What Does Dignitatis Humanae *Mean? A Reply to Arnold Guminski*

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In a previous issue of this journal, Mr. Arnold T. Guminski has criticized the ensemble of my own writings, published between 1988 and 1993, upholding the doctrinal continuity between the Vatican II Declaration on Religious Liberty, *Dignitatis Humanae* (*DH*), and traditional Catholic doctrine regarding Church, State, and religious toleration. (1) In this response, I hope to defend substantially my position, while also correcting and clarifying it on some points in the light of my critic's observations.

I. Guminski vs. Harrison: the status quaestionis

It will be helpful to begin by trying to summarize as clearly as possible the central issue about which Mr. Guminski and I continue to disagree. First of all, among those points that I believe we *agree* upon, the following reading of the traditional magisterium (let us call it proposition X) has particular relevance for our discussion:

> X: According to pre-conciliar Catholic doctrine, there can be (or have been) circumstances wherein government prohibition of all public (and, under Old Testament and medieval circumstances, even private) religious manifestations other than those of the true religion does/did not involve the violation of any natural human right.

While Mr. Guminski would agree with that, he appears to think the traditional doctrine went a good deal further in its severity. For he opines that, "according to pre-conciliar papal doctrine . . . there is no natural right *whatever* 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) His expression, "no natural right *whatever*," especially given his italicization of the last word, sounds as though it is equivalent, in his mind, to "*never under any circumstances* any natural right." If so, then I disagree. Certainly, pre-Vatican-II papal doctrine never positively taught that there *could* in fact be circumstances in which non-Catholics might have a natural right to the said immunity. But neither, as far as I can see, did the teaching of the magisterium (as distinct from that of certain theologians) *exclude* such a possibility, (3) especially as regards societies with non-Catholic or non-Christian majorities. (4) My view has consistently been (5) that this question was left obscure and undecided in the traditional magisterium, and that the essential development (i.e., non-contradictory change) in Catholic doctrine brought about by *DH* has been to clarify and answer it. The Declaration's new and authoritative answer is that there can indeed be circumstances wherein governmental prohibition of public non-Catholic religious activity—at least in its normal and more innocuous forms—would violate the natural right to religious freedom of the non-Catholics in question.

I believe Mr. Guminski would also agree with me on the following proposition:

> Y: According to *DH*, government prohibition of all public (and, *a fortiori*, private) religious manifestations other than those of the true religion would, under modern circumstances, have to be judged as involving a violation of the natural human right to religious liberty, in any country on earth.

However, Mr. Guminski's assent to Y would certainly only be a *placet iuxta modum*, as it were, because he definitely thinks that it is *not only* "under modern circumstances" that such prohibitions have violated the right in question. Herein lies our principal disagreement. I understand him to hold the following proposition to be true, while I hold it to be false:

> Z: According to *DH*, government prohibition of all public (and, *a fortiori*, private) religious manifestations other than those of the true religion involves, *and always and everywhere has involved*, a violation of the natural human right to religious liberty. (6)

Now, it can readily be seen that the position ascribed to *DH* in Y does not imply the falsity of the traditional Catholic doctrine outlined in X. However, it is equally clear that if Z is true, *DH* has *contradicted* that doctrine, even though my critic seems reluctant to spell this out too starkly. Unfortunately, his penchant for euphemism rather than the 'C-word' leads him to misrepresent my own position. He more than once chides me (7) for maintaining that *DH* did not "change" the pre-conciliar doctrine. He should have used the verb "contradict" here, for I have never sustained the implausible 'no-doctrinal-change' thesis. Authentic doctrinal development is always change—but of a non-contradictory sort.

Indeed, the very fact that Mr. Guminski's interpretation of *DH* has it contradict traditional Catholic doctrine is fundamental to my disagreement with him. He claims that my interpretation, if perceived by non-Catholics as being widely held within the Church, would "seriously jeopardize" her "credibility," (8) since, he says, it makes the document "essentially vacuous" (9) and reminiscent of the "sham legal constitutional provisions in totalitarian states." (10) However, I shall argue in due course that his own reading of *DH*, which sees in chapter I (articles 2–8) an outright reversal of pre-conciliar doctrine, turns the declaration as a whole into something even less credible: a self-contradictory and even *lying* document! (11)

Moreover, lest Mr. Guminski's use of the conditional mood in his conclusion (12) might suggest to some readers that my own position is in fact an idiosyncratic or isolated one, it seems appropriate to point out that I am far from alone in holding that proposition Z above is an incorrect reading of *DH*. Many examples could be given, but one will suffice here. The late Fr. John Courtney Murray, S.J. scarcely lies at the right of the Catholic spectrum in these matters. Indeed, I have argued in two other essays (13) that he leans too far to the left, particularly in his reading of *DH*'s teaching on the establishment of religion. It is significant, therefore, that Mr. Guminski's position situates him even farther to the left (14) than Fr. Murray, who explicitly denied that a Vatican-II-type understanding of the right to religious liberty condemns retrospectively, at least by implication, the kind of Church-sponsored repression mentioned in our propositions X, Y and Z. His view (which he took to be in substance that of the Council) was that any such retroactive verdict of injustice would be an "anachronism" wrongly based on "abstract deductive logic" and lacking in "historical consciousness." (15) For Murray, the right to full religious freedom "is a rational exigence of the *contemporary* personal and political consciousness." (16) I have expressed elsewhere (17) certain objections to this kind of psycho-historical hermeneusis. But for present

purposes Murray's conclusion itself (which I would reach by a rather different route) is what matters. My point is simply that, in holding *DH* to be wrongly interpreted by proposition Z, I have the support of the Catholic theologian generally acknowledged as the one whose thought, more than that of any other single scholar, lay behind the teaching of this conciliar Declaration.

II. Preliminary Criticisms of Religious Liberty and Contraception

Having sought to clarify the central point at issue between myself and Mr. Guminski, I shall consider his criticisms, generally following the order in which he presents them. He begins by questioning my relative lack of interest in the *infallibility* or otherwise of the doctrines under discussion. (18) Indeed, that issue is, for me, quite secondary. For the mind of the Church, as I understand it, is that the Declaration is not to be understood in a way that would make it contradict *any* existing doctrine, whether infallible or 'merely authentic.' And my concern has always been to uphold that broad diachronic consistency of Catholic doctrine. (Why should the Church's apologist troops retreat to defend only the inner citadel when they hear her calling them not to abandon or surrender the city walls?)

Mr. Guminski also seems surprised that my book "limits" discussion of pre-conciliar doctrine to "papal declarations," thus neglecting (he thinks) what the "ordinary universal magisterium" may have had to say about religious liberty. (19) But the non-*ex-cathedra* statements (20) in a long series of papal interventions surely provide a pretty good indicator as to what *is in fact* the doctrine of the ordinary universal magisterium.

My critic also finds "remarkable" *RLC*'s failure to rely "upon any real or purported *practical* infallibility with respect to the Church's legislation or policy, as distinguished from doctrine, bearing on religious liberty." (21) For the moment, it is sufficient to reply that, when writing *RLC*, I felt uncertain as to whether any Catholic *doctrine* must needs be deduced from the Church's traditional *practice* (policy or public law) of frequently urging governments to repress *all* public non-Catholic propaganda. Nevertheless, my book addressed that concern: first, by pointing out that *DH* does not in any case state or imply that such practice, in earlier historical contexts, was always and everywhere unjust; (22) and second, by formulating the pertinent pre-conciliar doctrine in terms open-ended enough to allow for either answer to the said question. Note the parenthesized words in the following quotation: "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." (23)

I shall pass quickly over Mr. Guminski's section 'B,' (24) which for the most part expounds, rather than criticizes, my position. However, he again misunderstands me here in stating the following:

> 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). (25)

The truth is that in using the expression "rights of others," I am never quoting—and have never even had in mind—the merely moral rights referred to in #7, par. 2. My repeated use of that expression as a quasi-synonym for "rights of all citizens" (used in #7, par. 3) is purely stylistic—adopted for the sake of more precise expression in certain contexts. The term "all citizens"

obviously includes the citizen who commits a (justly penalized) offence; but in committing such an offence he is not violating any right insofar as it is *his own*, only insofar as it is a "right *of others*." Indeed, the official *relator* himself used the term "rights of others" in exactly the same way I do. (26)

III. RLC *on "Public Order," "Public Law" and the "Objective Moral Order"*

Mr. Guminski's section 'C' contains his principal criticisms of my book, directed fundamentally at my interpretation of the aforesaid limits recognized by *DH*. They also reveal his concern to uphold proposition Z: that is, to argue that the Catholic Church in *DH* implicitly but clearly repudiates her own traditional repressive doctrine as having been false, and its application as having been always and everywhere unjust.

III.1. *Past and Present in Relation to* DH*, Chapter 1*. In this section my critic repeatedly assails another straw man instead of my true position. "According to Fr. Harrison," he writes, "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." (27) He later claims that I "egregiously err" in holding that the said term "*includes*" that right. (28) These statements—and yet another where Mr. Guminski similarly uses a present-tense verb (29)—naturally create the impression that, according to me, Vatican II teaches that Catholics *today* have a right to be protected by law from such temptations against their faith. On the contrary, the pertinent passage of *RLC* (30) is plainly talking about earlier historical periods. Indeed, by that point, I have already recognized five pages earlier in my book that, in Vatican II's judgment, "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." (31)

Mr. Guminski might possibly reply that, in any case, the text of *DH* is such as to condemn *absolutely*, i.e., at any period of history or in any place, coercive measures against all public expressions of religion except the true religion. He seems to hold, for example, (32) that the more repressive pre-conciliar Catholic doctrine could under no conceivable historical circumstances be reconciled with *DH* #6's teaching that government may never use "force or fear or other means to impose on its citizens (*civibus imponere*) the acceptance or rejection of any religion, or to prevent anyone from entering or leaving a religious body." But what the Council intends to repudiate here is clearly the kind of government 'imposition' which says, in effect, to citizens, "Believe X, and don't believe Y, *or else*!" In other words, *DH* teaches that government may not apply threats of "force or fear, [etc.]" *to those persons who wish (or might wish) to accept or reject* some given religion. But earlier laws prohibiting the public diffusion of false religious propaganda among an already-Catholic populace did not apply any such threat to anyone. No Catholic in pre-conciliar Spain, for instance, was legally subjected to force, fear or other 'impositions' simply for lapsing into heresy, schism or apostasy. And the legal threats to those who would *publicly propagate* non-Catholic religions in such countries were not felt, and could not possibly be construed, as attempts to pressure those persons themselves into becoming Catholics. No more do Christians in Israel today feel "imposed on" *to become Jews* simply by the fact that they are legally forbidden to evangelize the latter (or even to publish the New Testament in the Hebrew language). Nor do such laws "foreclose" free enquiry about religion, as my critic claims; they merely restrict it to some extent, while leaving room for such inquiry in private discussion, reading in libraries, etc.

Also, it should go without saying (since the limitations mentioned in *DH* #7 apply in 'blanket' fashion to all the more specific freedoms spelt out in previous articles) that *DH* #6 cannot be read as denying that government may prevent people from "entering . . . a [given] religious body" which *itself* constitutes a threat to a just public order. In our own day Al Qaeda, for instance, can be considered a "religious body"—it most certainly considers itself to be one. Yet only like-minded Islamic *jihadists* would consider it unjust for governments to treat evidence of membership in this body as sufficient cause for arrest and detention. After all, even its "private" activities are in truth conspiracies aimed ultimately at overthrowing the present Western public order and replacing it with *sharia*, the Q'uran's religious legal code. Likewise, at least under some historical circumstances, even simple membership in the Freemasons and other heretical sects could have been justly considered a presumptive threat to the public order of Christendom. (33)

More generally, if Mr. Guminski thinks that his citations of *DH* on pages 47–49 prove that the Council gives us a 'timeless' valid-for-all-ages doctrine against the kind of repression described in our propositions X, Y and Z, then he will need to provide further argumentation to that effect. In my view, we can know from circumstances independent of the text, (34) and also from what the text conspicuously *fails* to say, that the Council Fathers did not in fact intend their Declaration to *continue* allowing such repression in modern times. Nevertheless, I also maintain what the text itself actually *does* say in Chapter 1 (articles 2–7, the central section of the Declaration which my critic is appealing to) is intrinsically flexible and non-specific enough to be quite capable of accommodating the said repression under earlier historical circumstances.

