



Toleration, Respect for Persons, and the Free Speech Right to Do Moral Wrong

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Abstract

The purpose of this chapter is to consider the question of whether respect for persons requires toleration of the expression of *any* extremist political or religious viewpoint within public discourse. The starting point of my discussion is Steven Heyman and Jonathan Quong's interesting defences of a negative answer to this question. They argue that respect for persons requires that liberal democracies should not tolerate the public expression of extremist speech that can be regarded as recognition-denying or respect-denying speech – that is, speech or other expressive conduct that expresses viewpoints that explicitly reject that *all* persons should be regarded and treated as free and equal persons or citizens. According to

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Heyman and Quong, recognition-denying speech falls outside the scope of the right to participate in public discourse (i.e., what it is a right *to*). In contrast to Heyman and Quong, one can argue that a strong case can be made for viewpoint neutrality on the basis of what can be called a libertarian or Nozickean status-based theory of rights. According to this theory, toleration in a liberal democracy requires respect for the status of persons as thinking agents, and respect for thinking agents and their sovereignty over their own mind requires viewpoint neutrality – that is, a basic right to participate in public discourse as speakers and listeners free from state-imposed viewpoint-based restrictions. All persons should have a basic right to express, hear, and consider any viewpoint within public discourse. This doctrine of viewpoint neutrality requires that citizens in liberal democracies ought to have a *legal* free speech right to do *moral* wrong – that is, a legal right to express and defend any viewpoint within public discourse, even if it is morally wrong to express, or expose others to, such views.

Keywords

Extremist speech · Freedom of expression · Jonathan Quong · Respect for persons · Robert Nozick · The right to do wrong · Toleration · Steven Heyman · Viewpoint neutrality

Introduction

In the liberal tradition of political philosophy, it is a widely held assumption that political institutions in a liberal democracy should show respect for persons. However, even within the liberal tradition, there is deep disagreement about what respect for persons or the dignity of persons requires. This disagreement is evident in ongoing debates about toleration and the right to freedom of expression – especially in discussions about the extent to which liberal democracies should tolerate or ban the public expression of different forms of extremist political or religious viewpoints, such as hate speech and advocacy of terrorism. Respect for persons is a Janus-faced requirement that can be cited on both sides in these debates about toleration and the scope of the right to participate in public discourse as speakers and listeners. On the one hand, one can argue that respect for persons requires that liberal democracies should tolerate the expression of any political or religious viewpoint within public discourse (see, e.g., Dworkin 1996, 2009; Brettschneider 2012; Ekeli 2020). On the other hand, one can argue that respect for persons or the dignity of persons requires certain viewpoint-based restrictions on extremist speech (see, e.g., Heyman 2008, 2009; Quong 2004, 2011; Waldron 2012).

The purpose of this chapter is to consider the question of whether respect for persons requires toleration of the expression of *any* extremist political or religious viewpoint within public discourse. *Public discourse* can be said to refer to processes of deliberation on matters “concerning the organization and culture of society” or issues of public concern (Barendt 2005: 189. See also Heinze 2016: 27–30). It

includes speech or other expressive conduct that is relevant to intrapersonal and interpersonal deliberation on both political and religious questions and issues. Interpersonal deliberation refers to the process of discussion with others or interpersonal communications, such as a debate in a legislative assembly or other public fora. Intrapersonal deliberation refers to an individual's internal reflections (or considerations) on political or religious issues – for example, when we read a newspaper or watch a political discussion on TV and deliberate about the pros and cons of alternative policies (Ekeli 2012: 282).

The starting point of my discussion is Steven Heyman and Jonathan Quong's interesting defenses of a negative answer to the outlined question about toleration of extremist speech. They argue that respect for persons requires that liberal democracies should not tolerate the public expression of extremist speech that can be regarded as recognition-denying or respect-denying speech – that is, speech or other expressive conduct that expresses viewpoints or ideas that explicitly reject that *all* persons should be regarded and treated as free and equal persons or citizens. According to Heyman and Quong, recognition-denying speech falls outside the scope of the right to participate in public discourse (i.e., what it is a right *to*). Both Heyman and Quong reject that citizens in a liberal democracy should have a free speech right to do moral wrong that includes a right to express recognition-denying political and religious viewpoints within public discourse. As Quong points out, the public expression of recognition-denying viewpoints, such as hate speech, is unreasonable, and “there is no right to be unreasonable” (Quong 2011: 309).

In contrast to Heyman and Quong, one can argue that a strong case can be made for viewpoint neutrality on the basis of what can be called a libertarian or Nozickean status-based theory of rights. According to this theory, toleration in a liberal democracy requires respect for the status of persons as thinking agents, and respect for thinking agents and their sovereignty over their own mind requires viewpoint neutrality – that is, a basic right to participate in public discourse as speakers and listeners free from state-imposed viewpoint-based restrictions (Ekeli 2020). All persons – including radical extremists – should have a basic right to express, hear, and consider any political or religious viewpoint within public discourse. This doctrine of viewpoint neutrality requires that citizens in liberal democracies ought to have a *legal* free speech right to do *moral* wrong – that is, a legal right to express and defend any political and religious viewpoint or idea, even if it is morally wrong to express, or expose others to, such views. For example, this means that extremists should have a right to express their viewpoints within public discourse even if these viewpoints cause psychological harms.

This chapter proceeds as follows. Section “[Political Toleration and Viewpoint-Based Restrictions on Extremist Speech](#)” gives an account of different kinds of restrictions on speech – especially viewpoint-based restrictions. Section “[Heyman and Quong on Extremist Viewpoints and the Limits of Toleration](#)” sets out Heyman and Quong's arguments for the position that respect for persons requires that liberal democracies should not tolerate the public expression of recognition-denying speech. The aim of section “[Viewpoint Neutrality, Political Toleration, and the Free Speech Right to Do Moral Wrong](#)” is to present the doctrine of viewpoint

neutrality, and explain the way in which this doctrine requires that citizens in a liberal democracy ought to have a legal free speech right to do moral wrong. Section “[Respect for Persons as Thinking Agents: A Libertarian Status-Based Theory of Rights](#)” sets out a case for the doctrine of viewpoint neutrality. In sections “[Do Persons Have a Basic Right to Recognition or Dignity?](#)” and “[The Silencing Effects of Extremist Speech,](#)” two problems facing the doctrine of viewpoint neutrality are discussed. The first concerns the issue of whether persons have a basic right to recognition or dignity that outweighs the basic right to express, hear, and consider any viewpoint or idea within public discourse. The second problem concerns the silencing effects of extremist speech.

Political Toleration and Viewpoint-Based Restrictions on Extremist Speech

The liberal ideal of toleration requires A (e.g., an individual, a group, a state, or a majority) to permit B (i.e., individuals or groups) to do X, even when A strongly dislikes or disapproves of X (e.g., B’s actions, beliefs, or practices). My discussion of the scope and limits of toleration will primarily focus on what can be called political toleration. Like Peter Jones, my point of departure is that *political toleration* refers to toleration secured through the apparatus of the state (Jones 2007). In a liberal democracy, political toleration is located in the political and legal institutions that regulate and constrain people’s conduct in order to protect the freedom of individuals and groups or their choice-protecting rights. A tolerant liberal democracy is a political order in which the state’s political and legal institutions secure a state of affairs where B is not prevented from doing X by A – that is, intolerant others (individuals, groups, or a majority of citizens and their elected representatives) who dislike or disapprove of X and who might otherwise impede B from doing X. A central aspect of a liberal democracy is that it is tolerant in virtue of preventing A from using coercive political power to prevent B from doing X.

