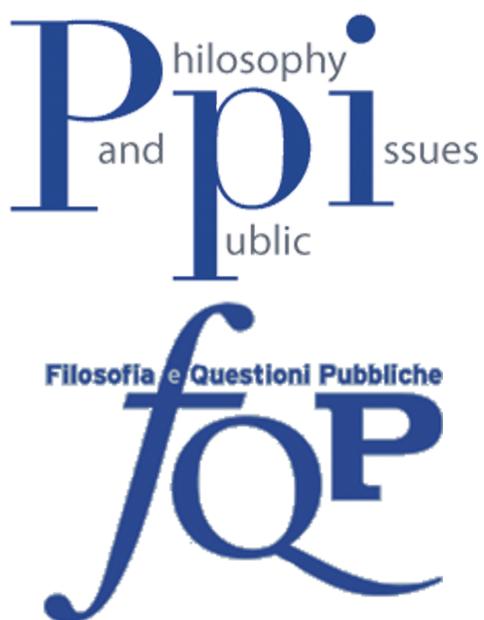


SYMPOSIUM  
ILLIBERAL VIEWS IN LIBERAL STATES



THE LIMITS OF DEMOCRATIC PERSUASION

BY  
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# The Limits of Democratic Persuasion

Carl Fox

**N**o matter how hard we work to make our democracies tolerant and inclusive, there will always be citizens who reject the basic idea that we should give everyone an equal say in the first place. They want to tear down the whole system and replace it with something designed to exclude those groups that they deem to be unworthy of the standing of free and equal citizenship, and they just won't stay quiet about it. They write blogs, make speeches, organise marches, and, sooner or later, some of them graduate to violence. So far, so depressingly familiar. But what should we do about these radical dissenters? In particular, how are we to reconcile the liberal principle of free speech with our duty to protect the rights and freedoms of all citizens? Corey Brettschneider's main aim in his original and insightful book is to find a way to stand firm on the principle of free speech, as he believes that this "right gives citizens an entitlement to say and believe whatever they wish",<sup>1</sup> without conceding that a liberal state is impotent to resist the spread of hateful doctrines that deny the freedom and equality of all citizens. The solution Brettschneider proposes is to distinguish between the coercive and expressive roles of the state. He argues that although the state must permit the expression of discriminatory and objectionable beliefs, it has a responsibility to

<sup>1</sup> C. Brettschneider, *When the State Speaks, What Should it Say? How Democracies Can Protect Expression and Promote Equality*, (New Jersey: Princeton University Press, 2012), 37. Unless otherwise stated, parenthetical references are to this text.

articulate its foundational principles, rebut hateful viewpoints, and, ultimately, to persuade citizens to adopt its values as their own. The problem that I wish to raise in this paper is that he is insufficiently sensitive to the dangers of non-rational persuasion.

Brettschneider argues that liberal democratic states are not value neutral in the sense that they have no values of their own and serve only to impartially defend a maximal set of liberties for all of their citizens. Instead, he advocates ‘value democracy,’ the view that the state “should engage in democratic persuasion, actively defending the democratic values of freedom and equality for all citizens” (4). He points to Martin Luther King Day and Black History Month as examples of how the state can emphasise its commitment to the principle of equal civil rights and thereby speak up for associated values such as tolerance, dignity, and equality (46). He is careful to set limits on how democratic persuasion can be pursued, and the ends it should be used to achieve. He sets a substance-based limit which proscribes state action to combat inegalitarian beliefs that do not themselves challenge the ideal of free and equal citizenship. However, I will be primarily interested in his means-based limit, which “requires that the state not pursue the transformation of citizens’ views through any method that violates fundamental rights, such as freedom of expression, conscience, and association” (87). In particular, Brettschneider asserts that this “does not mean that it must avoid emotion or rhetorical persuasiveness” (89). I think this leads him into trouble. Although he rejects “subconscious or subliminal methods” (89), he does not rule out non-rational persuasion, which is a powerful tool that Aristotle warned could be open to abuse. Even if we set aside that issue, we still have two important grounds for concern about the use of non-rational persuasion. The first is autonomy, and the second is stability.

One way of thinking about the relationship between autonomy and authority is that submission to the authority of a state can enhance citizens' autonomy by helping them to respond to reasons as part of a collective. We can best respond to our reasons for averting climate change say, or for guaranteeing civil rights to everyone, as a political community. However, many of our reasons do not mandate collective action and this is true of our reasons for adopting moral principles and values and, indeed, making them a part of how we think about ourselves and our communities. When the state deploys non-rational persuasion it might well be successful in inculcating its core values in its citizens, but those citizens do not take up those values as a response to reasons. The state is not helping them to be autonomous in a sphere where I shall argue it is particularly important to be autonomous—the construction of one's moral identity.

I will argue that a necessary condition for being autonomously committed to a value or a principle is that one endorses it because of the considerations that count in its favour. It is only when commitments are endorsed for reasons that they constitute an expression of our nature as reason-responsive beings. Emotional appeals, rhetorical devices, and other non-rational means of persuasion look to be at odds with this conception of autonomy. My claim is that it matters to us that we select our values for reasons so there is, at the very least, a significant missed opportunity here if the state takes it upon itself to persuade us to embrace its values in a non-rational way.

More seriously, though, on a Razian model of authority it is not clear that the state has the authority to do this because it is moving beyond helping us to comply with our reasons by telling us what to do, and trying to help us to comply with our reasons by influencing what we care about, how we think, and even how

we understand ourselves.<sup>2</sup> This is an important departure because establishing the first does not necessarily establish the second. The expressive state needs its own answer to the question of how to reconcile authority and autonomy.

The next problem I will tackle is concerned with stability. Brettschneider suggests that value democracy will promote the stability of a liberal democracy by persuading citizens to adopt its core values (107). My argument will be that values that are autonomously adopted or endorsed have deeper roots and are for that reason more robust than values held non-rationally. In the absence of sufficiently good reasons to reverse an earlier decision to endorse a value, acting contrary to it calls into question one's identity as a reason-responsive agent. I shall argue that this is something that most of us care deeply about and so it generates a weighty sanction to tie us those values that we do autonomously adopt. Values that we do not endorse for reasons are much more fragile. When the effect of the rhetorician's repetition (or alliteration), for instance, wears off then it is hard to see what binds the citizen to the value if it is challenged.

