

# Religious Reasons and Liberal Legitimacy

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## ABSTRACT

This article addresses the exclusivism–inclusivism debate about religious reasons in law within a justificatory liberal framework. The question of whether religious reasons have justificatory capacity for attaining public justification has increasingly been seen as a matter of how public justification is understood between two rival models: the consensus model being aligned with exclusivism, the convergence model with inclusivism. More recently, however, that alignment has been challenged with attempts to show that consensus can reach an equivalent degree of inclusivism as convergence. Against this, I contend that the purported equivalence is misplaced. First, I identify a crucial ambiguity about public justification and two corresponding domains. Upon demonstrating these to be mutually independent and severable, I conclude that the moves to equalize the models are confined within the more narrow domain while, in the more fundamental domain, the choice of model continues to prove determinative as to the exclusivist or inclusivist valence of justificatory liberalism.

## 1. INTRODUCTION

Liberalism and religion maintain a deeply ambivalent relation. Consistent with its historical and ideological roots in the religious upheavals of early-modern Europe,<sup>1</sup> liberalism is held distinctive for its attempts to take pluralism seriously—securing not just tolerance but also fundamental individual and religious freedoms. Yet, this amicable service to religion is tempered by various concomitant constraints. Religion’s proper role or normative status in the political or ‘public’ sphere<sup>2</sup> remains politically and theoretically contested. Schematically at least, the theoretical divide can be characterized in terms of *exclusivism* and *inclusivism*.<sup>3</sup>

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<sup>1</sup> See eg, John Rawls, *Political Liberalism* (expanded edn, Columbia University Press 2005) xxi–xxv; Jeremy Waldron, *God, Locke, and Equality: Christian Foundations of John Locke’s Political Thought* (Cambridge University Press 2002); Rainer Forst, *Tolerance in Conflict: Past and Present* (Ciaran Cronin (tr), Cambridge University Press 2013) esp. 170, 214, 218.

<sup>2</sup> This is far from a simple notion of course but it is not one necessary to address here. For clarity though, while ‘public’ could be construed as somewhat broader than ‘political’ (see Rawls *ibid* 442–43), I will treat these interchangeably in general usage.

<sup>3</sup> Sometimes alternatively rendered in terms of ‘exclusionist(s)’/‘exclusionism’ and ‘inclusionist(s)/inclusionism’. See James W Boettcher, ‘Strong Inclusionist Accounts of the Role of Religion in Political Decision-Making’ (2005) 36 *Journal of Social Philosophy* 497.

whereby exclusivists exclude or deny religion any normative political role, and inclusivists oppose such categorical exclusion in various ways and degrees.

While this contest extends across multiple fronts,<sup>4</sup> within justificatory liberalism<sup>5</sup>—the currently prevailing paradigm of liberal political legitimacy—it has become a rather insular affair. With its fundamental commitment to ‘public justification’ or that exercises of political power be in some (relevantly specified) sense justified or acceptable to all those who are subjects of it, justificatory liberalism transforms the general question about the normative role of religion in politics into the more idiosyncratic one of the admissibility or justificatory capacity of religious reasons in public justification. Accordingly, the answer has become almost entirely about how one understands public justification as between two rival models: ‘consensus’ and ‘convergence’. While the full technical elaboration awaits (Section 4), the main difference can be roughly summarized as follows. Consensus, the conventional model paradigmatically aligned with exclusivism, insists that something can only be publicly justified where the reasons for (or against) the matter in question are shared by all relevant members of the political community. In contrast, the, more nascent, convergence model allows public justification even upon disparate reasons provided that they all reach the same conclusion or outcome. The convergence model thus enables public justification to admit religious reasons and consequently the possibility of justificatory liberalism being substantially reconciled with inclusivism.<sup>6</sup>

More recently, however, the above binary alignments have been questioned. Consensus, it has been advanced, is in principle capable of replicating the inclusivism boasted by convergence.<sup>7</sup> With their apparent plausibility, these observations have proved highly pertinent in answering many inclusivist critiques of consensus and, for all practical purposes, effectively equalizing the rival models when it comes to their capacity for inclusivism (or exclusivism).

This article argues that such moves are mistaken. It is not that the suggested inclusivist amendments to consensus cannot be made, but rather that they do not in fact track inclusivism at the more fundamental level where the choice of model for public justification remains

<sup>4</sup> Examples of other prominent questions in this regard include those about the appropriate model of constitutional (dis) establishment? (eg, Leni Franken, ‘Liberal Neutrality and State Support for Religion’ (2016) 5 Boston Studies in Philosophy and Public Life; Cécile Laborde, *Liberalism’s Religion* (Harvard University Press 2017); David Miller, ‘What’s Wrong with Religious Establishment?’ (2021) 15 *Criminal Law and Philosophy* 75); whether the liberal state entails secularism? (eg, Cécile Laborde, ‘Liberal Neutrality, Religion, and the Good’ in Jean L Cohen and Cécile Laborde (eds), *Religion, Secularism, and Constitutional Democracy* (Columbia University Press 2016) 249; Andrew Koppelman, ‘Neutrality and the Religion Analogy’ in Kevin Vallier and Michael Weber (eds), *Religious Exemptions* (Oxford University Press 2018) 165; Chiara Cordelli, ‘Liberalism and Religion: The Plural Grounds of Separation’ (2020) 21 *Critical Review of International Social and Political Philosophy* 68); whether religious citizens are entitled to differential legal exemptions and/or accommodations? (eg, Laborde, *Liberalism’s Religion* (n 4); Jonathan Seglow, ‘Religious Accommodation: An Egalitarian Defence’ (2019) XIX *Croatian Journal of Philosophy* 15; Peter Jones, ‘Individual Integrity, Freedom of Association and Religious Exemption’ (2020) 23 *Critical Review of International Social and Political Philosophy* 94)—not to mention associational autonomy and/or jurisdictional sovereignty (eg, Perry Dane, ‘Maps of Sovereignty: A Meditation’ (1991) 12 *Cardozo Law Review* 959; Paul Horowitz, ‘The Philosopher’s Brief’ (2008) 25 *Constitutional Commentary* 285; Steven D Smith, ‘The Secular, the Religious and the Moral: What Are We Talking About’ (2009) 36 *Wake Forest Law Review* 487); and many other discrete interests and questions as prominently canvassed across the so-called culture wars (for further discussion, see John Corvino, ‘Is Religion Special? Exemptions, Conscience, and the Culture Wars’ in John Adenitire (ed), *Religious Beliefs and Conscientious Exemptions in a Liberal State* (Hart Publishing 2019) 13).

