

## STATE SPEECH AND POLITICAL LIBERALISM

**ORDERED LIBERTY: RIGHTS, RESPONSIBILITIES,  
AND VIRTUES.** James E. Fleming<sup>1</sup> and Linda C.  
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State regulation and state persuasion require different grounds of legitimacy. If we understand political liberalism to require, among other things, that the state “remain neutral toward disputed and controversial ideals of the good life,”<sup>4</sup> this neutrality should focus on state regulation, not state persuasion. Perhaps the state’s attempt to regulate based on common ground understandings (an overlapping consensus of reasonable comprehensive views of the good)<sup>5</sup> can help secure this kind of liberalism in politics. Even when it regulates in this fashion, however, the state should attend to the costs imposed on those who cannot share in the common ground understanding, or so I have argued previously.<sup>6</sup> This is so even though the failure of neutrality is one of effect and not purpose. Establishment Clause limits regarding state religious speech aside (at least in our

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4. CHARLES LARMORE, *PATTERNS OF MORAL COMPLEXITY* x (1987).

5. See JOHN RAWLS, *POLITICAL LIBERALISM* (1993).

6. See ABNER S. GREENE, *AGAINST OBLIGATION: THE MULTIPLE SOURCES OF AUTHORITY IN A LIBERAL DEMOCRACY* (2012); Abner S. Greene, *The Incommensurability of Religion*, in *LAW AND RELIGION: A CRITICAL ANTHOLOGY* (Stephen M. Feldman ed., 2000); Abner S. Greene, *Constitutional Reductionism, Rawls, and the Religion Clauses*, 72 *FORDHAM L. REV.* 2089 (2004); Abner S. Greene, *Kiryas Joel and Two Mistakes About Equality*, 96 *COLUM. L. REV.* 1 (1996); Abner S. Greene, *Uncommon Ground: A Review of Political Liberalism by John Rawls and Life’s Dominion* by Ronald Dworkin, 62 *GEO. WASH. L. REV.* 646 (1994); Abner S. Greene, *The Political Balance of the Religion Clauses*, 102 *YALE L.J.* 1611 (1993).

constitutional order), a proper understanding of political liberalism need not, though, hem the state in regarding its speech power, need not limit it to advancing common ground understandings or liberal conceptions of the good. My prior work has argued for a deep and wide pluralism in a liberal constitutional order—just as the state should accommodate those whose religious and other beliefs and practices cannot be part of the regulatory common ground, so should we see the “state” as many mini-states (federal, state, local), all competing for citizens’ allegiance, and able to advance through speech (and conditional funding) a wide array of goals, shared and not-so-shared, liberal and not-so-liberal. Citizens as listeners and voters can then make up their own minds. I believe this deep and wide pluralism is an aspect of the best understanding of political liberalism—a presumptive accommodation of those whose practices are harmed by common ground regulation; state speech that may be on contested issues and may (with some possible limits)<sup>7</sup> advance views at odds with standard liberal virtues. We should see political liberalism as applying liberalism’s open-mindedness, uncertainty, and humility to state action generally, acknowledging that viewpoints that reject these virtues help provide a check on laws that are otherwise liberal (in effect only, perhaps) and on state speech that would otherwise advance only standard liberal ends. This marriage of pluralism with political liberalism not only provides a checking function against the state; it also permits groups to develop apart from the state, an important aspect of diversity. Furthermore, it is the best way to apply an appropriate liberal sense of doubt about whether we’ve gotten the right or best answers.

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Jim Fleming and Linda McClain have written an impressive book on the responsible exercise of rights, which flows from prior writing by each.<sup>8</sup> Their title, “Ordered Liberty,” is a bit of a misnomer, however. When one thinks of that phrase, one thinks of the ways in which we balance liberty against order, *i.e.*, against security, police power, controlling the excesses of liberty. Responsibility in the exercise of rights is an aspect of how rights

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7. In addition to Establishment Clause limits on state speech, the Equal Protection Clause might best be understood to prevent government from denigrating persons on the basis of race, religion, gender, sexual orientation, etc.

8. See JAMES E. FLEMING, *SECURING CONSTITUTIONAL DEMOCRACY: THE CASE OF AUTONOMY* (2006); LINDA C. MCCLAIN, *THE PLACE OF FAMILIES: FOSTERING CAPACITY, EQUALITY, AND RESPONSIBILITY* (2006).

are orderly, but the major hard cases involving rights are hard because significant claims of harm are in play. Think of much of constitutional criminal procedure, free speech cases that are tough because speech causes serious harm, not because it does not, and abortion rights jurisprudence. Fleming and McClain have much to say about what it means to exercise rights responsibly, but little to say about the state's claims of order in the sense of preventing or redressing serious harm to others.

