Pope Francis and the Limits of Freedom of Expression

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I. Introduction

On January 7, 2015, two armed gunmen entered the office of the French magazine Charlie Hebdo in Paris, opening fire and ultimately killing twelve people, mostly journalists, in the attack. According to one witness, the attackers claimed to be members of al-Qaeda. Several witnesses stated that the gunmen shouted that they were avenging the Muslim prophet Muhammad.

Over the years, Charlie Hebdo had cultivated a reputation for satire of topics such as government, business, and religion. More than once, Charlie Hebdo presented an earlier version of this paper at the University of Louisville Free Speech Forum on December 3, 2015. For discussion after the Free Speech Forum presentation, the author thanks the participants of the Forum. For a review of a prior version of the paper, particularly with regard to Catholic theology, the author thanks Daniel Boyd. © 2017 by Carlo A. Pedrioli.


3. Three Days of Terror, supra note 1.

Hebdo had published various depictions of the Muslim prophet Muhammad. In 2006, the magazine’s republishing Danish newspaper cartoons of Muhammad had upset Muslims. In 2011, Charlie Hebdo had published another cartoon of Muhammad, who appeared on the cover as the “‘guest editor’” and “threaten[ed] readers with ’100 lashes if [they did not] die of laughter.’” Shortly thereafter, the magazine’s office had been firebombed. In 2012, Charlie Hebdo had published depictions of a naked Muhammad in sexual poses. The editor of the magazine, Stephane Charbonnier, had received death threats and was under police protection at the time of the January 2015 incident.11

The January 2015 attack on the Charlie Hebdo office came at a time of rising anti-Muslim sentiment in Europe. A poor economy, high unemployment, and ongoing immigration had contributed to this sentiment. The tensions were the greatest in France, which, in early 2015, had as many as six million Muslims and a legacy of colonialism in Algeria, Syria, and North Africa. Clearly, neither the publication of the Muhammad cartoons nor the shooting at the Charlie Hebdo office served to calm the tense atmosphere in France.

In the midst of all of this tension, which included discussion over how far freedom of expression in an open society should go, discussion that spread

5. Id. Charlie Hebdo was also critical of other religions besides Islam. Carvajal & Daley, supra note 4. See Charlie Hebdo and Its Place, supra note 4 (providing samples of cartoons that satirized Judaism, Islam, and Catholicism).
7. Charlie Hebdo and Its Place, supra note 4.
13. Id.
14. Id.
beyond France,16 Argentine Pope Francis entered the scene.17 On January 15, 2015, about a week after the attack on Charlie Hebdo, a journalist asked Francis about the limits of freedom of expression.18 The Pope, using an analogy, stated that if a friend of his insulted the Pope’s mother, the friend should expect the Pope to punch him. Apparently thinking that freedom of expression needed robust defense, various voices in the U.S. media, using strong language and not engaging Catholic theology at any depth, promptly critiqued the Pope’s comments.19 The Vatican received numerous requests for clarification.20
The Pope’s comments shortly after the attack on *Charlie Hebdo* presented an opportunity to look at the limits of freedom of expression from another perspective, a religious one. Since religious voices play a role in the public sphere,\(^\text{21}\) considering freedom of expression from a religious viewpoint is important. Although somewhat different from a traditional U.S. perspective on the speech that the *Charlie Hebdo* cartoons constituted, the Pope’s perspective nonetheless was consistent with existing theology of the Catholic Church. To develop such a thesis, this paper will proceed by offering the following: a more detailed and contextualized summary of the papal remarks, an overview of relevant principles of U.S. free speech law and an application of those principles to the *Charlie Hebdo* cartoons, and an overview of relevant principles of Catholic theology and an application of those principles to the cartoons. The result should be an improved understanding of an additional perspective on how far freedom of expression in an open society should go.

II. The Comments of Pope Francis

Because of the controversy regarding the Pope’s remarks, a thorough summary of the remarks, in context, is appropriate. This section provides such a summary of remarks made over almost two weeks in January 2015.

Despite the media attention to the remarks that Pope Francis made on January 15, 2015, the Pope provided remarks as soon as the afternoon of January 7, 2015, the day of the *Charlie Hebdo* attack. Francis issued a statement via the director of the Press Office of the Holy See, Father Federico Lombardi.\(^\text{22}\) The statement indicated, “The Holy Father expresses the strongest condemnation for the horrific attack that marred the city of Paris with a high number of victims....”\(^\text{23}\) Through the statement, Francis “call[ed] upon all to oppose by all means the spread of hatred and all forms of violence, physical and moral, which destroy human life, which violate the dignity of people.”\(^\text{24}\) “Whatever may be the motivation,” the statement continued, “homicidal violence is


\(^{23}\) Id.