Let me illustrate. Mr. Guminski thinks it is "nonsense" to attempt (35) to reconcile such repression with *DH* #4's assertion that "religious communities are entitled to teach and give witness to their faith publicly in speech or writing without hindrance," especially since the same article mentions only coercive, dishonest or unworthy *methods* of such witnessing as violations of the rights of others. (36) But such attempts do not seem like "nonsense" at all, once we remember that *DH* #7's three limiting criteria apply as much to #4 as to any other preceding article. And it would clearly beg the vital question simply to *assume* that, according to Paul VI and the Council Fathers, the Church was always wrong in former times whenever she judged that non-Catholic religious manifestations as such endangered one or more of those three essential social values. Indeed, I submit that the following imaginary codicil sustaining that earlier position, would, if inserted into the Declaration immediately after *DH* #7, by logically quite consistent with all of the real conciliar text that precedes it:

> All that has been said so far in Chapter I expounds the right to religious liberty from the standpoint of reason and natural law alone. That is, it prescinds from divine revelation in order to consider the requirements of natural human dignity abstractly considered. Therefore, as regards observance of the right to religious liberty under contemporary circumstances, what has been said so far is sufficient to explain what should and should not be done in pluralistic societies where most of the populace are non-Catholics.
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> However, further precisions must be made in order to determine the just limits on religious activity where the great majority of the population already professes the true religion. For it is clear that not all of the aforementioned civil liberties will still be appropriate among those who have passed, by means of the virtue of faith infused at baptism, from the natural state of being *seekers* after religious truth to the supernatural state of *possessing* it. The need for a social

> environment providing ample freedom for public discussion and inquiry in religious matters (affirmed in #2 above), no longer exists in Catholic societies. Indeed, for baptized Catholic believers, *searching* for the true religion, far from being a moral obligation, would be a mortal sin. For this "search," to the extent that it was seriously and existentially undertaken, would constitute the grave sin of heresy (or even apostasy): that is, pertinaciously *doubting* the previously embraced truth of the Gospel, as proclaimed by the One, Holy Catholic and Apostolic Church. As the Sacred Synod has itself affirmed in #1 of this Declaration, man's moral obligation is to *hold fast* to the truth once he has found and embraced it. For this reason, the "due limits" to religious activity mentioned above in #2, paragraph 1, and specified in #7, paragraph 3, can be considered violated in predominantly Catholic societies by any and every non-Catholic religious manifestation in public. Such manifestations will inevitably tempt many Catholic souls toward perdition, and so can be considered a grave threat to public morality, and indeed, as a violation of the right of the faithful to be protected from such threats to their eternal welfare—a right comparable to their right to be protected from the tempting availability of perilous narcotic drugs which threaten their temporal welfare.

Once again, I am *not* saying that Paul VI and the Council Fathers intended the concrete requirements of 'public order' in Catholic countries to be determined in this way *today*. I am simply saying that *the text itself* is not intrinsically contradicted by giving it this 'traditionalist' interpretation of 'public order,' and therefore does not exclude such an interpretation from having been a valid one for earlier times. This fact is in turn important, as we shall see, in establishing that the preamble (#1) neither lies nor errs in teaching that the Declaration "leaves entire and complete" (*integram*) the "traditional Catholic doctrine" on these matters.

III.2. *"Common Good" vs. "Public Order."* At this point it seems appropriate to open a parenthesis in the main line of our argument, in order to elucidate the question of the precise difference between "common good" and "public order" as providing alternative limiting criteria on religious activity in society. It is a rather thorny question, bedeviled also by semantic confusion, because "public order" seems to be a relatively recent term in Catholic usage, and earlier writers often seem to have appealed to the "common good" as a limiting criterion on religious propaganda when what they really had in mind was "public order" in Vatican II's sense of the term. In writing *RLC* I concentrated on Bishop Emil de Smedt's final *relatio* on the religious liberty schema and failed to notice an earlier one where he had explained the difference more clearly to the Council Fathers. (37) I wrongly supposed *DH* to mean that "the positive social values which belong to the 'common good' are co-extensive and identical with those linked to the 'public order,'" so that the latter term, in being described by *DH* #7 as the "fundamental part of the common good," meant "the coercive defence of those values, rather than the values themselves." (38) Mr. Guminski rightly points out that what de Smedt and the Council really mean is that the common good (in its entirety) includes *more* of those "positive social values"—or better, valued social conditions (hereafter VSCs)—than does the public order. The latter consists only of those most essential VSCs which society sees as *necessary for its very existence* or *survival* in an ordered form, and which, therefore, it has to protect by coercive measures. The common good (in its entirety), however, includes in addition other VSCs which, while not essential, are nonetheless valuable for the greater prospering and flourishing of society; that is, for its *perfection* rather than its very *survival*. And the Council certainly means to say that coercion may be used only against the kind

of religious (or pseudo-religious) activity which threatens the former, 'essential-for-survival,' set of VSCs, not that which might threaten only the latter set of 'nice-but-not-so-necessary' VSCs.

Nevertheless, the above error does not really weaken my case that proposition Z is an unwarranted reading of *DH*. To begin with, in earlier times the need to prevent the free propagation of heresy among a Catholic population most certainly *was* considered, by Church and State alike, to be the kind of VSC that was "essential for survival." For heresy radically undermined the foundations of Christendom as an integrated social order. Secondly, the precise content of "public order" is still left quite open-ended in *DH*. In the finally approved text of #7, par. 3, it is made clearer that this general norm is being defined *in terms of* the three more specific norms mentioned in that paragraph. Hence, the first question to be answered is not, "What specific VSCs are in fact to be considered essential, rather than just desirable?" but rather, "What specific classes of activity are to be considered as violating public peace, public morality, or the rights of other/all citizens?" Then, *after* those classes of activity have been identified, they will have to be considered as being *ipso facto* a threat to public order and so subject to legal repression. Now, it is fairly easy to identify activities threatening public *peace*, because the absence of peace—violence and disorder—is something rather obvious to all concerned. But the Declaration still leaves it rather an open question, even as regards present-day circumstances, as to what sorts of specific activities *are in fact* to be considered such serious threats to "public morality" or "the rights of other/all citizens" as to warrant legal repression. Thirdly, since *DH* is to be understood, as we shall see shortly, as allowing for significant historical changes in the evolution of the common good, it must be read as being *still more* open-ended as to what kinds of limits on religious activity were objectively justifiable *in the past*. For when the requirements of the common good evolve, those of public order necessarily evolve along with them. (39)

III.3. *Bishop de Smedt's Final* Relatio. Let us now return to our main theme. What other arguments does Mr. Guminski adduce in order to sustain his thesis that *DH* retrospectively condemns the repressive doctrine and practice mentioned in our propositions X, Y and Z? This thesis requires him to deal with, among other things, the last official *relatio* on the religious liberty schema delivered by Bishop de Smedt. The Dutch prelate pointed out on the Council floor that the final revision of the schema provided reassurance for those Fathers who did *not* want the document to imply too harsh a verdict on earlier Church doctrine and practice. Following John Courtney Murray's critique of that "anachronistic" approach which denounces certain past legal dispositions in abstraction from their historical context, (40) de Smedt agreed with the said group of conciliar Fathers that:

> . . . 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. (41)

Now, Mr. Guminski recognizes this *relatio* as bearing at least the appearance of a formidable weapon in my own armory, and so strives to expose it as a mere dummy. His efforts, however, are unpersuasive.

Unfortunately, he begins by misinterpreting me yet again, claiming that I see this *relatio* "as confirming [my] 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." (42) But I do not see it thus. My citation and appeal to the *relatio* come at the conclusion of a section of *RLC* (pp. 85–89) arguing for the more general and fundamental conclusion that (our present) proposition Z is a false reading of *DH*. This appeal precedes altogether my argument regarding the relationship between 'common good' and 'public order,' (43) and does not depend for its validity on that of the latter, and quite secondary, argument.

My adversary first tries to gain the most advantage from the fact that de Smedt's observations, cited above, were added orally to the printed text of his *relatio* which the Fathers had before them. Gratuitously, Mr. Guminski says that this addition "appear[s] to have been incidental, surely extemporaneous . . . very likely without any considerable impact." "*Surely* extemporaneous"? Back in 1965 all documents destined for distribution had to be submitted a day or so earlier to the Vatican press. So, for all we know, de Smedt may have spent an hour or two, the night before he was to deliver his *relatio*, meticulously preparing the Latin text of this additional paragraph. As regards the probable "impact" of these words, it is notorious that the Fathers were constantly swamped in such a volume of *printed* material that many or most never got round to reading it all. So it is precisely the orally-presented commentary which is most likely to have made the greatest impact. In any case, *all* of this particular *relatio*—its printed and oral parts—forms part of the official and public *Acta* of the Council; and the final text of *DH* should therefore be understood in the light of its content.

Mr. Guminski next objects—*a priori* rather implausibly—that the *relator*'s orally added remarks "are inconsistent with" what he himself says in his written report. (44) He evidently thinks that since de Smedt, in those remarks, was referring to government *limitations* on religious activity, consistency required him to speak of "public order" rather than "common good." But the *relator* did not need to make that distinction in these additional remarks. For here he was simply concerned to point out that the latest revision of the text, by reducing the prominence and importance of the relatively non-traditional *term* (45) "public order," and by *defining* it in terms of the "common good," (46) made the schema more clearly compatible with a relatively benign judgment toward the Church's more repressive stance in earlier times. De Smedt was taking it for granted that the Fathers he was addressing, since they realized the relationship of common good to public order is that of a whole to some of its parts, would understand that since the common good is ("as everyone knows") something "relative" and "evolving," so likewise is public order. His orally added words, using "common good" rather than "public order," were, in this context, no more inconsistent with his printed ones than the statement "I gave up smoking for the sake of my health" is inconsistent with the statement "I gave up smoking for the sake of my throat and lungs." This rebuttal of Mr. Guminski's second objection also covers his third, which depends for its validity on this supposed incompatibility. (47)

His fourth and final objection is that "the probative value of the bishop's *in oratione* statement is swamped by other matters" which supposedly show that the Pope and conciliar Fathers really meant *DH* to oppose that statement. (48) Now, what my critic needs to establish, of course, is that this abundance of "other matters" proves that the Council's judgment as to what *today* would constitute a violation of the right to religious liberty is necessarily retroactive for all of past history. I think that our prior discussion is sufficient, for present purposes, to show that he has failed to establish that.

III.4. *Tertio Millennio Adveniente*. Mr. Guminski then seeks to show that John Paul II himself teaches, at least implicitly, that *DH* has brought about a doctrinal contradiction. He cites (49) the 1994 Apostolic Letter *Tertio Millenio Adveniente* (*TMA*), #35, where the Pontiff calls for "a spirit of repentance" for the historical acquiescence of "sons and daughters of the Church" in "intolerance and even the use of violence in the service of truth." Expressed in these terms, such a judgment is too rhetorical to be of much help in addressing our present questions. (50) However, the Pope is more specific in the next paragraph quoted by Mr. Guminski, where he expresses "profound regret" for the views and practices of many earlier believers who thought "that a sincere witness to the truth simultaneously required eradicating, or at least isolating, the opinions of others (*sinceram veritatis testificationem simul iubere alienas opiniones extingui vel saltem secludi*)." (51) Several comments on this statement seem relevant.

