

THE RIGHT TO RELIGIOUS FREEDOM
IN
THE TRADITION OF THE CHURCH

Bro. Basil, O.S.B.

**THE RIGHT TO
RELIGIOUS FREEDOM
IN
THE TRADITION OF THE
CHURCH**

*A case of homogeneous doctrinal development
by the authentic magisterium*

Preface by Cardinal Jorge Arturo MEDINA ESTÉVEZ

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TO THE MEMORY

FROM MY FATHER

MAURICE VALUET
(1920-2004)

AGREGE DE L'UNIVERSITE

WHO PASSED ON TO ME

HIS FAITH IN THE INERRANCY OF THE CHURCH

ITS SCIENTIFIC SPIRIT

AND HIS LOVE OF LANGUAGES AND BOOKS

AND MY MOTHER

SUZANNE VALUET
(1920-2008)

GRADUATE IN CLASSICS

WHO TAUGHT ME JESUS ON HIS KNEES

AND FOR TEN YEARS

TAUGHT ME TO STUDY

BY MAKING ME RECITE MY LESSONS

*Si subtiliter veritas ipsa requiratur, hoc
quod inter se contrarium sonuit, quomodo
contrarium non sit, invenitur.*

*If we search with subtlety for the truth itself, we
discover how in reality what at first seemed
dissonant is not contradictory.*

(GREGORY THE GREAT,
Hom. 7 in Evang., n. 1).

PREFACE

by **Cardinal Jorge Arturo MEDINA ESTÉVEZ**

Ln December 7, 1965, during the ninth public session of the Second Vatican Council, Pope Paul VI promulgated the Declaration *Dignitatis Humane* on religious freedom. It must be recognized that, from the moment of its publication, this document was the object of controversy, of often acerbic criticism, and even, in certain circles, of a sometimes categorical rejection; Indeed, its detractors maintained that this text had betrayed the traditional teaching of the Church concerning the truth of Christian Revelation and the complete fidelity of the Catholic Church to the deposit of faith contained in the Apostolic Tradition and in Sacred Scripture, which is authentically transmitted by the Magisterium and preserved in the faith of the believing people, under the action of the Holy Spirit who accompanies the Church during her pilgrimage on this earth, sustaining her fidelity to the Gospel, despite the painful failings of some of her members. However, this negative analysis of the Declaration *Dignitatis Humane* was the fruit of erroneous interpretations, superficial and even tendentious readings, and one-sided presentations, sometimes even inspired by inadmissible presuppositions.

So what is the real content of the Declaration?

It is necessary to affirm from the outset that it was absolutely foreign to the intentions of the Council, and therefore of the text that was finally promulgated, to have wanted :

- declare that all religions are "true" and that they can therefore be put on the same level, as if they were equivalent;

- consider that the concept of "truth" is not absolute, but relative, and that no one can therefore claim to possess the truth;
- exclude the possibility of the Catholic Church passing judgment on the objective errors of other religious confessions, both Christian and non-Christian;
- to discourage missionary activity, that is, more precisely, to renounce the explicit proclamation of the Gospel, considered in this case as a sign of disrespect towards other religions;
- prevent the reception of members of other religions and other Christian denominations into the Catholic Church, considering that this would be a kind of proselytizing of "bad taste", and not a rallying to the Church which, alone, possesses the full truth of the Gospel.

The intention of the Council, to which the text of the Declaration corresponds, has nothing to do with religious relativism, ecclesial indifferentism or a kind of irenicism that would ignore the Catholic identity and the missionary mandate left by the Lord Jesus.

In the Declaration *Dignitatis Humane*, the concept of "freedom" does not refer directly to the primary meaning of this word, that is, the choice of appropriate means for the search for objective truth, but rather to respect for the human person, whose choices, even if they are wrong, deserve the respect of other persons as well as of the Church, civil society and the authorities that govern it. In fact, conscience, even if it is in error, and therefore objectively wrong, is the most immediate basis for moral judgment. This is what St. Thomas Aquinas himself taught, what the Venerable Cardinal Newman has always maintained, and what the *Catechism of the Catholic Church* has reiterated with great clarity.

The Declaration does not, therefore, in any way aim to declare the right to choose between truth and error, recognized as such, but affirms the right of every person, even when he is mistaken, to be respected on account of his dignity. Now, this dignity is itself founded on the rights of the human person; and these rights never disappear, even in the case of a person who is mistaken; moreover, in the latter case, no one can be authorized to resort to the supposed subjective guilt of this person in order to disregard these fundamental rights.

Similarly, the text of the Declaration does not take a position on the juridical status

of human society: it only affirms that no one can be prevented from acting according to his or her conscience, nor can any individual be required to act against his or her conscience, even if he or she is nonetheless obliged to conform to the requirements of the common good and of the public order that flows from it.

Thus, in the text of the conciliar Declaration *Dignitatis Humana*, is there a religious freedom that would amount to the right to choose any religion according to a judgment that disregards objective truth? Absolutely not.

Similarly, is it a question of a religious freedom that would exonerate the person from seeking the truth and therefore from consenting to the effort of a respectful, loyal and ardent search for this same truth? No, not at all.

Finally, is it a religious freedom that would authorize - or even encourage - actions in moral matters that are external and even opposed to the common good and public order? No, because that would be tantamount to the disappearance of the *raison d'être* of society.

On the other hand, in the same Conciliar Declaration, is religious freedom understood as a guarantee of the dignity of the human person and the inviolability of conscience? Yes, without a doubt, even if the affirmation of this principle entails the risk of misleading and erroneous actions. Such acts, which are not expressions of freedom but of its failures, are inherent to all life in society, where human beings, who are limited and fallible, are capable of committing errors, without always being guilty, or even if sometimes, at least in part, these errors are the result of the personal responsibility of their author.

Thus, the Church does not claim any abusive privilege from the State; nor does the Church demand that discrimination be established in her favor, but she wants that in every country the freedom of persons be recognized in an explicit and loyal manner. The Church also asks for the recognition of this freedom in those States where the majority of citizens are not Catholic; indeed, in this case, she desires to be able to freely profess her faith and to receive the adherence of those who would like to enter her communion. It is painful to note that, in addition to countries with a Christian majority, where people have ample opportunity to profess their religion and even to worship, there are also States which, in the name of their official religion, prevent any form of Christian worship, and even the sacred right of those who, out of conviction and

conscience, discover the full religious truth in the Catholic faith, to enter the communion of the Church. The Catholic Church does not wish to increase her membership by means of procedures which are alien to the inner conviction of individuals, but she equally firmly rejects the coercion which the public authorities might place upon those who wish to exercise the freedom of their conscience in the search for truth.

It is obvious that the exercise of religious freedom, properly understood, implies the existence of multifaceted relations with civil and political authorities; in the context of these relations between the Church and the various States, it would be an illusion to believe that it is possible to obtain immediately all that is legitimate to expect from the public authorities in the field of religious freedom. Nevertheless, it is to be hoped that the recognition of religious freedom as an inalienable human right will gain ground, even among those who today consider discrimination against Christians to be a logical and necessary consequence of their religious convictions. Indeed, it is astonishing that one can demand broad rights in places where one is part of the minority of the population, while at the same time one allows oneself to deny these same rights to minority groups in countries where one's own majority denomination holds public power.

Anyone who takes the trouble to read the text of the Conciliar Declaration *Dignitatis Humane* carefully can easily see that this document is situated in a well-defined perspective, which can be summarized as follows: a profound respect for the conscience of persons, with, at the same time, the unambiguous affirmation of the full truth of the Catholic faith, and consequently the recognition of the objectively unequalled role of the Church in the plan of salvation. The Declaration also affirms that this irreplaceable role of the Church goes hand in hand with the conviction that the salvific and universal will of God the Father, the Redemption accomplished by Christ for the benefit of all men, and the Gift of the Holy Spirit are also made present in the lives of many people in mysterious ways, in spite of the errors of those same people who nevertheless possess a fundamental good will, which is itself the fruit of grace from God.

I believe that the book by Father Basil, O.S.B., is a rigorous and scientific attempt to show the true scope of the conciliar document, which has sometimes been so misunderstood and which, too often, is known in a very superficial way.

t Jorge A. Cardinal MEDINA ESTÉVEZ

Vatican City, 28.IX.2004

MAIN ABBREVIATIONS

0001.,00020010. ...0100.... 1225. (Example:) 0760.14	Order number of the excerpts from Tradition and the Magisterium copied in t. 1/IA of LRTC. Extract n° 0760, 14' paragraph.
AS.	<i>Acta Synodalia Sacrosancti Concilii Oecumenici Vaticani H</i>
AA. W.	Various authors (collective work, listed in the table of abbreviations in volume III).
AAS	<i>Acta Aposlahca- Sedis</i>
Congr. gen. <i>DH</i>	Congregatio general is (of VATICAN II) <i>Dignitatis Humana-</i>
<i>DzSchHii</i>	DENZINGER-SCHONMETZER-HUNERMANN
LCC	Freedom of conscience and worship
LR	Religious freedom
LRTC	Fr. Basil, O.S.B., <i>Religious Liberty and Catholic Tradition</i> . Le Barroux, 1998 ² , 3 t. in 6 volsJ
m.o.u.	Ordinary universal magisterium.
AUTHOR NAME, DATE SOI, 02.03,04 [etc.] ²	[See bibliography] Extracts from the AS.
SUC	Secretariat for Promoting Christian Unity, <i>DH</i> Editorial Board
1,2,3,4,5,6 SC	1", 2 ¹ -'. 3', 4 ¹ --, 5', 6", Conciliar Diagram(s). ³
1,2,3,4,5,6 RO 1.2.3.4.5.6RS	1", 2", 3", 4", 5", 6", Oral reports. T, 2 ^V , 4 ^o , 5 ^o , 6 ^o . <i>Relatio(nes) Scripta(e)</i> .
4 RF	<i>Relatio finalis (conclusiva)</i> (oral) of SMEDT. DE

FOREWORD

LThe present work was the subject of a doctoral thesis in theology, defended on June 8, 1995 at the Roman Athenaeum (since then Pontifical University) of the Holy Cross, published for the first time in Rome on July 19, 1995 in three volumes of

² The mention "S" followed by a number refers to LRTC, t. 1/IB, Appendix "S" (SMEDT / SUC / *Synodalia*), a chronological series of extracts from the *Relationes orales* (RO) (read by M^m DE SMEDT) and *scripta*: (RS) (anonymous texts presented by the SUC) copied from the *Acta Synodalia*. Each extract is preceded by its designation "S 00", "S 01", "S 02". See in our general index the reference of the 1" occurrence of each text, accompanied by the references of date and sources, etc., to be read according to our table "Schemes and reports of the Commission" inserted at the beginning of the second part.

³ Always written in Roman and preceded by a number. Not to be confused with SC (*Sacrosanctum Concilium*), always in italics and followed by a number, nor with Schr (*Christian Sources*).

2,300 pages.⁴ On October 16, 1998, a second, revised and enlarged edition of 3000 pp. was published, entitled *Religious Liberty and Catholic Tradition* (henceforth: *LRTC*), with a preface by Cardinal Alfons-Maria STICKLER, S.D.B., and divided into three volumes of two volumes each.⁵ A third, complete edition, also of six volumes, but with 2525 pp. is now in press. We offer to the reader a substantially identical work, but summarized in a single volume, and which in 2011 appears for the 2^e time, slightly revised, especially in chapter zero.

For this abridged edition, we have almost always removed the literal quotations in the notes, citing the *sources* only when they had to be analyzed, and providing the original text of these only when the differences between the original and the usual translations presented particular difficulties. We have removed the chronological anthology of these *auctoritates*, while maintaining the same continuous numbering system as in the complete edition.⁶ *The Calendar of the genesis of DH* has also disappeared, with its complete listing of the conciliar interventions. In the alphabetical bibliography of studies, we have removed most of the footnotes, leaving only the *references*, and using the same system of abbreviation. We have also removed all titles not explicitly used in the work itself. Furthermore, the index is limited to the authors and works cited (scriptural, patristic, ministerial and private), leaving out other proper names and concepts.

Finally, our text itself has been shortened, with only the essential retained. However, since certain reviews invited us to do so, we have treated certain questions more extensively: thus, with regard to theological methodology, we have completely recast the section of doctrinal recalls on the magisterium, and added the entirety of the chapters on doctrinal development and on Tradition; in the part on positive theology, we have taken particular care to revise

⁴ Review: LA SOUJEOLE Benoît-Dominique de, O.P., *RThom*, 1997/3.613-616.

⁵ See details above in note 1. Erratum: In *LRTC*, MURRAY, 1969 actually means MURRAY, 1968/1966.10.29.

⁶ The *list of sources* is constituted, at the beginning of the index, by the numbered part 0001... 0002. etc. To have the complete description of the document, the reader must refer to the first occurrence of this number as indicated in the index.

the chapter on Saint Ambrose of Milan. Finally, we have sought to group the whole doctrine of each pope in its chronological place,' which has resulted in a general restructuring.

We must thank God, our parents, and His Holiness Pope Benedict XVI, who, while still a cardinal, had accepted the dedication of LRTC,⁷ without forgetting the cardinals, Alfons Maria STICKLER, S.D.B., (1910-2007), Jerome HAMER, O.P. (1916-1996),⁸ Johannes WLEBRANDS (1909-2006) and Paul Augustin MAYER, O.S.B. (1911-2010), who honored us with their encouraging presence during the defense of the thesis.

Of course, for this new form of our book, all our gratitude goes especially to Cardinal Jorge Arturo MEDINA ESTÉVEZ: despite his busy schedule in a great number of dicasteries, he has been kind enough to honor us with a kind preface.

Thanks to our late Father Emeritus and founder Dom GÉRARD (1927-2008), to our new Father Abbot Dom LOUIS-MARIE, and to our community for the considerable time and means put at our disposal, and finally to all those who, by their advice, their financial support or their reviews, helped to elaborate, improve and make known our work.

We do not forget the Archbishop of Avignon, who granted us his *imprimatur*, and the patient Monsignor Arturo BLANCO, who, after having been our second "thesis patron", took the time to read again the present summary and to affix his *nihil obstat*.

We are planning to publish soon a popular work of about 150 pages, answering the many questions that the faithful have about the Catholic doctrine of religious liberty.⁹ To keep our potential readers waiting, we have published two popular articles on the subject: one in the bi-monthly *L'Homme Nouveau*, no. 1289 (November 3, 2002), p. 11-12, the other in the monthly *La Nef*, no. 223 (February 2011), p. 22-27.

The Author.

7 Cf. the letter of Cardinal Joseph RATZINGER of July 21, 1995 to the author: "Your thesis (...) has great merit and represents a substantial advance in the thorny question of the correct interpretation of 'Dignitatis Humanæ' and its insertion into the tradition of the Church. Your study has embraced the entire history of the question and has provided a clear understanding of it."

8 The "private archives" that we cited only anonymously in LRTC, volume I/B, were none other than those of Cardinal Jean-Jérôme HAMER, O.P. (1916-1996), who very kindly allowed us to consult them and to quote them, without mentioning his name.

9 In the meantime, readers may wish to consult a work of similar scope, of comparable size, and on a similar subject: LAUZUN Pierre de, *Chrétienté et démocratie*, Paris, Téqui, 2002.

GENERAL INTRODUCTION

L Does the doctrine of Vatican II on *the right to religious freedom* oppose that of *the Church's pre-Council Tradition*?" One might think so by noting that in the past the Church did not allow heretics to practice their beliefs, and by reading the condemnations of the famous "freedom of conscience and worship" by the unanimity of the popes of the XIX^e century. To answer the question requires the examination of the two terms of the problem: the doctrine of the previous Tradition, and that of the 21^e ecumenical council. Let us note first of all that the latter proclaimed a *natural law*,¹⁰ and not merely a *positive one*TM and as a *doctrinal truth*, not as a mere *law*. *In fact*, on December 7, 1965, in union with the Council Fathers, Paul VI approved the Declaration *Dignitatis humanæ* (= *DH*)[^] whose no. 2, § 1, reads as follows (according to our trans.):

¹⁰ Cf. PAVAN. 1983,129, e(, with more authority, S 92:6 RS, modus 21, Ä.S. 1V/VI.769.

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The present Vatican Council declares that the human person has the right to religious freedom. This kind of freedom consists in the fact that all men are to be free from coercion on the part of individuals, social groups, and every human power, in such a way that in religious matters no one is to be forced to act against his own conscience, nor is he to be prevented from acting according to his own conscience in private as well as in public, either alone or in association with others, within just limits."

This is the passage from *DH* that determines the existence and nature of the right to religious liberty (LR), and which raises the whole problem studied in the present work. Moreover, like *DH*, we study this concept, which is certainly specifically juridical, in the light not only of natural reason, but also of Scripture, Tradition, the Magisterium of the Church (cf. *DV* 10) and thus, in the final analysis, of Revelation. We are therefore in theology, in its moral part, in the treatise on justice, in the chapter on the social doctrine of the Church.-® Finally, in resolving a problem of credibility of the magisterium of the Church, our work also belongs to fundamental theology.

VATICAN II, in proclaiming in *DH* the existence for every human person of a right to the RL, wanted to respond to an expectation of the whole world.-⁷ Nevertheless, this proclamation caused astonishment and even scandal in certain circles of the Catholic Church.-⁸ The precise teaching of *DH* which seems to some to break with Tradition is precisely *the very existence* of the right to the RL, proclaimed in *DH2*, § 1 quoted above.

Roman characters); incomplete notes; "societatum" = "societies"; reissued as appendix to AA. Vv., MURRAY, *End & Beginning*, 1966, 162-189; AA. Vv., *Declaration on Religious Freedom of Vatican Council 11. Commentary...*, ed. ŚIRANSKY Th. F., Glen Rock (NY), Paulist Pr^m 1966, [190 p.], 63-91: translation, approved by the U.S. episcopate, with some alterations by the A., official notes (without the references to s. THOMAS) in parentheses, within the text; "societatum" = "societies"; *DH* 11, § 2 complete; - laL-esp.: LAC 252, 679-701; SALAVERRI, 1965.12.08 / 1966, 817-851: incomplete notes; "societatum" = "sociedades"; *DH* 11, § 2 complete in LAC 252, but not in SALAVERRI; LAC 526, 981-1015; interesting introd.; complete notes; remarkable translation of *DH* 6, § 3: "Si, teniendo en cuenta las circunstancias peculiares de los pueblos, [...]"; *DH* 11, § 2 copied and translated; - laL-ital. N. B. The Italian translations all render well the passage "aUentis..." (from *DH* 6, § 3) by: "Se, considerate le circostanze peculiari...". IANNARONE R., *Tutti i documenti del Concilio Ecumenico Vaticano 11. Testo italiano-latino...*, Napoli, Ed. Domenicane Italiane, 1966², [812 p.], 459-478: *DH* preceded by BOVA Damiano, O.P., *Storia del documento*, and a *Schema della Dichiarazione* (by Fr. IANNARONE), very useful; incomplete notes; "societatum" = "delle società". *DH* 11: complete Italian translation in the face of a Latin text lacking "Non est enim potestas..."; *EV* 01, n° 1042-1086, p. 578-605; *ConcOecDecr⁴* (ital.), 1001-1011; complete notes; translates "societatum" = "delle società"; *DHII*, §2: complete text and translation; PAVAN, 1986, 7-23; AA. Vv., *QORPast* 8, 37-63: poorly numbered and incomplete notes; "societatum" = "e della società" [singular]; *DH* 11, § 2 complete (orig. and ital.); - ital. only: GAROFALO, 389-402; "societatum" = "della società"; notes 3 & 4 complete; PAVAN, 1967a, *Vivere il Concilio*, 4, p. 119 201: "societatum" = "e delle collettività", relatively exact; with the annotation: "e della società", which lacks the plural; *Concilio Ecumenico Valicano IL Costituzioni - Decreti - Dichiarazioni*, Milano, Ancora (Cristianesimo aperto), 1966², 451-474: "societatum" = "della società"; incomplete notes; *DHII*, §2 complete; - portug. only: *Compendio do Valicano II. Constituições, decretos, declarações*, Introd. and index KLOPPENBURG, Boaventura, O.F.M., ed. VIER Frederico, O.F.M., Petrópolis (Brazil), Vozes, 1971⁵, 743 p. complete notes; "societatum" = "das sociedades"; "attends" = "em aten!ão a"; *DH* 11, § 2 complete.

⁵ See S 02 S MEDT, 1964.09.23 (= 2 RO), AS. III/11, 349-350; cf. also S 09:3 RS, AS. 111/VII1, 461-462; and S 25:5 RO, 2 *Clarificatio notionis libertalis religiosa*; AS. IV/V, 99-100.

⁶ Cf. 1178. JOHN PAUL II, 1987.12.30 -.*Encycl. Sollicitudo reissocialis*: AAS, 1988,513-586; DC. 1988,251. Cf. HAMER. 1993,57.

⁷ See DW 1, § I and 5 RO. AS. IV/V, 104.

⁸ Cf. e. g. LEFEBVRE Marcel, M^m, 1987. *passim*.

"Much has already been written on the subject, but it does not seem that the perplexities raised by it in some sectors of the Church have been sufficiently clarified until now. Among those who have studied the topic, many defend the continuity between the declaration *Digni tatis humane* of VATICAN II and the previous Magisterium. On the other hand, others hold that such continuity does not exist, or even that it is a real *contradiction* in the literal sense."⁹

However, *DH* himself declares that he does not want to question the Tradition, and on

the contrary, he wants to unfold its implications:

"... religious freedom ... does not prejudice the traditional Catholic doctrine on the moral duty of man and society to the true religion and the one Church of Christ. Moreover, in dealing with this religious freedom, the Holy Council intends to develop the doctrine of the most recent Pontiffs on the inviolable rights of the human person and the juridical order of society."²⁰

We would like, through the present work, to contribute to shedding light on both this continuity and this development by answering the following question: _____

Is the *DH* doctrine on the right to social and civil freedom in religious matters a homogeneous doctrinal development carried out by the authentic magisterium in the Tradition of the Church? _____

The right to the RL does not raise any difficulty when it comes to the right to freedom to do *good*. The obstacle to be overcome consists *above all in the fact* that the Council proclaims the *right of every man not to be prevented from acting according to his conscience in private or in public (within just limits)*. Now this implies for every man - even when acting (including in public) for *wrong* reasons - *a right not to be prevented from doing so*.

This implication has in fact raised two kinds of objections: 1° the apparent contradiction between this principle of *DH on the one hand* and the previous practice, and doctrine of the Catholic Church on the other hand ; 222° the apparent absurdity of a *natural right not to be prevented from doing evil in religious matters even in public*. These objections both assert the existence of *contradictions*.

I) The first objection is based on an inadequate interpretation of the Church's previous doctrine and practice. This is what we shall try to show in our Book I, entitled *Positive Theology*, where we shall study the *predicate* of the question posed, namely: a "homogeneous doctrinal development carried out by the authentic magisterium in the Tradition of the Church." For this, we will question the witnesses (speculative or practical) of Revelation (written or transmitted) on such a subject. Hence the subtitle of Book I: *The predicate of the thesis. Tradition and Magisterium prior to DH*.

II) The second objection implies a misunderstanding of the teaching of Vatican II, which will be the subject of our Book II, entitled *Speculative Theology*, where

¹⁹OCÁRIZ, 1989.06,71-72 (our translation). Hence the danger of discrediting the magisterium (PRIETO-RIVERA. 1967a, 554). 20 *DH* 1, § 3, trans. *NRTh*. 1966,69.

21 Cf. e.g. KERGORLAY, 1992, 16, "Minor" (this is indeed p. 16, contrary to what the A. curiously claims in *SetTerre*, 30. p. 202. note 3).

22 See CARRILLO, 1961a, 108; and LASSOS, 1985b, 21.

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we will explain the *subject of* the question posed, namely: "DH's doctrine on the right to social and civil liberty in religious matters", while trying to make the truth of the copula "is." Hence the subtitle of Book II: *The Subject of the Thesis. DH's doctrine.*

Each of the two books will consist of a preliminary section providing the basic data, and then of two main parts. But before beginning even the first book, it is important that a preliminary "zero" chapter clarifies a concept that is everywhere underlying the problem studied, namely that of law.

PRELIMINARY CHAPTER "ZERO."

0. THE RIGHT

WE can consider law in two main ways: 1° that of its *essence*, that is, of the elements that make up its definition; 2° that of its *existence*, that is, of the elements and conditions that make it exist.²³ For the time being, we will consider only that which concerns *the essence* or definition of a right. A quick consultation of current dictionaries²⁴ or specialized dictionaries²³ shows that the word "right" is polysemous. As we move forward in the analysis of the various branches of this analogical mol,²⁵ we will try to bring together the different possible distinctions into a single, increasingly complex structure. These divisions are imposed on the human mind by the diversity of the "intensity" (at the level of *exigibility*) with which the word is used (law *simpliciter* / *secundum quid*; perfect / imperfect law),²⁶ or the diversity of the *origins of law* (authority and wisdom of God, of the Church, of civil society), or of the *elements* (or quasi-causes) of law compared to each other (subjects, object).

0.0. The elements of the law

According to E. Littré, the word "right" is used "improperly" to designate: "that which gives influence, moral authority [...] the rights of blood, of friendship."²⁷ *DH*, it is clear, is dealing with a *simpliciter* and *strict* right.²⁸ So let us leave aside for the moment *secundum quid* and imperfect rights,²⁹ and look for the constitutive elements of strict right, namely 1) the objects of right; 2) the subjects of right; 3) the foundations of right; and let us finish with 4) the types of right.

0.0.1. The objects of the law

A) The reality or "thing due in court" is called the *material object* of the right,³ - or "due", "debt", or "*debitum*" or "*res debita*":³² it is the "objective right".

²³ Other presentations: LEHEN, vol. 1 (1866), 321, no. 207; CORONATA, 1934, 1-3; CATHREIN, 1932, §283; RIVET, 1(1912), 4-5.

²⁴ Cf. art. Droit, 3°, in LITTRÉ, II (1877), 1244, § 3; *Petit Robert* 1, art. "Droit".

²⁵ Cf. LACHANCE. 1933.48, with diagram p. 323.

²⁶ On this distinction, cf. LACHANCE. 1933, ch. VII et VIII. p. 300-301, citing 1-2. q. 109, a. 3°; or CHOUPIN, 1928(ed. of 1907), 217, note 1; SCHIFFINI, 1891,1,342-343.

²⁷ LITTRÉ, cit, *ibid*, 1245.2. Cf. *Grand Robert*, 111 (1985°), art. "Droit," 676-677.

²⁸ Cf. BROGUE, 1964. passim.

²⁹Cf. LACHANCE. 1933,300-301;CHOUPIN, 1928/1907,217.note 1;SCHIFFINI. 1891,1,342-343.

time" in the concrete sense, or "passive objective right". 1° In a remote way, this right is a *thing*, 2° in a proximate way, it is an *action that provides the thing*?*

B) The primary material object, or rather the *formal* object *quod*, is the relation of equality of the debtor to the person of the creditor through the thing owed.³⁴ This is called the *passive right*.

C) The *formal* object *quo* or *motive of the due* is the moral goodness to give to each one what is due to him: it is the *ratio debiti*.

0.0.2. The subjects of law

A) The person to whom the right is owed (natural or legal person) or *finis is* called the "active subject of the right" (or "creditor").³⁵

B) The subject who *must* is called the "passive subject of the law" (or "debtor"). It is he who must in justice provide an object, an action, or an omission.

0.0.3. The causes or foundations of law

A) Causes external to the active subject

1° The final cause, *causa causarum*, assigned by the creative instance of the right is the common good and the happiness of the active subject here below, by the virtuous accomplishment of his duty, and, ultimately, the beatitude (individual and common). We will see that a right exists only in view of a duty,³⁶ which is the final cause and the logical foundation of the right, without being however its content, the due.

2° The external efficient cause of the law is the authority that decreed it.

a) *The authority* (or instance) that originates the right (divine, human), is the one that has delegated to the subject a part of its moral power. We see here in particular that God is the first and ultimate foundation of Right.³⁷ The human authorities (ecclesiastical, civil) are only derived foundations.

b) *The act of the authority* that grants the right is a precept or a law.³ "

B) Causes internal to the active subject

1° The material cause (*in qua*) of the right, is its active subject, already treated.

2° The efficient cause internal to the active subject is what we call the *ontological foundation* of right. It is, in the subject, that in virtue of which the subject has right.³⁸ There is for each right a particular foundation. But there is for every human right a next universal foundation: "the dignity and inviolability of the person himself."■"

3° The formal cause of the right is the faculty right itself, which we must now detail. The quality of the active subject which follows from the (efficient) foundation mentioned above, and which we have called "active right", is in this case a "power" or

³⁴ See MERKELBACH, no. 150, A.

³⁵ Others (e.g. SÉRIAUX, 1996, *passim*) call "active subject" the one who makes or says the right, and "passive subject" the holder of the right.

³⁶ Point recalled by JOHN PAUL II, 2002.12.08: Message for the day of peace of 1st January 2003.

³⁷ See MERKELBACH, no. 153.

³⁸ and. HERVADA, 1990,38-39, b: The *title* is what allows him to conceal the proof of the existence of this *foundation*, therefore of the right. One will confuse from now on title and foundation, really identical in the case of the RL.

"moral" faculty.³⁹ As a power, it is an accident of the active subject, where it is rooted. But, like any power, it has an extrinsic formal cause, its object (here the due-⁴⁰). And it is thus in a "transcendental relation" of specification to what is due to it in justice.⁴⁰ This *potentia* is called "subjective right",⁴¹ or "active right."⁴¹

0.0.4. Types of rights

A) An active right that has as its object the actions of its active subject is called a "right of permission". Since the actions of the active subject cannot be provided to him in justice by others, the "right-permission" is therefore not a right in the proper sense; and it is therefore not in this sense that we take the word "right" in *DH*, as we shall see, but in the sense of right-demand. However, if the right permission concerns an action exercised on other persons or before other persons, then it gives rise to a right-requirement of some benefit from these other persons. It is then back to a right-requirement.

B) An active right that has as its object the actions of *passive* subjects is called a "right-demand"; and it is in this sense that we speak of "right to the RL." In this case of a right-requirement, one can "quasi-define" the right-object as "*that which is owed to another rigorously according to an equality, so that the other can demand it as being due to him and exclusively his, even in a legal or judicial way.*" From this, we can identify, as a first approximation, meanings of the word "right" that designate 1) on the one hand, a reality that is *external* to the active subject of the right, and called "objective right" (O.1.); 2) on the other hand, a reality that is *internal* to the subject to whom the right is owed, hence its appellation of "subjective right" (O.2.)

In order to avoid any further misunderstanding, let us first set aside the division of right into *objective right to an objectively good reality, and subjective right based on a subjective goodness, i.e. one that the subject sincerely attributes to his action.*⁴² Indeed, in this sense, a "subjective" right would be "putative", and would fall into the category of imperfect rights.⁴³ Whereas enforceability and coerciveness are consequences of strict and perfect right. But the division into objective and subjective right is usually considered only from another perspective, and that is that of *DH*, where subjective right is supposed to mean something quite real and not imaginary, though internal to the subject.⁴⁴ Let us examine this

³⁹ Cf. 0319. SUÁREZ, 1612: *De Legibus*, lib. I, cap. 11, n° 5,1.1,24-25. Cf. also STIEGLER, 1960, 1222. and 1963. 1030-2.

⁴⁰ MERKELBACH, n° 150, B, writes: "it involves a relation of the reasonable being to something as his own, but formally, it is a power, and it is customary to define it as a *legitimate and inviolable moral faculty to have, to fair or to demand something as exclusively his own, for his own profile*". The relative character of the right is also noted by LACHANCE, 1948, 208 (ed. of 1933.) 281. Cf. also HERVADA, 1990.34; RODRÍGUEZ, Victorino, O.P., 1982, *Verbo*. 843 = *Studi tomistici*, 15, 128; CATHREIN, 1932, §286; PERRIER, 1948, 14.

⁴³ See MERKELBACH, n° 139. For "passive right", "active right" see e.g. 1D., n° 149.

⁴² See ROUQUETTE, 1954.02, 244, and BÉVENOT, 1961, 107-113. The expressions "purely subjective right" and "true objective right" would be well suited to this distinction.

⁴⁴ The impossibility of deriving a true objective right from a putative right has been amply demonstrated: cf. COTTIER, 1965.04, 456; BROGLIE, 1964, *passim*; 1D., 1965b, 17; RODRÍGUEZ, Victorino, O.P., 1964b, 403 and 408. The Council will take this into account (cf. *DH2*, §2). Cf. also: SCHULLER, 1965, 107. We consider the opposite position of Ph. DELHAYE untenable. On this subject, cf. our examination of *DH2* below in Book 11.

⁴⁴ Cf. MEYER, Th.. I (1885), 357, n°438,111° : " 2. [...] Jus enim pro potestate sumptum, etsi respectum involvit ad subjectum, nequâquam lamen aliquid simpliciter subjectivum, sed per se vere ac proprie *objectivum* dicendum est."

more closely.

0.1. The objective right

In its objective sense, law can be of two types: 1) abstract (art, science, legislation...) or *law-legal organization* (0.1.1.); and 2) concrete (due object) or law-res, or *law-justum* (0.1.2.).

0.1.1. The "right-set-of-laws

In a very derivative and improper sense, objective Law is the art of rendering justice, of saying the law, and the corresponding science.⁴⁵ *' In a still metaphorical sense, but less improper, Law is understood according to the etymology of "law", from the Latin "directum", with the idea of rule.⁴⁶ If one insists rather on this aspect *rectum*, one will consider the right as "that which is in conformity with a rule"⁴⁷ or with a whole of rules.⁴⁸ This is how we understand *nowadays* the "objective law" as the law⁴⁹ or rather the whole of the laws⁵⁰ and rules enacted, and known by all.⁵¹ Now who says law says legislator. This is why this first type of "objective law" is subdivided according to the authority that puts it into force, the efficient cause.⁵² And this authority can be I) divine; II) human.

I) *Divine law: natural law and positive law*

There are two kinds of rights which come immediately from the divine thought, namely: 1' that which is inscribed in the very nature of beings (or "natural law").⁵³ Natural law has God as its origin, but it is not manifested by a Word of God other than the nature of man, from which man, *by his reflection and experience*, must draw it.⁵⁴ 2° By "divine right" we mean rather the revealed divine positive right, or supernatural right.⁶ " The right to the RL,

⁴⁵ Cf. LITTRÉ, cit. art. "droit", 1246, 1, 6°; *GLU*, art. Law", 3410, sense 2. Cf. also in BATTAGLIA, art. "Diritto", 547.4°.

⁴⁶ See JACQUEMET, 1952a, 1092.

⁴⁷ *Petit Robert I*, art. " Law," 580-581.

⁴⁸ Cf. BATTAGLIA Felice, 1967:1., 1. *lus e directum*.

⁴⁹ VERMEERSCH, 1901, 13,n°9. See already 0270. THOMAS OF AQUIN, s., 2-2,57, l.ad 2.

⁵⁰ *GLU*, art. Law", 3410, sense 1.

⁵¹ Cf. LITTRÉ, cit. *ibid.* 1245, 3, citing PLANIOL Marcel, *Traité élémentaire de droit civil*, [Paris, Librairie Générale de Droit et de Jurisprudence, 1921"], I, 2. Cf. also GASPARRI, P., 1967, 538-539; FOURNERET, 1910, 1832; LECLERCQ Jacques. 1955.1 (1933 ed.). 11-13. Meaning criticized by VILLEY, 1969.15°37. especially 16.20.21. 24.25-26 and 1D.. 1987,111-131. HERVADA, 1990,127-135 distinguishes well between law and law.

⁵² For a division of the law according to the law that originated it, see CATHREIN. 1932.223. n° 304.

⁵³ Cf. SÉRIAUX, 1999. (One cannot, however, share the opinion expressed on pp. 120-121, which is contrary to 130 years of Magisterium on the fundamental rights of the person). Cf. also LALANDE, art. Law", 252. The tnpurite division into positive law, natural law and the law of nations comes from s. THOMAS AQUINAS. This division also applies to subjective rights, and not only to a "set of rules", as FOURNERET, 1910. col. 1835, would seem to believe. See also GONZALEZ DEL VALLE, 1989, col. 410. See also MOSCHETTI, 1967, col. 532-533 and 547-549. FOURNERET, 1910, col. 1834, note. bases the right on the law. Application to the subjective right in Art. "Diritto", in BATTAGLIA. IV (1966-1967), 548, 5°. On the other hand, *the existence* of natural law has generally been recognized, but not always under this name. Cf. also D1 ROBILANT. 1967. col. 535. Perhaps it would be better to speak of a "legal order" to designate all legal relations or "rights". This is what MEYER proposes, Th., I (1885), 367, no. 458.

⁵⁴ Cf. COTTI ER, 1966, 170. Natural law is in fact decipherable in the essence of man considered not only *in actu primo*, but *in actu secundo*, that is, in the behavior of men in the course of history. See also CTI. Document on the Natural Law; DC, 2009, 811-844.

as we shall see, falls into the category of *natural* subjective rights.⁶

II) *Human positive law: secular and canonical law*

As for "positive law", E. Littré defines it as "law established by the social power in each people". In general, jurists reserve the term "law" for positive law, i.e., that which has its source in the human legislator.⁵⁵ Such a common reduction of law to profane positive law should not make us forget canonical positive law.

0.1.2. The "justum" or right-"res

Law was for centuries envisaged rather in its concrete and objective sense⁵⁶ of "what is just,"^M the thing due, Aristotle's δίκαιον, *quod iustum est*, the

ius, object of the *iustitia*, the most common meaning in s. Thomas.⁵⁷ It is what is due to each person in the society in which he finds himself, hence: "what is required in a human community", then: "what is permitted in a human community."

0.2. The "subjective right moral faculty" : real right, right of permission, and personal right

What takes as its object the objective concrete right is the subjective right, the moral faculty of the subject relative to an object which belongs to him.⁵⁸ It is this meaning that, at least since Leo XIII,⁵⁹ the Magisterium has used as a *nominal definition*[^] although less proper, but at the same time common and precise, and *derived* from the original objective meaning.⁶⁰

1° Three types of objects of this faculty:

"[...]J an object capable by itself of being possessed in a physical or moral way, as are [I] creatures intended for man's use, [II] actions on which the command of one's own will and the exercise of one's faculties naturally bear, and [III] operations or performances depending in a proximate way on the command of the free will of another."⁶¹

2° Hence a three-part definition of this faculty:

"Right, in the sense of power, according to the common consciousness of men, is rightly defined: the moral

⁵⁵ Cf. D1 ROBILANT, 1967, 534. DABIN. 1953, 11, note 2 reminds us of the possible shifts. Moreover, do not confuse *positive* law with *affirmative* law, a term explained below.

⁵⁶ Nevertheless FOULQUIÉ, art. "Right", 189, names this right a *subjective right in the concrete sense*, as opposed to the "moral faculty or power to do, possess or demand something, considered in themselves, and abstracting from that thing", which he names: "subjective right in the abstract sense".

⁵⁷ To correct somewhat a frequent assertion of M. VILLEY (cf. e. g. VILLEY, 1969, 24) and his school, let us specify that s. THOMAS does not use *tus* only in this sense. He knows and enumerates others (1 -2, q. 57, a. 1). BUSA, CD-ROM, 1996⁶ provides its 1117 uses of the word "*ius*". See the list in the endnote of this volume of the less frequent cases where s. Thomas uses *ius* in the sense of moral faculty.

⁵⁸ Cf. LECLERCQ Jacques, 1955.1 (ed. 1933), 14. Cf. also GIRERD, 1925, col. 938: "[...] Duty is law insofar as it *binds* liberty; law is law insofar as it *protects* liberty" and FOULQUIÉ, art. Law"; see also RODRÍGUEZ-MOLINERO. 1989, col. 524-525.

⁵⁹ Cf. 0616.17 Leo XIII, 1888.06.20: *Liber las præstantissimuin*: "[b] Est enim *ius facultas moralis*" (*Acta beonis XIII* 08.232 = 455 20,605).

⁶⁰ Divergences of the jurists: GASPARRI, P., 1967, 539; CH1APPETTA, 1994, art. "Diritto soggettivo", 452-453; ABBAGNANO, 1992, art. Diritto soggettivo," ♦ 259.

⁶¹ MEYER, Th., I (1885), 370, no. 465; cf. also CATHRE1N, 1932, 208, § 284; 210, § 287.

power to [I] possess, [II] do or [III] demand something."⁷¹

3° Application of the faculty to the three types of objects:

facultas moralis... "aliquid [I]J possidendi vel [II] agendi vel [III] exigendi ; quibus designatur iuris materia seu objecta, circa quæ illud versare possit. Eiusmodi autem sunt vel [I]res vel humanæ operationes, et hæc quidem [II]vel propriæ [III]vel alienæ. Ideo, hac diversitate materia: omne jus est potestas moralis [I] rem possidendi [II] vel certam activitatem libéré exercendi [III] vel ab aliis personis aliquam præstationem sive activam sive passivam exigendi."⁶²

To each type of material object of the right corresponds a formal object (the way in which the right reaches the object), and thus a different type of subjective right:⁶³ [I] if the matter of the right is a corporeal reality (*res*), the right is formally a possession (*ius possidendi*), and we speak of a "real right" (*ius in re*); this will be our starting point, since possession is the basic characteristic (0.2.1.); [He | if this matter is the action of the subject (*operationes... proprice*), the right will be formally a permission to act and will be called a right-permission (*ius agendi*) (0.2.2.); [He [II] if, on the other hand, this object is constituted by the performances (active or passive) of another subject, it is then a right-requirement (*ius exigendi*) (0.2.3.)"

0.2.1. The real right or *ius possidendi*

By way of illustration (simple, even simplistic), let us start with the right of ownership⁷ -⁵ of a holder or creditor S, for example over a house M. A distinction is often made between the *ius in re*, a right that S has once he has come into possession of the right to M, which allows him to act legitimately on the thing and immediately, and the *ius ad rem*, a right that S has, once he has paid for M, and as long as he has not been provided with M, which allows him to act on the person who holds M. This *ius ad rem* is more a matter of right of action, studied further on. The source of S's right is first the Creator, the source of the secondary natural right of ownership, and then the human legislator, the organizer-moderator of this right; the basis is the action of acquisition (here, for example, a contract for the purchase of M between S and the former owner): the right of ownership is natural, but on such and such an object it is acquired.

0.2.2. Permission and *ius agendi*

The permission P given by an instance I to a subordinate S to perform (or omit) actions A can be considered I) either from a 1st terminal point of view, i.e. according to the being it has in S, the subject to whom it is permitted; II) or from a 2nd original point of view, in the instance I which permits something to its *subditus*.

I) *Permission in the holder of the permission*

A) *The permission of a positive action-*. In the case where the action of the permittee S is positive (commission), we notice a first type of "positivity." And it is better to speak of "permission of a positive action", than of "affirmative permission", because the "positivity"

⁶² MEYER, Th., I (1885 and 1906'), 380-381. Similar definitions in MESSINEO, 1939.11.22/23, 305; FOURNERET, 1910, 1832; CATHREIN. 1932.209.

⁶³ Cf. *GLU*. art. " Droit", 3410, meaning 3 and 4 and 5 (faculty and permission, moral or juridical) and BRIDE André, MP, art. " Real rights, personal rights", in *Catholicism* 03 (1952), col. 1126-1127. Cf. also ROMANI, 1953.3.

relates to *the permitted act*, and not to *the act of permitting*.

B) *Permission to act negatively*: In the case where the action envisaged is negative (not acting: omission), we are faced with a first type of "negativity", for which we will use the expression "permission to act negatively", and not that of "negative permission", because, here too, "negativity" qualifies *the act permitted*, and not *the act of permitting*, which is the object of our next step.

II) *The permission in the authority that allows*

Originally, that is, in the source itself, we find objective law in the sense of law, since permission is a decision, or even a law that *permits*. We can distinguish on the one hand A) the type of action that permits; and B) the level of authority (divine or human) of the one who permits.

A) **Permission as action**

The action of allowing is itself of two types:

1) *The positive authorization of an action*

We will name "affirmative permission" the action by which the authority decides to confer an authentic moral faculty to act (or not to act). This presupposes that it aims at an action (or a non-action) that it itself *approves and supports with its authority*: it is also and better called "positive authorization", because this time the "positivity" actually qualifies *the action of permitting*. However, we will be obliged to distinguish it according to two criteria.

a) According to the non-sociality or sociality of the action allowed

- We can consider the action A permitted by instance I without taking into account its social impact, and thus the law?⁶⁴ We will then speak of "moral permission". This type of permission does not require any positive intervention by others.

- If, moreover, the action A permitted by instance I can have repercussions on others, because it is performed (or omitted) in their presence, or even about them, etc., then it must be the object of a right, since any intervention on others presupposes a separation of domains between others and S, the acting subject. Thus, any authentic positive authorization to act (or not to act) *before or on another* is a true juridical permission, or right-permission. Such a positive right-permission entails that the subject is given an authority to act. Two consequences follow from this, one *positive*, the other *negative*. As a *positive* effect, the positive authorization leads to a qualification of action A imposing itself on other minds: these must judge action A as a juridical good, and help it positively, or even submit to it. Thus, the positive authorization to teach a student implies the obligation of this student to attend the course. In this way, the positive authorization of the Church to teach all men generates the obligation of all to listen to this teaching. As a negative effect, it entails⁶⁴ a faculty of demanding not to be prevented by the same authority and all inferior authorities, a faculty which we study later.

⁶⁴ The reverse is not true.

b) According to the positivity or negativity of the action allowed

The permitted action may be a commission or an omission:

- The right to affirmative permission for positive action is called *ius agendi*.[^]
- The right affirmative permission of a negative action is the *ius onuttendi*.^{J*}

2) *Negative permission for an action*

But the enabling act can also be itself a negative action, i.e. an omission of authority, in the sense that the latter does not prevent and/or repress the action (or non-action) of the beneficiary. One can then study the link of this negative act (omission) a) with the right (which it eventually creates); b) with the moral judgment made on the action.

a) As for the right

This "non-impediment" is called a *permissio negativa*, and unlike a positive permission, - it does not necessarily presuppose an approval of the action performed, - in itself, it does not create an authority to act, that is, it does not create any *right to act* in the proper sense.^{*10} Not being positive, this permission does not claim either the approval or positive action of others." - But if it is by an act of authority that it has been conceded, this decree creates a certain right."² Thus, a law of toleration, if just, creates a "right to be tolerated." However, the juridical good it protects will never be the bad action: it may be some good of society, such as public peace, or some individual good common to all, such as freedom, and *per se* the *good* free action. The bad action is not the content of the right, nor what creates the right. One can never speak of a "right to act badly" nor of a "right to act badly." The bad act is protected only *per accidens*.

b) As for the reason

When authority does not prevent an act, 1° sometimes it *approves it*: in this case, it is a non-impediment based on a positive authorization, already analyzed; 2° sometimes it *refrains from judging it*: the permission is simply negative; 3° sometimes it *disapproves of it*: this is the *permissio negativa mali*, the to-

⁷⁸ Examples: [I] in natural law: the right to marry at marriageable age; [11] in ecclesiastical law: the right to go to church during the week; [I11J in civil law: the right to marry after 18 years of age; [IV J in acquired law: as to house M, the right of the owner S to move into house M.

Examples: [I] in natural law, the right not to marry; UH in ecclesiastical law, the right not to go to church during the week; [HH in civil law, the right not to marry even after 18 years of age; UVJ as to the right to the house M, the right *not to move in*...

Cf. MEYER, Th., 1 (1906), 366, N° 454: "I. *Negativa licentia*, quæ per se aliud non importat quam absentiam positivæ prohibitionis et eatenus aliqua facultas moralis est, cum veri nominis jure confundi non debet".¹ *Ibid.* continued: "Et sane ejusmodi facultas negativa per se spectata nil continet, quo alienæ voluntates positiva morali obligatione in ejus obsequium obstringi intelligantur."

#Ibid. at the end: "Sæpenumero tamen et licentia vim juris habet, quoties nempe *positivo* aliquo jurisdictionis actu concessa fuerit." By the word "positive" it is meant to mark that there is a positive act (a position of law, and not mere abstention) of the legislator, the famous "legal tolerance", superior to the "de facto tolerance", simple "absence of legislative act." *l'érance in the proper sense*. Nevertheless, in all three cases, it at least approves the non-impediment of this act.

8) The level of authority that allows

Things will become more complicated if authority I, not only does not prevent the social action or omission A of S, but also does not give other subordinates D, D', D"..., of I (including instances or authorities I', I'', I'''..., inferior to I) the right-affirmative permission to intervene in the action A of S. And this is the case - as we have said - when authority I lays down a *law of non-obstruction*. Hence the need to study the influence of the arrangement of these levels of authority on permissions and on the legal order. Depending on the authority that grants it and the meaning of this "collation", the right-permission is *divine* or *human*. Here the question arises as to whether or not the decisions of one level of authority conform to another.

1) Case of positive authorization

An affirmative moral permission, and *a fortiori* an affirmative permission-right, in order to be legitimate, presupposes the moral lawfulness of the permitted action.⁶⁵ Thus, human affirmative permission-rights have limits imposed by divine law, depending on whether or not they conform to that law.

a) The case of non-conformity. It happens that men authorize in an approving way immoral acts, forbidden by the divine law. In this case, the authorization is null as positive (it can keep a value of tolerance, provided that it does not attack the right of another subject).⁶⁶ We will see it, on the contrary, according to the DDHC (= Declaration of the Rights of Man and of the Citizen, 1789), must be considered allowed all that is not contrary to the civil law, expression of the general will. This is law in the amoral or rather immoral sense,⁶⁷ for example the "right" or even the "legal obligation" of pharmacists to sell anti-conceptual or even abortive substances. Such a "purely civil" or "positivist" law is in *contradiction* with natural morality. It has no legal force.

b) The case of conformity. [If, on the other hand, humans positively authorize acts already positively authorized by God, they are merely passing on the divine (natural, revealed) law, *recognizing* existing affirmative rights. If they positively authorize acts that are indifferent in themselves, left to the discretion of the human legislator, they *create* affirmative rights: the right to drive on the right in France (on the left in England).

2) Case of negative permission

Where the problem becomes even more complicated is when the act A of the right-holder S is *forbidden* by the higher instance I (i.e. it has no positive authorization from I). In particular, if I is God, it is an *immoral* act. To cut a long story short, we place ourselves directly in the case where, in spite of everything, I wanted to negatively permit (= tolerate) this action A of S. Hence two figures :

⁶⁵ Cf. 0760.13. PIE XII. 1953.12.06: Alloc. *Ciriese*; A4S. 798; *DPPIeXII*. 614; *PIN* 3038.

⁶⁶ Cf. 1177. JOHN PAUL H, 1987.12.18: at the study congress on "the right to life and Europe"; *IGPII* 10/3 (1987). 1445-6; *ORLF*, 1988/4, 5; 1222. JOHN PAUL II, 1994.11.12: at the Symposium promoted by the CDF: *OR*, 1994.11.13, p. 4, §3,3; and 1223. JOHN PAUL II. 1995.03.25: *Encycl. Evangelium vite*; esp. 71, especially the end (quoting *Pacem in terris*); *OR*, 1995.0331,9,6. LEV / Médiaspaul, 107-108: "Legal tolerance of abortion and euthanasia can in no way be based on respect for the conscience of others, precisely because society has the right and the duty to protect itself against abuses that may occur in the name of conscience and under the pretext of freedom. See also no. 72. The principle of the invalidity of the law is repeated in no. 90.

According to liberals and atheists, this is the only kind of right. The *Syllabus* condemned this ideology: Prop. 39; 56; 59; 60; 61 = *DSchHii* 2939; 2956; 2959; 2960; 2961.

a) "For example, God does not prevent adulterous acts from occurring, but he does not confer any rights on adulterers as such; they cannot therefore impose anything on others; II] but it is then necessary to examine what instance I', inferior to I, does: IA| sometimes forbids or even represses A : S still has no right to assert; Bj sometimes I' does not prevent A: it is tolerance; we shall limit ourselves to the case where this tolerance can be legitimate (it cannot be if it infringes a fundamental right); 111 if it is a *de facto* tolerance, S still has no right; [2] but if it is a *legal* tolerance, provided for example by civil law, S can assert before the incompetent human authorities a "civil right not to be prevented from acting badly. "*> At least it will not be in any way that he can be prevented from doing so (wrong)."⁷

b) Another case, I (the superior authority) could have wanted *in addition* itself to establish a *legal tolerance* for a certain type of actions and/or circumstances; and thus (we have just explained it for the civil legal tolerance) not to give *to the other subjects, to the other instances, inferior to the authority I in question*, any right-permission " to prevent and to repress what is erroneous or false "" in this act (or not act) of the *subditus* S, however disapproved. The civil legislation has only to ratify this last "right not to be prevented." Two cases arise:

(I] I' or D would have *a priori* the *right* to prevent A, but in such a situation it would be *imprudent* for D *to use* this right. So D does not have the *moral permission* to prevent A at the time, although he has the *a priori right* to do so.

(II] But it may also be that I has decided that I or D *is not a legally competent body to prevent* or punish a particular act A: | A J sometimes because the body I reserves the prevention or punishment to *itself*. Thus, for example, although God does not give anyone objective permission not to be baptized, no one has the right to compel a man to profess the faith, the unbaptized even having a right to demand that he not be compelled. And

⁸⁶ Cf. BAUCHER, 1926, col. 701.

⁸⁷ This cannot be done by *active coercion*; but the question of *passive resistance* remains open. "0760.15 PIE XII, 1953.12.06, analyzed later.

Similarly, there is traditionally no right to punish the religious error of the Jews as such, God reserving to himself the right to judge the matter in eternity; [B] but sometimes I reserve to one authority I' the juridical right-permission to punish, without conferring this right on other authorities I", I'", etc. For example, [11 in the civil order, if a private individual surprises a burglar in his home, the burglar may deserve five years in prison, but the private individual does not have the right-permission to lock the criminal up for three years in the cellar: this private individual is not the authority I', competent to ensure the punishment;⁶⁸ [2] in the ecclesiastical order, at the Council, the Fathers often contradicted each other. So at least some were wrong. None of them (it goes without saying) had "the right to say errors". But in relation to their colleagues, they had the right not to be interrupted or molested, as was noted in the aula; (3) thus one can have a right before one authority (e.g., the State) and not before another (e.g., the Church). S can argue to the *other subjects D that the latter have no right to prevent him from acting*. But then, we have left the question of the relation between authority and action of the subject ("right-permission"), to enter into that of the relation of the subject with the other *subditi* of the same authority, the point of view of the "right-requirement".

0.2.3. The personal right or right to claim: *ius exigendi*

The right-requirement, considered in the contemporary culture as the subjective right in the most proper sense,⁶⁹ is thus a power of our friend S on realities to be provided by others, which creates a *relation* of creditor to debtor between S and instances I' (inferior to I) or subjects D' :

"... the personal right or, better, the right of claim, confers upon a person a power directly connecting him with another person and enabling the former to require the latter to do or refrain from doing something."⁷⁰

The right-requirement thus aims at the action or non-action of the 2^e person (the "passive subject"). The objective right, in the sense of *what is required*, is the operation or abstention of the passive subject. This action or non-action of the 2^e person can aim in its turn at the action or non-action of the 1^e . There can thus exist a right of the 1^e to require from the 2^e to let it act. Such a right should not be called a "right to act", of which

the object would be the subject's action, which would evoke a positive authorization, but a "right not to be prevented from acting", which designates a purely negative right-demand, whose object is *the non-action of others*. That the right is relative to the action or non-action

⁶⁸ Cf. HARRISON, 1989.05 'Recension de LEFEBVRE Marcel. M', 1987, 197.

⁶⁹ See RODRIGUEZ-MOLINERO, 1989, 524.

⁷⁰ TONNEAU, 1935, 764 [emphasis ours]. See also MEYER, Th., I (1906), 382. LUCIEN, 1990, 333 concluded: "The foregoing shows us that the distinction between the right to act and the right not to be prevented from acting is purely a matter of reason, from the strict point of view of law. On the contrary, a real distinction can be made between negative and affirmative *legal duty*" (with quotation from MEYER, I (1885), pp. 385-386J). We think we have shown that the A. is mistaken. Indeed, in the case of a right to act, there is a right to positive benefits intended to help one act; whereas in the case of a right not to be prevented from acting (by coercive means, restrictively specifies *DH*), one is only entitled to negative benefits, consisting in abstentions from coercion. This point was also missed by DAVIES, 1992, 15 and 18 (contra MURRAY, 1966 (ABBOTT), 678, note 5 on *DH* 2]. Thanks to the distinctions that we have made, we believe that we also escape the criticism of LUCIEN, 1990, 292 against Fr. D.-M. de SAINT-LAUMER, a) because in the XIX^e neither popes nor liberals knew well how to distinguish the affirmative right-permission from the negative right-requirement (cf. SOLER Carlos, 1993a, 240-241), a distinction that is now classic (cf. e.g. SEGARRA, 1966,20-21).

of the other person follows from the intersubjective aspect of the right, already noticed by St. Thomas, who wrote Thomas, who wrote:

"The matter of justice is the external operation as itself, or the thing of which it is [or: there a] use has a correct proportion in relation to another person",⁷¹

where it is question of the essential relation of justice to the creditor, but also of the fact that the object of justice is an action of the debtor. Or again:

"Justice is concerned with certain external operations, namely, distribution and exchange, which are really the use of certain external realities, either of things, or of persons, or even of services: 111 of things, of course, as when someone takes from or returns to another the thing which is his; [2]of persons, on the other hand, as when someone does injustice to the very person of a man, for example by striking him, or by insulting him, or when he shows him reverence; (3 j of benefits finally, as when someone in a just manner demands from another or returns to another a benefit,⁷²

Note the relation to the person [2], and in the last proposition [3], the notion of *exigency*. This *ius exigendi ab alto* can be: *ius exigendi rem* (or *ius ad rem*): the right to demand that another provide a material reality (for example, a family allowance); or *ius exigendi operationem*: the right to demand that another perform a certain action.⁷³ "The *ius ad rem* is the right to obtain the *ius in re*."⁷⁴ In fact, the *ius ad rem* is a power of a person over a thing, which founds a power of this person over - and thus a relation with - another.⁷⁵ In the second sense, the *ius exigendi* does not directly concern a thing, nor the *operationes propriae*, the actions A of S, the creditor, but the operations of another (of D, D', etc.), the debtor, *operationes alienae*. Basically, in both cases it is a question of demanding a performance from another. This is thus subdivided either I) according to the type of benefit (negative or positive) which is the *object of the right-demand*, a benefit by which D shows himself to be just, a right seen from D's side; or II) according to *the object of this benefit* (and no longer the object of the *right*), a material good B or an action A, *of the creditor S* (and no longer of D).

I) The right-requirement seen from the side of the debtor, or passive subject of the right: positive or negative benefit

The benefit requested from D by S can be A) positive or B) negative.

A) Right to affirmative performance

When the performance required of D by S is positive, what is required of D is to *act*, the right-requirement is said to be "affirmative. It is called *ius exigendi ab alio actionem* or *praestationem positivam*, or *activant*. It is, for example, the right of S, after buying a house M from D, to demand that D provide M, etc.: the positive realities here demanded are not the same as the positive realities in the case of D. The positive realities required here are M,

⁷¹2-2,58.10. Cf. likewise 2-2,58,1 Le: "materia iustitiae est operatio exterior secundum quod ipsa. vel resqua per eam ulimur, proportionatur alteri personae, ad quam per iustitiam ordinamur".

⁷² Our translation of : 2-2,61,3, c. In the following, it is still a question of actions as a matter of justice, therefore as a right, that is to say as a thing due,

⁹⁻¹ We gather here under a single idea (right to an operation) two ideas of Saint THOMAS (right to honor, towards a person, and right to a work).

⁷⁴ MERKELBACH, No. 158.

^{9->} TONNEAU, 1935,764 doubts, moreover, that a juridical relation can exist between a person and the thing that is the object of his right. S. THOMAS constantly reminds us that justice is a relation to others (and not only a relation to the right object of justice) (cf. 2-2, 57, 1, and *passim* thereafter; 2-2,58,2; 3.85,3. He frequently uses the intersubjective character of justice: "iustum est inter suales... iustum autem secundum quid dicitur quod est inter illos..." (corpus) or again (ad 1): "iustitia est *ad alterum*", the right, power relative to its object, and correlative of justice, is thus also between two people.

the keys, and the action of providing them. In the religious order, one can think of the right of the Church to require that its faithful go to church on Sunday or to require that the faithful pay the Church's penny.

B) Right to demand a negative benefit

When the performance required of D by S is not to act, to abstain, to omit, the right-requirement is said to be "negative",⁷⁶ *ius exigendi præstationem negativam, passivam, or ius exigendi omissionem*.[^] S, the owner of M, can henceforth require any D not to interfere with his own enjoyment of M.

II) The right to demand seen from the creditor's side, or active subject of the right

The performance owed by debtor D may in turn relate, in the case of creditor S, to two types of object: A) property or B) acts.

A) Debtor's performance of creditor's property

If the performance required of D concerns S's property, it can be either 1) to provide a good owed to S: this is what is required by the *ius ad rem*; this is the case of claimed property; it is also the case of social rights; the right-requirement is here affirmative in its object; 2) or to refrain from interfering with S's property: this is what is required by the *ius in re*: the right-requirement is here negative in its object. On the other hand, even in these cases of real rights, what is to be defended is not so much a thing, as the relation of *dominium* of the active subject with this thing. And possession itself has the aim of protecting certain actions of enjoyment of the subject, and this, in order to leave S the freedom necessary to accomplish his duties. And, conversely, the right to freedom of a subject S can be considered as a kind of "property right of S over his *acts*".

B) Debtor's performance of creditor's acts

If the performance demanded of the debtor D relates to an act A of the creditor S, what is required by such a right-demand, what D must provide in court is not the action A of S, but a performance P of his own." This performance P can influence only the transitive actions of S, whose *external effects* alone are controllable by others. The latter can take various attitudes with respect to these transitive acts: it can happen that they intervene positively to favor S's actions, or on the contrary to hinder them, or even to force them; it can also happen that they omit to intervene, leaving these acts of S free (to exist or not to exist), in the sense of the freedom of external coercion.*The law being made to protect the free action of S, it may therefore happen that some of these attitudes of D concerning the acts A of S become the object of a right-requirement of S, without one being able to say in strict terms that the acts A of S are themselves objects of right of S. Then, two cases arise, because it may be a question of requiring D: 1) either to help S positively to perform (or to

⁷⁶ On this distinction, cf. BuGNIfeRES, 1987.12; 1988.01, 1-3; 1988.05; 1988.06, 4-7; SAINT-LAUMER, 1988.05; 1988.06.2348. Before them: BROGLIE, 1964.34-35 and FUENMAYOR, 1974.35-37.

^{9K}Cf. the presentations of SCHIFFINI. 1891,1,321; or again: TAPARELLI, 1840, 143-144.

omit) acts A: this will be a positive or affirmative performance for D, and thus, it will be a right-requirement for S, called affirmative; 2) or to refrain from interfering with S's acts A, (positive or negative): D's performance will be negative (an omission), and S's right-requirement will then also be qualified as negative. Let us detail these two cases.

1) *The right to a positive benefit from D concerning an act of S*

As has been said, a right of action is said to be *affirmative* when it has as its object *positive* performances, that is, actions - and not simply omissions - by the debtor. Let us apply this to the case where D has to provide a service which itself concerns an act of S.¹⁰ * It is clear that such an *affirmative* right of demand can only be conceived when the act of S which is to be helped or supported, or to which it is necessary to submit, is a *good* act, and therefore the object of a *positive authorization* to act, or even a *mandate to act*, coming from an *authority superior* to both S and D. Here, then, we are faced with a real "right to act" (respectively "right to abstain from acting"): in the strict sense, it is an affirmative permission to act (resp. to abstain from acting); but, as we can see, it implies a right-demand, also affirmative, in the sense of a right to positive benefits from others.

On the other hand, it also implies the right-demand to negative benefits. From an "affirmative right-permission to act/not to act" necessarily follows a "right-requirement not to be prevented from acting/forced to act",¹⁰²

* ⁹ Indeed, a subject S cannot claim *his own actions* from himself (this is clear), nor even from others: he is the only author of them; as soon as he makes them, they are his; it is not others who will make them, nor that they will be *his*. This is perfectly obvious for his immanent operations of intelligence and will, which totally escape the control of other men. Cf. JIMÉNEZ-URRESTI, 1958.103, N° 164.2.

* **** On this distinction, cf. e.g. BAUCHER, 1926,706. The *raison d'être* of law is to protect man from this type of intervention: CATHREIN, 1932,207, § 282.

* -** For example, the right of the teacher (S) to demand that his students (D) attend his class (P), the right of the Church (S) to demand that the faithful (D) come to Mass on Sunday (P), the right of the parents (S) to have good schools (P) created for them, etc.

* **In some texts, the term "right to act freely" (*activitatem libéré exercendi*) is used, a synthetic expression which combines right-permission and right-requirement, but is confusing. In other texts, it is a question of

One of the essential tasks of our book will be to show that the reciprocal implication, on the other hand, does not apply in a general way. Thus, there may well exist a "right to not be prevented/coerced", without a corresponding "right affirmative permission".

To begin to see this, let us now turn to the negative rights requirements.

2) *The right to demand a negative benefit from D for an act of S*

In this context, a right-demand of the creditor S is negative if its object is a benefit P of D consisting of an abstention from intervention in an act (itself positive or negative) of S.

Let us take some examples: the right of unfaithful parents (S) to demand from other persons and instances (D) not to interfere (P) with the religious and moral education they give to their children (A) (whether they give them any or none); the right of the owner (S) to demand that other persons and authorities (D) not prevent him (P) from enjoying his property (whether he actually uses it or not) (A); the right of the unbaptized (S) to demand that Christians (D) not force him (P) to embrace Christianity (A).

The examples we have given (and which we will detail later in this book) suggest that

one can have such a negative right-requirement without it being necessary for the unconstrained or prevented act to be objectively good. *Thus*, it is not necessary (though it may be) that the acts (or omissions) of subject S be otherwise the object of an affirmative right-permission, or positive authorization, let alone a mandate to act.

We shall see that such a negative right-requirement obviously protects *per se* (= directly) good actions, objects of positive authorization, and *per accidens* (= indirectly) actions not covered by it. In our property example, S's right over M does not mean that S is morally right to do anything within M. But S has the right to demand of any man D, not to prevent him from acting (or not acting) within the limits of M. Thus, S has no permission to get drunk in the garden of his house M, but he has the right to demand from his neighbor D not to prevent him from doing so (provided he respects certain limits, e.g. the resulting nightly disturbance)."¹

Our second book, by studying *DH*, will show - but we can already anticipate - that it is of this one type, the right to a negative benefit concerning acts of S, that the right to religious freedom belongs, by definition:

of "permission to act without impediment", where two ideas are again closely intertwined and should not be confused. Cf. e.g. 0616.19, discussed below.

Cf. SCHÜLLER, 1965, 108, makes the correct distinction: "die Bedeutung einer positiven Ermächtigung zu einer Handlung" and "die Bedeutung eines Nicht-gehindert-werden-DÜrfens an einer Handlung" and adds that the first leads to the second, but not vice versa.

right of every man (S) to demand of every human power (D) that he not be coerced or prevented (P) from acting in religious matters (A), under certain conditions. The result in S of this forbearance, freedom from coercion, is the central object of this book. And in such a case, it is no longer rigorous to bet on a "right to act" in the sense of a requirement, nor on a "right to act" in the sense of a permission. Such a negative requirement will have to be properly designated, as in *DH*, "right not to be compelled / prevented from acting"⁴ Contemporary legal language contains a certain vagueness that should not delude us."⁵

On the other hand, we have just noted that such a negative right can be further subdivided into two cases, since it can be a) a "right not to be compelled to act" and/or b) a "right not to be prevented from acting".

a) The right not to be compelled to act

The fact of *compelling* S to perform a positive act A is called *positive compulsion*. Thus, it may first be a question of requiring others not to positively coerce the active subject S to act in such a way."⁶ And a certain "right not to be coerced" in religious matters constitutes the 1^{er} element of the essence of the right to the RL.

b) The right not to be prevented from acting

The fact of *preventing* S from doing an act A is called *negative coercion*, because it makes a negative action (omission) exist in S. It can thus also be a question of S, the active subject, demanding that others omit to prevent him from acting positively in such and such a way."⁷ This is the "right not to be prevented", the 2nd element of the essence of the right to RL.

3) *The conflict of two rights-requirements concerning the acts of S and D*

In the case of coercion, as in the case of impediment, a new problem arises. Let us suppose that a certain number of subjects are granted a certain negative right to be unrestrained. For simplicity's sake, we shall confine ourselves to examining the case where it is a right not to be prevented from acting (we could do the same for a right not to be constrained

¹ "M Cf. LEHEN, 1.1 (1876¹). 323, § 208.

⁻³ Cf. BROGUE, 1964, which BARS, 1964.11,9 praises in this respect. For example, we have seen the danger of a slide being realized in relation to the Veil law (1975), of pure decriminalization of abortion, and thus claiming to create (only) a right not to be prevented by legal means from killing a human embryo or fetus. From this, we have arrived at other laws positing an affirmative right to abortion, now positively supported by reimbursements, publicity, favorable advice, demonstrations, obligations on hospital services to perform it, not to mention heavy convictions of those who peacefully try to prevent it, etc. See ÚNORIO, 1995.02.08.

¹⁰⁶ In our examples, it will be S's right to demand that he not be compelled to live in M, or that he not be compelled to leave M; in the religious case, it will be the right not to be compelled to attend a ceremony of another religion or an atheist meeting; or, conversely, not to be compelled to receive baptism.

^{19?} Thus it is S's right to demand that any D let him enter or leave his house M and walk around as he pleases; and in the religious case, it will be the demand that he not be prevented from going to Mass on Sunday.) To reduce the problem to an easily usable expression, let us further suppose that there are only two subjects: X and Y, and that they have been given the *same* negative right. Let us now suppose that Y claims this right not to be prevented precisely because of his action consisting in preventing X from acting in the domain where they have both been given such a negative right. We will be faced with a conflict of rights: X will have the right not to be prevented from acting, but Y will claim the right not to be *prevented from preventing X from acting!* It is immediately clear that the very definition of such a right must include a limitation clause containing at least the condition that Y will be able to use his negative right only if, in using such a right, he does not seek to prevent X from acting, that is, if he does not attempt to prevent X from enjoying his right. Any negative right of this kind (the kind we call "right of freedom") is thus by definition limited by the right of freedom of others. This is what we will call the reciprocity clause throughout this book.

Summary conclusion of chapter zero

1 The reality protected by the right to freedom is an action of the creditor; but this action is not the object of the right to freedom itself, which is the object of the debtor's performance. In the case of a right of liberty, this last performance is an abstention: not to compel, not to prevent.

2 While forbidding S to take A-actions, an instance I may also have forbidden (= given no moral permission, or even no right-permission) to any D or to any D to prevent/compel such A-actions of S.¹⁰⁴ If I has withdrawn from any D the right-permission to intervene on S, then, if D intervenes, it violates a right of S: no one can intervene on another without a particular right.

3 A right to freedom of action, especially if it is a natural right, is necessarily limited in

its exercise at least by the same right in others.

4 A right to civil freedom to act, i.e. to be unconstrained, is not equivalent to a right to act. The latter implies not only moral permission to act, but also the requirement of positive benefits from others. This is not the case with the right to freedom. They are therefore different not only at the moral level, but also at the legal level. Finally, if one has a right to act, one necessarily has a right to freedom to act, but the converse is not true.

In studying further the text 0789. of Pius XII, we will note that the one who acts on the actions of S without having the right to do so commits an injustice towards S. i.e. injures a right of S (in this case the right to freedom).

FIRST BOOK

POSITIVE THEOLOGY

THE PREDICATE OF THE QUESTION

**TRADITION AND
MASTER'S DEGREE PRIOR TO DH**

INTRODUCTION TO THE FIRST BOOK

RECALL the question posed at the beginning of our work: _____

Is the *DH* doctrine on the right to social and civil freedom in religious matters a homogeneous doctrinal development carried out by the authentic magisterium in the Tradition of the Church? _____

After having provided the key notion of the whole work (chapter zero), it is important to study the predicate of the question posed (Book I), which presupposes the understanding of the *notions* it presupposes (preliminary section); then the study of the *real content* aimed at by these notions, a study broken down into two parts: I) "Tradition" and II) "Magisterium prior to *DH*".

PRELIMINARY SECTION.

BASIC NOTIONS ON "TRADITION", "DEVELOPMENT", AND "MAGISTERIUM"

Lhe predicate of our question contains the complex statement of "homogeneous doctrinal development in the Tradition of the Church through the authentic magisterium". To understand it requires the study of the concepts of "Tradition" and "homogeneous doctrinal development" (Chapter 1), and then of "authentic magisterium" (Chapter 2).

CHAPTER 1.

1. "TRADITION OF THE CHURCH" AND "HOMOGENEOUS DOCTRINAL DEVELOPMENT".

The IDEA of Tradition seems to many to be opposed to that of doctrinal development. In the modernist (heretical), evolutionist or transformist conception,¹⁹ doctrine passes successively through assertions that are not only different but also contrary to each other, depending on the evolution of the religious feeling of the believing community according to the times. On the other hand, Catholic doctrine teaches a homogeneous doctrinal development by passing from the implicit to the explicit, from the obscure to the clear, from the direct to the reflexive, and occurring in the very act of transmitting the faith, notably by the authority mandated by God, the authentic magisterium. In order to understand this phenomenon, it is important to recall some truths about Tradition (1.1.), and then to turn to the effect of its dynamism, which is the development or "disenfranchisement**⁰ homogeneous" (1.2.).

1.1. The Tradition of the Church according to the Magisterium

Since we are simply providing our overview here, we must limit ourselves to the main texts of the Magisterium,** namely the Council of Trent, developed by Vatican I, Pius X, Pius XII, Vatican II, and finally John Paul II.

The decree of Trent promulgated at the 4^e session (April 8, 1546) states:

"The Holy Ecumenical and General Council of Trent, rightly assembled in the Holy Spirit,... sees clearly also that this truth and this rule [of the Gospel] are contained in the written books and in the unwritten traditions which, received by the apostles from the mouth of Christ himself or transmitted as from hand to hand by the apostles under the dictation of the Holy Spirit, have come down to us. Therefore, following the example of the Orthodox fathers, the same holy council receives and venerates with equal piety and respect all the books of both the Old and New Testaments, since God is the unique author of both, as well as the traditions themselves concerning both faith and morals, as either coming from the mouth of

¹⁹ See PIEIX, S., 1907.04.17: Alloc. consistoriale *Accogliamo:DPPIeX*, 1,412.

^{*} -For the expression, cf. JOURNET, 1954,15.

^{*} To broaden the perspective, we have read CONGAR Yves Marie-Joseph, O.P., *La Tradition et les traditions. 1 : Essai historique ; 11 : Essai théologique*, Paris, Fayard, coll. *Les grandes études religieuses*. 1960 & 1963, 300 + 364 p. (More a meditation, an essay, than a formal treatise.), and its more accessible and structured summary: 1D.. *La Tradition et la vie de l'Église*. Paris, Fayard, coll. *Je sais, je crois*, 1963. 130 p. HOLSTEIN, SJ, *La Tradition dans l'Église*, Paris, Grasset. 1956 seemed rather boring to us. We are obliged to pass over excellent works, either overall, such as MICHELAlbert, art. " Tradition " in *DTC*, 15.1252-1350 (authoritative), or particular, such as MÉNARD Étienne, O.P., *La Tradition. Revelation. Scripture. Église selon saint Thomas d'Aquin*, Bruges-Paris, DDB, 1964, 272 p.

Christ or dictated by the Holy Spirit and preserved in the Catholic Church by a continuous succession" (*DzSchHü* 1501).

Thus, the fullness of Revelation, called "Gospel", Christ reveals it, entrusts it to the apostles and then transmits it to all, in writing (the New Testament), and orally (unwritten traditions or Tradition in the strict sense). Scripture and Tradition have the same value in the eyes of the Church, Christ and the Holy Spirit being their authors. They have as their object faith and morals. Tradition is continuously preserved by the Church.

Vatican I quotes the above-mentioned text from Trent. He adds the necessity of Tradition and the Magisterium to interpret the Bible correctly.¹¹² We will come back to his teaching later on, in connection with development.

In condemning the modernists in the decree *Lamentabili* of the Holy Office and in the encyclical *Pascendi*, St. Pius X rejects, among other things, their conception of Tradition, which is based on a false philosophy and on an erroneous theology of Revelation,¹¹³ and of the mutability of dogma.*---

Pius XII expressed himself on the subject in the encyclical *Humani generis* :

"It is also true that theologians must constantly return to the sources of divine Revelation; it is their task to indicate in what way what is taught by the living magisterium¹¹³ is found, explicitly or implicitly, in the Scriptures and divine 'Tradition'. Moreover, both sources (*uterque...fons*) of revealed divine doctrine contain treasures of truth so numerous and so great that they are never really exhausted (*exhauriatur*). That is why, by the study of the sources, the sacred sciences are constantly rejuvenated, while speculation which neglects to go beyond the study of the sacred deposit, experience has taught us, becomes sterile. For this reason, what is called positive theology itself cannot be reduced to the rank of a merely historical science. For God has given to his Church, along with these sacred sources we have mentioned, a living Magisterium to illuminate (*illustranda*) and clarify (*enucleanda*) what was contained in the deposit of faith only in an obscure and, so to speak, implicit manner. The divine Redeemer did not entrust the authentic interpretation of this deposit to each of the faithful, nor even to theologians themselves, but to the Church's magisterium alone" (*DzSchHü* 3886).¹¹⁶

Vatican II, in its dogmatic Constitution *Dei Verbum*, offers us a synthesis. *DV*¹ explains how God revealed himself in Christ and made provision for the honest transmission of the gift of Revelation, enjoining the apostles to preach,

"This was faithfully done, sometimes by the apostles, who, in oral preaching, in examples and institutions, transmitted either what they had learned from the mouth of Christ by living with him and seeing him act, or what they had learned from the suggestions of the Holy Spirit, and sometimes by these apostles and by men around them, who, under the inspiration of the same Holy Spirit (2), recorded the message of salvation in writing.¹¹⁷ But in order that the Gospel might always be kept intact and alive in the Church, the apostles left as their successors the bishops, to whom they "entrusted their own teaching function" (3). "J"¹⁸

*DV*⁸ continues the idea by describing the precept and the necessity of the uninterrupted succession of transmission. Then comes the determination of the content (faith and morals, the being of the Church). Finally, the existence of a real development of "the perception of things as well as the words transmitted" is affirmed. This passage will be found in John Paul II. It concludes by highlighting "the teaching of the holy Fathers" as an attestation of "the life-giving presence of this Tradition", necessary in relation to Scripture.¹¹⁴¹⁹ *DV* 9

¹² *Dogmatic Constitution *Dei Filius*, Chap. 2; *DzSchHü* 3006.

¹¹³ Note this expression, used several times by PIE XII, going back at least to Leo XIII, and explained in CCC 85. It is already found in various classical authors, such as FRANZEUN, 1882 or BAINVEL, 1905.

¹¹⁶ In n°3884, PIE XII affirmed that it is to the Magisterium that Christ entrusted the whole deposit. Scripture and Tradition. 114². Cf. JOHN PAUL II, 1988.04.08: Letter *In questo periodo*, to Card. J. RATZINGER; AAS, 1988, 1121-1125 (here 1123); *Fideliter*. n° 63 (May-June 1988), 4.

¹¹⁷ 22 1184. JOHN PAUL II, 1988.07.02: Apostolic Letter. *Motu proprio Ecclesia Dei*; AAS, 1495-1498; DC, 788-789.

¹¹⁸ 23 BIGNIERES, 1998,23.

then outlines these relationships:

"Holy Tradition, on the other hand, carries the word of God, entrusted by Christ the Lord and the Holy Spirit to the apostles, and transmits it in its entirety to their successors, so that, enlightened by the Spirit of truth, they, in preaching it, may guard it, expound it, and spread it faithfully: from this it follows that the Church does not derive from Sacred Scripture alone her certainty on all points of revelation. For this reason, both are to be received and venerated with equal love and respect.¹²⁰

In April 1988, while Cardinal J. Ratzinger was preparing a memorandum of understanding with the FSPX, John Paul II wanted to renew his support in an official letter that specified the concepts at stake:

"However, it is not the "old" as such nor the "new" per se that corresponds to the exact concept of Tradition in the life of the Church. This concept refers, in fact, to the Church's enduring fidelity to the truth received from God, through the changing events of history. The Church, like the householder of the Gospel, wisely draws "from her treasure the new and the old" (cf. *Mt* 13:52), remaining in absolute obedience to the Spirit of truth whom Christ has given to the Church as her divine guide. And this delicate work of discernment is carried out by the Church through her authentic Magisterium (cf. *LG* 25)."^{** *2}

Doctrine taken up again two months later in *Ecclesia Dei*.m Fr. Louis-Marie de Blignières, will note that this *Motu proprio* is "an authorized meditation on the notion of Tradition of which it underlines the two dimensions: connection with the living Magisterium (no. 4), continuity (no. 5a and b)."^{**} "Pope John Paul II addresses himself to the whole Church, as pastor and doctor of all the faithful. In it he determines (§ 1) a dogmatic fact, namely that the four episcopal ordinations conferred on June 30, 1988 by Mr.^{gr} Marcel Lefebvre, not only *without* papal mandate (can. 1382), but also *against* the express will of the Supreme Pontiff, constitute a schismatic act."^{*24} Then he goes back to the cause of this act (§ 4):

^{** *7} See also PAUL VI, PONTIFICAL BIBLICAL COMMISSION, 1964.04.21: Instruction *Sancta Mater Ecclesia*, on the historical truth of the Gospels, at § 2, especially *DzSchHii* 4406.

^{1*} Notes: (2) cf. COUNCIL OF THIRTY, I.c. [= sess.4, decr. *De canonici? script: DzB* 783 (*DzScl* 1501) - VATICAN Council I. sess. 3, Const, dogm. *De fide calli*, cap. 2. canones *de revelatione: DzB* 1787 (*DzScl* 3006). (3) S. 1Renee, *adv. Hier*, III, 1; *PC* 7.848; ed. Harvey, 2,9.

^{** *9} Note (5): cf. VATICAN COUNCIL I, Const. Dogm. *De fide cathol*, cap. 4: *de fide et ratione: DzB* 1800 (*DzSch* 3020).

¹²⁰ Notes: (6) cf. DETRENT CONCILE, sess. 4, I.c.: *DzB* 783 (*DzSch* 1501).

"At the root of this schismatic act is an incomplete and contradictory notion of Tradition. Incomplete because it does not sufficiently take into account the *living* character of Tradition, which, as the Second Vatican Council clearly taught, "originates with the apostles and continues in the Church under the guidance of the Holy Spirit : Indeed, the perception of things as well as of the words transmitted increases, either by the contemplation and study of believers who meditate on them in their hearts, or by the interior intelligence they experience of spiritual things, or by the preaching of those who, with episcopal succession, received a certain charism of truth."¹¹⁵ But it is above all a notion of Tradition that is opposed to the universal Magisterium of the Church, which belongs to the Bishop of Rome and to the body of bishops, that is contradictory. No one can remain faithful to Tradition by breaking the ecclesial bond with the one to whom Christ, in the person of the apostle Peter, entrusted the ministry of unity in his Church.] a) The result of the movement promoted by M^{gr} Lefebvre can and should be an occasion for all the Catholic faithful to reflect sincerely on their own fidelity to the Tradition of the Church, authentically interpreted by the ecclesiastical Magisterium, ordinary and extraordinary, especially in the Ecumenical Councils, from Nicaea to Vatican 11. From this reflection, all should draw a renewed and effective conviction of the need to deepen their fidelity to this Tradition, refusing all erroneous interpretations and arbitrary and abusive applications in doctrinal, liturgical and disciplinary matters.¹²⁶

^{*24} The *Motu proprio* then refers to can. 751 and 1364, § 1, on schism.

¹¹⁵ Note 5 refers here to "Vatican Council II Constitution *Dei Verbum*, no. 8; cf. VATICAN II Constitution *Dei Verbum*, no. 8; cf. VATICAN I, Constitution *Dei Filins*, chapter 4: *DzSch* 3020".

Conclusion. Tradition is therefore neither fixist nor progressive, it is living. Thus, like a person, it remains substantially identical, while taking on quite diverse appearances according to the ages, and it will grow richer until the Parousia. It is therefore necessary neither to adhere to totally new assertions, nor to reject a certain homogeneous doctrinal development sanctioned by the magisterium.

1.2. The homogeneous doctrinal development

What then is meant *in law* by a "homogeneous doctrinal development" (1.2.1.)?¹¹⁶ How do the authors share the view that such a development is *in fact* homogeneous in the case of *DH* (1.2.2.)?

1.2.1. What is a homogeneous doctrinal development?

Let us present the thought of two authors who specialize in the concept of homogeneous doctrinal development:¹¹⁷ Cardinal John Henry Newman (I) and Father Francisco Marin-Sola, O.P. (II).¹¹⁸ Then we will conclude with the doctrine of faith of the First Vatican Council in this matter, taken from the thought of Pius IX (III).

I) The seven general criteria of a homogeneous development according to Blessed Cardinal John-Henry Newman

In his famous *Essay on Development...*, Cardinal Newman⁻³ - provided seven criteria for discerning a homogeneous doctrinal development from a contradiction or corruption, namely: 1° the permanence of the same type (*Preservation of its type*); here the comparison with the growth of a living being, already used by St. Vincent Lerins, supposes substantial identity notwithstanding a variation in proportions between elements; 2° the continuity of the same principles (Continuity of its principles) In this case, the comparison with the growth of a living being, already used by St. Vincent de Lérins, supposes substantial identity notwithstanding a variation in proportions between the elements; 2° the continuity of the same principles (*Continuity of its principles*) 3° the power of assimilation, the capacity of the Christian doctrine to assimilate external elements; 4° the logical coherence (*Its logical sequence*); not that all development is done by a conscious syllogism,¹¹⁹ but because there is a slow effort of clarification and harmonious ordering of truths (nothing to do with rationalism); 5° the anticipation of its future development (*Anticipation of its future*), in germ in the starting idea; thus the outcome will be "what one would have expected";³ -- 6° the conservative action upon its Past: the new developments are not made

² ?- Didactic synthesis with copious bibliography in CONGAR Yves Marie-Joseph, O.P.. *La Foi et la théologie*, Chap. 4 : *Le progrès de l'Église dans l'intelligence de la foi*, Paris, Desclée, coll. *Le Mystère chrétien, Théologie dogmatique* 1,1962,93-120.

-28 Since our aim is not to be erudite, and since our subject is different, we do not have to be exhaustive, since it would be necessary to cite many other authors and works on them, e.g. NIENALTOWSKI Henry Raphaël, OFM.Cap., *Johann Adam Miuhler's Theory of Doctrinal Development...*, Washington. The Cat. Univ. Of America Press, 1959,82 pp.

¹¹⁸ In counterpoint: GRANDMAISON Léonce de, SJ (1868-1927), *Le dogme chrétien, sa nature, ses formules, son développement*. Paris, Beauchesne, 1928', of a different opinion on the definability of the theological conclusions.

¹¹⁹ See p. 213.

by contradiction, but on the contrary guarantee the points already acquired, illustrate them, etc.*³ -⁵ ; 7° the perennality of its vigour (*Its Chronic Vigour*) : the corruptions are transitory.-³⁶

Thus, when we affirm that the *DH* doctrine on the *RL* constitutes a homogeneous development of the doctrine of the Pontiffs since Leo XIII on the inviolable rights of the human person, we mean the following: 1° this doctrine, new in its formulation, was identical to a part of the previous one, although virtually; 2° it does not call into question any philosophical principle (metaphysical or moral) or any definitively established doctrine; 3° it constitutes the assimilation, after discernment, of that part of the truth which contemporary thought on the juridical organization of society contains; 4° it is well deduced from all the principles previously known, according to a deduction catalyzed by new situations; 5° it was sketched out in the most remote times of the patristic era; 6° it leaves intact - while building on it - the doctrine of the moral duties of the individual and of societies towards the true religion and the Catholic Church; 7° it represents a definitive achievement in certain aspects.

II) The homogeneous doctrinal development by logical way in particular, according to F. Marin-Sola

Francisco Marin-Sola, O.P., in his famous treatise on *The Homogeneous Evolution of Catholic Dogma*,¹²⁰ insisted on the 4^e of the above-mentioned criteria, the logical deduction of a new truth. We can summarize in the following ten theses the extremely repetitive exposition of A. with our own comments in square brackets! 1° there is an authentic homogeneous development of the Catholic dogma; 2° this consists in the rigorous theological conclusions, obtained by way of metaphysical inclusion in the revealed major;¹²¹ (however, the development is not done only by way of logic: it is there that the exposition of A. is the weakest¹³ "); 3° the conclusion obtained is really identical to the revealed premise, although it is conceptually different from it [a presentation difficult to understand, which tends to confuse the *res* and *Vobjectum*]; 4° this conclusion is really revealed, although only virtually, even if the minor used is only a philosophical or historical proposition [the A. 4° this conclusion is really revealed, though only virtually, even if the minor used is only a philosophical or historical proposition [A. has not shown that the intervention of a natural premise does not affect the character of the adherence, which is of another kind than faith, though certain]; 5° it is the proper work of the theologian to search for such conclusions, and these conclusions are not in the nature of the theologian. |6° these conclusions are always definable by the Church [we think they are not always definable *as revealed by God*]; 7° once defined by the Church, they are of divine faith, because they are really revealed, and it is revealed also (though this revelation itself is not yet defined) that all that the Church defines is of divine faith ; this conclusion does not follow, because the clause "as revealed of God" is forgotten,

120 MARIN-SOLA Francisco, O.P. (1873-1932), *L'évolution homogène du dogme catholique*, Fribourg (CH), Œuvre de Saint-Paul, 1924*. 2 vols. 535 + 375 p. We have read in full this French translation, revised and completed, of a collection of articles published in *CiTom*.

121 In 5 different ways, which we do not have to detail.

and also because the Church has not yet defined that it is revealed of God that all the propositions which she infallibly defines must be believed *of divine faith*; and the most recent magisterium rectifies: it is a question of an assent *impelled* by divine faith, but which is not divine faith]; 8° the expression "ecclesiastical faith" is not appropriate for the assent due to such conclusions once they are defined; for the formal ground of adherence is then indeed divine faith; the name "ecclesiastical faith" should be reserved for the "human assent" due to the non-infallible teachings of the magisterium [but the accepted expression for adherence to the merely authentic magisterium is "religious assent"; and it is not a purely human assent, since it derives from a truth of faith, namely the authority of the Church, assisted by the Holy Spirit, to teach us]; 9° this is true even for dogmatic facts such as the canonizations of saints [...] if the *theological* conclusions deduced in a virtual way seem to us to be *open* to dogmatic definition, especially if theologians think them formally revealed, the truths related in a merely *historical* way (dogmatic facts, the glory of such saints) can never be defined *as revealed from God*]; 10° all the above would constitute [...] the authentic position of St. Thomas in the case of the canonizations of saints.] the authentic position of St. Thomas Aquinas and of all the theologians prior to Molina¹²² and Vazquez.¹²³ -

III) *The development after Pius IX and Vatican I*

"The Church of Christ, the vigilant guardian and protector of the teachings deposited in her, changes, diminishes and adds nothing to them; but when, with all her zeal, her fidelity, and her wisdom, she deals with ancient truths, formed in the earliest times and sown by the faith of the Fathers, she studies to file and polish them, so that these primitive teachings of the heavenly doctrine acquire evidence, light, distinction, while preserving their fullness, integrity, property, and developing exclusively according to their kind, that is to say, according to the same teaching, the same meaning, the same thought."¹²⁴

In its Dogmatic Constitution *Del Filius*, in chapter 4 on the relationship between faith and reason, Vatican I states:

"On the other hand, the doctrine of faith which God has revealed was not proposed as a philosophical discovery to be advanced by human reflection, but as a divine deposit entrusted to the Bride of Christ to be faithfully guarded and infallibly presented. Consequently, the meaning of the sacred dogmas which must be preserved in perpetuity is that which our Mother the holy Church has presented once and for all, and it is never permissible to depart from it under the pretext or in the name of a further understanding. Let intelligence, knowledge and wisdom grow and progress widely and intensely, for each one as for all, for one man as for the whole Church, according to the degree proper to each age and each time, but exclusively in their order, in the same belief, in the same sense and in the same thought [Vincent de Lérins, *Cominitorium primant*, 23, n. 3]" (*DzSchHü* 3020).¹²⁵

This text contains the two complementary truths we have already encountered: 1° on the one hand, dogma does not progress in the same way as philosophy; in particular, the meaning of dogma cannot change once it has been defined by the Church. This condemns a transformist, modernist type of doctrinal development. 2° There is a growth, through time, of the understanding of this same dogma by each person and by the whole Church, but in a continuity of meaning and thought. There is, therefore, a "homogeneous evolution of dogma", or a "disenvelopment".

¹²² According to whom the conclusions are *not* of divine faith, even *after* their definition by the Church.

¹²³ For whom these conclusions, if they are rigorous, are *already* of divine faith *before* the definition of the Church.

1-12 PIE IX, 1854.12.08: Bull *Ineffabilis Deus*. *DzSchHü* 2802, translation revised according to JOURNET, 1954, 17, note

4. One recognizes at the end the formula of s. VINCENT DELÉRINS. *Cominitoriumprinutm* 23 : PL 50,668 A.

I-° Doctrine confirmed by can. 3 (*DzSchHü* 3043).

It is within this framework that the following text from the other dogmatic constitution of Vatican 1, *Pastor aeternus*, 4 (*DzSchHii* 3070), must be understood:

"For the Holy Spirit was not promised to Peter's successors to make known under his revelation a new doctrine, but that with his assistance they should keep holy and faithfully expound the Revelation handed down by the apostles, that is, the deposit of faith."

This text is often used by certain authors imbued with a fixist conception of Tradition to draw from it the idea that the popes could not say anything new without failing in their task. But the text means only this: when the pope defines a doctrine [cf. *DzSchHii* 3069], 1° he does not enjoy a new *revelation*, but an *assistance* of the Holy Spirit; 2° he does not teach a *new doctrine*, but *guards and expounds* the transmitted Revelation. 1° This certainly excludes popes teaching different or contrary truths. 2° But it does not exclude that popes "unwrap" what is contained in the deposit only implicitly, and therefore does not represent a *contradiction* or a *real novelty*. And so, when a pope teaches with authority a doctrine that *appears to be new*, it must be assumed *a priori* that it is not a question of a real novelty by contradiction or disparity, but of a homogeneous development by virtual inclusion: this is precisely what the assistance of God guarantees.¹²⁶ -*-* So much for the *law*.

1.2.2. DH: Contradiction or development?

Let us come to the point: does *DH* constitute a contradiction or a departure from previous Catholic doctrine?¹⁴⁵ Interesting from the scientific point of view,---⁶ the question of contradiction is from the ecclesial point of view a "very serious" matter >>>-⁴⁷ Few see no difficulty in recognizing a possible contradiction in the non-infallible magisterium. Thus for J. M. Diaz-Moreno, for example, this is an inescapable law of doctrinal development -⁴ "In the opinion of E. W. Bockenförde, the Holy Spirit would even have prevented the popes before the Council from exercising their infallibility on purpose. Therefore the thesis of the contradiction would be without disadvantage.¹⁴⁹ Mr. Davies¹⁵⁰ finally affects not to want to affirm categorically the existence of this contradiction, while declaring that he does not see how not to affirm it. In any case, one can distinguish I) a first group which affirms the contradiction between *DH* and the previous Church; II) a second, which denies it.

¹⁴⁴ On the doctrinal development of the magisterial formulas, it is important to consult also §§ 4-5 of 0988. SCDF, 1973.06.24. *DecimūnMysterium Ecclesiae*; AAS, 1973,396408; DC, 1973,664-670.

⁴⁵ -See CARRILLO, 1967b, 139, note 1; *CivCat*, 1985.09.07,345; LA VALETTE, 1966.09,267.

¹⁴⁶ See BURGHARDT, 1976.71-72.

¹²⁶⁴⁷ COSTE, 1969, 384. Against BARTHE, 1994.06, 28-29, it must be said that especially after the CCC, one can no longer speak of "the absence of magisterial explanation".

-4" DÍAZ-MORENO. 1991.04-06,134.

¹⁴⁹Cf. BOCKENFORDE, 1986,311-312.

- 5U DA VIES. 1992,227.

I) *A dangerous path: contradiction*

The "contradictionists"¹²⁵ - are on the one hand A) the theologians of dissent,¹²⁷ supporters of *DH* B) and on the other hand opponents of *DH*.^{*A} Both of them forget, moreover, that the "contestation of the competent theologian" can take place only in private and in connection with the Holy See.¹²⁸

A) For some, it was the "pre-Council Church" that was seriously mistaken,¹²⁹ and the "conciliar Church" that was right. But their position arbitrarily chooses one of the branches of the alternative to the detriment of the other. As a result, it is no longer clear on what basis they adhere to Vatican II.

B) Others, on the contrary, applying in a simplistic way the principle: "Nova? Falsa!", reject the conciliar teaching -¹³⁰ This position seems to us dangerous and false. Indeed, on the one hand, like the other, it arbitrarily chooses one branch of the alternative (in this case: the past). It neglects the fact that Tradition is the transmission of a *living* being (cf. *DV8*), that if the revealed data does not increase, the knowledge that one takes of it does.¹³¹ " " The transmission of the deposit includes its explication. "¹³²

II) *A cautious approach: non-contradiction*

Since the question of the RL had never been posed in the same terms,¹³³ we consider the path of non-contradiction to be more prudent *a priori*. In fact, until the contrary is proven, the magisterium and more broadly the universal Church do not contradict each other. Whoever claims the contrary has the burden of proof.¹³⁴ Especially since the Magisterium itself affirms this continuity:

"The Church has further manifested this conviction of faith [to remain always in the divine Truth, keeping the apostolic succession, etc.] in the last Council, which met to confirm and strengthen the doctrine of the Church inherited from the Tradition already existing for nearly twenty centuries, as a living reality that progresses, in relation to the problems and needs of each age, deepening the understanding of what was already contained in the faith transmitted once for all (Jude 3)."-62

A) Existence and importance of "non-contradictionists

1) That some *DH* supporters have asserted discontinuity is not an argument. 1" The thesis of doctrinal continuity enjoyed the majority of the votes of *DH*'s supporters, well

¹²⁷ Let us mention in passing Charles CURRAN and, more indirectly, FUCHS, 1987, *Kontinuität*. 242-256 (cf.

¹²⁸ Some jurists detect a clear *DH* opposition with the *classical* doctrine of *ius publicum ecclesiasticum* taught in the ante-conciliar *manuals*, but not an opposition with the *magisterial doctrine*, e.g. MUSSELLI, D'AVACK, GIMONDI.

¹²⁹ -54 Cf. BARTHE, 1994.06. 31; JOSEPH de SAINTE-MARIE, 1978 and 1987; KERGORLAY (various articles: cf. note *sub hac voce* in our bibliography); LASSUS, 1985a; 1988; 1989.04; 1992.10; 1993.05; 1994.02; 1994.10; LEFEBVRE Marcel, M¹, 1976a; 1D, 1985.11.06; 1D² 1987; and ID., 1988.04.19 (see various other titles in bibliography, s.v. LEFEBVRE); LUCIEN, 1983; 1984a; 1988.02; 1988.07-08; 1990; MARCILLE; MARTIN Michel, 1976.03.19; 1976.10; 1986.01; 1988.05-06; 1988.09: 1988.10; 1991.12; PIVERT, 1988.02/03-04; TISSIER. 1977.05-06; 1986.03-04; 1986.05-06; 1986.07-08a; 1986.09-10; 1987.11-12; 1988.03-04; 1988.05 06; 1988.07-08; 1988.09-10; 1991.04.12. DA VIES, 1992 admits that he cannot *demonstrate* the contradiction;

¹³⁰ Cf.-. 1199.CDF, 1990.05.24: Instruction *Donum veritatis*; AAS, 1550-1570; OC, 693-701; cf. *DA' hHt* 4870 4885; here § 28: *DzSchHü* 48774881.

¹³¹ Cf. CALZADA, 1968.12, 709; COSTE, 1969, 383-384 (very nuanced, in its 4'); CROWE, 1966, 258; BOCKENFORDE(1968,416-417and 1986,311);BOPP, 1967.07.216.

¹³² Cf. -e.g. DECORTE, 1979.03, 130;DAVIES, 1992,184 and 198.

¹³³ -58 See PICARD D'ESTELAN Gabriel, O.S.B., 1993,72.

¹³⁴ -JOURNET, 1954,47.

¹³⁵ -Cf. S 01 = 2 RO, A.S. III/II, 348.

¹³⁶ Cf. JACQUEMET, 1934, *Tu es Petrus*, 51.

before 1986. It is therefore not a question of placing ourselves among "the supporters of the restrictive interpretation who anachronistically lend the drafters their own concerns for the formal conservation of the previous doctrine."™ Indeed, the concern for continuity was present during the genesis of *DH*, and this as early as the first report of Mr.st de Smedt, of November 19, 1963.¹³⁵ Then, most of the Fathers in favor of the scheme (e.g., M.^{8r} Garrone)¹³⁶ maintained the agreement between the right to RL and the magisterium of the XIXth century. Likewise, the principal members of the drafting commission (Fr. Pavan, J. Hamer, E.-J. de Smedt and J.-C. Murray), consultants or members of the Secretariat for Promoting Christian Unity (SUC), not to mention their president himself, Card. Augustine Bea,¹³⁷ who all maintained this view after the Council.¹³⁸ Moreover, the concern to "leave traditional Catholic doctrine intact" appears explicitly in the Declaration, in *DH* 1, § 3.¹³⁹ *Last, but not least*, the main person responsible for the text, Paul VI, affirmed very clearly the continuity of the Council with the previous magisterium and the need to read the Council in terms of this continuity,¹⁴⁰ including for *DH* in particular.⁷ * This continuity is reaffirmed in the *Letter of the SCDF to W Lefebvre* (January 28, *WH*).™ Moreover, many interpreters even make it the subject of entire works, when they do not take it for granted.⁷

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2) In the circles considered "traditional", there has never been a cessation, *either before or after 1986*, of works intended to shed light on continuity or to assume it.¹⁴⁰ Méritent une mention spéciale les auteurs d'abord opposés à l'existence d'un droit strict à la LR et qui finissent par accepter la substance de la doctrine de *DH*: a) ceux qui avant le Concile refusaient l'idée d'un tel droit, puis s'inclinèrent devant le Concile (par exemple E. Guerrero,¹⁴¹ J. Meinvielle,⁷⁶ V. Rodriguez,⁷⁷ and the Spaniards in general); b) those who first refused the teaching of the Council, and then, after further study of the question, accepted it (especially B. Lucien,⁷ * " L.-M. de Blignières,⁷⁹ D.-M. de Saint-Laumer).*" The work of B.W. Harrison, from 1988 onwards, is at the origin of this last "revival of the debate".**

B) Arguments that remove the contradiction.

1) Let's avoid the extreme solutions, consisting in a) resorting to the non-infallibility of the ordinary magisterium, and granting only a "semi-importance" to either Leo XIII or *DH*; or b) "approximating by distorting": for example, by mentioning among Leo XIII's texts only those that resemble *DH*; or by reading *DH* in a minimalist way.*" Basically, one would find nothing new in *DH*, since the LR was claimed for a long time by the

¹³⁵ Cf. SMEDT, 1963.11.19. REGAN, 1967,46 blames him!

¹³⁶ Cf. A.S. 111/11,533-535.

¹³⁷ BEA, 1966(1963.12.13), 270ff.

¹³⁸ TOUTE LA JURE AA. Vv., *Unam Sanctum*, 60 testifies to this (whatever its arguments).

¹³⁹ It was thus a concern of the Fathers who stole it, as MARGERIE, 1988a, 24, and 1990a, 358, remind us. The Council is indeed the main proponent of "non-contradiction" according to ONORIO, 1989 (1986.04.28-30), 667-668, who stresses the importance of reading the text in the light of its notes (these refer to the earlier magisterium), and in accord with the rest of the Council.

⁷⁴ *For example: ANDRÉ-VINCENT, 1976; 1977.03-04; 1978; 1987.01-02; ARGAD, 1989; ARGOS, 1981, n° 205-214, 135-142; 1984 : 1986 ; 1987 ; 1988 ; 1989 ; BROGUE, 1964 ; 1965a and especially b ; CATURELLI, 1992, 276-286 ; GOETHALS, 1987.04.

*GUERRERO, 1967.01. Before the Council, A. had been *the most intransigent opponent of the "MARITAIN-MURRAY-ROUQUETTE-SANTAMARIA-SETIEN-VIALATOUX-LATREILLE"* line.

magisterium.*¹⁰

2) Valid arguments, but in need of refinement.

a) For the majority, the contradiction is removed because the retention of the "moral duties", etc., of *DH* 1, § 3, which entails the absence of moral freedom and right-permission (the main object of the previous doctrinal statements), does not in any way oppose the affirmation of the right-requirement to social and civil freedom (the main object of *DH*).^{*M}

b) For others, it is a question of clearly identifying what the previous magisterium had really wanted to teach.^{*1 -5} Following the path traced by J. C. Murray, these authors try to show how the "historical context" of the teachings of the XIX^e allows for a combination of continuity and progress.^{*86} But, by dint of "situating" the ancient texts, one risks falling into a certain historicism. The change of historical context was in fact only *the occasion*, the *catalyst* and not the *foundation* of the development of the doctrine, independent of the circumstances.^{*87}

1H2 cf. TORRES-RoÍAS, 1968,180. As typical cases: CALZADA, 1968.12,707; PRIETO-RIVERA, 1967a, 551.

183 Cf. MUSSELU, 1975,70.

184 In this sense: GARCÍA-GÓMEZ, 1967.05,329; LARRAÑAGA, 1965,232.

185 Thus COSTE, 1988.09.01-08,476,1-2.

186 MURTAS, 1970,166; RINCÓN, 1984/1989,329.

j87Cf- PAVAN, 1976b (BURGHARDT), 13-14.

Conclusion of Chapter 1

"The basic opposition which regularly emerges in the discussion, but which remains underlying even when it does not appear on the surface, concerns the question of *doctrinal development*."-* Between repetition and contradiction, there is the development of the "already contained",⁸⁹ by complementarity of points of view,¹⁴²⁹ "by passage from the implicit to the explicit, etc., under the pressure of events,⁹ * "In short, the doctrine of the Council [...] does not break with traditional doctrine, but develops it, perfects it and completes it."⁹² These are the *terms of the problem* that have changed since the XIX^e.⁹³ In fact, it is a question of a *better understanding of the principles* themselves.*⁹ -* *DH* clarifies a point that remained unresolved,⁹³ and makes a "homogeneous development" ^J⁹⁶ When the Church teaches us that two assertions are true, the prudent thing to do is to hold both, *salvo meliori iudicio*.^m The appearance of contradiction comes in reality from erroneous *interpretations*. In fact, it is necessary to reread the pre-conciliar *texts*,⁹⁸ and "return to the authentic texts of the authentic Vatican II. "" Moreover, "reading the *letter of the documents* can help us rediscover their true *spirit*." 2" Let us now turn to their degree of *authority*.

* - "GROOTÆRS, 1991, 117-118.

H© See PAVAN, 1976b (BURCHARDT), 14.

* 9" DUPONT Philippe, 1989/1988.11-12,26.

* 9a Cf. LIN, 1989, 30. Same perspective in SPINELLI, 1985b, 101.

* 92 SPANISH EPISCOPATE, 1968.01.22,931. Similarly: LAJOLO, 1969,813.

⁹³ LEFEVRE, 1986.23.

¹⁹⁴Cf. MACVOY, 1973,71, which seems to go beyond VALCARCE, 1966,30-31.

* 95 See MARSHNER, 1983,222.

* 96 TURRADO, 1968, 185: "*desarrollo homogéneo*"; see the title of MULLADY, 1994.01.

14297 See MOST, 1983, 197.

198 See PRIETO-RIVERA, 1967a, 551.

*99 RATZINGER, 1985, 32. Cf. JOHN PAUL II, 1980.06.01: at Issy-les-Moulineaux; *1GPII03/1* (1980), 1594-1603, especially § 2,1595-1596.

²⁰⁰ RATZINGER, 1985.43.

CHAPTER 2.

2. THE "AUTHENTIC MAGISTERIUM

"In any case, there can never be a lack of a fundamental attitude of readiness to accept loyally the teaching of the Magisterium, as befits every believer in the name of the obedience of faith. For this reason, the theologian will strive to understand this teaching in its content, in its reasons and in its motives. To this he will devote a thorough and patient reflection, prompt to review his own opinions and to examine the objections made to him by his peers."²⁰¹

F For the moment, it is a question of determining the nature of the magisterium (2.1.), and then of identifying its property (infallibility) (2.2.).

2.1. The nature of the Magisterium, a point of reference for the faith

I) Etymologically, the word "*magisterium*", in Latin, designates the function of president, chief, director; then that of master, preceptor; finally teaching, lessons, direction.²⁰² "2 b. In reality, applied to the Church, the word and its translation into modern languages will designate first, in a *broad* sense, the function of leadership of the Church by the Pastors; then, in a *strict* sense, only the function and the act of *teaching* to the Church by these Pastors the revealed truths²⁰³ "3 or linked²⁰⁴ "4 to the Revelation²⁰⁵ "5 supernatural of God. It is in this strict sense that it is studied here.

II) "The task of authentically interpreting the Word of God, whether written or transmitted, has been entrusted to the only living magisterium of the Church whose authority is exercised in the name of Jesus Christ" (DV 10), i.e., to the bishops in communion with the successor of Peter, the bishop of Rome."²⁰⁶

The area of competence of the magisterium (and thus of its infallibility) is constituted by the truths I) taught in the name of Christ II) in matters of faith and morals III) as formally revealed or related to revealed truths.

I) A) In the official documents issued by the bishops, only the *teachings* are properly magisterial and not what is affirmed only in passing or concerns contingent realities.

201 1199.. 24; DC. 1990,697.

202 GAFFIOT, 1934, art. "magisterium", 938.

203 We still say "formally revealed".

204 We still say "related truth" to Revelation.

205 In the sense not of the act of revealing, but of what is revealed.

206 CCC 85. with a lexical definition of "living magisterium". Cf. 0988.. § 2; *DzSchHü* 4533; AAS, 1973, 399; DC, 665.

tes.²⁰⁷ B) It must be a question, moreover, of teachings proposed officially *in the name of Christ*, and not simply in the function, for example, of giving a course in a university, or answering an "interview".²⁰⁸ ^{o8} This leads, therefore, to distinguish within the same document, between its various proposals, according to the authority involved in each.

II) The magisterium is *competent* only on faith and morals:

"The Roman Pontiff and the bishops as "authentic teachers, endowed with the authority of Christ, preach to the people entrusted to them the faith which must be believed and applied in morals" (LG 25). The ordinary and universal magisterium of the Pope and of the bishops in communion with him teaches the faithful the truth to believe, the charity to practice, the beatitude to hope" (CCC 2034).

III) The magisterium can teach officially in the name of Christ all that is formally revealed, and all that is necessarily implied or presupposed by Revelation, in the speculative or practical domain (cf. CCC 2033-2034).²⁰⁹

"The authority of the Magisterium also extends to the specific precepts of the natural law, because their observance, requested by the Creator, is necessary for salvation.²¹⁰ In recalling the prescriptions of the natural law, the Church's Magisterium exercises an essential part of its prophetic function of announcing to men what they are in truth and reminding them of what they should be before God (cf. DH 14)" (CCC 2036).

"The faithful, remembering Christ's words to his Apostles: "Whoever listens to you, listens to me" (Le 10:16; cf. LG 20), receive with docility the teachings and directives which their Pastors give them in various forms" (CCC 87)

2.2. The infallibility of the Magisterium *in docendo*

The whole Church is infallible *in credendo*, but under the magisterium.²¹¹

"The mission of the Magisterium is linked to the definitive character of the Covenant established by God in Christ with his People; it must protect them from deviations and failures, and guarantee them the objective possibility of professing the authentic faith without error. The pastoral office of the Magisterium is thus ordered to ensure that the People of God remain in the truth that sets them free. In order to accomplish this service, Christ has endowed pastors with the charism of infallibility in matters of faith and morals.²¹² The exercise of this charism can take on various forms [...] (CCC 890).

The 1983 *Code of Canon Law* (CIC 83), the *Profession of Faith* promulgated in 1989 and prescribed under canon 833,²¹³ the CCC (1992 and 1997 editions), and the 1998 *Doctrinal Note* of the CDF,²¹⁴ do not use the categories of "extraordinary"²¹⁴ and "ordinary" magisterium,²¹⁵ but levels of teaching.

²⁰⁷ E.g. "What are we to think of the fall of the Iron Curtain and its consequences?" *Centesimis annus* gives precisely this example as not being part of his magisterium: 1204. JOHN PAUL II, 1991.05.01: Encycl. *Centesimus annus*-, AAS. 1991,793-867;DC, 1991,518-550.

²⁰⁸ The books of JOHN PAUL II, *Enter into Hope, My Vocation, Gift and Mystery*, etc., are typically *non-agisterial* texts.

²¹⁹ The authentic Latin edition: *Catechismus Calholiae Ecclesia*, LEV, 1997, provides more precise references in a note, which the French edition, even the definitive one (1998), does not.

²¹⁰ Since respect for the natural moral law is necessary for salvation, the truths of the natural moral law are *necessary* for "the saving truths of the faith" to be "observed" (cf. CCC 2035).

²¹¹ Cf. CCC 84.91.92,889,

²¹² Similarly 0988., 3; *DzSchHii* 4534.

²¹³ CDF, 1989.01.09: *Professat fidei et iusiurandutn fidelitatis in suscipiendo officia nomine Ecclesia: exercendo*. s. d. Lat.: AAS. 1989. 105; and DC. 1989, 378-379; republished in AAS. 1998. 542-544; lat.-ital. (CEI): EV 11. n° 1190-1195 (important introductory note); official French translation: DC, 1991,757.

²¹⁴ Extraordinary magisterium means the solemn and definitive judgments of the Pope alone (*ex cathedra*), or of the ecumenical councils.

²¹⁵ Ordinary magisterium means the usual information of the pope, or of the pastors united to the pope, or of a local pastor. Usually it is a matter of exposition or explanation, and not of precise and definitive judgment. The result is a difference in style and tone of the two magisteria (extraordinary and ordinary), well explained in 2001 in a note signed **♦ of *VOsservatore Romano* concerning the *Doctrinal Note* on Jacques Dupuis' book.

1) Addressed to the whole Church, a teaching of the pope (*ex cathedra* alone, or united with the bishops, dispersed or gathered), on faith or morals, can be definitive or not. A) Definitive, it is infallible,²¹⁶ that it concerns: 1) on a truth formally revealed by God (thus of *divine faith*); or 2) on a truth related to divine Revelation ("for historical reasons or as a logical consequence"²¹⁷ >") (hence "full and irrevocable" assent);²¹⁸ B) Non-definitive, the magisterium, then said to be only "authentic," does not *present* itself as infallible, but nevertheless requires a religious assent of the will and the intellect. II) When an authentic teaching of the magisterium (of the Holy See or of a particular bishop) is addressed only to a part of the Church, it does not enjoy infallibility on its own, but its recipients also owe it a certain religious assent. III) In addition, there are only disciplinary and prudential decisions in doctrinal matters, to which respect and obedience are due, but not internal adherence. At each level, two correlative points of view will be distinguished: a) that of the quality (infallible or not) of *the teacher*, and b) that of the type of adherence which is due to him on the part of *the taught*.

2.2.1. The infallible magisterium. The definitive teaching and the required adherence

In the study of the infallible magisterium, it is necessary to consider I) the subject who speaks; II) the object treated; III) the adherence of the interlocutor.

I) *The two subjects teaching infallibly*

The definition of faith in *Pastor aeternus* on the infallibility of the pope *ex cathedra* declares that this infallibility is the same as that of the Church in its definitions.²¹⁹ Moreover, *Dei Filius* had taught that the truths proposed by the universal ordinary magisterium as revealed are also to be believed in divine and Catholic faith.²² ' This supposes, therefore, two subjects - inadequately distinct²²² - of the same infallibility:²² J the pope alone, or the pope united to the College of Bishops.

a) The infallibility of the pope speaking alone

Canon 749, § 1: "The Supreme Pontiff, in virtue of his office, enjoys infallibility in the magisterium when, as the supreme Pastor and Doctor of all the faithful, to whom it belongs to confirm his brethren in the faith, he proclaims by a decisive act a doctrine to be held on faith or morals (*doctrinal' de fide vel de moribus tenendam definitivo actu proclamata*)" (cf. LG 25).²²⁴

1) It is the "extraordinary Magisterium" of the pope, even though the canon does not use the expression. By "extraordinary" is meant directly that it is a punctual *act* in time

TM LG 25; CDF, 1998.06.29.

21H JOHN PAUL II, 1998.05.18: Apostolic letter *motu proprio Ad tuendam fidem*, §3: AAS, 1998,457-461 (here 459); DC, 1998, 651-657. On this *motu proprio*, cf. e.g. GANSWEIN G., *Commento al Motu proprio "Ad tuendam fidem", Ius Ecclesiae*: 11 (1999), 256-273; FERME B.M., *Ad tuendam fidem: some Réflexions, Periodica* 88 (1999), 579-606 and SALVATOR! Davide (1971-) "L' *Ad tuendam fidem*" e il can. 750; una novità in dottrina?, in *Periodica* XC1/3 (2002), 423-458, to be completed by his doctoral thesis: 1D., *L'oggetto del magistero definitivo della Chiesa alla luce del m.p. "Ad Tuendam Fidem"*; il can. 750 visto attraverso i Concili vaticani, Roma. Ed. Pont. Univ. Gregoriana (*Tesi Gregoriana. Serie Diritto Canonico*, 51), 2001, 461 p. Cf. also CDF, 1998.06.29, *Note dottrinale...*, cit. 7; AAS, 1998,547.

219CDF, 1998.06.29, cit. 8; AAS, 1998.547.

219 DzSchHü 307A.

with *definitive* value in itself, independently of its union with other similar acts (of other popes, of the same pope, or of other bishops). 2) Nor is the adjective "solemn" used, which could lead one to think of "external solemnity". The word "judgment" is enlightening, because it shows that it is a one-time act.

b) Infallibility of the College of Bishops

Canon 749, § 2: "The College of Bishops also enjoys infallibility in the magisterium when the Bishops assembled in an Ecumenical Council exercise the magisterium as doctors and judges of faith and morals, and declare for the whole Church that a doctrine concerning faith or morals is to be held definitively ; or when the bishops, scattered throughout the world, maintaining the bond of communion among themselves and with the successor of Peter, authentically teaching in union with the same Roman Pontiff what concerns faith or morals, agree on a point of doctrine to be held definitively" (cf. LG 25).

1) *The conciliar definitions*

The *conciliar definitions* or extraordinary magisterium of the bishops are also referred to as "definitive declarations," so that this covers not only "definitional acts," i.e., dogmatic definitions in the strict sense (presenting truths as *formally* revealed from God), but also "definitive acts" (i.e., presenting truths [at least

for the time being] only as having a necessary connection - de jure or de facto - with the preceding truths).²²⁰

2) *The "universal ordinary magisterium" ("m.o.u.")*

a) The definitive teachings of the dispersed but unanimous bishops belong to the "universal ordinary magisterium" ("m.o.u.") [definitive]. The adjective "universal" is added to it to include the universality of the dispersed bishops and to distinguish it from the ordinary pontifical magisterium (of the Pope alone). It is "ordinary" because it is exercised daily, by a repetition of identical acts in time or space, and not by a single precise act that is absolutely valid on its own. This teaching is presented as definitive, either explicitly, or simply because it is declared to be present in the whole of Tradition, or already present in the universal ordinary magisterium, or in an absolutely constant practice necessarily linked to salvation.²²¹

b) Nevertheless, it includes this ordinary magisterium of the pope alone, and it is infallible when it teaches something as revealed,²²² or even simply as definitive (LG 25). It is exercised through the professions of faith, the pastoral letters of the bishops, their oral preaching, their catechisms..., their liturgy, when they are in agreement among themselves and with the pope.

c) Sometimes a particular act of the "ordinary magisterium of the pope"²²³ confirms that a certain teaching is a definitive m.o.u.: the (effective) infallibility of *the teaching* in question does not come from this new *act*

Finally:

220 Cf. VATICAN 1.1870.07.18: 4th session. Dogmatic Constitution *Pastor alicernus*, § 4, *DzSehHü* 3074.

221 Cf. note 17 of CDF, 1998.06.29; AAS, 548; DC, 657.

222 1792 = *DiSch* 3011. Cf. BUGNIÈRES, 1985.10, LUCIEN. 1984b and 1994, and especially *Ad tuendam fidem* (ref. at note 218); to be read with CDF, 1998.06.29; AAS. 1998,542-551; DC, 653-655.

223 See BERTONE, 1996.12.20, 109. and 1224/C.

Canon 749, § 3: "No doctrine is considered infallibly defined unless it is [OH: "unless it is"] manifestly established (*nisi idmanifesto constiterit*), s²³ -

II) *The two fields of objects taught infallibly*

"The Magisterium of the Church fully engages the authority it has from Christ when it defines dogmas, that is, [1] when it proposes, in a form that obliges the Christian people to an irrevocable adherence of faith, truths contained in divine Revelation, or [2] *when it proposes in a definitive manner* truths that have a necessary link with them (*vel etiam cum veritates cum his conexione necessariam habentcs modo proponit definitive*)" (CCC 88).^{w2}

"The supreme degree of participation in the authority of Christ is assured by the charism of infallibility. This extends as far as the deposit of divine revelation (cf. LG 25); it also extends to all the elements of doctrine, including moral, without which the saving truths of the faith cannot be kept, expounded or observed (decl. *Mysterium Eedesiae*, S)²²⁴ " (CCC 2035).

The Church is infallible in matters of faith and morals, formally revealed or necessarily related to the revealed, i.e., required for the exposition or defense of the revealed.²³ -- Hence two types of assent on the part of the faithful.

III) *The two assents of the subjects taught*

The 1983 Code (can. 833) prescribes that a person who is to take up an official position in the Church must make a Profession of Faith before the competent authority. The text of the Profession of Faith was promulgated in January 1989 by the Congregation for the Doctrine of the Faith (CDF),²³³ after approval by the Pope.²²⁵ 11 requires 3 forms of assent to 3 levels of truths.²²⁶ If these 3 assents are expressed within a *Professio fidei*, it is because they are either elicited or at least imparted by divine faith. Only the first two levels concern absolute assent to definitive, and therefore infallible, teachings.²²⁷

A) **The adherence of divine and Catholic faith to the truths formally revealed by God and defined as such by the Church**

After the Nicene-Constantinopolitan Creed, the profession of faith continues:

"With firm faith, I also believe all the truths which are contained in the Word of God written or transmitted by tradition and proposed by the Church to be believed as divinely revealed either by virtue of a solemn judgment or by the ordinary and universal Magisterium. "239

This echoes canon 750, § 1, substantially identical to *Dei FUIus*

"One must believe of divine and catholic faith whatever is contained in the Word of God written or transmitted by tradition, that is, in Tunique deposit of faith entrusted to the Church, and which is at the same time proposed as divinely revealed by the solemn Magisterium of the Church or by its ordinary and universal Ma- gislère, namely, what is manifested by the common adherence of the faithful under the guidance of the sacred Magisterium;²²⁸ all are therefore bound to avoid any contrary doctrine."²²⁹

B) **Irrevocable adherence to the truths defined by the Church as necessarily**

224 The passage is in 0988. *DzSchHü*, 4536 (not in 0983. bis. SCDF, 1972.02.21: Declaration *Mysterium EUH Dei*, a reference where we had quoted it by mistake in LRTC. I/A, 1334).

225 *¿AS*, 1989, 1169.

226 cf. DUBLANCHY, 1911, 2208-2209, 2., a)b)c). Similarly: BAINVEL, 1925, 142, Thesis30 flrad. inLRTCj.

227 The 3^o concerns a "religious assent" to non-definitive teachings: we will examine it later.

228 Cf. PIE XII, 1950.11.01: Constitution *Munificentissimnx Deus*, AAS, 1950, 756-757, e. g. "singular union of the Catholic bishops and the faithful...] concordant testimony of the ordinary magisterium of the Church and of the corresponding faith of the Christian people, supported and directed because same magisterium."

229 This opposite is defined in can. 751: "Heresy is the obstinate denial, after the reception of baptism, of a truth which must be believed of divine and Catholic faith, or the obstinate doubt about this truth; apostasy, the total rejection of the Catholic faith; schism, the refusal to submit to the Supreme Pontiff or to be in communion with the members of the Church who are subject to him." (Cf. *CIC* 17, can. 1325).

linked to the revealed truths

C) 6. The second proposition of the *professio fidei* affirms: "Again, I firmly embrace and bind each and every one of the truths which the Church proposes in a definitive way concerning the doctrine of faith and morals".²³⁰ ¹ What is taught in this formulation includes *all those doctrines having to do with the dogmatic or moral domain*,²³¹ which are necessary to guard and expound the deposit of faith faithfully, even though they have not been proposed by the Church's Magisterium as formally revealed.

These doctrines can be solemnly defined by the Roman Pontiff when he speaks "ex cathedra" or by the College of Bishops meeting in Council. They can also be taught infallibly by the ordinary and universal Magisterium of the Church as a "sententia definitiva lenenda".²³² Every believer is therefore bound to give his firm and definitive assent to these truths, based on faith in the assistance which the Holy Spirit lends to the Church's Magisterium, and on the Catholic doctrine²³³ of the infallibility of the Magisterium in these matters.²³⁴ Whoever denies them would be in the position of one who rejects the truths of Catholic doctrine²⁴¹ and would therefore no longer be in full communion with the Catholic Church.

D) The truths related to this second paragraph can be of a different nature and in fact appear as such in their link with Revelation. In fact, some truths are necessarily linked to Revelation by virtue of a *historical relationship*, while others present a *logical connection*, expressing a stage in the maturation of the knowledge of this same Revelation, which the Church is called to accomplish. The fact that these doctrines are not proposed as formally revealed, since they add to the faith elements which are not revealed or not yet expressly recognized as such, does not detract from their definitive character. Moreover, their definitive character is implied at least by their intrinsic link with revealed truth. Moreover, it cannot be excluded that at a certain stage of the development of dogma, the understanding of the realities as well as the words of the deposit of faith may progress in the life of the Church and that the Magisterium may come to proclaim some of these truths as dogmas of divine and Catholic faith.^{24y}

Hence the paragraph 2 added to canon 750 by the Motu proprio *Ad tuendam fidem* :

"One must firmly accept and keep equally each and every one of the things which are definitively proposed by the Magisterium of the Church with regard to faith and morals, that is to say, those things which are required for the holy keeping and faithful expounding of this same deposit of faith; therefore, he who rejects these same propositions which must be kept definitively is opposed to the doctrine of the Catholic Church."²³ °

According to John Paul II, "it is a matter of a "definitive assent which is not, however, an assent of faith",²³⁵ from which this adherence nevertheless follows.²³⁶

" 8. With regard to the *nature* of the assent due to the truths proposed by the Church as divinely revealed ("1" paragraph) or to be held definitively ("2" paragraph), it is important to emphasize that there is no difference in the full and irrevocable character of the assent due respectively to these various truths. The difference lies in the supernatural virtue of faith: in the case of the truths of the first paragraph, assent is founded directly [*recta via*] on faith in the authority of the Word of God (doctrines *de fide credenda*); in the case of the truths of the second paragraph, assent is founded on faith in the assistance which the Holy Spirit lends to the Magisterium and on the Catholic doctrine of the infallibility of the Magisterium (doctrines *de fide tenenda*)."²⁴

2-" Latin Orig.: DC, 1989,378: transl.: DC. 1998.654.

²³¹ Here the note refers to PAUL VI, 1968.07.25: Encycl. *Humanae vitae*, 4, AAS, 1968, p. 483 and to JOHN PAUL II, *Veritatis splendor*. 36-37: AAS, 1993, pp. 1162-1163. Italics in the original.

²³² Here the note refers to LG 25. One can also think of VATICAN 1, Const. dogm. *Paxtor aeternus*, 4; *DzSch* 3074; *FC* 484. Similar expression in *Ordinatio sacerdotialis*: AAS. 1994, 545-548; DC, 551-552 [+ note of presentation of the Holy See's press room, 553 J. We are certain of the infallibility of the doctrine (*which is taught there, in virtue of the universal ordinary magisterium* (cf. 1224/C, CDF, 1995.10.28: *Responsum ad dubium* on the doctrine of *Ordinatio sacerdotialis*; AAS. 1114; DC, 1079-1080; *ORLF*. 1995.11.28, 6. The note signed *** in the OÆ which accompanies the so-called "Answer" has less authority (as does the *Nota dipresentazione* of VOR. p.4). Cf. BERTONE. 1996.12.20, e.g. p. 109. See also RATZINGER, 1994.06.07.

²³³ The infallibility in question is not yet explicitly a definitively taught truth of *divine faith*, hence the change from "faith" to "Catholic doctrine".

²³⁴ [c] i a note refers to DV8.10 *Mysterium Ecclesiar*, 3: AAS, 1973, p. 400-401.

²⁵² 1217/C. JOHN PAUL II, 1993.03.24: General Audience; DC, 410.

²³⁶ In short, we could speak of "mediate faith". This assent was formerly called (rather badly) by some the "ecclesiastical faith" (not "divine"). Cf. e.g. the criticisms of GUÉRARD, 1952, II, 293-302; CHIRON, 1999 (taking into account the limits pointed out in *La Nef*. n° 108, September 2000,39); and NEVEU, 2001.

A summary of the infallible magisterium can be found in CCC 891.

2.2.2. Cases other than the final magistracy, and the required submission

Let us come to the non-definitive magisterium. 1) It may be a magisterial act properly so called, of authority A) either universal; B) or non-universal; II) But it may be simply disciplinary decrees in doctrinal matters of any ecclesiastical authority, which require the assent of judgment not speculative (intellectual adherence), but practical (obedience).

I) *The non-definitive magistracy and the required submission*

As for the so-called *authentic* magisterium (magisterium teaching with authority a doctrine not presented as definitive), two fundamental truths could be denied.

namely: A) its existence; B) the obligation to submit to it.²³⁵ The grievances of the "traditionalists" are aimed rather at the requirement of assent.²³⁷ In fact, as we have seen, Paul VI affirmed this obligation, and the CDF teaches it in various official letters to Mr. ⁸⁷ Lefebvre,²³⁸ and in three recent universal documents (of 1989, 1990 and 1998). It is also found in the *CIC* (can. 752)^{251t} and CCC 892. Since the first of these public documents, this point has given rise to a lively polemic in certain circles. The (real) metaphysical possibility of error and subsequent change of doctrine would transform adherence into a promise to affirm errors and the faithful into a "weather vane", stirred by every wind of doctrine and giving its endorsement to successive "fashions", as one of the opponents states.²³⁹ This refusal in principle is contrary to Tradition.

A) *The non-definitive magisterium of universal authority and V assensus religiosus*

The true thesis is that to a teaching of universal authority which does not present itself as definitive, called "authentic magisterium", one owes a so-called "religious" assent, internal and external, of the will and of the intelligence. 1) This thesis is proven by the magisterium itself; 2) it is confirmed and clarified by theologians.

1) *The authentic magisterium seen by the magisterium*

The question of adherence to the authentic magisterium²⁴⁰ * has been addressed in a

²³⁷ It should be noted in passing that the profession of faith of 1989, on this point, is no more binding than that of 1967; cf. SCDF, 1967.07.17 / 1967.12.20, *Formula deinceps adhibenda in casibus in quibus iure praeeribitur Professio Fidelis, loco formulae Tridentinae et iuramenti antimodernistici*; AAS, 1967, 1058: CDF. *Documenta*. 14 (with 17 July as the date); EV 02, no. 1771; lat. + trans. in French: DC, 1967, 1486-1487. The formula of 1989 brings to that of 1967 an improvement by distinguishing well the various assents (cf. already DUBLANCHY, 1922, 1709-1714; SALAVERRI, 1962, Thesis 15, n° 658-683 and 892,5 and 905,5: CIC 83, can. 752).

238 SCDF, 1980.10.20: *Letter to M¹ 'LEFEBVRE, Itinéraires, n° spécial hors série 265 bis. W Lefebvre and the Vatican under the pontificate of John Paul II, I- Until the death of Cardinal Seper, p.46; SCDF. 1981.02.19 : Letter to M.¹ 'LEFEBVRE, Itinéraires, n° 265 bis, cit, p. 55. The SCDF will reaffirm this doctrine under Card. Ratzinger: SCDF, 1983.07.20, Letter to M^B ' Marcel LEFEBVRE, in MARCHAL, 135-139; RATZINGER, 1988.05.05: Protocol with M^f Lefebvre; and similarly in other documents which we will examine at length.*

²³⁹ Thus MARTIN Michel, 1989.05-07.

²⁴⁰ The whole magisterium is "authentic", but the expression is reserved for the ordinary magisterium other than

specific way by the magisterium itself and by theologians²⁴¹ especially since Benedict XIV, who has taken up the use of encyclicals.²⁴² Even before the definition of papal infallibility, German theologians, gathered in Congress in Munich by I. Dollinger,²⁴³ had questioned the magisterium of the pope alone. Therefore, in his letter to M.^{sr} G. von Scherr, Pius IX, after having recalled the duty to believe [1] not only what is *defined* [extraordinary magisterium J, but also [2] "what the universal" ordinary magisterium "transmits as divinely revealed", declares [3] that at least theologians must submit to the doctrinal decisions of the Roman Congregations and adhere to what is commonly taught as a theologically certain conclusion :²⁴⁴

"11 In giving [Catholic scholars] the praise due to them for professing the truth, which necessarily comes from the obligation of faith. We wish to persuade ourselves that they did not intend that the obligation to which Catholic teachers and writers are totally subject should be restricted solely to those subjects which the infallible judgment of the Church proposes to all to believe as dogmas of faith.²⁴⁵ (2) Our conviction is that they did not want to declare that this perfect adherence to revealed truths, which they recognized as absolutely necessary for the true progress of science and for the refutation of errors, could be obtained by merely granting faith and respect to all dogmas expressly defined by the Church. For even if this submission were to be manifested in the act of divine faith, it could not be limited to what has been defined by the express decrees of the ecumenical councils or of the Roman Pontiffs and of this Apostolic See,²⁴⁶ but it must also extend to that which the ordinary magisterium of the whole Church throughout the universe transmits as divinely revealed and, therefore, which is held by the unanimous and universal consent of Catholic theologians as belonging to the faith. 31 But when it is a question of that submission which obliges in conscience all Catholics who devote themselves to the sciences of observation, to render new services to the Church by their writings, the members of this congress must recognize that it is absolutely insufficient for Catholic scholars to receive and revere the dogmas of the Church of which we have spoken, but that it is also necessary to submit to the decisions concerning doctrine which are issued by the pontifical congregations, as well as to the points of doctrine which the common and constant consent of Catholics holds to be theological truths and conclusions so certain that opinions contrary to them, even if they cannot be called heretical, nevertheless deserve some theological censure."²⁴⁷

In *Quanta Cura* (QC), he insisted on the necessity of submitting to the decrees of the Holy See, even when they did not concern faith or morals.²⁴⁸ With Vatican I, he finally recalled the obligation to adhere to the doctrinal condemnations of the Holy See, even when they do not label opinions as heresy.²⁴⁹ On the other hand, once pontifical infallibility was defined by this council, theologians turned their attention to the rest of the papal magisterium.²⁵⁰

Leo XIII, for his part, did not end his encyclical *immortale Del* without insisting on the submission required to all the decrees of the Holy See concerning modern liberties.²⁷ He will take up this subject again in the encyclical *Sapientiae christianae*, distinguishing, as Pius IX did, between definite dogmas, truths taught by the universal ordinary

"universal-definitive". The vocabulary has hesitated between "ordinary magisterium" and "authentic magisterium", as shown by MARTINEZ Pedro Daniel, 2003.

²⁴¹ On dissent, cf. BETTI, 1987 (fundamental on LG 25); or (too kindly), JANSSENS. 1989.

²² <Cf. MANGENOT. 1911,15-16, and NAU, 1952,72-74.

²⁴³ So still Catholic.

²⁴⁴ See also VIGOUROUX Antoine, R.P. (alias TISSIER DE MALLERAI Bernard), *Leçons de catéchisme. Les concils œcuméniques...*, in *Fideliter*, n° 18 (Nov.-Dec. 1980), 11. Q. 233.

²⁴⁵ Cf. 0518.22 P1EIX. 1864.12.08: *Syllubii*. prop. 22; *DzSch* 2922: *Acta Pii IX* 03,706.

²⁴⁶ And not, as the current French translations affirm: "or of the Roman Pontiffs who occupy this See" (*sic*).

MJ 0514. *DzSchHü* 2879-2880 = *Acta Pii IX* 03,642-643; translation: *FC* 443-444.

²⁴⁸ Cf. 0516. PIUS IX, 1864.12.08: Encycl. *Quanta cura* (abbreviated to QC; for complete ref., cf. note 1164); here 0516.6: *Recueil*. 10 = ASS 03, 165 = *Acta Pii IX* 03,694-695.

²⁴⁹ *DzSch* 3045.

^{27U} Cf. VACANT. 1887.98-113 and VACANT, 1895,89-123.

magisterium, and a third category, which requires an adhesion of obedience, and without which the pope would be "*nec eloquiorum Del certus inter pres, nec dux ad vivendum tutus*". On the other hand, according to s. Pius X, "all without exception are bound in conscience to obey the doctrinal decisions" of the Biblical Commission and of the Roman Congregations,²⁵¹ which, however (if they are not taken up by the Pope himself²⁵²), do not commit infallibility. This desire to force intellectual adherence requires obedience of the will and the intellect, not faith;²⁵³ an attitude of refusal would be considered "disobedience or temerity" and would constitute "a serious fault, not to mention a scandal..."²⁵⁴ The Pio-Benedictine Code, for its part, transcribed the prescription of Vatican I, repeating the same doctrine for *negative* teachings (or condemnations):²⁵⁵

"Salis non est hærelitam pravitatem devitare, sed oportet illos quoque errores diligenter fugere, qui ad illam plus minusve accedunt; quare omnes debent etiam constitutiones et décréta servare qui bus pravæ huiusmodi opiniones a Saneta Sede proscrip̄tæ et prohibītæ sunt."²⁵⁶

Pius XI, in *Casti connubii*, will repeat and amplify much of this teaching.²⁵⁷ According to Pius XII, in the encyclical *Humani generis*, encyclicals require *per se* assent.²⁵⁸ The ordinary pontifical magisterium is an organ mandated by Christ to guide us, even when it does not engage his power in a supreme way.²⁵⁹ In his encyclical *Ad Cæli Reginam*, finally, Pius XII will repeat that the "living Magisterium" is the "proximate and universal norm of truth."²⁶⁰ Very logically, the Fathers of Vatican II will have this doctrine inscribed and

²⁵¹ 0636. PIEX, s., 1907.11.18: *Motu proprio Pnestanlia Scriptura*; on the authority of the Pontifical Biblical Commission; *DzSch* 3503 = ASS 40, 724; transl. BP III, 185 = GASPARRI Pieiro, Card. *Catholic Catechism for Adults*, ed. Chabeuil, 431. See also PIEX, s., 1910.06.29: *Motu proprio HUBatæ custodietidæ*; *DPPIeX*, 11, 246-247.

Otherwise, they seem to us to contain infallible judgments. We are thinking here, for example, of the interdicasterial Instruction *Ecclesie de mysterio. De quibusdam quæstionibus circa fidelium laicorum cooperationem sacerdotum ministerium spectantem*, AAS, 1997, 852-877, DC, 1012, and to CDF, 2000.08.06: *Instruction Dominus Jesus*; AAS, 765, whose commentary - private - due to Tarcisio BERTONE (*OR*, 2000.09.06, p. 9, col 5) excludes infallibility.

²⁵³ Even if motivated by religion, itself informed by faith in the mandate of authority.

²⁵⁴ 0636. *ibid*.

Cf. already, for obedience to the *condemnations* issued by the Holy See. 0634. ° *DzSch* 3408 = ASS 40 (1907), 471; BP 111, 227. In the same sense, as for the decrees on "doctrinal security", therefore indirect, cf. BILLOT, 1921,1,443. A *fortiori* for direct teachings.

256 c/C 17, can. 1324. This formula is derived from the epilogue of *Dei Filius* = 0524. P1E1X, 1870.04.24: SECOND VATICAN COUNCIL, sess. 111, Dogmatic Constitution *Dei Filius*; *DzSch* 3045. When he presented this, in the name of the Deputation of Faith, to the Council Fathers of VATICAN I, M^r PIUS declared (*Collectio lacensis* 7, 208): "Sane, E-mi ac R-mi Patres, principium in hoc canone assertum Deputaioni vestræ in se utilissimum ac pernecessarium visum est. Hoc enim principio secluso, scilicet admissio, quod iudicia doctrinalia conscientias non ligent, si error aliqua nota citra nolan hæresis ab ipsamet Ecclesia configitur, tunc pene tota ruit auctoritas doctrinalis Ecclesie, et exercitium hierarchicæ gubernationis fit impossibile. Certe ubi Dominus noster Iesus Christus dixit : *Si quis Ecclesiam non audierit, sit tibi sicut ethnicus et publicanus* : tunc non agebatur de Ecclesia tantum hæresim condemnante."

257 PIUSXI, 1930.12.31 : Encycl. *Casti connubii*, AAS, 1930, 579-581 (not cited in our previous editions), summarized in the final passage: "It is proper for every member of the faithful, whether learned or unlearned, to allow himself to be governed and guided in all matters of faith and morals by the Holy Church of God, by her Supreme Shepherd the Roman Pontiff, who is himself directed by Jesus Christ Our Lord" (our translation).

258 See also e. g. REGAN, 1963,40.

²⁵⁹ Cf. 0738. P1EX11, 1950.08.12: Encycl. *Human i generis* (on certain false opinions which threaten to ruin the foundations of Christian doctrine)", AAS, 1950, 568 = *RThom*, 1950/1, 15-16 = *DzSchHü* 3885; DC, 1950, 1153-1167; *DPPIeXII*, 1950, 295-330; *The Church*, no. 1280; cf. also *DzSchHü* 3884); see here no. 20, where "supreme" has the sense of "supreme in intensity", hence "ex cathedra".

²⁶² Cf. 0763. PIUSXII, 1954.10.11: Encycl. *Ad Cæli Reginam*; AAS, 1954, 637); DC, 1954, 1409-1422; *DPPIeXII*. 1954, 432, which quotes literally 0738, AAS, 1950, 567. Even more explicit, but of lesser authority, Pius XII, 1958.01.14: *Alloc. to the Arge/tan*: AAS, 150-153; *DPPIeXII*, 40-44; DC, 129-132.

clarified in the Dogmatic Constitution on the Church:²⁶¹

"This religious assent of will and intellect (*voluntatis et intellectus obsequium*) is due, in a singular capacity, to the Supreme Pontiff, in his authentic magisterium, even when he does not speak *ex cathedra*, which implies the respectful recognition of his supreme magisterium, and sincere adherence to his judgments (*sententiis*), in conformity with what he manifests of his thought and will and which can be deduced in particular from the character of the documents, or from the frequent proposal of a certain doctrine, or from the manner of expression."²⁶²

There exists, therefore, a certain authentic magisterium of the Supreme Pontiff, called "supreme magisterium",²⁶³ not necessarily *ex cathedra*, but claiming, in spite of everything, the religious assent of the will and of the intelligence.²⁶⁴ This assent is graduated according to the meaning and the authority that the Pope himself wanted to confer to his judgment.²⁶⁵ This will is manifested by the way he expresses himself, the type of document chosen²⁶⁶ and the insistence with which the pope proposes the same doctrine (*LG 25*). Such documents serve to interpret, deepen or develop the truths already defined, or to apply the principles to new situations, or to prepare for future definitions, which the Church, moreover, does not seek to multiply.

The challenge to the ordinary magisterium of the Church, which began under Pius XII, continued after the Council,²⁶⁷ especially after *Humanae vitae*, and sometimes even against the Council.

"Certainly, not everything that is said in a Council requires an assent of the same nature: only what is affirmed as an object of faith or truth annexed to faith, by "definitive" acts, requires a

²⁶³ One finds it already in the preparatory phase: *AD III/VIII-2*, p. 216-217, n° 6 {*de emendatione schematis Constitutionis de Ecclesia. Pars II, 1 - Responsio ad observationes generales circa caput VH: De Magisterio*}.

²⁶⁴ *LG 25*; AAS, 1965, 29-30; translation: *DC, 72-73*; *Centurion-VATICAN H*, reviewed by us. On the genesis of the text, cf. MARTINEZ Pedro Daniel, 1992. BEITI, 1987, especially 449-450, is a very authoritative commentary on this passage. See especially pp. 456-457 on the fact that the "non-ex-cathedra" character is not "a general permission for dissent", nor is it proof of non-infallibility, let alone of error. P. 460 considers the case of a suspension of judgment (in the case and according to the classical rules).

2K5 j: j "supreme" does not have the same meaning as in 0738.. Here, in the sense of supreme in substance, equivalent, basically, to "papal magisterium" exercised by the pope as head of the whole Church, it qualifies a superiority with respect to the magisterium of the other bishops.

²⁶⁶ *Au* about this *obsequium*, cf. DELHAYE, 1972, 4346-4347.

²⁶⁷ Cf. LABOURDETTE. 1950.01-03,38-39,§6,note 1.

²⁶⁸ See PHILIPS, 1967-1968,1,323.

²⁶⁹ Cf. on this subject, 0942. CDF, 1966.07.24: Letter *Cum Oecumenicum: ... de abusibus in doctrina Concilii interpretanda inualescentibus*; AAS. 1966, 659-661; CDF, *Documenta*. 9, no. 3: "Magisterium ordinarium Ecclesiae, praesertim Romani Pontificis ita interdum negligitur et parvipenditur, ut ad regionem rerum opinabilium fere relegatur"; French translation: *DC, 1966,1843-1846*.

assent of faith. But the rest is also part of the solemn Magisterium of the Church, to which every member of the faithful owes a trusting welcome and a sincere application."²⁶⁹

The new Code of Canon Law has maintained the obligation to adhere to the non-definitive magisterium:²⁶⁸

"Not an assent of faith, but a religious submission of the mind and will must be given to a doctrine which the Supreme Pontiff or the College of Bishops enunciates in matters of faith or morals [when exercising the authentic magisterium], even if they do not intend to proclaim it by a definitive act; the faithful will therefore take care to avoid what is not in accord with this doctrine."²⁶⁹

To counter the galaxy of *dissenters*, or theologians of dissent, opposed especially to the doctrine of *Humante vitæ, Persona humana*,² ^ and *Donuin vi- tæ*,² ^ the CDF has recalled this doctrine on three occasions: 1 by promulgating the new formula of the "profession of faith", in 1989, where, in the 3rd paragraph, it is stated:

"Moreover, with religious submission of will and intellect, I adhere to the doctrines which are enunciated, either by the Roman Pontiff or by the College of Bishops, when they exercise the authentic Magisterium, even if they do not intend to proclaim them by a definitive act."²⁷⁰

2^o In 1990, the CDF made it an important part of "the ecclesial vocation of the theologian",²⁷¹ and then, 3^o, in 1998, in the *Doctrinal Note* published at the same time as the *Motu proprio Ad tuendam fidem* :

"To this paragraph [3^o of the *Professio fidei*] belong all those teachings - in matters of faith or morals - which are presented as true or at least as certain, even if they have not been defined in a solemn judgment or proposed as definitive by the ordinary and universal Magisterium. [They are proposed to lead us to a deeper understanding of Revelation, or to remind us of the conformity of a teaching with the truths of the faith, or to warn us against conceptions incompatible with these truths or against dangerous opinions likely to mislead]."²⁷²

Such a teaching, which is only "authentic", can be made either by the pope alone, or by the College of Bishops (dispersed throughout the universe, or gathered in an ecumenical council). Examples: for the pope alone, in general, most of the teachings of papal encyclicals and other documents of lesser value, unless they present themselves as definitive, which is quite rare; and this is also the case for the doctrinal texts of the Roman

²⁶⁸ This obligation, it should be noted in passing, was obviously implied in the encyclicals of all his predecessors. Indeed, what is the point of teaching with authority, if not to demand assent? Nous avons pensé utile de fournir ici, extraite des 50 documents où il use de l'expression « magistère authentique ». une liste des 19 textes où JEAN-PAUL 11 rappelle l'autorité de ce magistère: JEAN-PAUL II, 1979.01.23: au Conseil Permanent de la CEI, 3 g (important); 1979.05.25: Constitution apost. *Sapientia christiani*, art. 26. § 2; 1979.10.05: to the Bishops of the U.S.A. (in Chicago), 7c; 1979.10.07: to the nuns (in Washington), 6c; 1979.10.07: to Univ. Cal. (in Washington), 6b; 1979.10.26: to CTI, 2b; 1979.11.15: to the Union of General Sup. (quoting 1979.10.07, to nuns); 1980.07.03: to nuns in São Paulo, 9; 1981.12.15: Apost. *Familiaris consortio*, 73 c; 1986.02.10: Homily at the college in Pune (India), 4 g; 1988.01.08: Letter to Card. J. RATZINGER, cit. 8; 1988.06.24: to the Bishops of Austria, Salzburg, 8d (quoting LG 25); 1988.10.15: to the Bishops of the U.S.A., *ad limina*, 8d (quoting LG 25). 5 (important; specifies what applies to the non-infallible magisterium); 1991.10.15: at the archdiocesan seminary of Brasilia. 4 ("authentic and universal magisterium"); 1992.10.12: at the opening of CELAM, Santo Domingo, 8; 1993.03.17, 1; 1993.03.24: at the funeral of Card. S. Baggio, 3; 1995.08.23: at the general audience, 2 b; 1995.10.18: to the Bishops of Brazil in *ad limina* visit, 5

²⁶⁹ CIC 83, canon 752. We have restored in square brackets an important passage omitted by the current French translation. Here is the original: "Non quidem fidei assensus, religiosum tamen intellectus et voluntatis obsequium præstandum est doctrina: quam sive Summus Pontifex sive Collegium Episcoporum de fide vel de moribus enuntiant, cuius magisterium authenticum exercent, etsi definitivo actu eandem proclamare non intendant; christifidelis ergo devitare curent quæ cum eadem non congruant." Cf. LG 25; CIC 17, can. 1324; CCEO 599.

²⁷⁰ SCDF, 1975.12.29: *Declaratio [Persona humana]* de quibusdam quæstionibus ad sexalem ethicam spectantibus; AAS. 1976.77-96.

²⁷¹ Cf. 1199. *Donum veritatis*, 23: AAS'. 1990, 1560; DC. 697 (cf. also no. 17). See also, with regard to the possible exception, § 28, quoted by *DzSchHii* 4877-1882 (reinstating "de soi", not "de foi": cf. the original "per se irreformabiles non sunt").

²⁷² CDF. 1998.06.29. § 10: AAS. 1998.548-549; DC. 655. Original underlining.

Congregations:

"The Roman Pontiff carries out his universal mission with the help of the organisms of the Roman Curia and, in particular, with regard to doctrine on faith and morals, with the Congregation for the Doctrine of the Faith. It follows from this that the documents of this Congregation, expressly approved by the Pope, participate in the ordinary Magisterium of the Successor of Peter."²⁷³

For the dispersed bishops, we can take the example of the unanimous adherence of the bishops to the doctrine taught in the papal encyclicals; for an ecumenical council, in general, everything that Vatican II teaches and that had not been explicitly and definitively affirmed until then. Let us summarize:

"Divine assistance is also given to the successors of the apostles, teaching in communion with the successor of Peter, and in a special way to the bishop of Rome, Pastor of the whole Church, when, without arriving at an infallible definition and without pronouncing themselves in a "definitive manner", they propose, in the exercise of the ordinary magisterium, a teaching which leads to a better understanding of revelation in matters of faith and morals. To this ordinary magisterium the faithful must "give the religious assent of their spirit" [LG 25 J] which, if it is different from the assent of faith, nevertheless extends it."²⁷³

2) *The authentic magisterium as seen by theologians and canonists*

The doctrine concerning the "authentic magisterium" has been constantly clarified, especially since the Jansenist crisis, but more especially in the treatises *De Ecclesia* published since 1870. There is agreement among all doctors¹⁰⁰ on two points, namely: the existence of a magisterium that is not *per se* infallible, and the obligation to adhere to it. Should this adherence be described as "firm", "certain", "morally certain", "more probable", "probable", "conditional"? The answers differ.²⁷⁴ But, based on all the studies consulted,²⁷⁵ the following synthesis could be made on the point under discussion:

"Even if it is not infallible, the official and authentic teaching of the Pontiffs, such as that of the encyclicals, represents an act of authority, of an authority which. "even when it does not exercise its power to the supreme degree, enjoys a special assistance from Providence". And this providential assistance promised to the Church and to its head calls for and justifies what Franzelin calls religious assent, *assensus religiosus*. Religious assent is not the act of faith that can only be required by a teaching that is certainly infallible. Religious assent which is not faith is however more than respectful silence, than the absence of contradiction, it is a true submission of the spirit, *obsequium mentis*, motivated by the sacred and divinely assisted authority of the Church. An interior assent of the mind which, without necessarily believing that what is taught is infallibly true or that what is condemned is infallibly false, admits that the doctrine proposed is the most certain, the most probable, and in the absence of a contrary certainty, the only one which is authoritatively imposed."²⁷⁶

All the authors rely on J.-B. Franzelin.²⁷⁷ The Church, because of its mandate, can, even

²⁷³ CEC892. Typical Latin text of 1997 identical. The French of 1992 had written at the end "enseignement ordinaire" where the definitive Latin has "*huic ordinario Magisterio*".

²⁷⁴ Cf. BAUDUCCO, 1962, 395-396, with references to numerous authors; SALAVERRI. 1962. LAC 61, 689. This assent is also described as "certain" by ITURRIZOZ, 1965.07-09 and NEIRA, 1966.04.

²⁷⁵ That is, in addition to the studies cited elsewhere: BARTHE, 1993.10; BEITL 1989.02.25/04.16; BOYLE. 1980; CAUDRON Marc. *Ordinary Magisterium and Pontifical Infallibility according to the Constitution "Dei Filius"*, in *EpitTheolLov*, XXXVI (1960), 393-431; CLÆYS-BOUWÆRT F., 1957: art. "Ecclesiastical Magisterium". in *DDCan* 6 (1957), 695, § 1 ; A. cites CHOUPIN, 1928 (ed. of 1913). 27 & 56; CONOAR, 1976.01; FENTON. 1949.08-09; 1950.07; 1950.11; 1950.12; 1951.07; 1951.09; HAMER, 1961.01 ;JOURNET. 1987. 173-174; LUCIEN, 1998; MORRISEY, 1992; NAU. 1956 and 1962; OCÁRIZ, 1988; 320-337; SALAVERRI. 1951 (especially IV. 162-171); SULLIVAN, 1963 & 1983, *De Ecclesia. 1. Qutesiones Theologia: fundamentalis*, Romæ. PUG. 1963. pp. 340-362 (on the ordinary magisterium of the pope); and *Magisterium: Teaching Authority in the Catholic Church*.** New York. Ramsey-Paulist Pr./Dublin, Gill and Macmillan, 1983, 234 p.; TORRELL. 1961.

²⁷⁶ JACQUEMET, 1934, *You are Petrus*. 57.

²⁷⁷ FRANZELIN, 1882, th. 12, scholion 1, p. 127-128 (authority of infallibility and authority of doctrinal providence); p. 130: "*Corollarium 3* [...] sunt enim gradus assensus religiosi multiplices. In presemi distinguendus est assensus *fidei proprie et immediate divina*: propter auctoritatem Dei revalentis ; assensus *fidei* quam supra diximus *mediate divinam*, propter

without defining anything, impose or forbid assertions in relation to theology. Prudence then consists always²⁷⁸ in following the path thus traced out, protected by an "*infallibilis securitas*. Indeed, even if an error were taught (possible, but very improbable), it would be foolhardy to think that we could perceive it better than the magisterium mandated to guide us through the maze of theological opinions. This authentic magisterium is exercised to determine what is certain and what is not (implying: at least in the current conditions of theological knowledge, thus *salvo meliori iudicio Ecclesiae*).[^] As we have seen, the pope can share this with others, including the Roman Congregations.^{30 "}

"According to the teaching received from theology, this assent must be: Internal: it is not enough to have a respectful silence by which the faithful would abstain from any manifestation contrary to the decisions of the Church.²⁷⁹ Certain: that is, that one accepts the Church's decision not only as a probable doctrine or, if one wishes, as the preferable doctrine among probable doctrines, but purely and simply according to the proper meaning of the statement.²⁸⁰ Religious: motivated by religious authority,²⁸¹ [and] not precisely by the scientific authority of the Church.²⁸² But this assent is not absolute nor irreformable. It is conditioned and depends on possible later dispositions of the same magisterium."²⁸³

"(...) the Pope (teaching in the name of his supreme authority) necessarily engages infallibility when he returns²⁸⁴ to what has already been made clear in the Church. When, therefore, he addresses a question in his ordinary Magisterium, he *ipso facto* recapitulates, in virtue of infallible assistance, what the Church has already made clear on this subject. The non-infallible Pontifical Magisterium therefore approaches the new aspects on a basis that is absolutely certain, divinely guaranteed, and therefore better than any theologian could do. We are assured of two things: negatively, that the new aspect of the teaching cannot contradict anything that has already been established by the Church; positively, that this aspect is really based on this already elaborated whole. And this is why the doctrine thus presented imposes itself *a priori* on the faithful and on the theologian as probably true, even if the possibility of error is not absolutely excluded, either with regard to doctrines which are revealed but still purely implicit (and which no theologian can claim, against the living Magisterium, to know with certainty), or above all with regard to elements which are not revealed and which are still circumstantially mingled with the present presentation of the doctrine by the non-infallible Magisterium. It is especially in this second direction that a work of decantation (which does not consist in an actual "dissentiment" of theologians perceiving difficulties in the proposed doctrine) could occur and sometimes lead to a reopening of the question by the Magisterium itself, including a discernment between the essential and the accessory in the first intervention, with a real

auctoritatem infallibiliter definientis doctrinam ut verain non tamen ut revelatam ; assensus *religiosus* propter auctoritatem universalis providentis doctrinalis in sensu, quem in expositione *principii* paulo ante declaravimus, [...]"; p. 131: "Nos vero existimamus, huiusmodi iudicia. etiam *cilradefinitionem ex cathedra*, posse esse ita comparata, ut postulent *obedientium* quæ includat *mentis obsequium*, non quidem ut credatur doctrina *infallibiliter* vera aut falsa [...]; sed ut iudicetur doctrinam in tali iudicio contentam esse *securam*, et nobis non quidem *ex motivo divina: fidei* (propter auctoritatem Dei relevantis vel Ecclesia: *infallibiliter docentis*), attamen *ex motivo sacre auctoritatis*, cuius munus indubitatum est prospicere sanitati et securitati doctrinæ, mentis obsequio amplectendam, ac contrariam reiiciendam. FRANZELIN goes on to demonstrate his assertions by numerous authorities (notably PIUS), until p. 152. LIZOTTE. 1989, *passim*, comments at length on the text. Cf. also COURTADE G., J.-B. Franzelin, *les formules que le Magistère de l'Église lui a empruntées*, *RechScRel*, 40 (1951-1952), = *Mélanges Lebreton*. 11.317-325.

²⁷⁸ Exception: ITURRJOZ, 1965.07-09, 286-287 (our translation) The majority of theologians admit without difficulty that the faithful who are truly competent in the matters dealt with by this magisterium of the Church could, if they had serious reasons for doing so, not consent interiorly, even if it is true that their respect for the authority of the Church would hold them back from manifesting their opposition to such decisions, and if their love towards her

²⁷⁹ See LABOURDEITE, 1950.01-03, 38-39, § 6.

²⁸⁰ It seems to us that this is true only if the magisterium teaches a proposition as certain, which (indeed) can happen even without a definitive act.

²⁸¹ The Church is mandated by God and assisted by Him to teach; therefore, its teaching is sacred, and is valid regardless of the arguments presented.

²⁸² Cf. JACQUEMET. 1934, *Tu es Petrus*, 44.

²⁸³ n uRRIQZ. 1965.07-09,286-287 [notre trad.J. Cf. also PHIUPS. 1967-1968,1,323; MARINA, 1951.07-12,436 437; DE GROOT. *SUUUIUI Apologetica de Ecclesia Catholica*, 1906, 640; SCHULTES, 1925, 615. 3°; and 1199. *DtSchHü* 4877^1882.

³¹⁴ In the sense of "re-milking".

correction on the accessory."³¹⁵

would urge them to make known to the magisterium of the Church itself everything that could contribute to a better clarification and a more perfect knowledge of the matter.

B) The magisterium of the *particular* authority and *Vobsequium* required

Secondly, the submission (*obsequium*) due to the teachings of the local Pastors is the object of a commitment not of the *Professio fidei*, but of the "Oath of Fidelity" which follows it: "Christiana oboedientia prosequar quæ sacri Pastores, tamquam authentici fidei doctores et magistri declarant [...]".^{1 -6} This "Christian obedience" in doctrinal matters, corresponds to the prescription set forth in the *CDC*, canon 753 :

"The Bishops who are in communion with the head of the College and its members, separately or gathered in conferences of Bishops¹⁷ or in particular councils, although they do not enjoy infallibility when they teach, are the authentic doctors and teachers of the faith of the faithful entrusted to their care; to this authentic magisterium of their Bishops, the faithful are obliged to adhere with religious reverence of spirit (*religioso animi obsequio adhærere tenentur*)".²⁸⁵

This canon also merges two passages from *LG 25*, the main one being:

"Bishops who teach in communion with the Roman Pontiff have the right, on the part of all, to the respect that befits witnesses to divine and Catholic truth; the faithful must attach themselves to the thought that their bishop expresses, in the name of Christ, in matters of faith and morals, and they must give him the religious assent of their spirit (*religioso animi obsequio adharere debent*)."

It is thus still a question of obedience of the speculative judgment.

H) *The disciplinary decrees in doctrinal matters of universal or particular authority, and the practical obedience required*

Finally, this reverence is extended to *obedience* to decrees (positive and negative) in *doctrinal* matters, issued in virtue of authority that is no longer magisterial-declarative, but canonical-prudential:

Canon 754: "All the faithful are bound by the obligation to observe the constitutions and decrees issued by the legitimate authority of the Church to expound doctrine and proscribe erroneous opinions, and in a special way those issued by the Roman Pontiff or the College of Bishops."

"The faithful therefore have the right (cf. *CIC2W*) to be instructed in the salutary divine precepts which purify judgment and, together with grace, heal the wounded human mind. They have the duty to observe the constitutions and decrees issued by the legitimate authority of the Church. Even if they are disciplinary, these determinations require docility in charity." (*CCC 2037*).

It is a matter of general obedience to the power of government.

Conclusion of Chapter 2

I) The magisterium of the universal Church is infallible.¹¹⁹ in its definitive teachings, presented as such either in definitive acts of the pope alone or of the College of Bishops with and under the pope, or, in non-definitive acts, in virtue of the universal ordinary magisterium. Among them,

A) the truths presented as formally revealed from God must be *believed in divine and Catholic faith*, and

285 Cf. *LG 25*; *CIC 17*, can. 1326; *CCEO 600*.

B) the propositions taught as required for the protection, custody, observance and exposition of the deposit of faith must be embraced absolutely and irrevocably as true, if not as revealed; the propositions condemned as contradictory to the preceding ones must be rejected definitively by the faithful.

It) The A) non-definitive universal magisterium, and B) the non-universal magisterium are not infallible, but nevertheless, they claim the adherence of the intellect and the will, when they take place in communion with the authentic magisterium of the pope.

Likewise C), disciplinary decrees in matters of doctrine to be accepted or rejected (which are precepts or laws), do not require speculative adherence, but practical obedience, *a fortiori* when they are issued by universal authority. _____

CONCLUSION OF THE PRELIMINARY SECTION

Just as Scripture cannot be read without Tradition,²⁸⁶ , so too Tradition cannot be interpreted without the Magisterium, the principal actual link in this same Tradition.²⁸⁷ -

After having clarified the Catholic *notions and doctrines* concerning "Tradition", "homogeneous doctrinal development", and "authentic Magisterium", we can study the *fact of* "homogeneous doctrinal development" of the contents of these "Tradition" and "Magisterium".

Our first book will attempt to do this by means of a *theological-positive analysis of the development in Tradition of the doctrine of freedom of Christian conscience up to religious freedom*. Now, Tradition (in the sense of transmission of doctrine) seems to have had to overcome a critical moment, namely the French Revolution. Indeed, this last event *symbolically* marks the end of any possibility for the Church to use the "secular arm", and the advent of new conceptions of "freedom". Hence the division of our first book into two parts, separated by the Declaration of the Rights of Man and Citizen (DDHC) of 1789, a key date in the history of ideas.²⁸⁸

²⁸⁶ This would be the mistake of the Protestants.

²⁸⁷ Cf. DV10, CCC 95 and *Ecclesia Dei*, 4 (DAhHü 4822).

²⁸⁸ Cf. REGAN, 1963,41.

FIRST PART

BEFORE THE REVOLUTION :

THE TRADITION

INTRODUCTION TO THE FIRST PART

DTaken as a whole, this book aims to highlight how various aspects of Tradition have been closely interwoven throughout history, constantly transmitted, never completely forgotten, but sometimes put on the back burner, sometimes emphasized, according to a more or less intense meditation, catalyzed by events requiring the deepening of this or that theme. We cannot admit that, in the case of the RL, it could be a question of one tradition dialectically prevailing over the other by way of contradiction. In fact, it appears rather that the various angles of approach complement each other, and are enriched by the contribution of experience, a capital element of moral reflection. In what follows, we hope to make it clear to our readers that "this doctrine of the RL, received from Christ and the Apostles, has been preserved and transmitted by the Church throughout the ages," without denying that "there have been times in the life of the People of God, as they have gone through the vicissitudes of human history, when

they have acted in ways that were less in conformity with, and even contrary to, the spirit of the Gospel. In any case, "the Church has, however, always taught that no one can be brought to faith by compulsion."³²³

In the first part, we will examine the documents of Tradition (especially of the Fathers, Popes and Theologians) *prior to* the so-called French Revolution."-"These documents span the patristic (section A) and scholastic (medieval and modern) theological periods (section B).

SECTION A.

THE PATRISTIC PERIOD

INTERRORING Tradition means above all listening to those Fathers of the Church,³²³ whose ears were still ringing with the apostolic preaching." The patristic period had all kinds of cases regarding the RL,³²⁴ and since then, the essential situation was not to change until the Revolution.³²⁵ The texts themselves will force us to divide this section into several chapters, first concerning the ante-nicene Fathers (chapter 3) and then the great masters, s. Ambrose of Milan (chapter 4). Ambrose of Milan (chapter 4) and s. Augustine of Hippo (chapter 5).

³²³ *DH 12*, § 1; *Cerf-VxrKAN U.* 1.111,184. The fact that the Council recalls that the freedom of the act of faith has always been taught by the Church leads us to think that this doctrine is definitively and infallibly taught in the Church.

³²⁴ 1 "that of the anti-Christian persecutions (from the first century to 313); 2' that of the peace of the Church (from 313 to 381);

^{3°} that of the State Church (from 381).

³²⁵ Cf. AUGUSTIN, Pius, 1966,35.

CHAPTER 3.

3. BEFORE SAINT AMBROSE

"The Church of Jesus Christ did not enter "from a position of strength" in human history, but by going through centuries of persecution."³²⁹

A From the point of view of the RL, the period before St. Ambrose can be divided into two articles: 3.1. Before the peace of the Church: the persecuted Church; 3.2. After the peace of the Church: the protected Church.

3.1. Before the peace of the Church: The Church persecuted by thepaganstate claims the freedom of the Christian conscience

To analyze the *Acts of the Martyrs* would take us too far, but here we can legitimately concentrate on the writers who were contemporaries of these tortures, these trials, and these killings, especially since they often signed their books in their own blood.³³⁰ Thus, around 150, Saint Justin (100/110-163/167), in his first *Apology*, summarizes well the general principle by which the martyrs respond to the civil authorities: "We worship God alone, but for the rest, we willingly obey you (...)"³³¹ > He himself takes these people in power to task, and points out to them *ad hominem* that they let anyone worship anything. Why not let the Christians worship their own God?³³² To

³²⁹ Cf. 111". JOHN PAUL II, 1979.04.04: General Audience; *IGPII 02/1* (1979). 779-780; DC. 1979.407-108 (here 408).

³³⁰ For an exhaustive study, see RUIZ-BUENO Daniel (ed.), *Actas de los Mártires. Texto bilingüe*. Madrid. EDICA, 1962, 1185 pp. (LAC 75). We had to give up a complete inventory of this volume, which lacks *an index rerum*, just like the French edition elaborated under the direction of Dom Prosper GuÉRANGER. O.S.Ü. (2 vols.).

³³¹ 0001. JUSTIN, s." *Apologia* l. 17; Greek + Latin translation: PG 06.327-440 (here: PG 06.353D); Greek + French translation: JUSTIN, *Apologies*, text, translation, introduction and index: PAUHNGNY Louis, Paris, Picard, 1904, 198 p. Here p. 37.

³³² 0001. JUSTIN, *Apol.* 1, 24; PG 06, 363; trans. PAUTIGNY, 49. One finds this argumentation *ad hominem* in 0002. ATHENAGORAS, 0177 : *Legatio pro christianis*, 1 : Greek + Latin translation : PG 06.890-894 : ATHENAGORAS. *Supplique au sujet des Chrétiens et Sur la Résurrection des morts*, introduction, text and translation: POUDERON Bernard, Pans, Cerf, 1992, 360 p. (SChr 379).

In the year 180/190, s. Irenaeus (= 0130/5- = 0202)³³³ deals more directly with the *freedom of the act of faith*. God, he remarks, "exhorts us to submission to him and turns us away from being unfaithful to him, but he does not do us any violence. Even the Gospel, in fact, it is possible not to follow it, if one wishes, even if it is without profit."³³⁴ And this freedom is precisely what makes man the image of God,³³⁵ which even refrains from forcing faith, in order to safeguard "man's freedom and self-control."³³⁶

Straddling the II^e and the 111* centuries, Tertullian (= 160-222/3) pushes even further the reasoning outlined by s. Justin and Alhenagoras. Justin and Alhenagoras.

"Let the one be free to worship God, and the other Jupiter; let the one raise his supplicating hands to heaven, and the other to the altar of the Good Faith....] >>³³⁷ " 6. Beware, indeed, that it is not already a crime of irreligion to take away from men the freedom of religion (*libertatem religionis*) and to forbid them the choice of divinity, that is to say, not to allow me to honor whom I want to honor, in order to force me to honor whom I do not want to honor! There is no one who wants forced homage, not even a man [...]. "338

This professional jurist thus adds the freedom not to be prevented to that of not being constrained. And, in 212, a Montanist, he goes so far as to proclaim:

"It is a human right and a natural right that everyone should be able to worship whom he thinks; * the religion of one individual does not harm, nor serve, another. It is not in the nature of religion to force religion; it must be adopted spontaneously, not by force, since sacrifices are only asked for willingly. Therefore, if you force us to sacrifice, you will give nothing in fact to your gods; they have no need of sacrifices offered reluctantly; (unless they are quibblers, but a quibbler is not a god). "339

In the 3rd century^e, two other Africans were interested in the difference between the Old Testament and the New Testament in this matter. First, in 248, Origen (\pm 0185 - \pm 0254), according to whom :

"If I had to characterize briefly the difference between the regime which was first in force among the Jews according to the laws of Moses, and the more perfect regime which the Christians now want to follow according to the teaching of Jesus, this is what I would say. On the one hand, it was not appropriate for the Gentiles called to faith to follow the regime of Moses to the letter, since they were subject to the Romans. On the other hand, it was not possible for the Jews of old to keep their constitution intact, since by assumption they obeyed the gospel regime. The Christians could not comply with the law of Moses by slaughtering their enemies or those whose transgressions of the law condemned them to be burned or stoned to death, since even the Jews, in spite of their desire, could not inflict on them this punishment ordered by the law. On the other hand, for the Jews of that time, who had a constitution and a territory of their own, to forbid them to attack their enemies and to campaign in defense of their traditions, to put to death or to punish in any way adulterers, murderers, and criminals of this kind, would have been to reduce them en masse to total destruction at the time of an enemy attack on the nation, for their own law would have deprived them of strength and prevented them from repelling the enemies. "340

Then, in 249, St. Cyprian of Carthage (=0200-0258) replaces the material sword of the A.T. with the spiritual sword of the N.T. (the simple expulsion):

" 3. Now that spiritual circumcision exists for the servants of God, the proud and rebellious are killed with the spiritual sword, and are thrown out of the Church. For they cannot live outside, since there is only one house of God, and outside the Church there is no salvation for anyone. "341

³³³ 0003. IRENAEUS OF LYON, s., *Adversus Hæreses*, IV, 37, after : - 1D" *Against the Heresies*, book IV, 37,3-5, t II. text and translation: ROUSSEAU Adelin, O.C.S.O., Paris, Cerf / Lyon, Ville, 1965, 926-935 (SChr 100) or - ID, *Against the Heresies. Dénonciation et réfutation de la gnose au nom menteur*, livre IV, 37,3-5, Paris, Cerf, 1985, 546-549.

³³⁴ 0003. IRÉNÉE OF LYON, s., 0180/0190: *Adversus Hæreses*, IV, 37.34. SC/rr 100,929; or ed. of 1985,547.

³³⁵ 0003. IRENAEUS OF LYON, s., 0180/0190: *Advenus Hiereses*, IV, 37, 5, SChr 100, 929-933; or 1985 ed.

³³⁶ 0003. *ibid*, SChr 100,933; ed. 1985.549.

³³⁷ 0004. ID., 0197: *Apologetieusiml*, XXIV, 5-6; - CCSL 001 (1954), 134 -CSEL, 69 (1939), 69; or/ > 2,001 (18781,476-478 (former no. 417418); - lat.-french: ed. Budé = *Apologetic*, ed. crit. et trad. WALTZING Pierre, and SEVERYS Albert. Paris, Belles Lettres, 1961, lxx, 115 p. Here XXIV, 5; PL 001 (1878), 477-478, n° 418 = PL 001 (18441,417418 = CSEL69,69; trans. Budé, 61.

For his part, Lactantius (± 0250; ± 0305-0323), before being able to contemplate with just satisfaction *the death of the persecutors*, finds himself obliged (around 305/310) to take up again Tertullian's argument on the nature of religion. This one is not a matter of violence, but of will. Violence defiles it. The A. has just invited ("rhetorically") the pagan priests to a colloquy where they would take the trouble to prove their idolatrous beliefs by demonstrative reason as the Christians do for their own belief:

"11.11 There is no need for violence and injustice, because religion cannot be born of coercion; it is necessary to use the word rather than the rod, so that there is a voluntary act. Let them draw out all the acuteness of their mind; if their reasoning is right, let them present it. We are ready to give them a hearing if they bring a teaching: but we cannot believe them if they keep silent, just as we cannot give in, not even to those who do us violence. 13. Therefore no one is ever held back by us in spite of himself - for he is useless to God who has neither devotion nor faith - and yet no one goes away, for truth alone holds us back."³³⁸

With speculative, not magical, arguments, holding the mind, not the body, one must defend religion "not by slaughtering, but by dying",

"For if religion is to be defended by blood, torture, and evil, it will no longer be defended, but will be defiled and violated. For nothing is so freely willed as religion: if the spirit of him who offers a sacrifice is repulsed by it, it is destroyed and non-existent."³³⁹

New nuance, the forced religious act is not religion;³⁴⁰ it is even a blasphemy.³⁴¹ El a god who would accept such a sacrifice would not be god. *³⁴

"We, on the other hand, do not demand that anyone be forced to worship our God, who is the God of all men, whether they like it or not, and we do not get angry if they do not worship him. We put our trust in the supreme majesty of him who

can just as well avenge the contempt he suffers as the sufferings and injustices suffered by his servants." "And therefore, though we suffer such horrors, we do not even respond with words, but leave the vengeance to God; we do not imitate those who present themselves as defenders of their gods and crack down without mercy on those who do not worship them.

Around 320/325, he summarized his thought, which was transmitted along the thread of Tradition to Leo XIII, Pius XII, John XXIII and *DH*:

"And yet religion is the only domain in which freedom has established its home. 2. Indeed, more than anything else, it concerns the will, and the necessity of it cannot be imposed on anyone to make him honor what he does not want. B³⁴²

At an uncertain date between 295 and 314, perhaps in 313, a council was held in Elvira, two canons of which are of interest to our subject...³⁴³ Canon 49 warns "landowners that they must not allow their fruits, which they receive from God, to be blessed by Jews, lest they render our blessing void and invalid. If anyone, after the

³³⁸ 0008. LACTANCE, *Divina: Institutiones or De Institutionibus divinis*; orig. and translation: LACTANCE. *Institutiones divines*. Book V. volume I: introduction, crit. ed., trans. MONAT Pierre, Paris, Cerf, 1973, 259 p. (*SChr* 204). We quote: V, 19-20-21; lat. alone: CSEL 19 (1890), 463-464.465 (read all 461-468); PL 006 (1844), 614 and 616 (cap. 20) (cited by *DH*, note 8); and also PL 006,619.620; orig. + Iranç.: *SChr* 204, pp. 232-245; here 232-233.

³³⁹ *Ibid.* V. 20: PL 006.616 = V, 19,22-23 in *SChr* 20". 236 and 237.

³⁴⁰ AA/bid..

³⁴¹ *Ibid.*, V. 20,7: lat: *SChr* 204.242. Translation: *SChr* 204.243, § 7.

3-W 0009. LACTANCE, *Epitome divinarum institutionum*, LIV or 49, 1 ; - iat.-franç : LACTANCE, *Epitomé des institutions divines*, introd., text crit., trans., notes and index : PERRIN Michel, Paris, Cerf, 1987, 297 p. (*SChr* 335) - lat only : PL 006, 1061 ; which names this Chap. as LIV ; *SChr* 335, 192-193, with n° 49, 1 and CSEL 19,728, with both numberings.

³⁴³ For the location of Elvire cf. VIVÈS.J., art. "Elvire. - I. The city and the diocese", in *DHGE* 15 (1963), 312. For the date of the council, cf. GAUDEMET J., art. "Elvire. - II. The Council of Elvira", *ibid.*, 317-320. In composing LRTC we had never seen canon 49 quoted (numbered by error LX1X in MANSI, 2, 14), and thus ignored it. This was reproached to us by a census taker, who ignored canon 60, and did not quote canon 49...

prohibition, should have the use of doing so, let him be excluded from the Church altogether.³⁴⁴ Let us note that a landowner obviously has the right, even according to *DH*, to ask that outsiders do not come to worship in his house; this is of the most elementary natural private right. Similarly, if workers wanted to use the landowners' harvest (*fructus suos*) for their worship: the harvest belongs by assumption to the Christian landowners, not to the Jews. And to exclude from the Church is not properly to compel.

According to canon 60, of which LRTC had already provided the reference: "If anyone breaks idols and is put to death on the spot, since this is not written in the Gospel, and it is not found that this was ever done in the time of the apostles, it has pleased us not to receive him among the martyrs."³⁵¹ Let us notice first of all that it is a question of destroying *paganism*?³⁴⁵ Then, certainly, in the time of the apostles, people were slaughtered for the faith. But not by destroying idols, and in any case not by provocation.³⁴⁶ The canon contains at least the generic condemnation of the process, whatever *natural justice* may be at stake (and only at stake in the principle of *DH*).

We can therefore conclude that from the writers confronted with persecution emerges a beautiful unanimity, unfavorable to coercion in religious matters. If we were to put their various messages together, we would obtain a natural right "not to be coerced or prevented" in matters of religion, based on God's respect for man's freedom, a reflection of the Creator, and on the nature of the act of religion. Nevertheless, it must be recognized that there is unanimity not on this *whole* synthesis, but on an instinctive repugnance to coercion in matters of religion, expressed along different lines. Moreover, one must take into account the context of the persecution, "focused" only on Christians. Several of these Fathers (it would then become logically possible, it is said) would argue by *reductio ad absurdum* relying on the *false* ideas of their adversaries.³⁴⁷ Moreover, there is no Church practice that reinforces the argument, because, of course, the Church of that time did not yet have the strength of a secular arm.³⁴⁸ The agreement of the early Fathers seems therefore to be perfect, *especially* on the freedom of accession to the Christian faith, on the "right not to be coerced". However, as we have seen, some of them go beyond the *ad hominem* response and go to the heart of the matter, even to the natural right not to be prevented.³⁴⁹ Finally, and this is not the least of our observations, in the face of this block *no* author positively restricts the right to Christians *alone*.

344 Our translation of the Latin original: MANSI, 2,14: "Admoneri placuit possessores, ut non patientur fructus suos, quos a Deo percipiunt, a Judæis benedicti; ne nostram irritam et infirmam faciant benedictionem. Si quis post interdictum facere usurpaverit, penitus ab ecclesia abjiciatur."

345 Our translation of the original Latin: MANSI, 2, 15: "Si quis idola frerit, et ibidem fuerit occisus quatenus in evangelio scriptum non est, neque invenitur, sub apostolis unquam factum, placuit in numero eum non recipi martyrum. Commentary in LAMBERTINI Prosper, card (future Benedict XIV), *de Servorum Dei beatificatione et Beatorum canonizatione*, 111, xvii, esp. 5-10, ed. of Venice, Remondini -Zatta, t. III (1788), 72.

346 This was not the context in which, for example, St. Benedict would do it on Mount Cassin in the 5th century^v.

347 Cf. e.g. DAVIES, 1992,67.

348 In fact, not using a right is not proof that it does not exist. Cf. PALOMBA. 1868.07.20,312-313.

349 None of them are interested in the *limits* of the RL.

3.2. After the peace of the Church: The Church defends its freedom against the Arian state

The peace of the Church, decided on June 13, 313 in Milan by the two Augustinians,³⁵³ the one of the West (Constantine I^{er} the Great, emperor from 306 to 337) and the one of the East (Licinius), will revolutionize the way of posing the problem.^{351*} We know the content of this "Edict of Milan"³⁵⁰ by a letter of Licinius, reproduced in Latin by Lactantius,³⁵¹ and in Greek by Eusebius of Caesarea (= 0265-0340):

"...we have determined to give Christians and all others the free choice of following whatever religion they may wish, so that what divinity and heavenly power there may be may be benevolent to us and to all who live under our authority. 151 So then, with a salutary and entirely upright purpose, we have decided that it is our will that no one should be denied absolutely the liberty of following and choosing the observance or religion of the Christians, and that each one should be granted the liberty of giving his considered adherence to that religion which he deems to be useful to him ... [S]ince your devotion sees that we grant them this liberty without any restriction, it also sees that to others also who wish to do so is granted the power to follow their observance and their religion, which is evidently suitable for the tranquility of our times: in this way each one has the power to choose and practice the religion he wishes. This has been decided by us in such a way that we do not appear to diminish for anyone any rite or religion."³⁵²

Licinius was faithful to it only until about 320, date when Constantine started a war against him completed in 324 by his death.³⁵³

"Constantine renewed his edict of tolerance for all in 324. This declaration, preserved by Eusebius,³⁵⁴ lifts a veil on the motivations of the first Christian emperor. He is persuaded that the pagans are in error; however, he does not think of depriving them of their freedom, because his faith indicates to him that nobody must harm others by his own convictions. No one can be forced to believe or adhere to a religion. That the political power proclaims such a principle is a novelty compared to the ancient state, and clearly a fruit of Christianity. Constantine's tolerance is not that of a sovereign who would place himself above religions. He identified himself with the Christian faith and drew the reasons for his tolerance from that same faith." ³⁵⁵

Remaining a catechumen, continuing to bear the title of *Pontifex* of the pagan religion, and wishing to play with regard to his former co-religionists the role of "bishop of those outside", Constantine will not be slow to behave often enough also as a "bishop of things outside", even as a "bishop of the outside", believing himself to be in charge of taking initiatives concerning all the temporal aspects of the life of the Church (cf. his interference in Donatist and Arian affairs). We find in this attitude the inconveniences of any human situation, and, if it is true that these kinds of troubles will be perpetuated until the end of the Old Regime, we must, like Leo XIII³⁵⁶ and Pius XII,³⁵⁷ draw a globally positive balance

³⁵⁰ There had been an Edict of Toleration, granted with bad grace by Galerius, and signed in Nicomedia on April 30, 311 (cf. LACTANCE, *De mortibus persecutorum*, 34 = PL 007,249 s). Cf. VERA-URBANO, 1987a. 602, notes 28 & 29.

³⁵¹ LACTANCE. *De mortibus persecutorum*. 48 : PL 007, 267 ff ; reed. e. g. in LO GRASSO², n° 3-7 ; or : LACTANCE, *On the death of the persecutors*, I: Introd., crit. & transl. ; 11 : Commentary : MOREAU J., Paris. Cerf. 1954, 482 p. in 2 volumes (SChr 039/1 & 11).

³⁵² EUSEBIUS OF CAESAREA, 0311-0325: *Ecclesiastical History*, X, 5,2-13 (especially 4); Paris, Cerf. 1958, viii-354 p. (SChrS5). The two versions in parallel in LOMBARDI, 1985,32-33.

³⁵³ Cf. PALANQUE, 1939,56-58.

³⁵⁴ See EUSEBIUS of Caesarea, *Vita Constantine*, IV. 20 and 11.24-42.

³⁵⁵ MINNERATH, 1991,30.

MS Cf. 0611.16: *Acta Leonis XIII*05.132 = ASS 18,169.

³⁵⁷ Cf. 0772 (here 0772.3 and 0772.7) PIE XII, 1955.09.07: to the X^e Congress of Historical Sciences; AAS, 672-682 (here 677-679).

sheet of this kind of collaboration of the two powers, with forms moreover very variable during the centuries. Nevertheless the Church, while calling upon the help of the secular power, will always have to guard against the encroachments of the latter, and to defend its freedom not only *by* but also *against* the Christian State. It is not up to us to retrace the history of these relations (it would be necessary to devote about fifty volumes to it).³⁵⁸ Let us note already that on September 1^{er} 326, in his letter to

Dracilianus, Constantine decides that the religious privileges will be reserved to the catholics, and that "the heretics and schismatics will be not only deprived of these privileges, but also subjected to various charges," s** On September 25, he specifies to Bassus another aspect: the novatian schismatics must be able to keep their churches, if they have them since the schism, not if they are catholic churches which they occupy?⁶⁹

But we will sometimes meet theologians too eager to encourage the emperors in the way of severity.³⁵⁹ Thus, a Firmicus Maternus (t after 360), towards 346, will put in residence Constance II and Constant I^{er} to follow the will of God, to make disappear idolatry:

"There is very little left to do so that, thanks to your laws, the Devil may be struck down from top to bottom, so that the deadly contagion of idolatry may be destroyed and annihilated.³⁶⁰ Remove, remove without hesitation, most holy emperors, the ornaments of the temples. Let the fire of the money workshops or the flame of the foundries bake these "gods"! Expropriate all the offerings for your benefit and take possession of them. Since temples have been destroyed, your prosperity has grown through the power of God... .P⁷³

"In general, when he attacked a temple, Constantine was content to strip it of the precious objects it contained. This was undoubtedly a means of enriching the treasury, but the propaganda effect was not negligible: less rich, less sumptuous, the temple attracted fewer crowds, and the deity to whom it was dedicated and who had not been able to defend it imposed less. As for the landed estates belonging to the temples, a law, promulgated during the anti-pagan reaction which followed the death of Julian, ordered that they be seized and integrated into the private patrimony of the emperor. [*Cod. Theod. X, 1,8 (364)*]."³⁶¹

Firmicus goes so far as to invoke the anti-pagan laws of *Deuteronomy (Dt 13)*:

"But to you also, most holy emperors, the obligation is imposed to crack down on this scourge and to suppress it. The law of the supreme God prescribes your severity to pursue the crime of idolatry by all means. The law of the supreme God prescribes your severity to pursue the crime of idolatry by all means. He even makes the beloved members of a wife pass through the edge of the avenging sword. The friend is also pursued by his high severity, and a whole people is armed to tear the body of the sacrilegious pagans. Even whole cities, caught in the act of such a crime, are doomed to destruction, and in order that your foresight may be more clearly instructed in this truth, I shall quote the formula of the established law.]...]."³⁶²

"In fact, the laws prohibiting pagan sacrifices are repeated from 341 [*Cod. Theod.*]

³⁵⁸ Cf. the collections: RAHNER H., *Church and State*; Lo GRASSO; and EHLER-MORRALL = *Church and State through the centuries. A collection of historical documents with commentaries*, trans. and ed. EHLER Sidney Z., and MORRALL John B. [Univ. Dublin]. London. Bums, 1954, 12-625p. Or: Westminster, MD. The Newman Pr., 1954, 14 625p. We have consulted the Italian edition, more up to date: *Chiesa e Stato attraverso i secoli*. Document- raccolti e commentati da (ut supra), Pref. SORANZO Giovanni [Univ. Milan], Milano, Vita e Pensiero, 1958. 638 p. Documents classified by chronological chapters.

³⁵⁹ See MONACHINO, 1959.01-03,15.

³⁶⁰ 0011. FIRMICUS MATERNUS, *De errore profanarum religionum*, XXI: PL 012, 1029 = CSEL 2, 109 (with the n° XX and not XXI); XX, 7, according to FIRMICUS MATERNUS. *L'erreur des religions païennes*, ed. TURCAN Robert, Paris, Belles Lettres (Coll. Budé), 1982. 125. Let us point out in this respect: AA. W" *L'intoUeran^a eristiana nei confronti dei pagani*, BEATRICE Pier Franco (ed.), EDB, 1990,210 p.

³⁶¹ SAVON, 1997, 159, which refers to EUSEBUS OF CAESAREA, *Vita Constantini*, 111. 54; ID.. *De laudibus Constantini*. 8; LIBANIUS. *Orationes*. 30,6,37 :62,8; JULIAN EMPEROR, *Orationes*. 7,228 b., etc.

³⁶² Cf. 0011. ID, *op. cil.* XXX IXXIX, 1-2, according to Budé); PL 012, 1048-1049 = CSEL 2, 129, which nevertheless numbers 'XXIX' instead of 'XXX'. Trad. Budé, 151.

XVI 10, 2]. It is especially the sacrifices offered in view of knowing the future that are targeted.

but in this area it must have been quite difficult for the defendant to prove the purity of his intentions. It is true that the very repetition of these prohibitions proves enough that their effectiveness left something to be desired.

K³ TM

It is a very different tone of voice that the positions of s. Hilaire de Poitiers (~ 310-367), so long in the face of the interventions of Constance II in the ecclesiastical domain, render. Hilaire de Poitiers (~ 310-367), so long in the face of the interventions of Constance II in the ecclesiastical field. Attacking the Arian bishops, he reproaches them in 364 for using political power to achieve their ends:

"I ask you, bishops [...], what support did the Apostles have for the preaching of the Gospel, what power did they have to preach Jesus Christ and to bring almost all the peoples from the idols to God [...]? Were they given dignity in the palace, those who in prison sang a hymn to God in chains and lacerated by the whip? Was it by the edicts of the king that Paul gathered the Church for Christ, when he was made a spectacle in the theater? Did he rely on the patronage of Nero, Vespasian or Decius? [...]"³⁶³

"Today, alas, earthly protections recommend divine faith, the power of Christ is accused of impotence, since ambition is attached to his name. The [Arian] Church threatens exile and dungeon; it wants to make people believe by compulsion, the one who was once believed in exile and dungeons. It drives out the priests, that which was propagated by the priests who were driven out. ...] There is a striking contrast between the Church of the past, now lost, and the one we have before us,"³⁶⁴

"This passage, often quoted, is directed, it is true, against the Arian Church and Constantius its protector. It has however a more general scope, because it seems to refuse in principle the expensive protection of the State for the diffusion of the Christian truth,"³⁶⁵

Indeed, if the Arian Church is not that of the martyrs, it is precisely because it is persecuting. Thus, provincial administrators have nothing to do with religious matters, have no business judging clerics, and must cease persecuting the Catholic Church.³⁶⁶ Besides," Hilary told the emperor, "the very purpose of government and of all the trouble you take is to ensure that 'all those whom you command enjoy a very sweet freedom. And the only reason why it is permissible to bring order to disturbances and to exercise coercion against dissensions is that each one, freed from all bonds of servitude, may lead his life entirely according to his own decision."³⁸ The emperor must "let his people listen to the teachings of whom they want, of whom they think, of whom they will have chosen."³⁸ - The bishop of Poitiers complains that the Arians claim for themselves alone the "freedom of faith", and on the contrary for the others "chains, prisons, tribunals", even torture. This has nothing to do with the way of God, who "taught rather than demanded" and "despised a will compelled to confess him."³⁶⁷ The "episcopal doctrine" opposes the use of force in favor of the true faith, for God has "no need of coerced service, of extorted profession."³⁶⁸ "What are these ways of forcing priests to fear God by bonds and penalties?"^{3K4}

It is not surprising, therefore, to see his Eastern companion in battle, St. Alhanasius of Alexandria (295-373), saying the same thing in 358: Arianism is not like those "polite" heresies of the past, which were silent once they were defeated by Catholic arguments. In

363 0013. HILAIRE DE POITIERS, S., *Über contra Arianos [or] contra Auxentium [Against Auxence]*, 3 and 4 : lat.: PL 010.610-611. We refer here to *Contra Auxentium*, 3; lat.: PL 010.610-611. Our translation.

364 0013. HILAIRE DE POITIERS, S., 364, *Contra Auxentium*, 4; lat. PL 010,610-611. Our translation. 37" LECLER, 1955,1,78-79.

366 0012. HILAIRE DE POITIERS, S., 355/356. *Ad Constantium*, I, 1 = *Über [primus] ad Constantium Augustum [or] Imperatorem* : I, 1; PL 010, 557, col. 557. The text goes with 0010. CONCILE OF SARDICA (Sofia) (0343 or 0344): *Letter to Constantius II: Epistula Synodica Sardicensis*, cc. 1-2: CSEL 65, 181 bis [entitled there: *Oratio Synodi Sardicensis ad Constantium Imperatorem et textus narrativas S. Hilarii (Liber I ad Constantium)*].

³⁶⁷ 0012. HILAIRE DE POITIERS, S., 355/356, *Ad Constantium*, 1,6; our translation of PL010,561.

fact, feeling convinced of error, the Arian heresy, to attract followers, uses whipping or caning, or prison, "proving that it is anything but religious. For the proper function of religion is not to compel, but to persuade. The Lord did not use force, but left each one to his own free will. *³¹³ In this, as in everything, we must imitate him. "We do not proclaim the truth with swords, javelins, soldiers..."³⁶⁸

"The promoter of the ultimate pagan reaction, Julian the Apostate (361-363), again proclaimed freedom of conscience for all, while counting on divided Christians to destroy each other. There were another fifteen years of tolerance under the reigns of Jovian, Valentinian and Valens.³⁶⁹ It is then that pagan authors like the rhetorician Themistius, develop, in favour of paganism, the same arguments that the Christians formerly used to claim the religious freedom. Arrived at the end of race, the pagan apologetic borrowed certain elements from Christianity: it does not claim any more a position of religion of State, and asks only to be able to live in the worship of the supreme divinity, towards which lead many ways."³⁷⁰

Some twenty years later, St. Gregory of Nyssa (±0335-0394/0395) addresses freedom more directly as constituting man the image of the Creator. If God did not compel the sinful Adam to return to the right path, it is because this would have prevented man from returning to it, and would have deprived him of that "divine honor" of being "*sui juris*," "for the free will of the will is equal in honor to that of God." Thus divine wisdom wished "both to leave to human nature the dignity of free will, and to remove evil itself."^{3K9}

Conclusion of Chapter 3

On the one hand, the Fathers prior to the peace of the Church unanimously claim in the name of natural law the freedom not to be forced to worship a god against one's will, and even the freedom not to be prevented from worshipping whomever one feels one should worship. On the other hand, the Fathers after the peace of the Church, but before Saint Ambrose and the State Church, on the one hand distrusted the "backlash" of the pagans, and on the other hand demanded religious freedom against the persecuting Arians and semi-Arians, who were in power at the Court.

³⁶⁸ Chap. XXX111; PG 25,732, translated by LECLER, 1955,1,78.

³⁶⁹ Let us note nevertheless a law of Valentinian and Valens against the Manichaeans, struck with fines, and whose places of meeting are confiscated. This law also punishes any reiteration of baptism, thus the Donatists: VALENTINIAN 1", Roman emperor (0321-0364-0375), 0372.03.02. Law of Trier; lat.: *Cod. Theod.* XVI. v. 3 (ed. MOMMSEN, 1/2, 855); & LO GRASSO. n° 70. See also the law of VALENS. GRATIAN and VALENTINIAN 11, decreed at Trier on April 22, 376 or 378: *Cod. Theod.* XVI, V, 4 (ed. MOMMSEN. 1/2, 856), which requires that heretical places of worship be denounced, which will be confiscated.

³⁷⁰ MINNERATH, 1991,31, where one reads. in note 21: "Cf. THEMISTIUS, *Oratio* 5 and 12: God wanted man to have a natural inclination towards religion, to be adored freely. Moreover. THEMISTIUS advances an argument characteristic of pagan apologetics, namely, that God is best honored by the diversity of religions."

CHAPTER 4.

4. FROM SAINT AMBROSE TO SAINT JEROME

C It is especially s. Ambrose who will set in motion a certain use of the secular arm against the ancient persecutors of the Church (4.1.). S. John Chrysostom, s. Optat of Milev and s. Jerome will bring additional lightings (4.2.) before the great Augustinian synthesis.

4.1. Saint Ambrose of Milan (340-397) and the beginning of the Catholic State

On the other side of the Mediterranean, St. Ambrose⁹⁰ was concerned with protecting the freedom of Catholics against any return of persecution. Various episodes in his dealings with the Christian state have a bearing on our subject: 1° From 380 to 383: the pagan question under Gratian (359-375-383) and Valentinian II (375-383-392); 2° the case of the heretics (384-386); 3° In 388: the affair of the synagogue of Callinicon under Theodosius I^{er} the Great (347-379-395). In the present edition, we quote Ambrose more extensively.⁹¹ Our conclusions are strengthened by this.

4.1.1. The pagan question.

The altar of Victory, the subsidies, the Vestals (380-383)

"From 380, the ascendancy of Ambrose on Gratian had been strongly established (...) and it is perhaps at his instigation that he decided, in 382, to take again the fight against the paganism, fight suspended in 383.

390 For reference, cf. CAYRÉ, I, 508-534 (especially 524), and : *Tutte le opere di Sant'Ambrogio, edizione bilin-gite a cura della Biblioteca Ambrosiana, promossa dal cardinale Giovanni Colombo, arcivescovo di Milano in occasione del XVI centenario dell'elezione episcopale di Sant'Ambrogio*, Milano, Biblioteca Ambrosiana / Roma, Città Nuova, 1977-1991, 32 volumes; we have used only the 3 volumes of the letters edited by Gabriele BANTERLE. 1988, namely: vol. 19: *Discorsi e Lettere HH. Lettere* (1-35), recensuit Otto FALLER, 370; vol. 20: *Discorsi e Lettere H/U, Lettere* (36-69), volumen secundum editionem Patrum Maurinorum (PL 016), 248 p. & t. 21 where all the letters quoted here are found. Attention: the numbering of the letters which we use to quote (for example: *Ep. 12, I*) is that of the Maurists, and not that of this Latin-Italian edition, which for convenience we will abbreviate to: "Città Nuova". It seems that the letters of s. AMBROISE had several editions in Migne (e.g. 1845 & 1880; unless explicitly stated otherwise, our references are to the 1880 edition), with different paginations. Other confusions of reference come from the various successive numberings that these letters have known until our days (cf. PL 016,905-910). The insertion in bold of the page numbers of the old edition of the Maurists in the text of Migne does not contribute little to complicate the research, because certain authors quote these numbers instead of the n° of the PL. Other edition : FALLER & ZELZER. CSEL 82.

391 In writing this edition, we had added a summary of each law of the *Theodosian Code*, book XVI on apostates, heretics and non-Christians, which was then difficult to access for non-Latinists, and which is now useless, since the French translation has appeared in the meantime: *Le code théodosien. Book XVI*, ed. MAGNOU-NORTIER Élisabeth, pref. ROUCHE M., Paris, Cerf, October 2002, 446 p. This *Code*, a compilation written in 438, takes its name from Theodosius 11 the Younger, emperor of the East (408-450), not to be confused with Theodosius F^r the Great, friend of Saint Ambrose, and author of a large part of Book XVI. Let us also point out DE GIOVANNI L.. *Chiesa e Stato nel Codice Teodosiano. Saggio sul libro XVI*, Napoli, 1980.

due for eighteen years by the tolerant policy of Valentinian I" [364-375]. An edict deprived the colleges of priests and vestals of their income. The allowances granted for the exercise of worship were suppressed for the benefit of the tax authorities, and the same was true of the land that these colleges had received as legacies.³⁹² Finally, to crown the vexations, Gratian ordered to remove from the room of the curia [of the Senate] the famous statue of the Victory,³⁹³ which, since Augustus [-63 - -27 - +14], stood there above an altar,³⁹⁴ as to symbolize, in front of the gathered senators, the glorious Roman past. The pagan senators resolved to send a deputation to Gratian to ask him to cancel such a hurtful measure. But their Christian colleagues, who already formed the majority in the curia, formally refused to join them, and through the intermediary of Ambrose and Pope Damasus [366-384], made their decision known to the emperor. Gratian did not receive the deputation.³⁹⁵

"The laws of Gratian put an end to this set of privileges and thus aimed to remove from paganism the status of "established religion" that it seemed to keep in Rome. Without knowing why, these laws have not been preserved for us. A constitution of 415 collected in the Theodosian code makes however mention of it. But we only know the precise content of it by the memoirs that Symmachus³⁹⁶ and Ambrose will write two years later, when the controversy will have started again under the successor of Gratian. This double testimony is, moreover, perfectly trustworthy, since it comes from the two parties which this legislation opposed."³⁹⁷

"Under which influence and with which end, Gratien had suddenly decided to launch this challenge to the pagan party? One can hardly invoke financial interests: the profits which the treasure could draw from these measures seem to have been minimal, as Symmachus will underline it. The decision of Gratian thus appears essentially religious. But it is very likely that it was suggested to him. According to Palanque, it is necessary to see the influence of Ambrose (...) but the bishop of Milan will declare later, in writing to the emperor Eugene, that he was not the instigator of these measures and that he only prevented them from being called into question [Ep. 57,2]. Other influences must have been decisive. One can think of the Christian circles in Rome and of Pope Damasus."³⁹⁸

But Gratian was assassinated in 383. In 384, the pagans try to take advantage of the youth of his brother and successor Valentinian II to take over:

"A legation [to him] was mandated in the name of the Senate by Symmachus, then prefect of Rome, so that one resumes the use of the altar of the Victory and the expenses for the ceremonies [païennes].³⁹⁹ Informed of the thing, the bishop [Ambrose] sent to the emperor

[Valentinian II] a letter [Ep. 17],⁴⁰⁰ requesting that copies of the report [of Symmachus] be sent to him."⁴⁰

Migne (PL) (according to the Maurists) summarizes this letter thus (we translate):

³⁹² Cf. also BAUNARD. 1899,96.

³⁹³ Cf. LABRIOLLE, 1914, 1093-1094.

³⁹⁴ PIZZOLATO. 1997. 143-155 (here 144, note 7), remarks, after TESTARD M., *Saint Ambrose of Milan*, in *Bulletin de l'Association G. Budé*, 51 (1992), 385, that it was the altar, not the statue, which concentrated all the Christian opposition.

³⁹⁵ LABRIOLLE. 1914,1093 = 1D., 1947,1.390-391.

³⁹⁶ Quintus Aurelius Symmacus (340-410). For the reference to the latter, cf. MINNERATH, 1991, 32, who quotes the *Relatio Symmachii*, in PL 016 (1845), 966-971. Reprinted in PL 016 (1880), 1007-1012. Ed. crit. SEECK, *MGH, Auctores auliqussimi*, t. 6. 280 ff.

³⁹⁷ SAVON, 1997. p. 160, referring to SYMMAQUE, *op. cil*, 3,7; AMBROSIUS, *Ep. 72* (17 of Migne), 3. 9 and *extra coll.* 10 (57 of Migne), 2; PAULIN OF MILAN, *Vita Beati Ambrosii Episcopi Ecclesiae Mediotanensis*, § 26, ed. PELLEGRINO Michele, *PAOUNO DI MILANO, Vita di S. Ambrogio*, Roma, Studium, 1961; for the maintenance of the vestals and priests, to SYMMAKIS, *Relatio* 3, 11; AMBROSIUS, *Ep. 18*, 13; for the seizure of the lands of the temples by the tax authorities, to AMBROSIUS, *Ep.* 18, 16; 57,2; *Cod. Theod.* XVI, 10, 20; for the prohibition of legacies, to SYMMAQUE, *Relatio*, 13 and 14; for the suppression of the exemptions of taxes for the vestals, to SYMMAQUE, *ibid.*, 3,11-12.

³⁹⁸ SOAP, 1997,161.

³⁹⁹ It almost succeeded, remarks LABRIOLLE, 1914, 1094, after AMBROISE, *De obitu Valentiniani*, 19: PL 016 (1880), 0425. PIZZOLATO, 1997, cit, 144, remarks: "Symmachus never relies on the right of individuals to religious liberty, but always on political motivations)...[."

⁴⁰⁰ Cf. 0017. AMBROSIUS OF MILAN, s., 0384: *Epistola 17* [ordo genuinus: *Ep. LXXII*, according to CSEL 1-4: "Christianissimo imperatori Valentiniano"; lat.: CSEL 82/3 (1982), 12*13; PL 016 (1880), 1001-1006 = (1845), 961 971. AMBROISE seems not to have read the text of the pagan senator yet.

"Emperors must protect religion and must not be asked to restore superstition. It is therefore necessary to take no account of the reasons advanced against the honor of the Christian faith. It is false that it was in the name of the Senate that the petition (of Symmachus) had been presented, since the Christian senators had not given their consent. It is necessary to refer to Theodosius and the bishops. Valentinian will be rejected by the Church if he concedes privileges to the infidels, and moreover, in so doing he would be insulting the memory of his father and his brother [...]."

In § 3 Ambrose invites Valentinian II not to pay any more subsidies to the pagan cult --⁰² Here again, nothing on the RL: it is a question for the emperor of [not] disbursing the money of the imperial treasury to subsidize the pagan cult. And not of the freedom left to the pagans to build temples or altars for themselves, or to use those which exist. Then comes logically the following passage (§ 4) r.⁴⁰¹

"They come to complain of their losses, they who were so little thrifty of our blood, and who, of our churches, made ruins! They claim privileges from you, when only yesterday the laws of Julian denied us the right of all to speak and teach... w⁴⁰²

It is a question of the reciprocity of the right, of self-defense.⁴⁰ -"Let us quote, in passing, from § 7, the reminder of the principle of the freedom of faith.⁰⁶

It is clear: the pagans should not extort the emperor to make them worship the gods, whereas they would not support themselves that one required of them to adore what they do not want to adore. In short, Ambrose militates for the RL of the emperor, whom he does not want to see forced to favor idolatry against his conscience. Paragraph 9 (col. 1003-1004) recalls that the obligation to sacrifice to the Senate would be unbearable for Christian consciences. It is a plea in favor of the RL of the Christians in general,⁴⁰³ not against that of the pagan cult, to which one denies only financial *favours*. The following paragraph (§ 10) recalls that the Christian senators declared that they had no part in the request of the pagan senators, which would obviously have been contrary to their conscience. Then, the saint takes up the idea that the re-establishment of official paganism is contrary to the freedom of Christians."⁸ It is thus well question of the LR of the Christians, so much scorned formerly by the pagans, without forgetting the cause of the true religion, pleaded by the only competent authority, the bishops (§ 13). In § 14, it is still a question of refusing that an act of *positive favor* and of privilege towards the pagans is made.--⁰⁹ § 16 confirms to us that it is a question of removing the privileges of the official religion and of respecting the LR of the Christians, but not of scorning the LR of the pagans.--¹⁰ Ambrose fully carried out the decision of Valentinian II. Then,

"once received the relation (pagan), he wrote a splendid answer,⁴⁰⁴ such as Symmachus, very eloquent man,

The only one cited in LRTC, because it is the only one related to LR. Cf. LABRIOLLE, 1914,1094.

Ep. 17, 4: PL 016, 1002: "Et de dispendiis queruntur, qui nunquam nostro sanguini pepercerunt, qui ipsa ecclesiarum sificia subruerunt. Petunt etiam ut illis privilegia deferas, qui loquendi et docendi nostris communem usum Juliani lege proxima denegarunt, et privilegia illa, quibus ssepe decepti sunt etiam Christiani: [...]." (According to PL, note 71, Julian the Apostate had forbidden Christians to teach the humanities).

"Si hodie gentilis aliquis. Imperator, quod absit, aram statueret simulacris, et eo convenire cogeret Christianos; ut sacrificantibus intéressent, ut oppleret anhelitus et ora fidelium cinis ex ara. favilla de sacrilegio.

fumus ex busto : et in ea curia sententiam diceret, ubi jurati ad aram simulacri in sententiam cogentur (propterea enim interpretantur aram locatam, ut ejus sacramento, ut ipsi putant, unusquisque conventus consuleret in medium, cum majore jam curia Christianorum numero sit referta), persecutionem esse crederet Christianus, qui cogentur tali optione ad senatum venire : quod fit plerumque; nam et injuriis convenire coguntur. Te ergo imperatore, Christiani in aram jurare cogentur ? Quid est jurare, nisi ejus quem testaris fidei tuæ præsumem, divinam potentiam confiteri? Te imperatore, hoc petitur et postulatur; ut aram jubeas elevari, sumptum sacrificiis profanis dari?"

⁴⁰⁴ 0018. AMBROSIIUS OF MILAN, s., 0384: *Epistola* 18 (ordo genuinus: Ep. LXXIII, ad Valentinianum Imp.: CSEL 82/3 (1982). 34-53; PL 016 (1880), 1013-1024 (n° 833) = (1845), 971-982. For the circumstances, see for example, BAUNARD,

never dared to retort anything more to it."⁴ ²

"Already, in his letters to Valentinian II, the idea slips in that the prince does not have to hold the balance equal between the two religions, but can make it lean in favour of his own [Ep. 18, 10]: it is not allowed to a Christian, even a catechumen, to contribute to the worship of the idols [Ep. 57.2,6]; his quality of Christian imposes on the emperor an attitude which is not of impartial indifference. It imposes on him a charity always merciful towards people, and the bishop who had interceded with Gratian to save the life of a notable pagan will obtain from Theodosius an amnesty for the pagans of Eugene's party. But these gestures of forgiveness accompany the most hostile measures to the institutions of paganism: and one cannot doubt that these were also inspired by Ambrose. We suspected his influence in 391, when Theodosius inaugurated his anti-pagan legislation; we heard him in any case celebrate with the greatest satisfaction the victorious struggle which this emperor had waged against idolatry. [*Obit. Theod.*] Now, it is notable that these laws of proscription only attacked external ceremonies and did not infringe upon personal freedom, except for those apostates whose treason seemed to allow them to be excluded from the common law. It is, in short, an analogous attitude that Ambrose, as we shall see, adopted with regard to heretics [...]" ⁴³

4.1.2. The Arian question (385-386)

If an embassy in Trier leads him to reprove the intervention of the usurper emperor Maximus in the condemnation to death of the heretical bishop Priscillian (± 300-385) and of the priscillianists,⁴⁰⁵ Ambrose fights especially Arianism."

"The empress-mother, Justina, who systematically favored the Arians, harbored a strong hostility against him. She suggested to her son, Valentinian II (in 385), the idea of claiming the Porcian basilica from Ambrose. (...) Ambrose replied with a respectful but categorical refusal."⁴⁰⁶

The affair almost turned into a riot. In the same way, a little later, always in 385, when one claimed to him for the Arians the new basilica, *intra mur os*.

"The following year (386), Justine tried to take her revenge. She raised up a competitor for Ambrose, a certain Mercurinus, a Scythian by origin, who took the name of Auxentius, in memory of Ambrose's Arian predecessor in the see of Milan." ⁴¹⁸

The court seeking to remove by force the required basilicas, s. Ambrose, surrounded by his people, supported a real siege, providentially interrupted by the discovery of the relics of the holy martyrs Gervais and Protais.⁴⁰⁷ This little war gave Ambrose the opportunity to claim loudly the freedom of the Church-institution, and the exclusive competence of the bishops in ecclesiastical matters.⁴²⁹ In a general way, Ambrose defends himself by recalling how the Arians persecuted the Catholics, massacred them or stole their churches.-^{*2} ' Here again appears

1899, 200-216; or : PALANQUE, 1933, 10. 37. 117-118. 131. 134. 165. 222. 278-279. 307. 359, etc. On the subject of pagans, St. Ambrose sarcastically remarks, PL 016 (1845), 975: "Numquam nobis amplius contulerunt, quam cum verberari Christianos atque proscribi ac necari iuberent. [...] Per injurias, per inopiam, per supplicium nos crevimus : illi ceremonias suas sine quaestu manere posse non credunt."

⁴⁰⁵ Independently of the character of usurper of the said Maximus. According to PAULIN OF MILAN, *op. cil.* Ipsum vero Maximum a communionis consortio segregavit. SAVON, 1997, 190. note 23 considers that Paulin detonates the facts: it is the bloody prelates that AMBROISE excommunicated. Cf. 0020. AMBROSIUS OF MILAN, s.. 0385: *Ep.* 24, 12: *lal.* PL 016, 1039; see also *Ep.* 25-26. According to Sulpice Severe, St. Martin of Tours had already taken the same position with regard to these bishops, refusing to be in communion with them: "If a sentence of the bishops condemns the heretics, it is enough that they be driven out of their seats; but, for God's sake, no bloodshed" (0028. Sulpice Severe (± 0360/0363-0420), ± 0403/0404: *Dialogus* II (III). § Ixiv, 11-13; - *lat.*: CSEL 1 (1866). 208-211; PL 020,95-222; - translation: MONCEAUX P.. *Saint Martin*. Paris, 1927.238-243; here trans. BAUNARD, 1899, 297-298). Cf. BOUYER, 1951.10/1952,71 and LECLER, 1955,1. 89; ALÈS Adhémar d'. *Priscillian and Christian Spain in the IV^e century*. Pans, 1936, 37-74; 167-173. See also letter 26. n@3: PL 016 (1880. 1086, where s. AMBROISE seems to condemn the idea of priests putting men to death.

⁴⁰⁶ LABRIOLLE, 1914, 1095. Source: 0018/B. AMBROISE de MILAN, s., 0385: *Ep.* 20 (to his sister); PL 016 (1880). 1036 = (1845), 994-1002, especially §§ 3 and 8.

