

ADDING INSULT TO INJURY IS CENSORSHIP INSULTING?

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THE GOVERNMENT bans the praise of terrorist attacks because it is worried that such praise will inspire further terrorist acts. The government censors arguments in favor of holding racist, sexist, and otherwise discriminatory views for fear that the dissemination of such views will promote discrimination and fortify preexisting prejudices. In a bid to get more parents vaccinating their children the government introduces restrictions on the publication of misleading anti-vaccination propaganda.

Certain restrictions on speech are accepted without much controversy. Virtually all agree, for instance, that the government may restrict speech acts that threaten to cause imminent and clear harm, e.g., true threats, blackmail, speech that violates a nondisclosure agreement, speech uttered at such a high volume that it will burst the eardrums of those who walk by. But cases of what we might call harmful advocacy—examples of which are listed in the opening paragraph—are more complicated. These cases involve the government restricting the expression of “corrupting” arguments that it reasonably fears might persuade citizens to think and act in harmful ways. Strong free speech supporters insist that citizens should be free to engage in and hear harmful advocacy, arguing that restrictions are deeply objectionable at best, and at worst wholly impermissible.

To support their position, strong free-speech supporters have offered a wide range of arguments and ideas. One of the most interesting arguments revolves around the idea that restrictions on harmful advocacy (henceforth simply “censorship”) are deeply insulting to citizens. The worry, broadly understood, is that censorship fails to properly respect or recognize the intellectual capacities of citizens. As such, even when censorship is effective in preventing harms to citizens, it nonetheless comes at the significant cost of failing to properly respect the citizenry at large. By contrast, so the thought goes, an alternative political scheme that allows for no censorship or permits censorship only in exceptional cases does a better job of respecting citizens as independent, rational, morally responsible agents. This alternative political system may be less effective at

preventing speech harms, but it is at least one where citizens can hold their heads high.

One response to the above is to concede that while censorship is insulting, in at least some cases it is nonetheless all-things-considered justified. This is a promising response. Those pursuing this response will argue that the censorship of dangerous speech helps prevent significant harms. Not only may these harms be life changing, but they tend to be distributed unevenly across society, usually falling on the heads of already marginalized groups.¹ Preventing these harms and the unfairness associated with them should be weighed against (and often in fact outweighs) whatever moral bad is involved in disrespecting citizens. One might also point out that while censorship may be insulting, often this censorship curbs speech that is itself insulting. Thus, one might challenge the view that censorship's insulting nature renders it impermissible by pointing out that even insulting censorship may be the lesser of two evils.

This paper offers a different but complementary line of response—that censorship is not in fact insulting in the ways that have been suggested, or that at any rate the insult involved in censorship has been exaggerated. As this paper argues, critics of censorship have been too quick in assuming that censorship is an affront to the intellectual capacities of citizens. Instead, we would do well to reflect on the various ways in which censorship may be framed as a way to take those intellectual capacities seriously.

To this point, the paper considers and rejects three versions of the worry that censorship is insulting. Section 1 explores the idea that censorship is insulting *qua* involving a negative appraisal of the citizens being interfered with. The key idea here is that censorship involves a lack of what Stephen Darwall terms “appraisal respect,” insofar as the government is suggesting that citizens cannot be trusted to manage their own beliefs and intentions. Drawing on the work of Thomas Nagel, section 2 explores the idea that censorship diminishes the political status of citizens. Finally, section 3 explores the suggestion that censorship is incompatible with a full appreciation of the thinking nature of citizens, and thus involves a lack of what Darwall would term “recognition respect.”

Ultimately the paper argues that the worry that censorship is insulting has been overstated. The best kind of censorship stems from an appreciation of the diverse needs of citizens, as well as the need for cooperation if societal flourishing is going to be achieved on a large scale. Granted, such a vision involves acknowledging the imperfections and liabilities of citizens—at least when compared to the rather solitary, highly intellectual creature one sometimes

1 Matsuda, *Words That Wound*; Brison “The Autonomy Defense of Free Speech”; Brown, *Hate Speech Law*.

finds in the philosophical literature. Still, such a vision of citizens as imperfect falls well short of being genuinely insulting. To err is human. And there is nothing insulting about being told that you are human.

1. APPRAISAL RESPECT

Perhaps the most straightforward way in which some form of conduct or expression can be insulting is in involving a negative appraisal of another agent. For instance, I might insult my neighbor by suggesting that his moral character is lacking in some way, or that his athletic abilities are subpar. One way of framing such insults is to say that they involve a lack of what Darwall calls “appraisal respect.”² On this view, I insult and show a lack of respect for another person when I appraise their actions, character, capabilities, etc., and find them wanting. Can this help shed light on the suggestion that censorship is insulting?

It is probably fair, albeit a little blunt, to say that the government’s decision to engage in censorship implies that it believes its citizens to be wanting in some respect. After all, the government that engages in censorship does so because it fears that at least some citizens, left to their own devices, and left free to hear all available arguments, will end up developing harmful beliefs and intentions that place others in danger. In this way, the government judges that citizens cannot be altogether trusted to manage their own beliefs and intentions by themselves and would benefit from state interference. What is more, it is easy to see why some might find this insinuation to be insulting. Certainly, many take pride in being able to decide for themselves what is right and wrong, as well as more generally what kind of beliefs and intentions are worth having.

At this point it will be useful to quickly canvass and reject a potential objection a reader might have to this suggestion. The government, so the objection goes, frequently and seemingly without much controversy suggests that its citizens lack competency. After all, traffic safety laws, contract laws, food-packaging laws, and almost any other law one cares to mention all imply that citizens sometimes need help from the government and would likely come up short if left to their own devices. Along these lines, it is tempting to conclude that censorship is no more insulting than the most mundane and uncontroversial forms of government regulation.

