state. In such a legal situation there existed an intrinsic connection between indifferentism and civil liberty.

Let us continue to the topic of the confessional state and the presence of public non-Catholic religious activity in Catholic societies. The most direct and pertinent statement is the solemn condemnation in Pius IX’s *Quanta cura*:

> Against the teaching of Sacred Scripture, of the Church, and of the Holy Fathers, [the men who hold to naturalism] do not hesitate to assert that ‘the best condition of society is that in which the duty of coercing by penal sanctions violators of the Catholic religion is not recognized by the government [*Imperio*], except insofar as the public peace requires.’

This and the other propositions related in this encyclical are condemned with language much stronger than that of Leo X’s *Exsurge Domine*:

> Mindful of Our Apostolic office, and greatly concerned for our most holy religion, for sound doctrine, and the salvation of souls entrusted to Us by God, and also for the good of human society itself, We have decided to raise Our Apostolic voice once more. Accordingly, by Our Apostolic authority, we reprobate, we proscribe, and we condemn all and each of the opinions and doctrines mentioned singularly by this Letter, and desire and command that they be held by all the sons of the Catholic Church as completely reprobated, proscribed, and condemned.

Perhaps there is ambiguity as to whether Pius intended all the propositions to be condemned definitively as heretical or erroneous. Still, the proposition from the third section is clearly doctrinal owing to the invocation of the teaching of Scripture, of the Church, and of the Fathers.

\[24\] *Quanta cura* (1864) 3; ASS 3 (1867), 162, author’s translation.

\[25\] *Quanta cura* (1864) 6; ASS 3 (1867), 165-66, author’s translation.
Therefore Pius authoritatively and definitely taught Catholics to hold the proposition as incompatible with the doctrine of Scripture, the Church, and the Fathers.

The condemnation could even be infallible, for Pius sent this encyclical to all the bishops of the world with a condemnation binding all Catholics, as the successor of Peter, in a matter of faith or morals. This fits the criteria of Pastor aeternus for an infallible pronouncement ex cathedra. If true, then John Lamont is correct to comment that “Quanta cura is significant as being the most authoritative Catholic teaching on religious liberty.”

A condemnation certainly can fulfill the criteria for an infallible pronouncement, according to Sullivan: “Such a definitive judgment can also be expressed negatively, by the solemn condemnation of an opinion as heretical. When it is clear that the term ‘heresy’ is intended to mean that the condemned opinion is in contradiction to a truth of faith, the contradictory of the heresy is thereby defined as a dogma of faith.” Sullivan himself does not regard the condemnations of Quanta cura to be irreformable. His argument is that, like Leo X’s Exsurge Domine, the global statement at the end of Quanta cura “does not explicitly condemn any particular proposition as heretical.” Therefore one cannot assume that the contradictory of the statement from paragraph three of the encyclical is a dogma. In this case, Pius certainly would be binding the faithful to hold the proposition as condemned, but in a non-definitive, non-irreformable way. Of course, the premise of Sullivan’s

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26 “Catholic Teaching on Religion and the State,” unpublished paper made available to author.
27 Sullivan, Magisterium, 102.
28 Sullivan, Creative Fidelity, 89. Sullivan refers to five such documents, including Exsurge Domine and Quanta cura. Dulles appears to accept, without comment, Sullivan’s exposition here of how to determine which pronouncements are definitive (Dulles, Magisterium, 71n14). The recent editors of DS appear to regard this condemnation from Quanta cura as not infallible or even important. They omit this part of Quanta cura, whereas earlier editions contained the condemnation (e.g., 30th ed., n. 1689).
argument is false, for a censure does not need to regard a heresy in order to be irreformable. The reason is that the Magisterium is infallible also in defining \textit{tenenda}, things to be held. Heresy is the contradictory of a formally revealed truth, a \textit{credendum}. The contradictory of something to be held is an error, not a heresy.\textsuperscript{29} Therefore, the pope is not limited in his infallibility to condemning heresies.

Let us take Sullivan’s argument, however, as also pertaining to the condemnation of error. Sullivan’s conclusion is possible for \textit{Quanta cura} as a whole, for two reasons. First, it is an encyclical, and encyclicals are not infallible by themselves in regard to genre. It is only that which a pope indicates as definitive for all the faithful in faith and morals that enjoys infallibility. Second, the global condemnation at the end of the encyclical does not specify the “theological note” of each condemnation. Pius only commands that the faithful “thoroughly hold” the various errors as “reprobated, proscribed, condemned,” without stating why the faithful are to hold them as such. Since more is not to be read into such teachings, Pius’s global formula bound the faithful as authentic but not infallible teaching. This general conclusion, however, does not vindicate Sullivan’s judgment, for it ignores Pius’s peculiar qualification of the proposition from section three. Unlike the others, he says that this proposition is contrary to Scripture, Church teaching, and the Church Fathers. Hence there is a stronger case for an enduring doctrinal value in this specific condemnation. Supporting evidence of this is found in the post-conciliar \textit{Catechism of the Catholic Church}, which understands the condemnation of \textit{Quanta cura} as having lasting

value. The *Catechism* refers to *QC* 3 in paragraph 2109 at the end of this sentence: “The right to religious liberty, by its own nature, is neither able to be unlimited nor limited only by a public order that is conceived in a ‘positivistic’ or ‘naturalistic’ manner.” The Church understands Pius’s condemnation as still binding, and thus compatible with *DH*, the latter being cited extensively in the paragraphs immediately previous (2104ff). Even if *Quanta cura* 3 were not an irreformable condemnation—it seems quite irreformable to this author—it still enjoys the presumption of being authentic, non-superseded doctrine until proven otherwise.

Martin Rhonheimer, as seen in the first chapter, believes that the contradictory statement of *Quanta cura* 3 is incompatible with the doctrine of *DH*: “However one views the question, the conclusion is unavoidable: precisely this teaching of the Second Vatican Council is what Pius IX condemned in his encyclical *Quanta Cura*.” The trouble with Rhonheimer’s assertion is that the contradictory of the condemned statement is compatible with what *DH* taught. The contradictory of *QC* 3 would be,

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30 Of course, section three of *Quanta cura* contains two condemnations, one of an unlimited right to liberty of worship and conscience, the other the condemnation of the civil consequences of this in a positivistic notion of public order. The first condemnation was translated above in chapter one’s section on Avery Dulles.

31 Valuet for his part holds that *Quanta cura* is confirming the incompatibility of the condemned proposition with what has been taught by the universal ordinary magisterium of the Church, which is infallible (Le droit à la liberté religieuse, 224).

32 Martin Rhonheimer, “Benedict XVI’s ‘Hermeneutics of Reform’, ” 1032. He shares this doubt with Lefebvre, who likewise assumed a contradiction on this point. See Congregation for the Doctrine of the Faith, Liberté religieuse: Réponse aux dubia présentés par S. E. Mgr Lefebvre (March 9, 1987), p. 3.

33 Pace Noonan, *Lustre of Our Country*, 348: “On December 8, the feast of the Immaculate Conception, exactly 101 years after *Quanta cura* had denounced liberty of conscience as madness, Paul VI promulgated the declaration [DH] as the teaching of the Church.” That *DH* does not teach an unlimited freedom of conscience and cult, the other condemned idea in *QC* 3, is treated in the fourth chapter below.
That is not the best condition of civil society, in which no duty is recognized, as attached to civil power, of restraining by enacted penalties, offenders against the Catholic religion, except so far as public peace may require.

A less certain refutation of Rhonheimer is to observe that *DH* teaches that “just public order” is the measure of civil power’s duties to limit the exercise of the right to religious liberty. Public peace is only one of three components of the public order (n. 7), thereby removing the contradiction. In this argument, “*DH* proclaims a right more limited than that condemned by Pius IX.”34 This refutation seems somewhat forced, however, and is thus less probable. That Pius’s condemnation says “public peace” and not “public order” is really immaterial, for the French Declaration of 1789 used “public order” (art. 10).

In light of this, it is better to attend to the literary and historical context of *Quanta cura*, such that one understands “public peace” in the sense given the term by the naturalistic political philosophies of the time. This accords with the practice of the Church in condemning propositions, for what is condemned is not merely the words themselves but what the author intended to convey by the words. As Valuet argues, public peace in this naturalistic sense would be shaped by the laws of an absolutist, atheistic state expressing the infallible general will.35 What matters is the concept signified by the phrase, namely, the legal expression of absolute individual liberty already demanded on the level of Enlightenment moral and political philosophy. The state has the absolute power to shape social space, to the detriment of Catholics.

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34 Valuet, *Le droit à la liberté religieuse*, 226.

35 This is the “naturalistic” sense of public peace mentioned in CCC 2109 quoted in the previous paragraph.
and the Church, in order to raise up the absolute freedom of man.\textsuperscript{36} God, the transcendent ground of man’s freedom, simply does not matter in such a moral and political system. Many offenses against the rights of Catholics and of the Church would be quite in keeping with this conception of public peace. To use an example derived from a matter of mixed jurisdiction, the public order would not be violated when the state refuses to recognize or enforce the civil effects of the Church’s marriage laws. The condemned proposition therefore entails that the ideal state is one where there is no concord or coordination between the Church and the state as to the civil consequences—both by temporal privileges and temporal penalties—of sacramental marriage and of decrees of nullity. The Church could only condemn such a teaching.\textsuperscript{37} In either case, \textit{DH} does not propound as true what Pius IX condemned as false.\textsuperscript{38} Moreover, if the previous paragraph’s analysis is accurate in judging \textit{Quanta cura} 3 as having a high, if not infallible, level of doctrinal authority, then arguments such as Noonan’s and Rhonheimer’s that argue that \textit{DH} is true and \textit{Quanta cura} false have a higher burden of proof than “traditionalist” cases that conclude the opposite (e.g., Davies, Gherardini). In fact such cases would err in presuming a definitive teaching of a pope to be false. A definitive papal teaching cannot be reversed by a later

\textsuperscript{36} Ph.-I. André-Vincent, OP, \textit{La liberté religieuse. Droit fondamental} (Paris: Éditions P. Téqui, 1976), 227: “La revendication d’autonomie absolue élevée par l’État contre l’Église se double d’une revendication identique pour l’individu. L’absolu de la liberté individuelle devient la loi. La liberté religieuse (et la religion elle-même) se ramène comme toute liberté à la souveraineté de l’individu. Tel est le libéralisme condamné par tous les Papes, de Pie IX à Paul VI.”

\textsuperscript{37} Harrison explicates the papal condemnations to cover the following position: “All peaceful non-Catholic propaganda has a right to immunity from civil coercion” (\textit{Religious Liberty and Contraception}, 51).

\textsuperscript{38} Valuet, \textit{Le droit à la liberté religieuse}, 226. Valuet argues that this second argument is more probable than the first, since Pius IX could not have had in mind the concept of public order as used by \textit{DH}, which arose later.
ecumenical council or by any other pope, by reason of infallibility. Indeed, here one finds an overlap between “traditionalists” and “liberals” such as Noonan or the Bologna school of Vatican II historiography: Vatican II was a substantial disruption of tradition, a heterogeneous change. The two groups only differ in whether this was for better or for worse. Whatever their background assumptions about how doctrine can or cannot develop, the two factions share an erroneous interpretation of DH as accepting what Pius IX solemnly rejected.

Other statements of Pius IX and his successors are more easily interpreted as prudential teachings pertaining to peculiar circumstances. One frequently misinterpreted text issued during Pius’s pontificate is the Syllabus errorum (1864), released simultaneously with Quanta cura. The document is a directory of errors drawn from papal encyclicals, apostolic letters, and allocutions made by Pius IX. It does not contain the words of the pope himself, but is a “table of contents,” to use Newman’s phrase, pointing the reader to Pius’s own teachings on various subjects by reference to allocutions and letters. The document must be interpreted with

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39 We now see why Rhonheimer is at pains to argue that the political theology of the popes is about neither faith nor morals, and therefore not due matter for authentic magisterial acts.


41 Cf. Donum veritatis 24: “The theologian knows that some judgments of the Magisterium could be justified at the time in which they were made, because while the pronouncements contained true assertions and others which were not sure, both types were inextricably connected.”

42 DS 2901-80. Examples of scholars who have either ignored the possibly infallible doctrinal teachings of Quanta cura, or who have equated them with the Syllabus include Gaillartetz, Teaching with Authority, 50; Noonan, A Church That Can and Cannot Change, 149; and John W. O’Malley, SJ, What Happened at Vatican II (Cambridge, MA: Belknap Press, 2008), 59. Neither of the latter two even mention Quanta cura, a document obviously having higher authority than the Syllabus.

43 John Henry Cardinal Newman, “Letter addressed to the Duke of Norfolk, on occasion of Mr. Gladstone’s
reference to those previous statements made by Pius, not from the abstract catalogue itself. The sense in which each proposition is an error must be discovered this way. As Newman points out, even the sense of the propositions depends on the meaning given to the words by the author who propounded them, not necessarily the usual meaning given by the Church. The text of the Syllabus itself gives no indication of papal authorship or promulgation, unlike Quanta cura.

It will suffice to show that two condemnations in the Syllabus ostensibly in conflict with DH are of such contingent, prudential character that they do not constitute of themselves timeless Catholic doctrine. These are propositions 77 and 78, listed below with the references to Pius IX’s previous teachings:

77. In our time, it is no longer advantageous that the Catholic religion be held as the unique religion of the state, thereby excluding whatsoever other cultus. (Allocution Nemo vestrum, July 26, 1855)

78. Hence it is praiseworthy provided by law in certain regions of Catholic name, that men immigrating there be allowed to have the public exercise of their own peculiar cultus. (Allocution Acerbissimum, September 27, 1852)

Before investigating the historical context of the two allocutions mentioned, one can easily see that these propositions are responses to particular circumstances: “in our time,” “it is no longer

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Expostulation of 1874,” in Certain Difficulties Felt by Anglicans in Catholic Teaching (London: Longmans, Green, and Co., 1896), 283. Pius’s secretary of state, Cardinal Antonelli, says as much in his letter to bishops accompanying Quanta cura and the Syllabus. The pope “desired that someone draft a syllabus of the same errors he had previously condemned, intended for all the bishops of the Catholic world” (Henri Poussielgue, ed., Les actes pontificaux cités dans l’encyclique et le syllabus du 8 décembre 1864, suivis de divers autres documents [Paris: Poussielgue et Fils, 1865], xi).


45 Ibid., 277-78. See also the editors’ introductory note to the Syllabus in DS, p. 590.

46 DS 2977-78, author’s translation.
advantageous,” “it is praiseworthily provided by law,” “in certain Catholic regions,” “to immigrants,” etc. By the form of the propositions, what is proposed is a prudential judgment.

One could try to harmonize 77 with *DH* by noting that establishment is permitted according to n. 6 of the Declaration, but this would not account for the demand that all citizens enjoy freedom of religion. This harmonization would also fail to account for the provenance of 77. The proposition in the *Syllabus* stems from the allocution *Nemo vestrum*, recalling the concordat concluded with Queen Isabella II’s moderate parliamentary government four years prior.\(^47\) In the two decades previous to the concordat, Spain had experienced a civil war disputing the royal succession and the implementation of liberal reforms. French-style anticlericalism engulfed certain regions, down to the lynching of hundreds of clerics and monks, the dissolution of religious orders, and the confiscation and sale of ecclesiastical properties to the highest bidder.\(^48\) The concordat negotiated in 1851, aside from accepting the loss of ecclesiastical property, proclaimed that Catholicism “to the exclusion of any other cult continues being the only religion of the Spanish nation” (art. 1) and that Catholicism would be taught in public schools under the oversight of the episcopate (art. 2).\(^49\) Pius complained in *Nemo vestrum* that the terms of the concordat had not been enforced, an offense made all the more pressing by the

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parliament’s renewed efforts to liquidate church property and their interference in the selection of candidates for the episcopate.⁵₀

The condemnation of the Syllabus thus pertains to a concordat with Spain, a Catholic nation where from the times of the reconquista religious unity has been seen as a necessary element of national identity and where the overwhelming majority of the population were baptized Catholics. To harmonize this with DH is difficult because it is asking to harmonize a particular policy with a universal statement designed to obviate such willy-nilly policies. The Syllabus is not propounding a timeless principle, but a response to a circumstance arising in a Catholic nation suffering from the violent imposition of Liberalism.⁵¹ Thus Pius regarded his recommendation of continued establishment as the most safe on the prudential plane, given the violence and indifferentism that had spread into European societies in the wake of their separation from the Church.⁵² No other course appeared reasonable or just.

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⁵¹ Newman, “Letter to the Duke of Norfolk,” 285: “First … the Pope was speaking, not of States universally, but of one particular State, Spain, definitely Spain; secondly, that he was not noting the erroneous proposition directly, or categorically, but was protesting against the breach in many ways of the Concordat on the part of the Spanish government; further, that he was not referring to any work containing the said proposition, nor contemplating any proposition at all; nor, on the other hand, using any word of condemnation whatever, nor using any harsher terms of the Government in question than expression of ‘his wonder and distress.’”

⁵² Cf. Sturzo, Church and State, 433: “On the other hand, the confessional State presented itself as historically bound to the monarchic and to the authoritarian régimes. This did not mean that the Church sought to bind the two terms indissolubly together, only that she was defending them on the earthly plane in order to prevent the overflow of the anti-religious and revolutionary currents that were steadily rising”; Jacques Maritain, Man and the State (Chicago: University of Chicago Press, 1951), 159n13: “I would only like to observe that, at the time (1855) when proposition 77 (about State-religion) was set forth, Concordats previously agreed upon were being brutally violated in the name of Liberalism, whose struggle against the Church was in full swing, so that, by virtue of this factual context, the vicious manner in which a false ideology often spoils a historical process in the making was then especially conspicuous. At such moments, no one is prepared to discard weapons that are at his command in actual fact.”
Nonetheless, the sticking point remains that the terms of the concordat seems to require
the suppression of non-Catholic public worship, whereas DH proclaims a right not to be impeded
from acting publicly according to one’s conscience in religious matters. Hence DH demands that
establishment not restrict the free exercise of citizens adhering to non-established religions. A
harmonization with the 1851 Concordat is therefore not obvious. It is helpful to point out that
wording proposition 77 of the Syllabus does not explicitly call for the suppression of non-
Catholics acts of religion, only that Catholicism should be the only religion of a state with an
overwhelmingly Catholic populace. This is Newman’s interpretation at least, where he says that
taking the Pope’s remonstrance as it stands, is it any great cause of complaint to
Englishmen, who so lately were severe in their legislation upon Unitarians,
Catholics, unbelievers, and others, that the Pope merely does not think it
expedient for every state from this time forth to tolerate every sort of religion on
its territory, and to disestablish the Church at once? for this is all that he denies.53

However rhetorically effective Newman’s ad hominem against Gladstone was in the late
nineteenth century, his argument falls flat today when one would expect more in light of the
progress achieved in DH. Perhaps for Gladstone and other English, it may have fallen flat, too.
The modern Catholic theologian should recall the fact that Pius is responding prudentially to an
unjust dissociating of the Church from Spanish society. In that situation there was some
unchangeable Catholic truth involved (e.g., unity in the faith among the people and the duty to
promote the Church by political power of a Catholic nation), but mixed up with the clash of
prudential or political matters. As will become clear by chapter five, however, a change in the ius
gentium explains how establishment with suppression of public acts of worship would be just in

one age and yet be unjust in another. In either case, the state would be acting in line with its duty to promote the common good and protect, even by coercion, the public order of a nation.

Proposition 78 is similarly prudential and reactionary, for it treats of the introduction of public worship for immigrants into a young nineteenth-century Catholic nation. While 78 may seem to contradict the right proclaimed in *DH* 2, in fact it does not obviously do so. *DH* leaves room for state limitation of religious exercise in keeping with public order. If the historical circumstances surrounding 78 hinge on some situation where the public worship of immigrants threatened, as far as one at the time could judge at the time with moral certainty, the common good or public order of a “certain Catholic region,” that teaching would be understandable even on *DH*’s own terms, accounting for the other differences in understanding of society. One could also understand proposition 77 similarly. Now proposition 78 in the *Syllabus* derives from the allocution *Acerbissimum*, in which Pius IX complained of anti-Catholic trends in the politics of the Republic of New Granada.54 The public exercise of non-Catholic religion was promised to any immigrants, with the goal of undermining the Church’s influence on civil society. Pius lamented this oppositional and anti-clerical turn of events in his allocution, and wanted to air his complaint publicly after diplomatic solutions had failed. What then of the proposition as it is found in the *Syllabus*? It is not stated as a condemned statement in *Acerbissimum*, so it is best to understand the condemnation in the *Syllabus* as a prudential judgment applying to a particular Catholic society, where it was judged imprudent to allow such freedom in light of it being a

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54 Poussielgue, “Les actes pontificaux cités,” 234-54. New Granada had broken away from the Spanish Empire, and had been recognized as legitimate by Pius IX’s predecessor, Gregory XVI (Chadwick, *A History of the Popes, 1830-1914*, 49).
forced disruption of the people’s culture, a violation of the rights of Catholics, and a violation of the rights of the Church.\footnote{This is also the interpretation taken by Newman, “Letter to the Duke of Norfolk,” 287-88, and Valuet, \textit{Le droit à la liberté religieuse}, 236.} In any event, these analyses of the sources of propositions 77 and 78 of the \textit{Syllabus} lead us to the conclusion that they do not directly state any Catholic doctrine but should be understood as prudential interventions based upon doctrine.

Discovering that some papal teachings were in fact only prudential judgments allows one to see that the popes were being forced to respond to precarious and unstable Church-state relations. Their problems included the forced legal dissolution of the traditional place of Catholicism among majority-Catholic peoples, coupled with the cynical proclamation of state neutrality in religious matters. These texts from Leo XIII, for example, contain exhortations to European Catholics to retain the place of the Church in their societies. These texts do not mention directly the suppression of other cults, only the unique position of the Church as the religion of the people and therefore the state. In his encyclical \textit{Cum multa} (1882), Leo addressed the Spanish bishops regarding attempts to separate Church and civil society: “Religion, which is the supreme good, should remain intact throughout the vicissitudes of human affairs, and even in the midst of regime changes; for it encompasses all intervals both of time and of place. Partisans of opposite parties, though differing in all else, should agree totally in this, that in public life [in
civilitate] the Catholic religion should be kept safe. In the encyclical *Pergrata* (1886), Leo advised the Portuguese bishops that

> [t]he state must always be governed under the leadership and guidance of this same [Catholic] religion. If this is done wisely, then the government will conform to the genius, the character, and the will of the people. For the Catholic faith is the legitimate religion of Portugal. Therefore it is entirely fitting that it be defended by the protection of the law and the authority of the state officials, and that its safety, continuance, and honor be publicly assured. (7)

In the encyclical *Au milieu sollicitudes* (1892), he addressed the French bishops and faithful, saying,

> [I]n France, a nation Catholic in her traditions and by the present faith of the great majority of her sons, the Church should not be placed in the precarious position to which she must submit among other peoples; and the better that Catholics understand the aim of the enemies who desire this separation, the less will they favor it. To these enemies, and they say it clearly enough, this separation means that political legislation be entirely independent of religious legislation; nay, more, that Power be absolutely indifferent to the interests of Christian society, that is to say, of the Church; in fact, that it deny her very existence. But they make a reservation formulated thus: As soon as the Church, utilizing the resources which common law accords to the least among Frenchmen, will, by redoubling her native activity, cause her work to prosper, then the State intervening, can and will put French Catholics outside the common law itself. . . . In a word: the ideal of these men would be a return to paganism: the State would recognize the Church only when it would be pleased to persecute her. (29)

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56 ASS 15 (1882/1883), 243, author’s translation: “Quapropter religionem, et quidquid est singulari quodam vinculo cum religione colligatum, rectum est superioris ordinis esse ducere. Ex quo consequitur, eam, ut est summum bonum, in varietate rerum humanarum atque in ipsis commutationibus civitatum debere integram permanere: omnia enim et temporum et locorum intervalla complectitur. Fautoresque contrariarum partium, cetera dissentientes, in hoc oportet universi conveniant, rem catholicam in civilitate salvam esse oportere.” The standard English translation incorrectly translates *in civilitate* as “in the State,” which fails to account for Leo’s distinction between civil society as distinguished from the state. Leo’s technical vocabulary for the social structures of the nation-state is rich, but most English translations of his encyclicals resort to “the State” as the English equivalent for *respublica, civitas, civilitas, status, societas publica, societas civilis*, etc.
In each of these texts, one finds Leo solicitous for the rights of the majority-Catholic citizenry to have the civil and public aspects of their faith recognized and protected, and for the rights of the Church herself to freedom. His appeals are bound up with the circumstances of Catholic peoples in countries undergoing intentional secularization. One could adduce similar texts from Pius X and Pius XI, in which the popes remind bishops, legislators, and Catholic citizens of the unique position of Catholicism as the religion of this or that people in response to attempts to nullify the Church’s influence by separating her from civil society and reducing the Church to a mere association under civil control.\textsuperscript{57} In each of these cases, the governments in question were attempting to disestablish the Catholic Church as the official religion of state, in favor of a religiously neutral or agnostic state. In response, the popes call special attention to two facts: that there is a social obligation to worship God, and that the religion of nearly all the citizens of these countries is Catholicism.

Other texts, it is true, affirm as a universal principle the duty of civil society to give true worship to God. This is what the final draft of \textit{DH} claims to “leave intact,” namely, “the traditional Catholic doctrine regarding the moral duty of men and societies toward the true religion and the one Church of Christ” (n. 1). It is obviously important to ascertain what that traditional doctrine was. Underlying the popes’ prudential interventions and expressions of

\textsuperscript{57} Pius X, \textit{Vehementer nos} (1906), on the 1905 French law of separation; \textit{Iamdudum} (1911), on a similar law in Portugal; Pius XI, \textit{Acerba animi} (1932), regarding Mexico; and \textit{Dilectissima nobis} (1933), regarding Spain. The popes understand by separation that the state should legislate as though the Church did not exist or that she has no right to have her own laws taken into consideration (e.g., marriage laws). The First Amendment is therefore a separation of “the city” (\textit{rei civilis}) and “the holy” (\textit{rei sacrae}), as Leo said in \textit{Longinqua oceana} 6, though one better than European versions insofar as America’s rule of law preserves by “universal right and the justice of judgments” a “secure capacity to live and act” for the Church (ASS 27 [1894-95], 390, author’s translation).
sorrow at the passing away of the Church’s place within societies stood a doctrine of a social obligation toward the true religion. The contours of that doctrine are found in the popes’ repeated teachings in their ordinary magisterium as contained in the following encyclicals.

One teaching is that civil society has a duty to worship publicly the Creator, since society is the created means to man’s happiness. The popes therefore expect civil power to recognize its own derivation from God, and to give thanks to God for such a gift to help human beings flourish. The state must also recognize, similarly, the value of religion for the individual citizens as the means by which they attain a justice and happiness beyond the temporal. Following naturally upon this recognition of the value of religion is the state’s duty to care for it and protect it as something within its scope, and to order the affairs of state in such a way as to enable citizens to fulfill their religious duties and attain eternal life. After all, man’s perfect happiness is not in the state, but in union with God. As society exists to assist men achieve their perfection, so society has an obligation to adjust its assistance to man in helping him attain his

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58 Leo XIII, *Immortale Dei* (1885) 6: “As a consequence [of public power being from God], the State, constituted as it is, is clearly bound to act up to the manifold and weighty duties linking it to God, by the public profession of religion [religione publica satisfacere].” See also Pius XI, *Ubi arcano* (1922) 48; *Quas primas* (1925) 18, 25.

59 In *Au milieu des sollicitudes* (1892) 5, Leo writes that without religion, the state has no solid foundation.

60 Leo XIII, *Diuturnum* (1881) 25: “We earnestly exhort them in our Lord to defend religion, and to consult the interest of their States by giving that liberty to the Church which cannot be taken away without injury and ruin to the commonwealth”; *Immortale Dei* (1885) 6: “So, too, it is a sin for the State not to have care for religion as something beyond its scope, or as of no practical benefit… [C]ivil society … should … have also at heart the interests of its individual members, in such mode as not in any way to hinder, but in every manner to render as easy as may be, the possession of that highest and unchangeable good for which all seek. Wherefore, for this purpose, care must especially be taken to preserve unharmed and unimpeded the religion whereof the practice is the link connecting man with God”; *Libertas* (1888) 21; *Sapientiae christianae* (1890) 29, 30; *Au milieu des sollicitudes* (1892) 28; Pius X, *Vehementer nos* (1906), 3; Pius XII, *Summi pontificatus* (1938) 58; John XXIII, *Mater et magistra* (1961) 217; *Pacem in terris* (1963) 57, 59.
finality in God. From this follows, simply on the plane of natural reason, that civil society may not separate itself from the Church. There is a further argument employed by the popes, namely, that the true religion is necessary for helping men to follow the state’s laws without complaint or rebellion. Thus rulers have an additional motive for caring for religion and preserving the freedom of and concord with the Catholic Church.

Now the state is capable of recognizing which of the religions is the true by means of the motives of credibility. For this reason, states and peoples are bound to recognize the reign of Christ and his precepts, both those of the natural law and of divine positive law. Especially if the people have in the main adopted the Catholic faith, the state must favor the true religion by law and not forcibly separate itself from the Church. Conversely, the state may not treat all religions equally, as though they were all true. At the very least, the state would violate its duty by hindering the Catholic Church, and must grant her the freedom necessary to carry out her

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61 Leo XIII, *Sapientiae christianae* (1890) 30; *Rerum novarum* (1891) 40; *Tametsi futura prospicientibus* (1900) 8; Pius X, *Vehementer nos* (1906) 3; Pius XI, *Ubi arcano* (1922) 48.


63 Leo XIII, *Diuturnum* (1881) 22; *Nobilissima gallorum gens* (1884) 4; Pius XI *Quas primas* (1925) 18; Pius XII, *Summi pontificatus* (1938) 92, 95-96; *Mystici corporis* (1943) 105.


65 Leo XIII, *Nobilissima gallorum gens* (1884) 2; *Sapientiae christianae* (1890) 29; *Tametsi futura prospicientibus* (1900) 8; Pius XII, *Summi pontificatus* (1938) 22, 30.


mission to guide men to everlasting happiness. At the same time, the state may never coerce people to embrace the Catholic faith, for the act of faith must be free.

An ambiguity in these teachings, however, is whether divine or natural law specifies how this positive duty of civil society to worship God and to favor the true religion is to be fulfilled. Furthermore, how does a society do these things in distinction from individual persons? This ambiguity can be seen in Pius XI’s exhortation to rulers in *Quas primas* (1925): “If, therefore, the rulers of nations wish to preserve their authority, to promote and increase the prosperity of their countries, they will not neglect the public duty of reverence and obedience to the rule of Christ” (18). What would count as fulfilling this duty today? One could imagine the following situation of Catholic or Christian recognition coupled with free exercise for non-Christians. The state could have prayers to Jesus Christ as King of all creation prior to the opening of its legislative session, perhaps offered by the ordinary of the diocese of the capital. There could be a concordat or a constitutional clause harmonizing the civil laws of marriage with those of the Catholic Church. No citizen would be coerced to baptism, to attend Mass, to prevent him from publicly adhering to his own religion within just limits, nor denied civil rights for not being baptized. In a globalized world striving to attain an international order of states, this would be the ideal, not achieving the repression of error. In this it differs from the contours of the civil expression of Catholicism in various kinds of regimes expressed by the manuals of public

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69 Pius XII, *Mystici corporis* (1943) 104; Paul VI, *Ecclesiæ suam* (1964) 75.
ecclesiastical law.\textsuperscript{70} Others imagined new ways, such as Cardinal Journet, who at Vatican II was capable of saying that by providing for religious freedom, the state was acknowledging God by arranging for him to be praised by the free, sincere acts of various religious communities in the state.\textsuperscript{71}

Papal Teaching on Religion in Society: Toleration and Liberty

The manuals of public ecclesiastical law based their arguments in the papal teaching on toleration, although they had a tendency to make the popes say more than they actually did. The popes taught that tolerance is the optic for the public expression of non-Catholic religions in Catholic states. This teaching is well-known and uncontested. Its pedigree stretches as far back as Gregory the Great, and Valuet has documentation for earlier patristic sources, although the Fathers tend toward toleration as the norm so long as non-Catholics did not employ violence against the Church.\textsuperscript{72} The Catholic state, as a state, must aim at achieving the common good. It may tolerate moral evil within the state insofar as repressing that evil would cause more harm to the common good than tolerating the evil; or insofar as tolerating the evil allows the statesman to attain a greater good than otherwise.\textsuperscript{73} Leo XIII’s teaching would appear to conduce to the classic thesis-hypothesis distinction, whereby the ideal of a Catholic confessional state is the universal


\textsuperscript{71} \textit{AS IV/I}, 425.

\textsuperscript{72} E.g., Valuet, \textit{La liberté religieuse et la tradition catholique}, 1:267-269.

\textsuperscript{73} See Leo XIII, \textit{Immortale Dei} (1885) 36; idem., \textit{Libertas} (1888) 33; Rommen, \textit{The State in Catholic Thought}, 368-370.
ideal, but the concrete realization of the common good falls under the term hypothesis.

According to that distinction, the *in concreto* hypothesis would include the toleration of non-Catholic public worship for the sake of avoiding worse evil or attaining greater good. What Leo never said and certain theoreticians of the Church’s public law did, particularly in regard to Spain, was that the repression of religious error so served the common good that it should be undertaken when possible. Without anticipating the section on Pius XII’s teaching in this matter, it is relevant to note that Pius XII taught in *Ci riesce* that such a duty to repress whenever possible “is unknown to the common convictions of mankind, to Christian conscience, to the sources of Revelation and to the practice of the Church.” Indeed, the origin of the thesis-hypothesis distinction is confused, and does not perfectly correlate with Leo’s or any other pope’s thought, in the terms in which that distinction is usually presented. As chapter four will show, establishment and repression are not correlative terms, such that repression is always entailed by establishment or Church-state cooperation.

Nevertheless, a universal human right to religious liberty was not yet formally articulated in the period before *DH*. The popes did teach that Catholics deserved free exercise in following the true faith, even in non-Catholic societies. Since the beatific vision is the only true, final destiny of man, and the Church the God-given means for attaining that end, any state that prevents Catholics from fulfilling their religious and moral duties has failed in its duty to equilibrate the political common good with the true destiny of man. Even so, Leo’s teaching can accommodate a broader interpretation. For example, in *Libertas* (1888) Leo distinguishes the

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term “liberty of conscience” in order to defend the meaning “that every man in the State may follow the will of God and, from a consciousness of duty and free from every obstacle, obey His commands. This, indeed, is true liberty, a liberty worthy of the sons of God, which nobly maintains the dignity of man and is stronger than all violence or wrong - a liberty which the Church has always desired and held most dear.” Given the politics at the time, it is difficult to imagine that a formal teaching on a basic human right to religious liberty would have been opportune, for states could have used it to further disestablish and marginalize the Church on the grounds that the state was removing an obstacle to free exercise. Only after the European governments had been secularized and the totalitarian regimes arose did a human-rights focus present itself. Indeed, the drafters of DH saw in Leo’s teaching the grounds of a formal declaration, citing this passage in a footnote to the declaration of the formal right in DH 2.

In a similar way Pius XI’s pontificate was a transitional phase toward DH, for as tensions with totalitarian regimes mounted he responded with a clearer attempt to enunciate a human right to religious liberty with regard to the state. This is entirely fitting for the pontiff who reiterated and extended the Leonine social doctrine to treat of the proper freedom of the family and of other associations within society, as articulated above all in Quadragesimo anno. The rise of Fascism, Naziism, and Communism only exacerbated the problems Leo faced in the late nineteenth-century, and Pius XI combatted these totalitarian conceptions of the state with a personalistic and structurally pluralistic one. Nonetheless, Pius retained Leo’s focus on liberty for Catholics in the face of hostile regimes. This teaching is particularly associated with Pius XI’s Non abbiamo
bisogno (1931), written in protest of Fascist suppression of Catholic Action in Italy. The encyclical refutes Fascist errors regarding civil society, above all, their denial that the common good must accommodate the Church’s mission. Fascism in this way replaces the Church with the state, “a real pagan worship of the State—the ‘Statolotry’ which is no less in contrast with the natural rights of the family than it is in contradiction with the supernatural rights of the Church” (44). In this context of the absorption into the state of individuals and all associations, including Catholic Action, Pius declares himself “happy and proud to wage the good fight for the liberty of consciences” (41). Pius, like Leo, distinguishes the term “the liberty of conscience,” which is an equivocal expression too often distorted to mean the absolute independence of conscience” (41). Looking at the context, however, Pius defends “the liberty of consciences” in regard to a “double right of souls,” that is, the rights of Catholics to learn Catholic truth, and to communicate that truth to others. Therefore, this encyclical does not have non-Catholics in view. Then again, the issue Pius was addressing concerned Italian Catholics, so it goes beyond Pius’s actual teaching to affirm or deny that non-Catholics would possess the same liberty.

