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THE CONTEMPORARY COMMUNIST challenge to Western society has had at least one good result. It has furnished an impulse toward formulating more articulate theories of democratic institutions. In the United States the tendency has generally been to rest content with purely pragmatic and utilitarian views; but now the need is felt for an intellectually more respectable philosophy of the rather vague thing called "the democratic way of life". There is a growing realization that if the institutions of a free society are to be effectively defended, it is essential to have a genuinely philosophical understanding of them. No mere "love" of them will suffice, unless the love is grounded in intelligence. This need for philosophical understanding is notably felt with regard to the institution of free speech.

This article does not pretend to discuss the problem of free speech in all its amplitude. My limited purpose is, first, to comment briefly on the present legal situation in the United States, and secondly, to make some equally brief reflections on the institution of free speech from a philosophical and Catholic point of view.

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* The Philippine Constitution is so closely modelled upon the Constitution of the United States, that any light thrown upon the American document must necessarily aid to an understanding of its Philippine counterpart. The constitutional right of free speech has during the past year in the Philippines been the subject of acrimonious debate, and therefore we have invited an internationally known authority to discuss its understanding in the American system.

The Legal Situation

A multitude of cases involving freedom of speech, both religious and political, have been decided by the Supreme Court of the United States. It is not a question here of analyzing them in detail. I do not write as a lawyer. The following comments are those which suggest themselves to a lay mind after a study of the cases of major importance that have been adjudicated by the Supreme Court.

The initial impression is one of confusion and uncertainty. The nine judges are not unanimous in their decisions. Often those who agree with the decision of the Court disagree with the Court's reasoning. And even the dissenters do not always agree on the reasons for dissenting. It is clear that the Court feels itself to be confronted by a vexing problem which grows continually more complex in consequence of an intensified clash of ideas, and in consequence too of the multiplication of media of communication. Moreover, the Court does not seem to be at all sure that even the principles of solution have yet been formulated with requisite definiteness.

In any event, it is not difficult to define the general climate of feeling in which the decisions of the Court are conceived. It is a climate of anxious concern to provide the fullest possible protection to the individual in the expression of his individual opinions, however singular, heterodox, bizarre, and even offensive they may be. The individual and his right to express whatever ideas and even feelings he may have—this seems to be the focus of the Court's concern.

This attitude has not lacked critics even within the Court itself. A criticism of it is implied in the dissent of Mr. Justice Jackson in the *Kunz** case:

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* A New York City ordinance required a permit from the police commissioner in order that a minister might preach in public places. Kunz received a permit in 1946, which was revoked in November of that year after a hearing which indicated that he had ridiculed and denounced the religious beliefs of others. Subsequent permits were denied him; and then,

> Essential freedoms are today threatened from without and within. It may become difficult to preserve here what a large part of the world has lost—the right to speak, even temperately, on matters vital to spirit and body. In such a setting, to blanket hateful and hate-stirring attacks on races and faiths under the protections for freedom of speech may be a noble innovation. On the other hand, it may be a quixotic tilt at windmills which belittles great principles of liberty. Only time can tell. But I incline to the latter view . . .[1]

Later in the same dissent he cites Lord Russell: "The problem, like all those with which we are concerned, is one of balance; too little liberty brings stagnation, and too much brings chaos." Mr. Justice Jackson adds: "Perhaps it is the fever of our times that inclines the Court to favor chaos. My hope is that few will take advantage of the license granted by today's decision."[2] The point seems to be sound. Concern for an individualistic freedom of utterance, when it becomes excessive, encourages license and not liberty, chaos and not ordered freedom.

Despite these criticisms, however, the prevailing attitude of the Court has been, as described above, a preoccupation with the individual's right of expression. And that is the first important thing to be observed about the legal position of free speech in the United States.