Even among those who defend a liberal democratic state, there is deep disagreement about the scope and limits of political toleration. One central question about the scope and limits of toleration concerns whether, and to what extent, it is permissible for a majority of citizens and their elected representatives to enact, and authorize the enforcement of, viewpoint-based restrictions on extremist speech – such as hate speech, holocaust denial, blasphemy, or speech that advocate or encourage terrorism.

In order to explain what viewpoint-based restrictions refer to, it can be useful to make a distinction between three kinds of restrictions on speech that play an important role in US constitutional law. *Content-neutral restrictions* limit communication for reasons that are unrelated to the content or message of the expression – such as restrictions on time, place, or manner of the exercise of speech (e.g., political demonstrations). *Content-based restrictions* limit communication because of the content or message of the expression. However, all content-based restrictions are not viewpoint-based. For example, a ban on all political speech in a certain place (e.g., airports or railway stations) is content-based, but viewpoint neutral.

Viewpoint-based restrictions or viewpoint-selective restrictions are a subset of content-based restrictions that restrict the communication of particular ideas or viewpoints. Such restrictions differentiate and discriminate between different political or ideological viewpoints. Typically, viewpoint-based restrictions are *viewpoint discriminatory* in the sense that they grant freedom to express, hear, and consider the state-approved viewpoint in public discourse, but prohibit some forms of expression of a competing viewpoint (Heinze 2016: 20 and 22). In a political context, viewpoint-based restrictions suppress at least some forms of expression of the viewpoints or ideas of one side in a political debate or disagreement.

Heyman and Quong on Extremist Viewpoints and the Limits of Toleration

Both Heyman and Quong argue that respect for persons requires that liberal democracies should not tolerate recognition-denying speech. This refers to speech or other expressive conduct that expresses viewpoints or ideas that fulfill one of the two following related conditions. (1) The viewpoints explicitly reject or deny that all persons should be regarded and treated as free and equal persons. (2) The viewpoints violate the idea or requirement that persons should recognize and respect each other as free and equal persons. According to their theories of toleration and freedom of expression, recognition-denying or respect-denying speech falls outside the *scope* of the right to participate in public discourse.

The starting point of Heyman and Quong's arguments is the abstract liberal idea that citizens should be regarded and treated as free and equal persons or citizens, and that this idea provides the core foundation or justificatory basis of liberal democratic rights. Persons should be regarded as *free* in the sense that they are rational and moral agents with plans and projects for their own life. Persons should be regarded as *equal* in the sense that they have the same fundamental moral status (Quong 2011: 14; Heyman 2008: chs. 1 and 3).

Heyman's Argument

The point of departure of Heyman's argument is that rights are based on respect for the dignity and freedom (i.e., autonomy) of persons (Heyman 2008: 2 and 37–40). For Heyman, dignity refers to the Kantian idea that a person possesses an absolute inner worth that commands respect from others. Proceeding from this idea about respect for the dignity of persons, Heyman claims that all persons have a *right to recognition* – that is, a right to be recognized and respected as a free and equal person. This right has a special status and significance within a framework of rights. According to Heyman, rights are rooted in respect for personhood, and an individual cannot enjoy rights in relation to others unless they recognize him or her as a person. The right to recognition is the most fundamental right that individuals have, and it

lies at the basis of all their other rights – including their right to participate in public discourse (Heyman 2008: 171).

Heyman assumes that the outlined dignity-based justification or foundation of the right to participate in public discourse limits the scope of this right. The idea is that recognition-denying speech falls outside the scope of the right to participate in public discourse, because the public expression of recognition-denying viewpoints violate the claim-right to recognition and the correlative *duty of recognition* – that is, the duty of individuals to recognize and respect others as free and equal persons and citizens.

Although individuals have a right to take part in public discourse, they also have a duty [of recognition] to respect other citizens as equal participants in that discourse. In other words, it is not enough that the *state* should view individuals as free and equal; citizens must also view *one another* in this light. (Heyman 2008: 175)

The duty of recognition can be understood as an integral feature of public discourse itself (Heyman 2008: 176). According to Heyman, this duty is a ground rule – a civility rule – that should govern public discourse, and recognition-denying speech, such as hate speech, violates this ground rule or duty. Heyman’s ideas about the connection between public discourse and the duty of recognition also play a central role in his moralized understanding of political speech. “[P]olitical speech is best understood as discourse among individuals who recognize one another as free and equal persons and members of the community” (Heyman 2008: 177; italics added). According to Heyman, “the duty to refrain from speech that denies recognition to others is not one that is imposed on public discourse from the outside, but one that is inherent in the concept of political freedom of speech” (Heyman 2008: 179). This means that recognition-denying speech falls outside the scope of the right to freedom of political speech properly understood. There is no right to recognition-denying speech – such as public hate speech. In Heyman’s words, “public hate speech does not fall within the . . . right to political freedom of speech” (Heyman 2009: 177). In view of this moralized understanding of public discourse and political speech, Heyman assumes that the right to participate in public discourse has an exception clause – i.e., a *recognition or respect clause* – that limits the *scope* of this right. The idea appears to be that P has a right to participate in public discourse except in cases where P uses or exercises this right in a way that violates the moral duty to recognize and respect the dignity of others as free and equal persons.

Heyman’s argument from mutual recognition and respect does not only provide a basis for viewpoint-based restrictions on hate speech, but also other forms of recognition-denying speech, such as advocacy of terrorism. Typically, acts of expression that advocate or encourage political violence against innocent civilians are forms of recognition-denying speech, in the sense that such speech denies recognition to others and expresses a lack of respect for the dignity and the moral status of the potential targets of terrorism. For example, direct and indirect encouragements to kill innocent civilians in order to promote political objectives constitute an explicit rejection of the dignity and the equal moral status of persons. Like the

UK's Terrorism Act 2006, one can say that indirect encouragements to terrorism primarily refer to glorification of terrorism – for example, praise or celebration of suicide bombings or holy war (or Jihad).

Heyman seems to distinguish between two aspects of the wrongfulness of recognition-denying speech, and these throw light on why the public expression of such extremist viewpoints should not be tolerated in a liberal democracy. First, both Heyman and Quong seem to regard recognition-denying speech as a *malum in se* – a wrong in itself. The idea is that the public expression of recognition-denying viewpoints is inherently immoral or unjust through the aim or intention to diminish or reject equal respect for all persons or citizens. Recognition-denying speech, such as hate speech, is wrong in itself because it degrades its targets. The expressive act itself inherently denies equal respect for all persons or the equal worth or dignity of all persons or citizens. This provides a strong reason for bans on such speech, regardless of whether any further harmful or detrimental effects can be traced back to it. Thus, hate speech is a *malum in se* that should not be tolerated, irrespective of whether the public expression of hateful viewpoints causes psychological harms, increases the likelihood of violence, or pollutes the social and moral environment of the society.

