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Education as Democratic Persuasion: Addressing Systemic Inequalities in Brettschneider's Value Democracy

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Claremont McKenna College

**Education as Democratic Persuasion: Addressing Systemic
Inequalities in Brettschneider's Value Democracy**

submitted to

Professor Paul Hurley

by

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Abstract

In Corey Brettschneider's book *Democratic Rights: The Substance of Self-Government*, he builds the value theory of democracy wherein procedural and substantive rights are both grounded in the core values of democracy. In his second book, *When the State Speaks, What Should It Say? How Democracies Can Protect Expression and Promote Equality*, Brettschneider elaborates on his theory to provide an account of how a liberal democracy can address hateful and discriminatory views. In response to both theories, critics have charged that the ideal value democracy does not sufficiently account for systemic inequalities that women and black citizens face. In this paper, I will elaborate on his theory of democratic education and argue that this necessary development can address these critics' concerns.

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Chapter 1: The Value Theory of Democracy

The challenge of any liberal theory of democracy is to describe a state wherein individual liberty is protected and state power is legitimated. The theory must demonstrate how different individuals may each retain their liberty and how the state will guarantee these substantive rights despite conflicting interests. Furthermore, it must explain why individuals would choose to pursue their liberty within a democratic setting. Liberal political theory often paints individual rights as inherently in conflict with self-government, leading to a tension that must be solved. The value theory of democracy resolves this tension, not by showing how to ease it, but by illustrating how, properly understood, there really is no tension between individual liberty and democracy at all.

1. Introduction to the Value Theory of Democracy

1.1 Between Two Democratic Extremes

Corey Brettschneider, in his book, *Democratic Rights: The Substance of Self-Government*, proposes a new democratic theory that avoids the typical liberal deficiencies. In his value theory of democracy, citizens' liberty is expansive and is grounded in democracy itself. Brettschneider charges that a problem with some liberal theories of democracy is that they define democratic self-government simply as majoritarian rule. Democratic rule, according to these theories, is fundamentally about the democratic procedure of citizens voting. This leaves no self-constraining principles with which to limit the majority's whims; it makes substantive rights disposable (Brettschneider 2007, 13). For example, if the majority votes to eliminate the voting rights of a group of citizens, and majoritarian rule is the only principle to appeal to, this would be legitimate and justified.

Perhaps there is a sophisticated version of procedural democracy which allows for some preconditions of liberty, or which appeals to epistemic claims, so that an elimination of substantive rights is prohibited. But the same problem may arise in this case, Brettschneider argues. The majority could still vote to eliminate the preconditions, or they could reject the epistemic claims. Ultimately, whatever substantive rights the populace agrees on remain disposable. Without appealing to some more fundamental values or principles other than simple majoritarian rule, there is no version of procedural self-government that does not internally lead to its own collapse.

Other theories, Brettschneider posits, make epistemic appeals to substantive rights fundamental and reason that democratic procedures are the best way to achieve results which guarantee the most robust set of substantive rights. Under these epistemic theories, substantive rights are granted greater protection than in proceduralist theories; there would be no democratic means to eliminate substantive rights grounded in epistemic appeals because these rights would be more fundamental than democracy itself. But therein lies the problem, Brettschneider charges.

Epistemic theories avoid the problem of dispensable substantive rights. However, by relying on epistemic appeals as fundamental, democratic procedures are only instrumentally valuable insofar as they enable the substantive rights more fully than other systems of government (Brettschneider 2007, 18). This leaves democratic procedures vulnerable to an empirical evaluation. If democratic procedures are serendipitously the best means to secure rights, then this threat is benign. If, however, democratic procedures are not the best means, then their instrumental value fades and these procedures are as disposable as substantive rights are in the proceduralist theories.

Ultimately, Brettschneider claims that these two theories of democracy fail at answering the question of what grounds democracy. If democracy is grounded in the majoritarian procedure, then substantive rights are disposable. If democracy is grounded in epistemic claims to substantive rights, then democratic procedures are disposable. A successful theory of democracy must situate itself between these two extreme theories. This theory will be able to explain why democracy reduces to something besides substantive rights and democratic procedures, while still justifying these two fundamental tenets of a liberal democracy.

1.2 The Role of Citizen

It is clear that procedural democracy and epistemic theories do not sufficiently resolve the tension between self-government and liberty. Accordingly, Brettschneider proposes the value theory of democracy, wherein self-government is grounded in the core values of democracy. The core values differ from the preconditions of procedural democracy discussed above because they provide “the basis for both justifying democratic procedures and constraining them” (Brettschneider 2007, 17). Thus, under this theory, democracy is grounded in the core values, which provide the foundation for democratic procedures.

Brettschneider articulates three core values of democracy: equality of interests, political autonomy, and reciprocity. These values do not require any epistemic claims to ground them; rather, the values are simply those that create a “shared ideal of democratic citizenship” (Brettschneider 2007, 23). The values require that the value theory of democracy relies on respecting all citizens not simply as members of the polity, but as rulers in themselves. This aspect of the value theory differentiates it from epistemic and

proceduralist theories because it “emphasizes the status of citizens as more fundamental than their role in democratic procedures” (Brettschneider 2007, 19). The status of citizens within a democracy is their sovereign status. Their sovereign status is their status as ruler over themselves, and their status as rulers in the democratic process. Thus, basing democracy on the core values, which makes the status of citizens fundamental, Brettschneider’s theory situates itself between proceduralist and epistemic theories to ground substantive rights and democratic procedure so that neither are disposable.

Beginning with the first core value of equality of interests, this means that each citizen's interests must be equally respected within a democracy. No citizen’s interests can intrinsically have greater value than her fellow citizens because equality of interests ensures that “all reasonable interests of citizens be respected as having equal weight” (Brettschneider 2007, 23). An example of citizens’ interests not having equal weight would be if formally educated citizens’ votes were worth more than an uneducated citizen’s. This voting scheme would dilute one class of citizens’ sovereign status if others intrinsically had a larger say in the democratic process. Thus, in order to fairly reach binding decisions within a democracy, equality of interests is required. Importantly, equality of interests does not require equality of outcomes (Brettschneider 2007, 24). Though it would be ideal if this is achieved through democratic policy, equality of interests does not guarantee it.

The second value, political autonomy, respects that each individual is a self-ruler within a society defined by collective self-rule (Brettschneider 2007, 24). Political autonomy, then, is two-fold. First, each individual must have their *individual* autonomy respected because without the ability to make decisions for oneself, there can be no

ability to make decisions for society. This means that each citizen must be allowed to develop their own conception of the good life and be allowed to pursue it as fully as possible while respecting others' autonomy. Second, each individual must have their *political* autonomy respected because, otherwise, their status as a citizen within democracy would be merely instrumental. This is why a system like a patronage democracy would not be allowed in Brettschneider's theory because it "would not allow individuals to make their own autonomous decisions about politics" (Brettschneider 2007, 24).

The third value, reciprocity, is necessarily a robust guarantee for the previous values of equality of interests and political autonomy. Reciprocity creates the obligation for citizens to use reason giving to justify policies. In this sense, reciprocity is an "organizing value" because it "suggests how to apply the other two core values" of political autonomy and equality of interests (Brettschneider 2007, 25). Reciprocity guards against arbitrary treatment of citizens within a democracy, because it requires that the policies, and the coercion they entail, must be justified by equality of interests and political autonomy. If a policy or the coercion it requires come into conflict with these two values in the eyes of a reasonable citizen, then it has failed to meet the ideal of reciprocity.

These values together are derived from the sovereign status of the people while also serving as limits on what a democratic polity can legitimately do. Importantly, these are not procedural limits—they are substantive limits that support "a democratic entitlement to reasonable treatment" (Brettschneider 2007, 22). The values create internal limits that ensure that a democracy is mutually reinforcing; in holding up a legitimate

democracy, these values work to guarantee the fundamental status of citizens, which simultaneously legitimates the democracy. The core values ground democracy.¹

The value theory of democracy illustrates the two roles that individuals have as members of a democratic polity: citizens as authors of law, and citizens as addressees of law. When individuals occupy their role as self-rulers (sovereign status), they partake in self-government by voting on and creating laws. When individuals occupy their role as addressees of law, they are subject to the laws democratic procedure has passed, while still retaining their entitlements of substantive rights. In both of these roles, the core values must be respected. For example, equality of interests delineates how voting laws can be drawn (status as rulers), but also outlines how policies can be legitimately carried out (status as addressees).

Thus, a systemic elimination of voting rights for a class of peoples would be clearly illegitimate because it would eliminate these peoples' sovereign status. Similarly, laws such as ex post facto laws would not be justified as they encroach on citizens' status as addressees of law, which will be further discussed in section 1.4. Citizens should follow law because it respects their status as free and equal rulers, "not merely because of the threat of sanction" (Brettschneider 2007, 32). Ultimately, grounding the legitimacy of democracy in these dual statuses of citizenship ensures that self-government has internal limits. Unlike certain proceduralist theories, these grounds do not serve as preconditions to democracy. The core values of democracy, properly understood, involve the dual statuses of citizens. Taking the core values together with the dual statuses of citizens will

¹ Some formulations found here are based on an earlier paper which I wrote explaining Brettschneider's value theory.

enable a derivation of specific policies and rights necessary in the value theory of democracy.

1.3 Democratic Contractualism

The core values are protected by what Brettschneider refers to as democratic contractualism. Democratic contractualism is composed of two parts: democracy's public reason and the inclusion principle. Both of these parts in combination serve to justify and provide the agreement for the state coercion necessary for a democracy to enforce laws. Democratic contractualism "draws from the concern to assure that the rights of individuals are protected because of their status as members of a sovereign people" (Brettschneider 2007, 57). This concern is derived from the knowledge that the people in a democratic policy themselves are the source of sovereignty. People within this theory are understood as "a community whose members are treated and treat each other in accordance with the core values of democracy" (Brettschneider 2007, 57). Citizens are persons within a people who are entitled to treatment and obligated to treat other citizens according to the core values. Again, it merits repeating that all of this is derived from the core values and individuals' sovereign statuses.

Democracy's public reason requires that any state coercion necessary to enforce policies and laws must be justifiable by appeal to the core values. If any law or policy comes into conflict with a core value on its face or substantively, there is no room for legitimate coercion to enforce that law or policy. Democracy's public reason is meant to gauge if laws are consistent with the core values and the dual-statuses of citizens. Thus, it does not require that citizens completely bracket off their comprehensive worldviews, such as religious ones.

Often, Brettschneider concedes, these doctrines can enrich arguments made in support of public policy. For example, Dr. Martin Luther King Jr. often used religious appeals within his arguments for civil rights. But because his arguments were fundamentally based on the core values, it was unnecessary for him to rely on arguments completely devoid of religious appeals. Democracy's public reason only requires that in arguing for policy, citizens' arguments do not rely solely on comprehensive doctrines. In this way, this principle of democratic contractualism does not require evaluating every single reason proposed to support a policy as independent from comprehensive worldviews; rather, it requires a simple evaluation of "whether laws plausibly could be defended as consistent with the core values" (Brettschneider 2007, 62).

From this understanding of democracy's public reason, we can understand three types of policy arguments which would categorically fail. The first is arguments "hostile to democratic values [which] can be ruled out at the general level of democracy's public reason" (Brettschneider 2007, 63). This would include arguments for slavery, eliminating women's suffrage, or mandating a religious doctrine. The second category of arguments are those that "formally cite the values" but do not reasonably interpret them (Brettschneider 2007, 63). Thus, a surface level argument based on the core values is not sufficient. An example of this would be arguments proposed in favor of Jim Crow voting laws or "separate but equal" arguments. Lastly, arguments that plausibly, but undemocratically, cite the core values would fail democracy's public reason. This would cover arguments such as utilitarian appeals that claim that equality of interests allows aggregation of interests. Thus, democracy's public reason will limit legitimate means for

justifying policy. This will both refine the way that citizens make policy and how coercion is employed to enforce policy.