A core claim in the book is that encouraging the responsible exercise of rights is consistent with a proper understanding of liberalism. Liberalism is not, on this view, just about appreciating the ways in which the state may be checked and the liberties of individuals fleshed out. In addition, it is about the state's (including the government, its officials, and persons acting as citizens) helping to foster and shape how such liberties are understood and employed. One focus of the book is the ways in which the state (and civil society) may use its persuasive powers—through speech, conditional funding, and the like—to “help persons develop their moral capacities for self-government and, in that sense, live good lives” (p. 4). Fleming and McClain call this “constitutional liberalism,” and deem it “a mild form of perfectionism” (p. 4). Corey Brettschneider's recent book *When the State Speaks, What Should It Say?*,<sup>9</sup> also offers a defense of government speech to enhance certain liberal virtues (although he might not put it precisely this way). His conception of “value democracy”<sup>10</sup> obligates the state to use its persuasive (but not coercive) powers to “transform . . . inegalitarian beliefs . . . that challenge the ideal of free and equal citizenship.”<sup>11</sup> Fleming/McClain and Brettschneider do not offer the same government speech agenda—the former focus on autonomy and the latter on equality—but both develop a distinctively liberal conception of the state's role as persuader.

In this review, I will discuss two aspects of these arguments for government speech. First, I will challenge the claim in both books that theirs is a political rather than comprehensive liberalism. To some extent, this involves coming to grips with Rawls' distinction between these two concepts. But I primarily mean to make a conceptual, rather than interpretive claim, *i.e.*,

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9. COREY BRETTSCHEIDER, *WHEN THE STATE SPEAKS, WHAT SHOULD IT SAY? HOW DEMOCRACIES CAN PROTECT EXPRESSION AND PROMOTE EQUALITY* (2012).

10. *Id.* at 4.

11. *Id.* at 89.

that the kinds of values, or virtues, that these books say the state should foster are based on a distinctive notion of the person and of the state's relationship with its citizens, and thus cannot be considered simply predicates we must accept for any properly working liberal order. Second, I will contend that the state's speech power in a liberal democracy should be broader than either book suggests. This is consistent with what I believe to be a proper political (rather than comprehensive) liberalism. Moreover, I mean this second argument, for the scope of government speech, to stand whether or not one agrees with my treatment of the political versus comprehensive liberalism issue.

For Fleming and McClain, responsibility in a liberal democracy is better seen as "autonomy" than as "accountability to community" (p. 3). The state need not be hands off in encouraging the responsible exercise of rights (that is a too limited understanding of liberalism); but it should foster the conditions for, and aid in the exercise of, knowledgeable choice among permissible alternatives, rather than steer citizens in one direction or another. For example, in the abortion setting, Fleming and McClain argue for "encouraging citizens to be aware of a range of perspectives" (p. 67), and for "balanced counseling encouraging responsible self-determination" (p. 68). This role for the state is consistent with a proper constitutional liberalism, they argue, which is a version of (their understanding of) political liberalism. They make this clear when they critique Ronald Dworkin's move to (what they say is) comprehensive liberalism (pp. 3–4). And they add: "Our formative project for constitutional liberalism is analogous to Rawls's political liberalism in maintaining that government should not embrace any comprehensive moral doctrine. Nor should government attempt to secure agreement upon an orthodoxy concerning the best way of life" (p. 118).

Brettschneider argues for the state to engage in "democratic persuasion,"<sup>12</sup> promoting the "ideal of free and equal citizenship."<sup>13</sup> This is a political, or public, and not comprehensive ideal, he maintains.<sup>14</sup> The state should speak, in various ways (including through public education), to preach the core values of equal citizenship, and should encourage persons in their private capacities to adopt these liberal democratic virtues.

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12. *Id.* at 4.

13. *Id.* at 24.

14. *Id.* at 14.

He even extends this latter argument to religious persons and institutions: although the state should not use its coercive powers to infringe the free exercise of religion, it may encourage religions whose beliefs do not accord with our constitutional notions of, say, gender equality, to alter their views.<sup>15</sup> His point here is not to engage in theological debate or attack religion as such, but to include (or fail to exclude) religion in the set of beliefs that the state may seek to adjust via its persuasive powers.

