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Part III: Liberty vs. License

Modern Western people, perhaps Americans above all, tend to be enamored of, not to say preoccupied with, the question of freedom or liberty – "live free or die!" – but if pressed, few could give anything like a coherent account of what these words mean. The social teaching of the Church comes to our aid on this question as on so many others, with a teaching that is clear, profound, and rich with practical applications.

Pope Leo XIII's 1888 encyclical *Libertas Praestantissimum* – sometimes referred to as *De Libertate Humana* or simply *Libertas* (hereafter, *LP*) – contains what is by far the most ample discussion of human freedom in the Church's Magisterium. The encyclical may be divided into three parts: free-will (§3–§6), law (§7–§13), and the errors of liberalism (§14–§46). The tone of the encyclical is set by the first paragraph. Freedom confers on man the dignity of being *master of his actions*, yet this very freedom can be the means not only of his reaching the highest good, but also of his sinking to the lowest evil. Though Our Lord Jesus Christ has set man free from sin and given him the gift of genuine spiritual freedom, there are some who think the Church an enemy of human freedom because they have a perverse or exaggerated notion of it (§1). The remainder of the encyclical unfolds what is sketched here: a true notion of freedom contrasted with a false and absurd notion, and the political implications of each.

Freedom and the Need for Law

Leo XIII begins with a philosophical analysis indebted to St. Thomas Aquinas. Natural freedom is the "faculty of choosing means fitted for an end proposed" (§5). "The end, or object, both of the rational will and of its freedom is that good only which is in conformity with reason" (§5), i.e., something that reason perceives to be good and judges to be choiceworthy. However, both reason and will are imperfect faculties and can make mistakes. Reason can take to be a good something which is, in fact, bad for a person; when the will, dependent on reason, freely acts according to this false judgment, sin is the result (§6). Sin thus testifies to freedom as disease to health, whereas perfect freedom acting in perfect wisdom would never fail to achieve what is best. God and the Saints who cannot choose evil are not *less* free, but *more* free, while the more a sinner sins, the more he becomes a slave of sin (cf. John 8:34).

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Being fallible, our exercise of free-will in this world needs "light and strength to direct its actions to good and restrain them from evil." In a word, we need *law*, a determination of reason prescribing to the will what it should embrace or shun in order that man's ultimate end might be attained (§7). The *natural law* engraved in the mind of man is "our reason, commanding us to do right and forbidding sin" (§8). This law is the rational creature's participation in the eternal law which is God Himself, infinite intelligence and goodness, Creator and Ruler of all the world.

"What reason and the natural law do for *individuals*, human law, promulgated for their good, does for the *citizens* of States" (§9). Human laws do not originate in civil society alone, nor does their rightness stem from human consent; they have their origin in natural law and its eternal exemplar, and their function is to specify what citizens must do or not do in order to serve the common good, as well as to restrain those bent on harming it. Thus,

> "the true freedom of human society does not consist in every man doing what he pleases, for this would simply end in turmoil and confusion, and bring on the overthrow of the State; but rather in this, that through the injunctions of the civil law all may more easily conform to the prescriptions of the eternal law." (§10)

True, or "moral," freedom really consists in "being free to live according to [just] law and right reason" (§13).

The Error of Liberalism

In his transition to the topic of *liberalism*, Leo XIII does not mince words: the men who, "usurping the name of liberty, style themselves *liberals*" are imitators of Lucifer, who "adopt as their own his rebellious cry, 'I will not serve'" (§14). Liberalism is the social counterpart of naturalism and rationalism, whereby supremacy is given to human reason and submission is refused to the authority of God and His Church (§15; cf. §36ff.). This makes "every man a law unto himself" and civil society the product of collective free-will; civil authority is deemed to result from the mere consent of the governed, and laws are held to owe their justice solely from their having been willed by "authorities." Such errors destroy the distinction between good and evil, make pleasure the standard of lawfulness, and open a way to universal corruption, "a road leading straight to tyranny" (§16). In such a society, religion is doomed to be "treated with complete indifference" – one of the many places where this great pope predicts the state of the world in which we now live, where liberalism is so ubiquitous it goes unrecognized.

