

*DIGNITATIS HUMANA*E AND A CATHOLIC SOCIETY: THE
CONFESSIOAL STATE AS A PERENNIAL POSSIBILITY

Christopher Cullen, S.J.

We are so completely enmeshed in modern liberalism that we find it difficult to see that the modern liberal democratic state is an anomaly in the history of politics and religion. No society in human history, prior to modernity, attempted to function without religion, that is, without telling its citizens what they should live and die for, what gods to worship for survival's sake, and what is the purpose of life. For the ancients and the medievals, a society must have its protecting gods. Sacrilege and heresy are threats to the body politic, for they sow dissension among the citizens about the most fundamental questions of human life. Ancient and medieval societies believed it perfectly within their right to suppress those who refused right worship because these acts were attacks against the body politic itself. Religious liberty in *ancien régime* Europe generally reflected this attitude.¹ It is crucial to understand the extraordinary nature of a society without an official religion if one is going to appreciate how anomalous is modern liberalism. Ancient and medievals, both Christian and non-Christian, would be dumbfounded before the idea that a society has no official cult. Modern liberal democracy is very much *ad experimentum*, and there are clear signs that the experiment is going badly for the souls of men.

It is important to appreciate the anomaly that is the modern liberal state in order to understand the Church's long struggle to deal with it. From the Roman Emperor Theodosius I in 381 to the beheading of King Louis XVI in 1793, the Catholic Church was deeply involved with confessional states, the most important of which was that governed by the Frankish monarchy. The alliance of the Frankish monarchy and the papacy, often stormy, like a troubled marriage, was the foundation of medieval Christendom. After the beheading of Louis XVI in January of 1793 until the era of Vatican II, the papacy treated the modern liberal

¹ Religious liberty in Christian Europe, Catholic or Protestant, generally meant tolerance for Jews, hostility and sporadic suppression of Moslems, and active suppression of heretics.

state with hostility. No doubt, it hoped that this was all a bad nightmare from which it would awake. *Dignitatis Humanae* is at once the white flag and the olive branch to modernity. It is an olive branch offered, however, only after the liberal state had, in general, shed its anti-Catholicism and anti-clericalism.

The Church, of course, did not begin in 1965, and so I want to read *Dignitatis Humanae* mindful of the previous history and in the light of the *Catechism of the Catholic Church*, which is the most important doctrinal document on religious liberty since the Council. Hence, I am led to my current thesis: the decree of the Second Vatican Council on religious liberty, *Dignitatis Humanae*, does not preclude the possibility of a Catholic confessional state. There are two fundamental reasons why this is so. First, the document carefully avoids limiting the state to concern for mere public order. The council unambiguously affirmed that the state exists to insure the common good. The common good as understood in the Catholic tradition encompasses the virtuous life of the citizens, including the virtue of religion. Secondly, the document clearly teaches the obligatory nature of the truth. Those who have not found the truth are obliged in duty to seek it, and those who have found it are bound in duty to adhere to it. It is in this context, then, that the Council clearly presents religious liberty as a limited, not an absolute, right that must be set within due limits. Hence, the pursuit of, and adherence to, the truth allows the state in a Catholic society to defend and promote the truth of Jesus Christ and of the Catholic Church, while prescribing the right within appropriate limits. A confessional state in a predominantly Catholic society remains a perennial possibility.

Contrary to popular opinion, the Council was not an endorsement of Enlightenment liberalism and its understanding of constitutional order, so accurately characterized by Alasdair MacIntyre, as a "government [which] does not express or represent the moral community of the citizens, but is instead a set of institutional arrangements for imposing a bureaucratized unity on a society."² Liberalism tends to regard the state as a means of insuring personal freedom and thus as completely

² Alasdair MacIntyre, *After Virtue* (Notre Dame, Indiana: University of Notre Dame Press, 1981), p. 236.

separate from society.³ The state exists to insure public order, which is often conceived in a reductionistic way as simply preserving one citizen from harming another. The Council did not endorse liberalism's laissez-faire state that exists for the sake of maintaining mere public order. It did not exile Catholics to living perpetually in societies that refrain from answering the most important questions of human life.

This paper attempts to address a theoretical question, namely, whether the Council left open the possibility of a confessional state. By asking this question, we hope to accomplish two tasks: (1) to illuminate ways that the teaching of *Dignitatus Humanae* is in harmony with the Church's long tradition of confessional states that began when the Roman Emperor Theodosius I made Christianity the official religion of the Empire around 381 and forbade pagan rites;⁴ and (2) to highlight tacit misinterpretations of the text which read it only through the eyes of post-Enlightenment liberalism. This paper is not "a call" for a confessional state. It merely attempts to answer a theoretical question. It is a question posed ultimately for the sake of a larger, as yet, unaccomplished task: showing how the teaching of Vatican II's most radical document, *Dignitatus Humanae*, can be reconciled with the Church's tradition.