Ultimately, I submit that Brettschneider needs to go beyond his substance and means-based constraints and think about what it means for citizens to adopt values and anchor them within their own identities. My suggestion will be that he introduce a third constraint on the use of non-rational persuasion to the effect that it should only be used to make citizens aware of considerations to which they might otherwise have been blind. In this way, value democracy will facilitate, rather than bypass, autonomy and the process of tangibly committing to values as a response to reasons.

I shall begin by explaining the basis and significance of democratic persuasion and then move on in Section II to look in

<sup>2</sup> J. Raz, *The Morality of Freedom*, (Oxford: Clarendon Press, 1986).

more detail at the limits that Brettschneider does, and doesn't place, on the expressive state. Section III will consider the nature of rhetoric and begin to lay out the potential pitfalls and drawbacks of extra-rational persuasion. I will explore this line of thought in the sections on autonomy, authority, and stability, before proposing my autonomy-based limit in Section VII.

## I

### Democratic Persuasion

Hateful viewpoints, Brettschneider tells us, express “an idea or an ideology that opposes free and equal citizenship” (1). Those who are committed to them typically “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” (1). Now, broadly speaking, there are two familiar approaches to dealing with people who are committed to such positions. We can insist that the state remain neutral and protect their right to express their noxious views up to the point where it amounts to threatening harm or inciting violence in a combustible situation. Mill's example of stirring up an already agitated mob is still a good example here.<sup>3</sup> Alternatively, we can legislate to outlaw hate speech and bring the might of the modern state to bear on those who express views that are incompatible with the core values that underpin liberal democracy.

The problem with option number one is that it lets extreme discriminatory speech go unchallenged. At best this seems to us

<sup>3</sup> See J. S. Mill, *On Liberty* in M. Warnock (Ed.) *Utilitarianism; On Liberty; Essays on Bentham: Together with selected writings of Jeremy Bentham and John Austin*, (Glasgow: Collins Fount, 1962), 184.

weak, but at worst it is dangerous - hateful ideologies have gained traction before. What kind of state would stand idly by while its core values are eroded? Targeted groups might also suspect a measure of complicity if their state quietly goes about the business of facilitating hurtful and poisonous speech. Hateful viewpoints cast a long historical shadow and it is not unreasonable for minority groups to be suspicious under such circumstances.

Option two is also unsatisfactory. It is, after all, a restriction on freedom, but more importantly it constrains debate when it is the debate about its own foundational values that characterises democracy. It was Mill again who argued that it is only by considering and confronting objections that we prevent our principles from lapsing into dead dogma. On that basis we can conclude that prohibition has the perverse effect of impoverishing both the actual and prospective proponents of democracy insofar as it robs them of the opportunity to develop their capacities for a sense of justice in the context of a full and frank exchange of views.<sup>4</sup>

Like any good showman, Brettschneider proceeds to offer us a third option. We can distinguish between the state's capacity to coerce its citizens<sup>5</sup> and its ability to influence behaviour by

<sup>4</sup> Rawls's conception of the moral person is based on what he calls the two moral powers. The first is the capacity for a sense of justice, which is the ability to judge things to be just and unjust and the willingness to propose and abide by fair terms of cooperation. The second moral power is the ability to form and revise a conception of the good. See J. Rawls, *Justice as Fairness: A Restatement*, (Cambridge: Harvard University Press, 2003), 18-19.

<sup>5</sup> See D. Knowles *Political Obligation: A Critical Introduction*, (Abingdon: Routledge, 2010), 19. This is what Knowles calls the "nasty face of the state" because states "threaten their citizens, fine, imprison, publicly shame and exact compulsory service from them. In some jurisdictions they inflict corporal punishment and the death penalty".

communicating with them instead. The latter is its “expressive power” (3) and it exercises this when it ‘speaks’ to us. This opens up a possible course of action for the state between the extremes of prohibition, and the heavy-handed tactics that must accompany it, and standing by idly twiddling its metaphorical thumbs. The state can permit, and indeed protect, the rights of dissenting citizens to give voice to their hateful viewpoints while at the same time rebutting those viewpoints and articulating, and thereby affirming, its commitment to the free and equal status of all of its citizens.

What Brettschneider has in mind, then, is a state that actively defends and promotes democratic values. This is where democratic persuasion comes in, the aim of which “is to change the minds of the opponents of liberal democracy, and, more broadly, to persuade the public of the merits of democratic values” (6). Indeed, the right we have been considering of all citizens, including the hateful ones, to advance their views is grounded in these very values.<sup>6</sup> Aside from the attractive middle ground that it opens up between prohibition and value neutrality, Brettschneider offers four reasons for the state to be in the business of promoting values.<sup>7</sup>

First, he claims that a state is less legitimate when there is a low level of congruence between the state’s foundational values of free and equal citizenship and the popular beliefs held by the citizenry. This is not to say that a state cannot be morally justified without this congruence, but Brettschneider believes that there is something regrettable about such a situation (38). He is unfortunately vague on the exact nature of the democratic value

<sup>6</sup> Brettschneider refers to this as the paradox of rights (5-6).

<sup>7</sup> For Brettschneider, individuals have a duty first to adopt democratic values and then to promote them in dialogue with their fellow citizens (37; 41; 50; & 93).

of high levels of congruence, and, indeed, on precisely how we should understand legitimacy. However, as I shall show later, in Section IV, there are autonomy-based reasons for encouraging congruence since these are the appropriate values for citizens to adopt.

Diminishing levels of congruence also raise the spectre of an unstable state that lacks sufficient public support to make its laws stick. Stability requires general compliance, and the Rawlsian condition of stability for the right reasons is only satisfied when that compliance is firmly rooted in citizens' shared sense of justice. Brettschneider is surely right that there comes a point when a notional democracy cannot meaningfully be called a democracy at all if its members eschew the basic tenets.