Second, recognition-denying speech is wrongful and harmful because it undermines or violates the rights of its targets. As we have seen, Heyman claims that recognition-denying speech violates the right to recognition or dignity, and this is a serious matter because he regards this as “the most basic right of all” (Heyman 2008: 183). According to Heyman, recognition-denying speech can also undermine or violate other rights, such as the right to participate in public discourse. Recognition-denying speech does not only violate the ground rules of public discourse (as outlined above). It also has a silencing effect that undermines or violates its targets’ right to participate in public discourse. Heyman sets out the following *silencing effect argument* for certain viewpoint-based restrictions on extremist speech, such as hate speech.

[H]ate speech tends to silence its targets and undermine their right to free expression. Because political discourse involves interaction with others, an individual cannot fully engage in such discourse unless other citizens are willing to interact with her and take her views seriously. By refusing to engage in discourse with their targets and by dissuading other citizens from doing so, hate speakers curtail the ability of target-group members to take part in democratic deliberation. Hate speech can also silence its targets by diminishing their sense of personal security and by attacking their dignity in ways that discourage them from full participation in the life of the community. These considerations suggest that hate speech regulation is justified not only to secure other rights but also to protect freedom of expression itself. (Heyman 2008: 279, note 65)

More recently, Alexander Brown has developed a similar silencing effect argument that also focuses on how certain forms of extremist speech can undermine its targets’ opportunity to participate in democratic deliberation or public discourse as “ordinary deliberative democrats” (Brown 2015: 198). Both Heyman and Brown defend certain viewpoint-based restrictions on extremist speech within public

discourse the aim of which is to promote the overall freedom or opportunity to participate in public discourse for *all* persons in a democratic society. Since this silencing effect argument can be regarded as an important objection to the doctrine of viewpoint neutrality, it will be discussed in more detail in section “[The Silencing Effects of Extremist Speech.](#)”

Quong’s Argument

In his discussion of the rights of “unreasonable” extremist citizens, Quong also defends the position that respect for persons requires that liberal democracies should not tolerate recognition-denying speech. According to Quong, unreasonable citizens that reject fundamental liberal democratic values have all the normal rights and liberties of citizenship. However, the otherwise valid rights claims of unreasonable citizens cease to be valid when they are used in the pursuit of *unreasonable objectives* or activities – that is, objectives or activities that do not respect the freedom and equality of persons or “activities that are motivated by, or aim at, the rejection of fair cooperation between free and equal citizens” (Quong 2011: 308. See also Quong 2004: 332).

The idea is that unreasonable citizens and groups cannot be denied any of the liberal democratic rights of citizenship just because they reject fundamental liberal democratic values and rights, but they can be prevented from exercising those rights when their aims are explicitly unreasonable. The rights in question cease to be rights when unreasonable citizens or groups exercise or attempt to exercise them in this way. The reason is that unreasonable activities are in clear conflict with the justificatory basis or ground of liberal democratic rights, and such activities “cannot plausibly be protected by liberal [democratic] rights” (Quong 2011: 310). Like Heyman, Quong assumes that there is a close link between the foundation of rights (i.e., the normative idea that citizens should be regarded and treated as free and equal persons) and the specification of the scope of rights.

Any alleged right must be at least consistent with the ideal of citizens as free and equal. . . . [U]nreasonable activities – activities that are motivated by, or aim at, the rejection of fair cooperation between free and equal citizens – are not protected by standard individual rights and freedoms. Such unreasonable activities are by definition inconsistent with the moral ideal upon which rights are grounded, and so they cannot be protected by such rights. . . . [B]ecause that moral ideal [of citizens as free and equal] is where our reasoning about justice begins, . . . the rights and benefits of citizenship are meant to aid citizens only in the pursuit of those conceptions of the good life that are compatible with that ideal. (Quong 2011: 308–309 and 312)

Choice-protecting (or liberty-protecting) liberal democratic rights, such as freedom of association, only protect *reasonable choices* – that is, choices that “respect the freedom and equality of persons” (Quong 2004: 332). This means that the choice-protecting right to freedom of association does not cover the liberty or freedom to choose to join a racist political or religious organization, or the liberty

to establish such organizations. Presumably, this also applies to the right to join or form an Islamophobic organization, the aim of which is to establish a political regime that will deny Muslims political and civil rights – for example, deny Muslims the civil right to equality before the law and political rights to participate in political processes. Quong assumes that choice-protecting liberal democratic rights have an exception clause – i.e., a reasonableness clause – that limits the *scope* of such rights. The idea is that P has a liberal democratic right to X except in circumstances where P uses or attempts to use the right in the pursuit of unreasonable objectives.

Quong's position has important implications with regard to the scope of the right to participate in public discourse and permissible viewpoint-based restrictions on extremist political and religious speech. There is no right to be unreasonable, and the public expression of recognition-denying viewpoints is unreasonable. Thus, Quong claims that there is no right to extremist recognition-denying speech, such as hate speech – that is, “expression whose primary intention is to deny the freedom or equality of persons or citizens” (Quong 2011: 305, note 45). Like Heyman's theory of the limits of toleration and freedom of speech, Quong's theory will open the door to a wide range of viewpoint-based restrictions on extremist political and religious speech that can be regarded as recognition-denying or respect-denying speech. It will, for example, be permissible for a liberal democracy to enact and enforce bans on different forms of advocacy of political violence that amounts to recognition-denying speech. It might not only be permissible to ban direct and indirect encouragements to terrorism, but also others forms of political violence, such as advocacy of war or violent revolution, provided that the advocacy constitutes recognition-denying speech.

Although both Heyman and Quong assume that there is a close link between the justification of rights and their scope, there is a noteworthy difference between their theories of the ground of rights. Heyman defends a version of a liberal *natural rights theory* inspired by John Locke and Immanuel Kant. Like other natural rights theories, Heyman's can be regarded as a form of a status-based theory of rights, in the sense that rights are grounded in the nature of persons or the morally crucial characteristics of persons. (An alternative libertarian or Nozickean version of a status-based theory is presented and defended in section “[Respect for Persons as Thinking Agents: A Libertarian Status-Based Theory of Rights.](#)”)

Quong defends an *interest-based theory* of the ground of rights that is partly inspired by Joseph Raz. Like Raz, he assumes that P has a right if P's interest is a sufficiently strong reason or ground for holding some other person(s) to be under a duty (Raz 1986: 166; Quong 2011: 306). To say that a person has a right is to say that his or her interest is sufficient to justify the existence of a duty on another person to behave in a way which serves the interests of the right-holder. This raises the question of what sorts of interests are sufficiently strong in order to provide interest-based reasons for rights. Quong's answer is that basic liberal democratic rights are grounded in the fundamental or higher-order interests of persons regarded as free and equal citizens. More precisely, “[b]asic rights and freedoms are meant to protect the especially important interests that citizens have in making (reasonable) choices over certain aspects of their lives such as freedom of association and religious

expression” (Quong 2011: 310). Basic rights are only meant to protect the fundamental interests of citizens when they are pursued with reasonable objectives in mind. If fundamental interests are being pursued in order to promote unreasonable political or religious objectives, these interests fail to ground rights, and they should not be protected.