First, let us look at the key texts of *Dignitatis Humanae* itself. In *Dignitatis Humanae*, religious freedom is declared to mean:

that all men should be immune from coercion on the part of individuals, social groups and every human power so that, within due limits, nobody is forced to act against his convictions nor is anyone to be restrained from acting in accordance with his

³ Roger Scruton, *The Meaning of Conservatism*, Revised Third Edition (South Bend, Indiana: St. Augustine's Press, 2002), p. 38.

⁴ It was the Roman Emperor, Theodosius I, who outlawed paganism. In 385, he renewed a prohibition against bloody sacrifices; in 391, he forbade all pagan ceremonies in Rome; in 392, he outlawed pagan worship, whether public or private. All of this was in addition to his active suppression of Arians in many different ways.

conviction in religious matters in private or in public, alone or in association with others.⁵

The Council declared that the basis of this "right to religious freedom" is found in "the very dignity of the human person" as this is known by revelation and reason.⁶

This right to religious freedom includes two key elements. First, it includes a freedom of conscience, such that no one can be forced to act against his conscience in religious matters.⁷ The Council gives as the reason for this the fact "that the practice of religion consists primarily of those voluntary and free acts by which a man directs himself to God." The freedom of conscience has long been recognized in the tradition of the Church. The second element is the free exercise of religion. It is this element that is more problematic in terms of the Church's tradition. The Council declared that to deny man "the free exercise of religion" is to do an "injustice" because man's social nature requires that he give external expression to internal acts of religion. The document proceeds to explain that this external expression of religion includes: (1) corporate autonomy for religious bodies, and (2) freedom of religious association. The document says:

Therefore, provided the just requirements of public order are not violated, these groups have a right to immunity so that they may organize themselves according to their own principles. They must be allowed to honor the supreme Godhead with public

⁵ Austin Flannery, O.P., ed., *Dignitatis Humanae in Vatican Council II: The Conciliar and Post Conciliar Documents: A Study Edition* (Northport, New York: Costello Publishing Company), par. 2.

⁶ *Ibid.*, par. 2.

⁷ *Dignitatis Humanae*, 3: "It is through his conscience that man sees and recognizes the demands of the divine law. He is bound to follow this conscience faithfully in all his activity so that he may come to God, who is his last end. Therefore he must not be forced to act contrary to his conscience. Nor must he be prevented from acting according to his conscience, especially in religious matters. The reason is because the practice of religion of its very nature consists primarily of those voluntary and free internal acts by which a man directs himself to God. Acts of this kind cannot be commanded or forbidden by any merely human authority."

worship, help their members to practice their religion and strengthen them with religious instruction, and promote institutions in which members may work together to organize their own lives according to their religious principles.⁸

Dignitatis Humanae restrains the civil authority from using coercive force or discrimination against either an individual or a religious body for religious reasons.

With this said, however, we must take careful note that *Dignitatis Humanae* does not declare that the state either is excluded from legitimate concern for the common good or is restricted to maintenance of mere public order. This is a crucial point, because if the state is concerned for the common good, then it must be concerned about the spiritual and moral welfare of its citizens. In other words, the common good of society includes the pursuit both of virtue and of the end of human life, i.e., union with God insofar as the virtues dispose man to the reception of beatitude. Among the moral virtues is the virtue of religion as a form of justice that involves rendering to God the worship due Him.⁹ Since the Incarnation, this virtue demands the worship of Jesus Christ. The common good of society, then, would seem to include ensuring the conditions that would contribute to each of its members attaining his supernatural end – union with God. At the very least, society's pursuit of the common good would include preventing those things that positively hinder man's pursuit of his end.

In the middle of the Council in 1964, John Courtney Murray wrote an article, "The Problem of Religious Freedom," which appeared in *Theological Studies*.¹⁰ In it he implies that religious liberty entails the restriction of the state to the maintenance of public order. He implies

⁸ *Dignitatis Humanae*, 4.

⁹ This is a point that the *Catechism of the Catholic Church* makes very clear: "Justice toward God is called the 'virtue of religion' (*Catechism of the Catholic Church*, Second Edition [Citta del Vaticano: Lireria Editrice Vaticana, 2000], par. 1807; see also 1836, 1839, 2087). Also worthy of note is the following: "Adoration is the first act of the virtue of religion" (*Catechism*, 2096).