First, in contrast to *DH* and the Pope's own *Catechism*, (52) the above judgment omits completely all mention of public order and the legitimate limits on diffusion of harmful propaganda. Taken literally and in isolation, such an unqualified rebuke might seem to indicate papal endorsement of an absolute, unlimited liberty of propaganda in matters touching faith and morals. But since we know that this is *not* John Paul II's true position, we can infer that his broad generalization, situated in a pastoral exhortation, is not intended as a precise formulation of authentic doctrine requiring a submission of mind and will on the part of the faithful.

Second, this 'non-doctrinal' reading of *TMA* #35 is supported by the Pope's cautiously-worded identification of the *target* of his criticism, namely, "many sons and daughters of the Church" in former ages. The Holy Father thereby makes it clear that he is not here intending to censure and reverse any previous Catholic *doctrine*. For doctrine—even authentic but non-infallible doctrine—must always, by definition and in all honesty, be attributed to *the Church herself*, not just to individuals or groups among her children.

Third, further corroboration of this interpretation is found in the Pope's use of the verb *iubere*, which should be translated here as "required" or "demanded." By denying that the "eradication" or "isolation" of anti-Catholic ideas was *required* in the interests of the true faith, John Paul is expressing only a historical judgment that such repression was *unnecessary*, not a formally ethical judgment that it was *unjust*. Admittedly, *if* this judgment is correct, it would follow from the teaching of *DH* that the repression in question was unjust as well as unnecessary. (53) But the relevant point here is that all judgments about the effectiveness or necessity of certain practices as means to achieve a given end are by their nature prudential judgments about questions of contingent facts, not doctrinal judgments about immutable moral norms.

Fourth, in announcing, nearly three decades after *DH*, this prudential historical judgment that neither the "eradication" nor even the "isolation" of anti-Catholic opinion in Christendom was necessary (at least, for the most part) in the interests of religious truth, His Holiness cannot be assumed to be handing down an authentic interpretation of the conciliar document. For he expresses no intention of doing so. The Pope's only reference to the Vatican II declaration in the *TMA* passage invoked by Mr. Guminski is a brief citation of the preamble's affirmation that "the truth cannot impose itself except by virtue of its own truth, as it wins over the mind with both gentleness and power." (*DH* #1). And this teaching presents no problem for my own thesis, since traditional Catholic *doctrine* never taught that religious repression was for the purpose of "imposing" truth on unbelievers or dissidents themselves; but rather, for preventing them from doing spiritual, moral or material harm to others. (54)

In short, while John Paul II's independent post-conciliar prudential judgment on religious repression within old Christendom seems more severe, at least implicitly, than the position I am

attributing to the Council itself, that by no means constitutes evidence that my reading of the conciliar doctrine is wrong.

III.5. *Post-Conciliar Changes in Spanish Law*. My position in *RLC* is that the new *doctrinal* development in *DH* (55) has been appropriately accompanied by (though it does not, *per se*, require) a reversal of the earlier norm of ecclesiastical public law which was reflected in concordats and other legal documents prohibiting, in certain states, the public manifestation of all religions except Catholicism. I hold that such changes reflect a new practical pastoral/political judgment of the Church to the effect that such manifestations, as such, can no longer be seen as a threat to public order (i.e., as a sufficiently serious threat to the common good as to require legal repression). (56) That kind of change does not imply any contradiction of *doctrine*, i.e., of what the Church had previously presented as *divine* law. Mr. Guminski, however, thinks that such doctrinal contradiction is assumed to have taken place at Vatican II by the authors of post-conciliar legal revisions in certain Catholic countries. He cites as evidence (57) the Spanish law of 28 June 1967 which eliminated the previous (1945) norm prohibiting public manifestations of all non-Catholic religions. Well, even if Mr. Guminski were right in thinking that the Spanish lawmakers in question agreed with him on this point, a sufficient short answer would be: "So what?" The said lawmakers scarcely constituted a kind of Iberian branch of the Holy Office, endowed with the faculty of authoritatively interpreting the teaching of Ecumenical Councils.

In any case, I by no means concede that the gentlemen in question did in fact agree with my critic's reading of *DH*. Their law simply states that "After this declaration of the Council"—that is, after the promulgation of the Declaration *Dignitatis Humanae*—it has become necessary, in view of Spain's 1958 'establishment' principle, for her to amend the earlier (restrictive) law of 1945. And, of course, the position I expound in *RLC* fully recognizes that necessity. But whether the Spanish legislators understood the Council to mean that this amendment was required by immutable divine law itself (as Mr. Guminski thinks), or only by a new ecclesiastical specification, suitable for our day, of a far more general and flexible divine law (as I think)—this, I submit, cannot possibly be determined solely on the basis of this brief legal text itself. Indeed, since those who draft and promulgate civil legislation are usually practical men, not theologians or natural-law philosophers, it seems quite probable that this theoretical distinction disputed by Mr. Guminski and myself passed completely undetected beneath their radar screen. (58)

III.6. DH *#1 and doctrinal "development."* Mr. Guminski has one more argument for "reject[ing] as without merit" my view that *DH* rescinded pre-conciliar public law without contradicting pre-conciliar doctrine. But this argument is the weakest of all, because it depends on a conciliar text which, correctly understood, conflicts with his own position and endorses mine. He reminds us that, in its preamble, "*DH* expressly declared that the Council, 'in treating of this religious freedom . . . intended[ed] to develop the doctrine of more recent popes . . . on the inviolable rights of the human person.'" (59) Indeed. But simply by using the word "develop," the Council Fathers *deny* the very thing my critic would have us believe they imply, namely, that the doctrine they now intend to propose is incompatible with pre-conciliar doctrine. Can it be that Mr. Guminski is unaware that ever since J.H. Newman's landmark essay propelled the concept of doctrinal 'development' into mainstream Catholic theology, it has been taken for granted, as a *sine qua non* for ecclesial recognition of this concept, that any authentic 'development' has to be in harmony, not in conflict, with the existing doctrine? That was fundamental to Newman's whole argument. Or does Mr. Guminski at least confusedly realize this, while supposing nevertheless that

the Council's specification of "more recent" popes as being those whose doctrine it proposes to "develop" is a gentle, diplomatic way of indicating that the doctrine of *earlier* popes may—alas!—have to be *corrected* (i.e., contradicted), rather than developed, in the course of carrying out this proposal?

If so, he is still wrong on three counts. First, orthodox theology has always recognized, and insisted, that any development of doctrine, to be authentic and acceptable, must be compatible with *all* previous Catholic doctrine, not just with certain parts of it.

Second, upon identifying those "more recent" Popes whom the Council had in mind, we find that *their own* doctrine, and not only that of their predecessors, is such as would have been contradicted, not authentically developed, by the doctrine Mr. Guminski ascribes to the Council (cf. our proposition Z). Named in note 2 to the next paragraph (#2, par. 1), these popes are those whose writings are cited as the main magisterial sources for the Council's central doctrinal affirmation of religious liberty as a natural right: John XXIII, Pius XII, Pius XI, and Leo XIII, in that order. But every one of these popes accepted the justice, under some circumstances, of legally prohibiting all public manifestations of non-Catholic religions: such prohibitions, of course, were papally endorsed in Spain, Colombia and elsewhere right up until the Council. Hence, to argue that the more innovative statements of these popes which are invoked here in #2 somehow imply, and so can be 'developed' into, the doctrine which proposition Z ascribes to *DH*, would imply the implausible claim that the position of all these Pontiffs on religious freedom was fundamentally incoherent—i.e., that each one of them embraced mutually contradictory doctrines in different statements or policies of his own pontificate.

Third, the word *recentiorum* ("more recent") was added to the final draft by the express order of Paul VI—and certainly not with the intention of smoothing the way for a contradiction of *earlier* popes. On the contrary, this and several other vital last-minute amendments to *DH* #1 were introduced with the avowed intention of "reassuring" those Fathers who feared such a contradiction. The fact that these amendments—together with two full paragraphs of the final *relatio* explaining them—were dictated word for word by Paul VI was not made public till more than a quarter-century after the Declaration was promulgated. Their importance, therefore, could not be fully appreciated in commentaries on *DH* written before the early 1990s. (60)

How does "*recentiorum*" serve this avowedly conservative purpose? First, it must be taken in conjunction with the other simultaneous papal additions to the same paragraph (#1, par. 3) of the final draft (viz., the words "traditional" before "Catholic doctrine" and "and societies" after "men"). Then, the ensemble of these additions must be understood in the light of the relevant portion of Bishop de Smedt's final *relatio*, (61) which was also dictated to him in a communication from the Pope. (62) The idea of saying that the Council proposed to develop the doctrine of "more recent" Popes was to underline the insistence that what *earlier* Popes had taught (i.e., the "*traditional* Catholic doctrine") was to be left '*un*developed,' i.e., "left intact" (*integram*, meaning "in its integrity," i.e., "entire and complete," "unchanged"). As the *relatio* says, these "recent" popes have "retained" the doctrine of "the papal documents up to Leo XIII . . . on the moral duty of public authorities toward the true religion" (a doctrine which certainly included the duty of those authorities, in some circumstances, to restrain the spread of *false* religions), but have also "complement[ed] it by highlighting another duty of the same authorities, namely, that of observing the exigencies of the dignity of the human person in religious matters as a necessary element of the common good." And (we are told) the Council now proposes to develop, in the sense of "clarify," this "more recent" papal teaching which complements the older, 'undeveloped' (but still "intact") teaching. (63)

Readers will recall that in my view, this complementary *doctrinal* clarification consists essentially in the Council's implied teaching that "*Some* peaceful non-Catholic propaganda (in at least some times and/or places) has a right to immunity from civil prohibition." (64) Now, this newly developed proposition of divine and natural law is very general (non-specific) in character. Yet at the same time we know—mainly from the declaration's *silence* about any possible differences in the application of *DH* in Catholic, as distinct from non-Catholic, societies—that the Council's specific will and determination was to disapprove any continued restrictions on non-Catholic propaganda *as such*, even in officially Catholic nations like Spain. It follows that this disapproval must be understood as a prudential judgment—that is, a new norm of public ecclesiastical law—which gives concrete specification to the more general divine law by ruling that *under modern circumstances* the said propaganda can no longer, as such, be considered a threat to the just public order of any country on earth (cf. our proposition Y). For if, as my adversary is anxious to prove, the said disapproval were presented by *DH* as being itself a point of *divine* law (i.e., as *doctrine*, valid for all places and times, past, present and future), then it would plainly not "complement" the traditional Catholic doctrine, nor leave it "intact," but rather, radically contradict it. And it is the chief signatory to *DH*, Paul VI, who assures us via the *relator* that the declaration *cannot* be interpreted in any such radical sense.

III.7. *What is the "Objective Moral Order"?* Mr. Guminski's final argument in the third section of his article has to do with whether or not the "objective moral order" (specified in #7, par. 3 in connection with the norms for legitimate governmental restriction on activity carried out in the name of religion), is to be understood—as Catholics would normally understand that expression—to include both the natural moral law and revealed (divine positive) law. In *RLC* I maintain that it should be understood to include both; (65) but my critic claims its meaning must be restricted in this context to the former. The short answer to Mr. Guminski, I suppose, is to ask him why on earth, if the Council Fathers had meant to teach that natural law provides the *only* legitimate criterion for setting legal limits to religious activity, they did not simply say so. However, his labored attempts to justify his narrow reading of the conciliar expression merit an answer.