<sup>5</sup> ‘Justificatory liberalism’ was originally coined by Gerald Gaus to refer to his own brand of liberalism, especially in contrast with ‘political liberalism’ used by Rawls and close adherents (see Gerald F Gaus, *Justificatory Liberalism* (Oxford University Press 1996)). Both terms have since expanded to serve a common generic label for a loose family of views, sometimes also called ‘public reason liberalism’. Usage preferences vary and some draw distinctions (eg, Paul Billingham, ‘Does Political Community Require Public Reason? On Lister’s Defence of Political Liberalism’ (2016) 15 *Politics, Philosophy & Economics* 20), but I will mainly use ‘justificatory liberalism’ (interchangeably with the other labels).

<sup>6</sup> For prominent arguments for this, see Gerald F Gaus and Kevin Vallier, ‘The Roles of Religious Conviction in a Publicly Justified Polity’ (2009) 35 *Philosophy & Social Criticism* 51; Gerald F Gaus, ‘The Place of Religious Belief in Public Reason Liberalism’ in Maria Dimova-Cookson and Peter MR Stirk (eds), *Multiculturalism and Moral Conflict* (Routledge 2010) 1; Kevin Vallier, *Liberal Politics and Public Faith: Beyond Separation* (Routledge 2014).

<sup>7</sup> Notably, Aurélie Bardon, ‘Two Misunderstandings About Public Justification and Religious Reasons’ (2018) 37 *Law and Philosophy* 639; Paul Billingham, ‘Consensus, Convergence, Restraint, and Religion’ (2018) 15 *Journal of Moral Philosophy* 354.

decisive. In large part, this is caused by insufficient clarity and shifting meanings of inclusivism/exclusivism in relation to consensus/convergence. Specifically, much of the suggested inclusivist parity between consensus and convergence is premised on the notion that the above-noted differences are overridden by an inescapable common commitment to at least a minimal form of what I will elaborate as ‘Restraint’—that is, duties of excluding religious (and other disqualified reasons) from public deliberations and/or political decision making. Insightful as the underlying conceptual resources for these moves are, I will argue that they overlook the more fundamental level, beyond Restraint, where the choice of model between consensus and convergence is still determinative of justificatory liberalism’s alignment between exclusivism and inclusivism. At that level, public justification operates in an abstract sense based on the totality of conceivable reasons and independent of Restraint, as shall be seen.

A significant portion of the article will therefore be devoted to examining the interrelations and meanings of these terms to clarify the dialectic from which the significance of the further innovations introduced can be gleaned.

My argument will proceed as follows. After setting out the relevant background and conceptual terrain, I introduce the consensus model as the ‘standard view’ of (exclusivist) justificatory liberalism in Section 2. The inclusivist critique is then presented in Section 3 followed by the apparent efficacy of the convergence model in demonstrating that there is nothing inherently exclusivist about justificatory liberalism to be the target of such critique in Section 4. The potential for consensus to respond in kind is then considered in Section 5. From there, I turn to evaluate the purported equalization by identifying a crucial ambiguity about public justification and two corresponding domains. Upon demonstrating these to be mutually independent and crucially severable, in Section 6, I conclude that the moves to equalize the models are confined within the more narrow domain while, in the more fundamental, the choice of model remains determinative as to justificatory liberalism’s alignment between exclusivism and inclusivism.

## 2. RELIGION AND JUSTIFICATION

For all its multifaceted complexity, the exclusivist–inclusivist debate *within* justificatory liberalism<sup>8</sup> has a determinate origin in justificatory liberalism’s fundamental commitment to public justification as a necessary condition of political legitimacy—namely, that to be legitimate the exercise of political power must be acceptable, in some qualified sense, to all who are subject to it. This requirement has been variously formulated and labelled,<sup>9</sup> and I will adhere to the following generic formulation in terms of the ‘public justification principle’:

**PJP:** Political-exercise is legitimate/legitimated if and only if (iff) it is publicly justified or capable of being publicly justified (ie *publicly justifiable*).

A few clarifications on the terms, starting with ‘political-exercise’. Most accounts associate this with coercion, which is inherent in political power whether in its direct forms (eg, enforcement or legal sanctions) or more general structural features of a political regime

<sup>8</sup> For prominent examples of inclusivist criticisms of justificatory liberalism see Christopher J Eberle, *Religious Conviction in Liberal Politics* (Cambridge University Press 2002); Nicholas Wolterstorff, ‘The Paradoxical Role of Coercion in the Theory of Political Liberalism’ (2007) 1 *Journal of Law, Philosophy and Culture* 135.

<sup>9</sup> For example, the ‘liberal principle of legitimacy’ (LPL) (see Rawls (n 1) 217), but also the public justification requirement (PJR) (see Colin Bird, ‘Coercion and public justification’ (2014) 13 *Politics, Philosophy & Economics* 189) qualified or reasonable acceptability principle (RAP) (see Paul Billingham and Anthony Taylor, ‘A Framework for Analyzing Public Reason Theories’ (2022) 21 *European Journal of Political Theory* 671).

(eg, constitutional provisions, economic, and social-institutional arrangements).<sup>10</sup> That has been questioned though<sup>11</sup> and, in principle, political-exercise could apply to any political decisions, endorsements, proposals, laws, moral rules, or something else.<sup>12</sup> Similarly, while sometimes the scope of political-exercise is limited to some special subset of political-exercise, I take no stand on these matters here. Accordingly, my references to ‘political-exercise’ are intended as a generic placeholder not limited in scope even when referring to proposals and/or laws in discussing concrete examples.

Likewise, I take *legitimacy* (and its cognates) in a broad sense meaning something like (morally) ‘permissible’ or ‘proper’ though not necessarily just.<sup>13</sup>

This brings us to ‘public justification’. While there is a plethora of possible accounts, the essential idea lies in its distinctiveness from the ordinary concept of justification.<sup>14</sup> Whereas justification appeals to external or objective standards such as correctness or truth,<sup>15</sup> in *public* justification the (justificatory) reasons offered must be ‘adequate or sufficient’ for acceptance by each relevant addressee *by their own lights*—that is, according to their individual ‘perspective’ or ‘belief-value set’.<sup>16</sup> By way of illustration, justifying the prohibition on meat consumption upon the reason that it is unhealthy, morally wrong, or sacrilegious might adequately justify the prohibition for some belief-value sets but not those with contrary beliefs such as meat consumption being of irreplaceable nutritional value, morally permissible or religiously mandated. A public justification would therefore mean finding reasons that are congruent with beliefs within all relevant perspectives such as, for instance, if meat consumption posed a risk of harm due to a viral outbreak or environmental hazard, accepted by all relevant perspectives as an adequate or sufficient reason.