⁴⁰⁷ See LABRIOLLE, 1914, 1096 and BAUNARD, 1899.251-271.

the argument of non-reciprocity, of self-defense. A series of laws of the time hit the Manicheans, Arians, and various other heretics,⁴⁰⁸ as well as apostates.⁴⁰⁹ And it is well s. Ambrose who is behind these decisions:

" This one asks first of all that the power does not favor this doctrine of error l'homéisme: the law, he affirms, does not have the right to impose a faith (C. *Aux.*, 34; *Epist.* 21, 10). But he invokes this principle of liberty against the edict of January 386 which claimed only to assure liberty to the Arian communities. It is that, at bottom, Ambrose is, in this field still, partisan only of the freedom of beliefs, following the respect which is due to the conscience, but by no means of a complete freedom of the cults. At the beginning, it accommodated this one as of a lesser evil: it is the moment when Gratien continued the policy of neutrality of his father and collected the painful heritage of Valens. But, as soon as he had the opportunity, the bishop demanded and obtained more: the edict of Milan of August 3, 379, which, like that of Thessalonica of February 28, 380, gave to the Catholic Church the character of a Church of State, prescribed to the heretics to abjure.⁴¹⁰ The edict of the Three Tavernes of April 22, 380, like that of January 10, 381,⁴¹¹ removes their places of worship. That this legislation is in conformity with the ideas of Ambrose, one cannot doubt it: as of spring 381, speaking in the name of the Council of Aquilée, he expresses his satisfaction to know that in the East "the Arians were driven out of the churches which they occupied"; and it is well the same attitude that he had in Milan in 379 and later, in 386, when he refuses to the Arians any basilica. Without doubt the problem of freedom was never really posed [...]."⁴¹²

4.1.3. The case of the Jews. The affair of Callinicos (388)

"During the year 388, Theodosius (I^{er}) learned⁴¹³ from a report of the commander of the Roman troops in the East, the *cornes Orientis*, that very serious disorders had broken out⁴¹⁴ in

the city of Callinicum, one of the principal cities of the province of Osroene (= Mesopotamia).⁴¹⁵ Some monks,

⁴⁰⁸ *Cod. Theod.* XVI, V, 5-31 (ed. MOMMSEN, 1/2,856-865).

^{42A} *Cod. Theod.* XVI, VH, 2-7, (ed. MOMMSEN, 1/2,884-886).

⁴¹⁰ 0098. THEODOSIS I^r, 0380.02.28 : Edict of Thessalonica (which nevertheless does not foresee any formal punishment against the offenders) ; in *Cod. Theod.* XVI, 1,2 (ed. MOMMSEN, 1/2,833 ff.).

⁴¹¹ Cf. our 0099. with, in our 2^v ed., the quotation " Is autem Nicænae adsertor... " = LO GRASSO, n° 71. The emperors forbid heresy any propaganda in the Empire; cancel any favor possibly obtained by heretics; forbid public meetings of those who do not profess the Nicene faith (Photinians, Arians, Eunomians) *, and order to restore the churches to the Catholic bishops only. See also: *Cod. Theod.* XVI. 6.1.38; & 1.4. We quote (after correction of the references) all the decrees listed by DIÈZ-ALEGRÍA, 1965.62 ff., but not the reaction of the bishops against CONSTANCE at Sardique (343/344); GRATIAN, *Dist. X*, c. VI = FRJEDBERG, 1.20.

⁴¹² PALANQUE, 1933.368.

⁴¹³ HERMANT, *Vie de Saint Ambroise* book V, Chap. XIII, 344 estimates that Theodosius learned the news only in October.

⁴¹⁴ HERMANT, cit. 343 ("des Moines allant pour célébrer la fête des Saints Martyrs Machabées"), places this at the end of July or on August 1". For BAUNARD, 1899,312, it was on 1^{er} August 388; "in the month of August 388", according to PELLEGRINO Michèle (ed.), *PAULINO Ist MILANO, Vita di S. Ambrogio*, Roma, Studium, 1961, 82, note 3. commenting on the following account of events by the said Paulinus of Milan, § 22: "After the killing of Maximus, the emperor Theodosius was in Milan and the bishop Ambrose in Aquileia, in a village in the East, the synagogue and a sanctuary of the Valentinians were set on fire by the Christians, because the Jews and the Valentinians insulted the Christian monks: the Valentinian heresy, in fact, honors thirty gods. The Count of the East sent a report to the emperor, who, on receiving it, ordered that the synagogue be rebuilt by the local bishop and that the monks were to be punished", when the contents of this order reached the ear of the venerable bishop Ambrose, he sent a letter to the emperor, for he could not at the moment move, and in his letter he asked him to revoke his arrangements and to grant him an audience. He added that if he was not worthy of being heard by the emperor, neither would he be worthy of being heard by the Lord through Ambrose, who could not mediate his prayers and wishes. He protested that he was willing, in such a matter, to undergo even the mon, in order not to make the emperor an apostate by his silence, he who was responsible for such an unjust order against the Church." Paragraph 23 recounts the sermon of Ambrose. The above-mentioned note 3 refers to numerous historians (Rauschen, Palanque, Campenhausen, Dudden, Biondi, Setton, Simon, Mesot, Figueroa, Ruggini, Jonkers).

⁴¹⁵ Callinicos, Callinicum, Callinicon, Kallinikon (plus lard Leontopolis, according to HERMANT. cit. 343), city located on the Euphrates, as specified by PELLEGRINO, cit. and PALANQUE, 1939,510. Cf. JANIN R., art. " Callinicos ". in

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justiced by the partisans of a Gnostic sect [Valentinian], had burned, in a way of reprisal, a sanctuary of this sect. More unfortunate still, and on which the attention of the emperor was mainly focused, a Jewish synagogue⁴¹⁶ had been burned at the instigation of the bishop of the city.⁴¹⁷ Theodosius, concerned as he was about public order, considered it necessary to take action.⁴¹⁸ He ordered that the synagogue be rebuilt at the expense of the bishop, who was considered responsible. On hearing this news, Ambrose, who was in Aquileia, returned to Milan in haste,⁴¹⁹ with the intention of formally opposing the measure taken by the emperor.⁴²⁰ Seeing that the emperor was not at all interested in giving him an audience, he addressed a letter to him (*Ep.* 40),⁴²¹ in an attempt to make him reconsider his decision. He reproached him for not having asked the bishop for a report, for having condemned him without hearing him. He evoked the memory of similar events, in which the Jews had often assumed the most serious responsibilities without being seriously questioned. Above all, he protested against the insult done to Catholics, humiliated in front of the Jews, and obliged to rebuild with Christian money a synagogue, a den of impiety.⁴²²

One is at first surprised that s. Ambrose asks the emperor not to require the guilty bishop to pay for the reconstruction of the building with his own money.⁴³² It is understandable that the money of the Church should not be used for the construction of synagogues, but *if* the Jews of the place in question respected good order, a debt of justice has certainly been contracted towards them, and the guilty must pay from their own pocket.⁴³ * What are the arguments of Ambrose?

"Two of his *Letters* tell us the story. *Letter 40* is a strong admonition addressed to Theodosius.⁴²³ *Letter 41*, addressed to Marcellina, Ambrose's sister, vividly recounts the sermon delivered to the emperor to make him reconsider his decision and the dialogue that followed."⁴³⁰

"He asks to be received in audience by the emperor, affirming that he praises the emperor for his ease of access; that he cannot remain silent without putting them both in danger; that kings do not dislike freedom; that the emperor, although he is pious, can be deceived; that his sentence concerning the repair of the synagogue is perilous; seeing that it exposes the bishop to martyrdom or to prevarication.⁴²⁴ Ambrose proposes on this subject the example of Julian the Apostate, then refutes the reasons of the (imperial) rescript; mainly because the Jews had burned several churches.⁴²⁵ Then, it is a question of the temple of the Valentinians, which Ambrose declares worse than the pagans; and of minimizing the (synagogue) treasure, which it is said was plundered. Ambrose shows that the fact [of having demanded its restitution] opens the door to the calumnies of the Jews, and thus to their triumph over Christ. Ambrose imagines an allegorical request from the Lord. He seeks to impress Theodosius with the example of Maximus, and to dissuade him from avenging the Jews or the heretics,

ZWGE11(1949), 412-414.

416 See SAVON, 1997. chapter XX: *La synagogue de Callinicum*, 251-264, which refers to PALANQUE, 1933, 523- 524 for the chronology, and which specifies a little the injustices committed by Jews against Christians during the years preceding the event...

417 *Sur* the fact of this instigation, the historians we consulted do not express any doubt, except perhaps HERMANT, *op. cit.* book V, Chap. XIII, 343. Read for example HADOT Pierre, Introduction to AMBROISE OF MILAN" *Apology of David*, *SChr* 239, 1977, 37, who refers to LIPPOLD A., art. "Theodosius 1" in *PW, Suppl.* XIII, 879.

418 The imperial legislation is found in *Cod. Theod.* XVI, VIII, 1 -28 (ed. MOMMSEN, 1/2, 887-897).

419 But PAULIN, *cit.* believes that he wrote Aquileia, where he was stuck. According to HERMANT, *cit.* 343: "it is constant that it was from there (Aquileia) that he wrote to Theodosius." Same information in PALANQUE, 1939, 510.

420 See also HADOT, *op. cit. ibid.*

421 0020/B. AMBROSE OF MI LAN, s" 0388: *Ep.* 40 (to Theodosius), *PL* 016 (1880). 1148 ff. = (1845), 1101-1113.

422 LABRIOLLE, 1947, I, 394, reed. of ID., art. "Ambroise", in *DHGE* 02 (1914). 1097-1098. Cf. also PALANQUE, 1939, 510-511 and the commentary of DÍEZ-ALEGRÍA, 1965, 70. Detailed summary of the *Letter 40* in HERMANT, *cit.* 347-352.

general and usual reciprocity on the part of the Jews.

⁴²⁴ Cf. e. g. § 6: "6. Relatum est a comite orientis militarium partium incensam esse synagogam, idque auctore factum episcopo. Jussisti vindicari in cæteros. synagogam ab ipso exaedificari episcopo. Non astruo exspectandam fuisse assertionem episcopi ; sacerdotes enim turbarum moderatores sunt, studiosi pacis, nisi cum et ipsi moventur injuria Dei, aut Ecclesie contumelia. Sit alioquin iste episcopus ferventior in exustione synagoga:, timidior in iudicio: non vereris, imperator, ne acquiescat sententiæ tuæ; ne prævaricetur, non times?"

⁴²⁵ This argument of non-reciprocity is therefore the main one, according to the summary of the Maurists.

while at the same time stimulating him to clemency, R⁴²⁶

Paragraph 9 considers the hypothesis that the Count would obtain from timid Christians the payment for the reconstruction of the synagogue, hence the scandal of a place reserved for the deviant faith of the Jews built at the expense of the Church.⁴²⁷ Then, § 13 compares the cases where Roman buildings were burned down, without being rebuilt. So, a synagogue without importance? And what is more, a "house of ungodliness" ⁷⁴¹⁵ Let us note that this argument *a niinori* ("*multo autem minus*") of the fact that it is a false religion is added to others and is therefore not the main one, nor the most conclusive, which we read on the contrary in § 15 (*PL* 16,1107):

" 15. But, of course, if I were to invoke the law of nations, I would say how many basilicas of the Church the Jews burned down in the time of the Emperor Julian: two in Damascus, one of which has just been repaired, but at the expense of the Church, not of the synagogue; the other basilica is horrifyingly shabby. Basilicas have been burned down in Gaza, Ascalon and Beryte, and almost everywhere there, and no one has asked for vengeance. A basilica was also burned in Alexandria by pagans and Jews, which alone outweighed all others. The Church was not avenged, and the synagogue will be avenged 1 "

In the *law of nations*,⁴²⁸ it is really the reciprocity that comes into play

" 18. (...) To omit other matters: the churches' basilicas were burned by the Jews, and nothing was returned, nothing was recovered, nothing was demanded. What could the synagogue possibly have in a tiny village, given that the totality of what is there is not much, not precious, not abundant? And what could have been stolen from the insidious Jews by a fire? All this is the machinations of the Jews who want to slander. So that while they are thus seeking a quarrel, an extraordinary military sentence is dispatched, a soldier is sent who may say that here he once said, before your advent, O Emperor, "How can Christ help us, we who militate for the Jews against Christ? who are sent to avenge Christ ? They have lost their armies, and they want to lose ours."

" 21. And although these people deny that they are bound by Roman laws, so that their crimes are law for them, they now consider that they must be avenged by Roman laws. Where were these laws when they themselves were burning the sanctuaries of the sacred basilicas? If Julian did not avenge the Church, because he was a prevaricator, you, Emperor, will avenge the insult done to a synagogue, because you are a Christian?"

St. Ambrose therefore had two main arguments to offer: 1) as to the law: the emperor must defend the Christians; 2) as to the facts: a) the investigation had not yet proved the facts; b) the Jews had violated the rights of the Catholics, who therefore owed them nothing. Since the emperor did not reply, Ambrose decided to deal with the matter by allusion in a sermon held in his presence. Afterwards, he stood before the monarch and obtained a firm promise that he would "immediately stop the investigation of the case", as the prelate recounts in a letter to his sister (*Ep.* 41),⁴²⁸ in which he demonstrates that the cult of the synagogue is null and void, but not why the person who burns down a synagogue, even if he is a bishop, is not obliged, in natural law, to pay the reparation.

It is the theory of the "secular arm" that the bishop of Milan formulated, with the reservation that it never goes as far as measures of rigor against persons. He protested against the death penalty applied to Priscillian [*Ep.* 24, 12]; he never called for, and we never see in his time, any diminution of rights, any personal incapacity for the crime of religious dissent. Such constraints would be in opposition to Christian principles; they are, moreover, useless: for, if the State refuses official favors and the freedom of public worship to heretical sects as well as to pagan institutions, it is the assured triumph for Nicene Catholicism. This is what Ambrose wants;

⁴²⁶ Our translation of the summary provided by *Sancti Ambrosii Mediolanensis Episcopi Opera Omnia Juxta editionem Monachorum S. Benedicti*, t. IV, Parisiis, Gauthier, 1836, 326, identical to that of *PL*, probably due to the Maurists.

⁴²⁷ Read also: "10. Erit igitur locus Judsorum perfidiæ factus de exuviis Ecclesiae : et patrimonium, quod favete Christi acquisitum est Christianis, hoc transferetur ad donaria perfidorum ? Legimus templa idolis antiquitus condita de manubiis Cimbrorum, de spoliis reliquorum hostium. Hunc titulum Judæi in fronte synagogæ sux scribent: Templum impietatis factum de manubiis Christianorum."

⁴²⁸ On this notion, cf. LA SOUJEOLE: 1992.

and his aim, it should be noted, has been achieved."-P⁹

"However, it must be remembered above all that, in Ambrose's time, the danger to be contained was not the excess of power of the Church, but the dangerous imperial interference. From this point of view, one can well say that the attitude of Ambrose relative to the religious freedom constituted the starting point for the immunization of the Western Church against any caesaro-pa- track temptation."⁴⁵⁰

4.2. Additional insights: Optât, Chrysostome and Jérôme

4.2.1. Saint Optat de Milève (t 385 / 400)

Only of his opinion, s. Optat de Milève claims: "It is not the State which is in the Church, it is the Church which is in the State, i.e. in the Roman Empire,"- "if

"We can see that things had progressed in sixty years, since the persecutions of Diocletian. Now that the Catholic Church believed itself assured of the assistance of the civil authorities, it accepted, and sometimes solicited, the intervention of the government in religious affairs. In spite of his personal moderation, Optat recognized the right of the State to strike heretics and schismatics. He admits the legitimacy of the constraint to restore the unity in the Church, to "avenge God" [3, 6]. He approves the measures taken by Constantine against the Donatists [2, 15]. He also approves, without reservation, the edict of union promulgated by the emperor Constantine, whom he calls a "Christian, God-fearing, religious, merciful" prince [3, 3]. Thus, the emperor had the right to intervene, and to suppress the schismatic Church. He even had the duty of it, adds Optat. And that, because of the attitude of the Donatists, who after having broken the unity of Christian Africa, went still until compromising the public order. At times, he seems ready to close the eyes on the committed excesses, to see only the result [3,4], "⁴²⁹

4.2.2. Saint John Chrysostom (344-407)

On the shores of Asia, St. John Chrysostom,⁴³⁰ still a deacon, proclaims:

"To Christians, less than to anyone else, it is not appropriate to use force to straighten out souls. [...] "⁴³¹ "We cannot use force; we have only persuasion to make better. The law does not give us any power to compel the sinner, and, if it did, we could not use it, for it is not to those who avoid evil in spite of themselves, but to those who avoid it of their own free will that God gives the reward. (...) "⁴³² "For Christians are not permitted to use coercion and violence to destroy error: it is by persuasion, word and gentleness that they save men. Thus the kings who serve Jesus Christ have never issued against you those cruel edicts which the devil worshippers have brought against us. But it is in full peace, without persecutions, that we have seen your superstition and your errors extinguish themselves; your religion has fallen of itself, as bodies undermined by a long illness perish by themselves, dissolve and consume themselves little by little. "⁴³⁶ "But when it is a soul which departs from the true faith, the pastor needs more than all this...." He must not think of dragging it away by force nor of compelling it by fear: it is by persuasion alone that he will bring it back to the truth. For "heretics must not be killed, for that would fill the whole world with wars and murders. He [Jesus] forbids them this violence for two reasons: first, because by wanting to uproot the weeds one could also harm the wheat; and second, because sooner or later the heretics will be punished if they do not convert from their error. If,

⁴²⁹ MONCEAUX, VI, 289-290, immediate continuation.

⁴³⁰ We have consulted: the Greek-Latin ed. : PG 47-64 (= Montfaucon, 1718-1738); *Του εν άγιοις πατρος ημών Ιωαννου του Χρυσοστόμου... Sancti Patris Nostri Joannis Chrysostomi (...) Opéra omnia quæ exstant...* opéra et studio D. Bernardi de MONTFAUCON, Parisiis, Gaume, 1839, 13 t. in 26 vols. and *French translation of the Complete Works of St. John Chrysostom*, M. JEANNIN (dir.), 11 vols. bar-le-Duc-Paris-Brussels, Guérin. 1863 1867.

⁴³¹ Cf. 0023. JOHN CHRYSOSTOM, s., 0381/0385: *De sacerdotio libri 1-6 = Dialogue on the priesthood*; Greek and Latin translation: PG 48,634-635; - Greek and other translation: JOHN CHRYSOSTOM, *On the priesthood (Dialogue and homily)*, Introd., crit. text, translation and notes: MAUNGREY Anne-Marie, Paris, Cerf, 1980, 430 p. (SChr 272). We quote here II, 3, in the translation: Abbé F. Martin, Paris, Garnier. 1932.23. Elsewhere, however, he envisages preventing, even by force, Christians from becoming Jews ("* homily against the Jews (386), 1,4: PG 48, 849). On the other hand, according to him it is necessary to strike the blasphemers *homily on the statues* (387): PG 49,32-33).

⁴³² Cf. 0023. JOHN CHRYSOSTOM. s.. 381/385, *De Sacerdotio*. II, 3; trans. Abbé F. Martin, Éd. Garnier, 1932.23.

therefore, you wish them to be punished without harming the good grain, wait for the time which God has appointed for doing justice to them. "458 "2. Let us consider again this word: 'Lest, in gathering the tares, you also uproot the good grain together.' It seems that he is saying by this, if you take up arms against heretics; if you want to shed their blood and kill them, you will necessarily envelop in this murder many righteous and innocent people. Moreover, there are many who, coming out of heresy, could turn from tares into good grain. That if one were to prevent this time, believing that one was pulling up tares, one would destroy the wheat that was to be born from them. Thus he gives time to the heretics to convert and to return to themselves. Nevertheless, he does not prevent the heretics from being repressed, forbidden to assemble, or to shut their mouths, or to be free to spread their errors; but he does not want them to be killed, nor their blood to be spilled, "459 "... the psalm of today engages us in a campaign against heretics, not to overthrow men who are standing, but to raise up fallen adversaries: such is the war we undertake; from the living it does not aim to make the dead, but from the dead it must make the living; it is a war all of gentleness and clemency. And indeed, I do not attack by my actions, but I pursue by my words, not the heretic, but the heresy; I have no aversion to man, but I hate his error, and I want to bring him back to us; I do not make war on being, for being is the work of God; but I want to straighten out belief, which the devil has perverted. In the same way that a doctor, when he treats a sick person, does not wage war on the body, but seeks to destroy the vice that is in the body. And so I, in the same way, if I fight the heretics, it is not the men themselves that I attack, but it is the error that I want to destroy in them, it is that I want to purify them from the contagion. I am accustomed to endure persecution, not to be a persecutor; to suffer myself to be driven out, not to drive others out. This is how Jesus Christ also triumphed: he did not crucify others, he allowed himself to be crucified; he did not blow anyone away, but they blew him away. "46

The bishop starts here a theory of moderate coercion against heretics, --⁶ * where it is not a question of forcing them to return to the faith, nor *a fortiori* of killing them, but of preventing them from meeting and spreading their errors.

456 0024. JOHN CHRYSOSTOME, s., ± 0382: *In sanctum Babylam et contra Juliuuni et gentiles*. 3: Greek and Latin translation: PG 50,537; translation. JEANNIN, t. III, 467-468.

457 cf. 0023. JOHN CHRYSOSTOM, s., 381/385, *De Sacerdotio*. 11,3; trans. Abbé F. Martin, Éd. Garnier. 1932,23.

458 0025. JOHN CHRYSOSTOM, s., ± 0390: *In Manliuim. hom.* 1 -90; see: *hom.* 46. 11 and | 2; Greek only: ed. MONTFAUCON / Gaume, 1.11,645-647; Greek and Latin translation: PG 58,477; translation. JEANNIN, t. VU,361.2.

459 Cf. 0025. JOHN CHRYSOSTOM, s., I 390, *In Ml. hom.* 46, 2. On the competences of the State according to s. JOHN CHRYSOSTOMUS, cf. ID, *In Epist. ad Rom.* 23.2: PG 60,616 f.

460 Cf. 0026. JOHN CHRYSOSTOM, s. *In sanctum hieromartyrem Phocam et contra luereses...* = Homily in honor of the holy Martyr Phocas and against the heretics and on Psalm CXXI: "I cried to the Lord, I made my prayer heard to God", § 2; orig. only: ed. MONTFAUCON / Gaume. L 11,841-842; Greek and Latin translation: PG 50.700-701; trans. JEANNIN, 1.111.435,1.

461 Cf. nevertheless LABRIOLLE, 1937a, 19-21, on his more violent attitude towards the remains of paganism.

4.2.3. Saint Jerome (±345/7 ?-420)

5. Jerome takes up the theme of the chaff and the wheat:

"If it is written: "Lest you gather the tares and pull up the wheat at the same time", it is to give rise to penance. Let us not be in a hurry to act against a brother who is now in error. He may repent and even become a defender of the faith."¹⁶²

Conclusion of Chapter 4: Patristics before Augustine

Apart from Firmicus Maternus and s. Optât, the Fathers who address the question are unanimous in proclaiming the juridical incompetence of the State in ecclesiastical matters, and in rejecting the use of violence, while at the same time welcoming the *positive result of the* intervention of the State in matters of idolatry and putting obstacles

in the way of a "return" to the pagan State. Let us note: this positive result is not the simple disappearance of paganism, which could be achieved (all things being equal) by persuasion and superiority of arguments; it is the fact that the pagans finally leave the Christians alone and no longer have a privileged situation. As for the heretics, the Arian experience has clearly shown that they too, as soon as they have political power, persecute Catholics. The same goes for the Jews. This persecutory and "worldly" mentality is not Christian. Neither the Creator in his providence, nor Jesus in his preaching, nor the Apostles spread the Gospel by the sword. The very nature of the act of religion and the act of faith are opposed to it, both on the side of God and on the side of man. Nowhere do the Fathers consider it consistent with the divine plan to force men to adhere to the true faith; according to them, it would also be contrary to the dignity of human nature. The aim of political power is not, therefore, to advance the Kingdom at the point of the pillar, but to ensure peace and freedom for the citizens. If one thus welcomes the anti-Arian repression of the Catholic emperors, it is because this repression, just like the progressive "strangulation" of the pagan religion, delivers the Catholics from oppression, constantly ready to resurface at the mercy of political events, at least in its administrative form (one thinks of the underhanded maneuvers on the one hand of Constance and on the other of Julian the Apostate). "Violent" and "Christian" are two discordant words, but there are limits to what the Christian power must support. If, therefore, non-Catholics are not to be forced to become good grain, the chaff must be kept quiet. We will not go so far as to cut it down, but we will prevent it from choking the wheat.¹⁶³

¹⁶² -Cf. 0027. Jerome, s.. *Commentant in Evangelium Mattluei = In Malt*, l. 2, c. 13 (on *MI* 13, 24-30 and 36-42); see especially on *A/13. 29*, *PL* 026,96 = *CCSL* 077, 112; our trans. Better translation in *LECLER*, 1955,1,89. where one reads again: "it is not so easy to know if someone is in error. Our judgment could confuse a real mistake with a semblance of error...". Let us think of the conversion of a Manichean *AUGUSTIN*.

Cf. *PASCAL*, 1911, 1834.

CHAPTER 5.

5. SAINT AUGUSTINE OF HIPPO(354-430) AND THE DONATISTS

The importance of St. Augustine in the study of coercion in religious matters is not lost on anyone.⁴⁶⁴ The Doctor of Grace had much to do with a very restless, organized and numerous sect, which had already taken root long before Augustine's birth.⁴⁶⁵ For a brief historical account of this "Donatism" (named after its most famous leader, Donatus), we refer to LRTC.⁴⁶⁶ As we know, Augustine was at first opposed to "methods of force", but the example of their success eventually won out in his mind.⁴⁶⁷ On the other hand, he always remained below the level of application that theory seemed to allow.⁴⁶⁸ The collection of letters under Augustine's name contains 279 letters.⁴⁶⁹ 225 are his own. Of these, 41 deal directly with Donatism,⁴⁷⁰ of which 23 ("secondary") merely mention religious dissensions, without dealing directly with the problem of repression, but 18 ("fundamental") deal specifically with the question of coercion or Donatist violence. The first letter⁴⁷¹ of s. Augustine (then a simple priest) on

⁴⁶⁶ We used there: LABRIOLLE, 1937b, § 4, 69-78; MONACHINO. 1959.01-03. 16; PALANQUE, 1939, 42 50; 206-213.

⁴⁶⁷ 0073. AUGUSTIN OF HIPPO, s., 0427: *Retractationes*, II. 5; CCSL 057 (1984), 93-94; CSEL 36 (1902), 137 [which names it: 1, xxxi instead of II, 5]; PL 032, 632. Cf. also BARDY Gustave (1881-1955) (ed.). *Œuvres de saint Augustin. Les Révisions*, Paris, 1950 (BA 12). This revision predates the edict of union of 405, and should be dated no later than 400. Augustine applied the theory of the use of the secular arm only to the Donatists.

⁴⁶⁸ Cf. VAN DER MEER, 1959/1949,1.1, 143-199.

⁴⁶⁹ For the study of the letters, we used in particular an anonymous dissertation of 135 p., defended at the university of Aix-en-Provence (around 1980). 54 of the letters in the collection are replies from correspondents. For the details of the letters chosen, as well as the reasons for the choices, see our 2^e ed.

⁴⁷⁰ These are *Letters* 23.33,34.35,42.44.49.51,52, 53, 56, 57,58.61.66,70.76.86.87.88,89.93.97. 100 105, 106. 107, 108, 111. 112, 128. 129. 133.134, 139. 141. 142,144, 173. 185.2(M).

⁴⁷¹ 0035. AUGUSTIN OF HIPPO. s., c. 0392: *Letter* 23,7 to Maximinus, Donatist bishop of Sinitum. Quoted by DH, note 8, as: IDEM, *Ep.* 23: PL 033,98.

the use of the secular arm dates from 392 the last one, from 420/427 approximately.⁴⁷³ Let us distinguish here in the evolution of the thought of the Doctor five periods:⁴⁷⁴ 1) between 391 and 400 (exclusiveness of the methods of persuasion) (5.1.);⁴⁷⁵ 2) between 400 and 405 (taking into account the Donatist violence; from where idea of the intervention of the State for the creation of a climate of freedom) (5.2.); 3) from February 12, 405 (imperial edict of union)⁴⁷⁶ to 408 (hesitant acceptance of the law) (5.3.);⁴⁷⁷ 4) from 408 to 411 (confirmation of the new point of view by the de facto effectiveness of the law of 405; opposition to the law of freedom of conscience of 410) (5.4.); 5) from 411 until his death (definitive elaboration of the theory, above all in the letter to Count Boniface, of 417) (5.5.)

5.1. Augustine's first antidonatist period (391-399)

It was around 391-392 that Augustine entered the scene. He had been a priest since 386. Even before he was put in charge of an almost entirely Donatist diocese in 396, he had to fight the schismatics, and this, by word, pen and recourse to the authorities. In 392, he first invited the dissidents to a dialogue held outside the presence of soldiers:

« 7. [My aim is not to force men to embrace any communion in spite of themselves, but to make the truth known to those who seek it peacefully. Thus, just as on your side you will no longer have to fear the terror of weapons and temporal power, see to it that on our side we no longer have to fear the Circumcellions.⁴⁷⁸ Let us take reason alone as our guide, and the divine Scriptures as our only authority [...]. [...]. »⁴⁷⁹

He explains himself again in 396:

« 1. God, who knows the secrets of the human heart, knows that as much as I love Christian peace, I am touched by the sacrilegious acts of those who continue to disturb it with impiety; He knows that this movement of my spirit is peaceful, that I do not act in this way to force anyone to enter the Catholic communion, but so that the truth may be openly declared to all the wanderers, and that, manifested, with God's help, by means of our ministry, it needs only itself to be loved and followed, »⁴⁷⁹

On another occasion, he blames overzealousness:

« 4. A farmer of the Church had a catechumen daughter among us. The Donatists, in spite of her parents, committed her to the number of their virgins. The farmer wanted to use his father's rights severely to bring her back to Catholic communion; as for me, I wanted to receive this woman, whose heart was corrupt, only if she consented to return to us, and to voluntarily follow a better way. To force his Daughter to submit to his will, the farmer began to beat her. As soon as I heard about it, I absolutely opposed it...J. "4"-

If any repression is to be exercised, it is by the chief of the Donatists against "the madness and violence of his clerics." -"2 In 397, addressing himself exceptionally to the Manichaeans, the saint declares:

"I cannot treat you with bitterness, you whom I must support now as my relatives supported me then, and whom I must treat with the same patience that my relatives showed me when, in my rage and blindness, I shared your errors by accepting your dogmas. "483

0072. ID, about 420: *Letter* 204,3*4. to Dultius or Dulcitus, tribune and imperial secretary.

⁴⁷⁴ Cf. MONACHINO. 1959.01-03,17-19; DIEZ-ALEGRIA. 1965,70.

⁴⁷⁵ Cf. AUGUSTIN OF HIPON, s., *Expositio in quarundam Propos, ex Epist. ad Rom., 72: PL* 035, 2083 f. (from 394/395): civil authority has no power in matters of faith.

⁴⁷⁶ From the emperor Honorius (384-395-423).

⁴⁷⁷ See MONACHINO, 1959.01-03,38.

⁴⁷⁸ Cf. 0035. AUGUSTINE. 392. *Letter* 23,6-7.

⁴⁷⁹ 0036. AUGUSTIN, 0396/0397: *Letter* 34 to Eusebius; *PL* 033, 132 (quoted by *DH*, note 8); *CSEL* 34 (1895), 23 ; *POUJOLAT-RAULX*, 02 (1865), 8.

At the end of the same year, he notes "the murders, the burning of the Circumcellions, the worshippers (...) who voluntarily throw themselves into precipices, (...) the public robberies" and visibly, he suffers from the very fact of the schism, the separation of the Donatists from "the inheritance of Jesus Christ ... spread over the whole earth. As the laws of Theodosius and his sons made the Donatists fear persecution, St. Augustine, in 398, reassured his opponents by guaranteeing the purity of Catholic intentions and preaching a spirit of tolerance and union."⁵

In 399, however, without wishing to respond directly to the accusations of persecution, Augustine began to imply that the schism deserved temporal punishment. He argues especially *ad hominem*: the Donatists had their own "separatists", the Maximianists, who had founded a schism within the schism, persecuted by magistrates and soldiers.⁶

A sermon delivered in Carthage in 399 / 400 finally allows Augustine to pronounce on the subject of violence against pagans.[^]

"In practice, his relations with the pagans were much less rigid. They may continue to offer their sacrifices, but nowhere, neither in his correspondence nor in his books of polemics, does he call for the application of the law against them. Only once, after the publication of the other first books of *the City of God*, does he congratulate himself on the fact that the legislation of Theodosius prevents them, not from refuting him, but from answering him with lies and calumny. Nothing is further from his mind than to take away their right to defend themselves. He always welcomed their claims and complaints with good grace; he worked tirelessly to save their lives or to avoid reprisals. They all knew that appealing to his charity was the surest way to salvation. Not only did he save the pagans who were recommended to him from the executioner, but he also protested strongly against the rapacity of his followers who took the property of idolaters without batting an eyelid. He speaks of nothing less than crime and laments the immense harm done to

48- #037. AUGUSTIN, 0396 (end): *Letter 35* to Eusebius; (cited by *DH*, note 8). For context: *Ep. 35,3:PL033.135; CSEL 34,27-31.*

4K 0037. ID, 396, *Letter 35,5: PL 033,136.*

483 0038. ID. 0397: *Contra epictulam Maniemi quant vacant Fundamenti. 2a3:PL042,174-175; trans. Vivùs. 25, p. 432-433.*

484 0039.1D., 0397 (end): *Letter 43, 24*, to various Donatists of Thubursicum Numidarum; *PL 033, 162-173; CSEL 34,106.*

485 0040.1D., 0398 (beginning): *Letter 44, 11*, to the same, especially: *PL 033,174.179-180; CSEL 34,110-111; 118-121. Here Ep.44,11: PL 033,179.*

486 0041. ID, around 0399: *Letter 51,3*, to Crispin (Crispinus), Donatist bishop: *PL 033.192 'CSEL 34,146-147.*

487 0042. ID. around 0399/0400: *Serina 62, 17; PL 038,423: Città Nuova, XXX/1. 272-274. Cf. COMUÛS. 1927, 333: "The closing of the temples and the prohibition of pagan worship is therefore necessary as a measure of hygiene and public health."*

Christ. The faithful retorted that he, Augustine, would do much better to destroy the idols which disgraced the countryside of Hippo. "Let the wicked," he replies, "exercise their violence without the necessary authority, [etc.]." a-⁸⁸

He recalls that the motive for the coercion exercised against heretics was "the fury of their violence."⁴⁸⁰

5.2. Augustine's second antidonatist period (400-405)

Towards the year 400, the tone rises, and the author begins to support *a priori* the

⁴⁸⁰ 0042. ID., 399/ 400, *Senno. 62, 18: Città Nuova. XXX/1, 272-274: "Quia contingit ut alicubi hæretici poenas darent legibus pro impietate et furore violentiarum suarum; iam dicunt nos per omnia quærere aliquam incommoditatem ipsorum ad perniciem."*

coercion. The *Contra epistolam Parmeniani* justifies the temporal punishments by their finality (to tear off the Donatists from Hell) and by their occasional motive (the gravity of the Donatist crimes). For him, only the martyrs of the *truth* are persecuted *unjustly*.⁴⁸¹ "On the other hand, admitting that temporal punishments are inflicted on them by the legitimate use that the princes of the earth make of their power, what are these punishments compared to the evils of all kinds that they sow every day on all sides contrary to all the civil and ecclesiastical laws?"⁴⁸² Moreover, if the emperor is incompetent, why did the Donatists resort to him? In any case, only the defenders of the *truth* are martyrs,⁴⁸³ or else we should also call the pagans martyrs.⁴⁸⁴ The "justice of a cause does not depend on the persecution it undergoes; on the contrary, it is the just cause that makes the persecution glorious."⁴⁸⁵ S. Augustine, it is true, does not forget the substance of the problem and asks: "Will they say that the emperors go beyond the limits of their power when they undertake to repress and punish schism or heresy?" However, he is content to add, "Let them prove, then, what they claim."⁴⁸⁶ If the Circumcellions like to overthrow pagan temples, why should not the emperors also have the right to do so? And if this is so, why shouldn't they also repress all false religions?⁴⁸⁷ Do they not bear the sword "*ad vindictam malefactorum*" (Rom 13:4)?⁴⁸⁸ And it is not only a question of the spiritual sword, of excommunication.⁹⁸ If, on the contrary, the emperors do not have this power, why did they use it against the Maximianists?⁴⁸⁹ And let us not compare the amount of suffering inflicted by the Catholic emperors on the Donatists with that inflicted by them on the Maximianists, or on the Rogatists.⁴⁸⁹ That would be irrelevant.⁵

"[b] Is the question here whether they suffer more than they make others suffer? I answer negatively and without any hesitation. Indeed, the cruelties they have imagined are counted by the thousands, or rather, they cannot be counted; supposing they were less numerous or less formidable, they would still be too many, for this reason alone that they are not inflicted by regular powers, but by the impulses of the most arbitrary fury...] But finally, as for numbers, these cruelties are not comparable to those which are done every day by those furious bands of young people plunged into drunkenness, to whom however the Donatists give leaders, whom they now arm with iron, after having armed them at first with sticks, and who, under the too well-known name of Circumcellions, traverse all the regions of Africa and indulge in acts which are reprobated by all the laws and all the human powers. etc."⁵⁰²

"But, as I said above, what does it matter to us whether the Donatists suffer more than they make others suffer? The whole question is whether the powers that be can deal bodily with heretics and schismatics. [If, on the contrary, physical coercion is permitted, let them prove to us, but they will never be able to do so, that the Catholic emperors crack down more cruelly on them than they themselves do by their own judges or by the barbarian kings on those whom they regard as schismatics, without forgetting, finally, the horrors of every kind with which the Circumcellions indiscriminately strike all the victims who fall into their hands. (Repeats the theme of the Maximianists driven out of their churches at the call of a council of 300 Donatist bishops aided by armed force, and concludes: 1 (d) Could the enemies of justice possess something justly? w⁴⁹⁰

-wo 0043.1D., 399 or 400: *Contra epistolam Parmeniani libri III*, lib. 1, 13-20 (here I. (viii), 13); I^o£043, 43, CSEL *Si* (1908), 3342 (here 51.33-34); BA 28(1963). 193-481 (here 240-241); POUJOLAT-RAULX. 15 (1870). 15.

482 0043. *Ibid.*, I, (viii), 14; CSEL 51.34-35; PL 043.4344; BA 28. 242-243; POUJOLAT-RAULX. 15 (1870), 15.

483 0043. *Ibid.*, I, (ix), 15 [a]; CSEL 51.35-36; PE043, 44; BA 28, 244-247; POUJOLAT-RAULX, 15 (1870), 15-16.

484 The Donatists felt they had to persecute the pagans. 0043. *Ibid.*, I, 15 [b].

485 0043. *Ibid.*, I. 15 [d].

486 0043. *Ibid.* "I. W, 16 (aj): CSEL 51.36-38; PL 043.4546; BA 28. 247-251; POUJOLAT-RAULX. 15(1870), 15-16.

487 0043. *Ibid.*, I. 16 [b] and [c].

488 0043. *Ibid.*, 16 [d]. cil. Cf. also! *PI*, 14.

⁴⁸⁹ Maximianism and rogatism are schisms born within the Donatist schism.

⁴⁹⁰ 0043. *Ibid.*, I, 18 [a]-[d]: *Contra epistolam Parmeniani*, 1 (xi). 18; CSEL 51.39-41; PL 043.46*17; BA 28, 252-257;

This is followed by a long description of all the barbarous acts of the Donatist bands, drunk and armed. After recalling the punishments provided for by the law against the Donatists, Augustine points out how far the Catholics fall short of what they could demand.⁴⁹¹ Finally, he adds that if there is no risk of destroying the good grain, the chaff must be uprooted.⁴⁹²

Still around the same time, Saint Augustine reproached Crispin for *buying* conversions to Donatism, but, as a good prince, did not demand the application of the fine of ten pounds of gold.⁴⁹³ He also blames him for *forced* conversions and wants a debate where the people will choose without coercion after having heard both parties:

"If it is of their own accord that the people of Mappalus have passed into your communion, let them hear us both; what we say will be written down, we will sign it, it will be translated into the Punic language, and the Mappalians, freed from all constraint, will make their choice freely. From what we will say, it will be seen if it is the compulsion which retains them in the error, or if it is of their full will that they embraced the truth. And if they do not understand these things, by what temerity have you made people who do not understand change their religious faith?

His second book *against the letters of Pétilien* will give him the occasion, in 401, to treat *ex professa* the fundamental point raised by the adversary:

" 184. However, thanks to the severity shown against evil, and especially thanks to the mercy of God, it very often happens that perfidy returns to itself and is corrected under the fire of tribulation. Because the free choice of the will is the human principle of the most beautiful morals, must we conclude from this that the most perverse morals must escape the punishment required by the integrity of the laws? Let us add, however, that in all legislations, punishment comes only in the last place, that is, after the culprit has shown contempt for the sanctity of the law. If, therefore, laws have been brought against you, know that their purpose is not to force you to do good, but only to prevent you from doing evil. No one can do good unless he consents to it, unless he loves it, and these dispositions depend above all on the free will; as for the fear of punishment, if it does not give the love of a good conscience, at least it enchains the evil lust in the secret of the mind. But finally, you are those who have brought laws against you to repress your audacity? Are they not the rulers, of whom the Apostle says that they bear the sword for a reason, for they are God's ministers, called to punish those who do evil? The whole question, then, is whether you are not doing evil, you who are constantly reproached by the world for your sacrilegious schism, a⁵⁰⁸

" 186. Augustine. If I were to ask you this question: How does the Father attract to his Son those men whom he has endowed with free will? I am convinced that for you the solution would be very difficult. Indeed, how can he attract, if he allows everyone to choose what he wants? However, it is quite certain that God attracts and that man remains free; but few Christians can grasp this mystery. Just as the Father really attracts to his Son men whom he has endowed with free will, so the laws do not deprive us of this free will, even though they are imposed on us on pain of punishment. The suffering that a man feels invites him to ask himself why he suffers; if he recognizes that he suffers for the sake of justice, he will show his virtue by determining to endure his sufferings for the sake of justice. If he recognizes that he suffers for the sake of iniquity, since he is convinced that these sufferings and pains would be perfectly useless for him, let him turn his will to the good, and at the same time he will rid himself of sterile suffering and of iniquity itself, which is a thousand times more to be feared than the cruellest sufferings. When princes bring laws against you, be persuaded that they want first of all to make you think about the cause of your sufferings; if they make you suffer for justice, they become your persecutors, and you are happy to suffer for justice, for by this you will possess the kingdom of heaven. But if they make you suffer because of the iniquity of your schism, they are for you the true instruments of your conversion; [elc.J. w⁵⁰⁹

Punishment is the last resort of the one who holds power precisely in order to "punish those who do evil."⁵¹ ◦ Coercive laws do not, moreover, deprive one of free will. In fact,

POUJOLAT-RAULX, 15 (1870), 18 :

⁴⁹¹ 0043. *Ibid.*, I, (xii), 19: CSEL 51,41-42; PL 043,47^a18; BA 28,256-259; POUJOLAT-RAULX, 15(1870), 18 (After having recalled the flagromery of the Donatists towards Julian the Apostate. AUGUSTIN enumerates the punishments foreseen by the law against the schismatics).

⁴⁹² 0043. *Ibid.*, III, (ii), 13: PL 043.92; BA 28.420-423; LECLER. 1955.1.85.

⁴⁹³ 0044. ID. 400 / 401: *Letter* 66, to Crispin, Donatist bishop of Calame. PL 033, 235-236; CSEL 34 (1895). 235-236; POUJOLAT-RAULX. 02 (1865), 81.

the question is not to *suffer*, but to suffer *for the good*. One thus constrains the bad people to make them return in themselves and that they convert.⁵¹ ! Augustine is repulsed by the use of force, but

507 0044. *Letter 66,2; PL 033,236; translation: Ibid.*

charity makes it a duty for him to convert.⁴⁹⁴ In a word: "Is it an injustice for kings to prevent division, while it would be justice for bishops to break this same unity?"⁴⁹⁵

At the end of 401, what is important is the *cause* and not the *fact of* the punishments. In any case, if the good of the Church requires a punishment, it must be moderate, he declares to the Donatists:

"it must be protected from your threats, so that the weak may choose without fear which side they should follow. If your people are guilty of violence against us, then you, who are like hostages in our lands and cities, are judged regularly, according to the laws, and are fined, without having to suffer any violence. This may even seem painful to you: well, do us no more harm and rest. But if your own people, those who depend on you or who belong to your communion, do not keep quiet and do something against us, what would you complain about? [It is up to you and your followers to follow your errors without suffering any punishment, provided you do not use violence against the Catholic Church. Do not reproach us, then, for persecuting you; reproach your own, if they would rather act violently against us and see you oppressed by the laws of the State than to calm their fury. If there are any among us who, departing from the laws and desires of Christian charity, make you endure odious treatment, I do not hesitate to say that they are not among us."⁴⁹⁶

5.3. Augustine's third antidonatist period (405-408)

In 405, at the time of the imperial edict of union which officially suppressed the sect, Saint Augustine had to argue *against Cresconius*, a Donatist grammarian:

"Have you forgotten that every day your clerics and the Circumcellions treat us in ways that thieves and brigands can hardly do? Equipped with all kinds of weapons and the most terrible, they spread fear and terror everywhere, disturbing the rest and peace, not only of the Church, but of the whole of society, invading the homes of Catholic clerics at night and taking everything they can carry away; as for the people who fall into their hands, they beat them with rods, tearing their bodies apart with iron nails, and leaving them half dead. But here is one of their favorite means: they throw lime soaked in vinegar into the eyes of their victims; it would have been simpler and easier to pluck out their eyes, but they want to prolong the pleasure they find in such spectacles. At first they used only lime, but when they learned that it was possible to remedy the situation and still save the victims, they added vinegar to the lime."⁴⁹⁷ "I pass over in silence all the other crimes that they committed previously, which determined to fulminate against your error these laws which are still rather imbued with Christian leniency than they are armed with all the severity that such horrible crimes demand. (...) "⁴⁹⁸ Thus, everywhere there was clear evidence that the fury of your Circumcellions was entirely at the service of your clerics. Hence the hatred which was kindled everywhere against you and dictated all these old and new laws with the aim of chaining your vengeance. I do not deny the severity of these laws; but, if we compare it with your ever-increasing cruelty, this severity could well be called mildness. Indeed, the application of these laws is so directed

by Catholic leniency, that it would seem that, far from calming the cruelty of heresy, it is only unleashing itself more and more boldly against us by murder, robbery, and fire, and all this after due deliberation, after public threats, and after facts to back it up."³¹⁷

⁴⁹⁴ 0046. He, cap. 93, 217 (the state as a loving father who chastises his child. But can we compare the case of adults with that of children?); CSEL 52.139; PL 043,332. BA 30.506-507; POUJOUAT-RAULX. 15 (1870), 265.

⁴⁹⁵ 0046. 11, cap. 97, 224; CSEL 52, 141-142; PL 043, 324; BA 30. 514-519; POUJOUAT-RAULX, 15 (1870), 267.

⁴⁹⁶ 0047. 1D.. 401 (end): *Ad Catholicos Epistula de seeta Donatistarum (= De Unitate Ecclesie)*. cap. XX. n° 55: PL 043 (1865). 434; CSEL 52 (1909). 303-305; BA 28.662-667; POUJOUAT-RAULX. 15 (1870), 350.

⁴⁹⁷ 0048.1D., 405-406: *Contra Cresconium granunaticum et Donatistam. libri IV* (here 111, xlii. 46); PL 043, 520; CSEL 52 (1909). 325-582 (here 452^53); B A 31.362-363; POUJOUAT-RAULX. 15 (1870). 420.

⁴⁹⁸ Account of attacks against the bishops Servus and Maximian.

And the small inconvenience caused by the emperor's laws is nothing compared to this terrorism.³¹ * Augustine only disapproves of capital punishment in general, even for heretics.

"As for what they [good Catholics] cannot prevent, they tolerate, and as I have said, this tolerance is in every way legitimate, for far from approving evil, it repels it absolutely.³¹⁹ "It is therefore a divine precept for kings [...] to command the good in their empire and to defend the evil therein, and this, not only with regard to human society, but also with regard to the divine religion."⁵² * "It is in vain that you say: 'Let me be left to my free will.' Indeed, why do you not maintain that you should be left to your free will, even when it leads you to homicide, libertinism and all sorts of crimes and disgraces? You admit, however, that it is very useful and very salutary to repress all these crimes by means of equitable laws. It is true that God has given man a free will, but in spite of this freedom God did not want the good will to remain without reward, and the evil will without punishment. "Whoever", you say, "persecutes a Christian, becomes the enemy of Jesus Christ". You are perfectly right, provided, however, that what is persecuted in him is not precisely what makes him the enemy of Jesus Christ. Indeed, should not the vices contrary to Christian truth be pursued everywhere? The master must do this with regard to his servant, the father with regard to his son, the husband with regard to his wife, when both are truly Christians."⁴⁹⁹

"Do you not want to fear power? Do good", he declares in his *Letter to the Donatist bishop Emerltus*. Do not confuse a private individual with the power established "for the suppression of evil".

"If Catholics ask the powers that be for protection against violence, "it is not to persecute you, but to defend themselves." "Another is the question touching the persecutions which you claim to suffer on the part of our people; whose leniency and gentleness are yet so great, while on the contrary those of your party exercise against us grave and numerous violences; another is the question touching baptism, and which is reduced to knowing not where it is, but where it produces good."⁵²²

In 406, the Catholic clerics of Hippo complained again:

"6. The indulgence of the Catholic Church would not have sought to revive the ordinances of the emperors, if your clerics and Circumcellions, by disturbing our peace with their violence, their wickedness, their fury and their devastation, had not put us in the necessity of recalling and reviving these ordinances against you. In fact, before these new laws, about which you complain, had appeared in Africa, your people were setting up ambushes for our bishops on the roads. They beat up our clerics and laymen, and set fire to their houses. Even a priest, for having chosen of his own free will the unity of our communion, was torn from his home; bruised with blows, rolled in a quagmire, dressed in rushes; and after having been a subject of pain for some, a subject of mockery for others, after having been walked pompously like a criminal and led wherever your people wanted, he was barely able, on the twelfth day, to be released by them.... And those who did this are today your priests. Every day they frighten us with their threats and persecute us as much as they can." ⁵²³

"However, our bishop did not complain to the emperors about the insults and persecutions to which the Catholic Church was exposed in our country. He was content to convene a council and to ask you, in a spirit of peace, to meet with us, to see if, in a conference, it would not be possible to remove the error which separates you from us, and to make those who have fraternal charity in their hearts taste the joys of peace [...]. Then, as the barbarity of your clerics and Circumcellions, known to all, did not cease, the matter was brought before the judges; and although Crispin had been declared a heretic, the indulgence of the Catholic Church did not prevent him from being subjected to the fine of ten pounds of gold which the emperors had established against heretics; and yet he was not afraid to appeal to the emperors again. If his appeal had the result you know, you must blame this very appeal and the wickedness previously displayed by your people. However, after the very decree made on the intercession of our bishops to the emperor, Crispin was exempted from the fine of ten pounds of gold. Moreover, our bishops sent deputies to the court from their council to obtain for all the bishops and clerics of your party an exemption from the fine of ten pounds of gold decreed against heretics and to which they had been condemned. They were satisfied to ask for the application of it to those in whose localities the Catholic Church would have to suffer violence on behalf of yours. But when the deputies arrived in Rome, the horrible cruelties recently exercised against the Catholic bishop of Bagaie so outraged the emperor that they gave rise to the laws which now exist against you. As soon as you began to feel the severity of these laws, I do not say for your harm, but rather for your good, what were you to do but to address our bishops and summon them as

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they had summoned you, so that the truth might come out of this conference?"⁵⁰⁰

"Not only have you not done so, but your people are now redoubling their cruelty to us. They are no longer satisfied with using sticks and swords to hit us, but, with incredible barbarity, they burn our eyes with lime soaked in vinegar; they plunder our homes; they have made gigantic and terrible weapons for their own use, with which they run around, threatening and breathing carnage, rapine, and fire; It is these excesses that have forced us to complain to you first, to ask you to consider how many of your people, or rather, how all of you, who claim to suffer persecution, remain quiet in your own homes or in those of others, under the laws of the Catholic emperors, which you regard as terrible, while we have to suffer unheard-of evils at the hands of your people You call yourselves persecuted, and your people beat us with their sticks and pierce us with their swords. You call yourselves persecuted, and our houses are pillaged and ravaged by your armed people! You call yourselves persecuted, and your people burn our eyes with lime and vinegar! They live like brigands, die like Circumcellions, and are considered martyrs. And yet we have never heard of brigands gouging out the eyes of those whom they had robbed..."⁵²⁵

Catholic clerics return good for evil:

"But if any of your people fall into our hands, we protect them with love from all evil. We talk with them, we read to them all that can convince them of their error, which separates brothers from their brothers. We recommend as much as possible that our lay people do no harm to those of yours who fall into their hands, but that they bring them to us, to correct and instruct them. Some of these laymen and women come to us and comply with our instructions. Others act with those they take as with brigands, because their violence gives them the right to consider them as such. Some rebel them by hitting them, to prevent the blows they are threatened with. Some others also hand over to justice those whom they have not seized, and do not spare them in spite of our intercession, for fear of suffering from them the terrible evils they fear (...)"⁵⁰¹

And far from accusing the Donatist bishops of belonging to this type of savage, it is a question of putting them on notice to dissolve these "gangs" which they at least passively support.⁵⁰²

Again in 406, St. Augustine himself returns to the idea "that it is not the suffering but the cause that makes the martyrs", and that even if the heretics were peaceful, they would deserve the punishment set. In fact, "if one were to compare what a merciful severity makes them suffer, with the acts they commit in their furious audacity, it would be easy to see which are those who deserve to be called persecutors."^{5M} And they further resist the authorities "either by their cruelty, or by nonchalance." The Church, as a good mother, "burns with the desire to heal the frenzy of some and the lethargy of others", then all happy to be healed.⁵⁰³ It's too bad if some people, out of fear, pretend to be converted: a good catechesis will complete the transformation of this change into a true revision of life.⁵⁰⁴

5.4. Augustine's fourth antidonatist period (408-411)

In 408, Augustine was obliged to write a real treatise, his *Letter 93*, in which he explained his theology of repression in greater depth. Thus,

"The Donatists are so restless that it seems to me useful to restrain them and to correct them by the authority of the temporal powers established by God. Already many of them, brought back by this means, are for us a subject of joy, as well as a subject of admiration, when we consider the sincerity with which they retain and defend Catholic unity, and the joy they feel at having been delivered from their former error. However, such is the strength of a bad habit, that they would never have thought of correcting themselves, if the fear of the laws had not forced them to seek the truth.

This method calmed the violence of these frenzied Circumcellions and restored them

500 0050. *Letter 88.7: CSEL 34.413-414; PL 033.306.*

501 #050. *Letter 88.9: CSEL 34.415-416; PL 033.307-308.*

502 0050. *Letter 88. 12: CSEL 34.418-419; PL 033.309.*

503 0051. *Letter 89.6: CSEL 34.423-424; PL 033.312.*

53-> 0051. *Letter 89.7: CSEL 34.424; PL 033.312.*

to unity, and it awakened the lethargic ones by taking them out of "their inveterate habits." 532 Augustine recognizes that "these means do not benefit everyone." Indeed, the most hardened will not bend. But they are the few, and the whole must be considered. Certainly, fear is not enough; it is necessary to make "a useful fear and a salutary teaching go hand in hand," "s" However this fear has freed some from the fear of the adverse terrorism.⁵³ -* To the principle that one should not force virtue, the holy bishop opposes counter-examples, notably the famous "*com pelle intrare*" of Luke 14, 23; the "great violence of Christ" done to Saul on the road to Damascus (*Act* 9, 5); and finally the "fear of divine wrath."⁵ Since suffering is common to both the good and the bad, it is not a criterion of truth, unlike the very causes for which one suffers.⁵⁰⁵ Certainly, Jesus tells Peter not to draw the sword;⁵⁰⁶ but those who are persecuted are declared blessed only if they suffer "for the sake of justice" (*Air* 5:10).⁵⁰⁷

Since the Donatists invoked the Gospel and the *Acts of the Apostles*, where no use of the secular arm appears, Augustine points out that the example proves nothing, for kings did not yet serve the Lord (cf. *Ps* 2:10). This was the time of Nebuchadnezzar, "the first way". But this king was converted, and so we are in the time of Nebuchadnezzar "second way."⁵⁰⁸ Since even the Donatists approve of the "laws brought by the emperors against the sacrifices of the heathen," they should understand coercion of heretics.^{^*0} In a word, "one should not consider coercion in itself, but the thing to which one is coerced, that is, whether it is to good or evil." Fear does not make one good, but it restrains from evil and makes one think. The result proves it well: the Donatist cities that became Catholic through fear of the imperial laws rejected their schismatic past. Moreover, this legislation was only triggered by the appeal of the Donatists to Constantine.⁵ *- Finally, the Doctor of the Church declares and explains his change of opinion:

" 17. These are examples, put before my eyes by my colleagues, which made me renounce my first resolution, for my first feeling was not to force anyone to return to the unity of Jesus Christ, but to act by word, fight by reasoning, and overcome by reason, so as not to have false Catholics in those whom we had known as declared heretics. It was not words of contradiction, but clearly demonstrated examples, that made me return from my first opinion. In fact, I was opposed first of all to my own city, which, although entirely do-natist, had converted to Catholic unity through fear of the imperial decrees, and which today hates your pernicious obstinacy so strongly that it seems never to have been in the heresy of Donal. 11. It is the same for many others that I was mentioned by name [...]. How many Donatists, in fact, do we know who had long wanted to be Catholics and who, struck by the evidence of the truth, nevertheless postponed their conversion from day to day, for fear of attracting the hatred of those of their party? How many others were held back, not by the evidence of the truth, which was never your strength, but by the bonds of an inveterate habit [...]. How many also regarded the party of Donatus as the true Church, because the security they enjoyed made them numb, nonchalant, disdainful, to know the Catholic Church? To how many more was the entrance to this true Church closed by the rumors of malice, which

SMC(.0052.Letter93,3.

SM 0052. Letter 93.5: CSEL 34,449-450; PL 033,323; LO GRASSO, n° 50.

⁵⁰⁵ 0052. Letter 93,6: CSEL 34,450-451; PL 033,323-324.

⁵⁰⁶ 0052. Letter 93,7: CSEL 34,451 -452; PL 033,324.

⁵⁰⁷ 0052. Letter 93,8: CSEL 34,452-453; PL 033,325.

⁵⁰⁸ 0052. Letter 93,9: CSEL 34,453-454; PL 033,325.

repeated everywhere that we were offering I don't know what on the altar of the Lord? Finally, there were many who, thinking that it did not matter in which party one was a Christian, remained in the party of Donatus simply because they had been born in it and no one forced them to leave it to return to the Catholic Church, B⁵⁰⁹

They had to be pushed a little hard to get them into the Church, and once in the Church, the former schismatics realized that the sect had indeed lied to them.⁵¹⁰ He who sows the wind reaps the storm.⁵¹¹ In conclusion, St. Augustine states the simple solution already proposed: "Do you want to have nothing to fear from the powers that be? Do good."⁵¹²

At the end of 408, the bishop recognizes that he would prefer not to have recourse "to the protection of any temporal power", but this is a providential fact. However, although the crime of the schismatics is great, it must be punished not with all the rigor that it would deserve, but according to "the Christian mansuetude", less than the death penalty, and this, in order to leave the culprit time to repent.⁵¹³ To curb the zeal of the new proconsul, Augustine warned him that in the event of capital punishment, the bishops would no longer have recourse to his tribunal. A certain amount of constraint should be maintained, but it should serve only to force the guilty to learn and to amend their ways.⁵¹⁴

In 409, the death threats of the Donatists,⁵¹⁵ and other violence, are again the reason for the "ordinances of the emperors":

"If your resentment against us is due to the fact that you have been forced to return to unity by the ordinances of the emperors, it is you who are the cause of this, you who, by your violence and threats, have prevented us from preaching the truth wherever we wanted to spread it, and who have not allowed others to hear it in peace and safety. (...) Remember the deeds of your Circumcellions and your clerics who were always at their head, and you will then see what was the cause of the laws brought against you, and of which you complain unjustly, since it was you who forced the emperors to promulgate them. (...) Mark, a priest of Casphalia, became a Catholic without being forced to do so by anyone, but of his own free will. Why did your people pursue him and kill him, if the hand of God had not stopped their violence with men who came to his aid? Reslitu de Victoria also passed of his own free will to the Catholic religion. Why was he torn from his home, rolled into a quagmire, beaten, dressed in rushes, held I know not how many days in captivity, and returned to freedom only because Procuieien feared he would be forced to appear for this cause? Marcian of Urges returned of his own accord to Catholic unity; why, while he was evading your fury, was his subdeacon beaten to death by your own people? Was it not for this crime that their houses were demolished?"⁵¹⁶

Augustine also recalls the "spirit of *dialogue and understanding*" of the Donatists towards their own internal (Maximianist) schism and the Catholics:

"What more needs to be said? Only a short time ago you sent a crier to Sintius to proclaim loudly that anyone who had fellowship with Maximin would have his house burned. But when he had not yet returned to the unity of the Church, nor even returned from his overseas journey, what did we do but send one of our priests to Sintius to visit our Catholics, without harming or hurting anyone, but only to preach Catholic peace in his own home to those who would listen to his word? Yet you drove him out of there with the utmost iniquity. And when one of our own, Possidius, bishop of Calamus, went to Figuli to visit the few Catholics we have there, and to invite men of good will to return to the unity of Jesus Christ through the word of God, those of your party set up snares for him in the manner of robbers, and not having been able to make him fall into their traps, they attacked him openly in the village of Lives, set fire to the house

⁵⁰⁹ 0052. Letter 93,17; CSEL 34,461-462; LOGRASSO. n° 53; PL 033.329-330.

⁵¹⁰ 0052. Letter 93,18; PL 033,330-331; cf. also CSEL 34,462-463.

⁵¹¹ 0052. Letter 93,19; CSEL 34,463-464; PL 033,331.

⁵¹² 0052. Letter 93,20; CSEL 34,464-465; PL 033,331 -332.

⁵¹³ 0054,1D., 0408 (after November 24); Letter 100, 1-2, to Donatus [Donatus], proconsul of Africa; see here § 1: CSEL 34,535-537; PL 033,366.

⁵¹⁴ 0054. Letter 100,2; CSEL 34,537-538 = PL 033,366. See also 0053. ID, 408 (Sept.-Nov.); Letter 97, to Olympius

"Master of the Offices" of the Empire, § 3: PL 033,358.

⁵¹⁵ 0056. ID. 0409-410; Letter 105,1, to the Donatists; CSEL 34,595-596; PL 033,396.

⁵¹⁶ 0056. Letter 105,(11)3; CSEL 34,596-597 .PL033,397.

where he had retired, and would have burned him alive, if the inhabitants of this village, in order to preserve themselves from the danger which threatened them, had not extinguished three times the flames of the fire which you had started. [...].^{55u}

"You see how violently you rise up against the peace of Jesus Christ, and that it is not for his sake but for your iniquities that you suffer. [You live in evil, you commit acts of robbery, and when you are punished according to the laws of justice, you claim the glory and the crown of the martyrs! If, with no other authority than your audacity, you violently force men to share your error or even to persist in it, should we not all the more have recourse to the temporal powers which God, according to his prophecy, has subjected to Christ, in order to resist your fury and so that so many unhappy souls, delivered from your domination, may be torn from an old error and restored to the light of the pure truth? You say that we force men to return to the Church of Christ in spite of themselves: on the contrary, many desire to be forced to do so, in order to escape your tyranny. This is a confession they make to us before and after their conversion."⁵¹⁷

Still in 409, St. Augustine wrote to a priest to exhort him to bear with resignation the evils that the barbarians and Circumcellions, in their excursions, made the consecrated ones suffer:

"The clerics and the Circumcellions of the Donatists carry out their brigandage and devastate the churches to such an extent that the violence of the barbarians would perhaps seem to us to be milder. Indeed, what greater atrocity could a barbarian invent than that of these impious men, who burn the eyes of our clerics with lime and vinegar, and whose limbs they mutilate and tear with horrible wounds? They plunder houses and set them on fire; they take away grain, spill wine and oil on the ground, and by dint of threats they force many Christians to be rebaptized. Yesterday I learned that in one place they had inspired so much terror that forty-eight people had been forced to receive a second baptism."⁵¹⁸

In 410, the year in which the Vandals seized the Eternal City, he ironizes again by writing to his "colleague" from Hippo, the usurper Macrobius: "you are the ones who have been persecuted" (the claim of the Donatists) "and we are the ones who have been martyred" (the reality).⁵¹⁹

5.5. Augustine's Fifth Antidonatist Period (411-430)

But already the victory approaches. The hero of God finally obtained that a conference be held in Carthage in 411 between all the Donatist bishops and all their Catholic colleagues. In order to make the beautiful share with their adversaries, the Catholics commit themselves to give up the episcopate if the Donatists leave winning, and to share the episcopate with the Donatists if they themselves win.⁵²⁰ Explaining the substance of the matter to the imperial tribune, the future arbiter of the results of the conference, Augustine reminded him of the legitimacy of coercion in religious matters, justified by the A.T.⁵²¹ After the victory of the Catholics, writing a third time to the same Marcellinus, he implored him, in spite of the seriousness of the crimes imputed to certain Donatists,⁵²² not to hand them over to the final torment:

"We are not opposed to removing the means of evil from guilty people, but we believe that it will be sufficient, without taking their lives or depriving them of any limbs, to divert them, by the repression of the laws, from their insane agitation, by bringing them back to the calm of reason, and from their criminal works, by employing them in some

517 0056. ID, 408, *Letter* 105,4. See also: *Letter* 105,5; *CSEL* 34, 598 = *PI* 033,398. An *ad hominem* argument follows: the Donatists appeal to the secular power... to defend themselves...

518 0057. ID, 409 (end): *Letter* 111, 1, to the priest Victorianus;(nos. 1-6); *CSEL* 34,535-536 = *PL* 033,422.

519 0059. ID, 409-410: *Letter* 108, (v) 14, to Macrobius, Donatist bishop of Hippo; *CSEL* 34, 627-628 = *PL* 033,413-414.

520 0060. lo.. 0411 (around May 25): *Letter* 128,2, to the tribune Marcellinus, imperial secretary.

⁵²¹ 0061.1D.. 411 (about May 30): *Letter* 129,4, to Marcellinus; *CSEL* 44 (1904), 36-37 = *PL* 033,492.

⁵²² Murder, cut finger, gouged eye...

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useful work. [Do not renounce those paternal sentiments which you have retained in order to obtain a confession of such great crimes, without using either trestles, iron nails or flames, but only rods. This is the only mode of penance to which the masters of the liberal arts, the parents themselves, and often also the bishops in their judgments have recourse. [...]. a⁵²³

At the end of 411, he intervened with the same sentiments with the proconsul Apringius, concerning the Circumcellions charged by Marcellinus.⁵²⁴ "Certainly, according to *Romans* 13:4, the authorities do not carry the sword in vain, but in ecclesiastical matters, it is necessary to avoid spilling blood, so as not to make the Catholic cause odious,⁵²⁵ which prefers a release to bloody vengeance.⁵²⁶ At the beginning of 412, Augustine interceded again with Marcellinus in favour of the same:

Whatever the enormity of the crimes confessed by the guilty, spare them the death penalty; I ask you, for the repose of our conscience, and to better show men the Catholic leniency," said the Pope.⁵²⁷

Around the same year, always filled with compassion for his poor adversaries, he tries to divert from suicide a Donatist priest named Donat, of Mutugenna. The Catholic violence only corresponds to that of yours, he explains to him.⁵²⁸ Moreover, it keeps away from the damnation.

"It is therefore because of the love we have for them that we must not abandon men to their evil will with impunity and cruelty. But as soon as we have the power, we must turn them away from evil and force them to do good."^{56_1}

Like the plagues that struck Israel, the force that caused Saul to fall and be blinded, the fathers who chastise their sons, the good shepherds who rebuke their sheep (*Ezek.* 34:4),³⁶⁴ just as a man must be prevented from committing suicide in his body, so he must be prevented from committing suicide in his soul.⁵²⁹ The constraint is justified, since it leads to the truth.⁵³⁰ If the Church did not use it in the early days, it was because it did not have it. Jesus said: "*compelle intrare*" (*Luke* 14:21).⁵³¹

The "power of princes", he continues in 414, "represses evil and allows the good to live quietly in the midst of the wicked", and at the same time "the fear of torment" cures the "ill will" of the perverse.⁵³² The preacher's thinking is, however, more complex than it appears. Does he not remind his flock in 416 that faith is necessarily free?

"A man can enter the church, approach the altar, receive the sacrament, without any consent on his part; but, to believe, it is necessary necessarily the free concurrence of the will, w⁵³³

A last time, in 417, he takes again from bottom to top the study of the problem in his letter 185 to the count Boniface. All his arguments are gathered and parade thus under

⁵²³ 0062. ID., 411 (end): *Letter* 133,1-3, to Marcellinus; *CSEL* 44,80-84; *PL* 033,509.

55X0063. lo., 411 (end): *Letter* 134,2-4, to proconsul Apringius; here § 2: *CSEL* 44,85-86 = *PL* 033,511.

525 0063. *Letter* 134.3; *CSEL* 44.86 = *PL* 033.511.

⁵²⁶ 0063. *Letter* 134.4; *CSEL* 44.86-88 = *PL* 033.511 -512.

56- 0064.1D.. 411-412 (before February 28): *Letter* 139, 1-2, to Marcellinus; *CSEL* 44, 148-149 = *PL* 033,535

536; *POUJOLAT-RAULX*, 02 (1865), 295.

5620065.1D.. verses 411-414, perhaps 412: *LeWre* 173,1-5.10; here § 1: *CSEL* 44,640 = *PL* 033,753-754.

⁵²⁹ 0065. *Letter* 173.4; *CSEL* 44.642-643 = *PL* 033.755.

⁵³⁰ 0065. *Letter* 173.5; *CSEL* 44.643-644 = *PL* 033.755.

⁵³¹ 0065. *Letter* 173, 10; *CSEL* 44.647-648 = *PL* 033,757. Same scriptural argument in a sermon: 0066. ID., 412 / 420: *Sermo* 112, 8; *PL* 038, 647; *POUJOLAT-RAULX*, 06 (1866), 474, who concludes: "external constraint will bring forth good will within." See also 0067. ID. AT 0413 (beginning) (or 406/409 T): *Letter* 86: to Caecilianus, governor of Numidia. *Ep.* 86, 1: *PL* 033. 296; *POUJOLAT-RAULX*, 02 (1865), 122: exhortation to threaten, but without punishing, in order to repress violence.

⁵³² 0068. ID, 413-414: *Letter* 153. Chap. VI, n° 16, to Macedonius. vicar of Africa; (cf. letter 152): *CSEL* 44, 413-415 = *PL* 033,660.

⁵³³ 006". ID" 416 (?) (413,415, or 419-421): *In Joann. Ev.*, 26,2: *CCL* 036 (1954), 260; *PL* 035, 1607; *Città Nuova*, 24/1,596-597; *POUJOLAT-RAULX*, 10 (1872), 526.

our eyes: the lions turned against the accusers of Daniel, the converts happy and grateful *a posteriori* to have been constrained, the "frenetic" tied up by the doctor, the son corrected by his father,⁵⁷¹ the complementarity of the penal laws and the preaching⁵³⁴ the "justice" of "the persecution inflicted on the impious by the Church of Jesus Christ",⁵³⁵ the terror in which the do-natist faithful live,⁵³⁶ the Donatist "racket" previous to the punitive laws, the terrorism of the Circumcellions, their unpunished crimes, etc. :

" 15. Before the establishment of these laws by the Catholic emperors, the doctrine of peace and Christian unity was spreading little by little, and each of those who abandoned the party of Donatus passed to the Catholic communion according to his will, according to his power, although troops of lost men disturbed under various pretexts the rest of the innocent, t---! Innocent men, who by misfortune had displeased these furious men, saw their houses razed to the ground or delivered to the flames. Some fathers, as distinguished by their birth as by their education, barely escaped alive from the hands and blows of these murderers, or were chained and put to the millstone, which was turned on them with whips, like beasts of burden. What help could be expected from these acts of violence, either from the laws or from the civil authorities? Which public officer would have dared to breathe a word in their presence? What tax collector ever demanded from them the taxes they refused to pay? Who tried to avenge the death of those they had murdered? It is true that

that they were cruelly punished by the death they gave themselves by throwing themselves into precipices, into the water, into the fire to find a voluntary death and to tear off their miserable souls from their bodies of which they made themselves the executioners, "⁵³⁷

Similarly, he points out the inanity of the argument drawn from the example set by the Apostles and the first Christians in the time of the pagan emperors, the need for a Christian prince to prescribe good and punish evil, the examples of Hezekiah, of Josiah, of the king of Nineveh, of Darius, of Nebuchadnezzar⁵³⁸ i a comparison of schism with "fornication" or "adultery",⁵³⁹ the distinction between those for whom instruction is sufficient and those (the majority) for whom fear is necessary,⁵⁴⁰ the road to Damascus.⁵⁴¹ Forcing people to do good is not wrong,⁵⁴² as the "*compelle intra re*" of Luke 14:23 proves.⁵⁴³ Moreover:

"Why, then, should the Church not use force to bring back to herself the children she has lost, since these lost children themselves use force to destroy others?

Augustine finally blessed Providence for frustrating the Catholic bishops' embassy for clemency,⁵⁸⁷ given the ordeal suffered by Bishop Maximian.⁵⁴⁴

" 28. He therefore asked the emperor for justice and protection, not so much to obtain vengeance from his executioners as to protect the Church entrusted to his care. If he had not done so, his patience would not have been praised, but his negligence would have been blamed. The Apostle St. Paul did not consult the interests of a passing life, but those of the Church of God, when he brought to the attention of the tribune the plans of those who had

534 0070. *Letter* 185.8; *CSEL* 57.7-8 = *PL* 033.795-796.

517 0070. *Letter* 185, 11; *CSEL* 57.9-10 = *PL* 033.797.

536 0070. *Letter* 185.13; *CSEL* 57.12 = *PL* 033.798.

⁵³⁷ 0070. *Letter* 185 (iv) 15 and 18. *CSEL*SI, 13-15 = *PL* 033,799. See also *Ep.* 185, 16: *PL*033,805. *Ep.* 185, 18; *CSEL* 57. 16-17 - *PL*033, 800-801: "18. The anger and hatred of the Donatists increased even more; almost none of the churches of our communion could be safe from their ambushes, their violence and their robberies. There were no safe paths against their rage for those who would preach Catholic peace and expose the folly of their doctrine by the light of truth. Not only the latques and the clerics, but the bishops themselves were subjected to the cruel alternative, either to keep silent about the truth, or to put up with the barbarity of these madmen (...)".

⁵³⁸ 0070. *Letter* 185.19; *CSEL* 57.17-18 = *PEO*33.801.

⁵³⁹ 0070. *Letter* 185.20; *CSEL* 57.18-19 = *PL* 033.801 -802.

⁵⁴⁰ 0070. *Letter* 185.21 -. *CSEL*SI, 19-20 = *PL*033,802.

⁵⁴¹ 0070. *Letter* 185.22; *CSEL* 57.20-21 = *PL* 033.802-803.

⁵⁴² 0070. *Letter* 185.23; *CSEL* 57.21 -22 = *PL* 033.803.

⁵⁴³ 0070. *Letter* 185.24; *CSEL* 57.22-23 = *PL* 033.803-804.

⁵⁴⁴ 0070. *Letter* 185,27; *CSEL* ST, 25-26 = *PL* 033.805-806 (Account of the horrible torture of the bishop of Bagaie).

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conspired to kill him, and obtained an armed escort to take him where he was going, without fear of the ambushes of the Jews. He also invoked the protection of the Roman laws and his status as a Roman citizen, who was not allowed to be subjected to the punishment of whipping, and in order not to be handed over to the Jews, who wanted him dead, he appealed to Caesar, a Roman prince, not a Christian. He showed by this what the conduct of the dispensers of the word of Christ should be, when the perils of the Church obliged them to have recourse to the protection of Christian emperors. This is what made a faithful and religious emperor, having heard of so many cruelties and excesses, prefer to repress entirely by pious laws the impiety of this heresy, and to force by terror to return to Catholic unity those who would raise the banner against Christ, rather than to remove only the means of harm from the heretics, and to leave them free to lose themselves by remaining in error, n⁵⁴⁵

The compulsion actually provided the freedom to reflect and return to the truth."⁵ Even conversions that were initially feigned turned into sincere and joyful adherence."⁶ Despite all this:

"There are several among them who still give us a lot of trouble, and who have made Catholics, especially bishops and clerics, suffer terrible evils, too long to tell. To some they gouged out the eyes. They cut off the tongue and hands of a bishop. Several of our people were massacred. I pass over in silence the murders committed with unheard-of cruelty, the looting of houses, the nightly assaults, the private dwellings set on fire, the churches delivered to the flames in which they threw the holy books."⁷

This proves that sometimes it is necessary to save people "in spite of themselves". In 420, the ardent defender of unity takes up the argument of the finality of persecution and that of just public order; but he adds, after having recalled the Donatist mania for suicide:

"Even if the Donatists had not destroyed the homes of the Catholics; even if they had not burned the Catholic churches; even if they had not thrown the sacred manuscripts into the flames; even if they had not exercised nameless cruelties on the persons of the Catholics; Even if they had not cut off their limbs and gouged out their eyes; even if they had not cruelly immolated them, we could still say that we are suffering a terrible persecution because of you (because the Donatists are damned, especially if they commit suicide)."⁹

The bishop reminds us of the weakness of reasoning based simply on free will and compares "adulterers, homicides" and "sacrileges"¹⁰

Conclusion of Chapter 5

Conclusion on Saint Augustine

In 427, three years before his death, Augustine summarized and justified his evolution:

"There are two books of mine entitled: *Against the party of Donatus*. In the first one I said that it displeased me to see any temporal power violently reducing the schismatics to unity. And indeed, it displeased me then, because I had not yet experienced either to what degree of audacity impunity was leading them, or to what degree of conversion and improvement a vigilant discipline could bring them. >>⁹¹

"It was only the excesses of the Circumcellions and the manifest disloyalty of the Donatist leaders that gradually led this otherwise gentle man to change his mind: he came to defend the law, then to call for its moderate application, and finally to regard coercion in matters of faith as a lesser evil, since it had, in fact, excellent results."²

⁵ 0070. Letter 185.29; CSEL 57.27 = PL 033.806.

5X6 0070. letter 185.30; CSEL 57.28 = PL 033.806-807.

5X7 0070. Letter 185.30. The mention of the holy books is ironic considering the origin of Donatism...

S^o 0070. Letter 185.33-34; CSEL 57.30-31 = PL 033.808.

SW 0071. ID.. around 420: *Contra Gaudentium Donatistarum episcopum, libri duo*; book I, xx, 22: xxii. 21; xxiv, 27 and xxv, 28; BA 32 (1966), 490-686; here: I, xx, 22 : CSEL 53 (1910), 218 = PL 043,713 : POUJOLAT-RAULX, 13(1869), 652 ; 1, xxiv, 27 : PL 043,722 :1, xxii, 21 : PL 043,720-721 ; CSEL 53 (1910), 223 ; 84 32.362-363 ; POUJOLAT-RAULX, 13 (1869), 655. See also xxv, 28 on the "compelle intrare".

⁵⁴⁵ 0070. Letter 185.28; CSEL 57.26-27 = PL 033.806.

570 0072. ID, 420, *Letter* 204.3-4; CSEL 57.318-320 = PL 033.940; POUJOLAT-RAULX. 03 (1865), 10.

571 0073.1D., 427, *Retract.* II, 5; PL 032,632; POUJOLAT-RAULX. 01(1865), 342-343. See CANEF. 1891,246. 592 VAN DER MEER, 1959, 166.

The coercion he advocated was relative, and its initiative was left to the clerics, who called on the secular power for help. Its aim is to force people to listen to the preaching, and its happy effect is to obtain numerous conversions. We can therefore distinguish in Augustine two opposing tendencies which seek to reconcile themselves, namely, on the one hand: I. Arguments rather unfavorable to coercion; and on the other: II. Arguments to the contrary.⁵⁴⁶

I. After a pure and simple *refusal of coercion* (392-398), one attends a call for *moderation in the repression*. Indeed: A) the jurisdiction of the state is limited by that of the church; B) the secular arm is really *the last resort*; C) Christian principles *moderate* the use of the secular arm; D) the latter should never go as far as the *death penalty*.^{^ n.} To justify (moderate) coercion, Augustine uses two types of arguments: A) those that are not based on the violation of just public order: 1. *A priori* arguments, namely: a) Scripture; b) theological reason; 2. *A posteriori* arguments, namely: the effectiveness of the method. B) those who on the contrary base themselves on this violation. And these are the most frequent and the most decisive. The Donatists "did not know how to be Donatists" other than by practicing violence:⁵⁴⁷ who would hesitate to force them?⁵⁴⁸ *They violated public order*.⁵⁹¹

Thus, St. Augustine found himself faced with a factual situation, for which he sought to find theoretical solutions.⁵⁴⁹ He drew his principles from 1° his conception of the role of the State with regard to the Church; 2° the justification of coercion by its good purpose;⁵⁵⁰ 3° the principle, true even more often, that one can prevent evil from being done. "* Finally, the prelate often had difficulty imagining the good faith of these Donatists, given their behavior.⁵⁵¹

" 25. However, before the promulgation in Africa of these laws which forced people to partake of the divine feast, some of our brothers, among whom I was, thought that, in spite of the rage of the Donatists, from which no place was safe, it was not necessary to ask the emperors to order the complete suppression of heresy by punishments against these schismatics; but that it was preferable to take measures to preserve from their fury and violence those who taught the Catholic truth by speech or reading. This purpose, in our opinion, could be attained by the enforcement of the law which Theodosius, of pious memory, had brought against all heretics in general. According to this law, every bishop, every cleric of the heretical communions, wherever they were found, were condemned to a fine of ten pounds of gold. We especially wanted this punishment to be applied to the Donatists, who did not consider themselves heretics; we did not, however, want all of them to be liable to it, but only those in whose countries the Catholic Church suffered violence from their clerics, their Circumcellions, or people of their party...]. We thought that since the Donatists were frightened and no longer dared to indulge in their usual cruelties, the Catholic religion could then be taught and practiced freely. No one would be forced to do so, but each one could, according to his will, embrace it and follow it without fear, so that we would no longer have false and simulated Catholics among us. We had several of our older brothers against our way of thinking. They had the example of many cities, where, by the mercy of God, the faith was firmly established, when the laws of previous emperors forced all men to follow the Catholic communion. We obtained, however, that they would confine themselves to asking the emperors what I have said. o⁵⁵²

⁵⁴⁶ Details in our 2^e edition.

⁵⁴⁷ CT. LEIBER, 1962, 162. See also VANHOVE, 1992.

⁵⁴⁸ Cf. AUGUSTIN. Pius. 1966. 59.

⁵⁴⁹ Cf. BERGIER, art. Donatistes ", in 1D., t. 34 (1850), 265-266.

⁵⁵⁰ Cf. MONACHINO. 1959.01-03, 35.

⁵⁵¹ Cf. AUGUSTIN, Pius. 1966, 79-81.

⁵⁵² 0070. AUGUSTIN, 417, *Lehre* 185, (vii) 25; CSEL 57, 23-25 = PL 033, 804-805.

From Saint Augustine to Saint Gregory

It is not for us to repeat the work of Dom Pius Augustine concerning the characteristics of the late period of the Fathers.⁵⁵³ We must, however, finish the analysis of the patristic texts subsequent to Augustine. Let us note at once that at the time of his death, the Vandals were besieging Hippo, and hastened to carry out a bloody persecution throughout North Africa.⁵⁵⁴

S. Celestine I^{er}, in 431, urged Emperor Theodosius II to protect the Church and to support with his authority the decisions of the Council of Ephesus.⁵⁵⁵ "An emperor should indeed have the good of the faith more at heart than that of his kingdom.⁵⁵⁵ On the other hand, according to s. Cyril of Alexandria (although he was primarily interested), it was impossible to use force against the opponents of Christian preaching.⁵⁵⁶ Salvian, a priest of Marseilles, (around 445) sees the possible good faith of the Arian Goths. It is a question of heretics, not of sectors of religions having never been in the Church, a case which he had envisaged previously:

"So they are heretics, but they don't know it. In short, they are heretics in our country, but they are not in theirs. That is why they think they are so Catholic that they call us heretics. What they are to us, we are to them. L-...] The truth is among us, but they suppose that they have it among them [...]. They are therefore mistaken, but it is in good faith, not out of hatred, but out of love for God, convinced that they honor the Lord and love him. What punishment they will suffer on the day of judgment for this false and erroneous belief, no one can know but the Judge, B⁵⁵⁷

Saint Leo I^{er} the Great (440-461), in 447, praises the Spanish bishops of the IV^e century for having suppressed the Priscillian heresy by force. The reason for this praise, however, is that these bishops, in this heresy, "saw indeed the care of good morals disappear, the dissolution of all matrimonial ties." Finally, while excluding capital punishment, he accepts the help of the secular arm, which makes those who fear "corporal punishment think. In 457, "the same pope writing to Emperor Leo of Constantinople about the disturbances in Alexandria caused by the sect of Eutyches",⁶ *® reminds him that his authority was given to him above all to protect the peace of the Church "by driving out the invaders of the rights of others and restoring the seat of the Church of Alexandria to the ancient faith."⁵⁵⁸ The call to force has thus for goal here to restore the Church in its rights and to cal- mer disturbances contrary to the public peace. As for Gelasius I^{er} (492-496), in 494 and 495, he certainly carefully distinguishes *Vauctoritas sacrata pontificum* from the *re galis potestas*^{fi}¹² declaring each one sovereign in its own domain, but he admits that the Church can make use of the help of the State:

"Thus the emperors find themselves in need of the priests in matters of the eternal life, and the priests use the imperial ordinances in temporal affairs. The spiritual power keeps itself away from the pitfalls of the world and, fighting for God, does not interfere in the affairs of the world, while the secular power in its turn is careful not to take the lead

⁵⁵³ Cf. AUGUSTIN, Pius, 1966,47.

⁵⁵⁴ Cf. CHELINI, 1968, 30-31.

⁵⁵⁵ 0080. C&LESTI NI", 0431: *Ep. ad Theodosium Imp. 2*; PL 050.511, n° 2.

⁵⁵⁶ CYRIL OF ALEXANDRIA. s" *In Epist. 11 Cor 10. 1*: PC74,945D.

⁵⁵⁷ 0083. SALVIAN OF MARSEILLES (0400 ? - 0480/4), *De Gubernatione Dei* (between 439 and 451). ŷd. lat. -fran^ . in (*Eueres, id. LAGARR1GUE Georges, 1.11, Paris, Cerf, 1975, 592 p. (SChr 220)*; lat. alone: PL 053, 95-96; *MGH. Auel.Ant. 1,1.57. Here V, ii. 9-10: CSEL", 104;S&Crr220.316-319.*

⁵⁵⁸ 0082. LEON T LE GRAND, s., 0457: *Ep. LXXV ad Leonem Augustum*, c. 3: PL 054, 1130 (who numbers it CLV1); LO GRASSO³, n° 104,49: "... debes incunctanter advertere, regiam potestatem tibi non ad solum mundi regimen, sed maxime ad Ecclesiæ præsidium esse collatam : ut ausus nefarios comprimendo, et quis bene sunt statuta defendas, et veram pacem his quæ sunt turbata restituas, depellendo scilicet pervasores juris alieni Cf. DIEZ-ALEGRIA, 1965,80.

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in divine affairs. By remaining thus modestly in its place, each power avoids the pride of monopolizing all authority for itself and acquires greater competence in the functions which are proper to it." ⁶³

5. Symmachus, at the very beginning of the VI^e century, explains again to the emperor Anastasius (and against the latter's encroachments) the Gelasian distinction of powers and concludes: "Obey God in us, and we will obey God in you." ⁶⁴ - This was, by the way, the time when the Church was undergoing persecution from the Arian Visigoths in Spain and Provence (and even from the Ostrogoths in Italy). ⁶⁵ *

Saint Gregory I^{er} the Great (590-604)

At the end of the same century, Gregory the Great, in the midst of incessant political difficulties, ⁵⁵⁹ after having recalled (around 580) the natural equality of all men, ⁵⁶⁰ had to defend several times in his letters ⁵⁶¹ "the LR of the Jews, who had appealed to him. He invites his colleagues in the episcopate to use "gentleness", "kindness", "warnings", "persuasion" and not threats and fear towards these non-baptized. ⁵⁶² It radically excludes forced conversions:

"Several Jews who reside in this province and travel from time to time on business to the region of Marseilles have informed us that a large number of the Jews who live there were brought to the baptismal font by force rather than by preaching. Certainly, I consider the intention in such a case to be commendable, and I am sure that it comes from the love of our Lord. But I fear that, if this same intention is not accompanied by the proper virtue of Scripture, no reward will come of it, or even, in some measure, that damage will ensue - God forbid - to the souls we wish to save. For when any one has come to the fountain of baptism not by the sweetness of preaching but under compulsion, if he then returns to his first superstition, he dies in a more fatal state because he had seemed to receive a new birth." ⁶²⁰

He advocated the freedom of worship which they had enjoyed until then. The Jews must have a suitable place of worship, without embarrassment for the Christians:

"The Hebrews who live in Terracina have begged us to give them permission, by virtue of our authority, to possess the place they have had until now as a synagogue. But since it has come to our knowledge that this place is so close to the Church that the voices of those who sing the psalms there can even be heard there, we have written to Peter, our brother and colleague in the episcopate, that if it were true that the sound of the voices coming from this place can be heard at the entrance to the Church, the celebrations of the Jews should no longer be held there. Your fraternity, together with our said brother and colleague in the episcopate Peter, will therefore carefully inspect this place; and if it is so, or if you see that the church suffers any inconvenience, provide within this *castrum* another place of meeting for these Hebrews, where they can without difficulty celebrate their ceremonies. If they are deprived of this place, let your Fraternity provide one which is such that no quarrel may arise in the future. We forbid that these Hebrews should be molested or unreasonably tormented. But as they are allowed to live under the Roman laws, let them also act justly, knowingly, without anyone disturbing them. Let them not, however, be permitted to have Christian slaves." ⁵⁶³

"The Jew Joseph, the bearer of these presents, has informed us of the following: the Jews who live in the *castrum* of Terracina used to meet in a certain place to celebrate their feasts. Your Fraternity having driven them out, they had, to your knowledge and with your consent, emigrated elsewhere to celebrate their solemnities in the same way. And now they complain loudly that they have been driven out of this place again. If this is really so, we want your

^{6/6} Cf. e.g. PINGAUD, 1872, *passim*.

⁵⁶⁰ 0087. GREGORY I" LEGRAND, s. n. ± 0579-0585, *Moralia*, lib. XXI, in cap. XXXI B. Job. cap. XV [vet. XII]. v.

15, n° 22 : PL 076,203 = CCSL 143B, 1082 : "Omnes namque homines natura aequales sumus."

61* 0088. GREGOIRE 1" LE GRAND, s., *Registrum Epistolarum* (Reg. ep.); MGH. Ep. ; CCSL 140 and 140A (1982), ed. NORBERG Dag; *Registrum des lettres*, tomes I^e et I^{II} (Livres I et II), ed. MINARD Pierre, O.S.B. (t), Paris, Cerf, 1991,540 p., 2 vols. (SChr 370 et 371) (stops at the year 592)

⁵⁶² 0090. GRÉGOIRE 1" LE GRAND, s., 0591.06.03: *Epistola "Scribendi" ad Virgilium Arelatensem et Theodorum Massiliensem Episcopos Galliarum*; MGH (Reg. ep., 1,45). 1,72; PLVT1,510-511 (lib. 1. ep. 47) (quoted by DH, note 8); CCSL 140 (1982). 59; orig. + translation: SChr 370 119911.226-229.

⁵⁶³ 0091. GREGORY 1" THE GREAT, s., 0591.09 / 0592.08: *Epistola "Supplicaverunt", Baccandat et Agnello episcopis. De Hebreis*; Reg. ep. 11. 45 (I, 10 according to PLOTI. 457); in MGH 1, 105 = LOGRASSO². n° 127. 61 = CCSL 140 (1982), 137 = SChr 370,426-429 (here 427).

brotherhood to abstain from this kind of quarrel, and that in the place where, as we have just said, they had obtained with your approval to meet, they be allowed to do so as they were accustomed to do. For those who are at variance with the Christian religion must be brought to the unity of the faith by gentleness and kindness, by warnings and persuasion, lest threats and fears drive away those whom the gentleness of the preaching and the unexpected coming of the future judge might have invited to believe. They must therefore come to hear you give them the word of God, instead of being frightened by this excessive severity.⁵⁶⁴

"Those who wish, with sincere intention, to bring to the right faith people who are strangers to the Christian religion, must endeavor to do so by gentle and not harsh means, lest the attacks drive away those whose reason, restored to serenity, could move the spirit. For all those who want to do otherwise and, under this apparent pretext, cut them off from the usual practice of their worship, are more concerned with doing their own thing than with God's. Now the Jews who live in Naples have complained to us that there are some who are trying without reason to keep them away from certain solemnities of their feasts, so that they are not allowed to celebrate the solemnities of their feasts as they have been allowed to do up to now, and as their relatives have been allowed to do from very ancient times. That if things turn out to be so, they appear to be of absolutely no use. For what use is it when, even if they are prevented from doing so in spite of long usage, the fact does not benefit their faith and conversion at all? Or why should we lay down rules for the Jews as to how they should celebrate their ceremonies, if we cannot win them over by this? It is necessary, therefore, that they should be led rather by reason and gentleness to follow us and not to flee from us, so that by showing them that what we say comes from their own books, they may turn, with God's help, to the bosom of Mother Church. For this reason it is necessary that Your Fraternity certainly urge them by its monitions, as much as it can with God's help, to convert, and that it not allow them to be troubled again about their solemnities, but that all be allowed freely to observe and celebrate all their festivities and holidays, as they have been doing up to now."⁵⁶⁵

Finally, it is not fitting for a bishop to rule by force and even less to demand faith by blows.⁵⁶⁶ The fact remains that the ultimate goal of temporal government is to facilitate the march of men towards salvation.⁶²³ And Gregory will call to his aid the material force to destroy in Italy the last remains of paganism. However: "Indulgence and persuasion seemed to him the most effective means; he resigned himself to rigor only when public order seemed to him to be in peril.⁵⁶⁷ If he allowed himself to be influenced by the imperial laws of the *Theodosian Code*, already encountered, and by those of Theodoric, it was above all a question for him of imposing the freedom of the preaching of the Gospel among the pagans, of watching over the sorcerers, by severely punishing the authors of spells."⁷

Then the Iberian peninsula gives us its position. Indeed, the IV^e Council of Toledo, in 633, also forbids the forced conversion of the Jews."⁸ For s. Isidore of Seville (±560-600-636)

"The princes of the century sometimes occupy the heights of power in the Church, in order to protect ecclesiastical discipline by their power. Moreover, in the Church, these powers would not be necessary if they did not impose, by the terror of discipline, what the priests are powerless to enforce by word. Often the heavenly kingdom benefits from earthly royalty; when those in the Church undermine faith and discipline, they are broken by the rigor of the princes."⁹

564 0089. GREGORY 1st THE GREAT, s., 0591.03: *Petro, episeopo Terracinensi* : PLQL 439 (*Reg. ep.* I, 35); *MGH. Ep. L* 34; *CCSL* 140 (1982), 42; *SChr* 370, 180-183. But Gregory would not have allowed the Jewish cult to grow in extension. 565 0093. GREGOIRE 1^{er} LE GRAND, s., 0602.11: *Letter Qui sincera* to Paschasus, bishop of Naples; *DzSch* 480; *CCSL* 140A (1982), 1013-1014; *MGH. Ep.* 2,283 (= *Reg. ep.* XIII, 13) *PL* 077, 1267-1268 (XIII, *Ep.* xii); transl.: GRELOT, 1987,80-81. One will be more reserved about some of his methods of apostolate to convert the Jews by attracting them with material advantages: cf. *Letters* 1, 71; IV, 33; II, 23; V, 8, and other passages mentioned by pINGAUD, 1872,206-207.

566 0092. GREGORY 1st THE GREAT, s., 0593.07: *Epistola ad Iohannem Episcopum Constantinopolitanum*; *Reg. ep.*, 52: *MGH. Ep.* 1,210; *PL*077,649 (lib. III, ep. 53); cf. D. 45, c. 1 (ed. FRIÉDBERG, I, 160) (quoted by *DH*, note 8); *CCSL* 140 (1982), 199.

567 pJNGAUD, 1872,207.

Princes can terrorize those who do not want to submit to the church.

⁷ Cf. PINGAUD, 1872,207. It even happened that he used fines and whips to make idolatrous peasants "listen to reason" (cf. *ibid.*, 209).

628 While providing for certain discriminatory measures: 0094. IV^o CONCILE OF TOLEDIA IV (0633.12.05), c. 57: MANSI, 10, 633; cf. D. 45, c. 5 (ed. FRIEDBERG, I, 161-162) (quoted by *DH*, note 8): "De Iudeis autem precepit sancta synodus, nemini deinceps vim ad credendum inferre. Cui enim vult Deus miseretur, et quem vult indurat. Non enim tales inviti salvandi sunt, sed volentes, ut integra sit forma iusticiæ. Sicut enim homo propria arbitrii voluntate serpenti obediens periiit, sic vocante se gratia Dei propriæ mentis conversione quisque credendo salvatur. Ergo non vi, sed libera arbitrii facultate ut convertantur suadendi sunt, non potius impellendi." Cf. SASTRE- SANTOS, 1985, 447-477. Cf. also CONCILIUM TOLETANUM 111, c. 14, MANSI, 9, 996: "Suggestente Concilio, id gloriosissimus dominus noster canonibus inserendum precipit. ut Judæis non liceat Christianas habere uxores vel concubinas, neque mancipia Christiana comparare in usus proprios: sed et si qui filii ex tali conjugio nati sunt, assumendos esse ad baptismum. Nulla officia publica eos opus est agere per quæ eis occasio tribuatur poenam Christianis inferre. Si qui vero Christiani ab eis judaico ritu sunt maculati, vel etiam circumcisi, non reddito pretio, ad libertatem et religionem redeant Christianam."

²⁹ 0095. ISIDORE DE SEVILLE, s., *Sententia*.; 111, 41 [or 51 ?] : PL 083, 723 = LO GRASSO³, n° 132-135, 65-66 : " n. 3. Sub religionis disciplina sæculi potestates subiectæ sunt, et quamvis culmine regni sunt preediti. vinculo tamen fidei tenentur adstricti, ut et fidem Christi suis legibus predicent. et ipsam fidei predicationem moribus bonis conservent." 630 00953 and 0095.4 ID" rW.Trad. de ce n°4dans LECLER. 1955,1,91.

631 0095.5 ID, *ibid.*: "n. 5. Sæpe per regnum terrenum cadeste regnum proficit, ut qui intra Ecclesiam positi contra fidem et disciplinam Ecclesia; agunt, rigore principum conterantur; ipsamque disciplinam, quam Ecclesia; humilitas exercere non prevaler, cervicibus superborum potestas principalis imponat; et ut venerationem mereatur, virtute potestatis impertiat."

CONCLUSION OF SECTION A

In fact, the Fathers of the Church, far from having been at the origin of the spirit of coercion, which appears rather to have been transmitted by the pre-Christian tradition, initiated a movement in favor of freedom of conscience.⁵⁶⁸ The numerous "outbreaks" of anti-Semitism by the rabble, admittedly sometimes aroused by clerics, monks, and even bishops, cannot represent the doctrine constantly *taught* by the bishops of the time, and especially by the popes. On the other hand:

"In ancient times, the repression of heresy and schism was carried out jointly by the ecclesiastical and civil powers. Constantine cracked down on the Donatists and supported the decisions of the Council of Nicea by threatening the Arians with exile. Many times, in the following years, the intervention of the imperial authority was requested by the bishops against the activities of the heretics and schismatics. S. Augustine himself, at first unfavorable to this kind of support for the Church, later admitted the occasional use of public force. From Theodosius to Justinian there was a whole body of legislation which punished various categories of heretics with exile, imprisonment and confiscation of property. The death penalty is even mentioned against Manichaeans, Eutychians, Eunomians... [In fact, capital punishment was only rarely applied in antiquity. All the bishops, with a few exceptions, were hostile to it."⁵⁶⁹

It is necessary to specify:

"The Fathers have constantly taught, as we still do, that heretics should not be persecuted, embittered or troubled when they are peaceful and do not disturb the public peace; that they should be instructed with gentleness and charity, and that they should be brought back only by persuasion. For this very reason the Fathers complained of the persecution which the pagans exercised against the Christians, a persecution which was all the more unjust because the latter were the most submissive subjects of the whole empire and the most attentive to respecting public order. But the Fathers added, and we say it after them, that when heretics are turbulent, violent, seditious, they must be repressed by the secular arm, otherwise society would be in flames; consequently they applauded the emperors who brought penal laws against the Arians and against the Donatists, because these sectarians used violence to make their errors be adopted. We defy our opponents to name a single Father of the Church who approved, advised or requested coercion against heretics who gave no cause for concern to the government, nor any law of the emperors requested by the clergy against miscreants of this kind. As early as the second century of the Church, St. Irenaeus prescribed this rule against heretics: "Turn away," he says, "and give confusion to those who are meek and humane, so that they may no longer blaspheme against their Creator; but turn away from you those who are fierce, fearful, and deprived of reason, so that you may no longer hear their clamor." (*Adv. Hier.*, I, II, c. 31, n. 1)."-"

568 AUGUSTIN, Pius, 1966,83.

569 LECLER. 1962.1683.

SECTION B.

THE SCHOLASTIC PERIOD (MEDIEVAL AND MODERN)

As the position (theoretical and practical) of the scholastics (medieval and modern) in the matter of the RL identical to that of the patristic period? For the medieval period, in addition to the doctrines, among the facts of capital importance, we will point out the Inquisition⁶³⁵ and the crusades. We will use the conclusions of historians and canonists in their regard. As for the authors, just as Augustine dominated the patristic period, the common Doctor will shine at the top of the medieval period. Hence the division of our chapters: Before s. Thomas (chapter 6); from s. Thomas (chapter 7). As for the modern period, the *Century of the Reformation*, with the wars of religion which it engendered for a century, profoundly modified the position of the question (chapter 8).

⁶³⁵ Black work was already in press when we received the essential volume: AA. Vv., COMITATO DEL GRANDE GIUBILEO DELL'ANNO 2000, COMMISSIONE TEOLOGICO-STORICA. *L'Inquisizione. Atti del Simposio internazionale. Città del Vaticano, 29-31 ottobre 1998*, a cura di Agostino BORROMEO, Città del Vaticano, Biblioteca Apostolica Vaticana (*Studi e Testi*, 417), 2003,788 p. 11 It has not been possible for us to take into account here the thirty or so contributions of this colloquium.

CHAPTER 6.

6. BEFORE SAINT THOMAS AQUINAS (VIII -XIII^{ec} CENTURIES)

NHE subject has already been carefully studied in the *canonists* of the xii'-xiv' centuries.⁶³⁶ We will thus follow rather the theologians, the popes, the councils, without however forgetting Gratien.

"The High Middle Ages, which had few heresies, had no temporal legislation against heretics. The Roman Empire had been teeming with heresies, and the constitutions of the emperors had carried severe penalties against heretics. But none of this survived the rule of the emperors over the West. Under Sigismund, the Burgundians had a Catholic king. This change in government brought no change in the law of faith. The Arians enjoyed the same tolerance in Catholic Burgundy that had been granted to Catholics in Arian Burgundy. Unlike the Burgundians and the Visigoths, the Franks were Catholic from the moment of their conversion to Christianity, and remained so; no heretics were seen among them. But the territories conquered by them from the Visigoths and Burgundians contained a certain number of Arian barbarians. Heretics and defeated, it would have been, as one might think, two reasons for one to mistreat them. Nothing was done. The principle of tolerance continued to prevail, and the Merovingian kings never made heterodoxy a secular offence. Moreover, princes who still counted among their subjects a large number of pagans and sometimes granted them high positions in the state could not be very rigorous about the purity of the faith of their Christian subjects."⁶³⁷

6.1. From viii^c to X^c century

"The Merovingians in Gaul, the Lombards in Italy, were succeeded by the Carolingians, who, having also completed the conquest of Germania, united these three countries under their empire. These princes are known for their attachment to the Church and for the care they took to put the power of the State at the service of religion. They imposed Christianity, under the last penalties, on the pagans of Saxony. It would not have been strange to see them also crack down on heretics, if they had had the opportunity: but this opportunity did not present itself. Arianism, as we have just seen, had disappeared before the advent of the Carolingians; Catharism did not appear in the West until after their fall. During the whole duration of their power, no important heresy divided the faithful of their States. The few heretics who appeared were members of the clergy and did not recruit adherents among the people. The application of the rules of ecclesiastical discipline was sufficient to overcome these dissidences, o"⁶³⁸

⁶³⁶ See in particular CONDORRELL1, 1960,133.

⁶³⁷ HA VET, 1896,119-121.

⁶³⁸ HAVET, 1896, 123-124, who cites Felix of Urgel and Elipand of Toledo, then Gothescalc: and he concludes, p. 126: "These cases are moreover isolated, and rarely did one see less heresy than under the Carolingians and their successors, in the Western Empire and in Gaul, until the end of the X^c century. In the legislative monuments of that time, the capitularies, one does not find any provision enacted by the sovereigns to combat heresy."

In addition, Alcuin (±735-804), Charlemagne's advisor, always took a dim view of the baptisms imposed by his master in Saxony⁶³⁹

"Faith (according to Saint Augustine) is a matter of will, not of necessity. How can you force a man to believe what he does not believe? One can push him to baptism but not to faith: like those heretics who maintain that the flesh of Christ was adopted,⁶⁴⁰ they can in no way be converted to the Catholic faith, for they have no will to know the orthodox profession of faith of the universal Church. Man, an intelligent being, reasons: teaching, the zeal of preaching, must lead him to recognize the truth of our holy faith. And prayer, above all, must bring down upon him the mercy of Almighty God; for the word is useless, if the dew of grace does not moisten the heart of the listener, B⁶⁴ -

S. Theodore Studite (±759-826), in Constantinople, states:

"It is up to the material princes to punish material offenses, but not spiritual offenses; these causes are reserved for those who govern souls; and these inflict excommunications and other punishments... the Church does not avenge herself with the sword. If you have another Gospel, which we do not know, so be it; but if you have none, remember the apostolic teaching."⁶⁴²

In this regard, the most important document of the entire "ante-thomian" period is without question the *Letter* of s. Nicholas I^{er} (858-867), to King Boris of Bulgaria.⁶⁴¹ It forbids forcing the Barbarians to embrace the faith and condemns the "torture of instruction" B.⁶⁴² On the horizon, however, is a danger:

"At the end of the X^o century, the Manichaeans made such progress in Macedonia and Bulgaria that they were called in the West *bougres*, i.e. Bulgarians, or bogomiles, from the name of one of their leaders. Moved by the reasons of public order which had inspired the emperors of the preceding centuries, the emperor Alexis Comnenus made arrest and condemn to the stake a great number of these heretics, a⁶⁴³

6.2. The xi^c century

Two cases were then treated very differently by the medievalists: 1^o that of the non-baptized (especially Israelites and Muslims); 2^o that of the heretics.

⁶³⁹ Cf. CHARLEMAGNE. *Capitulatio de panibus Saxorum (775-790)*, in *MGH, Legum sectio II. Capitularia Regum Francorum*, ed. BORETIUS Alfredus, 1.1.68-70; it is about art. 8, 69: "Si quis deinceps in gente Saxononim inter eos latens non baptizatus se abscondere voluerit et ad baptismum venire contempserit paganusque pennanere voluerit, morte moriatur, B Cf. ALCUIN, 0796? *Ep. 42, Ad Megenfridum*; FEBRONIUS, 1.1.51: *PL 100,205*: "Fides quoque, sicut sanctus ait Augustinus, res est voluntaria, non necessaria. Attrahi poterit homo in fidem, non cogi. Cogi potens ad baptismum, sed non proficit fidei. Nisi infantilis stas, aliorum peccatis obnoxia, aliorum confessione salvari poterit. Perfecta stas vir pro se respondeat, quid credat, aut quid cupiat. Et si fallaciter fidem profitetur, veraciter salutem non habebit. Unde et pndicatores paganorum populum pacificis verbis et prudentibus fidem docere debent, B Alcuin then makes, col. 205-206, the application to the Saxons.

⁶⁴⁰ Cf. the heresy of the adoptianists Felix of Urgel, etc., condemned at the Council of Frankfurt (794).

⁶⁴¹ 0103. NICOLAS I^{er}, s. : 0866.11.13 ; *Epist. 97,41* : *PL 119,995* : NICOLAI I PAPÆ *Epistola*; in *MGH. Epistola ari carolini*, ed. E. PERELS. Berlin. 1925. VI, 2,99, [568 ss.], n^o41, 582 s. ; cf. n^o 102, 599 : " De iis autem qui Christianitatis bonum suscipere renuunt, et idolis immolant, vel genua curvant, nihil aliud scribere possumus vobis, nisi ut eos ad fidem rectam monitis, exhortationibus, et ratione illos potius quam vi, quod vane sapiant convinctis: opera manuum suarum, et insensibilia elementa, cum sint homines intellectu habiles, adorantes, imo dmmomis suam cervicem flectentes et immolantes. [...] Jam vero si vos non audierint, cum eis nec cibum sumere, nec ullam penitus communionem habere : sed eos tanquam alienos, atque pollutos a vestris obsequiis et familiaritate remove debetis, ut tali forte confusione compuncti convertantur, inspirante Deo, ad ipsum qui est venis et non falsus Deus. Creator et non creatus, non factus [...] j B

⁶⁴² 07583-6. citing this text, will confirm this conviction. DIEZ-ALEGRÍA. 1965,80s., still quotes: 1) Letter of s. GRÉGOIRE II to Leo III Isaurian (between 726 and 730) (on the rigorous distinction of powers); Greek text, ed. CASPAR Erich, *Papst Gregor II. und der Bilderstreit*, in *ZKG*, 52 (1933), 80,1. 249-256; cf. MANSI, 12, 967-970. 2) Letter 88 of NICOLAS I^{er} to em. Michael III (865). which repeats GELASE *DzSch* 642.

⁶⁴³ GUIRAUD, 1978,37.

6.2.1. The case of the non-baptized. The crusades

Although the crusades were in no way directed against the Jews, the first one triggered an "explosion of anti-Semitism throughout Europe" *>*> Jews were accused of being accomplices of the Seljuk Turks in the anti-Christian persecutions of the Holy Land. The pogroms began in the Rhineland and continued with polemics, caricatures, and discriminatory legal measures: the spontaneous grouping of Jews became "legal and obligatory separation" in ghettos, with the wearing of the "rouelle" and the pointed hat. "Nevertheless, Alexander II, in 1065, declared that the Jews should not be forced to be baptized, but should be left alone *"proprii arbitrii libertate*. And he invokes s. Gregory the Great.⁶⁴⁴ If the State transformed into discrimination a certain persecution due to the surrounding culture, the aim was never forced conversion.

The question of the crusades⁶⁶ " concerns other non-baptized people, especially Muslims. To participate in a crusade was to commit oneself militarily, under the protection of the Holy See and with the reward of indulgences, to fight non-Catholics, and this with a religious purpose. The crusades against the Muslims were intended to free either Spain or the Holy Land from their domination.⁶⁴⁵

In Spain, it was the *Reconquista*, a set of wars in which the Spanish Christians embarked between the VIII^e and XV^e centuries to "drive the Saracens" out of the peninsula, until the capture of the kingdom of Granada in 1492 by the Catholic Kings. The aim was to destroy the *political* domination of the Muslims, not to convert them by force.⁶⁴⁶ Of course, like any human phenomenon, this movement had its serious excesses. The main one was the forced conversion of Moors and Jews (exaggerated by various authors).⁶⁴⁷ Hence the problem of the false converts, who were the only ones targeted by the Inquisition, and finally expelled, along with their ex-correligionists, by the Catholic Kings. In fact, the religious question was closely mixed with nationalistic, racial and cultural feelings, and above all with a political difficulty. We can therefore exclude this point from our research. The expulsions in question, in spite of their very regrettable existential circumstances, were essentially a measure of public peace. All in all, the *Reconquista* is rather like the liberation of a people from the servitude of a foreign occupation, and is largely a political matter.⁶⁴⁸

The crusades of the Holy Land are more typical. Born precisely in the XI^e century, this system, even if it had many abuses, had as its original goal the protection of the RL of Christians in the East.⁶⁴⁹ In itself, therefore, the crusades in the Holy Land were in no

⁶¹⁹ 0105. Letter *Licet ex*, to Landolf, Prince of Benevento; *DzSchHii* 698.

⁶⁴⁵ On the I^e crusade, preached in November 1095 by Urban II, cf. ELICHE & MARTIN. 08. 288 ff.; on the II^e-, preached at Vézelay on March 31, 1146, cf. 1D., 09/1, 192-198; on the III^e-, ID. 09/2,200-214; on the IV^e-, 1D., 10.44 84; on the last crusades, Id., 10,278-291.

⁶⁴⁶ Cf. VERA-URBANO, 1989, 1117, who cites the classic examples of the Cid, of Alfonso VI "emperor of the two religions", of s. Ferdinand III, "king of the three religions", of the *Libro de las Estados*, of the Infant don JUAN MANUEL (I -, 31F, 294 a), of *Lus Siete Panidas* of the king ALPHONSE X THE WISE 11265],

⁶⁴⁷ Cf. COSTE, 1969, 295-296. On the question, DUMONT Jean, 1981 puts many things in order.

⁶⁴⁸ It is difficult to distinguish the religious from the political when it comes to Muslim expansion.

⁶⁵⁵ Like the alliance of Francis Ist with the Great Turk.

way a violation of the right to the RL.⁶⁵⁰

6.2.2. The case of the heretics

"With the XIth century begins a series of measures by which the secular authority tries to restrict the development of heresy [Catharism]. (...) In the northern region, the practice of putting heretics to death, mainly by fire, was established early on and persisted. In the South, until the 13th century, heretics were very rarely put to death; more often than not, they were either tolerated or punished with lesser penalties than death, mainly banishment and confiscation of property. In both regions, the crime of heresy remained unknown to jurisprudence for a long time, and when heretics were punished, it was often as a political measure and not as an application of criminal law. In the course of the twelfth century, the efforts of the Church succeeded in bringing about a twofold change: on the one hand, the customs of the North were passed on to the South; on the other hand, these customs, in the North itself, were transformed into a regular custom or into law: thus the custom of burning heretics became a universal law."⁶⁵¹

"It was in 1022 that the secular arm cracked down on heresy for the first time in France. The king Robert [II the Pious (970-996-1031)]¹ took the initiative of this rigor. The execution of thirteen heretics, which took place by his order and in his presence, in Orleans, is a famous fact, which all contemporary historians have reported. Now, it is certain that in ordering the burning of these heretics, the king of France was not applying any law then existing."⁶⁵¹

If the *practice*, at least sporadically, begins to harden, the *authors* continue rather in the paltristic line of the mansuétude:

"In this same eleventh century, neither in St. Peter Damian nor in St. Anselm did we find a word for inflicting corporal punishment on heretics."⁶⁵²

"The heresy continued to spread in the diocese of Châlons and, in 1043, Bishop Roger was warned that many Cathar assemblies were taking place in the region. He consulted Wazon (980-1042-1048), bishop of Liège, about what to do about them, and he wrote him a very curious letter.⁶⁵³ [After having stigmatized the errors of the heretics, the A. asks himself what to do with these people. He takes as his starting point the parable of the zizanie; he cites the example of Saul who became Paul after having participated in the stoning of Stephen (Chap. XXV)]. God," said Wazon, "does not want the death of the sinner but his conversion. Did not Christ give us the example of gentleness towards heretics, while, all-powerful, he endured the opprobrium, the insults, the cruelties of the Jews and finally the torture of the cross? And when, in his parable, he advised us to let the weeds grow with the good grain until the harvest, did he not teach us that the bad must live with the good until the Judgment of God, which alone will separate them?" Showing himself even more tolerant, Wazon added: "Those whom the world now regards as tares, may be, when the harvest comes, gathered by God with the wheat... Those whom we regard as the enemies of God, may be set by him above us in heaven."⁶⁵⁴ "Let us remember that in our episcopal consecration we do not receive the sword of secular power, and that the divine anointing calls us, not to give death, but to give life, n⁶⁵⁵

"The account which reports this consultation and this answer tells us that at this time the persecution was raging with rigor in France. Wazon," says his biographer Anselm, "was trying with these words to stop the blind rage of the French who were eager to kill. For he had learned that the French condemned heretics on the mere pallor of their complexion, as if it were certain that anyone with a pale complexion was a heretic: so, through their

650 See MINNERATH, 1991,35.

65¹ HA VET, 1896,128; cf. p. 129 ff.

65² VERMEERSCH, 1922, 88. GUIRAUD. 1978, 78, § 3. notes that no coercive measures had been taken against Berenger of Tours (cf. *DzSch* 700). VACANDARD, 1923,2017, refers on this subject to the Councils of Reims (Oct. 5, 1049), MANSI. 19,737 and of Toulouse (Sept. 13, 1056), MANSI, 19.849. And in any case. the Church does not want the capital punishment, as ALEXANDREIL writes to the archbishop of Narbonne, MANSI, 19, 980: "*leges tain ecclesiasticas quant secularares effusionem humani sanguinis prohibent*".

65³ *Gesta episcoporum Leodiensium*, apud PERTZ, *MGH, Scriptores*, VII, 227.

65⁴ Cf. 0104. WAZON. Letter to bishop Roger II of Châlons, in *Vita Vasonis scripta ab Anselmo et Alexandro, canonicis Leodiensibus, inter Gesta Leodiensium episcoporum* (according to PL 142, 725-726, which refers to Dom MARTÈNE), in *Anselmi Gesta episcoporum Leodiensium*, cap. XXV and XXVI : *MGH, Scriptorum*, VII, 226-227 = PL 142,751-754, here presented and translated by GUIRAUD, 1928,825. For Vorig, cf. PL 142,752.

65⁵ Latin origin: PL 142.753, omitted by GIRAUD. WAZON then urges the use of excommunication, the warning of the faithful.

error and fury, many true Catholics were put to death."⁶⁵⁶ It is understandable that this summary justice inspired scruples in the bishop of Châlons; but on the other hand these scruples show, once again, that the rigors exercised against heretics were arbitrary acts and not legal and juridical executions. If, in fact, a law or a regular custom had ordered these executions, the bishop of Châlons would probably not have thought of hindering the action of the law, and Wazon himself would have felt somewhat embarrassed to preach a toleration contrary to the law, he does not say a word about the legal question, because this question, apparently, did not exist. A year after Wazon's death, in 1049, a council dealt with stopping the growth of heresy in France: it pronounced the penalty of excommunication against heretics, but it did not allude to any temporal punishment, nor did it even invite secular princes to crack down on heresy, w⁶⁵⁷

"■"Pi. 142,753.

⁶⁵⁷ HAVET, 1896, 132-133. The biographer of Wazon also refers to the example of s. Martin refusing to approve the killing of the priscillianistes (*ibid.*, 753, cap. XXVI: *De luereticis nequaquam interjiciendis*).

6.3. The xn^e century

"This system of tolerance, which prevailed in practice, was not accepted by the Church. If in Italy, for reasons explained above, the Church was able to give heresy only a distracted attention, in our southern provinces it took more care of it. During the XII^e century, she made repeated efforts to obtain an action of the secular power against the heretics, and obtained, thanks to these efforts, some results; she did the same in Italy, in the last years of this century only. Finally, from the pontificate of Innocent III onwards, it obtained positive and lasting results and definitively established the principle that heretics were not to be tolerated, x⁶⁵⁸

Once set in motion, the political forces took a liking to this kind of action, especially since they often found their interest in the remains of the condemned. Some particularly pious princes, for their part, committed excesses of zeal."⁶⁵⁹ A way had to be found on the one hand to condemn heretics from the ecclesiastical point of view, in order to prevent them from harming the spiritual common good, and on the other hand to have them constrained by civil society, in order to prevent them from harming the temporal common good, while at the same time curbing excessive interference by the state. The two common goods being closely intertwined, this gradually gave rise to the institution known as the Inquisition.

With regard to the non-baptized, on the other hand, the traditional principles were maintained, even if they were violated in many ways (pogroms, forced conversions), which obliged the popes to frequently remind them of the doctrine.

1) 3.1. The case of the non-baptized

The men of the XII^e consider three different cases of non-baptized: the Jews inside Christianity; the pagans on the borders of Christianity (in the East); the Muslims in the South (which we have already dealt with).

I) *The Jews*

With regard to the Jews, s. Bernard de Clairvaux (1090-1153) states, they must not be destroyed, for they must remain until the end of time. Bernard of Clairvaux (1090-1153), we must not destroy them, for they must remain until the end of time. The Gentiles should also be tolerated, but "since they have begun to be violent with us, those who do not carry swords in vain must repel force with force, w⁶⁶⁰ At about the same time, in Bologna, Gratian (end of XI^e - beginning of 1159) drew up his famous compilation (*Decretum*). Quoting *1 Cor 5:12*, he notes that the judgment of those who do not come under the jurisdiction of the Church ("*quia non sunt nostri iuris*") is reserved for God. In any case, in general," he says, "it is better to tolerate, than to disturb the peace of the Church."⁶⁶⁸

In 1190, Clement III (1187-1191), also became the appointed protector of the Jews, recalling the prohibition of forcing them to be baptized, of committing any private

⁶⁵⁸HAVET, 1896,151.

⁶⁵⁹ Cf. CAVAGNIS, 1882, no. 498: "Hinc aliquando Ecclesia coarctavit zelum principum ; ita Clemens IV. die 12 Julii 1268 Bullam direxit S. Ludovico Galliarum regi, ut poenas contra blasphemos mitigaret: et idem Pontifex sub eadem die scripsit Regi Navarra: "Fatemur quod in poenis huiusmodi tam acerbis, charissimum in Christo Filium nostrum regem Francorum illustrem non deceat imitari." "

⁶⁶¹0109. BERNARD DE CLAIRVAUX, s., *Ep.* 363,7; *PL* 182,567. Our translation.

violence against the Jews, of preventing them from celebrating their feasts, of reducing them to forced labor, of desecrating their cemeteries. All this under penalty of disqualification and excommunication."⁶ "

II) The pagans of the East

The 2^e type of crusade was launched against eastern Prussia and Poland. It was opposed not only to the natural RL, but to the freedom of the act of faith. It was born accidentally, when s. Bernard came in 1147 to preach the crusade to the Germans in the Holy Land. Some people managed to persuade the saint to transform this crusade into an expedition against the Slavic "Wendes", which "was decided at the Council of Frankfurt (March 19, 1147)",⁶⁶¹ in order to prevent the pagan Slavs from massacring the Christian Slavs.⁶⁶² Obviously, the monk did not know that this war for freedom would be transformed into a forced evangelization. A few baptisms were obtained, but basically "the only result of the crusade was to overexcite the hatred of the Slavs against the Christians; the missionary work was delayed."⁶⁶³ Fortunately, a peaceful development of the territory by German settlers followed, allowing the normal evangelization of the Slavs.⁶⁶⁴

2) 3.2. The case of heretics. The Inquisition

The recrudescence of the legal procedures set up in the XII^e seeks to face the progress made by the heresy in the previous century.⁶⁶⁵

"In the South of France, Catharism also developed and spread everywhere without being worried. A council assembled in Toulouse in 1056 pronounced only the ecclesiastical penalty of excommunication against heretics and their culprits.⁶⁶³ The customs of the county of Barcelona, written around 1068, declared them and all those excommunicated incapable of testifying in court against the orthodox: but at the same time they clearly separated them from criminals; they seemed to consider them as a class of society whose existence was recognized and tolerated by the law, in the same way as that of the Jews or Saracens, with whom they were associated. Excommunication had no temporal sanction: around 1110-1115, the civil magistrates of Castres refused to imprison excommunicated persons pursued by the abbot. The Cathars thus had every facility to profess and propagate their faith. Saint Bernard, visiting in 1147 the cities of the South of France, found them full of heretics. (...) In 1179, the third Lateran Council complained that the heretics of Gascony, Albigenia and Toulouse had complete freedom to practice their religion and publicly profess their doctrine."⁶⁶⁶ Numerous testimonies also attest to the freedom enjoyed around the year 1200 by the Cathars, or, as they were then called, the Albigenians, in the domains of the Counts of Toulouse and Foix. Raymond VI professed the very principle of tolerance and declared that he would never punish his subjects for heresy. The Count of Foix was denounced at the fourth Lateran Council, in 1215, for the favor he had granted to heretics in his lands; in answering this accusation, he defended himself for having loved and favored heretics, not for having tolerated them.⁶⁶⁷

1) First coercive legislation

"The ravages caused especially in the North of Italy and the South of France by the Cathars or Manicheans, whose doctrine was destructive of society as well as of faith, frightened the leaders of Christendom. On several occasions and in many places, the people and the princes took justice into their own hands, through

⁶⁶¹ FUCHE&Martin, 09/1 (1944), 186.

⁶⁶² See FLICHE & MARTIN, 09/1 (1944), 181-185.

⁶⁶³ FUCHE & MARTIN, 09/1 (1944), 186.

⁶⁶⁴ Cf. FLICHE & MARTIN, 09/1 (1944), 186-188.

⁶⁶⁵ On this period, in addition to the works of MAISONNEUVE, etc., note: FOREVILLE. 1953,330-352.

⁶⁶⁶ LABBE-COSSART, 10, 1152.

⁶⁶⁷ HA VET. 1896.149-150.

condemnations and summary executions: expulsion or death of the guilty.⁶⁷¹

"In 1119, a council assembled in Toulouse, under the presidency of Pope Calixtus II, and composed of prelates from Provence, Languedoc, Gascony, Spain and Armorica, renewed the ecclesiastical condemnations already pronounced against the heretics of the Midi; moreover, it enjoined the "external powers", that is to say, the princes and temporal magistrates, to force these heretics to submit.⁶⁶⁸ The provision was vague and unlikely, in these terms, to be carried out; but it marks a tendency which must be taken into account. Twenty years later, in 1139, it was renewed, in almost the same terms, by the second Lateran Council.⁶⁶⁹

"As for those who, under the color of religion, condemn the sacrament of the body and blood of the Lord [etc.], we expel them from the Church of God and condemn them as heretics, and we order that they be subjected to the restraint of the secular powers."⁶⁷⁰

Nevertheless, as the people of Cologne, in the year 1144, had snatched from a peaceful theological colloquy some heretics whom they had then burned without judgment, s. Bernard (1090-1153) wrote:

"We approve of his zeal, but not of what he has done, for faith is a work of persuasion, it is not imposed by force. It is better to suppress (in spite of everything) the heretics with the sword, that sword which the prince does not carry in vain, than to allow them to drag others along with their errors, if they are not to be persuaded."⁶⁷¹

"In 1147, St. Bernard, visiting Périgueux, succeeded in having a sort of municipal statute enacted which deprived heretics and their culprits of certain rights, notably those of testifying and of going to court; some lords of the country undertook to expel heretics from their lands,⁶⁸² "In 1148, the council held in Reims by Pope Eugene III⁶⁷² excommunicated the heretics of Gascony and Provence, their supporters and defenders, and those who would give them sanctuary in their lands: and he ordered to pronounce the ban in the domains of the princes who would violate this canon, B⁶⁷³

At the Italian Council of Cremona (July 7, 1148), Eugene III published the decrees of the Council of Rheims. His teacher, St. Bernard, on the subject of *Cant* 2:15, states:

"If we understand these words in the allegorical sense, so that the Churches are vines and the foxes are heresies, or rather heretics, the oblique meaning is that heretics must be taken rather than driven away. But let them be taken, I say, not by arms, but by arguments, with a view to refuting their errors; and let them be reconciled, if possible, with the Catholic Church, let them be brought back to the true faith. For this is the will of Him who wants all men to be saved and to come to the knowledge of the truth, B⁶⁷⁴

Nevertheless, if after two attempts at instruction they persist, they can be driven away or exiled.⁶⁷⁵ The holy doctor thus distinguishes between the personal conviction of the heretic (he cannot be forced to believe) and the danger he represents for others by his propaganda (he can be prevented from acting). While condemning "lynching", Bernard seems to approve the intervention of the temporal power. Indeed, the pope has two swords, one spiritual, proper to the Church, the other material, which must draw the

⁶⁶⁸ 0106. CONCILE OF TOULOUSE, 1119. can. 3: *Ut harretici eorunipte defensores ab ecclesia pellantur. Concilium Tolosanum*; LABBE-COSSART, 10,857 = MANSI, 21 (1776), 226-227.

⁶⁶⁹ HA VET. 1896.151.

670 0107. ECUMENICAL COUNCIL (XII^e) of LATERAN II, 1139.04.04...., can. 23: LABBE-COSSART, 10, 1008 = MANSI.21 (1776); *DzSclIHU* 718.

⁶⁷¹ 0112 BERNARD DE CLAIRVAUX. s.. *Sermones in Cant*, LXVI, 12 = PL 183, 1101. Translation: LECLER, 1955.1, 108 & 109.

opera. 1690. II, 1193.

⁶⁷² T olog, CONCILE OF REIMS, 1148.03.21-22, can. 18 = *Concilium Remense*, c. 18, in LABBE, 10, 1114 = MANSI, 21 (1776), 718.

HA VET. 1896.151 (continued).

⁶⁷⁴ 0110 BERNARD DE CLAIRVAUX, s.. *Sermones in Cant*, LXIV, 8 = PL 183, 1086-1087. Translation: LECLER, 1955, 1,108-109.

⁶⁷⁵ Indeed, let us not omit, like LECLER, 1955, to quote the end of the paragraph: "Quod si reverti noluerit, nec convictus post primam jam et secundam admonitionem, utpote qui omnino subversus est; erit secundum Apostolum devitandum (*Tit* 3,10). Ex hoc jam melius, ut quidem ego arbitror, effugatur, aut etiam religatur, quam sinitur vineas demoliri, B

prince "*ad nutum sacerdotis*."

"The sword of the prince is surely the use of force. Can this recourse go as far as the death penalty? Saint Bernard does not say so expressly, nor does he deny it, ^{B⁶⁷⁶}

Gerhoh of Reichersberg (1093-1169) agreed that the heretic should be punished, but not by death, and he regretted the execution of Arnaud of Brescia, who was famous not only for his errors but also for his political agitation.⁶⁷⁷ Pierre le Chantre (c. 1197) also opposed the death penalty, which was then inflicted on heretics in an unorganized manner.⁶⁷⁸ He was followed by the Cistercian Alain de Lille (t 1202), who was satisfied with excommunication.⁶⁹⁷

11) The so-called "*Legatine*" Inquisition

In 1162, Louis VII, King of France, complained about the Manichaeans in Flanders in a letter in which he asked Alexander III to intervene. If already the Council of Montpellier, in 1162, obliged the princes to repress the heretics,⁶ " Alexander III was repulsed by violence. "⁶⁷⁹ He will answer on January 11, 1163, without deciding.

"Finally, the following year, in Tours, a new council added to all these vague prescriptions a more precise clause; it fixed the punishments with which it wanted the princes of Toulouse and Gascony to strike the heretics of their states; it was prison and confiscation."⁶⁸⁰ These councils [Toulouse; Latran II; Reims; Montpellier; Tours] were not obeyed very much.

The pope himself began to send legates to the area (for example, to Toulouse in 1178), who were responsible for repression.⁶⁹ ? The ecumenical Council of Lateran III maintains the principles:

"As Blessed Leo 10081 said, the discipline of the Church is satisfied with the judgment of the priest and does not know bloody penalties. However, it is aided by the laws of the Catholic princes (Christians), so that men often go to seek the salutary remedy (for their souls) when they fear the torment with which their bodies are threatened."^{69K}

111) Establishment of the so-called "*episcopal*" Inquisition

In 1184, "... the emperor Frederick Barbarossa (1122-1190) and Pope Lucius III met in Verona and agreed on ways to combat the progress of heresy. The pope and the bishops, assembled in council, published a canon which ordered the secular power to punish heretics without fixing the punishment;⁶⁸¹ but the emperor, for his part, decreed against them the penalty of the imperial ban."⁶⁸² ◦

By the Decretal *Ad abolendam*, Lucius III institutes then (on Nov. 4, 1184) the procedure of *research* of the guilty, known as inquisition.⁶⁸³

⁶⁷⁶ LECLER. 1955,1, 109. Cf. also VERA-URBANO, 1989,1116.

⁶⁷⁷ Cf. OUS. GERHOF DE REICHERSBERG. *De investigatione Antichristi*. 1,42 = MGH, *Libelli de Lite*, 111.347.

⁶⁷⁸ Cf. 0122. PIERRE LECHANTRE, *Verbum abbreviatum*, c. 78: *!_205.231* : " Recludendi sunt, non occidendi, B

⁶⁷⁹ VACANDARD, 1923. which refers to MARTÈNE, *Amplissima collectio*, 11,683-684.

⁶⁸⁰ 0117. council of TOURS. 1163, can. 4: *UI [laici] cuncti Albigensium hatreticorum consortium Jugiant ;* " Illi veto si deprehensi fuerint, per catholicos principes custodiam mancipati omnium bonorum amissione mulctentur." According to LABBE. 10,1419 in HAVBT, 1896,152.

⁶⁸¹ See *DzSch* 760-761 for context.

⁶⁸² The ban included exile, confiscation of property, demolition of homes, infamy, inability to hold public office, etc. HAVET. 1896, 154, after FICKER, 187-188. See VACANDARD, 1923, for details.

⁶⁸³ 0120. LUCIUS IU. 1184.11.04: Decretal *Ad abolendam*; FRIEDBERG, II, 780-782. However, it seems that can. 4 of the CONCILE DETOURS (0117.) already implied this procedure ex officio (cf. FOREVILLE, 1953,346 347). For the repression of heresy at the end of the XII^e century, cf. FUCHE Augustin, in FLICHE & MARTIN, 10.112 117. We have read in full: HAVET. 1896: JORDAN, 1907-1909; VACANDARD. 1907 and 1923; CHOUPIN, 1924 and n.d.; GUIRAUD. 1928 and 1978; 1935/1938, t. 1; LECLER, 1962; almost entirely: MAISONNEUVE, 1960; consulted DOUAIS. 1878; 1891 (see note); 1906; TANON, 1893; GUIRAUD, 1911-1917; 1912; 1935/1938, t. II; LEIBER, 1962.

"The bull *Ad abolendam* provided for the establishment of an episcopal inquisition in the dioceses, with the assistance of the secular authorities. Several penalties were provided for, but not the mott.⁶⁸⁴ "Thus, by the time the tenth century ended, the period of legal tolerance had ceased in the southern region, and both southern France and Italy were provided with laws against heretics. Only these laws were poorly enforced. In our southern provinces, as we have seen above, heretics lived in complete freedom. In Italy, the municipalities, in whose hands was almost all the effective power, also cared little for cracking down on the "patarines" - to enforce in a city the law that outlawed them, it was necessary to send a legate of the emperor to that city on purpose."⁷⁶

So "...] We can affirm: 1* That, repugnant to temporal punishments and holding to spiritual ones, the Church did not subject heresy to material punishments until the end of the xn^e century; 2* That she was led to this increase in severity by the pressure exerted on her not only by pious kings who were subject to her direction, such as Louis the Fifth, but also by princes who were in frequent revolt against her, such as Henry II, king of England, and the emperor Frederick Barbarossa; 3* And that, from then on, the inquisition was almost universally practiced by civil authority before being established in the Christian world by an ecclesiastical decision."⁷⁷

6.4. The xine century

"The pontificate of Innocent III (t 1216), which began in 1198, marks a new phase in the history of measures taken against heresy. Without enacting new penalties, this pope focused on enforcing laws already passed, stimulating the zeal of princes and magistrates, and enlisting their help in the prosecution of heretics."⁷⁵

6.4.1. The case of the non-baptized

On the other hand, he will not change the principles concerning the non-baptized, and he declares in 1199:

"Although the deviant faith (*perfidia*) of the Jews is to be reproved on many grounds, because nevertheless by these people our faith is proved to be true, the faithful must not oppress them heavily... Just as the Jews must not be allowed to license in their synagogues more than the law has permitted, so they must not be harmed in any way in what has been granted to them. We, therefore, although they prefer to persevere in their hardness rather than to know the prophecies and mysteries of the Law and thus come to the knowledge of the Christian faith, since they nevertheless ask for the help of our defense Following in the footsteps of the Christian kindness of our predecessors of blessed memory Calixtus [U], Eugenius [1111, Alexander 1111], Clement [1111]⁷⁶ and Celestine (III), Roman Pontiffs, we receive their petition and grant them the shield of our protection. For we have decreed that no Christian shall force them against their will or without their will to come to baptism; but if any of them should spontaneously take refuge with the Christians in order to have faith, once his will has been made manifest (proven), let him be made a Christian, without any calumny. For no one is regarded as having the true Christian faith, if it is not known that he comes to the baptism of Christians spontaneously, but if it is against his will. Furthermore, it is important that no Christian should dare to harm any of them, or to take away their property by violence, or to change, in whatever region they may live, the good customs they have had up to now. Furthermore, that in the celebration of their festivities no one disturb them in any way with sticks or stones, and that no one

no one shall demand or extort from them any forced services, except those which they themselves were accustomed to render in former times. For this reason, preventing the malice and avarice of evil men, we decree that no one dare mutilate or reduce a Jewish cemetery, nor exhume for money bodies already buried...⁶⁸⁵ But we want only those who have not had the presumption to plot anything for the overthrow of the Christian faith to be protected by the fortress of this law."⁷⁰

Innocent III does not think of good faith. Nevertheless, in 1201, he recalled how "it is contrary to the Christian religion that a man, without ever having wanted it and in spite of his absolute opposition, should be forced to become and remain a Christian."⁶⁸⁶ He was

⁶⁸⁴ LECLER. 1955,1,106, referring to MANS1,21,492ff.

⁶⁸⁵ This is followed by excommunication for violations of this law.

686 0129 INNOCENT III, 1201 (end), Epistola "*Maiores Ecclesia; causas*" ad Ymbertum Arelatensem Archiepisco- pum. *Decretales*, lib. 111, tIL XLII, cap. 111; Latin extract: *DzSch* 781. Orig. in full: FRIEDBERG, II, 644-646; among the Decretales of GREGOIRE IX, where, moreover, one finds many other documents, under the titles VI: *De Iuditis, Sarracenis et eorum servis, 771-778*, & VII: *De hiereticis, 778-790*. Here FRIEDBERG, II, 646, (quoted by *DH*, note 8);

followed by Gregory IX (1227-1241), who based his respect for the Jews on two reasons: 1) they were creatures of God, like Christians; 2) their ancestors were friends of God. The pope then complains about the abuses to which some Christians subject the Jews, and concludes with the most important point of our research: 3) "The Jews must be treated in Christian lands in the same way as we wish to be treated in unfaithful lands".⁷¹ ° *This is the golden rule, the "rule of reciprocity"*.

6.4.2. The case of the heretics

As for the heretics, Innocent III 1° puts back in force the punishments envisaged by his predecessors, 2° launches a crusade.

I) *Resumption of previous procedures*

Innocent III recalled the laws against heretics, and endeavored to have them applied by the local hierarchies and princes by sending his legates to the scene.⁷¹ * In 1198, he insisted on confiscation of property and exile, and even on greater rigor (unspecified) in cases of obstinacy:

"To this end [i.e., the fight against heretics], we order the princes, counts, and all the lords and barons of your provinces, for the remission of their sins, to treat favorably these envoys [Br. Raynier and Br. Guy, of Cîteaux] and to help them with all their authority against the heretics, to proscribe... (...) those whom Brother Raynier (the legate sent to Provence on April 18) will have excommunicated, to confiscate their goods and to use greater rigor towards them, if they persist in wanting to remain in the country after their excommunication."⁶⁸⁷

"On March 25, 1199, he issued a general constitution in which he summarized and recalled the penalties he wanted to see inflicted on heretics and their offenders: they would be struck with infamy, they would be neither electors nor eligible for public office and for the councils of the cities, they would not be able to testify before the courts, nor to make a will, nor to collect the estates that would have fallen to them, nor to stand trial; if they succeeded in getting themselves into possession of some office, all the acts of their functions would be prohibited. Finally, all their goods will be confiscated: in the territories subject to our temporal power, says the pope, we pronounce the confiscation of their goods; in the others, we enjoin the secular powers and princes to do the same, and we want that, if they neglect this duty, they will be forced to do so by means of ecclesiastical censures.⁶⁸⁸ "The decretal of Lucius 111 was not aggravated, although the pope brought heresy dangerously close to the crime of lèse-majesté."⁶⁸⁹

"According to the civil law, criminals who commit lèse-majesté are punished with capital punishment and their goods are confiscated... How much more must those who, deserting the faith, offend Jesus, the Son of the Lord God,

trans. in *LREP*, 126. Translation in COSTE, 1969, 296. Let us quote the essential: " | Verum | Id est religioni Christian" contrarium, ut semper invitus et penitus contradicens ad recipiendam et servandam Christianitatem aliquis compellatur. " We quote the trans. COSTE, 1969, 296, which seems to make it a text of INNOCENTIV 1?

687 GUIRAUD, 1935, 1, 375-376, from 0125. INNOCENT III, 1198.04.21 : Letter *Cum anus Dominas*, to the archbishop of Aix and his suffragans; *Innocenta HI* *ep. 1*, 94, quoted (with a translation) by HAVET, 1896, 156, note 2. Cf. in note 3 the text of *Inn. III ep. 1*, 165, for legate Gui (circular to the bishops and princes of the South of France and the North of Spain; *PL* 214, 142-143), May 13, 1198, very similar; in note 4, *larf.* to a letter to the bishop of Narbonne, *Ep. VI*, 243 [*PL* 215], January 29, 1204; in note 5, the mandate to the legates [*Inn. III ep. VII*, 76, 31 May 1204; and, in note 6, the reference to letters to the king of France [*Ep. VII*, 212, etc.]. See also, p. 160, note 3, *Inn. III ep. 11*, 298 (letter of June 15, 1198); 161, note *Inn. III ep. 1*, 509 (letter of January 5, 1199 to the bishop of Syracuse; *PL* 214, 471-472). See the original in *PL* 214, 82-83. Let us quote here, in brackets, the part of the text not quoted nor translated by HAVET. "{ipsos benigne recipientes pariter et devote, eis contra hæreticos tam viriliter et potenter assistant, ut ad vindictam malefactorum, laudem veto bonorum, potestatem sibi traditam probentur laudabiliter exercere. et si qui hæreticorum ab errore suo comoniti noluerint resipiscere.}"

688 HAVET, 1896, 161, with, in note 2, the Latin text of this letter *Inn. Ulepp. 11.1*, to the magistrates of Viterbo; and its quasi-copy to the king of Hungary, in note 1. p. 162: *inn. III ep. 111.3*, Oct. 11, 1200; see on the following pages the various letters and measures of Inn. III in Italy and the promise obtained from Otto IV (March 22, 1209).

689 LECLER, 1955, 1, 106.

be cut off from Christian communion (excommunicated) and stripped of their goods; for it is infinitely more serious to offend the divine majesty than to injure the human majesty."⁶⁹⁰

King Peter II of Aragon (1196-1213) seems to be the first to have legally provided for the punishment of fire (in 1197).

II) A new measure: the crusade against the Albigensians (1209-1218)

"Freedom was not enough for them [the Cathar barons], they armed themselves against the Church, stirring up again those who were tempted by its wealth or wanted to escape its taxation. They found help in adventurers of all kinds who, living from war, were unemployed since the Treaty of Paris had officially abolished it. They gave themselves over to pillage, holding peasants to ransom and sacking ecclesiastical property. Also the Church en* vclopped them in the same condemnations as heretics."⁶⁹¹ "To counterbalance the material support which the princes of the South gave to the heretics, to assure the freedom of preaching of the Catholic missionaries and to regain the lost ground it was necessary to have recourse to the same means, that is to say, to the word through preaching and to material action through the intervention of the lords who remained faithful to the Church."⁶⁹² "It is rather in the doctrine of the heretics, and even more in the social consequences which followed logically from it and which one drew from it practically, that one must seek the reason for this repression of the heretics by the secular power. a⁶⁹³ -"

His legate Pierre de Castelnaud having been assassinated by Cathars in January 1208, Innocent III launched, in 1209, the Albigensian crusade, which lasted 9 years.⁶⁹⁴ Its goal was to destroy the temporal power of the Count of Toulouse and the barons of the South of France, protectors of the Cathar heresy.⁶⁹⁵ The pope used the secular arm in the strict sense,⁶⁹⁶ - raising an army himself, commanded by his own legates, Philippe-Auguste having refused in 1207 to take part in any such affair.⁶⁹⁷ Apart from this war against the political protectors of heresy, the oppressors of Catholics, Innocent III himself showed himself to be rather moderate in his repression, never going so far as to impose the death penalty, although the king in question sometimes had certain heretics summarily judged burned.⁷²² The excesses of the Albigensian War did not affect the principle of the RL itself. Moreover, this war was a simple complement to the principle of the Inquisition, an institution born mainly because of Catharism and Waldensianism.⁶⁹⁸

II) The so-called "monastic" Inquisition and the "animadversio debita

"Before the end of his pontificate. Innocent III brought about another important decision. The fourth Council of Laran, assembled by his order in 1215, transformed the rules established by the French councils and by the

690 0127. INNOCENT III, 1199.03.25: Bulle *Vergentis in senium*; in Registrum 1= *Innocentia III epistohe*, II, I: PL 214, 537-539 and FRIEDBERG, II, 782-783. PL 214, 539B; translation: LECLER, 1955, 1, 110. Read the context of p. 539 in PL; there the pope threatens spiritual sanctions against princes who would not comply. See also in FRIEDBERG, 11,783-784 the constitution *Si advenus nos*. which made all lawyers and notaries who would take up the cause of heretics infamous (which is very unfortunate).

⁶⁹¹ GUIRAUD, 1938,11, 13.

⁶⁹² GUIRAUD, 1935.1.366. Cf. also 1D., 1978.146-147 and CANET, 1891,247.

^{7.*} GUIRAUD, 1928, 834-5. See in GUIRAUD, 1978, examples of opposition to what we call public order: p. 30: *endura* (suicide by hunger strike); 32: condemnation of marriage; 33: abortion; 35: refusal of the right of repression; 36: condemnation of all wars; p. 47-48: abduction of children; 51: immorality allowed to the "believers"; 55: curation of the goods of Church; 57: abuse of power of the heretical barons in the ecclesiastical field; simony; 57-58: profanations...

⁶⁹⁴Cf. FUCHE Augustin, in FUCHE&Martin, 10(1950), 127-138, with, p. 125-127, the texts of INNOCENT 111.

⁶⁹⁵ Cf. CURCI, 1851,291, referring to St. Peter Damian.

⁷² - See CASTILLO-LARA, 1956.

⁶⁹⁷Cf.e. g. MAISONNEUVE, 1960.

⁶⁹⁸Cf. THOUZELUER. 1950,291-340.

Roman pontiff into canons of the United Church:⁶⁹⁹ . It decreed, in turn, the confiscation of the property of heretics and their culprits, and declared them infamous, incapable of testifying, of appearing in court, of exercising public functions, etc., etc. He also ordered that princes who neglected to expel heretics from their states be stripped of them. The memorable application of this last principle to the Count of Toulouse is well known. It was also in obedience to the Lateran Council that an oath was inserted into the coronation form of the kings of France, beginning with Louis IX, by which the king swore to exterminate - that is, to expel - the heretics from his kingdom.⁷⁰⁰

To various authors it seems undeniable that the conciliar expression of "*animadversio debita*" always designated at the time the capital punishment. In spite of everything, the text, ambiguous,⁷⁰¹ could as well be understood of the only confiscation of the

⁷²² LABBE, 11.col. 148-150.

⁷⁰⁰ HA VET. 1896,164.

⁷⁰¹ 0131. ECUMENICAL COUNCIL (XII*) of LATERAN IV: "Damnati vero, sæcularibus potestatibus præsentibus, aut eorum bailivis. relinquuntur animadversione debita puniendi, clericis prius a suis ordinibus degradatis : ita quod bona hujusmodi damnatorum, si laici fuerint, confiscentur : si vero clerici, applicemur ecclesiis a quibus stipendia perceperunt. [...] moneantur autem et inducantur, et, si necesse fuerit, per censuram ecclesiasticam

property, especially since the secular princes are then invited (under penalty of censure) to expel from their lands the heretics condemned as such by the Church.⁷⁰² How to banish someone who has already been killed T⁷⁰³

"From the foregoing, let us remember two facts: from the year 1000 to the first third of the XIII^o century, in the northern region, no temporal legislation was aimed at the crime of heresy and did not impose a penalty; but, in fact, the practice of putting heretics to death (most often by fire) was gradually established and almost became customary."⁷⁰⁴

It seems that Emperor Frederick II (1194-1250) was the first important sovereign to generalize (notably in 1224)⁷⁰⁵ death as a regular and legal punishment for the *obstinate* heretic. Gregory IX, perhaps impressed by the complaints of the Council of Toulouse of November 12, 1229,⁷⁰⁶ transcribed in February 1231 these decisions in the *Register* of his Letters,⁷⁰⁷ then "shortly after February 1231"⁷⁰⁸ promulgated them as law.⁷⁰⁹ From that moment on, *the animadversio debita* can only refer to the stake. From then on, even if it did not bear the *legal* responsibility (it did not pronounce the death sentence), the Church bore the *moral* responsibility for the punishment.⁷¹⁰ In a letter dated October 11, 1231, Gregory applied a very precise procedure in Germany.⁷¹¹ On May 26, 1232, he asked the bishops of the region of Tarragona to carry out a general inquisition in Aragon,⁷¹² in April 1233,⁷¹³ he appointed the Dominicans as inquisitors. This is the date of birth of the so-called monastic Inquisition. "The term of the Inquisition is the destruction of heresy; yet heresy cannot be destroyed unless heretics are destroyed; and heretics cannot be destroyed unless at the same time those who receive, promote, and defend them are destroyed,"-w Finally, in 1234, the pope decides on the penalty of life imprisonment for *repentant* heretics,TM and in 1238 the extension of the role of inquisitors to Franciscans.⁷¹⁴

compellantur sæculares potestates, quibuscumque fungantur officiis, ut sicut reputari cupiunt et haberi fideles, ita pro defensione fidei pnestent publice iuramentum, quod de terris suæ jurisdictioni subjectis universos hæreticos ab ecclesia denotatos bona fide pro viribus exterminare studebunt : ita quod amodo, quandocumque quis fuerit in potestatem sive spiritalem, sive temporalem assumptus, hoc teneatur capitulum iuramento firmare. " Ref. to scientific editions: *D^aSch* 809. See cap. III: *De harreticis [Waldensibus]*; K1ANSI,22 (1778), 986-987.

⁷ Cf. CASTILLO-LARA, 1956,52-53.

⁷⁰³ Basically, it is "the punishment that is needed". Cf. THOUZELUER, 1950,302.

⁷⁰⁴ Cf. HA VET, 1896,145.

⁷⁰⁵ The imperial decrees follow one another for Lombardy (1224: cf. *MGH, Const.*, II, 1267); the Kingdom of Sicily (1231); the Empire (edict of Ravenna 11232), ordinances of 14 May and 26 June 1238, and 22 February 1239, cf. *MGH, Leges*, 11, 196,281 ff). For the expansion of this usage in France, etc., cf. LECLER, 1955, I, 106.

⁷⁰⁶ cf. COUNCIL OF TOULOUSE, MANSI, 23, 191-198.

⁷⁰⁷ 0132. GREGOIRE IX, 1230/1231 (AUVRAY, n°535): constitution *Inconsutilem tunicam* (in EYMERIC, *Directorium*, Appendix, 14; *Bull, Rom.* 1 (TOMASSETTI-GAUDE), III, 505-506).

⁷³- THOUZELUER, 1950,309.

⁷³⁵Cf. 0133. GREGORY IX, 1231 (?), Bull *Excommunicamus*; AUVRAY, n° 539; FRIEDBERG. 11,787-789.

⁷³⁶Cf. JORDAN, 1908.04 (b), 23 citing EYMERIC [*Directorium*, ed. Pegna [Penal (1585), 541,5481 and Bernard GUI, *Practica*, ed. DOUAIS, 126.

Regesta Pontificum Romanorum inde ab a. post Christum natum MCXCVI [1198] ad a. MCCCIV]13Ü4J. ed. POTTHAST Augustus (1824-1898), Berolini, R. de Decker, 1874-1875,2 vols, n° 8860.

⁷¹² Bull in response to the request of King Dom Jayme of Aragon. A letter of April 30, 1235 to the same one will complete the legislation. The same year he appointed an inquisitor in Lombardy, the following year one in Milan (St. Peter Martyr of Verona), etc.

⁷¹³ On the texts of April 13, 20 and 22, 1233, cf. VACANDARD, 1923, 2019. On April 29, 1233, he designated the famous Robert le Bougre as "inquisitor general of France.

⁷¹⁴ Cf. for Navarre, April 24, 1238.

Innocent IV (1243-1254) confirmed the death penalty for obstinate heretics and relapses. The document⁷¹⁵ - like the following one, moreover - is not addressed to the whole world but only to the civil authorities of Lombardy, the Marche of Treviso and Romagna. Its complex structure, which can easily be misleading, includes, after a preamble, three laws of Emperor Frederick II, dated February 22 (1231): one begins with the words "*Commissi nobis coelitus cura regiminis*"; the second^e with these: "*Inconsutilem tunicam*";⁷¹⁶ finally the third^e as follows: "*Patarenorum receptatores*" (art. D).⁷⁴³ The pope wants the temporal rulers of the above-mentioned territories to proceed according to the laws of Frederick II.⁷¹⁷ Heresy is therefore a crime of divine lèse-majesté.⁷¹⁸ The Constitution against

⁷¹⁵ 0136. INNOCENTIV, 1243.10.31 : Bull *Cum adversus hæreticam pravitatem*; Bull. Ram. I (TOMASSEM- GAUDE), III, 503-507.

⁷¹⁶ See 0132. in note 733.

⁷¹⁷ Lo, L, § 1. (Frederick recalls that his role requires him to wield the sword "in exterminium hærelis pravitatis"). "Statuimus itaque sancientes, ut hæretici quocumque nomine censeantur, ubicumque per imperium damnati fuerint ab Ecclesia, et sæculari iudicio assignati, animadversione debita puniantur. § 3. Si qui vero de prædictis postquam fuerint deprehensi, territi metu mortis, redire voluerint ad fidei unitatem, iuxta canonicas sanctiones ad agendam poenitentiam in perpetuum carcerem detrudantur. § 4. Præterea, quicumque hæretici reperti fuerint in civitatibus, oppidis, seu aliis locis imperii per inquisitores ab Apostolica Sede datos et alios orthodoxæ Oedei zelatores; hi qui iurisdictionem ibidem habuerint, ad inquisitorum, et aliorum catholicorum virorum insinuationem eos capere teneantur: et eos captos arctius custodire, donec per censuram ecclesiasticam damnatos, damnabili mone perimant, qui fidei sacramenta et vitæ damnabant. § Simili quoque poena plecti censemus omnes, quos ad fovendum hæreticorum errorem callidus hostis suscitavit advocatos, vel parat illicitos defensores; maxime cum facinus quos inquinat, æquat: nisi monitione præmissa destiterint, et eorum vitæ duxerint consulendum. Item mortis sententiæ ducimus addicendos, si quos hæreticorum ad iudicium tractos, in extremæ vitæ periculo hæresim abiurantes, postmodum de falso iuramento constiterit, et fide mentita convinci, ac eos contigerit eiusdem morbi spontaneam incurere recidivam: ut sibi damnabilis iniquitas sit mentita, et poenam debitam mendacium non evadat. [...] § 12. Hæreticos vero, quos et ostenderit ipsi vobis in iurisdictione vestra singuli capientes, diligenti custodia detinendos, donec post ecclesiasticæ damnationis iudicium, poenam subeant, quam merentur." Law II (...) "Crudelius etiam sæviunt in se ipsos, dum post animarum dispendium, corpora denique severæ mortis illecebris, quam per agnitionem veram et veræ fidei possent evadere, vitæ prodigi, et necis improvidi sectatores, involvunt: [...] § 1.(...) statuimus in primis, ut crimen hæreseos damnatæ sectæ cuiuslibet, quocumque nomine censeantur sectatores (prout veteribus legibus est indictum), inter publica crimina numeretur. Imo crimine læsæ maiestatis nostræ debet ab omnibus horribillius iudicari, quod in divinæ maiestatis iniuriam noscitur attentatum (...)"

⁷¹⁸ "2 Et ut ipsorum nequitia, qui (quia Dominum non sequuntur) in tenebris ambulant, detegatur: nemine etiam deferente, investigari volumus diligenter huiusmodi scelerum patratores, et per officiales nostros, sicut et alios malefactores inquiri. Ac inquisitione notatos, etsi levis superstitionis argumento tangantur, a viris ecclesiasticis et prælatiis examinari iubemus; per quos si inventi fuerint a fide catholica saltem in articulo deviare, ac per ipsos pastoralis more commoniti, tenebrosi diaboli relictis insidiis, noluerint agnoscere Deum lucis, sed in erroris concepta instantia perseverent, præsentis nostræ legis edicto damnatos mortem pati. Patarenos. aliosque

the Patarins, etc.⁷ -" Moreover, the pope surely ignores the letter of s. Nicholas I Nicholas I^{er} to the Bulgarians, because in 1252 he allowed torture (and this, it seems, for the inquisitorial instruction).⁷ --⁹ But he did not repeat the death penalty.⁷¹⁹ Alexander IV (1254 1261) maintains the "handing-over to the secular judgement" for the relapses, but softens the punishments due to the simple heretics, by envisaging for example that they will not be able any more to be admitted to an ecclesiastical benefit (that supposes that they survive).⁷⁵ -

In absolute terms, it is estimated that over the entire period of operation of the various successive forms of the Inquisition (1225-1825 approximately), it is impossible to exceed, for the whole of Christendom, more than *JO death sentences per year* on average. Ten too many, one might think, but once the anti-social character of heresies has been proven, the discussion is limited to the death penalty and its method, which is another matter.

Conclusion of Chapter 6

For the period preceding the 11th century, and apart from a few scattered phenomena of lynchings or pogroms, we note the repetition of patristic principles of mansuetude towards the non-baptized (Alcuin, Nicholas I^{er}), notably the Jews (Alexander II), and even towards heretics (Alcuin, Theodore the Studite, Wazon). In the twelfth century^e, the criteria were divided into two: 1) towards the non-baptized (almost all of them Jews, except for the Muslims of Spain), tolerance was practiced in theory, provided that they respected Christian public order (Bernard, Clement III, Innocent III, Gregory IX), and this, by virtue of an absence of jurisdiction of the Church over their persons (Gratian); 2) towards the heretics, the principle of the coercive repression by the secular powers prevails (Calixtus II, Innocent II, Bernard, Councils of Montpellier, Latran III, Lucius III), going progressively from the simple research of the guilty ones (Lucius III), until the death in the event of pertinace recidivism (Innocent III implicitly; Gregory IX explicitly and for certain territories; Innocent IV for Italy; and in practice, everywhere); and death by fire, according to the Nordic custom spread little by little in the South of France),⁷²⁰ or to life imprisonment, in case of repentance (Gregory IX), passing by the confiscation of goods (Council of Tours, Councils of Montpellier), torture (Innocent IV) and exile (Eugene III, Lateran IV). Three isolated voices (Gerhoh de Reichersberg, Pierre le Chantre, Alain de Lille), formally rejected the death penalty, without however rejecting all coercion.⁷²¹

⁷¹⁹ On the insanity of INNOCENT IV's measures, cf. THOUZELLIER, 1950, especially 339-340.

⁷²⁰ JORDAN. 1908.04 (b), 17 wrongly attributes the general mentality of the time to the Church itself. However, this type of violence was common to all countries, even *non-Christian ones*, except for the court of certain Great Moguls. In medieval Spain, Christians knew how to be very tolerant.

⁷²¹ See also HAVET, 1896.180: "VI. Conclusions." (end of article).

CHAPTER 7.

7. SAINT THOMAS AQUINAS, O.P. (1225-1274)

N We can now group the Thomasian data under five main systematized headings:⁷⁵⁴ the common good (7.1.); penal law (7.2.); tolerance (7.3.); natural parental right (7.4.); the person and his conscience (7.5.).

7.1. The common good

St. Thomas emphasizes the primacy of the common good over the private good (7.1.1.), and distinguishes various kinds of common good (7.1.2.).

For the chronological order followed in our numbers, cf. R. M. SPIAZZI, O.P." Introduction to s. THOMAS, *In Duodecim Metaphysicorum Aristotelis Expositio*, Augustæ Taurinorum [Turin], Manciu, 1964, XVUI; for the most up-to-date chronology, cf. TORRELL, 1993, 479-482, with the "Brief Catalogue" which follows, 483-525, due to G. EMERY, O.P.) (who draws on WEISHEPL). We have used: 1. The edition of Parma: *Sancti Thome Aquinatis, Doctoris Angelici, O.P., Opera Omnia*, 25 vols, Parmæ, Fiacadori, 1852-1873. II. The Leonine edition. 111. The BUSA edition: *Sancti Thoma: Aquinatis Opera omnia (Indicis Thomistici Supplementum)*, ed. BUSA Roberto, SJ, Stuttgart, Frommann-Holzboog, 1980. 7 voi. and BUSA, CD-ROM = *Sancti Thome Aquinatis Opera omnia. Index thomisticus*. 1996². In the chronological order chosen: 1252-1256, *Commentary [or Scriptum] on the four books of the Sentences*: ed. of Parma and Busa CD. - 1256-1259, *Question disputed XI de Veritate (= Veri)*. 17, 4. Latin text in the Marietti ed. - 1256-1259, *Quodlibetum (= Quodl.)* II, art. 12 1= q. 10, P^o art.]. Manetti ed. (1931), 229 - 1259-1265, *Contra Gentiles (CG)*: lat.-fr., Paris, Lethielleux, 4 vols. 1950-1954-1957 1961; - ± 1267, *De Regno ad Regem Cypri* (Hugues 11 de Lusignan], seu *De Regimine Principum*. 1, I; 2; 3; 14. 15; *Du gouvernement royal*, trans. de Claude ROGUER, Préf. Ch. JOURNET, Paris, Dauphin. 1931, xxxviii + 159 p., and SAINT THOMAS D'AQUIN, *Du Royaume. De Regno*, trans. Marie-Martin COTTIER, O.P., Paris, Eglhoff. 1946, 152 p.; lat. in D1VI THOMÆ AQUINATIS DOCTORIS ANGELICI *Opuscula philosophica*, cura et studio Fr. Raymundi M. SPIAZZI- O.P., Augustæ Taurinorum (Turin), Marietti, 1973, (379 p.), 253-358. SPIAZZI calls caput 3 what is Chap. 2 in the trad. - 1271-1272, *Sententia Libri Ethicorum* (Commentary on the *Nicomachean Ethics*); *In! Ethic*, I, 1,4; SANCTI THOMÆ AQUINATIS DOCTORIS ANGELICI, *In decem libros Ethicorum Aristotelis ad Nicomachum expositio*, Ed. 3, ed. Raymundi M. SPIAZZI, O.P., Augustæ Taurinorum. Marietti. 1964, 610p. - 1270-1273, *Sententia super Metaphysicam* (abbreviated: *In Metaphys.*), 12, 12. Latin text: S. THOMÆ AQUINATIS DOCTORIS ANGELICI *In duodecim libros Metaphysicorum Aristotelis expositio*, ed. CATHALA M.-R., O.; re-ed. Fr. Raymundi M. SPIAZZI, O.P., Taurini, Marietü, 1977*. 647 p. - 1269-1272. *Sententia Libri Politicorum = in Polit*, Latin text: S. THOMÆ AQUINATIS DOCTORIS ANGELICI *In octo libros politicorum Aristotelis expositio*, cura et studio Fr. Raymundi M. SPIAZZI, O.P., Taurini-Romæ. Marietti, 1966, 449p. - 1268-1274. *Somme Théologique* in the edition of the Revue des Jeunes, Paris-Toumai. Cerf-Desclée; and Fans. Cerf, 4 vols. 1984-1984-1985-1986. Notably: *!2U&, Summa Theologia*., 1. 15.2; 103.2. ad 3; 113.2.- *!71, Summa Theologia*.: 1-2: 2. 8, ad 2; 5, 6. obj. 1; 19.5; 19.6; 21.4. ad 3: 91. 1; 91.4. c.: *Was a divine thou necessary?* (quoted in *DH*, notes 3 and 4); 92. I. ad 3; 93, a. 1 -2 (quoted in *DH*, notes 3 and 4); 93.3, ad 3; 95, 1; 95. 4; 96, 2 c. ad 2 and ad 3; 96.3; 96.4; 109. 3; 111. 5. ad 1; 113. 9. obj. 2 and ad 2. - 1271-1272, *Summa Theologia*.; 2-2: 10.7; 10.8 c, ad 1. ad 2 and ad 3; 10. 10; 10, 11; 10. 12; 11.3 c & ad 3; 26.3 c & ad 2; 26.4, ad 3; 31.3, ad 2; 39. 2. ad 2; 40.4; 47, 10 c & ad 2; 57, 1. sc. c & ad 2; 57.2, ad 1; 58. 5; 58.7. ad 2; 58.12; 64, 2; 64, 5; 65, 1; 77, 1, ad 1; 88. 11. obj. 1 & ad 1; 104, 1, 1 & 5. c.; 117.6; 134, I.ad3; 141.8; 152.4, obj. 3 & ad 3; 172.6. - 1265-1268 and 1272-1273, *Super epistolas sancti Pauli, lectura or: Lectura super Epistolas Pauli Apostoli*. Marietti, 1953 e, § 217, on Rom 2. 14; *ibid*, § 1120, on Rom 14. 14. 1269-1270, *Let tura super Matthuum*. V, num. 9, ed. Marietti. 89. On the different kinds of permission (*concessio, dispensatio, tolerantia, sustinentia*). As we correct most of the usual translations, we do not indicate in the present 3^y ed. the translation(s) from which we have drawn inspiration. For such references to translations, cf. our 2^o ed.

7.1.1. Superiority of the common good

The common good⁷ -" as such is superior to the particular good as such, and moreover it is not the sum of particular goods.⁷⁵⁶ Thus, the more common a good is, the more divine it is;⁷⁵⁷ the common good prevails over the particular good;⁷⁵⁸ the good of the whole finalizes the good of the part,⁷⁵⁹ thus the part exposes itself for the whole,⁷⁶⁰ by nature or by virtue: this is what has been called the "principle of totality"; the good of the whole is therefore more lovable than the good of the part,⁷⁶¹ and is not of the same kind;⁷⁶² what makes good in relation to others is better than what makes good in relation to itself.⁷⁶³ Man is naturally social and political;⁷⁶⁴ however the city is not a natural whole, a natural body, but a moral body, whose unity comes from the order, not from a unicity of individual nature.⁷⁶⁵

7.1.2. Species of common property

The common good intrinsic to the society under consideration is the temporal common good; the extrinsic (or separate) common good is God.⁷⁶⁵ It is not the task of the leader of the temporal society to lead his subjects to eternal happiness,⁷⁶⁶ but his government must help to achieve it.⁷⁶⁷ The end of the man evolving in society is to live according to the virtue.⁷⁶⁸ Thus the object of politics is to lead man to virtue.⁷⁶⁹ The ultimate end of the individual man as well as of the society is God and the supernatural bliss.⁷⁷⁰ -

"Man is not related in all his being and in all that belongs to him to the political community; that is why it is not necessary that all his acts have a merit or a demerit with respect to this community. But all that he is, all that he has and all that he can, man must relate to God; that is why every human act, good or bad, has a merit or demerit before

⁷⁵⁶ Cf. 0273. 2-2,58.7, ad 2.

⁷⁵⁷ Cf. 0205. CG II. 42, 2 : 0207. CG III, 17 ; 0209. CG lit, 69 -, 0222. In I Ethic, lect. II, 30; SPIAZZI, 8, n° 30; 0263.2-2,31,3, ad 2; 0264. 2-2,39.2, ad 2.

⁷⁵⁸ Cf. 0202. CG I. 41 ; 0203. CG I, 70; 0206. CG 11, 44; CG III. 42. 2; 0210. CG Ul. 71; 0213. CG III. 125; 0272.2-2,58,5; 0276. 2-2,64, 5; 0277.2-2,65, 1.

⁷⁵⁹ Cf. 0204. CG I. 86; 0207., 0208. CG II, 64; 0226. I. 15, 2; 0234. 1-2, 90, 2, ad 3; 0235. 1-2, 90,3, ad 3; 0247. 1-2,109,3; 0272., 0275.2-2,64,2.

⁷⁶⁰ Cf. *Somma Theologia*.; 1.60,5; 0263.; 0265.2-2,40,4; 0275., 0276.

⁷⁶¹ Cf. 0261. 2-2,26,3, ad 2 (and c); 0262.2-2,26,4, ad 3; 0266.2-2,47,10, c; see also 2-2,124,5, obj. 3 and ad 3; 0283.2-2, 134, 1, ad 3; and 2-2,141,8.

⁷⁶² Cf. CG II, 94.

⁷⁶³ Cf. CG IV, 35,0221. In I Ethic, lect. I, 5; cf. lat. ed. SPIAZZI, cit. 4, n° 5.

⁷⁶⁴ Cf. *De Regno*. 1,1.

⁷⁶⁵ Cf. 0227.1. 103, 2. ad 3; 0229. 1-2,2.8, ad 2; 0230. 1-2,5,6. obj. 1; 0248. 1-2. 111,5, ad 1. Cf. also 0264.

⁷⁶⁶ Cf. 0218. *De Regno*. I, 14, § 4; lat. SPIAZZI, n° 817, "Sed quia", and lat. SPIAZZI, n° 818.

⁷⁶⁷ Cf. 0219. *De Regno*, 1,15; lat. SPIAZZI, n° 822-825. See here § 2, referenced by us 0219.2. Here is the detail of the paragraphs : 0219.1 : lat. SPIAZZI, n° 822 ; 0219.2 : n° 823,3" sentence ; 0219.3 : n° 824, 276, "Per legem" ; 0219.4 10 : n° 825, "Sic igitur".

⁷⁶⁹ and. 0217. *De Regno*. I, 14; lat. SPIAZZI, n° 816; 0219.9; 0237. 1-2,92, 1, ad 3.

⁷⁶⁹ Cf. 0220. *De Regno*. 1,15; lat. SPIAZZI, n° 827. *Secundo*; 0223. In I Ethic. lect. XIV, 174; 0224. In I Ethic. lecl XIX, 225 ; lat SPIAZZI, 61, n° 225. Cf. ARISTOTE. *Nicomachean Ethics*. 1, 13, 1102 a 7-9 ; comin. de s. ALBERT LEGRAND. *Op. cit.* L. I, lect. XV, 75-76. See also 0219..

Cf. 0218.1; 0228. 1. 113.2.

God, as much as it is an act.⁷⁷¹

7.2. The human law

The human law must push to the virtue :

"...] Moreover, as we have said, the law aims at the general good. That is why there is no virtue whose acts the law cannot prescribe. However, human law does not command all the acts of all the virtues; but only those which can contribute to the common good, either immediately, for example when certain acts are directly performed with a view to the common good; or indirectly, for example when the legislator lays down certain prescriptions relating to good discipline, which trains citizens in respect for the common good, justice and peace, a⁷⁷²

2° Human law must prevent evil, but only that which harms the city or others:

" 2. Now human law is carried for the mass of men, and most of them are not of proven virtue. That is why human law does not prohibit all the vices from which virtuous men abstain, but only the most serious ones, from which it is possible for the majority of people to abstain, and especially those which turn to the harm of others. Without the prohibition of these vices, in fact, life in society would be impossible for mankind; therefore, murder, theft and other such crimes are prohibited by human law, at⁷⁷³. "As we have written above 11-2,96,2], human law is given to a people of which many members are of deficient virtue; and not only to the virtuous. The law could not, therefore, prohibit everything that is contrary to virtue. It is content to prohibit that which destroys the common life of men. As for the rest, it treats it as lawful, not by approving it, but by not punishing it."⁷⁷⁴

One should logically conclude that if even false religious propaganda does not disturb the peace of the city, then the state should not prevent it.

3' Human law has limited competencies:

"On the other hand, laws are said to be just, either by reason of their purpose, when they are ordered to the common good, or by reason of their author, when the law made does not exceed the power of the one who makes it; or by reason of their content, when the burdens are distributed among the subjects according to an equality of proportion and in view of the general good. Indeed, as the individual man is a part of the people, every man, in what he is and what he has, belongs to the people, just as every part, in what it is, belongs to the whole. That is why nature itself harms a part to save the whole.) But laws can be unjust in two ways. On the one hand, by their opposition to the general good, being in contradiction with the points indicated above; either by their purpose, as when a ruler imposes on his subjects onerous laws which do not contribute to the general good, but rather to his own greed or glory; or by the fact of their author, who, for example, imposes on his subjects a law which does not contribute to the general good.

⁷⁷¹ 0233. 1-2,21,4, ad 3; trans. MADIRAN, 1963a. See also *STh.* 3,46,2. ad 3, and 65,3, ad 1.

⁷⁷² Cf. 0244.1-2,96.3.

⁷⁷³ 0241.1-2,96,2.

⁷⁷⁴ 0278. 2-2,77,1,1.

It may be that a law has been made and that it exceeds the power entrusted to it; or it may be that the content of the law is such that the burdens are unequally distributed in the community, even though they are imposed for the common good. [...] In another way, laws can be unjust because they are opposed to the divine good: such are the tyrannical laws which encourage idolatry or anything else that is contrary to the divine law.⁷⁷⁵

A state that legislates beyond its competence would be committing an injustice.

7.3. Tolerance

The duty to defend the faith is limited by the principle of tolerance.⁷⁷⁶

7.3.1. General principle: the intrinsic lawfulness of tolerance

"Fourthly, St. Augustine declares that human law cannot punish or proscribe everything evil that is done, because, in wishing to extirpate all evil, it would at the same time do away with a great deal of good and impede the usefulness of the common good, which is precisely what is necessary for human life in common. Therefore, in order that no evil might remain unpunished and unprohibited, it was necessary that a divine law be added to prohibit all sins.⁷⁷⁷ "A wise legislator passes over small transgressions to avoid greater ones."⁷⁷⁸

Tolerance therefore aims to promote good or to avoid greater evils.^{78U}

"Human government is a derivation of divine government and must be an imitation of it. God, although he is almighty and sovereignly perfect, nevertheless allows evils to occur in the universe: these evils, which he could prevent, he allows to occur, lest, if they were suppressed, greater goods should also be suppressed, or even worse evils should follow. Consequently, the same is true of human government: those who are in charge rightly tolerate some evils lest some good be prevented, or even lest worse evils be incurred. This is what St. Augustine says in the second book of the Order: 'Remove public women from human affairs, and you will have disturbed all the passions' (0033.)" (0256).

"Wanting evil to happen and wanting it not to happen are not contradictory, since both are affirmative. God, therefore, does not want evil to happen, nor does he want evil not to happen, but he wants to allow evil to happen. And that is good."⁷⁷⁹

To want to allow evil is a good (the other conditions being met). What "justifies" God's tolerance is that He never wants in themselves the evils that are tolerated and from which He always wants to draw good.⁷⁸⁰ However, the great Dominican was aware of the risks of the spread of error, an evil of the intelligence.⁷⁸¹

7.3.2. Special applications: the unbaptized and the baptized

Like all medievalists, St. Thomas formally places himself at the level of the tolerance

⁷⁷⁵ Cf. 0245. 1-2,96.4.

⁷⁷⁶ See 0251.2-2, 10,8; 0256.2-2.10,11;0258.q. 11, a. 3c; 0259.2-2,11.3, ad 3^m; 0260.2-2, 11.4.

⁷⁷⁷ Cf. 0236. 1-2, 91. 4, c.; 0238.; 0243. 1-2, 96. 2, ad 3^m; transl. LAVERS1N O.P. ed. *Revue des Jeunes*. 1935,168-169 : "S. AUGUSTIN expresses it clearly: "This law which is brought in to govern the cities tolerates many things and leaves them unpunished, while Divine Providence takes vengeance for them. But because it does not achieve everything, it cannot be said that what it does achieve is to be condemned. That is why human law cannot defend everything that the law of nature forbids. Cf. also 0244.

⁷⁷⁸ 1-2,q. 101,a.3.ad2.

⁷⁷⁹ Our translation of *S. Th.*, 1, q. 19, a. 9, ad 3. On tolerance as a good, cf. GUERRERO, 1961.07⁰⁸, 31. Commentary on the text of s. THOMAS and application to the various types of State: DIEZ-ALEGRIA, 1961b, 114-117.

⁷⁸⁰ See also 0256; 2-2. q. 70, a. 2. sol. 3; q. 100. a. 6. obj. 2; q. 108. a. 1. sol. 2 and 5; 3. q. 27, a. 2. sol. 3; 3. q. 64, a. 6, sol. 2; *Quodl. I-XI*, 2, q. 4. a. 3; 5, q. 13, a. 1. obj. 1 and c.; *Coitura impugnantes*. ps 2. Chap. 2. sol. 7; ps4, Chap. 2, c.: ps5, Chap. 1, c.; Chap. 7, c.; *Catena aurea in Maltueum*. Chap. 13, lesson 4; Chap. 22, lesson 1; *in Man uin*, Chap. 9, lesson 6; *in Joannem*. Chap. 12, lesson 1; *Saper ep. ad Romanos*, Chap. 14. lesson 2.1.188-196.

⁷⁸¹ S. THOMAS AQUINAS (in 2-2. q. 10, a. 7) aims to defend the faith of the simple, as later GUERRERO. 1961.07-08, 23-24; and the Council Fathers of countries with a strong Catholic majority in the face of non-Catholic proselytism.

of *the Church*, not of *the State*, and therefore he carefully distinguishes, in this matter, I) the case of the non-baptized and II) that of the baptized.

I) *The unbaptized*

The Common Doctor considers two distinct cases regarding the unbaptized.

A) **Absolute duty: Do not coerce to the true faith**

"Should we push the unbelievers towards the faith?"

1° Do not force non-Christians to believe:

"Among the unbelievers there are some, like the Gentiles and the Jews, who have never received the faith. Of such unbelievers there is no need to urge them to faith in order that they may believe, because believing is an act of the will."

2° but prevent them from preventing faith :

"The faithful, however, must compel them, if they can, not to prevent the faith either by blasphemy or by evil persuasion or even by open persecution. It is for this reason that the faithful of Christ often make war on the infidels: it is certainly not to force them to believe, since even if, after having defeated them, they had them captive, they would leave them free to believe; but it is for this purpose to compel them not to prevent the faith of Christ."⁷⁸²

B) **Relative duty: Do not prevent false faith**

Should someone not be prevented *from acting* on their error = *"Should the rites of unbelievers be tolerated?"* :

T Possible tolerance of infidel cults in general:

"[...] although the unbelievers sin in their rites, these can be tolerated either because of the good that comes from them or because of the evil that is avoided" (0256).

2° Compulsory tolerance of the Jewish baker, for the sake of good:

"As for the Jews, there is a real good in their continuing to observe their rites: since these are the rites in which the truth of the faith was once prefigured, the result is that we have in them a testimony to our faith from our enemies, and what we believe continues to be presented to us, as if in figure. That is why the Jews are tolerated in their rites" (0256. (continued)).

3° Possible tolerance of other non-Catholic cults, to avoid harm:

"As for the rites of the other infidels,⁷⁸³ which do not bring any element of truth or usefulness, there is no reason why these rites should be tolerated, except perhaps for an evil to be avoided. What is to be avoided is the scandal or dissension which might arise from this intolerance, or else an impediment to the salvation of those people who, by the very tolerance which is allowed them, are gradually turned to the faith. For this reason, even the rites of heretics and pagans were sometimes tolerated by the Church when the infidels were still a great multitude" (0256. (continued)).

II) *Baptized heretics*

"There are other unbelievers, on the other hand, who at one time received the faith and who keep a certain profession of it: they are heretics or apostates of some kind. Such people must be urged, even bodily, to fulfill what they have promised and to keep what they have once received."⁷⁸⁴

Recall that s. Thomas understands by "heretic" (in law) ^{*717} only baptized persons guilty of the *formal* [not material] *sin of heresy*.TM To be able to persist in an error contrary to the faith, in spite of warnings, and in the midst of an entirely Catholic

782 0251.2-2, 10, 8, c. Cf. 0252. and 0256. For the Jews, if they have not received the faith, there is no need to bring them by force.

783 for the discussion of this comma, and the determinative or explanatory character of the relative, cf. our 2^o ed. the Leonine ed. 93. the BUSA ed. II. 539.2. KINDREGAN. 1970,52; and COSTE, 1969. 297.

784 0251 (continued). For the case of the Jews once baptized, cf. 0256 (continued): "But if they have received the faith, they must be forced to keep it, as is said in the same chapter of the Decretals. "They must be forced to keep it", as is said in the same chapter of the Decretals. See also 0253.2-2. IO,8.ad2^o *.

civilization, whose signs of credibility dazzled everyone, it did not seem to be possible to explain it otherwise than by bad faith. *⁷¹⁹

A) A duty to repress

« Heretics must be forced to keep the faith. In fact, heretics, unlike the *unbaptized*, are bound by commitments to the Church:

« "To make a vow, it is said, is left to the will, but to keep it is a necessity": in the same way, to embrace the faith is a matter of will, but to keep it when one has embraced it is a necessity. That is why heretics must be forced to keep the faith."⁷⁸⁵ ◦

« On the other hand, the faith of the weak and ignorant should not be put to the test by the public discussion of heresies.⁷⁸⁶ And when there is no danger of serious harm to those who remain in the true faith, or to other men, or of great divisions, heretics should be suppressed:

« Some have understood that what was forbidden by the authority quoted there was not the excommunication of heretics but their killing, as is evident from the authority of St. Chrysostom, which is also alleged. Yet St. Augustine makes this admission about himself [...J. [cf. 0052.]. In what way, then, the Lord's words are to be understood: "Let the wheat and the tares grow until the harvest" are seen by what is added immediately: "Lest, in gathering up the tares, you uproot the wheat along with them". As St. Augustine points out, -this addition shows enough when the said fear does not exist: that is to say, when the crime of each one is notorious and appears to all execrable to the point of having no defenders at all or of having none who are able to form a schism, then the severity of discipline must not be allowed to slumber."⁷⁸⁷

And heretics can even be put to death:

"... if heretics who return were always received with the assurance of remaining in possession of life and other temporal goods, it could be to the detriment of the salvation of others, either because, if they fell back, they would spoil others, or because, if they escaped without punishment, others would more surely fall back into heresy. That is why, when those who have been accepted fall back again, it seems to be a sign of their inconstancy in matters of faith. That is why, if they return later, they are admitted to penance, but not to the point of avoiding the sentence of death."⁷⁸⁸

B) A possible tolerance

"Should heretics be tolerated? With regard to heretics, there are two things to be considered, one on their side, the other on the side of the Church. - On their side there is certainly a sin by which they deserve not only to be separated from the Church by excommunication but also to be cut off from the world by death. For it is far more serious to corrupt the faith which assures the life of the soul than to counterfeit the currency which provides for temporal life. Consequently, if counterfeiters or other criminals are immediately put to death by the secular princes, much more so could heretics, as soon as they are convinced of heresy, be not only excommunicated, but quite justly put to death. - The Church, on the other hand, has mercy for the conversion of those who are in error. That is why she does not condemn immediately, but "after a first and second warning", as the Apostle teaches. After that, however, if the heretic still persists, the Church, no longer hoping that he will be converted, provides for the salvation of others by separating him from her by a sentence of excommunication, and then abandons him to secular judgment so that he may be cut off from the world by death. St. Jerome says in the Decretals: "The rotten flesh must be cut off and the black sheep driven out of the sheepfold, lest the whole house, the whole body and the whole flock suffer, rot, and perish. Arius in Alexandria was a spark; but because he was not immediately quenched, his flame has ravaged the whole globe."⁴⁷

In any case, the civil (and not only psychological) freedom of the act of faith (without the moral freedom of this act) became later undisputed Catholic doctrine⁷⁹ and from the XIX^c century the principles stated by s. Thomas for non-baptized people were extended

⁷⁸⁵ 0254. 2-2. 10,8,ad3^m.

⁷⁸⁶ See 0250. 2-2, 10,7.

⁷⁸⁷ Cf. 0252. 2-2,10,8,ad 1ⁿ.

⁷⁸⁸ 0260. 2-2,11,4. Cf. 0259. 2-2, 11,3, ad 3ⁿ.

to baptized dissenters born and educated outside the Church⁷⁹ ^ . Thomas for non-baptized people.⁷⁸⁹ Let us remember the following results: Thus, sometimes the rites of other infidels, even if they are pagans, can be tolerated; sometimes those of heretics.⁷⁹⁰

1) the rites of non-Catholics are an evil;⁷ 2) to tolerate them in view of a good or to avoid an evil is to imitate divine providence, and it is a good; 3) sometimes this tolerance is not obligatory, but only permitted (that of the cults of non-baptized non-Jews and that of the cults of baptized non-Catholics); 5) sometimes the tolerance is obligatory (one must not force the non-baptized to embrace the faith; one must not prevent Jewish worship)

7.4. The natural right of even unfaithful parents to educate their children religiously

The question then arises: are there not cases in which tolerating evil is obligatory *in Justice*? In fact, Thomas Aquinas taught the existence of a *natural right* of parents, even non-baptized ones, not to *be prevented*, even by the Church, except in rare circumstances, from *educating* their children in moral *and religious* matters, therefore according to their religious convictions, even if they are *mistaken*:

"Should the little children of Jews and other unbelievers be baptized in spite of their parents? (Sed contra) However, we must not do injustice to anyone. Now it would be an injustice to the Jews to baptize their children in spite of them: they would in fact lose their right of paternal power over these children as soon as they were faithful. Therefore, there is no need to baptize these children when the parents do not want to do so. 1] What is most authoritative is the custom of the Church. It is always the Church that must be followed in all things. For the very teaching of the Catholic Doctors takes its authority from the Church. Therefore, one must adhere more to the authority of the Church than to that of an Augustine or a Jerome or any other Doctor. In this respect, the Church's practice has never admitted that the children of Jews should be baptized in spite of their parents. There were, however, many Catholic princes in ancient times who were very powerful, such as Constantine and Theodosius. Very holy bishops were familiar with them, like Sylvester with Constantine and Ambrose with Theodosius. These bishops would not have failed to ask them this thing if it were in accordance with reason. This is why it seems perilous to introduce as a novelty the claim to baptize the children of Jews in spite of their parents, outside the custom hitherto observed in the Church. - [II] There are two reasons for this. [A] One is because of the danger to the faith. For if these children, not yet of age, were to be baptized, they could easily be led by their parents to abandon what they have received without knowing it. The other reason is that this is repugnant to natural law. Naturally, the son is something of the father. [But even afterwards, when he has left his mother's womb, as long as he does not have the use of free will, he remains under the guardianship of his parents as if in a spiritual womb. For as long as the child does not have the use of reason, it does not differ from the animal without reason. Therefore, just as an ox or a horse belongs to someone, in civil law, for him to use as he pleases, as one does with an instrument that is one's own, so it is by natural law that the son, before he has the use of reason, should remain under the guardianship of the father. This is why it would be against natural justice for the child, before he has the use of reason, to remain under the guardianship of the father.

⁷⁸⁹ Cf. MESSINEO. 1950.08.05, 237-247.

⁷⁹⁰ Cf. 0257. According to CONDORELU, 1960, 65, GRATIAN insists on the exceptional character of the tolerance in the case of heresy.

(30) But, after he begins to have the use of free will, he already begins to be himself, and he can, in what is divine or natural right, provide for himself. (31) But after he begins to have the use of free will, he already begins to be himself and he can, in what is of divine or natural right, provide for himself. And then it is necessary to bring him to faith not by force, but by persuasion; and he can, even in spite of his parents, adhere to the faith and be baptized, but not before he is of age. [Hence it is said of the children of the ancient Fathers that "they were saved in the faith of their parents": this gives us to understand that it is up to the parents to provide for the salvation of their children, especially before they reach the age of reason.*00

It is "*Judæorum et aliorum infidelium*". To prevent unfaithful parents from educating their children according to their own religious convictions (which are nevertheless false), is indeed "*de eo aliquid ordinare invitis parentibus*". But this is "*contra Justifiant naturalem*" &> i against a natural right of the parents. This right cannot be "a juridical affirmative right-permission to educate one's child in error" [this would be absurd], and yet the State cannot *without injustice prevent them from doing so*. So parents have a natural right *not to be prevented* from doing so, even if they teach their children religious error. Curiously, the holy Doctor does not use the word 'tolerance' in this case of not being prevented from erroneous religious education.*12

7.5. The human person and his conscience

Thomas was interested in the pre-eminent place of the human person in the universe and in relation to society (7.5.1.). In particular, he advanced theological research on moral conscience, including the erroneous (7.5.2.).

7.5.1. Superiority of the human person

The rational creature is the end of the others, while having God as end.⁷⁹¹

"The good of the universe is greater than the good of a single individual, if both are taken within the same genus. But the good of the grace of one is greater than the good of the whole natural universe. "The common good prevails over the private good if it belongs to the same genus.

But it can happen that the private good is better because of its superior kind. And in this way virginity dedicated to God prevails over the fruitfulness of the flesh."^{K05}

Man is not ordered to the political community "according to himself" j⁷⁹² and the inferiors are not obliged to obey their superiors for what concerns the essential things of life, and derives directly from human nature.⁷⁹³ The common good is a good of individuals.⁷⁹⁴ (Therefore, it is not the proper good of the entity "society" or the entity "State").⁷⁹⁵ Finally, coercion is in opposition to the full dignity of man:

"Also, it is the highest degree of dignity in man not to be determined to do good by others, but to do it of oneself. In the second degree are those who are determined to do good by another, but without the use of compulsion. In the third, those who need this constraint to become good. In the fourth, finally, are those who cannot be brought to goodness even by compulsion."⁷⁹⁶

"The Holy Spirit does not move the sons of God like slaves, but like free men. The free man is the one *who is*

W2cf.O257.

⁷⁹² Cf. 0233. cited above.

⁸¹¹⁷ Cf. 0281. 2-2,104,5, c.

⁷⁹⁴ Cf. 0267. 2-2,47.10, ad 2.

⁸¹¹⁰ This point is particularly well explained by MADIRAN, *passim*.

⁷⁹⁶ Cf. 0286. *Super epistolas sancti Pauli, Iecmra*, Romæ/Taurini, Marietti, 1953", § 217, on Rom 2.14 (on the degrees of human dignity). Translation: Abbé BRALE, 1.1. Paris, Vivès, 1869, 131. See also 0280. 2-2.104,1.1.

master of himself, says the Philosopher in the first book of the *Metaphysics*. We freely do what we do by personal decision, in other words by will. Any action performed against the will, in fact, is not a free action, but a servile action; whether it be absolute violence, when for example the principle of the action is totally external, the one who is the victim of it not contributing to it by any force [quando totum principium est extra, nihil conferente vim passa] [Aristotle, *Nicomachean Ethics*, III, 1, 12 ; 1110 b], - (whether one thinks of someone who is pushed violently) - ; or whether it is a violence mixed with voluntariness, when someone for example wants to do or undergo a lesser constraint in order to avoid a greater one.⁷⁹⁷

Thus: the relations of man with God, being of a higher and nobler order than the temporal common good of the city, escape the jurisdiction of whoever is in charge of this common good.

7.5.2. Role of the conscience

The interest in the need to follow one's conscience⁷⁹⁸ goes back to *Rom* (Chap.2 & 14). Thomas surely knew the text of Innocent III:

"Quidquid fit contra conscientiam - contra quamlibet conscientiam, etiam erroneam sive vincibiliter - invincibiliter - ædificat in gehennam."⁷⁹⁹

According to our research in Busa-CD-Rom, 1996², s. Thomas uses "conscientia" 62 times near "erronea"; 53 times "conscientia" with "ligare" (some of them with "conscientia erronea", of course); 11 times "conscientia" near the word "excusare".⁸⁰⁰ His position has not substantially changed on two points: 1° even an erroneous conscience obliges, so that to go against one's conscience is always a sin, and 2° the will which follows the erroneous conscience is bad if the error was sinful, and excused - even good - if the error was invincible.⁸¹³ We must here content ourselves with synthesizing the doctrine of the Angelic Doctor according to I-II, 19,5 and 6 :

I) Conscience, in general, obliges (I-II, 19, 5),⁸⁰¹ whether it is true or even erroneous, in the sense that to do what it forbids, or to omit what it commands, ^{*802} is a sin, and a sin indeed of such gravity that conscience presents this gravity.⁸⁰³ To go against one's conscience is therefore always a sin, whatever the objective matter (good, indifferent⁸⁰⁴ or bad) of the act, and the quality of the ignorance (vincible or not).⁸⁰⁵ From the moment one acts against one's conscience, one sins,⁸⁰⁶ because the judgment of conscience is presented as a divine (negative) precept.⁸⁰⁷ The conscience is moreover what by which the divine precept reaches the man.⁸⁰⁸ Thus, to reason, a good act can appear bad, and

⁷⁹⁷ 0215. *GC IV. 22*. Translation revised by us.

⁷⁹⁸ Section revised for our present 3^e ed.

⁷⁹⁹ C. 13. X, 1,2. t. 13, quoted by MURTAS. 1970.57-58.

⁸⁰⁰ We eliminate what does not concern our study.

⁸⁰¹ See also already around 1256-1259. *De Veritate*, q. 17, art. 3, c.

⁸⁰² On both cases (omission and commission), cf. e.g. in 1271, I-II, q. 19, art. 5, c. (0231.. BELMANS. 1990.10-12 does not insist enough on the symmetry instituted by s. THOMAS in 1-2, 19. 5. c: "... rationem boni vel mali peraccidens; rationem mali,... rationem boni [...]..."

⁸⁰³ 1268-1272, *Quodlibet* [X1], 9, q. 7. a. 2, c.; 1272-1273: Commentary on *Romans*. Chap. 14. lesson 2.

⁸⁰⁴ Cf. our 0288. *De Veritate*, q. 17, art. 4, c., paragraph 2, Romæ, ed. Marietti, 1942,67.

⁸⁰⁵ 1271,1-11. q. 19, art. 5,c.

⁸⁰⁶ Cf. *De Veritate*, q. 17, art. 4, c.; 1265-1268, Commentary on *Galatians*, chap. 5, lesson 1, § 282 (ed. Marietti).

⁸⁰⁷ *De Veritate*, q. 17, art. 3, c; art. 5. c; 1268-1272: *Quodlibet*. [1, XI] 111, q. 12, art. 2.

⁸⁰⁸ 1271, 1-11, q. 19, art. 5, c.; 1272-1273: Commentary on *Romans*. Chap. 14. lesson 2 (= our 0287. *Super epistolas*

vice versa. And the will is focused on the object *according to how* it appears to the conscience (or reason).⁸⁰⁹ We specify: the right conscience (that is to say, true, in the language of Aquinas) obliges *per se et simpliciter*; whereas the wrong conscience obliges *per accidens, et secundum quid*.⁸¹⁰

II) However, *following* one's conscience, i.e. abstaining from what it forbids or discourages, or doing the act that it dictates, advises or permits, is not always *good*. A) If conscience is objectively true ("*recta*"), then following it is good, *simpliciter et per se, as* we have seen. B) If the conscience is objectively false ("*erronea*"): 1) if it is due to a vincible ignorance, therefore culpable, it does not excuse;⁸¹¹ one should not follow a "vincible" erroneous conscience, but one should put it down before acting.⁸¹² By an ignorance *of right*, one is necessarily guilty,⁸¹³ because one ignores what one is held to know,⁸¹⁴ except if one is insane, mentally handicapped or that one does not have the age or the use of the reason; "o only an ignorance I *fact* is sometimes invincible; 2) in this last case, of the invincible ignorance, therefore *defeats*, according to the Doctor, the ignorance causes the involuntary, and excuses."- And it is the same thing to excuse the will and to make it good:

"ita ista quæstio (utrum voluntas concordans rationi erranti sit bona] eadem est cum illa qua quæritur utrum conscientia erranea excuset.""²

On this last point - capital - the Doctor has thus progressed. In the commentary on the *Sentences*, he did not yet distinguish between guilty and non-culpable ignorance as regards following it.¹³ Let us explain his new position: The act is grasped as good.¹⁴ The bad aspect of the act that the conscience commands, advises or allows is not only non-voluntary, but also involuntary, contrary to the will. The will, we add, adheres to the rectitude of the conscience, as being the will of God. Under this aspect, it is good. All in all, it is certainly only implicit, but it is really required by the doctrine of Saint Thomas. Thomas, the *will* that adheres through invincible ignorance to a *dictate* of the erroneous conscience, remains good. One does not see then why its act would not be meritorious, if the will is informed by charity, at least under the reason of adherence *per se* to rectitude, and not, naturally, under the reason of adherence *per accidens* to an evil object.¹⁵

Conclusion of Chapter 7

Conclusion on Saint Thomas

By virtue of the above, one should conclude that the State must provide the

sancti Pauli, lectura, Marietti, 1953", § 1120 IsurRorn 14. I4]. Trad. Abbé BRALÉ. 1.675).

⁸⁰⁹ 1271, I-II, q. 19, art. 5, c.

⁸²³ c. 1252-1256, *II Sent*, d. 39, q. 3, art. 3. c.; c. 1256-1259, *De Veritate*. q. 17, art. 4, c; art. 5, c.

⁸²⁶ *De Veritate*. q. 17, art. 3, ad 4m; 1271. I-II. q. 19. art. 6. c.; 1272-1273: Commentary on *Romans*. Chap. 14, lesson 2.

⁸¹² Towards 1252-1256, *H Sent*, d. 39, q. 3, art. 3. c and ad 5m; towards 1256-1259. *De Veritate*: q. 17. art. 4, ad 8m;

1271.1-11, q. 19, art. 6, c.; 1272-1273: Commentary on *Romans*, Chap. 14. lesson 2.

⁸¹³ *De Veritate*, q. 17, art. 4. ad 5m; 1265-1268. Commentary on *Galatians*, Chap. 5, lesson 1, § 282 (ed. Marietti); 1271.1-11. q. 19, s. 6, c.

conditions for man not to act against his conscience, and to act according to his conscience (whether true or invincibly wrong), the latter coming from man's direct relationship with God and constituting the closest rule to that practice of virtue to which the State must contribute. Nevertheless, Saint Thomas does not explicitly draw all these conclusions from the combination of his principles. Tradition has not said its last word with St. Thomas. Thomas,"⁶ whose concern to defend the (then recent) legislation systematically condemning obstinate heretics to the material sword may have prevented him from seeing what was special about this system to his

#29 Cf. for example, in 1272-1273: *Commentary on Romans*, Chap. 14, lesson 2.

#30 1268-1272: *Quadragesimal (Qwn/k)* [1. XIJIII, q. 12, art. 2, ad 2m.

#31 (1256-1259, *De Veritate*, q. 17, art. 3, c: if ignorance concerns what one is not bound to know, the will is not bound; likewise ad4m; likewise *De Veritate*, q. 17, art. 4, ad 5m; 1271, I-II, q. 19, art. 6. c.

#32 1271, I-II, 19, 6, c.

#33 As for going against, s. THOMAS will never budge.

#34 But we must not confuse sincere (or invincibly erroneous) mistaken consciousness with good intention: J 270. *De Malo*, Q. 2, a. 2, ad 8m.

#35 We do not deal here with the doctrine of s. THOMAS on the two powers, studied with precision by DAGUET François, in *RThom*, 2002/IV, pp. 531-568.

#36 H himself warns us against considering the Doctors as superior to the Magisterium or the practice of the Catholic Church (cf. 0257." corpus).

time. Thus, certainly, that formal heretics are bound by their commitments in a very serious way and that their sin is an abomination will remain true forever. But the way in which these offenses are punished may vary. In any case, the punishment of heresy as such belongs to the Church, not to the state.

The end of the Middle Ages (xin -xv^{ee} centuries)

After s. Thomas, the doctrine and the reflection evolve relatively little.⁷ Boniface VIII (1294-1303) takes again with his account the theory of the two swords emitted by s. Bernard,⁸ by hardening it since it seems to subject the temporal power to the spiritual power: the temporal power is not the only one. Bernard,⁸ by hardening it, since it seems to subject the temporal power to the spiritual power:

"Utrque ergo est in potestate Ecclesie, spiritualis scilicet gladius et materialis. Sed is quidem *pro* Ecclesia, ille vero *ab* Ecclesia exercendus. Ille sacerdotis, is manu regum et militum, sed ad nutum et patientiam sacerdotis. Oportet autem gladium esse sub gladio et temporalem auctoritatem spiri tuali subijci potestati."⁹

In reality, he submits the one to the other only in the context of the assistance of the secular arm to the ecclesiastical power, and not in a general way. The political authorities must therefore place themselves at the service of the spiritual authority for a particular act, required by the common good of the Church.

Blessed Raymond Lulle (1232/5-1316), sees this theory differently:

"The Catholic Church has two swords, as it says in the Gospel, the temporal sword, *i.e.* the sword, and the spiritual sword, *i.e.* science and devotion. With these two swords, the Church has what it needs to bring all the Infidels back to the path of truth. First of all, the Pope could send wise and prudent men to the Saracens, Turks and Tartars, ready to suffer death: they would show their errors to the infidels and discover to them the truth of the holy Catholic faith, so that the infidels themselves would approach baptism. In case of violent resistance, then the pope should use the secular sword against them."^{-<}

"The Council of Constance, in its fifteenth session, on July 6, 1415, condemned among the errors of John Hus the opinion that denies the Church the right to hand over a guilty person to secular jurisdiction, when that guilty person has not obeyed the sentences of ecclesiastical jurisdiction. (Fourteenth proposal of John Hus.)

This conciliar condemnation was approved, confirmed by Pope Martin V, in the dogmatic bull *Inter cunctas*, of February 22, 1418. "+1

¹⁰⁷ Cf. AUGUSTIN, Pius, 1966, 142-143.

Cf. AUGUSTINE, Pius, 1966, 105-106.

Cf. 0300. BONIFACE VIII. 1302.11.18: Bull *Unam Sanctam*. in LoGRASSCr, 212-213. n° 493: and *DzSch* 873 874; extract from *Corpus iuris canonici*. Extr. comm., lib. I, lit. 8. c. 1: FRIEDBERG, 11, 1245; *DzSch* 873. It is known moreover that the only truth defined in this bull is in the last sentence: *DzSch* 875. One could quote afterwards: JOHN XXII, 1327.10.23: Const. *Licet iuxta doctrinam*. to the bishop of Worcester, condemning the book of MARSILE DE PADOUE, *Defensor pads*, published in 1326. proposition 5 (*DzSch* 945). See the discussion in LRTC. In 0772.5 (AAS. 1955,678) P1E XII will put a damper on another text of BONIFACE (an audience to envoys of a prince, this time, and no longer a dogmatic bull; see the context in LOGRASSO². 214-216. n° 499-500. For any detail, cf. e. g. RIVIÈRE. 1926 & 1927). Let us also recall that BONIFACE VIII extended the principles of the Inquisition (not torture, which he does not deal with) to all of Christendom (cf. *Sexte*. deer. lib. V, lit. II, *De luereticis*. c. XVIII: "universos [sic-] sarculi potestates". in FRIEDBERG. II. 1076).

"10 Cf. 0301. Blessed Raymond LULLE, 1311.09-10, *Disputulio clerici et Raymundt phantaslici*; or: *Uber Disputulionis Petri et Ruimundi sive Phantusticus*; *Corpus Christianorum, Continuutio Medhevatis*. Turnhout. Brepols, 78 (1988), 1-30; we quote: V: *De ordine*. lines 537-547. p. 28; trans.: LECLER. 1955.1.103.

-HI LA BRIÈRE, 1911.10.05. 126. 0303. MARTIN V (1417-1431). 1418.02.22: Bull *Inter cunctas*: *CIC Fontes* I. n° 43,46-57. Cf. *DzSchHU* 1272.

At least it whitewashes theologians who hold the opposite position.⁴²

"Among the doctrines on which men suspected of favoring the errors of Wyclif and John Hus are to be questioned, the Pontiff [Martin V] expressly mentions the right of the Church to appeal to the *secular arm*. (Thirty-second question of the interrogation.) Such texts leave no doubt as to the thinking, the doctrinal teaching of the Church, ⁸⁴³

S. Antoninus of Florence (1389-1459) reiterates the doctrine of St. Thomas on 1. Thomas on 1° the impossibility of forcing the unbaptized to faith or baptism; 2° the necessity of forcing the baptized to keep the faith, 3° unless their baptism was absolutely forced; 4° the injustice of baptizing the children of infidels against the will of the parents.⁸⁴⁴ 11 justifies by the search for the common good the punishment of heretics who are relapsed and obstinate (including death at the stake).^{84 -5}

The capital punishment of these heretics would have been opposed by Tertullian, Lactantius, St. Alhanasius, St. Hilary of Poitiers, St. John Chrysostom, St. Martin of Tours and St. Augustine himself. Augustine himself. It seems, therefore, that in the Middle Ages people had lost touch with this aspect of the doctrine of the Fathers, and that, especially from the time of Emperor Frederick II, they had allowed themselves to be too easily influenced by the penal methods of imperial law.

⁸⁴² Cf. 0302. ECUMENICAL COUNCIL OF CONSTANCE, 1415.07.06: XV^e session, condemned prop. 14 (laL + franç.: *DzSchHü* 1214).

LA BRIÈRE, 1911.10.05.126.

⁸⁴⁴ 0304. ANTONIN OF FLORENCE" O.P., s., 1440-1454: *Summa Theologica in quattuor partea distributa*: ed. Ballerini, Veronæ. 1740, Ex Typographie Seminarii, 4 vols. Graz, Akademische Druck, 1959, 4 vols. t. II: here 1147-1148. Cf. 1151-1155 (especially on the prohibition to live with Jews or to be in their service; and the incapacity for them to hold public offices or to bear witness against a Christian); 1155-1162: "§ 1. 111 Ad fidem suscipiendam nullus Judæus vel gentilis debet cogi. Ratio est secundum B. Thomam ubi supra, quia credere est voluntatis. (Cite then Gratian, D. 45, *De Judicis*). [21 Sed susceptam etiam metu tormentorum et mortis cogendus est retinere, ut dicto capitulo *De Judicis*. Et qui redeunt ad Judæismum, etiamsi infantes fuerint baptizati, vel metu mortis ad baptismum adducti; debet procedi contra eos sicut contra hæreticos. (CONDORELLI, 1960, 27 showed that the idea comes from a quotation of Rufinus: "mali

non sunt cogendi ad bonum, quod nunquam elegerunt, sed compellendi sunt redire ad bonum quod reliquerunt" and will be taken up by la *Sununa Parisiensis* (p. 28). As we have seen, it runs through the whole of the Middle Ages (cf. e.g. 0253)] (...) [3] Si qui tamen infideles cogentur absoluta coactione, et per violentiam non susciperent sacramentum ; unde nec essent cogendi ad retinendum, ex quo non susceperunt ; secus de coactione conditionali, ut dictum est. Debent vero Judxi et alii infideles adduci ad fidem rationibus, persuasionibus, et auctoritatibus, ostendendo ex eorum libris eorum errorem, et dulcibus modis, ut Gregorius Dist. 45. *Qui sincera*. Possunt etiam ad fidem adduci secundum Guillelmum promissis et muneribus ; non quidem factis pro fide suscipienda, quia hoc esset simonia ; sed ad captandum bcivolentiam et excludendum ab eis timorem inopiae et hujusmodi [etc.(4) Puen Judæorum et aliorum infidelium non sunt baptizandi invitis parentibus secundum Thomam 2. 2. quæst. 10 art ultimo : quod probatur triplici ratione. Illi recopies the arguments of s. Thomas and in particular Thomas and in particular: quia hoc repugnat justitiæ naturali [etc.]"

"45 0304, cit, cap. IV: *De htrresi, et de poenis hiereticorum*, 1155-1162. See especially § I, from lap. 1157. where s. ANTONIN takes up again the comparison of the heretic and the forger, by estimating that the Church is very merciful to give a chance to the heretic, by allowing him to escape the capital punishment the first time, if he abjures. In case of a relapse, the Bull *Ad abolendum* applies; hence the comment: "Et hoc fil rationabiliter secundum Thomam ubi supra, quia per hoc providetur bono communi." (*Ibid.* 1157) See also *Ibid.*, 1158. And 1160 C, on the possibility of the inquisitors being assisted by the secular arm in their search.

CHAPTER 8.

8. THE MODERN PERIOD (XVI -XVIII^{ee} SIECLES)

C IS indeed the beginning of the modern era, with the crisis of the Reformation and especially the religious wars between Christians, which is at the origin of a new position of the problem of RL.^{8 *} We do not have to repeat the masterly *History of Tolerance in the century of the Reformation* by J. Lecler.^{8 -7} Let us just take a look at some more important texts and one or two theologians relatively less analyzed by this author.^{8 --"}

No death sentence for heresy was pronounced under the jurisdiction of s. Thomas More (1478-1535)⁴⁹ (author presented at length by J. Lecler).⁸³⁰ More exactly, at the time of the 3 executions decided "in 1531, during the last six months of his chancellorship "the Chancellor had no more real power."⁵ - According to More [in *the Dialogue between me and him*], "the princes and the temporal power, in the interest of the temporal society, were obliged to do violence to the heretics, themselves wrongdoers of violence."⁵²

8.1. Thomas de Vio, O.P., called Cajetan (1459-1534)

Card. Cajetan, for his part, maintains without hesitation the impossibility of forcing infidels to be baptized.⁸³³ However, he does not give as a reason a natural right of the latter, but the necessity of not committing a sacrilege against the sacraments, and the very nature of the faith. He thinks, like s. Thomas, that Christian princes can favor the sacraments. Thomas that the Christian princes can encourage conversions and prevent the infidels

⁶ On the wars of religion, cf. 0774. PIB XII, 1955.10.13: Discourse // *programma*; here 0774.1: AAS, 767 768; RH. n° 6261; MONNI. 1979, 125; and GUERZONI, 1975,218.

^{8.7} See in particular LECLER, 1955,1, 284-287; 292-296 (on BECANUS); 11,48-58; 124-127; 195-205. See also CHEREL, 1941.07-12-1942.01.

^{8.8} 11 It is obviously out of the question to compile all the commentaries of the *Summa Theologica* of s. THOMAS (at least 641), according to M1CHEUTSCH, 1925, 449-458. We have therefore had to be satisfied with the examination of a *part* of the "principal commentaries" indicated *ibid.* p. 453-458 and to note that - unless we are mistaken - GONET, GOTT1 and the *SAMANHENSES* do not treat our subject.

According to COSTE, 1969, p. 328. This is also the opinion of recent studies (cf. the dossier in *La Nef*, September 2002).

⁵⁰ LECLER, 1955,1, esp. 150-156.

⁵¹ Cf. LECLER, 1955,1,155.

⁵² SARGENT Daniel, *Thomas More*, trans. Maurice Rouneau, Paris, DDB (s.d.), 207.

⁵⁵ Cf. 0310, bis. CAJETAN, 1517.02.26: *Commentaria in Seeundain Secundo?* (completed 26.02.1517); we have studied: *In 2-2*, q. 10, a. 8.10.11.12, etc.; Leonine ed., 8 (1895), 89-90,93,95, etc. The passage in question here: *in 2-2*, q. 10, a. 8; ed. leonine, 8 (1895), 89-90.

to prevent the faith A⁵⁴ II considers that the rites of the Jews must be tolerated, while those of their books which attack the Christian faith must be burned."⁵⁵ Naturally, as G. de Tanouarn has remarked,⁸⁵⁶ he maintains the doctrine of Saint Thomas on tolerance:

"Consider, in the IF article of this same question [II-II, 10], that the rule of permissions in a government is the good that flows from it or the evil that is to be avoided; from this you will be able to judge in different ways the spiritual and temporal princes in the permissions they give to usury and things of this kind. For you can understand that, since the permission of crimes is not itself morally wrong (if it were wrong, on the one hand, it would not suit God, and on the other hand, it could not be made right by any intention), if it is given for a reasonable reason, it is morally right in so far as it accords with reason. Now the reasonable motive is supplied by the text [of s. Thomas]: as to the good, it is to avoid preventing it, and it is based on the sentence of the Lord: "Let them grow together lest you also pluck up the wheat" (Mt 13:29); and as to the evil, it is to avoid its occurrence, and it is based on the sentence of St. Augustine: "Take away the harlots, etc."⁸⁵⁷ It is on these grounds that one must judge of the permission to be given. But beware: let this permission not be confused with participation."⁸⁵⁸

Cajetan, against Scotus and Durand, maintains, with the Angel of the School, the impossibility of baptizing the children of infidels against the will of their parents."⁸⁵⁹ He poses the problem:

§ III: "The whole of the present difficulty seems to hang on this: is it or is it not contrary to natural justice to remove such children from the care of unfaithful parents who wish to bring them up in infidelity? If indeed it is against natural justice, it follows that it is unlawful: for it is not necessary to do evil in order that good may come of it. And if it is not against natural justice, it seems that no injustice is done to the parents, to whom the natural law has given the supervision of their children. And of course the Author [s. Thomas] in the text relies on the affirmative answer, but Scot on the negative, B⁸⁶⁰

The cardinal then makes explicit the thought of St. Thomas: the question is not one of right but of abuse of right. Thomas: the question is not one of right, but of *the abuse of right* i⁸⁶¹

"And note well that the discussion does not concern the question whether according to natural justice the children of infidels are subject to the supervision of the latter as to the exercise of religion in the child: it is manifest that this is true, since, just as the natural order wants the adult to order himself to God by his own reason, so it wants the child to order himself to God by the reason of his parents. But the question is whether, because of this abuse of the natural right, parents who abuse it can or should be deprived of such a right B⁸⁶²

After refuting Scotus,"⁶³ § IV asks whether God instituted the order of faith "*salvis naturae legibus*" or "*non obstantibus naturae legibus*." The cardinal responds, § V, that God instituted the revealed law in such a way that it respects the natural law also

⁸⁵⁶ TANOÛARN. 2000.152.

⁸⁵⁷ Our 0033..

⁸⁵⁸ 0310. bis. CAJETAN. 1517.02.26, In 2-2. q. 10, a. 11, n° 1. We have corrected here the translation of TANOÛARN, 2000. 153 (Latin text, in note 14, p. 169). by restoring some omitted words, and by revising certain passages, too freely rendered by the translator, who is substantially exact.

⁸⁵⁹ Indeed, Scotus believes that God's will to baptize overrides the right of parents; Durand limits this "violent" baptism to the case of slave parents.

⁸⁶⁰ "Ia praesens difficultas in hoc pendere videtur, an sil contra naturalem iustitiam huiusmodi pueros auferre a cura parentum infidelium volentium eos in infidelitate nutrire, an non. Si enim est contra naturalem iustitiam, constat quod illicitum est: quia non sunt facienda mala ut veniant bona. Et si non est contra naturalem iustitiam, nulla videtur iniuria parentibus fieri, quibus naturale ius curam filiorum dedit. Et Auctor quidem in littera super parte affirmativa se fundavit: Scotus autem super negativa.

