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## Religion, Human Law, and the Virtue of Religion: The Case of *Dignitatis Humanae*

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### I.

FOR THE PAST THREE YEARS, we have marked the fiftieth anniversary of the Second Vatican Council. Pope John XXIII convened the first session on October 11, 1962. In his opening allocution, he reminded the bishops that “history is the teacher of life.”<sup>1</sup> There was more than a little history from which to learn lessons. The last ecumenical council that completed all of its work was the Council of Trent, which ended in 1563. The Church had passed through four centuries of modernity by making ad hoc adjustments along the way. The post-Tridentine era was persistently troubled by church-state relations, which, by the nineteenth century, had gone from bad to worse. In the waning decades of the second millennium, it was time for the college of bishops to reckon with the situation of the Church in more than an incremental and politically make-shift manner. Indeed, by the end of the first session of the Council, the Pope was ready to air a new position on religion and civil liberties.

We tend to think backwards, and thus the “lessons of history.” But we live toward the future. Vatican II’s Declaration on Religious Liberty, *Dignitatis Humanae* (hereafter, *DH*), was the sixteenth and final document of the Council, signed by Pope Paul VI on December 7, 1965, only a few hours before the council adjourned. *DH* bore an especially heavy burden of thinking backward and living forward. It set out “to

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<sup>1</sup> John XXIII, *Gaudet Mater* (1962). The texts of all papal documents can be found on the Vatican website.

develop the doctrine of recent popes on the inviolable rights of the human person and the constitutional order of society.”<sup>2</sup> The word “develop” had at least two meanings for the council. First, it meant taking stock of an historical, legal, and social *development* from Catholic political Christendom to a new constitutional order of society. Second, it meant *developing* the teachings of recent popes on the moral-juridical right of human persons to religious liberty.

This symposium in honor of Reinhard Hütter provides a suitable occasion to reflect upon *DH* in the light of the ancient rubric *virtus religionis*. The topic comes to us chiefly through the work of Thomas Aquinas, who channeled ancient wisdoms, testimonies of sacred scripture, patristic writings (especially Augustine), and the debates of the medieval schools in order to understand how acts of religion are situated under natural, divine, and human law. What are the conditions for the virtue of religious acts, what are the causes and remedies for its vices?

Thomas puts acts of religion under the virtue of justice, having a ground in a natural obligation to give due to God according to certain interior and exterior acts.<sup>3</sup> He places religion among the moral virtues rather than the theological virtues because acts of religion do not approach or “touch” God directly. Whereas the proper matter or object of religion is human acts of worship performed out of reverence for God, the formal object of the supernatural virtue of faith is God revealing, and for charity it is God himself.<sup>4</sup> Therefore, the theological virtues also command acts of religion, but on a different plane and with a different formal object.<sup>5</sup>

Thomas’s questions on religion are quite extensive. In the *Summa Theologiae* alone he treats the duty of *cultus divini* in the context of the moral and ceremonial precepts of the Old Law (I-II, qq. 98–103). He later devotes some twenty questions to the virtues and vices of religious acts (II-II, qq. 80–100). In due course, I will show that he provides two rather different treatments of religion. In the one, he accounts for religion on the basis of its causes, objects, and ends in order to give proper definitions and to distinguish the various acts of religion; in the other,

<sup>2</sup> *DH*, §1 (available at [http://www.vatican.va/archive/hist\\_councils/ii\\_vatican\\_council/documents/vat-ii\\_decl\\_19651207\\_dignitatis-humanae\\_en.html](http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decl_19651207_dignitatis-humanae_en.html); all documents of the Council are available at the Vatican website).

<sup>3</sup> Thomas Aquinas, *Summa Theologiae* (hereafter, *ST*) II-II, q. 81. Unless otherwise noted, all citations of the *ST* are from the Blackfriars edition.

<sup>4</sup> *ST* II-II, q. 81, a. 5.

<sup>5</sup> *Ibid.*, ad 1.

he accounts for religion in real historical time, according to both divine and mundane testimony.

These two approaches need to be considered in tandem if we are to reflect on *DH* in the light afforded by the virtue of religion. For one thing, the Declaration takes up the question of religious acts in reference to the natural law and to the jurisdiction and coercive power of human law—human law is the main issue. The right of human persons to religious liberty is not framed against moral law or divine law, nor against the complex social network of institutions of religious formation.

Thomas recognized as a matter of historical fact that human laws “have devised many institutions relating to Divine matters, according as it seemed expedient for the formation of human morals; as may be seen in the rites of the Gentiles.”<sup>6</sup> Moreover, he understood that the normative and prudential grounds for the authority of human law over *cultus divini* was always a vexed issue, not just for Christendom but for the pagans. In this regard, Cajetan remarked that the issue of subordination of religion to the political common good has given birth to “many fables [*multas fabulas*].”<sup>7</sup>

Before we begin, it is important to understand that the template of “virtue of religion” cannot count for a strict interpretation of *DH*. In the first place, “virtue of religion” is used neither in this document nor in any other document of the Second Vatican Council.<sup>8</sup> In the interlude between the first and second sessions of the council, John XXIII issued *Pacem in Terris* (hereafter, *PT*), listing several human rights formu-

<sup>6</sup> ST I-II, q. 99, a. 3.

<sup>7</sup> See his commentary on the foregoing article (no. 4 on ST I-II, q. 99, a. 3) in the Leonine edition of the *Summa* with Cajetan’s commentary (Rome: Ex Typographia Polyglotta, S. C. De Propaganda Fide, 1892), 202.

<sup>8</sup> *DH* cites Leo XIII’s encyclical *Libertas* (1888), which includes an explicit and rather forceful discussion of the “virtue of religion” (§§19–20). Rather than citing that section, however, *DH* cites (at §2 n.2) a different paragraph on why the Christian understanding of liberty of conscience can be defended on its own terms without confusing it with the doctrine of indifferentism, *Libertas* §30, English translation of which is in *Leonis XIII: Pontificis Maximi Acta*, vol. 8 (Rome: Ex Typographia Vaticana, 1889), 237–238: “every man in the State may follow the will of God and, from a consciousness of duty and free from every obstacle, obey His commands. This, indeed, is true liberty, a liberty worthy of the sons of God, which nobly maintains the dignity of man and is stronger than all violence or wrong.” For Leo’s discussion of the virtue of religion in *Libertas* §§19–20, see *Pontificis Maximi Acta*, 8:229–230 (also available at [http://w2.vatican.va/content/leo-xiii/en/encyclicals/documents/hf\\_l-xiii\\_enc\\_20061888\\_libertas.html](http://w2.vatican.va/content/leo-xiii/en/encyclicals/documents/hf_l-xiii_enc_20061888_libertas.html)).

lated in familiar terms of natural law: “Also among man’s rights is that of being able to worship God in accordance with the right dictates of his own conscience, and to profess his religion both in private and in public.”<sup>9</sup> This document, in fact, was the proximate magisterial source for the duty and the right covered by *DH*. Although the Pope makes many references to Thomas’s doctrine of natural law and on human conscience participating the eternal law, we find no explicit mention of the virtue of religion. Nor is it to be found in the *Compendium of the Social Doctrine of the Church*. With the notable exception of the *Catechism of the Catholic Church*, the rubric “virtue of religion” has gone into a kind of desuetude in magisterial documents.<sup>10</sup> This does not prevent us, however, from reflecting usefully on the virtues and vices of religion, along with a rich set of issues that were once examined in that vein. It only cautions us to distinguish such reflection from strict interpretation of *DH*.