Elsewhere Pius indicates that he considered a natural human right somehow at play in the religious liberty question. For example, he argued for the rights of parents to educate their

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76 Therefore this was the foundational right for Catholic Action’s presence in Italian society. In addition to the suppression of Catholic Action, the Fascists had also cut the Church out of compulsory religious education in state schools, limiting the Church to “external practices of religion “such as Mass and the Sacraments” (Non abbiamo bisogno 52).

77 Murray, “Vers une intelligence,” 140; Valuet, Le droit à la liberté religieuse, 298.
children in their religion, even a false religion, a right binding even the Church in most circumstances. 78 Pius later included this parental natural right with a natural right to freedom in religious matters as fundamental human rights. Writing in *Mit brennender Sorge* (1937) against Naziism for absorbing the whole man into the state’s goals and for denying man’s ordination to God above the state, Pius articulated a human right to “profess and practice” one’s faith in civil society. Pius does so after concluding a long discussion on the rights granted to the human person prior and independent of the state: “man as a person possesses rights he holds from God, and which any collectivity must protect against denial, suppression and neglect” (30). The relevant passage then teaches that

The believer [*Der gläubige Mensch*] has an absolute right [*unverlierbares Recht*] to profess his Faith [*seinen Glauben*] and live according to its dictates. Laws which impede this profession and practice of Faith are against natural law [*einem Naturgesetz*]. (31) 79

Here Pius articulates an inviolable right of the believing person to profess and practice, a right which is natural to him as a man. The ambiguous German noun *Glaube* and its related adjectives can refer to religious conviction generally, in addition to the theological virtue of faith. 80 To prevent a man from exercising this right is to go “against a natural law.” What is striking here is that Pius does not base his claim on a divine right of the Church or the divine right of Catholics

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78 *Divini illius Magistri* (1929) 30-39. Pius cites several texts of Thomas, including *STh* IaIIae q. 10 a. 12, and the 1917 Code of Canon Law (c. 1113), to establish the natural human right and duty in this matter. This encyclical is erroneously titled *Rappresentanti in terra* in Claudia Carlen’s 1981 edition of the papal encyclicals. For explication of this section of the encyclical, see Valuet, *Le droit à la liberté religieuse*, 302-4.

79 The German for this citation and the following is taken from AAS 29 (1937), 160.

as baptized men belonging to the body of Christ. Pius makes the grounding of the right to religious liberty the natural law and “human nature” (30).

Despite this, some argue that the encyclical here speaks only of a natural right to profess whatever faith God reveals, and thus applying only to Catholics. The argument is circumstantially based on the fact that Pius has been treating of the incompatibility of Naziism with Catholic teaching throughout the encyclical. Furthermore, immediately after the sentence on a natural grounding to profess and practice one’s faith, Pius mentions the right of parents to educate their children im Geiste des wahren Glaubens, “in the spirit of the true faith.” Therefore, Pius is speaking of a human right to profess the true faith. To the contrary, though Pius speaks of the right of education mainly in terms of Catholics, this is attributable to the fact that the Nazis had broken the concordat by taking over confessional schools, thus preventing parents from giving their children an authentic Catholic education. The teaching is not as clear as DH would be, because Pius asserts the right only in application to Catholics. But it does not follow that the right is possessed only by Catholics; that something is true of Catholics does not mean it is not also true of human beings in general. Pius does speak of a violation of a natural right of the Catholic parents: “laws and measure which in school questions fail to respect this

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81 In Divini redemptoris (1937), issued the same month against the Russian Bolsheviks, Pius states the right in terms of true religion: “the right to tend toward his ultimate goal in the path marked out for him by God” (27).

82 The standard English translation renders this erroneously as “the spirit of their faith.”

freedom of the parents go against natural law [Naturrecht].” Also, the previously asserted right of “the believing man” to non-interference in living out his Glaube is an inviolable one to which positive law must conform. That this right of “the believer” points to a natural right of immunity from state coercion in religious matters is in fact how the drafters of DH understood Pius’s teaching in Mit brennender sorge. It would thus be a proximate preparation for the right formally declared at Vatican II, for the passage is cited in DH 2 to provide papal precedent for the right and its grounding in the dignity of the person, as known by reason and revelation. De Smedt, the relator for the drafts of DH at the council, understood Pius to be speaking of a universal right in light of the encyclical’s purpose and context.

The last phase of the development leading to DH consists of the teachings of Pius XII and John XXIII on religious liberty. These pontiffs were exploring a more extensive right vis-a-vis the state than had previously been taught. They both reiterate the natural right basis of religious liberty, particularly as a way to protect the flourishing of the human person from statism (Pius XII) or from materialist understandings of the common good (John XXIII). Still, their teaching is not nearly as explicit as DH because the wording of their teaching does not settle the question of whether the right is only for the practice of the true religion.

84 For this exegetical point and others, see Valuet, Le droit à la liberté religieuse, 306-7.
85 The reference in DH is to AAS 29 (1937), 160, which is the German original cited above. Fuller citations were included in the drafts of DH presented on the council floor, so one can easily verify which sections the drafters had in mind. See, for example, AS IV/5, 94.
86 AS II/5, 493: “Quod, quam sit universaliter dictum, neminem fugit, whi condicones temporum ac proinde scopum harum Litterarum Encyclicarum intellexerit.” At the same time, however, some of De Smedt’s interpretations of prior papal teachings in the relatio for the first draft of DH are tendentious.
Pius XII’s contribution to the progress toward *DH* is essential, yet under-appreciated. His basic contribution is threefold: that there is a natural right to religious liberty in regard to the modern nation-state, that religious liberty is founded on the dignity and transcendence of the human person, and that the right is connected to an international order of states. The last issue will be addressed in a later section. Pius’s teaching on religious liberty includes both Catholic-specific formulations as well as generically human formulae. On the one hand he says in his 1941 Pentecost radio message that there is “the right to give God his due [*vero*] worship.” On the other, he says in his 1942 Christmas radio message that there is “the right to religious formation and education” and “the right to worship God in private and public and to carry on religious works of charity.” In the latter case, Pius does not restrict the right to only the true worship of God, but includes generically the private and public worship of God and to charitable works. Pius further names this right as as among the “fundamental rights of the person.” Pius articulates a more basic human right to immunity from state interference in this second example, since he is laying down in this radio message the principles of the internal order of states in the new world order that should emerge after the world war ends. The first and ruling principle he lists is that of “the dignity of the human person,” and it is under this heading that Pius places the

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89 AAS 35 (1943), 19.
right of religious liberty. It is a generic and universal formula that does not qualify the object of the right the practice of the true religion.

Pius XII’s teaching cannot be left at this, however, for one must also consider that Pius regarded the exercise of the right to worship God publicly and privately, like any right, liable to curtailment when the abuse of that right threatened the common good.\textsuperscript{90} A question in this regard is raised by the Vatican’s 1953 concordat with Franco’s regime, which, reconfirming the terms of the 1945 \textit{Fuero de los Españoles}, left each citizen to his own convictions and private worship, but suppressed all public worship not that of the state’s religion.\textsuperscript{91} Importantly, this was understood not to prevent the very small number non-Catholics, most of whom were foreigners, from worshipping corporately within their own temples, for this is a kind of private worship. The provision only excluded non-Catholic worship and propaganda outside such buildings, that is, in public life.\textsuperscript{92} One should only note that the traditional language of that concordat originates back to the very same 1851 concordat with Isabel II’s government, the breaking of which was the occasion of Pius IX’s \textit{Nemo vestrum}, as well as Article 11 of the 1876 Spanish Constitution. It is reasonable to think that Franco and his ministers desired these terms more strongly than the Church, for Pius was reluctant to negotiate an international treaty with a dictatorship.\textsuperscript{93}

\textsuperscript{90} Valuet, \textit{Le droit à la liberté religieuse}, 331-33.

\textsuperscript{91} AAS 45 (1953), 651-52.

\textsuperscript{92} See the 1945 decree of Franco’s regime on this point, reproduced at Valuet, \textit{La liberté religieuse et la tradition catholique}, I:721n2: “Las confesiones disidentes de la religión católica podrán ejercer sus cultos particulares en todo el territorio español, a condición de que se celebren siempre en el interior de sus templos respectivos, sin que haya ninguna manifestación o exteriorización en la vía pública.”

\textsuperscript{93} Callahan, \textit{The Catholic Church in Spain, 1875-1998}, 408n112. For this and what follows, see ch. 15 of Callahan.
the hierarchy close to the regime was an avenue of control for Franco, who suppressed labor unions in order to uphold the Fascist monopolies, censored the Catholic press, and feared the loss of his *ius patronatus*, the right of episcopal nomination. The Vatican was not enthusiastic about the concordat because Franco was a dictator and suppressed the full freedom of the Church in these matters, and it took Franco’s ambassadors five years to achieve the treaty. While the rest of the Catholic intellectual world was moving toward “integral humanism,” most of the Spanish hierarchy was of one will with the regime as regards the question of establishment. Nevertheless, the 1953 Concordat was an international treaty that achieved a number of rights and protections for the Church, and these at least were happily received by the Curia.

John XXIII completed and formalized the transposition of papal natural law discourse into the conceptual language of human rights. Although John is more famous than Pius in this regard, it is ironic to note that John’s formula of the right to religious liberty in *Pacem in terris* (1963) is more ambiguous than Pius’s 1942 Christmas message. This is sometimes missed by scholars. Leslie Griffin, for example, states that Pius XII provided “an ambiguous defense of religious liberty,” whereas John XXIII “identified the right of religious freedom, but did not provide the theoretical foundation for it.”94 To the contrary, it was the legal acumen of Pius that identified the right and provided the foundation in human dignity and juridical order. Furthermore, John did not intended to settle the debate between Thomists on the one hand and Suarezians and Scotists on the other regarding whether an action done from a sincere, erroneous conscience was morally good. Thomists said that acting upon such a conscience would only be

94 Griffin, “Commentary on *DH*,” 245, 251.
not culpable, rather than good or meritorious. This question somehow had become tied to the question of whether a sincere, erroneous conscience had a right to respect in civil society. What John taught is that there is “among man’s rights … that of being able to worship God in accordance with the right dictates of his own conscience [ad rectam conscientiae suae norman], and to profess his religion both in private and in public.” This would later be cited in DH 2 alongside Leo XIII’s Libertas, Pius XI’s Mit brennender Sorge, and Pius XII’s 1942 Christmas message as the papal precedent. According to Pietro Pavan, thought to be the principle scribe for Pacem in terris, John’s diction was intentionally ambiguous in order to allow for further theological investigation and to leave the final resolution of the question to the council, which had recently concluded its first session. The Latin word rectam was understood by Thomists to mean a “correct” conscience (an objective norm) but understood by Scotists and Suarezians to describe a “sincere” conscience, including an invincibly ignorant one (a subjective norm). One must agree with Davies that the meaning of Pacem in terris in regard to religious liberty “can be reconciled with the traditional doctrine, even if inclining to toleration as the norm.”

The ambiguity in John’s treatment was fortunate, for an argument from conscience is underdetermined as to civil immunity. A right based merely on sincerity of conscience would

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95 AAS 55 (1963), 260: “In hominis iuribus hoc quoque numerandum est, ut et Deum, ad rectam conscientiae suae normam, venerari possit, et religionem privatim publice profiteri.”


97 Ibid., 69-70; Dulles, “Dignitatis Humanae and the Development of Catholic Doctrine,” 63-64n11.

98 Davies, The Second Vatican Council and Religious Liberty, 121.
have contradicted much of the Church’s social teaching, for the sincere error of others does not automatically translate into some claim of justice that others must respect, especially when the common good is involved. The first two drafts of DH based themselves on such an argument from conscience, which fails logically to deliver a juridical norm. Murray himself criticized them for this reason,\(^9\) and Pavan himself comments that in the final text “the problems of the true or the erroneous conscience are not touched on at all” since those “are moral, not legal” issues.\(^1\) More theological reflection was needed before the Church could articulate a right to religious liberty that did not reduce to a liberal understanding of freedom and society. Murray and Pavan see DH as bypassing the debate altogether. Nonetheless, John’s teaching indicates a growing awareness of the need, in light of the failure of liberalism and the world wars, to protect the proper freedom of the human person and of the person’s transcendence beyond the state. The tenor and contents of Pacem in terris may indicate to what opinion John inclined in the matter of universal free exercise.\(^1\) As the first chapter showed using Murray’s work, John emphasized the element of responsible liberty in Catholic social teaching for the post-totalitarian world.

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\(^1\) Pacem in terris did have one other virtue in paving the way for DH, insofar as it recalled the fact that human rights regarding truth and publication are not unlimited, but are exercised “within the limits of the moral order and the common good” (§ 12).
One may characterize the papal teaching leading up to the Council as being open to the question of whether there is a basic human right to religious liberty in civil society, although what had been asserted over and over again was the freedom owed to Catholics. But, as DH taught with regard to the Church herself, it is possible to have a twofold claim to a right: a natural and a supernatural ground. Thus the question was open as to whether every man also has this right by a natural ground.

Two Preparatory Developments in the Papal Teaching

The papal teaching on religious liberty was able to expand from a sole orientation to the freedom of the Church, Catholics, and citizens seeking the true religion, to also include the rights of the human person as such in relation to the state in religious matters. That this shift developed in tandem with the rise and fall of monist regimes in the nineteenth and twentieth centuries is no secret. Often, however, those who conclude that DH is a heterogeneous doctrinal development do not connect the Church’s teaching on religious liberty to the malleability of the political common good as it is presented in papal teaching. The papal teaching on the common good of civil society becomes more and more focused on what Rommen calls the “service” character and Messner calls the “ancillary” aspect of the political common good.\(^{102}\) That is to say, the popes

become focused on the common good as a means to the perfection of individuals, families, and other groups. This focus derives from the personalism mainly of Jacques Maritain and coordinate with his incursion into political philosophy beginning in the late 1920s. Thus, the popes emphasize an aspect of the common good that minimizes civil society as an end in itself and as an expression of the people as such, in response to the totalitarian error of subordinating the person in all that he is and all that he has to the state itself. The popes never deviate from the traditional teaching that the common good is the highest political norm, but the common good becomes primarily described as the state creating the conditions necessary for persons to achieve their flourishing, and thus described in the terms of the state protecting the just freedom of the citizenry (i.e., their human rights).

Another frequently missed piece of the puzzle in the course toward DH is the simultaneous development of the papal teaching on an international order of states as an appropriate mechanism for realizing in the political realm something of the universality of the Church. The arrival of an international order of states changes the relation of the individual states to all citizens and travelers within the boundaries of each nation-state without destroying the political nature of the state itself, just as a change in finality modifies the mean of any moral virtue without destroying the generic nature of the virtue itself deriving from the matter about which it is concerned. Again, without relinquishing the norm of the political common good, the popes nonetheless begin to discuss the common good’s malleability in light of culture, time, and place. That malleability includes a potential to be adapted to an international common good, an
adaptation which would create the necessary changes required for the human right of religious liberty to be exercised more fully than before in civil society, even in confessional states.

These two concomitant developments are not appreciated in English scholarly literature on DH (especially the second on the international order), which is why they are so important to discuss here. The exceptions in regard to the development on rights are Murray, Dulles, Hittinger, Valuet, and, to a lesser extent, Rhonheimer. Even here, it is Murray and Valuet who are most attuned to the issue of an international order of states. This omission or neglect in anglophone discussions of DH perhaps explains why there exist many scholars who find substantial discontinuity between past magisterial teaching and that of DH. These scholars have not accounted for the malleability of the application of unchanging Catholic political principles, which either leads them to doubt that past teaching is authoritative (Noonan, Rhonheimer) or to minimize to what extent past teaching was open to new political or social configurations (Gherardini, Davies, Pink). In fact Leo XIII hinted at the drastic adaptability of Catholic political principles to the time and place: “In descending from the domain of abstractions to that of facts, we must beware of denying the principles just established: they remain fixed. However, becoming incarnated in facts, they are clothed with a contingent character, determined by the center in which their application is produced.”103 Here Leo speaks in particular about the political form in this or that society, as being a contingent application of unchanging principles about the origin of political power in God. This was part of his policy of ralliement, an attempt to reconcile

103 Au milieu des sollicitudes (1892) 15.
French Catholics to the modern, republican political form of their country. The theological grounding for this extension of Leo’s teaching on the malleability of the demands of the common good is found in the work of Maritain and Journet. A fuller explanation remains for the fifth chapter of this study. Our reasoning is that since these two developments are bound up with the doctrinal change in religious liberty, they are best explained as a whole. In what follows, this chapter is more concerned to show that the popes have taught these things. The fifth chapter will attempt to explain how these three developed together, building also upon the cognizance of the drafting commission and of the bishops at Vatican II of the same threefold development.

The Personalist Common Good

This section simply intends to document a personalistic shift in papal teaching on the common good in the period leading up to DH. Of course, the common good was always regarded as being good for the individual citizens, but this shift is remarkable for its strong emphasis on society as a means to ultimate human perfection (beatific vision) rather than an end in itself. Of course, the papal focus on securing human rights as an element of the public order, that essential part of the common good for which the state has direct responsibility, goes back to Leo XIII. In Sapientiae Christianae (1890), Leo explains that civil society exists “in order that in it and through it [man] should find suitable aids whereby to attain his own perfection” (2). The goods that Leo mentions as constituting man’s proper perfection are spiritual, including the practice of the true religion (3). Yet Leo also emphasizes that the state only indirectly aims at man’s

104 Cf. Chadwick, A History of the Popes, 298-301.
perfection. It must furnish the conditions necessary for individuals, families, and associations to pursue true religion and virtue. In this encyclical is a clear articulation, long before *DH*, that the task of promoting the public order is the direct concern of civil power. “Peace and good order,” a “high standard of morality both in public and private life,” “justice,” and “public peace” are the direct concerns of government, concerns that reappear in *DH 7* as the components of public order. This is not to say that the state should not also promote the common good generally through its institutions and laws, but that the public order is the state’s direct concern. That the state is limited to this prevents the state from usurping the proper action of individuals and associations, which later becomes Pius XI’s principle of subsidiarity. In *Rerum novarum*, Leo also brings in the language of human dignity as the ground of rights. In regard to the rights of property and association, Leo’s entire encyclical is an argument that it is the state’s “office to protect natural rights, not destroy them” (51). To do otherwise would “contradict the very principle of the [state’s] existence.” With Leo, then, the traditional Catholic teaching on the common good takes on a natural rights-focus that begins to balance any claim of the whole of society with the claims of the parts of society. This will later bear fruit in *DH* insofar as the common good takes on that “service” or “ancillary” character to the just freedom of the parts of society in pursuing their own perfection.

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105 Cf. *Rerum novarum* (1891) 55; Rommen, *The State in Catholic Thought*, 352-53, on the conditions of state intervention: “Negatively it follows that the state may not intervene if the public order and the cooperative functioning of the groups is working in security and successfully; no mere utility, no profitable expediency for itself, which the state expects from an intervention for administrative purposes, confers a right of intervention. This limitation protects the public order against any perfectionist who, clamoring for the most perfect world, confers on the state powers of intervention which, if realized, would do away with freedom and initiative.”
This rights-focus takes on the language of personalism with Pius XI. In *Divini redemptoris* (1937), an encyclical against Bolshevism, Pius teaches explicitly that society is a means for man’s perfection. The passage is a striking adoption of personalistic language, and thus merits quoting at length.

In the plan of the Creator, society is a natural means which man can and must use to reach his destined end. Society is for man and not vice versa … in the sense that by means of an organic union with society and by mutual collaboration the attainment of earthly happiness is placed within the reach of all. In a further sense, it is society which affords the opportunities for the development of all the individual and social gifts bestowed on human nature. These natural gifts have a value surpassing the immediate interests of the moment, for in society they reflect the divine perfection, which would not be true were man to live alone. But on final analysis, even in this latter function, society is made for man, that he may recognize this reflection of God’s perfection, and refer it in praise and adoration to the Creator. Only man, the human person, and not society in any form is endowed with reason and a morally free will. (29)

Here society, even in cultivating the social gifts of man, exists for man to attain by his own free action his “destined end” in the knowledge and love of God. Society or mankind is not a substance greater than individual men, but is the result of their social action. The rights of the person cannot be preserved in some virtual sense in the triumph of the state, but the state must triumph by formally protecting the rights of individual men. Thus even abuses of rights do not
give the state warrant to suppress those rights.\textsuperscript{106} Pius XII repeated this teaching that society is a means to the proper perfection of individuals.\textsuperscript{107}

Pius XII completes Pius XI’s doctrine of society as a means by postulating that man is the end of society: “every moral association of men is in the end directed to the advancement of all in general and of each single member in particular; for they are persons.”\textsuperscript{108} One might expect God to be the end, but what Pius is doing, in harmony with his predecessors, is to ground all social ethics on the fact that man’s final end is in God and not in the state. Man does not exist for the state’s purposes, but the state exists to protect the common good, of which the central place goes to protecting and promoting human rights. Man in turn has these rights so that he has the appropriate space for attaining his proper perfection, namely, the attainment of virtue and true blessedness in the beatific vision. By facilitating the attainment of that end, society is taking God as its end only through the human person. Thus society’s norm and end is man’s own perfection, not the perfection of society considered apart from the perfection of man. Hence Pius says that “the origin and primary scope of social life is the conservation, development and perfection of the human person, helping him to realize accurately the demands and values of religion and

\textsuperscript{106} Pius XI, \textit{Quadragesimo anno} (1931) 86, on the state not having the right to suppress the exercise of the right of private property in light of abuses; \textit{Divini Redemptoris} (1937) 30: “Nor can society systematically void these rights by making their use impossible.”

\textsuperscript{107} Summi pontificatus (1938) 58-59. Cf. Pius’s 1941 Pentecost address commemorating the fiftieth anniversary of \textit{Rerum novarum} (AAS 33 [1941], 222): “…falling into the error that the proper scope of man on earth is society, that society is an end in itself, that man has no other life which awaits him beyond that which ends here below.”

\textsuperscript{108} Mystici corporis (1943) 61.
culture set by the Creator for every man and for all mankind.”

This means that the state must recognize the dignity of the human person as a free creature with an eternal destiny in God. In his 1944 Christmas radio message, *Benignitas et humanitas*, Pius connects his previous teaching on the dignity of the person and priority of human rights with the legitimate desire for democratic freedom. The “bitter experience” of modern dictatorships has led the peoples to call for a greater participation in their own governance, a participation that frees the “individual himself, who, so far from being the object and, as it were, a merely passive element in the social order, is in fact, and must be and continue to be, its subject, its foundation, and its end.”

John XXIII repeats Pius XII’s insights in his own social encyclicals, consolidating the link between man’s nature, dignity, rights, and transcendence beyond political society. John praised the UN Universal Declaration of Human Rights as “a step in the right direction, an approach toward the establishment of a juridical and political ordering of the world community” based on the dignity of the human person.

*DH* 6 would eventually adopt John XXIII’s definition of the common good of society as found in *Mater et magistra* and *Pacem in terris*: “the sum total made up of those conditions of social life by which men are able more fully and expeditiously to pursue their

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110 AAS 37 (1945), 10-23.

111 *Mater et magistra* (1961) 219: “Individual human beings are the foundation, the cause and the end of every social institution”; *Pacem in terris* (1963) 9: “Each individual man is truly a person. His is a nature, that is, endowed with intelligence and free will. As such he has rights and duties, which together flow as a direct consequence of his nature. These rights and duties are universal and inviolable, and therefore altogether inalienable.”

very own perfection.” Yet the path to *DH* is not fully traversed by a personalistic articulation of the common good alone, for the exercise of a universal right to religious liberty is actualized in the presence of an international “new Christendom.”

An International Order of States

The other concomitant development of papal teaching, especially under Pius XII, was the teaching on the desirability and necessity of an international, juridical order of nation-states for the preservation of the rights of the person and peace among men. The order would represent a formalization or specification of the *ius gentium*. This explicit desire dates back to at least Benedict XV, the pope who experienced the many pains of World War I and whose overtures for peace were repeatedly rebuffed. Benedict threw his support behind the idea of an international order of states, the League of Nations having been established within the previous year. The horrors of World War II made the implementation of this idea all the more urgent in the mind of Pius XII, who should be credited with placing the issue securely within Catholic social teaching. Having discussed the idea in his 1940 Christmas radio message, Pius devoted his entire 1941 message to the establishment of an international juridical order, and returned to the topic in his 1942, 1944, and 1951 radio addresses. One recurring rationale for the necessity of an

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115 He had previously mentioned the idea in tandem with “international natural law” or “the law of nations” in his *Summi pontificatus* (1938) 71-74.
international juridical order among states was to manifest, in the aftermath of total war, the natural unity of the human race in Adam/nature and supernatural unity in vocation to the beatific vision through Christ/charity. Such an order would not destroy the sovereignty of the individual states, but it would impose genuine obligations upon them.\footnote{Rommen, \textit{The State in Catholic Thought}, 627-31; cf. Messner, \textit{Social Ethics}, 493-499.} What follows here is a brief study of the notion of an international juridical ordering of states as found in the 1940 and 1941 Christmas addresses.

In the 1940 Christmas radio message, Pius observes the arousal of a desire for a new order among nations, “something more developed, organically sounder, freer and stronger than in the past” (1640).\footnote{Koenig, \textit{Principles for Peace}, nn. 1640ff. Internal references use Koenig’s paragraph numbers.} In light of the world war, people have “the firm determination to establish a new and just national and international order giving security” (1641). Pius then amplifies “the necessary premises for such a new order” in a generally rhetorical manner: “victory over hatred,” “victory over distrust,” “victory over the dismal principle that utility is the foundation and aim of law,” and “victory over egoism” (1644). He left a more systematic attempt to the next year’s radio message.

In that 1941 message, Pius responds to the “mechanico-materialistic character” of modern totalitarian society, a character that among other things renders the individual citizen a mere part of the whole.\footnote{Ibid., 750-762, at pp. 1748-49; AAS 34 (1942), 10-21.} After listing the various abuses that such regimes inflict upon the citizenry and the world, Pius searches for “the wise and unshakable norms of a social order
which, in affairs of national as well as international import, erect an efficacious barrier against the abuse of liberty and against the misuse of power” (1752). He offers a number of “fundamental conditions essential for an international order which will guarantee for all peoples a just and lasting peace” (1757), including respect for the freedom and sovereignty of each nation (1758), for the rights of “national minorities” (1759), and, notably, religious liberty: “Within the limits of a new order founded on moral principles, there is no place for the persecution of religion and of the Church” (1762). Pius defends this freedom since faith is required to have the “courage and moral strength” necessary for rebuilding the Europe and the world. Pius discusses this freedom in terms of true religion, for he speaks of faith as “not only a virtue … also the divine gift” (1762). This is the theological virtue of faith, not merely “faith” or “belief” in a general sense. In what follows, Pius laments the oppression of the Catholic Church and conditions the recovery of Europe on the faith of Catholic Rome. Yet at the end of his message, Pius desires that his benediction “may… also descend on those, who, although not members of the visible body of the Catholic Church, are near to Us in their faith in God and in Jesus Christ, and share with Us Our views with regard to the conditions for peace and its fundamental aims” (1768). Here Pius includes believers in God and in Jesus Christ, for they too have “faith”. One may reasonably read this precision back into Pius’s previous articulation of the essential condition of religious liberty, reading Pius as saying that liberty of religion ought to extend to those outside the membership of the visible Church.
It is also interesting to note the logical order of Pius XII’s 1941 and 1942 Christmas messages. The first deals with the juridical order of nation-states *ad extra*, while the second treats of the juridical order of nation-states *ad intra* as required by the dignity of the human person.\textsuperscript{119} This international to national progression circumstantially supports the theory of Valuet, that the reciprocal recognition of religious liberty made possible in such an international order as proposed by Pius places new demands upon the internal shape of the common good of each nation, so as to allow free religious exercise of all citizens. Thus a new factor enters into the calculus of social ethics. This new situation represents a progression within the law of nations (*ius gentium*) that enables the exercise of the right of religious liberty where that exercise was acceptably suppressed before by the demands of the common good of Catholic nations considered in abstraction from such an international order. The development *ad extra* leads in this way to a modification *ad intra* that activates civil protection for public religious acts stemming from the natural right of the person not to be impeded by the state in fulfilling his duty toward God. In fact, Pius himself makes this connection in the 1942 address: “International relations and internal order are intimately related. International equilibrium and harmony depend on the internal equilibrium and development of the individual States…. It is only, then, by striving for an integral peace, a peace in both fields, that people will be freed from the cruel nightmare of war.”\textsuperscript{120}

\textsuperscript{119} John XXIII’s *Pacem in terris* reverses this order, proceeding from the person to the state to the international order.

\textsuperscript{120} Koenig, *Principles for Peace*, n. 1828.
Elsewhere Pius XII linked the international order to the question of religious liberty. The most important message in this regard was Pius’s 1953 allocution to Italian Catholic jurists, *Ci riesce*. Rhonheimer sees in *Ci riesce* a mere repetition of the standard Leonine doctrine of toleration, whereby in view of the common good the Catholic legislator may tolerate the public expression of non-Catholic worship. The teaching of Pius XII in actuality amplifies the condition of religious liberty found in the 1941 Christmas message. *Ci riesce* is therefore a genuine transitional stage in the doctrinal evolution. This transitional form highlights the difference an international order of states makes for the religious liberty of the citizens of those states. It is a teaching that is concomitant with the emphasis of Pius XI and Pius XII on the duty of the state to provide the conditions necessary for individuals and families to develop themselves toward their own proper perfection. The particular significance of this allocution for the development of *DH* is Pius’s transposition into the international order of the classic problem of toleration within the order of an individual nation-state. He speaks of “one of the questions which arises in a community of peoples, that is, the practical co-existence (*convivenza*) of Catholic with non-Catholic states” (p. 309).

Pius frames the question of toleration in a new way. First he repeats the traditional doctrine, that the common good is a higher norm than the duty to impede or repress religious and

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121 AAS 45 (1953), 794-805. The English translation is that of the Vatican Press Office, as reprinted in Davies, *Second Vatican Council and Religious Liberty*, 305-315. Future citations will simply give page numbers internal to Davies.

122 Rhonheimer, “Benedict XVI’s ‘Hermeneutics of Reform’,” 1035. Rhonheimer is criticizing Basile Valuet’s study of the document, by which Valuet finds Pius promoting a “right to be tolerated.” The term’s ambiguity leads Rhonheimer to understand it in an absurd signification, but Valuet means something quite different.
moral error. Taking God’s own rule of mankind as the archetype of statesmanship, Pius even says that “some circumstances … indicate as the better policy, toleration of error in order to promote a greater good” (p. 311). After all, God reprobates error and false religion, and yet he tolerates their existence in the lives of his human creatures to respect their freedom. Pius goes so far as to say that in such circumstances, in order to attain the common good, God “would not even communicate the right to impede or to repress what is erroneous and false” (p. 311). The new question then is whether “the free exercise of a belief and of a religious or moral practice which possess validity in one of the member states, be not hindered through the entire territory of the community of nations by state laws or coercive measures?” Now “free exercise” seems to entail the public exercise, for the private exercise of religion was hardly a matter of controversy. This is all close, analytically speaking, to saying that there is a right on the part of the citizens of states within such an international order not to be impeded or coerced with regard to public religious practice. Of course, Valuet correctly says that the right of DH 2 cannot be deduced from this allocution. DH treats of the good object of that right, while Ci riesce “treats uniquely the case of unimpeded evil” owing to the state having no right of repression.123 Even so, Ci riesce progresses beyond the nineteenth-century teaching by arguing that “in certain circumstances” the state has no right to repress the public free exercise of erroneous religious belief and practice. In this, Pius XII is embracing a juridically limited state that simply has no right to suppress, in order to better respect the dignity of the human persons who are the citizens of the state.124

123 Valuet, Le droit à la liberté religieuse, 353.

Indeed, this progression is clear in Pius’s proposal for religious toleration in an international order:

Within its own territory and for its own citizens, each state will regulate religious and moral affairs by its own laws. Nevertheless, throughout the whole territory of the international community of states, the citizens of every member-state will be allowed the exercise of their own beliefs and ethical and religious practices, insofar as these do not contravene the penal laws of the state in which they are residing. (p. 309)

In other words, any citizen within the order would have a right to the free exercise of his religion, provided he did not violate the “penal laws of the state”—whether his own or a foreign nation in which he sojourns. Pius seems to have in mind here the concept of personal jurisdiction, a part of the international law that deals with the right to equal treatment and the right to privilege for the traveler and the resident alien.¹²⁵ Such a person is simultaneously under the jurisdiction and protection of his home country and in a more limited way under the jurisdiction of the resident nation. The idea is that resident aliens, barring damage to the essential interests of the host nation, ought to enjoy a privileged status due to the personal jurisdiction the home country exercises. Indeed, this idea goes back to the classic treatment of the rights of the traveller under the *ius gentium* in Vitoria’s *De indiis*.¹²⁶ The limitation on the alien’s privilege would be the

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public order, the essential component of the common good.\footnote{For the idea of \textit{ordo publicus} as found in late nineteenth-century international private and early twentieth-century canon law, see John Henry Hackett, \textit{The Concept of Public Order}, Canon Law Studies, vol. 399 (Washington, DC: Catholic University of America Press, 1959). The relevant canon in the 1917 Code is c. 14, and in the 1983 Code c. 13.} It is only a short step from the rights of the traveller to the rights of a citizen of a world order, himself also the citizen of a given country. Even should his religion differ from that of a country in which he resides or even his own, his world citizenship gives him the right to practice his religion within the constraints of public order. This allocution therefore introduces implicitly the notion of public order into the course of the doctrine’s progress, for penal laws are those that protect the public order, and the just public order limits free exercise (\textit{DH 7}).

Rhonheimer is correct to note that in \textit{Ci riesce} there is no formal declaration of a human right to religious liberty. On the other hand, Valuet is correct to see within this allocution a “right to be tolerated,” and Murray rightly protests against such an objection that “the issue of vocabulary is trivial” in light of the conceptual content of the allocution.\footnote{Murray, “The Problem of Religious Freedom,” 170.} Toleration has a twofold sense that can lend an ambiguity to that phrase, which Rhonheimer criticizes as absurd. Toleration can mean either a right not to be impeded from doing evil, or simply a right not to be impeded by another lacking authority. In the first sense, Pius denies that there is any right to hold to what is false in religious matters: “it must be clearly stated that no human authority, no state, no community of states, whatever be their religious character, can give a positive command or positive authorization to teach or to do that which would be contrary to religious truth and moral good.” On this moral plane, “that which does not correspond to truth or the norm of morality
objectively has no right to exist, to be spread or to be activated” (p. 311). It is on the plane of a juridical order among persons and states, however, that there can be a right not to be impeded in some matter, although that right is capable of abuse. Valuet compares it to the right of parents to educate their children in an erroneous religion, which is clearly a right to be tolerated in the second sense of having a right not to be impeded by the state.\textsuperscript{129}

*Dignitatis humanae* itself acknowledges the importance of an international order to secure peace among men:

The council exhorts Catholics, and it directs a plea to all men, most carefully to consider how greatly necessary religious freedom is, especially in the present condition of the human family. All nations are coming into even closer unity. Men of different cultures and religions are being brought together in closer relationships. There is a growing consciousness of the person responsibility that every man has. All this is evident. Consequently, in order that relationships of peace and harmony be established and maintained within the whole of mankind, it is necessary that religious freedom be everywhere provided with an effective constitutional guarantee and that respect be shown for the high duty and right of man freely to lead his religious life in society. (n. 15, Tanner trans.)

The international order would be based on a growing awareness of the dignity of the human person and the dependence of all men and nations on one another in achieving an international common good that enables the person to flourish.\textsuperscript{130}

Noonan is right insofar as the basic criterion of the development of moral doctrine is the twofold love commandment, which is the core of the natural moral law elevated by the Gospel. Now the natural law forms the core of the *ius gentium*, and so one can say that the *ius gentium* is

\textsuperscript{129} Valuet, *Le droit à la liberté religieuse*, 349.