⁸⁶¹ TANOÛARN, 2000, p. 160 cites this point, but avoids (probably unconsciously) entering into the question of the "abuse of the right", which nevertheless calls into question his position.

⁸⁶² "Et nota quod non est dissensio in hoc. an secundum naturalem iustitiam pueri infidelium subsint eorum cura quoad divina exercenda in puero: hoc enim manifestum est esse verum, quoniam sicut naturali ordine adultus per propriam rationem, ita puer per parentum rationem ordinatur ad Deum. Sed quaestio est an propter abusum huiusmodi iuris naturalis privari possint aut debeant parentes ipsi abutentes tali iure."

instituted by God." By divine disposition, if adults govern themselves, it is the parents who govern the children in matters of faith."⁶⁶ Cajetan objects (§ VI) that the natural law is ordered to the law of faith, and that therefore the supernatural law makes the natural law disappear in case of abuse by error."⁶⁶ He replies:

"To affirm this is to say that God has instituted that the law of faith must be observed notwithstanding the law of nature. Now, the natural law, of itself, does not oppose faith, since *the true does not oppose the true*. Therefore, if we say *notwithstanding the natural law*, it is only because of the case where there can be opposition by virtue of an abuse which comes to mix with it. This means that He has instituted that the law of faith must be fulfilled notwithstanding the natural law, in an absolute way, even in the case where, because of an abuse that gets mixed up with it, there is opposition. And therefore, if the first assertion is false, the second will be false as well. So this loophole is inoperative."

In short, there can be no question of "notwithstanding" if it is the *correct* use of the natural law. The "notwithstanding" refers to the abuse mixed with the use of the right. And the natural right persists even in case of abuse."⁶⁷ And Cajetan gives the reason: even if the abuse is gravely culpable and in itself deserves death, it cannot be suppressed without suppressing the very right to education."⁶⁶ Cajetan certainly does not think that these parents are following their conscience. But what interests us is

that he affirms that *such an abuse of the natural right does not take away the use of it*, because God author of the natural right cannot contradict God author of the supernatural law.⁸⁶³

"And so. God, in instituting the order of grace for the perfection of the order of nature, does not want this natural justice to be violated, although these [unfaithful parents], by abusing it, deserve it."⁸⁷⁰

From this necessarily follows a natural right of parents (even non-Christians) not to be prevented from educating them even in a false religion.^{*86471} And this, although the cardinal affirms without a shadow of a doubt that in such cases parents (objectively) abuse their natural right.⁸⁶⁵ Cajetan was also the legate of Leo X in the face of Luther.

8.2. Leo X (1513-1521)

"In 1520 Leo X condemned, among many other things, a proposition of Luther's which read: 'It is against the will of the Holy Spirit to burn heretics.'⁸⁶⁶ Such a condemnation does not imply a claim by the Church to the right to burn heretics. It may simply contain the assertion that the secular power has the right to take repressive measures against heretics when they threaten the tranquility of the state. It can also be a proposal which, abstractly taken, is not erroneous and which is simply shocking to the faithful, given the state of mind at the time and especially the connection of this proposal with another advocating total non-resistance to violence and even condemning the fight against the invasions of the Turks. The condemnation does not amount to a precise statement on the coercive power of the Church."⁸⁶⁷ "In proscribing this assertion, the Pope only states that certain heretics, under given circumstances, may be legitimately condemned to the stake. He specifies neither the circumstances nor the title which justify the severity, nor the heretics who deserve it, nor the authority which can decree it. From this condemnation "we shall deduce with certainty, that the application of the death penalty for the crime of heresy is not always and necessarily unjustifiable."⁸⁶⁸ "We will certainly not deduce from this that the Church has *the right of the sword*, the right to pass a sentence of death against heretics: since the text in no way imposes this interpretation. Nor do we deduce that the death penalty for the crime of heresy should be included, as far as possible, in the penal code of any officially recognized state.

tholic: for that would be to add to the text. But we shall deduce with certainty"⁷⁶ that the application of the death penalty for the crime of heresy is not always and necessarily unjustifiable; that circumstances may exist in which, as a result of the state of minds and morals, the Christian State does a wise and useful work in punishing public heresy by capital punishment."⁷⁷

For the XVI^e century, on our subject, we have not been able to find any other *doctrinal*

⁸⁶³ Cf. 0255.2-2, 10,10; text & trans. BERNARD, 1963, 114. Other translation: Cerf, 1984, III, 85.

⁸⁶⁴ Contrary to what TANOARN, 2000, 160, the fact that CAJETAN does not use the *vocabulary* of the law subjective does not mean that this is not the reality that it affirms.

⁸⁶⁶ Another important commentator on St. Thomas at the time, and a great jusnaturalist, F. de Vitoria, in his *Commentaries on the Summa*, rejects the *coactio ad fidem*, though only for reasons of prudence and *ut in pluribus*. On the other hand, he rejects at length the positions of Scotus and Durand on the baptism of the children of non-Christians . because such a baptism is contrary to justice by absence of competence (God having reserved this field to himself). 0312/B. VITORIA Francisco de, O.P. (t 1546), *Comentarios a la Secunda Secunda: de Santo Tomás*, ed. BELTRÁN DE HEREDIA, Vicente, O.P." Salamanca, 1932-1935,5 vols. (*Biblioteca de Teólogos Españoles dir. por los Dominicos de las Provincias de España*, vol. 2-6); 1.1: *De Fide et Spe* (qq. 1-22), Salamanca, 1932, 380 pp. See pp. 190-196 (In 2. 2. De Fide. Quæst. X. art. VIH); 202-203 (art. XI); 203-212 (art. XH); 220-235 (Q. XI, art. III IV). In this case, it is art. XII, in particular n° 14, 210-211, which thus sides with s. THOMAS, but by affirming this position only as *valde probabilis*.

⁸⁷³ 0311. LEON X. 1520.06.15: Bull *Exsurge Domine*, against LUTHER; *CIC Fontes* 1, 129-134; cf. prop.33 condemned (*DzSchHü* 1483).

⁸⁷⁴ DÜBARLE, 1952.01. 12.

⁸⁷⁵ VERMEERSCH. 1922. 199, note 1.

document emanating from the Holy See.⁸⁶⁹

8.3. Saint Peter Canisius, S.J. (1521-1597)

On the other hand, the question is of greater concern to *theologians*, such as Canisius: "Secular authorities and regent princes should remember that Christ's command [Mt 7:15: "Beware of false prophets"] also concerns them and warns them to exercise their functions and government in a Christian manner. Since they have received it from God and carry the sword to protect the pious and punish the wicked, as St. Paul says, Christ has ordered them to watch over the spiritual leaders so that the sheep of Christ and of the Church have nothing to fear from the wolves. Therefore, the enemies of Christ and the Church cannot be suffered and tolerated to the common detriment of the Christian people. While the true Christian faith is the mother and protector of peace, obedience, unity, discipline, charity and all the goods of the civil and spiritual order, the false and anti-Christian faith is the root from which come divisions, disorders, rebellions, insolences and excesses of all kinds. If it is right that civil authority should not leave counterfeiters unpunished, how can those who falsify the word of God be suffered? He who insults and outrages authority is guilty of lèse-majesté and must be punished *am Leib und Leben*; what (punishment) then must those receive who despise, deny and reject the sacrament of the altar, those who resist God in his spouse, the Church, in his holy general councils, in his divine ordinances, those who do not respect any Christian rule of the Church? "79

It is thus under the angle of its disastrous social effects, of the public order of the Christian society, more than under that of its falsity, of sin in the supernatural order, that heresy will have to be repressed.

8.4. Francisco Suarez, S.J. (1548-1617)

On the other hand, his colleague F. Suarez⁸⁷⁰ "presents us with a State that is incompetent in matters of religion and spiritual (even natural) happiness.⁸⁸¹ According to s. Thomas, it

⁸⁶⁹ Except for the "parking" of Roman Jews in the ghetto by PAUL IV, 1555.07.14: Constitution *Cum niinis absurdum*, and the law obliging them to come in turn to listen to Catholic preaching (GREGOIRE XIII, 1584.09.01: *Sancta Mater*).

⁸⁸¹ 0319. SUAREZ, 1612: ITractatusj *De legibus* lac Deo legislatorej. We aim here lib. 111: *De te^e positiva luimana seenndum se et prout in para hominis natura speclari potest. qute lex etiam civilis dieitur*, cap. XI : Ulrum

recalls the difference in finality between human law and ecclesiastical law. The civil legislative power does not even have as its goal the natural temporal happiness of men in their singularity, but that of the community and of men *as* members of the community, which consists in the search for peace, justice, a "*sufficiencia bonorum*" (*materialium*) and in that "probity of morals required for the external peace and happiness of the State and the desired conservation of human nature."⁸⁶ "2 The State, in natural law, is concerned with nothing but this common good." Faith does not alter the powers of civil power, which is natural in essence and does not extend to supernatural matters. However, a believing ruler takes the supernatural end as his ultimate goal.⁸⁷ *- As to the possibility of Christian princes punishing heresy, etc., he replies:

"First of all, some of these possibilities are not so much a matter of secular power *per se*, as of a concession of ecclesiastical power, which by an express or tacit request asks for the help of its secular arm. ""->

Consequently, the state that separates itself from the Catholic Church no longer has any power in religious matters.

Suarez calls "right" the true conscience not only in an objective way, like s. Thomas, but in a subjective and practical way, in short, the sincere conscience. Thomas, but in a subjective and practical way,⁸⁷¹ in short, the sincere conscience. He also believes that a Christian prince can compel his unbaptized subjects to preach the true faith.⁸⁷² On the other hand, he absolutely refuses that one can compel the aforementioned infidels to believe, even after such sufficient preaching.⁸⁷³ As for the unbelievers who are not subjects of the Christian prince, the

finis potestatis et legis civilis, prout nunc est in Ecclesia, sit alius a fine eiusdem potestatis et legis, ut in pura natura vel in gentibus spectari potest..., n° 6: Ed. PERENA, V, 150*152. thing is obvious.⁸ ⁸⁹ Deepening the text of s. Thomas (2-2, q. 10, a. 11) on the toleration of Jews alone, he distinguishes between cults contrary to *natural reason* and cults more specifically contrary to *Christian revelation*. He judges that the latter must be tolerated.⁸⁷⁴ (Note the addition of Muslims to the Jews, and the assertion that they worship the one true God). This is a "*certa res*":

"The reason is that these rites are not intrinsically evil by virtue of the natural law; therefore the temporal power

⁸⁶ Cf. 0320 SUAREZ, *Tractatus tertius; De bonitate et malitia humanorum actuum*, in *Opera omnia*, IV (1856), 274-454. See pp. 322-323; 437-439; 439-442. We refer here especially to 440-441 (which considers in particular the *conscientia erronea invincibiliter*).

⁸⁷² Cf. 0322. SUÁREZ, *Tractatus de fide theologica*, in *Opera omnia*, XII (1858); disp. XVIII: *De medijs quibus uti licet ad convertendos vel coercendos infideles non apostatas*, sect. II: *Utrum liceat Ecclesia: vel principibus Christianis cogere hos infideles ad audiendam fidem*, 441-444; SUÁREZ answers yes, but only for the subjects of a Christian prince.

⁸⁷³ Cf. 0322, disp. XV1H, sect. 111: *An liceat cogere pradiclos infideles ad credendum post sufficientem fidei propositionem*, 444, the positions in presence; SÜÁREZ holds for the *tertia et vera sententia* (cf. no. 4 [and the continuation, nos. 5-12]), 445. with the series of authors he cites: "*Tertia et vera sententia*. - Nihilominus tertia et communis sententia Theologorum est. infideles non apostatas, tam subditos quam non subditos, ad fidem suscipiendam cogi non posse, etiamsi sufficientem illius propositionem habuerint. Ita docet D. THOMAS 2.2, quæst. 10, art. 8 and 12 ; and ibi CAJETANUS ; PALUDANUS. in 4, dist. 4, q. 4 ; DURANDUS, q. 6 ; SOTO, dist. 9, q. 1, art. 3 ; RICHARD. dist. 6. ait 3, quæstione 1 ; ANTON1N., 2 p., tit. 12, c. 2 ; ABULENS., lib. 1 Regum, c. 8, q. 34, and quæst. 182 and 183; SYLVEST., vert.) *Baptismus*, 4, q. 6; CASTRO, lib. 2 of Just. Hæret. puni., c. 4; VICTORIA late in dicta Relectione de Indis; SALMERON., tom. 12, tractatu 37; HENRIQUES, lib. 2 de Baptismo, c. 4, n. 8; estque omnino vera et cena sententia, quæ a nobis per partes probanda est [...]. But SUAREZ admits the possibility of the *indirect* coercion of the Church on the unfaithful temporal subjects.

⁸⁷⁴ *ibid.*, n° 9,451: "*Utrum tolerandi sint ritus infidelium in regnis fidelium*".

of the prince *per se* does not extend to their prohibition; for no other reason can be given for this prohibition than that it is contrary to the faith; and this reason is not sufficient with regard to those who are not subjects of the spiritual power of the Church. Therefore, it is confirmed that it would be a matter of coercion to embrace the faith, which is forbidden, as we have said. And this reason is conclusive in general for the case of the Saracens, and of other infidels who know and venerate the one and only true God, as to rites not contrary to natural reason."⁸⁷¹

The rest of the text mentions all the discriminatory restrictions to this freedom of principle, even in the case of the Jews.⁸⁷⁵ As for the heretics, Surirez attacks his contemporary, the Belgian G. Cassandre (1513-1566), an ecumenist and irenist (and certain Donatists).⁸⁷⁶ By recalling the constant and universal practice of the Church,⁸⁷⁷ he proves that the Church has the power to punish these wrongdoers.⁸⁹³

8.5. Saint Robert Bellarmine, S.J. (1542-1621)

His confrere s. Robert Bellarmine, after having affirmed (Chap. 17) the incompetence of the magistrates to judge in religious matters, condemns the liberty given by the Princes of the Empire in Speyer in 1526 :

"But this is a very pernicious error, and without doubt, Christian Princes are bound not to allow (*permittere*) their subjects the freedom to believe (*Ubertatem credendi*), but to do their utmost that the faith which the Catholic Bishops, and principally the Supreme Pontiff, teach as to be held may be preserved."⁸⁹⁶

We do not know what he means here by "*permittere*". As for "*Ubertatem*", he will specify elsewhere:

"I answer: Free is understood in two ways. First, in relation to an obligation, as we say that one is free to vow chastity, or to enter religion; but one is not free to break the vow or to leave the religious state; and in this way, in those who have never received it, faith is free from obligation by human right, but not by divine right; and this is why men do not force, and yet God will punish. On the contrary, in those who have professed it in baptism, it is not free from obligation, neither of divine right nor of human right, and that is why men force its preservation. In the second way, free is understood as opposed to necessary, and in this way not believing is free, just as it is free to commit other sins, but this freedom does not prevent men from acting badly from being punished. On the contrary, it requires that they be punished; for if believing and not believing are free, then one has been able to believe and remain in the Church, as one should have, and since one has not done so, one is rightly punished (...)."⁸⁹⁷

We find the difference in treatment between the non-baptized, bound to embrace the faith by the divine law and not by the human lot; and the baptized, bound by both laws. Elsewhere, he specifies:

"The second error is that of those who, falling into the other extreme, teach that kings must look after their state (*Rempublicam suam*) and the public peace (*et pacem publicam*); but that they must not look after religion, and allow

⁸⁷⁵ *Ibid.* n° H, 452: "*Quibus limitationibus hi ritus Judieis concedantur*".

⁸⁷⁶ 0322., disp. XX: *De remediis Ecclesia: contra luereses et hiereticos*, sect. 111: *Utrum coactio luereticorum ad relinquentiam hieresim sit medium illicitum, conveniens, et cadens sub Ecclesie potestatem*, p. 509. n° 1: "quidam Georgius CASSANDER"; n° 2 proves that one can at least force heretics to keep themselves separate from the faithful. n° 3-5 expose the point of view of the Donatists on the subject of coercion; n° 6 & ss. seek to answer it by the traditional arguments: the Church has the desired power; heretics are malefactors to be punished", it is necessary to make an example; it is necessary to correct heretics.

⁸⁷⁷ *Ibid.*, n° 11 : "*Secundo ergo probatur assertio ex consuetudine Ecclesiae ; nam universalis Ecclesia utitur hac potestate, et ab antiquis temporibus usa est ; non potest autem universalis Ecclesia in rebus moralibus, et ad justitiam et religionem pertinentibus errare ; et per se est incredibile Ecclesiam tyrannice et sine legitimo titulo hanc usurpasse potestatem, et neminem de fide recte sententem illi contradixisse ; est ergo consequentia non solum certa, sed etiam evidens.*" ||| quotes s. LEON THE GREAT, *Letter 2* to the bishops of Italy, on the subject of the Manicheans (exiled); letter 4 (= 91 or 93?); letter 43 (=45 or 47); LUCIUS 1, letter to the bishops of France ; the COUNCIL OF TOLEDO IV. cap. 57 & 59; NICEE (CONSTANTINE against the Arians); CONSTANCE used it against Wideff and HUS; LEON X, 1520.06.15 V Bull *Exsurge Domine*, 33° proposal condemned by LUTHER; the *Corpus Iuris Canonici : Ad abolendam: Excommunicamus: Super eo, Arianos*, 1; *Manicluos. 1 Quieumque*.

everyone to think as he likes, to live as he likes, provided he does not disturb the public peace (*pacem publicam*).⁸⁹⁸

8.6. Martin Becanus, s.j. (1553-1624)

Becanus,⁸⁹⁹ of a more nuanced opinion, begins by distinguishing permission from who merely does not prevent, but then punishes (God in relation to the

against MARSILE DE PAÛOUE, William BARCLAY, and "Roger the Englishman" (alleged Catholic). - disp. XXIII: *De poenis corporalibus hæreticorum*, sect. I: *An Ecclesia hæreticos supplicio mortis juste puniat*, 577. See also disp. XIX: *De infidelibus apostatis, seu hmreticis, et imprimis de culpa eorum, lueresis*.

H96 0323. Our trad, de *Controversiarum de membris Ecclesia?*., 1. III : *De Laids...*, c. 18 : *Ad magistratum pertinere defensionem Religionis*, in *Opera Omnia Roberti Bellarmini*, ed. FÈVRE Justin. Parisiis, Vivès, 1871, L III, 12 vols. 1870-1874). See I. III, Chap. XVIII. See also Chap. XXI (339-342).

#97 0323.. Chap. XXII, answer to 17^o (where the Holy Doctor makes the distinction between civil tolerance and religious indifference, between moral freedom and civil freedom). Trad, in LUCIEN, 1990,86, note 141; orig. ed. FÈVRE, cit, #9# *Controversiarum de membris Ecclesia*., I. III: *De Laids*, c. 18: *Ad magistratum pertinere defensionem Religionis*, in *Roberti Bellarmini Opera Omnia*, ed. Pedone Lauriel, 1872, t. II, 334-335. Translation: LUCIEN, 1990, 181, note 105. The text seems to have inspired BIUO in his preparation of QC.

Cf. 0328: *Theologia dogmatica sive manuale controversiarum...*, Cologne, s. e., 1750, (16J-606-138 pp. LECLER, 1955 uses *Opera omnia*, Mainz, 1649, 2 vols, with the other important work on the subject: *De fide hæreticis servanda* (1608). Chap. XV of the work cited here also shows that one must keep one's word to heretics. Let us also quote: lib. V, cap. XVI: *An Princeps Catholicus possit tolerare hæreticos in sua provincia* ?

¹ Still available from the publisher: I)Volume 1 (Systematic): the dissertation itself, divided into 1 fase. A ("Preparations" = part 0 (introductory) + parts 1 and II) (I-LX + 1-4661 and 1 fase. B ("Denouement" = part 111) (467-8421 (18 chapters in all). 2) T. 11 (Chronological): 2 fases, anthological and chronological: A: sources (Fathers, Doctors and Magisterium) (843-1438) and B: documents (appendices, notably a calendar of the genesis of *DH*) (1439-1868). 3) T. 111 (Alphabetical): A: table of abbreviations and bibliography (3000 studies, 2450 consulted, 900 cited) (1869-2418); B: *index rerum et nominum* (2421-2959) (34000 entries). Finally 9000 footnotes. Reviews : JOBLIN Joseph, S.J., *Greg*, 80 (1999) IV, 770-771; *Archivo Teológico Granadino* 62 (1999), 293-295; *CivCat*, 2000,97-99; *Sabnant*, 2000/47, 190-192; *Laval philosophique et théologique*, 56,3 (October 2000), 565; LE TOURNEAU Dominique, *IusCan*, 2001,754-760.

⁷ Thus the doctrine on tolerance of Leo XIII is found in the section on this pontiff, and not in the chapter on tolerance, etc.

¹¹ Cf. FUENMAYOR. 1974,16.

13 On this distinction, cf. 2^o2, q. 57, a. 2.

14 0933. VATICAN II, 1965.12.07: Declaration *Dignitads Humana-*, on the right of the person and of communities to social and civil freedom in religious matters; orig. lut. *OR*, 1965.12.11.3-4; *AAS*, 1966.929 946; Sv. *OEC. CONC. VAT.11*, 509-540 (official ed. with, p. 515, note 3 referring to s. THOMAS D'AQUIN; p. 516. in Tin note 4, another reference to s. THOMAS; unless otherwise indicated, these two references are absent from the unofficial editions of the Council and from the translations: they are provided by the official (or semi-official) editions in Latin after Dec. 7, 1965, notes 3 & 4 [cf. e.g. *AS*. 1V/V11, 671, or *EV* 01, p. 582 & 5841. but absent from the booklet distributed to the Council Fathers in view of the vote of promulgation; finally, p. 526, in *DH* 11, one reads: "Sicut Magister ita et Apostoli auctoritatem legitimit civilem agnoverunt: "Non est enim potestas nisi a Deo" docet Apostolus, qui exinde iubet: "Omnia anima potestatibus sublimioribus subdita sit"^m": unless otherwise indicated, the passage put by us in italics is missing in the unofficial editions, lat. or trans. We do not know why); - Latin-French: *Centurion-VATICAN H*, 670-690: reed. 1985. SUC translation, revised by the DC. Incomplete as indicated above. Bayard reissue, 2002 (THEOBALD Chr.) slightly better; AA. Vv., *Unam Sanctam*, 60, p. 16-43: "*societatum*" was incorrectly rendered as "associations"; *NRTh*. 1966. 68-84 (in *DH* 1. § 3: "*societatum*" was correctly rendered in *NRTh* as "societies"; ALBERIGO, 1994, 2^o, 2030-2051: the best ed. laL-franc: complete notes 3 & 4: p. 2033, "*societatum*" correctly translated "societies"; *DH* H. § 2 complete in lat. and franç.; - iranç. alone: *DPPauVI* 4 (1964-1965). 433-445: transl. of the SUC, with the defects already mentioned; *Cerf-VATICANH*, 1.111, 172-190: defects of the SUC, but *DH* 11 complete; *Conciliar Documents*, 3, 351-372: badly translated "*societatum*"; *DC*. 1966, 97-110; *Papal Discourses and Roman Chronicle*, n° 168 (April 1966): *VATICAN H. Council IV^o session*, 279-288; all translations taken from *VORLF*. thus that of the SUC. with the defects already cited (p. 280); *VATICAN H. The Sixteen Conciliar Documents. Full text*. Montreal-Paris. Hdes" 1967", [671 p.] 555-570: transl. of the SUC, but notes completed in this 2^o ed. Unfortunately *DH* I. § 3 has maintained "associations" for "*societatum*". On the other hand, the translation of *DH* 11, § 2 includes the whole passage of *Rom* 13, 1-2; *Cahiers d'action religieuse et*

sociale, Paris, Ceras, n°430 (01.05.1966) (special on the RL), p. 325-349: transl. SUC...; - lat.-allem. PAVAN Pietro, *Declaratio de libertate religiosa / Erklärung über die Religionsfreiheit*, in *LThK²*, *Das Zweite Vatikanische Konzil... Dokumente u. Kommentare*, 2 (1967). Freiburg, Herder, 703-748: translates "*societatum*" well by "*der Gesellschaften*" (p. 1): notes 3 *SL* 4 complete; *DH* 11, §2 complete; - lal-ang.; TANNER-ALBERIGO. 2, 1001-1011: complete notes; "*societatum*" = "*and societies*"; * *waits...* "from *DHfs*. §3 - "*in view of particular demographic conditions*" (tendentious). *DH* II, §2 is complete (orig. & trans.). - FLANNERY, 799-812; notes incomplete; but: "*societies*"; ABBOTT" 672-700 mixes notes from official text (in italics) with Fr. MURRAY's annotations (in

²³ LALANDE, art. Law, 252.

³ Cf. DELOS, 1948, 231. We also say "matter of law". Cf. MEYER, Th.. 1 (1885). 370, n°465; CATHREIN, 1932, 208, § 284; and 210. § 287.

³² Cf. 0268. THOMAS OF AQUIN, s., 2-2,57,1, *sed contra*; or 0269-2,57, 1, c (end).

³³ Cf. PERRIER, 54-55, and LEHEN, 1.1,322, § 208; ARCY, 1964,133-134, citing DELOS, 1948.

³⁸ Law is called "law" by metaphor. In modern language, we say "objective law" (with the possible addition of "abstract") or legislation; in scholastic language, rather "normative law". Cf. MERKELBACH, no. 149.

⁴⁰ MERKELBACH, no. 152. N.B. All translations of MERKELBACH are our own.

⁴² See DELOS, 1948,232 and GEWIRTH, 1982,2.

⁴⁴ On objective and subjective law, cf. DABIN, 1953,14;SOT1LLO, 1958.9.

⁴⁶ MERKELBACH, No. 150.

⁶⁰ But JACQUEMET, 1952a, 1093 '*revealed divine right and natural right*.

⁶¹ For the study of the hierarchy of natural rights, see HERVADA, 1990, 86 and JACQUEMET, 1952a, 1098-1099.

⁶⁴ Still taken thus and opposed to the moral faculty by JOHNSTON, 1981, 496-498 (cf. also art. "Diritto", in BATTAGLIA. IV (1966-1967), 547, sense 2).

⁶⁵ Cf. VERMEERSCH, 1901,6, notes 1 and 7. For the *real* definition of the right, cf. HERVADA, 1990,31,33, etc.

⁷¹ Our translation of MEYER, Th., I (1885), 380-381. Cf. also FOURNERET, 1910, 1832 and GIRERD, 1925.938

⁷⁴ Different division in DABIN Jean. art. Law. A. Theory and philosophy". in *Encyclopaedia Universalis*. Paris, t. VI (1985), 413-424. Cf. also art. "Droit", in *Grand Robert*, 111 (1985²), 676-680, especially 676-677; LALANDE, art. "Droit", 250-253.

⁷⁵ Bare ownership, use, usufruct: it does not matter here.

⁷⁶ Example: God's permission to pray in the privacy of one's room.

¹⁵ -0634. SCSO, 1907.07.03: (S. CONGR. S. R. ET U. 1NQUISITIONIS). *Lamentabili* decree; condemning modernist proposals; ASS 40 (1907). 470-478; BP 111 (1907). 224-237; here prop. 20-26, *DzSchHü* 3420-3426.

¹¹⁴ *Ibid*, prop. 58-66; *DzSchHü* 3458-3466. See also the passage on dogmatic evolutionism in 0635. PIEX, s., 1907.09.08: Encycl. *Pascendi Dominici gregis*; *Acta Pii X* 4, 47-114; ASS 40 (1907), 593-650; *CIC Fontes*3, no. 680,690-724; BP III. 84-177 (here: *DzSchHü* 3493).

¹²⁶ *Ecclesia Dei*, 4 & 5a; DC. 788.

¹³⁰ The original. *An Essay on the Development of Christian Doctrine*, first appeared in 1845, immediately after the conversion of Newman, who revised it quite thoroughly in 1878: it is on this revision that the translation read by us is made: *Essay on the development of your Christian doctrine*, trans. GÉRARD Luce, introd. WALGRAVE J. H., O.P., Paris, Centurion, coli. *L'Eglise en son temps*, 1964, 435 p.

¹³¹ Cf. MARIN-SOLA, *op. cit.* 310: "He is the modern theologian who had the clearest vision of the existence of dogmatic progress"; and he was praised by P1EX, s., 1908.03.10: Letter *Tuum illud opusculum*, to the Bishop of Limerick: "Profecto in tanta lucubrationum ejus (Newman) copia, quidpiam reperiri potest, quod ab usitata theologorum ratione alienum videatur; nihil potest quod de ipsius fide suspicionem afferat."

¹³² See ID, *Essay*, cit, p. 203.

^{1.34} Cf. p. 221: "developments that are announced by specific clues make us presume that they are true."

¹³⁵ Cf. P- 221: "corruption in a development occurs at the very moment when a development ceases to illustrate, and begins to disrupt the acquisitions of the preceding period."

¹³⁶ The famous cardinal had taken care to summarize himself in *Apologia pro vita sua*. ch. V, part 1, quoted by JOURNET, 1954,56.

¹³⁹ Cf. remarkable criticisms in the mimeographed course on *Faith* by Fr. M.-M. LABOURDCTTE (1959-1960).

¹⁵¹ CONGAR, 1976,51 is often quoted: "It cannot be denied that such a text [*DH*] says *materially* something other than the *Syllabus* of 1864 and even more or less the opposite of propositions 15,77 to 79 of this document." However, "materially other...and even about the opposite" is not: "radically the opposite." Later, CONGAR, 1984,85 will go so far as to imprudently affirm the contradiction between PIE IX and *DH*. CONGAR. 1989, 343 will go back, praising Fr. L.-M. de BLIGNIÈRES because he: "(...) had shown that the liberties condemned by the *Syllabus* of P1EIX (1864) are aimed at something other than the religious liberty affirmed by the declaration of VATICAN II *Dignitatis humana: persona*: and therefore is (sic) not contrary to it."

- p. 255, a *mixture of continuity and discontinuity*). Let us also note an ex-Catholic: GUMINSKI Arnold T., *Contra Harrison in Re Libertate Religiosa: On the Meaning of Dignitatis Humana*; F & Reason XXVI/1 (Spring, 2001), 39-83.
- ¹⁶² JOHN PAUL II, 1988.04.08: *Lectre In questo periodo liturgico*, to Card. Joseph RATZINGER; AAS. 1123; *Fideliter*, no. 63 (May-June 1988), 3.
- *Baltasar Pérez ARGOS, SJ-, in his various articles, rightly considers that the affirmation of discontinuity may well be "interested", for example among the "dissenters". Abbé BELMONT, in his preface to LUCIEN, 1990, evokes a possible "bluff" of Hans KUNG on this subject. This is said in opposition, for example, to LASSUS, 1994.02.
- ¹⁶⁴ CL BARTHE, on p. 45 of the review by GONNET that follows BARTHE, 1994.06.
- 170 0944. PAUL VI, 1966.09.21: Letter to Card. Giuseppe PIZZARDO, Prefect of the Sacred Congregation of Seminaries and Universities, on the International Congress on the Theology of the Second Vatican Council; AAS, 879; DC, 1732. Refers to 0817. JOHN XXIII, 1962.10.11: Alloc. *Gaudet Mater Ecclesia*; AAS, 786; DC, 1377, which expressly manifested the desire to maintain the previous doctrine in its entirety, just as for example 1165. SYNOD OF BISHOPS, 1985.12.07, *Final Report: Exeunte coetu secundo*-, *The Church, under the Word of God, celebrating the mysteries of Christ for the salvation of the world*; § 5; EV 09, no. 1785, b; DC, 1986.37.
- ⁷ *-. 1003. PAUL VI, 1976.12.20: to the Sacred College; AAS. 1977.37-46; DC. 1977.51-55.
- ¹⁷² Cf. SEPER Franjo, Card. Prefect of the SCDF): - 1978.01.28: *Letter to bf LEFEBVRE* of January 28, 1978 (SCDF. Prot. N. 1144/69); *Itinéraires*. n° 233 (May 1979), 13-14.
- *73 Here is a sample: AA. Vv., *LR-Comillas*; COSTE, 1988.09.01-08; COTTIER, 1964.07-10: and COTTIER, 1965.04 (esp. 446); DIEZ-ALEGRÍA, 1965; DUPONT Philippe, 1989/1988.11-12; ESTRADA, 1972; FUENMAYOR, 1974; GILLON, 1966; GRELOT, 1987; JIMÉNEZ-URRESTI, 1966.10; & 1968; LECLERCQ Jacques, 1963; LOMBARDÍA, 1991a, 834-839; MADELIN, 1975; MARGERIE, 1988a; 1988b; 1990a; MARSHNER, 1983; MARTÍN-MARTÍNEZ, 1989; MOST, 1979 and 1983; MOSTAZA-RODRÍGUEZ, 1974; NICOLÁU, 1970; OCÁRIZ, 1989.06; ONORIO, 1991a; SESBOUÉ, 1986.10; STORCK. 1989; UTZ, 1990.
- *76 MEINVIELLE, 1966.
- *77 RODRÍGUEZ, Victorino, O.P., 1966.04-06. One of the most vigorous opponents of the thesis of the RL as held by some before the Council (cf. e. g. RODRÍGUEZ, Victorino, O.P., 1964).
- 178 LUCIEN, 1992.03.14, where our friend retracts his idea that DU would contradict QC by recognizing that the popes of the XIXth had condemned the freedom to act as *one wishes*, not according to *one's conscience*.
- *79 Cf. BLIGNIÈRES. 1983; 1984; 1987.12; 1988.01; 1988.05; 1988.06.
- *** SAINT-LAUMER, 1987.12. Answers to this pamphlet s. v. LUCIEN; HIRPINUS; MARTIN Michel; and PIVERT, 1988.02/03-04; for "answers to these answers", see s. v.: SAINT-LAUMER, 1988.05; BLIGNIÈRES, 1988.05; SAINT-LAUMER, 1988.06: 1D. 1992.04.564-567 and 567-569; 1D" 1993.01-03;eIID" 1993.02.
- *** HARRISON, 1988.01; 1988b; 1989.05; 1990; 1993.01; 1993.05 (HARRISON questions not the *substance* of DH's teaching, but what DH fails to say, and its *application*); and finally HARRISON, 1994.06.
- ²¹-* CDF, 1998.06.29: *Doctrinal note illustrating the concluding formula of the "Professio fidei"*; orig. lai. Æ4S. 1998" 544-551; French translation: DC, 653-655. On the mode of papal approval of this document, cf. ERRAZURIZ M. Carlos J., *Unità e tipologia del magistero nella Chiesa: rilevanza giuridico-canonica, lus Ecclesiae* 11/2 (maggio- agosto 1999), (427-445), note 11, p. 429.
- 221 DzSchHü30ll
- 222/one includes the other: the College of Bishops united to the Pope contains the Pope.
- 224 cf. in *Pastor tetemus*, 4: "doctrinam... tenendam... defines", and in LG 25: "doctrinam... definitivo actu proclamai".
- ²²³ For some, it will always be impossible for them to be declared revealed by God himself: these are the Revelation they are called "dogmatic facts"; their connection is "de facto"; as they concern facts posterior to the divine Revelation, they cannot be part of it. They are truths of a historical order (such as Some of them are in the same category as the others (e.g., such and such a council is ecumenical, such and such a pope is a pope, such and such a heretical doctrine is in such and such a book, such and such a group is schismatic, etc.). Others, on the other hand, may one day be part of it. For this to happen, they must have at least a logical connection, i.e., a legal connection, with the formally revealed fact, or they must be facts that can belong to Revelation, and therefore predate the death of the last of the apostles.
- 226 Cf. CDF. 1998.06.29.,
- 230 cf. CDF. 1998.06.29, § 9: AAS, 1998. 547-548; DC, 655: "When the Roman Pontiff, by a declaration, *confirms* or *reaffirms* it, he does not accomplish a new act which raises this truth to the rank of dogma, but he formally attests that it is already the property of the Church and infallibly transmitted by her."
- 231 Cf. C/17, can. 1323: CCEO can. 597. We propose a correction of the translation.
- 232 In italics, the French months added in 1998. The Latin words are from the typical 1997 edition, p. 32. The 1992 statement implied that "related truths" would also be *believed* by "adherence" of faith. But 1° even so, it was not clear whether it was a question of *divine* or *ecclesiastical* faith, of *fuit credenda* or *fide tenenda*; 2° in 1997/1998, if the *type* of adherence is not specified, the correction goes in the direction of the *Doctrinal Note* of 1998, where the *interpretation*

(cf. e.g. NEVEU, 2001) where it would be a question of *divine faith directly is rejected*.

234 ^{est} point minimized, especially for "dogmatic facts", by CHIRON, 1999.

235 Ref. in note 213.

239 Latin origin: DC, 1989.378. Translation: DC, 1998.654. The "I also believe" therefore concerns *dogmas of faith*, a homogeneous development from the *articles of faith*, carried out by the magisterium. The text applies the paragraph *Porro fide divina of Dei Filius (DzSchHü 3011)*.

240 *DzSchHü 3011* is recognized. Cf. already 0514. PIUS IX, 1863.12.21 : Apostolic letter. *Tuas libenter*, to the Archbishop of Munich-Freising; *Acta Pii IX* 03.636-645; *DzSchHü*, 2879-2880. Cf. also BOYLE, 1979.395.

248 Here the note refers to the whole *Motu proprio Ad tuendam fidem*.

249 CDF, 1998.06.29, § 6-7: AAS, 1998.546-547; DC, 654. Original emphasis.

²⁵⁰ Cf. also can. 1371, § 1, also modified by *Ad tuendam fidem* (see note 218), which asks that one punish of a just penalty for the offenders, bringing them closer to the offenders in can. 752.

²³¹ JOHN PAUL II, between 1978 and 1995, referred to the "magisterium" in 1049 documents, the "ordinary magisterium" in 14, the "infallible" in 18. N. B. Often, it speaks of "authentic and perennial magisterium". He dedicated three general audiences to the Petrine Magisterium: 1217/A. JOHN PAUL II, 1993.03.10: General Audience; *IGPII/16/1* (1993), 592-603; DC. 1993.355 ; 1217/B. JOHN PAUL II, 1993.03.17: General Audience; *IGPII/16/1* (1993), 636-646; DC. 356-357; 1217/C. JOHN PAUL II, 1993.03.24: General Audience; *IGPII/16/1* (1993), 734-746; DC. 410. He returns to this in the context of ecumenism with the separated Orientals: 1223. bis. JOHN PAUL II, 1995.05.25: Encyclical Letter *Ut unum sint*, 3 b, 8 b, 17, 18, 32 (LR) and 94 (magisterium); AAS. 921 982; DC, 0567-0597, here § 94. He spoke of this again in the *plenaria* of the CDF on the freedom of theological research: I224/D. JOHN PAUL II, 1995.11.24.; CD-ROM, *IGPII*. 1995; French translation: DC. 1996, 14-16; *ORLF*, 1996.01.30, 5, especially § 5 and § 6, where it is a question of underlining the value of the non-definitive acts of the universal ordinary magisterium and of the confirmation of the latter by non-definitive acts of the pope. He also has the CDF teach doctrine.

²³⁴ CDF. 1998.06.29. § 8: AAS. 1998.547; here: DC. 655.

²⁵⁵ "Singular error", says JACQUEMET, 1934. *You are Petrus*, 44.

258 i [50, JOHN PAUL II, 1983.01.25: *CIC* 83, can. 752 (on the origin of this canon, the most fundamental work:

MARTÍNEZ Pedro Daniel, 1992).

271 Cf. 061132 Leo XIII, 1885.11.01: Encycl. *Iminorale Del m. Acta Leonis XIII* 05. 144-145 = ASS 18, 176 = BP 02,46.

²⁷² 0618 (here 0618.5 [a] [b] [c]). Leo XIII, 1890.01.10: Encycl. *Sapientii: christiane*; *Acta Leonis XIII* 10 (1890), 10-41 (here 26-27); ASS 22 (1889-1890). 385-404 (here 395); ed. LEON X11-DDB. 4 (1894), 6-27; *CIC Fontes* 3, no. 605,325-340; BP 02,262-297 (here 280).

2900999. bis. PAUL VI, 1976.10.11: Letter *Cum Te*, to M^{re} Marcel LEFEBVRE; *IPVI*. 816-817; DC, 1058-1059.

²⁹³+1170. SCDF, 1987.02.22: Instruction *Donumvita*; AAS. 1988,70-102; DC. 1987,360.

²⁹³ Latin origin: AAS, 1989, 105 = DC. 1989, 378: "Insuper religioso voluntatis et intellectus obsequio doctrinis adhæreo quas sive Romanus Pontifex sive Collegium episcoporum enuntiant cum Magisterium authenticum exercent etsi non definitivo actu easdem proclamare intendant."; French translation: DC. 1998,655.

²⁹⁸ 1199: §18: AAS. 1990, 1558; DC. 696; note 18 refers here to *CIC93*, can. 360-361; PAULVI, 1967.08.15: Const. *Regimini Ecclesie*: no. 29-40; AAS, 1967,897-899; JOHN PAUL II, 1988.06.28: Apost. *Pastor Bonus*, 48-55; AAS, 1988, 873-874. N. B. The distinction "*in forma specifiâ*" / "*in forma comment*" applies to all acts of the power of government (administrative, judicial, and disciplinary) of all the Roman Dicasteries, since it means the exclusion or possibility of recourse, but never to acts of the power of teaching or sanctification. Declarations, Instructions. Notes, Letters, Notifications, Replies to *dubia*. Doctrinal Decrees of the CDF are acts not of mere government but of the magisterium, and do not need any approval "*in specific form*" (without which they would not even be magisterial) to fall within the magisterium of the pope. *Expreste* therefore does not mean "*in forma specifica*" but is opposed to "*tacite*", and does not seem to require (at least from a theological point of view) that papal approval be explicitly mentioned in the published text (although from a canonical point of view this may be desirable, to avoid any discussion, as we have seen with the *Professio fidei* itself). The Regulations of the Roman Curia, in art. 115, require that all documents made *public* by the Roman Dicasteries be approved by the Pope and that all documents on important matters be shown to him.

³⁰⁰ Except for the *dissenters*, of course. See BEITI, 1987.

³⁰⁶ FRANZEUN, 1882, th. 12, scholion I, p. 127.

³⁰⁷ Contrary to what we wrote in 1998, this type of magisterium does *not* belong to what Cardinal JOURNET, 1987 called "canonical power" in speculative matters, but to what he called "declarative power".

^{30K}Cf. FRANZEUN, 1882, 128-129. Cf. the various degrees of magisterium distinguished by SALAVERRI, 1955, 112-116.

³¹³ LUCIAN, 1994,75-76. On this decantation, cf. 1199, n° 24. Cf. in LRTC, the texts of DUBLANCHY, 1911, 2208-2209 and BILLOT, 1921,1.445; cf. also BARBERENA, 1967,538.

³¹⁴ Latin Orig.: DC. 1989,379.

317 JOHN PAUL II, in 1998, with the Motu proprio *Ad Apostolos suos*, specified under what conditions.

³¹⁹ We have only touched on the infallibility of the *sensus/idei* of the universality of the faithful under the guidance of the magisterium. On this subject, cf. the recent article by the specialist VITALI Dario, "Sensus *Jidelium*" e opinione pubblica nella Chiesa. in *Greg 82/4* (2001), 689-717, with bibliography, as well as 0988, 2; *DzSclHii* 4531 4533; CEC 84; 91; 92; 889.

³²⁴ In this abridged edition, we give only the main texts used in our "positive theology" section. Of the others we provide only the references (in bold).

325 main frescoes: DÍEZ-ALEGRÍA, 1965, p.70ff; AUGUSTIN. Pius, 1966; VERA-URBANO, 1971; 1975; 1983; 1987 a and b; 1988; 1989.

326 Cf. AUGUSTIN, Pius, 1966.34.

33^a 0004. TERTULUEN, *ibid*, 6. 61.

339 0005. TERTULUEN, *Ad Scapulam*, cap. 2; CCSL 002 (1954), 1127; PL 001 (1878), 777 (former no. 699). Trad. LECLER, 1955, 1,67, which we complete in brackets. [For the last argument cf. already 0004.). * We have restored "thinks" instead of "wants", because "putaverit" is not "voluerit", which is a crucial point in our debate.

³⁴⁰ 0006. ORIGEN, *Against Celsus*. VII, 26; Greek + translation: intro. crit. text, and notes: BORRER Marcel. SJ.. Paris, Cerf, 1967-1976, 5 vols (*SChr* 132; 136; 147; 150; 227). Here: *SChr* 150 (1969), 73. For the scope of the text, see LECLER, 1955, 1,70.

³⁴- 0007. CYPRIAN, s. 0249: *Epist.* IV, 4,2-3; - lat.: CCSL 003B (1994), 24; CSEL 3/2.476^a177; here PL 004, 381-382 (Cypriani 2), 381-382 (ancient 371 A): - lat.-french: CYPRIAN (saint). *Correspondence*, crit. ed. and trans. BAYARD, Chanoine, 1925, 2 vols (coll. Budé) (here p. 11-12).

³⁴ *Ibid.*y, 20,8. Cf. his predecessors.

347 *Ibid.*, V. 21 (= V. 20,7-9): PL 006,619-620: lat. + trans.: *SChr*204, 242-243.(Our translation for the last sentence).

352 The reference to Polyucte by our anonymous FSPX reviewer in *Si si, no no*, is not a serious one. The sincere ardor of some Christians is not necessarily an example to follow.

³⁵⁷Cf. ANDRÉ-VINCENT, 1976,15.

³⁵⁸ Cf. COSTE, 1969, 118: "Why was this wise edict not adhered to, the prolonged application of which would have spared humanity so many crimes and sufferings?"

³⁶⁸ *Cod. Theod.* XVI, V, 1 (ed. MOMMSEN, 1/2, 855 and LO GRASSO, n° 69). Cf. also EUSEBUS OF CAESAREA, *Vita Constantini*. III, 64-65.

³⁶⁹ Decree taken in Spoleto; *Cod. Theod.* XVI, V, 2 (ed. MOMMSEN. 1/2,855).

³⁷⁷ Cf. 0011. FIRMICUS MATERNUS, *op.eit.*, XXIX)XXVIII, 6, according to Budé); PL 012, 1015 = CSEL 2.125 (with the ref. "chapter XX VIII"); Budé, cil, 148.

³⁷⁵ SOAP, 1997.158-159.

3^{""} 0012. HILAIRE DE POITIERS, s., 355Z356. *Ad Constantium*, 1,2; our translation 1,2; lat.: PL 010.558.559.

381 0012. HILAIRE DE POITIERS, s., 355/356, *Ad Constantium*, 1,2; black transl.

³⁸³ 0012. HILARY OF POITIERS, s., 355/356, *Ad Constantium*, 1,6; black translation.

³⁸⁹ 0012. HILAIRE OF POITIERS, s., 355/356, *Ad Constantium*. 1,6; our translation.

³⁸³ 0014. ATHANASUS OF ALEXANDRIA, s., *Historia Arianorum ad Monachos*, LXV11; Greek + Latin transl.: PG 25. 773-774 A.

³⁸⁹ 0015. GRÉGOIRE DE NYSSÉ, s., *Discours De mortuis*; - Greek: J/EGER W.. HEILG. (ed.). t. IX (1967). 28-68; - for the quoted passage: Greek and Latin transl.: PG 46.523-524 A-B. Note the connection between dignity and the use of psychological freedom, whatever it may be.

⁴⁰¹ PAULIN OF MILAN, *op. cù.* § 26,88-89 (our translation). On these disputes, cf. also SAVON, 1997, chapter XIV: *Ambrose against Symmachus*, 167-180.

" 3. Ergo cum a te, Imperator christianissime, fides Deo vero sit exhibenda, cum ipsius fidei studium, cautio atque devotio, miror quomodo aliquibus in spem venerit, quod debeas aras diis gentium tuo instaurare præcepto, ad usus quoque sacrificiorum profanorum præbere sumptum; quod enim jamdudum vel fisco vel arcs est vindicatum, de tuo magis conferre videbere, quam de suo reddere. "

⁴⁰⁵ No. 5 believes that if the pagan privileges had not already been removed, they should be removed.

"Invitum non cogitis colere, quod nolit; hoc idem vobis liceat. Imperator, et unusquisque patienter ferat, si non extorqueat imperatori, quod moleste ferret, si ei extorquere cuperet imperator." This principle was already reminded to Gratian in the *De Eide*, lib. 11, cap. XI, n° 89. t. II, p. 488 (ed. of the Maurists). applied to the case of the Arians. Cf. BAUNARD, 1899,89-90: "Let us exercise moral action only on our brothers. Let us try to convince them of their true interests, then "let us cry before the Lord who made us"; for it is not a question of crushing these men, it is a question of healing them.

⁴⁰⁸ " 11. (...) Et miramur tamen si privatis resistendi Romæ eripiunt libertatem, qui nolunt esse liberum tibi non jubere, quod non probas; servare, quod sentis."

⁴⁰⁹ Here is the end: "Privilegia tua sacrais Deo virgines non habent, et vindicant virgines Vesta?"

⁴¹⁰ "insultarent gentiles presentibus Christianis, et inviti Christiani interessé sacrificiis cogentur". and the rest.

⁴¹² PAULIN OF MILAN, *op. cit.* § 26 (our translation). The incidents concerning the altar of Victory resumed under the emperor Flavius Eugenius (proclaimed in 392), at the request of Nicomachus Flavianus. Hence a letter of Ambrose to the new emperor, Ep. 57 (§5 7 and 11). Cf. *ibid.* § 27, with the notes of M. PELLEGRINO. To complete this picture, one can mention the various imperial anti-pagan laws of *Cod. Theod.* XVI, x : *De pæanis, sacrificiis et templis*, ed. MOMMSEN. 1/2, 897-905.

^{4..-} PALANQUE, 1933, 364.

⁴¹⁵ Cf. LABRIOLLE, 1914. 1094-1096 and SAVON, 1997, 193-208 + 209-222.

⁴¹⁷ Details in BAUNARD, 1899, 217-232.

⁴¹⁸ LABRIOLLE, 1914, 1095. Source: 0019. AMBROSIUS of MILAN, s., 0386: *Epistola* 21 [ordo genuinus: Ep. LXXV], *ad Valentinianum Imp.* ; PL 016 (1845), 1005 (quoted by DH, note 8) = PL 016 (1880), 1045-1062, here 1045: §§ 11, 12. See also PALANQUE. 1939, 507-509.

⁴²⁰ Cf. 0019. AMBROSIUS, 386: Ep. 21. It is in n° 36 of this letter, nicknamed "Sermon against Auxence" (PL 016 (1880), 1049) that we read the famous sentence: "Imperator enim intra Ecclesiam, non supra Ecclesiam est; bonus enim imperator quærit auxilium Ecclesiæ, non refutat."

⁴²¹ 0016. AMBROISE of MILAN, s., *Epistola* 12 [Extra collectionem 6: *Maurists and PL*: 12]: to GRATIAN. VALENTINIAN H and THEODOSIS I", CSEL 82/3 (1982), 186-188; PL 016 (1880), 987-990 = (1845). 947-949; PL 016, 987-988, n° 1 : "Nam cum post inulta tempora [pericula?], et persecutiones varias, quas Catholicis intulerunt Atiani, maximeque vel Lucius ille monachorum et virginum impia cæde grassatus, sed etiam Deinophilus dirum peridiæ caput, omnes Ecclesiæ Dei, maxime quæ per Orientem, Catholicis restitutæ sint: [...] quis est qui putet se gratiarum vestrarum fore idoneum relatorem T (...)"; PL 016, 988, n° 3: "[...] In Orientalibus autem partibus cognovimus quidem summo gaudio atque lanitia, ejectis Arianis qui ecclesias violenter invaserant, sacra Dei templa per solos catholicos frequentari." How can we blame him for denying a basilica to these "separated brothers"?

However, PALANQUE, 1933, 369, remarks: "But if the adversaries of Ambrose are not sincere 'liberals', he himself cannot be considered as such: he never suggests the ingenious solution which would have avoided any conflict (to let the Arians build their own church) (...) had it been proposed, it would probably not have met with his approval, because it was clearly contradicted by the edict of 380 which suppressed the freedom of assembly for heretics." On the other hand, letter 10 (col. 980-984) concerns the use of force to enforce the decisions of a council against heretics. See also PALANQUE, 1933, 78-104; *Gesta Conclii Aquileiensis*, PL 015, 916 and *Cod. Theod.* XVI, 5, 11.12.13.

⁴³⁷ As BAUNARD, 1899, 314, note 1, remarks: "It seems that on this point, ecclesiastical discipline was not unanimous in the IV^e century, and we see Saint Augustine having a statue of Hercules, broken illegally in the small town of Suffectæ, recast and returned to the pagans" (etc.).

⁴³⁸ Was the "if" realized? This is an underbelly of the affair which is poorly known, and it is therefore difficult, in this ignorance of the *antecedent* circumstances, to pronounce an objective judgement if not on the incident, inadmissible in any case, at least on the question of reparations. AMBROISE, prudently, refers rather to a lack

⁴¹⁹ 0020/B. AMBROISE. 0388 : Ep. 40. PL 016 (1880), 1148 ff. or 1101-1113 (1845 edition). We have been rightly reproached for not having quoted this *Letter* 40 in our 2nd edition. It is because we did not know it. But it does not call into question our thesis; on the contrary, it supports it.

⁴⁴¹ HADOT, *op. cit.* *ibid.*

⁴⁴³ " 14. Non est ergo causa tantæ commotioni idonea ; ut propter aedificii exustionem in populum tam severe vindicaretur: multo autem minus quia synagoga incensa est, perfidiæ locus, impietatis domus, amentix receptaculum, quod Deus damnavit ipse."

⁴⁴⁷ The remark had been made, independently of our work, in PIZZOLATO, 1997, 149, who adds: "Ad analogo principio Ambrogio aveva fatto ricorso a proposito dei decreti di Graziano che confiscarono i beni fondiari dei templi pagani".

⁴⁴ Cf. 0021. AMBROSIUS of MILAN, s., 0388: *Epistola* 41 (extra collectionem, 1) to his sister; CSEL 82/3 (1982). 145-161; PL 016 (1845), 1113-1121 = (1880), 1160-1169, 1; PL 016 (1880), 1113: "n" I. (...) Nam cum relatum esset synagogam ludæorum incensam a Christianis auctore episcopo et Valentinianorum conventiculum, iussum erat me Aquileiæ posito, ut synagoga ab episcopo rædificaretur. vindicaretur in monachos qui incendissent ædificium Valentinianorum. Tunc ego cum sæpius agendo parum proficerem, et epistolam dedi imperatori quam simul misi et ubi processit ad ecclesiam hunc sennonem habui: [...]." Amb. then copies his letter and tells his interview with the emperor. The account of the interview between the bishop and the emperor is translated by LABRIOLLE, 1947, 1, 395 and PALANQUE, 1939, 511. It is also narrated by PAULIN OF MILAN, *cit.* §23, and by HERMANT, *cit.* pp. 353-356.

⁴⁴⁹ PALANQUE, 1933, 370. For more details, cf. PALANQUE, 1939, 505-512.

⁴⁵⁰ PIZZOLATO, 1997, 155 (our translation).

⁴⁵¹ 0022. OPTAT DE MILEVE. s. ±0366: *Contra Parmenianum donatistam = De schismate Donatistarum* (The original seems not to have had a title; cf. MONCEAUX, VI [1920; reprint 19631, 248]. Ed: PL 011, 883; CSEL 26; lat. * franç.: *Traité contre les Donatistes*; l: Livres 1-11; 11: L. 111-VII, text crit. trans., notes & index: LABROUSSE Mireille, Paris,

Cerf, 1995-1996, 268 + 309 p. (SChr 412-413). We refer here to 3,3; PL 011, 999; trans. MONCEAUX, VI, 289-290. Other translation: SChr 413,23 (with the ref. 3,5 and not 3,3).

464 0030. We give only one translation, generally taken from the ed. PÉRONNE, VINCENT. & AL. (ed. and trans.). *Œuvres complètes* [lat.-franç.] de saint Augustin, évêque d'Hippone, Paris, Vivès. Paris, Vivès, 1870, 32 volumes (in abbreviated form: "éd. Vivès"). For the Latin orig." besides PL, we have consulted: I. *Opéra omnia*, Paris, Gaume, 22 vols; 11. CSEL: A) *Epistulae*, ed. GOLDBACHER A., t. 34; 44; 57; 58; B) Other works: t. 25; 40; 41; 51-53; 57-58; 111. *Œuvres complètes* [franç. only], trans. Poujoulat and Raulx, Bar le Duc. Guérin, 1865, 17 vols. (cited as "POUJOLAT-RAULX"); IV. *Bibliothèque Augustinienne* (abbreviation: BA), Paris, DDB, then (1987) *Études Augustiniennes*; V. For the antidonatist works in particular: lat. only: CSEL 51-53; lat. + franç.: BA 28-32; VI. For the chronology: MONCEAUX, VII, verified - and confirmed in general - by the ed. Città Nuova, i.e.: *Opéra omnia di Sam'Agostino. Nuova Biblioteca Agostiniana, Città Nuova Editrice*, Roma, Città Nuova. 1969..., 34 t. in 43 vols. ; LA BONNARDIÈRE Anne-Marie, *Recherches de chronologie augustiniennes*, Paris, Études Augustiniennes, 1965, 190 p.

465 Cf. PALANQUE. 1939,41-52. Details: MONCEAUX, IV-VII.

⁴⁷² Date of the law of THEODOSIS against heresy.

478 Members of a kind of "disorderly conduct service" with clubs.

⁴⁸⁸ COMBES, 1927,334.

498 0043. *Ibid.*, 1.16 [e].

⁴⁹⁰ *Ibid.*, 1.16 [f].

⁵⁰¹ 0043. *Ibid.*, 1, (xi), 17 [a]; CSEL 51,38-39; />E043, 46; BA 28, 250-253; POUJOLAT-RAULX, 15 (1870), 17.

⁵⁰² 0043. *Ibid.*, 1.17 [b],

500 0046. ID. 0401: *Contra litteras Petillant libri 1res*, Lib. II, cap. 83, 183-184: CSEL 52 (1909), 112-113; PL 043.315; cf. C. 23. q. 5. c. 33 (ed. FRIEDBERG, 1,939) (quoted by DH, note 8); BA 30,442*143; POUJOLAT-RAULX, 15 (1870), 251. The rest of the lexicon shows that if the Donatiles no longer coerce, it is only because they no longer have the public force.

S" 0046. Lib. H, 84,186 : PL 043.317-318 ; BA 30,450-453 ; franç : POUJOLAT-RAULX.

51" 0046. He, cap. 83,183-184.

5< > 0046. II. cap. 83.183-184. Cf. AUGUSTIN, Pi us, 1966,79.

³¹⁷ 0048. III, xliii, 47; CSEL 52, 453-455; Pi 043, 521-522; BA 31, 362-365; POUJOLAT-RAULX, 15 (1870), 420-421. See also 0048. 111. xlv, 49; CSEL 52, 455-456; PL 043, 522-523; BA 31, 368-371; POUJOLAT-RAULX, 15 (1870), 421; "...immediately they unleashed all the violence and cruelties of the Circumcellions to divert us from preaching the Catholic truth, and you may rest assured that they left no stone unturned to prevent us by terror from exposing their deceit and lies. (...)"

518 0048.111, xlix, 54. Not to mention the Donatist mania for suicide. CSEL Si, 461-462; PL 043,526; BA 31,382 383; POUJOLAT-RAULX, 15(1870),424.

519 0048.111,1,55; CSEL 52,462; PL 043.526; BA 31,384-385; POUJOLAT-RAULX, 15(1870), 424.

520 0048. 111, li, 56; CSEL 52.462; Pi 043, 527; BA 31, 384-387; POUJOLAT-RAULX, 15 (1870), 424 (with the example of Nebuchadnezzar).

522 0049.1D.. 0405 / 0411: *Letter 87,7-8-9.* to Emeritus, Donatist bishop (here n° 7, who quotes again *Rom 13,2*); CSEL 34,400-404; PL 033.299-301.

523 0050. [D-, 406 / 411: *Letter 88*, 1.6-9.12. of the Catholic clerics of Hippo to Janvier (Januarius), primate of the Donatist bishops of Numidia; § 1: CSEL 34.407; PL 033,302; § 6: CSEL 34.412-413; PL 033,305.

SIS0050.Letter88,8: CSEL34,414-415 -.PL033,307.

528 0051.1D., c. 406: *Letter 89,2.6,7.* to Festus, landowner; here 89,2: CSEL 34,419-420; PL 033,309 310.

531 0052.1D" around 407-408: *Letter 93*, to Vincentius (Vincent), rogatist bishop of Cartenne (here § 1) ; CSEL 34.445496 (here 445-446) and PL 033,321.

532 0052. *Letter 93.2 & 3: CSEL 34.446447; PL 033.321-322.*

533 0052. CSEL 34.447448; PL 033,322; LO URASSO, no. 48.

5" 0052. *Letter 93*, 10: CSEL 34,454-455; PL 033,325-326.

" - Cf. 0052. *Letter 93.16: CSEL34.461. Pt033.329.*

S.W 005". *Letter 105,4; CSEL 34,597-598; PL 033,397-398.*

563 0065.*Letter 173.2 -.CSEL44,640-641 = PL033,754.*

⁴0063. *Letter 173,3 ;CSEL44,641 -642 = PL033,754-755.*

570 0070.1D., around 417 (beginning) : *Letter 185*, to Bonifatius (Boniface), comes Africa: (military tribune) = *Liber de Correctione Donatistarum*; CSEL 57 (1911), I -44; here § 7: CSEL 57,6 = PL 033,795.

51" 0070. *Letter 185.23.*

⁵⁸² 0070. *Letter 185.26; CSEL 57.25 = PL 033.805.*

⁵⁹⁴ As we have seen, capital punishment is radically excluded by Saint Augustine (Letters 100, 133, 134, 139, 185). AUGUSTIN (Letters 100, 133, 134, 139, 185). Cf. DIEZ-ALEGRÍA, 1965.75. Cf. Letters 93 and 185, and, in more detail, in

Letters 95, 100, 133, 134, 139, 153, 173. See MONACHINO, 1959.01-03.25, note 31.

⁵⁹See DORRIES, 1966/1961, 84-85.

⁶⁰⁰ But this is not a universal proposition, as Augustine himself admits - in the name of prudence - in the case of prostitution (cf. e.g. 0033.1D., 0386. *De ordine libri duo*. liber 11, cap. II, § 12 [or III, 12 according to CCSL and CSEL]; CCSL 029,114 ; PL 032,1000 ; CSEL 63, 155 ; trans. Vivès, II, p. 535.2.

⁶⁰³ 0080. CELESTIN Ist, s. (pope, 422-432), 0431: *Ep. ad Theodosium [11] Imperatorem*; PL 050,51 I,n^o 1.

⁶⁰⁹ 0081. LEON I^{er} @ LE GRAND, s., 0447: *Ep. XV ad Turribium Asturicensem episcopum* (bishop of Astorga); PL 054,679-680 (of discussed authenticity). Cf. *Clavis Patrum Latinorum*, DEKKERS E." Steenbrugis. Brugis, C. Beyært / Hagæ Comitum, M. Nijhoff, 1961, xxviii-640p" n^o 1656; PL 054, 679-680. The last part of the text seems to be quoted from the Council of Latraniv (1215). (Partial) translation by LECLER, 1955, 1, 91.

GWDUBLANCHY, 1911,2214.

612 0084. GELASE 1^{er} *, 0494: Letter *Famuli vestra: pietatis*, to emperor Anastasius I^{er} = *Ep. 12 ad Anastasium Augustum*, Chapter *Duoppe sunt*, cf. LO GRASSO(1939), 45, n^o 96; (1952), 51, n^o 108-110 (= THIEL, 1,350 353) = *PLQ59.42: RAHNER H., Church and State*, 203-207; *DzSchHü* 347. Characteristic of his clear distinction of powers, cf. ID. (under the pontificate of Felix II), 488, *Letter*, 1, 10, in THIEL, *op. cit.* 292 ff. and RAHNER H., *Église & État*, 202-203: "(...) it is to the bishops, according to the will of God, that the task of leading the Church belongs, and not to the secular power." Cf. FLIX II, s., 0484.08.01, Letter *Quoniam pietas* to Emperor Zeno, *DzSchHü* 345 on the libené of the Church, quoted by PIE IX in QC.

613 0085. GELASE 1^{er} *, 0495 : *Tomus de anathematis vinculo " Fourth treatise on the Anathema*, c. 11 : THIEL, I, 567 ss. = PL 059,108-109. Partial translation : LECLER, 1955,1,80-81 [complete : RAHNER H., *Église & État*, 2W.

614 0086. SYMMAQUE, s. (pope, 498-514), (> 0506) *Epistola /" Apologeticus] adversus Anastasium imperatorem*, § 8-9; LO GRASSO, 1952, n^o 13. 53 and 114, 54 = THIEL, 703-704. On the necessity that the emperor put himself at the service of orthodoxy, cf. also 0086. bis. HORMISDAS (pope, 514-523), 0515 (VU! Idus Iulii, A.D. 515), Ep.4, *Ad Anastasium imperatorem Augustum*; PL 063,374.

615 Cf. CHÉLINI, 1968, 29-32, who then notes, p. 33: "Among the Arian Barbarians installed in Romania, the Burgundians proved to be the least intolerant"; and JOYEUX Abbé, *La Merveilleuse Histoire de saint Césaire d'Arles*, passim.

ém 0090. : *SChr* 370 11991], 229.

625 0092. bis. GRÉGOIRE^{1er} LE GRAND, s., 0593.08: *Epistola jil*, 61 [in *PL: Ep. III*, 65] *ad Mauritium Aligned¹* .^{PL077} 662-665; CCSL 140,209-211 (here 210).

634bergier, art. "Tolerance", in t. 35 bis (1851), 791-792, 11^e. Also RUSSO Biagio, 1965, 165-166.

⁶⁴¹ ALCUIN OF YORK, 0796: *Ep. 37*, to his friend Am of Salzburg; PL 100. 194. Other edition, *MGH. Epistole. IV Uiarolim /Evi, II) Alcióni Epistola*, n^o 113,164 (ed. of E. Dummler, 1895) (Our translation.

⁶⁴² 0102. *Ep. 155* to Theophilus of Ephesus: *PG* 99, 1485-1486. Translation and commentary : VERMEERSCH, 1922,86 and 105-106 (with the context of *PG*).

[^]CHÉLINI, 1968,326.

⁶⁴⁷ CHÉUN, 1968,327, who cites the innovative legislation of Philip the Fair in 1294.

M- See JEMOLO, 1969c, 7-8.

⁶⁵⁶ We consulted GROUSSET René (t 1952). *Histoire des croisades et du royaume franc de Jérusalem*. 3 vols. 1934-1936, Paris; and read in full ID. 1939, *L'épopée des croisades*, Paris. 1939;& VILLEY, 1942.

657 HA VET, 1896,127-128.

⁶⁶⁸ 0114. GRATIAN OF BOLOGNA, 1140/1152: *Deeretur Gratiani...*; PL 187; FRIEDBERG. *I.Dicnim Gratiani*. ante c. 17, C. XX11], q. 4. Cf. CONDORELLI, 1960, 24; 64. But later, he says, p. 143, a certain power of the pope over the infidels was admitted, and such an attitude was therefore called "tolerance".

⁶⁶⁹ 0121. CLEMENT III, 1190: *Sicut lttdd; Decretale* K, V, 6,9* (FRIEDBERG, 11,774) (quoted by DH, note 8) (part of C. 9, X: *de judæis. sarraeenis et eorutn servis*, V, 6).

⁶⁷⁵ Cf. MANSI,19,849.

⁶⁷⁸ VACANDARD. 1923,2016-2017.

⁶⁸² HAVET, 1896, 152, referring to *Vita S. Bernardi*, I. VI, epist. Gaufridi. 4 in MABILLON, ed, S. *Bernardi*

⁶⁸⁸0113. BERNARD DE CLAIRVAUX, s., *De Consideratione libri quinque*. I. IV, c. 3, n. 7 = PL 182,776.

⁶⁹² Cf. 0123. bis. ALAIN DE LILLE, *Contra luereticos*, 1.1, c. XXII; PL 210.396:" De Judaris autem dicimus, quod non sunt occidenti. Si tamen laborent illis criminibus, pro quibus lex dictat hominem occidendum, judex potest eos occidere, ut in hoc deserviat legi. Similiter haeretici propter harresim non sunt occidenti, sed propter characterem Christianum quem habent ad caulam Ecclesia: reducendi sunt. Si tamen illis peccatis laborant quibus mors temporalis debetur, a iudice sarculari puniri possunt, si tamen eos puniat intuitu justitia: non ex ira. vel animi rancore. [...] Judex etiam ecclesiasticus nullum debet punire poena corporali, imo pro damnatis apud sarcularem iudicem intercedere, B

⁶⁹³ 0116. LABBE, 10, 1410 and MANSI. 21 (1776), 1159-1160. The acts of this Council seem to be lost. They are known by another, of 1195, Chap. 4, which reiterates the obligation.

⁶⁹⁶ HA VET. 1896,152.

⁶⁹⁷ Cf. VACANDARD. 1923,2018 and FOREVILLE. 1953,348-349.

608 0118. ECUMENICAL COUNCIL (XI^o) of LATERAN III, 1179.03.05-19/22, can. 27, *De luereticis*; MANSI. 22 (1778), 231-232; Irad.: LA BRIÈRE. 1911.10.05, 125. In 1195, the CONCILE OF MONTPELLIER reiterated the penalty of confiscation: 0123. CONCILE OF MONTPELLIER, 1195.12. Cf. MANSI, 22 (1778), 668. Quoted by HA VET, 1896,154, after LABBE, 10. 1796: "Rursus omnes hxreticos... sub anathemate posuit... Constituit ut bona hujusmodi pestilentium hominum publicentur et ipsi nihilominus servituti subdantur."

⁷⁰⁰ HA ver, 1896,155.

⁷⁰¹ See GUIRAUD, 1928.833.

⁷⁰² HAVET, 1896,155.

⁷⁰³ Cf. 0t2t., here repeated.

7<W 0128. INNOCENT MI, 1199.09.15: Constitution *Licet perfidia Judæorum*; *DzSchHü TII-TIZ*; PL 214, 864 865 (= *Reg. epA\302*); trans. GRELOT, 1987.

710 0134. GRÉGOIREIX, 1233.04.06: Epistola "*Etsi Judæorum*", Archiepiscopus et episcopis per regnum Franci" constituit. We quote from AUVRAY, VOL. 1, n° 1216,691-692, in particular: "Est autem Judaüs a Christianis exhibenda benignitas, quam Christianis in paganismo existentibus cupimus exhiberi."

⁷¹¹ Cf. e. g. 0124. INNOCENT III, 1198.04.01: Letter *Inter cætera*, to the archbishop of Auch; *InnocentIII epp* 1,81, quoted by HAVET, 1896,156,note I.To be completed according to PL214,71.

⁷²² Cf. FUCHE, A.-op. tir., in FUCHE& MARTIN, 10(1950), 137-138.

⁷⁴⁰ LIÉGÉ, 1964.10.15,165, translating Bernard OUL, *Praefica Inquisitionis*, ed. C. DOUAIS, Paris, 1886,217.

⁷⁴¹ 0135. GREGORY IX. 1234 : *Decretales*, 15, X, V,7.

745 Details in our 2^o ed. Here is the text: "Cum adversus hæreticam pravitatem quondam Fridericus Romanorum imperator promulgaverit quasdam leges, per quas ne pervagetur, compesci poterit pestis illa, nos illas volentes ad robur ac salutem fidelium observari, universitati vestrae per apostolica scripta mandamus, quatenus eas, quarum tenores vobis mittimus, insertos (rie; "insertas"?J praesentibus. faciatis singuli in vestris capitularibus annotari, contra hæreticos sectæ cuiuslibet secundum eas exacta diligentia processuri. (...)" heréticos quocumque nomine censeantur, decernimus, quam affectant, ut vivi in conspectu hominum comburantur, flammaram commissi iudicio [...]."

"Catharos, Patärenosomnes heréticos utriusque sexus quocumque nomine censeantur, perpetua damnamus infamia, dissipamus, atque bannimus. Censentes ut bona talium confiscentur, nec ad eos ulterius revertantur: ita quod filii eorum ad successionem pervenire non possint, cum longe sit gravius atemam, quam temporalem offendere maiestatem. Qui autem inventi fuerint sola suspicione notabiles, nisi ad mandatum Ecclesia, iuxta considerationem suspitionis, qualitatemque personae, propriam innocentiam congrua purgatione monstraverint; tamquam infames et banniti ab omnibus habeantur: ita quod si per annum permanserint, ex tunc eos sicut hæreticos condemnemus. § 2 Statuimus etiam hoc edicto in perpetuum valituro, ut potestates et consules, seu rectores, quibuscumque fungantur officiis, pro defensione fidei praestent publicum iuramentum, quod de terris suoditioni subiectis universos hæreticos ab Ecclesia denotatos, bona fide pro viribus exterminare studebunt. [...] Si vero dominus temporalis, requisitus et monitus ab Ecclesia, terram suam purgare neglexerit ab hxretica pravitate, post annum a tempore monitionis elapsam, terram ipsius exponimus catholicis occupandam, qui eam, exterminatis hxreticis, absque ulla contradictione possideant. Rex regum apostatantes a Fide catholica penitus execramus, insequimur ultionibus, bonis suis omnibus spoliamus; et ut a professione, vel vita naufragantes, legibus coarctamus: successiones tollimus, ab eis omne ius legitimum abdicamus."

⁷⁴⁹ Permission is given to the magistrates: 0137.INNOCENTIV, 1252.05.15: Bull *Ad extirpanda*; *Buli. Rom. I* (TOMASSETT1-GAUDE), III, 552-558. Summary in our 2^o ed. Here is the text: §26 (Lex 25): "Teneatur praeterea potestas, seu rector omnes heréticos, quos captos habuerit, cogere citra membri diminutionem, et mortis periculum, tamquam vere latrones, et homicidas animarum, et fures sacramentorum Dei, et fidei Christiana? errores suos expresse fateri, et accusare alios heréticos, quos sciunt, et bona eorum, et credentes, et receptatores, et defensores eorum, sicut coguntur fures et latrones rerum temporalium, accusare suos complices, et fateri maleficia, quod fecerunt."

751 Cf. FRIEDBERG, II, 1070-1071, Tit. II, cap. 11, § 2 and cap. IV. General decisions taken up by civil legislations, for example in Castile, in the *Fuero rei* of ALPHONES X THE WISE (1255) and in *Las siete Partidas* (1265).

⁷⁵⁵ We have extracted from BUSA, CD-ROM, 1996³ the 814 uses by s. THOMAS of the words "common" and "good" within 5 words of each other. Apart from the fortuitous connections of the two terms, or those where "*bonum commune*" designates the "*bonum in communi*", the "*bonum communiter sumptum*", we have before us the printed list of 401 texts. That of UTZ, 1960 (343 texts), source of our own anthology on the subject, seems to us in fact sufficient.

⁷⁶⁵ Cf. 0274. 2-2,58,12; (cf. 1-2,66,4). Cf. also 2-2,141,8

780 BUSA-CDROM-1996² gives 259 uses of the word "tolerare" by s. THOMAS. Only the passages we quote in our book concern *religious* tolerance. The others deal with the fact of bearing with patience an evil, a pain, etc. However, let us note *IV Sent.* 13, q. 2, prol. and 25, q. 1, art. 2,1,3⁴.

787 As for the fact, it was primarily a question of the Cathars, for whose conversion - precisely - the Dominican order had been created.

788 cf. 2-2, 5, 3, c: "Et sic manifestum est quod hæreticus qui pertinaciter discredit unum articulum non est paralus

sequi in omnibus doctrinam Ecclesiae (*si enim non pertinaciter, tant non est haereticus, sed solum errors.*)" (Emphasis ours).

789 Cf. LUCIEN. 1992.03.14.

⁷⁹⁰ 0258. 2-2, 11,3, c.Cf. also 2021. *IV Sent.* 13.2,3 sol. (Trad. LECLER. 1955,1,110), already quoted.

⁷⁹⁵ Cf. 0611.28; *CJC* 17, can. 1351; 0710. (here: 0710.2.) *PIE XII.* 1943.06.29: *Encycl. Mvstiei corporis*: AAS. 193-248 (243-244 (p. 243 cited by *DH*, note 9)); *BP* 5. 91-194; *DPPIeXII.* 155-206 (here 201-202); *The Church*, 657-730 (nos. 1002-1112); 0723.4-6. *OTTAVIANI*, 1962: *AD 11/II/IV* (1968), 660, and post-conciliar magisterium.

⁷⁹⁶ S. Thomas hardly deals with the various separate Eastern rites, which he knew, however, in Italian from the south of the peninsula, and as his *Contra errores* *ræcormn* proves. In 2-2. 10, he deals only *with heretics* and non Christians (*infidelitum ritus*). As for schismatics who are not heretics, he states in 2-2, 39, 4: "Et idée, quia coerceri nolunt per spirituale potestatem Ecclesiae, iustum est ut potestate temporali coerceantur." But perhaps he does not include the oriental rites (separated) in the lot of the cults never to be tolerated. And he does not take into account possible good faith.

7" S. THOMAS always implies that these are unbelievers who do not act *according to their invincible wrong conscience*.

⁸⁰⁰ 0257. *Summa Theologica.* 2-2, q. 10, a. 12, c.. Cf. also CONDORELU, 1960, 103. And likewise: 111, q. 68, art. 10, c.: "Respondeo dicendum quod pueri infidelium filii aut habent usum rationis, aut non habent. Si autem habent, iam, quantum ad ea quæ sunt iuris divini vel naturalis, incipiunt suar potestatis esse. Et ideo propria voluntate, invititis parentibus, possunt baptismum suscipere, sicut et matrimonium contrahere. Et ideo tales licite moneri possunt et induci ad suscipiendum baptismum. Si vero nondum habent usum liberi arbitrii, secundum ius naturale sunt sub cura parentum, quando ipsi sibi providere non possunt. Unde etiam et de pueris antiquorum dicitur quod salvabantur in fide parentum. Et ideo contra iustitiam naturalem esset si tales pueri, invititis parentibus, baptizarentur, sicut etiam si aliquis habens usum rationis baptizaretur invitus"; *QuodL* ||, XI], n° 2. q. 4, art. 2, c: "de iure naturali est quod filius antequam habeat usum rationis, sit sub cura patris; unde contra iustitiam naturalem esset, si puer antequam haberet usum liberi arbitrii, a cura parentum subtrahatur, vel de eo aliquid ordinetur invititis parentibus. Postquam autem incipit habere usum liberi arbitrii, iam incipit esse suus, et potest quantum ad ea quæ sunt iuris divini vel naturalis, sibi ipsi providere; et tunc est inducendus ad fidem non coactione, sed persuasione; et potest etiam invititis parentibus consentire fidei et baptizari; non autem antequam habeat usum rationis."

Cf. the end of the Latin orig. of 2-2, 10, 12 c: "Unde *contra iustitiam naturalem* esset si puer, antequam habeat usum rationis, a cura parentum subtrahatur, *vel de eo aliquid ordinetur* invititis parentibus."

³ cf. 0211. *CG III.* 112. See also 0212. *CG III.* 113.

¹ 0249. 1-2, 113,9, obj. 2 and ad 2"; 0279. 2-2,88,1, obj. 1 and ad 1"; 0282. 2-2,117,6.

⁸⁰⁵ 0284. 2-2,152,4. obj. 3 and ad 3.

⁸⁰³ See chronological and analytical details in an article by us to be published soon in a French magazine.

⁸⁵⁴ "ad impedimenta fidei specialia quod non sufferunt in terris suis prædicationem publicam fidei, quod pneniam abnegantes Christum et accedentes ad eorum fidem, et alia huiusmodi." This is of course referring to the Muslims.

⁸⁵⁵ CAJETAN. 1517.02.26, in 2-2, q. 10. a. II; Leonine ed. 8 (1895), 93.

¹⁶³ "Scotus siquidem ad hoc tendit quod, quia parentes abutuntur iure suo, quia nutriunt filios ad cultum infidelitatis contra Deum, ideo princeps debet eos privare tali iure: quia faciendum est quod conservetur ius Dei contra ius parentum abutentium illo contra Deum, potius quam e converso, ut scilicet servetur ius parentum cum contumelia Dei; hic enim ordo perversus est"

⁸⁶⁴ "Ex his autem, adiuncta illa maxima, *Gratia perficit, non destruit naturam*: et, *Ordo gratia? perficit, non dissolvit ordinem naturae*": Manifeste apparet, primo, quod dominium parentum supra filios non est tam ipsorum quam naturae ac Dei, qui illam instituit. Ac per hoc, comparatio non est facienda inter parentes et Deum: sed inter Deum institutorem naturae, et seipsam Deum institutorem fidei; uterque enim ordo ab ipso et ipsius est."

⁶⁵ "statuit ut adultus media propria ratione ac voluntate legem fidei impleat, quia sus cura naturaliter commissus est, puer autem media ratione et voluntate parentum, quorum cura naturaliter commissus est. *

"VI. Et si diceretur quod, licet Deus instituerit legem fidei non ad solvendam sed perficiendam legem naturae, absolute et simpliciter; tamen in casu quo habentes ius naturale illo abutuntur, quia merentur privari illo, statuit legem fidei habere locum ablato ab abutentibus iure suo."

MI" - advertant sic dicentes quod hoc nihil aliud est quam dicere quod Deus statuit legem fidei servandam non obstante lege naturae. Quoniam cum lex naturae secundum se non obstat fidei, quia *verum vero non conirariatur*; ad hoc solum dicitur *non obstante lege naturae*; propter casum in quo obstat potest propter admixtam abusione. Idem est ergo dicere quod statuit legem fidei implemandam non obstante etiam lege naturae, absolute: et in casu quo propter admixtum abusum obstat. Et propterea si primum est falsum, secundum quoque erit falsum. Unde evasio hxc nulla est."

"Et confirmatur. Quia in parentibus infidelium concurrunt duo: scilicet ius naturale respectu filiorum cura; et admixta infidelitas, qua nutriunt eos ad suum ritum. Et licet secundum sit malum, et in eo peccent mortaliter; et propter hoc non solum filiis, sed vita et seipsis privari possint, ita quod possent iuste an nihilari: primum tamen iustum est naturaliter." Same reasoning in LEFEBVRE Marcel. *M*" , 1985.11.06 14, with lu note I.

⁸⁷⁰ CAJETAN, 1517.02.26. in 2-2. q. 10, a. 12, 96, continued: "Et propterea Deus, statuens ordinem gratiæ ad perfectionem ordinis naturæ, illud iustum naturale violari non vult, quamvis ipsi abutentes hoc mereantur." CAJETAN flexes a bit at the end on the case of slave parents, in fact already opposed to natural law.

⁸⁷⁶ Indeed, it is a question of an "authentic teaching, if there ever was one: for the bull *Exsurge, Domine* counts among the most solemn acts of the Apostolic Magisterium, and M^A Fessler himself, whom no one will accuse of excessively broadening the object, nor of indiscreetly multiplying the applications of the infallibility of the pope, mentions this bull as an irrefutable example of a document promulgated *ex Cathedra*" (LA BRIÈRE, [1911.10.05, 126-127, citing FESSLER Joseph, M^A, *La Vraie et la Fausse infallibilité des Papes*, Paris, 1873).

⁸⁷⁷ LA BRIÈRE, 1911.10.05, 127. Idea reaffirmed by PASCAL, 1911, 1836.

⁸⁷⁹ 0316. CANISIUS Petrus, s., SJ, *Epistidæ et Acta*, ed. O. Braunsberger, Freiburg, 1896-1923, 8 vols, vol. VL 633 634; transl. LECLER, 1955,1, 275-276.

⁸⁸¹¹ Cf. *Opéra omnia*, ed. M. André, Paris, Vivès, 1856-1878,281. in 30 vols.

⁸⁸² 0319. lib. III, cap. XI, no. 7: PEREhIA ed., V, 152-153.

⁸⁸³ 0319. lib. III, cap. XI, n^o 8: Ed. PERESA, V, 154.

^{***}0319. lib. III, cap. XI, n^o 9: Éd. PEREbIA. V, 155.

⁸⁸³ 0319. lib. III, cap. XI, n^o 10, our translation. Ed. PERENA, V, 155-156. Cf. HARTMANN, 1958,284-285, referring to this passage. As for the offences of "mixed for": "Deinde dicimus illa vitia et peccata quæ dicuntur mixti fori, eatenus puniri et cohiberi per leges civiles, quatenus supposito hoc statu reipublicæ christianæ illam perturbant et magna nocumenta illi afferunt etiam quoad suam pacem et externam felicitatem ac conservationem. Hunc enim finem semper intendit ipsa potestas quatenus talis est, licet utens illa possit perfectius operari. Et hoc modo Leo Ripa (*Epistola 7*) laudat Theodosium quod fide sua præsidium afferret Ecclesiæ et non solum regium animum, sed etiam sacerdotalem ostenderet et quod curam haberet avertendi hæreses et schismata: *Quia tunc* (inquit) *esi optimus vestri status, quando sempiterna: Trinitati unius Deitatis confessione servitur.*" (0319. lib. III. cap. XI. n^o 10, further).

⁸⁸⁹ See 0322., disp. XV111, sect. IV: *Utrum infideles cogi possint ut errores suos, vel falsos ritus, non solum fidei, sed etiam rationi contrarios, derelinquant*, 448 ff.; especially n^o 3,449. No. 4 explains that idolatry is not the same as blasphemy and that only if idolaters sought to corrupt Christians or acted out of contempt against the Church, etc., could one intervene (also in the case of human sacrifices; except for the sacrifice of criminals condemned to death). The n^o 6⁷ want to prove that on the other hand "Infideles cogi possunt ad veri Dei cultum profitendum a suo principe." The n^o 8 reckons: "etiam regem ethnicum, id est, non Christianum, si habeat cognitionem unius Dei, posse cogere subditos ad idem credendum, vel per proprium discursum, si docti sint, vel fidem humanam adhibendo sapientioribus, si idiohe sint, et consequenter posse illos cogere ad abstinendum ab idolis, et similibus superstitionibus rationi naturali contrariis."

[^]Ibul[^]n^o 10,451-452.

⁸⁹⁵ n^o 12 argues from the common good of the Church and thus from the power of punishment conferred on it. The n^o 13 29 prove the power that the Church has to inflict punishments even temporal. SUAREZ polemicalizes there in particular

This second form does not exist in God. This second form does not exist in God.⁹⁰⁰ He then explains that "the permission of sin differs from the sin itself ... it is of itself indifferent."⁹⁰¹ 11 then provides the 3 circumstances that make this permission good: 1° the search for a greater good; 2° the fear of a greater evil; 3° *the impossibility of preventing the evil.*⁹⁰² "2 Heresy can be justly punished by death, not as a sin, but as "*disturbing the peace and tranquility of the State,*"⁹⁰³ According to this formality, false prophets, blasphemers, etc., were punished in the same way in the Old Testament.⁹ " Now, *in fact,* "heretics, especially obstinate ones [...] do not disturb the *peace and tranquility of the State* any less than do homicides, thieves, etc."

"I answer. Heretics disturb both peace. First, of course, and *per se,* the peace of the Church, which consists in the unity of the faith. 1...J Secondly, and consequently, the peace of the State, which cannot be preserved without the unity of the faith. Indeed, where there is public dissension of spirits, such as is introduced by heretics, public peace cannot subsist, a⁹⁰⁵

8.7. From the xvi^c to the XVIII*

Thus, the Church punishes spiritual offenses, and the State punishes offenses against public order. The authors of the time take for granted the impossibility of maintaining public peace without the unity of faith. We believe that this was *true at the time, because of the general mentality,*⁹⁰⁶ which assumed 1° that the State had to be constituted on the basis of unity of religion (medieval society included *even from the temporal point of view* the adherence *in act* to the Catholic faith); 2° by way of consequence, that the true religion, once dominant, had to cement the political union. It followed that it was necessary to repress dissent on the part of the confession that was either currently or virtually dominant, that is, the confession that would take political power if it were allowed to spread.⁹ "7 But the course of history has proved that, by dint of diplomatic, political, constitutional, etc., efforts, men of various religious beliefs can be made to live together in fairly perfect peace, as in the United States after their Independence. This division did not prevent this new country from becoming the most powerful state in less than 200 years. Simply, in the

"BECANUS. n°3,534.

⁹⁹¹ *Ibid.* continued (referring to the CAJETAN passage on tolerance that we mentioned).

⁹⁹² *Ibid.* continued. See also 0328. BECANUS. n° 10-12,535-536.

⁹⁹³ Cf. 0328., caput XVII: *An Princeps, vel Magistratus possit luereticos propter solam lueresim poena capitis punire?*, BECANUS, n° 01.538.

" Cf. 0328., caput XVII, BECANUS. n° 02.538.

"50328., caput XVII, BECANUS, n° 03, 538. See also a little before: "Secundo. Hxrelici, præsertim pertinaces, de quibus proprie hic agimus, non minus perturbant pacem, et tranquillitatem reipublicæ, quant homicidi, fures, raptores, adulteri" (etc.).

⁹⁹⁶ Cf. the remark by BESSON, 1919.210.

⁹⁹⁷ Cf. also BARBAINI. 1964.07-08.508.

In the time of Becanus, only a few *politicians* and a few indifferentists or latitudinarians sought in this direction a solution to the de facto plurality created by the Reformation w" Apart from them, no one saw how a state could live in peace without religious unity, other than by a tolerance carrying the seed of its precariousness.⁹⁰⁹ Because any dissidence, once in power,

⁹⁰⁹ Because it is conceived as temporary in law.

believed itself entitled to repress orthodoxy, *⁹⁰ it was obliged to defend itself by armed means, which led to an escalation of violence. Any dissent thus created a political division, and, *at that time*, could be considered a civil offense. But this does not prove that, "*in theory*", heresy must of *itself and at all times* be considered a civil offense. We can therefore understand *both* the reaction of the popes of the time, s. Pius V, O.P. (1566-1572),**" Clement VIII (1592-1605)⁹ *2 then, in the following century, Innocent X (1644-1655) *⁹³ against the concessions of the *Politicians* to the Protestants,⁹ *- * and the much later statement of *DM*

"The only boldness that some Catholic theologians allowed themselves, towards the end of the sixteenth century⁹, was to extend to heretics themselves, at least provisionally, the rules laid down by Saint Thomas for the tolerance of Jews and pagans. [...] ⁹¹⁰ Molanus adds that one can even commit oneself by a formal pact to guarantee such freedom: "Sicut licet aliquando justis et gravi bus de causis religionis libertatem aliquam hæreticis concedere non quidem probando ma lum sed tolerando, ita licet quoque de tolerando pactum inire." With the consolidation of the Reformation, this position taken by the Rector of Louvain was adopted by a growing number of theologians and became classic in the course of the XVII^e century."⁹¹¹ _6

All this will not prevent the Holy See from *condemning* the following proposal:

"Although there is an invincible ignorance of natural law, this does not excuse the agent of formal sin in the fallen state of nature."⁹¹²

It was to proclaim, in a clear break with the medieval position,⁹¹³ *- the possibility of the "*ignorantia invincibilis iuris naturæ*" excusing any formal sin. It follows that a *fortiori*, there can exist an invincible ignorance of *Revelation*, excusing any formal sin of infidelity. St. Thomas himself had foreseen this point in considering the possibility of a man's ignorance of the moral goodness of adherence to Christ. Thus, he made it a duty for that man not to adhere to Christ. Simply, with all the medievals, he assumed the impossibility of such a case for a man born in Christendom and educated in the Catholic religion. In this he was probably right *in pluribus*. For a baptized person, educated in Catholicism and within a Catholic culture, can hardly leave his religion in good faith, the only one sufficiently endowed with grounds for credibility.

With regard to heretics, the medieval position was explicitly maintained until Clement XII (1730-1740).⁹¹⁴ Even in the 18th century^e, Ch.-R. Billuart O.P. (1685 1757), for example, reiterated the position of his teacher, St. Thomas, with regard to both Jews and heretics. Thomas, with regard to both Jews and heretics.⁹¹⁵

⁹¹⁰ Cite then MOLANUS Jean; cf. our 0315. MOLANUS (= Jean Van der Meulen. dit) (1533-1585). *De fide luerelicis servanda libri tres*, Cologne, 1584.

⁹¹⁶ LECLER. 1953b, 531.

⁹¹⁷ 0331. SCSO, 1690.12.07: Decree, condemning Jansenist proposals, DzSch23GI.

⁹¹⁸ Cl. 0232.1-2,19,6.

⁹¹⁴ Cf. 0332. CLEMENT XII, 1738.04.28: Apostolic Letter. *In eminenti* on Freemasonry; *CIC Fontes* I,n*299, 656-658 1= *Bull. Rom.*, t. 24, 236, 2371 : "§4. Volumus insuper, et mandamus, ut tam Episcopi, et Prælati Superiores, aliique locorum Ordinarii, quam hæreticæ pravitatis ubique locorum deputati Inquisitores adversus transgressores cuiuscumque sint status, gradus, conditionis, ordinis, dignitatis, vel pœnemeniæ, procedant, et inquirent, eosque tanquam de hæresi vehementer suspectos condignis poenis puniant, atque coerçant : iis enim, et eonim cuilibet contra eosdem transgressores procedendi, et inquirendi, ac condignis poenis coercedi, et puniendi, invocato etiam ad hoc, si opus fuerit, brachii sæcularis auxilio, liberam facultatem tribuimus, et impaniunur. "

⁹¹⁵ As for the pagans, he writes: "Ecclesia habet jus et mandatum a Christo prædicandi evangelium in universo mundo : Si ergo hæc prædicationem impediunt barbari, possunt principes Christiani contra eos bellum movere, rebelles domare, sibi que subjicere, non quidem ut eos ad credendum cogant, sed ut tueantur jura Ecclesiae violata, et innocentes defendant, tam eos qui jus habent prædicandi, quam eos qui habent jus audiendi: unicuique enim a natura competit jus defendendi innocentes " = 0336. BILLUART, 1876 = *Summa S. Thomæ hodiernis aædemiæ moribus accomodata*, ed. nova, Parisiis, Palmé / Romæ, Melandri-Propag. Fide / Bruxeliis. Albanel. 1876. 8 vols. Here, 1.111, *Dissertatio V. De vitii fidei oppositis*, an. 11: *Utrum infideles sint*

However, he considers that *malum vitandum* is not the only reason to tolerate unfaithful rites (even non-Jewish ones); he mentions the "*bona quee impedi rentur*."⁹² > Finally, he refuses to deal with the temporal punishments inflicted on heretical tics, because "*poenæ temporales pertinent ad forum sæculare : unde iis omissis dice mus tantum de spiritalibus*."⁹¹⁶

For his part, Benedict XIV (1740-1758) had to deal with the disagreement that arose between the Israelites and the Polish Christians. The Jews, who were richer, were accused of having (through usury, servitude, etc.) taken advantage of their situation to exploit and oppress the poorer Christians. He begins by welcoming the suppression of the "freedom of conscience" that had reigned in Poland until 1577.⁹ " After recalling the medieval regulations against Christians who molested Jews, Benedict XIV set limits to what Jews would be allowed to do in Christian lands.⁹² -* Finally, a last important event for our subject, in 1788, Louis XVI (1774-1793), partially revoking the Revocation of the Edict of Nantes, granted civil status to Protestants, which triggered protests from the clergy of France.⁹¹⁷

Conclusion of Chapter 8

With the modern times also the phenomena of laicism and regalism started at the time of the struggles of the Priesthood and the Empire and characterized then by the attitude of Philip IV the Fair (1268-1285-1314) are accentuated. These aspects, combined with the previous ones, will make more and more odious the artificial maintenance by force of a unity of belief that no longer exists,⁹¹⁸ and of a union of the Church and the State that, as a result, is no longer vital nor in any way natural, at least in many countries,⁹¹⁹ as the more and more frequent appearance of *Concordats* testifies.

cogendi ad fidem?, p. 257-258.

⁹¹⁶ *Ibid.* 261. §n.

⁹¹⁷ Cf. LUCIEN, 1990. 111. On the Revocation of the Edict of Nantes, the bibliography is considerable, given the studies published in 1985. We have pointed out a few clues in our second edition at this place. Let us add to it : AA. Vv., *Tolérance (La), Colloque international de Nantes, mai 1998, Quatrième centenaire de l'édit de Nantes*, Rennes, Presses Universitaires de Rennes, Centre de Recherche sur l'Histoire du Monde Atlantique, 1999,520 p.

⁹¹⁸ Cf. BAIERL, 1955, 118-119.

⁹²¹ Cf. CL. MARTAIN, 1936,461-462.

CONCLUSION OF SECTION B

I During the medieval and modern periods, there was a broad unanimity on two points:⁹²⁰
1° The **unbaptized cannot be** forced in matters of faith; 2° the **baptized** can be forced.

1. The case of the non-baptized

The non-baptized are not to be coerced in matters of faith,⁹²¹ either because one believes that one has no jurisdiction over them, or because one believes that while one has jurisdiction, one is obliged by Church Tradition to tolerate their "non-faith" and also, to a certain extent, their worship, especially in the case of the Jews. Nevertheless, there are several ecclesiastical documents⁹²² recommending intolerance of pagans.

"It is true that from Calixtus II to Martin V, at least twenty-nine papal bulls denounced physical violence as a means of conversion (of Jews as well as of anyone else). Is this not a sign that it was often used in this way? During the Middle Ages, thousands upon thousands of Jews were effectively forced to be baptized and to remain in the bosom of a Church they had not accepted. Frequently they were victims of pogroms and even massacred: to give just one example, it seems that ten thousand of them were murdered by the Crusaders in 1096 in the Rhine valley alone. It is also true that more than a hundred papal letters aimed to protect them, but should we not recognize that their formulation did not allow for the creation of the psychological shock that could have created a sufficiently effective barrier against anti-Semitism?⁹²³ "Thus, in practice, anyone who had not received baptism, infidel or Israelite; anyone who had received it, but was born of parents separated from the Church by a recognized historical fact, was legally reputed to be of good faith and enjoyed, as such, the fullness of his religious liberty, provided that he did not disturb public order, by manifestations hostile to the national faith."⁹²⁴

2. The case of the heretics

The Inquisition,⁹²⁵ practical expression of the theory that **heretics** can be forced to keep the traditional faith,⁹²⁶ whether or not it is contrary to the right to

⁹²⁰ Cf. the measured presentation of FOLUET, 1965, 100.

⁹²¹ Nevertheless, it is necessary to deplore the numerous factual infractions contrasting with the multiple reminders of the law.

⁹²² CONCIUUM CARTHAGINENSE V, cap. 15; MANSI, 3, 972; CONCIUUM TOLETANUM III, c. 16. MANSI, 9. 996); CONCIUUM TOLETANUM XII, c. 11, MANSI, 11, 1037). These texts (of particular councils) would, however, need their concrete historical context to be understood correctly

⁹²³ * COSTE, 1969,298-299.

⁹²⁴ CANET, 1891,243.

⁹²⁵ The present summary cannot complete this study with that of the Spanish Inquisition. Nevertheless, we should mention the praise given to the Inquisition by the liberal and sectarian Cortes of 1812, which abolished it. Text in HELLO, 1922, 46-47: "Without the Inquisition, the Spanish people, exasperated by the vexations, by the arrogance, by the perfidy, by the betrayals of the false converts of Judaism and Islam, would have given themselves up, as they did in the past, to reprisals that would have gone beyond the measure of legitimate defense. [T]he Spanish Inquisition did not crack down on all the false converts from Judaism and Islam, but only on those who tried to pervert their faith.

the faith and disturbed the public order. (...J Later, when the preachers of the so-called Reformation wanted to implant heresy in Spain, the Inquisition opposed them. Thus it preserved this country from civil war."

⁹²⁶ This was not *illogical*, despite BARBA1NI, 1968.05-06.246-247. Cf. also DUBARLE. 1952.01, 16.

the LR promoted by *DH*? This depends on two facts: I) *Primarily*, were the heretics *de facto* disrupters of the just public order as defined by *DH*? II) *Secondly*, was it for this reason that they were prosecuted?

I) *The heretics were disrupters of the just public order*

The first question clearly deserves an affirmative answer, as we have seen.⁹⁵ After citing numerous examples of "lynchings" of Cathars by the mob or of brutal executions by the civil power, Jean Guiraud⁹²⁷ continues:

"The texts we have just quoted specify the different positions that the civil power and the ecclesiastical hierarchy took with regard to heresy, from the year 1000 to about 1150. We can define them in these three propositions: 1° the Church repelled the violent repression of heresy. Among its most authorized representatives, some have not recognized the right to punish heterodoxy as a crime and have fought it only by discussions and controversial treatises; others have employed against it only spiritual punishments, such as excommunication, intended less to strike at error than to preserve the faithful by forbidding them any contact with it; Finally, those who were asked to pronounce temporal punishments against heretics, disrupters of public order, did so only weakly, invoking the irresponsibility of heretics to release them. 2° On the contrary, the civil power showed itself to be more and more rigorous against heresy. It was the first to light the pyres in France, Germany, Italy and Flanders. 3° The rigors of the civil power were approved by public opinion, from the XI^e and XII^e century, the people accusing of lukewarmness towards heretics not only the bishops and the clerics, but the princes themselves." | "It was in 1139 that the Church, no longer holding to spiritual sanctions, ordered the civil power to repress heresy by temporal penalties."⁹²⁸

"This legislation did not suffice for the ardor of the princes who had provoked it. It is curious to see them accusing the Pope and the Church of weakness towards heresy and always demanding new measures of rigor. Among these kings who were relentless against heretics, Louis VII the Younger must be placed in the first rank. But Pope Alexander III, in 1162, wrote to the archbishop of Rheims, Henri, the king's brother: "It is better to absolve the guilty than to attack, by excessive severity, the lives of the innocent... indulgence is better suited to churchmen than harshness.

"We can now explain why the princes of the eleventh and eleventh centuries were more energetic than the bishops and popes in repressing heresy, why they never ceased to activate the zeal of the ecclesiastical hierarchy on this point, and why, finally, after much hesitation, the hierarchy united with the temporal princes to decree material punishments against the heterodox. "The examination of the heterodox doctrines of the eleventh and twelfth centuries, and the account of the troubles they caused, have in fact shown us 1° That after the year one thousand, heresy ceased to be a purely theological opinion destined to be discussed in the precincts of the schools; but that it was increasingly coupled with anti-social and anarchistic doctrines, in opposition not only to the social order of the Middle Ages, but also to that of all times; 2° That these anarchistic doctrines provoked revolutionary movements and profound disturbances among the masses, and that thus the heresy which taught them became a public danger; That from that time on, temporal authority had as much interest as spiritual authority in combating and destroying heresy; 4. That these two authorities, after having acted for a long time separately, the first by the condemnations of its tribunals, hanging and burning at the stake; the second by excommunication and ecclesiastical censures, ended up uniting their efforts in a common action against heresy; 5.vicj and the Council of Verona of 1184. n*⁹⁹

"Let us imagine a sect that would reason a little like the Albigensians, and under the pretext that according to Scripture David was punished from heaven for having taken a census of his subjects, would refuse today to submit to those rules of civil law without which we cannot conceive of an organized society; it would not behave in a way that was more strange, more revolutionary and more unsociable. Is it any wonder that the society of the Middle

⁹²⁷ GUIRAUD. 1928. 835. Apart from the plagues unleashed by the supporters of the Cathars, we can cite with GUIRAUD, 1978, 143-144, those of Arnaud of Brescia; or 144, LEA's revealing admission that "the Cathar and Ghibelline forces united were unleashing, in many countries, civil and social war"; 148-149: the violence perpetrated on the Inquisitors; 152-153: for FRÉDÉRIC 11, the heretics were revolutionaries. On H. C. Lea's admission, cf. BAIERL, 1955, 131, referring to LEA H.-C., *A History of the Inquisition in the Middle Ages*. NT. 1888, I. 106"; and to AUGUSTIN, *Letter* 43, 1: PL II ?]. 160. JORDAN, 1909.09 (c). 562 and 566. goes so far as to concede: "The Church was thus to a certain extent in a state of self-defense. It is natural that she should have attacked the heresy of the attacks she was suffering; and in so far as it was a question of repelling violence, she was justified in claiming the assistance of the public force."

⁹²⁸ GUIRAUD, 1928.829. Cf. 0107. INNOCENT II, 1139.04.04, LATERAN COUNCIL II, can. 23.

Ages believed it had the right and the duty to defend itself against those who attacked its principles? This would be to condemn modern societies, which do not act otherwise. Indeed, it is not true that they are founded on absolute tolerance. Many people undoubtedly say this and even believe it. This is because certain opinions, once proscribed, now free, even preponderant, have conquered their new situation by claiming this dogma of tolerance. Their adherents have an interest in not appearing to disavow a principle which has served them so well; and besides, one is easily persuaded that everyone is free because one has become so oneself. However, neither public opinion as a whole, nor the positive legislation of civilized countries, grants complete license to all philosophical or religious doctrines, but only to certain forms of belief or unbelief, known forms, which have been able to live, to resist, to impose themselves, and which above all, whatever their divergences may be in the field of theory, agree, in practice, on the rules of current morality, social as well as private, such as they are expressed in our laws. But if an act contravenes this morality, if it violates this legality, the person who has committed it is not allowed to allege as an excuse that he has obeyed the inspirations of his religious conscience. All modern states have had to repress aberrations of religious sentiment.⁹²⁹ The United States, which rightly prides itself on giving the world lessons in liberty, has put an end by force to Mormon polygamy. ⁹³⁰

This anti-social character of the heresies remains just as evident in the following centuries. To prove it for each would require a special historical study.⁹³¹ * Note that the Waldensians, sometimes presented as harmless, must take their share of responsibility.⁹³² Wyclif's (or Wycliff's, or Wycleff's) theses "on the right of property in general, the secularization of ecclesiastical property, and the disciplinary power of the Church,"⁹³³ if they had no *direct* influence on the atrocious English riots of 1381, nevertheless provided the indirect framework for them.⁹⁴³ All the more so since, as early as May 1378, the Oxford professor had invoked the help not only of his University, but also of the most senior figures (John of Ghent) and even of the law of the realm against the "enemy of the Church and of Christ", the "Antichrist", in other words, Pope Gregory XI.⁹³⁴ He would therefore have been ready to defend himself at the cost of a civil war. How could he have been surprised at the disturbance caused among the ecclesiastics by his theses on the secularization of their property? (Cf. the history of the English lollards).⁹³⁵ (Cf. the history of the English lollards.) "Wyclifism, which was quickly exhausted in England, was, on the contrary, extraordinarily successful in Bohemia in the first years of the fifteenth century; it was under the label of wyclifist that John Hus was condemned by the Council of Constance."⁹³⁶ * Moreover, this John Hus was hardly peaceful either.⁹³⁷ His rebellion against his archbishop was mixed with the Czech nationalist struggle against the Germans. As usual in such cases, his followers were much more agitated than he was. Neither the Calixtines (moderate branch) nor the Taborites (radical branch) lived in respect of the "just public order".⁹³⁸ On this set of data came moreover to be grafted serious social problems. In spite of everything, we must regret the lack of diplomacy with which Hus was treated (he was burned alive in spite of his passport), a procedure that deeply and forever marked the Czech conscience.⁹³⁸ In any case :

"... deriving more or less from each other, the great heresies of the Middle Ages had an anti-social,

929 Religious feeling is not the foundation of the RL: S 74: 6 RS, modus 26. A.S. 1V/V1.746.

930 JORDAN, 1909.09 (c), 577-578.

931 Let us point out in passing BRIDE André, art. " Hérésie, II : Droit canon ", in *Catholicisme* 05 (1962), 642-646 (notably III. I. * *Église et la répression de l'hérésie aux siècles passés.* 643-644).

932 Cf. GUIRAUD, 1978, 155-156; 184: the Spiritualists were considered, like the Wicleffites, Lollards and Hussites, to be socialists and anarchists; see also p. 186-189.

9+4 FUCHE & MARTIN. 14/2 (1964). 946. This is WYCLEFF. *De civili dominio.*

934 FUCHE & MARTIN. 14/2(1964), 946.

935 Cf. FUCHE & MARTIN, 14/2 (1964), 978-985. England did not "receive" the Inquisition until 1397 (in the face of Lollardism).

941 FUCHE & MARTIN, 14/2 (1964), 989.

937 Cf. FUCHE & MARTIN, 14/2 (1964), 1006-1007.

938 See BERAN. 1965.09.20.

communist, anarchist aspect, and that one of the objects pursued by the Inquisition was precisely to safeguard both the social interests and the religious truths which they threatened at the same time."⁹³⁹ æ

Nevertheless, the great principle of the possibility for the Church to call upon the secular arm in order to repress persons who, by their "deviance" in the faith, constitute a danger to *Christianitas*, remains intact.⁹⁴⁰

II) *The Christian state prosecuted heretics as disrupters of the just public order*

In our opinion, it would be an exaggeration to claim that it was *only for* this reason of public order that heretics were condemned.

A) **The reason for the ecclesiastical courts**

The *ecclesiastical* courts obviously condemned heretics *as such* and 1) insofar as they departed outwardly from their personal commitments of fidelity; 2) insofar as they sought to remove others from that fidelity to the Church. It was surely as error-makers that the Church pursued them, even if this was not the direct concern of the state.⁹ -⁵⁴

B) **The motive of the state**

Was it indeed for the reason of public order that the secular arm condemned the heretics? Some deny it.⁹⁴¹ Others affirm it.⁹⁴² Didn't Catholic doctrine require *the State as such* to pursue *error as such*?⁵¹ 1° The *public peace* of the society of the time was the main motive for political intervention, for religious reasons were not enough to set most politicians in motion; moreover, a) on the one hand, it was commonly considered impossible to maintain political unity without religious unity; b) on the other hand, those who broke religious unity also broke political unity by their agitation, and this agitation often engendered an opposite agitation, hence a vicious circle. 2° Christian morality was unanimously considered to be the essential foundation of *public morality*, and the public expansion of heresy was thus considered contrary to public morality. 3° Heretics were often, as has been said, *violators of the temporal rights* (natural and acquired) of other citizens, and also of those of the Church.⁹⁴³

The argument of reciprocity was fundamental from the time of St. Augustine (let us recall his reproaches for the violence of the Donatists). Augustine (let us recall his reproaches against the violence of the Donatists). It was even found in s. It was even found in St. Thomas for the unbaptized (**0251**), in Becanus, etc. Popes and theologians of the 19th century put forward the same argument in the face of the hypocrisy of liberalism to challenge the theory of the LCC (which raised the banner of liberty, but then denied liberty to the Church).⁹⁴⁴

C) **The subordination of Church/State motives**

What a *formality was this, that* the two jurisdictions that worked "hand in hand" T⁹⁴⁵ "It is

⁹³⁹ GUIRAUD, 1978, 192. Cf. also CHÉNON. 1921, 205.

⁹⁵⁰ Cf. two illuminations: DUMONT Jean, 1981; KAMEN. 1966.

⁹⁴¹ Thus: JORDAN, 1909.10 (d), 25. See previous note.

⁹⁴² Cf. CANET, 1891,259-260.

⁹⁴³ List of these examples in 0328. BECANUS, n° 4,538-539.

⁹⁴⁴ Cf. BALLERINI, 1874.02.21, 514 and 517; CANET, 1891, 315 and 325-326: the liberal State, therefore independent of God, necessarily becomes the God State, persecutor of the freedom of the Church and of conscience; MOREL, 1876.1, 151-152; cf. also JANSSENS. 1964, 179-180; MOULART, 1895⁴.352.

⁹⁶⁹ See DUBARLE, 1952.01,8.

here that it is appropriate to evoke the theory of the secular arm. This one supposes a State united to the Church and holding from her the possibility of identifying the error and of repressing it. First of all, it can be affirmed that as long as the State recognized the Church as the only one competent in religious matters, it was authentically "secular"⁹⁴⁶ II recognized it as such because the people had recognized it as such through the faith of each of (and all of) its members.⁹⁴⁷ It followed that he was not competent to discern who was a heretic and who was not.⁹⁴⁸ Nevertheless, it was very important for him to know about them, since experience had taught that insubordinate, propagandistic and active heretics always ended up representing a real public danger. Thus, in this defensive war,⁹⁴⁸ there was a kind of *collaboration*, considered at the time as almost instrumental, hence the expression "secular arm".

On the other hand,⁹⁴⁹ the Church has never had the *lus gladii*. Therefore, the handing over of heretics to the "secular arm" for the death penalty is not strictly speaking a *legal delegation*.¹⁶⁶ It consists in putting the prince on notice to fulfill his duty as temporal sovereign to protect the just public order of Christian society⁹⁵⁰ by punishing those whom the Church designates as dangerous to that society,⁹⁵¹ * but by the penalties which he himself has fixed for this type of danger.⁹⁵² It is thus a question of the secular arm in the *broad* sense (acting on the *request* of the Church).⁹⁷ " It was thus a question of collaboration by *coincidence of purposes* and *complementarity of competences*.TM

What is of divine right is the *libertas Ecclesiat*, and the right to use all lawful means to protect it; notably the help of human societies.⁹⁵³ What is contingent is that the use of the secular arm is one of the licit means in question. It can become unjust.⁹⁷²

D) The motive of the attitude of the medieval society

A certain number of *characteristics of the time* of religious unity in the Middle Ages make it possible to shed light on this obscure point by better measuring the correlations between the practice of the time and the doctrine of *DH*.⁹¹ - * Here are these characteristics:⁵

7) *ı ignorantia iuris of good faith was ignored*

The Augustinian thesis of the impossibility of a non-culpable *ignorantia iuris*, especially⁹⁵⁴ in religious matters,⁹⁵⁵ has been maintained through s. Gregory, Gratian, and s. Isidore (1134). Gregory, Gratian, and s. Isidore (1134). Abelard disagrees with it, but because he mistakenly believes that *all* ignorance is excusable. This earned him the condemnation of the Council of Sens (1135), prepared by s. Bernard and Guillaume de Saint-Thierry.⁹⁵⁶ * Ph. Delhaye notes the same tendency among the canonists: "no one is supposed to be ignorant of the law" (*Dig.*

⁹⁴⁶ BACCARI. 1985.509-510.

⁹⁴⁷ Cf. MURRAY, 1948.06.28-30, 80: "the slate finds the true Church only inasmuch as it finds its citizens believing her to be the true Church."

⁹⁴⁸ It therefore seems excessive to us VEUILLLOT. 1986.31.

⁹⁴⁹ Cf. VITORIA, *Comentarios cit.* 1,233, § 2.

⁹⁵⁰ At the beginning, one attended a confusion more of the *companies* than of the *powers*. For the following time, cf CASTILLO-LARA, 1956.194-195.

⁹⁵¹ On the relationship between "Christian society" and the state, cf. MURRAY, 1953.06, 148-149.

⁹⁵² See CASTILLO-LARA, 1956, 54; 58; 59; 61; 64; 66, citing BENDER. 1948. 137. Another point of view in MOREL, 1876.1.249.

⁹⁵³ Cf. LA BRIÈRE, 1911.10.05, 124; and LIBERATORS, 1887,364, n° 318.

⁹⁵⁴ Nowadays, the field should be further expanded. Thus: KONINCK, 1962.09-10a, 193-194.

⁹⁵⁵ Cf. DELHAYE. 1965a, 1131-1134.

⁹⁷⁶ On the point of non-culpable ignorance, the latter two maintain the position of s. Augustine.

XXII, 6).⁹⁵⁷ Nevertheless, these canonists excuse the child, the cripple, the madman.⁹⁵⁸ "It was not imagined that once warned of his error by ecclesiastical authority, a man educated in Christianity⁹⁵⁹ could persist in thinking he was right."⁹⁶⁰ "Neither in patristic times⁹⁶¹ nor in the Middle Ages, therefore, did the question of "acting wrongly according to one's conscience and peacefully arise."⁹⁶² It was only much later⁹⁶³ that a clear distinction was made between heretics born in heresy and Catholics falling into heresy.⁹⁶⁴ Thus, slowly⁹⁶⁵ it came to be that what St. Thomas said about those who "numbed their conscience" was applied to "material heretics. Thomas said of those who "*numquam susceperunt fidem*", the unbaptized.⁹⁶⁶ The Middle Ages called a culprit of bad faith a "heretic,"⁹⁶⁶ a case much more difficult to assume in our era of religious division,⁹⁶⁷

of indifference, skepticism⁹⁶⁸ and international communications⁹⁶⁹ where several positions occupy the stage."⁹⁷⁰

2) Catholic Laïcal at the foundation of civil society

The second characteristic of the society of the Middle Ages is that it was *founded, even from the civil, cultural, moral, social, economic, etc., point of view, on the adherence in act to the Catholic faith*,⁹⁷¹ "[...] at a time when a practical unanimity reigned from the religious point of view, a unanimity infinitely superior, in any case, to the majority which, in our democratic countries, allows a fraction of citizens to impose their law on the others."⁹⁷² It is easy to understand that any public opposition to the faith was the equivalent of what today would be an attack on "human rights," etc.⁹⁷³ The internal national unity rested in fact on that of religion,⁹⁷⁴ and the faith thus constituted an essential basis of the internal public order,⁹⁷⁵ and the bulwark against the *external* danger represented by Islam.⁹⁷⁶ The Christian faith was moreover the only "temperament" that could limit the action of the temporal powers responsible before God alone.⁹⁷⁷ - Finally, it was the Church that had rebuilt and taken over the guardianship of civilization, of society, of the State itself, after the collapse of the Roman Empire.⁹⁷⁸ However, with the progressive awareness of the States as autonomous sovereign realities, and then with the Protestant rupture, this harmony could no longer subsist for long.-

⁹⁵⁷ Cf DELHAYE. 1965a. 1136.

⁹⁵⁸ Cf. also DELHAYE. 1965a. 1137 and 1140 (on s. THOMAS).

⁹⁵⁹ Cf. DíEZ-ALEGRÍA, 1965, 53-54; and note 38, 54-56 (VATICAN I did not endorse this opinion); cf. also CEREST. 1964.7.

⁹⁶⁰ Cf. CANET, 1891, 238-240. Constant assumption of bad faith by CAVAGNIS, 1882, n° 509; & n° 513 and 1891, n° 341,247; in the other sense, cf. COSTE, 1969,300; VERMEERSCH. 1922.306.

⁹⁶¹ Cf. AUBERT, R., 1969,378-379; also BOUYER, 1951.10/1952,69 and 72; MINNERATH, 1991.32.

⁹⁶² Cf. GIACON. 1967, 1564.

⁹⁶³ Cf. LATREILLE. 1966, 195.

⁹⁶⁴ Cf. e.g. RIVET, I (1912), 166; ARCY, 1964, 109; CAVAGNIS, 1882, n° 525 & n° 544; similarly CHÉNON, 1921.207.

⁹⁶⁵ Cf. LECLERCQ Jacques. 1963, 127-130. Still in the XIX- century, LIBERATORE. 1868.10.24,265, quoting TARQUINI, *taris eccl. institut.* 77. The A. bases himself on the motives of credibility of the Catholic Church. He goes further in LIBERATORE, 1877.08.20, 535, but finally agrees with CAVAGNIS (LIBERATORE, 1886.06.08, 659).

⁹⁶⁶ Cf. JANSSENS. 1964, 178, n. 2, quoting THOMAS D'AQUIN, s.: 1271-1272, *Summit Theologiae*, 2-2: 010. 8 & Oli, 1,c, ad 2 and 3 and 1269-1271, *De Maio*, q, 3, art. 7. Otherwise, one would say, as 2-2. q. 11,a. 2. ad3: "If there are some who defend their way of thinking, even though it is false and perverse, without putting stubborn animosity into it, but seeking the truth carefully and cautiously, being ready to correct themselves as soon as they find it, they should not be counted among the heretics at all" and 0034. AUGUSTINE OF HIPPO. S., 0391: *De utilitate credendi*, c. l. n° 1: CSEL 25, 3; PL 042. 65 ss. POUJOLAT-RAULX, 14 (1869), 33: "Indeed, the heretic is, according to me, the one who, in view of some temporal interest, and especially with a goal of glory and domination, emits or follows false or new opinions. Cf. also K1NDREGAN, 1970, note 37; LECLERCQ Jacques, 1949.02.107.

⁹⁶⁷ Cf. ARCY, 1964, 115 and 116; WULF. 1964, 219.

⁰⁰ -¹ Other forms of States were then able to constitute themselves and survive without this unity.⁻⁰⁰⁴ This was therefore no *longer* indispensable to any true notion of State.⁻⁰⁰⁵ The modern State, founded only on natural law, is a different matter.⁻⁰⁰⁶

3) *A society that ignores pluralism*

A society that almost totally ignores de facto pluralism was therefore the fundamental fact of the Middle Ages and until the Reformation, or even beyond, forcer-

⁰² Cf KELLER, 1865,383.

⁰³ Cf. DF (*Document de Fribourg*), prologue, our 2^e ed. t. 11/B, *Calendar... DH. TI* Dec. 1960).

⁰⁴ Cf. BAINTON, 1966,20.

⁰⁵ cr. STICKLER, 1989,16.

⁰⁶ CONG AR. 1950.07,730-731 (see also 732).

⁰⁷ cr. CARDINAL, 1966.11.10.316.

⁰⁸ Cf. DUPONT Philippe, 1989/ 1988.11-12,19,SriCKLER. 1989,andCONGAR, 1950.07, cited above.

⁰⁹ Cf. GARRUCCI, 05 (1863.11.07). 447 and 451. Cf. also LECLER. 1962, 1685-1686. respondent & JORDAN, and ANDRE-VINCENT, 1976, 19; and S 10: 3 RS, AS. III/VIII, 462-463 (The public power cannot repress a religion as false, but only as harmful to public order), trans. LUCIAN, 1990,291.

¹⁰⁰ See LECLER, 1966.10.13.

^{100'} cf. GIACCHI, 1966, in GIACCHI, 1981,1.1,718.

¹⁰² cf. OLIVIER, 1952, 185-186. For DAUJAT, 1970, 477-478. in a situation of Christendom *faith is a constituent element of the temporal common good itself*. This is more precise than CONNELL, 1948.06.28-30, 100, and it contradicts ZALBÁ. 1966 = D(EZ-ALEGR(A, 1966a, 192.

¹⁰³ See ONORIO, 1983,31.

- OO+cf. TIBERGHIEN. note 13,31-36, especially 33-34.

¹⁰⁰⁵CL VERMEERSCH, 1922,214.

¹⁰⁰⁶ See HARTMANN, 1958.282.

some countries such as Spain. The appearance of religious pluralism (a regrettable fact,⁻⁰⁰⁷ but one that cannot be helped, except by evangelizing the entire population) has been *the occasion* to seek another way of founding society, without being the ultimate cause of the demand for Religious Liberty.⁻⁰⁰ * Pluralism would not be irreversible if it were not accompanied by a development - apparently irreversible - of the means of communication.⁻⁰⁰⁹

4) *Non-reciprocity*

We have seen that those pursued by the Inquisition constituted a danger to what *we call* just public order.⁻⁰ -⁰ And not only at the level of public peace,⁻⁰ -- because even if they had been peaceful, their expansion would have constituted a threat to the RL of the Catholics who remained in orthodoxy,⁻⁰ -² and this, quite simply because the mentality of the time prevented them from caring in the least about the RL *of others*, especially about the freedom of action of the Church (members⁻⁰¹³ and institution¹⁰ -⁴). On the other hand, it is not useless to think of what became of the RL of the Catholics of Maryland, for example, when they, after having (the first in America) proclaimed the RL for all confessions as early as the XVII^e century,⁻⁰¹⁵ saw it confiscated when the Protestants became the majority again. We believe that this *lack of reciprocity* was the main factor that not only prevented the *discernment of the principle* of the RL by one or other of the parties involved, but also allows us to understand why the *principle* itself would have been *inapplicable*.

Thus, the Church, making a prudential judgment on what, in fact, was indispensable for the safeguarding of society in the circumstances of that specific period, used *in actu exercito* that criterion which later Vatican II would call *in actu signato*

¹⁰⁰⁷ See ROUQUETTE, 1966.01.89.

⁰⁰ * See CARRILLO, 1963b, 47.

¹⁰⁰⁹ See COTTIER, 1964.07-10.99.

¹⁰¹⁰ Cf. ANDRÉ-VINCENT, 1976, 16; BERGIER. art. "Heretic", in 1Dⁿ t. 35 (1850). 1149; OTTAVIANI 1954⁴, 300, n° 172; and SAUS SEEWIS, 1890.10.08. 175; BRANDI, 1902, 12; CANET, 1891. 113. note 1 and 241-242, note 1; BILLOT, 1921, 11, 10, note 1; CARON, 1985, 398; and 299 (cites GUIRAUD, 1912; HEFELE-LECLERCQ, 05/2 (1913), 1187 ff. & 1260 ff.; FLICHE & MARTIN, 10 (1950), 112-138; DANTE, *Inferno*. XXVIII. 55-60); LEIBER, 1962, 164; MARTINA, 1970.287; TANON, 1893, 10; MURRAY, 1960, 35.

¹⁰¹¹ Cf. RUSSO Biagio. 1965, 95-96.

¹⁰¹² Cf. CANET, 1891, 112: "The object of political intervention is therefore not to impose faith on souls, but simply to protect the exercise of their religious freedom", who does not seem to see the immense scope of what he is affirming.

¹⁰¹³ I Fri FR, 1955 had great difficulty in finding the first and rare defenders (Catholic and Protestant) of universal civil tolerance in the XVI^e century. See also ID-, 1969.

¹⁰¹⁴ Cf. PALOMBA, 1868.06.22.66; MURRAY. 1948.06.28-30, 84-85.

¹⁰¹⁵ Cf. 1224/B. JOHN PAUL 11, 1995.10.08: at *Mary Our Queen Cathedral* in Baltimore. 2a-b-c; ORLF. 1995.11.07,6; DC. 1995,0980-0982, n° 2.

just public policy.⁹⁶⁸ Even if sometimes wrong, such a prudential judgment implied no doctrinal error."⁹⁶⁹

In the past, in order to protect the RL of those who formed the near-unanimity of society and to facilitate their access to God, no other durable and effective juridical technique was known than the denial of any *natural right* to the RL which was *intrinsically inamissible per se* for non-Catholics, especially the baptized, even if it meant recognizing a *de facto* and *revocable tolerance* for them (tolerance in the historical-legal sense). And illiterate people themselves preferred to be protected from error by coercive means."⁹⁷⁰ All in all, as long as the moral unanimity of Christendom was maintained,⁹⁷¹ the system protected - rather well than poorly - the RL of the vast majority of the inhabitants of Christian lands. The situation after the 16th century^c made necessary the elaboration of the international and interreligious recognition of a *reciprocal* RL, by which the law of nations will bring into force a new aspect of natural law.

Without such a "process of multilateral disarmament" it would be impossible to discern, affirm, claim and put into practice any right to religious liberty for any man, even if he is living in error. Only a few embryos of such a freedom enjoy a stable existence: 1° the supernatural right to civil freedom of access to faith and baptism; 2° the natural right to civil freedom to educate one's children in one's own religion, even if it is erroneous; 3° the tolerance of error with a view to avoiding a greater evil or to procuring a greater good, which is itself much more unstable and unsatisfactory as soon as relations between countries become wider.

"The recognition of such a right presupposes that human beings become more conscious of their own dignity, lived and expressed in terms of *personal responsibility*; that, consequently, the *universal* conviction would be created that rights are not *directly and formally based* on spiritual values such as, for example, truth, moral good, justice, but that, on the contrary, the subjects of rights are persons and *only* persons, physical or moral; that juridical relations are always *intersubjective* relations (between persons and persons and not

⁹⁶⁸ See OTTAVIANI, 1960, vol. II. 59.

⁹⁶⁹ *DH* does not condemn the past actions of Christian princes in their entirety, even if it notes that certain specific attitudes are not in conformity with the spirit of the Gospel. Cf. 0979. PAUL VI. 1971.08.18: *General Audience*; 1PVL703-705: DC, 758-759. In this case 0979.4.

⁹⁷⁰ Cf. ARCY. 1964, 173-174.

⁹⁷¹ Cf. LERCARO, 1958.04.19, 345-346.

CONCLUSION OF THE

between persons and spiritual values) (...]. ""o

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CONCLUSION OF THE FIRST PART

ARRIVING FROM THE TIME OF THE FRENCH REVOLUTION, when new ideologies concerning human freedom and the relationship between the State and religion appeared, we are in a position to draw a small balance sheet of the period from the first Fathers to the XVIII^e century.

1^o The first Fathers claim freedom of religion as a natural right, at least in the form of the right not to be forced to worship contrary to one's conscience; 2^o when one passes from official paganism to the semi-arian State Church, the Catholics claim freedom of religion again, against the persecutions of the Court; 3^o when the Church finally succeeded in getting rid of the pagan and Arian persecutions, she asked the State to protect her against pagans and heretics; 4^o when, several centuries later, new heretics arise, strengthened by the support of local nobles who despoil the Church, for example in the Cathar Languedoc, then in Lutheran Germany, the Church calls the secular arm for help; 5^o but in the case of Protestantism, the tear is too vast and too deep: it can no longer be healed by a quick and efficient repression on an insignificant and brutal minority; it becomes ingrained, and the following generations are born without having known Catholic unity; their good faith can less and less be contested; 6^o disgusted with the religious wars, a movement then takes shape to separate religion and secular arm, but it is based on a positivist, naturalist and rationalist juridical ideology, and it ends up subordinating religion to the State. This is where we are now.

PART TWO:

**THE MAGISTRACY
SINCE THE FRENCH REVOLUTION**

(1790-2002)

OR:

**OF "FREEDOM OF CONSCIENCE AND
OF RELIGIONS"
TO "RELIGIOUS FREEDOM**

INTRODUCTION TO THE SECOND PART

DN Part II, which we are now addressing, we present in a first phase (section A) the reaction of the popes (from Pius VI to Pius IX) to the revolutionary movement that made the situation of the Catholic Church as the dominant religion disappear. In a second phase (section B), we will see the popes (from Leo XIII to John XXIII), while continuing to reaffirm the previous doctrine, begin a kind of application of this doctrine to the new circumstances. These "recent popes" operate a discernment within the many successive theories of the "natural rights of man" elaborated since the XVI^e century either within Catholicism, or against it or on the margins of it. A third phase, characterized by the *DH.* declaration, whose doctrine the Roman Pontiffs (from Paul VI to John Paul II) take up, explain and make apply, finds its logical place in our Book II. What leads us to think *a priori* that the recent popes do not contradict the popes of the XIX^e century, is the following observation: If the liberty proclaimed during the Revolution took hold of French religious buildings, it is undoubtedly because this liberty of "Marianne" differed from the LR claimed now by the Church for all her children (potential or actual).

¹⁰²¹ Cf. S 48. = 6 RO. A.S. 1V/VI, 719.

SECTION A.

FIRST PHASE:

FROM MAGPIE VI TO MAGPIE IX

(1789-1878)

ENCE the first upheavals of the French Revolution (1789) and the advent of Leo XIII (1878), it was especially Pius VI (1775-1799),¹⁰²² Pius VII (1800-1823) (Chapter 9), Gregory XVI (1831-1846) (Chapter 10) and Pius IX (1846-1878) (Chapter 11) who raised their voices in condemnation of the new conceptions of liberty in society and of the relationship between Church and State.

¹⁰²² On this period, one can desormais consult the very recent work of PELLETIER Gérard. *Rome and the French Revolution. La théologie et la politique du Saint-Siège devant la Révolution française (1789-1799)*. École française de Rome (coll. de l'École française de Rome, 319), 2004, 769 p.

CHAPTER 9.

9. FACING THE FRENCH REVOLUTION: PIUS VI AND PIUS VII

PIE VI (9.1.), then Pius VII (9.2.) had to suffer from the French Revolution and to condemn its principles.

9.1. Pius VI (1775-1799)

In the matter of freedom of worship, the Synod of Pistoia (1786) and the French National Assembly (1789) enunciated principles that Pius VI¹⁰²³ had to condemn in 1791 and 1794. We will examine first the French texts and acts that were condemned (9.1.1.), then the two pontifical condemnations (9.1.2.).

9.1.1. Condemned revolutionary texts and acts

The French errors were expressed in the Declaration of the Rights of Man and Citizen (DDHC) of 1789 (I) and the Civil Constitution of the Clergy (CCC) of 1790 (II), its great application.

1) The Declaration of Human Rights of 1789

From August 17 to 26, 1789, the National Constituent Assembly discusses and votes the DDHC, in 17 articles, future preamble of the constitution of September 3, 1791,¹⁰²⁴ which begins with a general theory of authority, law and freedom:

"Art. 1: Men are born and remain free and equal in rights!..."

One passes thus from the real equality of nature and natural rights, to the (non-existent) equality in any right. Then :

« Ait. 3: The principle of all sovereignty resides essentially in the nation; no body, no individual can exercise any authority that does not emanate expressly from it.

To make this ambiguous assertion an absolute statement, and not a practical principle for organizing civil society by suffrage, is to deny all divine authority and all unelected ecclesiastical authority (cf. the CCC).

« Art. 4: [1] Freedom consists in being able to do everything that does not harm others. [2] Thus, the exercise of the natural rights of each man has no limits other than those which ensure that the others are not harmed.

1023 0400. *bull. Rom. V* (Continuatio, Barbèri); and *Bull. Rom. IV* (Continuatio) (ed. Prato); GUILLOIN; THEINER ; RAULX.

1024 Source: *GLU*, vol. V, art. "Human Rights", box.

These limits can only be determined by law. [31 These limits can only be determined by law.

11] The 1st sentence defines positively the majuscular and ideological Liberty, of which it is not clear in which field it is envisaged. This conception is condemnable and will be condemned by all the popes, up to and including John Paul II. Since it admits as a limit only "harm to others", [a] it is neither specified, nor measured, nor finalized by the moral good (real or at least apprehended as such). It can therefore be understood as "doing *whatever one wants* as long as it does not harm others", without any internal regulation or limitation of freedom. Thus, it is a *positive authorization* to act as one wishes. The only limit mentioned is external, [b] In fact, non-harming others, even if properly conceived, cannot be the only limit (even external) of freedom, although it is part of it. But what is more, the DDHC will define it in a perverse way. 2] Indeed, the second sentence is exclusive of any other limit: [a] internal: freedom is not limited by the moral rule; [b] external: freedom is limited only by the rights of others. Logically, "harming others" is equivalent to "harming their rights". Here we recognize the juridical rule of "*neminem lædere*", which effectively aims at the respect of justice. 31 But if only it were a question of authentic rights! Indeed, it is a question of the rights determined by the only positive civil law:

"Art. 5: The law has the right to defend only those actions that are harmful to society. Whatever is not forbidden by the law cannot be prevented, and no one can be compelled to do what it does not command."

This very positivist freedom had already been conveyed by the culture of the time. Thus, according to the *Dictionary of the French Academy of 1777*: "Freedom also means the power to act in accordance with what is permitted by the laws."¹⁰²⁵ And what is this law?

"Art. 6: The law is the expression of the general will [...]."

In short, the freedom of 1789 has no internal regulation other than **individual arbitrariness**, and it has for external regulation only **collective arbitrariness**. It is in this context that we must continue with the two articles applying these theories to two particular liberties: the "freedom of opinion" and the "freedom of the press", henceforth the main targets of the popes:¹⁰²⁶

"Art. 10: No one shall be disturbed for his opinions, even religious, provided that their manifestation does not disturb the public order established by law."

1° This freedom covers the generality of opinions (religion being relegated to the rank of a particular *opinion*.) 2° At first sight, it is a *civil* freedom, not a moral one: the immediate context indicates it. However, as we have seen, the sovereign moral legislator can only be the people; it is thus a civil liberty which does not recognize a moral law above the civil law. 3° This freedom comprises two levels: a) what one thinks; b) the manifestation of what one thinks. 4° The formulation here is negative: it is a question of a non constraint. But this is only a negative and practical application of art. 4, where freedom was defined positively as a power to do "whatever...", etc. This context should not be forgotten: the freedom of opinion claimed in the DDHC is not *purely* a negative right-requirement; it contains a positive authorization given by the sovereign people. It is thus considered (wrongly) as a good to be protected by the law the fact of being able to think and to manifest everything that is not contrary to the civil law. The *manifestation of opinions* receives a special protection:

"Art. 11: The free communication of thoughts and opinions is one of the most precious rights of man; every citizen may therefore speak, write, and print freely, except that he may be held accountable for the abuse of this

1026 We have again checked this fact carefully, confirmed by PLONGERON, 1997, 336, however very scornful of the Brief *Quod aliquantum*, p. 337-338.

freedom in the cases determined by law."¹⁰²⁷

One can thus summarize (on our subject) the thought of the DDHC as follows: the absolutely sovereign people proclaims that it is a natural right of man, notably in religious matters, that the freedom to think, do and manifest all that is not contrary to what the positive civil law will have determined as necessary to the public order consisting in the non-harming of the rights of others established themselves by the law, expression of the only general will. Liberal thought thus recognizes freedom only as having a positivist *content* and *limits* (determined by positive law alone). In the liberal public order, therefore, no criterion (neither natural, nor *a fortiori* supernatural) imposed on society from outside, by divine authority, can enter. Let us notice how much these texts are dominated and unified by the law resulting from the general will, in tension or even internal contradiction with the concept of natural law. Louis XVI, while sanctioning the text on September 5, noted its ambiguity and announced the need, to really approve it, to wait for the laws which would be drawn from it. "¹⁰²⁸ As the continuation will prove him right!

II) The Civil Constitution of the Clergy (CCC) (1790) and the schismatic consecrations (1791)

On July 12, 1790, the French National Assembly passed the CCC,¹⁰²⁹ ' synthesis of all known forms of Gallicanism,¹⁰³⁰ and usurpation of jurisdiction in religious matters, leading directly to schism. "On July 22, Louis XVI, embarrassed, made known that he accepted the CCC but asked for a delay before promulgating it. 103- The next day [23], he received writs from the Pope, dated July 10, in which Pius VI condemned the CCC.">32 Too late. "The King urgently asked the Pope to accept at least temporarily 5 points of the CCC;i<"4 the Pontiff constituted a Commission of 20 cardinals, who advised to consult the bishops of France.""s" On August 24, 1790, the King sanctioned the decree, ""s" On October 10, French bishops wrote to the Pope. On October 30, thirty of them¹ ®⁷ condemn (in a moderate tone) the CCC, in the *Exposition of the Principles of the Constitution of the Clergy of France*, written by M^{8r} de Boisgelin. On November 27, the Assembly obliges all the ecclesiastics in exercise to take oath to the said CCC, under penalty of revocation. On December 26, badly advised, Louis XVI, against his conscience, gave his sanction to this text.""s On December 27, Henri Grégoire, parish priest of Emberménil, was the first to take the oath, followed by 60 other priests.¹ ® They were to be imitated by 46 others of the left and two bishops (out of 32 or 44?), Talleyrand and Gobel: in all approximately 109 constituents.1040 On January 4, 1791, all the ecclesiastics of the Assembly were to have taken the oath. Those on the right refused to do so one by one, then as a whole (except for 4), although they were aware of the risk of martyrdom. "Mi In fact, "it did not take three years for the French Terror to claim more victims than the Inquisitions combined after three centuries. "1042

IW' Cf. also ed. RIALS, 1988, 21-26.

1028 cf. his text in GIRAULT DE COURSAC Paul and Pierrette, *La politique de Louis XVI pendant la Révolution*, in AA. W., *L'envers des droits de l'Homme*, Actes de la 2^e université d'été de "Renaissance Catholique" (Mérigny, August 1993), Issy-les-Moulineaux, 1993, 75.

1029 cf. LEFLON, 1949, 57-67 and 1956. Full text: VIGUERIE, 1986b, 269-276, citing SCIOUT. 1872, 1, 39-47. Some information in GOBRY Ivan, *Lu Révolution française et l'Église*, Escurrolles, Fideliter, 1989, 95 120.

1030 Cf. LEFLON, 1949. 59. It was due in particular to Durand de Maillane, a famous *gallican*, and to the *Jansenist and richerist* lawyers Martineau (perhaps especially gallican) and Camus.

The schismatic consecrations. On February 24, 1791, "3 Talleyrand, bishop of Autun, assisted by Gobel and Miroudot, "44 against all the canonical rules, crowns as bishops the parish priests Expilly and Marolles, in Paris, near the Louvre, in the church of the Ora-

■ 031 According to ROHRBACHER, cit. 303, it was the 24th. For SCIOUT, I, 262-294 LOUIS XVI had indeed received the letter of the pope when he approved the CCC; but he does not indicate the date of the approval of which he speaks, and does not quote a source. See especially VIOUERIE, 1986b, 72-111, especially 81-83.

"2 French text: ROHRBACHER, CHANTREL & DUFOUR, *Histoire universelle de l'Église catholique*, Paris, Gaume & Duprey, t. XIV (1730-1852), 1867^a. 302-303. Similarly in THEINER. I. 5-7.

1033 TULARD Jean, etc.. *Histoire et dictionnaire de la Révolution française (17X9-1799)*, Paris, R. Laffont, 1987, 72.

■ 034 Cf. BOULENOER A., *Histoire générale de l'Église*. 1.111: *Les temps modernes*, vol. 8: XVII^e et XVIII^e siècles. Part 11: *The French Revolution*. Lyon / Paris, Vitte, 533. See details in LA GORCE Pierre de. *Religious History of the French Revolution*. 1.1, Book five: *The Pope, the King, the sanction*, Paris. Plon. 1912^U. 286* 287, which places the reception of the papal letter has before July 27 ".

■ 035 This "Congregation of Extraordinary Affairs of France", composed of 12 cardinals, advised the popes throughout the Revolution. Cf. PLONGERON, 1997,334-335.

1036 TULARD, op. cit. *ibid*. Cf. CONSTANTIN Charles-Aimé, 1906.

">37 According to LA GORCE, op. cit. 306 and DANIEL-ROPS, *Histoire de l'Église du Christ*, IX: *L'Église des Révolutions*. Paris. Fayard. 1962-1965.27, and LATREILLE. 1946.92.93 bishops adhered to it.

1038 Cf. DANIEL-ROPS, op. cit. 29 & VIOUBRIE. 1986b, 85-86.

1039 || there were about 55 % of refractory priests in France, according to ancient authors, but according to PLONGERON, 1997,338. It is 55 % of swearers.

1040 I Q5 according to TULARD, op. cit. 73. More detailed figures in PLONGERON, 1997,332.

1041 Cf. ROHRBACHER, cit. 306; TULARD. op. cit. 73.

1042 VERMEERSCH, 1922. 187.

■ 043 January 25 according to certain old authors. February 27 according to PLONGERON. which has against it all the preceding specialists.

IO+4 Loménie de Brienne, Jarente and Savine had recused themselves.

toire.¹⁰³¹ Many refractory people continue to take up the pen to attack the CCC."⁶ Pius VI will now publicly support them.

9.1.2. Pontifical condemnations

We come to two papal documents that carry condemnations. The first is the key to reading all those that will follow in the XIX^e century (I). The second, important in other respects, brings a stone to our research (II).

KM5 After that, he left the ecclesiastical ministry to devote himself to politics. In his *Memoirs*, he will nevertheless regret the CCC as "the greatest political fault of this Assembly, independently of the awful crimes which were the consequence."

KM6 Cf. VIGUERIE Jean de, *Introduction to LA MARCHE Jean-François de, M^e, év. de Saint Pol de Léon, Catéchisme nouveau et raisonné à l'usage de tous les catholiques français [contre la prétendue Constitution civile]*, reed. Bouère, DMM, 1991.

KM7 ^{for a} list of private letters and secret consistory addresses in which P1E VI had nonetheless expressed his thoughts, cf. CONSTANTIN Charles-Aimé, art. cit.

KM8 0402, PIE 1791.03.10: Brief or Decretal Letter *Quod aliquantum*. to the cardinal of La Rochefoucauld, to the archbishops and to the bishops of the French National Assembly having subscribed to *V Expos ilion of the Principles of the Constitution of the Clergy of France*. This brief is thus not yet addressed to all the Church of France. Latin-French texts: *Recueil*, 44-109; CHANTREL, 482-559; RAULX, II. 1-106; translation: GUILLON, I, 104-263; reprinted and well annotated by CHAUNU Jean, *Pius VI*" 89-146; *Vu de Haut*. Paris, University Institute of the FSPX, n° 7, 138-140: extract: *PIN* 1-4. Events well explained by AUBERT R., in *JEDIN* (ital.). 08/1.26. See for what follows our "Comparative Table" in *LRTC*, 1170-1174.

1049 usual translation *completely distorts* the meaning, because it is no longer a question of the CCC, but of the founding texts of the Assembly, in this case, of the DDHC, alone to contain what P1E VI condemns here.

1050 One expression confirms that it is the DDHC.

1051 The usual translation adds the epithet "unbridled" here.

I) Quod aliquantum (1791):

Condemnation of the French revolutionaries

On March 10, 1791, after 8 months of silence,¹ ¹⁴⁷ writing to the bishops members of the Assembly, Pius VI, in the brief *Quod aliquantum*,¹⁰⁴¹ ! condemns the CCC (while asking for the opinion of the bishops of France, that he declares to wait), at the same time as the DDHC itself, where he sees (rightly) the inspirer of the CCC.

"[A] [...] the National Assembly attributed to itself spiritual power, [1] when it made so many new regulations contrary to dogma and discipline; [2] when it wanted to oblige the Bishops and all Ecclesiastics to commit themselves by oath to the execution of these decrees. [B] But this conduct will not surprise those who will observe from the very constitution of the Assembly (*ex ipsa convenis constitutione*)^{TM4} @ that it aims at nothing but [1]] to destroy the Catholic religion and, [2] with it, the obedience due to kings. [C] It is with this view in mind that it is decreed that it has been laid down in law (*in tare positum esse*) that man constituted in society [1]] (*ut homo in societate constitutus*),[^] enjoys an absolute liberty (*omnimoda gaudeat libertate*), [a] consisting in that he is not to be troubled as to religion (*ut turbari scilicet circa religionem non debeat*), [b] and that it is up to his own good pleasure, in matters of religion itself, [b'] to opine, to say, to write and even [b "I to have printed and published whatever he wants (*ejusque arbitrio sit de ipsius religionis argumente, quidquid velit, opinari, loqui, scribere, ac typis etiam evulgare*) ; [2]) monsters certainly, which however seem to result from the equality and the natural freedom of all men. [D] But what could be more foolish than to establish among all this equality and freedom (*quant talem œqualitatem Ubertatemque inter omnes constitueret*)[^] so that nothing is granted to reason (*ut nihil rationi tribuatur*), the most precious gift that nature has given to man, and which distinguishes him principally from the animals? "¹⁰⁵²

[A] Pius VI condemns the Assembly first for having established the CCC, usurpation of competence, interference of the temporal in the spiritual, 11 J as for its contents; [2] as for the obligation to take an oath to it. [B] It aims then at the DDHC, for its double intention, namely to abolish [1] "the Catholic religion" and [2] the "obedience due to the kings".

[After this, he comes to the proper object of our work, the condemnation, repeated afterwards by all the popes of the XIX^c century, aimed at the act made in virtue of the above-mentioned intention ("*eo consilio*"). This act was to decree [11] a right of man living in society to enjoy total freedom (*omnimoda*).¹⁰⁵³ This rejected freedom is obviously that of art. 10 and 11 of the DDHC, but it is considered here, in both cases, only from the *religious* point of view. Despite its (extrinsic) limitation by 'public order established by law', the pope considers it 'unlimited'^J¹⁰⁵⁴ Moreover, according to the pontiff, this freedom has 2 components, namely (*scilicet*):

[The right to freedom of expression has a negative component, corresponding to art. 10 of the DDHC, "not to be disturbed" (in the absolute, therefore by nobody, not even by the Church, whose authority is not derived from the suffrage);

and [b] a positive component, corresponding to art. 11: "that it is his good pleasure, even in matters of religion, [etc.].".¹⁰⁵⁵ Freedom is presented here under its affirmative aspect and as regards the allegedly protected juridical good: to think, to speak, to write, to print, to publish whatever one wants, an aspect that corresponds to what civil freedom makes possible in the active subject of the right (because of the presence in him of free will). This necessarily leads us to think that the right to condemned civil liberty claims to protect an affirmative right-permission (what PiusXII will call a "positive authorization"), which is legitimate only if it is itself based on a moral permission. In [b"][, it is a question of freedom of the press (always for the religious matter, which commands the whole sentence). The set [b' and b"][of these acts made free is specified by "whatever one wants". We can see now that the reason for the epithet "*omnimoda*" is this "*quidquid velit*", synonymous with the absence of internal

limitation criteria. Indeed, it is the object, or rather the internal rule of this freedom in religious matters: "whatever man wants", or "his good pleasure", or "his arbitrariness" (*arbi trio*). This unlimitedness is thus rather the non-determination of the object of freedom otherwise than by the (in this case *individual*) will (in defiance of *the intelligence*). It is only because of the overall system of the DDHC (cf. the positivism

1052 0402. : trans. of *Recueil*. 53, corrected from the Latin.

1053 cf. COSTE, 1988.09.01 -08,469,2.

1054 This will be a constant in subsequent papal condemnations.

1055 0402.1. We therefore establish here our own translation, deliberately very literal, because the current translations are inaccurate. Indeed, Pius VI does not use the equivalent of the word "impunity". Nor does he refer to the "most unbridled imagination" but to the *will*. The said freedom has indeed for object "*quidquid velit*". all that the man wants. It is thus quite different from "what he considers in conscience to be necessary to do". Cf. LUCIEN. 1992.03.14. voluntarist of art. 4-6) that is also aimed at the indetermination of the criteria of the *extrinsic* limitation, carried out in the name of a public order established by the only civil law, itself based on the only will (this time *general*).

[2] Pius VI shows here that art. 10 & 11 of the DDHC are to be understood as flowing from art. 1. Pius VI therefore believes that according to the DDHC, the above-mentioned "positive" right (*in iure positum esse*) is based on "natural equality and liberty".

[D] confirms that what is formally targeted in [CJ [2] as "monsters" is (still in the religious domain, in this case, but not formally limited to it) the absence of *rational* limitation of the criteria of freedom. One thus aims a) *in recto* at an arbitrariness with an individual basis and b) *in obliqua* (for the moment) at a collective arbitrariness, supposed to limit the other. Moreover, the rejection of reason in favor of the will alone entails the rejection of true law and moral obligation [and even of conscience]. The proclamation of a right to civil liberty to act as *one pleases* in religious matters thus presupposes the absence of religious moral obligation, and the presence of a positive authorization to act as one pleases. The following confirms this:

"Did not God, after having created man, after having established him in the paradise of delights, threaten him with death, if he ate of the fruit of the tree of the knowledge of good and evil? And by this first precept did he not restrain his freedom? [And when he was later guilty of disobedience, did he not add new commandments through Moses? [And although he had "left him to the power of his own free will" (*licet ipsum reliquisset in manu consilii sui*), whether he deserved it or not, did he not surround him with "commandments and precepts which could save him, if he wished to fulfil them"? 1056

[Thus, the freedom mentioned is condemned because it implicitly denies the moral obligation to obey the laws of God and of society. 11] The laws laid down by God are then reviewed, [a] the unique precept of Eden; [b] the Decalogue of Sinai. [2] Denying the freedom of moral obligation. Pius VI says that he does not question the free will or psychological freedom, on the contrary necessary for obedience, and not even the freedom of coercion, which God has left to man, at least here below.

"Where is this freedom to think and act (*cogitandi, agendique liber tas*) that the decrees of the Assembly attribute to man in society as an imprescriptible right of nature itself?¹⁰³ 7 [21 By virtue of the sentence of these decrees, it will be necessary to contradict the right of the Creator, by whom we are, and to whose bounty we must report all that we are and all that we possess. (3 J Can we ignore, moreover, that man was not created for himself alone, but to be useful to his fellow men? For such is the weakness of nature, that men, in order to preserve themselves, need the mutual help of one another; and this is why God gave them reason and the use of speech, to put them in a position to ask for the assistance of others, and to help in their turn those who would implore their support. It is therefore nature itself that has brought men together and united them in society:^{103K} |4J moreover, since the use that man must make of his

reason consists essentially in recognizing his sovereign Author, in honoring him, in admiring him, in reporting everything to him;

1056 04023 and 4 (RAULX, 11. 15-16).

1057 cf. preamble of the DDHC ("natural, inalienable and sacred rights").

1058 This refers in particular to articles 1, 3, 4 and 6 of the DDHC.

Since, from his childhood, he must be subjected to those who have the superiority of age over him; he must allow himself to be governed and instructed by their lessons; he must learn from them to regulate his life according to the laws of reason, of society and of religion: this equality, this freedom so vaunted, are therefore, for him, from the moment of his birth, nothing but chimeras and words without meaning. [51 "Be subject to necessity," says the apostle St. Paul. Paul: thus men could not gather together and form a civil association without establishing a government, without restricting this freedom, and without subjecting it to the laws and authority of their leaders. "Human society," says St. Augustine, is nothing other than a "general agreement to obey kings"; and it is not so much from the social contract, as from God himself, the author of all good and all justice, that the power of kings derives its strength. "Let every individual be subject to the powers," says the great Apostle in the same Epistle, "for every power comes from God; those that exist have been regulated by God himself: to resist them is to disturb the order which God has established; and those who are guilty of this resistance, doom themselves to eternal punishment."¹⁰³² But to refute this totally absurd conception of freedom,¹⁰³³ is it not enough to say that this system was that of the Waldensians... "¹⁰⁶ -

[A]fter recalling the claim to the natural right to freedom in society to think and act, Pius VI advances the *reason* why this freedom of the DDHC contradicts the nature of true laws: it contradicts the rights of God over man. Such an assertion by Pius VI can *only* be understood *and is true* if it is a question of freedom to think and act as one wishes (*quidquid velit*), as he has just characterized it previously in [CJ, not if it is a question of freedom to act according to what one's conscience dictates is the law of God. So there is still a door open on this side, notably by the double mention of *reason*.¹⁰³⁴ [31 The freedom of the DDHC also contradicts the natural necessity of human society. It presupposes the voluntarist social contract. It places the opposition of wills within society. It thus releases the individual will from the natural social bond and consequently destroys the unity of the general will, thus of society. [4] It frees the will from the laws of reason, society and religion. This accusation is just, both for the general will and for the individual will (cf. DDHC, art. 3, 4, 6, 10, 11). [5] In particular, it releases the will from its duty of conscience to obey the social authority, leaving only the right of coercion for the positivist public order. 6] In this it repeats ancient heresies.

"However, what we have said about the obedience due to the legitimate powers, we do not want it to be understood (11) as if we had said it with the intention of attacking the new civil laws, to which the king himself could give his assent, as if we had intended that everything should be brought back to the old regime (*ut omnia ad pristinum civilem statum redintegrentur*), according to the interpretations spread by certain slanderers in order to arouse hatred towards religion: [31 you and I seek only to preserve the sacred rights of the Church and of the Apostolic See from all infringement. "

[G] Pius VI then comes to specify his goal: not the return to the Old Regime, but the preservation of the interests of religion.

"It is with this in mind that we shall here consider freedom in a different light, and make clear the difference between [1] men who have always been outside the bosom of the Church, such as infidels and Jews, and [21] those who have submitted to the Church itself through the reception of the sacrament of baptism. [The former are not to be

¹⁰³² Collection. 54. The famous "resistance to oppression" (art. 2 in connection with art. 3) seems to be particularly targeted here.

¹⁰³³non i_a t_{ra} d. usual fantasy: "to make this phantom of an indefinite freedom vanish in the eyes of sound reason". We do not note all the errors of translation. But the most constant one consists in putting epithets "unbridled", "indefinite", etc., after the word freedom. This should have been reserved for the transcription of "*omnimoda*".

¹⁰³⁴ And LEON XIII, we will see it, will rush in this door.

compelled to profess Catholic obedience; but the latter are to be compelled (*alteri sunt cogendi*). (a) St. Thomas Aquinas [2-2, 10,8] proves this difference with his ordinary soundness.^{11,63} (b) Several centuries earlier, it had been established by Tertullian in his work [*Scorpio*] against the Gnostics [II, 15],¹⁰⁶⁴ and [c] Benedict XIV recognized it a few years ago in his *Treatise on Beatification and Canonization* (111, xvii, 13),¹⁰⁶⁵ [c] and, in order to make this argument more evident, we must refer to the two very famous and often edited letters of St. Augustine, one to Vincent de Paul and the other to St. Paul. Augustine, one to Vincent, bishop of Carthenne [Ep. 93, Mauristes, II, p. 237];¹⁰³⁵ the other to Count Boniface [Ep. 185, *ibid*, p. 652],¹⁰⁶⁷ where he victoriously refutes both ancient and modern heretics.¹⁰⁶⁸

[As for the Church's right to coercion, [I] he exempts the unbaptized from the coercion of Catholic obedience, but [2] subjects the baptized to it. He does not indicate what he means here by "*cogendi*", nor what authority can exercise this coercion. While some of the authors to whom he refers think of civil coercion, Pius VI does not do so; on the other hand, he does not specify any circumstances in which such coercion is legitimate. The formality of the present text lies in ecclesiastical "coercion" (a coercive power that will remain taught by Paul VI).

"This equality, this liberty so exalted by the National Assembly, only results in the overthrow of the Catholic religion, and this is why it refused to declare it "dominant" in the kingdom, even though this title had always belonged to it, "tu&v

[I] This brings us to the implicit denial by the DDHC of society's obligations to the Catholic religion, a goal that Pius VI denounces. But this dominant position of the Church in France is taught here only as an *acquired* right.

¹⁰ See our texts 0251-0254.

^{10M} See REIFFERSCHIED August and WISSOWA Georg (eds.). *Quinti Septimi Florentis Tertulliani Opera*. 1. CSEL 20,147-150.

II) *Auctorem fidei (1794): Condemnation of the Jansenists of Pisto*

Four years later, *Auctorem fidei* condemned as heretical the idea that the Church would abuse its authority by using coercion towards its subjects, at least if one understands by this the authority which the Apostles used for external discipline.¹⁰⁷If, on the other hand, one specifies that one understands by this the means ["*iubendi per leges... salubribus poenis coercendi atque cogendi*"] other than those which depend on persuasion 1 "*consilia et suasiones*"], then it is an *error which leads to* heresy.¹⁰³⁶ In either case, one is obliged to maintain that the Church has an "innate" right to exercise a certain "external coercion" different from mere moral obligation and interior persuasion, in order to compel her baptized subjects to obey her. This "constraint", Pius VI declares only that it is at least a matter of *ecclesiastical* laws and *punishments* that force to act (*cogere*) or prevent from acting (*coercere*). In other words, he maintains the Church's legislative, judicial and penal power over the baptized, without specifying what form of "coercion" he means by this.¹⁰³⁷ But it is quite likely that he was thinking (*without formally teaching it*, let us emphasize again) of physical (immediate) or moral (mediate) coercion exercised by the state at the request of the

¹⁰³⁵ See our 0052.

¹⁰³⁶ 0404, § 5 = *DzSchHii* 2605 = LoGRASSO², n° 650,275-276.

¹⁰³⁷ Pius IX, in the *Syllabus*, will be a little more precise. Cf. also S 86: 6 RS, modus 3, A.S. IV/VI, 761 (67): "- Pag. 12, linn. 22-26 J. R. -[...] Insuper coactio erga adultos ei in societate et civitate, in re religiosa, in sensu in prima pane huius Declarationis expresso, de se iniusta est. Poenæ ecclesiasticæ actum delictuosum sancientes sunt ex coercitiva potestate Ecclesia? erga membra sua, sed non sunt coactio. De limitibus libertatis religiosa n. 7 primum est."

Church.¹⁰³⁸ Even then, he would formally contradict DH only if it were a matter of coercing persons who did not disturb the just public order of the society he envisaged: and this is far from being proven.

Conclusion on Pius VI

Thus Pius VI denies the individual freedom of moral obligation (0402.3), the right affirmative permission to act as one wants, and the right-negative requirement to act as one wants, with only positivist limits. He affirms the necessity of the dominant place granted to the Church in Catholic country (0402.6). He condemns the absence of religious obligation of the man acting in the society, and the civil freedom to exercise *this* moral freedom (0402.1; 0402.4); he condemns the freedom of the baptized in front of the jurisdiction of the Church (0402.6); and he would even seem to condemn the idea that the baptized could not be constrained by the secular arm acting at the request of the Church.

9.2. Pius VII (1800-1823)

His successor, Pius VII,⁰⁷⁴ clashes with the French indifferent freedom under two monarchs: 1° Napoleon I^{er} (9.2.1.); 2° Louis XVIII (9.2.2.).

9.2.1. The oath of the coronation of Napoleon I^{er} (1804)

"On June 25, 1804, Cardinal Caprara wrote to Talleyrand on the subject of Napoleon's coronation^{er} : "The emperor must promise, in addition, by this same oath, to respect and ensure respect for the freedom of worship. Now the Church cannot admit this universal tolerance. She recognizes no salvation outside her bosom; and when Catholic emperors, for reasons of insurmountable force, tolerate in their States sects separated from the Church, this tolerance, purely civil, extends only to the person of the sectarians, and not to the cult they profess. The Church... can only see with extreme sorrow that Jesus Christ and the Gospel are taken as witnesses, that one will respect, not only their persons, but also their errors and their worship." Talleyrand replied on July 18: "The freedom of cults is absolutely distinct from their essence and their constitution. The first has for its object the individuals who profess these cults, the second, the principles and teaching which constitute them. To maintain the one is not to approve the other." Pius VII was not content with this statement; and on August 28, Cardinal Consalvi wrote to Cardinal Caprara: "The Holy Father does not find it clearly expressed that the oath to respect and ensure the respect of the freedom of cults entails only civil tolerance and the guarantee for individuals not to be molested in the external exercise of their worship." This letter crossed with a note from Cardinal Fesch (of August 29), which gave satisfaction to the pope. After having reproduced Talleyrand's declaration, Cardinal Fesch added: "It obviously follows from this express declaration that the oath to respect and make respect the freedom of the cults, expresses only the civil tolerance and the guarantee of the individuals; and it is indeed in this sense that one must understand the answer of M. de Talleyrand." Thus clarified, the oath was authorized. [...] w¹⁰³⁹

1038 0402.6 His references to s. THOMAS, TERTULIEN, BENEDICT XIV and to the letters 93 and 185 of s. AUGUSTIN give us the opportunity to know more about his work. AUGUSTIN we 1U74 B., n Rom. V (Continuatio, Barbèri), t. XI: *Pontificatus Pii VII...* Romæ, 1846, XXI-510p. : t. XV: *Pontificatus Pii VII...*, Romæ, 1853, XXIV-650; or *Bull. Rom. IV* (Continuatio); *Recueil: ou Lettres apostoliques de Pie IX, Grégoire XV, Pie VI*, Paris, Bonne Presse et Roger et Chemoviz, Ilat.-franç.), s.d., 288 p. (abbreviation: BP (1800-1878); very incomplete); RAULX; extracts: PIN. W5CHÉNON, 1921, 199, note (2).

9.2.2. The senatorial constitution and the charter of 1814

Then, in 1814 (at the time of the first Restoration), Pius VII condemned I) on the one hand the senatorial Constitution; II) on the other hand the granted Charter.

1) *The senatorial constitution of April 6, 1814*

In the Constitution voted by the Senate,ⁱ⁰⁷⁷ Pius VII condemns A) the end of the status of "dominant religion" for Catholicism; B) the false right to "freedom of worship and conscience".

A) The end of Catholicism's status as the dominant religion

"Now, We have noticed in the first place that, in the constitution mentioned, the Catholic religion is entirely passed over in silence, and that there is not even a mention of the Almighty God by whom kings reign and by whom princes command" ¹⁰⁷⁸

"And how could we not be sorry? This Catholic religion established in France since the first centuries of the Church, sealed in this very kingdom by the blood of so many glorious martyrs, professed by the very great part of the French people, to which this same people has kept with courage and constancy an invincible attachment through the calamities, persecutions and perils of the last years, this religion finally that the race to which the designated king belongs professes itself, and that it always defended with so much zeal, Not only it is not declared the only one having right in all France to the support of the laws and the authority of the government (*religionem... declarari, cui soli in universa Gallia legum praesidium et gubernu auctoritas suffragetur*), but it is entirely omitted in the very act of the restoration of the monarchy!" ¹¹⁷⁹

He therefore criticizes the absence of mention of the Catholic religion and of God. According to him, the Catholic religion alone should be supported by the laws. ^{10 110}

B) The false right to "freedom of worship and conscience

I) Let's start with the analysis. 2) We will then proceed with the synthesis.

1) *Analytical reading of the text*

a) Pius VII *states* the condemned opinion, then b) *explains* why it is condemned.

b) The condemned opinion: the positive authorization of any worship

As for the condemned *text*, [I] Pius VII affirms its *existence* and provides its *reference*, then [II] he distinguishes two approaches to its *content*:

"A new subject of sorrow, of which our heart is even more deeply afflicted, and which we confess causes us extreme torment, overwhelm and anguish, is the 22^e article of the constitution. [In virtue of the constitution, not only is *freedom of worship and conscience (libertatem cultuum et conscientiae)* permitted (*permitti*), to use the very terms of the article, but also it is promised (*promitti*) to support and patronize (*praesidium patrociniumque*) [11 this freedom, and [2] in addition the ministers of what are called *cults*."

Let us analyze the phrase "II", concerning the two approaches to freedom of worship and conscience (LCC), distinguished by the Latin pun "A" *permitti* / [B] *promitti*]: [A] the phrase beginning with "not only" does not mean that one is going to condemn what follows, as a 1^{er} level of error (then followed by a more serious one), but rather that one tacitly designates this as the part that is at least acceptable; indeed, as [a] "*permittere*" almost always means (already in s. a) "*permittere*" almost always means (already in St. Thomas and in the Magisterium) "to tolerate in practice", and since [b] this *permission* of the LCC will be admitted by later popes in the form of a *negative* permission, it must be assumed that it is *not* condemned

0406.1 : BP (1800-1878). 242 -PIN 17.

1079 0406.2 : BP (1800-1878). 242; PIN 18.

1080 0406.2. According to MURRAY. 1949.06. 230, the re-establishment of confessionality after the Revolution was artificial, because the medieval *customary union* between Church and State had disappeared. The prudential judgment of the popes was different.

here, at least as negative; fB] on the other hand, the following shows that a *positive* authorization is condemned, designated by the *promise of support* and *patronage* offered [1J to this LCC and [2] to the ministers of religion.

c) Why the positive authorization of any worship is condemned

The statement of the *reason for* the condemnation follows the structure of the condemned proposition, but skips the non-condemned aspect (introduced above by "Not only").

"11 There is certainly no need for long speeches, addressing ourselves to a bishop such as you, to make you recognize clearly what a mortal wound the Catholic religion in France is struck by this article. 11 By affirming (*Dum... asseritur*) the liberty of all religions without distinction (*cultuum indiscriminatim omnium libertas*), one confuses truth with error (*hoc ipso veritas cum errore confunditur*), and [b] one puts in the rank of "heretical sects and even - of Judaic perfidy - the holy and immaculate Spouse of Christ, outside of whom *there* can be no salvation. [On the other hand, by promising favor and support (*favor palrociniumque*) even to the sects and ministers of heretics, one tolerates and favors not only their persons, but also their very errors."¹⁰⁴⁰

[First, Pius VII affirms the reason for the condemnation, the "wound"; then he shows how the condemned system is responsible for it. [A] Keeping silent about the (negative) *permission* of the LCC, [B] he condemns *the assertion of the LCC*, an assertion that corresponds structurally to what was previously said about the *praesidium patrociniunmque* promised to the LCC: [11] Placing the assertion of the LCC as the "subject of the sentence," he clarifies what the LCC is: an indifferent (*non-discriminatory*) liberty toward all cults. [Moving on to the "predicate," he asserts that *the assertion* amounts to a *confusion* [a] between truth and error on the one hand; [b] between non-Catholic confessions and the Church on the other. [C] He then takes up the 2^e error stigmatized earlier: [1] He states it as *subject-, that is*, the favor and patronage¹ ^ granted to the sects and their ministers (sub-understood *as such*); [2J he attributes to it his *predicate*; in this predicate we find [a] first of all a "*non persona: modo*" which corresponds to the "*non permitti modo*" already described: this "not only" is to be understood as before, as a parenthesis admitting "what could be accepted".io" [b] In fact, what follows condemns *dogmatic* tolerance, and all the more so *favoring* error. The content of its reference to St. Augustine proves that it is a freedom *implying* religious indifferentism.

2) *Synthesis*

The text can therefore be summarized as follows: - Neither permitting CCL nor tolerating individuals is condemned. - On the other hand, it is condemned to a) positively promote the "freedom of all religions without distinction" and b) to promise favor and support to sects and ministers as such.

a) the *positive* authorization of all cults, which, even if it *is* not the theoretical profession of the dogmatic tolerance of cults, inculcates it in practice, since it could only be *justified* by it. Indeed: to affirm the freedom of the cults without discrimination, he writes, "it is *hoc ipso* to confuse the truth with the error". One finds oneself again with this arbitrary civil freedom to act "as one wants" in religious matters, condemned by Pius VI. This freedom

1040 04063: BP (1800-1878), 242; PIN 19. He then adds: "It is implicitly the disastrous heresy which one will never deplore enough" and which St Augustine mentions in these terms: "It affirms that all the heretics are in the right way and say true, an absurdity so monstrous that it seems incredible to me [that a sect really professes it]".

would be valid only if neither the individual nor society had a specific moral duty towards the true religion and the one Church of Christ. We find the fact that in the XIX^e the popes understand "freedom", even in "civil freedom" as "positive authorization", as opposed to *DH* (simple non-coercion).

b) The *positive* and *equal* favor towards the different cults, defensible only by *dogmatic* tolerance, corresponds well to a *positive* authorization of civil indifference and not to a only negative right to non-impediment. Pius VII reproaches this Constitution with what Pius VI reproached the DDHC.

II) *The Charter granted*

The fears of Pius VII could be partially alleviated:

"The Charter granted portal (article 6): "The Catholic, Apostolic and Roman religion is the religion of the State."^{UB4} "The most Christian king thus pushes back the principle of the neutrality of the State and he erases the restrictive formula - "religion of the great majority of the French" - inscribed by the First Consul in the Concordat of 1801. " all

But Article 5 of the same Charter stated: "Everyone professes his religion with equal freedom and obtains for his worship the same protection. "ioa> Louis XVIII, on July 15, 1817, had to provide Pius VII with explanations on this last fact, through the intermediary of his ambassador Blacas:

"After having declared the apostolic and Roman Catholic religion to be the religion of the State, she had to assure all of her subjects who profess the other religions that she found established in France, the free exercise of their religion, and consequently guaranteed it to them by the charter and by the oath that Her Majesty took there. But this oath can in no way affect either the dogmas or the laws of the Church, the undersigned being authorized to declare that it relates only to what concerns the civil order. "10S7

Finally, this time it was *a civil freedom that positively excluded any idea of moral freedom.*¹⁰⁴¹

Conclusion on Pius VII

All in all, Pius VII condemns 1° the freedom of moral obligation; 2° the proclamation by the Constitution of a) a positive authorization of indifference, which presupposes the freedom of moral obligation; b) and whose character of *positive* authorization is confirmed by *the equality of favor* towards all religions and their ministers *as such*; 3° a right to freedom of coercion which would propose to protect this positive indifferent authorization as a juridical good, in other words, a right to civil freedom to practice the religion *one wants*.

In 1821 finally, Pius VII condemns again 1° "the indifference in the matter of religion"; and 2° "the absolute freedom to make a religion according to its inclinations and its ideas"; 0407. PiusVII 1821.09.13: Encycl. *Ecclesiam a Jesu Christo* (against the secret societies, in particular the *Carbonari*); *CIC Fontes* 2. n°479, 721 724; *Collection*, 136-143. Quoted in full in Leo XII, 1826.03.13: Apost. *Quo graviora* (against the F. M.J. *ibid.*, 124-153. Lat.-Fr. in CHANTREL. 586-601; RAÜLX, 11, 138-187 (which dates it from 1825, in the old curial manner). We quote here the translation: *Recueil*. 139.

CHAPTER 10.

10. GREGORY XVI (1831-1846)

LAMENNAIS had begun by fighting against religious indifferentism. Leo XII (1823-1829), who moreover appreciated it, taking up all the previous pontifical teachings against secret societies, had also explicitly condemned dogmatic toleration or indifferentism.¹⁰⁸⁹ But, curiously, freedom of conscience and/or of worship (LCC) received on the other hand at least practical support from the Catholics of the newspaper *L'Avenir* (10.0.). Gregory XVI⁰⁹⁰ therefore considered it necessary to condemn the theory in a definitive way (10.1-10.3) in the encyclical *Mirari vos*,^{lml} the basis of the subsequent condemnations, and of greater authority than the previous ones, since it was formally addressed to the *universal* Church and contained a *definition*.

10.0. The context of *Mirari vos*

Mirari vos was caused by the accession of Gregory XVI to the throne of Peter, the Garibaldian revolts of the Papal States, and the objective complicity of *L'Avenir* with the enemies of the Church. Nothing beats the complete reading of the dossier of *La Condamnation de Lamennais*, containing the texts of the school of *L'Avenir* (10.0.1.); the letter of Cardinal Pacca on these texts (10.0.2.) ;¹⁰⁹⁰ allowing a better overall vision of the encyclical (10.0.3.).

10.0.1. The doctrines of Lamennais

As an example of a position of the DDHC speculatively accepted by the La Chênaie school, without indifferentism being so, let us cite

1089 04Qg. Leo XII, 1760-1823-1829), 1824.05.05: Encycl. *Ubi primum*, against the sects (illuminists. masonic, etc.); *Bull. Rom. IV* (Continuatio) (Prato), VIII (1854), 53-57, here 55. I: "Secta quædam, vobis certe non ignota, philosophiæ nomen immerito sibi usurpans inordinatas omnium propemodum errorum phalanges e cineribus excitavit. Hæc siquidem blandam pietatis et liberalitatis speciem præferens tollerantismum (sic enim ajunt) seu indifferentismum profitetur, atque extollit non modo in rebus civilibus, de quo non est Nobis sermo, verum etiam in religionis negotio, docens, amplam unicuique libertatem a Deo factam esse, ut quæ cuique secta juxta suum privatam judicium, vel opinio arriserit, eam quisque sine salutis periculo amplecti, vel adoptare valeat. "

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"1° Freedom of conscience and worship must be complete, so that the authorities do not interfere in any way or under any pretext¹⁰⁹⁰ in the teaching, discipline and ceremonies of a religion.¹⁰⁹⁰ 2° The freedom of the press cannot be hindered by any preventive measure, in whatever form that measure occurs.¹⁰⁹¹ 3° The freedom of education must be as complete as the freedom of worship, of which it is essentially a part, and as the freedom of the press, since it is, like the latter, only a form of the freedom of the intelligence itself, and of the manifestation of opinions. 4° The freedom of intellectual, moral, and industrial associations rests on the same principles, and must be sacred on the same grounds. With respect to each of these liberties, the right and duty of the constitutional power consists solely in repressing crimes and offenses that would materially infringe either the full and legal enjoyment for all of these same liberties, or any other civil or political right of citizens,¹⁰⁹²

One must add to this the refusal of any budget for cults,¹⁰⁹² and, more broadly, the abolition of the concordat and even :

"The State and the Church must equally desire the total separation of Church and State..., without which there would be no religious freedom for Catholics."¹⁰⁹³

Proposal tempered by this other one:

"Finally, we know that in a Catholic social order, the Church and the State must be united; but such is no longer the social order of France.¹⁰⁹⁴

10.0.2. How does *Mirari vos* target Lamennais

Cardinal Pacca explains to Lamennais:

"In the encyclical letter which the Holy Father has just addressed to the patriarchs, archbishops and bishops of the Catholic world, announcing his elevation to the pontifical throne, and of which you will find enclosed a copy which I am sending you by his express order, you will see. Mr. Abbot, the doctrines which His Holiness rejects as contrary to the teaching of the Church, and those which must be followed, according to the holy and divine tradition and the constant maxims of the Apostolic See. Among the former, there are some which have been treated and developed in *L'Avenir*, on which the successor of Peter could not remain silent. The Holy Father, in fulfilling a sacred duty of his apostolic ministry, did not want to forget the respect he likes to have for your person, both because of your great talents and your ancient merits towards religion. The encyclical will tell you, Father, that your name and the very titles of your writings from which the reprobated principles were taken have been completely suppressed. But since you love the truth and wish to know it in order to follow it, I am going to expose to you frankly and in a few words the principal points which, after the examination of *L'Avenir*, have displeased His Holiness more. They are as follows:¹⁰⁹⁵

[J] First of all, she was greatly distressed to see [A] that the Editors had taken it upon themselves to discuss in the presence of the public, and to decide the most delicate questions which belong to the government of the Church and to its supreme head, [B] J from which necessarily resulted (I) disturbance in the minds, and especially [2] division among the clergy, which is always harmful to the faithful. [The Holy Father also disapproves and even reproves [AJ the doctrines of *civil* and political liberty, [B] which, contrary to your intentions, tend by their nature to excite and propagate everywhere the spirit of sedition and revolt on the part of subjects against their sovereigns. [This spirit is in open opposition to the principles of the Gospel and of our holy Church, which, as you well know, preaches obedience to peoples and justice to rulers. [The doctrines of *L'Avenir* on [a] *freedom of worship* and *freedom of the*

1090 Aimed at in No. LV of the "Censure of Toulouse", *ibid.* 620, along with the idea that the State has no power unless it obeys God. It had been formulated by Féli in *L'Avenir* as early as October 1st, 1830: "we ask first of all for freedom of conscience or freedom of religion, full, universal, without distinction as well as without privilege; [...]"

1091 *id.*, already stigmatized in prop. XL1V of the "Censure of Toulouse", *ibid.* 610-611. Prop. XLV denies the right of censorship even to the authority of the Church.

1092 cf. e.g. prop. XLII of the "Censure of Toulouse", *ibid.* 608-609.

[KM] Propo. L1 of the aforementioned "Censure," *ibid.* at 616, with several quotations from *L'Avenir* in evidence. LUCIEN, 1990, 73, note 128, aptly observes that the Separation will be condemned by *Mirari vos* in an entirely separate passage from that on the CCL. On the other hand, his reference on p. 74 to the "Charter of 1830" seems to be corrected to "Charter of 1814".

¹Prop. VIII. referred to in the *Observations* following the so-called "Censorship", p. 626. It is not condemnable in itself, but it probably did not yet correspond to the facts, of which *L'Avenir* was not to be the supreme judge. It appeared in the *Declaration presented to the Holy See...* The same idea, more detailed, quoted by LUCIEN, 1990,73,note 128, "Naturally", etc., and taken from *L'Avenir* of 1/10/1830.

1095 Our readers will forgive us for providing here as an analysis only the subdivisions themselves, except for a commentary on the 1st level of plan (II), [III], [1111].

press, which have been treated with such exaggeration and pushed so far¹⁰⁹⁶ by Messrs. the Editors, [21 are also very reprehensible, and in opposition to the teaching, maxims and practice of the Church. (B) They have greatly astonished and grieved the Holy Father; for J11 if, under certain circumstances, prudence requires tolerating them as a lesser evil,¹⁰⁹⁷ [21 such doctrines can never be presented by a Catholic as a good or a desirable thing, "H05

Three distinct reproaches (the third is distinct from the second^c) are thus addressed to Félic: [I] to have publicly discussed the *relationship between the spiritual and the temporal*; (II) to have preached doctrines on *civil and political liberty* leading to *insubordination to civil authority*; [III] to have treated and adopted with *exaggeration* the doctrines on the *liberty of worship*¹⁰⁹⁸ and the *liberty of the press*, doctrines which can be presented not as a desirable good, but only *tolerated as a lesser evil*. Let us note in passing a) the lawfulness of toleration of the lesser evil; b) the special meaning of the expression "civil liberty" (which does not include freedom of worship); c) freedom of worship, which is not mere civil non-obstruction, nor even any right to civil non-obstruction, but concerns doctrines which present as desirable in themselves the fact that error is free in society (which can only promote doctrinal toleration).

10.0.3. Overview of *Mirari vos*

The pope will take advantage of his encyclical-program to insert (in another order)¹⁰⁹⁹ the condemnation of these positions among those of other modern errors. *Mirari vos* is aimed at the liberal errors of his time (already condemned by Pius VI and Pius VII), but also (without naming them) at the Mennaisian school, especially insofar as it admits the liberties (those of the DDHC, moreover) that flow from theoretical indifferentism, considered as a good organization of society, likely to benefit the Church. A preamble recalls the revolts against the pontifical State, and condemns the pressures of the civil authorities on the local Churches to detach them from that of Rome and to subject them to the political power, as well as the destructive laws of morals, in particular conjugal.* re" Then it passes to the condemnation of the false liberties (10.1.), of the resistance to the legitimate power (10.2.), of the separation of Church and State (10.3.), of the conspiracy against these two powers (10.4.).

10.1. Condemnation of false liberties: duties of individuals towards the true religion

Here is an outline of Gregory XVI's talk on false liberties:

"1° He condemns the indifferentism of those who affirm that all religion is good, as long as it is lived honestly. 2° From this indifferentism is born the delirium that claims freedom of conscience for every man. 3° This¹¹⁰⁰ pestilential error is favored by the full and immoderate freedom of opinions, very harmful to the interests of religious and civil societies. 4° It is sovereignly impudent to repeat that Religion gains anything from it, since there is no worse death for the soul than the freedom of error. And why is this freedom so fatal? 5° Because, once all the brakes that might restrain men in the ways of truth have been removed, the corruption of nature drags all, but especially the young, into every form of wickedness: it is because of the immoderate freedom of opinions and the license of speech and the concupiscence of novelties, that the most powerful

1096 Note that PACCA, like ROZAVEN, takes *exaggeration into account*.

111W The French syntax requires that "les" refers not directly to the liberties, but to the doctrines concerning them. But the (Italian) author may have been thinking of the liberties.

1098 The divergence of lexicon with the encyclical, which uses the expression "freedom of conscience", does not seem significant, given the equivalence of the terms in LAMENNAIS himself, as we have seen above.

1107An order also in the memory of M^{of} Frezza (February 28, 1833), in LEGUILLOU Louis, 1982, p. 293*294.

1100 ¹¹⁰ Our transl. of TAPARELU, 1859.09.19,27.

U U 0410.0: ASS04(1868),341, 1; Rec. 163.

10.1.1. Freedom from moral obligation to revealed religion (or indifferentism)

(Po): "Now we come to another cause of the evils with which We are grieving to see the Church afflicted at this time, namely, to that 'indifferentism' or perverse opinion which has spread on every side by the devices of the wicked, and according to which one could acquire eternal salvation by any profession of faith, provided that one's morals were upright and honest... "mi

This indifferentism is a particular form of doctrinal toleration, claiming the absence of obligation to adhere to a single revealed religion.

10.1.2. The freedoms related to the freedom of moral obligation

Gregory XVI then condemns two false freedoms linked to indifferentism: "freedom of conscience" and "freedom of opinion". The first stems from the in-

1108 We do not have to detail these two points, which are rather external to our subject.

1109 The *cotexto*, instead of *questo*, either proves that for TAPARELU it is about indifferentism, not the claim of freedom of conscience, or has a purely depreciative meaning (like a Latin *late*).

differentialism, which specifies it; in² the second prepares the ground for indifferentism, and for the first.

I) *Absolute freedom of conscience*

"From this poisoned source of 'Indifferentism', comes this absurd and erroneous maxim, or rather this delusion: (P.) that one must attribute and claim to everyone the 'freedom of conscience.'¹¹¹³

A) Gregory XVI declares that the proposal that is going to be condemned stems from indifferentism:

"Atque ex hoc putidissimo" ¹⁴ "indifferentismi" fonte absurda illa fluit ac erronea sententia, seu potius deliramentum, (...)".

1° If it derives from it, it is not identical to it. 2° Nevertheless, only a proposition which derives from it is condemned; therefore a proposition *which does not derive* from Po, even if it resembles P, would only be condemned here if it *implied* Pi,¹⁵ *which* DH 2, § 1, a, as we shall see, does not.

B) He states the condemned delusional proposition (P) :

(P.) : "asserendam esse ac vindicandam cuilibet "libertatem conscientie" [...]. "m"

1° This proposition P is condemned *in itself*^{vi} Moreover, to affirm that a proposition is condemned *because* it derives from another proposition makes little sense, for from the false can *rigorously* come out either the false or the true. The pope thus declares: I have condemned Po (indifferentism); I say that P, derives from Po; I condemn P. HIS ON THE other hand, since it derives from indifferentism, the claim of "freedom of conscience" is in the *religious domain*.TM Moreover, Lamennais named freedom of conscience "freedom of religion" Jizo We believe that the pope sees a strict logical link between Pu and P.

2° What Gregory XVI denounces is not directly the freedom of conscience, but the idea "that it is necessary to a) "support" or "claim" (*asserere*) and "vindicate" (*vindicare*) for everyone the freedom of conscience". It is not uninteresting here to recognize the 1^{er} verb as

already used by Pius VII (*asseritur*) above, but for freedom of worship.¹¹⁰¹ The nuance is probably the same: one should not *positively support* "freedom of conscience". Both verbs will be found in *QC*.

3° But Gregory XVI did not specify in what sense he understood "freedom of conscience". He could assume that this meaning was known from the documents of his predecessors (Pius VI and Pius VII): Pius VI condemned a freedom to do, in religious matters, anything not forbidden by the general will, but without naming it "freedom of conscience"; Pius VII, for his part (0406.3), condemned "freedom of worship and of conscience" as a positive and equal authorization of all cults. One can thus think that Gregory XVI meant by this the positive authorization, supposedly provided by the power (of the people or the State) to practice any worship. B. Lucien, after attempting to determine the meaning of the expression through the dictionaries of the XIX^e century,¹¹⁰² had to admit later that "the mention of the 'belief of conformity to the truth' is not an essential and commonly received element of the lexical description of the expression 'freedom of conscience (and of worship)' at the time, "a In other words, following one's conscience was not part of the definition of the CCA, which referred instead to a *legal permission to do anything or anyone else one wanted in religious matters*. Let's look at some of the definitions he quotes: "*Freedom of conscience is the permission to profess a religion other than the dominant one.*"¹¹⁰³ For Boiste's dictionary, in 1819, "freedom of conscience" is a "permission to follow any religion". In 1824, for the *Sacred Library* of Richard & Giraud, it is the "right to choose such religion as **one wants to** make profession. All the heresies have been established on this false principle, that freedom of conscience is the right of people; and one could establish on the same principle everything absurd and horrible that can be imagined in the matter of religion".¹¹²⁵ We find here these two characteristics of *indeterminacy* ("everything that can be imagined") and of *arbitrariness* ("religion that one wants").¹¹⁰⁴ On the other hand, it is a question of a *right to choose* and not simply of a right not to be prevented from doing so.

One could try to determine the meaning of the expression also by the lexicon of the authors supposedly condemned by it (Lamennais, etc.).¹¹²² As we have seen, Pacca denounces Lamennais' "freedom of worship" (J¹²) and it is difficult to see how he could have meant anything other than the freedom proclaimed by the DDHC, article 10. In fact, Lamennais in 1830-1832 did not advocate individual indifferentism,¹¹⁰⁵ but the organization of society of the DDHC,¹¹⁰⁶ in other words, a liberty in society certainly,¹¹⁰⁷ but having its source in the sovereign people, not in God, having for its specific object to do "what one wants" within the limits of the civil law, expression of the "general will", in the domain of religious opinions.¹¹⁰⁸

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¹¹⁰² LUCIEN. 1990.27-33.

¹¹⁰³ *Dictionnaire de l'Académie Française*, 1777, cit, 21.

¹¹⁰⁴ Cf. also AUGÉ, 1925, art. "conscience", 206.3.

¹¹²⁵ Cf. GEREST, 1964.07-10.29. citing *L'Avenir* (July 2, 1831).

¹¹⁰⁶ Cf. TAPARELU. 1859.09.19.28.

¹¹⁰⁷ Cf. CONSTANTIN. 1926, 540: "It is thus a question of civil tolerance which they want to be complete. The ideas of *L'Avenir* on this point are exposed in an article of July 2, 1831, *Éclaircissement sur la liberté de conscience*. L V, 205*212. "The idea of a divine law prescribing beliefs, is radically independent of any civil sanction." And "civil tolerance is by no means religious indifference"; by allowing a man the freedom to say absurdities, one does not judge less that he "degrades his intelligence". On the other hand, "if dogmatic intolerance and compulsion were essentially linked, their union would be a law as inflexible as the profession of faith." "Did the Church ever hear it that way? So "the title on which civil intolerance could be founded, could not be the obligation to believe, considered in itself, but something external." "

¹¹⁰⁸ Cf. CONSTANTIN, 1926, 539, §3. A much more nuanced position of MONTALEMBERT, 1863.08.21, 142 143: "The reciprocal independence of Church and State, which is the great law of modern societies, in no way entails their absolute separation, still

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This view is supported by the remarks of the consultors who prepared the encyclical. For example, Fr. Orioli distinguishes, in the Catholic Church, between the acceptance of *persons* and of *error*.¹¹⁰⁹ It is clear that when he says: "All freedom in this area is only license", he gives to "freedom" (according to the proper meaning of the word license, moreover) the meaning of a positive authorization to act indifferently, that is to say as one wishes, in religious matters, and not of a simple non-impediment. Fr. Rozaven, on his side, and in the same spirit, confuses clearly the evil and the freedom making the evil possible.¹¹¹⁰ So what he certainly rejects as freedom, it is the positive authorization to choose as one wants (freedom which can never be provided, and under no pretext, but which one can nevertheless tolerate), and not in the sense of "simple non-impediment", since, "Fr. Rozaven goes to the point of envisaging the possibility of leaving the freedom of the worship "in general and without distinction", in certain circumstances."¹¹¹¹ So we concede to B. Lucien that "always, what is rejected, it is to affirm that such a freedom is an inviolable right of the man", but by specifying: "in the sense of positive authorization" (and such was the case, even in the magisterium); because in the sense of *simple* non-impediment, the magisterium treated of it only under the name of tolerance, without still discerning the case where the simple non-impediment would be itself object of right. To note also that Rozaven takes into account, as for the liberties, of "the extent which the editors of the *Future* give to them", *therefore of "the exaggeration of the law"*. thus of the "exaggeration" (cf. Pacca) of the Mennaisians. Mr.st Soglia, for his part, believed that "the freedom that is preached and that

This assertion was not yet true. It was indeed true only from the point of view that this "freedom" was a positive civil authorization to be indifferent.

Conclusion. This "freedom of conscience", according to the dictionaries cited, was a) not directly (admittedly) a moral permission;¹¹¹² b) but a positive legal authorization to act as if there were no specific religious obligation, and c) protected as a good by a negative right-requirement.¹¹¹³

II) Freedom of opinion, speech and press

Gregory XVI then condemns a practice with two main interrelated components [I] freedom of opinion; [II] freedom [A] of speech and [B] of the press (LPP) :

(P.) "1111A1 [11 (a) The way is prepared for [b] this most contagious error (*cui quidem pestilentissimo errori*) [2] by this absolute and immoderate liberty of opinions (*plena illa, atque immoderata libertas opinionum*) [3] which, the] for the ruin "of the Church and the State, is going to spread on all sides, and that certain men (*nonnullis*), by an

less their reciprocal hostility. This absolute separation is not at all an essential condition of religious or public freedom. On the contrary, it can very well be combined with an appalling oppression. Cf. also R1MOLD1, 1978.05. 388. Recently again, 1223, *Evangelium vihe*, 19: "Freedom denies itself, destroys itself and prepares for the elimination of the other when it no longer recognizes and respects *its constitutive link with the truth*. Every time that freedom, wanting to emancipate itself from every tradition and every authority, closes itself even to the primary evidence of an objective and common truth, the foundation of personal and social life, the person ends up taking as the only and indisputable criterion of his own choices, not the truth about good and evil, but only his subjective and changing opinion or even his selfish interests and whims. Trans. ed. LEV / Médiaspaul, 29. Orig. OR, 3.6.

¹³³ Cf. LUCIEN, 1990.92.

¹³⁴ Cf. the text quoted by LUCIEN, 1990,96-97.

¹¹¹¹ As LUCIEN admits, 1990,97.

¹¹¹² The demonstration of LUCIEN, 1990, 23-25 is not decisive on its own, because one can quite "claim" a positive authorization.

¹¹¹³ Cf. also *Dictionnaire de l'Académie Française*, 1835^o, II, 113: "Freedom of conscience, the right that every man has to adopt the religious opinions that he believes to be in conformity with the truth, without being able to be disturbed in this respect by the public authority", which includes an affirmative right-permission, doubled with a negative right; one sees the idea - new - of "believing in conformity with the truth."

excess of impudence, do not fear to represent as advantageous to the religion. (BJ) But, "What death is more fatal to souls than the freedom of error!" said Saint Augustine. (1) Seeing that men are thus deprived of any restraint capable of holding them back in the paths of truth, drawn as they are to their ruin by a natural inclination to evil, we truly say that this well of the abyss is open....] Hence, in fact, the lack of stability of minds; hence the ever-increasing corruption of young people; hence, among the people, the contempt for sacred rights, for the most holy things and laws; hence, in a word, the most disastrous scourge that can ravage the States;]31 for experience attests to it and the most remote antiquity teaches us: For experience attests to this, and the most remote antiquity teaches us, that to bring about the destruction of the richest, most powerful, most glorious, most flourishing States, it was only necessary to have (a) this unrestrained freedom of opinion, (b) this license of public discourse, and (c) the love of novelties. [Here is that fatal freedom, of which one cannot be sufficiently horrified, the freedom of the bookstore¹¹¹⁴ to publish whatever is written, a freedom which some dare to solicit and extend with such noise and ardor....] From this constant solicitude with which the Holy See has endeavored at all times to condemn suspicious and harmful books and to take them out of the hands of the faithful, it is quite evident how false, how foolhardy, how injurious to the Holy See, and how fruitful in evils for the Christian people, the doctrine of those who "have not been able to find a way out of the world" is, the doctrine of those who not only reject the censorship of books as too onerous a yoke, (b) but have come to such a point of malignity that they present it as opposed to the principles of law and justice, and (c) dare to deny the Church the right to order and exercise it. "¹⁴⁰

[I] *Freedom of opinion* (A) *Description* [1] *Link with what precedes*: "*freedom of opinion*" is not mentioned here as a theory, but as a *practice* which clears the way for the pestilential error mentioned above, i.e. (rather than the indifferentism of P_o) the proposition condemned in Pi on freedom of conscience.¹¹¹⁵ [2J *Qualification*: it is said to be "plenary" and "immoderate". [3] *The consequence* : *actual* : the ruin of the Church and the State ; *falsely hoped* : advantage for religion (idea proper to *L'Avenir (non nullis)*). [BJ *The condemnation of the fact*: the freedom of the error, death of the soul and the State. Here the pope condemns the license to say and do anything in the city, even in areas other than religion. [1] B. Lucian, in immediately concluding that it is a question of freedom in relation to "authority with its coercive power" goes too quickly: he seems to forget to consider another meaning of "freedom" and "license", that is to say a *positive authorization* provided by the State and to be exercised in the State (and which entails, of course, a non-impediment), as opposed to a pure "non-impediment", with no approval (otherwise how can one explain the acceptance by the popes of the non-impediment that is tolerance?) It is especially when the State approves evil that it develops and wreaks havoc. [2] In the DDHC, art. 10, the freedom of religious opinions is limited only by "the public order established by law". So on the one hand Gregory XVI is logical and realistic in affirming that the "general freedom" of opinions prepares the way for the claim of "freedom of conscience",¹¹⁴ 2 freedom of opinions *in religious matters*, that is to say, positive authorization to act as one wishes, based on the absence of the subjection of conscience to God. [3] On the other hand, there is no serious reason to think that, in condemning freedom of conscience, he (like Pius VI) would not have taken into account the fact that for "the principles of '89", **freedom has no limit other than extrinsic, namely, the public order established by the law.** Having no intrinsic limit, it is specified intrinsically by "*quidquid vellet*" (in religious matters). [11] *Freedom of speech and of the press (LPP)*: A| Free public manifestation of opinions. [B| In particular by printing. If contrary to the constant practice of censorship by the Church.

1114 LAMENNAIS was opposed to *any* censorship.

H41 "*Cui*" must normally refer to what immediately precedes, and "*erronea*" is taken over by "*errori*": cf. LUCIAN, 1990, 15, note 7.

1' The logic that seems to emerge is the following and reads backwards from the text: (a) general civil liberty of opinion, speech and press without discrimination (in the sense of positive authorization), is a practice that accustoms minds to (b) the idea that one should claim the right-positive authorization to think anything and everything in matters of religion (= freedom of conscience), an idea that in turn gradually makes minds admit (c) that there is a freedom from moral obligation in religious matters, morals being safeguarded (= religious indifferentism). This reading will be confirmed by that of Pius IX, notably the *Syllabus*, prop. 79.

2' The "freedom of opinions" is *not* the "freedom of conscience", but the "freedom of conscience" of P, is also "full and immoderate", because a) it derives in theory from indifferentism and b) is protected in practice by an "*omnimodal*" freedom of opinions, thus a) it has as intrinsic limit only "right and honest morals", and not the professed faith (cf. "b) as an extrinsic limit, it can certainly still be moderated in its exercise, but for reasons that are *in conformity with indifferentism*, and with *full freedom of opinion*, and with *positivist public order* alone.

3' Let's admit it then, provisionally, the "freedom of conscience" that Gregory XVI condemns is the "freedom of religious opinions" of the DDHC, art. 10, analyzed above, the very one that his predecessors refused.¹¹¹⁶

10.2. Condemnation of resistance to power: duties of individuals towards civil authority

Gregory XVI then condemned the refusal to obey the civil power:

"As we have learned that writings sown among the people proclaim certain doctrines which undermine the fidelity and submission due to the princes, and which light the torches of revolt everywhere, it will be necessary to prevent the peoples thus deceived from being led out of the line of their duties. Let all consider that, according to the Apostle's advice, "there is no power that does not come from God. Therefore, he who resists power resists God's command, and those who resist bring condemnation upon themselves. Thus, the divine and human laws rise up against those who try to undermine, by shameful plots of revolt and sedition, the fidelity of the princes, and to throw them off the throne."¹⁴⁴

10.3. Condemnation of the separation: duties of the State towards the Church and the true religion

Lamennais ^{*143} wanted to include in "religious liberty" the suppression of the Concordat, of the budget of the cults, the *complete separation*, ^{**} of which Gregory XVI (I) immediately condemned the demand, before (II) recalling the duties of the State towards the only Church:

[A] "We would have nothing to foretell of greater happiness for religion and for governments if we followed the wishes of those who want the Church to be separated from the State (*Ealesiam a regno separari*) and the mutual concord of the empire with the priesthood (*mutuam imperii cum sacerdotio concordiam*) to be broken. [For it is certain that this concord, which has always been so favorable and so salutary to the interests of religion and those of civil authority (*rei et sacre et civili*), is feared by the partisans of unbridled liberty (*inipudentissinæ libertatis*).¹⁴⁷

Let us note again these two stages of the condemnation: [A] on the one hand, the absolute condemnation of separation (which was also wanted by the French left); [B] on the other hand, the idea that separation is in itself profitable even from a tactical point of view (Lamennais' own position). The expression "*im-pudentissimæ libertatis*" confirms us in the

¹¹¹⁶ See TAPARELU, 1859.09.19,25, no. 7.

idea that the condemned liberties are unlimited licenses, positive authorizations of evil and error, and not simple negative permissions, or laws of non-impediment.

[May our dearest sons in Christ Jesus, the princes, by their assistance and authority, promote these wishes which We formulate for the salvation of religion and the State (*rei et sacrae et publicae*). Let them consider that their authority has been given to them, not only for temporal government, but above all to defend the Church, and that everything that is done for the benefit of the Church is also done for their power and for their repose. Let them even persuade themselves that the cause of religion must be dearer to them than that of the throne, and that the most important thing for them, we may say with Pope St. Leo, is "that the crown of faith be added by the hand of God to their diadem. Placed as fathers and guardians of the peoples, they will provide them with true, constant and prosperous peace and tranquility, if they put all their care into maintaining intact religion and piety towards God, who bears written on his garment: 'King of kings and Lord of lords.'"^{114,1}

Whatever the factual correctness (not admitted by Gregory XVI) of Lamennais' prudential judgment against the false union of throne and altar under Charles X and Louis-Philippe, this should not call into question the *principle* of the union of the two powers, with the State defending the Church and promoting its values.

10.4. Synthetic condemnation of the conspiracy against Church and State

"To the other causes of bitterness and anxiety which torment and afflict Us mainly in the common danger, have been joined certain marked associations and meetings, where people of all religions, and even false ones, are made common cause, and where, feigning respect for religion, but really out of thirst for novelty, and in order to excite seditions everywhere, they pre

¹¹⁴⁵ On the difference of conception between LAMENNAIS and the Belgian Catholics, cf. R.. 1950b. 690. H46cf. OEREST, 1964.07-10.25 and the text of LAMENNAIS in PRÉLOR, 1969.85-87.

conise any kind of freedom, they stir up trouble against the good of the Church and the State, they destroy the most respectable authority."¹⁴⁹

Undoubtedly, we are referring here, in a more practical than doctrinal way, to 1° the "act of union" of *L'Avenir* with men of all parties and all religions, 2° at the same time as its outcome, the "General Agency for Religious Liberty".

Conclusion of Chapter 10

Let us summarize the essential on the freedom of conscience: 1° its condemnation was definitive; 2° this freedom had for theoretical foundation, practical goal and *well protected* the religious indifference, and for measure the arbitrary one.

These two points are confirmed by Gregory XVI, in *Singulari Nos*, who tells us what doctrines were *definitively condemned* in *Mirari vos* that Lamennais developed in the *Words of a Believer*, published at the beginning of 1834:

« Indeed, in defiance of the faith solemnly given in his declaration, he has undertaken, usually wrapping himself in words and captious fictions, to undermine and destroy the Catholic doctrine (*catholicam doctrinam*) which we have defined (*definitivitus*) in the already quoted encyclical [*Mirari*], in virtue of the authority entrusted to our weakness, [1] either on the submission due to the powers, [2] or on the obligation to turn away from the peoples the pernicious scourge of indifference and [3] to put a brake on the license of opinions and speech (*deque frenis iniieiendis evagandi opinionum sermonumque licentia*); [4] finally the condemnation of the absolute freedom of conscience (*otnninioda conscientie libertate*), and [5] of the awful conspiracy of societies formed even by the huddle of the wrongdoers of every religion against religion and the state. ".¹⁵⁰

As we can see, Gregory XVI himself declared that the freedom of conscience condemned

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by *Mirari vos* was "*omnimodal*".¹¹¹⁷ He was surely implying everything that Pius VI and Pius VII had already specified. Now Pius VI had also condemned a freedom *omnimoda* and having for well protected *quidquid velit*.

The links between freedom of conscience and indifferentism were confirmed by the same pope ten years later, when he condemned

« the Christian Alliance [...1 (and the) Societies established to assist it with the common purpose of inoculating the Romans and other peoples of Italy, under the name of Religious Liberty, with the foolish love of indifference in matters of Religion... Resolved, therefore, to gratify all the peoples with freedom of conscience or rather freedom from error... "1152

H^{ns} Collection, 168-169.

¹¹¹⁷ Cf. also AUBERT. R., 1952a, 80-81: "...it is only against freedom without any restriction that the extremely severe qualifiers used by the encyclical are directed; one will be all the more inclined to admit this if one thinks of the observation that Gregory XVI was to make later to Czar Nicholas 1: "Freedom of conscience must not be confused with the freedom not to have a conscience."" (0413. GRÉGOIRE XVI, 1845.12.13: *Interview with the tsar Nicolas 1*", reported by BOUOOU. I, Paris, 1922,436).

CHAPTER 11.

11. POPE IX (1846-1878)

PIE IX will take up the same condemnations,¹¹⁵³ characterizing them more, already before *Quanta cura* (11.1.), but especially in this encyclical (11.2.), and will summarize them in the *Syllabus* (11.3.), and after (11.4.).

11.1. Before *Quanta cura*

Pius IX begins by recalling the exclusive rights of the Catholic religion. Thus, in the address *Quibus luctuosissimis*,¹¹⁵⁴ he congratulates himself that Spain

1° proclaims the Catholic religion as the only official one and forbids the others:

« The great object of Our concern is to ensure the integrity of our most holy religion and to provide for the spiritual needs of the Church. Now you will see that in the above-mentioned convention the principle has been taken as its basis that religion, with all the rights it enjoys by virtue of its divine institution and the rules established by the sacred canons, must, as in the past, be exclusively dominant in this kingdom, so that all other worship will be banished and forbidden there.

Naturally, if he congratulates prohibition, he does not prohibit not prohibiting: we will see him later allowing toleration;

« ° lends the Church the help of its secular arm:

« Furthermore, it was agreed that the civil authorities should, on all occasions, endeavor to render to the ecclesiastical authority the honor, obedience and respect due to it;

« ° and finally repress those who seek to pervert the minds :

"Let us add that the illustrious queen [Mary Isabella] and her government promise to support with their power and defend the bishops, when their duty obliges them to repress wickedness and oppose the audacity of those men who seek to pervert the minds of the faithful or corrupt morals, or when they must take measures to remove from their flocks and extirpate from them the deadly plague of bad books."¹⁵⁵

On the subject of freedom, we already have there the "skeleton" of *Quanta Cura* (QC): the refusal of freedom of conscience and of the cults (LCC), and even of any freedom for the non-Catholic cults; 2° right of the Church to call upon the secular arm to apply the ecclesiastical laws; 3° refusal of the freedom of speech and of the press (LPP). Pius IX also appreciates the favor shown to the Church by the Grand Duke of

1153 0500. *Pii IX Pontifici Maximi Acta, Pars Prima: Acta exhibent qm̄ ad Ecclesiam universum spectant*, 1 vol, Romte (= *Acta Pii IX*); *Apostolic Letters of Pius IX. Gregory XVI. Pius VII.* Paris, Bonne Presse and Roger elChcmoviz, [lat.-franç.J, s.d., 288 p. (= BP (1800-1878) - very incomplete).

1154 0506. Pius IX, 1851.09.15 or rather 05: Alloc. *Quibus luctuosissimis*. to the secret consistory; *Acta Pii IX* 01, 293-302: *CIC Pontes* 2, n°512, 861; *Recueil*. 3U2-311: CHANTREL. 212-224: RAULX. 1. 255-270. On the Concordat of March 16, 1851, which gave the Church the status of state religion.

Tuscany, in particular the respect which it shows for the *libertas Ecclesiae*, but this country does not seem to envisage coercive measures in religious matters.⁶

In 1852, he complained about a bill in the future Colombia guaranteeing "to men of any nation who emigrate to New Granada the public exercise of their worship, whatever that worship may be."¹¹⁵⁷ This is the non-contradictory, but contrary practice of Spain: freedom not of *any* non-Catholic worship, but of *any* worship, which implies absolute arbitrariness in the specification of civil freedom in religious matters. These are not directly doctrinal documents, but practical ones, although they are underpinned by implicit doctrine, as is shown by their use in the drafting of the *Syllabus*.

In 1854, then in 1863, he again fights indifferentism, firmly recalling the dogma "outside the Church, no salvation", while exempting from fault *Vignorantia iuris invincibilis*, known to God alone, and therefore possible in revealed religious matters. "Now, in truth, who in his presumption will go so far as to mark the limits of this ignorance, according to the character and diversity of peoples, countries, minds and so many other things?"¹¹¹³ *5" The magisterium's doctrine of "implicit baptism of desire" thus continues to be constituted :

"We know and you know that those who necessarily ignore [sic] Our most holy religion, and who. carefully observe the natural law and its precepts, engraved by God in the hearts of all, and are disposed to obey God, and lead an honest and upright life, can, with the help of divine light and grace, acquire eternal life; for God, who sees perfectly, scrutinizes and knows the minds, souls, thoughts and habits of all, does not, in his sovereign goodness and clemency, permit anyone who is not guilty of wilful misconduct to be punished by eternal torments. But it is also well known, this Catholic dogma: that no one can be saved outside the Catholic Church, and that those cannot obtain eternal salvation who knowingly show themselves to be rebellious to the authority and definitions of the Church, as well as those who are separated from the unity of the Church and from the Roman Pontiff, the successor of Peter, to whom the *custody of the vineyard has been entrusted by the Savior*. "11""

In 1856, he complained that:

"to propagate the abominable and disastrous plague of *Vindifferentism (teterrimamque indifferentismi pestent)* and to complete the destruction of our holy religion, the free exercise of all cults (*libertini cujusi/ue callus exercitium*) is admitted and everyone is granted the full and complete faculty of manifesting openly and publicly all kinds of opinions and thoughts. "1160

1156 Cf. 0506.2: *Acta Pii IX 0*, 300-301; *Recueil*, 308-309; RAULX, I, 268.

1157 0507. Pius IX, 1852.09.27: Alloc. *Acerbissimum vobiscum*, to the secret consistory (source of prop. 78 of the *Syllabus*); *Acta Pii IX 01*, 384-385; *CIC Fontes 2*, n° 515, 873-879; *Recueil*, 322-323.

This text retrospectively confirms our interpretation of *Mirari vos*. of which it is a sort of decal: a) the propagation of indifferentism is the goal of the two famous modern liberties; b) the "free exercise of all religions" seems here to correspond to art. 10 of the DDHC, to the "absolute liberty" of thought in matters of religion, of Pius VI, to the "liberty of worship

113 | 5" 0508. PIE IX. 1854.12.09: Alloc. *Singulari ipeidam perfusi* to the secret consistory; *Acta Pii IX 01*, 620-631 (here 625-626); *Collect.* 334-349 (here 340-341) (quoted in QC, ASS 3 (1867), 161).

1159 0513. Pius IX, 1863.08.10: Encycl. *Quanta conficiamur moerore*, to the bishops of Italy (source of 2 prop, from the *Syllabus*) : *Acta Pii IX 03*, 609-621 (here 613-614); *Collect.* 476487 (here 480481). Theme taken up by 0729. SCSO. 1949.08.08: Letter to M^r Richard Cushing, Archbishop of Boston (on the subject of "Outside the Church, no salvation"); lat. + trans. *AmEcdR*, 127/4 (October, 1952/11), 307-311 + 311-315; trans. in DC, 1952, 1395-1398 (+ 1398 1399); JOURNET, 1962^r, 1299-1303 (here: 1300-1301). Orig. *AmEcdR*, 127 (1952/11), 308-309), and more precisely still by LG 14-16, then by 1219. JOHN PAUL II, 1993.08.06: Encycl. *Veritatis splendor*, 3: AXS. 1133-1228: here: 1GPH 16/2 (1993), 159 -DC. 901-944.

116" 0511. PIE IX. 1856.12.15: Alloc. *Nunquam fore*. Source of prop. 79 of the *Syllabus*; *Acta Pii IX 01*, 542; *Collection*, 386-387.

and conscience" of Pius VII, to the "liberty of conscience" of Gregory XVI, to the liberty advocated by New Granada; c) the full liberty of opinions seems to correspond, it, to art. 11 of the DDHC, to the "absolute liberty" "to say, to write and even to print", of Pius VI, to the "absolute and immoderate liberty of opinions", of Gregory XVI, as which Pius IX unveils the successive phases of the enemy's tactics: 1. to claim the liberty of opinion; 2. in order to obtain the liberty of exercise of all the cults; 3. in order to propagate the indifferentism and to destroy the Church

In 1862, Pius IX brings us a precision I^o on a position linked to indifferentism, rationalist naturalism, which refuses the revelation; 2^o on an identical right to the famous "freedom of conscience":

"While they maliciously derive all the truths of religion from the native force of human reason, they grant to each man a kind of primordial right by virtue of which (exquo) he can (possit) freely (libere) in matters of religion (de religione) [2] they grant to each man a kind of primordial right by virtue of which (exquo) he can (possit) freely (libere) in matters of religion (de religione), (a) think (cogitare) and (b) speak (loqui), and (c) render to God the honor and worship which he finds best according to his *ca-pñcequempro suo libito meliorem existimen*".¹¹⁴

It is a right deriving from the absence of supernatural revelation - and therefore of obligation. It is a primary right (*quoddam veluti primarium jus*) [note the singular, sign that the various aspects are to be joined closely] having for object three parts of a false freedom in matters of religion, freedom of thought (in this case "of conscience"), of speech, and of worship. For the latter we find the specification *by caprice (pro suo libito)*.¹¹⁶ * The absence of moral obligation that specifies all this does more than suggest that the above-mentioned "primordial right" is a right-permission, having as its object "to think, to speak, to worship", thus a positive juridical authorization to act, and to act *according to a will* not regulated by revelation. It is the negation of the moral obligation of the individual in society (and of society) towards a revealed religion. And one can rightly think that the final characteristic of freedom of worship reflects on the other two (to think, to speak in religious matters... *pro suo libito*).

In 1864, Pius IX wrote to the bishop of Freiburg im Breisgau that the main goal of the Church's opponents was to remove all influence on society from the Church.¹¹⁴

11.2. *Quanta cura*

Here is *Quanta cura (QC)*, the principal document of the XIX^e century which is sought to be opposed to DH.--⁶⁴ First of all, it is not possible to dwell on the phases of the elaboration of *QC*, or the events which *caused* it, nor the reactions which its promulgation aroused among the French bishops, the international press and the Catholic laity (liberal or intransigent). Pius IX had long wanted to condemn modern errors in a comprehensive document. The congress of Belgian Catholics at Matins, where Montalembert made a resounding speech about the practical acceptance of modern liberties in a climate of benevolence towards the Church --⁶ -⁵ was probably what decided the pope to take action. The Holy See had unofficially sought to save the content of these Malines speeches, thanks to a very famous article in the *Civiltà Cattolica*, which initiated the famous distinction of

114 0515. pIE IX, 1864.07.14 *. Letter *Quum non sine* to Hermann, Archbishop of Fribourg en Brisg. '*Acta Pii IX* 03. 650-656 (here 652); *Collect*. 506-513 (here 508-509).

"thesis and hypothesis",--⁶¹15 and according to which Montalembert placed himself at the level of hypothesis.--⁶⁷ In fact, the famous liberal Catholic did not profess exactly the same LR as Vatican II, for he alone considered realistic the *practical* application (albeit in a *moderate* way) of those civil liberties of the DDHC whose goodness he denied in theory,--⁶⁸ whereas *DH does* not claim the same civil liberties, either in theory or in practice.'--⁶⁹ He admitted finally that "the freedom of worship, like all others, must be contained by eternal reason and natural religion."¹⁷⁰ The examination to which B. Lucien does not seem to us to prove what A. sees in it. For example, when the Abbé de Briey reports to Mr.st Pius on his meeting with Pius IX, he reports the following words: "The Church, the Pope told me, will never admit **as a good and a principle** that one can preach error and heresy to Catholic peoples."--⁷ - Certainly it cannot be a good, and therefore it cannot be the object of positive authorization; but it could be an evil to be tolerated in justice in consequence of a natural right to civil liberty.

After having recalled the existence of a stream of errors, condemned in his I^e encyclical and in two allocutions mentioned above. Pius IX adds that he will now deal with "other opinions, coming from the same errors as their source."⁷² He begins, like Pius VI and Gregory XVI, by denouncing the twofold perverse *purpose* of the authors of modern errors:

¹⁶⁴ -0516. P1EIX. 1864.12.08: Encycl. *Quanta cura* (= QO; *Acta Pii IX* 03. 687-700 or ASS 3 (1867), 160 167 lincompletj; *CIC Fontes* 2, no. 542,993-999; *Recueil*. 2-15; BP (1800-1878), 2-17; CHANTREL, 2-20; RAULX, 1. 1-23; HOURAT, 1904,3.8-31; PELTIER, 1865,ix-xxx.

