

***Dignitatis Humanae*—Not a Mere Question of Church Policy: A Response to Thomas Pink**

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Introduction

IN HIS REPLY¹ to my essay on *Dignitatis Humanae*, published in this journal,² Professor Pink assumes that according to me traditional Church doctrine held that it was the genuine task and right of the temporal power *under natural law* to coerce religiously and thus to have the right of suppressing false religions and of imposing religious truth on society. According to me, Professor Pink says, *Dignitatis Humanae* has given up this doctrine, replacing it by a secular conception of the state and *as a consequence* of this doctrinal change concerning the nature of the state, the Church now has given up her claim to have a right to coerce religiously with temporal means.³

¹ “The Interpretation of *Dignitatis Humanae*: A Reply to Martin Rhonheimer,” *Nova et Vetera* (English) 11.1 (2013): 77–121. I thank Professor Pink for kindly having sent me the text of his reply after its publication.

² “Benedict XVI’s ‘Hermeneutic of Reform’ and Religious Freedom,” *Nova et Vetera* (English) 9.4 (2011): 1029–54.

³ See also Pink’s former version of his criticism on: roratecaeli.blogspot.com/2011/08/on-religious-liberty-and-hermeneutic-of.html. A more expanded version of his argument can be found in Thomas Pink, “The Right to Religious Liberty and the Coercion of Belief: A Note on *Dignitatis Humanae*,” in *Reason, Morality and Law: The Philosophy of John Finnis*, ed. Robert George and John Keown (New York: Oxford University Press, 2013), 427–42, to which John Finnis has responded very critically

On the basis of this misrepresentation of my position, which is the premise of all of his criticism, Professor Pink has an easy task in proving that I am wrong. For there never existed such a tradition of attributing to the state a right under natural law to coerce in religious matters. Professor Pink emphasizes—and rightly so—that also according to tradition only the Church had such a right and that only she could licitly claim to possess it. In his own words: “The state’s past licit involvement in religious coercion . . . was never under its own authority but was always under the authority of the Church” (80). This is correct, as far as Church doctrine is concerned, and there is nothing in my writings which even implicitly contradicts that truth.

Therefore, to maintain that in my view the affirmation of religious freedom by the Second Vatican Council is a consequence of having abandoned a traditional doctrine on the state according to which the temporal power has a genuine right, under natural law, to coerce in matter of religion, is a truly bewildering presentation of my position. Moreover, to assert, as Professor Pink does, that therefore *the Church herself* has now given up her right to coerce in religious matters by temporal means, is beside the point. What I said and hold is something completely different.

I never asserted that according to traditional doctrine the state had a genuine right—that is, a right under natural law—to coerce in matters of religion; nor did I say that the abandonment of such a doctrine was the doctrinal change brought about by Vatican II. My thesis rather was that according to tradition *the Church had the right to demand of the temporal power that this power be subordinated to the Church’s jurisdiction*, in order that Church law might be imposed on the baptized by means of the temporal power (of the state).

In the factual order of salvation, so this tradition said, the temporal power of the state, though being a reality under natural law in the order of creation, was bound, in the order of salvation, to serve the spiritual power as its “secular arm.” As an ideal in a society formed by Catholics, this meant that the state had to be officially, constitutionally Catholic. This is why in my article I have talked of the traditional doctrine as being a doctrine about “the duties of the state toward the true religion,”

and about “the right of the Church to assert its claims by the secular arm of the state, as an instrument of both temporal penalties and civil consequences.”⁴ That the state was understood as having “duties toward the true religion” is not tantamount to asserting that according to this doctrine the Church has such a right *under natural law*, as Professor Pink makes the reader believe. It means that in the economy of salvation, carried out in this world by the Catholic Church, the temporal power of princes and later of the state is part of this economy of salvation by being the secular support of the spiritual power. According to this tradition, it is so not for natural-law reasons but for theological reasons, derived from revelation and based on the nature of the Christian religion and of the Church.

This is why in the same sentence I spoke of “the right of the Church to assert its claims by the secular arm of the state, as an instrument of both temporal penalties and civil consequences.”⁵ The point of my argument, therefore, was quite different from how it appears in Professor Pink’s reply. It was based on a critical review of a tradition which has been definitively and with sound theological reasons abandoned by Vatican II and the post-conciliar magisterium.

Historical Background

The way this older tradition was formed is long and complex. As such, it had no roots in Scripture, nor in the Apostolic Tradition or in the Fathers. In his reply, Professor Pink entirely disregards this tradition and the history behind it. In the following, I will roughly and in a very simplified manner summarize this history and the tradition it formed.

To begin with, notice what I wrote about Scripture and Tradition in my article:

[I]t would be excessive to affirm that these principles of Scripture and Tradition also contain guidelines on the relationship between the Church and the state, on the duties of the state toward the true religion, or on the right of the Church to assert its claims by the secular arm of the state, as an instrument of both

⁴ Rhonheimer, “Benedict XVI’s ‘Hermeneutic of Reform’ and Religious Freedom,” 1040.

⁵ Ibid.

temporal penalties and civil consequences. It was only in the course of time and under the influence of different situations and historical needs that such positions or doctrines were constituted, principally in relation to the Church's battle for the *libertas ecclesiae*, the freedom of the Church from civil and political control and oversight. This was an extremely complex process, the stages of which I have discussed in other publications.⁶

The story begins roughly in the seventh century when, after the breakdown of the Roman Empire, the Church and her bishops increasingly took over functions of civil government in the field of the administration of justice, public order, and defense. Before that time, the Christianized Roman Empire had been characterized by the typically Roman idea that religion guaranteed the prosperity of the Empire. The pagan version of this Roman civil religion was polytheistic; Christian monotheism was seen as a threat to the unity of the multicultural Empire. After Constantine the Great, however, the mentality changed: the cult of the one true Christian God was believed to be the basis of the Empire's unity, stability, and prosperity. Christian emperors, adopting Arianism, understood themselves as the supreme bishops and supervisors of the Church; the Latin Church started to oppose this view, defending the *libertas ecclesiae*.

