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Contra Harrison in Re Libertate Religiosa: On the Meaning of *Dignitatis Humanae*

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FATHER BRIAN W. HARRISON, O.S., WELL-KNOWN TO READERS OF THIS JOURNAL, has been widely noticed for his efforts directed toward showing that there is no inconsistency, and that there is indeed a legitimate continuity, between the doctrine of The Second Vatican Council concerning religious liberty, as set forth in *Dignitatis Humanae* (hereafter "DH"), and that of the pre-conciliar Church. Fr. Harrison's views are to be found in his book *Religious Liberty and Contraception*[1] (hereafter "RLC"), and as modified or augmented in several articles or book reviews.[2]

In a lengthy article such as this, I do not propose to discuss exhaustively all the many issues, doctrinal and historical, upon which I find myself in agreement or disagreement, as the case may be, with Fr. Harrison. However, I shall here focus upon what he holds to be a legitimate interpretation of DH's doctrine, and how he undertakes to demonstrate that this interpretation is consistent with what he understands to be pre-conciliar doctrine. What I hope to illustrate is that Fr. Harrison's interpretation of the doctrine of DH on religious liberty is unjustified, and that his thesis as to how that doctrine can be reconciled with pre-conciliar doctrine is fundamentally flawed.

A. AN ANALYSIS OF *RELIGIOUS LIBERTY AND CONTRACEPTION* ON PRE-CONCILIAR DOCTRINE AND PRACTICE

We first turn to his book. Fr. Harrison has rightly noted that the doctrine of DH concerning religious liberty, albeit authoritative, is not an instance of the exercise of the infallible magisterium.[3] Given this starting point, it is remarkable that in his book: (1) Fr. Harrison assumes, for the sake of argument only, that pre-conciliar doctrine on religious liberty is fallible, although authoritative.[4] (2) He limits his discussion of pre-conciliar doctrine respecting religious liberty to papal declarations-and thus without any reference to the relevant teaching (whether infallible or fallible), if any, of the ordinary universal magisterium. (3) He makes no reliance upon any real or purported *practical* infallibility with respect to the Church's legislation or policy, as distinguished from doctrine, bearing on religious liberty.[5]

With the foregoing in mind, we may examine how Fr. Harrison summarizes pre-conciliar papal teaching. He does so as follows:

> 1. The *Civitas*-the civic community as such has a duty to honour God, and to recognize as uniquely true the religion entrusted by Christ to the Catholic Church.
> 2. Civil authority therefore has the duty to protect the true religion and the Catholic Church by restricting (to the extent that the common good requires) the free propagation of doctrinal error-both that which

opposes reason or the natural law and that which opposes revealed truth. (It then pertains to ecclesiastical and civil law, mutable according to circumstances, to propose norms governing how much restriction the common good does in fact require in particular cases.)

3. In a well-constituted society, the common good will always require some degree of restriction over and above that which is necessary merely for the maintenance of public peace.

4. Civil authority can and should tolerate the diffusion of error to the extent that the common good requires, but may never give positive approval or authorization to that error, since nobody has an objective right to believe or propagate what is false, or to do what is wrong.

5. Nobody may ever be coerced into embracing the Catholic faith, since the act of faith must be free.[6]

The foregoing can be safely assumed for the purposes of our discussion as substantially accurate, as far as it goes.[7] The term "common good" is used to refer to the natural and the supernatural good of the community, the latter good including the salvation of souls.[8] The common good endows, as it were, civil authority with coercive power to repress some violations of revealed truth or divine positive law, and not only of natural law.[9]

Fr. Brian Harrison

For Fr. Harrison, the distinction between policy and doctrine is critical. It is essential, for our purposes, to notice especially that he states:

> In the realm of policy the practical assessment of what means are in fact necessary for upholding the common good the Church traditionally judged that, at least in an already Catholic country, the public diffusion of ideas and practices opposed to Catholicism is *ipso facto* a sufficiently serious threat to the common good to outweigh other factors (such as the dignity or good conscience of erring individual persons) which might incline towards tolerance; and that therefore such activity should be legally restricted even when it does not in itself violate commonly held truths of reason or the natural moral law.[10]

It should be also be noted that Fr. Harrison, in his explanation of the relevant pre-conciliar papal documents concerning religious liberty (as distinguished from papal public ecclesiastical law or policy), insists that what was condemned was the following proposition: "All peaceful non-Catholic propaganda has a right to immunity from civil prohibition."[11] He means by this that a person has a natural right to be immune from civil prohibition as to any peaceful non-Catholic propaganda.[12] What was not condemned, according to Fr. Harrison, was the following proposition: a person has the natural right to be immune from civil prohibition as to some peaceful non-Catholic propaganda.[13] According to him, "Vatican II ... was thus eventually able to affirm [that *some* peaceful non-Catholic propaganda has a right to immunity from civil prohibition] without contradicting earlier Catholic doctrine."[14] On the other hand, Fr. Harrison claims that DH "leaves open the possibility that at least some activity which violates revealed truth, but not naturally knowable truth, might endanger the 'public order,' and hence be subject to civil restrictions.[15]

Thus, a fair reading of Fr. Harrison's discussion of the matter justifies the conclusion that the objective meaning of what he has written is that pre-conciliar papal teaching did not condemn the proposition: in a predominantly Catholic country there is a natural right to be free (i.e., immune from coercion by civil authority) to publicly manifest and propagate (peacefully) *some* non-Catholic religions, and that DH affirms this right.[16] Indeed, when discussing the "fairly constant (though unfortunately far from invariable) practice" in medieval Catholic states of tolerating the public exercise of non-Christian cults of those never baptized, he writes:

> But it does seem fair to say that such an elevation [from a permissive to a mandatory toleration], carried out explicitly by *Dignitatis Humanae* when it teaches that at least some false religious practices can have a right to religious liberty, is an harmonious bringing to the surface of something which good Catholics had traditionally observed in practice, and perhaps recognized theoretically in an obscure or partially formulated way.[17]

B. FR. HARRISON ON THE MEANING OF *DIGNITATIS HUMANAE*

Turning now to the doctrine of *Dignitatis Humanae*, Fr. Harrison summarizes it as follows in his book:

> C1. The "traditional Catholic doctrine" concerning the "moral duty of men and societies towards the true religion and the one Church or Christ" remains "intact."
> C2. The human person, by virtue of his innate dignity, has a right to immunity from human coercion in religious matters both individually and collectively, in public and in private, so that within due limits, he may neither be forced to act against his conscience, nor prevented from acting in accordance with it.
> C3. The "due limits" mentioned in C2 are to be determined in accordance with the objective moral order, by the requirements of that fundamental component of the common good which in contemporary usage is termed the care of "public order." These requirements are: first, the protection of the rights of all citizens and the peaceful settlement of conflicts of rights; secondly, the protection of a just public peace; and finally, the protection of public morality.
> C4. The freedom of the Church, which she claims before every public authority in her capacity as the spiritual authority appointed by Christ for propagating the Gospel, is the fundamental principle governing relations between the Church, public authority, and the whole civil order. [18]

The foregoing, I think, is a substantially accurate statement for our purposes. I shall not, however, concern myself herein with points C1 (because his discussion in his book does not impact issues of religious liberty[19]) and C4 (insofar as the freedom of the Church is conceived as a matter of divine positive law).

Here, we notice Fr. Harrison's observation: "It is immediately evident that our pre-conciliar proposition 5 above (forbidding coercion on anyone to embrace the faith) is not contradicted by any affirmation of *Dignitatis Huncanae*."[20] Indeed, that the freedom of the act of faith has a corresponding component of the natural right to religious liberty is expressly affirmed by DH.[21] Fr. Harrison, noting "the harsh mediaeval practice of the Church towards heretics,"[22] explains that DH developed the traditional doctrine of freedom of the act of faith by having it also encompass whether or not to retain the faith. Thus, "it emerges as an implication of the traditional doctrine that people should not be coerced by governments simply for wanting to opt out of the Church by private acts of heresy, schism or apostasy."[23]

Before proceeding further, we should first examine the most relevant text in DH, that is, # 7. It declares:

> The exercise of the right to religious freedom takes place in human society and is therefore subject to certain modifying principles.
>
> The moral maxim of personal and social responsibility must be followed in the exercise of all liberties; in the use of their rights individuals and social groups are found by the moral law to have regard to the rights of others, to their own duties towards others and to the common good of all. All should be treated with justice and humanity.

Further, as society has the right to protect itself against the abuses that can occur under the guise of religious liberty, it is chiefly for the state to provide the relevant safeguards. This should be done neither arbitrarily nor with inequitable discrimination, but by legal norms in accord with the objective moral order. Such rules are required for the effective protection and peaceful harmonizing of the rights of all citizens. They are required to make adequate provision for that general peace and good order in which people live together in true justice. They are required for the due protection of public morality. These factors together constitute a fundamental part of the common good, and are included in the idea of public order. Nevertheless, that principle of full freedom is to be preserved in society according to which people are given the maximum of liberty, and only restrained when and in so far as is necessary.[24]

DH essentially defines religious liberty as immunity from coercion in religious matters, within due limits.[25] The declaration uses "as long as due public order is observed"[26] as equivalent in meaning to "within due limits." Hence, we may more succinctly define "within due limits" (or its equivalent expression) as: subject to those legal norms, determined in conformity with the objective moral order, necessary for the effective protection and peaceful harmonizing of the rights of all citizens, for

the adequate provision for genuine public peace, and for a proper guardianship of public morality. It should be here noted that # 7, par. 3 is concerned with the legal limits of the immunity from coercion as to religious matters, whereas the second paragraph is concerned with the moral limits of the same. Fr. Harrison treats the two terms, "rights of others" as used in # 7, par. 2, and "rights of all citizens" as used in # 7, par. 3, as essentially synonymous a matter, as we shall see, of great importance, since the former are moral (or quasi-moral) rights and the latter are legal (or juridical) rights.[27] Fr. Harrison correctly explains that religious liberty is not to be understood as consisting of any moral right to hold or manifest any false belief with respect to religion, but rather as consisting of a natural right to be legally tolerated, as he puts it, by civil authority with respect to any such belief, within the limits of just public order. Thus, doctrinal or moral error cannot constitute the objective ground of religious liberty as a natural right.[28] As the Council itself teaches, this right "is firmly based on the dignity of the human person as this is known from the revealed word of God and from reason itself."[29] Indeed, "the right to religious freedom is based on human nature itself, not on any merely personal attitude of mind."[30]