At this point, it should be noted that Quong defends a moralized understanding of interests. Unreasonable interests cannot provide a basis for liberal democratic rights because such interests are at odds with the freedom and equality of persons (Quong 2004: 333). Thus, unreasonable interests cannot ground the choice-protecting right to participate in public discourse, because such interests fail to recognize and respect other citizens as free and equal persons or citizens. According to Quong, this is important when it comes to the question of whether liberal democracies should tolerate recognition-denying speech, such as hate speech. The main reason radical extremists or hate speakers do not have a right to express their recognition-denying viewpoints is not that their views may cause psychological damage to the members of the groups they are attacking. Rather, it is because “hate speech or literature is not a genuine exercise of the right to free speech at all”, and this means that there is no strong countervailing reason to weigh against reasons for state interference, the aim of which is to contain the spread of extremist anti-liberal-democratic ideas or values (Quong 2011: 311). In cases of hate speech, “the primary (and possibly only) interest being pursued . . . is unreasonable” (Quong 2011: 311). Thus, there is no valid rights claim to be considered.

Before proceeding, it is worth noting that Quong assumes that the *strength of rights* is relative to the weight or importance of the interests they are meant to protect (Quong 2004: 333, note 54). Quong seems to defend a version of a balancing approach to justifiable infringements of rights. The general idea of a balancing approach is that we need to weigh competing interests against each other and determine the relative strength or importance of the interests at stake. Quong appears to defend a balancing approach that can be described like this. In cases where a right comes into conflict with other moral considerations, one must weigh the importance or strength of the reasonable interests of the right-holder(s) against the competing reasonable interests of other affected parties. In this balancing process, the fundamental reasonable interests of free and equal citizens weigh more than other reasonable interests, whereas unreasonable interests do not count at all – they are irrelevant.

Heyman and Quong’s arguments provide an interesting basis for viewpoint-based restrictions on extremist speech. However, even if one accepts the abstract liberal ideas that citizens should be regarded as free and equal persons and that rights are based on respect for persons or the dignity of persons, it is far from clear that recognition-denying or respect-denying speech falls outside the scope of the right to participate in public discourse. The move from these abstract assumptions (or premises) to Heyman and Quong’s conclusions is controversial, and a number of prominent liberal and libertarian philosophers would reject it (see, e.g., Dworkin 1996, 2009, 2012; Hospers 1971; Mill 1985/1859; Nagel 2002; Rawls 1993: 336 and 354–55; Rothbard 2006). One can accept the idea that persons should be regarded and treated as free and equal in a liberal democracy, but reject Heyman

and Quong's views on the scope of the right to participate in public discourse. In the remaining sections of this chapter, the aim is to elaborate and defend my version of this position. It will be argued that Heyman and Quong's theories of toleration and freedom of expression are overly intolerant, and that respect for the status of persons as thinking agents and their sovereignty over their own mind requires that liberal democracies ought to tolerate the public expression of *any* political and religious viewpoint within public discourse.

Viewpoint Neutrality, Political Toleration, and the Free Speech Right to Do Moral Wrong

The doctrine of viewpoint neutrality requires that *all* persons – including unpopular and radical extremist dissenters – have a right to express, hear, and consider *any* political and religious viewpoint, idea, or doctrine within public discourse. This means that liberal democracies should impose no criminal or civil penalties upon the expression of opinions or ideas that are relevant to intrapersonal and interpersonal deliberation on matters concerning the organization and culture of society or matters of public concern. The doctrine of viewpoint neutrality requires that citizens in a liberal democracy should have a basic right to participate in public discourse as speakers and listeners free from *state*-imposed viewpoint-based restrictions. Democratic majorities or their elected representatives have no moral right to enact and enforce viewpoint-based restrictions on public discourse. This does, however, not mean that liberal democracies should be neutral in the sense that they should grant radical extremist dissenters the right to attain political power to turn their political or religious ideas and objectives into law (Ekeli 2012).

With regard to extremist political and religious speech, the doctrine of viewpoint neutrality has two aspects that correspond to two basic rights. First, radical extremist dissenters (e.g., racists, Islamophobes, or radical imams) have a right to express and defend their political or religious convictions and ideas, however immoral or unreasonable they may be considered – except in cases where their speech acts violate the basic rights of other persons, such as their basic civil or political rights. Thus, *all* citizens have a right to participate in public discourse free from viewpoint-based restrictions, even if they express strongly worded and provocative recognition-denying viewpoints that are intended to stir up hatred, contempt, and hostility. Second, the rest of us – their potential audience – have a right to listen and make up our own minds.

According to the doctrine of viewpoint neutrality, political toleration in a liberal democracy requires a free speech right to do moral wrong that Heyman, Quong, and other defenders of viewpoint-based restrictions reject. The aim of this section is to explain in more detail the way in which this doctrine demands that citizens in a liberal democracy ought to have a *legal* free speech right to do *moral* wrong – including a right to be unreasonable. The argument for this doctrine is set out in section [“Respect for Persons as Thinking Agents: A Libertarian Status-Based Theory of Rights.”](#)

A right to do moral wrong is a moral or a legal right to do something that is wrong from a moral point of view. P has a right to do moral wrong if P has a right to do something that P ought not to do. To put it differently, a right to do moral wrong is a right to do something one has a moral duty not to do – a right to violate one’s own duty. Rights to do moral wrong are *choice-protecting rights*, the aim of which is to protect the choices or the freedom of choice of the right-holder. Examples of choice-protecting rights are freedom of speech, freedom of association, and freedom of religion. A choice-protecting right contains a *claim-right* that imposes a duty on others and the state not to interfere with the choices of the right-holder – that is, a duty of noninterference. Thus, to say that a person has a choice-protecting right to do moral wrong is to say that the state and other persons have a duty not to interfere with the right-holder’s moral wrongdoing. As Ori Herstein points out, a right to do wrong “is a right against enforcement of duty, that is a right that others not interfere with one’s violation of one’s own obligations” (Herstein 2012: 343).

At this point, it should be noted that there is an interesting and important difference between moral duties and choice-protecting rights. *Moral duties* provide reasons for action. If P has a duty to do X, this entails that P has a reason to do X. Thus, if we have a moral duty to respect persons or the dignity of persons in Heyman and Quong’s sense, this provides a reason to do so. *Choice-protecting rights* do not provide reasons for action. The function of a choice-protecting right is not to guide choices, but to protect choices. If P has a right to X, this does not entail that P has a reason to do X. Thus, if P has a right to express and defend extremist political viewpoints or ideas, this does not entail that P has a reason to express such views. Choice-protecting rights do not give the right-holder reasons for action, but they give others reasons against interference. This means that a choice-protecting right to do moral wrong provides a reason for other people and the state not to interfere with the right-holder’s moral wrongdoing, but it does not give the right-holder a reason to do moral wrong.