One additional caveat is in order. After fifty years, the teaching in *DH* is still controversial. Much literature is given to the question whether its doctrinal development is coherent and consistent. Some of this literature is tedious and merely argumentative, but much of it is quite interesting. I shall not directly engage these debates, for to enter into one is to enter into them all.<sup>11</sup> What can be said is that interpreting the document is tricky business. The Declaration is the second shortest conciliar document: forty-six hundred words in Latin, which amounts to about eight single-spaced pages in the usual format. During the drafting process, some bishops worried about the strictly philosophical questions (drawing proper distinctions between subjective and objective meanings of “conscience”). Some bishops worried about practical items (the effect of the declaration on concordatory states), while others worried about ideologies (indifferentism and laicism), and still others about how to interrelate canonical, international, and natural rights. Many bishops wanted the document to clearly rehearse and to settle the broken history of church-state relationships going back more than seventeen hundred years.

<sup>9</sup> John XIII, *Pacem in Terris* (1963; hereafter *PT*), §14.

<sup>10</sup> *Catechism of the Catholic Church* (hereafter, *CCC*), §§1807–1813; see also §§2084–2144, where acts of religion and irreligion are enumerated.

<sup>11</sup> For a useful study of the consistency and coherence of doctrinal development, along with an updated bibliography of disputants, see Barrett H. Turner, “*Dignitatis humanae* and the Development of Moral Doctrine: Assessing Change in Catholic Social Teaching on Religious Liberty” (PhD diss., Catholic University of America, 2015).

Gradually, by trial and error, the commission charged with the task of formulating the position, as well as the bishops who debated various drafts on the floor of the council, realized that the declaration could not do all of these things. This editorial process had the good effect of producing an exceedingly tight and carefully reasoned statement. In Roman tradition, a *declaratio* differs from a *constitutio* and a *decretum*. Constitutions and decrees have binding force upon the whole church. A declaration, on the other hand, is reserved for matters and persons who are not under the public law of the church. Therefore, *Dignitatis Humanae* was supposed to be short and to the point.

The downside of the council's success in achieving such a succinct and focused document was that a strong line of historical narrative had to be left for another time.<sup>12</sup> So, for example, *DH* cites no scholarly philosophical or theological authority for its position between Gregory the Great and late-nineteenth century papal encyclicals. Thomas Aquinas is not cited. The document sidesteps not only authorities crucial to medieval Christendom, but also the Catholic political Christendom that was reconstituted after the Council of Trent. It is completely silent about both the medieval schools and the significant work of later scholastic philosophers, theologians, and jurists. Interestingly, if we mean by "religion" the acts of *cultus divini*, *DH* is mostly silent about religion.

Respecting these silences, and without pretending to offer a strict interpretation of the document, we can turn to Thomas's treatment of religion. This article is divided into two parts. First, we will consider his twofold approach to the subject, one systematic and the other historical. We want to come rather quickly to perplexities surrounding the place of religion under human law, which come into focus especially in his historical approach. Second, we will return to *DH*, attempting to size it up in light of what we found in Thomas.

## II.

We shall limit ourselves to two lines of questions about religion in the *Summa Theologiae*. In questions 98–103 of the *Prima Secundae*, acts of religion are treated under the topic of law. Although these questions are organized around the first table of the Decalogue and the determinations of cult according to Mosaic Law, Thomas uses the occasion

<sup>12</sup> The Relator of the Commission, Bishop de Smedt, remarked that the relation of *DH* to past popes is "a matter for future theological and historical studies to bring to light more fully"; see "*Congregatio Generalis* CLXIV, 19 Nov. 1965," in *Acta Synodalia Sacrosancti Concilii Oecumenici Vaticani Secundi*, 6 vols. (Vatican City: Typis Polyglottis Vaticanis, 1970–1978), 4 (pt. 8):719.

to comment on the relationship between natural law and divine law, as well as the historical sequence whereby men are “instructed by law” in acts pertaining to religion. In questions 80–100 of the *Secunda Secundae*, Thomas treats religion chiefly under the topic of virtue, namely religion as a potential part of justice. This extensive set of questions on religion and justice represents a continuation of the earlier questions, for law directs human action principally to justice. In both lines of questions, Thomas locates the proximate cause of religion in the human reason’s inclination to know the truth about God and to form various considerations about the divine (e.g., creator and end of the natural good), which in turn give structure to volitional acts and incipient awareness of moral duties about rendering to God what is his due.

For the purposes of this essay, I want to highlight two main themes that crisscross throughout the two lines of questions. I shall call the first *the stem and its branches*, by which I mean Thomas’s examination of the rational inclination to know the truth about God and the various practical considerations and acts of religion, principally acts of divine cult, consisting of both interior and exterior acts of worship. This theme counts as a rather conspicuous application of Thomas’s dictum that the common principles of law are the “seeds of the virtues.”<sup>13</sup> I shall call the second theme *the historical situation of formation* (and deformation) of religious acts, by which I mean the record of how humans have been educated by laws, customs, and higher causes that include demons and God himself. In other words, all those things in real historical time that have shaped acts ensuing upon the root inclination to honor God as an end and to tender religious submission. Thomas holds that the root inclination is sturdy and vibrant because the seeds or principles of the inclination are causes “more excellent than the virtues acquired through them.”<sup>14</sup> It turns out, however, that the vector of the inclination and its acts does not fare very well in the natural habitat of reason, at least not as we find it after sin.

Among the first precepts of natural law are those arising most proximately from our rational nature: “there is in man an inclination to good, according to the nature of his reason, which nature is proper to him: thus man has a natural inclination to know the truth about God, and to live in society: and in this respect, whatever pertains to this

<sup>13</sup> *Quaestiones disputatae de virtutibus* q. 8, ad 10, in Thomas Aquinas, *Disputed Questions on the Virtues*, ed. E. M. Atkins and Thomas Williams, Cambridge Texts in the History of Philosophy (Cambridge, UK: Cambridge University Press, 2005), 49.

<sup>14</sup> *ST I-II*, q. 63, a. 2, ad 3.

inclination belongs to the natural law, for instance, to shun ignorance, to avoid offending those among whom one has to live, and other such things.”<sup>15</sup> The entire ensemble of social virtues is implied in this first sketch of natural law. Furthermore, the two great commandments regarding love of God and neighbor are implied—for, the good to be pursued is nothing other than being rightly ordered to God and other men. This much, he insists, is self-evident, having no need of additional promulgation.<sup>16</sup> This inclination—*ordinem ad deum*—is taken by Thomas to be not only an etymological option for the word *religio*, but the correct and proper one.<sup>17</sup>

The very compact article on inclinations and first precepts (*ST* I-II, q. 94, a. 2) also makes reference to a dignitarian principle. In answer to the question of whether man is naturally fit to love God above all things, Thomas answers that this precept of the natural law, after sin, cannot be integrally fulfilled without grace. On the other hand, if the question is put in a different way, as whether man is inclined to things superior to himself, he answers: “When it is said that nature cannot rise above itself, we must not understand this as if it could not be drawn to any object above itself, for it is clear that our intellect by its natural knowledge can know things above itself, as is shown in our natural knowledge of God. But we are to understand that nature cannot rise to an act exceeding the proportion of its strength. Now to love God above all things is not such an act; for it is natural to every creature, as was said above.”<sup>18</sup> To think upon what is above oneself [*cognoscere quae sunt supra seipsum*] is an evidence of human dignity, indeed it is mentioned in his definition of natural law:

Now among all others, the rational creature is subject to Divine providence in the most excellent way, in so far as it partakes of a share of providence, by being provident both for itself and for others. Wherefore it has a share of the Eternal Reason, whereby it has a natural inclination to its proper act and end: and this participation of the eternal law in the rational creature is called the natural law. Hence the Psalmist after saying Ps 4:6: “Offer up the sacrifice of justice,” as though someone asked what the works of justice are, adds: “Many say, Who showeth us good things?”