C. FR. HARRISON 'S BOOK ON THE "PUBLIC ORDER" AND "OBJECTIVE MORAL ORDER"

Fr. Harrison's reconciliation of pre-conciliar papal doctrine and that of DH is accomplished in the following manner. He first alleges that the public order, considered as the fundamental component of the common good, consists of three components which are identical with all those components of the common good that are concerned with the exercise of coercive power by civil authority. How is this possible? It is possible because "[t]he three grounds given by Vatican II [for civil restrictions on religious propaganda] cover generically all of the grounds recognized by the pre-conciliar doctrine. This is true by virtue of the Council's 'catch-all' category, 'the rights of all citizens."[31] According to Fr. Harrison, the term "rights of all citizens" as used in # 7, par.3 includes the moral (or quasi-moral) rights of citizens not to have eternal life imperiled by, for example, temptations against faith occasioned by exposure to heretics.[32] As he further explains:

> The first consideration-protecting and reconciling "the rights of all citizens" is particularly broad. This may have been deliberate.... [I]t is this very vagueness which saves *Dignitatis Humanae* from making any "blanket" condemnation of the Church's own traditional public law: as Bishop de Smedt's *relatio* about the "relative" and "evolving" nature of the "common good" implied, the Council did not wish to condemn the idea that, in certain social and cultural conditions which no longer obtain in the contemporary world, the public diffusion of non-Catholic ideas as such might have been justly restrained as an infringement of the rights of an overwhelmingly Catholic populace.[33]

Fr. Harrison's reference to Bishop de Smedt requires further elaboration. He refers in the preceding passage to remarks made by Bishop de Smedt, the official *relator* of DH, in the course of his presentation to the Council on 19 November, 1965. To quote Fr. Harrison's translation of Bishop de Smedt's remarks about # 7 of DH:

> Venerable Fathers, this elucidation regarding the common good clarifies many points in the text, and renders a number of other suggested changes unnecessary. Let me give an example. In no. 12 the issue was raised of reprehensible behaviour-behaviour contrary to the spirit of the Gospel which has sometimes arisen during the history of the People of God. Now, some Fathers wanted us to add that in judging these shortcomings of the past, one should take into account the fact that human society itself has exhibited different modes of thinking and living in different ages. This is quite true, but it is equivalently expressed when we affirm that the norm for the care of religion is the common good. The common good, as everyone knows, is something relative: it is linked to the cultural evolution of peoples and has to be judged according to that development.[34]

Bishop de Smedt's statement is made much of by Fr. Harrison as confirming his position that the "just public order" of DH is equivalent in scope only to the coercive components of the common good within the meaning of pre-conciliar doctrine. But this reliance is unwarranted.

First, Bishop de Smedt was reading from a written relatio, which had been made available to the Council Fathers on 17 November, 1965.[35] The above-quoted remarks on the common good were not contained in the written *relatio* but rather were made in oratione. Hence, these appear to have been incidental, surely extempora-

neous remarks-very likely without any considerable impact. Indeed, Fr. Harrison appears to have been the first person, writing in 1988, to have taken public notice of the bishop's statement. Second, the remarks in question are inconsistent with the statement in the written report: "The common good is taken in its full extent (sumitur in sua amplitudine) as a norm when it is a question of guarding or promoting the right to religious liberty. When it comes to imposing limits, however, the more basic component (parte fundamentali) of the common good is taken to be the norm."[36] If the common-good coercive power includes the power to guard religious liberty, it is clear that the scope of the commongood coercive power is greater than that of its public-order component. Third, although what a relator says is of value in determining the meaning of a conciliar text, this factor is subordinate to the most important consideration: the objective meaning of the text as is supplied by the text itself where sufficient to that purpose. The text of DH itself shows that the Council Fathers understood that the common-good coercive power (as historically understood with respect to the cura religionis) is much broader in scope than the public-order coercive power. Fourth, the probative value of the bishop's in *oratione* statement is swamped by other matters disclosing the legislative intent of Pope Paul VI and the Council Fathers.

"Truth, however, is to be sought in a manner befitting the dignity and social nature of the human person."
-Dignitatis Humanae

There are many more ways in which Fr. Harrison is erroneous in his opinion that DH can be properly interpreted such that the coercive power based upon just public order is equivalent to the coercive power based upon the common good, as conceived in preconciliar doctrine and practice. Let us examine some of them. The reference in # 7, par. 3, quoted above, to freedom in religious matters as "not to be curtailed except when and insofar as necessary," discloses awareness on the part of the Council Fathers that the coercive power of civil authority in this domain should only extend to what is necessary to limit, rather than to also what is appropriate or useful (but not necessary) to limit. Thus DH, also with respect to religious liberty, had at the outset acknowledged that the "people of our time.... also urge that bounds be set to government by law, so that the limits of reasonable freedom should not be too tightly drawn for persons or for social groups."[37]

DH itself proclaims: "In addition, religious communities are entitled to teach and to give witness to their faith publicly in speech or writing without hindrance."[38] True, this component of the right of religious liberty must be exercised "within due limits." However, it is nonsense to say there is a corresponding legal right within the meaning of the term "rights of all citizens" in # 7, par. 3, of DH-of a Catholic not to be exposed to such public teaching and witness by a non-Catholic religious community even if he freely wills to be, or assumes the risk of being, so exposed. Moreover, the same paragraph of DH proceeds to add a proviso about the duty to abstain from improper proselytizing-a qualification which is pointless unless some proselytizing for some non-Catholic religion is deemed within the scope of legitimate public teaching and witness. Clearly, the "rights of all citizens" in # 7, par. 3, cannot refer to such rights as those which entail limitations on liberty in religious matters and which also presuppose the truth of the Catholic religion as such.[39]

Similarly, DH teaches: "Truth, however, is to be sought in a manner befitting the dignity and social nature of the human person, namely by free enquiry assisted by teaching and instruction, and by exchange and discussion in which people explain to each other the truth as they have discovered it or as they see it, so as to assist each other in their search."[40] DH also declares "that it is wrong for a civil power to use force or fear or other means to impose the acceptance or rejection of any religion, or to prevent anyone from entering or leaving a religious body."[41] A civil power forecloses "free enquiry" and uses "force or fear or other means ... to prevent anyone from leaving [the Church]" by protecting believers from temptations against faith presented by propaganda, even if those believers are freely willing to be, or assume the risk of being, exposed to such propaganda.

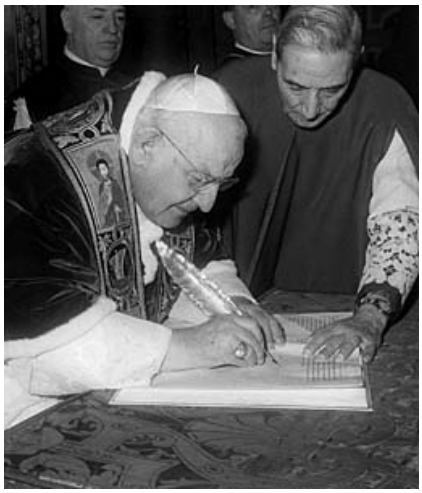
Thus, additionally, DH explains: "[T]his right to non-interference persists even in those who do not carry out their obligation of seeking the truth and standing by it; and the exercise of the right should not be curtailed, as long as due public order is preserved."[42] For Catholics, the individuals described in this passage clearly include a believing Catholic who virtually neglects the study of

apologetical writings but, nevertheless, avidly reads literature subversive of his faith.

Surely, it would not be difficult to multiply other reasons, based upon the textual analysis of DH, to show why Fr Harrison egregiously errs in holding that the "rights of all citizens" as used in # 7, par. 3, includes a right not to be subjected to temptations against the faith presented by propaganda involving persons freely willing to be, or assuming the risk of being, exposed to the same. Moreover, the entire framework of the declaration on religious liberty, and its stated purposes and functions, is utterly inconsistent with Fr. Harrison's thesis as to the meaning of "rights of all citizens."[43]

What is most interesting is that Fr. Harrison himself seems cognizant of the untenable nature of his position-though as we shall see he has an implausible argument by which he seeks to avoid a charge of inconsistency. This fissure in Fr. Harrison's position is disclosed in his discussion of Bernadino Montejano's contention that, to quote Fr. Harrison, "since, according to the Council, religious activity may be limited by the need to 'protect the rights of all citizens,' a Catholic State may justly claim that its citizens have a right 'to preserve their religious unity and to protect the humble faithful from a socially dissolvant proselytism.'"[44] Fr. Harrison's final statement on Montejano's point is worth quoting in part:

> Having argued Montejano's case for him as strongly as seems possible, one feels bound to say that such an interpretation still seems rather forced.... [T]o conclude with Montejano that a Catholic State could still today ban all non-Catholic propaganda, without infringing the norms laid down by Vatican II, would seem a thesis very difficult to sustain. Even if it does not contradict the letter of the Declaration, it contradicts very definitely the primary intention of many Council Fathers and periti, especially those coming from mainly Protestant countries, for whom the chief purpose of a conciliar statement on religious liberty was to counteract, for example, the discrimination against Protestantism in countries like Spain, where the Vaticanendorsed laws were seen as a scandalous embarrassment to the Church at large, and an insuperable obstacle to any significant ecumenical progress.[45]



Pope John XXIII signs the bull convoking Vatican II, Dec. 25, 1961

Fr. Harrison reconciles his position that DH does not contradict pre-conciliar papal doctrine, given his interpretation of the term "rights of all citizens" in # 7, par. 3 of DH, by contending that DH impliedly rescinded previous ecclesiastical public law or policy. He states that:

> [DH] understood especially in the light of the authentic interpretations given by the Holy See in its various post-conciliar concordat revisions-implies (though it does not explicitly state) a new practical policy judgment by the Church: namely, that even in overwhelmingly Catholic countries, non-Catholic propaganda as such is *no longer* to be seen as the kind of threat to the common good which may justly be repressed by civil law. In effect, then, *Dignitatis Humanae* has rescinded the previous public law of the Church on this point.[46]

To provide an example of such a change in church law, Fr. Harrison writes: "Since Vatican II, understood especially in the light of how the Holy See has applied the conciliar Declaration in various concordat revisions, the new law is that even in the most predominantly Catholic countries, the right of at least the more moderate and upright non-Catholic groups to immunity from government interference takes precedence over the right of Catholics not to be `led into temptation' towards sins against their faith, as a result of the diffusion of false religious ideas."[47]

In any event, it seems to me singularly unusual that the "authentic interpretation" of DH by the Holy See's post-conciliar policy is understood by Fr. Harrison not to confirm the thesis that the change in Church policy was determined by virtue of a doctrinal basis supplied by DH.

