

Complicating Religion in Public Reason

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INTRODUCTION

1. In 2010 in Murfreesboro, Tennessee the construction of a Muslim mosque was the subject of ongoing protests, even becoming the site of repeated vandalization. This culminated in a lawsuit brought against the city's Regional Planning Commission who had approved the mosque's construction, in which the plaintiffs argued that the mosque should not be built.¹ The judge in that case, Robert Corlew II, ultimately issued a memo in 2012 which ordered that construction on the mosque should cease.² The arguments provided throughout, by both local citizens and legal authorities involved, centered around the idea that Islam is not a religion. Instead, they argued, Islam is better understood as a political ideology or a vehicle for women's oppression, and the mosque itself as a site of terroristic threat.³ Ultimately the court's ruling was overturned by a higher federal court which argued that Corlew's decision constituted a breach of religious liberty since it treated Muslim citizens, widely recognized as religious, unequally.⁴

2. In an ongoing current event, tens of thousands of people are protesting in India against the Citizenship Amendment Act.⁵ This law provides a path to citizenship to immigrants entering from neighboring countries, but only if they are of a religious identity other than Muslim.⁶ Analogies have been drawn between this bill and the 2017 "Muslim ban" passed in the United States.⁷ Supporters of the bill argue that it protects other non-Muslim persecuted minorities, while protestors argue that the bill reflects rising anti-Muslim sentiment in the country and undermines India's constitutional commitment to secularism.⁸ The situation is further complicated by India's anti-proselytization laws which are

¹ Asma T. Uddin, *When Islam is Not a Religion* (Pegasus Books, 2019), 32-35.

² *Ibid.*, 36.

³ *Ibid.*, 34-35.

⁴ *Ibid.*, 37.

⁵ "Citizenship Act protests: Three dead and thousands held in India," *BBC News*, 19 December 2019.

<https://www.bbc.com/news/world-asia-india-50833361>

⁶ "Citizenship Amendment Bill: India's new 'anti-Muslim' law explained," *BBC News*, 11 December 2019.

<https://www.bbc.com/news/world-asia-india-50670393>

⁷ Bilal Kuchay, "What you should know about India's 'anti-Muslim' citizenship law," *Al Jazeera*, 16 December 2019. <https://www.aljazeera.com/news/2019/12/india-anti-muslim-citizenship-bill-191209095557419.html>

⁸ Mohammad Ali, "Thousands protest in US cities against India citizenship law," *Al Jazeera*, 27 January 2020.

<https://www.aljazeera.com/news/2020/01/thousands-protest-cities-india-citizenship-law-200127083331402.html>

purportedly a protection of religious freedom, given that someone's freedom of religion means they should not be coerced into any other religious views, but which have historically targeted Muslims and Christians, both religious minorities.⁹

3. In 2015, Vermont became the first state to repeal the possibility for parents to invoke a personal, non-religious reason to acquire a vaccine exemption for their children.¹⁰ California has since similarly repealed the ability to declare either a personal commitment or a religious reason in order to receive a vaccine exemption for one's children, due in large part to an outbreak of measles tied to Disneyland in December of 2014 which affected 131 people in California alone.¹¹ This may seem like an odd reversal, given that for most states it was just in the early 2000's that their laws were adjusted to allow for exemptions on non-religious grounds.¹² And yet decreasing percentages of vaccinated populations have led to other states following similar trajectories, first relaxing such laws to allow for those without reasons commonly understood as religious to have an equal claim to exemption from the law, then walking back both justifications to protect public health.¹³ The value formerly placed on parents' ability to choose for themselves the sort of lives their children will lead has been superseded by the value placed on the health of the community.

These three recent cases illustrate the ongoing challenge faced by liberal states of what attitude to establish towards religion and religious citizens, including how to determine the nature of what constitutes "religion" itself, how to determine who has a relevantly religious identity, and how to protect both religious citizens and those citizens who don't understand themselves as religious. Religious

⁹ "State Anti-conversion Laws in India," *Library of Congress*, last updated October 11, 2018, <https://www.loc.gov/law/help/anti-conversion-laws/india.php>.

¹⁰ "States With Religious and Philosophical Exemptions From School Immunization Requirements," *National Conference of State Legislatures*, January 3, 2020, <https://www.ncsl.org/research/health/school-immunization-exemption-state-laws.aspx>.

¹¹ Julia Wick, "Newsletter: Essential California: How a 2014 Disneyland measles outbreak changed state history," *Los Angeles Times*, May 7, 2019, <https://www.latimes.com/newsletters/la-me-ln-essential-california-20190507-story.html>.

¹² Daniel Salmon, et al, "Public Health and the Politics of School Immunization Requirements," *American Journal of Public Health* 95, no. 5 (May 2005): 778.

¹³ Kate Barcellos, "Bill would remove religious exemptions for vaccines," *Rutland Herald*, February 18, 2019, https://www.rutlandherald.com/news/local/bill-would-remove-religious-exemption-for-vaccinations/article_73ec099e-3195-551e-b378-d012ae85d502.html.

identification continues all over the globe to be a relevant feature in determining who is allowed special treatment and who is set aside for discrimination, demonstrating again and again that the relationship between liberal democracies and religiously-identifying persons is a fraught one. And, like many problems in political philosophy, these challenges of identifying the proper treatment of religion in liberal democracies seem to only have gotten harder over time.

Furthermore, this set of challenges is not just a contemporary phenomenon, but has its origins in the Modern period and in the formation of liberalism itself. Liberalism has been from the beginning driven by an effort to reconcile the fundamental freedom of all people with the need for people of diverse moral and religious commitments to live together, forming states and authorities in the process.¹⁴ This entails the labor of both determining what constitutes a legitimate exercise of power as an authority as well as sorting out how those who deeply disagree with one another could live together peacefully. This has particular salience for those groups who have a shared desire to live together peacefully but still have deep disagreements about what is most importantly true or what constitutes a good life.

Against this backdrop the specific form of liberalism known as justificatory liberalism has emerged. Justificatory liberalism is a liberalism concerned primarily with establishing a means of justifying publicly, and to all citizens, the use of coercive force by the government.¹⁵ In doing so, it hopes to answer the central question of political philosophy: what constitutes a legitimate government, given that citizens (according to liberalism) have a presumption of freedom? If citizens are all free and equal to one another, how can anyone claim power over another legitimately? Justificatory liberalism argues that governments and their exercise of coercive power can be rendered legitimate in the case that they can be justified by reasons that all citizens can understand and be expected to accept.

Found in this conception of justificatory liberalism is an element of publicity, one which John Rawls drew out as central to the project, arguing that “principles of political association should be” not

¹⁴ John Locke, *A Letter Concerning Toleration*. Hackett Publishing Company, 1983.

¹⁵ For a helpful review of this term, see Gerald Gaus, *Justificatory Liberalism: An Essay on Epistemology and Political Theory*, (New York: Oxford University Press, 1996).

only “an object of public knowledge,” but should be determined collectively.¹⁶ The means of such determination he called public reason.¹⁷ The notion of public reason is intended to correct for the problem of liberalism and religion by offering a basis on which citizens with deeply different comprehensive commitments, including religious commitments, could come together to pursue in a shared fashion the project of a legitimate government. Public reason, Rawls hoped, could be the common ground on which differently religious and non-religious citizens could come together.¹⁸

This conception of public reason and the form of public justification – political liberalism – which it undergirds have not, however, avoided criticism from religious citizens who have continued to find liberal treatments of religion not only unsatisfying but harmful. Such criticism goes hand in hand with an emerging trend in the humanities broadly of recognizing many contemporary societies as “post-secular,” where post-secularity indicates that they are no longer societies in which a secular, specifically non-religious future, is thought of as an inevitable or even as a superior future.¹⁹ This runs directly counter to Jose Casanova’s 1994 “secularization thesis,” which declared that religion would only decline in importance and influence in future years.²⁰ This recognition of post-secular societies, in its best forms, runs alongside the turn in Religious Studies departments towards a critical assessment of the way in which “religion” has been treated and conceptualized, both in the form of a close look at how the concept came to be understood as a universal one, and at its conceptual relationship to “secularism.”²¹

In light of this ongoing criticism, both from religious citizens and from critics on their behalf, competing forms of public justification have developed. Most notably, a model of public justification which calls itself the *convergence* model has put itself forward as a model which can correct for what

¹⁶ Charles Larmore, “Public Reason,” in *The Cambridge Companion to Rawls*, ed. Samuel Freeman (Cambridge: Cambridge University Press, 2003), 368.

¹⁷ Ibid.

¹⁸ “Interview with John Rawls: Politics, Religion, and the Public Good,” *Commonweal Magazine*, first published 25 September 1998. <https://www.commonwealmagazine.org/interview-john-rawls>.

¹⁹ Jürgen Habermas, “Notes on a Post-Secular Society,” *New Perspectives Quarterly* (October 2008): 17-29.

²⁰ José Casanova, *Public Religions in the Modern World* (Chicago: University of Chicago Press, 1994).

²¹ Elizabeth Shakman Hurd, *Beyond Religious Freedom: The New Global Politics of Religion*, (Princeton: Princeton University Press, 2015).

religious citizens assert is a longstanding mistreatment of religion by liberalism. The convergence model purportedly does so by protecting the integrity of religious citizens and reframing liberalism and religion as, when rightfully understood, not in battle with one another. It is in the midst of this debate, between the up and coming convergence model of public justification and the model it projects itself against, the consensus model of public justification, that I situate my dissertation. It is therefore not a defense of liberalism generally, or public reason liberalism in particular. While I will argue that there are compelling and valuable dimensions of public reason, I will not here defend it from its many external critics. Instead, I locate my efforts in this debate internal to the public justification conversation, in which I aim to perform a focused assessment of the way it can and should be informed by a more sophisticated understanding of religion, particularly as it has been developed in recent literature in Religious Studies.

Ultimately, I will show three things. First, I will argue that the convergence model fails in its goal of being better for religion and religious citizens, and in its goal of being a post-secular liberalism which can right the long misguided relationship between liberalism and religion. Second, I will update the conversation surrounding religion in the public reason debate by providing a presentation of the central insights offered by a more sophisticated conception of religion, and by arguing for the relevance of these insights against dismissive criticisms of their genealogical elements. The notion of religion used in the public reason debate has remained largely unchanged since its inception and has stayed almost entirely uninformed by work done on the term's history or its rich contemporary diversity, and all of this in spite of the fact that the notion of religion is absolutely central to these conversations. I will here begin the process of rectifying this. Third and finally, I will argue that in their dispute over the proper treatment of religious citizens and religion generally, the consensus and convergence models break even, leaving the debate between the two to be settled on other merits of the two models, in particular on the vision of liberalism to which they are individually committed. This "breaking even" is primarily a blow to convergence (given that it undoes the central gain convergence claims to be making over consensus), but also helpfully illuminates the way in which one of the central conversations in contemporary discourse

and debate about liberalism is in need of an overhaul which may have substantial implications on the conclusions being reached.

To do so, I will present four chapters which will proceed as follows. In Chapter 1 I will offer an introduction to the key terms, ideas, and motivations at play in the public reason debate. I will demonstrate that there is an ambiguity as to how the central principle of public justification is interpreted, and clarify how this ambiguity has allowed for a competing form of public reason, the convergence form, to develop. This form of public reason arose in response to serious and sustained criticism of the original form of public reason, consensus, on the grounds that it inhibits in a variety of ways the integrity of religious citizens. In Chapter 2 I will examine in detail the nature of the criticisms raised by religious citizens, focusing in particular on the Integrity Objection. I will then consider how both the consensus and convergence forms of public justification respond to the Integrity Objection, setting the stakes of the debate out fully. In Chapter 3 I will introduce a more sophisticated understanding of religion, guided by a school of thought known as “critical religion” and focused primarily on the Semantic Critique of religion. This will include an account of the central claims made by critical religion – particularly those genealogical claims – and an examination and response to the objection most commonly used to dismiss these, the charge of having committed the genetic fallacy. I’ll argue that the genealogy offered by critical religion provides us with the best guideline for future political accounts of religion, given the damage done by the Semantic Critique. Finally, in Chapter 4 I will bring together these insights concerning the nature of religion to take up the case against convergence. I will argue that, contrary to its claim of better answering the Integrity Objection than the consensus model, the convergence model actually fails to succeed in being better for religious citizens, and furthermore, that it fails overall in its claim to resolve the tension between liberalism and religion. I then conclude that, despite this failure of the convergence model, the differences between consensus and convergence are, in the final analysis, not substantively revealed by critical religion. Religious considerations are therefore not sufficient adjudicating grounds on which to distinguish between the consensus and convergence forms of public justification, rather the debate between the two must be decided on other grounds.

CHAPTER I

SOLVING THE IMPOSSIBLE: THE EMERGENCE OF PUBLIC REASON

The rise of liberalism has long been cast alongside the decline of religion. Liberalism and its alleged handmaiden secularism have accordingly been positioned as the path makers for religion's demise, and philosophers have sought accordingly for a way to defeat one, the other, or in a growing trend, to eradicate the tension altogether. The convergence form of public reason aims to do that very thing, and argues that it is the form of liberalism which can accommodate fairly, yet robustly, the insights, existence, and practitioners of religion while maintaining the hardy freedoms of liberalism. And yet, in this dissertation I will argue that convergence fails to do so. Instead, I will demonstrate that convergence is not superior to its opposing counterpart – the consensus form of public reason liberalism – with regard to its treatment of religious citizens, and further, that on a more sophisticated reading of the relationship between liberalism and religion, it not only fails to solve the ongoing tension between liberalism and religion, but actually inscribes that tension over again in a way which reinforces some of its most dangerous features and assumptions.

In this first chapter, I'll begin by introducing the idea at the heart of this dissertation, public reason, to answer what it is and why it's a worthwhile area of study. This will include a brief account of the context of public reason: what was Rawls' overall project and why was public reason such an essential part of it? I'll develop an account of the key features of public reason, particularly as Rawls revised his conception of it over his next two decades of scholarship. Second, I will answer specifically what the place of public reason is in regard to the central question of political philosophy and the project of public justification. This discussion will draw out an ambiguity at the heart of the project of public justification that leaves open the possibility of the development of different models of it. Third and finally, I will flesh out the two positions, consensus and convergence, whose dispute comprises the frame of this dissertation. By the close of this chapter I will have introduced all of the key terms, debates, and

motivations which will orient my dissertation and will have hopefully prepared the reader for the arguments to follow.

1. What is Public Reason?

The idea of political liberalism first appeared in Rawls' revisionary essay, "Justice as Fairness: Political not Metaphysical," wherein he returned to the central ideas of his 1971 book, *A Theory of Justice*, and argued for his famous formulation of applying "the doctrine of toleration to philosophy itself," rendering the idea of justice as fairness a *political* rather than *metaphysical* doctrine.²² This effort, to ensure that such public political conceptions of justice would be "so far as possible, independent of controversial philosophical and religious doctrines," demanded that there in tandem developed a form of speech likewise independent from such controversy.²³ This form of speech, public reason, was developed fully by Rawls in his seminal work *Political Liberalism*, first published in 1993. Covering little more than forty pages, Lecture VI of the expanded edition of the text, "The Idea of Public Reason," has come to be the basis for a substantive contemporary debate in political theory. An idea that seems intuitive, even unremarkable, at first glance, reveals on closer inspection depths of controversial implications. The purpose of this literature review is to orient the reader in the Rawlsian project of public reason and to highlight those key concepts which will be essential to later chapters, in particular the concepts of public reason, reasonableness, and the overlapping consensus. I won't attempt to argue for the superiority of one interpretation of Rawlsian public reason over another, rather I aim here to give an overview of the position with an eye towards some of the disputes surrounding it.

²² John Rawls, "Justice as Fairness: Political not Metaphysical," *Philosophy and Public Affairs* 14, no. 3 (Summer 1985), 223.

²³ Rawls, "Justice as Fairness," 223.

1.1 The Nature of Political Liberalism

Rawlsian political theory takes as its goal the resolution of the tension between coercive government and citizens understood as free and equal individuals. Recognized by many as the central challenge of political philosophy, this tension concerns the possibility of a legitimate state: how could any state have the right to exercise coercive power, even though all of its citizens are free and equal, a status which grants them a robust presumption against being coerced? Rawls' first attempt at solving this problem, specifically situated in the political theory of his day (where utilitarianism had come to dominate since its rise in the 19th century), was to rehabilitate social contract theory by offering a version of the contract which was hypothetical and grounded in large part in the Kantian moral project. This attempt included the concepts of the Veil of Ignorance and the Original Position, which stood in for the social contract tradition's "state of nature." Through this model, which Rawls understood to embody the idea of fairness and cooperation among free and equal citizens, Rawls emerged with the idea of "Justice as Fairness," a comprehensive conception of justice that recommended the implementation of two specific principles of justice.²⁴ Justice as Fairness faced a number of objections, however, and Rawls was drawn into a project that was at once both a revision and an expansion of his previous work.²⁵

As Rawls saw it, the central challenge to Justice as Fairness was, put simply, the problem of disagreement. Rawls proposed in the final section of *Theory of Justice* that a successful society would be one in which all people shared the convictions of Justice as Fairness.²⁶ But surely, as the objections Rawls found compelling ran, there would be citizens who would not share such convictions. These citizens would be liberal, in the broad sense of the term (that is, convinced of the freedom and equality of all

²⁴ Though Rawls didn't use the language of "comprehensive" conceptions at the time. Also, "Justice as Fairness" is capitalized here and throughout because it refers not to the general idea that justice ought to be fair but to Rawls' *particular*, named conception of justice.