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More controversially to Americans, Leo XIII then frontally attacks "the *fatal theory* of the need of separation between Church and State," a position of "manifest absurdity" which denies in practice the link between man's temporal everyday life and his eternal destiny (§18). Sounding the basic theme of integralism, Leo teaches that rulers owe it to the nation not only to provide for its worldly prosperity but even more to cultivate the spiritual good of the people. Political power is given by God (not by the people) in order to lead men *to* God. "Civil society must acknowledge God as its founder and parent, and must obey and reverence His power and authority. Justice therefore forbids, and reason itself forbids, the State to be godless" (§21). The harmony that should exist between Church and State may be likened to the relationship of immortal soul and fleshly body. If the soul is separated from the body, the former remains alive but the latter perishes and dissolves into dust (*ibid*.).

The Destabilizing Freedoms of Modernity

Having set down these principles, Pope Leo XIII considers various freedoms championed by liberalism—freedom of religion (§19–§22), freedom of speech (§23), academic freedom (§24–§29), freedom of conscience (§30)—explaining why *unlimited* freedom in each case is impossible in principle and massively destabilizing whenever attempted in practice. "Right [*ius*] is a moral power [*facultas moralis*] which … it is absurd to suppose that nature has accorded indifferently to truth and falsehood, to justice and injustice" (§23). "It is contrary to reason that error and truth should have equal rights" (§34). As error and moral vice are directly opposed to the common good of civil society, they enjoy no claim to protection by civil authority. "It is quite unlawful to demand, or to defend, or to grant unconditional freedom of thought, of speech, or writing, or of worship, as if these were so many rights given by nature to man. For, if nature had really granted them, it would be lawful to refuse obedience to God" (§42). I will come back a little later and dig into the question of freedom of speech.

Can we still say that *freedom of conscience* exists? Could we give this popular term a legitimate meaning? Leo XIII says we can do so, and that the Church always has done so:

> "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 freedom, a freedom worthy of the sons of God, which nobly maintains the dignity of man … This Christian freedom bears witness to the absolute and most just dominion of God over man, and to the chief and supreme duty of man toward God." (§30)

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Freedom of conscience is not only legitimate, it is one of man's noblest freedoms, one for which countless martyrs have laid down their lives. What is crucial is to see that "freedom" here means the right use of our will towards the supreme good and all that is in harmony with that good, while "conscience" means a well-informed faculty of practical judgment.

Prudential Toleration of Evil

As if in response to a question on the minds of his readers, Leo XIII joins to his critique of liberalism a substantial coda on the necessity of a *policy of toleration* in some States (§33–§35).

"The Church weighs the great burden of human weakness, and well knows the course down which the minds and actions of men are in this our age being borne. 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 of obtaining or preserving some greater good" (§33).

Even God, says the pope, permits certain evils lest a greater good be impeded or a greater evil ensue. Although such toleration can be justified by the exigencies of the common good, the evil may never cease to be called *evil* by those who know better, nor may it be approved of or desired for itself, as if the best condition for a State is one in which the errors of false religions are tolerated or, worse, encouraged in a sort of equal-opportunity relativism. The more a State is compelled to tolerate evils, the further it is from perfection; hence toleration, too, must be limited to what is strictly necessary for the circumstances, and there are times when toleration would be wrong (§34). "The Church usually acquiesces in certain modern liberties, not because she prefers them in themselves, but because she judges it expedient to permit them" (*ibid.*). The pope also takes pains to specify which type of liberalism he is condemning (§37–§46), noting that it is possible to uphold "some equitable adjustment consistent with truth and justice" between the Church and "the modern system of government," so long as one views it as an indulgence, a less-than-ideal state of affairs (§41).

