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Convergence Liberalism and the Limits of State Coercive Power: A Case Against the Public Justification Principle

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CONVERGENCE LIBERALISM AND THE LIMITS OF STATE COERCIVE POWER: A
CASE AGAINST THE PUBLIC JUSTIFICATION PRINCIPLE

by

SEAN RICE

Under the Direction of Andrew J. Cohen, PhD and Christie Hartley, PhD

ABSTRACT

Kevin Vallier defends a theory of the normative limits of the use of coercion by the state known as convergence liberalism. Central to this theory is a principle of public justification according to which the coercive power of the state is justified and legitimate if and only if each member of the public has sufficient reason to endorse the coercion. I argue that this principle is too demanding. Certain epistemological limitations render cost-benefit analyses of many, if not all, laws and policies inconclusive. This, together with the fact of evaluative pluralism, make it the case that very few coercive laws and regulations will be publicly justified. The result is that convergence liberalism threatens to obstruct the state's capacity to protect the environment and address preventable forms of injustice.

INDEX WORDS: Public reason liberalism, Convergence liberalism, Kevin Vallier, Gerald Gaus, Public justification, Political legitimacy

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2019

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DEDICATION

This thesis is dedicated to my family and friends, all of whom I love, and without whom I could not have completed this project.

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1 INTRODUCTION

One central and divisive question regarding the moral limits of state power is the problem of its public justification. Following the liberal tradition, if we start with the assumption that all persons are free and equal, it seems to follow that the state's use of coercion against its citizens is pro tanto wrong. Some claim that for such coercion to be morally permissible, it must be justified for the persons subject to the coercion. Otherwise, the coercion is "authoritarian."¹ But the question of how such coercion can and should be justified is complicated by evaluative pluralism, i.e., the fact that in a liberal society persons will develop diverse and incompatible, but nonetheless epistemically justifiable conceptions of the good.² The challenge facing theories of political justification and legitimacy is to explain how a coercive social arrangement (e.g., a coercive law) that binds such a diverse citizenry can be justified and legitimate given the possibility, indeed the likelihood, of deep disagreement regarding whether the coercion is warranted. Recently, a theory known as *convergence liberalism* (or *justificatory liberalism*) has emerged to answer how a publicly justified and legitimate moral and political order can obtain. On this view, a moral rule, coercive law, or constitutional principle is publicly justified and legitimate if and only if all members of a diverse political community have sufficient reason to endorse it from their own point of view, i.e., from reasons they can claim as their own.³

¹ Gaus 2011, p. 16.

² Evaluative pluralism obtains in virtue of what Rawls called "the burdens of judgment," i.e., "sources, or causes, of disagreement among reasonable persons," which include, among other things, the difficulty in assessing and evaluating empirical and scientific evidence, differences in the relative weight afforded to different considerations, the indeterminacy or vagueness of concepts, the influence of one's peculiar "total experience" on the way one assess evidence and weighs different values, the difficulty in making a comprehensive assessment of an issue with normative considerations on different sides of a conflict, and the necessity of prioritizing and adjusting cherished values. In virtue of the burdens of judgment persons can be epistemically justified (or "reasonable") in affirming different beliefs, values and conceptions of the good (Rawls 2005, pp. 54 -7). For Kevin Vallier's more recent treatment of evaluative pluralism, see Vallier 2019 p. 20-21.

³ Gaus 1996; Gaus 2011; Vallier 2014; Vallier 2019.

In this essay, I analyze and evaluate convergence liberalism, focusing on the practical implications of the public justification principle (hereafter PJP) for the prospect of publicly justifying coercive laws. Specifically, I analyze the extent to which convergence liberalism is compatible with the imposition of laws and regulations that are designed to address environmental problems that arise within a free market capitalist economy. I first provide a brief exposition of the basic structure of convergence liberalism as it is laid out by Kevin Vallier in his *Liberal Politics and Public Faith: Beyond Separation*. I then analyze the stringency of PJP and consider its implications for the prospect of enacting laws of social justice, in particular laws and policies designed to protect the environment and public health from harm caused by unrestrained economic forces. I conclude that while convergence liberalism is internally consistent, the stringent conditions of the public justification principle may obstruct the state's capacity to effectively respond to the demands of justice and so should be rejected.

2 CONVERGENCE LIBERALISM

Convergence liberalism asserts that a commitment to respecting the natural liberty and equality of persons requires that coercive laws be justified for each person subject to the law. This ideal of public justification is formally articulated in a public justification principle (PJP) which delineates necessary conditions for the legitimacy of coercive laws.⁴ According to the convergence liberal version of PJP, state coercion is publicly justified and legitimate if and only if all citizens have sufficient reason to affirm that the coercion is warranted according to their own evaluative standards, i.e., their beliefs, values, norms, conceptions of the good, etc. Several features of this view require comment.

⁴ Vallier 2014, p. 41.

First, while some public reason views (sometimes called *consensus liberalism*) conceive public justification as a process of deliberation on terms that are accessible or shareable to all participating members, convergence liberalism understands public justification to be “essentially a relation between persons, laws and reasons – a social state that obtains when each person has sufficient reason to endorse a law.”⁵ As a social state, public justification is understood to manifest spontaneously;⁶ it obtains when all members of the public just so happen to have sufficient reason to endorse a coercive law or constitutional principle from their own point of view, that is, on the basis of reasons each can recognize as their own and with which others may disagree. This means that no specific set of reasons will be independently sufficient to positively justify coercion. The power of citizens’ justificatory reasons to determine legislative outcomes is mostly negative: a set of reasons may defeat coercive laws but not by themselves positively justify them.

As convergence liberalism gives room for the justificatory reasons of members of the public (MOPs) to determine the public justification of collectively binding laws, some normative stipulations on justificatory reasons are necessary to avoid unreasonable influences on the political order, “the error of populism.”⁷ But for Vallier, respecting evaluative pluralism requires that a conception of justificatory reasons not be too restrictive. One of the central aims of Vallier’s theory is to show that public reason liberalism need not require that citizens refrain from appealing to reasons they have by virtue of their religious or controversial moral commitments in their political engagement.⁸ On his view, requiring such restraint from members of the public threatens to violate their integrity, especially when they have decisive religious or

⁵ Ibid., p. 35.

⁶ Ibid., pp. 168 – 169.

⁷ Ibid., p. 160.

⁸ Vallier 2014. See also Gaus and Vallier 2009.

moral reasons to reject an instance of coercion.⁹ The convergence liberal thus rejects requirements that justificatory reasons be based on common evaluative standards or that they be shared by all members of the public. Instead, the justificatory reasons of MOPs need only be intelligible to all members of the public to count for or against a given law or principle. For Vallier, “A’s reason R_A is intelligible for all members of the public if and only if members of the public regard R_A as epistemically justified for A according to A’s evaluative standards,” where epistemic justification is understood in the minimal sense that A “makes no gross epistemic error” in affirming R_A , and so is “rationally entitled to affirm” it.¹⁰ Moreover, intelligible reasons must be “recognizably moral reasons, or at least reasons that the person in question can see as moral rather than as immoral,” given her evaluative standards.¹¹ Importantly, convergence liberalism is committed to reckoning with “agent-relative” evaluative standards among members of the public.¹² This means convergence liberalism takes reasons of members of the public that are grounded in comprehensive doctrines (i.e., belief–value sets) that not all members of the public will necessarily share or even completely understand as eligible for determining whether a law is justified.

As PJP requires that each member of the public have *sufficient* reason to endorse state coercion, it is important to understand the convergence liberal’s account of sufficient reasons. On Vallier’s view, it is not enough that a person has some intelligible reason to endorse a law, for she may discover countervailing reasons that lead her to reject it. Thus, “it is only when coercion is justified by conclusive reasons [according to each agent’s evaluative standards] that we can

⁹ Vallier 2014, pp. 4, 57 – 66, 71 – 2.

