

INTRODUCTION

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Averting Two Dystopias

AN INTRODUCTION TO VALUE DEMOCRACY

A RECENT REPORT FROM the Southern Poverty Law Center suggests that hate groups advocating racist ideologies have been on the rise in the United States since the election of the first African American president.¹ In the advanced democracies of Europe, studies of public opinion show that anti-Muslim hostility is a growing problem.² As evidence mounts of increasing bigotry on both sides of the Atlantic, questions of how to respond to hate speech have become more pressing.

Traditionally, political and legal theorists have proposed two types of responses to hate speech. Some thinkers have stressed the need for a neutral approach to rights protection.³ This group broadly defends the United States Supreme Court’s current free speech jurisprudence, which does not protect threats or “fighting words,” but does protect what I call “hateful viewpoints.” Hateful viewpoints are opinions that are openly hostile to the core ideals of liberal democracy. In defining hateful viewpoints, it is important to emphasize that there is a distinction between the emotion of hate and the content of hateful viewpoints. Hateful viewpoints are defined not necessarily by their emotion, but by their expressing an idea or ideology that opposes free and equal citizenship. Those who hold hateful viewpoints seek to bring about laws and policies that would deny the free and equal citizenship of racial, ethnic, or religious minorities, women, or groups defined by their sexual orientation. The neutralist approach upholds free speech and protects hateful viewpoints from coercive sanction, despite their discriminatory content, because neutralism claims that the state should not endorse any values.⁴

In contrast to the neutralists, other thinkers have argued that free speech rights should not protect viewpoints that are hostile to the values of a liberal democratic society. Thinkers in this second group, the “prohibitionists,” broadly endorse the kind of legal limits on hate speech that are found in most liberal democracies outside of the United States.⁵ Although there are free speech protections in these countries, there is no legal doctrine of “viewpoint neutrality” that would extend the right of free speech to all viewpoints, including hateful ones. Some viewpoints are deemed

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too extreme to be tolerated, and they are prohibited, often by criminal law. For example, many liberal democracies believe that they cannot risk tolerating the fascist ideology that ultimately gave rise to the Nazi regime. They ban Holocaust denial and other viewpoints that are associated with the fascist ideology.

Most liberal democracies outside of the United States prohibit not only the fascist ideology, but the expression of hateful or discriminatory viewpoints more generally. These prohibitionist laws go beyond banning threats against specific individuals, and outlaw speech that displays hatred or animus toward ethnic, racial, or religious groups. For instance, section 319(2) of the Canadian Criminal Code bans public communication that “willfully promotes hatred against any identifiable group.”⁶ In the influential *Keegstra* case, the Supreme Court of Canada upheld the conviction under the Criminal Code of a teacher who had expressed and taught anti-semitic views.⁷ The teacher had hatefully described Jews as “subversive” and “sadistic” “child killers” who had “created the Holocaust to gain sympathy.”⁸ Like the Canadian government, Australia has adopted national and regional human rights laws forbidding racist speech. The country’s Racial Discrimination Act of 1975 prohibits public acts that “offend, insult, humiliate or intimidate people on the basis of their race, colour or national or ethnic origin.”⁹ The Federal Court of Australia ruled in 2002 that the Racial Discrimination Act banned Holocaust denial, and it ordered a defendant to remove material denying the Holocaust from an Internet site. In France, the former actress Brigitte Bardot has been convicted five times for violating hate speech laws, and fined up to 15,000 euros (equal to \$23,000), for her anti-Muslim remarks. Bardot had referred to Muslims as “this population that is destroying us, destroying our country by imposing its acts.”¹⁰ Besides Canada, Australia, and France, other countries that ban hate speech include Britain, Germany, India, the Netherlands, and South Africa.¹¹

Perhaps the most prominent case of prosecuting a particular ideology was found in the Netherlands. Dutch prosecutors in 2010 announced that they would try Geert Wilders for the crime of inciting hatred against Muslims. A sitting member of the Dutch parliament, Wilders had produced a film and had made repeated statements claiming that Islam was an inherently evil religion with no place in Dutch society. Although he was ultimately acquitted, Wilders would have faced two years in prison and the equivalent of more than \$25,000 in fines if he had been convicted. According to prosecutors, Wilders’ hate speech was incompatible with the egalitarian ideal at the heart of Dutch democracy.

The Dutch controversy regarding Wilders is striking in its differences from American political discourse. If a similar case occurred in the United States, the Supreme Court would most likely strike down any laws pro-

hibiting a political viewpoint, no matter how heinous. An indictment like Geert Wilders' would be met by a chorus of criticism claiming that the government was attacking freedom of expression. Free speech advocates would be quick to argue that citizens, especially elected officials, have the right under the First Amendment to express their political viewpoints, even when those viewpoints are hateful or discriminatory. On this issue, the Dutch and American approaches to hate speech seem to be worlds apart. In the Netherlands, a focus on the ideal of equality makes it possible for the state to seek to defend equal citizenship by banning hateful speech. In the United States, an emphasis on rights of free expression makes such a proposal almost beyond consideration.

I find both of these approaches problematic. The neutralism popular in the United States fails to answer the challenge that hateful viewpoints pose to the values of freedom and equality—values that are essential to the legitimacy of the democratic state. As Simone Chambers and Jeffrey Kopstein point out, the viewpoints of hate groups such as the Ku Klux Klan and American Nazi Party constitute “bad civil society,” in that they seek to undermine freedom and equality and thus oppose the core values of liberal democracy.¹² The problem for the neutralists is that hateful viewpoints threaten not simply any political ideal, but the very freedom and equality that justify protecting the rights of free speech for hate groups in the first place. In other words, hate groups attack the most basic ideal of public equality that underlies liberal democracy, an ideal I refer to as free and equal citizenship.

Although the neutralist approach to hate groups is problematic, the alternative approach, favored by the “prohibitionists,” has its own drawbacks. The prohibitionist strategy of having the state coercively ban hate speech overlooks the fact that the core democratic values of freedom and equality require the state to allow citizens to develop and affirm their own political views. The prohibitionists fail to heed the importance of Meiklejohn's argument that free citizens need to be able to debate arguments, even those that challenge the foundations of liberal democracy. Without this freedom, citizens cannot endorse democracy itself.