Third, the status of free and equal citizenship can be hollowed out if contrary views and practices are widespread in a community. Whether in the home, the workplace, or out and about in the world, everyday instances of discrimination can make a mockery of the state's formal declarations. This is especially problematic if it is public officials who develop anti-democratic sentiments since they are the ones charged with delivering on the state's guarantees. Only when democratic values are widespread is it reasonable to trust that public officials will reliably enforce and protect free and equal citizenship.

Finally, as we have already discussed, the state has an obligation to not only preserve the free and equal citizenship of its members, but to do so publicly and in a way that dispels any reasonable suspicion of complicity with the expression of hateful viewpoints.

Democratic persuasion can take a number of forms. Perhaps the most familiar example is written judicial rulings where judges outline the basis of their decisions and trace a line back to

political values enshrined in the constitution. However, Brettschneider suggests that states are, in fact, much more proactive in fulfilling their expressive function. Another key example he offers is public apologies. For instance, in 2013 the Irish Taoiseach Enda Kenny issued a formal apology on behalf of the state for its role in supporting the now infamous Magdalene Laundries. Tens of thousands of women were effectively imprisoned and used as a source of free labour. Many were forced to give up their newborn babies. One of the reasons for issuing that apology was to distance the state from values that were incompatible with treating all of its citizens as free and equal, and to unambiguously declare that commitment for the future.<sup>8</sup>

States can also ‘speak’ simply by drawing attention to notable historical figures and honouring them for their embodiment of particular values and causes. Declaring public holidays can, therefore, be a form of state speech. So too with erecting statues, organising public events, and issuing special stamps, notes, and coins. And we should not forget education, since the state can place democratic values right at the heart of students’ curricula.

So, the state can speak in a multitude of different ways and it can make its voice all but impossible to ignore. A key difference, then, between state speech and the speech of individuals is that

<sup>8</sup> “For we saw difference as something to be feared and hidden rather than embraced and celebrated. But were these our ‘values’? Because we can ask ourselves for a State – least of all a republic: What is the ‘value’ of the tacit and unchallenged decree that saw society humiliate and degrade these girls and women? ... in naming and addressing the wrong, as is happening here today, we are trying to make sure we quarantine such abject behaviour in our past and eradicate it from Ireland’s present and Ireland’s future. In a society guided by the principles of compassion and social justice there never would have been any need for institutions such as the Magdalene Laundries”. <http://www.thejournal.ie/full-text-enda-kenny-magdalene-apology-801132-Feb2013/> Accessed 1/6/15.

the state can speak so much louder.<sup>9</sup> Democratic persuasion must, therefore have limits and it is to these that we shall now turn.

## II

### Limits on the Expressive State

Brettschneider is aware of the danger that, as sometimes happens in its coercive role, the expressive state could become overbearing and intrusive. In order to buttress the rights to free speech and freedom of conscience he imposes two limits on state speech.

The first limit that I will discuss, although it is the second limit that Brettschneider enumerates, is the ‘substance-based limit’, which prohibits the state from confronting inegalitarian beliefs that do not challenge the ideal of free and equal citizenship. One example he uses is religious belief in the damnation of non-believers and members of other creeds (35). This is an inegalitarian belief, but it is not incompatible with a commitment to free and equal citizenship in one’s political community. Neither is the inequality involved in being a bad friend and failing consistently to pay your way when out for lunch, since this does not imply hostility to free and equal citizenship (89).

The substance-based limit prevents an overzealous state from imposing a comprehensive doctrine, rather than promoting the political values for which it properly has responsibility. It would

<sup>9</sup> Brettschneider recognises the worry that the state’s “massive power,” means that its expression could be “in a sense overwhelming,” although he ultimately concludes that so long as the state’s voice does not drown out other voices this objection does not gain any traction (152). As we shall see, it is a little more complicated.

fail to respect its citizens as moral equals if it inserted itself into deliberations that are not strictly publically relevant.<sup>10</sup> So, “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” (14). The state should, therefore, refrain from promoting a ‘thick’ conception of the good and ensure that its speech is consistent with all reasonable comprehensive doctrines that overlap on the principle of respect for persons as free and equal.

Brettschneider’s other limit is the ‘means-based limit’ which concerns the methods that states can employ to get their message across. It requires “that the state not pursue the transformation of citizens’ views through any method that violates fundamental rights, such as freedom of expression, conscience, and association” (87). He claims that on his view “the state can avoid crossing the means-based limit by confining its method of communicating its message to its expressive rather than its coercive capacity” (87), and he defines coercion as “the state threatening to impose a sanction or punishment on an individual or a group of individuals with the aim of prohibiting a particular action, expression, or holding of a belief” (88).

Citizens are to be respected as free and equal and this, he tells us, also “bars the kind of propaganda that avoids reasons, and relies on character assassination, mockery, or the denial of an individual’s humanity” (89). Expanding on the idea that democratic persuasion must retain some kind of connection to reasons, Brettschneider goes on to say that the state should not

<sup>10</sup> Of course, while there is no necessary connection between some inegalitarian beliefs and hostility to free and equal citizenship, we may worry that it is psychologically easy to make that transition. Even so, the state must keep a proper distance and restrict its persuasive efforts for the sake of permitting citizens to develop and exercise their two moral powers.

“resort to subconscious or subliminal methods that shun reason altogether” (89). However, it is not difficult for persuasion to meet the condition that it not shun reason ‘altogether’, and this is where a problem starts to emerge.

Emotional appeals and rhetorical devices are permitted for the expressive state (89). Indeed, Brettschneider takes the position that it would be remiss of the state to refrain from such effective methods since it is now in the business of persuasion: “[g]iven the choice between expressing the values of freedom and equality in a non-persuasive or persuasive manner, all else being equal, the state should opt for forms of persuasion that are more convincing” (91). This is deep water, and I submit that Brettschneider charts the wrong course by effectively farming out his theory of rhetoric to Simone Chambers and Bryan Garsten (91 fn.35).