\(^{24}\) Id.
abominable. It is never justifiable.”25 The statement added, “Every incitement to hatred should be refuted. Respect must be cultivated.”26 The statement concluded with an expression of the Pope’s solidarity with “all those who … continue to work consistently for peace, justice and right.”27

During a morning Mass in the Vatican guesthouse the next day, January 8, 2015, the Pope stated that the attack “made us think of so much cruelty, human cruelty; of so much terrorism.”28 He noted, “The cruelty that man is capable of!”29 In a five-sentence statement, the Pope used the word cruelty or cruel five times. He encouraged attendees at the Mass to pray for the victims of the attack and for a change of heart of the attackers.30

A week later, on January 15, 2015, while the Pope was on a flight between Sri Lanka and the Philippines as part of an apostolic journey to both countries, journalist Sébastien Maillard asked the Pope about freedom of expression.31 The context was a press conference in which many topics, including poverty, the Pope’s upcoming environmental encyclical,32 and terrorism, received attention.33 Specifically, Mr. Maillard asked the following: “Holy Father, during Mass yesterday morning you spoke of religious freedom as a fundamental human right. But in showing respect for the various religions, how far can freedom of expression go, that freedom of expression which is itself a fundamental human right?”34

25. Id.
26. Id.
27. Id.
29. Id.
30. Id.
33. First Press Conference, supra note 18.
In responding, Francis recognized that freedom of religion and freedom of speech were both fundamental human rights. While acknowledging freedom of religion, Francis said, “[W]e cannot offend others, make war or kill in the name of one’s own religion, that is, in God’s name.” The Pope noted that “many wars of religion” had taken place. One could exercise freedom of religion “without offending, but also without imposing it or killing for it.”

In terms of freedom of expression, Francis explained that everyone had the right and obligation to say what he or she thought “to promote the common good.” He gave the example of an elected official. Although people had a right to freedom of expression, they should exercise this right “without offending others.” Perhaps because Mr. Maillard was French, the Pope indirectly referenced the recent shooting in Paris.

Although “one c[ould] not respond violently,” violence sometimes resulted. The Pope used the hypothetical example that if Alberto Gasbarri, who planned the Pope’s trips and who was standing beside the Pope during the news conference, insulted the Pope’s mother, Dr. Gasbarri should expect the Pope to punch him. While speaking, Francis delivered a mock punch to Gasbarri. “We cannot provoke others, we cannot insult their faith, we cannot mock their faith,” declared Francis. He added, “All those people who belittle religions, who mock them, who ‘toy with’ other people’s religion, they antagonize others…. Francis stated that he used his example “to say that in freedom of expression there are limits.” He concluded, “I don’t know if [the example of punching Dr. Gasbarri] succeeded in responding to your question.”

35. First Press Conference, supra note 18.
36. Id.
37. Id.
38. Id.
39. Id.
40. Id.
41. Id.
42. Id.
43. Id.
44. Id.
46. First Press Conference, supra note 18.
47. Id.
48. Id.
49. Id.
Following various media requests for clarification of the Pope’s remarks made during the press conference on the flight between Sri Lanka and the Philippines, Father Thomas Rosica, the English language assistant to the Holy See Press Office, released a statement dated January 15, 2015. The statement indicated that the Pope, who believed that freedom of expression was a “fundamental human right,” had explained “there were limits to [ ] freedom of expression,” particularly regarding insulting others on sensitive matters. The statement continued, “The Pope’s expression [was] in no way intended to be interpreted as a justification for the violence and terror that took place in Paris last week.”

On January 19, 2015, while returning from the Philippines to Rome via plane, the Pope received from journalist Valentina Alazraki a request for clarification of his January 15 remarks. As before, the context was a press conference that addressed a variety of topics. Specifically, Ms Alazraki observed, “Your words were not well understood by everyone in the world and seemed to perhaps justify the use of violence in the face of provocation.” She then asked, “Could you explain a little better what you meant to say?”

