

The Principle of Convergent Restraint: A Failed Framework of Public Reason

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Abstract

This essay undertakes a critical examination of Kevin Vallier's Principle of Convergent Restraint (PCR) within the framework of public reason liberalism. The article begins by scrutinizing the PCR's inaugural provision: intelligibility, advancing the argument that Vallier's explication of intelligibility contradicts the requisites of public justification in liberal democracies. It argues that Vallier's predilection for intelligibility over accessibility runs afoul of the fundamental principles underpinning public reason and pluralistic liberalism. It then provides an evaluation of the second provision, narrow restraint, asserting that a proper comprehension of PRL allows for the accommodation of diverse justificatory reasons without compromising the emergence of overlapping, comprehensive doctrines. The final section addresses the PCR's third provision, proposal restraint, rejecting Vallier's advocacy for placing justificatory restraints solely on public officials. The essay contends that the demarcation between citizens and public officials is artificial and posits that effective restraints must be universally applicable, considering the dynamic interplay between public deliberation, public opinion, and legislative proposals.

Keywords: *Deliberative Democracy; Liberalism; Coercion; Political Legitimacy; Public Justification; Authoritative Obligation*

I. Introduction

The fundamental tenet of contemporary liberal political philosophy asserts that the legitimacy of political power lies in its ability to reconcile divergent and conflicting private judgments about what is good and just. This entails the requirement that coercive laws be justified to all citizens in a manner that they can reasonably accept, such that the state's actions are constrained by the individuality of its citizens and their normative equality.

Yet, this ontological commitment to safeguarding the expression of individual differences imposes a significant challenge to establishing justificatory reasons for coercive laws that all can accept. The required collective justification of coercive laws becomes particularly vexing, as individual judgements are grounded in often conflicting normative reasoning. After all, what happens when two principles meet that cannot be reconciled with one another? Thus, the central mission for liberal theorists today is advancing conceptions of democratic arrangement that are capable of establishing the social capital of collective justification while preserving differences in individual reasoning.

Public reason liberalism (PRL), grounded in the deliberative democratic tradition, offers one such conception. PRL has been widely recognized as a kind of political deliberation, confined by a socially-established set of rules that govern an individual's actions, that leads to the emergence of collectively-held valid norms. It has garnered the support of prominent liberal theorists, including John Rawls and Jürgen Habermas.

Despite its widespread adoption within liberal democratic theory, the concept of PRL has not gone without criticism and controversy. Kevin Vallier's influential work, *Public Justification versus Public Deliberation: The Case for Divorce*, for instance, offers a trenchant critique of the deliberative constraints implicit in dominant conceptions of PRL. Vallier argues that these constraints, which he sees as being primarily imposed on citizens themselves, sacrifice individual liberty for the sake of promoting social cohesion. Instead, Vallier contends that liberals should focus less on regulating the behaviour of individual citizens within the public sphere, and more on regulating the reach of public officials, through what he calls the 'Principle of Convergent Restraint' (PCR). The PCR is a tripartite framework that governs the conditions under which coercive legislation may be justified in a liberal democracy. The PCR, according to Vallier, represents the optimal approach for formulating justificatory reasons for such laws, while concurrently upholding the tenets of liberty and diversity. I disagree with this assessment. In my considered judgment, Vallier's PCR framework is inadequate in its ability to uphold the core principles of liberalism; this inadequacy can be evidenced by subjecting the three provisions of the PCR to close scrutiny and analysis.

The purpose of this paper, therefore, is not to endorse or rebuke PRL, but rather to identify, systematically, Vallier's misinterpretations of PRL and the contradictions inherent in his conception of the PCR. The main arguments will be organized into three main sections, each addressing one of the three provisions of the PCR. In the first section, I will demonstrate that the first provision of the PCR fails to uphold a

sufficiently rigorous standard for public justification. Subsequently, in the second section, I will argue that a proper interpretation of PRL obviates the need for the second provision of the PCR entirely. Finally, if I succeed in the first and second sections, my third section will expose the PCR's final provision as being inconsistent and devoid of any logical coherence.