But we should be wary of trying to draw an analogy between censorship and more run-of-the-mill regulation cases. To see why, we need only remind ourselves that agents take special pride in managing certain areas of their lives compared to others. For instance, most agents are more likely to be insulted

2 Darwall, “Two Kinds of Respect.”

by the suggestion that they cannot adequately take care of their own children than they are by the suggestion that they cannot drive safely without the government's help. Similarly, it is generally more insulting for someone to suggest that you cannot look after your own health than for them to suggest that you sometimes come up short reading the fine print on a contract. Along these lines, those who take censorship to betray a special lack of appraisal respect for citizens will likely claim that judging for one's self (in light of all available arguments) what is morally right and wrong, or which ideas are true and false, is an especially important part of what it means to operate as a mature and responsible autonomous agent. Insinuations of incompetence and attempts to take over the management of this area are thus revealed to be especially insulting in a way that distinguishes censorship from more mundane government interferences with our lives.

This point will serve to preserve the suggestion that censorship is at least *prima facie* distinctively insulting to autonomous agents. What distinguishes censorship as a special case of insulting government interference, so the argument goes, is that it involves the government suggesting that citizens cannot be trusted to manage an area of their lives so fundamental to what it means to function as a responsible and autonomous agent, as deciding for one's self what to think. Have we, then, arrived at a persuasive account of why censorship is so objectionable? I think the answer is no. Here is why.

Whether the suggestion that John is falling short in some endeavor counts as insulting depends on how we understand the challenges involved with that endeavor, and whether we can reasonably expect errors to be made.³ Take the case where John's PhD supervisor reflects upon the work he has produced and points to places where that work could be improved. We can imagine that the supervisor has marked in red pen dozens of places where John's work could be better. But even granting that the supervisor is making a negative appraisal of John and his work, this negative appraisal need not strike us as insulting so long as it takes place in the context of a recognition of the challenges and expected difficulties involved in completing a PhD. If John's supervisor knows that producing a PhD thesis is difficult, and that making mistakes is just part and parcel

3 Or at least, it partly depends on how we understand the challenges involved. All the same, I think we should agree that maliciously intentioned or callous suggestions that John is falling short may count as insulting. If a stranger repeatedly tells John that he is out of shape and unhealthy, just because the stranger wishes to cause John distress, then this plausibly will count as insulting. So malicious suggestions about how someone is falling short in some respect may well be insulting. But the kind of censorship we are discussing does not involve this kind of malice. At most, it involves the government thinking that its citizens are failing in some respect and that government interference is required.

of completing a PhD, then there need not be anything wounding or insulting when he points to places where John's work might be improved.

Now let us apply this idea to the case of censorship. The government might view the development of misguided (and even harmful) beliefs and intentions as just part and parcel of human reasoning and to be expected when we have a free flow of different arguments and ideas. Censorship then, rather than stemming from a supercilious or insulting vision of citizens as incompetent, might instead be rooted in a view that acknowledges the difficulties involved in coming to develop the correct (or at least harmless) kind of beliefs and intentions. In other words, the censorious government may merely be acknowledging the imperfect nature of human reasoning, and the likelihood that without censorship citizens will sometimes come to develop harmful beliefs and intentions.⁴

Such a view would be well-justified. For instance, no citizen can claim to be a perfect reasoner or a flawlessly rational being. Indeed, a good deal of research has gone into showing how our decisions about what to believe and how to act are often, without our realizing it, influenced by a number of biases and prejudices outside of our control—confirmation bias, framing effects, groupthink, projection bias, self-serving bias, and anchoring bias, for instance, are all well-known biases that impact upon our decision-making in a way that would seem to undermine the rationality and control we have in these areas.⁵ Moreover, sometimes the nuances and technical difficulties associated with a subject can lead us to make errors about what to believe and how to act. The point is made clear when we reflect on disputes concerning immigration, the connections between religious groups and terrorism, climate change, vaccinations, and the threat posed by our political adversaries. All of these topics involve various complexities, and disputes often turn on the more technical aspects of these topics—disagreements about what the empirical data tells us, what kind of data should be used, and the extent to which we can rely on “experts” to help fill in gaps in our own understanding. What is more, charismatic speakers are often adept at exploiting these complexities and our own lack of expertise. In short then, even ostensibly reasonable citizens, reflecting upon the various arguments and ideas they are exposed to, can come to mistaken and harmful conclusions.

Even leaving aside the issues surrounding our reasoning biases and the technical difficulties associated with certain subjects, arriving at the right beliefs and intentions can be made considerably more difficult simply by the emotional

4 De Marneffe, “Avoiding Paternalism.”

5 Caputo, “A Literature Review of Cognitive Biases in Negotiation Processes”; Murata, Nakamura, and Karwowski, “Influence of Cognitive Biases in Distorting Decision Making and Leading to Critical Unfavorable Incidents”; Loewenstein, O’Donoghue, and Rabin, “Projection Bias in Predicting Utility.”

context in which we find ourselves. Consider recent calls to censor particularly exploitative kinds of “seed faith” appeals. Seed faith appeals involve religious leaders encouraging their followers to donate (sometimes very large) sums of money to the church, while assuring their followers that these donations will be rewarded by God in this lifetime. Sometimes these appeals prey on highly vulnerable people. For instance, religious leaders have been known to convince seriously ill believers to donate thousands of dollars to the church, rather than spending that money on medical treatment, convincing them that they stand a better chance of being cured by God than by a doctor. Calls to ban these kinds of seed money appeals are sometimes framed as insulting. But there is nothing insulting about recognizing that those suffering from potentially deadly medical conditions might be vulnerable to exploitation, or that those in desperate situations are prone to making desperate decisions.