On the contrary, he urges that "*Dignitatis Humanae* contradicts no previously existing doctrine (it goes no further than rescinding a previous norm of ecclesiastical public law)."[48] Accordingly, he contends that the fact that the Church in DH "did not explicitly and formally

condemn as intrinsically unjust her own existing public law-the law which was then still in force in Spain is not without significance."[49]

Now, DH itself rather weakly refers to the fact that "at times in the life of the people of God, as it has pursued its pilgrimage through the twists and turns of human history, [and] there have been ways of acting hardly in tune with the spirit of the gospel, indeed contrary to it."[50] However, Pope John Paul II in his apostolic letter, *Tertio Millennio Adveniente*,[51] has emphatically condemned the injustice of civil intolerance committed on behalf of the Church. The Pontiff declared:

> Another painful chapter of history to which the sons and daughters of the Church must return with a spirit of repentance is that of the acquiescence given, especially in certain centuries, to *intolerance and even the use of violence* in the service of truth.
>
> It is true that an accurate historical judgment cannot prescind from careful study of the cultural conditioning of the times, as a result of which many people may have held in good faith that an authentic witness to the truth could include suppressing the opinions of others or at least paying no attention to them. Many factors frequently converged to create assumptions which justified intolerance and fostered an emotional climate from which only great spirits, truly free and filled with God, were in some way able to break free. Yet the consideration of mitigating factors does not exonerate the Church from the obligation to express profound regret for the weaknesses of so many of her sons and daughters who sullied her face, preventing her from fully mirroring the image of her crucified Lord, the supreme witness of patient love and of humble meekness. From these painful moments of the past a lesson can be drawn for the future leading all Christians to adhere fully to the sublime principle, stated by the Council: "The truth cannot impose itself except by virtue of its own truth, as it wins over the mind with both gentleness and power."[52]

Pace Fr. Harrison, the assertion of a natural right to religious liberty (i.e., immunity from coercion as to religious matters, within the limits of just public order) does indeed entail the objective injustice of such pre-conciliar public ecclesiastical policy or law as was rescinded, as it were, by the adoption of DH.[53]

We must reject as without merit Fr. Harrison's contention that DH rescinded the pre-concilar public ecclesiastical law or policy (by which any non-Catholic manifestation or propaganda in predominantly Catholic countries could legitimately be repressed) but did so without changing doctrine. DH expressly declared that the Council "in treating of this religious freedom [it] intend[ed] to develop the teaching of more recent popes [recentiorum summorum pontificum doctrinam] on the inviolable rights of the human person" (# 1, par. 3). Hence, DH declared *a doctrine* concerning religious liberty, i.e., that there is a natural right to be immune from coercion in religious matters within due limits (# 2, par. 1), and "due limits" (or its equivalent expression "iustus ordo publicus servetur") is thereafter defined or described (# 7, par. 3). It is in virtue of this doctrine that the Church's policy was changed in that DH calls upon the recognition of religious liberty as a civil right in all political communities (# 2, par. 1; # 6, par. 2; # 15, par. 4).

Thus, on 28 June, 1967, Spain eliminated that provision of Article 6 of the Charter of 13 July, 1945 (*Fuero de los Espanoles*) by which "[n]o one shall be disturbed for his religious beliefs nor the private exercise of his religion. There is no authorization for external ceremonies or manifestations other than those of the Catholic religion." In its place was substituted: "The State guarantees the protection of religious liberty, which shall be guaranteed by the effective juridical provision which will safeguard morals and public order." The preamble to the act, which was changed with Vatican approval, explained:

> The fundamental law of 17 May 1958, invirtue of which Spanish legislation must take its inspiration from the doctrine of the Catholic Church, forms the basis of the present law.
>
> Now, as is known, the Second Vatican Council approved the Declaration on Religious Freedom on 7 December 1965, stating in Article 2: "The right to religious freedom has its foundation in the very dignity of the human person, as this dignity is known through the revealed word of God, and by reason itself. This right of the human person to religious freedom is to be recognized in the constitutional law whereby society is governed. Thus it is to become a civil right." After this declaration of the Council, the necessity arose of modifying article 6 of the Spaniards' Charter in virtue of the aforementioned principle of the Spanish State.[54]

Returning to # 7 of DH, we now consider the relevance of the term "objective moral order" as used in the proposition that relevant safeguards by civil authority against possible abuses which occur under the guise of religious liberty should be done "by legal rules in accord with objective moral order." Fr. Harrison contends that "objective moral order" refers not only to the natural moral law but to the divine positive law as well. He states:

> [A]ccording to pre-conciliar doctrine, violations of revealed truth or divine positive law not only of natural law might also be penalized by public authority to the extent required by the common good. It is important to note that this teaching is not contradicted by Vatican II, which nowhere speaks of natural law as the *only* criterion by which civil authorities may decide what to permit or prohibit. The Council speaks of the "objective" moral order; and divine positive law, for Catholics, is certainly as "objective" as natural law, since both have God as their source.[55]

Asserting that Vatican II does not deserve Pope Leo XIII's rebuke of those who reject supernaturally revealed truths or who assert that the State should not publicly advert to them, Fr. Harrison proceeds to say:

> While [the Council] no longer wishes to allow civil powers to treat all public non-Catholic propaganda as a punishable offence in our own day, it leaves open the possibility that at least some activity which violates revealed truth, but not naturally knowable truth, might endanger the "public order," and hence be subject to civil restrictions.[56]

Fr. Harrison explains that "the Church herself, according to Catholic belief, is the unique authentic interpreter of the 'objective moral order."[57] The significance of this must be understood in the light of his statement:

> Vatican II does not say that the State may penalize violators of the Catholic religion *only* to the extent that such violators are opposed to reason or the natural law as well. "Reason" or "natural law" are not so much as mentioned in the Council's exposition of the limits to religious activity, only the "objective moral order." And in a Catholic document particularly in the light of the Declaration's re-affirmation in article I of the civic community's duty to act in accordance with "the true religion and the one Church of Christ"-the "objective moral order" (without further restriction or qualification) can mean only one thing: the law of God (both natural and revealed).[58]

As to all this, it should immediately be protested that DH nowhere requires or authorizes repression of any violations of the Catholic religion, as such. DH allows, as it were, civil authority to justly repress violators of the public peace, or of public morality, or of the rights of all citizens-an entirely different matter.

Fr. Harrison errs, I submit, when he claims that the term "objective moral order," as used in # 7 of DH, encompasses divine positive moral law. In the first place, DH declares and vindicates religious liberty as a natural right, to be universally recognized in all political communities as a fundamental civil right. Second, Vatican II's declaration on the Church in the World, *Gaudium et Spes*, was promulgated on the same date as DH, 7 December 1965. *Gaudium et Spes* (# 16) describes that "[d]eep within their conscience individuals discover a law which they do not make for themselves but which they are bound to obey, whose voice, ever summoning them to love and do what is good and to avoid what is evil, rings in their heart when necessary with the command: Do this, keep away from that." *Gaudium et Spes* is here referring to the natural law and to the human conscience. It proceeds to comment: "And the more a correct conscience prevails, so much the more do persons and groups abandon blind whims and work to conform to *the objective norms of morality*."[59] Citing this passage in his encyclical, *Veritatis Splendor*, Pope John Paul II has explained:

> The great concern of our contemporaries for historicity and for culture has led some to call into question *the immutability of the natural law* itself, and thus the existence of "objective norms of morality" valid for all people of the present and future, as for those of the past .[60]

The reader should recall that DH declares that "the right to religious freedom is based on human nature itself' (DH: # 2, par. 2), and refers to the duty of the Church not only to "announce and authentically teach the truth which is Christ, [but] at the same time to give authoritative statement and confirmation of the principles of the moral order which derive from human nature itself' (# 14, par.3).[61]

The principle of religious liberty, a natural right to be universally protected by civil authority, applies to any political community, whatever its official position respecting religion. Accordingly, the objective moral order

governs the process by which the just public order (which includes the "due protection of public morality" as a component factor) is to be determined.

The conclusion-that the natural moral law (and not the divine positive law) is to provide the foundation by which the requirements of just public order is to be determined by the civil authority of any political community-is not inconsistent with the doctrine that civil authority is bound by the moral law, both natural and positive, of God. However, DH necessarily presupposes that the law of God (whether positive or natural) does not require or authorize what would otherwise constitute violations of religious liberty.

Moreover, although it is only the natural moral law (and therefore not also the divine positive law) which provides the basis by which limitations on civil immunity from coercion in religious matters are to be determined, it does not necessarily follow that it is only the natural moral law that civil authority may properly consider in otherwise determining public policy issues not involving those pertaining to religious liberty.

DH codifies the principle of the narrowly-construed term "just public order" as the basic component of the common good in order to limit radically the traditional scope of the coercive power of civil authority with respect to religious matters. Historically, the coercive power was chiefly exercised in the following ways in "predominantly Catholic countries" ostensibly to promote or protect the common good (in addition to doing what was necessary to protect public morality and to preserve public peace): (1) to promote indirectly or preserve national or political unity, or public tranquility, by preventing the divisiveness brought about by religious dissent or pluralism; (2) to protect believers from temptations against the faith presented by the propaganda or the scandalizing exercise of dissident religions; (3) to vindicate divine honor against blasphemy, actual or constructive (and of other cognate offenses), as acts which by their malice especially require or warrant punishment by civil authority; (4) indirectly to protect public morality (which includes good citizenship) against the subversion of its principal source, religious truth; and (5) to act as the secular arm of the Church in the execution of its judgments against offenders.[62] Indeed, Cardinal Alfredo Ottaviani presented a doctrinal schema for consideration at Vatican II, on behalf of the Theological Commission, which incorporated that particular view of the common good referred to above. The schema proposed, *inter alia*, that:

> Thus then, in the same way that the civil Authority judges that it has the right to protect public morality, likewise, in order to protect the citizens against the seductions of error, in order to keep the [Catholic] City in the unity of faith, which is the supreme good and the source of manifold, even temporal, benefits, the civil authority can, by itself, regulate and moderate the public manifestations of other cults and defend its citizens against the spreading of false doctrines which, in the judgment of the Church, put their eternal salvation at risk.[63]

The schema nevertheless confirms the freedom of the act of faith as also a civil right, and confirms that the common good, both on the national and international level, can warrant a just civil tolerance in the Catholic City.64 However, the doctrine of *Dignitatis Humanae* concerning religious liberty is not just a disguised codification of Cardinal Ottaviani's schema. "Public order" as used in # 7 of DH must narrowly be construed in order to conform with the clearly manifested legislative intent to exclude the above-described traditional components of the common-good coercive power.

Fr. Harrison's thesis, as presented in his book, as to how the pre-conciliar papal doctrine and that of Vatican II respecting religious liberty agree depends upon the legitimacy of his contention that DH radically changed public ecclesastical law or policy but without contradicting pre-conciliar doctrine. He indeed asserts that DH propounds the doctrine "that when the common good is not significantly endangered, the followers even of false religions have the natural right, not indeed to propagate their mistaken ideas or practices, but to be left free by human authority to do so."[65] His argument depends upon two major premises. The first is that the term "the rights of all citizens," as used in # 7, par. 3 of DH, somehow includes *the right* (in some sense) of a Catholic, even though freely willing to be (or assuming the risk of being) so exposed, to be protected against temptations against his faith presented by non-Catholic propaganda. The second is that the term "objective moral order," as also used in # 7, encompasses the divine positive law. We have seen how both premises must be rejected as erroneous.