<sup>15</sup> *ST* I-II, 94, a. 2.

<sup>16</sup> “Fines praeceptorum: dilectionem Dei et Proximi” (see *ST* I-II, q. 99, aa. 1–2; q. 100, a. 5, ad 1 and 11; II-II, q. 44, a. 1, ad 3, and a. 6, ad 3).

<sup>17</sup> *ST* II-II, q. 81, a. 1.

<sup>18</sup> *ST* I-II, q. 109, a. 3, ad 2.



in answer to which question he says: “The light of Thy countenance, O Lord, is signed upon us,” thus implying that the light of natural reason, whereby we discern what is good and what is evil, which is the function of the natural law, is nothing else than an imprint on us of the Divine light.<sup>19</sup>

Thomas mentions several ways that the human intellect can think of a superior being: 1) in a general and confused way inasmuch as God is man’s beatitude (I, q. 2, a. 1, ad 1); and 2) with additional conceptual clarity and inference—as the beginning and the end of natural goods (I-II, q. 109, a. 3, ad 1), as the first principle of the creation and government of things (II-II, q. 81, a. 3), and as implicitly Trinitarian, insofar as God creates and governs by wisdom and love of the good (II-II, q. 81, a. 3, ad 1). These attributes are summarized according to the idea of *excellencia* (II-II, q. 81, a. 3, ad 2). Thus ensue the first stirrings of obligation, which, in the case of religion, are a due response to divine excellence. The act that proceeds from such considerations is one of the will by which man surrenders himself to the service of God: *latria*, having devotion as its internal act and sensible cult of sacrifice as its exterior object.<sup>20</sup> At least this much, he insists, is a dictate of natural reason.

There is one other consideration that should not be overlooked because it pertains not only to the main acts of religion, but also to prayer in general—namely, our indigence, which is also indicated in Thomas’s use of Ps 4: “Natural reason tells man that he is subject to a higher being, on account of the defects which he perceives in himself, and in which he needs help and direction from someone above him”;<sup>21</sup> “Now man shows reverence to God by means of prayer, in so far as he subjects himself to Him, and by praying confesses that he needs Him as the Author of his goods. Hence it is evident that prayer is properly an act of religion.”<sup>22</sup> Our indigence gives us reason to turn to divine excellence from afar, but also as the divine goodness is close at hand as a cause of our moral illumination and instruction.

What the texts above underscore is a recognition that dependence on God stands very close to the stem of rational inclination. First, even after sin, it remains vigorous. For example, the person who gives little

<sup>19</sup> ST I-II, q. 91, a. 2.

<sup>20</sup> ST II-II, q. 82, a. 3.

<sup>21</sup> ST II-II, q. 85, a. 1.

<sup>22</sup> ST II-II, q. 83, a. 3.

attention to religion will *in extremis* offer prayers and make vows for divine assistance. Second, its vigor also sets the stage for acts of irreligion. Religion is a potential part of justice, since, in giving due to God, no creature can achieve equality in the relation, as one who would repay a debt.<sup>23</sup> The religious *debitum* always exceeds the *res iustum*. The strict justice of the cardinal virtue is not possible in religion, at least not rightly understood. In one important sense, religion is the greatest of the moral virtues precisely because of its asymmetry. For, by acts of honor and devotion to an excellence “above us,” we implicitly recognize that the relationship transcends strict commutation.<sup>24</sup> Religion is a freely tendered act of submission to God as an end, and the nobility of the virtue consists precisely in this.<sup>25</sup> To a fellow creature we owe love as we love ourselves. To give due to God under that same *ratio* is to fall short of the natural obligation of religion, which is to love God as a superior and most excellent being. Therefore, the quest for a *quid pro quo* is likely to destabilize the order of religious acts. On that scenario, the object of religion, the divine cult, is not ordered to God as an end, but rather to God as an instrument for the city or some other temporal political or a private end (rather than to God as the common good of creation).

Putting to one side all the things that complicate or frustrate acts of religion, T. C. O’Brien states the ideal rather well: “The highest conceivable will-relationship to God would necessarily be a relationship of the creature to its fontal cause; and acknowledgement of a debt, an act of justice proper to the virtue of religion.”<sup>26</sup> This is what Thomas attributes to the state of innocence: “And hence we must say that in the state of perfect nature man did not need the gift of grace added to his natural endowments, in order to love God above all things naturally, although he needed God’s help to move him to it; but in the state of corrupt nature man needs, even for this, the help of grace to heal his nature.”<sup>27</sup>

In view of the last comment, it is useful to understand that, for Thomas, there is no natural religion.<sup>28</sup> We can recall that the object of

<sup>23</sup> ST II-II, q. 80, a. 1.

<sup>24</sup> ST II-II, q. 81, a. 6.

<sup>25</sup> On “freely tendered,” see ST II-II, q. 81, a. 2, ad 3, and a. 6, ad 3.

<sup>26</sup> Blackfriars edition, vol. 31, 189.

<sup>27</sup> ST I, q. 109, a. 3.

<sup>28</sup> Thomas’s understanding of natural law grounds of religious duties cannot be confused with the Enlightenment’s quest to discover, or even to construct, a natural religion.

religion is the cult, which is referred to God as an end. The interior act of cult is devotion, the free act of the will in submission to God under one or another consideration of reason. Although we might imagine the natural inclination culminating satisfactorily in that interior act alone, this is not a sufficient condition for the virtue. For, it is also a dictate of reason that there be exterior acts making use of sensible signs.<sup>29</sup> Such are required not only in worship (sacrifices) but also by other acts of religion, like the making of vows.<sup>30</sup> The virtue, therefore, depends on getting both the interior and exterior acts right.

Thomas frequently points out that the dictates of natural reason regarding religious acts need to be determined by human or divine law: “It belongs to the dictate of natural reason that man should do something through reverence for God. But that he should do this or that determinate thing does not belong to the dictate of natural reason, but is established by Divine or human law”;<sup>31</sup> “In like manner the offering of sacrifice belongs generically to the natural law, and consequently all are agreed on this point, but the determination of sacrifices is established by God or by man.”<sup>32</sup> Whether on account of the obscurity of God to the human mind, or owing to the fact that that what is due to God outstrips the strict justice covered by the cardinal virtue of justice—or even to ordinary, non-culpable doubts about the suitability of the external signs in worship—the natural inclination to offer *latria* is immediately in need of *determinationes* after loss of innocence. By determinations, we need to think of more than laws coordinating actions of a multitude, as would be necessary for any community of worship. We need to think more deeply of determinations of the object itself, of the *cultus divini*.

The pressing need for determinations of cult mark off the “stem” of the virtue of religion as being situated rather differently than action guided by the other first, or most common, precepts of natural law. One example suffices to make the point. Thomas cites the dictum of Ulpian regarding what “nature has taught all animals”—indeed, it is a telic arc including sexual intercourse, procreation, and the nurturing and education of offspring. To be sure, the object and end(s) of the conjugal act have been the subject of many moral and social perplexities, and have been enveloped in myriad laws and customs determining

<sup>29</sup> ST II-II, q. 81, a. 7; q. 82, a. 3, ad 2; and q. 85, a. 1.

<sup>30</sup> ST II-II, q. 89, a. 8.

<sup>31</sup> ST II-II, q. 81, a. 2, ad 3.

