

Equal Citizenship and Convergence

KEVIN VALLIER 

ABSTRACT *I argue against Lori Watson and Christie Hartley's recent criticisms of convergence approaches to public justification. In particular, I argue that convergence approaches can capture what is distinctive about democratic decision-making and provide an attractive account of stability for the right reasons.*

Political philosophy is overdue for a treatise that offers a synthesis of feminism and political liberalism, two of contemporary political philosophy's most popular and important topics.¹ While many feminists have positively engaged political liberalism, Lori Watson and Christie Hartley's new book, *Equal Citizenship and Public Reason*, towers over previous discussions of these issues and sets the standard for integrating feminism and political liberalism for years to come.²

Given that the book is synthetic, the most pressing question about its arguments is whether the synthesis is successful. Thus, Watson and Hartley are vulnerable to both feminist critics of political liberalism and political liberals who think that their alliance with feminism is unstable. I shall take the second position here.

Watson and Hartley believe that the form of political liberalism known as the 'convergence' view, defended most prominently by Gerald Gaus and myself, is perhaps the primary threat to their synthetic project, so they spend a great deal of time carefully and kindly criticizing Gaus's and my position.³ It is therefore natural to examine whether their criticisms succeed. If they do not succeed, or if they only partially succeed but do not neutralize the threat posed by the convergence view, then that is a problem for their project. I address the disagreement in this article. In short, I think their criticisms of Gaus and me do not succeed, which we can illustrate by considering some cases of how convergence views engage applied issues like domestic violence and the gendered division of labor.

Consensus and Convergence Revisited

To review for readers unfamiliar with the dispute, political liberals disagree about which sorts of reasons can figure into the public justification of laws, policies, constitutional rules, conceptions of justice, and the like. The standard view is that the only reasons that figure into public justifications are reasons that are derived from shared ideas, values, and conceptions of justice. These are not necessarily shared reasons, but they are at least what I call *accessible* reasons.⁴ They are reasons that not every reasonable person shares, but that all can see as derived from common evaluative

standards regarding whatever social or political issue is at stake. So, for a reason to be justificatory, it has to be evaluable or criticizable by evaluative standards that are shared.

One might take a stronger position and hold that justificatory reasons must be shared among reasonable citizens in a well-ordered society. Or one might take a weaker position and hold that even reasons not grounded in shared evaluative standards can figure into public justifications. Watson and Hartley take the former position, and I take the latter; we have the two most extreme positions in the literature, and they stand diametrically opposed.⁵

The disagreement is complicated by two other factors. First, Gaus and I think that the subjects of public justification are real persons whose values and beliefs have been moderately idealized. Watson and Hartley disagree: they think that the subjects of public justification are fully idealized citizens of a well-ordered society. Second, we disagree about whether political liberalism is a form of Rawlsian ideal theory or non-ideal theory. Gaus and I think political liberalism articulates a standard of public justification for real persons where persons might not comply with laws, policies, constitutions, etc. This makes our view a kind of Rawlsian nonideal theory. Watson and Hartley see political liberalism as concerned with justification to an idealized public where compliance can be assumed, making their approach a branch of Rawlsian ideal theory.⁶

Combining these differences, we can say the following. The convergence view allows the diverse, unshared reasons of real persons, including nonliberal persons, to defeat state coercion. On Watson and Hartley's view, diverse unshared reasons of real persons play no role in public justification. To use the common parlance, let's call their view a *consensus* approach (or perhaps a *hardline consensus* approach) and Gaus's and my view the *convergence* approach.

How do these differences map onto the role of feminism in political liberalism? The worry for my view in particular is that nonliberals will have reasons to reject various laws that protect substantive sex equality. And Watson and Hartley are keen to critique convergence views on these grounds.