Just what is sufficient for acceptance and by which addressee(s) is a hive of theoretical complexity that well outstrips what can be said in a single paper. Nonetheless, a few clarificatory remarks regarding the standard of acceptance are required. What matters is not *actual* acceptance or unanimity but a hypothetical or *idealized* one. This might involve idealizing the scope of the constituency whereby not every member of the political community counts as an addressee for public justification but only those meeting a certain qualification.<sup>17</sup> Hence, whereas references to ‘political community’ or ‘polity’ might denote an actual constituency, ‘the public’ serves as a technical term for the relevantly qualified constituency. Additionally, one might idealize the epistemic attributes of addressees to correct reasoning or informational flaws.<sup>18</sup> These modes of idealization tend to get expressed in various ways. Perhaps most common is to speak of *reasonable* (and *unreasonable*) person(s) or ‘member (s) of the public (MOPs)’ as their idealized surrogate counterparts and/or what is *reasonably/unreasonably* acceptable/rejectable. However, since these are technical designations, or terms of art, I will mark this with *italicization* throughout and generally replace references to *reasonableness/unreasonableness* with less suggestive terms like ‘qualified/disqualified’.<sup>19</sup>

<sup>10</sup> Rawls (n 1) 68; Baldwin Wong, ‘Public Reason and Structural Coercion: In Defense of the Coercion Account as the Ground of Public Reason’ (2020) 46 *Social Theory and Practice* 231, 238.

<sup>11</sup> Regarding the necessity of coercion see Bird (n 9) 195–98; Andrew Lister, *Public Reason and Political Community* (Bloomsbury Publishing 2013) 18; Jonathan Quong, ‘On the Idea of Public Reason’ in Jon Mandle and David A Reidy (eds), *A Companion to Rawls* (Wiley Blackwell 2014) 265. Regarding the ‘political’ per se, see Gerald F Gaus, *The Order of Public Reason* (Cambridge University Press 2011) 2–14 where public justification is extended more broadly to ‘social morality’.

<sup>12</sup> Fabian Wendt, ‘Rescuing Public Justification from Public Reason Liberalism’ in David Sobel, Peter Vallentyne and Steven Wall (eds), *Oxford Studies in Political Philosophy*, vol 5 (Oxford University Press 2019) 40.

<sup>13</sup> For more on this difference, see Jonathan Quong, *Liberalism without Perfection* (Oxford University Press 2011) 131–35.

<sup>14</sup> Sometimes termed ‘rational justification’ or ‘justification *simpliciter*’ (see Eberle (n 8) 62).

<sup>15</sup> *ibid*; Wendt (n 12) 40.

<sup>16</sup> Fred D’Agostino and Kevin Vallier, ‘Public Justification’ in *The Stanford Encyclopedia of Philosophy* (Spring edn, 2014) <<http://plato.stanford.edu/archives/spr2014/entries/justification-public>> accessed 26 June 2023.

<sup>17</sup> David Enoch, ‘Against Public Reason’ in David Sobel, Peter Vallentyne and Steven Wall (eds), *Oxford Studies in Political Philosophy*, vol 1 (Oxford University Press 2015) 118.

<sup>18</sup> *ibid*.

<sup>19</sup> Here, I follow David Estlund, *Democratic Authority* (Princeton University Press 2008) 44.

In short then, public justification is justification relativized to each qualified perspective comprising the public and attains where the justificatory reasons are sufficient for qualified acceptability and/or non-rejectability.

For justificatory liberalism, therefore, exclusivism or inclusivism about religion is essentially a question about the justificatory adequacy of religious reasons for public justification. Naturally, given the likely complexities around the adequacy of religious reasons (to which we shall come), one might anticipate hurdles in the characterization of exclusivism and inclusivism and would be right to do so. Being positions on a spectrum, exclusivism and inclusivism can confusingly vary according to the object of comparison. The very same position might be construed in both ways relative to other positions. For example, Rawls framed his position as inclusivist, yet later commentators take him as paradigmatically exclusivist.<sup>20</sup> To evade this confusion, I will anchor the exclusivist position in the so-called ‘standard view’.<sup>21</sup> Fundamentally rooted in the seminal work of John Rawls from which my examples will be drawn, the standard view adopts the consensus model of public justification and might therefore also be described as ‘consensus justificatory liberalism’ or ‘consensus-PJP’.

Adapting Kevin Vallier’s ‘Master Argument’, the standard view, or the exclusivism of the consensus model, can be outlined as follows:

### Consensus-PJP

- 1) PJP → public justification → **Public-reason-requirement**
- 2) Public-reason-requirement → **Exclusion**
- 3) Exclusion → **Restraint**.<sup>22</sup>

Taking each in turn, public justification, as seen, aims to make political-exercise acceptable to each qualified perspective. In that regard, controversial or divisive reasons seem inherently unsuitable compared to reasons that are mutually *accessible* and/or *shareable* amongst all relevant addressees. Accessible reasons are not shareable reasons but appeal to common or shared evaluative standards.<sup>23</sup> Shareable reasons, on the other hand, need not be the very same or identical.<sup>24</sup> Nor do they need to be actually shared so long as they *could* be (hence, ‘shareable’<sup>25</sup>). Since the distinction is not crucial in this article, any references to ‘shared’ are taken to include ‘shareable’, unless stated otherwise. Shared and/or accessible reasons are what constitute ‘public reason(s)’ on the standard view generating what I will call the ‘public-reason-requirement’ or that public justification must comprise *exclusively* public reason(s). It is this which distinguishes the consensus and convergence models, as shall emerge.

Reasons that are not shareable/accessible are in that sense ‘non-public’. In Rawlsian terms, these reasons are often designated as ‘sectarian’ or ‘comprehensive’ because they are rooted in private or esoteric metaphysical, moral or other philosophical worldviews (collectively, ‘comprehensive doctrines’) harbouring ultimate values or ‘conceptions of the good’.<sup>26</sup> I will use comprehensive and/or sectarian reasons interchangeably in referring to non-public reasons, as defined.

<sup>20</sup> Rawls (n 1) 248; Andrew March and Alicia Steinmetz, ‘Religious Reason in Public Deliberation’ in André Bächtiger and others (eds) *The Oxford Handbook of Deliberative Democracy* (Oxford University Press 2018) 203.

<sup>21</sup> See Christopher J Eberle, ‘Respect and War: Against the Standard View of Religion in Politics’ in Tom Bailey and Valentina Gentile (eds), *Rawls and Religion* (Columbia University Press 2015) 29; James W Boettcher and Jonathan Harmon, ‘Introduction: Religion and the Public Sphere’ (2009) 35 *Philosophy & Social Criticism* 5, 8; March and Steinmetz (n 20) 204.

<sup>22</sup> Vallier (n 6) 52.

<sup>23</sup> Kevin Vallier, ‘Convergence and Consensus in Public Reason’ (2011) 25 *Public Affairs Quarterly* 261, 264.

<sup>24</sup> This captures the difference between ‘weak consensus’ and ‘strong consensus’ noted by Quong (n 13) 264. My references throughout will intend only the ‘weak’ version.

<sup>25</sup> See Kevin Vallier, ‘In Defense of Intelligible Reasons in Public Justification’ (2015) 66 *Philosophical Quarterly* 596.

<sup>26</sup> Rawls (n 1) 19–20, 129, 175, 180.