My critic first protests that admitting divine positive law as a criterion would imply "authoriz[ing] repression of . . . violations of the Catholic religion, as such," and that *DH* does not allow for such repression. But I deny the validity of this inference as regards the words "as such." Authorizing government to repress "violations of the Catholic religion *as such*" would be handing it a *carte blanche* for the repression of *any and every* religious manifestation that conflicts with Catholic orthodoxy. And, of course, I have consistently recognized that according to *DH*, that degree of repression would, at least under modern circumstances, violate the right to religious liberty. But it by no means follows from this that divine positive law, at least in our own day, has to be excluded *totally* from the criteria by which the government of a predominantly Christian or Catholic country determines the requirements of a just public order (and, therefore, the legal limits to religious activity). For an intermediate position is possible, by which *certain points* of divine positive law could still be included among such criteria, not *simply because* they are revealed by God, but because, *in addition*, they are judged to have a particular and direct social importance in maintaining a Christian or Catholic public order. (66)

We read next an appeal to the authority of *Gaudium et Spes* and *Veritatis Splendor*: passages are cited which indeed emphasize the natural law in connection with "objective norms of

morality." But readers can readily see that neither quotation in any way excludes divine positive law from the role which my reading of *DH* #7 ascribes to it. (67)

Mr. Guminski further argues that since religious liberty is "a natural right to be universally respected by civil authority" in all political communities regardless of their official religion (if any), it follows 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 [*sic*] to be determined." (68) But this is a *non sequitur*, for the conclusion depends on another premise which *DH* neither states nor implies, namely, that the "due limits" which are inherent to the said natural right must be determined *uniformly*, at least as regards their "foundation," in all political communities—those which recognize the truth of Catholicism and those which do not. But *DH* nowhere denies that God, if He wishes, can authorize civil authorities to set the bar for communal conduct higher in a Catholic community than would be fair in a non-Catholic community, i.e., forbidding in the former certain things that it would not be right to forbid in the latter.

Finally, it should be pointed out that Mr. Guminski's attempt to keep divine positive law separate from natural law runs up against this further obstacle: according to Catholic doctrine, every violation of the former indirectly violates the latter as well. For it is precisely the *natural* moral law, known by the light of reason, which requires individuals and societies (even though only the former can possess the supernatural virtue of faith) to recognize the truth of Roman Catholicism, along with what it proclaims as divine positive law. (69)

I submit that my observations so far constitute a sufficient reply to Mr. Guminski's claim that the position I expound in *RLC* regarding the meaning of *DH* and its reconciliation with traditional doctrine is "unjustified" and "fundamentally flawed." (70)

IV. Articles Published After RLC

IV.1. *The Meaning and Status of* DH #7. The final section (D) of Mr. Guminski's critique covers several of my articles on the religious liberty issue published after *RLC*: articles in which, as he quaintly puts it, my own "doctrine" has been "developed." He refers first to an article in *Social Justice Review* (71) in which, noting that "the central *doctrinal* affirmation of the entire Declaration is found in article 2," I also suggest that "it seems probable that the precisions given in article 7 of *DH* in regard to the limiting criteria on religious liberty are to be seen as new norms of ecclesiastical public law rather than immutable doctrine." (72)

First, I should remark that if I were writing that sentence again today, I would use the word "possible" instead of "probable." For, as the foregoing argumentation in this present essay will have made clear to the reader, my considered opinion is that the limiting criteria of *DH* #7 are sufficiently broad and indeterminate *in meaning* as to constitute an umbrella large enough to shelter a number of *concrete applications* of varying degrees of tolerance or intolerance, in accordance with the Church's changing prudential judgment in different historical situations. If this is true, it will follow that article #7 affirms something which the Council understands and teaches to be true *at all times and in all places*. Indeed, the very breadth or vagueness of its *meaning* will help to guarantee the universality of its *truth*. And teachings which the Church requires Catholics to accept as true for all times and all places are, by definition, *doctrines*.

However, I recognize that the meaning of article #7, especially its terms "public morality," the "rights of all citizens," and "the objective moral order," is less than crystal-clear, so that my own reading of the text is at least open to debate. And in fact, Mr. Guminski and I are busy debating it. Now, let us suppose for the sake of argument that I am wrong and he is right, i.e., that the

Council Fathers did *not* intend the criteria to be as broad and indeterminate in meaning as I think they are. Let us suppose, concretely, that my adversary could prove his claim that the Fathers intended "the objective moral order" in *DH* #7 to mean the natural moral law *alone*. On that basis, the revealed or supernatural considerations (73) which underpinned the Church's more intolerant pre-conciliar stance would have to be judged 'inadmissible evidence' by State authorities—even in solidly Catholic countries—in determining legal limits on religious activity. In other words, it would then follow that the very *meaning* of the terms "rights of all citizens" and "public morality" in *DH* #7 would be restricted to those rights and moral norms which can be directly and persuasively established on the basis of 'secular' or philosophical ethics, i.e., unaided human reason.

Supposing all this to be true, would it then mean that Mr. Guminski is right in the main point at issue between us, namely, his claim that proposition Z expresses the true meaning of the conciliar declaration? Not at all. The point I alluded to (but did not expound) in my 1989 article is that in that case *DH* #7, by deciding that divine revelation as such (together with any consequences flowing from it) is to be ruled 'out of court' by even Catholic civil authorities as a basis for legal limitations on religious activity, would be establishing a norm that could in no way be seen as implied by, or as being a harmonious development of, any existing Catholic doctrine. Indeed, such a norm would not only be a complete novelty—and for that reason alone be excluded from doctrinal status by Catholic tradition (74)—but would actually fly in the face of traditional doctrine if it were itself proposed *as doctrine*. For these reasons, and in the light of *DH* #1's repeated assurances that the declaration remains in harmony with traditional doctrine, the criteria of *DH* #7, if they mean what Mr. Guminski thinks they mean, would have to be understood as constituting a "new norm of ecclesiastical public law" or policy, as I suggested in *SJR89*. The status of this norm would then be rather like that of the present Pontiff's recent prudential judgment that the death penalty can rarely if ever be justified *under modern circumstances*. Precisely because of its non-doctrinal status, the putative new norm of *DH* #7 would not imply any retroactive condemnation of all previous Church-approved religious repression (prompted mainly by considerations of revealed truth). In short, whether I am right or wrong about the meaning of *DH* #7, proposition Z remains false either way.

Let us return to Mr. Guminski's critique of my position. After citing my *SJR89* observations, he retorts sardonically: "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." (75)

I think the foregoing discussion sufficiently justifies my comment for present purposes. But I will add several further comments on Mr. Guminski's retort. First, on any possible reading of *DH*, not just mine, merely human, positive law in different times and places will have to decide the "limits" on acceptable religious activity in varying ways. Indeed, the authentic interpretation of *DH* furnished by the *Catechism* recognizes this: "The 'due limits' which are inherent in [the right] must be determined for each social situation by political prudence, according to the requirements of the common good, and '. . . in conformity with the objective moral order.'" (76) Second, the invidious comparison between *DH* and "the sham . . . provisions of totalitarian states" is unfair insofar as such regimes certainly do *not* follow this "objective moral order" in imposing their legal limits. Third, we should not be surprised that some natural rights, precisely in order to be valid for all times and places, have to be so general as to be quite 'vacuous' unless and until they are given concrete specification by a multiplicity of human positive laws which will vary

greatly according to circumstances. It is obvious that such 'vacuity' must also be admitted, for instance, in regard to the natural right of workers to receive a just wage (77) and the "inalienable right to education" of "[a]ll men . . . in virtue of their dignity as human persons." (78) Ah, but *how much* pay constitutes a just wage? And *what sort* of education truly befits human dignity? Only human positive law and prudential policy judgments, varying greatly according to changing historical, cultural and economic circumstances, will be able to answer those vital questions satisfactorily.

IV.2. *The Meaning of* DH #*1*. Still commenting on my *SJR89* article, Mr. Guminski brands as "wholly unwarranted" (79) my contention therein that the preamble to *DH* upholds the pre-conciliar doctrine acknowledging the right of civil authority to use coercion in protecting the true religion. Now, if the Theological Commission had wanted to present a schema contradicting *any part* of the existing doctrine of the Church, then of course honesty would have required that this be acknowledged openly on the floor of the Council. The *relator* would have had to adduce evidence and argumentation in order to convince the Fathers that the (putatively) erroneous doctrinal thesis they were now being asked to repudiate had never been proposed with *infallible* force by either the ordinary or extraordinary magisterium. There is of course not a trace of any of this in the Council's *Acta*. On the contrary, the Fathers were assured, in the pertinent *relationes*, that *no* doctrinal contradiction was involved. Moreover, I insist that the preamble itself, implicitly and explicitly, repeats that same assurance—three times, in fact. (Hence my earlier remark that Mr. Guminski's interpretation of *DH*, chapter I, far from making the declaration more "credible," turns it into a scandalous piece of lying hypocrisy.)

1. We have already seen one instance of this in discussing the implications of the verb "develop" near the end of *DH* #1. (80)

2. Next, we have another of Paul VI's last-minute amendments: the first paragraph's all-encompassing affirmation that the Council, in evaluating modern man's ever-increasing demand for freedom, "examines the Church's sacred tradition *and doctrine*, from which it draws forth new things which are *always in harmony* with the old." (81) The "doctrine" in question is not said to be limited to the "infallible" (as distinct from merely "authentic") category; nor is it said to be limited to some particular *area* of doctrine. In short, *anything* "new" proposed by the Declaration is affirmed in advance to be in harmony with any and every aspect of the "old" doctrine.

3. My critic has apparently not considered any of the points presented in the preceding three paragraphs. (I myself have never raised them in previous publications.) So he discusses only the third relevant text of *DH* #1, to wit, that better-known passage affirming that religious freedom (as the Council understands it) "leaves intact the traditional Catholic doctrine on the moral obligation of individuals and societies to the true religion and the one Church of Christ." Specifically, while Mr. Guminski does not contest my view that *DH* includes here the "moral obligation" of civil authorities to recognize Catholicism as uniquely true, (82) he rejects my contention that it also includes their right to use coercion against false religious propaganda "to the extent that the common good requires" (83) (that is, in the interests of a just public order).

Failing to appreciate the importance of the last clause in quotation marks, which I would maintain is essential in order to express the traditional (pre-conciliar) doctrine correctly, my critic asserts that the "moral obligation" reaffirmed by *DH* #1 "has nothing to do with the question of the coercive power as to religious matters," and that "[t]he preamble itself negatives this" by referring to the "people's demand for religious liberty . . . [which] concerns freedom from compulsion in civil society." (84) Now we know, of course, that repeated statements throughout

the rest of the declaration make it clear that the religious liberty affirmed briefly in article 1 is not to be understood as an *unlimited* liberty. But this fact in turn implies that there is no incompatibility between the said affirmation of the preamble and my own reading of the paragraph in which it occurs. For it is obvious that "leaving intact" a "traditional doctrine" which allows the State to restrict the diffusion of religious and moral falsehood in the interests of a just public order is perfectly compatible with affirming a "religious liberty" which can be *limited* in the interests of a just public order.

Moreover, since Mr. Guminski finds it "patently clear" that the coercion-justifying aspect of pre-conciliar doctrine is *not* included within that "traditional Catholic doctrine" which *DH* #1 claims to leave "intact," he must, logically, sustain the thesis that the coercion in question was *not* traditionally understood by the Church's magisterium as finding its justification in the "moral obligation" of the "public power" (85) (that is, government) "toward the true religion and the one Church of Christ"; for the preamble clearly means to say that *everything* traditionally understood to be included in that "moral obligation" is being "left intact" by *DH*. I submit, however, that this thesis is historically indefensible, and indeed, preposterous. For while the *civil* authorities of Christendom who actually enforced the traditional restrictions on heretical and Jewish propaganda might often have been motivated largely by political or other non-religious considerations, it is manifest and undeniable from all the relevant pre-conciliar magisterial documents and theological treatises that, as far as "traditional Catholic *doctrine*" was concerned, such restrictions were very much part of the State's duty to protect the true religion and the souls of those constituting "the one Church of Christ."