I say this for three reasons. First, it papers over a failure to adequately spell out the potential problems here for democratic persuasion. Second, Brettschneider is too quick to help himself to other theories without demonstrating that they are fully compatible with his own. Chambers, in particular, is primarily interested in mass deliberation and collective decision-making. This is, of course, relevant here, but Brettschneider is at least as interested in citizens’ individual interests in cultivating their two moral powers. As such, Chambers’ account of deliberative rhetoric, while helpful, cannot simply be plugged in. Having said this, Chambers’ distinction between ‘plebiscitary rhetoric’<sup>11</sup> and ‘deliberative rhetoric’ is instructive and points the way towards a third limit that I shall argue should be imposed on democratic

<sup>11</sup> See S. Chambers “Rhetoric and the Public Sphere: Has Deliberative Democracy Abandoned Mass Democracy?” in *Political Theory*, 2009, 37 (3), 337-339.

persuasion.<sup>12</sup> The former encompasses speakers, broadly understood, who are focused only on ‘winning’ some issue or campaign.<sup>13</sup> Deliberative rhetoric, in comparison, “makes people think, it makes people see things in new ways, it conveys information and knowledge, and it makes people more reflective”.<sup>14</sup>

Third, skipping over the dangers of rhetoric detracts from one of the chief virtues of Brettschneider’s articulation of value democracy. On the whole, *When the State Speaks* offers something that is still sadly rare in political philosophy: concrete guidance for the political sphere. Our governments do have to deal with the problems caused by unreasonable citizens spouting hateful viewpoints. Understanding and embracing the expressive role of the state instead of occasionally grasping at it would constitute genuine progress. Deploying non-rational means of persuasion is not without its dangers and drawbacks. An exhortation to go away and learn about rhetoric, instead of a frank discussion followed by an appropriate action-guiding principle, is not in keeping with the spirit of practical philosophy that motivates the rest of the book.

In truth, the charge that he is advocating non-rational persuasion is unfair to Brettschneider. Extra-rational persuasion is better since he is not suggesting that state methods shun reason altogether, but rather that they can, and should, go beyond presenting the relevant reasons themselves in a clear and accessible way. The aim appears to be persuasion, as opposed to

<sup>12</sup> See Section VII.

<sup>13</sup> See Chambers again: “[o]n this view, rhetoric, while able to cleverly defend itself, is not interested in engaging in debate or dialogue, which is to say, rhetoric is not interested in giving an account of itself. Rhetoric is interested in winning the day” Ibid, 327.

<sup>14</sup> Ibid, 335.

the facilitation of deliberation, and, if this is indeed what he means, then we are again led to the conclusion that his view does not map perfectly on to Chambers' view.

In the absence of clarity I think we need to work through the potential pitfalls and drawbacks of rhetoric and extra-rational persuasion. We will then be in a position to suggest a limit that unambiguously prohibits emotional appeals and other tricks and devices except when they are used to alert citizens to relevant considerations that might otherwise evade their deliberations. And so it is to the dangers of rhetoric that we shall now turn.

### III

#### The Dangers of Rhetoric

For Aristotle, rhetoric was the skill of persuasion. A rhetorician possesses the ability to get individuals and groups to feel, believe, and, ultimately, to do things. Jamie Dow argues that, as Aristotle understands it, rhetoric aims at an epistemic good.<sup>15</sup> He claims that “an orator presents listeners with proper grounds for conviction of his conclusion just if what he presents to them is—by their lights—good reason for adopting the conclusion he is recommending.”<sup>16</sup> We must distinguish, however, between the skill itself, and the ends for which it can be used.

<sup>15</sup> J. Dow *Passions & Persuasion in Aristotle's Rhetoric* (Oxford: Oxford University Press, 2015), 34.

<sup>16</sup> *Ibid* 51. There are three grounds that the speaker can provide: his character (ethos), standard premises (logos), and the emotions of his audience (pathos). Emotions are often picked on here as improper grounds for belief. Dow advances the view that Aristotle thought of emotions as complex states that included cognitive content, which is to say, roughly speaking, that a person in a state of fear takes her circumstances to be such that fear is warranted. If this is correct, then it is possible that an orator who can elicit fear of some person or

As with any skill, the ability to persuade can be abused for the sake of bad or misguided ends. Since we are talking about extending, or at least recognising a new kind of, state power, it is an important concern that it may be misused. We do not have to look very hard to find examples of persuasive politicians who proved to be completely unfit to hold this kind of power.

However, I want to leave this worry aside here for a similar reason to Aristotle's.<sup>17</sup> That a thing can be bent and twisted to nefarious purposes is not, by itself, a decisive reason to deny ourselves the benefits it offers. In the case of democratic persuasion, those benefits could be considerable. As Dow suggests: "From the point of view of the state, we value skilled speech-making because of its epistemic contribution to public deliberation in politics and law. From the point of view of the listener, when anyone sincerely pays attention to a speech, it is not in the hope of being duped or manipulated but in the hope of being informed and helped to a better-deliberated view".<sup>18</sup>

It is clear enough that the ultimate end of democratic persuasion is a good one. The goal is not simply to win the argument with hateful viewpoints, but to win over their adherents to the cause of free and equal citizenship, deepen the commitment of reasonable citizens, and create an atmosphere in

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set of circumstances can thereby provide a listener with a premise for some argument. I will not examine this position here.

<sup>17</sup> "If it is argued that one who makes an unfair use of such faculty of speech may do a great deal of harm, this objection applies to equally to all good things except virtue, and above all to those things which are most useful, such as strength, health, wealth, generalship; for as these, rightly used, may be of the greatest benefit, so, wrongly used, they may do an equal amount of harm". Aristotle *The 'Art' of Rhetoric*, trans. by J. H. Freese, (London: Heinemann, 1926), 1355b2-7. See also J. Dow, *Passions & Persuasion in Aristotle's Rhetoric*, (Oxford: Oxford University Press, 2015), 51 fn.31.

<sup>18</sup> *Ibid* 83.

which everyone can deliberate and express themselves as a moral equal. Any politician who deployed her rhetorical skills for some other ultimate end would not be engaging in democratic persuasion.

