

THE DANISH CARTOONS RECONSIDERED: CATHOLIC SOCIAL TEACHING AND THE CONTEMPORARY CHALLENGE OF FREE SPEECH

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The Danish cartoon controversy was extremely problematic for Muslims. But the publication of the cartoons also raised profound normative questions about speech for the Catholic Church as well. This article addresses the cartoon controversy in light of the Catholic social teaching's tradition on speech. In particular, the article addresses the issues of offensive speech; the relationship of speech and the secular; and the normative prioritization of the rights to the free exercise of religion and to freedom of speech.

THE DANISH CARTOON CONTROVERSY OF 2005–2006 exploded across a wide arc of the world, leaving hundreds dead, property destroyed, and concepts of free speech and religion in tattered suspicion.¹ In this article, I will examine the controversy as a test case for Roman Catholic social teaching on freedom of speech. Of course, the cartoon controversy more immediately involved Islam, not Catholicism. The satirical sketches of the Prophet Muhammad that appeared in the Danish newspaper *Jyllands-Posten* offended millions of Muslims around the world. But top Roman Catholic officials and publications nevertheless weighed in—usually critically—on the cartoons' publication. Moreover, the Catholic reaction to the cartoon crisis occurred against the backdrop of the Catholic

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¹ I would like to thank anonymous reviewers at this journal and David Pinault for helpful critiques. An earlier version of this article was presented at the annual meeting of the Society of Christian Ethics in January 2008.

Church's intensifying engagement with problems of speech and the press in Western democracies. From a Spanish television show in which a crucifix was cooked, to the role of the American press in uncovering the sexual abuse scandal, the unconstrained discourse of secular Western democracies has challenged the identity of the Church and prompted the Vatican's semiofficial newspaper, *L'Osservatore Romano*, to call for an examination of conscience on the issue of free speech.² Furthermore, the cartoon crisis, occurring as it did amid high levels of immigration and Muslim population growth in Europe, pointed to the deeply pluralist contexts in which the Church must now address the challenge of free speech.³ All these reasons, then, justify scrutiny of the broader implications of the Church's response to this particular crisis. What began in Denmark has passed far beyond its borders.

In what follows, I argue that the cartoon crisis revealed the need for Catholic social teaching to develop its understanding of free speech. In making such a case, I contend that the Church should have argued more forcefully on behalf of the cartoons' publication. I also argue that the Church should be able to draw on a more complete theoretical justification of free speech. Given the many problems associated with the publication of the cartoons—from riots in the Muslim world to the charge by Osama Bin Laden that Pope Benedict XVI is involved in a crusade against Islam⁴—the case for a more expansive Catholic notion of free speech in this instance faces a high burden of proof. But such a burden can and should be met.

The article proceeds as follows. I first review the facts of the cartoon controversy. Next, I interpret key Catholic responses to the controversy in light of the Church's doctrinal tradition on free speech and democracy. Then I examine two interrelated problems—interrelated in their shared neglect of a normative, political framework of analysis—in the Catholic responses to the cartoons' publication. In brief, the first problem was the use of a narrowly moral framework of analysis that prioritized the problem of the cartoons' giving offense at the expense of a wider range of normative, political concerns that could justify the publication of such speech. The second problem was the focus on the cartoons' effect on social unity but not on the cartoons' interaction with realities like conflict

² "When Satirical Cartoons Push the Limit," *Zenit*, February 7, 2006, <http://www.zenit.org/article-15214?l=english>. All URLs cited in this article were accessed on November 16, 2009.

³ For background on Muslim immigration to Europe, see David Masci, *An Uncertain Road: Muslims and the Future of Europe* (Washington: Pew Forum on Religion and Public Life, 2005), <http://pewforum.org/publications/reports/muslims-europe-2005.pdf>.

⁴ For Bin Laden's comments, see Inal Ersan, "Bin Laden Warns EU Over Prophet Cartoons," *Reuters*, March 20, 2008, <http://www.reuters.com/article/worldNews/idUSN1933824120080320>.

and power that complicate the achievement of unity in a political context. The chief interlocutors for the discussion of each of these problems are, respectively, American constitutional scholar Robert Post and moral philosopher Charles Taylor. I conclude with a set of theological recommendations for the development of the Church's doctrinal tradition on free speech.

Throughout the article, I argue in terms of the normative dimension of the political as such. By this, I refer to several interrelated aspects. First, I assume that there are goods—and corresponding norms and virtues—specific to the political dimension of reality; and that these goods are related to but distinct from the personal realm of morality. Second, I pay special attention to the realities of conflict and power in a political context. These realities should be considered as manifestations of sin, as evidence of the limits of finitude, and as attributes of creative political change. Last, I assume throughout a political starting point for the ethical reflection on the cartoons' publication: the constitutional perspective of the free human person under a government of limited powers. In arguing in such fashion, I seek to address the insufficient attention paid to the normative dimension of the political as such by Catholic social teaching—an insufficiency noted by, e.g., Charles Curran and John Coleman.⁵

One last introductory comment is in order. The article is an American reflection on the cartoon controversy and Catholic social thought for several reasons. One is obvious: I am American and approach this reflection on the widely recognized universal right to freedom of speech from within the constraints and possibilities of the national context of the United States.⁶ Another reason is more specific to the American tradition of free speech: the tradition's constitutional and normative openness to what

⁵ See, for instance, Charles Curran, *Catholic Social Teaching 1891–Present: A Historical, Theological, and Ethical Analysis* (Washington: Georgetown University, 2002) 85–91, 215–43; and John A. Coleman, “Neither Liberal Nor Socialist: The Originality of Catholic Social Teaching,” in *One Hundred Years of Catholic Social Thought: Celebration and Challenge*, ed. John A. Coleman (Maryknoll, N.Y.: Orbis, 1991) 32–41.

⁶ The preamble of the Universal Declaration of Human Rights speaks of the “advent of a world in which human beings shall enjoy freedom of speech and belief.” Article 19 of the Universal Declaration reads: “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to see, receive and impart information and ideas through any media and regardless of frontiers” (Universal Declaration, <http://www.un.org/Overview/rights.html>). The relevant section of the First Amendment of the U.S. Constitution reads: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press” (U.S. Constitution Online, <http://www.usconstitution.net/const.html>).

many would call offensive speech both sheds light on the cartoon controversy and can be of ongoing theoretical assistance as the Church encounters the challenge of free speech in the deeply pluralistic contexts of the present day.⁷ Benedict XVI has praised the American tradition's unique commitment to the free exercise of religion and to interreligious dialogue.⁸ But less attention has been paid by him—and by the Church more broadly—to the unique American commitment to free speech and to the interrelated nature of the fundamental rights to speech and religion.⁹ This article attempts to redress this deficit.

THE CARTOONS, REGENSBURG, AND THE CHURCH AS “BRIDGE”

I also consider the article to be an effort consistent with Benedict XVI's belief that the Catholic Church can be a “bridge”¹⁰ across the contemporary chasms between faith and reason, religion and secularism, and multiculturalism and liberalism. But I will emphasize a different side of the bridge than does the pope. For Benedict, the Church can be such a bridge both because Catholicism has long integrated faith and reason and because the Church's doctrine has incorporated key cornerstones of the Enlightenment like the right to religious freedom. The pope speaks more often and more elaborately of how the Church's tradition of reason open to faith provides a helpful corrective to what he and others regard as the prevailing and antireligious secular rationalism of Western Europe. In his 2006 address at the University of Regensburg, he said: “Only if reason and faith come together in a new way, if we overcome the self-imposed limitation of reason to the empirically falsifiable, and if we once more disclose its vast horizons . . . only thus do we become capable of that genuine dialogue of

⁷ For a discussion of the unique American perspective on offensive speech considered in a global context, see Adam Liptak, “Unlike Others, U.S. Defends Freedom to Offend in Speech,” *New York Times*, June 12, 2008, <http://www.nytimes.com/2008/06/12/us/12hate.html?pagewanted=1>.

⁸ See “Benedict XVI Lauds Religious Freedom, Interreligious Dialogue,” *Catholic News Agency*, April 17, 2008, <http://www.catholicnewsagency.com/new.php?n=12373>.

⁹ The issue of the interrelated nature of these rights was called to my attention particularly by the blog of Eugene Volokh, professor of law at the University of California, Los Angeles. See Volokh, “The Catholic Church and Free Expression,” *The Volokh Conspiracy Blog*, February 5, 2006, <http://volokh.com/posts/1139182381.shtml>.

¹⁰ I am borrowing the term “bridge” from the journalist Russell Shorto, who described in the following way Benedict's understanding of the role of the Church in the present time: “Because its tradition was filtered through the Enlightenment, the thinking goes, the church can provide a bridge between godless rationality and religious fundamentalism” (Shorto, “Keeping the Faith,” *New York Times Magazine*, April 8, 2007, 39–45, 61–63, at 41).

cultures and religions so urgently needed today.”¹¹ For all its possibilities as a “great round table for dialogue,”¹² the media for Benedict are also among those laboring today under the “self-imposed limitation of reason.” As a consequence, they are afflicted with tendencies toward what he calls a “monoculture that . . . undervalues the specificity of cultural practices and the particularity of religious belief.”¹³ His analysis here of the media and of the dominant secular rationality helps explain the deeper logic behind the Vatican’s criticism of the publication of the Danish cartoons: the satirical drawings of Muhammad were the inevitably offensive result of a secular culture trapped in rational categories that compel misunderstanding of such religious difference.