<sup>32</sup> Ibid., q. 85, a. 1, ad 1. See, also, I-II, q. 99, a. 3.

issues of property, consanguinity, frequency of the matrimonial debt, adultery, and divorce.<sup>33</sup> Even so, whatever the condition and circumstances of human conjugal acts, and however they are formed by laws and customs, people rather quickly get the point of this vector of rational inclination in respect not only of its proximate object, but also of its end(s). However rough and ready, it survives the loss of innocence, and confusions and perversions notwithstanding, people were not at a loss to know what to do either in general or in particular.<sup>34</sup>

In the case of religion, Thomas thinks historically, by which I mean that he considers not only the natural inclination and its natural law requirements, but also how religion plays out over time in institutions. Again, for Thomas there is no natural religion. He does allow, however, for a “time” between the loss of innocence and determinations of religion by law. Some men, gifted with a “spirit of prophesy” and a divinely given “spiritual instinct,” enjoyed a so-called “private law” prompting them to worship God in a definite way and in keeping with rightly ordered interior worship.<sup>35</sup> And he allows the scenario that “others followed them.” Afterwards, men were instructed by outward precepts about these things.<sup>36</sup> There was no idolatry in the first age, he explains, “owing to the recent remembrance of the creation of the world, so that man still retained in his mind the knowledge of one God.”<sup>37</sup> But in the time before the Law—and in an historical time of the gentiles<sup>38</sup> outside of the Law—human laws and customs determined the outward acts of religion. By and large, these efforts were unsuccessful. “Thus Augustine (*De civitate Dei* 6.10) quotes Seneca as saying: ‘We shall adore,’ says he, ‘in such a way as to remember that our worship is in accordance with custom rather than with the reality.’”<sup>39</sup> Hence, there is a twofold disruption of religion: 1) disordered in relation of truth about God; 2) disordered by confusing, or worse, perversely reversing the relation between object and end by giving *latría* to a creature (and many other

<sup>33</sup> See, for example, the twenty-seven disputed questions Thomas himself covers on marriage (*ST* Suppl. 41–68).

<sup>34</sup> We could also think of the rational inclination to enter into society under relations of justice. It is not difficult to imagine Aristotle’s scenario (in *Politics* II) of matrimonial and domestic orders opening up to tribal relations, and to villages, and to the necessity of political life.

<sup>35</sup> *ST* I-II, q. 103, a.1.

<sup>36</sup> *ST* II-II, q. 93, a. 1, ad 2. See also II-II, q. 87, a. 1, ad 3; and q. 92, a. 1, ad 2.

<sup>37</sup> *ST* II-II, q. 94, a. 2, ad 2.

<sup>38</sup> *ST* I-II, q. 98, aa. 2–6.

<sup>39</sup> *ST* II-II, q. 94, a. 2, corp.

acts of irreligion that ensue upon these disorders).

Thomas's discussion of the ceremonial precepts of the Law is pivotal to his account of the intersection of divine, natural, and human law in matters religious. These questions too often are given short shrift on account of their length and somewhat tedious detail.<sup>40</sup> Yet, it is here that Thomas gives the bridge connecting the natural inclination and first-order dictates of reason with the determinations of outward worship in the *ceremonialia*. What is most interesting is that these determinations, at least those regarding religion, are more than a positive law determination of things left indeterminate by natural law. They are also rectifications of reason as to the moral precepts regarding religion.<sup>41</sup> This is only to say that the first table of the Decalogue is the center of the crisis of the human appropriation of natural law: "[I]t is clear, since the order of reason begins with the end, that, for a man to be inordinately disposed towards his end, is supremely contrary to reason. Now the end of human life and society is God. Consequently it was necessary for the precepts of the Decalogue, first of all, to direct man to God; since the contrary to this is most grievous."<sup>42</sup>

As we already noted, Thomas admits that, in principle, religious cult can be determined by human laws; "Hence human laws have not concerned themselves with the institution of anything relating to Divine worship except as affecting the common good of mankind: and for this reason they have devised many institutions relating to Divine matters."<sup>43</sup> But in the concrete, determination of cult is vulnerable to perversion. Although a political community could restrict its interest in religious acts solely and honestly to the temporal common good,

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<sup>40</sup> ST I-II, qq. 101–103.

<sup>41</sup> ST I-II, q. 101, a. 3: "For in that people there were many prone to idolatry; wherefore it was necessary to recall them by means of ceremonial precepts from the worship of idols to the worship of God. And since men served idols in many ways, it was necessary on the other hand to devise many means of repressing every single one: and again, to lay many obligations on such like men, in order that being burdened, as it were, by their duties to the Divine worship, they might have no time for the service of idols. As to those who were inclined to good, it was again necessary that there should be many ceremonial precepts; both because thus their mind turned to God in many ways, and more continually; and because the mystery of Christ, which was foreshadowed by these ceremonial precepts, brought many boons to the world, and afforded men many considerations, which needed to be signified by various ceremonies."

<sup>42</sup> ST. I-II, q. 100, a. 6.

<sup>43</sup> ST I-II, q. 99, a. 3.

valuing its good consequences for the formation of morals, it is more likely that God will be worshipped for the community, if not for a merely private good. Hence, some consideration of divinity remains in the object of the act (the cult, the vow, etc.), but not in its end.<sup>44</sup> We recall Augustine's reference to Seneca's dictum: We worship according to custom rather than truth. To underscore the same point, Thomas cites Livy's report that "one who vowed to his idols to suffer death for the safety of his army" was "devout."<sup>45</sup>

The twenty questions on the virtue of religion in the *Secunda Secundae* evince a scholastic and Aristotelian division of virtues and vices. The details, however, are taken mostly from Augustine, especially *De civitate Dei*, *De doctrina christiana*, and *De vera religione*. No section of the *Summa* is more thickly carpeted with quotations of and references to Augustine.<sup>46</sup> The obvious reason is that, by the thirteenth century, paganism stood at the geographical and cultural periphery of western Christendom. Like everyone of his training and station, Thomas encountered the pagans mainly through book learning: sacred Scripture, Graeco-Roman authors of antiquity, and above all, the works of Augustine. It will be evident to anyone who reads the questions on the virtue of religion that he does not match Augustine's rhetorical

<sup>44</sup> ST I-II, q. 99, a. 6: "Those who are yet imperfect desire temporal goods, albeit in subordination to God: whereas the perverse place their end in temporalities." But note that, in this article, Thomas maintains that desire for temporal goods is licit specifically in the context of the Jewish cult determined by divine law, which, like a tutor, restrains any reversal of object and end. For this reason, the gentiles were more assuredly ordered in cult by being admitted into Mosaic worship (ST I-II, q. 98, a. 5, ad 3). Interestingly, in *De regno*, Thomas admonishes the king to avoid the pagan determinations of cult, to respect but not to follow the Mosaic determinations, and to be subjected to priests under the New Law. *De regno* 16.111: "Because the priesthood of the gentiles and the whole worship of their gods existed merely for the acquisition of temporal goods (which were all ordained to the common good of the multitude, whose care devolved upon the king), the priests of the gentiles were very properly subject to the kings. Similarly, since in the old law earthly goods were promised to the religious people (not indeed by demons but by the true God), the priests of the old law, we read, were also subject to the kings. But in the new law there is a higher priesthood by which men are guided to heavenly goods. Consequently, in the law of Christ, kings must be subject to priests" (Latin text available in vol. 42 of the Leonine edition, available at [www.corpusthomisticum.org/repedleo.html](http://www.corpusthomisticum.org/repedleo.html)).