A reading of Mr. Guminski's fifteen-line citation of the last part of the preamble (86) may well leave an initial impression that his bland (and, as it were, 'toothless') interpretation of this *social* obligation toward the true religion reflects the true mind of the Council. But it should be remembered, first, that this final version of *DH* #1 is a product of some last-minute 'doctoring' or 'retouching' of the second-last draft. That previous draft had indeed implied nothing favorable to coercion, since it spoke only of upholding the moral duty of *individuals* to the true religion. And traces of this previous more liberal and individualistic perspective remain embedded in the general structure and phraseology of the final text.

Second, and perhaps more importantly, the translation used by Mr. Guminski—like every other published translation I have come across—fails to render adequately one of those final papally mandated 'retouches': the replacement of *Itaque* by *Porro* to begin the second sentence of the preamble's last paragraph. (87) Dictionaries show that *porro* is a rather flexible connecting word, meaning "again, in turn, next, furthermore, moreover, on the other hand." In ecclesiastical Latin this last meaning, indicating a certain contrast with what has just been said, is common. For while *porro* here can still be more 'neutral,' and even (like *autem* or *vero*) a mere stylistic variant for "and," it often has the adversative force of "on the other hand," or "but." (88) In short, it is used to introduce a new thought that represents a *break or contrast* from the preceding statement. Now, *itaque* indicates just the opposite: continuity, reinforcement, or logical consequence from what has just been said. It means "and so, and thus, accordingly, therefore, consequently." Hence, the replacement of *Itaque* by *Porro* as the first word in the sentence reaffirming the "traditional Catholic doctrine" is highly significant. It means that this sentence *no longer* expresses something which is an implication or consequence of the preceding one, with its 'coercion-unfriendly' insistence that truth "imposes itself solely by the force of its own truth, [etc.]." Given this textual change, and given also the fact that all these final amendments were, in the handwritten words of Paul VI, introduced precisely to "in order to respond to the [conservative] objection alleging

discontinuity in the magisterium," (89) the word following *Porro*, namely, *quum*, should also be re-translated in a more 'conservative-friendly' way: that is, as "while" or "although," instead of "since." I submit therefore, that the following rendering of the first two sentences of *DH* #1, final paragraph, expresses their true meaning more accurately than the commonly used translations. (The Pope's 'retouches' are italicized so that the reader can see where the final text differs from the previous draft.)

> The Sacred 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. *On the other hand*, although religious liberty—which men demand in fulfilling their duty to worship God—concerns immunity from coercion in civil society, it leaves intact the *traditional* Catholic doctrine on the moral obligation of men *and societies* toward the true religion and the one Church of Christ.

The harmony between the text, thus translated, and the interpretation I am giving to it is now much more apparent. The train of thought is as follows: Given that religious liberty "concerns immunity from coercion in civil society," *it might seem* that if the Council now recognizes a natural right to such liberty, this will inevitably involve a repudiation of the *traditional* Catholic doctrine on the moral duty *of societies* toward the true religion. For that doctrine, after all, certainly included society's right and duty to protect the true religion with coercive measures. However (we are reassured), there will be no such repudiation. For *although* religious liberty (as the Council understands it) does indeed concern immunity from coercion, it *nevertheless* "leaves intact" (or "whole and complete" (90)) that traditional doctrine. (The seeming tension between the 'old' and the 'new' doctrinal positions would then be resolved by drawing attention, as I have done above, to the *limited* character of both the previously authorized coercion and the newly acknowledged liberty.)

IV.3. *The* Catechism of the Catholic Church *on* DH *#1*. Mr. Guminski next appeals to the *Catechism*'s authentic commentary on the preamble, which, he claims, "conclusively shows that Fr. Harrison's view is erroneous." (91) My adversary asserts this claim without argument, apparently thinking it is self-evidently vindicated by the very words of the *Catechism*. He simply quotes #2105, according to which the "traditional Catholic doctrine" mentioned in *DH* #1 is "constituted by" (Lat. *constituit*) the following principle: "The duty of offering God authentic worship (*cultum authenticum*) concerns man both individually and socially" (my translation).

Now, this laconic affirmation of the *Catechism* needs to be 'unpacked' in the light of its historical and literary context. First, given the papally mandated *relatio* we have considered above, there can be not the slightest doubt that among those bound to carry out "authentic" (i.e., Roman Catholic) worship "socially," the *Catechism* means to include civil authorities as such. Father (later Cardinal) Jérome Hamer, who had been a conciliar *peritus* for the Secretariat for Christian Unity, comments authoritatively as follows on the words "and societies" in *DH* #1: "The reference here is to all social groups, from the most modest and spontaneous to nations and States, and covering everything in between: trade unions, cultural associations, universities." (92) Article #2105 itself clearly implies that this "social" duty binds nations and states by referring in its sources to the encyclicals *Immortale Dei* (1885) and *Quas Primas* (1925), both of which are principally concerned to uphold and emphasize that duty. (93)

So far, Mr. Guminski will probably not disagree; but he evidently thinks the *Catechism* excludes the view that governmental *coercive* measures against non-Catholic manifestations as such can ever (past, present or future) find any justification in the aforesaid social duty. Well, if that were the case, the *Catechism* itself would be open to the objections I have already leveled at Mr. Guminski's own position in section IV.2 above, especially that of its unhistorical character. It is a clearly documented fact that "traditional Catholic doctrine" *did* include coercive measures as part of the State's "moral duty to the true religion." And if not even God can change the past, much less can a church catechism do so.

However, I do not concede that the *Catechism* does in fact exclude all coercive measures in fulfillment of the said duty. Bearing in my mind that this social duty of "offering authentic worship" to God involves not only *recognizing* Catholic truth in this way but also *keeping*, *conserving* or *guarding* it (94) so that the next generation (and the next, and the next) will still offer that same worship, the need for some degree of coercion to restrict anti-Catholic propaganda follows as a *practical* corollary. (95) According to both Old and New Testaments, "worship," no matter how outwardly reverent and orthodox, will not in fact *be* "authentic" if it is not carried out in the context of a life-style (individual or national as the case may be) marked by justice and the observance of God's commandments. (96) Accordingly, this same article (#2105) of the *Catechism* reminds Catholics that their duty to evangelize includes working to "infuse the Christian spirit into the mentality and mores, laws and structures of the communities in which [they] live." But experience amply demonstrates that in those states (for instance, post-conciliar Spain, Italy, and the northern European monarchies) which have maintained merely nominal, ceremonial church 'establishments' while imposing few if any restrictions on anti-Christian propaganda, the aforesaid "Christian spirit" gradually withers and disappears from their "mentality and mores, laws and structures." (That, of course, was precisely what the nineteenth-century popes had predicted in their crusade against excessive religious and other civil liberties.) Legislation eventually permits such evils as divorce, pornography, abortion, the sale of contraceptives, euthanasia, and even homosexual "marriage." (97) This massive atrophy of the grass-roots substance of a Christian social order has already led inexorably to the calm—generally uncontroverted (98)—abolition of even the nominal Catholic 'establishments' of Spain and Italy, where seventeen centuries of the Constantinian era officially ended with a mere whimper—certainly not a bang—in the 1980s.

Further light on what lies beneath the surface of the *Catechism*'s insistence on a "social" (i.e., national or civic) duty to give "authentic worship" to God is shed by the celebrated pre-conciliar theological exchanges in the U.S. between John Courtney Murray and his conservative critics. For, as a leading scholarly commentator on those debates has pointed out, the existence or non-existence of such a duty lay at the very heart of this debate. (99) Pavlischek selects as the paradigmatic attack on Murray's position a 1952 essay in which Msgr. Joseph Clifford Fenton insisted that the entire edifice of orthodox Catholic doctrine regarding Church, State and religious repression/toleration is squarely based on the bedrock principle that "not only individual men, but also all societies or groups of men are bound" to acknowledge and honor God, and that:

> . . . the one acceptable and authorized social worship of God is to be found summed up in the Eucharistic sacrifice of the Catholic Church. It is God's will that men should pay the debt of acknowledgement and gratitude they owe to Him in the worship and according to the rite of His own Church. (100)

Both Murray and his critics such as Fenton realized that this principle was inseparable from all the practical (if not strictly logical) consequences that flowed from it, especially the legitimacy of some degree of government restriction on manifestations contrary to the Catholic religion (which of course includes both 'faith' and 'morals'). Precisely for that reason, Murray denied the said principle: in his view, the State's incompetence to recognize religious truth is the real basis for the human right to religious liberty. After the Council Murray tried to present *DH* as supporting his own position on this point; but in fact, thanks to the last-minute papal intervention, the declaration had quietly vindicated the traditional doctrine expounded by Fenton (along with other critics of Murray such as George W. Shea and Francis J. Connell). And #2105 of the *Catechism* vindicates it even more explicitly. In short, once that 'stone' of "authentic worship" is cast into the 'pool' of man's social and national values, certain restrictions on anti-Catholic propaganda are among the ripples it inevitably produces.

IV.4. *My Review of M. Davies'* The Second Vatican Council and Religious Liberty. Mr. Guminski goes on to criticize my most recent substantial piece on *DH*, a 1993 review of the late Michael Davies' book of the above title. (101) Here, I think that some of his objections are better founded than those we have considered so far, and I shall modify my position accordingly. However, I shall pass quickly over his opening volley (102) because it depends entirely on a distinction which I find specious. Mr. Guminski wants to distinguish between a "natural right" and "what could be properly called a natural-law right." The former, but not the latter, would have as its "basic ground . . . the natural dignity of human persons," and the set of all natural rights would be "a proper subset" of "the set of natural-law rights." (103) The implication, namely, that certain rights whose "basic ground" is *not* "the natural dignity of human persons" can nevertheless pertain to the *natural* moral law, seems to me both incomprehensible and (as far as I know) unsupported by the Catholic natural law tradition. (My critic cites no other authors, Catholic or otherwise, in support of this distinction.)

More important, I think, are other issues arising from my critique of Davies. I have already acknowledged that my book *RLC*, in concentrating only on the major papal encyclicals (those from 1864 onwards), had left unanswered the question as to whether there had already been in place, since before the time of Pius IX, any authentic Catholic doctrine teaching that governmental bans on *all* public non-Catholic manifestations could be just in some circumstances. The book recognized, of course, the obvious historical fact that the Church's centuries-long *practice* (her policy and public law) approved such comprehensive bans in many Catholic countries. But whether or not that very fact (and/or, perhaps, other earlier magisterial documents) implied or amounted to a corresponding church *doctrine* was a question I did not address in *RLC*. Nevertheless, as has been noted, (104) *RLC*'s case for integral doctrinal continuity already 'covered that base,' both by understanding and formulating the traditional doctrine in sufficiently open-ended terms, and by arguing that *DH* does not in any case condemn the said earlier practice retroactively as having been always and everywhere unjust.

More recently, I have come to the opinion that the correct answer to that previously unresolved question is affirmative: i.e., that Church endorsement of such comprehensive government bans (those allowing *no* public non-Catholic manifestations) did indeed attain the status of at least authentic doctrine (as distinct from mere common theological or canonical opinion.) (105) Hence my expressed agreement with Mr. Guminski about proposition X at the beginning of this essay. On the other hand, I now believe that my original formulation of, and

proposed grounding for, this more long-standing doctrine of the ordinary magisterium was (as set out in my book review) inexact.