Criticisms of Convergence

Watson and Hartley level several criticisms against convergence theorists. Their two main criticisms are as follows: (1) 'convergence accounts of public reason fail to capture what is distinctive about democracy decision-making, namely, that it represents a kind of collective willing, and (2) convergence accounts lack normative stability' whereas true political liberalism offers both.⁷ Once Watson and Hartley offer these criticisms, they move on to address related issues about the role of integrity in public justification and how religious exemptions work on the hardline consensus view. But since those differences are downstream from their criticisms of convergence in Chapter 2 of their book, I'll focus on their criticisms of convergence in that chapter.

I think Watson and Hartley actually have four (maybe five) objections to the convergence approach.⁸ I'll address them in the order they appear in their chapter.

Convergence as Mutual Advantage

Watson and Hartley criticize convergence conceptions of public justification on the grounds that its conception of politics is akin to a ‘mutual advantage view’ on which

....

... liberal democracies are cooperative enterprises in which citizens aim to find mutually advantageous terms to structure their interactions with one another so they may pursue their view of the good with the assurance that the rules will be enforced by an impartial third party (the state). Liberal democracies are instrumentally valuable on this view. Persons are viewed as (naturally) free and equal. They recognize that democracies are the best way to protect their freedom, and they agree to constrain their freedom in accordance with terms agreeable to everyone to maximize their ability to pursue their good. The state is the instrument that exercises coercive power to enforce the terms and may properly do this only in accordance with the terms that are justifiable to each individual member of society given his or her own values and beliefs.⁹

So, on the mutual advantage view, public justification is addressed to each person given his or her own values and goals. Reasons can vary. The mutual advantage view is then contrasted with Watson and Hartley’s ‘collective enterprise view’ where people understand themselves as involved in a cooperative project focused on shared values and beliefs.

To vindicate the collective enterprise view, Watson and Hartley invite us to observe two family camping trips, one where the ‘Smith’ family’s mutual advantage standards prevail and the other where the ‘Rawls’ family’s collective enterprise standards prevail. Both families plan a family vacation, composed entirely of adults. The Smith family’s decision is made when family members ‘propose a destination of their choosing given their particular interests, but every other family member has veto power over any proposed destination’.¹⁰ The Rawls family, by contrast, ‘identify what they would like to do together, and this constrains possible vacation spots’, and each family member will then view ‘any of the potential destinations as acceptable, from the point of view of the family’s shared interests’.¹¹

The Smith family looks more like a bargain, the Rawls family like a real community. And, as one might expect, the Smiths reflect the convergence view, the Rawls’s reflect the consensus view. Watson and Hartley think the contrast favors the Rawls family’s practice over the Smith family’s practice and so favors their consensus approach over the convergence approach. At other points, Watson and Hartley say that the convergence view ‘fails to capture what is distinctive about the modern idea of liberal democracies, which is that such states are a shared project of citizens who engage in democratic discussion to find shared terms of social cooperation in order to live on terms of mutual respect with their co-citizens’.¹²

I don’t think that the convergence approach is a version of the mutual advantage view. Yes, indeed, people can insist on their own perspectives more than on the consensus approach, but I don’t think this makes politics into a kind of exchange or mutual advantage or that liberal democracy is merely instrumentally valuable. To see this, we just need to reflect on the range of diverse reasons that members of the public might affirm. Imagine that Rawls family camping trip has two additional members –

Aira and Aaliyah. Aira is a vegan, and Aaliyah is a Muslim. Let's suppose the Rawls family is deciding which meals to bring on vacation. Jack, the father of the family, really likes roast pork, as do his children. So, he proposes to bring some pulled pork dishes. However, Aira and Aaliyah have private reasons to object. Aira is a vegan and thinks that eating pork is immoral because pigs are sentient, and one must never eat a sentient animal. Aaliyah's faith forbids her from eating pork, and she cites this as a reason to object to Jack's meal plan. So, Jack chooses to prepare and pack tofu, which his kids don't particularly like, but he tells them that it is better to share a meal with Aira and Aaliyah and to respect their moral and religious commitments.