<sup>45</sup> On the etymology of "devout," see ST II-II, q. 82, a. 1. The religious object was not only given wrongly (to an idol), but also given for the wrong end.

<sup>46</sup> I count some 116 references, including 29 to the *City of God*.

proh, nor does Thomas cover the issues with anything approaching the pastoral urgency that marked Augustine's polemic in *De doctrina christiana*, written for the instruction of Christians who misinterpreted the event of Alaric's sack of Rome in 410.

Nonetheless, he follows Augustine assiduously on the nature and implications of religious acts adapted to the ancient city: "All the gods of the gentiles are demons."<sup>47</sup> The human determination of *cultus divini* was a disaster, and not even philosophers were able to produce a religion that prevented the subordination of cult to the temporal ends of the city.

It seems that the Apostle touches on the three theologies of the Gentiles. First, the civil, which was observed by their priests adoring idols in the temple; in regard to this he says: *they exchanged the glory of the immortal God*. Secondly, the theology of fables, which their poets presented in the theatre. In regard to this he says, *they exchanged the truth about God for a lie*. Thirdly, their natural theology, which the philosophers observed in the world, when they worshipped the parts of the world. In regard to this he says, *they worshipped and served the creature rather than the creator*.<sup>48</sup>

Taken altogether, with all of the complications and details, Thomas does not provide strong support for the practice of *cultus divini* determined by human law.<sup>49</sup> He especially adheres to Paul and Augustine, and to the failure of philosophy to produce a religion any better than those rites directed by civil and poetical theologies.<sup>50</sup> Putting to one side the somewhat extraordinary case of holy men inspired by a kind

<sup>47</sup> ST II-II, q. 94, a. 2. See also q. 92, a. 2; q. 95, a. 2; q. 96, a. 3; and q. 122, a. 2, ad 3.

<sup>48</sup> *Super Rom.* lec. 7, no. 145, in *Commentary on the letter of Saint Paul to the Romans*, trans. Fabian Larcher, ed. Jeremy Holmes (Lander, WY: Aquinas Institute for the Study of Sacred Doctrine, 2012). See also *Summa contra gentiles* (hereafter, SCG) III, ch. 38.

<sup>49</sup> Here, he also reminds the King that the Christian religion orders temporal persons and things to a supernatural end. *De regno* 16.113: "And because it was to come to pass that the religion of the Christian priesthood should especially thrive in France, God provided that among the Gauls too their tribal priests, called Druids, should lay down the law of all Gaul, as Julius Caesar relates in the book which he wrote about the Gallic war." His point is not that the pagan religion was free of idolatry and superstition, only that these rites were ruled by priests.

<sup>50</sup> ST II-II, q. 94, a. 1.

of “private law” of the Spirit, and then the submission of the Jewish cult to the first table of the Decalogue and the ceremonial determinations of Mosaic law, the record of antiquity is marked by confusion and reversal of the object and the end of religion.<sup>51</sup>

In the abstract, however, he does not rule out a role, even a duty, of human law to assist religion by *determinatio* under the ratio of good morals. In the first place, all things are ordered to God, including the temporal common good of the city. While religion has a different *ratio* than the honor given to parents and civil authorities or the ordinary reciprocities of justice and love between human persons, it is interwoven with the ensemble of social virtues in the fashion of a “general virtue”—that is, a virtue that directs the other acts of virtues.<sup>52</sup> Therefore, we may not attribute to Thomas the American dicta that “the state has no interest in” or “the state may not take cognizance of” religion. On the other side of the coin, human law must restrict itself to the temporal common good, to religious acts insofar as they are true and profitable to good morals, and inasmuch as nothing deflect the order of *latría*. This is a tough standard, and hence Augustine’s judgment is that the “celestial city, on the other hand, knew that one God only was to be worshipped, and that to Him alone was due that service which the Greeks call λατρεία, and which can be given only to a god, it has come to pass that the two cities could not have common laws of religion.”<sup>53</sup>

The second reason why Thomas does not absolutely rule out some role for human determination in religion is that he writes at the zenith of political Christendom, at which time existed deep and complex comity of jurisdictions. This comity included some limits to human law—for example, limits to temporal authorities directly determining and administering the divine cult and sacraments of the New Covenant. As he said to the King of Cyprus, religion must be subordinate to the authority of priests. Nor can the children of Jews be compelled

<sup>51</sup> In reply to an objection that the Jews said they have no king but Caesar, and thus would seem to give devotion to men, Thomas rather laconically answers, “devotion of subjects to their temporal masters is of another ratio” (ST II-II, q. 82, a. 2, ad 3).

<sup>52</sup> ST II-II, q. 81, a. 8, ad 2.

<sup>53</sup> *De civitate Dei* 19.17. He adds that there can be common laws, manners, and institutions whereby terrestrial peace is maintained, so long as “no hindrance to the worship of the one supreme and true God is thus introduced.” The English translation is taken from *Augustine: The City of God against the Pagans*, ed. and trans. Robert Dyson, Cambridge Texts in the History of Political Thought (Cambridge, UK: Cambridge University Press, 2003).



to baptism, but the latter is premised on the natural law obligation and right of parents to direct the religious formation of their children.<sup>54</sup> But throughout the different phases and configurations of political Christendom, there existed a penumbra in which human and ecclesiastical law intersected in service of religion—from liturgical and civic calendars, property, and punishment of heretics, to treaties regarding joint cooperation in missions. In this penumbra also stood the disputed issue of Jewish rites, which needs to be mentioned, but which we shall pass over because the complexities of the record would take us too far afield.<sup>55</sup>

The practices and opinions about the penumbral issues developed over many centuries—from the early medieval centuries to the post-Westphalian division of western Christendom into the geographical jurisdictions of temporal sovereignty under the formula *cuius regio eius religio*. It will suffice to note that the underlying problem of human law directing religious acts was never neatly settled. Let us return to where we began, with Thomas's general consideration of the issue: "Divine law is instituted chiefly in order to direct men to God; while human law is instituted chiefly in order to direct men in relation to one another. Hence human laws have not concerned themselves with the institution of anything relating to Divine worship except as affecting the common good of mankind: and for this reason they have devised many institutions relating to Divine matters, according as it seemed expedient for the formation of human morals; as may be seen in the rites of the Gentiles."<sup>56</sup>

Cajetan comments:

If human law should propose to subordinate divine worship to the interests of the peace of Society, and if, for example, it saw

<sup>54</sup> ST II-II, q. 10, a. 12, ad 4: "Hence a child, before coming to the use of reason, in the natural order of things, is directed to God by its parents' reason, under whose care it lies by nature, and it is for them to dispose of the child in all matters relating to God."

<sup>55</sup> ST II-II, q. 10, a. 11: "though unbelievers sin in their rites, they may be tolerated, either on account of some good that ensues there from, or because of some evil avoided. Thus from the fact that the Jews observe their rites, which, of old, foreshadowed the truth of the faith which we hold, there follows this good—that our very enemies bear witness to our faith, and that our faith is represented in a figure, so to speak. For this reason they are tolerated in the observance of their rites." For the nuances of Thomas's position on Jewish rites, see Matthew A. Tapie, *Aquinas on Israel and the Church* (Eugene, OR: Pickwick Publications, 2014).