To the extent that religious reasons are substantially sectarian/comprehensive in nature, they will not be accessible to or shareable by all relevant addressees and thereby incapable of constituting public reason(s). Failing the public-reason-requirement, religious reasons are, on their own, insufficient to attain public justification for political-exercise, which results in their *justificatory inadequacy* or ‘Exclusion’.

Exclusion of religious reasons in turn suggests some form of, what I have labelled, ‘Restraint’. By Restraint, I am referring to the (variously specified) moral duties said to be owed by MOPs to one another in the course of public reasoning, or, more precisely public deliberations and/or political decision making (in cases of voting or where the MOPs are government or public officials). Restraint has a prominent place in the standard view and for its inclusivist critics. This awaits elaboration below. For now, our outline of the standard view comes to a conclusion.

To summarize, starting with PJP, we have seen how the consensus model of public justification generates the public-reason-requirement, which, on account of the purported justificatory inadequacy of religion reasons, leads to Exclusion and entailment of some form of moral duties or Restraint.

### 3. THE INCLUSIVIST CHALLENGE

The standard view has attracted much criticism on account of its exclusivism. In this section, I will outline, in generalized form, two prominent kinds of inclusivist objections: the ‘semantic objection’ and ‘unfair-burden objection’. For reasons to become clear, our concern will be primarily with the second.

#### A. Semantic objection

The semantic-objection targets the equivalence drawn between non-public reasons and religious reasons for Exclusion. This equivalence is problematic not only because of the notorious definitional elusiveness and instability of religion as a conceptual category,<sup>27</sup> but also because the two categories seem unreliably coextensive. The latter is not much of an objection, however. Exclusivists are typically prepared to concede that religious reasons are not *unique* since Exclusion applies to all non-public reasons with religious reasons being but one subset of these. Religion or faith is held to belong there as a historically divisive phenomenon: steeped in intra-faith theological and liturgical disputations across ever-fragmenting denominations, not to mention the fathomless rift between the theist and atheist, the faithful, and agnostic.

Still, the semantic-objection might insist that religion is more complex in its diversity and can encompass a sufficiently public dimension. Beyond the caricatures of religion as private revelation or esoteric dogmas ‘backed-up by threats of hellfire’,<sup>28</sup> religious reasons can make sophisticated connections to the broader moral reflections within background public culture such as on the value of life or human dignity.<sup>29</sup> Key liberal public reforms: abolition, desegregation, refugee asylum—even liberalism itself—have been propelled by religiously inspired arguments.<sup>30</sup>

Observations like these have certainly prompted exclusivists to reflect more seriously on religion and develop ways of philosophically refining or ‘disaggregating’ it so as to identify

<sup>27</sup> Wilfred Cantwell Smith, *The Meaning and End of Religion* (Mentor Books 1964); Michael Bergunder, ‘What is Religion? The Unexplained Subject Matter of Religious Studies’ (2014) 26 *Method and Theory in the Study of Religion* 246.

<sup>28</sup> Waldron (n 1) 20.

<sup>29</sup> Jeremy Waldron, ‘Two-way Translation: The Ethics of Engaging with Religious Contributions in Public Deliberations’ (2012) 63 *Mercer Law Review* 845, 852.

<sup>30</sup> Jeremy Waldron, ‘Religion’s Liberalism’ (2021) 15 *Criminal Law and Philosophy* 91, 93.

its discretely non-public aspects beyond reproach from the semantic objection.<sup>31</sup> There is no need to detail this here. For as long as religion is at least in part non-public, we can, following Robert Talisse, narrow our focus to *strictly* religious reasons.<sup>32</sup> These are by stipulation purely comprehensive/sectarian. For simplicity, I will continue to refer to ‘religious reasons’ to mean the strict kind, unless indicated otherwise.

Constitutionally building exclusivism into religious reason will, no doubt, seem objectionable. Yet, the semantic objection leaves this possibility open and in seizing it we simply shift the debate to the substance of the matter. If exclusivism of the strict kind can be refuted, the more nuanced or hybrid kind of religious reasons are all the more vindicated.

### B. Unfair-burden objection

The unfair-burden objection claims that ‘citizens of faith’ or religious MOPs are unfairly burdened compared to their secular or non-religious counterparts. Being unable to appeal to religious reasons means that religious MOPs are effectively required to split their identity and repress their true convictions when participating in political life. This identity-splitting and privatization of their faith seem not just repressive, but a form of self-alienation and violation of integrity.<sup>33</sup> Alongside these burdens and partly as a consequence of them, religious MOPs stand unequal relative to their secular counterparts in terms of accessibility and ease of participation in political life.<sup>34</sup> In sum, religious MOPs seem unfairly disadvantaged in relation to secular MOPs; burdened by being unable to present and act on their authentic and deepest convictions in the public sphere.

While the burden here seems evident, there may be credible suspicion about whether there is unfairness. Notably, as Rawls emphasizes, public reason is not secular reason since secularism itself relies on comprehensive/sectarian doctrines in a way that public reason does not.<sup>35</sup> It follows that even secular MOPs are burdened in relation to their (secular) non-public reasons. Indeed, one might even go so far as to say that the only truly unburdened MOPs would be those whose belief-value set is entirely comprised of public reasons—a rather fantastical breed of MOP with purely public or political values!

Nonetheless, inclusivists will point out an apparent asymmetry here. Although *some* secular reasons are excluded as non-public, others which are public will not be. Conversely, *all* religious reasons are non-public and thereby *all* excluded.<sup>36</sup> To be sure, the asymmetry does not depend on the qualification of religious reasons in the strict sense since there is no corresponding idea of ‘strictly secular reasons’: It is *always* the ‘religious’ element that accounts for the exclusion as sectarian/comprehensive.

The apparent unfairness in this proves deeply discomfiting by liberalism’s own commitments such as equality of persons and respect. In response, exclusivists have therefore typically sought to either downplay these burdens<sup>37</sup> or show them vindicated by emphasizing the capaciousness of Restraint. The latter strategy is exemplified by Rawls in his later work. Rawls emphasizes that being a moral, not a legal, duty, Restraint, or ‘duty of civility’ (as he calls it), imposes no restrictions on freedom of speech and concerns only public

<sup>31</sup> See Andrew March, ‘Rethinking Religious Reasons in Public Justification’ (2013) 107 *American Political Science Review* 523; and especially Laborde (n 4).

<sup>32</sup> Robert B Talisse, ‘Religion and Liberalism: Was Rawls Right After All?’ in Tom Bailey and Valentina Gentile (eds), *Rawls and Religion* (Columbia University Press 2015) 54–55.

<sup>33</sup> Kevin Vallier, ‘Liberalism, Religion and Integrity’ (2012) 90 *Australasian Journal of Philosophy* 149, 155.

<sup>34</sup> Kent Greenawalt, *Private Consciences and Public Reasons* (Oxford University Press 1995) 63, 120; Eberle (n 21) 32–33.