The pursuit of noble ends, however, sometimes obscures inappropriate use of means. Individuals have an interest not only in greater levels of reflection and deliberation in general, but also in working through each step in the argument for democratic values for themselves. With this in mind we might be concerned when Brettschneider tells us that democratic persuasion “allows for certain forms of rhetoric to further the democratic values that underlie rights, provided that the rhetoric is truthful and combined with the promulgation of reasons” (91 fn.35). Specifically, we might worry that although the ultimate aim is one we can endorse, it is consistent with using psychological techniques and speechcraft to sweep citizens along when it comes to individual points and considerations. In fact, before we get to that point we must consider George Tsai’s contention that there are some circumstances in which even the giving of reasons can count as objectionably paternalistic.<sup>19</sup> If it impinges on those areas of their lives over which they are ordinarily entitled to control then it can be problematic.

Offering reasons is often assumed to be the paradigm case of respect for agency, but Tsai worries about cases where an agent offers reasons to another but denies her a sufficient opportunity to engage with those reasons for herself.<sup>20</sup> In such cases, he

<sup>19</sup> G. Tsai, “Rational Persuasion as Paternalism,” in *Philosophy & Public Affairs* 2014, 42 (1), 78-112.

<sup>20</sup> Ibid, 88. In fact, there are three necessary conditions for rational persuasion to count as paternalistic. Tsai worries about cases where an agent offers reasons to another, but is motivated to intervene by distrust and concern, conveys via this intervention the message that the other party is insufficiently

thinks, the giving of reasons can constitute a lack of respect. The pressure that rational persuasion might bring to bear can be such that an individual might justifiably feel that her agency has been usurped and that any subsequent decision or action is not really her own.

As Tsai notes: “[t]hinking for yourself involves having some control over your reasoning process. It involves having some independence—some space, some time—to exercise your reasoning capacities meaningfully, on your own terms”.<sup>21</sup> If I have an important decision to make but you continue to bombard me with advice, even if it is good advice, I might struggle to work through it on my own. Agents of the state speak from a position of presumptive authority, have access to expertise beyond the reach of ordinary citizens, and can broadcast their message in a wide range of prominent formats. This problem is compounded by Brettschneider’s rejection of what he calls the ‘spatial metaphor of privacy’ and its replacement with the idea of ‘publicly justifiable privacy’. The upshot is that “private beliefs, communications, and actions are not immune to public evaluation” (29). He does consider the right to resist transformation (165-167), but in the context of discussing Bob Jones University’s discriminatory practices he makes it clear that this does not extend to the right to be left alone “in the sense of never being criticized” (166). Brettschneider is wary of coercion because it would “impair the ability of citizens to determine autonomously which beliefs they wish to hold and defend” (88). Once we open up the definition of state speech to include such things as statues and public holidays, it becomes clear that the

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capable of weighing reasons for herself, and when this action denies her an opportunity to engage with those reasons for herself. Considerations of space prevent me from engaging with the substance of Tsai’s argument here.

<sup>21</sup> Ibid, 92.

state can ensure that its messages are pervasive and all but impossible to ignore. In that sense we might be concerned that democratic persuasion can prevent us from exercising appropriate control over our own deliberations.

Why is it so important for individuals to work through these matters for themselves? In the next three sections I will attempt to explain this by discussing autonomy, authority, and stability. It will emerge that extra-rational persuasion presents a distinct threat here, which is why we must be so cautious in setting the boundaries for the expressive state.

## IV

### **Autonomy**

In this section I will sketch an account of the autonomous life in terms of responding to reasons. When our deliberations are unduly influenced, either deliberately or unwittingly, we are denied an opportunity to express our rational natures by responding to reasons on our own. One of the most important ways in which we can respond to reasons is to fashion our own selves by constructing identities. Ultimately, democratic persuasion aims at identity formation (and transformation) since this is how democratic values can be anchored in citizens' own ways of thinking and being. My argument will be that democratic persuasion that encroaches upon citizens' own process of responding to reasons potentially robs them of the opportunity to be autonomous in a sphere where it is particularly significant. Extra-rational persuasion for the purpose of driving us towards a particular belief, commitment, or action straightforwardly satisfies this definition because it generates responses in a non-rational way.

Here is the idea: it matters to us that we live *intelligible* lives and the way to live an intelligible life is to act for reasons, indeed to act for good reasons. A very particular type of freedom consists in liberation from our limitations as embodied beings, determined by our natural drives and desires. Autonomy is often understood in opposition to heteronomy.<sup>22</sup> We are not autonomous, we might think, when we are driven by desires and appetites as opposed to what our reason tells us. The issue here is not so much that we have needs and wants as embodied creatures with a complex evolutionary past. It is true enough that I can exercise only limited control over my need to eat, for example. But this only undermines my ability to understand myself as a rational agent when my biological imperatives loom too large over my deliberations and obscure other, weightier, considerations for action. Excepting extreme circumstances of deprivation or stress, we can, as Christine Korsgaard emphasises, always “back up” from our drives and desires and reflect on the question of what we *should* do.<sup>23</sup> What would we make of a creature who possessed this capacity but was never moved to weigh considerations against one another in order to decide how best to act? Very little, I think, and if we do not want to be like that then we have an interest in being responsive to reasons.

We are also beings who persist over time and this affords us the opportunity to decide who we want to be and what we want to do with our lives. We can, I submit, form and revise our conceptions of our own selves, partly anyway, as a response to reasons. Our moral principles are particularly important elements

<sup>22</sup> For a classic statement of the contrast see I. Kant, *The Groundwork of the Metaphysics of Morals* trans. by M. Gregor (Cambridge: Cambridge University Press, 1998), 4:446-447.

<sup>23</sup> C. M. Korsgaard, *The Sources of Normativity* in O. O’Neill (Ed.) *The Sources of Normativity* (Cambridge: Cambridge University Press, 1996), 93.

in our self-conceptions because of the deep regulative role that they play. Allow me to illustrate this with a trivial example. Consider the principle that when in the pub one should make some extra space for any valiant soul trying to carry more than two pints.<sup>24</sup> Now, sometimes we describe our commitments in terms of a personal set of rules that we observe but this makes a natural, elegant solution into something cumbersome. It is not so much that I have a rule about making some space for people trying to get away from the bar with more than two handfuls. Rather, I simply understand myself as the kind of person who makes a little more room for someone with a precarious load.