But the provision of a logic by which reason can remain open to faith is one of the ways the Church can be a bridge between the polarities of these times. Another way, Benedict argues, is by a logic working in the opposite direction: not so much from reason to faith as from faith to reason. In his Regensburg lecture, he described this imperative in terms of the philosophy of religion: “The courage to engage the whole breadth of reason, and not the denial of its grandeur—this is the program with which a theology grounded in Biblical faith enters into the debates of our time.”¹⁴ Elsewhere he describes this imperative in terms of the integration in the political sphere of the authoritative claims of faith with the right to religious freedom.¹⁵ But Benedict is often less expansive when speaking of this aspect of the Church-as-bridge. To be sure, he directs an Enlightenment-informed critique against the religious fanaticism of the present day—a fanaticism that was the aim of his well-known and awkward criticisms of

¹¹ Benedict XVI, “Faith, Reason, and the University: Memories and Reflections,” University of Regensburg, September 12, 2006, http://www.vatican.va/holy_father/benedict_xvi/speeches/2006/september/documents/hf_ben-xvi_spe_20060912_university-regensburg_en.html. Unless otherwise indicated, all Vatican documents consulted are available at <http://www.vatican.va>. For background on Catholicism and contemporary Western European secularism, see Thomas Eggenberger, “De la relation entre religion et politique,” *Revue theologique de Louvain* 37 (2006) 3–25, at 10–14; Linda Hogan and John May, “Social Ethics in Western Europe,” *Theological Studies* 68 (2007) 154–71, at 157–63; Maureen Junker-Kenny, “The Pre-Political Foundations of the State,” in *The New Pontificate: A Time for Change*, ed. Erik Borgman, Maureen Junker-Kenny, and Janet Martin Soskice (London: SCM, 2006) 106–17; and Shorto, “Keeping the Faith.”

¹² Benedict XVI, “Message of the Holy Father Benedict XVI for the 40th World Communications Day,” January 24, 2006.

¹³ *Ibid.*

¹⁴ Benedict XVI, “Faith, Reason, and the University.”

¹⁵ See, for instance, Eggenberger, “De la relation entre religion et politique” 12–14; Junker-Kenny, “Pre-Political Foundations of the State” 107–8; and Shorto, “Keeping the Faith” 40–41.

Islam in the Regensburg lecture.¹⁶ But beyond addressing such fanaticism, Benedict appears to assume that a successful and irreversible integration of Catholicism and the “positive aspects of modernity”¹⁷ has already occurred. “A critique of modern reason from within,” he said at Regensburg, “has nothing to do with putting the clock back to the time before the Enlightenment and rejecting the insights of the modern age.”¹⁸ And, in any case, the more important problem to which the Church must address itself today is the failure of reason to open up to faith, not of faith to become more integrated with the demands of reason. This article, however, argues in the opposite direction: It examines the degree to which the authoritative claims of the social teaching of the Catholic Church should incorporate the Enlightenment-inspired right to freedom of speech. In doing so, I hope to contribute a more persuasive account of how the Church can be a bridge across the gulfs of our time.

THE CARTOON CONTROVERSY

The central facts of the cartoon controversy are as follows. In the fall of 2005, the Danish newspaper *Jyllands-Posten* published 12 cartoons satirizing interpretations of Islam advanced by radical Islamists.¹⁹ In the most controversial of the cartoons, the Prophet Muhammad was depicted wearing a turban shaped like a bomb with a burning fuse. The practical trigger for the creation of the cartoons was the reported inability of Danish publishers to find an illustrator willing to brave potential Muslim objections to pictures of Muhammad drawn for children’s books. *Jyllands-Posten* objected to what it perceived as this de facto censorship regarding Islam and, to make a point about free speech, commissioned the cartoons. At first, reaction was muted and confined largely to Denmark. Then, in February 2006, word about the cartoons reached the Middle East, and violent protests and a boycott of Danish goods were mounted throughout the Muslim world.²⁰ To be sure, the controversy did not spring from nothing. Rather, the drawings landed on

¹⁶ In the lecture, Benedict quoted Emperor Manuel II Paleologus as saying, “Show me just what Mohammed brought that was new, and there you will find things only evil and inhuman, such as his command to spread by the sword the faith he preached.”

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ The cartoons are available on the Internet via a Google Image search

²⁰ For contemporaneous accounts of the controversy, see Angela Charlton, “Controversial Cartoons Stir Media Debate,” *Associated Press*, February 6, 2006, <http://freerepublic.com/focus/f-news/1573117/posts>; Alan Cowell, “More European Papers Print Cartoons of Muhammad, Fueling Dispute With Muslims,” *New York Times*, February 2, 2006, http://www.nytimes.com/2006/02/02/international/europe/02danish.html?_r=1&oref=slogi; Sebastian Rotella, “Anger Over Cartoons of Muhammad Escalates,” *Los Angeles Times*, February 3, 2006.

a Western European continent already tense with the struggle to integrate Muslim immigrants into democratic societies. There have been successes in such efforts of integration. But there have also been notoriously bloody failures like the Madrid and London bombings and the murder of Dutch free speech advocate Theo Van Gogh by a Muslim extremist.²¹

Such drawings of Muhammad violated Islamic strictures more common to the Sunni tradition against any depiction of the Prophet and, as such, were considered offensive to Muslim religious sensibilities. Scholar Tariq Ramadan explained: "In Islam, representations of all prophets are strictly forbidden. It is both a matter of the fundamental respect due to them and a principle of faith requiring that, in order to avoid any idolatrous temptations, God and the prophets never be represented."²² In addition to the charge of giving religious offense, the cartoons were also criticized as discriminatory. Tariq Ali called them "crude racist stereotypes,"²³ while Reza Aslan said the drawings were "intentionally inflammatory, published to further humiliate an ethnic and religious minority that has been socially and economically repressed for decades."²⁴

Employees of *Jyllands-Posten*, however, primarily understood the publication of the cartoons as a rightful response to a challenge of power raised by the role of Islam in democratic public space. On the one hand, this challenge of power was understood specifically in terms of the perceived social pressure prohibiting Danish book publishers from finding someone willing to illustrate Muhammad for a children's book. One of the cartoonists, referring to the problem of finding the children's book illustrator, complained: "We are obliged to defend our view of freedom of speech, because a people practicing a religion and perhaps subscribing to the more fundamentalist aspects of it have begun to demand a privileged or special position in the public arena."²⁵ More broadly, this

²¹ For background on Muslim immigration to Europe, see Masci, *An Uncertain Road*. On the murder of Van Gogh in the context of Muslim immigration in Europe, see Ian Buruma, *Murder in Amsterdam: The Death of Theo Van Gogh and the Limits of Tolerance* (New York: Penguin, 2006).

²² Ramadan, "Cartoon Conflicts," *Guardian*, February 6, 2006, <http://www.guardian.co.uk/cartoonprotests/story/0,,1703496,00.html>. Reza Aslan, however, argued that such strictures against depiction of Muhammad are not universal within Islam. "In general, Shiites and Sufis tend to be more flexible on this point than Sunnis," he said. See Aslan, "Depicting Mohammed: Why I'm Offended by the Danish Cartoons of the Prophet," *Slate*, February 8, 2006, <http://www.slate.com/id/2135661/>.

²³ Tariq Ali, "This Is the Real Outrage," *Guardian*, February 13, 2006, <http://www.guardian.co.uk/cartoonprotests/story/0,,1708319,00.html>.

²⁴ Aslan, "Depicting Mohammed."

²⁵ Jannik Brinch, "Interview: The Cartoonist: The Reason for the Bomb in the Turban," *Internetavisen Jyllands-Posten*, February 28, 2006, <http://jp.dk/udland/article172054.ece>.

challenge of power was also understood to apply to the capacity of Islam and religions more generally to set the terms of public discourse in pluralist Danish democracy. Thus Flemming Rose, editor of *Jyllands-Posten*, said: "If a believer demands that I, as a nonbeliever, observe his taboos in the public domain, he is not asking for my respect, but for my submission. And that is incompatible with a secular democracy."²⁶ The concern about power also extended beyond the Danish political context to violence deployed by Islamist terrorists and to the sources of the inspiration for such violence. In light of such a concern, the cartoonist explained the drawing of Muhammad with a turban-like bomb: "The cartoon is not directed against Islam as a whole, but against the part of it which can obviously inspire to violence, terrorism, death, and destruction. And therefore the fundamentalist aspect of Islam. I wanted to show that terrorists get their spiritual ammunition from Islam."²⁷ These arguments about religion and power were often couched in terms of a Danish tradition of satire in which "anything can be mocked. Anybody."²⁸ In turn, this satirical tradition was also specifically linked to the equalizing logic of democracy according to which, Rose said, "no one can have the right not to be ridiculed."²⁹ Thus the primary stated concern behind the publication of the cartoons was the perception of undue power on the part of fundamentalist Islam in democratic public space. Rose disavowed any intention to discriminate against Denmark's Muslim minority by publishing the cartoons.³⁰ The paper did, however, take up the issue of minorities when it set itself against what it regarded as an increasingly balkanized multicultural world within Denmark where it was becoming less possible to affirm common, universal values like the right to free expression.³¹ The paper also understood the mocking character of satire in an inclusive, not exclusive sense. Thus Rose said of Muslims in

²⁶ Flemming Rose, "Why I Published Those Cartoons," *Washington Post*, February 19, 2006, <http://www.washingtonpost.com/wp-dyn/content/article/2006/02/17/AR2006021702499.html>.

²⁷ Branch, "Interview: The Cartoonist."

²⁸ *Ibid.*

²⁹ Alan Cowell, "After Fury over Cartoons, An Attempt at Dialogue," *International Herald Tribune*, July 12, 2006.

³⁰ Michael Kimmelman, "Outrage at Cartoons Still Tests the Danes," *New York Times*, March 20, 2008, http://www.nytimes.com/2008/03/20/books/20cartoon.html?_r=1&pagewanted=1&oref=slogin.