Though *LP* states nothing that could not be found in the pages of St. Thomas Aquinas or the writings of prior sovereign pontiffs, its radiant synthesis of Catholic doctrine on the subject it treats makes it a document of outstanding worth. Routinely appealed to by the popes of the first half of the twentieth century, *LP* somewhat surprisingly makes an appearance in the footnotes of the Second Vatican Council (e.g., *Dignitatis Humanae, Gaudium et Spes*), although its meaning is contradicted by the overall tenor of the Council's teaching; *LP* continues to be cited in the post-Conciliar Magisterium (e.g., *Centesimus Annus, Veritatis Splendor, Catechism of the Catholic Church*). One has the impression that so impressive a

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document cannot be ignored but must somehow be engaged, if only politely. We can certainly hope for a time when the rulers of the Church will actually subscribe wholeheartedly to its teaching.

Civil Liberties: The Problem

A fundamental question of political philosophy and one that faces us every day is what range of freedom of behavior should be allowed to, or is inherent in, citizens of a state – hence the term "civil liberties," as distinct from other kinds of liberty (e.g., the psychological liberty identical to freedom of will, the spiritual liberty identical to holiness). Not everything is permissible, for some actions cause grave harm to social life; yet not all immoral behavior can be prohibited, lest fallen nature be unduly strained and social unrest result.

Until modern times, nearly every philosopher and theologian agreed that any significant exercise of freedom in the public forum – forming associations with others, speaking or publishing one's thoughts, undertaking communal acts of divine worship, and the like – had to be placed under certain limits if the society's common good were to be safeguarded, and that government had the power and the obligation to impose such limits. In Catholic countries, rulers were expected to defend the Faith against heresy, and the code of civil law was expected to reflect the natural law as interpreted by the Church.

The modern problem of civil liberties stems from the Enlightenment's secularist, individualist conception of social life, wherein the individual's perception of the good is accorded a theoretical primacy, a nation's government becoming essentially the citizens' mouthpiece, mirror, and policeman. In a so-called "social contract," citizens are assumed to be entitled to the exercise of all liberties compatible with "public order," understood in a positivistic sense. For example, each man is to be left entirely free to determine his own religious beliefs; to worship one God, twenty gods, or no god; to defend or attack, in speech or print, whatsoever opinions he considers right or wrong.

Civil Liberties: The Church's Response

Pope Gregory XVI's encyclical *Mirari Vos* (1832) established the basic principle: unrestrained freedom to act, speak, or publish as one fancies is an "absurd and erroneous proposition" guaranteed to pull down the fabric of society and to occasion the loss of innumerable souls (§14). Pius IX affirmed this judgment in *Quanta Cura* (1864) and the *Syllabus of Errors* appended to it (see n. 79). It was not, however, until the encyclical we have been discussing, *Libertas Praestantissimum*, that the Church could be said to enjoy a fully worked-out account. According to Leo XIII, the provision and exercise of civil liberties is intelligible only in reference to the moral perfection of the individual and the sound order

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of civil society – that is, in reference to the social body's attainment of genuinely common goods such as peace, justice, truth, and ultimately God. John Paul II captures well Leo's concerns:

> "[*Libertas Praestantissimum*] called attention to the essential bond between human freedom and truth, so that freedom which refused to be bound to the truth would fall into arbitrariness and end up submitting itself to the vilest of passions, to the point of self-destruction. Indeed, what is the origin of all the evils to which *Rerum Novarum* wished to respond, if not a kind of freedom which, in the area of economic and social activity, cuts itself off from the truth about humanity?" (*Centesimus Annus* [*CA*], §4)

The error, he continues,

> "consists in an understanding of human freedom which detaches it from obedience to the truth, and consequently from the duty to respect the rights of others. The essence of freedom then becomes self-love carried to the point of contempt for God and neighbor, a self-love which leads to an unbridled affirmation of self-interest and which refuses to be limited by any demand of justice." (*CA*, §17)

Inherent Limits to Free Speech

The phrase "freedom of speech" is shorthand for the legal-political issue of what kind of right belongs to a person by nature or by citizenship to express his thoughts outwardly in the public forum, and what limits may or should be placed upon this activity. It makes an especially good case study for how civil liberties work (or should work), bringing into play all the elements of Catholic Social Teaching.