After the sacking of Rome by Alarich's troops, Saint Augustine established in his monumental work *De Civitate Dei* the typical Christian principle of the dualism of powers: the temporal power has the task of maintaining earthly order and peace; the task of the spiritual power, for its part, is to make us attain heavenly beatitude and eternal life. The powers belong to different orders, being mixed, however, on this earth

⁶ Ibid. At this point, in note 5 I referred to the following publications: Chapter 12 of my *The Common Good of Constitutional Democracy* (Washington, DC: The Catholic University of America Press, 2013), entitled "Christianity and Secularity: Past and Present of a Complex Relationship." This text was previously published in Italian as "Cristianesimo e laicità: storia ed attualità di un rapporto complesso," in *Laicità: la ricerca dell'universale nella differenza*, ed. Pierpaolo Donati (Bologna: Il Mulino, 2008), 27-138; in Spanish, see *Cristianismo y laicidad. Historia y actualidad de una relación compleja* (Madrid: Rialp, 2009). A much-expanded German version has been published under the title *Christentum und säkularer Staat: Geschichte—Gegenwart—Zukunft* (Freiburg i. Br.: Herder, 2012).

because the City of God and the Earthly City, respectively, arise in the hearts of people and are not visible institutions on this earth.

Clarifying, during the Church's assertion against the power of the emperors, the relationship between the Church and the temporal power, Pope Gelasius coined this dualism in his succinct formula: "There are two things on this earth: the sacred authority (*auctoritas sacrata*) of the popes and the royal power (*potestas regalis*)."⁷ According to Pope Gelasius, the rulers of this world possess the *potestas*, whereas the Church possesses the *auctoritas*. The *potestas* is a coercive, earthly power, which concerns the things of this world, while *auctoritas* is a sacred power of a dogmatic, pastoral, and moral nature, which is exercised in the name of a truth that is, also, the measure of goodness of the exercise of every temporal power.⁸ The Gelasian principle did not express an institutional or juridical supremacy of a spiritual authority over the temporal power; it only claimed a moral and pastoral supremacy in the sense of Saint Ambrose's famous dictum *Imperator intra ecclesiam, non supra ecclesiam* ("the emperor is in the Church, not above the Church").⁹ It meant that also emperors, kings, and princes of this world are, as faithful, subject to the spiritual authority and pastoral care of the Church. In the High Middle Ages this will be expressed by saying that the Church has jurisdiction over them *ratione peccati*. Yet, this refers not to institutions, but to persons.¹⁰

⁷ Hugo Rahner, *Kirche und Staat im frühen Christentum* (München: 1951), 256. Gelasius did not say "There are two powers" as many translations erroneously have, but "there are two things": *duo quippe sunt...*—For the later evolution of this formula see *The Cambridge History of Medieval Political Thought c. 350–c. 1450*, ed. J. H. Burns (Cambridge: Cambridge University Press, 1988), 88ff.

⁸ The distinction comes from the Roman republic: the Consuls had the *potestas* while the Senate had *auctoritas*, but no *potestas*. It was Emperor Augustus who first claimed to unite both *potestas* and *auctoritas* in his person. This is important to correctly understand the dualistic nature and the importance of the Gelasian formula.

⁹ St. Ambrose of Milan, Speech against Auxentius (Migne, *Patrologia Latina* [PL] 16, 1007–1018), cited by Hugo Rahner, *Kirche und Staat im frühen Christentum* (Document 13b), 184.

¹⁰ Notice that in Can. 2198 of the 1917 Code of Canon Law, referred to by Professor Pink, the *ratione peccati* clause refers to the state as an institution (*civilis auctoritas*) and as the secular arm (*brachium saecularis*) of the Church. This is something quite different from what is expressed in the formulas of Saint Ambrose and Pope Gelasius.

Things decisively changed with so-called political Augustinism, a “heterodox” interpretation of Saint Augustine’s doctrine on the two Cities. It was “heterodox” in the sense that it was faithful neither to Saint Augustine’s position nor to the Gelasian principle, converting the latter into a doctrine of the subordination of *powers*.¹¹ It was the time of the great missionary impulse of the early Middle Ages and the conversion of the Arian West Goths to the Catholic faith. Now, the temporal power of the princes, kings, and emperors was increasingly understood to be part of the order of salvation, having thus a sacred function as the “secular arm of the Church.” The Gelasian principle of the pastoral and moral supremacy of the spiritual power is increasingly interpreted in institutional, juridical, and thus political terms. So, Pope Gregory the Great wrote that “who governs has received his power over all men from above, so that the earthly city be in service of the heavenly” (*ut terrestre regnum coelesti regno famuletur*).¹² In the seventh century, St. Isidore of Seville expressed this idea in a somewhat cruder way: the power of Princes, he wrote, is needed so as to impose “by the fear of punishment what the clergy is unable to bring about by words alone.”¹³ This went so far that, from the ninth century the temporal power of kings and emperors was understood as one of the two ecclesiastical powers, essentially responsible for helping the Church to fulfill her task, to defend her from enemies, to create the conditions for her missionary expansion, and to provide for the clergy.¹⁴

“Political Augustinism” did not claim that this was the task of the temporal power *under natural law*. On the contrary, “political Augustinism” absorbed natural law into ecclesiastical law and thus sacralized temporal power. This resulted in the complete integration of the Church structures into the political structures of the Empire. Charlemagne took over the title of *Vicarius Christi* and the anointing of emperors and kings

¹¹ The classical treatment is: H. X. Arquillière, *L’augustinisme politique. Essai sur la formation des théories politiques du Moyen-Age* (Paris: J. Vrin, 1955).

¹² SS Gregorius I Magnus, *Registri Epistolarum*, Liber III, Epistola 65, PL 77, 663.

¹³ St. Isidore of Seville, *Sententiae*, book III, ch. 51 (PL 83, 723-724); the Latin text of this passage can be found in: Arquillière, *L’augustinisme politique*, 142.