¹⁰ *Ibid.*, p. 106.

¹¹ Vallier 2019, pp. 90 – 91.

¹² Vallier 2014, p. 106.

say that each citizen is committed to the coercion proposed.”¹³ Gaus provides a similar account. For him, a member of the public “has (provisionally) a sufficient reason R if and only if a “respectable amount” of good reasoning by [that person] would conclude that R is an undefeated reason (to act or believe).”¹⁴ Importantly, this account does not require that each member of the public have conclusive reason to endorse a coercive law over all plausible alternatives. Such a standard would obviously be far too stringent. What it does require is that each MOP have conclusive reason to endorse *some law against the alternative of having no law at all* regarding the matter in question. If all members of the public can agree that each member of a set of various possible laws would be better than a state of liberty (i.e., having no law at all on the matter in question), those laws comprise a “socially eligible set,” and one member of the set can be publicly justified via social decision procedures even if not all members of the public view the result as optimal.¹⁵

Still, given the sheer diversity of citizens’ evaluative standards and reasons, an obvious worry is that hardly any coercive law would be such that *every* person has sufficient reason to endorse it against a state of liberty. Especially given that some members of the public are liable to hold extreme views, lack relevant information, and commit errors in reasoning, convergence liberalism may appear to threaten anarchy. To avoid this worry and make the theory plausible, Vallier employs a moderately idealized conception of members of the public (MOPs), according to which MOPs are assumed to meet realistic standards of reasonableness, rationality, and knowledge. As rational, members form their beliefs based on sound, though defeasible, rules of

¹³ Vallier 2012, p. 151. By “conclusive reasons” Vallier means conclusive *for that person*.

¹⁴ Gaus 2011, p. 250.

¹⁵ Vallier 2014, pp. 28, 99 – 100, 166; Gaus 2010, pp. 249 – 250. On Gaus and Vallier’s view, the social decision procedure(s) by which one member of a set of socially eligible laws is chosen need not itself be conclusively justified to all MOPs, for to require public justification of decision procedures is liable to result in an infinite regress of public justification requirements, since there may be dissensus about which decision procedures are optimal. See Gaus 2011, pp. 389 – 409; Vallier 2019, pp. 110 – 112.

inference. They seek out information relevant to their practical interests that they are able to access and process effectively given constraints on time and energy, and they are mostly (though not necessarily completely) coherent in their beliefs and values.¹⁶ A moderately idealized agent is also reasonable in that she “(1) complies with publicly justified principles and offers intelligible reasons for her proposals, (2) she recognizes the burdens of judgment and (3) she rejects repressing other reasonable points of view.”¹⁷ Via moderate idealization, public justification is thought to be fairly resistant (though not impervious) to the errors of populism, as moderately idealized persons will be disposed to acknowledge and endorse laws that are clearly necessary or warranted to any rational, well-informed and reasonable individual.¹⁸

Finally, as the reasons of MOPs are diverse and widely dispersed, the convergence liberal requires an account of how a political order can be successful in its commitment to only imposing laws that are publicly justified. For Vallier, a commitment to PJP requires that the legislative and judicial branches of government be sensitive to the intelligible reasons of MOPs. This requirement gives rise to two additional regulative principles on the legislative process. The Principle of Intelligible Exclusion (PIE) requires that “(i) lawmaking bodies ... only impose laws on members of the public that members of the public have sufficient intelligible reason to endorse and (ii) repeal or reform laws that members of the public have sufficient intelligible reason to reject.”¹⁹ Realizing this goal in practice is liable to be difficult and complex since the reasons of MOPs will not be entirely known by those responsible for proposing and imposing

¹⁶ Vallier 2014, pp. 160 – 162.

¹⁷ Ibid., p. 163.

¹⁸ It is worth stressing that on Vallier’s view members of the public can only be idealized so much. The intelligible reasons MOPs can be expected to endorse must satisfy the *cognition criterion*, i.e., “they should be reasons that ordinary persons can reach through reflection, and not reasons that would only be endorsed after a great amount of cognitive exertion” (Vallier 2019, p. 98). This limitation is necessary, in his view, in order to “identify reasons that are adequately motivating for normally functioning members of the public” (ibid.).

¹⁹ Ibid., p. 184.

coercive laws. At the very least, however, it requires that any members of the public who justifiably believe their vote or advocacy for coercive laws will significantly affect political outcomes (e.g., legislators) exercise restraint; they should not advocate or vote for laws that they justifiably believe some member(s) of the public lack sufficient intelligible reason to endorse. Vallier calls this latter requirement the Principle of Convergent Restraint (PCR).²⁰ In the event that some coercive law or legislative proposal is revealed to be not publicly justified (for instance, by the expressed intelligible dissent of some member(s) of the public), the appropriate course of action is understood to depend on the circumstance. For example, if only a small minority of MOPs have sufficient reason to reject a law, whether for religious or secular reasons,²¹ the proper response may be to grant the intelligible dissenters an accommodation or an exemption from the law in question. When this is not feasible the law should be repealed altogether.²²

In sum, the public justification principle stipulates that a coercive law is legitimate if and only if all members of the public have sufficient reason to endorse it, where members of the public are moderately idealized such that they express reasons intelligible to all members of the public for why they affirm or reject an instance of state coercion and commit no gross epistemic errors in so doing. The public justification principle imposes obligations on legislators and judges to do their best to refrain from imposing laws that are not publicly justified and repeal existing laws that MOPs have sufficient reason to reject. For Vallier, a liberal order thus conceived is morally valuable because the moral and legal order of society is such that each

²⁰ Ibid. p. 191. The restraint required for judges is different because the reasons and decisions of judges have the potential to positively influence future law. For this reason, judges are obligated to issue decisions regarding the constitutionality of coercive law based on reasons that all citizens share, or at least that appeal to common evaluative standards that are accessible to all (p. 195).

²¹ Ibid. pp. 217 – 219.

²² This is implied by PIE. See also *ibid.*, p. 199.

member not only has sufficient reason to comply with moral and legal rules (as is the goal for a *modus vivendi*), but each also has sufficient reason to internalize the moral and legal order as compatible with her conception of the good.²³ This in turn has great practical value because it ensures that the moral and legal order of society is stable. Since members of the public have sufficient reason to internalize moral and legal rules (and the legal system is structured to reckon with the reasons of citizens for whom this is not the case), members of the public can justifiably trust that fellow members will comply with the moral and legal order to which they are collectively bound.²⁴

3 CONVERGENCE LIBERALISM AND PUBLICLY JUSTIFIED COERCION

3.1 Convergence Liberalism's "Classical Tilt"

One notable feature of convergence liberalism as it is developed by Gaus and Vallier is that it is concerned with legitimate rules and laws for our current conditions.²⁵ Thus, for instance, unlike competing conceptions of political legitimacy, convergence liberalism acknowledges and reckons with deep evaluative pluralism among members of the public and refrains from assuming universal compliance with a publicly justified morality and system of law.²⁶ Given the goal of convergence liberalism to articulate a theory that is compelling and realistic given current

²³ Ibid., p. 96 – 98.

²⁴ For an at length discussion of convergence liberalism and social trust, see Vallier 2019.

²⁵ It is worth noting that the moderate idealization of persons does not undermine this. The model of moderate idealization Vallier develops is designed explicitly to stay within the bounds of what can be plausibly expected of actual persons given the limitations on time, cognitive capacity, information, etc. that confront the average person in the "real world." For a defense of moderate idealization against worries related to this point, see Vallier 2014, pp. 170 – 172; Vallier 2019, pp. 103 – 107.

²⁶ This is to be contrasted with, for example, Rawlsian ideal theory which invokes a thicker conception of the idealization of persons that is not necessarily limited to what persons can be expected to live up to given current conditions, and which assumes reasonably favorable social conditions and idealizes away the possibility of lawbreaking (Wenar 2017, p. 6).

political realities, a critical analysis of convergence liberalism would do well to consider its practical implications.