¹⁰ John Courtney Murray, S.J., "The Problem of Religious Freedom," *Theological Studies* 25 (1964): 521.

that the common good lies outside the competence of what he terms "the constitutional state." Murray's remarks seem to constitute an attempt to give a classical liberal interpretation to the notion of religious liberty. He outlines three principles that make government constitutional, and then he asserts that "when government is based on them, it is based on the truth."¹¹ The first principle is the distinction between the sacred and the secular orders of human life; the second is the distinction between society and the state; the third is the distinction between the common good and public order. Public order, Murray claims, entails three goods: public peace, public morality, and justice. He says, "The power of the state is therefore limited to the maintenance of public order in a threefold sense."¹² What Murray calls the principles of constitutional government are what is usually meant by the modern liberal state.

The conciliar document, *Dignitatis Humanae*, however, does not demand that the Catholic accept "the constitutional government" for which Murray argued. It does not require the Catholic to accept the restriction of the state to the maintenance of mere public order. On the contrary, *Dignitatis Humanae* directly ties the civil authority of the state to the maintenance of the common good: "Therefore the civil authority, the purpose of which is the common good in the temporal order, must recognize and look with favor on the religious life of its citizens."¹³ The state is not excluded from concern for the common good; on the contrary, the civil authority of the state is declared to have its very purpose in securing the common good. What is more, the document has a comprehensive definition of the common good: "The common good of society consists in the sum total of those conditions of social life which enable men to achieve a fuller measure of perfection with greater ease."¹⁴ This definition clearly allows for traditional understandings of the common good that would include the spiritual

¹¹ Murray, "The Problem of Religious Freedom," p. 521.

¹² *Ibid.*

¹³ *Dignitatis Humanae*, 3: "Postestas igitur civilis, cuius finis proprius est bonum commune temporale curare religiosam quidem civium vitam agnoscere eique favere debet."

¹⁴ *Ibid.*, 6.

and moral welfare of the citizens. In the context of a Catholic document, "the perfection of man" can be presumed to refer to the final end of union with God in everlasting life.¹⁵

The second reason why the decree on religious liberty leaves the confessional state as a perennial possibility is that it unambiguously places the right to religious liberty in the context of the obligatory nature of the truth and, therefore, presents the right as a limited, not an absolute, right. As already seen, the right is based on the dignity of the human person. But the Council closely ties the right to the obligatory search for truth:

It is in accordance with their dignity that all men, because they are persons, that is, beings endowed with reason and free will and therefore bearing personal responsibility, are both impelled by their nature and bound by a moral obligation to seek the truth, especially religious truth.¹⁶

It is because of what human beings are that they have a moral obligation to seek the truth. This ordination to truth means that the human being is immune from coercion in religious matters. The right to religious liberty is directly tied to this ordination to truth. This is crucial for two reasons. One, the right only follows from an obligation – to seek the truth – and therefore is not absolute, but is ordered to the truth. Secondly, once the truth is found, the truth demands adherence and imposes moral obligations. The Council teaches: "They [men] are also bound to adhere to the truth once they come to know it and direct their whole lives in accordance with the demands of truth."¹⁷ The right to religious liberty is a right that in no way absolves anyone from the duty either to seek for or to adhere to the truth. Hence, it is not an absolute right, but one subject to the truth. This means that (1) it cannot be exercised outside of the truth insofar as this truth can be known by reason; and that (2) it cannot be exercised in such a way that it contradicts the truth. The right is not rooted in radical liberalism's autonomous individual who may determine the purpose and meaning

¹⁵ *Catechism*, 16, 260, 356.

¹⁶ *Dignitatis Humanae*, 2.

¹⁷ *Ibid.*

of human life for himself. The right is grounded in human nature insofar as it is inclined to the good of human reason, which has been ordered to the truth.

Furthermore, the right is always exercised in a concrete human society. "The right to freedom in matters of religion is exercised in human society. For this reason its use is subject to certain regulatory norms."¹⁸ Hence, the Council taught that the right could not be prescribed when the just requirements of public order are not observed.¹⁹

In general, the *Catechism of the Catholic Church* presents a more tightly organized presentation of the same issues than are found in *Dignitatis Humanae*. The *Catechism* makes clear that the state's role is to ensure the common good: "Every human community needs an authority to govern it. The foundation of such authority lies in human nature. It is necessary for the unity of the state. Its role is to ensure as far as possible the common good of the society."²⁰ In this paragraph, the *Catechism* ties the governing authority of a society directly to the common good, thus rejecting a liberal reading of *Dignitatis Humanae*. This authority follows from the requisites of human nature itself.