The inclusion principle requires that the justification of state coercion is directed to particular citizens. Interests of citizens cannot be aggregated and treated as a group or class. This reflects the idea that laws and policies are enacted by and upon reasonable individual citizens who respect the core values. The inclusion principle requires three components. First, it focuses “on the interests of the coerced instead of the interests of society as coercer” (Brettschneider 2007, 65). Second, it differentiates between reasons that persons accept and reasons that are reasonably acceptable under democracy’s public reason. Third, the inclusion principle assumes that individuals engaging in democratic deliberation intend to reach unanimous agreement.

Once again, it is necessary to emphasize that democratic contractualism is naturally derived from the core values, which are grounded in the sovereign status of citizens. Thus, simply by defining what is central to a democracy as the dual roles of citizens, the value theory of democracy creates internal constraints on legitimate and justified coercion. From the core values and democratic contractualism, we can reason our way to substantive rights and procedural requirements of a legitimate democracy.

1.4 Limits on Coercion

With the core values and democratic contractualism thus established, it is important to note a few limits on state coercion that arise from this theory. These limits are understood as rights that are derived from democratic contractualism and the core values. The state exceeds the limits on coercion in two ways: “by failing to abide by democratic procedures” and “by treating citizens in a manner inconsistent with their

sovereign status as the addressees of law” (Brettschneider 2007, 33). Again, this reflects how the value theory of democracy takes into account procedural and substantive rights.

There are some cases where the limits to legitimate coercion are easily defined. For example, free speech should be seen as a right because without it the core values and democratic contractualism would be empty. It would violate citizens’ rights both as addressees of law and as makers of law to eliminate free speech, as the deliberation process necessary for democratic contractualism would be stunted. Conversely, bills of attainder and ex-post facto laws curtail citizens’ “ability to foresee when the state will and will not coerce them” (Brettschneider 2007, 41). Their decision-making abilities are thus diminished as they cannot make autonomous decisions with the law in mind.

For cases that are not so clear, one must begin with the presumption that citizens are free from coercion unless there are good democratic reasons presented to the contrary. This creates a standard of justification “that must be met in limiting or overcoming the presumption of freedom” (Brettschneider 2007, 75). This is especially important in regard to privacy rights, which may present a problem for this democratic theory.

The interplay between private and public thoughts can make the limits for justifiable coercion with privacy murky. Some privately held conceptions of the good are contrary to the core values. For example, the belief that women or a racial minority deserve a lower status in society is fundamentally opposed to the value of equality of interests. In these cases, it is unclear where the privately held belief of an individual person becomes a public concern for citizens. Thus, Brettschneider differentiates between personal beliefs and private beliefs. He contends that “the right to privacy is not about a lifestyle; it is about the conditions necessary to treat citizens as free and equal”

(Brettschneider 2007, 80). Private beliefs become an appropriate venue for public concern when they affect the conditions necessary to treat citizens as free and equal. Conversely, personal beliefs are those that may infringe on the core values, but not on the conditions necessary to treat citizens as free and equal. These personal beliefs are not publicly relevant. Thus, most state coercion that would combat these personal beliefs would not be justified, as they do not sufficiently affect the conditions necessary to treat citizens as free and equal.

In this sense, Brettschneider's account of democratic rights is politically ideal rather than perfectionist. The limits on legitimate state coercion stop at the door of interpersonal relationships that would not justifiably be considered public according to democratic contractualism. As Brettschneider notes, "appeals to equality demonstrably must be democratic, not perfectionist, interpretations of the core value of equality of interests" (Brettschneider 2007, 87). For example, a case in which a man enacts violence against a woman in their private residence is clearly a case in which state coercion would be appropriate to prevent harm to the citizen. However, if inequality in a private interpersonal relationship does not substantively affect either individual's ability to act as a free and equal citizen, the state may not intervene.

Brettschneider suggests that perhaps we could avoid coercion against personal beliefs in conflict with the core values while still protecting individuals from these beliefs by providing sufficient exit opportunities.² For example, if the state provides women with ample employment opportunities and housing options that she may access at any time,

² Brettschneider argues later in his book that a system of welfare rights is necessary for any right to property, and so these exit opportunities may include schemes such as a universal basic income or a robust welfare scheme.

then she reasonably has the means to exit an inegalitarian relationship if she so desires. By providing exit opportunities, the state allows disempowered groups, like women, to choose to reject inegalitarian relationship schemes. Over time, Brettschneider contends, enough individuals in inegalitarian positions will choose these exit opportunities that the occurrences of freely chosen inegalitarian relationships will fall. Moreover, as these occurrences decrease, so the core values will be reinforced and strengthened by these choices.

Yet, the extent to which the state can coercively intervene is significant because limits on coercion will prohibit many interventions that citizens would reasonably argue are necessary to guarantee substantive democratic rights and the true adherence to the core values. Simultaneously, these limits will protect many instances of inequality from state coercion that citizens would reasonably argue should be immune from state intervention. Thus, Brettschneider gives us a tool with which to balance these two interests, but it is unclear if it is satisfactory.

2. Responses to the Value Theory of Democracy

2.1 A Feminist Critique

Many feminist thinkers criticize liberal democratic theories for not taking seriously the institutional and interpersonal oppressions that women face within democratic societies. For example, Susan Okin challenged John Rawls' theories through her critiques that they did not adequately address justice within the family.³ Loren King,

³ Okin, Susan. *Justice, Gender, and the Family*. New York: Basic Books. 1989.

in his response to Brettschneider's theory, picks up these arguments, explicitly referencing Okin.

King's feminist analysis rests on the principle that "intimate affairs often have important public consequences" (King 2011, 31). The inequalities in personal relationships can result in material inequalities that do not necessarily affect public equality, such as a father buying more toys for his son on the principle that boys deserve more than girls. The inequality can also be manifest in the result of patterns of these sorts of inequalities, which can be understood as psychological inequality. King provides two critiques of how Brettschneider's theory does not completely address these inequalities.

His first critique rests on Brettschneider's assumption that a selection against inegalitarian beliefs and practices would exist in his ideal democracy. Brettschneider posits that as democratic contractualism is practiced, assuming there are sufficient exit opportunities from inegalitarian relationships, a selection pressure against inegalitarian ideas will eventually be created. This is because it will become increasingly difficult to pass down inegalitarian traditions to children, namely young girls, and democratic contractualism will convince persons to uphold the core values in their private lives over time.

However, King argues that this pressure "is generated not primarily through appeals to public reason... but rather by guaranteeing conditions of meaningful choice... regardless of whether or not bearers of those traditions accept these conditions as reasonable public claims" (King 2011, 10). The significance of this critique is that it minimizes the difference between political equality, that which Brettschneider thinks is central to his account, and perfectionist equality, that which is central to some feminist

accounts. If Brettschneider's understanding of this selection pressure is based fundamentally in democratic contractualism, then it is unclear if this selection pressure will be strong enough to successfully eliminate inegalitarian relationships or psychological inequality. If his theory suggests, on the other hand, that the difference is only secured by certain conditions, such as exit opportunities, then it is not clear that a perfectionist equality is incompatible with Brettschneider's theory.

His second critique involves an example that Brettschneider presents wherein a thirty-year-old man follows the advice of his parents without fail (Brettschneider 2007, 88-89). His deference to his parents extends to how he votes, and, thus, how he exercises his sovereign status. Yet, within Brettschneider's analysis, this deferential son still has political autonomy despite his arguable lack of psychological autonomy. Brettschneider contends that state coercion which intervenes to prevent the deferential son's parents' dictation of their son's vote would be a violation of the *son's* political autonomy. King, on the other hand, argues that this case is not as clear-cut as Brettschneider would like us to believe; he claims that this case "further illustrates the difficulty of distinguishing between psychological and political autonomy" (King 2011, 12-13).

If we take King's critique seriously in both of these cases, it seems that a feminist worry that the value theory of democracy is not concerned enough with women's oppression may not be merited. King highlights how the value theory already has tools within its framework that could possibly lead to a perfectionist slant in the democratic ideal. Furthermore, the defenses within the framework against the perfectionist conception of equality do not seem as strong as Brettschneider wants them to be.

2.2 *A Racial Critique*

Feminist critiques of liberal theories of democracy have had many of their claims paralleled in racial critiques. Often, liberal theories are shown to fall short in addressing racial injustice, especially within countries like the United States. Christopher Lebron specifically takes up a racial critique of Brettschneider's theory in his book *The Color of Our Shame*. Lebron notes that Brettschneider's focus on citizens endorsing reasons for rights is a strong point of his theory. As Lebron understands it, "public reason, as a democratic political mechanism, must reach down into the self and elevate it to the level of moral excellence demanded by equality" (Lebron 2013, 138). Justifying rights in this way may successfully push back against many cases of inegalitarian differences between citizens.

Yet, in order to secure substantial equality with respect to race, Lebron argues that a perfectionist stance is necessary. Demanding reasons for rights is not sufficient. This is because of what he calls social value:

The problem of social value indicates that our social practices, as embedded within a liberal democratic framework, are outwardly regulated by rules and principles meant to preempt categorical inequalities, but fail selectively-- that is, in the face of race (Lebron 2013, 139).

Furthermore, these inequalities are reproduced because this problem is not taken into account when justifying reasons for rights. Thus, something beyond democratic justification is necessary; Lebron suggests that we must understand the reasons for race itself. Understanding the function that race has within society requires a perfectionist intervention because race currently continues to promote inequality, even if done

invisibly. For example, Lebron proposes perfectionist policies that would require government mandates for the media, which will be discussed further in Chapter 2.

3. Conclusion

Again, if we are to take Lebron's criticisms seriously, he suggests that the perfectionist stance necessary to combat systemic inequality of a race will go further than Brettschneider would want the value theory of democracy to allow. If we are to take King's critique seriously, the value theory may not address public and psychological inequality adequately, which would call for a response from Brettschneider.

Alternatively, according to King's analysis, the value theory may be able to address these inequalities fully, but this, like Lebron's criticism, will be contrary to Brettschneider's understanding of his own theory. These examples of a feminist critique and a racial critique could logically also be extended to other substantive and systemic inequalities within society, such as LGBTQ rights. Brettschneider's book *When the State Speaks, What Should It Say? How Democracies Can Protect Expression and Promote Equality* may be understood as a response to both these feminist and racial critiques.

Chapter 2: A Value Democracy State

The value theory of democracy as outlined in Brettschneider's *Democratic Rights: The Substance of Self-Government* was an ideal theory that represented how a liberal democracy could ground both substantive rights and procedural rights for its citizens. As its critics noted, however, it fell short of ideal in a few places, such as in areas of racial inequalities and inegalitarian relationships founded in sexism. These critiques were evidence of how hateful views can threaten even an ideal liberal democracy. Hateful viewpoints and discriminatory ideas in these cases jeopardize a liberal democracy because they directly oppose the core values of democracy as outlined in chapter 1: equality of interests, political autonomy, and reciprocity.⁴ In Brettschneider's book, *When the State Speaks, What Should It Say? How Democracies Can Protect Expression and Promote Equality*, he provides a response to these concerns by outlining how a liberal state grounded on value democracy can respond to hateful and inegalitarian viewpoints and strengthen its claims of legitimacy.