Perhaps the most striking feature of convergence liberalism is the extent to which it systematically limits the powers of government, given the diverse beliefs and values of moderately idealized members of the public. As Gaus has argued, the structure of convergence liberalism is such that the legislative apparatus “tilts” in the direction of classical liberalism, i.e., a political system that guarantees extensive private property rights and economic freedom.²⁷ This classical “tilt” of convergence liberalism is a fairly straightforward result of the justificatory burden PJP places on the use of coercion and the fact of evaluative pluralism: since all instances of coercion must be such that every member of the public has sufficient reason to endorse it, those members of the public who, in virtue of their evaluative standards, tend to weigh the costs of coercion very highly and be skeptical of the benefits of coercion (e.g., classical liberals) will not have sufficient reason to endorse laws that other members of the public view as optimal. As a result, the forms of legal coercion that stand a chance of being publicly justified will be limited to those laws that classical liberals will have sufficient reason to endorse over a state of liberty. Since classical liberals value liberty very highly, weigh the costs of coercion very highly, and are generally skeptical of the benefits of coercion, their evaluative standards will tilt the legislative apparatus towards less, rather than more, coercion.²⁸

Consider figure 1, which represents Gaus’s analysis of convergence liberalism’s “classical tilt.” The data on the graph is supposed to represent (members of the public) Alf and Betty’s ordinal utility function for their deliberation (based on their evaluative standards) on the choice-worthiness of various legislative proposals, with L0 representing a state of liberty and L1,

²⁷ Gaus 2010.

²⁸ Ibid.

L2, L3, L4 and L5 representing legislative proposals ordered in increasing degrees of state coercion, with L1 being more coercive than L0, L2 being more coercive than L1, and so on. For Alf and Betty, one line represents their assessment of the *pro tanto utility* of the different legislative proposals. Importantly, “utility is not an independent goal, much less self-interest, but a mathematical representation of an ordering of the choice worthiness of outcomes.”²⁹ Pro tanto utility is weighed against Alf and Betty’s relative assessment of the costs of coercion of the legislative proposals. Together, the figure is designed to represent the ordinal ranking of the balance of costs and benefits of different legislative proposals. At the point that coercion costs exceed pro tanto utility for Alf or Betty, they no longer have sufficient reason to endorse state coercion, and so the law is thereby not publicly justified and removed from the “eligible set” of legislative proposals. The graph allows us to see how classical liberals, or those members of the public who tend to evaluate coercion costs very highly, will tend to tilt the set of eligible laws towards less coercion. Even though Betty finds L3 to be the most choice-worthy law, L3 is ineligible because, for Alf, the costs of L3 exceed the pro tanto utility of L3 according to his evaluative standards.³⁰

²⁹ Gaus 2010, p. 266.

³⁰ This is a representation of an analysis in Gaus 2010, p. 267, presented here for illustrative purposes. This is a somewhat simplified version of the final analysis Gaus offers, which takes into account the fact that members of the public are liable to disagree about the relative coerciveness of various laws. Gaus argues that even given disagreements about the coerciveness of laws, the classical tilt still holds. See pp. 268 – 269.

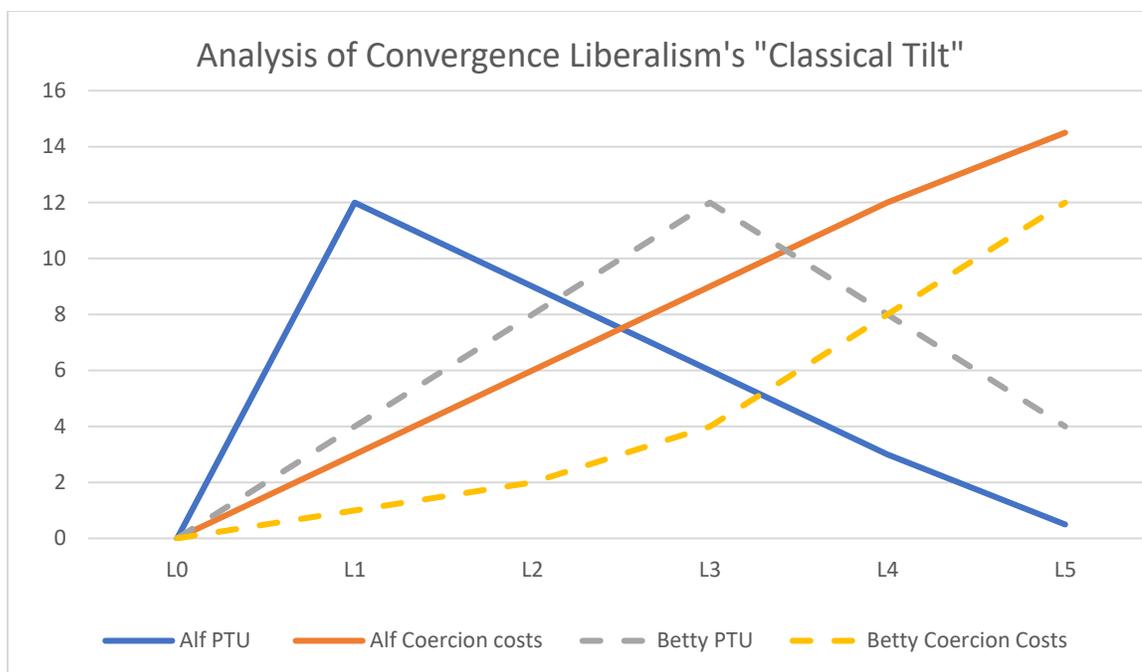


Figure 1 Analysis of Convergence Liberalism's "Classical Tilt"

The classical tilt means that convergence liberalism stacks the deck, as it were, against the use of coercion by the state. Since all members of the public must have conclusive reason of their own to endorse coercion, those members whose evaluative standards are most resistant to the use of coercion will effectively determine the set of eligible laws. This effect may seem unfair and have potentially drastic consequences. As I intend to argue in what follows, the practical implications of PJP are highly questionable indeed. However, it is important to recall that convergence liberalism stipulates that the reasons of members of the public must be intelligible to all moderately idealized members of the public for their reasons to endorse or reject a coercive law to legitimately determine its public justification. Gaus holds that the evaluative standards and reasons of classical liberals meet these normative epistemic requirements.³¹ But if, for example, the radical anarchist does not have sufficient reason to

³¹ See Gaus 2010, p. 271: "Mill's view of the dangers of coercion is manifestly an intelligible and reasonable basis for deliberating about laws; it connects up with a wide range of basic and intelligible human values." Gaus develops this point at length in "State Neutrality and Controversial Values in *On Liberty*" in *On Liberty: A Critical Guide*, ed. C.L. Ten. Cambridge: Cambridge University Press, 2009.

endorse any state coercion whatsoever, this would not mean that no laws are publicly justified according to the convergence liberal, for the reasons of the radical anarchist may not be intelligible to all MOPs or may not survive moderate idealization. This means that the extent to which the reasons of members of the public can constrict the set of eligible laws is a function of how intelligibility and moderate idealization are conceived. I will return to this point later in the analysis.

3.2 Policy Epistemology and the Justification of Coercion

Gaus's analysis of convergence liberalism's classical tilt is helpful in that it provides a model by which the effects of the public justification principle on the set of eligible laws can be assessed with some degree of accuracy. As Gaus argues, given the presence of classical liberal evaluative standards, socialism will be defeated in favor of "private property regimes... with considerable economic freedom."³² Further, "The classical liberal [members of the public] are apt to hold that almost every redistributive plan or scheme of social justice is worse than no redistributive/social justice laws at all."³³ The result is that convergence liberalism favors "private-property based regimes... with considerable economic freedom," something resembling laissez-faire capitalism. Of course, it is likely not the case that only *pure* laissez-faire capitalism can be publicly justified, because even classical liberals are liable to find some minimal redistribution scheme in a state that otherwise has extensive protections for private property to be better than no private property regime at all.³⁴ However, the basic effects of the classical liberal influence are clear enough: convergence liberalism favors (something like) capitalism with

³² Gaus 2010, p. 255.