¹⁶⁵ MONTALEMBERT. 1863.08.21.

¹⁶⁶ CURCI, 1863.10.02. especially 135-137.

⁶⁷ ->CURCI, 1863.10.02.138. Cf. also MONTALEMBERT, 1863.08.21,91-93.

¹⁶⁸ Cf. CURCI, 1864.03.21.50.

⁶⁹ -Hence our disagreement with ALDEA-VAQUERO, 1982,334.

"These false and perverse opinions are to be detested all the more because their main purpose is to prevent and remove that saving power (*salutaris illa vis*) which the Catholic Church, by virtue of the institution and commandment of her divine Founder, is to use freely until the end of time, [I]t is the duty of the Catholic Church, by virtue of the institution and command of her divine Founder, to make free use of this power until the consummation of the ages, [D] no less [11] with regard to individuals (21) than with regard to nations, peoples and their rulers, [I] and to destroy the Union and mutual concord of the priesthood and the empire, which has always been so salutary to both Church and State. **173

The errors and misguidedness propagated for this double purpose are then condemned. A first group of two errors (11.2.1.) consists in denying religious duties to civil society; a second (11.2.2.) promotes the corresponding modern liberties, with their concrete effects. To this should be added a paragraph (11.2.3.) on the authority of *QC*.

11.2.1. The denial of the religious duties of civil society

Pius IX condemns two denials of the moral duty of societies towards the true religion: I) that of any religious duty or at least towards the *true* religion; 11) that of any duty of coercive

¹¹⁵⁷⁰ Quoted by LUCIEN. 1990.167.

⁷ - Quoted by LUCIEN. 1990.175.

¹⁷² -0516.0: *Acta Pii IX* 03.689-690; *Collection*, 5.

protection of the Catholic religion.

I) Naturalistic negation of the religious duty of society

"It is well known to you, Venerable Brethren, that today there is no lack of men who apply to civil society (*civili consortio*) the impious and absurd principle of Naturalism, as it is called (Q_o): they dare to teach that "the perfection of public society and civil progress absolutely require (*optimam societatis publicitatem rationem, civilemque progressionem omnino requirere*) that human society be constituted and governed (*ut humana societas constituatur et gubernetur*), IQ'J with no more regard for religion than if it did not exist (*nullo habita ad religionem respecta. ac si ea non existeret*), or at least, |Q"o | without making any difference between true religion and false religion (*vel saltem nullo facto veram inter falsasque religiones discrimine*)." ¹⁷⁴

This passage contains three condemned errors. The first is implicitly condemned (naturalism itself) (Q_u)-¹⁷⁵ The other two (Q'° and Q"°) are the twofold application of naturalism to society, which, it is claimed, must be constituted and governed either squarely (Q'°) without regard to religion, or at least (Q"°) without any difference being made between true and false religion.¹¹⁶ Social and political indifferentism towards any religion or towards true religion compared to false ones is therefore condemned --¹⁷⁷

II) Naturalist denial of the duty of coercive protection of true religion by civil authority

Pius IX then condemns a 2° consequence of social naturalism:

[And, [I] contrary to the doctrine of Scripture, of the Church and of the Holy Fathers, they¹¹⁷⁹ are not afraid to affirm that "the best condition of society (*"optimam esse amditionem societatis,*)¹¹⁸⁰ is the one where one does not recognize the duty of the civil power [B | [1] to [2] repress by the sanction of penalties (*in qua Imperia non agnosculur officium coercendi sancitis poenis*) [C] the violators of the Catholic religion (*violatores catholicæ religionis*), [D] f IJ if not when [2] the public peace requires it (*nisi qualenus paxpublici postulet*)". ¹¹⁸

[I] The appeal to Scripture and to Tradition confers on this doctrine a particular solemnity and authority, making possible its eventual infallibility, by mode of inclusion in the m.o.u., an inclusion which would be confirmed here.

11] The condemned proposal includes four "protagonists": [A] "society"; [B] the Imperium (civil power); [C] the "violators of the Catholic religion"; [D] the "public peace".

1] A] Society: [11 As for "*optimam*", Pius IX does not claim that every civil authority has, in fact, such a duty of coercion; but that a society in which such a duty is not recognized as a matter of principle is not the best possible.¹¹⁸² [2] The translation "constitution" may be inaccurate, although it may be based on the etymology of "condere", to found, to base. It is more simply a question of the concrete situation, not of the legal foundations of this society. The often quoted translation ("the best government") is wrong. It is the *society* distinguished here from [4] *Vlimperium*, the public power.

2]] The public power: [1] As for "*officium*": Pius IX understands that in the best case, the government must be recognized as having such a duty to repress the violators of the Catholic religion, not *always* but only in principle, in virtue of an affirmative precept.¹¹⁸³ And, like all *affirmative precepts*, this one admits of dispensation in view of the circumstances.¹¹⁸⁴ [2] It is a duty of authentic *coercion* by means of temporal punishments inflicted by the secular power.

[CJ By "violator of the Catholic religion" is meant those who do any violence to

116 LUCIEN, 1990, 127 names them (A 1) and (A2). We recognize here the idea of 04063.

Catholicism. This does not mean 1) anyone who commits (by act or omission) any offense against the Catholic religion: the state is not obliged, even in principle, to repress all moral faults, and according to St. Thomas its repressive function is aimed only at those faults which are most contrary to the common good. Thomas, its repressive *function* is aimed only at those faults most contrary to the common good;¹¹⁸ 2) nor of any person adhering in thought or externally to a cult other than the Catholic cult. For example, the popes have never taught that there is a duty in principle to repress the Jewish cult. They have

¹⁷⁶ LUCIEN, 1990, 128 names it (A3).

¹⁷⁹ The Latin phrase requires that they be the same as those who apply naturalism.

HW) One could also translate: "it is an excellent condition of the society...", because *optimam* can be a *relative* or *absolute* superlative.

IK1 *fovi*. HOURAT, 1904 mistakenly translated, "violators of Catholic law."

I1X2 a synthetic proposal made by the Bamabite Luigi Biuo, consultant of the Holy Office, future card. and main coordinator of the material drafting of QC and the *SyUabus*. said, "neither right nor duty". Cf. LUCIAN, 1990, 185.

¹⁸³ Next. PIUS IX teaches the existence of this "*officium*" only in *the best* conditions of society. IMCF. LUCIEN, 1990, 129-130, note 13 (attacking GOETHALS, 1987.04. 12-13).

1 1X5 Cf. 0241.2. Cf. also 0246. which LUCIEN quotes, 1990, 134, without seeing at the time its significance. always denied the existence of any right to convert non-Christians by force; 3) nor any baptized person practicing a non-Catholic cult, since it could be a matter of invincible ignorance in matters of faith, declared already by him to be very difficult to judge, according to place and time. In such cases, the alleged "violation of the Catholic religion" would no longer be a fault, and even less a crime or a crime.⁸ < Pius IX does not consider this case here, either explicitly or even implicitly: good faith remains in the shadows here; 4) nor, probably, any Catholic person who rebels against the Church. According to the interpretation of B. Lucian,⁸⁷ according to us possible. Pius IX would recall the right of the Church to call upon the secular arm to suppress her rebellious sons, and the possibility of using it as a clemency of the "*optima conditio societatis*".⁸⁸ It may even be that Pius IX had this in mind at the time, but he did not say it *there*.¹⁷⁹ So we may well think that it refers to any circumstance in which such a rebellion would put the Church and its faithful in danger of being inflicted with injustice. It is not clear, on the other hand, that it is in any circumstance, at any time, that it is right for the Church to appeal on principle to the secular arm to enforce its own laws.

5) One can therefore well imagine that what was timeless in this condemnation was only that the Church has the right to appeal to the secular arm when one goes against her rights: the "violators of the Catholic religion" are "those who do not respect the rights of the Catholic religion" (whether they are themselves baptized or not).¹¹⁷ This solution seems to us to be more than suggested by the dictionaries for the words "*violator*" and "*violateur*".¹¹⁸ It is not entirely distinct from the previous one, for among the rights of the Catholic religion

>>See AUBERT, R., 1952a, 86, note 14. and FENTON. 1947,33;MOST. 1983,207.

118 Cf. QuiCHERAT, art. " Violator, oris"; GAFROT" 1934. art. "Violator. oris. m."; GOELZER. art. x Violator": and "Violo"; *Petit Robert* 1" art. Violator" and "Profaner".

is (at least in certain situations) that of punishing by temporal penalties the violators of the laws of the Church."⁹⁷ Thus, according to the condemned liberal, is ideal the state where one may abuse the Church as much as one pleases, provided that one does not disturb the public peace *established by the Zoz'*."⁹⁷ B. Lucien does not admit this conclusion. According to him, "the

¹⁹⁴ This assertion cannot be accepted, because, for example, the States that violently despoiled the Church between the XVIII^e and the XX^e enforced public peace while executing the laws "expression of the general will".

1D] This brings us to the expression "*nisi pax publica...*": :

111 With regard to the *meaning of "pax publica"*, two interpretations are possible: a) that which takes "*pax publica*" in a sense acceptable to Pius IX: it would then be a question of *true* public peace, founded on true justice. In this case, it should be noted that *DH1*, § 3 establishes this true public peace not as the *only* criterion, but as *one of the* criteria for limiting the exercise of law. It follows that even so *DH proclaims a liberty more limited than the liberty condemned by Pius IX*, and therefore cannot have been condemned in advance by Pius IX. Note that this interpretation has some support in the fact that the phrase was coined by Fr. Robert Bellarmine, already quoted by us (*De laids*, Chap. 18), and where it was a question of "allowing each one to think as he wishes, to live as he wishes, provided that he does not disturb the public peace.">i "s However, what interests us most is what the *magisterium* wanted to teach the Church here.

b) The other interpretation, and this is the most likely, takes "*pax publica*" in the sense that the expression had in the XIX^e century, in other words, in the sense of the DDHC. Now the DDHC, in art. 10, as a criterion for limiting freedom in religious matters, uses the similar expression "public order". According to the system already studied above, it makes this "public order" the only possible limit of freedom, and takes as the only criterion of this "order" "the law" established by "the general will". One thinks then of the "order" imposed by foreign weapons,¹¹⁹ or by the police,¹²⁰ in the name of an arbitrary law: that of the strongest, that of the majority. This liberal public peace or public order is therefore not the *justus ordo publicus* of DW.^{19K} In this case, it is difficult to adopt B. Lucian's position, where "*pax publicus*" is the same as "public order". Lucian, where "*pax publica*" designates the entire public order for which the State is responsible in the natural orderJ¹⁹⁹ [For the latter, Gregory XVI used "*ordo publicus*", not "*pax publica*" or "*tranquillitas publica*"].

[2] *The value of the "nisi"*. The supposedly condemned author¹²¹ would be ready to admit that "the best condition of society" contains among other things the duty for the political power to repress the violators of the Catholic religion *insofar as (quatenus) they violate at the same time the public peace*, and only in this measure. Thus, according to this "hypothetical author", the *only (nisi)* possible limit of the external manifestation¹²² of some act of violation of the Catholic religion would be the "*pax publica*". Therefore, in truth, there is a formality according to which the State can punish a violator of the Catholic religion, constituting a criterion *more demanding*¹²³ than the non-conformity to the simple *pax publica* and *less demanding* than the non-conformity to the "catholicity", in other words, an intermediate criterion, which remains to be found, and will be perfected only by *DH7*, § 3.

119 *and*. the invasion - then begun - of the Papal States.

120 Cf. the various spoliations suffered by the Church between 1789 and 1905.

121 According to MOST, 1983.200-201, there may be no intended author; the phrase may have been coined by Holy See. It is perhaps an incise from a sentence of CIIRCI. 1863.10.02. 135. who remarks that the only limit of freedom, according to liberalism, is the material and external order of the public thing.

122 Private or public: the text does not specify.

123 The conjunction < *nisi* " is enough to justify the subjunctive of " *postule!*".

Between the terrorist's bomb (repressed even by the liberal),¹²⁴ , and the simple public affirmation of a disagreement with the Church,¹²⁵ , there is everything that would be authorized by the liberal public order, and that *DHI*, § 3, would not authorize, for example blasphemous films that offend the Catholic public, legal persecutions by the State, etc.

At the time of this condemnation, the circumstances were surely such that the Church could still ask the State to repress *all the baptized who refused* - at least pertinently - to *obey the Church*: such is the part of truth in B. Lucien's position. Lucian's position. But this presupposes a time when it was still legitimate to settle some religious questions (as such) by force, which prevented at the root any reciprocity in the RL. An era in which all renounce the use of force in religious matters will make such an appeal to the secular arm unjust. Pius IX condemned the application to the particular case of the defense of the rights of the Church, of the liberal theory known as the State-gendarme, that of the DDHC, according to which men would have the right-positive authorization-to do everything that is not forbidden by the public peace-respect of the law-expression of the general will. Contemporaries did not misunderstand this:

"If the Church can only be free within a general liberty, that is to say, she can only be free on the condition that the liberty to deny and destroy her by all the offenses and all the legal means that such an order of things will necessarily put in the hands of her enemies... w¹²⁶

The theologians of Vatican I, in their (unvoted) draft of 2^e constitution on the Church, maintain the same "*nisi*" restriction when they summarize *QC*:

"Quapropter nemo dicere pnesumat, non posse auctoritatem et iura ecclesiae eum saecularis potes tatis iuribus et auctoritate consistere ; atque ideo ad optimam societatis publicae rationein necessariain

esse civilis reipublicae ab ecclesia separationem, ita ut imperio negelur ius et officium coercendi san citis poenis violatores calholicae religionis, nisi quatenus pax publica postulée "1206

In short. Pius IX implicitly condemns the proposition "the State has the duty to repress violators of the Catholic religion only when they disturb the positivistic public peace"; DW implicitly teaches: "the State has the duty to repress violators of the Catholic religion only when they violate the objective just public order". These two propositions do not imply any contradiction between them.

11.2.2. The indifferent civil liberties negate the religious duties of individuals

1) From this positivist naturalism applied to the State, II) derive in individuals the liberties that will now be condemned. So I) Pius IX establishes the transition with the literary and historical context; II) he condemns a two-faceted libertarian theory.

I) *The transition to the literary and historical context*

"(AJ [I] As a consequence of [2] this absolutely false idea (3) 4] of social government (*Ex qua omnino falsa socialis regiminis idea*), (B) [1] they (the aforementioned naturalists) [2] do not hesitate to favor this erroneous opinion (*haud liment erroneam illam fovere opinionem*), [and which Our predecessor of happy memory Gregory

124 And what is MOST thinking, 1979.

120Luc would like to repress WOLFE, 1983, 188.

IMS VEUILLOT, 1986,61 (emphasis ours).

[A] The logical-literary antecedent or context: [1] Pius IX begins by asserting the fact of the logical consequence, which is valid at least for the opponents. We believe it to be coherent, because if civil society has no specific duties toward true religion (neither positive nor especially coercive), then the individual can claim a behavior in society specified by the absence of individual duties toward true religion. 2] Pius IX recapitulates the antecedent: curiously, he does so in the *singular*. Yet it is probably not only Q, but rather the whole system of propositions ("Q_o and Q_o' and Q_o' and Q_j ") ¹²⁷ that he considers here I^o because "*qua*" is broader than "*hac*"; 2^o for a lexical reason seen in [4]. [He confirms the condemnation of this theory as "absolutely false". 4] He classifies it as a *social* theory. The two previously condemned elucidations were presented as "*optimam societatis publice rationem*" or "*optimam conditionem societatis*"; we can consider that we are talking about two sides of a system, summarized here (the lexical relationship inclines to think so) by "*falsa socialis regiminis idea*", especially since they were two graduated errors (one broader and more serious, one more precise and specific), asserting two predicates of a same subject. [B] Then comes the consequent: its subject "they" designates the *same* wrongdoers as from the beginning. This point is worth emphasizing. It is a question of those "men who apply to civil society the impious and absurd principle of Naturalism" ¹²¹ and who "dare to teach..." and who "are not afraid to assert..." [2] and who now "do not hesitate to favor..." : this is the predicate. This one is specified by "this opinion". Second surprising *singular*, announcing however not a proposition but a complex *system of propositions* (two accusative infinitives [Q_i and Q_{L2} ¹²⁸ each having their subordinates]Q_i' and Q_il)-¹²⁹ This opinion receives three pejorative qualifications. It is [a] "erroneous", [b] "fatal", [c] already condemned by Gregory XVI as "delirium": here is the historical-magisterial context. Hence a third surprising observation: Pius IX wanted to refer to Gregory XVI (**0410.1**), but not literally.¹³⁰ The quotation marks introduced in *QC* by most editions¹³¹ are misleading on this point. They seem to delimit a quotation, but it is not clear where it is taken from: probably from a condemnable document, not from a magisterial text [not *Mirari vos*], because a note would indicate the source. Pius IX is *paraphrasing* and *expanding*, not *quoting* Gregory XVI (except for the word "*deliramentum*"). In fact, he tries to *make explicit* the concept condemned by his predecessor, and this, by using the texts of **Pius VI (0402.1 -1- 0402.4)** and secondarily of Pius VII (**0406.3**).

II) The libertarian theory with two faces

From the above, it follows that for Pius IX the two parts of "illam... opinionem" are condemned inseparably, as a whole, both *by him and by Gregory XVI*, and that they constitute a single "delirium",¹²¹³ This whole is none other than the now well-known combination of art. 10 and art. 11 of the DDHC, namely A) the CCA and B) the LPP.

127 A L. A2. A3, in the terminology of LUCIEN, 1990,138.

128 In the language of LUCIAN, 1990. 139-140 : P1 = our Q1 ; P2 = Q1 ; P3 = Q2 ; P1 = P1 + PL

129 a² is the proposition beginning with "quo suos conceptus" and ending with "valeant".

130 Cf. LUCIEN. 1990. 143-145.

1214cf. e. g. A5S3. 162.

A) Condemnation of the "freedom of conscience and worship" (LCC)

"IQII ■-- "that [I]J freedom [AJ of conscience and j B] of worship (*libertatem conscientia- et cultuum*) is [II] [Å] a right proper to every man (*esse proprium cuiuscunq/ue hominis ius*), [B] [Q'J which must be legally proclaimed and asserted in every well-constituted society (*quod lege proclamari et asseri debet in omni recte constituta societate*), [...]"(*ibid.*)

From Q|, we must examine [I] the subject and [II] the predicate. [I] Let us note first of all that it is a question of a single liberty (*libertatem* in the singular, not repeated before "*cultuum*"). On the other hand, not more than Gregory XVI in his P, (0410.1), does Pius IX provide a definition of the LCC. For the sake of understanding, he therefore refers us a) explicitly to the logical-literary and historical-magisterial contexts mentioned above; b) tacitly to the current lexicon of his time and to Pius VII, the only one of his predecessors to have used a similar expression.¹³² In any case, he is more precise than Gregory XVI: a) as to the logical context, he mentions in detail the naturalist system, *Mirari vos* referred globally to indifference; Pius IX condemns a proposition Q, about "freedom of conscience and of worship" (LCC), while Pi (0410.1), only mentioned "freedom of conscience". We will also have to consult his *successors*. [II] Let us pass to the double predicate. [A] The first predicate is found in Q| : it qualifies the LCC as a "*right proper to each man*" (cf. 0402.1 and 2). This can only designate a natural right. We specify there what Gregory XVI meant by "*asserendam et vindicandam*". This conviction is reinforced by the relative Q' ,¹³³ acting as 2^e predicate, where it is question [I] of the necessary "positivization" of this right [2] in *any society*. We had not noticed previously that it can also refer to ecclesiastical society, in fact, first of all, it is not specified that it is only a question of civil authority, and moreover, as B. Lucien invites us to do. Lucien, it is useful to compare this text with the one prepared by Fr:

"The liberty of worship or conscience in matters of religion, so that all may be free to follow any religion, even a false one, is a right proper to every man, which must not be impeded either by the Church or by the civil government. ** +134

Nevertheless, one cannot immediately draw from it, like B. Lucien, that it is a question of material coercion. Lucien, that it is a question of material coercion,¹³⁵ because the title of the Bilio memoir distinguishes well: "*Theological censorship of five propositions relating to the freedom of worship and of the press and to material coercion for religious reasons*". In Bilio's case, the proposals on freedoms are the first three, those on material coercion are 4^e and 5^e ..., which were the subject of *QC*'s previous condemnations. However, B. Lucien rightly asserts that "the five propositions of June 1864 are undoubtedly independent. "i²²⁰

132 04063 : " freedom of worship and conscience ".

133 p2 of LUCIEN, 1990. Q', is a relative *subordinate* to Q, , while Q. is *coordinated* to Q, . It is not possible for Q, to be directly coordinated to the word "opinionem", because in Latin the word "and" cannot connect a noun and a proposition; it must connect two entities of the same grammatical function.

ilSTRad. LUCIEN, 1990,184-185, with the Latin origin. p. 186.

² ->^o LUCIEN, 1990, 186.

Conclusion on the CCA. 1° This right must be understood in the context of the social theory of the DDHC: (a) at the moral level, it cannot presuppose a specific and revealed moral obligation; it is therefore not a *purely* negative right, without permission founding it; (b) because of this, at the juridical level, it is a so-called natural right positive authorization; (c) and it is therefore *also* a natural right to non-coercion even in case of an attack on the Catholic religion, limited only by positivist-liberal public peace; (d) it is a right to be exercised in any society and to be positivized by any society, even the Church.

2° In fact, Pius IX is not concerned with a "freedom in religious matters" which would *only* be a natural right-requirement to a *purely negative* civil right, excluding from its notion to think *what one wants*. This brings us to the "freedom to *ex precede* what one wants" or LPP.

B) Condemnation of the freedom of speech and press (LPP)

"(Q.) ... and that the citizens have right to the full freedom, that no authority neither ecclesiastical nor civil must limit (*ius civibus inesse ad omnimodam libertatem nulla vel ecclesiastica, vel civili auctoritate coarctandam*),¹²²¹ [Q.] so that they can (*quo... valeant*) manifest their conceptions, whatever they may be, highly and publicly, by word, by print or otherwise (*quo suos conceptus quoscumque sive voce, sive typis, sive alia ratione, palam publiceque manifestare ac declarare valeant*)" (*ibid.*).

1] Here, on the one hand. Pius IX follows in the footsteps of his predecessors. Indeed, he takes from Pius VI and Gregory XVI the elements of the definition of the LPP, themselves put forward by the DDHC (art. 11). [Moreover, he also distinguishes between the freedom to *express* opinions and the LCC, while making them, as we have said, parts of a single system (that of the DDHC).

11] However, he proceeds to a doctrinal development. [A] First, as to the *essence* of the freedom condemned, Gregory XVI presented in P, the freedom of opinions in society as a detestable *practice*, but Pius IX condemns the *speculative* position which makes this freedom a right (Q2). [Then, as for the *domain* of freedom, he would seem to condemn the LPP in general, thus moral, and not only religious matters, unlike his predecessors.¹³⁶ [C] Moreover, Pius IX attaches LCC and LPP much more closely, because the proposition Q2 is *linked* to the preceding one (Q.) by the conjunction "*and*" in a set called "*illam opinionem*". Moreover, he presents this (unique) opinion as being *what Mirari vos condemned* (with the qualification of "*deliramentum*").¹² [D] Moreover, as for the limits] 11 if one considers the limits of specification or of object (internal limits), if Gregory had not specified explicitly that by "*omnimodam*" and by "*plena illa, atque immoderata*" he aimed at a freedom to spread *any* idea. Pius, on the contrary, comes to specify the resumption of "*omnimodam*", thanks to an opportune "*quoscumque*", thus specifying by the arbitrary the condemned freedom. One has the impression that, just as for Pius VI (with his *quidquid velit*), it is the fact that *only* the "general will" is "limit" which makes the object of this freedom arbitrary. [21 On the level of the limits of exercise (external limits), we note that if *Mirari vos* had condemned (in

¹³⁶ Even though censorship in moral matters has also been a constant in canonical practice.

¹²²² Otherwise PIE IX would be illogical. LUCIEN, 1990, p. 143-144 is visibly embarrassed by this fact, already noticed by BLIGNIÈRES & SAINT-LAUMER, quoted there. According to him, that would oblige to pose that GREGOIRE XVI had used the expression "freedom of conscience" in a "completely unusual direction" (p. 144). In milk, by placing the text in its historical context, i.e. the DDHC and PIE VI, 0402.1, all is cleared up: only one system (*opinūmem*) is condemned, comprising two distinct errors, but each one having to be understood in the context of the other.

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P₂, (continued) a practice in which *all brakes* (in general) were removed from the expansion of error, then Pius IX detailed the limits of the exercise of freedom. Pius IX, on the other hand, specifies the brake in question: "*nulla vel ecclesiastica... etc.*"

All in all, he is not condemning a freedom which is nevertheless limited,¹²²⁴ but by vain criteria: 1) the internal (moral) criteria are non-existent: man can say anything irresponsibly;¹²²⁵ 2) the external criteria are insufficient: "*nulla auctoritate...*". There is only the "pax publica", devoid of objectivity. This "pax publica", taken by us from the preceding passage (**0516.2**) - legitimately, since the following error comes from it (cf. "*Ex qua...*") -, is the only external (juridical) criterion limiting the so-called freedom of opinion. Yet one is needed, otherwise Pius IX would be condemning a freedom that only the craziest anarchists have claimed.

[E] Pope Cappellari (Gregory XVI) had not determined anything on the kind of *means* claimed by the liberals for the propagation of any idea; on his part, his successor, Pope Mastai, specifies that he condemns the right to express oneself "*sive voce, sive typis, sive alla ratione, palam publiceque*". With these last two points, however, he agrees with Pius VI. It is therefore a mistake to read *QC* only in the light of *Mirari vos*.

The condemnation of the LOB then continues, as in *Mirari vos*, with a *motivation*:

" IQ⁴ ! *But in recklessly maintaining this, they do not think, they do not consider that they are preaching "a freedom of perdition" and that "if human opinions are always allowed to conflict, there will never be a lack of men who will dare to resist the truth and put their trust in the verbiage of human wisdom, an extremely harmful vanity which the Christian faith and wisdom must carefully avoid, in accordance with the teaching of Our Lord [Jesus Christ] Himself" (ibid).*

Pius IX declares: "*id temere affirmant...*".¹²²⁶ And the following leads one to think that it is only the LPP that is concerned by the "conflict" of "human opinions" and by "verbiage". Here is aimed at Lamennais' opinion on the effectiveness of modern liberties in favor of truth.

III) If the fact that Pius IX wanted to condemn the liberal system as a whole does not mean that he did not want to condemn *each* part of "this

1224cf. VEU1LLOT, 1986,36 [which obviously refers to DUPANLOUP, 1865J.

1225 cf. by contrast DI/T, § 2 and 0980. PAUL VI, {QUAI AGA Audience: OR, 1971.11.11; DC, 1102 1103.

1226 In the neuter singular: *id*, not "these statements", which is an erroneous plural in various translations.

opinionem,"¹³⁷ the singular still remains as a *hermeneutical criterion*. *TM* Each error must be understood in the literary (the DDHC and *QC* itself) and historical (the meaning of the CCL and the LPP at the time) context of the other. If by writing "*illam opinionem*" Pius IX had meant *two separate and independent opinions*, he would have misled us at the very moment he wanted to instruct us. Thus, just as in Qj the Blessed refuses a right to publish and say anything (*conceptus quoscumque*), so in Qj he certainly refuses a right to the LCC to think any way, or at least "as one pleases", in matters of religion, as Pius VI did. On the other hand, just as the freedom to express opinions has no external limit (other than the *pax publica*, it is implied), so the LCC itself will have no other external limit. Thus, Pius IX condemns a freedom consisting of a supposedly natural right to think, do, say, write and publish anything in religious matters.¹³⁸ And since this right would be natural, on the one hand it should be written into the law, and on the other hand, neither it nor its *external expression* could be limited by the Church or the civil authority. No *objective* limit could be set for it, neither intrinsic nor extrinsic. Only the positivist limit of human law would remain.

"EI because where religion is banished from civil society, and the doctrine and authority of divine revelation rejected [cf. 0516.2], the true notion of justice and human right is obscured and lost, and material force takes the place of justice and true right, it is clear why some men, taking no account of the most certain principles of sound reason, dare to publish that "the will of the people, manifested by what they call public opinion or in some other way, constitutes the supreme law, independent of all divine and human right; and that in the political order, accomplished facts, by that very fact that they are accomplished, have the value of right." ""O

The condemnation of the CCL must therefore be read in the context of the legal positivism of the *Social Contract* and the DDHC, where "the will of the people... public opinion... constitutes the supreme law." Unlike the RL of *DH*, the condemned LCC therefore has no objectively determined foundation, object, or limits. Thus, Pius IX not only combines together the doctrines and condemnations of such and such a predecessor (Gregory XVI) with those of such and such another (Pius VI), but he also binds more closely together the opinions that each one condemned, intending by this to present in summary the globality of a system in which the ideas are closely intertwined, and which is none other than that of the DDHC (in particular, arts. 10 & 11).

11.2.3. The authority of *QC*

Let us then note the exceptional authority of this encyclical:

"Therefore, in the midst of this perversity of depraved opinions We, penetrated by the duty of Our apostolic office, and full of solicitude for our holy religion, for sound doctrine, for the salvation of souls which is entrusted to Us from Above, and for the very good of human society, have thought it Our duty to raise Our voice again. Consequently, each and every one of the evil opinions and doctrines detailed in the present Letters, We reprove them by Our Apostolic Authority, proscribe them, condemn them, and We will and order that all the children of the Catholic Church hold them to be entirely reprovved, proscribed, and condemned."¹³⁹

¹³⁷ See LUCIEN, 1990, 144. note 29.

¹³⁸ y interesting to reread how an author very much opposed to MURRAY's ideas understood the text: cf. FENTON, 1947.34.

¹³⁹ 0516.7: *Collection*, 10-11 = ASS 03. 165-166 = *Acta Pii IX* 03, 695. Cf. FENTON, 1947.31. Perhaps there is here confirmation of an infallible teaching of the m.o.u. HELLO, 1906,30-31 sees it as an *ex cathedra* definition.

11.2.4. Reminder of the State's duty to protect the Church and its freedom

Finally, Pius IX recalls a specific duty of the State not simply towards religious truth in general, but towards the Church institution in particular:

"Nor neglect to teach "that royal power is not conferred solely for the government of this world, but above all for the protection of the Church,¹⁴⁰ and that nothing can be more advantageous and glorious for the heads of states and kings than to comply with those words which Our most wise and courageous Predecessor St. Felix wrote to the Emperor Zeno,¹⁴¹ that is, to let the Catholic Church govern itself by its own laws, and to allow no one to impede its freedom...¹⁴² It is certain, indeed, that it is in their interest, whenever God's affairs are concerned, to follow carefully the order which he has prescribed, and to subordinate, and not to prefer, the royal will to that of the priests of Christ."¹²³³

The encyclical concludes with an exhortation to the bishops to be vigilant, to pray, and with the indiction of a Jubilee.¹⁴³

11.3. The *Syllabus*

The *Syllabus* attached to *QC*, on the other hand, is not easy to interpret.¹⁴⁴ Probably not *per se* infallible,¹⁴⁵ "the *Syllabus* remains valid (and even prophetic),¹⁴⁶ but its proposals should not be read out of the context of the speeches from which they were taken,¹⁴⁷ and the truth

that they teach is the *contradictory* assertion - not contrary - of the condemned error. On the one hand, certainly, on our subject, we find very clear propositions. Prop. 15 to 18 constitute the heading "§ III Indifferentism, latitudinarianism". According to proposition 15, it would be "free to each man to embrace and profess the religion which he will have considered true in the light of his reason" : is condemned a freedom of moral obligation (not a juridical freedom) in fact of religious choice, based on naturalism (refusal of the revelation) the 16^e admits of the supernatural, but claims to the *possibility* of salvation by any religion: it is indifferentism;¹⁴⁸ the 17^e, even claims to the *probability* of this salvation; the 18^e professes latitudinarianism in favor of protestantism.¹⁴⁹ "2" § VI " concerns " Errors concerning civil society considered both in itself and in its relations with the Church ". According to 39^e, "as the origin and source of all rights, the State enjoys a right which is not circumscribed by any

¹⁴⁰ Quotation of LEON1" LE GRAND, s., *Ep.* 156,125. To raise " *præsidium* ", already present in 0406.2.

¹⁴¹ It is about FÉLIX 11, s., 0484.08.01: Letter *Quoniam pietas* to the emperor of East Zénon (426-474-491).

¹⁴² This "libenas" included a positive aid. Cf. J1MÉNEZ-URREST1, 1958, n° 507.

¹⁴³ Let us add that *QC* did not call into question the possibility of taking an oath to constitutions in which freedom of worship was enshrined. Cf. ANTONELL1. 1865.01.24, 142.

¹⁴⁴ 0518. PIE IX. 1864.12.08: *Syllabus* complectens præcipuos nostræ retatis errores qui notantur in allocutionibus consistorialibus. in encyclicis aliisque apostolicis litteris sanctissimi Domini nostri Pii PapæIX; *Acta Pii IX* 03, 701-717; ASS3 (1867), 170-176: *CIC Fontes* 2, n° 543, 1000-1009; lat. LO GRASSO¹. 291-300 -.*Recueil*, 16-35; BP (1800-1878), 18-35; CHANTREL, 20^e13; RAÜLX, I, 23-50; HOURAT, 1904,3.55; PELTIER. 1865, xxxi-lviii.

¹²³³cf. HOURAT, 1904, 1, 7; ANONYMOUS, *Ami du Clergé (L.)* (Doctrine), 1905, 305; and 306; FRANZEUN, MAZZELLA. SCHRADER. PESCH, HURTER. At the opposite extreme: BORNE, 1965.03, 29. 36,37, and 42, for whom the *Syllabus* was plainly mistaken. Between the two, a more common position: CAULY, 1910.5.

iiWcf. DAVIES. 1992,61; LUCIEN, 1990.121.

¹⁴⁷ Of course, the context does not destroy the text nor the truth of the content (BORNE, 1965.03,32).

²⁴ - 0518.15 PIE IX, 1864.12.08: *Syllabus*. prop. 15 (*Collect.* 20-21 = *Acta Pii IX* 03.7(H); *DzSchHU* 2915.

²⁴² -0518.16 : *Collection.* 20-21 = *Acta Pii IX* 03.704-705; *DzSchHU* 2916.

¹⁴⁹ 0518.17 : *Collection.* 20-21 = *Acta Pii IX* 03,705; *DzSchHU* 2917.

limit". This recognizes the absolute sovereignty of the Nation, but in its state form. In propositions 41 to 55, one affirms the superiority of the civil power on the religious power. Let us note that in the 44^e, the *Syllabus* refuses the juridical competence of the State in religious matters: "The civil authority can interfere in the things which concern the religion, the manners and the spiritual regime. From this it follows that it can judge the Instructions that the pastors of the Church publish [...]"¹⁵⁰ This does not prevent the 55^e from condemning the separation of Church and State (with the use - exceptional - of the word "*Status*"),¹⁵¹ because "separation" does not then have the meaning of simple "laicity" that it will take in the magisterium at the end of the XX^e century.¹⁵²

The condemned proposals 77-80 (0518.77-80) are more difficult to interpret. More "moderate" in appearance than the others, they were the subject of more ink. Included in § X. *Errores, qui ad liberalismum hodiernum referuntur*, they must be read in the context of the liberalism of the time,²⁴⁷ and not of every conceivable civil liberty in religious matters.²⁴⁸ Let us leave aside prop. 80, explained a hundred times and having no direct bearing on our subject, and concentrate on prop. 77-79 (0518.77-79). The 77^e conviction teaches us that even at that time it was still useful that the Catholic religion was the only religion in Elat;¹⁵³ the 78^e, that New Granada (Colombia) was wrong to give free *public* exercise of their religion to all immigrants.¹⁵⁴ They suppose that there may have been times when it was legitimate to exclude any non-Catholic worship at least in public in a given country. Doesn't this contradict *DH's* "right angle"? We answer: apparently, yes; in reality, no. The negative answer rests on two arguments that depend on each other.

1° In the past, the Church considered that non-Catholic public worship and propaganda in a Catholic country were so opposed to the rights of Catholics that they had to be repressed as contrary to the "rights of others" and thus to just public order. This was a *prudential* assessment, a matter of ecclesiastical public law, not of moral doctrine, and one that would change according to the situation (such as the discipline of fasting, etc.). Finally, the Church rightly considered that the expansion of a non-Catholic religion into Catholic lands was contrary to objective public morality, which was so demanding at the time that it required the repression of any immoral public manifestation. Indeed, do Protestants, for example, not admit divorce?¹⁵⁵ Moreover, every non-Catholic confession deviates from the natural law on at least one point. 2° Any non-Catholic propaganda in a Catholic country, because it sought to create a non-Catholic majority *at a time when religious majorities did not recognize the LR for religious minorities*, constituted *ipso facto* a threat to the **religious freedom of Catholics**. Therefore, as far as the *past is concerned*, Church practice and **0518.77** and 78 do not imply a *doctrine* opposed to *DH*. The condemnation of prop. 79

²⁴⁴ -0518.44: *Collection*, 26-27 = *Acta Pii IX* 03,709-710; *DzSchHU* 2944. The source for this proposal is 0503. PIE IX. 1850.11.01: *Alloc. in consistoriali*; *Acta PU IX* 01, 251-261; *CIC Fontes* 2. n° 509, 850-854: *Recueil*, 276-285; CHANTREL, 182-194; RAULX, 1,217-233.

¹⁵¹ 051835: *Collection*, 28-29 = *Acta PU IX* 03,712; *DzSchHU* 2955.

¹⁵² *Sur*)_{es} terms, see among others MANARANCHE, 1967.

¹⁵³ 0518.77 : " Ælale hac nostra non amplius expedit, religionem catholicam haberi tamquam unicam Status religionem, celeris quibuscumque cultibus exclusis " (note the word *Status*) : *Collection*. 34-35 = *Acta Pu IX* 03,716 717); *DzSchHii* 2977; *PIN* 53-1. ¹⁵⁴ 0518.78: *Recueil*, 34-35 = *Acta PU /X* 03,717); *DzSchHR* 2978; and *PIN* 53-2: "It is also with reason that, in some Catholic countries, the law has provided that foreigners who go there each enjoy the public exercise of their own worship."

¹⁵⁵ For the presence of public morality in Gregory XVI and Pius IX, cf. 0410.1 (end) and 0518.79 (*mores... corrumpendos*).

summarizes well the condemnation of the LCC by Pius VI, Pius VII, Gregory XVI, Pius IX:

"It is false that the freedom (1) of (a) civil worship (*civilm cuiusque cultus libertatem*)" (2) the full power left to all to manifest any opinion or thought (*quaslibet opinio- nés cogitationesque*) openly and in public (*palam publiceque*) IB (3) corrupts the morals and the spirit of the people, [4] and favors the plague of indifference. "1^52

[In addition to the speeches from which these propositions came, one will have recognized the system 111 LCC + [2] LPP, condemned *inseparably*, as in *QC*. [1] The "civil liberty of all worship" [a] is a *civil* liberty, pertaining to *liberalism*, and not directly the moral liberty which specifies it, condemned above in proposition 15, pertaining to *indifferentism*; [b] it is *specified* by "all worship", indistinctly : if it is not a profession of theoretical indifferentism, it is practical indifferentism; it is indeed an affirmative right-permission [2] the LPP is specified by "any opinion". One recognizes here the arbitrariness and the intrinsic unlimitedness, already met. [B] Moreover, this time, Pius IX specifies to us that it is *the one and the other* that favor indifferentism.¹²⁵ -1 This "full liberty" of the time was understood as a positive authorization, hence the non contradiction with *DH*.

11.4. Conclusion. After the *Syllabus*

Let us mention again quickly the complementary and minor documents where Pius IX reproves the "liberal Catholicism",¹⁵⁶ not without noticing that one ignores the exact meaning taken at home by the expression, with the various meanings according to the countries.¹² -55 The letter to Charles Périn deserves a place apart, where Pius IX - for the first time - admits the possibility of tolerating, and even studies it somewhat:

"11 Deviations from the rule (3) may be tolerated when they have been introduced in order to avoid greater evils, without, however, raising them to the dignity of rights, since there can be no rights against the eternal laws of justice. [I wish to God that these truths were understood by those who boast of being Catholics, while stubbornly adhering to freedom of conscience, freedom of worship, freedom of the press, and other freedoms of the same kind, decreed at the end of the last century by the revolutionaries and constantly reprobated by the Church; [of those who adhere to these liberties]1] not only insofar as they can be tolerated, [2] but insofar as they should be [a] considered as rights, [b] favored and [c] defended [d] as necessary to the present condition of things and to the march of progress, 31 as if [a] everything that is opposed to true religion, [b] everything that attributes autonomy to man, and [c] everything that frees him from divine authority, [d] everything that opens the way wide to all errors and to the corruption of morals, could give prosperity, progress and glory to the peoples. " >256

[1] First, Pius IX affirms the doctrine. A) The truth about toleration: [11 [existence] the permission to tolerate [2] [object] "deviations from the rule" [3] [purpose] "to avoid greater evils" (cf. St. Thomas). Thus, condemnations 0518.77 & 78 should be interpreted as leaving open the possibility of a *negative permission* (tolerance) of non-Catholic cults in Catholic countries. (B) Rejection of the right to error: the impossibility that deviations are rights: [1J

12M 0525.-0534. : 0525. PIE IX, 1871.06.18 [or 16?]: to the pilgrims of Nevers: FRANCISCIS. 1.1,1875. 133-137 ; 0526. PIE IX, 1871.07.20: to the Accademia di religione cattolica. in *CivCat*, ser. VIII. vol. 3 (1871). 485 on the power of the pope as to the deposition of sovereigns; 0528. PIE IX, 1873.03.06 or 05: Brief *Per trisiésima Ince Ecclesie tempora*, to the Catholic circle S.-Ambroise, of Milan; *Acta Pii IX* 06. 161*163; BARBIER. I. 219-220 ; 0529. PIE IX, 1873.05.08: Apostolic letter. *Quo durior*. to M. de Cannait d'[H]amale. president of the Federation of Belgian Catholic Circles (Liege), on the subject of Catholic liberalism; *Acta PH IX* 06, 177-179; trans.: BARBIER, 1,220-221. 0532. PIE IX, 1874.05.21: Brief to the editors of *La Croix* de Bruxelles, in BARBIER. 1. 222: 0533. PIE IX, 1875.02.01: Letter *Dum civilis societas*, to M. Charles PÉRIN. PIN 3010-3011. Cf. also LUCIEN. 1990. 229-230 and PELLETIER, 113. Note that these letters are not addressed to the universal Church.0534. PIE IX. 1876.12.11: Brief to the director (Abbé Vernhet) and to the editors of a Catholic newspaper (*Le Peuple*) of Rodez (in particular on the subject of liberal Catholicism), in BARBIER, 1. 224; ROUSSEL Alfred. 1926. 144-145. The expression will be found, without more precision, in 0626. LEON XIII, 1901.02.11: Letter *In maximis*, to the bishops of the province of Westminster; *Acta Leonis XIII* 21 (1901), 28-31 (here 29); ASS 33 (1900-1901), 449-150 (here 449); BP 06.228-231 (here 228).

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is affirmed; (2) is justified: no right against the eternal law. But not raised here is the question of a right to demand a non-impediment protecting *per se* the good and the true, and *per accidens* from deviations (the case of the RL), of a "right to be tolerated", which is not against moral obligation.

(II) Then Pius IX condemns the error-makers, the "liberal Catholics". (A) He begins by defining this category in a broad way by its adherence to Catholicism on the one hand; [2] on the other hand, to the modern liberties of conscience, (b) of worship (c) and of the press. These freedoms are distinguished in his vocabulary, but he identifies them [3] with what the French Revolution decreed; (4) and with what the Church has constantly repudiated. In other words, liberal Catholics have not invented liberties more moderate than the liberties of the DDHC, which it would condemn, but they adhere to said liberal liberties while wanting to continue to call themselves Catholic. In a second step, the pope specifies to what extent it is condemnable to admit these liberties: [1] one is allowed to tolerate them as an evil;¹⁵⁷ [2] but not [a] to consider them as rights, [b] to be favored [c] or defended as necessary; [3] and the reason is that these liberties are opposed [a] to truth; [b] to authority in general; [c] to divine authority in particular: This is the case for freedom of conscience and freedom of worship; and they promote error and moral evil: this is the case for freedom of speech and of the press.

This text serves us as a conclusion, because it summarizes the whole teaching of Pius IX. Once again, we recognize the pattern of civil liberties of the DDHC, tirelessly condemned by Pius VI, Pius VII, Gregory XVI, *QC*, the *Syllabus*, because they are opposed to the truth and the moral good. They can only be tolerated.¹²⁵ " They contain human arbitrariness, its autonomy. They are not, therefore, freedoms to seek the truth and obey God. Our position is reinforced by a theological commentary elaborated by order of Pius IX:

"It would be a mistake to say that such tolerance (civil tolerance of worship as existed in certain countries such as France or Belgium) considered in itself is the best form of government, because absolutely speaking it is an imperfection and shows the existence of an evil (...). To believe that freedom of worship is in itself an excellent organization or form of government is certainly a great error because, absolutely speaking, this freedom shows the existence of an evil; to believe that freedom of conscience and of worship is a right proper to each man to be proclaimed and established by law in any well-constituted society, etc., is an even more serious error, because it equalizes the cults, degenerates or produces indifferentism and leads to its introduction everywhere and without distinctions. (On the other hand, in France, for many years now, there has been a constitution which guarantees the freedom of worship, but this, on the part of the law, can only include a purely civil tolerance which does not derive from the principle of indifferentism, nor from a religious or conscientious tolerance, since the religious beliefs of the people are not the same.

The Catholics who form the great majority of France are highly convinced that only the Catholic religion is the true one and that outside of it no one can be saved. Therefore this civil tolerance does not put the cults on an equal footing, but tolerates freedom in the external exercise of the cults in order to avoid, as we believe, those greater evils which could be feared.

We do not understand that B. Lucien quoted this text in 1990 without being aware of its immense scope, destructive of his own thesis at the time.¹²⁵ ' Indeed, we see that what is condemned in *QC* is a freedom understood as a positive right-authorization, **recognizing the de facto pluralism of religions as a pluralism of right**, instead of granting it a simple

¹⁵⁷ Cf. AUBERT, R., 1956; MONTALEMBERT, 1852-1880, 290. letter to F. de Mérode, & 291. On the reactions of the liberal Catholic party, cf. AUBERT, R., 1956, 119. summarizing DUPANLOUP, 1865, and p. 479. on MONTALEMBERT.

²⁵ "New Granada went further.

non-impediment. This non-impediment, when it applies to an evil, is indeed a sign that the evil exists... As we shall see, Leo XIII will not say anything else, in his famous phrase "the more it is necessary to tolerate an evil...", etc. The same idea was expressed in a correction made by the Roman theologians to the famous book by Father L. Godard: it is the moral state of a society where error is widespread that is an evil, not the law granting freedom of worship.²⁶⁰ So to claim that the fact that error has freedom is surely an error, in that it implies that the existence of error is good (and therefore that it must be positively authorized). *DH*, on the other hand, will not make the existence of various religions (all but one of which is false) a necessity in law, a good, nor the object of positive authorization.'²⁶

Conclusion of Chapter 11

1) Like his predecessors. Pius IX considered that, even in his time, the Church had the right to be dominant in countries that were unanimously and traditionally Catholic, so that rebellious subjects of the Church (and the Protestants of the time were still considered as such in such countries) could be prevented from practicing their heretical cult and from spreading their errors, which were harmful to Catholic society by the perversion of morals that they engendered.

2) It rejects any primordial natural right to think or write or act in religious matters according to one's whim, and even any right to practice and propagate any religion, even a false one, a natural right that should be positivized by civil law in the form of an affirmative right equalizing cults.

3) He condemned the idea that society could be governed without regard to religious truth. And the ideal of a society where those who violate the rights of the Catholic religion would be punished only if they disturbed the public peace.

4) He affirms the possibility of religious error in good faith, of salvation through baptism by implicit desire, and of religious tolerance, the *de facto* multiplicity of religions being an undesirable evil in itself.

1259 LUCIEN. 1990.189-190, quoting MARTINA. 1968 (not 1962),351.

²⁶⁰ cf. GODARD, 1863. cited by LUCIEN, 1990,202-203.

1261 *DH* only proclaims that a man should not be prevented from practicing his religion (whatever it may be), the just public order being safeguarded. To proclaim this (non-impediment) as a right is not to proclaim the practice of false worship as a right...

CONCLUSION OF SECTION A

I) In short, what the popes (from Pius VI to Pius IX) have *taught the whole Church* is that a State 1° cannot be indifferent to religion, or to the various religions, 2° cannot promulgate as a natural or civil right civil liberty *in the sense of positive authorization* to practice "the religion one prefers" and to spread any opinion with impunity, without any other limit than the positivist public order of the DDHC.¹⁵⁸ II) From the exchanges of letters between the Holy See and the French government under Pius VII, or the Spanish government during the preparation of the constitution of 1876, under Pius IX, we know on the other hand that *as private persons*. Pius VI and Pius IX seemed to have difficulty understanding the difference, at least in a Catholic country, between the proclamation of civil tolerance of religions in a constitutional text, and the proclamation, by this same text, of dogmatic tolerance.¹⁵⁹ "It is no longer a matter of doctrine, but of prudential, personal and private appreciation."¹⁶⁰ Perhaps it was even only the fear that the people would make confusion. The theological commentaries that they had written show that they were aware that another vision of this matter was possible. III) Thus, as a whole, the popes from Pius VI to Pius IX were opposed to secularization, to the proclamation of the autonomy of the individual and of societies in relation to God and his Church.²⁶⁵ They did not wish to deny the freedom which man must enjoy in relation to the State in order to reach the truth about his God by following his conscience. Even less have they studied what happens if man abuses this right to seek the truth, adhering (in good or bad faith) to error. At most they have indicated the impossibility of a right to practice anything in religion, or a right to practice what one wants, or a right to practice evil and to implement error. To reproach them for not having studied the question of the *purely* negative right not to be prevented from acting *according to one's conscience does* not seem fair to us. Indeed, the opponents they faced did not make all these distinctions, and it is only the subsequent papal magisterium that will deepen the question, beginning with Leo XIII. If the freedom of conscience condemned in the 19th century^e was a *civil freedom* (freedom from coercion to be exercised in civil society), it was not only a "non-impediment" and a "decriminalization" (not aimed at by the popes), but also a "positive authorization", a "license", ⁻²⁶⁶ which the popes condemned.

158 Cf. in this regard FENTON, 1947.35.

159 cf. in ARBELOA. 1964.754, the content of the letter of PIE IX to Card. Moreno (14 March 1876) against any RL (even a private one). See also ID...*ù/?. cit*, 755.

1264CL LUCIEN. 1992.03.14: VERMEERSCH, 1922, 189, note I; and DÍEZ-ALEGRÍA, 1965, 101.

SECTION B.

SECOND PHASE:

FROM LEON XIII TO JOHN XXIII

(1878-1963)

AFTER having seen the Roman Pontiffs - from Pius VI to Pius IX - insist above all on the "traditional Catholic doctrine of the moral duties of individuals and societies" towards the truth, we must enter a new phase of pontifical teaching, in which a doctrine of the fundamental rights of the human person is *also* developed. We are interested in four parts of the immense body of doctrine elaborated by Leo XIII and his successors up to Vatican II. This theology comprises A) on the side of the State: a doctrine on its religious duties: 1° on the one hand, the duty to render worship to God and to protect the liberty of the Church; 2° on the other hand, the possible duty of tolerance; B) on the side of the human person, a doctrine: 1° of liberty; 2° of the natural rights and dignity of man.¹²⁶⁷

¹²⁶⁷ Other list: TORRES-ROJAS. 1968.188-193.

CHAPTER 12.

12. LEON XIII (1878-1903)

L EON XIII took up the traditional Catholic doctrine on the duties of individuals and societies,¹²⁶⁸ on the Christian constitution of cities,¹²⁶⁹ which he defended, like his immediate predecessors, against the "new law" resulting from the Revolution; he was therefore led to deny certain forms of false freedom. Thus, from the beginning of his pontificate, he reminded us how much good the Church, if left free, could do for civil society, and he lamented in the opposite direction about the "unbridled freedom" to spread error, coupled with a systematic oppression of the Church and of the best citizens.¹²⁷⁰ "The same year, he renews the condemnation of popular sovereignty as the ultimate source of law,¹²⁷¹ of the "unbridled freedom" attributed to man, and of the new law built against the law of God.¹²⁷² In 1881, he reminds the Belgian bishops how much one must "wish with all one's heart that human society be governed in a Christian manner", while admitting the necessity "to tolerate sometimes evils which it would be almost or even quite impossible to prevent without exposing oneself to calamities and troubles even more disastrous."¹²⁷² Politics and religion must not be separated,

126" 0600. *Leonis XIII Pontificis Maximi Acta*. 23 vol. Roms, Typographia Val-, 1881-1905 (abrogated: *Acta Leonis XIU*); *Saudi Domini Nostris Leonis Papin XIII Allocutiones, epistolw, consliiutiones...* Saini-Augusiin / DDB, Brugis et Insults, 1887-1910, 8 vols (abbreviated: ed. LÉON XIII-DDB); *Ades de LKONXIII*, 7 vols, Paris, Bonne Presse, 1925-1928 (abbreviated: BP (1878-1903)).

1269 Against DAVIES, 1992, 164, let us maintain with HARRISON that, in Leonardo's documents, "civitas" should be translated not by "state" (state-power), but by "civil society" or "City", or "State-society". The current translations mislead our contemporaries. Cf. the proof in JIMENEZ-UKRESTI, 1958, 390; 391, § 510; p. 392, § 511; and TORRES-ROJAS, 1968, 46-47. Cf. also S 17:4 RS, AS. 1 VII, 191-192. Details in our 2nd ed.

1270 0601 (here 0601.1): Leo XIII, 1878.04.21: Encycl. *Inscrutabili Dei: Ada Leonis XIU 01* (1878-18791.44 58 (here 45-46); ÅSS 10 (1877-1878), 585-592 (here 586); BP 01,8-25 (here 11). See also 06013: *Ada Leonis XIU 01.48* = ÅS'S 10,587 = BP01, 12-13; 0601. bis. LEON XIII. 1878.08.27 : Letter *Da xrave sventura*, to Card. Nina, Secretary of State; *Ada Leonis XIU 01*, 104; and 0602. LEON XIII, 1878.12.24: Letter *Solatia Nobis*, to M^e Paul Melchers, Archbishop of Cologne; *Ada Leonis XIU 01*, 166-167; ÅSS 11,322; LEON XIII-DDB, 1.43.

1271 0603 (here 0603.1) LEONXIII, 1878.12.28: Encycl. *Quad aposloUd nmeris* (De secta socialistarum. communistarum, nihilistarum); *Ada Leonis XIU 01*, 170-183 (here 173); ASS 11, 369-376 (here 370); LEON XIII- DDB. 1.46-55: *C1C Fontes* 3. no. 576. 125-132; BP 01. 26*1 (here 28-30). Cf. 0604. (former 0606.) LEON XIII. 1881.06.29: Encycl. *Diuturnum ilhtd* (to all bishops, on the origin of civil power): *Ada Leonis XIU 02* (1880-1881), 283 or ÅSS 14, 11; LEON XIII-DDB, 1,210-222; BP 01. 155. Cf. also 0611. : *Ada Leonis A7II/O5*. 133.

1272 Cf. 0603.2: *Ada Leonis XIU 01*. 174 = ASS 11,371 = BP 01,30-31: cf. 0604. (former 0606.): 0606. (former 0606. bis.) Leo XIII, 1882.02.15: Encycl. *Elsi nos* [to the Italian episcopate] *Ada Leonis XIU 03*, 14 and 17.

but distinguished.⁻² ^ He then built two great encyclicals of synthesis: on the one hand (12.1.), in 1885, *Immortelle Dei*, ms "on the Christian constitution of Cities", and on the other hand (12.2.), in 1888, *Libertas*, "on human freedom". Finally, from 1888 to 1903, he was also led to affirm the right to freedom of the Church and of consciences and to outline a doctrine of the innate rights of the person (12.3.).

12.1. *Immortale Dei*

The encyclical *Immortale Dei* is addressed to all bishops, hence its particular authority. It deals with "the Christian constitution of cities" [title], where "Christian philosophy governs public affairs."²⁷ 6 It begins by recalling the benefits brought by the Church to civil society, ⁻²⁷² but its aim is to "confront the new social theories with Christian doctrine."²⁷⁸ This is why it recalls Christian law (12.1.1.), a doctrine in the name of which it condemns modern law (12.1.2.), and in particular its "modern liberties.

12.1.1. Christian law. The duties towards the truth

Leo XIII exposes I) the duties of individuals towards society and the authority derived from God; II) the duties of individuals and societies towards God and the true religion; III) the duties of civil society towards the one true Church.

I) Duties of individuals towards society and authority from God

Like Pius VI, Leo XIII teaches the natural sociality of man, the divine origin of family and civil societies, the necessity of a supreme authority of "the civil community of men" - ²⁷ - and the divine source of this authority (*potesta tem publicam per se ipsam non esse nisi a Deo*, with an appeal to *Rom* 13:1), which sovereignty (*lus imperii*) is not linked to any form of government.

"In any political form (*in quolibet genere reipublice ontrino*), the heads of state (*principles*) must absolutely have their eyes fixed on God", (and imitate him, because they are the image of him). "To shake off obedience and revolutionize society by means of sedition is a crime of lèse-majesté, not only human, but divine.

-274 0607.1-2: Leo XIII. 1882.12.08: Encycl. *Cummulla*, to the Spanish episcopate; *Acta Leonis XIII* 03 (1882-1883), 170-180 (here 172-173); ASS 15 (1882-1883), 241-246 (here 242-243); ed. LEONX111-DDB, I (1887). 302-309; *CIC Fontes* 3, n° 587,203-207; BP 07,44-55 (here 4649); *PIN* 110.

-275 0611. Leo XIII. 1885.1 LAW: Encycl. *Immortale Dei*; *Acta Leonis XIII* 5 (1885). 118-150; ASS 18 (1885 1886). 161-180 (161 cited by *DU*, note 7); ed. LEON X111-DDB, 2 (1887). 146-168; *CIC Fontes* 3, n° 592,234 250; BP 02. 16-53.

- 276 BP 02.19.

- 277 0611.01 : *Acta Leonis XIII* 05,118 = ASS 18,161 =BP02,16.

1278 BP02.19.

- 279 BP 02.19.

1280 BP 02,19-20. with reference to *Rom* 5,2.

H) The duties of individuals and societies towards God and the true religion

From the universal sovereignty of the Creator, Leo XIII also deduces the dependence

of the individual and civil society on God,¹ and thus the moral duty of individuals⁻² and civil societies (*civitates*)^{TM0} towards God (*adversus Deum officia*) and the one true religion (*modumque quo coli se Deus ipse demonstravit velle*), in opposition to indifference and caprice.⁴

"Heads of State (*principes*) must therefore hold holy the name of God and make it one of their principal duties to favor religion, to protect it with their benevolence, to cover it with the tutelary authority of laws, to establish or order nothing that is detrimental to it. "t "5

By seeking the common good, they must facilitate the acquisition of the supreme good and the motives of credibility make them distinguish the true religion⁻² -¹⁷

III) The duties of the civil society towards the Punic Church of Christ

In particular, it follows from this that civil society has duties towards the Church, to which Jesus Christ entrusted the mission of guarding and propagating this true religion.⁻² " Leo XIII A) in *Immortale* recalls these principles in general; B) will later apply these principles to particular countries.

A) General principles: distinction, unity, hierarchy

•) The two societies, like their ends, are distinct.² "a) Negatively, the Church has an end superior to that of the State; it claims its independence with regard to the State, and therefore cannot be subjected to it (*imperio civili*);¹²⁹⁰ it alone is the judge of religious questions and those relating to eternal salvation.⁻² ' - This is the theme of the *libertas Ecclesiae*, often taken up again by Leo XIII.⁻² ' b) Positively, the Church and the State are sovereign each in its own order.⁻² ' 2) The two societies

0611.02: *Acta Leonis XIII05*, 122-123 = ASS IS. 163 = BPO2.20.

0611.03: *Acta Leonis XIII05*. 123 = ASS 18, 163 = BP 02.21-22.

• 2tB 0" 11.04: *Acta Leonis XIII 05*, 123 = ASS 18,163-164 = BP 02.22. Cf. also TORRES-ROIAS. 1968.65.

• 284 0611.03-04. Note the expressions *quant quisque mahierit. quad libeat*.

• 2"5 0611.05: *Acta Leonis XIII05*. 123 = ASS 18, 164 = BP 02.22. About this doctrine of Leo XIII. cf.

TORRES-ROIAS. 1968.61-62.

I2H6 0611.06: *Acta Leonis XIII 05*, 123-124 = ASS 18, 164 = BP 02. 22. On this aspect of Leo XIII's doctrine, cf. ABAITUA, 1966, 153.

must be united: a) Since they have the same subjects, certain concrete questions called "mixed" will come under both competences, although under different formalities;¹²⁹¹ b) hence the necessity of a union full of harmony;¹²⁹⁵ c) or at least of a treaty between the pope and the heads of state (*principes rerum publicarum*).¹²⁹⁸ "Such is [...1 the Christian organization of civil society. History proves, moreover, the possibility and the benefits - even temporal - of such an impregnation of laws, institutions, mores, social classes, etc.,- by the "philosophy of the Gospel".¹²⁹⁹

B) Country-specific applications

Leo XIII will have two opportunities to apply his thought: 1) in 1892, to the case of France; 2) in 1895, to that of the United States of America.

J) In the midst of solicitude: *France*

a) Recapitulating the great Catholic principles concerning the relationship between the State, individuals, families and religion, Leo XIII, in 1892, in his Letter *In the midst of solitudes*¹²⁹² will remind France of 1° the usefulness of the Concordat and 2° the illegitimacy of the separation of Church and State:

"We will not use the same language on the other point, concerning the principle of the separation of State and Church, which is equivalent to separating human legislation from Christian and divine legislation. We do not wish to stop here to demonstrate the absurdity of the theory of this separation; everyone will understand it for themselves.

b) Inculcating again the duties of the state towards God, he addresses for the first time head on the existence of "true human rights":

"[I]f As soon as the State refuses to give to God what is God's, it refuses, by a necessary consequence, to give to citizens what they are entitled to as men; for, whether we like it or not, man's true rights arise precisely from his duties towards God. [Hence it follows that the State, by failing in this respect to fulfill the main purpose of its institution, ends up in reality denying itself and denying what is the reason for its own existence. These higher truths are so clearly proclaimed by the very voice of natural reason that they are binding on every man who is not blinded by the violence of passion.¹³ **

c) He then moves on to the duties of the State towards the Church: 1° The Church cannot be reduced to an association among others:

"Catholics, therefore, cannot be too careful to support such a separation. Indeed, to want the State to separate from the Church would be to want, by a logical consequence, that the Church be reduced to the freedom to live according to the law common to all citizens."¹²⁹²

2° This situation can be tolerated and used:

"This situation, it is true, occurs in some countries. It is a way of being which, if it has its many serious disadvantages, also offers some advantages, especially when the legislator, by a happy inconsistency, does not let himself be inspired by Christian principles; and these advantages, although they cannot justify the false principle of separation, nor authorize the defense of it, nevertheless render worthy of toleration a state of things which, practically speaking, is not the worst of all, w³ @³

3° In the concrete case of France, it is unacceptable:

"But in France, a Catholic nation by its traditions and by the present faith of the great majority of its sons, the Church must not be put in the precarious situation it is in among other peoples. UH Catholics can advocate separation all the less, since they know better the intentions of the enemies who desire it.] For the latter, and they say so clearly enough, this separation means the complete independence of political legislation from religious

1902.03.19: Encycl. *Pervenuti at'anno* (Reached the twenty-fifth year). to all your bishops: orig. irai. ASS

¹²⁹² 06213: *Acta Leonis XIII* 12,38-39 = ASS 24.528 = BP 03. 121 -122 = PIN 331.

legislation; B) more than that, it means the absolute indifference of the authorities to the interests of Christian society.

*Prceclara gratulationis*¹ -³⁰⁵ in 1894 will reiterate this doctrine of distinction and union of powers.

2) *Longinqua Oceani : the U.S.A.*

In 1895, *Longinqua Oceani*,³⁰⁶ approves the "separation" *more americano* (as opposed to the "separation" in the European sense),⁻³ - "but does not consider it as ideal, nor as licit or opportune everywhere; because if it produces fruits, it is because of the internal dynamism of the Church, which "would produce even more fruits if it enjoyed, not only freedom, but also the favor

Christ is the King of societies, over which the evangelical law must reign.³⁰⁹

12.1.2. Modern Law.

Freedoms linked to the indifference of man and society

These principles are opposed by the new law, inspired by the Reformation of the 16th century^e, born during the Revolution of the 18th century^e, "unknown until then, and on more than one point at odds, not only with Christian law, but with natural law. "3I) Leo XIII exposes its principles; II) he refutes it.

1) *Description of the principles of 1789 or "modern law*

Leo XIII refers explicitly to the French Revolution, whose charter was the DDHC. A) He begins with the great principle of the DDHC, namely the absolute sovereignty of man. B) He describes its consequence as the negation of the duties of society and of the individual towards God and the Church.

A) The absolute sovereignty of man

Leo XIII begins by identifying as the most fundamental principle of revolutionary thought (*Eorum principiorum illud est maximum*) the sovereignty of man: 1) first that of the individual, 2) then that of the people.

1) *The sovereign individual*

Leo XIII analyzes the sovereignty of the individual in two aspects: a) the negation of hierarchies of functions and rights in society, or the principle of equality; b) the negation of obligation, or the principle of freedom.

a) men are among them "as much similar in kind and in nature as equal in the conduct of life (*in actione vita:*)"; negatively, the man is "so autonomous that he does not depend on the authority of others"; from this equality thus obviously follows the freedom :

b) man "can in all things freely think and act as he wills" (*cogitare de re qualibet quae velit, agere quod lubeat, Hbere posse*); this is freedom measured by arbitrariness; "no one has the right to command others". i3i

2) *The sovereign people*

At the level of society, a) the basis of authority (*principatus*) is the will of the people

(*populi voluntas*), b) the exercise of it is that it alone commands itself-

1308 The_s contradicts of MURRAY had no difficulty in opposing 0624. *Longinqua Oceani* to the system of the said Jesuit, who did not succeed in integrating it. Cf. the "loophole" of MURRAY, 1952.12, 552, note 58. More precisely, FENTON, 1952.06,452.

1309 0625. LEONXIU, 1900.11.01: Encycl. *Tametsi futura prospicientibus*, on Christ the Redeemer: *Acla bwnix XHI 20* (1900), 294-314 (here 304-305); ASS33 (1900-1901), 273-285 (279-280); BP 06.146-169 (158).

1310 BP 02.33.35.

¹³¹¹ Quoted by LRTC, 1092 in note to 0611.17: *Acta Leonis XIII*05,133. even (*sibimetipsi solus imperat*); c) the charge (not the right) to command is delegated (not handed over) to the chiefs (*Ibid.*).

8) The religious independence of man and society

The first consequence of placing the source of *all* authority in the people and the individual is that both have no duty 1) to God and 2) to the Church.

1) Denial of duties to God and religion

The denial of religious duties a) begins with the relegation of God, and b) continues with the rejection of religion.

a) Silence on God

The negation of duties towards God is expressed by the silence on their foundation, "the divine sovereignty": [I] on the side of God (more dogmatic aspect), one acts as if he does not exist (one recognizes atheism at least in practice) or is not interested in human society at all [this is deism]; [II] on the side of the virtue of religion of man [more moral aspect], one acts as if individual men or in society owed Him nothing (*vel homines sive singuli sive societati nihil Deo deberent*); [III] on the side of the virtue of obedience between men, one acts as if all authority did not come from Him (*ibid.*).

"In this way, as we can see, the State (*respublica*) is nothing other than the multitude mastering and governing itself" (*ibid.*).

b) The rejection of religion

The negation of religious duties is: [I] on the level of society, state indifferentism; [II] on the level of individuals, individual indifferentism.

[I] Denial of the religious duties of the society by the freedom of *social cults*

"As the people are supposed to be the source of all right and power, the City (*civitas*), therefore, does not believe itself obliged to God by any kind of duty; it does not publicly profess any religion; [2] must [a] not seek, among the various religions, which is the only true one, nor (-) prefer one to the others, and favor one principally; but (b) grant to all kinds of religions an equal right (*lequabUitatem iuris*), (-) only concerned to prevent them from disturbing the discipline of the State (*disciplina reipublica*):" ¹³¹²

Starting from the foundation of the whole liberal and revolutionary system, namely, absolute popular sovereignty, this paragraph describes the indifferentism of the City which follows from it. This denial of the religious duties of society towards God and the one true religion has three aspects: [A] the general denial, as to exercise and as to specification, of *any duty* towards God, which translates, [B] into the particular denial of the duty of *religion*, [1] both at the level of *exercise*, by the denial of any duty of *public worship*; [2] and at the level of *specification*, by the denial of a *specific* worship to be practiced, a denial which has two sides: [A] the rejection of any duty towards God; [B] the denial of any duty towards religion; [C] the denial of any duty towards religion.

13120611.17: *Acta LeonisXIII 05*, 134 = ASS 18. 170 = BP02.34. Cf. qualified comment by RYAN. 1940.313. a] the truth itself, or negative side: [-] no search for truth; [-] no theoretical preference for truth; [-] no practical favor for truth; and [b] its consequences or positive side: [|] as to the object granted, the juridical parity of *religions*, here denounced¹²⁹³ (note also that it is a parity of *law-positive authorization*); [-] as to the criterion followed, the mention of the discipline of the state or public order (liberal, since it is a description of liberal thought): this whole constitutes what Leo XIII elsewhere calls "freedom of worship considered in society."

[11]Denial of the religious duties of the individual by the freedom of *individual* worship

In consonance with the fact that it is the people and not God who is the source of all right, then follows a 2^e paragraph, about the negation of religious duties, no longer of the *City*, but of *the individual*. In it are stigmatized [I] on the one hand a positive juridical authorization given to the individual (undoubtedly by the people) not to fulfill specific religious duties, [II] on the other hand its de facto result on the activity of individuals, in society, in religious and moral matters:

"It will be in conformity with this, [A] [1] to allow [2] each individual [3] to judge [4] any religious question (*iudicio singidorum permittere omnem de reli^oione quaestioneirt*), - It is true that each individual has license (*licere cuique*) [2] [a] either to follow the religion [a'] which he prefers (*aut sequi quant ipse nudit*), [b] or to profess none, [b'] if none is agreeable to him (*aut omnino nullant, si nullum probel*), [HJ From this obviously follow : 111 the judgment of each person's conscience exempt from any law¹²⁹⁴ (*exlex uniuscuiusque conscientia: iudicium*);¹²⁹⁵ [2] the freest opinions on the duty to worship or not to worship God (*tiberrimie de Deo colendo, de non colendo. sen- tenrite*), [3J the unlimited license [a] and to think [b] and to publish his thoughts (*injnita tum cojitatuli, tuni coRitata publicandi licentia*).

[I] The 1^e sentence is devoted to the positive authorization to be given by the City to individuals in society. It unfolds itself in two main aspects concerning religious matters: [A] on the one hand, that of individual judgment; [B] on the other hand, that of the practice of a religion. [A] the 1^{er} aspect is the positive authorization *to opine* as one pleases in religious matters, or "**freedom of conscience**" t¹³⁷ [1] in itself it consists of a permission (not a requirement) ; [2] the subject is the individual (and not, as previously, the people and the city) ; [3] the object is an act of the subject (the judgment) ; [4] the domain is religious matters contrary to what will happen for the true "freedom of conscience", it is not a question of "*licere in civitate*", but of "*licere*" at all; one does not know, therefore, whether it is a question of a permission *to* and/or *in* society; B J the second part is the positive authorization *to do* what one wants in the matter of the profession of a cult,

1293 On the other hand, Leo XIII, later on, will say he is in favor of the juridical parity of *citizens*.

1294 According to GAFF10T, 1934, "*exlex*" can also be translated as "unrestrained, unbridled".

1295 The current translation says "the absolute freedom of conscience". Cf. the "conscience" of the *Savoyard Vicar*.

[1] in itself, it is a permission (*licere*); here again, no mention of the City; [2] the object of the permission is an act of the subject, and it is twofold: either, as to the specification: to follow positively a religion, the measure being personal preference; [b] or, as to the exercise, negatively, to follow none, the motive being personal pleasure.

[III Here is now what this principle of *right* causes in *fact* in the individual, namely: [A] the *de facto* subtraction of the judgment of conscience from any law; this derives immediately from the "*permittere*" mentioned above (in [I] |A|]). Because of the close parallelism of parts [I] and [III], one can assume that the domain remains the religious matter, even if it is not specified, and even if, logically, the disappearance of any objective religious rule entails *de facto* the disappearance of any moral rule, which fits well with Kantianism (for the case of the individual) and with Rousseauism (as for the general will). This is "the freedom not to have a conscience" (cf. **0413.**); [B] the most unbridled opinions in matters of worship to be rendered or not are obviously the *de facto* result of the right-positive authorization of specification and exercise of worship, or "freedom of conscience" and "freedom of worship", described above; [C] the license of thoughts and publications (perhaps not here only in religious matters): *de facto* result of the *right to the LPP*. These various freedoms are said to be measured by caprice.

Objection: The text alone does not seem to prove that this is anything other than a civil liberty right. Answer: even so, we are certain that it is a positive authorization. Indeed, 1° The principle on which these liberties are based (*Consentaneum*) is absolute popular sovereignty. In the preceding paragraph, it is *the City* which it untied from any religious duty; here it is *the individual*; it is not, but *implies* well the negation of any moral obligation, in particular in religious matter; therefore the permission (even *in* and *of* the City) concerning the specification and the exercise of religion can only be positive (there is approval of the fact that the behavior is not measured by the obligation) ; 2° The object protected by these liberties is always measured by caprice, equivalent to the absence of religious obligation, taken as an intrinsic measure of the content of these liberties; 3° Leo XIII will declare negative permission, or tolerance, even legal, of these facts, not condemnable. What is condemned, therefore, is not only the simple right to non-impediment of indifferent action, but also the right permission to act indifferently in religious matters (which implies the preceding).

2) *Denial of the duties of society towards the Church and Separation submitting the Church to the State*

"Once these foundations of the State, now in great favor, have been laid, it is easy to see to what place and in what iniquitous way the Church is reduced.

Leo XIII distinguishes in this war on the Church three aspects:

a) The non-recognition of the place due to the Church in society

Three innate rights are denied to the Church: [I] the status of the dominant religion; [II] the recognition of canonical laws in the civil order; [III] the education of the people.

"For where practice is in accord with doctrines of this kind, [I] Catholicism (*noini catholico*) is accorded in the city (*in civitate*) only a rank equal to or inferior to that of non-Catholic societies; (II) no account is taken of ecclesiastical laws; (111) the Church is commanded to take no part in the education of the people, since she has a mandate from Christ to teach all nations. "W18

b) The refusal of jurisdiction over the spiritual parts of mixed matters

"In the very matters of mixed law, the rulers (*gubernatores rei civilis*) rule ex officio, arbitrarily and unilaterally, and superbly disregard the most holy laws of the Church in such matters. [(A) They call to their jurisdiction the marriages of Christians, deciding even the matrimonial bond, the unity, the stability of the marriage; (B) they lay hands on the property of the clergy, because they deny that the Church can hold its own property. |In short, they treat the Church as if it had neither the character nor the rights of a perfect society (*societatis perfecta*); and as if it were totally similar to the other communities which the state contains (*plane similem habeant ceterarum communitatum, quas respublica continet*) :)B| for this reason, if it possesses any right or faculty of acting legitimately, it is said to possess it by concession and benevolence of the rulers of the State (*possidere dicitur concessu beneficiorum principum civitatis*). "1319

c) Unilateral termination of agreements

Where the concordats nevertheless recognize these rights of the Church, they are attacked and denounced unilaterally, resulting in conflicts.

In short, "separation" in the sense of the 19th century^e involves "either driving the Church out of society altogether, or keeping it subjugated and chained to the State":

"Most of the measures taken by governments are inspired by this design. The laws, the public administration, education without religion, the spoliation and destruction of religious orders, the suppression of the temporal power of the Roman Pontiffs, all tend towards this goal: to strike at the heart of Christian institutions, to reduce to nothing the liberty of the Catholic Church and to annihilate its other rights (*Ecclesiatque catholico; et libertatem in angustum deducere, et jura cætera comminueri*). "¹⁴>

11) The refutation of modern law

Then Leo XIII *refutes* the principles of modern law, A) in the name of natural and theological reason; and B) by the authority of the magisterium of the Church.

WW 0611.19 |a| |b| |c| |d|: *Acta Leonis XIII*05,135 = 455 18,170-171 = BP 02,34. ^{3V}>0611.20: *Acta Leonis XIII*05,135 = ASS 18.171 = BP02.34 &36.

1320_B p 02,36

A) Modern law

condemned by reason (natural and theological)

Modern law" is contrary to natural reason in terms of 1) the principle of civil authority; 2) the natural duty of religion; 3) freedom of thought and expression; and theological reason 4) because "separation" is contrary to the moral needs of the city and the supernatural rights of the church.

1) As for the civil authority

a) All authority is of God; b) without God, the so-called sovereignty of the people [II] excites passions; [III] rests on nothing; [III] is not sufficient to maintain public security and peace (*ad securitatem publicam quietamque ordinis constantiam*); [IV] is the source of permanent seditions, because it makes leaders delegates executing the popular will.

2) As for religion

"With regard to religion, to think that the differences between its various and even contrary forms are of no importance obviously has the consequence of not wanting to approve any of them either in theory (*Judicio*) or in practice (*usu*). But if this differs nominally from atheism, it is really identical to it. Those who are convinced that God exists, provided they want to remain coherent with themselves and not fall into absurdity, necessarily understand that the species of divine worship that are in use, so different, so dissimilar and even opposed on questions of great importance, cannot all be equally worthy of approval, equally good, equally approved of God."¹³²¹

The text clearly concerns religious indifferentism in general. Given that the order of the refutation follows the order of the description, one can legitimately think that this religious indifference, placed between the question of popular sovereignty and that of the freedom of thought and of the press, makes it possible to specify that the freedoms of conscience and of worship stigmatized were specified by indifferentism.

3) Freedom of thought and press

Against the freedom of thought³²² and of the press (LPP), the reply is more detailed. The paragraph clarifies that it is not only a religious freedom, but a general one:

a) It condemns it (rather as a fact than as a right):

"The faculty (*facultas*) (A) of thinking anything (*quidlibet sentiendi*), and (B) of expressing anything (*quidlibet exprimendi*) through the printed word, without any moderation (*omni moderatione posthabita*), (II) is not of itself a good, of which human society has reason to rejoice, but rather the source and origin of many misfortunes.

[I] The subject of the sentence is a double faculty |A| to think and |B| to express. As we are now used to, this double faculty is presented positively as measured by the arbitrariness |A'| [|B'|, and negatively by the absence of

³²² - 0611.21 - *Acta Leonis XIII 05,127-128 & 137 = ASS 18, 166 & 172 = BP 02.26.36 & 38.* of moderating criteria. [II] This faculty is not a legal good to be protected by law. Why not?

b) Because of the idea of perfection:

[1] At the level of freedom, from its specifying object-fin :

" |A| Freedom, since it is a potentiality (*virtus*) that perfects man, must concern what is true and what is good (*debet in eo quod verum sit, quodque bonum, versari*); |B| but the nature of the good and the true cannot change according to the whim of man (*ad hominis arbi trium*) [...]."

|At the level of the intelligence and the will that found freedom, and in relation to the operative dignity :

"|A| If the intellect adheres to false opinions, if the will accepts evil and clings to it, (B) neither of them attains its perfection, but they both fall from their natural dignity and both fall into corruption."

c) He draws the double social conclusion:

[I] Evil and error must not be published or positively protected; [II] they must not be allowed to develop with impunity to the point of perverting minds and hearts:

" 11 | Consequently, all that is contrary to virtue and truth, [A | it is not advantageous (*lequum*) to bring it to light (*in luce*) and under the eyes of men (*in oculis hominum ponere*)-, |B| and even less to defend them by the favor (*gratta*) or the protection (*tutela*) of the laws. [11] |A| Only the good life is the way that leads to heaven, towards which we all tend; (B) that is why the City (*civitas*), if it allows to develop (*lascivire sinat*) such a license of opinions (*licentia opinionum*) and of misdeeds (*praveque factorum*) that it is allowed with impunity to turn away the spirits from the truth and the souls from the virtue, puts itself in opposition with the rules and the prescriptions of the nature. "1323

It should be noted that the whole text must be read in the context of the arW- *trium hominis*. In other words, a freedom not based on arbitrariness is not condemned. The license in question is thus formally different from the negative permission of erroneous actions (*a fortiori* taken in good faith).

4) The separation of Church and State

Against separation, finally, a) to *exclude* the Church from life, from the laws, from the education of the young in the family is a very great error, because the city without religion

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cannot be policed; and *b) to subject it* to the civil power is an injustice and a source of serious damage (*ibid.*). One will note here the two facets [a] and [b] of the separation in the secularist sense.

<323 0611.22: Acta LeomsXII 05,137-138 = ASS 18.172 = BP 02.38.

B) Modern law condemned by the Magisterium

In order to reaffirm the condemnations of his predecessors, Leo XIII 1) begins by recalling them; then 2) confirms them by synthesizing them; 3) highlights certain points not condemned, in order to better bring out the truth.

1) Reminder of previous convictions (especially *Mirari vos*)

Leo XIII provides us with an interpretation of *Mirari vos* (cf. 0611.18):

"Thus, in his encyclical letter *Mirari vos*, dated August 15, 1832, Gregory XVI struck with judgments of great gravity (*magna sententiarum gravitate*) those proposals that were already in use:

UI in matters of religion, man is not bound to make a choice (*in cuitu divino nutlum adhi- bere delectum oportere*); III that it is irreproachable for each one (*integrum singulis esse*) to judge religion according to his preferences (*quod malint, de religione iudicare*); IIII that only his own conscience is the judge for each one [= that each one is judged only by his conscience] (*solum cuique suant esse conscientiam iudicem*); (IV J and in addition (*praiterea*) that it is allowed (*licere*) [A] that each one divulges what he opines [= his opinions] (*edere quai quisque senserit*);)B] and likewise to foment the revolution in the city (*itemque res moliri novas in civitate*) "¹²²⁴

General remark: 1° The intention to repeat the propositions of *Mirari vos* is explicitly stated; but the repetition takes place in a slightly different form, which implies *interpretation*. 2° Leo XIII does not condemn *in recto* the fact that *the people, the city or the State* allow man to make or act on such and such choices or actions *in society*, but the idea that these choices or actions *would be permitted*. *Indeed*, once again, the "*licere*" is not followed by an "*in civitate*". This leads us to the preliminary conclusion that Leo XIII understood the propositions condemned by Gregory XVI as expressing positive (and not just negative) permissive liberties: this seems to us to be a crucial point. Let us now examine each proposition by looking for its corresponding passage in *Mirari vos*.

[I] The absence of an obligation to make a religious choice, which concerns the will, seems to us to correspond in Gregory XVI only to P_o, namely indifferentism. Leo XIII already mentioned above (in 0611.18) the positive authorization which is the social consequence: "that it be licit for each one either to follow the religion he prefers, or to profess none, if none is attractive to him". In turn, this positive authorization results in giving the individual the illusion that he is free from moral obligation in religious matters: "the freest opinions on the duty to worship or not to worship God".

[II] The freedom of opinions in religious matters, which concerns more directly the intelligence, can correspond, in 1832, only to *the religious part* of "this absolute and immoderate freedom of opinions (*plena ilia, atque immoderata li bertas opinionum*)" (P₂). *A priori*, the "fullness" and "immoderation" of this freedom resides formally in the arbitrariness of its internal criterion (*quod malint*).

BM 0611.23 [a-e] : *Acta Leonis XIII* 05. 139 = ASS 18. 173 = BP 02. 38 & 40). Black traj., correcting TIBLRCHIEN. 39.

On the other hand, the (religious) matter is here specified explicitly. This will lead us to a clarification below at the end of [III]. Note, here too, the correspondence with a passage in 0611.18 ("allow each individual to judge any religious matter").

[Conscience as the only judge (and this must be emphasized) can only be rigorously linked to one condemnation of Pope Cappellari: that of the assertion and claim of "freedom of conscience" (PJ: a complete rereading of *Mirari vos* has in fact *proved to us that no other* proposition of the said encyclical has anything to do with *conscience*. So we finally

have at least part of the definition of "freedom of conscience": that one's own conscience is the only judge of man. The comparison we have just made seems to us to settle this delicate point of interpretation decisively, especially if we compare this § [III] with 0611.18 ("the judgment of each person's conscience is exempt from all law").

It should be noted that neither Gregory XVI nor Leo XIII make *expliciti* reference to religious matters when they deal with this freedom of conscience. However, since Gregory XVI declares that it comes from *religious* indifferentism, we can rightly think that the assertion of freedom of conscience being condemned means: "in matters of religious opinions, the conscience of each individual alone is the judge of man". On the other hand, the fact that conscience alone is the judge [III] certainly entails freedom [II] of religious opinions. One can then ask oneself a question: could not the famous "freedom of conscience" be composed of the two aspects [II] and [III]: the right-permission to judge everything in religious matters [II] due to the fact that the conscience is the supreme judge of each man [III]? This would then be the adequate definition of "freedom of conscience", so that [II] and [III] would correspond to a bipartite *analysis of* the concept of freedom of conscience stigmatized by Gregory XVI.

[IV] Let us note once again that it is not a question of rights-requirements of liberty, but directly of two rights-permissions, whose point of application is here clearly society, namely: [A] on the one hand, the authorization of the *manifestation* of opinions; to be brought closer to the following passage of 0611.18: "the unlimited license to think and to *publish* one's thoughts", although in 0611.23 Leo XIII does not explicitly attribute to Gregory XVI the condemnation of the unlimited license *to think*. But this whole is obviously recognized in *Mirari vos*, in the form, for example: "*libertate immoderata opinionum, licentia concionum*", which makes explicit "*plena illa atque immoderata libertas opinionum*" (P₂). [B] on the other hand, the authorization to make the revolution (which we leave aside).

Leo XIII concludes with a quotation from *Mirari* against separation, he recalls the benefit of the union of Church and State, and then refers to the *Syllabus*A[^]

1325 0611.24 : *Alla LeonisXIII* 05.139 = 455 18,173 = BP 02.40. Citing 0410.2.

2) *Synthetic confirmation of previous convictions*

Leo XIII confirms the previous pontifical condemnations in the form of a synthesis, which can constitute a key of interpretation, indicating the scope of the previous condemnations, and always according to the same structure, that is to say: a) the origin of the civil authority; b) the religious duties of the individuals and of the societies; c) the freedom of thought and expression; d) the separation of the Church and the State :

"From these decisions of the Supreme Pontiffs, it is necessary to understand...

a) Civil and political freedom

- UI (AJ that public power has its origin [11] from God himself and not from the multitude; - |B| that the permission of sedition (*seditionum licentiam*) is repugnant to reason ;

b) Freedom of conscience and worship (LCC)

- It is contrary to divine law (*nefas*), [1 'J that individuals (*privatis hominibus*), 11"1 that societies (*civitatibus*), [2| 12" give no place to the duties of religion. [2"] or appreciate equally the various kinds [of religion] (*uno modo*

esse in disparibus generibus affectas);

c) Freedom of thought and press (LPP)

- The immoderate power to think and openly manifest one's opinions (*immoderatam sentiendi sensusque pedam iactandi potestatem*) cannot be ranked among the rights of citizens (*in civium iuribus*)² nor among the things worthy of favor and patronage (*gratia patrociniumque dignis*).¹³²⁶

d) Separation of Church and State

Leo XIII concludes by recalling [He the sovereignty and freedom of the Church; [11] and the necessary total concord, not the separation of the two powers:

"In the same way, it must be understood that the Church is a perfect society in its kind and in its law, no less than the City itself; and that the rulers (*qui summum imperii teneant*) must not seek to compel the Church to serve them or to be subject to them, nor must they allow her to be less free in the management of her affairs, nor infringe any of the other rights which Jesus Christ has conferred upon her. - On the other hand, in matters of mixed law, it is most in keeping with the nature and purpose of God that there should not be a separation (*secessionem*) of one power from the other, much less their mutual struggle, but a perfect concord, in accordance with the proximate causes which are at the foundation of each of the two societies,"¹³²⁷

The Pontiff does not mention any other proposal condemned by his predecessors, as would be, for example, the idea of a natural right to purely negative civil freedom and to act according to one's conscience in religious matters. This further strengthens our position that previous popes had indeed condemned freedom from moral obligation (thus the absence of God's jurisdiction over the will), its proclamation by way of positive authorization of indifference (thus the absence of any authority's jurisdiction over man and his conscience in religious matters in particular), i.e., the freedom to think and act as one pleases, and the immoderate civil freedom to think and publish one's thoughts (even if they are not religious).

1 .> 0611.25 : *Acta LeonisXIII* 05. 138 and 140 = ASS 18. 172 and 174 = BP 02. 40. TIBBROHIEN. 3940. review pure us.
0611.26 . *Acta Leonis XUI*05. 140-141 = ASS 18.174 = BP02.40.

III) *The discernment of true and false*

Leo XIII discerns the true from the false-" on A) tolerance; B) freedom :

"Moreover, there is no just reason for anyone to accuse the Church of being indulgent and condescending (*aut esse in lenitate facilitateque plus œquo restrictam*) or [B 1 of being the enemy of authentic and legitimate freedom (*aut eî, quai germana et légitima sit, libertati inimicam*)."

A) **False and true civil tolerance in religious matters**

Leo XIII distinguishes between 1) a false and 2) a true religious tolerance of the state.

1) *The false indifferent religious tolerance of the state*

"Indeed, if the Church judges that it is not licit for the various kinds of divine worship to be of the same right as the true religion (*divini cultus varia genera eodem iure esse, quo veram religionem, Ecclesia iudicant non licere*),
... "³²⁹

Given the meaning of "right" at the time, it is a positive authorization equality.

2) *True religious tolerance*

a) The principles of true religious tolerance

"... It] does not condemn for this reason [the Church] the heads of state (*rerum publicarum moderatores*) who, [A] with a view [l]of a great good to be achieved (*magni alicuius adipiscendi boni*), or [2]of an evil to be prevented (*aut prohibendi causa mali*), (B J endure patiently in custom and usage (*moribus atque usu patienter ferunt*) [C] that [1] these various cults [2] each have their place in the City (*ut ea habeant singula in civitate locum*).

">&>

Thus: [I] from the doctrinal point of view, the Church does not condemn; [II] who is not condemned? the public authorities; [III] what is their act that is the object of this permission? [A] first the intention required: [11] a great good to be achieved; [2] a great evil to be prevented; [B] then the act performed: practical tolerance; [C] the object of the act: [1] the material object of the act: the various cults; [21] the formal object: that each one have his place in the City.

b) Particular application to the freedom of coercion of access to faith

The fact that the Church does not force adherence to the faith is a particular case (or even a motive) of tolerance towards evil,¹²⁹⁶ hence the connection between tolerance and freedom of the act of faith.³³³ Leo XIII recalls and justifies the principle of tolerance, I, and then confirms it with a patristic source [II].

"(I) And [A] the Church is accustomed to take the greatest care [B] that [1] no one [2] is forced [31] [a] to embrace (b) against his will [c] the Catholic faith (*ad amplectendam fidem ca-*

¹²⁹⁶ Cf. GUERRERO, 1961.07-08,24 and B AUCHER, 1926,699,d).

tholicam nemo invitus cogatur), because, as Saint Augustine rightly observes, man can only believe by wanting to. "tW4

II| |A] A first justification (and thus affirmation) of the *existence* of the principle is the custom of the Church (*solet*). f B J As for the *content* of the principle, we indicate 11] the *subject* or *finis cui*: "person"; [21 the *object*: the absence of coercion (in negative form: "be not forced"); [3] in its turn, the object of this non-coercion, or evil to be prevented (thus correlative to a good to be protected, free access to the faith), has three parts: [a] it is an act of the subject: to *embrace* (and not, moreover, to *keep*); [b] this one is seen under its mode of contrariety to the will (*invitus*) [c] then this act is specified in its turn by its own object: the Catholic faith.¹²⁹⁷ [The reason for the principle followed by the practice of the Church is the *impossibility* of a forced act of faith. To compel faith would thus result in the *external* profession of the Catholic faith, without an *internal* profession, since by hypothesis the subject is *invitus*. The *praxis Ecclesiae* and Leo XIII forbid this external and apparent way of preventing infidelity: it is therefore an immoral intervention, and on the freedom of others, therefore (as we have seen) *unjust*. We thus have here the affirmation of a *right of every man to the freedom of coercion to remain in error*, or right to be tolerated in his error,¹²⁹⁸ valid in all circumstances. Always practiced *in* given circumstances, and occasioned by given circumstances, tolerance (here of religious error) is therefore not justified only *by* these circumstances.¹³³¹ * Leo XIII thus supports there a freedom of coercion which allows (negatively) not to accomplish the objective law of God.

B) False and true freedom

]) False freedom, or license

"For a similar reason, the Church cannot approve of a liberty which leads to disgust with the most holy laws of God, and excludes the obedience due to legitimate power. This is no longer freedom, it is license. Saint Augustine rightly calls it *the freedom of perdition*, and Saint Peter the Apostle *calls it the veil that covers malice*. It is even a real servitude, since it is outside of reason: indeed, *whoever does sin is a slave to sin*, n¹²⁹⁹

Therefore, a freedom to obey according to conscience, the holy laws of God, and legitimate authority is not condemned: for the moment, Leo XIII says nothing about such a freedom. He dismisses a licentious freedom, and will now promote the freedom to do good.

IW 0611.28 : *Acta LeonisXIII* 05. 141 = ASS 18. 175 = BP 02. 42. Cf. our 006"). Translation: TIBERGHIE. 42. corrected by BP 02, 43. Cf. also CIC 83. can. 748, § 2 in the form: "Homines ad amplectendam uđem calholicam contra ipsorum conscientiam per coactionem adducere neiniunq uam fus est". which in both Codes excludes the coercion of those who do not have the Catholic faith or at least have never professed it (so not only the unbaptized, but also the baptized who have never adhered to the bglicsc). This *invitus* will be replaced in the CIC 83 by the expression "against one's conscience", which is even more exact.

C) True freedom

"On the contrary, it is genuine and desirable that freedom which, (A) considered privately, does not leave man a slave to errors and greed, cruel masters, and (B) considered publicly, governs citizens wisely, broadly

1297 c. t adjective "Catholic" characterizes the *fuies gute*. objective faith, by distinction from the *fuies quā*. or subjective faith, the come of faith.

133? The common good is never presented as the reason for tolerating non-religion.

I339oiii.29 [a] : *Acta LeonisXIII* 05. 142 = ASS 18,175= BP 02,42 & 44 irad.TIBERGHIE. 4244, corrected.

distributes the faculty of increasing well-being, and defends the state (*rein publicam*) from the caprice of others. HIM Now this laudable freedom, truly worthy of man, [A] the Church approves of more than anyone else; and [B] she has never ceased to work and to struggle to ensure that the people enjoy it fully and constantly. [In truth, [A] the institutions of the city (*in civitate*) most favorable to the common prosperity, [2] the means most suitable for protecting the people against the abuse of power by princes (*licentiam princi- puni*) who deal badly with the people, [31 all that forbids the encroachments of the state (*suinam rem- publicam*) on the affairs of the commune or of the family, [4] all that interests [a] the honor and the person of the man,¹³⁰⁰ [b] the safeguarding of the equality of right (*aiquabilitatem iuris*) between the individual citizens : |All these things, the monuments of the preceding ages attest, the Catholic Church was always the inventor, or the protector or the faithful guardian, B¹³⁰¹

IJ Leo XIII affirms the existence and the benefits of true liberty: [A] on the individual level, it is liberty from error and sin; [B] on the level of society, it is, it seems, [11] civil liberties; [2] economic liberty; [3] liberty in relation to the foreigner. [II] Then he affirms the favor that such freedom enjoys in the Church. [III] He then lists several examples: [A]he details them [1 j at the level of the common good, as regards prosperity; [2] at the level of the people, as regards their civil liberty; [3] at the level of communes and families, as regards subsidiarity; [4] at the level of individuals, [a] as regards their dignity, [b] as regards their juridical equality.¹³⁴³ What is called legal equality is the fundamental principle of legal philosophy according to which two persons, *all things being equal*, should not be treated differently by the legal system if the difference has to do with a *personal* reality (race, sex, religion, etc.) and not with a *functional* reality (abilities, diplomas, profession, etc.). It is stated: equal legal situation, equal rights. Now, in matters of *natural* rights, the juridical situation is equal, therefore rights are equal.¹³⁰² [B] Leo XIII affirms that these examples have the full support of the Church. He thus sketched out a Catholic theory on the fundamental rights of the human person in relation to the State, which would be launched more fully six years later.

All in all, what the Church rejects is a "*libertatem immodicam*,"¹³⁰³ and true freedom is given by the truth, *John* 8:32.¹³⁰⁴ That is why Catholics must "work to prevent freedom of action from transgressing the measure fixed by natural and divine law, and work to bring every state back to the Christian type and form that We have said."³⁴⁶

Leo XIII, in 1887, while renewing the condemnation of rationalism and naturalism,¹ -¹⁴⁷ will allow the faithful *in practice to use these theoretically condemnable freedoms*, in order to avoid the worst:

"And it will not be fair to anyone to accuse and blame those of our own who have recourse to such means. Indeed, the enemies of the Catholic name are accustomed to use these same means for licentiousness, that is to say, to obtain and almost wrest from the rulers laws contrary to civil and religious liberty (*libertati rei civilis sacratque*). Is it not permissible for Catholics to use these same means, and to do so in such a way as to pursue the interests of religion in the most honest way, and for the defense of the goods, qualities and rights divinely granted to the Catholic Church "which must be respected in all honor by all, rulers (*qui pmsunt*) and subjects (*qui sub sunt*)?"

The goal is to *decrease the oppression* of Catholics,¹¹⁴⁹ and the Church:

"Of those goods of the Church which We must everywhere and always preserve and defend from all injustice, the first is certainly for her to enjoy all the freedom of action which she needs to work for the salvation of men. For this liberty is divine, it has as its author the only-begotten Son of God, who brought the Church into being by the

1300 "ad decus. ad personam hominis", probably a "hendiadis" for "the honor of the human person".
1301 0611.29 (dj./Wd).

1302 We have these remarks from our Roman professor Francesco D'AGOSTINO.
1344061130: *Acta Leonis XHI* 05, 142-143= ASS 18, 175 = BP 02,44). TIBERGHINI, 44.
1345061131 n. *Acta Leonis XHI* G5, 144 = ASS 18, 176 = BP 02,44). TIBERGHINI, 48.

shedding of his blood, who established it for ever among men, and who willed to be its head; and it is so proper to the Church, a perfect and divine work, that those who act against this liberty are thereby acting against God and against duty."¹³⁵⁰

This *libertas Ecclesia*: can not shade the power this vile.¹¹ "

12.2. *Libertas prestantissimum*

In 1888 Leo XIII sent another encyclical to all Catholic bishops, *Libertas præstantissimum*,¹³⁰⁵ in which he developed the question of "human freedom" (title) (12.2.), and the doctrine of *immortale Dei* on the freedom of the true and the good (12.2.1.), and on the tolerance of error and evil (12.2.2.)

1) .2.1. The freedom of the true and the good

Libertas treats the freedom of the person first in himself (I), then in society according to the truth (II), and finally according to the false modern freedoms (111).

2) *Personal freedom in general*

"Freedom, [A]]] the principal good of nature (*Libertas præstantissimum naturæ bonum*). 12] and proper only to natures using intelligence or reason, B attributes to man the dignity]1] of being "in the hand of his counsel", and]2] of obtaining dominion over his actions. 111 However, A] what matters most to this dignity is the manner in which it is exercised (*y'eratur*), B] since from the use of liberty arise both the greatest goods and the worst evils. "¹³⁵³

[I. Freedom in act 1^{er} [A] is first situated in a general and static way [1] at the top of creation;]2] and more specifically in beings endowed with intelligence [a] pure (angels), [b] or rational (men); [B] it is then considered more particularly in what it causes in man, namely the dignity: [1] of possessing oneself;]2] of controlling one's actions. [The freedom in second act, or *use* of freedom [A] is declared even more important (especially for dignity);]B] statement then justified. Hence the subsequent distinction made by theologians between "ontological dignity", due to the presence of free will, independently of its use, and "operative dignity", additional dignity brought about by the correct use of free will. Leo XIII, moreover, ignores here the distinction between a subjectively correct (sincere) use and an objectively correct use. He continues: Jesus Christ has restored human dignity, and rescues the will by grace. The Church has always deserved freedom:

"Yet there are many who believe that the Church is the adversary of human freedom. The cause of this lies in the defective and contrary idea that people have of freedom. For, by this very alteration of its notion, or by the exaggerated extension which is given to it, it comes to be applied to many things in which man, judging from sound reason, cannot be free. 13^{*4}

Leo XIII affirms that he has distinguished in *Immortale Dei* between what is true and what is error: whatever good is contained in modern liberties, the Church has always defended; whatever is new is corrupt.¹³⁰⁶ H then carefully distinguishes two types of freedom: A) natural freedom; B) moral freedom, the proper object of the encyclical, and "considered either in individual persons or in the city (*in civitate*)".¹³⁵⁶

1305 0616. Leo XIII, 1888.06.20: Encycl. *Libertas præstantissimum*, on human freedom: *Acta Leonis XIII S* (1888). 212-246 (237-238 cited by *DH*, note 2): ASS 20 (1887-1888). 593-613: ed. LEON XIII-DDB. 3 (1893), 96-120; *CIC Fontes* 3. n° 600,295-311: BP 02, 172-213.

1306 BP 02.173 & 175.

A) Free will or natural freedom

Natural liberty, or free will, is the source of all forms of freedom.¹³⁰⁷ It is based on the universality of the object of human intelligence and on the spirituality of the soul. The Church has always defended it against the various fatalisms. It is defined as: "the faculty of choosing between the means that lead to a determined goal; in this sense, he who has the faculty of choosing one thing among several

It has as its seat the will, but has as its object a good that is in conformity with reason.³⁵

B) The law, support of moral freedom

1) 9. [...] But just as being able to deceive oneself really is a defect which accuses the absence of integral perfection in the intelligence, so attaching oneself to a false and deceitful good, while being the index of free will, as illness is of life, nevertheless constitutes a defect of freedom. In the same way the will, by the mere fact that it depends on reason, and that it desires an object which deviates from right reason, falls into a radical vice which is nothing other than the corruption and abuse of freedom. "13°

Thus, the evil use of free will is a defect of it. Besides, God and the blessed are incapable of choosing evil. "The faculty of sinning is not a freedom, but a servitude" >³⁶ - Then, as a good Thomist, instead of opposing the law to freedom, Leo XIII is going to show that freedom postulates the law, its support, and under two forms: 1) the moral, divine law, 2) the civil law.

2) *The moral law, support of freedom in the individual*

1° The law, *ordinatio rationis* [and not *voluntatis*] is the norm of freedom. The root of its necessity is the requirement of agreement between the will and right reason. It is therefore precisely because he is free that man needs a law, and must not be exempt from any law.¹³⁰⁸ 2° And first of all the natural law, "the very reason of man ordering him to do right and forbidding him to sin", "the organ and interpreter of a higher reason to which our spirit and our freedom owe obedience".¹³⁶³ 3° The law rests on authority, "true power to rule duties and define rights, and to sanction them by penalties and rewards." Thus natural law rests on eternal law.^{13w}

3) *The civil law, support of freedom in society*

"What reason and natural law do for individuals, human law enacted for the common good of citizens accomplishes for men living in society. "Btô

a) Some laws sanction what is already good or bad in nature.

"In this kind of law, the office of the civil legislator is limited to obtaining, by means of a common discipline, the obedience of the citizens, by punishing the wicked and vicious, with the aim of turning them away from evil and bringing them back to good, or at least of preventing them from injuring society and being harmful to it. "1366

b) Others are properly human laws, normed by the eternal law.

They "are more remote and indirect consequences and are intended to clarify various points on which nature had only pronounced itself in a vague and general manner."¹³⁰⁹

1307 0616.02: *Acta Leonis XIII*08.214 = ASS 20.594 = BP 02, 174.

1308 See BP 02, 179 & 181.

1309 BP 02.183.

II) True freedom and false freedom in society in general

"The supreme end to which human freedom must aspire is God",¹³¹⁰. Therefore, A) true freedom is the possibility of fulfilling the law, B) false freedom is the possibility of refusing it.

A) True freedom in society in general

1° As for true liberty in society (*libertas veri nominis in hominum societate*), it does not consist in doing what one wants (*quod lubet*), but in the fact that, through civil laws, one can more easily do what one must.¹³¹¹ 2° The Church has always supported true "civil and political liberty of the people". She has done away with slavery, and proclaimed "true brotherhood among men."¹³¹² 3° This freedom is not opposed to the "very real duty of respecting power and submitting to just laws," not to whoever commands without right or against divine law.¹³¹³

B) The false freedom or license of liberals in general

Liberals propagate pure and infinite license, separate from the law of God.¹³¹⁴ They apply the philosophical principles of naturalism and rationalism to the moral and civil order, in 3 decreasing levels of error:

1) Rationalist liberalism

a) Description

— *The independent rationalist individual morality*

"The principle (*caput*) of all rationalism is the primacy of human reason: this one, challenging the obedience due to the divine and eternal reason, and decreeing that it is autonomous (*suique se juris esse decernens*), it constitutes for itself the supreme principle, the source and the judge of the truth. Thus those whom we called sectors of liberalism claim that in the conduct of the life there is no divine power to which it is necessary to obey, but that each one is to himself his own law: hence the moral philosophy which is called *independent*, which, diverting under the guise of freedom the will from the observance of the divine precepts, is wont to give man infinite license."^{*,373}

It is the *conscientia exlex*.

— *The rationalist social morality and the absolute popular sovereignty*

— *What* ultimately results from this, especially in human societies, is easy to see. For, once this conviction is fixed in the mind that no one has authority over man, the consequence is that the efficient cause of civil community and society must be sought, not in a principle external or superior to man, but in the free will of each individual, and that public power emanates from the multitude as from its primary source; moreover, what individual reason is for the individual, namely, the only law that regulates private life, collective reason must be for the collectivity in the order of public affairs: hence, power belonging to the many, and majorities alone creating right and duty."¹³¹⁵

Leo XIII affirms how all this is contrary to natural reason.¹³¹⁶ He then moves on to the

³⁶ -"BP. 185.

¹³¹¹ 0616.05: *Acta Leonis XU108*, 221 = ASS 20, 598 = BP 02, 182. The same applies to the freedom of rulers, which cannot be arbitrary, the pope specifies, but must be based on the eternal law (*ibid*).

¹³¹² BP 02. 185. We deal with slavery below.

¹³¹³ *1 und*.

¹³¹⁴ 0616.06: *Acta Leonis XIII Oi*. 224 = ASS 20,600 = BP 02, 186). See also 0616.07.

¹³¹⁵ 0616.08: *Acta Leonis XIII08*.225 = ASS 20,600-601 = BP 02. 186). Trad. Office. 1.3. n° 25.

¹³¹⁶ BP, 188-189.

evils of this theory.

b) Ravages

"But, moreover, such a doctrine brings the greatest harm both to the individual and to society."

- *In the individual: passionate corruption*

"And, in fact, if one makes good and evil depend on the judgment of the one and only human reason, one suppresses the proper difference between good and evil; the shameful and the honest no longer differ in reality, but only in the opinion and judgment of each one; what pleases will be pennis. I-.)" ³⁷⁶

- *In the company*

Leo XIII identifies three catastrophes due to liberalism [we have identified them in the DDHC]: [A] the tyranny of the majority, deciding what is right and wrong (general will); [B] society indifferent to religion (freedom of religious opinion); [C] the development of seditions, contained by force alone (resistance to oppression, etc.).

1A) "In public affairs, the power to command is separated from its true and natural principle, from which it draws all its effective virtue producing the common good: the law which rules on what should be done or avoided is left to the arbitrariness of the majority, which tends to tyrannical domination."¹³¹⁷ [B] "As soon as God's power over man and human society is repudiated, it is logical that there is no longer publicly any religion (*nullam esse publicè religionem*); and everything that touches religion becomes from then on the object of the most complete neglect."¹³¹⁸ [C] "Armed similarly with the idea of its sovereignty, the multitude will easily give way to sedition and disorder, and the brake of duty and conscience no longer existing, there is nothing left but force, force which is very weak on its own to contain popular passions."

One will have noted here that "duty and conscience" are brakes. Its very excesses lead liberalism to mitigations.

2) *Naturalist liberalism*

Naturalist liberalism recognizes the criterion of natural law, but not that of revealed law.³⁷⁹

3) *Moderate liberalism*

The moderate liberals, on their side, 1° admit the authority of God on the individual, not on the City and its laws; 2° hence the separation of the Church and the City.¹³ " Rebuttal: 1° society must provide the citizens with what is necessary to live according to the laws of God, therefore the goods of the soul also; 2° "the civil power (*principatus civilis*) and the sacred power, although not having the same goal and not walking by the same ways, must nevertheless, in the accomplishment of their functions, meet sometimes the one and the other ". Hence the necessity of their union.¹³⁸¹

111) *The false modern freedoms in particular*

"But in order to bring these truths more clearly to light, it is well that we consider separately the various kinds of liberties that are given as conquests of our age."¹³⁸³

Four particular types of modern freedoms follow: A) freedom of worship; B) freedom of speech and press; C) freedom of education; D) freedom of conscience. (This one is therefore clearly distinguished from the freedom of worship: a new approach is announced).

¹³¹⁷ Bp, 188-189. Theme taken up again in 1223. *Evangelium viue!*
^{13780616.09} : *Acta Leonis XIII* 08,226 = ASS 20,601 =BP02,188), Translation: Office. 14.

A) The false freedom of worship

Leo XIII distinguishes *two active subjects in which* freedom of worship must be considered: 1° on the one hand, the individual; 2° on the other hand, the City. The question of the passive subject of this freedom will become clearer later.

1) *The freedom of worship of the individual*

Leo XIII first deals with the freedom of worship in individuals (*singulis personis*): a) he describes it; b) he condemns it; c) he inculcates the opposite obligation.

a) Description

"And first of all let us see with regard to individuals this thing so contrary to the virtue of religion, namely the *freedom of worship*, as one says. This one has for foundation (*Jundamento*) that it is free to each one (*in tegrum cuique esse*), (a) to profess such religion as it pleases him, | b) or even to profess none of them *faut quant libuerit, aut omnino nulkim projiteri religionem*),"¹³⁸³

Leo XIII *defines* individual freedom of worship *by its foundation*. He will indicate to us later (0616.19) that *this* foundation of freedom of worship is called "*freedom of conscience*". He considers freedom of worship in the order of specification (with personal good pleasure as a measure); [b] and in the order of exercise (to practice or not to practice). Its domain is religion. [I] Rationalist liberals will understand this freedom of worship as a freedom from moral obligation: no God, therefore no obligation or worship. From this moral freedom, proclaimed by the

ISSU 0616.10 |a| : *Acta Leonis XIII*08. 228 = ASS 20. 602-603 = BP 02. 190; translation: Office, n°32 or BP 02.191. PRJETO-RIVERA. 1967a. 549 seems to us inaccurate in placing MONTALEMBERT in this category. G. CONSTANTIN. 1926.626.

13°1 0616.11 |a-ej| : *Acta Leonis XIU* 08,228-229 = ASS 20,603 = BP 02,190 & 192. Translation: Office. 15-16. n° 33. 13°2 8p. 193.

13°30616.12: *Acta Leonis XIU*08,229 = ASS 20,603 = BP 02,192); transl. Office, 17,n°34. philosophers and the people, necessarily follows a positive authorization to follow the irreligious rationalist criteria, from which a right-demand to be before the society free to follow the same criteria. [II] The naturalist liberals will admit an obligation, but it will not concern a supernatural cult revealed by God. In this system, there is still no moral duty of man to the one true revealed religion; there is therefore a positive permission to follow any religion; from this follows the civil liberty to follow the religion one chooses as one pleases. [III] Moderate liberals profess the revealed religious obligation for the individual, but do not admit the social consequences. More illogical than the previous ones, while admitting that one does not have moral permission to act as one pleases, they consider that society cannot know anything about it, and must therefore proclaim the civil liberty to act (or refrain from acting) *as if* one had this moral permission, i.e. "as one pleases".

The *reason why* Leo XIII condemns individual freedom of worship is its opposition to the virtue of religion in the one who should be the subject of this virtue, not in the subjects who should or could take away his civil liberty, an aspect of which there is no mention here, even implicit. The *main* (not exclusive) target is thus the liberal-rationalist conception of freedom of worship. This point will be further reinforced by what follows.

b) Conviction

"But on the contrary, of all the duties of men, this is undoubtedly the greatest and holiest, by which we men are commanded to worship with piety and religion. And this follows necessarily from the fact that we are perpetually in the power of God, that we are governed by the will (*numine*) and providence of God, and that, out of him, we must return to him. "1^

Once again, since Leo XIII, in order to stigmatize freedom of worship, does not use an obligation that *society* would have to prevent the civil freedom of the individual, but only the *moral obligation of the individual*, he aims *in recto*, a freedom not of coercion, but of moral obligation. Thus, in view of what he has already explained about the sovereign people as the source of all rights, it is indeed a positive authorization; he makes no mention of a purely negative freedom. Moreover, he adds, without religion, no morality (*ibid*).

c) Affirmation of the contrary obligation

On the other hand, as to specification, true religion is [I] obligatory and detectable; [II] to which the above-mentioned freedom is opposed:

"And if it be asked, since there are several religions in dissension among themselves, which only it is necessary that all should follow, reason and nature answer, that which God has commanded, which men can easily recognize by certain outward signs, by which divine providence has willed to make it distinct, because in a matter of such importance, error would lead to consequences too disastrous. [111 Therefore, to offer man this freedom of which We speak is to grant him the power to pervert or abandon with impunity (*imputie*)

this most holy duty, and so, turned away from the unchangeable good, he turns to evil: which, as We have said, is not freedom but depravity of freedom, and servitude of the degraded soul to sin."³⁸⁵

Leo XIII responds to the naturalist liberals, for nature itself makes it a hypothetical duty to adhere to Revelation, if God reveals himself. The context is still clearly that of moral obligation, here the obligation to adhere to Revelation. The fact that the people declare that there will be no sanction for religious deviation does not necessarily mean a purely civil sanction; rather, it is the proclamation of a positive authorization to act, from which impunity follows. If Leo XIII were to condemn here any *civil* freedom not to do the will of God, he would be condemning the *civil* freedom of the act of *faith*, which he had previously claimed. It is therefore necessarily that the Pope is condemning a freedom that does not in itself protect the fulfillment of religious duty as a function of conscience (a perspective addressed later in *Libertas*, and 87 years later in *DH*), but as acting *as one wishes* in the face of God's will. This possibility of acting as one wills 1° does not exist at the level of individual morality (there is no freedom from religious moral obligation); 2° does not exist at the level of the right to act (there can be no positive authorization provided by society to do what one wills in religious matters); 3° finally, although Leo XIII does not deal with it here, it is also clear that this possibility of acting cannot be a good to be protected by a negative right of liberty (there can be no right to civil liberty *to act as one wishes*). On all three levels, freedom of worship is contrary to the will of God, and the very words of Leo XIII show that his entire condemnation rests on the 1st aspect, necessarily included in the other two. As for "*impune*", it is to be compared with the "*impune*" applied to the *Ci- vitas* in the following §: moral impunity proclaimed by the people as the source of all rights and duties, and not formally impunity of penal coercion on the part of the civil power.

2) *The freedom of worship of the City*

As for the "freedom of worship" *of the City*, Leo XIII proceeds in the same way: a) he describes it as freedom of specification and exercise in religious matters; b) then he condemns it; c) finally he specifies the object of the contrary obligation.

a) Description

"Considered in the Cities (*in civitatibus*), this same liberty wills [I] that the City (*civitas*)^a [A] render no worship to God, or [B] will not want public worship to be rendered; 1111 (A) that no worship be placed before the other, but that all be considered as having the same right. [B] without even regard to the people, even when that people makes a profession of Catholicism."¹³⁸⁷

¹³⁸⁵ 0616.14 [a-b] : *Acta Leonis XU108.230* = ASS 20,604 = BP 02,192); trans. Office, 17. n° 35.
¹³⁸⁶ BP 02.195.

¹³⁸⁷ Cf. ABAITUA. 1966.178-179. MURRAY. 1951.06, 174, is easily refuted by TORRES-ROJAS, 1968,123.

The new active subject of freedom, *the City* (not directly the State), feels free from religious and juridical obligation. [I] Freedom from *moral* obligation to worship [A] either all worship, or at least [B] public worship; [II] At the level of the morality of law, [A] juridical equality of worship; [B] without regard to the situation of the people.¹³ - (The subject bound by the obligation of non-parity is the Catholic society).

b) Rebuttal

"(1) But for this to be so, it would be necessary that the civil community (A) really had no duty to God (*civillis hotinum communioms officia advenus Deum*), or (B) that, having such a duty, it could free itself from it with impunity (*impune*); which is equally and manifestly false. [For it cannot be doubted that the union of men in society is the work of God's will, whether we consider it [1] in its members, [2] in its form, which is authority, [3] in its cause, or [4] in the number and importance of the benefits which it gives to man. [It is by God that man was made for life in society and grouped with his fellow men, so that what his nature would aspire to, and what his solitary efforts could not satisfy, he could find in association.

[Once again, we recognize the speech of Pius VI, recalling the moral duty of societies towards God. [B] "*Impune*", it is confirmed, cannot allude to a punishment by civil society, since it is an obligation of the latter. This "freedom of worship" is again a freedom of moral obligation, even a positive authorization given by the sovereign people to the city. *¹³⁹

c) Obligation to the contrary

- Society 111 must give specific worship to God and not be indifferent to the various cults, as if they had the same rights-authorizations:

"Therefore, civil society (*civillis societas*), as a society (*qua societas*), must necessarily (A) recognize God as its principle and author, and therefore (B) pay homage to his power and authority. [It must necessarily (A) recognize God as its principle and author, and consequently (B) render to his power and authority the homage of his worship. By reason, the City (*civitarem*) cannot be atheistic, or, which would amount to atheism, [B] be animated towards all religions, as they say, by the same dispositions, and grant them indiscriminately (*protriscue*) the same rights.^{139U}

- The pope specifies according to which religion this duty must be fulfilled:

"11] [A] Since it is therefore necessary to profess only one religion (*unius religionis*) in the city (*in civitate*), it is necessary to profess the one religion which is the only true one [C] and which is easily recognized, [DJ at least in Catholic cities (*in civitatibus catholicis*), by the signs of truth which it bears in itself. [This religion, therefore, the rulers of the state (*qui rem publicam gerunt*) must preserve and protect, if they wish, as they are obliged to do, to provide prudently and usefully for the interests of the community (*civium communitati*).³⁹ *]1U] For [A] public power (*Publica enim potestas*) has been established for the benefit of those who are governed, and [B] even though its only proximate end is to lead citizens to the prosperity of this earthly life. C] it is

IMS passage that anticipates *DH* 6, § 3.

[3⁹ Once again, our reader will excuse us for contenting ourselves, on several occasions, by way of analysis, with the very statement of the articulations of the text, without comment.

[³ " 0" 1". 15: *Acta Leonis XIII* 08.231 = ASS 20.604 = BP 02.194): trans. Office, 18, n° 36 (retouched by us). ¹³⁹¹ Without ever repeating as clearly as Pius IX the doctrine of the secular arm. LEON XIII will recall that in Christian times, one would never have let publish so many insults against religion as in his time. Cf. 06183: *Acta Leonis XIII* 10,11 -12 = ASS 22,386 = BP 02.264). BP 02.265.

However, it is her duty not to diminish, but to increase, on the contrary, for man, the faculty of attaining that supreme and sovereign good in which consists the eternal happiness of men, which becomes impossible once religion is neglected.">392

He thus takes again the doctrine of *immortale*, to which he refers, and he insists on the fact that this false freedom of baked goods prevents the true freedom of the governors and the governed, by not inculcating obedience, by not putting a brake on the seditions, by not polishing the morals as religion does.¹³¹⁹ Let us notice again the mention of the Catholic character of the people, and the fact that the State pursues the eternal end by means of religion.

Leo XIII will take up all this in 1889 in his letter to the emperor of Brazil:

¹³¹⁹ 061". (end): BP02, 194 & 196.

"The freedom of worship, [A] considered in its relation to society (*considerata rapporta alla società*), [B] is founded on the principle that, [C] even in a Catholic nation (*anche in una nazione canonica*), [D] the State (*la Stato*) is not obliged to profess or favor any cult; (E) it must remain indifferent in the eyes of all, and hold them to be legally equal. 111J It is not a question here of that de facto tolerance which, in given circumstances, may be conceded to dissident cults; but rather of the recognition accorded to these cults of the very rights which belong only to the one true religion, which God has established in the world and which he has designated by clear and precise characters and signs, so that all may recognize it as such and embrace it. ¹³²⁰ "Such a liberty also places truth and error, faith and heresy, the Church of Jesus Christ and any human institution on the same line; [...] it leads finally to the sad consequences of the indifference of the State in religious matters, or, which amounts to the same thing, its atheism."^{13 95}

One condemns here not the non-prevention of cults considered as unequal, but that the State professes the equality of cults. Decidedly, in the 19th century^c, the notion of freedom, even civil freedom, implied that of positive authorization, and was opposed to tolerance, civil non-impediment without positive authorization.

B) The false freedom of speech and press

Then Pope Pecci condemns a very distinct freedom, the freedom of speech and of the press (cf. DDHC, art. 11), also specified by arbitrariness:

« 39. And now, let's continue these considerations about the *freedom to speak*, and to write whatever one wants (*quodcumque iibeat...*)»

He reproaches it with being immoderate, and makes its indifference to good and evil the very reason why it cannot be a right:

« [F]or right is a moral faculty, and, as we have said, and as cannot be repeated too often, it would be absurd to believe that nature has given it without distinction or discernment, to the true owner of the right.

ivXL 9616.16- Acta Leonis XH108,231 = ASS 20,604-605 = BP 02, 194. Trad. Office, 18. n° 37 (corrected).

and lies, good and evil.^{1 130} (A] The true, the good, one has the right (*Jus est*) to propagate them in the City (*in civitate*) with prudent freedom (*Ubere prudenterque*), so that a greater number may benefit from them; [B] but [11 the lying doctrines (*opinionum mendacia*), the most fatal plague of all for the mind; [B]ut the vices which corrupt the heart and morals, [C]J it is right (*wqilium est*) that the public authority (*auctoritate publica*) [a] employs to remove them (*coerceri*) its solicitude (*diligenter*), | b] in order to prevent the evil from spreading for the ruin of the State (*reipublicte*). [D] (11 The sins [a]of a licentious spirit, [b]which, for the ignorant multitude (*multitudinis imperita*),^a [I] evidently become a real oppression, (2) it is right (*rectum est*) that the authority of the laws repress (*coerceri*) them no less than the injustices committed on the weakest by violence. [And this repression is all the more necessary because against these devices of style and these subtleties of dialectic, especially when all this flatters the passions, the most numerous part of the population cannot in any way, or can only with great difficulty, keep itself on guard. [If you grant everyone unlimited freedom to speak and write (*cuilibet loquendi scribendique injinita licentia*), nothing will remain sacred and inviolable, nothing will be spared, not even those first truths, those great natural principles which must be considered as a noble heritage common to all mankind. Once the truth has been gradually taken away by darkness, which often happens, the error of pernicious and multiple opinions will dominate. Whatever license gains, freedom loses; for freedom will always grow stronger and stronger as license feels the brake more. a ¹³⁹

Opinionum mendacia" should not be understood to mean all errors in religious matters.

1320 0617. (here 0617.1 [a] [b] (c)) LEON XIII, 1889.07.19 : Letter *E' giunta*, to the emperor of Brazil, Don Pedro 11; orig. iial. *Acta Leonis XIII9 (18891, 145-151 (here 146); ed. LEON XI11-DDB.3 (1893), 265-269; trans: PIN 234-243 (here 234).*

<395 0617.2: *Acta LeonisXIU 09. 146; trans.: PIN235. See also 06173: Acta LeonisXHI 09. 146-147: PIN 236; and 0618.2: Acta Leonis XIII 10. 11 = 455 22, 385 = BP 02, 262 & 264. On juridical indifference, cf. MACEVOY, 1973. 27-28, who denounces the liberalism of MURRAY, 1952.12, 546, note 50; 551; 552; MURRAY, 1953.03.14. Error of interpretation in SCHÜLLER, 1965, 110-111.*

In fact, convictions admitted in good faith by error cannot be called "lies". Secondly, Leo XIII wants them repressed "*ne serpere ad perniciem reipubUcæ queant*". He therefore considers them from the point of view that they are destructive of the social order and not from the point of view of the common good of the Church. Finally, by the use of the word "*mendacia*" as opposed to "*vera*", Leo XIII is certainly thinking of the calumnies spread daily against the Church in the anticlerical press. Surely, these lies can be suppressed by the State itself, especially in a Catholic country. On the other hand, Leo XIII aims to protect a population that is mostly ignorant, as were the Italians of his time.*³ "Finally, the freedom he deals with is immoderate, and immoral. Nevertheless, freedom of speech exists for free questions, the object of opinions, because it often leads to the search for and discovery of the truth.*¹¹⁰

C) The false freedom of education

Since only the true (natural and supernatural) must be taught, *¹¹¹ the pope condemns a freedom of teaching which would claim "permission to teach everything as one pleases" (*quidlibet pro arbitratu docendi licentiam*). Once again, we recognize

fW 0616.17 [a-b]. See also 0627.2: BP06.282.

¹³⁹⁷ Note the *ignorant multitude* (so the effect might be different in a highly educated society). Cf. ABAITUA, 1966, 182, note 51, which refers to art. "Analfabetismo". *Endta!* 01. 83. Note also *t'appressian*. of fact contrary to just public order. Cf. LATREILLE. 1966.197.

1398Q616.17 [c] [d] [e] [f] : *Acta Leotix XIII*08.232-233 = ASS 20,605-606 = BP02.196.Trad. Office. 19-20.

1399 cf. TORRES-ROJAS. 1968. 119, note 56. the list of texts in which LEON XIII complained that Protestant proselytism took advantage of the weak economic conditions of the Italians. Hence the conclusion, p. 120: "La libertad de cultos que condena históricamente León XIII es una libertad que no se detiene ante los derechos del prójimo. Es un proselitismo fanático y dolado de las peores argucias para airær y convencer. No se trata pues de una libertad de cultos para respetar al errante de buena fe."

I4WBP02. 196-197.

I-WI 0616.18: *Acta Leanis XIII* 08,233-234 = ASS 20.606 = BP 02.196 & 198. moreover a *license* specified by the arbitrary, the implementation in the society of a freedom of moral obligation with regard to the true: it is still a positive authorization.

"The public power can grant to the City such a license only in contempt of its duty (*quant quidem licentiam ci vi tari dare publica potestas, salvo officio, non potes!*) This freedom is honest only "within certain limits: the art of teaching must not be allowed to become an instrument of corruption with impunity, b¹ -⁰²

The Church has been entrusted by God with the faith and the formation of morals, and for this she has an infallible magisterium, and she "bears within herself an inviolable right to freedom of teaching (*in eâque inest non violabile Jus ad magisterii libertatem*)", for which "she has never ceased to fight", contributing also to the "perfecting of human liberty", because "man becomes free through the truth". The Church also promotes the unrevealed sciences and all kinds of progress, and leaves an immense field open to free opinions. -*¹⁰³ Liberals deny freedom to the Church.*.* *⁰

D) False and true freedom of conscience

"Another freedom that Ton proclaims just as loudly is the one called *freedom of conscience (conscientia! libertatem)*."

Leo XIII finally gives us a beginning of an authentic interpretation of the expression "freedom of conscience", distinguishing 1) a false freedom of conscience from obligation;

2) a true juridical right-freedom to act according to one's conscience.

1) *The false freedom of conscience*

"That if one understands by this that to each one at his will, it is allowed indiscriminately to render or not to render a worship to God (*ut suo cuique arbitrant œque Uceat Deum colere, non colere*), the arguments which were given above are sufficient to refute it. ""*5

This first meaning has already been met as *the foundation of the freedom of worship* considered in the individual.^{1-*}06 So here we are at last with a definition of what was meant at the time by "freedom of conscience": it was an *authorization* to be irreligious or indifferent if one wanted to. Indeed, in itself, the fundamental idea of the Latin impersonal "licet" is that of *permission!*⁴⁰⁷ 1° at the moral level, this freedom-permission is the very negation of any obligation in religious matters; it is the moral permission to be indifferent; 2° at the level of the "good" to be legally protected, it is a positive authorization of indifference, having as its object to act (resp. to abstain) *as one wishes* in religious matters: the two aspects (the

1402_B p 02.198-199.

*^m BP 02.200-201. With citation of *Jn* 8.32.

1404_B p 02.202-203.

l-°05 0616.19 [a]: *Acta Leonis XI*108.237-238 = ASS 20.608 = BP 02.202 : Trad. Office. 24, n° 49.

l-°06 Cf. 0616.12 = *Acta Leonis XIII* 08. 229 = ASS 20, 603 = BP 02. 192. quoted above in Fren?: "... de *libertate*, uti loquuntur, *cultus*. Quid hoc est veluti fundamento constituta, integrum cuique esse, aut quam libuerit, aut omnino nullam profiteri religionem."

1407 GAFHOT, 1934, art." *licet* * gives "it is pennis".

pope says it) have already been refuted by him in the article of the freedom of worship; 3° the civil freedom--"8 corresponding, will protect this "good" (?), to render or not a worship to God, *according to his own good pleasure*.

2) *The true right (permission and requirement) to act according to one's conscience*

What "Christian truths gone mad" hide behind "freedom of conscience" 7---.⁰⁹

"... it can also be understood in this sense [A] [11 that to man (*homini*). *It is permitted in the city (in civitate liceat), to follow the will of God and to fulfill his commandments (Dei voluntatem sequi et iussa facere), according to the conscience of his duty (fer conscientia officii), without anything being able to prevent him from doing so (nulla re impediante).*"¹⁰

[A] on the subject side: [11] it is about any hotnme; [2] the faculty in question is stated as a permission; and this "*liceat*" echoes "*æque liceat...*" of the preceding sentence;¹³²¹ [31] then, since this permission is to be exercised in the city,i-"i2 it is a juridical permission. Moreover, the context shows that it is not a negative permission at all; it is therefore a positive permission. Like any legitimate positive permission, it includes the moral permission that it presupposes. Of course, Leo XIII does not specify the authority that grants this right; nevertheless, one can, by virtue of what follows, assume that it is God; but the juridical context can also suggest that the permission is given [ivory given *also*] by (and not only *in*) *the City*. B] *The object of this permission has [1] a positive aspect: [a] to follow God's will [b] according to one's conscience, and [2] a negative aspect: a non-impediment - universal (nulla re impediante). This non-obstruction, the effect of a right-permission to be exercised in the civitas, is thus a negative right-demand of freedom. Thus, Leo XIII formulates the requirement that civitas also recognize this right-permission to act, at least by not preventing its exercise.*

This "non-intervention" in turn takes as its object an "action according to consciousness". It is therefore necessary to examine the "action" in question, described in [B]. That man has the right to demand from a (lower) authority I₁ to be able to implement the permissions of a higher authority I₀ is obvious. "It is better to obey God than men" (*Acts 5:29*), and if God imposes his will, it must be done, "*ad sanguinis usque effusionem*" (*DH 14, § 3*); any opposition would constitute an injustice. However, although we know this will of God by all sorts of external means, it only has a hold on our actual acts [b] through the intermediary of the judgment of conscience. This judgment of conscience, without being the ultimate and sovereign rule of our actions, is the closest and most immediate rule.

1400 Note however that the "*licere*" is not accompanied for the moment by an "*in civitate*".

It is here that the difficulties increase. Indeed, conscience is not autonomous, but relative (this is what the expression "of its duty" means); moreover, it is fallible. If, therefore, it errs, what it dictates will no longer be the will of God, but the opposite. How can a right-permission of God have as its object that which is contrary to the will of God? At a first stage, the answer is easy: God wants men always to follow their conscience, or at least never to go against it.*-¹³ Therefore, God's will, even when conscience is wrong,

1321 Office, no. 49 illogically rendered "*liceat*" sometimes as "may" and sometimes as "has the right".

is that one should follow one's own conscience. So, on God's side, the permission to follow one's conscience, possibly erroneous but sincere (at least at the time, even if it is culpably erroneous), does not pose a problem.*⁴ *-* But then what about the juridical right-permission and the right requirement born of this moral permission? Leo XIII did not ask this question in his public documents, except here, where he does so only implicitly.*⁴³ On this point, two opinions competed for ground from 1888 to 1965.

I) The first, called "objectivist", rightly denies that the sincerity of conscience can be a creator of rights in the legal sense.*⁴⁶

II) According to the second, or "theory of the rights of the sincerely mistaken conscience", or "subjectivist position", the moral permission, issued from God, to follow one's sincere conscience even if mistaken, creates a right-permission and a right-demand.*⁴⁷ Is not the authority of God superior to that of society? However, this premise - which is correct - does not lead to the conclusion that is claimed.*⁴⁸ For we pass from the realm of conscience in good standing with the Lord (because invincibly in ignorance), to the world outside of conscience, that of society, where the criterion of relationships can in no way be that reality which is difficult to ascertain (especially in religious matters), and, what is more, subjective. Thus, no right requirement can be *founded* on the sincerity of conscience.*⁴⁹ This is what the first opinion declares, and rightly so.

III) But between these two opinions a third one slips in. 1° While admitting with the "objectivists" that the law cannot be founded on the sincerity of conscience, 2° it considers that it could be founded on another reality, and have the sincerity of conscience not as a foundation, but as a good to be protected juridically. It remains, therefore, 1° to find this other foundation (Leo XIII is going to tell us what it is)

1413 We have specified this point in St. Thomas, 1-11, 19, 5*6, with the necessary nuances; here we schematize.

WI4cf. 0231.

I415cf. FA VAN, 1965,203.

1416 TORRES-ROJAS, 1968, 110-111 thinks that the objectivist interpretation is the correct one, while believing, with DIEZ-ALEGRIA (cited in note 28), that these "formulas are open to later possibilities of complementation and de-emphasis."

1417 cf. e.g. RIEDMATTENand FEJNER, 1965, 242*246.

141° BEA, 1966 (1963.12.13), 265, analyzing the same sentence of LÉON X1H, held this theory, but he corrected it in 1966, by a supplementary note, at the time of the Italian re-edition of the discourse.

MI 9 As a cautious supporter of this theory, let us point out TISCHLEDER, 1932,479-481, in particular, 481. to provide *in adu exercito* in the following sentence: it is human dignity); 2° to define more precisely the object of the right as "not to be prevented from acting according to one's conscience", even when this conscience is accidentally in error: this will be the task of *DH*. On this point, the I° position objects that, according to the context, it is only a question of the freedom to do the *objective good*, that is, acts in conformity with Catholic doctrine.¹³²² In fact, it is said, according to the following sentence:

"This true liberty, this liberty worthy of the children of God, which gloriously protects the dignity of the human person (*cligna fililis Dei libertas. qua: humanw dignitulem persome lionestissinie tuetur*), is above all violence and injustice (*est omni vi iniuria- que maior*), has always been the object of the Church's wishes and her particular

¹³²² The most nuanced of this trend: N1COLAU, 1964,225.

affection. [It is this liberty [11] which the apostles so steadfastly claimed, which the apologists defended in their writings, which countless martyrs consecrated with their blood. And they were right, for [11] the great and most just power of God over men, and, on the other hand, [2] the great and supreme duty of men to God, both find in this Christian liberty a shining testimony.¹³²³

What is the situation? Leo XIII considers this true freedom of conscience [I] first as a right; [II] then as a fact. [I] As a right : [A] with regard to its active subject, this freedom protects [1] the supernatural dignity of man; [2] his natural dignity. Let us note here the link established between the freedom to follow one's conscience and the "dignity of the human person".¹³²⁴ [B] As to its passive subject: [I] as to the civil power, it is opposed to its encroachment; [2] as to the ecclesiastical power, it is praised by it. [III] As a past fact: [AJ existence of the claim [1] of the apostles, [2] of the apologists, [3] of the martyrs; [B] correctness of the claim: because [1] of the domain of God; [2] of the duty of man.

The texts **0627.2** and **0627.3** pose the same problems of interpretation, because the disjunction between two forms of freedom is there again incomplete and this, under the same report, because of the non-treatment of the abuse of *good faith* of the right:

"The Church, enemy of liberty? Ah, how the idea of freedom, which is one of God's most precious gifts, is distorted when its name is used to justify its abuse and excess! What is meant by freedom? Exemption from all laws, freedom from all restraints, and, as a corollary, the right to take caprice as a guide in all actions? The Church certainly condemns this liberty, and all honest hearts condemn it with her. But does liberty mean the rational faculty of doing good, widely, without hindrance, and according to the rules laid down by justice itself? This freedom, which is the only one worthy of man and the only one useful to society, no one favors it, encourages it and protects it more than the Church. By the force of her doctrine and the effectiveness of her action, it is this Church, in fact, which has freed humanity from the yoke of slavery by preaching to the world the great law of human equality and brotherhood. In every century she has taken into her own hands the defense of the weak and oppressed against the arrogant domination of the strong; she has vindicated the freedom of the Christian conscience by shedding the blood of her martyrs; she has restored to children and women the dignity and prerogatives of their noble nature by making them share, in the name of the same right, in respect and justice, and she has thus greatly contributed to the introduction and maintenance of civil and political liberty in the bosom of the nations" (0627.3).

But among the rules laid down by eternal justice, there is precisely that of following one's conscience...

It is then that the 3^e position (that of *DH*) brings into play another principle of law: as the study of *Rerum novarum* will show us, it would be contrary to the sound philosophy of law to claim that the misuse of one's right to liberty by such and such a man automatically creates in some other men the juridical permission to prevent that man from acting: the misuse does not take away the use. Of course, this is not to promote the *contrary* proposition, which would hold that any (universal affirmative) *use* leaves intact the "right not to be prevented from acting". We simply support the *contradictory* proposition, i.e.: "any abuse of the freedom of conscience thus presented is protected by law". And the interlocutors are then challenged to demonstrate that an abuse of the RL within the limits of the just public order of *DHI*, § 3 does not fall into this case.¹⁴²⁵

Leo XIII goes on to show that this true liberty does not lead to revolt; it only opposes orders that may be "manifestly at variance with the divine will."⁴²⁴ On the contrary, liberals are totally opposed to such liberty: they revolt against God, but submit everything to the State. Salvation requires the abandonment of these evil modern liberties and a return

¹³²³0616.19 [b] : *Acta Leonis XIII*08. 237-238 = ASS 20.608 = BP02.202.

¹³²⁴ Source of *DH*'s first words.

to sound doctrines.¹⁴²⁵

12.2.2. Tolerance of the false and the evil

Leo XIII then initiated a sound doctrine of tolerance: 1° affirming its legitimacy; 2° justifying it; 3° and determining its limits; 4° and finally distinguishing it from tolerantism.

I) Legitimacy of tolerance

"Nevertheless, in her maternal appreciation, (1J the Church takes into account the overwhelming weight of human infirmity, and (2J she is not unaware of the movement which in our time is driving spirits and things. 1B) For these reasons, (1J while granting rights only to what is true and honest, 2) she does not, however, oppose the toleration which the public authorities believe they can use with regard to certain things contrary to truth and justice, [b] with a view to a greater evil to be avoided or a greater good to be obtained or preserved."¹⁴²⁶

[A] Because of [1J the general human misery, and [2] the general movement of contemporary ideas, [BJ the Church, 11] although refusing any right to error and evil [2] admits [aj that they are tolerated [b] in view of "a greater good to be acquired" or "a greater evil to be avoided". This theme was initiated by the letter of Pius IX to Ch. Périn.¹⁴²⁷

¹⁴²³Thus, BOPP, 1967.07,198 must be qualified.

¹⁴²⁴BP 02.203.

1-125 BP 02.205

M26 0616.20.: *Ada Leonis XIU* 08 (1888), 239 = ASS 20,609 = BP 02,204. Translation: Office. 25, n° 52, and PIN 219.

¹⁴²⁷ See GOETHALS . 1987.04,73 & REGAN . 1967.6.

II) Justified tolerance as an imitation of God

The following repeats the Thomasian doctrine:

"[I] God himself, in his providence, [A] though infinitely good and all-powerful, nevertheless permits the existence of evil in the world, [11] on the one hand, so as not to prevent greater good (*partim ne ampliora impediatur bona*), [21] on the other hand, lest greater evils ensue (*partim ne maiora mala consequantur*). [In the government of states (*In revendis civitatibus*) it is fitting to imitate him who governs the world. (B) Moreover, since the authority of men is powerless to prevent all particular evils, it must permit and allow to go unpunished many things which the vindictiveness of divine Providence reaches and adjusts to the full.¹³²⁵ Nevertheless, in these circumstances, 111 if, [a] with a view to the common good and for this reason alone (*si communis boni causa et hac tantum causa*), the law of men can - or even must - tolerate evil (*potest vel etiam debet lex hominum ferre toleranter malum*), [However, it can never approve of it, nor should it want it in itself (*tamen nec potest nec debet id probare aut velle per se*), for, since the deprivation of the good is in itself, evil is opposed to the good, (*quia malum per se cum sit boni privatio, repugnât bono communi, quod legislator, quoad optime potest, velle ac tueri debet*). [D] And in this also, human law must propose to imitate God, who, by allowing evil to exist in the world, "does not want evil to happen, nor does he want evil not to happen, (4) but wants to allow evil to happen. (5) And this is good.¹³²⁶ [And this sentence of the Angelic Doctor contains in very few words the whole doctrine of the tolerance of evil.¹³²⁷

Thus [I] [AJ Divine providence allows many evils to exist which it could prevent; [B] in so doing, its purpose is [1] partly not to prevent greater goods and [2] partly to avoid greater evils; [U] human authority [AJ must imitate divine providence; [B] but [1] cannot prevent all evils; and [2] must allow many evils to occur, even of those (sins) which God punishes; [C] [1] [a] only the pursuit of the common good justifies such a tolerance; [b] in considering that this tolerance can be not only factual, but also legal (established in the "*lex hominum*"), and be permitted or even obligatory, Leo XIII goes further than Pius IX; [21] remain excluded all willingness and approval of evil in itself; [3] for evil is *per se* opposed to the common good: let us note here that the opposition of an activity to the common good is therefore not sufficient to create permission for the State to repress it; [D] to want to permit evil without approving it is good. The question remains: by affirming that sometimes "the law of men must tolerate evil", did Leo XIII simply want to affirm that sometimes the State has the *moral duty* not to make use of a *right to repress that it would possess a priori*? In fact, Leo XIII does not say anything more than "*assertively*". But he does not express himself "*exclusively*" and thus leaves the door open to the idea that, sometimes, the State not only does not

¹³²⁵ here we read note 1: S. AUGUSTIN. *De libero arbitrat*, lib. I. cap. 6. n° 14.

¹³²⁶ Here we read note 2: S. Th. I, 19.9. ad 3.

1431) 0616.21: *Acta Leonis X1H* 08 (1888), 239-240 = ASS20 (1887]-1888)], 609-610 = BP 02. 2<M. Trad.: PIN220; and Office. 26, reviewed by us.

It is not a matter of having the right to do so, but of not having the *right* to repress it.¹³²⁸ An idea that Pius XII introduced in 1953. -- "s

III) *Limitation of tolerance by circumstances*

"But it is necessary to recognize, to remain in the truth, that [A] the more (11 it is absolutely necessary to tolerate the evil in a City (*quanti plus in civitate mali tolerari pernecesse est*), the more [2] the conditions of this City deviate from the perfection (*tanto magis dislare id genus civitatis ab opn- mo*) and moreover, [BJ that the tolerance of the evil [1] pertaining to the precepts of the political prudence, [2] must be rigorously circumscribed within the limits required by its reason of being, that is to say the public salvation (*salus publiai*). [C] Therefore, if it is harmful to public salvation (*si salutipubliai: detrimentum afferat*), and if it is for the City the cause of a greater evil (*et mala civitati majora parlai*), (21 the consequence is that it is not permitted to use it, because, in these circumstances, the reason for the good makes default. [II] But, if, [A] it [] because of circumstances of time particular to a State (*Si vero ob singularia reipubliae tempera*), [2] it occurs that the Church [a] acquiesces to certain modern liberties (*quibusdam libertatibus Ecclesia acquiescai*), b] not because she prefers them in themselves, but because she judges it expedient that they be permitted (*permissas esse iudical expe dire*), [I] [I] as times (then) improve, (2) she would obviously use her freedom, and (3) by persuasion, exhortation, and oburgations, she would apply herself to fulfilling, as is her duty, the mission she has received from God, namely, to procure for men eternal salvation."^{143]}

[I] According to Leo XIII, 1A| [I]the more a society is forced to tolerate evils, [2] the further it moves away from the ideal society, that is, without evils.-¹³²⁹ This does not mean that, for a concrete society, tolerance is not, in a given case, the best solution,¹³³⁰ as Pius XII will specify for his part. IB] Tolerance is justified only by an act of prudence in determining what is required for public salvation. To be licit, tolerance must bring more advantages than disadvantages. [He] Certain modern liberties are sometimes "permitted" by the Church (in the sense of the *permissio negativa*), but in the event of improved circumstances, the Church takes back her liberty; it is not said that she then suppresses that of others, for it is not a matter of coercion, but of persuasion, etc.

IV) *Condemnation of Liberal Tolerantism*

A) Leo XIII rejects the freedom from evil sought for its own sake (*Persia*):

"11] But one thing always remains true, and that is that this freedom for all and for everything is not, as we have often said, to be sought for its own sake (*per se*), because it is repugnant to reason that the false should have the same right as the true (*falsum eodem Jure esse ac vertun*). [And, as far as toleration is concerned, it is strange to see how far from the equity and prudence of the Church those who profess Liberalism are.-⁴³⁸ [III] In fact, by granting citizens unlimited freedom (*infinitâ licentiâ*) on all the points We have mentioned, they go completely beyond measure and come to the point of not appearing to have more regard for virtue and truth than for error and vice, >1331 - "

Once again, we see that it is a question of a freedom founded and specified by indifference to good and evil, and condemned for this (whether it is understood as 1° a moral permission; 2° a positive juridical authorization; 3° a negative right of freedom). Based on indifferentism, this authorization could not be a pure non-prevention of evil; it could not mean: "certainly, citizens have duties in religious matters, but we tolerate [out

⁴³² -The existence of a right to repress and tolerate *as little as possible* is supported by MUÑOZ, 1964b, 19-20.

¹³²⁹ And not simply of the ideal union of Church and State. Cf. CAMPELO, 1955, 216-217.

¹³³⁰ For a development of this idea, see SETIEN, 1963.03-04. 135.

⁴³⁸ -0616.23: *Acta Leonis XIII*08.241 = ASS 20.610 = BP 02.206; trans. Office, 27, n° 54, colTigée.

1331*10616.25 : *Ada Leonis XU*108.241 -242 = ASS 20.611 = BP 02.206). Trad. Office. 27. n° 55.

*+2 BP 02.206-207.

of necessity, out of duty - possibly out of a duty of justice] that they do not fulfill them or fulfill them in a wrong way." Moreover, this "freedom to be indifferent" is coupled with a kind of prohibition not to be indifferent, since liberals have no desire to leave the Church free (as was implied earlier by "it would obviously use its freedom").

B) He blamed the liberals for persecuting the Church, the enemy of toleration:

"And when the Church, the pillar and support of truth, the incorruptible teacher of morals, believes it her duty to protest unceasingly against a toleration (*tolerantiae gémis*) so full of disorders and excesses, and to discourage its criminal use, they accuse her of lacking patience and gentleness; in doing so, they do not even suspect that they are making her a crime of what is precisely her merit. Moreover, it often happens that these great preachers of tolerance (*ostentatione tolerantie*) are, in practice, hard and tight, when it comes to Catholicism: prodigal of freedom for all, they often refuse to let the Church have her freedom."-+*-

"No [civil] freedom for the enemies of [moral] freedom!"

12.2.3. General summary

In order to clarify his thought, Leo XIII wanted to synthesize it as follows:

I) Condemnation of the denial of the dependence of freedom on God and his delegates - "the capital vice of liberalism".

II) Various forms of liberalism:

A) Pure rationalist liberalism admits no sovereignty of God:

"To rise completely against the supreme empire of God and to refuse him absolutely all obedience, whether in public life or in private and domestic life, is at once, without any doubt, the greatest depravity of liberty (*maxima libertatis perversitas*), and the worst kind of liberalism. It is from it that what we have affirmed up to now must be understood in its entirety."⁴²

Other forms of liberalism are therefore not necessarily condemned with the same rigor, or detail.

B) Naturalist liberalism admits the sovereignty of the God of nature, not of revelation, at least over society, and advocates the separation of Church and State (1°), and the submission of the Church to the State (2°):

"Immediately afterwards comes the system of those who, while conceding that one must depend on God, Author and Master of the universe, since all nature is governed by his Providence, dare to repudiate

0616.24 [a] and [b] I: *Ada Leonis XIU* 08.241 = ASS 20.610-611 = BP 02.206; Office. 27. I+⁴³0616.24 [c]: *ibid.*

the rules of faith and morals which, going beyond the order of nature, come to us from the very authority of God, or at least claim that they are not to be taken into account, especially in the public affairs of the city (*published in civitate*). How serious is their error and how little they agree with themselves. We have also seen it above ¹⁴⁴³

1° separation of Church and State :

"Many, in fact, want a radical and total separation between the Church and the State; they believe that, in everything that concerns the government of human society, in institutions, morals, laws, public functions, and the instruction of youth, no more attention should be paid to the Church than if it did not exist; at the most, they leave to the individual members of society the faculty of carrying out the duties of religion, if they please. Against them, the arguments with which We have refuted the opinion of the separation of the Church and the State remain strong, with the aggravation that it is completely absurd that the Church should be, at the same time, respected by the citizen and despised by the State."¹³³²

2° submission of the Church to the State: the Church would not be a perfect society, a "legislative, judicial, punitive authority", but "free association [...] placed under the

¹⁴⁴³ 0616.26: *Acta Levaís XIII* 08.242 = ASS 20.611 = BP 02.206 & 208. Translation: Office, n° 57, retouched.

⁴⁴⁴ 0616.27: *Acta LeonisXHI* 08.243 = ASS 20.611 = BP 02.208. Office, 28-29.

dependence and the domination of the State (*reipublicæ*)".¹³³³

III) Possibility of tolerating the liberal system in practice.¹³³⁴

A) Separation is sometimes acceptable in practice:

"11] Finally, there are many who do not approve of this separation of Church and State (*rei sacra! a re civili distraefioneni*); but they believe that the Church must be brought to yield to circumstances, to lend itself and accommodate itself to what the prudence of the day demands in the government of societies (*in udmnistrandis imperiis*). It is an honest opinion, if one understands it to mean a certain equitable way of acting, which is in conformity with truth and justice, namely: that the Church, in view of a great good (*magni alicujus boni*) to be hoped for, shows herself to be indulgent, and concedes to the circumstances of the time what she can concede without violating the holiness of her mission. |But the same cannot be said of the practices and doctrines which the decline of morals and common errors have introduced against the divine right.¹³³⁵

B) Modern freedoms cannot be desired in themselves:

"From these considerations, it follows that it is in no way permissible to ask for, defend or grant freedom of thought, writing and teaching, and likewise the indiscriminate freedom of religions, as rights which nature has conferred on man. For if nature had really conferred them, we would have the right to evade the sovereignty of God, and no law could temper human freedom."⁴⁴⁵

Leo XIII recapitulates here our old enemies, the liberties of thought, speech, press, teaching and religion, as the right a) to evade the sovereignty of God, thus the right to do evil or at least to take as the norm of action one's own good pleasure; b) without just political, juridical and moral limits (cf. "no law could moderate"). How can we not see here once again in this "right to evade God's sovereignty" a positive authorization, and not the right to a simple non-impediment?

C) They can 1° be tolerated with moderation and 2° used for good, 3° or even installed to diminish a worse evil:

1° "It follows in the same way that these various kinds of liberties can, for just causes, be tolerated, [11] provided that a just temperament prevents them from degenerating into the licentiousness of the *mœuis (libidinem)* and disorder (*insolentiam*),"⁴⁴⁹

2° "Finally, where custom has put these liberties into effect, citizens must use them to do good, and have the same feelings about them as the Church does. For a liberty must be considered legitimate only insofar as it increases our capacity for good; outside of this, never."⁴⁵⁰

Now, as we have seen, freedom of conscience is a positive encouragement to religious indifferentism, which is the foundation and the specific object of this freedom. It thus pushes to evil.

3° "When one is under the blow or under the threat of a domination which holds society under the pressure of an unjust violence, or deprives the Church of its legitimate freedom, it is permitted to seek another political organization (*temperationem rei publicæ*), under which it is possible to act with freedom. Then, in fact, what is claimed is not the aforementioned unmeasured and vicious liberty (*non illa expetitur immodica et vitiosa libertas*), but it is a certain alleviation with a view to the salvation of all; and what is sought only is to arrive at a situation where, where every license is given to evil, the power to do good is not impeded."⁴⁵¹

IV) According to the conclusion of Leo XIII

⁴⁴⁵BP 02,209.

¹³³³It is necessary to avoid confusing "the tolerance of the State towards religious error" (which Leo XIII has dealt with above) with "the tolerance (of the State or of the Church) towards the institution of the XIX^e century called freedom of conscience des euhes." MURRAY, 1965.12.11/18 (franç.), 63, already noted this interpretive difficulty, presenting it (erroneously) as the result of a confusion by LEON XIII. As noted by HARRISON, 1988b (trans. 127; Eng. orig., 114), after RODRÍGUEZ, Victorino, O. P., 1966.04-06, 306, the confusion between "tolerating religious freedom" and "tolerating the evil of religious error" was made by S 13:3 RS). § 8, Tolerantia. AS. 111/viii, 465: cf. irad. LUCIAN, 1990.239 & another translation of the same p. 290. Problem glimpsed by ROUQUETTE, 1963.06,410.

1335 0616.29 : *Acta Levis XIII*08.244 = ASS 20,612 = BP 02.208. Trad. Office. 29. no. 60. to which we add the word "divine". because "fas" designates *divine* right.

1° the Church does not condemn any form of government, as long as it respects justice towards all, and in particular towards the Church; in particular, it is not a question of condemning in itself the republic (the democratic regime), being saved "the Catholic doctrine on the origin and exercise of public power (*publicat potestatis*)"; 2° Catholics, except in exceptional circumstances,¹³³⁶ have the right to "take part in the management of public affairs"; 3° "the Church does not condemn either the desire to free one's country from a foreigner or from a despot, as long as this can be done without violating justice"; 4° nor the political and civil liberty of the cities and the citizens, especially at the municipal level. It is thus a series of clarifications, preventing too rigid interpretations of previous documents.

12.3. An outline of a doctrine of true human rights

Leo XIII's teaching must be placed in its more general framework concerning 1° the dignity and equality of men, as known by reason and revelation; and 2° the juridical organization of society, with the correlative limits of the competence of the State.

12.3.1. Dignity and equality of human persons:

At the magisterial level, it is Leo XIII who seems to have launched the expression "dignity of the human person", and in various forms (I). This ontological dignity he declares equal in all men (II).

I) *The dignity of man*

From his first encyclical, *Inscrutabili Dei*, Leo XIII had based his condemnation of slavery on the dignity of man.*-*In 1888, he devoted an entire document to this monstrosity, which was contrary to "human dignity"⁵⁵ spread by ancient paganism,⁵⁶ inhuman and iniquitous,⁵⁷ and profoundly transformed by the appearance of Christianity,⁴⁵⁸ itself a factor of true liberty, equality and fraternity.-⁴⁵⁹ He reiterated this teaching in 1890.⁴⁶ ° He used the expression "human dignity" or "dignity of man" or "dignity of the human person",¹³³⁷ also in other contexts, sometimes from the natural point of view,⁴⁶² sometimes from the supernatural point of view,⁴⁶³ sometimes generically.⁶ * This teaching was taken up again at length by Pius XI, Pius XII and John XXIII.⁶⁵

II) *The natural equality of men*

Also in 1878, *Quod apostolici*, taking up a theme of St. Gregory the Great, preaches the equality of all men based on their unity not only of nature but also of supernatural vocation. Gregory the Great, preaches the equality of all men based on their unity not only of nature, but also of supernatural vocation.¹ -"6

1336 Allusion to the *non expedit* promulgated for the Italians alone by the "prisoner of the Vatican".
14610616.19.

12.3.2. Fundamental human rights to property and freedom: *Rerum novarum*

But it is *Rerum novarum*¹ -^{*67} which gives the most impetus to the doctrine of fundamental human rights,---⁶⁸ in particular by two assertions: 1° the abuse of a right does not automatically take away its use; 2° there is a general right to civil liberty, limited by the requirements of justice.

I) *The abuse of a right does not take away the use of it*

The honest use of the right of ownership cannot be demanded by means of justice: "u. On the use of wealth, here is the teaching of extreme excellence and importance [A] which philosophy has been able to outline, [B] but which it was up to the Church [1] to give us in its perfection and [2] to bring down from knowledge to practice. [The foundation of this doctrine is in the distinction between [A] the rightful possession of wealth and its legitimate use (*iusta possessio pecuniarum a iusto pecuniarum usu distinguitur*). [1111] But as soon as one has given enough to necessity and decorum, it is a duty to pour the superfluous into the bosom of the poor. It is a duty, not of strict justice, except in cases of extreme necessity, but of Christian charity; a duty, therefore, whose fulfillment one has no right to demand by the action of the law (*lege agenda petere ius non est*),

More generally, we conclude that (except in the case of injustice) the right use of life cannot be imposed by means of justice: abusing one's life to sin does not ipso facto make one lose the right to life.---⁷⁰

II) *General right to freedom in the city*

Since "man is prior to the state", -⁴⁷ - the powers of the state are limited by certain natural rights of the individual and the family, not only to property, but to freedom:

"In the sphere determined by its immediate end, it [the family] enjoys, for the choice and use of all that its preservation and the exercise of a just independence require, rights at least equal to those of civil society. At least equal, we say, because domestic society has a logical priority and a real priority over civil society, and it follows that this priority also applies to its rights and duties.¹³³⁸ [It is in order [...] that neither the individual nor the family be absorbed by the State (*re publica*);⁴ 73 it is right that both should have the faculty of acting with liberty (*facultatem a gendi cum libertate permittere atquum est*) as far as this can be done without damage to the common good (*incolumi bono communi*) or injustice to anyone (*et sine cuiusquam injuria potest*). "1474

This is one of the most essential principles of the encyclical, founding the condemnation of socialism. Moreover, it is a question of freedom to act (*libertas a coercitione*) and not of freedom from moral obligation. Finally, the most interesting thing is to note the limits: "*incolumi bono communi et sine cuiusquam injuria*". This is the second time that Leo XIII attests to the existence of a right to liberty that can be opposed to the State. But it is the first time that he declares the conformity to justice of a general freedom to act and limited by the common good and the rights of others. He will add in 1894:

"On the other hand, individual freedom cannot be suspect or hateful to anyone. For, absolutely harmless, it will not stray from things that are true, just, and in harmony with public tranquility". 1475

The last essential statement: each man has the right to his proportionate share of the common good. Hence the impossibility of opposing in a contradictory manner the common good and the good of the person. Leo XIII will moreover clarify his thought in

1338 BP 03,26-29. Translation, revised by us. Passage partially quoted by PIE XI in 0674.2. Leo XI11 goes on to state that "paternal authority cannot be abolished or absorbed by the state ". etc., but without applying this to religious education (BP, 29).

1892, where he will again preach 1° the anteriority of individuals and families over civil society;¹⁴ 77 but also 2° the primacy of "the common good, for which social authority is constituted", and "the supreme goal which gives its origin to human society",¹⁴⁷ "because it is the creative principle, the conservative element" of the latter, from which "derives, as from its own and immediate source, the necessity of a civil power "J⁴ ?" and which "is, after God, in society, the first and last law";¹-HO and 3° the condemnation of rebellion against public power j¹ -¹ which "civil power, considered as such, is from God and always from God" [Rom 13, IJ.i-ne

1473 idea confirmed by PIE XI in 0670.7: A4S. 1930.63 = BP 06, 107; PIN 590.

1474 0620.2: *Aeta Leonis XIII* 11.123 = BP 03,46. PIN 305. retouched by us.

1475 0623. (here 0623.2) Leo XIII, 1894.06.20: Apostolic letter *Preclara gratulationis*, to Princes and all peoples: *Acta Leonis XIH* 14 (1894). *Preclara gratulationis*, to the Princes and to all peoples: *Acta Leonis XIH* 14 (1894). 195-214 (here 211) = XSS 26 (1893-1894), 705-717 (here 715); *CIC Fontes* 5, n° 625.441-450; BP04,82-107 (here 104): PIN345.

1476 06203: *Acta Leonis XIII* 11,134 = BP 03,58 & 60. Translation: PIN 307.

14770621.1: ASS 24,520 = *Acta Leonis XIII* 12,21-22.

1478 BP 03,116.

1479 0622. LÉONXIII. 1892.05.03: *Encycl. Our Consolation*, to the French Cardinals; *Acta Leonis XIII* 12 (1892). 107-116 (here 111); French + Latin translation: ASS 24 (1891-1892), 641-654 (here 643-644); BP 03, 123-127 (here 125).

1480 BPO3. 118.

14*1 BP 03. 117.

1482 BP 03,118. Truth and Pauline citation recalled by DH 13.

Conclusion of Chapter 12

1° *Maintenance of traditional Catholic doctrine.* Leo XIII, like his predecessors, recalls the duties of the individual and of societies towards God, religion and the true Church, and therefore condemns theoretical and practical indifferentism (individual and social), its positive authorization by law, as well as the claim as a natural right of the immoderate civil liberties which result from it: civil liberty (individual and social) to do or omit what one wishes in matters of worship, speech and press, teaching and conscience, "liberty" being always understood in the sense of "right-permission," and generally in the affirmative sense.

2° *Homogeneous doctrinal development* on tolerance, on the dignity and equality of persons, on the true freedom of human conscience before the State t*⁴ "right not to be prevented from following in society what conscience dictates is the will of God.

3' *Nevertheless, this development is incomplete*, because of the lack of precision concerning the repression or non-repression of abuses of this right to civil liberty. The principles are that the State has a certain duty to repress evil, limited by the principles of tolerance; the State will only be able to negatively permit the said abuse and not positively authorize it. But, on the other hand, abuse does not remove the use. *What about non-legal moral abuse (in good or bad faith)?*

4° Leo XIII does not take up again the teaching on the secular arm, which had become

inapplicable, and whose recall was therefore inopportune.

His successors will continue in this way.¹ - *¹⁴

¹⁴¹⁰ Cf. AUBERT. R., 1952a. 96.
■-■Mcf. PAVAN, 1965.199.

CHAPTER 13.

13. SAINT PIUS X AND BENEDICT XV

13.1. Saint Pius X (1903-1914)

SAINTE PIERRE¹⁴⁸⁵ to "restore all things in Christ", will aim in particular to: I) to recall the duties of societies to God and the Church; II) to elaborate some notions about law, especially the right to true freedom, as opposed to license.

13.1.1. The religious duties of the companies

I) The positive duties of societies and states towards God and the Church

A) Companies must submit to God through the Church

"11 is to bring human societies, misguided from the wisdom of Christ, back to the obedience of the Church; the Church, in turn, will submit them to Christ, and Christ to God."-¹⁴⁸⁶

B) Societies must give full freedom to the Church

"The Church, as instituted by Jesus Christ, must enjoy full and complete liberty and not be subject to any human domination, and We ourselves, in claiming this liberty, not only safeguard the sacred rights of religion, but also provide for the common good and the security of the people.... w---**?"

"The task of governing the Universal Church, which has been entrusted to us by a plan of God, strongly enjoins us to take measures, as far as Our strength allows, to ensure that no damage is done by a foreign power to this freedom which Christ has given us as a common good. It is for this reason that so many heralds of the Gospel, so many holy bishops, so many of our illustrious predecessors, have fought by word and deed, even shedding their blood. Under the influence of their example and authority, as soon as We ascended the Chair of Peter, in spite of Our unworthiness, We thought it Our Apostolic duty to apply Ourselves above all so that the life of the Church might develop in complete freedom, apart from

1485 *pa x Pontificis Maximi Acta*, Roma, Typogr. Vat., 1905 = in abbreviated form: *Acta Pit X*: *Acts of PIHX*, 8 vols. Paris. Bonne Presse, 1936 (= BP (1903-1914)); reissued and expanded (frany. only): *DPPIeX*.

¹⁴⁸⁶ Pius X, s., 1903.10.04: *Encycl. E supremi apostolatus*; irad. *DPPIeX*, 1.36.
M" PIE X, s., 1903.10.04: *ibid*: *DPPIeX*, 1.40.

any foreign intervention, as its Divine Founder wished it to take place and as required by the elevation of its high mission, "t-tx

C) The State must not only respect but protect the Church

"At the same time, therefore, the authority in place will be able to render to God what is God's, fully observing the authority that the Church exercises as coming from God, without obstructing it, and if necessary, protecting it in order to protect its children as well."^{14x9}

States must be united with the Church and recognize its competence:

"Thus, by the intrinsic force of things, the Church still becomes in fact the guardian and protector of Christian civilization. And this fact was recognized and admitted in other centuries of history; it still forms the unshakable foundation of civil legislation. On this fact rested the relations of Church and State, the public recognition of the authority of the Church in all matters which in any way touch upon conscience, the subordination of all State laws to the divine laws of the Gospel, the agreement of the two powers, civil and ecclesiastical, to procure the temporal good of the people in such a way that the eternal good would not suffer."¹⁴⁹

The 1^{erc} consistorial address of s. Pius X¹⁴⁹ - claims the right of the magisterium to pronounce on private and political life from the point of view of faith and morals. The States must recognize the right of the Church, *societas perfecta*, to maintain relations "with the princes of the cities and the rulers of the State" in view of the freedom of Catholics.¹⁴⁹²

II) Negative duties of societies and states: condemnation of separation

5. Pius X condemned the thesis of the separation of the City and the Church (*Civitates rationes a rationibus Ecclesiae*): first in his encyclical *Vehementer nos*, to the French bishops.¹⁴⁹³

A) as "absolutely false" and "very pernicious";¹⁴⁹⁴

B) because

"11) it is based on the false foundation that the City (*civitas*) should have no care for religion, and is therefore very injurious to God; who is himself the creator and preserver not less of human society (*humane societatis*) than of each man (*singulorum hominum*); he must therefore be worshipped not only privately but also publicly."¹⁴⁹⁵

[2] It denies the supernatural end of the city and the State (*civitas, civilis societatis, reipublicæ*), whereas the State (*republicam*) must positively help in the search for the supreme good.¹⁴⁹⁶ (3) It destroys the order of concord willed by God between the two societies (*societatis religiosæ et civilis concordiam; civitas cum Ecclesia*), notably on "mixed matters",¹⁴⁹⁷ 7 and sows the seeds of trouble.¹⁴⁹¹¹ [4] It hinders the prosperity of civil society (*societati civili*) itself, by depriving itself of the support of religion, master of rights and duties.¹⁴⁹⁷ [5] It subjugates the Church to the State.¹⁴⁹⁸

C) In confirmation of previous papal condemnations of the separation of Church and State (*dissociandam ab Ecclesia reipublicam*), and in particular of Leo XIII.¹⁴⁹⁹

D) And especially for France, a Catholic country, and where, aggravating

1492 0631.1 .Acta Pii XG\, 51= ASS 36, 195-196.

1493 0632. PIEX, s., 1906.02.11: Encycl. *Vehementer nos* (to the episcopate, clergy and people of France); ASS 39 (1906), 3-16: *Acta PU X 3*, 24-39; *CIC Fontes 3*, n° 671, 661-669; orig. + trad, official: BP II, 124-149 (good summary in LARRANAGA, 1965,225).

14940632.1 : ASS39.5 = BP H, 126.

1495 0632.2 : ASS 39. 5 = BP II. 126. Theme repeated in 0633.2: BP II, 156; ASS 39.30-31.

***W323MSS39,5 = BP II, 126.

1497 0632.5: ASS 39, 5.

150006353.

15010632.6: ASS39, 5-6 = BP II, 128, citing 0611.

circumstance, the State, illogically, does not even let the Church "enjoy in peace the common law in the freedom that it pretended to concede to it", since on the contrary "several measures of exception [...] put the Church under the domination of the civil power".- He will detail these measures.¹⁵⁰⁰

All this is taken up again in the consistorial address *Gravissimumm apostoli- ci.w* The saint finally returns to it in the encyclical *Pascendi*, against the modernists.¹⁵⁰¹ In 1911, in *Lamduum*, he produced a synthesis of what was meant by "Separation" and of the reasons for condemning it, denouncing the "very pernicious law of separation of Church and State", "such a serious attack on the rights and dignity of the Catholic religion":

"That in principle the law of which We speak is monstrously absurd, (1) results evidently from the fact that it exempts the State from divine worship, as if all men, individuals and societies, did not depend on Him who created and preserves all things; (2) results also from the fact that it releases Portugal from the observance of the Catholic religion, that religion, we say, which has always been for this nation the first element of its strength and glory, and which is professed by almost all of its citizens. | But, be that as it may, it was thought possible to tear apart this very intimate union of Church and State, established on the solemn faith of treaties. [IV] Given this separation, it was at least logical to leave the Church alone and to allow it the use of the freedom and common law enjoyed by every citizen and every honest society. Exactly the opposite has happened. For if this law calls itself a law of separation, in reality it aims by its very nature to strip the Church of its temporal goods, to the point of reducing it to extreme indigence, and, as far as its spiritual power is concerned, to deliver it into slavery to the despotism of the State."¹⁵⁰⁶

13.1.2. Freedom, dignity and rights

I) The freedom

A) Freedom in general is not the same as license

1) Saint Pius X rejects the false licentious freedom of the DDHC:

"The Church condemns this unbridled licentiousness of opinion and morals (*infinitam sentiendi agendique licentiam*), which respects no authority, neither divine nor human, which leaves no rights standing, and which, undermining the foundations of order and discipline, leads to the ruin of States. [But this is not true freedom, it is a corruption of freedom.

And the false freedom of worship, indifferent :

"This nation [Bolivia], which in its constitution recognized only the Catholic cult as public cult, does not hesitate today to sanction the so-called freedom of the cults and therefore to allow the practice of false religions, going so far as to abrogate the chapter that had to do with the religion of the country;

2) but he claims honest freedom:

"As for that loyal and charitable liberty which allows everyone to do what is honest and just (*germanum libertatem, qua nenipe cuique liceat, quod æquum iustumque sit, Jacere*), the Church is so far from compressing it that she has always taught that this liberty should be free from all hindrance."¹⁵⁰⁸

"While the wicked are given unbridled license for evil, you unite your efforts to claim for yourselves the full liberty to express, to teach, to prescribe all that is true and just, to do every good and salutary work, and above all to render in the open to the divine majesty a worship worthy of it."⁵⁰⁹

His division of the subject, like that of Pope Pecci, remains apparently incomplete, and for the same reasons: 1° he does not ask whether this "*æquum iustumque*" should be *objective*, or only "*ex conscientia*" (indeed, it is *æquum* to act according to one's conscience); 2° nor does he ask what happens if someone abuses in good faith - or at least

¹⁵⁰⁰ DPPiX.1,338&341.

¹⁵⁰¹OISS.I &3: BP III, U8& 120 = DzB 2092 (omitted in *DzSehl* = ASS40. 615-616).

according to one's conscience - this honest freedom. Does this abuse make the use disappear? Can the state *ipso facto* by legal means demand the honest use of this right?

B) The natural right to freedom of conscience and tolerance

"Finally, before concluding this letter, we would like to publicly congratulate your most powerful emperor, the tsar, whose friendship we have experienced in our regard, for having, by an edict of 30 April last, in his clemency and wisdom, assured the people of his subjects freedom of conscience.

1506 0639. (here: 0639.1 and especially 2) P1EX, s., 1911.05.24: *Encycl. lamdudum in Lusitania* (against the separation of Church and State in Portugal) IAAS, 217-224 (here 218); BP VII, 72-83 (here 73-74); *DPPieX*, II, 345.

1507 0631.2: *Acta Pij X* 01. 58 = ASS 36. 196; translation: BP 1, 205. Cf. also 0640. P1EX, s., 1913.04.03: *To the pilgrims of the diocese of Milan, in Questions actuelles*, no. 114, Paris, BP, 481; extract in *LREP*, 197-201. here: 199-200.

1508 pjj X, s." 1906.11.24 : *Letter Afflictum propioribus*; *DPPieX*, 1.383.

1509 Pius X, s., 1909.04.20: *Alloc. Significatio pietatis*, to the French bishops; translation: *DPPieX*, II, 58.

1510 PiusX, s., 1905.12.03: *Encycl. Polonia: populum*, to the bishops of Poland included in the Russian Empire; *DPPieX*, 1,326.

"If Your Majesty permits Your other subjects to profess that religion to which they are called by the voice of Heaven, why will You not use such tolerance for Your Catholic subjects?"¹³¹¹

Here we see the concept (but not the doctrine) of a civil freedom to follow one's conscience in matters of religion.

C) Religious freedom for Catholics

"We therefore rejoice with you, for by this act you show the spirit with which you are animated, and your desire to see the return of that time when it was given to the Church to be able to enjoy that freedom which is necessary for her to exercise her ministry fruitfully for the good of souls and of society. Because it is very painful, while we give thanks to Divine Providence for having called Constantine out of the darkness of paganism to erect temples and altars to that Religion which his predecessors (ancestors?) for three centuries had tried to exterminate, that he restored to the Christians the goods usurped, and gave to Christianity full religious liberty, that We, in the midst of such vaunted progress of civilization and such light of science, should claim in vain for the Church, even from Christian governments, that liberty which they themselves recognize, or should recognize as necessary to the development of her supernatural action on earth (...) (the Pope then describes how steadfastly the Church has refused to give up an inch of her freedom, and adds: "And our opponents themselves are so persuaded of this, that they repeat as they say, that every form of liberty is in the shadow of their flag; in reality liberty, or better, license, is for all, but there is no liberty for the Church. Freedom for everyone to profess his own religion, to manifest his own systems, but not for the Catholic, as such, who is persecuted and mocked, who is not promoted or who is deprived of the offices to which he has every right. [Similar remarks follow for the freedom of education and of the press. All associations, even the most subversive, are granted freedom to public and noisy demonstrations. But let the Catholic processions not leave the churches, because they are a provocation for the opposite parties, they upset the public order and disturb the peaceful citizens. Freedom of ministry is given to all, schismatics and dissidents; but for Catholics, when the ministers of the Church do not have in the country where they are sent a single powerful representative who can impose himself on the government, they are forbidden to enter and exercise their office. Freedom of possessions for all, but not for the Church and for religious orders, whose goods have been arbitrarily despoiled, converted and given by governments to secular institutions (There follow other considerations on the freedom of the Church)."³¹²

"He (God) chose France in preference to all the other nations of the earth for the protection of the Catholic faith and for the defense of religious liberty. [...]. God loves France, where at no time has the faith lost its vigor, where kings and soldiers have never hesitated to face perils and to give their blood for the preservation of the faith and of religious liberty."³

He is therefore the first pope to use the expression "religious liberty" in the sense of "social and civil liberty" (as opposed to "persecution"), where DH will use it. But he did not give us his opinion on the RL that Constantine also left to the *pagans*, and different

from a simple tolerance (in the historico-legal sense). Therefore, he seems to use the expression only for the freedom of Catholics, and the freedom to enter Catholicism.

1511 Pius X, s." 1906.07.18: Letter /1 *Nostro predecessore*, to the Negus of Ethiopia; *DPPIeX*, I, p. 365.

1512 0641. PIEX. s., 1913.02.23: to the pilgrims who came to Rome on the occasion of the XVI^e centenary of the edict of CONSTANTIN (on the freedom of the Church); AAS. 147 [Our translation]. See. p. 149-150. a list of liberties which the liberals claim, but against the Church. We have harmonized the translation with that of *DPPIeX*. 11. 500. otherwise the *only one* to indicate the exact date.

1513 PIEX, s., 1908.12.13: ADoc. *Vi son ^raio*; at the beatification of Joan of Arc, quoting here a letter of Pope GREGOIRE IX to s. Louis; *DPPIeX*. 1.655.

II) *The dignity of the human person*

Pius X teaches the natural and supernatural dignity of man, in whose name he vehemently condemns slavery:

"If there is nothing so contrary to the dignity of human nature as the enslavement of one man to another man, like a vile animal, by right of purchase, this fact is still more repugnant to the principles of the Christian religion, which proclaims the brotherly relations of men among themselves; for, all redeemed by the same blood, are called to the same inheritance from the heavenly Father, o¹⁵⁰²

"... the doctrine of Jesus Christ is the only one which reveals to man his eminent and authentic dignity inasmuch as he is the son of the heavenly Father, who is in heaven, created in his image, and called to live eternally happy with him. But from this dignity and from the knowledge of it which he gives us, Christ concludes that men must love one another as brothers [...]. "1515

III) *The right of ownership distinct from its use*

« In order to calm the conflict between the rich and the proletarians, it is necessary to distinguish justice from charity. There is a right to claim only when justice has been wronged (*Enc. Rerum nova- rum*). "4.516

It therefore stigmatizes

« the right of property subordinated to its use, and the latter becoming a function not of charity but of justice.⁵¹⁷

13.2. Benedict XV (1914-1922)

1) Benedict XV perfectly summarized for us the doctrine of his predecessors, again condemning the system of the DDHC,¹⁵⁰³ namely: 1° the "public rejection of the authority of the Church" and of the role of religion in society; 2° the absolute sovereignty of the people; 3° the equality of rights; 4° the principle "that it is permitted to each one to follow *his own good pleasure (quod cuique libuisset, id licere)*, *12 "excepting only that which the law would prohibit (*nisi quæ lex prohiberet*);"5° that "nothing has the force of law, if not what the multitude would have ordered (*nihil habere vim legis, quod non multitudo iussisset*) ; 6° and "above all, that the liberties to opine in matters of religion, or to divulge all that one wants, are not contained within any limit, except to harm no one (*Uberates maxime sentiendi de religione, vel vulgandi quidquid quisque voluisset, nullis contineri finibus, dum noceret nemini*).¹⁵⁰⁴ Once again, it is not only the absence of an intrinsic limit to the object (*quidquid voluisset*), but also the type of extrinsic limit (*dum noceret nemini*) that is condemned. This seems to us to confirm the correctness of our reading of the

1514 PIEX, s., 1909.04.02: Letter *Gullorum societatem*, on the anti-slavery society of France; *DPPIeX*, 11.25.

1503 Benedict XV, 1917.03.07: Letter *Anno tant exeunte*, to Fr. Superior General of the Marianists, on the occasion of the centenary of his congregation. 172; P/N4K7.

1504 See above on the fact of "harming others" according to the DDHC.

pontiffs of the XIX^e, notably as regards juridical positivism. II) Finally 1° he will remind us of the necessary harmony of the two powers, and 2° and the "*tranquillitatem publici ordinis*" as the foundation of all other goods,¹⁵⁰⁵ undoubtedly as a *condition*, but he does not specify it.

1505 0652. Benedict XV, 1921.11.21: A Hoc. consistorial *In huc quidem* (on the relations between the Church and the present-day Stations) -AAS, 522: BP 3, 106.

CHAPTER 14.

14. POPE XI (1922-1939)

SI Pius XI leaves intact, in the face of the principles of 1789, "the traditional Catholic doctrine of duties" (14.1.),¹⁵² -* he develops, in the face of Nazi, Mussolinian and Communist totalitarianism, which also originated in 1789 and 1792, a "doctrine of the inviolable rights of the human person" ¹⁵²⁵ (14.2.)

14.1. The duties of individuals and societies towards God and the Church

Pius XI recalls the duties of society (14.1.1.) and of each individual (14.1.2.).

14.1.1. The duties of societies towards the Truth

As early as 1922, Pius XI, wishing to establish "the peace of Christ in the kingdom of Christ," proclaimed that man must conform all his activity (private and public) to the law of the Church.¹⁵²⁷ More precisely, civil society (*societate civili*) must I) "pay sovereign homage to God" and II) recognize the Church's dignity as "perfect society, teacher and guide of other societies", which allows the Church to bring its benefits to the temporal order, and the latter to collaborate fruitfully in the search for the final end.¹⁵²⁸

I) Duties to God: The Social Kingship of Jesus Christ

"Jesus Christ reigns in civil society (*societate civili*), when, paying sovereign homage to God, it recognizes that authority and its rights derive from him, which gives power its rules, obedience its obligation and its dignity [...]."¹⁵²⁹

Pius XI returned in 1925 i¹⁵³⁰

"Men are no less subject to the authority of Christ in their collective life (*societate amicum*) than in their private life (*singuli*). [...] The heads of state (*Nationum rectores*) must not refuse to pay by themselves and by the people a public tribute of reverence and submission to the sovereignty of Christ,"¹⁵³ -

15270661.2 : A4S. 1922.689 = BP01, 159.

152506613:AAS. 1922,690 = BPOI, 162-163.

152906613.

1530 0662. Pius XI. 1925.12.11: Encycl. *Quas primas* (on the institution of the feast of Christ the King); A45. 593 610 ; BP03.63-93.

15310662.1: AAS. 601 = BP 03.76-77. Cf. ABA1TUA. 1966. 175-176.

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This will bring immense benefits to the whole of society.¹³³² Knowing that they command in the name of Christ, politicians will better seek the common good and better protect the dignity of their subordinates.¹³³³

"The annual celebration of the feast itself (of Christ the King) will teach the cities (*Civitates*) that magistrates (*magistratus*) and rulers (*gubernatoresque*) as well as private individuals (*privatos*) have the duty to render public worship to Christ and to obey him, he who at the last judgment will take vengeance on those who have expelled him from public affairs (*publica re*), or have disdained him, "for his royal dignity requires that the whole state (*respublica universa*) should be governed by the commandments of God and Christian principles."^{13 34}

II) Duties towards the Church: Separation or State religion

While the Revolution led to the denial of "the sovereignty of Christ over all nations", of the right of the Church to "teach mankind, to make laws, to govern peoples, in view of eternal beatitude" J³³³ the Church claims the status of perfect society (*perfecta societas*), and therefore "full freedom and immunity from civil power",¹³³⁶

fis) *The separation of Church and State* can be lived amicably, but "is certainly not in conformity with the doctrine of the Church, nor with the nature of men or of society, enlightened by the light of the Catholic faith", especially not in a Catholic country.³³⁷

B) *Common law*. However, 1° "the Church adapts to the laws and constitutions proper to each nation or state"; 2° "she practices and teaches respect for legitimately constituted political governments (*qui civili societati legitime præsunt*)"; 3° "for the workers of the Gospel and the faithful, it demands nothing other than common law (*commune tus*), security (*incolumitatem*) and freedom (*libertatem*)", for if governments have sometimes protected their missionary citizens, it has been only as a "guarantee against malice and persecution".³³¹⁵³¹

C) *The freedom of the Church*. The rulers of the cities will allow the Church its freedom, which is necessary for the good of humanity, especially in the time of Bolshevik communism.¹³³⁹ The Christian City must fight against communism.^{3 -0}

-532 0662.2 : AAS. 601 = BP 03.77-78 = PIN 545.

1533 06623 : AAS. 602 = BP 03.78-79. PIN 547.

- 534 0662.6 : AAS. 609 = BP 03.91 -92; Pt N 569.

1535 0662.4 : AAS. 605 = BP 03.83; PIN 553.

"To the Church, as a society of men (*tamquam hominum societati*), is absolutely necessary, to live and expand, a just freedom of action (*iusta agendi libertate*), and its faithful enjoy the right to live in civil society according to the prescriptions of reason and Unconscience."^{mm}

D) *The religion of the State*. In a Catholic country such as Italy, Pius XI called for the status of "state religion", where non-Catholic cults would be "tolerated" and not "favored":

"Cults "tolerated, permitted, admitted" ("*tollerat'i, permessi. ammessi*"): it is not We who raise questions of words. The question is solved, not without elegance, by a distinction between the statutory text and the purely

1531³³⁶ 0662.5 : AAS. 608-609 = BP 03.90-91; PIN 567.

-537 0663. PIEXI. 1925.12.14: Alloc. consistoriale *tant annus*; AAS. 641-642; DC. 1926, 32-33. It is a question of Chile. He will condemn the separation again in 0676. Pius XI, 1933.06.03: Encycl. *Dilectissima nobis*. to the Spanish episcopate. AAS. 264-265; BP 10,16-37; DC. 1933.1542.

-538 0666. PIEXI, 1926.06.15: Letter *Ab ipsis pontificatus primordiis*, to the vicars and prefects apost. of China; AAS. 306-307; DC 20. no. 444 (20 October 1928), 582). Reprinted in 0668. PIEXI, 1928.08.01: Telegram A *Santa Padre*. to the Ordinaries, the faithful and the Chinese people; AAS. 246; DC. *ibid*. 583.

³³⁹ -0681.9: AAS. 1937.104-105 = BP 15.97 = PIN 696. See ref. in note 1567.

-540 0681.7 : AAS. 1937.103 = BP 15.94. See note 1567.

legislative text, the first, in itself, more theoretical and doctrinal, where the word "tolerated" is better in its place; the second, which aims at practice and where one can leave "allowed or admitted", provided that one agrees loyally on it; provided that it is and remains clearly and loyally understood that the Catholic religion is, and only is, according to the constitution and the treaties, the religion of the State, with the logical and juridical consequences (*Religione dello Stato con le logiche e giuridiche conseguenze*) of such a situation of constitutional right, particularly in relation to the propaganda; provided that it remains no less clearly and loyally understood that the Catholic cult is not purely and simply a permitted and admitted cult, but that it is such as the letter and the spirit of the treaty and the Concordat want it. a¹⁵³²

14.1.2. The duties of individuals towards the Truth. False and true freedom of conscience

The Church fights for freedom, while condemning license.¹⁵³³ Maintaining with force the psychological freedom, or free will?⁵⁴⁵ Pius XI does not deny the freedom of moral obligation of the man in front of his Creator, which he challenges on the one hand under the name of "freedom of conscience", on the other hand under that of "license".

1) In his **1929 chirograph**, after dealing with the question of "civil tolerance" of Catholic cults in Italy, he announces:

"A more delicate question arises when, with so much insistence, one speaks of the freedom of conscience (*libertà di coscienza*) not violated and of the full freedom of discussion (*piena libertà di discussione*).""^a

[I] The "total freedom of discussion":

"It is not permissible to have had in view an absolute freedom of discussion (*libertà assoluta di discussione*), including those forms of discussion that can easily deceive the good faith of unenlightened listeners and that easily become concealed forms of propaganda, no less easily harmful to the religion of the State (*Religione dello Stato*), and, in fact, to the State itself.

and precisely in that which is most sacred in the tradition of the Italian people, and most essential in its unity.

This is a freedom contrary to the limits of honesty set by *DH4*, §4 for all religious propaganda. It is obvious that dishonest proselytizing - and only dishonest proselytizing - will *easily* deceive Catholics.

[It] The "Freedom of Conscience:

| A] Pius XI condemns it:

< [II] [A] It seems to us less admissible still that one has understood to assure complete, intact, the absolute freedom of conscience (*assoluta libertà di coscienza*), "

[B | He notes the double error:

< [As much as it would be worth saying that [1] the creature is not dependent on the Creator, so much [2] would it be worth legitimizing any formation or rather any deformation of consciences, even the most criminal and socially disastrous.

The "*omnimoda libertas conscientii*" already condemned was indeed an autonomy of the conscience in front of God, an absence of obligation of the conscience, implemented in the society in the form of a civil freedom "to act as one wants", and in this sense unbridled and going until the crime.

< [C] It brings out a double truth, close to the RL of *DH* :

"If one wants to say that conscience escapes the powers of the State (*la coscienza sfugge ai poteri dello Stato*), [2] if one wants to recognize, as one recognizes, that in fact of conscience it is the Church which is competent, if one wants to recognize, as it is recognized, that in matters of conscience the Church is competent, that she alone is competent (*in fatto di coscienza, competente è la Chiesa, ed essa sola*) by virtue of her divine mission, [3] one recognizes at the same time that in a Catholic State (*in Stato cattolico*), freedom of conscience and freedom of

1532 0669.1 : IUS. 1929. 301 = BP 05, 128. Same ideas in 0672. P1EXI, 1930.06.30: Alloc. consistorial *MicMn ante*; AAS. 299; BP 06.216-227; DC. 69-70.
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discussion must be understood and practiced according to Catholic doctrine and law!sJ.">548

[III] This document is the only one to define the Catholic State:

"It is the State which, in the order of ideas and doctrines as well as in the order of practical action, does not want to admit anything that is not in accord with Catholic doctrine and practice: without this, the Catholic State would not exist and could not exist.">5+9

11) *Non abbiamo bisogno* Mo on the subject of freedom of conscience(s) conceals the same "incomplete disjunction": on the one hand, it is "in consideration of this twofold right of souls'⁵⁵ > that We recently said We were happy and proud to fight the good fight for the freedom of consciences (*libertà delle coscienze*)[....]" (Pius XI thus takes the defense of the right of men to have free access to *objective truth*);⁵⁵² on the other hand: "not [." for the freedom of conscience (*libertà di coscienza*), an equivocal way of speaking, and too often used to mean

W 06693: AAS. 1929,301-302 = BP 05, 129-130.

> 548 0669.4 :AAS, 1929,301-302 = BP 05.129-130.

> 549 0669.5 : AAS. 1929,303. black transl.

1550 0675. PIUS XI. 1931.06.29: Encycl. *Non abbiamo bisogno*, in defense of Catholic Action (against fascism); AAS. 285-312; BP 07, 177-225; DC. 67-91.

1551 0675.1: AAS, 301-302 = BP 07, 205-206: "It is a question of the right of souls to obtain for themselves the greatest spiritual good under the magisterium and educational work of the Church, divinely constituted as the sole agent of this magisterium and work, in that supernatural order founded in the blood of God the Redeemer, which is necessary and obligatory for all, in order to participate in the divine Redemption. It is the right of souls thus formed to communicate the treasures of the Redemption to other souls, collaborating in the activity of the hierarchical apostolate.

> 552 See NICOLA u, 1964.231.

the absolute independence of conscience, which is absurd in a soul created and redeemed by God,¹⁵³⁴ In other words, once again a pope gives us an authentic interpretation of the famous *condemnabile* "freedom of conscience": the autonomy of conscience in relation to God. This is what was condemned under this name in the 19th century,¹⁵ ⁵⁴ as the foundation and content of modern civil liberties.

On the eve of Pius XI's death, his Secretary of State again condemned this freedom of conscience,¹⁵⁵⁵ the highest human prerogative being "the freedom to do good" z-¹⁵³⁵ "[...] one must not in any way conceive of free will as a **license to act against the moral law** [...] nor of social liberties as so many possibilities for undermining **the civil order and the common good**" >.¹⁵³⁶

It seems that the following ideas can be retained: 1° from the individual point of view, a freedom cannot be defined as a permission to go against the objective rule of good; 2° in society, a freedom cannot go so far as to harm the civil order and the common good. What happens if the "seeker of truth" abuses freedom according to an erroneous conscience without "harming the common good or doing injustice to others" / ^ The answer requires the study of the doctrine of human rights.

14.2. The fundamental rights of human beings

Pius XI makes explicit the thought of the Church as regards fundamental rights of the human person, on the one hand in general (21.2.1.), on the other hand as regards various aspects of freedoms in religious matter (21.2.2.).¹⁵³⁷ It does it in reaction against the continuation of the masonic-liberal persecution set in motion by the French Revolution,¹⁵³⁸ but also in the face of the totalitarianism resulting from liberal juridical positivism.¹⁵³⁹ -

"It was above all dictatorship and totalitarianism that he had to face, and historians unanimously recognize that he did so with fearless courage.¹⁵⁴⁰ He understood that the Church had to become the champion of freedom and to commit itself fully to the fight for the defense of the human person. The doctrine of human rights, once freed from the anti-clerical and individualistic-bourgeois challenge in which it had flourished in XV century Europe, would reveal its marvelous fruitfulness in a Christian climate."¹⁵⁶⁵

15" 0675.2 : AAS. 301-302; BP 07.205-206 = DC. 1931,82.

14.2.1. Fundamental rights in the face of totalitarianism in general

Pius XI takes up two great Leonine ideas that found natural rights: I) the dignity and equality of human persons; II) the anteriority of persons in relation to civil society.

I) *The dignity and equality of human persons*

As early as 1922, Pius XI declared the doctrine of the "dignity of the human person" one of the principal legacies transmitted to humanity by Christ,¹⁵⁴¹ whose social reign

153506843.

15560684.4: BP 18. 125 = P1N733.

155706843: BP 18. 124 = P1N729.

1537 See MESSINEO, 1950.08.05,238; and NICOLĂU, 1964.226.

1560The persecutions in Spain and Mexico come to mind.

1539 See BEA, 1966 (1963.12.13).265.

1540 Cf. also 1221. JOHN PAUL 11. 1994.11.10: Apostolic Letter Tertio millennio udeeniente. *Tertio millennio udeeniente* : AAS. 1995.5-11 ; zX-

1541 0661.1 : AAS. 1922.688 = BP 01, 159.

should bring "just freedom" ¹⁵⁴² and concern for "human dignity" ^J¹⁵⁴³

In 1937, *Divini Redemptoris*¹⁵⁴⁴ declares that communism "strips man of his freedom", takes away "from the human person all that constitutes his dignity", "does not recognize in the individual, in the face of the community, any of the natural rights of the human person"¹⁵⁶ and denies "his dignity and his freedom" ^J⁵⁶

In 1938, his Secretary of State would add:

"It is not surprising that the Church has continued unceasingly, for centuries, this spiritual education which aims at rooting in man the conviction of the free and formidable responsibility for his acts and at giving to all indiscriminately - to the leaders as well as to the led - the awareness of their essential equality before God, so as to exclude any violation of the rights proper to the human personality. This is why the old saying of Lactantius: "*Religio sola esi in qua libertas domicilium collocavit*" [PL 006, 10611 still retains its relevance for us."⁵⁷ °

II) *The anteriority of man over civil society*

Against fascism, and following in the footsteps of SS. Against fascism, and following in the footsteps of St. Thomas, Pius XI reminded us in 1931 ⁱ⁵⁷ⁱ that citizens are subordinate to the State in all that falls within its competence ("subjective totality"), but not in all that they are and do ("objective totality"), because, according to Leo XIII, "man is prior to the State (*respublica*)".⁵⁷²

In 1937, he condemned communism in the name of the following principle:

"God destined man to live in civil society (*ad civilm consanionem*) as his nature requires. In the Creator's plan, society is the natural means which man can and must use to achieve his end, for society is made for man, not man for society." ¹⁵⁷³

Not that society should serve the selfish utility of the individual (individualistic liberalism), but that it makes it possible for men, through their collaboration, to achieve true happiness on earth, to develop their abilities, to return to God and to give thanks to Him:

"Certainly, the common good prevails over the private good when it is of the same nature, as Saint Thomas says in his *Summa: Bonum commune potius est bono privato, si sit eiusdem generis* (2-2, q. 152, art. 4, ad 3.). This is why one can and must, even for the good of all, limit to a certain extent the particular good, because this sacrifice is amply compensated for by the greater good which individuals receive through the enjoyment of the common good."⁵⁷⁴

Man must fulfill his *duties* towards civil society (*civili societati*), and the rulers (*publicæ rei moderatores*) have the *right* to compel him to do so if he illegitimately evades them. In return,

"Society cannot deprive the citizen of the *rights* he has received from God the Creator, nor can it arbitrarily make their *use* impossible. It is therefore in accordance with reason and its demands that, in the end, all things on earth should be ordered to the human person, so that through him they may return to the Creator." ⁵⁷⁵

"The community, as well as the citizen (*civis*), derive their origin from the eternal Divinity and are by it mutually ordered to each other; neither the citizen nor human society can therefore evade their mutual duties, nor deny or diminish the rights of the other." ¹⁵⁷⁶

Pius XI then renewed his vibrant appeal in *Caritate Christi* to all those "-by far the greatest number of men- who believe that God exists and who worship him" to fight against the atheistic powers. ⁷⁵⁷

^{5650662.2.}

^{56606623.}

^{567 0681.} P1E XI. 1937.03.19: Encycl. *Divini Redemptoris* (on atheistic communism); AXS. 65-106; BP 15,34 100;DC. 1937,937-967; MAD1RAN Jean, transl. paris, NEL. 1961,62 p. (repr.).

14.2.2. Some specific rights of religious freedom

Like Leo XIII, Pius XI called on the French to cease their political disunity, to unite in favor of the "sacred liberties which are the foundations of the City," and to make citizens more conscious of their right.¹⁵⁷ "As examples of such "sacred liberties," Pius XI, I) speaking of the incompetence of the State in supernatural matters, highlighted three fundamental rights of the human person to freedom in the religious sphere: II) The natural right of parents to the freedom to educate their children in their own religion; III) The right to respect for the consciences and freedom of worship of the Russian Orthodox; IV) The right of every believer to the freedom to profess his or her belief.

1573 06813: AAS. 1937, 79: "*Civitas homini non homo Civitati essit*"; BP 15. 56-57 = PIN 686. Idea often taken up, for example by 0683. |lci: 0683.11, PACELU Eugenio. card. Secretary of State, 1937.07.06: Letter to E. Duthoit; CW. 1937.07.17; DC. 173-176; BP 16,261 -.PIN TW.

15740683.2 : BP 16. 261 = PINIW. With the following.

1575 Own underlining. 0681.4: AAS. 1937.80; BP 15,57-58 = PIN 687.

15760681.5 :AAS. 1937.81 = BP 15. 59-61); BP 15.59-61 : PIN690.

15770681.6: AAS. 1937, 103; BP 15. 93-94. The note refers to: PIEXI. 1932.05.03: Encycl. *Cantate Christi*; MS. 1932,184).

1578 0666. bis. Pius XI, 1926.12.20: Alloc. consistoriale *Misericordia Dondni*; AAS. 519; DC. 1927, 133-134 + 387-393. We are not dealing here with the FA.

I) *The incompetence of the State in supernatural matters*

As a counterpart to this truth that "in matters of conscience, only the Church is competent, we have seen Pius XI, in 1929, in the name of the freedom of conscience, which "escapes the powers of the State", dismissing the interference of the coercive power in man's search for the truth. Interference that he also denounced in *Non abblamo bisogno* regarding education: I° the Church recognizes the rights and duties of the State; which

"These are not only corporeal and material, but are, in themselves, necessarily contained within the boundaries of the natural, the earthly, the temporal";

2° the Church alone is competent in all that is "eternal, celestial, supernatural".issi This was already the doctrine of Pius IX.issi

II) *The natural right not to be prevented*

to educate his children according to his own religion, even if it is false

Basing himself on s. Thomas Aquinas, which he developed, and like the Thomists (notably Cajetan), Pius XI taught in 1929 the natural right of even unbaptized parents not to be prevented from educating their children in their own (therefore even false) religious convictions, ISM

I° All parents have received from God a right untouchable even by the state to give education to their child:

"The family therefore immediately receives from the Creator the mission and consequently the right to educate the child (*ius prolis educando*); an inalienable right (*ius cum abiliis nequeat*) because it is inseparably linked to the strict correlative duty, a right prior to any right of civil society and the State (*societatis civilis et reipublice iuri antecedit*), and therefore inviolable by any terrestrial power.

2° This right to education (affirmative right) has as an effect a right to non-intervention of others in this education (negative right), as long as it lasts:

"For this inviolability the Angelic Doctor gives the reason: "The son, in fact, is by nature something of the father...; it follows that, by natural right, the son, before the use of reason, is in the custody of his father. It would therefore be against natural justice (*contra iustitiam naturalem*) if the child, before the use of reason, were removed from the care of his parents or if he were disposed of in any way against their will"]S. And since the parents have the obligation to give their care to the child until this one is able to be self-sufficient (or: to take care of himself)

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(*giffed sibi ipsa considerare soboles valent*), it is necessary to admit that they also preserve for a long time the same inviolable right on his education (*inviolatum ius sobolis educando*): "Nature, indeed, continues the Angelic Doctor, does not aim only at the generation

1579 0669.4 [c] already cited. Same idea in 0677. PACELLI, 1933.07.12: Letter of Card. Secretary of State, to E Duthoit; DC. 1933.227-229; BP 10,242; PIN 654; and in 0772.2.

1580 06753 :A4S. 1931.303 -PIN 641 = BP 07,208 = DC, 1931.83.

ISO 0518.44.

1582(1670. (here: 0670.1-5) PIE XI. 1929.12.31 : Encycl. *Divini illius Magiari*: AAS, 1930, 049-086; BP 06,84 147.

15830670.1 :AAS, 1930,59 = BP06,101.

of the child, but also to his development and progress to the perfect state of man as man, that is, to the state of virtue" *ISuppl. S. TA. 3, q. 41, a. 11.*^{15W}

"It should be noted that the duty of the family to educate its children includes not only religious and moral education, but also physical and civic education, especially as it relates to religion and morals.^{15a5}

It is therefore *also a question of* children a little older than the age of reason. Pius XI thus goes further than the Angelic Doctor, whose two texts he combines.

3° It is a *natural right*.⁶

"This unquestionable right of the family has been legitimately (or legally) recognized on several occasions by nations which are concerned to respect natural law (*ius naturie*) in their civil organization (in *civili servare regimine*). Thus, to cite one of the most recent examples, the Supreme Court of the United States of North America decided a very serious controversy by declaring :

"The State (*Civitali*) has no general power to establish a uniform type of education for the youth, forcing them to receive instruction only in public schools".

And it gives the reason of natural right (*ex iure naturae*): "The child is not a simple creature of the State (*Civitate*); those who bring him up and direct him have the right and at the same time the important duty to form him and to prepare him for the accomplishment of his other obligations" (*ius habent, ami iKibilissimo officio coniunctum, ipsius educandi et ad officiorum perfimtionem comparan- dij* (Note 1).">⁷

Being natural, this right applies to everyone. Pius XI agrees with the Supreme Court, which obviously did not want to claim the *natural* right in question only for *Catholics*. Pius XI will dispel any doubt a little further on.

4' There is a universal moral obligation to adhere to the one true religion, and an obligation of Catholic parents to baptize their children:

"And indeed, although the Church, conscious as she is of her universal divine mission and of the obligation of all men to practice the one true religion, does not tire of claiming for herself the right (*us vindicare*) and reminding Catholic parents of the duty (*in parentum ca tholicorum memoriam redigere offlelum*) to have the children (of Catholic parents) baptized and brought up in a Christian manner, "...

5° In spite of this, there remains a natural right of *non-Christian* parents not to be prevented, even by the Church,■s"⁸ from educating their children as they see fit, thus even in their inexact religion :

"it remains, however, so jealous of the inviolability of the natural right of the family in matters of education (*iuris tamen naturalis educandi, quod familiar est, sanctitatem tam studiase veretur*), that it does not consent, except under certain conditions and guarantees, to baptize the children of infidels or to dispose of their education in any way against the will of their parents, so long as the children cannot determine of themselves to embrace the faith freely."⁹

It is thus clearly proclaimed a natural right of the parents, even infidels, not to be prevented by the State-⁵⁹⁰ from educating their children according to their own religion

- °-0670.2 :A4S. 1930.59 = BP06. 101-102.

06703:A4S'. 1930,60= BP 06, 103-104.

1586 PIUS XI does not address possible foundations other than nature.

1°967QA:AAS, 1930,60-61 = BP06, 104.

1588 The supernatural mission of the Church cannot be opposed to a natural right. Cf. SETIEN . 1963.03-04,120.

1589 0670.5: AAS, 1930, 61-62 = BP 06' 105-106. The note refers here to CIC 17, can. 0750, § 2 and to THOMAS

D'AQUIN, s. 1271-1272, *Summa Theoloniae*, 2-2 :010,12.
1590 Lt, in the case of the unbaptized, even for the Church.

(even false), and this by virtue of their natural right to the education of their children, and until the children can decide for themselves (even against the advice of their parents, from the age of reason),¹⁵⁹ * or are no longer under the guardianship of the parents (in adulthood). This is a negative natural right requirement not to be prevented from teaching even religious error*⁵⁹⁷ to their children, without moral permission to do so. Such a negative natural right is therefore not *absurd*.

(6) *Reason for such a limitation on state jurisdiction:*

"These [authentic] rights are attributed by the Creator of nature to civil society (*societali civili*), not by virtue of its paternity (*non paternitatis titulo*), as is the case with the Church and the family, but by virtue of the authority it has for the promotion of the common good here below, which is its proper end. ** W⁵

"Now, this end, this common good of the temporal order, consists (I) in the peace and security which families and citizens enjoy in the exercise of their rights and at the same time (II) in the greatest possible spiritual and material well-being in this life, (III) thanks to the union and coordination of the efforts of all. (IV) The function of civil authority (*civilis auctoritatis*) which resides in the state (*in reipublica*) [A] is therefore twofold: (I) to protect and [2] to advance the family and the individual, [B] but without [1] absorbing them or [2] taking their place. **⁵⁹⁴

As aspects of this first magisterial definition of the "common good", we note: 1^o peace and security;*⁵⁹⁵ in the exercise of rights; 2^o spiritual and material well-being. The function of the State is to protect*⁵⁹⁶ and promote, not to absorb or substitute.⁵⁹⁷

All in all, although it is morally obligatory that all non-Christians adhere to the true religion, have their children baptized, and educate them in the truth, the State would be going against the common good, because it would be going against the exercise of a fundamental inalienable right, by seeking to force this adherence and this baptism, or to prevent a family education even in non-Christian religious error.

7^o Pius XI, however, seems to consider this inviolable natural right of non-Christian parents only in the private sphere, at least "in a general way". He adds in fact that the State must protect the education of the youth against any public lesion.¹⁵⁴⁵

III) The right to respect for conscience and the freedom of worship of the persecuted Orthodox

Pius XI also asks the international community to condition any recognition of the Soviet government on "respect for consciences, -⁵⁹⁹ [of] the freedom of worship and the goods of the Church",¹⁵⁴⁶ "useful especially to ecclesiastical hierarchies... separated from Catholic unity", as well as the attempt of the same pope to "save from destruction and preserve for their traditional and religious use the sacred vessels [etc.], to remove from a capital trial... the head of this hierarchy... Patriarch Tykhon "J"¹⁵⁴⁷ - Could it be that freedom of worship is not condemnable in itself, but only when it is linked to an indifferent position? Pius XI salutes the "priests and adult believers... the other victims faithful to the cult of God", and only *afterwards* the specifically Catholic martyrs.¹⁵⁴⁸

Consequently, if the baptized non-Catholics cannot claim to have rights to oppose to *the Church* to act against it, on the other hand, they have a natural right to claim before the

159X0670.8: AAS, 1930.63 = BP 06, IO8;P/N594.

1546 0671 (here: 0671.1) PIEXI. 1930.02.02: Chirograph *Ci commuovono*. to card. Pompilii. on the subject of the divine rights injured in Russia; AAS, 089*093 (here 89); BP 06,148*151 (here 148).

1547 0671.2: AAS. 1930.89-90; BP06. 148.

160206713 AAS. 1930,90; BP06, 148-149.

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State the freedom of the worship which they practice according to their conscience.¹⁵⁴⁹ Here, as on June 30, 1930, if he calls for "*afflictis Rus-sioe filiis tranquillitatem fideique profitenda libertatem*",^{16U4} he aims at the profession of the faith of the Orthodox *per se* in what it has of *truth*, and only *per accidens* in what it has of deviation (in its content). It is simply a question, as in any claim of the natural right to the RL, of an indirect volunteer: by claiming the freedom of the cults, one aims at protecting all that it will entail as good effects (1° possibility of affirming religious truths; 2° possibility of living in a climate where one can act "*ex conscientia officii*"), while tolerating its bad effects, foreseen but necessarily implied in such a freedom (here the profession of all that separates from the catholic unity). Moreover, the State before which this is claimed, because it is separate from the Catholic Church, is radically incompetent to discern what is true and what is false. It must therefore allow everyone freedom of worship. Pius XI has explicitly in mind here the good that can come from freedom of worship; he leaves in the background the lesser evil that can come from it, in order to stigmatize the evil - much greater - of a State that would arrogate to itself any religious competence, especially in an anti-religious way.

IV) The natural right to freedom to profess one's beliefs

But in 1937, condemning Nazism, Pius XI had to address the question of the RL even more directly, in a passage of the encyclical *Mit brennender Sorge with a* rather controversial meaning.¹⁵⁵⁰

A) Proclamation of inalienable natural rights against the State

1) Existence of such rights :

"Human laws that are in insoluble contradiction with natural law are marked by an original vice that no constraint, no external deployment of power can cure" ;^{K*06}

"Man as a person (*der Mensch als Persönlichkeit*) [...] has "rights which he has from God and which must remain unimpaired by the community";

2) reciprocal finalization of the society and the individual :

"The true common good is determined and recognized, in the final analysis, by man's nature, which harmoniously balances personal rights and social obligations, and by the purpose of society, which is also determined by this same human nature. Society is willed by the Creator as the means of bringing to their full development the individual dispositions and social advantages which each person, giving and receiving in turn, must bring to bear for his own good and that of others. As for the more general and higher values, which only the collective, and not the individual, can achieve, they too are ultimately willed by the Creator for man, for his full natural and supernatural development and the completion of his perfection. To deviate from this order is to undermine the pillars on which society rests and thus to compromise the tranquility, security and very existence of society."->607

B) In particular the "right to profess one's beliefs

In this context of human rights. Pius XI states:

"The believing man (*Der gläubige Mensch*) (2) has an inalienable right (*ein unverlierbares Recht*) [3] to [a] profess (*bekennen*) his belief (*seinen Glauben*) and [b] to practice it (*betätigen*) in the corresponding forms. [Laws that (1) [a] oppress (*unterdrücken*) or [b] make it difficult (*erschweren*) (2) (a) to profess (*das Bekenntnis*) and (b) to practice (*die Betätigung*) this belief (*dieses Glaubens*) [3] are in contradiction (*Widerspruch*) with a natural law (*Naturge- serj*. "16U8

The two sentences [A] and [B] are parallel. One [A] states *the existence* and *the object* of the fundamental right; the other [B] draws the consequence that a law that prevents its

1549 But not, according to PIE XI, as we have seen. the freedom of propaganda in a Catholic state. Cf. NICOLÁU. 1964.230. 1550 0680 Pius XI, 1937.03.14: Encycl. *Mit brennender Sorge*, to the bishops of Germany; AAS, 1937. 145*167 (160 cited by DH, note 2); BP 16.7-53: DC. 1937,901-922.

exercise contradicts the natural right.

[A] [1] The previous context and the text prove that the active subject of the law is *the believing man* {"*Der gläubige Mensch*"}, and not specifically the Christian (*der Christ*), nor the Catholic (*der Katholik*), nor even the faithful (*der Gläubige*).[^] - As for the *context*. Pius XI has just used the expressions "*Mensch als Persönlichkeit*", "*Natur des Menschen*", "*Menschennatur*" and to evoke the last end "*of Menschen*", i6io It is indeed a question of a natural right of man. - As for the *text*, certainly, the noun *Gläubige(r)* alone would mean the faithful, the *Christifidelis* of canon law, in short: the Catholic. But Pius XI used *Mensch (homo)*, preceded by the adjective: *gläubige (credens)*A⁶ " 12| It is a question of an inalienable right.

1606 0680.1:A4S. 1937, 159;BP 16.36-38.

■607 0680.2: AAS. 1937, 159-160; BP 16,36-38. Same ideas in 0681.4. and already in Leo XIII: 0618.2. Cf. also 06813; 0683.

1608 06803. AAS, 1937. [60. defective translation: BP 16.38.

1609 Against CONNELL 1946.08.139.

1610 0680.2.

■61 ■ Pius XII will also use this expression (plural: *gläubige Menschen*) (in a similar context of opposition to atheistic malenalism) in 0750. (here 0750.1) PIE XII. 1952.08.10: Message *Mit dem Gejthl...*, to 75" Katholikentag; AAS. 723-727 (725); DC. 1291 -1294; DPPIeXU. 410-415 (here 413); ÄH 1,93-98.

[The object of law is twofold: [a] "profess" and [b] "practice. - The right does not apply only to the inner belief; it includes the outer practice. - This practice in turn has a content: "his belief". Indeed :]a| - *Glauben*: in German, the word *Glaube(n)(s)* (and the adjective *gläubige*) designate both belief in general and theological faith in particular; - *seinen*: Pius XI does not deal with a right of every believing man to practice *the* (true) faith (this would not give rise to any discussion), but with a right of every believer to practice *his* faith ("*seinen* Glauben"), [b] It is a matter of the practice of the forms corresponding to that faith. [B] 11] The only passive subject of this right explicitly mentioned is the (sub)civil law, and (2) in case it [a] denies or [b] complicates the exercise (profession, practice) of this right. 13] In this case it contradicts a *natural* right. Since Pius XI is in the field of *natural* law, he is dealing with a right that is valid for all believing men, by their nature as men and by the nature of religious belief. "The universality of these words does not escape anyone who knows the circumstances of the time, and therefore the purpose of this encyclical."¹⁵⁵¹ Here we see a natural right to civil freedom to adhere to and practice one's religious belief. It is a homogeneous doctrinal development by way of precision, of application of the principle of Leo XIII (*Libertas*) to a particular case. It is reported that in *fact* Pius XI, in the passage immediately following, deals only with *Catholics*:¹⁵⁵²

"A serious parents, conscious of their duty as educators, have a primary right (*ursprüngliches Recht*) to regulate the education of the children God has given them in the spirit of the true faith (*des wahren Glaubens*), in accordance with its principles and prescriptions. B] Laws or other measures which eliminate this free will of the parents, based on natural law (*naturrechtlich gegebenen Elternwillen in Schullfragen*), or which render it ineffective by threat or coercion, are in contradiction with natural law (*im Widerspruch ztun Natur recht*) and are fundamentally immoral."¹⁵⁵³

Since Pius XI (in 0680.4) cannot possibly have the intention of contradicting what *he himself* had previously taught *explicitly* in *Divini illius Magistri* (0670.1-5), he is content

1551 J RO. DC. 1964.79.

1552 This sentence then ends up dragging PAVAN. 1965, 215 and NICOLAU, 1964, 232-233 towards the "objectivist" view.

1553 0680.4: AAS, 1937. 160; our translation correcting BP 16.38. which carries "in the spirit of their law" where the German org. says: "*des wahren Glaubens*". Here Pius XI limits himself to the case of the true faith (cf. MUÑOZ. 1964b. 29-301.

^{CHURCH}(in 0680.4) to reaffirm the *natural* right (underlined in bold) of *all* parents, including non-baptized ones, not to be prevented from educating their children as they wish, but this time, after having elaborated a broader doctrine of the natural rights of the human person (0680.2), and having applied it to the generality of believers (0680.3), he comes back to a particular case, that of Catholic parents only (0680.4).