I then wrote: "[T]raditional 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." (106) But that formulation would amount to a doctrine according to which this one social circumstance alone (viz., the presence of a "predominantly Catholic" population), regardless of any other contemporary cultural, social, religious or political conditions, is, *always and everywhere*, a sufficient condition for the moral legitimacy of repressing all public manifestations of other religions. Catholic 'predominance' (whatever percentage of the population that might be defined as) would enjoy doctrinal status as a simple 'litmus test,' perpetually and universally valid, guaranteeing that such comprehensive repression would not, as such, violate any human right of the religious minorities affected by it.

I now think that this view I expressed in 1993 involved a rather too abstract and a-historical reading of the earlier ordinary magisterium. Certainly, whenever the question came up in earlier centuries with regard to "predominantly Catholic societies" (or Christendom), the legitimacy of such comprehensive repression was always insisted on. But I would not argue that the earlier popes and bishops who originally arrived at that judgment were, at least implicitly, making it relative to the *whole ensemble* of contingent social circumstances which then existed. These would have included not only the percentage of Catholics in a given area, but also (among other things) the generally low level of culture and education amongst largely illiterate populations, and the generally accepted 'paternalistic' view of the role of government in general, in the era before the rise of modern Western democracy gave birth to increasing popular demands for individual and group autonomy vis-à-vis state authority. Another relevant change in recent historical circumstances has been the revolution in technology, communications and 'globalization,' which has rendered Catholic "societies" (in the commonly understood sense of "countries" under a unified political regime) far less insulated from the non-Catholic world than they were in earlier centuries. The pre-nineteenth-century guardians of Catholic doctrine can scarcely be assumed to have foreseen an era when their own successors might arrive at a new prudential judgment to the effect that the *relevant region* requiring uniform religious policies (for the common good and public order) would no longer be a given "country" (sovereign state or colony as the case may be), but rather, a much larger *community* of countries—even encompassing the entire planet—in which the population, taken as a whole, is definitely not "predominantly Catholic." (107)

For all these reasons I no longer think it correct to elevate the category of "predominantly Catholic societies" to *doctrinal* status, and so have omitted it from the wording of the doctrinal theses under discussion in this essay (cf. Propositions X, Y and Z in section I).

So much for my 1993 *formulation* of the doctrine in question. I also believe now that I was mistaken in the *grounding or basis* which I then offered for it, namely, the 'infallibility' supposedly implicated in the very *practice* (policy or public law) of the Church in urging for many centuries the civil repression of all public manifestations of non-Catholic religions. Mr. Guminski takes me to task at some length over this point; (108) but it is not necessary to consider his arguments in detail, because I am now retracting the premise that drew his fire. There is indeed a long-standing (though now largely forgotten) common teaching of approved theologians, dating back (in explicit form) to sixteenth and seventeenth-century authors such as Melchior Cano, Bellarmine, and Suarez, that the Church's *universal disciplinary legislation* is 'infallible' in the sense of being guaranteed not to command or urge any behavior which would be *per se* immoral or contrary to Catholic faith. (109) This is a teaching which I still accept as authoritative and reasonable.

However, further study has persuaded me that I was previously misunderstanding the term 'universal,' as used by these approved authors. They base their reasoning on Christ's promises that the Holy Spirit will constantly guide the Church *as a whole* in the path of eternal salvation, and so will never permit her supreme authority to "oblige all the faithful" (110)—i.e., the great bulk of the People of God—to carry out objectively sinful actions. But they never claim that church laws obliging only a *small proportion* of Christians—even if decreed by the Church's 'universal' authority (Pope or Council) and/or for a geographically 'universal' area—*ipso facto* generate or presuppose a corresponding infallible (or even authentic) *doctrine*. After all, Providence has permitted Satan to win limited and local battles against the Church, including her leaders, ever since he managed to intimidate Peter and corrupt Judas. The concrete examples given by these classical authors are nearly always in the area of liturgical and sacramental law—norms of public worship applying to faithful Catholics as a whole. But papal decrees, letters, etc., urging secular authorities to repress all non-Catholic manifestations within their jurisdiction never obliged—even indirectly—any more than a tiny fraction of the faithful: rulers, magistrates, and other enforcers of 'law and order.'

In short, I no longer hold, as I did in 1993, that according to traditional *doctrine*, there can *never* (i.e., from Pentecost until Judgment Day) be a natural right of any non-Catholics "in predominantly Catholic states" to be tolerated in the public profession of their religion. This modification enables me to withdraw in turn another claim—rather shaky, as I now see it—which I logically had to make in the same book review in order to sustain my central thesis that *DH* does not contradict traditional doctrine. I refer to the claim—severely criticized by Mr. Guminski—that the right to public freedom implicitly recognized by *DH* for non-Catholics living "in predominantly Catholic states" is not in fact, according to the Council, a *natural* right, but only "an *acquired* right granted by the Church." (111) My critic points out that this expression effectively reduces the public religious liberty of non-Catholics in such states to "a matter of legislative grace" (112)—a mere *privilege*, in effect. I am now inclined to agree with him that this reading of the Council "presents difficulties," and probably does not do justice to the mind of the Pope and conciliar Fathers. It would imply, for instance, that the right of non-Catholics in Spain to immunity from coercion in publicly manifesting their religion *began to exist* only on December 7, 1965, *precisely by virtue* of the Church's promulgation of *DH*. I now think it more likely that the true mind of the Church at that moment was that she was *discerning* an *already-and-independently-existing* reality, not *creating a new* reality by her own legislative fiat. In other words, I suspect that most Fathers of Vatican II understood themselves to be discerning and recognizing—though without passing judgment against Spanish-style repressive legislation under earlier historical circumstances—that at least under mid-twentieth-century circumstances, that degree of repression in Spain *had already ceased* to be compatible with the natural human right to religious liberty (insofar as such repression could no longer reasonably be portrayed as *essential* for the common good of society, i.e., as required by a just public order). Nevertheless, I think it is worth emphasizing again that this concrete discernment did not flow simply and directly from *DH*'s strictly *doctrinal* content, which is too blunt an instrument, as it were, to attain such surgical precision; rather, it logically depended also on a distinct, complementary, *prudential* judgment, namely, that assessment of the contemporary, contingent facts expressed in parenthesis in the last part of the previous sentence. That is why, in seeking to summarize *DH*'s implied position in my proposition Y (cf. section I), I have used the expression "would . . . have to be judged as involving," and not simply "would . . . involve."

I do not think Mr. Guminski's final two substantial points need a detailed response. In the first of these, involving the *Catechism of the Catholic Church*, my critic announces "serious difficulties" in my reading of #1738, but then directs his concern mainly at the *CCC*'s own bracketing together here of "common good" and "public order." (113) I will also pass over his objections to my 1993 address to the National Wanderer Forum, which are concerned with a quite secondary and rather 'subjective' question, namely, how the Church's public image might (in his view) be affected by the kind of understanding of *DH* which I expressed in that address. (114)

Readers may perhaps welcome a thumb-nail summary of my overall thesis. My basic position is that the big difference between the Church's stance on religious liberty before and after Vatican II lies not in her old and new *doctrinal* teachings respectively; for these, though certainly not identical, are quite compatible, thanks largely to their very general (non-specific) content. Rather, it lies in the Church's very different pre- and post-conciliar prudential judgments as to *how much* restriction on false and immoral propaganda is *in fact* required by a just public order, given the dramatic social and political changes of recent centuries.

I would like to end simply by thanking Mr. Guminski for his thoughtful critique. He concludes it by stressing—very rightly—the importance of following a "correct method" if we are to determine the true meaning of *Dignitatis Humanae*. I leave it to readers to judge for themselves whether his method or mine sheds more light on the Council's treatment of this important but complex issue.

NOTES:

1. Arnold T. Guminski, "*Contra Harrison in Re Libertatis Religiosae*: On the Meaning of *Dignitatis Humanae*," *Faith & Reason*, Vol. XXVI, No. 1, Spring 2001, 39–83. The article is hereafter referred to in these notes simply as *CH*.
2. *CH*, 74, n. 13.
3. Traditional doctrine (summarized in the maxim "error has no rights") certainly did exclude the idea that there can ever be any natural right even to believe—much less to propagate publicly—any false religious doctrine or practice. But Vatican II does not teach that there is, or ever can be, any such right. Traditionalist dissenters from *DH* frequently betray confusion over this point, because they fail to appreciate the important difference between affirming: (a) a natural right *to propagate* a given religion R, and (b) a natural right *to immunity from human coercion* in propagating R (cf. *RLC*, ch. 8). Not all objectively sinful acts can justly be criminalized.
4. Cf. Brian W. Harrison, O.S., *Religious Liberty and Contraception* (Melbourne: John XXIII Fellowship Coop., 1988, hereafter referred to as *RLC*), 44. (The easiest way to obtain this book is to send a $10 [or a 5-pound] note in the mail to the publishers at P.O. Box 22, Ormond, Victoria 3204, AUSTRALIA.) At this point in my book I expressed the above view by saying that this lacuna in earlier papal teaching "left the door open" for Vatican II to subsequently teach, without contradicting traditional Catholic doctrine, that "*Some* peaceful non-Catholic propaganda has a right to immunity from civil prohibition." This is presented on p. 44 as proposition (b). I assumed readers would understand (as most apparently have) that I meant the word "some" in the most extensive sense, i.e., as meaning some such propaganda *in at least some times and/or places*. However, Mr. Guminski thought—and, in spite of my protestations in private correspondence, has continued to

insist (cf. *CH*, 42, first line, and 75, n. 16)—that the "objective meaning" of the above proposition (b) includes its implicit qualification by the words "in a predominantly Catholic country." I confess to being utterly mystified by this insistence, for neither on p. 44, nor anywhere else in that chapter (which spans pp. 31–51) is there any mention of "predominantly Catholic" societies or countries.

I think the above explanation sufficiently answers Mr. Guminski's criticism that there is a "tension," and indeed, a "striking incongruity" (*CH*, 57, 63), in my position by virtue of my acknowledgment that pre-conciliar Church-approved concordats forbade *all* public non-Catholic propaganda in many Catholic-majority states. Such tension or incongruity would exist only if, as Mr. Guminski has unjustifiably supposed, my proposition (b) referred only to "predominantly Catholic countries."

5. Cf. *RLC*, 129–130.
6. I am now avoiding the language of "intrinsic" evil, or "intrinsic" violations of rights. For Mr. Guminski has remarked, perhaps rightly, that certain classes of action which might not be intrinsically evil (i.e., whose *object* is not evil *per se*), might nevertheless be evil (and I take him to mean here *always and everywhere* evil) in an "extrinsic" way, i.e., because of certain invariable circumstances or consequences accompanying those acts which can be learned by empirical observation and experience (cf. *CH*, 77–78, n. 49, and 83, n. 104). I shall prescind here from the question of whether this view is valid or not, since the expression "always and everywhere" seems to cover both possibilities adequately for present purposes.
7. Cf. *CH*, 51, last paragraph and 58, last paragraph.
8. *CH*, 71, also cf. 70.
9. *CH*, 58.
10. Ibid.
11. This is because the relevant official *relationes* and *DH*'s own preamble (art. 1) deny any such doctrinal reversal. Mr. Guminski thinks that, according to the preamble, the declaration leaves only *part* of the existing doctrine intact. However, I hope to show below that this exegesis of *DH* #1 is untenable.
12. "The credibility of the Church . . . *would be* seriously jeopardized *were* Fr. Harrison's theory . . . perceived to be widely held" (*CH*, 71, emphasis added).
13. Cf. Appendix I, "Church and State: John Courtney Murray," in *RLC*, 147–162; and "John Courtney Murray: a Reliable Interpreter of *Dignitatis Humanae*?" in D.J. D'Elia and S.M. Krason (eds.), *We Hold These Truths: Further Catholic Reflections on the American Proposition* (Steubenville, Ohio: Franciscan University Press, 1993), 134–165.
14. I am using the terms "left" and "right" in this paragraph not as journalistic catch-phrases, but in their strict and classical political sense. From the time of the French Revolution onwards, a political theory has come to be understood as "left-wing" (denoting a "radical, advanced or innovating" position, according to the *Oxford Dictionary*), in the degree to which it promotes radical innovations or departures from, and hostility toward, the European *ancien régime*, which was essentially the traditional order of Catholic Christendom.
15. "The Problem of Religious Freedom," in J.C. Murray (ed. J.L. Hooper), *Religious Liberty: Catholic Struggles With Pluralism* (Louisville, KY: Westminster/John Knox Press, 1993), 187. This essay was originally published in *Theological Studies*, vol. XXV, no. 4, December 1964, 503–575.