¹⁴ Jonah of Orléans, *De institutione regia* (Jonah was bishop of Orléans, d. 843); for more detailed information see Arquillière, *L’augustinisme politique*, 149.

was understood as being a sacrament.¹⁵ But, beginning in the eleventh century, and with Gregory's VII's "Papal revolution," things started to change.¹⁶ Gregory and his successors de-sacralized temporal power, reducing emperors and kings to simple laymen. So he reestablished a conception of temporal power under natural law. The high medieval doctrine of the *plenitudo potestatis* of the pope claimed the ecclesial power to be supreme and having the control also over temporal power, essentially secular in its nature, which however had to be exercised in the service of the spiritual power. This implied the idea that, though being a reality of natural law and in this sense secular, it belonged to the nature of the state that it be under the jurisdiction of the spiritual power of the Church. According to the doctrine of the two swords, also, the temporal power was originally in the hands of the pope but was given to earthly princes for its exercise. This actually was a version of the doctrine according to which the temporal power is the secular arm of the Church, a version, however, substantially different from its modern variants. In fact, the papal revolution of the High Middle Ages contained the seed of a truly secular conception of the state, which would develop only many centuries later.

Moreover, the insistence of these popes on controlling political power *ratione peccati* as well as the cultivation by canon lawyers of natural law and the submission even of Church law to natural law, was the seed of the modern culture of rule of law and human rights. In fact, the Church did never, and does not today, accept absolute political power. It claims that every human power has to be subject to higher moral standards of good and evil. For imposing this claim, the Church in the past used juridical and political means we justly consider today as inappropriate. But at the time, they were perhaps the only available and, despite abuses and mistakes, the Church became the great legal and moral educator of Western civilization.

However, after the late medieval decline of papal power what first happened was not the rise of the secular state but something quite dif-

¹⁵ Cf. Ernst H. Kantorowicz, *The King's Two Bodies: A Study in Medieval Political Theology*, 3rd ed. (Princeton, NJ: Princeton University Press, 1973).

¹⁶ See for this especially Harold J. Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Cambridge: Harvard University Press, 1983). For more bibliography on this and related subjects see note 6 above.

ferent. The development of pre-modern territorial states and eventually the rupture of the religious unity by the Protestant reformation gave rise to the sovereign confessional state, which, not for theological but for merely political reasons—religious peace and increase and consolidation of absolute state power—established religion: Lutheranism, Calvinism, or Catholicism. For this period it is true what John Finnis points out against Professor Pink, namely that “the rulers of the state conceived their extremely coercive repression of heresy and apostasy as the exercising of an inherently secular state jurisdiction . . . rather than as the exercising of the Church’s coercive jurisdiction by an agency conveniently free from the limitations of the Church’s capacities and character.”¹⁷

The modern tradition of the (Lutheran, Calvinist, or Catholic) confessional state delivered the model for the Church’s opposition to the liberal ideas of the French Revolution, mainly its declaration of human and civil rights, which were seen as collective apostasy of a whole catholic nation. The theological and canonical tradition, rooted in political Augustinism and then reversed by the Papal revolution of the eleventh century finally, converted—and also perverted—into the modern confessional state. For Catholic theology, thus, the ideal became the “Catholic state.” As every reality of this world, the state, too, was seen as a part of the order of salvation, *not genuinely or “under natural law* but because in a Christian society and by its due submission to the authority of the Church, the temporal power was conceived as an earthly order to be integrated into the order of salvation. Therefore, in a truly Christian world, the temporal power, not by its own right, but by its being a *de facto* part of the order of salvation, has to serve as the secular arm of the Church.¹⁸

The problem with Professor Pink’s position is that it simply seems to ignore history. History cannot be read simply in the light of canon law, as he does. The development of canon law itself has to be understood in the light of historical contexts. This is why Professor Pinks misunderstood the main features of my interpretation of *Dignitatis Humanae* and why in my view he does not see the point of Pope Benedict XVI’s claim that

¹⁷ John Finnis, “Reflections and Responses,” in *Reason, Morality and Law: The Philosophy of John Finnis*, 573.

¹⁸ This very complex history, which I have so briefly and thus not adequately outlined in these few lines, can be found in more detail in other publications of mine, most in detail in my *Christenum und säkularer Staat*, First Part.

the Second Vatican Council has to be read according to a “hermeneutic of reform.” Professor Pink, instead, degrades the Council’s teaching on religious freedom to a simple tactical move, which, in his words, arises “from a reform on the level of policy and from accompanying change in religious and political circumstance, not from any reform of underlying doctrine” (79).

My thesis was that the Second Vatican Council changed a traditional *doctrine*, both theological and canonical. However, that doctrine—like Pope Gregory’s the Great interpretation of Saint Augustine, Isidor of Seville’s idea of temporal princes imposing clerical preaching by state power, Jonah of Orleans’s view on temporal power as being a form of ecclesiastical power, and the high medieval doctrine of the two swords, used by Gregory VII and perfected by Saint Bernard and Hugo of St. Victor—was not of any dogmatic value; it was not a doctrine of faith belonging to the *depositum fidei*, nor did it belong to the Catholic *moral* tradition.¹⁹ The change was that, according to *Dignitatis Humanae*, the state, even in a Christian society, is no longer understood as having the duty to submit to the authority of the Church, because *in principle* the state—the institution—is no longer understood as being part of the order of salvation, but as substantially *secular* and in this sense autonomous (or truly sovereign), a character which it does not lose even in a wholly Christian world.

In fact, what *Dignitatis Humanae* does is to peremptorily sanction *natural law*, that is, it recognizes unconditionally that very secularity which the temporal power possesses under natural law, that is, by its nature, a secularity and corresponding political and juridical autonomy which is in no way diminished by its de facto integration into the order of salvation. *Dignitatis Humanae*, therefore, overcomes definitively the tradition of political Augustinism which was characterized by absorbing natural law into divine and ecclesiastical law.

¹⁹ Especially the idea of referring to the two swords Peter mentioned, according to Luke 22:38, after the Last Supper, was originally conceived by Gottschalk (of Aachen), chancellor of Henry IV—Gregory VII’s great adversary—as a weapon of propaganda against Gregory’s attempt to deprive Henry IV of his ecclesiastical powers. But then Gregory used the formula, converting its meaning, as a weapon against Henry IV. So, the origin of that doctrine is not theological, but rather political and, in a later stage, juridical and pastoral. See my discussion of this subject in my *Christentum und säkularer Staat*, 97–103.