²⁵ For important criticisms of Rawls' *Justice as Fairness*, see the excellent volume edited by Norman Daniels, *Reading Rawls: Critical Studies of 'A Theory of Justice'* (Oxford: Blackwell, 1975). For more specific critiques, see Iris Marion Young's *Justice and the Politics of Difference* (Princeton University Press, 1990), and "Taking the Basic Structure Seriously," *Perspectives on Politics* 4, no., 1 (March 2006), as well as Michael Sandel's *Liberalism and the Limits of Justice* (Cambridge University Press, 1982), Alasdair MacIntyre's *After Virtue* (University of Notre Dame Press, 1981), and Amartya Sen's *The Idea of Justice* (Harvard University Press, 2011).

²⁶ John Rawls, *Theory of Justice*, 454.

people), but would think that these features of individuals ought to entail other societal structures than the ones proposed by Justice as Fairness. Of particular interest here were religious citizens, who were especially disposed, critics argued, to have conflicting interests and sources of authority. Were such citizens doomed to a life in an, at worst, authoritarian state, one which would call itself “liberal,” but which would nevertheless marginalize and alienate them? And if they were, how could a government which would repress the most deeply held convictions of so many of its citizens survive? Surely revolution would soon be on the horizon, and justice – of which stability is a part – would fall to pieces.

Understanding the transition in Rawls’ thought from *A Theory of Justice* to *Political Liberalism*, then, is to recognize a transition from a work motivated primarily by the question of how to establish principles of justice that could be reconciled with citizens’ freedom and equality to a work which embedded a particular answer to that problem (Justice as Fairness) in an answer to another problem, that of political stability over time. How can we ensure that, even if we are able to achieve the goal of *A Theory of Justice* and arrive at a political conception of justice which accords with our reflective commitments and which fulfills philosophical criteria of fairness, that conception of justice will be able to peacefully sustain its existence over time? In particular, Rawls is interested in ensuring that a society can maintain stability for the right reasons, that is, not stability maintained through force, deception, or any other spurious means, but stability maintained by broad public support of its conception of justice by the majority of citizens.²⁷²⁸

The system Rawls developed to respond to this potential loss of stability is called “political liberalism.” Political liberalism proposes that societies can achieve stability by developing a political conception of justice which is able to be the subject of an overlapping consensus. Such a consensus is

²⁷ John Rawls, “The Idea of Public Reason Revisited,” in *Political Liberalism* (New York: Columbia University Press, 1993), 459.

²⁸ This account of the Rawlsian shift from *A Theory of Justice* to *Political Liberalism* is offered by Paul Weithman, who argues that Rawls developed political liberalism as a result of his dissatisfaction with the account of stability offered in Part III of *A Theory of Justice*, an argument he says runs truer to Rawls’ own explanation of the development. Paul Weithman, *Why Political Liberalism: On John Rawls’s Political Turn* (Oxford University Press, 2010), 268.

intended to correct for that feature which would most likely undermine long-term stability: what Rawls called “reasonable pluralism.” Reasonable pluralism is a specially conceptualized version of disagreement, which refers specifically to the coexistence of multiple, incompatible – yet reasonable – comprehensive doctrines existing in any society as the natural by-product of the human exercise of reason in conjunction with the “burdens of judgment,” those “sources, or causes, of disagreement between reasonable persons.”²⁹ It is the incompatibility of these doctrines which could ruin the broad public support for Justice as Fairness, or any other widely agreed-upon conception of justice. Given that citizens will have competing conceptions of the good, they will also have competing and incompatible conceptions of justice and government. The question of stability asks, given those competing conceptions of government, what government structure could be put in place which could receive and maintain the willing support of all relevant citizens?

But to stop at describing *Political Liberalism* as concerned with stability is to miss the importance of the element of justification. Gerald Gaus has framed this story as a move from a concern with social contract theory – that is, contractualist liberalism – to a substantive engagement with the “problem of justification,” and therefore the emergence of a new kind of liberal theory, justificatory liberalism.³⁰ This

²⁹ John Rawls, *Political Liberalism*, expanded ed. (New York: Columbia University Press, 2005), 55, and “Idea of Public Reason Revisited,” 441, 486.

An abbreviated list of the burdens of judgment is as follows:

“a. The evidence – empirical and scientific – bearing on the case is conflicting and complex...

b. Even where we agree fully about the kinds of considerations that are relevant, we may disagree about their weight...

c. To some extent all our concepts, and not only moral and political concepts, are vague and subject to hard cases; and this indeterminacy means that we must rely on judgment and interpretation (and on judgments about interpretations) within some range (not sharply specifiable) where reasonable persons may differ.

d. To some extent (how great we cannot tell) the way we assess evidence and weigh moral and political values is shaped by our total experience...

e. Often there are different kinds of normative considerations of different force on both sides of an issue and it is difficult to make an overall assessment.

f. Any system of social institutions is limited in the values it can admit so that some selection must be made from the full range of moral and political value that might be realized... Many hard decisions may seem to have no clear answer.” *Political Liberalism*, 56-57.

³⁰ Gerald Gaus, “The Place of Religious Belief in Public Reason Liberalism,” in *Multiculturalism and Moral Conflict*, ed. by Maria Dimova-Cookson and Peter Stirk, Routledge 2009. 19-37. “Justificatory liberalism” is a liberalism concerned primarily with establishing a means of justifying publicly, and to all citizens, the use of coercive force by the government.

new project emphasizes that determining how to maintain stability for the right reasons means figuring out how to *justify* a particular socio-political order to citizens. If a state's political institutions and use of coercive power are justifiable to those living in it, then such coercive action is still consistent with their equality and liberty. If you understand – and on the strongest version of this liberalism, agree with – why coercive power is exercised in a particular instance, you are still respected as a free and equal citizen. This allows political liberalism, as a type of justificatory liberalism, to provide a richer answer to the question of legitimacy.³¹ An interest in stability over time, and specifically, stability for the right reasons, could be merely a pragmatic question, but for Rawls, such an interest is most importantly an interest in a properly legitimate government. This is importantly informed too by what Rawls calls the fact of oppression, that no single comprehensive doctrine can be the sole justificatory foundation for all political coercion without the inappropriate and oppressive use of state power.³² The question of legitimacy therefore confronts the tension between a government which, to exist, must use some coercive power, and the nearly impossible to achieve desire that those exercises of coercive power be agreed upon by all citizens. This tension is further complicated by the ability citizens have to affect and enact the policies of a particular government by their participation. If individual citizens can determine the state's policies, how can they do so in a way that renders the government legitimate and serves the interest of stability for the right reasons?

Rawls' primary answer is his liberal principle of legitimacy, which claims that the state's exercise of power is legitimate when it "is exercised in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in the light of principles and ideals acceptable to their common human reason."³³ This constitution ought to reflect the political conception of justice determined by a given society. A political conception of justice, in turn, ought to be formed using

³¹ I here connect justification and legitimacy concerns for the sake of expediency and clarity, but it should be noted that some argue that a state's legitimacy and its moral justification are in fact distinct, or simply have a different relationship than Rawls proposes. Most famously, A. John Simmons criticizes Rawls, arguing that justification and legitimacy are separate concerns. Simmons also distinguishes between state and government legitimacy, a distinction I don't integrate into this dissertation. See A. John Simmons, "Justification and Legitimacy," *Ethics* 109, no. 4 (July 1999): 739-771.

³² Rawls, *Political Liberalism*, 37.

³³ *Ibid.*, 217.

the public political culture of a society, ought to be consistent with the demands of reasonableness, and must be able to be the subject of an overlapping consensus. Each of these terms need to be explained further, but for now it is sufficient to say that there is a principled system of justice which governs Rawls' ideal society, and the way to achieve both legitimacy and stability is to ensure that those policies which concern "constitutional essentials and matters of basic justice" are supported by virtue of that principled system of justice, which, being the subject of an overlapping consensus, is already endorsed by all relevant citizens.³⁴

1.2 The Key Features of Political Liberalism

If the "clarion call of justificatory liberalism" is that "respect for others requires public justification of coercion," then a system of public justification must be developed.³⁵ For Rawls, this system was public reason. Public reason is the process and content of making reference only to that principled system of justice – which Rawls calls a political conception of justice³⁶ – when offering justification for constitutional essentials and matters of basic justice.³⁷ Broadly speaking, public reasons are public in virtue of three qualities: they are the reasons of the citizenry, their subject matter is the public good and basic justice, and their content and nature are "given by the ideals and principle expressed by society's conception of political justice, and conducted open to view on that basis."³⁸ This first characteristic isn't substantively contested by any contemporary theory of public reason,³⁹ and while the second has faced revision, it's largely been an issue of scope rather than conceptual critique. The third feature, however, has been the subject of significant criticism and revision.

³⁴ Rawls, *Political Liberalism*, xxiii.

³⁵ Christopher Eberle, *Religious Conviction in Liberal Politics* (Cambridge: Cambridge University Press, 2002), 54.

³⁶ As opposed to a comprehensive one.

³⁷ Rawls, *Political Liberalism*, 212.

³⁸ *Ibid.*, 213.

³⁹ Except in instances in which this becomes an issue of contested idealization of the citizens in question.

Public reasons are those reasons which are rooted in society's public political conception of justice, and are most helpfully contrasted with non-public reasons.⁴⁰ While for Rawls the standard example of such a political conception of justice was Justice as Fairness, it could be any combination of the set of public political values endemic to a constitutional democracy that can be freestanding and endorsed by an overlapping consensus of reasonable doctrines. In contrast, non-public reasons are reasons which are indexed to a comprehensive doctrine of justice, one which includes a robust account of the good and how it ought to be made manifest in all areas of life and society.⁴¹ These include religious or philosophical doctrines which can't be expected to be shared by all citizens. Imagine, for example, that a particular legislator (Dave) introduces a bill to ban all grocery stores and restaurants from selling meat and to criminalize individual consumption of meat. When offering an account of why such a bill ought to be passed, Dave argues that his spiritual advisor told them that humans and non-human animals both have eternal souls, and so neither can be consumed. The restrictions of public reason would allow for the rejection of such a proposal without having to wade into the question of the authority of spiritual legitimacy of Dave's spiritual advisor. Since that particular spiritual advisor is not an authority or reason-giver for many citizens (perhaps no citizens other than Dave), the citizens who would have otherwise been forced to stop eating meat are owed a reason they can accept or share (depending on the version of public reason endorsed) for this coercive activity. A reason that might be appropriate for a proposal to criminalize meat-eating could be that, in a state with a constitutional commitment to protect the well-being of its citizens, meat-eating has been discovered to be extremely dangerous. A different legislator (Dallas) might then argue that the only way to protect public health is to remove the opportunity to eat meat. Such a reason would be endorsable by reasonable citizens committed to a public political conception of justice which includes protections for public health, and would provide sufficient grounds

⁴⁰ I specify "nonpublic" reasons here in order to stress that public reasons ought not be contrasted with "private ones." Nonpublic reasons can be widely shared and can be expressed in public contexts, while private reasons are presumably reasons that are only reasons for the person who holds them. The only feature that renders a reason nonpublic is that it does not appeal to the shared political values of the state.

⁴¹ Rawls, *Political Liberalism*, 13-14.

for a discussion about whether or not this particular policy about meat-eating fulfills that political commitment. No one needs to consider Dallas' personal relationship with her spiritual advisor or make any decrees about comprehensive claims in order to debate (or accept or reject) whether or not the law prohibiting meat eating should be passed.

Public reasons, which refer only to shared political commitments that constitute the public political conception of justice, are clarified by further understanding the difference between a political and a comprehensive idea of justice. This distinction only emerges for Rawls following criticisms of *A Theory of Justice*, upon which he made a substantive revision to his presentation of justice as fairness. Accounts of what exactly Rawls thought the key error of *A Theory of Justice* was differ, but Rawls himself identified the core problem in the Introduction to *Political Liberalism* as being with the requirement that in a well-ordered society rendered in accordance with Justice as Fairness, all citizens would need to be fully committed to the idea of Justice as Fairness and the two principles of justice which were born of it.⁴² Justice as Fairness therefore required an inappropriate level of commitment from its citizens, one that was unacceptable given the fact of reasonable pluralism.⁴³ In order to correct for this, Rawls introduces in *Political Liberalism* the distinction between a political and comprehensive doctrine.⁴⁴

A political conception of justice is one which contains only political values, rather than any values or commitments tied to an unshared political or religious doctrine. Rawls introduced a method for building a political conception of justice via the original position. The original position would allow idealized individuals to develop principles of justice from behind the Veil of Ignorance, an approach which he first understood as modeling the dictates of practical reason, but in later work functions as a way to model the principles inherent in the public political culture of a constitutional democracy.⁴⁵ The political conception of justice fits into citizens' comprehensive doctrine of justice as a puzzle piece fits in

⁴² Rawls, *Political Liberalism*, xvi.

⁴³ This account of the Rawlsian transition from *Theory of Justice* to *Political Liberalism* I again draw from Paul Weithman's book *Why Political Liberalism?*.

⁴⁴ Rawls, *Political Liberalism*, xli.

⁴⁵ *Ibid.*, 13.

its rightful place in the larger puzzle of commitments, or a “module, an essential constituent part” that has the support of “various reasonable comprehensive doctrines that endure in the society regulated by it.”⁴⁶ Political conceptions of justice must therefore be essentially “freestanding,” that is, they don’t rely on any particular philosophical or religious comprehensive doctrine.⁴⁷ Otherwise they are only truly endorsed by one group of citizens, those who have adopted as their life orientation the idea of justice represented by the state. The governing idea of justice must therefore be acceptable to each citizen, despite their incompatible comprehensive doctrines. It must therefore be sparse enough to only apply to political matters and yet robust enough to make substantive contributions in that arena. In contrast, Rawls delineates comprehensive doctrines as being “fully comprehensive,” when they cover “all recognized values and virtues within one rather precisely articulated system,” while a “partially comprehensive” doctrine “comprises a number of, but by no means all, nonpolitical values and virtues and is rather loosely articulated.”^{48,49}

Comprehensive doctrines can be, of course, liberal or illiberal. However Rawls limited the scope of the project of political liberalism to only *reasonable* citizens and their comprehensive doctrines. This limitation allowed him to avoid the risk posed by those markedly unreasonable comprehensive doctrines, and to instead fully consider the possibility of determining the viability of the liberal project when pursued amongst only reasonable citizens. While this does provide a helpful narrowing of scope, it more importantly highlights how serious and persistent the problem of disagreement is. Even among reasonable

⁴⁶ Rawls, *Political Liberalism*, 12.

⁴⁷ Ibid.

⁴⁸ Ibid., 13.

⁴⁹ Important to notice in the literature on this distinction is that religious doctrines have come to be understood as the paradigmatic examples of comprehensive doctrines. Religious doctrines are very often the focus of public reason debates, but in a way which raises suspicion: they are both pervasive in the literature on public reason and yet simultaneously treated as “merely an example” of a comprehensive doctrine, introduced into the conversation just for convenience. But if religious comprehensive doctrines are truly just one type of comprehensive doctrine, why has so much of the literature on public reason fixated on them in particular? This double treatment (as both worthy of special attention and as not special at all) ought to raise an eyebrow for those investigating public reason closely. For now it will suffice to say that the majority of public reason literature largely considers only monotheistic, “Western” forms of religion in its examples.

citizens there will be, given the fact of reasonable pluralism, a risk of instability due to the robustness of citizen disagreement about the good.

This feature of reasonableness comes to play an important role throughout Rawls' work and later political liberalism theorists. Reasonableness is grounded by Rawls, in *Political Liberalism*, in two key ideas. The first is Kant's distinction between the reasonable and the rational, and the second is Scanlon's idea of moral reasonableness.⁵⁰ Ultimately, Rawls lays out two basic aspects of the reasonable. The first is "the willingness to propose fair terms of cooperation and to abide by them provided others do so," and the second is "the willingness to recognize the burdens of judgment and to accept their consequences for the use of public reason in directing the legitimate exercise of political power in a constitutional state."⁵¹

When applied to citizens, this is further explicated by three criteria: citizens are reasonable when they (i) view "one another as free and equal in a system of social cooperation over generations," (ii) "are prepared to offer one another fair terms of social cooperation (defined by principles and ideas)," and (iii) "agree to act on those terms, even at the cost of their own interests in particular situations, provided that others also accept those terms."⁵² Furthermore, Rawls here clarifies that the "fair terms" in question are only fair if the "citizens offering them... reasonably think that those citizens to whom such terms are offered might also reasonably accept them."⁵³ And finally, reasonable doctrines – which inform or are a part of an overlapping consensus – are those doctrines which are, (i) committed to the core idea of public reason in the sense of being doctrines which include the idea of people as free and equal, and (ii) consistent with the idea that citizens ought to, "viewing one another as free and equal in a system of social cooperation over generations... offer one another fair terms of cooperation according to what they consider the most reasonable conception of political justice."⁵⁴ In these ways, the concept of reasonableness predates the

⁵⁰ Though Rawls credits Scanlon's 1982 essay "Contractualism and Utilitarianism" in *Political Liberalism*, Scanlon himself was influenced by Rawls' 1980 Dewey Lectures, "Kantian Constructivism in Moral Theory," published in *The Journal of Philosophy* 77, no. 9 (September 1980): 515-572.

⁵¹ Rawls, *Political Liberalism*, 54.

⁵² *Ibid.*, xlii.

⁵³ *Ibid.*

⁵⁴ Rawls, "Idea of Public Reason Revisited," 446.

development of a particular political conception of justice and of investigating whether that particular conception of justice can be subject to an overlapping consensus. It's a surprising cornerstone in a system which otherwise attempts to make no strong philosophical claims that might over-commit it to a philosophical doctrine beyond the scope of reasonableness.