I am doubtful that Fleming/McClain and Brettschneider are actually offering versions of political rather than comprehensive liberalism. The distinction is a matter of both scope and grounds. Political liberalism goes to core matters of citizenship only; comprehensive liberalism goes more deeply, to touch what we would normally consider private matters and issues relating to the person apart from his or her role as citizen or official. These are matters of scope, and, for the most part, Fleming/McClain and Brettschneider limit their arguments to the civic/political realm in a way that would justify their claim to be political liberals. For example, Fleming and McClain state that “what separates perfectionism from political liberalism is that perfectionists appeal to furthering human goods, while political liberals generally appeal to fostering the preconditions for free and equal citizenship and the capacities for democratic and personal self-government” (p. 116). Brettschneider says that his is an argument about the political realm only, about the proper qualities of democratic citizenship. Thus, he refers to his “more limited concern with political equality, rather than with equality in some more comprehensive sense”<sup>16</sup>; he defines “the democratic ideal of free and equal citizenship” “in political terms, and distinguish[es] it from more comprehensive notions of equality”<sup>17</sup>; his argument about equality within family life “derives from a ‘thin’ or non-comprehensive conception of free and equal citizenship.”<sup>18</sup> The last quotation reveals something true of both books—they discuss family life in a way that extends the notion of the political rather deep. Both are aware of this and seek to link political understandings of autonomy and equality with how life in families potentially prepares one for life as a citizen. Thus, in a discussion of civil society that includes

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15. *Id.* at 143.

16. *Id.* at 14.

17. *Id.* at 24.

18. *Id.* at 54.

families, Fleming and McClain talk about the “liberal expectancy of congruence between civil society and democracy—that the values cultivated in civil society will be liberal democratic values and thus will undergird liberal democracy. . . . [O]ur own account of the roles of civil society holds this liberal expectancy” (p. 90). Brettschneider argues, similarly, in a discussion that includes family life, that “while a commitment to free and equal citizenship only entails endorsing a ‘thin’ set of values, this endorsement potentially challenges the comprehensive conceptions of citizens and some practices often regarded as private.”<sup>19</sup> Nonetheless, both books hoist the banner of political liberalism through arguments that go to what we share as citizens.

But although Fleming/McClain and Brettschneider arguably limit the scope of their arguments in a way that is consistent with a political rather than comprehensive liberalism, the values and virtues that they defend as appropriate for the state (and all of us) to be advocating are contestable and part of some, but not other, views of the good life. So, Fleming and McClain focus on responsibility “as autonomy” (p. 3). Both the state and civil society have a “responsibility to help persons develop their moral capacities for self-government and, in that sense, live good lives” (p. 4). In her prior work, McClain argues similarly that one guideline for government persuasion should be: “is government’s purpose for such persuasive measures to foster the capacity for self-government? Is this the likely effect of such measures?”<sup>20</sup> Regarding education, she continues, “Fostering children’s capacities for self-government should cultivate not only respect for authority but also autonomy and critical reflection.”<sup>21</sup> In discussing abortion, Fleming and McClain focus on helping citizens become aware of a “range of perspectives,” on “balanced counseling” (pp. 67–68). Their constitutional liberalism “recognizes a proper role for government in helping to develop the moral powers (or capacities) of citizens, to prepare them for self-governing citizenship” (p. 116). “[W]hat separates perfectionism from political liberalism,” they argue, “is that perfectionists appeal to furthering human goods, while political liberals generally appeal to fostering the preconditions for free and equal citizenship and the capacities for democratic

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19. *Id.* at 53.

20. MCCLAIN, *supra* note 8, at 46. *See id.* at 126–27 (government persuasion regarding marriage should include autonomy, developing capacity for choice, equality).

21. *Id.* at 69.

and personal self-government” (p. 116). The “political (or public)” values that the state should promote include “the equal citizenship of women” (p. 116). Under Fleming and McClain’s “mild civic liberal perfectionism,” “government should undertake a formative project of securing the capacities for democratic and personal self-government, including cultivating the civic virtues necessary for responsible citizenship” (pp. 178–79).