<sup>35</sup> John Rawls, ‘The Idea of Public Reason Revisited’ (1997) 64 *University of Chicago Law Review* 765, 775.

<sup>36</sup> Eberle (n 21) 32–33.

<sup>37</sup> A case in point is Stephen Macedo’s notorious response that if some feel “silenced” or “marginalised” < ... > I can only say “grow up!”—see Stephen Macedo, ‘In Defense of Liberal Public Reason: Are Slavery and Abortion Hard Cases?’ (1997) 42 *American Journal of Jurisprudence* 1, 21.

deliberations about “constitutional essentials” and questions of basic justice” within the ‘public political forum’.<sup>38</sup> This forum relates to certain roles and stages of political deliberation and decision making: for example, when serving as a public official or voting in referenda and elections, and engaging in related political activities such as policy lobbying or electoral campaigning (collectively, ‘political-advocacy’). Consequently, Restraint does not apply to personal and social deliberations amongst friends and family or within civil society (eg, churches, universities, civil associations, etc.).<sup>39</sup> Lastly, the ‘wide view of public political culture’ means that even within political realm public political deliberations (eg, discussion of voting intentions) MOPs can appeal to religious reasons (or similarly otherwise restricted reasons) subject to the famous *proviso* that ‘in due course we give properly public reasons’ (ie, reasons of the non-restricted kind).<sup>40</sup>

Loosened this way, Restraint can mitigate a considerable degree of the unfair-burden objection. Still, it does not constitute a complete defence. After all, the above-noted asymmetries will persist in relation to political-advocacy and public service, which are still significant dimensions of political life. If even after the concessions made, Restraint remains vulnerable to the unfair-burden objection in what seems to be the most salient areas of politics, the tensions between the standard view and its inclusivist detractors appear entrenched or deadlocked. Each side claims to hold the reasonable balance proportionate to the force of the other’s reply.<sup>41</sup>

#### 4. THE CONVERGENCE SOLUTION

Against that backdrop, proponents of the convergence model of public justification (also describable as convergence-justificatory liberalism or convergence-PJP) claim an innovative solution upon which justificatory liberalism need not be exclusivist and a target of critique such as the unfair-burden objection.

Recall the three-steps through which the standard view consensus model was presented in Section 2. Although much of debate has concerned step (3)—Restraint—the directedness at religious reasons only emerges due to step (1)—the public-reason-requirement. It is this that religious reasons, being non-public, fail to satisfy, resulting in their Exclusion (2). Here, convergence theorists point out that integral as the public-reason-requirement is for public justification, public reason need not be limited to accessible/shareable reason because it could just as well operate with *intelligible reasons* provided that they converge.

Intelligible reasons need not be shareable nor even mutually accessible to other MOPs. They need only be recognizable as intelligible reason(s) for the relevant MOP relative to that MOP’s evaluative standards (as opposed to the evaluative standards of others or shared ones).<sup>42</sup> Nevertheless, they can still attain public justification if and when they *converge* in support of (or against) some political-exercise. For instance, political-exercise P is supported by A for reason R<sub>a</sub> and by B for reason R<sub>b</sub>.<sup>43</sup> More vividly, in Allen Hertzke’s case retold by Christopher Eberle, the Trafficking Victims Protection Act (TVPA)—a law to combat global sex-trafficking—remarkably gained support from both progressive feminists and conservative Christians who, despite being politically polarized, in the absence of shared reasons, converged on the TVPA for ‘distinct and incompatible reasons’.<sup>44</sup>

<sup>38</sup> Rawls (n 35) 767–69.

<sup>39</sup> *ibid.*

<sup>40</sup> *ibid.* 776, 783–84.

<sup>41</sup> Vallier (n 6) 84–85; Paul Billingham, ‘Consensus, Convergence, Restraint, and Religion’ (2018) 15 *Journal of Moral Philosophy* 345, 353.

<sup>42</sup> Vallier (n 25).

<sup>43</sup> Fred D’Agostino, *Free Public Reason: Making it Up as We Go* (Oxford University Press 1996) 29.

<sup>44</sup> Christopher J Eberle, ‘Religious Reasons in Public: Let a Thousand Flowers Bloom, But Be Prepared to Prune’ (2007) 22 *Journal of Civil Rights and Economic Development* 431, 435.

The convergence solution then essentially springs from its contestation of the consensus definition of public reason(s) as restricted to accessible/shareable reasons. This reveals the ambivalence of public reason between the two models. In order to avoid confusion going forward, I will use ‘convergent reason(s)’ for intelligible reasons which converge, retaining the term public reason(s) for shareable/accessible reasons.

If public justification can be attained by convergent reasons then PJP need not necessitate Exclusion and if there is still a role for Restraint it is not one that concerns non-public reasons and so seems to avoid the inclusivist objections. While some further evaluation awaits in the following section, the argument so far is that justificatory liberals can embrace inclusivism provided they adopt the convergence model to allow the public-reason-requirement to be satisfied with convergent reason(s) instead of, or even in addition to, public reason(s).

## 5. CONSENSUS AND RESTRAINT

The convergence model, as just seen, carries immense implications for reconciling justificatory liberalism with inclusivism. Naturally, the choice between consensus and convergence concerns a far greater range of matters than exclusivism/inclusivism,<sup>45</sup> but it is neither within scope nor intention of this article to delve into these. Instead, the central concern here is whether or not the choice of model matters in relation to determining justificatory liberalism’s alignment between exclusivism and inclusivism. Thus far, the convergence solution suggests that it does. Yet, as we are about to see, there may be reasons to doubt this if some more recent analyses of consensus and inclusivism prove sound.

To begin with, it is worth noting that there are some limits to the conciliation convergence achieves. Inclusivists could, for example, still complain that religious reasons would not be able to publicly justify any political-exercise except by convergence with non-religious reasons as the case may be.<sup>46</sup> Thus, if in the TVPA example there was no support from secular feminists and instead various secular groups opposed the law, the religious reasons would be inadequate to publicly justify on their own, no matter their cogency all things considered. Admittedly, this flows both ways, but on the whole, it is far more likely that what is endorsed for secular reasons could be also endorsed for religious reasons, yet not the reverse. This asymmetry may make convergence still dissatisfying for robust inclusivists.

More importantly yet, convergence does not necessarily abandon Restraint. This may sound peculiar given that the public-reason-requirement has been amended to allow any intelligible reasons, thus making Exclusion and thereby Restraint arguably redundant. Without Exclusion, what content would Restraint even have? At the very least though, there could be Exclusion of non-intelligible reasons and thereby potential Restraint concerning those.