Reasonableness is therefore an essential feature of the Rawlsian project, and of any form of public reason. It is reasonableness and the informative fact of reasonable pluralism which ensure that public reason, even as an ideal project, is a reflective one that begins with real-world premises. Political liberalism takes seriously the reality that the free exercise of reason regularly produces substantive and irreconcilable disagreement (even among those subscribing to comprehensive doctrines that are reasonable and even liberal), and yet on the other hand, it doesn't allow this reality to engender a hopeless project. Political liberalism tells us that no society should be held hostage to the limiting contributions of unreasonable comprehensive doctrines or citizens, and further, that such disagreement, even among liberal citizens need not upend the possibility of a legitimate government. Those who refuse to offer basic respect to their fellow citizens ought not be allowed, for Rawls, to threaten the stability and functioning of an otherwise successful liberal constitutional society. Of course, who genuinely should be considered such a threat to legitimate government is not as clear as Rawls likely first thought. In particular, are citizens who understand themselves as committed to the idea that people are fundamentally free and equal, but who simply find the constraints of public reason too strict, fittingly excluded from public reason? To begin to answer this question, I will turn here to look more closely at the constraints of public reason. To what laws do they apply, and how does public reason concretely apply to citizens in particular?

Rawls limited the scope of public reason to those policies which concern "constitutional essentials and matters of basic justice."⁵⁵ That is, it was only these policies which *had* to be justified by public reasons. Rawls justified such a scope by arguing that such policies were the most fundamental to

⁵⁵ Rawls, *Political Liberalism*, 214.

any society, and therefore were the proper particular subject of public reason.⁵⁶ This isn't to say that Rawls did not think that other political questions should be decided within public reason, only that Rawls wanted to first consider whether or not it could be convincingly argued that the strongest, most essential questions of government must be subject to public reason. If such questions couldn't be defended, there surely isn't an argument for less monumental questions.⁵⁷ But there is no explicit prohibition from Rawls on the inclusion of other political questions, and perhaps even a hint that, should the position move in that direction, it would be a benefit. As public reason literature has developed, the scope of what ought to be justified only by public reasons has seen an increase in scope, partially due to the ambiguity of the terms basic justice and constitutional essentials. Most theories of public reason now treat all instances of coercive legislation as relevant for being subject to the requirements of public reason. That is, any coercive policy which grants the government opportunity and license to exercise power over its citizens ought to be decided on the basis of public reason.

Here, Rawls' distinction between the idea and the ideal of public reason comes to the fore.⁵⁸ This distinction clarifies the issue of the scope of public reason in a different way, and introduces the specific demands placed on individual citizens. The idea of public reason primarily concerns the question of legitimacy, that is, how can relevant policies be justified appropriately among equal citizens in a constitutional regime? The ideal of public reason, meanwhile, includes the accompanying behavior of citizens, even that which can't (and shouldn't) be monitored or controlled by the state. On the idea of public reason, its requirements apply properly only to those who vote on policy or who advocate for it in the public sphere, while the ideal of public reason applies to all voting members of the state. Anyone with a hand in the justification of a coercive policy ought to, ideally, have adopted the idea of public reason as a part of their personal ethic. If they are convinced that a state is only legitimate inasmuch as it is supported by public reasons, then they ought to also internalize the idea that their individual behavior,

⁵⁶ Rawls, *Political Liberalism*, 214.

⁵⁷ *Ibid.*, 215.

⁵⁸ *Ibid.*, 214-215.

where possible, should accord with that idea. Rawls argues that in order to fulfill the ideal of public reason, three conditions must be met: i) “We give very great and normally overriding weight to the ideal it prescribes,” ii) “We believe public reason is sustainably complete, that is, for at least the great majority of fundamental questions, possibly for all, some combination and balance of political values alone reasonably shows the answer,” iii) “We believe that the particular view we propose, and the law or policy based thereon, expresses a reasonable combination and balance of those values.”⁵⁹ Public reason, in order to live up to its ideal, needs the commitment and buy-in of the citizens. Specifically, it needs them to believe that it can, in the example of condition 2, provide sufficient answers to our political needs.⁶⁰ Ultimately, there has to be some genuine citizen buy-in to the goods that public reason has to offer in order for the system as a whole to work.

In determining the actual behavior that public reasons asks of citizens, the clearest account is found in the “duty of civility.”⁶¹ This moral, not legal, duty is placed upon citizens “to be able to explain to one another on those fundamental questions how the principles and policies they advocate and vote for can be supported by the political values of public reason.”⁶² It also includes “a willingness to listen to others and a fairmindedness in deciding when accommodations to their views should reasonably be made.”⁶³ In practice, this means that I vote – that is “exercise [my] coercive political power over” my fellow citizens – in ways that fulfill the liberal principle of legitimacy.⁶⁴ And further, that my reasons fulfill the “criterion of reciprocity,” that is, that I only offer reasons I reasonably think other people will reasonably accept.⁶⁵ Again, this means Dave cannot offer reasons that are unique to his comprehensive idea of the good (as told to him by his spiritual advisor), because he cannot expect that anyone else could

⁵⁹ Rawls, *Political Liberalism*, 241.

⁶⁰ See Neal for some pushback on and eventual refinement of condition 2. Patrick Neal, “Rawls, Abortion, and Public Reason,” *Journal of Church and State* 56, no. 2 (October 2012).

⁶¹ Rawls, *Political Liberalism*, 217.

⁶² *Ibid.*, 217.

⁶³ *Ibid.*

⁶⁴ *Ibid.*, 217.

⁶⁵ Rawls, “Idea of Public Reason Revisited,” 447.

accept this reason.⁶⁶ It should be said here that Rawls is clear that the limits on non-public reasons are never intended to limit freedom of speech or any other basic liberty. This can be seen in Rawls' priority of liberty principle, where the first principle of justice (that "each person has an equal right to a fully adequate scheme of equal basic liberties which is compatible with a similar scheme of basic liberties for all") has a "special status," or an "absolute weight," and can't be denied for the good of the public or for any other perfectionist value.⁶⁷ One of the criteria for an appropriate political conception of justice is that it gives special priority to the list of basic liberties, including freedom of speech and freedom of religion.⁶⁸ But this limitation hasn't saved the duty of civility or the criterion of reciprocity from concern and criticisms. If the ideal of public reason asks for both specific citizen behavior and a genuine belief in the value of the public reason project, what are citizens to do if they have deep, abiding philosophical or religious commitments which are significantly motivating for them? We've just reviewed again that such commitments are not considered appropriately justifying reasons for the essential policies of the state, and so ought not be acted on even in the privacy of the voting booth. But doesn't this demand a repression of the self for some citizens?

One response offered by Rawls was the development of the *proviso*. As Rawls explained the proviso in an interview, it is the idea that "any comprehensive doctrine, religious or secular, can be introduced into any political argument at any time, but... that people who do this should also present what they believe are public reasons for their argument."⁶⁹ This final revision to his view maintained the two core commitments of public reason: that public reasons had to be shareable reasons, and that public reasons had to, at some point and time, be provided for basic matters of justice in the state. More specifically, individuals may make arguments based on their comprehensive doctrines, and only have to

⁶⁶ For an illuminating discussion of how exactly to cash out the different levels of behavior implied by the duty of civility, see James Boettcher, "The Moral Status of Public Reasons," *The Journal of Political Philosophy* 20, no. 2 (November 2012): 156-177.

⁶⁷ Rawls, *Political Liberalism*, 291, 284-295.

⁶⁸ Rawls, "Idea of Public Reason Revisited," 450.

⁶⁹ John Rawls, "An Interview with John Rawls: Politics, Religion and the Public Good," interview by Bernard G. Prusak, *Commonweal Magazine*, 25 September 1998. <https://www.commonwealmagazine.org/interview-john-rawls>.

be prepared to, “in due course,” present public reasons “sufficient to support whatever the comprehensive doctrines are introduced to support.”⁷⁰

The proviso represented a substantive weakening of the Rawlsian position, as it entailed public reasons only had to exist for a particular position, even if they were never introduced into public discourse. This seemed to, for Rawls, solve the problem of some tough cases for public reason, most notably those cases where a public figure advocated for a matter of basic justice, on the basis of their comprehensive doctrines, for some good which we now recognize as clearly just. The most prominent case in the literature is that of Martin Luther King, who led the civil rights movement, often by appeal to his Christian beliefs. Many hold this up as instance in which a matter of basic justice would have been obscured by the demands of public reason; not everyone in the United States was a Christian, and reasons specific to that comprehensive doctrine could not have been understood to be born of the political conception of justice.⁷¹ But with the proviso, Rawls attempts to eliminate this threat; MLK surely could have advocated using Christian-specific reasons, so long as there were public reasons that could have been offered for his public support (and of course, there were).

The proviso leaves much to be desired in terms of specificity; how can we ensure that someone has sufficient public reasons when they say they do? What constitutes “due time” for the necessary presentation of those reasons? The proviso also might be seen as giving up too much to those critical of public reason. If public reasons only have to be offered in due time, then comprehensive reasons can be aired publicly and treated as justificatory. The space allowed to comprehensive reasons means that they can still exercise political sway on those who hear them, an idea which may corrupt the ideal of public reason, or most dangerously, may mean that an argument may be effective in the public sphere, even if it doesn’t actually have the support of public reasons. We can easily imagine a case in which someone offers a compelling set of non-public reasons, they are sufficiently effective as to enable the passing of a

⁷⁰ Rawls, “Idea of Public Reason Revisited,” 453.

⁷¹ Micah Schwartzman, “Religion, Equality, and Public Reason,” *Boston University Law Review* 94, no. 4 (July 2014), 1335.

particular coercive policy, and when public reasons are later sought for full justification, there are no such reasons.

What's the benefit of the proviso? For Rawls, the proviso, by enabling people to make contributions to public political culture on the basis of their comprehensive doctrines, builds mutual reassurance between citizens who can therefore feel confident that their fellow citizens have comprehensive doctrines which do genuinely reinforce the political conception of justice at hand.⁷² And yet, it maintained the most important element of political liberalism; it asked of citizens that they "give the kinds of reasons that can be understood and appraised apart from their particular comprehensive doctrines: for example, that they argue against physician-assisted suicide not just by speculating about God's wrath or the afterlife, but by talking about what they see as assisted suicide's potential injustices."⁷³ The proviso therefore continued to encourage citizens toward the right orientation and goals of public reason, even as it refrained from suggesting any particular right answers and instead offered a method for determining the right sorts of *reasons* that should be considered and taken as justificatory.⁷⁴

1.3 The Benefits of Public Reason

Public reason's extensive jargon, substantial list of revisions, and convoluted details may incline us to think that the view is more trouble than it's worth. Why be a public reason theorist at all? Surely whatever benefits it offers could be achieved on a similar and less complicated view. And yet, advocates for public reason have claimed, the view provides unique benefits. A brief gloss of these reveals three broad categories: the fulfillment of legitimacy, the demonstration of respect for persons, and the providing of resources to facilitate beneficial public political discourse.

The first of these is that public reason uniquely fulfills the demands of legitimacy, justification, and liberalism. Public reason is demanded by a correct understanding of what constitutes a legitimate

⁷² John Rawls, *Collected Papers*, ed. Samuel Freeman, (Harvard University Press, 1999), 592.

⁷³ "Interview with John Rawls," *Commonweal Magazine*.

⁷⁴ *Ibid.*

government, because it is the only way that citizens can build a state which legitimately coerces them, despite their robust disagreement. It is because people are free and equal that they are owed justification for the laws which coerce them, and they are in addition owed justification that they can both understand and possibly endorse. A government which cannot provide its relevant citizens with such a justification is illegitimate. As such, public reason gives us both criteria for a legitimate state – the reasons our government owes us – and criteria for how we could engage with one another to facilitate such an end.

The second reason to find public reason valuable is because of the way it cashes out what we owe to one another in a uniquely challenging realm of social relationships. It is because we have the appropriate respect for one another as humans and as reasoners that we ought to fulfill the demands of public reason, that is, that we ought to treat one another with care, respect, and attention even in a politically divisive environment. While this argument is implicit in Rawls' work, it is insufficiently fleshed out. James Boettcher goes so far as to say that "there seems to be an explanatory 'gap' in Rawls' exposition," noting that there isn't "any explicit treatment of the concept of respect for persons as fellow citizens" either in *Political Liberalism* or its follow-up, "The Idea of Public Reason Revisited."⁷⁵ As a result, some philosophers have stepped up to fill the gap. The most notable of these is Charles Larmore, who writes that "to respect another person as an end is to require that coercive or political principles be as justifiable to that person as they presumably are to us."⁷⁶ And interpersonally, our abiding by the demands of public reason is itself recognizing one's fellow citizens with the appropriate respect, as our equals, as individuals who are *owed* justifications for laws, rather than merely being the subject of them.

Finally, public reason not only offers us an account of a legitimate state and of what we owe one another in light of that account, but it also gives us the resources to achieve beneficial social discourse and improved social relationships. A recent example of this is Blain Neufeld's argument for what he calls

⁷⁵ James Boettcher, "Respect, Recognition, and Public Reason," *Social Theory and Practice* 33, no. 2 (April 2007): 223-224.

⁷⁶ Charles Larmore, "The Moral Basis of Political Liberalism," *The Journal of Philosophy* 96, no. 12 (Dec. 1999): 608.

the “civic people” account of public reason.⁷⁷ On this view, public reason can uniquely facilitate “shared political autonomy,” where citizens make decisions governing their society meaningfully as a group.⁷⁸ Drawing heavily on Rawls’ quote that public reason is the appropriate type of reasoning for citizens “who as a *corporate body* impose rules on one another,”⁷⁹ Neufeld argues that the use of public reasons is necessary in order to have a truly “self-governing people.”⁸⁰ More specifically, having norms of public reason gives you a way to reject certain reasons from the public sphere that don’t demand you reject an individual as a person. These civil norms ensure the focus remains squarely on the reasons at hand, rather than on debates over truth-claims or contested spiritual or philosophical authority.

1.4 The *Heart* of Public Reason Liberalism

As discussed briefly, the central problem of political philosophy is widely understood to be that of resolving the tension between the freedom and equality of citizens, and the need by governments to exercise coercive power. This problem does not have an easy answer: the anarchists argue that it doesn’t have one at all; the tension can’t be resolved but can only be dissolved the rejection of state authority altogether.⁸¹ But one of the most popular answers throughout the history of political philosophy has been, in line with Rawls’ revival of the concept, social contract theory. The promise of which is that the government exercises its power against you only on the grounds that you have *consented* to such exercise, and perhaps even that this exercise is an extension or manifestation of your own will (or the collective will, depending on the philosopher). The project of public justification aims to continue this promise by means less slippery than consent (a standard which faced a whole host of problems). If the government publicly justifies its actions to you, by standards that you yourself endorse, then this has the same legitimizing effect as your actual consent to a particular exercise of power. It’s clear to see how Rawls’

⁷⁷ Blain Neufeld, “Shared Intentions, public reason, and political autonomy,” *Canadian Journal of Philosophy* 49, no. 6 (2019): 776-804.

⁷⁸ *Ibid.*, 777.

⁷⁹ *Ibid.*, 781.

⁸⁰ *Ibid.*, 790.

⁸¹ See Robert Paul Wolff, *In Defense of Anarchism* (Berkeley: University of California Press, 1970).

model fulfills this. The most fundamental policies in a liberal democracy are all justified on the basis of reasons shareable by all citizens. All citizens have therefore had the essential features of the state justified to them, equally. But why think that this is the only way in which the promise of public justification could be fulfilled?

In fact, there is an *ambiguity* at the heart of public justification. We might even say, more strongly than an ambiguity, the nature of what actually constitutes the key feature of public reason is up for debate. What requirement must a public reason be held to if it is to be understood as properly public and genuinely constitutive of public justification? For Rawls, it should be clear that a public reason is one which refers to the public political conception of justice, and therefore it must be the sort of reason which can be shared by all the relevant citizens in a given society. This is reflected in the liberal principle of legitimacy and its commitment to political power needing to be “exercised in accordance with a constitution the essentials of which all citizens as free and equal may *reasonably be expected to endorse* in the light of principles and ideals *acceptable to their common human reason.*”⁸² On this principle, a law L is justified if and only if it is supported sufficiently by properly public reasons, that is, reasons which refer to the political conception of justice which is the subject of an overlapping consensus. Under such a principle, a law to outlaw the sale of meat, perhaps, would not be considered legitimately justified if there was no *public reason* which could be given to justify it, even if most or all of the citizens in the state might have nonpublic reasons or individual interests in such a law being passed. Political liberalism which holds the LPL to be the core of the public justification project is a *consensus* model of public justification.

But given challenges to such a model of public justification and the public reasons it employs, specifically that it is exclusive of reasons and values which aren't in the domain of common human reason, why not try for a more expansive model? Accordingly, justificatory liberalism has been argued of late to have another principle at its core, the Principle of Public Justification (hereafter the PJP). This is

⁸² Rawls, *Political Liberalism*, 137. Emphasis added.

that “a coercive law L is justified only if *each member of the public P has some sufficient reason(s) R_i to endorse L.*”⁸³ On this model, the law banning the sale of meat could be passed so long as each citizen had a personal reason to endorse such a policy. Perhaps everyone in the state is a vegetarian because their personal spiritual advisors have commanded them to be (and decried any meat consumption), and so they each have a vested interest in banning the sale of meat, even though there are no properly public reasons to do so. This form of public justification, wherein the PJP is the core of the project, is the *convergence* model of public justification.

There are only a few differences between these two principles, but the most important is between a policy or constitutional essentials needing to be justified by things acceptable to common human reason (in the LPL) versus their being sufficiently justified by the reasons of individual citizens (in the PJP). These represent the two models of public justification: the consensus and convergence model, respectively. Both propose a distinct account of justification in the liberal democratic state, and in line with the different principles they center, they have a core difference in their idea of what constitutes a public reason. And yet, most importantly, both fulfill the project of public justification: they justify, to all members of the public, the coercive policies of the state.

