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Public reason secularism : a defense of liberal democracy

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Chapter Six: Answering the Assurance Critique

I. Introduction

Recall that in Chapter Three, I brought out and answered the underlying question why it is fundamentally important that the political institutions must be rationally acceptable to all reasonable citizens. In other words, granted the fact of reasonable pluralism, why we ought to turn to the proposal of public justification of political institutions instead of pursuing a comprehensive truth ground. I believe that it is the equal respect that we owe to each other as equal members of a democratic political society and the perspective of internal participants of the political society that push us to search for public justification. The perspective of the public nevertheless allows another interpretation, the convergence approach, to account for public justification, apart from the consensus approach that I have defended in Chapter Three. The previous two chapters and this current chapter are dedicated to the examinations and discussions of the convergence approach's critiques of the consensus approach. I categorize four of them: the subjectivism critique, the asymmetry critique, the integrity critique, and the assurance critique. The subjectivism critique and the asymmetry critique are critiques of the consensus approach's plausibility, while the integrity critique and the assurance critique question the consensus approach's desirability from the standpoint that the consensus approach fails to supply a successful plan for the stability issue.

The convergence approach claims that the shareability requirement is undesirable as it tends to destabilize our political society, which consists in two aspects: one is its inability to give an individual citizen sufficient moral motivation to comply with the shareability requirement of public reason, and the other is its further inability to assure that everyone else will also comply with such a requirement. Firstly, from the individual's point of view, the shareability requirement is too demanding to be desirable, as it has imposed too strenuous a burden on religious citizens. Secondly, it is even more difficult to be sure that all citizens will not only agree to such a requirement but will actually comply with it. Therefore, laws cannot be successfully publicly justified on the basis of shareable public reason.

This chapter is going to consider the last critique, the assurance critique, namely, the critique that the consensus approach can barely ensure that everyone else in the political society will also honor the fair terms of cooperation over time. The assurance problem is not merely a challenge for the consensus approach but also for the convergence approach. The convergence approach, however, claims that it offers better solutions to this issue. In general, I will identify two solutions that the convergence

approach supplies and point out that neither of them suffices to solve the assurance problem. One is what I will call “the absolutist strategy”, that the state intends to persuade every member and prospective individual member of society to agree with the political decision by understanding every single one’s comprehensive doctrines. The absolutist strategy has its theoretical attraction in providing for every individual member of the society adequate moral motivation to be cooperative. But this solution is practically problematic, because of an inefficiency problem and an indeterminacy problem in implementing this ambition. The other strategy overcomes those two problems by using public rules coupled with the threat of punishment. However, this strategy is also normatively problematic as it fails to supply genuine moral motivation for citizens, which is what makes the convergence approach attractive in the first place.

I believe that the fundamental root of the inadequacy of the convergence approach’s solutions stems from the fact that the convergence approach is unable to grasp the core *inter homines* feature of public justification and is therefore incapable of stabilizing the society as it has claimed. In contrast, I will argue that the consensus approach has a better plan for the assurance problem. The consensus approach is the approach that recognizes that the power of public justification lies in its reasons being for us together rather than for you or for me. Moreover, the promise of the consensus approach’s solution consists in an underappreciated aspect of public reason, the transformative role of public reason, which precisely explains the transformation or the development of cooperative virtues of reasonable citizens.

Here is how my argument will proceed. In Section II and III, I will present the assurance problem and assess two solutions that the convergence approach has come up with: the absolutist solution and public rules with the threat of punishment. Having identified the defects of both solutions, I will point out the fundamental pathology of the convergence approach in Section IV. In Section V, I will indicate why the consensus approach’s transformative aspect of public reason facilitates the cultivation of cooperative virtues which foundationally address the assurance critique and at the same time strengthen our underlying commitment to justice. Lastly, I will manifest how transformative public reason deals with the controversial diversity-related claims in Section VI.

II. The Convergence Approach’s Strategy I: the Absolutist Strategy

2.1 The Assurance Problem and the Absolutist Strategy

To recapture the fourth critique the convergence approach launches against the

consensus approach:

The Assurance Critique: the shareability of public reason cannot ensure that all citizens will actually honor the fair cooperation in our political society.

The mutual assurance problem in collective action has actually been a long standing problem ever since Hobbes's time.¹ To ensure collectively rational outcomes, it is not enough to agree to certain conventions. It is also necessary to establish some mechanisms to assure actual compliance from people and to prevent them from defecting. Paul Weithman has underlined the assurance problem's significance and challenge to the framework of political liberalism. According to political liberalism, the core issue of stability for the right reason is an assurance problem in social cooperation. This kind of stability "requires that citizens be assured of one another's acceptance of a public conception of justice."² Weithman argues that political liberalism only signifies that public justification of political legitimacy is satisfied when an overlapping consensus of comprehensive doctrines is generated, whereas the obtainment of overlapping consensus alone cannot show that the political society would be stable for the right reason.³ In other words, in the well-ordered society, reasonable citizens cannot be sure that other citizens will also honor the fair terms of cooperation over time and hence accept (one of) a family of political conceptions of justice supported by an overlapping consensus.

Specifically, in Rawls's account of reasonableness, Weithman detects a problem that the political society could be susceptible to destabilization "if people's commitment to justice is conditional on other people's commitment" to justice.⁴ He points out that the adherence of fair social cooperation inevitably requires that some citizens sometimes act against their own interests or their own comprehensive doctrines in exchange for justice.⁵ This consideration of justice could be extra high if it is just me who adheres to fair terms of cooperation. Even with the presence of an overlapping consensus, a person's comprehensive doctrines only give him sufficient reason to adhere to fair terms of cooperation on the conditions that others also do the same.⁶ Therefore, "it is rational for a person to honor the terms of cooperation and treat the political conception of justice

¹ See Paul Weithman, "Inclusivism, Stability, and Assurance," in *Rawls and Religion* (Tom Bailey and Valentina Gentile ed., Columbia University Press, 2015) 84.

² *Ibid.*, 77.

³ *Ibid.*, 84-86.

⁴ Andrew Lister, "Public Reason and Reciprocity," *The Journal of Political Philosophy* 25 (2017): 156.

⁵ See Paul Weithman, "Inclusivism, Stability, and Assurance," 85.

⁶ *Ibid.*

as authoritative only when she has the assurance that all others or a sufficient numbers of others also adhere to the terms” and accept the authority of the political conception of justice.⁷ Weithman correctly identifies that it is the reference to public reason which intends to help solve the assurance problem.⁸ However, he claims that the shareable public reason that the consensus approach adopts is not the most promising candidate for resolving the issue. The cardinal problem of the consensus approach stems from its exclusion of religion from political reasoning accompanying its emphasis on shareable public reason. The exclusion of religion, perhaps especially against the backdrop of American society, would produce enormous political divisions, which can permeate so deeply “that adherents of different comprehensive doctrines come to doubt the sincerity of one another’s allegiance to political values” if the political values are just the camouflage for one’s comprehensive doctrines.⁹ Consequently, Weithman argues that political liberalism must allow the incorporation of religious reasons along with other comprehensive doctrines into public deliberation so long as the Rawlsian “proviso” is fulfilled, which Weithman interprets as citizens being able to adopt and reason from a common viewpoint in due course as well.¹⁰ Weithman understands the satisfaction of the proviso as the acceptance of the legitimacy of political institutions, which alone settles the assurance problem.¹¹ In other words, for Weithman, citizens are allowed to introduce and base their votes on their comprehensive doctrines, provided that they would be able to invoke public reason to justify their votes when facing others’ doubts.¹² Weithman thus concludes that his strategy outweighs the consensus approach in its inclusion of citizens’ comprehensive doctrines, and it is also congruent with public reason.

