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John Courtney Murray, S.J.: A Model of Engagement

Remarks of Robert John Araujo, S.J.*

Imagine yourself transported to some small town in New England that still utilizes the town meeting model for its governance. A moderator guides the discourse, but the citizenry discuss and debate how they will live their lives in common and by what means—engagement is critical if the process of self-government is to succeed. If the scene were not contemporary or seventeenth-century New England, it could be the ancient Greek city-state. The common denominator is engagement that necessitates reasoned discourse, patience, learning, consideration, evaluation, and then, action. One might ask the question if today's political exchanges that are often reported in various news media can be characterized by the model presented.

If I may stimulate your reflection and imagination, think of a famous television news program—no names mentioned, of course—where the moderator asks blunt questions demanding the monosyllabic answers of

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Upon completing military service as an officer in the United States Army, Fr. Araujo served as a trial attorney and attorney advisor in the Solicitor's Office of the United States Department of the Interior (1974–1979). In 1979, he joined the Law Department of the Standard Oil Company (Ohio) and served in a variety of capacities until 1985. After corporate service, he joined the general corporate department of a New England law firm and remained there until entering the Society of Jesus in 1986. Since 1997, he has served as an advisor to the Holy See providing counsel on issues dealing with public international law.

Fr. Araujo was also a member of the law faculty at Gonzaga University from 1994 to 2005 and became the Robert Bellarmine, S.J. University Professor in American and Public International law. He then became Ordinary Professor at the Pontifical Gregorian University from 2005 to 2008. He has been a visiting Professor at Georgetown University Law Center, St. Louis University School of Law, and Boston College School of Law. In the 2000–2001 academic year, he was the Stein Fellow at Fordham University School of Law. During his graduate legal studies in New York, he was the Chamberlain Fellow at Columbia University School of Law.

either “yes” or “no.” Is this engagement, or is it something else? Is it the means of testing the merits of different ideas dealing with common life—the *res publica*—or is it something else? One might also recall the cable news stations’ panels of experts that proliferate this form of media and ask if there is patient, reasoned discourse characteristic of engagement, or might it be more aptly portrayed as the “battle of the talking heads”? As we proceed as a nation through another election season, do we see evidence of engagement or battle in our important political discussions?

Here it would be useful to scrutinize the meaning of the term *engagement* and its root word, the transitive verb *engage*. Let me begin with the second word first. While this verb can mean to enter into combat or conflict, that is not the definition upon which I rely—nor is it the one that ought to be associated with political and public discourse—though it may, nevertheless, offer an apt description of what happens in the public square these days. Rather, my focus on the meaning relevant to my presentation follows: the notion this word addresses, i.e., of making a pledge, is relevant and important. By employing the word *engage*, the speaker intensifies the significance of pledging oneself to enter an undertaking. The undertaking I have in mind is political discourse and debate offered by fellow citizens where exhortation and persuasion are vital to the enterprise that pertains to the welfare and common good of the community and all its members.

The meaning of *engagement* that I contemplate follows: it is a formal or established process or procedure in which persons encounter and discuss their lives in common so that, through reasoned debate, they take stock of the intelligible reality that pertains to the issues debated. Thus, principles and norms addressing the needs of their lives in common can be recognized and established.

Does this definition explain or describe the political processes of the present day? One need not go any further than a cable television news program or computer screen to determine if this is what is constitutive of “political debate” of the present age. More often than not, today’s “debates” are frequently shouting matches where it is presumed that the most effective participants are the ones who can say the most outrageous things to their debate partners and adversaries in a few seconds. In candor, we might acknowledge that something like this process exists, and it is practiced not only by the political commentators but also by some members of the political community who may happen to encounter a television news crew or call together the televised media reporters for a press conference. However, frankness also requires acknowledgment that in other circumstances a process akin to verbal combat prevails in which verbal abuse is met with verbal abuse. To call

this process reasoned debate would be mistaken. Accuracy would demand other nomenclature such as the contemporary images suggested by the titles of violent video games: e.g., *Mortal Kombat*, *Grand Theft Auto*, *Doom*, or *Counter-Strike*. If you find the latter understanding of engagement unattractive, as I do, how might a model more conducive to the first understanding be constructed? The question is timely as we approach a time of crucial decision-making for our country that will have implications on the world. My proposal is based on the work and thought of John Courtney Murray as an appropriate model of engagement.