Then, in a subsequent paragraph, the *Catechism* goes further and defines the nature of the common good: "By common good is to be understood 'the sum total of social conditions which allow people, either as groups or as individuals, to reach their fulfillment more fully and more easily.' The common good concerns the life of all."²¹ The *Catechism* then goes on to explicate three necessary conditions for the common good: (1) "the common good presupposes respect for the person as such;" (2) "the common good requires the social well-being and development of the group itself;" (3) "the common good requires peace, that is stability and security of a just order."²²

¹⁸ *Ibid.*, 7.

¹⁹ *Ibid.*, 2.

²⁰ *Catechism*, 1898.

²¹ *Ibid.*, 1906.

²² *Ibid.*, 1907-1909.

With regard to the first element, the document says, "Society should permit each of its members to fulfill his vocation. In particular, the common good resides in the conditions for the exercise of the natural freedom indispensable for the development of the human vocation."²³ The *Catechism* is attempting to correct a strictly liberal understanding of the common good. It ties the common good to the development of the human vocation. The distinctly human vocation is to union with God in Christ. This point is made clear in the first statement of the section of the *Catechism* on the "Communal Character of the Human Vocation:" "All men are called to the same end: God himself."²⁴ "The vocation of humanity is to show forth the image of God and to be transformed into the image of the Father's only Son."²⁵

The *Catechism* quotes *Dignitatis Humanae* when discussing the first article of the Creed and the nature of the act of faith. The act of faith must be free. "To be human man's response to God by faith must be free, and... therefore nobody is to be forced to embrace the faith against his will. The act of faith is of its very nature a free act."²⁶ Faith cannot be compelled without destroying the very nature of the act.

The *Catechism* treats the right to religious liberty later under the first commandment, which prescribes the worship of God. By placing its treatment there, the *Catechism* presents the right as an aspect of the human duty to serve God. Here again the right is closely tied to duty. The duty to serve God implies a respect for other men's search for the truth about God. The *Catechism* says, "[This duty] does not contradict a 'sincere respect' for different religions which frequently 'reflect a ray of that truth which enlightens all men' nor the requirement of charity."²⁷ The *Catechism* is clear that:

²³ *Ibid.*, 1907.

²⁴ *Ibid.*, 1878. "Of all visible creatures only man is able to know and love his creator, . . . and he alone is called to share, by knowledge and love, in God's own life. It was for this end that he was created" (*Catechism*, 356).

²⁵ *Ibid.*, 1877.

²⁶ *Ibid.*, 160.

²⁷ *Ibid.*, 2104.

The right to religious liberty is neither moral license to adhere to error, nor a supposed right to error, but rather a natural right of the human person to civil liberty, i.e., immunity, within just limits, from external constraint in religious matters by political authorities.²⁸

There are two key points about this passage. First, the *Catechism* reiterates that religious liberty is a negative or passive right – it is immunity from external constraint. It does not oblige the state to render recognition or goods to religion. It is not a positive or active right that necessitates support from the state. The second point here is that the *Catechism* makes clear that the religious-liberty right is not absolute, but only relative, and therefore bound by “just limits.” It cannot be exercised outside of the limits of public order. This proposition is clear. But it also cannot be exercised outside the limits of the order of truth, the objective moral order:

The right to religious liberty can of itself be neither unlimited nor limited only by a “public order” conceived in a positivist or naturalist manner. The “due limits” which are inherent in it must be determined for each social situation by political prudence, according to the requirement of the common good and ratified by the civil authority in accordance with “legal principles which are in conformity with the objective moral order.”²⁹

Presumably, then, the state would not be obliged to tolerate a religion that practices human sacrifice, as did the ancient Aztecs before the arrival of Hernan Cortés. Nor would the state have to tolerate a religion that practices temple prostitution, as did the ancient Canaanites; nor ones that advocate suicide for their members, such as certain medieval sects, as well as certain more recent ones. One can argue that these religions violate both the just limits of public order and the legal principles in conformity with an objective moral order.

²⁸ Ibid., 2108.

²⁹ Ibid., 2109.

The *Catechism* also makes clear that a right (*jus*) cannot be rooted in error. Murray points clearly to this fact in his notes on *Dignitatis Humanae*, published in English immediately after the Council: "Neither the *Declaration* nor the *American Constitution* affirms that a man has a right to believe what is false or to do what is wrong. This would be moral nonsense."³⁰ Murray makes clear that the right is not to be conceived as being rooted in liberalism's autonomous individual who may determine the purpose and meaning of human life for himself.