Far more crucially, Restraint might also be relevant in relation to voting for political-exercise. Since voting outcomes are actual (not idealized) and typically majoritarian rather than unanimous they do not track convergent reason(s). Accordingly, to help ensure that political-exercise enacted through voting is one that could be supported by convergent reason(s), there may be grounds for Restraint in the form of only voting for political-exercise that one *sincerely* believes could be supported by convergent reason(s). There may, of course, be contention about just what exactly this Restraint would require of MOPs and whether it would apply to all MOPs or only those with greater influence over outcomes such as elected representatives or public officials.<sup>47</sup> Nevertheless, what emerges here is that

<sup>45</sup> For a partial overview see Andrew Lister, 2011, ‘Public Justification of What? Coercion vs. Decision as Competing Frames for the Basic Principle of Justificatory Liberalism’ (2011) 25 *Public Affairs Quarterly* 349, 356 ff.

<sup>46</sup> Eberle (n 21) 43.

<sup>47</sup> Vallier (n 6) 184–96.

there is a form of Restraint relevant to convergence given that voting and political decision making—especially at the level of public office—otherwise lacks a mechanism to ensure that only political-exercise backed by convergent reason(s) is enacted.

With the above observations, it appears increasingly as if, despite its innovations in redefining the public-reason-requirement, what ultimately counteracts the inclusivist unfair-burden-objection is not the convergence model per se but the deviation from Restraint as conceived on the standard view. Yet, if that is correct, then it seems to imply that there is nothing inherently exclusivist about consensus as opposed to the form it takes within the standard view. If the consensus model can compatibly reform the standard view Restraint into something like the convergence version, it too could offer a similar accommodation of inclusivism.

It is precisely this move that some consensus theorists have sought to make. Aurélia Bardon, for example, has plausibly argued that there is nothing essential to the standard view that should lead one to endorse its form of Restraint.<sup>48</sup> Accordingly, it is open to consensus theorists to meet the objections of inclusivism by going even further beyond the Rawlsian concessions discussed earlier and adopting a ‘limited’ Restraint.<sup>49</sup> Unlike what might be called general Restraint or the ‘direct method’, which applies to all MOPs, limited Restraint (or ‘indirect’ method)<sup>50</sup> only applies to MOPs who directly influence political-exercise—namely, public officials such as legislators, judges, and other office holders with executive or administrative powers.<sup>51</sup>

To be sure, limited Restraint is not identical to the convergence Restraint. Convergence Restraint could vary between general/direct or limited/indirect forms - even if it mostly leans towards the second, applying where one justifiably believes that one’s vote or political-advocacy contributes to the imposition of political-exercise.<sup>52</sup> Nevertheless, as some convergence theorists have themselves conceded, limited Restraint could likewise counter much of the unfair-burden objection by allowing MOPs (other than public officials) to freely appeal to their deepest convictions regardless of their comprehensive/sectarian character. This is because limited Restraint secures Exclusion without the unfair-burden costs of direct method Restraint. In Vallier’s summation, it allows non-public reasons ‘into the political process, but does not let them leave’.<sup>53</sup> Furthermore, as Bardon stresses, in applying only to the *roles* of public office, limited Restraint only imposes burdens by voluntary assumption, meaning that religious MOPs can avoid being burdened simply by ‘not becoming public officials’.<sup>54</sup>

Convergence theorists might object here that even if it unburdens citizens, there is no alleviation for religious public officials who are inequitably more burdened than their secular counterparts. Nor does the voluntary assumption matter since if some bear greater integrity costs in pursuing and holding public office, this is unfair and inconsistent with the liberal ideals of public offices being equitably open to all. The objection itself has force, but not in the comparative context since convergent Restraint would itself be liable to this objection. As such, consensus, via limited Restraint, so far looks capable of equalizing the advantage claimed by convergence.

A more difference-focused challenge might be that unlike convergent Restraint, the limited Restraint of consensus remains vulnerable to internal contestation with the (general)

<sup>48</sup> Bardon (n 7) 651–57.

<sup>49</sup> *ibid* 650.

<sup>50</sup> Vallier (n 6) 51.

<sup>51</sup> Bardon (n 7) 650.

<sup>52</sup> Kevin Vallier, ‘Public Justification versus Public Deliberation: The Case for Divorce’ (2015) 45 *Canadian Journal of Philosophy* 139, 153.

<sup>53</sup> Vallier (n 6) 51.

<sup>54</sup> Bardon (n 7) 650.

Restraint of the standard view.<sup>55</sup> The arguments effectively turn on whether the conventional Rawlsian picture of citizens as democratic equal co-rulers<sup>56</sup> withstands the posited realities of representative democracies where citizens exercise but a negligible degree of political power.<sup>57</sup> While, as indicated, I think a plausible case might be made, this all again turns out to be beside the point. Not only might convergent Restraint also rely on such arguments in leaning towards indirect method/limited Restraint, but moreover, as Paul Billingham observes, the common assumption here, namely Restraint being established by reference to its instrumental function vis-a-vis Exclusion, is itself contestable if Restraint has intrinsic grounds of justification.<sup>58</sup> One way or the other, there is no apparent advantage.

If anything, the above considerations would suggest that consensus and convergence can reach an on-par inclusivism because the leanest or minimal form of Restraint seems equally available to both, provided it can be defended from those insisting on the standard view and from the so far undiscussed intrinsic justifications. Sound as that may be, this conclusion rests almost entirely on a significant assumption about the instrumental (if not intrinsic) necessity of Restraint. This assumption, despite significant theoretical resources agitating for critical revision, has remained astoundingly unquestioned almost as if an inviolable premise. In the final part below, I argue that overturning this assumption about the inherent necessity (instrumental or intrinsic, minimal or otherwise) of Restraint to public justification reveals the irradicable relevance of consensus and convergence in determining just how exclusivist or inclusivist justificatory liberalism must be.

## 6. JUSTIFICATION UNRESTRAINED

So far, the underlying constant in the discussion has been the opposition between Restraint and inclusivism. Indeed, through this persistent focus even the considerable and illuminating differences uncovered between consensus and convergence as to the public-reason-requirement and Exclusion were remarkably reduced to merely establishing the possibility of convergent Restraint—a possibility not substantially more inclusivist than consensus limited Restraint. More remarkably still, despite having the theoretical resources to do so in minimizing Restraint, neither model seemed to exploit these resources further towards altogether severing Restraint. While there may be various ways of accounting for it, this assumption of Restraint's necessity appears irrevocably entrenched or taken as a foundational given. At one point, Bardon even tellingly confirms as much in her unelaborated assertion: 'there can be no justificatory liberal alternative to limited restraint for public officials'.<sup>59</sup>

As Eberle observes, despite being so widely held across many justificatory liberal accounts, this assumption that PJP entails or otherwise implies Restraint, receives virtually no direct explication.<sup>60</sup> This, of course, need not mean that there cannot be one. Indeed, as alluded to in the preceding section, the case for Restraint may rely on intrinsic or instrumental grounds. A full engagement with these is beyond our purview, but it is worth highlighting two prominent proposals to reveal that Restraint is by no means an easy or settled presumption to make.