1. Introduction to Democratic Persuasion

1.1 Between Two Liberal Dystopias

Brettschneider begins his exploration into how a liberal state could respond to hateful viewpoints by presenting two alternative liberal dystopias. The first is a response that would be endorsed by neutralists, those that believe that a liberal democracy must not endorse any values in order to fully respect and protect the pluralism of views

⁴ From this chapter forward, the core values of democracy will be referred to by the shorthand phrase "the values of free and equal citizenship" to remain consistent to the terms used by Brettschneider in *When the State Speaks*.

inherent in any society. According to neutralists, the worst thing that a state could do in response to hateful viewpoints within society is to use its coercive capacity to take a side, vindicating one section of society while condemning another. For the neutralists, to respond in this way would create a liberal dystopia which Brettschneider terms the Invasive State (Brettschneider 2012, 18). In the Invasive State, the government would intervene whenever hateful viewpoints were held by citizens in order to secure an ideal citizenry which unanimously endorsed the values of free and equal citizenship. The state would use its coercive powers to punish those that espouse hateful views, even when those views are voiced in a personal conversation within one's home. The foremost threat to the neutralists of the Invasive State is that it "respects no restraint on the state's coercive interventions to enforce equality" (Brettschneider 2012, 18).

Thus, rather than fall into the trap of the Invasive State, the neutralists advocate for a neutral state. In this state, the government protects rights even if this means necessarily protecting citizens' rights to hold and profess views contrary to free and equal citizenship. Though these views oppose and arguably weaken the value of free and equal citizenship, protecting liberal rights like the right to privacy and free speech are ultimately prioritized despite the damage that the hateful views could do to the grounding of these liberal rights over time.

These possible consequences of a neutral state are those feared by a second group, the prohibitionists. Prohibitionists believe that a liberal democracy cannot remain neutral in the face of hateful views contrary to free and equal citizenship. The liberal dystopia that they fear is the Hateful Society, one in which the state protects liberal rights such as the right to privacy and free speech, effectively protecting a culture that may hold hateful

viewpoints so widely that it can affect marginalized citizens ability to enjoy free and equal citizenship at all. In the Hateful Society, the state uses its coercive powers to enforce laws that formally guarantee equality. Ultimately, however, “minority citizens feel that their safety is threatened and that the state’s neutrality ignores their fundamental interests” (Brettschneider 2012, 19).

Any solutions proposed by neutralists cannot address the concerns that prohibitionists have about the Hateful Society. Conversely, any resolution proposed by prohibitionists cannot answer the concerns that neutralists have about the Invasive State. It seems, then, that a liberal state may simply have to choose between the alternatives. Stuck between two liberal dystopias, either choice threatens liberal values. Brettschneider refers to this as the paradox of rights (Brettschneider 2012, 20). Yet, the paradox of rights, Brettschneider posits, can be resolved when we explore beyond the content of rights to consider the reasons for rights. Value democracy, manifested in a state that promulgates the reasons for rights, can effectively respond to the problems of the Hateful Society without becoming the Invasive State.

1.2 The State as Speaker

Value democracy requires that reasons are given for rights—reasons grounded in free and equal citizenship. These reasons, importantly, are not value-neutral. Though they are not based upon a comprehensive or epistemic ideal of egalitarianism, they are nonetheless non-neutral because they are grounded in a public ideal of free and equal citizenship (Brettschneider 2012, 21). Furthermore, no actor within society has a monopoly on promulgating the reasons behind rights; the obligation for reason-giving is on the citizens, public officials, the courts, and the state itself. The state, however, has a

special obligation because of its two powers: coercive powers and expressive powers. On one hand, the state's coercive powers enable it to protect rights through force and law.

The state's expressive powers, on the other hand, empower it to give reasons for rights.

For example, the state uses its coercive power when it legally punishes those that discriminate against minorities based on race. But it also uses its expressive powers when it decides to celebrate historical figures like Reverend Martin Luther King Jr. by naming a holiday after him, effectively endorsing his fight for civil rights. Importantly, the state has an obligation to use both its coercive and expressive powers. If it uses only its coercive powers to protect rights but does not use its expressive powers to explain the reasons for rights, then the state could run into the paradox of rights again.

Free speech makes this obligation clear for Brettschneider. The right to free speech must be protected for all citizens, even those who intend to use their right to espouse hateful viewpoints contrary to free and equal citizenship, because "to be treated as free and equal, citizens must have the liberty to express and to hear any political viewpoint" (Brettschneider 2012, 23). The reasons behind free speech protections are thus grounded in free and equal citizenship because free speech respects citizens' political autonomy as makers and addressees of law. However, this complicates the state's role in coercively protecting free speech, especially when it comes to hate groups.

Respecting all citizens political autonomy necessitates protecting these hate groups' right to free speech using the state's coercive power, risking state complicity in the spread of these hateful viewpoints contrary to free and equal citizenship. The state must, therefore, use its expressive powers to give the reasons for the right to free speech: "without an explanation of why discriminatory viewpoints are wrong, those views might

be mistakenly seen as compatible with free and equal citizenship” (Brettschneider 2012, 23). By using its expressive powers to explain the reasons behind the right to free speech, the state will be endorsing the ideals of free and equal citizenship—ideals directly opposed to the hate groups’ viewpoints. In this way, the state’s expressive power is persuasive in nature and attempts to convince citizens to endorse the values of free and equal citizenship.

Brettschneider argues that the state’s coercive and persuasive powers must both be used in order for the state to retain its liberal legitimacy. Otherwise, as outlined above, the state risks both the co-opting of democratic values by hateful viewpoints and state complicity in the hateful viewpoints. The state, then, is neutralist in its coercive sense—it must uniformly protect all citizens and groups ability to take advantage of their liberal rights, no matter their viewpoints. But the state cannot be neutralist in its expressive sense—it must clearly make a case against hateful viewpoints. By making this case through its expressive powers, rather than its coercive powers, it is more fully respecting the citizens’ political autonomy because “reasons, unlike coercion, allow citizens the choice of adopting what is advanced by the state” (Brettschneider 2012, 45). Thus, though the state’s actions in value democracy are not neutralist, they avoid the liberal dystopia of the Invasive State.

1.3 Reflective Revision and Democratic Persuasion

Importantly, Brettschneider clarifies that not all hateful viewpoints would be subject to the state’s persuasive and expressive powers. The limits to the state’s persuasive powers will be discussed in detail in section 1.4, but, first, it is important to establish that this power is checked by the principle of public relevance. In perfect value

democracy, all citizens and state actors would personally believe and endorse the values of free and equal citizenship. But what happens when a democracy is not perfect, and citizens hold and act upon viewpoints contrary to free and equal citizenship? The principle of public relevance outlines when beliefs or actions are subject challenges by the state's persuasive capacities. Liberal theories often refer to certain spaces as being outside of government influence, such as the space of the private home. According to these theories, hateful viewpoints espoused within these spaces are to be completely left alone by the government, otherwise the state risks invading privacy rights.

Brettschneider argues, however, that this spatial metaphor fails to capture the ways that hateful viewpoints spread in "private" spaces can affect citizens in the public sphere. The principle of public relevance charges that views are publicly relevant when they conflict with the public status of free and equal citizenship. Thus, viewpoints opposed to free and equal citizenship may take place in a private household, violate no rights, and yet still affect other citizens' ability to participate in free and equal citizenship. This brings these viewpoints into public relevance.

Any sphere free from public relevance must be publicly justifiable. Publicly justifiable privacy means that the line that separates public and private must be grounded in what affects free and equal citizenship, rather than a spatial metaphor of privacy. This does not mean that no one can personally hold inegalitarian or hateful beliefs. It simply means that these privately held personal beliefs "should be in accordance with public values to the extent that private life affects the ability of citizens to function in society and to see others as free and equal citizens" (Brettschneider 2012, 34). As soon as private views affect these abilities, they are within the principle of public relevance.

The principle of public relevance and publicly justifiable privacy delineate when beliefs and actions are of public concern, such that other citizens or the state have an obligation to use its expressive powers to provide reasons for rights to argue against the hateful beliefs and actions. This is a normative inquiry. Thus, the first step is to bring beliefs or actions out of the realm of publicly justifiable privacy and into the realm of public relevance. Brettschneider suggests that we use a framework where we work backward from our public commitments to the values of free and equal citizenship to judge whether our personal beliefs conflict with these democratic values (Brettschneider 2012, 54). Importantly, this movement protects value democracy from the threat of the Invasive State: though each citizen should have personal views consistent with free and equal citizenship in value democracy, inconsistent views are only publicly relevant when they affect the political ideal of equal citizenship (Brettschneider 2012, 56). Yet, it also protects value democracy from the dangers of the Hateful Society, because it does not allow people to hold hateful viewpoints without any limits. More importantly, it signifies that hateful viewpoints are a non-neutral concern of the state because they affect free and equal citizenship.

Once viewpoints or actions are clearly within the realm of public relevance, the next step is for either the citizens or the state to take action. When the citizens themselves act upon publicly relevant hateful viewpoints, they use a process Brettschneider calls reflective revision. Reflective revision is an individualized practice whereupon citizens “appeal to a public ideal of free and equal citizenship, not only in evaluating coercive law, but also in evaluating their own beliefs and practice” (Brettschneider 2012, 59). Through this evaluation, citizens will hopefully choose to align their beliefs more clearly

with the values of free and equal citizenship. They may do this voluntarily to reach full reflective revision, where all beliefs are brought into harmony with the public ideals. This full reflective revision is not required by value democracy. Rather, partial revision is sufficient, where private beliefs remain incompatible “as long as their publicly relevant actions and deliberations are guided by respect for the freedom and equality of all citizens” (Brettschneider 2012, 59). Reflective revision is only required by value democracy to the extent that the beliefs affect other citizens.

The process of reflective revision is an important process for citizens in value democracy because it pushes citizens to individually contemplate the reasons for rights and decide independently to what extent they endorse the ideal of free and equal citizenship. It respects each citizen’s political autonomy, because this process is voluntary, while strengthening the values themselves over time. However, Brettschneider acknowledges that in a society where hateful views are held, it is unrealistic to assume that all citizens will choose to engage in reflective revision. With this in mind, the state has an obligation to also aid this reflective revision through democratic persuasion.

The state engages in democratic persuasion when it uses its expressive and persuasive powers to give reasons for rights. These reasons may contradict citizens’ privately held beliefs, and democratic persuasion gives them the option to disagree with these reasons and ultimately refuse the state’s conclusion. A commitment to free and equal citizenship simply bestows an obligation upon the state to publicly express support for the reasons for rights. This promulgation legitimates the state’s coercive protection of individuals who hold publicly relevant hateful viewpoints to hold these views, because it is clear that the state is not supporting the viewpoints by protecting the individual's’

rights. Brettschneider emphasizes the importance of democratic persuasion in cases of free speech, because “state expression can at times seem to be ‘inverted’ when rights are used to protect speech that opposes the reasons for the right of free expression itself” (Brettschneider 2012, 78). In these cases, the state must clearly promulgate the reasons for rights to avoid the risk of endorsing the hateful views.

The state’s democratic persuasion can be communicated in many ways. The state’s expressive powers can be seen in its role as a speaker, a spender, and an educator (Brettschneider 2012, 48). It speaks when the Supreme Court releases decisions, when it declares national holidays, when representatives in their public capacity give statements, and in other similar capacities. The state also speaks when it subsidizes certain views financially, such as when it grants non-profit status or gives federal aid to private entities. Lastly, the state speaks when it teaches citizens through public education. All of these versions of state speech, Brettschneider highlights, are intended to be persuasive. When the state speaks in favor of reasons for rights, it intends “to challenge and change the minds of those who do not appreciate the importance of free and equal citizenship in a legitimate society” (Brettschneider 2012, 80). In this way, the state in value democracy avoids the Hateful Society by actively attempting to change the minds of those who hold hateful views, rather than allowing them to spread unchecked. But because democratic persuasion is not coercive, it also avoids the Invasive State.