³³ *Ibid.*, p. 258.

³⁴ This qualification obtains if the scheme of private property rights is justified together with redistribution laws rather than independently. Vallier and Gaus both argue that sociopolitical arrangements should generally be publicly justified independent of others when it is feasible, however. See Gaus 2011, pp. 490 – 491; Vallier 2019, pp. 174 – 177. See also Quong 2011, pp. 273 – 287.

minimal redistribution and minimal, if any, coercive laws designed to enforce a scheme of social justice.³⁵ But from Gaus's analysis alone it remains somewhat vague just how minimal the set of laws will be in a convergence liberal state. It is widely believed that laissez-faire capitalism is liable to give rise to, or is at least compatible with, social forms that many reasonably consider to be lamentable or unjust. Extreme poverty, group-based oppression, and unsustainable environmental degradation are obvious examples. Many reasonably believe that the best means of ameliorating lamentable or unjust social forms is through the imposition of laws to regulate or prohibit causally related social practices. It is worth asking to what extent, if any, convergence liberalism leaves room for the use of coercion to address such lamentable or unjust social forms. Analyzing this question, I submit, reveals a crucial epistemological element to the public justification principle that helps to illuminate the practical implications of convergence liberalism, at least as it is developed by Vallier in *Liberal Politics and Public Faith*.

To begin, it is worth observing that when tasked with determining whether coercive laws are publicly justified and legitimate, a justificatory burden lies on legislative bodies to determine that there is conclusive reason to endorse the law in question. It is important to recognize why this is the case. As noted above, convergence liberalism conceives public justification as a *social state* in which all members of the public have sufficient reason of their own to endorse a moral rule or law. It is not typically conceived as a process of public deliberation or justification on the part of legislative bodies. This being the case, it may seem that convergence liberalism does not require legislative bodies to (be prepared to) demonstrate that laws are publicly justified by

³⁵ By "a scheme of social justice" I mean a scheme for realizing a conception of what justice requires with respect to a specific issue. This would typically involve the assertion that some feature of the sociopolitical system is unjust and requires adjusting. For example, the assertion that certain sociopolitical conditions enable gender-based discrimination, which results in unjust forms of inequality, together with a plan to utilize coercive means to reduce or eliminate such gender-based discrimination, would be a scheme of social justice as I understand the term here.

appeal to evidence that there is conclusive reason for all to endorse it. However, while there may be little or no need on the part of some authority to demonstrate that *moral rules* are publicly justified, since moral rules are not necessarily enforced by a central authority, imposing and enforcing *legal rules* in the form of coercive laws does require some compelling epistemological support indicating the law is (sufficiently likely to be) publicly justified. This is so for two reasons. First, compelling epistemological support that a coercive law is publicly justified is required for legislators to appropriately respect PJP. As noted above, Vallier understands PJP to impose duties on legislators, via the principle of convergent restraint, to only vote for or advocate laws that all members of the public have sufficient reason to endorse.³⁶ But as the intelligible reasons of MOPs are numerous, diverse and widely dispersed, requiring legislators to determine whether all MOPs do *in fact* have sufficient reason to endorse laws would be too demanding. So, legislators must to do their best to respect this requirement and only vote for or advocate laws that they “justifiably believe” all members of the public have sufficient reason to endorse.³⁷ “Importantly,” Vallier adds, “these beliefs should have good epistemic credentials.”³⁸ Vallier does not specify what constitutes “good epistemic credentials” in this context, but clearly a rigorous and honest assessment of the reasons available to believe the law will be seen as worth endorsing from diverse points of view is necessary to appropriately discharge this duty. At a minimum, this should involve assessments of the reasons members of the public offer for their

³⁶ Vallier 2014, p. 191.

³⁷ Vallier 2014, p. 187. Vallier articulates the principle of convergence restraint (PCR) negatively, requiring that “a legislator should not vote for law L in order to contribute to M’s becoming or remaining law (where L may be equivalent to M) if he justifiably believes that members of the public lack sufficient reason R_n to endorse M.” (p. 191). Here I articulate the principle positively, mainly for the sake of clarity, when I couch PCR as requiring legislators to only vote for laws they justifiably believe all members of the public have sufficient reason to endorse. Regardless of how it is articulated, the idea remains the same.

³⁸ *Ibid.*, p. 187.

positions,³⁹ as well as social scientific evidence relevant to evaluating the costs and benefits of the law in question.

The second reason legislators and other state representatives who act to impose coercive laws face a justificatory burden is brought out by the fact that PJP does not address all *actual citizens*, but only their moderately idealized counterparts.⁴⁰ It would hardly be surprising if every law proposed or enacted by a legislative body would be such that some citizen believes they do not have sufficient reason to endorse it. The presence of radical anarchists would be sufficient to make that the case. However, this alone would not necessarily be sufficient to defeat a law or grant such persons an exemption under convergence liberalism; such consequences are only called for if the reasons of a dissenter live up to the standards of a moderately idealized agent, i.e., they are intelligible and survive some critical scrutiny. If a legislative body is to be steadfast in imposing coercive laws against dissenters whose reasons it doesn't recognize as justificatory, surely it (that is, its members) must have some reason(s) that are sufficient to justify their belief that the law is publicly justified despite the unidealized dissenter's complaint.⁴¹ These reflections reveal that convergence liberalism's commitment to PJP implies the exercise of political authority must be backed by good epistemic credentials. And since the epistemic credentials of legislators and other members of lawmaking bodies exert an influence in determining the public justification of laws, some specification of what constitutes "good epistemic credentials" is required to fully grasp the legal implications of convergence liberalism. What is required, in

³⁹ Vallier 2019 pp. 119 – 120. Vallier also suggests social scientific evidence regarding rule compliance, specialized forms of media, and "political philosophical models" to determine whether a moral rule or law is publicly justified (ibid).

⁴⁰ See Vallier 2014, Ch.5; 2019, pp. 97 – 107.

⁴¹ If, that is, an overarching goal of the moral-political order is the avoidance of authoritarianism.

other words, is an account of *policy epistemology*, i.e., an account of the standards of evidence that, if met, are sufficient to justify legislators in their belief that some law is publicly justified.

I submit that PJP's requirement that *all* members of the public have sufficient reason to endorse coercive laws, together with Vallier's model of moderate idealization and the relatively permissive intelligibility requirement for justificatory reasons (as they are developed in *Liberal Politics and Public Faith*) give rise to extremely stringent standards for policy epistemology, which reveal convergence liberalism to be inimical to the prospects of proposing and imposing laws of social justice.

The case for this point is straightforward: since Vallier adopts the relatively permissive requirement that justificatory reasons be intelligible, then it follows from PJP that an MOP's having (and expressing) intelligible reason to reject a coercive law, preferring no law at all, is sufficient to render that law not publicly justified, and thus (per PIE) to warrant an exemption or a repeal of the law altogether. This implies that so long as a coercive law is intelligibly rejectable, it is liable to be defeated under PJP. But given the permissive conditions for intelligibility (being epistemically justified for an individual according to that individual's own evaluative standards), the fact of evaluative pluralism, and the sheer complexity of large scale, collectively binding laws, the vast majority of (if not all) significantly coercive laws are bound to be intelligibly rejectable, and thus liable to be defeated. This much is probably sufficient for the reader to get a general sense of the prospects for publicly justifying laws of social justice under convergence liberalism. Because the rationale for many schemes of social justice are based in part on comprehensive moral doctrines or empirical claims that are reasonably or intelligibly rejectable, and coercive laws infringe upon the freedom of persons, many persons will have *prima facie* reason to resist laws of social justice and will not have sufficient reason of their own

to endorse them. It is to be expected, then, that laws designed to realize or implement a scheme of social justice will generally be defeated.