For Weithman, the convergence of each citizen suffices to meet the goal of stability, and consensus is not needed. What gives reasonable citizens the assurance that fellow citizens would commit to the society’s fair cooperation is simply that their reasons are introduced into the public sphere. To put it more directly, citizens will be cooperative if the political system (or the laws) is justified from each of their points of view. The

⁷ Ibid., 86.

⁸ See *ibid.*, 86.

⁹ Ibid., 87.

¹⁰ Ibid., 88-90. “To engage in public reason is to appeal to one of these political conceptions—to their ideals and principles, standards and values—when debating fundamental political questions. This requirement still allows us to introduce into political discussion at any time our comprehensive doctrine, religious or nonreligious, provided that, in due course, we give properly public reasons to support the principles and policies our comprehensive doctrine is said to support.” John Rawls, “The Idea of Public Reason Revisited,” *The University of Chicago Law Review* 64 (1997):776.

¹¹ See Paul Weithman, “Inclusivism, Stability, and Assurance,” 90.

¹² See *ibid.*, 92.

“proviso” of public reason does not add substance to such a mechanism of assurance. Weithman’s strategy aims to persuade every new individual member of the society to agree with the political decision, which I call “the absolutist strategy”. In view of new circumstances and new groups of people coming into this society, the state needs to attend to each of their comprehensive doctrines to make the law justified to each of them so that every individual will be sufficiently motivated to cooperate. This absolutist strategy has the main attraction that it embodies the equal respect that we owe to each other.

As I have briefly mentioned in the beginning, it is the respect for persons that prevents us from taking my own comprehensive doctrines as the ones can be coerced upon others. Departing from the concern of equal respect, the convergence approach argues that the law must be seen as validated from each citizen’s perspective. Therefore, in public reasoning, the citizens could provide different reasons persuasive to different groups of people with differing comprehensive doctrines. The convergence approach aims to give individuals’ integrity due recognition by including their ultimate convictions in politics. For Gerald Gaus, the aim of public reason is to solve the puzzle of “how can we identify social demands that all have sufficient reasons to acknowledge as moral demands.”¹³ Driven by this question, Gaus believes that a moral imperative is authoritative social morality for all “only if each normal moral agent has sufficient reason to internalize” such an imperative, thus it cannot go against each moral agent’s integrity, in other words, such a moral requirement cannot be at odds with the most fundamental conviction of each moral agent.¹⁴ Religious critics believe that religious doctrines or religious reasons are integral to religious citizens’ identity; therefore, they are too important to be ruled out. The convergence approach would at least allow ample room for religion in politics. As Nicholas Wolterstorff has argued, politics should “not only honor[s] us in our similarity” but also “in our particularities”.¹⁵ We offer reasons that are “tailor-made” for our particular addressees: “To Ryan, I offer reasons that I hope he will find persuasive; to Wendy, I offer reasons that I hope she will find persuasive.”¹⁶ Whenever a new group or new member comes into the society with brand new comprehensive doctrines, the convergence approach designates that all the existing members have to make an effort to learn their comprehensive doctrines to be able to

¹³ Gerald Gaus, *The Order of Public Reason: a theory of freedom and morality in a diverse and bounded world* (Cambridge University Press, 2011) 262.

¹⁴ See *ibid.*, 400.

¹⁵ Nicholas Wolterstorff, “The Role of Religion in Decision and Discussion of Political Issues,” in Robert Audi & Nicholas Wolterstorff, *Religion in the Public Square: the place of religious convictions in political debate* (Maryland: Rowman & Littlefield Publishers Inc. 1997) 111.

¹⁶ *Ibid.*, 107.

persuade them that their doctrines support the constitutional principle.¹⁷

Apart from being moved by the equal respect that we owe to others, the convergence approach deems this effort to be the necessary cost that we must pay to engage in political deliberation if we aim to be assured that everyone is going to cooperate fairly, and hence that we can sustain the society's stability. Justice can be costly as adhering to the terms of cooperation would require that we act against our own comprehensive doctrines. The convergence approach believes that there is tremendous cost in maintaining the stable social structure. Furthermore, the convergence approach suspects that, as a valid empirical inference, reasonable citizens are likely to defect from public reason without any consideration of others or compensation for their being reasonable. Some convergence approach adopters even envision that, for the sake of keeping the society in order, the process of pay off would be costly and solemnly as cutting my own hand and letting the blood out to show my commitment of engaging in fair cooperation to others.¹⁸

2.2 Two Deficiencies of the Absolutist Strategy: Inefficiency and Indeterminacy¹⁹

I believe that the convergence approach's strategy of getting everyone and every group on board by learning others' comprehensive doctrines and thereby persuading them is highly inefficient and unrealistic. It seems like a plausible approach if the number of people we are addressing is small, such as a family, a group of friends, or even a small community within which everyone is familiar with each other. The cost of understanding

¹⁷ See Stephen Macedo, "Why Public Reason? Cooperation, Law, and Mutual Assurance," working paper in progress.

¹⁸ See Brian Kogelmann and Stephen G.W. Stich, "When Public Reason Fails Us: Convergence Discourse as Blood Oath," *American Political Science Review* 110 (2016): 717-730.

¹⁹ As a remedy to these two deficiencies, Gaus appeals to an idea of "umpire" who understands democracy as an adjudicative mechanism and who adjudicates public reason among private reason holders who make conflicting judgments. In analogy with a referee in a football match, the umpire does not need to be a purely epistemic authority, but his judgment is the resolution to the practical dispute, for instance, by voting. See Gerald Gaus, "Reason, Justification, and Consensus: Why Democracy Can't Have It All," in *Deliberative Democracy: Essays on Reason and Politics* (James Bohman and William Rehg ed., Cambridge: The MIT Press, 1997) 233-234.