I aim in this book to develop and defend a third position that resolves these problems. I suggest that we distinguish between a state's coercive power, or its ability to place legal limits on hate speech, and its expressive power, or its ability to influence beliefs and behavior by “speaking” to hate groups and the larger society. On my view, the state should simultaneously protect hateful viewpoints in its coercive capacity and criticize them in its expressive capacity. The state should respect the rights of these groups, but it should also use its expressive capacities to criticize their hateful views. In this way the state can protect the right to express all viewpoints and, at the same time, it can defend the values of freedom and equality

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against discriminatory and racist challenges. I use the term “discriminatory viewpoints” to refer to views that oppose or are inconsistent with the ideal of free and equal citizenship. “Hateful viewpoints” are extreme instances of discriminatory views. While individuals and groups are entitled to have their rights respected, they have no right to have their discriminatory or hateful views left unquestioned. I refer to the process of defending the values of free and equal citizenship as “democratic persuasion.”

Part of this book will focus on how liberal democracy should respond to hateful viewpoints. But my broader ambition is to propose a liberal democratic theory, called “value democracy,” that accomplishes two purposes: first, it should defend robust rights of free speech, religion, and association. This requires the state to refrain from coercively banning political viewpoints, religious groups, or civil associations, though the state should be allowed to coercively stop violence or threats against particular persons. Second, value democracy should articulate the reasons that justify why rights should be respected in the first place, and it should attempt to convince citizens to adopt the democratic values of freedom and equality as their own. These reasons for rights explain why the state and its citizens should uphold the rights of free speech, association, and religion for all persons who are subject to the coercive power of the government. In contrast to other democratic theories that are value neutral, my account bases democracy on the affirmative values of free and equal citizenship. These democratic values should be adopted by citizens and promoted by the state, because they ground the legitimacy of the government and justify protecting rights.

According to value democracy, all viewpoints should be protected by rights of free speech from coercive bans or punishment. But the state also has an obligation in value democracy that extends beyond protecting freedom of speech. It should engage in democratic persuasion, actively defending the democratic values of freedom and equality for all citizens when it “speaks.” The notion of state speech is common in First Amendment jurisprudence. It often refers to the various non-coercive functions of the state, ranging from pure expression, such as speeches, to issues of funding. My wider theory of democratic persuasion draws on that doctrine to defend the active promotion of democratic values. But I want to clarify that the title of the book is not about the factual question of what the state does say. Rather, it refers to the normative question of what the state should say. The ideal of democratic persuasion is meant to answer that normative question. It provides a guide to identify when state speech is appropriate, to elaborate its content, and to define its proper limits. I thus emphasize that not all state speech qualifies as democratic persuasion. State speech only qualifies as democratic persuasion when it promotes the democratic values of free and equal citizenship, and is consistent with what I call

the “substance-based” and “means-based” limits on what the state can express. The means-based limit bars the state from punishing or coercing citizens who express viewpoints that dissent from the fundamental values of democracy. The substance-based limit requires state speech to be compatible with free and equal citizenship and prohibits the government from promoting a particular sectarian view or comprehensive doctrine.

I also want to clarify that the notion of state speech should not be confused with the claim that there is only one state actor that speaks on behalf of democratic values. As the book argues, no single part of the state has a monopoly on interpreting the core values that are central to democratic legitimacy. Rather, a variety of state actors, as well as democratic citizens, should engage in democratic persuasion. It is common to the president, Supreme Court justices, legislators, local officials, and ordinary citizens protesting unjust state action that they can invoke, and attempt to articulate, the ideal of free and equal citizenship. In this book, an important example of a citizen who pursues democratic persuasion on behalf of the ideals of freedom and equality is Martin Luther King Jr. The state can support the efforts of citizens like King to engage in democratic persuasion not only by protecting their right of free speech, but also by actively affirming the values of freedom and equality. For example, the state can recognize King’s defense of democratic values by dedicating an official holiday and public monuments to him, and by teaching the lessons of the civil rights movement in public schools. Both citizens and state officials can therefore engage in democratic persuasion.

By using democratic persuasion to articulate the reasons for rights, value democracy aims to answer the critics who contend that liberalism cannot defend its most basic values or counter the threat to equality that might come from hate groups in civil society. In particular, I reply to the common criticism that liberalism is plagued by an alleged “paradox of rights.”¹³ According to this paradox, the neutrality implicit in liberal defenses of free speech, association, and religion leads liberalism to be complicit in its own demise. These rights are said to commit liberal democrats to a form of neutrality that protects the opponents of liberalism.

One worry, expressed by “militant democrats,” is that liberalism can do nothing about the rise of groups that advocate the dismantling of liberal democracy. Militant democrats, like Karl Loewenstein, argue that the only way to ensure the stability of liberal democracies is to limit the rights of hate groups that threaten the foundational values of these regimes.¹⁴ Militant democracy differs from liberalism in advocating not only limits on hate speech, but also restrictions on rights of hate groups to associate freely and to participate in the democratic process. Another kind of criticism suggests that even if liberal regimes do not literally fail, they are flawed in that they can offer no response to the critics who attack them.

This concern is often expressed by the worry that “a liberal is a person who cannot take his own side in an argument.” On some accounts, liberalism’s silence about hateful and illiberal views constitutes a kind of tacit complicity with the enemies of free and equal citizenship.

These two concerns motivate the accusation embodied in the paradox of rights: that liberalism’s commitment to free and equal citizenship in the public sphere is potentially undermined by its protection of inegalitarian beliefs in the private sphere of civil society and the family.¹⁵ A variant of this criticism is made by communitarians, who worry that liberalism’s neutrality and its protection of rights prevent the public values of free and equal citizenship from being affirmed and defended in public.¹⁶

Value democracy answers the paradox of rights by introducing the idea of democratic persuasion as a fundamental commitment of liberal society. Democratic persuasion extends the familiar principle that law, to be legitimate, must be widely publicized. It adds the further obligation that the state should publicize the justification for those rights protected by law—namely, their basis in the values of free and equal citizenship. When these values are attacked, the state should attempt to defend free and equal citizenship against the criticism of hate groups. The state’s defense of democratic values should be “persuasive” in that it should aim to be convincing. This means that democratic persuasion should not merely recite the values that underlie rights; it should argue for them. The aim of democratic persuasion is to change the minds of the opponents of liberal democracy, and, more broadly, to persuade the public of the merits of democratic values. By engaging in democratic persuasion, liberal democracy can avoid the paradox of rights: it offers a way for the legitimate state, without coercively violating rights, to respond clearly to its harshest critics and to challenge the hate groups that oppose the values of free and equal citizenship.

