

SYMPOSIUM
LIBERAL LEGITIMACY, PUBLIC REASON AND
CITIZENS OF FAITH



FREEDOM AND JUSTICE
IN A DIVERSE POLITY

BY
KEVIN VALLIER

[THIS PAGE INTENTIONALLY LEFT BLANK]

Freedom and Justice in a Diverse Polity

Kevin Vallier

Paul Weithman's 2016 book, *Rawls, Political Liberalism, and Reasonable Faith* (RPLRF) brings together a number of his characteristically careful and rich reflections on the political philosophy of his teacher, John Rawls. In my view, Weithman is the Rawls's richest interpreter, and in many ways his subtlest and deepest student. This is clear in both RPLRF and in Weithman's exposition of Rawls's political turn, *Why Political Liberalism?* (WPL). Weithman's claim that Rawls's thought has a religious aspect is particularly surprising and insightful.

RPLRF includes a number of essays on the theory of public reason that go beyond Rawls's work. I will focus on one of those essays in this piece. In particular, I will focus on an ongoing disagreement between Weithman and Gerald Gaus and myself (call us "convergence theorists")¹. We disagree about how to understand public justification within political liberalism because we have different views about what sorts of reasons play a central role in justifying the coercive powers of government. Despite the fact that Weithman and I agree that the dispute between us is

¹ Gaus and Vallier 2009; Gaus 2011; Vallier 2014.

sometimes “overdrawn” (Weithman 2016, 177), we have two important disagreements:

(1) Convergence theorists think that reasons drawn from reasonable comprehensive doctrines are necessary and jointly sufficient to legitimize political arrangements. Rawls and Weithman think that there must also be shareable or accessible reasons sufficient to justify those arrangements to achieve political legitimacy.

(2) Convergence theorists allow citizens to appeal to comprehensive reasons alone in their political activities. One can be a good citizen and only appeal to comprehensive considerations in all of one’s political activities. Weithman, and Weithman’s Rawls, think that appeals to comprehensive reasons are only permissible if people are prepared to back up their proposals with public reasons when challenged (Rawls 2005, 453).

In brief, we differ over principles of *justification* and principles of *deliberation*. Convergence theorists think that comprehensive reasons are necessary and sufficient for public *justification*, and that a citizen can fulfill her duties *qua deliberating citizen* without appealing to public reasons or even being disposed to do so when discussing matters of constitutional essentials and basic justice with other citizens in the public square.

Weithman thinks that our differences can be traced to a disagreement about the nature and conditions of political freedom. Weithman argues that “political freedom prominently includes political autonomy,” which can only be realized “if deliberation and decision-making conform to the norms of public reasoning” (Weithman 2016, 169). Citizens who deliberate in this way will come to see the value in conformity with the norms requiring the use of public reasons. For Rawls, political autonomy is the freedom of citizens *as citizens*, and the use of public reasons – reasons that

all citizens “can see as telling in favor of [a] law” – makes citizens collectively free when they appeal to them. If we allow citizens to appeal solely to comprehensive reasons, in contrast, then they will not be required to appeal to reasons *qua citizen*, which may leave them with a social and political agreement that is not an expression of the freedom of citizens as such. Thus, Weithman: “Citizens of a liberal democracy realize political autonomy when they act from laws they adopt or legislate for themselves as citizens” (184). This means, then, that the debate between convergence theorists and Rawls is really about “the nature and conditions of political freedom” (170).

To illustrate his argument, Weithman asks us to imagine a case of convergence that does not express political autonomy: an overlapping consensus based solely on religious reasons. We imagine a religiously pluralistic society where people have diverse reasons to agree to their shared basic structure, but they lack shared or accessible reasons to agree. In that case, the basic structure of society will be rooted primarily in considerations that do not motivate citizens *qua citizens*, even if these reasons motivate all citizens based on their private perspectives. In this case, Weithman thinks, a valuable form of freedom is lost. If citizens wish to achieve political autonomy, “the reasons for adopting fundamental laws must be reasons that move citizens as free and equal persons, regardless of what comprehensive doctrine they hold” (184).

A second argument in favor of the traditional Rawlsian position runs as follows:

Rawls is concerned with the full and public justification of justice as fairness in a just society. So he thinks that the convergence which contributes to the full and public justification of a conception of justice is brought about by institutions which implement that conception itself. This marks a significant difference from convergence theorists, who I believe think we could not

know which conception of justice would well-order a just society until we have identified the conception on which citizens converge (189).