However, I think this adjudicative mechanism fails for three main reasons. First of all, this voting mechanism fundamentally abnegates the aspiration of the convergence approach, at least for the absolutists who aim to justify every moral demand to every individual social member. Secondly, the direct voting mechanism, at least without further elaboration, is actually a populist design which is bound to be unstable to changes occurred in people's comprehensive doctrines. Thirdly, even if, temporarily speaking, the society's comprehensive doctrines are stable, this mechanism nevertheless encourages the stabilization of permanent majorities and minorities, which is against basic justice and also tends to destabilize the current society in the long run.

each other's comprehensive doctrines is relatively marginal compared to the aspiration of realizing justice for every group member. In a small group where everyone knows each other, it is possible and necessary to reach a decision that attends to every single person's considerations. A public decision made on that basis is not only publicly justified, but also further strengthens the stability of the maintenance of this group. For instance, a five-person family is thinking about their vacation location this summer and they have different dream locations in mind. Some of them want to enjoy the vacation in Italy while others look forward to spending the summer in a much cooler place such as Norway. These two different locations represent completely different vacation preferences and seem irreconcilable. However, it is important to choose a destination that fulfills the needs behind every family member's choice and hence is acceptable for everyone so that everyone will enjoy themselves on the vacation. However, this mode of reaching a convergence will be highly inefficient and unrealistic in a political society constituted of strangers. It takes a large amount of time and economic cost as well for us to learn others' comprehensive doctrines, and these costs exponentially increase, especially with new groups entering the relatively stable political society. Even for public officials who are in the position to possess much more information and understanding of any changes occurring in the society, such an individualized requirement is still too unrealistic and demands overly favorable treatment from public resources. Therefore, the convergence approach's petition of attending to and accommodating every new comprehensive doctrine when new circumstances give rise to it and new groups form or come to the society cannot be realistically held up.

Another problem that arises from this strategy is that, in order to persuade every new individual member, if all citizens are able to invoke all kinds of reasons into politics, which may be invoked to justify or undermine a certain law's legitimacy, citizens may "have a much more diverse array of potential reasons to reject L [certain laws] than would be the case were they permitted to rely only on shared reasons."²⁰ Simply put, under the guideline of the convergence approach, while the possibilities of entering public reason increase, the difficulty of converging on a decision regarding debated laws escalates as well. That is to say, reaching a concrete political decision would become highly unlikely if it depends on every individual's actual acceptance.

The inadequacy of the first strategy is logical rather than normative. The reasoning behind the first strategy is that political institutions (e.g., laws) have to reflect on every individual member's concerns; however, political institutions as a set of rules and regulations with a set of political values cannot both work efficiently and at the same

²⁰ Christopher Eberle, "Consensus, Convergence, and Religiously Justified Coercion," *Public Affairs Quarterly* 25 (2011): 290. It is not clear how religious critics combat this indeterminacy though.

time meet every single individual's requirements and preferences. Given the inadequacy of the first strategy, the convergence approach also advocates a contrasting strategy that includes the threat of punishment to ensure that no defection occurs, which disregards whether individual concerns are properly accommodated. I will argue, however, that this second strategy is normatively insufficient.

III. The Convergence Approach's Solution II: Public Rules with the Threat of Punishment

This solution (of the convergence approach) precisely identifies that the main element undermining the assurance provided by public reason is the unreliability of individuals' performance, which is called "noise and drift".²¹ Specifically, along with Weithman, some other convergence approach adopters argue that the consensus approach is fragile in grappling with the stability issue since what the consensus approach offers by public reason is only "cheap talk" in the sense that it does not impose cost for defecting.²² Due to this problem that is essentially attached to public reason, the convergence approach holds that the stability maintained by public reason is fragile as it "permits noisy signaling that can be amplified by informational drift" even in a well-ordered society, since "the phenomena do not require that agents be unreasonable or substantially misinformed."²³ While Weithman has pointed out the assurance problem, he has not explained how the problem could be settled apart from emphasizing that the public reason proviso would be satisfied anyhow. The question for Weithman remains why citizens would be able to accept political legitimacy in spite of their contrary comprehensive doctrines. For instance, according to Weithman, a religious citizen may bring into the debate of the legalization of women's abortion rights or same-sex marriage her religious doctrine which says that neither abortion nor the same-sex marriage should be legalized. But she would still accept the legitimacy of both of these laws despite her objections. However, it remains unexplained why and how she would suddenly be able to accept a law that is

²¹ See John Thrasher and Kevin Vallier, "The Fragility of Consensus: Public Reason, Diversity and Stability," *European Journal of Philosophy* 23 (2013): 941-942, 944. "Noise is the problem of distinguishing between communication by citizens that signal allegiance to the public conception, and hence assurance, and forms of communication that do not." For instance, the trouble with telling the difference between sectarian or self-interested reasons and public reasons as the basis of political decisions in the public forum is the typical noise. And the drift is the amplification of noise that occurs over large numbers of interactions.

²² See Gerald Gaus, "A Tale of Two Sets: Public Reason in Equilibrium," *Public Affairs Quarterly* 25(2011): 317.

²³ John Thrasher and Kevin Vallier, "The Fragility of Consensus: Public Reason, Diversity and Stability," 945.

exactly the opposite of her comprehensive doctrines.

Some convergence approach writers thus advise us to jettison public reason as a plan at all. Notably, John Thrasher and Kevin Vallier argue for an assurance mechanism consisting of bodies of legal and moral norms, formal or informal, just like a traffic light which coordinates drivers from different directions at an intersection.²⁴ This is a shift from public reason as a direct moral activity between citizens to “public rules” which regulate citizens’ public deliberation indirectly.²⁵ And the point of this shift is that the assurance and stability that we are aiming for no longer depends upon individuals’ moral consciousness or reasonableness, which, as the convergence approach deems, is fundamentally unreliable. A consequential change along with this assurance mechanism advanced by the convergence approach is that, in contrast to what the consensus approach insists, we need not know or even share one another’s reason for complying with public rules, as the rules determining the inherent stability can be achieved without knowing the reasons behind one another’s compliance.²⁶ Hence, “stability for the right reasons can be maintained so long as social processes and institutions associated with the political conception are publicly recognized and followed.”²⁷

However, Thrasher and Vallier have not made the role of public rules as a coordinated traffic light completely clear. They have not been clear about what the public rules are exactly, and this vagueness could lead to differing interpretations, none of which genuinely bolsters the convergence approach’s claim. Are the public rules legal norms or moral norms? If the public rules that the convergence approach has in mind are moral norms which work as an assurance mechanism, it is implausible for the convergence approach to really distinguish them from the moral duty of civility out of shareable public reason. Moreover, even if there is a way to distinguish the moral norms from shareable public reason, for instance by specifying some grounding moral norms and strengthening their moral forces, the problems of noise and drift which led Thrasher and Vallier to reject public reason in the first place still exist too. That is to say, it is still difficult to determine whether citizens are actually converging on moral norms or if they are again simply dissembling the master moral norms as another mask for their self-interest-motivated actions.

In the same vein, Gaus identifies the problem of assurance as a problem that the consensus approach is bound to fail to tackle. While the consensus approach is concerned with accounting for the normative expectations of others in explaining why

²⁴ See *ibid.*, 946-948.

²⁵ See *ibid.*, 948.

²⁶ See *ibid.*, 948-949.

