



Two questions for Professor Vallier

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ABSTRACT

Kevin Vallier claims to have attained a 'great goal' of the social contract tradition: 'to show that there are regimes supported by the reason of the public and that have authority for citizens in those regimes'. I contend that his argument depends upon changing the meanings of 'reason of the public' and 'authority', and conclude that he has not attained the goal he claims.

KEYWORDS Social contract theory; Rawls; public justification

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On pp. 28–29 of *Trust*, Kevin Vallier claims a significant philosophical achievement:

Because the intelligible reasons affirmed by moderately idealized agents rationalize our practice of moral responsibility, they can be used as a basis for criticizing real persons who depart from the rules justified by those reasons. We can credibly say that others should have known better than to depart from those rules. Therefore, if liberal order has the unique capacity to justify trust and trustworthiness across diverse perspectives, then we can criticize those who fail to comply with the directives of liberal regimes. We thereby accomplish one of the great goals of the social contract tradition: to show that there are regimes supported by the *reason* of the public and that have authority for citizens in those regimes. For moderate idealization will give us an account of sufficient, morally motivating reasons to endorse a political regime. And this is one way of morally justifying that regime.

As I read Vallier, he invites us to suppose that:

- (1) We can identify a regime of moral rules that is justified for each moderately idealized agent by some intelligible reasons she affirms.

I believe it follows from Vallier's definition of social trust at p. 30 that:

- (2) If the real people who have been moderately idealized at (1) believe with good reason that everyone else (i) when moderately idealized, would affirm intelligible reasons that justify that regime to them, and (ii) will follow the intelligible reasons their moderately idealized selves affirm, then their society enjoys social trust.

The agents referred to in (2) occupy diverse perspectives. So to identify the regime of rules referred to in (1) is to identify the basis of “trust and trust-worthiness across diverse perspectives”. Vallier argues that that regime is a liberal one. He thus claims to have realized the aim of showing that a liberal regime provides a basis of social trust.

The goal of social contract theory that Vallier claims to have achieved by realizing that aim is stated in the fourth sentence of the quoted passage. Vallier refers to moderately idealized agents as members of the public. So I believe he thinks the argument that he has achieved the first conjunct of the goal is straightforward:

- (3) Because the regime of moral rules referred to in (1) is justified for each moderately idealized agent by intelligible reasons she affirms, that regime is ‘supported by the reason of the public.’

What of the second conjunct? Limitations of space prevent me from parsing the quoted passage sentence-by-sentence, but I believe it is amenable to the following reading:

- (4) The intelligible reasons affirmed by moderately idealized agents are sufficient, morally motivating reasons for the real persons who are moderately idealized to endorse a political regime of moral rules.
- (5) Those reasons therefore rationalize our practice of holding real persons morally responsible for their failure to comply with the regime of moral rules referred to in (1).
- (6) So we can credibly say to a real person who departs from the rules identified at (1) that she should have known better than to depart from them, and that she should have known better on the basis of the intelligible reasons affirmed by her moderately idealized self.
- (7) Because the regime of moral rules identified at (1) is liberal, ‘we can criticize those who fail to comply with the directives of liberal regimes’.
- (8) We can morally criticize someone for breaking moral rules only if those rules are morally authoritative.
- (9) So the identification of the regime of moral rules referred to in (1) shows that there is a regime of rules that has moral authority for real persons who live under it.

The conjunction of (3) and (9) implies achievement of the goal Vallier attributes to contract theory.

Vallier says the notion of public justification is 'the normative idea at the heart of [his] public reason liberalism'. (Vallier, 2021, p. 35) It may therefore be surprising that I haven't mentioned that idea in laying out his reasoning for (3) and (9). But the absence of the idea is only apparent. For Vallier says that public justification 'occurs when a moral rule is justified for each person by way of her moderately idealized intelligible reasons'. (Vallier, 2021, p. 30). So the identification of rules which are justified for each member of the public at (1) just is the identification of rules which are publicly justified in Vallier's sense. Thus, Vallier thinks, it is by identifying moral rules which are publicly justified that we identify rules for common life which are morally authoritative for a diverse citizenry, just as contract theorists hoped.

Vallier says later that 'social contract theories attempt to show ... that the contract establishes what we morally ought to do.' (Vallier, 2021, p. 43). If the 'ought' is that of moral obligation, then the authority referred to in (9) is the authority of obligation. In that case, when Vallier implies at the end of the quoted passage that social contract theorists have tried to provide moral justification for political regimes, he is saying that they tried to identify regimes citizens were obliged to support and that that is what he takes himself to have done.