I will suggest in chapter 1 why the ideal of free and equal citizenship requires civil rights protection in the areas of race, gender, and gay rights. These protections use the force of law and coercion to protect racial minorities, women, and gays. Value democracy regards civil rights protections as fundamental. But in upholding the democratic values of free and equal citizenship, value democracy does not limit itself to protecting civil rights. The values of freedom and equality for all citizens should also be articulated and defended through democratic persuasion. Although citizens should retain rights to disagree with anti-discrimination laws, the state has the obligation to use its expressive capacities to defend the values of free and equal citizenship against criticism from hateful or discriminatory groups and individuals.

My theory of value democracy is thus “expressive” in two senses: it protects the entitlement of citizens to express any political viewpoint, and

it emphasizes a role for the state in explaining and defending the ideals that underlie free speech protections. I will extend the argument from freedom of expression to freedom of religion in chapter 5: value democracy protects the expression and practice of any religious view, but it is also committed to persuading citizens of the values that justify protecting religious freedom in the first place. In this persuasive role, the state appropriately employs its expressive powers—as an educator, speaker, and spender—to convince citizens to adopt the values that underlie legitimate law. When it uses these powers, the state does not regulate expression; rather, it expresses itself to defend the very values that underlie rights, including freedom of expression and religion.

One objection to democratic persuasion might come from critics who are concerned about excessive state power. In their view, more power for the state might imply less liberty. However, these critics overlook that the state already engages in expression and persuasion. State officials express the values that are fundamental to our society by building public monuments to civil rights leaders like Martin Luther King, by celebrating official holidays that honor democratic ideals, and by funding efforts to advance freedom and equality for all citizens.¹⁷ In short, an expressive role in promoting democratic values already characterizes many practices of contemporary governments.

My account of democratic persuasion and value democracy offers a coherent justification for these expressive practices. But when the practices of states and political actors oppose free and equal citizenship, my theory also offers a way of criticizing them. Throughout this book, I will suggest the proper aims, scope, and limits of the expressive capacities of the state. I will defend a role for the state in defending and promoting democratic values among the citizenry, as well as a duty for citizens to adopt democratic values as their own.

Another reply to the critics of democratic persuasion comes from a deeper examination of the challenge that the paradox of rights poses to liberal democracy. Specifically, I want to suggest why two attempts simply to define away the paradox will not work. Although I believe that the paradox is resolvable, I also think those who have appealed to it raise an important problem that accompanies robust rights protections in liberal democracies.

According to the paradox of rights, liberalism justifies rights protections based on an ideal of equality, but the liberal state cannot respond to critics of equality who are protected by rights. Some thinkers might try to argue that the paradox of rights does not exist, because there are simply different kinds of equality that, in the end, do not conflict with each other. These thinkers might contend that while some rights-protected viewpoints challenge unequal conditions such as inequality of income, they do not

necessarily challenge the kind of equality that is the basis for rights and equal citizenship. Since these viewpoints do not challenge free and equal citizenship, it is said that they do not lead to a paradox of rights.

I acknowledge that some kinds of inegalitarian beliefs do not violate the ideal of free and equal citizenship. As I will suggest in chapter 1, some views might be inegalitarian in their metaphysical or theological conception without opposing the ideal of free and equal citizenship. Similarly, individuals might have an account of the distribution of wealth in society without challenging the basic ideals that underlie liberal democracy. Such viewpoints should not be subject to democratic persuasion. However, the thinkers who dismiss the paradox of rights ignore how other inegalitarian beliefs do oppose the ideal of free and equal citizenship. For instance, the American Nazi Party, the Ku Klux Klan, and other hate groups advocate a conception of inequality that is at odds with the very ideal that all citizens should be treated as free and equal. They oppose the ideal of freedom and equality in at least one of the following senses relevant to citizenship: they deny that all citizens possess equal rights, they oppose recognizing the equal citizenship of minorities or women, or they defend discrimination in education or employment. It is the expression and endorsement of these kinds of inegalitarian beliefs that give rise to the paradox of rights. This conflict between the ideals of liberal democracy and hateful viewpoints that deny free and equal citizenship cannot simply be defined away.

Another attempt to dismiss the paradox of rights comes from the prohibitionists who deny the political nature of inegalitarian beliefs. Perhaps the most famous prohibitionist view of this form is “militant democracy.” As Karl Loewenstein argues, democracies should limit the right to express fascist viewpoints. Loewenstein tries to evade the problem of violating the right of free speech by claiming that fascism is not an ideology or a set of viewpoints, but rather a type of “tactic.” Similarly, some defenders of prohibiting hateful viewpoints contend that such views are not speech but actions. On this view, there is no loss that comes from prohibiting hate speech, because prohibition does not limit ideas or valuable expression, but is similar to stopping violence.

The problem with this second attempt to dismiss the paradox of rights is that, while fascists and other hate groups have engaged in violent action, they express political views in their books and speeches. While the state may certainly prohibit violent action, the paradox of rights still emerges when these political viewpoints are expressed. Even views that oppose the core values of liberal democracy can still be political viewpoints. Therefore, we cannot ignore the paradox of rights by denying that some hateful viewpoints are held at the level of ideas, distinct from unlawful action. Although I will suggest how democratic persuasion can respond to the

paradox of rights, prohibitionists such as Loewenstein are wrong to think that we can merely solve this dilemma by banning hateful viewpoints. As I will argue in chapter 3, because hateful viewpoints express political ideas, however vile, they are entitled to protection, as required by rights of free speech. But while it would be a mistake to pursue prohibition, Loewenstein and others are correct to argue that these hateful viewpoints cannot merely be protected and left unchallenged.