As I mentioned in the first lecture of this series in November 2009,¹ John Courtney Murray was born in New York City in 1904, the son of an Irish-American mother and a Scottish-American lawyer father. He entered the Society of Jesus at the age of sixteen. After his theological studies and ordination in the United States, he pursued doctoral studies at the Pontifical Gregorian University in Rome. Upon successful completion of these studies in 1937, he returned to the United States to teach at the Jesuit theologate in Woodstock, Maryland. In 1941, he was appointed as the editor of the then new journal *Theological Studies*. Notwithstanding his own theological expertise, he was drawn into various projects that intersected the relationship between the church and the state, especially in the United States. Others drew on his understanding of how the moral perspective might or ought to intersect with public policy. His best-known publication was the 1960 book *We Hold These Truths: Catholic Reflections on the American Proposition*, which contained thirteen essays written between 1950 and 1960. In it, he addressed issues dealing with the person who is a citizen of both the City of God and the City of Man and how this dual citizen is to conduct himself or herself in public matters. However, even if one considers that he or she is only a citizen of the City of Man, Murray's work is still relevant as it pertains to standards essential for engagement in the public square of a pluralistic society. Although critiqued after his death as "impossibly old hat" by a younger generation, he was, as George Weigel reminds us, "resurrected by Catholic thinkers seeking materials from which to build a religiously informed public philosophy for the American experiment in ordered liberty."²

1. Robert John Araujo, S.J., John Courtney Murray, S.J.: A Citizen of Two Cities, Remarks at the Inaugural Lecture of the John Courtney Murray Chair (Nov. 10, 2009), in 42 *LOY. U. CHI. L.J.* i, ii (2010).

2. George Weigel, *Truths Still Held?*, *FIRST THINGS* (May 2010), available at <http://www.firstthings.com/article/2010/04/truths-still-held>.

Now that our federal republic is in its 221st year of operation (if I use the Constitution of 1787 as the benchmark), many may think it odd to view the method and systems that surround our American polity as an experiment. In one fashion, we look at the durable Constitution as well as the politico-legal system it established and might conclude that it has enabled the nation to survive civil and world wars, grave economic crises, and other great tests. But the nature of these wars, crises, and other tests have differed, and the nation's responses to them have been diverse as well. In some ways, then, we may see that the responses of the nation, a people, and their leaders have taken different paths to address exceptional events that often seemed to challenge the very existence of our country. And yet, the nation and its people survived and flourished.

In the context of the American republic and its people, there exists the notion of the experiment in ordered liberty—an idea that Murray himself understood well.³ An experiment need not be something done once and then either forgotten or presumed to prove something. If experiments are worth doing once, they are most likely worth repeating to verify both accuracy and truth. In the context of the American people and Murray's thinking, the experiment was to be understood as a way of life in which citizens—be they friend or foe on particular issues—are united in the common project of preserving, protecting, and defending the American form of republican democracy. This, as I am sure you will acknowledge, is no easy task. But the fact that it is not easy does not make it impossible, nor should it deter the members of the polity from the experimentation.

For Murray, it seems that the experiment is and has to be the ongoing project of most members of the polity, and this requires their individual and corporate participations in a variety of ways—most of the time as citizens who vote, hold public office, or both. And the experiment is always essential if the common good and the advantage of public interest are to be enhanced and protected. Consensus is important to the experiment, but consensus cannot be confused with the populace following the will of any self-deputized political elite. Consensus is only proper if it reflects clearly the argument entered by the citizens themselves through the proper exercise of their sovereignty. This does not mean that there must always be absolute agreement on all questions debated. That would not be possible very often. But this does not

3. See JOHN COURTNEY MURRAY, S.J., WE HOLD THESE TRUTHS: CATHOLIC REFLECTIONS ON THE AMERICAN PROPOSITION 36 (1960) (discussing the American pursuit of freedom and the American belief that free government "is possible" provided that people are "governed by the recognized imperatives of the universal moral law").

preclude the fact that the decisions taken must be made in the genuine public interest, promote the common good, and welcome as important the vital contributions of all members of the republic. Conversation and the debate examining the merits and weaknesses of different perspectives—that is, both living together and talking together⁴—are essential if democracy is to survive and not be pushed aside by the totalitarianism of any political group whose members seem self-gifted with the faulty realization that they have the best answer all the time. The robust presence of ordered liberty is essential to democracy.