²⁷ *Ibid.*, 949.

everyone complies, it ignores that the assurance problem lies more critically in the “first-order empirical expectations about what others will do”²⁸. Moreover, the “empirical expectations are a much more powerful factor” than the normative expectations of assurance from others.²⁹ In order to gather the empirical expectations from others, a certain amount of knowledge of others’ information is needed. Gaus continues, “If we assume that each and every person has full knowledge of the compliance of others... we can see how iterated interactions lead to complete compliance.”³⁰ However, since it is likely that there are always mistaken judgments about others in reality, it is impossible to gain full empirical knowledge of others. What we can know for sure is the knowledge and information relied on by those with whom we regularly interact every day. Gaus believes that the key to lowering the possibility of the defection of others is equilibrium in political decisions with citizens’ “unrestricted set of reasons”.³¹ And the most effective way to prevent deviation from the equilibrium of compliance is still punishment: Law enforcement helps to “counteract non-compliance” and hence stabilizes norms “in the face of temptation to defect”.³² Gaus even goes as far as to claim that “it is very hard to see how stability can be secured in the face of imperfect information without willingness of many to punish perceived violators”.³³

I believe that this strategy of deploying state coercion is still not a very promising way to maintain assurance. It is very likely indeed that coercion or punishment to rule violators would effectively strengthen the cooperation by increasing the costs of not complying. The risk of fines or jail may “tip the balance in favor of cooperating rather than defecting.”³⁴ However, David Gauthier reminds us that it is not necessarily workable from a practical point of view. Someone “will not fear punishment if I[one] know[s] that the state lacks the personnel or resources to monitor my[his] behavior properly, or if I[one] know[s] that the police or judges can be bribed.”³⁵ For the purpose of solving this problem, it would however cost hugely to “establish a comprehensive

²⁸ Gerald Gaus, “A Tale of Two Sets: Public Reason in Equilibrium,” 318.

²⁹ Ibid.

³⁰ Ibid.

³¹ Ibid., 320.

³² Ibid., 321.

³³ See *ibid.* In *A Theory of Justice*, Rawls seems to also adopt the Hobbesian approach to the assurance problem in the sense that it is the problem for a state to manage to manifest its efficacy. He identifies that “the aim is to assure the cooperating parties that the common agreement is being carried out. Each person’s willingness to contribute is contingent upon the contribution of the others. Therefore to maintain public confidence in the scheme that is superior from everyone’s point of view, or better anyway than the situation that would obtain in its absence, some device for administering fines and penalties must be established.” John Rawls, *A Theory of Justice* (Harvard University Press, 1971) 270.

³⁴ Will Kymlicka, *Contemporary Political Philosophy: An Introduction* (Oxford University Press, 2002) 131.

³⁵ Ibid.

system of policing and justice”, and it perhaps will not work after all due to an infinite regression of avoiding punishment by bribing someone superior.³⁶

Moreover, the threat of punishment from a coercive state does not suffice to provide genuine moral motivation for citizens to undertake collective cooperation together. Citizens can be obliged to comply with the rules when there is threat of coercion; however, it does not mean that they would believe that they have the obligation to comply. That is to say, under the threat of punishment, citizens are forced to be cooperative. Being forced to be cooperative on fair terms cannot sufficiently answer the assurance problem, as the problem of stability generally is motivational, and being forced to do something is not an adequate account for moral motivation. Neither moral judgment nor moral desire can be inferred from the psychological state under force. Admittedly, this strategy is not solely reliant upon punishment but rather deploys the threat of punishment as a precautionary measure to prevent possible defection. Nonetheless, the fear of punishment cannot explain the generality of collective cooperation activity, and far from reflects citizens’ willingness to recognize their political institutions and democratic procedures.

I believe that such a vision of the cost and even the bleak, pessimistic characterization of assurance problem itself stem from a mistaken or at least exaggerated assumption of human nature. The convergence approach resembles Oliver Wendell Holmes’s assumption of a bad man’s perspective of law³⁷, in which people only respect or honor certain ideals when there is reward or compensation or when they are sure that they are not being taken advantage of by others. For instance, the convergence approach assumes a world where I judge whether I have breached traffic rules by the consequence, and I would only accept the fine of my violating traffic rules on the condition that others who have broken the rules are also fined. Although it is empirically true that even many reasonable citizens harbor such a perspective of social cooperation, it does not mean that it is the only perspective from which citizens depart when it comes to social cooperation. It is still plausible and perhaps commonplace that most of reasonable citizens regard the fair cooperation within our society as of fundamental importance to our political life. For example, most church attendees take their hats off in a church not only because they dread others’ critiques, but also because they take the social rule of taking hats off in a

³⁶ See *ibid.*, 131-132, 163. For instance, “fisherman will overfish unless monitored and punished by police officers. But a self-interested police officer would accept a bribe from the fisherman, unless monitored and punished by some superiors. And a self-interested superior would accept a bribe from the police officer, unless subject to some system of monitoring and punishment from an even higher-up authority”. The regression could keep going on like this.

³⁷ See Oliver Wendell Holmes Jr, “The Path of the Law,” *Harvard Law Review* 10 (1897): 457-478.

church as their behavior standard.³⁸ In football matches, most football players refrain from hurting their opponents in their quest for possession of the ball not just because they might otherwise be punished by the referee, but because they regard the vicious foul as something essentially wrong in itself. Likewise, most reasonable citizens, especially against the backdrop of democratic public culture that Rawls conceives of, realize or come to realize the moral significance of being fair to each other. Surely I am not imaging the society that Rawls has in mind as a highly civilized or developed society full of moral angels; nevertheless, I do not believe the society model and behavior patterns that the convergence approach visualizes have appropriately measured what a real liberal society with democratic traditions is capable of. The inadequacy of this strategy of the convergence approach consists in its negligence of a generally overlooked aspect of public reason, the transformative or educative aspect of public reason, that citizens can be actively involved in fair social cooperation for the promotion of justice, out of a civic duty which is embedded in what counts as a responsible, good citizen. I will come back to this transformative aspect of public reason later.

To summarize the convergence approach's two strategies, both of these two strategies have their attractions; however, they both fail to resolve the assurance problem. On the one hand, the absolutist strategy helps to explain that its mode will sufficiently motivate all citizens to honor fair cooperation in society by attending to every citizen's concerns. Yet, due to the essential unreliability of individuals, the absolutist strategy is highly inefficient and indeterminate in realizing its absolutist goal to expunge the assurance problem. On the other hand, deploying public rules with threats of coercion would effectively stabilize the individualistic fluctuation and thus overcome those two deficiencies of the absolutist strategy; it nevertheless lacks the attraction of the first strategy inasmuch as it fails to provide a normatively compelling moral motivation for citizens' collective cooperation. Therefore, neither of these two strategies succeeds in giving individual members an assurance that others will also be effectively motivated to commit to social cooperation. It seems like the convergence approach is forced to confront a dilemma: either it insists on its ambition to incorporating or satisfy every individual at the expense of practical unfeasibility, or it tackles the practical difficulty of assurance by coercion, which disappoints its ambition of making laws as moral demands justified to every individual member. This dilemma, I believe, is caused by its perverted vision of political institutions as a market that aggregates individual choices.

IV. The Pathology of the Convergence Approach

³⁸ This example is an adaption of H. L. A. Hart's critique of taking the habit of obedience as what is essential to the law. See H. L. A. Hart, *The Concept of Law* (Clarendon Press, 1961) Chapter 2-4.