In response to the question, Francis explained that one should not offer “a violent reaction in the face of an offense or a provocation.” Rather, as the Gospel instructs, one “should turn the other cheek.” Although people have freedom of expression, the Pope observed that, due to the limitations of human nature, “I cannot constantly insult, provoke a person continuously, because I risk making him angry, and I risk receiving an unjust reaction, one that is not just.” Freedom of expression had to “take into account the
human reality.” 60 One should “be well-behaved, prudent.” 61 The Pope described prudence as “a virtue of human coexistence” and “the human virtue that regulates our relationships.” 62 In short, “freedom must be accompanied by prudence.” 63

Overall, Francis offered a view that generally supported freedom of expression, but only prior to the point of provoking others to violence. The Pope condemned violence, although he recognized that people have breaking points at which violence sometimes results. Particularly on sensitive matters like religion, one should exercise care. Of course, Francis only made several brief remarks on freedom of expression, so, from those remarks, it is not possible to offer a full discussion of his theory of freedom of expression. Nonetheless, the Pope offered some points worth discussing.

III. U.S. Law and Freedom of Expression

The law in the United States would offer a somewhat more robust defense of freedom of expression than Pope Francis. In the U.S., the cartoons that depicted Muhammad in the Charlie Hebdo magazine most likely would receive protection under a doctrine such as the political speech or hate speech doctrine. Although they may seem to allow for restriction of the speech, doctrines such as the incitement and fighting words doctrines would not justify restricting the speech.

Under the political speech doctrine, the First Amendment offers strong protection for political communication. The value of communication in public life dates back to ancient Athens. 64 In the United States today, political communication includes “discussions of candidates, structures and forms of government, the manner in which government is operated or should be operated, and all such matters related to political processes.” 65 The purpose of this protection is to allow individuals to discuss matters of government in a free manner. 66 Justice William Brennan famously maintained that the country has “a

60. Id.
61. Id.
62. Id.
63. Id.
64. JOHN DURHAM PETERS, COURTING THE ABYSS: FREE SPEECH AND THE LIBERAL TRADITION 1 (2005) (characterizing communication as “the lifeblood of public life”).
66. Id. at 218.
profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.”67 Thus, the most exacting level of judicial review, strict scrutiny, applies to any law that seeks to restrict political speech.68

Political speech does not need to be verbal or smoothly polished to receive protection. The U.S. Supreme Court has upheld the right of protesters to burn the U.S. flag, a form of nonverbal communication, to express their dissatisfaction with the government.69 Also, the Court has upheld the right of an individual to express his views on a foreign war by wearing, in a courthouse, a jacket that proclaimed, “Fuck the Draft.”70 Indeed, the manner of speech can be important,71 as it can convey emotions.72 Signs that said, “Vote for a New Government” and “Repeal the Draft” would have been less potent than a burning flag and a jacket that proclaimed, “Fuck the Draft,”73 so the original messages received protection.

One could argue that the Charlie Hebdo cartoons were political speech. They implicated discussion of immigration, particularly with regard to Muslims who were coming from other parts of the world to France and beginning to change French culture. As is the case in any developed country with extensive immi-


69. Texas v. Johnson, 491 U.S. 397 (1989). Johnson represents the symbolism principle of the First Amendment, which recognizes that legal protection is not limited to words. RODNEY A. SMOLLA, FREE SPEECH IN AN OPEN SOCIETY 48 (1992). This principle would be more accurately referred to as the expressive conduct principle. Of course, action can be communicative and thus symbolic, but words themselves are symbols. As such, since symbolism is not limited to actions, expressive conduct as a term more specifically captures the symbolism of acts.

70. Cohen v. California, 403 U.S. 15 (1971). The anti-draft jacket scenario could have been different if the audience for the message had been captive, such as in a private home. Id. at 21–22. The Court indicated that those in the courthouse whom the jacket offended were not a captive audience because they could have looked away from the jacket. Id. at 21.


73. Haiman, supra note 71, at 189.
igration, France, through its government, would have to consider such an issue, and thus the issue would be part of the political process. The magazine might be telling the government and the public, “We don’t want Muslims in France.” Although this is not a welcoming message, it easily could implicate political matters.

While containing important verbal elements, the Charlie Hebdo cartoons, with their eye-catching caricatures of individuals, had the ability to draw immediate attention through nonverbal means. On various covers of the magazine, an orthodox Jew was pushing a Muslim in a wheelchair, a recently-resigned Pope Benedict XVI was passionately kissing a member of the Swiss Guard, and a Muslim man was kissing a male cartoonist from Charlie Hebdo. In these and other similar depictions on the covers of the magazine, words briefly explained the images, but the images filled more of the available rhetorical space. In their endless irreverence, the critical covers also had a rough rhetorical sensibility about them, as would a jacket that said, “Fuck the Draft.” If the cartoons were deprived of their rough visual nature, they would lose their emotional potency.