Incorporating moral principles into our identities in this way secures their place in our deliberations because it attaches a weighty sanction that is incurred in the event of a violation. To act contrary to a principle that forms part of how you think about and understand your self is to undermine your identity and compromise who you are. This is something that matters a great deal too almost all of us and it also explains the significance that Brettschneider attaches to what he calls ‘reflective revision’.<sup>25</sup> Now, how does all of this bear on non-rational persuasion?

Brettschneider suggests that it is good for all citizens to hear a reasoned defence of public values (45). We can now tell a story about this in terms of autonomy as responsiveness to reasons. Individuals ought to acknowledge these values and they do better as reason-responsive agents when they do. For those individuals who already buy into the ideal of free and equal citizenship,

<sup>24</sup> Please drink responsibly.

<sup>25</sup> “Citizens engage in reflective revision when they endorse the idea of free and equal citizenship and appeal to it to evaluate more general beliefs... To the extent that public values might conflict with the existing worldview held by citizens, a political conception of free and equal citizenship requires reforming and changing existing beliefs” (52).

another hearing may clarify certain aspects or consequences of their commitment and so improve their ability to respond appropriately to those considerations that apply to them in their publicly-relevant deliberations and behaviour. However, insofar as the state engages in extra-rational persuasion, it robs its citizens of the opportunity to respond on their own to the considerations that count in favour of free and equal citizenship. This also explains the enhanced moral status of states that permit their citizens to express their political views, no matter how noxious they might be. And the ideal scenario is one in which citizens reason their way to free and equal citizenship for themselves and incorporate it into their worldviews. This is why congruence should be so highly prized.<sup>26</sup>

Effective non-rational persuasion will have an effect on our feelings, beliefs, and behaviour and, we may suppose, will result in respective changes that are fitting for citizens who have an obligation to uphold public values. The problem is that these changes will not be *responses* to reasons. Further, it presents a missed opportunity to facilitate the deliberate process of identity-creation.<sup>27</sup> This will turn out to impact negatively on stability, but for now the concern is simply that it is particularly important to us to respond to reasons by forging our identities and it is not an insignificant loss when this opportunity is taken away. This is not to say that it may never be better, all things considered, for the state to take a hand here, but it raises a clutch of questions about authority that cannot be ignored.

<sup>26</sup> See Section II.

<sup>27</sup> This is not to say that identity-formation must always be a conscious process. The thought is that there is, however, something special about working on yourself in this way, and this includes reflecting on your commitments and endorsing only those that withstand critical scrutiny.

## V

### Authority

Brettschneider is not primarily interested in questions of authority and so never articulates an account of citizens' duty of obedience to a suitably just state. In this section I will discuss Raz's normal justification thesis to illustrate my worry that Brettschneider's casual endorsement of extra-rational persuasion obscures a potentially serious lacuna in his theory. The worry is that if states take it upon themselves to help us to better comply with our reasons by controlling how we think and feel, then they have exceeded the scope of Razian authority and so we are led to wonder on what basis they could justify such power and how it could be reconciled with our interest in living autonomously.

For Raz, "the normal way to establish that a person has authority over another person involves showing that the alleged subject is likely better to comply with reasons which apply to him (other than the alleged authoritative directives) if he accepts the directives of the alleged authority as authoritatively binding and tries to follow them, rather than by trying to follow the reasons which apply to him directly".<sup>28</sup> We should do what genuine authorities tell us to do because we will do better by all of our reasons, including our reasons for deciding what to do on our own, if we obey their orders.

It is important to understand two other key features of the Razian story. The first is the dependence thesis and the second is the exclusionary structure that he imposes on our relationship with the various reasons that might bear on any particular decision that we have to make. The gist of Raz's dependence thesis is that authorities do not spin out entirely new reasons

<sup>28</sup> J. Raz, *The Morality of Freedom*, (Oxford: Clarendon Press, 1986), 53.

when they issue commands.<sup>29</sup> Rather, what they do is create intermediary reasons that stand between us and the entire array of reasons relevant to the circumstances that call for action of some kind on our part. An individual is subject to someone else's authority just when acting on foot of the latter's directives will generally lead to them doing better by all of their reasons, and that is what provides the underlying justification for an authority relationship.

The second feature we need to appreciate is the exclusionary character of authoritative directives on the Razian scheme. Commands from genuine authorities mute the force of the original reasons that they sum up and replace, even though their own force is still ultimately derived from the balance of those original reasons. What this means is that the original reasons should no longer be taken as reasons for action, you ought to act only on foot of the command.

So, political authorities tell us what to do.<sup>30</sup> Indeed, this is their defining feature. In issuing orders, they demand us to surrender to their judgment of what to do. However, this does not entail that we surrender our judgment generally if that is to be understood as not deliberating for ourselves or coming to our own conclusions about the best course of action. What matters is that we *do* as we are told. As Raz points out, “[s]urely what counts, from the point of the view of the person in authority is not what the subject thinks, but how he acts.”<sup>31</sup>

Another way to approach this point is to think about the value of preserving the mental space for individuals to have a good think and play around with the original reasons in the solitude of

<sup>29</sup> Ibid, 47.

<sup>30</sup> Or what not to do, which for our purposes here amounts to the same thing.

<sup>31</sup> Ibid, 39.

their own minds. For one thing, practice makes perfect, and they may develop as reasoners by revisiting state directives and working through them from various angles. For another, it seems like a sensible idea to maintain a healthy scepticism towards one's political authorities. States sometimes make grave errors and it is important both to be alive to them, so that one can recognise them when they occur, and to be disposed to challenge them if needs be.<sup>32</sup>

Finally, although citizens should do as they are told, it should still be up to them to decide which values they endorse and what kinds of people they want to be. There are some instances in which submission to authority is the best way to respond to reasons. Think of collective action problems like climate change. Rather than trying to solve climate change solely as individuals, we should submit (or perhaps institute and then submit) to a suitable authority. However, this does not apply to something like my own identity; that is something for me to develop on my own.