These points all tell in favor of a relatively simple thesis: there need not be anything insulting in the government’s suggestion that its citizens occasionally need help developing the right kind of beliefs and intentions. Granted, the government that engages in censorship implies that some of its citizens are in danger of erring in some way. But, as indicated above, to err is human, and there is nothing insulting about being told you are human.⁶

2. NAGEL AND STATUS

Nagel considers the potential insultfulness of censorship from a rather different perspective. In his 1995 essay “Personal Rights and Public Space,” Nagel considers whether this kind of censorship threatens the political status of citizens.⁷ In particular Nagel is concerned with attempts by the government to curb speech that it judges likely to reinforce sexist, racist, homophobic, and other kinds of identity-based prejudices.⁸ Drawing on the work of Frances

6 Granted, there are other kinds of worries one might have with government censorship. For instance, one might worry that, even if censorship is not necessarily insulting, nonetheless it is likely to be ineffective in practice. One might likewise worry that governments cannot be trusted to regulate speech, or that acceptable censorship today will lead via a slippery slope to unacceptable censorship tomorrow. In response to these worries, I note two points. First, these worries are separate to a worry about whether censorship is insulting. Second, these are worries about certain cases of censorship—censorship that is ineffective, censorship engaged in by untrustworthy governments, censorship that will lead to worse censorship in the future—and as such do not tell decisively against censorship *per se*, or make sense of the principled worry many register toward censorship. What these concerns leave unexplained, in other words, is why we might object even to effective censorship.

7 Nagel, “Personal Rights and Public Space.”

8 Nagel, “Personal Rights and Public Space,” 96.

Kamm and Warren Quinn, Nagel suggests that such censorious interferences render citizens intellectually violable in a way that we have compelling reason to reject.⁹ How does his argument work?

To understand Nagel's thoughts on freedom of speech and censorship, one must reflect upon his larger approach to normativity and human status. Nagel claims that the inherent moral status of persons determines what kinds of freedoms those persons ought to enjoy, as well as placing limits on what interferences with those persons are permissible. When it comes to assessing the government's interferences with our lives, Nagel is interested in how the moral status of citizens determines what kind of burdens the government may impose upon them and what kind of justificatory reasons they may appeal to when imposing these burdens. Nagel's core idea here is that beings that enjoy a higher moral status have powerful claims against certain kinds of interferences, even though these interferences might be acceptable when dealing with beings of a lower moral status. For instance, perhaps certain kinds of animals can be permissibly killed for food or hunted for sport, but human beings—possessing an elevated moral status—cannot be used and abused in this way. Or consider the case where we must decide whether to kill one person in order to save five (different) people from being killed. On a straightforward consequentialist analysis of this case, we ought to kill the one in order to save the many. After all, why protect just one person from being killed when you can protect five? But Nagel demurs, viewing persons as enjoying the kind of elevated moral status that means they may not be compelled to sacrifice their life in the name of the greater good. In other words, Nagel tells us that persons enjoy an inherent “inviolability” possessed by higher moral beings.

At the foundation of Nagel's work lies a vision of persons as belonging to a special category of creature. On this view, unlike say insects or livestock, persons may not be compelled to sacrifice life and limb in the name of promoting the greater good. This is because persons enjoy an altogether higher moral status that grants them normative immunity from making these sacrifices. Nagel's suggestions here speak to an almost sublime, quasi-religious understanding of persons as belonging to an order of moral significance that reaches beyond the material confines of this world, and that grounds a seemingly undefeatable moral claim against being sacrificed in this manner. Nagel's suggestions here also enjoy a certain plausibility. As a matter of intuition, for instance, I imagine that virtually all of us would agree that animals can sometimes be sacrificed in ways that persons cannot; diseased livestock, for instance, may be regrettably slaughtered to protect the rest of the herd from becoming infected, in a way that would be utterly

9 Kamm, *Rights, Duties, and Status*; Quinn, “Actions, Intentions, and Consequences.”

unacceptable were we dealing with people. Nagel's message is that our intuitions here reflect a deeper insight about what it means to be a person.

The next key move in Nagel's argument is to argue that these reflections upon the moral status of persons ought to inform how the government treats its citizens—and, crucially, what kind of interferences with those citizens it is willing to engage in. In particular the government ought to grant citizens the kind of political status (that is, the kinds of political rights and liberties) that they are owed as beings possessing an elevated moral status. When it comes to the government that allows its citizens to be sacrificed, the main problem is not so much that this deals a material blow to the freedoms of its citizens (although this might well be problematic to some degree). Rather, what has centrally gone wrong is that the government has failed to fully recognize the elevated moral status of the persons they rule. As Nagel puts it:

What is good about the public recognition of such a status is that it gives people the sense that their inviolability is appropriately recognized. Naturally they're gratified by this, but the gratification is due to recognition of the value of the status, rather than the opposite—i.e., the status does not get its value from the gratification it produces. . . . It may be that we get the full value of inviolability only if we are aware of it and it is recognized by others, but the awareness and the recognition must be of something real.¹⁰

So that is a rough sketch of the foundation of Nagel's account. But what has this got to do with censorship? The answer is that, having reflected upon the elevated moral status of persons and the kinds of claims that this establishes, Nagel now shifts his focus toward our status as independent, thinking beings and what kinds of claims this establishes. While our general moral status grants us inviolability with regard to the sacrifice of life, Nagel argues that our status as independent thinking beings grants us a kind of intellectual inviolability that rules out censorship.

