

The Interpretation of *Dignitatis Humanae*: A Reply to Martin Rhonheimer*

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1. Professor Rhonheimer's Theory of Doctrinal Reform

THE DECLARATION *Dignitatis Humanae* of the Second Vatican Council concerns coercion in matters of religion by the state. Coercion, in the Catholic tradition, centrally involves the issuance of directives backed by the threat of penalties—dislike of the penalties being intended to influence the otherwise unwilling into doing as directed.¹ The declaration straightforwardly condemns, as morally wrong, coercion by the state of people's religious belief and practice, save to protect just public order. But it seems that the Church once endorsed just such state coercion in defense of the Catholic faith.

Should we see Vatican II as doctrinally consistent with previous Church teaching, or as contradictory and corrective of it? In his essay "Benedict XVI's 'Hermeneutic of Reform' and Religious Freedom" Professor Rhonheimer maintains that the declaration does contradict and correct previous teaching. The declaration (he says) maintains continuity

* I should like to thank Professor Rhonheimer for notifying me of his essay "Benedict XVI's 'Hermeneutic of Reform' and Religious Freedom," *Nova et Vetera* 9, no. 4 (2011): 1029–54 (citations to page numbers in the *Nova et Vetera* essay will henceforth be given parenthetically in the text), and for drawing my attention to his criticism there of my discussion on *Rorate Caeli* [August 5, 2011] rorate-caeli.blogspot.com/2011/08/on-religious-liberty-and-hermeneutic-of.html. An expanded version of my *Rorate Caeli* discussion is also forthcoming under the title "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).

¹ For a lucid discussion see Aquinas, *Summa theologiae* I–II, q. 95, a. 1, resp.

at the level of Church doctrine on faith and morals, and in particular, in doctrine concerning the nature of the Church herself (1048). The declaration maintains continuity in its teaching on the principles of the natural law. But the declaration does involve a contradiction of past teaching at the level at which principles of the natural law are applied—at the level of doctrine concerning the state.

Natural law as such is therefore not at all affected by the discontinuity that is in question here. The contradiction arises only at the level of the assertion of the civil right, and is therefore only of the political order. The doctrine of Vatican II and the teaching of *Quanta Cura* with its “Syllabus errorum” are therefore not in 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. (1042)

Past magisterial endorsement of religious coercion, in Rhonheimer’s view, was social teaching about the nature of the state, rather than an interpretation of the content of divine revelation. As teaching concerning, not even principles of the natural law itself, but their application, the teaching is fallible and subject to revision. This past Church endorsement of religious coercion involved only teaching about the state of some nineteenth-century popes. And the real purpose of the teaching was simply to defend the truth of Catholicism. It was mistakenly thought (Rhonheimer says) that unless the state were under a general duty to restrict the public practice of false religion, *de fide* claims as to the unique truth of the Catholic faith would be imperilled.

In the preconciliar magisterium, therefore, the doctrine on the unique truth of the Christian religion was linked to a doctrine on the function of the state and its duty to assure the prevalence of the true religion and to protect society from the spread of religious error. (1031)

But now, since Vatican II, we see that the truth of Catholicism can be defended without recourse to coercion; and so this social teaching about the state can be given up.

According to Professor Rhonheimer, no general council before Vatican II ever pronounced on freedom and coercion in relation to religion:

The first case—definition “ex cathedra” or ecumenical council—clearly does not obtain with the question of freedom of religion. In effect, the first and so far the only council to have expressed itself on this subject has been Vatican II. It was precisely this Council which recognized religious freedom. In the same way, not even the universal

ordinary magisterium seems to be affected here, because never before had the pope and the bishops condemned religious freedom and proclaimed this condemnation as a definitive doctrine of the Church. This was rather the case of a few isolated popes, over a span of about a hundred years, and never of an explicit assertion of wanting to present a definitive doctrine in a matter of faith or morals (even if this was the implicit understanding of the nineteenth-century popes). (1038)

So, in opposition to a hermeneutic of doctrinal continuity regarding the teaching on religious freedom of Vatican II, Professor Rhonheimer proposes a hermeneutic of doctrinal change and reform. *Dignitatis Humanae* is proposing new teaching, contradictory and corrective of the old, on “the sovereignty and competence of the state in religious matters” (1033). This teaching is doctrinally corrective of a previous political ideal, supported by the nineteenth-century popes. This previous ideal was the political establishment of Catholicism as the state religion, with the Church using the Catholic state to coerce on her behalf. *Dignitatis Humanae*, on Professor Rhonheimer’s interpretation, rejects the Catholic state as any such ideal, presenting instead as just and right, and the correct application of principles of natural law, an equal religious liberty for all and a separation of Church and state (1053–54).

Professor Rhonheimer’s contribution is important, in that it raises so many questions pertinent to the interpretation of *Dignitatis Humanae* and therefore pertinent also to a proper appreciation of the teaching of the Second Vatican Council. He has provided an invaluable opportunity for clarifying the declaration, which is so central to our understanding of Vatican II’s relation to the earlier Catholic magisterium. But this essay will show that Professor Rhonheimer’s account of past Church doctrine on religious coercion is importantly mistaken, as is his interpretation of *Dignitatis Humanae* in relation to that doctrine. My argument, in outline, will be as follows.

True, *Dignitatis Humanae* is an historic reform. For the first time since late antiquity the Church is now refusing to use the coercive power of the state to support her mission. The Church is refusing to use state power either to hold her own members to obligations of Christian fidelity or to protect her members from exposure to the public practice of, or to proselytization from, other, false religions. And she is now teaching, as she did not teach before, that people have a moral right not to be coerced religiously by the state. But all this arises from a reform at the level of policy and from accompanying change in religious and political circumstance, not from any reform of underlying doctrine. Once the

doctrinal history is properly understood, it will become clear that *Dignitatis Humanae* in no way contradicts the doctrinal basis of the Church's previous endorsement of religious coercion.

Dignitatis Humanae is a declaration, not on religious liberty and coercion in relation to any authority whatsoever, but rather on religious liberty and coercion in relation to the state and civic institutions. The doctrine it proposes is specific to state or civic institutions: it is the state which lacks the authority to coerce religious belief and practice. But the authority to coerce religious belief and practice, according to the teaching of the pre-conciliar magisterium, never belonged to the state in any case, but only to the Church. The state's past licit involvement in religious coercion, therefore, was never under its own authority but was always under the authority of the Church, in virtue of an obligation on Christian rulers to the Church, incurred through baptism, to aid her in her mission and to put the coercive power of the state at her disposal. The doctrinal basis for the Church's past endorsement of religious coercion involving the state lay then, not in any application of natural law teaching about the authority of the state, but in revealed doctrine about the authority of the Church, and about that authority's basis in people's obligations to the Church incurred through baptism—and, especially, in doctrine about the obligations to her of baptized state officials.

The doctrine on which the Church's historical approval of religious coercion was based was therefore precisely not what Rhonheimer alleges—reformable social teaching about the application of natural law concerning the state. Rather, the doctrinal basis for the Church's past endorsement of religious coercion lay in highly authoritative and long-standing magisterial teaching from revelation about the nature of the Church herself and of her sacraments—teaching that may not be easily reformable at all, and behind which, as we shall see, lies the authority, not just of a number of nineteenth-century popes, but of many general councils and of the canonical tradition of the Church. It is far from clear that Vatican II ever had the authority to contradict this past magisterial teaching. But, in any case, the Council never tried to do so, as this essay will make clear. For the underlying doctrinal basis for the Church's previous use of the coercive services of the state—traditional teaching about people's obligations to the Church—is expressly preserved, in *Dignitatis Humanae*'s very definite and explicit formulation, *integer* or intact.

Professor Rhonheimer attempts to set up a sharp doctrinal opposition between Vatican II and the nineteenth-century papal magisterium. But in its doctrine about the coercive authority of the state, namely that the state lacks an authority of its own to coerce religiously, *Dignitatis Humanae*

emerges as deeply continuous with the nineteenth-century magisterium. It is simply maintaining what was already the teaching of Leo XIII in *Immortale Dei*. Just as Vatican I's *Pastor Aeternus* of 1870 reserved supreme jurisdiction over the Church to the papacy, and so to the exclusion of the state, so in Leo XIII's *Immortale Dei* of 1885 we find all coercive authority in religion generally reserved to the Church—again to the exclusion of the state. The real novelty at Vatican II is the Church's refusal of further license for state involvement in religious coercion under her own ecclesial authority. But this refusal is not grounded by *Dignitatis Humanae* on any doctrine about the limits or extent of the Church's own authority either to coerce herself or to license or require other agents, such as state officials, to coerce on her behalf. This is precisely because, beyond undertaking to preserve traditional teaching, *Dignitatis Humanae* very carefully avoids stating any doctrine of its own about the Church's own authority over those subject to her jurisdiction and under obligations of fidelity to her—namely the baptized. The nature and extent of the Church's own coercive authority over the baptized, including baptized state officials, is strictly bypassed.

Since it is the Church, not the state, that has coercive authority in matters of religion, a doctrinal resolution of questions to do with religious liberty would have to involve teaching on the coercive authority of the Church, and in particular on the juridical implications of baptism. But *Dignitatis Humanae* never provided such teaching. *Dignitatis Humanae* simply maintains Leonine teaching on the state's incompetence to coerce religiously, leaving the crucial teaching on the Church's own authority unchanged, but otherwise unaddressed.

So much by way of outline. Let us now turn to the central question of religious coercion in traditional Catholic teaching. Where does the authority to coerce religiously lie, and what is the normative basis of that authority?

2. Church and State

Professor Rhonheimer assumes a distinction between, on the one hand, teaching from divine revelation on the Church and her nature and authority, where doctrinal continuity is both essential and assured, but which is supposedly not concerned with the right and authority to coerce religiously; and, on the other hand, teaching from natural law on the nature and authority of the state, where all past teaching of a right and authority to coerce religiously is supposedly located, and where doctrinal change can occur without endangering the Church's authority concerning faith and morals. But this distinction is not tenable, having no basis in the past teaching and tradition of the Church.

Rhonheimer is less than clear on the true juridical basis, according to past Catholic teaching, of the state's involvement in coercion in support of Catholicism as the true religion. But this issue is fundamental to understanding the problem of doctrinal continuity or change in this area.

Sometimes Rhonheimer writes of the state in past Catholic doctrine acting as the Church's agent, in the enforcement of her authority. He talks of the Catholic state as "the secular arm of the Church" (1032). And in relation to temporal penalties being applied in matters of religion, he writes of consultors to the Holy Office regarding state authority "as being in the service of enforcing *church laws on the baptized*" (1044) (my emphasis). And here it seems that the state is acting as the Church's agent, applying and enforcing ecclesial laws, and so penalties based on an authority other than its own.

But then, in the same footnote where he talks of the state's acting to enforce church laws, he claims, regarding these same temporal penalties that the state is helping to apply:

"temporal" precisely did not refer to ecclesiastical power and penalties, but to the coercitive (sic) power of the state in the service of the true religion. (1044)

In which case it looks as though, in acting in support of the Church, the state is acting on the basis of an authority of its own in matters of religion, so that the temporal penalties are legitimized by a native right on the part of the state to impose such punishments for religious ends, in defense of the true religion.

We touch here an old debate in Catholic theology, pitting Counter-Reformation Roman theologians such as Suarez and Bellarmine against Gallicans such as Barclay.² Are temporal penalties in religion—penalties imposed in the service of revealed religion and supernatural ends, but depriving the penalized of some earthly good—imposed on the authority of the Church, with the state, if involved at all, no more than the Church's agent? Or is the imposition of temporal penalties for religious or supernatural ends within the state's own native competence, independently of the Church's say-so? Or is the imposition of such penalties, as Marsilius of Padua and some Gallicans supposed, even within the competence of the state *alone*?