³¹ *Ibid.* For a related argument, see "Manifesto: Together Facing the New Totalitarianism," a statement in which such figures as Salman Rushdie and Taslima Nasreen "plead for the universality of freedom of expression, so that a critical spirit may be exercised on all continents, against all abuses and all dogmas"; <http://www.petitionspot.com/petitions/manifesto>.

Denmark: “We are integrating you into the Danish tradition of satire because you are part of our society, not strangers.”³²

CATHOLIC RESPONSES TO THE CARTOON CONTROVERSY

Two principal objections informed the crucial Roman Catholic responses to the cartoon controversy. First, these responses were critical of a concept of free speech in which a notion of freedom was detached from respect, and especially from respect for religion. Second, the responses evinced a keen concern for how speech can disrupt communal peace. In what follows, I will analyze these objections in light of the Catholic social teaching tradition on speech.

Two texts from the Vatican provide the principal bases for the evaluation. One is an unsigned statement on the cartoon episode issued February 4, 2006, by the Vatican Press Office.³³ The other is a signed article in the February 6, 2006, edition of *L'Osservatore Romano*; in light of the cartoon controversy, that article proposed an examination of conscience on the issue of freedom of speech.³⁴ Both texts note that the freedom of speech is affirmed in the Universal Declaration of Human Rights. Both texts, however, condemn or sharply question the practice of this right in the case of the Danish cartoons. At the root of their criticisms, the texts insist on a linkage between freedom and the obligation of respect or solicitude.³⁵ Other Catholic critics sounded a similar note, arguing that the cartoons were published under the misguided inspiration of an absolute freedom without reference to moral obligation.³⁶ In making such claims, these

³² Rose, “Why I Published Those Cartoons.”

³³ For the English language translation of the statement, I have relied on the news report “Vatican Condemns Cartoons of Mohammed,” *Zenit*, February 5, 2006, <http://www.zenit.org/article-15193?I=english>.

³⁴ I have relied on the English-language news report of the article in *L'Osservatore Romano*: “When Satirical Cartoons Push the Limit,” *Zenit*, February 7, 2006, <http://www.zenit.org/article-15214?I=english>.

³⁵ The Vatican Press Office statement spoke of the need for a “climate of mutual respect to foster peace” and noted how “these forms of exasperated criticism or derision of others manifest a lack of human sensitivity” (see n. 33 above). The *L'Osservatore* article asked, “Where does the right of expression begin and where does offense to the inner convictions of others begin?” (see n. 34 above).

³⁶ The *Zenit* news organization reported that, amid the cartoon controversy, Italian Cardinal Achille Silvestrini said that freedom of expression should be accompanied by respect, and that Western culture should limit its affirmation of liberty, as an absolute value. Bishop Rino Fisichella similarly noted that there is no such thing as absolute liberty, but that liberty is to be limited by respect for other persons and for their beliefs. See “Something Rotten in Denmark,” *Zenit*, February 11, 2008, <http://www.zenit.org/article-15251?I=english> (accessed February 14, 2009). The Nordic Catholic Bishops' Conference said of the controversy: “We welcome free and open discussion which searches for the truth but in a context and

critics stood in the doctrinal tradition on free speech articulated at Vatican II. Specifically, in *Gaudium et spes* the council declared that the spiritual and social nature of the human person in society required the due liberty to “search for the truth, express his opinion and publish it; that he can practice any art he chooses: that finally, he can avail himself of true information concerning events of a public nature.”³⁷ But this liberty is not absolute. Rather, the council delimited such expression by placing it “within the limits of morality and the general welfare.”³⁸

According to these criticisms, then, the publication of the cartoons was morally wrong because it was an instance in which freedom became detached from respect. But it is important to note that the respect in question in particular involved solicitude for the religious sentiments of Muslims and for religious sentiments more generally. As the Vatican Press Office statement put it: “The freedom of thought and expression . . . cannot include the right to offend religious feelings of the faithful. That principle obviously applies to any religion.”³⁹ In turn, this general concern with giving offense to religion was specified in terms of the satirical nature of the cartoons. Thus the *L’Osservatore* article argued that satire could be accepted with regard to “unmasking the idolatry of the ‘powerful’” but not with regard to the “sacred in the absolute and indefectible sense.”⁴⁰ Beyond such concerns with giving offense and blasphemy, the article also noted the degree to which the right to free speech inevitably impinges on the right to the free exercise of religion. As the article put it: “There is no doubt that every genuine expression [of the right to free expression] meets with a natural—to describe it in some way—limit in the full and integral realization of the [right to freely profess a religion].”⁴¹

climate of mutual respect and knowledge about what one is speaking of” (“The Nordic Bishops’ Conference Deplores the Publication of the Cartoon Drawings of the Prophet Mohammed,” February 2, 2006, <http://www.katolsk.no/nyheter/2006/02/02-0003.gif>). For an overview of Catholic and Protestant responses to the controversy, see Shanta Premawardhana, “Balancing Press Freedom and Anti-Racism: Christian Responses to the Cartoon Controversy,” National Council of Churches USA, <http://www.nccusa.org/pdfs/IFRcartoons.pdf>. The established Danish Evangelical Lutheran Church said that “the respect for the individual person is the presupposition for having freedom of speech in Denmark. With freedom of speech follows respect for others. . . . In the public debate an understanding of what is sacred and what can offend the individual person of which faith he or she may be is often missing” (“Freedom of Speech and Respect,” press release issued by the board of the Committee for Church and Encounter with other Religions of the Evangelical Lutheran Church in Denmark on February 2, 2006, http://www.religionsmoede.dk/index.php?indl_id=2813&id=5822).

³⁷ *Gaudium et spes* no. 59.

³⁸ *Ibid.*

³⁹ “Vatican Condemns Cartoons.”

⁴⁰ “When Satirical Cartoons Push the Limit.”

⁴¹ *Ibid.*

This concern about the relationship of the rights to speech and religion also has a doctrinal pedigree. Vatican II's Declaration on Religious Freedom accords a normative primacy to the right to the free exercise of religion. Or, as the Declaration puts it, the dignity of the human person requires that constitutional restraints be put on governmental power in order to "serve the rightful freedom of the person and of associations."⁴² In turn, this freedom should be understood chiefly in terms of "the quest for the values proper to the human spirit. It regards, in the first place, the free exercise of religion in society."⁴³ The Declaration notes that this "quest for values" is to be pursued in a manner that is "free, carried on with the aid of teaching or instruction, communication or dialogue, in the course of which men explain to one another the truth they have discovered, or think they have discovered, in order thus to assist one another in the quest for truth."⁴⁴ To be sure, this proscription for how this quest is to be pursued requires an inescapable role for speech; the quest cannot occur without it. Still, the Declaration does not equate the rights of free speech and religious freedom. Rather, the latter retains a primacy in its character as free exercise. I will return to this issue below.

I now turn to the criticism that the publication of the cartoons violated the norm requiring speech to serve peaceful coexistence. The Vatican Press Office statement unfavorably contrasted the cartoons' appearance with a "climate of mutual respect to favor peace among men and nations."⁴⁵ Against the backdrop of a need for such a climate, the cartoons allegedly evinced a "lack of human sensitivity"⁴⁶ and could be construed as "an inadmissible provocation."⁴⁷ As such, the publication of the cartoons was an occasion of "verbal intolerance,"⁴⁸ which is "always a serious threat to peace."⁴⁹ The statement did not specify what government authorities should do in the event of such verbal intolerance. But the statement signaled openness to the possibility of governmental intervention to suppress such problematic speech when it argued that "authorities might and should intervene eventually according to the principles of national legislation."⁵⁰ Of course, the Vatican statement was not issued in a vacuum. Riots related to the cartoons claimed scores of lives in predominantly Muslim countries (the Vatican statement decried such riots as failing the "true spirit of all religion").⁵¹ For instance, clashes between Christians and Muslims in Nigeria were sparked by protests against the cartoons and left 150 dead

⁴² Declaration on Religious Freedom, no. 1.

⁴³ Ibid.

⁴⁵ "Vatican Condemns Cartoons"

⁴⁷ Ibid.

⁴⁹ Ibid.

⁵¹ Ibid.

⁴⁴ Ibid. no. 3.

⁴⁶ Ibid.

⁴⁸ Ibid.

⁵⁰ Ibid.

and 900 injured.⁵² The church and monastery of the Franciscan Friars Minor in Benghazi, Libya, were destroyed by rioters objecting to the cartoons.⁵³ And, in March 2008, Osama Bin Laden threatened the European Union with punishment over the cartoons and said that Pope Benedict was involved in a “crusade” linked to the drawings.⁵⁴

How can the concern of the Vatican Press Office for the effect of speech on social peace be interpreted in light of the Catholic doctrinal tradition? I would like to call attention to several interrelated aspects of the tradition, each of which illumines the preeminent Catholic concern for the correlation of free speech and the well-being of community. First, this correlation is evident in the discussion in *Gaudium et spes* of the more specifically political character of the right to free speech. The conciliar document states that it is the increasingly evident demand of human dignity to protect a right like free speech insofar as such a right is a “necessary condition so that citizens, individually or collectively, can take an active part in the life and government of the state.”⁵⁵ However, while the document justifies the right to speech in terms of participation in democratic political community, the document also displays a keen awareness of how such a community can be “torn apart while everyone follows his own opinion.”⁵⁶ In light of such a possibility, the conciliar document accords a significant role to an “authority to direct the energies of all citizens toward the common good, not in a mechanical or despotic fashion, but by acting above all as a moral force which appeals to each one’s freedom and responsibility.”⁵⁷

The correlation of free speech and political community has a slightly different character in the postconciliar document called *Communio et progressio*. As with *Gaudium et spes*, *Communio* affirms free speech as an indispensable factor in “enabling citizens to play an active part in the community.”⁵⁸ *Communio* is more specific than *Gaudium et spes*, however, regarding how the free speech of citizens is specifically oriented to the formation of public opinion. Without such freedom, it is not possible for citizens properly to weigh information and to express themselves. In turn, without such weighing and expressing, it is not possible properly to create the public opinion by which a political community achieves unity and determines what it will do.⁵⁹ *Gaudium et spes* had feared the way that clashing opinions could disrupt social peace; to forestall such disruption,

⁵² “Pope Assails Violence Done in the Name of God,” *Zenit*, February 26, 2006, <http://www.zenit.org/article-15381?l=english>.

