

Dignitatis Humanae: Public Funding and Divesting of Faith Schools in a Liberal State

This article examines a largely overlooked element of *Dignitatis Humanae*, that is, its relevance for the question of whether or not the State has a duty to fund faith schools. To this end the fragmentary remarks of a number of commentators are examined, as well as the text, context and drafting of the Declaration itself. *Dignitatis Humanae* is also compared to another Vatican II document in this regard, namely *Gravissimum Educationis*. The analysis is extended to an area which has not, so far as the authors are aware, been explicitly dealt with by moral theologians: the question of whether there could be a duty of the Church to divest itself of control of some of its schools and transfer them to the State.

A Neglected Section

Widely regarded as one of the most important documents of Vatican Council II, the Declaration on Religious Liberty (*Dignitatis Humanae*, hereafter *DH*) is best known for endorsing the right of human persons (acting individually and in association) to “religious freedom” (*ad libertatem religiosam*, *DH*, no.2).¹ This right has a dual dimension: it protects the person *qua* citizen from being forced to act contrary to his “beliefs” (*conscientiam*)² concerning “matters religious” (*in re*

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¹ Unless otherwise indicated the “Abbott” translation of the documents of Vatican Council II is used in this article; see *The Documents of Vatican II*, ed. Walter M. Abbott (London: Chapman, 1966).

² The “Flannery” translation of the documents of Vatican Council II tends to refer to

religiosa), while, subject to the exigencies of public order, it also protects him from being restrained from acting in accordance with these beliefs. The claim-right to religious freedom corresponds to the negative duty of others - individuals, social groups and the State (*potestas civilis*)³ - to refrain from coercion and interference. All this has been the subject of very extensive commentary. Much less noted is the relevance of *DH* for something that at first blush seems only dimly related to the right to religious freedom: the matter of whether the State has a *positive* duty to fund faith schools.⁴ *DH* no.5 is the locus of the matter:

Since the family is a society in its own original right, it 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. Government, in consequence, must acknowledge the right of parents to make a genuinely free choice of schools and of other means of education. The use of this freedom of choice is not to be made a reason for imposing unjust burdens on parents, whether directly or indirectly. Besides, the rights of parents are violated if their children are forced to attend lessons or instructions which are not in agreement with their religious beliefs. The same is true if a single system of education, from which all religious formation is excluded, is imposed upon all.

Quite clearly, *DH* regards it as contrary to parental rights for the State to “impose” a single, thoroughly secularist system of education on all families, as it is for the State to “force” children to attend classes not in conformity with their parents’ religious beliefs. But from neither of these propositions does it follow that the State has a duty to fund faith schools. The matter at hand hinges on whether a State’s refusal to fund faith schools constitutes an “unjust burden” on parents’ interest in a “genuinely free choice of schools.” Yet the answer to this question is itself contingent on the prior question of right - if there is no right to the public

“convictions”; see *Vatican Council II: the Conciliar and Post Conciliar Documents*, ed. Austin Flannery (Dublin: Dominican Publications, 1996).

³ The Abbott translation refers to “government” whereas the Flannery translation refers to “civil authority.” This article employs the term “State” instead.

⁴ By “faith school” is meant a school controlled by a religious denomination and which possesses an ethos constituted by the faith professed by the religious denomination in question. By “public funding” is meant a very significant State contribution to the costs of running and maintaining a school. While the public funding of a school should make it financially feasible for all children to attend it, it does not exclude the possibility that parents are expected to make some small contribution towards the school or towards the provision of books and uniforms for their children.

funding of schools characterized by the ethos of one's religious denomination,⁵ then the withholding of such funding by the State is, at least *prima facie*, compatible with justice. There is, after all, a clear sense in the fact that being permitted by the State to send one's children to a privately funded school constitutes a free choice of schools. Nevertheless, it can be questioned whether such a system provides parents of lesser means with a genuinely free choice of school, and whether it places upon them not simply a burden (which it obviously does) but an unjust burden.

What little commentary⁶ there is on the implications of *DH* for the public funding of faith schools fails to present a consensus view. Some authors skim over the issue: Giuseppe Alberigo's five-volume history of Vatican II merely repeats that special mention is made of the right of families to rear their children in accordance with their religious convictions, a right which "implies the acceptance of parents' choices in the schooling of their children."⁷ Some other authors imply that *DH* avoids the issue altogether: Russell Hittinger considers that the relevant section of *DH* "prescinds, for the most part, from concrete matters of policy, where conflicts inevitably arise."⁸ Likewise, Richard Regan argues that the section does not attempt to identify concrete cases that constitute "unjust" burdens on freedom of parental choice in education.⁹ Another position taken is that *DH* permits, but does not require, the State to fund faith schools. In treating of the call in *DH* no.3 to show religion "favour," Robert George states that the State "can" (as distinct from "should") collaborate with religious schools;¹⁰ in a later piece co-written with William Saunders, and this time in the context of the State's duty (affirmed in *DH* no.6) to "help create conditions favourable to the fostering of religious life," he says that the State "may" provide aid to religious schools.¹¹ (George's analysis of

⁵ The right in question is here understood to be qualified by the need to demonstrate a sufficient level of parental support for a particular type of school.

⁶ From the outset *DH* no.5 provoked relatively little interest from commentators. By way of example, the index to one of the very earliest commentaries on *DH* shows that only one other section (no.10) receives lesser scrutiny throughout the work. Yves Congar, ed., *Vatican II: La liberté religieuse* (Paris: Éditions du Cerf, 1967), 279.

⁷ Giuseppe Alberigo, *History of Vatican II* (Leuven: Peeters, 2006), 5:454-455.

⁸ Russell Hittinger, "The Declaration on Religious Liberty *Dignitatis Humanae*," in *Vatican II: Renewal within Tradition*, ed. Matthew L. Lamb and Matthew Levering (Oxford: Oxford University Press, 2008), 369.

⁹ Richard J. Regan, *Conflict and Consensus: Religious Freedom and the Second Vatican Council* (London: Macmillan, 1967), 106.

¹⁰ Robert P. George, "Religious Liberty and Public Morality," in *In Defence of Natural Law* (Oxford: Clarendon, 1999), 135.

¹¹ Robert P. George and William L. Saunders, "*Dignitatis Humanae*: The Freedom of the

the matter completely omits mention of *DH* no.5, an indication of the extent to which the section is overlooked.)