16. *Ibid.*, 186 (emphasis added, in accordance with many other passages in Murray's writings where he stresses the "contemporary growth in historical consciousness" as a *sine qua non* of the right to religious freedom as it is now understood).
17. Cf. my essay, "John Courtney Murray: a Reliable Interpreter . . .?" (referenced in note 13 above), 141–146.
18. Cf. *CH*, 39–40.
19. *CH*, 40.
20. That is, *all* statements in the relevant encyclicals and other papal documents (such as the 1864 *Syllabus*) with the exception of some found in Pius IX's *Quanta Cura*. I hold the errors set out in *QC* (those highlighted in the original text by the use of quotation marks) to be condemned in a form which manifestly meets Vatican I's requirements for *ex cathedra* papal definitions. In this I follow such theologians as Franzelin, Hervé, and Newman. Speaking of the well-known error in certain letters of Pope Honorius, Cardinal Newman declares it obvious that the said pontiff did not "intend to exert that infallible teaching voice which is heard so distinctly in the *Quanta cura* and the *Pastor Aeternus*" ("Letter to the Duke of Norfolk," in *Certain Difficulties Felt by Anglicans in Catholic Teaching Considered* [London: Longmans, Green, 1920], 317).
21. *CH*, 40.
22. Cf. *RLC*, 87–89. Thus, I have consistently denied what in the present essay appears as proposition Z.
23. *RLC*, 60, quoted in *CH*, 40.
24. *CH*, 42–45.
25. *CH*, 44.
26. Cf. *AS*, IV, VI, 722, quoted in *RLC*, 90.
27. *CH*, 45 (emphasis added).
28. *CH*, 48 (emphasis added), and again in *CH*, 57, paragraph 1.
29. Cf. *CH*, 47, last sentence, saying that "it is nonsense to say there *is* a corresponding legal right . . ." (emphasis added). But I never said there "is" such a right.
30. Cf. *RLC*, 93.
31. *RLC*, 88 (emphasis in original). This is also reiterated clearly in the book's conclusion (cf. 143).
32. Cf. *CH*, 48.
33. Our proposition X mentions the mediaeval/Old Testament repression of even "private" religious dissent. Space does not permit in this article any extensive argument for the essential doctrinal compatibility between *DH* and even this degree of severity; but the above comparison with 21st-century *jihadism* sheds light on the issue. Fr. Basile Valuet, O.S.B., has emphasized, in his *magnum opus* upholding the continuity of *DH* with Catholic tradition, that in former centuries religious dissidents in Europe normally planned, in the event of their own rise to socio-political dominance, to be just as intolerant toward Catholics as Catholics had been toward them (or, we might add, as the warriors of the *sharia* now plan to be toward us). Cf. *La Liberté religieuse et la tradition catholique: un cas de développement doctrinal homogéne dans le magistére authentique*, 3 volumes in 6 '*fascicules*' (Le Barroux: Abbaye Sainte-Madeleine, 1998), vol. I, ch. 18. In all these cases, those propagating false religious doctrine, even 'privately,' posed (or still pose) a very real threat to the Church's own freedom of action, and so could scarcely invoke *DH* in their demands for immunity from state coercion.

As regards O.T. times, the divinely legislated eradication of religious dissent—and indeed, of the dissenters—was a basic pillar of ancient Israel's social order throughout the period of the Old Covenant. God, through Moses, commanded the Hebrews to treat the cult of pagans—"for as long as you live on [Israel's] soil"—as follows: "Tear down their altars, smash their sacred pillars, chop down their sacred poles, and destroy their idols by fire" (Deut. 12:1, 3, cf. 6:1–2, 7:5). 'Prophets' or teachers of false religions were to be put to death for thereby promoting apostasy, while even private incitement of others to pagan worship was to be similarly punished (cf. Deut. 13:6, 7–12). Catholic faith in the integral divine authorship of both Testaments rules out any simple condemnation of this pre-Christian harshness. Vatican II indeed recognizes in *Dei Verbum* #15 that some O.T. dispositions were "imperfect and temporary." But while divine justice might "temporarily" authorize what is "imperfect," it could never authorize something intrinsically (or always and everywhere) unjust.

34. Cf. *RLC*, 86, referring to the known aims and ecumenical consciousness of many Council Fathers and *periti*, the relatively liberal political attitudes of Paul VI, and the post-conciliar revision of a number of concordats between the Vatican and Catholic-majority states.
35. To attempt it, that is, by postulating a right of Catholics to be protected from exposure to salvation-endangering propaganda, even when they are themselves willing to risk the possible consequences of such exposure. But if the mere willingness of individuals to expose themselves to a given risk were enough to render unjust any legislation forbidding that exposure, civil law could not oblige us to wear seat-belts in automobiles, forbid swimming in dangerous areas, etc. Indeed, it could do little or nothing to outlaw the sale of narcotic drugs, whose users, after all, begin by willingly exposing themselves to the risk of addiction and its catastrophic effects on their lives. But at least that catastrophe is only temporal, whereas the sins of heresy, apostasy and schism lead to something much worse—eternal perdition. Indeed, any coercive protection *at all* of "public morality"—explicitly mentioned as a right and duty of the state in *DH* #7—seems problematic once we accept the premise that government can never, as it were, protect people from themselves. This same libertarian premise implies a "right" to free legal access to pornography, contraceptives, and practically all other forms of activity among "consenting adults," and is thus plainly seen as alien to Catholic doctrine.
36. *CH*, 47–48. All one can reasonably conclude from *DH* #4's failure to mention the doctrinal tenets of "religious communities" (as distinct from unethical methods of spreading them) as a possible threat to public order is that in the Council's estimation, doctrinal tenets as such could not normally be seen, *under modern circumstances*, as constituting such a threat. Even so, there could still be exceptions. No one in the Vatican, as far as I know, complained when a radical Imam in London was silenced by the British authorities in 2003 for his inflammatory, pro-terrorist preaching, even though this was carried out only within a mosque (i.e., on private property), and only within the hearing of those who voluntarily came to hear him.
37. Cf. *AS*, Vol. IV, Part I, 194–195.
38. *RLC*, 94–95.
39. The observations in this paragraph, together with those regarding semantic confusion in the preceding one, imply that the "common good"/"public order" distinction is not really so important as is often claimed. They are therefore also relevant for evaluating Mr. Guminski's claim that the reason why *DH* presents public order as the "basic component"

of the common good is "to limit radically the traditional scope of the coercive power of civil authority with respect to religious matters" (*CH*, 55). I think my critic is putting his own liberal 'spin' on the Council's intentions here. Bishop de Smedt's pertinent *relationes* said nothing about an intention of "radically limiting" anything "traditional." To read Mr. Guminski without reading the *relator* himself, one would never guess that when de Smedt was explaining the *reasons for using* "public order" rather than "common good" (as distinct from explaining what these terms *meant*), his emphasis was much more on the purely semantic issue: i.e., the value of using the same term (i.e., "public order") as is now commonly used in civil law codes in connection with coercive government actions, so as to render the Council's document more readily intelligible in the modern world, and also to help clarify that term at a time when communist regimes were appealing to it as a pretext for violating the Church's own freedom. (Cf. *AS*, Vol. IV, Part VI, 722, cited and translated in *RLC*, 90).

40. Cf. above, discussion in main text referenced by footnotes 25–28.
41. Vatican Council II, *Acta Synodalia* (*AS*) Vol. IV, Part VI, p. 723, n. 15 (my translation), cited in *RLC*, 89 and *CH*, 46.
42. *CH*, 46.
43. Cf. *RLC*, 89–95.
44. *CH*, 46.
45. The revision did not reduce the importance of the specific and substantive *content* which the Council wished to ascribe to that term. Nevertheless, that content itself—the three points mentioned in *DH* #7, par. 3—is understood to be historically "relative" and "evolving," along with the conditions that constitute the "common good" in its totality.
46. Cf. *RLC*, 89–91, and note 7 (spanning pp. 91–92).
47. Cf. *CH*, 47, par. 1.
48. Ibid.
49. Cf. *CH*, 51.
50. The words "intolerance" and "violence" are morally charged terms *by definition*: what they really mean here is "*unjust/excessive* restriction" and "*unjust/excessive* physical force" respectively. For that reason, they do not answer the vital question that now interests us, namely, *what specific types or levels* of restriction and physical force, employed or endorsed by Catholics in the defense of religion, *were in fact* unjust and/or excessive.
51. *AAS* 87 (1995), 27 (my translation). Mr. Guminski uses a defective translation wherein these words are rendered: ". . . could include suppressing the opinions of others or at least paying no attention to them." What the Pope plainly means here by *secludi* (lit., to be secluded, enclosed, fenced in, isolated) is legislation restricting or prohibiting the diffusion of such opinions.
52. Cf. *Catechism of the Catholic Church*, #2109.
53. Cf. section III.2 above.
54. Cf. discussion in section III.1 above, in the paragraph referencing note 32. I emphasize the word "*doctrine*" in the above sentence, because common medieval theological *opinion* did indeed hold that physical force could be used against heretics and apostates not only to protect Christian society from their dangerous influence (i.e., in the interests of public order), but also in order to compel such persons themselves to re-embrace the orthodox faith of their baptism. (Cf., Aquinas, *ST*, IIa IIae, Q. 10, a.8c, and discussion in *RLC*, 125.) I know of no evidence, however, that the legitimacy of *this particular rationale* for the use

of force—i.e., aiming more at 'rehabilitating' the offender himself than at protecting the rest of society from him—was ever insisted upon by the Church's magisterium as a truth requiring the assent of all Catholics.