Secularity of the state means that the temporal power owns an autonomy which includes *independence from Church jurisdiction* and that therefore the Church has no genuine right to enforce her religious claims by means of the temporal power of the state. To affirm this kind of secularity is not only a tactical move and a change in policy, but a recognition of the genuine earthly character of the temporal power of the state and thus the recognition of (1) its not being competent, *precisely "under natural law,"* to enforce religious claims stemming from a religious authority based on supernatural revelation, and (2) of not being obliged but rather being forbidden, to serve the Church as her secular arm in imposing Church jurisdiction on civil society.

So, when I say that *Dignitatis Humanae* implies a change on the level of the doctrine about the state, I do not mean that this change affected an alleged competence of the state under natural law to coerce religiously; the state was never held to have such a competence. What I referred to was the *doctrine about the role of the state in the order of salvation* and, therefore, *the doctrine about the state as submitted to the jurisdiction of the Church and its duty to serve the Church as her secular arm*. This exactly, in the past, was the program underlying the ideal of the "Catholic state." Such was not a state which by its own authority, or "under natural law," should be catholic, but by understanding itself as a part of the order of salvation and thus being in the service of the Church. Such a conception, however, implies the state's being subordinated to the only institution which *genuinely and by its own right*, has the authority and the spiritual means for salvation: the Church.

The Question of the Coercive Power of the Church

From this follows—and here again Professor Pink's argument fails—that by negating the Church's claim of having the right to use the temporal power of the state to impose her spiritual claims on the faithful I in no way negate the coercive power of the Church in religious matters altogether, nor do I negate that for such coercion she may licitly use temporal penalties. My interpretation leaves completely intact the Church's right to religiously coerce the faithful with the means proper to her and established in canon law, for example, by such church penalties as excommunications, suspensions, interdicts, and similar measures.

She can do that in order to punish, and defend herself and the faithful against, heresy, apostasy, schism, or disobedience. She may also inflict temporal penalties, such as removal from office, removal of benefices, etc. and all that this implies in real temporal disadvantages. She can even order—as it is in the case of pedophilic clergymen—those who committed determined offenses to surrender to the police as a condition of receiving sacramental absolution—which, however, rather implies that the Church works as the “spiritual branch” of the secular power.

That means that also in this respect I claim only that the Church has abandoned the doctrine according to which the state has a duty—not under natural law, but in the factual order of salvation to which Christians, including politicians and statesmen, belong—to serve the Church as her secular arm in imposing her religious coercive power on the faithful. The Church has abandoned this position because she at last recognizes the substantially secular nature of the state and its consequent autonomy, which is its real nature under natural law. Therefore, my position is in this important respect exactly the opposite of what Professor Pink thinks me to be saying.

Moreover, Professor Pink accuses me of negating the coercive power *of the Church* while, in fact, I only negated the Church’s coercive power *through the temporal power of the state*. Professor Pink rightly emphasizes that the *Syllabus*’s condemnations of the denial of the Church’s right to use coercion by the temporal power (condemned proposition 24) was originated not with the intention of upholding thereby a genuine right of the state, but on account of the Church’s concern to defend her own genuine authority (91). This was exactly the problem: in nineteenth-century France, the position of the Catholic liberals and their leader Charles de Montalembert, whose opinions were meant to be condemned by the encyclical *Quanta cura*, was not to deny the Church’s right to exert her spiritual authority by coercive means, but only her authority to do so through the temporal power of the state. Therefore, as an attempt at refuting my interpretation, also in this respect Professor Pink’s remarks are ineffective.

Pius IX's Refusal of Indifferentism and the Question of Church Coercion for the Removal of Heresy

On page 91, Professor Pink mentions that “the Syllabus’s condemnation of the denial of the right to use force or exercise any form of temporal power for religious ends . . . was fundamentally about the Church’s authority, not about the authority of the state.” According to me, it should have been about the authority of the state. This is another example of Professor Pink’s misreading of my argument. However, I do say, exactly as Professor Pink, that it was *fundamentally about the Church’s authority*. It was even more: it was also to defend the unique truth of the Catholic religion against “indifferentism” or what today we call religious relativism and pluralism.

Pius IX in fact condemned religious freedom because he thought it implied the doctrine of religious indifferentism or pluralism, which is tantamount to negating the unique truth of the Catholic religion. He thought this, because he took for granted that if there is a true religion, then political and juridical logic demanded that the temporal power of the state and the whole society must be subordinated effectively, and thus in a juridical way, to the spiritual power of that religion. So, inversely, according to his thinking, to establish a right to religious freedom was equal to denying the existence of the one true religion and, with this, Church authority altogether. Notice that in that time, both liberal free-thinkers and anti-clericals were accustomed to think in the same way, only inverting the terms: there being in religious matters no truth at all, so they argued, there must be conceded to citizens a right to complete freedom in these matters. But this foundation of religious liberty, freedom of worship and of conscience, is equally mistaken. This freedom does not depend on whether religious truth exists or not. It was with *Dignitatis Humanae* that this coupling of the existence of a uniquely true religion on one hand and the question of the existence of a civil right to religious freedom on the other hand was finally dissolved. *Dignitatis Humanae* even affirms that precisely because this truth exists and man is bound to search and embrace it, freedom in searching and embracing it must be guaranteed by the state to all men, even to those who are in error or do not care about it. The reason is the following, as *Dignitatis Humanae* §3 declares:

The religious acts whereby men, in private and in public and out of a sense of personal conviction, direct their lives to God transcend by their very nature the order of terrestrial and temporal affairs. Government therefore ought indeed to take account of the religious life of the citizenry and show it favor, since the function of government is to make provision for the common welfare. However, it would clearly transgress the limits set to its power, were it to presume to command or inhibit acts that are religious.