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To get clear about Vallier's view and about whether he has accomplished the goal he attributes to the social contract tradition, it will be useful to draw some distinctions. I begin with the common-sense view of morality.

Whatever else morality includes, it includes principles that express what we ought to do and how our basic institutions ought to be structured. These principles have overriding authority and provide reasons for action. We rightly blame one another for failing to give moral principles appropriate weight in practical deliberations. We rightly criticize institutions and nation-states which do not comply with the principles that apply to them.

We are sometimes mistaken about the demands of morality and take the wrong principles to express them. Because the demands of morality are authoritative, principles which are mistakenly taken to express moral demands may be taken as authoritative, and so play an important role in the regulation of social life. In that case, members of a group will treat the principles they mistakenly take to express those demands as if they were valid principles. And so they may try to comply with the principles, teach their children that it is wrong to violate them, appeal to the principles in holding one another accountable for their conduct and blame one another for violating them.

The fact that principles can play the role of moral principles even if they do not express moral demands shows the importance of distinguishing a principle's being a valid moral principle from its being treated as one. To mark the distinction, I refer to the former as *valid moral rules* and the latter as *rules-treated-as-valid*. Not all valid moral principles are treated as such and not all principles which are treated as moral are valid. But the categories are in principle not mutually exclusive. Some valid principles may be treated as such and some which are treated as such may be valid.

Now let's follow philosophical usage according to which knowledge is justified true belief. Conjoined with the common-sense view of morality, this implies that if I have knowledge of a principle that makes a claim about what we ought to do or how our institutions ought to be structured, then that principle must assert a truth. It must be a valid moral rule rather than just a rule-treated-as-valid. Moreover, if I know a valid moral rule, then my reasons for believing it must be of a kind that turn true belief into knowledge. If I should have known a moral rule, then it must be that the rule is valid, that I should have believed it and that I should have believed it for reasons of that kind.

But the word 'justified' and its cognates are sometimes used more loosely than when they are used to define 'knowledge'. Sometimes, when we say that someone is justified in holding a belief, we just mean that her belief is sufficiently supported by other beliefs she holds and that she holds the belief because of the support relation. The second of these forms of justification is weaker than the first because though the belief someone holds might be true and might be supported by other beliefs she holds, the support relation does not suffice to make her true belief knowledge. Let us call the first sort of justification 'warrant'. I refer to the second as 'a rationale', since someone who holds a belief which is supported by her other beliefs is in some sense rational – or not irrational – in holding it.

With these distinctions in hand, let us return to the line of reasoning I attributed to Vallier.

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Step (1) called for the identification of a regime of publicly justified moral rules. Now recall that Vallier says a moral rule is 'a kind of social norm distinguished from other kinds of social norm because the normative expectations that back the norm have a moral character. We all think that others think we ought morally to follow the norm.' (Vallier, 2021, p. 24). What makes some rules moral rules is that they are rules we are taught that we ought morally to follow and, because 'we all think others think we ought morally to follow the norm,' they are rules we expect others to enforce with moral praise and moral blame, among other rewards and sanctions.

Thus what makes a rule a moral rule for Vallier is its connection with practices of transmission and enforcement.¹ But this means that calling a rule a moral rule does not imply that it is valid. It means only that the rule is a rule-treated-as-valid by those involved in the practices. This raises the possibility that some moral rules which are publicly justified for a society are not valid. That rules are not valid would not imply that they are not rules members of society ought to follow. But if they *are* rules members ought to follow, that will be because there is some other, valid, rule according to which they should do so.

Why doesn't public justification insure the validity of the moral rules referred to in (1)? We have seen that public justification of moral rules 'occurs when a moral rule is justified for each person by way of her moderately idealized intelligible reasons'. 'An intelligible reason', Vallier says, 'is one we can see another as endorsing by her own lights.' (Vallier, 2021, p. 26) We have also seen that those for whom the rule is justified have different moral and political views, and so their moderately idealized selves have different intelligible reasons for affirming the rules. Grant that each person's intelligible reasons imply – and so give her grounds for affirming – publicly justified rules. Then each person's intelligible reasons constitute a rationale for her belief that she should follow publicly justified rules. But that someone has a rationale for rule-treated-as-valid just means that that rule enjoys support from other things she believes. And that does not imply that the rule is valid.

That publicly justified rules might not be valid points to lacunae in Vallier's discussion of the practices by which publicly justified rules are enforced. Those practices are referred to at (6). According to that step, real persons who depart from publicly justified moral rules can be criticized on the ground that they should have known better than to do so. But if knowledge is justified true belief, then she can be criticized on that ground only if it is true that she ought not to have violated the rule. We have seen that publicly justified moral rules need not be valid. If a rule is not valid, we cannot appeal to its validity to explain why someone can be criticized for violating it. We need some further explanation.