55. Cf. section I, paragraph referencing nn. 2–5.
56. Cf. *RLC*, 57–58, 87–88.
57. *CH*, 52.
58. These Spanish legislators (as cited by Mr. Guminski) do indeed begin the 1967 law by quoting the existing (1958) constitutional principle that all legislation in Spain "must take its inspiration from the *doctrine* of the Catholic Church" (emphasis added). But their decision to cite that principle is entirely explicable simply by the appropriateness of indicating, in a legislative document, why it is that a magisterial document of the said religious denomination could, as such, be seen as requiring a change in Spanish civil law.
59. *CH*, 51–52, citing *DH* #1, par. 3.
60. I was unaware of this intervention when writing *RLC* and my earlier articles on *DH*. The archivist of Vatican Council II, Msgr. Vincenzo Carbone, finally published in 1991 the text of an important handwritten note from the Pope, dated November 15, 1965. It reads as follows (my translation): "Proposals for new amendments to the text *De lib. rel.* have been seen. To Msgr. Felici Pericle [secretary-general of the Council]. Please make known the following: some reassuring retouches will be added (*saranno apportati alcuni ritochi tranquillizzanti*);—but the schema must be printed immediately after that (this evening) so as to be distributed on Wednesday 17 and put to the vote on Friday 19. Already phoned to Most Rev. Dell'Acqua" (V. Carbone, "Il ruolo di Paolo VI nell'evoluzione e nella redazione dello dichiarazione 'Dignitatis Humanae,'" in *Paolo VI e il rapporto Chiesa-mondo al Concilio* [Brescia: Istituto Paolo VI, 1991], 169). What these "reassuring retouches" were can be seen by comparing the final text of *DH* #1 with the penultimate draft (*textus recognitus*). Article 3 was also modified by this papal intervention, so that the final text no longer excludes all trans-temporal concerns from the state's legitimate area of competence, and *does* exclude the 'laicist' ideal of state 'neutrality' as between religion and irreligion. It says the state "must recognize and favor the religious life of citizens."
61. Cf. *AS*, Vol. IV, Part VI, 719 (reproduced over n. 31 in *RLC*, 75, my translation).
62. The Council's archivist informs us that on the same day Pope Paul ordered the above insertions into the final draft to #1 and #3, he also intervened directly to dictate their official explanation: "At the bottom of a sheet of paper containing the section of the *relatio* from '*Aliqui patres*' down to '*adiunximus*' [the section referenced in n. 61 above], the Pope added the following hand-written annotation: '15-XI-1965. For Mons. C. Colombo. This text will be inserted into the final *relatio* on the Schema *De libertate religiosa*, *in order to respond to the objection alleging discontinuity in the magisterium*'" (Carbone, 169–170, emphasis added). These papal interventions indeed seem to have had a significant 'reassuring' effect for several hundred Fathers. The percentage of '*placets*' (positive votes) for articles 1 through 5 in this new version of the schema rose on November 19 to approach the necessary consensus: 88 percent (1954 out of 2216), compared to only 72 percent (1539 out of 2138) in the vote on the previous draft on October 26 (cf. Carbone, 170 and *RLC*, 67).
63. Cf. references in n. 61 above.
64. Cf. note 4 above and corresponding paragraph in main text.
65. Cf. *CH*, 53–54, citing various passages of *RLC*.

66. Cf. *RLC*, 100-101, where several examples are suggested: divine positive law regarding polygamy, Sunday observance, and the *per se* duty of political communities themselves (along with all other "societies," according to *DH* #1, par. 3), to recognize Roman Catholicism as true.
67. Cf. *CH*, 54.
68. *CH*, 55.
69. Cf., for instance, Vatican Council I, DS 3033–3034, and Leo XIII, *Immortale Dei*, #6: "Since, then, no one is allowed to be remiss in the service due to God, and since the chief duty of all men is to cling to religion in both its teaching and practice—not such religion as we may have a preference for, but the religion which God enjoins, *and which certain and most clear marks show to be the only true religion*—it is a public crime to act as if there were no God. So too it is a sin in the State . . . [to adopt] out of many forms of religion . . . that one which chimes in with fancy; for we are bound absolutely to worship God in that way which He has shown to be His will" (emphasis added, cited in *RLC*, 13). The *Catechism of the Catholic Church*, #2105, references this encyclical in its entirety in expounding the social duty of religion.
70. *CH*, 39.
71. "Vatican II and Religious Liberty: Contradiction or Continuity?", *Social Justice Review*, July/August 1989, 104–112. This article was republished in *Catholic Dossier*, vol. 6, no. 2, March–April 2000, 21–30. I will follow Mr. Guminski in referring to this article as "*SJR89*."
72. *SJR89*, 110, cited in *CH*, 58.
73. These would have been, principally, the unique truth of the Roman Catholic religion and the consequent threat to the eternal salvation of Catholic citizens arising from the spread of heresy in society.
74. The First Vatican Council, for instance, insists that, in the light of the completeness of divine revelation, "the Holy Spirit was not promised to the successors of Peter in order for them to make known any new revealed doctrine, but rather, so that through His assistance, they might devoutly guard and faithfully expound revelation handed down by the Apostles, that is, the deposit of faith" (DS 3070 = Dz 1836).
75. *CH*, 58.1.
76. *CCC*, #2109.
77. Cf. *CCC* #2434.
78. Vatican Council II, Declaration on Christian Education, *Gravissimum Educationis*, #1.
79. *CH*, 59.
80. Cf. section III.6 above.
81. ". . . *sacram Ecclesiae traditionem* ***doctrinamque*** *scrutatur, ex quibus nova* ***semper*** *cum veteribus* ***congruentia*** *profert*" (emphasis added).
82. As Mr. Guminski points out, I had already defended *this* thesis in detail in chapter 6 of *RLC*. He does not seem particularly concerned to dispute the propriety, or even the theoretically normative status, of such state 'establishment' of Catholicism, provided this has no discernible restrictive consequences for non-Catholic minorities.
83. *RLC*, 60 (proposition 2); cf. *CH*, 58–59. As we have seen in section III.2 above, coercion which the common good *requires* (i.e., which is truly *necessary*)—as distinct from coercion which (putatively) would be *beneficial*, but not *necessary*, for the common good—is

precisely what *DH* means, according to the *relator*'s official explanation, by coercion in the interests of a "just public order."

84. *CH*, 59.
85. The papally dictated section of the final *relatio* unquestionably implies that the word "societies" In *DH* #1 includes the "public power" (*potestas publica*), i.e., the State (cf. *AS*, Vol. IV, Part VI, 719, reproduced over n. 31 in *RLC*, 75).
86. Cf. *CH*, 59.
87. Cf. *AS* IV, V, 78, for the pertinent section of the second-last draft (*textus recognitus*), and *AS* IV, VI, 704 for the corresponding section of the final text (*textus denuo recognitus*).
88. See for instance the Douay-Rheims rendering (a very close and literal one) of the Vulgate Bible, in such texts as Lk. 10:42 (Martha and Mary): "But one thing is necessary . . ."; Lk. 11:20: "But if I by the finger of God cast out devils, . . ."; and Mt. 8:27: "But the men were astounded . . ." Cf. also I Chron. 5:2, 11:5, I Kings (= I Samuel) 22:30; III Kings 11:32. In all these texts (and many others) "but" in the Douay-Rheims version translates *porro* in the Vulgate.
89. Carbone, *op. cit.*, 169–170.
90. Latin *integram*.
91. *CH*, 59.
92. *La libertá religiosa nel Vaticano II* (Torino-Leumann, Elle Di Ci, 2nd edn. 1967), 145. Hamer's comment is also cited in *RLC*, 77 (translation mine, emphasis added).
93. Significantly, the final (1997) version of the *Catechism* omits the original (1992) references specifying articles 3 and 17 of *ID*, and articles 8 and 20 of *QP*. These encyclicals, two classic *piéces de résistance* for Catholic traditionalists, are therefore now referenced in their entirety, making it clear that the Church is not repudiating any part of their doctrine.
94. Latin *servare* (*DH* #1, last word, second paragraph).
95. It does not indeed follow with a strict *logical* necessity. As I have noted in my other writings, state establishment of religion is theoretically compatible with a very wide variety of legal dispositions vis-à-vis the treatment of other religions, philosophies and life-styles, ranging from the fiercest intolerance to almost unrestricted liberty.
96. Cf., for example, "The sacrifice of the wicked is an abomination" (Prov. 21:27); "Away with your noisy songs! I will not listen to the melodies of your harps. But if you would offer me holocausts, then let justice surge like water, and goodness like an unfailing stream" (Amos 5:23–24); also Is. 1:11–17, Sir. 34:19–20, Jer. 6:20, Mk. 12:38–40, etc.
97. Indeed, a new intolerance toward *Christian* religious expression is now looming in some of these officially 'Christian' states: in Lutheran Sweden, a Pentecostal pastor was jailed in June 2004 for the "hate crime" of preaching (to his own flock, inside his own church building) that homosexual acts are "perverse" and abominable in God's sight.
98. However, for a fine, patriotic polemic against the disestablishment of Catholicism as Italy's State religion, see Roberto de Mattei, *L'Italia Cattolica e il Nuovo Concordato* (Rome: Centro Culturale Lepanto, 1985).
99. Cf. Keith J. Pavlischek, *John Courtney Murray and the Dilemma of Religious Toleration* (Kirksville, Missouri: Thomas Jefferson University Press, 1994) 44–47.
100. J.C. Fenton, "Principles Underlying Traditional Church-State Doctrine," *American Ecclesiastical Review*, vol. 126, June 1952, 455–456 and 457, quoted in Pavlischek, *op. cit.*, 44 and 45–46.

101. This review was originally published in *Living Tradition*, No. 44, January 1993, 4–12 (abbreviated by Mr. Guminski as *LT93*). However, I will refer here also to the more accessible and widely distributed version published in *Fidelity* (May 1993, 39–47), under the title (chosen unilaterally by the editor), "Did the Church Change Her Teaching on Religious Liberty?" (hereafter abbreviated as *F93*).
102. Cf. *CH*, 62–63.
103. *CH*, 62.
104. Cf. section II above (paragraph referencing notes 21–23).
105. I noticed, for instance, that in his 1832 encyclical *Mirari Vos*, Pope Gregory XVI, in condemning demands for an "immoderate liberty of opinions," appealed to St. Augustine's argument from repressing fifth-century Donatist propaganda: "What worse death of the soul is there than liberty for error?" (". . . *quae peior mors animae, quam libertas erroris?*" [DS 2731, = Dz 1615]). The Pontiff's clearly implied doctrine here is that since religious error *as such* threatens the salvation of Catholic souls, *any and every* public manifestation of religious error could justly be repressed (at least in the circumstance he was presupposing and addressing, namely, predominantly Catholic societies in the early nineteenth century). The "risk" to the "eternal salvation" of Catholic citizens arising from "the spreading of false doctrines" was also presented as justifying government intervention in the relevant preparatory schema for Vatican II, whose authors (notably Cardinal Alfredo Ottaviani, head of the Holy Office) were very well qualified to identify the content of existing (i.e., traditional) Catholic doctrine. (Quoted in M. Davies, *The Second Vatican Council and Religious Liberty* [Long Prairie, Minnesota: Neumann Press, 1992], 300).
106. *LT93*, 8 (= *F93*, 41–42), quoted in *CH*, 63 (emphasis in original).
107. Pius XII had already raised this issue a decade before Vatican II in his allocution *Ci riesce* (6 December, 1953), published in *AAS* 45 (1953), 794–802. Cf. Davies, *op. cit.*, 310–312 for an English translation of the relevant section.
108. Cf. *CH*, 65–66.
109. Cf. M. Davies, *I Am With You Always* (Long Prairie, Minnesota: 1997), 32. See also such standard texts as J.M. Hervé, *Manuale Theologiae Dogmaticae*, vol. I (Westminster, Maryland: Newman Bookshop, 1946), 515–516; L. Lercher, S.J., *Institutiones Theologiae Dogmaticae*, 5th edn. (Barcelona: Herder, 1951), 304–305; E. Dublanchy, s.v. ¨Église¨ (section IV), in *Dictionnaire de Théologie Catholique*, vol. IV (Paris: Letouzey, 1911), cc. 2185–2186.
110. ". . . *omnes fideles obligare*" (Lercher, *loc. cit.*); ". . . *omnibus fidelibus praecipere*" (Hervé, *loc. cit.*); ". . . *pour tout le people chrétien*" (Dublanchy, *loc. cit.*).
111. *F93*, 45.
112. Cf. *CH*, 67.
113. Cf. *CH*, 68–69. He finds the wording of #1738 "confusing," "puzzling" and "mystifying." Those readers who find my previous discussion of the "common good"/ "public order" distinction persuasive (cf. sections III.2 and III.3 above) will probably not share much of my critic's puzzlement.
114. Cf. *CH*, 69–70.