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Rev. Anthony F. LoGatto

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FREEDOM OF RELIGION AND THE CHURCH

REV. ANTHONY F. LOGATTO*

“GENTLEMEN . . . if it is not clearly understood that we help the poor without religious distinction, I shall go forthwith and return to the Protestants the donation which they have given. I shall say to them: ‘Take it back, we are unworthy of your confidence.’”¹ This burst of indignation was issued from the lips of a great lawyer, Frederick Ozanam, the founder of the Society of St. Vincent de Paul. He was motivated by an incident which occurred at one of the meetings of the first conference of the Society. It seems that a Protestant minister had entrusted money to Ozanam — such was his reputation for charity and integrity — for the relief of the poor. One member of the Society made a motion that the money be first allocated to Catholic cases, with the remainder, if any, to be distributed to Protestant cases. It was then that Ozanam delivered his famous retort.²

The statement proved to be the enunciation of a great principle. Though a layman, Ozanam had defined with legal accuracy the attitude and spirit of the Church. The principle is not exhausted by its application to the poor; indeed, it formulates the nature and the measure of the relationship of the Church with those of other faiths. The Church today co-exists with numerous other religions, even with those whose doctrine appears to be precisely no religion at all. The Church as a society — and it deems itself such³ — must relate to other groups. The detailed formulation of this relationship is a juridical process which canonists and theologians have traditionally treated as being within the broader concept of liberty.

Since this word liberty is today an electronic word with a thousand circuits, some readers must certainly be suspicious or at least concerned as to how the Church can entertain liberty within its own ranks, and extend it to, and protect it in, those of other religions. For the Church is identified, at least emotionally, with an authoritative philosophy, claiming the pre-eminence of truth and doctrinal infallibility. In addition, shadows

* Associate Director, Catholic Charities; Member of the New York Bar.

¹ Catholic Charities Review, Nov. 1962, p. 25.

² *Ibid.*

³ “For the only-begotten Son of God established on earth a society which is called the Church . . . it is a society chartered as of right divine, perfect in its nature and in its title.” Encyclical Letter of Leo XIII, *Immortale Dei*, in *The Catholic Mind*, Nov. 8, 1936, pp. 429-30.

of the past, the rack and the screw, at times illuminated by the stake, set up uneasy feelings. But in fact, no sect or denomination monopolized man's inhumanity to man; the gentleness of Christ was often forgotten in the intemperate zeal of an age when intemperance ran rampant.

Yet there has been a consistent line of thought and doctrine within the tradition of the Church as to liberty of conscience and belief. This is based on the very nature of faith which is defined by the theologians as "gratia gratis data,"⁴ a gift freely given and freely accepted. Pope John the XXIII, of beloved memory, gave this truth its most recent formal expression. He stated in his now memorable encyclical, *Pacem in Terris*: "Every human being has the right to honor God according to the dictates of an upright conscience, and the right to profess his religion privately and publicly."⁵ His simple statement echoes the classical words of Pope Leo XIII, pronounced in 1888: "This genuine, this honorable freedom of the sons of God, which most nobly protects the dignity of the human person, is greater than any violence or injustice; it has always been sought by the Church, and always most dear to her. This was the freedom which the Apostles claimed with intrepid constancy, which the apologists defended with their writings, and which the martyrs in such numbers consecrated with their blood."⁶

The tradition goes back even to days when the Church fared well with the political authorities and Christianity was the

accepted religion of the realm. Thus Pope Gregory IX, in a letter to the bishops of France, urged Christians "to conduct themselves with the same charity [toward the Jews] that they would desire to see used toward Christians who live in pagan countries."⁷ Pope Gregory the Great, as early as the fifth century, set forth this rule: "If, moved by a right intention, you desire to lead to the true faith those who are outside the Christian fold, you should use persuasion, not violence. . . . Those who act differently under the pretext of bringing men to accept their own religious traditions show that they are seeking their own wills rather than the will of God."⁸ Thus, in accordance with not only right reason, but also common Christian belief, "it is wrong to invade the sacred precincts of the inviolable conscience of men and attempt to coerce them into conformity of belief, no matter what their errors may be. God Himself does not do it; neither has He made such a grant to men as individuals or in groups."⁹

