


DISCUSSION NOTE

Public Justification Versus Public Deliberation: The Case for Reconciliation

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Abstract

Kevin Vallier has recently argued that the ideals of public justification and public deliberation should be separated. The link between the two, Vallier suggests, has been assumed without being properly defended. Once examined, the connection falls apart. In this paper, I argue that there is, in fact, a clear and convincing story available for why the two ideals should be treated as mutually reinforcing. Drawing on recent empirical evidence, I argue that the deliberative behaviour of citizens can have a clear and positive impact on the behaviour and policy choices of public officials.

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It used to be widely accepted that there was a close connection between the ideals of public justification and public deliberation.¹ Those who argued that state officials must ensure that laws are justified to every citizen commonly thought that the citizens themselves also were under requirements to deliberate in a way that aimed towards achieving public justification. In short: public officials and individual citizens alike must offer public reasons, reasons in some sense shared by all, in favour of their political advocacy.

This idea has recently come under pressure.² Kevin Vallier (2015) has in this journal provided one of the most sustained and compelling treatments of the case for divorcing public justification from public deliberation. The link between public justification and public deliberation, Vallier argues, has been assumed without being properly defended. Once examined, the connection falls apart. Thus, for Vallier (2015, 140), “the job of the public reason liberal is not to regulate or morally interfere with citizens who wish to approach politics based on their own private values or through employing divisive or strategic forms of discourse.” Those who are concerned with public justification should focus on “regulating the behavior of those who have direct, obvious and substantial control over the levers of power—not citizens, but public officials” (Vallier 2015, 140).

Vallier is right in saying that the connection between public justification and public deliberation must be made explicit. In this paper, I argue that there is, in fact, a clear and convincing story available for why the two ideals should be treated as mutually reinforcing. Drawing on recent empirical evidence, I suggest that the deliberative behaviour of citizens can have a clear and positive impact on the behaviour and policy choices of public officials. Hence, those who are concerned with public justification have instrumental reasons for thinking that individual citizens, too, should offer

¹For instance, see Cohen (1997), Freeman (2000) Rawls ([1993] 2005). See also Neufeld (2019).

²Some examples are Bardon (2018; 2020), Bonotti (2017), Habermas (2006), and Laborde (2020a; 2020b).

one another public reasons.³ Public justification and public deliberation should, therefore, remain faithfully married.

1. Vallier's case for divorce

Public reason liberals believe that laws must be justified to each citizen to be legitimate and permissible to enforce. A law that meets this test is *publicly justified*. According to the so-called “consensus” interpretation of what this entails, the idea is that laws are publicly justified when they are justified with *public reasons*, reasons that every reasonable citizen does endorse or would endorse if reasoning well under appropriate circumstances (Quong 2011; Rawls [1993] 2005; Watson and Hartley 2018). Typical examples of public reasons are appeals to fairness, freedom, and equality. The equal endorsement among citizens of these reasons, however, does not necessarily entail that every citizen supports the laws and policies justified with them.

The so-called “convergence” interpretation, on the other hand, takes public justification to entail that every sufficiently idealised citizen could accept the coercive laws that bind them. On this view, laws need not be justified with public reasons, citizens can accept laws for their own nonpublic reasons (Gaus and Vallier 2009; Gaus 2011).⁴

Among proponents of the consensus model, it is commonly thought that citizens who deliberate in public must offer one another public reasons in their political advocacy. In John Rawls's (1997) terms, this is the *duty of civility*. Others have called it a *requirement of deliberative restraint* (Leland and van Wietmarschen 2012) or a *public-reason-giving requirement* (Stears and Humphrey 2012).

Kevin Vallier has recently argued that citizens should be allowed to appeal to whatever reasons they see fit in the public sphere. He provides two main arguments. First, Vallier argues that restraint requirements infringe on the liberty of citizens. Moral rules can objectionably limit and remove options from people. Second, he argues that restraint homogenises people. Instead of allowing a wide range of perspectives, Vallier (2015, 146) says, a principle of restraint entails that people must become more similar to each other in the public sphere—“it prioritizes shared reasoning over diverse reasoning.” If we value liberty and diversity, Vallier argues, we should want to promote these ideals. It is costly to have social rules in place that limit freedom and diversity. By letting deliberative restraint apply to as few people as possible—that is, only legislators and other public officials—we minimise these costs (147).⁵

It is important to note, first and in response, that it is perfectly possible to agree with Vallier that restraint is costly but still hold that the benefits of restraint outweigh the cost to liberty and diversity. To me it seems as if what is at stake is whether the costs are justifiable or not. Or, put differently, it should be uncontroversial to say that what we are interested in is how far-reaching the requirements of deliberative restraints can be.