That the expression of what one thinks and feels should be overwhelmingly one's own business, subject to restriction only when clearly necessary to prevent serious harms distinct from the expression itself, is a condition of being an independent thinking being. It is a form of moral recognition that you have a mind of your own. . . . The sovereignty of each person's reason over his own beliefs and values requires that he be permitted to express them, expose them to the reactions of others, and defend them against objections. It also requires that he not be protected

10 Nagel, "Personal Rights and Public Space," 93.

against exposure to views or arguments that might influence him in ways others deem pernicious, but that he have the responsibility to make up his own mind about whether to accept or reject them.¹¹

For Nagel, the problem with censorship is a problem of recognition and status. The government that establishes a stringent legal right against censorship treats its citizens in line with their (supposed) metaphysical status as independent thinking beings. By steadfastly ruling out censorship even in those cases where it might prevent harms or benefit the populous, the government recognizes that its citizens possess, by nature, a powerful claim against others telling them what to think. Again, there is the hint of the sublime present in this conception of persons as having a deep-seated claim to sovereignty over their own minds, even when material considerations (e.g., harm prevention, social welfare) tell against this. By contrast, the political system that permits the government to engage in censorship bestows on citizens a lower political status.¹²

Some readers may balk at this suggestion. In particular they might argue that, even if we agree with Nagel that our status as independent thinking beings means that what we think and feel should be overwhelmingly our own business, this does not mean that the public expression of our thoughts and feelings is simply our own business. But note that this objection slightly misreads Nagel—or at least the version of Nagel I am discussing. When Nagel talks about our status as thinking beings, he is not primarily referring to our ability to express

11 Nagel, “Personal Rights and Public Space,” 96.

12 One preliminary worry with Nagel’s account is that there is something overblown about all this talk of the government undermining the status of its citizens as higher moral beings. After all, the government routinely controls and restricts the choices of citizens. Consider the uncontroversial restrictions on murder, speeding, stealing, etc., that the government imposes. If these restrictions do not degrade our status, then why worry that restrictions on speech (assuming those restrictions are similarly effective in preventing harm) pose a threat to our status?

As I read him, Nagel’s response is that our laws against murder, speeding, stealing, etc., only interfere with our physical autonomy (our ability to act). These laws do not interfere with our intellectual autonomy (our ability to think for ourselves). It is the way that censorious laws seek to subvert our intellectual autonomy, and make certain ideas unthinkable, that marks these laws out as especially troubling. I suspect that many readers will intuitively agree with Nagel here. It is one thing, so the thought goes, to restrict John’s freedom to steal Joan’s apple—perhaps through placing Joan’s apple behind a locked door or punishing John for stealing the apple. But it is another thing entirely to manipulate what ideas and arguments John has access to such that he never even gets the chance to consider stealing Joan’s apple. At the very least, I suspect that many will agree with the basic intuition that the latter case involves an interference with a more fundamental and private part of John’s person. However, as I argue in the main text, one can concede all of this to Nagel and still dispute that censorious interferences are significantly degrading.

ourselves to others, but rather our ability to listen to what others have to say and then judge their arguments and ideas for ourselves. The problem with a censorious political system on this listener-based account is that citizens are stripped of the ability to judge arguments for themselves in order to prevent the spread of dangerous ideas. As such, citizens within this political system—all of them—belong to a lower echelon of person that only sometimes gets to judge arguments for themselves, since they may apparently be stripped of this power whenever the material considerations call for it.¹³

The implications of all of this are subtle: even if we agree, *arguendo*, that censorship is sometimes justified in order to prevent serious harms from befalling innocent persons (and to be clear, Nagel is reluctant to even admit this much), the Nagelian picture still holds that permitting censorship nonetheless comes at the significant cost of demeaning our political status within that society. A democratic system where the government routinely engages in censorship may well be a safer place to reside. But we who reside in this society will no longer be quite the same sublime thinking creatures we sometimes imagine ourselves to be.

Before canvassing some of my worries with all of this, let me say that there is much to like about the Nagelian picture. Nagel begins by suggesting that many, including himself, register a deep intuitive unease with censorious interferences.

13 Note that, according to Nagel, censorship undermines the equal status of all citizens. With this in mind, Nagel frames free speech as a matter of protecting the equal status of all. Some readers will be understandably skeptical of Nagel here. In particular they will point out that embracing strong free speech rights and refusing to engage in censorship will affect different groups in rather different ways. Granted, perhaps in some sense all groups will benefit from having their higher moral status affirmed. But this higher moral status may involve an increase in speech-related harms throughout society. And crucially, these speech harms will not be distributed evenly throughout society. On the contrary, the harms that flow from (e.g.) hate speech tend to rather predictably fall on the heads of certain already marginalized groups, while other groups are left untouched. The worry, then, is that for all his talk of taking the equal status of persons seriously, Nagel is rather overlooking how certain groups will have to bear the brunt of his free speech policies. Worse still, by ignoring this, Nagel may even be guilty of unfairly prioritizing those groups who are least likely to be negatively affected by free speech policies, thus creating a new problem to do with the status of citizens in society.

While I think this is a reasonable worry, I will not discuss it much further. Nagel is likely to respond to this worry by insisting that what really matters when we are designing our speech policies is how these policies affect our higher moral status as thinking beings. That is to say, that our status as higher moral beings trumps considerations to do with harm prevention. Some will understandably balk at Nagel's prioritization of our alleged higher moral status. However, I want to undermine Nagel's argument via a slightly different route—that even if we grant Nagel's assumptions about the importance of our higher moral status, this does not ground an argument against censorship.

His account is in an attempt to unpack and situate these intuitions. Notice that Nagel deploys a striking argumentative strategy here, reflecting not so much on the interference itself (e.g., its harmful or disruptive qualities), but rather on the nature of the persons being interfered with. Of course, Nagel's analysis of persons has implications for how we understand things like the forcible sacrifice of life in the name of saving others, and censorship. But his starting point is definitively the moral qualities of the persons being interfered with in these cases.

Still, I want to discuss a fundamental problem with Nagel's account. Once we take a closer look at the mechanics of Nagel's objection to censorship, we see that his key argumentative move—that censorship is bad because it bestows on citizens a violable political status—can be interpreted in two subtly different ways. Unfortunately for Nagel, neither interpretation is promising.