What has happened, then, is that this new model of public reason has argued that the core of political liberalism properly speaking is public justification, and that the core of public justification is *just this*: that all people have sufficient reasons to endorse the policies under review. These reasons need not be shareable with anyone else at all, rather they only need to be enough for the individuals in question. If every person has a reason, then the law has succeeded in being publicly justified by virtue of being justified to the public, individual by individual. Why think that there needs to be anything common or shared about such justification, so long as it meets the criteria of the PJP? As a result of this line of argument, convergence theorists will clarify that “public reason is a narrower notion than public justification,” because there could be a state in which “some arrangement is publicly justified by non-

⁸³ Kevin Vallier, *Liberal Politics and Public Faith*, (New York: Routledge, 2014), 24. Emphasis added.

deliberative, indeed non-discursive means.”⁸⁴ As such, the consensus model – which argues for public justification as a process that needs public reason – is in line with the Rawlsian ideal, and therefore endorses a shareable reasons model, that is, a model on which public reasons must have a feature in common. This takes the form of being either shareable or accessible.⁸⁵ Shareable reasons are those which refer to a shared political conception of justice, and accessible reasons are those for which we have shared standards of assessment.⁸⁶ The convergence model replaces this standard of justification with the *intelligibility* standard, and argues that coercive power is justified in the case that all “individuals accept laws and political proposals for their individual reasons.”⁸⁷ Public reasons are sufficiently public if they are intelligible to everyone else as reasons, in such a way that others can see the reasons as justified by virtue of the person’s own commitments, but they do not have to be shareable or accessible to all. Due to this adjustment in what constitutes a public reason, the convergence model will position itself as having certain benefits unavailable to the consensus conception. I’ll now go into detail about both positions, the way they fulfill the goal of public justification, and why both are compelling versions of it.

⁸⁴ Kevin Vallier, “Public Justification,” *Stanford Encyclopedia of Philosophy*, updated March 2018, <https://plato.stanford.edu/entries/justification-public/>.

I’ve included this quote here but find it somewhat strange, given that the convergence model still has a conception of what constitutes a “public reason” and uses it to explain what constitutes successful public justification. I think Vallier must mean that the whole idea of public reason (as it is laid out by Rawls) is not necessary for the idea of public justification, which is the goal of the paragraph I’ve written here.

⁸⁵ Kevin Vallier, “Convergence and Consensus in Public Reason,” in *Public Affairs Quarterly* 25, no. 4 (October 2011): 262.

⁸⁶ Vallier distinguishes this into the “strong” and “weak” consensus conceptions of reasons. Vallier, “Convergence and Consensus in Public Reason,” 263. Also for this understanding of “accessible” reasons, see Kevin Vallier and Fred D’Agostino, “Public Reason,” *Stanford Encyclopedia of Philosophy*, 2013, <https://plato.stanford.edu/entries/justification-public/>.

⁸⁷ Vallier, “Convergence and Consensus,” 263.

2. The Consensus Vs. Convergence Debate

2.1 Understanding Consensus

Rawlsian public reason, also known as political liberalism, is a type of consensus theory and is currently the dominant model of public reason liberalism. However, it is technically but one of many possible consensus models of public justification, and others have been proposed which make adjustments in the scope and stringency of public reason. We can lay out the core of a *consensus* view as follows: public justification is achieved for policy p if and only if each policy citizen has a reason R (or set of reasons R_1, R_2, \dots), that justifies p and which is taken from among a set of acceptably shareable or accessible reasons. The most essential feature of the consensus position is the unique attention paid to the idea of a public reason, and the designation of it as a particularly valuable *kind* of reason. This view is quite restrictive, as consensus models designate that public reasons must have some feature in common, that is, that of being either shareable or accessible.

A reason is shareable when it is developed in accordance with the public political conception of justice that governs a given liberal society. Given that this public political culture is already the subject of citizen-wide endorsement via the overlapping consensus, reasons which are drawn from it and appeal back to it are in that sense shareable by the relevant citizens of the society. Vallier defines a reason RA as shareable for citizen A “if and only if members of the public regard RA as justified for each member of the public, including A , according to common standards.”⁸⁸ While there is room for ambiguity with regard to what exactly constitutes a reason’s being “shareable,” Vallier suggests that a properly shareable reason will be one that all citizens will have “at the right level of idealization.”⁸⁹ Despite the focus on shareability, “shareable reasons” need not mean that for any given policy that is appropriately justified by shareable reasons, all citizens agree as to the use of the same reasons in question or apply the same weight to the reasons which support a given policy. Rather, there is a pool of shareable reasons that citizens may

⁸⁸ Vallier, “Public Justification.”

⁸⁹ Ibid.

draw from in support of any particular policy, with each citizen free to assign weight to whatever set of those reasons they wish. While this suggestion is common in the contemporary literature,⁹⁰ criticisms of the shareable reasons position often appeal to the idea that shareable reasons demand all people to hold exactly the same reasons, with the same weight given to all the reasons in question. This is a level of homogeneity that is much easier to impugn, but need not be the form a shareable reasons standard must take.

More common than the more demanding requirement of shareability is accessibility. Vallier defines a reason RA as accessible for citizen A “if and only if all members of the public regard RA as justified for A according to common evaluative standards.”⁹¹ In other words, a reason is accessible when it can be tested or criticized using shareable standards of assessment, such as the commonly referenced scientific method. The intuition is that even if a reason isn’t explicitly or implicitly contained in the public political conception of justice, it can be acceptably introduced into political deliberation if it’s sufficiently warranted according to standards all citizens in the community have agreed on. On this model, while I may not explicitly share a particular reason offered in the public political sphere, I’m still fully capable of criticizing or engaging with the reason through the methods of critique I, as a citizen, am equipped to deploy.

2.2 Why Consensus?

With the consensus model of public justification clearly in front of us, we might ask, why be a consensus theorist at all? The answers will feel familiar; because the consensus model is the original model of public reason, the reasons to endorse it overlap significantly with the reasons to endorse the public reason project generally. And more than overlap, the consensus arguments are often a kind of doubling-down on the arguments offered for public reason, particularly with regard to the second and

⁹⁰ Christie Hartley and Lori Watson, *Equal Citizenship and Public Reason: A Feminist Political Liberalism* (Oxford University Press, 2018), 48.

⁹¹ Vallier, “Public Justification.”

third arguments offered for public reason (that it offers us a picture of what we owe to one another, and that it makes possible certain shared social goods). The first argument offered is that political liberalism is simply the best way to ensure a legitimate state. A state is justified in its exercise of coercive power just if that power is justified by reasons shared by all citizens, period. This first argument is the one most clearly contested by other theories of political liberalism, but while other versions can argue that they have developed the “right” way to ensure and maintain a legitimate state, only consensus gives such a rich picture about what we owe one another, and only consensus argues that it produces additional social goods on top of state legitimation. Here I will aim only to give a brief motivation for finding both of these reasons compelling, but I’ll explore more intricate consensus versus convergence debates throughout the text here.

Concerning the idea that public reason offers us a story of what we owe one another, the consensus model has a unique emphasis on reciprocity. As Rawls wrote, “public justification is not simply valid reasoning, but argument *addressed to others*.”⁹² Consensus, in its demand that citizens refrain from offering reasons that they couldn’t reasonably think that other citizens could reasonably accept, maintains this focus; justification and public reasoning are activities we do together and in part *for* one another. It also therefore offers us a way to ensure that we respect one another as citizens. As Charles Larmore argues, the public justification of coercive policies relies on “a principle of respect for persons whose validity must be understood as antecedent to the democratic will.”⁹³ The consensus model ensures this respect is concretely and transparently reflected in our habits of public political engagement. And, as Lori Watson and Christy Hartley put it, to refer to one’s comprehensive doctrine in discussing policies or laws is to fail to “engage others as free and equal citizens.”⁹⁴ Only consensus then actually manages to ensure the liberal treatment of citizens by the state and by other citizens.

⁹² Rawls, “Idea of Public Reason Revisited,” 465.

⁹³ Charles Larmore, *The Autonomy of Morality* (Cambridge University Press, 2008), 140.

⁹⁴ Hartley and Watson, *Equal Citizenship*, 80.

Additionally, the consensus form of public justification provides distinct benefits. This is the nature of many defenses of the consensus position: they argue that there is some essential benefit to the community provided by consensus that convergence cannot offer. Consider again Neufeld's work on public reason, which argues that the consensus form *uniquely* enables the "full political autonomy" of citizens.⁹⁵ A similar line of defense is offered by Watson and Hartley – a model of liberal democracy connected to consensus justification is better because it facilitates an attention to the interests one has *as a member of a group*, as opposed to one's individual interests. They use the analogy of two families planning a vacation.⁹⁶ The Smith family decides which destination to vacation at based on a simple veto process; everyone offers suggestions about where to vacation on the basis of which will be best for each of them as an individual. Sam chooses Alaska because he enjoys skiing; Erin chooses Alaska because she likes watching wildlife, etc. In contrast, the Rawls family chooses a destination based on what will be best for them as a family; which destination will be best for their collective family activities? The Rawls family also chooses to go to Alaska, but because they have a joint interest in bird-watching; Alaska happens to be a prime location at the time of year in question. They always bird-watch together and find that activity to be the one which best facilitates their family cooperation. The Smith family doesn't necessarily invest in any such considerations; rather each family member campaigns on behalf of a destination purely for their individual ends. The Rawls family, Watson and Hartley argue, has a richer model of communication and most importantly, has a very different and (implicitly) a superior understanding of respect.⁹⁷

2.3 Understanding Convergence

As discussed, convergence theories take as primary for justificatory liberalism the Principle of Public Justification (PJP). That is, "A coercive law L is justified only if each member of the public P has

⁹⁵ Blain Neufeld, "Shared Intentions."

⁹⁶ Hartley and Watson, *Equal Citizenship*, 43-45.

⁹⁷ *Ibid.*, 45.

some sufficient reason(s) R_i to endorse L .”⁹⁸ While this principle is consistent with consensus reasoning, it technically could be fulfilled by both the consensus and convergence forms of justification. This is because the convergence view understands the PJP to be a distilling or a paring down to essentials of the Liberal Principle of Legitimacy. On the PJP, in contrast to the LPL, what is essential is the *fact* that each relevant citizen, called by Gaus and Vallier “members of the public,” has a reason to endorse the policy or law in question. In contrast to the consensus position, public justification is achieved on the *convergence* view if each citizen has a reason R of their own (or $R_1, R_2\dots$) that justifies p to them. What’s most significant is that these reasons need be neither shareable nor accessible, rather they need only be intelligible. This is the cornerstone shift around which convergence departs from consensus.

Convergence theories reject the shareability and accessibility criteria offered by consensus theories. Their arguments for such a rejection are that consensus views (i) negatively affect citizens with strong convictions (usually religious), that they (ii) leave unjustified laws which actually meet the criteria of the PJP, and that they (iii) confuse the process and the state of justification. Argument (i) will be addressed thoroughly in Chapter 2, and argument (ii) is less important for the discussion at hand. Argument (iii), however, is of central importance to the consensus versus convergence debate, and is helpful to clarify both the reasons for adopting intelligibility and how the dynamics of the justification process proposed by convergence differ from those of consensus.⁹⁹

Argument (iii) is that consensus models confuse the *fact* of public justification with the *process* of public justification, and this conflation is one of the central charges made against consensus by Gaus and Vallier.¹⁰⁰ Consensus theories necessarily orient one towards the process of public deliberation; if I

⁹⁸ Vallier, *Liberal Politics*, 24.

⁹⁹ Argument (ii) contends that consensus models fail the most fundamental principle of justificatory liberalism, the PJP. These views of public reason have the surprising consequence of excluding the possibility of advocating on behalf of a law which is actually justified by the PJP. The key example here is of a law which all members of the public have an individual reason to support, and yet, which isn’t supported by public reasons (shareable or accessible). But what would be the objection to enacting such a law? Such a law will not be wrongfully coercive on these citizens; they all want the law to be in place. So it appears that consensus policies will limit the passing of laws which are in fact publicly justified, while convergence alone can guarantee that every genuinely justified law will be put in place. See Vallier, *Liberal Politics*, 10-11.

¹⁰⁰ Gerald Gaus and Kevin Vallier, “The Roles of Religious Conviction,” *Philosophy and Social Criticism* 35, no. 1-2 (2009): 52.

understand the state as central to facilitating the end of cooperative social life, then I'm invested in participating in the state in a certain way. According to consensus theories, the state is not merely instrumental, such that I would merely need to register my perspectives and interests, but it's rather a place in which I discover and refine my understanding of the interests I share with other people, each of us *as citizens*.¹⁰¹ In contrast, on the convergence model the state is understood as a market or generator rather than as a forum or register.¹⁰² The state isn't supposed to have its own interests, rather citizens should be able to trust the state to accurately record and then represent their interests in the development of laws which are justified by the support of all citizens. According to convergence theorists, treating the process of justification as part of justification itself is a kind of category mistake; while the former may be a stage on the way to the latter, it isn't constitutive of it.¹⁰³ As demonstrated by the example above, there are instances in which a law is technically publicly justified without ever being the subject of discussion among citizens; the government merely needs to enact such a law to formally recognize its status as so justified. In other words, something's being publicly justified is a fact that is true or is false, it is not something that *happens to* a particular policy. Justifications for consensus models of public reasons often appeal to the importance of public reasons being contestable by all citizens or being a demonstration of citizen respect for one another, but these can both be devalued if the focus comes to rest squarely on whether or not a law can be passed which does or does not coerce citizens without their having reasons for it. On this presentation, concerns about respect are indexed to policy that has already been implemented. Given the shift in focus from the process to the *fact* of public justification, any concerns about respect in the public sphere of deliberation become unimportant, or at least indexed to what is simply a different domain of political theorizing. Again, on the convergence model public justification is not at all a *process*, rather it is simply a *state of* or *fact about* particular laws.

¹⁰¹ Watson and Hartley, *Equal Citizenship*, 45.

¹⁰² Gaus and Vallier, "The Roles of Religious Conviction," 66.

¹⁰³ Vallier, *Liberal Politics*, 131.

On the basis of these criticisms, the convergence position erects a revised model of public justification, one which includes the conception of *intelligibility* for public reasons. A reason RA is intelligible “if and only if members of the public regard RA as justified for A according to A’s evaluative standards.”¹⁰⁴ A reason is intelligible for A if they can explain why that reason is justified for them, even if no other citizens share A’s standards of evaluating that justification. An individual, Paul, can have a mystical experience which provides him with definitive reasons to support a particular law, and so long as he can recount why that is the case, he seems to be in the clear. His fellow citizens can recognize and understand that, given Paul’s commitments to the value and justifying power of mystical experiences, it is no wonder that Paul would find that experience, and the reason R that it offers, sufficient to endorse law L. In this way, convergence theories attempt to answer the critique from religious citizens by broadening the scope of reasons which are acceptably involved in the sphere of public justification.

We may wonder what, however, *isn’t* allowed on the standard of intelligibility. The goal of intelligibility is to allow for a richer diversity of evaluative standards and of assessments of a “good cognitive process,” and yet to exclude “mere utterances, expressions of emotions, irrational demands or other irrelevant considerations.”¹⁰⁵ But is the criteria of intelligibility strong enough to do this exclusionary work? Presumably an unintelligible reason would be one which is identifiably unjustified on the basis of my standards of justification; perhaps I say that a law is justified for me on Kantian grounds, while I have previously proclaimed myself a utilitarian. But since there’s no requirement in the intelligibility criterion that I have a *good* set of justificatory standards – since presumably there is reasonable pluralism concerning the assessment of these standards – (and so perhaps I just have a very poor understanding of utilitarianism), it’s unclear under what conditions someone could really reject my reasons as unintelligible.¹⁰⁶ For Vallier, it is held in by “some pressure” put by the criterion “on a purely

¹⁰⁴ Vallier, “Public Justification.” This is distinct from Bird’s use of an “intelligible” criteria, which in execution is more similar to an accessibility requirement. Colin Bird, “Mutual Respect and Neutral Justification,” *Ethics* 107, no. 1 (Oct. 1996): 62–96.

¹⁰⁵ Vallier, “Public Justification.”

¹⁰⁶ It may be possible that the allusion to other members of the public assessing my reasons may be more akin to a red herring.

empirical approach,” which demands “that an individual’s reason for endorsing a principle must be justifiable as such according to her own standards of justification,” and that she not make a “gross epistemic error” in her inference.¹⁰⁷

A final feature of the convergence theory’s understanding of public reasons which is essential to understanding its benefit as a model of public justification is its commitment to *asymmetry*. In this context, asymmetry refers to the asymmetry between what merely intelligible reasons are allowed to accomplish. On the convergence model, one intelligible reason can abolish public justification, but one reason alone cannot enact public justification. Consensus views, however, treat all nonpublic reasons the same, or symmetrically: they can neither abolish nor enact public justification. This feature is oddly named and has created confusion in the literature, but an appropriate understanding of it is helpful to understanding the dynamics of public justification for both consensus and convergence theories of public reason.

There are two prevailing understandings of symmetry and a corresponding asymmetry. On the first, the symmetry of the consensus position is that the same set of reasons is available when advocating for or against a particular policy P. Boettcher, for example, thinks this way, and thus that the asymmetry in convergence theories refers to there actually being two different sets of reasons which can be drawn on for passing or vetoing particular legislation. Boettcher seems to think that on the convergence model, *private* or *nonpublic* reasons can be used to veto particular policies.¹⁰⁸ But this is a misunderstanding of the overall convergence project, which is to revise what even constitutes a public (and therefore nonpublic) reason. Reasons specific to my own particular comprehensive are relevant to public justification and are in that sense effectively public reasons. On this understanding, there is a symmetry in convergence as well, which is that, again, reasons which can count for policy can also count against it. In Boettcher’s defense, Vallier does write that “convergence is asymmetric because it allows private reasons

¹⁰⁷ Vallier, “Public Justification,” and *Liberal Politics*, 106.