Legal Theory of the Court

The second point regards the legal principles that guide the Court's decision. What are they? The central principle is that government has no right to place prior restraints on the individual's right to speak. The principle has often been stated. Thus, for instance, in the *Kunz* case:

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after speaking without one, he was arrested for violating the ordinance. In reversing his conviction the U. S. Supreme Court found the ordinance unconstitutional in application, inasmuch as the ordinance gave an administrative official discretionary power to control in advance the free speech of citizens of New York City. Such a law the Court decided was clearly invalid as a prior restraint of First Amendment liberties.

> We have here then an ordinance which gives an administrative official discretionary power to control in advance the right of citizens to speak on religious matters on the streets of New York. As such, the ordinance is clearly invalid as a prior restraint on the exercise of First Amendment rights.[3]

Mr. Justice Frankfurter in his concurring opinion in the *Kovacs* * case gives, in a subordinate clause, a simpler statement of the principle: "So long as a legislature does not prescribe what ideas may be noisily expressed and what may not be, nor discriminate among those who would make inroads upon the public peace, it is not for us, etc." [4] In still simpler terms, government is not the patron of one idea over any other idea; it is simply the patron of freedom for all ideas.

First Basis: Pragmatism

One must then further ask, upon what ultimate grounds is this legal principle based? The answer is a bit difficult, because two different lines of thought appear. The more common line is pragmatic. It is, for instance, contained in a statement of Mr. Justice Roberts, made in 1940, to which the Court later makes frequent reference:

> In the realm of religious faith, and in that of political belief, sharp differences arise. In both fields the tenets of one man may seem the rankest error to his neighbor. To persuade others to his point of view, the pleader, as we know, at times resorts to vilification of men who have been or are prominent in church and state, and even to false statement. But the people of this nation have ordained in the light of history that, in spite of the probability of excesses and abuses, these liberties are in the long view essential to enlightened opinion and right conduct on the part of citizens of a democracy.[5]

This statement makes no pretense to be philosophical.

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* The Court upheld the conviction under a Trenton, New Jersey, ordinance prohibiting the unlicensed use of sound trucks emitting raucous noises. Such legislation, the Court held, involves no violation of constitutionally guaranteed liberties for freedom of speech does not require legislation to be insensible to claims by citizens to comfort and convenience.

It starts from the fact of existent diversity of religious and political beliefs, alludes vaguely to past experience in the control of opinion, and suggests that the most practical expedient is for the law to take the side of freedom of utterance. If any principle is invoked, it is simply that of the lesser evil: the abuse of freedom is a lesser evil than the curtailment of freedom. Underlying the statement is that general distrust of secular government as a judge of ideas, which has been an American characteristic. Also underlying the statement is the unargued confidence, current since the French Revolution, that under conditions of full freedom, reason and truth will somehow prevail and result in enlightened opinion and right conduct.

These pragmatic considerations, and especially this idealism, undergird the further Court doctrine, which extends the above statement, that freedom of speech, like the other freedoms of the First Amendment, enjoys a "preferred position" within a free society. This doctrine leads to the conclusion once stated by the Court: "Only the gravest abuses, endangering paramount interests, give occasion for permissible limitation [of First Amendment freedoms]." [6] Actually, the main dispute within the Court has centered on the question, when does an abuse become grave enough, or when is a paramount interest sufficiently endangered, to permit legal limitation of free speech? Or, what comes to the same thing, what are the standards whereby to judge between liberty (and its permissible abuses) and license (with its intolerably injurious consequences)?