Brettschneider focuses on the state’s advancing the ideal of free and equal citizenship, as speaker, spender, and educator.<sup>22</sup> He accepts that this is not viewpoint neutral, but consistent with Supreme Court doctrine allowing deviation from viewpoint neutrality if the state is not regulating.<sup>23</sup> The state should teach civil rights history in a non-neutral way.<sup>24</sup> “[P]arental rights do not include the ability to raise children free from exposure to the ideas fundamental to liberal democracy.”<sup>25</sup> Accordingly, he critiques *Wisconsin v. Yoder*,<sup>26</sup> which interpreted the Free Exercise Clause of the First Amendment to require an exemption for the Amish from sending their teenage children to any type of school, public or private.<sup>27</sup> The state should encourage students to reflect and debate, and Brettschneider acknowledges this too is not value neutral.<sup>28</sup> When it comes to state subsidy, he admits that “[v]alue democracy embraces non-neutral criteria in deciding which groups to fund.”<sup>29</sup> He applies all of his arguments to state speech that might affect religious belief and practice antithetical to his conception of free and equal citizenship, accepting that his view is incompatible with some religions on the question of exposure to ideas.<sup>30</sup>

The conceptions of autonomy, freedom, equality, and open-mindedness are ones we should share, adopt, and try to persuade others to adopt. Were I a government official, I would try to promote them (with some caveats that I will mention below). I hope I try to live by them and advocate them to my friends. But . . . what kinds of ideas are these? Are they somehow implicit in a proper understanding of liberal democracy? If they

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22. BRETTSCHEIDER, *supra* note 9, at 46.

23. *Id.*

24. *Id.* at 95.

25. *Id.* at 97.

26. 406 U.S. 205 (1972).

27. BRETTSCHEIDER, *supra* note 9, at 98–99.

28. *Id.* at 101.

29. *Id.* at 111.

30. *Id.* at 164.

are, does that remove them from the realm of comprehensive notions of the good? I contend that these are contested, not natural, understandings of citizenship; they are part of a specific iteration of statehood and statecraft; they are (to some extent, in some ways) inconsistent with some fundamentalist religious views, and some secular positions on, say, how children should be raised and the relationship between men and women. We should see these arguments as grounded in a kind of comprehensive liberalism; there is no neutral or higher ground of argument that can render them arguments from “political” liberalism.

Another way of putting this is that Fleming/McClain and Brettschneider are making a kind of “fit” argument, *i.e.*, that the values and virtues they are touting (and suggesting the state tout) are endogenous and uncontestable terrain of our political conception of justice. For example, Brettschneider writes that “[c]omprehensive doctrines are those that seek to go beyond a theory of what is owed to people by virtue of their common status as political beings subject to state power.”<sup>31</sup> If we want to claim that a liberal democracy necessarily contains certain values such as equality (as we have come to understand it; both books discuss both gender and sexual orientation) and autonomy (including getting full knowledge, open-mindedness, having a wide range of choices, etc.), we should do so in one of two ways. We should acknowledge that we are a comprehensive liberal republic, and then think seriously about what that means for citizens who adopt different values, *i.e.*, who challenge what we see as implicit. Or—and better, more accurate, I would suggest—we should see these values of equality and autonomy as just some among many that the state may support, *i.e.*, not as endogenous and uncontestable terrain of our political conception of justice. Here I share Fleming/McClain’s and Brettschneider’s distinction between state regulatory power and state speech/funding power. Regarding the former, I share their views about the limits on state regulation in the name of a proper constitutional conception of equality and autonomy (the latter cashing out in various areas, speech, religion, reproductive rights, adult sexual choices, etc.) As I have argued elsewhere,<sup>32</sup> the state in a liberal democracy may regulate in these (and other) ways, but must be attentive to the cost to those who adopt

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31. *Id.* at 14.

32. *See supra* note 6.

different normative views, by providing appropriate exemptions and accommodations. Regarding state speech/funding power, although my personal preferences are to foster the values and virtues that Fleming/McClain and Brettschneider feature (and although I would seek to advance such values via speech/funding were I in office), a proper political liberalism should be more open to the state's advancing a wide range of visions of the good, not just ones that fit with a comprehensive liberal understanding of citizenship. I will say more about this below.