⁵³ *Ibid.*

⁵⁴ Ersan, “Bin Laden Warns EU Over Prophet Cartoons.”

⁵⁵ *Gaudium et spes* no. 73.

⁵⁶ *Ibid.* no. 74.

⁵⁷ *Ibid.*

⁵⁸ *Communio et progressio* no. 26.

⁵⁹ *Ibid.* nos. 26, 33, 45.

the conciliar document called for the direction of a forceful authority. By contrast, *Communio* does not envision a sharp clash of opinion. Rather, it supposes that public opinion will emerge more or less noncontroversially from the weighing of fact and the expression of opinion. Moreover, the postconciliar document does not specify as forceful a possible role for authority to intervene in the event of a disruptive clash of opinion. But, even so, the later document still envisions a broadly positive role for government, saying that public authorities have the “essential duty of maintaining freedom of speech.”⁶⁰ Both *Gaudium et spes* and *Communio*, then, while they may differ in emphases, affirm a doctrinal tradition that primarily justifies free speech in terms of participation in collective and democratic self-rule and that envisions a proactive governmental role in upholding free speech and preserving communal peace in the face of a threat from speech.

In discussing *Communio et progressio* and other key documents, I have thus far primarily addressed the social philosophy in the doctrinal tradition that correlates speech and collective self-rule. But it is important to note that often in the tradition this social philosophy is undergirded by a theology of communication. Such a theology is centrally operative in *Communio et progressio* and contributes significantly to the communal emphasis of the document.⁶¹ Thus, on the one hand, *Communio et progressio* confidently praises modern communication technologies as “exactly coincid[ing] with the Christian conception of how men should live together.”⁶² Consistent with the workings of Christian charity, such technologies tend to bring people into closer contact and on that basis to help people address their common fears and hopes.⁶³ On the other hand, the whole pattern of human communication—from the working of the latest technology to speech between friends—finds its analogue in the communication of God’s self as the Word made flesh that is now moving all of history toward its final unity.⁶⁴ In the incarnation, Christ is revealed as the “Perfect Communicator”⁶⁵ inasmuch as he identified himself entirely with those who are to receive his communication—all

⁶⁰ Ibid. no. 84.

⁶¹ In *Communio et progressio*, see especially nos. 1–18. For this theology in other doctrinal documents, see, for instance, *Inter mirifica* nos. 1–2; *Ethics in Communications* nos. 3–5; “Message of the Holy Father Benedict XVI for the 40th World Communications Day” no. 1; and “The Rapid Development: Apostolic Letter of the Holy Father John Paul II to Those Responsible for Communications” nos. 3–6. For an overview of recent writing on the theology of communication, see Paul A. Soukup, SJ, “Communication Theology,” *Communication Research Trends* 21.2 (2002) 25–30.

⁶² *Communio et progressio* no. 6.

⁶³ Ibid. nos. 6, 8.

⁶⁴ Ibid. no. 10.

⁶⁵ Ibid. no. 11.

of humanity.⁶⁶ Moreover, by the cross and resurrection Christ has fully shared the truth and life of God with all and thereby laid the foundation for unity among all.⁶⁷ By communicating his life-giving Spirit, Christ has enabled all of history to move toward the final unity where God will be “all in all.”⁶⁸ This theology of communication merits more extensive scrutiny in its own right. But, in terms of the cartoon crisis, the point is this: the doctrinal tradition’s great concern for speech’s potentially disruptive effect on community finds warrant in a theology that tightly links the purpose of communication with the achievement of social peace.⁶⁹

In this section of the article, I have noted the degree to which Catholic responses rested on a concept of free speech linked to preexisting obligations of respect. Such a linkage stands squarely in the doctrinal tradition. But such a linkage also means that the publication of the cartoons was viewed primarily as a moral or cultural matter—for instance, as a failure to exercise respect for Danish Muslims. This claim may be true—certainly many non-Muslims lacked knowledge of Muslim beliefs. But it is also important to note that, while arguing in such specifically moral or cultural terms, these responses failed sufficiently to consider the publication of the cartoons in terms of something like the political values that could permit such potentially offensive speech. The second key claim in this section was about the degree to which Catholic responses to the cartoon controversy connect concerns with intolerant speech and communal life. Here, though, it is important to note that these arguments are primarily social or, where political, are political in the sense of speech’s justification in terms of the unity of the political community devoted to collective self-rule; more extensive political realities and values receive scant attention.

CATHOLIC SOCIAL TEACHING AND THE POLITICAL ORDER

I noted earlier the criticism that Catholic social teaching has an underdeveloped political dimension. This is evident, for instance, in the degree to which the social teaching addresses public issues in terms of concepts like truth and the common good instead of more concrete and institutional political categories like pluralism and public order.⁷⁰ Similarly, Charles Curran has argued that Catholic social teaching has paid insufficient attention to the political realities of conflict and power. For instance, the social teaching has emphasized the possibility of rational consensus in the public

⁶⁶ Ibid.

⁶⁷ Ibid. no. 10.

⁶⁸ Ibid. no. 11.

⁶⁹ I am indebted to an anonymous reviewer of the article for pointing out the diminished role for prophetic speech in the theology of communication in Catholic social teaching.

⁷⁰ Curran, *Catholic Social Teaching* 241–43.

sphere over the reality of the diverse convictions and potent symbolic appeals that often confound political agreement. Likewise, the teaching has had a decidedly negative view of conflict, regarding the latter more as a regrettable sign of sinfulness than as an inevitable mark of finitude or as an occasion offering creative possibilities for change. The teaching has tended to view power in similarly narrow and overly negative terms.⁷¹

By contrast, this article assumes that the political dimension of reality has its own normative—and ontological—requirements. John Courtney Murray referred to these requirements when he said that the achievement of a constitutional consensus in political society depends on adhering to the “basic ontological principle of all ordered discourse, which asserts that Reality is an analogical structure, within which there are variant modes of reality, to each of which there corresponds a distinctive method of thought that imposes on argument its own special rules.”⁷² By this Murray was highlighting, among other points, the need to draw distinctions between such categories as the moral and the political. To be sure, for him the category of the political was profoundly moral: the former derived its norms from the natural moral order.⁷³ But, he argued, political morality has a distinct subject matter and logic pertaining to the origin of society, to the state as the legal order of society, and to the scope and limits of government.⁷⁴ Thus for Murray the speech clause of the First Amendment of the U.S. Constitution should not be understood as a piece of personal morality or individualistic Enlightenment rationalism. Rather, the clause was oriented to the necessity of creating “conditions essential to the conduct of a free, representative, and responsible government.”⁷⁵

I would like to address one other implication of using the interpretive lens of the political as such: The methodological starting point for ethical

⁷¹ Ibid. 85–91.

⁷² John Courtney Murray, “The Civilization of the Pluralist Society,” in *We Hold These Truths: Catholic Reflections on the American Proposition* (Kansas City: Sheed & Ward, 1960) 14.

⁷³ Murray, “Civil Unity and Religious Integrity,” in *We Hold These Truths* 61–63.

⁷⁴ Murray, “*E Pluribus Unum: The American Consensus*,” in *We Hold These Truths* 31

⁷⁵ Ibid. 34. See also Murray, “Should There Be a Law? The Question of Censorship,” in *We Hold These Truths* 155–74. The philosopher John Rawls adopted a distinction between the moral and political similar to Murray’s. For Rawls’s account, see “The Idea of Public Reason Revisited,” in *The Law of Peoples* (Cambridge, Mass.: Harvard, 1999) 129–80. For a comparison of Murray and Rawls on this and related matters, see Leslie Griffin, “Good Catholics Should Be Rawlsian Liberals,” *Southern California Interdisciplinary Law Journal* 5 (1997) 297–373. On Rawls in contemporary European theological ethics, see Hogan and May, “Social Ethics in Western Europe” 158–63.

reflection on freedom of speech in the social teaching tradition must be abstract and concrete, alive to transcendent moral realities and to political contexts that mediate those realities. For purposes of reflection on the cartoons—and consistent with the Church’s doctrinal commitment to democracy⁷⁶—I believe this starting point must be the perspective of the free person under constitutional government. The challenges that contemporary political life poses to the Church cannot be addressed by favoring the abstract at the expense of the concrete, the moral at the expense of the political. But this direction is frequently taken in Catholic social teaching. For instance, during a 2004 public discussion with philosopher Jürgen Habermas, then-Cardinal Joseph Ratzinger argued that “respect for the freedom of each individual for us nowadays seems to consist to a large extent in the fact that the question of truth cannot be decided by the state. . . . The modern concept of democracy seems to be inseparably connected with relativism.”⁷⁷ I understand this critique of democracy to have deeply informed the Vatican’s reaction to the publication of the Danish cartoons; in effect, the cartoons were one more manifestation of this relativism. But such a critique underemphasizes the political realities and political values at stake in a crisis like the cartoon controversy. In contrast with Ratzinger’s claim that human rights and moral truth supply the nonrelativist core of democracy, I will proceed in a fashion consistent with Habermas’s response to the future pope at the 2004 public discussion: “democracy is not subordinated to human rights, but is . . . equally original.”⁷⁸

OFFENSIVE SPEECH AND THE “PARADOX OF PUBLIC DISCOURSE”

The moral argument is clear enough: the publication of the cartoons was wrong insofar as the drawings failed to respect the religious feelings of Muslims informed by Islamic strictures against depiction of the Prophet Muhammad.⁷⁹ A distorted moral logic of rights brought matters to this pass: the right to free speech became absolute and overwhelmed the obligation of respect. It is beyond dispute that the cartoons were offensive to

⁷⁶ See *Gaudium et spes* no. 75: “It is in full conformity with human nature that there should be juridico-political structures providing all citizens in an ever better fashion and without discrimination the practical possibility of freely and actively taking part in the establishment of the juridical foundations of the political community and in the direction of public affairs, in fixing the terms of reference of the various public bodies and in the election of political leaders.”