Additionally, the hate speech doctrine generally provides protection for speech aimed against members of a particular group constituted by race, ethnicity, sex, gender, sexual orientation, religion, class, or a similar category. Hate speech can include, but is not limited to, “insulting nouns for [ ] groups, degrading caricatures, threats of violence, and literature portraying [members of groups] as animal-like and requiring extermination.” Case law has upheld the rights of members of a Nazi-oriented party to be free from prior restraint when desiring to march in a community with a large Jewish population, as well as the rights of individuals to express their views against African-Ameri-

75. Charlie Hebdo and Its Place, supra note 4 (providing samples of the cartoons).
76. See Le Direct, supra note 74.
79. Nat’l Socialist Party of Am. v. Village of Skokie, 432 U.S. 43 (1977). The imposing of prior restraint could have been acceptable if “strict procedural safeguards” like “immediate appellate review” were available. Id. at 44. In National Socialist Party of America, the ap-
pellate review by the Illinois Supreme Court could have taken a year or more, which was not “immediate appellate review.”

80. R.A.V. v. City of St. Paul, 505 U.S. 377 (1992). The Court noted that the cross-burning could have been prohibited on the basis of a crime like arson or damaging property, but the case was not brought on grounds such as these. Id. at 379–80.

Cross-burning that constitutes “a true threat” can be prohibited. Virginia v. Black, 538 U.S. 343, 359–60 (2003). A true threat involves a statement via which “the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.” Id. at 359. If a cross is burned as an ideological statement, the cross-burning might not constitute a true threat and thus could receive First Amendment protection. Id. at 365–66.

82. Black, 538 U.S. at 360.
83. Texas v. Johnson, 491 U.S. 397, 414 (1989) (flag-burning context). The Court noted, “If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.” Reactive harms, those caused by responses to the content of speech, generally do not justify punishment for speech. Smolla, supra note 69, at 48–50 (noting that reactive harms fall under the harm principle, as do physical and relational harms, although, under the harm principle, punishment for speech needs to be based on physical or relational harms). Also, speech does not lose protection because its content is emotional as opposed to rational. Id. at 46 (identifying this idea as the emotion principle).

In the context of hate speech, a critique of the lack of legal concern regarding offense points out that the law equates the positions of individuals who have less power with the positions of individuals who have more power. Catharine A. MacKinnon, Only Words 105 (1993). Thus, the law treats sexually derogatory remarks aimed at a woman like those aimed at a man, regardless of the history of sex-based discrimination against women. Id.

84. Snyder, 462 U.S. at 460–61.
Thus, the government may not allow speech that calls for racial harmony in the community but disallow speech that is hostile to a particular race and seeks to impede racial harmony in the community.\textsuperscript{87} Indeed, as this example would suggest, much hate speech is also political speech.\textsuperscript{88}

Of course, a legal system has to have a way of dealing with something like hate speech. Since punishment for hate speech is allowed only in very limited circumstances, such as when a speaker directs hate speech at a member of the implicated group who is in proximity of the speaker,\textsuperscript{89} the U.S. legal system generally asks those who disagree with a hateful message to respond with their own messages.\textsuperscript{90} As Justice Louis Brandeis wrote in another free speech context, “[T]he remedy to be applied is more speech, not enforced silence.”\textsuperscript{91}

The anti-Islamic cartoons in \textit{Charlie Hebdo} most likely would receive protection under the hate speech doctrine. If one interpreted the cartoons to focus on providing, rather than a critique of some aspects of the Islamic faith, insults aimed against Muslims for being Muslim, then one could describe the messages as hate speech. The depictions of the Muslims’ prophet could be described as “degrading caricatures”\textsuperscript{92} of Muhammad, particularly

\begin{itemize}
\item[\textsuperscript{87}] Some scholars, frequently coming from outsider vantage points, have problematized the way the U.S. legal system treats hate speech. These scholars have given voice to the victims of hate speech and have offered alternative ways to address hate speech. See, e.g., Richard Delgado, \textit{Words That Wound: A Tort Action for Racial Insults, Epithets, and Name-Calling}, 17 Harv. C.R.-C.L. L. Rev. 133 (1982); Charles R. Lawrence, \textit{If He Hollers Let Him Go: Regulating Racist Speech on Campus}, 1990 Duke L.J. 431; Matsuda, \textit{supra} note 78; MacKinnon, \textit{supra} note 83, at 69–110.
\item[\textsuperscript{88}] James Weinstein, \textit{Hate Speech, Pornography, and the Radical Attack on Free Speech Doctrine} 53 (1999).
\item[\textsuperscript{89}] Smolla, \textit{supra} note 69, at 167. For a discussion of using, including the problems associated with using, existing First Amendment doctrine to punish hate speech, see \textit{id.} at 160–69.
\item[\textsuperscript{90}] \textit{Texas v. Johnson}, 491 U.S. 397, 419 (1989) (flag-burning context). With regard to how to address flag-burning, the Court stated, “The way to preserve the flag’s special role is not to punish those who feel differently about these matters. It is to persuade them that they are wrong.” \textit{Id.} The Court added the following:

\begin{quote}
We can imagine no more appropriate response to burning a flag than waving one’s own, no better way to counter a flag burner’s message than by saluting the flag that burns, no surer means of preserving the dignity even of the flag that burned than by … according its remains a respectful burial.
\end{quote}
\textit{Id.} at 420.
\item[\textsuperscript{91}] Whitney v. California, 274 U.S. 357, 377 (1927) (Brandeis, J., concurring).
\item[\textsuperscript{92}] Matsuda, \textit{supra} note 78, at 2333.
\end{itemize}
since Muslims do not believe in depicting Muhammad. Conceptually, the message would be much the same as that sent to Jews by marching members of a Nazi-oriented party or to African-Americans by non-African-Americans via cross-burning: “We hate you for who you are.” While this type of communication would be offensive to many, a message is present nonetheless. Also, because of the problem of viewpoint discrimination, the government could not allow pro-Islamic or pro-religious speech while disallowing the anti-Islamic, anti-religious speech from a magazine like _Charlie Hebdo_. Rather, members of the Muslim community would be free to communicate their responses to the cartoons.

Two doctrines, the incitement and fighting words doctrines, that might seem to justify government punishment of the cartoonists are worth mentioning, but, because of the details of the _Charlie Hebdo_ case, neither doctrine ultimately would restrict the speech. The incitement doctrine requires that, for the government to be able to punish a speaker, the speaker’s message must be “directed to inciting or producing imminent lawless action and is likely to incite or produce such action.” This standard calls for a showing of intent to cause harm, imminence of harm, and likelihood of harm. Despite what the Supreme Court said in the early twentieth century, speech cannot simply have a “tendency” to incite harm. That now-antiquated approach, an opportunity
for the government to punish unpopular speech,\textsuperscript{97} omitted any serious analysis of a connection between speech and harm in incitement cases.\textsuperscript{98} Instead, in the absence of a showing of intent to cause harm, imminence of harm, and likelihood of harm, the legal preference is for ideas to have their chance at acceptance in the public sphere.\textsuperscript{99}

The \textit{Charlie Hebdo} cartoonists most likely did not intend to bring violent action upon themselves. Rather, they wanted to mock Islam, Muslims, or both. Also, when the cartoons went to press, the lawless action was not imminent; the shootings happened after years of publication of the cartoons. Thus, the ideas that the cartoons expressed would have an opportunity to be aired in the public sphere.

As with the incitement doctrine, the fighting words doctrine ultimately would not justify punishment of the speech in question. The fighting words doctrine involves words that “by their very utterance … tend to incite an immediate breach of the peace.”\textsuperscript{100} Legally, such words “are no essential part of any exposition of ideas[.]”\textsuperscript{101} In one classic case in which the Supreme Court upheld a conviction for use of fighting words, the speaker, in proximity to a

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\textsuperscript{97} Zechariah Chafee, \textit{Free Speech in the United States} 322 (1941).

\textsuperscript{98} See \textit{Brandenburg}, 395 U.S. at 447. The bad tendency test is a relic of eighteenth century England. Chafee, supra note 97, at 322.

\textsuperscript{99} Abrams v. United States, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting) (articulating “that the best test of truth is the power of the thought to get itself accepted in the competition of the market”). The marketplace of ideas that Holmes articulated came with no guarantees for speakers, although the court system might intervene to give the less powerful a chance to speak. Peters, supra note 64, at 155. Prior to Holmes, John Milton and John Stuart Mill had developed the marketplace of ideas theory of freedom of expression in their writings. Matthew D. Bunker, \textit{Critiquing Free Speech: First Amendment Theory and the Challenge of Interdisciplinarity} 2–6 (2001).

\textsuperscript{100} Chaplinsky v. New Hampshire, 315 U.S. 568, 571–72 (1942). Originally, the Supreme Court had considered fighting words to be words that “by their very utterance” either “inflict[ed] injury or tend[ed] to incite an immediate breach of the peace.” \textit{Id}. However, the Court later limited the meaning of fighting words to the latter option. Cohen v. California, 403 U.S. 15, 25 (1971) (noting that “one man’s vulgarity is another’s lyric”).