A prominent intrinsic justification is that of 'respect'. Seminally articulated by Charles Larmore, respect advocates for Restraint by appealing to our distinctive capacity as persons to act for reasons, which effectively entitles us to receive sufficient reason(s) (public or

<sup>55</sup> Vallier (n 6) 51–52.

<sup>56</sup> Rawls (n 1) 216–18.

<sup>57</sup> Bardon (n 7) 653–56.

<sup>58</sup> Billingham (n 7) 350–51.

<sup>59</sup> Bardon (n 7) 650.

<sup>60</sup> Eberle (n 8) 114–59.

convergent, as the case may be) when subjected to the incidents of involuntary political association<sup>61</sup>—namely, political-exercise. Resonant as that may be, there is a two-fold problem. Not only does respect seem to base Restraint on reasons arguably violating Restraint, but, even discounting that, it still begs the question: Why should complying with respect require or take the form of Restraint?<sup>62</sup> Indeed, it might be argued that respect is already properly afforded by conscientious civic engagement whether or not one ultimately succeeds in furnishing a public justification for political-exercise.<sup>63</sup> Conscientious engagement might, for instance, involve earnestly endeavouring to attain public justification, communicating one's reasons in their most cogent and accessible form, actively listening to other MOPs and learning the alternative reasons or objections. Thus, even granting respect its own basis, leaves the difficult task of bridging the gap to Restraint and eliminating substitute proposals for achieving respect.

Turning to the instrumental case, it is often framed in terms of 'stability'. This essentially holds that (i) appeals to non-public reasons have destabilizing effects and (ii) Restraint prevents or considerably reduces those effects thereby promoting stability. Much like with other forms of consequentialist reasoning, the soundness of this argument predominantly depends on its empirical claims and their interpretation. These are too elaborate to discuss here, but they have been shown to be highly contestable.<sup>64</sup> More crucially though, instrumental appeals to stability do not explain why stability ought to be an individual end or one that cannot be more directly and robustly secured by structural institutional mechanisms rather than Restraint?

As noted, however, these arguments are primarily rationalizations of the implicit assumption. Accordingly, might it just be that the most compelling case for Restraint is warranted by the structure of PJP itself? That is, if one accepts that PJP leads to Exclusion and Excluded reasons (non-public or non-convergent, as the case may be) have no justificatory capacity, Restraint may seem plausible. After all, if political-exercise justified decisively upon Excluded reasons cannot satisfy PJP and thus gain legitimacy, is it not rather pointless to rely on such reasons in furnishing public justification?

Reviving the earlier arguments for limited Restraint, the above justification could be restricted to the higher level of public officials, but that leaves us precisely with Bardon's above-quoted remark with which we began: that limited Restraint is fundamentally inseparable from justificatory liberalism's commitment to PJP. Challenging this limited instrumental justification requires a more elaborate response.

That begins with noting what appears to be a critical ambiguity within PJP with regard to public justification or rather two senses in which it might be understood. Public justification might be taken to be an abstract relational property pertaining to when there are reason(s) for political-exercise that render it *justified* or, more precisely, *justifiable*.<sup>65</sup> Call this the 'abstract-sense'. Yet, it might also be construed as the activity or *process* by which MOPs (or public officials) actually publicly justify political-exercise—ie, process of furnishing (non-Excluded) justificatory reasons. Call this the 'process-sense'.

This ambiguity is not unfamiliar. Vallier, for example, characterizes it in terms of public *justification* versus public *deliberation* and Bardon as 'PJ-Legitimacy/PJ-Civility'.<sup>66</sup> Yet,

<sup>61</sup> Charles Larmore, 'The Moral Basis of Political Liberalism' (1999) 96 *Journal of Philosophy* 599, 605.

<sup>62</sup> Steven Wall, 'Is Public Justification Self-Defeating?' (2002) 39 *American Philosophical Quarterly* 385, 390; Eberle (n 8) 109–16, 146–51.

<sup>63</sup> Eberle (n 8) 84–108.

<sup>64</sup> *ibid* 152–86.

<sup>65</sup> Just what it is that does so is of course specified by each discrete account of PJP and public justification. I elaborate on the difference between justified and justifiable further below.

<sup>66</sup> Vallier (n 6) 35; (n 52) *passim*; Bardon (n 7) 645.

despite their acute awareness and cogent elaboration of it in developing minimalist forms of Restraint, both curiously underestimate the fuller import of the distinction.

While it is plausible that (limited) Restraint can play an instrumental role in ensuring that each political-exercise has been furnished with justificatory reasons that satisfy PJP, it is in fact not strictly necessary when PJP is taken to refer to public justification in the abstract-sense. To see this, imagine a controversy over some political-exercise such as a public revenue-financed large construction project: for instance, a dam. Suppose in voting for the measure the majority party public officials appeal to a non-public reason such as personal revelation or religious scriptural commandments. To make it more acute, it may even be a majority judgment on these grounds in a judicial review or constitutional challenge to the law. Does this failure of Restraint mean that the political-exercise has not been publicly justified and is therefore illegitimate?

The answer, unsurprisingly, depends on the above distinction. Taken in the process-sense, since the reasons furnished are non-public, by stipulation, the answer is clearly no. Yet, when it comes to the abstract-sense, things are less clear. The answer depends on the totality of reasons that there might be for and against constructing the dam. If, for example, all this occurs within a political community located in the desert, then perhaps the religious reasons actually adduced might indeed be the most salient considerations for the dam. Conversely, if there is in fact water to be dammed, other reasons arise. For example, economic or environmental reasons like water security or irrigation benefits. Then, even though advancing (non-convergent) religious reasons fails public justification in the process-sense, public justification in the abstract-sense is not thereby failed. Religious reasons aside, there appear to be public reasons that apply here *even if no one actually pronounced them*. It is this potentiality in the abstract-sense that my above use of publicly *justifiable* intends to convey.

Now if political-exercise can be publicly justifiable and therefore legitimate by PJP irrespective of Restraint, then the process- and abstract-senses are far more mutually independent than even those pressing the distinction properly recognize. More critically, this means that the question of what is publicly justifiable is entirely severable from and more fundamental than that of how and whether it has been (process-sense) publicly justified. Restraint is certainly instrumental to the second, but has no bearing on the first. When it comes to the abstract-sense it is Exclusion and whether the public-reason-requirement is to be modelled by consensus or convergence, which is determinative. And, as already observed, with regard to Exclusion the consensus and convergence models diverge in their potential for inclusivism.

The above point is worth emphasizing because it underscores how within justificatory liberalism minimizing or even extinguishing Restraint entirely does not enable the consensus model to embrace inclusivism, understood in the abstract-sense. Thus, Bardon is entirely consistent in her defence of exclusivist justificatory liberalism and commitment to the consensus model. The problem instead lies in the confidence that the potential of each model to reach similarly minimal levels of Restraint equalizes consensus and convergence as both exclusivist in the minimal sense that justificatory liberalism must be. The abstract-sense, however, reveals a dimension of public justification upon which Restraint has no bearing. Considering public justification in the abstract, we are concerned with the totality of conceivable justificatory reasons for the political-exercise in question. It is this which gives indication of how convergence justificatory liberalism can be inclusivist in ways unavailable to consensus therefore rendering the choice between these models pertinent in determining the extent to which justificatory liberalism can be inclusivist.