The Catholic tradition begins its distinctive analysis from a fact of human nature, namely, that speech is a *rational* activity that can be done well or poorly, rightly or wrongly. Its due exercise is measured by its purpose, which is, broadly, the communication of truth, and therefore also the discovery and defense of truth – including not only speculative truths, but also advice, opinions, predictions, and the like, where one is attempting to come as near the truth as possible. From this intimate connection between the human mind and truth arises an *inalienable right* to the proper use of speech in all its forms, which translates into a just claim upon others, whether private citizens or public authority, to respect this right.

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By striking at the intellect's natural inclination to the truth, government prohibition of due freedom of speech is a tyrannical act pure and simple. Notorious examples of this tyranny were supplied by the 20th century's totalitarian regimes, which idolized one or another ideology as "truth" and ostracized those who sought truth outside of it. (Tellingly, the Soviet Communist Party's newspaper was named *Pravda,* "Truth.") At the same time, these principles illuminate the contrary error of liberalism, which absolutizes rights by ignoring or denying definite *goods* on which they rest, i.e., by severing the exercise of an activity from its natural purpose. In liberal democracies, freedom of speech is typically understood in absolute, individualistic terms – namely, as an inherent freedom to say or write *whatever one pleases*, provided a positivistically-conceived "public order" is not disturbed (cf. *CCC*, 2109), a view that Gregory XVI in 1832 characterized as "that harmful and never sufficiently denounced freedom to publish any writings whatever and disseminate them to the people, which some dare to demand and promote with so great a clamor" (*Mirari Vos*, §15).

What is the Good that Supports Freedom of Expression?

In reality, speech, like any created thing, is a finite good; like all finite goods, it is ordered to an end outside itself, and its goodness consists in its order to, and above all its attainment of, that end. Man, by nature, is neither a beast nor a god; he is a social animal who lives his life in a community of fellow citizens who share labors, pleasures, and ideas. An individual's mind is ordered to truth not simply for its own perfection, but also for the benefit of others who may become his partners in conversation. Because the human mind naturally *craves* truth and nothing less is worthy of it, a speaker or writer *owes* the same truth to others, and he *injures* them by refusing to share knowledge that they have a right to know, by disseminating errors, or by plain lying – the most obvious case of an abuse of the faculty of speech.

As St. Augustine often says, any good thing susceptible to abuse cannot be a perfect or unqualified good, but is rather an imperfect, relative good, deriving such goodness as it has strictly from the greater good toward which it is aimed. Accordingly, no one can have an unlimited "right" to use, or exercise, something which is not an unlimited good, or put positively, one may freely use a limited good only within due limits. There are two such limits: the truth, which stands as measure or form to the human mind (and in that sense, "limits" it; when a certain truth perfects my mind – say, the Pythagorean theorem – it simultaneously excludes all opinions incompatible with it); and the good of others in society, to whom truth is owed (this condition limits the speaker to expressing publicly only what he understands to be true, and not indiscriminately, but according to the right circumstances of audience, place, time, manner, and purpose).

Indeed, the very existence of legitimate civil authority and its boon, tranquility of order,

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depends upon the *non*-absoluteness of individual rights and the superiority of goods common to all – goods among which truth, especially truth about God, stands foremost. To posit an unlimited right is equivalent to favoring tyranny, for on that hypothesis whoever happens to have power may exercise his "right" as he wishes, and whoever lacks power is trampled upon (cf. *LP* 16 and 31; *CA* 44ff.). This, in fact, is the hidden premise of a positivistic legal order: it is only by "common consent," always changeable and changing, that any form of behavior is to be considered offensive and punishable. Thus, over time, even the murder of unborn children and the abomination of sodomy have found their well-paid legal advocates, and in the minds of many have been removed, as it were, from the list of crimes. If a society or a regime turns its back on the natural law, all moral evaluations reduce to positive, self-motivated acts of will; law becomes merely a reflection of *majority egoism*. Obviously, this perversion of social life, incessantly critiqued by the Catholic Church, flows from a view of personal rights that cannot be sustained either on natural or supernatural criteria.