Second Basis: Relativism

Although the general attitude of the Court is pragmatic (to the point indeed of a rather doctrinaire pragmatism), the temptation has been felt, notably by Mr. Justice Frankfurter, to go further and seek some philosophical ground. This ground is found in the philosophy of Mr. Justice Holmes: "The ideas now governing the constitutional

protection of freedom of speech derive essentially from the opinions of Mr. Justice Holmes." [7] Mr. Frankfurter goes on to give the essence of the matter. He makes Holmes's distinction between "liberties which derive from shifting economic arrangements" and "those liberties of the individual which history has attested as the indispensable conditions of an open as against a closed society." The former are fairly readily subject to curtailments by laws and courts. The latter have a specially sacrosanct and inviolable character:

> But since he [Holmes] also realized that the progress of civilization is to a considerable extent the displacement of error which once held sway as official truth by beliefs which in turn have yieded to other beliefs, for him the right to search for truth was of a different order than some transient economic dogma. And without freedom of expression thought becomes checked and atrophied.... Accordingly, Mr. Holmes was far more ready to find legislative invasion where free inquiry was involved than in the debatable area of economics.[8]

In other words, Mr. Frankfurter would found constitutional freedom of speech upon the philosophic ground of Holmes's dogmatic relativism of truth—upon the denial that truth in any absolute sense exists, and upon the consequent assertion that the highest, most untouchable value is the search for truth, not truth itself. Mr. Justice Jackson, for all that he belongs to the conservative wing of the Court in this matter, seems to embrace the same philosophy, though less forthrightly:

> As a people grows in capacity for civilization and liberty, their tolerance will grow, and they will endure, if not welcome, discussion even on topics to which they are committed. They regard convictions as tentative and know that time and events will make their own terms with theories, by whomever and by whatever majorities they are held, and many will be proved wrong. But on our way to this idealistic state of tolerance the police have to deal with men as they are. [9]

The implication seems to be that for the moment the old song is right in maintaining that "a policeman's lot is not a happy one," but that the years (or centuries) to come will see an improvement, after the triumph of a relativist philosophy.

It would seem that, as the issue of free speech has pressed itself upon the Court in these latter years, the impulse to find a theory for this freedom has made itself felt. The only trouble is that the theory upon which the Court seems to fall back, as upon the ultimate ground and justification of its practical decisions, is a false and disastrous philosophical relativism. Worse still, it is the particularly shallow kind of relativism proposed by Holmes—the theory of the "free market" as applied to ideas, which maintains that all ideas are free and equal, that each must be left to make its way in the unlimited competition of the market place, and that those which survive, for the length of time that they survive, are "true". In this theory the sole function of law and government is to protect the freedom of the market; it has no interest in the goods—the ideas and opinions—that pass through the market, and it does not care which ideas survive and which ideas perish.

Limitations of Freedom

Both the pragmatism and the relativism of the Court lead it to extend individual freedom of speech to the utmost limit. However, there is a limit; the right of free speech is not altogether absolute. The classic rule was stated by Holmes in the *Schenck* * case:

* Conviction for violation of the Espionage Act of 1917 upheld because distribution of a pamphlet calculated to cause insubordination among inducted members of the military services constitutes a conspiracy to obstruct military induction. Such a conviction, the court held, does not abridge free speech as conceived under the First Amendment, for the question in every case is whether the words are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent.

> The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic. It does not even protect a man from an injunction against uttering words that may have all the effect of force.[10]

This concept was later amplified by Mr. Justice Murphy in the *Chaplinsky* case:

> There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any constitutional problem. These include the lewd and obscene, the profane, the libelous, and insulting or "fighting" words—those which by their very utterance inflict injury or tend to incite an immediate breach of the peace.[11]

There are therefore certain kinds of speeches which one is not legally free to make. However, the Court has found itself in trouble in the application of this rule. The difficulty lies in the reconciliation of this rule with the rule against prior censorship of opinions. The *Kunz* case illustrated the difficulty. Reversing the decision of the New York Court of Appeals, the Supreme Court invalidated an ordinance of New York City which made it unlawful to hold public worship meetings on the streets without first obtaining a permit from the city police commissioner, because this ordinance invested restraining control over the right to speak on religious subjects in an administrative official without providing appropriate standards to guide his actions. The fact, however, was that Kunz's speeches were highly injurious and insulting to Catholics and Jews. The Court overlooked this fact in ruling in favor of Kunz. However, in his dissent, Mr. Justice Jackson questioned the decision of the Court on the grounds that this kind of provocative language, uttered on the public streets, cannot claim constitutional protection. He denied Kunz's contention that he was simply exercising his constitutional rights, and implied that Kunz had no right to demand that New York City "must

place its streets at his disposal to hurl insults at the passerby."[12]