For the standard convergence approach, political institutions are not registers whose tasks are simply to register the views of the citizenry. Rather, the “best political institutions draw directly on the firmest knowledge possessed by citizens” to generate publicly justified outcomes.³⁹ Recall that Gaus boils down the fundamental question in public justification to this simple question: how can we justifiably impose moral demands on others? For the convergence approach advocates, the answer hinges on whether the justification can be accepted by the specific interlocutors in this interpersonal relationship. When it comes to the public sphere, the convergence approach’s aim in the end is an “agreement of all parties in a given group on a set of rules to structure their interaction and cooperation.”⁴⁰ This aim is achieved if all or a majority of the members comply with the rule they agreed to beforehand.⁴¹ The reasons they offer to each other are reasons for each *individually* rather than reasons for all individuals together. In deciding whether a contested law can be approved or disapproved of by collective decision-making procedures while putting grounding reasons aside, liberal democracy becomes a market of private choices for consumers: the choice that attracts the most endorsement becomes law. The task of political institutions becomes similar to how a market generates output from input.⁴² Political institutions work as a market: The more information the institutions gather from citizens, the more reliably justified outcomes the institutions may be able to generate.⁴³

Public reason deliberation in this sense merely looks for a location to record each individual’s point of view, while harboring no ambition to exert any influence on the result of public reason. The convergence approach considers “tampering with citizens’ behaviors is morally unattractive on liberal grounds”.⁴⁴ Instead, they consider politics “as a market”, which should just “transform information about citizens’ reasons into publicly justified outputs.”⁴⁵ In other words, the convergence approach leaves sufficient room for all moral viewpoints which may “reflect a wide variety of concerns and interests” in a political society to freely compete, and those voted on or agreed by most people become

³⁹ Gerald Gaus & Kevin Vallier, “The Roles of Religious Conviction in a Publicly Justified Polity: The implications of convergence, asymmetry and political institutions,” *Philosophy Social Criticism* 35(2009): 66-67.

⁴⁰ Gerald J. Postema, “Public Practical Reason: An Archeology,” *Social Philosophy and Policy* 12(1995): 72.

⁴¹ Ibid.

⁴² See Gerald Gaus & Kevin Vallier, “The Roles of Religious Conviction in a Publicly Justified Polity: The implications of convergence, asymmetry and political institutions,” 66-67.

⁴³ See *ibid.*, 66-71.

⁴⁴ Kevin Vallier, *Liberal Politics and Public Faith: Beyond Separation* (Routledge, 2014) 190.

⁴⁵ Ibid.

publically justified laws.⁴⁶ Public reasoning is in this sense instrumental, since reasons are relatively sensitive to each citizen individually, which renders the process of public practical deliberation almost superfluous. Even in the initial scenario between two individuals, for the convergence approach, it is never a goal to identify or recognize considerations which could be normatively attractive for both parties in an interpersonal relationship, not to mention for a whole citizenry. Rather, it suffices for their purpose so long as one party manages to make the other party “get on board” regardless of her reasons and also the efficacy of their exchange of opinion.

According to their view of politics as a market, public deliberation is indeed superfluous, while the merit of the convergence approach’s instrumental view of public reasoning needs to reflect on the further question whether it is desirable to perceive politics as a market. For starters, its biggest merit is efficiency, since this model does not investigate the basis of the final choices of consumers. However, the notion of “consumer sovereignty” can only be acceptable insofar as the action that the consumer chooses only affects her, which is not the case in our real political life.⁴⁷ From the point of view of rational actions, this model “may provide a useful analysis of rational self-interest,” but it is hardly a method of moral justification, as justice is not seen as a value in this model.⁴⁸ The “task of politics is not only to eliminate inefficiency, but to create justice”, one of whose distinctive features is fairness, as in political situations, the citizen’s preference might also affect that of fellow citizens.⁴⁹ The market model of politics adopting collective decision-making procedure, is nonetheless deficient in that regard as “collective decision-making procedures cannot satisfy the standard of fairness and hence cannot be intrinsically valuable.”⁵⁰

Moreover, the convergence approach fails to acknowledge that public reasoning is moral reasoning by nature, which is reasoning addressed by persons to a public of which they count themselves as members. In order to “locate common ground for action and assessment among rational agents who must live in close proximity to, and interact with each other,” the reasons citizens offer one another in public deliberation are supposed to be reasons for us rather than for you or for me.⁵¹ “Public justification is aimed not only

⁴⁶ See *ibid.*

⁴⁷ Jon Elster, “The Market and the Forum: Three Varieties of Political Theory,” in *Deliberative Democracy: Essays on Reasons and Politics* (James Bohman and William Rehg ed., The MIT Press, 1997) 10.

⁴⁸ See Will Kymlicka, *Contemporary Political Philosophy: An Introduction*, 136.

⁴⁹ See Jon Elster, “The Market and the Forum: Three Varieties of Political Theory,” 10-11.

⁵⁰ Thomas Christiano, “Introduction,” in *Philosophy and Democracy: An Anthology* (Thomas Christiano ed., Oxford University Press, 2003) 10.

⁵¹ See Gerald J. Postema, “Public Practical Reason: An Archeology,” 74.

at vindication; it also aims at common formation of judgment.”⁵² Practical deliberation on the convergence approach merely creates convergent paths for coordinated behavior directed toward their realization. The convergence approach appears to be able to accurately reflect the formation of people’s judgment but it can only passively “write it down” or register people’s comprehensive doctrines while it cannot actively contribute to the formation process.

Contrariwise, the consensus approach identifies the essential “*inter homines*”⁵³ characteristic of public justification. The consensus approach’s shareability requirement of public reason signifies that “public justification is not merely *ad hominem*; it is essentially *inter homines*.”⁵⁴ For the consensus approach,

“[T]he reasons I offer you are not merely reasons that I find persuasive, nor reasons I believe you do or could find persuasive, but rather reasons I believe we do or could find persuasive... the policies or judgments, thus, are put forward as those they together can endorse on the basis of reasons they together can recognize as having force for them.”⁵⁵

Therefore, only reasonable people who are committed to public reasoning are able to “engage together in articulation, deliberation, and argument about the structure and direction of their common life.”⁵⁶ Practical moral or political discourse is in that sense robustly public in conducting public reasoning with shareable public reasons. In short, the convergence approach’s practical reasoning fails to provide a solid basis for real public justification. Their practical reasoning is essentially instrumental reasoning, in the sense that their reasons are set out to be normative reasons internal to practical deliberation, but their initial aim of attending everyone’s reasons cannot be sustained in a political society. This is because the convergence approach’s vision of democratic politics as a market downplays the central importance of justice. By contrast, the consensus approach regards the task of public justification as having to be justifiable to all of us altogether, which fundamentally deviates from the convergence approach’s aggregated individualistic route.

From the perspective of the practical guidance of public reason, Steve Macedo argues that “the robustness of mutual assurance in conditions of fluid diversity is greatly

⁵² Ibid.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Ibid., 74, 76.

⁵⁶ Ibid., 76.

enhanced by our mutual subscription to publicly reasoned political conceptions of justice capable of being articulated and extended to cover all major questions of justice even when new circumstances arising, since the articulation and extension are taken place on grounds” shareable by all.⁵⁷

However, the robustness of public reason by no means refers to inertness in shaping the public culture of liberal democratic societies. Macedo clarifies that the understanding of the robustness of shareable public reason is not the ability to make predictions about future political affairs, but is an expression of the moral confidence of a transformative aspect of public reason, that through shareable public reasons, our fellow citizens are committed to “carrying forward our shared political project on mutually endorsable terms”: values of freedom, equality, and fairness.⁵⁸ It is this transformative aspect of public reason that facilitates us to see the promising way out of the assurance problem.