Consider how it is commonly accepted that we (at the very least) should frown upon those who use derogatory language and insults in public debates. It is a good thing, for instance, that there are norms against using sexist and racist language in political speech. Vallier (152) recognises this, and so, in this way, he already accepts some limitations of the freedom and viewpoint diversity of citizens.⁶ Having moral rules in place for avoiding insulting language contributes to the goal of a

³I merely note that there might also be non-instrumental grounds for deliberative restraint that I do not explore in what follows.

⁴For a helpful overview, see Billingham and Taylor (2020).

⁵Instead of a general principle of restraint where individual citizens only can rely on public reasons in their political deliberation, Vallier argues in favour of a principle of restraint that applies only to legislators. The principle entails that a legislator should not vote for a law, “or publicly encourage effective others to do so, if she “justifiably believes” that there are citizens who do not have reason to endorse it. Thus, it is a convergence version of restraint.

⁶To reiterate, the restrictions that both proponents and opponents of restraint talk about are moral, not legal, rules. Whether moral rules are freedom-restricting in the relevant sense is, of course, a fundamentally important question. However, my

healthy and constructive public culture. Similarly, I take it that if it could be shown that further restrictions generate enough important goods, then these restrictions, too, are justified.

To conclusively make his case, Vallier would need to show that there are no benefits to restraint, or at least that the benefits do not outweigh the costs. Vallier's strategy for doing so is to contrast individual citizens with legislators. The latter group has an "an obvious and direct impact on whether citizens are coerced" (154). Legislators "seek to legislate," they "generally aim to coerce," and their votes "make a predictable, substantive contribution to outcomes" (154). The same does not hold for individual citizens.

Vallier acknowledges that the votes of individual legislators often fail to change the outcome by themselves, but while one "in several hundred is a small contribution," it is "many orders of magnitude greater than the contribution made by ordinary citizens" (154). The advocacy of individual citizens has "an extremely small effect on outcomes" (152). Therefore, individual citizens do not need to give public reasons (or, in Vallier's case, they do not need to only advocate laws that are publicly acceptable). Since those who do not hold public offices "have no real impact" in determining which laws that should apply to them, they may as well offer whatever reasons they want.

I agree with Vallier that it is true that the opportunities individual citizens have for influencing policy are much smaller than the power that public officials wield. However, this by itself does not show that the opportunity is small enough to warrant a principle of restraint for public officials but not for individual citizens. The important question is whether individual citizens are over some influence threshold that makes their contribution salient, not whether public officials have an even greater influence.

In other words, even if the contributions of individuals are small, they might still be significant enough to ground moral duties for regulating political behaviour. As Boettcher (2019, 231) forcefully puts it, the rationale behind Vallier's view seems

to reach beyond the question of restraint and apply to almost all of the political activity of most ordinary citizens. After all, if an individual citizen's vote is almost never going to have a real impact on an election or referendum, and if he or she has a legitimate liberty interest in doing anything preferable to voting, then why vote at all? We could pose a similar question about efforts to become more politically informed or more engaged in preventing widely agreed upon political problems such as corruption or malfeasance. In short, the empirical fact that no individual citizen's activity is especially impactful could be used to deny widely recognized civic duties such as voting just as easily as duties of restraint.

In the next section, I will argue that individual citizens are over the relevant influence threshold. The reason is that even if an individual's contribution is small, the aggregate macrolevel contribution of all individuals becomes significant. A society's public culture influences which policies are enacted and how politicians conceptualise what is at stake. Vallier (2015, 152) anticipates this argument, but quickly dismisses it since the claim has "little empirical ground, given the complex social processes by which citizens' advocacy is translated into legislative outcomes." Defenders of restraint, Vallier (144) argues, "assume that if citizens comply with principles of restraint, private reasons will be effectively excluded for legal decision-making." But this is wrong, Vallier claims, because the relationship between deliberative restraint among citizens and public justification is "likely to be a complex sociological question with no straightforward a-priori answer" (144).

argument does not turn on its answer. The reason is that I will argue that *even if* moral rules restrict freedom in the way that Vallier suggests, such restrictions can be justified and legitimate. Since the case for deliberative restraint becomes even stronger if moral rules do not have anything at all to do with freedom, it suffices to only consider the argument from Vallier's own premises. I am grateful to an anonymous reviewer for pushing me to clarify this point.