Pietro Pavan deals with the matter in a more equivocal fashion. He argues that the parental rights enumerated in *DH* no.5 are violated if they are “formally recognized by law but are prevented from being exercised in fact,” something which occurs when “all members of a society without distinction are forced to contribute to an educational system designed for all, without being given the opportunity to educate their children according to their particular religious beliefs.”¹² This could be a circuitous way of saying that *DH* no.5 affirms the duty of States to fund faith schools, but Pavan’s remarks can also be construed as meaning that the State ought not to coerce parents into contributing towards an educational model that is discordant with their religious beliefs. A clearer (though still not fully forthright) claim in favour of *DH* no.5 as articulating the relevant duty is provided by both Roman Siebenrock and Francis Canavan. On the basis of *DH* no.5 Siebenrock states that the right to religious self-determination on behalf of the family requires “the right to free choice of schools and the choice of appropriate means of education without encountering unjust burdens.”¹³ Focusing on the term “unjust,” he opines that it means that “a certain readiness to exertion, realistically speaking, and preparedness for sacrifice, realistically speaking, are inescapable. That said, there are limits. The State is called to neutrality (equality) of treatment in the educational arena and therefore must provide a pluralist educational system.”¹⁴ In a similar vein, Canavan argues that, at “the practical level,” the section “implies” a criticism of the American public school monopoly of tax support for elementary and secondary schools.¹⁵ Jeffrey Gros takes an opposing position, suggesting that the final text of *DH* implies no such duty on behalf of States.¹⁶

Church and the Responsibility of the State,” in *Catholicism and Religious Freedom: Contemporary Reflections on Vatican II’s Declaration on Religious Liberty*, ed. Kenneth L. Grasso and Robert P. Hunt (Lanham, MD: Sheed & Ward, 2006), 12.

¹² Pietro Pavan, “Declaration on Religious Freedom,” in *Commentary on the Documents of Vatican II*, ed. Herbert Vorgrimler (London: Burns & Oats, 1969), 71.

¹³ Roman Siebenrock, “Theologischer Kommentar zur Erklärung über die religiöse Freiheit *Dignitatis Humanae*,” in *Herders Theologischer Kommentar zum Zweiten Vatikanischen Konzil*, ed. Peter Hünemann and Bernd Jochen Hilberath (Freiburg im Breisgau: Herder, 2005), 4:178.

¹⁴ *Ibid.*

¹⁵ Francis P. Canavan, “*Dignitatis Humanae*, the Catholic Concept of the State, and Public Morality,” in *Catholicism and Religious Freedom*, 80.

¹⁶ Jeffrey Gros, “*Dignitatis Humanae*,” in *Evangelization and Religious Freedom: Ad Gentes, Dignitatis Humanae*, ed. Stephen B. Bevans and Jeffrey Gros (New York: Paulist Press, 2009), 182-183.

One of the few elements common to each of the foregoing interpretations is that none offer a sustained treatment of the issue: each view amounts to little more than an isolated assertion made independently of critical engagement with other relevant statements of *DH* and indeed Vatican II. In order to arrive at the most plausible interpretation of *DH* no.5 both these wider contexts require consideration.

Gravissimum Educationis

While the meaning of one conciliar document cannot by itself determine how another is to be interpreted, it can act as a hermeneutic guide to other texts when it directly treats of an issue which is rather indirectly dealt with by them. And although none of the aforementioned studies makes the connection, the Declaration on Christian Education (*Gravissimum Educationis*, hereafter *GE*) most certainly does deal with the public funding of faith schools. The matter was in fact one of the prime motives for the Council in addressing the topic of Christian education.¹⁷ The final text of *GE* reflects the fact that throughout debates over its various schemata numerous bishops had voiced criticism of a State monopoly on schools and expressed support for the public funding of faith schools.¹⁸ *GE* no.1 declares that since every man “is endowed with the dignity of a person, he has an inalienable right to an education corresponding to his proper destiny and suited to his native talents, his sex, his cultural background, and his ancestral heritage.” *GE* no.2 goes on to affirm that every Christian “is entitled to a Christian education.” *GE* no.3 indicates that it is the parents who have the “most solemn obligation to educate their offspring” and who therefore must be acknowledged as the “first and foremost educators of their children.” The section goes on to explain how the State, in discharging its duty to provide for the common good and to promote education, ought to oversee (*tueri*)¹⁹ “the duties and rights of parents and of others who have a role in education,” and provide them with assistance. When the efforts of parents and other organizations are insufficient to complete the task of education the State should so complete it; however, in accordance with the principle of subsidiarity, this completion must proceed with “attention to parental wishes.” With this groundwork in place, *GE* no.6 pronounces,

¹⁷ Johannes Pohlschneider, “Declaration on Christian Education,” in *Commentary on the Documents of Vatican II*, ed. Herbert Vorgrimler, 1-2.

¹⁸ Alberigo, *History of Vatican II*, 5:199-209.

¹⁹ The “Flannery” translation uses the word “recognize.”

Parents, who have the first (*primum*)²⁰ and the inalienable duty and right to educate their children, should enjoy true freedom in their choice of schools. Consequently, public authority, which has the obligation to oversee (*tueri*)²¹ and defend the liberties of citizens, ought to see to it, out of a concern for distributive justice, that public subsidies are allocated in such a way that, when selecting schools for their children, parents are genuinely free to follow their conscience.

GE no.6 also goes on to propose that while it is the duty of the State to ensure that all citizens have access to an adequate education, the principle of subsidiarity requires that “no kind of school monopoly arises,” for such a monopoly “would militate against the native (*nativis*)²² rights of the human person, the development and spread of culture itself, the peaceful association of citizens, and the pluralism which exists today in very many societies.” Intertwined with this teaching are the propositions that the Church has a divine mandate to play a part in the development of the education of persons, a mandate sourced in its obligation to promote full human welfare, including spiritual welfare (*GE* preface and no.3); that the Church has a role in aiding the moral and religious education of its children in non-Catholic schools through the teaching and example of Catholic teachers (*GE* no.7), but its role is especially evident in Catholic schools wherein an atmosphere animated by a spirit of liberty and Gospel charity should be developed (*GE* no.8); and that the Church has the right to freely establish schools of all kinds, a right which is important for the protection of the right of parents to have their children educated according to their conscience (*GE* no.8). *GE*’s forthright recognition of States’ duty to fund faith schools hardly constituted a wholly novel teaching; for instance, Pope Leo XIII’s *Immortale Dei* (1885) already spoke of the importance to the public welfare of making public provisions for the instruction of youth in religion and true morality (no.43), while Pope Pius XI’s *Divini Illius Magistri* (1929) insisted that distributive justice requires the allocation of public financial aid to Catholic schools (nos. 81-82).