The goal of ordered liberty that promotes a common good takes further shape by the experiment—that is, by the ongoing and enduring participation of the citizenry. Ordered liberty is not license to do what you want to do because you decide you want to do it and you think that no one can or should stop you. This is not ordered liberty, but a recipe for chaos. Vital to the experiment are two forms of responsible freedom: speech and the press. But, as Murray shrewdly said, their American conception does “not rest on the thin theory proper to eighteenth-century individualistic rationalism, that a man [or woman] has a right to say what he [or she] thinks merely because he [or she] thinks it.”⁵ It is essential to the American experiment that these goods are not only private, but are public as well, for their justification out of freedom must bear both dimensions if ordered liberty is to mean something that is right and proper to republican democracy.

Ordered liberty is that part of the American proposition and experiment where “ideas are circulated and criticized”⁶—yes, criticized with the honored tools of fairness and objective reasoning. This must mean, if the experiment is to remain worthwhile, that the views and the truths that they claim to hold are subject to a scrutiny that is simultaneously objective and honorable. As we think further about this ordered liberty of which I speak, it is crucial to recognize another essential element, namely, the kind of person whose participation is critical to the success of the experiment. Fr. Murray once said that “only a virtuous people can be free.”⁷ The virtues constitutive of this kind of people would include justice, courage, forbearance, and prudence. Are these virtues the stuff from which political debate is made these days? Murray understood his proposition well and offered as part of his justification for his view the words of Lord Acton’s definition of freedom as “not the power of doing what we like, but the

4. *Id.* at 13.

5. *Id.* at 34.

6. *Id.* at 35.

7. *Id.* at 36.

right of being able to do what we ought.”⁸ For Murray, the American proposition could not be restricted only to a political experiment—it had to be “a spiritual and moral enterprise” as well.⁹ The experiment is not static but ongoing. And where is it going? Simply, it is directed not to the success of the present moment but to the posterity of the American people of which the Constitution speaks, and to the moral certitude of choosing right over wrong and good over evil. As Murray exhorted, “Neither as a doctrine nor as a project is the American Proposition a finished thing.”¹⁰

I submit that this work of John Courtney Murray provides an advantageous model of engagement sorely needed in the public square today. In some exchanges that loosely pass for debates, harsh words are dispersed like grapeshot fired from ancient cannons, indiscriminately hitting targets but doing little to garner thoughtful listeners and citizen comprehension. This apprehension I raise does not mean that participants in public exchanges, i.e., political engagement, must be milquetoasts and not plainly speak their minds, but they should be able to present rational perspectives regarding what they recognize as right and wrong, as good and evil, as proper and improper, and how these perspectives must figure into the decisions to be made on behalf of the common good. From experience, most of us can acknowledge that telling others they are wrong can raise problems. This is understandable. The point is not simply to say someone is wrong and leave in a huff after the message is brusquely delivered. Rather, the point, as well as the way of proceeding, is to explain with charity and firmness *why* the other’s position is unsound and wrong and to await patiently a coherent response. Hence, a proper democratic debate can begin.

If virtue is essential to freedom and the republican democracy that can follow and flourish, so is civility. Civility is a common commodity that inheres in virtually everyone. But it is rarely displayed and exercised in some political discussions. If engagement is essential to sound and moral public decision making, civility is the bonding agent that holds the processes of engagement together. Murray conceded that civility and dialogue are necessary companions to the American experiment in ordered liberty. As he said, “Civility dies with the death of the dialogue.”¹¹ Murray reinforced his belief with the views of others who similarly recognized the importance of civility, dialogue,

8. *Id.*

9. *Id.*

10. *Id.* at vii.

11. *Id.* at 14.

and informed debate to making informed decisions for the *res publica*. One of these voices quoted by Murray was that of Thomas Gilby, the Dominican who argued in his 1953 book *Between Community and Society* that “[c]ivilization is formed by men locked together in argument.”¹² Being the versatile thinker that he was, Murray quickly noted that not all social beings come together for debate that is premised on reasoned argument. As he said, “Wolves do not argue the merits of running in packs.”¹³ The essence and nature of the human person as an individual and as a member of society differs from that of animals that associate with herds or packs. Still, there is danger in persons coming together not as rational beings but as those driven with some pack-mentality belief that their view is not just the right view, but the only view—so why bother considering other perspectives? This approach is not the method of the good citizen but of the barbarian—as Murray spoke of him or her.