² See William Barclay, *De Potestate Papae* (1609); Robert Bellarmine, *Tractatus de Potestate Summi Pontificis in Rebus Temporalibus, adversus Gulielmum Barclay* (1610); and Francisco Suarez, *De Fide* (c. 1580–1617) and *Defensio Fidei Catholicae adversus Anglicanae Sectae Errores* (1613).

So within past theology there have been two available models of the normative basis of the state's involvement in religious coercion. The first model might indeed involve nothing more than natural law, or its application. For the state derives its own legitimate existence and authority to coerce from natural law. On this model, the state's involvement in coercion on behalf of the true religion is an exercise of a natural law-based authority that is native to the state, and that does not derive from the Church. The state's involvement in religious coercion, if a duty, is a duty because essential to the proper exercise of the state's own authority, and part of its proper role, as based on natural law. We would have something quite distinct from and independent of "ecclesiastical power and penalties"—namely, a coercive power or authority possessed by the state itself, in support of the true religion.

Whereas, on the second model, the authority to coerce in matters of religion belongs to the Church; so that even if civil law is involved, the authority behind the penalties—the authority that legitimizes their application—is that of the Church rather than the state. The state is being authorized by the Church to act on her behalf, as her agent, to enforce her ecclesial directives. But then the authority to coerce does not ultimately belong to the state at all, but to another body, the nature and constitution of which is not given in natural law, but through a divine law that is revealed—the divine law of the New Covenant.

And pre-conciliar Church teaching eventually endorsed the second model, not the first. We find clear papal favor given to the second model at the Counter-Reformation: Suarez's *Defensio Fidei Catholicae* of 1613 in support of it was commissioned by Paul V. But, decisively, the second model was given direct magisterial endorsement in Leo XIII's *Immortale Dei* of 1885, perhaps the most juridically precise of magisterial doctrine to date on the respective authorities and legislative competencies of Church and state. Leo XIII is exact and unambiguous in his teaching. In *Immortale Dei*, he denies the state any native authority to coerce—to legislate or punish at all, including through temporal penalties—in matters of religion. That authority belongs to the Church under her own constitution—a constitution the coercive nature of which is not a matter of natural law but a matter of revelation, and that serves ends that are supernatural, not natural as are the ends proper to the authority of the state:

In truth Jesus Christ gave his Apostles free authority in matters sacred, together with a true capacity to legislate and what follows therefrom, the twofold power to judge and to punish (*adiuncta tum ferendarum legum veri nominis facultate, tum gemina, quae hinc consequitur, iudicandi puniendique*

potestate) . . . Hence, it is the Church, and not the State, that is to be man's guide to heaven: and it is to the same Church that God has assigned the charge of seeing to, and legislating for, what concerns religion. (*Immortale Dei* §11)

And further:

The Almighty, therefore, has given the charge of the human race to two powers (*potestates*), the ecclesiastical and the civil, the one being set over divine, the other over human, things. . . . While one of the two powers has for its immediate and chief object care of the goods of this mortal life, the other provides for goods that are heavenly and everlasting. Whatever, therefore, in things human is in any way of a sacred character, whatever belongs either of its own nature or by reason of the end to which it is referred, to the salvation of souls or to the worship of God, is subject to the power and judgment of the Church (*id est omne in potestate arbitrioque Ecclesiae*). (*Immortale Dei* §13–§14)

If the state was involved in coercion for religious ends, it was because the state itself could be under an obligation to aid the Church in the exercise of her authority, subject to the judgment of the Church and when she requested such assistance—a request that would itself be an exercise of the Church's same authority, serving supernatural ends that were properly the Church's concern.

It is therefore simply not possible in relation to religious liberty to make Rhonheimer's juridical distinction—essential to his case—between, on the one hand, revealed and irreformable *de fide* teaching on the Church and her authority that has nothing to do with religious coercion; and, on the other hand, teaching that endorsed religious coercion, but which was reformable as merely social teaching concerning the state and involving merely the application of principles of natural reason. Past magisterial endorsement of religious coercion was based firmly on teaching on the Church and her coercive authority—an authority not fixed in natural law, but, as Leo XIII makes clear, known to us through revelation concerning Christ's gift of the requisite authority to the Apostles and their successors, and exercised not for the natural ends proper to natural law, but for supernatural ends proper to the divine law of the New Covenant.

How might the state, an authority sovereign in the civil matters within its peculiar competence, ever be under an obligation in matters of religion to follow the directives of the Church, another and quite distinct authority, and one the legitimacy and coercive nature of whose authority is not a matter of natural reason at all, but of revelation? This is something that

clearly cannot be explained in terms of Rhonheimer's model of an entirely natural law-based theory of the state.

Indeed, one essential condition of such a duty of obedience to the Church, according to traditional teaching, is a sacrament, baptism—something the nature and significance of which is given, not in natural law, but in revelation. For the unbaptized might have obligations under natural law to God to receive any revelation he might deliver and to worship according to his will.³ But it is the baptized, and only the baptized, who have an obligation of fidelity to the Church, and a consequent obligation to follow her directives. The legislation of the Church, which in the 1917 *Code of Canon Law* still required the state to assist the Church in the application of ecclesial penalties,⁴ can bind and obligate only the baptized.

So the authority to coerce on behalf of the true religion belongs to an authority the very existence and divine gift of which is a matter of revelation rather than natural reason, with its jurisdiction fixed by baptism, a sacrament of supernatural grace. It is very clear that we are not dealing with the application of principles of natural law.

For natural law was seen by eminent and officially approved Roman theologians long before Leo XIII as providing no basis whatsoever for religious coercion in the service of revealed religion. How could the state, Suarez asked, ever coercively repress even false religions such as Judaism and Islam? For these religions are not in themselves contrary to natural law—which is the law that grounds and is served by the coercive authority of the state.⁵ The state's coercive authority is limited to concerns proper to natural justice, and does not extend to the imposition of revealed truth. Thus it was nothing new when, in 1965, *Dignitatis Humanae* said:

³ Leo XIII teaches in *Immortale Dei* §6 that this natural law duty to adhere to and worship according to whatever proves to be the true religion applies to states as well as to individuals. This is indeed teaching about natural law—magisterial teaching that, moreover, *Dignitatis Humanae* does not expressly deny.

But a duty to worship is one thing; the authority to legislate and punish—to coerce—for religious or supernatural ends, in support of the true religion, is obviously quite another. And Leo XIII makes it clear that this is not given to the state, but to the Church, and not under natural law but through the revealed gift of Christ under the New Covenant.

⁴ In canon 2198, as discussed below.

⁵ “The reason is that these [non-Christian] rites are not intrinsically bad in terms of natural law; so the temporal power of a ruler does not extend in itself to forbidding them.” Suarez, *De fide*, disputation 18, section 4, §10, p. 451.

Furthermore, those private and public acts of religion by which people relate themselves to God from the sincerity of their hearts, of their nature transcend the earthly and temporal levels of reality. So the state, whose peculiar purpose it is to provide for the temporal common good, should certainly recognise and promote the religious life of its citizens. With equal certainty it exceeds the limits of its authority if it takes upon itself to direct or prevent religious activity. (*Dignitatis Humanae* §3, *Decrees of the Ecumenical Councils*, ed. Tanner and Alberigo, vol. 2, 1004)

Suarez, in a papally commissioned text of 1613, the *Defensio Fidei Catholicae*, was already saying much the same, asserting against James I of England similar limits to his or any state's authority in matters of religion:

Punishment of crimes only belongs to civil magistrates in so far as those crimes are contrary to political ends, public peace and human justice; but coercion with respect to those deeds which are opposed to religion and to the salvation of the soul, is essentially a function of spiritual power [the power of the Church], so that the authority to make use of temporal penalties for the purposes of such correction must have been allotted in particular to this spiritual power. *Defensio Fidei Catholicae adversus Anglicanae Sectae Errores*, Book 3, chapter 23, §19

There is of course a general consideration in favor of the Leonine doctrine that the state can have no authority of its own to legislate and coerce on behalf of the true religion. This is the principle that human coercive authorities exist by virtue of some prior grounding law—and their authority to coerce extends only to ends proper to the law that grounds their existence. They do not possess an authority that extends beyond that law and matters proper to it. Thus, for example, authorities, like local councils, that exist by decree of state positive law, can properly do no more than apply the positive law involved in their constitution.

The state's existence is grounded on natural law, and so its coercive authority extends only to those ends involving natural justice and natural happiness that are proper to natural law. Now though natural law may, as Leo XIII teaches, call on us both individually and as a community to worship God in whatever way he eventually reveals, the true revelation is not itself given in natural law, and a variety of possible revealed religions could be consistent with that law's content. The duty to believe the Catholic faith is not part of natural law, but a duty under a distinct law, given not by natural reason but through revelation, the divine positive law of the New Covenant, and serving ends that are supernatural.

So when it comes to applying the revealed law of the New Covenant, another coercive authority has been instituted—by the terms of that

same divinely revealed law. That authority is the Church, which has the peculiar charism of authoritatively and even infallibly interpreting the very content of the law to be enforced, and the peculiar right to extend and render more determinate the force of that law through canonical legislation of her own. It is perfectly reasonable to conclude, then, that in matters of revealed religion it cannot be the state that has the authority to give direction and to enforce its direction by penalties. If revealed religion brings with it a law and a coercive authority of its own, then that must itself be a matter for revelation, the content of which fixes both the identity of that coercive authority—the Church—and the extent and nature of its jurisdiction. Which is exactly the position of Leo XIII.

So when Rhonheimer writes:

In the pre-conciliar magisterium, therefore, the doctrine on the unique truth of the Christian religion was linked to a doctrine on the function of the state and its duty to assure the prevalence of the true religion and to protect society from the spread of religious error (1031)

his description is only very qualifiedly true. The state as such had no authority and no duty to prevent or restrict religions just because they were false. If a state might ever be involved in the restriction of false religions as a matter of duty, this was as a Christian state ruled by the baptized, the rulers having under their baptism a duty, as rulers and not just as private individuals, of fidelity to the Church, and so a duty to act on her authority. But the coercive authority, including the authority to impose temporal penalties for supernatural ends with or without state assistance—this authority belonged to the Church not the state. Temporal penalties in the service of the true faith are legitimized by the authority of the Church, not by that of any state.

3. The Church's Temporal Power

It is characteristic of his confusion on this issue that Professor Rhonheimer should suggest that temporal penalties applied for religious ends have primarily been understood in the tradition as “penalties imposed through the state,” and that *Quanta Cura* and the *Syllabus*’s defense of temporal penalties in religion is a defense of the power or authority of the state:

The consulters explicitly stated that Montalembert’s condemnable proposition [that “the Church does not have the right to suppress violators of its laws by temporal punishments”] referred to the “freedom of worship and press and to material coercion for religious reasons,” and

so in this context “temporal” precisely did not refer to ecclesiastical power and penalties, but to *the coercitive power of the state in the service of the true religion*. (1045 n 8; my emphasis)

First, as far as the magisterial *Quanta Cura* and *Syllabus* are concerned, the authority behind these temporal penalties is undoubtedly the revealed authority of the Church, not the authority of the state under natural law. It is, after all, decisive that the condemned proposition 24 (“The Church does not have the power of using force, nor any temporal power whether direct or indirect”) occurs (unsurprisingly, given its explicit content) in the section of the *Syllabus*—section V, *errors on the Church and her rights*—dealing with the authority of the Church, and not in the following section on the state, section VI, *errors on civil society both considered in itself and in its relations to the Church*—where, were Rhonheimer’s interpretation correct, it should have been located. And in *Quanta Cura* the condemned proposition that “the Church does not have the right to suppress violators of its laws by temporal punishments” similarly occurs in a section not asserting state authority over religion but rather defending the authority of the Church against, in particular, the state—a section which begins:

Others meanwhile, reviving the wicked and so often condemned fictions of innovators, dare with signal impudence to subject to the will of the civil authority the supreme authority of the Church and of this Apostolic See given to her by Christ Himself, and to deny all those rights of the same Church and See which concern matters of external order.