This argument ties political liberalism to justice as fairness, Rawls's famed conception of justice.² Weithman thinks that Rawls would reject convergence because it might lead citizens to overrule and reject what Rawls regarded as the most reasonable conception of justice. Rawls provided independent arguments that justice as fairness is correct, and these specify the proper focus of an overlapping consensus. Convergence lacks any principled commitment to justice as fairness, since it allows for public justification without agreement on justice as fairness or even closely related conceptions of justice. I distinguish this argument from the argument from political autonomy because it does not seem concerned primarily with preserving the freedom of citizens as citizens. Further, Rawls does not directly tie the idea of political autonomy to agreement on justice as fairness (something Weithman himself points out in a recent essay, which I turn to below). The unique problem here, then, is that convergence is defective insofar as it permits rejecting justice as fairness.

Let's call these the *political autonomy argument* against convergence and the *justice as fairness argument* against convergence respectively. I will spend the rest of the piece explaining where I think these arguments go wrong. In so doing, I will bring together what Weithman says in his chapter on convergence and autonomy in *RPLRF* and *WPL*, as well as Weithman's recent article on justice pluralism (*JP*, Weithman 2017). My most significant conclusion is that convergence preserves a valuable form of collective freedom that mainline political liberalism lacks, such that an overlapping consensus is necessary and sufficient for persons to be free as a

² Rawls 1999, 52-6, provides a classic formulation of justice as fairness.

whole, even if collective freedom as citizens, or political autonomy, is lost.

I

The Political Autonomy Argument against Convergence

The political autonomy argument holds that convergence undermines political autonomy because it undermines citizens' role in using reasons *qua* citizens to embrace and shape their political order. Comprehensive reasons, in contrast, are not held by citizens *qua* citizens, so if they play a foundational a role in legitimizing the basic structure of society, then comprehensive reasons win out in a conflict with public reasons. Comprehensive reasons would, in turn, potentially defeat coercion embraced by public reasons (reasons *qua* citizen), which means that political autonomy can be trumped or overridden by comprehensive considerations. In this way, convergence is a threat to political autonomy.

Here I offer two replies. The first is to acknowledge the value of political autonomy but allow that other forms of freedom may be more valuable, such as the autonomy of moral agents beyond citizenship. While there may be a valuable form of autonomy where citizens express themselves as citizens, there are other forms of collective freedom, such as the freedom of persons, in all their diversity, to unite with others under commonly authorized rules. This collective autonomy obtains when persons in a society all agree on their social and political arrangements, but not necessarily when they agree *qua* citizens.

Collective autonomy has value for the same reason political autonomy has value. It is good for persons to live freely, and even better for them to live freely together. Political autonomy, in my view, focuses too myopically on living freely together as a citizenry

and ignores or downplays other ways of living freely together. There is great value in an overlapping consensus of religious reasons on political arrangements; people jointly authorize political arrangements based on their own principles and values.

The religious overlapping consensus shows that political autonomy and collective autonomy can conflict. In this overlapping consensus, people are collectively free but not politically free. But once we detect the potential for conflict between two forms of freedom, we must ask which has greater weight. I think it is far from obvious that political autonomy should win out; in fact, I'm inclined to think that collective autonomy is generally superior. But either way, there is a social loss if we follow Weithman because we may lose an opportunity to establish collective autonomy in order to secure political autonomy.

My second reply is to ask whether Weithman has correctly characterized political autonomy in the first place. I am not clear on why citizens qua citizens must appeal to public reasons in order to realize the appropriate ideal of citizenship. For it seems that reasonable people can disagree about the proper conception of citizenship, just as they can disagree about the proper conception of the good and justice. I think it is hard to show that any reasonable conception of citizenship must include something like Rawls's proviso. Good citizenship probably requires that persons are sincere and attempt to contribute to the common good, but some may conceive of citizenship as requiring them to offer and act upon reasons that they regard as moral and appropriate, but not public reasons. It is surely reasonable to think that I can be a good citizen if I am honest, thoughtful, and upright, even if I do not appeal to public reasons in my political activities. So perhaps we can have political autonomy, understood as the freedom of citizens qua citizens, even if some citizens do not abide by Rawls's

proviso, since their reasonable conception of citizenship does not include the proviso.