My emphasis on seeking to change hateful and discriminatory viewpoints through a process of democratic persuasion may provoke a strong defensive reaction from the neutralists. The neutralists will argue that I am wrong to distinguish hateful or discriminatory speech from other viewpoints. They will resist my claim that discriminatory speech should be criticized by the state and not treated as strictly private or ignored. In response to the neutralists, it is important to remember that value democracy respects the right of free speech, and rejects the coercive bans on hateful viewpoints that are endorsed by many of the world's liberal democracies.¹⁸ My aim is to preserve the doctrine of viewpoint neutrality in the protection of free speech rights, while rejecting viewpoint neutrality in state speech. The state should be viewpoint neutral in protecting all speech, regardless of its content, from coercive bans or punishment. But it should not be viewpoint neutral in its own speech. Instead, it should engage in democratic persuasion, supporting the ideal of freedom and equality for all citizens while criticizing hateful or discriminatory viewpoints. If viewpoint neutrality is to be preserved in the protection of free speech rights, however, it must answer important and widely held concerns about hateful viewpoints. These concerns are reflected in the bans on hate speech that have been enacted in almost every other liberal democracy, and they are raised by prohibitionists in the United States, including many feminists and racial scholars. Unlike neutralism, my account of value democracy can answer legitimate concerns about defending free and equal citizenship against hateful viewpoints. But unlike prohibitionism, which coercively bans viewpoints, value democracy protects rights and is more compatible with respect for citizens as free and equal. There is thus a key distinction between viewpoint neutrality and neutralism, as I will elaborate in chapter 3. Viewpoint neutrality is the legal doctrine that rights should protect the expression of all opinions. Neutralism is a political theory that the state should not promote or express any particular set of values. Although I apply viewpoint neutrality to rights, I reject neutralism. I ground viewpoint neutrality in an affirmative, non-neutral set of democratic values, namely those of free and equal citizenship.

Before turning to value democracy's account of how we might promote equality at the same time that we defend rights, in the next section I describe in greater depth what is at stake in the theoretical divide between

the neutralists who defend robust rights protections and the prohibitionists who seek to limit rights to protect an ideal of equal citizenship. I then introduce value democracy as an alternative to both of these accounts. Value democracy and democratic persuasion suggest how liberal democracies can simultaneously protect rights and promote a democratic ideal of free and equal citizenship.

I. TWO DYSTOPIAS: THE INVASIVE STATE AND HATEFUL SOCIETY

In formulating a political theory, it is often useful to begin by thinking about the kind of society that one wants to avoid rather than the ideal one wishes to realize. Theorizing in reference to dystopias rather than utopias may, in fact, clarify the kind of values that a legitimate society should aspire to fulfill. In liberal theory, the dystopia that is most feared could aptly be described as “the Invasive State.” In the Invasive State, roving police vehicles constantly monitor citizens. Citizens are prosecuted for having conversations and engaging in practices that are antagonistic to the public values of free and equal citizenship, even when these conversations occur in the private space of the home.

In the liberal imagination, fears about the Invasive State often focus on governments that violate rights in the name of illiberal values. The Invasive State is usually characterized as a fascist or authoritarian government that intervenes to promote discrimination or to preserve the power of the rulers. But the liberal worry about the Invasive State might also extend to interventions on behalf of liberal values. While authoritarian interventions are problematic because of the reasons for the government’s actions, liberal interventions raise a distinct difficulty. In the latter case, liberals might endorse the substantive values behind the intervention, but not the method of achieving them. For instance, attempts to ban hate speech might reflect a liberal concern to protect equality and condemn racism. In this version of the Invasive State, the government uses coercion to enforce the values of free and equal citizenship. However, liberals would resist heavy-handed means to enforce the defining values of a liberal polity. They would see the Invasive State as dystopian, since it respects no restraint on the state’s coercive interventions to enforce equality. Liberal rights to privacy are intended precisely to guarantee against such a dystopian role of the state and to ensure the integrity of private spaces such as the “marital bedroom.”¹⁹

While liberals fear the Invasive State, feminist critics of liberalism, especially those tempted by militant democracy’s willingness to use coercive means to challenge anti-egalitarian viewpoints, arguably fear a different dystopia, which I call “the Hateful Society.” In this dystopia, the state

maintains robust liberal rights protections, such as rights to privacy, free speech, and freedom of conscience, but the culture that is protected by these rights deeply opposes public values, particularly equality. In the Hateful Society, rights to privacy protect families that assign subordinate tasks to women and that teach female members to believe they are worth less than their male counterparts. Beyond the family, negative comments about women's roles predominate in the workplace and in civil associations; a pervasive culture of chauvinism reinforces the notion that women are less valuable than men. While the citizens of the Hateful Society enjoy rights to free speech that protect them against state intervention, inegalitarian speech and behavior are routine and unsanctioned within the culture of its civil society. The culture of sexism may be so pervasive that women are "silenced," in that they are marginalized in politics, despite their formal rights to participate.

Along with sexism, racism also predominates in the culture of the Hateful Society. Although the law might afford certain formal protections against racial discrimination by the state, civil society is characterized by a discriminatory culture that treats minorities as inferior to the majority race. This widespread private inequality inevitably results in political inequality.²⁰ While racial minorities may retain a formal set of rights, extensive racism results in "silencing." Racism silences minorities by discouraging them from believing that they can fully exercise their rights to participate as equals in public life. The rights remain merely formal in that they are proclaimed on paper, but they fail to be protected due to the racist culture of the Hateful Society. Citizens may deny loans to minority applicants, refuse to admit minority students into their schools, and pass over minority workers for promotion. Although laws ban discrimination, citizens in the Hateful Society can ignore those laws, and public officials can fail to enforce them. In the broader culture, rights of free speech allow civil society groups to spread racism by burning crosses, painting swastikas, and preaching a message of racial inferiority to minorities. Even if the state bans violence and direct threats, minority citizens feel that their safety is threatened and that the state's neutrality ignores their fundamental interests. Constrained by a doctrine of neutrality, the state is prohibited in the Hateful Society from criticizing discriminatory viewpoints or stopping their proliferation. In extreme cases, hateful viewpoints can inspire acts of violence. Although the violence can be punished and coercion employed to stop it, rights protect the culture that leads to violent acts against minorities in the first place.

The divide between those who fear the Hateful Society and those who fear the Invasive State seems unbridgeable. Liberals fear coercive intervention into the "private" realms of the family and civil society, regardless of the ways these spheres might reinforce inequality. In the extreme case,

this fear of state action might lead liberals to think that political theory can offer no response to inequality in the family and in civil society. While some liberals acknowledge that private life has a variety of “moral rights” that might be violated, as a political matter, they believe that the state should not intervene to counter these violations. These liberals argue that political rights cordon off the “private” realm from public scrutiny. In short, the reaction of liberals to the dangers and excesses of the Invasive State sometimes leads them to endorse a kind of neutralist liberalism, which is incapable of responding to the problems of the dystopian Hateful Society.