Mr. Jackson also raised the important question whether such a "freedom," granted to Kunz and his kind, would not constitute a violation of the religious freedom of others:

> Is official action the only source of interference with religious freedom? Does the Jew, for instance, have the benefit of these freedoms when, lawfully going about, he and his children are pointed out as "Christ-killers" to gatherings on public property by a religious sectarian sponsored by a police bodyguard?[13]

Finally, Mr. Jackson puts a pertinent question:

> In streets and public places all races and nationalities and all sorts and conditions of men walk, linger, and mingle. Is it not reasonable that the City protect the dignity of these persons against fanatics who take possession of its streets to hurl into its crowds defamatory epithets that hurt like rocks?[14]

Principle of Ordered Liberty

Actually, the Court has made an effort to avoid an anarchic concept of liberty and to defend a concept of "ordered liberty". Ordered liberty is limited by a decent respect for the rights of others. It is also limited by the police power of the state, whose proper extension is to all the needs of public order: "The police power of a state extends beyond health, morals and safety, and comprehends the duty, within constitutional limitations, to protect the well-being and tranquility of a community."[15] The principle of the rights of others was invoked in the *Kovacs* case:

> The right of free speech is guaranteed every citizen that he may reach the minds of willing listeners, and to do so there must be opportunity to win their attention.... Opportunity to gain the public's ears by objectionable amplified sound on the streets is no more assured by the right of free

> speech than is the unlimited opportunity to address gatherings on the streets. The preferred position of freedom of speech in a society that cherishes liberty for all does not require legislators to be insensible to claims by citizens to comfort and convenience. To enforce freedom of speech in disregard of the rights of others would be harsh and arbitrary in itself.[16]

The principle of public order was stated by Chief Justice Hughes in the *Cox** case: "Civil liberties, as guaranteed by the Constitution, imply the existence of an organized society maintaining public order, without which liberty itself would be lost in the excesses of unrestrained abuses."[17] This principle, like the preceding one, does indeed furnish some standard of limitation upon the right of free speech. And the Court has conceived its function to be that of "balancing" the requirements of the various rights and interests involved in particular cases.

Concrete Needs Yield to Abstract Theory

However, although the outcome of the balance is not seldom unpredictable, one has the impression that the balance is always somewhat loaded. There seems to be the following difficulty. On the one hand, the problem of the rights of others and of the requirements of public order is posited in the concrete. Whether these rights will be violated and whether public order will be disturbed depends largely upon the concrete content of the utterance, the circumstances in which it is made, the dispositions of the hearers, etc. On the other hand, the individual's right to freedom of utterance is initially conceived in abstract, not to say doctrinaire, fashion; so too is the supporting rule that there may be no prior gov-

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* The Supreme Court affirmed a judgment of conviction for violation of a statute prohibiting organized parades on public streets without a permit. The issue of a permit was subject to reasonable discretion determined by public safety and convenience as to time, place and manner of such use of the streets. Authority to so control the use of public highways is not inconsistent with civil liberties in the opinion of the Court.

ernment censorship of utterance, and by consequence (as the Court tends to insist) no prior licensing of the right to speak. The "load" in the balance consists of the Court's predominant disposition to apply, at times a bit ruthlessly, the abstract doctrinaire rules, under greater or less disregard of the particular demands of the more concrete balancing principles. It is this disposition which gives point to Mr. Justice Jackson's warning to the Court in his dissent in the *Terminiello** case:

> The Court has gone far toward accepting the doctrine that civil liberty means the removal of all restraints from these crowds and that all local attempts to maintain order are impairments of the liberty of the citizen. The choice is not between order and liberty. It is between liberty with order and anarchy without either. There is danger that, if the Court does not temper its doctrinaire logic with a little practical wisdom, it will convert the constitutional Bill of Rights into a suicide pact.[18]

American Constitution and Freedom

So much for a description of the current legal situation in the United States. Obviously, one must reject the relativistic philosophy of truth which the Court has recently come to allege in support of its attitude and decisions. However, it should be noted that this philosophy was not originally and inherently implied by the First Amendment provision that "Congress shall make no law . . .