Democratic persuasion by non-rational means encroaches on this previously private space since political authorities would now be claiming the right to influence us through more than our critical faculties and exercise control over our thoughts and feelings. This would take Brettschneider beyond the scope of political authority as it is normally conceived. It is worth nothing that Raz does suggest that reflection on the merits of actions required by authorities could possibly "be prohibited by a special directive to that effect."<sup>33</sup> Perhaps there are some extreme circumstances in which our reasons support such total obedience that we should not even risk thinking for ourselves, but clearly

<sup>32</sup> Of course, we don't want to be too suspicious or we could lose the benefits of authority altogether. See *Ibid*, 61-62, for a discussion of kinds of mistakes that undermine state authority.

<sup>33</sup> *Ibid*, 39.

Brettschneider cannot think that this applies to our commitment to democratic values.

A natural objection here might be that this confuses the kind of authority that the expressive state needs. This objection relies upon the distinction that is sometimes made between practical and theoretical authority. Perhaps the state only claims to be a practical authority in its coercive role but in its expressive capacity it is better thought of as a theoretical authority. When it attempts to persuade its citizens it is just giving expert advice that we would do well to take, even though we don't have to. This interpretation would fit nicely with Brettschneider's concern to preserve the right to hold and express hateful viewpoints. But this response founders on emotional appeals and rhetorical devices.

If you are an expert on financial matters and I want to know how best to invest my money, I should listen to you, but if I don't you won't use the emotional associations I make with my national flag or anthem, say, or the psychological effect of the power of three to bring me around. You won't erect imposing statues of the poor hedge fund managers who had to make do without my money. Nor will you declare public holidays in honour of the investment opportunities that I have passed up. Democratic persuasion does not amount to coercion, but it goes far beyond the offering of advice. This point is especially pertinent in the case of extra-rational persuasion since this can have an effect without being subjected to critical scrutiny.

To maintain the theory of value democracy and the expressive state as it is, Brettschneider would need to provide an account of political authority that vindicates the state in intruding into our deliberations in such a comprehensive way. A more straightforward solution will be offered in Section VII. Before I get to my proposal, however, I wish to raise a further ground of concern about extra-rational democratic persuasion.

## VI

### Stability

Brettschneider is concerned about the stability of a liberal democratic system and sees this as one point on which militant democrats might hope to gain some ground.<sup>34</sup> In response, he contends that value democracy can secure stability by persuading citizens to adopt democratic values as their own. However, I think he proceeds too quickly. It is not uncommon for people to be persuaded of something only for the effect to wear off as the experience becomes less vivid in their minds. Most of us will have had the experience of changing our minds about something as the result of a persuasive talk or presentation only to find ourselves later unable to reproduce the arguments that seemed so convincing at the time. We may then slide back to our original position, particularly if pressed to take and defend a position by a new interlocutor.

Advertising works precisely by foisting irrational connections upon us and by eliciting emotions that we then associate with a particular product. If I turn on the television and sit through an ad break, no doubt I'll turn it off having acquired the idea that a soft drink will make me popular, a new car will make me sexually appealing, and big faceless corporations are as cuddly as cartoon animals. If challenged on any of these points the motivational potency of these ideas will (I hope) evaporate quickly. The more plausible the ideas, of course, the easier it will be to come up with ad hoc arguments or to latch on to existing ones. And, it must be said, democratic persuasion, as Brettschneider envisages it, will primarily be an exercise in rational persuasion. But, to the extent that it relies on extra-rational means, it will produce unstable

<sup>34</sup> See Brettschneider (17; 25; 38-39; 107).

results since the corresponding commitments will not be suitably anchored.

Writing about the dangers of relying on received opinion, Mill said: “Instead of a vivid conception and a living belief, there remain only a few phrases retained by rote; or if any part, the shell and husk only of the meaning is retained, the finer essence being lost.”<sup>35</sup> As Brettschneider acknowledges, it is the whole justification that is owed to the public, and it is not sufficient that it is, like the truth, simply ‘out there.’

What Brettschneider really wants is for citizens to incorporate a commitment to free and equal citizenship into their own identities. This is why he speaks of a “duty for citizens to adopt democratic values as their own” (7) and argues 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” (13). The ultimate goal is not really to transform individual beliefs, but to inspire a transformation of the individuals themselves from people who understand themselves as, let’s say, white supremacists to people who identify as partners in a common political enterprise underpinned by democratic values. “When they engage in reflective revision, citizens internalise the reasons and values that underlie rights, and they transform their beliefs to make them consistent with free and equal citizenship” (29). When this occurs each individual citizen is bound respect her fellow citizens as moral equals by the cost of fracturing her own self-conception.

<sup>35</sup> J. S. Mill, *On Liberty* in M. Warnock (Ed.) *Utilitarianism; On Liberty; Essays on Bentham: Together with selected writings of Jeremy Bentham and John Austin*, (Glasgow: Collins Fount, 1962), 166.

But why does extra-rational persuasion pose a threat here? Identity-formation often takes place at an unconscious level and it is, of course, true that large parts of our identities are imprinted on us from a young age. One might object that I am offering, an overly voluntaristic understanding of identity-formation and ignoring the possibility that extra-rational persuasion for the right reasons can supplement and guide this process.

For Rawls, the stability of a theory, and so conceivably of a state or a system, is largely about resisting temptations to act in ways that are contrary to its basic principles.<sup>36</sup> Insofar as elements of our identities come to be perceived by us either as alien or unsupported by reasons then we are very likely to repudiate them. This is not to claim that we can remake our identities at will, but generally we strive quite hard to regulate our behaviour only by those principles that we have adopted or reflectively endorsed on account of the considerations that count in their favour. When elements of our identities that are not supported in this way are challenged, they quickly become a problem for us and as such cannot be contribute reliably to the stability of the democratic state by effectively regulating our conduct.

Democratic persuasion can promote stability and efficacy only if it leads citizens to feel bound to support and comply with the institutions of a just state founded on the ideal of free and equal

<sup>36</sup> See J. Rawls, *A Theory of Justice: Revised Edition*, (Cambridge: Harvard University Press, 1999), 6. It is worth noting that Rawls saw a deep connection between stability, identity, and autonomy: “The most stable conception of justice, therefore, is presumably one that is perspicuous to our reason, congruent with our good, and rooted not in abnegation but affirmation of the self” Ibid, 436. See also J. Rawls, *Political Liberalism: Expanded Edition*, (New York: Columbia University Press, 2005): “as a liberal political conception, justice as fairness is not reasonable in the first place unless it generates its own support in a suitable way by addressing each citizen’s reason, as explained within its own reason” 186.

citizenship. I have argued that this is best achieved by facilitating citizens in incorporating the values of free and equal citizenship into their identities as a response to reasons. In this way it can also establish obedience to the state as an autonomous response to reasons for individual citizens and secure for them the democratic state's meaning-giving role in creating and maintaining rational institutions and norms.