A natural reply to this argument is that it begs the question. Haven't I simply asserted that reasonable conceptions of citizenship can reject the proviso when that is precisely what is at issue? I don't think so. The basis for holding that people can reasonably disagree about what citizenship requires has the same basis as the view that people can reasonably disagree about the good and justice, namely the burdens of judgment (Rawls 2005, 54-8). Weithman can counter that the mere fact that people reasonably disagree about conceptions of citizenship does not mean that the correct conception of citizenship includes something like Rawls's proviso. Thus, if we, as theorists, have good arguments for the proper conception of citizenship as including the proviso, then we should conclude that good citizenship includes the proviso. Fair enough. But the Rawlsian project involves a commitment to determining what counts as an appropriate conception of the good or justice for us based on whether it can secure stability for the right reasons among members of a well-ordered society, and so we have a test for determining which conception of the good or justice is appropriate for governing members of that society. We can use that test to determine that no one reasonable comprehensive doctrine is uniquely justified for the whole public, nor is any one conception of justice (even if the bounds on the set of reasonable conceptions of justice are much narrower than the bounds on the set of reasonable conceptions of the good). For the burdens of judgment show that no one conception of the good or justice will be stable for the right reasons. We can make a parallel argument for reasonable pluralism about conceptions of citizenship: no one conception of citizenship can secure stability for the right reasons.

Weithman actually has a novel reply here, which is his claim in *WPL* that Rawls thought that the sharing of public reasons is an assurance signal. When citizens use public reasons, they help to provide stability for the right reasons by assuring others that they are committed to shared institutions and act from a duty of reciprocity. Interestingly, Weithman's argument has inspired a number of articles on whether public reasons function as effective assurance signals; many have concluded that they cannot.³ I cannot address this rich, new debate here. My aim is simply to establish that political autonomy may include disagreement about conceptions of citizenship, in which case it may not require the use of public reasons.

A third problem with Weithman's argument comes into focus when we examine his interpretation of Rawls's famous duty of civility. Weithman:

On my reading, Rawls allows citizens to rely on their comprehensive doctrines—including *very fully comprehensive doctrines*—without adducing public reasons in support of their positions, so long as their doing so does not lead others to doubt that they acknowledge the authority of the public conception of justice. If doubts never arise, then the proviso is never triggered, and they need do nothing more. Only if doubts arise, and others need assurance of their allegiance, must they provide assurance by actually adopting and reasoning from the “unified perspective” the public conception of justice provides (Weithman 2010, 331).

Theorists often think of Rawls's duty of civility as applying to citizens *whenever* they discuss constitutional essentials and matters of basic justice in the public square, but this runs contrary to Rawls's final view that the proviso allows private, comprehensive

³ Thrasher and Vallier 2015; Kogelmann and Stich 2016; Vallier 2017; Chung 2017. I review some of these points in Vallier 2019, chapter 6.

reasons into discussion as long as the conclusions backed by those reasons eventually turn out to be supported by public reasons (Rawls 2005, xlix-1). Weithman's interpretation of Rawls is that citizens need take *no positive steps* towards using public reasons. Instead, they must simply have the following trait: if citizen B challenges citizen A's allegiance to their society's constitution and conception of justice, then A must be prepared to offer B public reasons in favor of the fundamental issues for which A advocates. As Weithman says, the proviso is triggered *only when doubts arise* and when *others need assurance*. Weithman argues throughout *WPL* that Rawls developed the doctrine of public reason in part because he thought the exchange of public reasons allowed citizens to assure one another that they are on board with the fundamental rules of their society. So, the proviso is only triggered when assurance is required.

On this basis, then, let us compare two seemingly well-ordered societies. In the first well-ordered society, citizens never exchange public reasons because their allegiance to the political conception of justice is never in doubt, but they are nonetheless prepared to offer public reasons if assurance breaks down. Call this the *consensus-WOS*. In the second well-ordered society, citizens never exchange public reasons because their allegiance to the political conception of justice is never in doubt, but they are generally not prepared to offer public reasons if assurance breaks down. However, they are prepared to offer comprehensive reasons, and many, but not all, are prepared to offer public reasons. Call this the *convergence-WOS*.

Note that an alien observer cannot distinguish between consensus-WOS and convergence-WOS just by observing how citizens behave. The only way it could distinguish between the two is if assurance breaks down, citizens call each other's' allegiance

into question, and then citizens adduce certain kinds of reasons to demonstrate their allegiance.

