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RESPONSE TO RUBENSTEIN, CONLY,  
VALLIER, AND LEVER

BY

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# Response to Rubenstein, Conly, Vallier, and Lever

Corey Brettschneider

**I**t is an honor to respond to these four excellent essays on my book, *When the State Speaks*. I begin with the contributions from Jennifer Rubenstein and Sarah Conly, who embrace my idea of democratic persuasion. Although they embrace my core arguments, they argue that democratic persuasion should be made more robust in combating viewpoints that are racist or otherwise opposed to the ideal of free and equal citizenship. Kevin Vallier and Annabelle Lever take the opposite view of democratic persuasion in their contributions. They argue that democratic persuasion is too aggressive. I defend a middle ground between these two contrasting views.

## I

### Rubenstein and Conly on

#### How Democratic Persuasion Can be Made More Robust

Jennifer Rubenstein addresses the fundamental question of unconscious racial bias in her essay. She proposes an idea of “democratic induction” to complement the idea of “democratic persuasion” that I develop in *When the State Speaks*. Democratic persuasion seeks to convince citizens to adopt the democratic principles of free and equal citizenship. It encourages citizens to engage in a process that I call “reflective revision.” Members of a

democratic society should reflectively revise their personal beliefs, amending them to be consistent with the principles of free and equal citizenship. For example, citizens should reflectively revise hateful racist beliefs in favor of endorsing equality for minorities.

Citizens, however, may be unaware of how their beliefs may conflict with public commitments to freedom and equality. Part of the process of reflective revision should include citizens discovering or becoming more aware of this conflict between their beliefs and democratic principles. For example, in the book I discuss a town councilman who publicly supports gender equality, but does not realize that he discriminates against his daughters. He deprives them of opportunities he gives to his sons, but he is not aware of the effect of his actions. The bias in this example is unconscious instead of being overt and publicly declared. It is only through reflective revision of this previously unnoticed bias that the conflict can be recognized.

Rubenstein wants a more developed account of how the state might prompt reflective revision about unconscious beliefs and actions. She argues that democratic persuasion with its focus on explicit racism is not sufficient. Rubenstein introduces an idea she calls ‘democratic induction’ to supplement what I call democratic persuasion. On this view, citizens have an obligation to examine their own unconscious biases.

Democratic induction is a welcome addendum to the idea of democratic persuasion. Rubenstein agrees with me that democratic induction should be subject to what I call the means based limit. “Democratic induction should not use coercion to force citizens to examine their unconscious biases. I would add, however, that it is also essential that democratic induction also have “substance-based limits.” The content of democratic induction should not conflict with the principles of free and equal citizenship.

I am potentially troubled by some of the admittedly effective ways that unconscious racism might be fought according to Rubenstein. To turn to one of her cases, she cites the personal style that President Lyndon B. Johnson used to pass legislation. But President Johnson often invoked stereotypes in private to bring about greater changes in racial equality. Johnson's biographer, Robert Caro, describes how Johnson would use racial epithets when speaking with Southern legislators about civil rights bills. Johnson used this racist language to gain credibility with Southern legislators, in an attempt to disarm their opposition.

My only concern is that even if such methods are effective in combating racism, the state should not invoke racial stereotypes in its official rhetoric. It is essential to distinguish between official and unofficial speech. On my view, the state can never invoke prejudicial speech at odds with free and equal citizenship, even in the hopes of eradicating unconscious bias in the long term. Thus I am skeptical of the appeal to Johnson's personal style as a model of democratic persuasion or induction by the state.

Sarah Conly shares Rubenstein's concern that the substance based limit will hinder the effectiveness of democracy persuasion. Unlike Rubenstein, Conly expresses skepticism about the means based limit on coercion. She believes that democratic persuasion must respect rights, but she argues for weakening the substance and means based limits if it would make democratic persuasion more effective. For instance, Conly suggests that highlighting examples of suffering from racism or sexism will be more effective than reasoning alone.

So far I agree that pointing to examples of suffering from discrimination would be compatible with the means and substance-based limits. There is nothing in the limits that requires that the state refrain from using effective examples. An argument for democratic principles can appeal to emotion and narrative.

But I am opposed to effective rhetoric by the state that goes beyond what I call the substance-based limit on democratic persuasion. As with Rubenstein, my concern is that effective democratic persuasion should not conflict with the principles of free and equal citizenship. Conly disagrees with such limits. Democratic persuasion, she argues, should attack beliefs that can have “public effects” that are detrimental to free and equal citizenship, even if such beliefs are themselves consistent with that ideal.

My worry about such a “public effects” principle is that it is too broad. It does not specify how direct or serious the effect of a belief on democratic citizenship must be to qualify for being subject to democratic persuasion by the state. The public effects principle could then potentially subject any viewpoint to democratic persuasion, no matter how innocuous the viewpoint might be. For example, Marxists claimed that any belief in God had the eventual effect of weakening a commitment to certain forms of democratic action. They thought that religion was a source of comfort, which made it somewhat less urgent to act politically. The public effects principle would then have the unacceptable implication that belief in God would be subject to transformation, even if religious citizens endorsed democratic principles.