Who is this barbarian? And what is it that the barbarian threatens? Here one needs to take stock of the meanings of the word barbarian and the acts of such a person who may or do threaten the civilization with which one is not only familiar, but which one seeks to protect. First, we must recall Murray’s exhortation that the American proposition and experiment must “be constantly argued,”¹⁴ as it is an ongoing project that must be passed on from generation to generation. The experiment is not an inert or stagnant thing, for the American republic is an active thing—active and animated because its members, its people who are the *gens* (the nation), continue to live, continue to strive, and continue to improve (or at least try to improve) on that which has gone before. Here enters the barbarian who wishes to challenge these hopes, expectations, and contributions that are often expressed and that sustain the harmonious public square where the members of the polity assemble to advance the common good through reasoned and passionate debate. The barbarian and his acts rely on the lack or absence of reasonable and reasoned conversation that requires reasonable norms.¹⁵ Political discourse, exchange, and conversation in the modes that Murray understood them necessitate two essential components: the first is “living together” and the second follows—“talking together.”¹⁶ These important attributes of republican democracy require more than merely coexisting in the same dimension. They are an intentional enterprise

12. *Id.* at 6.

13. *Id.*

14. *Id.* at 11.

15. *Id.* at 13.

16. *Id.*

characteristic of and essential to republican democracy. Without “conversation” as understood in these terms, the *res publica* can easily disintegrate.

Murray warned us that the barbarian “need not appear in bearskins with a club in hand.”¹⁷ In fact, the barbarian of Murray’s day was more recognizable by the stylish business suit or the academic gown that he or she may be wearing. But these outward appearances of civilization and indicia of civility cannot always conceal the “child of the wilderness, untutored in the high tradition of civility.”¹⁸ For Murray, the recurrent project of the barbarian is this:

[T]o undermine rational standards of judgment, to corrupt the inherited intuitive wisdom by which the people have always lived, and to do this not by spreading new beliefs but by creating a climate of doubt and bewilderment in which clarity about the larger aims of life is dimmed and the self-confidence of the people is destroyed, so that finally what you have is the impotent nihilism . . . appearing on our university campuses.¹⁹

According to Murray, the hallmarks of the barbarian of the present age include the “rejection of the traditional role of reason and logic in human affairs.”²⁰ Indicative of this would be the emergence of evidence that places into question several presuppositions: that human beings are intelligent; that the world and reality that surrounds it are intelligible; and that these two factors combine to enable citizens to formulate the norms by which they choose to live in furtherance of the common good. And this all requires frank discussion about what should be done if the *res publica* and all that it encompasses are to be preserved.

Complementary to the success of this venture is the need on the part of all participants to participate as both contributing speakers and listeners who desire to hear and consider the propositions made by their fellow citizens, be they voters or holders of office. Throughout this process, the notion so appealing to our forebearers about self-evident principles that are intelligible by the intelligent person and translatable into society’s norms should also be evident to us almost a quarter millennium later. Let me emphasize this point: with the greatest respect due to Mr. Rodney King, neither Murray nor I are making the appeal, “Why can’t we all just get along?” That is not the nature of engagement. Getting along means making a truce and often accepting

17. *Id.* at 12.

18. *Id.*

19. *Id.*

20. *Id.*

the *status quo ante*. Engagement means, as is consistent with conversation, living together and talking together to improve the present moment for now and the future. The nature of the discourse may often reveal disagreement. But it is the talking together that brings about refinement of the areas of both agreement and disagreement along with work geared to taking stock of these positions to make the *res publica* more perfect—that is, more sufficient upon the cooperation and collaboration of its members. Political and social conversation also provides the meeting of minds so that citizens become better attuned to what they do and do not share in common. The conversation so essential to republican democracy also stimulates and sustains the environment in which problems that threaten the community and the common good can be more readily identified so that potential remedies can be explored and their merits evaluated in a manner that maximizes the furtherance of the common good.