If one accepts the doctrine of viewpoint neutrality, political toleration in a liberal democracy requires that citizens ought to have a *legal* free speech right to do *moral* wrong. This right to do moral wrong contains, at least, two important and related elements (Ekeli 2020). First, viewpoint neutrality requires that citizens should have a legally protected *liberty* to express and defend any political and religious viewpoint or idea within public discourse, even if it is morally wrong to express, or expose others to, such views. For example, this right covers the freedom to express racist or Islamophobic views that can cause psychological harms such as humiliation, fear, or anxiety. Even if it is morally wrong for citizens to express recognition-denying viewpoints that attack the dignity of persons and that can cause psychological harms, the doctrine of viewpoint neutrality requires that they should have a choice-protecting legal right to do moral wrong – subject to the *exception clause* that their speech acts do not directly and demonstrably violate the basic rights of other persons. This exception clause limits the scope of the free speech right to do moral wrong. A specification of the exception clause demands an answer to the question of the nature and ground of basic rights. This issue is discussed in more

detail in section “[Respect for Persons as Thinking Agents: A Libertarian Status-Based Theory of Rights.](#)”

Second, the doctrine of viewpoint neutrality requires that citizens ought to have a free speech right to do moral wrong that constitutes a right against legal enforcement of moral duty – that is, a legal *claim-right* against interference with moral wrongdoing. This means that it is not permissible for majorities in a liberal democracy to enact hate speech laws or bans on advocacy of terrorism that legally enforce the moral duty of individuals to respect the dignity of persons, because the state has a duty of noninterference. More generally, the enactment and enforcement of viewpoint-based restrictions on public discourse fall outside the scope of *the legitimate jurisdiction of majorities* – that is, the scope of the majority’s moral right to rule. In a liberal democracy, the majority has no moral power-right to enact, and authorize the enforcement of, viewpoint-based restrictions on public discourse. With regard to the duty of noninterference, it is important to note that the doctrine of viewpoint neutrality prohibits *state-imposed* viewpoint-based restrictions on public discourse, but not viewpoint-based restrictions imposed by private citizens on their property. Each individual – including the owners of media platforms such as Google and Facebook – has a right to decide what ideas or worldviews that should be spread or disseminated on their property.

Respect for Persons as Thinking Agents: A Libertarian Status-Based Theory of Rights

Respect for persons or the dignity of persons can be cited on both sides in debates about the right to participate in public discourse and its scope (i.e., what the right is a right to) and strength (i.e., the weight of the right when it comes into conflict with competing ethical considerations). On the one hand, one can, as Heyman and Quong do, argue that respect for persons requires viewpoint-based restrictions on recognition-denying speech. On the other hand, one can argue that respect for persons requires viewpoint neutrality and the associated legal free speech right to do moral wrong (Ekeli 2020).

One way to develop an argument for the doctrine of viewpoint neutrality proceeds from the assumption that political institutions in a liberal democracy should show *respect for persons as thinking agents*. This is a normative idea that political institutions and procedures should instantiate and respect, and it provides the main justificatory basis of the basic rights of persons. The core idea of this status-based theory of rights is that persons, regarded as thinking agents with separate lives, have certain attributes or capacities that warrant or command respect, and these respect-warranting characteristics make it fitting to grant them certain basic rights that limit the scope of the state or the majority’s moral right to rule.

The version of a status-based theory of basic rights that will be developed and defended here is crucially different from Heyman’s, and it can be called the libertarian or Nozickean status-based theory. *The libertarian status-based theory* of rights provides a basis for a specification of the scope and strength of the right to participate

in public discourse as speakers and listeners that supports the doctrine of viewpoint neutrality. This theory has three pivotal aspects. The first is that *the ground of basic rights* is respect for the status of persons regarded as thinking agents. Basic rights are grounded in certain fundamental morally significant characteristics of persons and their existential condition in the world as separate individuals each with their own lives to lead.

1. The worth, inviolability, and separateness of persons: Basic rights reflect the Kantian idea that persons have an unconditional worth (i.e., “a worth that has no price”), and Robert Nozick’s idea of the inviolability of persons – that is, basic negative rights express and specify what it is not permissible to do to persons being ends in themselves, who should never be treated merely as means or resources for other persons or collective ends without their consent (Kant 1797/2017: 201 and 225; Nozick 1974: 30–33). According to Nozick, there is a close link between respect for the inviolability of persons and the separateness of persons – that is, the morally significant fact that “[t]here are only individual people, different individual people, with their own individual lives. . . . To use a person [for the benefit of others or to serve the interests of others] does not sufficiently respect and take account of the fact that he is a separate person, that his is the only life he has” (Nozick 1974: 33). Respect for the separateness of persons requires that we respect the distinctiveness of individuals who have different and separate lives to lead and their own ends to set in view of what they regard as meaningful and valuable projects to pursue in their own life.
2. A person’s sovereignty over himself/herself: Basic rights are a response to, or an expression of, a person’s authority over his/her body, mind (i.e., a person’s beliefs and values), and separate life or existence. Every individual person has sovereign authority over their own person, and they are entitled to choose which goals and projects they will use their own bodily and cognitive powers or capacities to pursue in their own separate lives – individually or cooperatively – limited only by the basic rights of other persons.
3. The respect-warranting capacities of persons as thinking agents: Basic rights are a response to, or an expression of, the respect-warranting capacities of persons as thinking agents, the most important of which are the following. (i) The deliberative capacity to make up their own mind in matters of politics and faith. (ii) The ability to express their most fundamental moral, political, or religious convictions and defend them against criticism. (iii) The ability to choose how they will live their own separate lives in accordance with their own understanding of what is a meaningful and valuable life. (iv) The capacity to take responsibility for their choices, the personal and political goals they aim for, and the manner in which they pursue them. These respect-warranting capacities of persons regarded as thinking agents and their sovereignty over their own beliefs and values provide the main reason for why it is fitting or appropriate to grant persons certain basic choice-protecting rights – such as the right to freedom of association, the right to freedom of thought, and the right to express, hear, and consider any viewpoint within public discourse.

Before proceeding, it is worth noting that to say that persons are thinking agents who have the deliberative capacity to make up their own mind about what to believe and what reasons to act on does not mean that they always or mostly use this ability in a good or rational way – for example, deliberate thoroughly or rationally about political or religious issues. Rational deliberation and decision-making require both information and the ability to process it rationally. The extent to which thinking agents are informed and rational varies from person to person, and it is a matter of degree. A thinking agent is rarely, if ever, fully informed or fully rational. One important reason for this is that we as thinking agents are subject to cognitive biases that prevent us from believing, thinking, or doing what we ought to believe, think, and do in view of the information we have available.