\textsuperscript{130} All this builds upon that intermediate document *Pacem in terris*, especially its assessment of the United Nations (nn. 142-45).
the “growing end” of the natural law. The notion that specifications in the *ius gentium* rendering formerly permissible suppression of rights no longer permissible could explain the developments in slavery and religious liberty. The organic growth of the *ius gentium* so as to expand the exercise of human rights is also captured in the Anglo-Saxon model praised by Murray. As Elsbernd helpfully explains, the “ahistorical” approach to rights manifested in the French Republic—rights as rational conclusions from the general will—is not the same as the English tradition of rights “as historically accrued and then justified by appeal to the nature of things, or natural law.”

Empathy and experience are indeed the catalysts for such “historically accrued” expansions in the *ius gentium*, and Noonan is correct to emphasize them. But the *ius gentium* is a product of reason, not of sentiment or general will. Pius XII expressed his desire for international unity in his 1940 Christmas radio message:

> Let us hope that mankind and each single nation may grow more mature out of its present tribulations, with eyes able to distinguish between the genuine and the fallacious, with an ear alert for the voice of reason, be it pleasant or unpleasant, with a mind which, open to reality, is really determined to fulfill the demands of life and justice, not only when its own demands are met, but also when the equitable demands of others are heard.

John XXIII incorporated this idea of an international juridical order appropriate to the dignity of the person and his responsible freedom (*Pacem in terris* 7), but it was Pius XII who truly opened the path to *DH*. Murray was correct to interpret *Ci riesce* as a repudiation of Ottaviani’s thesis-hypothesis approach, given the push toward international political unity. Murray wrote that “the

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131 Mary Elsbernd, “Papal Statements on Rights: A Historical Contextual Study of Encyclical Teaching from Pius VI-Pius XI (1791-1939)” (PhD diss., Catholic University of Louvain, 1985), 129.

Pope’s recent discourse seems to accept the principle that the problem of religious freedom must receive some manner of international solution, or of solution within the context of the international community as it is presently coming into existence. I have long felt that this is one of the necessary steps in development.  

Yet another thing is clear at the end of this study. Leo XIII’s doctrine of the duty of the state to render worship to God is not unique to Leo, but was repeated by subsequent popes. Murray’s characterization of Leo’s teaching on this matter as merely “polemical,” and therefore so historically-conditioned that it can be disregarded, is false. Not only Leo but his successors had time enough to calmly assess the Catholic doctrine pertaining to the state. This is why DH affirms in saying that it preserves entire the “traditional teaching” on the moral duty of civil authorities to worship God. It is one thing to say that Liberalism occasioned Leo’s teaching; it is another to say that the occasion allows one to dismiss it as incompatible with the remainder of Leo’s neo-Gelasianism.

One final note about Murray. This chapter shares with Murray the conviction that Pius XII prepared for DH by means of his teaching on the juridically-limited state serving the common good understood in the sense of protecting and enabling the rights of the human

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134 Valuet, La liberté religieuse et la tradition catholique, 443-51, for a similar conclusion. See especially the quotation from MacEvoy on p. 448n1, to the point that while Murray is correct to assert that a duty of the state to worship God is not logically derived from the Gelasian doctrine, nonetheless, Leo teaches it on the grounds that the state is a creature and thus owes something to the Creator.
person. Where this dissertation hesitates to continue with Murray, however, is in his separation between the moral and the juridical spheres and between the spheres of faith and reason. Murray is absolutely correct to insist that not every moral duty is (or ought to be) a juridical one. Further, Murray was right to hold that civil authority is directly responsible for civil peace, and thus had more important norms than expurgating all religious and moral error from society. As seen above, Murray was vindicated on both points by Pius XII in *Ci riesce*. It would indeed be a mistake to move too quickly from a moral duty to a civil duty, a moral norm to a juridical one. Rather, what is novel is that Murray’s analysis, based on his premised separation between morality and the juridical shaping of social spaces, implies the converse: that some juridical duties are not moral. Yet there is no valid conversion from a particular negative proposition. Rather, the popes catalogued in this chapter teach both that the juridical order is entirely encompassed by the moral, and that therefore juridical duties are moral duties. They tie together the objective moral order and the humanly-crafted juridical order of society, even granting John XXIII’s “freedom” teaching.

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135 Murray, “Church and State at Vatican II,” 205-6: “The Declaration embraces the political doctrine of Pius XII on the juridical state… its primary function being juridical, namely, the protection and promotion of the rights of man and the facilitation of the performance of man’s native duties. The primacy of this function is based on Pius XII’s personalist conception of society.”

136 There is a parallel in papal economic teaching, namely, that while economics has its own proper autonomy, the popes understand economics to be a kind of moral philosophy and therefore governed by higher moral principles that cannot be eradicated by any set of economic data. See Pius XI, *Divini Redemptoris* (1937) 34: “Thus even in the sphere of social-economics, although the Church has never proposed a definite technical system, since this is not her field, she has nevertheless clearly outlined the guiding principles which, while susceptible of varied concrete applications according to the diversified conditions of times and places and peoples, indicates the safe way of securing the happy progress of society.”

137 Importantly, Murray claimed not to separate the juridical from the moral order in a post-conciliar work (“Arguments for the Human Right to Religious Freedom,” 238).
Indeed, Murray’s position seems to lead functionally to a kind of Rawlsian public reason position—a kind of naturalistic laicism—although Murray’s work in *We Hold These Truths* at times seems to militate against this conclusion. Murray’s principles are why post-conciliar American liberal Catholics, such as Charles Curran, Leslie Griffin, and Hermínio Rico, have argued that John Paul II unduly restricted the meaning of *DH* by privileging “truth” over “freedom.” These scholars have simply adopted Murray’s principles of historical consciousness and the separation between the juridical and the natural and revealed moral law, and they have developed them to their logical conclusion. Murray may well have been displeased by how his principles have been developed by later scholars, but this would only show that this part of his doctrine had grown in a heterogeneous way alongside his other insights and basic Catholic commitments. In this regard, one notices with similar irony that Leon Hooper laments how little Murray was able to push his ecumenical work toward a more relative notion of truth, because Murray was “stopped by a notion of Catholic truths as timeless and eternally complete.” At the same time, Murray himself declared just prior to his death in 1967 that the traditional Catholic proscription of contraception was founded on “classicism” and had to be discarded in favor of a view more in line with “historical consciousness.” Murray’s legacy is crucial and yet mixed in its appropriation of prior Church teaching in social matters.

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138 A great tension pervades *We Hold These Truths*, insofar as Murray both accepts American politico-religious principles as valid in chapter two, only to repudiate their animating principles derived from Lockean and Protestant origins in later chapters. My thanks to Steven Brust for this point.

139 Murray, “Church and State at Vatican II,” 199.

This chapter completes the historico-theological investigation of the previous chapter by analyzing the meaning of the final text of *DH*, with attention to the explanatory speeches (*relationes*) given to the council fathers by the Declaration’s drafting commission from the Secretariat for Christian Unity. Although I have consulted histories of the council, this chapter is not a history. These sometimes fail to consider the theological import of the evolution of *DH*, framing the changes almost exclusively in terms of a competition between factions, at times even with a chauvinistic regard for the American contribution. At other times such histories tend toward or embody a “hermeneutic of discontinuity and rupture” not embraced by the post-conciliar Magisterium. This chapter does, however, concern the meaning of the final text of *DH* as promulgated by Paul VI at the close of the Second Vatican Council, in light of the *relationes*. The method of this chapter is first to give an account of the genre, authority and textual history of *DH*. Then the chapter will analyze select issues derived from the final form of the text: the object of the right to religious liberty, limitations on its exercise, the competence and knowledge

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3 See Benedict XVI, “Address to the Roman Curia,” x.
of civil authorities about the human person and the good of religion, establishment of religion, and the drafters’ views of the development of doctrine. The final section of the chapter addresses an issue regarding public order in the reception of DH during the pontificate of John Paul II.

The conciliar relationes, although neglected in scholarship focusing on the theological interpretation of DH, are essential to interpreting the Declaration. This dissertation therefore aims to synthesize the most important aspects of these relationes for the sake of better understanding the final form of the document. A relatio was an oral or written report presented to the bishops at Vatican II to explain the nature and meaning of whatever draft lay before them. The term itself dates back to the Roman Republic and Empire, for it was the name given to a report presented to the senate or to the emperor. Then, as at Vatican II, the presenter of the report was called the relator. For the drafting subcommission of the Secretariat for Christian Unity responsible for DH, this was the bishop of Bruges, Émile-Joseph de Smedt. There was only an oral report for the “first” draft, which was actually the fifth chapter of the incipient document de Oecumenismo, later Unitatis redintegratio. For each of the free-standing drafts of DH, there was a relatio written by the subcommission and distributed to the fathers, accompanied by an oral relatio delivered on the council floor by de Smedt.

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4 Exceptions to this neglect of the relationes among anglophone scholars include Richard J. Regan, SJ, Conflict and Consensus: Religious Freedom and the Second Vatican Council (New York: Macmillan, 1967); Harrison, Religious Liberty and Contraception. Important francophone works that utilize the relationes include Valuet’s La liberté religieuse et la tradition catholique and Le droit à la liberté religieuse.

5 The relationes for all documents of Vatican II are located in the Acta synodalia sacrosancti concilii oecumenici Vaticani II, abbreviated hereafter by AS followed by volume, part, and page number. As mentioned in the first chapter of this dissertation, all translations from AS and DH are the author’s own unless otherwise indicated. For the first draft, still part of de oecumenismo, see AS II/5, 485-95, introducing the text at pp. 433-41. For the second draft of DH, known as the declaratio prior, the text and relationes are: AS III/2, 317-27 (text), 345-48 (written relatio) and 348-53 (oral relatio). For the third draft, known as the textus emendatus: AS III/8,
The *relationes* are important because they enable a theologian to ascertain the correct meaning of *DH*, that is, to know what *DH* actually said and did not say. They are the best record for disclosing to later generations what the intention of the council was in passing the document. Vatican II itself recognized this characteristic of a *relatio*, for *Lumen gentium* 25 utilizes the *relatio* of Vatican I’s *Pastor aeternus*. In *LG* 25 footnotes 43-46, the council refers to Bishop Vincent Ferrer Gasser’s *relatio* at Vatican I, which explained the sections of *Pastor aeternus* treating the infallibility of the pope and the reception of infallibly defined doctrines by the Church. Another fact confirms the importance of a *relatio* for disclosing the mind of the Magisterium in promulgating conciliar texts. The Congregation of the Doctrine of the Faith, in responding to *dubia* presented by Archbishop Lefebvre, utilized heavily the *relationes* in interpreting the final text of *Dignitatis humanae* and demonstrating its continuity with prior papal teachings. This is especially true of the *relationes* of the final drafts, since the latter drafts incorporated a new method and new material from the first two. Even the final two drafts accepted important amendments from council fathers otherwise favorable to the document.

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426-49 (text), 449-56 (oral) and 456-66 (written). For the fourth draft, *textus reemendatus*: AS IV/1, 146-67 (text), 168-95 (written) and 196-99 (oral); cf. De Smedt’s concluding speech at pp. 432-33. Fifth draft, *textus recognitus* (the text was now “in possession” of the council, having passed the previous vote): AS IV/5, 77-98 (text), 99-104 (oral) and 105-58 (written). Sixth and final draft, *textus denuo recognitus*: AS IV/6, 703-18 (text), 719-23 (oral) and 723-80 (written).


also true that the final three written relationes for DH include rather plodding reckonings with the minutest suggestions of the small minority of bishops completely opposed to the document. When treating topically the issues raised in the second section of this chapter, I will advert to relevant relationes. This dissertation places less emphasis on the speeches made by council fathers as such, for these are less dispositive than the relationes for determining the meaning of the drafts and final text. Above all, the final form of the document is definitive, while those relationes most proximate to the final draft play a greater role in the interpretive task than those introducing the earlier drafts.

Genre, Authority, History

Genre and Authority

The Declaration on Religious Liberty, Dignitatis humanae, went through six drafts before being promulgated by Paul VI on December 7, 1965. The modern concerns and conditions of the Church and of the world that led to the topic’s consideration at Vatican II are well-known, and partially recounted in the last chapter: the achievement of peace among nations and within 283-94). This speech was certainly among the most memorable of the council. Yet this first oral relatio was based in large part on first draft’s argument from the right of erroneous conscience to toleration, an approach abandoned by the later drafts. Further, De Smedt’s relatio sometimes gives tendentious readings of previous papal teachings in narrating the course of the doctrinal development. For example, the relatio interprets the teaching of Pacem in terris on the upright norm of conscience in a more definite sense than the text warrants, saying it affirmed the right of sincere but erroneous conscience to respect in civil society. The relatio also is informed by Murray’s hermeneutic of nineteenth-century teaching as historically-conditioned by the polemic with European Liberalism (see AS II/5, 490, 492, respectively). In fact, Murray drafted this developmental “story-line” for De Smedt (Pelotte, John Courtney Murray: Theologian in Conflict, 84).
nations by means of an international juridical order and constitutional democracy, the persistence of religious pluralism and totalitarian nation-states, the needs of the ecumenical movement, and the greater demand for freedom within the nation-state. The genre of *Dignitatis humanae* is that of a declaration, albeit one of an ecumenical council. A declaration is “the act of declaring or bringing to another’s or the public’s awareness,” and thus it pertains to things such as the authentic interpretation of a law. A declaration does not create a new situation, but announces what is already the case. Applied to doctrine, “it is a matter of proclaiming publicly a doctrine or convictions already acquired, or of making known the authentic interpretation of positions already acquired.” Hittinger says that, unlike constitutions and decrees, declarations treat “matters and persons who are not under the public law of the Church” and therefore lack “binding force.” It is true that some declarations historically have lacked juridical force, for example some issued by the French episcopate. Hittinger mentions *Nostra aetate* as evidence that declarations are marked by a concern for people or matters outside of the Church’s jurisdiction, but this is only true of the two declarations written by the Secretariat for Christian Unity. *Gravissimum educationis*, the council’s Declaration on Christian education, seems to be a declaration only insofar as it “declares” general principles to be applied or worked out later after the Council by bishops conferences, dioceses, and families (cf. *GE* proe.).

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11 Congar, “Quel faut-il entendre par ‘Déclaration’?,” 50.

12 Ibid., 51-52.
declaration from other documents by its attention to some extra-ecclesial or mixed matter is further complicated by the existence of *Gaudium et spes*, the Pastoral Constitution on the Church in the Modern World. Regardless, *DH* does having “binding force” on the faithful as an authentic magisterial act, in this way obliging the religious submission of mind and will. All things being equal *DH* has “the same value and the same force of obligation as the decrees and the constitutions of the same Council.”

*DH* is a declaration because it “declares” (n. 2, twice) to the world the Church’s mind on the right to religious liberty. It gives the authentic interpretation of the Catholic Church’s position on the matter, already implicitly held by virtue of the teaching of “the more recent popes” (n. 1). While it is true that *DH* touches directly on policy matters concerning all mankind and while the other declarations of Vatican II are practical (*Nosta aetate* and *Gravissimum educationis*, respectively), *DH* has an undoubted doctrinal character.

Having treated the genre of *DH*, its authority as an authentic act of the Magisterium requires clarification. *DH* did not definitively promulgate any doctrine to be believed or firmly held by the faithful, for the council did not manifest any intention to do such a thing in the document. Thus this is a question of the third level of magisterial teaching, the merely authentic

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13 Ibid., 51. Congar speaks directly of *DH* 1-2, but he admits the legitimacy of whether the obligation of nn. 3-15 is as high.

14 Cf. Ibid., 52. In this way the document is similar to two magisterial acts of John Paul II, wherein he made explicit already settled points of Church teaching on the matter of the sacrament of order and on the moral disorder of procured directly abortion (*Ordinatio sacerdotalis* [1994] 4: “declaramus”; *Evangelium vitae* [1995] 62: “declaramus”). In both cases John Paul II founded his declaration on the universal ordinary Magisterium.

15 Congar holds that *Nosta aetate* also develops doctrine in regard to the Jews (“Ques faut-il entendre par ‘Declaration’?,” 48.).

16 Only doctrines that “are manifestly established” as infallibly defined are such (*CIC* 749 § 3). This is indicated by the mode of teaching used by the pope or college of bishops.
or non-definitive. Nonetheless, there are grades within this third level of teaching, as chapter two showed: doctrinal teaching and prudential intervention. Teaching documents do not only differ in weight among themselves, but even the parts of a single document differ in weight. These shades of authority are exhibited in the kind of document and in the wording selected to convey the teaching. The authority of *DH* as a whole is higher than other acts of ordinary, non-infallible teaching, for it is an act of an ecumenical council. On November 14, 1964, in response to a question about the weight of *Lumen gentium*, the secretary-general of the Council indicated the level of authority of Vatican II’s documents, at the direction of Paul VI and the council’s Theological Commission. The Council’s secretary general, Pericles Felici, said that only those things were to be definitively held in faith or morals by the Church that the council “openly declared to be such.” Even so, “the rest of that which the holy council proposes, being the teaching of the Church’s supreme Magisterium, all the faithful ought to receive and embrace according to the mind of the holy council itself, which is made known either by the subject matter or the manner of teaching, according to the rules of theological interpretation.”\(^{17}\) Thus the council only proposed some teaching to be definitively held when this was openly declared to be definitively held.\(^ {18}\) All else taught by the Council, however, was still the teaching of “the Church’s supreme Magisterium.”

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\(^{17}\) AS III/8, 10. This note originates in a clarification of the council’s Theological Commission (AS II/6, 305). Paul VI later ordered that the clarification, along with the *nota explicativa praevia* concerning the meaning of episcopal collegiality be printed with *Lumen gentium*, since it constituted a hermeneutical key to the doctrinal value of the text (AS VI/3, 561). See Valuet, *Le droit à la liberté religieuse*, 369-370. The same hermeneutical clarification was repeated apropos *Dei Verbum* (AS IV/1, 50). For more on the *nota explicativa praevia*, see Luis Antonio G. Tagle’s treatment in Alberigo and Komonchak, *History of Vatican II*, IV:392-45.

\(^{18}\) Not to be confused with “declared” in the more general sense, for the word typically used in defining something infallibly is “define.”
Within *DH*, as Congar, Pavan, and Valuet point out, the most authoritative portion is the first two sections (nn. 1-2). The weight is carried by the three words indicating professions of faith in already defined doctrines (n. 1), and also by the two words indicating new formal declarations (n. 2). The three professions of faith are in the first section, second and third paragraphs:

So first, this holy council professes [*profitetur*] that God himself has made known to the human race the way through which, by serving him, men may be saved and beatified in Christ. We believe [*credimus*] that this one true religionsubsists in the Catholic and Apostolic Church. ... All men truly are held to seek the truth, above all in those things that respect God and his Church, and after having recognized it, to embrace and keep that truth. Indeed, this holy council equally professes [*profitetur*] that these duties touch and bind the conscience of men, and that the truth does not impose itself other than by the power of truth itself. (*DH* 1)

Here the Declaration recalls three things the Church already believes, holds, and teaches, above all to make it clear that the Declaration does not entail the acceptance of indifferentism or relativism. Next are the two new declarations in the first paragraph of section two: “This Vatican Council declares [*declarat*] that the human person has a right to religious liberty.... Further this council declares [*declarat*] that the right to religious liberty is truly based on the very dignity of the human person, known as such both by the revealed word of God and by reason itself” (*DH* 2). Since these are “solemn” statements, they belong to the highest level of non-

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20 These paragraphs were inserted into the fifth draft, replacing a smaller paragraph that had been inserted in the fourth draft (AS IV/5, 77-78).

definitive teaching; they are doctrinal teachings, not mere prudential interventions.\textsuperscript{22} One should not therefore look for any reversal in the teaching, but only for refinement and an increase in their authority, were the declarations ever to be formally defined. The rest of the document offers arguments from reason and revelation for the existence of the right, implications for the exercise of the right, guidance for political authorities, and so on. Except where these later sections repeat definitive or long-repeated teachings, they are merely authentic teachings of a lower authority than the declarations of \textit{DH} 2.

Two Moments in the Drafting History

Before proceeding to an analysis of the pertinent issues raised by the official text of \textit{DH}, it will be helpful to give a brief history of the six drafts, for it reveals something of the theological contours of the document.\textsuperscript{23} There were two critical moments in the drafting of \textit{DH}; for want of better terms these may be called the “juridical” and the “ontological” moments.

These two moments both represent important advances in grounding the right to religious liberty

\textsuperscript{22} In the solemnity of \textit{DH} 2 one finds a reason for not expecting a reversal in the teaching that there is a natural right to religious liberty. This helps complete Noonan’s confidence that the doctrine will not change.

\textsuperscript{23} For other historical accounts, see Murray, “Moment in Its Legislative History”; Hamer, “Historique du texte de la Déclaration,” 53-110; Regan, \textit{Conflict and Consensus}; Pavan, “Declaration on Religious Freedom,” 49-62; Marilyn Wallace, RSM, “The Right of Religious Liberty and Its Basis in the Theological Literature of the French Language (1940-1980): An Analysis and Critique of the Contributions of Guy de Broglie, René Coste, Philippe Delhaye, and Louis Janssens” (PhD diss., The Catholic University of America, 1987); Griffin, “Commentary on \textit{DH},” 247-50. For discussion of the Church-state position contained in the rejected \textit{De ecclesia} text of the Theological Commission, see Pavan, “Declaration on Religious Freedom,” 49-50; Valuet, \textit{Le droit à la liberté religieuse}, 357-59. For an English translation, see Davies, \textit{The Second Vatican Council and Religious Liberty}, 295-302. That text, presented by Ottaviani, proposed that public powers over a majority-Catholic people were bound to worship God by associating the state itself with the public worship of the Catholic Church. The public worship of non-Catholic cults could be permitted by “a just tolerance, even sanctioned by laws [that is, a civil right], according to the circumstances,” but not as the civil expression of a natural right. All in all, the document is a summary of Leo XIII’s doctrine. For a more detailed expression of Ottaviani’s pre-conciliar position, see his \textit{Institutiones iuris publici ecclesiastici}, 2:46-77.
declared by *DH*. The two moments overlap somewhat, as the juridical moment includes the third (Nov. 1964) and fourth (Sept. 1965) drafts; and the ontological moment includes the fourth, fifth (Oct. 1965), and sixth (Nov. 1965). While the first juridical moment constitutes a repudiation and replacement of the first two drafts (Nov. 1963 and Sept. 1964), the second ontological moment was an attempt to complete the juridical moment.

To understand the first moment one must understand the grounding for the right offered in the first drafts of *DH*. In the pre-conciliar “Fribourg Document,” written in part by De Smedt and Jerôme Hamer, the right is expressed in terms of the virtue of toleration informed by Christian charity, as well as an analogy from the freedom of the act of faith. From the beginning, the document is aware of a growing consciousness of the dignity of the human person and that the social conditions of the modern world were undergoing an “evolution”. 24 Thus, while the Fribourg Draft marshaled its argumentation from the supernatural order, it also had in view the nature of the human person and his dignity. At the council itself, the Secretariat for Christian Unity was given charge of the topic in preference to the Theological Commission. 25 The first conciliar draft (11 Nov 1963), 26 still a part of the document on ecumenism, displaced the dignity of the person as the foundation of toleration with a new “center of gravity” (Hamer’s phrase). 27

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24 Hamer, “Histoirque du texte de la Déclaration,” 55-57. Supporting the previous chapter’s identification of the personalist conception of the state and the development of the international order for the development on religious liberty, this Fribourg document points to both elements, basing itself in part on Pius XII’s *Ci riesce*. In the distant background is the Belgian Jesuit A. Vermeersch’s 1912 book *La Tolérance*.

25 The SUC preparatory document will not be discussed here for sake of space; see Hamer, “Histoirque du texte de la Déclaration,” 57-60.

26 AS II/5, 433-41

This new element was a theology of the sincerely erroneous conscience. It was natural for many fathers to conclude that religious liberty was based on civil tolerance of erroneous consciences.\textsuperscript{28}

The doctrinal nexus of the first draft, therefore, was the connection between ecumenism, erroneous conscience, and the virtue of tolerance. I have already mentioned Murray’s argument that there is a \textit{non sequitur} from this doctrinal line to that of a constitutionally-protected natural right.\textsuperscript{29} Besides a number of council fathers, other theologians such as Guy de Broglie concurred in this assessment of the argumentation as invalid.\textsuperscript{30} An erroneous conscience could be tolerated, but could not demand some necessary legal protection.\textsuperscript{31} Limitations on religious freedom in the first conciliar draft were the common good and the rights of others.\textsuperscript{32} Murray would find this unsatisfactory in revising the later drafts, for the common good could become a totalitarian \textit{raison d’État}, while the rights of others would likewise lead to the majority asserting its rights over minority exercise.\textsuperscript{33} Whatever the shortcomings of the first draft, De Smedt’s \textit{relatio} did make it clear that religious liberty was not a question of the freedom of the person from truth or

\textsuperscript{28} Ibid., 62.

\textsuperscript{29} Murray, “Moment in Its Legislative History,” 16-27.

\textsuperscript{30} Guy de Broglie, SJ, \textit{Le Droit naturel à la liberté religieuse} (Paris: Beauchesne, 1964); Guy de Broglie, SJ, \textit{Problèmes chrétiens sur la Liberté religieuse} (Paris: Beauchesne, 1965). Broglie wrote these short treatises during the council to influence the Declaration’s redactions. His \textit{Le Droit naturel à la liberté religieuse} is cited in footnote 17 of the third draft (see AS III/8, 445). This footnote is dropped by the fourth draft. Some footnotes of the draft, even of the final draft, contained references to secular and Protestant declarations, catalogues of modern constitutions, and studies by private scholars (e.g. Lecler’s \textit{Histoire de la tolérance religieuse au siècle de la Réforme}; cf. AS IV/6, 714). In the promulgated version no references other than papal, scriptural, and traditional citations remain. For an analysis of Broglie’s argument against the “erroneous conscience” approach, see Wallace, “Right of Religious Liberty and Its Basis in the Theological Literature of the French Language,” 71-78.


\textsuperscript{32} Hamer, “Historique du texte de la Déclaration,” 61-63; AS II/5, 435.

God, but a natural human right of immunity from the state in following the dictates of one’s conscience in matters religious. In this way the oral relatio anticipated the coming “juridical” moment. The conciliar debate began after the second draft, and the heated and protracted discussion has been well documented by others. The second draft emphasized that the greatest dignity of the human person derived from his “divine vocation” to salvation in God, a vocation that is the foundation for religious liberty. This claim emphasizes what de Broglie would call the “sacral right” of religious liberty, and which popes had clearly taught. Yet such a grounding does not by itself yield a general right of freedom from the state in matters religious, which was for the most part only latent in prior papal teachings.

The “juridical” moment in the history of the document arrived with the third draft. Earlier Murray had shaped the debate behind the scenes by distributing an important essay and coaching the American bishops before their floor speeches. It was the third draft, primarily written by Murray, that advanced his characteristic juridical and social approach to the question. The third draft consequently had to be introduced by De Smedt as a substantially different version than the one voted on at the previous session of the council. Murray himself identifies the transition from the first two drafts to the third as the key moment in the history of DH. The third conciliar...
draft dropped the fallacious appeal to erroneous conscience and clarified that the right of religious liberty was not an empowerment to follow whatever one thinks in religious matters, but an immunity from the state in acting or not acting in religious matters. Further, this third draft introduced the idea of public order, in distinction to common good, as the juridical limitation on the exercise of religious liberty actionable by public authority. The public order concept simultaneously limits the scope of government coercion and favors the freedom of citizens in religious matters.\textsuperscript{39}

The second, “ontological” moment was the result of the intervention of francophone bishops, such as Sauvage and Ancel, and allied francophone theologians, such as Ha\'mer, Congar, and Guy de Broglie. Their concerns correspond with those of other figures, such as the Polish archbishop Karol Wojtyla. This “ontological” moment in the drafting process was the inclusion into the fourth, fifth, and sixth drafts of a more objective grounding for the right of religious liberty in the human person’s rational nature and destiny in God, and clear statements about the duty of the human person to the truth and the Catholic faith. These were requested by a number of bishops from various countries, but it has been characteristically ascribed to the “French school” (denoting the national French bishops but also certain francophone Belgians). Already in the fourth draft, written in part by Murray but in dialogue with French theologians,\textsuperscript{40} the French school’s requests made an impact. Representing over a hundred French bishops and thirty-one


\textsuperscript{40} On Murray’s exchanges with de Broglie, see Regan, \textit{Conflict and Consensus}, 127-129; Wallace, “Right of Religious Liberty and Its Basis in the Theological Literature of the French Language,” ch. 2.
Indonesian bishops, Ancel asked after the vote on the fourth draft that the “nexus” between the juridical right to religious liberty and the human obligation to seek for the truth be stated positively in the next draft, which would show the fundamentum ontologicum for the liberty in human nature itself. The “French school” argued that religious liberty was a universal right grounded by theological anthropology: that man is a free being made in the image of God, owing God worship and destined for God’s friendship. An “ontological ground” would also show how the species of religious liberty offered by the Council is neither founded upon nor tends to indifferentism or relativism. Ancel therefore agreed in his intervention with the requests by Cardinal Urbani that the next draft state what duty religious liberty is for and that the Catholic faith is the true religion. Both Hâmer, one of the drafters, and Regan count Ancel’s intervention as the most important for shaping the subsequent fifth draft, in which drafting Ancel himself would participate. A similar request from Archbishop Wojtyla, that the document base its argument more on the moral law and less on current constitutional practice, was made just before Ancel’s speech.

These interventions represented a dissatisfaction with a text that seemed to overemphasize the juridical grounding for the natural right, and a desire to connect the juridical

41 AS IV/2, 17.
42 Cf. Ancel’s oratio, AS IV/2, 17.
43 AS IV/1, 211-13.
44 Hamer, “Historique du texte de la Déclaration,” 94-95; Regan, Conflict and Consensus, 151.
45 Regan, Conflict and Consensus, 157.
46 AS IV/2, 11-13; cf. his written animadversio at pp. 292-93.
order provided by Murray to the order of being, especially the human person as imago Dei and his vocation to share in the beatitude of the Triune God. There were some “French” who insisted on reverting to the order of treatment of the original Fribourg draft, that of moving from the supernatural order to the natural. The perceived opposition between natural law and revelation should be understood in terms of the concrete theologies of both sides: the natural law is Murray’s denuded, juridically-ignorant natural law, while the French revelation is the revelation of the true nature of the human person in the light of Christ. As Murray made clear to de Broglie, however, since the declaration was aimed at all men, the priority of natural reasoning over theological reasoning would be retained.47 In this way, the “French” line was capable of incorporating Murray’s juridical insights, insofar as both avoided basing religious liberty on some subjective disposition, such as erroneous conscience. The relationship was not reciprocal, however, for Murray believed the ontological grounding argument to be alien to jurisprudence as a discipline and a hindrance to dialogue in political society.48 This is not to say that Murray regarded the French line as a variety of the Ottaviani-Spanish integralist school. On the contrary, Murray regarded the French line to share the same genus as his position, because it arrived at the same conclusion. Yet Murray also regarded the French view as somewhat beholden to the ahistorical classicism that, to his mind, characterized the Ottaviani school. The French position

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47 Cf. the fourth written relatio, AS IV/1, 185-6. De Broglie accepted Murray’s order of presentation, in distinction from other “French school” theologians, such as Janssens. See Broglie, Problèmes chrétiens sur la Liberté religieuse, 39-63.

48 Hermínio Rico admits that Murray settled for the final text because, whatever theological appeals were contained therein, the final text also contained Murray’s political principle of equality before the law. According to Rico, Murray accepted only the French line so that the Declaration would be acceptable to the Europeans (John Paul II and the Legacy of Dignitatis Humanae [Washington, DC: Georgetown University Press, 2002], 50).
was prone to “overtheologizing” the issue.\textsuperscript{49} Whatever the case, Murray sought to mitigate the French line in his post-conciliar commentaries and articles, interpreting the final draft of \textit{DH} through his own position.\textsuperscript{50} Murray himself had had to drop out of the remainder of the drafting process with a collapsed lung soon after the vote on the fourth draft on 21 Sept 1965. In his absence, “the theological dimension received greater emphasis at the expense of the more strictly juridical or rational argument proposed by Murray.”\textsuperscript{51}

The fifth draft thus reflected the “ontological” moment by stating more fully the duty to find the truth about God; by clarifying that the right was social and civil, not a right against God or the Church; and by improving the argument from revelation.\textsuperscript{52} Two paragraphs on the true religion of Catholicism and the human person’s duty toward truth were inserted, which would later become \textit{DH} 1 §§ 2-3. Further, an entire new paragraph on the human inclination to religious truth was inserted, which would eventually become \textit{DH} 2 § 2.\textsuperscript{53} De Smedt’s oral \textit{relatio} to the fifth draft introduced these paragraphs using Ancel’s language of the \textit{fundamentum ontologicum},

\begin{itemize}
  \item \textsuperscript{49} Murray, “The Problem of Religious Freedom,” 139-40.
  \item \textsuperscript{50} This is accepted by scholars both hostile and sympathetic to Murray, e.g., Harrison, “Murray: A Reliable Interpreter?,” 152-62; Rico, \textit{John Paul II and the Legacy of Dignitatis Humanae}, 50-51. For an example of Murray’s minimizing of the French line, see his preference for the “personal responsibility” ground that appeals to “non-believers” over the grounds intelligible only “to those who believe in God, in objective order of truth and morality, and in the obligation to seek the truth” (Murray, “Religious Freedom,” 680-81; cf. Murray, “The Problem of Religious Freedom,” 141).
  \item \textsuperscript{51} Alberigo and Komonchak, \textit{History of Vatican II}, 5:114. Davies is therefore mistaken to justify his bypassing of the French position on the basis that “the final text of the Declaration… is virtually the Murray thesis” (\textit{Second Vatican Council and Religious Liberty}, 319n1).
  \item \textsuperscript{52} Hamer, “Historique du texte de la Déclaration,” 96-98.
  \item \textsuperscript{53} AS IV/5, 79; cf. Alberigo and Komonchak, \textit{History of Vatican II}, 5:116.
\end{itemize}
acknowledging “the desire of some fathers” for an exposition of the dignity of the human person terms of man’s searching for, assenting to, and living his life in the truth. 54

In summary, one should therefore interpret the meaning of the final draft of DH in accordance with both of these crucial moments in its drafting process, the juridical (focused on the state’s limitation in light of modern demands for freedom) and the ontological (focused on the truth of man’s nature and his vocation in God). There is a tendency among some interpreters to take Murray’s moment the basic intention of the text and the French “ontological” moment as a kind of inconsistent tack-on. 55 This narrative is prejudicial to the text as written and highlights the American contribution to the Church’s teaching at the expense of the wisdom of the Church universal. 56 Diminishing a document’s content by the argument that some passage was only included to appease the minority is out of bounds, for this implies that the content of the text

54 AS IV/5, 100; cf. the written relatio on 151. The drafting committee rejected a request between the fifth and sixth drafts to expunge this paragraph (AS IV/6, 736).

55 Rico, John Paul II and the Legacy of Dignitatis Humanae, 29; Griffin, “Commentary on DH,” 254. Those who see DH as a typically American and Murrayite document tend to follow Murray in deploring that the vote on the third draft was postponed on 19 November 1964 until the fourth session, labeling the day “Black Thursday” or, in Murray’s phrase, the “dies irae” (Pelotte, John Courtney Murray: Theologian in Conflict, 96; Griffin, “Commentary on DH,” 249). Yet this delay was correct on procedural grounds, for the Secretariat had given the council fathers only two days to assess a substantially new draft of de libertate religiosa. Tagle offers a good treatment of the “black week” in Alberigo and Komonchak, History of Vatican II, IV:388-452. The substantive argument presented by the minority in requesting a delayed vote was that the textus emendatus was so different from the textus prior that it required more time to assess before a vote. Tagle concludes: “the delay of the vote on the Declaration on Religious Freedom helped produce a better and more balanced document” (p. 452). Even Murray would later admit that “due to this delay we have a clearer and stronger text” (Edward Gaffey, “Religious Liberty and the Development of Doctrine: An Interview with John C. Murray,” Catholic World 204 [1967], 277).