There is a very considerable overlap in how *GE* and *DH* no.5 approach the general issue of State support for parental choice in education. Both proceed along natural law (i.e. philosophical) lines; both emphasize the primacy of parental rights and duties; both accept the principle of subsidiarity in this context; and both are critical of a State monopoly in education. Moreover, *GE* no.6 appeals to “distributive justice” to require the allocation of public subsidies to faith schools,

²⁰ Ibid. uses the word “primary.”

²¹ Ibid. uses the word “protect.”

²² Ibid. uses the word “natural.”

while the determination of the position of *DH* no.5 on the precise matter hinges, as indicated above, on the question of what constitutes an “unjust” burden on parents, a matter obviously implying the justice of distributing various resources and burdens among citizens. Yet, this overlap tends to be ignored in academic commentary: Johannes Pohlschneider, who introduced the topic of schools into the conciliar debate on *DH*,²³ makes no mention of it when, in the course of his influential commentary on *GE*, he refers to sections of *DH* containing “important elements with an educational aspect.”²⁴

The Broader Teaching of *Dignitatis Humanae*

Strictly speaking, the right to religious freedom at the heart of *DH* is not a liberty in the sense of an absence of duty to seek religious truth. It is rather a citizen’s right *qua* citizen to immunity from coercion by individuals, groups, or the State as regards one’s religious beliefs and acts (with the proviso that the religiously motivated acts in question do not violate public order). The right does not just concern direct coercion: while *DH* no.2 states that all men are to be immune from coercion “in such wise that no one is to be forced to act in a manner contrary to his own beliefs,” the section goes on to state that neither is anyone “to be *restrained* from acting in accordance with his own beliefs, whether privately or publicly, whether alone or in association with others, within due limits.”²⁵ Neither is the substance of this right exhausted by the good of autonomy *simpliciter*. Instead, correlative to the right to religious freedom is the duty to seek the truth in religious matters in order to form true judgments of conscience (*DH* no.3).²⁶ Underlying this right-duty correlation is the basic goodness of religion as something fundamentally worthwhile and fulfilling. *DH* no.2 understands the

²³ Regan, *Conflict and Consensus*, 78.

²⁴ Pohlschneider, “Declaration on Christian Education,” 11. Pohlschneider cites sections 1, 2 and 14, but not section 5.

²⁵ Emphasis added. Dulles puts these points thus: “The Council avoided teaching that anyone can have an objective right to do something that is objectively wrong. Religious freedom, strictly speaking, is not a right to *do* anything. In technical terms it is not a *ius agendi* but a *ius exigendi* – a right to make a demand on the state. Negatively, it is a right not to be coerced in one’s religious life unless one is jeopardizing public order. Positively, it is a right to be supported in one’s quest to know religious truth and live accordingly.” Avery Dulles, “*Dignitatis Humanae* and the Development of Catholic Doctrine,” in *Catholicism and Religious Freedom*, 58.

²⁶ The articulation of this duty by Bishop Ancel of Lyons greatly impressed Pope Paul VI at the time of the conciliar debates, and was to influence the understanding of the right in the final text of *DH*. See Nicholas J. Healy, “The Drafting of *Dignitatis Humanae*,” in *Freedom, Truth, and Human Dignity: The Second Vatican Council’s Declaration on Religious Freedom*, ed. David L. Schindler and Nicholas J. Healy (Cambridge: Eerdmans, 2015), 227-228.

good as concerning the seeking of religious truth, the adhering to religious truth, and the ordering of one's whole life in accordance with the demands of religious truth. On this basis *DH* no.3 reasons that since religious acts - whereby men direct their lives towards God - transcend the order of terrestrial and temporal affairs, the State therefore "ought indeed to take account of the religious life of the people and show it favour, since the function of government is to make provision for the common welfare." *DH* no.6 adds that because the protection and promotion of inviolable human rights is an essential duty of the State, the State is to safeguard the religious freedom of all of its citizens. It is in this context that *DH* no.6 affirms that the State is to "help create conditions favourable to the fostering of religious life, in order that the people may be truly enabled to exercise their religious rights and to fulfil their religious duties."

DH's affirmation of religion as something fundamentally important to individuals and society has two important implications for the present investigation. First, since favouring and fostering religion is an aspect of protecting both the right to religious freedom (*DH* no.6) and the common welfare (*DH* no.3), it militates against a minimalist understanding of what constitutes a restraint on one's acting in accordance with one's religious beliefs. Secondly, *DH* clearly disavows a neutralist understanding of the right to religious freedom of the kind endorsed by political liberals like John Rawls. According to Rawls' political conception of justice, the State must not favour any of the various competing "comprehensive" doctrines of the good, i.e. philosophically robust and thus inevitably contestable understandings of what constitutes the good or moral life. This neutrality is warranted in the following way. The basic rights and liberties of a just constitutional regime have the purpose of assuring that citizens can adequately develop the "two moral powers" (one of which is a capacity to choose among conceptions of the good)²⁷ that constitute them as "free and equal."²⁸ In determining the content and scope of rights and liberties, a just constitutional arrangement permits only "public" justifications, which are justifications arrived at through an "overlapping consensus" concerning a conception of justice. Since society is marked by an ineliminable pluralism of comprehensive doctrines, public justification via overlapping consensus must not aim to advance or be based on any comprehensive doctrine – otherwise consensus would not be achieved, and the justification would fail the test of reciprocity which governs the relationship between citizens as free and equal. Hence justice requires neutrality towards doctrines of the good.

²⁷ The other being a capacity for a sense of justice. John Rawls, *Political Liberalism* (New York: Columbia University Press, 2005), 19.

²⁸ *Ibid.*, 202.