⁷⁷ Quoted in Junker-Kenny, “Pre-Political Foundations of the State” 109–10.

⁷⁸ *Ibid.*

⁷⁹ I understand this line of argument as moral on account of a perceived failure to respect such religious concerns. I will not be addressing the question of whether this line of argument is blasphemous or whether the cartoons should have been sanctioned under the Danish blasphemy laws; they were not.

millions of Muslims. But, even given this offensiveness, are there reasons to justify the cartoons' publication? I do not think it is possible to see what these reasons might be if the analysis remains within moral terms abstracted from the normative requirements specific to political society. The American constitutional tradition has grappled with the problem of offensive speech in a number of ways, many of which permit such speech for the sake of crucial political values.⁸⁰ In this section of the article, I consider in particular the Catholic reaction to the publication of the cartoons in light of one American constitutional approach to this problem: what legal scholar Robert Post has called the "paradox of public discourse." By this paradox Post means that "first amendment doctrine suspends legal enforcement of the very norms that make rational deliberation possible."⁸¹ Post devised the theory of the paradox as a way to explain the prevailing logic of the U.S. Supreme Court's jurisprudence on First Amendment issues during much of the 20th century. He articulated the concept in an article that examined the Supreme Court decision finding that the First Amendment protected Larry Flynt and *Hustler Magazine* for its satire of televangelist preacher Jerry Falwell.⁸² The theory's engagement with realities like the pluralism of American society and the normative, public purpose behind permitting offensive speech make the Court's decision applicable to the Danish cartoon case and to the many culturally diverse contexts of speech around the world in which the Catholic Church now finds itself.⁸³

Post argued that the Supreme Court found Flynt's satire of Falwell to be constitutional on the following grounds. First, the Court reasoned that the motivation behind controversial speech could not determine its constitutionality. Second, the Court also reasoned that false statements of fact are of lesser constitutional value than are opinions about public figures and public matters, whether such opinions are true or false. Third, the justices asserted that, in general, opinions cannot be ruled unconstitutional on the

⁸⁰ See, for instance, the discussion of such categories in Erwin Chemerinsky, *Constitutional Law: Principles and Policies*, 3rd ed. (New York: Aspen, 2006) 1001–16.

⁸¹ Robert Post, "The Constitutional Concept of Public Discourse: Outrageous Opinion, Democratic Deliberation, and *Hustler Magazine v. Falwell*," *Harvard Law Review* 103 (1990) 601–86, at 603.

⁸² For the Supreme Court case, see *Hustler Magazine vs. Falwell*, 485 U.S. 46 (1988).

⁸³ I am aware that merely grouping a consideration of the cartoons of Muhammad with a satire in a pornographic magazine may risk reoffending those already upset by the perception of the disdainful treatment of sacred things. I intend no offense and regret if any is taken, but I find the grouping apt. In both cases the issue can be defined as what Post calls "outrageous" speech that is considered offensive and that dislocates assumptions and calls into question personal and community identity.

basis of their offensive nature alone.⁸⁴ For these reasons, it is readily possible to see that the Danish cartoons would be considered constitutional speech. Fundamentally, the cartoons expressed a highly critical, if offensive, opinion about a matter of great public significance: the relationship between Islam and terrorism.

But to see the underlying normative framework that would justify the cartoons' publication, it is necessary to consider Post's theory of the paradox of public discourse. I believe that four aspects of the theory are especially relevant: the purpose of public discourse itself; what constitutes a "public"; negative freedom and the "critical interaction" phase of public discourse; and the "rational deliberation" phase of public discourse.

First, then, the purpose of public discourse itself. As Post understands it, the fundamental aim of public discourse is to "enable the formation of a genuine and uncoerced public opinion in a culturally heterogeneous society."⁸⁵ Construed in this fashion, public opinion legitimates the democratic state.⁸⁶ But it is important to note the package of functional and normative aims that accompany the orientation of public discourse to public opinion and legitimacy. Thus Post notes that such discourse aims both to provide government with the information needed to make decisions and to allow for the collective, national self-definition of a people as such.⁸⁷ Here it is important to note that the Vatican reaction to the cartoon crisis did not refer to these functional and normative purposes of public discourse.

I now turn to Post's concept of the "public" as constituted by public discourse. Several steps are crucial for grasping both Post's meaning of the concept and the concept's applicability to the cartoon controversy. First, the "public" emerges out of pluralism. Post, as already noted, emphasizes the cultural heterogeneity of American society. Next, the public is created by speech. Or, as Post puts it, the public "is constituted precisely by the ability of persons to speak to one another across the boundaries of divergent cultures."⁸⁸ Last, the speech that constitutes the public has a different normative basis from the speech that constitutes each community among the many "divergent cultures" of pluralist society. Post spells out this distinction consistent with his assumption that the norms for civility in speech are tradition-based and specific to communities of interpretation. Thus, in the Flynt-Falwell case, he argues that Flynt's harsh satire of Falwell was constitutionally acceptable even though it may have violated the legal torts of defamation and infliction of emotional distress that are founded on communal norms of speech.⁸⁹ Moreover, Post extends

⁸⁴ Post, "Constitutional Concept of Public Discourse" 613.

⁸⁵ *Ibid.* 639.

⁸⁷ *Ibid.* 671.

⁸⁹ *Ibid.* 638.

⁸⁶ *Ibid.*

⁸⁸ *Ibid.* 634.

the notion of “community” beyond its application to the norms governing legal torts of speech. Thus he also argues that it is unconstitutional for the government to enforce standards of speech on behalf of a particular cultural community. For public discourse to achieve its purpose, the government must remain neutral in what Post metaphorically calls the “marketplace of communities.”⁹⁰

But it is important to note the complex fashion, combining liberal and communitarian aspects, in which Post conceives of the role of individuals and communities in the formation of a public. To be sure, he argues that the public is created in tension with the communities that form pluralist society. But he also argues that the wide boundaries of constitutional speech allow for a constant dialectic of newness and tradition, of the voluntary and the communal. He therefore does not argue in terms of atomized individuals detached from any sense of tradition. Rather, he understands that a citizen’s new “self-constitution” is never really separable from a simultaneous “self-discovery”: The occasion for being reconstituted as an individual or community is always at the same time an occasion of discovering anew one’s own tradition.⁹¹ For Post, then, public discourse is not only oriented to the creation of a collective opinion but also permits the possibility of persons constituting themselves and their communities anew. Through changes made by individuals—often at the instigation of controversial speech—the communities to which such individuals adhere can be remade and become better.⁹² Moreover, the maintenance of the sphere of public discourse in which no one community’s speech is favored ensures that “communities themselves develop through competition for the allegiance of individual adherents.”⁹³

In this discussion of the “public,” two points are especially relevant to the Danish cartoon case. First, Post’s theory of the public does not permit the government to enforce, on behalf of a particular community, standards of speech like Islamic norms against the depiction of the Prophet Muhammad. Such a prohibition on government enforcement allows for the possibility of the creation of a public. Second, the prohibition on government enforcement of a community’s standards also intends to protect the voluntary choices of the members of each particular community—choices in relation to their communities, such as whether to belong to the communities or not,

⁹⁰ Ibid. 632. While the metaphor of a “marketplace of ideas” has been deeply influential in American constitutional interpretation, Post argues that it is important to change the metaphor to one of a “marketplace of communities.” Otherwise the constitutional interpretation “conceives of neutrality only at the level of ideas, rather than at the more general level of structures that establish communal life” (ibid.).

⁹¹ Ibid. 680.

⁹² Ibid. 630.

⁹³ Ibid.

or how to interpret communal traditions. Such individual choices, of course, may improve or diminish communities. Such choices may also enhance or undermine the designated authorities in these communities. The constitutional possibility of such speech challenging an individual or communal identity does not determine the direction of such choices, only their possibility. But it also creates the possibility of tension between the constitutional liberty of citizens and the authoritative assumptions of religious communities.

I now turn to what Post calls the “initial, distinguishing moment”⁹⁴ of public discourse or the “radical negativity that characterizes critical interaction.”⁹⁵ By this negativity, Post means the negative freedom ensured by the constitutional prohibition on government enforcement of norms of speech consistent with community life. This negativity creates the possibility in itself of public discourse. Or, more specifically, it enables what Post calls “critical interaction” or the manner of speech that constitutes the public. Post says that such speech shares in standards, just not the standards of any one community. More to the point, the standards of critical interaction pertain to intellectual processes in which speakers act on one another critically: opinions and arguments clash, are questioned, modified, and negated.⁹⁶ Such a process is inherently conflictual, even if in service to the formation of a unified public opinion. But the conflict is not just one of clanging speech; rather, dissonance is introduced into the identities of individuals and communities. Thus Post argues that insofar as the creation of public discourse requires communication between persons of disparate communities, so too does the creation of such discourse require citizen-speakers to obtain some distance from the assumptions and certitudes that define the self and one’s community.⁹⁷ Speech that bears constitutionally protected, if offensive, ideas creates the space to reflect, perhaps angrily or uncomfortably, on the character of social relations. Speech understood too quickly as an action giving offense fixes social relations at the expense of the possibility of change.⁹⁸

I can now relate Post’s conception of the “initial, distinguishing moment” of public discourse to the Catholic reaction to the cartoon controversy. To be sure, the Vatican, in responding to the crisis, affirmed the significance of the human right to free expression. Such an affirmation contains at least an implicit approval of the negative freedom of speech: the human right would not be intelligible without assuming that it required some restraint on government prohibition of speech. But, in the cartoon case, the Vatican’s affirmation of this negative freedom was qualified. Moreover, the Vatican saw the negative freedom in itself as a cover for an absolute freedom

⁹⁴ Ibid. 642.