To see this more clearly, return to the desert version of the dam scenario. Given the stipulated controversy about the political-exercise in question (constructing the dam), to offer

only religious reasons would fail to publicly justify and hence legitimate the political-exercise on either model on the *process-sense*. (For consensus, the public-reason-requirement is failed; for convergence, the stipulated controversy rules out convergent reasons). Things are different on the abstract-sense, however. As noted, the desert environment plausibly eliminated many of the candidate accessible/shareable reasons that could have satisfied the public-reason-requirement of consensus-PJP. Consequently, without the existence of alternative public reasons, the religious reasons offered leave the political-exercise publicly unjustifiable irrespective of what sectarian/comprehensive reasons there might be in support of the dam. And yet, in emphatic contrast, on the convergence model, these religious reasons may nonetheless still suffice to make the dam publicly justifiable in the abstract-sense. All that is necessary is for all intelligible reasons to converge (ie, that there be convergent reason in support of the dam). Thus, if the majority had religious reasons and the minority were utilitarians or in some other way supportive of majority-preference satisfaction, there could be public justification for the dam on entirely religious (or other sectarian/comprehensive) convergent reasons.

From this, it emerges that although consensus and convergence may attain equal levels of inclusivism when it comes to limited Restraint, this pertains to the narrow domain of comparison: the process-sense. At a more fundamental level of the abstract-sense, which concerns what is, in principle, publicly justifiable, it is Exclusion, not Restraint, which proves operative. Consensus justificatory liberalism here will Exclude the very reasons that, on the convergence model, might publicly justify as convergent reasons. The abstract-sense of public justification therefore preserves the differences between the two models with direct implications for determining justificatory liberalism's alignment possibilities between exclusivism and inclusivism.

It might be objected that all this moves too fast and there are various ways in which the abstract-sense and process-sense are either more equal or intertwined than I have presented. For instance, whereas the dam scenario starts from public justification in the process-sense being failed, that overlooks the instrumentality of the process-sense in preventing (abstract-sense) publicly unjustifiable political-exercise. Had the judges practised limited Restraint they would have overruled the dam in the desert, for example. Without at least limited Restraint, justificatory liberal polities might be eroded by illiberal majorities or otherwise unstable. Granted, but this question is distinct from that of working out whether the political-exercise in question is publicly justifiable. Indeed, as the comparison of models in the desert version just illustrated, applying Restraint presupposes an answer to what is publicly justifiable in the abstract-sense, which in turn requires an account and model of public justification.

Still, it may be countered that the distinction is less neat than that. Without the process-sense of public justification, how can we even form what is publicly justifiable in the abstract-sense? Is it not through the process of actually offering one another reasons and publicly deliberating the matter that reveals to us what reasons (in the abstract-sense) there are? Were all MOPs to be appealing to esoteric reasons would it even be possible to discover what shared—for example, economic or environmental reasons there might be? And, in any case, who decides what model is correct and what is publicly justifiable in the abstract-sense if each MOP only has their perspective to go by?

Again, these are valid concerns but they merely point to the fact that there are multiple ways of theorizing public justification. On some accounts the abstract-sense must be highly sensitive to the actual make-up of a constituency and its deliberations whereas on other accounts that may have zero bearing because the constituency is entirely idealized.<sup>67</sup> That and how exactly one idealizes are all deeply contested internal questions that are beyond

present scope. What matters here is that the abstract-sense can be independent of the process-sense occupying a reflective, philosophical standpoint about what reasons there are and which matter for public justifiability. As such, it is not immune to controversy and historical and/or cultural particularity. From our contemporary standpoint, we can disagree about whether, say, investing in divination is publicly justifiable precisely because there is no certainty in the connection between divination and preventing various maladies. Conjecturally, if, in antiquity, such a certainty extinguished any doubts then perhaps from that historical-cultural standpoint a case for public justifiability could be made much like we make between the dam and, say, its economic benefits. In short, though not uncomplicated, the abstract-sense is conceptually distinct and plausibly severable from the process-sense without incoherence.

## 7. CONCLUDING REMARKS

With the benefit of the foregoing, we can, by way of conclusion, retrace the argument and dialectic of the preceding sections. Starting with the standard view incorporating the consensus model of justificatory liberalism, the inherently exclusivist character of public justification under the public-reason-requirement was evinced. This was contrasted with the innovative moves of the convergence model in abandoning the public-reason-requirement in favour of convergent reasons, which enabled an inclusivist justificatory liberalism, making the consensus–convergence choice pertinent to determining justificatory liberalism’s possibilities between exclusivism and inclusivism about religion.

This apparently settled dichotomy was then questioned by considering the potential for the consensus model to replicate the inclusivist possibilities of convergence by abrogating the standard view of Restraint in favour of a more minimal form resembling that of convergence Restraint. The success of these moves in distinguishing more clearly between Exclusion and Restraint challenges the prior settlement that the choice between consensus and convergence determines justificatory liberalism’s exclusivist–inclusivist alignment.

Arguing against these proposals, this article contended that whatever parity might be achieved between consensus and convergence via the practical or instrumental role of Restraint and its more inclusivist possibilities, this is entirely severable from the question of Exclusion or justificatory capacity of religious reasons in public justification. Drawing on the already noticed conceptual distinction between public justification as justification/legitimacy and as deliberation/civility and its corresponding relevance for separating Restraint from Exclusion or PJP itself, this article posited a yet more robust and consequential form of that distinction—namely, between the process-sense and abstract-sense of public justification. The comparison between the two senses underscored the abstract-sense as the more primary or fundamental of the two. Indeed, not only does the process-sense and Restraint presuppose answers to the abstract-sense of public justification for evaluating its success, the failure of Restraint might not even matter if the political-exercise is publicly justifiably and therefore legitimate by satisfying PJP in the abstract-sense.

Accordingly, the apparent equalization that might be achieved between consensus and convergence in relation to Restraint is confined to a narrow and secondary domain of the process-sense. At the more fundamental level of applying PJP to ascertain legitimacy, the divergence between the consensus and convergence models proves critical with implications for the justificatory capacity of religious reasons. Thus, insofar as the abstract-sense is the

<sup>67</sup> A notable version of this is Quong’s ‘internal conception’ of justificatory liberalism which he contrasts with the ‘external’—see Quong (n 13) 138–45.

primary one, the question of justificatory liberalism's alignment between exclusivism and inclusivism cannot be answered without reference to the consensus or convergence models. And with many other matters intertwined therein, the contest between exclusivism and inclusivism within PJP is part of a far more elaborate puzzle about the internal logic of justificatory liberalism itself where far more philosophical inquiry awaits.