Note that the very justification for giving priority to neutrality of justification in the public life of the State, with citizens as “free and equal” constituted by a moral power to choose among conceptions of the good, reveals a pre-eminent - and very much “comprehensive”²⁹ - concern for the good of individual autonomy in choosing and pursuing ends. So Rawlsian rights and liberties are based on the idea of autonomy as an ultimate good, as independent of and prior to any purported duty to seek either the truth or what is truly good. Rawlsian neutrality thus supports a liberty right to freedom of conscience in the sense of the absence of any kind of duty to conform one’s intellect and conscience to religious truths. As such, political liberalism approximates to an idea the Council Fathers emphatically rejected in drafting *DH*, that of “indifferentism” towards religion.³⁰

By enjoining the State to refrain from the furtherance of some definite conception of religion it becomes exceedingly difficult to justify any kind of State favouring or facilitating of religion through the educational system. John Courtney Murray’s difficulties in this regard illustrate the point in a strictly theological context,³¹ while Rawls and his followers can only contemplate support for the public funding of faith schools for political or civic ends.³² Conversely, when religion as a basic and public good is affirmed, and thus State neutralism towards religion is rejected (as it is in *DH*), it becomes difficult to justify the claim that the State has no obligation to favour or facilitate religion through the educational system. A functioning State will inevitably have an educational system, and a thoroughly “neutral” stance towards the good of

²⁹ Rawls argues that this underlying value of autonomy is not comprehensive in nature because (a) it is not in itself a fully worked out doctrine of the good, and (b) it derives from an overlapping consensus on its central importance for justice as fairness. Therefore, he argues, it is a political rather than a religious or philosophical good. As to (a), a specific, discrete idea can be comprehensive (i.e., philosophically thick) without amounting to an overarching network of ideas; as to (b), while there may be an overlapping consensus as to its importance for justice, there is no overlapping consensus as to why it is so or as to its proper role and scope within justice (therefore this “overlapping consensus” is an unsure foundation for determining constitutional particulars).

³⁰ For examples of statements attacking “indifferentism” made by influential voices like those of Msgr. De Smedt, Pope John XXIII and Pope Paul VI in debates over religious freedom around the time of the Council, see Alberigo, *History of Vatican II*, 1:436-440; 3:284-286; 4:108, 541.

³¹ See Todd David Whitmore, “Immunity of Empowerment? John Courtney Murray and the Question of Religious Liberty,” *Journal of Religious Ethics* 21, no.2 (1993): 269.

³² Rawls does not offer any conclusive answer as to whether it is permissible for faith schools to be publicly funded on such grounds. Rawls, *Political Liberalism*, 199-200. Stephen Macedo argues against the public funding of faith schools. Stephen Macedo, *Diversity and Distrust: Civic Education in a Multicultural Democracy* (Cambridge, MA: Harvard University Press, 2000), 240-245.

religion therein is virtually impossible.³³ Since the good of religion concerns the meaning of ultimate truth and the conforming of one's life to such truth, schools, operating as vehicles for the transmission of worthwhile knowledge and the formation of good character, appear to be an especially suitable mechanism for the transmission of religious truth and the formation of religious consciences. So once public order is respected and freedom of religion guaranteed by the religion-assisting arrangement, no countervailing reason of principle suggests itself which would challenge the existence of an obligation on the State to favour and facilitate religion through the education system.

Evolution of *DH* no.5

So the internal logic of *DH*'s stance on the role of the State vis-à-vis religion undermines the position of those who argue that *DH* no.5 merely permits the State to fund faith schools on the grounds that State neutralism towards religion is permissible. Added to this are a number of noteworthy amendments made to the text of *DH* during the conciliar debates. Schema no.2 merely contained the following on the matter: "The Church defends man's right ... to order his entire life according to the demands of his religion, in matters familial, educational, cultural, social, and charitable, as well as in other activities of human life."³⁴ With schema no.3 came a much more focused statement of the religious freedom of the family in the context of education: "Parents also have the right to determine the way in which religious instruction will be handed on to their children. In addition, public powers must acknowledge the right of parents to choose with true freedom among schools or other means of education. Unjust burdens must

³³ A State decision not to express favour for religion or facilitate it through the education system would inevitably imply and almost certainly presuppose a number of non-neutral propositions, viz.: (a) the judgment that religious teaching is unfit for a school setting; (b) the judgment that even if the truth claims of one religion or atheism are ultimately true, these truths are insufficiently important to warrant being communicated in a public environment dedicated to the communication of important truths; (c) following (b), the implicit judgment that there is probably no way of rationally deciding whether or not the respective truth claims are in fact true or false (because if rational decision in this manner were possible then judgment (b) would appear extremely curious); and (d) the judgment that teaching the truth concerning a religious or an a-religious worldview, as distinct from reporting on the contents of the respective beliefs, is a very significant threat to important goods (e.g. public order, or civic training, or the equal and fair treatment of students, etc.).

³⁴ Healy, "The Drafting of *Dignitatis Humanae*," 267. Healy very helpfully provides the full texts of *DH*'s various schemata, including a line-by-line comparative analysis of the third schema and the final text.

not be placed upon them on account of this freedom of choice.”³⁵ To this schema no.4 added that “the civil power violates the rights of parents if it imposes a single system of education that excludes all religious formation.”³⁶ Schema no.5 expanded the last sentence to read: “The civil power violates the rights of parents if it forces their children to attend lessons that are at odds with the religious beliefs of their parents, or if a single system of education is imposed that excludes all religious formation.”³⁷ With the final text came an important clarification on the nature of what *DH* no.5 understands as “unjust burdens”: they may not be imposed, “whether directly or indirectly.”

Throughout the conciliar debates, then, there was a clear trajectory in favour of a greater and greater realization of parental religious authority in the field of education and schools. The Fathers did not consider it sufficient that section no.5 denounces the State imposition of unjust burdens on parents exercising their freedom of choice as regards schools; they wanted to make it clear that the State can place unjust burdens on parents not only directly - as with the direct imposition of a registration fee - but also indirectly. Omitting to fund faith schools, when State schools are funded, is an obvious example of the imposition of an indirect burden on parents seeking the former kind of school. For parents in this category who are not very wealthy - the overwhelming majority - the omission of funding for faith schools means that they do not have “a genuinely free choice of schools.” Such an omission means that they are “restrained from acting in accordance with [their] own beliefs ... publicly ... in association with others.” As such the burden is indeed unjust.