The key move in Nagel's argument against permitting censorship is his suggestion that censorship objectionably bestows on citizens the political status of intellectually violable beings—i.e., beings who may permissibly have their intellectual freedom violated. But how precisely should we understand Nagel's complaint here? The 1995 paper touches upon at least two potential readings. The first reading construes Nagel as objecting to the way censorship bestows on citizens a lower political status than they might otherwise have enjoyed. That is to say, given that citizens might have otherwise enjoyed the political status (and concomitant liberties and legal rights) of intellectually inviolable beings, we have reason to lament the government's decision to permit censorship and bestow on citizens the lower political status of beings that may have their intellectual autonomy undermined. On the first reading then, it is the comparative loss of status involved with permitting censorship that is objectionable.

The main problem with this first reading is that, even granting that permitting censorship changes our political status, it is doubtful that this change involves a significant loss of status. Two points in particular are worth emphasizing here. First, if there is a loss of status involved in the move from intellectual inviolability to intellectual violability, it is likely a subtle one. The government that engages in precisely worded, narrowly framed speech regulation need not suppose that their citizens may have their intellectual autonomy undermined willy-nilly. On the contrary, they may hold that citizens generally have a strong claim to exercise their intellectual autonomy. It is just that this government also supposes that there are certain select cases where the harms involved are such that interferences with the intellectual autonomy of citizens, while regrettable, are nonetheless all-things-considered justified. Whatever else we might say about this change then, it is a subtle one, and thus may not support the powerful objection to censorship that the likes of Nagel wish to establish.

Nagel might reply that when it comes to losing inviolability, there are no subtle changes. Here the thought is that losing inviolability always involves a substantial loss. But this kind of argument works best when made in the context of our having an inviolable claim against torture, or an inviolable claim against being made to sacrifice our life for others, or other such uncontroversially dehumanizing interferences. This argument functions less well when made in the context of whether we can sometimes have our access to dangerous persuasive arguments partly blocked. Construing agents as violable in this way does not seem to strike the same demonstrable blow to the status of citizens as, say, permitting torture might. Indeed, we can strengthen this point by reflecting on how even the likes of Nagel and other strong free-speech supporters will admit of some acceptable cases of interference with our intellectual autonomy, e.g., in the form of suppressing incitement to imminent violence.

Second, while in one respect censorship may lower the political status of citizens, in another respect it raises their political status. In his response to Kamm's suggestion that the status of all persons would be degraded were the government to permit persons to be killed in order to save the lives of others, Shelly Kagan argued that a decreased level of inviolability simultaneously secures for each agent an increased level of "saveability."¹⁴ In this sense, so the response goes, permitting persons to be sacrificed does not necessarily diminish or degrade the status of citizens. For whatever loss of status is experienced as a result of being treated as a being that can sometimes be sacrificed may be made up for by being treated as a citizen with an increased claim to being saved.

An analogous argument can be made concerning censorship. Permitting censorship may well treat citizens as intellectually violable. But this decreased inviolability secures an increase in one's state protection and the claims one has against others engaging with arguments that one might be endangered by. The point here is not a consequentialist one to do with balancing the benefits and burdens of censorship. It is that bestowing on citizens powerful legal claims against others endangering them speaks to a certain way of valuing those citizens that enhances their status within the political community. Those citizens subject to censorship may possess fewer political liberties in one sense, but in exchange they enjoy greater legal protection. Take the example of the regulation of (e.g., racist and sexist) hate speech. This regulation, while diminishing the status of citizens in one respect, simultaneously bolsters the protection citizens have against the harms that flow from hate speech, and in this way

14 Kagan, "Replies to My Critics."

bolsters the status of citizens as beings worth protecting. So understood, censorship both diminishes and enhances our political status in various respects.¹⁵

The implications of all of this for our discussion of whether censorship is insulting are subtle and worth drawing out carefully. One thought is that the above implies that censorship is in no way whatsoever harmful to the status of citizens. After all, even if in some respect the status of citizens is lowered due to censorship, that same status is simultaneously raised by the protection afforded by the said censorship. The net result of this, one might think, is that the status of citizens is unchanged. Some readers may find this a little hard to swallow. One worry is that I am mistakenly assuming that the losses and gains in status brought about by censorship cancel each other out. Some readers will reject this canceling-out model and insist that, even if censorship raises our status in some respects, it nonetheless lowers our status in other respects. With this in mind perhaps the better lesson to draw from our discussion is that, even if censorship does lower our status in some respects, this lowering is at least somewhat compensated by our status being raised in other respects. We might concede then that censorship is in some respects insulting, but nonetheless point out that this insult has been exaggerated by the likes of Nagel, who has overlooked the significant and compensating benefits to our status that censorship secures. Censorship may well lower the status of citizens in some respect, but it also offers them compensation in kind.

Let us move on to the second way of understanding the key move in Nagel's argument. On this second reading the problem with censorship is not that it bestows on citizens a lower political status than they might have otherwise enjoyed, but that this lower status is unfitting. Persons, so the thought goes, naturally possess a special kind of moral status that makes them intellectually inviolable. As such, the government fails to properly recognize its citizens and their true moral status when it leaves citizens intellectually violable. It fails, in other words, to grant citizens the kind of elevated political status that is appropriate and right for beings like us.

This second reading echoes the argumentative strategies we find in Nagel's chief inspirations (Kamm and Quinn). Quinn, for instance, writes that "it is not that we think it fitting to ascribe rights because we think it a good thing that rights be respected. Rather we think respect for rights a good thing precisely because we think people actually have them—and, if my account is correct, that

15 Connectedly, Anne-Sofie Greisen Hojlund suggests that the government's decision not to engage in welfare-promoting, lifesaving regulation may convey a variety of objectionable attitudes, including neglect, indifference, and unwillingness to give appropriate weight to the strong interests of others. See Greisen Hojlund, "What Should Egalitarian Policies Express?"

they have them because it is fitting that they should.”¹⁶ The main problem with this second reading is that it boils down to a brute claim about the underlying inviolable status of persons. Nagel’s account began as an attempt to contextualize and unpack a certain kind of intuitive worry that many (including Nagel) register with censorship. Rather than leave the argument at the level of intuition, however, Nagel suggested that we can productively unpack and even help justify this intuitive response by interpreting it as a worry about status and recognition. The problem is that at this point in Nagel’s argument we now find ourselves with the brute claim that persons just are the kinds of beings that are intellectually inviolable. Without further independent argument in favor of this brute claim, those of us who do not already find ourselves drawn to this striking vision of citizens as naturally intellectually inviolable will find Nagel’s account unpersuasive.