Some astute minds might possibly sense a fallacy or at least an inconsistency in the doctrine set forth. If the Church holds the honest conviction that she carries the deposit of faith, and therefore that those at variance with her have at least an admixture of error, how can she be so liberal toward such error? This is a proper objection and must be sustained unless a valid distinction can be drawn. The distinction lies in the application of still another principle, namely, that

⁴ "By grace you are saved through faith, and that not of yourselves . . . that no man may glory . . . for it is the gift of God." Ephesians II, 8-9.

⁵ JOHN XXIII, *PACEM IN TERRIS* 6 (American Press ed. 1963).

⁶ Leo XIII, *Libertas Praestantissimum*, 8 ACTA LEONIS XIII 237-38 (1888).

⁷ Letter From Gregory IX to Bishops of France 1233, in LERCARO, *RELIGIOUS TOLERANCE IN CATHOLIC TRADITION* 18 (America Press ed. 1960).

⁸ LERCARO, *RELIGIOUS TOLERANCE IN CATHOLIC TRADITION* 18 (America Press ed. 1960).

⁹ *Will Catholics Suppress Protestants?*, America, Sept. 24, 1960.

of tolerance. Let it be said at once that this must not be interpreted as the smug condescension of the proud and strong toward the foibles of the lowly and weak. Rather it is a term of respect, a word of art, with a technical meaning of its own. Tolerance, in a theological scientific sense, is "that magnanimity we show toward those of another faith, determining to leave it and its believers untroubled even though we are convinced they profess what is false."¹⁰ However, it is critical to carefully distinguish between error itself and those who are in error. As to error, the Church logically holds that it is indefensible when objective and proven so.¹¹ To condone error is to equate it with truth, and eventually this makes counterfeit the coinage and exchange of basic concepts. Thus Russia "liberates" when she enslaves and "enlightens" when she brainwashes. The Church, however, holds tenaciously to her basic concepts;

¹⁰ *Ibid.*

¹¹ Rather obviously, it is essential to make a distinction between religious error and the person erring. Our attitude toward error in itself is one that must be guided by the just submission of the mind to the claims of what is objectively true. On the other hand, our dealings with those we hold to be in error must be controlled by justice and charity, respect for the sacredness of the human person and even the responsibility we all have of giving due recognition to the common needs of human society. These remarks indicate that we must carefully note the difference between *theoretical dogmatic tolerance* and *practical civic tolerance* (whether this latter is exercised by the individual or the organized community).

The Catholic position on theoretical dogmatic tolerance is simple: no man, be he doctor, lawyer or Indian chief, can defend this sort of tolerance if he has any regard for truth. Theoretical dogmatic tolerance is nothing else than the affirmation that truth and error are of equal value in a universe where truth, religious or otherwise, either does not exist or is unattainable. With logical consistency, therefore, the Catholic Church is unqualifiedly intolerant toward what it believes to be erroneous in faith and morals.

hence, regardless of such euphemisms as "humanitarianism" and "eugenics," she condemns the killing of the unborn, the disposal of the incurably sick, and the systematic extermination of a race. The objective and cruel realities remain the same.

Error in itself, however, is to be carefully distinguished from the *person* in error for now we deal with the inviolability of the human conscience.¹² Man is ordained by his Creator to fulfill a goal. His conscience is a function of his intellect¹³ and must make a practical judgment as to the means appropriate or not appropriate to achieve the goal.¹⁴ Since he is given the freedom to make his own judgments, he suffers a penalty if he fails.¹⁵ Any condition other than freedom of judgment or conscience would be a travesty of justice. Hence the conscience of man

¹² The circumstances are quite different when we deal with practical human situations, and more perplexing, too. It may be entirely proper to refute error wherever it appears. But it may be entirely wrong to assault the mind and heart in which error resides, whether or not the error is held in good faith. For when we confront human persons, we are never at liberty to disregard the principles of justice and charity; the inviolability of personality gives a new dimension to the dialogue on tolerance.