Some readers may consider this result a virtue of convergence liberalism. After all, imposing coercive laws on persons that they do not have sufficient reason to endorse is clearly *prima facie* undesirable and morally questionable. Avoiding moral authoritarianism is indeed a virtue. My concern is that the convergence liberal's staunch commitment to avoiding moral authoritarianism, and the very stringent conditions for policy epistemology to which this commitment gives rise, imposes a justificatory burden on the use of coercion that is so stringent that it threatens to obstruct the state's capacity to enact laws that are truly important. I noted earlier that the kind of socioeconomic order that convergence liberalism is thought to manifest, something resembling *laissez-faire* capitalism, is widely believed to be conducive to or compatible with social forms that are lamentable or unjust. To make my case, I consider the prospects for the convergence liberal state's capacity to remedy such conditions by enacting legislation to regulate or prohibit causally related social practices.

I would like to begin by considering in more depth the implications of the intelligibility requirement, evaluative pluralism, and the complexity of laws for the prospects of satisfying the demands of PJP. It is obvious that with respect to some social practice ϕ believed to be causally related to the production of social forms that are lamentable or arguably unjust, some members of the public will have an interest in preserving the freedom to ϕ without coercive intervention. In the context of *laissez-faire* capitalism, there is typically some compelling economic incentive to engage in the practice(s) some law purports to regulate or prohibit. In the case of worker exploitation, for example, employers see they have an economic incentive to offer the least amount of pay and benefits to workers they can manage while preserving a productive

workforce. Similarly, industrial firms are sometimes incentivized to engage in unsustainable environmental degradation because of greater costs involved in more environmentally responsible operations. Given compelling economic or other incentives to engage in some practice ϕ , especially when the practice comprises a significant part of one's life goals or plans, members of the public engaged in these practices will have prima facie reason to resist coercion that threatens to regulate or prohibit their freedom to ϕ . Of course, presumably moderately idealized members of the public will refrain from assessing the costs and benefits of a law purely in terms of their own self-interests, so we should not expect every law that goes against the self-interests of members of the public to be defeated.⁴² However, given that some MOPs are liable to be interested in retaining the freedom to engage in forms of behavior that are to be regulated or prohibited by some law, their evaluative standards, much like those of classical liberals, are liable to lead them to weigh the costs of the law relatively high and be skeptical of the benefits the law purports to bring.

The effect of self-interest captures only one possible force that is liable to influence the reasons and evaluative standards of some members of the public to resist favoring particular coercive laws. It is important also to consider the influence of one's lived experience in shaping one's evaluative standards and beliefs about the good. Discussing the difficulties of publicly justifying laws of social justice, Charles Mills notes, "under nonideal circumstances, where social oppression is the norm, the group interests of the privileged and their differential group experience will generate rationalizations of the existing order, so that contesting social privilege to realize social justice will necessarily mean encountering and combating such ideologies."⁴³

⁴² Perhaps this is implied by Vallier's stipulation that intelligible reasons must be "moral reasons," or at least not seen as immoral by the agent in question. See Vallier 2019, pp. 90 – 91. Thanks to Dr. Hartley for bringing this to my attention.

⁴³ Mills 2013, p. 19.

Mills is pointing to an important and real psychological tendency which may be generally stated thusly: if some state of affairs S is important to an agent's ability to pursue his or her life plans, or is essential to obtaining or maintaining some personal interest, or is taken for granted as normal, then the agent will be disposed to generate rationalizations of S against conflicting evidence or ideologies so long as he can do so without making gross errors in reasoning. This may be appropriately described as a sort of system – justification bias, i.e., a tendency to favor or rationalize the status quo.⁴⁴ If this is a real psychological tendency among rational agents, it is liable to exert some influence on the evaluative standards of some MOPs, making them resistant to endorsing coercive proposals that threaten to interfere with their established way of life or personal goals.⁴⁵

The psychological effects of self-interest and the possibility of a sort of system-justification bias provide reason to believe that most, if not all, significantly coercive legislative proposals will be met with resistance among some members of the public. At the very least, this provides reason to expect that MOPs for whom a law threatens their self-interests or their established way of life will be rationally motivated to discover whether the law in question is truly such that they have conclusive reason to endorse it, and do so by seeking out relevant

⁴⁴ Systems justification theory holds that “people are motivated to justify and rationalize the way things are, so that existing social economic, and political arrangements tend to be perceived as fair and legitimate” (Jost and Hunyady 2005, p. 260). System–justification bias has been correlated with a tendency to resist social change. See *ibid*, pp. 262-263.

⁴⁵ On this point, Vallier may object that I am being uncharitable to his position by appealing to the effects of psychological bias in reasoning to articulate the stringency of PJP. Vallier may argue that such psychological biases are examples of errors in reasoning, and moderate idealization is employed precisely to address the problems that may arise in virtue of such errors in reasoning among members of the public. However, it is not clear whether appeal to moderate idealization is available to Vallier on this point. Vallier requires that justificatory reasons be intelligible. So long as all members of the public acknowledge that the reasons put forth by a fellow MOPs are intelligible, the question of whether those reasons are altogether sincere or motivated by self-interest or are in part the result of bias seems beside the point. Indeed, there would seem to be no reliable way of detecting insincerity or bias so long as the reasons themselves stand up to critical scrutiny. If convergence liberalism purports to be a theory that makes real recommendations for determining how political decision-making should be handled, it must limit its a priori idealization to reasons.

information regarding why the law is being proposed, what it purports to accomplish, how likely it is to be efficacious, whether there are viable noncoercive alternatives, and whether the benefits of the law are sufficiently likely to outweigh the costs. If, after an honest examination, such MOPs are not convinced that the law in question is sufficiently likely to bring about net benefits that outweigh the net costs, then they likely won't have sufficient reason to endorse it. And since such MOPs have strong prima facie reason to resist coercion, their evaluative standards will likely dispose them to weigh the costs of coercion relatively highly. They may also be inclined to weigh the benefits the law purports to bring relatively low or be skeptical that the law in question is sufficiently likely to bring about those benefits, given the evidence available. This suggests that in order to generate convergence on coercive regulations on economic forces in a sociopolitical order otherwise characterized by extensive private property rights and economic freedom, the evidence available to indicate the law is warranted must live up to very stringent epistemological standards, as it will generally have to be sufficient to convince even the most skeptical members of the public that the law is in fact sufficiently important, and sufficiently likely to be efficacious, to justify the costs of coercion.

However, basic limitations in policy epistemology make it such that empirical evidence that is sufficiently compelling to convince all MOPs will rarely obtain. The social consequences of laws and policies is extraordinarily difficult to predict in advance, or even to track after laws have been enacted. In his forthcoming book, Vallier acknowledges some of the basic epistemological challenges that obstruct reliable and comprehensive assessments of the socioeconomic effects of laws and policies. The first relates to difficulties in evaluating the budgetary impact of a piece of legislation. Remarkably, the Congressional Budget Office (CBO) admits, "it is often difficult or impossible to determine, even in retrospect, the incremental

impact on the budget of a particular piece of legislation.”⁴⁶ Second, Vallier notes, “recent work on the ability of experts to predict social outcomes has shown that their abilities are much more limited than we might have otherwise expected... This means that even the most honest attempts to predict the outcomes of public policy are bound to meet with limited success. So, meeting even the most basic standards of policy epistemology is going to be difficult given the limitations of expert prediction.”⁴⁷ Third, “reasonable pluralism among economists is deep, especially on macroeconomic policy. If so, satisfying the standards of economic policy epistemology is quite difficult, since few policies have enough support from economic experts to serve as a basis for convincing citizens who disagree with the expert consensus of a culpable epistemic or moral error.”⁴⁸ And fourth, members of the public must be sufficiently confident that any coercive regulations will not be susceptible to the threat of rent seeking, i.e., to corporations manipulating a regulatory apparatus to work in their favor to maximize profit, which will be difficult to assess.⁴⁹

These brief reflections on policy epistemology suggest that given the sheer complexity of large – scale socioeconomic systems, the accuracy of mechanisms for predicting and measuring the socioeconomic impact of laws and policies is very limited. These limitations of policy epistemology have important implications for the prospects of publicly justifying laws of social justice. Since some members of the public are liable to have strong prima facie reasons to preserve their freedom to engage in practices for which they have a compelling economic incentive, or which form an important part of their established way of life, any laws purporting to regulate or prohibit such practices are likely to be met with some resistance. Such members of

⁴⁶ CBO website (E7). Reference from Vallier, *LDP* v.2 (forthcoming) p. 202.