There are, I submit, several tensions evident in Fr. Harrison's book. DH, it is claimed, does not contradict

pre-conciliar papal doctrine (i.e., the civil authority may legitimately repress public manifestation or propagation of doctrinal error as to faith or morals to the extent that the common good requires). Yet this pre-conciliar doctrine was not supposed to have condemned the proposition that there is a natural right to be free to propagate publicly or manifest some non-Catholic religions in predominantly Catholic countries. This proposition, according to what Fr. Harrison plainly says, is affirmed by DH. However, according to pre-conciliar public ecclesiastical law or policy, all public manifestations or propagation of non-Catholic religions in overwhelmingly Catholic countries could legitimately be repressed by civil authority. On the other hand, DH somehow impliedly rescinded this policy. However, Fr. Harrison does not explain the mechanism of such rescission in his book.

D. THE DEVELOPMENT OF FATHER'S HARRISON 'S DOCTRINE IN HIS SUBSEQUENT WRITINGS

We now turn to so see how Fr. Harrison has modified his theory significantly, as to the meaning of the doctrine of DH concerning religious liberty, in his later articles and reviews. In his July/August 1989 article in *Social Justice Review,*[66] he remains focused on pre-conciliar papal doctrine on religious liberty issues. This article contains two major points which are of special significance for us. The first is that Fr. Harrison, repeating that DH does not contradict pre-conciliar papal doctrine, provides an explanation of why DH nevertheless changed ecclesiastical public law or policy warranting the repression, in some situations, of all public nonCatholic manifestations or propagation in predominantly Catholic countries. He writes:

> [I]t seems probable that the precisions given in article 7 of DH in regard to the limiting criteria on religious activity are to be seen as new norms of ecclesiastical public law rather than immutable doctrine. The central *doctrinal* affirmation of the entire Declaration is found in article 2.... The Council simply affirms there that there are "due limits" to legitimate religious activity in civil society; and article 7 then gives concrete application to this general doctrinal principle by specifying how the Church in our own day wishes these limits to be determined by civil governments.[67]

In short, the alleged doctrine of DH concerning religious liberty is essentially vacuous. It reminds one of those sham legal constitutional provisions in totalitarian states which (in substance) affirm the right of the people to be free, as to a particular matter, but only within the limits of law.

The second major point is that Fr. Harrison now turns to his proposition Cl to buttress his argument that DH did not change pre-conciliar papal doctrine. C1 states: "The 'traditional Catholic doctrine' concerning the 'moral duty of men and societies towards the true religion and the one Church of Christ' remains 'intact.'"[68] Fr. Harrison contends in his SJR article that this particular traditional Catholic doctrine referred to in # 1, par.3 of DH includes the first four of the five cardinal propositions of pre-conciliar papal doctrine set forth at pages 60-62 of his book. These include the three propositions (C2, C3, C4) which pertain to the coercive power of civil authority with respect to the expression or manifestation of non-Catholic religions.[69]

Fr. Harrison's reliance on his interpretation of proposition Cl is wholly unwarranted. To demonstrate this, we must quote from the relevant text in the preamble to DH. That text, following a description of how God has revealed Himself to humanity and that "this one and only true religion subsists in the catholic and apostolic church," reads:

> [A]ll people are bound to seek the truth, especially about God and his Church, and when they have found it to embrace and keep it.
>
> The synod further proclaims that these obligations touch and bind the human conscience, and that truth imposes itself solely by the force of its own truth, as it enters the mind at once gently and with power. Indeed, since people's demand for religious liberty in carrying out their duty to worship God concerns freedom from compulsion in civil society, it leaves intact the traditional catholic teaching on the moral obligation of individuals and societies toward the true religion and one church of Christ. Furthermore, in treating of this religious freedom the synod intends to develop the teaching of more recent popes on the inviolable rights of the human person and the regulating of society by law.[70]

It is patently clear that "the moral obligation of the individuals and societies toward the true religion and one church of Christ" only encompasses the duty "to seek the truth ... about God and his Church, and when

they have found it to embrace and keep it" and "to worship God." Assuming, for the sake of argument, that this obligation impliedly confirms the traditional doctrine of the duty of the political community to recognize especially and support the Catholic religion and the Catholic Church, it has nothing to do with the question of the coercive power as to religious matters. The preamble itself negatives this by, among other things, referring to the "people's demand for religious liberty in carrying out their duty to worship God concerns freedom from compulsion in civil society."

Indeed, the *Catechism of the Catholic Church* itself conclusively shows that Fr. Harrison's view is erroneous. It declares (in part):

> The duty of offering God genuine worship concerns man both individually and socially. This is "the traditional Catholic teaching on the moral duty of individuals and societies toward the true religion and the one Church of Christ."[71]

"Public authority may not justly enact or enforce a particular law limiting a liberty entails the existence of a corresponding right. However, it does not follow that we have a natural right..."

In his review of the late Archbishop Marcel Lefebvre's book,[72] Fr. Harrison again focuses on papal pre-conciliar doctrine with respect to the issue of continuity of doctrine with that of DH. He erroneously states that *Ecclesia Dei*, John Paul II's apostolic letter pertaining to Archbishop Lefebvre illicit ordinations, "calls on the Church's scholars to study the Vatican II documents more deeply, with a view to bringing out more clearly their essential continuity with *traditional doctrine*."[73] Nevertheless, he appears to limit the discussion of proposition C1, discussed in the immediately preceding paragraphs, to church-state issues other than those pertaining to religious liberty.[74] The greater part of his discussion pertains to the proper interpretation of pre-conciliar papal documents bearing upon religious liberty, which need not concern ourselves here since we assume for the sake of argument the substantial accuracy of Fr. Harrison's summary of pre-conciliar papal doctrine concerning religious liberty. The review essentially restates the major theses of his book concerning pre- and post-conciliar papal doctrine and public ecclesiastical law or policy concerning coercive power as to religious matters. However, Fr. Harrison states:

> The *new doctrinal development* of Vatican II can be reduced quintessentially to the proposition neither affirmed nor denied by the pre-conciliar magisterium, but seemingly implied in *Ci Riesce* of Pius XII that under some circumstances (namely, when the common good of society is not seriously endangered) the public exercise of non-Catholic cults may not be justly repressed by human authority. In other words, the Declaration clarifies and affirms the teaching that there *can be* a *right* to immunity from human coercion for those who believe and practice a religion other than the Catholic religion.[75]

Fr. Harrison makes an interesting point. That public authority may not justly enact or enforce a particular law limiting a liberty entails the existence of a corresponding right. However, it does not follow that we have a natural right "natural right" being understood as one fundamentally based upon the natural dignity of human persons.

The review also asserts that the guarantee of infallibility does not apply to the Church's prudential judgments concerning an appropriate means to a good end. Moreover, Fr. Harrison notes en passant that "a consensus of theologians has traditionally held that the Holy Spirit could not allow the Church to impose a universal disciplinary norm which was intrinsically evil-as would be, for instance, a command to do what was intrinsically sinful, or a universal prohibition of some activity which is objectively required by divine law."[76] However, he does not pursue this matter further.

Next, we turn to Fr. Harrison's review of Michael Davies' book.[77] This review is quite remarkable, as we shall see, because in it Fr. Harrison closes up some loose ends.

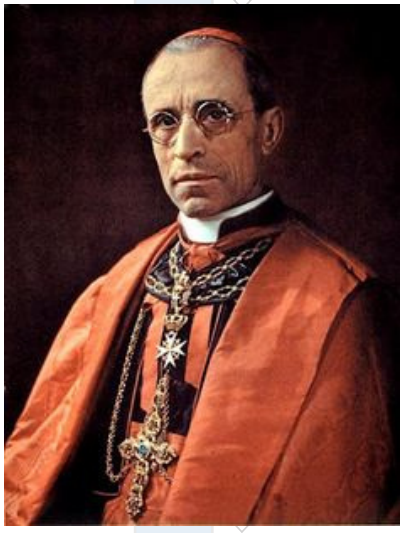
He affirms that DH "teaches the following thesis (not explicitly, but by undeniable implication): non-Catholics (like all human beings) have a natural right to immunity from government coercion in publicly expressing their beliefs, in circumstances where this does not violate public morality, public peace, or the rights of other citizens." He admits "that no Pope before Vatican II ever actually taught this thesis," but denies that pre-conciliar

popes had actually condemned it.[78]

The vacuous nature of religious liberty as a natural right, as interpreted by Fr. Harrison, clearly appears since he affirms that the "rights of other citizens" (read, "rights of all citizens") includes the right of Catholics to be defended "against the spreading of false doctrines which, in the judgment of the Church, put their eternal salvation at risk."[79] He comments:

> It is evident that a contradiction of the above thesis [i.e., concerning the natural right of non-Catholics to religious liberty] affirmed by Vatican II would affirm or imply the following: no violation of a natural right of non-Catholics is ever committed by a government which represses the public expression of their beliefs, not even in circumstances where such expression does not violate public morality, nor public peace, nor any rights of other citizens. This amounts to the doctrine that public religious error may always and everywhere be repressed without injustice, simply because it is erroneous; that is, without any regard for the social consequences of either repression or non-repression. (Such social considerations, according to this doctrine, could be relevant only to whether repression is prudent or imprudent, nor just or unjust).[80]

The second statement, I submit, is fallacious. It assumes that the injustice of a particular statute necessarily entails a corresponding natural right that would be violated by the application of the statute. This assumption, it seems to me, is unjustified. What the natural law would entail, in such circumstances, is what could be properly called a natural-law right. A natural right is a right entailed by the natural law where the basic ground of the right is the natural dignity of human persons. Given this analysis, it is clear that the set of natural-law rights includes all natural rights as its proper subset. However, not all natural-law rights are natural rights.



Pope Pius XII

Fr. Harrison essentially repeats the same fallacies elsewhere in his review. Thus, he refers to the teaching of Pope Pius XII in *Ci Riesce* to the effect that in certain circumstances the common good may not only permit the toleration of evil by civil authority but may require it. Fr. Harrison writes:

> If at times the state has no God-given right to repress certain errors, that seems to imply that those who propagate them have a God-given right, under those circumstances, to be immune from such repression. It would be interesting to know Davies' answer to the following question: in countries where Catholics are a minority, do the non-Catholic citizens have a natural right to immunity from coercion in publicly practicing their religion (at least insofar as they remain within the bounds of natural law)? After all, article 7 of the preparatory schema for Vatican II (praised by Davies as a good summary of pre-conciliar doctrine) asserts that the state "should concede" that sort of immunity under those circumstances; and there seems only a short distance between saying that those non-Catholics "should" be given this immunity and saying they have a right to be given it.[81]

If there is no God-given right to repress X, then there is a corresponding God-given right not to be repressed as to X. However, it does not follow that this natural-law right is a natural right. Similarly, to say that A should have an immunity does not imply that the entailed right to the immunity is a natural right. Fr. Harrison, as we have seen, fallaciously assumes that all natural-law rights are necessarily natural rights.