Moreover, one might even worry that this brute approach to status risks lapsing into an overly selfish, individualistic view of persons. Nagel may view any interference with our intellectual autonomy as degrading. But we should be wary of accepting this assumption too quickly. Granted, censorship involves bestowing burdens on citizens—citizens may now have restricted access to certain kinds of arguments. Some of these burdens may be simply for the benefit of other citizens. And some of these burdens may be unpleasant. But there is nothing necessarily degrading about taking on burdens for others. Recall that we are here reflecting on the status and nature of people. Even if it is the case that persons sometimes have to make unpleasant sacrifices for one another, this hardly implies that the persons themselves are unpleasant or thereby belong to a lower echelon of creature. Perhaps even the most wonderful creatures may sometimes have to help each other out.

Nagel may have room to respond here. One thought is that, while citizens should sometimes take on burdens for one another, the government nonetheless degrades citizens when it enforces these burdens. This thought is strengthened if one views censorship as compelling citizens to shoulder burdens for others. This is an interesting line of thought, but I offer two responses. First, some will contest the suggestion that censorship compels citizens or in some sense “makes the choice for them.” An alternative and milder way of characterizing censorious laws is that they give citizens additional reasons to act in a particular way. On this milder way of characterizing censorious regulation, such regulation falls short of wholly determining what citizens do. Second, if censorship is degrading in this way, then note that a whole host of other relatively uncontroversial government regulations are also degrading. Taxation, restrictions on playing music loud late at night, and anti-monopoly laws can

16 Quinn, *Morality and Action*, 173.

all be framed as the government forcing citizens to shoulder burdens for one another. Are we to conclude that these laws are also degrading? Even if one is tempted to answer this question with a yes, the objection to censorship we are considering seems less like an objection to censorship *per se* and more like a general anarchist worry with government regulation.

3. RECOGNITION RESPECT

To end this discussion, I consider one final way in which censorship might be thought to deliver a special kind of insult. Perhaps censorship is insulting insofar as it involves a failure to properly recognize that citizens are thinking beings. Or, as Darwall might put, censorship involves a lack of “recognition respect” on the government’s part for its citizens and their fundamental thinking capacities. Of course, this is close to the Nagelian worry canvassed about how censorship might bestow on citizens an unfittingly low political status. But the worry here is not so much about political status as it is about the extent to which a government can simultaneously interfere with the intellectual capacities of its citizens in as direct a way as is involved in censorship, while still having a proper appreciation for those citizens and their intellectual capacities. Perhaps censorious governments are so concerned with pointing to the shortcomings and dangers associated with the intellectual capacities of citizens that recognition respect for citizens falls out of the picture.

Unlike appraisal respect, recognition respect does not involve appreciating some achievement or excellence of character on a person’s part.¹⁷ Instead, it primarily involves giving a person the due consideration and respect that is owed them simply in light of their being a person.¹⁸ It is common to hear governments who engage in radical rights-violating behaviors being accused of lacking “recognition respect” for their citizens. Such a government, so the thought goes, fails to recognize the basic human capacities of its citizens and how these capacities ought to inform how the government treats these citizens. But we need not reserve this objection simply for such extreme cases. Jonathan Quong, for instance, has argued that paternalism involves a failure to recognize the nature and capacities of those being paternalized.¹⁹ Can a similar argument be constructed in order to problematize censorship?

17 Darwall, “Two Kinds of Respect.”

18 I say “primarily” because Darwall also thinks that recognition respect can be granted by responding appropriately to someone’s “presented self.” However, I will say no more about this aspect of recognition respect.

19 Quong, *Liberalism without Perfectionism*. Echoing Rawls, Quong argues that agents have two crucial moral powers, the second of which is the “capacity to form, revise, and

A relatively straightforward version of such an argument goes as follows: censorship involves a failure on the government's part to recognize the fundamental capacity for moral assessment that its citizens possess, and the importance of their exercising this capacity free from outside interference. The government that engages in censorship may have the best of intentions and aim only to prevent innocent persons from being harmed. But its pursuit of these aims through censorious regulation reflects a failure to recognize that its citizens are thinking beings, capable of arriving at their own conclusions. This species of argument underpins Ronald Dworkin's widely cited suggestion that the government "insults its citizens . . . when it decrees that they cannot be trusted to hear opinions that might persuade them to dangerous or offensive convictions."²⁰

This straightforward version of the recognition respect worry is unlikely to win many admirers. Its key claim is that censorship involves a failure on the government's part to recognize that its citizens are thinking beings that possess the capacity to assess for themselves what kind of beliefs and intentions they ought to develop. However, not only is censorship compatible with the government recognizing that its citizens are thinking beings, such recognition is in fact necessary for engaging in censorship in the first place. After all, the reason the government engages in censorship is that it is worried that citizens, left to their own devices, will be exposed to arguments and ideas that persuade them to develop harmful thoughts. This government, then, is fully aware that its citizens are capable of coming to their own conclusions about what kind of thoughts are worth having. Indeed, that is the whole problem! It is the fact that citizens have this kind of intellectual power, and may use it unwisely, that explains why intervention is necessary.