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* Arthur W. Terminiello addressed Christian Veterans of America in Chicago, Feb. 7, 1946. His speech occasioned a violent riot. He was arrested, convicted and fined $100.00. By a five-to-four decision the Supreme Court reversed the Illinois judgment convicting petitioner for violation of a Chicago ordinance. This ordinance provided that anyone could be convicted of disorderly conduct if in public speaking he should contribute to "any improper noise, riot, disturbance, breach of the peace or division tending to a breach of the peace." In charging the jury the trial judge stated that "breach of the peace" includes a speech which "stirs the public to anger, invites disputes, brings about a condition of unrest or creates a disturbance." The Supreme Court held the ordinance invalid on grounds of vague delineation of the crime, without reaching the further question whether the content of the speech carried it outside the scope of constitutional guarantees.

abridging the freedom of speech or of the press." No philosophical doctrine about the nature of truth lay behind this restriction of governmental power. Such theory as did lie behind it was purely political. The first premise was a sharp distinction between state and society, that is, between the voluntary and the coercive aspects of social existence. This distinction involved a subordination of the state to society, and a concept of the state (meaning primarily the law, and government as the agent of law) as simply instrumental to the purposes of society, and indeed instrumental only to a severely limited number of these purposes. The problem of truth, especially of religious truth, was removed from the area of governmental or legal concern and deposited in the area of society, there to be solved, if possible, by the processes of freedom, and not by the enactments of law.

In a word, American government was to have no truths to teach; the teaching of the truth was to be done by associations, including the Church, within society. Again, government was to have no power of deciding between conflicting beliefs and no function of protecting the teaching of one rather than of another. Its sole functions were to be, first, the protection of individual and social freedom to seek the truth and to teach it, and secondly, the protection of public order, including an order of minimal public morality, against abuses of freedom. It is in the light of this theory of government that the American institution of free speech must initially be judged, having in mind that these restrictions on governmental power were imposed by popular consent. It may be well to remark that, in proposing a relativist philosophy of truth as the basis of the First Amendment, the Supreme Court is being false to the tenor and spirit of this part of the Bill of Rights, which expressly forbids government in any of its branches to adopt and impose any such sectarian philosophy.

The special character of the American system might perhaps be illustrated by comparison with the Constitution of Eire. The pertinent provision runs thus:

> The State guarantees liberty for the exercise of the following rights, subject to public order and morality: The right of citizens to express freely their convictions and opinions. The education of public opinion being, however, a matter of such grave import to the common good, the State shall endeavor to ensure that the organs of public opinion, such as the radio, the press, the cinema, while preserving their rightful liberty of expression, including criticism of Government policy, shall not be used to undermine public order or morality or the authority of the State. The publication or utterance of blasphemous, seditious or indecent matter is an offence which shall be punishable in accordance with the law.

This constitutional provision reveals the concept of the state that the Irish Constitution contains. It reflects the Continental idea rather than the British or American one. It does not indeed go so far as to accept the concept of *l'Etat enseignant* ("the state as a teacher") characteristic of France under the ancient and restored monarchies, under Napoleon, and under the Republic, and of Germany under the "enlightened despots". However, it goes farther than the British and American concept of government. It grants to the state that manner of negative power of teaching by which official state agencies may decide what shall not reach the public mind. The premise of this grant of power to the state is the grave importance of the education of public opinion to the common good.