V. Tackling the Problem of Assurance: Public Reason’s Transformative Role

Before explaining the consensus approach’s response to the assurance problem, I will set two puzzles aside. To begin with, it is puzzling that, while Weithman confirms the role that public reason has played in explaining reasonable citizens’ moral duty to be fair to each other, he also deems the exclusion of religious reasons in political deliberation as too politically controversial and suspicious. In accord with this thought, political conceptions as freestanding views cannot be intelligible if they are easily identified as the camouflage of comprehensive doctrines. Admittedly, it is possible that a person may use the political value of religious liberty to champion her own religious doctrine in political deliberation. Nevertheless, it is a different issue than that citizens should honor the moral duty of following public reason in public deliberation. The former is a factual concern while the latter is a normative requirement. Secondly, in introducing the assurance problem, Weithman has extended Rawls’s original concern from “expected to be endorsed” to actual endorsement. However, the public justification that the consensus

⁵⁷ Stephen Macedo, “Why Public Reason? Cooperation, Law, and Mutual Assurance”, working paper in progress. He lays down three layers of robustness of shareable public reason. Firstly, “it is robust to shifts in the balance of power among groups and to changes in people’s non-public doctrines,” as it is based on freestanding political conceptions that appeal to autonomous or independent principles of political morality of fairness instead of referring to citizens’ comprehensive doctrines. Secondly, it is also “robust to new circumstances and problems” as its resources are sufficient to incorporate new challenges as new circumstances arise. Thirdly, it is “robust to the emergence of new groups” as well, inasmuch as the political principles and “institutional forums should provide means for fairly integrating new groups”.

⁵⁸ Ibid.

approach puts forward at no point depends on actual endorsement but only needs to be endorsable. The criterion for public justification is not actual acceptance but acceptability.⁵⁹ The point is to say that the question of public justification is a normative one, and it aims to work out the content and structure of liberal political justification given the fact of reasonable pluralism in any democratic society.

According to political liberalism, Rawls dealt with the moral psychological problem of “why and how we shall all be fair to each other in social cooperation” by the conception of reasonableness. Rawls believes that several consequences will follow from citizens’ moral power to be reasonable, namely they are ready to “propose and to abide by fair terms of cooperation, their recognizing the burdens of judgment and affirming only reasonable comprehensive doctrines, and their wanting to be full citizens.”⁶⁰ It follows that citizens will have a capacity to acquire conceptions of justice and a desire to act according to these conceptions along with a conception of the good. On the basis of just social institutions and political practices, they are willing to do their fair share as long as they have reasonable assurance that others will do their fair share too. Therefore, over the long haul, citizens will gradually develop and strengthen mutual trust and confidence in sustaining this fair cooperative society.⁶¹ It seems that for Rawls, the conception of reasonableness presumes the condition that every reasonable citizen would adhere to the fair terms of social cooperation. Reasonable people act in ways that can be justified to others and are willing to abide by fair terms of social cooperation for their own sake. Since the essence of being reasonable for citizens who share a political life together simply is to take other people’s interests or considerations into account, it is within reasonable citizens’ moral power to be ready to “propose principles and standards as fair terms of cooperation and to abide by them willingly, given the assurance that others will likewise do so.”⁶² It is true that in reality, anyone could be unreasonable sometimes and act totally out of self-interest even though he ought to act reasonably and fairly. The convergence approach cannot eradicate that possibility either, even if it allows every citizen to introduce their own comprehensive doctrines. A person who is entitled to bring her comprehensive doctrines into political deliberation is still capable of turning her back on the fair terms of social cooperation in reality. Anyone could still defect, even from their own convictions, for all kinds of reasons, which is why real-life politics is

⁵⁹ A popular misunderstanding of the consensus approach confuses the task of public justification with actual popular acceptance, whereas popular acceptance is such a foundational assumption or starting point of political liberalism that liberalism would be unstable without it. See Jonathan Quong, *Liberalism without Perfection* (New York: Oxford University Press, 2011) 159.

⁶⁰ John Rawls, *Political Liberalism* (Columbia University Press, 1996) 86.

⁶¹ Ibid.

⁶² Ibid., 49.

complicated. The difference between the consensus approach and the convergence approach is defined by their conceptual divergences instead of the results of their practical implementation.

Whereas Rawls spent a great deal of ink in addressing the issue of stability, it appears that most of his concern was on the former question, “why a reasonable citizen *should* follow public reason” rather than the latter one, “why a reasonable citizen *will* follow public reason”, which implies “how this citizen could be assured that others will do the same”. Rawls did not say much specifically about the problem of assurance in his detailed treatment of stability, which is because he does not deliberately consider the issue of assurance as a conceptually separate issue from the problem of stability for political liberalism. For Rawls, the answer to “why I as a reasonable citizen am expected to follow public reason in public life” also answers “why everyone else is also expected to do the same”. That is to say, according to Rawls, what deals with the issue of stability also includes an answer to the mystery of assurance, that answer exactly consists in the content of public reason, and the content of public reason is supplied by political conceptions of justice supported by an overlapping consensus.⁶³ Therefore, the problem of assurance is fundamentally a question of how could every individual reasonable citizen regard political values as a priority to their comprehensive views so that they will not defect from the guideline of public reason filled with an overlapping consensus of political conceptions.⁶⁴ In order to grasp the essential point of this conviction, I believe

⁶³ It is worthwhile to note that, for Rawls, the concept of overlapping consensus is conceived as an ideal which could be approximated as close as possible but maybe not fully achieved in actual politics. An ideally full overlapping consensus can be achieved “if the liberal conceptions correctly framed from fundamental ideas of a democratic public culture are supported by and encourage deeply conflicting political and economic interests, and if there be no way of designing a constitutional regime so as to overcome that.” The arrival of a full overlapping consensus takes two steps from the *modus vivendi* to constitutional consensus, which designates that certain liberal principles of political justice are accepted, and from constitutional consensus to an overlapping consensus, which is wider, deeper, and more specific than constitutional consensus. See *ibid.*, 158-168.

However, in my chapter here, I do not intend to follow the distinction between constitutional consensus and overlapping consensus, as the differences between these two concepts are not really crystal clear. Moreover, it may complicate the story and hinder our understanding of the gist of how to achieve such a consensus.