A core idea of the libertarian status-based theory of rights is that respect for the status of persons as thinking agents with sovereignty over their own body, mind, and separate life has *justificatory priority* over the protection and promotion of interests or the promotion of good consequences. For example, the reason why it is fitting to grant hate speakers and their potential audience (i.e., the rest of us) the right to participate in public discourse as speakers and listeners free from state-imposed viewpoint-based restrictions is not that their fundamental interests as free and equal citizens outweigh the interests of the targets of hate speech. Rather, it is respect for the status of persons as thinking agents and their sovereignty over their own beliefs and values that provide the basis of this right – regardless of the importance or weight of their interests in expressing, hearing, or considering extremist viewpoints. As Warren Quinn points out, “[i]t is not that we think it fitting to ascribe rights because we think it a good thing that rights be respected [or that such an arrangement or political system best promotes overall human welfare or the interests of all affected parties]. Rather, we think respect for rights a good thing precisely because we think people actually have them – and . . . that they have them because it is fitting that they should” (Quinn 1989: 312). This status-based approach to the justification of basic rights is crucially different from Raz’ interest-based approach. According to Raz, “rights are based on evaluating the interests not only of their beneficiaries, but also of others who may be affected by respect for them” (Raz 1994: 35–36).

The second aspect of the libertarian status-based theory is that basic rights are *deontological side constraints* that provide a basis for assessing and constraining the actions and decisions of the state or the majority, as well as individuals and groups. Status-based rights impose what Nozick calls “moral side constraints” on the pursuit of the interests and goals of other people and the state. These moral side constraints reflect the limited authority individuals, groups, and states have over persons regarded as thinking agents with sovereignty over their own body, mind, and life. A specification of our basic rights as deontological side constraints is a specification of our rightful freedom and our rightful powers and immunities with respect to one another as thinking agents with separate lives.

The third aspect of the libertarian status-based theory is that *the strength of basic rights* is a reflection of the status of persons as thinking agents. Respect for the status of persons has justificatory priority over the protection and promotion of interests, and this justificatory priority is crucial when considering the strength of basic rights.

Although rights typically protect interests directly and indirectly, the strength of a basic right, such as the right to participate in public discourse, can be out of proportion to the interests it protects and promotes. As Frances Kamm points out, “we can recognize that any given person’s interest in speaking freely is not great, yet still argue that he has a strong [status-based] right to free speech, even when its strength is independent of serving (directly or indirectly) any other interest of his or anyone else’s” (Kamm 2007: 246–247). When we consider whether a basic right should be respected, its strength is not a function of the interests at stake. The issue of justifiable infringements of basic rights is not a matter of balancing competing interests.

Basic rights are trumps in at least two important senses. In the first place, basic rights trump moral considerations of aggregative welfare. The normative force of basic rights places them on a different plane from any aggregative calculus of interests. A basic right is not just another consideration to be weighed and balanced against conflicting interest-based or welfare-based reasons – whatever their strength. Secondly, a basic right expresses the inviolability and separateness of persons, and it is a trump in the sense that the overall promotion of respect for basic rights in a society cannot justify a violation of the right. As Nozick points out, basic rights should not be treated as *goals* to be promoted, but as deontological side *constraints* to be respected – that is, as constraints that reflect respect for the status of persons with sovereignty over their own body, mind, and separate life. Consider the basic right to freedom of religion. It is reasonable to assume that if a state respects the basic right to freedom of religion, this will have the consequence that some citizens form extremist religious communities or sects that provide breeding grounds for violent radicalization, and that some members of these communities or sects will violate the basic rights of persons both within and outside these communities. Nevertheless, the right to freedom of religion is a constraint on the actions of the state that makes opportunistic violations of this right impermissible – even if violations would over time minimize the total amount of violations of basic rights in the society. From the point of view of the Nozickean status-based theory of rights, it is not permissible to violate a person’s basic right to freedom of religion as a means to advance the interests or goals of others or even his/her own interests and goals.

The libertarian status-based theory of rights provides a basis for a specification of the scope and strength of the right to participate in public discourse that supports the doctrine of viewpoint neutrality. Respect for the status of persons as thinking agents and their sovereign authority over their own mind requires that they are ascribed a basic right to participate in public discourse as speakers and listeners free from state-imposed viewpoint-based restrictions. A political system that does not respect this basic right as a deontological side constraint fails to respect persons. Persons regarded as thinking agents can complain about the disrespect or indignity of being told by the state or a majority what political or religious views they can express, hear, and consider in processes of public discourse. To subject competent adult citizens to viewpoint-based restrictions is to treat them like children who need protection from being exposed to dangerous, poisonous, or contagious viewpoints. A democratic state does not respect persons as thinking agents if it functions as a

moderator of public debate and deliberation that suppresses or censors the political ideas and viewpoints that they are allowed to express, hear, and consider. Viewpoint-based restrictions on extremist speech within public discourse constitute an indignity and insult to *all* persons who are subject to them – both speakers and their potential audience. This also applies to members of minority groups who are targets of extremist speech, such as hate speech. I will return to this point in section “[Do Persons Have a Basic Right to Recognition or Dignity?](#).”

Another argument for the position that respect for the status of persons as thinking agents requires viewpoint neutrality can be called the *argument from freedom of thought*. According to this argument, there is an inseparable link between freedom of thought and viewpoint neutrality, and respect for the status of persons as thinking agents requires both freedom of thought and viewpoint neutrality. One way to develop this argument goes like this. The liberal and democratic idea that political institutions should respect persons as thinking agents requires the protection of free intrapersonal and interpersonal deliberation on matters concerning the organization and culture of society. *The right to freedom of thought* is a precondition for free processes of deliberation. Freedom of thought is a basic right that is a response to, or an expression of, respect for the status of persons as thinking agents with sovereignty over their own mind – that is, their own beliefs and values. This right includes the freedom of belief on all subjects (e.g., religious, political, scientific, philosophical, literary, or artistic), and the liberty to live in accordance with the demands of conscience. For present purposes, the most important dimension of the right to freedom of thought is the right or liberty to make up one’s own mind about what to believe, and what is valuable and worth doing. This includes the liberty to develop or form one’s own viewpoints or thoughts in processes of deliberation or discussion with others. Thus, the right to freedom of thought protects both inquiry and discussion.

There is an inseparable link between the outlined right to freedom of thought and viewpoint neutrality – that is, the basic right to participate in public discourse as speakers and listeners free from state-imposed viewpoint-based restrictions. According to the doctrine of viewpoint neutrality, this basic right to participate in public discourse has, as we have seen, two aspects: (a) It is a right to *express* and *defend* one’s viewpoints or thoughts, even if it is morally wrong to express, or expose others to, such views. (b) It is a right to *hear* and *consider* the viewpoints or thoughts of other persons.

Viewpoint-based restrictions represent a form of state coercion that fails to respect the inviolability and separateness of persons as thinking agents, who have the ability and the right to develop their own political and religious viewpoints or thoughts. First, viewpoint-based restrictions, such as bans on recognition-denying speech, constitute a kind of thought control – the aim of which is usually to prevent citizens from acquiring or developing dangerous or poisonous ideas or viewpoints that can bring about harmful changes in their subsequent behavior. The state attempts to control (1) what particular political and religious ideas or viewpoints people are exposed to; (2) how they should think about certain political or religious issues, ideas, and aims (e.g., to prevent violent radicalization); and (3) what ideas should be

allowed to influence processes of democratic deliberation or the society's moral environment in which people form their characters. Second, viewpoint-based restrictions on recognition-denying speech constitute a form of state coercion that is especially problematic with regard to respect for dissenters, who are subject to institutions and laws that they reject, and that are in clear conflict with their fundamental moral, political, or religious convictions.