Indeed, some critics have maintained that an inability to respond to the Hateful Society is a fundamental problem with liberalism itself. As I have noted, these critics argue that liberal theory faces a paradox of rights in its treatment of hateful viewpoints and hate groups. To recall the paradox, liberal rights recognize the status of citizens as free and as equal, yet the protection of rights to free association, expression, and conscience provides cover for groups and individuals who attack the equality of citizens. The paradox is that, in the name of freedom and equality, liberalism shields groups such as the Ku Klux Klan, the American Nazis, and chauvinists who threaten to undermine the very entitlement of women and minorities to free and equal status.

In the chapters to come, I attempt to bridge the divide between liberal theories that seek to protect rights and feminist theories that seek to promote certain fundamental values, such as equality. On my view, a fully articulated theory of rights will offer a way to address both of these concerns, avoiding the pitfalls of both the Invasive State and the Hateful Society. The resolution of the paradox of rights is found when we expand our focus to examine not only the content of rights, but the reasons for rights. Although rights such as free speech are defined by their neutrality toward the content of the views expressed, the reasons for rights are not value- or viewpoint neutral. When we seek to explain why such legal protections are afforded to citizens in the legitimate state, we should appeal to the non-neutral, affirmative values of freedom and equality that characterize the status of all who are subject to law. Although free speech doctrines regulating coercion are rightly “viewpoint neutral,” in that all views are protected by rights, the reasons for rights are not themselves neutral with regard to the content or the viewpoint of ideas.

My account of value democracy highlights the important role of the state in promulgating the reasons for rights. While the idea that the content of rights should be promulgated by the state is a familiar one in law, value democracy adds that the reasons and values that justify rights should also be expressed to and promoted among the citizenry. The values of freedom and equality do not apply only in the so-called public sphere.

Instead, I argue that the state should promote these values even when it requires seeking to persuade individuals to abandon or transform certain beliefs that are at odds with the ideal of free and equal citizenship. Value democracy is thus a transformative theory of rights. This account shows that the concern to promote equality is not only compatible with rights, but it is based on the very reasons and values that justify rights themselves. While the paradox of rights is a real problem, value democracy resolves the paradox by protecting the rights of citizens from coercive intervention, while using democratic persuasion to promote the values of freedom and equality that underlie rights.

The reasons for rights, I argue, should be promoted by an appeal to the “expressive” and “persuasive” capacities of the state, and not by coercion. On my view, the exaggerated divide between those who fear the Hateful Society and those who fear the Invasive State is partly a result of an overemphasis on issues related to the justification of coercion in contemporary political theory. In many of the debates, the exclusive question theorists often ask is: “to coerce or not to coerce?” By contrast, value democracy highlights a role of the state distinct from its role as coercer. I focus on when and why the state should employ its non-coercive, persuasive powers.

Rights such as freedom of expression correctly protect citizens against coercive intervention, but I argue that these rights do not extend to a right not to be persuaded by the state. As John Stuart Mill famously writes, alongside a set of rights protecting freedom of conscience and speech, there should be a wide role for citizens in defending the core liberal democratic values.²¹ I extend this argument in highlighting a role for the state—in its non-coercive, persuasive capacities—to defend the reasons for rights, namely, the ideal of free and equal citizenship. Indeed, as John Locke argues in *A Letter Concerning Toleration*, it is legitimate for a rights-respecting state to persuade using reason. Locke notes the distinction between the state’s persuasive and coercive power when he writes: “In teaching, instructing, and redressing the erroneous by reason, he [the magistrate] may certainly do what becomes any good man to do. . . . [It] is one thing to persuade, another to command; one thing to press with arguments, another with penalties.”²² Since state persuasion, on my view, is not tantamount to coercion, the legitimate state can articulate the reasons for rights and convince citizens to adopt these reasons as their own.

Value democracy relies on two features in responding to the paradox of rights. On the one hand, it emphasizes the central role of the state’s persuasive, as opposed to its coercive, capacities. On the other hand, value democracy also stresses the proper limits on the content of the message that the state promulgates to its citizens. As I argue in later chapters, the state should not promote any account of equality or any set of values,

but it should focus on the specific kind of equality that justifies rights. While the reasons for rights are grounded in a non-neutral conception of equal citizenship, they do not include a comprehensive or sectarian account of egalitarianism. Rather, the reasons for rights are focused on expressing a respect for the equal status of citizens, a status that the state must respect for it to be legitimate and for the laws to be justifiable to all. The ideal of free and equal citizenship is therefore a public and not a comprehensive ideal.

The legitimate state should seek to change discriminatory views to the extent that they challenge the democratic value that all persons should be regarded as free and equal. However, to avoid having the state impose a “comprehensive doctrine,” I argue that persuasive attempts at transformation should only be aimed at those beliefs that are openly hostile to or implausibly consistent with the ideal of public equality.²³ Comprehensive doctrines are those that seek to go beyond a theory of what is owed to people by virtue of their common status as political beings subject to state power. The doctrines are comprehensive in that they are accounts of how persons should act in all parts of their life, including the conception of the good that they should endorse.²⁴ By contrast, I hope to sketch an ideal of citizen status that is solely related to their role as political beings in a democracy. I signify my break with comprehensive conceptions of liberalism by referring to individuals as “free and equal citizens.” I do not wish to limit my view or to confuse it with legal or *de jure* citizenship, but rather to invoke the broader tradition of a conception of citizenship within the domain of political morality. Many potentially inegalitarian views, which are nevertheless arguably consistent with an ideal of political equality, are rightly left alone by the state. I signify my more limited concern with political equality, rather than with equality in some more comprehensive sense, by discussing an ideal of free and equal citizenship.

Value democracy is a theory that attempts to incorporate both liberal protections of rights and the promotion of egalitarian values. As such, it has both traditional liberal and democratic elements. Its liberal elements are found in its concern to limit the coercive power of the state. Its democratic elements are found in its concern to ensure that the democratic values of freedom and equality are widely respected by the state and by the broader culture of civil society. Value democracy is thus consistent with democrats’ concern—dating back to Tocqueville—to think about democratic culture, not only democratic procedures.²⁵

In my previous book, *Democratic Rights: The Substance of Self-Government*, I argued that the respect for equal status is rightly understood as among the values of self-government. These core values justify democracy itself and are more basic to the democratic ideal than proce-

dures alone.²⁶ But while I was concerned in *Democratic Rights* to examine the implications of these values for certain basic rights, here I examine the implications of democratic values for the beliefs and practices of family members and participants in civil society. Value democracy, in the following chapters, applies democratic values beyond formal procedures and institutions directly to what many liberals have thought of as “private” life. Understood as a synthesis of liberal and democratic commitments, my theory of value democracy is rightly understood as an account of liberal democracy.