<sup>56</sup> ST I-II, q. 99, a. 3.

in that the chief reason for honoring God, it would be perverse. Human law does not do that: although doubtless many impious legislators have attempted it, inventing all kinds of myths [*multas fabulas*] to serve this end, as Aristotle suggests in the second book of the *Metaphysics*. But whereas there are many ways of justifying divine worship, human law, taking account only of those things that concern its own domain, will make them serve the common good, and it abstracts from reasons that do not concern it. Now to abstract is neither to lie nor to sin. And if grace perfects nature instead of destroying it, human law can take the common good of human society for its principal end without thereby being prevented from subordinating it to a higher end in virtue of a higher principle.<sup>57</sup>

Cajetan gives an accurate summary of the article and its implications for the virtue of religion. When the temporal authority uses the instrumentalities of law to subvert the relation between the object and end of religion, it must be counted as irreligious (perverse). This much holds whether we are speaking of religious acts under natural or supernatural specifications. When, on the other hand, the human law abstracts from the end to consider only the advantages of religion for the temporal good, Cajetan and a more recent theologian like Charles Journet hold it does not necessarily sin, provided that the divine end remains intact. Both theologians recognize that the ideal boundary was defeated, at least by the gentiles of antiquity. Exactly when in the Christian order it was honest, fudged, or defeated was the pressing question as Christendom itself began its decadent period after Westphalia, and even more urgently after the French Revolution.<sup>58</sup>

<sup>57</sup> See note 7 above.

<sup>58</sup> Cardinal Charles Journet cites Cajetan's comment on article 3 of question 99, but he digs into the historical complications. One must admit that, although Cajetan witnessed the opening round of the Reformation, he did not see the end of medieval Christendom at Westphalia or the final demise of Christendom in the events that ensued upon 1789. Journet distinguishes two ways in the older regime of Christendom that the temporal power might act for its own benefit in relation to the Church's superior power to direct religious acts. In one mode, the temporal arm allows itself to be used as an instrument for the Church's pursuit of a spiritual end, but in doing so it acts for its own advantage and uses no power except that which properly belongs to the political. In a second way, the secular arm acts on its own initiative "for an intervention whose end is an immediately temporal good considered as conditioning a spiritual good." For example, the human lawgiver acts to suppress schism or heresy. Journet admits that, in the older Christendom, the legal and

In lieu of that historical judgment, we have no direct way to move from Thomas's questions on religion to *Dignitatis Humanae*. Except a brief note—"through the vicissitudes of human history, there has at times appeared a way of acting that was hardly in accord with the spirit of the Gospel or even opposed to it"—*DH* is entirely silent about any part of the historical record that might count as controversial.<sup>59</sup> Even so, we can offer some general remarks about the relevance of Thomas's understanding of the virtue of religion.

### III.

In our quick traversal of the questions on religion, we saw that, for Thomas, the virtue of religion is rooted in what most pertains to human dignity, which is the rational inclination to know the truth about God. By means of various considerations about God—excellence, the first and final cause of the good, and human indigence and need of divine assistance—the practical intellect understands obligation to give to God his "due." The object of the *free* act of religion is the "due," or the *cultus divini*, consisting of the interior act of devotion and the external act of sacrifice. The end of religious acts is God. However, on account of the obscurity of the divine and the weakness of the human intellect, and on account of the fact that that debt can never repay God in full and according to equality, and because the sensible signs of the external cult are variable, acts of religion need "determinations." This is especially true after the loss of innocence. For Thomas, there is no such thing as a natural religion, at least not if we consider all of the dimensions and facets of religion. Rather, there is a rather sturdy natural inclination and natural dictate of reason about the obligation in general terms. Finally, we emphasized that Thomas adheres to the judgments of Paul and Augustine regarding the unsteady and often perverse character of human determinations of religion.

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moral proprieties of these two modes were extraordinarily complex. With the benefit of hindsight, he asks whether either justification was "truly useful" to the Church. My reading of Journet is that he leaves this question open-ended, but with the burden of proof falling on those who defend it on grounds that are more than abstract principle. Journet, of course, also had the benefit of knowing about the demise of political Christendom and the decrees of the First Vatican Council that solemnly ruled out virtually all of the older arrangements by which temporal sovereigns were deputized with apostolic authority. Journet argues that, with the demise of the last phase of political Christendom, it is St. Augustine's position "to which we shall have finally to return"; see Charles Journet, *Theology of the Word Incarnate*, trans. Alfred Howard Campbell (London: Sheed and Ward, 1955), 221–222.

<sup>59</sup> *DH*, §12.

Now, in the final part of this essay, I will sketch in a somewhat general way the compatibility between Thomas and the teaching of *DH*. My three main points, made briefly and without adequate elaboration, are as follows: 1) The basis of a human right to religious liberty is a rational inclination to search out the truth about God; 2) The obligation to adhere to the truth includes both internal and external acts of religion; and 3) The human law is forbidden to enjoin or forbid religious acts by means of external coercion. This last point is, firstly, in respect of human dignity and what we have called the stem-set, namely those intellective and volitional acts that must be freely engaged as a minimal condition for the virtue of religion, and secondly, in respect of the end of religious acts, which transcends the terrestrial common good. But human law may facilitate religious acts and, in some cases, restrict religious acts injurious to the temporal common good. Importantly, *DH* does not mention a right or duty of the state to *determine* religious acts per se. In the second part of the Declaration, dealing with the religion of the Catholic Church in the light of divine revelation, such human determinations are absolutely forbidden with respect to the ordinary and apostolic powers of teaching, sanctifying, and ruling.<sup>60</sup>

Under the heading of religious liberty “in general” (*ratio generalis*), *DH* §§2–8 treat of human dignity according to the natural law, but also as it has become “more fully known to human reason through centuries of experience.” The lights and the shadows of those centuries of experience are not reported in any detail. The Declaration moves straight away to the anthropological ground of the right and the duty:

It is in accordance with their dignity as persons—that is, beings endowed with reason and free will and therefore privileged to bear personal responsibility—that all men should be at once impelled by nature and also bound by a moral obligation to seek the truth, especially religious truth. They are also bound to adhere to the truth, once it is known, and to order their whole lives in accord with the demands of truth. However, men cannot discharge these obligations in a manner in keeping with their

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<sup>60</sup> The *principium fundamentale* of church liberty (*DH*, §13). This is repeated in a document on the episcopal authority of the bishops, the Second Vatican Council’s *Christus Dominus* (1965), §19: “In discharging their apostolic office, which concerns the salvation of souls, bishops per se enjoy full and perfect freedom and independence from any civil authority. Hence, the exercise of their ecclesiastical office may not be hindered, directly or indirectly, nor may they be forbidden to communicate freely with the Apostolic See, or ecclesiastical authorities, or their subjects.”

own nature unless they enjoy immunity from external coercion as well as psychological freedom. Therefore the right to religious freedom has its foundation not in the subjective disposition of the person, but in his very nature.<sup>61</sup>

Although it is not elaborated in philosophical detail, the ground of the right is a fair replication of Thomas's inclinational stem-set, which as we saw, has three components: 1) a participation of the human intellect in the eternal law, 2) a search, consideration, and affirmation of the truth about God, and 3) a recognition of duty. The Declaration reads: "[T]he highest norm of human life is the divine law—eternal, objective and universal—whereby God orders, directs and governs the entire universe and all the ways of the human community by a plan conceived in wisdom and love. Man has been made by God to participate in this law, with the result that, under the gentle disposition of divine Providence, he can come to perceive ever more fully the truth that is unchanging."<sup>62</sup> *Gaudium et Spes* puts it this way: "The root reason for human dignity lies in man's call to communion with God. From the very circumstance of his origin man is already invited to converse with God [*ad colloquium cum Deo*]."<sup>63</sup>

These are familiar Thomistic themes, especially the dictum that divine providence disposes things gently, according to their nature. That the Eternal Law sweetly (*suaviter*) disposes people to fulfill their duty to know and to assent to the truth, which is taken from Wisdom 8:1, has a long history in Catholic theology. It was one of Saint Thomas's favorite biblical texts for describing divine governance.<sup>64</sup> Thomas is not directly cited by the Declaration, but there are more than enough indirect clues, including the frequent references to *Pacem in Terris* where John XXIII cites and quotes Thomas's doctrine of natural law.<sup>65</sup>

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<sup>61</sup> *DH*, §2.