I agree that it is a complicated question. However, recent empirical evidence at least suggests that there is a link between public opinion and the speech and policy positions of public officials. I discuss this next.

2. Aggregate influence

There is a growing literature that suggests that the aggregate views and political behaviour of citizens influence policy. Anselm Hager and Hanno Hilbig (2020, 921–22) have found that politicians who receive opinion polling on the views of citizens “become more responsive to the public’s preferences” and that “linguistic similarity between politicians’ speech and the public opinion reports increases.”⁷ Similarly, Jeroen Romeijn (2020, 426) has found that there is a link between “public preferences and the positions of political parties.” The connection between public opinion and political action is not only demonstrated among elected officials. Casillas, Enns, and Wohlfarth (2011, 74) have found that the “influence of public opinion on [US] Supreme Court decisions is real ... [and] substantively important.”

Naturally, there is a further question about whether (and if so, to what extent) requirements of deliberative restraint would make politicians more likely to adopt an attitude of restraint themselves. However, the evidence suggesting that public opinion influences the speech, decisions, and reasoning of public officials at least points in this direction. It does not seem unlikely that changes in deliberative norms also produce corresponding changes in the behaviour of public officials.

3. Influential citizens

We thus have good reason to think that the aggregated actions of citizens influence politics. However, it is also the case that some individual citizens by themselves are powerful enough to make a difference beyond their contribution to the aggregative effects. Influential citizens often have a direct effect on politics. For instance, the journalists (and their team of researchers) who decide which questions to ask in political debates have a significant “agenda-setting” power (Benoit and Hansen 2001). If they are allowed to consistently frame problems in nonpublic terms, this will most likely influence the way ordinary citizens see what is at stake in these debates. In the US context, it has been shown that presidential debates play a significant role in influencing people’s views about politics and candidates (Benoit, Hansen, and Verser 2003). For these reasons, there seems to be something problematic, from a public reason perspective, if in every presidential debate the journalists framed all political questions from within a specific comprehensive doctrine. Vallier’s proposed view, however, cannot make this judgement.

We do not even have to go as far as to the people involved in presidential debates. Ordinary news media has been shown to structure “the overall tone” of debates, with a framing that can sometimes differ “from that of politicians and interest groups” (Callaghan and Schnell 2001, 183). It undoubtedly seems possible that this could translate into a clear and direct influence on policy. And so, a public political culture where journalists consistently frame political questions in a way that favours only one comprehensive perspective—for instance, the dominant religious view of society—could force public officials away from publicly justified policies and arguments.⁸

Or consider wealthy people. Through buying advertisement space, and through other measures, they, too, can have a significant agenda-setting power (Arlen 2019; Arlen and Rossi 2021; Winters 2011). To take just one example, billionaire Bill Gates “gave millions of dollars to see a charter school law approved despite multiple failed ballot referendums” (Ho 2018). Similar things can be said for community leaders, public figures, and celebrities. Indeed, when the singer Taylor

⁷See also Rottinghaus (2008).

⁸I am grateful to an anonymous reviewer for helping me clarify this point.

Swift endorsed candidates for public office in Tennessee, a voting registration service received more registrations to vote in twenty-four hours than it had for the whole previous month (Nisbett and Schartel Dunn 2021). Similarly, evidence suggests that Oprah Winfrey's endorsement of Barack Obama made a notable difference for the campaign contributions and votes he received (Garthwaite and Moore 2013).

If the requirements of restraint apply only to public officials, none of these influential citizens would be under a duty to limit their political advocacy to proposals that are publicly justifiable. In contrast to this, I propose that there are clear benefits of morally restricting the discourse of citizens if this increases the likelihood that politicians will advocate publicly justified policy positions.

4. Conclusion

Vallier has done important work in showing that proponents of deliberative restraint must make clear the link between public deliberation and public justification. He is wrong, however, to suggest that the two ideals should be divorced.

In response to Vallier, I have provided an instrumental argument for why citizens should offer one another public reasons. I suggested that public deliberation and public justification can be reconciled by showing that citizens influence public officials. And insofar as citizens do shape and influence the behaviour of public officials, either directly or indirectly, we have good reason to demand that we offer each other public reasons when we deliberate in public.

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