Do Persons Have a Basic Right to Recognition or Dignity?

In section “[Heyman’s Argument](#),” we saw that Heyman claims that persons have a basic right to recognition or dignity – that is, a right to be recognized and respected as a free and equal person. Presumably, Quong would also say that persons have a similar basic right to be respected as free and equal persons that is grounded in the fundamental interests of persons regarded as free and equal citizens. On this basis, one can argue that persons have a basic right to recognition or dignity, the aim of which is to protect persons – especially members of minority groups – from the public expression of extremist recognition-denying viewpoints that attack their dignity or their status as free and equal persons and citizens. If one accepts this, the issue of whether the expression of extremist recognition-denying viewpoints should be tolerated in a liberal democracy involves a conflict between two basic rights – the basic right to recognition and the basic right to express, hear, and consider any political or religious viewpoint within public discourse. Moreover, if one accepts Heyman’s assumption that the right to recognition is “the most basic right of all,” one could argue that the strength of this right outweighs the conflicting basic right to express, hear, and consider any viewpoint within public discourse. This objection to the proposed status-based theory of viewpoint neutrality raises the question of whether persons have a basic right to recognition or dignity.

It is worth considering three responses to this objection. First, political institutions in a liberal democratic state must respect the status of persons as thinking agents and their sovereign authority over their own mind, and this means that I must accept that other persons have a basic right to hold me in contempt, to think that I lack dignity, and to express these beliefs or convictions. This applies to me and all other persons – regardless of whether I belong to a vulnerable minority, or whether I am a communist, a libertarian, a racist, a religious fundamentalist, an Islamophobe, an alcoholic, or a junkie. As Ronald Dworkin points out, no one has a basic right that other individuals, who do believe they lack dignity, not hold or express that conviction (Dworkin 2012: 342). A liberal state should not be in the business of using the coercive apparatus of the state to regulate or control what we think and feel about other persons or citizens, and how we choose to express those thoughts and convictions within public discourse. According to the status-based doctrine of viewpoint neutrality, a majority has no moral right to enact, and authorize the enforcement of, laws that prohibit or penalize recognition-denying viewpoints stating that members of certain groups are inferior beings who have no moral status. The same applies to viewpoints that express an aspiration or wish to deprive

members of certain groups of all or some elements of citizen status. There might be strong reasons for regarding the public expression of such viewpoints as morally wrong, but they should be tolerated in a liberal state.

Second, from the point of view of the Nozickean status-based theory of rights, the viewpoint-based restrictions on recognition-denying speech defended by Quong aim to protect the dignity or status of persons, but fail to respect the dignity of persons as ends in themselves. One important reason for this is that the restrictions fail to respect the inviolability and separateness of persons, in the sense that they use persons as means to advance the interests of others. The point is that the bans violate a person's right to participate in public discourse as a speaker *and* listener as a means or tool to protect and promote the dignity-based interests of other persons – that is, their interest in being protected from attacks on their dignity or their status as free and equal persons or citizens.

Third, political institutions do not show wrongful disrespect for people if they treat them as persons who have the deliberative capacities to evaluate, deal with, and respond to political and religious viewpoints that attack their dignity or their status as free and equal persons or citizens. Rather, respect for the status of persons as thinking agents requires that they are treated as persons who have the ability to deal with such viewpoints, and the ability to defend and stand up for themselves. This applies to all of us when other individuals or groups express viewpoints that deny that we should be regarded or treated as free and equal persons or citizens. To respect the status of adult competent persons as thinking agents is incompatible with treating them as weak and helpless victims who need special state protection from viewpoints attacking their dignity or their social reputation.

In their famous defenses of hate speech laws, Richard Delgado and Jeremy Waldron seem to defend the competing perspective that regards the targets of hate speech as weak and defenseless victims who need special state protection from “words that wound” (Delgado 1982; Delgado and Stefancic 2018; Waldron 2012). In contrast to Delgado and Waldron, one can argue that this form of special state protection of members of certain selected groups undermine their status as thinking agents, in the sense that it is an indignity and insult to suggest that members of certain selected minority groups need special protection from speech that attack their dignity or social reputation and that might cause psychological harm. The African American conservative political activist Alan Keyes makes a similar point: “The. . . protection [of a “hate speech” law] incapacitates. . . . To be told that white folks have the moral character to shrug off insults, and that I do not. . . . That is. . . the most racist statement of all!” (Quoted in Strossen 2018: 164).

The Silencing Effects of Extremist Speech

In section “[Heyman and Quong on Extremist Viewpoints and the Limits of Toleration](#),” we saw that both Heyman and Brown argue that one important argument for certain viewpoint-based restrictions on extremist speech within public discourse is that such speech can have silencing effects. This argument can provide an objection

to the doctrine of viewpoint neutrality that can be called *the silencing effect objection*. One way to develop this objection that is inspired by Brown's silencing effect argument goes like this. If left unchecked, the public expression of certain forms of extremist viewpoints can "deter or inhibit members of targeted groups from functioning as *ordinary deliberative democrats*" – that is, the targets can be prevented "from participating normally or as other citizens in the formation of democratic public opinion" (Brown 2015: 198; italics added).

What is at stake is a sort of deliberative exclusion in which out of fear for their personal safety or livelihood or as a result of an impaired sense of their status some, perhaps many, victims of hate speech tend to refrain from participating in the formation of public opinion; adapt their expressed preferences in order to fit their reduced circumstances; and/or find that even when they do decide to speak up what they say falls on deaf ears because of the low opinion that others have of them, partly as a consequence of the negative stereotypes carried and reinforced by hate speech. (Brown 2015: 198)

This silencing effect objection raises the following questions. If political institutions should respect the status of persons as thinking agents, why should it not be permissible for a liberal democracy to ban the expression of extremist political and religious viewpoints if the views can have the outlined silencing effects, and the viewpoint-based restrictions will promote the freedom or opportunity to participate in public discourse for people overall in a democratic society? Should citizens in a liberal democracy have a legal free speech right to do moral wrong even if they express extremist viewpoints within public discourse that silence others in the way described by Brown and Heyman?