⁴⁷ *Ibid.*, p. 205.

⁴⁸ *Ibid.*, pp. 207 – 208.

⁴⁹ *Ibid.*, pp. 208-209.

the public are liable to have evaluative standards that weigh the costs of coercion with respect to such laws very highly and are skeptical of the benefits such laws purport to bring. Such persons may reasonably demand compelling evidence that the law in question will be sufficiently likely to bring about some tangible benefit that outweighs its costs. However, the sheer complexity of policy epistemology is such that conclusive evidence that the law will bring more benefits than costs rarely, if ever, obtain. Convergence liberalism thus has bleak prospects for the public justification of laws of social justice.

4 A CASE IN POINT: PUBLICLY JUSTIFYING COERCIVE REGULATIONS

That convergence liberalism systematically limits the set of eligible laws in a sociopolitical order is acknowledged, and even celebrated, by the main proponents of the theory.⁵⁰ However, I submit that the conditions for justified coercion imposed by PJP are too extreme. In the previous section, I hope to have provided the reader a sense for why this may be the case. Conceiving the public justification principle as delineating necessary conditions on the legitimate use of coercion threatens to render any legislative proposal that admits of intelligible disagreement unjustified and, qua PJP, illegitimate. However, given evaluative pluralism and present limitations on the accuracy and reliability of policy epistemology, the vast majority, if not all, of coercive laws will be susceptible to intelligible disagreement by some member(s) of the public. The problem with this arrangement is that the conditions for public justification are so stringent that the set of laws that some MOPs lack sufficient reason to endorse is liable to include some laws that are very important.

Consider, for example, cases in which unregulated industrial practices produce negative externalities, i.e., costs born on third parties rather than industrial firms themselves. Typical

⁵⁰ See, for instance, Gaus 2010 and Lister 2010.

examples of this phenomenon include (potentially) hazardous pollution of land, air and waterways. The production of negative externalities is most uncontroversially unjust when negative externalities result in tangible costs borne by third parties by way of destruction of another's property or damage to another's health. The production of negative externalities is typically profit-driven; industrial firms engage in practices that result in potentially harmful forms of pollution or other externalities because such practices are often the least costly, at least in the short run, for the firms themselves. Since firms, generally speaking, have a vested interest in minimizing the costs of production, they have an interest in preserving the freedom to engage in the least costly means of production, even if they have reason to suspect the least costly means of production produces more negative externalities than more costly alternatives.⁵¹ Furthermore, whatever damage to property or health, or whatever other costs are borne by third parties by less than fully responsible industrial practices is often difficult and costly to measure, such that the accuracy of measurements of damage to third parties caused by industrial practices are liable to be susceptible to reasonable, or intelligible, doubt.⁵² Evaluative pluralism and limitations in policy epistemology together make it such that any coercive laws that are designed to ameliorate harms in cases where industrial firms' productive practices result in costs to third parties that are arguably unjust stand little chance of being deemed permissible according to PJP.

⁵¹ This empirical claim is corroborated by Heiman 1997: "Common reasons given for corporate aversion to [toxic use reduction] include lack of awareness of engineering alternatives, a myopic focus on very short-term profits, and an organizational adherence to static ways of doing business (Lewis et al., 1992; Gottlieb et al., 1995). However, we must also consider corporate aversion to any external interference in the production process itself. While firms can live with command-and-control rear-end regulation of emissions, allowing a government entity, labour union or community group to have direct input with decisions over what is produced, and how it is produced, is still viewed by many as an anathema akin to socialism. Thus, while sustainable industrial output, at least in terms of resource use and toxic use reduction, is becoming a technical reality, the very structure of the modern corporation, with its emphasis on a lack of accountability and protection from personal liability, and the requirements of an imperfect competitive market that does not internalize the negative externalities generated, coupled with feeble attempts by government to hold corporations accountable for public welfare, have all resulted in a tendency for firms to focus on short-term profits at the expense of worker, community and environmental health" (pp. 335-336).

⁵² This epistemological problem is noted with respect to the effects of industrial air, water and land pollution on the health of local populations by Gonzalez and Saarman 2014, pp. 44 – 46, 58.

This can have serious consequences. Consider, for example, the US Congress's passage of regulations in 1973 requiring a reduction of 80% of standard lead levels in gasoline by 1979. The rationale for the regulation was that the standard amount of lead in gasoline resulted in airborne lead levels that were potentially harmful to adults and children in urban areas.⁵³ Importantly, though, at the time the regulations were imposed there remained scientific uncertainty regarding whether current levels of airborne lead posed a threat to public health and Congress was incapable of quantifying the expected benefits of the regulation.⁵⁴ The regulation was a precautionary measure; the *potential* for harm to members of the public was considered sufficient reason to enact the regulations. Unsurprisingly, the Ethyl Corporation, the preeminent producer of tetra ethyl lead at the time, rejected Congress's new regulations and the rationale used to support it. Ethyl argued in a landmark court case that without conclusive scientific evidence showing actual harm from leaded gasoline there was insufficient justification for the costly regulations.⁵⁵ Fortunately, the court ruled in favor of justifying environmental regulations on a precautionary basis and the regulations were upheld.⁵⁶

Considering that the regulations were costly to Ethyl and scientific evidence connecting leaded gasoline to public health problems was inconclusive, Ethyl's rationale for rejecting Congress's regulations was at least intelligible. The following argument, for instance, appears to commit no gross errors in reasoning:

“The correct epistemological standard for justifying coercive regulations as costly as those under consideration is proof that leaded gasoline has actually caused harm to members of the

⁵³ Robert v. Percival et al., *Environmental Regulation: Law, Science, and Policy* vol. 362 (4th ed. 2003). Reference from Ackerman et. al. 2005, p. 166.

⁵⁴ See Regulation of Fuels and Fuel Additives, 38 Fed. Reg. 1258, 1259 (Jan. 10, 1973) (proposing to defer the reduction schedule by one year). Reference from *ibid.*, p. 165.

⁵⁵ See *Ethyl Corp. v. EPA*, 541 F.2d 1, 12 (D.C. Cir. 1976) (*en bane*) (affirming that the EPA may show a significant risk of harm rather than the heightened standard of proving actual harm). Reference from *ibid.* p. 166.

⁵⁶ *Ibid.*, pp. 166-167.

public. Without such proof, it is uncertain that the law will bring about benefits that outweigh the costs. And without a compelling positive cost-benefit analysis, laws and regulations should not be enacted.”

Assuming Ethyl’s rationale was intelligible, it follows from Vallier’s convergence liberalism that the regulations were not publicly justified and so should not have been enacted. But of course, it was later revealed that the law was very important indeed. After the passage of the regulations on lead levels in gasoline scientific evidence supporting a correlation between lead levels in gasoline and blood-lead levels in children,⁵⁷ as well as scientific evidence establishing a negative correlation between blood-lead levels in children and IQ,⁵⁸ were able to be generated. Together these studies effectively establish that leaded gasoline poses a real threat to public health. Importantly, though, the accumulation of this evidence was possible only because the regulations imposed by Congress gave researchers a point of reference to compare blood-lead levels as they correlate to lead levels in gasoline before and after the regulations were enacted. If the regulations were not enacted because Ethyl had intelligible reason to reject them, the proof that leaded gasoline does pose a threat to public health may never have become available, or at least not until harm to the public became empirically detectable by other means.