Weithman must claim that the consensus-WOS is *freer* than the convergence-WOS, even though they are observationally *identical*. The only feature that makes the consensus-WOS freer is that each person has an untriggered disposition to offer public reasons to demonstrate her allegiance and generate assurance, rather than comprehensive reasons. I find it implausible that this untriggered disposition is enough to make the consensus-WOS freer than the convergence-WOS *by definition*. Their actions are identical, their collective choices are indistinguishable from one another, and yet Weithman sometimes seems committed to the claim that the consensus-WOS is freer than the convergence-WOS all the same.

Weithman could reply that the consensus-WOS isn't freer *by definition* but will be freer because citizens are disposed to offer successful and respectful allegiance signals – by being prepared to use public reasons – in cases of doubt. As a result, the consensus-WOS should be more stable than the convergence-WOS, especially given that each citizen's allegiance probably will become doubtful at some point or another. And one could argue that the consensus-WOS is freer than the convergence-WOS because it is more stable, and so maintains the conditions for freedom more successfully. As far as I can tell, this is not the argument Weithman makes. But even so, as I noted above, new work has challenged the idea that public reasons are good assurance signals. If so, then Weithman cannot demonstrate that the consensus-WOS is freer than the convergence-WOS based on the stability yielded by the untriggered disposition to offer public reasons. For there will be no practical difference between the level of assurance generated by the consensus-WOS and that provided by the convergence-WOS.

I conclude that the political autonomy argument against convergence fails.

II

The Justice as Fairness Argument against Convergence

Now let's turn to the *justice as fairness* argument against convergence. This argument is shorter, with fewer passages to back it up, but here is how I think it goes. For Rawls, justificatory reasons must derive from a conception of justice, specifically justice as fairness; Rawls is concerned "with the full and public justification of justice as fairness *in a just society*" (Weithman 2016, 189).⁴ The trouble with convergence is that it counts comprehensive reasons as justificatory, and as a result, citizens can reasonably reject justice as fairness, such that whatever freedom or good is achieved through that process, it will not establish justice because it will not embrace justice as fairness. Since convergence can thereby undermine justice, that is reason to think political liberals should reject it.

I see two problems with this argument. First, Weithman acknowledges that full justification, where citizens determine if a political conception of justice congrues with their reasonable comprehensive doctrine, can still lead to the rejection of political coercion. Thus, even on the consensus view, justice as fairness and full justification can conflict. It is not clear to me, then, why convergence is any more vulnerable to failing to pass through justice as fairness than the consensus view, since reasonable Rawlsian people can reject conceptions of justice as well.

The second problem comes into focus once we draw on Weithman's recent essay on justice pluralism (*JP*). Weithman points out that Rawls eventually admitted that reasonable people

⁴ Remember here that "public justification" means the third stage of political justification Rawls outlines in Rawls 2005, 465, which is meant to ensure publicity of the conception of justice which is the subject of an overlapping consensus.

can disagree about justice. Weithman then argues that Rawls came to believe that political autonomy could be achieved without agreement on justice as fairness, or on any particular conception of justice, so long as the presently orienting conception of justice lies within a broad set of reasonable liberal political conceptions. A well-ordered society can be politically autonomous, therefore, even under conditions of justice pluralism, which implies that we can have political autonomy apart from justice as fairness (Weithman 2017, 95).

Weithman can reply by arguing that political autonomy can be preserved so long as each citizen is not governed by a conception of justice outside the set of reasonable liberal political conceptions of justice. And, in fact, that seems to be his position in *JP*. But this weakens the justice as fairness argument against convergence because while convergence might lead to the rejection of justice as fairness, it is much less likely to lead to the rejection of all liberal political conceptions of justice. This is due to the fact that comprehensive reasons are likely to defeat all non-liberal options because each adherent of a reasonable comprehensive doctrine will have a defeater for claims that other comprehensive doctrines ought to be in charge of their shared political order.⁵ It may be that the convergence conception provides a unique rationale for limiting the set of reasonable conceptions of justice to liberal ones.