In reply, one might argue that all the above really shows is that censorship involves a formal recognition of the fact that citizens have certain intellectual capacities. As such, a more sophisticated version of the recognition respect worry pushes the thought that true recognition involves more than this. The sadistic murderer who takes special delight in slowly extinguishing the sentience of his victims may well formally acknowledge the humanity of those he kills. Indeed, this kind of formal recognition is part of his sadistic motivation for killing (he enjoys seeing his victims' humanity extinguished). Yet at the same time he fails to fully recognize the moral significance of their humanity and how it is supposed to modify his behavior. In a similar vein, while censorship may well be compatible with a formal recognition of the thinking nature of citizens, its critics might argue

rationally pursue [one's] conception of the good" (2). The problem with paternalism, so Quong suggests, is that it treats agents as though they lack this second Rawlsian power; it treats them as though they lack this capacity.

20 Dworkin, *Freedom's Law*, 200.

that it is incompatible with a richer appreciation of their thinking nature. This richer appreciation, so the argument goes, involves at the very least attaching some significant normative weight to the intellectual autonomy of citizens.

This is an interesting and challenging objection to governmental censorship. Here I offer two initial responses. First, depending on how one understands what it means to recognize and appreciate our intellectual capacities, promoting our intellectual capacities in the long run may sometimes involve interfering with those same capacities in the short run. In some ways this is a straightforward idea—we all know, for instance, that promoting a patient's long-term health may involve giving him medicines that make him unwell in the short term. A similar point arguably applies when it comes to our intellectual capacities. For instance, certain persuasive appeals may help reinforce an environment that is hostile to certain marginalized groups. As a result, members of these marginalized groups may be deterred from both expressing themselves in public and from engaging with popular arguments and ideas.²¹ Moreover, hostile environments may present obstacles to agents developing their intellectual skills and pursuing their intellectual interests. Drawing these thoughts together, we see that an appreciation for the value of agents utilizing their intellectual capacities may in fact establish a case in favor of governmental censorship. Governments that engage in censorship may be taking the intellectual autonomy of their citizens very seriously—it is just that they think, with some justification, that the value of intellectual autonomy tells both for and against censorship, and sometimes more tellingly for censorship.

Second, plausibly the government can recognize the importance of its citizens' intellectual capacities and how citizens generally have a powerful claim against censorship, while nonetheless holding that certain cases of censorship are all-things-considered justified. Such a government might recognize the moral importance of its citizens' intellectual capacities and the *pro tanto* interest they therefore have in being free from censorship, while also judging that sometimes other moral factors (such as harm prevention and the promotion of well-being) have even greater moral weight. Such a government may step back from granting the intellectual autonomy of its citizens infinite (or trumping) moral weight. Nonetheless the government recognizes that our intellectual autonomy has significant moral value.

What options are left for the critic of censorship who wishes to insist that censorious governments fail to properly recognize the intellectual capacities of their

21 Williams, "Stress and the Mental Health of Populations of Color"; Kwate and Meyer, "On Sticks and Stones and Broken Bones"; Priest et al., "A Systematic Review of Studies Examining the Relationship between Reported Racism and Health and Wellbeing for Children and Young People."

citizens? One option would be to insist that the only way for the government to properly recognize the moral importance of our intellectual capacities is to grant citizens a claim against censorship that cannot be outweighed by other moral considerations—i.e., to grant the intellectual autonomy of its citizens infinite, trumping moral weight. But this suggestion is vulnerable to the kind of bruteness worry we canvassed earlier when discussing Nagel. After all, this suggestion simply assumes that the only proper way to appreciate an agent's intellectual capacities is to steadfastly refuse ever to interfere with her intellectual autonomy.

A more promising strategy would be for the critic of censorship to suggest that there is a gap in the argument of those of us who think censorship is compatible with recognition, and that this gap needs to be filled. In particular they might ask, with some justification, just how appreciative a vision the government can have of its citizens and their intellectual capacities when it openly admits that these capacities are limited, sometimes harmful, and sometimes worth limiting in the name of other values. The worry here is subtle. Think of a child who grows up in awe of the beauty of music and who would not give up their dream of becoming a musician for the world. Then the child grows up and learns that, not only is being a musician more frustrating, mundane, and technical than they had imagined it to be, but that sometimes other things in life are more important. We might well think that, from this person's perspective, being a musician and music more generally have lost some of their luster. Similarly, those of us who think that the government can simultaneously appreciate the intellectual capacities of its citizens and engage in censorship should reflect carefully on just what kind of appreciation we are really left with. Are we left with a vision of citizens and their intellectual autonomy that, while appreciative to some degree, have also lost much of its luster? At the very least, it seems that we should try to provide some description of how such a government views the citizenry that it censors.

At the close of our discussion, then, the key question is what kind of vision of its citizens and their intellectual capacities a censorious government really possesses. I end this essay with a four-point sketch of the conception of citizens and their place in a political community that might underpin a government's decision to engage in censorship. The sketch draws together several insights touched upon already in this essay, and has one main aim: to demonstrate that a government that engages in censorship may nonetheless be committed to a genuinely appreciative and attractive vision of its citizens.