Considering the text, context and drafting of both *DH* no.5 and *DH* as a whole, as well as those aspects of *GE* which directly pertain to the question at hand, it is reasonable therefore to conclude that *DH* no.5 entails a duty upon States to publicly fund faith schools. So the best interpretation of *DH* is not that it leaves the matter underdetermined, as Alberigo, Regan and Hittinger suggest; nor that it does not contain such a duty, as George, Saunders and Gros imply in their respective ways; but that it contains an implicit yet real endorsement of the duty of States to publicly fund faith schools, a duty which Pavan’s interpretation of *DH* no.5 perhaps elliptically recognizes and which Canavan’s and Siebenrock’s interpretations also tentatively acknowledge. This being the case, *DH* is consistent not only with those articles of international human rights law that provide for freedom of religion, but also with those articles that provide for parental choice in religious education.³⁸

³⁵ *Ibid.*, 396.

³⁶ *Ibid.*, 327.

³⁷ *Ibid.*, 355.

³⁸ E.g., Article 2 of the Protocol to the European Convention for the Protection of Human

Parental Authority and the Duty to Divest of Control of Schools

The question that has been the focus of this paper up to now is important for its own sake, for it concerns an issue of live relevance to Christian parents the world over seeking to educate their children in a faith school. But, at this moment in time, the question also bears upon a matter of direct practical relevance to a far narrower category involving the Irish Church and perhaps the Maltese Church, and a few others besides (which is not to say that the matter is not of very significant interest to theologians engaged with the questions of Church-State relations, freedom of religion, and pluralism). The question is whether there is anything in *DH* to suggest that Church bodies or patrons have a duty to divest themselves of control of their schools to the State in certain circumstances? Prompting the question in the minds of the authors is the current situation in the Republic of Ireland whereby 89% of primary schools are controlled by the Catholic Church³⁹ in an increasingly secularized society. The relative number of unbelievers is almost certainly on the increase and is especially pronounced in large urban centres. The widening discrepancy between the patronage of Irish primary schools and the religious demography of Irish society has led to political and cultural pressure on faith schools. The issue at the centre of the debate is that a subset of secular-minded parents (whether atheist, agnostic, or in some other way secularist) judge it unfair that they have no choice but to send their children to schools whose ethos they either do not share or reject outright. Their objection does not lie with their children having to attend classes devoted to religious formation and instruction - all parents have the right under Irish law to remove their children from particular classes - but with having to send their children to schools with an objectionable religious ethos permeating the entirety of the school day.

In the explicitly political context this pressure has translated into two broad proposals to deal with the objections of the parents in question. One is that the State assumes direct and complete control over all publicly funded primary schools, meaning that there would no longer be any publicly funded faith schools. This proposal is advanced by Atheist Ireland, among others, and would require a constitutional referendum to be effected.⁴⁰ If the argument of this paper heretofore is sound such a proposal would conflict with *DH* no.5 since it manifestly denies

Rights and Fundamental Freedoms, and Article 18(4) of the International Covenant on Civil and Political Rights.

³⁹ <http://www.catholicbishops.ie/2011/04/06/6-april-2011-catholic-schools-republic-ireland>.

⁴⁰ Articles 42 and 44 of the Irish Constitution presuppose that the State has a duty to fund primary level faith schools.

any duty on the part of the State to fund faith schools. The other proposal is that the Church divests itself of control of some of its schools to meet the wishes of secular-minded parents where a sufficient level of demand exists for schools with a more secular ethos. This proposal is currently the more politically popular at the present time (though Irish political life is undergoing rapid change) and is supported by a number of senior Catholic bishops, including the Archbishop of Dublin, Diarmuid Martin.⁴¹ However, for a variety of reasons, efforts to divest of control of Catholic schools have generally been resisted by patrons and other stakeholders (including parents and local politicians). Complicating matters further are the actions of the previous Government to partially restrict the control which faith schools have over their employment decisions⁴² and the protection of their own ethos,⁴³ actions that were not opposed by any of the opposition parties at the time. With this complicated political context in mind, stakeholders in Catholic education may well wonder whether the support given by members of the Catholic hierarchy in Ireland to the proposal that the Church divests itself of control of some of its primary schools amounts to an erroneous judgment, one formed more by a politically expedient concern to prevent further State encroachment into Catholic education than by a principled and faithful concern for the relevant rights, obligations and freedoms of all individuals and groups affected by the proposal. In particular, some may wonder whether the proposals pay insufficient regard to the importance of Catholic education and the rights of Catholic families to receive a Catholic education. It is quite possible that these lines of thinking have formed part of the resistance to the project of divestment.

In considering what guidance *DH* may offer for religious and civic leaders in addressing this question, it is important to acknowledge that there is no evidence to suggest that the precise matter was seriously contemplated by the Fathers at the Council or that the text of *DH* has anything direct or explicit to say on it. Nevertheless, *DH* certainly does deal with religious freedom in the context of schools so it is perfectly reasonable to suppose that it contains principles relevant to the topic and from which more specific norms could be derived to provide helpful and perhaps even decisive guidance.

⁴¹ <http://www.irishtimes.com/news/social-affairs/church-dragging-its-feet-over-divestment-process-martin-1.2422751>, Accessed April 26, 2016.

⁴² In relation to the amendment of sec. 37 of the Employment Equality Act, 1998 by sc. 11 of the Equality (Miscellaneous Provisions) Act, 2015.

⁴³ In relation to the deletion of Rule 68 of the Rules for National Schools by the Minister for Education by way of circular letter of January 2016 (the significance of which is more normative than legal). There is also growing political pressure for restricting the control faith schools have over their own admissions policies.

It is first important to gain clarity on the primary justification for the position *DH* no.5 takes on school choice as regards religion education. An earlier section of this paper examined *DH* no.5 in the context of the document as a whole, and in particular in relation to the call by *DH* for the State to favour and facilitate religion. There, the point was not to imply that *DH* no.5 itself receives its exclusive warrant from the State promotion of religion, but instead to undercut those objections to the idea of a State duty to publicly fund faith schools which are based on a neutralist conception of the State's role vis-à-vis religion. As it happens, *DH* no.5 is primarily sourced not in the good of religion exclusively, but in the good of parental authority over the child's religious education, which is a good emanating from the interaction between the good of religion and the good of family life, as an independent type of society central to human well-being: "Since the family is a society in its own original right, it 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." It is as a consequence of these considerations that the State "must acknowledge the right of parents to make a genuinely free choice of schools and of other means of education." Compared to some other contested questions of justice explored by the natural law tradition, the basis and value of parental authority over one's child has been somewhat neglected. The recent work of the philosopher Melissa Moschella fills an important lacuna in this regard.⁴⁴ Moschella explains that authority exists at the service of the common good, and that one's authority flows from the nature and content of one's special obligations to pursue and promote that good. Relationships trigger special obligations insofar as they involve potential dependence between those in the relationships, while personal relationships create personal obligations which can only be truly fulfilled by certain persons particularly related to the obligee.⁴⁵ Since human persons are intrinsically bodily beings - holistic unities of mind and body - the biological parent-child relationship is a personal relationship. It therefore carries with it personal obligations that can only be truly fulfilled by the parents; the child's

⁴⁴ Melissa Moschella, *To Whom do Children Belong? Parental Rights, Civic Education, and Children's Autonomy* (Cambridge, forthcoming 2016), and Melissa Moschella, "Natural Law, Parental Rights and Education Policy," *American Journal of Jurisprudence* 59, no. 2 (2014): 197.