Professor Pink quotes Benedict XVI on page 92, in a passage that refers to the Church's right and duty to take measures to prevent heresies from spreading among the faithful. But he misuses that text in order to substantiate his thesis of a genuine right of the Church to use coercive means through the temporal power of the state to achieve this end. However, such a claim is clearly not contained in Benedict's text. In consequence, there is no reason to say, as Professor Pink suggests, that I deny the Church licit use of her spiritual power in a coercive way—for example, its sanctions for heresy or grave fault against Church discipline. So if Professor Pink writes against me that it “is just historical fantasy to suppose that Catholic endorsement of religious coercion at the magisterial level was peculiar to a ‘few isolated popes’ of the nineteenth century,” he is mistaken, because I do not speak of magisterial teaching about “religious coercion” as such, but I referred to its condemnation of the modern idea of religious freedom as a civil right.²⁰

I do not negate either that “[t]here is much magisterial and canonical backing for the Church's direct coercive authority over the baptized, and in particular for her authority to coerce the errant baptized back into Catholic fidelity.” (96). However, when Professor Pink adds “and to call on state assistance for such coercion” he introduces a new element into his argument for which he could not find very much *magisterial* backing, even though perhaps in certain times quite a bit of evidence in

²⁰ It is undeniable that in the High Middle Ages, from Gregory VII, through Innocent III, and to Boniface VIII, the idea of the juridical supremacy of the spiritual over the temporal power was fully maintained. However, it is important to understand the context in which this canonical doctrine and its most famous expression in the “doctrine of the two swords” arose. See for this *Christentum und säkularer Staat*, 92–103.

canonical law. But being by its nature human law, and although containing elements of unchangeable divine and natural law, canon law is not Church doctrine, it is simply *law*, and Church law changes and adopts according to Church doctrine, based on the *depositum fidei*. So, Professor Pink's argument runs in the wrong way.²¹

When Professor Pink, toward the end of his essay, writes, "as we have seen, the Church thought it right to use coercion to remove heresy altogether from the belief of the baptized, but not to use coercion to force the conversion of unbaptized Jews or Moslems," he is, in my view, obscuring the issue. What traditionally the Church claimed was not simply to have a right "to remove heresy from the belief of the baptized," but to remove it *from society altogether* and to do this by imposing her doctrinal authority by means of the temporal power. Also, after Vatican II, the Church still claims to have the right "to remove heresy altogether from the belief of the baptized"; she even asserts that she has the *duty* of doing so. She does this for example with the help of the Congregation for the Doctrine of Faith; but also local bishops and local episcopal conferences are called to engage in this task.

However, the issue at stake is that there is a real discontinuity, which lies in the Church's abandoning the idea of her having the right and duty to remove heresy *from society altogether* and of her having the right to be supported for this purpose by the temporal power of the state (what obviously will be possible only in an ideal situation of a "Catholic nation" and of a government run by Catholics). If the Church defends truth and tries to remove heresy *in society altogether*, she now wants to do this by means of teaching, by enlightening consciences, and through the apostolic, evangelizing, and missionary impetus of the faithful. As *Dignitatis Humanae* §1 asserts, "The truth cannot impose itself except by virtue of its own truth, as it makes its entrance into the mind at once quietly and with power." This does not contradict the coercive power still existing for reasons of protecting faith, especially over clerics and their preaching and over those who in the name of the Church teach the ecclesiastical disciplines.

²¹ See also Pink's references to the 1917 Code of Canon Law on page 100; this is no valid argument for proving his case.

“The traditional catholic teaching on the moral obligation of individuals and societies towards the true religion and the one Church of Christ”

On page 103, Professor Pink refers to Cardinal Journet, who was appointed by Pope Paul VI as a cardinal so that he, a simple professor of theology at the *Grand Séminaire* of Fribourg, could participate in the deliberations on the schema about religious freedom. Professor Pink quotes Journet in support of his and against my reading of *Dignitatis Humanae* §1 where it is declared that the doctrine contained in this text “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” (104). As I wrote in my article, this statement already presupposes the claim, made in the previous sentence of *Dignitatis Humanae*, that in religious matters there must be “immunity from coercion in civil society.”

Professor Pink asserts that “it is not at all clear what the basis might be for Rhonheimer’s reading” (104). This is surprising, because the basis is extensively referred to. It is not only the very text of *Dignitatis Humanae*, but also No. 2105 of the *Catechism of the Catholic Church*, which not only literally quotes that passage of *Dignitatis Humanae* but provides an authoritative interpretation of it.

So, about “the traditional catholic teaching on the moral obligation of individuals and societies towards the true religion and the one Church of Christ,” on page 1036 of my article I wrote the following:

What these duties consist in is specified in what can be considered an authentic interpretation of the debated passage. The passage is quoted in the Catechism of the Catholic Church, no. 2105, which explains that it refers to the duty of individuals and of society of “offering God genuine worship.” This is realized when, “constantly evangelizing men, the Church works toward enabling them ‘to infuse the Christian spirit into the mentality and mores, laws and structures of the communities in which [they] live.’” In their personal involvements and activities in family and professional life, Christians are required “to make known the worship of the one true religion which subsists in

the Catholic and apostolic Church.” This, concludes the present section of the Catechism, is how the Church “shows forth the kingship of Christ over all creation and in particular over human societies.” That is, the perspective of Vatican II calls for the proclamation of the Gospel by the Church and for the apostolate of the Christian faithful so that these penetrate the structures of society with the spirit of Christ—not a word on the state as the secular arm of the Church, which by state coercion must protect the “rights of truth,” and in this way impose the kingdom of Christ in human society.²²

This means not only that the Council’s doctrine of religious liberty is compatible with recognizing the fact of religious pluralism, but also that it cannot be the task of the state to conform society according to the truth of the Catholic religion. In fact, the famous sentence of *Dignitatis Humanae* §1 speaks about a moral duty, not of the state, but of “individuals” and “societies.” It is significant that the text in one of its quotes refers to the Conciliar Decree *Apostolicam Actuositatem*, which is about the apostolate of the lay people, but not on the duties of the state and of governments.

Against this interpretation, rooted in an authoritative text of the post-conciliar magisterium, Professor Pink invokes the authority of Cardinal Journet, referring to his *L’Église du Verbe incarné*. Now, this book was first published in 1941, more than twenty years before Vatican II. However, what matters is the view Cardinal Journet defended during the Council, not what he wrote more than twenty years earlier.

²² This is the integral text of CCC number 2105: “The duty of offering God genuine worship concerns man both individually and socially. This is ‘the traditional Catholic teaching on the moral duty of individuals and societies toward the true religion and the one Church of Christ.’ (DH 1 §3). By constantly evangelizing men, the Church works toward enabling them ‘to infuse the Christian spirit into the mentality and mores, laws and structures of the communities in which [they] live’ (AA 13 §1). The social duty of Christians is to respect and awaken in each man the love of the true and the good. It requires them to make known the worship of the one true religion which subsists in the Catholic and apostolic Church. Christians are called to be the light of the world. Thus, the Church shows forth the kingship of Christ over all creation and in particular over human societies.”