Of course, in the tradition everyone thought that there were licit temporal penalties, fully within the Church’s authority to impose, the enforcement of which would ordinarily require state assistance were the Church to decide to impose them. If the Church did decide to impose these then, under certain conditions, such as the state’s being Christian and rulers’ obligations under baptism being activated, state rulers would be obligated to follow ecclesial directives and provide that assistance. But the authority of the Church to exercise temporal power and to impose temporal penalties could not by its very nature consist in a form of state-applied force or punishment—and for a fairly obvious reason. The authority was understood to attach to the Church by her very nature, and to attach to her even under conditions where there is no state ruler under an obligation to follow her directives, and so where she was not in a position to direct the state. This might happen—at least a notional possibility—if there were no state authority at all; but more frequently, it might

happen if the state were not Christian and were ruled by the unbaptized, who have no obligations of fidelity or obedience to the Church.

This, of course, is why the state's involvement, as a matter of duty, in the application of temporal penalties is very clearly regarded in many of the more precise discussions as a contingent and derivative feature of them. It is dependent obviously on the precise nature of the penalties applied—not all temporal penalties are viewed as requiring coercive state assistance for their application. But also it depends on whether there is a Christian state with baptized rulers under any obligation of obedience to the Church.

We can find careful pre-conciliar discussions separated by nearly four centuries that make the secondary nature of state involvement in temporal punishment for religious ends deeply clear. Take Suarez's discussion of this matter in his subsequent working up of his Roman College lectures *De Fide* (c. 1580–1617) and in his papally commissioned *Defensio Fidei Catholicae* (1613) or Cardinal Journet's immediately pre-conciliar discussion in *L'Église du Verbe Incarné* (1941).⁶

Much care is devoted by Suarez to finding exercises of coercion of a temporal kind under the authority of the Church even under pagan Rome, and so occurring quite independently of the involvement of the state. He appeals to cases such as the deaths of Ananias and Saphira in Acts 5 (to illustrate the exercise of the Church's authority to impose temporal penalties on the baptized), or the blinding of Elymas in Acts 13 (to illustrate the exercise of the Church's right to use force defensively, to prevent the unbaptized from interfering with her mission), as supposed examples of what Gallicans denied—the Church's native authority, independent of state consent or cooperation, forcibly to remove, for supernatural ends, earthly goods such as life or sight. Whether or not one endorses Suarez's scriptural interpretation of the relevant parts of Acts,⁷ the model of coercive authority in relation to

⁶ Throughout this essay, page references to Charles Journet's *L'Église du Verbe Incarné* are to the 1955 English edition, *The Church of the Word Incarnate*, volume 1 (London: Sheed and Ward).

⁷ One issue here is whether the Church has the right to impose death as a penalty. Death was not formally a canonical penalty, and Aquinas denied that ministers of the gospel could have the right to impose it. Aquinas viewed the deaths of Ananias and Saphira as a punishment under divine authority alone—see *ST* II–II, q. 64, a. 4, resp. But by the time of the Counter-Reformation a Catholic theologian such as Suarez thought that since death was (in conventional theological opinion) a legitimate penalty for heresy, the Church herself must really have the authority to impose it, even if the penalty was applied by the state. For the state could have no authority of its own to punish heresy by any penalty. Indeed, Suarez no longer bothered even to mention Aquinas's rather different interpretation of Acts 5.

the application of temporal penalties to defend the true religion which that interpretation is being used to defend is very clear. We are not dealing here with a doctrine about the state's coercive right under natural law, but rather with a doctrine of a right and authority possessed by the Church—an authority specified in divine revelation concerning its gift to her by Christ himself, and attaching to her independently of state authority or cooperation.

Again in *L'Église du Verbe Incarné*, Journet discusses the authority of the Church to impose temporal penalties, as that authority is specified in the 1917 Code, and in terms similar to the 1983 Code canon 1312 §2:

The 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. (1917 Code, canon 2214 §1)

This *Code*-specified ecclesial authority, retained in the 1983 *Code*, is expressly treated by Journet as the true object of the teaching of *Quanta Cura* and of the *Syllabus* regarding the Church's right to impose temporal penalties, and as involving, in itself, precisely the Church's right punitively to remove earthly goods without reference to any "human," that is, state or civil authority (see Journet, 262 and 270). The discussion of temporal penalties is carefully placed in a section on the Church's coercive power in itself (see 262–72)—a section that precedes any later discussion of the state's involvement in the enforcement of these penalties, which is regarded by Journet as a further and distinct, though of course vitally important issue (see 272–304). And whilst by no means endorsing Suarez's exegesis of the deaths of Ananias and Saphira or the blinding of Elymas as actual cases of the ecclesial authorization of force without state assistance, Journet treats the Suarezian reading of these episodes, as involving the divinely assisted exercise of ecclesially authorized force, as a respectable opinion within the Catholic theological tradition (see 263 and 265).

As we have already noted, the Church's authority to impose temporal penalties was of course officially understood to extend to penalties that, absent direct divine intervention such as that detailed in Acts, would ordinarily require state assistance. Thus the 1917 *Code* specifically required such needed assistance, when requested, to be provided by those state authorities subject to canonical obligation:

Offences against the law of the Church alone, are, of their nature, within the cognisance of the ecclesiastical authority alone, which, when it judges it necessary or opportune, can claim the help of the secular arm. (1917 Code, canon 2198)

But pre-conciliar theology did not suppose that temporal penalties as such ordinarily needed state enforcement. Thus the Church's punitive removal of what would otherwise have been a moral liberty to move about, by imposition, as a punishment, of an obligation not to do this, is seen rightly as a perfectly clear exercise of the Church's right to impose temporal penalties—the punitive removal of a genuine earthly good, a moral liberty that would otherwise have been possessed under natural law.⁸ But of course a moral liberty is certainly one good the removal of which need not ordinarily require state assistance.

It should by now be very clear why the *Syllabus's* condemnation of the denial of the right to use force or exercise any form of temporal power for religious ends should have been placed in a section on errors about the Church, and not, where Rhonheimer's argument would imply, in the section on errors about the state. The issue was fundamentally about the Church's authority, not about the authority of the state. Rhonheimer uses scare-quotes around the word *temporal* in relation to the statement of the Church's authority to impose temporal penalties in the 1983 *Code*,⁹ and again refers in this connexion to 'so-called temporal penalties'¹⁰—presumably because the Church is no longer calling on the state to act as the religiously coercive agent, through use of fines, prison etc, of their enforcement. But it is clear by now that his qualifying use of scare-quotes and terms such as 'so-called' is unwarranted, just as it would be in relation to the 1917 *Code* or the pre-1917 *Corpus Iuris Canonici*. The characterization of temporal penalties in the service of religion as involving the punitive removal of earthly goods on the specific authority of the Church, and apart from any question of recourse to state assistance, is a deeply traditional specification—a very traditional assertion of the Church's native right to coerce by temporal means for supernatural ends.

The modern *Code* speaks the language of punitive coercion—just as did the 1917 *Code* and the pre-1917 *Corpus*. And, as in the past, the Church's current *Code* speaks this language in order to direct religious belief and practice. The coercive authority of the Church has historically been seen as one aspect of the pastoral function of the bishop—part of his duty as a shepherd. For shepherds do have to use coercion on the sheep they care for. The shepherd's staff may have to be employed coercively as a *virga* or *rod*—terminology we find used in connexion with the repression

⁸ See Journet, *L'Église du Verbe Incarné*, 300.

⁹ See Rhonheimer, Benedict XVI's 'Hermeneutic of Reform,' 1044.

¹⁰ See *ibid.*, 1052.

of heresy by Bellarmine,¹¹ as again in our day also by a modern successor of his in the service of doctrinal regulation:

The Church too must use the shepherd's rod, the rod with which he protects the faith against those who falsify it, against currents which lead the flock astray. The use of the rod can actually be a service of love. Today we can see that it has nothing to do with love when conduct unworthy of the priestly life is tolerated. Nor does it have to do with love if heresy is allowed to spread and the faith twisted and chipped away, as if it were something that we ourselves had invented. As if it were no longer God's gift, the precious pearl which we cannot let be taken from us. (Benedict XVI, *Homily on the Solemnity of the Sacred Heart of Jesus*, Friday 11 June, 2010)

The use of the Church's rod is to prevent the spread of heresy. The threat of punishment for heresy, including restriction of movement and job loss, is expressly aimed to discourage the spread of false belief. We have then the use of dislikeable penalties in a coercive project aimed at influencing what people religiously believe and do. Indeed, in canon 1311 the 1983 *Code* itself describes the use of sanctions for heresy and the like as coercive.

It is tempting to suppose, in the spirit of Weber, that only states or similar civic or secular bodies really coerce, so that only such secular bodies could ever go in for true religious coercion—the application of real pressure to direct religious belief and practice. Some might deny that the present *Code* is really coercive, precisely because it no longer calls on the state to act as coercive agent. But this repudiation of coercion is not faithful to the language of the present *Code* itself; nor was such a denial of the Church as a religiously coercive authority in her own right ever traditional. In his encyclical *Libertas*, Leo XIII developed further the teaching of *Immortale Dei*, and explicitly condemned a view of the Church as a non-coercive voluntary association, with mere membership conditions but no more:

Others do not oppose the existence of the Church, nor indeed could they; yet they despoil her of the nature and rights of a perfect society, and maintain that it does not belong to her to legislate, to judge, or to punish, but only to exhort, to advise, and to rule her subjects in accordance with their own consent and will. By such opinion they pervert the nature of this divine society, and attenuate and narrow its authority, its office of teacher, and its whole efficiency; and at the same time they aggrandize the power of the civil government to such extent as to

¹¹ See Bellarmine, *Controversia Generalis de Membris Ecclesiae Militantis*, caput 22, *De Laicis*, liber 3, p. 523 (Ingolstadt, 1599).

subject the Church of God to the empire and sway of the State, like any voluntary association of citizens. To refute completely such teaching, the arguments often used by the defenders of Christianity, and set forth by us, especially in the encyclical letter *Immortale Dei* are of great avail; for by those arguments it is proved that, by a divine provision, all the rights which essentially belong to a society that is legitimate, supreme, and perfect in all its parts exist in the Church. (*Libertas* §40)

By now it should be clear what was the historical basis of the Church's past endorsement of religious coercion. This did not at all take the form proposed by Professor Rhonheimer—a (misguided) theory of the state's authority under natural law. Rather it lay in a theory of the Church's authority as a *societas perfecta*, and constituted as such under the revealed law of the New Covenant. This is a revealed law that gives the Church 'by a divine provision' a like sovereignty in the sphere of religion—and so a like supreme legislative and punitive authority to direct and coerce—as the state possesses, under natural law, in its temporal sphere. Of course state officials were historically involved, as a matter of duty, in the exercise of that authority. But the authority enforced did not belong to the state, and its basis did not lie in natural law; and the duty on state officials to cooperate in its exercise, likewise, did not come from natural law, attaching to those officials as it did through baptism—a sacrament of supernatural grace that subjected them to that other sovereign authority beyond the state, the Church.