56 This contrasts with the post-conciliar perspective of an American bishop who had served on the Declaration’s drafting subcommission of the Secretariat for Christian Unity (Ernest J. Primeau, “The Right Reverend Ernest J. Primeau to the Reverend Monsignor Vincent A. Yzermans, May 16, 1966”): “I fear that you are going to give the inaccurate impression that this document was exclusively the work of the Americans at the Council, or nearly so. … My impression is that you will be accused of chauvinism if you allow your introduction to religious freedom to stand as it is, without any reference to the others who played key roles in the preparation of the declaration.”
need not be taken too seriously, and that the true teaching of a council is found in a ghostly level of meaning or in the political actions of this or that group. This position also adopts the shakier aspect of Murray’s own approach to doctrinal development, reading documents at an intentional level often contradicted by the words on the page.

Murray was certainly aware that the ontological framework had taken primary place in the final draft, with his juridical line put in a subordinate place. After the council he criticized the insufficiency of the “ontological” line for yielding a civil right of religious liberty. Murray points out that in past ages man’s inclination and duty to seek the truth about God was seen as the basis for public power suppressing public propagation of religious error, since that propagation would “thus cause harm to the public good.” Murray uses this insufficiency to shift attention back to his juridical argument. In response to Murray, one must distinguish. First, if Murray’s argument merely holds the insufficiency of the “ontological” moment for yielding the complete position of DH, then one should concede this. Speaking from the perspective of the historical process of deliberation within the Church and at the council, both the juridical moment and the ontological moment were necessary to achieve DH without destroying the principles that

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58 Ibid., 236.
59 Cf. Regan, Conflict and Consensus, 173: “The argument for religious freedom from the right and duty to search for truth thus must have recourse to the constitutional principle of the limited competence of government in relation to the quest for values proper to the human spirit.”
animated previous teachings.\textsuperscript{61} Second, if Murray’s objection entails the stronger position, that the ontological moment is unnecessary in the logical sense, this one should deny as tending toward discontinuity in the development and to the separation of the juridical and the moral that Murray himself disclaims.\textsuperscript{62}

Indeed, Murray does intend the stronger objection that no reference to the inclination to truth is needed, for he provides a two-part argument that “is sufficient … nothing else [being] required” to ground the right to religious liberty.\textsuperscript{63} Although Murray incorporates the Council’s less restrictive formula of state incompetence in religious matters into his argument, his argument itself is an advanced version of his previous argument equating human dignity with the capacity to arrive at a responsible personal decision, with social and political consequences deduced from that dignity. The first part of his argument is a general argument for civil liberty based on the natural rights of the human person, and the second part of the argument is a specification of the latter yielding a right of religious liberty. The first, general argument proceeds by linking five principles in succession to arrive at “a kind of vision of the human

\textsuperscript{61} In fact, the theory of Valuet would hold that, although both arguments are necessary, it is only within the frame of an addition to the \textit{ius gentium} of a clause of reciprocity that both arguments together are sufficient. See chapter five of this dissertation.

\textsuperscript{62} Ibid., 236: “Admittedly it was mainly pastoral considerations that led the Fathers to accept this first argument in the Declaration, the argument that situations the ontological roots of religious freedom in the obligation to seek the truth. Some Fathers feared the establishment of a kind of separation of truth and freedom, or more exactly, a separation between the order of truth and the juridical order that equips man with rights against others. Of course this was an entirely legitimate concern. Still, the speculative question remains: Is it correct to place the ontological ground for religious freedom in man’s natural and moral relationships to truth? On this point doubt may be allowed.”

\textsuperscript{63} Ibid., 241.
person in society and of society itself.” The five principles are the following: (1) The “ontological principle” of the dignity of the person, which “consists formally in the person’s responsibility for himself,” in his “act[ing] by his own counsel and purpose.” This is not the same usage of the term “ontological foundation” as the French school, for Murray says that the Declaration’s language “about the natural human impulse to seek truth and about the person’s moral obligation to live according to the truth once found” is language that “illustrates the first ontological principle and the second social principle” of Murray’s argument. In other words, as an illustration that language is accidental to Murray’s general argument for the rights of the person in society. Murray focuses instead on the human person’s capacity for “responsible decision” as the ontological ground. (2) Following from the first principle is a “social principle” that states that “the human person is the subject, foundation and end of the entire social life,” such that man has rights over against his fellows and society that flow from his personal dignity. (3) Flowing from the first two principles is a third: “the so-called principle of the free society [which] affirms that man in society must be accorded as much freedom as possible, and that that freedom is not to be restricted unless and insofar as is necessary.” (4) The first two principles also yield the principle of “juridical equality in society” for all persons. (5) Finally, the fifth principle following on the others is that public power has for its “first and principle concern” the effective protection of the human person’s inviolable rights.\(^6^4\)\(^6^5\)

\(^{64}\) Ibid., 239.

\(^{65}\) Ibid., 238-39.
To this general argument, Murray adds a second that arrives at the specific immunity of the person in religious matters protected by public power. The main specifying element is the following move based on the first “ontological principle” from Murray’s first argument:

The first thing to note is that the dignity and the freedom of the human person should receive primary attention since they pertain to the goods that are proper to the human spirit. As for these goods, the first of which is the good of religion, the most important and urgent demand is for freedom. For human dignity demands that in making this fundamental religious option and in carrying it out through every type of religious action, whether private or public, in all these aspects a person should act by his own deliberation and purpose, enjoying immunity from all external coercion so that in the presence of God he takes responsibility on himself alone for his religious decisions and acts.

The remainder of the second argument consists in working this out through the remaining four principles of the first argument. The state is therefore bound to recognize in law this demand of the truth of the person, establishing a right to immunity in religious matters that would never be restricted except insofar as it violates public order.

Murray’s argument is ambiguous, and resolving the ambiguity either concedes everything to the ontological ground argument of the French school, or makes Murray’s argument invalid for the purpose of concluding to an immunity in religious matters. The ambiguity is found in Murray’s term of “goods proper to the human spirit” that demand freedom. It is not clear from

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66 Here Murray evokes the language of DH 1 § 1: “This urgency of liberty in human society concerns most of all those goods which pertain to the human spirit, indeed in the first place those which regard the free exercise of religion in society” (Quae libertatis exigentia in societate humana ea maxime respicit quae sunt animi humani bona, imprimis quidem ea quae liberum in societate religionis exercitium spectant). Murray had introduced this language in a slightly different form into the third draft, the textus emendatus (cf. AS III/8, 426).


68 Ibid., 240-41.
the argument as stated by Murray why in particular “the first of [those goods] is the good of
religion,” namely, discovering the truth about God, giving him due worship, and ordering one’s
whole life according to that truth. A resolution of that question is the dilemma. Either there is
some reason why religion, as the premier good of the human spirit, deserves specific juridical
protection over other goods of the spirit (“in the first place”), or there is no such a reason. Since
responsible human decision-making pertains to all the goods of the spirit, by Murray’s own
acknowledgement, no specifying reason can be found in human independence or autonomy as
such. According to one horn of the dilemma, then, if there is no particular reason why freedom of
religion should be protected by a civil immunity, then it would appear that religious freedom is
not sufficiently different than other freedoms, at least for juridical purposes. Religious liberty
need not be anything other than freedom of thought, freedom of speech, and freedom of
association. No further “religious liberty” would be required. Freedom of art, freedom of
scholarly endeavor, and freedom of religion would not need to be juridically specified, for they
could all be protected by freedom of speech and freedom of association together. If this were
the result of Murray’s juridical argument, it would mean that Murray’s approach is insufficient to
ground a specific immunity for religion. In that case the French school’s position would not be a
mere pastoral consideration to avoid religious indifferentism, but a necessary strand of the

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[69] A trend in the second half of twentieth-century U. S. Supreme Court First Amendment jurisprudence
creates problems just of this sort. Russell Hittinger has argued that this trend is a result of the belief that to even
“cognize” religion (James Madison) is to violate the establishment clause. The result is that religion, precisely as not
cognized or interpreted in such an expansive way as to include atheism or belief in objective moral truths, is reduced
to some combination of free speech and free association (First Grace: Rediscovering the Natural Law in a Post-
was the Court’s view of religion as divisive and irrational, whether a particular religion such as Catholicism or
“religion in general” (Justice Black’s phrase from Everson v. Board [1947]; see Ibid., 163-82).
Declaration for avoiding an indifferentism in the various “goods of the spirit.” One could choose art as much as religion to fulfill one’s capacity to make a responsible decision. In other words, the pitfall here is explaining why the formal aspect of “religious” ought to qualify civil liberty of speech and association. There would no longer be a good reason to say why religion should be privileged in the collision of human persons claiming “personal, responsible freedom” in seeking or constructing their own meanings to life. Yet the final draft of DH expects civil authorities to recognize religion as having reference to “God” or at least Numen supremum, “the Supreme Divinity” (4 § 2). Further, DH expects public authorities to promote the religious lives of their citizens (3 § 5), including support to parents in providing an education that would include religious instruction (5 § 1).

According to the other horn of the dilemma, some reason is required in addition to Murray’s argument for why religion should acquire specific juridical protection as the first among the various goods of the human spirit. Such a reason would have to do what Murray has not done in his argument: relate the human person to the truth about God, not merely as illustrative, but constitutive of this immunity. To do this, however, is to grant that the French school’s “ontological foundation” is necessary to explain why the formality of religion (as opposed to other goods of the spirit, or the goods of the spirit considered generically) deserves juridical protection. The highest human inclination and capacity is to know and love God, and thus this highest good ideally should be protected as a condition conducing to man’s fullest perfection. One would have to acknowledge truth as being a good of the soul, not merely as a
requirement for responsible decision, but also as its end. God, as the First Truth, would then be
the highest good of the human person. Religion, the loving adherence to the First Truth in
worship, proclamation, and moral living, would thus become recognizable as “first” among the
goods of the soul and deserving a particular kind of protection. Indeed, this horn of the dilemma
would admit what was implicit in the French school’s criticisms of the purely juridical approach:
that freedom is a function of truth and for truth. The previous horn of the dilemma, in contrast,
would entail a kind of voluntarism, for it privileges the freedom to make a personal, responsible
decision without explaining why the truth about God has a privileged place. In that voluntarist
view, autonomy would not be a property of personhood but a definition. This in turn would entail
what Servais Pinckaers later would call “the freedom of indifference”—what is primary about
*liberum arbitrium* is the ability to choose.\(^70\) In the French line, in contrast, autonomy would be a
property of personality, insofar as being a person is being an individual substance of a rational
nature. Thus an inclination to truth, and indeed, to the First Truth, is paramount to freedom.

As the next section will argue, the Declaration expects public powers not only to
recognize religion as a human good, but to know what religion is and that there is a truth about
God to be found and adhered to. Murray’s argument requires supplementation by the French
“ontological moment” to arrive at the final position of *DH* and to explain why religion is worthy
of civil protection. Murray states the object of the right as an immunity from coercion in

\(^70\) Servais Pinckaers, OP, *The Sources of Christian Ethics*, trans. Mary Thomas Noble, OP (Washington,
DC: Catholic University of America Press, 1995), 327-53. A study of Murray’s own conception of human freedom
in light of modern debates regarding voluntarist and nominalist views of freedom would make a tremendous
contribution.
religious matters. The French school’s point is that the duty corresponding to the right is equally recognizable. That duty is specified by its object: to know, to love, and to serve God.

Topical Analysis of DH in Light of the Relationes

This section will interpret key issues arising from the final draft of DH. Here the objective is to fix the meaning of DH as far as possible, using both the text and also the relationes of the drafting subcommission. Various post-conciliar commentaries will aid in this task. While the primary goal is an exegesis of the text, saving an attempt to tie together the doctrinal development for the following chapter, it will be impossible to avoid entirely making theological comment. This section will address the following issues: the object and subject of the right proclaimed in n. 2; the limitation of free exercise conveyed by the notion of public order from n. 7; the knowledge and competency of public authorities in religious matters from nn. 1, 3, and 6-8; the final draft’s conditional teaching on religious establishment, contained in n. 6; the silence of DH on coercion within the Church, apropos the debate between Rhonheimer and Pink; and the document’s treatment of the law of nations and doctrinal development.
Object and Subject of the Right to Religious Liberty

The object of the right to religious liberty is clear from the final text. It is a twofold immunity from coercion in religious matters, not a permission to do whatever one wills. The Declaration is succinct:

Liberty of this kind consists in this, that all men ought to be immune from coercion \([a \text{ coercitione}]\) on the part of individuals or of social groups and of whatever human power, and indeed so that in religious matters neither should anyone be constrained \([\text{cogatur}]\) to act against his conscience nor should he be impeded \([\text{impediatur}]\) from acting according to his conscience in private or in public, whether alone or in association with others, within due limits. \((DH 2)\)

Coercion will be discussed in a later section, but it denotes the use or threatened use of force to persuade another to a certain course of action.\(^71\) The right is a double immunity from the state and from other men and social groups, which is highlighted by the pair of verbs \(\text{cogatur}\) and \(\text{impediatur}\): one may not be constrained to act, nor impeded from acting. The object as a kind of interpersonal immunity remained fairly stable throughout the drafting process, though the earlier \(\text{relationes}\) were marred by the inexact presentation bound up with the fallacious argument from conscience.\(^72\) The written \(\text{relatio}\) for the second draft clarified that the freedom pertains to the relations between men.\(^73\) In the first draft’s oral \(\text{relatio}\) the right is described by De Smedt:

\(^71\) DH 6 § 5: “per vim vel metum aut alia media.” Cf. Murray, “The Problem of Religious Freedom,” 142: “By coercion, here and hereafter, is meant all manner of compulsion, constraint, and restraint, whether legal or extralegal. It includes such things as social discrimination, economic disadvantage, and civil disabilities imposed on grounds of religion. Today it importantly includes coercive forms of psychological pressure, such as massive propaganda, brainwashing techniques, etc.”

\(^72\) To give one example, in the first draft’s oral \(\text{relatio}\) De Smedt announced an unqualified principle concerning erroneous conscience that seems inapplicable in civil society, even taking into account the intrinsic dignity of the person: “nulla persona humana obiectum coercionis seu intolerantiae esse potest” (AS II/5, 488).

\(^73\) AS III/2, 345.
“Speaking negatively, religious liberty is an immunity from all external coaction in personal relations with God, which every conscience claims for itself.”74 This is inadequate, for coactio seems too narrow, insofar as it can mean merely “constraint” to do, an external compulsion to follow an order. The term could permit someone to say that while no one may be compelled externally to do, he may be restrained from acting in religious matters because of the common good. One may not practice coactio, forcing someone to do something, but one could still practice coercitio by pressuring in other ways. Perhaps for this reason, although coactio is used in the first and second drafts,75 later drafts adopt the broader term coercitio.

While the early presentations of the object were uncontroversial in the former aspect, the liberty from constraint,76 the other aspect of the right entailing liberty from restraint in doing was controversial for some bishops, and the one seen to be most in conflict with previous papal teaching. It was “the new thing” in the document.77 This immunity entails that one cannot be restrained by the state in the public practice and propagation of one’s religion, including public worship, charitable action, and the freedom to share ideas about social organization derived from one’s religious teachings (cf. DH 4 § 5). The previous optic for the public expression of non-

74 AS II/5, 486.

75 AS II/5, 434; AS III/2, 319 [x2].

76 Cf. The speech of Ottaviani, an opponent of the document during the council, on the second draft at AS III/2, 375: “Declaratio de libertate religiosa hominis in societate enunciat principium quod semper viguit in Ecclesia secundum quod nemo ad religionem est cogendus.”

Catholic religion had been tolerance. This side of the dual immunity proclaimed in DH 2 was not explicit in *Pacem in terris*.  

As pointed out above, it is only with Murray’s influence that the third draft initiates the “juridical moment” of *DH* by moving away from the underdetermined argument from erroneous conscience. Basing the right on respect for the sincere conscience of others is a problem for the reason that the sincerity of others is not directly accessible to others and to the law. The basis of toleration must be sought elsewhere. In the third draft the right is considered as a civil immunity based on a constitutional acknowledgement of a natural right of the human person,

78 This is not to say that it was “for the first time unequivocally” that the Church “has officially declared itself in favor of the civil right of religious freedom for all men” (Thomas T. Love, “Religious Freedom and Roman Catholicism: A Critique of *Dignitatis Humanae*,” in *Religion and the Public Order, Number Four*, ed. Donald A. Giannella [Ithaca, NY: Cornell University Press, 1968], 170). Pius XII had repeatedly called for that. Furthermore, the assertion conflates civil rights with natural ones. Despite this, Love demonstrates good knowledge of three positions on how religious liberty could be grounded at the time of the Declaration. For further evidence of the growing Catholic consensus accepting of religious liberty prior to Vatican II, see A. F. Carrillo de Albornoz, *Roman Catholicism and Religious Liberty* (Geneva: World Council of Churches, 1959).

79 De Smedt had to respond in his third oral relatio to the charge that the early drafts’ argument for civil liberty from sincere, erroneous conscience was a “false illation” from the subjective to objective order (AS III/8, 462). The third draft’s juridical focus allowed him to side-step the issue of erroneous conscience entirely. See also Pavan, “Declaration on Religious Freedom,” 66-67.

80 Interestingly, a magisterial text cited in the first draft (AS II/2, 439), but which does not enter into the final text, is Pius XII’s allocution “Vous avez voulu” to a gathering of historians (AAS 47 [1955], 672-82). There Pius applies the canon law principle of non-coercion to the faith to the civil sphere: “The Church… thinks that [non-Catholics’] convictions constitute a motive, but not the principle, however, of toleration” (p. 679, my translation). In other words, personal convictions are not the basis of civil tolerance. The use of this text in the first draft is ironic because it is at cross-purposes with its attempt to ground liberty in conscience itself. Perhaps for this reason it is dropped by the second draft, which still uses the argument from conscience. One discovers also a reason why this text would have been awkward for the “juridical” moment of the declaration. Pius XII’s allocution affirms as late as 1955 that “the Church does not hide that she considers in principle that this collaboration [between Church and state] is normal, and that she regards as an ideal the unity of the people in the true religion and the unanimity of action between her and the State” (ibid.). Pius then mentions that things are different “where Catholics constitute a minority,” referring explicitly to the United States. He then adverts to *Ci riesce* and reaffirms the legitimacy of Concordats to achieve “juridical security and necessary independence for her mission” (ibid.). In other words, Pius affirms what Murray took *DH* to deny: that there is an ideal (or as) of cooperation between Church and state where Catholics are the majority, and that absent that, the Church should always have freedom for her mission. Valuet does not hesitate to call Pius’s principle a “thesis” from which a “hypothesis” is drawn (*La liberté religieuse et la tradition catholique*, 1:735).
who does not belong to the state in all that he is. The language of coactio in regard to the relation of men to civil society has now been replaced with coercitio. Likewise, De Smedt now annunciates the inadequate principle of the first draft in the new, changed language: “nullus homo, nulla religiosa communitas potest esse objectum coercionis in sacra religionis materia.” That is to say, there can be no coercion in religious matters as such, given the nature of religion. Since this right to immunity is juridical, that is, it is a right between men to be inscribed in the constitutional order of societies, it is enjoyed by all citizens. It does not matter whether they have true or erroneous consciences. The fifth written relatio would later analyze the right: “a) religious liberty is a right of the human person, b) whose object is immunity from coercion, c) a right of the kind that ought to be acknowledged as a civil right in the juridical ordination of states, and d) a right that is founded on the very dignity of the human person.” The right is not a positive authorization to believe, practice, and spread error, but it is a negative, juridical right of immunity that opens up civil space for the pursuit and propagation of the truth about God. De Smedt likens it to rights pertaining to moving about within a nation. Such rights do not exempt

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81 Cf. the third written relatio (AS III/8, 461): “Ius vero hominis in re religiosa respicit eius vitam religiosam privatam et publicam, quae ordinem civilem finesque terrestres societatis humanae omnino transcendit. In eo enim fundatur hoc ius, quod homo directe ordinatur, cui tandem soli solus rationem vitam suae reddere tenetur.”

82 AS III/8, 427 (the third draft).

83 AS III/8, 452.

84 AS IV/1, 190.

85 AS IV/5, 151.

86 AS IV/5, 99.
those who move about from the moral duty of using the movement well. The final written relatio notes that “if people diffuse error, this is not an exercise of the right but an abuse of it.” That abuse would be merely a moral fault until the point of harm to the public order, at which point the state could intervene. This accords with prior papal teaching, seen in the last chapter, that moral abuses of a right do not justify the suppression of that right.

Neither is there doubt that this right is a natural, inviolable human right, “in fact based [revera fundatum] in the dignity of the human person itself” (DH n. 2 § 1). It is a right that ought to be acknowledged (agnoscendum, n. 2 § 1); it is not “granted” as a positive civil right would be. The relationes make this clear, in response to certain bishops at the council who were trying, up to the very last draft, to change the text in this regard. De Smedt explains in the final oral relatio why these last-minute amendments were rejected, for they contradicted the majority of the fathers who voted on the right as a natural and a personal one. Such a change would have reduced DH to the former position of tolerance for non-Catholic religion for the sake of the

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87 AS IV/5, 100. This is similar to an illustration employed by de Broglie (Problèmes chrétiens sur la Liberté religieuse, 15-16): two men go to Paris, exercising the right to liberty of movement. One goes to visit his seriously ill mother, the other his mistress. The first uses the right well, the second abuses the right. I came upon this text via Wallace, “Right of Religious Liberty and Its Basis in the Theological Literature of the French Language,” 94.

88 AS IV/6, 725; cf. AS IV/1, 190: “[S]chema non affirmat, dari ius ad errores religiosos in societate spargendos.”

89 AS IV/5, 100.

90 Cf. AS IV/6, 731, response to modus 32, part of the final written relatio. The traditional position prior to the Council was that non-Catholic religions could be granted a civil right to not be impeded in their public exercise. Such a grant derived from toleration and was not owed to the adherents or communities in natural justice. See Davies, Second Vatican Council and Religious Liberty, 46-47.

91 AS IV/6, 719-20.
common good.\textsuperscript{92} \textit{DH} would then be just a policy change, an expression that it was now opportune to grant civil liberty given the diversity of social conditions within the nations of the world. As pointed out previously, that the right is natural would be later confirmed by the Magisterium.\textsuperscript{93} The hypothesis of Thomas Pink, introduced in the first chapter of this dissertation, does not cohere with \textit{DH}, for he would hold that the human person does not have a natural right to immunity from state power in religious matters when that power is wielded instrumentally by the Church.

The subject of the right of \textit{DH} 2 is the human person (physical persons, individuals) and, as discussed in \textit{DH} 4, social groups composed of human persons (moral and juridical persons). Religious groups have the right to immunity, but not under the aspect of true or false. To frame the question in terms of the rights of truth or the rights of error is a mistake, for the question is one of justice in society, that is, the relation between persons. Truth only has rights in an improper, non-juridical sense.\textsuperscript{94} As De Smedt clarifies in the oral \textit{relatio} for the third draft, it is not a question of public authorities granting, authorizing, or recognizing a freedom to do evil or believe falsehoods.\textsuperscript{95} The written \textit{relatio} for the fourth draft is even clearer on this point:

\textsuperscript{92} Cf. Pavan, “Declaration on Religious Freedom,” 65, where he distinguishes between the historical circumstances that gave rise to the council’s reflections (pluralism, globalization, growing awareness of human dignity—all of which could make mere civil toleration more prudent), and the actual grounding of the right in human nature.

\textsuperscript{93} CCC 2108 interprets \textit{DH} 2 as teaching that religious liberty is a “naturale ius personae humanae ad libertatem civilem.”

\textsuperscript{94} Cf. Pius XII’s \textit{Ci riesce} (1953): “First: that which does not correspond to truth or to the norm of morality objectively has no right to exist, to be spread or to be activated. Secondly: failure to impede this with civil laws and coercive measures can nevertheless be justified in the interests of a higher and more general good.” Pius moves on from this question, however, to the rights of persons in an international community.

\textsuperscript{95} AS III/8, 464.
The subject of a right are only physical and moral persons. For this reason a right connotes immediately and formally an inter-subjective relation, namely, a relation that comes between persons. Indeed in every juridical relation two persons or two subjects are always supposed; the active subject to whom the right belongs [*in quo inest ius*], and the passive subject which is held to fulfill the object of the right [*quod objectum iuris praestare tenetur*], whether by doing or omitting an action. In the strict sense, therefore, the right is not given to the truth; for the relation between a person and the truth is either logical or moral, but not juridical.96

To make it clear that the active subjects of the right are physical and moral persons, and that the object is an immunity from coercion on the part of civil society (whether civil authority or social groups), the words *socialem et civilem* were added to qualify *libertatem* in the subtitle of the fifth draft.97 This was done to clarify that “the liberty which is treated in this declaration does not respect the relation of man to the truth or to God…but between persons in human society” (hence “social”), nor does the liberty “concern the relations between the faithful and authorities in the Church” (hence “civil”).98 The passive subject of the right would be the physical and moral persons, including civil society, who are not to coerce the active subject of the right.

The foregoing discussion of the object and subject of the right is liable to the counter-objection that the human person has the right to be taught the truth about God and to be protected

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96 AS IV/1, 192. This line is repeated nearly verbatim by Pavan to show “the deepest reason why the contents of religious faith are not and cannot be the object of religious freedom,” namely, “that the relation between the persons and these contents is not a legal but rather a metaphysical or logical or moral one.” Instead, the liberty regards an “inter-subjective relation… exist[ing] between physical and moral subjects or persons” (“Declaration on Religious Freedom,” 66). See also Pavan, “Le droit à la liberté religieuse,” 150-151: “it is a universal conviction that rights do not have for their subjects, immediately and formally, spiritual values such as truth, moral goodness, or justice, because the subjects of rights are persons and only persons, whether they be physical or moral.” Cf. Maritain, *Man and the State*, 174-75.

97 AS IV/5, 77.

98 AS IV/5, 150 (written relatio of firth draft); cf. De Smedt’s oral relatio (p. 99).
in this truth. The state, therefore, as the passive subject of this right, is held to exclude the propagation of religious errors from society. One thinks of the objections of Brian Davies encountered in the first chapter above. He had a point in protesting the rebuttal of the traditional slogan that “error has no rights,” that only persons have rights, not truth or error. Davies notes that the slogan was shorthand for saying that no one has the right to cause harm to the common good by the public propaganda of error. A full resolution of this objection must wait for the remainder of this chapter and the next. Some resolution may be attained by appeal to the natural limitation of the state in these matters correlative with the dignity and freedom of the human person, who has an inclination by nature and grace to an end that transcends the earthly city. This is why the French school’s insistence on the necessity of an “ontological foundation” and Wojtyla and others highlighting the inclusion of the juridical realm within the moral realm is absolutely correct, for without it the juridical approach of Murray simply begs the question. Hence this chapter’s insistence that Murray’s juridical precisions were necessary but insufficient for bringing about the doctrinal evolution necessary to arrive at and implement DH as a piece of authentic Catholic social doctrine. This is perhaps why the relatio for the fourth draft moves from a consideration of the “rights of truth” to a consideration of the nature of the state. The other important development necessary to understand why the counter-objection is irrelevant is the quest for an international juridical order to secure peace among men, an order that necessitates international political unity on some other grounds than unity in religious truth.

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100 AS IV/1, 193-94.
Limitations on Religious Exercise

During the course of the conciliar debate, those favorable and hostile to the natural right to religious liberty posed objections concerning the limitation of the right’s exercise in society. That the drafts of DH underwent an evolution on what the genuine criterion was for limiting the exercise exacerbated the problem. The final text of DH reflects our two moments in the drafting history, for the final criterion of ordo publicus, “public order,” reflects both the juridical expertise of Murray and also the anthropological concerns of the “French school.” Moreover, positing the concept of public order, distinguished from the common good, was a development necessary to harmonize the doctrine of DH with the development of papal teaching on the nature of the state from Leo’s two perfect societies to Pius XI and Pius XII’s personalistic teaching on the common good. The early drafts of the council identified the common good as the criterion by which public authorities could limit free exercise in order to protect society from abuses.101 This was traditional insofar it was taken to be the teaching of Leo XIII on toleration in the state, that the common good was the criterion for the non-repression of public, non-Catholic cults. This was problematic for the draft’s thesis of a right to toleration, however, for the common good of a Catholic nation could justify restraining someone from acting publicly according to his conscience.

101 AS II/5, 489 (the first oral relatio): “[P]atet ius et officium ad externam manifestationem dictaminis conscientiae non esse illimitatum, sed bono communi temperari et ordinari posse atque quandoque debere.”
For this reason the common good was dropped as the criterion of limitation with the arrival of the juridical moment in the third draft, replaced with *ordo publicus*. The draft identified the public order as the source of juridical norms limiting free exercise, somehow related to “public peace,” “public morality,” and “the rights of other citizens.” This was Murray’s move to harmonize the doctrine with modern secular and papal notions of civil society, wherein the citizens are active participants exercising responsible liberty, only coerced by the authorities when necessary to preserve society. In other words, public order is the proper object of public authority’s actions, especially in a juridically founded society; the common good, which would include religious exercise as such, is not the direct object of civil power. A number of fathers, however, asked for clarifications of the nature of public order and its relation to the common good. Called the fundamental component of the common good, it seemed to be nothing other than the rule of law, for it excluded interventions of the state “modo arbitrario, sed secundum normas iuridicas.” Now this seems compatible with the notion of public order used by liberal states of the nineteenth century.

Yet the public order as introduced in the juridical moment was not the final position of the text. Many fathers otherwise sympathetic to the Declaration were concerned that public order as formulated during the “juridical” phase of *DH* was still too positivistic and needed to be described as derived from the objective moral order. This for at least two reasons. First, fathers from behind the Iron Curtain were concerned the Communist authorities would use public order

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102 AS III/8, 432-33.

103 AS III/8, 433.
to suppress all religious practice, just as totalitarian regimes in the thirties had used the notion of the common good. For this reason, various fathers feared throughout the drafting process that the Declaration would be twisted to suppress the Church by hostile governments. Second, the French and other like-minded bishops wanted the juridical order more clearly based on a Catholic anthropological vision (in other words, a tie to the objective ontological and moral order). It was a matter of guarding against totalitarianisms on both sides of the Catholic tradition: communism on the one hand and secular liberalism on the other. While these fathers agreed with Murray that modern democratic and constitutional impulses of modern man rightly requested freedom of religion, this freedom needed to be couched in terms of the objective path to man’s perfection. The fathers at the council were concerned that a narrow view of public order, detached from the common good and from natural law, would lead to “neutral” liberal states. Only in this way would the text avoid indifferentism. Given the condemnation of *Quanta cura* 3 analyzed in the previous chapter, this was an important move to shore up the compatibility of *DH* with prior teaching by explaining that the notion of public order is informed by the moral law. Paralleling this dissertation, André-Vincent points out that public order is only intelligible in a

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104 De Smedt tried to assuage their fear when the limit in the second draft was the common good, saying that it did not seem possible to find a formula that would prevent all abuse (AS III/2, 352). The drafting commission would later say the same when the limit in the sixth draft was public order (AS IV/6, 756: “patet quemvis terminum periculo detorsionis obnoxium esse”).

105 For samples of the various conciliar interventions on this point, see André-Vincent, *La liberté religieuse*, 91-93. For the incompatibility of *DH* with strict American neutrality, see Hittinger, “Declaration on Religious Liberty,” 367-69.
non-neutralist way by its relation to the common good, just as all positive laws ("lois juridiques") must be related to the moral law in some way.\textsuperscript{106}

The subsequent drafts, under pressure from such objections, began to tie Murray’s juridical insight more firmly to the objective order constituted by the law of God. This was done by clarifying the relations between the public order and the common good, and the juridical order and the moral order. The public order was therefore defined by the fourth written relatio, by a quotation from Vermeersch’s *Epitome iuris canonici*:

[T]he laws that look after the public order are those that have the public or common good not for an end only (as every law) but for an immediate object. Unless such laws are observed by all staying in a territory, the community itself would be exposed to detriment. … It may be possible to say that the public order is looked after by those laws that are made for adverting damage more than those made for promoting the common good.\textsuperscript{107}

To use a metaphor not employed by the drafters of *DH*, if the common good is like promoting the health of the body through exercise, the public order involves preserving the very life of the body. The necessity of public order for society underwrites public authority’s responsibility to intervene with force, lest society itself cease. The state has direct authority over the public order, and takes public order for the object of its action. Nevertheless, this new

\textsuperscript{106} André-Vincent, *La liberté religieuse*, 92, noting an intervention of Karol Wojtyla. Thomas makes the distinction between positive laws deduced or determined from the eternal law; in either case they are derived from the natural law (*STh* IaIIae.95.2).

\textsuperscript{107} AS IV/1, 194. In the context of the canon law, Vermeersch says that the difference is between laws that are given for the sanctification of the faithful (common good) versus laws that preserve the order of the Church’s social life (public order). The drafters also refer the fathers to Hackett, *The Concept of Public Order*, which arrives at the same judgment as Vermeersch. Hackett also provides a helpful conceptual history of the term and its origins in private international law as a way of solving the conflicts that arise when citizens of one country travel through foreign nations (pp. 21-52). Within the Church these concepts were useful to discuss the rights of travelers passing through or residing in other dioceses. Laws that concern public order bind all without exception, though the foreign traveler is not held to laws that concern the common good broadly considered.
doctrine of public order does not contradict prior teaching on the common good as the ultimate norm of state action. The state takes the well-being of society (the *bonum commune*) as the end of its action, but not its object. Instead, the common good is the end of society as a whole, but is not brought about directly by the coercive action of the state. De Broglie explains this with the metaphor of a gardener, who aims at the production of fruit but is unable to cause its growth directly. Instead, the gardener removes threats to the life of the plants and does what he can to promote their life and health. In the same way, public authority guards the necessary elements of society (public order), intervening when necessary; and positively, promotes the common good through laws encouraging the exercise of responsible freedom.\textsuperscript{108}

The technical term “public order” was in current usage in modern public and international private law and in canon law, and was the term used in international statements of the right to religious liberty.”\textsuperscript{109} The state protects the rights of others, and hence it must intervene when these rights are violated. Yet the state has no right to suppress “by force of law or any other coercive action” whatsoever is contrary to the common good.\textsuperscript{110} In this way “[t]he distinction between the common good and the public order coheres with the distinction… between society

\textsuperscript{108} This metaphor belongs to de Broglie, and is found in a dossier drafted by the French bishop Sauvage during the council (see Wallace, “Right of Religious Liberty and Its Basis in the Theological Literature of the French Language,” 60).

\textsuperscript{109} AS IV/6, 722: “Haec pars fundamentalis boni communis in hodierno iure civil et in pluribus publicis Constitutionibus hodie nominatur ‘ordo publicus’”; cf. p. 756 and AS IV/5, 155. E.g., Article 29 of the UN Universal Declaration of Human Rights: “In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.”

\textsuperscript{110} AS IV/1, 191 (fourth written *relatio*).
and the state.”\textsuperscript{111} The former regards the \textit{bene esse societatis} “the well-being of society,” while
the latter regards the \textit{ipsum esse societatis}, “the very existence of society.”\textsuperscript{112} All are bound to
observe laws pertaining to public order, for the public order “is necessary for society,” not
merely “useful” as laws that aim at promoting the common good.\textsuperscript{113} This gives the drafters of \textit{DH}
a principled way of explaining why public authority can only use coercion in regard to averting
grave harm to public order. The public authority, in suppressing religious exercise, acts only to
avert damage to society’s existence.\textsuperscript{114} For the public order is that essential part of the common
good entrusted to public power, that it might be protected by the “coercive power of the law and
by police action.”\textsuperscript{115} Indeed, in private international law the ability of public power to coerce
foreigners under obligation to public order was analogous to self-defense.\textsuperscript{116} On the other side,
the coercive power of the state may not be used to promote the common good in the case of
religious matters, given that the individuals and groups making up society must pursue their
proper perfection freely.\textsuperscript{117} Thus drafters claim to move past the “obsolete concept” of the
liberalistic police state (“l’état gendarme”), where the state just watches over a positivistic

\textsuperscript{111} AS IV/1, 194.
\textsuperscript{112} AS IV/1, 194.
\textsuperscript{113} AS IV/1, 195.
\textsuperscript{114} Cf. AS III/8, 450, 453.
\textsuperscript{115} AS III/8, 453.
\textsuperscript{116} Cf. Hackett, \textit{The Concept of Public Order}, 39.
\textsuperscript{117} AS IV/1, 195.
conception of public order or peace in a kind of libertarian manner.\textsuperscript{118} The drafters offer an important difference between liberal neutrality and the fourth draft: the schema “touches on the principle of positive aid [\textit{de subsidiiis positivis}], which the state is able to furnish for a more expeditious exercise of religion in society.”\textsuperscript{119} In other words, the state as conceived by \textit{DH} knows that religion is a good that perfects the human person and aims at promoting religious exercise by its laws. But since the common good includes the rights of all, the limitation of any right must be guided by a more narrow principle. This twofold norm (promoting here, limiting there) was clarified further in the fifth written \textit{relatio}: the public order is “the fundamental part of the common good,” so that the common good is the norm for promoting the right to religious liberty, while public order is the norm in limiting the right.\textsuperscript{120} This twofold norm was retained in sections six and seven of the final text of \textit{DH}; the end (\textit{finis}) of the state remains the common good.\textsuperscript{121} At the same time, Murray’s formula is present in the final text to preserve the harmony with the notion of subsidiarity: “Further, the custom of integral liberty in society is to be preserved, according to which liberty ought to be acknowledged to man as much as possible, and not restricted except when and as far as is necessary” (\textit{DH} 7 § 3).