⁴⁵ To clarify, a shop assistant has a duty of sorts to serve a customer, but it is a professional rather than a personal duty since it does not matter to the customer which shop assistant serves her (or if it does, it matters for reasons of professional competence). It is different if a husband promises his wife that he will take her to dinner for their anniversary: the promise creates a duty which can only be fulfilled personally.

need for protection, love and identity is the need for personal and, in the first instance, parental protection and love (and the identity which is fostered by this care and connection). (If, for whatever reason, the specifically parental form of care is lost, it amounts to an important rather than incidental loss.) Thus, parents have a prior duty towards their children, prior to any duty of the State in this regard, a duty that grounds their parental authority and parental rights. Parents are therefore primarily responsible for their children's education, a moral norm unaltered by the comprehensive ways in which the State itself has a (subsidiary) duty to facilitate children's education. Moschella's natural law approach mirrors that of *GE* no.3: "Since parents have conferred life on their children, they have a most solemn obligation to educate their offspring. Hence, parents must be acknowledged as the first and foremost educators of their children."⁴⁶

DH no.5 makes it clear that parental authority over the religious education of children is the governing principle for religious freedom in the schools and educational context, and also makes it clear that from it is derived the right of parents to a genuinely free choice of schools. If this specific good were lost sight of or downplayed there would appear to be very good grounds for supposing that the good of religion *simpliciter* could be legitimately furthered through a publicly funded educational system that is thoroughly religious in character (i.e. one ultimately controlled by the Church or one permeated by a clear theistic ethos). This is the position that George, Saunders, and John Finnis take while considering *DH*. It was earlier stated that George and Saunders consider it merely permissible for the State to fund faith schools, yet they also consider it permissible (though, again, not required) that all State-funded schools teach and profess religious faith or at least some version of theism (with the qualification that the religious freedom of dissenting children and families be suitably respected).⁴⁷ Similarly, as part of a philosophical investigation into the interrelationship between religion and the State which makes extensive use of *DH*, Finnis argues that the State-favouring of religion can be achieved "by requiring or permitting the teaching and profession of religious faith in state-run or state-funded schools (with suitable opt-outs to preserve religious liberty)."⁴⁸ Each author treats the issue from the perspective of how the State may favour the good of religion. And while each author qualifies his position by including within it the need to respect religious freedom in the event that the hypothetical

⁴⁶ See also *Amoris Laetitia*, no.84.

⁴⁷ George and Saunders, "*Dignitatis Humanae*: The Freedom of the Church and the Responsibility of the State," 11.

⁴⁸ John Finnis, "Religion and State," in *Religion and Public Reasons: Collected Essays of John Finnis* (Oxford: Oxford University Press, 2011), 5:101.

scenario obtains, it seems that the aspect to the good of religion foremost in their thinking is religion as concerned with objective, ultimate truth about God and the cosmos, as distinct from religion as involving the personal (and thus also parental) seeking of, adhering to, and ordering of one's life in conformity with this truth.⁴⁹ If the latter aspect to religion were brought more into focus then the relevance of parental authority and educational rights to the question at hand would become more apparent. Under the proposal the authors envisage as entirely permissible, however, there would be little or no genuine freedom of school choice available for parents - every publicly funded school would either profess some prescribed religious faith or teach some particular form of theism.

Like most examinations into the specific matter, George, Saunders and Finnis deal with it only very briefly. So in order to develop the present analysis it is necessary to consider some possible arguments in support of their position. For a start it could be pointed out that, under the arrangement they deem unproblematic, no child would be forced to attend religious instruction, and therefore the right to religious freedom is not seriously threatened. But opt-outs like this are really directly relevant to only one aspect of the right to religious freedom protected by *DH*, namely the right to immunity from being coerced to act in a manner contrary to one's religious beliefs. (The right here operates to protect parents and their children from having to attend religious instruction or formation; appealing to it should not imply that such instruction or formation is necessarily in any way coercive itself.) Opt-outs like these do little to give expression to the other aspect of the right to religious freedom, namely the right not to be restrained from acting in accordance with one's religious beliefs, subject to the demands of public order, a right inherent within the right of parents "to determine, in accordance with their own religious beliefs, the kind of religious education that their children are to receive." To this it may be objected that an immunity, on the part of the individual, from being restrained in acting in accordance with one's religious beliefs cannot so easily translate into an obligation on the part of the State to publicly fund activities in accordance with one's religious beliefs: a right to wear a cross in public does not translate into a State obligation to subsidise the purchase of crosses. But this objection loses its force in a context where the State has a duty to fund a public good (education within schools); has a duty to facilitate and favour a good which may in principle

⁴⁹ The objective and subjective aspects to the good of religion are thoroughly integrated, as Finnis properly notes in the concise outline of the good in his seminal work. See John Finnis, *Natural Law and Natural Rights* (Oxford: Clarendon, 2011), 89-90. The subjective aspect to the good of religion is not exhausted by reference to personal authenticity in religious matters but, in the fullest sense of religion, includes also the good of friendship with God.

be promoted as part of the public good in question (religion); and where parental choice as regards children's religious education is a principle directly relevant to decisions over how to calibrate the funding of this public good.