Some commentary has observed that words cannot do anything “by their very utterance.” Haiman, \textit{Speech and Law}, supra note 95, at 21. For injury to be felt or reactive violence to take place, audience members have to make judgments about the words in a given context. \textit{Id}.

\textsuperscript{101} Chaplinsky, 315 U.S. at 572. When one constructs fighting words, which are rhetorical in nature, as an act, punishing their use becomes easier. Haiman, “\textit{Speech Acts},” supra note 77, at 21.
city official, had yelled to the official the following: “‘You are a God damned racketeer’ and ‘a damned Fascist and the whole government of Rochester are Fascists or agents of Fascists[.]’”\(^{102}\) As this example suggests, for a court to find fighting words, the speaker would have to speak insultingly to a particular individual in a face-to-face setting, such that violence may result.\(^{103}\) Of note, there is tension between disfavoring the use of “bad tendency” analysis in incitement situations but not in fighting words situations; the Supreme Court has yet to resolve this tension in a convincing manner.

In the case of Charlie Hebdo, as indicated above, there was no immediate breach of the peace; the breach of the peace happened after years of publication of the cartoons critical of Islam. Also, the cartoonists were not in proximity of the attackers when the former delivered their message. Thus, as with the incitement doctrine, the fighting words doctrine would not justify government punishment for the speech.

From a U.S. perspective, “free speech is an essential element in a good society.”\(^{104}\) In being essential, free speech protects both individual and social interests.\(^{105}\) An important individual interest is the need of people to express views on matters vital to them, while an important social interest is discovering the best courses of action so that the government may adopt and pursue those courses of action.\(^{106}\) Still, whether allowing speech is for the good of the speaker or the good of society, the individual speaker still retains the right to speak. The United States is a very individualistically-oriented culture, and one is allowed to say many things, including those that are hateful to other people.

IV. Catholic Theology and Freedom of Expression

As noted above, the Charlie Hebdo cartoons very likely would receive protection in the United States under the doctrine of political speech or hate speech, and Muslims and others who opposed the cartoons would be free to offer their rhetorical responses. Some minds in the United States unfamiliar with the details of Catholic theology no doubt wondered why Pope Francis, al-

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102. Chaplinsky, 315 U.S. at 569.
105. Chafee, supra note 97, at 33.
106. Id.
though not agreeing with the message of the anti-Islam cartons, did not support the right of the *Charlie Hebdo* cartoonists to publish the cartoons. As this section of the paper will illustrate, Pope Francis, when presenting his view on freedom of expression, drew upon several ideas in Catholic theology, including prudence, the common good, human dignity, and duties.

In his responses, the Pope explicitly referenced prudence several times. Prudence is a cardinal, or pivotal, virtue. Prudence “disposes practical reason to discern our true good in every circumstance.” The function of prudence “is to point out which course of action is to be taken in any round of concrete circumstances.” The virtue calls for “a deliberate and reflective process,” and one can think of the virtue as “intelligence applied to our actions.” Because “it guides the other virtues by setting rule and measure,” prudence can be described as “the charioteer of the virtues.” Of note, “the prudent man looks where he is going.”

In the probable estimate of the Pope, the journalists who published the Muhammad cartoons did not exhibit prudence, presumably because they did not do an effective job of determining the true good and the right way to achieve that good. Criticizing Islam may not have been the true good. In his press conference answers, the Pope used terms like offend, insult, provoke, and mock. From the Pope’s view, offending, insulting, provoking, and mocking

107. *See supra* note 19.

108. Catechism of the Catholic Church 1805 (2003), available at http://www.vatican.va/archive/ccc_css/archive/catechism/p3s1c1a7.htm [hereinafter Catechism]. The other cardinal virtues are justice, fortitude, and temperance. *Id.*


113. *Id.* (citing Proverbs 14:15).

Muslims did not provide examples of the true good. Even if some criticism of Islam were for the true good, the cartoons were not the right way to achieve that good, as they offended, insulted, provoked, and mocked. The cartoonists’ reflective process, if any, regarding whether to create the cartoons, was lacking. Given that they continued to publish visual rhetoric that mocked Islam, even after protests and a firebombing of their office, the cartoonists did not appear to be looking where they were going.

In addition to prudence, the Pope also spoke of the common good, which is “the sum of those conditions of social life which allow social groups and their individual members relatively thorough and ready access to their own fulfillment.” More than “the simple sum of the particular goods of each subject of a social entity,” the common good involves “the full development of human personality.” All people have a right to experience the common good.