⁹⁶ Ibid. 636.

⁹⁸ Ibid. 666.

⁹⁵ Ibid.

⁹⁷ Ibid.

unhinged from the obligation of respect. By contrast, Post robustly affirms the priority of the negative freedom of speech. Such a freedom, he argues, is what creates the possibility for the discourse that constitutes a public out of pluralist society or, in Murray's phrasing, that creates the "constitutional consensus whereby the people acquires its identity as a people."⁹⁹ Moreover, Post is clear-eyed about the difficulties that come with prioritizing such negativity. Constitutional discourse can be a clash of clanging, offensive symbols that hurt feelings and jar individual and communal identities. But the potential for giving such offense is subordinate in value to the possibility of creating constitutional society and of allowing individuals and communities to change.

One final component of Post's theory remains to be considered: the "rational deliberation" phase of public discourse. If the distinguishing moment of public discourse is marked by negative freedom and critical interaction, then its complementary phase is characterized by the reasonable consideration of positions emerging from that distinguishing moment. This consideration should proceed according to standards of deliberative rationality consistent with democratic self-government. Thus speech in this phase of public discourse should be civil and noncoercive; the participants in the discourse are understood as equal, free, rational, and capable of deliberating together toward the formation of a common democratic will.¹⁰⁰ Post's model for his complementary phase of public discourse is taken from theories of deliberative democracy recently regnant in American legal and political thought.¹⁰¹ Consistent with those theories, Post argues that rational deliberation depends normatively and empirically on standards of civility that allow discussion to continue and consensus to emerge.

Post departs from such theories, however, on key points. For instance, he subsumes the phase of rational deliberation within the overall conceptual structure of public discourse: rational deliberation alone is not sufficient to constitute public discourse. Second, his fundamental concept of public discourse combines both a negative moment creating the possibility of critical interaction and a positive moment aimed at successful deliberation. Between these moments, Post accords normative and constitutional primacy to the former. This primacy is not in service to an absolute freedom detached from obligations of respect; rather, it arises from the challenge of forging public opinion out of a deeply pluralist society and from recognition of the voluntary and communal nature of a citizen

⁹⁹ Murray, "Civilization of the Pluralist Society" 9.

¹⁰⁰ *Ibid.* 642.

¹⁰¹ See, for instance, John Gastil, *Political Communication and Deliberation* (Los Angeles: Sage, 2008); and Amy Gutmann and Dennis Thompson, *Democracy and Disagreement* (Cambridge: Harvard, Mass., 1996).

inhabiting democratic political society. Post also understands that the primacy of this negative moment means that public discourse will have an inherent conceptual and social instability. Speech that violates a community's norms—as the cartoons of Muhammad violated Muslim strictures—is often experienced as “coercive and incompatible with public debate.”¹⁰² Even more, to the extent that the primacy of the negative moment of public discourse prevents the law from sustaining a commitment to civility, public discourse “corrodes the basis for its own existence.”¹⁰³ But the corrosion is not inevitable, only possible. Moreover, the corrosion can be corrected by the commitment to rational deliberation. Nevertheless, this constantly unstable nature of public discourse—veering between conflict and consensus—cannot and should not be avoided. It is the acceptable price to pay to permit the formation of an uncoerced public opinion in a pluralist society. A central problem, then, with the Catholic responses to the Danish cartoon controversy was not only that they did not accord a distinct primacy to the negative moment of this paradox; they also scarcely invoked this negative moment and its rich normative possibilities for the creation of a public and of new and better selves and communities.

SPEECH, POWER, AND THE PUBLIC SPHERE

Post, then, provides a persuasive logic by which to respond to one of the Vatican's chief objections to the publication of the Danish cartoons: that the drawings were offensive and violated the moral requirement of respect. I now address a second major Vatican objection to the cartoons: that their publication threatened social unity. As already noted, this objection should be interpreted in light of Catholic social teaching's concern for the effect of clashing opinions on the unity of a democratic community and for the imperative of unity contained in *communio* theology. Here I will consider this normative concern about speech and unity in light of what moral philosopher Charles Taylor has argued are three distinctive traits of the public sphere in liberal societies: acceptance of conflict, orientation to power, and its “radical secularity.”

First, though, an explanation of the meaning of “public sphere.” Taylor describes it as the “common space in which the members of society meet, through a variety of media (print, electronic) and also in face-to-face encounters, to discuss matters of common interest; and thus to be able to form a common mind about these matters.”¹⁰⁴ From its emergence in

¹⁰² Post, “Constitutional Concept of Public Discourse” 604–5.

¹⁰³ *Ibid.* 643.

¹⁰⁴ Charles Taylor, “Liberal Politics and the Public Sphere,” in *Philosophical Arguments* (Cambridge, Mass.: Harvard, 1995) 257–87, at 259. Taylor returns to this material in *A Secular Age* (Cambridge, Mass.: Harvard, 2007) 185–96.

18th-century Europe, he argues, the public sphere has been one of two central social forms (the economy is the other) in the Western liberal tradition in which society as a whole is understood to function independently of the state.¹⁰⁵ As such, the public sphere has “been of crucial importance to the limitation of power and hence to the maintenance of freedom in the modern West.”¹⁰⁶ It would be a mistake, however, to understand the public sphere—or liberal society more generally—only in terms of its orientation to freedom. Thus Taylor argues that liberal societies are characterized not only by the pursuit of the good of freedom but also by the effort to maximize the good of collective self-rule (and by these pursuits undertaken “in conformity with rights founded on equality”).¹⁰⁷ It will be especially helpful in the following discussion to consider the public sphere in light of the tension between these often-competing goods—a tension similar to the one at the heart of Post’s paradox of public discourse.

As already noted, the Vatican statement decried the effect of the Danish cartoons on “mutual coexistence” and observed that governments, if justified by legislation, could use their power to restrict such potentially disruptive speech. Taylor’s account of the public sphere in liberal society puts this unity-based criticism in context. On the one hand, the Vatican’s concern for the effect of the cartoons on social unity corresponds to what Taylor describes as the liberal tradition’s commitment to the good of collective self-rule. This aspect of the liberal tradition pays special attention to the effect of speech on the quality of common debate that is an integral part of collective democratic decision-making and of the achievement of social unity.¹⁰⁸ Taylor also argues that an overriding focus of a liberal society on the limitation of power in service to the good of freedom—meaning, in this case, the limitation of power to permit the widest range of speech—can work to undermine common debate by creating a cacophonous public space.¹⁰⁹ Seen in light of these claims by Taylor, the Danish cartoons can be understood as the uncivil fruit of a liberal society overly concerned with the limitation of power and insufficiently concerned with the quality of common democratic debate. This way of understanding the crisis, in any case, is consistent with both the Vatican’s view of the cartoons’ publication and the Catholic social teaching tradition’s concern for the effect of speech on social unity.

But Taylor’s work more fully considered provides a perspective in normative political terms from which to see the conceptual shortcomings that informed the Vatican response. First, there is the issue of conflict.

¹⁰⁵ Ibid. 258.

¹⁰⁷ Ibid. 258.

¹⁰⁹ Ibid. 272.

¹⁰⁶ Ibid. 272.

¹⁰⁸ Ibid. 272–73.

The concern about social unity has a self-evident importance, both in the face of the challenge of immigration in Western Europe and as a consequence of Catholic *communio* theology. But the Vatican concern for unity in the case of the cartoons—and in the longer social tradition—is at the expense of seeing unity arising out of conflict. By contrast, Taylor notes that the liberal public sphere

involves a breach in the old ideal of a social order undivided by conflict and difference. On the contrary, it means that debate breaks out and continues, involving in principle everybody, and this is perfectly legitimate. The old unity will be gone forever. But a new unity is to be substituted. For the ever-continuing controversy is not meant to be an exercise in power, a quasi-civil war carried on by dialectical means. Its potentially divisive and destructive consequences are offset by the fact that it is a debate outside power, a rational debate, striving without *partis* to define the common good.¹¹⁰

This conflict, then, while regrettable, is an inevitable political reality that the liberal public sphere strains to transform into a conflict of ideas and speech, not weapons and war. Out of such conflict—as it is envisioned in liberal society—a common good can emerge.

What of the role of another fundamental political reality in liberal society—power? Taylor's analysis of power and the public sphere extends beyond his identification of the possibility that a liberal society may mistakenly favor the restraint of power and an excess of freedom. Thus he argues that in a liberal society the most fundamental normative claim with regard to power and the public sphere is that the public sphere in itself ought to operate by its own dynamic.¹¹¹ This is understood to mean, first, that the sphere of debate in which the common good is defined ought to exist outside the distorting influence of government power.¹¹² In turn, the opinions arrived at in this sphere outside government power provide the rationale by which government power is legitimized and checked.¹¹³ To be sure, this is an ideal criticized for underestimating the degree to which cultural anomie, governments, economies, and self-interested media companies in liberal societies in fact influence the formation of public opinion. But such criticism, valid in part as it is, should not negate the wisdom of the ideal at the heart of the Western liberal tradition's separation of state and society. Moreover, it is this formative ideal that is brought into question by the Vatican's call in the cartoon crisis for governments to restrain provocative speech.