Now, is this adjustment to the Rawls family meal plan akin to the Smith family meal plan? Do we now have a mutual advantage view? Or do we have a shared, cooperative enterprise view? I'm not sure it is either one. It's not a strict cooperative enterprise view since Aira and Aaliyah care about the shared enterprise, but they feel morally and religiously compelled to object to a shared plan. But it's not a mutual advantage view because Aira and Aaliyah still want to go camping together, based on moral considerations, and don't see themselves as looking out for themselves or their own benefit. Instead, they see themselves as under an obligation to object to eating pork.

The convergence view is more like the expanded Rawls family vacation than the Smith family vacation. So, I don't think convergence has a truncated, or exchange-focused, view of politics. We can simply understand a shared cooperative enterprise as requiring that we not override the conscience or integrity of their members in the convergence approach.

Voters and Judges

A second objection is that convergence makes it difficult to determine what a law requires and how it is to be interpreted. My response in *Liberal Politics and Public Faith* is to insist that judicial reasoning meet a consensus requirement, since the arguments given by judges, since they are placed in opinions, become the basis for future law.¹³ Judicial reasoning comes with tight controls on the content of arguments since judges are restrained by the constitution and constitutional practice. Watson and Hartley say this is revealing and may be a basis for pushing me into a consensus position for citizens. My response to this pressure is to argue that citizens don't come under this requirement because they have dramatically less impact on the shape of the law, and so there is no point in placing restraint on the reasons they can offer. Watson and Hartley respond as follows: 'we think this is a dim view of citizenship'.¹⁴

Perhaps I have a dim view of citizenship. However, while citizens of liberal democracies tend to believe they have an effect on outcomes, it is hard to discount the purely mathematical point that citizens have very little effect on outcomes all the same. Following well-known work by Geoffrey Brennan and Loren Lomasky, the math is clear.¹⁵ The vast majority of voters only have a tiny amount of influence when elections are very close, and otherwise their effects are incredibly small. Why place restraints on citizens when the effects of those constraints are so limited? Why not let citizens appeal to diverse considerations? From what Watson and Hartley have said, it is hard to say. The effect that federal judges have on the law is vastly greater, and so it makes sense to apply restraint to them, but why push citizens around? So, I think it makes sense to apply certain restraints on judicial reasoning and that these constraints

allow us to settle disputes about how to interpret the law, all the while preserving the convergence view.

I will concede, however, that their arguments have purchase in smaller policies and legislative assemblies, since for me, whether restraint applies depends on the efficacy of votes.

Normative Stability

The third argument against convergence is that it does not provide a plausible or attractive account of stability for the right reasons. A major aim of any version of political liberalism is to show that a conception of justice or constitutional essentials is such that people can comply with it for moral reasons and that the stability of a society does not depend on a *modus vivendi* balance of power. The trouble with the convergence view is this:

But the basis for social unity, and continued commitment to seeking fair terms of social cooperation, is absent on this account. The contingencies of convergence—due to the ‘possibly fluctuating circumstances’ connected with revisions of persons’ views and, as a result, the laws that can be supported and the balance of power within a society—provide no deep assurance to a sustained commitment, by anyone, to laws that happen to find convergence at a given time.¹⁶

By basing stability on diverse reasons, ‘those reasons may or may not be stable’. In contrast, if we base stability at least largely on shared reasons, we will avoid this problem.

I am not sure Watson and Hartley are correct. Their argument depends on a comparative judgment: whether diverse reasons or shared reasons are more stable than the other. But it seems to me that which reasons are shared can vary considerably. As doctrines and ideals change, the reasons that people share will change too. If Watson and Hartley try to respond that stability will be established by the reasons shared by reasonable people, those who recognize the freedom and equality of others, share a commitment to reciprocity, and recognize the sources of sincere disagreement about matters of ultimate import.¹⁷ In reply, I don’t see why I can’t stipulate something similar, which is that the reasons of diverse, reasonable people will be stable enough if these people are reasonable.