Man Has No Right to Abuse a God-given Power

Since the God-given purpose of speech is to discover, declare, discuss, or defend the truth, the power of speech is used virtuously whenever the speaker, in good conscience, endeavors to speak truth, and thereby to lead others to knowledge of the truth or away from falsehood. When, on the other hand, it is used for deception, cruelty, perjury, moral depravity, etc., the speaker is *abusing* the power of speech, and hence he forfeits the immunity of the natural law and makes himself subject to civil prosecution. Speech is a natural power and the use of speech a natural good; accordingly, the *abuse* of speech is contrary to nature and cannot be a natural *or civil* right.

Pope Pius XII reiterated the traditional teaching that "error has no rights": what is in itself false can never be a good for any intellect (*Ci Riesce,* December 6, 1953). Even if error has no rights, however, it does not follow that an *erring person* has no rights; therefore, persons are always to be treated with respect, whereas errors and other evils deserve contempt and, to the extent possible, should be eradicated. Something like pornography has no *right* to exist, nor can those who produce it have any right to do so. Many speak equivocally of such "rights," but they are pure fictions, as are so-called "rights" to abortion, sterilization, euthanasia, same-sex "marriage", and so forth.

For the benefit of society as a whole, civil authority *must* limit, and in practice has *always* limited, the exercise of natural powers. For example, just as I am forbidden to kill or maim an annoying neighbor, so I may not sound my opinions in the street with a bull horn at 3 A.M.; indeed, if my opinions are sufficiently obnoxious, I may be forbidden to sound them at *any* time of day or night. If a traveller were fool enough to kid around with a companion at

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an airport, “I guess those guards didn’t find the knife in my bag,” an officer who overheard the comment would search him in a flash. If there were no evil in the world, men could be permitted to say and do whatsoever they pleased, and all would be to the good. Freedom of speech was unlimited in the Garden of Eden before the Fall. But since there *are* miscreants who do evil, citizens need to be protected, for otherwise their own happiness will be endangered and the community cannot prosper. As Leo XIII wrote: “If unbridled license of speech and of writing be granted to all, nothing will remain sacred and inviolate; even the highest and truest mandates of nature, justly held to be the common and noblest heritage of the human race, will not be spared” (*LP* 23). How true this observation is requires no demonstration today.

Discretionary Prudence about Evils

Granting, as Catholics have always done, that the State has *by its very nature* the right and the duty to forbid harmful uses of speech and even to destroy publications that undermine the common good of society (cf. Leo XIII, *Immortale Dei* 32; *LP* 23), a serious question still remains: How should the State’s policy vis-à-vis abuses of speech or press be determined?

Following Aquinas, Leo XIII teaches that evils may be tolerated if, and only if, attempts at abolishing them would lead to a still greater evil or impede a greater good. Such toleration does not involve positively *willing* the evils, but merely *allowing* them to remain unchecked (*LP* 33–35). This distinction is not merely semantic, for it stresses the truth that the ruler does not choose the ultimate *end* of government; he chooses rather the *means* by which, in his judgment, this end may best be achieved. The supreme end of political society is the attainment of the common good (see, e.g., Leo XIII, *Immortale Dei* 5 and *Rerum Novarum* 35; Pius XII, *Summi Pontificatus* 59). Thus, it is evident that any activity opposed to the common good may be legitimately restrained or proscribed by public authority.

The tightening or relaxation of civil liberties and the toleration of evils incident upon liberty are left to the discretion of the statesman’s prudence, aspiring to the highest realization of the common good under the possibilities afforded by concrete circumstances.

To be continued. See here for Part I and here for Part II.

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