¹⁰⁸ James Boettcher, “Against the Asymmetric Convergence Model of Public Justification,” *Ethical Theory and Moral Practice* 18, no. 2 (2015), 195.

to serve as defeater reasons for the justification of coercive laws.”¹⁰⁹ But those “private” reasons are still reasons which are relevant for public justification. What we cannot say is that *nonpublic* reasons can function in public justification. And given that private reasons can also be the source of justification for coercive laws, the asymmetry must not lie in the class of reasons which can be drawn on when a law is being either justified or rejected.

The second understanding, offered by Gaus and Vallier, is that the symmetry of the consensus position lies in the idea that if unanimity is required to permissibly pass law L, then unanimity is also required to reject L and render it impermissible. This would have the undesirable consequence of leaving a whole host of laws in the lurch as neither permissible nor impermissible in the instances of a lack of unanimity. In contrast, the asymmetry of convergence recognizes that while unanimity is required to pass L, it is not required to render L impermissible. Put differently, convergence is asymmetric because while a single religious reason cannot serve to justify a coercive policy, a single religious reason alone can serve to render a law unjustified.¹¹⁰ The asymmetry therefore refers not to the groups of reasons which can be called on in a particular context, but to the overall role religious reasons are allowed to play in public justification. Convergence’s asymmetry allows private reasons to be defeaters, empowering “defeater reasons to prohibit legal coercion that would otherwise be justified by appealing to other diverse reasons.”¹¹¹ So, in assessing the fact of whether or not a particular policy which would ban the sale of meat products in the United States is publicly justified or not, the discovery of just one intelligible reason to *reject* such a policy would be enough to declare the policy not publicly justified. This is the case even if the reason in question is that Tom’s spiritual advisor told him no one should ever eat animal meat. But, in the same assessment, the discovery of one intelligible reason *to* ban such a sale would not be enough to establish the policy as publicly justified. In contrast, a religious reason on the consensus model cannot alone justify or defeat a law; Tom’s reason to not let anyone sell meat is not sufficient to either deny or

¹⁰⁹ Vallier, “In Defense of the Asymmetric Convergence Model,” 256.

¹¹⁰ Gaus, “The Place of Religious Belief,” 30-31.

¹¹¹ Kevin Vallier, “In Defense of the Asymmetric Convergence Model: Reply to Boettcher.” *Ethical Theory and Moral Practice* 19, issue 1 (February 2016), 258.

establish public justification. This feature of convergence will prove to be a reason for religious citizens to both endorse and criticize the view. Religious reasons are more powerful, and yet religious views as a whole are less likely to have control of policy.

2.4 Why Convergence?

The question to be answered now is, why be a convergence theorist rather than a consensus one? Convergence theorists have convincingly shown that there is an alternative to the consensus model that fulfills the goal of public justification and that such a view can be worked out coherently (as I have tried to show here), but just because it can be done, why should it? The most robust argument in favor comes from Vallier, who argues that convergence is “superior to the mainstream consensus view,” and therefore the better choice of the two, “*from the perspective of public reason itself.*”¹¹² This is because convergence better fulfills (or answers) two essential features of public reason, the notion of reasonable pluralism and the value of respect for integrity. Convergence justification better respects reasonable pluralism because it takes seriously the diversity of perspectives and doctrines of the good which emerge and makes more space for this richness in the public deliberative sphere. Second, it better respects liberty and respect for integrity because it both allows people to include more of their motivating reasons in public justification, and because it allows for laws to be passed which may not have the support of shareable or accessible reasons, but are genuinely desired by all of the relevant citizenry.¹¹³ And in an attempted blow to committed Rawlsians, a second prominent argument is that convergence simply takes up and extends an idea unquestionably central to Rawlsian political theory, that of the overlapping consensus. If the very public political conception of justice to which consensus theorists hold so dear is the product of diverse and incompatible reasoning, why can’t individual policies be acceptably justified by the same process and phenomenon? This argument is unique given that it doesn’t so much appeal to a value inherent to public

¹¹² Vallier, *Liberal Politics*, 139.

¹¹³ *Ibid.*

justification, but to the Rawlsian origins of public reason.¹¹⁴ In this sense, these two arguments both seek to stress that the convergence model doesn't sin against the central project of public justification. While the mechanism of public justification may look differently than in the consensus model, it still accomplishes the same goal.

And yet, there are reasons to endorse convergence that go above and beyond merely meeting the criteria of public justification. The convergence model, Vallier argues, actually “protects the poor and marginalized.”¹¹⁵ Because convergence justification allows for the inclusion of less traditionally “public” reasons, it seems to avoid the very real threat of limiting engagement in the public sphere to only those who have been cultured and protectively raised in the dominant discourse of their time, in particular educated in a particular way and with the hubris that comes from an entitlement not made available to most people. This is a serious argument in favor of convergence, if it holds. The protection of voices which are often underrepresented in communities and even liberal democracies is a central concern of Rawls and of all public reason theorists. It is in part of our desire to protect those voices that theories of public reason have developed. The threat of misunderstanding is clear, given philosophy's short history with work in epistemic injustice and standpoint theory. We are only now beginning to understand, much less embrace, the idea that certain marginalized groups have understandings and even language which are largely inaccessible to nonmembers.

This third argument will go hand in hand with a fourth and final argument, and the subject of the remainder of my project here, which is that convergence justification is the form of public justification that's more friendly to religion and religious citizens. Convergence works to avoid the problems posed by

¹¹⁴ In spite of this, it draws on a formidable critique of consensus theories: why think that reasonable pluralism stops at conceptions of the good, and not extend to conceptions of justice themselves? Here enters what Gaus refers to as “deep” political liberalism, which recognizes such a reasonable pluralism about justice, not merely the good. What I think this argument neglects is that the original overlapping consensus is not an incidental by-product of happenstance overlap, but is prepared ahead of time out of an independent justificatory process. Ultimately, whether or not we recognize a deep political liberalism that troubles most consensus models' recognition of reasonable pluralism only about comprehensive conceptions of the good versus one which recognizes the same about conceptions of justice won't matter to the core question of this dissertation: whether or not convergence models prove to be better for religious citizens. See Gerald Gaus, “The turn to a political liberalism,” in *A Companion to Rawls*, ed. J. Mandle and D.A. Reidy. 2014. (Chichester: Wiley-Blackwell): 235–250.

¹¹⁵ Vallier, *Liberal Politics*, 138.

the ongoing religious critics of public reason.¹¹⁶ While it is true that later work by prominent convergence theorists such as Vallier has moved away from championing convergence theories as primarily benefitting religious citizens, such themes still appear frequently in the literature, and the popularity of the view is certainly due in part to this early characterization.

Conclusion

In this opening chapter I have introduced thoroughly the project of public justification and the role of public reason within it. I have also highlighted an ambiguity in public justification concerning the mode and mechanism of such justification: why think that public justification has to be “public” in exactly the way Rawls first presented? In light of this, I’ve laid out two models of public justification which both aim to fulfill the core of the project and yet which offer differing benefits. Ultimately, both are compelling responses to the need for a legitimate state via public justification, and determining which is superior is a genuine challenge. But I haven’t yet addressed seriously what has been for many the most important adjudicating factor between the two models: their treatment of religious citizens. One of the primary reasons for the development of the convergence view was the critique of consensus views by religious critics. Convergence views emerged in large part as a response to these criticisms and the larger challenge they represented. The religious critiques of consensus had all the flavor of a much longer-running dispute: the one between liberalism and religion. Was the entire project of public justification doomed, then, to death on the battlefield of this nearly ancient dispute? Or could there be a model of public justification that would not only fulfill that project’s central aims, but would also solve the centuries-old challenge of reconciling intense, personal religious commitment with the demands of a public, common state?

¹¹⁶ There are still some religious critics who reject all forms of public reason, even more accommodating convergence varieties. Most notably, Christopher Eberle.

CHAPTER II

RELIGION, THE ACCUSER

In Chapter 1 I introduced in some detail the project of public justification, its importance, its development into two models: consensus and convergence, as well as the place of public reason in both of these models. In this chapter, I focus on what is at stake in this conversation, specifically with regard to the consensus/convergence debate. Why is this debate of such importance? To answer this question I will turn to religion, the concept which was intended to serve as the adjudicating ground between these two in yet another standoff in the continually unfolding drama between liberalism and religion. In this chapter I'll investigate thoroughly the place of religion in the public reason debate, specifically the way in which consensus and convergence models have tried to respond to the challenge it poses. I'll open with a review of why religion become such a prominent concern for the public reason debate, starting with Rawls' particular interest in it and ending with its role as one of the most significant challenges to political liberalism. I'll then lay out a taxonomy of the religious criticisms that have been made of public reason and argue that the Integrity Objection is the most important criticism to attend to. Next, I will review the consensus and convergence responses to the Integrity Objection, illustrating both how convergence views purport to better answer the objection and how we may begin to identify holes in that characterization. Finally, I'll discuss briefly how these two conceptions would differently inform a contemporary case of religious speech in the public sphere and argue that a more thorough investigation of the nature of religion is warranted to establish any meaningful conclusions in the public reason debate.

1. The Charge of A Rigged Political Liberalism

From the beginning, political liberalism has been uniquely concerned with religion. In Rawls' introduction to the first version of *Political Liberalism*, he gives an account of the history of religion from the ancient Greeks through the Medieval period and the Protestant Reformation, ultimately claiming that

the “historical origin” of political liberalism was “the Reformation and its aftermath.”¹¹⁷ The question and problem to which political liberalism is an answer came to be refined as reasonable pluralism, but in its most nascent form was a version of the ongoing quest for sustainable religious toleration.¹¹⁸ Given this, the criticisms of political liberalism from religious citizens and their philosophical defenders take on unique importance. To demonstrate why religious citizens in particular might raise a critique of public reason, consider the case of Rawls’ infamous footnote concerning abortion.

1.1 The Footnote

In the first edition of *Political Liberalism*, Rawls wrote in an extended footnote that public reason could provide an answer to the issue of the legal status of abortion. Specifically, Rawls wrote that any reasonable view “will give a woman a duly qualified right to decide whether or not to end her pregnancy during the first trimester.”¹¹⁹ This seemed to imply that only an *unreasonable* person would not support the right to abortion during the first trimester, an implication that unsurprisingly inflamed those who held pro-life views but considered themselves to be liberal and reasonable.¹²⁰ Rawls appears to, in effect, weaponize public reason by ensuring it provided a definitive answer to a long-standing and challenging ethical debate, effectively dividing those who were pro-choice and pro-life along the lines of public reason and insinuating that to accept public reason was incompatible with being pro-life. Rawls took this critique seriously and made an earnest reply in “The Idea of Public Reason Revisited,” arguing that he hadn’t intended the footnote to provide an argument that public reason would always justify pro-choice legislation, but rather offered his personal opinion (which favors such legislation) as an illuminating example of the ability of public reason to provide conclusive answers to challenging political questions.¹²¹

¹¹⁷ Rawls, *Political Liberalism*, xxvi.

¹¹⁸ *Ibid.*, xxvi.

¹¹⁹ *Ibid.*, 243, footnote 32.

¹²⁰ As an example of such critique, see Timothy Hurley, “John Rawls and Liberal Neutrality,” in *John Rawls: Critical Assessments of Leading Philosophers: Volume IV: Political Liberalism and The Law of Peoples*, ed. Chandran Kukathas (London: Routledge, 2003), 49.

¹²¹ Rawls, “Idea of Public Reason Revisited,” 479, footnote 80.

This did not nearly solve the problem, however. Despite separating his own opinion from the idea that public reason necessarily endorsed a pro-choice system of legislation, he still insisted on the text to which the footnote was attached, that “the only comprehensive doctrines that run afoul of public reason are those that cannot support a reasonable balance [or ordering] of political values [on the issue.]”¹²² But this is certainly less than clear.¹²³ When Rawls claims that “any reasonable weighing of values” will support the right to first trimester abortion, what could he mean by “reasonable”? Surely Rawls doesn’t mean “reasonable” in any ordinary sense, but is intending to use the word in a way consistent with his previous particular stipulative use of the term. But in this case, that seems more challenging. If we can understand doctrines or individuals as reasonable when they support only offering reasons which they reasonably expect others will reasonably accept, how can we understand the ordering of political values that way? If all political values are the appropriate subject and content of public reason, how could there be an ordering of them that isn’t acceptable under public reason? Rawls doesn’t provide an answer to this, therefore avoiding this most interesting case, that of the individual who makes an argument against a right to abortion only using public reasons, in favor of addressing the easier case here, that of the citizen who makes such an argument but by appeal to their particular political values. In such an instance it’s all too clear what the error is.¹²⁴ Neal believes Rawls has no answer for the first problem (and neither does Joshua Cohen, who makes a more charitable interpretation of the passage¹²⁵).¹²⁶ And, in not addressing this problem, what remains unacknowledged (and therefore implicitly rejected) is the idea that no one can reject a woman’s right to abortion in the first trimester and still be a reasonable citizen.

¹²² Rawls, “Idea of Public Reason Revisited,” 479, footnote 80.

¹²³ Neal, “Rawls, Abortion, and Public Reason.”

¹²⁴ Ibid.

¹²⁵ Joshua Cohen, “A More Democratic Liberalism,” Michigan Law Review 92 (1994): 1503-1546.

¹²⁶ Neal, “Rawls, Abortion,” 346.

1.2 Two Concerns

Ultimately, what comes through despite Rawls' attempts at mitigation are two very serious concerns, one, that political liberalism may be "rigged," and two, that the demands of the ideal public reason will be inconsistent with the duties of conscience of religious citizens. This first concern is more specifically that the shape of public reason is set up so as to be rigged in favor of certain "progressive" policies – most often pro-choice policies and marriage equality – rather than being merely a procedural means of adjudicating between liberal disagreement. If someone cannot be pro-life without being unreasonable, then perhaps the constraints of political liberalism have perhaps been set by Rawls already in his pro-choice favor. Put more strongly, Rawls' position "seems plainly, if silently, to import into the analysis of the question a range of undefended beliefs of precisely the sort that 'political liberalism' is supposed to exclude," and is itself a "smuggling in of controversial moral and metaphysical beliefs."¹²⁷ Rawls is charged with hypocrisy: doing the exact thing his model is purportedly designed to avoid.

According to this concern, political liberalism is inhospitable to or even totally excluding of those with comprehensive doctrines known as traditionally "religious." This concern is compounded by what seem to be overly stringent requirements placed upon religious citizens, who, in order to participate in a politically liberal democracy and abide by the ideal of public reason, will have to present reasons with which they fundamentally disagree and will have to suppress their true, genuinely motivating reasons. I'll address these concerns in detail in the next section.

2. The Religious Critique

As I've made clear, in its efforts to resolve the problem of the tension between the liberal state and religion, political liberalism has often raised the ire of religious citizens. Despite Rawls' best efforts at building a solution which won't conflict with any one individual's comprehensive doctrine, for many the demands of their comprehensive doctrines run up against the limitations of public reason.

¹²⁷ Robert P. George, "Public Reason and Political Conflict: Abortion and Homosexuality," *Yale Law Journal* 106, issue 8 (1997): 2488.

Understanding the depth of these criticisms is essential for recognizing the motivation to shift towards a new model of public reason. Additionally, looking closely at these criticisms offers my first sustained treatment of religion as it functions conceptually in the public reason literature. While Rawls includes both religious and nonreligious doctrines in his category of comprehensive doctrines, the debate in public reason has often revolved around religious doctrines in particular. There have been no objections from devout utilitarians or humanists concerned about their lack of representation in a society governed by Rawlsian public reason.¹²⁸ But religious citizens have repeatedly raised concerns about the possibility that they and their beliefs won't be appropriately treated in such a society. Religion has therefore played an odd role in the literature. There's a sense in which it's entirely inessential, merely an instance illustrating a larger phenomenon, and yet at the same it is *the* paradigmatic example of a comprehensive doctrine which might trouble the Rawlsian picture. We should ask, then, if it's merely just an instance of a broader phenomenon, or if there's a way in which its centrality to the debate has larger significance. Ultimately I will argue the second, that religion's role as a key example has actually framed the way the debate has run, rather than simply providing an opportunity to investigate the way the debate functions over time, but I will return to this point in later chapters.

For now, let us look to a taxonomy of religious criticisms of political liberalism. Following this taxonomy, I will show that what I will call the Integrity Objection is the most important, and essentially the core, of all of the religious-based objections raised to political liberalism. To begin, there has been an enormous number of religious criticisms leveraged against political liberalism. Vallier provides one helpful taxonomy of the three most common types of religious objections to public reason. These are the fairness objection, the religious security objection, and the integrity objection.¹²⁹ As Vallier argues, however, these objections are best understood as not being against public reason *as such*, but only to the "religious restraint" demanded by *some* theories of public reason.¹³⁰ This demand, formulated as the

¹²⁸ Not yet to my knowledge.

¹²⁹ Vallier, *Liberal Politics*, 45.

¹³⁰ *Ibid.*, 77.

Doctrine of Religious Restraint (hereafter DRR), is that “a citizen should not support any coercive law for which [he/she] lacks a public justification.”¹³¹ It is this doctrine, presumably necessitated by consensus forms of public reason, which raises the ire of religious citizens who argue that this restriction is problematic. Their concern is therefore less often about the conceptual apparatus of public reason, and more about what the ideal of public reason asks of their personal behavior.