II. Provision One: Intelligibility

The initial provision of the PCR seeks to establish a minimum standard for justificatory reasons to be considered public, thereby capable of fulfilling the ideal of public reason. This standard, which is referred to as the 'convergence view', is designed to counter the widely-held 'consensus view' advanced by many public reason liberals, and which, according to Vallier, encroaches on individual liberty. Consensus views hold that justificatory legitimacy rests on accessible theoretical reasons that can be evaluated by shared normative criteria. On the other hand, 'convergence views', espoused by the PCR, maintain that justification need only meet a standard of intelligibility or a level of idealization that allows others to acknowledge that it is motivated by a reason. Therefore, for Vallier, "reasons are intelligible, and so potentially justified, even if (i) citizens do not share those reasons, and (ii) some citizens do not even recognize these reasons as reasons" (Vallier, 2015).

Vallier's phrasing here warrants attention. Notably, he does not contend that "some citizens do not even recognize these reasons as valid reasons," since he promptly follows it up by asserting that reasons need not be shared with others at all. Consequently, the sole logical inference is that to fulfil a standard of intelligibility, reasons (i) do not have to be commonly held among citizens, and (ii) do not have to be presented in a way that allows for others to recognize their structure as that of a reason. Considering this, the PCR's conception of intelligibility only requires that we are able to appreciate the potential existence of reasoning behind a particular justification, even if we do not necessarily see it ourselves.

Because liberalism entails the requirement that coercive laws be justified to all citizens in a manner that they can reasonably accept, the process of justification requires the presence of a standard for multi-perspectival accessibility (Scanlon, 2000). This accessibility, therefore, must only take on the form of epistemological soundness, as it is assumed that rational citizens would not reasonably accept justifications that they recognize as nonsensical. This presents a constitutive rule that justificatory reasons should satisfy to ensure they are deemed valid: I must be able to recognize this reason presented to me as being epistemologically justified, even if I do not agree with its conclusions. Vallier recognizes this constitutive rule when he says "For reasons to count as justificatory, they must be ones that suitably idealized members of the public can see as epistemically justified" (Vallier, 2015). This, however, entirely contradicts his other assertion that reasons are intelligible even if "some citizens do not even recognize these reasons as reasons" (Vallier, 2015). For in reality, I need to be able to recognize your reason as a reason, if I am to evaluate its epistemological soundness. A deeper analysis of the structure of a reason may prove beneficial in elucidating the issue at hand.

A basic reason can be expressed as “x believes that P is a reason to ϕ ” (Raz, 1999). While the reason operative ($R(\phi)$) in this expression is stated (P), I agree with Vallier that reason operatives do not always need to be stated. An example of a justificatory reason that meets the standard of accessibility and does not name the ($R(\phi)$) would be my partner saying, “It is going to rain, you should take an umbrella”.

This could be considered accessible because although she does not state her reason operative, I can still intuitively access, and judge, the epistemological soundness of her reason. Because it is going to rain (P), and she knows that I do not want to get wet (J), I should take an umbrella to stay dry ($R(\phi)P,J$).

Because I can recognize her reason as a reason (even when she does not state it), that in light of the rain, taking an umbrella will keep me dry, something that I want to happen, I can consider her justification epistemologically sound. We can see that the epistemological soundness of her argument does not depend on my agreeing with her (perhaps, on this day, I would like to get wet). Let us return to Vallier’s assertion that an intelligible reason fulfills the requirement that coercive laws be justified to all citizens in a manner that they can reasonably accept. An example of a justificatory reason that meets the standard of intelligibility and does not name the $R(\phi)$ would be my partner saying, “Because red is the most common car colour in Canada, Justin Trudeau should only deliver his parliamentary remarks in french”.

