Review of: "Free Speech Regimes and Democratic Vehemence"

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It is somewhat difficult to respond to this paper – particularly in the form of a review. This is because this is one of those few papers that one reviews that one finds to stand so well alone. I'm delighted to have read this paper.

This paper pursues the thesis that in the current political climate – especially in liberal democracies, a conflict has emerged between two ways of engaging in political discourse. These include processes based on "procedural rights" (PR) and "victim's rights" (VR). Procedural rights are based upon the valuing the right to discourse and free speech as process of democratic decision-making. It is the traditional democratic approach to discourse that guarantees the right of speech to all parties to an issue.

In recent decades, the victim's rights perspective has gained currency. The VM perspective builds upon the twin ideas of rights and equality. It is based upon the desire to foster equity and equality among dominant and traditionally marginalized groups (e.g., women, racialized groups, minorities, LGBT+, etc.). VR approaches support the idea of restricting the speech of people whose speech is offensive, hateful or which can be perceived as harming others or traditionally marginalized groups.

Joseph Yi argues that the VR perspective risks fostering noncooperative culture of discourse – one that is hostile to democratic decision-making. He shows how the VR perspective operates on both the "left" and "right" poles of political discourse. He further shows how advocates of the VR view draw on different self-supporting bodies of information and belief when engaged in political discourse or otherwise seeking to legitimate the VR approach. He gives examples of PR and VR approaches from a variety of nations and cultures, describing within-nation and between nation forms of VR dialogue and justification.

I have little of substance to say about the content of this paper. I am deeply convinced by the arguments made here. The only critical comment that I have is that I found the paper a bit difficult to read. Some of the language was difficult to parse, and I had to read some passages several times. It is possible that there is an issue with English as a second language.

With full disclosure, I was convinced of the author's thesis before I read it. Is this an example of bias? Perhaps yes – but if so, the bias is in me, and not the paper. Yi approaches this emotionally tense topic in an extraordinarily balanced and dispassionate way. And it is what I take to be his neutral and empirical grounded approach to supporting his assertions that makes this paper compelling.

Beyond its compelling argument, I find the paper*bold* and *courageous*. Yi is taking on the issue of basic modes of approaching political discourse – an issue that is fraught with controversy, emotion and a clash of moral stances. In my view, the very willingness to adopt the phrase *Victim Rights* as an alternative to the concept of procedural rights is a courageous act. There are many in the West who would not endorse the use of this term, feeling that the phrase "victim" cats the opposing pole in a bad light. What other terms might be used to refer to the opposing pole? Several come to mind – one might speak of a "social justice" perspective, or the "rights of marginalized groups" or something similar. Of course, none of these phrases is value neutral. There is no view from nowhere, even for someone like Yi who, as far as I can tell, is working very far to be balanced and fair.

My point is that the mere calling into question the "victim's rights" is an occasion for many – even within scholarly circles – to call for some sort of cancellation. The justification of such a position would embrace the idea that, to the extent that "procedural rights" grants equal access of all interlocutors, it includes participants whose views are inherently in some way "beyond the pale", apodictically immoral, or otherwise "harmful" to a marginalized group.

One might suggest that such a perspective, however, is based on a suite of dubious assumptions. The first is the assumption of rectitude. In order to seek to limit the free speech of others on moral grounds, one must be certain of one's moral stance. The logic of limiting free speech takes on many variations on a common theme. If I articulate an immoral position – if endorse a belief that can be regarded as racist -- then I become racist. My racist statement is then viewed as a reflection of my racist character. Since my character is racist, and thus immoral, I become an immoral person. And if I am immoral, then my claim to have a voice at the table can be dismissed.

The danger here is the failure of moral humility. That is, when we cancel another person out of a sense of our own moral certainty – when we fail to believe that the "immoral other" may have something to say – we rob ourselves of the possibility that there might be something in the other person's experience that explains his or her actions or beliefs, something that we may not be aware of, something that we might actually learn from. That is, there is always the possibility the immoral position of the other is not so immoral after all. And if we do not give the other person the opportunity to express that position, we will never know if the other person has something constructive to offer beneath what appears to be an immoral exterior.

For example, if I mistake the names of two people from another heritage or culture – say, as a White American male I mistake one Asian person for another – I might expect someone to suggest that I committed a racist act: "Are you suggesting that all Asians look the same? That is a reflection of your Western bias." The person making such an attribution may, in fact, be right! However, the simple fact is that such errors are ubiquitous to all people in all cultures when they encounter people who are new and unfamiliar. When an American visits an Asian nation, it will take time until the visitor is able to make the perceptual and conceptual differentiations necessary in order to make reliable distinctions in the people that he or she meets. And while such an act may properly be described as the product of a biased set of perceptions, such a bias is nonetheless a human process. Instead of accusations of racism, what is more likely needed are calls to allow for the time and effort needed to adjust to a new cultural group.

If we were to cancel the perpetrator of such an act – if we deny the person a space at the democratic table – we fail to entertain alternatives to our erroneous belief that the person has committed a racist act, is a racist, is an oppressor, or the like.

A second problem involves the relatively recent extension of the concept of "violence" and "harm" to the effects of language. The concept of free speech is founded upon an important distinction between *speech* and *action*. Although my actions may harm others, unless speech leads to actions that cause harm, speech functions within the sphere of the symbolic. When we say that speech harms, we are extending the concept of violence from action to speech. When we do this, we are speaking metaphorically. Unless my speech incites action, it cannot hurt you physically. To say otherwise would be to confuse genuine violence with symbolic violence.

PR and VR have much in common; both rely upon the idea that democratic action is founded upon discursive interaction between and among equals. They also agree that freedom of speech has limits. In the procedural approach, limits are placed on speech that can produce harm (i.e., speech that would incite a riot; speech that defames).

In this way, both the PR and VR approaches agree to limits on freedom of speech. This is an important point. An advocate of the PR approach must concede that ultimately, there is no purely free speech; speech is limited in explicit ways – and likely in ways that are implicit and hidden. Even under broad limits to freedom of speech, there are positions that society either explicitly or implicitly may fail to grant freedom of speech simply because their offensive content – pedophilia, incest, etc. The VR advocate can get some mileage from these concessions: there is no *purely* free speech; why are the limits you concede to preferable to limits designed to protect marginalized groups?

In the end, despite these commonalities, PR and VR advocates part ways on the nature of the moral goods that should be preserved in democratic speech. Building on the distinction between speech and action, defenders of the PR approach seek to privilege procedure over the moral content of arguments – unless speech threatens to produce physical or reputational harm. Advocates of the VR approach seek to honor equality among individuals and groups. In so doing, they are willing to place limitations on the moral content of an argument or the moral character of a speaker as a path to group empowerment. Yi has convincingly pointed out the dangers of the latter position – regardless of whether it is advocated by either the political left or right. Are there ways to bridge this divide? Perhaps. But doing so would have to be able to mitigate the risks and dangers of the VR approach that Yi has demonstrated.