## II

### Vallier and Lever on

#### **Why Democratic Persuasion is Too Aggressive**

Kevin Vallier suggests that my account of transformation commits me to a state role in making theological judgments.

Vallier believes that when the state criticizes religious groups that engage in hate speech, the state engages in theology.

However, one can criticize hate speech or other views that are opposed to democratic values without engaging in theology. I am focused on defending a set of democratic values that might or might not conflict with theological values. That does not require that the state become a theologian, although it might impact theological institutions, notably churches like Westboro. My aim is to have the state promote a set of democratic values, and not to make theological judgments about the existence or nature of God. I am seeking to defend the reasons for rights, including the reasons that undergird the right to freedom of religion. That right is based on an ideal of free and equal citizenship. To defend religion, we must uphold the values of freedom and equality that ground religious rights, even in the face of religious opposition. This defense of free and equal citizenship engages in reasoning about the meaning of religious freedom, but it does not make theological judgments about the existence or nature of God.

But I do think Vallier is correct that some religious groups will find that democratic persuasion impinges on their theological commitments. Some religious groups have no trouble seeing how their theology leads them to endorse an ideal of free and equal citizenship. But others, such as the Westboro Church, will find their theological commitments at odds with the state's promotion of the ideal of free and equal citizenship. Their central commitment, as they see it, to the idea that God hates gays is opposed to the principle of equality for gay citizens under law. To the extent that the government promotes an ideal of equality, it inevitably criticizes homophobia, whether the discrimination is grounded in secular beliefs or the Westboro's view of theology.

I take Vallier's point to be that we know these effects will happen. They are foreseeable. But recognizing that democratic

persuasion might impact theological viewpoints is not the same as saying that democratic persuasion is itself theological or engages in theology. The state is not endorsing a belief in Christianity, Islam, Buddhism, or any religion at all. Rather, the state is promoting a set of democratic political values even when they conflict with other values, including those grounded in some theologies.

The idea that the state should refrain from actions that will have any impact on religious viewpoints would have the implausible implication that the state could never act at all. Almost all actions by the state will have some impact on religious viewpoints. Take supporting a food stamp program to prevent hunger. State support for food stamps may tend to lead citizens to look more favorably at religious viewpoints that require help for the poor, and less favorably at religious viewpoints that would abandon them. But the fact that state speech in favor of food stamps would have some impact on religious viewpoints does not mean that the state is engaging in theology.

Vallier also raises a further objection. It is not just that the state will itself engage in theology. He argues further that democratic persuasion targets reasonable theological doctrines. In particular he thinks that my claim that democratic persuasion in defense of gay rights inevitably take a stand on matters of reasonable theology.

Here Vallier shifts the terrain from his concern about theological reasoning by the state to one about interventions into reasonable theology. Thus he seems to acknowledge that there is some way to draw the line between reasonable and unreasonable religious beliefs by appealing to a theologically independent standard. But this was precisely what he denied in accusing me of engaging in theology.



I suspect that what is really at issue between Vallier and me is not a disagreement about the role of the state in regard to religious belief, but rather a substantive disagreement about the reasonableness of the concept "love the sinner, hate the sin." By "reasonableness," I mean whether the concept or belief should be the concern of a theologically independent, public standard of respect for free and equal citizenship. Some religious believers who oppose gay marriage claim that they do respect free and equal citizenship. They portray themselves as accepting of gay citizens, but as being critical of the act of gay sexual relations. What I take to be unreasonable about this position is that it suggests that being gay is not a status that should be protected from discrimination. It instead treats being gay as defined merely as a discrete set of sex acts. This would be as unreasonable as suggesting that those who engaged in heterosexual sex acts could be reduced to those acts, without regard for the love that exists in long-term heterosexual romantic relationships. While there is not room here to fully explore this issue, I think I have shown that the debate concerns the content of the reasonable, and not theology.

Like Vallier, Annabelle Lever is concerned that my view of democratic persuasion is problematically non-neutral toward religion. She worries that it will be seen as taking sides between religions in internal disputes between different sectarian constituencies. For example, she claims that my view would seem to affirm liberal Catholicism versus a more conservative variant, or Reform over Orthodox Judaism. She argues that even if I seek to avoid taking sides in such disputes, any intervention by the state will be interpreted this way.

In my earlier response to Vallier, I argued that democratic persuasion was not theological, but instead advances a set of public democratic commitments that do not address the

theological questions of the existence or nature of God. Unlike Vallier, Lever does not accuse me of engaging in theology. But she worries about the perception that I am doing so, especially by groups that will interpret themselves as disfavored.

I think that Lever points to the need to further theorize how democratic persuasion should take place; she is not making a challenge to the idea itself. For instance, democratic persuasion might need to explicitly affirm the rights of groups to dissent from core democratic values. It also must make clear that it is advancing a set of secular values, and not affirming or disaffirming particular theologies.

Of course, even with clear attempts to clarify the meaning of state expression some might be misconstrued. In the United States, the First Amendment ban on state endorsement of particular religions has been regarded by some as a “war on Christmas.” But the state cannot guarantee a way to ensure that it will always be understood. It can only make a good faith effort to clarify its message.

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