⁶⁴ The only time that Rawls explicitly addresses the basis of the reasonable assurance that other citizens will comply with constitutional arrangements is when he states that the very basis is “past experience” (*Ibid.*, 168). Rawls does not elaborate on that though. In my view, given his characterization of the stability issue, including the assurance problem, as how an overlapping consensus could emerge, the “past experience” for Rawls refers to the historical evidence of religion and philosophy which supports the notion that political values are received from comprehensive views. Nevertheless, I do not believe this “past experience” is appropriate for giving this support. In fact, I do not believe any factual evidence could play the role as a substantive reason here. After all, any historical argument could be easily overruled by any new incoming situation, and we cannot use

that there is a “transformative” or “educative” aspect of public reason directing toward the improvement of justice, which has not been paid too much attention, and which provides us with the key to the problem of assurance.⁶⁵

Let me illustrate the transformation process of citizens’ appreciation of fundamental political values as follows. Given that the barricade for citizens’ collective cooperation may be their self-interests or comprehensive views, it is important to notice that a person’s self-interests or comprehensive doctrines may be not dominant all the way down. In other words, most people’s comprehensive doctrines are not general or extensive throughout, and there is lots of room for liberal principles of justice to “loosely cohere” with part of them; in the meantime, the liberal principles of justice would, at least partially, “allow for the pursuit of different comprehensive doctrines.”⁶⁶ The upshot is that many citizens come to accept the principles of justice as part of constitutional and political practice without any particular presumptions of those principles’ relationship to their comprehensive doctrines. They could very likely accept those principles out of self-interests as well as for the society.⁶⁷ Rawls identified two conditions, the fulfillment of which would make citizens pledge their allegiance to liberal principles of justice and political institutions, which is what gives reasonable citizens the assurance that everyone else will lead a fair cooperative political life. Firstly, the liberal principles and political institutions should be able to fix and prioritize the content of basic rights and liberties, an undertaking that would free citizens from “the calculation of social interests”.⁶⁸ Secondly, political groups must be able to use public reason in public reasoning on its own terms as they “enter the public forum of political discussion and appeal to other groups who do not share their comprehensive doctrines.”⁶⁹ This is a vitally important point as this point makes it rational for citizens to,

historically successful experiences to prove this success of congruence is going to last into future. As Rawls himself claims, “History is full of surprises” (Ibid., 87).

⁶⁵ Macedo accurately identifies the transformative aspect of public reason: “transformative constitutionalism itself suggests certain principles of accommodation, for it is not simply a set of limits on political power, but an aspiration toward a certain kind of civil society: one in which people share a public moral order and respect one another as common participants in that order. Since a liberal public morality is always (more or less) in a state of coming-into-being, we should accommodate dissenters when doing so helps draw them into the public moral order: when it helps transform a modus vivendi into a deeper set of shared principled commitments.” See Stephen Macedo, “Transformative Constitutionalism and the Case of Religion: Defending the Moderate Hegemony of Liberalism,” *Political Theory* 26(1998):73.

⁶⁶ John Rawls, *Political Liberalism*, 160.

⁶⁷ See *ibid.*

⁶⁸ See *ibid.*, 161.

⁶⁹ *Ibid.*, 165.

“[M]ove out of the narrower circle of their own views and to develop political conceptions in terms of which they can explain and justify their preferred policies to a wider public so as to put together a majority. As they do this, they are led to formulate political conceptions of justice. These conceptions provide the common currency of discussion and a deeper basis for explaining the meaning and implications of the principles and policies each group endorses.”⁷⁰

Therefore, the employ of public reason together with the basic rights and liberties settled down in the constitution tends to “encourage the cooperative virtues of political life: the virtue of reasonableness and a sense of fairness, a spirit of compromise and a readiness to meet others halfway, all of which are connected with the willingness to cooperate with others on political terms that everyone can publicly accept.”⁷¹ The cultivation of this cooperative virtue is in line with the human nature to “understand, act on, and be sufficiently moved by a reasonable political conception of right and justice to support a society guided by its ideals and principles.”⁷² Moreover, on the basis of political principles predicated on fundamental political values, reasonable citizens act together in willingness and with good intentions in accordance with constitutional arrangements. And “as the success of political cooperation continues, citizens gain increasing trust and confidence in one another”⁷³ to carry on this cooperation. When new and fundamental constitutional problems arise, as long as an overlapping consensus is in place, it will be able to be weighed to work out what political conceptions best fit the underlying fundamental political values. A virtuous circle of the transformation of liberal society is thus generated. It is in this transformation process of overlapping consensus that we that it is through citizens’ adherence to public reason that they are engaging in a voluntary process of identifying and promoting those political principles underpinned by basic political values. Therefore, in such a society, reasonable citizens’ collective fair cooperation is not merely out of self-interest, habits of obedience, or even fear of punishment, but out of a willing, engaging, and critical attitude to the very political society in which they live together, and by virtue of the cooperation through which they advance its civic culture in their everyday lives. I have to emphasize that by civic culture, I mean the social culture of daily life which includes all comprehensive doctrines of civil society. It needs to be differentiated from the tradition of democratic thought in a democratic society. The content of democratic thought is “at least familiar and

⁷⁰ Ibid.

⁷¹ See *ibid.*, 163.

⁷² *Ibid.*, lxii.

⁷³ *Ibid.*, 168.

intelligible to the educated common sense of citizens generally.”⁷⁴ And it includes society’s main institutions, and their accepted forms of interpretation, which are seen as “a fund of implicitly shared ideas and principles.”⁷⁵ The point of the transformative aspect of public reason exactly lies in the progression of the social culture in general.

In short, the convergence approach’s solutions to the assurance problem fall short of seeing public reason as a continuing process that progresses along with the evolution of a family of conceptions of justice. The convergence approach’s view of laws as protecting individuals so that they can freely live up to their own comprehensive doctrines presents an incomplete image of the aims of a liberal constitutional order. The incompleteness is due to their neglect of the properly understood transformative aspect of public reason. Yet, “public reasons are made, shaped in the process of public practical discourse, and learned through learning how to participate in that discourse.”⁷⁶ The transformative aspect of public reason tends to “transform the larger context within which members understand and evaluate proposed judgments and principles.”⁷⁷ It is this transformative aspect of public reason that explains the reasonable assurance every citizen gains from her reasonable fellow citizens. Moreover, it is also the direction that public reason is able to steer towards that strengthens the desirability of the idea of public reason as such.

VI. An Example of Transformative Public Reason: the Controversy of Diversity

Lastly, I will develop the transformative role of public reason to entertain a concept which is often entangled with controversies: diversity. The consensus approach is often accused of being indifferent to the claim of diversity in terms of the accommodation for new groups with ethnic, linguistic, and religious diversity in contemporary liberal democratic societies. This accusation is not true, however.⁷⁸

For those theorists who champion diversity, diversity is undoubtedly regarded as a vital value for the prosperity of liberal democracy. However, their championing diversity

⁷⁴ Ibid., 14.

⁷⁵ Ibid.

⁷⁶ Gerald J. Postema, “Public Practical Reason: An Archeology,” 74.

⁷⁷ Ibid.

⁷⁸ In contrast with the accusation, Steve Macedo believes that shared standards of public reasoning actually may facilitate diversity instead. He argues that the sharing of commitments to a public standard of justice would free us from distrust or doubts in our nonpublic lives and strengthen the society’s stability. “By providing a public language of mutual accountability, public reason may *enable* fluidity and *facilitate* the flourishing of those forms of diversity prepared to accept the regulative values of free and equal citizenship.” See Stephen Macedo, “Why Public Reason? Cooperation, Law, and Mutual Assurance”.

is established upon jumping over two presumptions: firstly, diversity is a value rather than a social fact that arises within the evolution of the society; secondly, not only is diversity an important political value or a value of sociological importance, it is also a value that possesses comparable significance with the values as liberty, equality, and fairness of opportunities that underscore our liberal democracy. Furthermore, there are two possible interpretations that depart from regarding diversity as a political value: diversity should be either perceived as an important instrumental political value which aims to enrich and promote the justice of a liberal democratic political society; or, in a stronger sense, that diversity should be entertained as an indispensable intrinsic value such as liberty, equality, and fairness, which are at the heart of a liberal democratic society.