He then proceeds to develop a thesis, not expounded by him in his previous writings. First, he asserts that non-Catholics in non-Catholic countries have a natural right to immunity from coercion within the bounds of natural law. He then says that "this core affirmation of *Dignitatis Humanae* does not say anything one way or another about the treatment of public non-Catholic manifestations in Catholic states."[82]

Now we come to the *piece de resistance* in Fr. Harrison's review. He declares that it is true that "traditional doctrine excludes the possibility that, in a *predominantly*

Catholic society, there can be any natural right of non-Catholics to be tolerated in the public profession of their religion." He also declares that it is false that DH "affirms (or at least implies) such a right."[83]

The reader will recall that Fr. Harrison had ostensibly stated in his book that pre-conciliar papal doctrine did not contradict the proposition, although affirmed by DH, that there is a natural right to be free to publicly manifest or propagate (peacefully) some nonCatholic religions in predominantly Catholic countries. We discerned here a striking incongruity because this proposition cannot justify, as it were, the pre-conciliar public ecclesiastical law or policy which required or permitted the repression of the public manifestation or propagation of all non-Catholic religions in predominantly Catholic countries. Fr. Harrison now proposes in his review of Davies' book that "a correct understanding of *Dignitatis Humanae* leads us to see the 'right' to immunity from coercion which nonCatholics now enjoy in predominantly Catholic states, not as a natural right, but as an acquired right granted by the Church."[84] According to Fr. Harrison, it was by virtue of the change in public ecclesiastical law that this was accomplished.[85]

Since, according to Fr. Harrison, non-Catholics do not have a natural right to be free to publicly manifest or propagate any non-Catholic religion in predominantly Catholic countries, he can no longer ostensibly rely upon the supposed fact that pre-conciliar papal doctrine had not condemned the proposition that there is a natural right to be free to publicly manifest or propagate (peacefully) some non-Catholic religions. He therefore provides another explanation:

> [I]t must be acknowledged that Leo XIII and the other earlier Popes certainly did frequently urge (in concordats and other lesser documents) the repression of all public non-Catholic manifestations in Catholic states or societies. This policy was such a firm and unanimous norm of public ecclesiastical law universally applied throughout centuries of Christendom that I believe (as I am sure Davies does) that the Holy Spirit could not have permitted it if it were, *per se* and intrinsically, a violation of natural law. Indeed, all traditional theologians (and thus, the Popes and Bishops who approved their works) have taught it as theologically certain a conclusion inseparable from revelation and therefore part of the infallible Ordinary Magisterium-that the Church's sanctity and indefectibility exclude the possibility that any general disciplinary norm of the universal Church (as distinct from a merely local norm) could be intrinsically (*per se*) contrary to divine law, whether natural or positive. It follows that if *Dignitatis Humanae* affirmed a natural right not to be prevented from publicly propagating non-Catholic religions in Catholic societies, then in deed the Declaration would implicitly contradict the aforesaid doctrine of the Ordinary Magisterium.[86]

Given the foregoing, Fr. Harrison's laborious attempt to show that pre-conciliar papal documents did not condemn the proposition that there is a natural right to be free to publicly manifest or propagate (peacefully) some non-Catholic religions turns out to be rather pointless. He finally comes to realize that he can no longer rely solely upon his reading of the relevant pre-conciliar papal documents to serve as the total justification of pre-conciliar Church law or policy with respect to non-Catholic religions in Catholic countries. Moreover, unlike his book, which studiously avoids the doctrinal infallibility issue with respect to religious liberty issues, his review of Davies' book contends that (at least some) relevant pre-conciliar-doctrine of the ordinary universal magisterium is infallible.[87] Finally, he expressly relies upon (what I term) practical infallibility with respect to universal disciplinary laws of the Church.

Alas, his argument is rather sketchy. It is, however, essential to take notice of his implicit assumptions. First, he assumes that a universal doctrine of "traditional theologians," that a particular proposition is a true theological conclusion, is necessarily a doctrine of the ordinary universal magisterium simply because popes and bishops have approved the works of these theologians. Second, he assumes that a given doctrine of the ordinary universal magisterium, albeit classified as theologically certain or as a theological conclusion, falls necessarily within the scope of the secondary object of the Church's infallibility (i.e., truths, not themselves divinely revealed, but which are necessarily connected to divinely revealed truths). Third, he assumes that a doctrine taught by the universal ordinary magisterium is necessarily taught as one to be held definitively by the faithful. Fourth, he assumes that theologians have assigned substantially the same meaning to the tenns "theologically certain" and "theological conclusion." Fifth, he assumes that, if a policy or law rescinded by DH is held to have violated divine law, it must be held as having been "*per se* and intrinsically" contrary

to natural law-rather than as having been instrumentally or extrinsically contrary to such law. Sixth, he assumes that the rescinded public ecclesiastical law or policy respecting repression of non-Catholic religions falls within the ambit of what is meant by a general disciplinary norm of the universal Church to which a sound doctrine of practical infallibility properly applies. These assumptions, of course, require further discussion. However, for the present, I shall content myself with the maxim: *quod gratis affirmatur, gratis negatur* what can be gratuitously affiinned can be gratuitously denied. In any event, Fr. Harrison deserves credit for expanding his inquiry as to pre-conciliar doctrine beyond the confines of papal documents of the last two centuries. Of course, Fr. Harrison may well disclose to what extent he agrees or disagrees with the "implicit assumptions" which I think underlie his argument.

Suffice to say that Fr. Harrison appears to have painted himself into a corner with regards to his views on DH. We should recall that it was also part of the public ecclesiastical law or policy, for many centuries, for the Church itself, or civil authorities acting at her behest, physically to coerce[88] Catholics for heresy, schism, and apostasy, and cognate offenses. Indeed, this law or policy was once universal in scope in Catholic Christendom.[89] Fr. Harrison, the reader will recall, stated that DH teaches that the freedom of the act of faith applies to keeping the faith as well as to embracing it initially-thereby entailing a corresponding natural right. The reader will also recall that Fr. Harrison, in his book, expressly approved of this "development of doctrine." Clearly, the teaching of DH on this point is incompatible with the now long defunct, but very much longer observed, law and practice of the Church concerning apostates, heretics, and schismatics. Given his views on practical infallibility since Fr. Harrison reads DH such that there can be no natural right with respect to the public manifestation or propaganda of any non-Catholic religion in predominantly Catholic countries he should *a fortiori* also read DH such that Catholics do not have any natural right to be immune from physical coercion by civil authority or the Church with respect to apostasy, heresy, or schism. However, this view would contradict his book's position that DH had developed the doctrine of the freedom of the act of faith so as to encompass the decision whether or not to retain the faith or remain in the Church.

Adverting to his opinion that DH rescinded that pre-conciliar ecclesiastical public policy or law by which the public manifestation or propaganda of all non-Catholic religions could legitimately be repressed in predominantly Catholic countries, Fr. Harrison repeats his view as to how one must distinguish between "norms" and "doctrine." He proceeds to elaborate:

> Formally speaking, [article] 6 of *Dignitatis Humanae* contains no new doctrinal affirmations over and above what have been affirmed in [article] 2. It simply states that, if one religion is given state recognition, "the right to religious liberty of other citizens and religious communities" must be respected as well. But since this right has already been defined as an intrinsically limited one, [#] 6, taken just as it stands and from a strictly logical viewpoint, leaves just as open as [#] 2 does the question as to whether, in predominantly Catholic societies, the public manifestation of non-Catholic cults might, as such, be considered a transgression of the "due limits," and hence subject to legitimate repression.[90]

From a strictly logical viewpoint, Fr. Harrison's position here presents difficulties. He holds that DH somehow affirms that nonCatholics have a natural right to be free, in non-Catholic countries, to publicly manifest and propagate non-Catholic religions within the bounds of natural law, and this right exists because the common good requires civil authority to tolerate such manifestation and propagation. On the other hand, he also holds that there cannot be a natural right to be free to publicly manifest and propagate any non-Catholic religion in predominantly Catholic societies. Thus the "acquired right" of non-Catholics in predominantly Catholic countries with respect to religious liberty is a matter of legislative grace. According to Fr. Harrison, as we have seen, A does not have any natural right to be free to do (or not do) X unless B has a corresponding duty to permit X. Hence, he should hold that it is impossible for the common good, national and international, of the political community and of the Church, to be considered as ever imposing upon civil authority in predominantly Catholic countries the duty of tolerating the public manifestation and propagation of any non-Catholic religion within the bounds of natural law. Therefore, it seems that Fr. Harrison's explanation of the "acquired" right of non-Catholics (allegedly granted by DH) as to some non-Catholic religions in predominantly Catholic countries is inconsistent with the doctrine of Pope Plus XII in *Ci Riesce* that, under certain circumstances, the toleration of public manifestations or propagation of religious error within Catholic states is a duty required by the common good.[91]

Finally, we have two points to consider: Fr. Harrison's understanding of "the common good" and "public order," and his remarks at the National Wanderer Forum held on 24 - 26 September 1993. Fr. Harrison refers in his *Living Tradition* article to how "the new *Catechism of the Catholic Church* ... restores the traditional term *common good,* and indeed gives it priority over *public order*, the novel term preferred by *Dignitatis Humanae*. [Number] 1738 of the Catechism says that the civil power should protect the exercise of religious liberty 'within the limits of the common good and the public order.[92]

There are serious difficulties with Fr. Harrison's views. Number 1738 reads in full:

> Freedom is exercised in relationships between human beings. Every human person, created in the image of God, has the natural right to be recognized as a free and responsible being. All owe to each other this duty of respect. *The right to the exercise of freedom*, especially in moral and religious matters, is an inalienable requirement of the dignity of the human person. This right must be recognized and protected by civil authority within the limits of the common good and public order.[93]

The freedom mentioned in number 1738 is the "power, rooted in reason and will, to act or not to act, to do this or that, and so to perform deliberate actions on one's own responsibility." Number 1747, a summary "in brief," indicates the purpose of number 1738. Number 1747 reads:

> The right to the exercise of freedom, especially in religious and moral matters, is an inalienable requirement of the dignity of man. But the exercise of freedom does not entail the putative right to say or do anything.[94]

It is therefore puzzling to see why number 1738 includes a reference to the civil authority at all. It should have, I think, referred to the limitations of the moral law. The confusing character of number 1738 also appears because it states that the right in question "must be recognized and protected by civil authority within the limits of the common good and public order." The inclusion of both the "common good" and "public order" is mystifying. On the one hand, it is redundant to mention them conjunctively since public order is a component of common good. (It would not, to give an example, be good usage to say: "All birds and pigeons have feathers.") If, on the other hand, the two terms ("common good" and "public order") are synonymous, it also does not make sense to use both in the conjunctive. (To give another example: "all male bachelors and unmarried men are unhappy.") If the third sentence in number 1738 refers to civil authority, it would make sense were it to read: "This right must be generally recognized and protected by civil authority within the limits of the common good as to moral matters but specifically within the limits of public order as to religious matters."