Value democracy is thus not limited to formal democratic procedures. A state is not fully democratic if it formally guarantees rights and democratic procedures, while failing to endorse the underlying values of self-government in its broader culture. A culture of racism and sexism in civil society, as illustrated by the Hateful Society, can dis-empower minorities through non-formal means, preventing them from participating in politics and from achieving positions of influence. In this way, the Hateful Society leaves the values of self-government empty and abstract. Value democracy, by contrast, seeks to present an account of liberal democracy that more substantively respects and promotes self-government, avoiding the dystopia of the Hateful Society while also steering clear of the pervasive coercion and rights violations of the Invasive State.

Some might challenge my emphasis on promoting democratic values as being elitist, not democratic. For instance, I do not contend that public officials should merely echo the beliefs that are widely held by people at any given period. Value democracy is not limited to only reflecting public opinion. Rather, my claim is that the reason why we have democratic procedures in the first place is to respect the equality and autonomy of citizens. The values of free and equal citizenship are therefore the values that justify and undergird our entitlements to vote in elections and to have a say in public policy. As I argued in *Democratic Rights*, these values give rise not only to entitlements to participate and rights to the franchise, but also to rights that stem from the values that undergird democratic procedures. In short, on my view, democracy requires not only rights to participate, but also other rights that are based on the very values that justify the freedom to participate. These rights include entitlements to free speech, religion, and association.

Now that I have described my theory of value democracy, I am in a position to articulate more fully its response to the challenge that the paradox of rights poses to liberal democracy. A first challenge noted that liberal democracy’s commitment to rights makes it complicit in condoning or being silent toward views that attack the foundations of liberal democracy. But value democracy offers a way to protect rights at the same time that the state makes clear through its expressive capacity that it criticizes

hateful or discriminatory viewpoints. A second challenge raised by the paradox of rights concerns the stability of democracy. Militant democrats contend that liberals offer no way to prevent the collapse of liberal democratic regimes. On this view, the rights protections afforded to illiberal groups might result in the spread of hateful viewpoints and the demise of liberal democratic protections, as in the case of Weimar Germany. But it is important to point out here that a clear tradeoff would come from abandoning rights in order to coercively suppress hateful viewpoints. It would result in a loss to a major aspect of democratic legitimacy. I will argue that for government to be fully democratically legitimate, it must respect the free and equal status of citizens. To be treated as free and equal, citizens must have the liberty to express and to hear any political viewpoint. Without this ability, citizens would be denied the capacity to accept or reject laws and public policies.

I think, however, that value democracy offers a third alternative between this hard choice of either sacrificing rights to prevent democratic collapse or protecting robust rights to free speech in regard to all political opinions. In response to the militant democrat, I suggest that there is another way of protecting democracy and its core values aside from coercively limiting rights. Value democracy has the advantage of recognizing the concerns of militant democrats without sacrificing the rights that are fundamental to the liberal polity. In response to liberals, I contend that there is no tradeoff between my view and the concern to protect rights. Value democracy maintains robust rights protections alongside a concern to promote and promulgate the reasons for rights.

Value democracy is not limited to stating in the abstract the democratic values of free and equal citizenship that justify the protection of rights. It also criticizes specific hateful or discriminatory viewpoints, such as racism or segregationism.²⁷ Value democracy explains why those views are wrong, and seeks to persuade citizens to reject them. One reason for active criticism, and not just stating the reasons for rights, is that without an explanation of why discriminatory viewpoints are wrong, those views might be mistakenly seen as compatible with free and equal citizenship. For instance, the segregationists claimed that their policy of “separate but equal” public schools for different races was compatible with the equal protection of the law for all citizens. The Supreme Court rejected these claims in *Brown v. Board of Education*, and criticized the public policies advocated by the segregationists. In its unanimous decision, the Court explained why segregationist policies were incompatible with equal protection, despite the segregationists’ claims to the contrary.²⁸ To avoid the problem of democratic values being co-opted, or wrongly thought to be compatible with specific discriminatory viewpoints, the state and its citi-

zens should criticize views that conflict with the ideal of free and equal citizenship.

A second and related reason for active criticism is to avoid the potential problem of state complicity. There is a danger that the state may be considered complicit with hateful or discriminatory viewpoints, because it protects their right to be expressed. Citizens may then believe that the state is neutral toward the opponents of free and equal citizenship. The state can avoid complicity by not only promulgating the reasons for rights, but criticizing discriminatory viewpoints. This criticism clarifies that the state's protection of free speech rights for racists and other holders of discriminatory views does not imply complicity with or neutrality toward them.

A third reason why value democracy engages in criticism is to counter the concerns of militant democrats, who worry about the stability of democracy in the face of challenges from hateful or discriminatory viewpoints. Militant democrats will likely argue that a mere abstract statement of democratic values would be unable to dissuade the opponents of liberal democracy or convince undecided citizens. This failure would raise the specter of the Hateful Society, where discriminatory viewpoints spread unchecked. One of the aims of value democracy, like that of militant democrats, is to counter the spread of discriminatory viewpoints and to change the minds of those who hold or hear them. While sharing this aim, value democracy rejects militant democracy's coercive bans on speech and other Invasive State methods. Value democracy instead uses persuasive reasoning and criticism. To defend democracy against its opponents, and to avoid the emergence of the Hateful Society without resorting to the Invasive State, value democracy criticizes their arguments and shows why they should be rejected.