I have been suggesting that as a conceptual matter, we should understand comprehensive liberalism according to the grounds stated for state (and citizen) action, not merely according to the scope of application of such grounds. As a matter of interpreting Rawls, this is not an easy issue. To some extent, Rawls' distinction is a matter of scope.<sup>33</sup> Comprehensive moral conceptions apply to "what is of value in human life, and ideals of personal character, as well as ideals of friendship and of familial and associational relationships. . . ."<sup>34</sup> Political moral conceptions are "worked out for a specific kind of subject, namely, for political, social, and economic institutions."<sup>35</sup> The content of a political conception of justice is "expressed in terms of certain fundamental ideas seen as implicit in the public political culture of a democratic society."<sup>36</sup>

On the other hand, the problem Rawls was responding to in *Political Liberalism* was that he came to see some of the concepts from *A Theory of Justice* as grounded in comprehensive liberalism, and accordingly okay for ideal theory but problematic in terms of actual governance (and legitimacy) in a liberal democracy.<sup>37</sup> As Samuel Freeman puts it, "The problem Rawls . . . discovered with official political appeals to autonomy [is] familiar. The value of autonomy is part of one or more 'comprehensive doctrines' which . . . could not be generally endorsed by conscientious moral agents, even in a well-ordered society where Rawls's own principles of justice are generally accepted."<sup>38</sup> And Rawls was careful to limit the appropriate state-endorsed content of children's education. Let me quote

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33. As he says. See RAWLS, *supra* note 5, at 13.

34. *Id.*

35. *Id.* at 11.

36. *Id.* at 13.

37. See *id.* at Introduction.

38. Samuel Freeman, *Public Reason and Political Justifications*, 72 *FORDHAM L. REV.* 2021, 2025 (2004).

him at length:

“[V]arious religious sects oppose the culture of the modern world and wish to lead their common life apart from its unwanted influences. A problem now arises about their children’s education and the requirements the state can impose. The liberalism of Kant and Mill may lead to requirements designed to foster the values of autonomy and individuality as ideals to govern much if not all of life. But political liberalism has a different aim and requires far less. It will ask that children’s education include such things as knowledge of their constitutional and civic rights so that, for example, they know that liberty of conscience exists in their society and that apostasy is not a legal crime, all this to insure that their continued membership when they come of age is not based simply on ignorance of their basic rights or fear of punishment for offenses that do not exist. Moreover, their education should also prepare them to be fully cooperating members of society and enable them to be self-supporting; it should also encourage the political virtues so that they want to honor the fair terms of social cooperation in their relations with the rest of society.”<sup>39</sup>

Although Rawls to some extent focuses on scope in this passage, the main point is to clarify that the state in a liberal democracy should foster what I would call a fairly thin set of virtues, and back off from fostering autonomy and individuality in a way that would more deeply cut against the norms of various subgroups. Fleming/McClain and Brettschneider advance a view of the state’s persuasive power that is more grounded in and intent on fostering distinctively liberal virtues. My view about the appropriate scope for government speech, about which I will say more in a moment, borrows some from Rawls’ treatment and differs from Fleming/McClain and Brettschneider—I, too, believe the state should be cautious about promoting (only) distinctively liberal virtues such as autonomy, open-mindedness, equality, and the like. My view then goes on to claim a thicker role for government speech, to permit various not-so-liberal viewpoints (as well as liberal ones) to be fostered, and to encourage the state to provide a seedbed for a wide array of viewpoints, some of which may challenge liberal norms.

In earlier writing, I have argued for a robust role for government speech.<sup>40</sup> The argument differs from Fleming/

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39. RAWLS, *supra* note 5, at 199.

40. See Abner S. Greene, *Speech Platforms*, 61 CASE WESTERN L. REV. 1253

McClain's and Brettschneider's, and differs even if one takes their side over mine regarding whether their ideas are truly politically liberal. I contend that the state may speak on contested issues, even those that do not involve autonomy or equality and even to advance positions that a traditionally liberal view might abjure. So, for example, I maintain that public high schools may choose to teach abstinence-only education, sex education, both, or neither. Regardless of my preference were I running such a school, I do not believe the state is limited to introducing a broad range of perspectives or the perspective that might best accord with my preferred version of gender equality. (Or my preferred way to ensure against religious norms being filtered through the state. On this point: I have argued it is unconstitutional for the state to ground coercive law through predominant, expressly religious argument.<sup>41</sup> The same would go for state speech. But laws or persuasive activity that can be translated into secular terms are fine, even if the law or speech act accords best or most with the views of a particular religion or religions.) In earlier work, McClain says that providing sex education is part of "government's affirmative responsibility to promote responsible self-government and to facilitate the work of families in doing so."<sup>42</sup> She adds that it is "not defensible for government to seek to advance a conservative sexual economy through funding abstinence-only education."<sup>43</sup> We should see these as comprehensive liberal views on the state's role in education, and should prefer a view of state speech that is a bigger tent, that permits localities to choose for themselves which values involving teenage sexuality to promote via public education.