In this connection, we should here digress to consider number 2109 of the *Catechism* as well. Number 2109 reads:[95]

> The right to religious liberty can of itself be neither unlimited or limited only by a "public order" conceived in a positivistic or naturalist manner.[96] The "due limits" which are inherent in it must be determined for each social situation by political prudence, according to the requirements of the common good, and ratified by the civil authority, in accordance with "legal principles which are in conformity with the objective moral order."[97]

Here, reference to the "requirements of the common good" as part of the process of determining the due limits (of public order: "intra debitos limites" or "iustus ordo publicus servetur") is quite understandable-given that due limits encompass the three factors (i.e., the rights of all citizens, the public peace, and public morality) which together constitute the fundamental part of the common good.

Finally, we briefly discuss Fr. Harrison's remarks at the National Wanderer Forum held on 24 - 26 September 1993. In this talk, he emphatically confirmed the view that the adoption of DH did nothing to contradict the "doctrine of the previous one and a half millennia;"[98] that the common good was the criterion as to which "Catholic governments, in conformity with Church teaching, had always appealed to in order to limit or even prohibit entirely the public manifestation of anti-Catholic doctrines or rites in predominantly Catholic societies."[99] According to this doctrine,

> such restriction by Catholic governments "is in itself morally legitimate, and may be imposed in the interest of the 'common good' of society, since heresy and apostasy are grave dangers to the eternal salvation of Catholic citizens, whose welfare spiritual as well as temporal is the legitimate concern of civil authority."[100]

This view is quite remarkable. Fr. Harrison urges that the pre-conciliar doctrine cannot be reversed "with as little damage to the Church's credibility as that which was occasioned by the Vatican's self-contradiction in regard to the Galileo case."[101] On the other hand, he candidly acknowledges:

> [DH]... *sounds* more liberal than it really is. Conscious of the Church's public image at a time when dialogue with nonChristians and non-Catholics was being given high priority, Vatican II gave prominence to language which seems to allow for very few government restrictions on religious propaganda. But then, in the "fine print" and official commentary, which was not even published in Latin by the Vatican Press until thirteen years after the Council, it is revealed that this language *is not to* be understood in a way which would contradict the doctrine of the previous one and a half millennia, which in fact allowed for many more such government restrictions.[102]

Thus we are to suppose that the credibility of the Church is not more seriously damaged if it is indeed the case that DH was adopted so that it appears to the unsuspecting to mean one thing, but was covertly intended actually to mean another. Apparently Fr. Harrison thinks so, although he disarmingly acknowledges that "if that strikes you as all rather confusing and less than straightforward, then I am inclined to agree with you."[103] But would it really be a good thing for the world to believe that the Council Fathers were guilty of a such subterfuge?

Fr. Harrison argues that such pre-conciliar doctrine as is apparently contrary to that of DH (but not, according to him, actually so) had been definitively taught by the Church."[104] But that raises another question, namely, whether pre-conciliar doctrine, apparently inconsistent with that of DH, had been *definitely* taught by the Church. My principal concern in this article has been to establish that the doctrine of DH is radically different from that presupposed by the concededly abrogated public ecclesiastical law or policy by which governments of predominantly Catholic countries had severely limited the public exercise or manifestations, or propaganda, of non-Catholic religions (and I should add, irreligions).

We end this article with an expression of dismay as to how the text of DH, read in the light of its legislative history, as further authentically interpreted by the diplomatic and ecumenical practice of the Holy See, apparently can be misconstrued so radically by Fr. Harrison. The credibility of the Church, ecumenical progress, as well as fruitful dialogue between Catholics and fellow-Christians, fellow-theists, and others, would be seriously jeopardized were Fr. Harrison's theory of religious liberty perceived to be widely held within the Church. Nevertheless, Fr. Harrison's sincere and honest concerns cannot be dismissed as unworthy of serious and respectful consideration by those who disagree with him as to the meaning of DH. He, and those who share or sympathize with his position, are very much bothered by the issue of the consistency between pre-conciliar doctrine and that of DH.

Fr. Harrison, with very considerable polemical and analytical skill, has argued thoroughly, candidly and vigorously for his position. The fact remains, however, that there is something fundamentally wrong about his approach to the problem at hand however intellectually stimulating it has proven to be. Surely, one can argue that there is something very wrong about an approach which ultimately leads Fr. Harrison to conclude that there is no natural right to be free to publicly manifest or propagate any non-Catholic religion in predominantly Catholic countries; and that the doctrine of DH is consistent with this position.

Fr. William Most has well pointed out: "The use of correct method is vital in all study."[105] Addressing the nature of the correct method is outside the scope of this article. It suffices to say that essential to the correct method for the study of *Dignitatis Humanae* is first to endeavor to determine its manifestly intended meaning, as disclosed by its text and legislative history, rather than to construct what appears to be a theory especially contrived in order to "save appearances."

Notes

1Brian W. Harrison, O.S., *Religious Liberty and Contraception* (Melbourne: John XXIII Fellowship Co-Op. Ltd, 1988.) Fr. Harrison's book, as its title indicates, is very much concerned with the status of the Church's doctrine on contraception. He wishes to show that DH, which does not define infallible doctrine, does not somehow constitute a precedent for relaxing the Church's teaching on contraception (assuming for the sake of argument its doctrinal status as being fallible) because DH's doctrine is not inconsistent with pre-conciliar doctrine on religious liberty (see RLC, 133-140). Nevertheless, Fr. Harrison contends that the Church's doctrine on contraception is indeed infallible, by virtue of both the exercise of the Church's ordinary and extraordinary magisterium (Ibid., 138 # 17, 163-181). He thoroughly discusses the status of the doctrine concerning contraception as being infallible in his article, "The Ex Cathedra Status of the Encyclical *Humanae Vitae*," in *Faith & Reason*, vol. XIX, no. 1, Spring 1993, 25-78.

2 "Vatican II and Religious Liberty: Contradiction or Continuity?" *Social Justice Review*, July/August 1989, 104-112 (hereafter "SJR 89"); "The Church, Archbishop Lefebvre, and Religious Tolerance," *Fidelity*, October 1989, 38-44 (hereafter "F89"); "The Second Vatican Council and Religious Liberty by Michael Davies," *Living Tradition*, No. 44, January 1993, 4-12 (hereafter "LT93"); "Roma Locuta Est, Causa Finita Est," in *For the Glory of God and the Salvation of the World* (Proceedings of the 26th Annual National Wanderer Forum September 24th-26th, 1993) (*The Wanderer Forum Foundation*), 39-48 (hereafter "Roma...Est"). His article, "John Courtney Murray: A Reliable Interpreter of *Dignitatis Humanae*?" in *We Hold These Truths and More: Further Reflections on the American Proposition*, eds. Donald J. D'Elia & Stephen M. Krason (Steubenville: Franciscan Univ. Press, 1993), is the published version of his paper read at a conference held 8-11 November 1990. This very ably written article, however, is expressly limited to a discussion of church-state issues other than those pertaining to matters of religious liberty.

3RLC, 102.

4Ibid., 138-139; but see 102.

5The Church is *practically infallible* if it has that divinely endowed property whereby it is impossible for her, when she makes and imposes general disciplinary laws on all the faithful, to command what is contrary to evangelical law, prescribe what is intrinsically evil, or to proscribe what is intrinsically good. That such practical infallibility exists had been commonly maintained by approved theologians before The Second Vatican Council, with some differences of opinion as to its scope and limits, and as to its doctrinal status. I do not mean to imply that Fr. Harrison denies this doctrine; he certainly does not do so, as we shall see. Rather, I simply point out that he has merely seen fit to ignore it in his book, together with the two other points also mentioned in the accompanying paragraph in the text. Fr. Harrison mentions in his book "the realm of Church policy, law or discipline -in which field she [the Church] does not enjoy any guarantee of infallibility." Ibid., 87 (see 26). However, I understand Fr. Harrison to be referring in this cited passage to doctrinal infallibility.

6Ibid., 60-6 L Notes omitted. The pre-conciliar papal pronouncments upon which Fr. Harrison focuses are: Pope Gregory XVI's encyclical, *Mirari Vos* (1832), Pope Pius IX's enyclical, *Quanta Cura* and the accompanying *Syllabus* (1864), Pope Leo XIII's encyclicals, *Immortale Dei* (1885) and *Libertas Praestantissimum* (1888), and Pope Piux XII's allocution, *Ci Riesce* (1953). I sharply disagree with some of Fr. Harrison's opinions concerning the interpretation of these papal documents. However, I assume (for the purposes of this article) the substantial accuracy of his account of pre-conciliar papal doctrine. Hence I shall not discuss these documents in this article, which focuses upon the proper interpretation of the doctrine of DH on religious liberty.

7Michael Davies, in his *The Second Vatican Council and Religious Liberty* (Long Prairie: Neumann Press, 1992), 168, rightly points out that the first point should be amplified to include: "In a predominantly Catholic society this will be achieved by the union of Church and State in which false religions will not be granted the same rights as the true religion." But see Harrison, RLC, 70, 76-82. I do not propose to discuss in this article doctrinal issues pertaining to an establishment of religion provided that full religious liberty is constitutionally guaranteed.

As to the second point in the summary, I do not see why Fr. Harrison, by the use of "therefore," holds that a duty to restrict the free propagation of any doctrinal error flows from the duty postulated in the first point.

8RLC, 55, 93, 135.

9Ibid., 83-84, 100-101. By "coercive power" I mean the power to impose penalties of the kind typically imposed by civil authorities involving the use, or the threat of the use, of physical force by an agent of that authority (e.g., death, , fines, imprisonment, flogging, confiscation, and restraints on liberty as conditions of parole or proba-

tion). I do not refer to ecclesiastically imposed spiritual penalties (e.g., excommunication) or temporal penalties (e.g., loss of entitlement to ecclesiastical offices, privileges, benefits, including restraints on liberty) ultimately conditioned upon the consent of the offender. Of course, "coercion" as used in DH refers to the former but not the latter kind of penalties.

10Ibid., 83-84. The same point is essentially made in many other places. See, for example, 59, 87, 108, 141. The other references make it clear that Fr. Harrison is referring to overwhelmingly Catholic countries, and his use of "should" is to be understood in the sense of what is ideal but which is to be realized only to the extent it is prudent or expedient to do so. Fr. Harrison refers frequently to this public ecclesiastical policy as "law," which I suggest is perhaps too strong a term.