Militant democrats might contend, however, that value democracy is not strong enough in its protection of liberal democratic values, and still risks the weakening of liberal democratic regimes by the illiberal forces protected by rights. I offer two responses to this contention. First, it is not clear that persuasion will fare less well than coercion in promoting and protecting democratic values. Indeed, as many defenders of liberal democratic rights have pointed out, coercive laws banning the expression of hateful viewpoints and the free association of hate groups may not be effective. It might cause citizens who hold these views to go underground and to become even more hostile to liberal democratic regimes, as Nancy Rosenblum argues.²⁹ Such groups may garner sympathy from third parties by resisting coercive persecution. In contrast, value democracy protects the rights of persons who hold viewpoints hostile to free and equal citizenship, and it exposes those viewpoints to public criticism. At the

same time, value democracy offers a method for the state and citizens to seek to change minds. It offers respect for holders of even the most hateful viewpoints by protecting their rights, but it also seeks to transform their views so that they are compatible with the foundations of liberal democracy. Value democracy can publicly engage these viewpoints, challenge their premises, and seek to change the minds of the citizens who hold them. In the eyes of third parties, this approach of persuasion and criticism robs hateful viewpoints of their possible outlaw allure, and instead publicly refutes them. Even if the most radical among these groups do not have their minds changed, in the eyes of the polity, value democracy and democratic persuasion can combat the spread of ideas that are inimical to liberal democracy.

Second, even if coercion proves more effective than democratic persuasion endorsed by value democracy, we should not simply favor the view that most effectively combats hateful viewpoints. Even if value democracy is less effective in transforming these views, it is important to respect the rights of citizens in order to treat them as free and equal. The state's respect for citizens as free and equal is the basis for its democratic legitimacy. Less effectiveness in reducing hateful viewpoints may be justified by the overall gain to democratic legitimacy that comes from a strategy that embraces rights, instead of rejecting them.

I concede, however, that there might be some empirical situations in which my argument might fail. In some historical circumstances, value democracy might lack the tools to stave off threats to democracy. In such circumstances, there might be a need to abandon democracy temporarily in order to reinstitute it. But such emergency situations should be viewed with much skepticism, and value democracy offers a way to avoid reaching such a dire choice. Even if value-neutral conceptions fail to combat a rising tide of anti-democratic viewpoints, value democracy might offer an effective approach to defending democracy without abandoning core democratic rights.

In sum, my ambition in this book is to offer a third alternative both to neutralist liberals and to militant democrats. Value democracy stands in contrast to value-neutralist conceptions of liberalism and democracy, in that it posits a clear set of affirmative values that undergird rights and democratic procedures. Value democracy also offers a constructive role for the state in promoting these values among the citizenry. But it resists the militant democratic strategy of coercively defending these values at the expense of rights. Rather than sacrificing rights in the name of democratic values, I suggest that a legitimate democracy has the duty both to protect rights in the most robust sense and to promulgate the values that justify these rights. This third alternative, presented by value democracy, should be attractive primarily because it addresses the concerns of liberals who

fear the intervention of the Invasive State as well as militant democrats who worry about defending democratic values in the face of the threat from the Hateful Society. Value democracy thus answers the concerns about complicity raised by the paradox of rights and the problem of stability stressed by militant democrats.

II. HOW VALUE DEMOCRACY IS DISTINCT FROM OTHER VIEWS

Value democracy shares much with the traditional feminist belief that the “personal is political.” I will argue that democratic persuasion is important in convincing citizens to adopt the values, principles, and reasons that underlie a commitment to rights. It is worth mentioning, however, another distinct project which has also taken the feminist mantra as its starting point. The work of the late political philosopher Gerry Cohen is largely an attempt to explore why the public and private realms could not be sharply divided in a just society. But unlike my account, Cohen is not concerned with defending rights or showing the compatibility of his view with the liberal tradition more generally. Indeed, much of Cohen’s effort reflects the belief of Karl Marx that a focus on public rights can undermine private equality. Specifically, for Marx, an emphasis on the public rights of the citizen ignores the way private egoism pervades society.

Cohen’s work is specifically concerned with demonstrating why John Rawls fails to recognize the relevance of public, egalitarian values to personal decision-making.³⁰ Cohen thinks that individuals undermine a society’s claim to justice when they are inegalitarian in their personal decision-making, pursuing personal wealth in a way that increases inequality. Cohen and I share the view that equality is relevant not only to laws governing and limiting coercion, but also more broadly to citizens’ beliefs and practices. But while a concern for citizens’ equality is present in Cohen’s view and my account of value democracy, our definitions of equality differ significantly.

For Cohen, equality is a comprehensive value that pervades all aspects of personal choice. In contrast to Cohen, I have adopted a different kind of egalitarianism that concentrates more on protecting the values of free and equal citizenship, and that does not require all substantive decisions to be made in an egalitarian fashion. For instance, Cohen is concerned with both the choices that citizens make in spending their money to pursue their own conception of the good and the impact of personal consumption on the value of equality. By contrast, my ideal of free and equal citizenship does not pervade every aspect of citizens’ choices in that way. Cohen also differs in that he is not concerned to elaborate how, if at all, his account of equality is compatible with robust rights to freedom of conscience. He

does not distinguish himself from theories of rights that seek to combat inequality through the use of force, accounts which lend themselves to the excesses of the Invasive State. Value democracy, by contrast, has at its core the ambition of reconciling the promotion of public values with the protection of rights.³¹

My view is also distinct from many prominent accounts of how the state should promote the values of free and equal citizenship through education. For instance, Amy Gutmann's *Democratic Education*, Eamonn Callan's *Creating Citizens*, and Stephen Macedo's *Diversity and Distrust* are all concerned with the importance of instilling a set of liberal values in citizens before they are entitled to the full rights of adults.³² These accounts suggest that, because children have not yet developed their full capacities, they can be coerced into a liberal education in a way that adults cannot. My book also concerns education, but in a broader sense that is not limited to children. For Gutmann, Callan, and Macedo, state education is largely pursued chronologically in youth before rights are granted. In contrast, throughout this book, I discuss the possibility that the state can be concerned to educate the citizenry about the values that underlie rights even after those rights are granted in adulthood. Because I am concerned with the state's broadly expressive and educative functions regarding adults, however, the balance between the concern for rights and the concern for democratic values cannot be resolved chronologically by age. Rather, drawing on the concepts of public relevance and the non-coercive, expressive capacities of the state, I attempt to show how value democracy can simultaneously protect rights and seek to educate the citizenry about the values that are at the core of a legitimate state.

A second difference between my account compared to the approaches of Gutmann, Callan, and Macedo is that these authors argue for the compatibility of rights and a robust approach to promoting liberal values through education. By contrast, my account goes beyond an argument for compatibility to suggest why the commitment to rights themselves entails a commitment to promote public values in private life. In addition, I offer a theory of rights and the reasons of rights, not an account of virtues which would need to be balanced against rights. Because my approach is rights-based, it avoids promoting a particular or sectarian conception of the good. The reasons for rights on my account are based on neither virtue nor conceptions of the good.³³ Instead, the basis for rights is free and equal citizenship.