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.

Since it was traditional teaching about the authority of the Church rather than the state that served as the doctrinal basis for past magisterial endorsement of religious coercion, let us now examine that traditional teaching in more detail. Then we can determine whether this teaching is addressed at all by *Dignitatis Humanae*.

4. The Traditional Teaching on Religious Liberty and on the Church's Coercive Authority

Professor Rhonheimer makes important claims about the magisterial nature of the Church's pre-conciliar teaching on religious liberty and coercion. In his view, the teaching involved no previous general councils,

and did not even involve the ordinary magisterium of popes and bishops teaching together that certain claims were to be definitively held. It involved only the teaching of ‘a few isolated popes, over a span of about a hundred years’—those he mentions ranging from Pius VI to Pius XII. Unfortunately Professor Rhonheimer’s view does not withstand much historical examination. 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.

Professor Rhonheimer restricts his attention to explicitly political encyclicals or decrees of the nineteenth-century period. This is of course precisely because he maintains that the Church’s past endorsement of religious coercion was part of natural law teaching about the function and authority of the state, and not, ultimately, based on teaching about the content of divine revelation concerning the Church’s own nature and authority. Given his view, it is all too tempting just to assume from the outset that any past Church declarations on her own nature and on the nature of her sacraments and their implications cannot be about religious liberty or coercion. But since by now we see that the Church rather than the state was properly the religiously coercive authority, this inattention to past teaching about the Church herself and the sacraments is likely to be hazardous.

A further issue which is not really addressed by Professor Rhonheimer, but which also arises once we understand that the Church saw herself as the properly religiously coercive authority, is the testimony provided by the canonical tradition, and the doctrinal significance of this. For the canonical tradition—the Church’s own past legislative activity—contains claims both implied and express about the Church’s own authority to coerce religiously, as well as about the obligations to her of the baptized. The Church’s legislation and canonical practice was historically treated as of great doctrinal significance, as itself including doctrinal teaching by the successors of the Apostles, whether as individual popes or as bishops gathered in councils both general and provincial, about what the Church had a right to impose by way of obligations or as penalties on those subject to her jurisdiction, and so about the obligations to her of Christians both as private individuals and as rulers or public officials. This body of canonical material was certainly regularly treated by past theologians as sufficient to establish definitive Church teaching and so *de fide* theological claims. Moreover the interpretation of dogmatic definitions at the level of general councils was regularly carried out by reference to this canonical tradition—and this is especially clear, as we shall see, in discussions of religious liberty and coercion. A complete account of Catholic teaching on religious liberty would therefore need to address the doctrinal significance of

the Church's canonical tradition as found in the *Corpus Iuris Canonici* as well as in the 1917 and 1983 *Codes*. This is not an issue that can be passed by, as Professor Rhonheimer certainly passes it by, assuming as he does that canon law has no doctrinal significance.¹²

There are two major forms of coercive authority historically claimed by the Church. The first is the Church's *direct* coercive power over those subject to her jurisdiction and authority—the baptized. This coercive power includes the right to use punishments to hold the baptized to their baptismal obligations of fidelity to the Church and her teaching. These obligations centrally include the obligation to faith or belief in the Church's solemn teaching, heresy and apostasy being punishable crimes as involving formal and culpable breach of this obligation. And indeed the claim to this authority remains. The current, 1983 *Code* teaches, in canons 1311 and 1312 and elsewhere, that the Church retains a coercive authority, not just over Catholic clergy, and not just over baptized Catholics, but over the baptized in general, with a right to impose both temporal and spiritual punishments for culpable breach of baptismal obligations, including for such crimes as heresy, apostasy, and schism.

The second form of coercive authority historically claimed is an *indirect* or defensive coercive power—a right to use force, or the rod, not to convert the unbaptized to Christianity, which was forbidden exactly because the unbaptized had no obligation of fidelity to the Church, but to prevent the unbaptized from intruding on the Church's jurisdiction and obstructing her mission. The Church's possession of this second, indirect coercive authority was defended theologically by appeal to the Church's revealed and *de fide* nature as a coercive authority with sovereign jurisdiction in its proper, religious sphere. Any such sovereign authority, it was argued, must have a right not just to enforce its jurisdiction on those subject to it, but to defend its jurisdiction and the ends it serves against intrusion and interference from those not subject to it. But the Church's possession of this coercive power was also defended by direct appeal to Scripture, such as by reference to the blinding of Elymas when he sought to obstruct St. Paul's evangelization of Sergius Paulus.¹³

¹² Rhonheimer treats "principles of Catholic doctrine on faith and morality" and "traditions and practices of ecclesiastical law" as unproblematically distinct (1045). But canon law is one medium by which the Church has historically taught regarding her own authority and nature—and still does: see, for example, the 1983 *Code*, where the Church declares and teaches, in canon 1311, her possession of a coercive power over the baptized.

¹³ For both lines of argument see Suarez, *De Fide*, disputation 18. For earlier endorsement of this "defensive" use of religious coercion, see Aquinas, *ST* II–II, q. 10, a. 8, resp.

In both cases, whether in the exercise of her authority to enforce fidelity on the baptized, or in its exercise to protect her mission and jurisdiction from intrusion on it from without, by the unbaptized, the Church claimed the right to request and obligate assistance for the exercise of her authority from the baptized—including from baptized rulers who had an obligation to the Church not just as private individuals but as baptized holders of public office. We shall now consider these two forms of coercive authority in turn.

There 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, and to call on state assistance for such coercion.

The principle that baptized heretics and apostates were legitimately to be coerced back into the faith is noted by Rhonheimer as an opinion of Aquinas (1035):

Others in truth are infidels who at some time received and professed the faith: as have heretics and apostates. And these are to be compelled, even physically (*corporaliter*), to fulfil what they promised and to hold what once they received. (Aquinas, *Summa theologiae* II–II, q. 10, a. 8 *Utrum infideles compellendi sint ad fidem*, resp.)

This opinion, Rhonheimer also notes, was later invoked by Pius VI in *Quod Aliquantum* of March 1791. And he rightly recognizes this papal teaching as constituting, along with the opinion of Aquinas to which it referred, a clear endorsement of religious coercion. But this endorsement goes well beyond the teaching of some 'isolated' modern popes.

First the principle that heretics may properly be coerced back into the faith goes back very far in the canonical tradition, and has been consistently asserted and applied by popes and bishops and their officials throughout most of the Church's history. One very frequently cited authority for such coercion from the *Corpus Iuris Canonici* is the fourth provincial council of Toledo of 633—a highly significant canonical text and authority that, we shall see, was also invoked at Vatican II in *Dignitatis Humanae*. This provincial council forbade coercion of the unbaptized into the faith, and did so on the basis that the act of faith must be an act of free will. But this metaphysical freedom of the act of faith, the same conciliar ruling emphasized, only blocks the coercion of those outside the Church's jurisdiction. For the council, and with equal force, requires state-assisted coercion (where necessary) of the faith of those who have been baptized; free will is no block at all to enforcement of baptismal

obligations to belief as well as practice on those already within the Church's jurisdiction.¹⁴

But nor is this teaching a merely canonical tradition. At the highest level of the conciliar magisterium, and in passages that are clearly doctrinal rather than merely disciplinary, and that are consistently interpreted by commentators thereafter not only as doctrinal, but as dogmatic and *de fide*, the Council of Trent formally endorsed this teaching.

In its decree on penance, the Council restricted the scope of the Church's jurisdiction to the baptized.¹⁵ Then in its decree on baptism, the Council taught that the obligation to obey Church authority applies to and binds the baptized irrespective of their own will and consent in the matter.¹⁶ Finally Trent specifically taught that individuals' baptismal commitment to the faith may be coercively enforced, even on those adults baptized without their personal consent as children. Baptism not only subjects the baptized to ecclesial jurisdiction; this jurisdiction comes, it seems, with coercive teeth.

Erasmus in his preface to his *Paraphrases on Matthew*¹⁷ had proposed that those baptized as children be asked on growing up publicly to reaffirm their baptismal promises; and that they not be subjected to any punitive coercion back into fidelity save exclusion from the sacraments if they were unwilling to provide the reaffirmation. This Erasmian challenge to the use of temporal penalties to coerce the baptized into fidelity had already been criticized well before Trent by Spanish theologians meeting at Valladolid in 1527 to review Erasmus's works. Whatever else the individual theologians variously thought about the public reaffirmation of baptismal promises, all were hostile to Erasmus's proposed rejection of any coercive enforcement of fidelity on the unwilling—one theologian expressing the view that a threat of death for the unwilling would be a suitable sanction.¹⁸ Trent

¹⁴ See Friedberg, *Corpus Iuris Canonici* (I, 161–62).

¹⁵ Council of Trent, Session XIV, decree on penance, chapter 2, 25 November 1551: "The church passes judgment upon no man who has not first entered it through the gate of baptism." *Decrees of the Ecumenical Councils*, 2 volumes, ed. Norman Tanner and Giuseppe Alberigo (Washington, DC: Georgetown University Press, 1990), vol. 2, 704.

¹⁶ Council of Trent, Session VII, decree on baptism, canon 8, 3 March 1547: "If anyone says that those baptized are exempt from all the precepts of holy church, whether they are in writing or handed down, so that they are not bound to observe them, unless of their own free will they wish to submit themselves to them: let him be anathema." Tanner and Alberigo, vol. 2, 686.

¹⁷ Erasmus *In Evangelium Matthaei Paraphrasis* (Basle 1522).

¹⁸ For more on the universally hostile reception already given at Valladolid to Erasmus's rejection of a punitive coercion of the recalcitrant baptized back into faith—

specifically cited Erasmus's proposal, and in canon 14 of the decree on baptism imposed an anathema upon it. And as at Valladolid, the condemnation is not of the simple proposal that people be asked to reaffirm their baptismal commitment; but of Erasmus's linkage of this proposal to a disavowal of any real coercion of the baptized—his suggestion that those unwilling to make the requested affirmation should be left uncoerced to their own decision:

If anyone says that when they grow up (*cum adoleverint*), those baptized as little children should be asked whether they wish to affirm what their godparents promised in their name when they were baptized; and that, when they reply that they have no such wish, they should be left to their own decision and not, in the meantime, be coerced by any penalty into the Christian life (*suo esse arbitrio relinquendos nec alia interim poena ad christianam vitam cogendos*), except that they be barred from the reception of the eucharist and the other sacraments, until they have a change of heart: let him be anathema.¹⁹

Subsequent theologians viewed this decree as *de fide*, and as defining the legitimacy of the use of coercion to enforce baptismal obligations on heretics and apostates, including the central baptismal obligation to faith.

a hostility shown even by those theologians otherwise well disposed towards Erasmus—see Lu Ann Homza “Erasmus as hero, or heretic? Spanish humanism and the Valladolid assembly of 1527,” *Renaissance Quarterly* 50 (1997): 78–118.

¹⁹ *Council of Trent* Session VII, Decree on baptism, canon 14, 3 March 1547, Tanner and Alberigo, vol. 2, 686[0].

Paolo Sarpi gives an account in his *History* of the discussion by the fathers of Trent relating to this canon. There he reports the argument amongst the Council fathers that since circumcised Jews were rightly coerced into fidelity to the Old Law, how even more right and just, given the dignity of the New Law, that baptized Christians be coerced into fidelity to the New Law. Erasmus's proposal in the *Paraphrases on Matthew* was regarded by the fathers of Trent as pernicious precisely because he opposed the evident legitimacy of such coercion.