Nonetheless, these two presumptions cannot be so quickly taken for granted, since either refutation of these two presumptions would overcome the critics' critique of the consensus approach's so-called underestimation of diversity. For one thing, if diversity in society is a social fact that arises along with the development of contemporary liberal society, then it is not entitled to or needs no special protection to warrant or even support its continuation. This is the strongest rejection of accommodating diversity.

A weaker version would be if we perceived the value of diversity as an instrumental value which facilitates the realization of justice, then the critics' (including many religious critics who I attribute to the convergence approach) claim of diversity must be able to be supported by the contribution that diversity makes to justice, otherwise the value of diversity does not deserve to be paid special attention. Moreover, if the value of diversity becomes a burden and ceases to support the realization of justice in society, it will lose its importance as an instrumental value. Macedo points out that "any tolerably complete account of our disposition toward diversity needs to take account of the dependence of our political order on the habits, values, and interests formed in 'private' communities, including religious communities. The degree of support that these communities provide for our shared political project is a vital public concern."⁷⁹ Therefore, the accommodation that we make toward claims of diversity should depart from a perspective that recognizes the utmost importance of diversity for the core political values of the democratic society.⁸⁰

⁷⁹ Stephen Macedo, "Transformative Constitutionalism and the Case of Religion: Defending the Moderate Hegemony of Liberalism," 65.

⁸⁰ I believe that Macedo views diversity in this light, that diversity helps to strengthen the fundamental political values: "[I]ndeed, there is ample reason to think that a modern mass liberal democracy cannot thrive...without the support of certain patterns and kinds of intermediate associations. Modern liberal democracy needs the right sort of civic culture, and religious communities of the right sort are an important part of this culture." See *ibid.*

The weakest rejection of critics' claim of diversity would still be strong enough. Even if diversity is regarded as an intrinsic political value that has been embedded within the liberal democratic value system, it does not necessarily enjoy the same privileged position as liberty, equality, and fairness, as not all important political values have the exact same weight. Hence, if diversity is a downstream value of the fundamental values of liberal democracy, then at least the accommodation for diversity would have to be limited by those primary bases of liberal democratic societies. In other words, the accommodation for diversity cannot conflict with the basic values of liberty, equality, and fairness; otherwise, the accommodation for diversity has to be outweighed by those basic values.⁸¹ The consensus approach's fundamental commitment to justice based on liberty, equality, and fairness places exactly such a limitation on other values. In that sense, contrary to what the critics have claimed, the consensus approach is able to support whatever the claim of diversity advances, so long as it does not conflict with the fundamental values of liberty, equality, and fairness. Demarcating by the basic rights and constitutional essentials that protect the equality of all individuals, the consensus approach actually leaves rather spacious room for newcomers, whatever religious or cultural minorities, to make their cases while also giving due weight to legitimate policy goals. All the consensus approach asks for is that newcomers should be able to take the basic values underscoring shareable public reason seriously, and realize that their religious or philosophical views do not enjoy special privileges in the public sphere. Therefore, if a democratic society strengthens the values of liberty, equality, and fairness embedded in public reason by discouraging various kinds of religious or comprehensive views, it does not mean that such a society is unfair to those comprehensive doctrines, nor does it represent the advancement of a particular comprehensive doctrine.

Granted that the consensus approach seeks common ground that all reasonable citizens would be able to stand on, this does not mean that it cannot still "affirm the superiority of certain moral character and encourage certain moral virtues"⁸², insofar as they belong to a reasonable political conception of justice for a constitutional regime. Such values as liberty, equality, and fairness are shared by citizens and do not depend on any particular comprehensive doctrines, since they are distinctively political values tied to

⁸¹ Precisely for this reason, many liberals in Britain, the Netherlands, Germany, etc, strongly object to the claim of incorporating "Sharia Councils" into their domestic legal systems. Liberal democratic legal systems are the last remedy and guardian of those most fundamental values for human rights, while some content of Sharia Law is plainly incompatible with those basic values of liberal democracy. In that sense, the diversity of pluralist legal system cannot be accommodated, not to mention supported. I believe that my above analysis of diversity also applies to some other controversial or ambiguous "values", such, tradition, for instance.

⁸² John Rawls, *Political Liberalism*, 194.

political conceptions of justice and to the forms of judgment and conduct essential to maintain fair social cooperation over time.⁸³ Thus, these values characterize the ideal of a good citizen of a democratic state, which is specified by the moral duty of public reason, and subsequently these values signify the direction that the transformative aspect of public reason aims to achieve.

VII. Conclusion

This chapter considers the last critique facing the consensus approach, the assurance critique: the consensus approach cannot ensure that everyone else in the political society will also honor fair terms of cooperation over time as I do. As this is a problem that applies to all public justification theories, the convergence approach also struggles to come up with an ideal response to that issue.

I gathered two types of solutions representing two divergent directions of the convergence approach. One solution aims to strive for an absolutist ideal which works for every individual member in the society, from the perspective of their comprehensive views. However, this solution is logically problematic as it is both at best inefficient, if not entirely unrealistic, and indeterminate in terms of convergent political decisions. Moreover, the convergence approach's other solution of public rules along with the threat of punishment also fails. On the one hand, such a solution cannot be categorically differentiated from the consensus approach's solution if the public rules are conceived of as moral rules, which is not acceptable for the convergence approach. On the other hand, regarding the threat of punishment as what makes collective cooperation plausible, it obscures the aspect of citizens willingly engaging in public life and recognizing political institutions as just.

I believe that the convergence approach's fundamental mistake is in treating public justification as essentially aggregated individual activity, while it fails to recognize the *inter homines* characteristic of public justification. The consensus approach deviates from the convergence approach's mistake on this vital point. It views the undertaking of public justification as a task for all of us together. Therefore, citizens shall be able to develop political conceptions providing common currency for a discussion that is shareable with every reasonable citizen. Public reasoning conducted this way is on the one hand robust

⁸³ See *ibid.*, 193-194. Rawls believes the reasoned opinions of the U.S. Supreme Court can be seen as such a political institution that can manifest the educative role of public reason. The judges "develop and express in their reasoned opinions the best interpretation of the constitution," which on the one hand "best fits the relevant body of constitutional materials" including precedents, on the other hand is justified "in terms of the public conceptions of justice" underscored by political moralities.

to changes in people's comprehensive doctrines in the society, and on the other hand leaves ample room for diversity-related claims so long as they do not at least conflict with important political values. In that sense, there is a transformative aspect to public reason which encourages the enhancement of liberal democracy by involving every reasonable citizen as an engaging party in such a transformation process. As long as the transformative force of liberal democracy works effectively over time, it will encourage the fair cooperative virtues of reasonable citizens in the political life, which fundamentally facilitates eradicating the root of defection from the cooperative scheme.