V) *The law and abuse of the law*

This whole discussion can be avoided, because the problem lies elsewhere anyway. For if there is a natural right, the question that arises, in the case where some men *exercise it* in a manner not in conformity with objective morality, is not whether they *possess this right* or not, but whether *the abuse* (of the right) thus committed is a sufficient reason for the State to *suspend the exercise of* such a right.¹⁵⁵⁴ Now, taking the text of *Rerum novarum* literally elsewhere. Pius XI had explained that

"In order to set certain limits to the controversies which have begun to arise concerning property and the duties incumbent upon it, it is necessary first of all to establish as a fundamental principle what Leo XIII has established, namely that the right of property is distinct from its use (Encycl. *Re- mm novarum*, n° 19), [I] It is, in fact, the so-called commutative justice which prescribes respect for the various domains (*possessionum divisionem*) and forbids anyone to invade the right of others (*alienum ius invadere*), by overstepping the limits of his own domain (*proprium dominii limites ex cedendo*); 11111(A) on the other hand, the obligation of owners to make only honest use of their property is not imposed on them in the name of this justice, but in the name of the other virtues; it is therefore a duty "whose fulfillment cannot be demanded by means of justice" (*dominos autem re sua non uti nisi honeste, non huius est iustitiar, sed aliarum virum, quarum officia "lege agendo petere ius non est"*) ILitt. Encycl. *Rerum novarum*, n. 19). [I]t is therefore wrong for some to claim that the right of ownership and its morally legitimate use (*dominium honestumque eius usum*) are confined within identical limits; (B) it is even more wrong to assert that the right of ownership is outdated or lost by the very abuse or non-use of the right of ownership (*ipso abusu vel non usu ius proprietatis perimi autamitti*)."¹⁵⁵⁵

Let us summarize: [I] Principle: distinction between [AJ the *right* and [B] *its use'*; thread I Positive application, where JAJ and [BJ overlap: mention of a *juridical* abuse, violation of commutative *Justice*; implicit idea that such a *juridical* abuse can be repressed "by legal means";¹⁵⁵⁶ 7 [IIIJ 1^e negative application: [B] mention of a merely *moral* abuse, contrary not to justice but to the "other virtues"; [A] therefore not repressible by means of justice; [IV] 2^e negative application: rejection of the confusion between JAJ the limits of the *right* and JBj the limits of its *morally good use*; [V] 3^e negative application: rejection of the idea that [B] the abuse or non-use of the right of property [A] makes the right of property itself disappear; all based on *Rerum novarum*, n° 19.¹⁵⁵⁷ Thus, although one has no affirmative juridical right-permission to misuse one's property, one has a negative juridical right-requirement not to be prevented from doing so, since no one can in justice prevent it; and although one has no affirmative juridical right-permission not to make morally obligatory use of one's property right, one has a negative juridical right-requirement not to be compelled to do so.¹⁶¹ "

"It is not from human laws, but from nature that the right of individual property emanates; public authority

1554 This abuse is not the object of the law, but the non-repression of this abuse can be the object of the law; cf. moreover LEFEBVRE Marcel. M°\ 1985.11.06. 14.

1555 0674 (here: 0674.1) PIEXI, 1931.05.15: Encycl. *Quadragesimo anno*; § 86; AAS, 1931, 177-228 (here 192); BP 07.89-176 (here 114-115. which we correct); DC, 1931, 1403-1450.

1556 Pius XI gives the lesion of *commutative* justice as a *sufficient* reason for repression; but it does not explicitly exclude that *legal* and *distributive* justice can also come into play. According to 0681.4, legal justice, that is to say towards the common good, is also coercively exigible.

161 "cf. 0620.1. Cf. also PIE X, s., 1913.01.03, already quoted.

cannot therefore abolish it; all it can do is to temper its use and reconcile it with the common good."¹⁵⁵⁸

Pius XI establishes as a general principle that the duties of virtues other than justice cannot be imposed by law: "*aliarum virtutum, quorum officia lege agenda petere ius non est*". Then, in this last case, the authority which constrains or prevents "exceeds the power which was entrusted to him", thus carries an unjust law by abuse of competence, thus injustice (Cf. 0245.). In the same way for the questions that we asked ourselves about the freedom of the consciences: the one who abuses in a only moral, not juridical way (i.e. not unjust) of his right to the freedom of the consciences, does not lose this right. For, correlatively, the State does not have competence to judge the abuses of conscience, except when the rights that it must defend are at stake: those of the individuals and those of society.

Thus:

"Only Christian doctrine [...] can fully claim human rights and freedoms, because it alone recognizes the value and dignity of the human person."^{*,62}

Conclusion of Chapter 14

Following in the footsteps of Leo XIII, Pius XI :

1) recalls the traditional Catholic doctrine of the duties of the individual and of societies towards the Truth, God and the Church.

a) As for the duties towards the Truth, he excludes freedom of conscience, while admitting, like Leo XIII, a certain freedom of conscience.

b) With regard to duties towards God, he instituted by a special encyclical a feast of Christ the King, in order to further inculcate in the holders of civil authority their duties towards the social royalty of Christ.

c) As for duties towards the Church, he again instills in theory and practice (especially in Italy) the goodness of the system of the Catholic religion as the religion of the State, firmly rejecting the separation of Church and State as an ideal in a Catholic country, while admitting that one may, of necessity, have to live it, and in this case, in a friendly form. He recognizes that the situation is different in non-Catholic countries, where the Church can only demand common law and freedom. In Catholic countries, erroneous cults must be considered speculatively as "tolerated", that is, as unimpeded evils, not as goods, whatever status the law may give them in practice.

2) It also develops a doctrine of the fundamental rights of the human person in the face of fascist, Nazi and communist totalitarian aggression, recalling the anteriority of the person over the State, the religious incompetence of the latter, and the right of every believing person to the possibility of practicing his or her belief as he or she wishes to be lived. This is especially true of non-Catholic parents, who have a natural right not to be prevented (by anyone, including the Catholic State and the Church) from educating their offspring, even in a non-Christian, and therefore erroneous, religion. This is also the case for the Orthodox persecuted by the Bolsheviks. Finally, he reminds us, as regards the natural right to property, that to abuse it morally and not legally, or not to use it, does not make one lose the use of it.

¹⁵⁵⁸ 06743 :AAS. 1931. 194 = BP 07.117 = DC. 1931.1418.
16210685. : AAS. 1938.341-342;DC. 1939.4.

CHAPTER 15.

15. POPE XII (1939-1958)

PIE XII maintains the traditional Catholic doctrine (15.1.).¹⁶²² But he takes the helm of Peter's boat "in this period marked by a terrifying contempt for man." ^J⁶²² II therefore develops considerably the doctrine of the fundamental rights of the human person, especially the freedom to worship God (15.2.). He deepens the doctrine on the case where the man abuses his right to freedom, adhering to the error and committing the evil, objects sometimes of civil tolerance, and which in certain circumstances, one does not have any right to repress or to prevent (15.3.).

15.1. Duties towards the true religion

Pius XII also rejects "moral and religious agnosticism", both in individuals and in the constitution of social and political life.¹⁶²³ He therefore teaches religious duties on the one hand of society (15.1.1), on the other hand of individuals (15.1.2.).

15.1.1. The duties of societies towards God, Christ, the Church

As religious duties of societies, Pius XII mentions the more general one of respecting the sovereignty of God over society (I), followed by the specifically supernatural ones of respecting the social kingship of Jesus Christ (II) and the competences of the Church (III).

AAS, *Discorsi di PioXH*: orig. + franç.: *Actes de PieXU*. 10 vols. (1-8 + 19-20) (= BP). 1949-1960; *DPPieXII*; *RH*, *DC*; *PIN*, *LREP*.

1623 07|6. PieXU. 1945.10.19 : Letter *Ben volentieri*, to Card. Lavitrano: AAS. 274; *Discorsi di PioXU7*, 543 546; OTTAVIANI, 1963. 278-279; *DC*, 865-868; *DPPieXII*, 246. Several agreements or concordats (xissés under his reign will come to apply this principle.

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I) Give back to God...

*Summi pontificatus*¹⁶²⁴ denounces

"the error contained in the conceptions which do not hesitate to untie the civil authority of any species of dependence with regard to the Eternal Divinity (*Sempiterno Numine*), first cause and absolute master, either of the man or of the society (...)." ¹⁶²³

The pope therefore calls for the presence of God in political life, etc., <627c ar "the order willed by God embraces the whole of life, without excepting public life." <628 The practice of the duty of submission to God, moreover, brings lasting prosperity to states and is necessary for the common good, respect for human dignity, <629 and other values of the common good.>⁶³⁰

II) The social kingship of Christ

This same first encyclical inculcates the social kingship of Christ against

"The blind and self-conceited unbelief [which] has in fact excluded Christ from modern life, especially from public life (*ex publica re*), and with faith in Christ has also undermined faith in God. The moral values according to which, in other times, private and public actions were judged, have fallen, by way of consequence, as if in disuse; and the much vaunted secularization of society (*civillis sacielas*), which has made ever more rapid progress, removing man, the family and the State (*publica.- rei potestalem*), from the regenerating beneficent influence of the idea of God and the teaching of the Church, has made reappear, even in those regions where for so many centuries the splendors of Christian civilization shone, the ever clearer, ever more distinct, ever more distressing signs of a corrupting paganism {...}." <631

Pius XII will insist again on this royalty in the same year. <632 then in 1941, 633 in 1952, 1634 etc.

III) Duties towards the Church

He professes for civil and religious societies what might be called A) union in liberating distinction; as opposed to B) separation in oppressive absorption.

A) For a "healthy secularism"

Pius XII explicitly confirms the doctrine of *immortale Del*: The two societies are quite distinct in their ends ("earthly interests" and "heavenly and eternal goods"), but must unite:

"Nor should we let pass unnoticed, nor without recognizing its beneficial influence, the close union which, until the French Revolution, placed in mutual relations, in the Catholic world, the two authorities established by God: the Church and the State. The intimacy of their relations on the common ground of public life created - in general - an atmosphere of Christian spirit, which dispensed in good part from the delicate work which today priests and laymen must undertake to safeguard the faith and its practical value." >⁶³⁵

Necessary union, because they both care for the same men, etc. -⁶ -¹ * And the State (*Civitas*) must help man to reach his supernatural end. -⁶¹⁷

"There are those in Italy who are agitated because they fear that Christianity is taking from Caesar what belongs to Caesar. As if giving to Caesar what belongs to him were not a commandment of Jesus; as if the legitimate and healthy secularity of the State were not one of the principles of Catholic doctrine; as if it were not the tradition of the Church to make a continual effort to keep the two powers distinct and yet united, according to true principles; as if, on the other hand, the mixture of the sacred and the profane had not been most strongly verified in history, when a part of the faithful broke away from the Church." ¹⁶³

On the other hand, of course, the State must respect the freedom of Catholics and the Church, claimed as a divine right. -⁶ -¹⁹

B) Against liberal secularism

Liberalism is once again condemned. -**" On the one hand, the Church cannot be

<625 070 J, Pius XII. 1939.10.20: Encycl. *Summi pontificatus*; Latin orig.: AAS, 413-453 (incomplete) (pp. 445-446 cited by *DH*, note 33); BP 1, 198-262; French transl.: AAS. 481-509; DC. 1251-1275; DPPieXH, 266-298; RH I, 3-39.

inserted into the State; on the other hand, the State cannot be coldly indifferent to the Church.⁶⁴ - *A fortiori*, it must respect its freedom, which is the bulwark of human freedom.¹⁶⁴²

1635 0743, PiusXII. 1951.10.14: to the Congress of the Apostolate of the Laity; French orig.: AAS. 785; DC, 1497-1504; DP. 420. IMSf. 0744.1: AAS. 1952. 10; DC. 6.

- 637 See 07013: AAS. 1939. 432 (where the typography has skipped several pages - including our quotation - between 'idcirco' = BP 1, 230, and 'Hoc tantum agendi modo' = BP 1. 242. Here. see official transl. 1939.495. Same idea in 0714. P1E XII. 1944.12.24: RM *BeniRnitas et huinanias... Già per la vevla voila*, to the whole world (on democracy); AAS, 1945. 10-23 (p. 14 cited in *DH* note 1): (here 21-22); BP 6.245-273: DC. 1945,1/2-12; DP. 1944,242-256 (here 254-255); *RH* 2,1722-1738.

- 6380788. Pius XII, 1958.03.23: Alloc. *Alla rosira filiale ridiiesta*: AAS. 216-220.-ORLF. 1958.01.04;DC. 453 457; DP. 134-139: *RH* 3,2533-2539.

- 639 Cf. 0736.; 0741. bis.

IM0 Cf. 0734. S. C. OF THE SEMINARIES. 1950.03.07: *Letter to the Ordinaries of Brazil*: AAS. 841; *DPPieXII*. 75-76; and 73.

1641 Cf. 0726 (here: 0726.1) PIE XII. 1947.10.29: to the Rota; AAS. 493-498 (here 495); DC. 1540-1544: DP. 319 325 (here 321); *RH* 2, 1334-1340.

1642 Cf. 0736. : DP. 1950.263.

"The struggles which, forced by the abuse of force, she [the Church] had to sustain for the defense of the freedom received from God were, at the same time, struggles for the true freedom of man.

"Whether she fights to conquer or defend her own freedom, it is still for true freedom, for the primordial rights of man that she does so,"¹⁶²⁵

In turn, the Church, religion, *render to Caesar* what is due to him, and contribute to the prosperity of civil societiesJ¹⁶²⁶

15.1.2. Duties of individuals: moral obligation and internal limits of civil liberty

Like all his predecessors. Pius XII states the duties I) natural and II) supernatural of individuals towards the truth (especially religious) and the moral good.

I) *In the natural order*

In the natural order, he firmly maintains the following principles: A)at the individual level, there is no moral freedom to adhere to evil; B)at the social level, there is no civil freedom to do evil.

A) **No moral freedom to do evil**

To the false freedom of conscience,¹⁶²⁷, the so-called moral freedom to do evil, Pius XII opposes two bulwarks: 1) on the one hand, the obligation to follow one's conscience, which must itself be subordinated to objective norms; 2) on the other hand, the non-existence of a right to evil.

1) *The moral conscience*

Pius XII often evokes the moral conscience, both individual¹⁶²⁸ and collective,¹⁶²⁹

1625 0730 (here: 0730.2) Pius XII, 1949.09.25: to the Humanist Congress; AAS, 555-556.

1626 See e.g. in 0745.8 and 0746.

1646Cf., for the expression, 0723.2-3.7; 07263: AAS, 1947.496; *DPPieXII*. 323; 0746.

1628 cf. 0723.7: "the healthy conscience in man is the voice of God"; 0730.2: "consciousness of acting under the gaze of a personal God".

1629 cf. 0707. "conscience of modern society"; 07233: "modern conscience"; 0772.4: 44S, 1955, 678: "conscience of the Church".

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natural as well as supernatural.¹⁶³⁰] will dedicate an entire speech¹⁶³¹ to

"What is most profound and intrinsic in man: his conscience" J.⁶⁵ - "the most intimate and secret core of man", where he is "alone with himself, or better, alone with God - whose voice is heard in the conscience - and with himself". "The conscience is therefore [...] a sanctuary" J.⁶⁵² "the spiritual faculty which, in particular cases, indicates to the will, so that it chooses them and is determined by them, the acts which are in conformity with the divine will", "faithful echo, pure reflection of the divine rule of the human actions".³¹⁶⁵

"The man has the possibility and the obligation to perfect his nature, not as he wants, but according to the divine plan. He must not follow his instincts, but the objective norms. He must not follow his instincts, but the objective norms [...], which are imposed on his intelligence and his will and which are dictated to him by his conscience and by revelation. The conscience will enlighten itself by questioning the opinions of others and the traditional wisdom of humanity. [...]"⁶ >

2) No right to evil

Pius XII excludes any right to evil or evil.

"Freedom can easily become a captious word (...) yet it is obvious and fundamental to observe that man, who has received from his Creator the gift of freedom of choice between good and evil, does not have the right to choose evil, but he does have the privilege of freely choosing good, and this is his duty, and thus he deserves the eternal reward which God has destined for him."¹⁶ 55

B) No civil freedom to do evil

Immediately following the previous text, he summarizes the familiar themes of freedom of thought and the press.

1) Civil liberty cannot have falsehood and evil as its object

"Freedom of the press, like all other freedoms, of action, speech or thought, has its limits; it does not permit man to print what is evil or what is known to be false, or what is calculated to secretly gnaw and destroy the moral and religious fiber of individuals, and the peace and harmony of nations. It must keep man from being shackled by material or selfish interests, while he pursues the laudable purpose of exposing the truth and upholding the rights of justice. Obviously, the first postulate of such freedom is to have access to the truth."¹⁶³²

And "what is not known to be false"? Pius XII does not say a word about this. Like Leo XIII, he only deals with "*opinionum mendacia*".

2) Civil liberty must take the true and the good as its goal

If he condemned the freedom to do evil, he sometimes called for "the dignity and freedom of conscience of each person",¹⁶³³ obviously taking the expression in the second Leonian sense (cf. 0616.19). It is a question of a "true and legitimate liberty" (0718.), of a "liberty, we want to say, to tend to what is true and good." "If it is a question of *tending* to the true, it is because we are *not yet* in the true. And in the meantime? Pius XII does not specify this, although he himself (elsewhere) masterfully expounded the foundations of the doctrine of the *semina Verbi*.¹⁶ TM Freedom "has nothing in common with unbridled license, the overflow of wantonness; true freedom is, on the contrary, that which guarantees the profession and practice of the true and just within the realm of the divine commandments and within the framework of the public good." -i⁶ ""

II) In the supernatural order

In the supernatural order, 1) there is no moral freedom not to adhere to the faith; 2)

1630 Cf. e. g. "human and Christian conscience" in 0704. Pius XII, 1940.06.02: to the Sacred College; AAS, 273 274; BP 2, 120-132 -, DP, 186-193; RH 2, 1967-1977; La Paix internationale (coll. EP), t. I, Solesmes, Bruges, pesd. 1956. n° 338,262-263; and "Christian conscience" in 0760.15.

16500745. (= 0745.1 -8). Speech quoted several times by DH and GS 16.

1632 0721. *Ibid*, immediate continuation of the previous one.

1633 0746.

there is a civil freedom of the act of faith (which cannot be forced) and a possibility of invincible ignorance in matters of faith; 3) there is no intra-ecclesial freedom of the subject of the Church not to be punished by the Church for his faults against the faith.

A) The moral duty of individuals to adhere to the faith

As the Pontiff notes, the advocates of naturalistic and rationalistic freedom "appeal to the principle of 'freedom of conscience', to the principle of 'tolerance' in matters which concern the spiritual life, especially the religious life", maxims which they themselves violate as soon as they are in power.⁶⁶ *

"...) We must add that the ecclesiastical tribunal, in the exercise of its jurisdiction, cannot make its own the rule followed by the civil courts. The Catholic Church, as We have already said, is a perfect society which has as its foundation the truth of the faith infallibly revealed by God. Anything that opposes this truth is necessarily an error, and error cannot objectively be given the same rights as truth. In this way, freedom of thought and freedom of conscience have their essential limits in the truthfulness of God revealing. We said their essential limits, if really the truth is not equal to the error and if really the healthy conscience in the man is the voice of God, "the "⁶⁶

There is no right to error. There is an obligation to follow one's well-formed conscience, not freedom to choose error. What happens if one abuses one's authentic freedom of conscience? Pius XII does not deal with this here.

B) The right of the Church to punish faults against the faith

On the other hand, if one may say so, freedom of conscience exists even less in the Church than in civil society and individual life. Indeed:

"it follows that a member of the Church cannot without fault deny or repudiate Catholic truth already known and admitted; and if the Church, having acquired the certainty of the fact of heresy and apostasy, punishes it, for example, by excluding the guilty party from the communion of the faithful, she remains strictly within the sphere of her competence and acts for the protection, so to speak, of her domestic right."⁶⁶³

What punishment can the Church use? Pius XII evokes only excommunication, but *assertive*, not *exclusive*. As for the Inquisition :

"Among the goods that the ecclesiastical tribunals (binding the Ordinaries of the places that the Apostolic See) have, in the course of history, defended sometimes harshly, we must point out the faith itself.

¹⁶⁶⁰ 0722. Pius XII, 1946.09.14: RM *The particular affection*, to the Swiss people; AAS. 374-375; DC. 1143-1146; DP. 281-283; RH2.1739-1742 - PIN977.

¹⁶⁶¹ 0723. (here: 0723.2.) Pius XII, 1946.10.06: to the Rota; AAS. 391-397 (here 392-393) (p. 394 cited by DH, note 9); *Discorsi di Pio XII* 8, 255-264; BP 8. 186ff.; DC. 1185-1191; DP. 300-307 (here 301-302); RH2, 1324 1333.

¹⁶⁶² 0723.7 : AAS. 1946,394-395; *The Church*. no. 1023; *DPPIeXII*, 304.

¹⁶⁶³ 0723.7.

foundation of all supernatural life. The tribunal for the defense of the Catholic faith is therefore a legitimate organ of the judicial power in the Church, as the latter is a perfect religious society. Its role is to respond legally to any attack on one of its most vital and important goods. The crimes of heresy and apostasy have not and cannot leave the Church indifferent and inert. No doubt, in the course of the centuries, the tribunal charged with the defense of the faith has been able to take forms and methods which were not required by the very nature of things, but which can be explained in the light of particular historical circumstances; it would be wrong, however, to want to draw an argument against the legitimacy of the tribunal itself."^{166W}

Pius XII thus implies that the repressive forms and methods of the Inquisition, if they can be explained by the historical circumstances, are not totally justified by them. Here Pius XII is thinking in particular of the inquisitorial torture, which he will condemn without hesitation as contrary to natural law.¹ ¹⁶⁵

15.2. The fundamental rights of the human person before the State

Pius XII determines the competence of the State (15.2.1.). From this he deduced the correlative doctrine of the fundamental rights of the human person (15.2.2.).

15.2.1. Exact role of the state

Pius XII, in a positive way, assigns to the State its value (I); then, in a negative way, traces its limits (II).

I) The positive value of the state

It teaches the real authority and coercive power of the state (A), based on its God-given purpose and mission (B).

■**0723.1 :AAS. 1946.392 -.DPPieXII. 301. Similar statement in 07263.
1665 0758. Pius XII, 1953.10.03: to the Congress of Penal Law; AAX 730-744. *Discorsi di Pio XII* 15.335-353: DC. 1349-1362; DP. 464**81 (here 07S8.4-5: DP. 471-472); RH I. 184-202. citing for this 0103. NICOLAS 1^o. 0866.11.13, and regretting that this answer was so little known between 866 and 1953 (0758.6: *ibid.*). See likewise 0764. P1E XII, 1954.10.15: to the Congress of Criminal Police; AAS\ 598*605; DP, 446-453. After Fit XII. torture was consistently condemned without any restriction by the magisterium. Cf. e.g. LG 27 and the 37 documents (prior to Dec. 31, 1995) in which JOHN PAUL II mentions this repugnant practice, 33 of which condemn it, without making any distinction or restriction: JOHN PAUL II, 1979.03.04: *Redemptor hominis*. 17 b; 1979.10.02: general audience, 8; 1979.12.08: Message for the World Day of Peace, 3; 1980.11.14: to the Pontifical Council *Justitia et Pax*, 4 a; 1980.11.30: Encycl. *Dives in misericordia*. 11 b; 1981.02.02: to the *Nato Defence Cutleae*. al. 3; 1981.12.12: homily at the 450^o anniversary of Our Lady of Guadalupe, 6 e; 1982.02.19: to an international congress. 4; 1982.05.18: at the International Institute of Humanitarian Law, para. 7; 1982.06.15: at the Red Cross. 4. 5. 7; 1983.01.15: to the Diplomatic Corps, 5 b; 1983.01.18: to the Pontifical Council for Culture. 8 a : 1983.11.26: to the Presidents of the European Parliaments, 5 a; 1983.12.12: to the European Court. 3 b *. 1984.01.14: to the Diplomatic Corps, 4b; 1984.09.13: homily in Moncton (Canada). 8a; 1984.12.02: Apostolic Exhortation. *ReanudiuiM and Poenilenlia*, 2b; 1985.04.07: Easter Message, 8b; 1985.05.20: to the Constituted Corps (Brussels). 5d; 1985.10.14: General Assembly of the UN. 6b; 1986.01.11: to the Diplomatic Corps. 12 a; 1986.03.30: Easter Message, 5b; 1986.07.07: in Barranquilla (Colombia), 9b; 1986.10.05: at Gerland Stadium (Lyon), 22b; 1987.04.07: to the faithful of Mendoza (Argentina). 3 d; 1987.05.26: to the XII-^o General Assembly of *Caritas*, 1; 1987.10.19: to various pilgrims (Vatican), 12; 1988.11.10: to the working community of the Churches of Switzerland (Vatican), 3; 1988.12.30: Apostolic Exhort. *Chrhiffideles laici*. 42; 1991.10.19: Mass in Vitoria (Brazil). 3; 1992.09.26: to the Bishops of Ireland *ad Umina*, 3; 1993.03.01: to Mr. Boutros-Ghali. al. 2; 1995.10.06: Mass in Brooklyn, 3. See also CCC 2297.

A) The real authority of the State generates the duty to obey

1^o The primacy of the human person 2^o cannot be understood as the negation of authority:

" [1^o] The absolute order of the beings and the ends, which shows in the man an autonomous person, that is to say a subject of duties and inviolable rights from which derives and to which his social life tends, understands also the State as necessary society, covered with the authority without which it could neither exist nor live. [If, therefore, men, in availing themselves of personal liberty, denied all dependence on a superior authority with the right of coercion, they would thereby undermine the foundation of their own dignity and liberty, that is, that absolute order of beings and ends.⁶⁶⁶

B) The high purpose of the State is the common good

Pius XII, as early as 1939, determines the three tasks of the State-authority at the service of man's natural and supernatural perfection:

"Civil sovereignty (*civitatis imperium*) was indeed willed by the Creator (as our great predecessor Leo XIII wisely teaches in the encyclical *Immortelle Dei* [Acta Leonis XIII 3, p. 118]), so that it would regulate political life (*publicam rem moderetur*) according to the prescriptions of an order that is immutable in its universal principles, and so that it would make it possible for the Church to be more effective in the world. [18]), so that [1] it would regulate political life (*publicam rem moderetur*) according to the prescriptions of an order immutable in its universal principles, [2] it would make it easier for the human person (*humaiue personal*), in the temporal order, to obtain

physical, intellectual and moral perfection, and [3] it would help him to attain his supernatural end. "1667

The (mediate) "ordination" of society to the natural perfection of man is the "primordial law" of the common good.¹⁶⁶⁸ Sound reason is sufficient to establish the basis for a real and valid common good; therefore, Catholics can collaborate with others to build it.¹⁶³⁴

"It is integral the noble prerogative and mission of the State (*res publica*), to control, help and regulate the private and individual activities (*privata singulorum incepta et opera recognoscat, temperet atque promoveat*) of national life (*in nationis vita*), in order to make them converge harmoniously towards the common good (*aeque ad commune omnium bonum*), which cannot be determined by arbitrary conceptions, nor can it find its primary law in the material prosperity of society (*civilis societatis prosperitate*), but rather in the harmonious development and natural perfection of man, for which the Creator has destined society as a means. " °¹⁶³⁵

II) *The limits of the state's value*

Thus, the state and civil society are intended as *means* for man (A), not as all-absorbing ends (B).

A) *The state and society are means*

Taking up the doctrine of Leo XIII and Pius XI, Pius XII gives a thorough consideration of the relationship between the society-whole and the person-part.¹⁶³⁶ He essentially brings out three ideas, developed in three great speeches to doctors and nurses.

cins (1944, 1952 and 1956): 1) Society is made for man, not man for society; because 2) society is not an organic whole of which the citizens would be simple integral parts; this is why 3) the principle of totality cannot be applied without restriction to the relations between individual and society.

1) *Society is made for man*

As early as 1944, Pius XII gives us the conclusions of faith and reason on

"The limits between the respective rights of society and the individual. Without doubt, man is, by his nature, destined to live in society, but, as simple reason teaches, in principle, society is made for man, not man for society. "1672

Similarly in 1953 :

"The political community is not a physical being like the corporeal organism, but a whole that possesses only a unity of purpose and action; man does not exist for the State, but the State for man."¹⁶³⁷

And even a speech from 1952 is devoted to the question:

"Man in his personal being is not ultimately ordered to the utility of society, but on the contrary, the community is there for man. The community is the great means willed by nature and by God to regulate the exchanges in which reciprocal needs are completed, to help each one to develop his personality completely according to his individual and social aptitudes."> 4⁶⁷

It immediately provides the reason for these principles.

2) *Citizens are not members of an organic whole*

"The community considered as a whole is not a physical unit that subsists in itself, and its individual members are not integral parts of it. The physical organism of living beings, of plants, of animals or of man, as a whole, possesses a unity that subsists in itself: each of the members, for example, the hand, the foot, the heart, the eye, is an integral part, destined by its whole being to fit into the whole organism. Outside the organism it has, by its own nature, no meaning, no purpose; it is entirely absorbed by the totality of the organism to which it is connected."><75 "It is quite different in the moral community and in every organism of a purely moral character.

1634 Cf. 0782.1-2 PIE XII, 1957.04.25: to "Pax Romana"; AAS. 296-300; DC. 645-649; DP. 200-204; RH3. 2835-2840; 0786. P1EX11. 1957.12.22: RM of Noël Leva *Jerusalem*; AAS. 1958. 21; DC. 1958. 1-18; DP, 1957, 729-750; RH3. 2445-2469 (here no. 4573).

1635 07013 (linen).

¹⁶³⁶ See JANSSENS, 1939.

>673 0759.

11953.143 = DPPieXII. 535.

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The whole here has no unity subsisting in itself. but a mere unity of purpose and action. In the community, the individuals are only collaborators and instruments for the realization of the community goal. [...] ">576

As early as 1943, *Mystici corporis* had announced that the organs exist for the living whole, but society for its members. >⁶⁷ 7 n will go further in 1956:

"It is a departure from the clearly expressed thought of the Popes to consider man in his relation to society as if he were inserted in the "organic thought of the physical organism"; a particular physical member undoubtedly has a certain existence of its own, but, as such, it does not exist in any way for itself; it is absorbed in the end by the whole organism. The principle: "*civitas propter cives, non cives propter civitatem*" is an ancient heritage of Catholic tradition and was taken up again in the intelligence of Popes Leo XIII, Pius X, Pius XI, not in an occasional way, but in explicit, strong and precise terms. The individual is not only anterior to the society by his origin, but he is superior to it by his destiny. Society, to the formation and development of which individuals are ordered, is only the universal means willed by nature to put people in relation to other people. This relation of the part to the whole is here entirely different from that which exists in the physical organism. When man enters society by birth, he is already endowed by the Creator with independent rights; he deploys his activity by giving and receiving and, through his collaboration with other men, he creates values and obtains results that he alone would not be able to obtain and of which he, as an individual person, cannot even be the bearer. These new values manifest that society possesses a pre-eminence and a dignity of its own; but this does not entail a transformation of the relation, which We sketched above, because these same superior values (like society itself) are related in their turn by nature to the individual and to persons." 1678

3) Limits to the application of the "totality principle"

a) "(...) We mean the principle of totality. It affirms that the part exists for the whole, and that consequently the good of the part remains subordinate to the good of the whole; that the whole is determining for the part and can dispose of it in its interest. The principle derives from the essence of notions and things and must therefore have absolute value."

b) "Respect for the principle of totality in itself! However, in order to be able to apply it correctly, one must always first explain certain presuppositions. The fundamental presupposition is to clarify the *quastio facti*, the question of fact: are the objects to which the principle is applied in the relation of whole to part? A second presupposition: to clarify the nature, the extension and the narrowness of this relation. Is it on the level of essence, or only on that of action, or on both? Does it apply to the part under a certain aspect or under all aspects? And in the field in which it applies, does it absorb the part entirely or does it still leave it a limited finality, a limited independence? The answer to these questions can never be inferred from the principle of totality itself: that would be like a vicious circle. It must be derived from other facts and other knowledge. The principle of totality itself affirms only this: where the relation of whole to part is verified, and in the exact measure in which it is verified, the part is subordinated to the whole, the latter can, in its own interest, dispose of the part."¹⁶³⁸

c) "Speculation cannot be granted the unlimited right to systematize and construct, even when it coincides with papal declarations, and this in matters that concern the fundamental questions of law in general. It is by no means proven that the starting point and foundation of every juridical structure and of every justification of law is the realization, willed by the Creator, of perfect human nature, and that this goal postulates the subordination of the individual to the society on which he or she immediately depends, from this society to a higher society, and so on, until the perfect society. This way of looking at things is contrary to what the last Popes declared on this subject. Nor should we want to distinguish in the thinking of the Popes between the order of actual realization and that of finality. The Popes have heard and wanted to be heard from both sides the fundamental principle of the origin of the right to life. It is undeniable that many consider the principle of totality as determining in the understanding of the relationship that unites the individual to society. But the application of this principle to concrete questions concerning the origin and limits of the right to life, which we are now discussing, raises serious objections. First of all, it is forgotten that the principle of totality applies only to the whole as such with respect to the part as such: this is the question of law. But the question of fact also arises: are the two terms in question in a relation of whole to part, and which one? Already in the address of September 14, 1952, when the precise limits of society's right to the body and life of natural persons were to be determined, We explained the meaning and importance of the principle of totality, and expressly warned against the erroneous application of this principle."¹⁶

80

B) The state is not an all-absorbing end

And, logically, to condemn the totalitarian state (whether or not based on suffrage):

¹⁶³⁸0751.4-5 : A4S. 1952.787-788 = DP. 462.

"To consider the State (*rem publicam*) as a Tin to which everything must be subordinated and directed could only harm the true and lasting prosperity of nations (*natioimm*). And this is what happens, either when such an unlimited empire is attributed to the State (*rei publicae*), considered as a mandate of the nation (*iiatiouis*), of the people (*populi*), of the ethnic family or even of a social class (*alicuius civiuui ordinis*), or when the State (*civillas*) claims to be the absolute master of it, independently of any kind of mandate."¹⁶⁸¹

By destroying private initiatives, such a state also harms the public good.¹⁶⁸² In his famous Christmas RM of 1944, he again condemned state absolutism, even disguised as "democracy":

"State absolutism (which cannot be confused, as such, with absolute monarchy, which is not in question here) consists in fact in the erroneous principle that the authority of the State is unlimited, and that in the face of it, even when it gives free rein to its despotic views by going beyond the boundaries of good and evil, no appeal to a higher law that is morally binding is admitted."¹⁶⁸¹

Pius XII will summarize all this thinking after the war and the promulgation of the UDHR:

"What, then, is the true notion of the state, if not that of a moral organism founded on the moral order of the world? It is not an oppressive omnipotence of all legitimate autonomy. Its function, its magnificent function, is rather to foster, to help, to promote the intimate coalition, the active cooperation in the sense of a higher unity of members who, while respecting their subordination to the end of the state, provide in the best way for the good of the whole community, precisely in so far as they retain and develop their particular and natural character, a."⁶⁸⁴

In short, for Pius XII as for Leo XIII and Pius XI: "man and the family are by nature prior to the State (*civitatem*) a."⁶⁸ * And, quoting literally Leo XIII, to continue the preceding text:

"Neither the individual nor the family should be absorbed by the State. Each one keeps and must keep his freedom of movement insofar as it does not risk harming the common good, a."⁶⁸⁶

Is it a question of the common good in its essential perfection (*ad esse*)? in its added perfection (*ad melius esse*)? Pius XII does not say.

15.2.2. The true rights of freedom

Pius XII applies the above text I) to the true rights and liberties of man in general, and II) to the "right and freedom to venerate the true God" in particular.

16"1 0701.4: AAS. 1939.495; original: BP 1,230-231 (missing in the Latin edition of the AtS, 1939).

16H2 07015: *Ibid*.

16X3 0714. : AAS. 1945.17; *DPPieXU*. 1944.249-250.

16040737. Pius XII, 1950.08.05: to the congress of the administrative sciences; *Diseoni di Rio XII*12,160 -. DC. 1090 1091 -.DP. 280 & 282; *RH2*, 1716-1719; *PIN* 1119.

161150701.6: trans.: AAS. 1939.495; Latin orig. (absent from AAS. 1939): BP 1.231.

1606 0737. Same ideas in 0705. PIE XII. 1941.06.01: RM to the whole world *Lu wlenità délia Peureeaxe*: AAS. 195-205 (p. 200 cited by *DH*, note 6) and *Discorsi di Pia XII* 3. 105-119 (especially 107); trans.: AAS', *ibid*, 205-215:2X7, 1946.790-798; *DP*. 1941, 142-154; *RH* 1,243-257.

I) Real human rights in general

Pius XII highlights the importance of true fundamental rights (A); then their foundation (B).

A) Importance

These true human rights are inviolable (1), and they have primacy in the common good (2).

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1) Existence and inviolability

"And first of all, you will consider that man has immediately received from his Creator rights, which the public authorities themselves are obliged to respect. [...] there are some rights and liberties of individuals - of each individual - or of the family, which the state must always protect and which it cannot violate or sacrifice to a so-called common good."*7

All the RM of Christmas 1942 teaches "the respect and practical exercise of the fundamental rights of the person"¹⁶³⁹ or "rights of the human person" "J"¹⁶⁴⁰ "fundamental rights of the person",¹⁶⁴¹ "rights {inviolably}"¹⁶⁴² "sacred of the {human} person",¹⁶⁴³ "inalienable rights" "J"¹⁶⁴⁴ * "personal and inalienable right",¹⁶⁴⁵ "rights [...] imprescriptible",¹⁶⁴⁶ "inseparably inherent to the free personality" "J"⁶⁹ ? "human rights",¹⁶⁹ "primordial rights of man",¹⁶⁴⁷ "essential rights [...] inviolable". "or "human rights",TM "innate rights",*702 "natural rights of every human being",>"³ or more simply "natural right",¹⁶⁴⁸^{U4} "independent rights",*705 "rights which are but the natural flowering of the innate dignity of his person" "J"⁷

"Whether one calls these requirements of nature "law", "ethical laws" or "postulates of nature", it does not matter. But we must recognize the fact that they exist; that they have not been established by the caprice of man; that they are ontologically rooted in human nature, which man has not shaped himself; that they must therefore be found everywhere; that consequently all public law and all law of nations find in common human nature a clear, solid, and lasting foundation."*707 "The error of modern rationalism has consisted precisely in its claim to want to construct the system of human rights and the general theory of law, considering man's nature as a being existing by itself, having no necessary relation of any kind with a superior being, on whose creative and ordering will his essence and activity depend." *78

2) Primacy in the common good

His RM to the whole world at Pentecost 1941 gives the State as its primary function: "to safeguard the intangible domain of the rights of the human person and to facilitate the fulfillment of his duties": this is the common good.*709

a) Pius XII defines the "common good":

"those external conditions necessary to the whole of the citizens for the development of their qualities and duties, of their material, intellectual and religious life";*7 ** or "re-establishment of normal and stable public conditions, such that to individuals as well as to families it is not difficult to lead a dignified, regular, happy life, according to the law of God, this common good is the end and rule of the State and its organs",*7 * * the purpose of the action of statesmen¹⁷¹² and of individuals.¹⁷¹³ "The common good, in view of which civil power is established, culminates in the autonomous life of individuals." * * 4

1639 0709 (here 0709.5) REX11, 1942.12.24: RM de Noël *Con sempre, au monde entier* (on the foundations of the internal order of the States); AAS. 1943.9-24 (here p. 19, cited by *DH*, note 2); DC. 1946.909-921 *1DP*, 1942,329 347 (here 341); *RH1*, 102-123; *P/N* 804.

16900705; 0725.2 & 07253: AAS, 1947,381; *DPPIeXH*, 254.

1641 0709.5; 0711. ; 0774.2.

1642 We put brackets around the words that do not appear each time in the expression used by the pope.

1643 0718. *P1E* XII, 1946.04.17 [or 18]: to French journalists; DC, 417-419; *DP*, 123-125; *W2*, n° 4218 4219, p. 2035-2036.

1644 07093 ; 0713. RE XII, 1944.12.15: to politicians from the U.S.A.; *Discorsi di Pio XH* 6, 221-222; *DP*, 234 235; *PH* 834; 0787. RE XII, 1958.01.10: (chemical industries); *Discorsi di PioXH* 19, 713-719; DC, 138 140; *DP*, 38; *RH3*,3514-3517 (n° 6154).

1645 0725.1 : AAS. 1947, 381; *DPPIeXH*, 252-253. Or: "personal right, prior to any state": 0790. (here: 0790.2) RE XII. 1958.05.16: to the "Nato Defence College"; AAS, 369-370 (here 370); DC. 709-710; *DP*, 262 263; *RH3*,3642-3644 (here n° 6351).

1646 0727.2 ; 0742. REXII, 1951.06.23: to the envoy of Great Britain; AAS, 552-553; *DP*. 256; *RH* 1. p. 124-126 ,*P/N* 1146.

1955.06.27 : Apostolic letter. *Sie haben, ehrwürdiger Bruder*, to the Bishop of Augsburg; "*Menschenrechte Rechtedes Menschen*"; AAS, 597; DC. 1153-1156; *RH3*.2882-2885 (here n° 5179).

16990730.2.

16487150711.

17160750.2.

*7*0730.2.

*71" Pius XII. 1950.07.15: to the Congress of Private Law: *DP*. 250-254; DC. 1095. Cf. 0713. ; 07302 :0737. ; 0742. ;

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b) On the other hand, he is inexhaustible on the subject of fundamental rights,* *75 integral part*^{*7} *7" and most precious aspect of the common good.*⁷ -⁷ Pius XII urges the "recognition and direct and indirect realization of the innate rights of man, which, as inherent in human nature, are always consistent with the common interest; from which it follows that the duty of the State is to protect them, to promote them, and that in no case can they be sacrificed to a pretended reason of State. "718 "At this critical juncture in the history of mankind, the legislators of all nations have a particularly grave responsibility. The questions on which they must decide have much more than a passing political significance. They touch upon the very roots of society, upon the inviolability of the human person, upon those inalienable rights given by

IW07583 -. *DPPieXU*. 1953,471.

ITOS 0777.1.

0790.1: AAS, 1958.369; translation: *RH*. n° 6350.

* ⁷⁰⁷ 0758.7: AAS, 1953,739-740 = *DPPieXU*. 475-476.

-70S0731.

1709 0705.. already cited.

17100709.2: AAS. 1943, 13; *PIN*782; *DPPieXU*. 1942,334.

* 7**0724. *PIEXII*, 1947.01.08: to the Roman patricial (here: 0724.1; cf. *PIN*981): *Disconidi PiuXU* 8,365-371: *DC*. 193-197: *DP*. 21-25 -.*RH* 2, 1571-1574.

* ⁷² *0708. *PIE XII*, 1942.09.20: to the men of Catholic Action: AAS. 283-284; *DP*. 234 : 0709.2.

171307093.

*7140785.

God, prior to the State, and which the State itself cannot violate without compromising its own existence. "171"

8) Basis

The "true rights of man, as willed and established by God,TM and correlative to the duties (natural and supernatural) to God,¹⁷² - are founded proximately on the equal native dignity of human persons, images of God (1); and ultimately in God (2).

1) *The equal dignity of human persons, images of God*

"Human nature, in spite of the stain inherited from the sad fall of Adam, keeps within itself a naturally Christian fund which, enlightened by the divine light and nourished by grace, can rise to authentic virtue and to supernatural life. "1722

Pius XII often returns in his speeches¹⁷²³ on the one hand, a) to the dignity of human persons; on the other hand, b) to their equality; finally, c) to a certain form of primacy of what Christianity calls "the free person, an absolute subject of right and responsible before God not only for his individual destiny, but also for the fate of the society in which he is engaged".⁷²⁴

a) Dignity

Pius XII does not tire of defending the "dignity">⁷²⁵ or "inviolability"^{m6} "of the human person", the "dignity of man",¹⁷²⁷ "man in his personal dignity as a free creature",^{172s}]a "personal dignity of man",J "personal dignity of the individual",> 3o "dignity of a free person",J "dignity of the human person",⁷²⁹⁷3o "dignity of a free person",¹⁷ -¹¹ "dignity of a free man" "J⁷³² "inherent dignity",¹⁷³³ "dignity of human nature",

17190713 (see ref. in noie 1694).

1723 cf. HURTH. 1952,246 (*Weighted appendix and montento titeoloRieo Allocutionni*),

ne,¹⁷³⁴ or "innate dignity [of the person],"¹⁷³³ of which he distinguishes between the two levels ("personal, natural, or supernatural dignity").■"This 'inalienable dignity'¹⁷³⁵ has a social significance.¹⁷³⁶ And he wants men to be proud of it.¹⁷³⁷ This "personal dignity of man,"¹⁷⁴⁰ is not entirely destroyed by sin (original or personal),¹⁷³⁸ even if it is indeed moral goodness that confers dignity on *human action*.^{TM*} We recognize the doctrine of *Liber tas*.

b) Equality

Alongside this "human dignity",¹⁷³⁹ Pius XII proclaims the "sacred principle of equality and parity among men",¹⁷⁴⁰ and in particular the need to claim for others the same rights as for oneself.¹⁷⁴¹ Hence the synthetic expression: "the equal personal dignity of all men",¹⁷⁴² * or "the equal human dignity of all, which, for its part, results entirely from the transcendent end, common to all",¹⁷⁴³ to which corresponds the divine image present in man.¹⁷⁴⁴ Pius XII means by this a native equality, not an equality of functions, authority, gifts, properties, etc. *¹⁷⁴

c) A primacy

"It is therefore, in the final analysis, (...) to the liberation of the human person, that everything must tend and converge. It is the human person whom God has placed at the summit of the visible universe, making him, in economics as in politics, the measure of all things."¹⁷⁴⁵

In fact, she is "the subject, the foundation and the end",¹⁷⁴⁶ "the origin and the goal",¹⁷⁴⁷

1734 0793.1, again.

1735 0755.2 :AAS, 1953, 183) : DP. 80.

1736 0714; AAS, 1945,12; PIN 339: DPPieXH, 1944.244-245: RH, n° 3615.

1737 0717.6, copied in 0784, already quoted; 0772.1: AAS, 1955, 675: "men who are proud of their personal dignity and healthy freedom (...) of equality (...) of human dignity."

17410793.1: AAS, 1958,692 = RH. n° 5475.

1739 0749. : 0756. PIE XII, 1953.05.14: to Italian workers of the ACLI; AAS. 405: DC. 783-787: DP. 210; RH 2,1610-1617; 0772.1; 0784.; 0791. Pius XII, 1958.07.14: Encycl. *Meminisse invai*: AAS. 451 (*liumatur digiti- talix*); DC, 961-968; DP, 379-388; RH 3,2385-2396 (here n° 4449-4450).

17+4 07173: AAS, 1946, 145; DPPieXH, 74; 0717.6; 0744.2; 0756; 0772.1; 0775.1: "The personal dignity of the individual: all men are equal by nature, by origin, by destiny... They are all brothers in Jesus Christ"; 0784; cf. already 0684.2.

17450714. AAS, 1945, 14. quoted in *DH* note 1: "In un popolo degno di tal nome j1 cittadino sente in se stesso la coscienza della sua personalità, dei suoi doveri e dei suoi diritti, della propria libertà congiunta col rispetto della libertà e della dignità altrui"; see also 0761. Pius XII, 1953.12.24: *H popolo*, RM of Christmas to the world; AAS, 1954, 15; DC. 1954, I-I; RH 1, 315-329; DP. 1953, 656: "freedom, dignity and the rights of others": 0781. DELL'ACQUA, 1957.04.08: Letter to *the General Assembly*, from the Secretariat of State, to the International Catholic Organizations; OR. 1957.04.19; DC, 603-605; DP. 144-146; RH 3, 3684-3687 (here no. 6420): "(...) "the loyalty which honestly recognizes in others the same rights as one demands for oneself. r [*Discorsi di Pio XH 14(1952)57*]. [...]"

17460744.2.

1740756.

1744 0706; 07093: AAS. 1943, 14; PIN 735; DPPieXH. 1942. 335; 0717.6 : 0717.7: AAS. 1946. 14"; DPPieXH. 77; 0732.1, quoted just now; (and 0732.2: *ibid.*: DPPieXH. 1949. 500-501; RH 1, 156-157. n°375); 0733. PIE XII, 1950.01.23: to American journalists .OR. 195D.GI.23-24. *Discorsi di Pio XH 11.361*;DC.

193-194 (here 193) = DP. 22: "[...] man taken individually is in his true nature the image of God, endowed with innate rights which no purely human power can violate (...J"; 0772.1; 0784.; 0793.1.

1745 0715. Pius XII, 1945.07.14: Apostolic Letter, "We have taken, at the XXXII *We have taken*, at the XXXII" social week of France, AAS, 211: DC, 549-550; DP, 168; RH 1,368-370.

¹⁷⁴⁶ Cf. e. g. 0714: AAS. 1945. 12; RH. no. 3615; 0773. DELL'ACQUA, 1955.09.25: Letter *In the course of two sessions*, from the Secretariat of State, to the presidents of the "Social Weeks of Canada"; DC, 1289-1294; DPPieXU. 320-326; RH 3. 3561-3565 (here no. 6226); 0792.2: DP, 1958. 479. citing 0709.1: AAS. 1943, 12; PIN 778; cf. DP, 1942.333.

¹⁷⁴⁷ See 0717.1.

"the origin and the end",¹⁷⁴⁸ 53 the "center of the whole social order",¹⁷⁴⁹ and of the State,¹⁷⁵⁰ "or of the civil society, itself "posterior to man and willed as a means to defend him and to help him in the legitimate exercise of the rights that God has granted him",¹⁷⁵¹ . Hence, as in Pius XI, the principle of subsidiarity.¹⁷⁵² Pius XII professes "a healthy personalism",¹⁷⁵³ where social life culminates in friendship.¹⁷⁵⁴

2) *The rights of God*

"But who will have this unconditional respect for human rights, if not the one who is aware of acting under the gaze of a personal God?"

"Transmitting" to John Paul II an idea of Leo XIII, Pius XII founded the natural rights of the human person on "the express recognition of the rights of God and of his law, at least of the natural law",¹⁷⁵⁵ . In this way, one obviously thinks of the right of God to be freely honored by man, correlative to the dignity of human persons.

11) *In particular, the right to freedom to worship the true God*

Pius XII emphasizes the "rights of freedom" in general (A), and more particularly the right to freedom to worship the true God (B).

A) *Freedom rights in general*

Pius XII very often evokes, in connection with the previously treated themes of dignity, equality and rights, that of freedom.¹⁷⁵⁶

1) *Social and civil liberty is one of the main fundamental rights*

Pius XII posits in particular as "the goal of every juridical ordinance that deserves this name" "the protection" of "personal freedom",^{<763} named elsewhere the "fundamental liberties of the human person "J" "

¹⁷⁵⁵ 0727.1 .DPPieXU, 1948,194.

¹⁷⁴⁹ 0709.1 ;0714. : AAS. 1945, 12; PIN 839; DPPieXU, 1944, 244-245; RH. no. 3615.; 0717.1; 0717.4: AAS. 1946, 145-146; DP. 74 ; 0773.

¹⁷⁵⁰ 0717.7.

¹⁷⁵¹ 0725. (here: 0725.2) P1BXII. 1947.08.26: Chirograph *We hâve Just.* to Harry Truman; AAS. 380-382 (here 381); DC. 1412-1418; DP. 251-255 (here 252-253); RH 2. 1879-1882 (here n°3916); 0701.6.; cf. 0674.2, cited at 1472.

¹⁷⁵² 0717.2: AAS. 1946, 144-145: DPPieXU. 1946,73.

¹⁷⁵³ 0785. Pius XII, 1957.12.06: to the Council of European Municipalities - AAS. 1958, 32; DC. 1958, 26-21; DP. 1957.713-715; RH 3.3672-3675 (here n° 6397).

^m "VH1.5;AAS. 1946. 146; DP. 1946.75.

¹⁷⁵⁵ 0728. PIE XII, 1948.1 I.: to the European Union of Federalists; AAS, 509; DC, 1537-1540; RH, n°4055. For "rights of God", cf. already Pius X. s., 1905.06.11: *Encycl. // Jenno proposuo*; DPPieX, 1, 299 & 305; 1906.02.21: *Alloc. Gravissimum apostolici: DPPieX, 1,345, etc.*

¹⁷⁵⁶ Cf. e.g. several texts already cited, and 0704; 0710.2; 0713; 0717.6; 071S. : 0720.2 ; 0721. ; 0722. ; 0723.1.3.7 ; 0724.2 : PIN 982 ; 07263 ; 0728. ; 0728. bis. ; 0730.1.2 ; 0732.2 : 0734. : 0736. ; 0737. : 073.". 0741. bis. ("religious freedoms" and "freedom of movement in the religious field"); 0742. -. 0745.6.8 : AAS.

1952, 276-277; 0746; 0749 ("civil and religious liberties"); 0752; or 0754. PIE XII. 1952.1231: *Message From a heart ftUed with Joy*, to the Malabars; AAS, 1953, 096-099; DP, 1952, 580-584 (the "dignity and natural rights of every human being"); 0761. ; 0770. : "the dignity and rights of man ; the freedom of the individual"; 0771. ; 0772.1 ; 0772.6 ("freedom of religious convictions"); 0773. ; 0778. ; 0788. ; 0782. : 0784. ("freedom of local communities and individuals"); 0791. or PIE XII. 1952.12.15: *Encycl. Orientales Ecetestas*. on the persecutions endured by the Eastern Churches (in Bulgaria, Romania, Ukraine, etc.); AAS, 1953,001-014 (here 9), the expression: "debitæ civibus libertatis dignitatisque cultores". See also on persecutions: 0753. PIE XII, 1952.12.24: Christmas RM "Levate capita veslra... Alzale le voslre leste..."; AAS. 1953.042-043 -.DC. 1953, 1-14; DP, 1952,566-567.

2) *The requirements of life in society set its fair limits*

But freedom "needs therefore just limits" ¹⁷⁷ "It is no longer a question here of internal limits (in the active subject and the object of freedom): those of the true and the moral good. Here, the jurist poses external limits: "the common good", ¹⁷⁵⁷ the "tranquility", and especially the "public morality" ¹⁷⁷ and, more largely, the moral offences "which seriously threaten the order of the community life", ^{176K} or still "the limits of the order and the morality".¹⁷⁶⁹ Freedom cannot extend to the right to injure "the absolute order of values" and to "endanger public morality, which is undoubtedly one of the principal elements of the common good on the part of the state," as would, for example, "unrestrained freedom." ^{177M} "unconditional liberty," "permitting the press and the film to undermine the religious and moral foundations of the people's life," a true legalization of license, unacceptable to the mere tribunal "of reason and sound moral sense."¹⁷⁷ "To understand and admit this principle, one need not even be a Christian." ¹⁷⁷²

B) The human right to freedom to worship God

As a corollary of God's right to be honored by a human person in spirit and in truth, the right of man to freedom to worship God has been expressed in various forms by Pius XII. This right always poses a problem of interpretation: what happens if, abusing according to his conscience - or even in good faith - this right, man renders deficient worship to God? Pius XII does not answer explicitly. But we can very well remember once again that "abuse does not take away the use". Besides, Pius XII often does not specify which divine cult it is about (1), even if sometimes he seems to indicate (in an *assertive*, not *exclusive* way) a right to the true cult of the true God (2).

1) *Freedom of unspecified divine worship*

Pius XII will first deal with a certain right of all to worship God.

a) The "freedom of private and public exercise of divine worship" (1940)

Already in 1940, when he spoke to the Cardinals about the need for a juridical regulation to protect the civilian population in the occupied countries, he set as a condition "*la libertà dell'esercizio privato e pubblico del culto divino*" according to the people and their language. The context seems to indicate a freedom of the *true* cult. But nothing certain can be affirmed as for the conscientious practice of cults that diverge from the truth.¹⁷⁵⁸

b) The "right to worship God, privately and publicly" (1942)

In his RM to the whole world of Christmas 1942, the Pope enumerates, among the "rights of the person" (*diritti della persona*), "the right to the worship of God, private and public, including religious charity".¹⁷⁷⁴ As in the case of Leo XIII's true "freedom of conscience" and Pius XI's "right to profess one's beliefs", one must remember on the one hand that there can be no right

1757 0737, repeating *Renan novanan*. On the limitation of freedom by the common good, cf. 0773. 1758 0704.

On the one hand, the right to use a work of art is not a right to be used for the purpose of rendering a false cult t-⁷⁷ " on the other hand, that abuse does not remove the use, therefore that those who misuse this right do not *ipso facto* lose it. One will not fail to see here again, with reason, the anticipated affirmation of the right to the RL promoted by *DH*.^m If Pius XII, addressing the whole world, had wanted to exclude this case (of erroneous worship), he should absolutely have specified it.¹⁷⁵⁹ Certainly, *it goes without saying* that a false cult has no objective right.¹⁷⁶⁰ Nevertheless, it is neither the true nor the false that have rights, but the person.

2) *The freedom to worship the true God, author of the Revelation*

Pius XII *sometimes* mentions only the "true cult" or the "true God".¹⁷⁶¹

a) The "freedom to practice religion based on faith in God" (1944)

"Foremost among these rights is the freedom to practice religion based on faith in God¹⁷⁶² and His Revelation."¹⁷⁶³

Formulas acceptable to members of the three major religious groups in the U.S.: Protestants, Catholics and Jews, as in a text addressed to envoys of President F.-D. Roosevelt (1882-1945). The same is true of the chirograph to President Truman (1884-1972), which speaks of "faith in the one true God, the Creator of all men" and even of the "personal and inalienable right to pursue this goal [of human life]" (affirmative right) "and not to be hindered in the attainment of it" (negative right)!⁷⁸⁷

And, of course, Pius XII takes this "faith" in what it has in common and therefore in truth, *tolerating* the aspects that separate Catholics and the other two communities, and which he *disregards* here. It is a question of claiming the freedom for all to be able to speak the truth in religious matters, even if it is in the name of a religion mixed with errors.

b) The "right and freedom to worship the true God" (1950)

After quoting the famous text of *Rerum novarum* on the right to freedom of the individual and the family within the limits of the common good, and applying it to the general case of fundamental rights and freedoms, Pius XII, in 1950, specifies, following his predecessor:

"We are aiming at, just to mention a few examples, the right and freedom to worship the true God, the original right of parents over children and their education."⁷⁸³

3) *Civil liberty of access to faith (1946)*

Moreover, no one should be forced to embrace the Christian faith,¹⁷ " or to enter the Church.¹⁷ ¹⁷⁵ And Pius XII refers in this regard to *Immortale Dei*.^{ist} to Lactantius (0008.). This implies a right not to be forced to become Catholic, and implicitly a right not to be

¹⁷⁷ Cf. BEA, 1966 (1963.12.13), 265; and the balanced exposition of DIEZ-ALEGRÍA. 1961a, 30-31; or again: LEVILLÉ, 1967, 273; LEVILLE, 1967, 274. about P1EX11, 1943.06.13; and 275, about HEX11. 1945.07.08.

¹⁷⁶⁰ As examples of this "first position", let's mention ALONSO & GüERRERO. 1962.50.

¹⁷⁶¹ Cf. e. g. LASSUS. 1985b, 18.

¹⁷⁶² Expression to be compared with "*Deum esse cretlun!*" [0681.6] and "all those who recognize and adore a personal God and observe his Decalogue" [0720.1: Æ45, 1946.256; PIN 966; DPPIeXH. 175]; c! "also 'faith in a personal God, legislator and judge" [0707.].

^{17K} 10713. previously referenced. '

^{17K2} 0725.1.

prevented from remaining non-Catholic. A right already met with by s. Thomas and Pius XI for non-Catholic parents. Thomas and Pius XI for non-baptized parents. Moreover, Pius XII, as we have already noted, maintains the doctrine of Pius IX on the possibility of invincible ignorance in matters of belonging to the Church, and therefore the possibility of baptism of implicit desire.¹⁷ ¹⁷

4) *The Freedom of the True Christian Religion (1952)*

Even more precise, in 1952, in a message addressed "to all the peoples of Russia" (title), he advocated a

"freedom to safeguard one's own human dignity, to know the teachings of the true religion, and to worship God as he deserves, not only in the privacy of one's own conscience, but also openly, in the exercise of public and private life."¹⁷⁸ "

And he recalls and confirms the wishes of his predecessor "that peace and freedom to profess the faith be restored to the unfortunate sons of Russia"¹⁷ ¹⁷ almost all Orthodox, to whom he does not reproach their separation, put at the account of the "vicissitudes of the history".ⁱ ^{*77} " He formulates on the other hand the ardent prayer

"That among the peoples no one be governed by force of arms, but all by the majesty of law; that each of them, in possession of civil and religious liberties within the limits of his own country, be led to concord [etc.]. 1-. Not only do they (the errors of communism) rob your souls of that supernatural light and supreme comfort which come from love of God and worship of him, but they deprive you of the human dignity and just liberty which is due to citizens (*humana quoque dignitate expoliemini iustaque libertate civibus debita*). We know that many of you preserve the Christian faith in the intimate sanctuary of your own conscience; that in no way will you support the enemies of religion. We know, too, that they ardently desire not only to believe in secret, but also, as befits free men, to affirm publicly, if possible, the Christian principles which are the sole and sure foundation of the life of the city. We know, moreover, and this is a great hope and consolation for Us, that you love and honor with ardent affection the Virgin Mary Mother of God, and that you venerate her images. We know that in the city of Moscow itself there is a church dedicated to the Assumption of the Blessed Virgin Mary.

⁷ ^{*5} Q737. LEV1LLE, 1967.279, remarks: "The 'true God' is venerated by millions of non-Catholics, and it was their rights also that Pius was certainly endeavoring to safeguard, as the audience to which he addressed himself [cf. p. 278: 'representatives of fifteen different nations'] would seem to imply."

ⁱ ^{**} 0723.4-6: AAS, 1946.393-394; *DPPieXII*, 302-304.

1785 0710.2.

1786 Black 0611.28.

1787 0729. already mentioned in Chap. on PIE IX.

17X8 074". PiusXII, 1952.07.07: Apostolic Letter. *Sacra vergente anno*; AAS. 505-506; DC, 1025-1026; DP, 292300.

17X9 Citation from 0672. : AAS, 1930,301.

1790 *UM*. cc, 1952. 1025.

in heaven. Is this not a clear testimony of the love that you and your ancestors have for the Blessed Mother of God? We address to her our supplicating prayers: That in the Russian people the Christian faith, the honor and support of human life, may be increased and strengthened; that all the deceptions, errors, and deceits of the enemies of religion may be thwarted and driven away from you; that public and private morals may be modeled in your countries on the precepts of the Gospel ; that especially those who profess their Catholic faith in your countries, even if deprived of their pastors, may be strong before the assaults of impiety and resist impassively to the point of death; that the just liberty which befits them as men, citizens, and Christians may be restored to all, as it should be: To the Church, in the first place, to whom it has been assigned by divine command to teach truth and virtue to all...[*iusta illa tibenas. qua lunnines. quie cives, (i)lue christianos decet, omnibus, ut oportet, resilluatur, Ecclesie imprimis, cuius est ex divino mandato veritatem virtutemque docere omnes*.-.pl'H ".⁷⁹²

It is about the *Christian* faith and religion, but not exclusively *Catholic*. On the other hand, it is about a right linked to the dignity of the human person, identical in all, a right destined to allow the Russians to discover the true religion ⁻⁷ ^{*11} Let us remember that Pius

XII claims religious freedom 1° even for the public; 2° even for the Orthodox; 3° mainly (*printed*) but not exclusively for the Catholics.

5) *The "full freedom to exercise true divine worship" (1957)*

In 1957, adopting the same structure as *Mit brennender Sorge*, it deals with *full* freedom, which is then claimed only (*assertive, not exclusive*) for "true divine worship", and is applied to the right of parents to educate:

"Respect for the dignity of the human person, for the intangible human rights and, more specifically, for those of the individual and the family, among which are the full freedom to practice true divine worship, and the right of parents to bring up children and provide for their proper education, is also one of the fundamental principles on which a 'Christian policy' must be based. It is for this reason that the Church must and will defend to the end the right of Catholic parents to schools that are in keeping with their convictions."-""*

6) *The right to fulfill one's duties to the Creator (1958)*

"Would it not be expected that all members of the vast human family would be happy to share in common their personal right, prior to any state, to fulfill their sacred duties to their Creator?"

Pius XII rightly declared himself "champion of the individual against despotism... of religion against persecution."-""*

C) The limits of the abuse of the right to freedom to worship God

Such formulas are in fact *applications* of the *general principle* formulated in 1942 (0709.5) to a *more particular* case, that of the true worship of the true God. Let us conclude as usual: if a right is natural, or fundamental, it belongs to all

""/145.1952.510.

mt *ibid.* DC. 1952. 1028-1031.

1793 See *ibid.*, A AS. 1952.508-509; DC. 1952.1028-1029.

1794 0780. PIE XII. 1957.03.28: to a group of the CDU of West Berlin: AAS. 288; DC. 528-529; DP. 128

129; RH 3.3566-3568 (no. 6231).

17950790.2 See, always for all believers of all religions. 0707..

1796 07253.

men. The fact that this or that man uses it incorrectly is not a *sufficient* reason to deny the holder the exercise of this right. The question of whether Pius XII "thought" only of Catholic worship or not becomes a false question.⁷⁹⁷ The question is only to know within what limits the subjective right to render true worship to the true God in private and in public protects an area of abuse of this right. Then **the objective right** itself (to render true worship to the true God) + **the zone of abuse** are no longer objects of affirmative right, but only of negative right or right not to be prevented 1) from rendering true worship to the true God + 2) from mistakenly abusing (within just limits) the right to render true worship to the true God = *DH's* RL right.^{! TM}

The silence of Pius XII on *the abuse* of the said natural right is perhaps due, historically, to the circumstances. Indeed, almost all the nations he was addressing were immersed in agnosticism or official atheism, and the states were thus devoid of any capacity to distinguish what is a "moral abuse of the right to LR as a result of error" from what is a "morally correct use of LR as a result of adherence to the truth." Moreover, non-Catholic

states, as will be recalled in the¹⁷⁶⁴ manual and the¹⁷⁶⁵ outline" of Card. A. Ottaviani, must grant the RL to all indiscriminately, since they are unable to formulate the above distinction. The discernment of moral abuse could indeed only take place in a state adhering to Catholicism. Catholics (and non-Catholics in Catholic countries) had to ask themselves, therefore, in connection with the Christmas 1942 RM, to what extent a Catholic state can repress what the Church tells it is a moral abuse of the right to private and public worship. But this was not the time for Pius XII to put such a "school question" before the universe, when so many millions of people were suffering from absolutely non-theoretical persecutions. Here again, man's adherence to some false religion was a lesser evil admitted *per accidens*, compared to this crushing of the natural virtue of religion by the Nazis and the Communists.¹⁷⁶⁶ Such a claim of the RL - at least for Christians - in atheist, secularist or Muslim countries would not shock us, but what about Catholic countries?

It is the question of the limits of the exercise of the right, of the abuse of the right and of its tolerance. It is a view of this kind which seems to have determined Pius XII to accept the prohibition of public worship and of Jewish and Protestant propaganda in the concordat Spain of General Franco.⁸⁰² Let us recall the texts: an appendix to the Concordat of 1953 confirmed § 6 of the Spanish "Charter" (*Fuero de los Españoles*) of 1945¹⁸⁰³ in the following terms:

"No one shall be disturbed for his religious beliefs nor for the private exercise of his worship. No other ceremonies or outward manifestations shall be permitted than those of the Catholic religion."¹⁸⁰⁴

It seems that such a fact can receive only one explanation within the doctrine of Pius XII, which maintains the following two principles limiting the application of morality by law:

[1X03 [2] "the criminal law (...) cannot take as its object all acts contrary to morality, but only those which seriously threaten the order of community life (...)"^{IKU6}

Pius XII also notes a little further on (and this is very important for the RL) that in order to punish one must ask oneself:

"Was the offender sufficiently aware of the illegality of his act? Was his decision to perform it substantially free? In order to answer these questions, the presumptions provided by law will be used. If it is impossible to establish guilt with moral certainty, the principle of *in dubio standum est pro reo* will be applied."¹⁸⁰⁷

So the fact is explained because Pius XII considered, as did Franco, on the one hand (most probably) that the practice and propaganda of non-Catholic religions in public in the Spain of 1953 represented a serious threat to community order (after *DH*, we would say: to just public order); on the other hand (perhaps) that there was sufficient reason to presume bad faith for the few Spanish Protestants (who seemed not to be acting "according to their conscience"). Within this framework, the only question that remains to be settled is that of limits, or, if one prefers, the discernment of "determined circumstances" in which human law has "no right to prevent" (0760.15) this evil and error, this abuse, and of circumstances in which it does, on the contrary, have the right, even the duty.

1764 cf. OTTAVIANI, 1960, II, 74-75, based on AICHNER. 1915, 164 (already cited).

IKOU OTTAVIANI, 1962, analyzed in the chapter on JOHN XXIII.

IKUl The same explanations would apply to the "freedom of religious convictions" which the Church has always "aimed to safeguard" in the Investiture dispute (0772.6).

ISO2cf. 0757. PIE XII, 1953.08.27: *Concorda!* with Spain; AAS, 625-656; DC, 1153-1167; DP. 347-366.

15.3. Legality or even obligation to tolerate religious error

One of the most pertinent opponents of *DH*, A. de Lassus, entitled one of his pamphlets: *Religious liberty: right or tolerance?* For him, these two con-

ISX3 sur les many issues raised by n°6 of *Enero de los Españoles*, cf. ALONSO & GUERRERO. 1962. 56; 105; & 111; ARBELOA. 1964, 772-773; BEA. 1963.01, 378; CAVAUJ, 1948.04.03. 37: CHAVAT. 1948, quoted in HARTMANN. 1958. 286. note 1; CORRAL. 1972c. 324-325; and CORRAL. 1972c. 351. Cf. also DAVIES. 1992, 276; DíEZ-ALEGRÍA, 1961a. 19-20; SPANISH EPISCOPAT. 1968.01.22. 932; HUNCO F. 1964.1230, 374; cf. FUENMAYOR. 1974. cap. 5, *passim*; HARTMANN. 1958, 236; LA MERA. 1972c. 316; LA HERA. 1976a, 189-190; MARTIN-MARTINEZ. 1989, xxxi; 656-659 & 662, note 63; MUÑOZ-PALACIOS, 1965a. 18; MURRAY, 1948.06.28-30,95, note 40. end; and MURRAY. 1949.09.430-131.

I "M Final Protocol, in AAS. 1953, 651-652, with reference to the *Fuero de los Españoles*, art. 6. of which *DPPIeXH*. 364, recalls the text (= *DC*, 1945,690).

ISU5 0759 (jci; 0759.2) PIE XII. 1953.10.19: military medicine; AAS. 744-754 (here 751); *DC*. 1409-1418; *DP*. 531-544 '*RH*.1.1121-1135. Emphasis on the word "required".

IHM 0758.1 :AAS. 1953.732.

1807 *DPPIeXH*, 1953,473.

⁸In fact, the notion of "right to tolerance" raises both the specific problem of the double meaning of the word tolerance (not to prevent an evil that one would have the right to prevent / not to prevent an evil, whether or not one has the right to prevent it), and that of the distinction between an affirmative right (to act) and a negative right (not to be prevented from acting). Some authors deny the validity and scope of this last distinction, such as M. Martin :

"To say that the Authority confers the *right to act* in such and such a way is to say equivalently that this Authority *leaves you free to act* in that way. And to say that this Authority *refuses the right to act* in such a way, is to say equivalently that it *prevents you from acting* in such a way, either by physical constraint or by the threat of punishment,"¹⁷⁶⁷

But this is to forget that between "denying the right to act" and "conferring the right to act" there is "not conferring the right to act" while conferring a right not to be prevented from acting by *another authority*.^{TM⁰} For example, in the face of an authority inferior to God, man may have the right not to be prevented from acting, without having received any "right to act" from that authority (nor from God), since God has given that inferior authority no right to prevent acting.

Now Pius XII taught the existence of cases in which the State was not given *any right* by God to prevent or repress error. It was in his famous address *Ci riesce*,^{TM¹} of December 6, 1953, to Italian Catholic jurists, on the subject of religious and moral tolerance and the juridical organization of relations between Catholics and non-Catholics in a multi-confessional society of nations. In it, Pius XII professed - implicitly but necessarily - the existence, in certain circumstances, of a right of the followers of religious error not to be prevented from believing and practicing their error.¹⁷⁶⁸ If Pius XII has several times evoked "religious tolerance", -⁸ -² - this time he dedicates a whole text to it, which must be read

1767 MARTIN Michel, 1988.09, "*Right to act*" and "*right not to be prevented from acting*", 17. Same misunderstanding in FONTAINE. 1993.06,18.

1768 cf. TORRE, 1954,288 (with "right to be tolerated").

and analyzed (I), then interpreted (II).

15.3.1. Analytical reading of *Ci riesce* (December 6, 1953)

Ci riesce is a text whose occasion, addressees, subject and vocabulary are legal. It is officially divided into 7 main parts, numbered in Roman numerals.^{18 -4} We have identified 25 elements in all. However, these parts and elements can be grouped into three major blocks:

- an introduction by the context, §§ I-III: the construction of the international community ;
- a doctrinal core, §§ IV-V: practical religious tolerance of the state;
- an explanation, §§ VI-VII: the religious tolerance of the State Church.

I) *The context: the international community (§§ I-III)*

1. First, here is the occasion of the text and the designation of the interlocutors:

"It is a special joy for Us ("*Ci riesce di grande soddisfazione, ...*"), dear sons of the Union of Catholic Jurists of Italy, to see you gathered here around Us and to welcome you cordially. "ISIS

2. Pius XII establishes the transition with the previous congress of jurists of October 1953 (so he has not forgotten it), and indicates the theme of the present congress:

"At the beginning of October, another Congress of Jurists gathered in Our summer residence, that of International Criminal Law. Your "Congress" has a national character, but the theme it deals with: "Nation and International Community" touches again the relations between peoples and sovereign States."¹⁸¹⁶

The construction of communities of states is a present-day necessity, due to a) the progress of communications; b) to a free will; c) to an internal law of development, which must be promoted.^{-8 -1}

/ *Communities of States*

3. Within this development,

a) Importance of Communities of States:

"[a] In this work of extension, the Communities of States and peoples naturally have a special importance, either because they already exist or because they are still only a goal to be reached and realized."

b) Legal definition:

"[b] These are Communities in which sovereign States, that is, those that are not subordinate to any other State, unite in a legal community in order to pursue determined legal goals."

c) Legal difference with ancient empires:

"It would be a misrepresentation of these juridical communities to compare them to the empires of the past or present, where races, peoples and States are merged into a single complex by force or by choice. In this case, on the contrary, the States remain sovereign and unite freely in a legal community. >>."^{8 -8}

4. Distinction by final cause:

a) A history of struggle for hegemony:

"In this respect, universal history, which shows a continuous series of struggles for power, could certainly make the establishment of a legal community of free states seem almost utopian. Such conflicts have too often been triggered by the desire to subjugate other nations and to extend one's own independent existence."

1015 0760.01.

-ms 0760.02: AAS. 1953.794; DPPieXII. 610.

1017 0760.02: *ibid*: "This mutual approach is determined not only by the incomparably greater technical possibilities and by free choice, but also by the more penetrating action of an immanent law of development. Therefore, it should not be repressed, but encouraged and promoted." IKI "0760.03 :AAS.795 .DP. 610-611.

b) A present for the search for peace of all Humanity:

"This time, on the contrary, it is precisely the will to prevent threatening conflicts that pushes towards a supranational juridical community; utilitarian considerations, which undoubtedly also weigh notably, are directed towards works of peace; and finally, it is perhaps precisely the technical rapprochement that has awakened the faith slumbering in the minds and hearts of individuals in a superior community of men willed by the Creator and rooted in the unity of their origin, their nature and their end."¹⁷⁶⁹

IL The Creator and natural law, sources of all law

5. A creationist and jusnaturalist law of nations:

"These and other similar considerations show that the path to the Community of Peoples and its constitution does not have as its sole and final norm the will of the States, but rather nature or the Creator. The right to existence, the right to respect and reputation, the right to one's own character and culture, the right to develop; the right to observe international treaties, and equivalent rights are requirements of the law of nations dictated by nature."¹⁷⁷⁰

The framework and foundation of positive law:

"The positive law of the peoples, indispensable also in the Community of States, has the task of defining more exactly the requirements of nature and of applying them to concrete circumstances, and of taking furthermore, by a convention which, freely contracted, has become obligatory, subsequent provisions, always ordered to the end of the community."¹⁷⁶⁹

6. International law, mediation of natural law :

"In this Community, therefore, each State is inserted into the order of international law and, by the same token, into the order of natural law that supports and crowns the whole.

And exclusive framework of the sovereignty of each state:

"Parla, it is therefore no longer - indeed, it never was - "sovereign" in the sense of a total absence of limits. "Sovereignty", in the true sense of the word, means exclusive self-sufficiency and competence from the point of view of things and space, according to the substance and form of the activity, even within the framework of the international law - but not in dependence on the own legal order of any other State. Each State is immediately subject to international law. States that lack this fullness of competence or that are not guaranteed independence from the authority of another State by international law are not themselves sovereign.

Relativity of all sovereignty :-⁸²²

"But no state could complain about a limitation of its sovereignty if it were denied permission to act arbitrarily and without regard for other states. Sovereignty is not the divination or omnipotence of the state, somewhat in the Hegelian sense or in the manner of absolute legal positivism."⁸²³

III. The tasks of lawyers in the organization of the international community

7. The complexity of the task

a) In general

"To you who cultivate the law. We do not need to explain that the creation and functioning of a true Community of States, especially if it includes all peoples, encounters a series of sometimes extremely difficult and complicated tasks and problems, which cannot be solved by a simple yes or no."

1X19 0760.04: AAS. 795; DP. 611.

b) In particular

"Such is the question of race and blood with its biological, psychic and social corollaries; the question of languages, the question of families and the diverse character, according to the nations, of the relations between spouses, parents and lineages ; the question of equality or equivalence of rights in matters of property, contracts and persons for citizens of one sovereign state who are in the territory of another in which they sojourn for a time or settle while retaining their own nationality; the question of the right of immigration or emigration and others.

¹⁷⁶⁹IK24

1769 0760.05: continued, *ibid.*

¹⁸²²This thesis is always present; cf. e. g. 0714. AAS. 1945, 17; DP. 1944, 249-250.

18230760.06 : AAS. 1953.796 -,DP. 612.

8. Taking into account innate, limited, and complementary human tendencies. The promotion of unity and the eventual tolerance of that which opposes it. Difficulties in applying this principle, hence the transition to § IV. ■**

II) *The Doctrine: Practical Religious Tolerance of the State (§§ IV-V)*

IV. *The practical cohabitation of Catholics with non-Catholics*

9. This is the main topic of the speech:

"In this regard. We would now like to speak to you - you who like to proclaim yourselves Catholic jurists - about one of the questions that arise in a community of peoples, that is, the practical cohabitation of Catholic communities with non-Catholics."¹⁶²⁶

10. Religious affiliation of states:¹⁷⁷⁰

1° Diversity: Double criterion [a] and five categories [b]] for the classification in religious matters of the member states and peoples of the community:

"[a] According to the confession of the great majority of the citizens or on the basis of an explicit declaration of their Statute, the peoples and member states of the Community shall be divided into Christian, non-Christian, religiously indifferent or consciously secularized or even openly atheistic."

(2) The settlement unit:

a) Need for a Community regulation on this subject:

"Religious and moral interests will require for the whole extent of the Community a well-defined regulation which is valid for the whole territory of each of the sovereign States, members of this Community of nations."

b) A typical example of such a regulation:

"According to the probabilities and circumstances, it is foreseeable that this regulation of positive law will be stated as follows: [Within its territory and for its citizens, each State will determine religious and moral affairs according to its own law;] However, in the whole territory of the Confederation, the citizens of each member state will be allowed (*sarù pennesso*) to exercise their own moral and religious beliefs and practices (*l'esercizio delle proprie credenze e pratiehe etiche e religiose*) [c] as long as they do not contravene the penal laws of the state in which they reside."¹⁷¹⁸

11. Existence of a moral problem posed by this regulation (cooperation with the religious pluralism thus instituted):

"For the Catholic jurist, politician, and state, the question arises here: can they consent to such a regulation when it comes to entering the Community of Peoples and staying there?"¹⁶²⁹

¹⁶²⁶ Cf. LECLER, 1955, II, especially 72 ff.

¹⁶³⁰ The Reformers did not recognize the RL of the Catholics. Cf. LA NUNZIATA. 1969-1970,35-36.

¹⁶³¹ 0314. *Epist. IV*, ep. 43, against the laws of tolerance of Sigismund, King of Poland.

¹⁶³² 0317. Oral recrimination against the Edict of Nantes (April 13, 1598): "It crucifies me. Write it to His Majesty from me." Word addressed to card. Arnaud d'OSSAT, representing France to the Holy See, who reports it in his letter of Oct. 31, 1598 to M. de Villeroy (in LA HOUSSAYE Amelot de. *Letters of the card. d'Ossat*. Amsterdam, 1708, vol. III, 172; cf. also 316). Cf. LA BRIERE, 1904.04.05, 49-55, where there is also the report on the interview that CLEMENT VIII had with the cardinals of Joyeuse and d'Ossat, on 25 Feb. 1599, where he declared himself "the most sorry and disappointed man in the world for the Edict which the King had made in favor of the heretics, to the prejudice of religion" and Ossat added in the mouth of the pope: "this edict, the most wretched which could be imagined, allowed freedom of conscience to everyone, which was the worst thing in the world. Thanks to it, the heretics were going to invade the offices and parliaments to promote and advance heresy and henceforth to oppose everything that could turn to the good of religion" (quoted by LECLER, 1955,11, 125). As can be seen, this is a private conversation, not a doctrinal teaching of the pope. Moreover, the complaint is not pure and simple, but qualified by the effect of the Edict ("the heretics would invade, etc."). The Cardinals replied with a similar "thesis and hypothesis system", and Ossat recounted how he took the comparison of other Catholic kings who were then tolerating the tares among the good grain. The pope, only half reassured, complained in a letter to Henry IV, who replied on Nov. 6, 1599. War weary, the pope closes the eyes. Besides, he himself had been very tolerant with the Huguenots... (cf. *Studies*, Nov. 5, 1903). Of course, the correspondence of the nunciatures, especially that of Paris, is full of details concerning the personal thoughts of the popes on these matters, and their favor for the "St. Bartholomew" operation, etc. None of this can constitute

a definitive proof that the pope was not in favor of the Huguenots. None of this can constitute a magisterial document. One can certainly, with LUCIEN. 1990, 182, note 109, cite the COUNCIL OF THIRTY, sess. 25. c. 20; "Principles... catholicos... Deus sanctæ fidei Ecclesiæque protectores esse voluit." But this text does not explicitly affirm the right / duty to suppress heresy *ut sic*.

913 0330. INNOCENT X, 1648.11.26: Bull *Zelo domus inecæ*. against the treaty of Westphalia. Cf. LATREILLE, 1962, who summarizes the bull as follows: "At the signing of the treaties of Westphalia (1648), INNOCENT raised a solemn protest against the exclusion of the Holy See, against the disappearance of German ecclesiastical states, against the equality granted to Protestants within the Empire, in a word against the secularization of European public law. The above-mentioned documents of s. The above-mentioned documents of S. Pius V, Clement VIII and Innocent X were cited (along with Pius VI, 1790.03.20 & 1791.03.10) by Fr. Bluo in his preparatory report for his later writing of *QC* and the *Syllabus*: S.S.C. SANCTI OFFICII, *Sillabo: Esame deU'opera "The Free Church in the Free State. Speeches pronounced to the Catholic congress of Malines"*. Voto de! M. R. Luigi Billio *Barnabla professoredi teologia*, Roma, gennaio 1864, note 62, 11-13 (cf. MARTINA, 1990: *Pio IX*, II, 324, note 64).

⁹⁴4 DELPLACE. 1908 studies how Protestantism was finally led to rather indifferent positions, starting in particular from the "Remonstrants" of Holland.

921 *foui*, 258,2, at bottom, "Hinc inferes".

⁹²³ According to the *Bullary*, Benedict XIV welcomes the contrary: cf. 0335. Benedict XIV. 1751.06.14: *Encycl. Aqm primum*, to the Polish bishops: "De his quæ vetita sunt Hebræis in Regno Poloniae (habitantibus in iisdem civitatibus, et locis, in quibus habitant Christiani)": lat. in *Benedicti Pp. XIV Bullariutn*, vol. 3, 390-394; orig. + trad. ital. in *ENcicliche I*, n° 420-429,578-593. See here § 1. n° 421.580.

⁹²⁴ § 2, n° 422, 582. § 3, n° 423, deplors the fact that the Jews have in their hands the management of the economic affairs of Christian houses and take Christian servants into their service; and adds, p. 582: "Porro autem ipsi ludzi cum exercendis mercaturis potissimum occupentur, postquam eâ via grandem pecuniæ summam confecerunt, nimio usurarum excessu Christianorum census ac patrimonia penitus exhauriunt (...)" The § 4, n° 424, 585 cites. BERNARD DE CLAIRVAUX, letters 363 & 365 against the exactions due to the monk Radulfe; § 5, n° 425,587 cites PETER THE VENERABLE to King Louis against Radulfe, who nevertheless asks that the goods which they have unjustly taken from the Christians be taken back from the Jews; cites and renews the prohibition of ALEXANDER III to Christians to make themselves servants of Jews; idem for INNOCENT III; finally INNOCENT IV to Saint Louis. See also § 6, n° 426.588.

⁹³³ CHOUPIN, 1924.451-452. Not only the public peace, but a certain oppression is at stake. Cf. on this subject: KELLER, 1865, 151-153. COSTE, 1969, 120 seems to neglect this *fundamental* aspect. Cf. also BERGIER.an. "Hérétique", in ID, 1.35 (1850). 1147. based on the *Traité de Tunité de l'Église*, by L. THOMASSIN.

⁹³⁹ GUIRAUD, 1928.830.

⁹³⁹ GUIRAUD, 1928,846.

945 Cf. FUCHE & MARTIN, 14/2 (1964). 970-976, especially 973.

⁹⁵⁹ CL FUCHE & MARTIN, 14/2 (1964), 1021.

⁹⁵⁴ Different viewpoint: HELLO, 1922,25.

⁹⁵⁷ See MURRAY, 1948.06.28-30,34.

⁹⁶² Cf. CANET. 1891.198-199 and CARRILLO, 1961a, 85-86.

⁹⁶⁵ Cf. e.g. BRIDE André. M¹, art. "Glaive (Droit de)", in *Catholicisme* 05 (1962), col. 37-39, & LA BRIÈRE, 1911.10.05,122.

970 CASTILLO-LARA. 1956, 198-200.

⁹⁷¹ CASTILLO-LARA, 1956 is more accurate than the simplistic MURRAY, 1948.06.28-30, 40. The secular arm can be explained in ways other than direct power.

⁹⁷² See CONOAR, 1952c, 223.

⁹⁷⁴ Original formula in SEGURA-FERNS, 1989.11-12. 1397.

⁹⁷⁶ See ROUQUETTE, 1952.221, noie 1.

⁹⁸⁸ Cf. VERMEERSCH. 1922,311.

⁹⁸⁹ AUBERT. R.. 1969.385 ;

¹⁰²⁰ PA VAN, 1966.10 (*Concilium*), 45.

¹⁰²⁵ Art. Freedom". *DictAcadFranf*, II (1777), 21. Similarly, LUCIEN. 1990, 113, note 184 rightly remarks that according to LOCKE, "human freedom consists in following one's own will in all things, in all areas, where the law prescribes nothing." I⁶¹ Follow the beguards, the Wiclefites, Luther, etc. (*Recueil*. 54).

1065 See the Venice edition, Remondini - Zana, vol. III (1788), 75, especially: "eos [heretics and schismatics] enim, præmissis præmittendis, diligentius videlicet. et suavibus aptisque modis, ut ab errore recedant, hisque omnibus inutiliter adhibitis, ad Fidem demum compelli posse minis et terroribus, et peninacem demum morte puniri, implorato brachii sæcularis auxilio, concors est Patrum et Theologorum sententia." The A., who was not yet pope, quotes in particular the two famous letters of s. AUGUSTIN. We have seen above what to think of them. In particular, it would be wrong to conclude from this that there is patristic unanimity concerning the death penalty for heretics. Card. Lambertini then refers to St. Thomas, to the commentaries of D. Solo (*IV Sent. Dist. 5, q. unique, art. 10,271*), of Card. de Laurea (II Sent., part. 2.1.111, disp. 15, an. 1), of Card. Gotti (*Theol.*, I. X, q 4, dub 2, § 1), of Noël Alexandre (*Diss. Sæculi XIII i XIV*, 333 ff.). 11 is also based

on the position of Calvin himself and of Bèze concerning Servet, against Castellion and Socin. The n° H gave the right to the Catholic princes to compel the infidels to respect the natural law, and in particular the worship of the single God, but (against Scotus and the card. Francisco Ximénez, his disciple, who had Moors baptized by force, says the A.) not to force them to embrace the faith; no. 12 admitted a possible tolerance of the non-observance of the natural law by the infidels, and no. 14 will treat of the possibility of forcing the infidels to listen to the Catholic preaching.

1067 See our 0070.

106*0402.6 : *Collection*, 56 = RAULX, II, 20-21.

1069 cf. the expression «*dominantis titulum in regno* ». We have largely redone the rather fanciful translation of *Recueil*. 51-57 " GUILLON = CHAUNU, 97.

1070 0404. PIEVI, 1794.08.28: Apostolic Constitution. *Auctorem fidei*, against the synod of Pistoia; *Bull. Rom.* IV (Continuatio), VI/3 (Prato, 1849), 2703-2726; Latin + French: *DzSchHii* 2604-2605, here 2604. The edition of *Bull. Rom.* VI/3 gives the title of the paragraph: *De potestate Ecclesie; quo ad constituendam et sancendam exteriorem disciplinam*. Note at the end, p. 2725, § 65, Tappel of the pope to the secular arm against the theses of Pistoia.

make you think so.

1076 cf NETTEMENT Alfred, *Histoire de la Restauration*, 1.1, Paris, Lecoffre, 1860; LA GORCE Pierre de, *La Restauration*, Paris, Plon, 1926, 320; BERTIER DE SAUVIGNY Guillaume de, *La Restauration en questions. Joie, hardiesse, utopies*, Paris, Bartillat, 1999, 188; ID, *La Restauration*, Paris, Flammarion, 1955, 652 p., with, p. 56 64, the genesis of the senatorial Constitution, without the text. This one, Louis XV111 rejected it partly by his declaration of Saint-Ouen of May 2, where he accepted nevertheless the "freedom of the cults" (text *ibid.*, 76), and replaced it by the famous "Charter", granted on June 4.

1077 And some members of the Legislative Body.

WW On this positive support, cf. BAUCHER, 1926.702. For Belgium, PELLETIER. 1878. 11, on the ambiguity of the "projection" granted to all cults (in the positive or negative sense ?), and also, for 1814-1817. CHAPPIN, 1982.

1083 PIUS saw had accepted it for the coronation of Napoleon, and it will be followed by his successors.

10H4 *ibid.* ed. CHANTREL, title page.

IO *5 BERTIER DE SAUVIGNY, 1955, 93.

10K6 Text in BERTIER DE SAUVIGNY, 1955, 93. According to NETTEMENT, 1860, 399-403, it was the Protestants Boissyd'Anglas and Chabaud-la-Tour who obtained the inversion of the order of the two articles (initially 6 and 5), after a close discussion. The king, warned, renounced to return to the previous order (cf. p. 403). Article 7 concerned the payment of the ministers of all religions.

¹⁰⁸⁷Text in PELLETIER, 1878,66-67, who understands "civil freedom of worship" as an attack on the dogmas and laws of the Church. Blacas, on his side, is not very honest in returning to the old and reversed order of articles 5 were.

1090 Cf. *Acta Gregarii Papie XVI*, ed. BERNASCONI Antonio Maria, Romæ, ex Tipografia Poliglolia S.C. de Propaganda Fide, 4 vols; *Collection; Apostolic Letters of Pius IX, Gregory XVI, Pius VII*, Paris, Bonne Presse et Roger et Chemoviz, s.d., 288 p. (abbreviation: BP (1800-1878) - very incomplete.); R AULX, II *, extracts: *PIN*.

GREGORY XVI, 1832.08.15: Encycl. *Mirari vos*: ASS 4 (1868), 336-345 .*Acta GregorūXVI*, 1.1.169 174; *CIC Fontes* 2, n° 485,744-752 ; BP (1800-1878), 200-221 ; CHANTREU 602-624 ; RAULX, H, 188-217.

1092 LE GUILLOU Louis & Marie-Joseph, O.P., 1982.

1093 And quæ confirms the reading of the preparatory documents to *Mirari vos*.

1094 A more detailed survey in LUCIEN, 1990,71 ff.

1095 To note well this very strong expression.

109M of a tone proposed by L'*Avenir*, reprinted in LE GUILLOU Louis & Marie-Joseph, O.P., 1982,538-539.

11050410. bis. PACCA Bartolomeo, card. Secretary of State, 1832.08.16: *Lattre* explaining to LAMENNAIS the Encycl. *Mirari vos*, in LAMENNAIS F. de, *Œuvres complètes*, t. VIII, Paris, 1844, 131-136; LE GUILLOU L. *Correspondance générale de Lamennais*, Paris, 1974, t. V, 584 and DUDON. 1911.402.

¹¹¹² Indeed, freedom of conscience is a freedom to act "as one wishes." This "as one pleases" is equivalent to the absence of religious obligation, thus including religious indifferentism.

11J3041Q.1: Our translation, cf. *collection*, 163; ASS04,341.

H4 "putidissim< ", according to ASS 04.341; "putidissimo" according to *Acta Gregorii XV101*,172,1 and *Recueil*, 162.

n¹³ cf. LUCIEN, 1990,89.

msef. LUCIAN, 1990,9, note 5 (who, p. 14, calls it P°).

1117 Against LECLER, 1946a. 298-299, BEA, 1966 (1963.12.13), 265.

UI "Cf. LUCIEN. 1990.15.

It 19 LUCIEN, 1990,34.

liai LUCIEN, 1990,74 and 78.

¹¹²³ LUCIEN. 1992.03.14,3-4.

¹¹²⁵ RICHARD Ch.-L. and GIRAUD J. J., *Bibliothèque sacrée ou Dictionnaire universel historique, dogmatique, canonique, géographique et chronologique des sciences ecclésiastiques...*, Paris, Méquignon-Havdat. 1824.29 vol. in-8". t. XV (1824), art. "liberté de conscience ". Not cited by LUCIEN, 1990.

¹¹²⁷ Cf. BEA. 1966(1963.12.13). 265.

- ¹¹²¹ According to MONTALEMBERT, 1863.08.21, quoted by LUCIEN, 1990, 166: "freedom of worship (...) is nothing other than the practical and social application of freedom of conscience." Freedom of conscience was thus theoretical and individual.
- 1136 Quoted and translated thus by LUCIEN. 1990. 101. What prevents B. LUCIEN in note 162 to understand SOGLIA's vocabulary, is that he forgets that a civil liberty can be a positive authorization, which thus includes toleration in the good it protects *per se*, which is precisely what the popes condemn.
- 1140 Immediate continuation of the previous sentence. *Compendium*. 162 & 164 (164-165 for the end) : or *CIC Fontes* T 748 749. S 14. ASS04,341.
- 1142 c_o which P1EIX will repeat in *SyUabux*. prop. 79, taken from 05111. Pius IX, 1856.12.15: Alloc. *Numitiam fore* to the secret consistory; *Acta PU IX* 02, 538-549; *Recueil*, 382-393.
- ¹¹⁴⁴ *Compendium*. 166-167. The pope then recalls the example of the martyrs who obeyed the persecuting princes, except when it was a question of the cause of Christ. These examples condemn the "unbridled" freedom seekers, pupils of the Waldensians, Beguards, Wiclefsts and Lutherans. One recognizes here the framework of the thought of P1E VI. The quotation from *Rom* 13 will be taken up again in *DH* 11.
- 11⁴⁷ 0410.2: *Recueil*, 168-169; ASS 04,344; *CIC Fumes* 2.751. § 20.
- 114 "O4103: *Collection*, 168-171; *CIC Fontes* 2.752. § 23.
- 1150 o4i. GREGOIRE XVI, 1834.06.25: Apostolic letter. *Singulari nos*, on the errors of LAMENNAIS; *Acta Gregorii XVI*. 1.1,433-434; DUDON, 1911.427^130 1 here 428J; translation: LE GUILLLOU L. & LE GUILLLOU M.-J., 1982,729-736 [here731J&PW29.
- 1152 Q4I2. GREGOIREXVI, 1844.05.08: *Encycl. Inter prateipuas*, against the biblical society and the Christian Alliance; *Acta Gregorii XVI*, 1.111,332-336; RAULX, II, 196^217^.
- 1155 05064. *Acta PH IX* 01,295-296: *Collection*. 305. He will be pleased again in 0509. PIEIX, 1855.07.26: Alloc. (2^o of the day) *Nemo vestrum* to the secret consistory (source of prop. 77 *-hi Syllabus*) --*Acta Pii IX* 02,441-146 (here 441): *Collect*. 350-351.
- 1161 0512. PIE IX. 1862.06.09: Alloc. *Maxima quidem hetitia* to bishops; (source notably of prop. 39 and 44 of the *Syllabus*); *Acta Pii IX* 03, 451-461 (here 454); *Recited*, 454-465 (here 456-457): franc. : HOURAT. 1904. II. 57-58. Quoted in *QC*, in *ASS* 03 (1867), 161. Cf. VEUILLOT, 1986, 13, describing the "Catholic liberale" position.
- 1162 Cf. already the "*quidquid velit*" of 0402.1.
- 1173 0516.1: *Acta Pii IX* 03.689-690; *Collection*. 5 (Here, Note 1 refers to "*Mirari vos*", p. 154.1 (HOURAT, 1904 more accurately translates the last words: "to religion and society.")
- 1174 0516.2: ASS 03, 162 = *Acta PU IX* 03.690 (immediate continuation of 0516.1): "Etenim probe noscitis... "Tnid. *PIN* 40, reviewed by us. One does not know yet the precise origin of the quoted and condemned proposition.
- 1175 We name it Qo, in parallel with Po of GREGOIRE XVI. concerning indifferentism.
- 1177 LUCIEN, 1990, 127 goes too quickly from "constituted and governed without making a difference" to the idea of a "civil liberty" that would be of simple non-obstruction, when it may very well be a matter of positive authorization - and therefore encouragement - of indifference by the constitution or the State.
- ¹¹⁸⁶ Pius XII would later emphasize the necessity of knowledge for accountability and penalty.
- ¹¹⁸⁷ Cf. LUCIEN. 1990, 135-136. It is also that of Benedict Paul. 1885, 11, 202. More explicitly still, cf. BENEDICT Paul, 1885, II. 203. § 847; the A. quotes: JOHN XXH against Marsilio of Padua; Benedict XIV. 1753.08.05: *Ad usuiduas*; PIUS VI. 1794.08.28: *Auctorem fidei*, 4; TRENTE, sess. XXV" cap. 111.
- 1188 There, indeed" one can hardly presume the invincible ignorance.
- 1189 Even if one can establish a connection with the already quoted allocations of the same PIE IX, and with the text of PIE VI, 0402.6; 0516.5: *Recueil*, 8-9 = ASS 03, 165 = *Acta Pii IX* 111,693... 694.
- 1192 The Church has a radical right to use all just means to achieve her purpose. Cf. prop. 24 condemned by the *Syllabus* 0518.24: "The Church has no power to use force, nor any direct or indirect temporal power." And its source: 0505. PIE IX, 1851.08.22: Apostolic Letter. *Ad Aposollorae Sedis fasti^ium*; *Acta Pii IX* 01" 285-292; *CIC Fontes* 2, n^o 511. 857-860; *Collect*. 292-301; BP (1800-1878). 130 139 zCHANTREL, 202-212: RAULX. 1.243-254.
- 1193 T is a question of the law of the State, "expression of the general will", and not of the law of the Church, otherwise there would no longer be a problem. One thinks here of all that the anticlerical newspapers could print as insults, calumnies, etc." against the Church, cf. the Quinet, the Michelet, the Sue. We are thinking here of all the insults, calumnies, etc. that the anticlerical newspapers could print against the Church, cf.
- PIE IX. between 1880 and 1905. in perfect respect of "public order"). The same goes for the anticlerical measures of the Piedmontese governments of the time, etc.
- 1194 LUCIAN, 1990, 129.
- 1195 We have checked the text in the ed. FÉVRE Justin, Paris, Vivès. 1871, t. III, 33. Note in passing the expression "as he wishes".
- 119KCf. DAVIES' admission, 1992.228, and 272.
- 1199 Cf. LUCIEN. 1990,134-135.
- 1206 OS23. VATICAN I. (Primum) *Schema de Ecclesia...*, XIII-XV; cap. XIII: *De concordia inter ecclesiam ac societatem civilem*, in MANSI, 51,545-547, especially 547 A. In this document, see also cap. XIV: *De jure et tisu potestatis civilis secundum ecclesia: catholica: doctrinam*, in MANSI, 51, 547-549; cap. XV: *De specialibus qui' busdam ecclesia: iuribus in relatione ad societatem civilem*, in MANSI, 51. 549-551. On the freedom of the Church in relation to the omnipotent State.
- 1207 (mo.

I20K05I03: pw4], *Recueil*, 4 = ASS03.162, which quotes in note 1: LÉON LEGRAND, s., *Epist.* 164, al. 133, §2.ed. Ball, and, in note 3: AUGUSTIN OF HIPNONE, s., *Epist.* 105, alias 106 = *Acta PU IX* 03, 690-691, who quotes in note 1: AUGUSTIN OF HIPNONE, s., *Epist.* 105, al. 166 (sie); and in note 2: LEON LE GRAND, s., *Epist.* 14 al. 133. §. 2 edit. Ball. |.v/c].

1210 As these men were thus specified (so to speak "once and for all"), the plurals that follow cannot simply be translated as "we".

1215 Same scheme already with 0402.1.

²² ■° LUCIEN. 1990,186.

¹²²¹ Compare prop. 79 of the *Syllabus*. from P1E1X, 1856.12.15: Alloc. *Nunquamfore*.

122# And it is here that we depart from LUCIEN, 1990.

1231)0516.4 : *Kecijéh.* 6-7 = ASS 03. 163 = *Acta PU TX* 03,691.

¹²³³0516.8 : *Recueil.* 12 = ASS 03.167 = *Acta Pii IX*03,697; *Recueil.* 13 or *PIN42*.

1247CLRIMOLD1, 1978.05,389-390; AUBERT, R., 1964.11.15/12.15,484-185.

1248 As RATZINGER, 1982, points out. 425-426. between the time of the *Syllabus* and VATICAN II. "liberalism had seen itself in the necessity, during the great political reversals of the XX^e century, to accept notable corrections."

1252 0518.79: *Collect.* 34-35 = *Acta Pii IX* 03.717; *D^ochHü* 2979; *PIN* 53-3.

1253 c i |_{lectencausa} i to confirm that the "id" in 05163 : "*Dum vero id temere...*" refers to the system of two accusative infinitive propositions Q, + Qj, whose *Joint* assertion promotes an "*Überlas perduionis*". Cf. also *Mirari vos*.

1255 Cf. u n contemporary: BENOIT Paul. 1885, II. 3-4: the A. does not want to use the expression "liberal Catholics", polysemous: cf. II, 4, 9, 11, 166, §811. Other descriptions: BUENO-MONREAL, 1945, 204; CAVAGNIS, 1882, no. 537.

1256 0533.. text: *PIN* 3010.

1265 Cf. HELLO, 1906, 29.

1266 cf. c. g. LUCIEN, 1990,96 above.

1273 0605. Leo XIII, 1881.08.03: Apostolic Letter. *Licet milita*; *Acta LeonisXIII* 02.323-324 = AS'S 14. 145-146 = BP 07,20-23.

1287 0611.07: *Acta Leonis X1U* 05, 124 = ASS 18.164 = BP 02,22.

-2""0611.07. and BP 02,23.25.

-28'Cf. 06133: *Acta Leonis XIII* 07,240 = ASS 20,269 = BP 02,140.

-291 0611.09 : *Acta Leonis XIII* 05. 126 = ASS 18. 165 = BP 02, 24. Same doctrine of faith in 0618.6: *Acta Leonis XIII* 10.28 =

ASS 22,396 = BP 02,282.

-292 On this subject, cf. MURRAY, 1951.06. p. 156, note 3, who cites ASS 19.465 & ASS 24.646 (0622.1. See also correspondence with Emperor Wilhelm 1^{er} in ASS 15 (1882), 592-602.

-293 0611.10 : *Acta Leonis XIII* 05. 127 = ASS 18. 166 = BP 02.26. See also 0611.13: *Acta Leonis XIII* 05. 128 = ASS 18, 166 = BP 02. 026; and 0611.14: *Acta Leonis XIII* 05. 128 = ASS 18.166-167 = BP 02. 27-28. Similarly 0618.8: *Acta Leonis XIII* 10. 29-30 = ASS 22. 397 = BP 02, 284; *PIN*2S3: 0627. (here 0627.4) LEON XIII.

34 (1901-1902). 513-532; Latin text: *Annun ingressi sunius: Acta LeonisXIU* 22 (1902-1903), 52-80; French: BP 06,275-293 (here 286-287).

¹²⁹⁴ 0611.11 : *Acta LeonisXIU*05,127 = ASS 18.166 = BP 02,26.

12950611.12: *Acta LeonisXIU* 05.127 = ASS 18. 166 = BP 02, 26.

1296 0611.15: *Acta LeonisXIU* 05, 128 = ASS 18, 167 = BP 02, 28. Item already in 0608.1-2 LEONXII1, 1884.02.08 (according to *PIN*) or 10: Letter *Nobilissima Galtorum Gens*, to the French episcopate ("on the Christian government of domestic and civil society"); *Acta Leonis XIII*4 (1884), 10-22 ("on the Christian government of domestic and civil society"); *Acta Leonis XIII*4 (1884), 10-22 (here 13 & 15-16); ASS 16 (1883 1884), 241-248 (here 243 & 244); ed. LEON XIII-DDB, 2 (1887), 44-52; *CIC Fontes* 3, n° 590. 216-221; BP 01, 226-241 (here 230 & 232-233); *PIN* U6. Also 060". (here 0609.1-3) Leo XIII, 1884.04.20: Encycl. *Humanutn genus*. to the bishops of the whole world (on the Freemasons) : *Acta LeonisXIU* 4 (1884), 43-70 (here 51 52 & 58 & 60) : ASS 16 (1883-1884), 417-433 (here 422 & 426 & 427); ed. LEON XIII-DDB, 2 (1887), 56-75; *CIC Fontes* 3. n°591. 221-234; BP 01. 242-277 (here 252-253 & 260-261 & 262 & 264); *PIN* 122-0123. See also in 0613. : BP02.142-143.

1297 BP 02.29.

129ⁿ On the same theme, cf. 0611.01; 0618.1,4 & 9; *Acta LeonisXIU* 10. 10-11, 12 & 30 = ASS 22,385 & 386 & 397 = BP 02.262 & 264 & 284.

1299 0611.16: *Acta LeonisXIU* 05, 132 = ASS 18, 169 = BP 02, 32. On the other hand, "the ruin of Christian institutions and morals necessarily entails the ruin of the first foundations of human society" (0618.4).

1300 0621. Leo XIII, 1892.02.16: Apostolic letter to the clergy and faithful of France. *In the midst of sollicitudes*, to the clergy and faithful of France; *Acta LeonisXIU* 12(1892), 19-41; ASS 24 (1891-1892), 519-559; BP 03. 112-122.

¹³⁰¹ 0621.2: *Acta Leonis XIII* 12,38-39 = ASS 24.528.

¹³⁰³ 0621.4 : *Acru Leonis XIII* 12,38-39 = ASS 24.528 = BP 03. 121-122 = PW331.

IW06213 : *Acta Leonis XIII* 12,38-39 = ASS 24,528 = BP 03.121 -122 = *PIN* 331.

IMS 0623.1; *Acta Leonis XHI* 14 (1894), 208) = ASS 26 (1893-1894), 712-713) - BP 04.98.

1306 0624. Leo XIII, 1895.01.06: Encycl. *Umxinqua Oceani*, to the bishops of the United States of North America -. *Acta Leonis XHI*15(1896), 3-21 (here 7); ASS 27 (1894-1895), 387-399 (here 390): *CIC Pontes* 3. n° 628.460-168; lat.-french: BP 04, 158-179 (here 162 & 164).

1307 The separation *more americano* is not absolute. Cf. also 062134-5. Cf. already at that time the remark of LIBERATORE, 1886.10.07, 174: "Convien distinguere due specie di Stali separati dalla Chiesa: altri per semplice negazione, altri per positiva

influenza del principio liberalesco. I primi non favoriscono la Chiesa, ma nondimeno la lasciano interamente libera, come vediamo accadere negli Stati Uniti di America; i secondi, oltre al non favorirla, le negano ogni libertà, tranne quel pochissimo che piace loro di concederle."

1316 0611.18: trans. T1BERGH1EN, 27-28 (reviewed by us like all translations); *Acta LeonisXHI* 05, 134-135 = ASS 18, 170= BP 02.34.

1317 That this is finally a detailed description of "freedom of conscience" will be confirmed by the reading of *Libertas*, 0616.19.

¹³²² Excellent presentation in TAPARELLI r ??? 1877.09.05.684.

¹³²⁸ Cf. *Libertas*, 0616: *Acta Leonis XIU* 08 (1888). 213: "Alias Nos. nominatimque in litteris Encyclicis *Immortale Dei*, de *modernis*, uti loquuntur, *libertatibus* verba fecimus, id quod honestum est secretentes ab eo quod contra."

¹³²⁹ 0611.27 - *Acta Leonis XIII* 5 (1885), 141 =ASS 18(1885). 174 = BP 02.42 .PIN 154.

³³ 0/b/d-, continuation of the sentence.

¹³³¹ *maellii* and not *maius*.

¹³³³ Cf. LERCARO. 1958.04.19, DC, 1959,343. Cf. also GUERRERO, 1961.07-08,24.

[33#Cf. CARRILLO. 1961a, 133-134.

1342 0611.17 condemned *VaequabUitate* *iuris* of the various *religions*, not of citizens (cf. *DH* 6, § 3).

1346 061133: *Acta Leonis XIH* 05, 147-148 = ASS 18, 178 = BP02,48).

1347 06[3, LÉONXIII, 1887.12.22: Apost. *Officia sanctissimo*. to the bishops of Bavaria;*Acta Leonis XIII!* (1887), 219-243; ASS 20 (1887-1888), 257-271 (269 quoted by *DH*, note 32); ed. LEON XIII-*DDB*, 3 (1893). 19 36; *CIC Fontes* 3, n" 596.269-280; BP02. 116-143. See here 126-127& 134-135.

048 0613.1: *Acta Leonis XIII*07.239 = 4SS 20.269 = BP 02.138). Translation: BP 02.139.

1349 Cf. 0612. LEON XIII, 1887.04.07: Letter *Ex litteris*, to the archbishop of Cologne "on the amendment of laws contrary to the freedom of Catholics in the kingdom of Prussia"; *Acta LeonisXIII!* (1887), 61-65 (sunout62); ASS 19 (1886-1887), 465-467 (465 cited by *DH*, note 32); ed. LEON XIII-*DDB*, 2 (1887), 258-261.

1350 0613.2 (cited by *DH* 13) & 0613.4: *Acta Leonis XIII* 07. 240-241 = 455 20, 269-270 = BP 02. 138 & 140 / 139 & 141. See also, on the *libertas Ecclesiae*, Leo XIII, 1886.08.22: Encycl. *Quod inulluni*, to the bishops of Hungary; BP (1878-1903), 02, 89: "those who preside over the destinies of nations (*qui civitatibus pnesuni*) can do nothing more wise and opportune than to let religion, free of all obstacles (*nulla re im pediente*), exercise its influence on the minds of peoples and bring them back by its precepts to correctness and integrity of morals.

IM! 0613.: BP 02.140-141.

■353 0" 16.01: *Acta Leonis XIII* 08,212 = ASS 20.593 = BP 02,172; trans. Office, 1. Idea taken up by 0684.1.

1354 BP 02,173.

■3560616.02: *Acta Leonis XIII*08,214= ASS 20,594 = BP 02.174.

1358 BP02.177.

0" *Ibid*.

1360 0616.03: *Acta Leonis XIII*08.216 = ASS 20.595 = BP 02.176; transl. Office = PIN 177.

1361 BP. 179.

1363 BP 02.181.

1364 BP 02, 181. In passing, we mention the grace of God, which "makes the exercise of our natural freedom easier and safer.

1365BP02. 181.

13660616.04: *Acta Leonis XIII*08.220 = ASS 20,598 = BP 02. 182). Trad. Office. 8-9. § 16.

1373 0616.07: *Acta Leonis XIII* 08,225 = ASS 20,600 = BP 02,186). Trad. Office, 12, n" 24. Cf. *DH* 3.

1376 BP, 188-189.

1379 BP 02. 189 & 191.

1409 Every error has a part of truth: 0285. THOMAS OF AQUIN, s., 2-2, 172, b.

1410 Our translation of 0616.19 [b].

1412 This right of permission is "social and civil" as to its *point of application (in civitate)*.

1431 In *no* text has the magisterium taught that this duty to tolerate could *never* be a matter of *your justice*.

143.10760.15, analyzed in our chapter on PIE XII.

⁴³⁴ -Cf. APOLLONIA, 1954.04. 97. It goes without saying that in such a case the government is not only subjectively but objectively exempted from the duty to repress this particular evil. Cf. WEIGEL, 1952.175.

⁴³³ -0616.22: *Acta LeonisXHI* 08 (1888), 240 = ASS 20 (1887-1888), 610 = BP 02, 204-206. Trad. Office. 26, n" 53, corrected by us.

144K 061630: *Acta Leonis XIII*08,244 = ASS 20,612 = BP 02.210. Trad. Office. 30, no. 61. corrected.

1449, 61631: *Acta Leonis XHI*08,244 = ASS 20,612 = BP 02.210. Office. 30. *ibid*.

1450061632: *Actu Leonis XIII* 08,244 = ASS 20,612 = BP 02.210. Office. 30. *ibid*.

1451061633: *Aeta Leonis XIII* 08, 245 = ASS 20,612-613 = BP 02.210. Trad. Office. 30. n" 62. reviewed by us.

1453 Leo XIII based the rights of men primarily on their natural dignity. Cf. 0601.2: *Acta Leonis XIII*01, 46-47 = ASS 10.586-587; trans.: BP 01, 11. The dignity of man thus implies *Hbertas a servitute*, the first of all meanings of the word *Hbertas*.

1454 0615. Leo XIII, 1888.05.05: Letter *In plurimis*, to the bishops of Brazil on the emancipation of many slaves in that country;

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- Acta LeonisXIH* 8 (1888), 169-192; ASS20 (1887-1888), 545-559; ed. Leo XI11-DDB.3 (1893), 69-84, ^598,281-292;BP02, 144-171
- 1455 0615.1 [a] and fb] : *Acta LeonisXUI* 08, 172 = ASS 20. 546-547 = BP 02, 146 & 148) ; translation : BP 02. 147 & 149: "without taking into account either the community of nature, or human dignity, or the divine image imprinted in man".
- 1456 0e [5.2. *çaa LumisXUI* 08, 172-173 = ASS 20.547 = BP 02.148 ; transl.: BP 02.149.
- 145706153: *Acta Leoms XUI* 08,173 = ASS 20,547 = BP 02.148; transl.: BP 02,149.
- >4580615.4 rAcmliewü XIII08,180 = ASS20,551-552 = BP02,156 ; translation: BP02,157.
- 1459 0615.5 z *Acta Leonis XIH* 08,184-185 = ASS 20,554 = BP 02, 162; transl.: BP 02.163.
- 1460 0619. Leo XIII, 1890.11.20: Encycl. *Catholtcæ Ecdesia*.- to all the bishops of the world ("de missionibus africanis stipe communi iuvandis", on anti-slavery work; *Acta Leonis XIII* 10 (1891), 312-318; ASS 23, 257-260; ed. LEON X111-DDB, 4 (1894), 112-116; BP 02, 298-305. See especially 299 & 301 on the fact that all men are brothers (299) and that "slavery is repugnant to religion and human dignity" (301): and 302: "*humanam dignitatem*".
- 1462 0611.22: "native dignity" (of the intelligence and the will): 0616.01 (dignity conferred to the man speaks free will).
- 1463 cf. "a even the very high dignity of son of God" (06033).
- 1464 Cf. "ja human dignity" (0615.1). between the mention of the "common nature" and the "divine similitude imprinted in man".
- 1465 To DECORTE, 1979.03, 132, may be contrasted, RECASENS, 1966.11-12, 607-608. Cf. SCHIFFINI, 1891,1,304. The principle of the person as "non-means", taken up by RAHNER, K., 1955,178, is also found in PIE XII, which makes the person the *end* of the whole social order, an axiom that DE CORTE, 1979.03, 142, explicitly refuses, criticizing 6S 25, § 1., however perfectly traditional. Of course, it is not then a question of constructing, like KANT, an autonomous morality, which would make the meaning of the "dignity of the person" deviate, hence - no doubt - the origin of the allusion of 0638. PIEX, s., *Our Apostolic Office*: BP V, 127-128; 132; 137.
- 1466 06033: *Acta Leonis XIII* 01, 175 = ASS 11,372 = BPO1, 32; translation: BP 01,33.
- 1467 0620; Leo XIII, 1891.05.15: Encycl. *Rerum novurum*, to all bishops; *Acta Leonis XIII* 11 (1891), 97 144; BP 03,18-71.
- ^Cf. B1FA. 1990a, 577.
- 14690620.1 z *Acta Ijionis XIII* 11, 113-114 = ASS 23,651 =BP03,36.
- 1470 Do not_{as}]re IrOp lve ce subject S. Th., 2-2,64, 2.
- 1471 BP 03, 24-25 : " *est enim homo, t'uum respública, senior* ", quote taken up by 0674.2.
- 1488 Pius X, s., 1904.01.20: Constitution apost. *Commission nobis*, against the Veto of the Laity in the Election of the Pope; trans. in *DPPiex*, 1. 85. See also 0637. PIEX, s., 1909.04.21: Encycl. *Communium rerum* for the VIII^e century of s. ANSELM; Latin ong. + Italian transl. AAS, 333-388; orig. + franç.: BP V, 16-64; especially 26-27; 39: quoting s. ANSELM: *God has nothing more dear to the world than the freedom of his Church = DPPiex*, II, 60-80 (here 69).
- !P^JEX.s., 1908.11.18: Alloc. *Vi ringrazio*; translation: *DPPiex*, 1,645.
- 1490p] xEs + 1905.06.11: Encycl. *Ilfermo proposito*; translation: *DPPiex*, I, 298.
- 1491 0631. PIEX. s., 1903.11.09: Alloc, to consistory *Primum vos*. in *Acta Pii X*, 1,54-59; ASS 36 (1903-1904), 193-198: BP! 11903-19041,200-209; *DPPiex*, 1,44-47.
- 1497 The Secretariat of State also recalls the thesis of the "indirect jurisdiction which the Church has the right to exercise over temporal things, when they have a supernatural aspect": 0642. |PIEX, s.], 1913.10.14: *The Holy Father*. Letter of Cardinal MERRY DEL VAL. to M^{of} Sevin: AAS, 559.
- M^H0632.4:ASS39.5 = BP11, 126.
- 1502 0632.7 : ASS 39, 6 = BP II, 128. And *DPPiex*, I, 336. Reprinted in PIEX. s., 1906.08.10: Encyd. *Gravissinw officio*; *DPPiex*, I, 376. S. PIEX will also mention in passing the "social kingship of Our Lord" (0643. PIEX, s., 1913.10.22: Letter C '*est avec une bien douce*, à François Veuillot; AAS. 514).
- 15^0633. (here: 0633.1-2) PIEX, s., 1906.02.21: Alloc. *Gravissimuin apostolicei*. to consistory, on the subject of the French law of separation; ASS 39 (1906), 30-33 (here 30-31); Actu Pii X, 3,44-47; *CIC Fontes* 3, n^ 672.669-671; BP 11. 154-161 (here 154 & 156). See also *DPPiex*, I, 346.
- 1515 POPE x, s., 1905.04.15: encyclical *Acerbo nimis*; BP 11, p. 73 and *Écrits doctrinaux*, Paris, Téquì, 1975, p. 101 -, *DPPiex*, 1,283.
- 1516 PiusX, s., 1903.12.18: Motu proprio *Fin dalla prima*, fundamental regulation of Christian popular action. § 6; *DPPiex*, 1,67.
- 1517 Pius X, s., 1913.01.03: Letter from the Secretariat of State to Count Albert de Mun; *DPPiex*, 11,491.
- 1518 ms; *Acts of BENELECT XV*, 3 vols. Paris, Bonne Presse, 1924-1926 (abbreviation: BP (1914-1922)) *IPIN*.
- 1520 cf "qitidquid vêtit * of Quod adqjianUun.
- 1521 Cf. the DDHC and QC's " *nispax publiai idpostulet*".
- 1524 4 AS; *Actes de PteXI*, 18 vols, Paris, BP. 1927-1939 (= BP(1922-1939"); DC; *PIN. LKEP*.
- 1525cf.OH01.§3. c.
15260661. PIE XL 1922.12.23: Encycl. *Ubiarcano* Der(title);AAS. 673-700; BPO1. 136-178.
- 1541 0682. Pius XI, 1937.03.28: Encycl. *Firmissimam constantiam*, to the Mexican episcopate: IUS. 196, cited by *DH*, note 34); BP 15. 126; DC, 985-997.
- 1542 0669. PIE XI, 1929.05.30: Chirograph *Ci si è domandato*. to card. GASPARRI, on the Concordat: AAS. 297-306; BP 05,

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- 121-137 (especially: 128-129). The persecution of Protestants under the guise of the Concordat during the Mussolini era has also been blamed on 1st E XI: specific bibliography in SCATENA, 2000a, note 21, 592-593.
- 1545 0684 (here 0684.1): PACELU Eugenio, card. Secretary of State. 1938.07.19: Lerne to E. Duthoit; OR. 1938.07.24; DC. 934-938; BP 18. 122-126 (here 123) : PIN 721-739 (here 72b). 15460669.2.
- 1554 Otherwise. PIE XI would confuse us.
- 1558 0620.2, previously cited.
- 1994.1017-1032. Here, see § 22.
- 1563COSTE. 1969,339.
- 568 0681.1: AAS, 70: "humante personat iuro. dignitatem, Ubertatem"; BP 15. 42-43 (transl. MADIRAN more precise).
- 569 0681.2: AAS, 72; BP 15.43 = PIN 681. Whereas, on the contrary, governments are the titular defenders of divine and human rights (0681.5). This is why PIE XI can call on the states (especially Christian ones) as a secular arm (in the broad sense) to prevent atheistic propaganda (0681.8: AAS, 103; BP 15.94).
- 1570 0684.2: BP 18. 123-124 = PIN 711. See also: 0685. PIE XI. 1938.09.21 : Letter *Sollemnia iubilaria*, to the episcopate of the United States; AAS. 341-342; BP 17, 162-167; DC. 1939,4.
- 1571 0673. PIE XJ, 1931.04.26: Chetrographe *Dobbiamo intrattenerla*, au |Bx| card. Ildefonse SCHUSTER; AAS, 1931, 147; BP 07.39-40; DC, 1931,810.
- 1572 0674.2 :A45, 1931,193 ; BP 07,116-117 = DC. 1417. Citation from 0620.: BP 03 (1878-1903), 24-25.
- 1591 In fact, in the current canonical practice, at the age of 14.
- 1592 Since we are dealing even with non-Christians, and in order to prevent them from educating in error, we must prevent them from educating at all.
- j593 0670.6: AAS. 1930.62 = BP 06, 107; PIN 589 = BP. 1594 0670.7.
- 1595 Cf. s. PAUL making pray for the civil authorities of his time (Nero...).
- 1596 In particular of youth: see 0670.8 below.
- 1597 jci PIE XI clearly aimed at any kind of totalitarianism.
- 1599 for the expression, cf. also 0984. PAUL VI, 1972.02.28: to the ambassador of Yugoslavia; AAS. 230-232.
- 16040672: AAS, 1930,301; DC, 1930,71. PIE XII will underline these words of PIE XI (cf. further 0749.).
- 1619 Within certain limits, because of the extreme necessity of the neighbor, *the use of material goods is encumbered by a "social mortgage"*, as JEAN-PAUL H.
- 1623 1225. JEAN-PAUL H (private author). *Enter into hope*. Paris. Plon/Mame. 1994. p. 188.
- 1626 0701.2: A45, 1939,431; trans. 493-494 (corrected by us).
- 1627 cf. 0778. PIE XII. 1956.11.10: RM *All'ò strazio*. to peoples and rulers; AAS, 789 -, DC, 1481 1484; DP, 700-703; RH 3,3626-3629.
- 1628 0745.8.
- 1629 Cf. 0726. bis. Pius XII, 1947.11.15: to the ambassador of Haiti; AAS. 624; DP. 350-352.
- 1630 Cf. 0728. bis. Pius XII, 1949.05.24: to the ambassador of Bolivia; AAS. 293; DP, 189; 0736. PIE XII. 1950.07.19: Encycl. *Summi matroris*; AAS, 516; *Discorsi di Pio XII* 12, 518-521; DC, 1028; DP, 265; 0741. bis. Pius XII, 1951.06.18: to the ambassador of Ecuador; AAS. 551; DP, 253-254; 0745. (here 0745.8) PIE XII, 1952.03.23: RM *La Famiglia* (on conscience); AAS. 277 (pp. 270-271 cited by DH, note 36); DC. 449456; DP, 82-91; RH 1. 836-846; 0746. PIE XII, 1952.03.27 : Apostolic Letter. " *Veritatem facientes illi cantate*", to the Catholics of Romania; AAS. 251; DC, 467-470; DP, 102; 0748. Pius XII, 1952.06.15: to the scholars of Rome: AAS. 585-586; DC. 833-840; DP. 261; RH 1,870-878.
- 16310701.1 and2:AAS. 1939,424and 431; translation: p. 488489 and 493-494.
- 1632 Cf. 0702. Pius XII, 1939.10.29: Homily *Audistis*; AAS. 596; DP. 306.
- 1633 Cf. 0707. Pius XII. 1941.12.24: Christmas RM to the whole world, *Nell'alba*; AAS. 1942, 10-21 -,DC, 1946,929 940; DP. 1941.325-338.
- 1634 Cf. 0752. Pius XII. 1952.10.12: to Action Cat. ital. (ACI); AAS, 832; DC, 1345-1350; DP. 497.
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- 1643 0714.
- 1651 0745.1: 445. 1952. 271; *DP* *PieXII*, 82-83.
- 1652 0745.2: 445. 1952,271: *DP* *PieXH*.93.
- 1653 07453: AAS. 1952. 272; *DP* *PieXII*. 84.
- 165+0789. (here 0789.4) PIE XII, 1958.04.10: to the Congress of Psychology; AAS. 268-282 (here 271): DC. 519-530; DP. 179-195; RH3,3031-3049 (here n° 5442).
- 1655 0721. PIE XII, 1946.07.11: to Americans; *Discorsi di Pio XII* 11. 169-172 :DC. 1383-1384: DP. 233; RH 1.1011-1012. The doctrine of Pius VI is recognized. See also further 0760.
- 165⁷ 0720. (here: 0720.2) PIE XII, 1946.06.01: to the S.-College; AAS, 253-260 (here 256); DC. 609-616; DP. 17117"; RH 2.2078-2087; extracts: PIN 966-968 (here 967).
- 1659 q 0741. (here: 0741.2) PIE XII. 1951.06.02: Encycl. *Evangelii pran-ones* AAS, 497-528 (here 522 & 523); DC, 769-790; DP, 195-229 (here 223 & 224).
- 1666 0714.. XAS. 1945.] 5 . *DP* *PieXU*, 1944,247.
- ¹⁶⁶⁷ 07013 (top).
- 166K 07013.

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- 1672 0712. Pius XII, 1944.11.12: to the Union of St. Luke; *Discorsi di Pio XII* 6.183; BP 6.214-224; DC. 1947.967 ; DP. 1944.203 -.RH 1,1056-1069.
 >740751.1-2 MAS. 1952.786.
 >67S 0751.2 : AAS. 1952.786.
 >67607513:AAS. 1952.786.
 >6770710.1 :AAS. 1943.222 -.DPPieXII. 181; *The Church*. n" 1060.
 167" 0777. P.e XII. 1956.09.11; RM *In September 1949*, to physicians cat. ; A4S, 1956,677-680. here 0777.1
 1680 0777.2. already partially cited.
 1687 0793. (here 0793.2) RE XII. 1958.09.09: to the "Collegium neuro-psycho-pharmacologicum": AAS, 687*696 (here 692); DC, 1227*1236: £>/>,487-498; RH3,3050-3062 (here n@ 5476).
 1688 0737. See also 0727.2: DPPieXH, 1948, 194: "imprescriptible rights and duties, inseparably inherent in the free personality he has received from God."
 1697 0727.2.
 1698 0705; 0728; 0730.2; 0737; 0750.2: AAS, 1952, 725 (*Menschenrechte*); DPPieXH. 413; 0770. P.eXH.
 1700 0730.2.
 1701 0731; 0780: "unantastable human rights".
 1702 0733.
 1703 0754.
 0750.2 ; 0793.2.
 1720 0737. See also 0766. PIEXII, 1954.11.19: to the International Labor Organization; AAS. 717; RH. no. 3284.
 1721 0770.
 1722 0741.1: DPPieXII, 1951, 223; cf. also 0706. PIE XII, 1941.11.30: to the Pontifical Academy of Sciences, AAS, 507; *Discorsi di Pio XU* 3. 269-281; BP 3, 217-218; DP, 292.
 1724 0755. (here 07SS.I) PIE XII. 1953.03.15: at the College of Europe (Bruges); AAS. 183; DC. 393-398; DP. 80; RH 2. 1961-1966.
 1725 0707; 0709.4: AAS. 1943. 19; PIN803; DPPieXII. 1942.341; 0711. PIEXII, 1944.09.01: RM *Oggi*. to the world; AAS. 250: *Diseorsi di Pio XU* 6. 119-132; BP 6. 188-197 -.DC. 1945, 1-12: DP. 1944, 153-154; RH I, 344-348; 0739. PtEXII, 1950.09.23: Apostolic Exhort. *Menti nostra*: ; AAS, 696; CATTIN, n°208, 151-152; 0742. AAS, 1955, 675; 0780 (*Mensehenwiirde*).
 1726 0713.
 1727 0714; 0748; 0793.1: AAS, 1958,692 = RH. n" 5475.
 1728 0717 (here: 0717.1) PIEXII, 1946.02.20: Alloc. consistoriale *La elevatezza*; AAS. 141-151 (here 144); BP8. 78 ff; DC, 170-178; DP. 69-80 (here 72-73); RH 2. 2063-2077.
 1729 0717.6: AAS, 1946, 147-148; DPPieXII. 1946, 76, copied by 0784. Pius XII, 1957.10.05: to the congress for the apostolate of the laity: AAS. 927-928; DC. 1413-1427; DP. 568-586; RH 3, 3399-3420 (here n" 6002); cf. also 0744.2: AAS. 1952. 10; DC. 6-7 ; 0772.1.
 1730 0775. (here 0775.1) PIEXII. 1956.03.09: to Institutes of Archaeology, etc.; AAS. 1956, 215; DC, 389-395; DP, 115-122; RH 3, pp. 2397-2405 (here no. 4475).
 1731 0727. (here 07273) PIEXII. 1948.05.20: to the Institute of Private Law; OR, 1948.05.21 -. *Discorsi di Pio XII* 10. 89-93; DC. 179-782: DP. 192-195 (here 194); RH 1. 177-179.
 1732 0730.1: AAS. 1949, 555; 0775.2: AAS. 1956, 215.
 1733 0732 (here: 0732.1) PIEXII. 1949.12.04: O of the American parliamentarians: OR, 1949.12.05-06: *Discorsi di Pio XII* 11, 299-301; DP, 500-501; RH 1, 156-157, n@375: "the first apostles ...] ...were persecuted and tortured (...J because they taught that the immortal human soul, created in the image of God, confers on man an intimate dignity and rights that no one in the world can take away from him.
 1735 0790.1
 1736 here 0726.2 :AAS, 1947,495; DPPieXH. 1947,321; cf. also 0714. -.AAS, 1945,22: DP. 1944.255:0717.1: AAS, 1946,144; DP. 72-73: "infinitely higher dignity of child of God"; cf. 0726.1:0790.1
 1740 0792. (here: 0792.2) DELL'ACQUA, 1958.09.08: Letter of the Secretariat of State, to the XXXI^o Social Week of halt .OR, 1958.09.21 ,ORLF, 1958.10.03; DC. 1959.71-80 .DPPieXH, 1958,479.
 1742 07933. = RH, n@ 5479: "It is the observance of the moral order that confers value and dignity on human action..."
 1749 0792.1 -DP. 1958,478.
 1760 0730.2; cf. the same idea in 0731. PIUS XII. 1949.11.06: to Italian Catholic jurists; AAS. 600; DC, 1537-1544; DP. 466; RH 1, 168-176.
 17630724.2 .PIN982.
 1764 0782/A. PIEXII, 1957.06.13: to the Congress of the European Union; AAS. 631-632; DC. 847-850; DP. 323 326; RH 3.3634-3638 (here no. 6343).
 1765 0722.
 1767 On this concept, cf. 0719. PIUS XII. 1946.04.20: to the ACI: *Discorsi di Pio XII* 8, 53. § 3; DC. 481-485: DP. 127; RH 2, 1493-1499; 0724.2; 0735. PIE XII. 1950.03.26 : Exhort. *La spontanea e ardente dem^ane*; *Discorsi th Pio XII* 12, 11-18; DC, 449-454; DP. 98-105: RH I, 280-286; 0771. DELL'ACQUA. 1955.07.14: Letter to the Social Weeks, to the 42^o SemSocFr; DC. 961-968; DPPieXII. 233-240; RH S. 2928-2935 (here n" 52561; 077" . PIEXII. 1956.12.23: RM of Noël *L'inesaurihile mistem*; AAS. 1951, 5-22; DC. 1957. 5-22: DP. 1956. 749 769; PIN 1246/1 to 1251/9; RH 3. 2421-2444 (here n' 4513). Cf. also LAPLATVEC. & MATHON

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ü., art. " Moralité publique ", in *Catholicisme* 09 (fasc. 40) (1980). 727-731 (especially 730-731).

176" 0758.1.

1769 0783. PIE XII, 1957.10.04: to Eamon de Valero; AAS. 953; DP. 566.

1770 0742. AAS, 1951, 552-553; *DPPieXII*, 256, which adds: "These rights and duties are carefully measured and balanced by the demands of the dignity of the human person and the family, on the one hand, and the common good, on the other."

1771 0724.2: *PIN* 982. When Pius XII condemns a freedom, he always adds an epithet like "unconditional", "unbridled", or "unrestrained" (0742).

1772 0724.2. Cf. also 0782.2: AAS, 1957,299 = *RH*. n° 5113. PIE XI had already noticed the difficulty of determining the concrete limits in question: 06833: BP 16,261 = *P1N*713.

1774 0709.5.

¹⁷⁷⁵ Cf. NICOLĂU, 1964,236-237 which retains only a "putative" right.

IWCf. BEA, 1966(1963.12.13),265.

1797 Cf. NICOLĂU. 1964,244-245, which unfortunately opposes freedom and tolerance.

179X BARTHE, 1994.06 makes it clear that this right extends to any true statement and not just to worship.

1808 LASSUS. 1988. See also RODRIGUEZ, Victorino, O.P.. 1963a. 326 and 328. criticizing SCT1ÉN. 1963.03-04,97- 136 (who thinks like THIRY. 1967,41): according to PELLEGRINO Ubaldo, 1965.04,273. "tolerance" supposes a confessional State, that the right to the RL eliminates therefore. On the contrary, BOULENGER, 1946, 440*441, b), uses the expression: "right to tolerance"; see also MARCEL, 1948,270. TABERA, 1955, note 8,144-145, he hesitates.

1810 Of course, there is also the possibility of leaving free, without giving any right (in the case of de facto tolerance).

MARTIN Michel, 1991.12,11-12, does not want to give up.

1811 Q760. Complete references in note 83.

1813 0723.2-3; 07263; 0734.; 0772.6; 0772.8: AAS, 1955,679.

1814 We add the intertitles.

1820 0760.05: AAS, 795; DP, 611-612; orig. ital. li. [...] 11 diritto all'esistenza, il diritto al rispetto e al buon nome. lecc.J."

1824 0760.07 : AAS. 796; DP. 612.

18230760.08 : AAS. 796-797 '.DP. 613 (we do not cite this 8° item, for us irrelevant).

1826 0760.09: AAS. 797; DP. 613.

<827 *tur*, je danger of religious wars between Stales, see also 0774.1

18280760.10 : AAS. 797; DP. 613-614.

12. Need to distinguish two issues:

"On the subject of religious and moral interests a twofold question arises: the first concerns the objective truth and the duties of conscience towards what is objectively true and good; the second contemplates the actual behavior of the Community of Peoples towards any sovereign state and of the latter towards the Community of Peoples in matters of religion or morality."

1° the moral duty towards the truth :

"The first question can hardly be discussed and settled between the particular states and their Community, especially in the case of a plurality of religious denominations in the Community itself."

2° the effective relationship between the Community and the sovereign States in religious and moral matters :

"The second issue, on the other hand, may be of extreme urgency and importance."¹⁸³³

V. Moral Principles Concerning the Practical Attitude to Religious Error

13. It is morally illicit for authority to be exercised in denial of the duty to truth and good.

Thus the positive authorization or positive mandate to teach the false or to do evil:

a) exceeds the power of any human authority:

"Here is the way to answer the second question correctly. First it must be clearly stated that no human authority, no State, no Community of States, whatever their religious character, can give a positive mandai or positive authorization (*possono dare un mandata positiva a una positiva autorizzazione*)^{TM37} to teach or do what would be contrary to religious truth or moral good."

b) No right or obligation to the false and evil:

"A mandate or authorization (*Un mandato o una autorizzazione*) of this kind would not be binding and would remain ineffective. No authority could (*potrebbe*) give them because it is against nature to oblige the spirit and the will of the man to the error and to the evil or to consider the one and the other as indifferent."

The double "or" of this sentence thus distinguishes on the one hand the effect of the "positive mandate", which creates an "obligation of the mind and the will", and on the other hand the effect of the "positive authorization", which generates to "consider error and evil as indifferent."

c) It exceeds even the divine power:

"Even God could not give such a positive mandate or positive authorization (*Neppu re Dio potrebbe dare un tale positivo mandato o una tale positiva autorizzazione*), because this would be in contradiction with his absolute truthfulness and holiness."^{1^2}

14. The practical non-prevention of error and evil:

"Another essentially different question is this: in a Community of States, can it be established, at least in certain circumstances, that the free exercise of a religious or moral belief and practice in force in one of the Member States is not

IK300760.12 : AAS. 798; DP. 614.

IK31 TANOUARN. 2000. 157-158. writing: "PIEXII in a very clear way recuses any permission given to Terror". forgets the *negative* permission or tolerance, "*it non bnpedire*" of the error. Now according to PIE XII (0760.15). sometimes the State has *no right* to prevent the error. One grasps the stake of the question, if one remembers that S09: prevented in all the territory of the community by means of laws or coercive ordinances of the State?"

One recognizes here the couple belief / practice already met in *Mit bren nender Sorge*. The precise object of the paragraph is the **non-impediment of a free exercise**, a concept extraordinarily close to that of *DH*.

"In other words, one asks (a) whether [the fact¹⁸³³ dc] "not to prevent," i.e., to tolerate, is permissible in these circumstances, and, [b] [one infers] in that case, (that) positive repression would not always be a duty."¹⁸³⁴

¹⁸³³ The word "fact" does not appear in the Italian origin. TANOUARN, 2000, 154 is therefore wrong to try to draw a conclusion from it, besides beside the question.

1834 0760.14: DP, 615 (= PIN 3039), trans. corrected by adding some words in square brackets for the grammatical logic of

1° Explicitly, Pius XII asks first a) whether the non-impediment or toleration of objectively erroneous religious activity is permitted, morally licit; then b) whether the positive impediment or repression of such activity is not always a duty. Note in passing that the contradictory proposition including the word "always" would not deal with "*these* circumstances", but with "some circumstance". In this way, the duty to repress evil could be a general principle, but, being an affirmative precept, it would admit of exceptions. In reality, this would only raise the question of the *fact*: in this case, are "such concrete circumstances" part of "some circumstance", an exception to the possible abstract principle, according to which one should always repress? 2° Implicitly: a) since Pius XII poses the equivalence: "not to prevent" = "to tolerate", which is true only for false or bad objects, the aforementioned free exercise is considered (because it does not pose a problem) only from the point of view that the religion exercised is erroneous, bad; b) the tolerance considered is that of the State; c) more precisely, the non-exercise of coercive means.

15. Answer based on divine authority:

a) Question on divine tolerance:

"We have just invoked (*or ora*) the authority of God. Although it is possible and easy for Him to repress error and moral deviation. Can God choose in some cases to "not prevent" (" *Pud Dio, sebbene sarebbe a Lui possibile e facile di reprimere l'errore e la deviazione morale, in alcuni casi scegliere il "non impedire"*) without contradicting His infinite perfection?"

b) Question on the divine precept of toleration:

"Can it be that, in certain circumstances. It gives men no commandment, imposes no duty, gives no right even to prevent and repress what is false and erroneous? "a"³³

the French; the Italian genius is less strict (AAS. 798): "Un'altra questione essenzialmente diversa è: se in una comunità di Stati possa, almeno in determinate circostanze, essere stabilita la norma che il libero esercizio di una credenza e di una prassi religiosa o morale, le quali hanno valore in uno degli Stati-membri, non sia impedito nell'intero territorio della Comunità per mezzo di leggi o provvedimenti coercitivi statali. In altri termini, si chiede se il "non impedire", ossia il tollerare, sia in quelle circostanze pennesso. e perciò la positiva repressione non sia sempre un dovere."

a) Answer regarding divine tolerance:

"A look at reality allows an affirmative answer. It shows that error and sin are found in the world to a great extent. God reproves them; however, he lets them exist (*Iddio li riprova; eppure li lascia esistere*)."

a") Application of the divine case to the morality of tolerance :

"So the statement: religious and moral error must always be prevented as far as possible, because its tolerance is in itself immoral (*impedito, quanto è possibile, perché la sua tolleranza è in sé stessa immorale* - cannot be valid in an absolute and unconditional sense."

b) Answer as to the divine precept to tolerate or not :

"On the other hand, even to human authority, God has not given such an absolute and universal precept, either in the field of faith or in that of morals. It is not found in the common conviction of men, nor in the Christian conscience, nor in the sources of revelation, nor in the practice of the Church. "06

16. Classic scriptural argument: the parable of the tares

a) Reminder of the parable:

"Without speaking here of other texts of Sacred Scripture that relate to this subject (*argomento*), Christ, in the parable of the zizanie, gave the following warning: 'In the field of the world, let the zizanie grow with the good seed, for the sake of the wheat' (*Mt 13:24-30*)."¹⁸³⁷

b) Application: it is sometimes advisable to tolerate error and evil:

"The duty to repress moral and religious deviations (*dovere di reprimere le deviazioni morali e religiose*) cannot therefore be an ultimate norm of action. It must be subordinated to higher and more general norms,¹¹⁰⁸ which, in certain circumstances, allow and even perhaps make appear as the best party that of not preventing error, in order to promote a greater good (*in alcune circostanze permettono, ed anzi fanno forse apparire come il partito migliore il non impedire l'errore, per promuovere un bene maggiore*),"¹⁸³⁸

17. Two principles summarizing the results:

"Herein are clarified the two principles from which we must derive, in concrete cases, the answer to the very serious question concerning the attitude which the jurist, the politician, and the Catholic sovereign State [s] should take with regard to a formula of religious and moral tolerance such as the one indicated above, as regards the Community of States."¹⁸³⁹

a) First principle, correlative to the duty towards the objective truth:

"First: what does not respond to the truth and the moral law has objectively no right to exist, neither to propaganda, nor to action, "you"¹⁸⁴⁰ -

Pius XII, knowingly presupposing that error and evil cannot be the *subject* of a right, denies them the possibility of being the *object* (or *foundation*) of a right.¹⁸⁴¹

b) Second principle, legitimacy of legal or de facto tolerance:

¹⁸³⁷ 0760.16 : AAS, 799. Cf. SCOWOLA, 1989, 563.

¹⁸³⁸ 0760.16: DP, 615-616; AAS, 799. Italicized underlining of the original. Cf. already ROUL, 1931, 355; and more lard. RussoBiagio, 1965, 178.

¹⁸³⁹ 0760.17 (top): AAS, 799; DP, 616 (= PIN 3041).

¹⁸⁴⁰ 0760.17 (continued): AAS, 799 -, DP, 616 (= PIN 3041). "Rights of truth" is a "stylistic trick" (cf. RODRÍGUEZ, Victorino, O.P., 1963b, 679), a metonymy (cf. LUCA Pietro, 295 and RODRÍGUEZ, Victorino, O.P., 1964b, 386. in opposition to ROUQUETTE, 1954.02. 244-245. Contrary to BOCKENFÜRDE, 1986.306-307, we believe that *DH* does not question this principle at all. Cf. also ARCY, 1960, 292.

¹⁸⁴¹ Cf. BOYER, 1960, 113, note 1; ROUQUETTE, 1954.02, 244; ANDRÉ-VINCENT, 1976, 86; RODRÍGUEZ, Victorino, O.P., 1963a, 330; Or VIER, 1952, 178.

"Secondly: the failure to prevent it by means of state laws and coercive provisions may nevertheless be justified in the interest of a greater and broader good,

"This is important: not just a greater good (*più vaste*), but also a higher good (*superiore*). The first characteristic could be satisfied with a circumstantial explanation: the Catholic minorities will suffer if the Catholic majorities indulge in repression; this could be a *wider good*; but it would not be a higher good. What would be a good of this kind? A good we have already wagered on: the freedom necessary to make an act of supernatural faith. This is the main reason why the Church has always forbidden the use of force to compel people to join her fold; but it is not the reason that interests us here. We have sought to determine another *higher good*: *tranquillità conscientiae*, the happiness of a good conscience and the freedom necessary to enjoy it through fidelity to the convictions of one's conscience."18⁴⁴

Pius XII also taught that in a *de facto pluralistic* society in religious matters, civil tolerance is a *duty* even for Catholics.*[^] So also for the *leaders*. We have also seen that he advocated the prohibition of coercion in the Catholic faith. *14⁶

18. The *quæstio facti*

"As to the "question of fact", whether this condition is verified in the concrete case, it is primarily for the Catholic statesman (*Statista*) himself to decide. He will let himself be guided in his decision by the harmful consequences which arise from toleration, compared with those which, as a result of the acceptance of the formula of toleration, will be spared to the Community of States; and then by the good which, according to wise forecasts, may derive from it for the Community of States itself as such, and indirectly for the State which is a member of it.

In matters of religion and morality, he will also seek the judgment of the Church. On the part of the Church, in such decisive questions, which affect international life, the one to whom Christ has entrusted the leadership of the whole Church, the Roman Pontiff, is the only one who is ultimately competent. a *14⁷

111) An explanation: the tolerance of the Church (§§ VI-VII)

VI. Church and tolerance

19. The international community, towards unity :

"The institution of a Community of Peoples, as it has now been partly realized, but which is tending to be realized and consolidated to a higher and more perfect degree, is a movement from the bottom up, that is, from a plurality of sovereign states to the highest unity, a *14⁶

20. The Church, already a.-*⁴ ®

21. Conflicts of the Church due to its dogmatic intransigence:

"The Church, in carrying out this mission, has always been and still is to a great extent confronted with the same problems that must be overcome in the "functioning" of a community of sovereign states; only she feels them even more acutely because she is bound to the object of her mission, determined by her Founder himself, an object that penetrates to the very depths of the human mind and heart. Under these conditions, conflicts are inevitable, and history shows that there have always been conflicts, that there are still conflicts, and that according to the word of the Lord, there will be conflicts until the end of time. It is that the Church, by virtue of her mission, has found and finds before her men and peoples of marvelous culture, others of barely comprehensible lack of civilization, and every possible intermediate degree: diversity of races, languages, philosophies, religious confessions, aspirations and national particularities; free peoples and enslaved peoples, peoples who have never belonged to the Church and peoples who have fallen away from her communion. The Church must live among them and with them; she can never declare herself "not interested" in any of them. The mandate imposed on her by her Founder makes it impossible for her to follow the rule of "laissez faire, laissez passer". It has the duty to teach and educate with all the inflexibility of the true and the good and, with this absolute obligation, it must live and work among men and communities who think in completely different ways.

22. Back to 1st problem: intransigence:

"However, let us now return to the two propositions which We have mentioned above: and in the first place to that of

80 0760.17 (end): ibid.

H[^]ARCY, 1964,160.

I^{^45} Cf. 07233: AAS. 1946,393; *The Church*, H. no. 1202.

I^{^6} Cf. 0710.2.

14*7 0760.18 : AAS. 1953,799-800; DP. 626, continued = PIN 3042.

1*180760.19: AAS. 800; DP. 616.

184V 0760.20: AAS. 800 'DP, 616-617 (off topic for us, and thus omitted).

the unconditional negation of all that is religiously false and morally evil. On this point, there has never been and there is for the Church any hesitation, any pact, neither in theory nor in practice. Her attitude has not changed in the course of history, and it cannot change whatever the circumstances of time and place that confront her with the alternative: incense to idols or blood for Christ. The place where you are now, the *Roma Aeterna*, with the remains of a past greatness and the glorious memories of its martyrs, is the most eloquent witness to the Church's response. Incense was not burned before the idols, and Christian blood bathed the ground that had become sacred. But the temples of the gods in their majestic remains are now but lifeless ruins; while near the tombs of the martyrs, the faithful of all peoples and languages fervently repeat the ancient Apostles' Creed, "ISI

23. 2^o problem: tolerance, out of respect for conscience:

a) The fact of this tolerance:

"As for the second proposition, that is, tolerance, in certain circumstances, even in cases where repression could be carried out (*in casi in cui si potrebbe procedere alla repressione*), the Church - if only out of consideration for those who with a good conscience (even if erroneous, but incorrigible [*invincibile*]) are of different opinion - has been led [= incited] to act and has acted according to this tolerance, after that under Constantine the Great and the other Christian emperors, it became Church of State, but it was always¹⁸⁵² for higher and more important motives (*più alti e prevalenti motivi*); So it does today and will do in the future, if it is faced with the same necessity. "

"Even in cases where": this implies that there are also cases of tolerance in cases where repression is not possible.

b) The reason for this tolerance, the common good:

"In such particular cases (*In lali singoli casi*), the Church's attitude is determined by the protection and consideration of the *bonum commune*, the common good of Church and State in each of the States on the one hand, and, on the other, the *bonum commune* of the universal Church, of God's reign over the whole world."

c) Assessment of the issue of fact:

"In assessing the pros and cons in the determination of the *quaestio facti*, the Church observes no other nuns than those We have already indicated for the Catholic jurist and statesman[s], even as regards the last and supreme instance. "u⁵³

VH. 24. *The Concordats*

a) Various figures:

1X500760.21: AAS, 800-801; DP, 617.

1X51 0760.22: AAS, 801; DP, 617-618.

1X52 WOLFE, 1983,189 notes that the sentence does not universalize I principle of tolerance.

1X53 0760.23 : DP. 618 = DC, 1607 ,AAS. 801.

"What We have said can also be useful to the lawyer and the politician when, in their studies or in the exercise of their profession, they come into contact with the agreements (Concordats, Treaties, Conventions, *Modus vivendi*, etc.) that the Church - that is, the Apostolic See - has concluded in the past and still concludes with the sovereign States. For her, the Concordats are an expression of the collaboration between Church and State.

b) Rejection of separation as a principle:

"In principle, or in *thise* (*ossia in tesi*), it cannot approve the complete separation between the two powers."

c) Claiming the independence of the Church:

"The Concordats must therefore assure the Church a stable condition of law and fact in the State (*nello Stato*) with which they are concluded, and guarantee her full independence in the fulfillment of her divine mission. "1X54

d) Various purposes:

"It is possible that the Church and the State proclaim in the Concordat their common religious conviction, but it can also happen that the Concordat has, along with other purposes, that of preventing discussions about questions of principle and of ruling out from the beginning possible matters of conflict."

e) Interpretation:

"When the Church has affixed her signature to a Concordat, this applies to its entire content. But, the two high contracting parties having informed each other of it, its intimate meaning can have degrees; it can signify an express approval, but it can also say a simple tolerance, according to the two principles (mentioned above) which fix the norm for the common life of the Church and her faithful with the Powers and men of different beliefs. "1⁵⁵

25. International peace, freedom of the Church; apostolic blessing :

"This, my dear sons, is what we wanted to discuss with you at greater length. We trust that the international community will be able to avert all danger of war and to establish peace; and as regards the Church, that it will be able to guarantee

her everywhere a clear path, so that she may establish in the minds and hearts, in the thoughts and actions of men, the tenement of Him who is the Redeemer, the Lawgiver, the Judge, the Lord of the world, Jesus Christ, the God who, above all, is blessed for ever.

In spite of everything. Pius XII maintains the right of the Catholic State, at least in certain circumstances, 1^o to prevent Catholics from getting divorced;¹¹⁵⁷ and 2^o not to tolerate public manifestations of non-Catholic religions.¹¹⁵⁸ However, this does not prevent that in certain other circumstances the followers of error may have a genuine right not to be prevented from professing, or even practicing and propagating their error. Let us examine this aspect.

15.3.2. Synthetic interpretation of *Ci riesce*: a right of the followers of religious error to be tolerated?

As for the context, it should be noted that if *Ci riesce* applies the principles of tolerance only to the case of a multi-faith community of states, this does not imply that the principles of tolerance have been applied to the case of a multi-faith community.

W54 Note "Stato" in the sense of country or nation or society.

1855 0760.24 : AAS, 801 -802; DP, 618-619.

1H56 0760.25: AAS, 802; DP, 619.

1857 Cf. 0703. PIEXii, 1940.05.07: *Concordat and missionary agreement with Portugal*: AAS, 217-233 + 235 245; BP 2,87-105+ 106-115 (here: 101); DP, 1940,151-161 + 162-168: Article 24.

1858 see further note 1867.

It is by no means clear that this doctrine is valid only in this case, which is, moreover, the most general in extension (the community of States) and that "the indissoluble union of States is a natural postulate."¹¹⁵⁹

The core of the text is constituted by § V, brought by n^o 12, completed by reflections on the tolerance of the Church, inspired by s. Thomas and Leo XIII :

1^o tolerance, in order to be legitimate, must be a practical non-obstruction, not a positive authorization presupposing moral approval; thus determined, it represents an act indifferent in itself, because there is no universal negative precept: "Thou shalt not tolerate"; 2^o being indifferent in itself, and not always and of itself an act of virtue, ¹¹⁶⁰ it is justified by the circumstances, and notably by the finality: it requires: a) determined circumstances; ¹¹⁶¹ b) creating a legitimate possibility, even a necessity and duty to tolerate; and even sometimes the absence of any right not to tolerate; c) with a view to a higher good, especially the respect of the sincere conscience and the common good of both societies.⁹

Tolerated evil is evil, tolerance by which one tolerates can be a good. Thus, tolerance by the State of evil acts, like the freedom resulting from it, sometimes constitutes a good. ¹¹⁶² One may ask under what conditions they can not only be a good act of the ruler (and thus the object of a *right to tolerate*) and a favorable situation for the citizen, but also be the object of a right of the individuals whose action is tolerated (*the right to be tolerated*), and more

⁹ Cf. 0760.23, already cited. MARTIN Michel, 1988.09, *The fundamental error of "Dignitatis Humanie". Pilate a supplanté Moïse, in DeRAilleurs, n° 89* (September 1988), 14 sees an opposition between "the good of society" and "a right of individuals". This is to forget that, according to 0730.2: "the primordial rights of man ... are the most precious thing in the common good" (our emphasis). To tolerate in order to protect a fundamental right is therefore to tolerate in view of the common good. A duty of political prudence towards the common good can therefore *also* be a duty of justice (against MARTIN M. *op. cit.*, 15).

precisely, of a *natural*, and not merely civil, *right*.¹⁰ The proponents of the "classical" doctrine would be ready to admit the *present* necessity of proclaiming in most countries the *civil* right to the RL, from which would thus follow a *civil right to be tolerated*, because of the *present circumstances*, but not the existence of a *natural right* having this object,¹¹ right which *DH* is approached for asserting in apparent contradiction with the present.

IS59 0744. (here: 07443) REXII, 1951.12 24: RM of Christmas. *Già per ta decimeter*^a; AAS, 1952. 5-15 (here 10); DC. 1952.1 -11 (here 7). DP. 1951.555-567; RH 2.2103-2116.

diction with the traditional doctrine of tolerance,¹¹ "* according to which such manifestations, especially public ones,¹² cannot be the object of a right, but only of a tolerance. But what about a possible right to tolerance? Should we say: "such a right is absurd, false and condemned by the Church"?¹³

Let us return to the text of the *Pastor angelicus*: "**Can it be that, in certain circumstances, He [God] does not give men any commandment, does not impose any duty, does not even give any right¹⁴ ^ to prevent what is wrong and false?" (0760.15).**

We consider that according to this text God imposes in certain circumstances on the State a *duty in justice* not to prevent an evil. Then, reciprocally,¹⁵ exists (in these same circumstances) in the subjects of which one "does not have any right" to prevent the error and the bad actions, a *right - in justice - not to be prevented* from making these actions.¹⁶ Right that is implied, in fact, by the right to the RL of *DH*. -

Scope of our thesis: A) the thesis is *particular*, restricted to certain circumstances, and not universal; it does not therefore imply that it is *always* immoral to repress error, on the contrary; B) the thesis *presupposes* the *possibility* of this right, but it also affirms *the fact* that this right exists; C) it is certainly an implicit teaching, not an explicit one, but it is *rigorously implied* by the text.

To **demonstrate the thesis**, we will proceed in several steps: I) we will begin by recalling that an action *taken without any right* is immoral, without necessarily being an action that is

¹⁰ Cf. S 92:6 RS. A.S., IV/VI, 769. ad n. 13, modus 21. To 225 Fathers who wished to add the adjective "civil" to the word "right", the SUC replied: "It cannot be admitted, for it would be against the Declaration, which affirms a natural right, and not only a civil one" (our translation).

¹¹ Cf. WUENSCHL, 1961. 51; JOBUN, 1991b. 61 (summarizing the preparatory scheme "OTTAVIANI: 1962"), and LASSUS. 1988.14, § 4. Cf. 6 RO, A3. IV/VI, 719-720, according to which this position was maintained by some Fathers until the *Textus recognitivus*; it could not be retained, because a) the affirmation of a right that is only civil would be contrary to the substance of the doctrine of the text already approved; b) it would be very dangerous for the Church; c) it does not correspond to the truth of human dignity.

¹² Only the *public* manifestations outside the places of worship and the propaganda present a real difficulty. In fact, the final protocol of the *Concordat between the Holy See and Spain* (27 August 1953). 445. 1953. 625-655 (here 651-652) and DC, 1953, 1153 ff, AAS, referred to the *Fuero de los Españoles*, art. 6 (DP. 1953.364 and DC, 1945.09.30.690), which stated: "No one shall be disturbed for his religious beliefs or for the pnvé exercise of his worship. No other ceremonies or external manifestations shall be permitted than those of the Catholic religion." Cf. e.g. LEFEBVRE Marcel, M^s, 1985.11.06, 10" I. a) and *ibid.* b); or TISSIBR. 1991.04.12. 49. Against this A. (*ibid.*, 51), let us note that "HE IX. encyclical *Quanta cura* (8 December 1864):" does *not* specify that the violation of the true religion of which he speaks would be *public*.

¹³ LEFEBVRE Marcel, M^s, 1985.11.06 16, 2. But how to reconcile this passage with this other one (*ibid.*, 14): "Thus, the teaching of the Muslim religion (which denies the Trinity and the redemptive Incarnation) to their children is not an objective natural right of Muslim parents, but only an object of practical non-repression (or negative tolerance)", completed by note I (which we will quote later), especially if one brings this last one closer to § 1. a) of 10, already quoted?

¹⁴ The italicized underlining is our own.

¹⁵ Obvious correlate for OCÁRIZ, 1989.06.89.

¹⁶ 171CONNELL, 1964.08.128 does not see it and does not quote the famous expression "*nessun diritto*".

always immoral; II) we will note the *objective possibility* of such a "right not to be prevented"; III) we will demonstrate the *effective* presence of such a right in the text of *Ci riesce*.

I) Acting on others without right is immoral

Pius XII, in 1958, after having recalled that the end does not justify the means [I] distinguishes two categories of sins with regard to the means: [A] actions that are bad because they are forbidden by positive law (extrinsically immoral), and [B] actions that are forbidden because they are bad (intrinsically immoral); within this second category, he discerns two kinds: 111 actions that are always immoral, and [2J] actions that are immoral because of the circumstances. Within this last kind, he provides (perhaps non-exhaustively), two species: [a] actions immoral for lack of right (this is the species we are interested in); [b] actions immoral as a result of the *unjustified risk* of being driven to evil.

[I] "(A) Some actions are contrary to morality, because they only violate the norms of a positive law; [B] others carry in themselves their character of immorality; of these - the only ones We shall deal with, - II) some will never be moral; [2] others will become immoral according to determined circumstances. [Thus, for example, it is immoral to penetrate someone's conscience; but this act becomes moral, if the person concerned gives his valid consent, [b] It may also be that certain actions expose to the danger of violating the moral law: thus, for example, the use of (psychological) tests may in certain cases excite immoral impressions, but it becomes moral, when proportionate motives justify the danger run."¹¹⁷²

[II] The Pope recapitulates:

"We can therefore distinguish three kinds of immoral actions, which can be judged as such by reference to three basic principles, according to whether they are immoral, (1) either in themselves, [2] [a] or because of a lack of right on the part of the person who performs them, [b] or because of the dangers that they cause without sufficient reason ."¹¹⁷³

[111] In the case we are interested in, that of the lack of right, he specifies:

" (A) Actions which are immoral by reason of a lack of right on the part of the person who performs them do not in themselves contain any essential element which is immoral, but, (BJ in order to be performed lawfully, they presuppose a right which is either explicit or implicit. [...] [CJ Since a right cannot be presupposed, it must first be established by positive proof on the part of the person claiming it, based on legal title. D] As long as the right is not acquired, the action is immoral. But if, at a given moment, an action appears to be so, it does not yet follow that it will always remain so, for it may happen that the right which was lacking is acquired later. However, the right in question can never be presumed."¹¹⁷⁴

Let us apply these principles to "*determined circumstances*" where "God gives men [...] *no right* to prevent and repress what is wrong and false" (0760.15): in the context of *Ci riesce*, this is the religious or moral domain. We note first of all that it is not a question here of immorality only because of a positive law;^{*875} [B] that it is indeed an immoral action; 111 not certainly because to prevent or repress a religious error would always be immoral,¹¹¹⁷⁶ [2J] but according to determined circumstances; [a] for *Ci riesce*.

^{11,72} We complete here our 0789.1 :AAS, 1958,279-280 |DPPieXH. 192-193.

¹ "70789.2: AAS". 1958,280; |DPPieXU. 193.

ⁱ¹⁷ – 07893 : Ibid.

1X75 As might a constitution or law that previously prohibited preventing or repressing.

1X76q_{ue} we do not claim in any way, on the contrary, despite our assertion of a *natural* right.

it will be immoral because of **the absence of law**; and not only because of [b] the risk of provoking an evil (which is otherwise indicated as a just reason for tolerance). Now, for its part, *DH's* right to LR is based not so much on the intrinsic immorality of *any* repression of religious error, as on the absence of a state right to repress *non-legal abuses*.

Let us recall then that for St. Thomas, precisely, laws are unjust "when someone carries a law beyond the power entrusted to him. Thomas, precisely, laws are unjust "when someone makes a law beyond the power that has been entrusted to him.¹⁷ If, therefore, the State legislates to repress error in conditions where God has given it *no right* to do so, it commits an injustice. Now, it is a question here of denying to the State a faculty of taking away from someone a part of freedom, a faculty which necessarily belongs to the domain of justice, and does not only belong to another social virtue or to charity.

H) Objective possibility of a "right to religious tolerance

We must then show in general the non-absurdity of a right not to be prevented from acting even in a wrong way. This notion of a "right to be tolerated" seems to some absurd (A); nevertheless, the alleged absurdity of a right to be tolerated, or rather of a right not to be prevented from acting even in a wrong way, is proven (B).

A) The notion of "right to be tolerated

The objection takes as its targets two expressions: 1) "right to be tolerated"; 2) "right not to be prevented from doing wrong".

1) Objection: "a right to be tolerated has no meaning, since to tolerate is not to prevent that which one could prevent and which one would have the right to prevent. "i"¹⁸ " Let us reply: it is not correct if we do not include "the right to prevent" in the definition of tolerance, which is not necessary either in French or in Italian, and especially not in *Ci riesce*. Tolerance is "the fact of not preventing what one could physically prevent, whether *or not* one has the *right to prevent it*".¹⁹

"We say 'tolerate' that which, for serious reasons, we cannot or should not avoid, and which we admit by not resisting it, although we cannot approve of it."²⁰

In any case, what is not prevented is obviously an evil, or at least what the possible "impediment" considers to be such. El since Pius XII chose to deal with this problem mainly by means of the neutral expression "*non inpedire*", the question remains open of "the right in certain circumstances *not to be prevented* from doing *even* what is objectively evil".

2) By using the expression "*il non impedire*", *ossia*²¹ *il tollerare*", the Pope makes the two expressions synonymous, at least in the case of erroneous behavior. Same equivalence in the passage "...prevented when possible, because his tolerance..."- Therefore, here too the problem of the "right to be tolerated" comes down to that of the possibility that there is - sometimes - some right not to *be prevented* from doing wrong. Since the expression "right to

¹⁷Cf. 0245. THOMAS OF AQUIN, s., 1-2,96,4.

¹⁸ Cf. e. g. LASSOS. 1989.03.22. 2; who affirms moreover: "Moral libené is synonymous with the *mol droit*" (LASSOS, 1988,8. probably under the influence of ROUSSEL. Alfred. 1926. of which he quotes p. 11-13).

¹⁹⁷⁹ See BUONIFIRES, 1988.06.4-7 and HARRISON, 1990,35-39, on Genesis 4.

IIHOOR TAVIANLIOO. II, 63. our translation.

⁸⁸¹ As another example ci. 0760.05: "la natura, ossia il Creatore a.

be tolerated" offends - not without reason - many authors,²² we will prefer that of "right not to be prevented from acting - even possibly badly".

B) The notion of "right not to be hindered

"Some right not to be prevented from doing wrong exists in fact.

1) *First counter-example: the civil right not to be prevented from doing wrong*

According to a post-conciliar author, H. Madelin:

"With regard to other religions, the Christian State must show itself equally tolerant, with a view to a greater good or to avoid a greater evil. By decreeing this *de facto* tolerance, it will not grant other religions the positive moral right to worship, but only the negative right not to be hindered in the exercise of that worship."¹⁸⁹⁴

But long before the Council, Dom J. Baucher already exposed two cases where, despite an objective duty imposed by God, there could be a negative right not to be forced or prevented in a way contrary to this duty:

1° First, the case of the right not to be forced to become Catholic:

"The duty to be Catholic, imposed by God, does not create for anyone the right to force an unbaptized adult to become a member of Christian society. In other words, every man using his reason has the right not to be forced by the Church, the State, or any individual or society to receive baptism."^{181,5}

And this, therefore, despite the absence of any right-permission not to be Catholic.

2° Then, the example of civil law not to be prevented:²³

"By decreeing this tolerance, the legislator is supposed not to want to create for the benefit of dissenters the right or the moral faculty to exercise their worship, but only the right not to be disturbed in the exercise of this worship. Without ever having the right to do wrong, one may have the right not to be prevented from doing wrong, if a just law prohibits this impediment on sufficient grounds, a²⁴

It is then argued (the rest of Dom Baucher's text urges it)¹ *** that if it is true that such a right not to be prevented can arise from a *civil* law, it cannot nevertheless come from a *natural* law. But, even restricted to *natural* law, such a denial is false, for a divine law¹ *** is obviously always a just law. Therefore, *if* someone asserts that natural law gives rise to a certain right not to be prevented from doing even evil (under certain conditions), this assertion cannot be called *absurd*. Having shown, from Dom Baucher's article, the **non-absurdity** of some right - even a natural right - not to be prevented from doing evil, *¹²⁵ we will now prove the existence of a particular natural right not to be prevented from doing certain objectively evil actions.

HOC *and. e. g.* LÓPEZ DE PRADO, 1966a, 253. Perhaps it is better to speak in terms of "rights of freedom" rather than "right to tolerance". Cf. OCAÍJZ. 1989.06.89; UTZ, 1960, 129, etc.

²³ Civil right to liberty not to be confused with the (natural) right to civil liberty (cf. HARRISON, 1988b, franç. 130; ed. ong., 117).

IKU7 BAUCHER, 1926.701.

I*** BAUCHER, 1926.701. continued.

I**⁹ Natural or revealed. This responds to DAVIES. 1992.305 citing his own p. 221.

I⁹⁰ Cf. also BROCHE, 1964.25-27.

I¹¹ Cf. KONINCK. 1962.09-10b. 199.

-¹¹ KONINCK, 1962.09 10b. 197-198; and again. 203.

** Cf. DAVIES. 1992.221.

1W4 Cf. LEFEBVRE Marcel. M*, 1985.11.06. where curiously one admits a right of the parents to educate their children according to their religious convictions except harmful social consequences [cf. 10, a and 14]. and on the other hand one allows the possibility of any negative right to error 116]. On the other hand, how can we explain that a *civil* law can give a negative right to error practiced in public (as DAVIES, 1992,216-219,221 admits) whereas God could not, because it would be an absurdity? Cf. also BARTHE, 1992.02,71.

2) *Second counterexample: the natural right not to be prevented from giving a wrong religious education*

We remember that St. Thomas Aquinas and Pius XI taught the existence of a **natural right** of parents, even non-Catholics, not to **be prevented**, even by the Church, let *alone* by the State, from **bringing up** their children according to their religious convictions, **even if they are false**, except under very particular conditions... And yet, here is a case where parents have no affirmative *right* (moral or juridical) to *bring up* their children in their religion, except if it is the true one: it is thus a question of a *natural right not to be prevented from educating even in error, within certain limits*,¹ and this, in spite of the absence of any natural right to *do so*... We are indeed in the presence of a natural right which protects even the possible moral abuse of this right:

"It is therefore possible that, knowingly or unknowingly, parents abuse their natural right. This abuse does not, however, destroy their right. The law, on the other hand, does not sanction abuse. [...] Similarly, the right of ownership is a natural right which the subject may abuse, knowingly or unknowingly; the abuse, however, does not take away his right of ownership. a * ^19

This case obviously does not prove the more general case of *DH*.¹ ^ It only proves the *non-absurdity* of a *right not to be prevented* from professing and spreading error, against the main argument of many of the opponents of *DH*'s doctrine. ^

III) Presence of a "right to religious tolerance" in *Ci riesce*

A thorough research on "*diritto*" in Pius XII in general can be found in LRTC. 18" We must be content here to study (A) the use of the word in *Ci riesce*, (B) and its implication for the reflection on *DH*.

A) The word "right" in *Ci riesce*

What use does Pius XII make of the word "*diritto*" in 1953 (1), then in *Ci riesce* (2), and in particular in the sentence whose interpretation we seek (3)?

1) *The word "right" in Pius XII in 1953*

Apart from *Ci riesce*, the pontifical speech of 1953²⁶ most interesting for our research is the one - already quoted - of October 3 (addressed in French to the VI International Congress of *Criminal Law*):

"(...) no higher authority is empowered to command an immoral act; there is no right, no obligation, no permission to perform an inherently immoral act, even if it is commanded, even if refusal to act results in the worst personal harm - this moral standard is not at present under discussion; [...]J."²⁷

Thus, two months before *Ci riesce*, Pius XII made a clear distinction between "right" and "permission". Let us note in passing the existence of two trilogies: "no right, no obligation, no permission" (October 3) and "no mandate, no duty, no right" (December 6). Pius XII, fully aware of the relationship between the two speeches, as we have seen, was only continuing his reflection in the second, keeping in mind the first.

2) "*Diritto*", "*permesso*", "*potere*" in *Ci riesce* in general

1K95 Nous refer then to ROBERT P. & SIGNORELLI C., *Dictionnaire français-italien, italien-français*. Paris Milano, Société du Nouveau Littré-Signorelli. 1981 (repr. 1984), 3002 p., s. v. ".droit" (p.380) and s. v. "diritto" (1738-1739); to LALANDE, art. "Droit", 251 (annotation on Droit, quotation from J. Stuart MILL); and to our exhaustive list of uses of the word "droit" in PJE XII (LRTC. t. II/B).

IK96 See also DPPieXU. 1953,145 (below): 223 (below: "cannot"); 148 ("may"); 539-540.

Let us note now in the official original of the *Ci riesce* speech,²⁸ the groups of formulas expressing the concept of right and the close concepts.

Pius XII uses "diritto" in the objective sense of "juridical discipline (matter, science)" in the prologue of *Ci riesce*,²⁹ in sections II, § 2, lines 2,¹⁹⁰⁰ 6,9 and 11;³⁰ III, § 1 jivozIV, §2,1. 9;³¹ and in the sense of "fundamental subjective right - requirement" in sections II, § 1,1. 4;³² III, §1,1. 9;³³ III, §1,1. 13;¹⁹⁰⁶ VI, §4,1.

¹⁹97 0758.6/A; AA5, J 953,738,2" paragraph = *DPPIeXU*, 474.

^{19w}AA5, 1953,794-802.

AAS, 794: "Diritto penale internazionale" (International criminal law). Here the capital letter indicates even more clearly the subject (law-science or law-art).

^{1^1} AAS, 196: "diritto internazionale" (international law).

³¹ AAS. 797: "diritto positivo" (positive law).

³² 0760.05: AAS. 795; *DPPIeXU*, 611-612; cited in note 1820. Note after the statement of various rights the expression: "diritto delle genti dettato dalla natura", the law of people dictated by nature.

6-7.1907 On the other hand, if it is a question of right-permission, Pope Pacelli uses "permesso", in the sense of permission either juridical but negative (thus in IV, § 2, I. 13);¹⁹⁰ or moral and therefore affirmative: V, § 2, I. 6.¹⁹⁰⁹ In the same sense, he will sometimes use the more ambiguous word "potere" (power). Here it can be moral permission (cf. V, § 1, I. 3-4;¹⁹¹⁰ *Ibid.* 1. 7);¹⁹¹¹ or both moral permission and physical possibility (*Ibid.* 1. 10);¹⁹¹⁷ or simply physical possibility (VI, § 4, I. 2).¹⁹¹⁸ If we put in brackets the sentence whose meaning we are looking for, *Ci riesce*, in order to render the expression "to have the right-moral permission", never used "to have the right, *avere il diritto*", but used turns containing "*permesso*" or "*potere*", and, on the other hand, used the word "*diritto*" in a purely juridical sense. It is therefore highly improbable, if not impossible, that the phrase in question³⁴ denies to human law the mere moral permission and not, in addition, the juridical permission, in determined circumstances, to repress evil and error.

3) "*Nessun diritto*" in the passage studied in particular

We even consider that the juridical sense is the only one possible for "*nessun diritto d'impedire e di reprimere ciò che è erroneo e falso*",³⁵ key passage in question (V, § 3, I. 4). Pius XII teaches there that in determined circumstances God does not give **any** right to prevent the may. Not simply: "not *the* right",³⁶ but "**no** right" ("*nessun diritto*"). So, sometimes the State has **no right, therefore not even a right in the strict sense**, since the word "no" is universally negative. And Pius XII, on October 3, already used the expression "no right" by "contradicting" it with "no permission".¹⁹¹⁷ In the sentence under consideration. Pius XII makes God deny to men any "*diritto di impedire*". And he denies any right-permission, therefore even a *juridical* right-permission to forbid.¹⁹¹⁸ Now without juridical permission to act on others, one commits an injustice;

1905MS. 796: "equivalenza dei diritti" (equivalence of rights).

1906MS, 796: "diritto d'immigrazione" (immigration law).

is equivalent to asserting the subject's right to demand non-repression (in this case, for *evil* acts).^{TMTM}

If Pius XII, in the same address, denies evil (expressed in the neuter "*ciò che*") any right to existence, etc., he does not deny at all that *the man who is in error* may have some right not to be prevented from teaching, practicing error, etc. (otherwise he would be contradicting, for example, the teaching of St. Thomas and Pius XI),³⁷ but he only affirms that *evil, error, cannot be an object, nor a foundation, nor a subject of right*. There can be no objective - affirmative (neither moral, nor juridical) - right to profess and propagate error. But there can be a right (not of error, but of man) to non-coercion, even in the case of the propagation of some error, within certain limits. We therefore propose to avoid even the expression "negative right to error", and to replace it by "right not to be prevented from acting, even in an erroneous way".

Thus it follows from *Ci riesce* that in certain (unspecified) circumstances there exists for

¹⁹¹⁰*Ibid.*, V, § 4, I. 6. AAS. 798 (0760.15).

19150760.15 : AAS. 798. Trans. at 1835.

¹⁹¹¹LeContre DAVIES. 1992.304-305.

³⁷ *supra*, the natural right of parents not to be prevented from teaching and therefore from spreading even religious error among their children.

some a right in justice to see the evil they do not prevented by human law. Pius XII thus developed the doctrine of Leo XIII. showing that sometimes God denies the State the very right (*ius*) - and not only the moral permission - to repress; it is no longer a question of forbidding *the usum* of a right that the State would have, but of denying it even the *ius*, thus forbidding repression in the name of justice itself!³⁸

B) "Determined circumstances":

from tolerance to LR, or from Ci riesce to DH

The discussion among the Council Fathers of Vatican II revolved essentially around the passage from the doctrine of the *Ci riesce* address, symbol of "traditional doctrine", to that of the right to social and civil liberty in religious matters.³⁹ In our opinion, the passage is made in particular by a deepening of the concept of "determined circumstances". First, two objections:

a) On the one hand, it is rightly asserted, no one should claim to *deduce* from *Ci riesce* the doctrine enunciated by *DH2*. Far from such a claim, we simply propose to show how the content of *Ci riesce* proves the *non-absurdity* of a possible right not to be prevented from acting, even in case of error - the kind of right claimed by *DH2*.^{TM2.3} Both magisterial acts deal with

38 TANOUARN, 2000, 155 claims without any foundation, and without even discussing our present text, that neither Leo XIII. nor Pius XII. made any progress in the doctrine of tolerance... Cf. on the contrary COURTADE. 1954, 185 and SARACENI, 1957,76-77: "Si potrebbe dire che Leone XIII non va, concettualmente, oltre la distinzione, ben nota ai canonisti, fra *ius* e *exercitiuin inris*, mentre Pio XII nega che, talvolta, esista lo stesso *ius*."

39 The title of our paragraph resembles *De la Tolérance à la liberté religieuse, à la mémoire du Joseph ŪXJUJI, S.J. /1895-1988/*, n° spécial de *RechScRel*, 78/1 (1990), 1 -95.

objects only partly identical: Pius XII deals only with the case of unprevented *evil*, while *DH* deals with the problem of "unprevented" evil as well as *good*.^{TM *I}

b) Another objection is that a right restricted to *certain circumstances* would exclude the proclamation of a natural right. Let us answer in two steps:

c) PIE XII on the one hand declares that the question arises (0760.14) "*almeno* in determinate circostante", not *exclusively* in these circumstances. Moreover, he affirms that the Church has practiced tolerance in the past "with regard to those who with a good conscience (even erroneous, but incorrigible) are of different opinion" (0760.23). It follows that *such circumstances can exist whenever the good faith of those who do not believe as Catholics do must be taken into account*. This is both much broader as a point of application, and higher as a basis.⁴⁰ One could therefore imagine in particular a very general type of circumstance stated thus: **When the just public order - that of *DH 7* - is respected, God gives men no right to prevent what is false and wrong (in good faith) in religious matters.** - For, on their part, the limits placed by *DH 2* and *DH 7* on LR imply, of the right claimed by *DH*, a *use limited by certain determined conditions*.⁴⁶ Indeed, let us not forget the difference between the right and its exercise.

2° The exercise of a right, even a *natural right*, is never *unlimited*. As soon as a given right is defined, its use is limited intrinsically by its object, and by morality, and extrinsically, by the necessities of social life.^{*927} Indeed, a natural right can never be claimed at the expense of another natural right (of others or of society). Society has the natural right to enforce, if necessary by force, its own foundations, without which it cannot survive, that is to say, the part of the common good that we call "just public order".

Conclusion of Chapter 15

Ci riesce's doctrinal progress consists, therefore, in no longer merely affirming the possible immorality of the *use of a possible right of repression*, but in denying the *right of repression* itself, in certain circumstances.^{1921*} One could then effectively conclude: **in the circumstances where the subject S does not cross the just limits** (mentioned in *DH 2*, § 1 and described in *DH 4*, § 4 and *DH 7*, § 3), **God does not give men any right to repress the evil that S may commit on the basis of a bona fide error in religious matters.**

"Impartial history obliges us to note that Pius XII, in twenty years, has made considerable progress in the Church's reflection on the inviolability of the person, the dignity of the family, the prerogatives and limits of public authority, the rights of ethnic minorities, the right to the public expression of opinions, the right to political freedom, the right of refugees, prisoners, the persecuted, the right to religious education, the right to private and public worship of God [cf. *RM of Christmas 1942*, AAS 35 (1943), p. 9]. It is clear from these messages that the human person can never be sacrificed to any national or international political interest." 1929

All in all, visibly, if Pius XI and Pius XII knew, on the one hand, the foundation of the right to the LA of *DH* (the dignity of the person, his duties,^{>93o} the limits of the State, the freedom of the act of faith, the freedom of the Church), and on the other hand, the object of this freedom (to render worship to God), they only sketched the doctrine of the limits of this right. They still lacked the solution constituted by the *purely negative* character of this right, and thus the study of a possible protection of non-legal abuses of the right by the right itself.

40 Cf. also DONDEYNE. 1964.287-288 and RuSSO Biagio. 1965.133 and 191-193.

In any case, the key to our problem will have to take into account the fact that "without religion, there can be no morality or public order in a State [...]" 3i¹⁹

1929 11 15. JOHN PAUL II. 1979.03.22: to the International Institute of Human Rights; *DC*, 412.

1930 PIUS XII very often couples "rights and duties"; cf. e.g. 0742.

19310791: *AAS*, 1958,451; *RH*. n° 4449-4450. Cf. LEV1LLE, 1967,285-286.

CHAPTER 16.

16. BLESSED JOHN XXIII (1958-1963)

L 9 INITIATOR of the Second Vatican Council, "good Pope John", in a brief pontificate, will have just enough time to synthesize the teaching of his predecessors (especially Pius XII): thus, he takes up the traditional Catholic doctrine of the duties of individuals and societies (16.1.), and advances the doctrine of fundamental rights (16.2.).

16.1. The traditional Catholic doctrine of the moral duty of individuals and societies

John XXIII faithfully transmitted the doctrine of his predecessors in the matter of moral and religious indifferentism (16.1.1.); but he launched the preparatory phase of an ecumenical council, destined to update the mode of exposition of the doctrine; during this phase the classical conception of religious tolerance (Otlaviani scheme) and a new conception, that of religious liberty (Bea scheme), would clash (16.1.2.).

16.1.1. The refusal of indifference and public immorality

We find in Pope Roncalli a pastoral concern with indifferentism. From his first great encyclical, he recalls the obligation of every man to follow natural reason:

"[...] Now God has endowed us with a reason capable of knowing natural truths. If we follow reason, we follow God himself, who is the author of it, as he is our legislator and the guide of our life. If, on the other hand, through carelessness, negligence or malice, we depart from these natural truths, we thereby turn away from the supreme good and the moral law. We can. As we have said, we can reach natural truths by reason; nevertheless, this knowledge - especially in the field of religion and morality - cannot be acquired by all with ease, nor often without risk of error. As for the truths that escape the natural capacity of reason, we cannot in any way reach them without the light and inspiration of the Holy Spirit. R"⁴¹

This duty is correlative to the truth, the intrinsic limit of the freedom of the press:

"The right to truth and orientation to an objective moral rule, based on the perennality of divine laws, is prior to and superior to any other right and requirement."⁴²

The non-indifference to error⁴³ also applies to supernatural matters:

41 Q803. JOHN XXIII. 1959.06.29: Encycl. *Ad Petri cathedram*: AAS. (here 499): DC. 897-922 (here 898).

42 Q804. JOHN XXIII. 1959.12.08: to Italian Catholic jurists; AAS', 1960.47 ,DC, 3-4.

19340807. JOHN XXIII, 1960.12.04: to the journalists, cat. ital; AAS. 1960,1017/DC. 1961, 1*6.

"This means that all men, either individually or as a group, must adopt the doctrine of the Gospel. If they reject it, they call into question the very foundations of truth, honesty, and culture. 1935 "This means that all men, either individually or collectively, have the duty to tend constantly and throughout their lives to the attainment of heavenly goods. And the use they make of the things of earth must be ordered to this end, taking care that temporal goods do not endanger their eternal happiness."⁴⁴ "23. We therefore ask all, but especially the heads of state, to meditate carefully on these points before God, their judge, and to employ courageously all the means that can lead to the necessary union. - This unity of views, which, as We have said, will certainly alone increase the common prosperity of the peoples, can only be restored when, by the pacification of minds and the safeguarding of the rights of each, the freedom due to the Church, to nations and to all citizens will shine forth everywhere."¹⁹¹⁷

Statesmen must govern under the eyes of God, and respect the rights and freedom of all, including the Church:

" 72. We do not wish to offend anyone, rather, We wish to grant forgiveness and ask God for it for all. But the consciousness of Our sacred duty demands that We defend to the best of Our ability the rights of these brothers and sons, and that We insist that the legitimate liberty which is due to all, and therefore also to the Church of God, be granted to all as it should be. Those who truly observe the principles of truth and justice, and who have the interests of individuals and nations at heart, do not deny freedom, they do not restrict it, they do not stifle it; they do not need to resort to these means. So it is never possible to achieve a just prosperity of citizens by force, by oppression of minds and hearts. 73. And if there is one thing that must be considered certain, it is that where the sacrosanct rights of God and religion are neglected and trampled underfoot, the very foundations of human society are shaken and will sooner or later crumble, as Our Predecessor of immortal memory, Leo XIII, so wisely noted: "It is normal.. that the force of laws be broken, that all authority be weakened when the sovereign and eternal order of God which commands or forbids is repudiated" (Leo XIII, 1888: *EpisL. Exeunte iam anno; Acta Leonis XIII* (1888), p. 398)."⁴⁵

On the one hand, he will recall that the State must positively help the attainment of eternal salvation,⁴⁶ on the other hand, he will welcome the disappearance of certain intrusions:

"No one, however, can deny that the new conditions of life have at least this advantage of having removed innumerable obstacles by which the sons of the century formerly impeded the Church's freedom of action. It is enough to glance at the history of the Church to see at once with evidence that the Ecumenical Councils themselves, whose vicissitudes are written in golden letters in the splendors of the Church, have often experienced grave difficulties and reasons for sadness because of the intrusion of the civil power. Although these secular princes sometimes sincerely set out to protect the Church, this was not always done without danger or damage to the spiritual, since they were often driven by political motives and were too concerned with their own interests. Today, we confess that we are very saddened by the absence from your midst of a large number of bishops who are very dear to us and who, because of their faith in Christ, have been imprisoned or otherwise prevented from attending. This prompts us to pray for them with fervor. However, it is with hope and great comfort that We note that today the Church, finally freed from all the profane obstacles of the past, can from this Vatican Basilica, as from a second Cenacle, make her voice heard through you, full of majesty and gravity.

¹⁹⁴ "

But the penetration of faith in public morality and institutions, and the collaboration of the State with the Church for the education of the people also provide the temporal common good,¹⁹⁴ * of which in his second great encyclical,⁴⁷ he develops precisely the "Pacellian" definition:

"For this purpose, it is required that the men invested with public authority are animated by a healthy conception of the common good. This includes all the social conditions that allow and favor the integral development of men's personalities,"¹⁹⁴ *

Now, this common good justifies, as we know, civil tolerance in religious matters: this is

44 0817. JOHN XXIII. 1962.10.11: Alloc. *Gaudet Mater Ecclesia*. at the opening of the Council (public session 1); AAS. 789-790; AS. *l/l*. 166-175; Ss. *CONC. OEC. VAT. 11*. 854-872; DC. 1380-1381.

45 0803: AAS, 1959. 528-529; DC. 920. The pope then calls for prayer for all those "*quorum religio coarctatur et coauRUXtatur*".

46 Cf. 0819.4: AAS. 1963. 273 (quoted by *DH*, note 6); DC. 523. Cf. MURTAS. 1970. 129-130, with a hesitant conclusion. 151.

⁴⁷ 0809. *Mater et Magistra*; lat. + ital. AAS. 401-464: trans. in DC. 945-990.

what the "Ottaviani scheme" will remind us of.

16.1.2. The classical doctrine of the "Ottaviani scheme"

As we know, during the preparatory phase of the Council, John XXIII had put Cardinal A. Ottaviani, Secretary of the Holy Office, at the head of the theological commission. Ottaviani, Secretary of the Holy Office, to head the theological commission. This commission had drawn up an outline *De Ecclesia*, intended to be presented to the members of the central preparatory commission, in which chapter IX dealt with *the relationship between Church and State and tolerance*.^{TM**} This outline presents the theology and public law common in the textbooks before Vatican II.

It can be summarized under the following headings: 1) Civil society cannot pursue its end at the expense of the ultimate end.⁴⁸ 2) The state cannot be indifferent to religion, and must not only provide that which helps men to procure material and human (temporal) goods, but must also facilitate access to spiritual and religious goods.⁴⁹ 3) The civil power, in the person of its holders acting as representatives of civil society, must render worship to God according to the forms of worship of the Catholic Church.¹⁹¹⁷ 4) On the one hand it *can*, because the Church is recognizable by the signs of credibility; on the other hand it *must*, and must also, in its government, conform to the natural law and take into account the positive divine and ecclesiastical laws.¹⁹⁴¹¹ 5) But it can do so only when the society it guides has received and recognized Revelation.⁵⁰ 6) It must therefore exclude from its legislation, its government and its public action everything which, in *the judgment of the Church*, would prevent the attainment of the eternal end; it must even positively seek to make the path towards this end easier.¹⁹⁵⁹ The outline then moves on to the application of the principles to the various possible concrete cases. It then notes that even in a Catholic nation it is forbidden to coerce faith.⁵¹ However, the schema asserts and justifies that the state can of itself moderate the exercise of erroneous worship.⁵² The reason invoked is a parallelism between the expansion of an erroneous religion and public morality, to which unity in faith is attached. It is worth noting the twofold type of intervention mentioned, namely, on the one hand, to prevent public manifestations of cults and, on the other hand, to prevent the spread of doctrines opposed to eternal salvation. Then comes the description of a tolerance inspired by charity and prudence:

"Tolerantia religiosa in Civitate catholica. Qua in præservatione veræ fidei procedendum est secundum postulata christianæ caritatis et prudentiæ, ne dissidentes ab Ecclesia absterreantur, sed potius ad ipsam alliciantur nec Civitas nec Ecclesia detrimentum patiantur. Ideoque semper prae oculis est habendum tum bonum commune Ecclesiæ, tum bonum commune Reipublicæ quibus Potestati civili, secundum rerum adiuncta, iusta tolerantia, legibus quoque sancienda, imponi potest, tum ad maiora mala vitanda ut sunt scandalum vel dissidium civile, impedimentum conversionis ad veram fidem,

⁴⁸ See AD 11/11/IV (1968). 658. N° 1. in fine.

WX/ibid. N° 3.

⁵⁰ *Ibid.* 659 and N° 5. In fact, the Magisterium is competent and alone sure in matters of natural law (cf. 0765. P1E XII, 1954.11.02: Alloc. *Magistate Dotinuni necam*; to Cardinals and Bishops; AAS, 1954. 671-672; DP. 1954,478-491 -,DC. 1954, 1433-1434; *DzSehHü* 4351).

⁵¹ *Ibid*" 660, N° 5 (suile).

⁵² *Ibid*" suile: "Quod Ila liberté de l'acte de foi autem non impedit, quominus potestas civilis condiciones intellectuales, sociales et morales procurare debeat quibus fideles etiam scientia minus exculiti in fide accepta facilius perseverem. Quam ob rem, sicut Potestas civilis publicam moralitatem tueri a se alienum non putat, ita ad tutandos cives ab errorum seductionibus, ad ipsam Rempublicam in unitate fidei conservandam, quod est bonum summum, et beneficiorum plurimum etiam temporalium fons. Potestas civilis de se aliorum cultuum publicas manifestationes temperare potest, et contra diffusionem falsarum doctrinarum quibus, iudicio Ecclesiæ, salus æterna in periculum vocatur, cives suos defendere."

et alia huiusmodi, tum ad procurandum maius bonum,⁵³ ut sunt cooperatio civilis et pacifica conviventia concivium religione inter se dissidentium, maior libertas Ecclesiae et efficacior adimpletio eius supematuralis missionis et alia similia. Qua in re non solum boni ordinis nationalis, sed etiam ltoni Ecclesiae universalis est habenda ratio. Hac sua tolerantia Potestas civilis catholica divinis Providentis exemplum imitatur quae mala non impedit ex quibus maiora bona trahat. Quod praeipue est observandum in regionibus illis, in quibus iam a saeculis existunt acatholicorum communitates."⁵⁴

After what is ultimately a summary of S. Thomas, Leo XIII and Pius XII, the outline continues with the principles applicable in the non-Catholic city. Thomas, Leo XIII and Pius XII, the outline continues with the principles applicable in the non-Catholic City:

" Applicatio in Civitate non catholica). In illis civitatibus, in quibus magna pars civium catholicam non profitentur fidem, vel nec cognoscunt quidem factum revelationis. Potestas civilis non catholica, in re religiosa praeceptis saltem legis naturalis sese conformare debet. Quibus in adiunctis a Potestate illa non catholica omnibus cultibus religioni naturali⁵⁵ non oppositis libertas⁵⁶ civilis concedenda est. Libertas autem illa tunc principiis catholicis non adversatur, utpote tam bono Ecclesiae quam reipublicae conveniens."⁵⁷

These are the points of doctrine commonly taught before Vatican II in the manuals of ecclesiastical public law and concerning, on the one hand, the relationship between the Church and the State, and, on the other hand, between the Church and the State.

¹⁹⁵⁹ *Ibid.*, 659. N°3: "Tandem Potestati civili grave onus incumbit excludendi a legislatione, regimine et actione publica omne illud quo assecutionem finis aeterni impediri Ecclesia iudicet ("everything by which *the Church* judges that the obtaining of the eternal end is prevented"): immo intendere debet, ut facilius reddatur vita principiis Christianis innixa finique illi sublimes ad quem Deus homines creavit quam maxime congruens. "

53 Once again, it should be noted, public peace, etc., is considered a greater good than religious unity itself, at least the relative one that could be obtained by force.

¹⁹⁵ 4/*Md.*, 660. N°6.

⁵⁵ No *you*. but natural *religion*.

⁵⁶ No longer "tolerance", but "freedom".

W/ibid.. 660. N°?.

between Church and State and on the other the religious tolerance of the State.i" Note that *almost* all of these principles are drawn from the ordinary magisterium of the Church. Let us specify, however, an aspect commonly accepted in textbooks and which does not appear in the diagram: the State, even a Catholic one, must allow *non-Christian* cults⁵⁸ civil freedom of worship, even public, but within just limits, implicitly mentioned, namely: public morality, the rights of others, respect for the objectively good laws of the State and public peace.⁵⁹ In a country whose members are not unanimously Catholic, the State must authorize all religious practices that are in conformity with public morality, public peace, and the rights of others, and it must not interfere in quarrels of a purely religious nature.⁹⁶ - Moreover, since it no longer relies on the magisterium mandated by God, it becomes totally incompetent to pass judgment in this domain.⁹⁶²

As for the "classic" doctrine (that of the textbooks),⁹⁶³ the real difficulty - with regard to *DH* - would lie in denying *the injustice of* a civil power governing an almost unanimously Catholic society to repress *public* akatholic (especially non-Catholic Christian) religious activities whenever possible, *even if* these activities remained within the framework of a *just public order*, *w*

In the central preparatory commission, the "Ottaviani" schema clashed head-on with the "Bea" schema of the Secretariat for Christian Unity (now SUC). John XXIII made the SUC capable of presenting conciliar plans (Oct. 19-22, 1962), had the entire paragraph on tolerance expunged from the "Ottaviani" plan (Nov. 10, 1962) so that only the SUC would be competent in the matter of LR, and had everything concerning the relations between Church and State excluded from the SUC plan. It is not possible for us to examine here, as in our 2^e ed. (LRTC), the course of this draft of the SUC, destined to become *DH*, and which will receive light, rectification and support from the Roncallian magisterium on the fundamental rights of the person.

16.2. The doctrine of fundamental rights: *Pacem in terris*

Like Pius XII, John XXIII will claim the RL for the Church:

"One of the fundamental rights which the Church cannot renounce is religious freedom, which is not reduced to freedom of worship. The Church claims and teaches this freedom. It is for this reason that she continues to endure distressing trials in many countries. The Church cannot renounce this freedom, which is connatural to the service she is obliged to fulfill. This service is an essential and irreplaceable part of the plan of Providence to guide man on the path of truth. Truth and freedom are the basic stones on which human civilization is built.

According to him,

"The Pope must work for the establishment of a true peace, destined to elevate peoples in the respect of the human person and to procure a just religious and religious liberty; a peace which favors concord between States, - and, what goes without saying, - even if this requires some sacrifice on their part."****

It takes up these various elements in *Pacem in terris*.¹⁹⁶⁷ There we find again the doctrine of his two predecessors concerning the "*humance personæ dignitatem*", in the light of reason and Revelation:

"The foundation of every well-ordered and fruitful society is the principle that every human being is a person, that is, a nature endowed with intelligence and free will. By this very fact he is subject to rights and duties,^{1,68} both of which derive,

58 g, 'is about non-Christian cults.

59 Cf. VERDIER. 1898.454, n° 399; 501. n° 442; 509. n° 449.

together and immediately, from his nature: they are therefore universal, inviolable, inalienable. If we consider the dignity of the human person in the light of the truths revealed by God, we cannot but place it even higher. Men have been redeemed by the blood of Christ Jesus, made children and friends of God by grace, and made heirs of the glory of heaven.¹⁹⁶⁹

Among the natural rights, Pope Roncalli states the

"right... to freedom in the search for truth, in the expression and dissemination of thought... the requirements of the moral order and the common good being safeguarded, "t³ ?"

A right to civil liberty in view of the truth and limited by the common good is thus affirmed: we are approaching the clarifications of *DH*. And it is here that we come to the so controversial passage:

"(1) It is also among the rights of man to be able [A] on the one hand [1] to honor God (2) according to the right rule (3 J of his conscience (*ad rectum conscientiae suae normam*) and (B) on the other hand [1] to profess (2) his religion [3] in private and in public (*et religionem privatim publicè profite ri*).]Indeed, as Lactantius teaches with great clarity: we receive existence in order to render to God, who grants it to us, the just homage that is due to Him, in order to (re)know Him alone and to follow Him alone. This obligation of filial piety binds us to God and connects us to Him, hence its name of religion. [III]On this subject. Our predecessor of immortal memory, Leo XIII, affirms: "This true freedom, truly worthy of the children of God (etc.^{1971 1972}

We have corrected the usual translations: 111 In fact, the text does not say "each one has the right to honor God". In fact, the object of the right is "to *be able*

■VAS 0815. JOHN XXIII. 1962.09.11: RM *The great aspettazione*. to all Catholics; AAS. 682 .DC. 1220. 1966 0818. JOHN XXIII. 1962.10.12: to the representatives of the Nations; AAS, 808; DC. 1387-1392. See also 0801. JOHN XXIII. 1959.01.25: Homily *Il convenir*", at St. Paul's Outside the Walls; AAS, 72-73; DC, 195-196, ei 0802. JOHN XXIII. 1959.06.28: for the 1^e " vespers of SS. Peter & Paul; AAS, 479; DC, 924, where JOHN XXIII still deplores the persecutions. IV67 08]9, JOHN XXIII. 1963.04.11: Encycl. *Pacem in terris*', AAS, 257-304 (pp. 279 and 265 cited by *DH*, note 1; 260-261, note 2; 270, note 4; 273, note 5; 273-274, note 6; 299-300, note 38; 295-296, note 39); DC, 513 546. "96" te (jen between rights and duties is repeated a little further on (DC, 1963,516). 19690819.1 :AAS. 1963.259 .DC. 515. Cf. BOLTÉ, 1975,49. 19700819.2:445.1963.260;DC,515. *971 We do not reproduce in full this literal quotation from 0616.19 Leo XIII, 1888.06.20: *Liberus prastantissimum, Acta Leonis XIII* (1888), 237-238. 197208193:445. 1963,260-261 ,DC. 516. Cf. PAVAN. 1985, 150-151.

The distinction between the object of the right (this possibility) and the double good legally protected ([A] to honor God, etc. and [B] to profess religion) is better marked here. [A] The 1st good is [1] to honor God [2] according to the just [or right] rule [3] of one's own conscience. It is on this last part of the sentence [3] that all the discussions have focused. According to P. Pavan,⁹⁷³ generally considered to be the principal material writer of the encyclical, John XXIII, considering the theological reflection insufficiently mature, used an expression as vague as Leo XIII's "*ex conscientia officii*", precisely in order not to settle the question.⁹⁷ -- The other interpretations follow the two main lines already often mentioned, supported by the same types of arguments. The "I^{arc} position" will be based on the Thomasian sense of the "right conscience" (therefore true)⁹⁷-⁵ and on the impossibility of a right to error, etc.;⁹⁷⁶ the "2¹", on the other hand, will be based on the suarézian sense of the "right conscience"⁹⁷⁷ and on the fact that only the person has rights, etc.⁹⁷⁸ She adds that John XXIII specified in [d] that it was a question of "*conscientiae sua*". We find the argument based on the use of "*seinen* [Glauben]" in *Mit brennen der Sorge*.⁹⁷⁹ If it is a question of the conscience of this or that man, it may well be that it is not objectively true. The answer is that no one can act on the basis of *another's* consciousness. The second opinion is divided into two, as in the text of *Libertas* quoted here.⁹⁸⁶ Some consider that from the rectitude of the conscience a right-demand arises; the others do not.⁹⁸ [B] Further on, we see that the claim to religious adherence and practice is distinguished from the claim to "honor God". Thus, the focus has shifted from freedom of worship to freedom to express one's thoughts in religious matters. [Secondly, the reference to Lactantius and [III] to Leo XIII provides us with a key to the interpretation of these texts and of the present passage, all of which must be read with the same meaning.

However, John XXIII specifies it further: "the right to freely seek the truth is matched by the duty to deepen and broaden this search."⁹⁸² The only difficulty is then to know what happens to the right when it is morally abused, and not to know if everyone is actually entitled to it (thus including men plunged into religious error), for it is obvious that a Muslim has the right to render true worship to the true God. The question is what happens to this right if he worships the true God in error. This brings us back to the

WJPAVAN. 1965,237; and again: PAVAN, *W/c, Appimù*. 45, followed byHAMER, 1967a. 69 ff. P⁹⁷⁴ in the opposite direction: COSTE. 1988b, 476,1.

⁹⁷³ Abstract: GILLON, 1966,94-95.

⁹⁷⁴ CT. e. g. MUÑOZ, 1964c. 598.

⁹⁷⁵ Cf. e. g. BOPP, 1967,07,202.

⁹⁷⁶ Cf. ROUQUETTE, 1963,06,411.

⁹⁷⁷ Cf. 06803.

⁹⁷⁸ Cf. GILUON. 1966.97.

⁹⁷⁹ Cf. CIAPPI, 1964.04.03,396.

⁹⁸⁰ A4S. 1963,260-261;DC. 516.

problem of the right to tolerate abuse. In any case, John XXIII invites *in the name of justice* to carefully distinguish the error from the errant.⁶⁰ The question remains partially unresolved.

CONCLUSION OF THE SECOND PART

Here are our findings. 1° The Popes of the XIX° and XX' have consistently condemned the theoretical and practical religious indifference of the individual and of society towards revealed religion,¹⁹⁸⁴ and the positive authorization to adhere to error or evil or to be indifferent to it.¹⁹⁸⁵ 2° From Leo XIII onwards, they have developed a doctrine of the right to freedom of conscience in the face of political and coercive power. They founded this freedom on its finality (to reach the true God and to obey him), and on the dignity of man's nature (creature and image of God). Thus, while condemning a freedom to despise one's duties to God, they proclaimed a freedom to serve God as best one could. A great advance in doctrinal clarification, without contradiction, was made between a Pius IX and a John XXIII. 3° However, before Vatican II, they did not manage to make explicit to what extent this right protects the purely moral and not juridical abuses that one commits in exercising it. They were in a concrete situation that did not allow them to discern this. If the "doctrinal development" between Leo XIII and

19W The magisterium professed the specific religious obligation of individuals to God, revealed religion and the Church, and rejected the criterion of arbitrariness, good pleasure, caprice (0611.23 °. 0616.14), the right of man to do *what he pleases* (0616.05), or license (0616.06, 0616.12, 0616.13,0616.19,0616.25), and practical indifferentism (0611.04, 0611.17, 0611.21). He condemned rationalism and naturalism (0518.15, 0616.26). Society must not only not hinder eternal salvation, but also positively help to achieve it (0819.4). The best government is the one where one recognizes the obligation of the power to repress by the sanction of the punishments the violators of the Catholic religion even when the only public tranquility does not require it (0516.2,0611.17).

possibility and the milk to adhere to the evil are not perfections but defects, because freedom is made for the good as the intelligence for the true one; a freedom is thus legitimate only if it increases the faculty to reach the good (0611.22, 0616.01,0616.03, 061632). Evil cannot be an object of right, but can only be tolerated (0533.). There is neither a right of false religions to exist, to propagate themselves, to act: nor a right of the followers of false religions to remain in their false religion, to propagate it or to practice it (0410.1. 0518.15. 0518.16, 0518.17, 0611.03, 0611.18, 0611.21,0611.24); error and vice are not entitled to any (positive) favor or protection of the laws (0611.22). A right cannot belong naturally and without distinction or discernment to truth and falsehood, to good and evil (0616.17, 0616.23); by placing error on an equal legal footing with truth, one practices state indifferentism (0617.2). The State cannot therefore *confer* the affirmative right-permission to *turn away from the true* (0616.14). There is no right to/teach error (0616.18); the State cannot recognize the same rights to dissident cults as to Catholicism, at least in a Catholic country (0617.1). Therefore "freedom of conscience and worship" is an evil and can only be tolerated, not claimed as a right (0533.). No right to civil liberty to take *only* one's conscience as a rule; everyone is not subject only to his conscience (0611.23). (I therefore rejected the freedom to disclose what one wants in matters of opinions (0611.23). As for *opinions in general*, there is no right to unlimited freedom of opinion and of the press (0611.22, 0611.25): a) The Church rejects this excessive freedom or license (061130, 0616.17). In a well-constituted state, citizens should not enjoy full freedom to manifest their opinions, whatever they may be, highly and publicly, by word, print or otherwise, without being restricted by ecclesiastical or civil authority (05163). A necessary condition for a freedom of speech and press to be a right is that it be tempered and measured (0616.17). A civil freedom (in the sense of the XIX° century) of all the cults accompanied by a full power left to all to manifest openly and publicly all their opinions precipitates more easily the people in the corruption and the indifferentism (0518.79, 0611.18). If *modern liberties* already exist somewhere, they can be used for the good of the Church (0616.22, 0616.29, 061632), in particular to deliver it from persecution, but only by condescension to the circumstances (0616.29); they can only be tolerated, provided that they are moreover limited (061631). There does not exist for the *civitas* a right to show itself in practice indifferent with regard to the various religions (0611.04,0611.17,0611.21), to the point of leaving to the cults all freedom, by taking as criterion of limitation of this freedom the only "public order", understood in the liberal sense of public tranquility (*not pu- blicu*) (0611.17, 0516.2); the civil society must make a difference between the religions, between the true religion and the false ones (0516.2).

John XXIII is now a given,⁻⁹⁸⁶ the pontifical teaching prior to Paul VI awaits a complement, studied below.

But is there a natural right not to be prevented by society from practicing, disseminating, etc., one's religion (provided, however, that the error it contains does not as such, and thus *ipso facto*, cause such a disturbance that society is entitled to suspend this activity)? This is what Vatican II answers.

CONCLUSION OF BOOK ONE

From St. Justin to John XXIII, a fairly clear line emerges. While protecting man's conscience as well as possible against the violence of other men, the popes and Christian theologians, in order to direct this conscience towards its finality, resorted to various means, one of which was the confessionality of the State (more lived than doctrinally elaborated before the Revolution called it into question and put it in crisis), and including, in religious matters and in entirely Christian societies, certain coercive aspects. Since man (in fact) abused his freedom in such a way that he endangered society, these aspects were maintained. If, therefore, on the one hand Tradition sought (in social and civil order) to make man free to reach God, it did not know the stable juridical technique which would allow certain constraints not to be exercised for this purpose. The system of tolerance *ad tempus* (what we have called "tolerance in the historical-legal sense") could not satisfy, because it always left the threat of "revocation" hanging. Many points needed to be clarified before it was possible to construct and then recognize as corresponding to the dignity of the person the juridical instruments gradually perfected and called "social and civil freedom in religious matters". The elements of this construction were to be found in Tradition in the form of various principles, of which the Council merely established a new synthesis.

SECOND BOOK

SPECULATIVE THEOLOGY

THE SUBJECT OF THE QUESTION

THE DOCTRINE OF *DHON*
THE RIGHT TO SOCIAL AND
CIVILFREEDOMIN RELIGIOUS MATTERS

INTRODUCTION
TO THE SECOND BOOK

D In our first book, we have gone through the notions and then the contents of the doctrinal development within the Tradition in the matter of the RL prior to *DH*. In this second book, we must now expose and explain the conciliar doctrine,¹⁹⁸⁷ , in

¹⁹⁸⁷ 0816. VATICAN COUNCIL II, I)Official texts promulgated : A.S. AAS, *ConcOecDecr** :EV01.1985^u ;Ss *Ote. Cosc. VAC. //; Centurmu-VATKMU, Cerf-VA1KAN 11, DC; Conciliar Documents; ALBER1GO, 1994; DSchHii, etc.*; 2) Interventions of the Council Fathers: A.S. I to IV; translations, partial: DC. 1964, 1311-1330 ; 1965, 1761-1801. For all the details, cf. LRTC, t. 11/B, *Calendar of the Genesis of DH*. Let us refer to the specific bibliography (in addition to the AD and A-S.): ALONSO,

order to be able to compare it with previous doctrine and even practice.

1965a; ALONSO, 1965.11; Private Archives of Cardinal HAMER; BROGUE, 1965c; CAPRILE; CARBONE, 1971; CARBONE, 1991; DELHAYE, 1975; FOSCHINI, 1965.06; GARCIA- GOMEZ, 1966; GÖNNET, 1994; GROOTÆRS, 1991; HAMER, 1967a & HAMER, 1991; LAURENTIN, 1966; NEOPHITOS, 1974,291 -292; PASSIGATO, 1982; PAVAN, 1967a, *Vivere il concilio*. 4; PAVAN. 1967e, *Appunti...* PAVAN. 1967b, *Declaration*: PAVAN, 1980; REGAN. 1967; RODRÍGUEZ, Victorino, O.P., 1966.04-06; ROUQUETTE, 1968; SOLER Carlos: 1993a; STRANSKY, 1966; W1LTGEN, 1985' . *The Rhine*. From now on, one will also refer to ALBERICO Giuseppe (dir.), *Histoire du concile Vatican 11*, translation, directed by FOU1LLOUX Etienne, Paris, Cerf, 1997 and ss.

PRELIMINARY SECTION.

TITLE AND PREAMBLE OF DH

LORS of reading *DH*,¹⁹⁸⁹ one first encounters title, subtitle, *prooemium* (objects of the present section, in two chapters [0 and 11]) and then two official parts I & II, studied further on respectively in first and second parts. These will themselves be subdivided into sub-parts suggested by the unofficial inter-titles.¹⁹⁸⁹ For each passage of *DH*, the following is given: 1° the retranslated text (with the original as a note); 2° a detailed outline of the text; 3° an explanation of the doctrine taught.¹⁹⁹⁹

¹⁹⁸⁹ Q_{UX} 4.,\$ fascicles presented to the Council Fathers, and reproduced in most editions.
¹⁹ For an overview of the genesis of *DH*, see the "Table of Main Projects and Schemes".

CHAPTER 0. UNIQUE

0. AUTHOR AND SUBJECT

LHE "chapeau" of the conciliar text is composed, in the official edition, I) on the one hand, of the name of the authors (or heading), from which the authority of the text derives (0.1.); II) on the other hand, of a title and a subtitle, which announce the problem treated (0.2).

0.1. Author and authority: Header and foreword

The author is "Paul, bishop, servant of the servants of God, in union with the Fathers of the Holy Council". The expression "so that it may be remembered forever" ("*ad perpetuam rei memoriam*") does not mean that the teaching of the text is definitive, but that the written document is intended to constitute a definitive monument of what was decided. As for the literary genre, unlike the 15 other conciliar documents, *DH* is not preceded by an official name; the name "*Declaratio*" was given to it by Paul VI at the very moment of his approval of the 4 texts proclaimed on December 7, 1965; - it appears in the concluding formula; and this is undoubtedly because *DH* 2, 1 contains the word "*declarat*";^m it will be taken up again by all other editions.⁰ We must first evaluate the authority of Vatican II in general (0.1.1.), then of *DH* in particular (0.1.2.).

0.1.1. The authority of Vatican II in general

The authority of the 21^e Ecumenical Council can be assessed on the basis of the *Synodal Acts* of this Council (I), the declarations of the popes subsequent to the conclusion of the Council (II), and the clarifications of theologians.¹ " -+++++

I) *From the Synodal Acts of Vatican II*

During the Council, the Fathers themselves wondered what authority the documents being prepared would have, especially with regard to *LG*. Here is the official answer of the General Secretariat of the Council:

"As for the intention of the flight to be formulated - a very important and serious point indeed - the Fathers should pay attention to the following: taking into account both the conciliar custom and the particular purpose of this Council, which is primarily pastoral, this Holy Synod infallibly defines as points to be held by the universal Church in matters of faith or morals only those which it will itself indicate as such. Consequently, the other points, about which the Council does not openly declare this, are not infallibly defined by it, but are set forth by a magisterium at the - ICf.AS. 1V/V11.860. *992 (jn, point je view on this choice in CONGAR. 1967.47-52.

+++++1993 Except, in 1978, the A.S. which nicknamed it *Deeretur*, but for purely editorial reasons, as Mr. Vincenzo CARBONE personally confirmed to us on Saturday, Sept. 15, 1990.