Regarding the duties of society toward God, Journet at the Council said the following:

Also civil society has the obligation of publicly manifesting the honor due to God. In consequence, the very civil power must not ignore the different religious families existing in society and it is its duty to rely on them so that God be duly honored by all.²³

According to this statement, in order to pay due honor to God, the temporal power of the state need not privilege one religion as the true one; rather it “must not ignore the different religious families existing in society.” According to Journet, public manifestations of honoring God do not need to have a confessional character but rely on the plurality of religions existing in civil society.

Moreover, Cardinal Journet explicitly rejected in his statement the older view according to which the Church has a right to appeal to the State as its secular arm:

Since the epoch of Constantine, and beyond, Church pastors have appealed more than once to the secular arm in order to defend the rights of the faithful and to safeguard the temporal and political order of so-called Christianity. But precisely under the influence of the preaching of the Gospel, the distinction between the temporal and the spiritual has increasingly become more explicit and today it is clear for everybody.²⁴

²³ “La société civile elle aussi a le devoir de manifester publiquement l’honneur qu’elle réserve à Dieu. Par conséquent, le pouvoir civil lui-même *ne peut ignorer les diverses familles religieuses présentes dans la cité* et c’est son devoir de recourir à elles afin que Dieu soit dignement honoré de tous.” Cardinal Charles Journet, Statement during the Second Vatican Council, 21 September 1965, *Documentation Catholique* 62 (1965), col. 1799-80; quoted according to Bernard De Margerie, *Liberté religieuse e Règne du Christ* (Paris: Édition du Cerf, 1988), 95-6, at 96 (nr. 4). Emphasis added.

²⁴ “Les pasteurs de l’Église, dès l’époque de Constantin, et au-delà, ont fait appel plus d’une fois au bras séculier afin de défendre les droits des fidèles et pour sauvegarder l’ordre temporel et politique de ce qu’on appelle la chrétienté. Pourtant, sous l’influence précisément de la prédication de l’Évangile, la distinction entre les choses temporelles et les choses spirituelles est devenue progressivement plus explicite et aujourd’hui elle est claire pour tous” (ibid., nr. 6).

Journet adds that, in consequence, “the doctrinal principle according to which the temporal is by its very nature subordinated to the spiritual is in no way abrogated, but is simply applied in a new way, that is, that resistance against errors should be carried out with the arms of light and not with the arms of war.” And this, Journet concludes, is exactly what is contained in the Declaration; these themes could even be emphasized a little more, and therefore the text merits to be fully approved.²⁵

Therefore, Professor Pink’s reference to Cardinal Journet is quite misleading. The reason why Paul VI wanted Journet to participate in the Council’s deliberation about *Dignitatis Humanae* was not, as Professor Pink suggests,²⁶ because of his views expressed in his book *L’Église du Verbe Incarné*, which on this point reflects the pre-conciliar state of Church doctrine, but because he knew he would be helpful in convincing the conciliar Fathers of the convenience of adopting *Dignitatis Humanae*.

Only a Temporary Prudential Shift of Policy?

Moreover, Professor Pink is mistaken when he asserts on page 109 that according to *Dignitatis Humanae* individuals possess a moral right to religious freedom only (1) because of the new Church policy of renouncing the use of state power to implement its jurisdiction over the faithful and (2) because the state as such has no normative authority to coerce religiously. This is at odds with the key affirmation of *Dignitatis Humanae* §2: “that the right to religious freedom has its foundation in the very dignity of the human person as this dignity is known through the revealed word of God and by reason itself.” This is not a statement about policy but it means that this right is something given with human existence itself. *Dignitatis Humanae* further declares that “[t]his right of the human person to religious freedom is to be recognized in the

²⁵ Ibid.: “En conséquence, le principe doctrinal selon lequel les choses temporelles sont subordonnées de soi aux choses spirituelles n’est nullement aboli, mais trouve un mode nouveau d’application, à savoir qu’il faut s’opposer aux erreurs par les armes de lumière, et non par les armes de la guerre. Si je ne me trompe, tous ces thèmes sont bien contenus dans la Déclaration sur la liberté religieuse. Peut-être pourraient-ils être mis en meilleure lumière. Toutes ces raisons font que l’actuelle déclaration me semble mériter une pleine approbation.”

²⁶ On page 103 of his article.

constitutional law whereby society is governed and thus it is to become a civil right.”

For the same reason, Professor Pink’s affirmation on page 110 “that the Council intended through *Dignitatis Humanae* to abandon, at least for our time, the tradition of *using* the temporal power of the state in the service of the spiritual power” is misleading. The Council did not teach this “at least for our time,” as Professor Pink writes, because it certainly did not and obviously could not want to teach “for our time” only “that the right to religious freedom has its foundation in the very dignity of the human person”! However, what Professor Pink in fact admits is that the change is on the level of the role given to the state: the temporal power of the state is not anymore conceived by *Dignitatis Humanae* as the secular arm of the spiritual power. That this change is essential was, in fact, my main thesis. On the grounds of textual evidence, my interpretation seems to me much more plausible than Professor Pink’s idea that *Dignitatis Humanae* contains only a momentary prudential change in Church policy. Professor Pink’s reading, however, rather contradicts the very text of *Dignitatis Humanae*.

According to my view, the change brought about by the Council consists in the doctrinal separation of the two questions: with *Dignitatis Humanae*, the Church can defend her coercive power in religious matters and simultaneously postulate a civil right to religious freedom. This is not because she has abandoned her right to coercion, but because for reasons of human dignity she now recognizes that the temporal power of the state is not—not even in the economy of salvation—meant to serve as the secular arm of the Church. This implies a change in the conception of the state *not under natural law*, but in its relationship to the economy of salvation.