One possible way to proceed here is for the state to find ways to make citizens' own commitments transparent to them. If citizens can be assisted in drawing the connections between the principles with which they personally identify and the justification of the state then they will quite naturally feel bound to adhere to its rules when it acts justly.

Another key avenue for democratic persuasion is through education, particularly of children and young people. Here the state will have to start by encouraging children to form identities that include a regulative commitment to the principles underpinning the justification of the state. Given the nature and development of children this will necessarily involve a degree of compulsion. However, the goal should not be to produce obedient but unquestioning citizens. Rather, it should be to foster the development of a critical spirit so that individuals can come to voluntarily endorse the values of the state. Only then can the values of the state form a stable part of their attempts to live autonomous lives as a successful response to reasons.

As a child's education progresses the curriculum should change too and teachers should strive to engage their pupils as rational agents, as indeed many of them already do. There is also no good reason why civic education should suddenly stop at a particular age. If we are to take seriously the liberal exhortation that the justification of the state should be available to all then we

must be prepared to invest heavily in facilitating access to education for all citizens.<sup>37</sup>

In the end, it is for individuals themselves to make their democracies stable by identifying with those principles for which satisfactory justifications can be advanced and by policing their own commitments. In the next section I will offer a limitation on extra-rational means of persuasion that respects citizens as reason-responsive beings but permits emotional appeals and rhetorical devices when they are used to help citizens decide their political values by revealing to them relevant considerations that they might otherwise have missed.

## VII

### **An Autonomy-Based Limit**

Persuasion is hard, and encouraging citizens to undertake reflective revision not only of their beliefs, but also of their identities, is extremely challenging. As Mill noted, “[w]e often hear the teachers of all creeds lamenting the difficulty of keeping up in the minds of believers a lively apprehension of the truth which they nominally recognise, so that it may penetrate the feelings, and acquire mastery over the conduct” (167). It would be foolish to deprive ourselves of useful tools that can be used to enhance our sensitivity to the reasons that apply to us. In this section I will offer a third limit on democratic persuasion that permits appeals to emotion and other non-rational methods of

<sup>37</sup> Adults should not be forced to attend political philosophy courses, but the credentials of a state can certainly be enhanced by making civic education available to any and all who can be interested. For more in-depth treatment of civic education see A. Gutmann, *Democratic Education* (New Jersey: Princeton University Press, 1999) and E. Callan, *Creating Citizens: Political Education and Liberal Democracy* (Oxford: Oxford University Press, 1997).

persuasion on the condition that they are used to increase sensitivity to considerations which are relevant to citizens' deliberations about their political values. With this small addition I believe that Brettschneider's important contribution to political theory can be fully embraced. Here is the limit I suggest:

*Extra-rational means of persuasion should only be employed in order to make citizens sensitive to considerations that apply to their publically relevant deliberations.*

I shall call this the autonomy-based limit for the reason that it facilitates citizens in responding to reasons and prohibits bypassing their critical faculties.

Take as an example the production of a documentary video about the Magdalene Laundries I mentioned earlier. Let's imagine that this video is intended to form part of a state-sponsored museum exhibition open to the general public. One directorial decision that will need to be made is whether music will be used at key points. Music can elicit the whole range of emotions and we have been well-trained by cinema and television to make associations and suppositions depending on the various cues emanating from our surround sound systems. My proposal allows us to distinguish between the use of music to indicate the priority of certain poignant contributions or perhaps draw our attention to the special horror of particular events, and the use of music simply to make us feel what the director wants us to feel.

In the first instance, the aim is to assist the viewer in identifying those parts of the film that offer something of special significance for our appraisal of the historical actors and events, or that should bear on our deliberations about our political values. You might think that this is what charities do on a regular basis with their emotionally-charged television ads. Those of us

lucky enough to live in relatively safe, secure, and prosperous environments are informed about almost unimaginable hardship and loss on a daily basis. One response, which we almost all have, is to become inured to some degree. Charities need to break through this protective barrier if they are to have any immediate impact on our deliberations. This is, I think, acceptable just so long as the intention is to encourage us to acknowledge and reflect on upon particular considerations. It goes wrong when the purpose is to drive us towards a particular conclusion. This is when extra-rational persuasion risks robbing individuals of the opportunity to respond on their own by coming to their own conclusions and proceeding accordingly.

This is, of course, a fine line since my limit applies to the intentions with which someone may deploy extra-rational means. As such, the very same means might be permissible in one case but not another depending on the intention of the persuader. It is reasonable to hope that political authorities possessed of the appropriate intentions will also be likely to use extra-rational means in a more responsible way, but what really matters here is that they approach their expressive role in the right way. As Brettschneider rightly argues, democratic persuasion by the expressive state can perform a vital role in a healthy political community and contribute to the establishment of a democracy worthy of the name. The principal thought underlying the autonomy-based limit is that, ultimately, state intervention to improve our deliberations must only come from a place of respect for citizens as rational agents with a higher-order interest in developing and exercising their two moral powers.

## VIII

### Conclusion

In this paper I have sought to show that there is a potential problem with Brettschneider's important contribution. Specifically, he is too casual in endorsing extra-rational means of democratic persuasion. I argued that, as it stands, his theory can be interpreted in a way that permits the expressive state to deny important opportunities to its citizens to respond to reasons for themselves, calls into question the authority of the state, and fails to secure stability. I then proposed a third limit to slot in alongside the existing substance and means-based limits. This limit is the autonomy-based limit and it says that extra-rational means of persuasion should only be employed in order to make citizens sensitive to considerations that apply to their publically relevant deliberations. Adopting this limit would preserve the spirit of democratic persuasion and round out its appeal as a novel and action-guiding piece of practical philosophy.

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