The DRR in practice asks that neither citizens nor public political officials support a law which is not publicly justified. For citizens, this is most often cashed out in voting on the grounds of public reasons rather than non-public reasons. There is some ambiguity here. Eberle describes the DRR as both that “a citizen is permitted to support coercive law *L* *only if* *L* is publicly justified,” and as that “a citizen who lacks public justification for *L* *should not* support *L*.”¹³² But we might draw these apart; I could think that a law is supported by a balance of public reasons, but that may be distinct from whether or not a law actually passes as publicly justified. But perhaps that opinion is in the minority, and the vast majority of my fellow citizens, reasoning on the basis of the same reasons, find sufficient support lacking. In such a case I would not be in breach of the ideal of public reason in voting in favor of the law.¹³³ Either way, the concern, betrayed by the name of the doctrine, is with the critical eye cast upon religious citizens who vote only in line with their convictions without regard for whether or not there are public reasons to support such a vote.

2.1 Three Common Objections

Now, to return to the three most common types of objections. The first two I will summarize quickly. The fairness objection charges that public reason is in some way unfair to religious doctrines or religious individuals, and gives non-religious doctrines or non-religious citizens preferential treatment.

¹³¹ Eberle, *Religious Conviction*, 68.

¹³² *Ibid.*, 68.

¹³³ This note, however, relies on a certain conception of public reason mentioned in Chapter 1, that is, that public reasons are not constituted by each citizen having the exact same set of reasons, but are a bank of available reasons appropriate for public deliberation.

Since it is most often religious citizens who actually have to repress or reject their comprehensive doctrines, and who are therefore most affected by the DRR, political liberalism places an extra burden on them, treating them unfairly compared to non-religious citizens.¹³⁴ Concerning religious doctrines themselves, the fairness objection could charge that they are subject to a “content-based double standard,” in that “religious speech strengthening secularism and the liberal coalition in a well-ordered society is permissible,” but any other type of religious speech is unwelcome.¹³⁵ Second, the religious stability objection argues against what the critics see as an assumption built into the DRR: that religious commitments and individuals are dangerous and divisive, and so need to be contained in order to ensure long-term stability.¹³⁶ The religious stability objection argues that the DRR is an unnecessary attempt to correct for this assumption, and that the assumption itself is unfounded.¹³⁷

2.2 The Integrity Objection

The final objection, and certainly the most important, is the Integrity Objection (hereafter “IO”), and it is this objection which I will focus on throughout this chapter and the next. Not only is the IO the most compelling objection to the DRR and conceptions of public reason which adopt some form of it, but integrity is a concern at the heart of many varieties of religious critique. It’s the reason offered by many critics of political liberalism to reject that doctrine; it’s given notably by Jürgen Habermas as why he rejects the Rawlsian DRR.¹³⁸ And, as for being at the heart of many religious criticisms, it is the charge of

¹³⁴ Vallier, *Liberal Politics*, 66-68.

¹³⁵ Gary Leedes, “Rawls’s Excessively Secular Political Conception,” *University of Richmond Law Review* 27, issue 5 (1993): 1111.

¹³⁶ Christopher Eberle taxonomizes this assumption into two forms, the “argument from Bosnia,” and a weaker form, the “argument from divisiveness.” Eberle, *Religious Conviction*, 153.

¹³⁷ Vallier, *Liberal Politics*, 72-77. Vallier titles the “divisiveness objection,” but what he means is that the argument from divisiveness *fails*, and that this failure is invoked by religious critics (Vallier, *Liberal Politics*, 77). To reduce confusion, I’ve here re-titled it as the “religious stability objection,” because the actual objection is that religions are not so threatening to stability as to warrant restraint on the part of individual citizens.

¹³⁸ Jürgen Habermas, “Religion in the Public Sphere,” *European Journal of Philosophy*, 14, no. 1 (2006): 7. For yet another example of a secular liberal who uses the Integrity Objection to reject political liberalism, see Ronald Dworkin’s *Is Democracy Possible Here?* (Princeton University Press, 2006), 64-65. Dworkin writes: “Americans of that opinion cannot separate these religious convictions from their political principles. Their religious convictions *are* political principles. They do not accept private observance as a substitute for public religious endorsement; they

obstructed integrity that guides the fairness objection. If there was no damage being done to religious citizens in having to perform the requirements of the DRR, the fairness objection would be significantly less effective, and perhaps may not exist at all. Likewise, if the DRR wasn't undesirable in the first place – which again, is often accounted for on the grounds of it damaging one's integrity, the religious security objection would have less motivation (though certainly not none) to criticize the assumption that religious commitments need to be contained.

The IO states roughly that public reason, by presenting religious citizens with a moral duty to make their arguments using only public (presumably secular) reasons, forces them to split their private and public selves. It demands that they participate politically as dis-integrated selves. They are required by not being allowed to use reasons drawn from their comprehensive doctrines in the public deliberative sphere, to either, depending on the version of the IO presented, misrepresent themselves in the public sphere, or to do something impossible: offer and engage with purely public reasons where such reasons are divorced entirely from their comprehensive commitments.¹³⁹ Wolterstorff provides the standard view of the objection:

It belongs to the *religious convictions* of a good many religious people in our society that *they ought to base* their decisions concerning fundamental issues of justice *on* their religious convictions. They do not view it as an option whether or not to do so. It is their conviction that they ought to strive for wholeness, integrity, integration, in their lives: that they ought to allow [some religious source] to shape their existence as a whole, including... their political existence.¹⁴⁰

Habermas writes of the objection in this way: “a state cannot encumber its citizens, whom it guarantees freedom of religious expression, with duties that are incompatible with pursuing a devout life – it cannot expect something impossible of them.”¹⁴¹ The Rawlsian picture demands that citizens undergo “an

want to celebrate their god not just as private worshipers but as citizens. They want to pour their faith into their patriotism so that the two commitments are one.” (64-65)

¹³⁹ When such reasons would apply to constitutional essentials or matters of basic justice.

¹⁴⁰ Nicholas Wolterstorff, “The Role of Religion in Decision and Discussion of Political Issues,” in *Religion in the Public Square* (Lanham: Rowman and Littlefield Publishers, Inc., 1997), 105. Cont: “Their religion is not, for them, about *something other* than their social and political existence; it is *also* about their social and political existence.”

¹⁴¹ Habermas, “Religion in the Public Sphere,” 7.

artificial division within their own minds” which would “[jeopardize] their existence as pious persons.”¹⁴² So Habermas’ version of the concern with integrity is that it proposes something which is not merely morally questionable, but which is actually psychologically impossible. Similarly, Robert George argues that there is “no reason to suppose that people can or should attempt to prescind from their ‘comprehensive views’ in determining their obligations to those with whom they find themselves in morally charged political conflict,” demonstrating a concern with even the *possibility* of fulfilling the ideal of public reason.¹⁴³ However, presentations of the IO do vacillate between arguing that the ideal is impossible, and arguing that it may just be exceptionally difficult, as seen in Gary Leedes’ treatment which bemoans Rawls’ being “unsympathetic and unforgiving” to religious citizens, for whom “compliance with his ideal of public reason” is “an extremely difficult task.”¹⁴⁴ Similarly to Wolterstorff, Leedes specifically invokes the integral nature of religious convictions: “when internalized religious values dominate a person’s mental decision making, they are virtually an integral and inseparable facet of that person’s identity. If such persons were asked to separate their non-political values from their political values, each would say: ‘What you want me to do just isn’t *me*.’”¹⁴⁵ The Integrity Objection argues, then, that religious citizens are forced, an account of being asked to not vote on the basis of their comprehensive doctrines, to separate their most profound commitments from their actions, and to do something so challenging as to be nearly impossible. If true, this objection is seriously damaging to political liberalism. A state which creates a wholly inhospitable environment for its religious citizens is one which will be hard-pressed to argue that it genuinely respects and treats all of its citizens as equals.

3. The Consensus Response

Before considering how convergence models respond to the IO, I want to show how the consensus model has so far dealt with this challenge. Given that my goal in this dissertation as a whole is

¹⁴² Habermas, “Religion in the Public Sphere,” 7.

¹⁴³ George, “Public Reason and Political Conflict,” 2502.

¹⁴⁴ Leedes, “Rawls’s Excessively Political Conception,” 1112-1113.

¹⁴⁵ *Ibid.*

to argue that the convergence position does not achieve its goal of being better for religion, and to show that the consensus position stands as a reasonable alternative, I will look at how the consensus position responds to these criticisms as a way to begin weighing the approaches of the two models. While there is at least one famously dismissive response to integrity concerns by a consensus theorist (Stephen Macedo's famous injunction that religious citizens who want their religious reasons to count as public ones need to just "Grow up!"¹⁴⁶), consensus responses by and large respond to these challenges concerning integrity more carefully, usually by changing the conversation so as to make the Integrity Objection either misdirected, misapplied, or insufficient. Other popular responses take the form of arguing that there is no real infringement on integrity at all, either due to a misunderstanding of integrity on the part of religious objectors, a misunderstanding of what is actually required by the DRR, or a critique of the idea that someone could understand themselves as meaningfully infringed upon by the requirements of the DRR. But far and away, the most common consensus response to the IO is to argue that the DRR does require that some citizens compromise their integrity, but that these kind of compromises are necessitated by the goals and method of political liberalism. This response can take different forms, depending on the reasons why the consensus theorist in question endorses public reason more generally, but the broad strokes of all of these approaches are that instances in which one may have to refrain from voting for a policy one knows is publicly unjustified are simply inevitable necessities.¹⁴⁷

Put most clearly by Andrew Lister,

If it *is* wrong to make political decisions on grounds that others can reasonably reject, then it *ought* to be harder for people with such beliefs to put them into practice. Having a law against murder makes it harder for bad guys to satisfy their preferences, and easier for good guys to satisfy theirs, and compared to the situation in which there are no laws. Yet, we do not think that unequal impact compared to the baseline of anarchy counts as a strike against laws versus murder.¹⁴⁸

¹⁴⁶ Stephen Macedo, "In Defense of Liberal Public Reason: Are Slavery and Abortion Hard Cases?," *The American Journal of Jurisprudence* 42 (1997), 21.

¹⁴⁷ This type of argument is made both by Andrew Lister in *Public Reason and Political Community* (Bloomsbury, 2013), and Lori Watson something similar in her review of Vallier's book. "Liberal Politics and Public Faith," *Notre Dame Philosophical Reviews*, September 20, 2015. <https://ndpr.nd.edu/news/60955-liberal-politics-and-public-faith-beyond-separation/>.

¹⁴⁸ Lister, *Public Reasons and Political Community*, 39.

In other words, if I think that it is simply wrong to not vote on the basis of shareable or accessible reasons, whether because I'm compelled by a respect for persons argument or some other, I won't be persuaded by anyone's objection that they are frustrated by these requirements.

What this response makes clear is that, in order to respond to the Integrity Objection, what actually needs to be worked out is the foundational interests and commitments of public reason, which will then appropriately limit the scope of relevant integrity concerns. This holds true because, as I will show in the following sections, even the convergence model will encounter some concerns about integrity, but they will likewise be dismissed on the grounds that catering to integrity in those instances would go beyond what is tolerable on the demands of public reason.

3.1 A Consensus Case Study: The Barthian

Before looking to convergence's response to the Integrity Objection, however, I'll here demonstrate a more thorough example of how a consensus theorist could respond to a specific charge of the objection. Wolterstorff, who provided the classic formulation given above, has recently strengthened his account of the Integrity Objection by introducing the "barthian," an individual who "regards himself as obligated to ground his political reflections on the resources of his religion (plus relevant non-normative factual knowledge) *and on those resources alone* – when these speak to the matter at hand."¹⁴⁹ The barthian will never "think about political issues in Rawlsian terms" because "thinking that way is unfaithful to God; and fidelity to God overrides all other considerations."¹⁵⁰ The barthian, the paradigmatic individual to make the Integrity Objection, claims it is impossible for him to vote only on the basis of public reasons, or even in light of public reasons. Anything less than being able to vote based only on his religious reasons will keep him from fulfilling his religious obligations. What renders the barthian a tough case for the consensus public reason liberal is that he has commitments which are liberal

¹⁴⁹ Nicholas Wolterstorff, *Understanding Liberal Democracy: Essays in Political Philosophy*, ed. Terence Cuneo (Oxford: Oxford University Press, 2012), 99.

¹⁵⁰ Wolterstorff, *Understanding Liberal Democracy*, 99.

– that is, in accord with the conclusions of public reason – in execution, and yet rejects the condition of public reason itself. Wolterstorff insists the barthian is both reasonable by Rawlsian standards and yet unfairly encroached upon by them. The conclusion must be that the barthian has only reasons which are so bound up in his particular Christian theology that he cannot vote without appeal to that theology. It follows that public reasons are literally *not his reasons*, and therefore if he is coerced on the basis of them, he is wronged.

But the case of the barthian fails. Public reason liberalism answers the puzzle of legitimacy and authority in political philosophy by saying: if you are only coerced on the basis of reasons which you actually have, then you aren't inappropriately coerced at all. Rather your moral authority and equality are upheld because you have made the laws which rule over you. If the barthian says, "Your reasons are so far from me that I cannot even vote on the basis of them," then public reasons have failed in their one goal: to be properly public. The implication is that there are no public reasons which the barthian can understand as his own, but if this is true, then the barthian has failed to be represented in the overlapping consensus. But if the barthian is not represented in the overlapping consensus, then we should ask: what kind of commitment does the barthian have to freedom and equality? From here I think I should assume that the barthian would therefore not grant his support to any liberal legislation. As a result, the barthian is not actually *reasonable* on the Rawlsian model, that is, he does not see his fellow citizens as free and equal, and is not willing to offer them reasons he thinks they could reasonably accept. Either this is the case, and the barthian is not properly reasonable (in which case he is excluded from the realm of consideration for Rawls and all other consensus public reason liberals), or (what I think is the more likely alternative), the barthian does in fact have reasons which can be considered public reasons, and therefore reasons which could be voted on in the Rawlsian picture. The question which arises here is how we ought to understand the relationship between comprehensive and political conceptions of justice; the consensus theory argues that to have a comprehensive conception which supports the political conception, one must understand oneself as therefore having public reasons. If this is true, then the barthian doesn't actually exist, and therefore doesn't pose the problems for political liberalism that Wolterstorff believes he does.

4. The Convergence Response

Given that, as I've shown, consensus theories make no special concessions for the Integrity Objection, it is perhaps unsurprising that convergence theories take it head on. Convergence theories of public reason are intended to be a form of public reason that does not include the demand for restraint Vallier understands to be problematic, and which therefore can respond almost entirely to the IO. Hand in hand with this claim to be able to satisfy those who make the IO is convergence's claim to be the more faith-friendly form of public reason liberalism. The case for this is made, at least by Vallier, primarily on the grounds that convergence better protects the *integrity* of religious citizens through a variety of corrective measures to the consensus position. It most importantly (i) removes the doctrine of the restraint (nearly), (ii) includes an idea of moderate idealization that protects religious commitments from being idealized away, and (iii) promotes a robust set of religious accommodations through a justification of the free exercise and establishment clauses. In general, convergence views respond to the Integrity Objection by trying to accommodate it, while consensus views respond to the Integrity Objection by explaining it away.

4.1 Convergence's Three Strategies

This first way in which convergence views aim to correct for the DRR is by largely eliminating it. On the convergence view, citizens need not refrain from voting on the basis of their religious doctrines. They are still required to vote only on the basis of public reasons, but on convergence's intelligibility criterion, the vast majority of reasons are considered appropriately public. Instead, the DRR is replaced with the Principle of Convergent Restraint. On this view, "A should not publicly advocate law L in order to contribute to M's becoming or remaining law (where L may be equivalent to M) if A justifiably believes (a) that members of the public lack sufficient reason R_n to endorse M and (b) that A's public

advocacy effectively contributes to M's becoming law."¹⁵¹ The only actual "restraint" in place that Vallier acknowledges applies strictly to legislators or politicians, and prevents them from acting politically where their actions would *effectively* contribute to something becoming law, where they don't have good enough reason to think that the law is actually publicly justified. It also applies to judges, who Vallier argues are the only people in a justificatory liberal state subject to a reasons restraint.¹⁵²

The second such way is by defending a concept of moderate idealization.¹⁵³ While technically no specific level of idealization is mandated by either consensus or convergence, convergence theorists advocate for a moderate level. This would prevent, on a high level of idealization, either a default consensus or an erasure of unique, conflicting belief systems. This is because, on a high enough level of idealization wherein all people reason perfectly, the burdens of judgement would be mitigated and lead all people to come to the same conclusions. Having the same conclusions would lead to the existence of only one comprehensive doctrine, and therefore the very same set of reasons for all citizens. There would be no need for convergence justification because there would be no potentially unshared reasons in need of representation. It would also prevent the risks of a very low level of idealization, which as something more like epistemic populism, would be subject to the emotional misgivings and confused rationalities of ordinary citizens.¹⁵⁴ Ultimately, convergence theorist Vallier argues that this model of moderate idealization allows for religious citizens to retain their most important commitments, preventing the possibility of yet another instance of the Integrity Objection. Vallier argues that being coerced on the basis of a reason which you don't explicitly have – even if it is a version of a reason or interest you do have, only poorly reasoned – is a form of obstructing your integrity.¹⁵⁵

¹⁵¹ Vallier, *Liberal Politics*, 188.

¹⁵² Ibid.

¹⁵³ David Enoch, Christopher Eberle, and Nicholas Wolterstorff have all been critical of coercion based on any sort of idealization; this adjustment of the level of idealization is in part a response to these concerns.

¹⁵⁴ See Eberle on this, *Religious Conviction*, 200.

¹⁵⁵ I find it strange here that Vallier treats this as a concern for integrity, rather than a concern for the primary wrong public reason is intended to defend against: that someone be coerced on the basis of a reason that they don't have. This serves, however, to connect the convergence endorsement of moderate idealization to Vallier's presentation of integrity as one of the two core values of liberalism. This is convenient, but not a compelling framing.