But the relationship of the public sphere to government power is only one aspect sketched by Taylor of the relationship of this sphere to power in liberal society. I would like here to call attention to another aspect of this relationship, one that was especially implicated in the cartoon crisis and

¹¹⁰ Ibid. 265.

¹¹² Ibid. 265.

¹¹¹ Ibid. 272.

¹¹³ Ibid. 260, 264.

that has important implications for the issue of free speech and Catholic social teaching in the coming years; I am referring to the normative issues of power internal to the use of speech itself to form public opinion. Seyla Benhabib referred to this set of issues when she argued that “power is not only a social resource to be distributed. . . . It is also a sociocultural grid of interpretation and communication. Public dialogue is not external to but constitutive of power relations.”¹¹⁴ Thus power construed in this fashion can be understood in terms of things like the use in public speech of more-or-less dominant or popular kinds of arguments, idioms, and images;¹¹⁵ the capacity of language itself to reveal the good and to move people to do it;¹¹⁶ and the struggle over the shape and meaning of the self-understanding that constitutes a people.

Taylor refers to speech and its constitutive relation to power in two ways especially relevant to the cartoon crisis and to related issues in Catholic social teaching. First, he contrasts the historical development of public opinion in liberal society with the “opinion of mankind.” The latter, he argues, was handed down passively from one generation to the next; shaped by authorities, elders, and parents; and often local or self-consciously circumscribed in its reach.¹¹⁷ By contrast, public opinion was understood to be the product of discussion, to extend beyond a local community or culture, and to result in an actively produced consensus.¹¹⁸ To be sure, it would be reductionist to identify the opinion-forming process of contemporary religions with what Taylor describes as the character of the “opinion of mankind” current in the 18th century. Many religions today, Catholicism and Islam included, have sophisticated means for shaping opinion within and without their folds. Nonetheless, it is true that contemporary Catholicism and Islam rely for the formation of internal, collective opinion on a tradition-based process analogous to the workings of the “opinion of mankind.” Such a tradition-based process surely informs the Islamic strictures forbidding depiction of the Prophet Muhammad. Seen in such light, the cartoon crisis appears as a clash between styles of argument associated with different interpretive processes at work in a liberal society: one belonging to the critical nature of public opinion, the other to the tradition-based character of the “opinion of mankind.” Such an analysis lends credence to the view that the crisis was representative of

¹¹⁴ Seyla Benhabib, “Afterword: Communication Ethics and Current Controversies in Practical Philosophy,” in *The Communicative Ethics Controversy*, ed. Seyla Benhabib and Fred Dallmayr (Cambridge, Mass.: MIT, 1990) 330–69, at 353.

¹¹⁵ *Ibid.* 353–54.

¹¹⁶ Charles Taylor, *Sources of the Self: The Making of the Modern Identity* (Cambridge, Mass.: Harvard, 1989) 91–98.

¹¹⁷ Taylor, “Liberal Politics and the Public Sphere” 260–61.

¹¹⁸ *Ibid.*

the contemporary conflict between modern secular rationality and traditional religion.¹¹⁹

To keep the analysis within such terms, however, is to remain within a cultural or religious, but not political, framework. With one more important step in his argument, Taylor refines the distinction between public opinion and the “opinion of mankind”: his identification of the “radical secularity”¹²⁰ of the modern public sphere. Here his analysis provides a way to understand the cartoon crisis more fully in terms of the realities of power and the norms of politics. By “radical secularity,” Taylor does not mean that the liberal public sphere is inherently hostile to religion. Rather, he uses the word “secularity” to refer to the process by which the public sphere creates the common self-understanding that constitutes a people in a liberal society.¹²¹ For Taylor, this process is nothing other than the interaction occurring within the public sphere itself; this common speech, for better or worse, in itself yields an association. To be sure, laws and structures, norms and images shape the stream of debate,¹²² but such laws and structures, whether derived from religion or culture, finally do not enjoy an unquestionable authority and power in specifying the self-understanding of the public sphere. Rather, such laws and structures are subordinated to critical interpretive action for the normative purpose of forming society. Thus the “radical secularity” of the modern public sphere does not consist in its rejection of religion but in its rejection of final and fixed religious points of reference by which to define society’s self-understanding. The definition of such a society is always a historical task, always an exercise of freedom and responsibility that may or may not incorporate religious ideas. Taylor explains this link between his understanding of secularity and the liberal public sphere:

The move to modern secularity comes when associations are placed firmly and wholly in homogenous, profane time, whether or not the higher time is negated altogether, or other associations are still admitted to exist in it. Such is the case with the public sphere, and therein lies its unprecedented nature.¹²³

¹¹⁹ This framework is the primary one with which the Vatican viewed the cartoon crisis. For a related discussion, see Oliver O’Donovan, *Common Objects of Love: Moral Reflection and the Shaping of Community* (Grand Rapids, Mich.: Eerdmans, 2002) 45–57. This analysis of the conflict between Western media culture and the Islamic world (published well before the cartoon crisis) argues that the former is marked by an uncontrolled use of imagery—a use that has an iconoclastic character deeply at odds with Islamic sensibilities. I find O’Donovan’s arguments in this regard to be incisive but incomplete in that they pay insufficient attention to the normative dimensions of the structure of Western political societies.

¹²⁰ *Ibid.* 267.

¹²¹ *Ibid.* 269.

¹²² *Ibid.* 268. See also Taylor’s discussion of modern “social imaginaries” in *A Secular Age* 171–76.

¹²³ Taylor, “Liberal Politics and the Public Sphere” 271.

I can now bring to a close this discussion of the Vatican's claim that the Danish cartoons threatened social unity. Taylor's analysis makes clear that this concern for collective decision-making and unity represents only one fundamental aspect of the liberal tradition's approach to the public sphere. The other is the concern about power. And this second concern received muted attention in the Vatican's response to the cartoon crisis. By contrast, Taylor enumerates the range of ways in which normative concerns about power are an inevitable characteristic of the liberal public sphere: in the capacity of the public sphere to define itself; in the legitimacy that governmental power gains from this freely-defined public sphere; and in the struggle for interpretive control of the self-understanding of society in a liberal polity. With Taylor's framework, we also see a philosophical account of speech and the public sphere that has affinities with Post's constitutional concept of the "paradox of public discourse." For Taylor as for Post, public opinion in liberal society has a negative character insofar as it is shaped outside the authoritative power of church and state (even if it may incorporate ideas generated by church and state). But public opinion has a positive character insofar as it provides a basis for the constitution of political society. Inevitably, public opinion in a liberal democratic society is poised between these two moments.

CONCLUSION

I have argued that crucial Roman Catholic responses to the Danish cartoon controversy insufficiently integrated the normative concerns of the political as such; this insufficiency was consistent with views already present in the tradition of Catholic social teaching on speech. The Catholic responses focused on the moral issue of the cartoons giving offense at the expense of normative political arguments that could justify such problematic speech. But, as Post argues, a constitutional democratic society has sound normative reasons for permitting offensive speech. The tolerance of such speech permits the possibility of the formation of a public out of a deep pluralism. The tolerance of such speech also protects the voluntary choices of the members of the diverse communities that constitute such a society. The inadequacy of the Catholic responses was also evident in the degree to which the criticism of the cartoons' publication for impairing social unity eclipsed a broader view of normative issues of speech and power. Taylor's analysis of the public sphere in a liberal democratic society enumerates this range of issues: the existence of a distinct public sphere in itself as a check on government power; the interpretive struggle over the self-understanding and public opinion generated by this public sphere; and the spirit of "radical secularity" in which this struggle takes place.

To conclude, I will apply the normative analysis favored here to an issue raised by the cartoon crisis that is likely to demand theological attention in the years ahead. I am referring to the normative prioritization of the right to the free exercise of religion and especially of this prioritization relative to the right to freedom of speech. This issue was a key point raised in *L'Osservatore Romano's* call in the aftermath of the cartoon crisis for an examination of conscience on the question of freedom of speech. The Vatican newspaper noted the conflict the crisis raised between the “right to express one’s thought and the right to freely profess a religion”¹²⁴ and then stated: “There is no doubt that every genuine expression of the first of these rights [freedom of expression] meets with a natural—to describe it in some way—limit in the full and integral realization of the second [free exercise of religion].”¹²⁵ The logic behind this prioritization of the free exercise of religion stems in part from an interpretation of the first lines of the Declaration on Religious Freedom where it says: The “demand for freedom in human society chiefly regards the quest for the values proper to the human spirit. It regards, in the first place, the free exercise of religion in society.”¹²⁶ *L'Osservatore's* phrasing finds support in recent UN-related efforts to combat the “defamation of religions.” In April 2005—before the cartoon crisis—the UN Commission on Human Rights adopted a resolution stressing the “need to effectively combat defamation of all religions, Islam and Muslims in particular.”¹²⁷ In the aftermath of the crisis, many Muslim governments pressed for a formal UN ban on mocking religions, stating in the text of a proposal that the “defamation of religions and prophets is inconsistent with the right to freedom of expression.”¹²⁸ In September 2009, Archbishop Silvano Tomasi, the Vatican representative to UN agencies in Geneva, told a UN meeting on intolerance that the right to freedom of expression should not be understood to permit speech that promotes religious intolerance or infringes the right to religious freedom.¹²⁹

¹²⁴ “When Satirical Cartoons Push the Limit.”

¹²⁵ Ibid.

¹²⁶ Declaration on Religious Freedom, no. 1.