This principle is, of course, recognized in the American system; indeed it is insisted upon. However, the American conclusion from the principle seems to have been the contrary of the Irish conclusion. Behind the constitutional law of the United States is the conviction that public opinion is so important that the task of educating it may not be entrusted to government, either by way of positive teaching or by way of censorship. This task is committed to all kinds of free agencies within society. Even the public school system is not a state system in the Continental sense; its educational content is not determined by government.

Catholic Point of View

There is no space here to criticize at length the American theory of free speech (in so far as there is such a theory) or other contrasting theories. The interested reader will find a brilliant critique of freedom of speech, as based upon the philosophical and political theories of eighteenth and nineteenth-century rationalism, in an article by a Protestant author, Gerhart Niemeyer, "A Reappraisal of the Doctrine of Free Speech".[19] The author's argument is that this theory of free speech, when consistently applied in institutional practice, tends to discredit and destroy the three assumptions on which it is based—the pre-eminent value of truth, the concept of "the people" as a structured moral entity with a genuine "will," and the ideal of rationality and reasonableness as the supreme social good. I shall not attempt to summarize the argument; but I must say that it is made with complete success. The author's positive thesis is that all ideas are not free and equal, that there is a distinction between right and wrong uses of speech in public life, and that there must be some official attitude of patronage and favor toward the ideas that form the moral basis of society.

Moral Basis of Community

Actually, this seems to be the essential Catholic thesis. Perhaps I can briefly set it forth in two propositions, which answer two distinct questions. The first question is philosophical and moral: is there a moral basis of human community? Leo XIII's answer is clear:

> There are certain natural truths—such as the principles of nature and the further principles which are immediately deduced from them by reason—which constitute, as it were, the common patrimony of the human race. And upon this patrimony, as upon a most firm foundation, morals, justice, religion, and indeed the social unity of the human community rest.[20]

This notion of "the human heritage" is a favorite one with Leo XIII. He opposes it to the rationalist notion of "free thought", which regarded all ideas as equal, and equally open to question. In contrast, the Pope asserts the Catholic thesis that there are certain privileged ideas. The ideas that make up the human heritage furnish man with his basic understanding of himself as a person and as a social and political being. To destroy them would be to destroy the foundations of freedom and justice in human association. Hence, their position within society is privileged.

The notion of an inviolable human heritage of ideas furnishes the primary criterion by which to distinguish right and wrong uses of public speech. Man is not morally free to destroy the very spiritual substance of his social life: "... it would be wicked and stupidly inhuman to permit [this human heritage] to be violently attacked and dissipated with impunity".[21] Be it noted that the duty of preventing this wickedness and folly devolves in the first instance upon the community itself, whose existence as a human community depends on the preservation of its intellectual and spiritual heritage. The community must make this moral demand on all its members, that they respect this heritage.

Government and Moral Basis

Here the second question rises—a political question: what is the function of the state—of law and government—with regard to the preservation of this heritage? This is a much more difficult question, since it involves not merely abstract considerations of truth and error, right and wrong, but also concrete problems of political prudence. At least one must say, with Niemeyer: "There ought to be no public neutrality in questions concerning the moral basis of society, whether one approaches them from the point of view of moral obligation or from that of vital political interest." [22] The official attitude must be

partisan, not neutral; it must take a side, in favor of the heritage. This attitude of favor follows from the principle that the state has a positive function in the perennial struggle between truth and error, right and wrong. To deny this principle would be to adopt a concept of the state that is unhistorical as well as immoral, and is furthermore impossible; for the political and legal action of the state is inevitably in some moral direction, inescapably on the side either of good or evil. (I might add that no such absurd concept of the state figures in the American system, as a host of early and later documents witnesses.)

This much is certain. But the complications begin when one asks how far, and with what degree of detail, this official attitude of patronage of the truth should be translated into specific laws and positive governmental action, e.g., of censorship or indoctrination. In a sense, this is an administrative problem—a problem of setting up norms and procedures for applying in practice the distinction between right and wrong uses of public speech. It is also a very concrete problem, whose solution greatly depends on circumstances.