Three elements comprise the common good. The first element is respect for the person, including his or her fundamental rights. The rights of the


The common good is closely related to three other principles of Catholic social doctrine, including human dignity (discussed in this paper), subsidiarity, and solidarity. Compendium, supra note 116, at 160–63. See also Pierpaolo Donati, Pacem in Terris and the Principle of Subsidiarity: Beyond the Misunderstandings, in The Global Quest For Tranquillitas Ordinis: Pacem In Terris, Fifty Years Later 436 (Mary Ann Glendon, Russell Hittinger & Marcel Sánchez Sorondo eds., 2013).


120. Id. at 1907, available at http://www.vatican.va/archive/ENG0015/__P6K.HTM#$220. See also Wilson Muoha Maina, The Common Good and or the Human Rights: Anal-
human person, like his or her duties, “are universal and inviolable.” The second element involves the well-being and development of the group. Indeed, “[e]very social group must take account of the needs and legitimate aspirations of other groups, and even of the general welfare of the entire human family.” The third element is peace, or “the stability and security of a just order.” Such order must exist within various relationships, including relationships among people, between people and the government, among governments, and among members of the world community. In the absence of peace, no community can exist. On the other hand, if peace exists, people have something in common.

The common good “can never exist fully and completely unless the human person is taken into account at all times.” As such, exterior aspects of the common good include “economy, security, social justice, education, access to employment, and spiritual research.” A society that seeks to be of service to humankind at all levels has the common good as its main goal, and both the state and individuals have the responsibility of promoting the common good. The common good calls for prudence from everyone.

Francis suggested that the cartoonists did not effectively promote the common good. Specifically, by offending, insulting, provoking, and mocking Mus-
lims, the Charlie Hebdo cartoonists were not considering the well-being of members of another group within French society, Muslims, which would constitute a violation of the second element of the common good. Likewise, through offending, insulting, provoking, and mocking Muslims, the cartoonists were not promoting peace, which would constitute a violation of the third element of the common good. Indeed, the cartoonists were actively working in a manner that opened the door to conflict, hardly a way to promote peace in a secular country struggling with the challenges of receiving large numbers of religious immigrants. Just as one should not insult someone else’s parent, one should not insult another on the basis of that person’s religion. Part of the problem behind opening the door to conflict likely was that the cartoonists were not in relationship with Muslims in France. Thus, the cartoonists, who had failed to exercise prudence, accordingly failed to work for the common good.

Another important idea in Catholic theology relevant to the Pope’s comments is human dignity. Human dignity is a function of humankind’s having been created in the divine image. As such, the divine image is present in all people. The dignity of humankind should receive respect, and a society that refuses to respect human dignity loses its moral credibility. At the personal level, one should look upon one’s neighbor “as another self.” This need to respect the human dignity of others is likewise important regarding “those who think or act differently.”

Respecting human dignity takes on greater urgency when the disadvantaged are involved. The disadvantaged can include, but are not limited to, “an old

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134. First Press Conference, supra note 18.
136. Id. at 1702, available at http://www.vatican.va/archive/ccc_css/archive/catechism/p3s1c1a1.htm.
137. Id. at 1929, available at http://www.vatican.va/archive/ccc_css/archive/catechism/p3s1c2a3.htm.
139. Paul VI, Church in the Modern World, supra note 115, at 27.
141. Id. at 1932, available at http://www.vatican.va/archive/ccc_css/archive/catechism/p3s1c2a3.htm.
person abandoned by all, a foreign laborer unjustly looked down upon, a refugee, a child born of an unlawful union and wrongly suffering for a sin he did not commit, or a hungry person who disturbs our conscience[.].”

Francis touched on this idea of human dignity in his comments on the Charlie Hebdo matter. In the remarks at the first press conference, the Pope noted, “Every religion has dignity, every religion which respects human life, the human person.” Although human dignity, by definition, does not apply to institutions, the Pope nonetheless personified religion, highlighting its dignity. In the same sentence in his stream-of-consciousness remarks, he then arrived at the human person. Indirectly, he was linking dignity and the human person, placing emphasis upon the dignity of those whose prophet the cartoonists had attacked rhetorically. Because the belief in Muhammad as prophet was an extension of French Muslims, the mocking of Muhammad was a mocking of French Muslims themselves.