1994 ^{our} This last point of view, we are obliged to refer to LRTC. We are content to indicate here a summary bibliography: BETTI. 1966; DELHAYE, 1972. 4323-4324 and 43304350 (fondameit.il): ITURKIO4 1965.07-09; LAVALBrrE. 1966.09; PHILIPS, 1967-1968,1: SALAVERRRf. 1965.12.08/ 1966.

It is not possible to define the faith as a doctrine of the Church. Therefore, in the event of any definition of faith, the Council Fathers must and will be warned, and expressions must be used in the text which explicitly show the will to define something in this way.

The Doctrinal Commission had to issue, "by order of the higher authority" and through the mouth of the Secretary General, a new declaration, following another question, presented the following year. This statement quotes a third, intermediate one:^{W6}

"It was also asked what should be *the theological qualification* of the doctrine set forth in the Schema *de Ecclesia* and proposed for voting. The Doctrinal Commission gave an answer to the question, as can be seen on p. 8 of the booklet containing the amendments, which refer to chapter 111 of the schema *De Ecclesia*. "As is obvious, the text of the Council must always be interpreted according to the general rules, known to all. On this occasion, the Doctrinal Commission refers to its *Declaration of March 6, 1964*, the text of which we transcribe here: "Taking into account the custom of councils and the pastoral purpose of the present Council, this Sacred Congregation defines as points of faith or of faith the following Synod defines as points of faith or morals to be held (*tenenda*) by the Church only those which it has itself openly declared to be such. But the others which the Sacred Synod proposes, as a matter of principle, are not to be considered as points of faith or morals. Synod proposes, inasmuch as they are the doctrine of the Supreme Magisterium of the Church, each and every one of the faithful must receive and embrace them according to the intention of the H. Synod itself, which is made known to all. Synod itself, which is made known either by the matter dealt with or by the manner of speaking, according to the norms of theological interpretation."

Therefore 1° If points had been infallibly *defined* by Vatican II, it would have expressly declared them so. But Vatican II did not expressly declare any point as such. Therefore Vatican II did not *define* anything *infallibly*. By "define" we mean both a dogmatic definition and a definitive act, since the word used in Latin is "*tenenda*" (not "*credenda*"). 2° "*Ideo cetera de quibus Concilii hoc aperte non déclarât, non sunt ab ipsa infallibiliter definita, sed au thentico magisterio exposita tamquam Ecclesia: doctrina.*" Therefore, the teaching of Vatican II belongs to the "doctrine of the Church" taught with the authority of the "authentic magisterium" or "*Supremi Ecclesia: Magisterii doctrinain*", of the kind "magisterium non *per se* infallible". Moreover, it is nevertheless obligatory: "*omnes ac singuli christifideles excipere et amplecti debent*", and must be received "*iuxta ipsius S.Synodi mentem*", perceptible intention by the application of the classic methods of theological interpretation. Note the (identical) formula that concludes all the documents of the Council, without ever using the word "*definimus*"^{J998}

Moreover, the universal ordinary magisterium is infallible (*de fide et moribus*) only when it *wants to* teach an assertion as *definitive*.^{TM*9} Therefore, for what

1995 Black trans. Congr. gen. 078,29 novembris 1963, in A.S. 1V/1.305.

1996 AAS, 1965.72, text introducing the "nota previa".

-997 Congr. gen. 123, November 16, 1964, in A.S. UI/VIII. 10, 11. The Doctrinal Commission quotes here not the above-mentioned text of Nov. 29, 1963, but its own declaration of March 6, 1964, which explains some slight differences in the formulation. This text will be used as the "chapeau" of the famous *Notu previa*. This same Notification (AS. 1V/1.49) was read again at Cong. gen. This same Notification (AS. 1V/1.49) was read again at the Congres. gen. 161 (15/11/65) by the Secretary General (AS. 1V/VI, 419). It was also used in the proposed *Dei Verbum* (cf. SALAVERRJ, 1965.12.08/1966, which on p. 32, note 43, provides a list of the various studies carried out on these "Notifications").

1998cf. SALAVERRI. 1965.12.08/ 1966.26.

1999 Cf. LG 25, § 2. In fact, the Councils, apart from their definitions (present in the chapters, and not only in the canons; cf. SIMOR John. M", in the name of the *Deputation of Faith*, to VATICAN I, in MANSI, 51.45

Vatican II did not present itself as definitive (so except for the points previously taught as such, so not for religious liberty, surely not previously taught as such), one can legitimately

think that Vatican II did not want to commit its infallibility.²⁰⁰⁰ Besides, nothing should be assumed to be infallibly defined if it is not obvious or proven.²⁰⁰¹

II) According to later papal assertions

As for John Paul II,²⁰⁰² from his first speech, he has always considered the Council as a definite norm of thought and action.²⁰⁰³ Paul VI, the principal signatory of the Council documents, all of which he approved, and therefore the most authorized to interpret them, expressed his position on the subject in three texts in particular.²⁰⁰⁴ The first - the least known - is the speech he gave during the IX^c public session of the Council, on December 7, 1965, on the eve of the closing, and at the moment of approving, among other things, *DH*. In it Paul VI explains:

"But it is good to note one thing here: The magisterium of the Church, although it did not wish to pronounce itself in the form of extraordinary dogmatic sentences, has extended its authorized teaching to a number of questions which today engage man's conscience and activity; (IV) it has come, so to speak, to dialogue with him; (V) and while always preserving the authority and force proper to it, it has taken on the familiar and friendly voice of pastoral charity.²⁰⁰⁵

Therefore Vatican II: [I] did not promulgate definitive teachings (at least in formally revealed matters); [II] is an authentic magisterium; [III] binds conscience; [IV] [VI] and although expressed in a less solemn manner; [V] retains full magisterial authority.

Apparently, some people were misled by this *pastoral* aspect of the *mode of expression*, and in the general audience of January 12, 1966, Paul VI had to intervene again, specifying that the Council was "an act of the magisterium". And, referring to the above-mentioned declarations of 6 March and 16 November 1964, he maintains that, even if the Council "avoided pronouncing solemn dogmatic definitions, committing its infallibility", it "endowed its teachings with the authority of the ordinary magisterium", "clearly authentic", demanding "docility" and an "adapted adherence to the intention of the Council" concerning "the nature and aims of each document".²⁰ Thus the decrees of the Council have the authority of the "supreme ordinary magisterium," that is, of the pope as head of the whole Church [*supreme in substance*], but not with the highest degree of authority that the pope [*supreme in intensity*] can have.^{2am}

BC), are not supposed to teach infallibly *all* that they teach. Nevertheless, their chapters are more valuable than the encyclicals (cf. SALAVERRI, 1951).

2000 Counter GOETHALS, 1987.04. 133.

²⁰⁰¹ Cf. *CIC* 17, can. 1323, § 3 and *CIC* 83, can. 749, § 3.

2002 JOHN PAUL II^{1st} (1912-1978.08.26-09.28), despite the brevity of his pontificate, had time to declare the Council an essential part of his program; cf. *DC*. 1978.803; *Insennanuntii di Giovanni Paolo I*, pp. 45-47.

2003 Cf. 1101. JOHN PAUL II, 1978.10.17: r^a RM "Urbi et Orbi", *Unioi sohiinmodo verbum*; AAS, 919-927: *DC*. 902-905; *JOHN PAUL II / DDH*. 130. Let us list here, for guidance, some other words or writings: JOHN PAUL II. 1979.11.05: at the first plenary meeting of the Sacred College; *OR*; *DC*, IU02. n° 5: 1982.10.10: *Angelus*; *DC*, 1032-1033; 1985.01.25: at St. Paul Outside the Walls; *DC*, 283: and the *Angeluses*: 1985.09.29 (*DC*, 1013-1014); 1985.11.01 (*DC*. 1111-1112); 1985.10.27 (*DC*. 1160-1161); 1985.11.10 (*DC*. 1161): the *Alloc.*: 1985.11.09 : *DC*, 1986.5-6; 1985.11.21 (to the Sacred College) : *DC*. 1986.12-13, no. 4: 1986.0530: to the Colloquium of the French School: *DC*, 637-638; 1987.10.11: Homily for the 25th anniversary of the opening of the Council; *DC*, 1064-1066; 1988.04.08: Letter to Card. J. RATZINGER, *Fideliter*. n° 63 (May-June 1988), 3: "the Spirit of truth...] has spoken - in a particularly solemn way and with a special authority - through the Vatican Council U...!"; 1990.06.29: Letter to the religious of Latin America; *DC*.837-838. n° 13. JOHN PAUL II. between 1978 and 1995 mentions the "Vatican Council 11" in 2360 documents and recognizes its unquestionable authority.

2004 Add: 0901. PAUL VI. 1963.09.29: *Alloc. Salvete Fratres*, for the opening of the 2nd period of VATICAN 11; AAS: 848-849; *DC*, 1345-1361; PAUL VI announces that he prefers *doctrinal declarations* to dogmatic definitions; 0915. PAUL VI. 1964.11.21 (promulgation of *LG* and closing of the 3rd period): Homily *post duos menses*; AAS. 1009.

On a third occasion, in his letter to Card. Pizzardo, motivated by the International Congress of Theology on the Council, Paul VI specified that "the integral doctrine of the Council must be preserved religiously" because it belongs to the ecclesiastical magisterium and is therefore "the next and universal norm of truth in matters of faith and morals"²⁰⁰⁵ from which "theologians [...] can never depart".²⁰⁰⁹

Thus, Vatican II wanted to express itself in the same way as the papal encyclicals, in an "expository and parenetic" manner.²⁰¹⁰ It was done with similar authority.

"Vatican II, at the most, does not go beyond the first stage (that of the authority of the doctrinal statements of the previous councils which do not commit infallibility and which represent the "doctrine of the Church") since it has renounced going further, while reaffirming its right to do so. I said "at the most", because a constitution, a decree, a declaration, a message, represent very different wills of commitment.

0.1.2. The *DH* authority in particular

1. According to some, *DH* would determine in a purely practical way²⁰⁰⁶ what men, and the faithful in particular, should *do* in matters of RL, and would not state anything at the speculative level.²⁰⁰⁷ But, in this case, this practical directive would have been approved from the beginning of the Council with absolute unanimity, without the slightest opposition, because all the Council Fathers, including Mr.^{Br} M. Lefebvre, eventually declared themselves ready to admit the *contemporary* advisability of not preventing (as a matter of universal, but contingent, tolerance) the members of other religions from practicing their worship.

2. All the difficulty came - and still comes - from the affirmation of a *principle* based on the dignity of the human person, on his nature and on his supernatural vocation. It is therefore *a priori* a timeless doctrine, a moral teaching in matters of justice, in the same way as the principle of subsidiarity, etc. Thus, it is clear that *DH* contains a *doctrinal* teaching.²⁰⁰⁸

3. *DH* has at least as much authority as any encyclical.²⁰⁰⁹

4. But did Vatican II want to commit its infallibility to *this* teaching? The majority of authors agree with M.st Delhaye in affirming that it is a teaching of the magisterium that is only authentic, although destined for the universal Church.²⁰¹⁰ In *DH*, only five teachings are proposed with particular authority. The sign of this is the solemn formula which precedes each of these *teachings*: "profitetur, credimus, declare".

"Primum itaque profitetur Sacra Synodus Deum Ipsum viam gencri humano notant fecisse per quam, Ipsi inserviando, homines in Christo salvi et beati fieri possint. Hanc unicum veram Religionem subsistere credimus in catholica et apostolica Ecclesia. etc." (*DH* 1. § 2). "Panier vero profitetur Sacra Synodus officia hæc hoininum conscientiam tangere ac vincire, [...]" (*DH* 1, § 3).

These first three sentences comprise professions of faith (*profitetur; credimus*), and commit the previous m.o.u. Without a new definitive act, they imply a previous definitive teaching. The other two authentic statements read as *DH* 2, § 1 :

"Hæc Vaticana Synodus declarat personam humanam ius habere ad libertatem religiosam. [...] Insuper declarat ius ad libertatem religiosam esse révêra fundatum in ipsa dignitate persome humanæ[...]"

These two passages of *DH* 2,1 each contain a teaching, the one on which the whole difficulty depends, and it is, among the teachings that engage the authority of the Council, the

²⁰⁰⁵ Expression of 0763. and from 0738.

²⁰⁰⁶ However, according to S02 bis: 2RO, A.S. III/II, 350, although the statement is pastoral, its doctrinal basis is stated. ²⁰⁰⁷ cf. FONDEVILA, 1966.10-12,322. who qualifies his thought on pp. 323-326.

only one that is *proper to DH*.² -"² That is why they constitute the more specific object of our work. On the other hand, are these assertions (the question applies *above all* to the first, and by derivation to the second) clothed with infallibility? It seems to us that we have proved the negative, through the citations of the Doctrinal Commission. Moreover, according to can. 749, § 3, one must hold to this minimal point of view:

"No doctrine is considered infallibly defined unless it is manifestly established.

Infallibility is however supported on the one hand by some of DH's opponents,² *"" on the other hand by some of his supporters.²⁰⁰⁸ In any case, it would not

WH On the undoubtedly doctrinal character of *DH*, cf. especially CONGAR. 1967. 50-51; DA SILVA, 1966.381-382; SPANISH EPISCOPAT, 1965.12.08.4; JIMÉNEZ-URRESTI. 1968.587; BELDA. 1966.04.357.

²""5cf. WOLFE, 1983, 194.

not on the recitals, on the arguments, clarifications, etc.,²⁰⁰⁹ at least as such, because the Council can very well present a reality as the foundation of the LR, and commit its authority there, without committing its authority on the logical link between the two affirmations.²⁰¹⁰ We therefore lean more towards non-infallibility.²⁰¹¹

There are supporters of *DH*'s non-infallibility both among the opponents of the Declaration (understandably), and among its apologists. To the opponents, we would reply that non-infallibility is not error, therefore 1° We believe we can prove the non-contradiction between *DH* and the pre-Vatican II Church; 2° An error should worry us, because it harms the daily credibility of the magisterium; 3° That a document of the magisterium is not infallible is not enough to give permission to publicly contest it.²⁰¹²

Some authors support *DH* 2, § 1 while denying its infallibility. As we have seen above, this was the idea of Paul VI himself with regard to all conciliar documents in general. As for *DH in specie*, this point is confirmed by the *Letter of Cardinal Seper to M¹ 'Lefebvre* of January 28, 1978, where we read:

"4° The affirmation of this right to religious freedom is in line with previous pontifical documents (cf. D.H., 2, note 2) which, in the face of the excesses of statism and modern totalitarianism, affirmed the rights of the human person. With the conciliar Declaration, this point of doctrine clearly enters into the teaching of the Magisterium and, although it is not the object of a definition, it demands docility and assent (cf. Dogmatic Constitution *Lumen Gentium*, 25). Therefore, it is not licit for the Catholic faithful to reject it as erroneous, but they must accept it according to the exact meaning and scope given to it by the Council, taking into account the "traditional Catholic doctrine on the moral duty of man and society

Consl. dogm. *Pastor internus*. 2. *DzSch* 3057). I° Of the I° school (pure sedevacanum or thesis of the total vacancy of the apostolic see), BARBARA Noel († 2002), *The present situation of the Church and the duty of Catholics*.

1981; el *Forts dans la Foi*. n° spécial 21; SIEBEL Wigand, *Sakadnfonationen*, Oct. 1983, etc.); T of the 2° ("thesis of Cassiciacum", concluding to the formal vacancy of the Holy See, materially occupied by PAULVI, then JOHN PAUL I and JOHN PAUL II); GUÉRAND, 1979.05, 12-22; LUCIEN Bernard, *Cahiers de Cassiciacum*. suppl. to n° 2; 1D., *Une démarche catholique*; and especially the complete presentation of the argumentation: ID° 1985 (very characteristic, p. 7 & 105; 19-20; 25; 31; 35; 38; 100); BLIGNIÈRES Louis-Marie de, in *SedSap*, before n°22 of winter 1987-88, where the A. finally admitted to being mistaken. (These last two AA. abandoned their position, resp. in 1992 & 1987); BELMONT H., *L'exercice quotidien de la foi dans la crise de l'Église*, 1984. Details in LRTC el GOETHALS, 1987.04,103-115.

2019cf. FONDEVILA, 1966.10-12,323; SAINT-LAUMER, 1993.05a. 19-20 :

2009 Cf. JIMÉNEZ-URRESTI, 1968, 587; and 588; also MURRAY, 1968/1966.10.29, 562. This was specified (only for a particular argument, and taken as *argumentative*, not as *true*) in A-S. IV/V1, 735, reply to Amendment 19.

²⁰¹⁰ Cf. A.S., *ibid*, 734-735: "quando sermo est de fundamento, non agitur eo ipso de argumentis."

²⁰¹¹ pour tom detail, see LRTC.

²⁰¹² See, among others, HÜRTH, 1961,841-842.

towards the true religion and the one Church of Christ" (cf. D.H., 1).²⁰¹³

0.2. Announcement of the subject matter: The title and subtitle

The text begins with a **title** *De libertate religiosa*, a general indication of the subject treated. A **subtitle** was requested:²⁰¹⁴ *From the right of the person and of communities to social and civil liberty in religious matters ("De iure personarum et communitatum ad Libertatem socialem et civilem in re religiosa")*.

1) The **right-moral faculty** itself (*De iure... ad*): is expressed in the form of a right-subjective requirement (right to), in strict justice.²⁰¹⁵

2) The **active subjects** or holders of the right are natural and legal persons (individuals and communities) (and not entities such as truth or error, as we shall see in more detail).

3) The **object of law** is "social and civil freedom" (kind of the object of law, characterized by the place of its application: the civil society).

4) The **passive subjects of law**: the partners of society, and civil society itself.²⁰¹⁶ It is therefore not a question of moral freedom (in relation to God and conscience), nor intra-ecclesial freedom (in relation to the governing power of the Church as such). *²⁰²¹

5) The **domain** of the law is "**the religious matter**" (a necessary condition for the acts to be protected by the law is that they belong to this domain). This domain is not the object of the right (what is due) but the property of the active subject (and moreover a common property) protected by the right.

The subtitle, read carefully, clears up many misunderstandings right away. The following paragraphs will further clarify the thinking. The first, by way of preamble, places the declaration in its historical and doctrinal context. Before examining n° 1, let us provide below the list of conciliar schemas.

²⁰²4SCDF, 1978.01.28: Prot. N. 1144/69; French original: *Itinéraires*, n. 233 (May 1979), 13-14.

²⁰¹⁴ By card. G. URBANI, A.S. 1V/1,212,5. Cf. S 32: 5 RS, A.S. 1V/V, 150.

²⁰¹⁵ Cf. S OS: 3 RO, 4.5. 111/VIII, 452, 2. (...) |27|; DC. 1965. 172; S 16: 4 RS. 45.1V/I. 189. LUCIEN. 1990,247, and *passim*.

²⁰¹⁶ The whole expression is repeated, for example, in 0966. PAUL VI. 1970.01.03: to the Congress of the A.C.I.; *IPVI*. H-15; trans. (excerpt) .DC. 110*111; *DPPautVI* (1970). 13. MARGERIE, 1988a. *passim* uses the expression "socio-civic freedom."

SCHEMES AND REPORTS OF THE COMMISSION

The *DH* text had 18 votes: the preliminary vote (no. 293); the votes on §§ 1-15 (no. 407 to 417); on the amendments and on the whole scheme (no. 507 to 511); the vote of promulgation (no. 541). It is the one that, until the end, met with the strongest opposition and was reworked the most often.²⁰¹⁷

Date	C.G.	Name	Abrcv	Nature	Author	Acta ^W
1960.12.27	0	Documen! of Fribourg	DF		Private (SMEDT, JANSSENS)	0
1962.06.18-19	0	<i>De Ecclesia</i>	SCF	Constitutional scheme	OTTAVIANI Preparatory Theological Commission	AD I/11/IV. 657-672 + II/11/1. 176-191
1962.06.18-19	0	<i>De Ubertate religiosa</i>	SPP	Preparatory scheme	SUC BEA	AD 11/11/1V. 676-684
1962.12.01	31	<i>De Ecclesia</i>		Conciliar scheme	Theological Commission	AS. II/V. 65-74
1962.12.01-05	31 34	<i>Relationes & Orationes Patrum</i>		Oral discussion on the	Conciliar Fathers	AS. II/V. 121-158
1963.11.18	69	Chap. V of <i>Oecumenismo</i>	1SC	Conciliar scheme " 1963 " + notes	SUC	A.S. 11/V. 433-441
1963.11.19	70	<i>Relatio</i>	1 RO	Oral report	SMEDT, 1963.11.19	AS. 11/V.485495 ²⁰¹⁸
1963.11.20-22	71 75	<i>Patrum Orationes (de Oecumenismo in genere)</i>		Oral discussion on (ecumenism (a bit on the RL)	Conciliar Fathers	A S. 11/v. 527-545 + 597-631 + 661-696 + 744-768
1963.11.18	69	<i>Emendationes a Concilii PP. scripto exhibita? super schema Decreti de Oecumenismo</i>		Amendments proposed in writing	Conciliar Fathers	A.S. II/V, 874-922 + A.S. / Appendix, 442-509 + A.S.II/II, 881-895 + A.S. 111/111,621-781
1964.09.23	86	<i>Declaratio prior de libertate religiosa seu de iure personat et</i>	2SC	Conciliar scheme (anc. &	SUC	AS. 111/11.317-327

²⁰¹⁷ Pour more details, see LRTC, t. II / B, last appendix: *Timeline of the genesis of DH.*
²⁰¹⁸ DC. 1964.71-81.

		<i>communitatum ad libertatem in re religiosa</i>		new on 2 col.) + notes		
		<i>Relatio circa rationem qua schema elaboratum est + Relatio super declarationem de libertate religiosa</i>	2RS	Written report	juice	AS. 111/11.334 + 345-348
1964.09.23	86	<i>Relatio super declarationem de Ubertate religiosa schematis decreti de Oecumenismo</i>	2RO	Oral report	SMEOT, 1964.09.23	4.S. 111/11.348-353
1964.09.23-25	86 88 + 90	<i>Patrum Orationes</i>		Oral discussion	Conciliar Fathers	45. 111/11. 354-381 + 468 510 + 515-558 + 569-579
		<i>Animadversiones scripto exhibita: quoad schema declarationis de libertate religiosa</i>		Written remarks	Conciliar Fathers	AS. 111/11.609-752 + 45. / Appendix. 566-607
1964.11.17	124	<i>Schema Declarationis de libertate religiosa seu de iure persona: et communitatum ad libertatem in re religiosa. Textus emendatus</i>	3SC	Conciliar scheme (anc. & new on 2 col.) + notes	SUC	45. III/VIII, 426-449
		<i>Relatio de animadversionibus patrum</i>	3RS	Written report	juice	45. III/VI 11, 456-466
1964.11.19	126	<i>Relatio</i>	3RO	Oral report	SMEDT, 1964.11.19	AS. III/VIII. 449-156.
		<i>Animadversiones scripto exhibita: (Paul VI added the oral discussion).</i>		Written remarks	Conciliar Fathers	AS. 1V/I.605-881 + IV/VI. 809-810
1965.09.15	128	<i>Schema Declarationis de Ubertate religiosa, seu de iure persona: et communitatum ad libertatem in re religiosa. Textus reemendatus</i>	4SC	Conciliar scheme (anc. & new on 2 col.) + notes	SUC	45.1V/I,146-167.
		<i>Relatio de reemendatione schematis emendati</i>	4RS	Written report	SUC	AS. 1V/I.168-195

1965.09.15	128	<i>Retalio super schema Declarationis tle libértale religiosa</i>	4RO	Oral report	SMEDT, 1965.09.15	AXIV/1,196-199
1965.09.15-17 + 20-22	128 130 + 131 133	<i>Patrum Orationes</i>		Oral discussion	Conciliar Fathers	A.S. IV/1,200-219 + 225-277 + 282-331 + 384-418 + 422 434 + A.S.IV/11, 11-20
		<i>Animadversiones scripto exhibirte</i>		Written remarks	Conciliar Fathers	A.S. / Appendix, 608-615 + A.S. IV/II, 56-298
1965.10.25	152	<i>Schema Declarationis de libertate religiosa. Textus recognitus</i>	5SC	Conciliar scheme (anc. & new on 2 col.) + notes	SUC	A [^] . 1V/V, 77-98 = 45 IV/VI, 705.2032
		<i>Relatio scripta: I. de animadversionibus...; 2. Mutationes...factie</i>	5RS	Written report	SUC	A.S. IV/v, 105-158
1965.10.25	152	<i>Relatio oralis</i>	5RO	Oral report	SMEDT, 1965.10.25	A.5. IV/V, 99-104
1965.11.19	164	<i>Schema declarationis de libertate religiosa. Textus denuo recognitus</i>	6SC	Conciliar scheme (anc. & new on 2 col.) + notes	SUC	A.S. IV/VI, 703-718
		<i>Expensio modorum, Exitus suffragationum</i>	6RS	Written report	SUC	A.S. IV/V), 723-780
1965.11.19	164	<i>Relatio de modis a Patribus propositis</i>	6RO	Oral report	SMEDT, 1965.11.19	A [^] .1V/VI, 719-723.
1965.12.07	Public Sess 9	<i>Declaratio de libertate religiosa de qua agetur in Sessione publica diei 7 decembris 1965. Textus approbatus</i>	TDD	Final text: DH statement	VATICAN II	A.S. IV/VII, 663-673 + 804 860

CHAPTER 1.

1. THE INTRODUCTION (*PROOEMIUM*) (*DH 1*). THE RELIGIOUS DUTY OF SOCIETIES

AFTER a general reading of the text of *DH 1* (1.1.), we shall consider the particular question of the religious duties of the State, raised by its 3^e paragraph (1.2.).

1.1. Analytical reading of *DH 1*

No. 1, introductory, independent of the distinction between natural and theological discourse, is subdivided into three paragraphs (*DH 1*, §§ 1, 2, 3), which, after having evoked the contemporary aspiration (§ 1), will clarify it by the distinction between religious moral obligation (§ 2) and immunity from coercion (§ 3).

1.1.1. *DH 1*, § 1: Contemporary aspirations for civil liberty

DH 1, § 1 introduces us to the declaration, by I) *its occasion*; II) *its intention*.

I) *DH's opportunity: contemporary aspirations*

DH's opportunity lies in several contemporary phenomena:

A) a growing awareness *in intensity* of the basis of the law :

"Men in the present age are becoming more and more conscious of the dignity of the human person (1)"² "33

B) a subsequent triple claim, increasing *in extension*:

1)) one concerning the good to be protected, *the free and responsible action*:

"and the number of those who demand that in acting men enjoy their own counsel and responsible freedom and use it, [A] not under the pressure of coercion, but B) moved by the conscience of their duty, B² "34

2) The other is the legal protection of this property, *the rule of law*:

"Likewise, they call for a legal delimitation of public power, so that the bounds of honest liberty both of the individual and of associations may not be too narrow. "2WS

Legal limitation is probably opposed to a *factual limitation* ^{t^{TM6}} it is set in relative opposition to the (*fine*) limits of freedom: it is

2033_M DIGNITATIS HUMANA personx homines hac nostra retate magis in dies conscii fiunt L> Note (I): Cf. IOANNES XXIII, Liti. Encycl. *Pacem in terris*, 11 April 1963: AAS 55 (1963), 279; *ibid*, 265; PILSXII, *Nuntius radiophonicus*, 24 Dec. 1944: AAS 37 (1945), 14.

2034 "atque numerus eorum crescit qui exigunt, ut in agendo homines proprio suo consilio ei libertate responsabili fruunturet utantur, non coercionem commoti, sed officii conscientia ducti."

2035 " hemque postulant iuridicam delimitationem potestatis publica?, ne fines honesta; libertatis et personx et associationum nimis circumscribuntur."

limit the ability to limit freedom. Finally, it is about the freedom of the individual and of associations (cf. the "communities" of the general subtitle).

3) Finally, the area to be specially protected:

"Now this demand for freedom in human society concerns to the highest degree the goods of the human soul, in the first place of course, that which relates to the free exercise of religion in society."²⁰³⁷

It is thus a question that the men act according to a) their own deliberation [intellectual aspect] and their responsible freedom [volitional aspect] ; b) consequently, not by coercion (*Non coercitione commoti*) [which would be opposed to *freedom*, hence the expression "freedom from coercion" or "immunity from coercion"], but led by the conscience of their duty [which corresponds to *responsible*, and is opposed to caprice or action led by the desire to do *what one wants*, not what one *must* : *officii conscientia* recalls *ex conscientia officii* of Leo XIII, *Libertas*. Moreover, John XXIII had just taught:

"The dignity of the human person requires that each person act according to a conscious and free determination. In social life, respect for rights, fulfillment of obligations, and cooperation in a variety of activities are to be expected above all from personal decisions. The individual must be moved by personal conviction, by his own initiative, by his sense of responsibility, and not by external constraints or pressures. A society based only on power relations would be inhuman: it would necessarily compress the freedom of men, instead of helping and encouraging it to develop and improve."²⁰³⁸

"It should be noted that the argument is not based on the pure fact of this heightened awareness, nor on the pure fact of the demand for civil liberty, as if the Church were yielding to public opinion or showing herself to be in favor of a certain juridical positivism. *Quod absit*. On the contrary, the argument is founded in the truth about the dignity of the person, which the modern conscience manifests, and therefore in the justice itself, with which the freedom due to the person is demanded."²⁰³⁹

II) DH's intention: to judge these aspirations

"[H] (a) Diligently considering these aspirations of the hearts. [b] and proposing to declare to what extent²⁰³⁸ they are in conformity with truth and justice. [2] this Vatican Council [a] scrite the holy Tradition and doctrine of the Church, [b] from which it draws new always in accord with the old."²⁰³⁹

[11] The final goal is a judgment: [a] whose material object is these aspirations, [b] whose formal object is their evaluation; the intermediate goal is the application of the magisterial method: [a] according to its own methodological criteria (Tradition and Church doctrine),²⁰⁴⁰ [b] by mode of homogeneous development. Therefore: *neither opportunism, nor doctrinal transformism*.

1.1.2. DH1, § 2: The universal moral obligation towards Catholicism

DH 1, § 2 then exposes to us the finality of RL, the adherence to the one true religion; this excludes that RL implies a freedom of moral obligation:

"[I] First of all, therefore, the Holy Council professes [A] that God Himself has made known to mankind the way in which, by serving Him, men can be saved and made blessed in Christ. [We believe that this one true religion subsists in the Catholic and Apostolic Church, to which the Lord Jesus entrusted the task of spreading it to all men, when he said to the Apostles: "Go into all the world and teach all nations, baptizing them in the name of the Father and of the Son and of

²⁰²² "Quæ libertatis exigentia in societate humana ea maxime respicit quæ sunt animi humani bona, imprimis quidem ea quæ liberum in societate religionis exercitium spectant."

²⁰⁴⁴⁴ The "*quantum*" is not emphatic but indirect interrogative.

²⁰³⁹ "Ad has animorum appetitiones diligenter attendens, sibi que proponens declarare quantum sint veritatis et iustitiae conformes, hæc Vaticana Synodus sacram Ecclesiæ traditionem doctrinamque scrutatur, ex quibus nova semper cum veteribus congruentia profert."

²¹⁴⁴² Perhaps a hendiadis for "traditional doctrine".

the Holy Spirit, teaching them to observe all that I have commanded you" (Mt 28:19-20). [All men, on their part, are bound, especially in matters pertaining to God and his Church, (A) to seek the truth, and (BJ) once they have known it, to embrace it and observe it.²⁰⁴³

The text professes the faith, thanks to a well-linked sequence, in fact, I) God calls A) by revealing a unique way, in Christ: a single true Church (concretely the Catholic Church); B) by sending this Church to preach; II) on their side, men are all bound [AJ to seek the *truth*, especially *religious truth*, and [B] to adhere to it and conform to it.²⁰⁴⁴ DH therefore rejects all religious indifference, all right to choose the religion one prefers, or to adhere to false religions, or "to leave the Church."²⁰⁴⁵

1.1.3. DH 1, § 3: Civil liberty to perform moral duty

Then, DH 1, § 3, will insist on what RL is not (a freedom of moral obligation), and on what it is (a freedom of civil coercion), thanks to several binomials: I) Obligation of conscience // suavity of truth; II) "leaving intact" the moral duty of worship ("Tradition") H "developing" the right to immunity from civil coercion ("Recent Pontiffs"). All this concerns both men and societies, as subjects, and the domain of worship, as a good action to be protected.

²⁰⁴³ "Primum itaque profitetur Sacra Synodus Deum Ipsum viam generi humano notam fecisse per quam, ipsi inserviendi, homines in Christo salvi et beati Hen possint. Hanc unicam veram Religionem subsistere credimus in catholica et apostolica Ecclesia, cui Dominus Iesus munus concredidit eam ad universos homines diffundendi, dicens Apostolis: "Euntes ergo docete omnes gentes baptizantes eos in nomine Patris et Filii et Spiritus Sancti, docentes eos servare omnia quaecumque mandavi vobis" (Mt. 28. 19-20). Homines vero cuncti tenentur veritatem, praesertim in iis quae Deum Eiusque Ecclesiam respiciunt, quærere eamque cognitam amplecti ac servare."

²⁰⁴⁴ will develop these last two points.

²⁰⁴⁵cf. also LG 14. On the "*subsistere credimus in catholica et apostolica Ecclesia*", see the decisive clarifications provided by CDF. 2000.08.06: Declaration *Dominus Iesus*; AAS. 2000/10.742-765. Moreover, the Church has the task of announcing this true religion throughout the world. Cf. S 17/2: 4 RS. AS IV/L. 189: 2 |...| ; S 25 : S 27 : 5 RO. 4. *Synthetica compositio documentorum pontificalium*, A.S. 1VN. 100-102. especially the third paragraph: S 32 & S 33: 5 RS. A .5'. 1VN, 150. In this DH is in perfect accord with the *Syllabus*, prop. 15.

I) *Obligation of the conscience and sweetness of the truth*

"Now, the Holy Council professes in the same way [A] that these duties touch and bind the conscience of men, and [B] that the truth is not imposed except by the force of the truth itself, which penetrates in a way that is both sweet and strong in the minds."²⁰⁴⁶

Thus, after the *fact of the obligation*, one comes to profess its *mode*: 1° the conscience is bound; 2° but *only* by the force of truth (not of constraint).

II) *Duty of worship and right to immunity in worship*

A) *Maintaining the doctrine of duty to the true religion*

²⁰⁴⁶ [H] Furthermore, [A] seen that [or "although"] 111 [a] religious freedom [b] which men require [c] in the fulfillment of their duty [d] to worship God [2] concerns (*respcial*) [a] immunity from coercion [b] in civil society, [B] it 111 leaves intact [2] the traditional Catholic doctrine about the [3] moral duty [a] [a'] of men and [a"] of societies [b] to [b'] the true religion

and [b"] the one Church of Christ."²⁰⁴¹

[The text begins with the continuity with the old: [A] it gives the reason for the continuity: 11] The contemporary [a] LR [b] is a requirement (not a permission), [c] in the very act of fulfilling one's *duty* (not of denying it) [d] *religious* (so it is not an irreligious freedom), [2] requirement [a] of "*immunity from coercion*" (not positive permission to follow one's caprice); [b] "in civil society" (not in ecclesial society); [B] he affirms this continuity: [1] subject to integrity; with [2] the "traditional Catholic doctrine", that is, the "papal documents up to Leo XIII", which had precisely this particularity that they "insisted more on the moral duties of the public power with regard to the true religion" (S 48).^{2, W8} Naturally, it was also a question of individual moral duties. The French Revolution and the "sacristan emperors" having operated a double movement that of separating the Catholic Church from the State; and then that of creating a national Church subject to the State (such was, for more than a century, the meaning of "separation", different, therefore, from what a Pius XII understands in our day by the "healthy secularity of the State"), it was in the face of this problem, as we have seen, that the magisterium had to elaborate explicitly the doctrine of the "union of throne and altar".²⁰⁴²

B) Development of the doctrine of the fundamental right to freedom

"[III] Furthermore, (AJ dealing with this religious freedom, IB] the Holy Council intends to (11 develop [2] the doctrine of more recent Pontiffs [3] concerning [a] the inviolable rights of the human person [b] as well as the juridical organization of society. "Mi"

[Without touching the previous doctrine, which it maintains, the Council deals with something else, namely: [AJ dealing with this contemporary claim of the RL; [B] J1J developing (= clarifying, extending by its implications) [2] the doctrine of the most recent popes²⁰⁴³ [1] on the inviolable rights of the human person and J2J on the juridical organization of society. Thus, by examining the above-mentioned "*vetera*", one part is left completely *intact*, that of duty, and from the other, that of rights, one draws something new, which one wants to be "in accord with the old". *DH* 1 places itself therefore resolutely in a perspective of *homogeneous doctrinal development* in the *Legal* field. Before moving on to the *development*, let us linger over the *maintenance* of the famous "traditional Catholic doctrine" mentioned above.

1.2. The religious duty of companies

Let us first settle some questions of vocabulary. The word "confessionalism", which has not been used much so far,²⁰⁴⁴ covers several meanings.²⁰⁴⁵ We will take this one: "Character,

2647_M Pon-o, quum libertas religiosa, quam homines in exsequendo officio Deum colendi exigunt, immunitatem a coercitione in societate civili respiciat, integram relinquit traditionalem doctrinam catholicam de morali hominum ac societatum officio erga veram religionem et unicam Christi Ecclesiam." We review here the translations. *NRTn*. 1966.69. and *Conciliar Documents*. 3,353.

2042 See what 0611.20 says.

2043 That is to say - as already implied by S 00: 1 RO. - that of JOHNXXIII, Pius XII. PIEXI, LEON XIII; AS. II/V, 491 -492; DC. 1964.71 -81.

2044 *te* QUILLET and the *Larousse of the XX^e century* understand by this: a close attachment to a religion, but give it as uncommon. The *Grand Robert* of 1965 ignores the word.

2045 We leave aside the one indicated by the *GLU*: a very special system in Lebanon, where the different religious confessions enjoy civil and administrative posts in proportion to their importance.

status of what is confessional. Contrary to secularism²⁰⁴⁶ * Therefore, we will have to refer correlatively to "secularism": "Principle of separation of the civil society from the religious society, the State not exercising any religious power and the Churches not exercising any political power".²⁰⁴⁷ The term "confessionality" is unknown in current dictionaries. Intended to express in the noun the reality of the confessional State, it means, in the specialized use, several distinct concepts and realities.²⁰⁴⁸ 1) As for the concepts: A) *Formal* confessionality, or confessionality by law, is the inclusion of the official character of a religion in a text that *explicitly* declares it. This formal confessionality can be 1) either *doctrinal*, if the text declares that the religion adopted as official is *true*,² or historical-sociological, if it simply states that it has played a particular role in the for

Nouveau Petit Robert 1, Paris, Le Robert, ed. 1993 (1996), an. "Confessionnalisme".

205.-" *Nouveau Dictionnaire Robert 1*, Paris, Le Robert, ed. 1993 (1996), art. "Laïcité," which unfortunately illustrates this non-ideological definition with a phrase from Renan advocating not only laïcité, but the neutrality of the state between religions, which is ambiguous.

2048 See details at ⁴ans LRTC.

mation of the nation or that it is the religion *of the nation as a whole or of its majority*.^{TMTM} B) *Substantial* confessionality, on the other hand, is the fact that the legal functioning of the state depends *de facto*, by virtue of a tacit, lived, and unexplained principle, on a confessionality of the *society*. It goes without saying that a society that wishes to develop all its activity according to the principles of a religion²⁰⁴⁹ requires that this part of social life, i.e. political life, should also be so. Thus, the "confessionality of the State-power" depends, at its root, on a collective judgment made by *society*. II) As for past realities: In the history of law, the confessionality of the State most often implies²⁰⁴⁹ various negative and positive aspects that are not essential to the duty for society and for the State to give true worship to God. These are: A) negatively, intolerances: religions different from the official confessions (but often also these same²⁰⁵⁰) have suffered and are suffering from more or less severe restrictions on their RL;²⁰⁵¹ B) positively, privileges: 1) political privileges to the representatives of any official religion²⁰⁵² and in return, 2) religious privileges to the political leaders.

Confessionality, however, seems to include in its very concept only the conformity of political action, in at least some of its aspects, to a certain number of rules dictated by the explicit or implicit beliefs of official religions. This is the more natural form that it took in the Middle Ages. Moreover, the term "confessionality" appeared in the 16th century^e in the context of the Protestant "confessions of faith".²⁰⁵³ It is easy to understand why the magisterium of the Church was wary of the term,²⁰⁵⁴ while professing a doctrine not unrelated to what was commonly called the "Catholic confessional state".²⁰⁶⁶ It is above all the distinction between these two "confessionalities" (the pure concept and its past realizations) that the examination of the discussion on the subject (1.2.1.), that of the evolution of the conciliar drafts (1.2.2.), and finally that of the official conciliar and post-conciliar doctrine (1.2.3.) brings to light.

1.2.1. The discussion before *DH*

(1) "Since the 19th century, the "traditional doctrine" has given rise to a debate between (I) a "First Position", which wants to defend it, and (II) a "Second Position", which seeks to reform it.

I) Traditional Catholic doctrine

We will begin by recalling traditional Catholic doctrine as we have encountered it in the texts (A); then we will outline some aspects of the "I^{arc} position" (B).

A) The popes have taught the moral duty of cities, peoples, nations, and their leaders

2049 go at least until the XX^e century for most of the "state religions" or "state religions", and even until the dawn of the XXI^e century for some of them.

2050 Let us mention LECLER, 1949b.

2051 NAUROIS. 1958,93. Cf. 0518.77

2052 With the risks of interference of the ministers of religion in the temporal government. Cf. LECLER. 1949c.

2053 See DEUERLEIN E. (2).

2054 According to the CD-ROM *1GPII*, JOHN PAUL 11 uses the word "confessionality" twice; JOHN PAUL II. 1991.12.16: to the Spanish bishops on a visit *ad litina*, 8 (non-confessionality of the state [esp.D]; JOHN PAUL II, 1992.12.04: to the Bavarian bishops, 7 (confessionality of the teaching of religion). Neither of these two cases brings anything to our discussion.

considered as such, to pay to God²⁰⁵⁵ the homage of a cult, of true worship.²⁰⁵⁶ Likewise, to recognize the exclusive religious competence of the Church.²⁰⁵⁷ " This in no way excludes the ability and duty of rulers and societies to discern the true Church and to give it the adherence of their minds,²⁰⁵⁸ and therefore to conform civil legislation and government as much as possible to the divine law (natural and revealed), which facilitates the attainment of the eternal end for their fellow citizens,²⁰⁵⁹ and in particular by recognizing the special character of the Church.²⁰⁶⁰ Among these moral duties, the popes mention particular duties, especially juridical ones, of which they provide some *very general* principles, namely juridical non-indifference,²⁰⁶¹ union without confusion,²⁰⁷ -- the possibility of a separation *more americano*,²⁰⁷¹ but not absolute²⁰⁶² the *better character* in itself of the "favor of the laws and of the protection of the public power" (0624.), finally the *necessity*, always in a country of tradition and very strong Catholic majority, of a certain social profession of the Catholicism *in the law* (0402.6; 0406.2), social profession against which fight the enemies of the Church, falsifiers of the radical separation of the Church and the State (0410.2), condemned by the *Syllabus* (0518.55), and resolute adversaries of the "concord between the Priesthood and the Empire" (0516.1; cf. 0752.).

Catholicism as the religion of the State is a concept whose realizations have varied greatly over time²⁰⁷⁷ and to discuss the realizations is not to discuss the idea itself.²⁰⁷ " The essential is the substantial confessionality,²⁰⁶³ that is to say, the impregnation²⁰⁶⁴ of morals and institutions by Christianity.²⁰⁶⁵ - In the traditional doctrine, this worship of God by the State includes not only liturgical and religious manifestations, or the simple defense and preservation of religion, but "the Christian inspiration of the actions of the State, which, in its laws and in its practical realizations, is guided by a criterion that is in conformity with Catholic doctrine",²⁰⁶⁶ even if sometimes there is no formal confessionality²⁰⁶⁷ (that is to say, no explicit declaration).²⁰ "2068 On the other hand, this declaration has no meaning if it does not presuppose a substantial confessionality.²⁰⁶⁹ - "-5

2055 0607.1 ; 06093 ; 06093 - 0611.02 ; 0611.05 ; 0611.17; 0616.09 ; 0616.10; 0616.15 ; 06173 ; 06183; 0633.1-2 ; 0661.2 ; 06613 ; 0662.1 ; 07013 ; 0778.

2056 0406.2-3; 0611.05; 0611.17; 0611.19; 0616.15; 0617.1; 06172.; 06613; 0662.1-5 and 6.0701.1 (worship to Christ).

2057 0518.44; 0618.6; 06753 ; 0677.; 0611.09 ; 0611.08 ; 0611.10; 0611.13 ; 0611.14; 0788.; 0611.11 & 0011.20 ; 0611.13,0611.26 ; 0616.11 ; 0611.15.

20700611.074)8.

2059 0611.06:0819.4 [A4S. 1963.273].

2060 Its right to teach people (0662.4) and its status as a perfect society (0662.6 & 0611.20).

20730516.2 and 0617.1.

20760518.55; 0611.24; 0616.27; 0616.29; 0621.2; see 0621.1. In France: 0633.1-2.

²⁰⁶³ Cf. GANGOTI. 1972.710; CALVO-OTERO. 1968.183andNEIRA, 1966.04.319.

²⁰⁶⁴ The most important aspect, reminded us LOMBARDIA, 1973,418. See also MACDONAGH, 1967b, 145.

²⁰⁶⁸ Cf. ROCHE. 1966.169, § 2.

20X2 MARTIN-MARTINEZ, 1989,734. Cf. p. 750: the Catholic confessional State is above all that which puts into practice the social doctrine of the Church; and 805. As an example of "formal recognition of substantial confessionality" (FUENMAYOR. 1974.133).

20xi cf. DALLA TORRE, 1977,346; and MOSTAZA-RODRIGUEZ, 1974,90.

20X4 Of course, one influences the other: cf. DANIELOU. 1964.01.31, 30, who subscribes to the position of G. DE BROGUE DANIELOU. 1965.05-06.52, is opposed to the confessional state, but also to the separation of church and state: "Where religion is in the majority, it is absolutely normal that it should have certain rights."

20X5 cf. FUENMAYOR. 1974. 122-123; DAUJAT, 1970, 471-472 reminds us that the Christian state presupposes a Christian

The main juridical duty towards the Church is the defense of the "*libertas Ecclesiae*":²⁰⁷⁰ and the popes do not enter into the details of the juridical organization of the relations between Church and State,²⁰⁷¹ matter in fact very contingent and variable, as would be abundantly proved by the reading of the various Concordats signed since the XIIth century.²⁰⁷²

The worship rendered to God by the State is an *affirmative duty*, fulfilled as *much as possible*, even if it can only be fulfilled to its full extent in *the hypothesis of "ideal" conditions*. Its implementation will have to be adapted to all circumstances in view of the common temporal and spiritual good of the human persons at whose service the State-power and the Church-institution work.²⁰⁷³

B) Canonists and theologians who do not wish to deny the ordinary magisterium of the popes feel obliged to reject the very principle of the RL. For this "First Position" (in the language of J. C. Murray), the state is supposedly competent to discern where true religion lies,²⁰⁷⁴ and must therefore be doctrinally confessional. The articles and textbooks on public ecclesiastical law all more or less repeat, with some variations, the points made above.²⁰⁷⁵

H) Position II or "new

Some Catholic thinkers, not only at the time of the *Syllabus*, but then, in a second wave, from about 1935 onwards,²⁰⁷⁶ question this doctrine of the earlier magisterium, and do so in the desire to provide a rational basis for the universal contemporary aspiration to the RL, apparently opposed to the "Catholic State."²⁰⁷⁷ There can be no competence of the state to discern where true religion is, nor therefore²⁰⁷⁸ any particular duty of the state to the Church as the teacher of truth.²⁰⁷⁹ Is the II position endorsed by *DH*? It itself splits into two interpretations of *DH*.

According to a first opinion,²⁰⁷⁷ the Council would proclaim the absolute incompetence of the State in religious matters.²⁰⁹² It would be a pity, it is said, if the final text of *DH* mentioned only an incompetence to prevent or direct and not a more general incompetence.²⁰⁷⁸ *DH 6* should be criticized for not explicitly mentioning the juridical equality of *religious communities*.²⁰⁷⁹ Some authors adopt an apparently contradictory position: on the one hand, in *DH 1*, § 3 they do indeed imply that the state has a moral duty towards true religion;²⁰⁸⁰ - and on the other hand, they deny that the special recognition of *DH6*, § 3 can be derived from

population, and that a state can be Christian without being oppressive, with the example of Ireland.

20X60516.8: 0602. ; 0606. (former 0606. bis.) and 0611.20 ; 0613.2 & 0613.4.

20X7 Cf. the summary of JIMÉNEZ-URRESTI, 1958,285. n° 379.

20X° Overview of all these Concordats in JULG, 1990. For the nuances of these treaties, see 0760.24 (AaS,] 953.801-802) and 0772.8.

20X9 The thesis is not a miracle solution: cf. JIMÉNEZ-URRESTI, 1958,249; and already KELLER, 1865,398.

2°⁹⁰ On "State", cf. ALONSO & GUERRERO, 1962,10.

2075 Cf. JIMÉNEZ-URRESTI, 1958, 219-225: Cap. VII: *Fatsas nociones de la cmjesionalidad*. distinguishes the confessional State I) from the totalitarian State (which constrains consciences) with which VIALATOUX-LATREILLE confuse it; 2) from the clerical State; 3) from the "lidiest State" (the one that pretends that the Christian religion has ready-made political solutions, etc.); 4) from the State with the "religion of State".

MMLAJOLO, 1969,774, admits the capacity of judgment but denies the corresponding obligation of the state.

²⁰⁷⁷ Exposed in AVACK, 1974a, 611, of an inspiration parallel to that of J.-C. MURRAY.

2078 Cf. SOLER Carlos: 1993a, 202; for the opposite position, cf. p. 218.

2079 cf. such a significant admission in SOLER Carlos: 1993a, 265.

²⁰⁹²Cf. TORRES-ROJAS, 1968, 164.

an act of cognitive judgment about the truth of religion.² Finally, others simply confess their embarrassment before the necessary reconciliation of *DH* 6, § 3 and *DH* 1, § 3 and before *DH* 13, § 2,² ² and seek to minimize these last passages,²⁰² or seem not to take them sufficiently into account.²⁰³ However, in spite of a diffuse hostility towards any "confessionality"² especially formal from the practical point of view,²¹⁰ "several authors admit the speculative compatibility of *DH* with a sociological confessionality;²⁰⁸¹ but very few with doctrinal confessionality.¹²⁰⁸ On the other hand, some are frankly hostile to any *specialis civilis agnitio*.

According to another reading, *DH* would then declare the confessional State *possible* but not *ideal*, nor *obligatory*, nor *normative*,² ! i° t this reading knows various nuances. According to the first, there is no "model" concerning the relations between Church and State.²¹¹ According to another, the claims of the Church were transferred from the State-organization (*Stato-ordinamento giuridico*) to the State-commune.²¹² For others, more extreme, it would be the human community itself that would be incompetent in religious matters.² ' is We think that the least unacceptable is that of C. Corral-Salvador's view, which is outlined below: [Society as such has a duty of public worship towards God; the State has duties towards religion consisting on the one hand (a) in considering it as the supreme social value, and on the other hand (b) in ensuring the LR in order to favor the fulfillment of religious duties; *DH* is not opposed to the rights of the Church, nor to Catholic confessionality (with privileges for the Church) in a political community with a Catholic majority, nor to concordats;² ' >-* |4| *DH* neither affirms nor denies any particular form of positive collaboration of the State with the Church; therefore, on this subject, since *DH* explicitly invites us to do so, it is necessary to look for this form in the traditional doctrine;² i is

[The essential of confessionality is the juridical "conformation" of the State (in its legislation, in its public action) to the divine laws, natural and positive, and to the canonical law, derived from them. It involves a collaboration of the State because of the common good, creating social conditions favorable to the Catholic religious life of the faithful of the Church and protecting it. [The highest degree of confessional externalization is the constitutional recognition of the Catholic religion as the only religion of the Nation. The confessional State is therefore in no way a totalitarian State which establishes and imposes a religion on its citizens. 110] Nevertheless, the State is Catholic confessional "in an analogous sense, not insofar as it formally professes the faith, but insofar as it proclaims in a juridical-political manner the Catholic religion as the inspiration of its legislation and its activity, and as the official religion and worship of its people. 111 Such a proclamation does not mean the sacralization of the State, nor its infederation to the Church, nor the imposition of the Catholic religion, nor the violation of the consciences of dissidents. Nor does it mean an injury to legal justice with respect to the existence of other religions and their adherents, simply because of the special juridico-political situation of the Church with respect to them. In fact, [...] the official recognition of the Church does not come from a granted privilege, but from a juridico-political requirement and expression of the social reality of the governed people."² <¹⁶

1.2.2. The conciliar genesis of *DH*

The controversy between positions I and II was reflected in the conciliar debates. Both the diagrams,¹²¹⁷ as well as the *Relationes* (written reports of the SUC and oral reports of M^{er} de Smedt) i>²⁸ concerning the Declaration *DH* evolved 1° from silence on the moral duty of societies towards the true religion, to the affirmation of this duty (*DH* 1, § 3); 2° from a denial

²¹⁷ cf. SUÁREZ-PERTIERRA, 1974,439; DELHAYE, 1975,685.

of any religious competence of the State, to the denial of the only competence to "direct and prevent" (DH3, § 5) ; 3° from silence on the confessional State to the mention of this possibility (DH6, § 3); 4° from criteria of public order not objectively defined, to criteria based on the objective moral order (DH 7, § 3); 5° one has likewise progressed on the distinction between LR and freedom of the Church (DH 13). All this gives us the sense in which the Council Fathers on the one hand rejected the draft schemes, and on the other hand approved the definitive text. !²

I) November 18, 1963 (On Ecumenism) (1 SC)

On Nov. 18, 1963, Chapter V of the *De Oecumenismo*²⁰⁸² does not express itself on the question, except to forbid the public power to impose "on citizens the profession of a certain religion as a condition for being able to participate in national and civil life with full rights and integrity."² >² i The oral report of Mr.^{sr} de Smedt does not address this point either. ¹²²²

II) September 23, 1964 (Declaratio prior) (2 SC)

On September 23, 1964, the *Declaratio prior*²⁰⁸² takes up - in a more precise way - the theme of the prohibition of "moderators of public affairs to impose on citizens the profession or rejection of any religion as a condition for their full or partial participation in national and civil life." The corresponding written report does not deal with the competence of the State,²¹²⁴ unlike the oral report, in its § 5: *De caractere laicali sed non laicisticopotestatis publicæ* ;

"From what is stated in the text concerning the duties of the public authorities in this matter (p. 33, 1.4-10; 20-21) it would be wrong to conclude that the State, in our opinion, must be neutral, in the sense that it should be at least "separate" or indifferent towards religion. On the contrary, the public authorities must in fact indirectly favor the religious life that citizens lead according to the *dictates* of their conscience (this is indeed the supreme value both in the individual and in the social life of citizens); in order for everything to go well, it must be held that the State or the government has no capacity to make judgments of truth in religious matters, to interfere directly in what has to do with the religious life of citizens, or to subordinate the life of religious groups to its ends. As for secularism, which is offensive to religion, it is absolutely forbidden to public authorities by the natural law itself.²⁰⁸³

III) November 17, 1964 (Textus emendatus) (3 SC)

On November 17, 1964, the Fathers were given a comparative table of 2 SC (*Declaratio prior*) and 3 SC (*Textus emendatus*),^{m2084} 3rd outline, now an independent declaration, with *Vincipit*: "*Dignitatis personae humanae*". 4 takes up the ideas of the previous schemes, and the doctrine of Leo XIII and Pius XI on the purely natural competence of the State. It adds that public power "exceeds its limits completely if it interferes in any way with the government of souls or the *cura animarum*." >²⁰⁸⁵ Its §6 is a draft of DH6, but without the question of *Vagnitio civilis specialis*. On November 19, 1964, the oral report that presents it excludes the capacity of the state to judge religious acts.²⁰⁸⁶ Yet it declares the earlier doctrine upheld:

2082 intercalated between *De Oecumenismo* and *la Declaratio altera de iudais et de non christianis*. 2 SC : AS. III/I, 317-327 (here 320; our translation).

2083 s 03 = 2 RO, 45. 111/11,352-353.

212645 I11/VH1,426449.

212745.n1/VH1.432.

212" S 04:3 RO, 45. UI/VIII, 450, II. 10), e): "iudicare vel statuere"; DC, 1965, 171.

« Our Declaration does not deal directly with the juridical matter of the relationship between the Church and the State [...]. It is quite clear that on all these points the Church's doctrine must be maintained. But these points are not directly our subject.²⁰⁸⁷

Thus, the Church's *doctrine* concerning the legal duties of the State towards the Church is also maintained. Moreover :

« Religious liberty does not prevent the Catholic Church from enjoying certain privileges or even official recognition in countries where Catholics are in the majority. This privileged condition, if it is sometimes offered by Divine Providence and the good will of men, does not exclude of itself that other religious communities may also benefit from true religious freedom. This is not contrary to true religious liberty, as long as non-Catholics are guaranteed that they will not be the object of coercion. "2130

This acceptance does not yet appear in the scheme itself, and it is coupled with an explicit distrust of the support of the civil authority (*ibid.*) - The written report (3 RS) goes into some detail:

« 4. [*Confessionality of the State J. (I)*] If we understand things correctly, the doctrine of religious liberty does not contradict the historical concept of the "confessional state", as we would say in the case of the Catholic Church. In fact, the regime of religious liberty prohibits that legal intolerance according to which certain citizens or certain religious communities would be reduced to an inferior condition with regard to civil rights in religious matters. [However, it does not prevent the Catholic religion from being recognized by public human law as the common religion of the citizens in a certain region, or the Catholic religion from being established by public law as the religion of the state.¹¹ However, in this case, care must be taken to ensure that from this institution of the state religion do not derive either juridical or social consequences which in religious matters would damage the equality of all citizens in public law. In other words, at the same time as the regime of state religion, the regime of religious freedom must be observed." 3[>]²¹

« 5. [The regime of religious liberty fits in well with the contemporary practice of the Holy See concerning Concordats. This is evident if one pays attention to the essential purposes of the Concordats. In fact, if Concordats are passed nowadays, it is to protect the freedom of the Church and her faithful, which is due to them by the mandate of Christ. Now the regime of religious liberty is totally in accord with the full freedom of the Church, (It is true that in the past some concordats usually had other aims, such as the legal exclusion of non-Catholic cults from a certain region, legal privileges of various kinds, and so on. However, this was the case because of certain historical and social circumstances and because of the organization of the state at that time, "W

And implicitly not because of doctrinal principles.

IV) *September 15, 1965 (Textus reemendatus) (4 SC)*

On May 28, 1965, Paul VI sent the Fathers a table comparing the *textus emendatus* (3 SC) and the *textus re-emendatus* (4 SC), 4^e draft, discussed in Congr. gen. 128, September 15, 1965, reaffirming the incompetence of the State to interfere in religious matters:

« Potestas igitur civilis limites suos excedere dicenda est, si in ea, quæ ipsam ordinationem hominis ad Deum respiciunt, sese immisceat. "33²

The written report reinforces this point:

« Status enim non est auctoritas competens, quæ possit iudicia ferre de veritate vel falsitate in re religiosa. Ergo nequit esse sermo de errore religioso "tolcrando" a statu. "2134

Thus, without ever accepting secularism (aggressive or indifferent towards religion and irreligion),² '1' and therefore always maintaining the necessity of a benevolence

2130 ff OS: A.S. II Will. 454.5" paragraph; DC. 1965.175 [other translation: HAMER. 1967a. 87].

2131S 11:3 RS, § 4, AS. UI/VIII. 463, § 4.

2132s 12:3 RS. A.S. III/VIII. 463^164, § 5.

21334 SC, AÆIV/l. 150.

2134s n: 4 RS, 4). A.S. 1V/1.191.4 RO, very brief, does not address the issue.

2135cf. also S 55:6 RO, A.S. 1V/VI.721.3. Modifications introduced to ζcarter the secularism. of the public powers

towards the religion *in general*, the *Retallones*, as for the possibility of the *Catholic* confessionality of the State, begin with a total silence, doubled by the affirmation of an absolute incapacity of the public powers to pose judgments *of any type* concerning the religious truth (S 03 and S 04). And the commission will continue for a long time to profess the incapacity of the public power to **judge** truth or falsity in religious matters (S 17).

1° However, it ends up admitting that

« [...]society itself is free to have acts of public worship, by which society as such recognizes its dependence on God and renders to Him the honor due to Him in accordance with the duty incumbent on society as such.

« On the other hand, it still seems to limit the *cura religionis* of the State to the protection of the RL, by which the State would recognize the supreme value of religion (*in general*, not specifically of the only *true* religion) (*ibidem*).

« But it rejects the idea that by protecting the RL the State would favour indifferentism, or that the RL would be opposed to the confessionality of the State.²¹³⁷ Finally, for his part, the rapporteur (4 RO) reminds us that the "sum" of the rights of the Church and of the duties of *men* towards it is *disregarded* (and therefore not ignored).²⁰⁸⁸

Following the interventions of the Council Fathers, the leadership of the Council finally asked them the following question on September 21, 1965:

« Does the *textus reemendatus* on the RL please the Fathers as a basis for the definitive declaration to be perfected later according to Catholic doctrine on the true religion and the amendments proposed during the discussion by the Fathers and to be approved according to the Council's Rules?»²⁰⁸⁹

The answer, given by the vote n° 293 the same day, is favorable.²¹ -" The brief concluding oral report (4 RF) then recalls the duty a) for all men, even for "*omnes auctoritatem civilem gerentes*" to seek the truth, to accept it and not to take the defense of the error; b) that of every human authority (therefore implicitly the *public powers'*pm to adhere to the Gospel and to the Church

V) *October 25, 1965 (Textus recognitus) (5 SC)*

The commission then drew up the *Textus recognitus*, which was distributed on October 22, 1965, and presented on October 25, 1965, at the Cong. gen. 152. This 5° scheme (5 SC) makes progress on our question.

2136s 19:4 RS, AS. IV/1,193, § VI. De indole status.

213SS21 :4 RO. AS. IV/1, 198.
2139^9 J v/I, 434 = AS. 1V/V, 105.

(1) At the declaration of intent level of No. I:

<p><i>Textus reemendatus:</i> "Porro ratio libertatis religiosa, intactam relinquit doctrinam catholicam de unica vera religione et de unica Christi Ecclesia."</p>	<p><i>Textus recognitus:</i> " Quum libertas religiosa, quam homines, in exsequendo officio Deum colendi, exigunt et de qua mentem suam declarare Ecclesia catholica intendit, immunitatem a coercitione in societate civili respiciat, constat eam integram relinquere doctrinam catholicam de unica vera religione, de unica Christi Ecclesia et de morali hominum erga ipsam officio."²⁰⁹⁰</p>
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2° At the level of the study of the role of the State (future n° 3), the scheme evolves towards the idea of a religious incompetence of the State limited to the facts of *preventing or directing religious acts*:

<p><i>Textus reemendatus:</i> "For this reason it must be said that civil power exceeds its limits if it interferes in those things which concern the very ordination of man to God, if²¹⁴²</p>	<p><i>Textus recognitus:</i> "That is why it must be said that civil power exceeds its limits if it prevents or directs that which, by its nature, transcends the earthly and temporal order of things."²⁰⁹¹</p>
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3° at the level of the study of the possible confessionality (future *DH6*):

<p><i>Textus reemendatus:</i> "Hoc vero libertatis religiose regimen non impedit, quominus, attentis populorum circumstantiis historicis, uni communitati religiosae specialis agnitio in iuridica civitatis ordinatione tribuatur, eo tamen pacto, ut simul omnibus civibus et communitatibus religiosis ius ad libertatem in re religiosa agnoscatur et observetur."</p>	<p><i>Textus recognitus:</i> "Si attentis populorum circumstantiis historicis, uni communitati religiose specialis <i>civilis</i> agnitio in iuridica civitatis ordinatione tribuatur, () <i>neces- se est</i> ut simul omnibus civibus et communitatibus religiosis ius ad libertatem in re religiosa agnoscatur et observetur,"²⁰⁹²</p>
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The *moral duty of societies* appears again in the corresponding report (5RO), which acknowledges having received on September 21 the mission "to show more explicitly that the RL does not exempt man and societies from the moral duties which bind them to the Catholic religion."²⁰⁹³ " But this duty *of the societies*, neither the *textus recognitus*, nor the written report (5 RS) mention it.²⁰⁹⁴

VI) November 19, 1965 (*Textus denuo recognitus*) (6 SC)

On November 17, 1965, the *Textus denuo recognitus*^u " was distributed to the Fathers with a new subtitle, and on November 19, 1965, it was presented in a final *Relatio* (6 RO), in which Mr.^{sr} de Smedt changed his position concerning the incompetence of the State.² -- " : In fact, on that day, he made it clear that the changes which had then taken place in the text

2090 2 columns in the tableuu of A.S. IV/v, 78.

2091 5 SC : A.S. IV/v, 81 = A.S. 1V/V1. 705; (rad. HARRISON, 1988b (franç.). 73-74 (see notes). Change reported (without much explanation) in 5 RS, A.S. IV/v, 152.

2092 The two columns in A.S. 1V/V. 84.

2093 s 24: 5 RO, 1. *Officia veritatem et Ecclesiam*, A.S. IV/V. 99. According to the following, the text would have tried to do it.

(in particular in *DH*)² - recall the duties of the public power (*potestatis publica*). Finally, he clearly indicates that, with the addition²¹⁵ - [in particular] of "*ac societatum*", it was intended to accede to the request of the Fathers of the Council who were anxious to see the duties of the State (*potestatis publica*) towards the Church more clearly manifested: 1) duties no longer only of men, or of society, or of "rulers as persons", but of the *public powers*; 2) duties not only concerning *some* public worship rendered to God, but indeed *Catholic* worship; 3) finally, these duties were explicitly included in the *text*, no longer only in the *Relatio*, however with the words "*ac societatum*" and not "*potestatum publicarum*". Paul VI, in fact, gave the order on November 15, 1965, to specify in a sort of *Nota previa* introducing the *Relatio*:² -⁵²

"Some Fathers claim that the Declaration does not sufficiently show how our doctrine is not opposed to the ecclesiastical documents until Leo XIII. As we have already said in our last report, this matter will have to be brought to light in future theological and historical studies. As to the substance of this problem, it must be stated as follows: while the papal documents up to Leo XIII insisted more on the moral duties of the public power with regard to true religion (*officia moralia potestatis publica- erga veram religionem*), the later pontiffs, while preserving this doctrine, complete it by highlighting another duty of the public power (*aliud officium potestatis publicat*), namely, to respect in religious matters the dignity of the human person as a necessary element of the common good. The text presented to you¹ [Note 1: orally: proposed] today clearly recalls the duties of the public power with regard to true religion (see n° 1 and n° 3).²⁰⁹⁵ This makes manifest the fact that this part of the doctrine has not been omitted (*officia potestatis publica- erga veram religionem*TM *clarius recollit* (videre *N. / and N. 3*); *ex quo patet hanc doctrinal partem non pre- termini*). However, the proper object of our Declaration is the enhancement of the second and most recent part of the doctrine of the pontiffs, that which treats of the rights and duties which flow from the consideration of the dignity of the human person.²⁰⁹⁶ So that these two aspects if the words "traditional" (to "Catholic doctrine") appear clearly, we have added, in no. 1, p. 5,1,29, the word "traditional" (to "Catholic doctrine"), and in p. 6.1. 3, the word "more recent" (to "Pontiffs"). a² -⁵⁵

By the expression "*ac societatum*", the Council therefore intended to designate also the *potestas publica*² ^ Since it is a question of duties towards the *true* religion, this presupposes (upstream and not downstream of the state) a discernment of that religion. Therefore, if the State cannot decide what is true in religious matters, it can take into account in its action what the Catholic Church teaches in moral matters: the incompetence of master remains, as in the whole Tradition, the radical incapacity to disciple is not maintained even in an implicit way in the final text of *DH*?[^] nor of the last reports.²¹⁵ "

1.2.3. The conciliar and post-conciliar doctrine

Let us expose the doctrine of *DH* himself (I), then that of the later magisterium (II).

I) *The conciliar doctrine*

In agreement with GS,²⁰⁹⁷ *DH* does not exclude - and on the contrary implies - that Catholics strive, as far as possible, to imbue the very institutions of the state with the Gospel. Does *DH* allow a Catholic people the possibility and even the duty of asking the State to recognize the Church as the true teacher and guide, as the only competent one, in the religious and moral order, even in the order of public morality, of the morality of the government of peoples?²⁰⁹⁸ And what legal effect will this moral duty have?²⁰⁹⁹ It is necessary to examine

2095 <>/3 must therefore be read in the context of the true religion. 2154)^. HARRISON, 1988b, 82-83.

215 "GS42.§2;43.§ 1; § 5: see also AA 5.

2169 No, claim BOCKENFORDE, 1965,206-207 and NEOPHITOS. 1974,284. Yes. according to CIAPPI, 1966,50-51.

2099 MARCEKIE, 1988a. 49-50 answered: "none". but MARGERIE, 1990a corrects his own thinking.

the immediate context (the rest of *DH* itself²¹⁰⁰) and the distant context (the other conciliar documents^{216 -1}), as well as the *Relationes*, already quoted. In spite of a certain discretion of *DH*²¹ on the relations between State and God,²¹⁰¹ it is specified that

"The precise objective of *DH* is not what the state *should do*, but what it *should not do* in religious matters. Therefore, the distinction of competences between the Church and the State, and the general affirmation of *DH*, 3, that the State must favor the religious life of the citizens, do not exclude at all that the Catholic Church can and must be helped and protected in a special way by the State, even reaching the confessionality of the latter where it is possible. This last point was not explicitly proclaimed by *DH*, but neither was it excluded (contrary to the erroneous interpretation of some). "2167

The text of *DH* 1, § 3 maintains a doctrine of *moral duty* - while seeking to develop one about the *legal* ordination of society. This requires immunity from coercion, but not absence of obligation. The indifferentism here rejected concerns not only the active subjects of the law (if man and societies are coercively free, they are not for all that morally free), but also its passive subjects (if man and societies are holders of the right to the RL, it is not because the men and societies they have in front of them - the passive subjects - would have permission to be indifferent in religious matters, as was the case in the DDHC of 1789). On the other hand, *every Juridical duty* (= "of justice") is a *moral duty* (the reciprocal certainly not being true).²¹ "a Moral duties *can* thus sometimes be juridical. ¹²⁶ ' DH only excludes any coercive consequences for persons and groups, at least in the formally religious domain and within the limits of the just public order.²¹⁷⁰ Moreover, as we have seen, the "traditional doctrine" of the magisterium teaches the necessity of a cult rendered to God by the State-society and by the holders of the State-power. Now this worship consists properly and principally in legislating, governing and judging as much as possible in accordance with the law of God²¹⁰² ("objective worship") and also - but *not primarily* - in participating (this is what is called "subjective or formal worship") in an official way ("official worship") in religious ceremonies.^{2 -73} The "legislative, executive and judicial worship" mentioned just now prevails by far in its consequences. It will be a question of imposing not "the morals and the social doctrine of the Church",²¹⁷⁴ but the elements of

²¹⁰⁰DH3 :6.s3 :7, §3 :13. § 2.

ANDRÉ-VINCENT. 1977.03-04/ 1991,35-36.

²¹⁰² Cf. RUSSO Biagio. 1965. 14. The CCC 2105 will emphasize this objective aspect of the homage paid to God, without mentioning any official subjective worship.

natural law essential to the common good, which is related to the problem of just public order, studied below. ¹²⁷

To reduce "*societatum*" to *associations* (I) does not fit with the explanation - already quoted - given by the rapporteur on November 19, 1965 (S 48), nor with a study of the lexicon of the Council in general and of *DH* in particular (2). ¹²⁶

1° As we have been able to verify on the original fingerprint in the private archives of Card. Hamer's private archives, the usual French translation is due to the SUC. Nevertheless, it is not official, and done in a hurry, it is not exact either. However, according to various theologians - notably French-speaking ¹²⁷ - misled by it, "*societatum*" would designate only *associations to the exclusion of civil society*.¹⁰³ It is difficult to see how such an interpretation can be reconciled with the numerous texts of Pius VI, Pius VII, Gregory XVI, Pius IX, Leo XIII, Pius XI, Pius XII, nor with theological reason.¹⁰⁴

2° Relying on the interpretation officially given by the Editorial Commission (S 48) and on the lexicographical context of *DH* (cf. LRTC, Chap. 14), we consider it proven that by the word "*societatum*",^{211,0} *DH* 1, § 3 designates political society, civil society, ¹²¹ *¹ the lower societies and associations, ¹²¹² the State,²¹⁰⁵ capital part (in the sense of the root *caput*) of civil society, or the higher, international societies.²¹ *¹⁴ On this subject, a) our *positive* argument was that in *DH* "*societas*" includes the civil society; b) our *negative* argument resided in the fact that to designate another reality than the civil society, the conciliar declaration uses other terms. This was also the opinion, admittedly private, but emanating from one of the editors of the text itself, Fr:

"Furthermore, the declaration emphasizes that this "duty" (*officium*) does not only affect individuals but also communities, that is, men acting in common. This refers to all social groups from the most modest and spontaneous to nations and states, passing through all intermediaries: unions, cultural associations, universities... The idea of the scheme is simply to eliminate a kind of individualistic interpretation of this primordial duty. "11"

All this necessarily implies the discernment of the truth of this religion. Nevertheless,

"It is one of the misfortunes of this conciliar text that it did not go to the end of its problematic, by abstaining from confronting the formidable question of the duties of the State towards God. He does not ignore these duties, and he mentions them; but he is careful not to expose them in a text which he wants to limit to a declaration in favor of religious liberty. It remained to show how the State would discharge this duty by fixing the "just limits" of this liberty in relation to public order, "zut"

Respect by the State for the Church's doctrine on society implies in a special way respect for the fundamental rights of the human person, the most precious part of the common good. It implies not only *verbal* but *real* conformity of laws and government to the principles taught by the Church *concerning society*. *DH* 1, § 3²¹ ¹⁷ explicitly upholds "traditional Catholic doctrine":² "thus the profession of Catholicism by the state in a Catholic nation."¹¹¹⁹ Thus, it cannot be claimed either that *DH* 1, § 3 simply reaffirmed the thesis of the "confessional Catholic state" in the classic form known in the past, ²¹⁰ or, conversely, that it is only a matter of a duty to create a favorable climate towards religion in general. ¹²⁹¹ *Ac societatum* of *DH* 1,

²¹⁷⁸ "*Societatum*" has not always been rendered by "associations", even by the translations that are used in the past. feel as if they were in conformity with the SUC! See LRTC, vol. 11/A, 0933, notes. The Interpretation Commission of Va 21HI Nous we dare to propose again the suggestion of LIO. 1968. note 30.623: "Forsan sublineanda esset in commentaris illa adiuncta obligatio *etiam societatis* erga unicam veram religionem, [...]"²⁹² Translation still used, alas! by GONNET, 1994,229.

§ 3 concerns also the State.²¹⁰⁶ Therefore, any interpretation of *DH* that would challenge this doctrine seems contrary to *DH* itself.²¹⁰⁷

II) The post-conciliar doctrine

In any case, since private interpretations²¹⁰⁸ cannot in any way provide an authoritative solution to the problems under consideration,²¹⁹³ recourse must be had to authentic postconciliar interpretations, namely A) concordat practice and B) the doctrinal magisterium.

A) The post-conciliar "concordat" practice

Concerning the practical relations of the Church with the States after Vatican H,²¹⁰⁹ it is sufficient for us, in order to prove that *DH does not forbid a Catholic nation to proclaim in an official way the truth of the Catholic religion*, to study a very significant particular case, that of the organic law of the Spanish State (January 10, 1967) which made possible the law of religious liberty (June 28 / July 1, 1967).²¹¹⁰ This clear maintenance of confessionality "for reason of truth" coupled with an application of the principle of LR, in the **very name of *DH***, with the approval of the Holy See, and because of the very *truthfulness of the teaching of the magisterium of the Catholic Church*, is stated as follows:

"The law of fundamental character of May 17, 1958, according to which Spanish legislation must be inspired by the doctrine of the Catholic Church, constitutes the foundation of the present law. Now, as is well known, on December 7, 1965, the Vatican Council approved the declaration on religious freedom, saying in its number 2: "The right to religious freedom has its foundation in the very dignity of the human person... In the juridical order of society, it must be recognized in such a way that it constitutes a civil right." After this declaration of the Council, the need arose to modify Article 6 of the *Fuero de los Españoles*, by virtue of the aforementioned fundamental principle of the Spanish State. For this reason, the Organic State Law of January 10, 1967, modified said Article 6 as follows: "The profession and practice of the Catholic religion, which is that of the Spanish State, shall enjoy official protection,²¹¹¹ * The State shall ensure the protection of religious freedom, which shall be guaranteed by an effective juridical provision that shall safeguard both morality and public order." This new wording - and this must be expressly noted - had previously been approved by the Holy See.²¹¹² The reform of the *Fuero de los Españoles* having been approved by the organic law of the State, the way was open to insert into Spanish legislation the civil right to religious freedom, guaranteed by an effective juridical provision safeguarding at the same time morality, public order and the special recognition of the Catholic religion stipulated by the said legislation. L...]. "2200

Now here is the essence of the fundamental law of 1958, in which the Catholic Church is still recognized as the only *true* one, and which is still the **basis of the provisions of 1967**:

"La Nación española considera como timbre de honor el acatamiento a la Ley de Dios, según la doctrina de la Santa Iglesia Católica, Apostólica y Romana, única verdadera y fe inseparable de la conciencia nacional, que inspirará su legislación. "22U

²¹⁰⁶ On the substance, see LOBO-ALONSO, 1966. 19-20-21-22 ; 27.

²¹⁰⁷ See STORCK, 1989.67.

²¹⁰⁸ cf. SOLER Carlos: 1993a, 291.

²¹⁰⁹ We leave aside the example provided by BARRETT, 1982,749.

²¹¹⁰Cf. DC, 1968,45, note 1.

²¹¹¹ This sort of primacy given to confessionality over the RL has been attacked. Cf. CORRAL, 1968.03-04.89. and 1972c, 334. Cf. also 0997. bis. IPAUL VIL 1976.07.28: Agreement between the Holy See and the Spanish nation modifying certain aspects of the Concordat of August 27, 1953. according to *DH* (principles of LR and freedom of the Church) and the law of 1st July 1967 (new procedures); AAS, 509-512 .DC. 845.

²¹¹² D'Ujals remarks of LA HERA, 1972c, 305-306 & 308. There is no text of the Holy See asking for the suppression of the fundamental law of 1958. We therefore agree with SUAREZ-PERTIERRA. 1974. 449. The SPANISH EPISCOPAT, 1968.01.22, 933, states: "The historical and sociological reality of my people requires that the Catholic Church be recognized in a special way by the State in the legislation of the Spanish nation. "

B) The post-conciliar magisterium makes explicit

In addition to the documents of John Paul II, which we are studying in their place, two explicit texts of the post-conciliar magisterium have expressed themselves on the subject: 1) the CCC; 2) the Note of the CDF of 24 November 2002.

1) *The Catechism of the Catholic Church*

The French text of the CCC, no. 2105, translates "*societatum*" as "societies", and seems to emphasize the above-mentioned "impregnation" of society by religious truth:²¹¹³

"The duty to render authentic worship to God concerns man individually and socially. This is "the traditional Catholic doctrine on the moral duty of men and societies towards the true religion and the one Church of Christ."²¹¹⁴ - By constantly evangelizing men, the Church works so that they may "penetrate with a Christian spirit the mentalities and mores, the laws and structures of the community in which they live."²¹¹⁵ The social duty of Christians is to respect and awaken in every man a love for what is true and good. He asks them to make known the worship of the one true religion which subsists in the Catholic and Apostolic Church.²¹¹⁶ Christians are called to be the light of the world.²¹¹⁷ In this way the Church manifests the kingship of Christ over all creation and in particular over human societies."²¹¹⁸

The note refers here to *immortale Dei*²¹¹⁹ " and to *Quas primas*.²¹²⁰ These references constitute an inescapable hermeneutical context. !²²⁰ However, *DH* has not sufficiently emphasized the impregnation of laws and structures.²² -! With regard to the duty of worship of society, the CCC, no doubt in order to avoid entering into the thorny debate of "gnoseological competence upstream / juridical incompetence downstream", does not emphasize the importance of the duty of worship.

2113 Cf. SAINT-LAUMER. 1993.02.28-34 summarized in *La ^*(January 1993), 11-12.

2114 The *i_{noe}* refers to *DH*! AAS, 1966,930.

2115 The note refers to AA 13: AAS, 1966, 849. Translation: *Cerf-VATICAN IL t. II, 221*. The idea is traditional: cf. 0611.01; 0618.1.4, & 9; 0632.5, already cited, + AA 5: AAS, 1966,842; *Cerf- VATICAN IL t. II, 209*.

2116 The note refers to *DH* 1: AAS, 1966.930.

2117 The note refers to AA 13: AAS, 1966,850.

2118 see SAINT-LAUMER. 1993.02.29.

220K_A *cta leonin XIU*. 8,229-230 (= our 0616.12).

2120 AAS, 1925, 593-610. The entire encyclical is referenced here.

In this respect, the "downstream" of the State is content to recall the essential, that is to say the evangelization of politics. It therefore maintains in equivalent terms what usage calls the "substantial confessionality" of the State, called, in our time when absolute monarchies have disappeared, to manifest itself through the Catholic *citizen- sovereign*,²²² and the Catholic statesman, docile to the magisterium of the Church and its social doctrine.²² '1 The CCC specifies moreover :

"The proper vocation of the laity consists in seeking the kingdom of God precisely through the management of temporal things which they order according to God (...). It is for them, in a special way, to enlighten and direct all the temporal realities to which they are closely linked, so that they may be made and flourish constantly according to Christ and be to the praise of the Creator and Redeemer" ;LG 31J" (CCC 898). "The initiative of lay Christians is particularly necessary when it is a question of discovering and inventing ways to impregnate social, political and economic realities according to²²⁴ the demands of Christian doctrine and life" (CCC 899).

Let us add n° 2244 of the same CCC, where the capacity of the rulers to evangelize even the functioning of the State is necessarily presupposed:

"Every institution is inspired, even implicitly, by a vision of man and his destiny, from which it draws its references of judgment, its hierarchy of values, its line of conduct.²² '1 Most societies have referred their institutions to a certain pre-eminence of man over things. Only the divinely revealed religion has clearly recognized in God, Creator and Redeemer, the origin and the destiny of man. The Church invites the political powers to refer their judgments and decisions to this inspiration of the Truth about God and man: [...]

"Societies that ignore this inspiration, or refuse it in the name of their independence from God, are led to look to themselves or to borrow from an ideology for their references and their end, and, not admitting that an objective criterion of good and evil is defended, give themselves over man and his destiny a totalitarian power, declared or underhand, as history shows."²² 'é

In any case, even the political structures must be Christianized.²²⁷ And both citizens and rulers, in order to achieve this Christianization, need, *de facto*, to be attentive to the Church's magisterium. If the Church has always denied the State any competence to judge in religious matters, it assigns to it, at least in Catholic countries, a competence of "disciple",²²¹ ability to recognize and apply the truth taught by the Church²²⁹ on matters concerning the State (i.e., above all, moral and social doctrine, especially what concerns the natural rights of man).²²² " Now, precisely, one of these truths is that the State has no business intervening to direct or prevent religious acts, a truth already recognized before the Council by several opponents of the

2212 Same idea in LOMBARDIA, 1974b, 523. Let us mark black disagreement with MÜSSELU. 1975.50.

2213 On this displacement of "fulcrum", cf. SOLER Carlos: 1993a. 47.

2214 Word added in 1997, forgotten in 1992.

2215 The same premise in ROCHE, 1966,116, note 4.

22)6 2244, citing (1204.)*Ceniesiimx annus*, 45 & 46.

2217 On this question, cf. CATÜRELU, 1992,278-281.

221" Cf. CAVAGNIS, 1882, n° 394: it is thus a question of an *inanislative* incompetence of the State.

221" On this point, see SOCKEY, 1983,217.

2220 (jf. already, with different images, BENOIT Paul, 1885, II. 261-262: or CANUT. I89). 107. citing LIOERATORE, 1872 (trans., franç. 1877), *L'Église et l'Etat dans leurs rapports mutuels*. 83 88.

The LR theory then advocated by some Catholic authors.²¹²¹ In the conclusion of our LRTC, we wrote: "Finally, we dare to suggest that future researchers be concerned with the concrete way in which Catholics throughout the world, each according to the particular situation of his

²¹²¹ See MESSINEO, 1950.09.30.57-67; especially 63-64.

or her country, can more effectively influence temporal, political, legal, etc. realities, overcoming the permanent accusation of wanting to impose their point of view on society by force. At stake are the rights of other people (the rights of the unborn, the terminally ill, etc.), the common good of society and the reign of Christ over the created reality of the state (society and power). This aspiration has been heard by the Holy See, in the form of a clarification.

2) *The CDF Doctrinal Note of November 24, 2002*

And in fact, on November 21, 2002, JOHN PAUL II approved a Doctrinal Note of the CDF.²¹²²

"The present *Note* does not claim to propose anew the entire teaching of the Church on the subject, which has been summarized for the most part in the *Catechism of the Catholic Church*. It simply wishes to recall some of the principles that inspire the Christian conscience in the social and political commitment of Catholics in democratic societies."²¹²³

The document seeks to inculcate in the laity, above all, the "task of animating the temporal order in a Christian way", while respecting its "legitimate autonomy" (§ 1). It has a particular context in contemporary democratic societies, and has a limited purpose.²¹²⁴ It is from § 5 onwards that the *Principles of Catholic doctrine on secularism and pluralism* are set out *ex professa*. 1st principle: There is a legitimate pluralism in the choice of concrete political means. 2nd principle:

"Certainly no faithful Christian can appeal to the principle of pluralism and the autonomy of the laity in politics to favor compromise solutions that compromise or mitigate the safeguarding of fundamental ethical requirements for the common good of society. In itself, these are not "confessional values". Indeed, these ethical requirements are rooted in the human being and belong to the natural moral law. They do not require that the person who defends them professes the Christian faith, even if the doctrine of the Church confirms and protects them always and everywhere, as a disinterested service to the truth about man and to the common good of civil society. (...) "

3rd principle: If the religious and political powers must remain distinct and sovereign in their order (secularism), the political power remains subject to morality:

" 6. The oft-repeated call for "*secularism*" that should guide the commitment of Catholics requires clarification, and not only at the terminological level. The promotion in conscience of the common good of political society has nothing to do with "congressionism" or religious intolerance. For Catholic moral doctrine, secularism is understood as an autonomy of the civil and political sphere from the religious and ecclesiastical sphere, *but not from the moral sphere*. It is a value, recognized by the Church, that one acquires and that is part of the patrimony of civilization obtained.²²²³ John Paul II warned several times against the perils of any confusion between the religious and political spheres. "The situations in which a specifically religious norm becomes, or tends to become, the law of the State, without sufficiently taking into account the distinction between the religious and the political spheres, are very delicate. In fact, identifying religious law with civil law can effectively stifle religious freedom and even limit or deny other inalienable human rights."^{4 2125} All the faithful are well aware that specifically religious acts (profession of faith, performance of acts of worship or sacraments, theological doctrines, communication between religious authorities and the faithful, etc.) fall outside the competence of the State. The latter must not interfere with them, nor can it in any way oblige or prevent them, except in cases of public

²¹²² CDF, 2002.11.24: orig. ital. A4S, 2004, 359-370; French translation: distributed by the Vatican on the Internet (more lard in DC).

²¹²³ Note 11 of the text refers to "LEON XIII, Encycl. *Diuturnum illud*, ASS 14 (1881/82) 4 ff; Encycl. *Immortale Dei*, ASS 18 (1885/86) 162 ss.; Encycl. *Libertas praestantissimum*, ASS 20, (1887/88) 593 ss.; Encycl. *Return novarum*, ASS 23 (1890/91) 643 ss.; Benedict XV, Encycl. *Pacem Dei munus pulcherrimum*, AAS 12 (1920) 209 ff; Pius XI, Encycl. *Quadragesimo anno*, AAS 23 (1931) 190 ff; Encycl. *Mit brennender Sorge*, AAS 29 (1937) 145-167; Encycl. *Divini Redemptoris*, AAS 29 (1937) 78 ff. PLEXII, Encycl. *Stimmii Pontificatilli*, AAS 31 (1939)423 ff.; *Christmas Radio Messages 1941-1944. Muterei Magistra*, AAS 53 (1961)401 463; Leit. Encycl. *Pacem in terris*, AAS 55 (1963) 257-304; PAUL VI, Encycl. *Populorum Progressio*, AAS 59 (1967)205-299; Leu. *Oculosima adveniensi*, AAS 63 (1971)401-441". We are on familiar ground!

²¹²⁴ It does not therefore consider all states at all times and in all circumstances, nor the whole question.

²¹²⁵ Note 24 refers to AXS, 1991,410-421 (our 1202).

order. The recognition of civil and political rights and the distribution of public services cannot depend on the convictions or services of a religious nature on the part of citizens.

In line with what the rapporteur to the Council already explained concerning the "historical concept of the confessionality of the State", the present text once again eliminates a form of confessionality that would imply the confusion or entanglement of orders or the need to confess a particular faith in order to be able to live in a society, hence the religious intolerance that destroys the RL. On the other hand, it does not in any way eliminate (and the following will prove it), the idea that a majority (relative, absolute, or morally unanimous) of Catholics should pass into laws, structures, etc., the moral and social doctrine of the Church, at least as far as natural law is concerned.²¹²⁶ Thus:

"Catholic citizens have the right and duty, like all others, to sincerely seek the truth, to promote and defend by all lawful means, the moral truths about social life, justice, freedom, respect for life and other human rights. The fact that some of these truths are also taught by the Church does not reduce the civil legitimacy and secularity of the commitment of those who recognize themselves in them, independently of the role played by rational research and the confirmation received from faith, in the way of knowing them. Secularism", in fact, designates in the first place the attitude of the one who respects the truths that proceed from the natural knowledge about the man living in society. It does not matter if these truths are also taught by this or that particular religion, since truth is one. It would be a mistake to confuse the rightful *autonomy* that Catholics must have in politics with the claim to a principle that is independent of the Church's moral and social teaching. By its intervention in this area, the Church's Magisterium does not wish to exercise political power or to eliminate the freedom of opinion of Catholics on contingent questions. On the contrary, the Magisterium wishes to form and enlighten the conscience of the faithful, especially when they are involved in political life, so that their actions may always be at the service of the integral promotion of the person and the common good. The Church's social teaching does not interfere in the government of different countries. It certainly proposes a moral duty of coherence for the lay faithful, within their own unique conscience. To live and act politically in conformity with one's conscience is not a slavish endorsement of positions alien to political commitment or of a form of con- fessionalism. Rather, it is the expression by which Christians offer their coherent contribution to the political process. so that through politics a social order is established that is more just and more adequate to the dignity of the human person.

If secularism forbids, therefore, that religious power have political power, on the other hand, contrary to secularism, it does not forbid that the magisterium have a say and that the conscience of Christians must follow the teachings of the magisterium as to the moral ends to be promoted:

"(...) They would be endorsing a form of intolerant *secularism*, those who, in the name of individual conscience, would like to see in the moral duty of Christians to be coherent with their conscience, a signal to disqualify them politically and to deny them the right to act in politics in accordance with their convictions about the common good. In this perspective, one would deny not only the political and cultural importance of the Christian faith, but also the very possibility of a natural ethics. If this were so, the way would be open to a moral anarchy that could never be identified with any form of legitimate pluralism. The domination of the strong over the weak would be the obvious consequence of such a choice of society. On the other hand, the political marginalization of Christianity could not serve the future of a society as it is planned, nor the concord between peoples. On the contrary, it would undermine the very foundations of civilization at the cultural and spiritual level²⁶ 222K

This is the difference between the healthy *secularism* of Pius XII, a clear distinction of powers, always supported by Catholic doctrine, and the secularism that denies civil and political freedom to the Church and to Christians in the name of a chimerical freedom of moral obligation. Finally, as for the RL itself, the text recalls

" 8. [...] a truth that is not always perceived and is not properly formulated in common public opinion: the right to

²¹²⁶ Nor even that it becomes a structural principle of the State, which seems possible only in the case of a stable unanimity, successful in the past, but now apparently impossible.

freedom of conscience and especially to religious freedom, proclaimed by the Second Vatican Council's Declaration *Dignitatis humanae*, is based on the ontological dignity of the human person, and certainly not on an equality between religions, or between human cultural systems²⁶.²¹²⁷ This equality does not exist. I...²².¹⁰ The affirmation of freedom of conscience and religious liberty does not therefore in any way contradict the condemnation of religious indifferentism and relativism on the part of Catholic doctrine.² " On the contrary, it is fully consistent with it."²²² -

Conclusion of Chapter 1

A) When we speak of the duties of the state towards true religion, we are speaking of the duties of the holders of temporal power (citizens in a democracy, politicians in all regimes). The fact that the political community is a moral and not a physical person is not an argument against the profession and practice by the community of the moral truth known by religious means.²¹²⁸ Man has obligations to God, both individually and collectively; this is the heart of "traditional Catholic doctrine."²¹²⁹ However, the laws of the state are not the pure and simple application of religious rules, and the fact that moral truth is known by religious means is *accidental*: it is natural morality that must direct the laws of the state.

B) One must not confuse thegnoseological competence of the holders of State power (citizens, chiefs), who must accept religious truth, with the jurisdictional competence in religious matters, proper to the Church, and denied to the State:²¹³⁰

"The State must not pronounce on religious matters and cannot substitute itself for the various confessions in the organization of religious life"²²³ but "the function of the State is to permit and facilitate for men the realization of the transcendent ends for which they were destined, o"²¹³¹

The matter is further clarified if one considers that the primary meaning of the words "jurisdiction" and "competent" is *Juridical*^*DH* maintains an inability of the state in religious matters to make authoritative judgments or jurisdictional acts (at least as a principal cause, if not as an instrumental cause).²²³ "

C) If a unanimously Catholic country desires that the State accept the moral and social doctrine of the Church, it can achieve this by various means. One of these means, not the only one, nor the most important one, nor always the most effective one, is to have this principle written into the constitution (in a modern state). This in any case does not give the state any religious competence. But this must not lead to the state directing or preventing religious acts.²²³ ' The state really according to the heart of the Catholic Church should recognize the Church as the only one competent in this matter.²¹³² The governed and the rulers as such are capable of rendering Catholic worship through the ministers of the Church.²¹³³ The State, although incompetent in the supernatural domain,²¹³⁴ has obligations to God and to the

²¹²⁷ Note 28 of the text reads: "Cf. OECUM. VAT. 11. *Decl. Dignitatis humanae*, n. 1: "The Council declares that God himself has made known to the human race [and the following to] Catholic and Apostolic." This does not prevent the Church from considering with true respect the various religious traditions, and even from recognizing that there are in them "elements of truth and goodness. Cf. CONC. OECUM. VAT. II. Dogmatic Const. *Lumen gentium*, n. 16; Decree *Ad gentes*, n. 11; Decl. *Nostra ouate*, n. 2; JOHN PAUL II. *Leu. encyd. Redemptoris missio*, n.55. AAS 83 (1991) 249-340; CONGREGATION FOR THE DOCTRINE OF THE FAITH. Decl. *Dominas Jesus*, nn. 2; 8; 21, A AS 92 (2000) 742-765."

²¹²⁸ See also LA TORRE, 1968.285.

²¹²⁹ This formulation is substantially taken up by CCC 2105. Cf. also HARRISON. 1988b (franç. 1, 85.

²¹³⁰ Cf. ANDRÉ-VINCENT, 1977.03-04/1991,34: ANDRÉ-VINCENT. 1976.228, and OCARIZ, 1989.06,93. note 72.

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²¹³² Cf. ESTRADA. 1972, 507.

²²⁴ Cf. ANDRÉ-VINCENT. 1976.229-230; especially 230.

²¹³⁴ On the positive duties of the state, see CORRAL, 1966b, 383 and 386-387.

Church; it cannot be agnostic. In a country with a Catholic tradition, it must in principle favor the true religion.

D) On the other hand, this submission to religious truth is not opposed to a healthy secularism.²¹³⁵ The separation of Church and State, in the sense of a *distinction between* the two powers, is a *Catholic doctrine*;²¹³⁶ on the contrary, *separation*, in the sense of a refusal in principle of all evangelization of the temporal and of the reduction of the Church to the status of a simple association, is opposed to this doctrine.²¹³⁷ The texts of the Magisterium on the distinction between Church and State do not mean, therefore, that the State as such has no duties towards the Church, nor that the *libertas Ecclesiae* is identical to the LR naturelle common to all citizens.²¹³⁸

"Separation in the juridico-political sense (as a system) is not recommended by the Second Vatican Council, except that it takes it into account and seems to consider it as the system towards which we are nowadays universally tending."²⁴⁷

Finally, the post-conciliar application of *DH* was done in two ways: 1° as for the negative precept (not to coerce, not to prevent), which is *sem per et pro semper*, the Church made it come into force in all its extension where it was not yet perfectly in force and where it could bring its authority into play (e.g. Spain, Colombia); 2° as for the positive duties (worth *semper sed non pro semper*) of the State towards the Church, the Church preferred to renounce them more often than not. 2° as for the positive duties (worth *semper sed non pro semper*) of the State towards the Church, the Church has preferred to renounce most often to *demand* them.

²²⁴Cf. ANDRÉ-VINCENT, 1976,231.

²¹³⁶ Cf. e. g. 07723-5: AAS. 1955,677-680; or 0783..

²¹³⁷ Cf. ARGOS, 1981, n° 211 & 213. In this sense, cf. 0611.10: *Acta Leonis XIII 05, VH = ASS 18.166 = BP02, 26:0623.1.*

²¹³⁸ Cf. OCÁRIZ. 1989.06, 92. SPINELU, 1988, 77 (LR negative and *libertas Ecclesiae*, affirmative). On these questions, one can still consult: ANDRÉ-VINCENT, 1977.03-04 / 1991, 34; SAINT-LAUMER. 1988.06.31 : GOETHALS, 1987.04, 65-66-67; MARTÍN-MARTÍNEZ, 1989, 495; 568, and 569, note 36: MOSTAZA-RODRÍGUEZ. 1974,86-87. Let us point out a presentation of this thesis, by an opponent: COSTE, 1969,396-399 (ref. to BROGUE, 1964.130-131 and to M. LEFEBVRE, *Le Monde*, 20 March 1969).

CONCLUSION OF THE PRELIMINARY SECTION

All in all, we are not witnessing a complete victory of J.-C. Murray's thesis,²² --* but a reaffirmation (*noviter non nova*) of the "traditional Catholic doctrine",²² --⁹ on the duties of civil societies, of political societies (*civitates*) and of their leaders towards God, and more precisely, towards Christ and his Church.²¹³⁹ The moral duty concerns societies directly and *per se*, as "collective man", the public powers being in some way included in this duty (W 48), that is to say their holders insofar as they exercise authority over society (and are thus the ministers of God's authority; cf. *DH* 11: *Non est enim potestas nisi a Deo*). This is how B. de Margerie understands it in his retraction.²¹⁴⁰ In other words, such a judgment of religious truth is not *downstream* from state activity, but *upstream* from it. No organ of the State is called upon to make an authoritative judgment in religious matters, but the functioning of the organs of the State can very well *take into account* a religious truth previously recognized as such, and by another authority. It must be added that the State, in using its own prerogatives, *does not formally act on behalf of religious truth*, but on behalf of the *temporal common good*. Therefore, a possible *specialis civilis agnitio, whatever* type it may take, must always be suspended from the "circumstances of the people", which determine the concrete common good that the state must pursue. It may be regrettable that *DH* *did* not insist more on this aspect, but he did not forget or deny it. This is what we wanted to demonstrate in this section.²¹⁴¹ The Council was realistic, in fact: "Even if such a type of state [the confessional state] is not desirable under present conditions, it is nevertheless the ideal, and it is the present conditions that are not the ideal."²²⁵⁵

DH then comes to the determination of the truth about the RL. He does this in two parts: the first^{cc} on the general notion of the RL; the second on the RL in the light of Revelation.

2139 cf. CIAPPI, 1966,58.

2140 MARGERIE, 1990a, 360-361 & 367-368. See also notes 20 & 25. p. 370.
2141 to summarize, cf. ONORIO" 1991a, 17.

FIRST PART OF *DH*:

GENERAL CONCEPT OF THE LR (*DH* 2-8)

LHE first part of *DH* (*. LIBERTATIS RELIGIOSÆ RATIO GENERALIS*) usually *ignores* Revelation, while the second part does. The official text does not further subdivide the hierarchy of the text, but one can detect in it, to a first approximation, two sub-parts, according to whether the RL is seen there according to its *rather* active subjects (Section A) (*DH* 2-5), or (Section B) *rather* passive (*DH* 6-7).

Except on one occasion, where supernatural Revelation is explicitly mentioned (*DH* 2. § 1). This abstraction is sufficient to resolve the principal difficulties raised in particular by *DH3: DH 4; DH b. § 2.* where the concern is with the right, not with the abuse, dealt with later, in *DH1*. The plan was explained for example in S31: 5 RS. A.S. *IV/V*, 149,1: *Nova testas structura. § 4.*

SECTION A.

RELIGIOUS FREEDOM ON THE SIDE OF THE ACTIVE SUBJECTS OF THE LAW(DH 2-5)

RLET US CALL the active subjects of a right those who can claim that the right be given to them. According to the subtitle of *DH*, the active subjects of the right are I) on the one hand, the person (aspect developed in *DH2-3*), II) on the other hand, the communities (aspect studied in *DH 4-5*).

The real active subject of the right to LR is, according to the subtitle of *DH*, and *DH 2*, § 1, the "human person" acting either alone or in association with others,²²³⁵ and not truth (much less error). The drafting committee noted that the problem of RL should not be posed in terms of "the rights of truth" and the absence of "the rights of error."^{^s} Indeed, truth (except the Truth, Jesus Christ) cannot be a subject of law.²²⁵⁷ And the proposition: "Error has no rights" is neither true nor false; it is nonsense; it can only be understood as a shortcut²²⁵ "for this truth that "error can be neither subject nor object nor foundation of rights",²²⁵ " Hence a possible correct meaning, recognized by the Magisterium, of the expressions "rights of truth",²²⁶ ® and "error has no rights",²²⁶ - However, strictly speaking, according to the juridical adage "*Jus pertinet ad personam*", only a person can be subject of rights.²²⁵⁸

"Quite often we speak of "rights of truth", "right to truth", "right to terror". For the sake of clarity, it will be useful to briefly outline the common doctrine on the subject of law and its nature. Only physical persons or mummies are subjects of law. Therefore, the right

2257 cf. OLIVIER, 1952,177.

2262Cf. SCHIFRNI, 1891,1,322.

connotes immediately and formally the intersubjective relation, that is, the relation that takes place between person and person. In fact, in any juridical relation, there are always two persons or two subjects; there is the active subject, in which the right inhere (*inest*), and the passive subject, who is obliged to provide (*praestare*) the object of the right, either by acting or by omitting the action. Therefore, in the strict sense, there is no right to truth; for the relation between the person and the truth is either logical or moral, but not juridical. There can exist, and in fact there exists, a right not to be prevented by others from telling the truth. But in this case, the object of the right is not the manifestation of the sale; it is instead what the passive subject of the right is obliged to provide, and this is the immunity from coercion or the omission of the action that would prevent the truth being told by the active subject of the right. It is true that there may sometimes be a right to have someone tell the truth or teach it, for example, when it is a question of witnesses in a trial or teachers in schools. But even in these cases, the juridical relation does not take place between person and truth; on the contrary, it is between the person (the active subject of the right), in whom the right to have the truth told or taught inheres, and the person (the passive subject of the right), who has the correlative duty or teaching the truth. And if the truth is not told or taught, a right of the unmanifested truth is not infringed, but a right of the person, to whom the truth should be manifested, is infringed. The truth itself is certainly offended too; but this is a moral disorder, not an injury of right. Finally, it is too obvious that there is no right to error and that there cannot be any; that would be totally meaningless. But there can exist, and in fact there exists a right, that someone is not prevented by others with coercive means, to put into practice what is wrong, or even to communicate it to others. And it is in this sense that the right is taken in the scheme. "2263

It is the right to freedom to seek the truth and to freedom in the search for the truth that also implies some non-impediment to error.²²⁶⁴ Thus, *DH* did not at all abandon the idea that error was neither subject, nor object, nor basis of right, and did not profess that all are more or less in error and in truth religiously.²²⁶⁵ *DH* simply professed that man, in his obligatory search for truth, must have a margin of responsibility, a sphere of protection from other men.²²⁶⁶

The text of *DH* 2-3 approaches the RL of the person in general first A) from the point of view of its definition by its object and its foundation (*DH* 2),²²⁶⁷ (our Chapter 2, developed by Chapters 3 and 4), and then B) from the point of view of the property to be protected by the law, the reasons alleged in its favor (*DH* 3) (Chapter 5).

2263 s 18: *ibid.*. V. *De subiecto iuns de eiusque natura*, A.S. IV/I, 192-193. Our translation. Cf. also PAVAN, 1966.10 (*Concilium*), 38: V. *The subjects of the law*.

2264cf. BOYER. 1963.12.18,81.

2265 N_{ous} disagree with CARTER, M." 1978, 569.

2266cf. BARALINA, 1966.06,278.

2267cf. MARGERIE. 1988b, 53, § 2.

CHAPTER 2.

2. DH 2. EXISTENCE AND ESSENCE THE RIGHT TO RELIGIOUS FREEDOM

QUANT to *DH 2*, an analytical reading (2.1.) must precede any explanatory synthesis (2.2.).

2.1. Analytical reading of *DH 2*

DH 2 contains the central core of the Declaration's own doctrine. It is divided into two paragraphs: *DH2*, § 1 *declares* the existence, the essence, the foundation, the positivization of the right to the RL (2.1.1.); *DH2*, § 2 *details* what concerns its *foundation* (2.1.2.).

2.1.1. *DH 2*, § 1: Declaration and definition of the right to the RL

DH 2, § 1 in turn comprises four sentences (a, b, c, d respectively).

I) *DH 2*, § 1, a. *Affirmation of the existence of the right*

"This Vatican Council declares that the human person has the right to religious freedom."^{226K}

On the side of *the authority that is the source of law*, we present : [A] *the authority* that declares the right (the 21st Ecumenical Council); [B] the act by which it affirms the right: a *declaration*. We have already studied these two aspects. [II] On the side of the *active beneficiary subject*: [A] *who* he is ("the human person"); [B] the *subjective right faculty* that affects him ("right to"); [C] his *existence* (the verb "a", *habere*). [III] Finally, *the object* of the right, by its kind, *freedom*, itself specified by the adjective *religious*, designating, among the acts of the active subject, the more specific domain protected by this freedom. Then we detail.

II) *DH 2*, § 1, b. *Details of the essential elements of the right to theLR*

The 2nd sentence of *DH 2*, § 1, states *the essence of the RL*, the object of the law:

"(I) This liberty consists in the fact that [A] all men [B] must (*debet*) be [C] free from coercion [D] on the part of both [1] individuals and [2] social groups and [3] any human power, and this, UJ so that [A] in religious matters [B] no one is compelled [C] to act against [D] his conscience, nor prevented [B] from acting according to [D] his conscience [D] 111 [A] in private and [B] in public, [2] [A] both alone [B] and in association with others. (K) within fair limits."²²⁶⁹

KO* " Hæc Vaticana Synodus declarat personam humanam ius habere ad libertatem religiosam. > The texts are ours.

cogatur ad agendum contra suam conscientiam neque impediatur, quominus iuxta suam conscientiam agat pnvā ūm et publice, vel solus vel aliis consociatus, intra debilos limites." Other translations: *Cerf-VM'ICAN H*, 172-173. *Conciliar Documents*, 3. 353, differs only by the words: "on the part of both individuals and social groups"; and AA. Vv." *Unam Sanctam*. 60,19.

It can be seen that, in order to do this, it first *states it* in a general way, and as a negative inter-subjective benefit. This first phrase does not recall the religious domain, which is not the object, and of which the protection will only be a result. It designates [A] the *active subject* of this right, "all men", beneficiaries of the benefit; [B] the *duty-to-be* (duty not of the active subjects, subjects of the verb *debet*, but of the passive subjects of the right) ; [C] *the* precise *object* of the right that the passive subjects must provide in justice (the right is the object of justice), in this case a negative benefit, *the immunity from constraint*,^{22 '0} or non-coercion specified further on, and presented here on the side of those who benefit from it (*immunes esse*). *DH* then indicates [DJ] the *passive subjects*, who must provide immunity: [1] on the one hand individuals ("*singulorum*"); [2] on the other hand groups ("*coetuum*"); [3] finally, more formally: "any human power".^{22 'n}

[III] Then, thanks to a consecutive proposition, we *specify* the acts of the active subjects of the law, protected *by way of consequence (and ita quidem ut)* and not objects of the law itself. We enumerate

- [A] the domain, the "religious matter" (*re religiosa*) ;
- [B] the universality of active subjects: "nul" (*neque aliquis*) ;²²⁷²
- [C] the double aspect of immunity as such, namely the absence :

111 of a positive constraint :	2 on the other hand of negative constraint:
" a constrained	" a prevented
Iblàagir	b to act
c against	fc according to
d] his conscience "	d his conscience "

In contrast to what occurred in the earlier schemes and *relatio- nes*,^{2 TM} *there* is no longer any consideration of the *rightness* (whether in the sense of *true* or in the sense of *sincere*) of this consciousness. Moreover, if one acts according to one's conscience, in the very moment of acting, if one does not have the possibility of capturing that the ignorance of one's conscience is guilty itself, then one is in invincible ignorance, and the conscience is sincere. Nevertheless, these distinctions are in legal practice of little significance. Indeed, the law protects *per se* the conscience of good faith, and *per accidens* the insincere conscience. The right to the RL is no longer a "right of sincere conscience". 2° As for the binding character of conscience (whether it is a *prohibition* or an *obligation*), it is not mentioned here, but it appears in *DH* 3, § 3, an interpretative context not to be neglected, and where it is question of "precepts of the divine law" and of being "obliged" to follow one's conscience, which is not the case for a conscience which only *allows* or *advises*. The legal impact, here again, is weak. 3° As for the erroneous character (whether *culpably* or *invincibly*): certainly, following a *true* conscience is protected *per se*. However, error is also protected *per accidens*, as will be explained in *DH* 2, § 2, d. Indeed, the SUC has consistently insisted that it is impossible for the state to punish for error as such, and not for violated public policy,^{2 *TM} a question explored further in *DH* 2, § 2, d and 3.

"Conscience' means first of all *responsibility*, so that the statement must be understood as follows: "no one, in

2212 The right is defined independently of its accidentally bad use. Cf. S 02, A.S. 11/11, 350: "Agimusigitur...". Cf. also PAVAN, 1967d, *Unam Sanctam*, 60,149-150.

religious matters, can be forced to act in a way *different from that which* he himself has *decided*"; secondly, "conscience" means *worldly rectitude*, so that the statement takes on a new meaning, i.e. Secondly, "conscience" means *worldly rectitude*, so that the statement takes on a new meaning, i.e.: "no one, in religious matters, can be forced to act in a way different from that which he *thinks is his duty*". But it must be made clear that the right to religious freedom does *not* concern the problems of *true* or *false*, *right* or *wrong* conscience; these problems concern the relationship between man and truth - whereas religious freedom concerns the relationship between *person* and *person*.

[The text then examines the sociality of the act *I* non-act thus protected, and under two angles: [1] the *passive* sociality, that is to say the cases of figure of *presence of the passive* subjects of the right: the] "in private" or the [b] "in public". 12] sociality

"In this second part, it is proposed that the Council solemnly demand religious freedom for the whole human family, for all religious groups, for every human person, whether his conscience, in matters of faith, is right and true or right but mistaken, as long as he sincerely obeys the *dictates* of his conscience"; cf. likewise 2 SC, AS. III/1. 319. no. 29: *sincere oboedit*; 2 RS. AX. II 1/u. 345: "Fundamentum horum iurium consistit in strictissima obligatione observandi dignitatem humanam seu sequendi legem Dei prout in conscientia sincere formata percipitur"; it is specified, p. 347. § 11. c). that it is a question of "iuru personæ rectam sive veram sive erroneam conscientiam sequentis." In 3 RO. we find the "dictamen of his conscience", DC, 1965. 171,11, 1^o, d. But this aspect has almost disappeared.

2274 Cf. 3 RS, A "S. 111/vill. 462-463: "ad potestatem publicam iure pertinet publicum religionis exercitium in casu cohibere, si ordini publico graviter noceat. Sic enim agit potestas publica in ordine civili, non autem in ordine religionis qua talis. Ex altera tamen parte, non licet potestati publicæ publicum exercitium cuiusvis religionis lege vel actione administrativa cohibere, ea ratione innixæ, quod hsc vel illa religio iudicatur esse falsa, vel quod eiusque exercitium e conscientia erronea procedit, vel quod bono Ecclesia; nocet. Sic enim actio coercitiva potestatis publicæ versaretur in ordine religionis qua talis, quod nefas est."

2275 BIFR. 1985, 736. in full agreement with S 62: 6 RS, A.S. IWVI. 733-734 : " 12 - Pag. 4. linn. 27-29, ubivis sermo est de conscientia clare dicatur agi de vera velina conscientia (1 Pater). Linn. 28-29. loco "iuxta suam conscientiam" dicatur "iuxta proscripta conscientis suæ" (2 Patres). A. - Prima propositio non admittitur, quia est contra textum approbatum (cf. pag. 5. linn. 19-26) : secunda non videtur necessaria : in textu conscientia connotat etiam responsabilitatem."

active, i.e. the cases of *engagement of the active* subjects of the law: [a] "either alone", [b] "or associated with others" (cf. - "*personce*" and -- "*communitatum*" of the subtitle). This sociality will be detailed in DH 4-5.

[Finally, we come to the "*limit debitos*" which limit the action or omission protected by the law, and, as such, are *intrinsic* to the property protected by *the immunity*.²²⁷³ And they thus delimit this non-"coercive intervention" of the passive subject,²²⁷⁴ e t t_{one} the right. They will be specified in DH1.

Finally, *the active subject* is a person acting according to his conscience or not acting against his conscience, in religious matters, in private or in public, alone or with others, and within proper limits. This whole defines the reality protected by the law, namely that subject extended by that determined type of his actions. All this is *not the object* of the right, a service that the passive subjects must provide, but the *subject of immunity*, the active subject of the right taken adequately. What the passive subject must provide is immunity. And it results (*ita quidem ut*) in the protection of a certain type of action of the active subject. In terms of objective law, one would rather have said: the religious action *I* non-action as such is the exclusive competence of the person: it amounts to the same thing.

²²⁷³ The limits are therefore *inherent to the right to the RL* (cf. CEC 2109).

²²⁷⁴ It is DH 7 that will specify the boundary of its active intervention in case of crossing the limits.

III) DH 2, § 1,c : Declaration of the basis

Vatican II, after proclaiming the right of the human person to the RL,
 "declares, moreover, that the right to religious freedom has its foundation in the very dignity of the human person as made known by the Word of God and reason itself."²²⁷⁰

The repetition of the word "declares" indicates the same level of magisterial commitment as DH 2, § 1, a. The object of this teaching is the assertion of the nature of the foundation, the dignity of the human person. The Council does not affirm that the right to the RL is a revealed truth, but that the dignity on which this right is based, already known by reason, is better known to us thanks to Revelation.²²⁷⁵ This assertion of the foundation will be developed further by that of its how (DH2, § 2) (it is a question of *ontological* dignity, prior to use)²² -¹⁰ and of its why (DH 3).

IV) DH 2, § 1,d : Necessity of the positivization of the right to the RL as a civil right

"This right of the human person to religious freedom must be recognized in the juridical organization of society so that it becomes a civil right."²²⁸

Thus, the right to the RL is a strict (and not imparted), true (and not putative) right - Secondly, the right to the RL is a *natural right* (DH 2-^Λ),^{22K} not a simple positive civil right²²⁷⁶ granted at the discretion of the legislator (on which, on the other hand, the organization of the *exercise* of the right depends);²²⁷⁷ 2° confirmed by divine positive law, revealed (DH 9-14); 3° promulgated by the ecclesiastical legislator, who imposes it on 4° the recognition of all human authorities,²²⁷⁸ and in particular of the civil legislator.²²⁷⁹ It is a civil natural right ("civil right") (cf. the subtitle: "*ad libertatem socialem et civilem*"), to require a "civil positive right" ("*ut ius civile evadat*"^{y*} ²²

2.1.2. DH 2,2 : The logical and ontological foundation of law

After having declared *what* the foundation of law is, DH will *explain* this foundation, on the one hand (I) by its final cause or logical reason, external foundation, and on the other hand (II) by its efficient cause, ontological or internal foundation of law. What makes law exist is the internal foundation. But what makes there a foundation is the external finality: *finis, causa causarum*.

I] DH 2, § 2, a-c: Logical basis or purpose of the law

We examine the *movement* of the *internal foundation* towards the *external finality*. We are thus engaged in a study of human nature as a principle of movement in potential towards a term

²²⁷⁰ Details in KINDREGAN, 1970,55-56.

²²⁷⁶ Otherwise, the Council Fathers of the minority would have signed it: it was the *natural* character of this right that stopped them. Cf. S 49-51: 6 RO, AS. IV/VI,719 J, 1 to 720, which specifies in S 51:1. This is a natural right, not just a positive one. To affirm the contrary is a) to call into question the very substance of the text and b) to jeopardize the freedom of the Church, c) as well as the very foundation of the right: the dignity of the human person made in the image of God.

²²⁷⁷ The fact that the existence of the right to LR does not depend on the appreciation of the legislator prevents some people from equating it with tolerance.

²²⁷⁸ pl/2, § 1, b s EV 01, n° 1045: "...ex parte sive singulorum, sive coetuum socialium et cuiusvis potestatis humana:..."
²²⁸⁶DH2, § 1.d: EV01, n° 1045: "ut ius civile evadat".

of movement which will be its act, the truth.

II] First, we contemplate the movement itself:

"(A) In accordance with their dignity, all men, since they are persons, that is, endowed with reason and free will, and therefore with personal responsibility, (B) are

They are] a) impelled by their own nature and b) bound by moral obligation [2] to seek a) the truth, b) first and foremost that which pertains to religion. "22H8

«A] The *starting point* of the movement is the angle under which *dignity* will serve as a foundation: namely, *personality*, as containing *rationality* and *free will*, as well as *responsibility*. [B] We then move on to the movement itself, of which we consider (1) the double motor, double dynamism (or attraction) of this personality [a] the one spontaneous, though elicit, [b] the other reflective, ratified by a *moral obligation*, [2] the very essence of the movement, a *search*, specified by its end, the *end which*, truth, and *especially religious truth*, is the end of all the others.²²⁸⁹ It is thus excluded that the search is its own end.

[Then we contemplate the true *end quo*, the possession that ends this movement, namely a double adhesion [A] *intellectual*, and [B] *moral*:

« They are also bound [A] to adhere to the truth once it is known and [B] to order their whole life according to the requirements of the truth."

[III] We end on the double *condition of humanity* of this dynamism:

« But men cannot satisfy this obligation in a way that is consistent with their own nature, except by enjoying [A] psychological freedom together with [B] immunity from external coercion. "2290

The dignity of human action consists not only in the *fact*, but also in the *way* of adhering to the true (*freely*).²²⁸⁰

II) DH 2, §2,d: *Ontological foundation, efficient cause of law*

Those who defend *DH in the name* of the "rights of invincibly erroneous conscience" seem to us to depart from a correct interpretation in two ways.²²⁸¹ First A) because the Council has abandoned this argument *fi*® B) and precisely because juridical relations cannot be based on sincerity;²²"4 this theory is therefore a dead end.²²⁹⁵

22SK "Secundum dignitatem suam homines cuncti, quia personæ sunt, ratione scilicet et libera voluntate pradiu ideoque personali responsabilitate aucti, sua ipsorum natura impelluntur necnon morali tenentur obligatione ad ve* ritatem quærendam, illam imprimis quæ religionem spectat."

22X9 Same idea in 1201/B. JOHN PAUL 11, 1990.09.02: to religious leaders in Dar-es-Salaam; 1GPH 13/2 (1990), 395; DC, 899; 1223. bis. *Ut unum sint*, § 18, ed. LEV, 24.

2280 cf. GOFFI, 1964.05.530.

2281 Cf. c.g. SESBOUÉ, 1986.10, or DELHAYE, 1964a, 1965a, 1965b, 1965d, 1967.01.26, 1969, 1971. 1975, 1980.09.25.

A) DH has abandoned the theory of the rights of sincere conscience

1) DH determines the ontological basis of the law

DH 2, § 2, shows that the dignity of the human person is not operative and subjective (a), but ontological and objective (b):

"It is not, therefore, on a subjective disposition of the person, but on his very nature that the right to religious freedom is founded.²²⁸²

a) Negatively, the basis of the law is no subjective provision

"The unambiguous choice of the notion of immunity to define religious freedom showed that the Council did not intend to build its project on a doctrine of invincibly mistaken conscience.²²⁸³ That the human person is obliged to follow his invincibly erroneous conscience is a theological thesis from which it is difficult to draw social and political conclusions. The Council did well to eliminate these considerations. In order to understand *Diniūla- lis humana, one* must never lose sight of the fact that religious freedom is a technical juridical concept that belongs to contemporary public law. It is only about the organization of civil society. Nothing else, a²²⁹⁰

b) Positively, it is the natural ontological dignity that makes the right exist in its holder

As for the foundation assigned by DH, as we have just seen, it is the dignity of the human person, due to his intelligent and free nature, the "ontological dignity", and not the dignity of conscience, or "operative dignity". The particular fact²²⁸⁴ that such a man follows his conscience does not found the existence in him of a right.²² " What grounds it is that he is a man.²²⁸⁵

2) DH draws a double consequence

The double consequence is that the absence of a good subjective disposition, the absence of operative dignity, the absence of truth or sincerity do not make disappear a) neither the right b) nor its exercise.

"Therefore, the right to this immunity persists even in those who do not fulfill the obligation to seek the truth and to adhere to it: and [11] its exercise cannot be prevented, provided that the just public order is preserved, a²²⁸⁶

a) The right subsists even in the absence of a good subjective disposition

It is the "right to this immunity", that is, to the RL. [1] Those who do not seek the truth have a conscience that is clearly wrong or do not follow their conscience. [2] Those who do not adhere to the truth represent a broader case: it can be by refusal of the light known as such, without error of the conscience; it can be as a result of an erroneous judgment of conscience, whether ignorance is guilty or not. Certainly, if "man cares little for seeking what is true and good, and when the habit of sin gradually blinds his conscience," he has lost the dignity of *his conscience* (GS 16). The dignity or unworthiness of the *conscience* (not of the *person*), subjective dispositions, do not intervene in the foundation of the right, DH 2, § 2 tells us here. This precision was necessary, so that one would not misunderstand the previous assertion according to which the obligation to seek the truth also followed from the dignity of the person:

2282 .. Non ergo in subiectiva persona: dispositione, sed in ipsa eius natura ius ad libertatem religiosam tundatur. *

²²⁸³ Cf. S 34: A.S. 1V/V. 150; S 10: A.S. 111/VII.1.461-462.

²²⁸⁴ Cf. CALZADA, 1968.12.715.

²²⁸⁵ Aspect clearly seen in RODRIGO. 1954.442-443,5⁶, and 447 (language of "negative law" 1.

²²⁸⁶ "Quamobrem ius ad hanc immunitatem perseverat etiam in iis qui obligationi quasendi veritatem eique adhærendi non satisfaciunt; eiusque exercitium impediri nequit dummodo iustus ordo publicus sen etur."

two realities deriving from a third do not necessarily derive from each other. Man must be free from coercion **in order to** seek the truth and adhere to it, not because **he** seeks the truth and adheres to it. Those who deduce from the fact that action according to conscience is part of the protected good, that not following one's conscience makes protection disappear, are therefore far from the text.

b) "Its exercise must not be prevented provided that just public order is observed".

This is the exercise of the right to immunity. This addition was also necessary, because otherwise it could have been understood that bad faith would only preserve the right to freedom to be *in good faith*, or that error would only preserve the right to freedom to be *truthful*. With the addition, we see that error or bad faith also subsists *the exercise of* the right to LR. One cannot force the texts here, and use the fact that adherence to an error "is not an exercise of the right, but an abuse of it", to conclude that the one who propagates an error can have *the exercise of* the right to the RL withdrawn. Indeed, it is precisely a question here of the exercise of the right *by the one who does not adhere to the truth* or does not care about it: this exercise - therefore in this case even morally abusive - cannot be prevented - we are told -, being excepted the just public order. However, in order that one should not understand that such a coercion would only be immoral, and not unjust, it will even be specified that any prevention of this exercise, *iusto ordine publico servato*, would be an *injustice* (DH 3, § 4).

Thus to follow one's conscience is not the foundation of the right, and does not condition its existence, nor its exercise. Not to follow it does not involve the disappearance of the right,² -⁰³ nor the possibility of preventing its exercise. This is indeed a case of *abuse of* the right, but it is not enough to make its *use* disappear.²²⁸⁷ For "*usum non tollit abusus* a.²²⁸⁸ To legitimize repression, it will be necessary to have an *abuse of right* that is not only *moral*, but *juridical* (cf. *DHI*, § 3).²²⁸⁹ In short, adherence in act to the truth is the *finality*, but not the *foundation* of the right; it is protected *per se*, but adherence to error is protected *per accidens*; the fact of sincerely seeking the truth is a good protected by the right, but is not the condition of the existence of the right.

B) The theory of sincere consciousness is a dead end in itself

The theory of the rights of the erroneous sincere conscience is a dead end, many private authors have demonstrated.²³⁰⁷

J) *The subjectivist theory assumes a crossing of the boundaries between internal and external fora*

a) One cannot move from the internal moral forum to the external legal forum -²¹¹ "

According to this theory, as long as the conscience is subjectively sincere, it would have rights even in the external forum.²³⁰ *- ' In reality, first of all, the conscience, even if sincere, is

²³¹ Cf. CARRILLO, 1965b, 115 and 1967b, 177.

²²⁸⁸ cf. S 64:6 RS. 45. IV/VI.736.

²²⁸⁹ cf. already S 17 (1): *Quoad methodum*, A.S. IV/I, 189, § IV. De difficultatibus motis circa schema, 1).

fallible. *²³⁰ Then sincerity gives only subjective moral permissions and only in the internal forum,²³ -* not in the external forum:²³ -² these are not *juridical* rights-permissions nor even rights-exercencies. ²³³ To affirm the contrary is, in fact, to *identify* law with morality.²³ --- Let us show it.²³ -⁵ Surely, it is better to obey God (or at least what one sincerely believes to be God) than to obey men. *²³⁶ Sincerity will excuse formal sin before the tribunal of God.*²³⁷ Nevertheless, it provides no right other than "putative", *²³⁸ or "apparent"²³ * '-' or "subjective" (in the sense of "unreal", of "not strict κ),²²⁹⁰ or "relative s,²²⁹¹ * *before the tribunal of men.*²²⁹² Not to be in conscience bound to follow the orders given by men is a *moral permission*, not a *juridical right-demand*. It follows that the putative right is "in possession" only until a possible conflict with a right based on truth.²²⁹³ In this case, the "imaginary" right will necessarily have to "give way" *zn** unless the holder of the true right agrees (for example, moved by charity) not to make use of his right,²²⁹⁴ which will have to happen especially if this holder has been able to realize (by signs) the good faith of the other.²²⁹⁵ If it is indeed necessary to organize society in order to make it easy to fulfill one's duty to follow one's conscience and to adhere to the truth, these are the *ends* of law considered *specifically*, not the *foundations* of law considered *in individuo*.

b) Those who know the law do not know the internal forum

On the other hand, the impossibility of scrutinizing the conscience of another man is obvious.²³²² On the one hand, the experience of our own insincerity (which is the case in every formal sin) inclines us not to believe that we are obliged on every occasion to presuppose the sincerity of conscience in others.²³² * Let us suppose, on the other hand, that there are areas and circumstances in which we *must* presume with moral certainty the good faith of the subject,²²⁹⁶ or, on the contrary, his bad faith. B. Lucian, concludes that in the Middle Ages the Church and the State presumed bad faith in those who pertinently refused to submit to the teaching of the Catholic faith, because at that time no Christian could ignore the absence of a well-founded reason for disagreement with the Catholic faith, since all were educated in the Church or at least in the midst of a Catholic cultural environment.²²⁹⁷ " In any case, the theory of the rights of sincere conscience otherwise sheathes a dangerous weapon *for itself*, because it lets the state²²⁹⁸ *judge good faith.* *νi E* *n* *all* *ca* *s*, according to *DH's* doctrine, the existence of the right and its exercise do not depend on good faith, nor on bad faith: it is therefore irrelevant.

2290 See CONNELL 1964.08. 130; MUÑOZ, 1964c, 601; ODRIÓZOLA. 1955.296-297.

2291 Cf. ESTRADA. 1972.482-483.

2292 Cf. MURRAY. 1945.06 (4). 210. 1.

²²⁹³ Let us point out REGATILLO, 1963.437; RODRIGO. 1954.442,4 and GAMBRA. 1965, PreC. p. xxix.

2294 cf. MEYER, Th., 11 (1900), 88, n° 89. The A. insists several times that freedom is "in possession".

2295 cf. PA VAN, 1967a, *Vivere il Concilio*, 4,35-36; reprinted in PA VAN, 1967c, *Appunti*, 46.

2296 A condition that is both necessary and hardly possible. Cf. CAVAGNIS, 1882, n° 477. And it is not always verified. Cf. BARTHE, 1994.06.40.

2297 LUCIAN, 1992.03.14. Similarly: GIACON, 1967, 1565. According to CARRILLO, 1965.06, 183, on the contrary, bad faith is indeed an abuse of the right, but impossible to establish.

2298 Cf. CARRILLO, 1965b. 116.

2332BROGUE, 1964, & 1965a & b, *passim*.

2) *The subjectivist theory of the rights of the erroneous conscience leads to social disasters*

To let or not to constrain a man simply because he is supposed to be sincere (and even after realizing his mistake) can lead to the worst disasters.

a) *Legitimacy of an indirect constraint*

It is legitimate to indirectly compel a man to perform an act contrary to his conscience, if this act is required by the right of others or of society.

In general, there are two ways of compelling someone to act against his conscience: (a) the first way is *direct*: and what is then sought by coercion is *the very act* of the subject of conscience as a *moral act* (e.g., that a Jew should genuflect before the Blessed Sacrament or that a Christian should burn incense to idols); and this can be either *material* (one wants the act, knowing that it violates one's conscience, but does not directly want the violation of one's conscience), or *formal* (one wants the very violation of one's conscience). In either case (the second is particularly diabolical), one sins oneself by forcing others to sin (it is a *direct scandal*); (b) the second way is *indirect*: *what is then willed* is not the extorted act itself, but another reality, linked in spite of everything to this act, and in particular a *result* of this act (which is not the formal or immediate effect of this act). For example, military service or (a less discussed case) the payment of direct taxes. What is then directly sought is the common good or the good of a third party, not the act of the subject, nor the violation of conscience that may accompany it. It is therefore wrong to think that the case of the man who sincerely believes himself obliged to *omit* an act is "absolute". And the Council did not intend to teach this.²³³³

As for the religious case, two possibilities must be distinguished here: it can be (a) a properly religious act; (b) a mixed act.²³³⁴ (a) As a case of a properly religious act (external, since that is the problem), one must enumerate principally the external profession of a belief or faith and the performance of an act of worship.²³³⁵ Only the hierarchical authority of the Catholic Church (and not a private individual, an association, or the State) is competent to demand such an act in the name of God. However, we cannot conclude that the Church can force *any* man in any way to render to God the worship that he owes Him. We can see that the "*limit debits*" are also about "not being

2333 LUCIEN, 1990, 247²⁴⁸, note 25: "According to the statement of the Commission reported in note 24 [A.S. IV/1, 189; 15 Sept. 1964], the just limits concern only 'prevented from acting' and not 'forced to act'. In a written intervention, Cardinal LÉGER asked for a change (Acta, vol. IV, pars 11, 64). It is certain that the change took place. Cf. 4 RS.

2334 ^{§u r} this distinction, good summary of NEOPHITOS, 1974.182; 183; and 187.

2335 Details: CARRILLO, 1967b, 27.

compelled to act"^{A136} (b) Let us now turn to the second case, that of a mixed act, i.e. an act committed or omitted for religious reasons, but which is not itself entirely and formally religious. We are considering here only *omissions* motivated by a religious prohibition, or a permission to omit. For example: not to send one's child to the hospital, under the pretext that religion forbids it (the case of the followers of the famous "Christ of Montfavet"); not to allow doctors to carry out a blood transfusion (the case of the "Jehovah's Witnesses"); not to obey those who are considered to be in a state of mortal sin (the case of several medieval sects, in particular the Wycleffites). All are subject to a right to a positive benefit held by third parties.

Thus, the prohibition against compelling one to act against one's conscience in the case of mixed acts is even less absolute than in the case of religious acts proper.

b) Legitimacy of an *impediment*, even direct

Now let us consider the man who sincerely believes he is obliged to *perform* an act. In this case, the invalidity of the argument of sincere conscience is even more obvious.²²⁹⁹ Indeed, the erroneous religious conviction sometimes has surprising conclusions. For example, a man may sincerely believe that he is authorized or even obliged to perform abortion, euthanasia, etc.²³⁰⁰ And the religious motivation will not give more rights to the one who wants to, for example: marry several women, or divorce and remarry, because his religion allows it; burn a widow with the corpse of her husband (*suttee, knows*), or practice sacred prostitution and human sacrifices because his religion commands it, etc.²³⁰¹ Moreover, in all these cases, the criterion for allowing or preventing will no longer be sincerity, but just public order, as in *DH*.³⁰

2299 Cf. c. g. ALONSO & GUERRERO, 1962,33.

233KVery clear in 1223. *Evangelium vitae*, n° 71.

2301 cf. HARTMANN, 1958,221.

CHAPTER 3.

3. THE PURPOSE OF THE RL RIGHT

LHE nature of the right to LR is correlative to its purpose. The SUC, which is responsible for drafting *DH*, has provided several crucial clarifications of the meaning of the word "right" in the phrase "right to LR" on various occasions.

1° The RL is not a moral permission, nor a right-permission:

"In the first sense, right is understood as the moral faculty to do something, a faculty by which someone is intrinsically endowed with a positive authority (*empowerment, Ermächtigung, autorizzazione*) to act. [In the Declaration one does not take the right in this sense, in order not to raise points which are not related to the question, as for example the speculative question of the rights of the erroneous conscience, which arises apart from (the state of) the juridical question of the RL, as it is treated in the Declaration.

The SUC clearly denied that the right to RL is such a **right-positive authorization to act** (implying: in religious matters)^-:** i) The very text of *DH* rejects any positive *moral* authorization to do anything other than seek the truth, adhere to it, and conform one's whole life to it. II) As for the *juridical* positive authorization, the rapporteur also excluded it, specifying A) that it is not a question of a *divine* positive authorization; B) that a positive authorization of *the State* is not requested either:

"It appears, therefore, that in asserting that religious freedom is a true human right, it is in no way asserted that all religions have received from God the same positive authority to exist and propagate. God forbid! That would smell [B] of the worst kind of religious indifferentism. [B] Nor is it asserted that it is permissible for the public power to give all religions a positive authorization, so that they may enjoy the same right in society. Here too, God forbid! That would breathe the awful totalitarianism of the State, proper to secularism.

S 09, 3 RS, A.S. 11/III, 461-462. Our translation of the original: "Duplici sensu sumi potest ius. Primo sensu ius dicitur facultas moralis aliquid agendi, facultas scilicet qua quis ab intrinseco positivam auctoritatem habet (empowerment, Ermächtigung, autorizzazione) ad agendum. In Declaratione non adhibetur ius hoc sensu, ne quaestiones oriantur quæ ad rein non sunt, e. g., quaestio speculativa de iuribus conscientiae erroneas, quæ versatur extra statum quaestionis iudicium de libertate religiosa, prout in Declaratione tractatur. Altero sensu ius dicitur facultas moralis exigendi, ne quis constringatur ad agendum neve impediatur, quominus agat. Quo quidem sensu ius significat immunitatem in agendo et excludit coercionem sive constringentem sive impediendam. Unice hoc altero sensu sumitur ius in Declaratione."

2342 The only rights-authorizations mentioned in *DH* are those of the Church (as authority and as members) (*DH* 13).

2343 § 09, *ibid*, immediate continuation of the preceding quotation. Our translation of the original: "Exinde constat quod. affirmando libertatem religiosam esse verum ius hominis, nullatenus affirmatur, omnes religiones eandem squalam auctoritatem positivam habere, a Deo receptam, ut existant seseque propagent. Quod absit, superet enim pessimum indifferentismum religiosum. Neque affirmatur, potestati publicæ licere omnibus religionibus positivam auctoritatem dare, ut æquo iure in societate gaudeant. Quod etiam absit; saperet enim pessimum istud totalitarismum status, qui proprius erat laicismo. >" Who adds: "E contra. Declaratio agit de personis humanis sive singillatim sive collective sumptis, qui omnes æquo iure dignitatem humanam induunt ac proinde æquo iure exigunt, ut in re religiosa liberi seu immunes sint a coercionem."

It is not, therefore, a right-permission (neither with a negative object in the sense of *jus omittendi*; 2344_n i with an affirmative object, *jus faciendi*).²³⁴⁴ One will note then how ambiguous was still the formulation of the World Council of Churches, declaring, in a working document, drafted in 1948: "Every man has the right to choose his faith and his *creed*." T.²³⁴⁶

« The RL is a negative right-demand

« [1 [A] In another sense, the right is said to be a moral faculty to demand that someone not be forced to act, nor prevented from acting. And in this sense, right means an immunity in acting, and excludes coercion, whether it compels or prevents. [B] It is only in this sense that the right is taken in the Declaration. "2347

Moreover, the right to the RL is not a right to demand positive performance from others (*jus exigendi actionem*) (the right to have the state provide a free, turnkey mosque). We do not deny that circumstances, a convention, etc., can create a right for a majority denomination to demand positive assistance from the state. But this is not a *natural* right of the *adherents* of this faith. It is only in a second step that DH 6 demands the only positive benefit involved, namely: the system of legal protection of this right of freedom.

Recently, the CCC 2108 took the trouble to summarize all this, specifying on the one hand what the right to the RL is not, namely: 1° *moral permission*, 2° *affirmative juridical right-permission*, i.e., positive authorization; and then on the other hand what it is, i.e., 3° *negative juridical right-requirement* (or right to immunity from constraint):

« The right to religious liberty is neither [1°] a moral permission to adhere to error.²³⁴⁸ [2°] nor an assumed right to error.²³⁵⁰ but [3°] a natural right of the human person to civil liberty, that is, to immunity from external constraint, within just limits, in religious matters, on the part of the political power. This natural right must be recognized in the legal order of society in such a way that it constitutes a civil right."

Note that in this text, as in all the doctrine stemming from DH, the expression "civil liberty" no longer designates, as in the XIX^e century, a positive right-authorization to act, but a pure immunity. Finally, this right is claimed before the authority not religious but political. **The right to the RL is therefore only a "subjective natural right"**²³⁵¹ -52 with the object of non-coercion (*Jus exigendi ab alio omissionem coercionis*).²³⁵¹ According to the reports of the drafting committee,²³⁵² "[...] the approved text affirms a right whose object is immunity from coercion, not the content of any religion."²³⁵³ Such immunity is required by the very dignity of the person.²³⁵⁴ This is the subject of this chapter. We shall first examine the actual object of the law, immunity (3.1.), and then the improperly called object, the action of the subject protected by immunity (3.2.).

²³⁴⁹ ic),_a note of the *Catechism* refers to *Lihertas pneslantissimum [Leonis XIII Acta 8.229-230]*.

²³⁵⁰ Here the note refers to *Ci riesce* [AAS, 1953,799].

²³⁵¹ Cf. OCÁRIZ, 1989.06, 75 and 76, who cites in note: AS. 1 V/V1, 725; AS. IV/1. 189-190; AS. IV/VI. 744; 4.5. III/VIII, 461-462 and 464; HAMER. 1967a, 104; ST. LAUMER, 1988.06.28-30; HARRISON. 1988b. 131].

²³⁵² Cf. also LOMBARDO, 1887, HOand 114-115; CABRBROS, 1966b, 183-184.

²³⁵³ Point firmly held in S 60: 5°, 6 RS, AS. 1 V/vt, 725 and elsewhere.

²³⁵⁴ Our translation of S 58: 6 RS, AS. 1 V/VI, 725, § 2, Response to general *modus* n° 2. Cf. also S 09 : 3 RS. A.S. III/VIII. 461-462 (see note 2341; S 17: 4 RS, AS. 1 V/1, 189, § IV, 2), end; S 18: 4 RS. AS. 1 V/1. 193: "Nimis evidens est. non dari ius ad errorem nec posse dari ", hoc enim omni sensu caret. Potest tamen dari ius et revera datur, ne quis mediis coercitivis ab aliis impediatur, quominus id quod est erroneum in actum deducatur vel etiam aliis communicet. Et hoc quidem sensu sumitur ius in schemate"; S54: 6 RO. AS. IV/vi, 721. 2°; S71 b: 6 RS, AS. IV/VI, 744: "In memoriam revocetur quod textus schematis non agnoscit ius ad falsa publice docendum, sed affirmat ius ad immunitatem a coactione."

3.1. The actual purpose of the law

The object properly speaking of the right to RL is RL itself, which consists, in the passive subject, in an abstention: one can call this the object tout court, or the passive object, or the negative object, which is the formal but generic object of the right requirement to social and civil freedom:²³⁵⁵ "in matters of faith, let no one be prevented, let no one be coerced! This is also called immunity from coercion."²³⁵⁶ Let us show therefore that the immunity required by the dignity of the person is *per se* (i.e. directly) a freedom due to the person making a good use of his right (3.1.1.) and comprises *per accidens* (i.e. indirectly) the tolerance of moral abuse or objectively bad use of the right (3.1.2.).

3.1.1. The object *per se*: Freedom

The concept of "freedom"²³⁵⁷ tortures the authors of dictionaries²³⁵⁸ and encyclopedias, and there is no lack of crimes committed in its name. For etymology, as for modern usage, freedom is an absence of ties, of burden, of weight.²³ I) It is conceived as a negative and positive reality. II) Then as an external and internal reality. III) Finally, we see that negative external freedom is based on positive internal freedom.

I) Negative freedom (*libertas a*) and positive freedom (*libertas ad*)

Freedom is characterized by *self-determination* (a rather positive aspect) and the *absence of external determination* (a negative aspect).²³⁵⁹ DH's "religious freedom" is *formally*, that is, in its essence, a negative freedom (*libertas a*), and *ultimately*, that is, in its *raison d'être*, in its finality, a positive freedom (*libertas ad*). L.-B. Geiger, o.p., faced with a similar study,²³⁶⁰ had followed A. Lalande.²³⁶³ And also according to A. Guzzo and V. Mathieu, freedom is a

"condition by virtue of which one possesses a capacity to operate that is specified primarily in the exemption from bonds (capacity for self-determination), and subsequently in the diversity of bonds (*ontological or psychological or physical freedom, moral or spiritual freedom*) and in the kind of field of operation (freedom of thought, speech, worship, etc.; freedom of conscience, religious freedom, political, or civil, juridical, economic, etc.) [...]J."²³⁶⁶

II) Internal and external freedom

A division between *internal* and *external* freedom is then established.²³⁶¹

"Freedom (in Latin *libertas*, derived from *libra*, balance), power to act according to one's will; it is opposed to constraint, to fatality. One can distinguish between *internal freedom* or *freedom of choice*, which consists in choosing between two parties, and *external freedom* or *freedom of execution*, which consists in doing without obstacle what

²³⁵⁵ Cf. PA VAN, 1968.630.

²³⁵⁶ Cf. HAMER, 1991, 183. Aspect of immunity developed in the 3^e DH scheme by J. C. MURRAY; cf. PAVAN, 1983, 136.

²³⁵⁷ On freedom in general: ABBAGNANO, 1992, 525; 1991, 192-194; FABRO, 1951, 1283-1287; FUENMAYOR, 1984; GARCIA-LÚPEZ, 1984, 316-321 (especially: §6. 319); GIL-CREMADES, 1984, 326-328; *Liberia*, an. (collective) de *VEncfal* 21 (1934), 48-55; on liberties in civil society: BOZZETTI, 1951c, 1291-1292 and SOLARI, 1934, 49-51; but especially 4 RS, AS. IV/I, 183-195; on the RL in particular, cf. ARCY, 1981, 107-114; CARTER, M" 1978, 569-570; COTTIER, 1965.04. 443459; DELHAYE, 1965d; and 1975, 676-689; MELICHAR, 1963,1175-1177; MORGAN, 1988.505-506; RINCÓN. 1984.328-330.

²³⁵⁸ LITRÉ, E., art. "Libertà", t. III (1877), 294-296. provides no less than twenty-four meanings of the word "liberty". and BATTAGLIA, art. "Libertà", IX (1975-1977), 21-27, twenty-six. Less disclosive: SIEWERTH. 1960. 325; BAUCHER. 1926.660.

²³⁵⁹ Cf. GEIGER, 1957.10, 602. Cf. art. "Freedom", in *GLU* 09 (1987), 6275, sense 5; PIAT, 1895, j1. 3; RODRIGUEZ, Victorino, O.P., 1964b, 314-315, n@ 3: "Aspectos integrativos". Similarly, GUÉRARD, 1952,1,34.

²³⁶⁰ CL GEIGER, 1957.10,601-631.

²³⁶¹ *he colloquium on The Iniquity of Religious Freedom* (Rome, January 7-12, 1968) did not have as its object the socio-civic RL (cf. p. 25. GOUHIER), but rather the consciousness of an internal freedom in religious matters.

one has chosen. - *Internal freedom*. This freedom, which is also called *free will, psychological freedom*, and which takes the name of *moral freedom* when it is a question of choosing between moral good and evil, has been the object of the most lively discussions, some recognizing it as one of the essential attributes of man and as the condition of all morality; others contesting it or even denying it absolutely. - *External freedom or freedom of execution*. It has as many applications as there are spheres in which man's activity can be exercised.²³⁶²

The *will*, let us notice it moreover, is always free in an external way because no external cause can require it: it is prerequisite to its psychological freedom.²³⁶³ But *man* is not always free to carry out his decisions.²³⁶⁴ Indeed, external factors can either prevent him from implementing his decision, or force him to act against his will. It is immediately clear that the RL will be an external freedom.

A) The RL is not an internal freedom

1° **Freedom from an internal necessity**, from the nature of the will, from its *formal extrinsic cause*, the object that specifies it in act, is called psychological freedom⁷⁷ "or free will."⁷⁷ In *DH**TM it is not LR, which nevertheless presupposes it. It consists in the absence - due to the intimate nature of the will - of automatism in adherence to one object rather than another.⁷⁷ -* It can be: **a)** the psychological freedom of exercise (or of contradiction), or the possibility of determining between wanting to act or not to act; wanting to perform an act or not wanting to perform it; which constitutes the essence of free will;⁷⁵ **b)** the psychological freedom of specification: this one takes two forms: **ba)** freedom of disparity, or the possibility of choosing between different objects (*libertas specificationis disparitatis*), which is a *perfection* of psychological freedom, but depends on the existence of a diversity of possible objects; **bb)** freedom of contrariety, which makes it possible to choose between good and bad objects (*libertas specificationis contrarietatis*),⁷³⁷⁶ which is a defect of the preceding one in fallible beings⁷⁷ and thus, in a sense, a lack of freedom I⁷⁷ "

2° **freedom in relation to the material cause "in qua"** of the will (or subject), i.e. in relation to the obstacles to the exercise of the will coming from the body or from the parts - "potestatives" - of the soul: intelligence, appetites (especially other than the will), senses (internal and external), etc., with their qualities. These forms of freedom are irrelevant. One classifies in particular freedom with regard to certain tendencies (innate or acquired, current or habitual): **freedom** (or rather servitude)⁷⁹ **of the vicious, the sinner;** ">*< or, conversely, **freedom of the**

⁷¹ Some people, however, call it "physical freedom": cf. art. Libertad, "EncRe/Cat. IV (1953). 1297. N. B. FOULQUIÉ, art. Liberty", 402, gives a completely different meaning to the expression: "Psychological Liberty", then, p. 403, the meaning we accept, clarified p. 404.

²³⁷² See definition in GEIGER, 1957.10, 602; criticized *ibid*, p. 607, and by P1NCKERS, 1985, Chap. XV, and in particular 352 citing LALANDE, and 375-376.

²³⁷³ *DH2*. Trad. Cerf-VATICAN U, vol. III, 173. Misunderstanding on this subject by J. MARÍAS, in AA. VV, CASTELLI Enrico (ed.) (French transl. cit.), 401. Cf. S44: 5 RS, A.S. IV/V, 156 (...) I); S45: *ibid* "A.S. IV/V, 156-158 (...) 1); S46: *ibid*, A.S.IV/V, 158, 4).

2362 Art. " Liberty", in BOUILLET, 1854,931,2.

2363 cf. RODRIGUEZ, Victorino, O.P., 1964b, 315. God does not require the created will.

2371 " Cf CHÉNON. 192) / 1928, n° 55 ff. 185, §11. Cf. HAVARD, 1988, 502. Another formulation: RODRIGUEZ, Victorino, O.P." 1964b,314.

²³⁷⁴ Except for 1^o the perfect Good immediately apprehended; 2^o our desire for happiness, not free as to its specification.
[^] Cf. BAÜCHER. 1926,660-662.

[†] ²³⁷ ^ It is confusing to call it "moral freedom". Cf. art. Libertad", in *EncRelCat*, IV (1953), 1297.

²³⁷⁷ Cf. JIMÉNEZ-URRESTI, 1958,96, note 12;0616.03 *Acta LeonisXIII*08,216-217 .PIN 178.

2378 BAUCHER, 1926,662 mixes *libertas a coactione exteriore* and *libertas a necessitate interna*.

2379 Cf. PINCKÆRS, 1985,370-371, citing s. THOMAS, *CG IV*, 22.

" KOcf. GS 16 (EV 01, no. 1369, end) and *Libertas, Acta LeonisXUI* 08 (1888), 217: PIN 178. citing s. THOMAS OF AQUIN on n°8.34.

virtuous freedom or spiritual freedom (sometimes also called, alas, moral freedom) or **inner freedom** (in the noblest sense).²³⁸

"The word *freedom* then designates the "state of the human being who realizes in his acts his true nature, considered as essentially characterized by reason and morality". In this sense the word *freedom* is a fully normative term, and designates an ideal state, where human nature would be exclusively governed by what is superior in it. It is the *freedom of the wise*.^{a2365}

Virtue makes man free (in the positive sense of *free for*) the accomplishment of the good, but the will remains free (in the negative sense of *free from*) in relation to the virtuous inclination.²³⁶⁶

-¹⁰ Virtue makes the virtuous *free in relation to* the hindrances to good action and makes him *free for* the good.²³⁶⁷ Far from chaining the virtuous to the law, it makes him enjoy the habitual inclination to practice it.²³⁶⁸ -⁸ -'

The freedom that DH deals with is none of these things. *DH* defines RL as freedom from coercion and compulsion. It is therefore a negative freedom. *DH's* RL is a "social and civil liberty" (*DH*, subtitle),² -²³⁶⁹ a removal from all coercion of individuals and social groups (*DH* 2, § 1), thus an external liberty.

B) Religious freedom is an external freedom

1^o **The RL is not a freedom in relation to the final cause** which would restrict the range of means that can be the object of choice, and this, notably in the case of freedom in relation to the ultimate final cause: or **moral freedom**.²³⁷⁰ It is not a moral freedom,²³⁷¹ -⁸⁸ even if it is a freedom with an object limited to one area of the moral order (namely, religious matters).²³⁷² *DH* repeatedly

²³⁶⁵ GEIGER, 1957. IO. 602. This "freedom of the wise" reminds us of the "freedom of quality". discussed by PINCKÆRS. 1985. Chap. XV, e. g. 356 and 360, and, on the supernatural level, it becomes the holy freedom of the children of God, the inner freedom of the Christian (1D., *op. ciC* p. 370, quoting s. THOMAS, IV *CG*. 22). On the absence of freedom caused by sin, see AUGUSTIN OF HIPPONUS, s.. In *Iohannis Evangelium Tractatus*, 41, 10: CGSL036,363, quoted in 1219: *Veritatis splendor*. 17; *IGPI* 16/2 (1993), 175.

23H3 sur la distinction between "freedom from" and "freedom for", cf. HIRSCHMANN, 1959 = MULLER, 1959,528-530.

²³⁶⁷ Cf. PINCKÆRS, 1985,370, citing 0215. s. THOMAS, IV *CG*. 22; trans. Lethielleux, 143.

2368 LR has nothing to do with Pauline freedom. liberation from the Old Law: cf. BEA, 1966 (1963.12.131 (irai). 272.

²³⁶⁹ Cf. S 25; SPANISH EPISCOPAT. 1968.01.22, 929; MAROERIE, 1988a and ROUQUETTE, 1968, 610 prefer "civic" to "civil".

²³⁷⁰ Cf. FOULQUIÉ, art. Liberty", 402.3.

²³⁷¹ Cf. the misunderstanding of LEFEBVRE Marcel, M^P, 1985.08.31, p. 4: "the natural right to be exempt from the coercion imposed on him by divine law to adhere to the Catholic faith in order to be saved"; likewise in § 4, *ibid.* p. 5. Cf. letter of Card. RATZINGER to MP L., 20 January 1986, in *Fideliter*, 50 (March-April 1986), 19-20, to say nothing of LG 14. Moreover, bF L. distinguished *only* between moral freedom and psychological freedom (cf. also LEFEBVRE Marcel. M¹, 1988.09.09, notably 30), forgetting the possible *right to civil freedom* (likewise, LEFEBVRE Marcel. M¹, 1986.02.02,9). (Cf. on this subject MAROERIE, 1988a, 42, quotation from 1-2, q. 98, a. 1, etc., and GRELOT, 1987,50-51). Cf. also S 24 and CARRILLO, 1967b, 18.

²³⁷² Acting by compulsion is the fact of the slave. Cf. PINCKÆRS, 1985,370, citing s. THOMAS, IV *CG*. 22.

excludes² - ""

Z⁸ + Cf. GEIGER. 1955.07,390-391; RODRÍGUEZ, Victorino. O.P., 1964b. 321, § 1.

a freedom from a moral obligation.'²³¹¹ Commentators are unanimous on this point.²³⁷³ The philosophers of the Enlightenment, on the contrary, want to detach man from any law imposed on him²³⁷⁴ and advocate a freedom in relation to the voice of conscience, a freedom to obey or not to obey God, or at least to obey God who reveals himself positively.²³⁷⁵

2° The LR of *DH* is a freedom of the man in relation to the efficient cause. It is thus about what one names a freedom of spontaneity, or physical freedom²³⁷⁶, or freedom of action,²³⁷⁷ or external freedom of exercise (to act or not to act) and of specification (to act thus or otherwise).²³⁷⁸

DH claims the freedom of man and religious groups especially in relation to external coercion. Coercion in general is 1° a "violence exerted against someone; an impediment to freedom of action"; 2° an "obligatory rule".²³⁷⁹ It is not the latter in *DH*, which excludes a moral freedom. Coercion, as 3° "state of the one to whom violence is done",²³⁸⁰ joins the coercion mentioned in 1°, because it is an effect of the latter: it is passive coercion. But what does coercion consist of in *DH* 2, § 1? It is the violent obstacles²⁴⁰⁹ put in the way by individuals, groups, societies, human powers, but not, of course, obligation. The RL of *DH* is freedom in front of²⁴⁰ * of other men, in human society, especially civil, or "social and civil", not in front of God²⁴⁹² or of the Church.²⁴⁹³ It is not an intra-ecclesial freedom, therefore in front of the "coercive" or penal power of the Church. This power is not a coercion²⁴⁹⁴ or coercion²³⁸¹ in the sense that *DH* takes these terms.

The so-called "physical" or "immediate" coercion consists in the very deprivation of the freedom of spontaneity, realized *actu nunc* by the walls of a prison, a chain, etc. The coercion known as "mediate"²³⁸² is on the other hand the *threat* of this deprivation.²³⁸³ Do not name it "moral coercion", because that inclines to confuse it with "moral obligation", very different.²³⁸⁴ - ""* *Man* can be deprived of it, without his *will* ever being deprived. Now the RL subtracts every *man* from the constraint exercised by the other men.²³⁸⁵ The RL is thus an external freedom²³⁸⁶ of action (thus in relation to direct (actual) or indirect [virtual] coercion), sometimes called physical freedom,²⁴ ** in civil society.

⁹² Cf. e. g. HAMER. 1993,57; PAVAN, 1969a (GAROFALO), 1280 and 1281 (already cited); and 1967d. 151 and 152.

²³⁷⁴ Cf. HAMER, 1993, 57. Cf. also SMEDT, 1963.11.19, in A.S. II/v, 491-192: DC. 1964.71-81. On the theme "freedom and law", cf. 1219. *Veritatis splendor*, 35-53; *JGPU* 16/2 (1993), 193-211.

See 0675.2.

²³⁷⁶ Pour BAUCHER, 1926,660, physical freedom = *free will*...

²³⁷⁷ J6cf. FOULQUIÉ, art. "Liberty," 402.

²³⁷⁸ Cf. CARRILLO. 1967b, 17.

²³⁷⁹ *Petit Robert J*, art. "Contrainte", 380-381.

²³⁸⁰ //>"/. 381.

²³⁸¹ *Petit Robert I*, an. "Coercion", 331: "Power, action of compelling".

²³⁸² Cf. CHÉNON. 1921, § 55 and DUTHOIT, 1938.68.

²³⁸³ cr. JIMÉNEZ-URRESTI, 1958,101,n° 161.

²⁴⁰¹* On this ambiguity, cf. REGATILLO, 1958.214. Confusion in LEFEBVRE Marcel, M⁸¹, 1985.08.31.

²³⁸⁵ *DH* 2.11 is therefore about *man* and not about his *will*.

²⁴* Cf. e. g. NEOPHITOS, 1974,187.

There are two other types of such coercion: those which aim at a positive effect (compelling a man to act); those which aim at a negative effect (preventing a man from acting).^{*242} These are the two types of effects of external coercion excluded by DH 2, § 1.

C) Negative external freedom is based on positive internal freedom

In good philosophy, the negative can only be based on the positive.

" 2. However important and useful this first negative presentation of freedom may be, it is obvious that it cannot suffice, much more than it would be meaningless, if we did not already imply a positive element, namely a certain internal spontaneity of the free agent,²³⁸⁷ thus a *natural* direction of his action and of his fulfillment. The absence of determining constraint could not even suggest the possibility of a free activity, if it were not implicitly associated with the presence, in the subject, of some principle, related, more or less closely, to what in Aristotelian terms we call a *nature* : the internal principle of movement and rest of the being in which it is found. Without such a principle, the negation of external constraints would only result in pure and simple inertia. The very idea of constraint would lose all precise meaning. >>²³⁸⁸

The constraint thus leads to a kind of imbalance between man's will, which remains internally free, and his external action, which can no longer correspond to it.^{*23893} In this case, man is no longer the source of his external action. Consequently, freedom is a *fundamentally positive and formally negative* concept (inseparably one and the other).²³⁹⁰

"Quia, sicut Damascenus dicit, homo factus ad imaginem Dei dicitur, secundum quod per imagi nem significatur *intellectuale et arbitrio liberum et per se potestativum* ; postquam prædictum est de exemplar scilicet de Deo, et de his quæ processerunt ex divina potestate secundum eius voluntatem (cf. 1 q. 2 introductio), restât ut consideremus de eius imagine, idest de homine, secundum quod et ipse est suorum operum principium, quasi liberum arbitrium habens et suorum operum potestatem."²³⁹¹

The man is a being "*per se potestativum*" (avreCouatov, says the Damascene²³⁹² -). Such is, in relief, freedom in all its purity of positive concept. But: "*ipse est suorum operum principium*". [man] is himself the principle of his own works. Now, if he is himself, other beings are not.²³⁹³ Hence the second aspect of freedom, namely its negative aspect:

"According to Aristotle, he who is his own cause when he acts is free. So we act freely when we act by ourselves, that is, according to our inner will, whereas our conduct is servile and not free, when we act against our inner will. This happens either when we undergo complete violence, when the principle of our action is entirely external to us, without any collaboration on our part, as when we are made to act by force, or when we mix a partial consent with the constraint imposed on us, as when we agree to do or undergo something that is less contrary to our will in order to avoid something that is more contrary to it."²⁴²⁰

External freedom is thus in keeping with man's dignity, and its absence *from oneself makes* a mockery of this dignity, and renders human action servile.²⁴²ⁱ Once the absence of constraint is assured, man sees himself as being able to be fully responsible for his acts (notably religious). He has a kind of *no-man's-land*, a space where he is allowed to act in society, a "security zone",²³⁹⁴ a "free zone",²³⁹⁵ produced by an "immunity".

²⁴³ Common to men and beasts (cf. *GLU*, 09 (1987), art. "Freedom". 6275, sense 10). Cf. also TAPARELU. 1859.01.20,280. n°6, § 2.

²⁴⁴ *GE1GER. 1957.10.609-610. On this dynamic character of freedom, cf. PINCK/ERS, 1985, especially 358.

^{244*} Cf. 1-2. q. 13, a. 6. cet GEIGER, 1957.10.611.

²³⁹⁰ Cf. GEIGER. 1957.10.611-612. GEW1RTH, 1982 also studied this inseparability. Cf. in the same sense: DONDEYNE, 1964.70; GONELLA, 1945, 189.

24171 -2, Prol. cf. translation : SERTI LLANGES, 1951,9.

^{241*} cf. JOHN DAMASCENE, S., *De fide orthodoxa*, 1,2, c. 12; PG 94,920.

²³⁹³ c t_{ae} conclusion is from us, not from s. Thomas. Thomas. We put aside the Cause j^{no} .
2394 PA VAN, 1967d. 154.

2425Q_{ua} n] to exercise and specification.

"The concept of immunity appears explicitly eight times in *Dignitatis Humana*, either as the adjective "*immunis*" (twice) or as the noun "*immunitas*" (six times). It is now the key concept for understanding the entire Declaration."²³⁹⁶

What is guaranteed is the *possibility*, in civil society, of being the source of one's decisions in religious matters,²⁴²⁵ without having them imposed on him by others and without being forbidden (within fair limits) to implement them. Nevertheless, this responsibility is not the ultimate purpose of free will itself.²³⁹⁷ Indeed, if free will makes man the image of God *in the first act*,*TM it is still necessary that *the use of* free will make man the image of God *in the second act*. Free will is thus itself a *freedom for*, a freedom for the good (not only to tend toward the absolute metaphysical good, the ultimate end, but to accomplish the moral good, as a means).²⁴ "Thus, freedom does not consist in doing what one wants, but in doing without compulsion what one ought. w"²³⁹⁸

3.1.2. The object *per accidens*: tolerance

The immunity object of the right to the RL, considered in itself, is a non-constraint and a non-impediment. Seen from the side of the passive subject D, it is an abstention, an omission. Seen from the side of the active subject S, it is a freedom. As we have seen, this abstention, this omission, and thus this external freedom are provided even if the act of S is bad and judged as such, except if it violates the just public order.

In the case of a bad act A performed by an active subject S, the non-obstruction on the part of the passive subject D was called, in the classical way, "tolerance".*TM The word "tolerance" itself covers two aspects of this reality, namely a) the internal act and habitual disposition of the passive subject: this internal act presupposed that D had the competence to judge the act in question as bad and in fact judged it as bad; b) the non-contradiction or non-impediment of the evil, the external effects of this act. It is not the internal aspect of this act of the passive subject that can be the object of law, but only its external effect: "*il non impedire, ossia il tollerare*" (*Ci riesce*).

This raises the questions of the attitude to be adopted in the face of *abuse* of freedom, and of the law concerning it.²³⁹⁹ A non-legal moral abuse will have to be tolerated, hence the *per accidens* object of the right to the RL, namely the concrete tolerance of an error; a legal abuse transgresses the limits of the exercise of the right, and will not have to be tolerated (cf. *DH* 7).

I) *Tolerance in itself*

The etymology (the Latin "*tolerare*")²⁴⁰⁰ implies the fact of undergoing a constraint, a force, an evil, something negative, which in spite of everything one does not remove.²⁴⁰¹ Let's move on

2424HAMER, 1991, 180-181.

2397 Cf. CARRILLO, 1967b, 24.

^{24m} Cf. TAPARELU, 1859,424.

2429CANCT, 1891.67. Same idea in P1AT, 1895, II, 4-5; and in BATES, 1946, 296, citing ACTON, *The History of Freedom and Other Essays*. 3.

2399 See COGLEY, 1981,103.

2400 See G AFF10T, 1934. art. "tolero", 1580.

2433Cf. LALANDE, 1980.art. "Tolerance", 1133-1137; BOSSUET(1)and RIVIÈRE, 1928,707.

to the current meaning of the word.²⁴⁰² "We must be tolerant", it is commonly affirmed,²⁴⁰³ but on the other hand, does not every post-conciliar review congratulate itself on the fact that the Church has abandoned tolerance in favor of religious freedom?²⁴⁰⁴ This implies a pejorative side to tolerance.²⁴⁰⁵ If we leave the material, physical or physiological reality^{243,f} to rise to that of *spiritual* (intellectual or moral) *realities*, "tolerance can be defined as an attitude of reasoned patience towards an evil that one has the right or the power to combat."²⁴⁰⁶ The right *or* the power; so not necessarily the right.²⁴⁰⁷

"A disposition of mind or rule of conduct consisting in leaving everyone free to hold or even express his opinions, even though he does not share them. These opinions can be of different kinds: philosophical, literary, moral, religious... We shall confine ourselves here to religious opinions, and to others only insofar as they are related to these."²⁴⁰⁸

Card. A. Ottaviani explains: "*Tolerantia est ea animi dispositio qua patienter ferimus, varias ob rationes, ea quæ nobis adversa seu molesta sunt, non bisque non probantur.*" *WJ* and adds in a note: "*Dicimus enim ea a nobis tolerari quæ dum prohibera vel declinare aut non possumus aut non debemus propter graves causas, non resistendo admittimus, licet nostro iudicio probari nequeant.*"²⁴⁰⁹ Thus, sometimes we tolerate what we *must* tolerate. A. Michel²⁴¹⁰ perfects F. Cappello's definition of tolerance:²⁴¹¹ *permissio negativa mali*. Negative permission, as opposed to positive authorization, i.e. assuming an approval,²⁴¹² "tolerance cannot have as its object a good known as such", but only an **evil** ("real or supposed").²⁴¹³ "The tolerance referred to here concerns religious things, doctrines and practices, foreign or opposed to the teaching of the Catholic Church, as well as the persons who profess these doctrines or engage in these practices."²⁴⁴⁴ⁱ This is what we will call: "**tolerance in religious matters**". Nevertheless, there are many ways of refraining from fighting against the religious positions of our fellow men, depending on the person who tolerates, the object tolerated and the reason for tolerating: adjectives distinguish these "tolerations".²⁺ Let us notice that in all these cases, the word "tolerance" designates "the disposition of the soul".

2402 let's leave aside the *medical and technical* meanings.

2403 On tolerance as a good, cf. DONDEYNE, 1964,278; and BELLOFIORE, 1961,160.

2404 Cf. MASSAUT and DENIS, 1990,32. Another point of view: LECLERCQ Jacques, 1963,223.

2405 Cf. RUFFINI. 1992. 99, and 1991, 10; KONINCK, 1962.09-10a, 195; LECLERCQ Jacques, 1963, 226; COSTE, 1969, 161, quoting MIRABEAU, to the Constituant about article 10 of the *Declaration of the Rights of Man*: after BONET-MAURY, *Histoire de la liberté de conscience en France depuis l'édit de Nantes*, Paris, 1900,1-2.

²⁴⁰⁶ DENGHIEN. 1928, 1714, summarizing VERMEERSCH, 1922, 1-64. Cf. also *Petit Robert 1*. art. "Tolérance". 1973-1974. Cf.

also KUNICIC. 1967,426.

²⁴⁰⁷ Against ODDONE, 1946.05.25.318.

²⁴⁰⁸ DENGHIEN. 1928. 1714. cil.

²⁴⁰⁹ *Id*, *ibid*. (note) (original emphasis). Cf. NILLES, 1893,247. n° 4.

²⁴¹⁰ MICHEL Albert. 1946, 1208-1223 (here 1209). Other definition: REGATILLO. 1963,426.

²⁴¹¹ CAPPELLO. 1928. n° 270.

²⁴¹² Cf. our study of *Ci tierce*, in the light of COURTAGE. 1954,184.

²⁴⁴² MICHEL Albert, 1946, 1209; cf. art. "Tolercancia", in *EneRetCat*. VII (1956). 219; "Tolleranza". in *EncEil VI* (1967'). 498; GUERRERO, 1961.07-08.23; POHLE. 1912,763; PAROTTO, 1991,96; BATTAGLIA. Felice. 1937. 980; MESSINEO. 1954. 201-202 and MESSINEO. 1950.11.25. 567; BOYER. 1960. III; CAVAGNIS. 1891. n°420. 304; VERMEERSCH, 1922. 1 (Note 3: "Tolerantia quæ dicitur non est nisi in malis". *Etutrrul. in ps. 32. PL 036, 271*); NÍCOLÁU, 1963, 230; S 17,4 RS. A.S. IV/I.191. § 4: "Tolerari non dicuntur nisi mata, quæ a competent! auctoritate iudicantur esse mala"; FUENMAYOR, 1974. 164, nota 30, citing "BALMES. J. *El pleuutuismo cotpanulo con el caloticismo*, capitulo XXXIV, in "Obras completas". Ed. B. A. C" IV. Madrid. 1949. p. 341 y 342"; DALCOURT, 1966. 192; PUY. 1984. 541-542 and HOFMANN. R.. 1962, 1007-1008: "I. Begriffliche Klärung". See also SORIA-SA12. 1984,544-545.

A) Speculative or dogmatic tolerance

In the religious domain, tolerance can have as its object a speculative position taken in itself (in the domain of faith or morals); it is then called speculative tolerance²⁴¹⁴ or dogmatic,²⁴¹⁵ - which the popes call "tolerance of error". Speculative indifference to the truth: a common fault²⁴¹⁶ of individuals²⁴¹⁷ (toleration, relativism or individual indifferentism) and of civil society ("state indifferentism"), but radically impossible in the Catholic Church.²⁴¹⁸ The Church cannot tolerate a position that is certainly false and harmful;²⁴¹⁹ however, it must more than tolerate plausible opinion;^{243<} it tolerates every doctrine that it does not yet consider indispensable to "hold" (*tenenda*).^{245J} This speculative toleration is excluded from the context of the LR *ofDH* (e.g. DH 1 and 3).

B) Practical tolerance

The practical tolerance²⁴²⁰ or tolerance of people consists in not repressing the acts of others considered bad:²⁴²¹

"The attitude in question may be that of the individual towards other individuals or religious societies, or of societies towards individuals or other societies. A distinction must therefore be made between private and public tolerance. The latter, depending on whether it is a matter for civil society or for religious society, will logically be subdivided into civil tolerance and ecclesiastical tolerance.²⁴²² This division is the one we will follow here.²⁴²³

1) **Individual tolerance** is necessary;²⁴²⁴ it is a virtue of prudence, charity²⁴²⁵ or justice ^-^ or several of these virtues.²⁴²⁶

"Let us take private tolerance. What is the position of the private individual in relation to his fellow men, according to divine law as well as to human law? Except for the right to repel violence and to defend himself against injustice, the jurisdictional control of the acts of an equal completely escapes him; and he has no business setting himself up as judge of the faculties left to all. Even when abused at its source, the freedom of an equal becomes a right which he must respect. He can advise against, blame such and such a use that is made of it, but he can neither prevent it nor punish it.²⁴²⁷

Let us note in passing the connection established above between tolerance, freedom and right, hence the possibility of a right for certain individuals not to be prevented by others from abusing their freedom.

"...] The ever more frequent contacts and the confused mixture of the various religious confessions within the same people have led the civil courts to follow the principle of "tolerance" and "freedom of conscience". Moreover, there is a

2414 Cf. POHLE, 1912, 763-773; STRUKER, 1931, 483-486: "Il. Arten"; and art. "Tolerancia", in *EncRelCat* VII (1956), 219-220.

2415 Cf. art. "Tolerancia", in *EncRelCat*, cil. 219-220.

2416 Cf. MOULART, 1879⁹, 236, POHLE, 1912, 763-773; and art. "Tolerancia", in *EncRelCat*, cit, *Ibid'*, 1158. JOHN PAUL II, 1985.01.12; A4S. 651.

2417 Cf. art "Tolerancia" in *EncRelCat*, VII (1956), 219-221.

2418 Cf. MICHEL Albert, 1946, 1209 and 1210. For the tolerance of divergent, though possible, opinions, cf. various opinions in OCÁRJZ, 1979,85andSMEDT, 1967a, 131-135; BOYER, 1960, 111.

2419 Cf. MICHEL Albert, 1946, 1209-1220, especially § 3.

2420 Cf. MENSCHING, 1962, 932, el MARTINELL-G1FRÉ, 1984, 540-541 or POHLE, 1912, 763, (2), and art "Tolerancia", in *EncRelCat*, cit, 220. Practical tolerance is not practical indifference, condemned by 0638. PIUS X, s., 1910.08.25: Letter *Our Apostolic Charge* to the French Episcopate concerning the *Sillon*, AAS, 619 = BPV, 131.

2421 Same idea in SMEDT, 1967a, 132.

2422 DENGHIEN, 1928 calls "ecclesiastical tolerance" what MICHEL Albert, 1946, calls "religious tolerance".

2423 DENGHIEN, 1928, 1714. See also VERMEERSCH, 1922,3.

2424 See this necessity, and its difference from absurd tolerationism, cf. HARTMANN, 1958, 129 and MARJAIN, 1960,144.

2425 On tolerance, love of neighbor and indifference to the misfortune that is error, cf. JANSSENS, 1964, 131.

2⁵ See ODDONE, 1946.05.25,318.

2⁶ VERMEERSCH, 1922,2-3.

political, civic and social tolerance towards the followers of other religions which, in such circumstances, is also a moral duty for Catholics.

In such a case of de facto religious pluralism, toleration is therefore a *duty* for Catholics, even those in public authority.^{2428 --2429}

2) Civil (or "public") tolerance:²⁴³⁰

Let us summarize the doctrine developed by the Magisterium on civil tolerance, especially religious tolerance. 1° It is *not ideal that there should be error to be tolerated*, for the wandering of the human mind in error is not desirable, and tolerance must be circumscribed within the limits of *public salvation* (0616.22); de facto tolerance may be granted to dissenting cults in *given circumstances* (0617.1). The Church does not condemn heads of state who, with a view to a (greater) good to be achieved, or a (greater) evil to be prevented, tolerate in practice that each of the cults has its place in the state (0611.27), and tolerate certain things contrary to truth and justice (0616.20); human authority must even leave unpunished many actions which God nevertheless forbids; on condition that it proposes the common good as its goal and does not approve of evil and does not want it in itself (0616.21) (for evil is of itself opposed to the common good (0616.21)), human law imitating in this the divine providence (0616.21). Sometimes even the state has no right to prevent evil. Thus, the principle that evil must be prevented whenever possible does not exist (0760.). The civil law has the aim of obtaining to turn away from evil the wicked and the vicious, or at least to prevent them from harming society (0616.04); it must facilitate the fulfillment of the eternal law

(0616.05,0616.10,0616.11). However, preventing evil cannot be an absolute criterion for state action; there are greater goods to be promoted, for example the union of states in an international community (international common good) or the temporal common good of the country in question (0760.) or simply respect for the beliefs of others (*ibid.*).

Again in *Ci riesce*, as we have seen, Pius XII distinguishes between the tolerance of the State and that of the Church.²⁴³¹ The Church^{2432 --7 --} cannot fail to declare the religious acts of her apostate, heretical or schismatic children, or of those who have never belonged to her, wrong, at least from the point of view that these acts are objectively wrong, and, if she has the power of the State, the problem of the civil tolerance of the Catholic confessional State in religious matters towards "infidels" and "dissidents" or "separated brothers" arises.²⁻⁻²⁴³³ In any case, in *DH*, there is no question of the tolerance of the Church, which consists in refraining from brandishing the punishments that are proper to it.²⁴³⁴

Moreover, if the State is not "confessional", how could one speak of its *tolerance* towards a doctrine that it would not declare bad since it would not profess the contrary doctrine? Similarly, based on doctrinal relativism, it would no longer be strictly speaking a "tolerance", since it would

^{2*}07233. According to 0760.15 it can be a duty in justice.

²⁴²⁹ After VATICAN II, the word "tolerance" will still be used in this sense, while linking it to the expression "LR".

²⁴³⁰ cf. VERMEERSCH. 1922, 2-7. After Vatican H, this term is still used in this sense. Cf. e.g. EV 09, n° 1785, b, § 111 = DC, 1986.37,5°; AAS, 1988,98 = DC, 1987,360.

²⁴³¹ Cf. 0760.23.

²⁴³² See MICHEL Albert, 1946 1209.

²⁴³³ LUIS-PÉRIE, 1900, 128 wrongly claims that this tolerance "necessarily supposes dogmatic tolerance".

²⁴³⁴ Cf. S 94,6 RS, modus 9, AS. IV/VI, 770.

not consider as bad the act that it would not prevent. Moreover - and paradoxically - those who advocate the most absolute doctrinal tolerance can become socially very intolerant.²⁴³⁵ Therefore, the connection between LR and "religious tolerance of the state"²⁴³⁶ or - better still - "civil tolerance in religious matters"²⁴³⁷ can only make sense for a Catholic state, relying on the Church in matters of religious truth.²⁴³⁸

It can be seen that in this question of "practical tolerance" are intertwined both the attitude of patience towards the evil judged as such, and the concrete non-impediment; and it is this second aspect that intersects with the RL.

II) Tolerance as an object per accidens of the right to the RL

If the active subject is in error, doesn't *DH2*, § 1 claim for him a "right to [or to] misbehave"? Let us answer: Error, the evil of the intellect, can be neither object, nor subject, nor basis of right.²⁴³⁹ But *DH* proclaims neither 1° a right to error: the subject is the person; 2° nor a right to error: the juridically protected good is to act according to one's conscience in the search for truth; the finality of the right to LR is adherence to the truth; 3° nor a right in virtue of error: the basis is the dignity of the person; not even a right by virtue of *error in good faith*, good faith which is only a "subjective disposition of the person" (*DH2*, § 1); 4° nor a right to err or to *disseminate error*: erring or disseminating error are possible actions of the active subject of the right; they cannot be the object of a right-requirement, thus not of the RL.²⁴⁴⁰

In fact, it is a right not to be prevented from acting, even when one is in religious error (within certain limits). In the latter case, it therefore resembles a "right to be tolerated in one's error", or a "right to the freedom to be in error". The notion of "freedom", on the other hand, would imply that of right or good,²⁴⁸ - while that of tolerance would exclude them.²⁴⁸ - Many authors would consider it impossible to speak of a "right to tolerance", either in general, or to designate a "right to freedom",²⁴⁴¹ . However, not preventing someone from doing objectively bad actions when one could do so, is indeed *tolerating* these actions. On the other hand, if one does not prevent a man from doing objectively evil actions, he will enjoy a certain freedom to do them.²⁴⁴² But in reality there is some confusion on this subject, even after the Council. Many people use the expressions "tolerance" and "religious freedom" almost interchangeably.²⁴⁴³ Let us try to clarify the debate.

²⁴³⁵One thinks here of Voltaire and all the "free thinkers". Cf. RUFFINI, 1992, 215-216.

²⁴³⁶Cf. MICHEL Albert, 1946,1220.

²⁴³⁷Cf. MURTAS, 1970,5 and CORRAL, 1966b, 403.

²⁴³⁸Cf. BOYER, 1961,163 and 1960, 119.

²⁴³⁹Cf. 0616.17: *Acta Leonis XIII*08, 232-234 & 239 = 4SS 20,605-606 & 609 = BP 02. 196 & 198 & 2<M -, el 0723.14:445, 1946,394; *L'Église*, 11, n° 1203;el 0760.17: 445. 1953.799; *DPPieXII*. 616(= *PIN3041*). Cf. BOYER, 1960, 113, note 1.

²⁴⁴⁰(X s 17: 4 RS, A.S. 1V71, 189, § IV, 2), end: "Item notare iuvat, quod schema Declarationis non affirmat, dari ius ad errores religiosos in societate spargendos. Etenim tum in se tum maxime in statu quaestionis praesenti eiusmodi affirmatio omni caret sensu. Quaestio enim exactius ponitur, utrum et quonam iure possit potestas publica hominem coercitive cohibere, quin sententias suas religiosas publice testatur. Quæstione sic posita, redit principium, ad potestatem publicam non pertinere de veritate vel falsitate religiosa iudicare, ei vero pertinere officium omittendi actionem coercitivam, nisi in casu probari possit crimen publicum." 24W>Cf. VERMEERSCH. 1922,6.

²⁴⁴¹Cf. CORVEZ. 1967, 27.

²⁴⁴²For the undifferentiated use of these two terms, cf. e.g. LECLER. 1955, II. 421, and 428; art. "Tolerancia", *EncRelCut*, VII. 220; and international documents cited in MULLOR, 1991. 83-116. Complain about this usage: Bim, 1985,733; CARRILLO. 1963b. 89.

²⁴⁴³wscf. GUERRERO. 1961.07-08.23-24.

A) Civil tolerance as a possible object of law

Insofar as civil tolerance makes evil action possible, thus providing a means (freedom) that risks *causing* evil,²⁴⁴⁵ it constitutes what moralists call cooperation, but only in a *material sense*.²⁴⁴⁶ Like all *mediate material* cooperation, it is *in itself* indifferent, and - as indirect voluntariness - it is justified if otherwise the End pursued is good,²⁴⁴⁷ that the resulting evil effect is intended neither as an end nor as a means, and that there are proportionate reasons for allowing this evil to occur.²⁴⁴⁸ Indeed, the good obtained by this abstention must equal or exceed the evil that is allowed to occur (the evil due to this abstention must not exceed in importance the evil that would have occurred in the case of repression).²⁴⁴⁹ In cases where tolerance is legitimate, what is a lesser evil (than the negative effects of the possible intolerance) is the evil that is tolerated, and not the act of tolerance itself, which is a good.²⁴⁴⁴

In these circumstances where tolerance is a good, the regime of tolerance does not itself have to be *tolerated*, and it remains to be seen whether it can be the object of a right not only *to or to tolerate*, but of a right *to be tolerated*.²⁴⁴⁵ Ci riesce's study has shown us that such a "right to be tolerated" is quite possible. However, the object of such a "right not to be hindered" is not the (material) evil committed by the civilly free man, nor even the inner disposition of patience of the passive subjects (other individuals, groups, civil society, the state), but only their *external forbearance*.

B) Civil tolerance as an object *per accidens* of the law of DH

1° *As for what is not prevented*, the term *Uberté* (civil) concerns both good and bad action, and is therefore more neutral.²⁴⁴⁶ Whereas that of *tolerance* can only concern evil.²⁴⁴⁷ In fact, the right to religious freedom *will imply* the necessity of tolerating the evils resulting from the abuse of freedom.²⁴⁴⁸

2° *As for the act of not preventing*, tolerance is an act and a *moral* duty of individuals (sometimes holders of authority) who do not prevent, whereas freedom is a quality of individuals that is not prevented, and the object of a *legal provision*. The two concepts of tolerance and freedom, taken in their generality, are not therefore mutually exclusive but are "*disparate*".^{ws}

3° *As for the right not to be prevented*, tolerance understood as the fact of not preventing the evil that one would have the *right* (juridical permission) to prevent can never constitute the object of a right, especially if one considers that according to *DH* the "non-impediment" of the activity

2444 Q_n never commit evil, even the least evil, and even with a view to good. This principle of reason, and revealed (*Rom* 3,8), is taken up in particular by 1219. *Veritatin nplendor*, 78-83; *iGPU* 16/2 (1993), 235-239, after PAUL VI. 1968.07.25: *Encyd. Humante vitee*, 14.

²⁴⁴⁵ LAISNEY, 1994.09.11, 3, recognizes only the right to tolerate. For his part, LIBERATORE, 1865.10.06,151 seems (just like the anonymous person he is criticizing) to confuse a *right to be tolerated* (in reality possible) and the *tolerance of a right* (absurd); however, granting a right can rigorously imply the necessity to tolerate not its existence, but its non-legal abuse; finally MARNEFFE²⁴⁴⁶ 1964.10.29, on the other hand, gives the impression of confusing the tolerance of error with the tolerance of the freedom given to the victims of error. Similar confusion in DAVIES, 1992.45, especially in the note ²⁴⁴⁷.

2446 Cf. GOETHALS, 1987.04,67 and 69. Cf. also 4.S. IV/1,190-191.

2447 cf. CAPPELLO. 1923,345, n. 269²⁷⁴.

2448 See MARGERIE, 1988b, 57. n° 46. and 61, § 3 and 4; with note 83.

does not depend on the simple good will,²⁴⁴⁹ of the simple judgment of opportunity pronounced by the government,²⁴⁵⁰ nor on a pure question of majority.²⁴⁵¹ If, on the other hand, we take "tolerance" in the broader sense of simple "non-impediment of evil", as used by St. Thomas, Leo XIII, Pius X and others, we can see that this is not the case. If, on the other hand, we take 'tolerance' in the broader sense of simply 'not preventing evil', as used by St. Thomas, Leo XIII and Pius XII, we can understand the non-absurdity of a possible 'right to be tolerated'. From this point of view, it is appropriate to take the word "tolerance" in the broad sense of "**not preventing an evil which one could physically prevent, but which one does not want to, or must not prevent**";²⁴⁵² the only meaning given to the word by the magisterium of the Church.²⁴⁵³ But, as we can see, the expression "right to be tolerated" is hardly appropriate.

Moreover, as for the connotation of these terms, an intervention by Mr.^{sr} Karol Wojtyła at the Second Vatican Council,²⁴⁵⁴ according to which the word "tolerance" is ambivalent, since it always retains a pejorative connotation,²⁴⁵⁵ prompted the decision not to use the expression. It is thus rather the *connotation*²⁴⁵⁶ TM than the *meaning* of the word that would exclude the idea of right, for tolerance *evokes* the expectation of the propitious moment when it can be suppressed, or even made to disappear by force.²⁴⁵⁷ At least this is how it was understood, if not by the magisterium of the Church,²³⁰⁵ at least in the legal and political practice of Christian states,²⁴⁵⁸ or by certain canonists.²⁵⁰²

4° *As for the necessity of non-impediment, on the eve of the Council, both bishops and theologians commonly considered it necessary to extend tolerance in a universal way.*²⁵⁰ " With such universal but *per accidens* tolerance, *DH* would have been in perfect accord with the classical textbooks.²⁴⁵⁹ In any case, Vatican II is a more authoritative interpretation of the teaching of previous popes²⁵ -⁰ than these manuals. The latter, moreover, already professed for the unbaptized (not for heretics) in Catholic countries, a theory equivalent to that of *DH*, that the unbaptized are not of the Church.²⁵- And likewise, for all men in non-Catholic countries, where the State must be content with a certain neutrality, because officially it is only supposed to judge religions by their social effects and not by their intrinsic truth;²⁴⁶⁰ it would be different

²⁴⁴⁹ Cf. TEDESCHI, 1989,216.

²⁴⁵⁰ Cf. LITTELL, 1978, 6; MARCO, 1964, 12-13; MATTEUCCI, 1982.04-06.98-99; SETIÉN. 1963.03-04. 115: and. with anti-Catholic aggressiveness, A DENE Y, 1921,360.

¡JWCf. BRUGGER, 1964,600 or again: CIAPPI, 1966,51.

²⁴⁵² See SAINT-LAUMER, 1988,06,36.

²⁴⁵³ Cf. DONDEYNE, 1964, 279 and 287.

According to M^{sr} Karol WOJTYŁA, 1964.09.25, Congr. gen. 088, A.S. III/n, 531, tolerance in the civic sense is a right.

²⁴⁵⁵ Cf. CARDINALE, 1966.11.10, 309; CHENU, 1965b, 74; COSTE, 1969. 349; RAHNER, K., 1955. 187; RIVA, 1969,36; it is perhaps the word that is inappropriate *nowadays* (cf. RODRÍGUEZ, Victorino. O.P., 1966.04 06.326 327).

²⁴⁵⁶ Cf. *Petit Robert J*, art. "Connotation". sense 2®, 368.

²⁴⁵⁷ v. l.º: ¡quotes from MIRABEAU and Lord STANHOPE in RUFFINI, 1992.99. e.g. *On the freedom of worship, session of 22 August ¡789*, quoted in LALANDE, art. "Tolérance", 1133-1137. Cf. ÜÜ39/B. (ex üü3L) AUGUSTIN D'HIPPONE, s., 0397/0398: *Contra Faustum Maniducum*, Book 20, Chap. 21: CSEL 25 (189). 563: "Another thing is what we teach, another thing is what we suffer; another thing is what we are commanded to prescribe, another thing is what we are commanded to correct, and what we are forced to tolerate, until it is possible for us to reform it." Cf. also, on another "tolerance": SMEDT, 1967a. 131-132.

²⁴⁵⁸ cr. BATES. 1946,301 ¡CARDINALE, 1966.11.10,311.

²⁴⁵⁹ for example CORONATA. 1934, 139 (which quotes WERNZ, I, n. 9; CAVAGNIS, 1. n. 582-583); or: GONZALEZ F. CORDERO. 1960,376 OR VERGA, 1960,476.

1962.

²⁵² -Cf. OTTAVIANI, 1960,11,74-75, SC based on A1CHNER, 1915,§52, 164ff.

in a Catholic society, not because the State could then decide on theological controversies,¹²⁵³ but because it can and even must in general and on principle admit the Church as mistress

Thus, we can say that the *right to LR* claimed by *DH*, when applied to the *particular case of the non-Catholic and erroneous religious action* of a follower of a religion acting within the objectively determined just public order in a Catholic nation,²⁵¹ *4 corresponds to the claim of a right not to be prevented* by Catholic civil authorities from acting non-Catholic, even in public ; or, in terms of tolerance, the claim of a right, under such conditions, to have one's non-Catholic and erroneous religious behavior tolerated. Outside of these conditions, tolerance and RL are *two different issues*.

Conclusion: The purpose of the RL of DH is not that of the false right to "freedom of conscience and worship" (LCC

A comparative table will be more meaningful than a long speech. Knowing that the CLC and the LR are claimed freedoms in religious matters in society:

LCC Claim		DH's RL claim	
Formally	Materially	Negative	Positively
1° a moral permission... +	. to do all that that we wants... ²⁵ _5 and which is not prohibited by law,...	1° no moral permission for error;	the moral obligation to adhere to the truth (DH)-,
2° a positive legal authorization given by the sovereign people +	expression of the general will, the only	2° no positive legal authorization of the error;	2° positive supernatural authorization to live according to God (DH 13);
3° a right negative requirement not to be prevented...	source of authority.	3° no right requirement not to be prevented from doing what you want.	3° right-demand not to be prevented from following one's conscience (DH 2) KM

It is not because the CCL was a freedom to act as one wishes *in society* and proclaimed *by society*, that it was a *purely* civil freedom, a *purely* negative right.²⁴⁶¹ But what *causes this difference of object* (to do what one wants, without having a duty / to do what one must, without being prevented from it),²⁵¹ "it is indeed the difference of foundation (absence of obligation / presence of a transcendent obligation).²⁵¹ ' What characterizes positive authorization is that it includes a favorable assessment, a favorable presentation (which often leads, of course, *de facto*, to positive aid);^{252u} and also the declaration that the act performed is to be encouraged, that it promotes the common good, etc. In other words, **the CLC is a requirement of positive authorization of the various cults and of indifference towards them; the RL is a requirement of merely negative permission of the various religious acts.**

²⁴⁶¹ We think we are responding to LUCIEN, 1990,76, note 131, §3.

Sometimes other men (including the state) have a duty *not to interfere* with our actions because, outside of certain limits, it is not within their *legal competence* or mission.²⁴⁶¹ By recognizing the natural right to RL, without pronouncing on the value or lack of value of any particular religious activity,²⁴⁶² or even *claiming to be unfit* to discern who (the Catholic Church) is competent in religious matters, but to recognize its limits in the face of the transcendence of the human person,²⁴⁶³ civil society seeks to ensure that everyone has the possibility of acting according to his or her conscience in religious matters. To this end, it builds around the person a space of activities in which it undertakes not to intervene. In so doing, it recognizes a positive value - and one that transcends the temporal domain - in acting according to one's conscience, as well as in religious activity in general - even if *in concreto* this activity covers errors - because it wants *per se* what is good (= acting according to one's conscience) and *per accidens* what is bad (= acting badly), which it "tolerates". This space of freedom is a good for people, even if it makes bad acts possible. In view of this good, the state must tolerate these evil acts (in their evil aspect), within certain limits. The good directly sought is civil liberty, as a protection against too many encroachments by the state; and the consequence is the duty in justice to tolerate evil. This last case constitutes the precise contribution of *DH* :

"In the matter of religious freedom, the "right or tolerance" debate is equally outdated, for the freedom which the Council dealt with is only a "right to be tolerated", that is to say, a civil - but not absolute - immunity for every religious spirit, a physical freedom opposable to the State and to society, and not a moral freedom opposable to God and his Church. It is not a natural right to propagate theological error or denominational divisions, but the natural right not to be disturbed by civil authority as long as there is no violation of objective public order." ²⁴⁶²

The *doctrine of tolerance* prepared the *doctrine of the RL*. It did not imply it but did not contradict it. It **demonstrates a posteriori its non-impossibility**, under the precise angle of a right not to be prevented from acting in society even when one acts in an objectively bad way.²⁴⁶³

3.2. The object improperly called, or the subject's property protected by law

The protected activity consists, more precisely, in the acting/non-acting described in *DH2*, § 1. As we have said, these goods that are the objects of immunity would be better called *subjects of immunity*, because they are in fact on the side of the subject, not of the object's. In the active subject, the negative right-requirement protects *per se* good realities, in this case objectively good action or omission in religious matters (1); and *by accident* certain bad actions that are therefore incapable of being the objects of an affirmative right-permission: erroneous or insincere action (2). This distinction is correlative to those which oppose freedom and tolerance, on the one hand, and right and abuse of right, on the other.²⁴⁶⁴

3.2.1. Protected realities *per se*

DH2 protects I) free action, II) conscientious, III) religious, IV) individual and collective,

²⁴⁶² CT. OCÁRIZ. 1989.06.77, I^o§.

²⁴⁶³ Cf. MARCO, 1964, 113.

²⁴⁶⁴ *n. sup.* fnt to think of the right not to be prevented from living if one is innocent of a serious crime, a right that is not lost if one commits a sin, even a serious one, which would no longer be a crime.

private and public, V) limited.

I) A free action. The law protects the human modality of the act and therefore the exercise of free will

As announced by *DH* 1, according to *DH* 2, § 2:

"(...) all men (...) are also bound to adhere to the truth (...). Now, this obligation can only be fulfilled by men in a manner consistent with their own nature if they enjoy, in addition to psychological freedom, immunity from all external constraints.

Thus the right to the RL protects the specifically human *modality* of the act, which makes it fully *actus humanus*, and not only *actus hominis*. It allows the freedom of the *will* to lead to the freedom for *man* to implement externally the *conscious* internal decisions of the will.

II) Acting in conscience. The law protects the regulation and therefore the responsibility of the act

In *DH* 2, § 1, in accordance with *DH* 1 and *DH* 2, § 2, the RL consists in not being forced to act *against one's conscience* nor prevented from acting *according to one's conscience*. This is of course the so-called judgment of the *antecedent moral conscience*. *DH* 2, § 2 teaches us that following one's conscience does not establish the existence of the right, and not following it does not take away the exercise of it either. To know in what way conscience is a good to be protected, we will have to look at *DH* 3. Let us content ourselves here with noting that in the definition of the right (*DH* 2, § 1), the double good protected by the LR is not to *act against one's conscience* and to *act according to one's conscience* (perspective of *DH*) and not in any way or as one wishes (perspective of the LCC).²⁴⁶⁵ However, **to follow one's conscience is not to follow one's caprice, to act according to one's conscience is not to act as one wishes**²⁴⁶⁶

III) A religious action.

The law protects the highest domain of human acts

Religion, as *DH* understands it, comprises a complex set of acts (of belief, worship, moral teachings and practices, etc.). It is the highest activity of man, concerns his most important good, engages his being in the most profound way, and the whole of his moral life. In Tradition there is already a right not to be prevented from *remaining* in religious error, and a right not to be prevented from teaching even religious error to one's children. The religious question is thus quite particular in the moral and juridical domain (let us also think of the relationship between listening to one's conscience and the practice of a religion). We must study A) what is meant by "religious matter"; B) what it is as a domain of a right, or essential delimitation of it.

A) What do we mean by *religious matters*?

The DDHC treats religion as "opinions, even religious opinions".²⁴⁶⁷ This means that

2465 Cf. SMEDT, 1967b, 224: "Conscience is not confused with subjective preferences, as those who appeal to the rights of conscience to allow themselves to follow their personal tastes or their inspiration of the moment seem to believe." Cf. REGATILLO, 1963, 426; VERMEERSCH, 1922, 249. It is therefore not a question of practicing "the religion of one's choice", against MURRAY, 1966 (MILLER), 578 and LASSOS, 1988,5.

²⁴⁶⁶ Difference highlighted by LUCIEN, 1992.03.14, after others.

²⁴⁶⁷ Cf. PAVAN, 1965,144.

adherence to a given religion is reduced to the rank of opinion,²⁴⁶⁸ whereas it must arise from a conviction, or even (after Revelation) from theological faith. Moreover, it makes it a matter of an individual opinion, and not of a collective adhesion and life. Let us study by contrast what *DH* understands by "religious matter".

1® It is mainly *DH* 3 and 4 which indicate to us what *DH* means by "religious" in "religious matter".²⁴⁶⁹ "Religious" is an activity linked to the fact of "honoring the supreme deity with a public cult":²⁴⁷⁰ are therefore not, it would seem, considered here as religious the polytheisms, pantheisms, atheisms.²⁴⁷¹ *DH* associates religion to the idea of truth (cf. *DH* 1; 2; 3) and to that of worship - internal and external (*DH* 3 and 4).²⁴⁷² Are not therefore "religion" the ideologies devoid of cult or the practices not accompanied by beliefs, and in a general way what does not have a relationship with the "*Numen supremum*".

Once this field has been delimited, we must try to determine whether or not by "*in re religiosa*" the Council intended to cover both positive options (adherence to a given religion) and negative options (absence of adherence to any given religion) in the right to RL.²⁴⁷³ In our opinion, the various opinions must be partially accepted, while reserving one aspect for the chapter on limits.²⁵³² It is enough to note that neither adherence to a given religion nor non-adherence to any religion is the object of the natural right to Religious Liberty, which is only immunity from coercion. At this level, it is clear that the choice of the expression "*in re religio sa*" ensures immunity *per accidens* for atheists,²⁵³ * pantheists, polytheists, and *per se* for monotheists.²⁴⁷⁴

[1] As for the negative options. Nevertheless, one sometimes asks why the Council was reluctant to mention atheism *explicitly* here. Answer: [AJ First of all, only goods to be protected *per se* had to be explicitly mentioned, i.e. neither error nor action contrary to conscience. Now [1] like all error, atheism is in no way a good to be protected *per se*; [2] on the other hand, the Council nowhere admits that one can spend one's life following one's conscience while being in atheism (cf. *GS* 19-21), a possibility which is moreover incompatible with the fact that God at least once in human life proposes grace *sufficient* for salvation, which necessarily includes the recognition of a *remunerative God*. *GS* 19, § 3 and *GS* 21, § 4 & 7 even seem to quietly imply that atheism is so contrary to the natural aspirations of the human heart that it is difficult not to see it as a refusal to follow one's conscience. However, by insisting on the hypothesis of a scandal of the weak in this matter, *GS* 19, § 2 and 21, § 5 hint at the possibility of a *temporary* good faith atheism. Moreover, *DH* asks the state to positively favor religion (*DH* 6, § 2: "*propitias suppeditare*", etc.) and not irreligion. And *DH* 5 demands that the irreligious school be excluded. [B] On the other hand, even less specific mention should be made of errors which are very prone to destroy the just public order, which is the case of atheism, which is always destructive of public morality²⁴⁷⁵ and

²⁴⁶⁸ This is not without consequence: see MESSINEO, 1952.01.19.721-722.

²⁴⁶⁹ *DH* uses the terms "*religio*", "*religiosus(a)*", etc., "*res religiosa*" or a similar expression (in the same framework) in various places, precisely identified in LRTC.

²⁴⁷⁰ On "Mr/nen". replacing "*Deum*", see S 71 a: 6 RS. AS. IV/VI. 743-744, [46] & 147].

²⁴⁷¹ Various opinions on the matter in FERRARI, 1989b, 9, SOLER Carlos: 1993a, 278 and PAVAN, 1980,371.

²⁴⁷² See BUENO-SAUNAS. 1985,186-190 and 201-203.

²⁴⁷³ Cf. FEDELE, 1963, 16. but let us reject his conception of the RL as freedom to "believe in what pleases best". For LA HERA, 1971b, 618-619, atheists have a right to "freedom of opinion," not to the RL.

²⁴⁷⁴ For FORCANO, 1965,218, no LR for atheism. On the contrary, GUERZONI, 1975,277.

²⁴⁷⁵ cf. MURRAY. 1945.06 (0) 91.2: "Ethics has always taught, and experience has confirmed to the point of evidence, that the

often also of the rights of others, which is the case of contemporary forms of militant atheism, notably by their opposition to the RL itself. In any case, because he is a man, the atheist has, like all men, the right to the RL,²⁴⁷⁶ which does not necessarily mean the right not to be prevented from propagating atheism. We are not asserting any "right to irreligion", since the protection of the atheist by the RL is entirely incidental to his atheism and his right.

III On the contrary, opting for the necessity to render some worship to God is already a legitimate choice, considered in a good light by *DH*, and, under this good aspect, it is not an abuse of the right. As for *positive* choices in religious matters, we must distinguish between [A] false religions (false as to the "ontological truth") and [B] false religions (false as to the "logical truth"), or defective religions. [A] By "false religions" we mean activities that are covered by a religious appearance but are not really religious (e.g. superstition, especially black magic, Satanism, etc.; or sects²⁴⁷⁷ that have no other purpose than to collect money or to ensure the tyranny of a "master", etc.; in other words, all acts that do not conform to the *natural* notion of *religion*). [B] By "deficient" or false religions, we mean *activities* (and *communities* practicing these activities) that *conform to natural religion*,[^] but *differ* in at least one respect from a religious truth taught by the Catholic Church (and as to *natural law*, and as to revelation).

2° Let us now turn to the examination of what, in an activity authentically inspired by religion, is or is not *purely* religious.

"What happens is that on many occasions religious social activities necessarily involve the exercise of other human freedoms which are *not specifically religious*, such as the right to free expression of thought through the various media of communication, the freedom of assembly and public gathering, the right of association, and so on. Now, any rational organization of civilized society recognizes the need to *temper the use* of all these freedoms to harmonize them with the supreme and essential interests of the civil community. It is therefore in the use of these freedoms, which we might call "mixed" because they involve both religious motivations and the exercise of human rights which are not, in themselves, religious, that the possibility, and even the necessity, of certain moderating rules lies.

In other words, it is not religious freedom itself, in the strictest sense of freedom in intimate relations with God, which admits of some legal limitation, but only the use of other human rights having a different religious motivation or content; and this, so to speak, *although they have* religious motivations or content. For example, the right to hold public meetings does not completely escape the competence of the State; the civil power can regulate it by means of *just and non-discriminatory* provisions, even though it is a religious meeting, and this in the same way as any other kind of meeting, has²⁴⁷⁸

According to *DH*, the state may repress a strictly religious or mixed activity, not by virtue of its *purely* and strictly religious content but only by virtue of its possible impact on just public order.²⁴⁷⁹

B) Religious matters as the limit of the domain of law

The religious matter, the domain of the right of HR, delimits the essence of this right, in that it specifies the provision of immunity. When the act performed by the subject of the right is not religious, it is not protected by this right (it may be protected by other rights). It is here that it is necessary to note that the reflection of the Council started from religion. However, as we shall see

denial of God and the moral law, the diffusion of anti-religious and anti-moral ideas are the most dangerous enemies of the social order", with the clarifications of p. 92.

2476 Less convincing explanations in MURRAY, 1970.109 and NEOPHITOS. 1974.250-251.

Cf. *Sects (The)* I.I.548.1.

2478 CARRILLO, 1967b, 140.

2479 KINDREGAN, 1970.52.

in chapter 8, it led, especially in *DH1*, § 2, to a much broader principle, in which general civil liberty is always protected, except for a just public order. One thus has the impression that everything concerning religion in *DH* becomes logically useless, since it is only an application of a more encompassing principle. In fact, it is not quite so, because it was still necessary to show that religion is not in itself a criterion of just public order (a religious offence cannot *per se* be a civil offence, an aspect which is not obvious in view of past centuries), whereas it is on the contrary an important criterion of the common good, and is even, by natural law, the highest good to be protected legally by civil society (an aspect obscured by recent centuries). As such, religious matters deserved to be mentioned emphatically, and to be the subject of a particular freedom. Moreover, representing the aspect under which the person, precisely, transcends the temporal order, it is that of the freedoms that most directly threatens any totalitarian order, tyrant of the consciences. That communicated to him a topicality and an exceptional urgency.

The passive sociality of "religious matter" - a) Religious acts devoid of sociality are by the very fact extra-legal and do not fall within the scope of our problem.²⁴⁸⁰ b) Religion must, by requirement of nature, lead to a social and public activity, otherwise "religious matter" is reduced to the purely personal-individual relationship with God, outside the social, legal problem posed by the RL.²⁵⁴ "

Speculative and practical religious matter - *DH* does not reduce "religious matter" to belief in *speculative* doctrines; indeed, all religion includes "doctrines" or "directives" of a *practical nature*, both individual and social.²⁵⁴ " Even practical, these concern not only the acts of worship (prayer, sacrifice, etc.), but also a certain "monastic", "domestic" and "political-social" morality.

IV) A collective or even public action.

The law protects the sociality of religion

In the concept of the next kind "freedom of social and civil action" is included the active sociality of the religious action. This can be *indirect* (to act in the *presence of* others),²⁵⁵ "5 or *direct* (to act *on* others).²⁵⁵ - In the one and the other case (especially the second), arises the possibility of a collision with the rights of the others, in particular rights of freedom (for example the same one) existing in the thirds. In particular, a *natural* right of freedom will be possessed by *all* the partners in society, X, Y, Z. They will thus be in turn active and passive subjects of this right. In the case of the natural right not to be prevented from acting, what happens if a subject S chooses as an action precisely *the fact of not letting a subject D act*? *A priori* D should let S act and thus let S prevent D from acting: this is absurd. In short, every natural right to freedom contains an internal contradiction, unless it is defined with an exercise limited *at least* by the exercise of the *same* right by other subjects.²⁵² And likewise by all the rights of others. This makes the definition of *any* right of civil liberty to act *self-contradictory* if one does not place in the definition itself the *reciprocity clause*: any exercise of S's right over other men is suspended in case of S's non-respect of other men's rights over himself. Thus the right to the RL will

²⁴⁸⁰ Cf. JIMÉNEZ-URRESTI, 1968,599-600.

²⁵ "This sociality is a "proper accident" of religion. Í^Cf. MESSINEO. 1952.03.29,726.

necessarily include in its own definition the limits of its exercise.

V) A rightly limited action. The law does not protect legal abuse

DH2 delimits by "just limits" the protected activity. Activities that take place outside these limits will therefore not be the object *per se* of freedom, but only either *per accidens* (in the case of purely moral abuses), or not at all (in the case of legal abuses). This is part of the very definition of law: these limits are inherent to it. On the other hand, the fact that the person(s) subject to the right does or does not in fact exercise it "*intra debitos limites*" is extrinsic to the object specifying the grant of immunity.

The action/non-action protected by the law is thus specified not only by its *domain*, but also by its *limits of exercise*, "extrinsic" to the *religious matter*, but not to the essence of the right to the RL as a "**right to civil freedom**".²⁴⁸¹

It is true, then, that all the social problems of the RL derive not from the right to the RL, but from the *exercise* of this right.²⁴⁸² But *whether there are limits to the exercise of the right, and whether the limits to the exercise of the right are of this or that type, is surely not outside the definition of the right*. That such a man remains within these limits or crosses them is accidental to the definition of the right.

3.2.2. The protected realities *per accidens*: the moral abuse of the right

If conformity to conscience is protected *per se* by the law, the same cannot be said for acting in a manner not in conformity with conscience, nor for acting in conformity with a con

²⁴⁸¹ LEFEBVRE Marcel. *Mst*, 1985.11.06, 13. See also MARTINA. 1959, 173.

²⁴⁸² Cf. also LUCIEN. 1990,262, who quotes 3 SC, *Expensio modo mm* (AS. I VII, 170-179).

They will be protected only *per accidens*, and provided they remain within the framework of a just public order. They will be protected only *per accidens*, and provided they remain within the framework of a just public order. The objectively erroneous or insincere action is not the object of the right to the RL, but a certain way of using that right, accidental to the right itself, in other words, a misuse, or abuse, of the right. Since this misuse is accidental to the right, it is not mentioned in the definition, except in the case of legal abuse (cf. the *limit debitos*). To grasp this aspect requires the study of the difference between a right and its exercise, first in general (1), then in the particular case of the RL (2).

I) *The use and abuse of a "right to" in general*

Having determined the essence and specification of law, it is important to consider its existential exercise. For this, let us start from an interesting distinction, formulated by the *Dubia* of M^{sr} M. Lefebvre:

"One can, if one wants, distinguish between "subjective right" and "objective right": the subjective right is the faculty to demand, insofar as it is rooted in the subject, apart from its exercise: for example, the right to worship God, apart from the concrete worship. - The objective right is, on the contrary, the concrete object of the right: this worship, this education. And here is the very simple solution: the objective right is inalienable, the subjective right is alienable."²⁵⁵⁵

In fact, as the A. notes, it is a case where in a particular case *the* concrete and real *exercise of* the subjective right relates to a bad or good object. So we would prefer to write: "even if the subjective right is inalienable, its abusive exercise can sometimes be limited". Indeed, the question is not so much that of the subject's right to act, as that of the right of others to prevent it.^{2 - "}

The exercise of any right can be considered a) in comparison with the right in its essence: this is the question of the distinction between the right and the exercise of the right;²⁴⁸³ b) in comparison with the duty in view of which the right exists: this is the question of the distinction between good and bad exercise, or more simply between use and abuse of a right.

A) **The law and the practice of law in general**

The distinction between a subjective right and its exercise applies particularly in the case of natural rights, especially of liberty, and especially to the RL, especially when man uses such a right to act materially - or even formally - wrong. *DH2*, § 2 and *DH1* use this distinction. That it is necessary to distinguish between the right and its use, we have seen this in the case of the right of property in Leo XIII in *Rerum novarum* and in Pius XI in *Quadragesimo an* . In the case of the RL, since this right includes a double negative precept: "not to prevent", but also "not to compel", it follows that even when its subject does nothing in particular, he exercises his "right not to be compelled". Nevertheless, it is common to say that in this case he does not exercise his right.

We have already seen, in the section on *Ci riesce*, that a negative right, even if it is *natural*, is not necessarily exercisable without constraint in all circumstances.²⁴⁸⁴ It can be conditioned, limited in the way it is exercised, and this conditioning can come either from purely natural facts (such as age), or from mixed facts (resulting from a human intervention, but natural), which can

²⁴⁸³ Relevant distinction according to JANSSENS. 1939.312.

²⁵⁵⁵ This is the framework in which PAVAN, 1966,37; and BIFFI, 1985,734 must be interpreted.

be due either to the subject S himself,²⁴⁸⁵ or to another subject,²⁴⁸⁶ " or to society.²⁴⁸⁷ If the society in question is the Church, the "moderation" (not the existence) of the exercise of natural law, without there being any infringement of natural law itself,²⁴⁸⁸ may well follow supernatural criteria.²⁴⁸⁹

Finally, without ever being able to renounce intrinsically the *radical possession* of a natural right, man can renounce himself *the exercise of it*, indirectly, either by a *simpliciter* voluntary act, or by a voluntary act only *secundum quid*. For example, a man who is dangerous to society renounces - unwillingly, but implicitly - the exercise of his right to liberty, even to life.²⁴⁹⁰ The same would be true for the exercise of his right to the RL.

B) The use and abuse of a right in general

It is here that the consideration is no longer of the existence of the right, nor of the fact of its exercise, but of the *way* in which the exercise takes place. We will call "use of the right" its morally good exercise, and "abuse of the right" its morally bad exercise. The abuse of the right *can also* be contrary to a right. In this case, the abuse will be *legal*. We shall take as our starting point the undisputed general principle of law, namely, that abuse does not take away the use, *usum non tollit abusus*.TM We shall first apply it to a simple case: every man, by sinning, abuses his right to life; this does not necessarily entail the loss of his right to life. We have already encountered a 2nd application of this ancient adage in Leo XIII, s. Pius X, and Pius XI: the misuse (abuse) of property does not (in general) cause the loss of the right to property.²⁴⁹¹

C) It goes without saying that the power recognized to the owner, a power founded in human nature, a power specified by the social conditions of life, a power determined in its ultimate concrete realizations by positive law, has no other purpose than honest use. Power is conceived only in view of the act, a legitimate power in view of the legitimate act. This right, finalized by use, thus borrows, in all that it is, from honest use, its determination, its measure, its rectification.] And yet the right of property, within the limits of its definition, confers on its holder a sovereign and absolute authority as regards this orientation, this rectification, to the ends of honest use. Between the power and its use, there is not a link of necessity. And it is in this free play, in this autonomous determination, that the essence of the right of property lies, in its most characteristic aspect. It is made only for honest use, but it is made by essence for the free exercise of this use. Of course, this self-determination, like any use of freedom, is not a free game; according to the direction it takes, it traces in the field of reality a correct furrow or a tortuous rut, which does not let itself be characterized morally and lead to various consequences, happy or fatal. The freedom does not subsist less. One would sometimes like, in order to lead the right of ownership infallibly to its goal, to withdraw from the owner this free power to use; but one is on the wrong track. To blunt this fine point of sovereign authority is to misunderstand, by distorting the right of ownership, the rational depths in which this freedom is rooted (*libertas est in ratione*) and, by the same token, to relieve the owner of his moral and social responsibilities.^{25 7}

II) The use and abuse of the right to the RL in particular

Since the use of property depends on liberty, and since liberty is a kind of property of man *on*

2485 Thus the matrimonial consent, due to the human will of the subject, - but not purely conventional, since marriage is a natural institution.

2486 for example if the woman S would like to marry is already married.