In section 6 of his article (“Post-conciliar Official Statements”), Professor Pink refers to Benedict XVI’s 2005 Christmas address to the Roman Curia and the November 24, 2002, Doctrinal Note from the Congregation for the Doctrine of the Faith, “*On Some Questions Regarding the Participation of Catholics in Political Life*.” He tries to dismiss these texts by saying “these passages are crucially vague” and that they “possess a pretty low level of magisterial authority in their own right.” What Professor Pink says in the lines following this statement, however, seems to me to be erroneous. It is certainly not true, as Professor Pink suggests,

that Benedict's affirmation about the Second Vatican Council's "recognizing and making its own an essential principle of the modern State with the Decree on Religious Freedom" is only recognition of the fact of the modern liberal state for reasons of *policy*. Professor Pink suppresses the words "making its own" and he also withholds the end of the sentence, which says that with this recognition the Council "has recovered the deepest patrimony of the Church."

Moreover, Professor Pink does not sufficiently take into account the initial context of these affirmations. At the beginning of this section of his address, Pope Benedict introduced the topic with the following words:

[I]t was necessary to give a new definition to the relationship between the Church and the modern State that would make room impartially for citizens of various religions and ideologies, merely assuming responsibility for an orderly and tolerant coexistence among them and for the freedom to practise their own religion.

This, then, was the "essential principle of the modern State" which, with the Decree on Religious Freedom, the Church wanted "to recognize" and to "make its own."

In order to identify this "deepest patrimony of the Church," finally, Benedict XVI refers to Matthew 22:21 ("Render unto Caesar the things that are Caesar's, and unto God the things that are God's") and to the "Church of the martyrs of all time." He mentions that while the ancient Church "prayed for the emperors, she refused to worship them and thereby clearly rejected the religion of the State." This clearly indicates a doctrinal change, not on the level of principles or doctrine of faith, but on the level of its application and the consequences drawn from it.

The "essential principle of the modern state" which the Church not only recognizes but makes its own is, therefore, precisely the state's autonomy regarding Church authority and Church law, and its institutional, juridical, and political autonomy regarding any religious authority of whatever kind. This does not mean *moral* autonomy—the Church and Church leaders can licitly intervene in the public forum by means of her magisterial teaching and by applying pastoral measures to the faithful—and it does not mean autonomy regarding God (as *Gaudium et Spes*

explicitly teaches). This kind of autonomy and sovereignty is precisely what makes the state to be a *secular* state. Equally, this is the autonomy clearly stated in the 2002 Doctrinal note of the Congregation for the Doctrine of the Faith, when it mentions the “autonomy of the political or civil sphere from that of religion and the Church” as “a value that has been attained and recognized by the Catholic Church and belongs to inheritance of contemporary civilization.” This principle of the secularity of the state is the one recognized by the Second Vatican Council and in subsequent post-conciliar teaching, including even texts of higher magisterial rank, as for example Pope John Paul II’s encyclical *Centesimus Annus* (especially chapter 5).

Professor Pink’s Theocratic and Clericalist Interpretation of the Leonine Doctrine about Church-State Relations

In his “Conclusion,” Professor Pink strangely holds that “if humanity is to flourish, the two [the Church and the state] must unite like Aristotelian form and matter, as parts of a single substantial unity.” I don’t know whether Professor Pink really means what he says here, but if he really wants to conceive the relationship between Church and state in the metaphysical terms of form and matter, then what he says is really bizarre. For, the form being the proper principle of structuring and making a thing formally what it is by its species, this would mean that the state (or human society), without being led and shaped by the Church, has no such proper principle of structuring and that it receives the formal principle of what it is by its very nature and species from the Church. This, however, is absurd. It is the more absurd if we consider that, in the case of living beings, the form is properly the soul. So, considering the state and civil society as a unity with proper life, the Church would be like the soul of the state (or of civil society).

Now, in a sense this is true, but not in the sense Professor Pink holds it. His conception demands at least a theocratic and extremely clericalist political regime, for he talks about the Church as a hierarchic institutional body, not of the Church as the body of Christ which includes all and each faithful. Would he conceive the Church as the form or soul of civil society in that latter sense, he would be right. His statements then would be in the tradition of the letter to Diognetus, which affirms that

Christians are for human society what the soul is for the body—the soul being the form of the body, which is the matter. What Vatican II teaches is certainly in this line. It does not teach, however, that the Church hierarchy is that soul. It is rather the Christian faithful living in the middle of society and fulfilling their task of being leaven of Christian truth and charity who are like the soul of civil society, even though by saying this we certainly remain in the genus of metaphors and not real metaphysics.

Approaching the end of his article, Professor Pink even goes so far as to affirm (on pages 118f.) that the need for divine grace in order to comply fully and reliably with the natural law makes it *an interest of the state* to use its coercive power in support of the Church. Even if that, objectively speaking and given the weakness of humans in general and politicians in particular, may be quite true, this would mean that in such a Christian regime everything that would be in the interest of the state could be justified by claiming it to be part of natural law and a service to the Church.

According to Professor Pink, however, the above affirmation shows the necessity of establishing the true religion as the state's own religion! This, Professor Pink even affirms, is the point of Pope Leo XIII's teaching on the relationship between Church and state. Yet, again he ignores history and he does not take into account that it was precisely that Pope who in his 1885 encyclical *Immortale Dei* §13 wrote (emphasis added):

The Almighty, therefore, has given the charge of the human race to two powers, the ecclesiastical and the civil, the one being set over divine, and the other over human, things. *Each in its kind is supreme*, each has fixed limits within which it is contained, limits which are defined by the nature and special object of the province of each, so that there is, we may say, an orbit traced out within which the action of each is brought into play by its own native right.

Not only is this absolutely incompatible with Professor Pink's idea that Church and state relate to each other like form and matter, but also the affirmation that each power "in its kind is supreme" (*utraque potestas est in genere suo maxima*) is an important step toward the idea of the secular state which, in principle, is sovereign and autonomous regarding

Church power.²⁷ Admittedly, with Leo XIII we have not yet arrived at Vatican II, but with his program of so-called *ralliment*, Pope Leo has moved an important step away from Pius IX's refusal to cooperate with the secular state (by his *Non expedit*, with which he prohibited Italian Catholics from participating in the political life of their country). Leo's politics of *ralliment* (which means both "gathering" and "joining") intended precisely, at least in practice, to renounce the idea of an established religion and to exhort the French Catholics to attain the goal of permeating society and the state with Christian spirit and truth, not through their imposition by state force, but through the action of Christians in society and their cooperating with the political institutions of the secular state. Leo XIII, though not advocating the separation of Church and state, was convinced that "in regard to purely human societies, it is an oft-repeated historical fact that time, that great transformer of all things here below, operates great changes in their political institutions."²⁸ The tragedy was that the French Catholics did not follow Leo's vision and exhortations, instead continuing to stick to the idea of the Catholic state and refusing to cooperate with the republican political institutions devoted to the French model of *laïcité*. The outcome of that refusal, against Leo XIII's wish, eventually was, in 1905, the extreme anti-Catholic law of separation of Church and state.