Moreover, moderately idealized agents may have different rationales for rules-that-are-treated-as-valid. If widely divergent rationales do not all provide warrant for the belief that one ought to follow those rules, then on Vallier's account, it is possible that only some – or perhaps none – of those rationales does. So at least some people may have intelligible reasons which are not such as to turn their belief that they should follow the rule into knowledge that they should follow it. If those people cannot be expected to reject the intelligible reasons they hold, and embrace instead those that would warrant their belief, then we need some account of why they can be criticized on the ground that they should have known better than to depart from the rule. There must be some further rule, which they should have

known, according to which they should not violate a rule for which they have a rationale but no warrant.

Vallier may have some explanation other than the validity of rules for why those who are moderately idealized in (1) ought not violate rules that are publicly justified and why they should know that they ought not. He does not say what that further explanation is or to what moral rules it appeals. My first question for Professor Vallier is what they are. To raise my second, I turn to whether Vallier's view does indeed realize the aims of social contract theory by showing that there is a regime of rules which – as (8) asserts – has authority for citizens who live under it. I cannot survey all of social contract theory, so I shall consider the contract theory of Rawls.

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The Rawls of *Theory of Justice* wanted to identify valid moral principles of right for institutions and individuals. A condition on the latter is that they 'hold for everyone in virtue of their being moral persons' (Rawls, 1999, p. 114). By 'hold for' I take Rawls to mean 'be authoritative for'. By 'in virtue of their being moral persons', I take him to mean 'just in virtue of the capacities that make them moral persons.' This interpretation of the 'in virtue of' phrase is confirmed by the way the Rawls of *Theory* thought valid moral rules were to be identified: by using a social contract in which our nature just as free and equal persons 'is the decisive determining element' of the choice (Rawls, 1999, p. 222). And so I take one of Rawls's great goals to have been the identification of valid principles of right which are authoritative just because of their connection with our common moral capacities. Call this 'Rawls's grounding goal'.

Even after his turn to political liberalism, Rawls aspired to identify the most reasonable principles of justice for a society of free and equal citizens.² As in his earlier work so in his later, Rawls identified his target principles by using a choice situation in which our nature alone – now our nature as free and equal citizens rather than persons – is the 'decisive determining element' of the choice. And so the later Rawls pursued a recognizable version of the grounding goal: that of identifying valid principles which derive their authority – perhaps, in his later work, their pro tanto authority – just from their relation to the moral capacities common to those for whom the rules hold.

Vallier's claim to have accomplished a great goal of the social contract tradition may tempt us to think his project is comparably ambitious. We may then read the phrase 'moral rule' as referring to valid rules of morality and – given what Vallier says about the terms of moral criticism – we may think that by 'justified' he means 'warranted'. And so we may think that what Vallier hopes to identify as the basis of trust for the right reasons is a set of moral rules which are valid, which everyone should know, and which have authority

for all because they are valid and all are in a position to know that they are. It should be clear by now that that is not so.

The rules Vallier thinks are authoritative are publicly justified rules-treated-as-valid, rules which may or may not *be* valid. What he thinks makes them authoritative for real persons and their moderately idealized selves are rationales which vary across persons. These rationales far outstrip what those subject to the rules have in common, and may or may not warrant their endorsement of the rules. Thus if Vallier has ‘show[n] that there are regimes supported by the reason of the public and that have authority for citizens in those regimes’, it is only because he means something very different by ‘reason of the public’ than Rawls did and has a very different idea of the ‘authority for’ relation. Identifying rules that have the authority of what the later Rawls called our ‘common human reason’ is clearly a philosophical task and is ‘one of the great goals of the social contract tradition’. Identifying rules which actual people all take to be moral when moderately idealized seems a task for empirical political science and is not, as far as I know, the goal of any of the great Enlightenment thinkers in the contract tradition. And so my second question for Professor Vallier is why he thinks otherwise.

Notes

1. Christie Hartley has suggested that Vallier imposes more substantive constraints in other work: that moral rules must be justified for someone by ‘recognizably moral reasons, or at least reasons the person in question can see as moral rather than as immoral.’ But the first disjunct of the suggested constraint is inconsistent with Vallier’s refusal ‘to take a position on which moral standards are correct.’ (Vallier, 2021, p. 29) If ‘can see as’ means ‘treats as’, then the second relocates rather than answers the question I’m pressing about the definition now in view.
2. Rawls said he regarded justice as fairness as the most reasonable conception of justice; see (Rawls, 1996, p. xlviii).

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Notes on contributor

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