The general principle holds good in any set of circumstances: official public neutrality with regard to the moral laws of community life is absurd and dangerous. But only practical wisdom and political prudence, which take close cognizance of the needs, the sensitivities, and the cultural level of the body politic, will be able to translate this general principle into specific laws and procedures that will further the common good.

I might only add that for democratic societies today the crucially important thing is to come to a common awareness of the general principle. Difficult and annoying problems of free speech are indeed raised by sectarian fanatics, like the Jehovah's Witnesses.[23] But the real problem is raised by Communism. This activist ideological movement hurls its challenge at the very spiritual substance of so-called "free societies," which are free pre-

cisely because their roots are in the Christian tradition, whatever may have been their subsequent departures from that tradition. The basic communist denial is directed against the human heritage of which Leo XIII spoke. The basic communist drive is to substitute a new idea of man for the idea contained in the human heritage. And the question is, how shall the free society, remaining free, protect itself against this fundamental searching challenge?

My hope is that the Philippines may show the way towards a solution of this crucial, complicated question. I think it is a good hope, for two reasons. First, the Philippine state is committed to a political ideal of freedom. Second, the Filipino people are still largely faithful to the Christian idea of man, in itself and as the spiritual basis and substance of the political community. This second point is the important one. Other Western societies have become vulnerable to Communism in proportion as they have put their faith simply in the forms of freedom, in matters of process, procedure, method, to the neglect of the substance of freedom, which is of the religious and spiritual, not the political, order. To this extent they have lost the sense of the political community as a spiritual and moral community. They have lost touch, as it were, with their own soul—the soul that was infused in them by their participation in the human and Christian heritage. This loss of soul is their weakness. But the Filipino people has not lost its Christian soul or its grip upon its heritage of Christian wisdom. And if the Filipino people wed their ancestral Christian wisdom to their hard-won political wisdom, there is hope that they will show triumphant leadership in today's crisis.

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[1] Kunz v. People of State of New York, Mr. Justice Jackson, dissenting, 71 S. Ct. 315.

[2] *Id.* at 325.

[3] *Id.* Ct. 314.

[4] Kovacs v. Cooper, Mr. Justice Frankfurter, concurring, 69 S. Ct. 459.

[5] Cited by Mr. Justice Black, dissenting, Feiner v. People of State of

New York, 71 S. Ct. 315.

[6] Thomas v. Collins, 65 S. Ct. 315.

[7] Kovacs v. Cooper, Mr. Justice Frankfurter, concurring, 69 S. Ct. 458.

[8] *Ibid.*

[9] Terminiello v. City of Chicago, Mr. Justice Jackson, dissenting, 69 S. Ct. 909.

[10] Schenck v. United States, 39 S. Ct. 247.

[11] Chaplinsky v. State of New Hampshire, 62 S. Ct. 766.

[12] Kunz v. People of State of New York, Mr. Justice Jackson, dissenting, 71 S. Ct. 317.

[13] *Id.* at 319.

[14] *Id.* at 325.

[15] Kovacs v. Cooper, 69 S. Ct. 451.

[16] *Id.* at 454.

[17] Cox v. State of New Hampshire, 61 S. Ct. 762 (1941).

[18] Terminiello v. City of Chicago, Mr. Justice Jackson, dissenting, 69 S. Ct. 911.

[19] *Thought,* XXV (1950), 251-74. The article was a paper read before a panel of the American Political Science Association in December, 1950. The panel held sessions for three days on the whole problem. The general result was considerable dissatisfaction with current theories and with alternative theories.

[20] Encyclical, *Libertas.*

[21] *Loc. cit.*

[22] *Thought,* XXV (1950), 272.

[23] To follow these cases through the American courts is like wandering through a legal wilderness. The Court has reversed and re-reversed itself several times. And the reasonings have widely varied. This is why the present article makes no attempt at detailed discussion of these cases.