¹³ "Conscience is a kind of dictate of the reason (for it is an application of knowledge to action) . . ." AQUINAS, *SUMMA THEOLOGICA*, I-II, q. 19, art. 5.

¹⁴ "Now in those things that are done by the will, the proximate rule is the human reason, while the supreme rule is the Eternal Law. When, therefore, a human action tends to the end, according to the order of reason and of the Eternal Law, then that action is right: but when it turns aside from that rectitude, then it is said to be a sin." *Id.* at q. 21, art. 1.

¹⁵ "For an action is said to deserve praise or blame, from its being imputed to the agent. . . . Now an action is imputed to an agent, when it is in his power, so that he has dominion over it; and this is the case in all voluntary acts: because it is through his will that man has dominion over his actions. . . ." *Id.* at q. 21, art. 2.

is sacred and inviolable. The tolerance of a person in error is not mere forbearance; it is the gracious acknowledgment of man's dignity, his creation by God, his eternal destiny, and his right to seek it in the light of his own conscience.

This general principle of tolerance, when applied to the government, is known as public tolerance and acts as a directive to the heads of states. "[I]t may be described as that exercise of political wisdom whereby the civil community, in seeking the social good of peace, not only recognizes the right of every citizen to make a serious interior commitment of faith, but also leaves everyone free to give that faith a suitable external profession and cultus, subject to the essential requirements of public order and morality."¹⁶

Such is the doctrine of the Church, stated and restated in her official documents, enunciated clearly and affirmatively in the encyclicals of the popes, and fully expounded in the *Summa Theologica* of St. Thomas Aquinas.¹⁷ This position seems to need con-

¹⁶ *Will Catholics Suppress Protestants?*, *supra* note 9, at 7.

¹⁷ "Human government is derived from divine government, which it should imitate. Though God is all-powerful and sovereignly good, He permits the occurrence of evil in the universe which He could prevent. He does so in order that the suppression of evil may not entail the suppression of greater goods or even beget worse evils. Similarly, in the case of human government, those who govern well will tolerate evil in order to foster good or prevent worse evil." AQUINAS, *SUMMA THEOLOGICA*, II-II, q. 10, ad 2.

"With the discernment of a true Mother, the Church weighs the great burden of human weakness and well knows the course along which the actions of men are being borne in this our age. For this reason, while not conceding any right to anything save what is true and honest, she does not forbid public authority to tolerate what is at variance with truth and justice for the sake of avoiding some greater evil or preserving some greater

stant reaffirmation to allay the latent suspicion that if the Church ever becomes powerful enough, it will turn prosecutor. The myriad number of Catholics who have held and do hold high political office in every branch of government is clear evidence that patriotism and faith are not conflicting virtues but rather mutually reinforcing moral habits. If all other qualifications are equal, public officials of strong moral conviction and faith are to be preferred regardless of their particular persuasion.

It would not be inappropriate here to emphasize, once and for all, that neither the Vatican nor the Catholic Church in America has any sinister or devious plans for the future of this glorious country. As far back as the days of the signing of the Declaration of Independence, Bishop John England stated: "May God long preserve the liberties of America from the union of any church

good. God Himself in His Providence, though infinitely good and powerful, permits evil to exist in the world, partly that greater good may not be impeded and partly that greater evil may not ensue. In the government of states it is not forbidden to imitate the Ruler of the world." Leo XIII, *Libertas Praestantissimum*, 2 ACTA LEONIS XIII 205 (1888).