The term "public," with reference to the manifestation, exercise, or diffusion of religion, is ambiguous. Fr. Harrison usually uses "public" as synonymous with "external" or "exterior" and thus to refer to what only occurs, or is open to the view of those, in public places, such as streets, parks, squares, and the like-and not to what occurs within buildings open to the public, such as churches and temples. See ibid., 51 # 46, 56-59, 86 # 4; but see also 125-126. The term "public" as used in the relevant Church documents in connection with the public exercise of religion, however, appears ordinarily intended to refer to what occurs within or without buildings open to the public.

11Ibid., 44.

12Ibid., 44. He explains that he uses the quoted expression "merely for economy of expression."

13Ibid. I do not accept Fr. Harrison's analysis as accurate, but will assume its accuracy for the purpose of our discussion. Briefly, my opinion is: (1) according to pre-conciliar papal doctrine (most probably up to John XXIII's encyclical, *Pacem in Terris* [1963]), there is no natural right *whatsoever* to freely (i.e., to be immune from coercion by civil authority) engage in the public manifestation or propagation of any non-Catholic religion; (2) that this doctrine, although authoritative at the time, should be held as not having been promulgated in the infallible exercise of the papal magisterium.

Unless otherwise indicated, the term "definitively taught" as used in this article refers only to those doctrines which have been taught by the Church in the exercise of its infallible magisterium.

I shall generally use terms "natural right to be free to" or "natural right to freely" in place of "natural right to be immune from coercion by civil authority."

14RLC, 44.

15Ibid., 100.

16See ibid., 43-53, 100-102, 109, 125-126, 128-129. In fairness to Fr. Harrison, it should be here noted that, in a letter to me, dated 8 February 1995, he denies that his book asserts that DH asserts the natural right to be free to publicly manifest or propagate some non-Catholic religions in predominantly Catholic countries. If that, however, is not what he meant to say, it is nevertheless the meaning of what was written by him. The reader, of course, must judge for himself.

17RLC, 126.

18Ibid., 63-64. Notes omitted.

19See ibid., 64-82, where Fr. Harrison discusses C1 ("The `traditional Catholic doctrine' concerning the 'moral duty of men and societies towards the true religion and the one Church of Christ' remains 'intact'") only in connection with issues pertaining to the duty to honor God and to recognize the Catholic religion as uniquely true. The book's discussion of the post-conciliar coercive power does not refer at all to C l. See also ibid., 83-111.

20Ibid., 64.

21DH, # 6, par. 5; # 9, par. 1; # 10; # 12, par. 1: *Decrees of the Ecumenical Councils*, eds. Norman P. Tanner & Giuseppe Albergigo (Washington: Georgetown Press, 1990) (hereafter "Tanner"), vol. II, 1003, 1005, 1006-1007, 1009.

22RLC, 125. See also 32, where he refers to sixteenth-century Catholics "accustomed to a long tradition of ecclesiastically-sanctioned heretic-burning."

23Ibid., 125.

24Tanner II, 1005-1006.

25DH, n 2, par. 1, Tanner II, 1002: "[Religious] freedom consists in this, that all should have such immunity from coercion by individuals, or by groups, or by any human power, that no one should be forced to act against his

conscience in religious matters, nor prevented from acting according to his conscience, whether in private or in public, whether alone or in association with others, within due limits." The legislative intent is clearly, to quote Fr. John Courney Murray, "that the word 'conscience,' found in the Latin text, is used in the generic sense, sanctioned by usage, of 'beliefs,' 'convictions,' 'persuasions'" (*The Documents of Vatican II*, ed. W.M. Abbott [New York: America Press, 1966], 679, # 5). According to Cardinal Pietro Pavan: "It must first be stated that here the term 'conscience' means above all responsibility, so that the statement must be understood thus: In the religious sphere no one may be compelled to act in a way different from that in which he himself has *decided* to act, and no man may be prevented from acting according to this way." (Pietro Pavan, "Declaration on Religious Freedom," in 4 *Commentary on the Documents of Vatican II,* ed. Herbert Vorgrimler [New York: Herder and Herder, 1969], 66). See *Acta Synodalia Sacrosancti Concilii Oecumenici Vaticani II* (Rome: Typis Polyglottis Vaticanis, 1978) (hereafter *Acta Synodalia*), vol. IV, part vi, 734: "In textu conscientia connotat etiam responsabilitatem"; Ibid., 769: "'Conscientiam' . . . 'indicans propriam persuasionem."

26DH, # 2, par. 2, Tanner II, 1003. The term "iusto ordine publico servato" is also translated as "within the limits set by due public order" (# 3, par. 4, Tanner II, 1003).

27See, e.g., RLC, 93, 97, 107, 110. Cf. DH, # 4, par. 4, Tanner II, 1004, which condemns improper proselytizing ("any kind of action that savours of undue pressure or improper enticement, particularly in regard to the poor or uneducated") by religious communities as a "course of action [which] must be held an abuse of their own rights and an infringement of the *rights of others*" (emp. added). Since # 7, par. 3 should not be understood as including within the meaning of legal "rights of all citizens" all the rights encompassed in # 7, par. 2, not every violation of the right not to be subjected to improper proselytizing (# 4, par. 4) is a violation of the legal (or juridical) rights of all citizens, within the meaning of # 7, par. 3. Of course, some kinds of such action may violate such legal rights. The late Cardinal Jerome Hamer (*a peritus* at the Second Vatican Council) is reported by A.F. Carrillo de Albornoz, as having said (as a member of the Secretariat for Christian Unity) at a "recent meeting in Geneva that the conciliar statement in question [DH, # 4, par. 4] referred only to *moral rights* and that these moral rights neither could nor should be enforced by laws; thus this assertion [concerning improper proselytizing] rightfully belongs in the preceding paragraph of Section 7 where moral regulation of religious freedom is discussed" (*Religious Liberty* [New York: Sheed and Ward, 1967], 124-125). On the other hand, Fr. Harrison holds that the any improper proselytizing is potentially a violation of a just public order. RLC, 98, 110-111.

28Ibid., 114-117, 129-130, 142. Unfortunately, Fr. Harrison insists on speaking of religious liberty in terms of the "right to be tolerated," which in my view tends more to confusion than clarification.

29DH, # 2, par. 1, Tanner II, 1002.

30DH, # 2, par. 2, Tanner II, 1003.

31RLC, 93.

32lbid.

33lbld., 97.

34Ibid., 89, quoting from *Acta Synodalia*, vol. IV, Part VI, p. 723 # 15.

35Ibid., 703 (text at pp. 718-723); Pietro Pavan, "Declaration on Religious Freedom," 4 *Commentary on the Documents of Vatican II, supra*, 61-62.

36Fr. Harrison's translation in RLC, 90.

37DH, # 1, Tanner II, 1002.

38DH, # 4, par. 4, Tanner II, 1004.

39A law does not necessarily limit liberty in religious matters simply because the truth of the Catholic religion is presupposed by the legislature. For example, a law which forbids abortion or polygamy does not limit liberty in religious matters.

40DH, # 3, par. 2, Tanner II, 1003.

41DH, # 6, par. 5, Tanner II, 1005.

42DH, # 2, par. 2, Tanner II, 1003.

43See, e.g., DH, # 15, Tanner II, 1010-1011.

44RLC, 84. Note omitted. The citation from Montejano comes from an article by Christopher Wolfe, "The Church's Teaching on Religious Liberty," *Faith & Reason*, vol. IX, no. 3, Fall 1983, 192.

45RLC, 86.

46Ibid., 87-88.

47Ibid., 142; see also 87-88.

48Ibid., 144.

49Ibid., 87. Fr. Harrison uses "intrinsically [unjust, immoral, evil, or vicious]" to refer to something which is essentially or *per se* unjust, immoral, evil, or vicious, and therefore absolutely (i.e., without exception "always and everywhere") unjust, immoral, evil, or vicious. Ibid., 87, 134-136. But see RLC, 135, where he appears to hold that an act, not intrinsically evil, may nevertheless be immoral in specific contexts because it leads to evil consequences. He also appears to hold that a law or policy, not intrinsically unjust, can conceivably be objectively unjust (as distinguished from being imprudent) in some determinate circumstances because of its evil consequences (LT93, 5-6; F89, 40-41). Such injustice can, I think, be properly called extrinsically or instrumentally unjust. For an example of usage by a writer exemplifying the distinction between intrinsic and extrinsic (i.e., non-intrinsic) violations of the natural law, see James J. Fox, "Natural Law," *Catholic Encyclopedia* (New York Robert Appleton, Co., 1910), vol. ix, 77, and ibid., "Slavery," *Catholic Encyclopedia* (1912), vol xiv, 39-41. For John Paul It's teaching about *intrinsically evil acts*, see *Veritatis Splendor* (6 August 1993) , (Washington, D.C.: United States Catholic Conference, 1993), # 79, 80, 81, 83, 137, 95, 172, in which such acts are defined as being "'*per se* and in themselves, independently of circumstances, [which] are always seriously wrong by reason of their object'" (# 80). However, as Germain Grisez points out, "[m]ost specific moral norms are nonabsolute because they are open to further specification by recourse to the same principles from which they are derived" (*The Way of the Lord Jesus: Vol. 1, Christian Moral Principles* [Chicago: Franciscan Herald Press, 1983] 256).

It is possible that a judgment that a particular act or practice is morally evil, whether or not intrinsically so, may well depend upon the discernment of empirical facts which have neither been divinely revealed nor are necessarily connected thereto. See *Donun Veritas: Instruction on Ecclesial Vocation of the Theologian* (24 May 1990) (Boston: St. Paul Books & Media, n.d.), # 24. For example, DH, # 9, declares that "the right of people to religious freedom have their basis in the dignity of the person, the demands of which have come to be more fully known to human reason from the experience of centuries" (Tanner II, 1006). Similarly, the Congregation for the Doctrine of the Faith has declared: "the legitimate demand for freedom in the absence of constraint is a necessary condition for the loyal inquiry into truth" (*Donun Veritas*, # 32).

Some writers, it should be noted, classify any violation of the natural law as intrinsically evil, and any violation of the positive law as extrinsically evil. See, for example, Anthony Koch-Arthur Preuss, *A Handbook of Moral Theology* (St. Louis: B. Herder Book Co., 1919), vol. 1, 266-267.

50DH, # 12, par. 1, Tanner II, 1009.

51(10 November 1994) (Boston: Pauline Books & Media, 1994), # 35, 40-41. Note omitted.