In short, the conversation that is crucial to the success—or at least the continuance—of republican democracy is the living together and talking together that are mindful of the truths that surround the human person, the essence and nature of the human person, and the society that is conducive to human flourishing for all—not just some—of society’s members. If there are Americans skeptical about the existence and reality of truth, we need to remind ourselves here and now that this great nation was founded on truth—certain self-evident truths. If these self-evident truths are to be denied, then the Declaration of Independence, the Constitution, and their meanings are nothing more than fragile gossamer. Truths are important to the essence of the human person, the societies in which these persons live, and the norms they formulate in community for their individual and communal prosperity—the common good. Some of these truths include: all are created equal in certain fundamental ways, and all are endowed by their Creator—yes, their Creator—with certain unalienable rights.

Let me pause here to provide some emphasis: These rights are not the product of the state or the laws that the state periodically promulgates. These unalienable rights are founded in another source—one who has been recognized by many but denied by others. So be the disagreement, but let us agree on this: those who established our republic and the democracy that has emerged from it acknowledged this truth about these rights and their source. Moreover, they had the wisdom and courage to acknowledge that the proper role of the state is not in the making of these rights, but in securing and protecting them. In short, what the state does not create, it cannot deny. This is truth, pure and uncomplicated.

Mindful of this launching point, the Framers of the Constitution were quick to note in the prologue of this venerable, basic law that there is a common good at stake that must be protected. Why do I assert this? How can I assert this? Listen to the words chosen by them: “in order to establish a *more perfect union*”; “to establish justice”; “to insure domestic tranquility”; “to provide for the *common* defense”; “to promote the *general* welfare”; and “to secure the blessings of liberty to ourselves *and* our posterity.”²¹ These are words that further reflect the truths acknowledged in the Declaration of Independence. Moreover, these truths are a crucial defense against the cynicism and nihilism that can often interfere with and threaten our republican democracy. In this regard, we need to be all the more mindful of the words of our founders when they spoke not only of “ourselves”²² but of “our posterity”²³ as well. Conversation is vital to the present moment, and it is critical to the promises of the future as well as the existence of the future.

Freedom, particularly of well-reasoned speech and peaceful assembly, are imperative if the truth is to be known and circulated among citizens. Freedom does not require flamboyant rhetoric, a high decibel level, or vulgar or sensational language. It does mandate, however, the ability to communicate clearly and the capacity to be received by those whose views are being informed. This freedom of communication does not prevent robust debate; rather, it vigorously promotes it. In addition, this freedom welcomes constructive exchanges that ought to lead to the refinement and the improvement of the ideas being disseminated. The more that perspectives important to the issues of the day are distributed, discussed, and debated, the more authentically free is the society and its members. In addition, this robust exchange and debate that ensues promotes the securing of the truth about the matters under review and discussion. Access to the truth requires participation and mutual exchanges by those who pursue it. By contrast, those uninterested in or fearful of the truth will not engage in the exchanges necessary for its encounter; moreover, some may even stifle the debate so that the fruitful exchanges essential to the truth’s discovery will never take place. This is the hallmark of both the barbarian and the totalitarian of the twenty-first century. Murray identified this freedom of exchange and receipt as “a civil right of the first order, essential to the American concept of a free people under a limited government.”²⁴

21. U.S. CONST. pmb. (emphasis added).

22. *Id.*

23. *Id.*

24. MURRAY, *supra* note 3, at 35.

And yet, we see this civil right being restricted—even silenced—in some quarters that insist on their dedication to democracy and human rights. The recent incident at the University of Illinois involving Dr. Kenneth Howell provides an illustration. He was hired, then fired, and then rehired for teaching Catholic moral theology on issues involving human sexual morality in a course clearly advertised as one in which Catholic morality would be explained and taught. Murray correctly noted the importance of the freedom of communication “whereby ideas are circulated and criticized.”²⁵ It was ironic that the Howell incident involved an institution of higher learning where “the pursuit of truth and the perpetuation of the intellectual heritage of society”²⁶ are presumed to be welcomed and given refuge when political tempests elsewhere restrict the safe harbors where the exchange of ideas must take place. Again I must recall Fr. Murray’s counsel that “only a virtuous people can be free.”²⁷ But free for what? How is freedom to be understood? Is it tied to the “truth”? In the 1960s, Dr. Martin Luther King, Jr. understood the truth and accepted the consequences of proclaiming it where the political environment did not welcome it.