1.4 Limits on Democratic Persuasion

Value democracy requires a legitimate state to both coercively protect rights and expressively engage in democratic persuasion to argue for these rights. Yet, Brettschneider also contends that democratic persuasion, just like coercive actions, is still

subject to limitations. The two categories of limits that he outlines are substance-based limits and means-based limits. Together, these restraints will enable the state to expressly support the values of free and equal citizenship without violating each citizen's liberal rights.

First, substance-based limits specify which beliefs the state can legitimately attempt to transform through democratic persuasion. These limits clearly exclude any beliefs outside of public relevance and within publicly justifiable privacy. However, because even in only its expressive capacity the state is more powerful than individuals, Brettschneider clarifies that the substance-based limit is more narrow than public relevance. Because there are many cases in which it is not clear that beliefs are completely opposed to free and equal citizenship, "it is only those views which are openly hostile to the ideal of equal citizenship, or implausibly compatible with it, that the state has an obligation to criticize" (Brettschneider 2012, 83). Any case that is not clearly opposed to free and equal citizenship must remain free from both the state's coercive and expressive capacities.

If viewpoints are within the substance-based limit, the state is then restricted by the means-based limit. This compels the state to engage in democratic persuasion only in certain ways. The state cannot engage in democratic persuasion "through any method that violates fundamental rights, such as freedom of expressions, conscience, and association" (Brettschneider 2012, 81). This is an important element of Brettschneider's theory, as the means-based limit is an attempt to ensure that the affirmation of liberal beliefs is completed through liberal means. This requires a clear lack of coercion—a state must not prohibit citizens from holding hateful beliefs. It must simply attempt to convince them to

endorse the ideal of free and equal citizenship, while respecting their right to ultimately reject any argument the state puts forward. It also requires that the arguments presented in favor of rights are grounded in the public ideal of free and equal citizenship rather than any comprehensive epistemic doctrine.

Of course, just as with reflective revision, Brettschneider acknowledges that these limits mean that even in a value democracy where the state engages in democratic persuasion, hateful viewpoints may still be actively held by individuals with little intervention by the state or even other citizens. But active democratic persuasion and reflective revision will ideally lead to a gradual dampening of these views, Brettschneider argues. This is made clearer by revisiting the three ways that the state can engage in expression: as a speaker, as a spender, and as an educator.

The state may engage in democratic persuasion by speaking through the Supreme Court. For example, when the Supreme Court examines Constitutional questions regarding the KKK's ability to hold a rally in public, the Court will come to the conclusion that respecting the values of free and equal citizenship requires protecting the group's ability to freely associate and speak in public. However, the decision will also outline clearly that this protection of free and equal citizenship is wholly contrary to the KKK's views. It will explicitly explain that these views are fundamentally incompatible with value democracy and will argue against them.

The state may engage in democratic persuasion through its spending capacity by using state subsidies. For example, private universities may not receive state funding when they allow discriminatory viewpoints to spread through the school. The schools are still allowed to function, but the state's refusal to fund its functioning importantly

expresses that the university's practices are contrary to free and equal citizenship. The state uses its spending capacity when it provides police protection for certain events; the police protection of a KKK rally is necessary to protect their right to free speech. However, the state also uses its spending capacity to outline when entities should be considered as non-profits and to benefit from non-profit status. By basing the public benefit required for non-profit status on free and equal citizenship, the state also engages in democratic persuasion.

Lastly, the state engages in democratic persuasion when it uses its capacity as an educator. This applies to both public universities and all publicly provided education. Thus, when the state designs curriculum for history, it emphasizes the Civil Rights movement to clearly portray Reverend Martin Luther King Jr. as supporting free and equal citizenship and Jim Crow Laws as opposing these ideals.

Together, the capacities of the state will serve to reinforce the values of free and equal citizenship. Over time, it will encourage reflective revision in citizens, which will also make hateful views less and less popular within the populace over time. Importantly, paired with the state's coercive protection of the right to hold these hateful and discriminatory views, the state will reinforce free and equal citizenship over time in a manner that also reinforces the state's legitimacy. Thus, Brettschneider's conception of the liberal state grounded in value democracy avoids the Invasive State and the Hateful Society by protecting rights and providing reasons.

2. Responses to Democratic Persuasion

2.1 *A Feminist Critique*

When the State Speaks was clearly written with feminist concerns, like those of Loren King, in mind. Yet, two responses are evidence that it may be disputed how successfully Brettschneider answers King's original concerns, and some new concerns as well. Sarah Song, in her response to Brettschneider, raises a new feminist argument in the form of a prohibitionist objection. Brettschneider often cautions throughout his book against the militant democrat's perfectionist view of using coercion to secure true equality and completely rid society of hateful or discriminatory views. Song, without going as far as the militant democrats, still presents a prohibitionist argument that democratic persuasion is insufficient.

Song also draws on Okin's critique of Rawls to emphasize that Brettschneider's theory of democratic persuasion, which does not require any comprehensive doctrine, implements state tolerance to a variety of personal views "at the expense of the equality of women" (Song 2014, 1050). Song elaborates that Brettschneider clearly outlines some cases of discriminatory or hateful beliefs that the state would not tolerate in value democracy because of their clear conflict with free and equal citizenship: "slavery, segregation, and race-based exclusion from vote" (Song 2014, 1051). Her concern, then, centers on the situations that Brettschneider concedes can be muddy.

Song presents the example of the Catholic Church's forbiddance of women into the priesthood. Brettschneider discusses this case in relation to state subsidy. Because state subsidy falls under the state's spending power, and thus its expressive power, he maintains that the state should not grant subsidies when groups or their beliefs violate

free and equal citizenship. However, this is subject to the substance-based limit, which the Catholic Church falls outside of because Brettschneider evaluates their policies towards women, even banning them from the priesthood, as one of the muddy cases that does not clearly oppose or support free and equal citizenship. Song, in response, asks this question: “why should the ambiguity of a case not trigger democratic persuasion instead of ruling it out?” (Song 2014, 1051).

Song cites Okin’s argument that the Catholic Church, or any entity that does not clearly *not* discriminate against women, should not receive tax-exempt status until they prove that they do not discriminate. Moreover, Song questions why certain cases of race discrimination call for democratic persuasion when comparable cases of gender discrimination do not (Song 2014, 1052). Thus, she argues that Brettschneider’s conception of democratic persuasion does not avoid the problems of the Hateful Society as he wants it to, especially in cases of gender-based discrimination. The substance-based limits, she argues, may be understood as allowing more sexist discriminatory viewpoints than it should.

Robin West, in her response to Brettschneider, also presents a concern that his theory of democratic persuasion will not be able to properly respond to sexism, racism or other discriminatory views in society. West acknowledges that some individuals who harbor these views may be convinced by the democratic persuasion and reflective revision that Brettschneider outlines. This is because some of these views are founded in a doctrine or ideology or comprehensive sets of beliefs, and are thus responsive to reasons. However, she notes that some hate speech is motivated “by literal hate, pure and simple” (West 2014, 1035). Often, West claims, these simply hateful viewpoints are

manifestations of “twisted psyches rather than noxious beliefs” (West 2014, 1036). These cases are unlikely to be affected by reflective revision or democratic persuasion.

Furthermore, West raises her concern that individuals and groups that hold illiberal views will respond to democratic persuasion by further entrenching themselves in their hateful and discriminatory views. Essentially, she worries that the arguments will backfire. This will result in individuals completely unresponsive to democratic persuasion because these “habits of thought, feeling, and child-raising... have at their core, not periphery, fear of and contempt for a state that preaches liberal values” (West 2014, 1036). Thus, these people would resist democratic persuasion precisely because their views are fundamentally opposed to free and equal citizenship.

Lastly, West raises the apprehension that there may be a third liberal dystopia that Brettschneider does not anticipate: The Hypocritical State. This state, she cautions, would engage in democratic persuasion by using its coercive powers to actually limit the rights it espouses to support: “sometimes, when actual liberal states speak of the values of equality, diversity, and liberty, they are doing so at the very moment they are pursuing profoundly inegalitarian, stultifying and oppressive ends” (West 2014, 1037-1038). Brettschneider, she contends, does not address this threat fully or the consequences it could have for reinforcing sexist, racist, or otherwise discriminatory views.

When we examine these critiques together, it seems that Brettschneider may not have successfully addressed the full extent of material or psychological inequality that he intended his theory to address. According to Song, Brettschneider’s reluctance to trigger democratic persuasion in ambiguous cases is demonstrative of the inability of his theory as it stands to truly lead to free and equal citizenship over time, especially for women.

West raises multiple objections that illustrate how democratic persuasion may be completely ineffectual or may backfire in profound ways. In either case, it is clear that entrenched discriminatory views, such as sexist views against women, may remain unchanged at best or driven to extremes at worst.

It is relevant here to reflect back to King's feminist analysis of Brettschneider's *Democratic Rights* to examine if democratic persuasion would answer his concerns. As discussed in chapter 1, King's critique was founded in two possibilities: either Brettschneider's value democracy did not sufficiently account for psychological inequality and autonomy, or it did account for these inequalities, but in a perfectionist fashion. Brettschneider's response is clear in *When the State Speaks*. Value democracy can account for psychological autonomy that has been largely ignored by previous liberal theories by addressing it in terms of public relevance and democratic persuasion. What is laboring against inequalities is not exit opportunities, but the reasons that the state gives in support of these policies.

Yet, even still, it seems that some of King's concerns were echoed in the responses just discussed. He focused on the difficulties of delineating where psychological inequality ended and political inequality began, specifically citing the case of the deferential son. Song's apprehension that Brettschneider's conception of democratic persuasion, especially in regard to the Catholic Church, could truly address whether political inequality is affected by inegalitarian policies emphasizes this point. King's worry was further stressed by West's regard for the ineffectiveness of democratic persuasion for even the most visible cases of political inequality. All of these critiques, it seems, are grounded in the doubt that the inequality present in society will be effectively

eradicated by democratic persuasion as Brettschneider presents it largely because of how pervasive, entrenched, and often invisible, it can be.

2.2 A Racial Critique

Though both Song and West reference possible racial repercussions of democratic persuasion, it is important to similarly reflect on Christopher Lebron's response to Brettschneider's *Democratic Rights*. Lebron's critique of the value theory of democracy was based on its inability to tackle the problem of social value. Value democracy demanded that reasons are given for rights, but did not demand that reasons were given to issues of social value, particularly when relating to race.

Lebron's proposed solutions embody what he refers to as "moral-agency perfectionism" (Lebron 2013, 14). This sort of perfectionism is specifically catered to the moral problem of racial injustice within a democracy that endorses ideals like the core values of democracy. This perfectionism begets a few clear policies: the "Real America" Re-education Act, the Just Trojan Horse, and the Boondocks Institution Principle. These policies respectively call for an education overhaul that has a "main aim [of shifting] the grounds of racial understanding" (Lebron 2013, 145); a form of "epistemic affirmative action" that compels media and news sources to fairly portray news in regard to race and to air reasonable propaganda that alters social cognition (Lebron 2013, 147); and an accountability lever for institutions such as law enforcement (Lebron 2013, 149).

Some of these proposals are faintly echoed in democratic persuasion. Lebron's explicitly perfectionist policies, however, differ in that they would clearly come into conflict with both the substance-based and the means-based limits on democratic persuasion that Brettschneider outlines. So, can state speech in value democracy address

Lebron's concern regarding social value? Not completely, it seems. Lebron's vision for addressing the problem of social value requires a perfectionist response precisely because he argues that without a moral perfectionism, the problems of racial inequality will inevitably persist. Because Brettschneider's account falls short of perfectionism, though it does address racial inequality more fully with democratic persuasion, it does not completely ameliorate Lebron's concerns.