It could also be argued that elevating parental choice over the teaching of theism or a particular religious faith in all State-funded schools promotes in its own way indifferentism and neutralism, at least as a side-effect. For it may seem that the stance in favour of parental choice as regards children's education can also be justified by insisting solely upon the value of parental autonomy, and by neglecting the importance of truth in matters religious. Yet, even if this overlapping consensus does exist, it is still the case that at least one genuine justification for the position is perfectly compatible with the good of religion and presupposes the good of parental authority, particularly as regards religious matters. Just as the right to religious freedom contained within *DH* does not amount to an endorsement of indifferentism or neutralism, neither does its support for parental choice in education collapse into a relativistic or agnostic view of religious truth. *DH* does not elevate parental choice concerning religious education above religion. Rather, the good of parental religious authority is derived from the good of religion itself (as well as the goods of marriage and parental authority),⁵⁰ meaning that parental authority in matters religious is an aspect of the good of religion and is not prioritized over it. Furthermore, while it has been conceded above, *arguendo*, that a heavily autonomist ethics might support a right to parental choice as regards religious education, in reality any such ethics will struggle to accommodate a strong insistence upon *religious* educational choice above choice of schools according to other potential categories.

There is another, more pragmatic consideration which tells against the idea of an exclusively theistic or religious model of State-funded schools being a legitimate alternative to a model of public funding designed to facilitate parental choice. The former proposal would generate very significant practical problems in relation to facilitating mass conscientious opt-outs in a predominantly atheistic or agnostic society, as well as generating the likely side-effect of a more entrenched hostility towards religion. This consideration poses no comparable problems for a model of public funding designed to facilitate parental choice.

⁵⁰ As with *Gaudium et Spes*, no.48, Finnis and George both understand the good of marriage as including the generation *and education* of children. See, e.g., John Finnis, "Sex and Marriage: Some Myths and Reasons," in *Human Rights and the Common Good: Collected Essays of John Finnis* (Oxford: Oxford University Press, 2011), 3:362, and Patrick Lee and Robert P. George, *Conjugal Union: What Marriage Is and Why it Matters* (Cambridge: Cambridge University Press, 2014), 47.

Admittedly this latter model will not be able to accommodate all parents. In practice, for some parents it would be unfeasible to send their child to a school whose ethos they share more or less fully. For example, a lack of similarly minded parents in their own locality may render the distance to their nearest preferred school an insurmountable obstacle. But there is no reason to think that this negative side-effect is not proportionate to what this model does achieve in terms of religious freedom and parental choice. The model also coheres with the sort of pluralism and concern for subsidiarity so central to modern Catholic social teaching. Among the various intermediate social groups that stand in the way of a statist monism, the family is in many ways the most important (*GE* appeals to both the principle of subsidiarity [*GE* no.3 and no.5] and pluralism [*GE* no.5 and no.7] in explaining the duty of the State to facilitate parental choice as regards schools).

Acceptance of the above lines of argument is still potentially consistent with the proposal that all State schools (as distinct from all State-funded schools) not only may but even ought to teach theism or a particular religious faith as true (for the sake of religious truth, not some ulterior rationale). Once parents seeking public funding for schools with an alternative religious or philosophical ethos are sufficiently accommodated, a theistic model of State education does not conflict with parental choice. Just how permissible or mandatory is this model is a question which the present study does not address directly. It suffices to note here that while *GE* no.1 affirms the right of children and young people to “know and love God more adequately,” and, on the back of that right, “earnestly entreats all who exercise government over peoples or preside over the work of education to see that youth is never deprived of this sacred right,” it does not propose that the teaching of religious faith or theism by State schools is a necessary mechanism for protecting it. Instead, stress is placed on the right to parental choice as regards religious education (*GE* nos.3, 6 and 7). So in stating that “the Council insisted that all schools, secular as well as religious, must incorporate moral and religious instruction,” Don Briel is incorrect in so far as he is implying that *GE* requires State schools to teach a particular religion as true.⁵¹ Against this it may be argued that the right to religious freedom in *DH* implies a jurisdictional limit rather than an epistemic limit on behalf of the State, and that, so long as the coercive, jurisdictional limit is not transgressed, it behoves the State to in some way honour religious truth in that one area of its operation where truth and knowledge are its central concerns. Yet, a State that respects the

⁵¹ Don J. Briel, “The Declaration on Christian Education, *Gravissimum Educationis*,” in *Vatican II: Renewal within Tradition*, ed. Matthew L. Lamb and Matthew Levering (Oxford: Oxford University Press, 2008), 388.

right to parental choice contained within *DH* no.5 and *GE* nos.3 and 6 already gives honour to the good of religion. What can be said is that a State cannot reconcile its duty to facilitate and favour religion with permitting the teaching of atheism or agnosticism by its own schools.

Up to now this section has offered a critique of the view that, for the purpose of advancing the good of religion, including the good of religious freedom, an exclusively theocentric system of publicly funded schools is a legitimate alternative to a model of public funding based on genuine parental choice. This critique, if sound, serves only to emphasize that safeguarding parental choice as regards religious education is neither a superogatory addendum to respect for the right to religious freedom, nor a measure inimical to the good of religion. Proposing a plausible *DH*-based argument in favour of a duty of the Irish Church (or Irish Church bodies) to divest themselves of the patronage of some schools in favour of the State (or some other secular type patron) requires establishing two further elements. The first is whether the right to parental educational choice in *DH* no.5 protects the religious interests of not only non-Christian parents but secularist parents too. There is a fairly clear answer to this. The very *raison d'être* for *DH* was to offer forthright conciliar recognition to the right of all persons to religious freedom, regardless of their religious beliefs. In its focal sense “religious belief” covers religious belief *in* a particular religion, but it can also be understood as including philosophical belief *about* religion(s): a conscientious judgment against the truth of even all religions can still be legitimately described as a religious judgment and as the basis of a religious-type belief. *DH* does not restrict the right to religious freedom to the former category - in fact, to make just this point, its subtitle employs the phrase: “On the right of the person and of communities to social and civil freedom in matters religious.”⁵² The matter is complicated a little by the need to distinguish between religious belief - which *DH* does not tie to an affirmative belief in God - and “religious acts” and “religious life” - which *DH* does source in faithfulness to God (e.g. *DH* nos.3, 4 and 6). *DH* no.5 incorporates both “domestic religious life” and “religious belief” as part of its justification for parental choice as regards children’s religious education. Ultimately, though, it is the good of parental authority in the context of the right to religious belief that plays a more direct justificatory role for the right to parental choice (and, in any event, the right of the family to “live its own domestic religious life under the guidance of parents” surely applies in principle to the protection of atheist or agnostic parents from unjust incursions into their