\footnote{\textsuperscript{118} For more on the character and consequences of the “watchman state,” especially its result in the economic liberalism that enslaved the working class, see Rommen, \textit{The State in Catholic Thought}, 334-58. Though I am not aware of the drafters ever citing \textit{Rerum novarum} in regard to public order, it is clear that Leo XIII had something like the concept of public order in mind when he described in that encyclical the duties and limitations of state invention in disputes between labor and capital.}

\footnote{\textsuperscript{119} AS IV/1, 195.}

\footnote{\textsuperscript{120} AS IV/5, 155; AS IV/6, 722, 740.}

\footnote{\textsuperscript{121} AS IV/5, 143. This is the classic Catholic conception of the common good, as the written \textit{relatio} later explains in commenting on \textit{DH} 6. The common good includes such spiritual goods as \textit{iustitia} and \textit{pax}. The common good does not concern merely or primarily the increase in material goods, but also \textit{spiritualia} (p. 153).}
The drafters inserted new phrases in response to still more requests to explicate public order in terms of objective justice and divine law. The fourth draft changed the language of the three components of public order into positive goods under the guardianship of civil authorities: “the public order requires sufficient care for public peace, due oversight of public morality, and the peaceful composition and the effective guarding of equal rights for all citizens.”¹²² The fifth draft further qualified the public order as providing juridical norms in ordine morali obiectivo fundati, “founded upon the objective moral order,” which the written relatio called an “addition of great importance.”¹²³ Further, the apparent bifurcation of the moral order and the juridical order in treating of the limitations on free exercise in the third and fourth drafts was removed in the fifth draft.¹²⁴ These additions, along with new talk of “living together in true justice,” adds an objective, moral basis to the juridical order not emphasized in the previous drafts.¹²⁵ It should be noted that the relationes do not comport with the assertion that late additions in the text were

¹²² AS IV/1, 151.

¹²³ AS IV/5, 154.

¹²⁴ Compare the third and fourth drafts (AS IV/1, 150-51) with the fifth draft (IV/5, 84-5). The addition of the preposition praeterea was meant “to indicate the number 7 is not divided into two parts, one moral and another juridical” (AS IV/5, 154 [fifth written relatio]).

¹²⁵ It seems to me that such additions and clarifications prevent DH from lapsing into a minimalist “clear and present danger” test such as was used in U. S. Supreme Court free exercise jurisprudence in the 1940s (such as Cantwell v. Connecticut [1940]). Rather, DH seems to allow that public order prohibits not only “gravest abuses, endangering paramount interests” of the state conceived in too narrow a way (Thomas v. Collins [1945]), but also abuses constituting slanderous or vile speech against religious groups and aggressive invasions of privacy and property to propagate religious ideas, which would be a kind of dishonest propaganda. For an interesting study of American liberal principles regulating the restriction of free exercise by state police power, see Francis J. Powers, CSV, Religious Liberty and the Police Power of the State: A Study of the Jurisprudential Concepts Underlying the Problem of Religious Freedom and Its Relationship to the Police Power in the United States with Special Reference to Recent Decisions of the United States Supreme Court on the Subject (Washington, DC: Catholic University of America Press, 1948).
only to coax the recalcitrant conservatives into voting *placet*. Instead, these requests typically came from other sectors, such as the French school or from such Polish bishops as Karol Wojtyła. For this reason, the requests were taken quite seriously by the drafting commission, which now lacked Murray and included drafters sympathetic to the ontological moment such as Ancel, Columbo, Hámer, Congar, and others.

A subsidiary issue is whether dishonest means of the propagation of religious belief comprises a mere moral disorder, or also an offense against the public order. The final text of *DH* is clear: the bad kind of proselytism “ought to be considered as an abuse of one’s own right and a harm against the rights of others” (4 § 4). The Declaration includes in such dishonest propagation any kind of “coercion” (*coercitio*) or “dishonest enticement” (*suasionem inhonestam*). This is a particular danger for those who have not yet attained a full education in responsible liberty on account of a lack of means, namely, “the poor and uneducated” (4 § 4). Now public order includes the protection of the rights of others as an integral part. Therefore, *DH* understands the state to have competence in determining what is dishonest proselytism, for

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126 O’Malley, *What Happened at Vatican II*, 243, insinuating that Paul VI interfered only to placate the minority. To the contrary, Gilles Routhier has shown that Paul shared the “ontological” concerns of the French and the Poles, and resisted the minority (Alberigo and Komonchak, *History of Vatican II*, 5:113-15). Routhier is also more accurate apropos the final draft: “Judging by the new text, some observers thought that the members of the secretariat had been more sensitive to the objections of the opposition than to the judgment of the majority. But this response misjudged all the efforts made by the promoters of the schema to avoid weakening it too much and to guarantee its completion” (p. 121).

127 E.g., AS IV/2, 12-13. Wojtyła there asked that public order be grounded not merely in the order of positive law, but in the *lex moralis* (Hittinger, “Declaration on Religious Liberty,” 368). Wojtyła had been making similar interventions throughout the council, asking for the connection between rights and duties, freedom and truth to be better expressed (e.g., AS III/3, 766-768). For a study of Wojtyła’s interventions, see Rico, *John Paul II and the Legacy of Dignitatis Humanae*, 103-116. André-Vincent sees the intervention of Journet as decisive in nudging the drafting subcommission to made new changes in this regard (André-Vincent, *La liberté religieuse*, 95-97.). On the composition of the drafting subcommission, see Alberigo and Komonchak, *History of Vatican II*, 5:112n243.

128 *DH* never uses the word proselytism, which is found in *Unitatis redintegratio*. 
the state may not protect the rights of citizens against the harm of dishonest propagation unless it knows what that is and could identify it in a court. In this I depart from De Smedt’s post-conciliar commentary:

In order that civil power should have to intervene, it does not suffice that the right of a citizen is found to be harmed, as is the case, for example, when someone conducts the proselytism of doubtful quality of which the Declaration speaks in n. 4. It pertains to individuals and to religious groups in this delicate domain, to have recourse to means of persuasion or to public opinion in view of safeguarding the rights of the person.129

This is not stated or required by the text, and it actually cuts against what the text claims about the responsibility of public powers in n. 7 and about evil proselytism harming the rights of others in n. 6. De Smedt might have been concerned about some government abusing the language of the Declaration to suppress even peaceful evangelization, or perhaps about civil power intervening in good faith too frequently in the civil order, but such legitimate concerns do not make the text yield his opinion on the matter. In this way DH does not completely abandon the paternalistic view of government that Murray believed to be an accidental feature of Leo’s theology of the state. The state would be able to repress certain modes of propagation that attack other religions with means that do not respect the dignity of the human person. Nevertheless, should the people become educated in the responsible use of freedom, and a propagator of a religion not use dishonest means, Murray is correct that the juridical outlook would prevent the state from acting. DH does not envision public power judging the truth of one’s religious

convictions, but rather whether the mode of promulgation involves a disruption of the public order.\footnote{Regan provides a solution to this ambiguity (Conflict and Consensus, 174-75): “Still, if the state has no competence in religious matters, and if religious groups employ no slander, libel, deceit, bribes, threats, etc. to spread their faiths, it is difficult to see how the state has any legitimate interest as parens patriae to justify action in behalf of the religious faith of the illiterate.” I was alerted to this text by means of Valuet, La liberté religieuse et la tradition catholique, 1:740n4.}

One large unresolved question, even fifty years after the promulgation of the document, is the relation between public morality and the common good.\footnote{Cf. André-Vincent, La liberté religieuse, 186-90.} This is left vague in the Declaration, and Murray’s and Pavan’s commentaries do not add anything to the relationes and the final text.\footnote{Pavan’s commentary obscures rather than clarifies the text when he identifies the public order of DH with that of the 1789 French Declaration (“Declaration on Religious Freedom,” 74).} Just as the common good is more or less changeable as a concrete factor in political action depending on time and place, so public morality will have a certain flexibility given the character of the people and their culture. A culture evangelized would be offended by polygamy or sacred prostitution, unlike a Muslim culture or an ancient pagan one.\footnote{André-Vincent, La liberté religieuse, 187.} Thus while child sacrifice or child marriage would be a violation of public order by virtue of the guarantee of the rights of all, cultic prostitution would be a violation of public morality and likewise should be restricted. But what would determine the level of public morality protected by the state? Would public morality be public opinion, or would it be the opinions of the wise? De Smedt splits the difference: “One understands by public morality that totality of attitudes at such a time and in such a region that public opinion and those who are regarded as wise consider as meeting...
good morals such as those prescribed by the moral law written in the heart of man.”

This approaches the traditional Thomistic doctrine of positive law and political prudence: the ruler ought to limit the more egregious of vices capable of being avoided by the majority of people, and especially those vices that hurt others. The ruler ought not to go much further, lest the people be taxed and greater evils break out (ad 2). In other words, public morality is based not on public opinion alone, for “the wise”—ideally including political leaders—can identify further conduct harmful to others and the very essence of civil society. It would seem to me that agitating for contraception, divorce, abortion, and euthanasia under the guise of religion or conscience would be an egregious abuse, and that the public power would be able to restrict any religious exercise aimed at the public acceptance of such disorders.

At the same time, the teaching of DH is that the entirety of society is responsible for promoting the common good (n. 6) under a rightful title to liberty (n. 7), and the papal encyclical tradition itself contains the teaching that fear of the law’s penal sanctions is an insufficient motive for men to improve themselves morally. As De Smedt cautions, public authority defends

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135 StIaIIae.96.2 co., as Valuet points out (Le droit à la liberté religieuse, 513). See also Ilallae.77.1 ad 1: “Et ideo lex humana non potuit prohibere quidquid est contra virtutem, sed ei sufficit ut prohibeat ea quae destruunt hominum convictum; alia vero habeat quasi licita, non quia ea approbet, sed quia ea non punit.”

136 Cf. John Paul II, Evangelium vitae (1995) 68-73, where he laments the use of public opinion to underwrite a civil liberty to commit grave moral abuses such as abortion and euthanasia. Rather, as even DH says, public law must conform to the basic tenets of the objective moral order. Cf. Valuet, Le droit à la liberté religieuse, 513.

137 If, as Pavan notes, public power should protect the right of women to determine their state in life (“Le droit à la liberté religieuse,” 186-87), how much more ought it to protect children from abortion, divorce, and pornography.
society against grave and dangerous infractions, but it is not “teacher of morals” as such. This position, only apparently alien to Thomas’s thought, is possible in the neo-Thomistic distinction between the state and civil society. The basic, essential level of social morality is upheld by the law, which does teach morality indirectly (public order); while the action of groups in civil society is what leads citizens to further virtue (common good). In light of precisions introduced by Maritain and Journet, and explained further in the next chapter, the Church no longer sees the propaganda of heretical or erroneous viewpoints as a threat to public order, just as such. In light of a globalized world and the international order of nation states, pluralistic religious belief is not a grave threat to society at its core. At the same time and for the same reason, the basic threats to human dignity and social life ought to be suppressed by all government.

Knowledge and Competency of the Civil Authorities in Religious Matters

As seen above, the two moments of DH hang together: the juridical and the ontological, for the juridical without the ontological tends to nineteenth-century liberalism, while the ontological without the juridical does not recognize advances in papal teaching on politics. This problem of religious liberty at Vatican II has been nicely summarized by André-Vincent as the dialectic between the state’s twofold duty toward “la Vérité”: its noninterference in the religious sphere (avoiding “le césarisme”) and the state’s duties toward God, the Church, and the good of religion (avoiding “l’indifférentisme”). In pairing religious liberty with the equality of all citizens

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139 Valuet, Le droit à la liberté religieuse, 513-14.
before the law, the Council was poised to fulfill only half of its duties toward the Truth. This half-way position tends toward indifferentism and the neutral state rejected numerous times in previous papal teachings.\(^{140}\) It is only by expecting the state to know what makes human beings flourish that the declaration is able to expect the state to stay out of religion. This is a paradox, but it succeeds in holding together a limited state with a state cognizant of the true human good. One sees the paradox in one of Pavan’s post-conciliar commentaries:

> Indeed, the *raison d’être* of public power is to implement the common good, namely, the creation of a social climate in which human beings find the means and the proper inducements to realize their integral flourishing. … We have affirmed above that public powers overstep their sphere of competency if they pretend to determine the intrinsic content of the religious belief of its citizens; however, this does not mean that they are not held to see to it that citizens do not lack the means of exercising their rights and fulfilling their duties in the religious domain.\(^{141}\)

This paradox is liable to a certain instability, if the need for the state to cognize religion were not insisted upon. The unstable formulation would take this paradox to a juridical extreme ending up in liberalism, where the state, lest it rule on religious doctrines, merely sets up a legal sphere of freedom. The instability, documented so well by the last half-century of American First Amendment jurisprudence, is that without an understanding of religion as the supreme temporal good, the state will tend to restrict and ignore religion. If one does not know the end, how can one furnish the appropriate means? Only if the state simultaneously knows the human person and his need for the truth about God can it then take a stable course. It is one thing for the state not to

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\(^{140}\) André-Vincent, *La liberté religieuse*, 88-89.

\(^{141}\) Pavan, “Le droit à la liberté religieuse,” 183. He holds the same, “*in a constitutional state, for all the values of the spirit,*” namely, scientific theory, philosophy, art—the state provides the means but not the content.
interfere in the various religions of its people; it is another to make decisions pertaining to the common good in blindness to the value of religion. While the state may not judge of a religion’s truth, it must know what conditions are needed for the exercise of the right to religious liberty, including the moral and intellectual formation required to fulfill one’s duty to make an informed personal judgment in religious matters.

Thus, the doctrine of the *relationes* in regard to the competency and knowledge of public power in religious matters is both simple and complex. It is simple insofar as it is merely the completion of the distinctions between the two perfect societies, between state and society, and between the common good and public order. In the modern constitutional democracy that guards the dignity of the human person, public authorities have no jurisdiction or competency “to judge of religious truth or falsity.” 142 The reason for this is that “religious acts by their own nature transcend the terrestrial and temporal order” of the civil society. 143 Furthermore, political rulers are unable to judge of interior acts or of the sincerity of someone’s conscience, so it has no direct access to the subjective element of religious belief, ruling out any grounds for the state to be the pastor of souls. 144 Therefore the state has no competency to direct or restrict the religious exercise

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142 AS III/8, 450, 452; AS IV/1, 190-91.

143 AS IV/5, 152; cf. AS IV/6, 742. The final text repeats this verbatim in n. 3.

144 AS IV/6, 734. Admittedly, this reasoning rules out the ground of erroneous conscience for religious liberty, but as a reason for religious liberty, it is truly weak. The argument from the transcendence of religious acts is much stronger, as this places the very object of the action outside the scope of government. The argument that the state cannot access the subjective conscience, used in this way, would sufficiently prohibit the state from any coercion against citizens in any area (e.g., marriage law, criminal law). Rather, the reason why the state cannot judge the conscience in this matter is from the nature of religion itself.
of the citizenry.\textsuperscript{145} It is rather the duty of the Church to preach against error with sound doctrine.\textsuperscript{146} Public authorities only have an indirect or negative jurisdiction in suppressing religious exercise insofar as the public order is harmed.

On the other hand, \textit{DH} assumes that the state is capable of recognizing the value of religion and its duty to promote it as integral for human well-being. The state must know how to promote the conditions necessary for religion. It must understand the nature of religion and the nature of man whom it perfects. The state has the duty of promoting religion by safeguarding the right to religious liberty and showing favor to religion in society as the highest social value. In this way the state’s character is “laïcal” but not “laïstical”.\textsuperscript{147} The state exercises “care of religion” by favoring the religious life of its citizens, and it is able to fulfill, in the most minimal way, its duty to God by favoring religious liberty. In this way, civil society is free to acknowledge God with public worship.\textsuperscript{148} Thus, the doctrine is complex because it contains a tacit Catholic anthropology and eschatology. The state should recognize “that religion itself is the

\textsuperscript{145} AS III/8, 452.

\textsuperscript{146} AS IV/1, 191: “Ceteram ad solam Ecclesiam pertinet, potentem esse exhortari in doctrina sana et eos, qui contradicunt, arguere (cf. \textit{Tit.} 1, 9), ut non decipientur homines per philosophiam et inanem fallaciam secundum traditionem hominum, secundum elementa mundi (cf. \textit{Col.} 2, 8).” One detects the influence of Murray here: “It may be that in a Catholic society heretical propaganda does spiritual harm. Granted; nevertheless this is not the kind of harm that secular government, as the agent of public order, is bound by its office to ward off from its citizens. The protection of her members in the possession of their faith is the task of the Church; it is a spiritual, not a political task” (“Governmental Repression of Heresy,” 67, cited in Carrillo de Albornoz, \textit{Roman Catholicism and Religious Liberty}, 18).

\textsuperscript{147} AS III/2, 352-53. The second \textit{relatio} said that the favor shown to religion was “indirect” by virtue of preserving the citizen’s immunity from coercion. This is too mild and seems only a nuance away from a Liberalistic approach to religion. Probably for this reason it was dropped from later drafts in favor of more robust language about the responsibility of civil power to promote religion in society (cf. \textit{DH} 3 § 5).

\textsuperscript{148} AS IV/1, 193-94.
highest social value.”

Furthermore, the state implicitly acknowledges God by guarding the rights of truth, namely, the truth of the dignity of the human person. The fourth written *relatio* responded to the maxim that “error has no rights” by saying that the right to religious liberty is founded upon “that objective truth, which is the dignity of human person, and in the objective truths, which are principles flowing from that dignity, according to which society ought to be organized.” "The truth of man’s dignity as a person, then, is what a government must recognize in the juridical regulation of society. This is in accord with what André-Vincent notes, that the signal Catholic contribution to the modern juridical language of rights is the bond between them and moral duties, both guaranteed by the natural law of God. This is synthesized above all by John XXIII’s *Pacem in terris* approach complementing the 1948 UN Declaration’s focus on rights alone.

In the end, the theocentric anthropology of *DH* contributes to keeping the document from nineteenth-century indifferentism. The final text’s emphasis on the value of religion as pertaining to “the dignity of the human person it its relation to truth” derives from changes introduced in the fifth draft. Indeed, Pavan lists six grounds available to public authorities in recognizing the right of religious liberty, all derived from the final draft of the declaration: 1) the principle of

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149 AS IV/1, 194: “ipsam religionem esse valorem summum socialem.”

150 AS IV/1, 194.

151 AS IV/1, 192; cf. AS IV/6, 720: “ipsa rei vertitate, i.e., ipsa hominis natura.”


subsidiarity, derived from the principle of as much freedom as possible, as much restriction as necessary, contained in n. 7; 2) the principle of the interiority of religious acts, from n. 3; 3) the principle of the transcendence of religious acts, also from n. 3; 4) the principle of personal responsibility, that the state anticipates human development as a free being by interfering in religious matters, from n. 2); 5) from the state being proved incompetent by the divine positive right possessed by the Church, from n. 11; and 6) the principle of the growing acceptance of a human positive right to a zone of freedom in the religious sphere, from nn. 1, 2, 13, and 15.\textsuperscript{154}

One should note, however, that these grounds hang together as a complex for religious liberty. Independently, they are underdetermined for making the case that religious freedom is a natural right that ought to be protected in any constitutional order of the state. The reason for this can be seen by negation. Take away the transcendence of religious acts by the nature of their object (the quest for the truth about God, in order to worship him), and the interiority of religion yields no right to manifest religious acts and opinions. The proofs offered are correct as far as they go, but incomplete. Pavan cites Thomas’s doctrine that human power is incapable of judging or commanding interior acts, the implication being that religion, being above all interior, is outside the domain of public power.\textsuperscript{155} This only proves that the state may not coerce in regard to one’s religious beliefs and interior acts, something already explicit in the Catholic tradition by the time

\textsuperscript{154} Ibid., 168-81. The divine positive right corresponds to the fact that historically speaking the distinction between the two powers of state and Church emerged only in the West under the influence of the constitution by the Lord Jesus of the Church as independent of the state (p. 175-76). Thus it is a precision in the order of knowing, even though the first part of \textit{DH} makes an argument from reason. Again, this supports Hittinger’s reading that \textit{DH} was only possible historically speaking after Vatican I’s formalizing of the doctrine of the freedom of the Church (Hittinger, “Declaration on Religious Liberty,” 359-61).

\textsuperscript{155} Pavan, “Le droit à la liberté religieuse,” 172-74, citing Thomas Aquinas, \textit{STh} IaIIae.91.4 and IaIIae.104.5.
of DH. After all, human law cannot coerce someone’s lustful thoughts, but it can prevent public acts stemming from such lust. Therefore, something else must be necessary to get a public zone of freedom for religious activity. Likewise, the growing acceptance in human positive law of a zone of freedom is insufficient, for there was a growing acceptance in the nineteenth century of destructive and selfish nationalisms, yet that fact by itself did not yield some papal encyclical on the joys and benefits of absolute nationalism. The growing acceptance of the positive right to religious liberty is good because of that right is compatible with and an outworking of the natural and divine moral law.

Certain conditions for having a right to religious liberty are more necessary. The transcendence of religious acts, that they aim at something beyond the state, is one of these more important grounds, and is much closer conceptually to the “ontological ground” of man’s natural inclination to know the truth about God. Coupled with Murray and Pavan’s focus on the social nature of man requiring social freedom to follow his religious convictions, the ontological ground yields the right to religious liberty as expressed in DH. In this way, DH expects the state to be aware of who man is in his interiority and his freedom, and therefore his rationality; this yields an understanding of man’s inclination to the truth and to higher values, above all the Truth, the Good, and thus God; and therefore man’s transcendence with regard to the state. At the same time, knowing man as social, the state recognizes man’s necessary dependence on social relations to learn and express religion, and thus moral and juridical persons have an integrity that the state must guarantee within the limits of just order. To expect of the state anything less is to
place the right on less firm ground. In this, the juridical and ontological approaches contained within *DH* are complementary.

The drafters obviously committed themselves to the position that the state knows enough about the nature of the human person to ground a natural human right in the civil order. Without this grounding in the truth about man, legal rights ineluctably are treated as creations of the human will, whether asserted by the individual or society in the form of positive law. On the contrary, a recognition of inherent limitations on the state based on the dignity of the human person implies a higher law doctrine, and thus a natural law, which is to say, a law given by the Author of nature. The state should recognize the existence of a transcendent end of the human person, since *DH* n. 3 § 5 state that religious acts “by their nature transcend the terrestrial and temporal order of things.” This implicit theocentric anthropology is how *DH* can exhort rulers and teachers to form the people in the responsible use of religious liberty (n. 8). As Pavan notes, especially given modern advertising and media, men must know how to achieve the moral and intellectual formation necessary to arrive at an informed personal decision regarding the questions of God and religion. The danger is a culture and education that focuses on scientific and technological progress, keeping human beings focused on matter and distracting them from beauty, truth, and goodness. In other words, those who shape education—the state is undoubtedly among them—must know that the human person’s flourishing is not complete

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156 Cf. John XXIII, *Pacem in terris* (1963) 78: “We must, however, reject the view that the will of the individual or the group is the primary and only source of a citizen’s rights and duties, and of the binding force of political constitutions and the government’s authority.” The following paragraph then identifies a growing awareness of human dignity as the basis of the constitutional protections for rights.

unless that flourishing attends to the highest things. They must shape the human person’s education accordingly.

What further complicates the disfiguring portrait of DH as endorsing state neutrality is the declaration’s argument from revelation. While much of the conciliar debate and indeed of the text itself concerns whether the general or natural right to religious liberty is derived from or merely rooted in revelation (merely rooted according to n. 9), the text witnesses to the existence of a sacred right of the Church to freedom in completing the mission granted her by Jesus Christ himself. Hence n. 13 speaks of a “sacred liberty” that the Son of God gave to the Church, “acquired with his own blood.” The liberty “is so obviously proper to the Church that they who fight against her act against the will of God.” Indeed, “in human society and before any public power whatever the Church claims for herself liberty as a spiritual authority founded by Christ the Lord, on whom lies the duty by divine command of going into the whole world and preaching the gospel to every creature.”\textsuperscript{158} This is a claim urged in societate humana and coram quavis potestate publica, the very places where Murray said the Church cannot advance a divine claim. The Declaration, in other words, while upholding the rule of law and demanding free exercise for all citizens on the basis of human dignity, also repeats traditional teaching on the identifiability and public nature of the Catholic Church as a “spiritual authority founded by Christ the Lord.”

\textsuperscript{158} As indicated in a footnote to the Declaration, this section of n. 13 is a loose quotation of Leo XIII’s Officio sanctissimo; cf. ASS 22 (1887), 269.
One may say with Benoît, then, that the relative autonomy of the Church and state is not a contradiction, but does entail a tension that can be overcome in an ordering achievable through a dialectical encounter.¹⁵⁹ Let us return to the body and soul metaphor employed by Leo XIII in his encyclicals, though in a slightly different application. Just as the body and soul created good by God are in tension through the difference in appetites, nonetheless, the relative autonomy of the faculties of the human person is capable of integration through the acquisition of moral virtue, which does not destroy the nature of the lower appetites. Of course, such a metaphor can only go so far, since the social body is not an organism, nor is the Church properly a soul. Pius XII, the pope most responsible for the doctrinal core of DH himself called attention in Mystici corporis to the witness of the Church to her mystical unity, a witness recognizable in the world. To say that such witness is incapable of recognition by human beings when they wear their “political animal” hats is either to separate politics from society (a natural impossibility) or to separate the Church from society (a moral impossibility). In contrast with Murray’s comment that the Church may not urge her theological title in civil society, Pavan says that the Church claims freedom from coercion in two ways, both of which are recognizable in society. The two rights of the Church do not differ in object but “only with regard to the sources,” the divine claim being based on “the divine command to fulfill her saving mission for the benefit of all mankind.”¹⁶⁰ Religious communities in general have their corporate claim to religious liberty


¹⁶⁰ Murray, “Church and State at Vatican II,” 209: “Furthermore, the Declaration makes sufficiently clear—without being altogether as precise as might be desired—that the foundation of the Catholic Church’s right to
derivative from the claims of the individual persons composing those communities, while the Church advances the additional claim that she has received from above the right to religious liberty (13 § 2).\textsuperscript{161}

Pavan shares with Murray, however, the position that the right of \textit{DH} 13 is the same in content as that of \textit{DH} 4—freedom from coercion in religious matters. Valuet disagrees, saying the Church has a right to preach the gospel that others do not have. I affirm Valuet’s point, but do not see where in the text of \textit{DH} 13 this right is explicitly mentioned as a right possessed by the Church. It appears rather as a duty or mandate given to the Church by Christ, which no other community has. The right to preach the gospel is implicit here, but distinct from the right mentioned explicitly in n. 13. In the end Valuet attempts to distinguish the Church’s right as materially identical, yet formally distinct from the general right in terms of agent (efficient causality).\textsuperscript{162} Elsewhere Valuet claims an additional distinction in end (finality).\textsuperscript{163} Valuet does not provide an argument for how a difference in agent or finality creates a simultaneous material identity and formal difference in the objects of the two rights. More probable is Valuet’s freedom is twofold. The theological foundation is the mandate of Christ to preach His gospel and to observe His commandments (n. 13). This unique theological title, however, cannot be urged in political society and against government. The mandate of Christ to His Church is formally a truth of the transcendent order in which the authority of the Church is exercised and her life as a community is lived. Therefore it is not subject, or even accessible, to judgment by secular powers as regards its truth or falsity… In political society, however, and in the face of government, only that title to freedom may be urged which the powers of the secular order are, and are obliged, to recognize.” See also Pavan, “Declaration on Religious Freedom,” 84-85.

\textsuperscript{161} This makes for an interesting parallel to the difference between the power possessed by the governments of natural, temporal polities and that of the Church. Both powers are from God, yet the former comes through the people and the latter from the Holy Trinity.


\textsuperscript{163} Ibid., 539.
conclusion that *DH* 13 discusses the minimum necessary freedom from state interference, a juridical right to immunity that the Church has on two different but complementary grounds. Of course, the Declaration does not limit the Church to asking only for liberty, but it does ask for at least liberty from all governments. The proximity of the statement of the Church’s unique end to the statement of her freedom does assert something further than a claim for freedom before political society equivalent to any religious body whatever (“utpote auctoritas spiritualis, a Christo Domino constituta”). Paul VI likewise warned rulers not to hinder the Church in her mission, lest they “crucify [Christ] anew: this would be sacrilege, for he is the Son of God; that would be suicide, for he is the Son of Man.”

It would be a mistake to turn the omission of a statement of the full rights of the Church into an admission that the Church can demand nothing more than the minimum level of freedom owed her.

Establishment of Religion and of the True Religion

The final text of *DH* 6 touches on the problem of religious establishment under a hypothetical formula: “If after taking into account the particular circumstances of the peoples, specific civil recognition in the constitution of the state *in iuridica civitatis ordinatione* is given to one religious community, it is necessary that at the same time the right to liberty in religious matters be acknowledged and guarded for all citizens and religious communities.” The Church’s

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164 *Sacrosanctum Oecumenicum Concilium Vatican II: Constitutiones Decreta Declarationes* (Vatican City: Typis Polyglottis Vaticanis, 1966), 1087, author’s translation of the French original. Murray claims that Paul VI made “freedom, nothing more” an eternal principle of jurisprudence or a point of divine law (“Religious Freedom,” 693, followed by Griffin, “Commentary on DH,” 256). Murray’s opinion has been criticized by Hittinger, “Declaration on Religious Liberty,” 372-74. For further treatment of Paul VI’s reception of *DH*, see Valuet, *Le droit à la liberté religieuse*, 552-56.
teaching on religious liberty has sometimes been described as hostile to any establishment of religion, in light of the lack of jurisdiction of the state in sacred matters. This is thanks, in large part, to the post-conciliar commentary of Murray. To take one example in his Abbot commentary, Murray acknowledges that some fathers believed the “respectable opinion” that establishment is compatible with religious liberty. Murray says that the final document takes no stand on the issue, and even asserts that “the Council wished to insinuate that establishment, at least from the Catholic point of view, is a matter of historical circumstance, not of theological doctrine.”\footnote{Murray, “Religious Freedom,” 685. I have not found any evidence for this last complex proposition.} Yet as Murray had to admit, the final text “did not… condemn the institution of ‘establishment.’”\footnote{Ibid.} Besides, Murray ought to have known that the vote on the fourth draft was a strictly placet/non placet vote—no placet iuxta modum votes were allowed—on whether the text should be, as Paul VI instructed, the “basis of a definitive Declaration perfected further according to Catholic doctrine regarding the true religion and emendations proposed for discussion by the Fathers.”\footnote{Pavan, “Declaration on Religious Freedom,” 57; AS IV/1, 434.}

The final text is indeed reluctant to speak about religious establishment, but careful attention to the reasoning behind the formulation of the hypothetical statement reveals a potentially more complicated rationale than Murray lets on. As Hittinger has pointed out, the text was “silent” on the establishment of Catholicism for very good reasons. Hittinger lists four reasons: First, it would have been impossible for the short document to extract from the fifteen hundred years which kinds of establishment were acceptable. Second, the major burdens of the
council were convincing neutralist or atheistic states to allow free exercise, and to support the emergence of constitutional democracies. Third, “the Catholic Church did not, and does not, believe that disestablishment is a principle superior to free exercise.” Fourth, the council’s stress on finding “a theology of social liberty” emphasized civil society’s agency, in distinction to the government’s.\textsuperscript{168}

The \textit{relationes} indicate that the drafting commission as a whole and over the entire drafting process saw establishment or endorsement as compatible with religious liberty, provided that all citizens and communities enjoy true religious liberty. This was put in terms of where Catholics are the majority and where a minority. So De Smedt said, in the third oral \textit{relatio}, that “privilege or even official recognition for the Catholic Church” is compatible with religious liberty in cultures where the majority of citizens are Catholic. De Smedt was making the argument that the rights of the Church and the rights of the human person are not at variance, and that liberty will be a better mode of renewing the Kingdom of Christ, free of interference from political powers generally.\textsuperscript{169}

Some bishops who did not want the Declaration to categorically approve of religious establishment offered alternative points of view. Some feared the abuse of establishment by Catholic or non-Catholic governments to interfere in the Church’s business.\textsuperscript{170} Similarly, Maronite bishop Michaël Doumith, speaking for seventy bishops from the Middle East, Africa,  

\textsuperscript{168} Hittinger, “Declaration on Religious Liberty,” 365-66. 
\textsuperscript{169} AS III/8, 454. 
\textsuperscript{170} E.g., Cardinal Alfrink’s speech after the fourth draft (AS IV/1, 218).
and Asia, noted that the confessional state has an “equivocal” meaning for different religions and cultures. Among Christians, the confessional state “does not exclude of itself, or not now anyhow, religious liberty.” On the other hand, the non-Christian conception of the confessional state generally excludes religious liberty and allows only adherents of the established religion full citizenship and protection from discrimination. Doumith’s main concern was that in “speaking indiscriminately about the confessional state to justify the confessional state of Christians (which indeed no one opposes), we should seem to approve, outside of our intention, unacceptable forms of discrimination.”

In other words, that various fathers opposed a categorical endorsement of establishment does not signal general agreement with Murray’s position.

More damning for the myth that DH settled the question of establishment negatively is what De Smedt’s fifth relatio reveals about the concerns of the council fathers. Murray at this point was no longer on the drafting commission, having suffered a collapsed lung on 5 October 1965. The fifth draft admitted in hypothetical form the establishment of religion, in part to split the difference between four types of requests by the council fathers. Some thought the matter inopportune to treat in a universal declaration on religious liberty; others wanted a clear statement that it is possible to recognize juridically the true religion; still others that if the matter of establishment were to be treated in the Declaration, it should be under a hypothetical form;

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171 AS IV/2, 13-14.

and finally others that establishment should be treated, but under a conditional formula.\textsuperscript{173} The situation was much more complex than Murray and other American interpreters would allow, for even those who did not want the Declaration to treat the issue of establishment had diverse reasons for this. Some simply wanted the matter omitted for prudential reasons, while some who wanted a hypothetical formula were thinking of guarding religious freedom in non-Catholic or non-Christian establishments. As for the theoretical question of whether religious liberty is compatible with establishment or endorsement, the drafting commission was unequivocal. Recognizing that establishment is a reality in much of the world, the drafting commission thought it not possible not to respond to this question in the Declaration. Hence the hypothetical formula, which covers generically the right of religious liberty no matter what state or what established religion. The issue “of all the rights which ought to be recognized for the Church,” De Smedt clarified, was simply “not treated,” for “the object of our declaration is not the vindication of all the rights of the Church, but only the vindication of of a universal right to liberty that always should be observed for Catholics and for others.”\textsuperscript{174} One notices, furthermore, that De Smedt speaks of rights to be recognized for the Church beyond mere liberty, highlighting the incompatibility of Murray’s “freedom, nothing more” opinion with the meaning of the text. Similarly, the last written \textit{relatio} responded to a proposed amendment trying to raise the issue of concordats in n. 6, saying the “text is not against concordats, for it expressly speaks of special
Murray was right to note that religious liberty was the “thesis” and establishment the “hypothesis,” but not in the sense he meant. Instead, the final draft considers the issue generically, at the request of the fathers, without regard whatsoever to the question of whether it is the true religion that is established. *DH* itself does not disavow the Catholic doctrine that the state ought, as a “thesis” in Murray’s sense, to cooperate with the Church. But Regan’s next statement reads too much into the final draft, aside from posing a false dilemma: “The text does, however, at least make clear that the institution of establishment is the product of historical circumstance, not a matter of theological doctrine.” Cf. Davies, *Second Vatican Council and Religious Liberty*, 173-74.