For Sarpi's account and further important commentary on it, see Le Courayer's edition of Sarpi, *Histoire du Concile de Trente* (Amsterdam 1751), 436. Pierre-François Le Courayer, canon regular and librarian of the Abbey of Sainte Geneviève in Paris, was a defender of the validity of Anglican orders, and becoming a Doctor of Divinity of the University of Oxford eventually took refuge in England. He provides a footnote of his own to this passage of the *History*. In it Le Courayer opposes the use of coercion to enforce Christian fidelity in terms that are nowadays very familiar: without coercion there would be fewer Christians, but this would be amply compensated for by the fact that the fewer Christians would be better ones. There is an interesting contrast of attitude to coercion with his contemporary, the eminent and undoubtedly orthodox Catholic Billuart, whose views are discussed below.

Thus to take one example, the eminent Dominican theologian, Billuart, writing around 1750. In his famous commentary on Aquinas, *Summa Sancti Thomae*, in the *Tractatus de Fide*, dissertation V, article II, *Utrum infideles cogendi ad fidem?* Billuart asserts it to be clear Church teaching that the faith of heretics and apostates, but not of the unbaptized, may rightly be coerced. What authority does Billuart cite for this? His treatment is thorough, and carefully links definition of the extraordinary magisterium to relevant theological and canonical tradition. He cites in support of his view of Church teaching :

1. Aquinas's opinion in the *Summa theologiae* II–II question 10, article 8 that heretics and apostates may rightly be compelled or coerced into fidelity;
2. the canon law on heresy, specifically including the Fourth Council of Toledo on the coercive retention in the faith of the baptized;
3. for dogmatic teaching by a general council, canon 14 of Trent's decree on baptism—the condemnation of Erasmus.²⁰

What of Church teaching about the duty to the Church of Christian rulers to cooperate in the enforcement of baptismal obligations, and the kinds of penalties open to the Church to authorize? It is not hard to find teaching at the level of general councils in support of such assistance from baptized rulers. For example, the Fourth Lateran Council declared a penalty of excommunication for those Christian rulers who disregarded what the Council expressly declared as the authority over them of the Church in this matter, and who, despite episcopal instruction to the contrary, dared to tolerate heretics.²¹ Excommunication for this reason was still being applied by the Church against powerful and otherwise loyal Catholic princes in the period after Trent. The Habsburg archduke

²⁰ Canon 14 is still given unembarrassed discussion in a standard and widely used text by that very central figure of Restoration Roman theology, Giovanni Perrone: *Praelectiones Theologicae quas in Collegio Romano SJ habebat* (Milan 1845): see volume 7 *Tractatus de Baptismo*, 103–11. Unsurprisingly Perrone regards the canon as *de fide*, and as supporting the coercive or punitive enforcement of baptismal obligations on the baptized. See also another standard manual, Hurter, *Theologiae Dogmaticae Compendium* (Innsbruck 1908) volume 3, Tract IX §§315–16, pp. 281–82 where canon 14 is similarly discussed—Perrone's earlier discussion is referred to—and the Tridentine argument, mentioned by Sarpi, from the case of the Jews and the Old Law is again used.

²¹ See Lateran IV, Constitution 3, *De haereticis*, in *Decrees of the Ecumenical Councils*, ed. Tanner and Alberigo, vol. 1, 234.

Karl was excommunicated by Gregory XIII in 1579 for conceding toleration to Protestantism in his territories.²²

In *L'Église du Verbe Incarné* Cardinal Journet cites general councils in support of his own view that the Church has historically taught not only her own possession of a right to coerce religiously, but a further right to call on a Christian state to aid her in her exercise of her coercive authority (see 272–73). For example he cites the Council of Constance's condemnation of Hus for denying the legitimacy of handing those subject to ecclesiastical censure over to the state for punishment,²³ a condemnation that was repeated at the Council's conclusion by Martin V in *Inter Cunctas* as part of a post-conciliar summary of points of Church teaching on which the followers of Hus and Wycliffe were to be questioned.²⁴ Again, Journet also notes, the Council of Trent's canons on the reform of marriage call on ecclesiastical judges to request the assistance of the state in the enforcement of penalties for adultery and concubinage, penalties that extend if necessary to expulsion from the place of residence.²⁵ We should also record the Council of Trent's calling in the help of the secular arm to enforce Church law on monastic enclosure, declaring the excommunication of any secular magistrates unwilling to assist.²⁶ And then we should note the Council of Trent's solemn admonition to rulers precisely in their capacity as baptized Catholics to enforce Church authority.²⁷

These just-mentioned decrees of Constance and Trent are cited in the 1917 *Code of Canon Law* in the references to past conciliar and papal teaching basing canon 2198—the canon that calls on the state to help enforce the legislation of the Church.

It is not hard to find further clear commitment, at the level of a general council, to the legitimacy of the imposition under the authority of the Church of penalties that are decidedly temporal in their weight. Thus the

²² See Peter Wilson, *Europe's Tragedy: A History of the Thirty Years' War* (London: Allen Lane, 2009), 68.

²³ See *Decrees of the Ecumenical Councils*, ed. Tanner and Alberigo, vol. 1, 430.

²⁴ "They are to be asked whether they believe that when the disobedience and contumacy of the excommunicated increases, prelates or their vicars have the power of repeatedly increasing the level of excommunication, of imposing an interdict and of calling on the secular arm; and that these censures are to be complied with by inferiors." *Inter Cunctas*, article 32.

²⁵ See Council of Trent, Session 24, *Canones super Reformatione circa Matrimonium*, caput viii in *Decrees of the Ecumenical Councils*, ed. Tanner and Alberigo, vol. 2, 759.

²⁶ See Council of Trent, Session 25, *Decretum de Regularibus et Monialibus*, caput v in *Decrees of the Ecumenical Councils*, ed. Tanner and Alberigo, vol. 2, 777–78.

²⁷ See Council of Trent, Session 25, *Decretum de Reformatione Generali*, caput xx in *Decrees of the Ecumenical Councils*, ed. Tanner and Alberigo, vol. 2, 795.

Council of Trent specifically instructs ecclesiastical judges to avoid excessive use of the penalty of excommunication, lest it fall into contempt, but to prefer to impose monetary fines and the confiscation of property by way of punishment.²⁸

Backing for the defensive or indirect coercive power of the Church in relation to the unbaptized comes both at the level of general councils and at the level of past canon law. The pre-1917 *Corpus Iuris Canonici* contains many decrees and instructions that clearly assume the Church's possession of such an authority, and an obligation on the part of baptized rulers to aid her, when so directed, in its exercise. Consider one very important canonical collection in this area, from the decretals of Gregory IX, liber 5, titulus 6, *De Iudaeis, Sarracenis, et eorum Servis*.²⁹ This material places a whole variety of restrictions on Jewish and Moslem worship and behaviour. Besides restrictions on places of worship—synagogues may not be located too close to Churches, for example—Jews and Moslems are forced to wear distinctive dress, are restricted from moving about on Good Friday, are restricted from having Christian slaves or servants, from holding political office over Christians, and so forth. For an example of a general council, Lateran IV issues instructions to Christian princes to protect Christians from non-Christian moneylenders, to restrict non-Christian contact with Christians and to ensure that non-Christians (Jews and Moslems) are clearly identified as such to prevent them being confused with Christians. The same Council also forbids non-Christian public movement on certain Christian holy days, and orders Christian rulers to punish all disrespect shown by non-Christians for Christ. Finally Lateran IV renews the canons mentioned above forbidding the appointment of non-Christians to hold public office over Christians, ordering punishments for any Christian state officials who make appointments in breach of these laws.³⁰

It is important that in this canonical and conciliar material there is no reference to or presupposition of a supposed native authority on the part of the state to forbid the external practice of false religions. All these restrictions are being very explicitly imposed under the authority of the Church, and specifically under papal or conciliar authority, often in instructions to

²⁸ See Council of Trent, Session 25, *Decretum de Reformatione Generali*, caput iii in *Decrees of the Ecumenical Councils*, ed. Tanner and Alberigo, vol. 2, 786. For provision for monetary fines as a possible penalty for any of the faithful under the 1917 *Code*, see canon 2291 §12.

²⁹ Friedberg, *Corpus Iuris Canonici* (II, 771–78).

³⁰ See Lateran IV, constitutions 67, 68 and 69, in *Decrees of the Ecumenical Councils*, ed. Tanner and Alberigo, vol. 1, 265–67.

bishops, sometimes with explicit instructions to Christian rulers just to do as they are told by the Church in this matter. And their purpose is not to forbid the external practice of a religion such as Judaism altogether. To forbid synagogues and the like altogether would be in effect to force Jewish conversion, which the Church had no right to do. Rather the purpose of these regulations was to protect the public space of the Christian religion—the Church’s field of jurisdiction—from being disturbed by practitioners of false religions, who should, nevertheless, still be left with a space for practice of their own. So synagogues would be permitted—but only away from Churches, and in structures of lesser standing. And covert disturbance of the Church’s mission, through camouflaged proselytisation or influence, was as much feared as was overt disturbance. So, far from encouraging it to be hidden, the religious identity of non-Christians would have to be clearly marked.

These regulations are of course long defunct, and in respect of their overall morality are deeply repugnant to us now. Their significance lies in the general view of Church authority that they presuppose, especially in relation to the baptized, who are supposed to be under an obligation to aid the Church in her enforcement of such directives.

To sum up so far. We are now arriving at a clearer view of past Catholic teaching concerning religious coercion. It is teaching that long predates the papal magisterium of the nineteenth century. Much is to be found at the level of general councils, or as long-standing and much-cited principles of canonical authority and procedure—principles respected and applied over many centuries by popes and bishops and their officials. All of this material concerns the coercion of religious belief and practice, and so religious liberty, and was clearly understood as such at the time. The intimate connexions between the canonical and the doctrinal were recognized and carefully marked. We find religiously coercive canonical principles being methodically linked by eminent theologians such as Billuart to *de fide* Council declarations and definitions, such as Trent’s condemnation of Erasmus. And the material fundamentally concerns not state authority under natural law, but rather an authority to coerce given through the law of the New Covenant. Its content involves a view of baptism and its juridical consequences that was generally regarded by theologians as *de fide* and a matter of divine revelation, as part of a constitution and authority communicated to St. Peter and the Apostles by Christ himself, involving doctrine about the nature of the Church herself and about her sacraments.

How much of this teaching really is *de fide*? Certainly Trent’s condemnation of Erasmus, in particular, looks to be such, and just as much so as are the accompanying canons regarding other baptismal heresies associated

with Calvin and the Anabaptists. And it is clear both from the literature of the time and subsequently what was at issue in the condemnation of Erasmus: an heretical denial of the legitimacy of applying some appropriate but nevertheless real coercive pressure to hold culpably errant baptized to their baptismal obligations in respect of belief and practice.

The general nature of past Catholic teaching down to Leo XIII that endorsed religious coercion is very clear. The legitimacy of coercion on behalf of the true religion, even coercion involving the state, was founded, not on the natural law-based authority of the state, but on the revealed, New Covenant-based authority of the Church, and involved a jurisdiction fixed by baptism and based on the baptismal obligations to her of the faithful. What matters now is not how irreformable this teaching on the Church's authority may be, about which discussion will continue. What matters, as I shall now argue, is that, whether the teaching is reformable or not, *Dignitatis Humanae* did not in any case aim at its reform. The traditional teaching on the Church's authority was instead carefully preserved by the declaration—and bypassed.