The true exercise of freedom vital to republican democracy is dependent on the self-disciplining virtues of patience and honesty. Patience cultivates a temperament conducive to listening to the exchange and welcoming it. Honesty promotes the necessary humility essential to each of us proclaiming that the truth we seek may be beyond me and my thoughts of which I think so highly. With patience and honesty shared all around, the exchanges crucial to the success of the American experiment and its republican democracy will likely never be threatened. Without these virtues permeating the public square, the experiment and its fruit can easily be forfeited.

Of course, an important objective of the exchanges conducive to the American experiment and its republican democracy is the making of norms—that is, laws by which the society and its members promote harmonious public life in which policy decisions are made in a just and equitable fashion. Now, it would be relevant here to ask the question: is there some way of thinking about law and the juridical nature of society that would also be a companion of the model of public engagement that I have been developing? If we turn once again to Fr. Murray, we find an answer: the natural law.

25. *Id.*

26. *Id.*

27. *See supra* note 7 and accompanying text (introducing this proposition by Fr. Murray in the context of ordered liberty).

Murray understood the natural law and what it was about. He acknowledged that it was also the jurisprudential foundation of the American experiment. It should come as no surprise that it was not the Hobbesian or Lockean idea of the “law of nature” that undergirds this experiment and the republican democracy that it established; rather, it was the natural law itself, so familiar to the likes of Augustine, Aquinas, de Vitoria, Suárez, Bellarmine, Jefferson, Adams, and Madison, just to mention a few names—some familiar to us, others, perhaps not—that was the foundation of the “more perfect union” set into motion between 1776 and 1787.

Of course, the natural law has ironically fallen out of favor with many influential citizens today. They erroneously attribute to it the defense of slavery and other nefarious institutions. They could not be more wrong in this and related conclusions. Murray recognized this problem in his time. He noted over a half century ago that the natural law approach had neither been refuted nor rejected; however, it was (and to this day is) no longer “taught or learned in the American university.”²⁸ I largely agree with Murray, although there are a few exceptions to this deficiency frequently encountered in the academy today. I am happy to say that Loyola University Chicago is one place where it is offered and discussed! If you offer it, they will come—but I digress!

Murray demonstrated the nexus between the Founders, which included their educational and professional background and the fruit of their political labor. The presence of the natural law that is dependent on the intelligent person studying an intelligible world and reality and crafting human law that reflects the encounter of the intelligent and the intelligible is evident in the republic they gave us. As Murray stated, the Founders inherited and used the tradition of natural law.²⁹

Murray continued his thoughts in this way: there is a universal moral law that is the foundation of society. The Founders understood and appropriated from this principle; they further recognized that the state that they were establishing was “subject to judgment by a law that is not statistical but inherent in the nature of man”; and, as Jefferson asserted in the Declaration of Independence, that the eternal reason of the Creator is “the ultimate origin of all law” and that the nation, the people, are in free relationship with their governors but are also *under* the Creator.³⁰ Murray saw evidence, however, that this important history of

28. MURRAY, *supra* note 3, at 40.

29. *See id.* at 41 (“To the early American theorists and politicians the tradition of natural law was an inheritance.”).

30. *Id.* at 42.

the founding of the republic was being forgotten as the tradition of the natural law and, while not being rejected outright, was being contested. Drawing from Santayana, Murray suggested, “We do not refute our adversaries . . . [rather] we quietly bid them goodbye.”³¹

Let me emphasize again the point made by Fr. Murray and that I echo here today: reasoned and respectful debate is essential to the American experiment and to our republican democracy. Most of us know that it is often difficult to enter a political discourse for fear of raising ideas or views that are unpopular with others. We also know that making public our views on many political, social, cultural, and economic issues of the day may mark us as being on the “other” side. Truth be told, this has been a major characteristic of public life for centuries from the Greek city-states, to the Roman Senate, to the British Parliament, and to the American citizens’ participation in the public square. While most might have a visceral reaction to expressing personal views on difficult issues, we must acknowledge that the ability to express our views and take seriously those with which we disagree is what makes democracy the safeguard to the totalitarianism of the malevolent monarch, the tyrant, or the despotic elite.