2487 For example, setting the minimum legal age for marriage.

2488 Since grace does not destroy nature, but presupposes it and elevates it.

2489 Let us think of the following facts: the absolute indissolubility of sacramental marriage *ratum et consummatum*; the only relative indissolubility of marriage *ratum et non consummatum*, or - by virtue of the privilege of faith - that of natural marriage, even when consummated; the invalidity of marriage "dispar" without dispensation, etc.

2^o Cf. Pius XII on the death penalty: 0712; 0751. DC, 1952, 1232. See also 0705.

2491 [=, apart from exceptional cases. See TONNEAU, 1935,764-766,782-783,801.

his acts, the idea then comes to mind to apply the preceding considerations to our debate on the RL. It is important here to recall how, finally, the affirmative right-permission of correct use entails the protection by the negative right-requirement not only, *per se*, of correct use (a), but even, *per accidens*, of moral abuse in that use (b).

A) The negative right to protect *per se* the correct use of the RL

In good philosophy, the negative rests on the positive.^{*118} We have seen that the negative right protects various levels of good realities: freedom,²⁵ ®" conscience, religion, sociality, etc. The negative right to liberty is intended to protect the affirmative right permission of the sincere practice of the true worship of God,²⁵⁷⁰ i.e., rendered to the true God, in the Catholic Church (*in truth*), and in conformity with conscience (*in spirit*, not in a purely external manner) (*true faith and good faith*)TM

B) The negative law accidental protector of the moral abuse of the right

But what happens when man abuses his right to the RL?

[1] There are different kinds of abuse of the right to the RL. Active and passive abuse can be either legal or simply moral.²⁵⁷² [A] *Passive* moral abuse consists in not acting

1567 BARREL, 1935, 783-784. The state must *organize* (not suppress) *the use of the right* (not the right) of property to make it as morally right as possible.

²KOCÁRIZ. 1989.06.76-77.

1569 cf. the very clear exposition of GEWIRTH. 1982.311-314.

²⁵0 See OCÁRIZ. 1989.06.83.

⁷⁵⁷¹ Cf. CIAPPI, 1966, 43. We have already touched on this point in our study above 0709.5: A4S, 1943. 19 ;

PINW4'.DP*PieXII*, 1942,341. Cf. also BELDA. 1966.04,361.

1572 Cf. DÍEZ-ALEORÍA, 1965.41 and note 29.

B] Active moral abuse is to act in one way when one ought to act in another. [B] *Active* moral abuse is to act *in such a way* when one should act *in another*, *in the* form of either a positive practice [11] or a positive opposition to a practice.²⁴⁹²

[II] Adherence to and propagation of error are not proper uses, but abuses of the right to LR :

"Nowhere is it affirmed, nor is it allowed to affirm (it is obvious) that there is a right to spread error.²⁴⁹³ If therefore people spread error, this is not the exercise of the right, but the abuse of it. This abuse can and must be prevented when public order is seriously harmed, as is stated several times in the text and explained in no. 7. If these fundamental elements are kept in mind, many of the proposed amendments appear unacceptable. And if a right thus understood is denied, then the amendment is against the substance of the text approved by the Fathers and therefore cannot be admitted."²⁴⁹⁴

[III] Non-legal moral abuse is only tolerated; but there is, in its precise case, a right to be tolerated:

" Révéra ius ad errorem spargendum intelligi non potest. Ius vero ad libertatem in re religio sa secumfert, ut alii quamdam propagationem erroris tolerare debeant. Ius igitur libertatis religio sae limitat ius defensionis contra errorem."^{257a}

[According to St. Thomas, Leo XIII, and Pius XII, sometimes tolerance is obligatory, thus immoral repression. Thomas, Leo XIII, and Pius XII, sometimes tolerance is obligatory, therefore

²⁴⁸² Cf. ARCY, 1964.122.

²⁴⁹³ Inexistence maintained on several occasions by the commission, e.g. in S 95: 6 RS, AS. IV/VI, 771 (...) I-78L

²⁴⁹⁴ Our translation, from S 58: 6 RS, AS. IV/VI, 725, Response to General *Modus* No. 2; see also S 52, 6 RS, AS. IV/VI, 721. Same type of assension in PAVAN, 1967a (*Vivere il Concilio*, 4), 132-133; 1967d, *Unam Sanctam*. 60.149: or 1980.357. LIO, 1968.628; URBANI, 1969.01-02,209. See also M¹¹ WILLEBRANDS to Card. RUFFINI (15 December 1965, AS. V/III, 657-659).

repression immoral. B] The case of the moral abuse of the right of property (Leo XIII, Pius XI), and of the right to the education of children (St. Thomas, Cajetan, Pius XI), and, more generally, the existence of cases in which human law has no right to prevent what is erroneous and false (*Ciriesce*), have shown us that a right not to be prevented from committing even errors in religious matters can derive *per accidens* from a right to act well. Thus, the obligation for men to make only an honest use of their right to LR²⁴⁹⁵ is not imposed on them in the name of justice,²⁴⁹⁶ but in the name of the other virtues (for example: faith, religion...); it constitutes consequently a duty "whose fulfillment cannot be demanded by means of justice.

If moral abuse is to be tolerated in the name of the law, it is because abuse does not take away the use:

"...] the abuse of a right - perpetrated in good or bad faith - does not imply its destruction: if it did, there would no longer be any right, since there is no right that men cannot abuse, that they have not abused, and that they do not in fact abuse. The abuse of a right may, however, render legitimate, especially on the part of the public authorities, the interruption or suspension of its exercise; in the document, it is stated that both are legitimate in the matter of the right to religious liberty only if an informed and just public order is violated." ²⁵⁷⁹

Moreover, *DH* does not directly claim a right not to be prevented from disseminating *the error*.^{25 *0} By defining the right, one *disregards* whether the exercise will in fact be abusive or not. ^{28 *} It is thus only *per accidens* that the negative law protects moral abuse, by virtue of the principle recalled by SUC :

"[...] Cum vero abusus non tollat ius, ut aliquis Pater recte notât, ultimæ linæ sic sonent : "eius- que exercitium impediri nequit dummodo iustus ordo publicus scrvetur". (...) ²⁴⁹⁷

If the law indeed protects a margin of abuses (only moral abuses, i.e. those that do not undermine public order, and described in *DH7*, § 2), it does not protect abuses outside this margin (legal abuses, undermining public order, and the object of *DH7*, § 3).

The protection of moral abuse creates a zone²⁴⁹⁸ of non-coercion for the benefit of the follower of the error, claimed not *in view of the exercise of the right*, not bad (and especially not "insincere"), but *good*, as freedom of access to the good,²⁴⁹⁹ in virtue of the "inseparability" between the right and the non-repression of certain abuses :-^{W5}

"(...) the civil power, as Fr. Diez-Alegria says, "has the duty to tolerate the dishonest use of this right to freedom" as long as it does not trample on the rights of others and does not expect "just public order." ²⁵⁰⁰

And it is only in this sense that one can speak of a "negative right to see tolerated the abuse of the right".²⁵⁰¹ *The acts perpetrated inside the sphere*, and in particular, the content of any belief, true or false, is not at all the object of the right,²³ ²⁵⁰² *contrary to the (surface of the) sphere of protection itself*. Thus, there are abuses of the right to the RL (the adherence to error and the propaganda of error, taken formally in this aspect) protected (as a necessary tolerance) by the law,

²⁴⁹⁵ obligation recalled by *DH1*, § 2; 8, § 2.

²⁴⁹⁶ Being except the just public order, that is to say basically the rights of others and of the society.

²⁴⁹⁷ s 64: 6 RS. A.S. 1 V/vl. 736. It should be noted that this is precisely the passage in which it speaks of the one who *does not seek the truth*...

²⁴⁹⁸ HAMER, 1993, 57 speaks of a "free zone," expressed by BROGUE. 1965b. 150. as: "*freedom to act badly*", by PAVAN. 1965, 157, as: "*cintura di sicurezza*"; also: PAVAN, 1967a (*Vivere il Concilio* 4), 134.

²⁵⁰⁰ Cf. CARRILLO. 1967b. 81.

²⁵⁰¹ CARRILLO, 1967b, 82-83; see also LE GUILLLOU M.-J.. 1964, 231.

²⁵⁰² As S 09 notes, the possible right of mistaken consciousness is beside the point. See also BEA. 1966 (1963.12.13). §4⁴. ²⁵⁰² cf. PAVAN, 1969a (GAROFALO), 1281; transl.: PAVAN, 1966.10 (*Concilium*). 37; cf. also S 58: A.S. IV/vl, 725, R. 2.

without being objects of the law.²⁵⁰³ This right is declared to persist in the erring person in bad faith,²⁵⁹ *- because it is attached to the person, not to the use.²⁵⁹ -

Conclusion of Chapter 3

We can take stock with F. Biffi:

"JJJ The right to religious liberty thus has as its object the exemption from coercion in religious matters on the part of *individuals*, *intermediary bodies* and *public authorities*. It is for this reason that religious liberty can be understood as a *security belt* guaranteeing the *inviolability of a human space*" within which the person can fulfill his *duty to organize his relationship with God and truth* " *without any pressure from (outside)*. It is the guarantee that *society stops SHORT OF THE* sacred thresholds of the person when it comes to the most important decisions of his existence.

²⁵⁰³ Cf. COLOMBO. 1965.06.1206-1207.

CHAPTER 4.

4. THE ONTOLOGICAL DIGNITY OF THE HUMAN PERSON , FOUNDATION OF LAW (DH 2, § 2)

Po understand the basis of the right to LR, we will begin by defining the "dignity of the person" in question (I), then we will show that this is indeed the basis of LR according to *DH and* according to the truth (II).

4.1. What kind of human dignity are we talking about?

What does the Council mean here by the "dignity of the human person"?² ⁵⁹³ The note 2 which adorns the passage quoted from *DH 2* (and must therefore constitute the key to its interpretation) refers us to the texts of John XXIII,²⁵⁹⁴ Pius XII, Pius XP⁵ and Leo XIII on this subject, already commented on by us. These four excerpts, we had noticed, already proclaimed the right to RL, but without specifying the limits of its exercise. What is interesting in *DH 2*, § 1 and in our present chapter is that each of these four paragraphs *founded* the right to "freedom of conscience" on "the dignity of the human person". Indeed, Leo XIII considered that this freedom of conscience "*humante dignitatem personæ honestissime tuetur*" (0616.19 [b]). It protects this dignity, but is it a requirement? Yes. Leo XIII implicitly affirmed this, adding that the Church had always claimed it and that it was "*omni vi injuriaque major*" (*Ibid.*) Pius XI, for his part, placed the right to freedom of conscience among the rights that man "as a person" "has from God", which are beyond the reach of the collectivity, and are part of the common good, as a requirement of human nature (0680.2). Pius XII proclaimed this right in the perspective of "the end of all social life" "sacred, obligatory: the development of man's personal values as the image of God" (0709.3). This implied, in order to "restore to the human person the dignity conferred on him by God from the beginning" (0709.4), to "promote respect for and the practical exercise of the fundamental rights of the person" (0709.5), among which he listed "the right to worship God" (etc.). As for the text of John XXIII, besides quoting that of Leo XIII, it was prepared by an explanation not only of the two perspectives (natural and supernatural)²⁵⁹ ^ in which one

2594 03193. To this must be added 0819.1 & 2.0819.1 refers to the whole text of PIE XII, of which the note 2 quoted above mentions an excerpt (our 0709.4-5). 08193 refers to the text of *Libertas*, which it quotes literally (our 0616.19). (0819.1-3 = AAS, 1963,259-270; DC: 515-522).

The "dignity of the human person" can be considered, but also the *basic* role of *society* that this dignity plays (0819.1). These 4 texts thus found the doctrine of *DH2*, § 1. The last one calls for a distinction between two kinds of "dignities". Which one is it? In a general way, we can define "dignity" as "quality that makes one deserving of respect"; "function, title or office that gives someone an eminent rank"; "respect that someone deserves"; "self-respect".⁵⁹⁷ Now the eminent rank of man comes from the fact that he is the hypostasis of an intelligent and free nature, the image of God, deserving as such of respect. Leo XIII links this dignity to the equality between men (0603.3; 0615.1)^{25W} or to freedom itself (0616.01). In this last case, he distinguishes two points of view: 1° *the existence* of free will: the fact that God has "given man this dignity of being in the *hands of his counsel*" (0616.01),²⁵⁹⁹ that is, of being responsible for his acts, inasmuch as it is by his own decisions that he moves; 2° *the concrete use* that man makes of his freedom (*ibid.*). Thus: a) there is a dignity of man which is founded on the fact that he *possesses free will*; it is called *ontological* dignity, or in the first act, "radical" or "fundamental"; b) there is a supplementary dignity, founded on the correct *use* of this free will, or *operative* dignity, in the second act, "perfective" or "terminal",^{260 *} etc.²⁶⁰⁰

4.1.1. The ontological or radical dignity

1° By definition, we will understand by ontological dignity of the human person the fact that he deserves respect, independently of his action. 2° This ontological determination, conferred by God, comprises, independently of the concrete economy of salvation, two levels: that of nature (the order of creation);²⁶⁰¹ <"that of supernature (the order of grace)."²⁶⁰² 3° The adequate and concrete dignity²⁶⁰³ of man always has two levels, common to all men and prior to any personal decision: to be endowed with a spirit, image of God and *capable* of beatific vision (natural platform); to be *called* to the beatific vision (supernatural platform).²⁶⁰⁴ 4° In the real world where we live, these two platforms always exist together. Indeed, although God was not required to provide the latter by virtue of the former,²⁶⁰⁵ he has decreed that the call to the supernatural order is made to all men of all times. 5° As we have read, *DH*, in order to posit the existence of law, does not use the division into "natural dignity" and "supernatural dignity",²⁶⁰⁶ °8 but distinguishes two ways (one natural and rational, the other revealed) by which one knows the unique natural dignity of man,²⁶⁰⁷ foundation of law, prior - from the causal point of view - to action, and resulting from nature,²⁶⁰⁸ of the origin and end of man.²⁶⁰⁹ 6° In particular, if the right to the RL of *DH* has explicitly as its end the supernatural knowledge and love of God, its existence in a man does not rest on the actual possession by him of supernatural grace. 7° On the other hand, human dignity is now situated in an existential framework

2599 *αυτεξούσιον*, says s. JOHN DAMASCENE, in the text quoted by s. THOMAS, 1 -2, Pr.

2600 On ontological / operative dignity, cf. MARGERIE, 1988a, 48 and 1988b, 50, n°39 ("radical / terminal dignity"). RODRÍGUEZ, Victorino, O.P., 1982, 9-10, distinguishes *dignidad* (innate, ontological dignity), and *dignificación* (acquired dignity).

2601 cf. 0715. ("the human person... placed at the top of Tunivers visible") & 0793.1.

2602 see 0819.1.

2603 cf. MARGERIE, 1988b, 54, n°42, for whom it is indeed a question of concrete (and not abstract) dignity.

2604 We will come back to this. Let us already mention HARTMANN, 1961, 427, § 2.

2605 cf. 0738. *Humani generis: DzSeh* 389! See also e. g. *DzSchHü* 1901.1903.1907,1911,2616.

2608*ciary* distinction of these two dignities in 0717.1.

2°" Cf. FUCHS, 1968,575-576.

2608 Not on his individuality. And it is a question of a dignity of the person, "that is to say, of a nature endowed with intelligence and free will" (0819.1). Is therefore without object the remark of VAN der PLOUG, 1980.11-12,63.

2609 See KINDREGAN, 1970.47.

of *fallen* nature. However, original sin did not radically corrupt nature.²⁶¹⁰ The contradictory has been condemned in various forms by the Church among the Lutherans,²⁶¹² the Baianists²⁶¹ 4 and the Jansenists.²⁶¹¹ 8° The present nature of man is situated in an economy of decay but also of redemption,²⁶¹² at least in the first act, by objective redemption. It will remain for man (at least as an adult) to appropriate this objective Redemption by a personal decision (moved by grace) and thus to acquire the Redemption called subjective, which depends on a use of freedom. What then of personal sin?

4.1.2. The operative or terminal dignity

1° One will call operative, terminal or moral dignity a dignity attributed to man in virtue of a human act performed in accordance with the rule of these acts. 2. Operative dignity is preserved by conscience when it is objectively true. 3° "However, it often happens that the conscience goes astray, as a result of invincible ignorance, without losing its dignity". 4° "This cannot be said when man cares little for seeking what is true and good, and when the habit of sin gradually renders his conscience almost blind",²⁶¹³ Operative dignity is therefore lost by conscience when it is grossly mistaken, a case considered in *DH 2*, § 2, d, which nevertheless affirms that the right to RL and its exercise remain even in this case. 5° In fact, operative dignity is in itself a "subjective disposition", in the sense of *DH 2*, § 2. It cannot therefore found the right to the RL. And if its absence certainly founds this right even less, it cannot make it disappear either. 6* *DH* in fact founds the RL on dignity, not operative (therefore not on natural merit, nor on supernatural merit),²⁶ m but on-ological?⁶⁹ which the sinner does not lose,²⁶¹⁴ any more than the one who errs in good faith. If the operative dignity increases the total dignity of man, it does not found the right. In any case, the bad use of such user, if it founds "even less" this right in the user, does not abolish it for all that. "Not to found" is not identical to "to destroy".

4.2. Why this basis?

But then, in what way can the dignity of the human person *found* a right not to be prevented from spreading even error, an error in itself *opposed to this dignity*?²⁶²ⁱ To answer, it is necessary to show, first, that only ontological dignity, not operative dignity, can found a right; then, B) that coercion is opposed in a special way to *ontological dignity*.

4.2.1. The use of the law cannot be the basis of the right or the non-law

I) *The basis of the law*

A) **The abuse of the right (operative unworthiness) cannot be the basis of the right**

Certainly, no right can be *founded* on an error. Ontological dignity is ordered to operative dignity as being is ordered to acting, and as power is ordered to doing. Of itself, ontological dignity therefore calls only for good action, and in no way for bad action. But this is not the question, as we

²⁶¹⁰ Cf. 0706; 0730 and SARANYANA, 1982,25. Cf. 0015.

²⁶¹¹ *DzSchHü* 2305.2307, 2308,2311, 2401, 2402,2438,2439, 2440, 2441.2444,2445.2447. 2448.2449. 2450, 2458,2459,2623.2624.

²⁶¹⁶cf.e. g. *DH2*, § 1 and 0717.4.

²⁶¹³ CS [6. Text taken up and commented in 1219. *Verilalis sptendor*,f-2-W *JGPit* 16/2 (1993). 217-220.

²⁶¹⁴ Cf. ROUL. 1931,298-299, quoting St. THOMAS OF AQUIN, s.: 1271-1272, *Summa Theologia*. 2-2:010,4, c; 012.2.C&010.12. c..

have seen: error is not put forward as subject, nor as foundation, nor as object, nor as end of the right to RL.²⁶¹⁵ In return, ontological dignity does not therefore found any "right to act badly" or "right to error".

B) Even the good use (operative dignity) cannot found the right

[I] The good use of such and such a user cannot be *the basis for the existence of the right to good use in all users*; [II] it cannot even be the basis for the existence of the right to good use in the user who uses the right, because the basis is

²⁶¹⁵ See PA VAN, 1983, 135.

III] This being said universally, it follows that even **good use in general** cannot found right among all users.

II) *The foundation of the lawlessness*

A) **Abuse of the right does not in itself cause the right to be lost**

Secondly, adherence to error does not deprive man of all dignity: a) it does *not always* make the operative dignity of conscience disappear (an error can be committed without sin, and this out of invincible ignorance)^{f623} b) it *never* makes (even when committed in a guilty manner, therefore with personal sin) the ontological dignity of nature disappear.

B) **Abuse sometimes, not always, suspends the exercise of the right**

A right always protects a margin of abuse, as we have seen. The ontological dignity a) requires the psychological freedom of acts; b) it excludes from it the freedom of moral obligation; c) it postulates *per se* the juridical freedom; d) *per accidens, that is to say* outside certain limits, it can not postulate the latter.

4.2.2. Ontological dignity and non-coercion

I) *The dignity of the person generally requires non-coercion*

That the ontological dignity of the person requires *per se* the juridical freedom to act or freedom of coercion, it is s. Thomas who teaches us: "The freedom to act is the freedom to coerce. Thomas teaches us:

"In the second degree are those who are determined to do good by another, but without the use of coercion. (3) In the third, those who need this compulsion to become good. [4] In the fourth, finally, those who cannot be brought to good even by compulsion." (0286.).

a) In the *four* cases considered, it is a question of being determined to do good. Thomas is not at all interested in the question of whether what corresponds to the dignity of man is to do good or to do evil (the answer is obvious). Thomas wants to discern which **way** of doing good corresponds to the dignity of man. And he answers that the **way** of doing good that best corresponds to the dignity of man is to do good of **oneself and not driven by another**.²⁶¹⁶ -* b) The man of whom s. Thomas speaks is a fallible being. Thomas speaks of is a fallible being. It follows that if man's dignity is to do good with *freedom of coercion* (to move by oneself, and not to be moved by another), it will therefore be with a *fallible freedom of coercion*, c) Independently of the *de facto* failure of the creature, his freedom *as homo viator* is characterized concretely by the fact that he *must* do good

²⁶Cf. e. g. LEFEBVRE Marcel. M^m. 1985a, 104. *while being able not to do so*, d) In other words, the greatness of man here **below** (and of the angel *in via*), *is to be able* to decide freely on his destiny, thus to do God's will, **while having the possibility of not doing it**, thus to be able to choose God rather than himself, e) The possibility of doing evil, the distance between the human will and its rule, is certainly a deficiency (non-existent in heaven), but it is *inseparable* from the *status creaturæ* and the *status viatoris*. Moreover, as an *ontological* deficiency, it is not a *moral* deficiency, or a moral evil. God has judged it good (even better) to create fallible intelligences, capable of sinning. This possibility of sinning is therefore not an evil in itself. What is an evil in itself is to sin *in fact*. But to sin *in fact*

²⁶¹⁶.*Cf. in the same sense MEYER. Th.. He (1900), 84. and MURRAY. 1966 (*End & Beginning*). 39.

is to *misuse* freedom. f) Just as psychological freedom is given to man *to do good* in spite of the possibility of not doing it, so LR is given to man *to do good in spite of the possibility of not doing it, an indissociable clause*²⁶¹⁷ of human freedom (as *created and in via*).²⁶¹⁸ This dignity thus implies *some* freedom of coercion,²⁶¹⁹ making possible *even* the evil, which is however not the goal, nor the foundation of it.²⁶²⁰ h) The question is only to determine which category, which quantity, which degree of "evil" one has the right, the permission or the duty to prevent. This question arises at the level of the limits of the abuse of the right.

II) *Civil liberty rights correlative to state incompetence*

We will now see that the general principle of freedom from coercion deriving from the dignity of man implies freedom from civil coercion (the famous "rights of freedom"),²⁶²¹ "Indeed, the human person is the subject, the foundation and the end of all social life (Pius XII, John XXIII)."²⁶²²

"Because it is the effective guiding principle of human societies, authority must conform to man's nature and respect his dignity as a reasonable and free being. Now for the free man, the only really effective direction which safeguards the dignity of the person, is that of moral obligation, exercised by the immaterial constraint of duty. [...]"²⁶²³

"Under the evangelical inspiration, often ignored but active, the profane conscience has understood the dignity of the human person and it has understood that the person, while being part of the State, transcends the State by the inviolable mystery of his spiritual freedom and by his vocation to absolute goods. The *raison d'être* of the State is to help him/her to conquer these goods and a truly human life."²⁶²³

"The State is therefore destined, out of respect for individuals, to provide men with the conditions for a perfect life, by protecting the rights and dignity of the person (life, integrity, temporal goods, reputation, education, etc.). Moreover, in order to promote an orderly use of man's freedom, so that he uses it as often as possible for his good, for morality, honesty, religion, charity, etc, the State cannot compel it (right of association, to marry, to found a family; religious duties, etc.): it is also its duty to help, to make up for the inadequacy of the activities of individuals in view of the common good, to prevent (by just and honest means) what may harm the public good, without ever forbidding or denying the natural faculty of acting within the limits of honesty and public order."²⁶²⁴

This is the framework of *DH's* doctrine. *It is* not in all its aspects that man is part of society. But the principle of totality can only apply to a whole as such with regard to a part as such (0751.). Society thus plays the role of a *means* of enriching and perfecting individual persons, from the point of view that they transcend and finalize it.²⁶²⁵ This is the conception of the common good that is present both in *DH 6* and in John XXIII (0809.) and Pius XII,²⁶²⁶ and even Pius XI²⁶²⁷. Indeed, the State is charged (contrary to the Church) not to lead men *directly* to their supernatural perfection, but to *assure* them (not only negatively, but positively) *the conditions* of life allowing them to reach their own perfection, by means put at their disposal (the principal one being the Church) (cf. John XXIII). Consequently, we can see **a difference of emphasis, not an opposition of doctrine, between the popes of the XIX^e century and those of the XX^e**. The former were more concerned with asking the State to channel man towards the good through moralizing laws. The latter, without neglecting this aspect at all, demanded of the State an even more fundamental request, that of respecting the primordial rights of man, and thus creating the indispensable atmosphere for man to move towards

2617 We reserve here the case of the Holy Humanity of Christ.

2618 See RAHNER, K., 1955,181.

2619 Cf. RECASENS. 1966.11-12,610-611.

2620 Cf. VACANDARD, 1904,7, quoted by CHÉNON, 1921 (ed. 1928), n° 58, note 1.

2621 Cf. LEHEN, 1,1 (1876),412.

2626 See MURRAY, 1968/1966.10,29,569.

2623 MAR1TA1N, *Works*. 07.728 = (1943). 54-55.

2623QTTAV1AN1. 1954.307-308 of the 1936 ed., translated by GONNET, 1994.113-114. noie 36.

2625 cf. our Chap. on St. THOMAS (especially 0233.).

2635q70j3; 0708.; 0709.; cf. 0730.; 0724.1 ; 0750.; 0785.

2627 0670.7 ; 0680.2.

the good.²⁶²⁸

A) The general principle of freedom

Human rights are not only, according to Pius XI, Pius XII and John XXIII, a requirement of the common good, but they are its most precious part (0730.2). They cannot be restricted for the apparent sake of the common good, nor can the common good be set in opposition to them.²⁶²⁹ * The protection and promotion of these rights is a capital task of the State.²⁶³⁰ Now among these fundamental rights, Pius XII listed various freedoms, including "the right to worship God," etc. It follows that these "**rights of liberty**" are also part of the essential common good. Therefore, *a priori*, and unless they run up against other elements that are *also* part of this core of the common good, they are "possessions", i.e. they have "*priority*". Thus, by virtue of the axiom: *odiosa restringi effavores ampliari*, it is not enough to restrict the exercise of these rights if one has the *possibility* of doing so; one must be forced to do so by *necessity*.^{Λ2}

B) The "natural rights

For the modern "jusnaturalist" conception, natural law is not a law inscribed in the being by Nature or by God, but a rational regulation (thus made by *man*) of human relations made necessary by life in society.²⁶³¹ On the other hand, for the "classical theory of natural law", that of s. Thomas, extended by Vitoria, it is not a law inscribed in being by Nature or by God. Thomas, extended by Vitoria,²⁶³² Suarez, etc., and the magisterium, the rights inherent in man are a gift from God, a gift that derives from the divine image imprinted in man, and inscribed in an "absolute order of values and ends" (therefore of tendencies)²⁶⁴² and of relationships.²⁶³³ Human reflection intervenes only to discover these pre-existing rights from experience.²⁶³⁴

1) The "human rights"

It is recognized that the UDHR of 1948, although it may be subject to the most explicit reservations on certain points,²⁶³⁵ and that it constitutes a compromise text acceptable even for nations with a non-Christian or even non-theistic culture, was not drafted in the same positivist spirit as the DDHC of 1789/91.²⁶³⁶ It goes without saying that the UDHR of 1948 aims to protect man

2628 presentation different from MURRAY, 1966.05 (*ConeUluftil*) 15.

263 "cf. MADIRAN, 1961.25-27.

2639 Cf. MURRAY, 1966 (MILLER), 575. Idea already present in S 36: 5 RS, A.S. 1V/V, 153.

2631 Cf. ABBAGNANO, 1992, art. "Giusnaturalismo", 437 and "Diritto", 252.

2632 Cf. 0312/B. VITORIA Francisco de, O.P. (t 1546), *Comentarios a la Segunda Segunda: de Santo Tomás*, ed. BELTRÁN DE HEREDIA, Vicente, O.P., Salamanca, 1932-1935, 5 vols. (*Biblioteca de Teólogos Españoles dir. por los Dominicos de las Provincias de España*, vols. 2-6) *, we have consulted only the 1.1: *De Fide et Spe (gg. I- 22)*. Salamanca. 1932.380 p. See p. 190-196 (In 2. 2. De Fide. Quæst. X. an. VIII); 202-203 (art. XI); 203-212 (art. XII); 220-235 (Q. XI. an. 111-IV).

2633 Cf. LEHEN, 1.1 (1876²). 323. § 208.

2634 Cf. puv, 1967, 393-394 *, and already PAQUET, 1877, 23-24: "Natural rights, which are also called primitive or absolute rights as opposed to acquired, derived and conditional rights, are all a consequence of the dignity inherent in the human personality. This dignity and the absolute rights which derive from it, are found in all men, and are clothed with a sacred and inviolable character."

2635 Reservations mentioned by 0819.4: AAS, 1963, 295-296; DC. 538, as recalled by 0954. PAUL VI, 1968.04.15: Autograph message *We have learned*, for the 20th anniversary of the UDHR; AAS. 283-284: "If this declaration may have 'raised objections and been the subject of justified reservations', as Pope JOHN XXIII noted, there is no doubt, however, that it marked an important step 'towards the establishment of a juridico-political organization of the world community', as the unforgettable Pontiff I-I also joyfully pointed out."

2636 See ANDRÉ-VINCENT, 1980.03-04, 92; and BOUTÉ, 1975.41. Nevertheless, among other things, these declarations remain ambiguous as to the *equality* of rights. Indeed, it is necessary to insist on the existence of an inequality of acquired rights finalized by the functional or organic necessities of society (cf. 0792.1) and ANTOINE Ch., 1925,1527.

from the evils of legal positivism and therefore of totalitarianism²⁶³⁷ which in fact originated in the DDHC of 1789.^{26w} Hence the Church's unwavering condemnation of the first²⁶³⁸ and its partial acceptance of the framework of the second. The reason is simple: it is no longer a question of human rights against the hold of God, of Revelation!²⁶³ e t de the Church on society²⁶³⁹ and the State,²⁶⁴⁰ _33 but of human rights against the hold of the State on society and the individual. In terms of the "rights of liberty", we can say that we have moved from the "European" to the "American" conception.²⁶⁴¹

Of course, in the UDHR in particular, one must also regret the absence of explicit reference to the source of all rights (God)²⁶³³ and the statement of false rights (right to divorce, etc.), not to mention the equating of all sorts of rights of different importance and the vagueness of the definitions.²⁶⁴² Nevertheless, one should not despair of the development of this type of concrete agreement in the field of human rights,²⁶⁴³ and one should also consider its positive contribution: 1° it is not only the legislation of the State that is the basis of the right;²⁶⁴⁴ * and 2° there are not only "rights of liberty" but also "social rights",²⁶⁴⁵

2) *The "fundamental rights of the human person*

²⁶⁶⁰DH seeks to determine the part of truth contained in this UDHR (art. 18), and does so using a framework of thought, precision and vocabulary that are quite different from those of the "fundamental rights of the human person" of the previous magisterium (cf. *DH* 1, § 3). These "fundamental rights", more than individualistic claims, are the primordial rules, the ultimate ends of social life; they are "duties of others".²⁶⁶¹ More than rights, they are the foundations of law.²⁶⁶² Their purpose is to protect the person in the pursuit of his moral interests,²⁶⁶³ and to provide him also with the positive means to pursue them. Since these moral interests are equal for all men as men, the corresponding fundamental rights are obviously equal for all. The radical moral interest is to be able to "follow the will of God *in civitate, nulla re impediens*".^{26M} As an essential protection of human action as human.

²⁶³ICF. PA VAN, 1965,143.

²⁶³⁷ Cf. APOLLIS, 1989,53.

²⁶⁵⁰COSTE, 1988b, 471.2, unjustly criticizes the earlier popes.

²⁶³⁹ Cf. MURRAY, 1953.12, 562: separation in the "continental" sense meant: "the freedom of society front religion".

²⁶⁴⁰ Cf. SOLER Cayetano, 1911.5.

²⁶⁴¹ Cf. already LIBERATORE, 1876.01.24, 278; or pp. 280-283; 284 (lists all active or passive religious acts of the U.S.A.),

²⁶⁴² See BLÁZQUEZ, 1982.126.

²⁶⁴³ Cf. MAUK. 1949,405.

²⁶⁵ Cf. BARILE, 1984,12 and B1FF1, 1990a, 581.

²⁶⁴⁵ Cf. COSTE, 1982, 14/19 (and p. 22).

²⁶⁶⁰ Cf. e.g. DALLA TORRE, 1977,344-345; or SÁSTRE-SANTOS, 1985.472.

²⁶⁶¹ See ANDRE-VINCENT, 1976,146.

²⁶⁶² cf. ANDRE-VINCENT. 1976.150 and 151.

²⁶⁶³ Cf. OEWIRTH, 1982. 1: 1. *The Concept of Human Rights*.

MM See MARITAIN, 1942.661.

therefore responsible, is therefore freedom, "es of which the law is in essence a protection."⁶ "

On the other hand, as all the popes from Leo XHI onwards have taught us, "the State is at the service of families, at the service of individuals, and not individuals and families at the service of the State."² ⁶⁷ The State must therefore protect in particular the fundamental rights of freedom and harmonize the exercise of these.²⁶ "

Conclusion: The dignity of the person is the basis of the RL in particular

To the general principle of liberty and of the "rights of liberty" considered above, especially at the level of subsidiarity,²⁶⁴⁶ there will be added, in the religious domain, an additional consideration: namely, the fact that the relationship between man and his God is even more particularly outside the jurisdiction of the State (a fact which is called the "principle of transcendence").²⁶⁴⁷ "7o

"In fact, if the State is assigned as its field of action the profane and the temporal, in the spiritual and transcendent domain, reserved for another authority, of different origin and nature, man can proclaim before its power his own autonomy, his own independence, his own freedom, opposing it with the limits that are assigned by the very end that this power must favor.²⁶⁴⁸ In other words, in front of the State, man keeps his full freedom of conscience. In the inner sanctuary of his beliefs and ideas, he is responsible to God and not to the State.²⁶⁴⁹ which has no right or power of any kind to dictate and impose a certain way of thinking, believing, worshipping, and, if it does so, as unfortunately happens in totalitarian regimes, it oversteps the bounds of justice, infringing a sacred and fundamental right of the human person." ²⁶⁷

²⁶⁴⁶ cf. PAVAN, 1967d, *U nam Sanctam*, 60,171-172.

²⁶⁴⁷ cf. PAVAN, 1967d, *U nam Sanctam*, 60,168.

²⁶⁴⁸ Cf. PAVAN, 1967d, *Unam Sanctam*, 60,174-175. Cf. also POULAT, 1990.12,21-22.

²⁶⁴⁹ See also PAVAN, 1967d, *U nam Sanctam*, 60,172-173.

CHAPTER 5.

5. THE RELATIONSHIP TO GOD, THE PURPOSE OF LAW (DH 3)

"He who named religious liberty, named the holiest and most inviolable of all liberties. The man who is most blessed with the gifts of fortune is but a vile slave if the hand of another man comes to hinder and regulate the aspirations of his soul, and, on the contrary, the poor man can be proud in his misery if nothing stops the flight of his intelligence and his heart towards God I--J. "2674

AFTER having proclaimed the existence and the essence of law, and its real foundation in the subject, we must provide its *raison d'être* outside the subject, that is the question of the alleged reasons for the existence (or question of the finality) of law (DH 3). Our analytical reading of DH 3 (5.1.) will be completed by an explanatory synthesis (5.2.).

5.1. Analytical reading of DH 3

DH now provides the reasons why God has placed this right in man. Very logically, since freedom is 1° self-determination and 2° absence of constraint, DH 3 studies: 1° the self-determined movement toward divine truth (§§ 1-2); 2° the incompetence of civil power over this movement (§§ 3-5).

5.1.1. The movement towards God, the true *raison d'être* of law (DH 3, § 1-2)

The search for truth is I) obligatory (§ 1); II) free (§ 2).

I) DH 3, § 1: *The obligation to search for the divine truth*

DH3, § 1 develops the argument - contained in DH 2, § 2 -267sd, *the obligation* to search for the truth.

1H At the top, the *measure of* movement (the divine law):

"All this becomes even clearer to those who consider that the supreme norm of human life is the divine law itself, eternal, objective, and universal, by which God, in the design of his wisdom and love, orders, directs, and governs the entire universe and the ways of the human community. "2676

²⁶⁷⁴ KELLER, 1865,333 (see p.340).

²⁶⁷⁵ Cf. S 35:5 RS, A.S. 1V/V, 150.

²⁶⁷⁶ "Qua; clarius adhuc patent consideranti supremam humane vita? nonnam esse ipsam legem divinam, aeternam, objectivam atque universalem, qua Deus consilio sapientia? et dilectionis sua? mundum universum viasque communitatis humane ordinat, dirigit, gubernat."

Note here 1° *the objectivity* of this divine law and its *universality*; 2° the fact that it governs the human *community*, and not only the individual.

[II] At the lower level, the *motive* (man), with [A] the starting impulse (the *participation of* the divine law); [B] the motor (the *duty*) and [C] the path (the *right*); [D] the immediate (the use of adequate means) and medial (the right and true *conscience*) term:

"God shared this law with man, so that he, by virtue of a gentle provision of divine providence, might recognize more and more the unchangeable truth (3).²⁶⁷⁷ 1B] For this reason, it is the duty, and therefore the right, of everyone to seek the truth in religious matters, so that by the use of suitable means he may form right and true judgments of conscience."²⁶⁷⁸

Thus [A] the Finality is indeed truth; [B] like any duty, it generates the right to fulfill it; [C] the right protects the search. This search for truth gives no right to/spread its errors, but error does not necessarily produce the right of others to repress.²⁶⁷⁹ [D] However, the search is not its own Finality, which is the sincere adherence to the true.

II) DH 3, § 2: *The free mode of the search for truth*

This leads us, therefore, to study the relationship of power to act that exists between the *search for truth and adherence* to truth, a relationship that is itself analogous to that between nature and supernature, between belonging in power and belonging in act to the Church, for *DH* clearly considers man precisely insofar as he is in the power of truth and of belonging to the Church (*DH*) and *DH2*, § 2).²⁶⁸⁰ More precisely, it is a question of the elision of a movement (*actus entis in potentia in quantum est in potentia*) towards the truth. One can conceive this movement as the result of a call, of a vocation from God: this was the perspective of the first schemes of *DH*.²⁶⁸¹ * One can also see it as a dialogue between God and man.²⁶⁸¹ And one can consider the RL as a kind of first, initial act, of inferior analog of the *libertas christiana*, even of the *H- bertas Ecclesice*, especially if one takes into consideration the adherence to the partial truths, to the *semina Verbi* present in the religions mixed with error.²⁶⁸² This is the construction of J. Fuchs.²⁶⁸³ It is therefore necessary to take a closer look at the movement of the inferior analogue towards the principles *analogatum* or *analogatorum*.

M⁸ ' Ancel, during a famous intervention, ²⁶⁵ explained that the RL is finalized by the accession (obligatory as the text will specify) to the truth, independently of the subjective disposition of the man. ²⁶⁶ Now, the man must all his life seek the religious truth, and unceasingly more. In spite of this, he always remains distant from the perfect truth seen face to face. In particular, the non-Catholic is distant from the truth in matters of religion, which he must nevertheless seek. The point is to determine under what *conditions* he should seek it and adhere to it. First of all, the right to adhere to the partial truths contained in non-Catholic religions and confessions does not pose any particular

V>n Note (3): Cf. S. THOMAS, *Summa theologica*, I-II, q. 91, a. 1; q. 93, a. 1-2. [This note is missing in many unofficial editions, and even in the booklet distributed to the Fathers in view of the public session of December 7, 1965, p. 14; the numbering of the notes is therefore shifted].

267" "Huius suae legis Deus hominem participem reddit, ita ut homo, providentia divina suaviter disponente, veritatem incommutabilem magis magisque agnoscere possit³. Quapropter unusquisque officium ideoque et ius habet veritatem in re religiosa quaerendi ut sibi, mediis adhibitis idoneis, recta et vera conscientiae iudicia prudenter effermet."

2679 cf. s 17 (3):AS. IV/1,189, § IV. De difficultatibus motis circa schema, 3) *Quoad regulam iuris*.

²⁶⁸⁰ DH 2. § 2 explicitly takes up this theme.

26K2 Cf. e. g. FUCHS, 1968,576-577.

26X3 cf. FUCHS, 1968,580, probably joined here by BARTHE, 1994.06.

2^aCf. FUCHS, 1968.578 or 581.

problem. This right derives even from an affirmative permission or even from a moral obligation. The difficulty concerns the adhesion to the errors with which these truths are mixed. *267 And it is solved as usual by considering the abuse of the right.²⁶ **

Research sometimes leads *per accidens* to adherence to error,²⁶ ⁹ tolerated in the name of the natural right²⁶⁸⁴ to seek the truth, and as a simply moral (not juridical) abuse of a certain right.²⁶⁹ - Such an abuse, the coercive power has the obligation in justice to tolerate it, justified by the search for a "greater good" or a "lesser evil". The double "greater good" consists in 1° the respect of the *freedom* of coercion, thus of a *no man's land*, of a "free zone", allowing man to develop a free, *responsible* action 2° in the respect of the *truth*, worthy of being freely embraced as *truth*.² TM Moreover, the foundation of the right to the RL is the dignity of the human person, *insofar as he or she is obliged* to freely search for the truth about God.²⁶⁹ 4 Coercive power could only intervene in the case of *legal* abuse, crossing the legal boundaries of the law. In our opinion, *DH* is thus perfectly right to present (4 times) the duty to seek the truth as the main argument in favor of the RL.²⁶⁸⁵

DH 3, § 2 develops the argument of the *mode*, more exactly of the *external means* of truth-seeking. This means is again determined in a tripartite way by [A] the starting point, the person, considered in his dignity and [2] his sociality; [B] the type of movement: [1] globally, a (legally) free search; [2] in particular, the various concrete social modes of communication; [C] the end of the movement: the conclusive adhesion of the search:

"1A. But truth is to be sought in the manner proper [1] to the dignity of the human person and [2] to his social nature, [B] that is, [J] by free inquiry, [2] by means of teaching or education, communication, and dialogue, by which some expose to others the truth they have found or believe they have found,²⁶⁸⁶ in order to help one another in the search for truth: (CJ) but to the truth once it is known, it is necessary to adhere to it firmly by personal assent."²⁶⁸⁷

5.1.2. The incompetence of the State over this movement {*DH* 3, § 3-5}.

Here, the argumentation follows three stages: I) *DH*3, § 3 first reasons about the *good to be protected* by the law in the active subject (conscience, religion); II) *DH*3, § 4 draws a conclusion about the *object* of the law; III) which allows the transition to the *passive subject* of the law, legally incompetent in religious matters.

I) *DH* 3, § 3: *The good to be protected: conscience and religion*

DH 3, § 3 argues in terms of A) the mediation of consciousness, and B) the nature of religion (interiority, sociality).

A) *The nature of the conscience, a good to be protected by law*

[And first of all, we pass here to the *internal means* of searching for the truth: the mediation of the conscience: [A] its necessity; [B] hence a duty; [C] hence a right [11] of non-coercion; [2] of non-impediment :

"However, man perceives and recognizes the precepts of the divine law through the mediation of his conscience; he is bound to follow it faithfully in the totality of his activity, in order to reach God, his end. He must not, therefore, be

²⁶⁸⁴ See KINDREGAN, 1970. 51.

²⁶⁸⁵ Against MURRAY, 1966 (MILLER). 570-571.

²⁶⁸⁶ On this last expression, cf. S 66: 6 RS. AS. IV/VI, 737-738, § 11, already mentioned, and S 67: 6 RS. modus 14./t.S.IVZVI, 738. 2697" Veritas autem inquirenda est modo dignitati humane personae eiusque natura sociali proprio, libera scilicet inquisitione, ope magisterii seu institutionis, communicationis atque dialogi, quibus alii alii exponunt veritatem quam invenerunt vel invenisse putant, ut scse invicem in veritate inquirenda adjuvent: veritati autem cognita firmiter; adharendum est assensu personali."

compelled to act against his conscience. But neither must he be prevented from acting according to his conscience, especially in religious matters.²⁶⁸⁸

1) *Upstream of the action, DH wants to protect the conscience*

As early as *DH 1*, the goal pursued as more in conformity with human dignity by the claim of the RL is to make it possible for men to act *officii conscientia ducti* (cf. 0286.). With such an expression (almost identical to that of Leo XIII, 0616.19), *DH 1* makes the possibility of following one's conscience a good to be protected by freedom, an end of the law. In *DH2*, § 1 the expressions "against one's conscience" and "according to one's conscience," designate an aspect of the active subject to be extended by the RL.⁹⁹ *DH 3*, § 3 develops this theme, again in the sense of the end to be protected by law, namely, free conscientious access to truth and to God.

2) *Upstream of the conscience: the law. DH wants to protect a conscience that is not exlex, but a divine sanctuary.*

To speak of the *rectitude* of the conscience supposes the existence of a *rule* of it, but not that the subject follows the *right* rule of the conscience. It is enough that the conscience feels weighing on it obligations / values *that it does not create*.^{2 TM'}

[1]^eThe popes of the 19th century condemned the idea of a conscience without law and that of the right to follow this *exlex* conscience, or the right not to have a conscience. What Leo XIII and Pius XI expressly condemned, in the theory of the "LCC", was the claim to a right for each person to be able to "at will, render or not render worship to God" (0616.19); to correspond to "[c] *exlex unius cujusque conscientia Judicium; [d] liberrimæ de Deo colendo, de non colendo, sententiæ*" (0611.18); to "signify the absolute independence of conscience" (0675.2).

[*DH* professes the regulation of conscience by law, and the obligation to follow one's conscience. In the Catholic perspective, that of Vatican II, and of natural morality, the judgment of conscience refers to a rule or law located *outside of oneself*:

"In the depths of his conscience, man discovers the presence of a law which he has not given himself, but which he is bound to obey. This voice, which never ceases to urge him to love and do good and avoid evil, at the appropriate moment resounds in the intimacy of his heart: "Do this, avoid that." For it is a law written by God in the heart of man; his dignity is to obey it, and it is this law that will judge him Icf. *Rom 2:14-16*]. Conscience is the most secret center of man, the sanctuary where he is alone with God and where His voice is heard." oi²⁷

Several conclusions follow: 1. Conscience is not lawless. 2. Conscience is not its own law. 3. The conscience of a subject expresses the law to him. 4. The conscience seeks the law to express, because it judges according to a rule that it *knows other* than itself.

"In the same way, the Council declares that this twofold duty [to seek the truth and to adhere to it] concerns man's conscience and obliges him" (*DH 01*, § 3, beginning).

"But the faithful of Christ, in order to form their conscience, must take into serious consideration the holy and certain doctrine of the Church" (*DH 14*, § 2).

[The conception of conscience according to *DH* is not, therefore, the one condemned by the

²⁶⁸⁸ "Dictamina vero legis divins homo percipit et agnoscit mediante conscientia sua ; quam tenetur fideliter sequi in universa sua activitate, ut ad Deum, finem suum, perveniat. Non est ergo cogendus, ut contra suam conscientiam agat. Sed neque impediendus est, quominus iuxta suam conscientiam operetur, præsertim in re religiosa."

popes of the XIX^c century, a rationalist and naturalistic perspective foreign to the

M "Cf. CARRILLO, 1967b, 29-30, and PAVAN. 1980,387.

27"^m Cf. KÖNIG, 1966.335. note 2.

2701 (*JS* 16: transl.: *Cerf-VATICAN H. t. III, 33. After the word "hear" read note refers to our 0745.2. See also the commentary on GS 16 in 1219. Veritatis splendor, 54-64, especially 57-61; 1GPII 16/2 (1993). 212-220, especially 214-217.*

Vatican II (*GS* 16) and the later magisterium (e.g., *Veritatis splendor*)?TM In *DH's* conception, "conscience is not *legis-lator* but *legis-mediator*: it is the interpreter of a higher law which it applies to this or that concrete and present situation. "27-"

3) *To act according to one's conscience is not to act as one wishes*

[I] Between law and action, conscience is an obligatory mediation of the divine law. The will of God is known to us through objective sources and through subjective sources. The objective sources are human nature and experience studied rationally; the written and transmitted Word of God received under the guidance of the magisterium. These objective sources are perceived by intermediaries interior to the subject, or "subjective": *synthesis* and the judgment of conscience. The latter is the ultimate judgment before the "practical" judgment informing (= specifying) the voluntary election (= choice). It is destined to be the proximate (not sovereign, not ultimate) rule of it^{27a} as it expresses the application of the divine law to the object of this "practical" judgment, the obligatory passage of all objective information about God's will to the "practical" judgment (*DH* 03, § 3).

[II] Downstream from consciousness: acting according to one's consciousness. 1° there are four modalities of regulation of the action by the consciousness; 2° there are two ways for the action to be situated in relation to the consciousness; 3° from which follows the formal difference between "acting as one wants" and "acting according to one's consciousness".

[III] The four kinds of moral consciences are respectively *conscientia prohibens*, *permissens*, *suadens*, *imperans*.

2° Following articles 5 and 6 of question 19 of I-II of St. Thomas, it is necessary to distinguish between two cases: (a) The obligation *not to go against* one's conscience has meaning only for *conscientia prohibens* and *conscientia imperans*?TM *Conscientia prohibens* presents itself as a prohibition of God. As a negative precept, it obliges *semper and pro semper*. It never admits of an exception. It obliges one to abstain. To go against it is to perform an act, whereas it forbids it. *Conscientia imperans*, as an affirmative precept, obliges *semper sed non pro semper*, that is, it can be accompanied by a permission (and thus by a second judgment, of *conscientia permissens*) to postpone the accomplishment of the precept to other circumstances. To go against the latter is to abstain *without sufficient reason*. (b) As for *following* one's conscience, the question is broader, as we know. There may be prohibition, precept, advice or permission. It is only in the case of prohibition and precept that there is obligation. And it is that of an affirmative precept.

2702 On the possible confusions, cf. n° 31; A4S. 1993.1158-1159; DC, 1993,912.

2703 MURRAY. 1945.06 (4). 207. 2.

2704 cf MURRAY, 1966 (*End & Beginning*), 23.

2705 However, the Council did not want to restrict the right to an impelling or forbidding conscience: cf. S 91: 6 RS. AS. IV/Wh 769: it is broadly speaking about "personal persuasion".

Consequences. 1° There is an important difference between "forcing a man to act against his conscience" and "preventing a man from acting according to his conscience". Indeed, in the first case, one compels a man to a formal sin; in the second, the man thus constrained can believe himself exempted from the positive precept, because of a serious fear for example...²⁶⁸⁹ 2° Even if one prohibits a man from acting positively in all ways except one, he is not compelled to act positively in this unique remaining way. He can indeed simply refrain from acting. Therefore, one cannot *demonstrate* the existence of a right not to be prevented from acting in such a positive way *from the mere* right not to be compelled to act in a contrary positive way.

3° To act according to one's conscience is not to act as one wishes. As soon as one does *not* take as a *basis* for the right to freedom the absence of moral obligation (or indifferentism, or the idea that conscience is its own law, that it is *exlex*), this *entails* that the very *object of the claim changes*. For the LCC theory, it is good for the law to protect "acting as one wishes"; whereas for *DH*, it is good for the law to protect [not to be prevented/coerced] from acting [positively or negatively! according to what conscience dictates. To act according to one's conscience is very often not to act as one wants.²⁶⁸⁹

4) *Why conscience is to be protected*

- To live according to one's conscience is already a good in itself:

"A society which, by its organization and the spirit which reigns in it, makes it considerably difficult for the individuals who live within it to be faithful to their conscience, constitutes a perpetual threat to freedom of conscience; social reform must still have the cowardly task, in the name of the right of conscience, of creating an order in which each person can live according to his or her conscience without being forced into a permanent heroism of which most men are not capable. M²⁶⁹⁰

""

- To make it possible "to act according to one's conscience" is an authentic objective juridical good to be protected, because in this way a social atmosphere is built that *favors* the taste and the search for the *objective truth*, *ulterior* aim of the law,²⁶⁹¹ and that the dignity of the person, foundation of the law, requires.²⁶⁹² In fact,

"The more the right conscience prevails, the more individuals and groups move away from blind decision making and tend to conform to objective standards of morality."²⁶⁹³

It is a question, therefore, of a good end that, like the "consideration towards those who with a good conscience (even erroneous, but incorrigible) are of different opinion", justifies the tolerance towards the only moral abuses committed in this search.

5) Moreover, it is the search for the most important truth, religious truth.^{27 -2} Thus, the right to RL is a *right of God* to receive from his creature a homage obtained without coercion, the only valid one in his eyes, as the Apologist Fathers had already noticed.²⁷³ The RL, in its *finality*, *causa causarum*, is thus a *libertas ad* (*ad veritatem amplexandam*).²⁶⁹⁴ And in its *formality* the RL is a *libertas a* ("*a coercion*", not "*a religion*"). Hence a great difference between the RL of *DH* and

²⁶⁸⁹ Point highlighted by LUCIEN. 1992.03.14.

²⁷¹LT HARTMANN. 1958.209.

²⁶⁹¹ Cf. K1NDREGAN. 1970.53.2; MEJ1A, 1991.78; and C/C83, can. 748, § 1.

²⁶⁹² Cf. JIMÉNEZ-URRESTI. 1968. 591. The foundation of the RL is not directly the common good; cf. S 89 :

6 RS, modus 2, A.S.1V/V1, 767 [73 L

²⁶⁹³ CS 16 : translation : Cerf-VATICAN II, 1.111. 33.

²⁷¹ Cf. PAVAN, 1968,632;cf. the error of one PICOZZA, 1975,426.

the LCC. ²⁶⁹⁵³

6) Finally, it respects the way in which God has "made" man, who adheres to the truth through the mediation of conscience.

The fact remains that, according to *DH*, man must be free in order to follow - but not because he follows - his sincere conscience.

B) The nature of religion as a legally protected good

DH then continues with the nature of *religion*, both internal and social. This nature implies ;A] negatively, as for the non-social religious acts, the subtraction from the purely human power; |B] positively, as for the social religious acts: 11] the externalization; [2] the communication; [3] the communal profession:

"For the exercise of religion, by its very nature, consists first of all in voluntary and free internal acts, by which man orders himself directly to God: such acts can neither be commanded nor forbidden by a purely human power. (4)²⁷ -²⁶⁹⁶ (B) For its part, the social nature of man requires [1] that man express outwardly the internal acts of religion, (2) that he communicate with others in religious matters, (3) that he profess his religion in a communal manner."²⁶⁹⁷

II) DH 3, §4 : How to protect this property : the object of the right

DH3, § 4, thus draws the object of the right, the free exercise of religion, within the right limits:

"Therefore, it is an injustice to the human person and to the very order established by God for men, if one denies man the free exercise of religion in society, being except the just public order. "271"

Only the violation of just public order legitimizes the denial of liberty in court, not error or bad faith.

III) DH 3, § 5 : From whom this good must be protected; transcendence of religion

DH 3, § 5 confirms his argument by [I] *the transcendence of religion*, which generates [III] *the legal incompetence of the public authorities in religious matters*, | A] if not for [1] recognize and [2] favor; |B] at least for [1] direct or [2] prevent :²⁶⁹⁸

"I] Moreover, religious acts, by which men in private and in public order themselves to God according to their intimate conviction, transcend by their very nature the earthly and temporal order of things. [II] Consequently, it must be considered that the civil power, whose proper aim is to watch over the temporal common good, [A] if it must certainly [1] recognize and [2] favor the religious life of citizens,²⁷²⁹ |B] goes beyond the limits of its attributions, if it dares [1] to direct or [2] to prevent religious acts."²⁷²

This incompetence is expressed in the form of "crossing limits" (limits are recognized here as the "interface" between law [limited by just public order] and civil power [similarly limited, but in the other direction]).

2695 The LCC was indeed an "*Ubertas a religione*". Cf. BALLERINI, 1874.02.21, 518 and 519. We believe that FONTAINE, 1993.06, 15 (repeating the argument of ARGOS, 1984), was confusing. After reading LRTC, the A. corrected his view: cf. FONTAINE, 2001, *passim*. Cf. also PAVAN, 1980, 387 (on freedom as a right/duty); RODRÍGUEZ, Victorino, O.P., 1966.04-06,316-317.

2696 Note (4): Cf. IOANNESXXXIII, Litt. Encycl. *Pacem in terris**11 April 1963: AAS 55 (1963), 270; PAULUS VI, *Nimius radiophonicus*, 22 Dec. 1964: AAS 57 (1965), pp. 181-182; S. THOMAS, *Summa theologica*, M.I. q. 91, a. 4. c. | Same remark as for the preceding reference to S. THOMAS OF AQUIN. J

²⁷⁷ "Exercitium namque religionis, ex ipsa eius indole, consistit imprimis in actibus internis voluntariis et liberis, quibus homo sese ad Deum directe ordinat : huiusmodi actus a potestate mere humana nec imperari nec prohiberi possunt* . Ipsa autem socialis hominis natura exigit, ut homo intemos religionis actus externe exprimat, cum altis in re religiosa communicet, suam religionem modo communitario profiteatur."

2698 cf. already *Syllabus*, 44; and 0772.2.

As far as the State is concerned, to intervene when the existence of the common good is not at stake is to go beyond its remit.²⁶⁹⁹ And to intervene coercively when the common good to be coercively defended is not at stake is to abuse its power, and thus to commit an injustice.²⁷⁰⁰ Indeed, St. Thomas lists among the causes of injustice in a law (in this case, it would be a repressive law) the fact that the person who promulgates it goes beyond the limits of his powers,²⁷⁰¹ -- even if its object is not in itself reprehensible. Subsidiarity requires, moreover, that the state should not have the right to intervene unless its inferiors (individuals and societies) are not able to achieve their objectives by themselves.²⁷⁰² This is, in fact, one of the most fundamental principles of the Church's social doctrine.²⁷⁰³ This obviously offers the risk of a statistically inevitable number of bad actions, but this risk²⁷⁰⁴ itself is necessary for the common good, which is impossible to achieve with constant state intervention.

It is obviously not a question of reducing the common good sought by the State to purely material aspects.²⁷⁰⁵ Thus, the state must care about the practice of religion²⁷⁰⁶ (and even care about the practice of true religion).²⁷⁰⁷ "1 "

Therefore, when the religious activity of an individual, a family, a group of people does not harm the just public order, the indispensable task of the State, the latter commits an injustice by "directing" or "preventing".²⁷⁰⁸ The State has, therefore, the duty of justice to grant a space of civil freedom.²⁷⁰⁹ In this way, a legal reality is perfectly logical which, seen from the side of the State, is called "limit of its legal competence of coercion" or "obligation of non intervention"²⁷¹⁰ and, seen from the side of the subject, is called "right of freedom".²⁷¹¹ -t One perceives thus clearly its negative character (not to be forced, not to be prevented),²⁷¹² and one sees also that its object is *not the action of the subject*, but *the abstention* of the State and the *other* subjects.²⁷¹³ These rights of freedom were unfortunately conceived for a long time as a "self-limitation" of the State, in other words, a concession of the latter.²⁷¹⁴ In reality, it is the "*recognition* by the State of its own limits",²⁷¹⁵ limits

2699 LEFEBVRE Marcel. M^a. 1985.11.06, 10. a & b. specifies that it is "in the case of harmful social consequences" that the State can restrict freedom. 4 RS had attempted a synthesis, A.S. IV/I, 186 ff (extracts translated by LUCIEN. 1990. 273).

2700 See 0620.2, above. Principle taken up by 0674. : AAS. 1931.184; BP 07 11931], 101; PIN 632; 0737.

2724CL 0245.1-2, q. 96, a. 4. c.

2725CL REGAN. 1967,56.

2703 *Sur* je principle of subsidiarity, from which this consequence is derived, see: 0674. See: 0674 (AAS, 1931, 184-186 & 203; PIN638-640); 0809 (*Mater et Maestra*, 53.117.152); 0819 (AAS, 1963, 294; 1145). JOHN PAULLI. 1981.09.14, *Encycl. Laborem exercens*, AAS, 1981, 616; 1167. SCDF, 1986.03.22: Instruction *Libertatis conscientia*, De liberate Christiana et liberatione; AAS, 1987, 554-599 (here p. 586, no. 73); DC, 1986, 393-411; 1204. *CemeuHiHs anaux*, 48, § 4; AAS, 1991, 854; trans. Paris, Médiaspaul-Vaticane, 77 (with reference to 0674., AAS, 1931, 184-186).

2727er. COTTIER, 1964.07-10,112.

272" Cf. BROGUE, 1964, 118.

2706 This is explicitly admitted by DH3 and J.-C. MURRAY.

273üThis is explicitly denied by J.-C. MURRAY, but implicitly recalled by DH 1; 6; & 13.

2708 See BROGUE, 1964, 117-118. HARRISON. 1990, no. 31, 15-40, assumes (in our opinion wrongly) the temporary character of this part of DH (unlike DH 2).

2709 cf. already CAVAGNIS, 1891, no. 188, 123. This doctrine is that of *Resum novarum*. It is found in most of the works on the subject, often without any connection with the question of the RL (e.g. CA VALLERÁ, 1931,304-306).

2710 cf. FEDELE, 1963, 18-19, long note 20.

2711 Cf. BISCARETTI, 1960,728.

2712 See SOLER Carlos: 1993.01-06, 16-17.

2736c. f. CATALANO, 1957.37. § 10; RECASENS, 1966.11-12,612 and ROSA, 1967.02, 92.

2737cf. CATALANO, 1957,26-27. See also 1170: DC, 1987,360, and 1192/B., § 5: AAS. 1989,1350;DC685.

273 " Cf. SHTIÉN, 1963.03-04, 108.

determined by a previous or superior instance (God, "Nature", international law, or more simply a constitution).²⁷³ Finally, what most characterizes the rights of liberty is 1° their negative character and the difference that separates them from a positive authorization to do what one wants;^{274U} 2° their anteriority in relation to the State. In other words, the main change between the liberal conception condemned in the 19th century and the *DH* conception is the difference between the two notions of right at stake: on the one hand, the right-positive authorization given by the constituent people, or even by the State, and having as its object an indifferent action; on the other hand, the right-exigency, *which is only* negative, given by God and to be asserted before other men as such.

5.2. Explanatory summary.

The basis of the LR is not the basis of the LCC

1° *The foundation of the RL is not relativism or indifferentism.* The foundation of the RL is obviously not the error itself possibly professed by a man;²⁷ 4i moreover, of course, it is not either the indifferentism of the State, nor individual indifferentism (cf. *DH* 1, *DH* 3, § 1, *DH* 14).²⁷¹⁶ The right to the RL is not, therefore, a "moral right-permission to do what one wants in religious matters".²⁷¹⁷

2° *The foundation of LR is not subjectivism either:* The ontological dignity of the subject, unlike any "subjective disposition of the person", is an *objective* reality a) a first form of true subjectivism would consist in considering that there is no objective moral norm. It is rejected both by *DH* 3, § 1 ("the divine law... objective and universal"), and by *DH* 7, § 3 ("juridical norms, in conformity with the objective moral order"); b) We have already, like *DH*, rejected a second form of subjectivism, consisting in basing the law on the sincerity of conscience.

3° *The foundation of the RL of DH is not the "freedom of conscience" of the XIX^e century.*

a) Liberalism. Let us clear up an ambiguity: it is not only hypocritical liberalism (which persecutes the Church and is obviously condemned), but also sincere liberalism which was rejected by the popes of the 19th century.²⁷¹⁸ However, it is necessary to excuse from this condemnation the "1^{er} amendment" that governs American society.²⁷¹⁹ Dictionaries do not shed much light on the liberalism condemned in the last century.²⁷²⁰ It is better to look among theologians. We offer this characterization of the foundations of liberalism by one of its most persistent opponents:

"The liberal principles are : the absolute sovereignty of the individual, in complete independence of God and his authority; the absolute sovereignty of society, in complete independence of that which does not proceed from it; national sovereignty, that is, the right of the people to make laws and to govern themselves, in absolute independence of any other criterion than that of their own will expressed first by suffrage and then by a parliamentary majority; freedom of thought without any restraint, neither in politics, nor in morals, nor in religion; freedom of the press, whether absolute or insufficiently limited, and freedom of association, just as extensive its last word, the one which is the summary and the synthesis, is *secularization*, that is to say the non-intervention of religion in the acts of public life, whatever they are, true social atheism which is the last consequence of liberalism. B²⁷²¹

²⁷¹⁶ See WOLFE, 1983, 183.

²⁷¹⁷ Cf. USEROS, 1966,60 and HAMER. 1967a. 103.

²⁷¹⁸ LUCIEN, 1990,83, is right against UN, 1989; MADELIN such SESBOUÉ. 1986.10.

²⁷¹⁹ Cf. 0624. : *Longinqua Oceani*. Cf. MORTATI, 1950,12,641.

²⁷²⁰ Cf. LALANDE, art. Liberalism," 557-558; SPIRITO, 1934,36-40.

²⁷²¹ SARDÀ y SALVANY, 1975,5-6. Cf. also art. Liberalismo". *EncRelCat* IV (1953), 1291; 1293.

As we have seen, it is exactly such a system that the popes of the XIX^e century condemned, because, in short:

"The error of liberalism consists in denying the necessary relationship between human freedom and the eternal law, the sovereignly wise expression of God's will." ^g2722

The radical opposition of perspective between *DH* and this liberalism is then obvious. And this is true, as we have already seen, for the three forms of liberalism (rationalist, naturalist, mixed) condemned by Leo XIII.

b) "Freedom of conscience and worship". In the XIX^e century, there was a certain vagueness about the definition of "freedom of conscience", 5^o gradually²⁷²⁷⁻⁵ distinguished from "freedom of worship":

"Freedom of worship, or freedom of religion, is distinguished from freedom of thought or conscience, in that the latter is confined to the interior, while the former occurs outside." ²⁷²³

As for the "freedom of conscience", we note that :

"Freedom of conscience is seen as a liberation from Catholic dogma and morality. It is not, in the first place, freedom to believe, but freedom not to believe. And this rebellion against any transcendent or revealed norm is now the new dogma." ²⁷²⁴

As for freedom of worship, we learn from a great expert that it is :

"*facullas quant Status singulis civibus impertitur externis et placitis actibus Deum colendi, dum published omnes cultus, lege civili, iuribus et facultatibus æquiparantur, ita ut nullus anteferatur alteri, ne catholicis quidem in societate catholicis civibus constante.*" ^B2725

It is an indifferent positive authorization to act as one pleases, and a leveling (theoretical and practical) of religions, and is granted by an incompetent authority.²⁷²⁶ At the very least, the LR and the LCC do not have the same logical basis.

⁴*o* *La LR de DH is a form of true freedom of conscience, a right based on duty, already perceived in the XIX^e :*

"Freedom of conscience, as we understand it in this study, is therefore 'the right of the human soul to direct its religious life, under the responsibility of its choice before God, independently of any pressure from political power.'" ²⁷²⁷

We find the doctrine - and the difficulties - of the very text of *Libertas*. Some people limit the purpose of this freedom to acting in conformity with Catholic truth, ²⁷²⁸ ^{ma} is without questioning the question of protected misuse.

Conclusion

The "rights of man and citizen" are not the "fundamental rights of the human person".²⁷⁵⁸

1) The LR is not based on the same foundation as the LCC. The law according to Vatican II is based on duty; in the liberal conception, it is based on the absence of duty.²⁷²⁹ Indeed, Gregory XVI taught that the basis of the claim to freedom of conscience was indifferentism. In *DH*, the right has its foundation in the individual, but insofar as this individual is *relative to* God and not absolute.²⁷³⁰

²⁷⁴GDUTHOIT. 1938,72-73.

²⁷²³BAUCHER. 1926. Cf. already CANET, 1891,300. note 1.

²⁷⁵⁵MINNERATH, 1991,40.

²⁷²⁵OTTAVIANI, 1954.303. Read the note: "Hoc sensu libertas cultuum idem valet ac paritas cultuum: aliud vero est cum republica ita ordinatur ut unus habeatur cultus seu religio Status, servata ceteris cultibus libertate exercitu absque illis privilegiis vel auxiliis quoro religioni Status dumtaxat conceduntur" and 304.

²⁷²⁶Cf. MADEUN, 1975,123; MURRAY, 1945.06 (7), 334,1.

²⁷²⁷CANET, 1891.11-12 (see p. 100).

²⁷²⁸E. g. TAPARELU. 1861,202.

²⁷"Cf. ANDRÉ-VINCENT. 1983b.

²⁷³⁰See ANDRÉ-VINCENT, 1987.01-02.38.

" The evolution, as regards the change of foundation, consisted above all in "changing the location of the observer" and in placing him at the center of the person and no longer directly facing the sun of truth.²⁷³¹ This has made it possible to see certain aspects that were previously hidden by a "blind spot", namely the sphere of immunity that must surround the person because of his or her dignity.²⁷ " However, in proclaiming the RL, the Church has not adopted an "idea from elsewhere".²⁷

2) It is not the same type of right: while the CLC was a positive authorization, the RL is a right to non-impediment, does not have the same object or the same *meaning* as the CLC.²⁷³² The popes of the XIX^e condemned a civil liberty conferred by the absolute sovereign people, even by the State, and to the individual as well as to the society, and meaning a positive authorization to behave indifferently²⁷³³ or as one wants in religious matters,²⁷³⁴ therefore specified *intrinsically* by indifferentism.²⁷³⁵ The right, in this system, had the *meaning*²⁷³⁶ ^ *required* by indifferentism,²⁷³⁷ all religions being considered as having the same positive authorization to exist in society.²⁷³⁸ This is why the magisterium insisted so much (from Pius IX to Pius XII) on stressing that both (a) moral evil and (b) freedom to do *what one wants* (which is an evil) could only be *tolerated*, not *positively authorized*, in order to avoid equivocation among the faithful.²⁷⁷¹ But the magisterium never condemned oaths taken to constitutions that recognized the "civil liberty of worship" understood either in the sense of a "*permissio negativa mali*" (Concordat France of the Empire and the Restoration), or of an abstention from judgment (Belgium, U.S.A.).

3) What is sought to be protected by law is different: in the CLC, it is to act as one wishes, since the sovereign people have permitted it; in the LA, it is to act according to the conscience of one's duty imposed by the Divinity. The CLC is the proclamation by society of a freedom of conscience in relation to religious duty.²⁷⁷² The RL, on the contrary, is the proclamation of a freedom to fulfill one's religious duty.²⁷⁷³

4) It is the historical evolution of situations that has allowed us to decant and distinguish the concepts,²⁷⁷⁴ even if we cannot help but use similar vocabulary.²⁷⁷⁵ The Church's magisterium is not exempt from this law.²⁷⁷⁶ It is not the first time in the history of the Church that words used by a condemned error are reused by the Magisterium according to another meaning.²⁷³⁹ A freedom claimed in the face of a tyrannical atheistic state does not have the same resonance as a freedom claimed in the face of a Catholic state, even an authoritarian one.²⁷⁴⁰ Likewise, a freedom made necessary by a definitive unification of the world, by the multiplication of contacts between religions, etc.,²⁷⁴¹ is not a freedom proclaimed with the idea that the practice of any religion can be

²⁷⁶ Cf. Bim, 1990a. 576.

^{276a} Cf. NEOPHITOS. 1974.26.

²⁷³³ Cf. also SOLER Carlos: 1993a, 240-241: "El indiferentismo religioso y el relativismo eran exigencias doctrinales intrínsecas de unas libertades concebidas como legitimación moral."

²⁷³⁴ Cf. MURRAY. 1967, 112.

²⁷³⁵ Cf. SOLER Carlos: 1993a, 242.

²⁷⁶ See also SOLER Carlos: 1993a, 240.

²⁷³⁷ Similar ideas in CANTERO, 1963.05.15, 116; St. LAUMER. 1993.01-03. 156; LIUERATORE. 1865.02.07.417: the "freedom of conscience" aimed at was that of a *consciemia estes* :

²⁷³⁸ Cf. MONNI, 1985,777.

²⁷⁷⁷ For more details, see CARRILLO, 1961a, 129; DíEZ-ALEOR(A, 1967, 103; DONDEYNE. 1964, 281; LIBERATORE. 1868.10.24, 260; 262; 264; REGAN, 1967,42; CANET, 1891, 380, II; GARRUCCI, 02 (1863.09.04), 659-660 and MOULART, 1879' ,355.

²⁷⁷⁸ The latter can itself have disadvantages for the Church; cf. CARDUN, 1965.11.9.

²⁷⁷⁹ Cf. CARDUN. 1965.11.6-7.

suitable.

Tandis qu'au XIX^e l'Église se battait contre le libéralisme, au XX^e elle se bat
contre le totalitarisme.¹⁷⁰ Elle a donc adopté deux positions successives différen-
tes, qui manifestent deux aspects de la vérité : 1^o sous l'aspect péroratoire, et au
niveau moral, l'homme n'est pas libre (d'obligation) face à Dieu ; sous son
niveau juridique, l'homme a l'obligation morale donc l'autorisation positive juron-
que de vivre le catholicisme, mais n'a pas d'autorisation positive (et de Dieu, et de
l'État) de se comporter en manière religieuse de façon non catholique ; 2^o sous l'as-
pect exigence, il doit être libre de coercition face à l'État.¹⁷¹

27 "ocf. COTTIER, \965AA, AA'I, 2781 Cf.
KASPER,

CHAPTER 6.

6. THE LR OF THE GROUPS IN PARTICULAR (DH 4-5)

LHE social nature of religion, mentioned at the end of *DH3*, allows the transition to the RL "in the plural", that is to say, that of religious groups, either in general (*DH4*), or in particular, of the family religious cell (*DH 5*).

6.1. *DH 4*: The RL of religious groups in general

DH A examines the right to the RL no longer of the person in general, nor of the person in the singular, but of persons gathered in groups, by presenting A) the *reason for the expansion* of the RL from the individual person to the group, and then B) the *content of the RL* in the plural.

6.1.1. *DH4*, § 1: Justification of the RL in the plural: the sociality of man and religion

DH4, § 1 affirms the community RL, in the name of human sociality and religion.

"The freedom or immunity from coercion in religious matters which belongs to all persons taken singly, must be recognized also when they act in common. "27X2

This is the development of a theme touched upon and announced in *DH 2*, § 1.

"Indeed, religious communities are required by the social nature of both man and religion itself. "2783

Such an *associative* "regime" (of religion), it goes without saying, will raise many more difficulties for civil society than *individual* religious practice. However, here again, the problem to be solved is only to know in what way society has the right to react when the associated persons 1° either do not seek the truth, or else are mistaken in seeking the truth, 2° or else endanger the others or society. So, is the abuse 1° only *moral*, 2° or even *legal*?

Certainly all religious communities other than the Church are more or less seriously in error in religious matters. But *DH* grants the right to these communities not as founded on error, but as bringing together people who have the right to the RL.^{^wi} In other words, these other communities

27X2 " Libertas seu immunitas a coercitione in re religiosa. qu" singulis personis competit, etiam ipsis in communi agentibus agnoscenda est."

27X3 "Communitates enim religiose a sociali natura tum hominis tum ipsius religionis requiruntur."

2W Cf. SOLER Carlos: 1993.01 -06,22.

have the right to the RL not *per se*, but *per aliud*, or rather *per alios*, namely by their members.²⁷¹⁵ On the other hand, the text is placed at the level of natural law, which indeed requires that religion be practiced in a social way, apart from a possible Revelation.

6.1.2. DH 4, § 2-5 : The concrete applications of the RL in the plural

DH4, § 2-5 goes down to some concrete examples of what groups should not be prevented from doing.

I) DH 4, §2: *Internal activities of religious communities*

"To these communities, therefore, provided the just requirements of public order are not violated, is due in law Timunity, so that they govern themselves according to their own norms, honor the Supreme Divinity with public worship, assist their members in the exercise of their religious life and support them with doctrine, and promote institutions in which the members cooperate in organizing their own lives according to their religious principles." 2786

II) DH 4, §3: *Ministers, communication, buildings and goods*

"Likewise, to religious communities is attributed the right not to be prevented by legislative means or by the administrative action of the civil power from choosing, training, appointing and transferring their own ministers, communicating with the authorities and religious communities dwelling in other parts of the universe, [I]J constructing religious buildings, and [IV] acquiring suitable property and enjoying it."²⁷¹⁷

Note once again the care taken not to speak of a "right to choose", but of a "right not to be prevented from choosing".

III) DH 4, § 4: *Propaganda or proselytism?*

The following paragraph (I) states the *right* to free religious propaganda; then [11] denounces its *abuse*.

"[I]A)Religious communities [B] also have the right to [C] not be prevented [D] [I] [a] from teaching and [b] attesting [2]their faith [3]orally and [3'] in writing [II] However, [A] 11] in the act [a] of disseminating religious faith, and [b] of introducing practices. [2] One should always refrain from any kind of action that appears to be coercive or persuasive [a] dishonest or [0] lacking in uprightiness. [3] especially when dealing with people who are uneducated or poor. B] Such a way of behaving must be considered [1] an abuse of one's own right and [2] an injury to the right of others. 2788 2785 Cf. SOCKEY, 1983. 215; also JIMÉNEZ-URRESTI, 1968, 593. Here we contradict PAVAN, 1969b (*Human*), 45ct PAVAN, 1967d. *U nam Sanctam*, 60, 157. 2786 "His igitur communitatibus, dummodo iustæ exigentiæ ordinis publici non violentur, iure debetur immunitas, ut secundum proprias nonnas sese regant. Numen supremum cultu publico honorent, membra sua in vita religiosa exercenda adiuvent et doctrina sustentent atque eas institutiones promoveant, in quibus membra cooperentur ad vitam propriam secundum sua principia religiosa ordinandam."

2787 " Communitatibus religiosis pariter competit ius, ne mediis legalibus vel actione administrativa potestatis civilis impediuntur in suis propriis ministris selligendis, educandis, nominandis atque transferendis, in communicando cum auctoritatibus et communitatibus religiosis, quæ in aliis orbis terrarum partibus degunt, in aedificiis religiosis erigendis, necnon in bonis congruis acquirendis et fruedis."

2788 "Communitates religiosae ius etiam habent, ne impediuntur in sua fide ore et scripto publice docenda atque testanda. In fide autem religiosa disseminanda et in usibus inducendis abstinendum semper est ab omni actionis genere, quod coercionem vel suasionem inonestam aut minus rectam sapere videatur, præsertim quando de

[I] It affirms IAJ about an *active subject* (the religious communities), [B] *the existence of* a right, [CJ whose *object* is a non-impediment, [D] protecting a *good*, consisting [1] in *acts* (teaching, witnessing), [2] having themselves as a *specifying domain* the religious faith, [3] and as a *mode of* orality and writing. In short, it is the right to *freedom* of religious communication.

[II] Then come the possible abuses of this right: [A] first enumerated; [B] then characterized as abuses. [A] Their enumeration first of all sets up as a framework for abuse the very exercise of the right (the act of speculative or practical propaganda), an occasion [2] for abuses to be

avoided, which consist in [a] coercive or [b] deceptive proselytism; [3] for which a double aggravating circumstance is indicated on the part of the addressees: [a] ignorance (prey to deceptive proselytism)²⁷⁸⁹ and [b] poverty (prey to financial proselytism).²⁷⁹⁰ Here the Council raises the problem of the *imperita multitudo* (Leo XIII) in the face of dishonest methods of proselytizing.²⁷⁹¹

"As well as physical coercion, taunting, seductive, deceptive, threatening speech, speech that leads astray as well as speech that intimidates, are processes of coercion."²⁷⁹²

[Finally, some commentators confess their perplexity in the face of the very precise formulation of the final: "an abuse of one's own right and an injury to the right of others".²⁷⁹² The most characteristic position on this subject is that of P. Pavan.²⁷⁹³ According to this specialist, this badly drafted sentence assumes the false principle that any abuse of one's own right is an injury to the right of others.²⁷⁹⁴ However, if the principle *denounced is* indeed too general, it is not *stated at all* by Z)//.²⁷⁹⁰ Indeed, it is *precisely because not every* abuse of one's own right is a lesion of the right of others, that the Council *specified* that proselytism with a coercive/dishonest flavor was *both*.²⁷⁹⁴ (We have

rudioribus vel de egenis agitur. Talis modus agendi ut abusus iuris proprii et lasio iuris aliorum considerari debet."

used of "and" and not "vel" or "vel etiam"). This type of proselytizing is thus not only *immoral* (abuse of right, *non-exercise* of right), but also an injury to the right of others (*juridical* abuse, not merely *mora*Z).TM It thus falls under the juridical criterion of limitation provided in *DH-1*, §3 ("*efficaci iurium tutela pro omnibus civibus*").

1° *Lying* proselytizing violates a right of others (the right to truth, in the sense of veracity and in the sense of logical truth). Of course, it may well be that a lie does not have to be repressed by the State (out of tolerance or because the State must only deal with the most serious lies, the "right to not lie" having to be "positivized" only in these cases). In this respect, one can agree with J. Willebrands,²⁷⁹⁰ for whom it is self-evident that only an injury to the kind of rights that the State must protect (i.e. strict rights and not imperfect rights, and moreover, in matters that are sufficiently important to be "positivized" by legislation) will fall under *DH7*, § 3.²⁷⁹¹ 2° On the other hand, proselytizing with a *coercive* flavor very clearly undermines the right to the RL of others (which is defined as the right to be free from coercion), and the state must certainly address this.²⁷⁹² 3° Finally, "*financial*" proselytizing is also understood by *DH4* as an injury to another's right (it comes down to coercion).²⁷⁹³ *Financial* proselytism, which includes the fact

²⁷⁸⁹ See PIANCIANI, 1852, 595, § 2; FRANCO, S., 1867.04.06. 148 and. more recently, LEFEBVRE Marcel, M^e, 1985a, 106.

²⁷⁹⁰ See BEA, 1962.08.05, 1180. Cf. on this point NEIRA, 1966.04.314. As for Colombia, cf. GÓMEZ-HOYOS. 1965.09*12.360. Apparently, the peril is still not averted.

²⁷⁹¹ Cf. S 66: 6 RS, A.S. IV/VI, 737-738, 110; S 72: 6 RS, modus 15, A.S. IV/VI, 744; S 75: 6 RS. modus 27. AS. IV/VI, 746. Then REGAN, 1967 recognizes that the declaration does not apply to situations of *imperita multitudo*.

Cf. Díez-Alegría, 1965, 47-48, note 33.

²⁷⁹⁴cf. PAVAN, 1967b, *Declaration*, 70-71.

²⁷⁹⁴ p/f4, § 4 does not use the word "proselytizing". And what he describes is proselytizing of the *wrong kind*. On the pejorative or non-pejorative meaning of the term, cf. WILLEBRANDS, 1967.246; COSTE. 1969. 253 & 256 (agreeing with PAVAN) : LEGÉ, 1964.10.15, 168. 6 RS answered in S 97. modus 9, A.S. IV/VI, 772 (...) [79] to the following *modus*: "Pag. 18. linn. 4-8, textus ita mutetur, ut proselytismus acatholicorum inter catholicos non permittatur. >R. - Textus non permittit proselytismum. Qui ceteroquin verbis pag. 8. linn. 8° 14. clare excluditur."

of alleviating certain miseries by setting the *precondition* of a conversion or some religious gesture, should not however be confused with the fact of performing works of mercy in the *hope* of converting men and as a sign of God's goodness. These various proselytizations (in the pejorative sense) considered here are an abuse of the right to RL precisely by attacking the same right to RL in others (under the guise of one's own RL).^{281H}

IV) DH 4, § 5 : *Social action of religious inspiration*

The RL is not a pure freedom of worship. It includes the freedom of associative and social action of religious inspiration:

"Furthermore, it is part of religious liberty that religious communities should not be prevented from freely showing the special efficacy of their doctrine in organizing society and enlivening all human activity. Finally, it is in the social nature of man and in the very nature of religion that the right is founded, in the name of which men, moved by their own sense

2798 cf. LÓPEZ DE PRADO, 1967d, 601: "De todo el contexto se deduce que la "Declaración" habla aquí del abuso jurídico, es decir, de una violación del derecho ajeno en nombre de un pretendido - en realidad inexistente - derecho propio que justifique tal violación."

2799 Cf. MARSHNER, 1983,224.

2800 See WILLEBRANDS, 1967, 244.

2801 Same thought in SMEDT, 1967b, 232-233.

2802 *Nous* seems to lean for our interpretation the document interdicasterial *The Sects*, 4. *Conclusión*. 553.1.

2803 CROWE, 1966,261, gives the example of "souperism" in Ireland (conversion to Protestantism in exchange for soup); as does PIANCIANI, 1852,596.

2804 DAVIES, 1992, 279, who nevertheless, p. 280, forgets the Spanish law of 28 June / 1st July 1967: this provided for surveillance measures.

religious, may freely hold meetings or set up educational, cultural, charitable or social associations." ²⁸⁰⁵

According to SUC,^{280e} |e the text does not make a *factual judgment* about the effective contribution of non-Catholic religious groups to the vivification of civil society, but it implies: "if they have one". Here again, the Council ignores *usage* and considers only the *law*. Moreover, it goes without saying that these associations cannot be prevented from doing good simply because they do so for a reason that is mixed with error.

6.2. DH 5: The LR of the family in particular

With *DH 5*, the question of the religious rights of the family community, and especially of the parents, is addressed. This question, much better known thanks to St. Thomas and Pius XI, requires little comment:

"To each family, as a society with its own primordial right, belongs the right to organize freely its domestic religious life under the direction of the parents. To the latter, on their part, belongs the right to determine the type of religious education to be transmitted to their children, according to their own religious conviction. [For this reason, the civil authorities must recognize the right of parents to choose schools and other means of education with true freedom, and not to impose unjust burdens on them, either directly or indirectly, because of this freedom of choice. Furthermore, the rights of parents are violated if children are forced to attend school courses which do not correspond to the religious conviction of the parents, or if only one type of education is imposed, from which religious training is totally excluded. ²⁸⁷

The Council wanted to avoid dealing with the age at which children can discern the truth in the religious order on their own, without being civilly emancipated from the guardianship of their parents (cf. W 76). On the other hand, any society in which, in order to give their children a religious education, parents, for example Catholics, have to pay for both national and

denominational education, is in opposition to the RL. This system falls within the framework of the "*iniusta onera*" and pushes for the unique education of another denomination (denominational state), or secularist (liberal state) or militant atheist (communist state).

^{21.05} "Praeterea ad libertatem religiosam spectat, quod communiaetates religiosae non prohibeamur libere ostendere singularem suae doctrinae virtutem in ordinanda societate ac tota vivificanda activitate humana. Tandem in sociali hominis natura atque in ipsa indole religionis fundatur ius quo homines, suo ipsorum sensu religioso moti, libere possunt conventus habere vel associationes educativas, culturales, caritativas, sociales constituere." Cf. dcjù PIE XII: 1942.12.24.

Cf. S 73:6 RS, modus 24, A.S. IV/VI, 745, [50] & 746.

^{21.07} "Cuique familia,; utpote quae est societas proprio ac primordiali iute gaudens, competit ius ad libere ordinandam religiosam vitam suam domesticam sub moderatione parentum. His autem competit ius ad determinandam rationem institutionis religiosa: suis liberis tradenda", iuxta suam propriam religiosam persuasionem. Itaque a civili potestate agnoscendum est ius parentum deligendi, vera cum libertate, scholas vel alia educationis media, neque ob hanc electionis libertatem sunt eis iniusta onera sive directe sive indirecte imponenda. Praeterea iura parentum violantur, si liberi ad frequentandas lectiones scholares cogantur qua: parentum persuasioni religiosa: non correspondant, vel si unica imponatur educationis ratio, ex qua fonnatio religiosa omnino excludatur."

SECTION B.

RELIGIOUS FREEDOM SEEN FROM THE SIDE OF THE PASSIVE SUBJECTS OF LAW(DH 6-7)

I It remains to consider the passive subject of the right to the RL. In the introduction, we will determine who he is. Then, we will study its positive role (of encouraging LR), and its negative role (of limiting the exercise of the right to LR).

The passive subject of a right is the person before whom it is claimed, the person from whom a service is required.

D) The real passive subjects of the right to the RL. One can have a right before one instance without having it before another.²⁸⁰⁸ Being social and civil, the RL is claimed before the partners of the social and civil life as such, therefore the persons and any group of persons, as well as any power of purely human coercion,²⁸⁰⁹ individual, collective, notably civil.

II) The passive subjects of the right to RL are not A) God, B) or the Church.

A) The passive subject is not God or Jesus Christ: *DH 1* in particular rules out this possibility.²⁸¹⁰ Indeed, on the one hand, no right-demand can be claimed before God. On the other hand, the RL, not being a freedom of moral obligation, is not either a right-permission conferred by God.

B) The passive subject is not the Catholic Church: The RL is claimed before any human power acting *as such*. Its passive subject is therefore not the Church-institution, the authority of the Church, which is not strictly speaking a purely human power. The RL is not an intra-ecclesial freedom.²⁸¹¹ It is not claimed before any power of the Church, neither magisterial, nor sanctifying, nor of government (executive, legislative, judicial, coercive); the right in question will not be opposed to the duty to evangelize (cf. *DH 14*).²⁸¹² On the contrary, a whole current of theological-canonical thought would like to draw inspiration from *DH in* order to create in canon law a reflection of what LR is in the socio-civic order.^{281 -'} We will not enter into this subject, which is different from that of the socio-civic LR, because no indication in this sense is given by the text itself (*DH 14*, § 2-3 is even there

¹ISOKcf. SCHÜLLER. 1965. 108-109.

²⁸⁰⁹See CARRILLO. 1963b, 15-16.

MIO See also S 21 and especially S 32 and S 33.

²⁸¹¹ See also MARGERIE, 1988b, 49, no. 38, § 3. On the contrary, COLELLA, 1984b, 47 would like to draw from the RL an intra-ecclesial freedom. Cf. also COSTE, 1969, 462; MURRAY. 1966 (ABBOTT), note 58.694-695.

²'12Cf. CORRAL, 1989a, 370; and, already OLIVIER. 1952,181. See also S 21 and especially S 32 and S 33.

with cf. LOMBARDI, 1987.07-08,421.

rather the opposite);²¹¹ --- if not perhaps under the following aspect.²¹ ** Without admitting either moral liberty or canonical liberty (or at least without admitting absolute canonical liberty), can we not see in *DH* the renunciation by the Church of all use of the secular arm for the purpose of repressing offenses of a purely ecclesiastical nature which would not at the same time affect the just public order of civil society? ² 11.⁶ This point will have to be dealt with in the chapter on the limits of *RL*.

Once the passive subjects of the right have been determined, it remains for *DH* to derive from the requirements of the common good, first, the general right / duty to promote the free exercise of religion (*DH* €>), and then, in a quasi inverse sense, the particular right / duty to protect society against abusive exercises of religion (*DH7*).

2X14 Cf. SÁSTRE-SANTOS, 1985,474; SMEDT, 1967b, p. 221; also SPINELU, 1970,306-307. 2X15 See also SMEDT, 1967b, 226.

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2 "16Cf. e. g. COSTE, 1969,214.

CHAPTER 7.

7. THE PROMOTION OF THE FREE EXERCISE OF religion (DH 6)

Po study the promotion of the free exercise of religion, we will begin with an analytical reading of *DH 6* (7.1.) and then address the issue of "special civil recognition" in *DH 6*, § 3 (7.2.).

7.1. Analytical reading of *DH 6*

DH 6 envisions two ways in which civil society can support religion, through the promotion of: 1) the right to RL (7.1.1.); 2) religion itself (7.1.2.).

7.1.1. Promotion of the right to the RL (*DH 6*, § 1-2)

The promotion of the common good, and thus of the RL, is a duty: I) of all (*DH6*, § 1); II) and in particular of the public authorities (*DH 6*, § 2, a).

I) DH 6, § 1 : A duty for all

"(11 Since the common good of society, [a] which is the sum of the conditions of social life by which men can more fully and more easily obtain their own perfection²⁸¹⁷ [b] consists principally in the preservation of the rights and duties of the human person (5) 2K1" [2] the care of the right to religious liberty falls to the citizens, [b] as well as to social groups, (c) to the civil powers, (d) to the Church, and (e) to other religious communities, in the manner proper to each, according to its duty to the common good. "²⁸¹⁸

II) DH 6, § 2, a, b .- A duty of the State

"[1] To protect and promote the inviolable rights of man belongs in an essential way to the duty of every civil power (6).²⁸²¹ III| The civil power must therefore by just laws and other suitable means [A] effectively take upon itself the protection of the religious liberty of all citizens, eli... J"

^{2,4,7} The notion of common good used in the text is that of JOHN XX111. Cf. AS. tV/VU 755 (60): "15 - Pag. 10. linn. 19-37. R. "

^{2818m} Cum societatis commune bonum, quod est summa earum vitæ socialis condicionum, quibus homines suam ipsorum perfectionem possunt plenius atque expeditius consequi, maxime in humanæ personæ servatis iunibus et officiis consistat⁵, cura iuris ad libertatem religiosam tum ad cives tum ad coetus sociales tum ad potestates civiles tum ad Ecclesiam aliasque communitates religiosas spectat, modo unicuique proprio, pro eorum erga bonum commune officio. "

7.1.2. The promotion of religion itself (DH 6, §§ 2 b - 5)

The promotion of religion is viewed I) positively, and II) negatively.

I) DH 6, §2, bet §3: Positively

The positive promotion of religion A) contributes to the common good (DH 6, §2, c); B) may take the form of special civil recognition of a particular religion (DH 6, §3).

A) Civil promotion of religion in general (DH 6, § 2, b)

[The civil power must therefore] "provide conditions conducive to fostering religious life, so that citizens may be truly able to exercise the rights of religion and fulfill the duties of religion, and that society itself may enjoy the goods of justice and peace which come from the fidelity of men to God and his holy will."²⁸²¹

The text implies a basic commitment on the part of the State to provide positive services that effectively make possible the enjoyment of the "rights of religion" and the fulfillment of its duties, as well as the benefit of religion for civil society.

B) Civil status of a given religious community (DH 6, § 3)

In order to understand DH 6, § 3, it is important 1) to reread it carefully and to draw the consequences; 2) to put it in its context.

1) The text of DH 6, §3

DH 6, § 3: [I] admits the hypothesis of a special civil recognition of a religion, [II] the right to LR of other citizens and religious groups to be maintained i²⁸²²

"(1) If, after taking into consideration the particular circumstances of the peoples, a special civil recognition in the juridical organization of the city is attributed to a religious community, it is necessary that at the same time towards all the citizens and towards all the religious communities the right to freedom in religious matters is recognized and observed.

Here is the exact Latin text of DH 6, § 3-4:

"Si attentis populorum circumstantiis peculiaribus uni communitati religiosa specialis civilis agnitio in iuridica civitatis ordinatione tribuitur, necesse est ut simul omnibus civibus et communitatibus religiosis ius ad libertatem in re religiosa agnoscatur et observetur, tuti

Let us proceed a) to an analysis, then b) to a synthesis of this difficult text.

a) Analysis

1° "If": the conditional form of the proposition neither claims nor denies the idea of an affirmative precept. If therefore the corresponding duty is not affirmed, it is not denied either. DH 6 neither takes a position for nor against the confessionality of the State, neither for nor against any of its forms, except those which would hinder the practice of the (or a) religion *iusto ordine publico servato* fl is therefore false that DH 6 establishes confessionality as an exception.²²⁵

2° "Attentis":²²⁶ particular circumstances play a role as a *sine qua non*, but not as an exclusive cause or reason.²¹¹²⁷

3° "Populorum": The situation of the people must be taken into consideration. The common

²⁸²¹ "Inviolabilia hominis iura tueri ac promovere ad cuiusvis potestatis civilis officium essentialiter pertinet⁶ Debet igitur potestas civilis per iustas leges et per alia media apta efficaciter suscipere tutelam libertatis religiosa omnium civium, ac propitias suppeditare condiciones ad vitam religiosam fovendam, ut cives revera religionis iura exercere eiusdemque officia adimplere valeant et ipsa societas fruarur bonis iustitiæ et pacis quæ proveniunt ex fidelitate hominum erga Deum Eiusque sanctam voluntatem."⁷ Note (7): LEO XIII, Litt. Encycl. *Immortale Dei*, 1 Nov. 1885: ASS 18(1885), 161.

²⁸²² Cf. S 70:6 RS. modus 36. AS. IV/Vl. 741.

good will be determined according to it.

4° "*Circumstantiis*": Among the circumstances, there may be the fact that the people are, for example, almost unanimously Catholic.²⁸² "

5° "*Peculiaribus*": DH 6, § 3 (final text) qualifies the *circumstances* as *particular*.² ^ "In the last draft, 'historical' was changed to 'particular' (*peculiaribus*) in article 6, in order to avoid the possible insinuation that the confessionality of a State is only a legacy of the past."² -¹⁰ John Paul II (1991.) in stating, "Even if, for historical reasons, a state grants special protection to a religion, it has the obligation to guarantee personal freedoms [etc.] to religious minorities on the other hand," does not proceed to an "authentic interpretation" of "*attentis...*" (DH6, § 3), and thus does not assert *ex professo* that historical reasons are the only possible reasons, but presumably implies that it is ultimately always a prudential judgment about historical circumstances that allows one to judge the appropriateness of the thing.

6° "*Uni communitati religiose*": The supernatural duty of the state to God and the Catholic Church is the subject of DH 1, § 3 and DH 13, § 2; its natural duty to religion in general has just been dealt with in DH 6, § 2. DH 6, § 3 deals with an attitude of the state towards a given religious community, not towards religious *truth*. DH 6, § 3 deals with *any* kind of "confessionality," *even non-Catholic ones*.^

1° "*Specialis civilis agnitio in iuridica civitatis ordinatione*": The confessionality of the State and the *specialis civilis agnitio* are in fact two different realities, one of which can exist without the other.²⁸²³ Nevertheless, the *specialis civilis agnitio* generally goes hand in hand with confessionality.² @² What the Council excluded, on the other hand, was the particular civil recognition of *irreligion*, and a confessionality that *identifies, mixes* or *confuses* the State and religion.

b) Synthesis

1° The compatibility of the RL and a special civil recognition given to a particular denomination is presupposed. 2° DH 6, § 3 does not explicitly deny that reasons other than the "particular circumstances of the people" may lead the State to provide this "special civil recognition"; it says nothing about it. It considers confessionality hypothetically as a reality existing according to circumstances.² @⁴ The "*specialis civilis agnitio*" of a given religious community (which "is not confessionality in the strict sense")² @⁵ is thus *made possible* by particular circumstances, which are *taken into consideration*. 3° Special civil recognition is not always appropriate. This is why the formulation *had* to be conditional.² @⁶ 4° Non-Catholic confessionality can *only* be *due to* circumstances. Catholic confessionality, on the other hand, *depends on* circumstances, but is not *only due to* circumstances. It is also due to the "moral

²⁸³¹ cr. FUENMAYOR, 1974,128.

²⁸³² Cf. MARTIN-MARTINEZ, 1989, 563 ("special recognition" without "confessionality": the Spanish constitutions of 1837 & 1869).

²⁸³³ cf. MARTIN-MARTINEZ, 1989,564.

²⁸³⁴ FUENMAYOR, 1974, 126 argues for a *doctrinal substantive* confessionality accompanied by a *sociological formal* confessionality.

²⁸³⁵ COSTE. 1969,415.

²⁸³⁶ Cf. S 28: 5 RO, 5. De *limitibus libertatis religiosa.*, A.S.WN, 102-103; see also S 37: AS. IV/V, 153,6).

duty... of societies towards... the one Church of Christ" (*DH* 1, § 3). The context will make this clearer.

2) *The context of DH 6, § 3*

DH 6, § 3 must be read in the light of its context a) near (*DH* itself); and b) far (the other documents of the Council and the Commission).

a) The next context of *DH* 6, § 3

DH 6, § 3 must be understood in relation to *DH* 1, § 3 on the one hand, and *DH* 13,2 on the other. If one neglects *DH* 1 and *DH* 13, one tends to consider legitimate the "special civil recognition" of the Church *according only to the historical-sociological* circumstances of a given country, and not for the reason that the Catholic religion is *true*. Does this not neglect *DH* 1, § 3c, and *DH* 13, § 2?

"To admit the *Catholic confessionality of the State* solely on sociological, and not specifically religious, grounds, as P. A. D'Avack does, would be to mutilate not only traditional Catholic doctrine, but the Conciliar Declaration itself in its opening number. The denial of the absolute competence of men of government to *recognize* and profess the Catholic religion would inevitably involve the denial of their *obligation* to profess and maintain it. Why should statesmen be denied their competence to discern or consciously accept the true religion, while conceding this competence to the common people?²⁸²⁴

[I] *DH* 1, § 3: *The contribution of "traditional Catholic doctrine*

While *DH* 6, § 3 belongs to the part on the "*ratio generalis libertatis religiosa*:" and thus *disregards* the supernatural, *DH* 1, § 3 explicitly relied on the revealed fact, and maintained a "traditional Catholic doctrine" of the "moral duty" "of societies towards the true religion and the one Church of Christ. Now the said doctrine contained, as we have seen, two great types of duties of the public authorities: [AJ the one, immutable and definitive, concerning the moral duty of recognition of the truth, under two aspects: [J in relation to the religious truth itself: to recognize it; J2] in relation to the Church: [a| to respect her exclusive competence in religious, moral and spiritual matters; [bj to leave her her supernatural freedom; [c] to collaborate with her in mixed matters]The other, more circumstantial, subjectively obliging only a Catholic society, and linked on the one hand to the form of the society, on the other hand to the general coercive mentality, concerned the moral duty to organize the society juridically according to Catholic principles, and thus to give special civil recognition to the Church recognized as the only religion of the State, and even not to grant other religions anything other than a more or less broad, more or less temporary and more or less supervised civil tolerance, at least in public and for propaganda. We also noted that the *DH* drafting committee did not consider these latter aspects as required in timeless doctrine, but as corresponding to particular circumstances of time, mentality, political regime, etc. It must therefore be recognized that on this point a decantation, a discernment between the essential and the accidental, between the timeless and the definitive traditional, has taken place. Let us content ourselves here with recording the fact that *DH* 1, § 3, read in the light of the *SUC Relationes*, should not be understood as maintaining in "traditional Catholic doctrine" this second aspect of the earlier pontifical documents, considered rather as circumstantial than as "traditional" in the proper sense. If by "special civil

recognition" DH 6, § 3 were to be understood as meaning *only something other* than the above-mentioned points [a,b,c], then it could be admitted that this *agnitio* would only ever be due to particular circumstances. This, however, does not seem to us to be the full meaning of the passage.

[II] DH 13, § 2

As for DH 13, § 2, studied below, it presupposes, as we shall see, that society, like any human instance, individual or collective, can recognize the exclusive mandate and competence of the Catholic Church, the only true one.

In the matter of the recognition of the Church by the State, it remains established that, in a country populated by Catholics, civil society must recognize the Church as the only true one, and impregnate customs and laws in accordance with this point (not only with regard to the natural law, but also with regard to the Gospel). There is thus a special minimum obligatory civil recognition in virtue of the affirmative precept recalled by DH 1, § 3 and DH 13, § 2. On the other hand, as we have just said, other aspects of such civil recognition will have more circumstantial explanations. Negatively, DH6, §3 excludes as a special civil recognition only that which would harm other denominations (outside the criterion of just public policy). Positively, DH 6, §3 makes only one assumption.

b) The conciliar context of DH6, § 3

The more distant context is composed of GS76, § 5 and the final message to the rulers (0938.), as well as the *Relation.es*.

GS76, §5

GS 76, § 5 is often cited as evidence of Vatican II's principled hostility to "confessionality":

"Certainly, the things of this world and those which, in the human condition, go beyond this world, are closely linked, and the Church herself makes use of temporal instruments insofar as her own mission requires. But she does not place her hope in the privileges offered by "vile" power. Indeed, she will renounce the exercise of certain legitimately acquired rights, if it is recognized that their use may cast doubt on the purity of her witness, or if new circumstances require other arrangements. But it is right that she should be able everywhere and always to preach the faith with genuine freedom, to teach her doctrine on society, to carry out her mission among men without hindrance, to pass moral judgment even in matters which touch the political sphere, when the fundamental rights of the person or the salvation of souls require it, using all the means, and only those, which are in conformity with the Gospel and in harmony with the good of all, according to the diversity of the times and situations. x * ²⁸²⁵²⁸²⁶

From this text, it cannot be deduced that the Church believes that she should never *accept* [we do not say: *claim*], at any time and under any latitude, privileges ^{*239} from the State.²¹ ¹⁰ It cannot even be inferred from this that the Church is not entitled, as a matter of principle, to a special juridical situation in a society populated by Catholics.^{*241} Certainly, the Church does not place her hope in *privileges*. But, whether or not these are due to her on some grounds (of strict justice, or other), the text says nothing about them; *a fortiori* it does not declare them illegitimate or always inappropriate i ^{*282742} simply, it does not see them as an indispensable

^{2825*} Too absolute: SPINELU, 1969,35 & 36.

^{21,41} Cf. LAJOLO. 1970,124.

²⁸²⁷⁴² * Same position in the liberal RUFFINI, 1992,504.

¹⁰ Cf. CALVEZ, 1966.05.525.

^{2144*} Aspect insufficiently underlined by COLELLA, 1972.885.

means of her action. Secondly, he distinguishes between *privileges on the one hand*, and legitimately acquired *rights on the other*. Concerning the latter, let us note first of all that the Church does not deny that the rights she has acquired in certain countries have been real rights up to now, since they are designated as "**legitimately** acquired". *²⁴³ Secondly, the Church does not renounce these rights here, but only their *use* or *exercise*. Moreover, she renounces the use not of all these rights, but only of some of them (*quorundam*). And this is not for timeless reasons, or as a matter of principle, but for pastoral reasons, namely: the desire not to raise doubts about her disinterestedness and the concern to adapt to times and places. *²⁴⁴ Finally, this renunciation does not take place as a matter of principle, for the future, and automatically, but only if it *is recognized that it is more appropriate*.

The quoted extract does not prove, therefore, that Vatican II would have renounced any form of formal confessionality, and *a fortiori* substantial confessionality (which is not the subject here). Simply, the Church announces its desire to live any situation of relationship with the State in a new way, centered more on the *libertas Ec-clesiae* considered under the aspect of freedom from hindrance, an innate right, rather than under the aspect of particular acquired rights or privileges. In other words, at most it can be admitted that, according to this text, the Church, in her *pastoral work*, no longer considers *today* (or even for an indefinite future) the privileges and some of the particular rights acquired before the Council as a means necessarily adapted to the free development of her activity, even in nations where they would still be possible (in view of the national context). This is therefore a *pastoral* and contingent choice (depending on the international situation, etc.), and not a *doctrinal* affirmation, judging the past.

The Final Message to Governments

Likewise, as the presence of the word "today" in the *Final Message to Governments* of December 8, 1965, shows *²⁴⁵ Paul VI made no claim

to judge in a negative way the more extensive demands of the Church in past centuries. And confessionality in itself implies the will to conform, in the way of exercising authority, to the requirements of the natural law (especially natural law, including all the fundamental rights of the person) and of the Gospel. It does not require *per se primo* a particular regime of favor for Church-institution, a consequence and a means that may be useful, but for the other aspect, and that the Church *does not demand in a universal way*, at least as far as the privileges properly so called are concerned (this is the explicit doctrine of Pius XI for the mission countries, of Paul VI, and of John Paul II). If it is only the "privileges" that are designated by the *specialis civilis*

²¹⁴⁴⁵ VATICAN II, 1965.12.08: Message to the rulers *at this solemn moment*; AAS. 1966. 10: "And what does she ask of you, this Church, after two thousand years? She has told you in one of the major texts of this Council: she asks only for your freedom. Freedom to believe and to preach your faith, freedom to love your God and to serve him, freedom to live and to bring his message of life to mankind"; 093 PAUL VI. 1965.12.23: Christmas RM A *tutti i Nostri Figli*. to the whole world: AAS, 1966, 95; DC. 156: "The Church knows that she is the bearer of a wealth of truth and salvation, whose value is infinite, and which impels her to come to meet you. But note that she comes to you without any pride, without claiming any privileges for herself. If she asks for anything, it is the freedom to live the faith which animates her interiorly and the freedom to proclaim this faith to the outside world: but she does not impose herself on anyone; on the contrary, she wants the sovereign responsibility and the definitive choice of consciences, even before religious truth, to be respected and protected": 0941 PAUL VI, 1966.05.15: Alloc. to *Polish pilgrims*; AAS. 486; DC. 1066 ; 0967. PAUL VI. 1970.01.19 or 20: to the International Congress of Canon Law: AAS. 110;

agnitio, surely they are not required by the Church, and this helps to understand why they are treated in *DH 6*, not in *DH 1*.

Relationships

As we have seen in more detail when studying the genesis of the conciliar schemes (cf. our chapter 1), Catholic confessionality was presented by the rapporteur not as an evil to be avoided in itself, nor even as a hypothesis to be temporarily rejected, but on the contrary as a happy reality whose possibility he hardly dared to hope for.²⁸²⁸ Indeed, this duty is "subject" only in a Catholic society, to the existence of which the existence of duty itself is suspended. None of the four positions of the Council Fathers concerning the mention of the confessionality of the State in *DH6* detailed by the 5' *Relatio scripta*²⁸²⁹ ^ "wanted the Council to *disavow* the duty of the State to recognize Catholicism as the true religion."²⁸³⁰

The Concordat with Colombia of July 2, 1975 is based only on historical and sociological arguments.²⁸³¹ However, it should not be seen as the *maximum*

1PVI, 57: *The Teaching of Paul VI*. 3 (1970). 222 ; 097". : A4S. 1971, 299; DC. 357 ; 0987. PAUL VI, 1973.01.11: to the Diplomatic Corps 'AAS, 38: "And the Holy See will not claim, as you know, any privileges except the rights of religious freedom"; 0997. PAUL VI, 1976.06.21: to the Cardinals; AAS. 1976, 464-465; DC, 653: "The Church, as the recent ecumenical council of the Vatican reminded us with particular insistence, does not place her true trust in the help of men or in the subsidies of the State, but in God, in his spirit which gives her life and in the presence, which is assured to the end of time, of her Founder who can draw from trials and persecutions elements of strength and progress. She asks for no special protection or privileged position for herself. The Church desires only a just freedom. This is all she needs. By her own congenital right she asks for freedom to do good for herself, for her children and for all men. This is in the name of the sacrosanct and inalienable rights of the human person, of his dignity, of his divine vocation to fulfill himself in the fullness of truth and in the exercise of that responsibility which neither society nor the State nor any human power can take away from him"; 1005. PAUL VI, 1977.12.09: to the Bishops of Hanoi and Hochiminhville; AAS, 1978, 164-165: "the Church, with equal loyalty and respect, asks everywhere in the world of the responsible Authorities, whatever the social and political regime, for freedom to carry out her mission, without privileges but also without impediments of any kind."

Cf. S 05: see note 2130.

2*47c f. s 37; 5 RS, A.5.1VN, J 53.

2*4K |HARRSON: 1988b (Eng.), 76.

2*49cf. 0994. PAUL VI, 1975.07.02: Concordat with Colombia, orig. ital. + esp. AAS. 1975,422.

of confessional! compatible with *DH* 1, § S. *²⁵ "We have seen this with the example of the Spanish laws of 1967.

Conclusion

What the magisterium (in *LG* 36, *DH*, *AA* 5 and 13, and *GS*) continues to invite us to rediscover is the spontaneous movement towards "informing" structures with the Gospel, which revolutionary ideology did violence to. And this "impregnation" remains a positive duty. If some people prefer not to call it "substantial confession", that's up to them; the only thing is to agree on the concepts and realities, since ambiguous words or words that lend themselves to useless discussions can easily be discarded in favor of paraphrases that are devoid of delicate resonances.

"This means that the State, while being applied to the temporal domain alone and thus independent of the Church, must be Christian and conduct a Christian policy, that is, a policy enlightened by faith. [...] The Church converts to Christ, along with men, thoughts, sciences, letters, arts, techniques and trades, families, professions and states. It is from the Church, therefore, that the State receives its Christianity, "51

U) *DH* 6, § 4-5: Negative

Agnitio must never be at the cost of A) discrimination of citizens on religious grounds (*DH* 6, § 4); B) and even less *violence for or against a religion or religion in general* (*DH* 6, § 5).

A) Refusal of religious discrimination of citizens (*DH* 6, § 4)

"Finally, the civil power must see to it that the legal equality of citizens, which is itself the common good of society, is never openly or secretly prejudiced for religious reasons, and that no discrimination is made between them." *⁵²

In *DH* 6, § 4, the prohibition of any **legal inequality** of citizens and of any **discrimination** seems to oppose - precisely - a *specialis civilis agnitio*. Nevertheless, "discrimination" is, in contemporary language, not only a *juridical term* (and here it is *a fortiori*, of course, given the juridical context), but also a *pejorative one*, denoting the placing of a certain category of persons in a *rank lower than the common rank*, so that these persons *would not only have fewer rights*, but also *be bullied*. *²⁵ * It is obvious that the fact that one person has more rights than another is not *per se discrimination*. *²⁵ * The Council only seeks to avoid that the difference in rights leads to

"Cf. MARTÍN-MARTÍNEZ. 1989.542; and498.

" 51 DAUJAT. 1970,468-469.

"52 "Denique a polestate civili providendum est. ne civium æqualitas iuridica, quai ipsa ad commune societatis bonum pertinet, unquam sive aperte sive occulte kedatur propter rationes religiosas, neve inter eos discriminatio fiat."

*⁵³ ci. COSTB, 1969,263, citing the draft international convention (PCI).

2854 See the conditions recalled by ROSA, 1963,294.

directly or indirectly an infringement of the *right to liberty, constituting bullying*.⁵⁵

Moreover, legal equality among *citizens* is not identifiable with legal identity among *religious communities taken collectively*, hence, the lack of inconsistency among the various paragraphs of *DH at*.^{TM56} Of itself, in fact, "legal equality" even requires that different

communities be treated differently.²⁸³² For legal equality requires that not everyone be given equal status, but that everyone be given their due. In our view, the proposition "*neve inter eos discriminatio fiat*" is also affected by "*propter rationes religiosas*". Thus, "other things being equal, *religion* should never be a reason for treating someone **worse** than another, "z*"-⁵⁸

B) Refusal of imposed or prevented religion (DH 6, § 5)

"It follows that it is contrary to divine law for the public authority (A1111 by force or [2] fear, [3]ou by other means, (B) to impose on citizens the profession or [2] rejection of any religion, or [C] to prevent anyone from joining or [2] leaving a religious community. (111A *fortiori*, it is [A111] contrary to the will of God and [2] contrary to the sacred rights [a] of the person and [b] of the family of nations [B] to use force in any way [C] to 111 destroy or [2] suppress (one ?) religion [DJ 111 in the whole human race, or [2]1 in a given region, or (31 in a given group. "2859

Conclusion on DH 6. Thus, the *specialis civilis agnitio* is not opposed to the RL, and **DH 6** does not make any kind of judgment on it, neither negative nor positive. El **DH 1**, § 3, on the contrary, recalls the "traditional doctrine" for the case of the *Catholic* religion.

This remark is taken up by almost all Italian "jupublicists", following RUFFINI, 1992,301-302. Cf. e.g. DALLA TORRE, 1977,353; SPINELU. 1988,78.

CHAPTER 8.

8. THE LIMITATION OF THE FREE EXERCISE OF RELIGION {DH 7}

ON then passes to the opposite problem, that of the limits of the use of the RL, required by the sociality of this exercise. It is a question of the limits of what (good or bad) is protected de facto (resp. *per se* or *per accidens*) by the right considered in its *exercise* (limits of the exercise of the right). The criteria for the limitation of the exercise of the right can be considered either theoretically, in the doctrine of *DH1* (8.1.) or in the articulation of the doctrine of *DH 7* with history (8.2.).

8.1. *DH's doctrine7* on the limits of the exercise of the right to LR

In order to understand *DH's* doctrine on the limits of the RL right, it is important to outline the various possible approaches to the question of limits (8.1.1.); then to analyze in detail what *DH* says about them (8.1.2.).

8.1.1. Ethical or legal limitation of the exercise of a right

Beyond the specification, the essence of the right as a power, there is the act of this right, that is, its exercise. It is inherent to a natural right to possess limits of exercise.²⁸⁶⁰ These limits are like the inner surface of the sphere that protects "free action in religious matters in accordance with conscience", insofar as they define the concrete activities protected by the right and distinguish them from those that are not.²⁸⁶¹ * It is, on the other hand, external to the essence of the right whether or not the limits of exercise are crossed *in fact*. "To assert a right is not necessarily to claim the exercise of it under any circumstances."²⁸⁶²

"The limitation of rights is the restriction (*coarctatio and restrictio*) of their exercise, the rights themselves remaining. This limitation is made or determined by the same law as that by which the right itself came into being. Now this limitation can arise from a moral or purely ethical duty, or from a juridical duty; in the first case, the exercise of the right, in spite of the limitation, will be illicit but at least sometimes will be valid, and he who exercises it will sin against the moral law;²⁸⁶³ in the other case, the exercise of the right, in spite of the limitation, will be unjust, and he who exercises it will sin against justice, and sometimes he will also perform an invalid act, namely when

²⁸⁶⁰-Cf. COSTE, 1969.236-237; cf. already MESSINEO, 1954.205.

²⁸⁶¹ See KONIG, 1966.345.

²⁸⁶² COSTE, 1969.240; see also JIMÉNEZ-ÜRRESTI. 1968.596: and BOPP. 1967.07.215.

²⁸⁶³ Cf. also art. "Tolerancia". *EncRetCat VII* (19561.219-221).

this act is capable of invalidity. (...) but to limit the rights is to determine to which cases their use extends, and to which it cannot extend. 15. - 2° *The collision of rights.* - The collision of rights is nothing other than the opposition of two or more subjective rights, so that they cannot be exercised at the same time. It is obvious from the very notion of law that there can be no real collision of rights, since such a real collision would presuppose that the law from which they derive can prescribe contradictory things. Everyone can see how repugnant this is. But there can be an apparent collision of rights. "2°64

In a language where "right" is understood in the sense of "juridical permission", where "the object of right" is consequently a good action, the "limits of right" are very exactly those of truth and moral good, outside which there is only error and evil. But it is not in this sense that *DH* takes the word "right".

If, on the other hand, one places oneself within the framework of law as a requirement, DH's point of view, one brings in an external factor, namely the passive subjects of law, endowed with their own limits. In this properly juridical framework, the exercise of the right can only be justly limited by the other subjects within the limits of their own attributions. The whole problem will then consist in determining when the others have the right or even the duty to prevent the subject from adhering to the error or from propagating it. And we have seen in Ci riesce that, in certain circumstances, God... gives men... no right to prevent what is wrong, so man must in justice tolerate this wrong abuse."

8.1.2. Analytical reading of *DH 7*

DH2, § 1 mentions the existence of limits to the exercise of the RL ("*intra debitas limites*"), limits affecting the act protected by the right, but does not describe their *es-sence*^{TM6} On the other hand, *DH 7*, § 1 begins by founding the existence of "moderating norms" of the exercise of the right:⁶⁷

"The right to freedom in religious matters is exercised in human society, therefore its use is subject to certain moderating norms. "2868

Then two more paragraphs detail the *types of limits*:

- I) of moral obligation {*DH 7*, § 2};⁶⁹
- II) subject to legal coercion {*DH 7*, § 3}.⁷⁷ <

2864 CORONATA, 1934,17-18. Our translation.

2865 This is the difference between this Catholic conception and the liberal conception. Cf. CANET, 1891, 383. But 3 RS preferred to reserve the word "tolerance" for the virtue which allows the common life of persons of different opinions (cf. S 13, A.S. IH/VIII, 465).

2866 See ANDRE-VINCENT, 1987.01-02,39.

2867 If their existence is obvious, their definition is less so. Cf. ROOT, 1983, 156, which refers to the Jones, Moon and Scientology sects.

2868 "fus ad libertaictm in re religioia exercetur in societate humana, ideoque eius usus quibusdam nonnis moderantibus obnoxius est."

2869 On the moral nuns of limitation, cf. S 79: 6 RS, modus 32. A.S. I V/VI, 751 -752, (56)-[57].

2870 on moral and legal limits, cf. MESS1NEO, 1943.09.08, 383. The State is not responsible for enforcing morality. Cf. DABIN, 1953,297-298 & 299. But cf. 1223. Encycl. *Evangelium vitae*, n° 71.

I) DH 7, § 2 : Internal limitation of the exercise of the right by morality

"In the use of all liberties, the moral principle of personal and social responsibility must be observed: in exercising his rights, every man and every social group are obliged by the moral law to take into account the rights of others and their duties towards others and the common good of all. |With all, one must act with justice and humanity. ®2864

2864 "In usu omnium libertatum observandum est principium morale responsabilialis personalis ei socialis: in iuribus suis

[I] [A] The framework of the principle is provided: [1] It is no longer a question of the right, but of its use. [2] It is no longer a question here specifically of the RL, but of all liberties ("*In usu omnium libertatum*"). fBJ A norm is provided. [1] And it is a **moral** norm. [2] This norm is responsibility. a) This responsibility is personal: it therefore regulates each individual; [b] it is social: it therefore regulates all society. *²⁸⁶⁵⁷² It affects the user, the active subject, not the passive subjects as such. It indicates the limits beyond which there is moral abuse of the right.

[II] The moral principle is then defined (after the colon, including in the Latin original). [A] The framework is recalled, namely]IJ not directly the right, but the exercise of rights ; [2] not specifically the right to the RL, nor even to freedom in general, but "the rights" ;]B) the subject of the duty, which is recalled to be double : individuals and groups ("*singuli homines coetusque sociales*"). [C] we reinculcate its character of *moral* obligation. This reminder (cf. also *DH*²⁸⁶⁶) corresponds perfectly to the fact that the right to the RL is claimed as a consequence of a serious moral duty.²⁸⁶⁶ If in the following paragraph, some of these obligations can be coercively demanded as juridical duties, they are considered here only from the *moral* point of view; [D] the content of this obligation is characterized as taking into account ("*rationem habere*")... [1] the rights of others ("*iurium aliorum*"),²⁸⁶⁷ this point will come back under the juridical point of view in the following paragraph; [2] one's own duties towards others; [3] the common good of all ("*boni omnium communis*").

In short, a morally good use of law includes respect not only for the strict right of others or of the community, but also for all morality, including equity, charity, and other virtues of the common good. The duty to promote the common good concerns all men,^{287 -'} and especially those in power:

"Public authority, when it protects rights, excludes all other action: social peace being impossible when each one does justice to himself. On the contrary, when it comes to the aid of interests, public action merely associates itself with individual or collective private action, or makes up for the absence of the latter. It follows that the duty to protect rights always exists and must necessarily be fulfilled, whereas the contribution to social interests is variable and suppletive. In other words: to protect rights is the *primary* function; to help interests is the *secondary* function of the State.

The *whole* common good is used as a norm of limitation when it is a question of the *moral* obligation of the man towards it (*DH* 7, § 2).^{2x77} But, contrary to the case of the juridical norms object of the following paragraph, the whole common good is not for the State norm of *negative promotion*,^{2 ^} by *coercive* action on the exercise of the right to the RL.^{287 "} Only a part of this common good (just public order)²⁸⁶⁸ concerns the respect of the rights of individuals²⁸⁶⁹ and society.²⁸⁷⁰ It is only *the essential part of* the common good (the just public order)²⁸⁷¹ that will

exercendis singuli homines coetusque sociales lege morali obligantur rationem habere ei iurium aliorum et suorum erga alios officiorum et boni omnium communis. Cum omnibus secundum iustitiam et humanitatem agendum est."

²⁷² On the contrary, the CCA is a freedom of the *irresponsible*.

Cf. e.g. *DH* 1; *DH* 2, § 2 and the formula of PAUL VI cl of JOHN PAUL 11: "the most important of the rights according to the greatest of the duties", etc.

²⁷¹ Cf. DELHAYE, 1965b. 388. which emphasizes this reciprocity clause. See also DELHAYE. 1975.684; AUBERT Jean-Marie. *Droits de l'homme et libération évangélique*, Paris. Centurion. 1987. [286 p.], 95. and JARRUCCI. 04 (1863.10.26). 296.

²⁸⁶⁸ In most contemporary constitutions, "public order" refers to the limit of the exercise of the LR. Cf. FEDELE, 1963,36. However - it goes without saying - *DH* 7, § 3 perfects the concept, in order to prevent the States from turning it to their advantage. Hence the legitimate question of DAVIES, 1992, 196. And our inescapable conclusion: *only those States that align themselves with DH will be able to apply this criterion correctly. Only substantially or formally Catholic states have reason to align themselves with the Church's magisterium.*

²⁸⁶⁹ The rights of other individuals cannot be the only criterion; cf. NEOPHITOS, 1974,279.

²⁸⁷⁰ See JIMÉNEZ-URRESTI, 1968,597.

²⁸⁷¹ It is by falling into the *public* domain that religious manifestations may eventually come under the jurisdiction of the

justify forcing man by legal means to respect it (DH7, § 3).

II) DH 7,§3 : Legal or external limits to the exercise of the right

DH 7, § 3 is complex and delicate, because it determines when active subjects of the law can be coerced / prevented.²⁸ " In this entire paragraph, the drafting commission, strongly impressed by the intervention of Cardinal Wyszynski,²⁸⁸ > was especially concerned to avoid anything that might give anti-religious States (and confessional States of the "monist" type) the opportunity to play with words.²⁸⁷² Abuse that crosses the *external or juridical limits of the law*, and is therefore seriously harmful to society, can be prevented or repressed:

"Furthermore, (I) | A J since [1 j civil society [2] has the right to [3] protect itself against [4] abuses that may occur under the pretext of religious freedom, (B J it is primarily up to the civil power to provide this protection; [I] (AJ this must not, however, be done (1 j arbitrarily or

[2] BJ but according to legal norms, which are required by (a) the effective protection of the rights of all citizens and their peaceful harmonization, and (b) the sufficient care of that honest public peace which is the common life ordered according to true justice, and (c) the proper care of public morality. [C] All these elements constitute the fundamental part of the common good and enter into the notion of public order. [D] On the other hand, the custom of complete freedom in society must be observed, according to which freedom is to be granted to man as much as possible, and is to be restricted only when and insofar as it is necessary, B² ***

[3] As to the *existence* of this limitation, [AJ The *raison d'être* of these criteria lies in a *right*. Of this right [1] is first named the *holder, civil society*; [2J then is indicated *the essence*, a juridical permission ("positive authorization"); [3] the object consisting in *self-defense*; [4j in turn this self-defense is aimed at abuses, committed under the pretext of LR, and by us always named "juridical abuses." In fact, the final text no longer explicitly requires that these abuses be *really serious*^{TM*} Note that the abuses are envisaged as accidental ("*qui haberi possunt*"): one protects oneself not against the right to LR, but against an abuse that pretexts this right. JB] After the *right* to defend oneself, comes the *duty* to do so, the subject of which is an *organ of civil society*. By declaring that "it is *principally (præcipue) to the civil power* to provide this protection", the Council implies that other entities can also provide it. It goes without saying that families or associations, working to promote an honest use of the RL on the part of their children, members or fellow citizens, or even to convert men to objective religious truth, also protect civil society against the abuses envisaged (cf. *DH S*). If the protection in question falls mainly to *the civil power*, it is because it has at its disposal means which no organization can enjoy, and, especially in *contemporary times*, the *monopoly of coercive power*, coercion being moreover a property of law.

[11] We then move on to the rules measuring this protection:

|A| negatively, this protection must be neither 11J arbitrary; [2J nor unjustly "favoritistic,"² **9 which is not simply *favoring* one party (distributive justice often requires this), but doing so in a way that injures a right.² ***

**** " Præterea cum societas civilis ius habeat sese protegendi contra abusus qui haberi possint sub pretexto libertatis religiosæ, præcipue ad potestatem civilem pertinet huiusmodi protectionem prestare ; quod tamen Geri debet non modo arbitrario aut uni parti inique favendo, sed secundum nonnas iuridicas. ordini morali obiectivo conformes, quæ postulantur

State. This is a classic point in the doctrine. Cf. e.g. ANTOINE Ch., 1925, 1535, and LEFEBVRE Marcel, M^a, 1985.11.06. 10. a & b. Criterion already used by the WCC in Amsterdam (1948). according to COSTE, 1969, 245.

2872 Major concern of the Council: S 28, especially § 1: S 39 a: 5 RS, A.S. IV/V, 154; S 40 (on false public peace): 5 RS, A.S. 1 V/v, 154; S 56-57: 6 RO, A.S. 1V/VI. 722.

ab efficaci iurium tutela pro omnibus civibus eorumque pacifica compositione, et a sufficienti curia iustis honestæ pacis publicæ quæ est ordinata convnientia in vera iustitia. Haec omnia partem boni communis fundamentalem constituunt ei sub ratione ordinis publici veniunt. Ceterum servanda est integræ libertatis consuetudo in societate, secundum quam libertas debet quam maxime homini agnosci, nec restringenda est nisi quando et prout est necessarium. * Cf. DA VIES, 1992, 194-195.

^Cf. S39 b: 5 RS. A.S. IV/V, 154.3. Cf. the discussion in ONORIO. 1991a, 14.

MW In any case, according to the SUC itself, (S 83: 6 RS. modus 14. AX IV/VI, 755, [60]): "R. - Vox 'inique' excludit iniustitiam. ideo quando potestas civilis secundum iustitiam distributivam uni parti favet non agit inique. Ceterum hæc verba expresse rogata fuerunt." See the details of S 08, S 11.

3 RS, A.S. 111/viii, 461-462 will designate by "autorizzazione" the right-permission-affirmative, by opposing it to the right-requirement-negative.

IK32 0760.13. 445, 798; DP. 614.

UO5 0760.15 (beginning); DP, 615 (= PIN 3040); AAS, 798-799: "Può darsi che in determinate circostanze Egli non dia agli uomini nessun mandato, non imponga nessun dovere, non dia perfino nessun diritto d'impedire e di reprimere ciò che è erroneo e falso '1' " (emphasis original).

¹⁸³⁶ 0760.15 (continued): DP, 615 (= PIN3040), corrected by us; AAS, 798-799.

¹⁸³⁸ Is it a question of the common good, especially in the form of public peace, or of the values resulting from the dignity of the person? Cf. DELHAYE 1964a. 166-167.

¹⁸⁶⁰ Because of the evil that it connote. Cf. MOULART, 1879². cit. 295, § III. TANOÛARN, 2000, 169, note 19. simply does not understand what we wrote here in our 2^o ed.: tolerance, having for object an evil. is not a come; moreover, it is an act, not a habitus; this act can be the object of a come (prudence, even justice). We have never hesitated to write that tolerance can be good... There are acts which are indifferent in themselves, which only become good (or bad) in view of the finality and the other circumstances. They are therefore not good in the absolute.

¹⁸⁶¹ Cf. MESSINEO, 1954.05.08, 380; 1950.09.30; 1950.10.28; 1950.08.05. Another interpretation: MURRAY, 1965.12.11/18.41-67.

¹⁸⁶⁵ Cf. e.g.: GUERRERO, 1961.07-08.23. or ONORIO, 1991a. 15.5^o.

1866 Cf. e. . The interventions of the Council Fathers are listed in LRTC, 11/B: *Calendar of the genesis of DH*, and 111/B, Index, s. v. "tolerance". Cf. also 2 RO, A.S. 111/11,349 :3 RS, 45.111/VUE 464: "S. *¿Tolerantia!*"; S 17:4 RS, A.S. IVA, 1901-191; LEFEBVRE Marcel, M^a, 1985.11.06.82, e); and *ibid.*, 99. XXVI. *Dubium* 15.

1882 0760.15. *circa medium*.

1884 MADELIN, 1975.02, 125, who exposes the Leonine thought, and refers to 0621. in DTC 15/1, 1221]. Same thought in REGATILLO, 1958.210, and SÜNER, 1965.01-04.23.

1885 BAUCHER. 1926.699. On this "right not to be prevented from being Catholic a, or "civil liberty of the act of faith", or "liberty of the individual conscience a, cf. also DA VIES. 1992, 25.

1900 445; 796: "del dinto intemazionale... diritto naturale" (of international law... natural law).

1902 AAS, 796: "To you, cultori del diritto" (to you who cultivate the law).

1907 MS. 799: "ciò che non risponde alla verità e alla norma morale, non ha oggettivamente alcun diritto né all'esistenza né alla propaganda, né all'azione" (that which does not respond to truth and to the moral norm has objectively no right either to existence or to propaganda or to action) (0760.17). P1EX11 also uses "facoltà" (cf. 0760.06).

-S MS, 797: "sarà permesso" (it will be permitted [to the citizens to practice their religion, etc.]).

I909Q760.14 : AAS. 798. See note 1834.

I910Q760.13. AAS. 798. See note 1832 (*possono*).

1911 MS, 798: "Nessuna autorità potrebbe" (no authority could).

OBJUS, 798: "Neppure Dio potrebbe" (even God could not) (details in LRTC).

I913MS. 801: "si potrebbe procedere alla repressione" (one could proceed to repression) Cf. also 0760.23.

1917 TANOÛARN, 2000. 156-157. gratuitously affirms: "PIE XII does not necessarily place himself on the territory of justice", not taking into account our demonstration, based on our integral research of the meaning of the word right in RE XII. and on our precise study of the immediate context.

1918 The question of legal right-earrgemvr is irrelevant in this sentence.

1919 Cf. DIEZ-ALEGRÍA, 1965, 12, note 11: "Evidentemente, en tales casos, los que están en el "error" tienen *derecho a no ser reprimidos*: mí "no derecho" es estrictamente correlativo de un "derecho" del otro."

1923 *DH2* does teach such a type of right, which entails a right to be tolerated: see WOLFE, 1983,190.

1924 This is one reason for choosing the word "freedom" instead of "tolerance". The other reason is that the modern rule of law has been constitutionally deprived of the legal power to repress according to a judgment of truth; the word "tolerance" therefore has no meaning there; cf. SARACENI. 1957.76-77.

1926 Cf. STORCK. 1989.66. *circa med*.

1927 See the case already considered by 0271. THOMAS OF AQUIN, s., 2-2.57,2.1.

192 "Cf. SARACENI. 1957,76-77. already quoted.

¹⁸³ 35 0803.:DC. 1959,899.

193⁷ 0803. : AAS. 1959.505: DC. 903.

¹⁹⁴¹ 0817.

¹⁹⁴¹ 0806. JOHN XXIII, 1960.02.22: to the President of Peru: AAS. 95-96.

¹⁹⁴¹ 0809. AAS. 1961, p. 417. cited by *DH*, note S; DC. 956.

¹⁹⁴⁴0812. CENTRAL PREPARATORY COMMISSION, 1962.06.19 = OTTAVIANI. 1962.

¹⁹⁴⁷*Ibid*, 658-659, No. 3, continued.

TM ***Ibid*" 659.

-58 Other summaries: VERMEERSCH, 1922. 115-117 and 279-281; GARRICOU-LAGRANGE. 1931. 415-125. especially 422; and 440-454. especially 441 and 448; RODRÍGUEZ. Victorino, O.P.. 1964b, 347-348 and 388-389. Or JOUIN. 1991b, 61; MURRAY. 1964.12. in AA. VV., *LR-Exigence*, 16-20; or LUNG, 1948. 135-137; MISNERAIH. 1982,79; 80; 111; 112 (whose view we do not share); 117; 118. (with note 88), and 125.

-961 Cf. OTTAVIANI, 1960.11. 74-75.

l'62cf. BOUGAUD. IV (1895'). 380-381; eICHÉNON. 1921.208. note 2. citing CANET. 1891 (1900-'). 24-30.

-963 Examples: LLUIS-PEREZ, 1900.129-130; MARCHESI, 1948,144. n" 115.

1964 Within the meaning of *DH 7*, § 3.

¹⁹⁸⁸ p._{our}]_s texts and translations by us consulted, see our note 14.

20U5 0932. PAUL VI, 1965.12.07: Homily *Hodie Concilium*; AAS. 1966, 57; Ss. *C/KC. O.I.C. VAt. II*. 1061 1077; DC, 1966.64.

²⁰⁰⁶ Our translation of 0940. PAUL VI, 1966.01.12: General Audience: *OR*, 1966.01.13; *IPVI*, 700;DC. 418-420.

2007 of FRANZELIN, 1882, 129-130; same distinction with the words "plenitude" and "summo gradu" in HÜRTH, 1952,247.

2009 0944.

2 "Wcf. SALAVERRI. 1951.151.

20JI DELHAYE, 1972.4345. with, however, an error on the conciliar *definitions*.

²⁰¹⁶ Pär example, MacDONAGH. 1967b, 34; NEIRA, 1966.04. 305-306; ITURRIOZ. 1965.07-09. 286-287; SEGARRA, 1966.5-6.

²⁰¹⁷ See PAVAN. 1969a (GAROFALO). 1279.

2** The two "sedevacantist" schools, however, believe that all the conditions for infallibility were met (except the pope himself...). These these are difficult to reconcile with the faith (cf. e.g. VATICAN I.

202" CL S 23: 4 RF, A.S. 1 VI. 433 and all 5 RO. A.S. 1VV, 99-100. especially § 2, p. 99: S 24-30). S 32, S 88: 6 RS, AS. IV/VI, 763; and S 94: 6 RS. AS. IV/VI, 770, cf. also *DH 14*. El MARGERIE. 1988b, 48. n- 37. § 2.

2030 We do not indicate the references to the minutes of the meetings.

2036 E, pe; u.Šre also customary (cf. the Ancien Régime).

² c^o 08193:AAS. 1963,261;OC,518-519.

^{2UW} S 15:4 RS. A.S. 1V/1, 185.LUCIEN, 1990,266-267.

2046 "Pariter vero profitetur Sacra Synodus officia hæc hominum conscientiam tangere ac vincere, nec aliter veritatem sese imponere nisi vi ipsius veritatis, quae suaviter simul ac fortiter mentibus illabatur." Cf. S 09,3 RS, III/viii, 461. This does not call into question the right and duty of parents to exercise a certain amount of restraint on their children to train them in virtue, etc., up to a certain age. The SUC has explicitly excluded dealing with this (S 76:6 RS, A5. IV/vt, 746).

2(MK being understood, moreover, that "the last pontiffs, in preserving this doctrine, complete it" (*ibid.*). See also 3 RS, AS. III/viii, 464, § 6: this is a new question compared to the XIX^o century.

²⁰⁵⁰ "Insuper, de hac libérale religiosa agens. Sacra Synodus recentiorum Summorum Pontificum doctrinam de iuridicabilibus humanæ personæ: iuribus necnon de iuridica ordinatione societatis evolvere intendit."

20*7 Cf. JIMÉNEZ-URRESTL 1958,372, conclusion.

^{205c} It can also be mono- or multi-professional.

2059 OF_o minus the principles regarding policy.

2065 c_o s[in this sense that Mr. J.-L. TAURAN, addressing the Academy of Social and Political Sciences, was able to declare "secularism well understood supposes the non-confessionality of the State;!...!" (*DC*. 2002,128).

20740611.12 ; 0611.16 j061131 ; 0772.7 -.0611.24.

20750624. ; 0663.

²⁰⁷⁷ See ZALBÁ, 1966 = DíEZ-ALECR1A. 1966a, 182 IsurDHIJ; and GUERRERO, 1966.02,64.

²⁰⁷⁸ See FUENMAYOR. 1974. 121-122.

2*9I CT OTTAVIANI, 1960,1962 and 1963, For a more complete bibliography, see LRTC. chapters 13 and 14.

2092]_{too} of the conferences of J. MARITA1N at the Summer University of Santander. collected in *Integral Humanism*.

2095 See already AT, 1883,63-64 against such a thesis.

²⁰⁹⁷ Cf. AVACK. 1972,362 ; 363 ; 364-365 ; 1974a, 611. Too fast: KASPER. 1988a. 827. CT. also COLELLA. 1984b, 56; CALVO-ESPIGA, 1984. 74; CORVEZ, 1967.44-15; SOLER Carlos: 1993a. 255; SPINELU. 1988. 73 74; COLELLA. 1984b, 56.

²¹⁰¹ Cf. TORRES-ROIAS. 1968. 168.

²¹⁰² Very typical, NAURO1S. 1980,287. Same uneasiness in SOLERCarlos: 1993a, 290.

²¹⁰³ Cf. *Zur Konzilsverklaerung liber die Religionsfietteil*, 1966.06,276.

2104 cf. e.g. SPINELLI, 1969, 39, which then evolves from SPINELLI, 1976, 323-324. Good synthesis of position 1 in MARGERIE, 1988a. 37-43. summarized by A. in 1988b. 60. § I. B. de MARGERIE was forced to change his mind in 1990 after having subsequently become acquainted with S 48 and having reread the Latin original of certain texts of Leo XIII prior to *Kerum novarum*.

²¹⁰⁵ Cf. c. g. BURGHARDT, 1976,72.

2106 COSTE. 1969, 414 supports a combination of secularism of the state and substantial confessionality of institutions, to be compared with COTTIER, 1964.07-10,110.

2108 Very nuanced position in DíEZ-ALEGRÍA. 1965,99.

2109 Cf. e.g. DEL OLMo, 1966,79.

²¹¹⁰ Cf. CALVO-ESPICA, 1984,70, embarrassed about the fact that the confessionality is also treated in *DH 1*.

2111 ALONSO, 1964.316; ARCY, 1964, 170; AVACK, 1974a. 612; BERTONE, 1992/1980.401; CALVO-ESPIGA. 1984,71-72; 74;

- CALVO-OTERO, 1968, 179; CONDORELU, 1972,370; CORVEZ. 1967, 46, and 47; 61-62;FRAGA- IRIBARNE, 1974, 162 & 167; GANGOITI, 1972, 708-709; GOFFI. 1963b, 152-153; GOFFI, 1964.01, 1; LAJOLO. 1970.03-04. 122-123; LECLER. 1966.04; LLANO-CIFUENTES. 1989, 220; 222 [refers to THILS, 1966.11-12, 665ff.]; 226; MAIRENA, 1968, 128; 129 [relies on BONAVENTURA DA GANCI. 1960.05.01, 5051; 130 & 159; MARTINEZ-SISTACH, 1987,35-37, about the special mention of the Catholic Church in art. 16. § 3 of the Spanish Constitution of 1978; MINNERATH, 1983. 136; MISTÔ. 1982, 102; MURRAY, 1966.12 (*ThSil*, 593; 595-596; MURRAY. 1967, 122; MURTAS, 1970. 116; PAVAN, 1967d, *Unam Sanctam*. 60, 183-184; PAVAN. 1976b (BURGHARDT), 34; PESCE, 1976.07-12, 270; SOLER Carlos: 1993a, 80; 89; 246 & 258; 267;TURRADO. 1968.210-211.
- 211² AVACK. 1972,366.
- 2113 BERTONE, 1992/1980,401-402; DAMIZIA, 1978,48.
- 2114Cf. S 77: 6 RS, AS. IV/V1,750, [55]: "19 - Pag. 9. linn. 20-25 [...]. R. - Textus non est contra Concordata, immo expresse loquiturde speciali civili agnitione " CORRAL. 1966b, 382.
- 2 11 .5 Cf. CORRAL. 19666,380-381 & 385-386.
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- 2116CORRAU 1966b,396-397 (our translation).
- 21171] there were six: cf. 5 RO, AS. 1V/V, 77. For a list of references to the main passages of 4.5. on the religious freedom, see LRTC, t. II / B and here, our "Table of various projects..." and the tables of GONNET, 1994,377:379:380.
- 211# This one maintains that the fundamental rights are the same in the confessional State and in the pluralist society: S 17:4 RS, § 5, A.S. IV/I. 192.
- 2119SOLERCarlos: 1993a, 69 demonstrates the utility of studying prior discussion.
- 2)20 | SC, A. S. H/V, 433-441;DC. 1964,71-81.
- 2121 | SC, A.S. 11/V.436 : our translation.
- 2122 | RO, AS. ij/V. 485-495.
- 21242 RS. AS. 111/11,345-348.
- 2137 *Ibid.*. 194.
- 21402222 present; 1997 votes for. 224 votes against, 1 invalid vote. Cf. AS. IV/I,564 = AS. 1V/V, 105.
- 2141S 23:4 RF. AS. 1 VII. 433.
- 2)43x5. 1V/V, 81; HARRISON, 1988b (French), 73-74.
- 2)47x51V/V, 151.
- 214# Without the parallel *textes recognitus*, probably due to lack of time for the printers.
- ^{21,29} Cf. HARRISON, 1988b (Eng.), 82. [Compare A.S. 111/11,352 = S 03].
- 2150 EH *Q^hhaec*u n other change concerns both traditional Catholic doctrine and the *potestas publica*.
- 2151 We have managed to find the origin of this addition. Cf. *Expensio modorum* in 6 RS, AS. IV/vi, 731. amendment n°28: " - Pag. 4, linn. 11-13, loco "de unica... officio" dicatur "de morali hominum ac societatum officio erga veram religionem et unicam Christi Ecclesiam". A. - Accipitur quia clarius." Moreover, the private archives of Cardinal HAMER have given us the name of the author of this amendment, Card. Rufino SANTOS, of Manila. The *Modi* on 5 SC and 6 SC, of which this one is a part, have not yet been made public (at the time of writing [March 2003]). Similar remarks apply to the following "modus", no. 29: "Pag. 4, hn. 13, addatur aliquid de societatum officio erga Ecclesiam (5 Patres). R. - Sufficienter provisum est admissione Modi præcedentis." The same *Expensio modorum* points out later, p. 732, that in *DH*, "agitur de progressu in explicitatione doctrina-, ut alii 214 Patres affirming [...]."
- 2152 paragraphs written by M^o Carlo COLOMBO, his personal theologian. Cf. Note of PAUL VI reproduced by CARBONE, 1991,170.
- ²¹⁵⁵ S 48:6 RO, A.S. IV/VI, 719. Our translation.
- 2156 In the continuation of the same *Relatio de modis a Patribus propositis*, the SUC insists very strongly on maintaining the passage on the "*officiis erga veram religionem*", in spite of foreseeable difficulties with the acatholics: S 53, A.S. IV/VI, 720-721, [22111 & notes : A.S. 1 V/vt. 722-723. The words "*ac societatum*" have a little history, narrated by notes 9 and 10 of the A.S.: "(b) pag. 5, lin. 29. ad pag. 6. lin. 2 legatur: "... integram relinquit traditionalem doctrinam catholicam de morali hominum ... officio erga veram religionem et unicam Christi Ecclesiam"...¹¹ Notæ (p. 722-723): "In oratione": Note 9: *ac societatum*. Note 10: (duo verba in typographia remanserunt, nempe a de morali hominum ac societatum "*quod debet adiungi*: " de morali hominum ac societatum officio erga veram religionem ac unicam Christi Ecclesiam ")."
- ²¹⁵⁷ Thus, for example: SOLER Carlos: 1993a, 261 & 263.
- ²¹@Cf. ARGAD, 1989.03-04,26-27.
- 2163 GS 76, § 5: and the final message to the rulers (0938).
- 2164 On the *writing* deficiencies of the document, see also ARGOS, 1989, no. 277-278.1096 & 1102. Nevertheless the silences are not negations.
- 2166 cf_{as} on the broader doctrine of the relations of Church and State, MARTIN-MARTÍNEZ, 1989.755 763. with a list of texts of VATICAN II on the question: GS 74,76,42; AG 12; LG 36; DH 6; 3; 2; AG 13; GS2Q&21; DH 15WA 5; Final Message (0938.); CD 20; 31; GE 6: 7; 8; IM3; AA 24; 7; 14; GS43; 75 Let us add, with COLELLA, 1972,884. the important CD 19 on the civil liberty of bishops.
- 2167OCÁRIZ, 1989.06.93 (our translation). S05 and S 21 made it clear that *DH did* not set out to deal with "*professa of all the duties of the State towards the Church, but only with one, that of leaving the Church free from coercion*."
- 216KCL NEOPHITOS. 1974.263.
- 2169 We thus disagree here with CORRAU 1976, 105.
- 2170 cf. RUSSO Biagio, 1965, 12-13; LUCIEN, 1990, 242. to be studied with note 18. See also MACDONAGH. 1967b. 37.
- 2172 Nor a *fortiori* exclusively, as J.-C. MURRAY would only like to grant. On "objective cult" and "formal cult", cf. J1MÉNEZ-URREST1, 1958,385*386. See also 388*390 on "society", "state", "body poli" c". etc.

2173 But what good is a seemingly pious head of state who tramples on the rights of his constituents?

2174 For the expression: cf. e. g. 0730.2. On its meaning, cf. 0745.4: AAS, 1952,272²⁷³.

2175 See also CDF, 2002.11.24: *Doctrinal note on questions about the involvement and behavior of Catholics in political life*. 2176: f. 10 commentary of DH 6, § 3, by BELDA, 1966.04.360. He then wants to show that the State is not implied by "societatum"; and he believes he is bound to do so because otherwise he would detect an opposition between DH 1, §3 and DH 6, §3. This cannot be reconciled with S 48. J.-C. MURRAY, summarized in MACEVOY, 1973. 27, seems to us to have overcomplicated the distinction between public power and civil society. In any case, as MACDONAGH, 1967b, 140, notes, the word "State" refers to the body of political leaders, or institutions, or the people, and this remains ambiguous.

2177 See for example LAURENTIN, 1966,183.

tican He never formulated anything about DH. Let us note nevertheless the correctness of the transl. ALBERIUO. and of that edited by Christoph THEOBALD. SJ, *Vatican 11. L'intégralité*, revised bilingual edition with biblical and analytical tables and index of sources, Bayard, 2002, where a note referring to St. Thomas is missing, where the text of *Romans* in DH 11 is incomplete in the lut. but complete in the transl.

ii^ABROGUE, 1964.97-1 [9,passim.

21K0 For the general meaning of "societas", cf. 1934,19, § 3.

21X3 Not only in the sense that GONELLA, 1945, 101: "L. - Lo Stato è una società: la società civile", or LIBERATORE, 1885.12.09, 618. We understand by State the two meanings indicated by HAYOTI, 1956, 196, and by LOBO-ALONSO, 1966. 12-13. namely: State-society / State-power. PAPAUI. 1964. 259- 260 considers that the State-society must render worship to God, but not the State-meaning, only the Church rendering worship.

2i⁴poGUASSO, 1968, 116-117, includes the State under "ac societatum".

2103 HAMER, 1967a, 99-100.

2iS6 ANDRÉ- VINCENT. 1977.03 04/ 1991.33.

2187 ^{D_{REV}} quoted, even among those whose thesis this passage would support, for example MARSHNER, 1983,225-226.

Some others are even quick to declare that DH 1, § 3 is a... lapsus; thus FUCHS, 1987,247.

2188 Cf. MOSTAZA-RODRÍGUEZ, 1974, 99. "Catholic doctrine" refers to the teaching of the authentic universal magisterium (cf. LAC 61. no. 892,5^o).

2189 Cf. CATURELU, 1992, 284.

2190 The position of RODRÍGUEZ. Victorino, O.P., 1966.04-06 seems to us therefore - on this point - a little exaggerated. More exact, a supporter of the opposite position rejects the present opportunity of some historical Corme clothed by the confessionality: CONDORELLI, 1972,370.

2191 We agree with HARRISON, 1988b, 81-82 against RODRÍGUEZ, Victorino, O.P., 1966.04-06, and TORRES-ROJAS, 1968.

2195 Cf SCDF, 1983.07.20, to M ** M. LEFEBVRE, in MARCHAL, 138: "... private authors, even if they were experts at the Council (like Fr. CONGAR and Fr. MURRAY whom you quote) are not the authority in charge of interpretation. Only the interpretation given by the Magisterium, which is thus the interpreter of its own texts, is authentic and authoritative: for the conciliar texts are not the writings of this or that expert or of anyone who may have contributed to their genesis, they are documents of the Magisterium."

2200 FRANCO F., 1967.07.01. who seeks to apply as rigorously as possible all the principles of DH. in the words of LA HERA, 1972c, 312.

22 The "Fundamental Law of 17 May 1958"; Spanish original cited by FUENMAYOR, 1974. 133. Cf. also the Concordat of 1953, signed "In the name of the Most Holy Trinity" and wishing "to regulate reciprocal relations...in conformity with the law of God and the Catholic tradition of the Spanish nation"; and art. 1; transl.: DG 1953, 1153-1154. Thus, the Spanish nation and state (cf. also art. 2) also had to recognize truths of divine law, of revelation, and not merely the fact of the Catholic tradition of Spain, which any non-believer could also have recognized. Nevertheless, in the law of 1958, it is about doctrinal confessionality of the nation, not of the State. CL also mentions the Trinity in the Irish Constitution, commented by 0783. AAS, 1957,954; DPPieXH, 1957, 566.

2210 CL then our extracts 0611.02 ;3 ;4 ;5 ; 6 ; 7, etc., on the one hand, and on the other hand 0662.1 ;3 ;4 ;5 ;6.

2211 See MAGIOIUNI, 1985,351, & 357-358.

2225 The_{no} te 23 of the text refers to GS 76.

2228 Note 26 of the text refers to JOHN PAUL II, *Address to the Diplomatic Corps accredited to the Holy See*, in: *L'Osservatore Romano*, 11 January 2002.

follows the quotation of our 1003. PAUL VL 1976.12.20: AAS. 1977,45.

J²-¹ ^{IA} note 30 refers to PIE IX, Encycl. *Quanta cura*, ASS 3 (1867) 162; Leo XIII, Encycl. *Immonale Dei*. ASS 18 (1885) 170-171; PIEXI, Enc. *Quas Primas*, AAS 17 (1925) 604-605; *Catechism of the Catholic Church*, 2108; CDF. Decl. *Dominus Jesus*, n. 22.

Cf. the condemnation of Proposition 44 of the *Syllabus: DzSchHü* 2944. See also ARGAD, 1989.03 04.21-22.

1191. JOHN PAUL II, 1989.01.09. n° 6.

2237 Cf. LITTRÉ, art. "Competence" & "Competent, ente", 1.1, 598; & LITTRÉ, art. "Incompetence". "Incompetent," vol. III, 58; BATTAGLIA, art. "Competenza" & "Compelèntic," vol.III (1967), 401402; & "Incompètènè," vol. VII (1972), 716: GLU, art. "Competence." "Competent," t. IV (1987), 2451; *Petit Robert* 1, art. "Competence," "Competent," "Incompetence." "Incompetent".

223^w See -LOBO-ALONSO, 1966.46.

2239 [c.] we part from RODRÍGUEZ Victorino, O.P.. 1966.04-06.308 & 330. If is except the just public order.

2242 CORRAL, I 989b, 543 (cf. CORRAL, 1976,100-108).

2248 Very measured presentation of SETIEN, 1965.09-10,356-357.

2249 Teaching of the popes especially until Leo XIII. but also beyond.

2253 ARGAD, 1989.03-04.28, note 24.

2255 cf. *CivCat*, 1985.09.07.347.

2256 S 90 b : 6 RS, modus 16, A.S. IV/vt, 768 and S 13. bis. = 3 RS, A3.111/V.111. 464. reject as irrelevant this way of posing the problem. Thus, this last text : " *Iura verilulafal*. Sæpius appellatur ad principium quod quasi axiomático statuitur, veritatem scilicet iura exclusiva habere, errorem vero iura nulla. Si qui vero in hoc trito axiomate sensus iuridicus insit, huc tantum redit, falsum nempe et malum non eodem titulo ordinem humanum introire ac verum et bonum. Quod enim verum et bonum est licite potest ab auctoritate humana positive sanciri ; quod vero falsum et malum est non potest nisi permittu seu tolerari. Neque est inter catholicos, ne dicam inter homines cordatos, de hoc sensu iuridico istius axiomatis ambigendum. Nimis enim evidens est, potestatem humanam efficere non posse, ut falsum sit verum neque ut malum sit bonum. Quod ne Deus quidem efficere potest. His positis, ulterius dicendum est, axioma istud in re libertatis religiosa; sensu hodierno nihil omnino valere. Hodiernum enim regimen libertatis religiosa nullatenus importat quod auctoritas publica positive affirmat religiones falsas esse veras. Sub regimine enim libertatis religiosa iure publico simpliciter agnoscitur, neminem esse constringendum ut agat contra conscientiam neve impediendum. Quin secundum conscientiam agat. Quidquid alias valeat sermo de iuribus diversis veritatis et erroris, nullus est ei hic locus."

2258 Cf. ARCY, 1960.289-290.

2259 Cf. ^{les} very clear texts of CARRILLO, 1967b, 172-173 & CANET. 1891.382.

2260 Cf. 0627. § 19, ASS 34 (1901-1902), 523: "The liberty which (the Church) gives does not infringe the rights of truth, because they are superior to those of liberty, nor the rights of justice, because they are superior to those of numbers and strength, nor the rights of God, because they are superior to those of humanity" (trans. MINNLRATH. 1982, 113, note 72).

2261 Cf. 0760.17: AAS, 1953.799; *DPPwXU*, 616. Cf. ARCY. 1960.292.

2269. Huiusmodi libertas in eo consistit, quod omnes homines debent immunes esse a coercitione ex parte sive singulorum sive coetuum socialium et cuiusvis potestatis humane, et ita quidem ut in re religiosa neque aliquis

2270 your current translation "any constraint" reinforces the expression, without changing the meaning. Thus even a fine is excluded, but not an exhortation, a reprimand; neither is "social pressure", distinguished from coercion by S 61: 6 RS, A.S. IV/VI, 733. Cf. 0986. PAUL VI, 1972.08.16: *General Audience* (on freedom); *IPVt*, 819-820: "immunity da vera coazione"; *DC*, 756-757.

2271 The power of the Church is divine both in its origin (this is common to it with any authority, which always comes from God) and in its essence (supernatural). *DH33* uses the expression "purely human power" (*polesiate mere huniana*) to set apart the Church, which may have (it is discussed) the right to impose inter religious acts, at least when they are necessarily linked to exterior acts: imposing the state of grace for communion. The reporter explicitly ruled out this question (cf., on " *mere huniana*," S 68:6 RS, AX IV/VI, 739, and LRTC's index s. v. - *c. mere*").

2273 Cf. I RO, *DC*, 1964, 73: "in accordance with the demands of his conscience"; "obey the *dictates* of his conscience"; 73-74: "On the other hand, the faithful must recognize and respect the right and duty of non-Catholics to obey their conscience, even if, after sincere and sufficient examination, it persists in good faith in error"; 74: "the non-Catholic who, in sincerely following his conscience, does not embrace the Catholic faith and errs in matters of faith, is to be considered as a non-Catholic. 74: "The non-Catholic who, sincerely following his conscience, does not embrace the Catholic faith and errs in matters of faith, is to be considered and esteemed by all members of the Catholic Church;

227 "Translation: *Cerf-VATICAN H*, vol. III, 173. reviewed by us. Cf. *Council Documents*, 3.353-354. "Insuper declarat ius ad libertatem religiosam esse revera fundatum in ipsa dignitate persons humane, qualis et verbo Dei revelato et ipsa ratione cognoscitur" Note (2): Cf. IOANNES XXIII, Litt. Encycl. *Pacem in terris*, 11 April 1963: AAS55 (1963), pp. 260-261: PIUS XII, *Nuntius radiophonicus*, 24 Dec. 1942: AAS 35 (1943), 19; PIUS XI, Litt. Encytl. *Mil brennender Sorge*, 14 mare 1937: AAS 29 (1937), 160; LEO XIII, Litt. Encycl. *Libertas pra:stantissimm*, 10 iunii 1888: *Acta Leonis XIII*, 8 (1888), pp. 237-238.

2200 Cf. PRIETO-RIVERA. 1967a, 537-538.

2281 "Hoc ius personæ humanæ ad libertatem religiosam in iuridica societatis ordinatione ila est agnoscendum, ut ius civile evadat." The current French translations are erroneous.

2282 Cf. also 0819; AAS. 1963, 259; *DC*, 514. It is indeed a *naturel'M* right in the proper sense: S 00:1 RO. AS. I/IV, 488; *DC*, 1964,72-73; S 02:2 RO, A.S. 111/11,350; and S St:6 RO, AS. I V/VI, 720.

2287 cf. SOLER Carlos: 1993a, 280-281.

2290 "Tenentur quoque veritati cognitæ adhærere atque totam vitam suam iuxta exigentias veritatis ordinare. Huic autem obligationi satisfacere homines, modo suæ propriæ naturæ consentaneo, non possunt nisi libertate psychologica simul atque immunitate a coercitione externa fruantur."

2293 cf. s 10 = 3 RS, 2 *Illatio falsa*, AS. III/vm, 461-462. Cf. also 1225/A., no. 2 (*ORLF*, 1996.02.20.1 and 8).

2294 ^{ius} let us use here only the essential of the argumentation of BROGUE, 1965a and of MURRAY, 1966 (ABBOTT), 679. These two authors have taken the Council Fathers out of the "false step" (MARTELET, 1985, 150) of the sincere conscience posed as a foundation by the first two conciliar schemas, and of which KONIG, 1966, 319, vainly tries to take the defense. 2295 ^{MURRA} y, 1968/1966.10.29.565.

2296 ^{HAMER}. 1991, 181-182.

2300 Cf. PAVAN. 1985. 152; BELDA. 1966.04.365.

2303 *DH2*, § 2 is thus perfectly consistent with a sound general theory of law and with the whole text, and in particular with *DH 2*, § 1, to which it is sometimes opposed. Cf. BIFFI, 1985, 735.

2307 Cf. SCHÜLLER, 1965, 107; PA VAN. 1980, 363 or COTTIER. 1965.04. 456; BROGUE, 1964, *passim*: 10. 1965b, 17; RODRÍGUEZ, Victorino, O.P., 1964b, 403: "il PARTE - el error invencible no funda positivamente derechos-", and 408. The opposite position, of Ph. DELHAYE, seems erroneous.

- 2308 cf. RODRÍGUEZ, Victorino, O.P., 1966.04-06,318: 2. *Fundamento natural del derecho negativo a la libertad religiosa*. See already S 10: 3 RS, A.S. 111/VIII, 461-462.
- 2309 Proponents of such reasoning: ARCY, 1964, 136; BEA, 1966 (1963.12.13), IV - *The "religious freedom" of one <fui errs in good faith (the 1966 ed. will correct this idea); DELHAYE. 1964a. 170. who then seems to regret not finding exactly his opinion in DH; LECLERCQ Jacques, 1963.247; MARNEFFE. 1964.10.29. 337-338; NAVARRO-LEYES, 1967a, 30; 38 (much more precise p. 39, where he deduces the LR from the freedom of families).*
- 2310 On the fallibility of conscience, cf. 1219. *Veritatis splendor. 62, IGPII 16/2 (1993), 218.*
- 2311 Cf. ALONSO, 1964,289, to be completed by p. 291.
- 2312cf. SUÑER. 1965.01-04,27-28.
- 2313 Cf. MURRAY. 1968/1966.10.29,568.
- 2314 Cf. PAVAN. 1967a, *Vivere il Concilia*, 4, 23. about the "BEA scheme", backward from DF; also PAVAN, 1967c. *Appunti*, 42, criticizing the definition of the RL of 1 RO & 1 SC.
- 2315cf. also ALONSO, 1964,287-288.
- 2316 cf. ALONSO, 1964, 12, citing s. THOMAS. *Green*, 17.3; 1I *Sent* 39.3.3, ad 3.
- 2317Cf. e. g. RAMÍREZ-VALIDO. 1964,20.
- 2318 cf. CONNELL, 1955,443-445, quoting MERKELBACH. n^o 211: "*jus existimatum*".
- 2319Q. CAVAGN1S. 1882. n^o 512; SOTILLO. 1953.04-05-06,338.
- "cf. MARCHESI, 1965.192.
- 2327 It is recalled by S 17,1), quoting *Pacem interris*, AAS, 1963, p. 270.
- 232K cf. S 10: 3 RS, AS. 111/VIII, 461-462 (the text does not move from the subjective to the objective order), S17 (I), S 34: 5 RS. AS. IVV. 150; S 63: 6 RS. AS. IVVI. 734; S 65: 6 RS. AS. IVV1, 737: the text speaks of both true and right conscience only when it is a question of the *formation* of conscience, not where the existence of the right to freedom to act / not to act according to / against one's conscience is at stake.
- 2336 NEOPH1TOS, 1974,284-285 and REGAN, 1967, 123 are among the few who have noted that even the "right not to be coerced" is not absolute.
- 2340 Cf. ALONSO. 1964,302.
- 2344 for example, it is not permission to omit an act of Catholic worship to God. Cf. also OLIVIER, 1952,179.
- 2345 Thus, it is not the right-permission to worship a statue of Buddha.
- 2346NOLDE. 1949,295.
- 2347 g 09, *ibid*, immediate continuation of the previous citation.
- 234K Cf. CABREROS. 1966b, 182;GEWIRTH, 1982,317-318; PRIETO-SANCHfS, 1991,300. SOLER Carlos: 1993a, 236-237, erroneously argues that positive benefits other than maintaining the right to liberty are necessarily egalitarian.
- 2351 "Subjective" here in the sense of "inherent to the *subject*". See ONORIO, 1991a, 16-17.
- 2352 On the purely negative aspect of the right to the RL, cf. FEDELE, 1963,4-7; TORRES-ROJAS, 1968.145-146. S 82 : 6 RS, modus 49, A S. 1V/V1,753, [58] established an equivalence between "negative right" and "right to immunity".
- "-." 21. PAUL VI. 1965.06.28: General Audience; *IPVI*. 1968-973: DC. 1965,1254-1255.
- 2362 Cf GAFFIOT, 1934, art. "liber", 905 and art. "libertas", 906-907. Ditto for the modern word in BAUCHER. 1926.
- 2365cf. LALANDE, art. Liberty," 558-567.
- 2366 Guzzo, 1967 = MATHIEU, 1967, 1536. See also FINANCE, 1981, 95.
- 2390 According to JIMÉNEZ-URRESTI, 1968,589, note 6, *DH* recalls 10 times the moral obligation in religious matters.
- 2391 "*Libertas ab obliatione*" writes ROMANI. 1953, 116, n^o 142. Cf. also *GLU*. 09 (1987). art. "Libertas", 6275, sense 7 and FOULQUIÉ, art. "Liberty", *ch. supra*. Nor is the RL the "*libertas christiana*": cf. CARRILLO, 1967b, 22; KASPER, 1988a. 826 f., § 3.
- 2400 cf. X.S. 1V/V1, 733, 9": "Etiam coercitio proveniens ex parle coetuum socialium reiicienda est. Ceterum coercido non est idem ac "pressio" socialis."
- 2401 Cf. GUILLUY, 1975, 607-648.
- † Cf. SMEDT, 1967a. 128; CARRILLO. 1967b, 79.
- ²,^u^o3 SEE PAVAN, 1967d, 152-153 and CARRILLO. 1967b. 26.
- 24(M A term unknown to common French usage, a transcription of the classical latin *coactio*. "action of collecting, cashing in," "abbreviated, summarized," and finally "curtailment." "It is used in canonical language to designate the act of forcing someone. RODRÍGUEZ. Victorino. O.P., 1964b. *pasdm*, distinguishes between "coacción" (to force to act) and "coercición" (to prevent from acting).
- ²⁴¹ * Not to be confused with physical liberty, the civil right to move about as one pleases. See also FOULQUIÉ, art. Liberty", 402.
- ²⁴² * Cf. GEIGER, 1957.10,611.
- 242ÜTHOMAS OF AQUIN, s., *CG IV*, 22. On this type of act, see GUINDON, 1972.01-03,33-57.
- 2421 It is sometimes necessary, but it must be limited to the case where it is necessary.
- 2423HAMER, 1993,57.
- 2427 Detail in LRTC.
- 2430 for the history of this notion, cf. LECLER, 1955.
- ²⁴³⁰ Cf. CARRILLO, 1967b, 16. The concept has different meanings depending on the discipline in which it is studied; cf. e.g. GONZALEZ DEL VALLE, 1984,544-545 and Puv. 1984.541-542; SORIA-SAZ, 1984,544-545.
- ²⁴⁴² OTTAVIANI, 1960, U, 63. Articulus V.
- ^{244t} MICHEL Albert. 1946. 1209.

- ²⁴⁴⁹ See MARTINELL-GIFRE, 1984, 540.
- 2456cf. MICHEL Albert, 1946, 1211.
- ²⁴⁵⁷ Cf. *Grand Robert*, IX (1985²), an. "Tolerance". *Item*, MICHEL Albert, 1946, 1210-1211.
- ²⁴⁶⁴ The individual is incompetent to punish his equal: cf. VERMEERSCH. 1922, 2-3. and MARCEL. 1948, 271; or even because the free search for truth is a right: cf. MESSINEO. 1950.10.28.323.
- 2-^{***} Cf. S 02: AS. 111/11,349-350; partial translation: LUCIEN, 1990.239.
- 2^{*A2} Cf., in this sense, among the opponents of the doctrine of *DH*, besides LEFEBVRE Marcel. 1985.11.06 16, LASSUS, 1988, *passim*; DAVIES, 1992,45; and, panni the defenders of *DH*. OCÁRIZ, 1989.06.89.
- 2486 *sur* tolerance and cooperation, cf. ÜONDEYNE, 1964, 288. On cooperation with evil, see 1223. *Evangelium vitæ*, n. 74. § 2³, with the expression "*de participatione cum malin actibun*" (participation is one of the modes of cooperation); translation: LEV / Médiaspaul, 1995, 113. On formal cooperation, cf. HARTMANN, 1958,169-170.
- 2487 cf among others LEFÈVRE, 1986,6.
- 2488 principle of the "double effect" volunteer. Cf. e.g. MERKELBACH, t. I, 1935², 69-71 and, more clearly, PRUMMER D. M" *Manuale theologian tnoralin necundum principia s. Thonue Aquinatin in unum scholarum*. Barcinone, etc., Herder, 1961 I, 45-48, n° 57-62. We do not share the conclusions of HENDRIK's thesis on this subject.
- 2489 See OCÁRIZ, 1979,89.
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- ²⁴⁹⁵ See CARRILLO, 1967b, 52, note 30.
- 2505 We depart from BOPP, 1967.07.207.
- 2507 For example: TABERA, 1955,185.
- 25-^{*} Thus CONNELL. 1964.08.127.
- ²⁵⁰ -Cf. OCÁRIZ, 1989.06.96.
- ²⁵¹ - Cf. CORONATA, 1934. 140-141, and, in more detail: VERDIER, 1898, § 454, n° 399; or OTTAVIANI.
- 2513 *Syllabus*, 44 = *D[^]ch* 2944.
- 2514 See FUENMAYOR, 1974,35, note 37.
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- ²⁵¹⁵ Cf. CAPPELLO. 1910.716-717. n° 918.
- "[^]Cf. already SCHIFFINI. 1891. 11. 503.
- "[■]Cf. MURRAY, 1960.36.
- "[■] "Complements in SCHIFFINI. 1891. H, 579-580.
- "²⁰ Of course, the presence of positive supports suggests that the act is judged favorably. We have already mentioned the shift from decriminalization of abortion to the "right to abortion.
- ²⁵²¹ This is the theory of *freedom rights*. See OCÁRIZ, 1989.06.85.
- ²⁵²³ See OCÁRIZ, 1989.06.90.
- ²⁵²⁴ ONORIO. 1991a. 18. Similarly GOETHALS, 1987.04,73.
- 2526 Noire ancienne présentation (LRIC, Chap. 16-18) had led us (like many other authors) to include in the object of the right to LR realities which do not belong to it. Some indications in TORRES-ROJAS. 1968,162-163.
- 2537 discussion: CARRILLO, 1967b. 95; JIMÉNEZ-ÜRRESTI. 1968,592, notes 20-21.
- 2538 Cf. PAVAN. 1967d, *Unam Sunelatn*, 60, 156, trans. of PAVAN, 1969a (GAROFALO), 1279. Also RUFFINI,1992,278-279 -, SMEDT, 1967b, 217; SPINELLI, 1970, 301; TORRES-RCUAS, 1968, 157; WILLEBRANDS.1967^{*} 238-239.
- 2542 See also LOBO-ALONSO, 1966, 11-12.
- 2544 Nevertheless, to limit the RL to these religions alone would still be to depart from the text of *DH*. *Ct.* on this subject S 59.
- 6 RS. A S 1V/VI.725.
- ²⁵⁵⁰ Cf. JIMÉNEZ-ÜRRESTI, 1968,601-602 : "socialitas indirecta = coram aliis".
- ²⁵⁵¹ Cf. JIMÉNEZ-ÜRRESTI. 1968.603-606: "socialitas directa = ad alios seu erga alios".
- ²⁵⁵² Even the DDHC had seen that!
- ²⁵⁵⁵ Cf. CCC. n° 2109.
- 2556 Cf. MURRAY. 1968/1966.10.29,563.
- 2565 cf. S 64:6 RS. AS. 1V/VI,736.
- ²⁵⁷⁶ FUCHS, 1966,51, note 23.
- ²⁵⁷⁹ PAVAN, 1967d, *Unam Sanctum*, 60. 151. Cf. also BAUCHER. 1926. 702a; PA VAN, 1969a (GAROFALO). 1282.
- ^{258ⁿ} Cf. NAVARRO-LEYES. 1967a,35.
- ²⁵⁸ > er. CANET, 1891.70; MEYER. Th.. I (1885), 373-374. n°475: VI.
- ²⁵⁸⁵ Similar idea in LEFEBVRE Marcel. M[°] *, 1985.11.06. 14. note 1.
- 2590 E>"2. §2.
- ²⁵⁹¹ Cf. ANDRÉ-VINCENT, 1978,44 and PRIBILLA, 1950. 167.
- WW BIFFI, 1985,736. Before the definitive text, PAVAN. 1965,169-182 hesitates.
- 2593 Dignity that DH considers from three angles of approach, detailed by PAVAN, 1969b (*Humait*). 54-55.
- 2595 0680.2 & 3.
- 2596 Two perspectives that are taken up by *DH* 2, § 1.
- 2597 *de IR Robert* 1, art. " Dignity", 541 -542.
- 259K Also P1E XII, e.g. 07173; 0717.6; 0744.2; 0756; 0772.1; 0775.1; 0784; see already 0684.2.
- 2600 For the ternie, cf. MARGERIE, 1988b, 51. n° 40.
- 2601 for the term, cf. MARGERIE, 1988b, 50, n°39.
- WC.D[^]chHü* 1481. 1482. 1486, 1521.
- 2614CL *D[^]chHU* 1916, 1922. 1925, 1927, 1928. 1929. 1930, 1935,1936, 1937,1938.1962.1965.

- 2618 Cf. MACDONAGH, 1967b, 42. ALONSO, 1964, 309-310, reasons wrongly on the operative dignity. Let us signal FORTINO LUCA TROMBEITA, 1989,23.
- 2619 See PA VAN, 1976b (BURGHAROT), 15; PA VAN, 1980, 359. Already MESSINEO, 1950.05.27, 507-508, but restricting the right to the private domain only.
- 2621 Refusing this idea, among others, ALONSO, 1965a, 444; FONTAINE, 1993.06, 16-17; TISSIER, 1977.05-06-37, note I: VAN der PLOEG, 1980.11-12,64.
- 2631 ANTOINECh.. 1925,1533.
- 2640 CT. MURRAY, 1966 (MILLER), 575 and MURRAY, 1968/1966.10.29,570.
- 2642 See PERRIER, 1948,56.
- 2649 See, prophecy of LIBERATORE, 1874.03.09.641.
- 2633 Cf. DUPUY, 1960, 152.
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- 2665 Cf. GEWIRTH, 1982,15.
- 2666 Cf. CATHREIN, 1932,211, § 288.
- 2667 LEFEBVREMARCEL, M⁸, 1976.09.15,124. Doctrine explained by MESSINEO, 1939.09.06,494-495.
- 266 "Cf. VALTON, 1912,881-882.
- 2673 MESSINEO, 1952.01.19,720.
- 2" "Cf. OCÁRIZ. 1989.06,82.
- 2" *- See MURRAY, 1965.01.09,42.
- 26" 5Cr. ANCEL, 1965.09.22: DC. 1801-1802.
- 267 *Without any other data, the obligation to seek the truth is insufficient to create the right not to be prevented from adhering to the error. Cf. MURRAY. 1968/1966.10.29, 566 and 567.
- 26** Item at CHÉNON. 1921 (ed. of 1928).n^o58.
- 2610 Cf. also DÍEZ-ALEGRÍA. 1965,40.
- 2691 See already MESSINEO. 1950.11.25.569.
- 2692 Cf. DÍEZ-ALEGRÍA. 1961 b. 115. Cf. 0286. This dignity is the good which justifies tolerance. Cf. also ODÓONE. 1943.03.10,347.
- 2693 See LERCARO, 1958.04.19.337-338 & 342.
- 2694 Cf. S 26: 5 RO, 3. *Fundamentum iuris ad liberalem religioisam*. AS. IV/N. 100.
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- 2706 See BOYER, 1963.12.18.82.
- 272 See "MaIA, 1991.81.
- 2713 Cf. PAVAN, 1965,163.
- 2718 "Iniuria ergo humanæ personæ et ipsi ordini hominibus a Deo statuto fit. si homini denegatur liberum in societate religionis exercitium, iusto ordine publico servato."
- 2720 weighing added at the same time as "ac societatum" of *DH* 1, § 3, c (cf. S 48). Cf. also BAUCHER, 1926. 702 and our comments on 04063.
- 2721 "Pncterea actus religiosi, quibus homines privatim et publice sese ad Deum ex animi sententia ordinant, natura sua terrestrem et temporalem rerum ordinem transcendunt. Potestas igitur civilis, cuius tñis propnus est bonum commune temporale curare, religioisam quidem civium vitam agnoscere eique favere debet, sed limites suos excedere dñcend est. si actus religiosos dirigere vel impedire pnesumat."
- 2739 Cf. GONELLA, 1945, 165. See also MADEUN, 1975, 115 and FERRARI in RUFFINI, 1992, Introduzione. 27, dem. line, & 28.
- 2740 cf. SOLER Carlos: 1993.01-06, 17.
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- 2741 See GUERRERO. 1966.03.192.
- 2744 Cf. MESSINEO, 1950.10.28, 314; RIVA, 1967, 149-150, and SETIÉN. 1963.03 M, 116. Against ODRIÓZOLA, 1955,297.
- 2750 Cf. LUCIEN, 1990.30-32 and 1992.03.14,3; el MEYER. Th., II (1900). 85. n^o 88.
- 2751 see 0410.1 compared to 05163.
- 275* ANDRÉ-VINCENT, 1976, 29. CT. BALLERINI, 1874.02.21, 515; KINDREGAN. 1970. 49. SALLERON Louis. *Liberalism and Socialism*, cil.
- 2762 Cf. KÖNIG. 1966,323.
- 2765 Cf. ONORIO. 1989 (1988.11.11-12), 202-203.
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- 2776 Cf. CANET, 1891,377.
- 2771 Let us note in passing how much pastoral work remains to be done so that the faithful understand that the RL is *not* a positive authorization (cf. CCC2108 and CDF, 2002.11.24). Let us also note how easily the mass of the people still believe that they are free of moral responsibility from the moment when a law *allows* them to commit such and such an act (for example, abortion).
- 2772 See COTRIER, 1964.07-10.105.
- 2773 Cf. MARTIN-MARTÍNEZ, 1989,806-809; especially 806.
- 2774 Summary in R1NCÓN, 1984/1989,329; cf. MACEVOY. 1973,74.
- 2775 Cf. DELHAYE, 1965d.457.
- 2792 VERMEERSCH, 1922,267.
- 2795 even CARRILLO, 1966.01,73 and CARRILLO, 1968.01,113. On the other hand, according to SOLER Carlos: 1993a. 286, the dishonest proselytizing condemned by *DH* 4, § 4 is indeed covered by *DH* 7, § 3.
- 2796 Against Pavan, 1966, 39; PAVAN, 1967a, *Vivere U Concilia*, 4, 145; PAVAN, 1967d. *U nam Sanctam*, 60, 157.
- 2818 Note (5): Cf. IOANNES XX111, Litt. Encycl. *Mater et Magistra*, 15 Mayi 1961: AAS 53 (1961). 417; IDEXI. Litt. Encycl.

Pacem in terris, 11 April 1963: AAS 55 (1963). 273.

2820 Note (6): Cf. IOANNES XX111. *Lin. Encycl. Pacem in terris*, 11 April 1963: AAS 55 (1963). pp. 273-274: P1US XII, *Nimius radiophonicus*, 1 June 1941: AAS 33 (1941). 200.

2823 Trad. ital. EV 01. n° 1060-1061: "Se, considerate le circostanze peculiari dei popoli, | ; trad. franç. *Cerf-VXUCAN U*, t. III, 177-178: "If, because of the particular circumstances in which peoples find themselves. (...)."

2822 Cf. HARRISON, 1988b (Eng.). 75-76.

2825 Cf. MARTIN-MARTINEZ. 1989.494.

2828 Cf. in LRTC the detailed assessment of the conciliar use of the word *atentis*: only once is the expression translated "by reason of": in *DH* 6, § 3; it is the translation that we reject, in favor of "once the..." or of "taking into account the...".

2827 Various opinions: MURRAY, 1966 (ABBOTT), 685, note 17; TORRES-ROJAS. 1968. 168; in the opposite direction: HARRISON, 1993A.

2821 It could also be that the circumstances include a general violent mentality in religious matters, obliging to defend coercively the religious truth: it is not required of course.

2829 The "change" (explained in S78: 6RS, modus 24. A.S. 1V/V1. 751) seems to rule out the idea of a recognition due *solely* to a - possibly cumbersome - legacy of history, (to leave out the earlier formula would have been to disavow, for example, all countries that had become officially Christian after having been pagan. We therefore (probably) disagree with WULF, 1966, 96 ("geschichtlichen Gründen") and especially with TANNLR- ALBERIGO (for "demographic" reasons [sic]).

HARRISON, 1988b, 78. However, unless I am mistaken, the A. provides no evidence for this assertion.

2828 Trad. *Cerf-VATKAN* 11. t. III. 122.

2139 Cf. art. Privilege " [s]c[. in LITRÉ, III, 1326, 1" & 3"; *Petit Robert* 1. art. " Privilege", p. 1532; and, in BAITAGUA, art. " Privilege ", 410.

2855 Cf. *Petit Robert* 1, art. " Discrimination", 550, 2nd *Cour. The fact of separating a social group from others by treating it worse*"; *ibid.* Discriminatory: "Tending to distinguish one human group from others, to its detriment." Cf. *GLU*, 05, art. Discrimination, 3288.2: "The act of distinguishing and treating sb. or a group differently (most often worse) from the rest of the community or from another person." The terms were not yet known to the LITRED. Any doubt about the pejorative nature of the word "discrimination" in *DH* disappears upon reading the answer given by S 80: 6 RS, A.S. 1V/VI, 752, answer to amendment no. 38: "R. - [...] vox "discriminatio" sensum peiorativum iam habet."

2856 In the same sense, TORRES-ROJAS, 1968, 169, and COSTE, 1969, 264, with reservations, p. 366.

2858 Cf. on the subject RUFFIN1, 1992, 301-302.

2859m. Hinc sequitur nefas esse potestati publicæ, per vim vel metum aut alia media civibus imponere professionem aut reiectionem cuiusvis religionis, vel impedire quominus quisquam communitatem religiosam aut ingrediatur aut relinquit. Eo magis contra voluntatem Dei et contra sacra personæ et famltxe gentium iura agitur, quando vis quocumque modo adhibeatur ad religionem delendam vel cohibendam sive in toto genere humano sive in aliqua regione sive in determinato coetu."

2*75Signals BROGUE. 1964.118.

2876 ANTOINE Ch., 1925, 1536. 1223. *Evangelium vita*: recalled that the common good is the norm of action of public authorities.

2877 Equivocation chei CARRILLO, 1964a, 64.

2878 cf. CARRILLO, 1967b, 148-149.

2879 The_e paragraph concludes: "Cum omnibus secundum iustitiam et humanitatem agendum est." For this concept of "humanité", cf. *Petit Robert* I, art. "Humanity", 945, 2°: "Sentiment of benevolence toward one's neighbor, compassion for the misfortunes of others."

2884 _{ur} la difficulty of practical interpretation of this passage, cf. BIFFI, 1965, 49, and especially OCÁRIZ, 1989.06, 79 80, S 39a: 5 RS, AS. IV/v, 154; and BROGLIE, 1964, 27-34.

2885 See WYSZYNSKI, 1965.09.20.

[B] Positively, the protection must take place according to [1] a general criterion and [2] three particular criteria. 111 The general criterion must be doubly objective: [a] as to its existence, there must be rules of the game, "legal norms". The repression of abuses by LR must therefore be based on the law, or at least on a custom recognized as having legal value. In other words, one assumes a "rule of law" (as opposed to totalitarian) state, governed by law, or equivalent custom, not by the will of a tyrant or party, (b) As to their essence, the norms must be ".in accordance with the objective moral order."TM Hence it follows that the state, in order to be able to repress an abuse of RL, must refer to the objective moral order.
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"Along with this right, the Council should emphasize responsibility in the use of this right. Therefore, the definition of the limits of religious freedom should be based on the moral law. But the text is based on juridical rules. Religious freedom, based on the moral law, can only be limited by law if the law itself is in conformity with the moral law. The text must be revised in this sense,"²⁸⁹²

The *EQF* summarizes and specifies:

"The right to religious liberty cannot of itself be either unlimited [Note 7: Cf. Pius VI, brief "*Quod ali- quantum*"^{TM3} ^ or limited only by a "public order" conceived in a positivist or naturalistic manner [Note 8: Cf. Pius IX, enc. "*Quanta cura*"). The "just limits" inherent in it must be determined for each social situation by political prudence, according to the requirements of the common good, and ratified by civil authority according to "juridical rules in conformity with the objective moral order."²⁸⁹²

1° The completeness of the "objective moral order", even if purely natural, can (*de facto*, given original sin) only be known "*ab omnibus expedite, firma certitudine et nullo admixto errore*"²⁸⁹⁶ thanks to the Church.^{*297} Indeed, in general, no social ethics without religion,^{*29} * and in particular, no complete ethics, *de facto*, without revelation, and therefore without the Christian solution.^{*299} For the State must make ethical choices.²⁹⁹⁰ In particular, the concrete evaluation of just limits will involve a judgment of truth.²⁹⁰¹ However, this criterion of the moral order ob-

²⁸⁹¹ Cf. S 3" a: 5 RS, AS. 1V/V. 154. Cf. already HARTMANN, 1958,223. note 1. jectif constitutes a *necessary* but not *sufficient* condition for the possibility of repression.²⁹¹¹²

2° The State-society, just as in order to have moral duties towards true religion, must, in order to discern a public order other than positivist or naturalistic, be able to submit to religious truth. Moreover, the State-or see⁴ must also be able to judge in a *non-naturalistic and non-positivistic way*, according to the *non-naturalistic and non-positivistic* discernment made "upstream" by the State-society. In a word, the State cannot **judge** natural law, nor **judge** supernaturally revealed principles, but it can - and indeed must, according to the quoted text - *judge according to them*.⁵ (In fact, none of the activities of the state itself is an activity of

²⁴⁹² CI.CANAVAN, 1966,75.

Karol WOJTYLA, 1965.09.22, Oral Intervention at the Council. A.S. 1V/11, 11-13; summary: DC, 1798-1799.

²⁹⁰⁰ Cf. ESTRADA. 1972,473. Cf. also LOMBARDIA, 1973,420.

²⁹⁰¹ Cf. ANDRÉ-VINCENT, 1977.03-04/ 1991,34.

⁴ In this sense: SOLER Carlos: 1993a, 287. In the same way, it seems, DUPONT Philippe. 1989/ 1988.11-12, 17. Nevertheless *who* determines what is objective, if not the magisterium? Example: 1223. *Evangelium vitar*.

"CT. MESSINEO. 1954,207.

discernment of religious truth.)⁶

3° Many have noticed that we do not speak of the possible religious,⁷ or even supernatural "coloration", immediate or mediate,⁸ possibility left intact, of this "objective moral order".

"The question of whether this objective moral order refers only to the natural moral law, or whether on the contrary supernatural moral requirements as well - concerning, for example, the moral duty to avoid what would constitute a public peril to the true faith of men - can determine limits to religious liberty, is not addressed by *DH*. Therefore, the answer that Catholic doctrine offers to such a question is not to be sought in *DH*, but in the other teachings of the magisterium, whose validity is also reaffirmed by *DH*. It is well known that there are important magisterial texts that provide an affirmative answer. As for the topic at hand - the non-contradiction between *DH* and the preceding magisterium - it is sufficient to note that a negative answer could not be based on *DH*, since it is obvious that the supernatural moral order is as "objective" as the natural moral order."⁹ s

If the mention of juridical positivism rules out arbitrariness, subjectivity and thus partiality, the exclusion of naturalism allows the use of revealed criteria in the estimation of the just public order itself.⁹ And if *DHI* does not mention this explicitly, it is because in *DHI* we are in the first part of *DH*, where the order of faith is *disregarded*. It is even less clear then how, after the Council, *DHI*, § 3 was too easily interpreted as endorsing the liberal public order:

"Some politicians have advocated a religious freedom that no longer takes into account the limits that the Council had clearly indicated. These limits are: the rights of other men, the common good, public morality. We have thus arrived at a certain 'advanced liberalism' which has removed from the laws the brakes formerly placed on abortion, adultery, misconduct, violence, etc."¹

"One would have liked to see a better clarification of how "respect for the fundamental rights which flow from the intrinsic dignity of the person" (no. 1944) can and must be harmonized with a social organization which does not grant the same rights to truth and error, to good and evil. Liberal and egalitarian ideology has in fact imposed a minimalist conception of the common good. The result is that spiritual, moral and religious values are no longer protected. Religious truth, when it is sufficiently recognized, should also have a privileged status in the order of the city. For example, "Christians should have the Sundays and feast days of the Church recognized as legal holidays" (no. 2188). Truth, even and especially religious truth, is not indifferent to the happiness of peoples, which is the end of society."¹⁰

4° However, when the State represses, in the name of the just public order of the society impregnated with Christianity, actions contrary to this order, it will be *mediately* and not immediately for the reason that these actions are opposed to the revealed truth.¹¹ Obviously, *if errors have the effect of harming life in common, it is because they are errors*,¹² but it is not formally because of their *erroneous* aspect or because they are contrary to supernatural Revelation that the State represses them. It will be the same, if we pay attention to the rights that the Church could have *acquired* in a society, true rights, which, like all the "rights of the others", would then constitute one of the criteria of limitation of the exercise of the right to the RL. Now these rights, while having been acquired through services rendered to society, would be translated into certain practices of supernatural origin (Sunday, etc.). i-¹³

⁶This is how we understand 1191.

⁷ Cf MACDONAGH, 1967b, 92, and 93.

⁸ Revelation is morally necessary in order to know even those truths which are not self-evidently within the scope of reason (cf. VATICAN I. *Dei Fuius*; P1E XII. *Humani generis*). To reduce public morality to the framework of "natural morality" is therefore only to set back the problem. This is what we would reproach ROBERT H.-D., 1952,232, summarizing the thought of OLIVIER. 1952. For the correct answer, cf. HARRISON. 1988.01,2.2. But it is a pity that the Council did not say this explicitly enough. Let us note, however, *DH* 14. § 3; on the moral order as a limit, cf. GS 59. § 4; GS 64; GS 74. § 4; GS 76. § 5; *IM* 6.

⁹ Revelation was part of the public order of justice, and no one was supposed to ignore it in good faith.

¹⁰ SAINT-LAUMER, 1993.02,33. This is the solution of the aporia of REMOND, 1965,59.

²⁹¹² Cf. MAIRENA, 1968,136.

¹² Cf. CANET, 1891,21-22.

²⁹¹³ Cf. DUBLANCHY. 1911.2215, which refers to ID" art. Sunday," in *DTC* 04/1 (1911), 1308-1348.

5° Let us note how much these criteria differ from the "public order defined by the law" of the DDHC.¹⁴ The latter, in fact, refers not to an "objective moral order" (*DH*),^{2V16} but to the "general will" (DDHC). It consists therefore in the respect of the law and of the rights defined by the law or by the DDHC.

¹⁴CT. OCÁRIZ, 1989.06,79-80.

[a] a *juridical* criterion, which is double: * "the effective guardianship of rights for all citizens"²⁹ >⁷ and ** "their peaceful harmonization" (which links this criterion to the next); [b] a *political* criterion: "that honest public peace,¹⁵ which is the ordered common life and in true justice"¹⁶ ("true justice" establishes the link with what precedes; "honest" and "ordered" with what follows); [c] a *moral* criterion: "public morality". The word "public" here covers both the "public" character of the offenses in question and their "public" (i.e., social) evaluation as dangerous, and their character as a "public danger" (to society).

"The difficulty disappears if one observes that the private transgression of the moral law is only remotely offensive to society, and thus does not constitute an actual fault. It cannot therefore be regularly punished, we say regularly, because there is an exception for certain serious faults, whose known enormity causes a great scandal in society, and which, by this harmful influence, offends public morality, or at least, testifies to a heart so corrupted that society would have to fear its excesses. [...] Let us note again that the appreciation of the enormity of an immoral act is partly relative to the social situation. What in one society would be judged very severely, could be perfectly tolerated in a corrupt society. Let us leave it to the criminalists to determine when immorality is public and when it is not."^{29u}

[C] We then establish the link between these rules and (1) the *common good* (of which they form the essential part),¹⁷ and (2) *public policy* (of which they incorporate the notion).

"4. Certainly the common good is taken in all its amplitude as a norm, when it is a question of guarding or promoting the right to freedom in religious matters. But when it is a question of limitation, it is taken in its fundamental part, b) This part of the common good is called, nowadays, "public order", in contemporary civil law and in several public constitutions. If our document is to be understood by the modern world, it must use the technical term as it is used in society today. What would be the use of calling the thing in question "common good" if this term is not used in this sense in the present civil law? This would cause immense confusion. Our Council can contribute much to the clarification of this delicate question, if it indicates precisely what the content of this notion of "public order" must be if it is to be legitimately used as a norm limiting religious freedom. Our document does this by saying that public order is violated in three ways: either by the injury of the rights of others and their peaceful harmonization, or by the injury of the public peace, or by the injury of public morality."¹⁸

The notion of just public order¹⁹ is similar to the *contemporary* - post-war and technically sophisticated - notion of public order.²⁹ " This notion of [just] public policy is often explained elsewhere by the *DH* drafting committee

"According to the common opinion of jurists and professors of political science, the competence of the State in this field is limited to the maintenance of public order. Public order, in fact, is the essential part of the common good that is entrusted to the public authorities in order to protect it by the coercive force of the law or the action of the police. Public order therefore comprises a threefold good: the political good, which is public peace; the moral good, which is the desired maintenance of public morality; the juridical good, which is concord among citizens in the exercise of their rights."²⁰

"As Vermeersch insinuates,²¹ the restriction of liberty is legitimate to avert harm, but not with the intention of positively promoting a common good."^{u2}

[D] This becomes even clearer, if we read the rule that follows (the "principle of freedom", a double criterion *limiting* these limits,²³ namely, positively, that of maximum freedom, and negatively, that, correlatively, of limitation only in case of necessity.²⁴ We recognize again the axiom: *favores ampliandi, odiosa restringenda*,² TM *regula iuris*,^{^22} as the *Relationes*

¹⁵ Cf. PAVAN, 1967b, *Déclarai ion*, 75: the text is opposed here to an ideological public order.

¹⁶ See S40:5 RS. AS. *DHv*. 154.4).

¹⁷ Cf. S 41: 5 RS. A.S. IV/v, 155.6).

¹⁸ Cf. S 56. LUCIEN. 1990.269-270: A.S. I V/VI. 722.

¹⁹ Cf. DAVIES, 1992, 197. Contrary to what some people think (e.g. DAVIES, 1992.78), it had already been studied by the canonists. In addition to VERMEERSCH, 1963, n° 110, which we quote, let us point out the comprehensive work of HACKETT, 1959, which was also used by the drafting committee of *DH*.

2926s 06,4" and 5^l paragraphs M^a.HI/VIII, 454;trans.:DG 1965, 173-175.

21 VERMEERSCH. 1963, n° 110.

292KS20.

23 See GONELLA, 1945, 166.

24 Passage due to the expert (future cardinal) Jorge Arturo MEDINA ESTÉVEZ.

often call it.

DH makes it clear that the common good requires *a priori* non-repression - except in cases of necessity, i.e. to avoid a greater evil.²⁵ Nevertheless, it would be wrong to claim that traditional doctrine, for its part, was explicit that the common good requires *a priori* repression (always except in cases of necessity, i.e. to avoid a greater *evil*). This would not be contradictory to the new position *in practice*.^{29,24} In fact, 1° the previous doctrine already envisaged the obligation of non-repression "intended to promote a greater *good*". If, therefore, the reflection discovers that among the "greater good" there is "respect for the dignity of the person in the form of his or her religious convictions" (an aspect envisaged in 0760.23), the new viewpoint *integrates* the old one; 2° the previous doctrine (as we have seen from reading Leo XIII and Pius XII) already explicitly declared that man should have the freedom to act "as long as he does not harm others or the general good" (0620.2). In other words, the earlier doctrine already presented a favorable *a priori* to liberty, as its general theory of criminal law also proves.

5.2. Synthetic reflections on the evolution of fair limits

One must then notice a certain elasticity of application²⁹ ¹⁵ in the criteria adopted by *DHI*, § 3.²⁹ ¹⁶ Well defined in understanding, these parameters are endowed with a concrete extension subject to variation according to various factors,²⁹ ¹⁷ of which the main one, in our opinion, is what we will call the "time factor".² ¹⁸ A natural right can evolve, because A) natural rights include a certain margin of "positivization" left to the appreciation of the legislator.²⁹ ¹⁹ B) a right may well be both natural and dependent on contingent circumstances for its exercise: a category of persons may be denied the exercise of the right until they have *learned to exercise it* "within fair limits".²⁶

5.2.1. "Elasticity" of the "public peace

Saint Thomas already knew the criterion of public peace:

"Because there are men who are perverse and inclined to vice, who can hardly be easily led by words, it was necessary that they should be compelled by force and fear to abstain from evil, so that, at least, by abstaining from evil actions, they would guarantee to others a peaceful life."²⁷ < "The end of human law and that of divine law are not confused. For the human law. it is the tranquility of the city in the present time; the law achieves this by restraining external acts, insofar as their malice can disturb the peace of the city (*cohibendo exteriores actus, quantum ad illa mala qua: passum perturbare pacificum statum civitatis*). But the end of the divine law is to lead man to his end, eternal happiness ...]."²⁸ "The good and the salvation of the men in society is the conservation of this unity which one calls peace; that it disappears and the utility of the social life disappears; much more, the disunited society becomes unbearable with itself. >>^{29,4} "

Public peace represents one of those just limits "determined for each social situation by political prudence" (*CCC2109*). Indeed, what might disturb the public peace in one country will not disturb it in another. And in the same country, it will also depend on the time. Thus, the public manifestation of heresy disturbed *the public peace* in the Middle Ages, but not nowadays. In Spain, manifestations of Protestantism easily led to disturbances in the minds

²⁵ This does not prejudice the *de facto* frequency of this need.

²⁶ We therefore give importance to *DH* 8, rarely analyzed.

²⁷ Cf. 0239. 1-2.95,1.

²⁸ 0246. 1 -2.98. 1 (not 99. 1, c of TANOÛARN. 2000.169);

agitated by a civil war that had barely died out."⁴⁴

5.2.2. "Elasticity" of "public morality"

Public morality, a concept well known in the philosophical and magisterial reflection²⁹ before *DH*,

"[...] cannot be defined in a timeless way, for the political authority, which has the ultimate responsibility for it, is well obliged to take into account the mentality of the people, [...] The theologian must even add [to M. Krishnaswami] the crucial clarification that *political authority, if it wants to be inspired by the Gospel, must strive to bring public morality into conformity with the demands of the Word of God, at least through the fundamental ethical principles (natural law)*, (emphasis ours) but it is this same Word that recommends patience and tolerance of certain deviations in order to avoid greater evils and because it is necessary to take into account the concrete reactions of human beings, their prejudices, their *hardness of heart (Mt 19:8)* and their difficulties in overcoming their temptations or misfortunes, but also out of respect for their conscience it is normal, because it is a divine requirement, in the eyes of the Christian, and one of the minimum standards of the civilization of the universal, that polygamy should be prohibited in the countries of Western civilization and in all others where the public mentality has sufficiently evolved in the direction of understanding the ethical requirement of monogamy. [...] Fanatical sects which "provoke demonstrations not because they positively proclaim a doctrine, but because they do nothing but attack and slander the Church of God, ... which misrepresent our doctrinal and moral teaching" (Heenan) fall under public order because of their disloyalty and slander."²⁹⁴⁰

"Public morality is understood to be that set of attitudes which, in a given time and place, public opinion and those who are regarded as wise consider to be in keeping with good morals as prescribed by the moral law written in the heart of man. Each individual person and each religious group must be made aware of this through appropriate education. It would be unacceptable that, under the pretext of religion or fidelity to intimate convictions, one adopts behaviors that the general public would consider morally shocking and inadmissible."²¹ 7

"It is only in the absence of private initiative or in the face of its inefficiency that the civil power must take on the "*debita tuitio*", the indispensable maintenance, of public morality. Even then, society must be defended against important and socially dangerous offenses, because the civil power does not have to assume the role of master of morals."²⁹

The "common estimation of the wise", at certain times, has been able to see in the simple diffusion of religious error an offense to public morality.³⁰ On the other hand, if the dissemination of what is good and true in every religion is to be allowed, it is prudence that must evaluate whether or not the errors that are inseparably linked to it are seriously harmful to the common good. At present, however, and for the future, the Church is no longer prepared to recognize the publication of

²⁹ Cf. e.g. 071"; 0724.2; 0735.; 0771.; 077".

³⁰ Cf. OCÁRIZ. 1989.06, 80-81. See also KELLER, 1865. 352; HARTMANN; 1958, 224 (tolerance of polygamy in Africa).

of heresies as harmful *per se* to the just temporal public order: this is a judgment of fact and not of doctrine.

Moreover, s. Thomas (0241.) provides us with some complements:

"1...] Human law is carried for the mass of men, and most of them are not of tried and tested origin. That is why human law does not prohibit all the vices from which virtuous men abstain; but only the most serious ones, from which it is possible for the majority of people to abstain (here is a definition of public morality); and especially those which turn to the harm of others" [and here are the "rights of others" and the "public peace"] (0241.2).

The text 0242. teaches us the pedagogical and gradual role of the law in public morality. The whole doctrine is summarized in 0278. :

"The (human) law could not therefore prohibit everything that is contrary to virtue. It is content to prohibit that which destroys the common life of men. As for the rest, it treats it as lawful, not by approving it, but by not punishing it."

What destroys the common life of men is by definition that which prevents the common good (thus that which is contrary to the just public order). Certainly, the other faults against virtue destroy the *bene* - or *melius* - *esse* of the common good. But this does not enter into the coercive competences of the State, that is, into the object of the penal laws, as Pius XII confirmed to us (0758.1 and 0759.2).

In fact, neither SS. Thomas nor Pius XII explicitly make the assessment of the maximum morality that the population can admit depend on "public opinion".²⁹³ " And taking public opinion as a criterion could lead to serious errors. Thus, public opinion and many so-called "wise men" currently hold as not opposed to morality or to the common good practices that are in fact shameless: contraception, homosexuality, not to mention offenses against the rights of others such as euthanasia, abortion, etc.²⁹³¹ And such practices (and the propaganda in favor of them) can certainly be forbidden by J'Elat.²⁹³²

In order to find common ground between two "vessels" (countries, cultures, dominant religions) called to communicate with each other, it will become necessary to find a criterion of public morality acceptable to both countries, both cultures,²⁹³³ both religions in question. The more these cultures communicate with each other, the more *difficult* it becomes to *immediately* integrate speculative truth (in terms of beliefs) into *public morality*?²⁹³⁴ A practical matter, not a matter of principle, of *law of nations*, not of natural law. Without artificially aligning the public morality of one country with that of another, one must take into account the change in mentality caused by international communications, regardless of the im-

29501223. In this way, the "*Evangelium vit*" will deny that the general will or opinion is the *adequate* criterion for the evaluation of public morality (cf. e.g. n. 68 ff.). Cf. the "*objective moral order*" of DH1, § 3.

2951 Abortion is not simply a matter of public morality, for it awaits the fundamental right of an innocent person. Cf. HARING. 1966.262-263; and MARGERIE, 1990a, 359.

2952 *Human* " vit" called for states to ban contraceptives, regardless of the fact that chemical contraception is very often abortive.

2953 According to PIE XII, one cannot speak of a single Christian culture (cf. 0772.9: A AS.1955,680-081).

2954 Difficulty already underlined by *Ci riesce*.

migration, a specific problem, the foreigner having to respect the values of his host country.³¹ A certain *de facto* religious pluralism therefore prevents the simple public affirmation of a divergent thought from being *as such* contrary to public morality. Let us concede with John Paul II that the Church must ask forgiveness for the faults committed in this respect by Christians, including representatives of the Church.³²

³¹CT CEC 2241.

32 cf. [221. JOHN PAUL II, 1994.11.10: Apost. *Tertio millenia adveniente*. n.35, no doubt in response to remarks such as that of the Protestant LINDBECK. 1967, 121-123.

In addition to the time factor, there is the "place" factor: a religion that permits simultaneous polygamy will not be - in this respect - contrary to the public morality of a country where this principle is admitted; it will be so where public morality does not admit it, and so on.³³

5.2.3. "Elasticity" of the legal criterion

The solution to the difficulties encountered in the past (persecutions, religious wars, etc.) is an agreement on a principle of the **law of nations**, which, as is well known, is largely of the "contractual" type, presupposing the "**reciprocity clause**", based on the one hand on the existence of a reciprocal right relationship (the juridical duty), and on the other hand on the recognition of the same right in all the participants of a pact. If, therefore, the various parties to an international pact (this is the case envisaged by *Ci riesce*) recognize *each other's* right not to be prevented from practising their religion, even when moving from one nation to another, then all the citizens of the contracting States will have the right not to be prevented from practising their religion within the limits covered by the sovereignty of all these States. This is the case - envisaged both by J. Baucher and by Pius XII - of a law (in this case an *international law*) which gives rise to the civil right to tolerance.

Not everything is resolved by these considerations, because a) such a law is not valid for all the countries of the world, but only for the signatory States; b) even if it were valid for all the countries of the world, it would only come under the *law of nations*, and not yet under *natural law*, which is the object of *DH*; c) it would only commit the States (denominational or not, as Pius XII specifies) as such, but would not at all settle the question of the *way* in which the followers of the various *religions* will *exercise* this right finally acquired. As we can see, the problem can only be solved by simultaneous declarations by *States* (denominational or not) and *religions*. This is what happened between 1948 and 1965, and then continued at the level of the CSCE (then OSCE).

One understands then how the juridical criterion of *DH* 7, § 3, namely the protection of the rights of others, comes into play to explain why it was impossible for our ancestors to discern, proclaim the right to RL, *and* (even if they had made the right explicit as *DH*) to grant its *exercise*. Indeed, in a world where no one recognizes the "**natural right not to be prevented from** acting according to one's conscience in religious matters within the just limits - notably - of the rights of others" **except for those of one's own religion**, it is obvious that **no one practices his or her religion** (= exercises this right) **while respecting the right of "others"** (those "outside") **to RL** as described. Indeed, everyone thinks that once his religion is dominant, he will be able to convert the others by force, or at least prevent them from practicing their religion. Therefore, **in this world**, any **expansion of** a religion other than the dominant one in a given country is a **threat to the religious freedom of** the members of **the** dominant religion in that country. In particular the heretics, having become the majority, would have crushed the orthodox. And this is what happened in fact.

Henceforth, **since the exercise of the natural right to RL by non-Catholics is no longer automatically legally abusive in a Catholic country**, and since a natural right of freedom protects even the moral abuse of the right to exercise it in a *non-legally abusive* manner, it

2957cf. the remarks of DELHAYE, 1965b. 386-387 (polygamy prohibited in France and permitted in Algeria).

becomes obligatory in justice to let those who practice a religion not in conformity with the integral truth practice and try to spread their religion."³⁸ Once the United Nations (1948) and the World Council of Churches (1948 and 1961), through their declarations, have committed themselves in principle to this "reciprocity" in the RL, it becomes not only possible but urgent for *the Catholic Church* to manifest itself on this point³⁴ and to widen the RL that it has been granting up to now, while refining the concepts of the UDHR and of the WCC.³⁵ The problem of the evolution of the right to LR could thus be compared to that of disarmament. The Church now considers that error is no longer a *legal abuse per se*: it is no longer in a state of war. The international community still has to press for some adherents of a religion to renounce certain (legal-political) aspects of their religion on how to behave towards "infidels",³⁶ -

By denying the full exercise of the RL right in the past (beyond an intangible nucleus), the Church was therefore not at all going against the very principle of natural law proclaimed in *DH*, but it was allowing itself to be locked into an imperfect juridical context. This explanation³⁷ has the advantage of making it possible to understand why the refusal of the full exercise of LR was *systematic* (even with regard to personally "peaceful" wrongdoers) until the time when there was a general desire to renounce this mentality and a greater sensitivity for civil liberty, so violated by totalitarian regimes. We can therefore speak of an evolution of the *general human mentality* leading to an evolution of the *law of nations*. This evolution leads in turn to a change in the *extension of natural law*. This is the role of *time* in the evolution of the "just limits".³⁸ In fact, the previous general mentality was in no way due to the specific teaching of the Church, and was instead based on the pagan idea of the fusion of the temporal and the spiritual. Thus, it was only gradually that the Gospel made people aware of the dignity of the person, of the distinction of powers and of the need not to mix coercion and religion.*³⁹

This argument of the evolution of the "law of nations" and of the "reciprocity clause" is indeed underlying *DH* 1, § 1 and 9, § 1, *DH* 12, § 2,⁴⁰ *DH* 15, § 1. *DH* 15, § 3, on the other hand, emphasizes that the RL is "necessary, especially in the present condition of the human family", which *DH* 15, § 4, explains precisely for a reason that comes under the law of nations.

Objection: Doesn't the one who spreads error automatically go against the right to truth of the one who listens to him? This is the famous problem posed by a possible "right of Catholics not to be disturbed in their practice of the true religion".⁴¹ Answer: Catholics have a right not to be disturbed in their true convictions. This is true at the level of the individual, the family, the building, the block, the commune, the region, the nation.⁴² And this does not

34 With a more correct basis than the common ground of the two above mentioned instances.

35 greater exercise of the right to RL - including "not being hindered in public" - for Catholics only; more restricted RL - with an intangible core: "not being forced against one's conscience" and a more fluctuating margin (private tolerance) - for non-Catholics

36 Example of this relativization in ARKOUN Mohammed: *La Liberté religieuse comme critique de la religion à partir du Coran et de la tradition islamique*, in AA. VV., *Cogitatio JideL* 110119811.109-118.

37 Basic idea in CAMPBELL, 1953.09.03/1954.03-04, 184-185. Let us add CALVCZ. 1963.05.578. note 19.

38 DAVIES, 1992,186 does not consider the time factor.

39 The evolution on this point could be compared to that concerning slavery.

40 See STICKLER, 1989, 12-13.

41 A frequent argument among various Spaniards: ESTRADA" 1972, 484; GUERRERO" 1966.02, 71-72; SEGARRA, 1968a. 59-60, and 73.

42 cf. LÓPEZ DE PRADO, 1967d. 603.

contradict *DH*.

"It is necessary that the community concerned be able, if it so desires, to manifest its worship freely in the sight of all, although without annoying those who are opposed to it. (For this reason, a distinction must be made between religious demonstrations inside buildings, for which the greatest freedom must be the rule, and those which take place in public squares and streets, for which great discretion is required, taking into account the mentality of both the general population and the minorities), a⁴³

"The political authorities may, in view of the common good for which they are responsible, make the exercise of the right of immigration subject to various legal conditions, in particular to the respect of the duties of migrants towards the country of adoption. The immigrant is obliged to respect with gratitude the material *and spiritual* heritage of his host country, to obey its laws and to contribute to its burdens. a⁴⁴

And without a doubt, these dissidents will be assured full equality of rights in all their social and civil life. But they will be asked not to show their religion in the media, because the whole population does not want to "receive

296" COSTE. 1969,217.
44 cEC2241 (emphasis ours).

Such a way of behaving is not *in itself* contrary to the principle of the RL.²⁹⁷ * However, the holder of the right not to be disturbed in his enjoyment of the truth is not obliged in justice to use his right.⁴⁵ And "*volenti et consenti non fit iniuria*."⁴⁶ It may even be that the subject (individual, building..., nation) of the right to the truth has good reasons to allow the said propaganda⁴⁷ and has means to limit the damage. Under these conditions, there may not even be a sin anymore.⁴⁸ And the peddler of error does not commit an injustice.⁴⁹

"Thus it appears that the last Council developed without changing the Church's previous doctrine, even as it profoundly modified public ecclesiastical law by recognizing that, even in the most Catholic countries, the right of non-Catholic communities to immunity from governmental intervention outweighed the right of Catholics not to be "led into temptation" against their faith. "2977

5.2.4. Applications of our "elastic" solution

Let us now apply our solution based on the reciprocity clause and the evolution of the law of nations to a few particular problems.

I) The thesis and the hypothesis

It is often claimed that *DH* has transformed into a "thesis" what was once a "hypothesis" and vice versa,²⁹⁷ " or that *DH* has "surpassed" this famous distinction.⁵⁰ What do we think of this? Let us remember that the distinction between thesis and hypothesis is not an invention of liberals,²⁹ nor of liberal Catholics.²⁹ "1 C. Curci, S.J., in the famous article in the *Civiltà Cattolica*, where, at the unofficial request of the Holy See, he sought to calm people's minds following the uproar caused by the Malines speeches.²⁹ "2 Afterwards, this distinction became commonplace both in the very "classical" treatises⁵¹ and in the more "modern" studies. Finally, Pius XII will give it a certain consecration by using himself at least once explicitly the expression of *thesis*, as opposed to "complete separation" (0760.24), and another time in an implicit way (0772.7).⁵² What then is the thesis according to him?

"The Church does not conceal the fact that she considers in principle this collaboration (between the Church and the State for the education of the same people) as normal, and that she regards as an ideal the unity of the people in the true religion and the unanimity of action between it and the State" (0772.7).

So that's the thesis. And the hypothesis?

"But she [the Church] also knows that for some time events have been moving rather in the other direction, that is, toward the multiplicity of religious confessions and conceptions of life in the same national community â€" where Catholics constitute a more or less strong minority" (*ibid.*).TM*

It can be seen, therefore, that for Pius XII the thesis consists essentially in the collaboration of Church and State, and not directly in the repression of the religious error of heretics. The hypothesis, therefore, is the pluralism of fact, which prevents this close and trusting collaboration.

II) *Is the doctrine of the secular arm abandoned* T *²⁹¹⁵³ Answer: The Church, by *DH*,

USEROS. 1966, 62.

⁴⁶ Principle admitted by all moralists and jurists, and studied by s. THOMAS OF AQUIN, 2-2, q. 59, a. 3: *Utrum aliquis possit pati iniustum voiens*.

⁴⁷ For example in view of a great good, such as the re-entry of his country into a community of states (cf. 0760.10).