Pope Pius XII, in suggesting a juridic world community among the society of nations, stated: "Within its own territory and for its own citizens, each state will regulate religious and moral affairs by its own laws. Nevertheless, throughout the whole territory of the international community of states, the citizens of every member-state will be allowed the exercise of their own beliefs and ethical and religious practices, insofar as these do not contravene the penal laws of the state in which they are residing." Address by Pius XII, Fifth Nat'l Convention of the Union of Italian Jurists, Dec. 6, 1953. In this same document, the Holy Father asks whether God gave any mandate to root out or repress that which is false. He states that "such a command is unknown to the common convictions of mankind, to Christian conscience, to the sources of revelation and to the practice of the Church." *Ibid.*

with state! In any country, with any religion, it is an unnatural increase of the power of the executive against the liberties of the people.”¹⁸ This has been the line consistently adhered to by the bishops of America. The National Catholic Welfare Council, the official organ of the bishops of the United States, announced in 1948: “We deny absolutely and without qualification that the Catholic bishops of the United States are seeking a union of Church and State by any endeavours whatsoever, either proximate or remote. If tomorrow Catholics constitute a majority in our country, they would not seek a union of Church and State. . . . In complete accord with the Catholic doctrine, we hold firmly that our own constitutional provisions are the best for our country. Even had we the authority to do so, we would not change one iota of them.”¹⁹

Glorious as these principles are, this is not the total picture nor the total solution. There always remains the painful and thorny problem of applying the principles to particular cases. Difficult though it may be, it is apparent that the Church has produced a solution to this problem. Over an uninterrupted period of 2,000 years — certainly a

unique experience in political history — having at her disposal some of the most brilliant and luminous minds, the Church has fashioned and forged a workable philosophy at least consistent with her own principles. But the same is not true of the American philosophy of freedom. It is not even fair to demand it of a country only in its 188th year of independence. The fact remains, however, that our political branches and, more specifically, the United States Supreme Court, the final interpreter of the Constitution, are struggling with this area of our law and have not found a satisfactory solution. Mr. Justice Brennan indicated in 1963 that the Court was under severe attack. He summarized the opposition — all in the area of freedom — as follows: “There is sectional opposition because of the desegregation cases; state opposition because of recent decisions involving state powers as they relate to aspects of criminal law; rural opposition because of the reapportionment cases, and church opposition because of the prayer case.”

There is no inference here that the opposition is valid or invalid, right or wrong, but merely that there is a serious and delicate problem. One can venture an explanation as to the source of the trouble. In our pluralistic society a strange thing has happened: values are merely described as different; they are not graded in accordance with their relative merit. There is no universal criterion, no accepted scale. It would therefore seem that all values, or at least those in the areas of freedom of speech, press and religion, are of equal weight in terms of legal protection.²⁰ Our basic problem is a fundamental confusion; there is no

¹⁸ America, Sept. 24, 1960, p. 696. Archbishop John Carroll, the first Catholic bishop in America, said: “Freedom and independence, acquired through the united efforts, and cemented with the mingled blood of Protestant and Catholic fellow citizens, should be equally enjoyed by all.” *Ibid.* Archbishop John Hughes of New York expressed this forceful thought: “I regard the Constitution of the United States as a monument of wisdom. . . . Every separate provision of that immortal document is stamped with the features of wisdom; and yet among its wise provisions, what I regard as the wisest of all is the brief, simple, but comprehensive declaration that ‘Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof.’” *Ibid.*

¹⁹ *Ibid.*

²⁰ In *Roth v. United States*, 354 U.S. 476 (1957),

philosophy proper to our system of law. Our society is well on its way to passing from a democratic society to a pluralistic collection. Certainly a democracy, in its philosophical and indeed in its traditional American expression, believes firmly in certain truths, held self-evident, and in certain rights, deemed inalienable. But today's children may not pray in school, for they may offend those who disavow any belief in God.²¹ This may be an oversimplification, but the point is obvious. It is interesting that nearly a