5. *Dignitatis Humanae*

We have seen that well before Vatican II the Church already taught that coercion on behalf of the faith must, when legitimate, be done under the authority of the Church, not the state. The consequence of this is obvious—and of fundamental importance. Any declaration of the modern magisterium that addressed the doctrinal basis of the Church's past endorsement of religious coercion would, very evidently, have to address the authority not of the state, but of the Church. The declaration would have to address the coercive authority of the Church under the revealed divine law of the New Testament, and treat of the Church's past conduct to those subject to her jurisdiction—the baptized—and especially of the terms in which she imposed obligations on rulers subject to her jurisdiction—the baptized rulers of Christian states. The declaration would have to address the whole body of Church teaching and of canonical and theological discussion concerning revealed truth about the Church as a coercive institution—material that was still being discussed as such even immediately before Vatican II in as notable a text as Journet's *L'Église du Verbe Incarné*, the work of a major theologian who was himself present at the Council and importantly involved in *Dignitatis Humanae*'s passage.

But *Dignitatis Humanae* clearly does not do this. The declaration plainly declares at the outset that its purpose is to address the rights of individuals and groups in civil society, and, in particular, in relation to the state. The declaration is entitled: *On the right of persons and communities to social*

and civil liberty in religious matters. And the declaration further announces in the first paragraph that since its concerns are with civil liberty, nothing in the declaration affects traditional teaching concerning people's obligations to the Church, including those of the baptized:

Indeed, since people's demand for religious liberty in carrying out their duty to worship God concerns freedom from compulsion in civil society, it leaves unchanged (*integram*) the traditional catholic teaching on the moral obligation of individuals and societies towards the true religion and the one Church of Christ. (§1, Tanner and Alberigo, vol. 2, 1002)

This passage is often taken to be, at best, a sop to nostalgia for some form of Catholic state establishment. Professor Rhonheimer treats the passage as certainly no more than this. Rhonheimer even claims that the preservation of 'the traditional teaching' is only qualified—as presupposing and limited by the Church's current endorsement of religious freedom.³¹ But it is not at all clear what the basis might be for Rhonheimer's reading. The traditional teaching is after all expressly presented as preserved, not in some qualified form, but *integer*—*unchanged* or *intact* or *untouched*. There is no reference to any form of qualification in the text; what Rhonheimer takes to be such a reference is merely an observation that since the declaration's concern is with civil liberty, the declaration does not change traditional teaching on another topic, people's obligations to the Church. One thing is certainly true. If *Dignitatis Humanae* is to be internally consistent, the traditional teaching preserved unchanged by the declaration must be compatible with the declaration's claim that the state's involvement in religious coercion would be wrong, and a violation of individual right based on human dignity. But establishing such compatibility will not be a problem, as we shall see.

Now, after our historical discussion, we understand more exactly the content of the Church's traditional teaching "on the moral obligation of individuals and societies towards the true religion and the one Church of Christ." As a result the full significance of this passage emerges, and it is fundamental to the declaration. The passage's effect is to preserve *integer* or *unchanged* traditional teaching on the coercive authority of the Church.

³¹ See Rhonheimer: "And what of the 'traditional Catholic teaching on the moral duty of individuals and societies toward the true religion and the one Church of Christ,' which according to the conciliar Declaration, remains 'intact'? This statement, in fact, has often been called up to suggest an uninterrupted 'continuity' in the Church's teaching on religious freedom as well. The Council's teaching here seems to be ambivalent. The statement, however, is not as ambivalent as it might appear. These duties—as is stated immediately prior to the cited phrase—presuppose a 'freedom from coercion in civil society'" (1036).

We anyway know that the declaration was intended to bypass the coercive authority of the Church. It was objected to the declaration by worried canonists among the Council fathers that there were examples of religious coercion exercised by the apostles over the baptized that could be drawn from the New Testament itself.³² In reply the conciliar commission for the declaration noted:

Examples and statements brought against the text taken from the New Testament (and also many from the Old Testament) either concern the internal life of the religious community of Israel, in which Jesus and the Apostles lived, or the intra-ecclesial life of the early Christian community. And the declaration does not treat of this life.³³

And again, replying to the suggestion that the declaration affirm as compatible with religious liberty that the Church use sanctions to impose her doctrine and discipline on those subject to her, the commission refused, insisting that the declaration was not to address the question of freedom within the Church herself.³⁴

Now what did traditional teaching include in the “moral obligation of individuals and societies towards the true religion and the one Church of Christ”—the teaching that the declaration is expressly intended to preserve *unchanged*? Clearly included are the moral obligations to the Church of the baptized. These obligations base and constitute the Church’s coercive jurisdiction, and as traditionally understood, both by previous general councils and throughout the canonical tradition to 1965, include obligations on the baptized to aid the Church in enforcing her authority. One effect of the clause is, exactly as required, to ring-fence what was supposed to be ring-fenced—the coercive authority of the Church.

The part of the declaration entitled “The general principle of religious freedom” that states and argues for this principle then relies primarily on appeal to natural reason—not on appeal to revelation, on which an account of the coercive authority under the New Covenant of the Church would have very importantly to depend. For the Council admits that the right not to be coerced with which it is concerned—a right not to be coerced by the state—is not dealt with in revelation:

³² We have seen Suarez’s citation of a claimed example from Acts—the deaths of Ananias and Saphira. Other conventionally cited examples might include, for example, St. Paul instructing in 1 Corinthians 5 that a sinner within the Christian community be “handed over to Satan for a chastisement of the flesh.”

³³ *Acta Synodalia Sacrosancti Concilii Oecumenici Vaticani II*, vol. 4, part 6, p. 763.

³⁴ See the same *Acta*, p. 770.

... revelation does not expressly affirm the right of immunity from external coercion in religious affairs. (§9, Tanner and Alberigo, vol. 2, 1006)

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

And first and foremost religious freedom in the social order is fully congruent (*congrua*) with the freedom of the act of christian faith. (§9, Tanner and Alberigo, vol. 2, 1006)

Secondly, the conduct of the Church in relation to those already baptized is not explicitly discussed. Rather, having announced as one of the chief catholic doctrines that no one must be forced to embrace the Catholic faith against their will, the declaration then emphasizes the fact that from the apostles on, the Church never, at least officially, relied on coercion to evangelize the *unbaptized*. The declaration’s account of Church history in relation to the non-coercion of faith is entirely centred on the Church’s constant opposition to any coercion of the non-baptized:

The apostles, taught by Christ’s word and example, followed the same course. From the very beginning of the Church the followers of Christ strove to convert people to the confession of Christ as Lord, not by any coercive measures or by devices unworthy of the Gospel, but chiefly by the power of God’s message. (§11, Tanner and Alberigo, vol. 2, 1008)

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

Although at times in the life of the people of God, as it has pursued its pilgrimage through the vicissitudes of human history, there have been ways of acting less than in conformity to the spirit of the gospel, indeed contrary to it, nevertheless it has always remained the teaching of the Church that no one’s faith is to be coerced. (§12, Tanner and Alberigo, vol.2, 1009)

But this statement occurs at the end of a general account of the evangelization of non-Christians, and is plausibly to be understood as referring to the communication of faith in the context of such evangelization. For read as an account of “what the Church has always taught” regarding coercion of the faith and practice of the baptized, this statement about “what has always remained the teaching of the Church” would be a plain falsehood—as our account of the Church’s traditional teaching has clearly shown. There is certainly no more detailed account given of the Church’s past teaching on and policy in relation to coercion generally, and especially with respect to coercion of those already baptized. But such an account would be deeply relevant to—indeed a compulsory feature of—any serious account of the jurisdiction specifically of the Church.

Dignitatis Humanae supports its account of Church history by references, in footnote 8, to the pre-1917 *Corpus Iuris Canonici*. This canonical material is cited by the declaration to support the claim that the Church historically forbade coercion into the faith. The material from the *Corpus* cited is very exact. It specifically condemns the use of coercion to evangelize the unbaptized, such as forbidding the coercive baptism of Jews and Moslems. Indeed, one canonical authority referenced is that traditional canonical plank, cited by Billuart, for the coercion of the faith in heretics and apostates, the fourth Council of Toledo, which, as we noted before, having condemned coercion into baptism, then, in the very same passage referred to by *Dignitatis Humanae*, actually and in the same terms and with the same force, demands coercive measures to retain within the faith those who, having been baptized, then attempt to leave.³⁵ The declaration is clearly not telling some story about how Church teaching has always opposed the coercion of religious belief as such—a story that would anyway be utterly false. The non-coercive story told is very clearly restricted to the case of the unbaptized.

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

³⁵ See again Friedberg, *Corpus Iuris Canonici* (I, 161–62).

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

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

The declaration is exactly structured to avoid addressing the coercive authority of the Church, a coercive authority that the framers of the declaration anyway made it clear in replies to *modi* was not covered by the declaration. The declaration was intended to address only the coercive role of the state as fixed by natural law, referring to the past teach-

ing of the Church about her own use of coercion only in relation to the evangelization of those *outside* her jurisdiction, and only by way of illustration of a natural law argument about the incompetence of the state in the coercion and direction of religion. So the declaration simply does not address the very authority on which past religious coercion on behalf of the Catholic faith was based, at least as far as such coercion was endorsed by the magisterium. Nothing is taught about the extent and nature of the Church's authority to direct or to coerce those actually subject to her jurisdiction. Teaching on the subject is also explicitly reserved from being changed through the declaration by the declaration itself.

So *Dignitatis Humanae* in no way impugns religious coercion as such. Its subject matter is state and civil coercion under natural law; and it teaches the moral wrongness of the state's involvement in religious coercion. And that wrongness plainly follows given, first, the state's lack of any authority of its own for such coercion—hardly a new idea, but Counter-Reformation and Leonine teaching; and given, second, the Church's present and evident refusal to license such coercion by states on her authority. This is a refusal made evident by *Dignitatis Humanae* in itself, by the Church's subsequent policy regarding state concordats, and by the absence from the 1983 Code of any requirement on the state to act as a religiously coercive agent. Given this refusal, states completely lack the required normative authority to coerce religiously. And so individuals possess a moral right not to be so coerced by states and state officials, exactly as *Dignitatis Humanae* says.

But is this refusal of the Church to call on the state's assistance relevant? Was the Church not just wrong in the past to license state involvement in religious coercion, and even demand that Christian states coerce on her behalf and on her authority? Opinions will differ on what is a very complex question. But this is a question concerning the coercive authority of the Church herself, and not one that *Dignitatis Humanae* actually addresses. All the declaration states is that, as things stand, and given rights against the state attaching to human nature, state coercion of religion cannot be justified.

Dignitatis Humanae in no way denies that the Church's past policy, particularly towards those subject to her jurisdiction, the baptized, was highly coercive; nor does the declaration in any way disavow or contradict the Church teaching that consistently endorsed such coercion, when done under her authority. The declaration even cites, we have seen, and without condemnation, canonical authority actually supportive of such coercion. The whole declaration sidesteps very carefully the issue of the Church's own coercive authority, and of the legitimacy of past religious coercion done under that authority.