The treatment of concordats in the *relationes* also demonstrates how the drafters and voting bishops understood the implications of *DH* for the public law of the Church. The third written *relatio*, alluding to Pius XII’s remarks in *Ci riesce*, noted that the goal of a concordat is a stable regime of freedom for the Church in a particular region. If “in former times certain concordats used to aim at other ends, for example, the legal exclusion of non-Catholic cults from a certain region, legal privilege of different kinds, etc.… [t]hat happened according to determinate historical and social circumstances and in conformity with the kind of government

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175 AS IV/6, 750.

176 Regan, *Conflict and Consensus*, 175.
that obtained during that time.” Here one can make several interesting observations. First, the Declaration aimed in part at establishing social conditions which would guarantee a basic level of liberty for the Church, overlapping with the previous concordat policy of the Church. Second, the *relatio* dismisses the relevance of the Spanish concordat tradition by declaring its obsolescence and attachment to a previous politico-social mindset. This last point is compatible with our contention that it is only with the development of the Church’s teaching on the nature of the common good and the arrival of an international “Christendom” (union of states) that the full exercise of religious liberty was capable of recognition. Thus, the unique demands of a confessional state in the present era are not able to suppress the demands of the dignity of the human person.

In summary, *DH* teaches that establishment is compatible with religious liberty, so long as the right of all citizens and groups are respected; and the further issue of which rights of the Church ought to be recognized legally was simply passed over. I may make two observations, then, about the compatibility of *DH* with prior teaching about the legal recognition of the

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177 AS III/8, 464.

178 AS IV/1, 192 (fourth written *relatio*).

179 David Hollenbach helpfully says that Vatican II teaches a “differentiation without privatization” in regard to public religious activity, so that religion liberty ensures that religion is not cordonned into some private sphere outside of which it is unable to have a public presence. At the same time, Hollenbach too quickly precludes establishment on the basis of *DH*: “Non-establishment of religion is an institutional consequence of this freedom of religion…. Non-establishment is called for because religious freedom cannot be adequately protected where government power is placed behind one religion to the exclusion of others” (*The Common Good and Christian Ethics* [Cambridge: Cambridge University Press, 2002], 119-20). To be sure, if establishment necessarily entailed the Church trying “to co-opt the power of the state for its own purposes” and that this co-opting necessarily entailed the exclusion of all other public religious activity (Ibid., 119), then Hollenbach is certainly correct. The final text of *DH*, however, importantly refrained from drawing this conclusion, and nothing in it requires Hollenbach’s conclusion about establishment.
Catholic religion. First, the text of DH does not explicitly contradict any of this prior teaching, for the issue is explicitly identified by the relationes as not pertaining to the object of the Declaration. Second, DH is compatible with the prior teaching, for the relationes explain that the special legal recognition of Catholicism is possible, whether by concordat or other means, so long as the religious freedom of all other citizens is preserved. In this way, there is a nice balance within the duty of societies and states toward God: on the one hand toward the human person made in God’s image and destined for an end beyond the terrestrial city, on the other hand toward the divine society sojourning on earth, which is united to that heavenly city above. DH is mainly concerned with the former, though both the relationes and the text (e.g., n. 1) assert the compatibility with prior teaching regarding the latter recognition. It can justly be said that the lines in the debate over establishment and religious liberty parallel, despite some of their partisans thinking they were perpendicular. This is found in the false presentation of the theory of “thesis/hypothesis,” where the thesis requires repression in addition to establishment, or better, repression as a function of establishment. Valuet summarizes this point well:

The thesis therefore is false that jams together religious establishment [la confessionnalité] and the absence of civil and social religious liberty for baptized non-Catholics…. And yet it is precisely because the two elements were without cease more or less linked together… that the debate was a dialogue of deaf men. From one side, they were affirming that the ideal consisted of religious establishment and therefore the absence of a right to free exercise for dissident cults. From the other side, they were claiming the right of religious liberty for dissidents and from that they denied that religious establishment was an ideal.\textsuperscript{180}

\textsuperscript{180} Valuet, La liberté religieuse et la tradition catholique, 1:736, emphasis original.
The result of framing the debate in terms of this false dichotomy is to create an impossible case for the development of doctrine: before the Church taught it was the immutable ideal that the state acknowledge and aid the true religion, now the Church teaches that this is not true on account of the (false) supposition that religious liberty entails disestablishment and state neutrality. It is a case of A and ~A. This false opposition between establishment and liberty ought not condition one’s interpretation of DH, as seen from the comments of the drafting commission in this chapter and the teaching of prior popes.

This balance is the true meaning of the final text’s explicit affirmation that DH does not obviate or contradict prior teaching regarding the duty of civil society toward the true religion. As the first section of the Declaration says, the council “leaves untouched [integram] the traditional Catholic doctrine on the moral duty of men and societies toward the true religion and toward the one Church of Christ” (n. 1). De Smedt’s sixth and final oral relatio made it clear that “societies” referred to civil societies and included the public authorities. At the same time, this duty was balanced with the development of Catholic teaching on the personalist nature of the temporal common good. It thus also declares a liberty of the individual citizens in civil society. Responding to calls for an explanation of how the Declaration did not contradict prior doctrine, de Smedt said in that last oral relatio that, while future theological studies would have to treat the issue in further detail,

\[\text{as to the substance of the problem the following should be said: While pontifical documents up to Leo XIII insisted more on the moral duties of public power [in moralia officia potestatis publicae] toward the true religion, later High Pontiffs,}\]

\[\text{This change was introduced into the fifth draft and explained by De Smedt at AS IV/5, 99.}\]
while retaining this doctrine, complete the same by making clear another duty of public power, namely, the duty of observing in religious matters the demands of the dignity of the human person as a necessary element of the common good. The text presented to you today more clearly recalls the duties of public power toward the true religion (see n. 1 and n. 3); from this it is clear that this part of the doctrine has not been overlooked. The proper object, however, of our declaration is an enucleation of the second part of the doctrine of more recent supreme pontiffs.  

Two things stand out in this paragraph. De Smedt explicitly affirms that public authorities have a moral duty toward the true religion, something that our previous chapter shows was clearly taught by prior popes. De Smedt also claims that the development on the personalist common good advanced without removing this prior doctrine, for he says that later popes retained it while conditioning it with the dignity of the human person. The intervention provides a balanced template for understanding the developments in Catholic political theology. The state is an autonomous, non-sacral order that nonetheless has duties toward two other sacral realities: the human person made in the image of God and the Catholic Church. Valuet has examined this issue at length, and has shown that the doctrine of the latter drafts of DH differs significantly in these regards from the middle drafts written in part by Murray. Where the middle drafts had claimed in religious matters the state ineptam esse, “to be incompetent,” the final documents only say that the state is incompetent dirigere vel impedire, “to direct or impede” religious acts as such. Valuet concludes that DH excludes only the state’s “compétence juridique” in matters religious, but not the state’s “compétence gnoséologique” as to what religion is the true one. In

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182 AS IV/VI, 719. De Smedt emphasizes this twofold doctrine by repeating the words of the first section: traditionalem and recentiorum. It is a signature motif in Harrison’s work to highlight this explicit affirmation of the duty of the state toward the Church in De Smedt’s final relatio (Harrison, “Murray: A Reliable Interpreter?,” 75).

183 Valuet, La liberté religieuse et la tradition catholique, 1:525–581.
light of my own analysis, I agree that the doctrine of the final *relationes* is that the state has a moral duty to the true religion. This is the doctrine recalled in *DH* 1.

In light of De Smedt’s comments on the addition to the final draft regarding the duty of civil society, inclusive of its authorities, toward the Catholic Church, I make a final comment on Murray’s post-conciliar gloss of *DH* 1. Murray said in several places that the changes to the final form of *DH* 1 were primarily motivated by “pastoral” concern about indifferentism. The implication is that these changes were made to assuage the concerns of some bishops, and that the changes therefore are accidental to the core position of *DH*. One should therefore interpret *DH* 1 as controlled by *DH* 6’s teaching on establishment, rather than vice versa. This is why Murray interprets the duty toward the Church only in terms of individual men. As seen above, however, De Smedt’s presentation of *DH* 1 as preserving the duty of public authorities toward the Catholic faith contradicts Murray’s position on the ineptitude of the state, the obsolescence of the Catholic state, and the incompatibility of establishment with religious liberty. In other words, De Smedt presents *DH* 1 as controlling the interpretation of *DH* 6 on establishment. De Smedt’s *relatio* and the final text itself of *DH* ought to have more weight in any interpretation of the Church’s mind in promulgating *DH* than Murray’s personal theological opinions. The *relatio*

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185 Agreeing with De Smedt is fellow subcommission member Jérôme Hamer. See his comments in J. Hamer and C. Riva, *La Libertà Religiosa nel Vaticano II*, 2nd ed. (Torino-Leumann: Elle Di Ci, 1967), 145, translated and cited in Harrison, *Religious Liberty and Contraception*, 77: “The Declaration emphasizes once again that this ‘duty’ (officium) does not concern only individuals but also communities, that is, men insofar as they act in common. The reference here is to all social groups, from the most modest and spontaneous to nations and States, and covering everything in between: trade unions, cultural associations, universities. … The schema simply wishes to eliminate any form of merely individualistic interpretation of this primordial duty.”
is the more authoritative aid in helping us perceive the mind of the Church in this matter, and thus this dissertation follows it in interpreting the final form of the Declaration. Furthermore, understanding De Smedt to have given a better interpretation of DH 1 than Murray coheres with what has already been seen regarding why the Council was satisfied with a hypothetical statement of the teaching on establishment in DH 6.

Progress in Doctrine and in Social Institutions

The view of doctrinal development offered by the drafting commission to the council fathers is difficult to assess for several reasons. First, the early narrative offered in De Smedt’s first relatio was marred by the fact that it had to end in the “rights of erroneous conscience” position of the first draft. De Smedt identified a twofold principle of “the rule of continuity” and “the rule of progress.” Second, the narrative offered by the drafting commission changed over the course of the council, such that the commission simply left it to future theological studies to explain the change. Some have insinuated that this was irresponsible, but the direction of papal teaching had already been sufficiently established by Pius XII and John XXIII. Further, the development was accepted by the majority of bishops at the council. Third, the two constant features of the commission’s account of how the doctrine developed were enough to show non-

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186 Not only the relatio, but also subsequent teaching of the Church is itself a guide to understanding the true meaning of DH. One area of research in Catholic social thought not yet fully explored is the post-DH demand of the Magisterium that Sundays and Holy Days have civil effect (e.g., CCC 2187).

187 AS II/5, 490.

188 AS IV/1, 186-88, on their doctrines of the nature of social order, dignity of the person, office of civil authority, the rule of law, free society, etc.
contradiction in the object of the right itself. The drafts do not affirm the rationalism, laicism and indifferentism underlying papal condemnations of past ages, ideologies that so shaped the liberties proclaimed that the object was a positive authorization to do whatever one’s conscience declared.\(^{189}\) Human awareness of the dignity of the person and the nature of government have progressed such that the question of religious liberty is substantially new.\(^{190}\) Thus it is a question of a new world situation, in light of deeper knowledge of the rights of the human person and the nature of the state, and so on.\(^{191}\)

Interestingly, De Smedt anticipates certain teachings of *Donum veritatis* in his penultimate oral *relatio*, such that papal pronouncements were limited by focusing on certain questions and not others, such as focusing on truth and the rights of the Church and less on the human subject. De Smedt, however, is quick to point out that this was not entirely lacking, but that only in bringing both poles together in the teaching of Pius XII and John XXIII was something like *DH* able to happen. His point is that the limited nature of papal teaching leaves many questions unsettled and hence room for doctrinal evolution in the matter of religious liberty.\(^{192}\) Other texts address more directly the development in the *ius gentium* (not the drafters’ term) insofar as religious liberty attends other changes such as constitutional limitations on the

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\(^{189}\) E.g., II/5, 491-94. De Smedt’s first oral *relatio* explains the papal condemnations of the nineteenth century and unfolds a path of development in the personalist (rights-focused) nature of the state.


\(^{191}\) AS III/8, 453-54, 464.

\(^{192}\) AS IV/5, 100-101.
powers of state vis-a-vis citizens and the maximizing of freedom under the rule of law, especially in a matter so touching upon the dignity of the person as religion. The growing awareness of the dignity of the human person (n. 1), globalization and resulting religious pluralism of societies, and the desire of men and nations to live peacefully in a juridical unity despite their differences (n. 15)—all were necessary social and political conditions for the doctrine of DH to be proclaimed. Pavan himself saw this as the key to understanding how a natural right could be so lately proclaimed by the world and the Church: it is only in the modern period that men have perceived human dignity more fully, consequently desiring a responsible liberty and establishing constitutional states to guarantee that liberty. From such a point there is no return. Pavan’s use of Pius XII’s Ci riesce in this regard, however, appears to be an extended ad hominem against the conciliar minority, using their own “civil toleration” framework to argue against them. Pavan says that the globalization of the world and the religious pluralism of states makes it prudent, for the sake of avoiding greater problems within societies and in limiting the rights of those in the truth in foreign societies, to ask for universal civil acknowledgement of religious liberty. While granting to Pavan that the civil toleration model was repudiated by DH, to my mind he has unnecessarily cut off any rapprochement between these two approaches. One can grant the modern democratic, constitutional state as a “postulate

193 AS IV/1, 185, 197.
194 AS III/8, 453, contrasting twentieth-century attitudes with nineteenth-century laicism and indifferentism.
197 Ibid., 177-78.
of reason” (Pius XII), and thus recognize that the *ius gentium* has changed accordingly. By this, one affirms Pavan’s assertion of a greater awareness of human dignity resulting in a different conception of how political power is to be exercised, not paternally but democratically.198 This makes universal civil acknowledgment not only a prudent thing, but a just thing. There is no going back to tying political unity necessarily to religious unity or vice versa.

**Excursus on the Church’s “Coercive Power”**

Recalling the first chapter, part of the dispute between Rhonheimer and Pink involved the nature of the Church’s power to coerce her members. Pink says that *DH* leaves untouched the Church’s coercive authority as mediated through baptized rulers, but this is not what *DH 1* says is preserved entire. Rather, it leaves untouched the traditional teaching on the moral duty of individuals and societies toward the true religion. It says nothing of retaining a traditional teaching on a moral or civil duty of temporal power to coerce the baptized at the direction of the Church. As far as is possible to tell in my own research and the work of others, the traditional doctrine was thought by some bishops to require the state *as such* to identify, adhere to, and uphold, in the name of the *temporal* common good and strictly in their capacity as temporal rulers, the rights of the Catholic Church. The use of the temporal power in a purely instrumental way was not presented as the traditional doctrine.199

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198 Ibid., 180-81.

199 In fact, a work cited in early drafts of *DH*, and influential in the pre-conciliar movement toward *DH*, argued cogently that the political theologies of Bellarmine and Suarez, on which Pink bases his theory, were an aberration in the tradition. See Vermeersch, *La Tolérance*, 65-113.
More damaging to Pink’s case than anything else—and interesting in its own right—is the fact that the written relatio for the final draft of DH explicitly denies that the Church’s power to sanction delict acts with ecclesiastical penalties is a form of coercion. The relatio draws some kind of a distinction between the state’s use of force in protecting public order (coactio, from cogere), and the Church’s use of canonical penalties (potestas coercitiva, from coercitio/coercere). The relatio points this out twice, first in response to a proposed amendment to n. 10 of the textus denuo recognitus and again in response to measure 9 to n. 14. The first of these two measures asked that the draft be amended to say not, “It is fully consonant with the nature of faith that in religious matters, any kind of coercion whatsoever on the part of men be excluded” (Indoli religiosa... quodvis genus coercitionis ex parte hominum excludatur), but instead that it is compatible with faith only that “whatsoever kind of unjust coercion” (quavis iniusta coactione immunis) be excluded. The amendment therefore implies that there is a just form of coercion in religious matters. The drafting commission rejected this suggested amendment because “coercion [coactio] toward adults in society and in the state, in religious matters, in the sense expressed in the first part of this Declaration, is itself unjust [de se iniusta est].” The response continues: “Ecclesiastical penalties that sanction delict acts are from the compelling power [coercitiva potestate] of the Church toward her members, but they are not coercion [non sunt coactio].” The amendment then refers the father proposing the change to n. 7 of the Declaration to learn about what limits on religious exercise can be imposed by the state.200

200 AS IV/VI, 761.
The difference seems to be not that *coactio* is juridical and *coercitiva potestas* is not, but rather that one touches and forces the body, while the other does not.

The drafting commission likewise held that the proposed amendment to n. 14 proceeded on a conflation of the disciplinary power of the Church toward her members and the power of coercion possessed by the state toward citizens who violate public order. The measure requested that the following text be added to the Declaration:

> Further, the Church has not only the right, but also the duty to impose her doctrine and discipline by power of her authority and with sanctions, on those who freely became subject to her. This coercion [*coactio*] is not at all opposed to but rather favors genuine liberty, for in this way Christ acted, while he frequently often harshly reprehended that they did not believe, those who ought to recognize the truth: ‘Indeed, he who will not believe will be condemned’ (Mk. 16:16).

The drafting commission refused this amendment on the grounds that the Declaration does not treat the question of liberty within the Church herself. The response continues by saying,

> “[B]esides, the described action of the Church ought not be called coercion [*non est vocanda coactio*].” Recall that the described action of the Church was “to impose doctrine and discipline by power of her authority and with sanctions.” This response confirms the hypothesis that the difference between the state and the Church’s power is not that one is juridical and the other not. The difference must be sought elsewhere.

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201 AS IV/VI, 770.

202 Pink’s article only summarizes the first part of the reply about the Declaration not treating liberty within the Church (“Interpretation of *Dignitatis Humanae*,” 105). This omission misleads the reader to think that the drafting commission asserted the coercive power of the Church in a univocal sense with the coercive power of the state. To the contrary, the commission certainly did not accept something like Pink’s neo-Suarezian account of coercion, as the two replies make clear.
What precisely is this distinction between *coactio* employed by the state and the Church’s ability to mete out ecclesiastical penalties according to her *coercitiva potestas*? As said above, the Church does have coercive power over her members, as Pink argues in appealing to both pre- and post-conciliar codes of canon law. On the other hand, perhaps it was not by accident that in addition to the *relationes* cited above, both the 1917 and 1983 codes of canon law use *coercere*—not *cogere*—to describe the power of the Church to discipline her members with penalties. In this case, *coercere* would mean “to restrain” in a different way than *cogere* means, the latter perhaps more alongs the lines of coercion using or threatening physical contact with the body. If true, this semantic nuance would point to the deeper theological distinction that Charles Journet explicated before the council: certainly both civil society and the Church are societies, but only in an analogous way. It is true that the political state and the Church are both perfect (complete) societies, but they are only so in regard to attaining their respective and different ends. The Church truly is a juridical society, but at a different level than the state. The Church has a supernatural end transcending the state’s temporal end, and thus the means at the Church’s disposal for directing her members to that end likewise transcend those of the state. Moreover,

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203 Ibid., 93: “It is clear that the traditional view of the Church as being as properly a coercive authority in her own right as is a political state is in no way incoherent. For any authority can be coercive if it has both the right and the capacity to adopt and execute the requisite sort of project—the deliberate use of the credible threat of the deprivation of a good as a form of directive pressure, where the goods might be ones that even potential wrongdoers would fear to lose.”

204 CIC c. 1311: “Nativum et proprium Ecclesiae ius est christifideles delinquentes poenalibus sanctionibus coercere.” Cf. 1917 Code c. 2214 § 1: “The Church has the native and proper right, independent of any human authority, to coerce [coercendi] those offenders subject to her with both spiritual and temporal penalties.”

205 Leo XIII emphasized this distinction in ends and jurisdictions between the two societies many times (e.g. *Nobilissima gallorum gens* 4; *Immortale Dei* 10-14; *Officio sanctissimo* 13; *Sapientiae christianae* 26-30).

206 Journet, *L’Église du Verbe Incarné*, ch. 4 on the relation between canonical power and political power.
the supernatural end of the human person can only be attained freely, and thus force (in the sense of *cogere*) is incompatible with achieving that end. This last point is prominent in *DH* itself, insofar as it places the religious quest as something above the state, and thus above force. The human search for God as the First Truth and the Highest Good requires free acts of intellect and will, free acts of the human spirit. The society properly associated with that search would surely be more spiritual than the state (without compromising the basic requirement of visibility necessary to any human society). Penalties meted out by that spiritual society could not then adopt the same mode—violence toward the body—as that utilized by the state.

The *relatio* cited above would therefore be highlighting the difference in measure resultant from the essentially different ordination of the two societies. When the Church imposes temporal penalties, her touch is lighter, so to speak, because she is aiming at a supernatural end: the conversion of the sinner to God, and the restoration of justice in a society ordered directly to God.207 The difference can be seen between the state’s ability to arrest, to confiscate property, to incarcerate, or to use the death penalty, on the one hand, and the Church’s removal of penalties.

Ironically, Pink employs Journet to support his interpretation of the tradition, missing the fact that Journet, like Vermeersch before him, insisted that Suarez’s view of the coercive power of the Church and its relation to the temporal power was an aberration or false path in the tradition. See, for example, Journet’s negative comments about Suarez’s view that the Church possesses the ability to mete out the death penalty through secular princes (p. 319). Journet elsewhere says that the argument from the nature of the Church as a perfect society to her right to the temporal sword is a “sophism,” for a difference in end entails a difference in means and in rights (p. 254n1).

207 It is beyond the scope of this investigation to settle the question of how much the first reason may enter into the mind of the ecclesiastical judge. In responding to Pink, John Finnis has argued that “the justifying purpose of punishment… can only be to restore the order of justice disturbed by culpable offense” (“Reflections and Responses,” in *Reason, Morality, and Law: The Philosophy of John Finnis*, ed. John Keown and Robert P. George [Oxford: Oxford University Press, 2013], 571). The difficulty for this position lies in St. Paul’s appeals to the restorative aspect of excommunication (1 Cor. 5:5: “you are to hand this man over to Satan for the destruction of the flesh, *so that his spirit may be saved in the day of the Lord*”; 1 Tim 1:20: “Hymenaeus and Alexander, whom I have turned over to Satan, *so that they may learn not to blaspheme*” [NRSV, emphasis added]). Could it be that Finnis has unintentionally assumed a univocal concept of the “justifying purpose of punishment” in the Church and the state?
ecclesiastical benefice or assigning a penance with temporal implications (e.g., a pilgrimage) as reparation for a delict. The Church does not have a police force to enforce such penalties. Other ecclesiastical penalties are even more straightforwardly spiritual and involve the removal of a spiritual good (e.g., interdict, suspension, or excommunication). This canonical/juridical aspect to the development has not been accounted for by recent English studies. Certainly the Lord Jesus established a visible society of salvation, a sacrament, something in the world; but that kingdom is not from here (cf. Jn 18:36).

What this all implies then is not a renunciation of the Church’s proper juridical authority over the baptized—Pink is right that the Church retains this. As De Smedt, in a post-conciliar commentary on DH, clarified, “spiritual penalties coming from ecclesiastical authorities are not opposed to religious liberty,” since the liberty proclaimed in the document is not a freedom from “valid authority.” The Church has a proper authority over the baptized by virtue of the imprint of baptism on the soul, a new nature giving in root form the capacity to become a citizen of the heavenly Jerusalem. Yet precisely because the Church’s end is heavenly, she does not natively exercise coercion against the body in the same way as the temporal, terrestrial power of the state. Thus, DH does not necessarily point forward to a renunciation of authority over the baptized, but it does signal a development in how the Church understands the exercise of her authority.

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208 Rhonheimer gives the hypothetical penalty of ordering a pedophiliac priest to surrender himself to the police as a condition of absolution (“Response to Thomas Pink,” 455).

209 Even the temporal aspects of these spiritual penalties have been mitigated in recent centuries, e.g., the relaxation of the prohibition of associating with an excommunicated family member. That being said, my research touches here on a development in the Church’s own awareness of the juridical implications of her nature.

Conclusion to the Topical Analysis

On the one hand, Murray and scholars most appreciative of his contribution to the Council, grounded in the American notion of religious liberty, are absolutely correct that a juridical or constitutional grounding for the right as an immunity from state coercion was necessary for the development of the Catholic position. Where they err, however, is to suppose that Murray’s contribution is sufficient to explain fully the doctrinal development contained in the final text of *DH* as presented to the council fathers, for the juridical approach is unable to explain precisely why the human person ought to be protected from coercion in religious matters. If the first two drafts of *DH* struggled to give a coherent answer to the question of why a sincerely erroneous conscience has a right to respect in society, the third and fourth drafts struggle with the question of why man has a right to aim for some good higher than society, to a liberty that is specifically about the quest to find God. The second, “ontological” moment of *DH* was also necessary in clarifying the truth of a natural right to religious liberty presumes something like the Catholic picture of man, created and redeemed by God, and of the two powers created to assist man on his journey to perfection (*Gaudium et spes* 76). The previous teachings that *DH* conserves are the duty of even civil society, inclusive of government, to acknowledge Christ as Lord and to favor therefore the Church of Christ. The text balances this duty with a person-centered account of governance, the duty of government to provide the means for the person’s flourishing without attempting to direct or force the things of the spirit. Although the
state is a creature of God and owes something to God, it is not a sacral society charged with
directing the human person to his end in God. Hence even in the case of Catholic establishment,
the repression of public religious activity of non-Catholics cannot proceed simply on the grounds
that such exercise is false and wrong. Yet even here the state should bow before the truth, in this
case, truth about the human person made in the image of God and called to eternal blessedness.
To cross-pollinate with another conciliar text (Gaudium et spes 22), man’s right to religious
liberty, though supremely rational and natural, is cognized and safeguarded most of all when one
recognizes, even implicitly, that Christ has called mankind to a happiness that transcends Caesar.
If Caesar were to ask what truth is (John 18:38), then he has not recognized the true nature of the
citizens he serves.

John Paul II and Public Order

The post-conciliar reception of DH is complex, and cannot adequately be treated here.
Nonetheless, one recently contested issue is John Paul II’s reception of the conciliar teaching on
the public order can be briefly expounded. Scholarly arguments about the reception of DH by
John Paul II have often centered the question of whether John Paul reversed a supposed
preference for freedom over truth in social ethics evinced by *DH*, often seeing in texts such as *Redemptor hominis, Centissimus annus, Veritatis splendor*, and *Evangelium vitae* a hesitation about freedom in modern democracies, since such freedom has led to materialism and a divorce of freedom from living in the truth. Similarly important is John Paul II’s insistence that the right of religious liberty is the first or primary right.\(^{211}\) These questions are too large to be treated thoroughly here, but have been addressed by other scholars.

Nonetheless, one dispute revolves around whether John Paul II correctly interprets *DH 7* in discussing the relation between the political common good and laws permitting abortion. A recent exchange between Catholic ethicists regarding the concept of public order in *DH 7* as appropriated by John Paul II illustrates the difficulty in grasping the distinction between the common good and public order. Charles Curran has repeatedly charged that John Paul II has undermined the teaching of *DH* that in the civil sphere that “the custom of integral freedom is to be preserved in society, according to which liberty ought to be acknowledged as much as possible, and it ought not be restricted except when and as far as is necessary” (*DH 7*).

According to Curran, when John Paul II called for civil law to restrict the practice of elective abortion in the 1995 encyclical *Evangelium vitae*, the pope failed to appreciate this criterion of maximal liberty according to conscience.\(^{212}\) John Paul II reasserts “the Thomistic approach” to

\(^{211}\) John Paul is in continuity with *DH* on this point. John Paul called the right fundamental at the council (AS IV/2, 293), and De Smedt also called the right to religious liberty “the supreme of these social or civil guarantees or immunities” found in modern society (AS IV/5, 99). The idea is in the final text of *DH 15*: “requiritur ut … observentur suprema homnium officia et iura ad vitam religiosam libere in societate ducendam.”

civil law, by which secular power asserts law and truth over freedom, while Curran calls the 
approach of DH the “religious freedom approach,” which uses the concept of public order to 
favor freedom.\textsuperscript{213} Despite John Paul’s two citations of DH 7, Curran reads Evangelium vitae 71 as 
“never refer[ing] to the concept of public order; it always uses the broader term common good.” 
In Curran’s reading, the appeal to the common good serves the pope’s appeal to the requirement 
that human laws not oppose the natural law, backed up in the encyclical by citations of Thomas 
Aquinas and John XXIII (EV 70-72). Although John Paul explicitly recalls the three aspects of 
the public order mentioned in DH 7,\textsuperscript{214} Curran says that “John Paul II explicitly refers to these 
goods as comprising the common good and not the public order.”\textsuperscript{215} Curran asserts that this 
enables John Paul to read DH through the Thomistic approach, whereas Curran favors “the 
religious freedom approach to law and public policy [which] is more complex, gives more 
attention to contemporary empirical evidence, and cannot claim absolute certitude.”\textsuperscript{216} Curran 
does not explain how empirical evidence could establish that a human fetus does not have a right 
to life, nor does he explain why one should not claim absolute certitude in public. Nevertheless,

\textsuperscript{213} For a similar charge that John Paul II replaced the “juridical” element of DH favoring freedom with a 
“top-down” mandate to impose on pluralistic societies laws that protect the right to life, see Rico, John Paul II and 
the Legacy of Dignitatis Humanae, 170-176. This critique has been accepted and repeated by Griffin, “Commentary 
on DH,” 256-260. The following comment is especially egregious: “John Paul does not share this commitment [of 
Maritain and Murray] to autonomous civil government” (p. 259). Griffin fails to distinguish Catholic moral 
teachings which are also naturally-known, such as the prohibition on direct abortion and the right of the human 
person to life, from those known only by revelation, such as making acts of faith, hope, and love, and also those 
obligations that only bind juridical members of the Church, such as the rules governing fasting. This leads her to 
claim, inappositely, that John Paul was seeking to “establish” Catholic morality over non-Catholics.

\textsuperscript{214} EV 71: civil law is tasked with “ensuring the common good of people through the recognition and 
defense of their fundamental rights, and the promotion of peace and of public morality.”

\textsuperscript{215} Curran, Catholic Social Teaching 1981-Present, 241.

\textsuperscript{216} Ibid., 214.
it is clear that in Curran’s mind, the invocation of public order in *DH 7* ought to commit the Church and all people of good will to a regime of law that values freedom so highly that it tolerates the deliberate killing of children. Curran’s main point in arriving at this conclusion is that public order is a “narrower” concept than the common good. Therefore civil law must not aim at achieving the common good, but at public order.

Curran has been opposed in his interpretation by William May and Christian Brugger.\(^{217}\) May and Brugger argue that Curran’s understanding of freedom is legalistic insofar as it defines freedom in only a negative sense, without reference to the good, whereas even *DH* demands religious liberty precisely in order that people may seek the truth about God.\(^{218}\) Nevertheless, to further bolster their criticism of Curran’s separation of law from moral truth in the civil sphere, May and Brugger also argue that *DH* does not remove the common good as the norm measuring civil law. To prove this, they supply citations from *DH 3* and *6* where the common good is referenced as the measure of social ethics: that the state’s “proper purpose is to care for the temporal common good” (3), and that “civil authorities,” along with “individuals and social groups,” have “a duty toward the common good” (6). May and Brugger then cite the instances where *DH* mentions the public order being a criterion for restricting the exercise of religious liberty in order to protect society from abuses of the right (DH 2, 3, 4, and 7). They conclude that


\(^{218}\) Ibid., 299-300.
such occurrences do “not mean that public order is itself the universal standard for the scope for civil law and the exercise of public authority.” Therefore, Curran’s charge is unwarranted.

The parties to this dispute are partially correct and partially incorrect in their appreciation of the term public order. Curran is correct that public order is a narrower concept than that of the common good, and the written *relatio* for the fourth draft of *DH* makes this explicitly clear, as noted above. Yet Curran is incorrect in supposing that government protection of the right to life of a child (and thus the right not to be directly killed) does not fall under the public order. As explained in the *relationes* of *DH*, public order is the essence of society (*ipsam esse societatis*), whereas the common good is the wellbeing of society (*bene esse societatis*). The public order therefore refers to those laws that are absolutely necessary for social unity. For this reason, public order includes public justice, namely, the protecting of the rights of all citizens (*DH 7*).

*DH* even says, referring to John XXIII’s *Mater et magistra* and *Pacem in terris*, that the common good “consists chiefly [*maxime*] in the safeguarding the rights and duties of the human person” and that “it essentially pertains [*essentialiter pertinet*] to the duty of every civil authority whatsoever to safeguard and promote the inviolable rights of man” (6). These are implicit references to the public order, for they refer to the chief component of the common good, over which the civil authority has the proper competency. Granting that public order is a more restricted concept than the common good, Curran has not shown that this precision is relevant for his conclusion that the state should tolerate violations of the right to life under the guise of

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219 Ibid., 298.

220 AS IV/I, 194-95.
freedom of conscience. That is necessary for his argument to be a relevant criticism of
_Evangelium vitae_. After all, protecting the rights of other human persons, whatever their
circumstances, is a component of public order according to _DH 7_. This juridical norm is thus
entirely basic to public order, and would cover the right to life. Nevertheless, Curran’s
objection is logically invalid insofar as the public order is the most essential part of the common
good, for the common good is the essential component of the common good.

For John Paul II’s part, he is referring to public order as the means by which civil law
protects the common good from abuses of freedom that threaten the very essence or foundation
of society. Curran’s criticism that John Paul is speaking about the common good and not public
order is not only irrelevant, but a misreading of _EV 71_ and _DH 6-7_. Furthermore, if charging the
state with care for public order is not the “Thomistic approach,” as Curran believes, then not
even Leo XIII was a Thomist! He indicated that civil authorities have a responsibility to
promote, through their direct oversight of “the tranquility of public order… the sheltering care
necessary to [man’s] moral life” (_Sapientiae christiana_ [1890] 30). The “public order itself of
States” in fact “cannot be separated from the laws influencing morals and from religious
duties” (29). This is precisely why _DH 7_ mentions “public morality” as one of the components of
public order. All this _prima facie_ indicates a duty of the state to ban abortion, given the state’s
mission to guard public order. The burden of proof is on Curran who says otherwise. Curran’s

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_221_ This is why Valuet finds the issue of abortion to be not simply an issue of public morality, but also
justice, since abortion involves the child’s right to life (_Le droit à la liberté religieuse_, 513n2951.). See also Regan,
_Conflict and Consensus_, 179: “The state should be especially zealous to prohibit acts which deprive other citizens of
what is rightfully theirs. Thus the state should protect the rights of each citizens to his life, liberty, and property. Just
how much beyond this the state should go will depend.”
real problem is his separation between the objective moral law and the civil order, and his assumption that civil dialogue must exclude any party’s claim to have “certitude” about moral matters. Neither does the sincerity of someone’s conscience grant that person an immunity from the state in committing an action that violates the just moral order. His assumption that public order excludes certainty on abortion is false, and his separation of the moral from the legal fails to recognize that the true path to freedom consists in living the truth. Finally, Curran misses that all this is part of DH itself, for the drafters explained that n. 6 pertains to the common good as a positive norm for state promotion of rights and perfection. While DH develops doctrine, it does not abandon the common good as the end of all human law.