Finally, my view can be contrasted with liberal perfectionist thinkers such as Joseph Raz and, as has become clear in his latest work, Ronald Dworkin. These thinkers also see values as at the basis of rights, but they articulate comprehensive conceptions of these values and suggest that

they should be promoted as conceptions of the good life.³⁴ For instance, Dworkin ties the value of autonomy to the obligation to lead a reflective life and even to pursue one's life as a "work of art."³⁵ Such visions are much more comprehensive than mine and would justify an expressive role for the state well beyond articulating the reasons for rights. In contrast, as I suggest in chapter 3, my distinctly political ideal of free and equal citizenship offers a way for the state to counter the Hateful Society, without using the state to bring about a particular vision of the good life.

III. OUTLINE OF THE BOOK

The theory of value democracy explains how the state can avoid the two dystopias of the Hateful Society and the Invasive State. Unlike the Hateful Society, value democracy seeks to challenge beliefs in civil society that threaten equal citizenship. But unlike the Invasive State, value democracy protects the freedom and equality of citizens through the state's persuasive capacity, and not through coercion.

In chapter 1, I propose a "principle of public relevance," which claims that when beliefs, expression, and practices conflict with the ideal of free and equal citizenship, they should be changed to make them compatible with that ideal. In this book, I suggest two ways to fulfill the principle of public relevance, consistent with a respect for rights. The first way, "reflective revision," emphasizes the duty of *citizens* to incorporate the ideal of free and equal citizenship into their *own* set of beliefs and practices. The second way to fulfill the principle of public relevance is "democratic persuasion." It gives the *state and citizens* two duties: they should convince other citizens to adopt the ideal of free and equal citizenship, and they should criticize policies and positions that oppose free and equal citizenship. Democratic persuasion suggests how the state can respond to the problem of hate groups and promote the public values of free and equal citizenship in the family and civil society. Together, reflective revision and democratic persuasion specify how the principle of public relevance can be realized. The book will use the concepts of reflective revision and democratic persuasion to explain how democracies can avoid the excesses of both the Invasive State and the Hateful Society.

I continue in chapter 2 with a discussion of the role of the family and civil society within my theory. While the family and civil society should be protected by basic rights, I argue that the extent to which public values apply there is a normative question. I propose a conception of "publicly justifiable privacy" to clarify the implications of the principle of public relevance for thinking about the divide between public and private. My conception of publicly justifiable privacy challenges the traditional

liberal approach of separating public values from the internal dynamics of the family and civil society. According to publicly justifiable privacy, family and civil society practices that conflict with free and equal citizenship should be protected by rights, but ideally should be amended to be compatible with public values. Drawing on and critiquing the work of Susan Okin, I argue that even “thin” values of free and equal citizenship have relevance within the family. Ideally, I argue, people should engage in reflective revision to change those personal beliefs and practices within the family and civil society that conflict with the ideal of free and equal citizenship.

The principle of public relevance suggests why some beliefs and practices, though they are protected by rights, ideally should be amended to be compatible with free and equal citizenship. But a question remains about what the state should do to address these protected yet publicly relevant beliefs. In particular, what should the state do if people fail to adopt the ideal of free and equal citizenship? In chapter 3, I outline a theory of freedom of expression that offers an account of how the state should simultaneously seek to transform discriminatory or hateful beliefs while defending them from coercive interference.

On my view, freedom of expression, rightly understood, has two components. First, it protects all viewpoints, short of threats to particular persons and incitements to imminent violence, from coercive intervention. Second, it provides a role for the state—in its capacities as speaker, educator, and spender—in expressing the reasons why these viewpoints are protected. In this persuasive, non-coercive role, the state should actively seek to promote the values of free and equal citizenship. Chapter 3 explains that the reach of this persuasive role is broad in the sense that it aims to affect the beliefs not only of family members, but more generally, of groups in civil society. I refer to this account of the state’s role in value democracy as democratic persuasion. Although democratic persuasion stresses the importance of an active role for the legitimate state in promoting democratic values, value democracy does not abandon all accounts of neutrality in thinking about freedom of expression. I argue in chapter 3 that the Supreme Court’s doctrine of viewpoint neutrality is appropriate as a standard for limiting state coercion. Viewpoint neutrality means that all viewpoints, regardless of their content, should be protected by freedom of expression, provided they are not direct threats to individuals. However, while viewpoint neutrality is appropriate as a standard for applying the right of free expression to citizens, I argue that it is misplaced as a guide to determining the state’s own expression and what it should say. On my view, the state should be non-neutral in its persuasive and expressive roles. It should pursue a robust, non-neutral policy of persuading citizens

to change their discriminatory views and to respect the ideal of free and equal citizenship.

Although acts of pure persuasion are central to my theory, they sometimes are not capable of changing minds or of influencing the culture widely. In chapter 4 I defend the notion that, while persuasion should not be backed by coercive force, it should be backed by the state's subsidy power. I define subsidy power as the ability of the state to spend money and, as crucially, to refuse to spend money on certain organizations. The state's subsidy power includes the ability to grant or withdraw tax-exempt, tax-deductible non-profit status. Its use is compatible with the right of free expression. Indeed, I argue that the reasons justifying free expression require the state to withdraw subsidies from groups that oppose the core values of free and equal citizenship.

An important challenge to the principle of public relevance is raised by a concern for freedom of religion. Should the state seek to transform inegalitarian religious beliefs using its persuasive capacity? On some accounts of religious freedom, religious beliefs deserve a presumptive protection from state influence. In chapter 5, I argue against such "static" views of religious freedom, and claim that rights should not entail the absence of public justification. Not only are some religious beliefs publicly relevant, but the state should seek to transform them through its persuasive capacity. In making this argument, I appeal to the ideal of religious freedom itself. Some religious conceptions, I argue, are at odds with the ideal of religious freedom—suggesting that religious freedom itself requires an account of the public relevance of hateful religious beliefs and a role for state transformation in the realm of religion. Whereas I argue in chapters 3 and 4 that freedom of expression requires both legal protections in form of rights and the state's active promotion of public values, so too, I argue in chapter 5, religious freedom requires these two roles for the state. In chapters 3, 4, and 5, I attempt to show that the state should protect rights and promote the public reasons that justify and underlie them.