The Church's present policy regarding state coercion on her behalf is abundantly clear, and is not likely to change soon. But the complete Catholic doctrine on the issue goes beyond this. It depends on the moral obligations of the baptized, including baptized state officials, towards the Church; and it depends on the nature of those obligations not just under present conditions, but also under conditions such as those that held in the past, when state populations were overwhelmingly made up of the baptized, and Church policy was very different. Beyond expressly undertaking to preserve traditional teaching about such obligations—and declarations of Councils such as Lateran IV, Constance and Trent, and the content of the canonical tradition to 1965, all suggest something about the possible content of this teaching—the declaration does not itself tell us what these obligations could involve. The declaration in effect guarantees traditional teaching about the authority of the Church to direct and coerce religiously, without itself telling us what that teaching is.

Professor Rhonheimer complains against me that:

Many passages of *Dignitatis Humanae* make it clear, however, that the Council intended precisely much more: to abandon the centuries-old, but certainly not apostolic, tradition of conceiving the temporal power as being in the service of the spiritual power and to return to the message of the Gospel, the teaching of the Apostles, and the practice of the early Christians (see *DH* nos. 10–12). (1047 n. 10)

It is obvious and agreed by Rhonheimer and me 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. But to address the traditional *teaching* about the Church's authority which legitimized that use, something more would have been required. The declaration would have had to include a constitution on the nature of the Church's coercive authority and—in particular—on her jurisdiction over the baptized. But such a constitution is entirely absent from the declaration, and is notably absent from the very paragraphs 10–12 dealing with the Church's historical teaching and practice to which Professor Rhonheimer appeals, and of which I have just given detailed analysis. As that analysis has clearly shown, far from being expounded and addressed, the nature of the Church's authority and jurisdiction over the baptized, including her authority and jurisdiction over Christian rulers, was very carefully bypassed.

Nor should this be surprising. *Dignitatis Humanae* was immensely controversial precisely because it did constitute the Church's abandonment, for our time at least, of a policy reaching back to late antiquity—

her use of the Christian state as her coercive agent. The declaration's passing was no foregone conclusion; and it would have been made vastly more difficult by expanding the controversy to include a doctrinal constitution on the Church's own authority to authorize coercion in matters of religion. But that is what would have been required to address the *doctrinal* basis of the Church's past endorsement of religious coercion, including her past use of the state as her agent.

Aside from the sheer disagreement that would have been unleashed,³⁶ the public embarrassment would have been considerable, especially for those most enthusiastic for the declaration's passing. Who among that group, in particular, would then have had the stomach explicitly to rehearse the Church's traditional teaching and legislation regarding the coercive enforcement of her own authority and jurisdiction? *Dignitatis Humanae* is drafted very precisely to avoid doing anything like that. On the other hand that teaching and legislation actually exist and are authoritative as fully part of the Church's doctrinal self-conception—as the more historically learned Council fathers such as Journet were very well aware. Hence the authority of that past doctrine had to be accommodated and respected, even without its explicit treatment or discussion. The declaration could not simply bulldoze a path through all that past doctrine about the coercive nature of the Church herself; still less could it do so without some actual discussion of that doctrine's content and significance.

Hence the traditional teaching on the obligations of the baptized to the Church, fundamental to the coercive authority of the Church, was left unspecified—it was not the business of a declaration on the authority and competence of another coercive authority entirely, the state, to expound it. But at the same time that body of teaching was still carefully and expressly preserved *integer—unchanged*. And the result was a declaration that was effective at the level of policy; it brought to an end, at least for our time, the Church's actual use of the state as a religiously coercive agent. But the declaration did so in a way that remained consistent with the doctrine about the Church herself by which that use of the state had hitherto been legitimized. The Church's own authority to coerce religiously was

³⁶ For example, it is clear that though some theologians involved in the Council, such as Journet, learnedly described the Church as being herself a coercive authority, others, such as John Courtney Murray, regarded the state as the only genuinely coercive authority, even in matters of religion: "If an authority exists that is empowered to restrain men from public action in accord with their religious beliefs, this authority can reside only in government, which presides over the juridical and social order." John Courtney Murray, "The Declaration on Religious Freedom," in *Vatican II: An Interfaith Appraisal*, ed. John H. Miller (Notre Dame, IN: Association Press, 1966), 565–76.

preserved, while the state's right to coerce religiously—always at best a loan to it from the Church—being lent no more, was consistently denied.

Dignitatis Humanae's bypassing of the coercive authority of the Church, and so too of the doctrinal basis for the legitimacy of past religious coercion, is an unmistakable and central feature of the declaration's content and subject-matter. It is not a feature of the declaration that can be made conveniently to disappear “in the spirit of the Council” by post-conciliar theological *fiat*—not even with the help of the post-conciliar magisterium, to which I now turn.

6. Post-conciliar Official Statements

Professor Rhonheimer seeks to buttress his reading of *Dignitatis Humanae* and its significance by appeal to two recent statements of the post-conciliar magisterium. The first is this observation by Pope Benedict in his 2005 Christmas address to the Roman Curia:

With the Decree on religious freedom, the Second Vatican Council both recognized and assumed a fundamental principle of the modern state, while at the same time re-connecting itself with a deeply rooted inheritance of the Church.

The second is 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*,” which endorses some form of *laïcité*:

... *laïcité*, understood as autonomy of the political or civil sphere from that of religion and the Church—but not from morality—is a value that has been attained and recognized by the Catholic Church and belongs to [the] inheritance of contemporary civilization.

But unfortunately, these passages are crucially vague, and they no more explicitly address the nature and extent of the coercive authority of the Church than did the original declaration. Indeed, if anything, they are less detailed than the original declaration, rather than more specific clarifications of it. Moreover these statements possess a pretty low level of magisterial authority in their own right, and certainly could not count as developing or refining the declaration's teaching at any level of authority matching the declaration's own.

Consider Pope Benedict's 2005 Christmas address. It seems to presuppose no more than what Professor Rhonheimer and I both agree *Dignitatis Humanae* to say: that there is a right not to be coerced in matters of

religion by the state. But that is what the modern liberal state believes too. So, certainly, in *Dignitatis Humanae* the Church is indeed recognizing and affirming a fundamental principle of the modern state. The Pope also refers rather generally to *Dignitatis Humanae* as constituting a “review or even correction [by the Church] of certain past *decisions*,” which view of *Dignitatis Humanae* is again common ground between Rhonheimer and me, the papal claim being vague enough to include changes in or corrections of policy apart from underlying doctrine.

For Pope Benedict’s address to be of help to Professor Rhonheimer, it would have to do more than assert a right not to be coerced religiously by the state. It would have to give express teaching on the basis of that right—and teaching that, in particular, explicitly endorsed as magisterial teaching Professor Rhonheimer’s own model of the Church’s past endorsement of religious coercion as involving no more than an application of natural law on the authority and function of the state, and of *Dignitatis Humanae* as a contradiction of the Church’s past teaching so understood. But there is no such content to the address; which is as well, as it would have involved the Pope in clear historical error.

What about the Pope’s mention of reconnecting with a deeply rooted inheritance of the Church? Certainly, even before Vatican II the Church taught, in Rome at any rate (we have seen that Gallicans in the Sorbonne thought differently) that we have a right not to be coerced religiously on state authority. Church and state are distinct authorities, each with its own legislative competence. Just as the Church cannot properly legislate on her own authority in civil questions, over which the state is sovereign, so the state cannot properly legislate on its own authority in religious questions, over which the Church is sovereign. But it is precisely such legislation, on the authority of the state alone, that the pagan emperors attempted:

The ancient Church naturally prayed for the emperors and political leaders out of duty (cf. I Tm 2: 2); but while she prayed for the emperors, she refused to worship them and thereby clearly rejected the religion of the State. (Benedict XVI 2005 Christmas address)

And indeed the pope sees *Dignitatis Humanae* as in harmony with the teaching of Jesus himself. What is this teaching of Jesus that the Pope cites? That of Matthew 22:21:

Then he said to them, Render therefore to Caesar the things that are Caesar’s; and to God the things that are God’s.

Far from endorsing Rhonheimer's theory, this simply affirms that the state has a proper coercive authority of its own, but one that does not extend to religious or supernatural ends. At a fundamental level, then, *Dignitatis Humanae* expresses again, for our time, a doctrine of the distinct legislative competences of Church and state that is deeply traditional, and that was expressly taught by Leo XIII.³⁷

There is important reference to freedom of conscience in the papal address:

The martyrs of the early Church died for their faith in that God who was revealed in Jesus Christ, and for this very reason they also died for freedom of conscience and the freedom to profess one's own faith—a profession that *no State can impose* but which, instead, can only be claimed with God's grace in freedom of conscience. A missionary Church known for proclaiming her message to all peoples must necessarily work for the freedom of the faith. She desires to transmit the gift of the truth that exists for one and all. (Benedict XVI 2005 Christmas address; my emphasis)

But again, this seems to affirm a right of conscience and religious liberty against the specific authority of the *state*. There is no explicit denial of the Church's religiously coercive authority—her native right to authorize use of the rod to punish culpable heresy or culpably wrong belief amongst those already subject to her. Indeed elsewhere we have seen Pope Benedict actually to teach that authority and right.

What of the CDF's *Note*? Again the CDF's appeal to *laïcité* understood as "autonomy of the political or civil sphere from that of religion and the Church," is very vague. As Rhonheimer himself admits, *laïcité* does not plausibly mean here secularist French *laïcité*, at its limit an aggressive and anti-Christian ideology devoted to excluding religion from the public sphere. But what then does it mean? This Note does not really say, beyond using the word *autonomy*, of which Rhonheimer makes much. Rhonheimer claims that the autonomy taught is unqualified, in a sense that would exclude *any* authority on the Church's part to direct even baptized

³⁷ The division of coercive authority between Church and state as sovereign perfect societies is taught by Leo XIII in *Immortale Dei* by reference to the same Matthew 22:21: "Whatever, therefore in things human is in any way of a sacred character, whatever belongs either of its own nature or by reason of the end to which it is referred, to the salvation of souls, or to the worship of God, is subject to the power and judgment of the Church. Whatever is to be ranged under the civil and political order is rightly subject to the civil authority. Jesus Christ has Himself given command that what is Caesar's is to be rendered to Caesar, and that what belongs to God is to be rendered to God" (*Immortale Dei* §14).

rulers in matters specific to religion. But I do not see Rhonheimer's reading asserted in the text. And in actual fact, terms such as *autonomy* were used of the state and political life before the Council, and in a very strong way, to assert the autonomy of the state in relation to the Church—but in standard and for the time clearly orthodox commentary endorsing of the content of Leo XIII's *Immortale Dei*. For *Immortale Dei* was indeed historically spoken of and understood as teaching a "perfect autonomy" of the state from the Church. Thus, to take only one pre-conciliar example, from the article in the *Dictionnaire de Théologie Catholique* on *Pouvoir du pape dans l'ordre temporel*, we read:

C'est-à-dire que la cité de Dieu ne doit pas présentement absorber la cité terrestre, qui est le domaine de César: l'Évangile proteste là contre et la tradition chrétienne, malgré ses fluctuations, reconnaît au pouvoir civil *une parfaite autonomie d'opération*.³⁸

So the state is *perfectly* or *unqualifiedly* autonomous—but of course, only in matters that are peculiarly its competence, that properly fall within the civil sphere. (Why should the state have autonomy in matters that are *not* within its competence?) The value recognized by the Catholic Church, as the CDF *Note* reports, is that there is indeed a civil sphere in which the state is sovereign, and so immune to direction by the Church—and this is as the CDF *Note* certainly claims. But does that exempt the state from *ever* being subject to direction in other matters—in matters religious that fall within the sphere of the Church? Leo XIII thought not; and though this CDF *Note* repeats, very briefly, the teaching of *Dignitatis Humanae* on the wrongfulness of state involvement in religious coercion, there is no detailed and specific treatment of the Church's coercive authority that addresses and specifically denies the traditional, and Leonine, theory. The *Note*'s strong language asserting state *autonomy* is clearly nothing new, as already pre-conciliar, and does not of itself give Professor Rhonheimer's reading of the declaration any independent support.