In a mistake opposite to Curran’s, though much less egregious, May and Brugger do not recognize the true meaning of the term public order and instead advance their position that the common good is the sole norm for political action. This is broadly correct, for the Church has not ceased to teach that civil authority must aim at promoting the common good with law, at least as an end (finis). Yet May and Brugger, eager as they are to rebut Curran, obscure the way in which modern Catholic social teaching on the one hand places responsibility for the common good on the shoulders of society and its parts, and on the other hand recognizes public order as a negative limit on the exercise of rights in community, as the proper object of legal coercion. Hence DH 6 says that “individuals… social groups… civil authorities… the Church… and other religious

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222 See in this regard Valuet, La liberté religieuse et la tradition catholique, 1:648-49: “[L]a motivation religieuse ne donnera pas plus de droits à celui qui voudra, par exemple: épouser plusieurs femmes, ou divorcer et se remarier, parce que la religion le permet; brûler une veuve avec le cadavre de son mari, ou pratiquer la prostitution sacrée et les sacrifices humains parce que la religion le commande etc. Si l’on objecte que dans tous ces cas-là, l’ordre public est en jeu, nous répondrons très simplement que le critère pour laisser faire ou empêcher n’est donc plus la sincérité, ni même la ‘sincérité en matière religieuse,’ mais l’ordre public respecté ou non.”
communities” are responsible for protecting the right to religious liberty as a facet of the common good. In contrast, only public authority is directly responsible for the public order. In modern societies especially, *DH* is asking civil powers to respect the custom of maximum freedom outside of matters pertaining to public order (n. 7), but also to train the citizens in a responsible use of freedom (n. 8). The public order is essential to having a society at all, while the common good pertains to the wellbeing of a society and should be the work of society as made up of creatures using their free choice responsibly. Public power is expected to respect the dignity of the person in this way, but also to set up the conditions that make it easier for the human person’s responsible use of freedom. This distinction between public order and the common good enabled the development on religious liberty to take place, as chapters three and four have shown. Further, to erase this distinction to contradict Curran’s argument is a mistake, for it conflates the norm for promoting a right with the norm for restricting the exercise of a right. This increases the grounds for the restriction of freedom beyond that allowed by *DH* itself.
This final chapter returns to the question of the role of experience in doctrinal progress. The thesis of the chapter is that experience plays an important subsidiary role in doctrinal development, but that this justifies neither the “historical consciousness” approach to prior magisterial teachings nor the position that natural human experience as such is capable of developing Catholic doctrine. Instead, the true function of natural experience is to provide an opportunity for new questions and hence for new distinctions. New times and conditions will raise the question of whether prior prudential teachings still obtain, or whether prior doctrinal teachings could be progressed by further genuine distinctions. Yet the presence of another supernatural mode of experience, parallel to that of the ratiocinative method of theology, lends some support to the idea that the Gospel may make an impact on culture prior to a theological precision or a magisterial teaching. In combination of these two ways, the way of theology and the way of connaturalty, the development of DH can be explained. If the first part of the chapter establishes what I mean by these two ways of development, then the second illustrates it by providing two accounts of the development of DH. The first, which preceded Vatican II, is the “profane Christendom” of Maritain and Journet; the second, following the council, is Valuet’s notion of a development in the ius gentium. The third part of this chapter closes by offering some
conclusions, based on the insights of section two, as to how it is that social doctrine is capable of
development in the way suggested by the two theories presented in the second part. This involves
giving a theoretical account of social entities and a brief treatment of the idea of a Christian *ius
gentium*.

*Experience and the Development of Doctrine*

I should recall now the importance for some theorists of human experience as a catalyst or even source for moral doctrinal development. John Noonan, for example, holds that
experience is a necessary and, in the light of human nature and the Gospel, a sufficient source for
such development. In fact, it is superior to the “logical” path of doctrinal development, since
doctrinal developments may be logically contradictory to previous teaching. It would even seem
to trump long-standing doctrines taught by ordinary magisterium. Hence for Noonan, the most
important theologian of development is John Henry Newman. Noonan’s Newman is able to
affirm both the givenness of revelation and the changeability of Church teaching because he
posited organic images of growth. Therefore in moral doctrine one can have fidelity to Christ and
the twofold love commandment, while acknowledging propositional reversal in doctrine. As seen
in chapter two, however, Newman did understand development to follow some basic rules or
criteria. Further, although certain ambiguous passages from the *Essay* could lead one to think
that Newman elevated experience over logic, allowing for experience to add to or change the meaning of what has been reveled—indeed, he was understood in this way by some of the Modernists—Newman himself held to the classical understanding of doctrinal development being capable of logical relation to previously defined doctrine.¹

The larger underlying problem is that the term “experience” means different things for different scholars, meanings often refracted through the methodological, philosophical, and theological pluralism of the modern academy, and especially in modern Christian ethics broadly conceived. The authority and meaning of experience as a source for theology is highly contested, and the interpretive filters to be used in sifting experience are as diverse as the definitions of experience itself.² Some scholars include the conclusions of modern empirical and social sciences, such as economics, sociology, and psychology, in the category of experience. Others exclude these on the grounds that they fall under the source of reason, or require reason’s interpretation and thus do not constitute an independent source for ethics. Another disputed division is the relative weight given to the experience of an individual and that of the group.

¹ For additional texts of Newman and analysis on this point, see Marín-Sola, *L’Evolution homogène du Dogme catholique*, 1:347-53; cf. p. 349 for documentation that Newman explicitly disavowed any theory of doctrinal development that destroys the meaning of old doctrine.

This underdetermined import of experience for moral theology becomes clearer in reference to some of the alleged experiences leading up to *DH*. For example, some point to the experience of various Protestant sects excluding one another from public life in various countries during the sixteenth, seventeenth, and eighteenth centuries, as indicating that disestablishment is a dictate of reason. Why should not one conclude more narrowly that the Protestant principle of the private interpretation of the Protestant Bible is no basis for establishment? Some may think that the experience of the Thirty Years’ War indicated a principle of absolute immunity from coercion in religious matters. Yet among the Enlightenment *philosophes*, this experience pointed just as equally to the need to eliminate the public influence of religion, often by refusal to cognize it publicly at all as religious, all the while allowing for absolute freedom of private religious behavior. Such “religious violence” also indicated to them the supposed need for the peace-making power of a sovereign state over dangerous, irrational religion. Further complicating the appeal to the experience of eras of persecution is the fact that medieval uses of force against heretics, though often put in terms of a thought-police or tyranny, was often seen not primarily as an attempt to force belief upon the unwilling, but to preserve the public order of a Catholic nation. When is one to find in experience anything more than a statement that some people found a certain practice unpleasant or personally disadvantageous? A sociological

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observation cannot become a factor in development without being transposed by some other factor into the sphere of moral analysis. The factor is necessarily a panoply of reason: methods, assumptions, and reasoning itself, whether implicitly or explicitly deployed to the problem of interpretation. What was the simple appeal to experience is actually the use of a complex philosophy of the human person, subjectivity, affectivity, sex, race, class, power, the place of empirical science, the fundaments of which system are more or less defended by reason itself or else the superiority of which system is simply not argued. As much as one’s concept of experience is too broad or unspecified, to that extent its usefulness as a subsidiary cause in the process of development is doubtful or even spurious. In regard to the development of Catholic doctrine, the elevation of any concept of experience over the teaching of the Church herself is self-refuting, for the resulting conclusion destroys the root of faith itself: divine revelation as understood by the teaching of Church. This danger of self-contradiction was apparent in the Modernist crisis.

Yet it would be a grave mistake to overreact to these problems of experience and deny it any role whatsoever. Experience, especially in moral and social doctrinal development, plays a role that cannot be filled by reasoning alone. This is itself a crucial tenant of DH in its opening lines:

Men are becoming more and more aware of the dignity of the human person in our age, and the number of them is growing who ask that in acting men enjoy and use their own counsel and responsible liberty, not moved by coercion but led by an awareness [conscientia] of their duties. They also require the juridical limitation of public power, lest the honest boundaries of the liberty of persons and associations be too much circumscribed.
To understand that, one need only think of the shock aroused by the experience of the two world wars and the mass-murders and displacements that preceded and followed them, and also the experience of the brokenness of the various politico-economic forms of the time (liberal vs. antiliberal, socialist vs. fascist, various forms of nationalism). Yet nothing about the experience itself gave a resolution, and other intellectual qualities are needed both to perceive and penetrate the confusion created by such experiences.

In what follows, I propose a two-step clarification of the role that experience plays in doctrinal development, two basic aspects that could be the basis for more elaborate theorizing later. This section is necessary for moving to the later sections of this chapter, for those sections illustrate and amplify this first one. The two basic aspects are first, that experience conceived broadly, including the experience of human beings whether Catholic or not, only provides an occasion for doctrinal development; second, that experience within the Church in the life of her just members, is a subsidiary cause of doctrinal development parallel to the subsidiary cause of theology (both subsidiary to the Magisterium and the principle of divine faith). This experience is supernatural, owing to the just person’s connaturality with God effected by divine grace. For the first point, I turn to the work of philosopher Robert Sokolowski and then for the second to the

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6 E.g., the mass-murders prosecuted by the Russians and the Germans in the years leading up to and during the Second World War in Poland, the Baltic states, Belorussia, and Ukraine. These policies lead to about fourteen million deliberate killings that are not to be included in the millions of other noncombatant deaths caused by bombings, food shortages, evacuations, or even in concentration camps or as forced laborers (Timothy Snyder, *Bloodlands: Europe between Hitler and Stalin* [New York: Basic, 2010]).

7 While the experiences themselves may provide certain obvious negative conclusions (X does not “work”), even then every analysis presumessome basic philosophical commitments. China and the Muslim countries did not draw the same conclusions about Communism as did Western Europe after the Second World War. Certain Latin American theorists resented the imposition of European-derived plans for globalization and development.
work of theologian Francisco Marín-Sola. The former provides a framework for understanding how reason clarifies experience to develop knowledge. He thus argues that the basic task of philosophy is to make distinctions. Marín-Sola illustrates how this use of reason is instrumental for the development of doctrine, but that on account of the life of grace, another way of doctrinal development is open: the “affective way” or way of experience. The latter, entirely dependent on the life of grace, will still depend on the principles of faith (which are intellectual), be confirmed by the Magisterium before possessing authority, and will be explainable by appeal to the logical way of development. In combination these thinkers allow us to see the possibility of a logical theory of development that respects experience.

First, the premier role of generic human experience, the suffering of new economic, social, and intellectual conditions, new conflicts and resolutions in the modern world, is to provide the occasion for the development of knowledge. To understand this role, two articles by Robert Sokolowski on the primary task of philosophy are relevant. The thesis of these articles is that the proper object of philosophy is the making of genuine distinctions, in order to display to oneself or another reality as it is. These genuine distinctions “allow reality to be itself,” to allow what is really two to be two (positive), or to show that what someone thinks is two is really one (negative). This task requires experience because the need to make a distinction arises from contact with a reality that is obscure. The “obscurity” or “confusion” of reality perceived in the

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experience arouses the desire to sort it out. One must be “immersed in simple familiarity with a particular type of thing” or activity in order to make genuine distinctions about it. But experience itself is insufficient for this sorting out, because it simply gives rise to the perplexity that is perceived in it. Furthermore, if one is “dull,” one may not perceive the need to make a distinction. For arriving at genuine distinctions, one needs the ability to perceive the difference between things that are originally obscure in one’s experience. This requires a “contemplative act.” It also requires having the ability to make such a contemplative act, and thus requires attention or intention in undergoing experiences, and not being given over to emotion or distractions. Sokolowski attributes this power in part to a Husserlian account of the faculty of “imagination”, by which one makes distinctions that differentiate what is from what could be in things that one can change, or that reveals what is essential in things that one can not change. Importantly, the first exercise of imagination allows an agent to discover “a way of being and

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10 Robert Sokolowski, “Making Distinctions,” 659. Sokolowski puts experience in terms of reality, the experience of a thing, and not “subjective” terms. In fact, he is trying to avoid the post-Cartesian tendency of splitting everything into objective-subjective, including the reduction of non-quantifiable aspects of reality to the mental state of the observer. Instead, Sokolowski follows Aristotle and especially Husserl. This is why Sokolowski prefers the language of genuine distinctions “displaying” an aspect of reality as it is to oneself and to others (Ibid., 661; Robert Sokolowski, “Method of Philosophy,” 522-23).


13 Robert Sokolowski, “Making Distinctions,” 663-66. This seems different than Noonan’s “empathy”, which is a sympathy for the pain of another in light of the most basic norm of justice and a recognition of the other as deserving justice. Empathy in this sense may very well be a requisite motive for the act of which Sokolowski speaks, but it is not the same act of imagination. These are distinguished from Alasdair MacIntyre’s “rare gift of empathy” (Whose Justice? Which Rationality? [Notre Dame, IN: University of Notre Dame Press, 1988], 167), which seems to be an intellectual virtue by which one is “able to understand the theses, arguments, and concepts of their rival [tradition] in such a way that they are able to view themselves from such an alien standpoint and to recharacterize their own beliefs in an appropriate manner from the alien perspective of the rival tradition.”
acting that resolves something painful and confusing.” The second allows an agent to understand what is immutable or essential about something, by imagining it apart from something presumed to be essential. The first is obviously a practical exercise and the second more speculative. These kinds of “imaginative variation” prevent us from confusing a genus with a species, from displaying something as one when it is really two or vice versa.

One can see how Sokolowski’s account of distinction-making elicited by experience could be applied to certain examples of doctrinal development in the Church’s moral teaching. Indeed, Murray saw distinction-making in response to experience as the way by which the teaching on religious liberty came about. Another example would be the precisions made in the usury prohibition over the centuries. At key moments when economic progress demanded innovations such as lending houses and the business of banks and so forth, there were different conditions that made what had seemed to be one (lending at interest) be in fact many (unjust versus just titles to interest). It is interesting to note how economic circumstances needed to change before usury could be distinguished from taking interest on a loan under a just title. With the necessary changes and appropriate acts of imagination, moral theologians were able to recognize that not all lending at interest was unjust, and the Church was able to accept at least

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15 Sokolowski uses an example from Yves Simon: by seeing that authority is not merely substitutionary, one sees that authority does not consist in substitution. One can imagine a world filled with good men requiring authority to direct their common action (Ibid., 667-69)


17 Murray, “Vers une intelligence,” 146-47: “The text of the Declaration replies to all. It replies in adopting the new state of the question, fruit of history, in situating itself in the new perspective, and in making the necessary and appropriate distinctions. These—and already the simple fact of making of distinctions there where one had not made them before—constitute the ordinary way by which doctrinal progress is achieved.”
some of these distinctions as genuine. It is also important to notice that experience of the new conditions is a necessary but insufficient condition of achieving a new insight. It is necessary, for one lacking experience in trade would not see how such distinctions were anything but a betrayal of an absolute moral norm. It is insufficient, for a merchant or banker might attempt to make a distinction between various types of contracts in regard to their being usurious, when there is no moral difference between those types of contracts, even if they come about through different techniques. Worse, a merchant or banker with experience may simply treat the whole enterprise of justifying a title on a loan as a hoop to jump through on the way to making money.\textsuperscript{18} The next two sections of this chapter will apply this same method more fully to the question of religious liberty, but one can already see how one may distinguish between, say, religious liberty as a natural immunity and religious liberty as a permission, or between a civil liberty formulated to entail religious indifferentism and a civil liberty formulated so as not to entail indifferentism. What was one, religious indifferentism and the civil liberty of conscience and cult of the nineteenth-century variety, had to be condemned both at the prudential and theoretical level. The experience of later events and conditions made better imaginings possible, allowing for the discovery of a genuine distinction delivering a species of civil religious liberty that did not entail religious indifferentism.

Our second clarification of the role of experience is a theological one, drawing on the work of Francisco Marín-Sola regarding the relation between the theological and affective ways

\textsuperscript{18} In this case, the moral or intellectual defects of the one with experience leads him to propose as progress what is not progress, or to propose it cynically.
of doctrinal development. While Marín-Sola wrote in order to tackle the problem of how it is that a theological conclusion could become defined as a revealed truth, he also attempted to distinguish this theological way of development from another, “affective way”.\textsuperscript{19} In distinguishing these two ways, Marín-Sola sought to recognize theological method as a cause of development while at the same time granting proper place to the experience of the Church and of her members as a cause of deepening the Church’s understanding of the divine realities. By this he was attempting to save the truth in Ambrose Gardeil’s sensus Ecclesiae.\textsuperscript{20} Hence Marin-Sola contributed to a conversation that anticipated what DV 8 later said about doctrinal development in the Church by simultaneously avoiding an exclusive Konklusionstheologie of someone like Tuyaerts on the one hand,\textsuperscript{21} and the semirationalist elevation of experience over reason and supernatural faith by Modernists like Tyrrell on the other. It is not necessary to discuss the theological way here, except to note that the theological way of doctrinal is the normal method of theologians and depends on the instrumental use of a rational system such as Thomism to arrive at theological conclusions. The theological method incorporates and proceeds by distinction-making. In using the rational theological system, the theologian is able to penetrate the mysteries of faith by his human reasoning illuminated by the supernatural light of faith. Theology is

\textsuperscript{19} In regard to the first issue, Marín-Sola was seeking to solve a problem that had been inherited from the seventeenth-century Spanish scholastics about the assent due to theological conclusions, even when defined by the Church, where one premise was a formally revealed de fide proposition and the other a premise of human reason. Recall some of the figures from chapter two described by Chadwick, such as Suarez and de Lugo. For an explanation of Suarez in regard to Marín-Sola’s work, see also Nichols, From Newman to Congar, 180-82.

\textsuperscript{20} Ibid., 178. Nichols finds Marín-Sola’s most important contribution to lie in this comparison of the two ways of doctrinal development in the Church, the theological and the affective (p. 183).

\textsuperscript{21} Ibid., 183-86. It was against the “logicism” of M. M. Tuyaerts and Charles Boyer that de Lubac protested in Henri de Lubac, SJ, “Le problème du développement du dogme,” Recherches de science religieuse 35 (1948): 130-60.
essentially natural in its method, since it involves human reasoning; while supernatural in inspiration, since reason is illuminated by revelation and faith. Hence the sufficient minimum for the theologian to accomplish this task would be to have dead faith and intellectual training.

The second “affective way” or sensus fidei, in contrast, proceeds by way of the just person’s experience of divine things by a connaturality established through the infusion of sanctifying grace, the theological virtues, and the gifts of the Holy Spirit. If theology pertains to the intellect, as faith is an intellectual virtue, then the affective way pertains to the will, as charity is in the will as its subject.22 Such a person then “suffers divine things,” to use Dionysius’ phrase, and comes to an understanding of revelation that is not the fruit of theology’s discursive method. Anteceding Congar’s focus on what is virtually revealed in the liturgy, Marín-Sola put forward the liturgical expressions of the Church’s sensus fidei as evidence that something was in the deposit of faith.23 Prominent among his examples are the doctrines pertaining to the Blessed Virgin. These understandings brought about by a connatural experience of God made possible by grace and the gifts are also capable of later definition by the Magisterium. At the level of moral theology, Marín-Sola writes that the sensus fidei would lead the whole people of God (la société chrétienne tout entière) to accept certain moral teachings despite being unable to understand the reasoning behind them. A teaching may “strike at the heart of every pious person” without the

23 Ibid., 1:364-65; cf. 365n1: “Rien de plus apte, en effet, que la liturgie à exprimer les sentiments de foi, et à hâter les définitions de l’Eglise.”
average just person being able to offer a compelling rational defense of the doctrine. While Marín-Sola does not draw this conclusion, one could say that if the bishops are morally united on an issue at council, as they were on whether religious liberty is a natural right, one should not fear the possibility of a heterogeneous doctrine being adopted as the doctrine of the Church, even if a logical explanation be obscure or there is no consensus among the bishops as to the reasoning. This is precisely the confidence one should see undergirding De Smedt’s statement that theologians would be able to provide more detailed studies of the issue subsequent to the council.

What unites both these ways, in Marín-Sola’s estimation, is their common need for the Magisterium as the principle and only infallible norm of doctrinal progress. The theologian needs the Magisterium because human reasoning is fallible, especially in divine things. He sometimes thinks something to be demonstrated when it is not. The mystic needs the Magisterium to distinguish true experiences of divine things from false imaginings or inspirations of the devil. In this way, the Magisterium protects the deposit from the mistakes of either, and orients both in the paths of truth progress. It is helpful to see Marín-Sola’s meaning in contrast with a later theologian such as Salaverri. Whereas Marín-Sola subordinates both theology and the affective way of the mystic to the “lighthouse” of the Magisterium, Salaverri seems to go too far toward logicism when he speaks of “religious life and liturgical practice” and “the practice and experiential life of the Church” as merely occasiones of development, rather than true causae.

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24 Ibid., 1:383. He gives the example of fornication and masturbation being intrinsically evil (cf. DS 2148-49).

25 Ibid., 1:388-89.
subsidiares. Salaverri reserves that appellation only for the discursive method of theology. In other words, Marín-Sola gives the affective way its due, owing both to his deep Thomistic understanding of the role of the *dona Spiritus Sancti* and his understanding of the actual history of the development of various doctrines.

Of course, Marín-Sola’s theory does not say all that could be said, for the contributions of later Catholic theologians deepened the same conversation about doctrinal development. For example, the emphasis on Christ as both revealer and the one revealed, so eloquently captured in *DV* 1, comes from de Lubac. In addition, theologians such as Simonin and Congar identified the role of cultural, socio-political, and intellectual conditions of an epoch for the development of doctrine, whether in raising a question or suggesting modes of explication. Nevertheless, one will never be able to exclude or transcend a logical or propositional model. It is only if one begins to give too much to a representational understanding of ideas that one becomes more and more suspicious of propositions as incompatible with Christ as the content of all revelation. But if true propositions actually bring the understanding into conformity with the thing known, there need be no contradiction between the revelation of the Triune God in Christ and the propositional content. The deposit of faith could be both Christ and propositions about Christ at the same time. One need not and should not pit revelation as Christ and development as a non-propositional adherence to Christ against a propositional or scholastic approach to development. The

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supernatural and the mystical may not destroy the rational consequences of divine faith, just as the latter may not deny the former.

To transition, one can see here that experience does have its place in doctrinal development, both in theology and the spiritual life. In both cases, a supernatural factor is necessary since revelation treats even human things by a higher light, the light of faith or by affective connaturality by the other virtues and gifts. At the same time, since the right to religious liberty as declared by *Dignitatis humanae* is a natural right, one ought to expect some intellectual and affective movement on the side of those outside the Church. Thus one should respect and listen to the “signs of the times,” for they stem from the nature all human persons share, Catholic or not. Yet since religious liberty is a mixed issue involving the reality of the Church and that of civil society, the solution could never come apart from the Church, and the light of revelation would prevent false solutions from being accepted by her and her children uncritically. The next section of this chapter turns to how the imaginative distinction-making of Maritain, Journet, and Valuet contributes to a fuller appreciation of the course of development in the case of religious liberty. Interposed between the section on Maritain and Journet and that on Valuet is an excursus on the flexibility of societies in adopting changes without destroying the immutable principles of social organization.
Intertwined with the development of papal teaching on the nature of the state, society, and the common good was the important work of Jacques Maritain, the French neo-Thomist philosopher, and his friend Charles Journet, the Swiss professor of theology. This section will explain some important precisions Maritain made and their import for appreciating how the Church’s social doctrine in particular can develop. This may seem an obsolete or even an atavistic move, given that much water has flowed under the bridge in the area of political theology in the nearly eighty years since the first publication of *Humanisme intégral*. Maritain has been charged since then with alternating, if not contradictory, objections of subtly restricting the created autonomy of the world with Catholic principles, or of turning the Church into an apolitical specter floating above the political plane instead of a social body testifying against the violent excesses of the modern nation-state through its own liturgical politics. The importance of Maritain for this chapter, however, lies in the location of his work as preceding and preparing for Vatican II and *DH*, for his work enabled a new way of seeing the location of the Church in the modern world. In this way, he and Murray were independently seeking new solutions to the Church-world problem, and were each in his own way countered by “integralists” who held to

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29 For William T. Cavanaugh’s criticisms of Maritain, see *Migrations of the Holy: God, State, and the Political Meaning of the Church* (Grand Rapids, MI: Eerdmans, 2011), 123-41; William T. Cavanaugh, *Torture and Eucharist: Theology, Politics, and the Body of Christ* (Oxford: Blackwell, 1998), 151-200. Cavanaugh charges that Maritain’s integral humanism enabled in an intellectually architectonic way the torture employed by Catholics in the Pinochet regime in Chile. The mechanism alleged by Cavanaugh is the compartmentalization of one’s identity into Catholic and citizen made possible by Maritain’s spiritual and temporal planes. Cavanaugh wishes that Maritain had had a more political ecclesiology while eschewing any association of the Church with the violence of the state. Could one avoid the errors of the integralists or the errors of social monism without making the precisions that Maritain and Journet made regarding the state and the Church being perfect societies only in an analogous sense?
political forms and modes of Church-State cooperation that were passing away.\textsuperscript{30} More importantly, Maritain’s work as a piece of Thomistic philosophy of civilization or politics contains ideas that illuminate the way toward a \textit{ratio} of development for Catholic social doctrine in general, a \textit{ratio} for which this dissertation has sought since the first chapter. Through a consideration of his theory of a transition from a sacral to a profane Christendom, combined or rather explicated in terms of a Thomistic analysis of social order, the theologian is able to articulate how it is that social doctrine—including the question of religious liberty—is capable of greater doctrinal development than, say, marital ethics. Maritain’s and Journet’s accounts of the possibility of movement from a sacral to a profane Christendom that propose principles for how the relation between social form and the Church changes with time and place, without necessarily destroying the claims of the Church. Yet the change in relation affects the style or bearing of the Church as much as society.

Maritain’s work has its origins in his break with the integral nationalism of Charles Maurras, the French atheist whose anti-liberal organization Action Française attracted many conservative Catholics. When Pius XI condemned French Action in 1926, Maritain was awakened from the royalist, anti-modern French illusion he had been living. Maritain wrote a book defending the superiority of religion over politics, the proper distinction between the sacred and secular realms, and the Church’s power over politics, \textit{Primauté du spirituel} (1927).\textsuperscript{31} This set

\textsuperscript{30} Maritain’s friendships, such as with Reginald Garrigou-Lagrange, suffered from Maritain’s break first with Action Française in 1927 and his refusal to support Franco in the Spanish Civil War in the mid-1930s (Barré, \textit{Jacques and Raïssa Maritain}, 267, 323, 331).

\textsuperscript{31} Ibid., 255-71. Pius XI subsequently asked Maritain to lead the writing of a book against Maurras’s errors, which resulted in \textit{Pourquoi Rome a parlé} (1927).
the trajectory of Maritain’s application of his Thomistic personalism to social and political ethics over the next three decades, of which some of the most influential works were *Humanisme intégral* (1936), *Les Droits de l’homme et la loi naturelle* (1942), *Le Personne et le Bien commun* (1947), and *L’Homme et l’Etat* (1953). The main burden of these works is to articulate the political common good in Catholic, personalistic terms against the totalitarian and liberal views current at the time. Maritain argues that the human person is ordered to the temporal common good insofar as he is an individual, a part of the political body, but that the political body is ordered to the human person *qua* person in order to help him attain his transcendent, spiritual perfection in God.\(^{32}\) This articulation is anti-liberal insofar as it presents true spiritual goods that are higher than man, that have a claim on him, and that man by nature is ordered to the political body to create the conditions necessary for attaining those higher goods. It is anti-totalitarian insofar as it does not order the human person to the political community in all that he is, but rather demands that the political community only secure the conditions necessary for the human person to attain freely his own proper spiritual perfection. In this way, the common good of the political community is a true but “*immediate or infravalent end,*” and thus not a “pure means on

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\(^{32}\) Journet made use of this distinction in his speech at Vatican II (AS IV/1, 424-25): “Quantum ad *ordinem temporalem*, dicendum est quod persona humana, quamvis sub uno aspectu sit pars societatis civilis, tamen transcendit totum ordinem politicum per suam ordinationem ad bonum incommutabile et ad Deum suum creatorem. Unde sub hoc secundo respectu, persona humana: a) est *libera* erga totam societatem politicam; sed b) debet rationem *Deo* reddere omnium suarum optionum.”
the way to eternal life.” More relevant for the investigation of this chapter is Maritain’s related analysis of the two Christendoms, even though that analysis coheres with Maritain’s distinction between the individual and personal relations of man to the temporal realm. Maritain’s account of these two civilizational epochs contains within it a powerful analysis of the principles of social organization and the relation of the temporal order to the spiritual. The theory reduces the following points. First, that the temporal has its own integral end. Second, that this temporal end, however, is an “infravalent” one, and thus open to being ordered in various ways as a means to the higher spiritual plane, the latter being alone the supreme end of man. Third, the flexibility of that order among the temporal and the spiritual allows for an analogous application of social principles to form a new, profane Christendom in the modern age. Maritain’s manifesto for a profane Christendom entailed a properly secular notion of the state, what the popes according to the usage of Pius XII called *saine laïcité*, “healthy secularity.” Those familiar with the unique social disruption that the Church was in the ancient Mediterranean milieu know that this

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33 Maritain, *True Humanism*, 130-31. It is impossible here to settle the question of whether Maritain’s approach suffers ultimately from a collapse into the very liberalism he rejected, that is, by making the human person an individualistic monad with the political common good, the universe, and even God ordered to him. This was the somewhat veiled criticism of Charles De Koninck in his *De la primauté du bien commun contre les personnalistes* (1943), which provoked contrary defenses from Yves Simon and I. Thomas Eschmann defending Maritain. For these texts and De Koninck’s reply to Eschmann, see Charles De Koninck, *The Writings of Charles De Koninck*, ed. Ralph McInerny, vol. 2 (Notre Dame, IN: University of Notre Dame Press, 2009). A few years later Maritain obliquely dismissed De Koninck’s attack in, *The Person and the Common Good*, trans. John J. Fitzgerald (New York: Charles Scribner’s Sons, 1947), 4: “The true sense of the distinction [between individuality and personality] has not always been grasped... because certain minds, despite their metaphysical inclination, prefer confusion to distinction. This holds especially true when they are engaged in polemics and find it expedient to fabricate monsters which for the lack of anything better, in particular for the lack of references, are indiscriminately attributed to a host of anonymous adversaries.”
disruption had to do in part with the Gospel’s disruption of the pagan combination of politics and religion, for the sake of the health of the political community, the city. In this way religion was the social bond, but had as its end the common temporal good.\textsuperscript{34}

In considering Maritain’s approach, I will first lay out the principles he discusses, and then explain how it illuminates his discussion of a legitimate transition from a sacral to a profane Christendom. Christendom means “a certain temporal regime whose formations, in very varying degrees and in very varying ways, bear the stamp of the christian conception of life.” Thus while “there is only one catholic Church,” at the same time “there can be diverse christian civilizations.” What Maritain was searching for, amid the rubble of the old Christendom,\textsuperscript{35} was the possibility of a new social order “whose animating form will be christian and which will correspond to the historical climate of the epoch.”\textsuperscript{36} In this way, the new epoch, while acknowledging the progress achieved by human sciences and inspired by new experiences, would be informed by lasting Christian principles of social order and the relation of the Church


\textsuperscript{35} Maritain, \textit{True Humanism}, 8, emphasis original: “The radiating dissolution of the Middle Ages and of its consecrated forms represents at the same time the birth of a secular civilisation, one that is not indeed wholly secular, but which, as it advances, severs itself more and more from the Incarnation.” Maritain argued that the absolutism of early modernity was a parody and corruption of sacral Christendom, and that the secular political forms of the Enlightenment were another stage of this absolutism (Ibid., 147-55). In the debates over “humanism” in the late modern period, some partisans of liberty and some of their anti-liberal opponents were captive to absolutism. The true current of liberty could only be actualized in a new form of Christendom and an “integral humanism”, with its rejection of absolute state sovereignty and its capacity for social pluralism.

\textsuperscript{36} Ibid., 126.
to that order. Let us now turn to an abstract consideration of temporal regimes. Maritain identifies three, that each temporal order is communal, personal and “peregrinal”. Any true polity will express these three essential characteristics in its own specific way.

First, the end of a temporal regime is communal because it is centered on the accomplishment and sharing of a true common good. Since this common good is a good in itself, the temporal order has its own autonomy or integrity considered apart from any other end. The common good of the city is truly shared by and good for all citizens, both in their material and in their moral needs and interests. It will be something built together in the sense meant by a Thomistic analysis of political unity: a unity of order maintained by legal authority for the sake of the common good of the community. The papal teachings of the second and third quarter of the twentieth century, seen in the third chapter above, are anticipated in Maritain’s definition of the common good. It is not in the nature of the political community “to lead human persons to a state of spiritual perfection and full freedom of autonomy,” but rather its finality is “towards such a development of social conditions as will lead the generality to a level of material, moral and intellectual life in accord with the good and peace of all, such as will positively assist each person in the progressive conquest of the fullness of personal life and spiritual liberty.”

Now the political life of men in this way is a *bonum honestum*, an intrinsically worthy pursuit, and which—as the highest end in its own order—demands the engagement of the entire person in the

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37 Ibid., 128. Cf. Maritain, *The Person and the Common Good*, 42: The political common good includes, in addition to “public commodities and services,” fiscal and military stability, just laws, and so on; the “sum or sociological integration of all the civic conscience, political values and sense of right and liberty, of all the activity, material prosperity and spiritual riches, of unconsciously operative hereditary wisdom, of moral rectitude, justice, friendship, happiness, virtue and heroism in the individual lives of its members.”
communal effort to create and sustain such a political life.\textsuperscript{38} The state, the authority of the body politic and hence over an intrinsically worthy end (indeed, the supreme end in its own order), has within this field of activity a proper autonomy.\textsuperscript{39} It is a \textit{“vitally christian lay commonweal} or a \textit{christianly constituted lay state.”}\textsuperscript{40}

Second, the temporal end of the body politic, in order to serve the human person in his quest to achieve his proper freedom and perfection, must be open to the spiritual plane, for it is on the spiritual plane that the supreme end of the human being \textit{qua} person lies. This personal aspect is coupled by the third characteristic, namely, the \textit{“peregrinal”:} from its awareness that man is not completely satisfied in the political order, the city itself is ordered or open to the spiritual plane. The human person is not brought to perfection in the terrestrial body politic, and thus does not belong to the terrestrial political order in all that he is.\textsuperscript{41} This is the point that the temporal end, while a true end, is also an \textit{“intermediate or infravalent”} end, that is, \textit{“a final end in a given order … in itself relative and subordinate … to an absolute final end.”}\textsuperscript{42} This

\begin{itemize}
  \item \textsuperscript{38} Ibid., 52-54.
  \item \textsuperscript{39} Maritain, \textit{Man and the State}, 153.
  \item \textsuperscript{40} Maritain, \textit{True Humanism}, 171, emphasis original.
  \item \textsuperscript{41} Ibid., 129; Maritain, \textit{The Person and the Common Good}, 60-66. In both places Maritain cites Thomas, \textit{STh} IaIIae.21.4 ad 3: “homo non ordinatur ad communiatatem politicam secundum se totum et secundum omnia sua.”
  \item \textsuperscript{42} Maritain, \textit{True Humanism}, 127. cf. p. 142-43 for further explanation of the differences between an infravalent end and a pure means, and between a principal secondary cause and an instrumental. Also see Maritain, \textit{The Person and the Common Good}, 52-54; Journet, \textit{The Church of the Word Incarnate}, 207. Journet says, following distinctions made by Thomas and John of St. Thomas: “[T]he lower principal cause acts by virtue of its form, of its nature, the motion it receives being only the condition of its activity; whereas the pure instrument does not act of itself at all, the motion it receives being the total cause of its activity.” Here Maritain had contrasted a plant’s vegetative power conditioned by sunlight versus the artist using a paintbrush. “Similarly, the intermediate end is, \textit{absolutely speaking}, an end, something desirable for its own sake; it is only in a certain sense that it is a means, something desirable for the sake of something else; whereas the pure means is desirable \textit{solely} for the sake of something else.” Here Maritain had contrasted professions being ends ordered to a virtuous life to the pure means of
subordination of the state and the temporal common good to the final good of the person is
clearly seen in the light of the revelation of man’s nature, above all in Christ; but it is also
accessible on the “natural” plane through a consideration of the nature of the common good
itself: “If... the common good of the city implies an intrinsic ordination to something which
transcends it, it is because it requires, by its very essence and within its proper sphere,
communication or redistribution to the persons who constitute society. It presupposes the persons
and flows back upon them, and, in this sense, is achieved in them.”

The temporal common good is a true end, desirable in itself, but since it has as its own inner meaning the sum of the
conditions that allows human persons to achieve their perfection more fully and easily, the
common good as an end includes within it a reference beyond itself. Absolutely that final end is
supernatural beatitude, but certain natural or temporal goods also indicate in a lesser way the
subordination of temporal society to higher goods, for example, goods associated with the “life
of the spirit” and the pursuit of goodness, truth and beauty.

It takes little elaboration to see that
this intrinsic openness to the needs of the person that transcend the body politic would demand
from the body politic respect for religion and for the freedom of the Church. Such an ordination
of the body politic may be concretely established in a variety of ways.