⁴⁸ Cf. LÓPEZ DE PRADO. 1967d. 604.

⁴⁹ p.-our les exceptions, cf. 1223. *Evangelium vitte*. passages condemning euthanasia.

⁵⁰ Cf. MARTINA. 1970, 594.

explicitly. Dupanloup (1865) uses it in his pamphlet on QC. but does not apply it at all to the question of denominationalism and RL.

placed at the level of the "hypothesis"; and finally, p. 144, he recalls the value of the "thesis".

undertakes not to incite the State to use coercion except in cases where just public order is endangered. And we believe we have shown that this was the principle followed during the Constantinian era.^{29RT}

III) *Situated texts?* Those who try to harmonize *DH*'s doctrine with the teachings of the popes of the 19th century^{e54} - sometimes minimizing their significance,⁵⁵ dwell on the need to "situate" the latter in their context.⁵⁶ The attempts of J.-C. Murray to classify in a context of "anti-liberal polemic" and "continental absolutism"⁵⁷ everything that, in Leo XIII, could resemble a refusal of modern liberties or a maintenance of the confessional State. The idea does not seem to us to correspond to reality.⁵⁸ For if the popes condemned "modern liberties", it was in the name of *timeless* principles. And these condemnations remain valid, even after *DH*, in the sense that they had in the XIX', a "context" which relativizes not the validity of these teachings, but the definition of their words.⁵⁹

IV) *Moral of situation*⁶⁰ and doctrine drawn from a new fact? Answer: we firmly adhere to a philosophy of being and to the immutability of truth, including moral truth. But we have now understood that according to the way in which a man uses his natural right, one will have or not the right to refuse him the exercise of it. It is the *quæstio facti*, which is in play, not the *quæstio iuris*.

Conclusion of Chapter 8

If in the past the Church has more often than not denied certain categories of people (apostates, heretics and schismatics) envisaged in certain types of situations (especially when the rights of Catholics were not respected) *the* (morally incorrect) *exercise* of their right to the RL, this is amply explained by the fact that these cases involved crossing the limits of the RL as expressed by *DH* 7, § 3, regardless of the many abuses perpetrated by Catholics in the use of their own right to protect themselves; regardless of the common misconception that truth could be imposed by coercion.

From the moment that the principle of reciprocity came into force at the level of the law of nations, it goes without saying that the Church will not go back on it. This accession of the principle of reciprocity to the level of the law of nations has made it possible to better perceive that it is a properly natural right, which the generally incorrect exercise of this right did not previously allow to be understood in theory and prevented from being put into practice.⁶¹ Everything depends then on the education to the good use of the right to liberty,²⁹⁹⁶ object, precisely, of the following n° of *DH*.

29XX ^{une} of the best attempts to "put into context" appears to us AUBERT, R., 1965.03, 15.

29X9 Not to confuse (as COSTE, 1982, 26) magisterial doctrine and personal thought of the popes, given the cultural context to which they belonged.

56 cf. AUBERT, R., 1965.03, 13-14.

57 Typical of the latter aspect, MURRAY, 1967,142 [1*A. overlooks the 1953 Concordat].

58 Cf. REGAN. 1967, 174-175.

59 cf. similar remark by AUBERT, R." 1965.03,22, about' *hminoriale*.

2994Condemned in particular by <1747. P1EX11, 1952.04.18: to the Catholic Women's Youth;A4S. 413-119
2996Cf. BIFH. 1985.743.

CONCLUSION OF THE FIRST PART OF *DH*: EDUCATION OF ACTIVE AND PASSIVE SUBJECTS (*DH 8*)

DH 8 elaborates on the need to instill the content of *DHI*, § 2.

i) *DH 8*, § 1 notes the paradox of the contemporary situation:

" (A) Men in our time 111 are oppressed in various ways, and [2] are in danger of being deprived of their own capacity for free decision. On the other hand, many seem, under the pretext of freedom, to reject all subjection and to despise the obedience required. >>⁶²

ii) *DHi*, § 2 then logically emphasizes the need for an education in A) obedience to 1° the moral order and 2° legitimate authority; B) love of authentic freedom, including: 1° personal judgment; 2° in the light of truth; 3° a sense of responsibility, truth, justice; 4° and working together:

"Therefore, this Vatican Council exhorts all men, especially those who are responsible for educating others, to strive to form men who obey the moral order, obey legitimate authority, and love authentic freedom ; that is, men who know how to judge things for themselves in the light of truth, carry out their activities with a sense of responsibility, and strive to pursue all that is true and just, willingly associating themselves with others in work, a ⁶³

iii) And according to *DH S*, § 3, the RL then also becomes a means of education in the performance of one's duty, in the sense of responsibility.⁶⁴

IV) But it is always freely that man turns to the good. Our contemporaries value this freedom highly and pursue it with ardor. And they are right. Often, however, they cherish it in a way that is not right, like the license to do anything, as long as it pleases, even evil. But true freedom is in man a privileged sign of the divine image. For God has willed to leave him to his own counsel (12) so that he may seek his Creator of his own accord and, by adhering freely to him, thus complete himself in a blessed fullness. Man's dignity therefore requires that he act according to a conscious and free choice, moved and determined by a personal conviction and not under the sole effect of instinctive impulses or external compulsion. Man achieves this dignity when, free from all bondage of passions, by the free choice of the good, he walks towards his destiny and takes care to really obtain the means by his ingenuity. However, it is only by the help of divine grace that human freedom, wounded by sin, can be ordered to God in an effective and integral way. And each one will have to give an account of his own life before the tribunal of God, according to the good or evil accomplished (13)."^{3U0} °

This mention of the supernatural domain leads us logically to the second part of *DH*.

"Nostra allatis homines varia ratione premuntur et in periculum veniunt ne proprio libero consilio destituantur. Ex altera parte non pauci ita propensi videntur, ut specie libertatis omnem subiectionem reiiciant ac debitam oboedientiam parvi faciant." 299" " Quapropter hac Vaticana Synodus omnes hortatur, prasertim vero eos qui curam habent alios educandi, ut homines formare satagant, qui ordini morali obsequentes legitima auclontati oboediant et genuina libertatis amatores sint; homines nempe, qui proprio consilio res in luce veritatis diudicent, activitates suas cum sensu responsabilitatis disponant, et quacumque sunt vera atque iusta prosequi nitantur, operam suam libenter cum ceteris consociando."

⁶⁴ "Religiosa igitur libertas etiam ad hoc inservire et ordinari debet, ut homines in suis ipsorum officii adimplendis in vita sociali maiore cum responsabilitate agant." Cf. S 42: 5 RS, A.S. IV/V, 155.

3U0 "GS- 17. Notes: (12) Cf. Si 15,14 : (13) Cf. 2 Cor 5.10.

SECOND PART OF *DH* :

**RELIGIOUS FREEDOM
IN THE LIGHT OF REVELATION
(Dtf 9-14)**

LHE second part (*// UBERTAS RELIGIOSA SUB LUCE REVELATIONIS*) confirms the doctrine of the RL by its *appropriateness on the one hand* (section A) with Revelation in general (*DH 9*), on the other hand (section B) with two particular revealed givens (*DH 10-14*). No. 15, which concludes this part and the declaration, is a concrete appeal to politicians.

**SECTION A.
THE THEOLOGICAL STATUS
RELIGIOUS FREEDOM IN
REVELATION**

CHAPTER 9.

9. RELIGIOUS FREEDOM ACCORDING TO REVELATION AND SCRIPTURE {DH 9}

LThe very text of *DH* allows us to situate his doctrine of the RL in the framework of Revelation, considered *in general* (9.1.) and then *in particular*, namely in Scripture (9.2.).

9.1. LR and Revelation in general

DH 1 does not tell us directly where to situate *DH's* doctrine within the framework of Revelation, but on the one hand he announces his intention to do so,^{31 *} on the other hand he gives us the condition *sine qua non* for the interpretation of everything that follows, and this condition also comes under Revelation.^{3uu2} It is rather chapter II (*DH* 9-14) which is directly concerned with the theological status of the doctrine.^{3UU3} And especially *DH* 9, which we must therefore analyze.

[1] First, there is a transition to a progress in the knowledge of natural law by natural reason:

[2] The demands of the dignity of the person have been more fully manifested to human reason by the experience of the centuries.

[11] We situate the RL: It has its "roots" in the Revelation.

[A] We begin by stating the fact:

"This doctrine of freedom has its roots in divine revelation, which for Christians is one more liter to be sanctimoniously faithful to it (*sancte servanda est*), "3004

[B] We explain what it means it is a doctrine:

It is not "formally explicitly" revealed ("[11] Although, in fact, revelation does not explicitly affirm the right to immunity from external coercion in the religious sphere, [...]);

[2] but "based on Revelation. The SUC made it clear that the purpose of the outline was not "to demonstrate exegetically or theologically that the human right to religious freedom is valid. This would be inept of course and impossible. [But Revelation

3001 *DH* 1; translation: *CerfVATKAN II*. 1.111. 171: "the sacred tradition and the holy doctrine of the Church .

MI DH 1. § 2-3; translation: *Cerf-VATKAN H*. t. III, 171-172.

3003 cf. PAVAN, 1967d, *U nam Sanctam*. 60, 192 ff.

3WMDH9, § 1; trans. *Cerf-VAnCAN* 11. t. III. 180. Cf. S 43: 5 RS. A.S. IV/V. 155.

3005 Cf. S 15 bis : Å.S. IV/1, 185. 11. *De methodo schematis*. S' paragraph (43) : S 22 : 4 RO. A.S. IV/I, 198; S 2": 5 RO, 6 *De fundamento in Revelatione*. AS. IV/V, 103.

"It shows in what respect Christ held the freedom of man in the accomplishment of his duty to believe in the word of God and teaches us with what spirit the disciples of such a Master must be imbued in their action. "30*

Thus, [a] Revelation enlightens the foundation of law; [b] provides us with an example [c] to imitate in this matter as to the spirit.

"[d] All of this points to the general principles on which the doctrine of this declaration on religious liberty is based."

After announcing, in [b] and [c], the main lines of the plan of the second part, the paragraph ends with a transition:

"And first of all, religious freedom in society is in full accord with the freedom of the Christian act of faith. "3ixn

All this supposes an *implicit* or at least *substantial* presence (cf. the "roots") of the doctrine of the RL in Revelation.³⁰⁰⁸ However, one does not declare its *necessarily connected* character to the revealed given,³⁰⁰⁹ and one only posits a form of relationship of *convenience*, therefore of connection in the broad sense.^{30 -0} For agreement is not necessary deduction. Moreover, the revelation of truths about a reality that is a foundation is not the revelation of the fact that it is the foundation.

A doctrine has "its roots" in Sacred Scripture, if the Bible contains it, not explicitly or implicitly, but substantially, *read in the light of Tradition*, the latter providing the Bible with a more "plenary" meaning than the obvie meaning.³⁰ -- Perhaps this is how, according to *DH*, the doctrine of the RL could be found in the written-transmitted Word of God. The Council is therefore consistent in seeking the *material basis* for such a "reading in the light of Tradition" by highlighting the New Testament texts that are the object of this reading:

"quamvis S. Scriptura de doctrina circa libertatem religiosam quae in schemate nostro exponitur directe non loquatur, principia tamen, ex quibus decursu saeculorum haec doctrina evoluta est, ex ipsa revelatione elucescunt".³⁰²

9.2. The Holy Scripture in particular

Starting from the conciliar document itself, we shall suppose that if any biblical text can support its doctrine, it must be cited therein;³⁰¹⁰ ¹³ and we shall complete this investigation with some information drawn from the authors who have been willing to clear such a path.³ ¹⁴ We shall leave aside the quotations suppressed in the definitive text, namely, from the Old Testament, the texts on the creation of man in the image of God, on the freedom of Abraham and Israel at Sinai, and, from the New Testament, *Mk* 8:11-12 and *Lk* 9:54-55.³ ¹⁵ More precisely,

"The texts prior to the one distributed to the Fathers on November 17, 1964, had almost no recourse to Holy Scripture.

There was only one unfortunate allusion to human freedom in general, based biblically on *Gen* 1:27, and another not much happier one on the freedom of the act of faith, based on the first *epistle of John* 3:21. The image and likeness of God, imprinted by the Creator in human nature (*Gen* 1:27) undoubtedly includes freedom. But God can hardly be the model of man as regards *religious freedom*, which precisely 11 does not possess."³ ¹⁶

It is from the *Textus emendatus* onwards that the biblical argumentation takes on a

haec Vaticana Synodus, fundamentum habent in dignitate persona; cuius exigentiae rationi humante plenius innouerunt per steculorum experientiam. Immo ha;c doctrina de libertate radices habet in divina Revelatione, quapropter eo magis a Christianis sancte servanda est. Quamvis enim Revelatio non expresse affirmet ius ad immunitatem ab externa coercionem in re religiosa, tamen humante persona dignitatem in tota eius amplitudine patefacit, observantiam Christi erga hominis libertatem in exsequendo officio credendi verbo Dei demonstrat, atque de spiritu nos edocet, quem discipuli talis Magistri debent dans omnibus agnoscere et sequi. Quibus omnibus principia generalia illustrantur super quae fundatur doctrina huius Declarationis de libertate religiosa. Praesertim libertas religiosa in societate plene est cum libertate actus fidei Christiana; congrua." 3(H "Kcf. PAVAN, 1967d, 192.

3009 This may have worried some Protestants, such as Lundbeck, 1967, 127.

³⁰¹⁰ ¹⁴ *Ibid.*. 118-119; 122; 124.

considerable place.³ ②-⁷ The *Textus reemendatus* contains a long passage on the roots of the RL in the history of salvation; but this presentation will be suppressed in the *Textus recognitus*, because it will provoke too many complaints from the Fathers. The *Textus recognitus* will also delete the theme of Jesus "refusing to perform certain miracles so as not to violate the RL of his hearers. Thus, Holy Scripture does not directly support the right not to be prevented from acting in public and proselytizing. Finally, several of the proposed biblical texts were rejected by the SUC as referring to intra-ecclesial freedom:³ ②¹⁸

"The most important thing in the additions to the *textus recognitus* is the explicit recognition that the texts alleged do not claim to constitute theological proof - since Revelation does not expressly deal with the theme.³ ②⁹ "It is not, therefore, a thesis which is claimed to be formally revealed and which, as such, is intended to be demonstrated by explicit texts of Sacred Scripture."³ ②²⁰

^{30.3} We use the *Osty Bible*. Paris, Seuil. 1973.

^{31.14} FONDEVILA, 1966b, 539-569; AD1NOLH, 1990 (for Act 4 and 5); BENOIT Pierre. O.P., 1967; BLASER. 1960; HONORA, 1988; CERFAUX L., *La Situation du chrétien dans le monde d'après le N. T.*, in AA. Vv., *Tolerance and Human Community*. 1952,49-56; COUNE, 1963; DUPONT Jacques. 1948; FREEDMAN. 1966; GONZÁLEZ-RUIZ José-Maria, 1956 & 1965; HAMER. 1966.04.15; LÓPEZ DE LAS HERAS. 1982; LYONNEC, 1969; finally PAVAN, 1967d. *Unam Sanctum*. 60, 192-203, and above all MUNOZ-IGLESIAS, 1968. Miser. BENOIT Pierre, O.P., 1967,206 and 209. M¹ MUNOZ-IGLESIAS, 1968, 105-106; our translation. M¹ Cf. *Ibid*. 106-109 ; 111.

9.2.0. The Old Testament

DH never quotes the Old Testament. This is certainly not because of Marcionism,³⁰¹¹ but because it was only after the coming of Christ that the State ceased to be competent in religious matters:³⁰¹² Israel was a theocracy. "The Fathers therefore considered it preferable to omit any appeal to the Old Testament.³⁰¹³ On the other hand, as early as the religious wars of the sixteenth century^e, arguments *against* toleration attempted to rely on the OT³⁰¹⁴ -- Controversialists had already used it in the much more distant days of the Donatist controversy.³⁰¹⁵ We need only recall that various types of God's commandments were specific to the people of Israel, who were to be constituted *ad intra*, by religious unity itself, and *ad extra* by the invasion of the promised territories.³⁰¹⁶ Like many other *præcepta Judicialia and cæremonia- lia*, they were subsequently abrogated.³⁰¹⁷ To model the system of the confusion

³⁰²¹ See FREEDMAN, 1966.86.

^{3012c} f. 0772.2 : A AS. 1955,677.

³⁰¹³ cf. BENOIT, *op. cit.* 206.

³⁰¹⁴ cf. e.g. LECLER, 1953a.

³⁰¹⁵ cf. LEFEBVRE Marcel, M¹. 1985.11.06, chapter XII (*La contrainte en matière religieuse dans l'histoire biblique*), divided according to the Old Testament and the New Testament, 47-50.

³26 cf. COSTE, 1969,37-38.

³⁰¹⁷ Cf. THOMAS AQUINAS, s. 1271, *Summa Theologûe*, 1-2: 98, I and 5; 99,6; 100,8: the question is not part of the precepts of the decalogue, from which God himself cannot dispense in any circumstances; 104,3. The obsolescence of certain political-legal visions of the Old Testament was underlined by S 88: 6 RS, Modi generales. A.S. IV/vi, 762168]. Scripture as a whole should not be read as a code of laws: *Ibid*. 763.

of the temporal and the spiritual on all the States is one of the great errors from which Christ wanted to turn us away with the "Render unto Caesar", because it leads to the domination of the conscience by the State. Our discussion will therefore be divided according to the texts of the New Testament which, on the one hand, seem to *contradict DH and, on the other hand, support him.*

9.2.1. Texts of the New Testament in apparent discordance with *DH*

Sometimes examples are cited of Jesus using coercion in religious matters. In fact, the only case that does not involve moral obligation but physical coercion with a vague connection to the subject is that of Jesus driving the sellers out of the Temple (*Mt* 21:12-13 and //). However, these vendors are there to *traffic* in the Temple of true religion. Moreover, if Jesus had really used some coercion in religious matters, was it by a right of his *own* or by a right he wanted to give to civil societies and individuals?

If we come to the case of the Apostles, we see that the killing of Ananias and Sapphira, often mentioned, was the result of a fraud (*Acts* 5:1-11), and not of the crime of belonging to another religion or of abandoning the faith, and moreover, the two culprits were not killed by civil coercion, but by God himself,

5. Peter having only prophesied their death.³⁰¹⁸ The same applies to the punishment of Elymas prophesied by St. Paul. Paul.³⁰¹⁹ ²⁹

As for 2 *Jn* 10, it invites us not to frequent pagans, but those who confuse others by making them believe they are Christians, while teaching false doctrines. It is an invitation to beware of them, and not to exercise civil coercion on them. Is this the *Apocalypse*?³⁰²⁰ The bishops are urged to expel heretics. But the RL in no way contradicts the Church's right to "expel" those who cause trouble in her midst.

9.2.2. Texts of the N. T. in agreement with *DH*

DH quotes the New Testament in two ways: 1) A first series of excerpts is quoted literally in the text, with the references given in parentheses also in the text. 2) In the present summary, we leave out the extracts of the second series, paraphrased or alluded to, and referred to only in the notes (10 to 37 of the official text). In the first series, two main categories can still be identified. I) Texts scattered throughout the *DH*; II) Texts grouped in *DH II*. We will review here the texts quoted in various paragraphs of *DH*; we will find the others when we read *DH* 11.

— *Mt* 28:19-20 is quoted twice (*DH* 1, § 2; *DH* 14, § 1). This famous passage, in which Christ sends his Apostles on mission, has the role here of excluding on the one hand any freedom of moral obligation in the choice of a religion (*DH* 1) and on the other hand

³⁰¹⁸ Ananias dies on hearing Peter accuse him of lying to God (*Ad* 5:5); Peter makes no mention of any death penalty in his case. Sapphira, on the other hand, is predicted by Peter to die immediately (5:9). But at no point does Peter pronounce a sentence or even a death wish. It is not understandable that VITORIA, 1:222-223 (= *Jn* 2-2, 11:3) invokes *Acts* 5:1-11 in this connection. ³⁰²⁹ ¹³,6-11.

³⁰²⁰ Chapter 2 is full of warnings against heretics: 2.6.14-15.18-23.

indifference to the state of ignorance in which "the nations" find themselves (*DH* 14) with regard to the Word of God, which is indeed destined to be spread (2 *Thess* 3:1 [*DH* 14, § 11])

— *1 Tenth* 2:1-4 (*DH* 14, § 1) is more directly concerned with social and civil liberty. In fact, St. Paul asks for prayers "for kings and all those in authority, that we may lead a quiet and peaceful life in all godliness and dignity" (1 *Tim* 2:2). (*1 Tim* 2:2). We are immediately struck by both the request for prayer for the *kings of the time* and by the end sought, namely: calmness, peace, allowing a life of "piety" and dignity. The tranquility of the citizens is thus one of the purposes of the State.³⁰²¹

— *Rom* 8:21 (*DH* 15, § 5), finally, a little noticed text which closes the declaration and delivers its scope by fixing the ultimate finality and state of all freedom in general and

of the RL in particular, namely the "*libertatem gloriæ filiorum Dei*", perfect freedom of the state of glory.

Conclusion of Chapter 9

On the whole, the texts quoted in *DH*, in particular *DH* 11, constitute a solid proof of the *freedom of the act of faith*, and consequently of the right of every man not to be forced by civil society to adhere to a belief; in the same way, they bring a certain proof of the right not to be prevented from adhering to the Revelation offered by God. On the other hand, their contribution in favor of a right not to be prevented from adhering to such a false belief and from propagating it seems to us very tenuous, not to say non-existent. But the problem becomes clearer if we consider that adhering to errors is only an abuse of this right to adhere to the truth. When should such an abuse be repressed by the state? In other words, when does this moral abuse become legal? The New Testament does not reveal this. According to it, princes bear the sword "*ad vindictam malefactorum*" (*Rom* 13:4), but are these "evildoers", these "wicked", sinners in general or only those who violate the legal limits of the law? If the New Testament does not specify this, we should not be surprised. The situation did not then provide any case that raised the problem of the "Christian" state facing "heretics."³⁰²² Thus, it is true, the Apostles and the primitive Church did not rely on public force. However, this observation could only provide an argument if, having this force at their disposal, they had avoided using it. Although aware of this fact, the Council wanted to support its teaching with arguments that were not only philosophical and juridical, but also theological, so as not to give the impression of opportunism and to extinguish any fear of a possible future reversal.³⁰²³

Some have tried to build a *theology of the RL* on a broader basis, having recourse to passages from the New Testament (especially from St. Paul) revealing, among other things, the doctrine of respect for conscience, even if erroneous, or that of Christian freedom. But we must emphasize with A. Bea

"It is important to note that the particular aspect of freedom for which Paul fought is not precisely the one we are

3021 2 *Cor* 6:6-7 (*DH* 14, § 3) illustrates how the apostolate is to be accomplished. The RL is not a prohibition of the apostolic mission *ad extra, ad pentes*.

3022 see S 14:4 RS, A.5.1V/1,182.

3023 cf. AUGUSTIN. Pius, 1966. 309. The rejection of opportunism is clearly formulated in S 07, 3 RO, AS. III/VIII, 454, § 111. Realism. Translation: DC, 1965,173-174, with reference to DC. 1953, 1601.

thinking of at the moment. We are thinking above all of the freedom of the human person from the many forms of abuse by other people and by society. St. Paul, on the other hand, was thinking of the *liberation of man from the slavery of the baser passions, from sin* [...] In speaking of liberation, Paul was also thinking of the *Law of the Old Testament*, disproportionately complicated by so many minute traditions and so many equally minute explanations of the "doctors of the law" [...]. (...).³⁰²⁴

³⁰²⁴ BEA. 1966(1963.12.13). 263.

SECTION B.

**SUITABILITY OF
THERELIGIOUSFREEDOM
WITH TWO FREEDOMS
SUPERNATURAL (*DH 10-14*)**

E *DH* THEN GOES ON TO show the suitability of the RL with two particular revealed freedoms, namely: I) the act of faith (*DH* 10-12); II) the Church (*DH* 13-14).

CHAPTER 10.

10. RELIGIOUS FREEDOM AND FREEDOM OF FAITH (DH 10-12)

LE text then teaches the full harmony of the dogma of the coercive freedom of the act of faith with the RL, considering this dogma A) first in itself (DH 10), and then B) in the correlative behavior of God and his envoys that grounds it (DH 11-12).

10.1. The dogma of the freedom of the act of faith (DH 10)

"(I) It is [A] one of the principal points [1] of Catholic doctrine, [2] contained in the word of God and [3] constantly taught by the Fathers (8),³⁰³⁵ that [B] [11 the response of faith given by man to God must be voluntary; (21 consequently, no one must be compelled to embrace the faith in spite of himself (9).³⁰³⁶ By its very nature, in fact, the act of faith has a voluntary character (B) since man, [1] redeemed by Christ the Savior and called by Jesus Christ to filial adoption (10),³⁰³⁷ [2] can adhere to the revealed God only if, attracted by the Father (11),³⁰³⁸ he reasonably and freely puts his faith in God. [Therefore, a regime of religious liberty contributes in a notable way to the promotion of a state of affairs in which a man can be unhindered in his invitation to the Christian faith, can embrace it of his own free will, and can confess it fervently with his whole life.³⁰³⁹

DH 10 inculcates a principle: [I] the principle is affirmed [A] in its epistemological status (*auditus fidei*): the freedom of the act of faith is: [1] Catholic doctrine; [2] with revealed foundation; [3] and of constant tradition; [B] in its

³⁰³⁵ Note (8): Cf. LACTANTIUS. *Divinarum Institutionum*, Lib. V. 19; CSEL 19, pp. 463-464,465; PL 6. 614 and 616 (cap. 20); S. AMBROSIIUS, *Epistola ad Valentinianum Imp.* 21: PL 16. 1005; S. AUGUSTINUS. *Contra Iheras Petdiani*, Lib. 11. cap. 83: CSEL 52, 112; PL 43,315; cf. C. 23, q. 5. c. 33 (ed. Friedberg, 939); IDEM. Ep. 23: PL 33, 98; IDEM, Ep. 34: PL 33, 132; IDEM, Ep. 35: PL 33, 135; S. GREGORIUS MAGNUS. *Epistola ad Vtrgillum et Theodorum Episcopos Massiliui Galbarum*, Registrant Epistolarum, 1, 45, MGH Ep. I, 72; PL 77. 510-511 (üb. I, ep. 47); IDEM, *Epistola ad Iohannem Episcopum Constantinopolitanum*. Registrant Epistolarum, 111.52: MGH Ep. 1, 210; PL 71, 649 (lib. III, ep. 53); cf. D. 45. c. 1 (ed. Friedberg, 160); CONC. TOLET. IV. c. 57: MANSI 10. 633; cf. D. 45. c. 5 (ed. Friedberg, 161-162); CLEMENS III: X. V, 6. 9: ed. Friedberg, 774; INNOCENTIUS 111, *Epistola ad Arelatensem Archiepiscopum*, X., 111. 42.3: ed. Friedberg, 646.

³⁰³⁶ (9). CIC, can. 1351; PI US XII, *Allocutio ad Pnelatos auditores exterosque officiales et administratos*

Tnbunalis S. Romana; Rots, 6 Oct. 1946: AAS 38 (1946), 394; IDEM, Liit. Encyd. *Mystici corporis*, 29 June 1943: AAS 35 (1943), 243.

³⁰³⁷N goose (10): Cf. Eph. 1,5.

³⁰³⁸Note (I i); cf. Io. 6,44.

content .- 1] the free will [2] opposed to coercion; [II J the principle is justified by a *theological reason (intellectus fidei)*: [A] the reason is affirmed: it is the very nature of the act of faith; [B] this nature is detailed: [1] a call; [2] a response: [a] supernatural; [b] reasonable; [c] free; [III] the principle is related to non-coercion: | A J freedom from coercion in general; [B] the RL in particular as a favorable climate (*medium in quo*)TM 111 to an easy invitation, [2] to a correct adherence to the Christian faith, and [3] to its putting into practice.-¹¹⁴¹

DH will now reason from model behaviors: 1) first those of God and the Apostles (*DH* 11), 2) then that of the Church (*DH* 12).

10.2. The behavior of God and the Apostles (*DH* 11)

DH II, very logically, is going to feed first [I] on the very first source of Revelation, God (*DH* 11, § 1), then [III] on its first transmitting channels, the apostles (*DH* 11, § 2). Like the declaration as a whole, art. 11 is built on the "adversarial" pattern: *there is moral obligation, but not coercion*.

III *DH* 11, § 1 provides as an example the behavior of God himself [A] in his Divinity: [1J he obliges in conscience, but does not coerce, otherwise there would be no service "in spirit and in truth]2J he indeed respects the dignity of his creature (his counsel and freedom);]B] in his Humanity (gentleness and patience in deed and word; miracles are not coercion; Jesus reproves unbelief, but does not punish it until the Judgment; He preached tolerance of the tares; he refused power for himself in favor of service; he recognized Caesar's power, but subordinated it to God's;³⁰⁴³ he bore witness to the truth by dying, not by forcing it; his kingdom grows by witnessing, listening, and loving, not by beating).³⁰⁴⁴

"God certainly calls man to serve him in spirit and in truth; if this call obliges man in conscience, it does not therefore compel him. God, in fact, takes into account the dignity of the human person whom he himself created and who must conduct himself according to his own judgment and use his freedom. This was most clearly seen in Christ Jesus, in whom God fully manifested himself and made his ways known. Christ, in fact, our Master and Lord (12)³⁰ 45 gentle and humble of heart (13),³⁰⁴⁶ invited and attracted the disciples with patience (14).³⁰⁴⁷ (14) He supported and confirmed his preaching with miracles, but it was to arouse and strengthen the faith of his hearers, not to coerce them.³⁰⁴¹ (15) It is also true that he reproached those who heard him for their unbelief, but this was done with the reservation of punishment for God on the day of judgment.³⁰⁴⁹ When he sent his apostles into the world, he said to them: "He who believes and is baptized will be saved; but he who does not believe will be condemned" (*Mk* 16:16). But, recognizing that the tares had been sown with the wheat, he commanded that both should be allowed to grow until the harvest, which will take place at the end of time (17).³⁰⁵⁰ [q_e not wanting to be a political Messiah dominating by force (18),³⁰⁵¹ he preferred to call himself the Son of Man, who had come "to serve and to give his life as a ransom for many" (*Mk* 10:45). He showed himself to be the perfect Servant of God (19),³⁰⁵² who "does not break the crumpled reed or extinguish the wick that is still smoking" (*Mt* 12:20). He recognized the civil power and its rights, ordering to pay tribute to Caesar, but reminding that the superior rights of God must be respected: "Render to Caesar what is Caesar's and to God what is God's" (*Mt* 22, 21). Finally, by completing on the cross the work of redemption which was to bring salvation and true freedom to mankind, he completed his revelation. He gave witness to the truth (20),³⁰⁴⁵ but he did not want to impose it by force on his opponents. His kingdom, in fact, is not defended by the sword (21),³⁰⁵ 4 but it is established by listening to the truth and by bearing witness to it, it is extended thanks to the love by which Christ, lifted up on the cross, draws all men to himself (22)."³⁰⁵⁵

[II] *DH* 11, § 2, for its part, relies on the example of the Apostles (followed by the

³⁰⁴³ Cf. COSTE, 1969, 75-76. *Mt* 22, 21 founds until the end of the world the doctrine of the *distinction of the two powers*, and thus of the difference in their *legal competence*. This legal incompetence of the state forbids it to use its coercive power in religious matters.

³⁰⁴⁵ Note (20): Cf. Io. 18,37.

martyrs). These, while professing no religious indifference and seeking to convert all men, did not wish to impose the faith or to advance it by unworthy artifices. They taught the obligation of conscience and bore witness to the truth, but did not rely on human weapons. They recognized public power and taught the divine origin of its authority, but they professed that it was better to obey God than men.

"The apostles, instructed by the word and example of Christ, followed the same path. In the early days of the Church, it was not by coercion or by skills unworthy of the Gospel that Christ's disciples endeavored to lead men to confess Christ as Lord, but first and foremost by the power of God's word (23).³⁰⁵ With courage, they proclaimed to all the purpose of God the Savior "who wants all men to be saved and to come to the knowledge of the truth."

(/ Tim 2,4); but at the same time, towards the weak, even those living in error, their attitude was one of respect, thus showing how "each of us will give an account to God for himself" (Rom 14,12) (24).³⁰⁵⁷ and, therefore, is bound to obey his own conscience. Like Christ, the apostles always endeavored to bear witness to God's truth, boldly "proclaiming the word of God with confidence" (Aet 4:31) (25 J⁺³⁰⁵⁴ before the people and their leaders. An unshakeable faith made them hold the Gospel as being in all truth a power of God for the salvation of all believers (26).³⁰³⁹ (26) Rejecting, therefore, all "camel weapons," (27)³⁰⁴⁶ following the example of meekness and modesty set by Christ, they preached the word of God with the full assurance that it was a divine force capable of destroying the powers opposed to God, (28)³⁰⁶¹ and of bringing men to believe in Christ and to serve him.³⁰⁶ Like their Master, the apostles also recognized legitimate civil authority: "For there is no power but from God", the Apostle teaches, and from this he draws this command: "Let everyone submit to the authorities in charge... Whoever resists authority is rebelling against the order established by God" (Rom 13:1-2) (30).³⁰⁴⁷ But, at the same time, they were not afraid to oppose the public power which was itself opposed to the holy will of God: "God must be obeyed rather than men" (Act 5, 29) (31).³⁰⁶⁶ This path has been followed by countless martyrs and faithful in all times and places.³⁰⁶⁵

10.3. The behavior of the Church, passive subject of the RL(DH 12)

DH 12 sets itself the task of examining on the one hand 1) how the Church has respected religious liberty (DH 12, § 1), and on the other hand 2) how her evangelical teaching has contributed to the advancement of humanity's consciousness on this subject (DH \2, §2).

\DH2^ 1 :

"The Church, therefore, faithful to the truth of the Gospel, [I] follows the path of Christ and the Apostles when she recognizes and promotes the notion of religious freedom as being in conformity with the dignity of man and the revelation of God. The doctrine received from the Master and the Apostles, in the course of the centuries, has been preserved and passed on. Even if in the life of the People of God, through the vicissitudes of human history on its pilgrimage, there has sometimes been a way of acting less in conformity with - or even contrary to - the spirit of the Gospel, the Church's doctrine has always remained that no one should be forced to believe. "³⁰⁰⁶

The Church thus affirms [I] its present fidelity, by the conformity of DH [A] with human dignity; [B] with the Gospel; on the other hand [II] its past fidelity: [A] by the constant transmission of the evangelical *doctrine* described in DH 11; [B] in spite of the *behavior* of some Christians, [1] either less perfectly evangelical than DH's doctrine; [2] or contrary to the Gospel (hence the famous "repentances" of the Great Jubilee of the year 2000); [C] and thanks to the Church's unwavering profession of the principle of non-contradiction with the faith.

The order of the paragraph is not entirely satisfactory from an editorial point of view. Should it not be glossed as follows? [I] The Church has always been faithful to Christ: [A] and at present, by teaching fully all the connections, even natural ones, of the freedom of

3046 Note (27): Cf. 2 Cor. 10:4; 1 Thess. 5:8-9.

3047 Note (30): Cf. 1 Petr. 2, 13-17.

faith; [BJ and in the past, by teaching 1° the principle of the freedom of the act of faith; 2° more broadly, the evangelical spirit described in *DH 11*. /On the other hand, certain ways of doing things by various Christians have been able to go against the explicitly taught principle of freedom of access to faith p⁰⁶⁷ 2° to obscure its *implicit scope*, which goes as far as the right to the RL (including the "right not to be hindered in public").

Certainly, it is a principle invariably handed down by the Church that no one should be forced to embrace the Catholic faith.³⁰⁶ " This principle has not always been considered as coming from a right of the person,³⁰⁴⁸ and it was rather used to deduce it from the impossibility for anyone to believe against his will ("*credere non pot est nisi volens* Such a constraint being without result, any intervention in this sense was useless. It follows that no one had legal competence to compel it.³⁰⁴⁹ The freedom of religion of the unbaptized was also admitted - without explicitly making it an innate right - by virtue of the Church's explicitly recognized absence of jurisdiction over them.³⁰⁵⁰ And in this sense, coercion in matters of faith should have been conceived as an injustice by overreach. In any case, from the freedom of the act of faith, one cannot derive the right not to *be prevented from acting* according to one's conscience. Of course, one

knew such a right for the family circle. But the *per se* exclusion of constraint for *public* propaganda would thus seem, here, to exceed the premises. Moreover, preventing the spread of error would seem to favor free adherence to the faith; and while adherence to the faith is most certainly the purpose of the RL, it cannot - obviously - alone justify the freedom to adhere to the "opposite of the faith."³⁰⁷³ Indeed, it seems difficult to demonstrate that any adherence to error would be a step towards adherence to the truth, unless it is a question of a *good faith* adherence to error³⁰⁷⁴ by a person seeking the truth while living in an environment contaminated by error. For this reason, while holding the principle of "no restraint" in matters of faith, there was no obligation to add to it the freedom "not to be restrained".³⁰⁷⁵ In reality, preventing *per se* the spread of error simply promotes *the coming to know the content of the faith*. On the other hand, the RL favors a climate of *freedom of adherence to the faith itself*.³⁰⁷⁶

2) *DH 12*, § 2 somehow "pulls the rug out from under the feet" of those who would oppose the Gospel to freedom:

"The evangelical ferment has thus operated for a long time in the minds of men, and has contributed much to the fact that men, in the course of time, have recognized more widely the dignity of their person and that the persuasion has matured that

³⁰⁴⁸ But Cf. already TERTULIEN.

³⁰⁷¹ [similar 4e in GARCÍA-MARTÍNEZ, 1965,195-196.

[^]Cf. BÜENO-MONREAL, 1945,219 and CAV AGNIS, 1891, n° 413,299.

in religious matters this should be preserved in the city from all human coercion. "3077

3073 cf RODRIGUEZ, Victorino, O.P., 1964b, 379.

3074cf ^{es} hesitations of CAVAGNIS, 1891, n° 241, 157 ct 158.

3075cf. PAVAN, 1967d. *Unam Sanciam*. 60,200-201.

3076cf.TUIRY, 1967, 8.

3077 "Evangelicum fermentum in mentibus hominum sic diu est operatum atque multum contulit, ut homines temporum decursu latius agnoscerent dignitatem persona: sute et maturesceret persuasio in re religiosa ipsam immunem servandam esse in civitate a quacumque humana coercitione."

CHAPTER 11.

11. RELIGIOUS FREEDOM AND FREEDOM OF THE CHURCH {DH 13-14}

AFTER having envisaged the Church as a passive subject of law (DH 12), it is a question of presenting her as an active subject (DH 13-14). A) In DH 13, the Church is presented as the subject of a supernatural *Ubertas Ecclesiae* right, consistent with the natural right to the RL; B) in DH 14, as the active subject of one aspect of this *Ubertas Ecclesiae* right, the positive right-authorization to teach, thus to demand listening and obedience.

11.1. The freedom of the Church according to the RL (DH 13)

DH 13 teaches the *Ubertas Ecclesiae* in three aspects: I) its supernatural essence (DH 13, § 1), II) its double active subject (DH 13, § 2), III) its coherence with the RL (DH13, §3).

11.1.1. Supernatural essence and importance of the *Ubertas Ecclesiae* (DH 13, § 1)

According to DH 13, § 1, the importance of the Church's freedom *is caused by* its purpose and source (I); and *causes* negative and positive consequences (II).

I) *Final and efficient causes of the freedom of the Church*

The final and efficient causes of the freedom of the Church, the active subject of the right to *libertas Ecclesiae*, are those of the Church itself. This causal discourse clearly teaches the supernatural character of the *Ubertas Ecclesiae* :

* The final cause lies in the salvation of men:

"Of all the things which pertain to the good of the Church and even to the good of the earthly city itself, and which must always and everywhere be preserved and defended against all injustice, the principal one is surely that the Church should enjoy as much freedom as is necessary to watch over the salvation of men. "32 307#

- The efficient cause is the incarnate Word:

"Indeed, this freedom is sacred, with which the Only-begotten Son of God has endowed his Church, redeemed by his blood. "3079 307" "Inter ea quae ad bonum Ecclesiae, immo ad bonum ipsius terrena: civitatis spectant et ubique semperque servanda sunt atque ab omni iniuria defendenda, illud cene praesantissimum est. ut Ecclesia tanta periculis agendi libertate, quantum salus hominum curanda requirat"²." Note (32): LEO XI11, Litterae *Officia sanctissima*, 22dec. 1887: ASS 20 (1887), 269; 1DEM. Litterae *Ex litteris*, 1 aprilis 1887: ASS 19 (1886 |1887),465.

Hac enim libertas sacra est, qua Unigenitus Dei Filius ditavit Ecclesiam acquisitam sanguine suo.

II) Consequences of the freedom of the Church

This freedom itself has consequences for its passive subject, men organized in society.

- First, a negative consequence for any passive subject:

"It is so proper to the Church that those who attack it are attacking the very will of God, "3080

- Then a positive consequence towards society:

"The freedom of the Church is a fundamental principle in the relations between the Church and the public authorities as well as the entire civil order."

This mention of the passive subject serves as a transition to the study of content. However, 'fundamental principle' should not be understood as 'exclusive principle'.³¹¹ Indeed, the *libertas Ecclesiae* is not the only duty of society to God and the Catholic Church. There is for the state (in a unanimously Catholic nation) a duty of positive assistance (valid objectively and fully in the case of true religion alone, and only partially for the naturally good religious acts of any man).

11.1.2. The two aspects of the active subject (DH 13, § 2)

This supernatural freedom of the Church, a collective person, is divided according to the two formalities of its active subject. Indeed, "the Church claims freedom for itself" - "as a spiritual authority" (I); and - "as a society of men" (H).

I) The freedom of the Church as spiritual authority (DH 13, § 1)

"UJ [A] [11 In human society and (2) before every public power, [B]1111 the Church (2) claims [3] for herself (4) freedom, [5] as a spiritual authority [II] [A] constituted by Christ the Lord, [B] to whom by divine mandate [C] falls the duty [I]J to go into all the world and 121 preach the Gospel (31 to every creature (33). "3082

This sentence posits [I]the claim of freedom in its elements, and then [II]the supernatural cause of that claim. The two are connected by "utpote".

[The elements of the claim are seen [A] first on the side of its passive subject, the State, under the two aspects of [1] "State-society", place of freedom, [2] "State-authority", debtor of freedom; [B] then on the side of its active subject, the Church: [1] the Church is the active subject of the claim; [2] it engages in the act of claiming; [3] it is the subject for whom it claims; [4] the object it claims is freedom (implied, non-coercion); [5] the first aspect of

3080 "Ecclesiae sane adeo propria est, ut qui eam impugnant, iidem contra Dei voluntatem agant."

3081 cf MARSHNER. 1983,246, note 3. who reproves this & MURRAY.

3082_M in societate humana et coram quavis potestate publica Ecclesia sibi vindicat libertatem, utpote auctoritas spiritualis, a Christo Domino constituta, cui ex divino mandato incumbit officium eundi in mundum universum et Evangelium praedicandi omni creatura." Note (33): Cf. Mk. 16:15; Mt. 28:18-20; PIUS XII, Lit. Encycl. *Summi pontificatus*, 20 Oct. 1939: AAS 31(1939), pp.

445-446. The active subject and term of the claim is the Church-authority; this is what characterizes this paragraph in relation to the following one.

111 We then move on to the cause-foundation of the claim, namely: [A] the instance that is the source of the right-duty (Christ); [B] the act that is the source (*ex*) of the right duty: it is a mandate (which includes, but goes beyond, an affirmative right-permission or positive authorization, and, *a fortiori*, a simple negative right-demand); [C] the act that is the object of the positive mandate : [1] in its local (but also, undoubtedly, temporal) universality; [2] in its object (an act: preaching, with its own content: the Gospel); [3] in the universality of

interlocutors. With consummate art, the text then passes from these persons-terms of the right-duty to preach, to these same persons as active subjects of right to the *libertas Ecclesiae*, once they are Christians.

U) The freedom of the Church as a society of men (DH 13, § 2)

In fact, according to DH 13, § 2, the second formality of the subject claiming the *li bertas Ecclesiae* is the Church-society (as distinguished from the Church-authority):

"(1) Similarly (*pariter*), the Church claims for itself freedom inasmuch (*prout*)³⁰⁸³ as it is also a society [II] of men who enjoy the right to live in civil society according to the prescriptions of the Christian faith (34)."³⁰⁸⁴

According to a structure and terms parallel to the preceding paragraph, the text here indicates II) the claim and ITS supernatural cause, linked this time by "*prout*". [I] One expresses first of all the similarity of the claim with the preceding one (*pari- ter*)³⁰⁸⁵ the material identity of the claiming subject and *finis cui* (the Church), and of the claimed object (freedom); but with a new formality of the claiming subject: the Church *as society*. Contrary to what we affirmed in LRTC, it is a question, in DH 13, § 2, of claiming for the faithful a right that is not already natural, but always supernatural, a right to the freedom of the Church, but as a *society*, and no longer as an *authority*. [II] We then move on to the *cause* of the claim to freedom; this cause is the object protected by freedom; it is no longer the mandate duty-right to teach, but the right of the faithful "to live in society according to the *prescriptions of the Christian faith*". Three observations: 1° This right is just as supernatural, since it has as its object a life according to the Christian faith; 2° it is, moreover, of the "positive authorization" type: "authorization", since it has as its object the actions of its active subject ("to live in society"), and not directly that of the passive subject; "positive", since it is a question of a right to accomplish an authentic objective duty. Hence the affirmative formulation, "right to live", and not "right not to be prevented from living", which we will find in § 3.

3083 This "*prout*" echoes the "*utpote*" of the previous sentence. Cf. GAFFIOT, 1934. art. "*prout*".

3084 "*Libertatem pariter sibi vindicat Ecclesia prout est etiam societas hominum qui iure gaudent vivendi in societate civili secundum fidei Christiana: praescripta*". Note (34) : HUS XI. Littera: *Firmissimum constantiam*. 28 March 1937: AAS29 (1937), 196.

3085 'Cf. GAFFIOT. 1934. art. "*pariter*".

DH 13, § 2 raises a problem: the claim of "*libertas Ecclesiae*" by virtue of a supernatural title seems to recognize a supernatural gnoseological competence of the state. In this regard, J.-C. Murray states:

"Moreover, the Declaration makes it sufficiently clear - though not quite as precise as one might wish - that the basis of the Catholic Church's right to freedom is twofold. The theological basis is Christ's mandate to preach his Gospel and to keep his commandments (no. 13). However, this unique theological title cannot be imposed on political society or government. Christ's mandate to his Church is a truth that formally belongs to the transcendent order in which the Church's authority is exercised and its communal life takes place. Therefore, it is not subject to judgment by secular powers concerning its truth or falsity; indeed, it is inaccessible to such judgment. w³⁰ "®

In this case, it is no longer understandable that DH 13, § 2 proclaims:

³⁰⁸ See LOBO-ALONSO, 1966,47, quoting JIMÉNEZ-URRESTI.

3089 From, to the concern of the Anglican CARRILLO, 1966.01, 79. Likewise, we cannot adhere to the thesis of CARVAJAL. 1971,492.

3090 0938. VATICAN II. 1965.12.08: Message to the rulers FV 01, n° 482*.

"In societate humana et coram quavis potestate publica Ecclesia sibi vindicat libertatem, ut- pote auctoritas spiritualis, a Christo Domino constituta, [etc.J. "3087

What is the point of claiming this freedom *before any public power, as a Christ-mandated* authority or society living according to the *faith*, if this public power is *never* able to grasp the substance of the said claim?³⁰ "" We are here in perfect coherence with *DH 1, § 3* where we are reminded of the "moral duty" (towards the *true* religion) of the "*societatum*" (read in particular: "*potestatis pu- blicae*", as *S 48* has specified). The opposite thesis does not seem to be supported by *DH*, nor by the conciliar context.³⁰ "" However, it will be asked, will the states examine the "credentials of the Church"? We answer: it will not be an examination resulting from an act of these powers (legally incompetent to make such an act), but from an act of society (the mediate subject of power in a democratic regime), or of the persons holding the power (the immediate subject of power, in any regime). An act of intellectual judgment, at least of credibility, even of "credence", then of faith, made upstream of the exercise of political power, and not downstream of it, thus never in virtue of the political power itself, which cannot make an act of faith (no decree of the legislative, executive or judicial powers can be concluded by an act of faith; but such a decree can be issued *according to* the faith common to the people) For example, Paul VI and the Second Vatican Council themselves, in the *Message to Rulers* of December 8, 1965, do not consider it unnecessary to declare to rulers:

"But we have a sacrosanct word to say to you, and it is this: God alone is great. God alone is the principle and the end. God alone is the source of your authority and the foundation of your laws."³⁰⁹ °

3(186 Our translation, from MURRAY, 1966.12 (*TtISI*). 590: " Furthermore...truth or falsity. "

3087 The text of 0701. AAS, 1939,445-446, quoted there in note, asks the *civitatium redores* for full freedom for the Church so that she can, among other things, "*veritatem impertire mentibus... eosque divina Jesu Christi refovere caritate*" and "*inslaurare omnia in Christo*. "*inslaurare omnia in Christo*. 11 is intended to be a criterion for the interpretation of *DH*.

11.1.3. Consistency of the *libertas Ecclesiae* with the RL (*DH 13, § 3*)

It is only in *DH 13, § 3* that the negative natural right to the RL, which is brought closer to the *libertas Ecclesiae*, is discussed as a minimal condition. The effective RL is presented as coherent with the supernatural right to freedom of the Church and authority and membership.

The actual RL is described:

"Now, if the notion of religious liberty is in force, [I] not only proclaimed in words, [H] nor only sanctioned by laws, [III] but sincerely practiced, then..."³⁰⁹

It is therefore undoubtedly the very fact of freedom, rather than the principle, that interests the Church, both in its authority and in its faithful.

2° The effective RL is presented as the condition of the *libertas Ecclesiae* :

1(1)of ecclesiastical authority :] "then at last the Church obtains the condition both de jure and de facto of the independence necessary for the fulfillment of her divine mission, and which the ecclesiastical authorities have been claiming more and more urgently in society. "30°2 fnj of the members of the Church:] And at the same time, the faithful of Christ, like other men, enjoy the civil right not to be prevented from leading their lives according to their conscience, [III] in short in general: / Concord therefore reigns between the freedom of the Church and that religious freedom which must be recognized as a right for all men and [all] communities, and must be sanctioned in the juridical organization. "3093

The RL proclaimed in law and assured in fact to the Church is a minimum condition³⁰⁹ -- necessary for the fulfillment of its mission (*DH 13, § 3, a*). To exclude the possibility of an

ideal and better status for the Church would be contrary explicitly to *DH6*, implicitly to *DH 1* and to the SUC interventions already reported. Two positions are in dispute on this subject.

The first one considers that in *DH 13* it is a question of a single *freedom*: the RL, claimed by *DH* for the Church, but under *two* different *foundations*.⁹⁴ Its

⁹⁴ Cf. e.g. TORRES-RQIAS. 1968. 154. DÍZ-ALEGRÍA, 1967. 94. SOLER Carlos: 1993a. 294-295 draws this conclusion from his principle of radical incompetence. BARAONA, 1966.06.276-277. note 12, thinks that the right to the RL and the right to the freedom of the Church are identical in themselves, and differ only by their *title*: likewise BEA. 1966.07.03. 1192, low: BELDA, 1966.04.367; CAMAIANI. 1971.488 against the project of *Les Ecclesiar Fundamentalis*; and CAMAIANI, 1971, 489: CONDORELU, 1972, 364. We consider ambiguous the speech of DA SILVA, 1966. 392 and of DAVIES. 1992, 179; likewise we are perplexed by DÍEZ-ALEGRIA. 1966a (= ZALBÁ. 1966), 197; or HAMER. 1967a, 85-86; HIGUERA U DÍAS. 1991. 154; or LAURENH. 1966.328 329; MURRAY, 1966 (ABBOTT), 682, note 9; PAVAN, 1967a, *Vivere il Concilio*. 4. 191: PAVAN, 1967d. *Unam Sanctam*. 60,202-203.

supporters deny any *juridical* difference between the *libertas Ecclesiae* and the *libertas religiosa*, even if many admit the ontological, formal difference between the two, one being natural and the other supernatural.⁹⁵ This is misunderstood, since precisely *DH 13* claims *two* rights for the Church.⁹⁶

The second sees the natural right to RL and the Church's right to *libertas Ecclesiae* as two different rights in essence, not just in foundation. For, on the one hand, the multiplication of titles strengthens the right to liberty.³⁰⁹¹ * On the other hand, the interpretation of the reporter shows us that it is a question of "*jura*" (in the plural), and not of "*jus*" (in the singular), and therefore not simply of the same right claimed in two different liters.⁹⁷

In fact, the *libertas Ecclesiae* as it is presented by *DH 13*, simple freedom of immunity, is distinct from the natural RL only by its supernatural essence and origin, and not by its concrete content. This conclusion seems to us imposed by the formulation of the conclusion of **S 30**: once the civil LR socio of *DH* is assured, *the* material integrity ("*integrated*") of the *libertas Ecclesiae* of *DH 13* is realized⁹⁸ and indirectly.⁹⁹

Nevertheless, the conciliar reporter specified well that it was not intended to detail all the rights of the Church nor all the duties of the State (cf. **S 21, S 94**); thus, for example, the text does not mention the duty, for the States, to *positively* help the Church. This does not mean that the RL fulfills all the moral duties of societies towards the one Church of Christ, but only that the most fundamental, the most radical, the most indispensable of them is fulfilled, a negative duty that is fulfilled at least materially (i.e., at least the *medium rei* of justice, the right in the objective concrete sense), for a natural reason of right to immunity, without it always being for a supernatural reason (the right of Christ to be heard).

11.2. The Magisterium of the Church, active and passive subject of obligations(*DH 14*)

If the RL granted to the Church allows her to teach, does not her teaching oppose the RL of everything that is not her? This is the question that *DH 14* seeks to resolve at its root, which basically develops *DH 13*, § 1, and seeks to rule out an indifferent interpretation of *DH 13*, § 2.

DH 14, § 1 recalls the *moral duty of the Church to preach Revelation*;

"In keeping with the divine precept: 'Teach all nations' (*A1r28*, 19), the Catholic Church must work, without measuring her efforts, so that 'the word of God may accomplish its course and be glorified' (*2 Thess 3*, 1). "3i<2

⁹⁵ MISTÓ. MUSSELU, SPINELU (1st way), D'AVACK...

⁹⁶ The fears of DAVIES, 1992, 183 are therefore unfounded.

⁹⁷ OCÁRIZ, 1989.06, 95, quotes precisely S 30: 5 RO, 7. *Libertas Ecclesite*, AS. IV/V, 103: *eaccnrailus diMinnuuntur ittra qme Ecclesite competunt!*". Cf. also GARGANO, 1966, 33; DALLA TORRE, 1977, 352, quoting LAJOLO, 1970,1, 7, which, on the same page, notes 19 & 21, attacks the contrary position of PA VAN (follows, p. 352*353, a list of differences between the LR, negative concept and the *libertas Ecclesite*, positive concept). Some would have it that the positive content can be claimed by any other religious community. We confess that we do not understand. Cf. CALVEZ, 1966.05, 532-533. Let us add the idea of J. FUCHS, taken again and made explicit by LAJOLO, 1970, 117: the *libertas Ecclesite* est *te princeps analogatum* to which the inferior analog "LR" refers, by link of final causality. Also LAJOLO, 1970, 118: against MUSSELU, 1975,73-74, who opposes here to FUCHS, 1968. In the opposite direction: LÓPEZ DE PR ADO. 1966b, 244.

^{3.00} Only those who grant this freedom to the Church because it comes from God *formally* grant it.

⁹⁹ S 30 (a few sentences after the previous quotation) *e Inter utrumque tus, divinum et naturaie, non datur oppositio; utrumque integre servatur si in societate datur libertas socialis et civitis in re religiosa.*" S 30 is identical to S 90 a: 6 RS. AS. IV/V1. 768 [75].

This point again rules out any indifference to the truth. *DH 14*, § 2 then emphasizes the *correlative moral duty of the faithful to pray for this mission*:

"The Church, therefore, expressly asks her children "to make requests, prayers, supplications and thanksgiving for all men... This is what is good and pleases God, our Savior, who wants all men to be saved and to come to the knowledge of the truth" (2 *Tim* 2:1-4)."³¹⁰³

After placing the faithful on the same side as the magisterium, *DH 14*, § 3 emphasizes several *moral duties of the faithful toward the truth taught* by the one Church of Christ:

"The faithful, on their part, in forming their conscience, must diligently take into consideration the sacred and certain doctrine of the Church (36).³¹⁰⁴ For it is by the will of Christ that the Catholic Church is the teacher of truth, and that she has the duty of enunciating the Truth which is Christ, and of teaching it authentically, and at the same time of declaring and confirming by her authority the principles of the moral order which flow from human nature.¹⁰⁰⁺⁰⁵ Furthermore, let Christians, walking in wisdom, strive to spread to those outside "in the Holy Spirit, in unfeigned charity, by the word of truth (2 *Cor* 6:6-7), the light of life with complete confidence⁺³⁰⁶ and absolute apostolic courage, even to the shedding of blood."⁺³⁰⁷

This allows the transition with the duty to respect both the rights of the Truth in person and those of the possible carriers of error:

"In fact, the disciple is bound to Christ the Master by the grave duty of knowing more and more each day, of faithfully announcing, of steadfastly defending the truth received from Him, excluding, however, methods contrary to the spirit of the Gospel. However, at the same time, the charity of the

³¹⁰³ "Ecclesia Catholica, ut divino obtemperet mandato: 'Docete omnes gentes' (*Mt* 28,19), impensa cura adlaborare debet 'ut sermo Dei currat et clarificetur' (2 *Thess*3,1)"

³¹⁰⁴ "Enixe igitur rogat Ecclesia, ut a filiis suis primum omnium fiant 'obsecrationes, orationes, postulationes, grauarum actiones pro omnibus hominibus... Hoc enim bonum est et acceptum coram Salvatore nostro Deo, qui omnes homines vult salvos fieri et ad agnitionem veritatis venire' (*I Tun* 2, 1-4)."

Christ urges him to act with love, prudence and patience towards men who are in error or ignorance concerning the faith (38).^{310K} Care must therefore be taken both of the duties towards Christ the Living Word who is to be preached, and of the rights of the human person, and of the measure of grace conferred by God through Christ on the man who is invited to receive and profess the faith spontaneously.⁺³¹⁰⁹

Conclusion of *DH* (*DH 15*)

The conclusion then examines the concrete legal situation of the RL. *DH 15*, § 1 notes the widespread aspiration to LR:

"It is evident that today man wishes to be able to freely profess religion, in private and in public; much more, that religious freedom is now proclaimed in most constitutions as a civil right and is solemnly recognized by international documents (39)."¹⁰¹

¹⁰⁰⁺⁰⁵Note (36): PtUS XII, *Nuntius radiophonieus*. 23 March 1952: AAS 44(1952), pp. 270-271.

³¹⁰⁵ The moral order known by natural as well as supernatural means, the commission specified, although it was not intended to enter into this distinction here: cf. S 93:6 RS, modus 8, A.S. IV/VI, 770 (...) (771).

³¹⁰⁶ Note (37): Cf. Acts. 4,29.

³¹⁰⁷ "Christifideles autem in sua efformanda conscientia diligenter attendere debent ad sacram cenamque Ecclesiae doctrinam³⁶. Christi enim voluntate Ecclesia Catholica magistra est veritatis, eiusque munus est. ut Veritatem quae Christus est enuntiet atque authentice doceat, simulque principia onJinis moralis, ex ipsa natura humana profluentia, auctoritate sua declareat atque confirmet. Insuper Christiani, in sapientia ambulantes ad eos qui foris sunt, 'in Spiritu sancto, in caritate non ficta, in verbo veritatis' (2 *Cor* 6.6-7), lumen vitæ cum omni fiducia³⁷ ei fortitudine apostolica, ad sanguinis usque effusionem, diffundere satagant."

^{310HNob}(38). cf. [JANNES XXIII. Liti. Encycl. *Pacem in terris*, 11 April 1963: AAS 55 (1963), pp. 299-300. i-⁰⁹ "Etenim discipulus erga Christum Magistrum gravi adstringitur officio, veritatem ab Eo receptam plenius in dies cognoscendi, annuntiandi fideliter, strenueque defendendi, exclusis mediis spiritui evangelico contrariis. Simul tamen caritas Christi urget eum, ut amanter prudenter patienter agat cum hominibus, qui in errore vel ignorantia circa fidem versantur". Respiciendum igitur est tum ad officia erga Christum Verbum vivificans quod pradicandum est. tum ad humane persona lura, tum ad mensuram gratia a Deo per Christum tributam homini, qui ad fidem sponte accipiendam et profitendam invitatur."

³¹¹⁰ Constat igitur presentis relatis homines optare ut libere possint religionem privatim publiceque profiteri, immo libertatem

In *DH 15*, § 2, complaints about an RL proclamation that is often purely verbal, and hypocritically betrayed:

"But there are regimes, where, although freedom of religious worship is recognized in the Constitution, the public authorities themselves strive to turn citizens away from professing religion and to make the life of religious communities difficult and precarious."¹⁰²

DH 15, § 3 emphasizes the *current* need for the RL:

"Welcoming with Joy the favorable signs offered by our time, but denouncing with sadness these deplorable facts, the Holy Council asks Catholics, but also urges all men to examine with the greatest care how necessary religious freedom is, especially in the present condition of the human family."¹⁰³

DH 15, § 4 proves it from A) the unification of the human race. The increasing socialization of human life at the international level makes the *application of the RL* more urgent. It is the evaluation of the application of the *RL* which, because of the "just limits", will necessarily vary according to the times and the countries. *-³³ B) the growing awareness of personal responsibility; C) creating a particular sensitivity for the right to the RL, to be established therefore everywhere as a *condition of peace*.¹⁰⁴

"In fact, it is clear that peoples today are inclined to become ever more united; that closer relations are being established between peoples of different cultures and religions; that the awareness of personal responsibility is growing. In order that peaceful relations and harmony may be established and strengthened in humanity, it is therefore necessary that religious liberty be everywhere sanctioned by an effective juridical guarantee, and that the supreme duties and rights of men to lead their religious life freely in society be respected.

Finally comes the "sending", *DH 15*, § 5, a wish for success and an indication of the ultimate goal, the freedom of glory:

"May God, the Father of all men, grant that the human family, with the help of an assured regime of religious freedom in society, through the grace of Christ and the power of the Holy Spirit, may attain the sublime and eternal 'freedom of the glory of the sons of God' (*Rom 8:21*)."¹⁰⁵

DH ends with the formula (identical for all the documents of the council):

"The decisions of this Declaration, each and every one of them, have pleased the Fathers of the Holy Council. And We, in virtue of the apostolic power transmitted to Us by Christ, with the Venerable Fathers, approve them in the Holy Spirit, decree and rule them, and, for the glory of God, give orders to promulgate those things which have been ruled conciliarly."¹⁶

The dates*-? |e s signatures of Paul VI, '*"" and the Council Fathers,^{3 -9} and the notes.^{3 -20}

religiosam in perisque Constitutionibus iam ut ius civile declarari et documentis internationalibus sollemniter agnoscit³ "" Note (39): Cf. IOANNES XXIIH, Litt. Encycl. *Pacem in terris*, 11 April 1963: AAS 55 (1963), pp. 295-296.

¹⁰² "At non desunt regimina, in quibus, etsi in eorum Constitutione libertas cultus religiosi agnoscitur, tamen ipsa publica potestates conantur cives a religione profitenda removete et communitatibus religiosis vitam perdifficilem ac periclitantem reddere."

¹⁰³ "Illa fausta huius temporis signa lato animo salutans, hac vero deploranda facta cum moerore denuntians. Sacra Synodus Catholicos hortatur, exorat autem homines universos, ut perattente considerent quantopere libertas religiosa necessaria sil in prasentli potissimum familia humana condicione." On this phrase. cf. S 96: 6 RS. modus T.A.S. 1V/VI, 772 (...) [79].

¹⁰⁴ "Manifestum est enim cunctas gentes magis in dies unum fieri, homines diversae cultura et religionis arctioribus inter se devinciri rationibus, augeri denique conscientiam proprii cuiusque responsabilitatis. Proinde ut pacifica: relationes et concordia in genere humano instaurentur et firmentur, requiritur ut ubique terrarum libertas religiosa efficaci tutela iuridica muniatur atque observentur suprema hominum officia et iura ad vitam religiosam libere in societate ducendam."

3H⁵ "Faxit Deus et Pater omnium ut familia humana, diligenter servata libertatis religiosae ratione in societate, per gratiam Christi et virtutem Spiritus Sancti adducatur ad sublimem illam ac perennem 'libertatem glonae filiorum Dei' (*Rom 8, 21*)." Cf. S98: 6 RS. modus 13, AS. 1V/VI. 772 (...) |80): "Textus Rom. 8. 21 convenienter hic ponitur, quia indicat finem, cui libertas religiosa inservire debet."

CHAPTER 12.

12. PAUL VI (1963-1978)

PAUL VI continues the teaching of John XXIII, but rather than proceeding himself to doctrinal developments, he prefers, before the definitive text of *DH*, to highlight the principal conclusions which gradually emerge from the conciliar debates (12.1.), and then, after the final text, to discard errors of interpretation of the latter (12.2.).

12.1. Paul VI before *DH*

Inaugurating the 2^e period of Vatican II, on September 29, 1963, Paul VI had the pain of noting in his speech *Sálvete Fratres*³¹²¹ how many of the Council Fathers were missing the appointment, because of the stifling of "religious freedom" in the countries where they lived.³ <22 That is, "the free and honest profession of personal religious faith", a fundamental human right, but, once again, applied to the persecution of the *Catholic* religion alone (*ibid.*). This pattern, so common among his predecessors, would be found in most of his speeches, both during the Council and afterwards.³¹ 23 Foreshadowing the final message of December 8, 1965, Paul VI announced on January 6, 1964, that the Church demanded from rulers only the freedom to profess one's faith,³ '2-* thus making himself the faithful continuator of Pius XI (0666.; and 0668.).

Paul VI, in his speeches, clears the way by dismissing the freedom of moral obligation:

"Thus, while recognizing the subjective freedom of those who, according to their conscience, profess non-Christian religions or, unfortunately, profess practically no religion at all, it is reaffirmed that the imprescriptible obligation of a universal, active and wise evangelization is all the more in conformity with the divine plan of salvation." 3125

"Faith is necessary for salvation; faith is offered to all men through the ministry of the priest. The Catholic religion still presents itself today in its absolute character. If its expansion is limited by the respect we owe to the freedom of opinion of others, and therefore also to their freedom

³¹210901. : AAS. 1963.855-856; *DPPautVI*, 275.

... the Church must be Catholic, that is to say, she must strive continually and lovingly to embrace all things, to save all things.
"3126

Men ;1 must be "facilitated in their free consent to divine revelation, without, however, depriving them of the merit of that consent. "3127 Hence the need to seek in collaboration with other religious communities the means of promoting this common ideal of the RL. *32 "

At the famous close of the 3^e period, the LR scheme could not be put to the vote due to lack of time, so Paul VI undertook to put it on the agenda of the next session.³¹²⁹ At Christmas 1964, he will defend

"The Church cannot therefore fail to express its sorrow when this unconditional aspiration to God is hindered, thwarted, stifled and even punished by the force of public authorities. Therefore, the Church cannot fail to express publicly her sorrow when this unconditional aspiration is hindered, thwarted, stifled and even punished by the force of the public authorities, who, in this case, arrogate to themselves the right to penetrate into a domain which is not their competence. On this question, which would require a much more extensive and thorough answer, we can in any case repeat what the Church proclaims today: just and rightly understood religious liberty; the prohibition of taking the pretext of other people's beliefs - assuming they are not contrary to the common good - to impose a faith not freely accepted, to proceed with odious discriminations or undue vexations; the respect for what is true and honest in every religion and in every human opinion, with the special aim of promoting concord among citizens and collaboration in good activities of every kind. "3130

He does not yet deal with the abuse of this right, and he relies here only on the stage of deepening doctrine where the conciliar scheme was, both for the limits (the common good) and for the foundation ("respect for what is true and honest in every religion"). Regretting that "the common order" no longer encourages the practice of the good, he will see as a necessary consequence of freedom the need to tolerate religious and moral errors with patience around us.³¹³⁰ He rejoices in "the practice of a healthy religious freedom", still in force in Lebanon at that time.³¹³¹ His position does not prevent him from demanding in Lower Saxony the observance of Sunday and ecclesiastical solemnities, the respect by the media of the Catholic religious sentiment and "the teaching of the Catholic religion as an ordinary subject in the public schools";³¹³² by which one sees that in his spirit the confessionality is not opposed of itself to the RL.

The central theme treated remains that of the distinction between the freedom of moral obligation (denied) and the *libertas a coercitione* - (affirmed) :

"Here we are at the center of the great problem of religious liberty, on which the next session of the Ecumenical Council will give us precious lessons, interpreting the thought of Christ. Christ invites to himself, he invites to faith. He creates a moral obligation for the one he invites, a saving obligation; but he does not force, he does not take away the physical freedom of man, who must decide for himself, consciously, about his destiny and his attitude towards God. Thus you will hear a great part of this capital doctrine summed up in two essential propositions: in matters of faith, let no one be hindered, let no one be forced! *Nemo impe diatur. Nemo cogatur*. This doctrine is completed by the knowledge of the word of Christ of which We spoke: there is a divine call; there is a universal vocation to the salvation brought by Christ; we have the duty to inform and to be informed, we have the order to instruct and to be instructed; we have before the religious problem a supreme responsibility, but one to which one must and can correspond only freely, that is to say, by love, with love; not by force. Christianity is love. [...] "3133

It follows that the freedom to be claimed will be *responsible*, !³¹³⁴³⁵ and not licentious. Paul

312" Cf. 0915. : A4S. 1964.1013-1014.

³¹⁵ - 0918. PAUL VI, 1965.02.07 - *Angelus JPVI*, 1128-1129; DC. 584.

³¹² Cf. 0917. PAUL VI, 1965.01.12: to the ambassador of Lebanon; French original: *1PV1.34*.

3132 0919. PAUL VI, 1965.02.26: Concordat with Lower Saxony; orig, italo-alcim. AAS. 835,839 & 842 art.

1,7, and 10. See also art. 14, pp. 844-845. on ecclesiastical taxes.

3133 0921. : *IPV103* (1965). 969-970; DC. 1254-1255.

³L35 Cf. 0922 (here 0922.1) PAUL VI, 1965.09.12: Homily at the Catacombs of Domillille; *IPVI*, 455-459 (here 457); DC. 1671 -1674; *DPPaulVt*. 463-466 (here 464).

VI has for main concern "the free religious life of the people and of the individuals" that persecute notably communism.³¹³⁵ Furthermore, he will congratulate the UN for proclaiming "the fundamental rights and duties of man, his dignity, his freedom, and above all religious freedom."³¹³⁷ *This is an invitation to link right with duty.* "The Church therefore rejects, as contrary to the spirit of Christ, any discrimination or offence against men on account of their race, color, class or religion."³¹³ **

Paul VI also declared to the Spaniards: "Your nation rightly prides itself on that Catholic unity which has been its jewel for so many centuries of its history and continues to be so."³ -³ "So, there is no opposition between LR and Spanish Catholic unity.

Finally, on December 7, 1965, the day of the promulgation of *DH*, which was prepared by a speech in which Paul VI called *DH* "one of the great documents of this Council", in which the Church

"...] the aspiration so universally felt today for civil and social freedom in religious matters. No one should be forced to believe; but neither should anyone be prevented from believing and professing his faith, a fundamental right of the human person, recognized today, at least in theory, if not always in practice, by the great majority of legislations. In the same spirit, the Church asks governments - and this is the object of a paragraph in the Decree on the Pastoral Charge of Bishops - to agree to recognize or restore to her full and complete freedom in the choice and appointment of her Pastors. This clearer delimitation of respective competences and domains cannot fail, in the estimation of the Church, to be advantageous to both powers [s]. Whatever may be the judgement of the historical situations that have occurred in the past for certain nations, the Church today asks for nothing more than the freedom to proclaim the Gospel. Her internal dynamism, whose origin is not in her but above her, puts her in a position to carry out her mission among men, provided she is given the means to do so."³⁴ °

12.2. Paul VI after *DH*

Paul VI, after the promulgation of *DH*, often had occasion to return to the subject, to deplore the persecutions *in general*³¹³⁶ but especially *anti-Catholic*.⁻⁴³ He complained about the constraints exercised against the *bishops*.³¹³⁷ But he rejoices in the legislations favorable to the RL,³¹³⁸ and he demands the application of *DH* by the temporal powers,³ "-" in particular the international organizations,³ * or by the local Churches,³¹³⁹ either finally to remove erroneous interpretations.³¹⁴⁰

As for *DH* 1, § 2, Paul VI warns against the dangers that accompany the practice of RL,³¹⁴¹ and against the libertarian spirit,³¹⁴² or "agnostic irenicism", indifferentism,³¹⁴³ syncretist³¹³² or the freedom to constitute "one's own little religion"³¹⁴⁴ with which it is confused. As if

3135 Cf. 0922.2: *IPVI* 03 (1965). 457; *DPPaulVt.* 464.

³¹³⁶ cr. 0948. PAUL VI, 1967.05.13: Homily at Fatima; AAS, 596; DC, 979 ; 0952. AAS, 1967, 1091; DC, 1967, 1951; 0969. PAULVI, 1970.03.25: General Audience; *IPVI*, 229; DC, 354-355; *Teachings of PAUL VI*. 3 (1970), 49; 0982. PAUL VI, 1971.12.23: to the Sacred College; AAS, 1972, 39; DC, 55 ; 1006. PAUL VI, 1977.12.22: to the Sacred College; AAS, 1978, 47; DC, 55; 1007. PAUL VI, 1978.01.14: to the Diplomatic Corps; AAS, 169-170.

3137 cf. 0937. PAUL VI, 1965.12.08: Homily *Ascoherete Ira poco*, at the closing of VATICAN II; AAS, 1966,6-7; DC, 75.

3138 cf. 0947. PAUL VI, 1967.04.28: to King Olav V of Norway; AAS, 432; DC, 1176-1177; 0964. PAUL VI, 1969.06.10: to the President of Switzerland, etc.; AAS, 507; DC, 623-624; 0978. PAULVI, 1971.05.24: to the Indian ambassador; AAS, 547-548; 1006.

3139 cf. 0951. PAUL VI, 1967.10.29: Message *Africte terrarum*-, AAS, 1073-1097; DC, 1967, 1937-1956 (paragraph to rulers).

314 "cf.0984.

3149CL 0953. PAUL VI. 1968.02.22: to the Italian episcopate; AAS, 212; DC, 496497; 0979.

3150CL 0957. PAUL VI. 1968.09.11: General Audience; *IPVI*, 898; DC, 1638.

3143 Cf. 0998. PAUL VI. 1976.08.25: General Audience; *IPVI*, 672; DC, 802.

3144 Expression of the Princess Palatine, as we know. Cf. here 0973. PAUL VI, 1970.12.08: Apostolic Exhortation. *Quinque iam anni transadi*, for the S' anniversary of the closing of the Council; AAS, 1971, 102-103; DC, 54: "The religious freedom affirmed by the Council, which is based on freedom of conscience, is valid for personal decisions regarding the faith, but it has nothing to do

"The conciliar proclamation on religious freedom (...) favored an agnostic irenicism and allowed indifference to religious truth and to the apostolic imperative to which the plan of salvation is linked, namely that missionary effort would no longer be necessary. The existence of pontifical works, expressly qualified to promote and support such an effort, proves the contrary even today. Since the religious liberty upheld by the Council is intended to safeguard the independence of religion from undue interference by any profane power external to religion, and also from any abusive social or political exclusivism in the religious sphere, it does not impede the apostolic duty, but rather constitutes the civil condition for the exercise of missionary activity, while it itself is obliged to respect consciences in the proclamation of the one true message of salvation deriving from religion."³¹⁴⁵

In continuity with *DH* 1, § 3, Paul VI recalls the distinction between moral obligation and civil coercion.³¹⁴⁶ He will explain what the Church reproached to the liberal conception of freedom:

"If, under the pretext of freedom, everyone wants to do as he pleases, we will easily end up with the decadence of society organized as a state, with violent, instinctive, passionate force taking precedence over the public moral order. This is where the Church's doctrinal polemic about liberalism (to which we must acknowledge certain praiseworthy aspects, especially on the practical level) was situated, because of its agnosticism with regard to transcendent principles, both religious and moral; because of its optimism about the result of the inevitable struggle between the different tendencies, which very often led to the oppression of the stronger, especially on the economic and social level; because of the naturalism that resulted, to the detriment of moral ethics, and to the benefit of an indifference, speculative at least, towards the needs and sufferings of others; and because of the anlinormative ferment that subsequently fueled social anxieties, thus fostering revolutionary and totalitarian reactions."³¹⁴⁷

He thus stigmatizes this "arbitrary license", blind, impulsive, instinctive, etc.³¹⁵⁷ Moreover, he is careful to distinguish between secularism (which can be healthy), and secularism (which he condemns):

"The Church of today, the Church of the Constitution *Gaudium et Spes*, is not afraid to recognize the "values" of the secular world. She is not afraid to affirm what Pius XII, Our predecessor of venerable memory, already openly recognized: a "legitimate and healthy secularity of the State" (445, 1958, p. 220), in which he saw "one of the principles of Catholic doctrine". This is why the Church today distinguishes between secularism, that is, the proper sphere of temporal realities governed by their own principles and having a relative autonomy corresponding to the intrinsic requirements of these realities (scientific, technical, administrative, political, etc.); and secularism, which excludes from society the moral and fully human references that postulate imprescriptible relationships with religion."³¹⁵⁸

"Because it is legitimate [...] that a healthy and reasonable secularism preside over the organization of the State (as our venerated predecessor, Pope Pius XII, has already said; cf. 445, 1958, p. 220 |DC. 1958, col. 456 = 0788.1), one would like religion not only to no longer appear in public, but also to have no influence in inspiring and guiding civil legislation and practical behavior. Even if religious freedom is then officially recognized, it is practically stifled and suppressed.

with determining the content and scope of divine Revelation." (Note 18 refers to GERMAN EPISCOPAT, 1968.12.27, "Fulda Declaration").

31340963. PAUL VI, 1969.05.25: *Message [written] for the missionary day of 19 Act. 733 'DC. 856.*

³¹⁴⁶ Cf. 1000. PAUL VI, 1976.10.17: *Alloc. We have great joy* (canonization of St. John Ogilvie. S.J.); 445.

1976.649 ; 1001. PAUL VI, 1976.10.17: *Alloc. L'Alia elleNoi...* at the Angelus; *IPVI.849-850: DC. 909.*

31560979.1 and 2: *IPVI 09* (1971), 703-705; *DC. 758-759.*

³¹⁵⁷ Cf. 0999. PAUL VI, 1976.10.13: *General Audience; IPVL 828; DC. 905.*

¹³ *0955. PAUL VI, 1968.05.22: *General Audience -IPVI.796;DC. 1070.*

Sometimes with methods of intimidation and vexation that succeed in stifling, even in the conscience, the free expression of religious feeling." 3159

The doctrine of the RL is therefore not opposed to Tradition:

"However, it is objected to us - and we say this with great sorrow - that various doctrines or directives of the 11th Vatican Council, confirmed and taken up by us, depart from the traditional faith. We cannot dwell on the various points, especially since we have not failed to do so in other circumstances. But we do want to mention at least the right to religious freedom. It is a right in relation to human authorities, and in particular to the authority of the State; a right which is at the same time, and even more so, a grave moral duty, and which has as its object the search for true religion, and the choice and commitment to which this search tends. The Council in no way bases this right on the fact that all religions and all doctrines, even erroneous ones, which touch on this area, are of more or less equal value. It bases this right on the dignity of the human person, who demands not to be subjected to external constraints which tend to oppress his conscience in the search for the true religion and in adherence to it.^{316U}

Pope Montini will inculcate that the passive subject of the right to RL is not the Church but the profane powers.!!! 11 will also return to the Catholic doctrine of freedom in general?-

In agreement with *DH2* and *DH 3*, § 5, he will place, like the Council, the internal foundation of RL in the dignity of man in his "relationship to God",³⁻ and its external foundation in the religious incompetence of the State.³¹⁴⁸ -" He will not omit to repeat it, it is the truth that makes one free.³ !"³ n will finally recall the necessity of founding on God the rights of the person !"³ ou "fundamental human rights"¹⁶⁷ and juridical activity?@* to the point of calling "the rights of religious freedom" "those of God"?<"

Concerning *DH 6*, § 3, Paul VI will persevere in rejecting any request for privilege for the Church...¹⁷ " without, however, in practice suppressing all con- fessionalism of the States.

Concerning *DH7*, Paul VI will not forget the limits of the exercise of the RL ("we do not say superstitious, nor fanatical, nor troublemaker")...¹⁷

In connection with *DH 12*, § 2, he will emphasize the long doctrinal tradition of the Church in favor of the freedom of the act of faith and of the RL in general.³¹⁴⁹ He will even give a general explanation of the procedures formerly used in the Church:

"We know that in the history of the Church, in matters of religious liberty, there are pages that deserve reservations and explanations, easily given by the historical context where one finds things more in conformity with the temporal spirit than with the evangelical spirit. But let us welcome with joy the new teaching which corresponds better to this spirit of the Gospel."³¹⁵⁰

Like *DH 13*, Paul VI insists on the freedom of the Church. *³⁷ --

11 applies *DH 14*, § 4 in dismissing the idea of an RL understood as the cessation of missionary activity...¹⁷ -⁵ not to be confused, of course, with a proselytizing of the wrong sort:³

"Thus it happens that, in various ways, we too often hear that to command the truth, even if it is the Gospel, to direct a path, even if it is that of salvation, is to do violence to religious freedom. It is certainly immoral to impose anything on the conscience

³¹⁴⁸ ¹⁶³ 09793: *IPV109* (1971), 703-705; *DC*, 758-759.

3164 cf. 0979.4: *1PVI09* (1971), 703-705; *DC*, 758-759: "Now comes the second point worth mentioning: man's relationship with God must not be imposed or impeded by the external authority of the state, which is incompetent in religious matters. This is the fundamental reason for the conciliar decree on religious freedom in the field of social life. (...)." Similarly 0981. PAUL VI, 1971.12.08: Message *Noi riprendiamo*, for the "World Day of Peace"; *AAS*, 1971,867; *DC*, 1972, 21 -22.

³¹⁶⁵ Cf. 0991. PAUL VI, 1974.07.10: *General Audience* (speech not delivered); *IPVI*, 647-652; *DC*, 701-702.

3166cf. 0961. PAUL VI, 1969.04.11: Official Audience to a Minister of Argentina; *AAS*, 1969,308.

3149 Cf. 0965 (here: 0965.1) PAUL VI, 1969.07.09: *General Audience* (on freedom); *OR*. 1969.07.10; *IPVI* 7 (1969), 1001-1005 (here 1002); *DC*. 705-707 (here 706).

3150 0979.4.

of our brothers. But it is quite another thing to propose to this conscience the evangelical truth and salvation in Christ Jesus, in a clear-cut manner, leaving entirely intact the power of this conscience to choose and to opt - being excluded any kind of action that resembles coercion or persuasive maneuvering with a dishonest or unrighteous flavour; this, far from doing injustice to RL, is a tribute to freedom itself, to which is given the power to choose a path, noble and commendable even in the eyes of those who do not believe in God. Would it be a crime against the freedom of others to proclaim the Gospel which we have received from the most merciful God? "3177

31670982.

In fact, the RL is "the civil condition for the exercise of missionary activity." Paul VI will of course have occasion to recall the doctrine of moral theology concerning the principles of tolerance:

"In truth, if it is sometimes licit to tolerate a lesser moral evil in order to avoid a greater evil or to promote a greater good [14], it is not permitted, even for very grave reasons, to do evil in order that good may result (cf. *Rom* 3:8), that is, to take as the object of a positive act of will that which is intrinsically a disorder and, therefore, something unworthy of the human person, even with the intention of safeguarding or promoting individual, family or social goods."³¹⁵¹

But he will not apply it to the question of the RL. On the other hand, he will link the doctrine of the Council to those of conscience and the "principle of subsidiarity",³ -^{*0} All in all, for Paul VI, *DH* is "one of the most important documents" of the Council, ^{*311} and the right to the RL is "the first of the human rights".³ -^{*3}

³¹⁵¹ 0956. PAUL VI, 1968.07.25: Encycl. *Humana viute*, 14, §4 & note 17:445,490-491; *DPPautVI*, 440 [Note 14 refers to 0760: 445. 1953,798-799; *DPPie XU*, 1953,615-616].

311">0965.2: *1PVI*, 1969,1002-1003: *DC*, 706: "That is to say, in addition to the existence of freedom, it (the council) affirmed its exercise on two main levels: on the one hand, on the personal level, by recognizing for each man a high degree of autonomy, the mastery of which belongs to conscience, the immediate and unshakeable rule (cf. *Rom* 14:23) of the moral act, and which, consequently, needs all the more to be enlightened by truth and sustained by grace (cf. *Gai* 5:1; 7" 8.36) as it has a greater tendency nowadays to determine itself (cf. *GS* 16 and 17); and, on the other hand, on the social level, by demanding, as We have said, a true and public religious freedom, but with respect for the rights of others and for public order (*DHT*, etc.), and by supporting the "freedom of the faithful" (cf.), and by upholding the "principle of subsidiarity" (*GS* 86), which in a well-organized society aims at leaving the greatest possible freedom to subordinate persons and bodies, and at mandating only what is necessary for an important good that could not be achieved by other means and, in general, for the common good (*DHT*)."

³¹¹¹1002. PAUL VI, 1976.12.09: to the ambassador of Indonesia; 445,733-734.³ 1*2 1006.

CHAPTER 13.

13. JOHN PAUL II (1978-2005)

DIn his first message "Urbi et Orbi", John Paul II focuses on all those whose RL is oppressed,³¹⁸³ declaring them the favorites of Jesus. *³¹⁴ Throughout his pontificate, he takes up and develops the themes of Paul VI.³¹ ³ But while the latter died without having seen any positive results of this claim, the pope from Poland will be able to witness the at least partial collapse of oppressive systems in many countries.³¹ *

In line with *DH* 1, § 1, John Paul II bases the right to RL on the general human right to freedom.³¹⁸ ? There are countless speeches in which he deepens the meaning of human freedom in general, which he defines "above all as *self-control* (self-domination)",³¹⁸⁸

In continuity with *DH* 1, § 3, on the one hand, it maintains the moral religious obligation, under the label of "rights of God":

"Proclaiming and defending such rights, without putting them before the rights of God or forgetting the duties that correspond to them, is a constant in the life of the Church, in virtue of the Gospel that has been entrusted to her."³¹ *9 "[.] But it is also important to remember the rights of God, of the Church and of the Gospel. Just as it is important to recall the fundamental right of every man to the benefit of the Redemption wrought by Christ Jesus. "Every man must be able to find Christ," I recalled in the Encyclical *Redemptor hominis*. Every man needs Christ, who is also a perfect man and the Savior of man. Christ is the light which, integrated into the most diverse cultures, enlightens and elevates them from within. [The Christian faith respects the cultural expressions of every people, as long as they are true and authentic values. But to neglect to transmit to all men the integral deposit of faith would be an infidelity to the Church's own mission. It would be a failure to recognize one of the fundamental rights of mankind: the right to the truth. It is clear that the proclamation of the faith presupposes an adaptation to the mentality of those who are evangelized. In no way, however, does this adaptation imply an incomplete expression and proclamation of

³¹¹¹³ Cf. 1101. For a general study of the thought of Card. Wojtyła and JOHN PAUL II, cf. DULLES. 2001 a.

³¹¹¹⁴ Cf. US". JOHN PAUL II. 1985.02.02: to young people in Monterrico (Peru); *1GPH* 08/1 (1985), 363; DC. 335-338. especially § U, 338.

J *¹⁵ Cf. in note under n° 1300. of LRTC, II/A. a list of references of 450 texts where JOHN PAUL II approaches the theme of the RL, in addition to the 120 quoted then literally. We note here his general reference h *DH* in 1125. JOHN PAUL II, 1979.10.02: to the 24th General Assembly of the U.N. (n° 2 and 20); AAS. II58/DC, 1979, 878; 1181. JOHN PAUL II, 1988.02.14: Letter *Magnum baptismi dimum*, to Ukrainian Catholics; AAS. 995; DC, 483-487, § 7; 1186. JOHN PAUL II. 1988.11.15: to the Pontifical Commission *Iustitiae et pat*: AAS, 1989.661, §§4-5; 1191. bis. JOHN PAUL II, 1989.02.24: to the Pontifical Commission for Social Communications; AAS, 967.

³¹¹¹⁶ Cf. 1200. JOHN PAUL II. 1990.06.05: at a preparatory meeting of the Synod. § 3: AAS, 1991.71 -73 & 77) - DC. 1990.685 & 687.

³¹⁸⁷ Cf. 1119. JOHN PAUL II, 1979.04.22. *Angelus*-, *1GPI102/1* (1979). 953;DC. 463.

³¹¹⁶¹ U31/A. JOHN PAUL II. 1980.01.16: General Audience *JGP1103H* (1980). 148-152.-DC. 162.

³¹⁸⁹ 1134. JOHN PAUL II, 1980.06.30: to the Brazilian president. § 6; AAS'. 832-833; DC. 736-737.

the Gospel.³¹⁹¹ " (...) the rights of man have no force, in truth, except where the imprescriptible rights of God are respected, and the commitment to the former is illusory, ineffective and not very lasting if it is carried out on the fringe or in contempt of the latter."³¹⁹¹

On the other hand, he clarifies the difference between the *distinction* and the *separation of powers*.³¹⁹² He also reminds us of the place that religion should have in society.³¹⁹³ And he is often inspired by John XXIII.³¹⁹⁴ * He specifies: "The right to religious freedom is not a right to oppose religion."³¹⁹⁵ And he vigorously rejects the relativistic interpretation:

"It is clear that freedom of conscience and religion does not entail a relativization of the objective truth that every human being is obliged, by moral obligation, to seek. In the organization of society, it is only the institutional translation of the order established by God, according to which his creatures can know, welcome and accept, as free and responsible persons, the elemental proposal of the covenant with him."³¹⁹⁶

John Paul II will have occasion to repeat the negative nature of the right to LR or to "freedom of conscience",³¹⁹⁷ and *a fortiori* to quote literally *DH 2*.³¹⁹⁸ As for the foundation, it states that it is the *innate* dignity of the image of God: "the dignity of every person has its first source in his essential relationship with God the Creator and Father, in whose image and likeness he was created, because he is endowed with intelligence and freedom."³¹⁹⁹ II specifies the contours of the doctrine of *DH2*, § 2, for the case in which the person subject to the law falls into error (a crucial aspect in our research):

" (...) The human person, even when he or she is wrong, whether man or woman, always retains an innate dignity which is never lost. [...] "³²⁰⁰ "[1] This right is a human right and therefore universal, because it derives not from the honest action of persons or from their right conscience, but from persons themselves, that is, from their innermost being (*esistenziale*), which, in its constituent parts, is essentially identical in all persons. [It is therefore a right [A] which exists in every person and [B] which always exists, even in the hypothesis that it would not be exercised or [2] [that it] would be violated by the very subjects where it inheres.

(a) the violation of a right does not entail its destruction, (b) but gives rise to the requirement that it must be restored. "3201

If the "imperatives of conscience" are by no means the foundation, they intervene in the determination of the good protected by the law:

"The right to religious freedom, that is to say, the ability to correspond to the dictates of one's own conscience in the search for truth and to publicly profess one's faith in free membership of an organized religious community, constitutes the *raison d'être* of the other fundamental freedoms of man. Insofar as the profession of a belief touches the most intimate part of the conscience, it cannot but influence the choices and commitments of man. Believers, therefore, are led to contribute effectively to public morality, to solidarity among persons and to peace among peoples. This is why the Catholic Church has never ceased to be vigilant in ensuring that everything possible is done to put an end to persecution and discrimination against believers and their communities. In so doing, she is aware that she is serving humanity by defending the dignity of the person."³²⁰²

And developing another aspect of the doctrine of *DH2*, § 2, usually too forgotten, and before quoting *DH 14*, he adds:

"But it is a right in relation to a duty. As my predecessor Paul VI has repeatedly confirmed, it is the most fundamental of rights in relation to the first of duties: that of going to God in the light of truth, with that movement of the soul which is love; a movement which only begins and is nourished in that light.... [3203] "While insisting, and rightly so, on the claim of human rights, one must never lose sight of the obligations and duties connected with these rights. Every individual has the obligation to exercise his fundamental rights in a responsible and morally justified manner. Every man or woman has the duty to respect in others the rights he or she claims for himself or herself."³²⁰⁴

From this duty of man towards God, the duty of the State derives to help man to approach

³¹⁹¹ 1141. JOHN PAUL II, 1980.12.10: Letter to the Bishops of Brazil -, *J or nul do Brasil*, 7 Jan. 1981 -, DC, 1981, 152.

³¹⁹² Cf. 1138. JOHN PAUL II, 1980.10.13: to the 4th International Congress of Canon Law in Fribourg; A4S, 1105; DC, 1034.1035. Likewise 1209/B. JOHN PAUL II, 1992.01.25: to the bishops of the Eastern Region of France; *IGP11/15/1* (1992), 149; DC, 255-257, n° 2.

³¹⁹³ Cf. e. g., 1226. JOHN PAUL II, 1996.06.22: to the German Episcopal Conference, n° 10; OR, 1996.06.26; DC, 1996.668.

³¹⁹⁴ 1106. JOHN PAUL II, 1978.12.28: to Italian Catholic doctors: *1GPH 01* (1978), 438; *John Paul II/ DDH*. 135-136.

³¹⁹⁵ *ius*. JOHN PAUL II. 1980.07.01: to the youth in Belo Horizonte, §4; AAS, 838; DC, 739-740. Cf. also 1225/A. (*ORLF*. 1996.02.20, I and 8).

God, without interfering directly in his approach. This is such a fundamental right that it is like the thermometer of the others:

"5. 1...]The notion of the "rule of law" thus appears as an implicit request of the Universal Declaration of Human Rights and is in line with Catholic doctrine, for which the function of the State is to enable and facilitate for men the realization of the transcendent ends for which they were destined. 6. Among the fundamental freedoms which it is the duty of the Church to defend in the first place, *religious freedom* is quite naturally to be found. The right to religious freedom is so closely linked to the other fundamental rights that it can be rightly argued that respect for religious freedom is like a "test" for the observance of the other fundamental rights. The religious approach, in fact, comprises two specific dimensions which indicate its originality in relation to other activities of the spirit, notably those of conscience, thought or conviction. On the one hand, faith recognizes the existence of the Transcendent who gives meaning to all existence and founds the values according to which behavior is oriented. On the other hand, religious commitment implies insertion in a community of persons. Religious freedom goes hand in hand with the freedom of the community of the faithful to live according to the teachings of its founder. The State does not have to pronounce on matters of religious faith and cannot substitute itself for the various 3201 1156, n° 5.

3202117". JOHN PAUL II, 1988.01.09: to diplomats, no. 11; AAS. 1142.

3203 1156, no. 6; cf. also 1173. JOHN PAUL II, 1987.09.11: Alloc. / *greet each one*. during the ecumenical service in Columbia (South Carolina); 1GP11 10/3 (1987), 410; DC, 944 §§ 6, especially 7. referring to 1167. AAS. 1987,565; DC, 1986,393. Likewise, 1127. JOHN PAUL II, 1979.10.03: at Battery Park (New York); AAS'. 1178 1179. He will link this duty to its source, man's ontological dependence on God: 1188. n "39 (AAS. 1989, Wf.DC. 175-176.

32" 1103.

Confessions as regards the organization of religious life. State respect for the right to religious freedom is a sign of respect for other fundamental human rights in that it is an implicit recognition of the existence of an order that goes beyond the political dimension of existence, an order that belongs to the sphere of free adherence to a community of salvation that predates the state. Even if, for historical reasons, a state grants special protection to a religion, it has an obligation to guarantee to religious minorities the personal and communal freedoms that flow from the common right to religious freedom in civil society. Unfortunately, this is not always the case. From more than one country, appeals continue to be received from believers - especially Catholics - who feel that their religious aspirations and the practice of their faith are being suppressed. It is not uncommon, in fact, for legislation or administrative provisions to persist which conceal the right to religious freedom or which provide for limitations so exorbitant that they end up nullifying the reassuring declarations of principle. In the present circumstances, I appeal once again to the conscience of those responsible for the nations: no peace without freedom!

Like his predecessors, he will give a "key position"³²⁰ to this right, which is "the basis of all other liberties and is inseparably linked to them all because of that very dignity which is the human person."³¹⁹⁶ These "rights of man",^{3 2<8} "which are the expression of God's will and the requirement of human nature as God created it",^{2<30} he always links them to the *duties of man*,³¹⁹⁷ in other words, to the rights of God:³¹⁹⁸

"We hear a lot about human rights today. In many, many countries, they are violated. But we don't talk about the rights of God. And yet *human rights* and *God's rights* are closely linked. Where God and his law are not respected, man cannot assert his rights either."³¹⁹⁹

Therefore, neither autonomy nor infallibility of the conscience:

"The moral conscience is not an autonomous judge of our actions. The criteria for its judgments are drawn from that divine, eternal, objective and universal law, from that immutable truth of which the Council text speaks (*DH3*): that law, that truth which man's intelligence can discover in the order of being. It is for this reason that the Council says that man is, in his conscience, alone with God (*GS 16*). Note: the text does not limit itself to affirming: is alone, but adds: with God. Moral conscience does not enclose man in an impassable and impenetrable solitude, but opens him to the call, to the voice of God. It is in this - and in nothing else - that all the mystery and dignity of moral conscience are to be found: in the fact of being the place, the holy space in which God speaks to man. Therefore, if man does not listen to his own conscience, if he allows error to take up residence there, then he breaks the deepest bond that maintains the covenant with his Creator.

"If the moral conscience is not the ultimate authority that must judge what is good and what is evil, but must conform to the immutable truth of the moral law, it follows that it is not an infallible judge: it can make mistakes. This point deserves special

³¹⁹⁶ 1103.

³¹⁹⁷ E. g. 1103; 115"; cf. 1167. AAS. 1987, 586; DC, 1986, 405: "The supreme commandment of love leads to the full recognition of the dignity of every man, created in the image of God. From this dignity flow natural rights and duties. In the light of the image of God, freedom, the essential prerogative of the human person, is manifested in all its depth"; 1173.

⁵²¹¹ For example 1134. : 113". : 1141.

³¹⁹⁹] 17]. JOHN PAUL II, 1987.05.03: Alloc. *Der Aufruf*. in Munich for the beatification of Rupert Mayer: AAS. 1988,323; transl. : DC. 1988,584.

attention today: [...]j.

3205c f. 1191. JOHN PAUL, 1989.01.09: to the Diplomatic Corps, no. 2 c-d, 5,6 and 7 f ,DC. 199-200.

In the judgments of our conscience there is always the possibility of error. The consequence that follows from this error is very serious: when man listens to his own erroneous conscience, his action is not right, it does not objectively realize what is good for the human person. And this is because the judgment of the conscience is not the ultimate moral instance. "3213

No right not to listen to the Church:

" 38. Finally, recourse to the duty to follow one's conscience cannot legitimize dissent First of all, because this duty is exercised when conscience informs practical judgment in view of a decision to be made, whereas here it is a question of the truth of a doctrinal statement. Secondly, because if the theologian, like every believer, must follow his conscience, he is also bound to form it. Conscience is not an independent and infallible faculty, it is an act of moral judgment made on a responsible choice. The right conscience is a conscience duly enlightened by faith and the objective moral law, and also supposes the rectitude of the will in the pursuit of the true good. "3214

The RL, John Paul II reminds us several times, is based on truth, for it is a "right to seek religious truth and to adhere to it",3215 which derives from the "right to truth".3216 Therefore, unlike the DDHC, our philosopher pope always specifies and finalizes freedom by the true and the good:

"Freedom is not freedom to do anything, it is freedom for the Good, in whom alone lies Happiness. The Good is thus its goal. Consequently, man becomes free insofar as he reaches the knowledge of the true, and that this - and not any other forces - guides his will. Liberation in view of a knowledge of the truth which alone directs the will is a necessary condition of a freedom worthy of the name. "3217

John Paul II can only deplore the restrictions imposed on RL, and refuse to collaborate with regimes that make anti-religious struggle an essential part of their agenda, or that confine religion to a purely private sphere.3218 The denial of "religious freedom, the highest form of spiritual freedom" is "the greatest of affronts, for the spiritual and religious dimension is that by which all other human greatness is measured. "3219 Indeed, RL "is a fundamental human right as well as a requirement of religion itself. "3220

He takes up the argument based on the transcendence (in relation to temporal powers) of man's vocation3221 and his relationship with God,3222 a corollary of the distinction of powers established by Christ. He thus insists on the incompetence of the State (in the jurisdictional sense) in religious matters:

"The State may not claim jurisdiction, directly or indirectly, over the religious convictions of individuals. It cannot arrogate to itself the right to impose or prevent the profession and public practice of religion. JOHN PAUL II, 1983.08.17: General Audience; 1GP1/06/2 (1983), 256-257; DC, 937. Here 1152.1-2-3321-111" ,... * 38: DC. 1990.699-700).

32151128. JOHN PAUL II, 1979.10.16: Exhort, apost. *Cateched tradenda.*: § 14;AAS, 1288-1289; DC. 904.

32161136.

3217 H67. § 26.

321 "Cf. 1103.

32191143. JOHN PAUL II, 1981.01.12: to the Diplomatic Corps. § 11; AAS. 193 & 194.

3220 1161. JOHN PAUL II, 1985.08.11: Homily at Garoua (Cameroon). n. 7-8; IGP1/08/2 (1985). 319-320.

3221 Cf. 1111. JOHN PAUL II, 1979.02.24: to the ambassador of Costa Rica; IGP1/02/1 (1979), 449 - *John Paul! U! DDH.* 165.

3222 Cf. 1155. JOHN PAUL II, 1984.01.14: to the Diplomatic Corps, § 4 b and 7 c - AAS. 590; 1156: IGP11 07/1 (1984). 656; DC, 511.

of a person's or community's religion. In this matter, the civil authorities have a duty to ensure that the rights of individuals and communities are respected, while at the same time safeguarding just public order. Even when a state grants a particular religion a special legal position, it must legally recognize and effectively respect the right to freedom of conscience of all citizens, as well as of foreigners who reside on its territory, even temporarily, for professional or other reasons. In no case can the organization of the State substitute itself for the conscience of citizens, nor can it take away the vital space of their religious associations, or take their place. A just social order requires that all - individually and in community - can profess their religious convictions while respecting others, >>.3200

According to John Paul II, being "one of the most fundamental rights of man", the RL

³²⁰⁰ 1176: AAS. 1988,280-281;DC. 1-2.

must be implemented in all sectors and at all levels of "social, public, state and international life. Like Pius XII, he insists that the freedom to worship God must lead to charitable activity.³²⁰¹ Finally, he will emphasize the communitarian character of this right, especially in his message to the Madrid Conference, which lists - in a much more precise way than the *DH* - all the practical implications of the RL.³²⁰² "

DH 5 gives John Paul II the opportunity to recall a) with regard to schools, the principle of respect for the consciences of pupils and their families; b) with regard to parents, their right to educate their offspring according to their convictions.³²⁰³ He goes even further, demanding from the State a positive and confessional service for reasons that are not purely historical:

"It is obvious that, since this is a nation with a Catholic majority, the educational project of the State - while duly respecting the conscience of students and their respective families with another faith or conviction - must offer an educational and cultural system that does not contradict the Catholic tradition, but on the contrary is inspired by it."³²⁰⁴ "

As for *DH 6*, § 1, John Paul II places the doctrine of the RL in the broader perspective of the ordination of society to the service of man,³²⁰⁵ recalling in this regard the teaching of *Pacem in terris*.³²⁰⁶ With regard to *DH6*, § 3, without systematically rejecting any *specialis civilis agnitio*, John Paul II reiterates the pastoral option of the Council, -³²⁰⁷ opposed to the search for *privileges*.³²⁰⁸ He rejects any discrimination that harms the juridical equality

³²⁰¹ Cf. 1117. JOHN PAUL II, 1979.04.07: At the VIII^e Congress of the U.N.E.B.A.; 1*GPU* 02/1 (1979), 816-819 (here 1117.1:818-819).

³²⁰² Cf. 1137. JOHN PAUL II, 1980.09.01: Message (on the LR) *The Catholic Church*, to the Madrid Conference of Heads of State Signatories of the Helsinki Accords; here § 2. AAS, 1254 and 4; see also 1187. JOHN PAUL II, 1988.12.08: Message *Fin dalsecolo*, for the World Day of Peace; AAS, 1989,99; DC, 52.

³²⁰³ Cf. 1154. JOHN PAUL II, 1983.12.12: to the European Court and the European Commission of Human Rights; AAS, 1984.470.

³²⁰⁴ 1146. JOHN PAUL II, 1981.12.07: to Italian Catholic Jurists; *IGPII04/2* (1981), 864; DC, 1982,94. n°3, last paragraph. See also 1218. JOHN PAUL II, 1993.07.28: *Concordat between the Holy See and the Republic of Poland*: ORLF, 1993.08.17-24,6-7; DC, 772-776; in particular the preamble and arts. 1;3;4,§ 1;5;8;9; 10; i l; 12; 13. Even if it was not finally ratified by the Polish Diet, this concordat made known to us what the Holy See still feels it can ask for after VATICAN II.

³²⁰⁵ Cf. 1102. JOHN PAUL II, 1978.11.25: To Catholic Jurists -, *1GPU* 01 (1978), 210-211; DC, 1059: "Society is made for man, *"hominis causa otne lus constitutum est"*. Society, with its laws, is at the service of man. And the Church was founded by Christ for the salvation of man (cf. Dogmatic Constitution *Lumen gentium*, 48; Pastoral Constitution *Gaudiunt et spes*, 45). Therefore, the Church also has a say in this matter. Above all, she must say that the problem of "freedom of assistance" in a modern state that wants to be democratic is part of the broader problem of human rights, civil liberties and religious freedom itself.

³²⁰⁶ Cf. 1103. : AAS, 1979, 122-125.

³²⁰⁷ GS 76 and 0938. *EV* 01. No. 482".

³²⁰⁸ According to the *IGPII* CD-ROM (1978-1995), JOHN PAUL II used the word "privilegi" in 109 interventions. After eliminating the 2 cases in which the verb "to privilege" is used and the 72 documents in which other types of privileges are mentioned, the following 35 texts remain, in which the Pope constantly rejects the idea that Christians or the Church seek privileges in civil society: JOHN PAUL II, 1978.10.20: to the Diplomatic Corps, para. 6; 1105. 1978.12.13: to a Bulgarian Minister; AAS, 1979, 104-105: "the Catholic Church - ... - does not seek privileges; but she needs, as everywhere else, vital space in order to fulfill her religious mission and also to be able to work - according to her specific nature and with the means proper to her - for the integral and peaceful development of the whole man and of all men"; 1120. 1979.06.02: to the Polish authorities in Warsaw; DC, 604, 2 & 4 c: "For this activity the Church does not desire privileges, but only and exclusively *what is indispensable for the fulfillment of her mission.*"; 1980.05.16: to the President of Portugal, para. 3; 1980.07.05: to Porto Alegre (Brazil), 4j; 1980.07.13: ambassador of Yugoslavia. para.3 JOHN PAUL II, 1981.02.18: to the Chinese Catholics of Asia, 4b; 1982.02.17: to the President of Benin, 3a; 1148.1982.09.18: to the 69^e conference of the Inter-Parliamentary Union, n°6; AAS, 1166: "It is opportune to mention again the problem of religious freedom. As you know, the Church does not ask for any privileges from the civil power: with a clarity which, since the Council, is even more evident than in the past, she has defined a global position according to which religious liberty is only one face of the unitary prism of liberty: this is an essential constitutive element of a genuinely modern and democratic society. Accordingly, no state can claim to be positively esteemed, let alone deserving, merely because it appears to grant religious freedom, when in fact it isolates it from a general context of freedom; and a state cannot define itself as 'democratic' if it obstructs in any way religious freedoms not only in the exercise and practice of worship, but also in the equal participation in school and educational activities, as well as in social initiatives, in which the life of modern man is increasingly articulated." 1983.03.19: to the workers of S. Salvo (Chieli), 4d; 1984.01.10: to the Lebanese Parliamentarians, 4; 1984.01.28: to a teachers' jubilee, 3 a; 1984.09.08: to the Croatian Eucharistic Congress, 3 c; 1985.0130 : au monde de la Culture à Quito (Ecuador), 5 e ; 1985.05.26 : à la messe (Pza Concordia) à Salemo,4d (renvoie à GS76) : 1985.06.15 : au clergé diocésain de Riese-S.-Pio-X, 2 a ; 1985.10.04: to the President of Italy. 3 d; 1986.05.23: to the Bishops of Angola on *ad limina* visit, 11 a; 1987.12.19: to the Bishops of Poland on *ad limina* visit, 7 d (reference to GS 76); 1989.06.02: to the faithful in Trondheim (Norway), 6 b; 1990.01.25: at the

between citizens³²⁰⁹ even in the name of a religious majority.³²³ -- Before the European Assembly, in a capital speech, he recalls some fundamental principles: 1° freedom must be specified and finalized by truth; 2° individual and social life must be governed by God's law (natural and revealed); 3° freedom in the revolutionary, rationalist, naturalist and positivist sense, of absolute autonomy, is therefore condemned, as is the rejection of religion that it then entails; 4° but the old (idealized) order of "Christendom" is undesirable, because it did not sufficiently distinguish between God's business and Caesar's : in fact, even if God must be reinstated as the supreme authority of society, heretics must not be excluded in a "fundamentalist" way from the temporal community (he also aims at the Muslim system); in conclusion, however, the European future must be based on the Christian inspiration of ethics.³²¹⁰ And to deny that it is legitimate to expel holiness from social and state life.³²¹¹

Much more than his predecessor, John Paul II insists on the intrinsic, moral limitation of the exercise of the RL (cf. *DH 07*, § 2), and by the *responsibility*,[^] and by the respect in others of the rights that one claims for oneself (*ibid.*, cf. *DH1*, § 2 and 3). John Paul II delicately suggests that the problem of non-reciprocity in the area of Religious Liberty is the main difficulty in the relations of Christians with Muslim nations³²¹², not to mention the communities of the Muslim world.

airport of Praia (Cape Verde), 6 b; 1990.04.27: to the President of Portugal, 4; 1990.05.10: in Chihuahua (Mexico), 8c; 1198/B. 1990.05.12: à la Conférence épiscopale mexicaine; *IGPII 13/1* (1990), 1255; *DC*, 608-609; 1990.11.24 : 5b; 1204.: *Centesimus annus*, 53a; 1991.08.17 : au Corps diplomatique (Budapest), 2 ; 1991.11.13 : à des év. esp. (région de Tarrugone, etc.), 4a (renvoi à GS 76) ; 1992.11.14 : à 10 ambassadeurs, 3 ; 1993.02.10 : à l'aéroport d'Entebbe, 2 b ; 1993.02.19 : au président de Slovénie, 3a; 1994.07.04: au 1^{er} ambassadeur de la Slovaquie, 4c; 1995.05.02: Lettre apost. *Oriente lumen*, 8 c; 1995.05.06: to the Italian federation of nursery schools, 3 b; 1995.10.05: to the UN (New York), 17 b; 1208.1991.08.17: to the diplomatic corps (Budapest), ^2, *IGPII 14/2* (1990,323; *OÆIZXU1/35*, il^o 2176 (Sept. 3, 1991), 7, 1, low; 1224. 1995.04.06: to the ambassador of Mexico; *OR*. 1995.04.07, 5, 4; 1223. bis. *Ut unum sint*, § 3, ed. LEV, 6; 1224/E. 1995.12.07: Message to Congress on *Secularism e libertà religiosa*; *OR*, 1995.12.09-10; *OR English ed.* no. 51/52. 10/27 Dec. 1995, p.7, § 3: "The Church neither seeks nor desires to seek any worldly power place at the service of the truths she bears. She asks only to be allowed to address man in freedom; and she asks for all human beings the freedom to respond to the Gospel in the full measure of their humanity."

323? E. g. 1129. JOHN PAUL II, 1979.12.22: to the Sacred College, § 8; *AAS*. 1979, 1561-1562; *DC*. 1980, 54, § 8; 1142.1980.12.22: to the Sacred College; *AAS*. 1981,172-173 ,*DC*, 56. §8.

³²¹⁰ Cf. 1185. 1988.10.11: to the European Assembly (Strasbourg), n°7-10; *AAS*, 1989, 697-700; *OC*. 1988, 1045.

3211 cf. also 1206.1991.06.03: Homily at the Lubaczów Stadium; Polish orig.: *1GPH 14/1* (1991), 1435-1441; *ORLF*, p. 7,3 (bottom) and 4 (top).

3212 Cf. 1104. 1978.12.04: to the Ambassador of Turkey; *AAS*, 1979, 101; 1158; 1163 (to the young Muslims of Casablanca), § 5, continued: "Respect and dialogue therefore require reciprocity in all areas, especially with regard to fundamental freedoms and more particularly religious freedom"; 1197. 1990.01.13: to the Diplomatic Corps; *AAS*, 869; "16. (...) I cannot pass over in silence the worrying situation in which Christians find themselves in certain countries where the Islamic religion is in the majority. The expression of their spiritual distress reaches me constantly: often deprived of places of worship, subject to suspicion, prevented from organizing religious education according to their faith or charitable activities, they have the painful feeling of being second-class citizens. [It is my earnest wish that, if the Muslim faithful today find in countries of Christian tradition the essential facilities for satisfying the demands of their religion, Christians may likewise enjoy comparable treatment in all countries of Islamic tradition. Religious freedom cannot be limited to mere tolerance. It is a civil and social reality, with specific rights that allow believers and their communities to bear witness to their faith in God without fear and to live out all its requirements"; 1203. 1991.01.04: to the Ambassador of Pakistan; *A4E 757-758*; 1192/A. 1989.05.12: to Turkish and Roman professors; *IGPII 12/1* (1989), 1229; 1194. 1989.10.10: to non-Catholic religious leaders of Indonesia; *1GPH 12/2* (1989), 836; *DC*, 1055-1057; 1198. 1990.02.15: Address / *am happy to welcome the delegation of the World Islamic Call Society*; *IGPII 13/1* (1990), 466; 1201/C. 1990.11.30: to Filipino bishops, no. 5; *IGPII 13/2* (1990), 1331; 1224/F. 1996.01.13: to the Diplomatic Corps. § 9; *DC*, 106: "Just as countries with a Christian tradition welcome Muslim communities, some countries with a Muslim majority also generously welcome non-Islamic communities, even allowing them to build their own religious buildings and live according to their faith. Others, however, continue to discriminate against Jews, Christians and other religious families, even denying them the right to meet privately for prayer. It cannot be said often enough: this is an intolerable and unjustifiable violation not only of all existing international norms, but of the most fundamental human freedom, the freedom to manifest one's faith, which is the reason for living.

nists,³²¹³ among which I especially refers to Albania, Maoist China and Vietnam.³²¹⁴

" 3. [...] As for the area of religious freedom, it must also include reciprocity, that is, equal treatment. Those who believe in the true God, out of respect for the Truth to which they adhere with all their faith, cannot admit the equivalence of all religious faiths, and even less fall into religious indifference; They even desire, normally, that all should have access to the Truth which they know, and they strive for this by a witness which respects the freedom of adherence, for it is a matter of human dignity to open oneself to religious faith by a free homage of reason and of the heart, with grace, according to what a well formed conscience discovers and prescribes. At the same time, therefore, they can - and must - respect the dignity of other people, who cannot be prevented from acting according to their conscience, especially in religious matters. The Second Vatican Council made this distinction in the Declaration *Dignitatis humanae* [D/12], thus resolving a problem that may have left something to be desired in the past in Christian communities. Therefore - if I may say so in all confidence - we understand the astonishment and the feeling of frustration of Christians who welcome, for example in Europe, believers of other religions and give them the possibility of exercising their worship, and who are forbidden any exercise of Christian worship in countries where these believers, who are in the majority, have made their faith the state religion. - On the other hand, serious difficulties arise where the state adopts an atheistic ideology. There is, of course, a great diversity of situations, depending on whether or not the State is faced with strong religious communities with a vigorous faith. But, in general, there is a contradiction between the official declarations on religious freedom, supposedly left to private persons, and the anti-religious propaganda, to which are added, here and there, measures of coercion preventing free access to seminaries, the possibility of catechesis for young people, not to mention discrimination for the civil rights of believers, as if the adherence of faith endangered the common good! - Moreover, there is at least one situation in Europe where the atheist ideology is so closely linked to the State that atheism is imposed on consciences and any religious gesture, in any confession, is absolutely forbidden and severely punished. In these different situations, what is at stake is the spirit of tolerance well understood, which is not religious indifference, but respect for consciences, that is to say, for one of the most fundamental freedoms, and respect for the distinction between the political and religious domains, as Christ formulated it so well: "Render to Caesar what is Caesar's and to God what is God's" [Mt 22:21]." ³²¹⁵

On the other hand, John Paul II sees no contradiction between the RL and the commitment of a Catholic people to maintain through democratic channels³²¹⁶ the prohibition of certain practices contrary to public morality,³²¹⁷ such as divorce³²¹⁸ and to the rights of others, such

³²¹³ Cf. nos. 1129; 1133. JOHN PAUL II, 1980.05.06: to diplomats in Nairobi, §6; AAS. 481-188; DC. 527; 1158.

³²¹⁴ Cf. e.g. §129; 1224/F., § 9. continued (DC. 1996, 106); "In *China and Vietnam*, in admittedly different contexts, Catholics face constant obstacles, especially with regard to the visible manifestation of the bond of communion with the apostolic see. Millions of believers cannot be oppressed, suspected or divided indefinitely without negative consequences, not only for the international credibility of these states, but also within the societies concerned: a persecuted believer will always find it difficult to trust the state that intends to govern his or her conscience. On the contrary, good relations between the churches and the state contribute to the harmony of all members of society.

³²¹⁵ 1158. JOHN PAUL H. 1985.01.12: to the Diplomatic Corps (especially nos. 3-4-5); AAS, 650-651.

³²¹⁶ On the limits of democracy, cf. e.g. 1216. 1993.01.15: to the 2nd group of Polish bishops; AAS. 1229 1238; *ORLF*, 1993.02.16, 10: "The Church appreciates democracy, but she constantly warns that 'a democracy without values easily turns into overt or covert totalitarianism' (1204. *Cetlesimus annntis*, § 46). The life of the political community enjoys its own autonomy (cf. *Gaudium et Spes*, § 36). This autonomy, however, must not be understood as independence from moral principles, for a politics deprived of sound ethical principles inevitably leads to the degradation of social life, to the violation of the dignity and rights of the human person."

³²¹⁷ Sur la moralité publique dans le magistère contemporain, cf. GS 52, § 2 ; et 29 documents de JEAN-PAUL II : 1979.10.07 : Rencontre œcuménique à Washington, 3 ; 1980.05.29 : XV^e Assemblée générale de la CEI, 3 d ; 1980.06.02 : à l'UNESCO (Paris), 12; 1981.12.12: pour le 450^e anniversaire de N.-D. of Guadalupe, 6f; 1982.11.29: Congress on public morality, 2; 1982.12.06: to the parliamentarians of Austria, 2; 1984.05.11: to the bishops of Thailand, in Bangkok, 5; 1985.05.24 : Day of Social Communications, 5; 1984.12.01: to the bishops of Argentina *ad limina*, 3 a; 1984.12.07: to the bishops of Bolivia visiting *ad tintina*, 6 a; 1985.10.17: to the bishops of the Philippines visiting *ad limina*, 3 b; 1986.10.17: to the Bishops of Spain in visit *ad Ununa*, 1 f; 1987.04.06: to the leaders of Argentina (in Buenos Aires), 3 b-c-d; 1987.04.08: to the Z. 1. of Córdoba (Argentina), 4 d; 1987.1987.05.27: to the bishops of Rwanda on a visit *ad limina*, 3 c; 1988.05.12: to intellectuals in Santa Cruz (Bolivia), 9a; 1988.05.12: to children in Tarija (Bolivia), 6c; 1988.05.13: to the laity of Santa-Cruz, 5 b; 1988.05.15: to the Bishops of Peru (in Lima), 6 b; 1988.05.16: to the authorities, in Asunción (Paraguay), 4d; 1988.05.17: to the "Builders of Society", *ibid*, 4c; 1988.05.18: to young people in Asunción, 4d; 1988.09.26: to the Bishops of Mexico on a visit *ad limina*, 6b; 1993.06.04: to the Pontifical Council for the Family, 3b; 1994.01.10: to the Bishops of El Salvador, 4c; 1222. 1994.11.12: 2 c (ref. to *DH7*); 1995.03.25: *Evangelium vival*, 73; 1995.11.11: to the Bishops of Argentina, 4 d.

³²¹⁸ cf. H24.1979.09.29 or 10.01: Homily *On this last day*, at Greenpark, Limerick (Ireland); AAS. 1132 ,DC, 868. N° 5.

as abortion³²¹⁹ -"and euthanasia.³²²⁰

As for *DH* 8, like Pope Montini, Pope Wojtyła emphasizes a) the need for solidarity of those who are fortunate enough to enjoy the RL towards those who do not,³²²¹ and b) the educational value of the RL principle.³²²² "

As for the light projected by Revelation on the doctrine of the RL, John Paul II underlines the importance of the *two* chapters of *DH*:³²²³

"In this document not only the theological conception of the problem was expressed, but also the conception from the point of view of natural law, that is to say, from the purely human position, on the basis of these premises dictated from the very experience of man, his reason, and the sense of his dignity. "3250

And he sees in the doctrine of the dignity of the person and the respect due to him the very yardstick by which the quality of a political system is measured.³²²⁴

He deplored all religious wars and inquisitorial coercion:

"Recently, unfortunately, I had to say once again that: "No one can consider that he believes in a great and merciful God if, in the name of that same God, he dares to kill his brother" (*General Audience*, 26 October 1994). *Religion and peace go together*: to wage war in the name of religion is a flagrant contradiction. "3252

"There is another painful chapter to which the sons of the Church cannot fail to return in a spirit of repentance: the consent given, especially in certain centuries, to *methods of intolerance and even violence in the service of the truth*. It is true that in order to judge history correctly, one cannot dispense with taking into careful consideration the cultural conditioning of the time.

3219 cf. 1215. 1993.01.12: to a 1" group of Polish bishops: *ORLF*, 1993.02.02, 4: "It is not a question here of imposing Christian principles on everyone, as some have objected, but of defending the fundamental human right, namely the right to life, a concern which should also find expression in the legislation of the state."

3246cf. 1225" *passim*.

3221 cf. 1116. DC. 408; 1118. 1979.04.13: Way of the Cross *Quando percorriamo...*, in the Colosseum; *IGP# 02/I* (1979), 900-901 ,DC, 405^106.

3222 Cf. 1195.1989.10.13: to the Episcopal Conference of Indonesia (Jakarta), 3 b and 4 b; AAS, 1990, 177; 1207. 1991.06.17: to the Ambassador of Taiwan; AAS, 1992,305.

3223 cf. 1112.1979.03.04: Encyclid. *Redemptor hominis* (especially § 12 and 17); AAS, 279-280; DC, 307-308.

3224 see 1117.2.

In fact, under their influence, many were able to consider in good faith that, in order to bear authentic witness to the truth, it was necessary to silence the opinion of others or at least to marginalize it. There were often many reasons for creating a fertile ground for intolerance, feeding a climate of passion from which only truly free and God-fearing great minds could somehow escape. But the consideration of extenuating circumstances does not exempt the Church from the duty of deeply regretting the weaknesses of so many of her sons who have disfigured her face and prevented her from fully reflecting the image of her crucified Lord, an unsurpassable witness of patient love and humble meekness. From these painful attitudes of the past there emerges a lesson for the future which should encourage every Christian to hold firmly to the golden rule defined by the Council: "Truth is imposed only by the force of truth itself, which penetrates the mind with as much gentleness as power." [DH I]³²²⁵

In the wake of *DH* 13, John Paul II, like all his predecessors since S. Peter, is of course concerned above all (but not only) with the RL of the faithful, with the freedom of the Church to catechize, to evangelize. Peter, is of course concerned above all (but not only) about the RL of the *faithful*,³²²⁶ and the freedom of the Church to catechize, to evangelize.³²²⁷

John Paul II does not see any contradiction between the missionary spirit and the recognition of the RL in all people, any more than did his predecessor, *D.H.* 14.³²²⁸ On the contrary, for the two post-conciliar popes, the RL is the condition of mission;³²²⁹ and in return, this demand for human dignity is drawn from the very truth proclaimed by the Church.³²³⁰ "This respect will have to *accompany* especially the missionary activity."³²³¹ And of course :

" 36. The freedom of the act of faith cannot justify the right to dissent. Indeed, it does not mean freedom from the truth, but the free determination of the person in accordance with his moral obligation to accept the truth. The act of faith is a voluntary act, since man, redeemed by Christ the Redeemer and called by him to filial adoption (cf. *Rom* 8:15; *Gai* 4:5; *Eph* 1:5; *Jn* 1:12), can adhere to God only if, "drawn by the Father" (*Jn* 6:44), he pays him the reasonable homage of his faith (cf. *Rom* 12:1). As the Declaration of *Human Dignitatis* [*DH* 09 10] recalled, no human authority has the right to intervene, by coercion or pressure, in this choice which goes beyond the limits of its competence. The respect of the right to religious freedom is the foundation of the respect of all human rights. However, one cannot appeal to these human rights to oppose the interventions of the Magisterium. [...] "³²³²

Nor is it a question of abandoning the missionary effort:

"It is certainly an error to impose something on the human conscience, but to propose to this conscience the evangelical truth and salvation in Christ Jesus in full clarity and with absolute respect for the free choices it will make, far from being an attack on religious freedom, is a homage to that freedom to which is offered the choice of life which even non-believers consider noble and exalting. This respectful way of proposing Christ and his kingdom is not only a right, but a duty of the evangelizer. In the face of so many humanist conceptions, often locked into a vision of man that is strictly economic, biological and psychic, the Church has the right and the duty to proclaim the truth about man, a truth she has received from her Master himself, and to work so that Christ, God's gift to the world, may find a place in the life of individuals, of States, of continents, in the life of the whole of humanity."³²⁶¹

Like Paul VI, John Paul II often demands this freedom from national and international political authorities,³²⁶² and from the leaders and representatives of various religions;³²⁶³ | deplors all violations of it.³²⁶⁴ In the same document, the Pope further emphasizes the special place of the RL among human rights: The RL "is the basis of all other freedoms "³²⁶³

³²²⁵ 1221.. § 35: AAS. 1995,27; DC. 1994. 1026.

³²⁵³ Cf. 1108; 1114. JOHN PAUL II, 1979.03.19: Letter *Cum superioris mensis*. to Card. J. Sliipy; AAS. 526; DC. 505 ; 1116. ; 1147. 1981.12.25: Christmas message Urbi et Orbi. *In quext'ora*: AAS. 1982. 323; DC. 1982. 79.5; 1151.1983.08.14: *Gentle Sermon tonight* at Lourdes, § 6; AAS. 1984,32-37.

³²²⁷ Cf. e. g. 1109. JOHN PAUL II. 1979.01.23: to the Permanent Council of the CIS; AAS. 362-367; DC. 213 :1128.

³²²⁸ Cf. 1156, n° 6, § 2.

^{S25} ? cf. 1217. JOHN PAUL II, 1993.02.03: to the bishops in Cotonou (Benin). § 10: AAS. 941.

³²³⁰ Cf. 1110. JOHN PAUL II. 1979.01.28: in Puebla to CELAM: AAS, 195-196. 198,111. 1. §2 and 199: DC, 164 172; *John Paul H / DDH*. 96-98: "The Church possesses, thanks to the Gospel, the truth about man..., the Church has the right and the duty to proclaim the truth about man, a truth which she has received from her Master, Jesus Christ. God grant that no external coercion should prevent her from doing so!

³²³¹ 1113. JOHN PAUL II. 1979.03.12: to Jewish organizations; *IGPI* 02/1 (1979). 530; DC. 333-334; *John Paul II / DDH*. 142: "Here is another important reflection: 'In view of her divine mission and true nature, the Church must proclaim Jesus Christ to the world' (AG 2). In order to avoid that the witness given to Jesus Christ appears to the Jews as an offense, Catholics must be concerned to live and proclaim their faith with the most rigorous respect for religious freedom, as taught by the Second VATICAN Council (*DH*).

³²³² | 199. ; DC, 1990, 699-700. See also other declarations of the CRC, in particular 1167; 1190.

and must be "respected everywhere and by everyone" 3266 It occupies in "the list of human rights" "a key position";³²⁶⁷ it is "the ultimate foundation of the whole question of human rights";³²⁶⁷ it is "the ultimate foundation of the whole question of human rights";³²⁶⁸ it is the "ballast" of the other freedoms,³²⁶⁹ their pillar,³²⁷⁰ their source,³²⁷¹ their "touchstone",³²⁷² [their cornerstone,³²⁷³ their "benchmark and, in a way, [...]³²⁷⁴ Hence the importance of *DH as a* means of diplomatic dialogue with all those who accept LR at least in principle,³²⁷⁵ and even with the communists, especially the British. 3276 Moreover, unlike his predecessor, John Paul II on the one hand often couples the RL with another right which he calls "freedom of conscience",³²⁷⁷ _{sur} for which he will explain himself

3261 1156, § 6; cf. the overall theme of 1201/D. JOHN PAUL II, 1990.12.07: Encycl. *Redemptoris missio*, on the perennial validity of the missionary command; AAS, 1991, 249-340; DC, 1991, 152-187. See no. 8 (2 citations from DH2); 39 (1 reference to DH 3-4). The theme is taken up again, for example, in 1136.

3262 E. g. 1128.; 1137.; 1142.; 1147.; 1149. JOHN PAUL II. 1983.01.15: to the Diplomatic Corps. § 10; AAS. 381; 1172.1987.05.04: Homily *Gnade sei mit euch*. in Speyer. no. 6-8; AAS, 1988.332-333; DC, 1987,590, § 7. 3263 Cf. 1197.

3264 Cf. e. g. 1162. JOHN PAUL II, 1985.08.12: to the personalities of Cameroon, no. 13c; AAS, 1986. 51; 1182. 1988.03.26: to the colloquium "believers in the USSR". §2; *IGPII* 11/1 (1988), 771-773; DC, 492493; 1192. 1989.03.26: Easter Message, n° 6 -, *IGPII* 12/1 (1989), 664; DC, 419.

3265)03. ; 1140.; 1179.

3266 1103.

3267)1108.

3268 1157. 1984.09.19: to personalities in Ottawa; French and English orig. AAS, 1985,427; DC, 1984,982,7 b. Cf. also 1207/A. 1991.07.10: to the President of the Mexican Republic -. *JGPII* 14/2 (1991), 74 (all about the RL).

3269 | 9i. and JOHN PAUL II, 1985.01.04: to the ambassador of Benin; *JGPU* 08/1 (1985), 21.

3270] 192/B. JOHN PAUL II, 1989.06.05: to the Paasikivi Society (on the RL; see especially § 2); AAS, 1346; DC, 6S1; 1201.1990.06.16: to the bishops of Malaysia etc.. AAS. 1991,94.

3271 Cf. 1204. *Centesimus annus*. 9 and 47; DC, 522-523: "source and synthesis". quoted again by 1208/B. 1991.11.15: to the ambassador of the Fiji Islands *VGP11/4/2* (1991), 1156.

3272)1104; 1220; 1180. 1988.02.13: to the bishops of Sudan -.AAS. 1217 -.ORLF, 1988. n° 10.10.

3273 ¹ *Pietra angolare* in the ital. of 1176. AAS. 1988.278 (DC. 1-2); and from 1202.1990.12.08: Message for the World Day of Peace; AAS. 1991. 411 (§ V); DC, 55-56; "Cornerstone" in the English of 1203., and of 1214/B. 1992.11.28: to the ambassador of Nepal *JGPII* 15/2 (1992), 753-754.

3274)1176. ¹ *isule*

3275)CL 1122. JOHN PAUL II, 1979.06.23: to 13 bishops of Tamil Nadu; AAS, 1010.

3276 Cf. 1121. JOHN PAUL II. 1979.06.05: to the POLISH SPLIT in Czestochowa; DC. 620-621.

3277 E. g. 1101; 1131. JOHN PAUL II, 1980.01.14: to the Diplomatic Corps (§4); AAS. 82; 1132. 1980.02.24: Letter *Dominica: cemt*, to all bishops; AAS, 130; DC, 305, no. 8; 1133: *JGPU* 03/1 (1980), 1192, §6, in particular: "The Church believes - without any hesitation - that an atheistic ideology cannot constitute the force

On the other hand, he no longer seems to be as concerned about seeing RL confused with religious indifference, although he warns against relativism resulting from the promiscuity between religions.³²³³ Finally, in the CCC, he provides various clarifications likely to avoid misunderstandings, notably on the common good (n° 1905-1909), on religious obligation (n° 2105), and especially on the foundation (n° 2106), the object (n° 2108) and the limits (n° 2109) of the RL.³²³⁴

Appendix: The RL at His Holiness Pope Benedict XVI

Finally, it would be premature to summarize the teaching of His Holiness Benedict XVI during the first six years of his pontificate. We must be content here to provide the references of the most important documents.³²³⁵

BENEDICT XVI, 2005.09.29: Message for Lent 2006;³²³⁶ BENEDICT XVI. 2005.12.04: Angelus; 40 years of *DH*; BENEDICT XVI. 2005.12.22: Address to the Roman Curia (capital); BENEDICT XVI. 2006.12.08: Message for the World Day of Peace, January 1st, 2007 (see § 4); CDF, 2007.12.03: *Doctrinal note on certain aspects of evangelization*³²³⁷ BENEDICT XVI, 2008.04.20: Homily at Yankee Stadium. Bronx. New York; BENEDICT XVI. 2008.04.30: General Audience (about the trip to the USA); Benedict XVI, 2009.05.20: General Audience (about the trip to the Holy Land; passage on the RL in Jordan); BENEDICT XVI, 2009.06.29: Encyclical Letter *Caritas in veritate*, to bishops, priests and deacons, consecrated persons, lay faithful, and all people of good will, on integral human development, in charity and truth; Benedict XVI, 2009.07.10: Address to the new Mexican ambassador to the Holy See; Benedict XVI, 2010.06.06: Address (at the Sport Centre in Nicosia) for the handing over of *Vinstrument Laboris* of the Special Assembly for the Middle East of the Synod of Bishops; BENEDICT XVI, 2010.06.13: Angelus (in reference to the closing of the Year of the Priest; the priest as a factor of LR); BENEDICT XVI, 2010.09.30: Post-synodal Apostolic Exhortation *Verbum Domini*. on the Word of God in the life and mission of the Church: § 120: Benedict XVI, 2010.12.08: Message for the 44th World Day of Peace (1st January 2011): *Religious Freedom, the Way to Peace*; BENEDICT XVI, 2011.01.10: Address to the Diplomatic Corps accredited to the Holy See (the text focuses on the violations of the RL of Christians by non-Christians, especially in Muslim countries).

driving and guiding force that enables the welfare of individuals or the promotion of social justice when it deprives man of his God-given freedom, spiritual inspiration and power to love his fellow men adequately." *Innotre trad.*; 1137.; 1219. bis. JOHN PAUL, 1994.04.13: at the general audience; *OR*, 1994.04.14; *DC*. 1994, 503-504, n° 5.

CONCLUSION OF SECTION B

I) Since 1963, the right to Religious Liberty has been taught consistently by four successive popes (one of them in Council), who, depending on the person to whom they are addressing it, sometimes call it "religious liberty" and sometimes "freedom of conscience and religion". It is presented as a doctrine of the Church, a fundamental principle of individual and political morality, and the foundation of other human rights in society. It is also insisted on distinguishing it from a simple freedom of worship, where the State would show itself

³²³³ Cf. 1156; 1158; 1176; 1185; 1211. JOHN PAUL II 1992.03.25: Exhort. *Pastores dabo vobis*; AAS. 667; DC. 454-455: "The presence in the same territory of substantial groups of people of different races and religions is a very important phenomenon, even if it is relatively recent in many countries of ancient Christian tradition. Thus a multiracial and multireligious society is developing. If this phenomenon can be the occasion, on the one hand, for a more frequent and more fruitful exercise of dialogue, for an opening of minds and experiences of welcome and just tolerance, it can, on the other hand, be a source of confusion and relativism, especially among persons and groups with insecure faith. On relativism, cf., also 1219. On relativism, see also: *Veritatis splendor*, 1; *IGP11* 16/2 (1993), 157; and CDF. 2000.08.06: *Dominae Jesus*.

3234 CCC, *The Ten Commandments. The Social Duty of Religion and the Right to Religious Freedom*, nos. 2104-2109. paragraphs all cited elsewhere in this book.

3235 We omit the texts issued by dicasteries of the Curia that do not fall under the magisterium of the Pope, or by representatives of the Holy See in international bodies, and which can be found, together with extracts of papal texts, in our 3rd complete edition (2011), t. II/A (end).

3236 This document is on the Vatican website, as are all the following.
3282orig. lat. : AAS. 2008,489-504; French translation: Vatican website.

indifferent, even hostile to religion,³²³⁸ and would reduce the manifestations of this one to the worship itself: it is necessary that religion can be translated into charities, into schools, into associations and communities with a religious goal, and even impregnate public life, and not be relegated to the sacristies or to the homes, or, worse still, in the forum of consciences.³²³⁹

II) LCC and LR have different foundations, purposes and limitations:

a) *Different foundation*: the CLC was based on the absolute sovereignty of the nation as the source of all authority and law, from which derives the absence of an objectively imposed moral obligation on conscience (individual and collective, depending on whether it was rationalist, naturalistic or mixed liberalism) in religious matters, whereas *DH(l & 3)* recalls the absolute sovereignty of God, from which derives the moral duties of individuals and societies, and thus rejects the religious relativism of individuals and societies. Thus, *DH's* RL is based on the dignity, not the autonomy, of the individual.

b) *Different object*: since the LCC was based on the absence of moral obligation, it consisted in the *right-permission* to act and to act *as one wants* in religious matters; the LR of *DH*, it consists in the right not to be prevented from acting *as one must, in the way that this duty imposes itself on the conscience*.

c) *Different limits*: the CLC was limited by the public order *determined by law, the expression of the sovereign general will*; the LA of *DH*, on the other hand, is limited by the public order *determined by objective moral criteria* concerning public peace ("convivence" in true justice), public morality, the rights of all (including those of the Church, therefore).

3238 Cf. 0627.1: BP 06,280. and 1203/A, JOHN PAUL II, 1991.03.23: to the International Union of Lawyers; *IGPII* 14/1 (1991), 629-632. See the whole text, especially, n. 2 a-3 (pp. 630-631); 1209/B. *IGPIt* 15/1 (1992). 149.

³²³⁹ Cf. e.g. 1192/B. : A4S, 1989,1346; DC, 682.

GENERAL CONCLUSION

The universal Church has never positively denied, and indeed, in the sense that we have made clear in these pages, has always recognized man's natural *right* to the civil liberty necessary to fulfill his obligations to God in accordance with what his conscience dictates. However, *the moral abuse* that man may have made of this freedom by refusing to fulfill his obligations, or by fulfilling them in an erroneous manner, has not always been considered as fully protected by law (neither natural nor ecclesiastical). In fact, if on the one hand the Church has continually and explicitly taught since its beginnings the right of the unbaptized not to be forced to embrace the faith, not to be prevented from educating their children even in error (pagan or Jewish), or from discreetly practicing their non-baptized cult, on the other hand, it did not consider as protected by law either the propaganda of defective religions in Catholic countries, or any form of adherence to religious error by the baptized. What prevented her from proclaiming that the wrongdoers (especially the baptized) were also holders of the right, even before a state "holder of the truth", was not that she was wrong to believe that civil society was capable of *submitting to* the truth, but that she rightly considered that these holders were abusing this right in a way that was not only *moral*, but also *legal*. It could not be otherwise in a world where the natural right to religious freedom had not yet been recognized with *reciprocity* in the law of nations. It followed that any propaganda in favor of error to the holders of the truth was a danger to the *religious liberty itself of Catholics*, and therefore constituted a *juridical* abuse of the right to RL and was punished as such by the "Catholic State, and not only Catholics as holders of the right not to be prevented even in public from following one's conscience in religious matters, is not in contradiction with reason, nor with Tradition, nor with the magisterium or the previous practice of the Church. Nor is it an endorsement of the liberal theory of freedom of conscience and worship. Rather, it is the effect of an awareness of the dignity of the person, requiring a new law of nations, which in turn means that the expansion of religious error in a Catholic setting is no longer automatic.

The Church's position is no longer so contrary to the freedom of the Church and of Catholics, and no longer so radically attacks the right of Catholics to the truth.

This social and civil freedom is the object of a negative subjective right. And this negative subjective right, like any subjective right, protects the moral (not legal) abuse of it. In the case where the acts performed under the pretext of this right remain *only moral* and not legal abuses of the right, they cannot, by definition, be punished by legal means. They therefore fall into the category of circumstances in which God gives *no right* to prevent error and evil.

While in ancient times the state was legally competent in religious matters and regulated the question of coercion in religious matters itself (under the direct guidance of God in the Jewish theocracy), since the death of Christ the religious domain has been the exclusive competence of the Church. Neither Jesus nor the Apostles envisaged the use of coercion in religious matters. At the time when the Church did not yet have the secular arm, and was persecuted by the pagan state, she invoked the natural right to freedom of religion without ulterior motive. When she finally had the secular arm at her disposal, she asked it to protect her against those who, as experience proved, were attacking her rights: pagans, heretics and schismatics, even Jews. When, in Christendom, following the collapse of the Roman Empire, the taking in hand and the reconstruction of civilization by the Church, faith became part of the temporal common good itself, to the point of constituting the very foundation of common life, and notably of public morality, experience proved that heretics could not exercise their freedom without damaging not only the supernatural right of the Church-authority to obedience, but also the rights of temporal society itself and the secular rights of the Church-authority and of Catholics. 11 There followed a principled suppression of heresy by the secular arm. Thereafter, as the state became more and more independent of the church, faith became less and less a part of the very constitution of civil society, and the state encroached more and more on the exclusive religious powers of the bishops. The lack of reciprocity among heretics continued. Thus, the hard wars of religion and their aftermath slowly made Christians aware of the untenable nature of a law of nations without reciprocity in the matter of religious freedom. Unfortunately, it also created disaffection with Christianity and the demand for a civil liberty all informed by moral liberty (obligation!).

This latest "freedom of conscience and worship" (LCC), as little respectful of the freedom of the Church as had been the heretics of earlier times, could not but be condemned by the Church. In the meantime, society was becoming de-Christianized, and it was necessary to become aware of the possibility of an error of good faith in religious matters even in a country of Catholic tradition. While maintaining the ideal of a Catholic society organized as a Catholic state, the popes began to elaborate a theory of true freedom of conscience, based on the moral obligation deriving from the dignity of the human person. However, faced with the aftermath of the naturalistic positivism of the DDHC, in a word, with totalitarianisms, the Church was led to accentuate her study of the dignity of the human person and its relationship with social and civil freedom. The Second World War, during which the most barbaric and tyrannical systems mercilessly crushed all human dignity, was the catalyst for an awareness of humanity as a whole, and for a modification of the law of nations (inter-national and inter-religious), which received its ecclesial consecration in the encyclical *Pacem in terris*. This achievement was unambiguously specified and the Church entered into the great negotiation of the law of nations in the matter of LR with the *DH* Declaration, taken up, made explicit and applied by Popes Paul VI and John Paul II

Contrary to what the preconiliar and conciliar discussions predicted, and to what many commentaries assume, this Declaration in no way calls into question the ideal of the Catholic unity of society and the consequent duty of the state-society to recognize the *truth* of Catholicism, and in this case of the state-power to take it into account in the search for the common good, and not merely for socio-historical reasons. This does not entail the claim of civil privileges in addition to the recognition of these duties towards the truth.

The Church does not, therefore, base the right to RL on individual, social or state indifferentism, but on the dignity of the human person and on the obligation, the right and the freedom to search for the truth that derive from it. Nor does it base this right on the sincerity of the subject's conscience. This is the *end* and not the *foundation* of the right, whose field of exercise is intrinsically determined in *DH 2*. The difficulty then arises of the effective exercise of the right, which could be limited in case of abuse, not only moral, but juridical, the juridical abuse having to be determined in its turn according to objective moral standards. Without ever denying the civil freedom to seek and practice religious truth, it is the abusive exercise of this freedom that the Church has sometimes repressed. It is to be regretted that in the past the inferiority of the law of nations led much more easily than in our day to the legal abuse of this right by the *holders* of this right, and thus to its repression by *passive subjects*. But the present law of nations makes it possible to no longer consider every infraction of the truth (objective, or what is taken for it) as a legal abuse, and this is to be welcomed. The Church will thus no longer have the unpleasant obligation to use force to defend itself from error, at least insofar as "error" is willing to respect the just public order, and especially the reciprocity clause. The practical difficulties will have to be smoothed out more by concertation than by force. All things considered, while it is regrettable that the Churchmen of the past did not know how to better and more fully perfect the law of nations of their time, the Church cannot be accused of having taught or practiced in the past the opposite of the principle of the LR which it proclaims today.

Pope John Paul II, in his *Motu Proprio Ecclesia Dei*, declared:

« [...] l'ampleur et la profondeur des enseignements du Concile Vatican II requièrent un effort renouvelé d'approfondissement qui permette de mettre en lumière la continuité du Concile avec la Tradition, spécialement sur des points de doctrine qui, peut-être à cause de leur nouveauté, n'ont pas encore été bien compris dans certains secteurs de l'Église. »¹²²

Nous voudrions par le présent travail avoir offert aux chercheurs des matériaux utiles en vue de cet « effort renouvelé d'approfondissement ».

Après ce long examen de la doctrine de l'Église, nous nous sentons poussés à rendre grâce à Dieu, à le prier pour l'unité de tous ses enfants et par-dessus tout à contempler la beauté de son dessein d'amour destiné à être accompli librement par chacun d'entre nous.

Le Barroux, June 29, 2005, Solemnity of the
2011, dies natalis of Saint Thomas eV AhCYMtrK,

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3285 1184. Here 5b; AAS. U91 -. DC.

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TABLES AND INDEX

The system of abbreviations we use for the presentation of bibliography titles is quite simple. For details, see LRTC, vol. II/A, section 0.1. The present abridged edition has deleted the *chronological and anthological bibliography* of **sources** or *auctoritates* (documents of the Church Fathers, Theologians and Doctors, Popes and Councils) (our former t. II/A), and the appendices (former t. II/B). The chronological list of sources is found in the index, in the section with 4 bold numbers. One will thus find hereafter only a condensed version of our former t. III, alphabetical, in three parts:

I. The alphabetical table of *abbreviations and acronyms of the names of biblical books*, dictionaries, encyclopedias, bibliographies, journals, collective works, and other working tools (used or simply reported).

II. The alphabetical table of studies, or *bibliography* proper. This one, *in a single alphabetical list*, includes, in the present abridged edition, only two categories of works actually cited in support of the reflection: 1) *important* works (indicated by a triple asterisk 1***); 2) works only *cited*.

III. The index of authors, works and documents cited. This index includes first, in *numerical* order, the serial numbers of the source documents (Tradition and Magisterium), indicated by four bold numbers, followed by a dot; then, in a unique *alphabetical* order, the *incipits* of these documents (in italics), the abbreviations of the names of the biblical books, and finally the names of the authors (in small capitals, with the date of their article or their book)

The numbers referred to in the index are those of the pages: and they are written in italics when the object referred to is mentioned in a footnote, in bold, when the object in question is a text quoted literally on the page indicated, and finally in bold italics, when the text is quoted literally in a footnote.

1. ABBREVIATIONS AND ACRONYMS

1° Table of scriptural abbreviations

<i>Gen</i>	<i>Genesis</i>	<i>Mc</i>	<i>Marc</i>
<i>Er</i>	<i>Exodus</i>	<i>The</i>	<i>Luc</i>
<i>Lev</i>	<i>Leviticus</i>	<i>JH</i>	<i>John (gospel)</i>
<i>DI</i>	<i>Deuteronomy</i>	<i>Act</i>	<i>Acts of the Apostles</i>
<i>Sum</i>	<i>Samuel (1 and 2)</i>	<i>Rom</i>	<i>Romans</i>
<i>Rs</i>	<i>Kings (1 and 2)</i>	<i>Cor</i>	<i>Corinthians (1 and 2)</i>
<i>Chr</i>	<i>Chronicles (ParaUpomenes)</i>	<i>Gai</i>	<i>Galatians</i>
<i>Mac</i>	<i>Maccabees</i>	<i>Eph</i>	<i>Ephesians</i>
<i>Ps</i>	<i>Psalms</i>	<i>Fold</i>	<i>Philippians</i>
<i>Prov</i>	<i>Proverbs</i>	<i>Collar</i>	<i>Colossians</i>
<i>Qoh</i>	<i>Ecclesiastes (Qohelet)</i>	<i>Thess</i>	<i>Thessalonians</i>
<i>Cl</i>	<i>Song of Songs</i>	<i>Tim</i>	<i>Timothy (1 and 2)</i>

<i>ON</i>	<i>Wisdom</i>	<i>Tit</i>	<i>Tite</i>
<i>Sir</i>	<i>Ecclesiasticus (Sirach)</i>	<i>Heb</i>	<i>Hebrews</i>
<i>Iset.Jér</i>	<i>Isaiah, Jeremiah</i>	<i>I</i>	<i>Jacques</i>
<i>Ez</i>	<i>Ezekiel</i>	<i>1.2 P</i>	<i>Peter (epistles)</i>
<i>Dan</i>	<i>Daniel</i>	<i>! Jn</i>	<i>John (epistle)</i>
<i>Ml</i>	<i>Matthieu</i>	<i>Apoc</i>	<i>Apocalypse</i>

2° Table of other acronyms and abbreviations

A*

A. (P)
A.S

A. = the author [of the work in question].
*Acta Synodalia Sacrosancti Concilii Oecumenici Vaticani II. Typis polyglottis
Vat" 1970...32H6*

32X6 i. v begins the publication of the minutes of the conciliar commissions. LRTC was already in press when we received vol. VI/III: *Acta Secretariat Generalis, Periodus Tenta MCMLXIV*, Typis Vaticanis, 1998. 757 p" which adds interesting elements for a historical study of the genesis of *DHm* 1964: - As to the composition of the SUC: 16; 64; 70; 72. - As to the composition of the Conciliar Theological Commission: 25; 38-39; 84-85; 181. - Regarding the meetings of the SUC: 48; 49: plenary sessions from February 24 to March 7 (Ariccia. Rocca di Papa); meetings of experts: from February 3 to 24 (Monte Mario, Roma). - On the theme of the RL or on the *DH* scheme: 108: on March 12, Card. RITTER complains to the Pope that the schema has not been accepted as a basis for discussion; 113-122: 30 March, memorandum of M^A Pietro PAVAN to the Pope on the RL in the constitutional law of modern States (main contribution of this volume of the A.S.): M^S ' DELL'ACQUA on 6 April sends a photocopy of the brief to M^I ^ FEUC1 (130), who acknowledges receipt on 11 April (133); 243-245: M^M CABANA, Archbishop of Sherbrooke, complains to the pope about the interpretations that some conciliar experts draw from the schemes of *DH*. and about the imprecision of these schemes: letter identical to a petition sent to the pope (on 16 Sept.) by NN. SS. Hannibal MüNOZ-DUQUE, de PROENÇA-S10AUD, GROTTI, DE CASTRO MAYER, CUN1BERTI, and 5 others, less known (339-340); 417: M^M Angelo DELL'ACQUA, Substitute, asks M^M FELICI to have the schema revised by enlarging the drafting commission to theologians and sociologists. See, in appendix, 418,2

- A4 VATICAN II, 1965.11.18: Decree *Apostolicam actuositatem*.
- AA.VV. Various authors. Collective work.
Acta Apostolicæ Sedis
- AAS AA. W., ABBOTT Walter, M., SJ. (ed.), and GALLAGHER Joseph, (ed.), *The Documents of VATICAN II*, New York, America Pr. / Guild Pr. / Herder and Herder etc., 1966, 792 pp.
French Academy.
- Acad. Franc. AA. W., *Acta Congressus internationalis de Theologia Concilii VaticaniII* (Romæ diebus 26 sept. - 1 oct. 1966 celebrati), moderated by Édouardo DHANIS, SJ, ed. Adolphus SCHÖNMETZGER, SJ, [Civitas VaticaniJ, Typis polyglottis Vat. 1968, lxxvii-814p.
Acta et Documenta Concilio Oecumenico Vaticano II apparando...., Series 1 (Antepreparatoria).
Acta et Documenta Concilio Oecumenico Vaticano II apparando.... Series 11 (Præparatoria), 31. in 7 vols, Typis Polyglottis Vat. 1964-1969.
- ADI *Action Familiale et Scolaire*, Paris.
VATICAN II, 1965.12.07: Decree *Ad Gentes*.
- ADII
- AFS notes of PAUL VI: 24.IX.1964: "The scheme '*De liberiate religiosa*' does not seem to be well prepared" and 29.9.64: "The scheme '*De liberiate religiosa*' must be redone, associating to the Commission some other competent persons, especially in theology and sociology." (our transl. of fori®. itai.); 431: a note from the General Secretariat of the Council on the evolution of the debates (7.10.64), which seems to demand an extension of the 3^d period of the Council; 440-441: finally appears the official text of the famous letter of the 14 cardinals (11 Oct. 1964) complaining to the Pope that the scheme on the RL be submitted to a future mixed commission, of which 4 members (out of 10) had already been appointed [by M®¹ FELICI], among whom 3 were opposed to the majority. In the appendix (441), an annotation from Paul VI: "13.X.1964. Parlato al card. Frings." This is followed (441-442) by a note from M®¹ DELL'ACQUA (October 11), in which it is learned that M®¹ WILLEBRANDS intervened to have M®¹ Marcel LEFEBVRE removed from the list of 4 proposed members. This is followed (442-443) by a *Note on the situation of the scheme of liberiate religiosa* (October 11, 1964) written in French, shown to the Pope, and sent by Card. A. G. CICOGNANI to M®¹ FELICI, and where W. complains again about the "three opponents to the scheme"; 501: Note of Pope PAUL VI "*About the revision of the Schema De liberiate religiosa - Circa la revisione dello Schema De libertate religiosa*" (6.XI.1964): "The definitive redaction has to have the approval of the pope, before being printed and distributed. The Pope wishes that the text be reviewed by the Commission - La redazione definitiva deve avere l'approvazione del Papa, prima che sia stampata e distribuita. Il Papa desidera che il testo sia rivisto dalla Commissione "De doctrina iudei et morum." With great care and benevolence. Con grande sollecitudine e benevolenza." Follows the Rescriptum. 7-XI-64 of Card. CICOGNANI: "I warned His Excellency M®¹ WILLEBRANDS of this last night. We can repeat it to him, given the imperative order given by the Holy Father"; 522: Letter from M®¹ WILLEBRANDS to M®¹ FEUCI (Nov. 2, 1964) sending him the outline, the RS and the RO to be printed and sent to the Fathers; 525: M®¹ F. acknowledges receipt of the outline, announces that it is in press, and that the proofs will be sent to M®¹ W. 530: Notes of PAUL VI on the schema *De liberiate religiosa*: 15-XI-1964: "It must be submitted to a vote. It is to be expected that it will be approved. But there will be "amendments" to be examined. This implies the postponement of the definitive approval to the 4^e session. - Has it been examined theologically? - Perhaps some other amendments are required. È da sottoporre alla votazione; e si prevede che sarà approvato. Vi saranno però i "modi" da esaminare. This includes the return to the fourth session for the final approval. - È stato esaminato in sede teologica? - Forse qualche emendamento è ancora richiesto." Under which M®¹ W. adds: "Fully agree. - Pienamente d'accordo"; 564-565: Card. Norman Thomas GILROY, from Sydney, thanks (Nov. 24) the Pope for his desire to put the scheme to the vote; M®¹ FELICI answers him on Dec. 15 (597) that the scheme will be discussed on the 1st days of the 4th session; 604-605: M®¹ DELL'ACQUA transmits (Dec. 16) to M®¹ FEUCI the desire of M®¹ VAGNOZZI, nuncio to the USA (cf. his letter of Nov. 30), to know the exact number of the members of the Council., to know the exact number of requests sent by the bishops to the Pope concerning the future declaration on the RL, following various figures put forward by the press (800. 1000, 1400...); 610: M®¹ FEUCI answers (Dec. 17) to M®¹ V. that the number of the "callers" signatories of the petition is exactly 441; 634: M®¹ FEUCI addresses (Dec. 28) to the pope a "prò memoria" on the work project of the 4th period. The "*De liberiate religiosa*" is the 1st foreseen on the list of the schemes to be discussed.
- In 1999 the last volume of the coll. was published: A.S. VI/V. On the RL. see p. 51, 68, 135. n° 7; 212-213; 276 277 (autograph note of PAUL VI); 278: 281; 312; 319; 354; 360 :374 :465 :480:481; 496; 497; 498; 499 (note of PAUL VI); 500; 501: 561; 570; 579; 617 (note of PAUL VI, with S 48 :618 (note of PAUL VI); 684; 830.

- ALBERICO ALBERICO Giuseppe (din). *Les Candies œcûmêniques*, Paris, Cerf, 1994, 3 vols.
German(s).
Alloc. speech.
AmEccIRAmerican *Ecclesiastical Review (The)*, Philadelphia, New York.
Amer America.National Cat. Weekly Review, New York, 1913...
Ang. English(s).
AnGregAnalecta Gregoriana [coll.], Romæ, PUG.
Antonianum *Antonianum*.Quarterly of TAntonianum, Roma.
apostl. apostolic.
Archev. Archbishop.
art. article(s).
ASSActa *Sancta: Sedis*. 41 vols. Romæ, Typis polyglottæ officinæ S. C. de
Propaganda Fide and P. Marietti, 1865-1908.
AUCÉ AUGÉ Cl(dir.), *Nouveau Larousse illustré. Dictionnaire universel
Encyclopedic*, 71. in 8 vols. 11925J.
AUVRAY AUVRAY L. (ed.), *Les Registres de Grégoire IX*, Paris, Fontemoing, 1896-1955,
41. in 3 vols.

B*

- Augustinian Library*, Paris.
Biblioteca de Autores Cristianos, coll. of La Editorial Católica (EDICA), then independent publisher, Madrid, 1944...
Vatican Council II. *Constituciones. Decrees. Declaraciones. Documentos pontificio^ complementarios*, MORCILLO-
GONZÁLEZ Casimiro, M* (Pref.), Madrid. Editorial Católica, 1964',875 p.; 1965-, xiv-917 p. (BAC252).
Vatican Council II. *Constituciones. Decretos. Declaraciones*, Ed. bilingue patrocinada por la Conferencia Episcopal
Española, SUQUIA-GOICOECHEA Angel, card. (Pref.), Madrid, LAC, 1993, xi-1295 p. (LAC 526).
BA BAC BARBIER E., *Histoire du catholicisme libéral et du catholicisme social en France depuis le
Concile du Vatican jusqu'à l'avènement de S. S. Benoît XV (1870-1914)*, 5 vol. + tables, Bordeaux.
IBC 252 Cadoret-Delmas, 1923-1926.
BATTACUA S., *Grande dizionario della lingua italiana*, Torino. UTET, 1966...
LAC 526 BELLOCCHI U., (ed.), *Tulle le encicliche e I principali documenti pontifei emanati dal 1740*, LEV, 1993...
BERGIER N. S., *Dictionnaire de Théologie*, in *Encyclopédie théologique*. Pans (Petit-Montrouge),
Migne, 1850-1851, t. 32-35.
BARBER BIHLMeyer K. and TUCHLE H., *Histoire de l'Église*, Mulhouse, Salvator/Paris-Toumai, Casterman,
1962-1967, 4 vols.
National Library (Paris).
Official Bulletin of the District of France. Society of Saint Pius X.
BATTAGLIA BELLOCCHI BOISTE P.C.V., *Dictionnaire Universel de la langue française, avec le latin et les étymologies*, Paris,
Verdière, 1819*.
BERGIER BOUDOU A., *Le Saint-Siège et la Russie. Their diplomatic relations in the XIX^e century*, Paris, 2 vols. t.
1: 1814-1847, Plon-Nourrit, 1922, 580 p. and t. II: 1848-1883, Spcs, 1925. 566 p.
BIHLMeyer & TUCHLE BOUILLET M. N., *Dictionnaire Universel des Sciences, des Lettres et des Arts*. Paris, Hachette, 1880³,
1817+29 p.
BN BOFSPX Boiste Aux éd. de la Bonne Presse, Paris, orig. + trad. franç. des actes des papes, LÉONXIII ; Pu- X, PIE XI ;
BOUDOU PLEXH. *Dictionnaire pratique des connaissances religieuses*, BRICOUT J. (din), 6 vol. + JACQUEMETG. (din), 1
supplementary volume (1929-1933), Paris, Letouzey et Ané, 1925-1928 + 1929-1933.
BOUILLET
BP
BRICOUT

ABBREVIATIONS, 579

- Paris, Belles Lettres (Coll. *des Universités de France published under the patronage of the Association Guillaume Budé*).
- Bude** *Bullariutn Romanum*. ... TOMASSETTI Aloysius (ed.). Augusta Taurinorum (Turin), S. Franco, etc., then Neapoli (Naples). H. Caporaso, 1857-1883, 24 vols.
Bullarii Romani Continuatio..., Prati, Alberghettus, 1840.
- Bullarii Romani continuatio*..., ed. BARBÉRI A.
- Bulletin des Amis du cardinal Daniélou*, Neuilly-sur-Seine.
- BullDanielor* AA. Vv., *Religious Freedom 1965-1975*, ed. BURGHARDT W. J., Woodstock Theological Center, New York / Ramsey (N.J.), Paulist Pr., 1976,74 pp.
- BURGHARDT**
- Canonicus, -a, -um; canonical; canonico; canonica; canônico.
capitulum(a), capitulo(i), capitulo(s)
cardinal.
- Can.**
cap. card.
- CAPRILE** CAPRILE G., *Il Concilio Vaticano II*, Roma, La Civiltà Cattolica, 1965-1969, 5 L in 6 vols.
Catholic(s); catholicus, -a, -um...; Catholic(s); católico(s); católica(s); cattolico, -i, -a; cattoliche...
Catechists, Paris.
Catholica, Paris, bimonthly, 1987...
Catholicism, yesterday-today-tomorrow.
- Cat, cat.**
- Catechists Catholica** CATTIN Paul, O.P., *Spiritualité sacerdotale. Documents pontificaux sur le sacerdoce de PIEIX à JEANXXIII*, Paris/Fribourg, éd. Saint-Paul, 1964, 224 p.
- CATTIN** CAYRÉ F., *Patrology and history of theology*, Paris-Toumai-Rome, Société de S. Jean l'Evangéliste, Desclée, 1947 -1950¹², 3 vol.
Corpus Christianorum, Series Latina.
VATICAN 11, 1965.10.28: Decree *Christus Dominus*.
Code of Canon Law or Codex Iuris Canonici (of 1917 or Pio-Benedictine).
Code of Canon Law or Codex Iuris Canonici (of 1983) p287
- CAYRE** CONGREGATIO PRO DOCTRINA FIDEI (see also SCDF).
CONGREGATIO PRO DOCTRINA FIDEI, *Documenta inde a Concilio Vaticano Secundo expleto edita* (1966-1985), LEV, 1985, xxv-303 p.
Catechism of the Catholic Church.
VATICAN 11 ECUMENICAL Council, *Constitutions, Decrees, Declarations, Messages*, French and Latin,
- CCSL CD CDWICICV7**
CDCB3 / C/C83 CDF
CDF, Documenta
- CEC**
Centurion-Vatican /I
- Vatican II GC**
- CHANTREL** tables, Paris, ed. Centurion, 1967-11966h 1012 p.
Les Actes du Concile VATICAN II, Paris, Cerf, 1966¹, 3 vols, 269 + 252 + 292 p.
SAINT THOMAS OF AQUIN, *Contra gentiles*, Paris, Lethielleux, 1950-1961, 4 vols.
- CHAUNU Jean, Pius VI** Reissued Paris, Cerf, 1993, 1 vol. 1099 p.
- CIC** CHANTREL J. (ed.), *Actes pontificaux cités dans l'encyclique et le Syllabus du 8 décembre 1864* (lat.-franç.), Paris, Poussielgue, 1865,12-736 p.
CHAUNU J., *Pius VI et les évêques français. Droits de l'Église et droits de l'homme*, Limoges, Critérior, 1989, 171 p.
Codex Iuris Canonici. See above s. v. CDC.
- 3287 Ong]at . PONTIFICIA COMMISSIO CODICI JURIS CANONICI AUTHENTICE INTERPRETANDO, *Codex Iuris Canonici fontium annotatione et indice analytico-alphabetico auctus*. Civitas Vat, L.E.V., 1989, 669 p.; - Latin-French: *Code of Canon Law*, official text and French translation by the International Society of Canon Law and Comparative Legislation, Paris, Centurion/Cerf/Tardy, 1984, 363 p.; or *Code of Canon Law*, bilingual and annotated edition. Martin DE AZPILCUETA Institute, French translation on the 4^v Spanish edition, ed. CAPPAROS E., THERIAULT M., THORN J., Montreal, ed. Wilson et Lafleur Limitée, 1990,1502 p.; improved reprint: 1999.

- CIC Pontes** GASPARRI Pietro, card, and SERÉDt Iustinianus. card, (ed.). *Codicis Iuris Canonici Fontes*, 9 vols. Romæ, Typis Polyglottis Val, 1923-1951.
- Cices CITom CivCat Cod. Theod.** *Cices*. Bulletin of the Cercle d'Information Civique et Sociale. Bouère, ed. DMM. *Ciencia Tomista (La)* Salamanca. Madrid. *Civiltà cattolica (La)*. *Theodosiani libri XVI cum Constitutionibus Sirmondianis et Leges Novellæ ad Theodosianum pertinentes...*, ed.: MOMMSEN Th., and MEYER P. M., Berolini, Weidmann, 1954³, 21. in 3 vols.
- WCC** World Council of Churches (= WCC).
- Cogitatio fidei** *Cogitatio fidei*. Collection théologique, Paris, Cerf.
- Cogitatio fidei, 110** A. A. Vv. " *Religious Liberty in Judaism, Christianity and Islam*. Paris, Cerf (*Cogitatio fidei*, 110), 1981, 289 p.
- coi.** column(s).
- coli.** collection.
- Collectio Iacensis** *Acta et Decreta Sacrorum Conciliorum Recentiorum*. Collectio Iacensis; (Maria Laach). Friburgi Brisgovia: Herder. 1890, 7 vols.^{328K}
- Communio** International Catholic Review *Communio* (French edition), Paris.
- Communio (Granada)** *Communio*. Granada/Sevilla.
- Concilium ConcOecDecr*** *Concilium*, monthly French edition (10 n° per year), Tours-Paris-Rome, Marne. *Conciliorum oecumenicorum decreta*, ed. ALBERIGO G., et AL., Bologna, Istituto perle Scienze Religiose, EDB, 1991⁴, 1135+1135+170* p.^{32 n°9}
- Congress.** Congregation, Congress.
- Congr. gen.** Congregatio generalis (from the Second VATICAN Council).
- Congr.Dir.Can.** A. A. Vv., *La Chiesa dopo il concilio*, Milano. Giuffrè, 1972, 2 t. in 3 vols. 1: *Relazioni*; II, 1-2: *Comunicazioni*.
- ConscLib CourRome erit.** *Conscience and Freedom*, Bern.³²⁹⁰
- CSCE CSEL CSIC** *Le Courier de Rome*, Paris, Versailles; French translation of *Si. si. no. critique(s)*, critic(s), criti(ca, co, ci. che). critic(a, as, o. os) Conference on Security and Cooperation in Europe (since, OCSE). *Corpus Scriptorum Ecclesiasticorum Ecclesia: Latina*.
- CT1** Consejo Superior de Investigaciones Científicas. International Theological Commission.

D*

- DAFC DC** *Apologetic Dictionary of the Catholic Faith*. *Documentation catholique (La)*, Paris, Bayard-Pr.

32K "cf. I. VII: *Acta et decreta Sacrosancti Oecumenici Concilii Vaticani*, etc., + General Index.

32K9 Orig. + facing Italian translation. For the English translation, see s. v. TANNER-ALBERIGO below. For the French translation, see S. V. ALBERIGO.

3290 We did not have access to this journal when preparing the previous editions of our book. For the present one, we have been able to consult only *ConscLib*, 10,2^v semester 1975, Dossier: "History of Religious Freedom" * SORDI Maria (prof, at PUniv. of the Sacred Heart, Milan): (1) 1975: *Les Persécutions chrétiennes des premiers siècles*, in *ConscLib*, 13-21 (details in LRTC's biblio.); LANARES Pierre (general secretary of *ConscLib*): *Constantine*, 22-26; 1MBERT Jean, *L'Inquisition au moyen-âge*, 27-32 (details in LRTC); OLSEN V. Norskov, *Marsilio of Padua*, 33-36; CORSANI Bruno, *The Waldensians and Religious Liberty*, 37-45; EDWARDS Charles, *The Word That Was Engraved*, 46-47; MOLNÁR Amedeo, *The Hussites and Religious Liberty*, 48-52; GARRISSON F. " *De l'Édit de Nantes à la révocation*, 53-65; KÜHNERT Wilhelm, *Le Protestantisme en Autriche*, 66-71 : FAYARD Michèle- Marie, *Les Déclarations des Droits de l'Homme*, 72-78; DUFU André, *La Révolution française*, 79-89; CSIZMADIA Andor, *L'État et l'Église en Hongrie*, 90-98; MISSIR Livio Amedeo, *La Liberté religieuse et l'Islam*, 99-104; SENGHOR Léopold Sedar, *La Liberté religieuse en Afrique*, in *ConscLib*, 7 (1974), 53-56 and 10 (1975), 105-110. We also had at hand n° 24, second semester 1982, rather dedicated to anti-Semitism, but containing an article by A. DUFU, *Les écrits de Sébastien Castellion sur la tolérance*, 5-9.

ABBREVIATIONS, 581

- DDB
DDCan DDHC
DeEl
DeRAilletirs
Second Council of the Vatican (The)
DH
DHGE dir.
Dbcorsi Pio XII
Diss.
DMM
Documents
Complete documents
Conciliar documents, 3
- Desdée de Brouwer (publisher), Paris-Bruges.
Dictionary of Canon Law.
Declaration of the Rights of Man and of the Citizen, August 26, 1789. Promulgated on Nov. 3, 1789, included in the French constitution of September 3, 1791.
- Il Diritto Ecclesiastico*, Roma, Milano, Giuffrè, 1890...
From Rome and elsewhere, Versailles.
AA. W., *Le Deuxième concile du Vatican (1959-1965)*, Rome, École française de Rome, Palazzo Famese, 1989, xx-867 p.
VATICAN 11, 1965.12.07: Declaration *Dignitatis Humanae*.
Dictionary of Ecclesiastical History and Geography.
Director, under the direction, coordination of...
Discorsi e Radiomessaggi di Sua Santità Pio XII.
Dissertation, i.e. doctoral thesis.
Dominique Martin Morin (ed.), Grezen Bouère.
Documentos (San Sebastián).
Documentos completos de Vaticano II. 1991 **,573 p.³²⁹ -
SECOND VATICAN ECUMENICAL COUNCIL, *The Church in the World. The Apostolate of the Laity. Religious freedom. The Means of Social Communication*, KONIG Franz, Card. and DH's French translation, Paris, Centurion, 1966, pp. 317-350 and 351-372. (*Documents conciliaires*, 3).
- DPPaulVI
DPPieX
DPPieXU
Rights of God and Rights of Man
DTC
DUDH
DV DzB DzSch
DzSchHii
- Pontifical Documents of S. S. PAUL VI*, Saint-Maurice, ed. Saint Augustine, vol. I (1963)-vol. VII (1968), 1967-1971.
Pontifical Documents of His Holiness Saint Pius X, 1903-1908. sd, Publications du "Courrier de Rome", 1993, 2 vols.
Pontifical Documents of His Holiness Pius XII, 20 vols, Saint-Maurice [CH], ed. Saint-Augustin, 1963-1959 + 1 vol. of tables.
AA. Vv., *Droits de Dieu et Droits de l'Homme*, Paris, Téqui, 1989, 215 p.
Dictionary of Catholic Theology.
Universal Declaration of Human Rights. Resolutions adopted on December 10, 1948 by the General Assembly of the United Nations.
VATICAN 11, 1965.11.18: Dogmatic Constitution *Dei Verbum*.
DENZINGER-BANNWART: see s.v. *DzSch*.
Denzinger-Schonmetzer: Enchiridion Symbolorum Definitionum et Declarationum de rebus fidei et morum, quod primum edidit Henricus Denzinger et quod funditus retractavit auxit notulis omavit Adolfus SCHONMETZER S.l.. editio XXXVI emendata, Barcinone. Friburgi Brisgovia, Romæ, Herder, 1976, 954 p.³²⁹¹
DENZINGER Heinrich, *Symbols and Definitions of the Catholic Faith*, ed. by HÜNERMANN Peter, for the original ed. and by HOFFMANN Joseph, for the French ed., Paris, Cerf, 1996, 1283 p., on the 37^e ed.(1991) of the *DzSch*.

E*

- ^c 8- *Ecclesia*
EcumR
Ed. or EdJ [or: EdJ]
- exempli gratia*: for example.
Ecclesia, Madrid.
The Ecumenical Review (WCC). Geneva.
Publisher(s), Editor(s) [Edizione, Editrice... Ediciones, Editorial... Editor(s), etc.

³²⁹¹ We note *DzB* the ed, prior to 1963^e,

- Edizioni Dehoniane, Bologna.
- EDB *Enchiridion delle Encicliche* (1740-1994), bilingual edition (orig. lat. * transl. ital.J, Bologna, EDB, 1994-, 8 vols.
- EEncicliche AA. Vv., *L'Église et l'État en France*, Paris, Téqui, 1983, 175 p.
- Church (The) al the State in France* AA. Vv., *L'Église et la liberté*, Paris, Horay, Flore, 1952, 264 p.
- Church and your freedom (The) Church (The)* |167J p. (EP, n°210). *L'Eglise*, présentation et tables par les moines de Solesmes, 2 vols, Tournai, Desclée, 1959, xiii-1038-19'-
Encyclopedia, Enciclopedia, Encyclopaedia, Encyclopaedia.
Enciclopedia Cattohca.
Enciclopedia del Diritto.
Enciclopedia filosófica.
Enciclopedia italiana.
Enciclopedia de la Religión Católica.
- Enc. encyclical.
- EncCat *EncDir EncFU* Epistola (letter).
- EncIcal *EncRetCat* *Pontifical teachings*. Solesmes; Tournai, Desclée.
- Enycl. Ep. EP esp. Spanish(e)(s); español(a)(o)(e)(s).
- EspVie *EstEci Studies EV* *Esprit et Vie* (former: *L'Ami du clergé*).
Estudios eclesiásticos, Madrid.
Studies. Paris, 1856...
Enchiridion Vaticanatm.
Bishop.
Exhort. Exhortation.
- F***
- Faith and Reason*, Christendom College Pr., Front Royal (VA) U.S.A.
- Facultas, Faculté, Faculty, Facultad, Facoltà, Fakultät.
fasciculus, fascicle, fascicolo...
- F & Reason DUMEIGE Gervais, SJ (trans. and pres.), *La Foi catholique (Textes doctrinaux du Magistère de l'Église sur)*, Paris, L'Orante, 1986, 15-558 p.
- Fac. fase. *Fuilelter*, bimonthly magazine and publishing house (now "Clovis") of the FSPX.
- FC FLANNERY A. (ed.), *Vatican Council II. The Conciliar and post conciliar documents*, Dublin, Dominican Publications / Leominster, Fowler Wright / New Town, Dwyer Pty. 1988, 1062 p.
- Fideliter* FUCHE A. and MARTIN V. (dir.). *Histoire de l'Église depuis les origines Jusqu'à nos jours...*, Pans, BloudetGay, 1934-1959, 21 t.
- FLANNERY FOULQUIE P. and SAINT-JEAN R. " *Dictionnaire de la langue philosophique*, Paris, PUF, 1978-. 780 p. French(s).
- FLICHE & FRANCISCO D. Pasquale de (ed.), *Discourses de notre très Saint Père le Pape Pie IX*, Paris, Adrien Le Clère, 1873-1876, 3 vols.
- MARTIN FRIEDBERG E. A. (ed.), *Corpus Iuris Canonici*, Lipsiœ (Leipzig), Tauchnitz, 1879 -1881³², 2 vols.
- FOULQUIE anastatic repr., Graz, 1959, 2 vols.
Priestly Fraternity of Saint Pius X (founded by Mr.^{gr} Marcel LEFEBVRE).
- franç.
- FRANCISCO
- FRIEDBERG
- FSPX

G*

- GAFFIOT
GAFFIOT F., *Dictionnaire illustré latin français*, Paris. Hachette. 1934. 1720 p. (reed. 2001).
- GAROFALO
GAROFALO S. and FEDERICI T. (eds.). *Dizionario del Concilio Ecumenico Vaticano Secondo*, Roma. Unedi, 1969, 2034 pp.
- GDE GE GER CLE GW
- GONZA LEZ-POLA
Grande Dizionario Enciclopedico.
VATICAN II. 1965.10.28: Decree *Gravissimum educationis*.
Gran Enciclopedia Rialp.
Grand Larousse Encyclopedic.
Grand Larousse Universel.
AA. VV. GONZÁLEZ-POLA M, O.P. (ed). *Dignidad de la persona y derechos humanos*, Univ. Pont, de S. Tomás de Manila / Instituto Pont, de Filosofía de Madrid, 1982, 170 pp.
Le Grand Robert de la langue française, Paris. Le Robert, 1985² .9 VOL. + 5 voi.
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Opusc. 19: *Contra impugnantes Dei cultum et religionem*, cap. 16: the text proves too much, since it would even forbid tolerance; p. 105, the chronicler shows that he has not fully grasped the notion of negative law; p. 106, it is a question of the right of the individual to be free from all forms of discrimination. 106, it is a question of the general necessity of coercion, not of its application to non-Catholics according to their conscience; p. 107, the ref. is not given, but it is a question of 2-2, 10,8, c. analyzed at length by us (0251.); p. 108, the text of the *Comm. on Cor.*, 15.8 evokes the conversion of s. Paul, which did not take place in the first place. Paul, which did not take place under *civil coercion*: irrelevant; the Church did not advocate after the Council the *separation* of Church and State, but *religious freedom*: irrelevant; p. 109, the A. confuses "autonomous social space", simple non-impediment, mediate material cooperation, with a positive encouragement to evil: irrelevant; ID, *Ibid*, p. 110: Review of LUCIEN, 1992.03.14: the A. is wrong in believing that the Church has condemned the freedom to act according to one's conscience (erroneous) and that DH also asks for the freedom to act "as one wishes"; ID., Review of MARGERIE, 1988a, in *SelTerre*, n°6 (Autumn 1993), pp. 201-208; 1D.. *Dossier on Religious Liberty (!): Debate with Fr. Gitton*, n°8 (Spring 1994), pp. 256-261 (Fr. Gitton & Fr. Philippe Penuchet generally respond well to Fr, but it is impossible in simple letters to go into the whole question); (H): *The New Catechism and Religious Liberty*, *ibid*, p. 283-293 (Fr. Gabriel's book, 1993. provides ample answers); *Small Chronicle on Religious Liberty*, n°12 (Spring 1995), p. 164-168; 1D, *Les saints face à la liberté religieuse*, n°13 (Summer 1995), pp. 112-133 (A. gives more authority to the actions of the saints than to an ecumenical council: a strange theological method, not recognized by. s. THOMAS; he also often gives credence to accounts whose historicity is doubtful, to say the least: a curious method, too; in any case, we have explained why the destruction of pagan temples and cemeteries was legitimate, given the situation of inter-religious law of nations which we explained in the chapter on limits); ID. *Saint Augustine and Religious Liberty*, n. 16, p. 10 ff; ID. *La France chrétienne face à la liberté religieuse*, n°19, p. 99 ss. ; 1D. "Saint Francis of Assisi in the face of the conciliar Church, n. 26, p. 170 ff, Recension of LRTC, n°30 (autumn 1999), p. 202-207: the A. humbly reproaches us for not having quoted all his works... which he modestly hides under the name of "studies published in our review" ; among which he does not quote the study of the abbot LAISNEY) ; one could reproach him for not having studied all the texts quoted in our 2^e edition... In this review, A. shows, p. 204-206, that he does not see what the change in the law of nations provokes in the question of the right to the RL: he believes that we are thereby renouncing the principle of contradiction (1) and professing a simple "duty of generalized tolerance" (cf. p. 206): really A. has not understood! He goes so far as to neglect our own answer to his argument on p. 207 (concerning "circumstances" in a natural right). We doubt that he has read anything other than some pages of LRTC.

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111. GENERAL INDEX

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NOTE ON "IUS" IN SAINT THOMAS

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ID, c); "Ad tertium dicendum, quod aliquis potest esse dignus aliquo dupliciter : aut ita quod ipsum habendi ius habeat (...)" (IV Sent. d. 18, q. 1, art. 1B, ad 3); "potestatis iura" (IV Sent. d. 18, q. 2, art. 5C, ex); "ius, scilicet ligandi et solvendi" (IV Sent. d. 19, q. 1, art. 1C, SC 1); "ius in hereditate paterna" (IV Sent. d. 24, q. 3, art. IC, ad 2); "ius sepultura" (IV Sent. d. 25, q. 3, art. 2C, objection 2); "ius primogenitura" (IV Sent. d. 25, q. 3, art. 2C, objection 5); "ius quod habeat sepeliendi mortuum" (IV Sent. d. 25, q. 3, art. 2C, ad 2); "ius percipiendi decimas" (IV Sent. d. 25, q. 3, art. 2C, ad 4); "ius primogenitura" (IV Sent. d. 25, q. 3, art. 2C, ad 5); "iure patronatus... ius patronatus" (IV Sent. d. 25, q. 3, art. 3, ex); "ius suum aufertur quod in illam habebat" (IV Sent. d. 27, q. 2, art. 3, obj. 3) 30, q. 2, art. 3, ad 2); "ius plus petendi" (IV Sent. d. 32, q. 1, art. 1, ad 3); "ius petendi debitum" (IV Sent. d. 34, q. 1, art. 5, c); "ius petendi debitum vel revocandi uxorem" (IV Sent. d. 35, q. 1, art. 6, ad 3); "ius excipiendi contra accusationem..." (IV Sent. d. 35, q. 1, art. 6, ad 5); "ius in corpore viri infidelis" (IV Sent. d. 39, q. 1, art. 4, objection 2); "ius paterne hereditatis" (IV Sent. d. 39, q. 1, art. 5, objection 5); "ius divinum quod habet vir in uxorem" (IV Sent. d. 41, q. 1, art. 4C, ad 1); "ius petendi debitum" (IV Sent. d. 42, q. 1, art. 1, c); "iure successionis in bonis adoptantis" (IV Sent. d. 42, q. 2, art. 1, ad 7); "iure creationis" (IV Sent. d. 48, q. 1, art. 1, ad 1); "ius contradicendi non habet" (bis) (MI, 58, art. 2, c); "idem ius circa utrumque" (MI, 105, art. 2, ad 3); "ius domini vel praelationis" (IMI, q. 10, art. 10 c.); "ius patris potestatis" (IMI, q. 10, art. 12, objection 1); "ius patris potestatis in filios iam fideles" (IMI, q. 10, art. 12, SC); "ius imperandi subditis fidelibus" (IMI, q. 12, art. 2, objection 3); "ius possidendi totum thesaurum" (IMI, q. 66, art. 5, ad 2); "maius ius in re quam acquisivit quam in pecunia quam dedit" (IMI, q. 78, art. 3, objection 3); "plus iuris habet in re acquisita..." (IMI, q. 78, art. 3, ad 3); "ius accipiendi decimas" (11-II, q. 87, art. 3, c.); "iure accipiendi decimas" (IMI, q. 87, art. 3, ad 3); "antequam alicui acquiratur ius in episcopatu, vel quacumque dignitate seu prabenda, per electionem vel provisionem seu collationem..." (IMI, q. 100, art. 2, ad 5); "ius accipiendi decimas" (11-11, q. 100, art. 4, obj@3); "ius autem spirituale accipiendi decimas" (IMI, q. 100, art. 4, ad 3); "in eis ex ipsa desponsatione ius habent" (IMI, q. 154, art. 7, ad 3); "ius in sua sponsa" (IMI, q. 154, art. 7, ad 4); "diabolus nullum ius in homine habebat" (III, q. 46, art. 3, obj@3); "ius accedendi ad mensam domini" (III, q. 67, art. 2, c.); "ius baptizandi" (111, q. 67, art. 6, c.); "ius et facultatem repugnandi" (Q.D. De Virtutibus, q. 1, art. 4, c.); "iure reddendi decimas" (Quod I, XI, n@ 2, q. 4, art. 3, TTB and sc; "Habet autem pater carnalis ius praelationis in filium" (Quod I, XI, n@ 2, q. 5, art. 1, c); "ius habebant opprimendi eos" (In Isaiam, cap. 52, lect. 0); "in animam ius nullum est" (Catena aurea in Mt, cap. 10, lect. 10); "ius habeat impetrandi" (Catena aurea in Lc, cap. 5, lect. 5); "ius in hereditate" (De duobus praecipis charitatis arp); "ius habet in isto pane" (Super Evangelium Malthari cap. 6, leci. 3); "intrare autem in possessionem proprie convenit ei, qui ius habuit" (Super Evangelium Matthari cap. 25, lect. 3); "quantum ad hoc in eis aliquid iuris habebat... aliquid ius habebat in hominibus... m quo nullum ius habebat..." (Super Evangelium Johannis cap. 12, lect. 5); "pleniori iure possidetur res, quando iam habetur..." (Super II ad Cor., cap. 5, lect. 2: note here that the ius is not the res, but that *by which* one has power over the res); "nullus super me ius habet nisi Christus" (Super ad Galatas, cap. 6, lect. 5); "ad que se extendit ius dominative potestatis" (Super ad Titum, cap. 2, lect. 2); "nulli licet abrenunciare iuri accipiendarum decimarum, sed bene licet dimittere usum accipiendi propter scandalum" (Super ad Hebraeos, cap. 7, lect. 2, with a distinction on the right and its use).

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2M94PLONGERON, 1997,338, seems to us contradicted because reference of the CEC.

^{2Ky6}CEC2109.

^{2X96} Cf. *DzSch* 3005. It seems to us that morality is intrinsically linked to the "*rebus divinis*". Cf. also the interpretations of JIMÉNEZ-URRESTI, 1958, 228: with the bibliography in his note 1. and above all, the very authoritative and explicit interpretation that 0738. AAS, 1950, 561-562: "ut ea quæ in rebus religionis *et morum* rationi per se impervia non sunt", a doctrinal development already begun by PIEXI, 1930.12.31 :

Encycl. *Casti connubii*, AAS. 1930, 580, a legitimate interpretation of VATICAN I, since this is the meaning given to the passage quoted by the theologians of the Council itself, cf. *CoUecdo tacensis, Acta et Décréta s. Cane.* 7,525.

2**7 Cf. ANDRÉ-VINCENT, 1976,229-231 and CATURELU. 1992.282-283.

2H9X Cf. REGNIER, 1971.04,4.

^"Cf. ANDRE-VINCENT, 1977.03-04 / 1991,35. Insightful remark by GONNET, 1994, 80-81, about the MURRAY / CONNELL controversy.

²⁰⁰² If the state-society does not take away this possibility for a valid reason. This has almost always been the case for the last 200 years, but not always legitimately.

²⁰⁰¹ Our translation of OCÂRIZ, 1989.06. 80-81. See also NEIRA, 1966.04.321. Against PRIETO-SANCHIS. 1991.311 312. We seem closer to the real DABIN, 1953. 89. and MAIRENA, 1968. 134. This possibility maintained implicitly by *DH* of having to rely on the Church raises the protests of ranti-ehréten lot.Y. 1986. 112 or of a LARICCIA. 1989a. 31 (and 32. with the example of the

divorce). It seems to us much more exact KEGAN, 1967, 179. The necessity of conforming the civil law with the moral law is a fact of Tradition, recalls 1223. The necessity of conforming the civil law with the moral law is a given of the Tradition, recalls 1223: *Evangelium viue*. in particular to n°71 and especially 72 (OR. 1995.0331. 9. 6). We seem true *ilésonmis. but not for you past*, the assertion n° 1 of NEOPH1TOS. 1974. 278. The A. goes moreover himself in our direction, p. 280. The purely contemporary character of the exclusion of the criterion "faith" is also highlighted by the underlining of "ogg" in

PA VAN, 1965. 243 (not translated in PAVAN. 1967d. *Unam Sanctam*. 60) Cf. also GANGOITI. 1972.704. As for SPINELU. 1970.311. he does not tell us which is the instance that judges.

Cf. MESSINEO, 1950.08.05.239 (summary of THOMAS D'AQUIN, s.: 1271-1272, *Summa Theologiae*, 2-2:010,8). "IODELHAYE, 1980.09.25,524.

2916. See CANAVAN. 1965.11.20. 636. and CANAVAN, 1966, 76; CARRILLO, 1966.01, 72. and already GARRUCCI, 08 (1864.01.21), 258-259. Cf. the explanations of MARGERIE, 1990a, 363. And also 1223.

Evangelium vilię, n°11.

²⁹¹⁷ It should be noted that these are not only the rights *common to all citizens*

²⁹²⁰CAVAGNIS, 1891, n° 195, 127. Cf. also n° 197.129, n° 238,156 -, eICHENON, 1921.201.

²⁹¹⁸Cf. DUPUY. 1960, 159.

2925 p. example: S 84: 6 RS. modus 15, A.S. IV/VI, 756 (61J: "Quantum ad expressionem "ordo publicus" sequentia sunt notanda: |62| a) "Ordo publicus" est notio sat divulgata in Constitutionibus Nationum et in documentis inernationalibus. Est expressio vere technica in iure publico hodierno. b) Propter hanc

rationem, nullo modo est negligenda sed e contrario cum accurata præcissione describenda et præcipue in relatione cum notione boni communis prout in hac declaratione (iuxta S. P. Ioannem XXIII) nunc clare apparet, c) Certo certius gubernia possunt notione ordinis publici abuti eumque a proprio sensu detorquere. Sed nullo modo est novum. Idem enim factum est 30 annos abhinc ab aliquo gubernio tolaliario circa notionem boni communis. Ex hoc patet quemvis terminum periculo detorsionis obnoxium esse et proinde necessitatem alicuius definitionis vel descriptionis præcisæ terminorum urgeri. Nihil aliud in

textu declarationis fecimus."

2931 See already a draft in CANET, 1891,22. Cf. also e.g. MURRAY, 1967, 143.

2932 *p_{our}* for details on these "axioms of law". cf. BARTOCETTI, 1955, 74-77. Application: 4 RS, III, A5. I VI, 188,6), *Recula iuris*. which quotes *Ci riesce*, and S 17: IV, 3) *Quoad regulam iuris*. *Ibid*, p. 190-191.

2934 See HARRISON, 1994.06.32.

²⁹³⁵ According to VERA-URBANO, 1971. 121, the public order, is an *analogical* concept.

2936 Cf. already BATES. 1946,301-302.

2937 STORCK. 1989,65-66 forgets the "time factor".

2938 There is also the "place" factor. As an example, we cite PORTUGUESE NATIONAL ASSEMBLY. 1971.07.21 22. Note n° 1° the maintenance of the Concordat of May 7, 1940, as far as the Catholic Church is concerned, if article 24. on the impossibility for canonical marriages to obtain civil divorce (cf. 0703.); then 2° 0993. bis. PAUL VI. 1975.04.23: Additional Protocol modifying art. 24 of the Portuguese Concordat of 7 May 1940. on civil divorce between Catholics; AAS, 1975. 435-436; DC. 263. Overview of this elasticity in POMPEDDA, 1972.04 06,209 and NAUROIS, 1964.230.

2939 Cf. e.g. 0774.2: A AS. 1955,770: RH. n° 6266.

2943 0216. *De Règna.* 1, 2; lat. ed. SP1AZZI. cit. n° 750.

Cf. 0214. CG 111. 146. See also 02194! (cf. above).

29+4 cf. LECLERCQ Jacques. 1963.344 and 345.

²⁹⁴⁶ COSTE, 1969,249-251.

2947 SMEDT. 1967b, 233 (private text).

"-" SMEDT. 1967b, 234.

2958 point raises the problem of the "right of others to the truth", discussed below.

²⁹⁷⁰ Situation of Spain until VATICAN II.

²⁹⁷¹ According to CALZADA. 1968.12, 714, the Council

does not admit a free religious propaganda to a predominantly Catholic people. To be qualified by JIMÉNEZ-URRESTI, 1966.10,83-84. according to whom the propaganda launched in the denial is a propaganda *imposed* to the Spaniards and contrary to the rights of their conscience.

²⁸⁷⁷ MARGERIE, 1990a, 368; follows a reference to HARRISON, 1988b.

²⁸⁷⁸ Cf. e.g. BORNE, 1965.03,34; MARTELET, 1985. 159-160.

²⁸⁸⁰ LEFÈVRE, 1986, 5, rejects the distinction "thesis" / "hypothesis" as "an invention of liberals". MURRAY.

1951.06,164 instead distinguishes "doctrine and application of doctrine."
29M Cf. BENOIT Paul. 1885, 11. 192-195. Montalembert in his speeches of Malines does not use it
²⁹¹¹² Cf. CURCI, 1863.10.02, 135-137, where he makes the distinction; 138, notes that MONTALEMBERT
29X3 LIBERATORE, 1865.01.19,284, mentions it.
29X4 At_{van} (PIUS XII, the famous distinction remains a matter for private authors (cf. TORRES-ROJAS, 1968,134).
29X5 pope XII gives there as a typical example of this second case the U.S.A.

29X6 cf. SEBOTT, 1977,59.

29X7 Au Middle Ages, but less so in the period following Philip IV the Fair (1268-1285-1314), etc. Cf. MURRAY, 1949.09.430-431.

2995 Cf. TORRES-ROJAS. 1968, 194.

³⁰⁹⁶ DH 9, § 1; translation: *ibid.* 180.

³⁰⁷ *Cerf-VATtCAN j1*, vol. 111, 180. Here is the original: "Qua: de iure hominis ad libertatem religiosam declarat

3 0R^h_{cat} ons reserved for BELDA, 1966.04,365, and a *fortiori* COSTE, 1969,83.

3011 cf. g j, dogma of the Assumption.

3012 S 52 = 6 RO, A.S. IV/VI, 720, etc.

MW Ibid. 112.

Ibid. 117.

3039 < Caput est ex prscipuis doctrinae catholics, in verbo Dei contentum et a Patribus constanter prxdicatum*. hominem debere Deo voluntarie respondere credendo; invitum proinde neminem esse cogendum ad amplectendam fidem.⁹ Etenim actus fidei ipsa sua natura voluntarius est, cum homo, a Christo Salvatore redemptus et in adoptionem filiorum per

iesum Christum vocatus¹⁰. Deo sese revelanti adhaerere non possit, nisi Patre eum trahente¹¹ rationabile liberumque Deo prorsiterit fidei obsequium. Indoli ergo fidei plene consonum est ut, in re religiosa, quodvis genus coercionis ex parte hominum excludatur. Ac proinde ratio libertatis religiosas haud parum confert ad illum rerum statum fovendum, in quo homines expedite possint invitari ad fidem Christianam, illam sponte amplecti atque eam in tota vitæ ratione actuose confiteri."

³⁰⁴⁰ See S 87:6 RS. modus 7, A.S. IV/VI, 762 [67].

³⁰⁴¹ See in particular s 44 & S 85: 6 RS, Modus generalis ad numerum 10, A.S. IV/VI, 760. 5042 s 45 clarified this point.

^{3,444} "Deus quidem homines ad inserviendum Sibi in spiritu et veritate vocat, unde ipsi in conscientia vincuntur, non vero coercentur. Rationem enim habet dignitatis personæ humanæ ab Ipso condita, quae proprio consilio duci et libertate frui debet. Hoc autem summe apparuit in Christo Iesu, in quo Deus Seipsum ac vias suas perfecte manifestavit. Etenim Christus, qui Magister et Dominus est noster idemque mitis et humilis

corde¹⁴ , discipulos patienter allexit et invitavit¹⁴
Miraculis utique prædicationem suam suffulsit et confirmavit, ut fidem auditorum excitaret atque comprobaret, non ut in eos coercionem exerceret¹⁵ . Incredulitatem audientium certe exprobravit, sed vindictam Deo in diem iudicii relinquendo¹⁶ . Mittens Apostolos in mundum dixit eis : "Qui crediderit et baptizatus fuerit salvus erit ; qui vero non crediderit, condemnabitur" (Mc 16, 16). Ipse vero, agnoscens zizaniam cum tritico seminatam, iussit sinere utraque crescere usque ad messem quæ fiet in consummatione

sarculi¹⁷. Nolens esse Messias politicus et vi dominans¹⁸, maluit se dicere Filium Hominis qui venit "ut ministraret et daret animam suam redemptionem pro multis" (Mc 10,45). Sese præbuit ut perfectum Servum Deiqui "harundinem quassatam non confringet et linum fumigans non exstinguet" (Mt 12,20). Potestatem civilem eiusque iura agnovit, iubens census dari Cæsari, clare autem monuit servanda esse iura superiora Dei: "Reddite ergo quæ sunt Cæsaris Cæsari, et quæ sunt Dei Deo" (Mt 22, 21). Tandem in opere redemptionis in cruce complendo, quo salutem et veram libertatem

hominibus acquireret, revelationem suam perfecit.
Testimonium enim perhibuit veritati eam
tamen contradicentibus vi imponere noluit. Regnum
enim eius non percutiendo vindicatur³¹, sed stabilitur
testificando et audiendo veritatem, crescit autem amore,
quo Christus exaltatus in cruce homines ad Seipsum
trahit" "

3W5Note(12): See Io. 13. 13.

3*46 Note (13): Cf. Mt. 11:29.

3047 Note (14): Cf. Mt. 11:28-30; Io. 6:67-68.

3148 Note (15) Cf. Mt. 9:28-29; Mk. 9:23-24. 6, 5-6;

PAULUS VI, Litt. Encycl. *Ecclesiam suam*. 6 Aug. 1964:
AAS 56 (1964), pp. 642-643.

Note (16): Cf. Mt. 11:20-24; Rom. 12,19-20; 2 Thess.
1.8.

3^o3^oNote (17): Cf. Mt. 13:30 and 40-42.

3051 Note (18): Cf. Mt. 4:8-10; Io. 6:15.

3052 Note (19): Is. 42. 1-4.

3054 Note (21): Cf. Mt. 26:51-53; Io. 18:36.

3055 Note (22): Cf. Io. 12,32.

3056 Note (23): Cf. I Cor. 2:3-5; 1 Thess. 2:3-5.

3N57 Note (24): Cf. Rom. 14, 1-23; I Cor. 8, 9-13; 10, 23-

33.

3058 Note (25): Cf. Eph. 6:19-20.

3059 Note (26): Cf. Rom. 1, 16.

3061 Note (28): Cf. Eph. 6:11-17.

3062 Note (29): Cf. 2 Cor. 10:3-5.

3064 Note (31): Cf. Acts. 4,19-20.

3065 "Apostoli, Christi verbo et exemplo edocti, eandem viam secuti sunt. Ab ipsis Ecclesiae exordiis discipuli Christi adlaborarunt, ut homines ad Christum Dominum confitendum converterent, non actione coercitiva neque artificiis Evangelio indignis, sed imprimis virtute verbi

Dei³³ . Fortiter omnibus nuntiabant propositum Salvatoris Dei, "qui omnes homines vult salvos fieri et ad agnitionem veritatis venire" (*J Tbn 2,4*) ; simul autem verebantur debiles etiamsi in errore versabantur, sic ostendentes quomodo "unusquisque nostrum pro se rationem reddet Deo" (*Rom 14,12*)³⁴ et in tantum teneatur conscientis suis oboedire. Sicuti Christus, Apostoli intenti semper fuerunt ad testimonium reddendum veritati Dei, abundantius audentes coram populo et principibus loqui "verbum Dei cum fiducia" (*Act 4, 31*)²⁵ . Firma enim fide tenebant ipsum Evangelium revera

esse virtutem Dei in salutem omni credenti Omnibus ergo spretis "annis carnalibus"²⁷ , exemplum mansuetudinis et modestiae Christi sequentes, verbum Dei praedicaverunt plene confisi divina huius verbi virtute ad potestates Deo adversas destruendas atque homines ad fidem et obsequium Christi reducendos" . Sicut Magister ita et Apostoli auctoritatem legitimam civilem agnoverunt : "Non est enim potestas nisi a Deo" docet Apostolus, qui exinde iubet : "Omnis anima potestatibus sublimioribus subdita sit; ... qui resistit potestati. Dei ordinationi resistit" (*Rom* 13, 1-2)³⁰ . Simul

autem non timuerunt contradicere potestati publice se sancite Dei voluntati opponenti : "Oboedire oportet Deo magis quam hominibus" (Act 5, 29)³¹ . Hanc viam secuti sunt innumeri martyres et fideles per specula et per orbem."

³⁰⁶⁶ "Ecclesia igitur, evangelicæ veritati fidelis, viam Christi et Apostolorum sequitur quando rationem libertatis religiosæ tamquam dignitati hominis et Dei revelationi consonam agnoscit eamque fovet. Doctrinam a Magistro et ab Apostolis acceptam, decursu temporum, custodivit et tradidit. Etsi in vita Populi Dei,

per vicissitudines historia humans peregrinantis,
interdum exstitit modus agendi spiritui evangélico
minus conformis, imino contrarius, semper tamen
mansit Ecclesiae doctrina neminem esse ad fidem
cogendum."

3067 One thinks of the few cases - famous and never
approved by the Church - of Catholic sovereigns
forcibly demanding the baptism of some of their
subjects or enemies.

3068 07233-6: AAS, 1946,394; *DPPieXH*, 303-304.

^Cf. e.g. VAUCELLES. 1981, 127.

³⁰⁹¹ "Iamvero si viget ratio libertatis religiosæ non solum verbis proclamata neque solum legibus sancita, sed etiam cum sinceritate in praxim deducta [...]."

³⁰⁹² "... tunc demum Ecclesia stabilem obtinet et iuris et facti condicionem ad necessariam in missione divina exsequenda independentiam, quam auctoritates ecclesiasticæ in societate presse pressius vindicarunt." Note (35): PIUS XII, Allocutio *Ci riesce*. 6 Dec. 1953: AAS 45 (1953), 802.

³⁰⁹³ "Simulque Christifideles, sicut et ceteri homines, iure civili gaudent *ne impediatur in vita sua iuxtu*

conscientiam agenda. Concordia igitur viget inter libertatem Ecclesiae et libertatem illam religiosam, qua; omnibus hominibus et communitatibus est tanquam ius agnoscenda et in ordinatione iuridica sancienda." The words by us italicized here are missing in various unofficial editions.

³⁰⁹⁴ On this character of *minimum of the simple* "libertas", cf. FUENMAYOR. 1974. 47. It is not a question of a maximum, otherwise there could no longer be *agnitio specialis*. See also SEGARRA. 1968.01-06.22.

3098 cf LÓPEZ DE PRADO, 1966b. *Introduction*, 242.

³¹¹² See S 30: 5 RO, CONCLUSIO, A.S. IV/V, 103-104.

3116 "Hxc omnia et singula, quae in hac Declaratione edicta sunt, placuerunt Sacrosancti Concilii Patribus. Et Nos, Apostolica a Christo Nobis tradita potestate, illa, una cum Venerabilibus Patribus, in Spiritu Sancto approbamus, decernimus ac statuimus et quæ synodaliter statuta sunt ad Dei gloriam promulgari iubemus."

^{3,17} "Romae, apud S. Petrum, die VII mensis decembris anno MCMLXV."

3118" Ego PAULUS Catholicæ Ecclesiæ Episcopus. "

3119 Except in the AS, it reads, "*Sequuntur Patrum subsignationes*)." See in AS. 1V/VIK 663-673 + 804-860, *Sessiones Publicæ IX-X; Dignitatis Humanor Persome*, the definitive text, followed by the printed list of each signature (including those of Lefebvre and M* de Castro Mayer).

3120 pans |e *T fexius denuo recognitus*, all references were accompanied by the corresponding literal citations (cf. AS. IV/VI, 713-718). The references to non-magisterial works (e.g., collections of constitutional texts, in note 43,

p. 718) were subsequently deleted. We have put the notes in their place in the text.

³¹²² Expression, already taken in good part, we have seen. by s. PiusX (cf. our 13.1.2. I. C & 0641.) and JohnXXIII (0815.; 0818.). Here (0901.) in Latin; see also 0906. PAUL VI. 1964.04.17: at the Seminar on Freedom of Information; AAS. 389; *IPVI*. 253-255; *DC*. 555-558; *DPPautVI*, 356: 0907. PAUL VI. 1964.04.23: to the royal couple of Denmark; AAS, 391; *IPVI*, 268-269; *DC*, 614-615.

3123 Cf. 0905. PAUL VI, 1964.03.10: to the missionaries

expelled from Sudan: AAS. 308; *IPVI*. 168-170; DC. 426.
3i24cf. 0904. PAUL VI, 1964.01.06: *Prayer & Message We
Would* (Bethlehem); AAS. 176-177; *IPVI*. 32.
3125 0908. PAULVI. 1964.05.15: to the Pontifical
Missionary Works; *IPVI*, 331; *OKU*-. 1964.05.22;
DPPautVI, 471; and (extract) : DC, 707.
3126 0910. PAUL VI, 1964.06.21: to the College of St.
Peter; *IPVI*, 410; extract: DC, 882.
3127 Twice in 0911 (here 0911.1.) PAUL VI, 1964.08.06:
Encycl. *Ecdesiam suatn*; AAS, 609-659 (here pp. 642-
643 cited in *cnDH*, note 15); trans.: DC, 1057-1093;

DPPaulVI, 652-695 (here 680-681).

²⁴12* Cf. 0911.2: *AAS*, 1964,655; *DPPaulVI*. 691.

3130 0916. PAUL VI, 1964.12.22: RM of Christmas *La ricarrenta*, to the world; *A4S*, 1965, 181-182, quoted by *DH*, note 4; *DC*, 1965,134; *DPPaulVI* 2 (1964), 1034ff.

²⁴137 0923. PAUL VI. 1965.10.04: at the UN *When he spoke*: *AAS*. 883-884, §§ 6 and 7.

313X0927, § 5: *AAS*. 1966.744; *Cerf-VATICAN* 11. t. 111. 164.

3139 0928. PAUL VI, 1965.11.13: to the Spanish pontilical college; *Ecclesia*. n® 1269, 37. Extract in

SPANISH EPISCOPAT, 1968.01.22. DC. 1968.932.

3140 0931. PAUL VI, 1965.12.07: to extraordinary envoys; AAS. 1966.74.

3142 Cf. 0945. PAUL VI, 1966.12.25: Homily *Prima die vidiamo*; for the *Urbi et Orbi* blessing; AAS, 1967, 81; 0960. PAUL VI, 1969.02.19: to Slovak pilgrims; *IPVI*, 103; 0975. PAUL VI, 1971.01.24: at the Angelus; *IPVI*, 51; DC, 173; 0982; 0996. PAUL VI. 1975.12.08: Apostolic Exhortation. *Evangelii Nuntiandi*; AAS. 1976.30; DC, 8. See also § 53: AAS, 42; DC, 11; 1004. PAUL VI, 1977.10.29: Alloc. *Quoniam ad finetn.* to the Synod; AAS.

635; DC, 964-965; 1007.

3145 Cf. 0972. PAULVI. 1970.12.02: Alloc. *It is a pleasure*, in Sydney; AAS. 1971, 68 ; 0974. PAULVI. 1971.01.09: to the Diplomatic Corps; AAS. 129; 1004. This was also the only intervention of JOHN PAUL T on the subject (1009. JOHN PAUL 1^{er}, 1978.09.04: to the special missions; AAS, 739; DC, 831-832.

3146 cf. 0954; 0958; 0971. PAUL VI, 1970.10.04: Message to U'Thant, for the XXV^e anniversary of the UN, AAS, 686: "(...) It is therefore of the utmost importance that your organization has recognized, among the fundamental

rights of the human person, what our venerated predecessor John XXIII called "the right to honor God according to the just rule of conscience and to profess one's religion in private and public life" (*Paeem in terris*, AAS, 1963, 260 = DC, 515), that religious freedom whose value the Church reaffirmed at the Ecumenical Council. But, alas, this right, sacred among all, is flouted with impunity for millions of men, innocent victims of intolerable religious discrimination, [etc.]"; 0990. PAUL VI, 1973.12.10: Message *Prompted by Conscience*, for the 25th anniversary of the UDHR; AAS, 1973, 676; DC,

1974, 13-14; 0992. PAUL VI, 1974.10.23: *Message // Sunto Padre*, from PAUL VI in union with the Fathers of the Synod; *IPVI*, 1032 1036; *EV* 05. n° 608; *DC*, 966; 0995. PAUL VI. 1975.07.25: Letter *in June 1973*, to M^r CASAROU, for the Helsinki Conference (CSCE); *AAS*. 479480 ; 1006. ; 1007.

3152 Cf. 0998.

³¹⁵⁹ 0985. PAUL VI, 1972.07.26: *General Audience; 1PVI, TI 1 -772: DC. 752*. On the difference between revolutionary secularism and the "open secularism" advocated at the end of the XX^e century, cf. MARTÍNEZ-

SISTACH, 1987,33; JANSSENS, 1964, 206; MURRAY, 1966.04.23, 593; MURRAY, 1966 (ABBOTT), 684. note 14, § 3; POUPARD. 1990, 10; LA TORRE, 1968. 281; REMOND. 1965, 58; VIALATOUX, 1951.11a, 702; CONDORELU. 1972, 366; MURRAY, 1966.05(*Conciliium*). 11.

3160 1003. : AAS, 1977.45; DC, 54-55. Theme taken up again by 1225/A. JOHN PAUL II. 1996.02.18: Angelus; *ORLF*, 1996.02.20,1 and 8, especially § 2.

3161 cf 0963. Note in passing his reminder of the coercive power of the Church: 0968. PAUL VI,

1970.01.29: *to the Role*; orig. ital. AAS, 113, 117 and 118; DC, 158-161. Our translation: "No one is unaware of the growing tendency to devalue authority in the name of freedom: the Council underlined this in a very significant document, precisely the one on religious freedom, when it pointed out that "there are not a few who, under the pretext of freedom, reject all dependence and pay little attention to necessary obedience" [Dft8]. |Yet we must not forget that coercive power also has its foundation in the experience of the early Church. Already St. Paul made use of it in the Christian community of Corinth

(/Cor 5)."

³¹⁶² Cf. 0959.

3168 Cf. 0970. PAUL VI, 1970.09.24: to the VIII^e congress of young lawyers; AAS, 614; *IPVI*, 911-912, with the title: "Human law must always be inspired by divine law."

31690974. ; 0983. PAUL VI, 1972.02.05: to Kurt Waldheim, Secretary General of KONU; AAS. 215.

3170 Cf. 0938; 0939; 0941; 0967; 0976; 0987; 0997; 1005. 31710981.

3174 cf, 0943. PAUL VI, 1966.09.04: Letter to M^{fr} Vincentas Brizgys; orig. *IPVI* 4 (1966), 385.

3175 Cf. 0950. PAUL VI, 1967.10.12: *RM for Missionary Day [Oct. 22, 1967]: AAS. 1967, 983; DPPaulVI 6 (1967), 734; 0963; 0989. PAUL VI, 1973.10.21: Angelus: IPVI 11 (1973), 1013-1014; our translation: "Freedom, yes, we will leave to all and now more than ever: but we must not tie up the proclamation of the Word of God by our own spinelessness or by the deafness of others, if it is true that such a Word is the true Truth and the only authentic source of beatitude and of life"; 0993. PAUL VI, 1974.10.30: General Audience i/PW, 961 ,DC, 1004-1006. 3176 Cf. 0946. PAUL VI, 1967.04.28: to SUC; AAS, 497.*

On the question, see ARRUPE, 1018-1040. and
ACACIANIAN, 1966.08.10.
31770996. *Evangelii nuntiandi*, § 80: AAS, 1976,73-74.
Our translation.

³¹⁷⁴ 0963.

³¹⁹⁰ 1136. JOHN PAUL 11, 1980.07.06: Homily *Hd quase*
480 anos, in Salvador de Bahia; *1GP11 03/2* (1980),
173;DC. 786,2.

3194 E. g. 1103. JOHN PAUL II, 1978.12.02: Letter *The*
signal occasion, to K. Waldheim, for the 30th anniversary
of the UDHR; A4S, 1979, 121-125;DC. 1979.1-3.

.3195 1226.

.3196 This is the very important 1176. JOHN PAUL,
1987.12.08: Message *Nel primo giorno*, for the World
Day of Peace; orig. ilal. AAS, 1988.280-281; DC, 1988,1-
2.

3198 g. g. 1166. JOHN PAUL II. 1986.02.05: *Mloc. I hâve
been longing*, in Madras (n° 4-5); AAS, 770; DC, 298.

3200 1156. JOHN PAUL II, 1984.03.10: at the V*
International Colloquium on Legal Studies; 1GP11<S7I/
(1984). 654 658; DG 510-511. Here. §4.

3206 nos. JOHN PAUL II, 1979.01.12: to the Diplomatic

Corps; AAS. 357-358; here § 8.

32081103; 1108; 115^o; 1188, n° 39, already quoted.

3209 | J.J. JOHN PAUL II, 1985.08.19: to the youth in Casablanca, no. 5: AAS. 1986,99.

³²²41107. JOHN PAUL II. 1979.01.07 -.Angelus; ICPII02/1 (1979), 22; DC. 109,§3.

3234CL 1187.

3237 cf, 1103., end; 1140. 1980.12.08: Message to all of you, for the 24^o World Day of Peace -,AAS, 1264: "6. Man must therefore be able to make his choices according to the values to which he gives his adhesion; he will show

himself responsible for them, and it is the task of society to foster this freedom, taking into account the common good. The first and most fundamental of these values is always his relationship to God, expressed in his religious convictions. Religious freedom thus becomes the basis of other freedoms, (citing 1137. A4S. 1980, [258]."

3250^56., n° 5.

3252 1220. 1994.11.03: to the "World Conference of Religions for Peace"; *OR*, 1994.11.04; DC, 1033.

^{JM1} This recent edition translates "*socielatum*" of *DHI*, 3

by "sociedades", includes the notes referring to s. THOMAS D'AQUIN, translates "*attentis*" of *DH* 6, § 2 by "en atención" and finally gives the whole text of *DH* II, § 2.

3308 This is *Correspondent (Le)*, Paris, 1843.

3318 corrected. See LUCIEN, 1990. 191-206.

3361 Trad, franç. de Kong, néerl. *Augustinus de Zielzorger*, Utrecht, 1949.