3. Brettschneider's Response

Brettschneider's response to the criticisms that West and Song present also does not fully address their concerns as outlined above. In response to Song, Brettschneider again reaffirms his commitment that in ambiguous cases, such as with the Catholic Church, the state should "give the organization the benefit of the doubt about the consistency of its position with the ideal of free and equal citizenship" (Brettschneider 2014, 1084). He concedes to Song that this is to ensure the possibility of a broad pluralism that value democracy supports. Brettschneider further distinguishes that his discussion of race-based discrimination seems biased against sexist issues simply because of context; the examples of race-based discrimination were cases that were unambiguous in being opposed to free and equal citizenship. Therefore, Brettschneider partially responds to Song's concerns, but it is not clear that he fully answers her apprehension that democratic persuasion may be unable to address the complete extent of politically relevant inequalities.

Brettschneider responds to West's worry regarding the Hypocritical State by arguing that "democratic persuasion is a necessary but not sufficient part of what a fully legitimate state must pursue" (Brettschneider 2014, 1083). It must embody free and equal

citizenship both in its speech and its actions. Thus, the Hypocritical State would be illegitimate and rightly should be regarded as a liberal dystopia. This does not, however, make it an inevitable result of democratic persuasion. Moreover, Brettschneider posits that the Hypocritical State may still be preferable to a neutralist state because “there is a foothold for reform” (Brettschneider 2014, 1083). This does not seem to be an adequate response to West’s anxiety, which is multiplied when coupled with her other concerns of democratic persuasion failing or backfiring, which Brettschneider does not address.

4. Conclusion

With a full survey of Brettschneider’s theory of democratic persuasion, possible feminist and racial critiques of his theory, and his responses to these criticisms thus completed, we are left to evaluate whether his theory can provide a liberal account for how to address systemic inequalities and discrimination within a democracy. I will argue in the next chapter that Brettschneider has not sufficiently accounted for the degree of inequalities and discrimination that may remain after democratic persuasion has had its day. However, I will outline that this insufficiency is grounded in the interventionist approach that Brettschneider assumes when addressing issues of systemic inequalities. Lastly, I will make the argument that an extension of Brettschneider’s theory of the state’s expressive role as educator will address the feminist and racial concerns presented in the past two chapters without veering into a perfectionist or militant democrat state that Brettschneider fears.

Chapter 3: Educational Persuasion and Reflective Reproduction

With his two books, Brettschneider has provided us with a liberal theory of democracy based on the values of free and equal citizenship and a liberal theory of state speech that strengthens these values over time. These theories are grounded in the concept of individuals' sovereign status—their status as rulers over themselves and their status as addressees of law, and also as addressees of state speech. Yet, in order for Brettschneider's ideal liberal democracy to respect each citizen's sovereign status, it must allow hateful viewpoints and illiberal worldviews to exist in society. As discussed in the previous chapters, this poses a problem for certain feminists and racial theorists because it makes certain groups' substantive ability to participate in the democracy vulnerable because of the systemic inequalities that are perpetuated by these problematic views. As his theory stands, Brettschneider does not provide a satisfactory response to these concerns. However, a theory of education based on the foundational ideas from his theories may supply this response. Elaborating on the state's role as educator, and the state speech that accompanies this role, I will argue in this chapter that this arm of democratic persuasion can reduce systemic inequalities over time.

1. Review of Brettschneider and Education

1.1 Education as Shaping Citizens

In *Democratic Rights*, Brettschneider's discussion of education is largely focused on citizens' basal capacity to participate in democracy. This capacity is relevant to the value theory of democracy because it is connected to state coercion and a citizen's engagement in democracy's public reason. As Brettschneider acknowledges, there are minimal necessary conditions that an individual must cultivate in order to engage

meaningfully in their sovereign status: “Among these I include the capacity for language and reason prerequisite for engaging in public discourse” (Brettschneider 2007, 58-59). This does not mean a certain level of education is necessary to participate in democracy. Rather, it simply suggests that these capacities enable better participation in democracy’s public reason.

Though the state clearly has a role to play in the development of these capacities for its citizens, Brettschneider does not explicitly dedicate much discussion to this point in *Democratic Rights*. This is especially relevant for the discussion of children and their role in affecting change within a democratic society. When discussing privacy rights, Brettschneider briefly addresses children’s privacy rights within his theory. He notes that a function of the state is to develop “children’s self-conception as autonomous equals through education,” though the references to this distinction are extratextual (Brettschneider 2007, 93). Again, Brettschneider suggests here that the development serves as a necessary precondition for value democracy.

This discussion is critical precisely because Brettschneider addresses this topic of the state’s role as educator with children in a limited fashion for the entirety of *Democratic Rights*. This is in spite of the fact that during this examination of children’s rights, Brettschneider notes that civic education is a complex subject because it involves state coercion. Thus, though forcing children to attend a school that teaches the internalization of the core values is acceptable, if we attempted this sort of coercion with adults, “we would cross the line from a respect for decisional autonomy to an illegitimate promotion of the psychological senses of the values” (Brettschneider 2007, 94). If

children are as different as Brettschneider wants to assume they are here, this seems to merit some greater discussion.

Further, as *When the State Speaks* focuses specifically on state education of adults in the form of democratic persuasion, if children truly merit a different means-based limit for democratic persuasion, the effect this would have on Brettschneider's theory remains ambiguous based on his existing analysis. However, at a minimum, the discussion of education and children in *Democratic Rights* suggests that there may be a different level of decisional autonomy for children qua children. Moreover, the way that the state approaches this different level may affect the preconditions for meaningful participation in free and equal citizenship.

1.2 Education as State Speech

Let us now consider how Brettschneider addresses the topic of education and children's education, in particular, in *When the State Speaks*. He elaborates on the ideas outlined above, specifically expanding on the principle that the point of education is, at least in part, to shape better citizens. In this way, state-administered education cannot be value-neutral; education is an obligation for the state which is necessary for securing free and equal citizenship for all. Once more, it is imperative to make the distinction here between the state's coercive role as educator and the state's expressive role as educator.

The coercive role is based on education mandates directed at children, and, at times, their parents. By directing children to attend school until a certain age, the state is using its coercive power. Is this compatible with free and equal citizenship?

Brettschneider claims that it is for two reasons. First, because of the state obligation "to ensure that children are educated and understand democratic values" (Brettschneider

2012, 88). This is a revisit to the necessary preconditions discussed in *Democratic Rights*. To treat citizens as free and equal, it is not controversial to assume that at times the state must intervene to forcefully create an equal baseline standard, such as with compulsory education and curriculum. Second, Brettschneider argues that this use of the state's coercive power for education is compatible with free and equal citizenship because "children, who are not yet fully-fledged citizens, do not have the same rights as adults" (Brettschneider 2012, 88). Much of society, even within liberal theories, assumes that children are not operating at their full capacities.

So, when Brettschneider discusses the values of free and equal citizenship, it is not very contentious for him to posit that children qua children cannot fully embody these values. They lack the clear autonomy over themselves or their political decisions, as evidenced by the fact that most discussions of the state's role as educator center around parents' or adults' concerns over their children's education. This merits two results: the state has an obligation to help develop the capacities necessary for free and equal citizenship, and it can do so in ways that are typically incompatible with fully-fledged free and equal citizenship. Yet, these means are not unlimited; Brettschneider notes that the state's persuading of children to accept the values of free and equal citizenship itself cannot be coercive (Brettschneider 2012, 94). The coercive power is limited to mandating some basal level of schooling through compulsory education laws.

The means-based limit on democratic persuasion, then, is altered for particular cases when the state is acting as educator of children. Adults could not be forced to attend school and undergo democratic persuasion, because to respect free and equal citizenship the state must allow room for citizens to disagree or completely disengage whenever it

employs democratic persuasion. When it comes to mandatory education for children, however, this issue of adult coercion becomes more difficult. Brettschneider tackles this problem of parent coercion by maintaining that mandatory education can still respect the rights of the parents to refuse to engage in democratic persuasion by “ensuring that the school is not attempting to persuade them when it attempts to persuade their children” (Brettschneider 2012, 91). Generational friction is bound to happen if the state is successfully teaching the values of free and equal citizenship to children, but this does not constitute coercion when the children reject and critique their parent’s problematic views. Furthermore, because of the power structure present in nearly all parent-child relationships, this generational friction has even less grounds to classify as coercion.

Ultimately, in *When the State Speaks*, Brettschneider’s analysis of the state’s role as educator can be characterized as a simple elaboration on the principles sketched in *Democratic Rights*. These principles are as follows: the state has an obligation to provide and mandate education in order to respect free and equal citizenship; children, because of their lower capacities, do not merit the same means-based limits on democratic persuasion as adults do; adults cannot be coerced by their children’s education, as this would be a violation of the means-based limits on democratic persuasion; and, mandatory childhood education does not violate the means-based limits on democratic persuasion where parents are concerned.

1.3 Brettschneider and Systemic Inequalities

Brettschneider’s comments on childhood education, and the state’s correlative obligations are thus summed. Though there are some basic premises on which a more elaborate and nuanced account could be built, Brettschneider makes a point to clarify that

his theory of democracy and state speech is not a theory of education because it focuses on addressing the promotion of liberal values in private life (Brettschneider 2012, 26). But as Robin West points out in her discussion of *When the State Speaks*, a more thorough discussion of public education could have benefitted Brettschneider's account of democratic persuasion (West 2014, 1034). This is especially poignant when analyzing the criticisms that surround the theory's inability to tackle many issues of substantive and systemic inequality. As discussed in the previous chapter, Brettschneider does not provide a robust response in defense of his theory to the feminist and racial responses. It is not clear that he *could* provide this response, precisely because of the minimal discussion of public education.

Perhaps if Brettschneider were to elaborate on his theory of democratic persuasion as it pertains to public education, he could respond to these criticisms. Yet, his focus on democratic persuasion and its advancement of the values of free and equal citizenship in private life necessarily draws his attention away from a more vigorous discussion of public education. His focus on private life, I argue, may be understood as the source of his inability to respond to criticisms regarding systemic inequalities that are grounded in arbitrary differences. These systemic inequalities are perpetuated over time by individual actors and by institutions. Brettschneider's analysis cannot fully capture the reproduction of these inequalities because his inquiries begin too late in the cycle of perpetuation—he begins when the inequalities, and the hateful views backing them, already exist.

2. Democratic Contractualism and Democratic Persuasion as Interventionist

2.1 *The Deferential Son*

Brettschneider's trouble with systemic inequalities in his theories is made clear early on through King's discussion of the deferential son in *Democratic Rights*. To review, in this example, Brettschneider describes a case in which a thirty-year-old man "defers to his parents' opinion of what he should do in all cases" (Brettschneider 2007, 88). This includes his political decisions, such as how to vote. Brettschneider uses this example to illustrate how perfectionist autonomy is an illiberal standard because the state could not intervene in this case. Though many would evaluate the deferential son as lacking substantive autonomy, Brettschneider posits that "we likely would still consider him politically free even if his choices in voting were unduly influenced by his parents" (Brettschneider 2007, 89). Thus, any coercive interference would actually breach the deferential son's political autonomy.