Although my partner may have suggested a correlation between the popularity of car colours and the Prime Minister’s language preferences, I am unable to recognize her reason as possessing the structure of a reason. Therefore, I cannot assess the epistemological validity of her rationale. While I can appreciate the possibility of a connection, and thus a cogent reason why Trudeau ought to speak exclusively in French due to the abundance of red cars, my inability to access her reasoning leaves me uncertain. In the example with the umbrella, the accessibility of the $R(\phi)$ was in its intuitiveness; in this example, the $R(\phi)$ is not intuitive. One could argue that a natural response to this lack of intuitiveness would be to request clarification from my partner, however, Vallier’s PCR would deem such an action as overly intrusive. According to the PCR, compelling others to further provide accessible justificatory reasons in response to a lack of intuitiveness would restrict “behaviour by morally foreclosing options to others and permitting other citizens to morally condemn those who fail to restrain themselves appropriately” (Vallier, 2015). While the aforementioned scenario involving red cars and Trudeau’s language may seem insignificant, it underscores the vital importance of accessible reasoning in justifying state coercion. Moreover, having acknowledged the necessity of reason accessibility in justifying state coercion, it becomes apparent that other liberal ideals cannot be fulfilled through mere intelligibility.

In light of the driving force of liberalism, which is the pursuit of self-determination or the ability to control one’s political circumstances, and the democratic context, which requires popular support to attain such goals, advancing accessible reasons appears to be the minimum requirement for all liberals participating in public deliberation. The accessibility of a reason is critical for its proliferation, as reasons that are not recognized

as such lack a basis for epistemological evaluation. I contend that the PCR advocates for a more permissive form of public deliberation, by relaxing the criterion of accessibility in favour of intelligibility, despite the inherent logical inconsistencies of the latter and its failure to fully align with the liberal aspiration of self-determination.

III. Provision Two: Narrow Restraint

The second provision of the PCR posits that deliberative restraint should be applied to a smaller subset of citizens, complementing the first provision's objective of lightening the burden of what counts as a reason. Vallier contends that PRL imposes unwarranted constraints on individuals, especially those whose reasons are derived from religious convictions, as they are barred from making public appeals to such reasons to justify coercive actions (Vallier, 2015). The second provision of the PCR, therefore allows religious reasons to be used as justification for state coercion between citizens. However, I contend that provision is entirely unnecessary, in light of a proper reading of PRL.

Vallier's analysis of reason restraint within mainstream PRL posits that "Reason restraint would prohibit public appeals to, say, religious reasons, in order to justify the restriction" (Vallier, 2015). He presents an example of John, a religious citizen who advocates for the redistribution of wealth based on biblical grounds. Vallier contends that reason restraint within the PRL framework would not only preclude John from endorsing the law on the basis of religious reasons but also subject him to potential censure by his peers as if he had violated other recognized public duties. However, this represents a deep misunderstanding of the principle of reason restraint within the PRL.

In reality, reason restraint does not curtail the particular types of comprehensive doctrines that provide an individual with their justificatory reasons. Rather, it regulates the selection of reasons that become publicly held to ensure that no particular doctrine dominates others. One could contend that the reasons widely accepted through public deliberation, forming the collective opinion, are those that align with reasonable comprehensive doctrines, thereby engendering a shared set of values which all reasonable citizens can readily endorse. These shared values encompass notions of what is good and just. Hence, while John may argue that, in accordance with the Bible, the justness of wealth redistribution is a reason to tax billionaires more heavily, Nonye, an atheist and a devoted communist, may assert that the justness of wealth redistribution, as per Karl Marx's ideology, is a reason to levy higher taxes on billionaires. Despite differences in their justifications for believing that wealth redistribution is just, their $R(\varphi)$ s exist as an overlap between their comprehensive doctrines. This overlap is only possible in light of a standard of accessibility, as I need to be able to recognize your justificatory reason, though I do not have to agree (nor would John be permitted to insist that Nonye only advance their shared $R(\varphi)$ based on his religious reasons). Hence, Vallier's claim that "Standard forms of restraint discourage religious diversity because they morally prohibit John from living in accord with his religious convictions" (2015) is erroneous. The principle of reason restraint within PRL does not undermine religious diversity, nor does it impose moral restrictions on living in accordance with one's comprehensive doctrine.