<sup>62</sup> *Ibid.*, §3.

<sup>63</sup> Second Vatican Council, *Gaudium et Spes* (1965; hereafter, *GS*), §19.

<sup>64</sup> On the many uses of Wis 8:1 by Thomas, see *SCG* III, ch. 97 and *ST* I, q. 22, a. 2; q. 103, a. 8; I-II, q. 110, a. 2; II-II, q. 23, a. 2; and q. 161, a. 1.

<sup>65</sup> On participation, truth, God, and the moral order, see *PT* §§37–38, in *Acta Apostolicae Sedis* 55 (1963): 270–271, referenced in *DH* §3n3. Recall that *PT* was the proximate authority for the right of religious liberty. For an analysis and evaluation of *PT*'s use of Thomas's doctrine of participation, see my essay for the Pontifical Academy of Social Sciences, "Quinquagesimo Ante: Reflections on *Pacem in Terris* Fifty Years Later," in *The Global Quest for Tranquillitas Ordinis: Pacem in Terris, Fifty Years Later*, ed. Mary Ann Glendon, Russell Hittinger, and Marcelo Sánchez-Sorondo, The Pontifical Academy of Social

On Thomas's rendition, the inclinational stem-set includes natural duty with regard to external and sensible acts of religion. Just so, in addition to divine worship, *DH* includes the human duty, and therefore the right, to give expression to and communications about religious truths, as well as to maintain institutions of religious formation:<sup>66</sup>

Provided the just demands of public order are observed, religious communities rightfully claim freedom in order that they may govern themselves according to their own norms, honor the Supreme Being in public worship, assist their members in the practice of the religious life, strengthen them by instruction, and promote institutions in which they may join together for the purpose of ordering their own lives in accordance with their religious principles.<sup>67</sup>

As Thomas himself argued, the domestic order has a natural duty in the matter of religious formation—one that stands very close to the stem-set.<sup>68</sup> So, too, for *DH*: “The family, since it is a society in its own original right, has the right freely to live its own domestic religious life under the guidance of parents. Parents, moreover, have the right to determine, in accordance with their own religious beliefs, the kind of religious education that their children are to receive.”<sup>69</sup>

The picture presented by *DH* is that the inclination to know the truth about God and the dictates of reason regarding the obligation to give proper due to God are completed in concrete determinations and institutions of religion by agents other than those of Caesar. This, however, does not mean that temporal government has no legitimate interest in religion under the limited *ratio* of good morals and the common good: “Government is also to help create conditions favorable to the fostering of religious life, in order that the people may be truly enabled to exercise their religious rights and to fulfill their religious duties, and also in order that society itself may profit by the moral qualities of justice and peace which have their origin in men’s faithfulness to God and to His holy will.”<sup>70</sup> The very recognition of

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Sciences Acta 18 (Vatican City: Pontifical Academy of Social Sciences, 2013), 38–60.

<sup>66</sup> *DH*, §3.

<sup>67</sup> *Ibid.*, §4.

<sup>68</sup> ST II-II, q. 10, a.12, ad 4.

<sup>69</sup> *DH*, §5.

<sup>70</sup> *Ibid.*

the duty and right of religion is already to regard religion under the category of good morals and the common good. Under that same *ratio*, government may externally curb religious acts that are injurious to the common good, including acts that are dishonest, abusive to others, or disruptive to the public order. It may also “show favor” to a particular religion, provided that the rights of other citizens and religious communities are recognized.<sup>71</sup> Of the many things government might do or not do with regard to religious acts under the *ratio* of the common good, it may not “presume to command or inhibit acts that are religious.”<sup>72</sup>

I interpret this to mean that the state may not command or inhibit religious acts from scratch, so to speak, for this much already falls under the natural law—most pointedly in the case of parents and children. Surely, the prohibition also includes temporal government, as Thomas noted about the gentiles, devising many institutions on divine matters—that is to say, determinations of *religion*. Admittedly, we enter a penumbra once again. For it is one thing to say that it is not the proper role of Caesar to command the details of the divine cult, but it is another to say that government may never, under the *ratio* of good morals and the tranquility of the common good, use its authority to facilitate the religious acts freely undertaken by citizens in light of their own determinations of religion.

The big picture is clear enough. *DH* gives a moral-juridical teaching on the natural law source of religious acts. It does not treat the different modes of knowledge and assent, running from intuition and inference to belief and faith.<sup>73</sup> It does not intend to be an exercise in comparative

<sup>71</sup> Ibid. One thinks, in this respect, of concordats or the synchronization of civil and ecclesiastical calendars. For the variety of legal and constitutional regimes that might be accommodated by *DH*, see my essay, “Political Pluralism and Religious Liberty: The Teaching of *Dignitatis Humanae*” in *The Proceedings of the 17th Plenary Session on Universal Rights in a World of Diversity: The case of religious freedom*, Pontifical Academy of Social Sciences Acta 17 (Vatican City: The Pontifical Academy of Social Sciences, 2012), 39–55, 677–80.

<sup>72</sup> *DH*, §3.

<sup>73</sup> In the Congregation for the Doctrine of the Faith’s *Dominus Iesus* (2000), then-Cardinal Ratzinger notes that: “For this reason, the distinction between *theological faith* and *belief* in the other religions must be *firmly held*. If faith is the acceptance in grace of revealed truth, which ‘makes it possible to penetrate the mystery in a way that allows us to understand it coherently,’ then belief in the other religions is that sum of experience and thought that constitutes the human treasury of wisdom and religious aspiration, which man in his search for truth has conceived and acted upon in his relationship to God and the Absolute” (§7), quoting John Paul II, *Fides et Ratio* (1998), §13. In *Fides et Ratio*

religion, much less to survey, as Thomas does, all of the vices afflicting religious acts. Importantly, the Declaration mentions only one specific religion: “We believe that this one true religion subsists in the Catholic and Apostolic Church, to which the Lord Jesus committed the duty of spreading it abroad among all men.”<sup>74</sup> It does not speak in any detail about the ways that the rational inclination is formed and determined by any other religion. The Declaration can say, with Thomas, that the inclinational stem is sturdy because it is imprinted on our nature and is at the center of our dignity.

To draw out the full force of the two stories, consider the fact that, in defense of the natural right of freedom in religious acts, both John XXIII and the council cite Lactantius, an advisor to the Emperor Constantine who died at about the time of the Council of Nicea. In the section of the *Divine Institutes* cited by the Pope, Lactantius comments in a general way on ancient wisdom shared by Gentiles, Jews, and Christians—namely, that it belongs to the supreme good of humankind to know and serve God: “Truly religion is the cultivation of the truth.” For its part, *DH* chapter II, on religion in the light of revelation, cites a different section from the same work, where Lactantius explains that the specifically Christian understanding of the Cross of Christ is the ultimate completion of acts of religion.<sup>75</sup> These two

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§30, John Paul observes that “All men and women, as I have noted, are in some sense philosophers and have their own philosophical conceptions with which they direct their lives. In one way or other, they shape a comprehensive vision and an answer to the question of life’s meaning; and in the light of this they interpret their own life’s course and regulate their behavior.” And what is relevant to *DH* chapter I (“General Principals of Religious Freedom,” §§2–8) is that they do so both by a personal quest and within communal traditions: “On the one hand, the knowledge acquired through belief can seem an imperfect form of knowledge, to be perfected gradually through personal accumulation of evidence; on the other hand, belief is often humanly richer than mere evidence, because it involves an interpersonal relationship and brings into play not only a person’s capacity to know but also the deeper capacity to entrust oneself to others, to enter into a relationship with them which is intimate and enduring” (*Fides et Ratio*, §32). See Gerard V. Bradley “Pope John Paul II and Religious Liberty,” *Ave Maria Law Review* 6, no. 1 (2007): 33–59. Not only is this a very lucid article on *Dignitatis Humanae*, but it alerted me to the importance of Ratzinger’s work in *Dominus Iesus*.