First, the government recognizes that the capacity citizens possess for intellectual autonomy (i.e., the ability to assess arguments and ideas and form beliefs and intentions in light of this assessment) is to some extent flawed. That is to say, the government reasonably views its citizens as liable to discharge their intellectual capacities in ways that may be unwise, affected by bias, self-defeating,

liable to be a cause for regret in the future, etc., and thus conclude that citizens are liable to at least sometimes arrive at imperfect beliefs and intentions.²²

Second, the government recognizes that its citizens have a deep interest in exercising their intellectual autonomy. But it also rejects the simplified vision of citizens as merely intellectual beings whose only or predominant interest is in enjoying intellectual inviolability. Instead, the government embraces a more holistic vision of citizens as having a range of interests and capacities—some of which are intellectual, but others of which may be more accurately characterized as emotional, social, relational, physical, etc.²³

Third, the government holds that whether citizen interests are met depends on their environment. For instance, as thinkers, we benefit greatly from being able to share our ideas with sympathetic audiences who are happy to respond with their own critical reflections on our ideas. We likewise benefit from being able to engage with the ideas and arguments of others.²⁴ However, the speech of others can also be both indirectly and directly threatening to our interests. The proliferation of hate speech, for instance, may inspire listeners to harass, discriminate, and assault certain people. Hate speech may also inspire listeners to stop engaging with the ideas and speech of those groups that the hate speech vilifies.²⁵ As if this was not bad enough, being the target of hate speech is correlated with displaced aggression, avoidance, social withdrawal, decreased political participation, alcoholism, suicide, and increased levels of stress and anxiety.²⁶ In addition, being targeted by hate speech may make one less likely

22 Caputo, “A Literature Review of Cognitive Biases in Negotiation Processes”; Murata, Nakamura, and Karwowski, “Influence of Cognitive Biases in Distorting Decision Making and Leading to Critical Unfavorable Incidents”; Rabin, “Projection Bias in Predicting Utility.”

23 For instance, citizens have a deep interest in, e.g., being physically safe and healthy, successfully pursuing their goals, having an adequate sense of self-worth, and having a suitable range of functioning capabilities (e.g., bodily health, bodily integrity, an adequate range of emotional capabilities, a sense of self-respect, the ability to pursue play and leisure activities). See Westlund, “Rethinking Relational Autonomy”; Benson, “Free Agency and Self-Worth”; Govier, “Self-Trust, Autonomy, and Self-Esteem”; Nussbaum, *Women and Human Development* and “Capabilities as Fundamental Entitlements”; Sen, *Commodities and Capabilities*, “Development as Capability Expansion,” and *The Idea of Justice*.

24 Shiffrin, *Speech Matters*.

25 Williams, “Stress and the Mental Health of Populations of Color”; Kwate and Meyer, “On Sticks and Stones and Broken Bones”; Priest et al., “A Systematic Review of Studies Examining the Relationship between Reported Racism and Health and Wellbeing for Children and Young People.”

26 Matsuda, “Public Response to Racist Speech” and *Words That Wound*; Williams, “Stress and the Mental Health of Populations of Color”; Lewis, Cogburn, and Williams, “Self-Reported Experiences of Discrimination and Health”; Brown, *Hate Speech Law*.

to engage in public discourse and the sharing of ideas, which we have already suggested is important for the development of one's intellectual capacities.²⁷

Fourth, the government views citizens as sometimes liable to take on burdens for one another. Of course, there is a limit on the kinds of burdens citizens can be expected to take on in the service of their fellow citizens. All the same, there will be occasions when citizens will be expected to shoulder moderate burdens for one another. Given that, as discussed above, the proliferation of certain kinds of arguments may strike a blow against the interests of citizens, the government recognizes that imposing certain limits on expression will sometimes help protect the interests of certain citizens.

This vision of citizens and of their role in the political community is neither insulting nor unappreciative. Granted, this vision conceptualizes citizens as flawed reasoners, and as sometimes liable to harm one another as a result of exposure to certain arguments. Likewise, this vision suggests that citizens possess a certain kind of vulnerability, and that some degree of cooperation is required if we are to truly thrive. But these suggestions stem from an accurate and grounded understanding of how our intellectual capacities function in practice. Critics of censorship may insist that we embrace a more flattering vision of citizens—one that conceptualizes us as highly competent, independent, and self-sufficient thinking beings. But this more flattering vision risks being so detached from the real-world functioning of people as to lapse into a kind of vanity.

4. CONCLUSION

Censorship then, despite what its critics might say, is not deeply insulting. The best kind of censorship, far from being premised on a derisive or disrespectful view of citizens, rather proceeds from a holistic appreciation of the varying interests, capacities, limitations, and vulnerabilities of citizens, as well as the need for cooperation. Those who consider this vision to be insulting because of the way it acknowledges certain imperfections and duties of people may well be guilty of a kind of vanity—a vision of themselves and people more generally that, while rather flattering, is detached from reality.

That said, it is worth reflecting on the fact that it is only the “best kind” of censorship that avoids deeply insulting its citizens. Critics of censorship may be justified in suggesting that a good deal of censorship does not in fact proceed from such a holistic view of the citizenry and is therefore insulting. For instance, it may be that, were citizens left free to engage in certain kinds of hate

27 Bishop and Simpson, “Disagreement and Free Speech.”

speech, this would result in only minor harms that would not normally justify government intervention. Perhaps citizens would, by and large, simply reject hate speech as the nonsense it in fact is. Were the government to engage in censorship in this case, based on an exaggerated fear about the harmful fallout of this kind of hate speech being permitted, it would plausibly count as insulting its citizens.²⁸ Similarly, it may be that certain governments engage in censorship largely because they undervalue (or are simply unconcerned about) the value of citizens being free to exercise their intellectual capacities. Again, such a government would plausibly qualify as holding an unacceptably insulting view of its citizenry.

What we should take from our discussion is that there is a need to consistently scrutinize and challenge censorious governments. Two governments might both decide to engage in censorship, but if one does so on the basis of an accurate recognition of the harms involved and the imperfect nature of human reasoning, while the other does so out of disdain for its citizens and a lack of concern for their intellectual autonomy, then we are dealing with two very different cases of censorship. Censorship may be an effective tool for harm prevention (alongside other tools, such as education). But the price we pay for wielding this tool, it would seem, is eternal vigilance.²⁹

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28 Kramer, *Freedom of Expression as Self-Restraint*. Though, as I have argued, this is partly an empirical matter to do not only with whether designing an excellent education system that makes censorship redundant is theoretically possible, but also whether designing such an education system is sufficiently difficult as to leave governments blameless if they try and fail on this score; see Bishop, "Back to School."

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