King critiqued this case, arguing that it is not as clear as Brettschneider assumes that the son has any degree of political autonomy. Though the state guarantees his fundamental rights to participate in democracy, if his every decision and move is dictated by his parents, how can we reasonably find this case compatible with free and equal citizenship? Is the deferential son, as described here, simply an extension of his parents' free and equal citizenship? What King is beginning to draw out is that Brettschneider's reasoning is unsatisfactory because it begins from an interventionist standpoint. When we ask the question whether or not the state should intervene, this inquiry is quickly complicated because of the psychological inequality and the lack of substantive

autonomy already exists. Where has the state's possible intervention been for the previous thirty years of the deferential son's life?

Let us further elaborate on this example with the addition of Brettschneider's theory of state speech. The example of the deferential son should fall into the substance-based test of democratic persuasion because it considerably affects the son's ability to participate in free and equal citizenship. Thus, the state would try to engage in democratic persuasion towards the parents and the son. Perhaps this would look like politicians giving speeches that encourage parents to allow their children to come to political decisions free of parental influence. But even in this case, if the persuasion fails, the state may not coercively intervene. We could reasonably assume that the persuasion would fail because the parents had already spent thirty years set in their ways of controlling their son's actions, political and otherwise.

Though we may concede that Brettschneider's evaluation of the deferential son's political autonomy still does not merit coercive state intervention, this does not mean that the state has exhausted its ability to promote free and equal citizenship for the deferential son, or for others in similar situations. Again, to reach Brettschneider's conclusion, we must approach the problem of the deferential son from an interventionist perspective. The substantive inequality already exists, and if democratic persuasion fails then it seems that the son and his parents will continue as they are indefinitely. A reframing is necessary.

Let us begin when the son starts to attend public school in his early years, at about five or six-years-old. The parents, until this point, have exercised control over his life, and as many children are, he remains deferential to his parent's wishes. Yet, here the indefinite possibility of his deference to his parent's wishes is not guaranteed. Many

children naturally grow out of this unquestioning mode of deference to their parents, and so this complaisance to his parents' wishes could be better described as a function of his status as a child than his lack of perfectionist autonomy. As Brettschneider notes, children are not fully-fledged citizens partially because they lack substantive political and personal autonomy.

Could the state then coercively intervene in the hopes of preventing the future extreme deference that would affect the son's ability to participate in free and equal citizenship because he is a child? In terms of coercively preventing his parents from pushing their wishes onto their son, this is clearly unjustified. But if the state is already coercively mandating the son's attendance to school, then it seems that there would be a way for the state to act that could respect his parents' rights and would promote the son's eventual free and equal citizenship. The matter in which the state could do so will be discussed in section 3.3. Here, it is sufficient to note that Brettschneider's discussion of the problem of the deferential son is unable to reach this point where the state could reasonably intervene to promote the son's autonomy because of the point of intrigue. If we begin from an interventionist perspective, when the inequality is already ingrained in social structures like the family, we cannot account for the way that inequality is solidified and learned over time.

2.2 Literal Hate and Social Value

West's criticism of *When the State Speaks* also highlights the problem with Brettschneider's interventionist viewpoint. One of her sources of discomfort regarding democratic persuasion is when it will fail to persuade. This could be because of two reasons. First, democratic persuasion could fail because of "literal hate, pure and simple"

(West 2014, 1035). West acknowledges that often, hateful views and discriminatory viewpoints are not shaped by reasons, but rather by pure hate that is necessarily devoid of reason and is caused by twisted psyches. These views, she claims, may not be responsive to democratic persuasion and, thus, the problem of hate will not truly be addressed by Brettschneider's theory of state speech. Second, democratic persuasion could fail because those who hold views opposed to the values of free and equal citizenship will only become further entrenched in their views as a response. West notes that they will resist this way because their views and habits are grounded in their opposition to liberal values (West 2014, 1036).

In both of these cases, democratic persuasion backfires and results in solidifying hateful groups' commitment to their views. Again, however, it is important to note that this is because both West and Brettschneider are assuming that democratic persuasion begins at adulthood—when these views are already developed and at least minimally entrenched in the individuals' minds. This is significant because West's criticisms in both of these cases is founded on the inherent unreasonableness of these group's views: “twisted psyches rather than noxious beliefs” (West 2014, 1036). If these views are so unreasonable, how is it that the groups have come to hold them so inflexibly?

The answer to this question must be that somehow the ideas must have been learned and absorbed throughout their lifetimes. When we picture a group of young children, about the age where mandatory school attendance begins, can we reasonably picture a case in which these young children genuinely and steadfastly hold these hateful viewpoints? The key factor to note here is that it would be difficult for a large percentage of the children to hold these hateful and discriminatory views if they had not first been

taught to hold them. People are not born inherently racist, sexist, or homophobic. If the children can be taught to hold hateful views, we can reasonably assume that they can also be taught to endorse the values of free and equal citizenship.⁵

Lebron's criticism that Brettschneider's theory does not substantively account for the problem of social value reinforces this idea. Individuals learn social value through social interactions with other people and institutions. His proposed responses to the problem of social value attempt to help the American public *unlearn* the problematic conclusions that social value creates for race issues. Lebron's robust responses would make Brettschneider uncomfortable precisely because they attempt to tackle many categories of this unlearning in a sweeping fashion that does not acknowledge differences between state coercion and persuasion. In contrast, Brettschneider's version of this unlearning is limited by the means-based and substance-based limits for fully-fledged citizens. However, as we noted earlier, these limits may be amended based on whether the targets of democratic persuasion are children or adults.

Thus, again West and Brettschneider's interventionist perspective is misleading here. Though individuals may respond negatively in the manner that West describes, if democratic persuasion could target individuals at different points in their adoption of hateful views, perhaps we could avoid these deeply entrenched views in the first place. This is evident in Lebron's analysis of social value and his proposals which center around helping America to unlearn its problematic views.

⁵ Some research supporting this sentiment include Willa Michener's *The Individual Psychology of Group Hate* (2012), and Marilynn B. Brewer's *The Psychology of Prejudice: Ingroup Love and Outgroup Hate?* (1999).

2.3 Reflective Revision

Though I believe the preceding sections have clearly demonstrated that the interventionist perspective is problematic because it begins its inquiry too late in the cycle of perpetuation, perhaps the clearest evidence of this problem is Brettschneider's concept of reflective revision. Reflective revision is the manner in which citizens voluntarily choose to evaluate their personal views against the values of free and equal citizenship to eventually incorporate these values into their own comprehensive doctrines. As Brettschneider describes, reflective revision "entails that citizens should '*work backwards*' from the ideal of equal citizenship, using this political value to *reevaluate* and *transform* the discriminatory aspects of their comprehensive doctrines" (Brettschneider 2012, 57; emphasis added). Reflective revision is, by definition, interventionist. It involves citizens, who already hold private views in conflict with free and equal citizenship, choosing to reflect upon these views and revising them in favor of the ideal of equal citizenship.

Democratic persuasion, which can be understood as a state encouragement of reflective revision, operates similarly. It involves the state targeting specific views in conflict with free and equal citizenship, which are already held by individuals, and arguing against them through state speech. Again, Brettschneider's interventionist perspective is clear here. If one begins when the problematic views are already held, his theory provides a robust and substantive challenge to these hateful ideas, but it only minimally addresses the democratic persuasion that can take place before individuals become entrenched in these ideas. In the remainder of this chapter, I will extend his theory of democratic persuasion and the state's role as educator to develop a response to

the substantive and systemic inequalities that will remain under the interventionist perspective.

3. The State as Educator

3.1 The Interests of Children

As reviewed in section 1, children are an interesting case as addressees of democratic persuasion and coercive actions because they are not considered fully-fledged citizens in much of liberal theory and in Brettschneider's analysis. For our purposes here, it is necessary to further examine why this special status of children qua children is the case. Brettschneider notes that children are properly considered "future citizens" rather than fully-fledged citizens, noting that this distinction has its roots in other liberal theories, such as those of John Stuart Mill (Brettschneider 2012, 88). Rawls also described children as having "powers that are undeveloped... they cannot rationally advance their interests" (Rawls 1971, 249). Because the rational power of individuals is often central to liberal theories, children can be left out of the discussion.

Nonetheless, it is clear that children are an essential concern in our endeavor because of how systemic inequalities are perpetuated over time. Children are necessarily part of this equation because they become the generation that can either perpetuate or prevent these inequalities. Thus, when we ask questions regarding how Brettschneider's value democracy would approach the issue of children's education, we are really asking how Brettschneider's theory would justifiably shape the future citizenry.

It is important to note here that the entirety of *When the State Speaks* is concerned with the question of how to shape the future citizenry. Democratic persuasion and reflective revision are, at their core, theories of change. The change that occurs because

of these tools, however, seems to fall short of tackling substantive and systemic inequalities. Remembering West's criticisms, those holding views contrary to free and equal citizenship because of literal hate will likely not respond to democratic persuasion and they surely will not voluntarily engage in reflective revision. In terms of the other criticisms, such as Lebron's, democratic persuasion and reflective revision cannot sufficiently account for the problem of social value. Thus, to understand how Brettschneider's value democracy could affect change over time requires a discussion of childhood education.

Brettschneider briefly addresses the justifiable shaping of future citizens in both of his books. While parents have some room for decisional autonomy over their children, this cannot be understood to be absolute, even with Brettschneider's treatment of the deferential son (Brettschneider 2007, 94). Moreover, despite the looser means-based limits for addressing children through democratic persuasion, the persuasion itself cannot be coercive. As Brettschneider outlines, democratic persuasion that takes place in school "requires that students should have the right to retain a viewpoint that is at odds with the ideal of free and equal citizenship" (Brettschneider 2012, 94). If the state did not respect this right, then it would risk becoming the Invasive State. But children, when addressed by democratic persuasion at school, are coerced to hear, not to believe.

These ideas of the difference of children are reflected in the United States and in many other societies. First, it is clear that there is a minimal understanding that children have certain rights that cannot be recognized without a basal level of education. This is reflected in the compulsory education laws that every state has. State actors like the Supreme Court have noted that education is the paramount role of state and local

governments and that education is “required in the performance of our most basic public responsibilities.”⁶ Second, in order to recognize these rights, there is an understanding that the state has an obligation to provide this minimal education. Again, the many state laws that require localities to provide public education starting at a young age demonstrate this principle. Education is understood as a public good.

A more contentious understanding of the difference of children concerns when they are coerced through the state by paternalistic laws. Yet, it is reasonable to regard many societies, and again the United States, as having a minimal agreement that children can be coerced by the state. Once more, compulsory education laws illustrate this, though the varying age requirements and exceptions of these laws also highlight the disagreement on the periphery of this issue. The real controversy surrounds compulsory education curriculum, which is often posed as a conflict between parental rights and state rights. Under *Brettschneider*’s understanding, however, compulsory curriculum as designed under democratic persuasion cannot truly be understood as coercive because children cannot be forced to agree with the teachings. They are merely coerced to witness the state’s speech, which will hopefully expand their capacity for democratic reasoning. Again, the outcome here is the simple listening and understanding, and the children can be coerced to force this listening as future citizens.

If we assume that compulsory curriculum is uncontroversial and regarded as non-coercive, does this still merit an overriding of parental rights to prevent their children from being taught certain content in school? A discussion of *Brettschneider*’s substance-

⁶ *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954).

based limit is fruitful here. There are certain lessons that would not pass the test of public relevance, such as dance classes, which have minimal effect on the conditions for free and equal citizenship. Here, the parents should reasonably be able to prevent their children from engaging in these lessons. Nevertheless, there are many sectors of compulsory curriculum that should be understood as passing the test of public relevance. Within Brettschneider's theory, an example of this would be a history curriculum that teaches about the civil rights movement or the suffrage movement (Brettschneider 2012, 87). Perhaps a better example would be an attempted exemption for sexual education, as this curriculum can have effects on female student's ability to participate fully in free and equal citizenship. Here, the state could justifiably override the parents' wishes that their child is not taught this lesson because the state would retain the ability for the student to dissent or disengage.