Hence the third point is that the concrete way in which the temporal is ordered to the
spiritual is capable of diverse arrangements, which may all analogically be called Christendom-

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type civilizations. The sacral Christendom of the Middle Ages “was only one of its possible forms of realization. In other words, this conception is or can be realized at different epochs of the world’s history not *univocally*, but *analogically*. The formal idea of a christianized social order—a “Christendom”—is an analogical one, instantiated in different social orders and therefore existing in unique and differing ways according to the people, social institutions, times. Maritain’s and Journet’s efforts seek to identify unchanging, Catholic principles that bear on the problem of social organization, while also seeking a way out of the total collapse of the sacral Christendom and even of the absolutist states that followed it. This way of presenting the problem is different from that of the popular way in which *thesis-hypothesis* framework was employed by some Catholic theologians after the *Syllabus of Errors*. As Maritain argues, the *thesis-hypothesis* could be legitimate as rules governing the application of principles and the actual applications, but the framework confusedly took on a different meaning from this. The different meaning was that the *thesis* was an ideal, and the *hypothesis* any arrangement which derogated from the ideal, something merely to be tolerated. Hence, as is well-known, the idea came to have the meaning that when Catholics are unable to enforce the *thesis*, typically enunciated as the exclusive establishment of the Church as the religion of the state, combined

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45 Maritain, *True Humanism*, 131, emphasis original.

46 The origin of the *thesis-hypothesis* motif is complex, but one of the earliest uses was actually contrary to that of the later integralists. Bishop Dupanloup of Orléans used “thesis” for the secular, anti-Catholic ideal regarding the liberty, the Church, the state, etc.; and “hypothesis” for the practical arrangement sometimes acceptable to Catholics (Maurice Bévenot, “Thesis and Hypothesis,” 440-43; cf. F. Russell Hittinger, “Two Modernisms, Two Thomisms: Reflections on the Centenary of Pius X’s Letter Against the Modernists,” *Nova et Venera, English Edition* 5 [2007]: 853-54).

with a number of other privileges, then Catholics may tolerate the hypothesis of various other arrangements—“except when we get a chance to enforce our image of the past by violence,” as Maritain sardonically put it.\textsuperscript{48} Such a conception of the thesis-hypothesis treats the principles of a Christian social order as “univocal” rather than analogical, that is, as only capable of one application at all times, places, and conditions. Thus Maritain affirms that “the principles are absolute and immutable and supratemporal,” but these “are to be analogically realized” accounting for all the circumstances of human political life.\textsuperscript{49}

How then do Maritain and Journet conceive of the analogy between the sacral Christendom, which they held as operative in general up until the emergence of the absolute monarchies, and the profane Christendom they saw coming?\textsuperscript{50} While both Christian civilizations maintained the characteristics mentioned above (communal, personal, and peregrinal), the sacral regime of the medieval period was marked by its own particular quest for maximal unity predicated upon shared religion. Hence receiving baptism and becoming a subject or citizen were coterminous. Ecclesiastical and temporal power, though distinct, were constituted together into, as it were, one body with two intrinsic causes. This application of the principles came about over centuries and through a maze of privileges, immunities, and rights granted the temporal power by the ecclesiastical, and the ecclesiastical power by the temporal. In such an arrangement, the

\textsuperscript{48} Ibid., 156.

\textsuperscript{49} Ibid., 157.

\textsuperscript{50} For what follows in the next two paragraphs, see Maritain, \textit{True Humanism}, 137-51; and Journet, \textit{The Church of the Word Incarnate}, 241-62. According to Valuet, Journet was unable to publish an Italian version of \textit{L’Église du Verbe incarné} because of the opposition of some in the Curia to Journet’s concurrence with Maritain on these issues (\textit{La liberté religieuse et la tradition catholique}, III:321n5).
temporal sphere was used more as a pure means for the spiritual advancement of the Christian people. In such a vital union, heresy was not only a spiritual delict, but a civil crime on account of its threat to the public order. The coercive power of the state could be used either instrumentally by the Church in accord with spiritual values and secondarily in accordance with temporal ones, or principally by the state itself in accordance with its own proper initiative and duties toward the temporal common good. Journet, in fact, favors the view that the temporal agent acted according to its own power, “subjected to the Church as an autonomous cause of a lower order is subjected to a cause of a higher order, but not as an instrument is subjected to is principal cause,” especially when it came to coercing heretics. This was done for the most part under the state’s own proper concern for public order. Kings were simultaneously vicars of the people and vicars of God, though the latter by the nature of their office and the former in virtue of privileges and modes of cooperation granted by or extracted from the Church.

This identification of Church and polity was mitigated somewhat by the fact that the Church itself was a supranational body with its ruler, the bishop of Rome, who was simultaneously viewed under the acquired titles of temporal sovereign of the papal states or even as the protector of Christendom. The sacral Christendom thus pointed toward a social unity that somehow transcended the state. Christian international unity mitigated and regulated war

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51 Journet, *The Church of the Word Incarnate*, 274-75.

52 Ibid., 254, emphasis original. In other words, while leaving open historical investigations in this or that episode of cooperation, Journet does not follow Suarez’s view that the state is but an instrument in the hands of the Church. Thus, Journet would not share the interpretation of Thomas Pink in these matters (Pink, “Right to Religious Liberty and the Coercion of Belief”). For criticism of Pink’s neo-Suarezian approach to state coercion as an inducement to belief, see Finnis, “Reflections and Responses,” 567-73.
between the kingdoms and even united them against Muslim threats. When the international order of Christendom was disrupted in the sixteenth century, the Church-state identification congealed within the territorial boundaries of the nascent states under absolutist monarchs, resulting in similar politico-religious arrangements in Protestant England and Catholic Spain. To be clear, the Protestant Reformation only galvanized tendencies that predated it and made it even possible to have regional Christian communities separated from communion with the popes of Rome. With the internationalist character of Christendom thus eliminated, the churchly character of society was brought more under the control of the various temporal powers who claimed or received unprecedented control over the Church within their boundaries. One might say that the spiritual became a kind of means to the temporal ends of monarchs. Thus when the head of state appoints the bishops or censors papal documents, a member of the faithful will begin to wonder, by the movements of the affective way as much as the theological, whether the right relation between the Church and the state has been achieved in concreto. Practical expedience recommended the cuius regio, but theologically that solution would never work, especially as Catholic political theory understood the ruler to be the representative as much of the people as of God. The kings now claimed to be the vicars of God directly, imitating the divine constitution of the Church. The collapse of these absolute monarchies under the assault of the eighteenth- and nineteenth-century revolutions followed. In their place, other absolutist polities arose, whether democratic, communist, or fascist. The confusion of this era pushed the Church and the human race toward resolution, but the resolution could not be provided by reason alone apart from faith,
since the issue involved not just “religion” but also the Church. To ignore the Church or to remove her from society by force, as some of the Liberal and totalitarian regimes did, was no lasting solution. That obscurity or confusion thus elicited a drive for distinctions that could present real but new possibilities for a different kind of Christian political order. Maritain and Journet supplied this with the idea of the profane Christendom.

The profane or secular Christendom, in contrast to the sacral Christendom, extends citizenship to a wider group, but with a more minimal unity in the body politic centered on the dignity of the human person. Its pluralistic and democratic character simultaneously effects a change in the mode of cooperation between the state and the Church. This in turn changes the mode by which the political body fulfills its duty to God. It preserves the distinction between temporal and ecclesiastical power by recognizing that the two powers properly belong to two diverse social bodies, each perfect and autonomous in its own sphere in regard to separate ends. Heresy would cease to be a threat to the civil order, since the unity of the state is more minimal than that of sacral Christendom. Here the state may recognize the Church and instill civil effects to the Church’s legislation in mixed matters such as marriage, such as in the 1941 Portuguese concordat. Political power is transmitted to the state from God through the people,

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while the Church has its constitution from above, directly from Christ.  

In a profane or secular Christendom, the application of the principles governing the relations between the Church and temporal societies would be different. The Church would not have the same acquired rights, and many of her essential rights could no longer be exercised in the way they were under a sacral Christendom, without doing damage to the common good.

The eternal principle that the Church and the state must cooperate, since they pertain to the same persons, would be applied differently in the profane Christendom so as not to violate the minimal unity achieved. This would consist first of all in “indirect” assistance to the Church by the creation of conditions favorable to the protection of rights and the fulfillment of duties of the human person. Non-Christian citizens and Christian citizens alike would enjoy equality before the law and the same rights. In this, Maritain explicitly agrees with John Courtney Murray, and like Murray he also holds the liberty of the Church as the first principle of the mutual assistance of state and Church. Yet Maritain stretches beyond Murray to say that the new Christian democracy would acknowledge the existence of God and “be conscious of the

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56 Ibid., 184-85. For a fuller exposition of the medieval, scholastic, and papalist origins of the “transmission” theory of political power, classically articulated by Cajetan, Bellarmine, and Suarez, see Yves R. Simon, Philosophy of Democratic Government (Chicago: University of Chicago, 1951), ch. 3; Journet, The Church of the Word Incarnate, 485-90.

57 Maritain, Man and the State, 180. Maritain gives an example as an essential right the power to abrogate civil legislation harmful to the common good, the exercise of which power would be unjust today on account of the damage and confusion it would case to the common good (p. 180n30). Cf. Journet, The Church of the Word Incarnate, 280: the use of the essential right of the Church to call upon the temporal power as an instrumental cause becomes “more hypothetical” and perhaps even then possible “in connection with her own children alone.” One thinks of the enforcement of the Church’s marriage laws by civil law, for example, not granting civil divorce to a Catholic unless an ecclesiastical tribunal declares the marriage null, as in the 1941 Portuguese Concordat or the 1978 Columbian Concordat. Another example: the state granting full custody to an abandoned Catholic spouse on account of a prenuptial agreement that the children from the marriage would be raised Catholic.

58 Maritain, Man and the State, 177.
doctrine and morality which enlighten it.” Maritain did not consider soft establishment inconsistent with the liberties of the new Christendom. Those “religious communities historically rooted in the life of the people” the government “should grant institutional recognition… in contradistinction to other religious groups or secular associations which enjoy freedom but not institutional recognition.” In the particular case of the Catholic Church, the government would know perfectly well that the Church herself was no part it, but above it. And in this connection it would recognize the juridical personality of the Church as well as her spiritual authority in ruling her members in her spiritual realm, and it would deal with her as a perfect and perfectly independent society, with which it would conclude agreements and with the supreme authority of which it would maintain diplomatic relations.

Maritain makes it clear that such an establishment would be coordinate with the equality of all citizens before the law: “Christian citizens… are no more legally privileged than any other citizens.” The state would remain secular in a Christian way, not in the way of agnostic liberalism, for the state recognizes that its duty to the common good of the nation requires that it acknowledge religion’s contribution to the national patrimony and the preservation of good morals. Here is the teaching of DH 1 on the ideal of Catholic establishment, qualified by the reciprocal free exercise within just limits of all citizens, the equality before the law of DH 6.

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59 Ibid., 172. At the least, Maritain considered the invocation of God and public prayers at government occasions—as he found in America—to meet this requirement (pp. 183-84).

60 Ibid., 174.

61 Ibid., 175. This citation disproves the identity that Davies presumes between Maritain and Murray (Davies, Second Vatican Council and Religious Liberty, 81-86). It is true, as Davies points out, that Murray was influenced by Maritain. From this it does not follow that Maritain’s and Murray’s doctrines are identical on the ideal of establishment in a Catholic society.

62 Maritain, Man and the State, 175.
All this is very cursory, but it shows the insight of the Maritain-Journet approach: that there is an analogical application of the unchanging principles that make a political order “Christian”, and thus there is the possibility of different civilizations all just in their own application in light of the times. This inherent flexibility in the application and realization of a Christian social order therefore has the potentiality of allowing for new and perhaps even better conformations of the social order to the Gospel. Yet the change from one epoch to another would also be accompanied by the corruption of the former. The drama of Church and state entered its most perilous times with the advent of the absolute monarchies, followed by absolute liberal states, followed by absolute illiberal totalitarianisms. Only in the ashes of one war and the threat of another did Maritain work out the theory.\textsuperscript{63} The compatibility of the Maritain-Journet theory with the contribution of Valuet is the subject of a soon to come section of this chapter. This is a new contribution, for it is apparent that Valuet has not read Maritain or Journet in depth.\textsuperscript{64} Nonetheless, both theories converge in finding an analogical application of principles in a new social situation. However, before examining the theory of Valuet in further detail, it is helpful to consider why it is that political bodies are flexible enough to accommodate such changes.

\textsuperscript{63} Whether Maritain only reprised the theory of Lamennais, as was and is assumed by many, is impossible for us to settle here. Any answer will have to assess whether Lamennais’s semi-rationalist philosophy (“traditionalism” based on a “common sense”) so informed his social program that his version of religious liberty necessarily ended in indifference to the revelation proclaimed by the Catholic Church. See in this regard McGrath, “Vatican Council’s Teaching,” 44-50; Broglie, \textit{Problèmes chrétiens sur la Liberté religieuse}, 103-20.

\textsuperscript{64} In his exhaustive bibliography, Valuet indicates that he has read some of Maritain’s works, but has not cited them in his study (\textit{La liberté religieuse et la tradition catholique}, III:382-84). Valuet admits that he does not know whether it was Maritain’s thought that was adopted by \textit{DH} and that this question “merits a special study” (p. 382n1). I propose here, however, that there is an initial plausibility to an affirmative answer that Maritain’s theory of a secular Christendom prepared for \textit{DH}, and that this theory further supports Valuet’s own \textit{ius gentium} solution to the problem of the doctrinal development.
Thomistic Social Ontology and the Fuzziness of Social Form

Understanding how one can have diverse forms of Christendom depends on understanding, in turn, the flexibility built into the nature of a social unity, that is, a society. How is it that a Christian civilization can be corrupted under one form, only to reemerge in another while remaining a Christian civilization? The reason involves the “fuzziness” of social forms from an ontological point of view. On the one hand, a society is indeed something; on the other hand, it is no thing at all. Understanding this permits us to see both how an epochal change in civilization is possible and also how that change could be made in a binding way by means of the ius gentium, the hallmark feature of Basile Valuet’s explanation of the doctrinal development leading up to DH. This section will present a basic introduction to an account of the nature of political society and its inherent flexibility using the thought of Thomas Aquinas, and then explain the import of this account for Valuet’s ius gentium thesis. In turn, this entire section will point forward to a ratio for doctrinal development in moral and social teaching.

One of the classic texts of Thomas on the nature of the social unity, in comparison with a compositional unity of a natural substance, is his In Ethic. I.5. There Thomas explains why individual and social ethics are distinct sciences by giving an account of the difference between

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an individual substance and a social body. Social groups, whether the family or the political body, have “only a unity of order, for [they are] not absolutely one,” in contrast to a compositional unity such as a human being, a dog, or a star. The parts of the social unity are individual persons, and unlike the parts of a composite unity, the persons have actions of their own that are “not the operation of the whole.” In a compositional unity, any part exists entirely for the whole. Thomas uses the example of a soldier in the army. On the one hand, he is involved in an action—the army’s assault—that is not explainable by appeal to an aggregate of individuals. The army’s assault cannot be explained by tracing the activity back to one soldier (e.g., the firing of this soldier’s rifle or the movement of this tank). One cannot simply trace an assault back to the action of a team or to an aggregation of individual actions. Instead the assault depends upon the cohesive functioning of the entire army, even if, as Simon points out, all the individuals or parts of the army are not instantaneously committed at the time of the assault. At the same time, each soldier does things which are not attributable to the whole, but to the soldier alone. To add my own examples, he steals a loaf of bread from a local farm, he receives his pay and sends it home to his wife, he writes a letter to his father, and so on.

In contrast to the social unity, the operations of the parts of a substantial or compositional unity are “principally that of the whole.” Think of the legs of a dog; their action makes no sense taken as subsisting, autonomous agents, but only and always in reference to their being the legs of a dog. One can say that the legs exist entirely for the dog, while the soldier does not exist entirely for the army, and the citizen of a city does not exist entirely for the city. In a natural or
compositional unity, the parts are “ultimately destined to the good of the whole alone” (*Mystici corporis* [1943] 61). The limbs of a dog are destined strictly to the good of the dog as a whole, and the whole supports the the parts for sake of the whole. In contrast, the members of a human society are “in the end directed to the advancement of all in general and of each single member in particular; for they are persons” (61). Think of the family. The children are oriented to the common good of the family, but that common good also exists for the sake of each and every child in the family. If some member of the family were treated as a mere means to the end of any of other members, that is dysfunction and contrary to the human dignity of that member of the family.

This coordination is necessary for the attainment of the extrinsic common good, namely, the point or end of the society. Now the intrinsic common good is itself ordered to the extrinsic common good. To use an example Hittinger has modified from Thomas Aquinas, a crew team has the goal (extrinsic common good) of winning the race, and therefore has an intrinsic order of rowers to the coxswain. Each rower in the crew team has operations which do not belong to the whole crew team. Nonetheless, the crew team has an operation which is not reducible to the operation of the single rowers, the operation of the crew rowing the boat. The intrinsic ordering of the rowers to the coxswain exists in order to achieve the operation of the whole for the sake of the extrinsic common good, winning the race. As Pius XII summarizes this social ontology, “In the moral body [Pius’s term for a human society], the principle of union is nothing else than the
common end [extrinsic common good], and the common cooperation of all under the authority of the society for the attainment of that end [intrinsic common good]” (*Mystici corporis* 63).

If a social unity is not a composite unity, whence its unity? The unity comes from the order of the parts to the whole (called the intrinsic end or intrinsic common good) for the sake of a further end (called the separated or extrinsic common good). To run with the example of an army, the intrinsic common good would be the order of the army to its leadership, achieved through cultivation of discipline, skill, and morale by means of the art of military leadership. The separated or extrinsic common good would be victory over the enemy. The intrinsic and extrinsic common goods give the social body a foothold in the order of intentionality of the individuals composing it. The soldiers and officers of an army do not become one thing in the sense of substance, but by willingly accepting or at least cooperating with the internal ordering to the leadership, and the ordering of the army to victory through the leadership, the individuals in the social body become one by intention. They accept the same plan in such a way that they achieve a level of activity not reducible or attributable to themselves as individuals.

This twofold ordering differentiates the social unity from mere sets, collections, heaps, or aggregates of individuals, such as all the people riding on a certain subway car. A mere set or aggregate of persons is not a society since there is no unity of action in accordance with a single plan. Hence an aggregate has no real unity outside of a logical set of persons existing in the mind. To put it another way, the persons in a set are just individuals, not members. When the members of a society change, the society is not necessarily destroyed. The society can be
sustained in spite of the loss of members, as the country of France or the Catholic Church is sustained by member’s being made citizens or being baptized even as others leave or die. The U. S. Marine Corps remains what it is, even if the names on the uniforms change completely every thirty or forty years. The changing of the individuals composing the social unity does not change the social unity into another body. On the other hand, a mere set or aggregate of persons changes whenever someone leaves or is added to the set, just as a line at the DMV changes whenever someone advances to the next available agent and whenever a new person is added to the back of the queue.66

Now social bodies are defined by their common goods, that is, by their intrinsic order and extrinsic ends. The intrinsic common good is the means to the extrinsic end, and thus subordinated to that end both in value and in configuration. This is where the “fuzziness” of social unity makes its impact: there are as many social unities as there are communally-pursued ends and communally-actualized means to an end. A marriage, a rowing team, a hobby club, a civil society, a religious order, and university are all examples of social unities, each having its character shaped by the different ends they all seek. Furthermore, one can differentiate different kinds of social bodies by the means by which they seek even the same end. Hence one can account for the difference in constitutions among civil societies, the different character of families and sports teams. Because social bodies are not compositional substances, changes in end and means does not destroy the fact that such a social body is one; but such changes will still affect the qualities of the social body. The differences between the Franciscan and Dominican

orders is not reducible to the personality differences of their respective founders. Each one is a religious order, but it is a religious order differently from the other because of the difference in charisms (ends) and the corresponding differences in the rule of life (means). There are fundamental principles animating the notion of marriage or of family, but how one is married or how one is a family retains some flexibility across cultures and times. Nonetheless, one does not have a marriage without having a man and woman enter into a permanent commitment ordered to the procreation and education of offspring (cf. CIC 1096).

The relevant kind of social unity under discussion in this chapter is the highest social body in the temporal sphere, the body politic. That social unity is charged with providing everything necessary for living well to the individual members. Lower social bodies are unable to be “perfect” in the sense that they do not have the requisite division of labor nor strength of numbers to achieve political stability and provide the goods necessary for stable human living. These would be defense, harmonized ownership of property, the making of laws to coordinate order, force to prevent arbitrary violence, and so on. A family is unable to master every art, and so cannot farm, practice medicine, and cobble shoes at the same time and with excellence. in the way that a political community, composed of many families, can. Neither can single families provide for defense nor provide a legally-binding response to the questions of utility to a multitude (traffic laws, the placement and use of common utilities). The common good of the political community in Thomistic terms would include above all the achievement of justice and peace within the social body. This ordering is achieved in the highest temporal social body, the
political community, through legal authority (means). The diversity of political bodies throughout the ages is a function of the diversity of ends on which the body politic is established as well as of the different political means by which the end is sought. Now the means to a given end may be many, and in the case of coordinated action among free persons, this multiplicity of means requires an authority to oblige coordination. Hence Simon says that “unanimity is a precarious principle of united action whenever the common good can be attained in more than one way.” In a political society authority is all the more necessary, not to replace the freedom of the citizens, but precisely to oblige their coordinate activity in attaining the common good by this means and not that (otherwise possible and licit) means. The difference in what means are selected by political power will still imprint upon the consciousness of the citizens a different way of thinking and bearing within the body politic. One may be a perfect monarchist, but if one lives within a democratic republic, one will have a difficult time acquiring and exercising the virtue of legal justice. One will be trying to live out one’s citizenship in a mode incompatible with the means of the current regime.

One can begin to see now how there can be a diversity of Christendoms in Maritain’s sense. There are basic, unchanging principles of what it means to have a Christian political order; yet there are analogous instantiations of those principles at very different times. Both the sacral and the profane Christendoms are true political orders because they possess an immanent ordination to achieve the necessary conditions for human flourishing. They are thus true ends.

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The two orders are both Christendoms in the sense that they are ordered toward the supernatural common good of the human person, union with the Triune God through the physical body of Jesus Christ and his mystical body, the Church. This in fact is what makes two civilizations capable of being a Christendom, namely, the capability of the polity to be ordered to the end of supernatural beatitude. The political organization of the people ought to help them attain eternal life. The difference between the two Christendoms, however, is constituted by the mode of achieving the common good and of achieving the further ordination to the supernatural common good of the human person. Hence they are analogous, time-bound applications of the same timeless principles. That analogy is made possible because of the malleability or inner flexibility of political society.

Finally, this political “fuzziness” was also acknowledged by the drafting commission of DH at the Second Vatican Council. In his last oral relatio, De Smedt added to his written text an interesting hermeneutical key to how the common good could be realized differently in different situations. He said that the notion of the common good was malleable to historico-social factors that could change from age to age. He gives an example:

In n. 12 the question is touched upon of ways of acting contrary to the spirit of the Gospel that existed in the history of the people of God. Now certain fathers want to add that in discerning these defects a reason ought to be considered from the

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68 Cf. Thomas Aquinas, De regno, 1.14-15, differentiating between the relatively autonomous tasks of temporal kingship and the priesthood, then ordering the task of the former to help men achieve the eternal salvation for which the latter was given.

69 One thinks here of Augustine’s discussion with Evodius of different political regimes (“temporal law”) being legitimate applications of the one, unchanging eternal law to the changing conditions that exist in society (de lib. arb. 1.6.14-15). The characteristics of a just temporal law include derivation from the eternal law but also the possibility of being changed in time.
fact that even in human society itself there were different ways of acting and thinking in different ages. This affirmation is true, but it is already expressed equivalently when we assert that the common good is the norm for the care of religion. The common good, as all know, is something relative, connected with the cultural development of peoples and ought to be discerned in accordance with this progress. 70

The common good is “relative” to the development of the people; it likewise takes on a new form in accordance with “progress” in a people’s political life. Here the official explanation of DH endorses the idea of the inherent flexibility of the end of society in accordance with time and place. One only needs to recognize that public order, which is a function of the common good, must also be “elastic,” as Valuet puts it. Before turning to his theory, one can state an additional way in which a political order’s common good may be changed in light of human progress.

As argued in the third chapter above, one of the keys to understanding the evolution of the Church’s social doctrine is the attempt to secure international peace by means of an international juridical order of states. The pope heartily endorsed this idea on account of the universal brotherhood of mankind in nature and supernatural destiny. If the Church universal corresponds to the human person attaining his supernatural destiny, there ought to be some universal organization that helps mankind preserve peace. Now the addition of an international or global common good is something added to the common good of the political body at a particular moment in history, accepted by all as something worthy of doing. Such an international common good would therefore require some adjustment of the common good of the individual states, and therefore an adjustment of the means of keeping the public order. This modification of the state would need to be reciprocal among all the member states, in order to

70 AS IV/6, 723n15.
achieve that common action and equity in the order to be achieved. Now this is exactly the doctrine of Pius XII’s *Ci riesce*, which called for states to recognize that they do not have such authority over religion in a globalized world, in light of the accommodations of the state to the international community. Chapter three has already expounded part of this allocution, but one thing unmentioned there is Pius XII’s theological analogue used when discussing an international community of nations. Pius uses the analogy of the universal Church to speak about that international juridical order, and to hold out the hope of its achievement. The Church, with her message of the actual natural and possible supernatural unity of the human race, illuminated in the light of Christ Jesus, could indicate how states with religious establishment, whether Catholic or not, could retain establishment under a different modality that respected the international order. The stretching of the common good of states by the demands of the international order forces the state to aim for a wider but more minimal common good centered on the achieving the conditions appropriate for the human person’s flourishing. It also further distinguishes the Church, an international body in her own right but without territory, from the state’s more minimal concern for the temporal common good. It is a new relation of nature and grace in the social realm. The public propagation of heresy would no longer of itself constitute grounds for state suppression of the exercise of the natural right of religious liberty. As Pius XII said, there would be no right of suppression and thus no duty of suppression granted by God to public power in that case. Suppression of free exercise would proceed along the norm of the more minimal, accommodated public order. Now, let us turn to Valuet, who picks up on this theme of
elasticity in the public order in light of a reciprocal adjustment of the common good of the member states of the world community.

*Valuet, Ius Gentium, and Christian Civilization*

The signature contribution of Basile Valuet to understanding *Dignitatis humanae* as a homogeneous development of Catholic social doctrine is his notion of the elasticity of the public order in light of a modification of the *ius gentium* to include a “clause of reciprocity” among nations regarding the free exercise of religion.71 Through his proposed analysis and interpretive thesis, Valuet has articulated a way in which the free exercise of erroneous religions would have been justly curtailed in a Catholic society prior to the establishment of reciprocity, while after such an establishment it would be unjust to repress. In both cases, the public order of the civil community is the basis for limiting free exercise. In a majority Catholic society pre-reciprocity, the exercise of the right to religious liberty by heretics was a threat to the public order, then including the protection of the rights of others to practice, believe, and live the true religion, to preserve a higher standard of public morality, and so on. After reciprocity, however, the public expression of heresy is no longer as such a threat to public order because of the public order’s ability to stretch to the current state of the *ius gentium*. Valuet calls this “l’élasticité” of the

71 Valuet himself calls this the “clef principale” of his thesis (*La liberté religieuse et la tradition catholique*, 1:717). Up to 1995, he had not found anyone before him to offer his thesis (p. 715).
public order. Valuet illustrates his solution with the example of armament and disarmament. While threatened by another country, it is necessary for a country to arm itself and not to disarm. When both countries agree to cease hostilities and mutually disarm, however, it would be unjust for that country not to disarm.\textsuperscript{72}

Valuet is correct that the distinction between society and the state allows the people to be directed directly by the “moral compass” of the Magisterium, and they then expect their representatives to imprint on the laws and institutions of the city the Gospel. DH supports both, but requires the former in all cases in light of 1) the truth of the human person and his transcendent end in God and 2) the recognizable truth of the Catholic religion. This idea of “substantial confessionality” is compatible with Maritain’s notion of the profane Christendom. The profane Christendom is still a Christendom insofar as it requires at the foundation a Christian understanding of the human person and a potentiality of having the civil order imprinted with a Christian spirit in its institutions and laws.\textsuperscript{73}

Would that mean that the addition of reciprocity to the law of nations created the right to religious liberty? Valuet denies this, and holds that the Catholic tradition has always at least implicitly held that there is a human right of immunity from the state in pursuing the truth about God. Further, not only Catholics but non-Catholics have recognized the right, but usually only permitted its exercise for oneself and one’s co-religionists. Rather, in accordance with that supreme norm of social life, the common good, and its more narrow limitation on public

\textsuperscript{72} Ibid., 1:723.

\textsuperscript{73} See Maritain’s remarks about the planes of action on which the Catholic acts (\textit{True Humanism}, 288-304).
violence by the public order, the exercise of that right by non-Catholics in a Catholic society was basically so circumscribed that a formal recognition of the right under a universal application to all citizens regardless of religion was impossible. Now, in a pluralist and globalized world seeking a minimal political unity for the sake of peace, “the exercise of the natural right to religious liberty by non-Catholics is no longer automatically abusive at the juridical level in a Catholic country.”74 The modification to the *ius gentium* did not create the right, but lowered the barriers to its exercise for adherents of whatever religion.75 The evidence that such a clause of reciprocity had been established is provided by the international declarations of human rights, which included expressions of reciprocity (e.g., 1948 UN Declaration, article 18).76

Another important objection to Valuet’s solution arises from the difference between a thinker such as Pink and one such as Noonan. Pink thinks that *Dignitatis humanae* is a policy change, insofar as the Church renounces her right to use the state as an instrument of coercion in civil society. With that renunciation the state loses all right to coerce in religion, naturally incompetent as it is in such matters. But Pink implies that in the future this could all change, and that when possible in a Catholic society, the Church could use the state to once again suppress all public non-Catholic religious practice. In this reckoning the claim of the council to develop doctrine, and the *relationes* tying the doctrine to the development in papal teaching on the common good, become difficult to understand. Perhaps Valuet’s theory is susceptible to the same

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75 Ibid., 1:723-24.
76 Ibid., 1:711.
weakness, insofar as the reciprocity clause added to *ius gentium* could be revoked and things return to a state of war? Here Valuet denies it, and though disagreeing with Noonan in substance, agrees that the position of *DH* is certainly more permanent than Pink implies. Noonan has no compelling reason to saw why *DH* should be a doctrinal term, a lasting configuration of Church teaching. This is all the more troublesome for his position insofar as *DH* is non-definitive doctrine, and Noonan argues that non-definitive doctrine can change. Hence the apparent dilemma: in the absence of a compelling reason why *DH* cannot change, either one simply asserts that *DH* is more permanent than a doctrinal change, or one estimates that *DH* is in fact changeable.

In contrast to both Pink and Noonan, however, Valuet offers a reason based precisely on what the *ius gentium* is. The reason why Valuet does not expect a change in the doctrine of *DH* is owing to the clause of reciprocity. So long as the reciprocity clause remains part of the *ius gentium* and so long as it is respected in fact, there is a principled reason for the position of *DH* to endure. Hence Valuet writes that “[t]he Church no longer thinks her rights have been attacked at each expansion of a religious error in a Catholic people, because and on the condition that she continues to value the principle of reciprocity.” This gives a reason beyond a calculating prudential policy or an appeal to nonpublic experience for why *DH* will be and should be the Church’s position for the foreseeable future in light of the law, not merely in regard to present circumstances alone. Furthermore, it would never be prudent or just unilaterally to break or

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77 Ibid., 1:744 (emphasis original).
abrogate a reciprocity clause, for the object of the agreement is honest and thus binding in contract.

The advantage of bringing the accounts of Maritain-Journet and Valuet together is that both balance the philosophical and theological method of making permanently valid distinctions, with the affective way or attention to a Christian experience of the world. Neither Maritain nor Valuet conceive of the profane Christendom or the *ius gentium* as “secular” as opposed to Christian. Rather, each is a Christianly way of being secular, a new form a Gospel-inspired social order. Further, both argues for the important place of changing circumstances in the evolution of Catholic social thought, without being forced to say that previous configurations of the social order were imprudent, stupid, or wicked. In this way, bringing together their approaches to argue for a Christianized version of the *ius gentium* offers much potential for not only explaining change, but also anticipating and advocating for change. *DH* itself says that the “leaven of the Gospel” has greatly influenced the growing awareness of the dignity of the human person and the need for avoiding coercion in religious matters in civil society (12 § 2).

Circling back to Marín-Sola’s comments regarding the affective aspect of development, one can also explain partly why the *ius gentium* would develop in a Christian way. First, the Catholic religion understands every human person, as an instance of human nature, to have an inherent dignity that is extended in responsible action. Further, if it is true that Christian citizens have a connaturality with the divine truths about God, the God-Man, and man in the image of God, one would expect advancements in social life to arise from more or less Christian societies.
This would be in virtue not only of the illumination of their reason by faith, but also the connaturality to the very divine realities themselves introduced into their souls by grace and the gifts of the Holy Spirit. Knowing these things one ought to expect a Christian society to develop the *ius gentium* in a way more and more in accordance with the dignity of the human person than other civilizational forms. One knows well how the influence of the Gospel on Western society has led to greater respect for children, women, and work subordinates (whether slaves or wage employees) to see this dynamic at work. One could also see it in the reformation of warfare, of the responsibility of those in public authority over their subjects, of judicial procedures and the application of corporal punishments, and so on.\(^78\) One may infer two things: first, it is right to expect these developments to be in accordance with reason, but to require a vital spiritual life to actualize them. Second, should a civilization lose the vital Christian inspiration that led to these developments, one should expect the very meaning of the terms to become misunderstood or even corrupted. Hence the use of the terms “dignity” and “rights” today have been invoked to protect legally the most unjust acts of suicide and abortion.

What requires further explanation is the nature of the *ius gentium*, how does it bind, and whether it would be possible to revoke the obligation of something added to it. These are important questions for future research, both for the sake of understanding how the scholastic understandings relate to modern international law, but also for the sake of understanding how

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\(^78\) One thinks here of Vitoria’s comment about enslaving prisoners of war no longer being acceptable in conflicts between Christian nations, but in the state of perpetual warfare between Christians and the Turks, such enslavement is possible (*On the Law of War* 3.3, in Vitoria, *Political Writings*, 318-19). To make an analogy from Valuet’s solution, were the Turks and the Christians to enter into a reciprocal peace, it would no longer be just to enslave Turks, and it would not be in the power of Christian nations to unilaterally break the peace treaty.
other issues in Catholic moral theology have and will develop (e.g., polygynous marriage, slavery, the death penalty, norms for warfare). Further, the *ius gentium* bears the imprint of Catholic theology, insofar as it was gradually modified in accordance with the Gospel. The *ius gentium* seems a powerful concept for explaining how natural law does not change, and yet it can change with the accumulation of experience and the clarifications accruing from revelation.

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*A Concluding Comment on Social Doctrine’s “Elasticity”*

In this chapter I have attempted to account for the flexibility of social doctrine that reflects the real elasticity of social form in light of changing demands placed upon it by modifications to the common good of the political body. These modifications may be the addition of a higher goal relevant to the concrete form that the public order takes in lower, sovereign bodies (e.g., the honesty of an international juridical order), or even a remodeling of the political common good within the concept of the modern state itself (e.g., Maritain’s personalistic common good operative in the profane Christendom). If the foregoing holds as valid, this investigation has discovered a principled way for explaining how Catholic social doctrine pertaining to social unities at higher levels of organization is more malleable than moral teaching pertaining to lower level social unities such as marriage and the family. The reason is that higher organizations, while still bound by eternal principles such as “the political order must
accommodate the human person’s supernatural destiny in the Triune God,” are also more creations of the order of human intentions than a society such as marriage. The latter is tied to the concrete biological aspects of the human person, made in the image of God, male and female. The former, however, are capable of a more “elastic” (Valuet) or “analogical” (Maritain and Journet) expression, depending on the ends sought in concerted effort by the political community, and on the means or intrinsic order thought suitable for attaining those ends. So long as new configurations respect the eternal ordering wisdom of God, changes in human law do not—simply by changing—become unjust (cf. St. Augustine, de lib. 1.6.14-15).
Bibliography