Nor can the argument be that the right to religious liberty is rooted in the sincere but erroneous conscience. This would still ground the right in error. The decree is clear that the basis for the right is man's dignity. A medieval Cathar might sincerely have acted from an objectively erroneous conscience that judged suicide a good act because this act liberates one from the body, but said Cathar cannot claim that such an erroneous judgment gives such a person a right to suicide. A bishop may sincerely act from an objectively erroneous conscience that judges suicide to be a justified act of protest against other unjust acts, but one cannot claim that this erroneous judgment gives the bishop a *right* to suicide.

Contrary to such interpretations of the document, the *Catechism* moves in the other direction. It explicitly calls for the public and legal recognition of Sundays:

In respecting religious liberty and the common good of all, Christians should seek recognition of Sundays and the Church's holy days as legal holidays. They have to give everyone a public example of prayer, respect and joy and defend their traditions as a precious contribution to the spiritual life of society.³¹

Although this paper is not advocating a confessional state, one might find it helpful, as a theoretical exercise, to ask what a Catholic confessional state would look like in order to bring to light its consonance with the principles of *Dignitatis Humanae*. It is possible in

³⁰ John Courtney Murray, Notes to Declaration on Religious Freedom, in *The Documents of Vatican II*, trans. Walter Abbott (New York: Guild Press, 1966), n. 5.

³¹ *Catechism*, 2188.

the current age to discern two very different models for a confessional state that are polar opposites. One model is found in certain Islamic societies, such as in Iran or in Saudi Arabia. Another is found in the Scandinavian countries, which are still technically confessional states, each with a state religion. The first model presents us with theocratic states that seem highly undesirable for a number of reasons and very problematic for the religious freedom that the Council decreed. The second model presents us with democratic states that are officially confessional but that do little to influence thoroughly secularized civil societies. A Catholic confessional state, without violating the religious freedom of its citizens, could re-introduce those principles eliminated at the birth of the liberal state: the pursuit of virtue and the recognition of transcendence. A confessional state, therefore, could (1) recognize the truth of the Catholic faith in its state papers, i.e., in an official capacity, thereby attempting to shape civil society by orienting it to a transcendent meaning and purpose; (2) affirm the human vocation to live the virtuous life; (3) enact laws that are in accord with the natural law and that prudently inculcate the virtues, especially the virtue of religion, such as what the *Catechism* calls for, namely, the public and legal recognition of Sundays and feasts; (4) require that the head of government and/or head of state be Catholic; (5) respect and defend the freedom of the Church (*libertas ecclesiae*) which is so highly sought by *Dignitatis huanae*; (6) actively support the works of the Church by various means, financial and otherwise (for example, a confessional state could support Catholic institutions that perform spiritual and corporal works of mercy, such as schools and hospitals); (7) shape the culture of such a society through education and censorship; and (8) secure and protect the borders from influences deemed detrimental to the common good. In short, the *cura ecclesiae* would fall within the competence of the state insofar as this affects civil society, that is, insofar as it affects the common good. The Church would work to sustain and foster the health of the body politic, without losing its own independence.

The thesis of this paper is that a Catholic confessional state remains a possibility even after *Dignitatis Humanae*. There are two reasons for this: (1) the decree does not remove the common good from the concern of the state, and (2) the right to religious liberty is not absolute but is prescribed by the obligatory search for truth and the limits of public order. In this light, *Dignitatis Humanae* appears more in harmony

with the previous tradition and practice of Roman Catholicism. Whether or not such a state is desirable is another question.

The decree on religious liberty played a crucial role in the Church's struggle against communism. In the years since the Council, it seems to have also allowed the Church to guide a number of societies from dictatorships to democracy, in what Samuel Huntington calls "the third wave" of democratization in the history of the modern world – a wave that has been "overwhelmingly Catholic."³² The great irony is that the Church has arguably become the single largest, transnational champion of ordered liberty. Ordered liberty does not preclude a Catholic confessional state.

³² Samuel P. Huntington, "Religion and the Third Wave," *The National Interest* 24 (Summer 1991):29-42. The first wave lasted a hundred years and took place from the 1820's to the 1920's; the second started at the end of World War II and lasted until the mid-1960's; the third wave began with the end of the Portuguese dictatorship in 1974 and continues. "Since then democratic regimes have replaced authoritarian ones in more than thirty countries in Europe, Asia, and Latin America" (Huntington, p. 29). The first wave received its remote impulse from the Puritan Revolution in the seventeenth century and more immediate impulse from the American and French Revolutions. Most of the countries involved in this first wave were Protestant. The countries involved in the second wave were religiously diverse, but the larger number were Protestant. "In its first fifteen years the third wave was overwhelmingly Catholic" (Huntington, p. 30).