The assumption that there are cases in which the state may override parental interests is widely adopted in its most extreme cases. Take, for example, the cases where children require blood transfusions to save their life, and their parents object to this procedure for religious reasons, such as with Jehovah's Witnesses. Parental authority to make decisions for children is grounded in the assumption that parents, because of their intimate relationships with their children, generally have a better knowledge for what is best for their child than the state does. Thus, parental rights are respected to the extent that the parents can be said to be concerned with the welfare of the child. In the case of life-saving blood transfusions, a parental refusal clearly constitutes destruction of child welfare. The state steps in and coerces the child and the parents in these cases because it is assumed that this is in the best interests of the child.

Extending this principle to Brettschneider's value democracy, we must remember that this theory is grounded in the state's ability to protect its citizens capacity to participate in free and equal citizenship. All government policy must begin and end in this principle. So, state supremacy over healthcare decisions when there are parental objections to blood transfusions clearly fall within this principle because the child's life is at stake. Minimal education, I argue, would also fall under this principle. As Brettschneider discusses in *Democratic Rights* and *When the State Speaks*, there are certain necessary conditions to fully participate in free and equal citizenship. If certain curriculum falls within the domain of public relevance, then it follows that they qualify because they affect citizens' (even future citizens') ability to participate in free and equal citizenship. In these cases, parents must justify their desire for their children to be exempted from this curriculum through democracy's public reason.

Therefore, though certain controversy remains, it is evident that children are different in important ways. First, children qua children should be understood as future citizens. Second, children are important because they can perpetuate or prevent substantive and systemic inequalities. In addition, there are ways for the state to justifiably shape these future citizens within Brettschneider's value democracy through a combination of coercive and expressive means. Moreover, children should be understood to have certain rights that require minimal education, and when the education falls under public relevance, parental interest in their children's exemptions must be based in democracy's public reason to be successful. Thus, at times, a child's interest in free and equal citizenship merits state overriding of parental interests.

3.2 *The Paradox of Educational Rights*

With these principles established, it is imperative to emphasize why education is crucial for Brettschneider's theory. To do so, we must revisit his discussion of the paradox of rights. In *When the State Speaks*, Brettschneider describes the paradox of rights as the two possible dystopias that result from a state's treatment of hateful views. Because a liberal democracy must protect fundamental rights, such as the right to free speech, the state must protect citizens' rights to voice hateful viewpoints. The first problem of the paradox of rights is that the neutral state which protects hateful viewpoints without giving reasons for this protection will risk allowing hateful or discriminatory groups to paint their viewpoints as compatible with or grounded in free and equal citizenship. The second problem is that, without explaining why the hateful or discriminatory viewpoints are protected, the state risks being perceived as complicit in these viewpoints. These negative consequences are important to value democracy because they ultimately will impede on citizens' ability to participate in free and equal citizenship if they come to fruition.

When we discuss the paradox of rights in relation to education, these problems become even more critical. The paradox of educational rights has the same risks of complicity and co-optation of the values of free and equal citizenship, but are more perilous in the realm of public education for the reasons previously discussed: children receive education because it is imperative for their participation in free and equal citizenship, and children's education shapes future societal values. If the state fails to act as non-neutral in favor of the values, its failure will adversely impact future citizens' ability to participate meaningfully in democracy, especially citizens in groups typically

targeted by hate speech and discriminatory views, such as women, black citizens, and LGBTQ citizens.

Therefore, it is evident that the state has a role in providing education compatible with free and equal citizenship. This special role is accompanied by a special obligation because of the paradox of educational rights. If the goal of Brettschneider's democratic persuasion theory is to shape the citizenry so that it more closely approximates the ideal of free and equal citizenship, then the state must fulfill this political obligation.

3.3 Reflective Reproduction

When the state aims to provide public education compatible with free and equal citizenship, it is important that it does so legitimately. This means, as discussed in section 3.1, this democratic persuasion must meet the substance-based and means-based limits of all other democratic persuasion, with the exception of the coercion necessary to compel attendance at public schools with a compulsory curriculum. Again, this exception is only merited because of the fact that children qua children are assumed to be future citizens without full rational capacities or autonomy. Democratic persuasion in all other cases is designed to encourage reflective revision, which is a voluntary process. Educational democratic persuasion, then, will be designed to encourage what I will call reflective reproduction.

Reflective reproduction parallels reflective revision in that it involves individuals voluntarily reflecting on their views and trying to make them more compatible with the values of free and equal citizenship. Reflective reproduction, however, differs from reflective revision in that it is not an interventionist method. Again, Brettschneider defines reflective reproduction as entailing "that citizens should '*work backwards*' from

the ideal of equal citizenship, using this political value to *reevaluate* and *transform* the discriminatory aspects of their comprehensive doctrines” (Brettschneider 2012, 57; emphasis added). When future citizens engage in reflective reproduction, they will begin from the starting point of the ideal of equal citizenship, using this to evaluate and form their comprehensive doctrines. Reflective reproduction is involved in the shaping, rather than reshaping, of comprehensive worldviews.

I draw the concept of reflective reproduction largely from Amy Gutmann’s theory of conscious social reproduction as outlined in *Democratic Education*. Gutmann defines conscious social reproduction as “the ways in which citizens are or should be empowered to influence the education that in turn shapes the political values, attitudes, and modes of behavior of future citizens” (Gutmann 1999, 14). Essentially, within a democracy, the state’s treatment of public education will affect the future citizenry. This clearly brings public education into the principle of public relevance for Brettschneider and for Gutmann this merits a similarly political response. The values taught to children will shape the future citizenry as well as how the state teaches future generations of children.

Specifically, conscious social reproduction draws out the political primacy of public education for Gutmann. Our discussion above of children’s ability to perpetuate or prevent future inequalities and the necessary conditions of participating in citizenship that Brettschneider outlined in his books reflects the political primacy of education.

Gutmann’s theory of public education also echoes Brettschneider’s limits on democratic persuasion in many ways. She notes that “there should be room within school for [children] to develop the capacity to discuss and defend their political commitments with people who do not share them” (Gutmann 1999, 107). This emphasizes why the state

would engage in democratic persuasion within schools—it will increase the capacity for future citizens to engage in democratic contractualism. These capacities are based in each citizen's sovereign status and are necessary conditions of free and equal citizenship.

Furthermore, Gutmann also distinguishes between appropriate forms of democratic persuasion and instances of coercion. When public education is concerned, the state can coerce students' attendance and engage in democratic persuasion because the primary social purpose of schools is education. This is in contrast to avenues like the mass media and other industries, for which education is a purpose but not necessarily a primary purpose (Gutmann 1999, 288). For Brettschneider, the state could not control private children's television programs to make them reflect the values of free and equal citizenship because this would be a breach of the means-based limit. Education, however, is a clear version of state speech and, thus, is an appropriate venue for democratic persuasion.

Educational persuasion involves the state designing curriculum for mandatory public schooling so that it develops children's capacity for reflective reproduction. Remembering that hateful and discriminatory views are learned, educational persuasion will provide reasons not to accept the problematic views contrary to free and equal citizenship that outside forces are trying to teach the children. Importantly, children still have the right to disagree or disengage with this educational persuasion. Especially because of their decreased ability to reason, children qua children will require a careful version of democratic persuasion. They may have relatively more difficulty differentiating between views that the state endorses and views that they feel coercively forced to adopt. This is a concern that the state must take seriously. It will have to

provide comprehensive training for teachers and staff of public schools that includes how to engage in educational persuasion to ensure it falls within the means-based limit for children. Clearly, this is a difficult, but important, task.⁷

Their parents, moreover, retain the right to teach their children any hateful or discriminatory views that they desire at home. Educational persuasion simply develops the capacity for the children to evaluate the worldviews provided for them and to weigh their commitment to the values of free and equal citizenship as they decide which views to adopt. Thus, the results of educational persuasion and reflective reproduction may be a perpetuation of hateful and discriminatory views simply because the child's parents are excellent at arguing. This is a result that must be allowed in order for educational persuasion be justifiable in a liberal value democracy.

However, if the state engages in educational persuasion successfully, reflective reproduction will result in a decrease of viewpoints contrary to free and equal citizenship over time. As future citizens who have developed this capability become fully-fledged citizens, they will no longer be subject to educational persuasion. If successful, the need for democratic persuasion will decrease as well because fewer citizens will adopt the hateful or discriminatory views. With fewer citizens adopting these views, there are fewer instances of necessary persuasive intervention. This will become a politically virtuous cycle, with the values of free and equal citizenship reproducing more citizens who hold and endorse these values.

⁷ The specifics of Gutmann's *Democratic Education* would be an excellent starting point for this endeavor.

3.4 Homeschooling as Educational Persuasion

Of course, the discussion thus far and the majority of Brettschneider's theory operates on an ideal plane. If all parents agreed without resistance to having their children subjected to educational persuasion, then the effects favorable to free and equal citizenship will be much more attainable. Realistically, however, parents will attempt to exempt their children from this. According to Brettschneider's principle of public relevance, the parents' reasons for exempting their children must be publicly justifiable. For example, parents who want to exempt their children from participating in public school because of the burdensome distance they would have to travel to ensure attendance would have a publicly justifiable reason as long as they provided comparable education through homeschooling. This exemption would not affect their child's ability to participate in free and equal citizenship, and so it would be acceptable. Secular private schools that teach curriculum sufficiently comparable to state schools could also easily pass this requirement for a publicly justifiable reason. Conversely, parents wanting to exempt their children from participating in public school because their racist viewpoints are opposed to integrated schools would not have publicly justifiable reasons.

Religious objections to public education are difficult cases here. The previous example is clear because it is founded on hateful views fundamentally opposed to free and equal citizenship. Some religious traditions oppose their children attending public schools precisely because they fear educational persuasion luring their children into a liberal ideology that can often conflict with their religious beliefs. Some religious traditions are not as openly opposed to free and equal citizenship, but still oppose public education. For example, some may simply encourage parents to spend more time with

their children for the purpose of developing their moral framework. This is ambiguously related to free and equal citizenship as long as these morals are not hateful or discriminatory in nature.

As Brettschneider unequivocally states, however, “religious claims do not immunize citizens from the principle of public relevance or from democratic persuasion” (Brettschneider 2012, 118). Thus, for these ambiguous claims, some further reasons within the realm of democracy’s public reason would have to be offered. Gutmann also advocates for overriding these religious interests in favor of a secular standard of education for reasons related to free and equal citizenship. She explains, “secular standards constitute a better basis upon which to build a common education for citizenship... because secular standards are both a fairer and firmer basis for peacefully reconciling our differences” (Gutmann 1999, 103). Religious claims alone would fail the standard of publicly justifiable privacy necessary to exempt children from public education on these grounds.

Other state policies echo this principle of state authority overriding religious interests. For example, some religions refuse to recognize spousal rape as a legitimate crime, but individuals remain subject to laws against spousal rape. Other religions have been prevented from consuming illicit substances as part of their religious rituals because of the state drug laws. Religious justifications do not have a claim to absolute deference.

Though there may be alternative reasons for exempting children from public school in favor of homeschooling, the discussion thus far should provide a sufficient framework from which we could evaluate these claims. Ultimately, if we accept all the reasons given for compulsory education and educational persuasion in most cases, then

we must defer to these principles when evaluating publicly justifiable reasons for educational exemptions.