<sup>74</sup> *DH*, §1. The internal point of view of this religion and its congruence with the natural right are covered in the chapter II of the Declaration, “Religious Freedom in the Light of Revelation” [*libertas religiosa sub luce revelationis*], §§9–15.

<sup>75</sup> Lactantius, *Divine Institutes* 4.28 and 5.19. English translation by William



references to Lactantius represent just what we have distinguished as the stem-set and its natural apprehension of duties, and what the entire vector will look like when we are taught by divine revelation.

#### IV.

Let us conclude with Thomas's enumeration of the properties of human law. He helps us to understand how religion, under different aspects, can be situated vis-à-vis human law:

[I]t should be said that, whenever a thing is for an end, its form must be determined proportionately to that end, as the form of a saw is such as to be suitable for cutting. . . . Again, everything that is ruled and measured must have a form proportionate to its rule and measure. Now both these conditions are met in human law, since it is both something ordained to an end, and is a rule or measure ruled or measured by a higher measure. And this higher measure is twofold, viz., the divine law and the natural law. . . . Now the end of human law is to be useful to man, as the jurist states. Hence Isidore, determining the nature of law, lays down, at first, three conditions: that it be consistent [*congruat*] with religion, inasmuch as it is proportionate [*proportionata*] to the divine law; that it be helpful [*conveniat*] to discipline, inasmuch as it is proportionate [*proportionata*] to the natural law; and that it further the common good, inasmuch as it is proportionate [*proportionata*] to the utility of mankind.<sup>76</sup>

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Fletcher in *Ante-Nicene Fathers*, vol. 7, eds. Alexander Roberts, James Donaldson, and A. Cleveland Coxe (Buffalo, NY: Christian Literature Publishing Co., 1886).

<sup>76</sup> ST I-II, q. 95, a. 3. The corpus of the article continues: "All the other conditions mentioned by him are reduced to these three. For it is called virtuous [*honestā*] because it fosters religion. And when he goes on to say that it should be 'just, possible to nature, according to the customs of the country, adapted to place and time,' he implies that it should be helpful to discipline. For human discipline depends first on the order of reason, to which he refers by saying just [*iusta*]; second, it depends on the ability of the agent, because discipline should be adapted to each one according to his ability, taking also into account the ability of nature (for the same burdens should be not laid on children as on adults); and should be according to human customs, since man cannot live alone in society, paying no heed to others; third, it depends on certain circumstances, in respect of which he says, 'adapted to place and time' [*loco temporisque conveniens*]. The remaining words, 'necessary, useful,' etc., mean that law should expedite well-being. Hence, necessity refers to the removal of evils;

Human law is not a first rule and measure, for it is ruled and measured by the natural and the divine law. So far, this is standard Thomism. In matters pertaining to human law, both higher laws must be observed. In the first place, human law should be consistent with religion insofar as it is proportioned to divine law. We should construe religion here in the way Thomas presents it in the two series of questions on the subject in the *Summa*—not just the inclinational stem that can be counted as the “seeds of the virtues,” but the entire package: inclination, first and secondary precepts, and determinations of *cultus divini* by divine instruction. To use the broad terms of *DH*, we are dealing with religion *sub luce revelationis*. The human law is proportioned to divine law inasmuch as no citizen who is also a believer be commanded to offer *latría* contrary to the law of the Gospel and determinations of apostolic authority. This is what Augustine meant in saying that while Christians have many laws and customs in common with non-believers they cannot be brought under a law alien to their religion. By the same token, it is what Thomas meant in saying to the King of Cyprus that the ruler should respect the law of priests.

In the second place, human law should be consistent with (moral) discipline proportionate to the natural law. But it is of the natural law—indeed, in its most fundamental and noble ordering of human action—that rational creatures freely search out the truth about God and render devotion by sensible signs. Prescinding from all other complications, this anthropological core must be respected. In this regard, the saying of Epictetus makes the point: “Were I a swan, I should do after the manner of a swan. But now, since I am a reasonable being, I must sing to God: that is my work: I do it, nor will I desert this my post, as long as it is granted me to hold it; and upon you too I call to join in this self-same hymn.”<sup>77</sup> This is a matter not of divine right alone, but also of human right.<sup>78</sup>

In the third place, human law must be useful to the common good. The fontal goods comprised under the first precept most proximate to

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usefulness to the attainment of good; and clearness of expression, to the need of preventing any harm ensuing from the law itself. And since, as stated above [q. 90, a. 2], law is ordained to the common good, this is expressed in the last part of the description.”

<sup>77</sup> Epictetus, *The Golden Sayings of Epictetus*, ed. Charles Eliot, trans. Hastings Crossley, The Harvard Classics, vol. 2 (New York: Collier & Sons, 1909), part 2, no. 1.

<sup>78</sup> Repression of this basal and fundamental response to the truth is a violation of both the human person and God (*DH*, §6).

our rational nature is “a natural inclination to know the truth about God, and to live in society; to shun ignorance, to avoid offending those among whom one has to live, and other such things”—*in nucleo*, all of the natural social virtues. Human law subverts itself if it should thwart the tranquility of social order under law. Coercion of religious acts deepens civil strife, and therefore frustrates not only the rational inclination to give due to God, but our inclination and obligation to love our neighbor in a specifically political order. It is the responsibility of government and citizens to remove impediments to political order and to correct injuries to others. The details of time and place of course put a somewhat different complexion on the institutions in which we achieve an honorable and stable peace. *DH* repeatedly uses the word “constitutional.” Comprehended on its own terms, the Declaration means the constitutional politics of our time and place, having as their constituency a diversity of people, under a rule of law that makes explicit provision for the honest civil rights of minorities, that sets limits to political powers, that makes government responsible to the people, and that provides remedies for those whose rights are abused or neglected in the ordinary processes of politics.<sup>79</sup>

At the outset, I promised to respect the silences of *DH* and to stop short of claiming that Thomas’s understanding of the virtue and vices of religion can be used for the purpose of a strict interpretation of the Declaration. The Declaration on Religious Liberty should be read in the very rich historical context of its time and according to the very narrow moral-juridical purposes of the document itself. The position is always in danger of being misunderstood in one direction or the other. Even so, Thomas’s treatment of religion offers a useful angle of interpretation for the larger issues at stake. In the first place, there is his account of the source and the intellectual and volitional pulse of the human inclination to know the truth about God and to render service. It frames rather nicely *DH*’s declaration of a duty and right based upon human dignity. In the second place, informed by scripture and Augustine, Thomas’s historical consideration of the weakness and dangers attending determination of *cultus divini* by human law are truly appropriate to the work of *DH*. In the third place, his insistence that the stem-set needs to be instructed by divine law and healed by grace takes us close to the deep rationale of the chapter II of *DH*. N-V

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<sup>79</sup> *DH*, §15.