Of note, the Charlie Hebdo cartoonists almost certainly had not been thinking of Muslims as the cartoonists would think of themselves. Instead, they more likely were thinking of Muslims as Others, Strangers who are different from “normal” people, in a secular country like France. The secular cartoonists did not demonstrate respect for those individuals who thought differently from the cartoonists. Also, given that many French Muslims are immigrants from former French colonies like Algeria, Morocco, and Tunisia, the cartoonists did not exhibit respect for the dignity of immigrants, those who are often in weaker positions in society than native-born

142. Paul VI, Church in the Modern World, supra note 115, at 27. For additional examples of the violation of human dignity, see id.
143. First Press Conference, supra note 18.
144. This attempt to consider the impact of the cartoons on the target group, French Muslims, was much like the attempt that some critical scholars have made to examine the impact of hate speech on members of minority groups. See e.g., Delgado, supra note 87, at 135–49 (considering racially-oriented hate speech).
individuals. Francis himself has shown sensitivity to the issue of immigration in Europe.

Although the Pope only made a brief mention of obligations, or duties, he did mention rights. Rights are interrelated with duties. When one has a right, others have duties to that person, but that person also has a duty to other people who have their own rights. As such, “to claim one’s rights and ignore one’s duties, or only half fulfill them, is like building a house with one hand and tearing it down with the other.”

In the Pope’s comments is the idea that, while they had their right to free speech, the cartoonists at Charlie Hebdo had a duty to respect Muslims, who, just like the cartoonists, had human dignity. “Respect must be cultivated,” Francis indicated via a statement on the day of the shooting. Because, due to the limits of human nature, everyone has a breaking point, the cartoonists should not have been antagonizing Muslims over the years. With his sensitivity to the issue of immigration, the Pope likely was contemplating respect for Muslims, many of whom were immigrants, throughout France.

The Pope’s view of freedom of expression was grounded in both the individual and the collective. The Pope recognized the individual’s fundamental right to free speech, but, in drawing a line, he also recognized the overall good of French society. In part, that good was a function of how the press, including cartoonists, treated members of an immigrant minority, who had their own interests that called for protection. On the facts of the Charlie Hebdo case, the Pope ultimately focused more on the collective than the U.S. legal system would have.

One particular ambiguity in the Pope’s discussion of speech was particularly vexing. Francis did not specify what or who would regulate speech. The

147. Francis also noted the violation of the human dignity of the cartoonists, repeatedly mentioning, in his comments at Mass on January 8, 2015, the words cruelty and cruel to describe the attack on the Charlie Hebdo office. Morning Meditation, supra note 28. The Pope’s statement on January 7, 2015, specifically used the violation of human dignity as a theme. Pope Francis Condemns Paris Attack, supra note 22.
149. First Press Conference, supra note 18.
150. Compendium, supra note 116, at 156.
151. Id.
152. JOHN XXIII, PACEM IN TERRIS, supra note 118, at 30.
153. Pope Francis Condemns Paris Attack, supra note 22.
Pope said, “We cannot provoke others, we cannot insult their faith, we cannot mock their faith,” and he later added, “I cannot constantly insult, provoke a person continuously, because I risk making him angry, and I risk receiving an unjust reaction, one that is not just.” One could interpret these statements as meaning that the secular law, the government, should prohibit the type of messages that *Charlie Hebdo* was promoting via its cartoons. Alternatively, one could interpret these statements as meaning that personal moral standards higher than the secular law would not allow individuals to insult Muslims.

Since Francis was brief in his remarks, he would need to say more to clarify the matter. Of course, the Pope is a pastor, not an attorney or freedom of expression scholar, so the seemingly minor, at least to a layperson, detail of what or who should regulate speech may not have occurred to him. However, whether the government or one’s own conscience should act as regulator is an important detail to consider.

V. Conclusion

As this paper has illustrated, Catholic theology offers an explanation of the position on freedom of expression that Pope Francis took with his remarks after the *Charlie Hebdo* shooting in January 2015. Although somewhat different from a traditional U.S. perspective on the speech that the *Charlie Hebdo* cartoons constituted, the Pope’s perspective nonetheless was consistent with existing Catholic principles. U.S. law, calling upon doctrines such as the political speech and hate speech doctrines, would be more liberal in allowing the volatile speech, while Catholic theology would caution against the publication of the speech.

Indeed, although significant overlap between U.S. law and Catholic theology on the fundamental human right of freedom of expression exists, some of the underlying priorities are different. U.S. speech law often focuses more on the rights of the individual speaker than of the collective, while, at least in more extreme cases, Catholic theology eventually counsels in favor of considering the well-being of the larger community, which, in the *Charlie Hebdo* case, involved peace in France, a country that had been struggling with the challenges of immigration. The Pope drew upon this concern for the larger

community, as well as concern for the victims of what some people would call hate speech. Like other voices in the ongoing discussion about how far freedom of expression in an open society should go, Pope Francis was speaking from his own perspective, a religious one, which came with its own underlying assumptions. Without doubt, the conversation about the limits of freedom of expression in an open society would continue well into the future.