Professor Bradley Birzer makes the point quite clear in his recent biography of Charles Carroll, *American Cicero*. The fact that Carroll was a Roman Catholic and, prior to the Constitution of 1787, unable to exercise the franchise because of his religion did not stop him from participating in the robust debates leading up to the Revolution of 1776, the implementation of the Articles of Confederation, and the establishment of the federal republic in 1789.³² And he did so with eloquence, with grace, with informed reasons, and, most importantly, with respect for virtually any debate partner with whom he disagreed on some issue. From our perspective, individuals like Carroll must not be considered a relic of the past. They are still with us today, thanks be to God, for their presence helps ensure the stability of good government that is by the people and for the people. This mode of engagement, when practiced by most officeholders, candidates for office, and citizens, becomes an assurance that our republican democracy and the nation it represents shall not perish from this earth.

While it is not the only factor, the manner in which political discussions are conducted is a major concern in the fate of democracy. Murray understood this well, but so have others. For example, James Madison reminded his fellow Americans that “a well-instructed people

31. *Id.* at 40.

32. *See generally* BRADLEY J. BIRZER, *AMERICAN CICERO: THE LIFE OF CHARLES CARROLL* (2010) (discussing the life and times of Charles Carroll).

alone can be permanently a free people.”³³ I would add that this good instruction comes not from manipulators of information or authors of ideology but from the engagement and exchanges of the citizens themselves. But what if the laws were changed to prohibit the free speech essential to republican democracy because citizens feared reprisal, recrimination, persecution, or prosecution? Would they then be likely to express their views that are essential to the consent of the governed? Understanding well the motivation for and justification of laws regulating so-called “hate speech,” are there not other ways to encourage much-needed debate without intimidating the well-intentioned citizen from speaking?

Here, there comes to bear a story chronicled by Max Farrand in his *The Records of the Federal Convention of 1787*: a Mrs. Powel of Philadelphia asked Dr. Benjamin Franklin the question, “Well Doctor what have we got[?] [A] republic or a monarchy[?]” Franklin’s retort followed: “A republic . . . if you can keep it.”³⁴ It would appear that Franklin saw that the republican democracy established in the Constitution of 1787 *would* require the work of its citizens if it were to survive not only in good times but in difficult times as well. This work would necessitate the participation of its citizens. Again, an important and rational method of this participation would reside in the ability to exercise the right of speech and debate, not just by elected officials, but by citizens as well. Otherwise, the fate of democracy would easily be imperiled. As Murray observed, “[O]ne day the noble many-storeyed mansion of democracy will be dismantled, levelled to the dimensions of a flat majoritarianism, which is no mansion but a barn, perhaps even a tool shed in which the weapons of tyranny may be forged.”³⁵ Why and how could these weapons be forged? My simple answer is this: If citizens are in any way restrained from participation in their government, how can they be well instructed? How can they participate in *their* government if they are impeded in *their* ability to provide *their* insights: into what should be done and what should not; into their views on what is right and wrong; and into their distinctions between good and evil. Their participation is essential to avoid the dismantling of the mansion of republican democracy and to ensure that they remain well instructed.

33. James Madison, Second Annual Message (Dec. 5, 1810), in 8 THE WRITINGS OF JAMES MADISON 123, 127 (Gaillard Hunt ed., 1908).

34. James McHenry, Anecdotes, in 3 THE RECORDS OF THE FEDERAL CONVENTION OF 1787, at 85 (Max Farrand ed., rev. ed. 1966).

35. MURRAY, *supra* note 3, at 42.

Engagement of and by citizens is essential to the continuation of the American experiment and the success of its republican democracy. The future of this engagement is in the hands of those who have the right and the ability to exercise it properly. The choice is yours and mine to make. As we make our respective choices about how each of us chooses to be well instructed and participate in the government of *our* society, knowing that many fellow citizens are comfortable in simply going along with the views of others who *seem* to know what they are talking about, the words of Robert Frost may be of help as we embrace the rights and responsibilities of citizenship:

Two roads diverged in a wood, and I—
I took the one less traveled by,
And that has made all the difference.³⁶

Knowing how to live well with one another by talking meaningfully, sincerely, and respectfully with one another is the road each of us can travel. Which one do you choose?

Thank you so very much!

36. Robert Frost, *The Road Not Taken*, in *THE OXFORD BOOK OF AMERICAN VERSE* 556, 557 (Francis Otto Matthiessen ed., 1950).