A further difficulty is that the literature is making increasingly clear that even restricting public discourse to shared reasoning won’t guarantee stability because public reasons are inadequate to provide assurance to members of a well-ordered society that they share a political conception of justice with one another.¹⁸ If so, the shared reasons view will have its own problems generating stability. Convergence may also have stability-generating advantages; for instance, the use of diverse reasons helps to signal an official’s commitment to respecting a diverse group, as Brian Kogelmann and Steven Stich argue in a recent piece.¹⁹ Further, as I have argued, we may not even have the right concepts of political stability in the first place, in which case their arguments become even less compelling.²⁰

Coercion – Narrow and Broad

Watson and Hartley end Chapter 2 by arguing that the convergence view tends to construe state coercion too narrowly. With a broader conception of coercion, the convergence view may become less plausible:

Emphasizing the coercive function of the basic structure in terms of its profound effect over citizens' lives highlights the emphasis on the collective and cooperative features of liberal democracies as captured by the second view—the cooperative enterprise view.²¹

Here the convergence view's conception of coercion is supposed to highlight how individuals are coerced, whereas the consensus view stresses the coercive function of a society's basic structure as a whole.

Yet the conception of coercion used in public reason is orthogonal to which conception of justificatory reasons we adopt. If coercion is understood broadly, then *what is to be justified* must change, but that doesn't seem to bear on whether the *reasons that justify* are set by the consensus or convergence standard.²² The case for a certain account of legal coercion can be made apart from an account of justificatory reasons.

Feminisms and Political Liberalisms

Watson and Hartley offer a number of new and important arguments in favor of their exclusive view of public reason, which limits the domain of the political to shared reasons. And I think these arguments play an important role in fleshing out a conception of public reason that accommodates feminist insights enough to make political liberalism compatible with sex equality. If I were to pursue an exclusive view of public reason, that is the position I would defend. However, I still think that the convergence view is the more attractive specification of political liberalism and that Watson and Hartley's new arguments do not undermine convergence. Consequently, the convergence alternative may yet make trouble for the political liberal feminism that Watson and Hartley develop.

Also, I don't think the convergence view is so bad for feminism, because a lot of antifeminist state coercion will be defeated, and if you include social norms as the subjects of public justification, as Gaus and I have argued, then many antifeminist social norms will be defeated and law may be justified in interfering with defeated social norms to eliminate or suppress them.²³ It is true that in populations dominated by conservative women, most women will endorse antifeminist norms, but the defeater reasons held by feminist women will, at the least, require that the law be used to allow them to live in accord with their values, perhaps through some kind of local or polycentric policy arrangements, much like how India allows martial law to vary by religious faith. So, I think it is an open question whether the convergence view, with all the trimmings, is incompatible with feminism.

To settle whether convergence is bad for women, we need a sense for whether sectarian feminist reasons will carve out enough legal protections that the resulting public policies aren't worse or at least not much worse for women than on consensus views.²⁴

Consensus, though, forbids sectarian feminist reasons from shaping public policy in any direct way, much as consensus views exclude private religious reasons. And since in my more recent work, he applies public justification to social norms, there is even more hope for women on the convergence view, because the law is permitted to intervene in social arrangements like families when the social norms in place within those arrangements are defeated for some people.²⁵ So if a woman is subject to a patriarchal social norm that she has sufficient reason of her own to reject, and ordinary social change cannot dislodge the norm, then the law is permitted to interfere to discourage or undermine the patriarchal norm. Thus, laws are shaped not merely by sectarian feminist reasons, but laws may intervene in the private sphere if oppressive social norms cannot be publicly justified, which they arguably cannot be. This sounds to me like a pretty feminist-friendly view.

Perhaps domestic violence is an easy case, so let's consider a harder one: gender equity in family income, where women are often at a disadvantage vis-à-vis men due to the social norms that place great normative pressure on women to serve as primary caretakers, often leading to blame and ostracism when women prioritize their careers and rely heavily on hired help. In this case, the relevant social norms may set back women's freedom and economic wellbeing in ways that many women will have defeaters for. Here, again, the law may be permitted to intervene to undermine the norm – a pretty feminist-friendly view.