Congress took a precautionary measure that was grounded in scientific research and good judgment, motivated by an interest in public health. Especially since public health was on the line, it can be reasonably expected that such a law would generate widespread support among members of the public, especially those who have no stake in the profitability of lead-producing

⁵⁷ See Environmental Protection Agency, “Great Lakes Binational Toxics Strategy, Draft Report on Alkyl Lead: Sources Regulations and Options,” available at <http://www.epa.gov/grtlakes/bns/lead/steplead.html> (last visited Dec. 16, 2004). Reference from Ackerman et al. 2005, p. 167.

⁵⁸ See H.L. Needleman et al., “Deficits in Psychologic and Classroom Performance of Children with Elevated Dentine Lead Levels.” *300 NEW ENG. J. MED.* 689, 689 (1979) (adding that the children with high lead levels performed worse than children with low lead levels in verbal tests, auditory and speech processing). Reference from *ibid.*

firms like Ethyl. So, it seems clear that Congress was operating within the bounds of acceptable use of coercive power. Though Ethyl was coerced into accepting the consequences of the law against its will, such infringements are justifiable when enacted for the sake of justice, in this case for the sake of preventing avoidable harm to the public. Since a strict adherence to the public justification principle threatens to prevent the government from taking such action, that is, from enacting coercive legislation despite it being intelligibly rejected by one or more members of the public, the intuition that the law was nonetheless justified suggests that the public justification principle as expressed by Vallier is misguided because it limits the power of government to such an extent that it prevents the government from being able to perform its basic functions. We should thus reject the public justification principle and seek a conception of the moral limits of state power that better aligns with our considered judgments of the purpose and function of government.

5 OBJECTIONS AND REPLIES

The worry I have pressed against convergence liberalism is that according to its parameters, important laws are liable to be defeated. This, I have suggested, risks obstructing the state's capacity to address preventable forms of injustice, such as cases where there is good reason to believe industrial firms infringe on the rights of third parties because of less than fully responsible industrial practices. This problem results from conceiving the public justification principle as delineating necessary conditions on the moral permissibility of state coercion. Evaluative pluralism, together with basic limitations on policy epistemology, make it such that even truly important laws will be such that they can be intelligibly rejected. In such cases, convergence liberalism seems to consider it a moral requirement to refrain from imposing laws

that are widely and justifiably believed to be necessary to effectively protect the rights of citizens.⁵⁹

A few possible responses to my argument are worth considering. One may just bite the bullet and maintain that any law which some member(s) of the public lack sufficient reason to endorse should not be enacted. Such a position is coherent. As I hope to have shown, though, it is a position that a great many reasonable persons would have strong reason to reject. If coercive laws are held to the standard that they must be conclusively justified to all intelligible points of view, few, if any, significant laws and policies are liable to be publicly justified, which has extremely bleak prospects for the imposition of significant environmental laws and other laws of social justice, even when strong evidence that provides a majority of members of the public conclusive reason to endorse them is at hand. Consider, to return to the example above, a circumstance in which 80% of members of the public vote in favor of a coercive legal requirement to gradually reduce lead levels in gasoline by 80% over the course of 5 years. Even though, in this hypothetical scenario, the scientific evidence is yet inconclusive whether current lead levels pose a significant threat to public health, those 80% of members of the public believe it worth the economic costs to err on the side of caution. If the law is defeated because the producers of tetra ethyl lead, who stand to bear the brunt of the economic costs of the legislation, do not have sufficient reason to endorse it from their point of view, those members of the public who endorse the law may have reason to suspect whether the principle of legitimacy at play in determining political outcomes affords due respect to their political voice and their right to political participation. Despite this, one may maintain that convergence liberalism, at least as

⁵⁹ A similar argument is put forth by Eberle 2012. Eberle argues that if we permit private reasons, including religious or sectarian reasons, to determine the public justification of laws, as convergence liberalism does, then “[i]n a pluralistic liberal polity, there will always be sensible, epistemically competent, and morally serious citizens who have conclusive reason to reject any significant state policy” (p. 301).

Gaus and Vallier develop it, represents the right view of political legitimacy. The argument presented here does not show that convergence liberalism is internally inconsistent.⁶⁰ At the very least, though, it provides strong reason to suspect that the view as it is developed by Gaus and Vallier has highly questionable practical implications that many are liable to find unacceptable.

Some proponents of convergence liberalism may doubt whether the public justification principle really does threaten to obstruct the state's capacity to impose laws that are truly important. One may argue that every moderately idealized citizen, qua idealized, would have sufficient reason to endorse laws that are in fact truly essential, or are in fact requirements of justice.⁶¹ After all, the justificatory public is idealized specifically in order for PJP to be a plausible regulative principle on the coercive power of the state, i.e., to avoid patently unreasonable sociopolitical outcomes.

This line of argument fails, however. Though appealing to moderate idealization may serve to make the convergence liberal conception of PJP more plausible, moderate idealization cannot by itself be used to determine whether laws are publicly justified.⁶² Moderate idealization, as Vallier and Gaus conceive it, is designed to preserve citizens' belief-value sets and the idiosyncrasies of their evaluative standards, doing away only with the reasons that such citizens may have that are the result of a lack of accessible information or gross errors in reasoning, and implanting a thin conception of reasonableness.⁶³ Gaus couches the justificatory reasons of moderately idealized citizens in terms of the reasons that a person would recognize after a "respectable amount" of reasoning. This reasoning is supposed to be a function of an agent's

⁶⁰That some members of the public may have reason to reject the public justification principle as a criterion for determining the legitimacy of coercive laws has led some authors to suspect that convergence liberalism may be self-defeating. Wall 2002 and 2013 argues that convergence liberalism is self-defeating for this reason. See Vallier 2016 and Billingham 2017 for arguments to the contrary.

⁶¹ Vallier 2016 seems to think this is the case. See especially pp. 354 – 357.

⁶² As noted by Vallier himself. See Vallier 2014, p. 164.

⁶³ Vallier 2014, Ch. 5.

own evaluative standards, and so the reasons an agent can be expected to have “must be accessible” to the agent given their evaluative standards and the costs of cognitive activity.⁶⁴ In short, the conceptions of moderate idealization Gaus and Vallier adopt seek to provide a *procedural* account of the reasons citizens have, meaning that the reasons citizens are identified to have after idealization is not determined by *what reasons there are*, external to the beliefs and evaluative standards of an agent, but is rather determined by the agent’s own reasoning process.⁶⁵ Accordingly, moderate idealization cannot be used to (reliably) determine specific reasons MOPs would or should have to endorse policy proposals, especially when such policies can be intelligibly rejected.⁶⁶ Thus, even after moderate idealization it remains the case that so long as a coercive law is intelligibly rejectable, it will be liable to be defeated under convergence liberalism.

It may be suggested that this worry can be assuaged by idealizing the justificatory public further, or in a different way. For example, in light of the challenge of publicly justifying coercive laws for which there is compelling, but inconclusive, scientific evidence to suggest the law is necessary to effectively protect the (publicly justified) rights of citizens, one may opt to build more into the model of idealization to get the desired result. For example, one might stipulate MOPs to have sufficient reason to endorse “policy experiments,” i.e., policies temporarily enacted to test the efficacy of policy proposals, or to otherwise gather necessary information to determine whether laws are in fact publicly justified.⁶⁷ However, while increasing

⁶⁴ Gaus 2011, p. 253.

⁶⁵ As Gaus says, “a justified choice to act, or a justified belief in a proposition, is one that has been arrived at in conformity with the norms of rationality, which are to be understood procedurally” (2011, p. 244).