Let us imagine, however, that parents choose to exempt their child from public education based on burdensome distance, a publicly justifiable reason. Once they have exempted their child from the coercive power of the state's compulsory education laws, are the children now free from coercive force? This cannot be the case if we accept all of the reasons for compulsory education in the first place. The state cannot legitimately force attendance to public schools in publicly justifiable homeschooling cases, but it can still coercively enforce certain curriculum standards to secure a substantive basal educational equality between future citizens. For example, curriculum for how to teach the history of the civil rights or suffragist movement would be uniformly standardized.

This curriculum would have to respect the parent's ability to denounce these teachings within their private interactions with their children in order to meet the means-based limits of democratic persuasion for fully-fledged citizens. In this way, the homeschooling would not differ from public schooling. Parents engaging in homeschooling, thus, are entitled to some discretion. This discretion, however, is only granted to the extent that it respects the child's interests in her capacity to function as a free and equal citizen. When the mandatory curriculum conflicts with the parents' views, the parents must grant some arrangement to ensure that their children still secure the education despite homeschooling.

For example, let us imagine that a young girl's parents decide to homeschool her because the distance to the nearest public school is burdensome. The family's strict religious beliefs are irrelevant to their justification for homeschooling their daughter, and

so the state grants this exemption. But when it comes time for her parents to teach the young girl state-mandated lessons in sexual education, this conflicts with their religious beliefs. How can we still ensure that the young girl receives the education necessary for her capacity to engage in free and equal citizenship? When the parents are acting as her teacher during homeschooling, they are taking the role of a state actor. Still, because of their own roles as free and equal citizens, for the state to mandate that they teach their daughter the sex education that they disagree with would clearly be an illegitimate breach of the means-based limit of democratic persuasion.

The requirement in this case, however, is not that the parents participate in their child's education, but that their child receives the education. There is no state demand for the parents to teach their children disagreeable sex-education while homeschooling—it only requires that the parents allow their children to be taught this. Some alternative scheme would be mandated. Either the parents would hire someone to teach their daughter these specific disagreeable lessons, or they would have to send her to public school. Either way, this does not constitute coercion of the parents because it does not require any endorsement on their part of the lessons the child will receive.

For some parents, this would mean that they have no choice but to send their child to public school despite their publicly justifiable reasons for homeschooling in the first place. This still does not constitute coercion for the parents on the part of the state. Rather, it reflects the principle discussed in section 3.1 that the parents can make decisions on their own behalf, but they cannot make decisions on behalf of their child that interferes with the ultimate ability to participate in free and equal citizenship. The child's interest in her own sovereign status defeats her parents publicly justifiable interest in not

sending her to public school in cases like these where the parent's beliefs interfere with certain curriculum. The state, by supplying the free public education that satisfies all of the required factors to ensure the basic capacities for the child, has satisfied its means-based limit on persuasion against the parents' interests.

The case of homeschooling should illustrate that even when there are difficulties with the parents' beliefs, educational persuasion can still encourage reflective reproduction without breaching the means-based limits. The aim is simply to develop the future citizens' capacity to understand the values of free and equal citizenship and to productively reflect on these values when forming their comprehensive viewpoints. Though this aim is likely best achieved through uniform state education, this standard is not so inflexible that homeschooling cannot fit into the system.

4. The Education Tightrope

4.1 A Response to Neutralist Concerns

As was the case with democratic persuasion as outlined in *When the State Speaks*, there are some neutralist concerns that remain with educational persuasion. The line between coercion and persuasion is ever blurry and difficult to pin down. There is one main criticism that would likely arise from the neutralists: that educational persuasion is really coercion of both children and their parents.

This criticism may draw from multiple sources. Perhaps educational persuasion is coercive because children have difficulties differentiating between state endorsement and state persuasion; perhaps it is coercive because of the limited opportunities to opt out of uniform curriculum; or, perhaps it's coercive properties lie in the state funding necessary to support the endeavor. Ultimately, each of these criticisms can be answered in the same

way. Educational persuasion in practice could surely breach the means and substance-based limits and err towards the Invasive State. But this is not a comment on the policy itself.

Take the first criticism as an example. Educational persuasion, when implemented without proper caution would be coercive if it did not carefully differentiate between state endorsement and state enforcement of values in the classroom. Any state testing of what the students learn could be interpreted as a test of what the student believes. But this coercion is not inevitable. When taking a history test, the question, “why do you believe women deserve suffrage?” would surely be coercive if there was a right answer the student had to produce to achieve a passing grade. The question, “what reasons did the suffragists give in favor of women’s suffrage that are in accordance with free and equal citizenship?” on the other hand, is not coercive because a correct answer does not require endorsement. For the student to achieve a passing grade, they must simply demonstrate an understanding. The students themselves must not agree with the curriculum to excel in school. This keeps the grading component of public education from coercing beliefs.

Thus, differentiating between state endorsement and state enforcement is difficult, but not impossible. In principle, this cannot be a reason to oppose educational persuasion because the aim is not to indoctrinate the citizens. The goal is to develop their capacity to think for themselves as future citizens and to think critically about the values of free and equal citizenship.

In terms of the limits on opting out of educational persuasion and problematic state funding, these critiques cannot be reasons to oppose educational persuasion for the same reason. In practice, both could be realized as coercion. In principle, however,

neither is truly coercive. Limits on opting out of educational persuasion is not a coercive practice of the state, but a limit on citizens by the sovereign status of other citizens because of democracy's public reason. As discussed in section 3.1, publicly provided education up to a certain age is widely endorsed as a public good—a public good that is most beneficial when the most people participate in it as possible. Nonetheless, parents could opt out for reasons that are compatible with free and equal citizenship and stand up to a publicly justifiable test. Public funding, moreover, is drawn from taxes but its use in public education is justified because it is a public good. A desire to opt out of tax collection specifically because of opposition to educational persuasion would also have to be justified under democracy's public reason. Despite the difficulty inherent in this, it is not conceptually impossible. Thus, again, this cannot be a reason to oppose educational persuasion in principle.

Importantly, if the analysis contained thus far regarding the interests of children in developing their capacities for free and equal citizenship is correct, then providing these publicly justifiable reasons will likely become increasingly difficult over time. This is because, if successful, educational persuasion will lead to reflective reproduction that will contribute to the erosion of discriminatory and hateful viewpoints. Furthermore, the erosion of these beliefs will result in less discriminatory practices. The groups that typically are at the receiving end of these practices, such as women, black citizens, and LGBTQ citizens, will certainly benefit from this. Educational persuasion, like democratic persuasion, by design is intended to create this virtuous cycle that perpetuates the values of free and equal citizenship. As these values are strengthened, it will become more difficult to provide publicly justifiable reasons to opt out. In the beginning stages, one is

arguing against the *potential* benefits of educational persuasion. After development, one must find publicly justifiable reasons to opt out despite the actual benefits that these citizens experience.

Nevertheless, this is still not coercive. As stated previously, difficult does not mean impossible. The state is not more invasive because opting out of its coercion becomes more challenging. If the prohibitionists endorse the ideals of free and equal citizenship, then they should not in principle oppose educational persuasion.

4.2 A Response to Prohibitionist Concerns

Perfectionists may also have grievances that remain after the elaboration of educational persuasion. Lebron, in particular, would likely argue that it does not go far enough because it only reaches the border of the classroom. At home, with the influence of the media and their parents, children are just as vulnerable to hateful and discriminatory viewpoints as without educational persuasion. Especially in relation to the problem of social value, this is concerning.

In response, I will argue, as Brettschneider did for democratic persuasion, that educational persuasion may fail to create the virtuous cycle aforementioned. The problem of social value may be perpetuated and hateful views may continue to spread, unphased. But this is a necessary risk we must be willing to take if we truly endorse the values of free and equal citizenship. The power of educational persuasion necessarily ends at the classroom's door because it must to respect the rights of future citizens and fully-fledged citizens. The state's role as educator is not the right to exclusively educate. Children's viewpoints will undoubtedly be influenced by the media, their parents, and other sources. But their capacity to reflect upon the values of free and equal citizenship as they evaluate

these influences will hopefully result in a citizenry that more fully endorses free and equal citizenship. In this way, educational persuasion at the very least gives Brettschneider's theory a possible mechanism for unlearning social value.

Song may also raise her objection from *When the State Speaks* and argue that educational persuasion does not answer the problem of ambiguity and state funding. Again, because of the limits of educational persuasion, she would be justified in this statement because this elaboration of the state's role as educator does not address the state's role as a spender. Yet, because of reflective reproduction and the virtuous cycle, I argue that educational persuasion has the potential to affect the citizens' role as enforcer of democratic values. As the values of free and equal citizenship become more and more widely endorsed, the citizens will also likely become uncomfortable with the Catholic Church's ambiguous stance towards women. Citizens, importantly, are not subject to substance or means-based limits on democratic persuasion. Thus, they could independently choose to encourage the Church's reflective revision until it escapes ambiguity. Of course, this is not guaranteed, but it is more of an answer to ambiguity than Brettschneider provides without an account of educational persuasion.

5. Conclusion

With the prohibitionist and neutralist concerns thus addressed, it becomes clear that educational persuasion suffers from a few of the same criticisms as democratic persuasion. But because educational persuasion is not an interventionist approach, it provides a liberal extension of democratic persuasion that has the tools to answer these critiques. In principle, educational persuasion avoids the Invasive State and the Hateful Society. It avoids the Invasive State because it is targeting children, who are future

citizens, and does not coerce their parents. It avoids the Hateful Society because it has a mechanism for change and for shaping society that addresses how hate and discrimination opposed to the values of free and equal citizenship perpetuate over time.

Educational persuasion also answers the specific feminist critiques that have been lodged at Brettschneider's theory thus far. It answers King's critiques of *Democratic Rights*, where he argues that value democracy is either more perfectionist than Brettschneider wants it to be or it does not adequately address women's oppression. Here, educational persuasion avoids perfectionism because children have the option to form their hateful and discriminatory views despite reflective reproduction, but it makes this result less likely. Educational persuasion is a way to address how women's oppression can continue despite exit opportunities and formal equality. Additionally, as discussed above, it provides a response to Song's worries to show how citizens can be an enforcing power in value democracy.

Lastly, it addresses the bulk of West's concerns with *When the State Speaks*. She presented the problem of literal hate and further entrenchment of hateful views as two problems with democratic persuasion. Educational persuasion provides a response to literal hate because it addresses the development of hate early on instead of taking an interventionist approach. With children, this also avoids the problem of further entrenchment because they have not developed their views fully enough for this yet. West's final apprehension involved the Hypocritical State that used liberal values to mask illiberal practices. Educational persuasion is as vulnerable to this criticism as democratic persuasion and so the same response is appropriate. Just as Brettschneider argued that democratic persuasion is insufficient to guarantee a fully legitimate state, so educational

persuasion must embody free and equal citizenship as fully as possible to guarantee legitimacy. But if it does so successfully, then educational persuasion will guarantee a more legitimate state than democratic persuasion could on its own because it addresses the perpetuated inequalities and discrimination.

This sentiment is echoed in racial critiques. Lebron would still likely want to develop educational persuasion in a more perfectionist direction. But to remain a liberal theory that embodies the values of free and equal citizenship, we must resist this urge. Educational persuasion cannot ensure the unlearning of the problem of social value, but it provides a way to prevent the learning in the first place.

Educational persuasion and reflective reproduction should address many of the shortcomings of democratic persuasion and reflective revision as outlined by these feminist and racial critiques. Importantly, it does so as an extension of the existing framework that Brettschneider laid out in *Democratic Rights* and *When the State Speaks*. Educational persuasion will not conflict with democratic persuasion but will function as an addendum that specifically addresses how hateful and discriminatory views are perpetuated in a value democracy.

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