Therefore, John's support for wealth redistribution would not face moral prohibition within the PRL paradigm. Justificatory reasons are deemed public when they satisfy the criteria of accessibility discussed earlier, and when they appeal to values and principles that fall within the overlap of comprehensive doctrines. Thus, PRL places no restrictions on an individual's private value system, but only on the collective $R(\varphi)$ that can be held. For instance, a $R(\varphi)$ that claims men deserve to earn more than women in similar positions would be restricted under PRL. While it may not be feasible to prevent all sexist individuals from participating in public deliberation, it is feasible, according to liberalism, to prohibit the adoption of a $R(\varphi)$ publicly that all (including women) cannot reasonably support. It is clear, therefore, that the principle of reason restraint in PRL does not impose constraints on an individual's comprehensive doctrine but rather on the $R(\varphi)$ that is taken up collectively in the deliberative sphere.

Let us consider a second example to illustrate the principle of reason restraint within the PRL framework. Charlotte argues that the danger of an accident in the fog is a reason for Cassandra to drive slowly, while Caitlin posits that the car's inclination to swerve when driven too fast is a reason to believe that driving slowly is necessary to prevent an accident. In both cases, the $R(\varphi)$ for driving slowly is to avoid an accident, and the justifications for believing the $R(\varphi)$ provided by Charlotte and Caitlin are accessible to Cassandra. However, the principle of reason restraint prohibits either Charlotte's or Caitlin's justification for believing the $R(\varphi)$ from becoming the sole justification held collectively. This is noteworthy as Caitlin's justification would retain its validity on a clear day, just as Charlotte's would become applicable again in the event of fog following Cassandra's vehicle repair. What is important is that both justifications have sufficient overlap in the $R(\varphi)$. Thus, the PRL framework preserves the legitimacy of a range of justificatory reasons, which can be advanced by different parties in different contexts, ensuring that the principles of public reason remain accessible and relevant across a diverse range of situations. Moreover, reason restraint functions in such a way that multiple justifications for a shared reason can coexist without contradicting one another, allowing for a pluralistic conception of public deliberation.

It is clear that reason restraint does not infringe on liberty or diversity when there are multiple justifications for believing the same $R(\varphi)$. We can take it one step further, and show that even when $R(\varphi)$ s are diametrically opposed, reason restraint does not reduce one's liberty. To do so, let us return Charlotte, Caitlin, and Cassandra.

In this example, however, Charlotte has convinced herself that the likelihood of an accident increases with the amount of time Cassandra drives in the fog, and so argues that driving quickly is necessary to avoid an accident. Caitlin, on the other hand, argues that driving slowly is necessary to prevent an accident. Thus, they offer different justifications for opposing $R(\varphi)$ s. In an attempt to persuade Charlotte, Caitlin may appeal to empirical research demonstrating a higher likelihood of accidents in foggy weather when driving quickly. In this instance, Caitlin engages in an important discursive practice, not by advancing her own position that Cassandra should drive slowly, but by reasoning from Charlotte's perspective, thereby acknowledging the normative equality of their individual doctrines. Irrespective of whether Charlotte alters her position

following the presentation of evidence, Caitlin was compelled, in essence, to acknowledge the normative parity of their respective $R(\varphi)$ s in order to engage in discursive exchange. The principle of reason restraint, in this scenario, did not coerce either party to relinquish their beliefs, but rather, it prevented Caitlin from rejecting dialogue with Charlotte on the basis of regarding her perspective as an absolute truth. This embodies the quintessential tenet of liberalism, which advocates that normative pluralism is indispensable for individual liberty and necessitates engaging with the ideas of others.