52Quoting from DH, # 1, par. 3 (note omitted). In his message to the participants in the Congress on Secularism and Religious Freedom marking the thirteenth anniversary of DH (7 December 1995), the Pontiff stated (*L'Osservatore Romano*, Eng Ed., no. 51/52, 10/27 Dec. 1995, 7): "On their part, *religious believers must be deeply committed to the method of dialogue and persuasion*. As we prepare to celebrate the 2,000th anniversary of the birth of Christ, the Church acknowledges, in a spirit of profound repentance, those times in history when 'acquiescence (was) given ... to intolerance and even the use of violence to the service of truth' (*Tertio Millennio Adveniente*, # 35). With the Fathers of the Second Vatican Council, the Church today holds firmly to that basic tenet of the Declaration on Religious Freedom: 'the truth cannot impose itself except by virtue of its own truth, which wins over the mind with both gentleness and power' (*Dignitatis Humanae*, # 1). The Church neither seeks nor desires to seek any worldly power placed 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." See also the Pope's Homily and the Prayers of the Faithful during the Day of Pardon Mass (12 March 2000), 45 *The Pope Speaks* 242-248; The Pope's Catechesis of 1 September 1999, 45 *The Pope Speaks* 49-50.

53See note 49, supra. Whether or not such objective injustice was intrinsically so would require an extended discussion, to be deferred to another time since we are focusing on the meaning of the central doctrine set forth in DH. An analysis of each important component of the natural right of religious liberty would have to be undertaken in order to determine whether or not a corresponding violation should be properly deemed intrinsically or extrinsically unjust.

54Michael Davies, ibid., 275-276. For the post-conciliar development of Spanish law respecting religious liberty, see Roland Minnerath, *L'Eglise et Les Etats Concordataires* (1846-1981) (Paris: Les tditions du Cerf, 1983), 101-112.

55RLC, 100.

56Ibid. Fr. Harrison expressly states that, by virtue of the public ecclesiastical law or policy brought about by Vatican II, applicable even in an overwhelmingly Catholic country, non-Catholic "ideas and practices" which would merit classification as a punishable threat to the common good "would now usually (but not invariably) have to be the kinds of anti-Catholic propaganda which also assault or threaten (by virtue either of their content or their methods) those norms of truth, justice, civic responsibility, sexual morality, and respect for persons which are accessible in principle to unaided human reasons, without any appeal to the supernatural authority of divine revelation" (ibid., 143.

57Ibid., 99.

58Ibid., 107.

59Tanner II, 1077-1078. Emphasis added.

60Ibid.., # 53, 83.

61Tanner II, 1010. Leo XIII, in *Libertas Praestantissumun* (1888), #25, refers to two kinds of truths, natural and supernatural. He writes: "Of natural truths, such as the principles of nature and whatever is derived from them immediately by our reason, there is a kind of common patrimony in the human race. On this, as on a firm basis, morality, justice, religion, and the very bonds of human society rest." *The Church Speaks to the Modern World: The Social Teachings of Leo XIII,* ed. Etienne Gilson (Garden City: Doubleday & Co., 1954), 73.

62Civil authorities have also violated religious reasons for purposes unrelated to concern for the public good: for example, exploiting popular religious sentiments simply to keep in power for essentially corrupt or self-serving motives.

63Michael Davies, ibid., 300. Davies incorporates the complete text of this schema at 295-302, less its numerous notes. Cardinal Ottaviani's schema, however, does not appear expressly to warrant reliance by the Church upon civil authority acting as its secular arm to enforce the judgments of its courts against offenders.

64lbid., 300-301.

65RLC, 141-142.

66Fully cited in note 2, supra.

67SJR89, 110. Reference to "immutable doctrine" in the first quoted sentence is puzzling. How can any doctrine in DH concerning the point in question be *per se* immutable simply because it was promulgated in the exercise of the fallible magisterium of the Church?

68RLC, 63.

69SJR89, 106-111.

70DH, # 1, Tanner II, 1002.

71(Liguori: Liguori Publications, 1994), # 2105, 511. Nothing in number 2105 pertains to coercion. Interestingly enough, Fr. Harrison also indicated in his article that "whether or not non-Catholics may practice their religion publicly" has nothing to do with his Thesis I "*The civitas - the civic community as such - has a duty to pay public honour to God and to recognize as uniquely true the religion entrusted by Christ to the Catholic Church*" (SJR, 109). In the same article he also writes: "A state can give special favour and protection to the true religion in various important ways without repressing all public manifestations of other religions" (ibid., 108).

72Fully cited in note 2, supra.

73F89, 38. Emphasis added. *Ecclesia Dei* (*L'Osservatore Romano*, Eng. Ed., 11 July 1988, p. 1, col. 3) refers to "Tradition," and not to "traditional doctrine" a very different matter.

74F89, 38-39. Indeed, his synthesis of the relevant statements in # 1, # 6, and # 7 of DH is as follows (at 39): "In those particular circumstances where a people as a whole professes the Catholic faith, the society and its public authorities must fulfill their moral duty to give special recognition to the true religion and the one Church of Christ. This special recognition, however, should be such as to recognize and respect the right of religious liberty of all other citizens and religious communities, insofar as their activities do not violate public peace, public morality, or other rights of citizens."

75Ibid., 44.

76Ibid.

77Fully cited in note 2, supra. Mr. Davies argued in his book that there is an apparent contradiction between pre-conciliar papal teaching on religious liberty and that of DH, and does not see how they can be reconciled.

78LT93, 5.

79Ibid. He asserts that "[t]he other two limits mentioned in [#] 7 are really rather redundant, since it is plain that those who violate 'public peace' and/or 'public morality'" are thereby also violating the 'rights of other citizens [read, "rights of all citizens]'" (ibid., 10). Given Fr. Harrison's understanding that "rights of all citizens," as used in # 7, par. 3, encompasses all the moral rights encompassed in # 7, par. 2, it is not surprising that he concludes that this term renders redundant the two other factors constituting the public order.

80Ibid., 5.

81LT93, 6. Cardinal Ottaviani's schema declared that in a "non-Catholic City ...[t]he civil Authority must, in matters of religion, conform at least to the precepts of the natural law. Under these conditions, the nonCatholic Authority should concede civil liberty to all forms of worship that are not opposed to natural religion" (Davies, ibid., 301). Based upon this schema, it is fairly arguable that civil liberty in a non-Catholic City need not be accorded to the public or notoriously conducted exercise of polytheistic or idolatrous worship.

82LT93, 7.

83Ibid., 8.

84Ibid., 11.

85Ibid.

86Ibid., 9.

87In the same article, Fr. Harrison for the first time states his opinion that Pope Pius IX's encyclical *Quanta Cura* includes "teaching [which is] *ex cathedra* and irrefonnable" (LT93, 8).

88See note 9, supra.

89See, e.g., canon 3 of the Fourth Lateran Council requiring secular rulers to "expel from the lands subject to their jurisdiction all heretics designated by the church in good faith" (Tanner I, 233-235). The adoption of the code of canon law in 1917, which took effect in 1918, abrogated the public ecclesiastical law sanctioning physically coercive penalties for these offenders, such law having already fallen into desuetude during the nineteenth century. Incidentally, Pope Pius XII, in his encyclical *Mystici Corporis* (1943), # 104, used language concerning freedom of the act of faith broad enough to mean that the freedom also pertains to remaining in the faith. See too his *Allocution to the Sacred Roman Rota* (6 October 1946) 38 AAS (1946) 392 (*Catholic Mind*, vol. XLV, March 1947, 129, 130-133). See also Pope John XXIII, *Pacem in Terris* (11 April 1963), AAS 55 (1963), 299-300 (Paulist Press, 1963), # 158, 53-54. In his World Day of Peace Message of 8 December 1998, John Paul II observed that the "inviolability [of religious freedom] is such that individuals must be recognized as having the right even to change their religion, if their conscience so demands.... [N] o one can be compelled to accept a particular religion, whatever the circumstances or motives." *L'Osservatore Romano* (# 51/52 - 23/30 December 1998, Eng. Ed.), 10. For similar remarks about religious freedom as including the right to be free to change one's religion, see also John Paul H, World Day of Peace Message of 8 December 1990, 36 *The Pope Speaks*, 211-212.

DH teaches "that it is wrong for a civil power to use force or fear or other means to impose the acceptance or rejection of any religion, or to prevent anyone from entering or leaving a religious body" (# 6, Tanner II, 1005).

90LT93, 10.

91See RLC, 18-20 and F89, 40, where Fr. Harrison appears to acknowledge that *Ci Riesce* teaches this doctrine.

92LT93, 10.

93*Catechism*, ibid., 430. Note omitted.

94Ibid., 433.

95Ibid., 512.

96Harrison is here citing "Pius VI, *Quod aliquantum* (1791) 10; Pius IX, *Quanta cura* 3." What the *Catechism* appears to do is to warn against any interpretation of "public order" that would preclude the promotion of religious life or subvert the freedom of the Church. See DH, # 3, par. 5&# 13, Tanner II, 1004, 1009. See John Paul II's message of 7 December 1995, cited in note 52, supra, 4, 7.

97Citing DH, # 7, par. 3.

98 "Roma ...Est," 42.

99 Ibid., 41. iooIbid.

101 Ibid., 41.

102 "Roma ... Est," 42. Fr. Harrison acknowledges that the term "public order" in # 7 "seemed to imply that the state can never intervene unless religious (or anti-religious activity involves actual rioting, fraud, public obscenity, instigations to violence or sedition, and so on: the kind of thing we normally think of as breaches of 'law and order' or 'disturbing the peace.'" He also argues that the *Catechism of the Catholic Church* confirms his position the pre-conciliar doctrine was not contradicted by DH.

103Ibid., 42.

104See ibid., 41-42, where Fr. Harrison argues that DH, if understood as being actually inconsistent with pre-conciliar doctrine, must be read as condemning the abrogated public ecclesiastical law or policy based upon such doctrine as intrinsically evil. Fr. Harrison overlooks the possibility that such law or policy may have been extrinsically evil because the right to religious freedom is (at least partly) only instrumentally necessary to secure basic human goods, and that the religious freedom as a natural right is grounded in large part upon the discernment of empirical facts not within the deposit of faith or necessarily connected thereto. See note 49, supra.

Fr. Harrison erroneously claims that "Pius IX declared personally in the encyclical *Quanta Cura* that this 'evil opinion' [alleged by him to the effect "that government repression of anti-Catholic doctrine for the sake of the common good is intrinsically evil and unjust"] must be 'absolutely held as reprobated, denounced and condemned by all the children of the Catholic Church'" ("Roma ... Est," 41). What Pius IX condemned was the quite different proposition: "the best condition of human society is that wherein no duty is recognized of the Government of correcting, by enacted penalties, the violators of the Catholic religion, except when the public peace requires it" (As quoted in RLC, 15).

105Fr. William Most, "Religious Liberty: What the Texts Demand," *Faith & Reason*, vol. IX, no. 3, Fall 1983, 196.