the Court observed that "the protection given speech and press [under the first amendment of the Constitution] was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes. . . ." *Id.* at 484. Under this theory, "all ideas having even the slightest redeeming social importance — unorthodox ideas, controversial ideas, even ideas hateful to the prevailing climate of opinion — have the full protection of the guaranties, unless excludable because they encroach upon the limited area of more important interests." *Ibid.* The "limited area" refers principally to obscenity and libel; matters of security and safety are not of interest here. This rather noble, knight-in-armor sentiment is exalted and even romantic. But problems arise in applying it to cases. For example, the matter of obscenity is not solved by the now famous definition of obscenity expounded in the *Roth* case. The "contemporary community standards" given therein are the criteria to be applied to determine if the theme of the literature under examination appeals to "prurient interest." This leads to an exasperating search for a definition of a "community" and for a further definition of "community standards." In contemporary American society everything has been espoused from nudism on the public beaches to bathing suits in the bathroom shower. Some may call a particular book art, while others call it depravity. This goes on endlessly, ultimately raising these questions: who sets values? who sets limits? Values imply philosophy, and the eternal question is, whose philosophy? In a heterogeneous society such as ours, many think there is no one correct point of view.

²¹ *Engel v. Vitale*, 370 U.S. 421 (1962).

century ago a Princeton theologian predicted that the public school system would eventually become "the most efficient instrument for the propagation of atheism which the world has ever seen . . . if every party in the state has the right of excluding from the public schools whatever he does not believe to be true."²² This observation is not to be construed as criticism of the prayer decision. It serves merely to illustrate a point, viz., that we have not galvanized our philosophy into a system of values with due concern for their relative equities.

Moreover, some find deeply disturbing the idol-worship of men like Mr. Justice William O. Douglas, who hold freedom, especially as embodied in the first amendment, as somehow in itself the great solution of all problems. Under his philosophy we must let ideas clash, let there be no restraint, regardless of the character of the exposure, moral or immoral.²³ Somehow the "truth" will emerge! But what is "truth?" Is it an entity, an ideal or a reality? How can all men recognize it? Who or what gives it substance? Who or what makes it permanent or unchanging? And if it is changing, does this not impair its validity? It appears that Mr. Justice Douglas is probing the argu-

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²² *The Priest*, May 1961, p. 380. Dean John C. Bennett of Union Theological Seminary states that "when all specific forms of religion are omitted from the world of the schools, this is in itself a negative form of religious teaching; it strongly implies that religion is peripheral and dispensable as a matter of human concern." BENNETT, CHRISTIANS AND THE STATE 236 (1961).

²³ O'DOUGLAS, THE RIGHT OF THE PEOPLE *passim* (1962).

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(Continued)

ments for an ultimate criterion or goal.²⁴ Liberty, however, is not this goal, but merely a means to its achievement. Our search is for a philosophy of values. Our task is to reconstitute our ideas and ideals. No super-Supreme Court is the solution. Constitutional amendments can alter the supreme law of the land, but they cannot change the attitudes, the values, the ideals and the prin-

²⁴ Mr. Justice Oliver Wendell Holmes, Jr., certainly with as skeptical a mind as Mr. Justice Douglas, looked on man as a speck in the universe, a ganglion. Yet he once said that the happiness of the lawyer went beyond material success: "An intellect great enough to win the prize needs other food besides success. The remoter and more general aspects of the law are those which give it universal interest. It is through them that you not only become a great master in your calling, but connect your subject with the universe and catch an echo of the infinite, a glimpse of its unfathomable process, a hint of the universal law." Holmes, *The Path of the Law*, in *COLLECTED LEGAL PAPERS* 167, 202 (1920).

ciples which are at the heart of every legal system.

Perhaps this seems to be an idyllic utopian solution, well beyond our grasp. But justice, and a philosophy of justice, can be arrived at only by careful, painstaking and patient effort, producing a judicial edifice built to withstand the winds and waters of time. This is the work and responsibility of every citizen of this fair land, but it is the pre-eminent duty, indeed high privilege, of the legal profession to whom is entrusted the administration of justice. It is ours to illuminate the image of democracy. Let us bear in mind that for ages the democratic principles of government were in disrepute. It was in the United States that, with the establishment of the Constitution, the revolutionary example of a democratic republic was revealed to fascinate the world, to confuse its friends and defeat its enemies. Indeed we are as a city on a hill — all nations and all people look upon us, wondering if this nation, "conceived in liberty, and dedicated to the proposition that all men are created equal . . . can long endure."