Vallier may find the previous criticism unsatisfactory, particularly in the context of religious reasons. Unlike the example with Charlotte and Caitlin, there may be no empirical research that proves or disproves one religion over another. Moreover, there are often multiple interpretations of religious texts and arguments, even within the same denomination. Thus, it is not clear how reason restraints can establish collective justification while protecting individual, conflicting religious arguments. To address this issue, we can turn to Habermas' institutional technical proviso.

Habermas' *Between Naturalism and Religion* puts forth a concept of democracy as a cohesive system comprising of two components, each of which supports the other: a hard institutional core, which represents the formal public sphere where decisions are made, and a soft social periphery that serves as the discursive bedrock of the political system (Habermas, 2008). The interplay between the formal sphere and informal periphery results in the propagation of reasons from the periphery into the core, resulting in the creation of legitimate laws that are accepted by most citizens, who comprehend and acknowledge the reasons behind them. Given the secular nature of the state, only secular reasons can be given credence in the formal public sphere. While religious reasons may be discussed and considered, they cannot be codified into laws and regulations. The responsibility of government officials is to provide secular justifications for laws, as this is both a legal requirement with an institutional foundation and a functional prerequisite for social integration that enables the formulation of legitimate law.

Careful scrutiny of Habermas's work reveals that reason restraint offers a valuable approach for addressing conflicting justifications for opposing $R(\varphi)$ s that cannot be resolved through empirical evidence (2008). The implementation of reason restraint involves a discerning filter that allows for the inclusion of shared values, beliefs, and justifications in the formal public sphere, while simultaneously curtailing the dominance of any one religious or value-based system over another. This is a crucial aspect of pluralistic liberalism, as no one doctrine can be elevated above another. While specific religious reasons may be contemplated and discussed in the public sphere, their relevance is exclusive to a specific subset of the population and, therefore, cannot serve as the basis for enacting laws and statutes. This responsibility falls solely on secular justifications (although there may be religious overlap with these secular justifications). The filter serves as a semi-permeable boundary between the informal realm of accessible individual reasons that need not be subject to empirical verification or falsification and the formal political realm of justifications that enable the enactment of coercive acts with the consent of the people.

Upon examining each stage of the argumentative process, it is clear that reason restraint does not impede individual freedom or the expression of diverse viewpoints, even when there are differing justifications for believing the same or opposing $R(\varphi)$ s. It is important to note that PRL allows for religious reasons to be presented and deliberated in the informal sphere, without violating the principle of reason restraint. As such, the PCR's second provision, which aims to limit the scope of restraint, is deemed superfluous. Overall, the proper interpretation of PRL permits the inclusion of religious reasons within the informal realm of discourse, while ensuring that secular justifications are the sole basis for enacting coercive laws and regulations in the formal public sphere.

IV. Provision Three: Proposal Restraint

Building on the previous provisions, the third provision of the PCR pertains to the specific domain in which reason restraint should be operationalized. Vallier proposes three potential areas of application: i) constraining citizens' reasons, ii) limiting the legislative proposals of public officials, or iii) restricting both parties (2015). We have seen that Vallier believes restraint on citizens' deliberation undermines individual liberty and diversity of opinion, and that PRL is overly intrusive when it prohibits appeals to non-secular reasons, such as religion. It is, therefore, not surprising that Vallier recommends imposing restraints only on the proposals of public officials in the third provision. However, I demonstrated in section one, mere intelligibility is insufficient, and a standard of accessibility must be implemented as a restraint to achieve the principles of public reason and pluralistic liberalism more broadly. Moreover, as outlined in section two, there must be restraint in the form of a filter that limits what kind of justificatory reasons can be adopted within the formal public sphere. Consequently, in this final section, I challenge Vallier's assertion that restraint should only apply to public officials. Instead, I argue that there must be restraints placed on both citizens and public officials, as state actions and public opinion are interrelated. However, before addressing these issues, I will first discuss one crucial flaw in Vallier's framing of proposal restraints.