A defender of viewpoint neutrality grounded in the libertarian status-based theory of rights can give a twofold answer to these questions. First, the libertarian status-based theory regards viewpoint neutrality and the associated free speech right to do moral wrong as a deontological side constraint that prohibits the state from violating this constraint even if a violation would better serve freedom of expression overall in the society. This means that the basic right to participate in public discourse free from viewpoint-based restrictions can be invoked against a liberal democratic state that would ban the extremist political viewpoints of a Neo-Nazi group, even when the group, if allowed to express their hateful viewpoints, is likely to psychologically "deter or inhibit members of targeted groups from functioning as ordinary deliberative democrats" (Brown 2015: 198). If a state is prepared to ban political viewpoints in order to promote the freedom or opportunity to participate in public discourse for people overall, then it does not (as Nozick would have said) endorse the basic right to express, hear, and consider any viewpoint within public discourse as a deontological side *constraint* on its actions that respects the status of persons as thinking agents and their sovereignty over their own mind. Rather, it merely treats this right to participate in public discourse as a *goal* that should be promoted, and this would allow the state or the majority to violate or transgress this basic right when doing so promotes the overall freedom or opportunity to participate in public discourse. To treat viewpoint neutrality and the associated free speech right to do moral wrong as a deontological side constraint means that the state cannot justifiably fail to respect or instantiate this

status-based constraint simply because an opportunistic breach or transgression promises to promote the overall realization of the freedom or opportunity to participate in public discourse better than respecting this constraint would do.

Second, the proposed doctrine of viewpoint neutrality and libertarian status-based theory of rights do not imply that it is never permissible for a liberal democracy to ban speech acts that silence or aim to silence other persons. As pointed out in section “[Viewpoint Neutrality, Political Toleration, and the Free Speech Right to Do Moral Wrong](#),” the free speech right to do moral wrong does not cover speech acts that directly and demonstrably violate the basic rights of other persons. This exception clause means that if a speech act silences or aims to silence others in a way that constitutes a violation of other persons’ basic right to participate in public discourse, then such speech acts fall outside the scope of the free speech right to do moral wrong. One can argue that speech acts that fulfill one of the two following conditions can silence others in a way that amounts to a violation of the right to participate in public discourse (Ekeli 2020). It is important to point out that even though these conditions open the door to prohibit certain speech acts, these prohibitions are not viewpoint-based restrictions on public discourse.

1. *The coercion via threat condition*: A speaker A communicates a serious expression of intent to commit an act that will inflict serious harm upon B or other people B cares about in order to obstruct B’s freedom to participate in public discourse or prevent B from exercising this right. Typically, the term “an act that will inflict serious harm” refers to acts of severe physical force or violence (e.g., murder, torture, rape, abduction, or enslavement), but it can also refer to acts that cause grave property damage or destruction of valuable property (such as a threat to burn down a person’s home). It is irrelevant whether A (or A’s associates/co-conspirators) actually intends to carry out the threat, and whether A (or A’s associates) has any intention of carrying out the threatened act imminently or not. This coercion via threat condition is fulfilled in situations in which A communicates a serious expression of intent to kill B or his/her children if B participates at a political demonstration, or if B publishes certain political or religious viewpoints. In such cases, A’s intention is to coerce B into acting against his/her will – the conditional threat is a form of coercion.
2. *The incitement to imminent violence condition*: A’s speech act is intended and likely to incite C to imminent use of severe physical force or violence against B in order to obstruct B’s freedom to participate in public discourse or prevent B from exercising this right. This condition is fulfilled if A incites a group of Neo-Nazis to imminent use of violence against B in order to prevent B from participating as a speaker in a public debate, and it is likely that the Neo-Nazis will be persuaded by A to commit imminent violence in the given context. The condition is also fulfilled in a relevantly similar situation in which A incites a group of radical Islamists to start a violent riot in order to prevent B and others from participating at an anti-Islamic political meeting or political demonstration. Although it is outside of A’s control whether the Neo-Nazis or the radical Islamists will in fact be persuaded to use violence to prevent B, it is reasonable to assume that A’s act

of incitement to imminent violence qualifies as a violation of B's basic right to participate in public discourse. What make the incitements at issue a violation of B's basic right is the combination of the intent with which the words are communicated and the high degree of certainty that the Neo-Nazis or the radical Islamists will act on the incitement.

Summary and Future Directions

This chapter has considered the question of whether respect for persons requires toleration of the expression of *any* extremist political or religious viewpoint within public discourse. On the one hand, we have seen that Heyman and Quong have developed interesting defenses of a negative answer to this question. According to Heyman and Quong, recognition-denying or respect-denying speech falls outside the scope of the right to participate in public discourse, and this means that there is no free speech right to do moral wrong that includes a right to express recognition-denying viewpoints within public discourse. On the other hand, we have seen that a strong case can be made for the competing position that toleration in a liberal democracy requires respect for the status of persons as thinking agents, and that respect for thinking agents and their sovereignty over their own mind demand viewpoint neutrality and an associated free speech right to do moral wrong.

The competing positions that have been discussed in this chapter illustrates that respect for persons is a Janus-faced requirement that can be cited on both sides in debates about toleration and the scope and strength of the right to participate in public discourse. We have also seen that these debates raise a number of interesting and important questions related to political, legal, and moral philosophy. This means that future directions for research in this area are numerous. Here I will just mention one issue or research direction. This concerns the question of whether the expression of viewpoints within public discourse can amount to a "violation" of the basic rights of other persons – that is, basic moral rights that the state should respect and protect. Delgado and Heyman are among the advocates of viewpoint-based restrictions on extremist speech who assume that the answer to this question is positive. In his defense of hate speech bans, Delgado claims that "a racist insult is always a dignitary affront, a direct violation of the victim's right to be treated respectfully. . . . [I]ndividuals are entitled to treatment that does not denigrate their humanity through disrespect for their . . . moral worth" (Delgado 1982: 143–144. See also Delgado and Stefancic 2018: 12). The assumption that a person's expression of his or her opinions, ideas, or convictions within public discourse can qualify as a "direct violation" of a basic right can be questioned, and it deserves further analysis and scrutiny.

The expression of political or religious viewpoints within public discourse can, in a number of different ways, have a significant impact on the lives of other people and change the context or environment in which other persons act. First, the public expression and discussion of more or less extreme viewpoints on matters concerning the organization and culture of society can influence how we think about other

people and ourselves. Second, the public expression of extremist viewpoints (e.g., racist views or ideologies) can, as Delgado emphasizes, cause psychological harm, such as “emotional distress.” Having said that, even Delgado admits that the psychological impact of viewpoints or ideas depends on a number of individual or subjective factors (e.g., an individual’s attitudes and personality traits) and situational factors (Delgado 1982: 143; Delgado and Stefancic 2009: 366). Third, the spread of ideas and ideologies can over time lead to conflicts and serve as a source of inspiration for political violence – war, revolution, and terrorism. Although an individual’s public expression of his or her opinion or ideology can change the context or environment in which other persons think, feel, and act, it is far from straightforward that the public expression of viewpoints or ideas about the culture and organization of society can amount to a “direct violation” of the basic moral rights of other persons. In this connection, it is worth considering the following questions: Can the expression of viewpoints or ideas within public discourse *violate* the basic rights of other persons? For example, is the public expression of a clearly racist viewpoint or a racist ideology in a debate about immigration or integration a violation of some basic right of the targets? If the answer to the first two related questions is positive, (a) what particular rights can the public expression of viewpoints or ideas violate, (b) what is the normative ground or foundation of the alleged rights (e.g., Delgado’s “right to be treated respectfully”), and (c) how does the expression of viewpoints or ideologies within public discourse violate the alleged rights?

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