⁵² A number of commentators note this, e.g., Pavan, “Declaration on Religious Freedom,” 69, and Gros, “*Dignitatis Humanae*,” 180.

domestic sphere by a zealously theocratic State). And while it is true that *DH* no.5 does speak of the right to determine the “religious education” of children - a term which appears difficult to reconcile with either “secularist education” or “humanist education” - the particular socio-political context in which the conciliar Fathers found themselves meant that the protection of the freedom of religious believers against the totalizing tendencies of modern secular States was to be at the forefront of their collective consciousness (the last line of *DH* no.5, which criticises the imposition of a single system of education upon all and from which all religious formation is excluded, is a reference to Marxist States).⁵³ So it seems that the principles operative in *DH* no.5 include atheistic and agnostic parents within the ambit of parental choice over schools, notwithstanding the fact that these parents have reached or assimilated false conclusions about the nature of God and ultimate reality. It is worth recalling here that, in affirming parental choice as regards religious education, *GE* no.6 appeals to “conscience” and does not propose to limit the liberty to Christian or otherwise religious parents.

It still remains to be shown that not only the State but the Church too has a responsibility for facilitating parental choice as regards schools. Showing this requires distinguishing among different understandings of what “facilitating” may mean in this context. Obviously the Church has no duty to facilitate parental choice if by “facilitate” is meant the establishment, management and funding of every school type necessary to adequately fulfil reasonable parental demand across all of society. At the same time the Church quite obviously has an obligation to facilitate the wishes of Catholic parents by doing what it reasonably can to meet their requests for truly Catholic schools (*GE* preface and no.3 are clear on this obligation). But can it be said that the Church has some kind of responsibility for facilitating the parental choices of secularist parents in this context? *DH* restricts the religious freedom question to persons *qua* citizens in civil society, as distinct from persons *qua* members or potential members of the Church, meaning that the right to religious freedom in *DH* does not serve to nullify individual Catholics’ responsibilities towards the Church.⁵⁴ But the right to religious freedom contained within *DH* applies to the Church’s interactions with persons *qua* members of civil society on account of the Church’s co-responsibility for the common welfare. So immediately

⁵³ Regan, *Conflict and Consensus*, 125.

⁵⁴ According to *DH* no.1, “Religious freedom ... has to do with immunity from coercion in civil society. Therefore, it leaves untouched traditional Catholic doctrine on the moral duty of men and societies towards the true religion and towards the one Church of Christ.”

following the enumeration of the right to parental choice in the schooling of children, *DH* no.6 posits:

The common welfare of society consists in the entirety of those conditions of social life under which men enjoy the possibility of achieving their own perfection in a certain fullness of measure and also with some relative ease. Hence this welfare consists chiefly in the protection of the rights, and in the performance of the duties, of the human person. Therefore, the care of the right to religious freedom devolves upon the people as a whole, upon social groups, upon government, and upon the Church and other religious Communities, in virtue of the duty of all towards the common welfare, and in the manner proper to each.

The Church has a duty of care towards the right to religious freedom; it is not solely a competence of the State. This duty of care devolves upon the Church in a manner proper to it. This duty relates to the right to religious freedom, a right which involves the right to genuine parental choice as regards children's religious schooling, and is a right which inheres in parents regardless of their religious beliefs. Can it therefore be said that the Church's duty may, in particular circumstances, translate into a duty to divest itself of a Catholic school in favour of some other patron for the sake of parental freedom of choice as regards children's schooling? The particular circumstances in mind involve situations where a locality contains a clearly disproportionate number of Catholic schools relative to the demographic level of Catholic or otherwise religious parents, where it can be established that there is strong parental demand to have a school with some kind of secular ethos, where the transferring of patronage of a designated school from the Church to some other patron would not significantly infringe upon the parental rights of Catholics or other believers in the locality, and where there is no significant shortage of school places within the locality requiring the State to establish a school in order to discharge its obligations towards providing children with a basic level of education. Considering the analysis of *DH* hitherto undertaken, it would seem that in these circumstances it is not only permissible for the Church to so divest itself of control of the designated school but that in fact it morally ought to do so.

To this it may be replied that the primary duty here really belongs to the State - that because of its vastly greater resources it is the State's "proper" role to facilitate parents' wishes by either aiding the establishment by a secular patron of an entirely new school in the locality or by establishing its own, new non-denominational school. But in facilitating a model of schools respectful of parental choice, the State's primary duty is discharged through administering public funds in support of the various patrons' initiatives. In the given case, if the Church decides not to divest itself of patronage it would fall to the State to expend extra public resources in acquiring land (in an appropriate area, which may not be practicable) and

building a new school in order to vindicate the parental rights at issue, unless those parents possess sufficient access to private funds to achieve these measures by themselves (which is unlikely). It is difficult to see how such a decision could contribute towards the Church's mission or its duty towards the common welfare - it will merely have delayed and made costlier the vindication of the parents' rights, with the added side-effect of raising questions in the minds of reasonable members of the public about the Church's respect for these rights. If the intent in declining to divest was to contain these families within the sphere of religious influence, that in itself would be difficult to reconcile with the right to freedom of religion within *DH*. Since divesting would be feasible, and would not in itself involve assuming a function, like public funding, that properly belongs to the State, a decision against it would, if submitted, amount to a dereliction of the Church's proper share of responsibility towards the common welfare and religious freedom. The Irish Church - in particular Church patrons and others in control of Catholic schools - should consider whether particular circumstances obtain that may engage a duty to divest. The duty is not a question of political expediency or of avoiding "scandal" in the secular sense of that term, but a matter of Catholic principle.

Conclusion

Because *DH* leaves this precise matter (regarding the divestment of schools) at least partially underdetermined, and because the question involves complex issues of contingent fact which the present study can hardly avoid simplifying, the conclusion reached here is tentatively proposed. Still, it seems sound. The best interpretation of *DH* no.5 and its affirmation of the right to parental choice as regards schools, is that it implicitly recognizes a duty on behalf of the State to fund faith schools. This interpretation fits with both *DH*'s insistence that the State ought to favour and facilitate religion, and also with its understanding of religious freedom as including the freedom of non-believers. In turn, because of the Church's duty towards the common welfare and religious freedom, there are potential circumstances where it may have a responsibility to divest itself of control over some of its schools.

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