Vallier commences his concluding section by defining the PCR's scope, particularly with respect to its impact on legislative proposals. He asserts that the PCR would prohibit "A [public official] from advancing a law defeated by the diverse reasons of members of the public...A should not advocate L even if L is defeated only for a small sector of the population" (Vallier, 2015). However, this seemingly innocuous statement raises a pertinent question: does Vallier's stance imply unanimity? While it is indisputable that no minority should be expected to consent to the majority's removal of their political integrity, the requirement for unanimity imposed on legislators by the PCR poses a considerable challenge, not only to efficiency but also to the very foundation of democracy. As was discussed at the top of the article, liberalism asserts that no individual or group of individuals should possess more political power than another, yet Vallier seems unable to acknowledge the inherent privilege afforded to the minority when unanimity is demanded of public officials in accordance with the PCR. If it is the liberal ambition to ensure that no one group is bestowed with greater political power than another, is it not antithetical to provide mechanisms by which the minority are empowered to block a decision made by the majority? As Dahl's majoritarian critic asserts, granting the

minority the ability to veto majority decisions would be tantamount to minority rule (Dahl, 1989). Although Vallier seeks to preserve pluralism and uphold the liberal ideal, the restraints imposed by the PCR on public officials inadvertently end up privileging minority doctrines over democratically established majority views.

We can now assert that the optimal degree of restraint placed on public officials within the hard institutional core lies between the extremes of no restraint and the requirement for laws to be passed through a unanimous vote. However, my present objective is to demonstrate that the appropriate degree of restraint on public officials cannot be determined in a detached, decontextualized manner, as Vallier attempts to do. Rather, it must be determined based on the responsiveness of citizens to the restraints imposed on their public reasoning.

In his attempt to disentangle public deliberation from the justification of legislators, Vallier distorts both historical and sociological facts when he claims that “while restraint on racist and sexist reasons may account for some part of the variance between laws concerning race and sex over the last 50 years, we do not know how much effect they have had on real policy outcomes, in contrast to, say, better protection of the voting rights of racial minorities” (Vallier, 2015). If we accept that the deliberative practice of public reason is the most effective means of realizing collective justification for coercive action, and that proposal restraint serves as a standard of accountability that legislators must adhere to in order to accurately represent the demos they serve, then we cannot separate public deliberation and the ensuing public opinion from the eventual actions of public officials. Restraints on public reasons allow for shared values to emerge, arising from the overlap of comprehensive doctrines and value-systems, offering voters the opportunity to “send a message” to politicians involved in enacting coercive measures. By participating in public deliberation, people provide compelling justificatory reasons to political representatives, who are then required to implement the outcome of the vote. In short, the enactment of provisional protection for minority voting rights would not have occurred without the prior determination of public reason. After all, did the nation-wide abolition of slavery trigger the American Civil War, or did the outcome of the war mandate nation-wide abolition?

After careful analysis, it has become apparent that the restraints imposed on legislators necessitate the advancement of only those proposals that are deemed justified within public opinion. However, such a mandate presupposes the existence of a previously established public opinion, which is typically expressed through voting or protesting. This public opinion, in turn, only emerges through the imposition of reason restraint in the form of requiring accessibility of reasons and is intimately linked to the legitimacy of the democratic process. It is clear, then, that state actions and public opinion are not mutually exclusive.

In light of this, the interplay between public deliberation and proposal restraint as posited by Vallier presents a paradoxical scenario. On the one hand, his proposal restraint requires legislators to advocate only for proposals that could gain unanimity. On the other hand, it permits the advancement of inaccessible (intelligible) reasons in

the deliberative sphere, thereby making it impossible to achieve unanimity. As a result, the third provision of the PCR is contradictory, as we cannot place restraint on public officials without first placing restraint on citizens.

V. Conclusion

In summation, it can be argued that Kevin Vallier's proposal for the PCR is not only superfluous, but also detrimental to the fundamental principles of public deliberation, given its inherent contradictions. Vallier's three provisions appear to misunderstand the true meaning of PRL, resulting in a set of logically inconsistent recommendations that fail to enhance the democratic process.

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