¹²⁷ Office of the High Commissioner for Human Rights, *Combating Defamation of Religions: Human Rights Resolution 2005/3*, http://ap.ohchr.org/documents/E/CHR/resolutions/E-CN_4-RES-2005-3.doc. The United States, Canada, and the European Union “rejected the resolution as focusing almost exclusively on Islam.” See Stephanie Nebehay, “U.N. Calls for Combating ‘Defamation of Islam,’” Reuters, April 12, 2005, <http://www.swissinfo.ch/eng/index.html?siteSect=143&sid=5679301&cKey=1113318334000>.

¹²⁸ The proposal is quoted in “Muslim Countries Seek U.N. Ban to Shield Religions,” *Zenit*, February 15, 2006, <http://www.zenit.org/article-15292?l=english>.

¹²⁹ Carol Glatz, “Vatican Says No to Protecting Free Expression When It Incites Hatred,” Catholic News Service, October 1, 2009, <http://www.catholicnews.com/data/stories/cns/0904353.htm>.

To be sure, then, the prioritization of the right to the free exercise of religion has an interpretive foundation in the text of the Declaration on Religious Freedom. But the rationale behind the prioritization has also gained strength in recent years due to the sense that religion is broadly under attack in the secular, rights-based culture of Western democracies. One of the chief manifestations of this attack is unhindered speech offensive to people's religious convictions. However, such arguments for the relative primacy of the free exercise of religion are cast in mostly moral or cultural terms, rather than in terms of the normativity of the political as such. And where these arguments are cast in more intrinsically political terms, they appear to follow two lines of thought. One line holds that speech that mocks religion strikes at the heart of the moral role of religion in sustaining the public order of a political society.¹³⁰ The other line focuses on the discrimination resulting from such offensive speech. This may be either discrimination evident in the pain experienced by a society's less-powerful minority compelled to see and hear the objects of religious devotion mocked in the media.¹³¹ Or it may be discrimination experienced by a minority in a society as the inhibition of the human and civil right to the free exercise of their religion.¹³²

But what of more consistently considering the prioritization of the right to the free exercise of religion in light of intrinsically political realities and values, especially as such realities and values pertain to constitutional democracy? And how might such a consideration affect specifically the ordering of the relationship between the right to the free exercise of religion and the right to freedom of speech?

I will consider these questions first in light of the reality of political pluralism. The cartoon crisis was one manifestation of the struggles arising from the onset of a deeper pluralism within European democracies. The great movement of peoples spurred by globalization is sure to continue to make pluralism a growing phenomenon within many states across the globe. In the face of the cacophonous speech that often characterizes such polities, Catholic social teaching has relied on the imperatives of unity flowing from *communio* theology. But, as I have argued in this article, this theology elides the difficulties and obscures the conflicts of living in a political society of deeply conflicting visions of the good. In turn, such a diminishment of differences also diminishes the challenge of ordering the rights to the free exercise of religion and freedom of speech. American

¹³⁰ Office of the High Commissioner for Human Rights, *Combating Defamation of Religions*. See also Rowan Williams, "Archbishop's Lecture: Religious Hatred and Religious Offence," January 29, 2008, <http://www.archbishopofcanterbury.org/2107>.

¹³¹ Williams, "Religious Hatred and Religious Offence."

¹³² *Ibid.*

constitutional scholar Eugene Volokh pointedly criticized the Vatican statement on the cartoon crisis for failing to acknowledge such a challenge. The Vatican statement, he noted, argued both that “the freedom of thought and expression . . . cannot include the right to offend religious feelings of the faithful,”¹³³ and that “any form of excessive criticism or derision of others denotes a lack of human sensitivity.”¹³⁴ But, in response to such statements, he added:

The Church . . . still seems not to have accepted free expression about religion, or for that matter religious freedom. . . . May we still publish the works of Martin Luther? How about of Christopher Hitchens? *The Last Temptation of Christ*? The religious works of the Jehovah’s Witnesses? A historical film in which some actor plays Mohammed? . . . This is not a marginal issue; it is at the core of the rights of free speech and religious freedom. Under the position that the Vatican sets forth, large zones of religious debate, political debate, and art would be outlawed.”¹³⁵

Theologian Oliver O’Donovan has offered an antidote to the limits of applying *communio* theology to the pluralistic societies of today. Pluralism, he argues, is not something to be shunned. Moreover, the Tower of Babel is not an everlasting testimony to the failure of unity. Rather, it is a sign of God’s providential purpose in allowing plurality as “a necessary restraint, a curb on evil to which unity had given free rein.”¹³⁶

A deeper acceptance of political pluralism, then, inevitably complicates the ranking of the rights to the free exercise of religion and to freedom of speech. But such an acceptance also brings into sharper view an inevitable tension that constitutional democracy may pose between speech in the public square and the claims of religious authorities. The cartoon crisis made plain this tension: the freedom of the cartoonists crashed into proscriptions against portrayals of Muhammad. But Robert Post’s arguments provide a way of understanding why such a tension exists. As he notes, the constitutional tolerance of speech that may be offensive to a religion is justified in part because it protects the freedom of citizens to interpret for themselves the meaning of each citizen’s religious tradition; it also protects their freedom to choose for themselves how and whether they wish to remain adherents of such a tradition. Thus, due to the right of free speech

¹³³ “Vatican Condemns Cartoons of Mohammed.”

¹³⁴ Ibid.

¹³⁵ The Volokh Conspiracy Blog. See Hitchens’s recent defense of atheism, *God Is Not Great: How Religion Spoils Everything* (New York: Hachette, 2007).

¹³⁶ O’Donovan, *Common Objects of Love* 40. The Catholic social teaching document, Ethics in Communications, no. 3, notes, “Viewed in the light of faith, the history of human communication can be seen as a long journey from Babel, site and symbol of communication’s collapse (cf. *Gn* 11:4–8) to Pentecost and the gift of tongues (cf. *Acts* 2:5–11)—communication restored by the power of the Spirit sent by the Son.”

conferred on citizens in a constitutional democracy, religious leaders may retain their authority but also lose a measure of interpretive control over their tradition. Post argues that preserving the possibility of citizens to engage in such interpretation—and hence possibly to change or improve their communities of tradition—is one of the reasons behind the U.S. Supreme Court’s refusal to accord any special protection to speech about religion.¹³⁷ But it is also important to note how well such a view of freedom of speech accords with the text of Article 19 of the UN Declaration of Human Rights. To be sure, that text affirms the right to the freedom “either alone or in community, with others in public or private, to manifest . . . religion or belief in teaching, practice, worship and observance.”¹³⁸ But such a clear affirmation of the right to the free exercise of religion is in fact preceded in the text of the Article by the affirmation of the more broadly stated “right to freedom of thought, conscience, and religion; this right includes freedom to change . . . religion or belief.”¹³⁹

What, finally, of the relationship of the rights to the free exercise of religion and freedom of speech in light of the realities of political power? Anthropologist Talal Asad has called attention to two related conceptual mistakes that deeply affect how this question is answered. Both mistakes, he argues, stem from the too-easy assumption by religious leaders and theologians that “religion” has a universal character that is inherently transhistorical and transcultural and hence removed from the sphere of political power in society. By construing religion in such terms, religious leaders and theologians play into the hands of Enlightenment hardliners for whom religion is precisely such a dehistoricized and privatized reality. Thus any public engagement by religion construed in such fashion necessarily involves—so these hardliners think—an undue intrusion of what should be private power into secular public space. But the problem of how Enlightenment hardliners may construe religions is compounded by how religions, locked in this universalistic mode, understand themselves. Thus Asad argues that a dehistoricized understanding of religion makes the mistake of construing itself apart from the forms and practices that in fact constitute it. Here, then, there is an opening for religions to consider such practices as speech—and not only internal religious speech but also speech in political society—by which a religion is understood and constituted at any one time.¹⁴⁰ Consistent with Asad’s critique, theologian David Hollenbach has offered a helpful understanding of the Church that is both

¹³⁷ Post, “Constitutional Concept of Public Discourse” 631–32. See also Chemerinsky, *Constitutional Law* 932–49, 1005–8, 1011–16.

¹³⁸ Universal Declaration of Human Rights.

¹³⁹ *Ibid.*

¹⁴⁰ Talal Asad, *Genealogies of Religion: Discipline and Reasons of Power in Christianity and Islam* (Baltimore: Johns Hopkins, 1993) 28–29, 43.

universal and historical and that is keyed to the contemporary challenges of pluralism and political power. At the heart of his idea is what he calls the Church's need to immerse itself in speech or, as he puts it, to assume the character of "dialogic universalism."¹⁴¹ This means that the Church's engagement with the pluralism of our time should be guided by a commitment to the fundamental goods inherent in all persons; by a commitment to the good in itself of engagement with others of different traditions; and by a recognition that the depth of cultural differences today means that the common good of any society can be achieved only "in a historically incremental way through deep encounter and intellectual exchange across traditions."¹⁴²

I believe that both Asad's and Hollenbach's ideas about how to think about religion, speech, and power cohere with Charles Taylor's discussion of the interpretive struggle that characterizes the "radical secularity" of the modern public sphere in liberal society. As I noted earlier, for Taylor the "radical secularity" at issue does not point to the rejection of religion from public space. Rather, it refers to the self-understanding of the people that constitute a liberal democratic society and to the imperative that this self-understanding is to be shaped in history by the people themselves. Religions may contribute ideas and images, but no fixed religious point of reference—for example, no proscriptions against making images of Mohammed—can finally determine the identity of a liberal democratic society. Thus religions may insist on certain authoritative interpretations of their traditions. And religions may internally succeed in maintaining such authoritative interpretations. But in liberal democratic society, given freedom of speech, religions lose a measure of control over how their ideas and images are integrated into the public dialogue that shapes a people's self-understanding and that constitutes one of the principal sources of political power.

¹⁴¹ David Hollenbach, *The Common Good and Christian Ethics* (New York: Cambridge University, 2002) 152.

¹⁴² *Ibid.* 152–53.