Eventually (on pages 119–21) and surprisingly, Professor Pink concedes that perhaps the Church's renunciation, with *Dignitatis Humanae*, of any use of its right to appeal to state power in order to impose its jurisdiction on the faithful might not be only a "prudential policy decision" but itself "something morally demanded." This, "because the con-

²⁷ I say "in principle" because Leo XIII in the subsequent sentences talks about the so-called "mixed matters" (mainly marriage and education) which are regulated according to the following principle: "inasmuch as each of these two powers has authority over the same subjects, and as it might come to pass that one and the same thing—related differently, but still remaining one and the same thing—might belong to the jurisdiction and determination of both, therefore God, who foresees all things, and who is the author of these two powers, has marked out the course of each in right correlation to the other." These questions have traditionally been regulated by concordats. They do not require Catholicism as state religion.

²⁸ Leo XIII, Encyclical *Au milieu des sollicitudes* for the French Catholics (1892), §17; the English text is available online on the Vatican Website: www.vatican.va/holy_father/leo_xiii/encyclicals/documents/hf_l-xiii_enc_16021892_au-milieu-des-sollicitudes_en.html.

ditions may no longer obtain under which baptism could bring with it the obligations to the Church invoked by canon 2198 of the 1917 Code—to provide state power, if so directed by the Church, to enforce her ecclesiastical law.” So, according to Professor Pink, if these conditions should change, and again obtain, for example as the fruit of new and successful evangelization, this moral obligation to concede religious freedom would vanish and another moral obligation would arise again: that the Church return to the practice of appealing to the secular arm of the temporal power to enforce her jurisdiction over civil society. That this cannot be the meaning of *Dignitatis Humanae* seems to me clear, not only for reasons of defending the honesty of the Conciliar fathers, but also because of the Council’s statement, mentioned above, that the right to religious freedom is founded in the very dignity of the person.

In Response to Professor Pink’s Last Conclusion

Professor Pink ends his article by stating his view that the state has a right under natural law to suppress false religions and to impose religious truth on society. Referring to Leo XIII’s doctrine on Church-state relations, he affirms that behind this teaching “stands a complex combination of highly authoritative magisterial teaching *on the duty of states as well as of individuals to acknowledge revealed religious truth*, on our need in a fallen world for divine grace to live well as a political community, and—essential to the possible legitimacy of religious coercion involving the state—on the possible duties of the baptized under various circumstances to the Church” (120, emphasis added).

If there exists a “duty of states as well as of individuals to acknowledge revealed religious truth,” this must be a duty *under natural law*. If so, this means that the state has also the genuine right to enforce this truth, a right which he exerts in cooperation and in the service of the institution representing this truth, the Catholic Church. Professor Pink clearly distinguishes the duty of states from the duty of individuals. That is, he is talking not only about Christian politicians or statesmen having a duty to do their job in accordance with Christian principles: the state power itself, by its very nature, has this obligation. Therefore, it logically must be an obligation *and a corresponding right under natural law*. So, it seems to me that at the end of his article Professor Pink is forced to

admit what in the beginning of his article he declared to be mistaken and even mistakenly attributed to me.

In case Professor Pink would deny that the “duty of states to acknowledge revealed religious truth” is meant by him to be a duty under natural law, he would implicitly assert that in the economy of salvation—that is, in a Christian nation populated mainly by Catholics and in the case of a government run by Catholics—the *nature of the state would undergo a change*: that such a state and such a temporal power would not be any more a reality under natural law, but its nature and its law would be assumed, or absorbed, by the reality of the Church and by Church law. The power of the state would, in fact, become a kind of ecclesiastical power. Now, as we remember, this was precisely what political Augustinism affirmed since the ninth century (recall Jonah of Orleans, referred to above).

Professor Pink’s error lies in construing Leo XIII’s doctrine on Church-state relations as a fully coherent doctrine, which it is not. Leo had the deep intuition of acknowledging the sovereign and political autonomous nature of the state as a reality under natural law, a sovereignty and autonomy that obtain also under the condition of a Christian society and government run by Catholics. This is why Pope Leo taught the spiritual and the temporal power to be “each in its kind . . . supreme.” It is this very affirmation which is at odds with everything Professor Pink claims, especially with the idea that Church and state relate like form and matter. Admittedly, it is also at odds with some of Leo’s proper claims. Leo XIII’s was a teaching on the verge of the Church’s way into modernity. His teaching is like a watershed from which the view on both sides is still possible, but it is not a balanced view, because the waters run only to one or the other side—they cannot remain on the divide. It was only Vatican II, namely *Dignitatis Humanae*, that drew out the consequences of Leo’s teaching that the state has a power which is *of its own kind* and which *in this kind is supreme*, not morally, but politically and juridically, which is the only aspect of interest in this context.

Conclusion

It seems to me difficult to deny that with *Dignitatis Humanae* the Church has declared its will to abandon, on the level of doctrine and pastoral practice, a long tradition, now recognized as not being part of Christian faith and morals but rather as running against the deepest inspirations of the Gospel, the Apostolic Tradition, and the common sense of the Fathers.

As I tried to elucidate in my first article, Benedict XVI has taught us that, to adequately understand the obvious discontinuity resulting from this new doctrinal and pastoral orientation, we must read the Second Vatican Council, namely *Dignitatis Humanae*, in the light of a “hermeneutics of reform.” The teaching of *Dignitatis Humanae* is not simply a case of prudential policy, nor even of *morally demanded* prudential policy, but it is an example of true reform in the Church’s comprehension of her relationship to the world. This reform implies the abandoning of an older doctrinal and canonical tradition, now considered to belong neither to the nature of the Church nor to the *depositum fidei* entrusted to her, and which does not belong to the essentials of Catholic morality either. 