Second, one can argue (as I have elsewhere), that the idea of the reasonable still has a role in convergence views, and that illiberal comprehensive reasons fail to be justificatory in virtue of being essentially unreasonable (Vallier 2016). The convergence view doesn't mean *anything* goes, after all. One could therefore argue that convergent reasons must be drawn from reasonable comprehensive doctrines, such that the comprehensive reasons

⁵ I develop an argument of this sort in Vallier 2019.

that citizens adduce to provide assurance and signal allegiance, may not, or may seldom, conflict with all *reasonable* liberal political conceptions of justice. If so, then these versions of convergence may not undermine the stability of a society ordered by liberal political conceptions of justice.

III

The Consequences of Convergence

Weithman has two arguments against convergence views from a traditional Rawlsian perspective: the political autonomy argument and the justice as fairness argument. Neither argument succeeds. The political autonomy argument faces three problems:

(i) Even if convergence views lose the value of political autonomy, they can express other valuable forms of collective autonomy.

(ii) Reasonable people can disagree about whether citizenship requires a preparedness to use public reasons. If so, then political autonomy, freedom as a citizenry, need not require the use of public reasons.

(iii) A well-ordered society where citizens have an untriggered disposition to cite public reasons is probably not freer than an observationally identical society where citizens lack this disposition.

The justice as fairness argument faces two problems:

(iv) While convergence views can lead to the rejection of liberal justice, so can full justification in the standard Rawlsian story.

(v) Convergence may vindicate liberal justice in other ways, either by defeating non-liberal conceptions of justice, being bound

by reasonableness such that the only justificatory reasons are drawn from reasonable comprehensive doctrines, or both.

In sum, then, the convergence theorist appears to have successful replies to Weithman's concerns.

The point of this essay, however, is not simply that the convergence view is correct. Convergence yields a different account of which institutions and practices are appropriate for a modern, diverse polity. Convergence theorists allow comprehensive reasons to play the role of defeaters for coercion, and, as such, there seem to be more opportunities to defeat coercion than Rawlsians acknowledge. This may yield a more classically liberal approach to politics.⁶ Second, convergence theorists, by allowing comprehensive reasons to function as defeaters, set aside the principles of deliberative restraint that ignited the debate between public reason liberals and their religious critics (Vallier 2014). No one can complain that the convergence view places religious citizens outside the public sphere or treats them differently and worse than secular citizens. So our dispute is not unimportant; depending on how the dispute is resolved, we are left with different accounts of just and legitimate institutions.

*Associate Professor of Philosophy
Bowling Green State University*

⁶ For illustration of the convergence-classical liberalism connection, see Gaus 2011, as well as Vallier 2019.

References

- Chung, Hun. 2017. "The Instability of John Rawls's 'Stability for the Right Reasons,'" *Episteme* 16 (1), 1-17
- Gaus, Gerald. 2011. *The Order of Public Reason*. New York: Cambridge University Press.
- Gaus, Gerald, and Vallier, Kevin. 2009. "The Roles of Religious Conviction in a Publicly Justified Polity: The Implications of Convergence, Asymmetry and Political Institutions." *Philosophy and Social Criticism* 35, 51-76.
- Kogelmann, Brian, and Stich, Stephen G.W. 2016. "When Public Reason Fails Us: Convergence Discourse as Blood Oath." *American Political Science Review* 110, 717-30.
- Rawls, John. 1999. *A Theory of Justice*. Revised ed. Cambridge: Belknap Press.
- . 2005. *Political Liberalism*. 2nd ed. New York: Columbia University Press.
- Thrasher, John, and Vallier, Kevin. 2015. "The Fragility of Consensus: Public Reason, Diversity, and Stability." *The European Journal of Philosophy* 23, 933-954.
- Vallier, Kevin. 2014. *Liberal Politics and Public Faith: Beyond Separation*. New York: Routledge.
- . 2016. "On Jonathan Quong's Sectarian Political Liberalism." *Criminal Law and Philosophy*, 1-20.
- . 2017. "Three Concepts of Political Stability." *Social Philosophy and Policy* 34 (1), 232-259.
- . 2019. *Must Politics Be War?*. New York: Oxford University Press.

Weithman, Paul. 2010. *Why Political Liberalism? On John Rawls's Political Turn*. New York: Oxford University Press.

———. 2016. *Rawls, Political Liberalism, and Reasonable Faith*. New York: Cambridge University Press.

———. 2017. “Autonomy and Disagreement about Justice in Political Liberalism.” *Ethics* 128, 95-122.