So, in sum, I do not think that Watson and Hartley have vindicated their hardline consensus view against the convergence view. But they have provided the most advanced and detailed objections to the position, which has increased our understanding.

Kevin Vallier, Department of Philosophy, Bowling Green State University, 310 Shatzel Hall, Bowling Green, OH, 43403, USA. kevinvallier@gmail.com

NOTES

- 1 I appreciate helpful feedback from Lori Watson, Christie Hartley, a number of commentators at a recent Pacific APA meeting, as well as feedback from anonymous referees and editors at this journal.
- 2 Lori Watson and Christie Hartley, *Equal Citizenship and Public Reason: A Feminist Political Liberalism* (New York: Oxford University Press, 2018). Another recent book bringing together feminism and political liberalism is Gina Schouten, *Liberalism, Neutrality, and the Gendered Division of Labor* (New York: Oxford University Press, 2019).
- 3 They focus on arguments in Kevin Vallier, *Liberal Politics and Public Faith: Beyond Separation* (New York: Routledge, 2014).
- 4 ———, 'Public Justification', *Stanford Encyclopedia of Philosophy*, <http://plato.stanford.edu/entries/justification-public/>.
- 5 As demonstrated in our respective monographs.
- 6 Neufeld, 'Why public reasoning involves ideal theorizing', in Kevin Vallier and Michael Weber (eds.) *Political Utopias: Contemporary Debates* (New York: Oxford University Press, 2017), pp. 73–93.
- 7 Watson and Hartley op. cit., pp. 6–7.
- 8 Setting aside their association of Gaus's convergence view with what Jonathan Quong calls the 'external' conception of political liberalism on p. 54. The external conception implies that the constituency of public justification is tied to the unidealized views of actual persons. This is contrasted with the 'internal' conception which understands public justification as applying to an idealized constituency of persons in a well-

- ordered society. See Jonathan Quong, *Liberalism Without Perfection* (New York: Oxford University Press, 2011), pp. 137-160.
- 9 Ibid., pp. 41-42.
 - 10 Ibid., p. 43.
 - 11 Ibid.
 - 12 Ibid., p. 56.
 - 13 Vallier op. cit., chapter 6.
 - 14 Watson and Hartley op. cit., p. 58.
 - 15 Geoffrey Brennan and Loren Lomasky, *Democracy and Decision: The Pure Theory of Electoral Preference* (Cambridge: Cambridge University Press, 1993), p. 66.
 - 16 Watson and Hartley op. cit., p. 59.
 - 17 Rawls, *Political Liberalism* (New York: Columbia University Press, 2004), pp. 48-54.
 - 18 John Thrasher and Kevin Vallier, 'The fragility of consensus: public reason, diversity, and stability', *The European Journal of Philosophy* 23, 4 (2015): pp. 933-954.
 - 19 Brian Kogelmann and Stephen G.W. Stich, 'When public reason fails us: convergence discourse as blood oath', *American Political Science Review* 110, 3 (2016): pp. 717-730.
 - 20 Kevin Vallier, 'Three concepts of political stability', *Social Philosophy and Policy* 34, 1 (2017): pp. 232-259.
 - 21 Watson and Hartley op. cit., p. 61.
 - 22 See the discussion of legal coercion in public reason in Kevin Vallier, *Must Politics Be War?* (New York: Oxford University Press, 2019), pp. 129-130.
 - 23 Vallier argues in favor of a social norm-directed form of public justification in op. cit., pp. 81-82.
 - 24 They may do this by publicly justifying religious exemptions, which Vallier explains how to do in ———, 'The Moral Basis of Religious Exemptions', *Law and Philosophy* 35, 1 (2016): pp. 1-28.
 - 25 Vallier, *Must Politics Be War? Restoring Our Trust in the Open Society* (New York: Oxford University Press, 2019), pp. 140-41, 150-52.