These moderately idealized agents are considered rational if they meet two criteria. One, they “only have epistemically justified beliefs,” and two, they “generally [arrive] at these beliefs via sound rules of inference.”¹⁵⁶ Vallier believes that such agents will develop a local coherence among their beliefs, when such coherence is the product of easily accessible information, and when developing such coherence wouldn’t lead to “removing or altering a vast edifice of [the individual’s] beliefs.”¹⁵⁷ The final picture put forward is of citizens who are both rational and reasonable, lining up with Rawls in language, but where rational agents are those who “rationally pursue their goals with integrity in an informed way,” and “obey rules they regard as publicly justified subject to the same epistemic constraints.”¹⁵⁸

The third and final way convergence purports to protect citizens’ religious integrity is by an establishment of the free exercise and establishment clauses, in line with the current United States Constitution. Because of the nature of the Principle of Intelligible Exclusion, which is that “law-making bodies must (i) only impose laws on members of the public that members of the public have sufficient intelligible reason to endorse and (ii) repeal or reform laws that members of the public have sufficient intelligible reason to reject,” Vallier argues that there will be the guarantee of the free exercise of religion as well as of there not being excessive mixing of the state’s institutions with any particular religious tradition.¹⁵⁹ Furthermore, because of the structure of convergence justification, there will also be a robust system of religious accommodations put in place. Because any intelligible reason, including a religious reason, can serve as a defeater for a particular type of law, a religious community can say they reject a particular law, L, unless it is made into L*, which would be the same law, but with an accommodation provided for them. Religious citizens will be protected in their activities, and will never have to fear that they will be coerced by a law which they cannot endorse by one of their own intelligible reasons.

¹⁵⁶ Vallier, *Liberal Politics*, 161.

¹⁵⁷ *Ibid.*, 163.

¹⁵⁸ *Ibid.*, 164.

¹⁵⁹ *Ibid.*, 206.

4.2 Convergence Response to the Barthian

To concretize these strategies, consider how they could be employed to respond to Wolterstorff's barthian introduced above. The barthian, recall, finds it wholly impossible to consider making his political arguments in the language of public reason. The consensus theorist has to argue that the barthian is not actually obstructed in the way he thinks he is; in other words, such a theorist has to disagree foundationally with the barthian. In contrast, convergence theorists can validate the barthian's concern and proceed to alleviate it directly by means of eliminating the DRR. On a convergence model, the barthian, so long as he is a citizen, can freely advocate or vote for a particular coercive policy, regardless of his reasons for doing so. There is no restraint placed on citizen political activity, and so no reason for the barthian to divorce his most important reasons for acting from his political commitments.

It should now be clear that the convergence model makes a compelling case in their ability to eliminate the concerns of religious citizens. The barthian seems aptly dealt with in a way that will satisfy his most important desires. Ultimately I will argue that – contrary to appearances here – the convergence model neither definitively solves the Integrity Objection nor succeeds in being better for religious citizens on the whole. For now though, I will make one important clarification about the kind of concern I'm exploring throughout this dissertation. This is that the Integrity Objection is about the risk of harm to religious citizens, not about other social dimensions of politically liberal states. In making this clarification, I am responding to Vallier's presentation of the Integrity Objection. He argues that the objection is not a psychological concern related to the potential frustration or hurt feelings of the religious citizen (and so is not answerable by Macedo's injunction), but should be read normatively as arguing that "religious citizens have *no reason* to engage in integrity-violating restraint."¹⁶⁰ When "properly understood," the objection "asks whether religious citizens have reason to endorse restraint," such that the concern is not over what they actually can or cannot handle psychologically, "but what they can *reasonably be required* to handle."¹⁶¹ This move acknowledges that costs to integrity alone are

¹⁶⁰ Vallier, *Liberal Politics*, 59-60.

¹⁶¹ *Ibid.*, 60.

insufficient objections to public reason. All accounts of justified political power limit citizen behavior in some instances, and therefore their ability to maintain some kinds of integrity.

However, in his effort to consider the costs of restraint and judge what would be an unreasonable cost to religious citizens' integrity, Vallier makes an error. He introduces two real life cases: the role Christian churches played in the Civil Rights movement and of Desmond Tutu's explicit use of Christian theology as a part of the South African Truth and Reconciliation Commission. The first case leaves "unclear" "the strength of [the] reconstructed integrity objection," as restraint doesn't entail, for any public reason liberal, restricting citizens' discussion of religious reasons in of their religious communities.¹⁶² Vallier uses the second case to argue, however, that the costs of public reason restraint are still too significant because, had Tutu been forced to argue only using public reasons, he would not have been successful. In Vallier's words, "a Rawlsian Tutu may not have been as effective an advocate – advancing his arguments in terms of a reasonable balance of political values could have easily fallen flat give the power and centrality of religious considerations in the lives of many South Africans."¹⁶³ This is also due to the fact that for individuals who are not "secular, college-educated citizens of Western liberal democracies," Vallier argues, acquiring the capacity to distinguish public and non-public reasons would be "unduly onerous."¹⁶⁴

This a compelling case. But it's not clear that it's an instance of the Integrity Objection. Rather, the move to Tutu introduces a problem of *realizability* for public reason – a challenging problem, to be sure, but not one of personal integrity. Vallier doesn't argue that the problem is Tutu's personal loss of integrity, rather that the overall goal of "effective political activism on behalf of social justice" would be "needlessly interfere[d] with."¹⁶⁵ That concern touches on two interesting issues: whether or not the ideal of public reason can be embraced by a particular population, and if we ought to reject public reason because positive social change has been born from religious reasons, but both of these are departures from

¹⁶² Vallier, *Liberal Politics*, 62.

¹⁶³ *Ibid.*, 63.

¹⁶⁴ *Ibid.*, 64.

¹⁶⁵ *Ibid.*, 63.

the value of personal integrity. And more importantly, neither of these are relevant to the question of whether the convergence model of public justification solves the problem posed by the Integrity Objection.

Conclusion

As a contemporary application of the debate between consensus and convergence, consider the ongoing battle over immigration legislation, in which heated questions swirl around the US Government's practice of separating immigrating families at the border, forcefully taking children from their parents and placing both in separate holding facilities until their request for asylum has been properly considered. In the midst of the public press briefings surrounding these events, then Attorney General Jeff Sessions referenced Romans 13, a book and chapter in the Christian New Testament. The first two verses command the audience, originally Christians in Ancient Rome being addressed by Paul, to obey the rule of law because all authority is established by God, and is therefore ordained or intended by him. Or, in Sessions' words, "I would cite you to the Apostle Paul and his clear and wise command in Romans 13, to obey the laws of the government because God has ordained them for the purpose of order."¹⁶⁶ Sarah Huckabee Sanders used a similar argument when questioned about Sessions' comments, telling reporters that "It is very biblical to enforce the law. That is actually repeated a number of times throughout the Bible."¹⁶⁷

The use of such language was highly controversial, both among non-religious critics who objected to the use of the Bible as justification for any government policy, and among Christians who argued that the verse had been used out of context. The verse was used inappropriately, some Christians argued, either because it wasn't consistent with the rest of Romans 13, or because it indicated a kind of

¹⁶⁶ "Attorney General Sessions Addresses Recent Criticisms of Zero Tolerance By Church Leaders," The United States Department of Justice, updated 14 June 2018, <https://www.justice.gov/opa/speech/attorney-general-sessions-addresses-recent-criticisms-zero-tolerance-church-leaders>.

¹⁶⁷ "Sarah Sanders uses Bible to defend border policy," Guardian News, 14 June 2018, <https://www.youtube.com/watch?v=R-4tGZLyW0A>.

“cherry picking” wherein one non-representative Bible verse was used as authoritative. Regardless, Sessions’ argument here presents a test case for the question of public reason. It provides an instance in which a public official, arguing in justification of a coercive policy (one so coercive that it’s led directly to the functional incarceration of thousands of children), cited a Bible verse as a key argument. The upshot of Sessions’ speech was that he was enforcing the law, and that such enforcement is good in part because the Christian sacred text commands as much.

In a society governed by Rawlsian public reason, Sessions has done something which, on at least some interpretations, does not fulfill the dictates of that ideal.¹⁶⁸ Sessions invoked a particular comprehensive doctrine as a way to legitimate a coercive policy. But did he *really* do something wrong? For those sympathetic to the idea that Sessions didn’t behave inappropriately, and perhaps that the public reason tradition has historically been too restrictive, the convergence position offers a chance to consider a more lax alternative.

How would the convergence position respond differently to Sessions’ appeal? Would it provide the same resources for criticism of Sessions as the consensus position? The answer is a firm no, and the “no” reflected here is an excellent example of what is, in part, lost in the switch from consensus to convergence theories of public reason. Lurking in a deceptively simple name change is a robust shift in

¹⁶⁸ One might make a distinction here between Sessions’ offering a defense of a law that necessitates the detainment of children as such, and his offering a defense of enforcing a law in general. On the latter reading, Sessions may not have been at risk of infringing on any of Rawls’ classic public reason standards. The good of enforcing law, period, is not necessarily a matter of constitutional essentials or basic justice, while presumably arguing for enforcing the immigration law would concern matters of basic justice. And yet, Sessions’ was responding specifically to critiques of the law, and coupled the justification with other justifications related specifically to the immigration laws in question.

One additional consideration should be addressed here. One might argue that given the proviso, this behavior is unobjectionable. For the sake of argument, let’s imagine here that Sessions’ didn’t provide any additional arguments, and that public reasons to justify this decision were not forthcoming. However, even without such a fictionalized account, there are consensus theorists who reject the Rawlsian proviso, and on these more stringent accounts, the case at hand poses at least an instance of interest.

In reality, I should note, other arguments not specific to any comprehensive doctrine were also offered; Sessions argued that the United States has a limited amount of resources which is threatened by a growing number of immigrants entering at the border. On Sessions’ account, the number of immigrants who argue that they are seeking asylum has increased rapidly and unsustainably because many people are falsely posing as asylum seekers, lured in by the promise of easy access to American citizenship due to Obama’s lax immigration policies. This is an argument which relies on presumably factual information and on the national interests, neither of which rely on any one comprehensive doctrine and so are at least potentially appropriately public reasons.

the way we understand religion's place in public life. Convergence theories give us no grounds on which to critique Sessions' use of the Bible, because they re-orient public justification to a kind of fact-checking, concerned primarily with whether or not policies are supported in the sense of having sufficient registered support and significantly less with the process by which such policies come to be or the public presence they maintain. On the convergence model of justification, there is no reason for Sessions not to advocate for current immigration policy using religious language.¹⁶⁹

Largely on the basis of this feature of the view, that comments such as Sessions' would be largely non-suspect or subject to public critique, convergence argues that it is appropriately understood as the version of public reason liberalism which is better for religion and religious citizens. That is, convergence doesn't only argue that it can better respond to the Integrity Objection, but that it actually is better for religious citizens, full-stop. Vallier's exact language is that the convergence model is the more "faith friendly" form of public reason liberalism, and that it saves liberalism, declaring it "innocent by answering the challenges that *religious critics* have raised against it."¹⁷⁰ Doing this is an act of redemption, protecting liberalism from a long history of being seen as "hostile to religion in public life."¹⁷¹ Vallier's aim is to show that the best form of liberalism, public reason liberalism, ought to actually be understood as "friendly to religion in public life," and therefore that liberalism itself might by definition be the same.¹⁷² Convergence's presentation of itself as being the better model of public justification due to its superior treatment of religious citizens must be recognized for what it is. It is not merely a comparative statement, that it is better than consensus, but that it is *the* best way to solve the ongoing tension between "liberal politics" and "public faith." And given this, it argues not only that it is better than consensus, but that the consensus model fails to solve such a tension, and is therefore

¹⁶⁹ Again, it may not be the case that the consensus view would offer a total condemnation of this invocation. However, the consensus position at least flags instances such as these as worthy of attention, while the convergence view has literally no reason to consider this even an interesting or important event.

¹⁷⁰ Vallier, *Liberal Politics*, 9; and "Liberalism, Religion and Integrity," *Australasian Journal of Philosophy* 90, no. 1, March 2012, 149.

¹⁷¹ *Ibid.*

¹⁷² *Ibid.*

fundamentally inadequate because of the way it handles religion and religious citizens. Given this context, the convergence model warrants assessment in light of that long-running project of developing means of reconciling these two traditions. This demands that I not only weigh convergence's response to the Integrity Objection, but its place in that tradition, specifically in comparison with the place of the consensus model. To do so, in the following chapter I will examine the nature of religion much more closely than I have so far, in order to equip us with a significantly more sophisticated account of the concept. What does it mean to be better for religion once we have acquired a more robust understanding of "religion"?

CHAPTER III

EXAMINING RELIGION

In Chapters 1 and 2 I have reviewed the consensus/convergence debate and demonstrated the stakes of this debate, specifically as it concerns the interests and commitments of religious citizens. In this chapter I will tackle an ongoing problem the public reason debate faces with regard to these citizens in particular. The problem here is that the public reason debate often employs a definition of religion which is too narrow, and so risks cutting off certain religious traditions from its consideration of integrity claims, exemptions, and religious freedom protections. Consider, for example, that Vallier writes that in his text he deals only with the “major monotheisms” in his study of religion and liberalism.¹⁷³ But a number of defenses are at the ready to this concern. There’s Vallier’s own, when he writes that he speaks only about the “major monotheisms” because those are historically the traditions which have clashed with liberalism.¹⁷⁴ The obvious reply to Vallier is to say that regardless of liberalism’s historical clashes, given increasing religious diversity in the United States and internationally, public reason liberalism needs to be able to deal with a variety of perplexing religious cases. A more challenging response to the concern I’ve raised here about the narrowness of religion is that it’s unsurprising that convergence theorists don’t get the definition of religion quite right. Who does? What would it even mean to get the definition of religion “right”? Wouldn’t the most expansive version of religion end up including things no one thinks is an appropriate candidate for the title? And doesn’t any reasonable definition necessarily exclude something? I don’t disagree with this claim, that stabilizing a definition of “religion” is not an easy feat. Arguing that convergence theorists ought to keep more religious traditions in mind when they theorize relies on a certain comfortable standardization of that category of “not usually included, but actually religious” religions. This isn’t to say that such an argument fails, just that it is a stopgap on the way to a much more

¹⁷³ Vallier, *Liberal Politics*, 47.

¹⁷⁴ *Ibid.*

thorough probing of the nature of religion and its place in the public reason debate. In particular, I wonder how the conclusions of the public reason debate change once a more sophisticated understanding of religion is introduced. I hope to provide that in this and the following chapter.

In what has now become the dominant trend in American Religious Studies departments, “religion” is criticized for being an essentializing – and therefore unsatisfactory – term, particularly in its appropriation by other disciplines (including political philosophy). This stems primarily from two areas of research, one into the origins of the language of “religion,” and a second into the contemporary political use of the language of “religion,” particularly in the way it is used to legitimate or subjugate minority groups. In this chapter, I aim to use these two areas of research and the insights they have produced to draw attention to the content of “religion” as it is posed in the public reason literature, and the way it is used to legitimate or render illegitimate certain groups or traditions.

To do so, I will first offer some representative examples of how religion has been defined and discussed in the public reason literature, and then argue that those definitions and accounts warrant substantive examination and revision. I’ll then introduce the Semantic Critique of those accounts of religion which usually function in the public reason debate, and proceed to flesh out the critique and offer robust context through a presentation of the Critical Religion school of thought (hereafter “CR”).¹⁷⁵ This is the collection of research and insights recently developed in Religious Studies with which I frame my analysis of the consensus/convergence debate. To make this presentation, I’ll review the most essential literature in the debate, namely Talal Asad’s *Genealogies of Religion* and Tomoko Masuzawa’s *The Invention of World Religions*, then look at the contemporary context for these criticisms in the public reason literature, focusing on their treatment in Cécile Laborde’s *Liberalism’s Religion*, the most recent and thorough text to consider these issues.

¹⁷⁵ A brief note on terms. I will use the acronym “CR” throughout this text to denote the school of critical religion, a set of commitments defined in Section 2. When I speak of the “critique of CR,” I mean criticisms of that set of commitments. This will almost entirely take the form of charging CR with committing the Genetic Fallacy, and so undermining their conclusions. When I speak, however, of “CR’s critique of religion,” I refer to those criticisms made by the school of Critical Religion of unreflective or uninformed uses of the word “religion,” particularly as it is deployed in political and legal contexts.

Following this consideration of CR, I'll then raise and defend against the primary objection faced by these arguments in the literature – that the concerns they raise are merely historical, and therefore inconsequential for the public reason debate – an objection often made by invoking the genetic fallacy. I'll respond to this objection by arguing that genealogical arguments need not commit the genetic fallacy, and rather that the genealogical approach employed by Asad, Masuzawa, and other thinkers like them actually provides a uniquely valuable and important approach for the study of religion, even in analytic political philosophy. The upshot of this chapter is that there are serious, ongoing, persistent difficulties concerning the definition of “religion,” and that these need to be acknowledged by theorists of public reason. The dominant literature suffers from its inattention to these difficulties, and even the most recent literature doesn't quite take seriously enough that “religion” is a deeply contested term. With the difficulties surrounding the definition of “religion” set out in this chapter, I will be positioned to argue in Chapter 4 that the convergence model does not live up to the demands of a more sophisticated account of religion.

1. Framing Critical Religion

Before introducing the central texts of CR in detail, I first want to orient the project in light of three elements. First I'll review the broader context in which CR is situated intellectually, specifically the idea of the post-secular. Second, I'll review the treatment “religion” has currently received in the public reason debate, and third, I'll highlight the core of CR as it applies to this dissertation: the Semantic Critique.