Here is another example of how I believe a state may speak on contested issues: it may say it favors childbirth over abortion or that it favors a woman's right to choose between the two. Or that it favors neither and expressly wants to remain on the sidelines. Although I support the right of a woman to choose whether to carry her child to term,<sup>44</sup> and have serious doubts

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(2011); Abner S. Greene, *Government Speech on Unsettled Issues*, 69 *FORDHAM L. REV.* 1667 (2001); Abner S. Greene, *Government of the Good*, 53 *VANDERBILT L. REV.* 1 (2000).

41. See GREENE, *AGAINST OBLIGATION*, *supra* note 6, at 150–55; Greene, *The Political Balance of the Religion Clauses*, *supra* note 6, at 1614–33.

42. MCCLAIN, *supra* note 8, at 257.

43. *Id.* at 276.

44. See *Planned Parenthood v. Casey*, 505 U.S. 833 (1992); *Roe v. Wade*, 410 U.S. 113 (1973).

about the outcome of the abortion-counseling gag rule case, *Rust v. Sullivan*,<sup>45</sup> in general abortion should be an area in which the state may take sides, if it wants, via its persuasive powers. My doubts about *Rust* go to the setting in which the speech is taking place (doctor's offices). My argument for state speech requires that it be neither monopolistic nor coercive,<sup>46</sup> and telling poor women who come to Title X clinics that they may carry their fetuses to term, while telling them nothing about abortion alternatives even if they ask, risks rendering their ultimate choices not fully knowing, and thus even if not strictly speaking coerced, still constitutionally problematic. Brettschneider disagrees on my main point here, contending that "[t]he decision of individuals regarding abortion is in the realm of comprehensive conceptions of the good, and thus falls beyond the scope of democratic persuasion."<sup>47</sup> But the state's advancing its position in a contested arena, where some (not all) citizens will ground their views in comprehensive conceptions of the good, does not infringe liberty, because it is not regulatory. Were the state required to advance just one view (say, the one that best promotes women's equality) it would be, on my argument, itself forced to advance a comprehensive liberalism. Better to see the state as a participant in an active speech market, where citizens can then make up their own minds. This notion of listener autonomy is a key predicate to our free speech jurisprudence generally, and helps undergird a more capacious understanding of state speech.<sup>48</sup>

Brettschneider's argument for the state's being hands-off regarding persuasion in the abortion setting stems from his broader claim: "I do not suggest that the government should mold opinion on matters about which there is reasonable disagreement."<sup>49</sup> In her prior work, McClain argued similarly: it is "inappropriate for government to promote an orthodoxy concerning what views citizens should hold about a good life."<sup>50</sup> Let's put aside that there is disagreement about some of the virtues that Brettschneider (and Fleming/McClain) would ask the state to promote (this would require a discussion of the "reasonable" and would lead us back to my claim that their view

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45. 500 U.S. 173 (1991).

46. See Greene, *Government of the Good*, *supra* note 40, at 26–49.

47. BRETTSCHEIDER, *supra* note 9, at 123.

48. See Greene, *Government of the Good*, *supra* note 40, at 25–26. See also BRETTSCHEIDER, *supra* note 9, at 66, 88.

49. BRETTSCHEIDER, *supra* note 9, at 39.

50. MCCLAIN, *supra* note 8, at 48.

of what is implicit in liberal democracy may well be contested<sup>51</sup>). The state may play a broader role. So long as it reveals itself as speaker (to avoid ventriloquism<sup>52</sup>) and is neither coercive nor a monopolist in the relevant speech market, the state may advance what a majority believes to be true or good, leaving it to citizens to decide in contested arenas. For an example of how we differ here: Brettschneider says that because disagreement about affirmative action is reasonable and an understanding of free and equal citizenship doesn't require one answer, the issue is thus "not subject to democratic persuasion."<sup>53</sup> I say that state actors and jurisdictions may differ in their views about affirmative action, and may seek to persuade citizens of one position over the other. The sum total of diverse views here, and elsewhere, supports a true political liberalism, open-minded at a meta-level toward what may be good.

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51. See GREENE, *AGAINST OBLIGATION*, *supra* note 6, at 56–63, 101–07.

52. See Greene, *Government of the Good*, *supra* note 40, at 49–52.

53. BRETTSCHEIDER, *supra* note 9, at 90.