⁶⁶ A similar point is noted by Quong 2014, especially pp. 547 – 549, and Schoelandt 2015, pp. 1035 – 1037. Both argue that moderate idealization is insufficient to liberalize persons with patently illiberal beliefs or inclinations, which, in their view, raises problems for convergence liberalism’s goal of publicly justifying social morality to all MOPs.

⁶⁷ This is something Vallier himself suggests. See Vallier, *A Liberal Democratic Peace*, unpublished manuscript (version 2.0), p. 204.

idealization of MOPs may improve the chances that important environmental laws and other laws of social justice will be publicly justified, doing so risks the kind of moral authoritarianism convergence liberalism is designed specifically to avoid.⁶⁸

Allow me to explain. The public justification principle is understood to be a criterion by which the legitimacy of coercive laws is determined. As such, the conditions for legitimacy delineated by the public justification principle can be helpfully understood as a “test of public justification”⁶⁹: so long as the conditions stipulated by PJP are met, the law in question is legitimate. As Vallier understands it, PJP stipulates that “A coercive law L is justified only if each member *I* of the public P has some sufficient reason(s) R_i to endorse L.”⁷⁰ If PJP is to serve as a test for public justification, the values of L, I, P and R_i must be specified. These values can be specified in different ways. As I have argued, the way in which Vallier specifies these values in *Liberal Politics and Public Faith* threatens to obstruct the state’s capacity to enact important laws of social justice. The present suggestion is to attempt to address this worry by increasing the idealization of the public P to make publicly justifying coercive laws and regulations more plausible to better enable the state to perform its essential functions. If this is done for the purpose of publicly justifying a coercive law L that is intelligibly rejectable, however, then some members of the public (or their moderately idealized counterparts) may have sufficient reason to reject the conception of PJP according to which L is deemed legitimate. This becomes problematic if those MOPs do not have sufficient reason of their own to endorse the law in question. If the law is imposed because it is deemed publicly justified according to a controversial test of public justification (in this case, a controversial conception of how MOPs

⁶⁸Vallier cautions against excessive idealization in his 2014, pp. 151 – 160.

⁶⁹ This terminology is borrowed from Wall 2013.

⁷⁰ Vallier 2014, p. 24.

are to be idealized), imposing that law despite it being intelligibly rejected by some members of the public arguably fails to respect those MOPs as equally authoritative interpreters of morality's demands. Such an outcome, however, is exactly the kind of authoritarianism convergence liberalism seeks to avoid. Thus, bolstering the idealization of MOPs to generate public justification on laws that are otherwise intelligibly rejectable is a move unavailable to the convergence liberal on pain of inconsistency.⁷¹

These reflections reveal a dilemma confronting convergence liberalism. If, on the one hand, the convergence liberal is to stay true to his theoretical aim of avoiding moral authoritarianism by restricting the set of socially eligible laws to those for whom all moderately idealized members of the public have sufficient intelligible reason to endorse, the result is that any coercive law that is intelligibly rejectable is liable to be defeated. But since many important laws of social justice are liable to be intelligibly rejectable, convergence liberalism threatens to obstruct the state's capacity to enact important laws. On the other hand, if the justificatory public is further idealized to generate public justification for vitally important laws of social justice, convergence liberalism threatens moral authoritarianism and internal inconsistency. The result is that convergence liberalism, at least as it is developed by Kevin Vallier in *Liberal Politics and Public Faith*, either imposes excessively stringent restrictions on the use of coercion or is internally inconsistent. Unless one is willing to accept a state with few coercive laws of social

⁷¹ This general idea is expressed clearly and persuasively by Wall 2013. Wall argues that convergence liberalism is subject to the reflexivity requirement (RR), i.e., the requirement that the public justification principle itself must be publicly justified to be a legitimate criterion of political legitimacy. Since PJP is liable to fail RR, in Wall's view, convergence liberalism is at odds with its own rationale, i.e., the avoidance of authoritarianism. Here, I agree largely with Wall, though it seems to me that failing the reflexivity requirement is only problematic when the test of public justification in question is both intelligibly rejectable and necessary for the public justification of essential laws, as Vallier 2016 argues. Such is the case, I argue, if the test of public justification is conceived in such a way so as to render intelligibly rejectable laws publicly justified and legitimate, and so this theoretical move is unavailable to the convergence liberal on pain of inconsistency. See Billingham (2017) for corroboration and further discussion.

justice, and bleak prospects for enacting such laws even given compelling evidence indicating their importance, convergence liberalism ought to be rejected.

6 CONCLUSION

One of the central theoretical goals at the heart of convergence liberalism is the avoidance of moral authoritarianism in politics.⁷² Achieving this goal is understood to be necessary for appropriately respecting the natural freedom and equality of persons. In order to reconcile the use of coercion to restrict the actions of persons with their status as naturally free and equal persons, Vallier considers the use of coercion by the state to be legitimate if and only if all members of the public subject to the coercion have sufficient reason of their own to endorse it. This moral requirement obtains, in his view, even given the fact of evaluative pluralism, i.e., the fact that persons have diverse conceptions of the good and standards of evaluation which lead to deep disagreement. In this essay, I have drawn out some of the practical implications of conceiving the ideal of public justification as delineating necessary conditions on the use of coercion by the state. If a coercive law is legitimate only if every member of the public has sufficient reason to endorse it, it follows that those members of the public that are most inclined to weigh the costs of coercion very highly and be skeptical of the benefits of coercion must be able to determine on the basis of their own reasoning that the coercion is warranted. This brings out the fact that convergence liberalism systematically “tilts” towards less, rather than more coercion. Given the presence of classical liberals, and the fact that coercive restrictions on behavior are liable to set back the interests of some MOPs, the requirement that coercion be endorsed by all turns out to be a very stringent one indeed. As I’ve argued, this requirement is so stringent that it may threaten to impede the state’s capacity to enact laws and regulations that are

⁷² Vallier 2014, pp. 31 – 33.

important for realizing the demands of justice. This worry is brought out by the fact that there are significant epistemic hurdles in generating a positive cost-benefit analysis for any significant policy proposal that is sufficiently compelling to convince those most skeptical or resistant to coercion as the case may be. The public justification requirement is a condition that is unlikely to be met by laws of social justice of any kind, even those for whom compelling, if inconclusive, evidence suggests the law is necessary to prevent members of the public from infringing on one another's basic rights. In such extreme cases, some members of the public, perhaps even a majority, may have sufficient reason to reject the public justification principle as a criterion for the legitimacy of coercive laws.

Again, this outcome does not necessarily entail that convergence liberalism is internally inconsistent or self-defeating. Proponents of the view may argue that even if many members of the public have sufficient reason to reject PJP as a test of political legitimacy, continuing to use PJP as a test for the permissibility of laws is not thereby authoritarian because only positive instances of coercion require public justification; restrictions on its use such as PJP need not themselves be universally endorsed to be legitimate since they are not (positively) coercive.⁷³ I do not intend to take a stand on whether this line of argument is successful. I admit that the argument advanced in this essay does not reveal convergence liberalism as self-defeating. What I do hope to have shown, though, is that the public justification principle imposes such stringent restrictions on the use of state coercion that it is liable to engender sociopolitical outcomes that many reasonable persons will find unacceptable. Convergence liberalism makes it exceptionally difficult to publicly justify laws of social justice, including environmental laws and regulations designed to ameliorate the negative impacts of unregulated industrial practices on the

⁷³ For an argument along these lines, see Gaus 2011, p. 228.

environment and public health. Other laws of social justice, such as schemes of redistribution or prohibitions on group-based discrimination are liable to be similarly defeated. And while this may be a welcome result for classical liberals and other persons who are especially hostile to coercion and authoritarianism, many others will reasonably view convergence liberalism as effectively obstructing collective efforts to realize what justice requires.

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