But there is a more fundamental objection to Professor Rhonheimer's appeal to such relatively low-level papal allocutions and curial notes. The subject matter of *Dignitatis Humanae* is very clear, and in particular its ring-fencing of the Church's coercive authority over the baptized is a marked and intended feature of it. The implications of this ring-fencing

³⁸ *Dictionnaire de Théologie Catholique*, 2768, vol. 12 (my emphases): "This means that the city of God must not in the present absorb the earthly city, which is Caesar's domain: the Gospel protests against this and Christian tradition, despite its fluctuations, acknowledges the civil power's *perfect autonomy of operation*."

are also very clear, once we understand the doctrinal history of the Church's past endorsement of religious coercion. These evident features, both of the Vatican II declaration and of the Church's earlier history, cannot be "magicked" away just by appeal to, in magisterial authority, relatively minor papal allocutions or curial notes—especially allocutions or notes that in no way address, in specific and argued detail, the juridical and normative basis of the declaration.

7. Conclusion

The history of Catholic teaching on religious liberty is still ill-understood. Part of this lack of understanding is owing to long-standing internal controversy over many centuries before the Council, between Roman theologians who emphasized the coercive authority in matters of religion of the Church over the state, and others, such as Gallicans, who did the reverse.

The magisterium's formal and explicit siding, in *Immortale Dei*, with the Roman school is clear and important, but not always recognized and respected as such. *Dignitatis Humanae*, properly understood, is in part a consistent continuation of *Immortale Dei*'s earlier and decisive magisterial denial of the state's authority to coerce religiously.

Why has *Immortale Dei*'s clear teaching on this matter and its significance not been sufficiently appreciated as such? Why has the Church's past endorsement of the state's involvement in coercion on behalf of the Catholic faith been misperceived as based on a theory of the state's supposed native possession, under natural law, of the requisite authority? The answer is obvious, and it lies in the excessive politicization, at least in modern times, of the problem of religious liberty. The old Gallican view that saw past religious coercion on behalf of the faith as a legitimate use of native state authority chimes with a modern prejudice that coercion is fundamentally what states do, so that the problem of religious coercion must really be a problem just about legitimate political authority and its proper use. Or so at least the modern secular mind would suppose, that no more accepts a coercive authority that is supernatural than it accepts a supernatural law and a supernatural end. And modern Catholics, even including those who are traditionalist in sympathy, have outlooks profoundly shaped by modernity. So Professor Rhonheimer will easily find modern traditionalist support for his supposition that the issue of religious coercion has to do just with teaching about the state and its authority. Since, at least after the time of those divinely assisted exercises of non-political force detailed so vividly in Acts, the state was so central an agent of coercion in the service of the faith, the problem of

that coercion's legitimacy could easily be mistaken for a problem about the authority of the state. But that is a mistake, and recognizing the mistake is vital to understanding the significance of *Dignitatis Humanae*.

Professor Rhonheimer thinks that the Church's past endorsement of religious coercion was simply in the support of objective religious truth—a needless and dispensable manoeuvre in a war against indifferentism. And of course, if the Catholic faith had not been thought true, no one would have supported coercion in its defense. But the point of the coercion endorsed, and the basis of its supposed legitimacy, was more complex. For example, 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—despite the fact that Islam was certainly viewed as more false and so further from the truth than was much mere heresy in Christians. The true explanation for the more severe coercion of heresy is obvious by now. Licit coercion was not about the state's protecting religious truth as such, but about the Church's enforcing and protecting a jurisdiction of her own founded on baptism and obligations that come with baptism—obligations that applied to Christian heretics, but not at all to Jews or Moslems. And this theory of a sovereign and coercive ecclesial authority and jurisdiction, based on baptism and directed at supernatural ends, far from being abandoned at Vatican II, remains fundamental to the Church's doctrinal and canonical self-understanding.³⁹ No one has managed respectably to propose an alternative model to replace it; and certainly no general council of the Church has yet endorsed any such replacement of it.

Likewise, the very ideal of a Church-state establishment, so clearly endorsed by Leo XIII, is hardly explicable just in terms of a misguided war against indifferentism. That pope, like others before and after, taught a vision of Church and state as, at least ideally, united like soul to body. And this again involves a more complex doctrinal model than that proposed by Professor Rhonheimer—a model that is not simply about protecting religious objectivity, but which is instead to do with human flourishing and what that flourishing requires. The driving force is not simply a concern with objective truth, but a concern with happiness.

In *Immortale Dei*, Church and state are presented as distinct coercive authorities with distinct legislative and punitive competences—based

³⁹ See, after Vatican II, Paul VI's *motu proprio*, *Sollicitudo Omnium Ecclesiarum: de Muneribus Legatorum Romani Pontificis*, 24 June 1969: "It is not to be denied that . . . Church and state, each in its order, are distinct perfect societies, each equipped with its own peculiar rights and powers, each applying its own laws, and each with its own field of competence."

respectively on a revealed law that is supernatural and a rationally given law that is natural. But these distinct authorities do not serve two distinct communities, an ecclesial community and a political community, that should ideally stand apart from and distinct from each other as Cartesian soul stands apart from Cartesian body. Rather, if humanity is to flourish, the two must unite like Aristotelian form and matter, as parts of a single substantial unity—a single community of human persons destined both individually and as a community for a happiness that is both natural and supernatural. And as Pope Leo makes very clear, the Church matters to the state as a condition of the political community's own flourishing and development. There is an eloquent statement in *Immortale Dei* of the civilizing effect of the Church, once Christianity had been established, on the once-pagan state. Indeed this is a central theme of the encyclical, which begins:

Though the Catholic Church, that imperishable handiwork of merciful God, by her very nature has as her purpose the saving of souls and the securing of happiness in heaven; yet, in regard to things temporal, she is the source of benefits as manifold and great as if the chief end of her existence were to ensure the prospering of our earthly life. (*Immortale Dei* §1)⁴⁰

And this civilizing effect is not hard for a Catholic to understand. Aside from the fact that grace perfects nature, grace is required also to heal nature: in a fallen world even the law that is the state's proper concern, the natural law, will not be fully and reliably complied with apart from

⁴⁰ See also, later in the encyclical, on how these earthly benefits are secured through state recognition of and support for the Catholic faith: "And, lastly, the abundant benefits with which the Christian religion, of its very nature, endows even the mortal life of man are acquired for the community and civil society. And this to such an extent that it may be said in sober truth: 'The condition of the commonwealth depends on the religion with which God is worshipped; and between one and the other there exists an intimate and abiding connection.' . . . There was once a time when states were governed by the philosophy of the Gospel. Then it was that the power and divine virtue of Christian wisdom had diffused itself throughout the laws, institutions, and morals of the people, permeating all ranks and relations of civil society. Then, too, the religion instituted by Jesus Christ, established firmly in befitting dignity, flourished everywhere, by the favour of princes and the legitimate protection of magistrates; and Church and state were happily united in concord and friendly interchange of good offices. The state, thus constituted, bore fruits important beyond all expectation, whose remembrance is still, and always will be, in renown, witnessed to as they are by countless proofs which can never be blotted out or ever obscured by any craft of any enemies." *Immortale Dei* §§19–21

the help of divine grace.⁴¹ So the state's own interest as a coercive authority in the natural end for man must properly commit it to cooperation with and support for the Church—as the essential channel to the political community of supernatural grace, needed as grace now is, given the Fall, for the state itself properly to do its job. We find this view at the heart of much magisterial teaching on the social kingdom of Christ. The Church exists as a perfect society alongside those of states

... not of course in the sense that she should detract in the least from their authority, each in its own sphere supreme, but that she should really perfect their authority, just as divine grace perfects human nature, and should give to them the assistance necessary for men to attain their true final end, eternal happiness, and make them *more certain promoters of happiness here below*. (Pius XI, *Ubi Arcano Dei Consilio* §48, 1922; my emphasis)

The Leonine ideal of the state as recognizing and establishing Catholicism as the state's own religion is plainly not at all detached from divine revelation, as Professor Rhonheimer makes it out to be. Far from being a mere application of natural law, and as such supposedly reformable, the Leonine ideal is grounded in a theology of the relation of grace to nature that is very much a matter of revelation, and which is hard for any orthodox Catholic to deny.

At the level of current political reality, Leo XIII's ideal of Church-state establishment and cooperation is now profoundly out of reach. *Dignitatis Humanae* remains a deeply understandable and magisterially authoritative response to this modern reality. And indeed, the declaration may have been dictated by more than simple prudence. For it is not clear that the religious and social constitution of the modern state makes it even juridically possible, still less sensible, for the state now to act as the Church's agent. The Christian states envisaged in traditional teaching about the obligations of baptized rulers to the Church seem, as a matter of their constitution, to be something like political communities of the baptized ruled by the baptized. It might well be that only in the context of such states could baptism ordinarily obligate officials to exercise coercive state power on the direction of an authority distinct from the state and based on that baptism. But such Christian states, it might be thought, hardly now exist. In which case, it is not clear that the Church currently has the right to require states to coerce religiously on her behalf, even supposing she had the inclination so to direct them. The wrongfulness of religious

⁴¹ As famously discussed by Aquinas—see, for example *ST* I–II, q. 109, a. 2: *Utrum homo possit velle et facere bonum absque gratia*.

coercion involving the state certainly follows, as we have observed, from the Church's refusal to license such state coercion under her own ecclesial authority. But the Church's refusal to issue that license may not be a merely prudential policy decision. That refusal may itself be something morally demanded. The conditions 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 ecclesial law.

But if this were so—something not completely obvious and certainly needing further discussion—that certainly would not imply the falsehood of any of the Church's traditional doctrine. Rather, it would simply mean that the conditions on political and social constitution presupposed by the traditionally taught obligations to assist the Church do not currently obtain. *Dignitatis Humanae* has certainly not itself denied the traditional doctrine of people's obligations to the Church that lay behind canon 2198 and that was taught with such insistence by general councils from Lateran IV, through Constance, to Trent. We have seen that *Dignitatis Humanae* very carefully makes no such denial, which would have been a reversal, not in the mere application of natural law, but of teaching about the Church's own authority under revealed law—an authority that *Dignitatis Humanae* just does not address.

Behind the Leonine ideal of Church-state relations 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. *Dignitatis Humanae* certainly does not expressly assert the content of this long-standing magisterial teaching, but neither does it expressly deny this teaching. Indeed it is not obvious that the authority ever existed for the declaration to make such a denial.

A properly doctrinal treatment, in Catholic terms, of the legitimacy of religious coercion involving the state would, it is now clear, have to include discussion of baptismal obligations, and under what conditions and in what ways such obligations, understood in line with the Church's tradition, can take political form—a form that, it was always taught, they could very well take, at least in certain circumstances. *Dignitatis Humanae* does not even approach providing any such discussion; nor does its evident silence plausibly substitute for or remove the need for such a discussion. Indeed it is hard to see how *Dignitatis Humanae* constitutes any kind of resolution of the issue of religious coercion, as that coercion was

historically endorsed by the Church, that is clear and unambiguous at the level of strict doctrine. That issue could never be resolved doctrinally just by reference to natural law and its application. A doctrinal resolution requires what *Dignitatis Humanae* does not supply or even attempt—a theory of the Church and of her revealed authority, and of how that authority best serves the supernatural end. **N V**