1.1 The Post-Secular

In the last thirty years, a line of research has emerged which aims to reckon with the reality of religion as a global phenomenon, a line of research which recognized that “religious motivations,

practices and modalities of belief had to be reconsidered, to say the least, non-reductively.”¹⁷⁶ This postsecular turn facing many of the humanities has been closely tied with the development of the CR position. Just as the idea of “religion” has been examined and criticized, so in complement, the idea of “the secular” has likewise been increasingly complicated. Secularism, or “the secular” is no longer considered a refuge of neutrality, or a guaranteed outcome of increasing scientific knowledge. There are two broad ways to approach the post-secular turn. The first I associate primarily with the idea of a post-secular society proposed most famously by Jurgen Habermas in response to the ongoing sociological debate about whether or not the modernization of societies would entail their subsequent secularization.¹⁷⁷ That debate has been reinvigorated, given particularly that the United States has, despite significant modernization, persisted in being a state where religion is highly influential throughout society.

Habermas understands a “post-secular society” to be a sociological designation referring to a society in which there is a shift in consciousness away from a previous security in an inevitably secular future toward an acceptance of a religiously-influenced future. It characterizes first, a loss of security in the idea that the future will be increasingly secular, as well as a growing awareness of the threats posed by religious violence. Second, it includes a recognition that religion is gaining in influence worldwide and nationally, and third, it involves an increased multiculturalism brought on by immigration.¹⁷⁸ Habermas therefore contrives the idea of the post-secular as the next step in the sociological literature, often associated with José Casanova, which wanted to say that increased industrialization would lead to a greater differentiation between “secular” and “religious” spheres.¹⁷⁹ In contrast, the second way is much less a move in a sociological debate and more a philosophical critique of the structure or notion of the “secular” as a concept.

This second broad way to characterize the post-secular turn goes hand in hand with post-colonial scholarship, and aims at a critique of the very notion of the secular and of the religious. Typified by

¹⁷⁶ Gregor McLennan, “The Postsecular Turn,” *Theory, Culture & Society* 24, no. 4 (2010): 3.

¹⁷⁷ Habermas, “Notes on a Post-Secular Society.”

¹⁷⁸ Ibid.

¹⁷⁹ Casanova, *Public Religions in the Modern World*.

scholars such as Elizabeth Shakman Hurd, it aims to bring to the surface the reality that a secular space is not necessarily a neutral one.¹⁸⁰ From this perspective, the post-secular is less a sociological thesis about a secular future, and much more about the investigation and critique of the notion of what it is for something to *be* secular or religious, and the idea that those are natural, inevitable categories. Instead, it advocates the recognition that these categories are “not opposites of each other,” but co-constitutive products of modernity, “closely intertwined in paradigmatic ways in modern nation-states.”¹⁸¹

The tension between these two understandings of post-secularism is evident when Vallier calls says that, he “like many post-secularists,” rejects “the double standard that liberals often apply to religious and secular reasons, treating religious reasoning as private, sectarian, and irrational, and secular reasoning as public, universal and rational.”¹⁸² While a post-secularist of Hurd’s stripe would agree that such this is a double standard and an untenable distinction, she would also reject what seems to be Vallier’s casual invocation of the idea that there are such distinct, differentiable things as “religious” and “secular” reasons in the first place. Vallier ultimately argues that the convergence form of liberalism is a “*post-secular* liberalism,” (emphasis in original), but it’s clear that this is a reference not to a form of liberalism which includes a critique of the *ideas* or conceptualizations of secularism or religion, but to one in which the *balance* of these things differs from what we might call their standard form. The convergence view isn’t trying, in other words, to question why some forms of reasoning are understood to be meaningfully “religious,” while others are not, but to push that those things already established as religious are worthy of more public space and attention. The claim that the convergence view constitutes a kind of post-secular liberalism is one that I will refute in Chapter 4, but before doing so, I need both lay out how the idea of “religion” has come up so far in the debate and how it can be contested.

¹⁸⁰ Hurd, *Beyond Religious Freedom*.

¹⁸¹ Saba Mahmood and Peter G. Danchin, “Immunity or Regulation? Antinomies of Religious Freedom.” *The South Atlantic Quarterly* 113, no. 1 (Winter 2014): 130.

¹⁸² Vallier, *Liberal Politics*, 3.

1.2 “Religion” in the Public Reason Debate

The account of religion which has so far functioned in the public reason debate has on the whole been remarkably limited. To start with the source, in the introduction to *Political Liberalism* Rawls explains that political liberalism as a view is an answer to the religious pluralism induced by the Protestant Reformation.¹⁸³ In other words, Rawls explicitly frames his view using specifically, and only, Christian history, departing from this particular context only to give a review of ancient Greek civic religion. There is no global consciousness on Rawls’ part at this moment in the text; even the insinuation that religious pluralism somehow didn’t exist before the Protestant Reformation reveals something like the idea that the only meaningful religious pluralism was between different varieties of Christianity.¹⁸⁴ And yet, Rawls isn’t wrong about the history he provides, and it is clear that his framing of the history of religion is the right background against which to understand his particular project. It’s because Rawls understands the Protestant Reformation as the harbinger of religious pluralism that he focuses so closely on the role conversion and belief play in religion. The pluralism of religion is for Rawls intimately connected to reasonable pluralism, a phenomenon which is challenging because of the depth of disagreement of belief it includes about the nature of the good (reflected in comprehensive doctrines as opposed to political ones).¹⁸⁵ And importantly, the rise of a specifically religious goal of conversion meant that these ideas about the nature of the good included a “transcendental element,” one “not admitting of compromise.”¹⁸⁶ And given that this transcendental element is the sort of one thing one *believes* or somehow commits to, the conversation turns to, perhaps for the first time, “something like the modern understanding of conscience and freedom of thought.”¹⁸⁷

As the public reason literature developed, pressure grew to clearly define the general notion of religion, rather than relying on an explicitly Christian framework. Currently the most commonly cited

¹⁸³ Rawls, *Political Liberalism*, xxvi.

¹⁸⁴ *Ibid.*, xxii.

¹⁸⁵ *Ibid.*, xxvi.

¹⁸⁶ *Ibid.*, xxvi.

¹⁸⁷ *Ibid.*, xxiv.

definition comes from Robert Audi, who in his influential essays in *Religion in the Public Sphere*, offers a conception of religion that defines it in terms of characterizing features. And yet, it's noteworthy that Audi is largely just following in the steps of his predecessor, William Alston, and the definition of religion provided by him in his 1964 book, *Philosophy of Language*. Alston, and subsequently Audi, claim that there are nine features which characterize a religion. Quoted here, there are:

(1) belief in supernatural beings; (2) a distinction between sacred and profane objects; (3) ritual acts focused on those objects; (4) a moral code believed to be sanctioned by the god(s); (5) religious feelings (awe, mystery, etc.) that tend to be aroused by the sacred objects and during rituals; (6) prayer and other communicative forms concerning the god(s); (7) a world view according the individual a significant place in the universe; (8) a more or less comprehensive organization of one's life based on the world view; and (9) a social organization bound together by the preceding.¹⁸⁸

We might call this kind of religious definition the “family resemblance” view.¹⁸⁹ Alston and Audi after him have offered nine characteristics which typically show up in ideas or traditions designated as religious. We might say that a family is known by a set of features, perhaps small noses, close-set eyes, and large ears, but we wouldn't be surprised if not every member of the family possessed those traits. This view is likely to resonate with most Americans, given its seemingly comprehensive scope and appositeness to those things commonly understood as religious.¹⁹⁰ Additionally, this definition stands out for its thoroughness in contrast to Rawls' own explicit treatment of the concept. Surely Audi's account includes all the religious traditions which had previously been undiscussed, leading to their either implicit omission or their implicit inclusion under the broad heading of “comprehensive doctrines,” depending on which view you think is correct. The convergence theorist most discussed here, Kevin Vallier, follows suit. He cites Audi in giving his account of religion, including both the nine characteristics given and this aggregated definition, that he takes a religion to be “a comprehensive doctrine with a core set of

¹⁸⁸ Robert Audi, “Liberal Democracy and the Place of Religion in Politics,” in *Religion in the Public Square: The Place of Religious Convictions in Political Debate* (Lanham: Rowman & Littlefield Publishers, Inc. 1997), 5.

¹⁸⁹ Which will later be endorsed, albeit not in exactly this particular version, by Cécile Laborde.

¹⁹⁰ While I couldn't locate a study that asked Americans to list all the religions they know, I think it's at least somewhat helpful that the Merriam Webster dictionary begins their definition of religion as Audi does, with the “service or worship of God or the supernatural.” “Religion,” *Merriam Webster*, <https://www.merriam-webster.com/dictionary/religion>.

principles about the supernatural that prescribe social organization, practices, rituals, norms, beliefs, and actions.”¹⁹¹

So, political liberalism and its theory of public reason was originally built on a primarily Christian understanding of religion, and has developed a largely family-resemblance view about what constitutes religion. Rawls may have had a limited frame, but later scholars have attempted to build that frame out to acquire a more robust sensibility and a more inclusive perspective. Why does this matter for political liberalism and later versions of justificatory liberalism? In spite of increasing clarity on the term, the use of “religion” throughout the public reason literature still warrants much closer attention. This is because, even while the account of religion has expanded, it has continued to do so only up to, but not yet crossing, a genuine consideration of the development of “religion” as a concept, nor even a sustained examination of the recent scholarship available concerning its definition. Consider that Alston’s book, the text from which the majority of these definitions find their root, was published in 1964. But unsurprisingly the academic understanding of religion has changed since the early 60’s and become significantly more sophisticated, most importantly by becoming attuned to the ways in which power and the histories of Western colonialism built into early scholarship on religion certain harmful and untrue assumptions.

The problematizing of the category of religion has not just been based in the history of the term, but has been extended to the nature – and even existence – of the term’s referent. What *is* a religion? One line of critique that asks this question, to the end of rejecting the possibility of defining religion altogether, is what Cécile Laborde’s has classified the “semantic critique.”¹⁹² Laborde’s taxonomy of the criticisms recently made against the classic understanding of religion will appear throughout this chapter, as well as her critiques of and solutions to the problems they raise. Laborde is one of the very few contemporary analytic political philosophers who is engaging seriously with the work done by scholars of Religious Studies concerning the nature of religion and the act of defining it. Her project in her recent

¹⁹¹ Vallier, *Liberal Politics*, 46.

¹⁹² Cécile Laborde, *Liberalism’s Religion*, (Harvard University Press, 2017), 18.

book *Liberalism's Religion* is to defend against the whole set of these criticisms (collectively referred to as the Critical Religion school) concerning the charge they make against the category of religion as it is integral to and deployed in liberal political philosophy. Laborde attempts to defend liberal egalitarianism from these criticisms by both undermining the effectiveness of the criticisms and by revising the way religion is discussed in liberal political projects and texts. Her work will be both a foil and a resource for my argument going forward.

1.3 The Semantic Critique

The Semantic Critique is characterized by three rejections: a rejection of the notion that religion has essential features, a rejection of the notion that religion can be defined (via something like essential features), and a rejection of the notion that religion is a naturally occurring kind. As Laborde summarizes it, the Semantic Critique charges that “there is no stable, universally valid empirical referent for the category of religion,” and so uses of the word in political philosophy risk being seriously misguided by either misrepresenting a non-existent phenomenon or speaking at cross purposes accidentally.¹⁹³ This critique argues that, due to both the historical construction of religions other than Christianity, and the contemporary motley nature of the collected set of things usually referred to as “religion,” there is now no real “feature or set of features, that all religions share,” or that are both essential to and true for them.¹⁹⁴ Rather our contemporary set of “world religions” is the product of colonialism and the textbook industry more than a product of a naturally occurring, and subsequently catalogued, feature of the world. This criticism will be richly expounded throughout the next section.

2. Examining Critical Religion

In order to answer the question of how public reason ought to reckon with the criticisms and insights raised by the Semantic Critique and the general realization that there is no easy way to

¹⁹³ Laborde, *Liberalism's Religion*, 18.

¹⁹⁴ *Ibid.*, 20.

distinguish the religious and the secular, I will turn now to a thorough review of the Critical Religion school (CR). This school of research is characterized by the criticism that religion is neither a neutral nor an ahistorical category, and further that the “liberal construal of religion itself” has been indeterminate and insufficient; specifically, it has historically been an “ethnocentric and Christian” category that purports to extend neatly to all forms of religion.¹⁹⁵ The central tenant of this post-colonial perspective on religion is that it “is a rather monumental assumption, that is as pervasive as it is unexamined... that religion is a universal, or at least ubiquitous, phenomenon to be found anywhere in the world at any time in history, albeit in a wide variety of forms and with different degrees of prevalence and importance.”¹⁹⁶ In other words, the commonly accepted account of religion is not a the product of sustained, reasoned study, but instead is more akin to a conjecture. Laborde’s presentation of the critical religion position illustrates how this critique comes to bear on a particular domain: that “the liberal attempt to define the ‘just bounds’ between the state and religion is a ‘mission impossible’... because there is no nonarbitrary way to single out, and fairly regulate, a stable, recognizable sphere of religion.”¹⁹⁷

This criticism is often leveled at the discipline of Religious Studies, but has also served as the foundation for criticisms of politics and public engagement, as I intend to do here. While the moniker of “critical religion” is relatively new, the project has been in production since at least the publication of Talal Asad’s work *Genealogies of Religion* in 1993. Asad’s work in particular solidified CR as a species of postcolonial theory, rendering it a project which follows closely on the heels of Marxism and Critical Theory, and also affiliating CR with the genealogical method familiar to critical theorists. This method produces an analysis of religion that relies heavily on an examination of the history of the term itself, and of the institutions we usually think of as religious.

This particular orientation focuses precisely on the issue and *event* of defining religion. Jonathan Z. Smith famously wrote that “while there is a staggering amount of data, of phenomena, of human

¹⁹⁵ Laborde, *Liberalism’s Religion*, 4, 15. While Laborde is not herself a CR theorist, her summary is helpful here.

¹⁹⁶ Tomoko Masuzawa, *The Invention of World Religions: Or, How European Universalism Was Preserved in the Language of Pluralism* (Chicago: The University of Chicago Press, 2005), 1.

¹⁹⁷ Laborde, *Liberalism’s Religion*, 16.

experiences and expression that might be characterized as religious – there is no data for religion. Religion is solely the creation of the scholar’s study.”¹⁹⁸ What this points to is that this series of critiques is committed to the study, not of “religion,” but of the acts and processes of *defining* religion. What functions do particular definitions perform, and more importantly, what interests do particular definitions serve? Russel McCutcheon, who argues for what he calls a “critical realism” about religion, aims to point out that we ought to find “the actors, in specific settings, who made the standards and set the definitions,” because to do otherwise is to fail to historicize “the situated and interested means by which social life is regularly constituted and reconstituted, and therefore to lend impression that the groups of which we claim membership... are naturally occurring phenomena with clear, stable boundaries.”¹⁹⁹ In a similar vein to McCutcheon is Timothy Fitzgerald, who primarily points to what he sees as the danger of the history of “religious” definition, focusing on the historical (and to him, necessary) interrelation between “the religious” and “the secular,” as well as the role of power in religion.²⁰⁰ As will become clear, what McCutcheon, Fitzgerald, and to some extent even Asad begin to point out – the costs associated with defining religion in particular ways – will be a framework that must be supplemented with empirical research, offered here by Tomoko Masuzawa and Richard King. First, I will introduce what I intend to be the key takeaways of the CR position, then do a review of some of the central texts in the literature, and lastly demonstrate some of the empirical content associated with the debate.

2.1 Core Claims of Critical Religion

By introducing the CR position into the debate over public reason, I will demonstrate the following two claims:

¹⁹⁸ Jonathan Z. Smith, *Imagining Religion: From Babylon to Jonestown* (Chicago: University of Chicago Press, 1982), xi.

¹⁹⁹ Russell McCutcheon, *Fabricating Religion: Fanfare for the Common e.g.* (Berlin: De Gruyter, 2018), 60.

²⁰⁰ Timothy Fitzgerald, “Critical religion and critical research on religion: Religion and politics as modern fictions,” *Critical Research on Religion* 3, no. 3 (2015): 303-319.

1. “Religion” is not as essential or simple as it has historically been treated in the public reason literature, and does not exist as a natural, inevitable kind in all human cultures throughout history. Rather the category of “religion” is the product of a particular enterprise deeply embedded in a history of colonialism.
2. As a result of this historical context, no definition of religion is free from the longstanding hegemony of Christian, Eurocentric norms concerning what appropriately constitutes a “religion.” Defining something as “religious” is therefore a rhetorically, politically, and materially weighty event. Given this, all debates in political philosophy which use the category of “religion,” including that of public reason, warrant close study, with special attention paid to the rhetorical weight of the act of defining “religion” in particular instances and the practical outcomes of particular definitions.²⁰¹

To argue for both of these claims, I will begin by reviewing the methods and key conclusions of two major thinkers in the critical religion tradition: Talal Asad and Tomoko Masuzawa.

2.2 Talal Asad – Introducing Religion and Power

What the familiar work by Edward Said, *Orientalism*, did for the field of post-colonialism, is what Talal Asad’s *Genealogies of Religion* did for post-colonialism’s critique of religion. Asad was one of the first to argue that the idea of “religion” included normative, rather than merely descriptive, content. “Religion” as a phenomenon is not just a plastic box through which the contents are clearly visible, but as a term it functions like one: it shapes what is allowed to belong inside of itself, sometimes forcefully. Born in part out of Asad’s frustration with Marxist essentializing of “religion,” Asad sought to examine the concept or idea of religion as it developed historically, through the method of genealogy. While Marx

²⁰¹ My interests here are nearly in line with those of The Critical Religion Association, which claims to have roughly two orientations, that of i, questioning the category of religion as an essential or existing thing, and ii, to do so “from a positive critical standpoint,” instead of “hold[ing] religion to suspicion, or blame, or discredit, or incredulity.” Their emphasis is therefore on the possible “re-interpretation or re-conceptualization” of religion, rather than a demand for immediate dismissal. See “What is Critical Religion?”, *Critical Religion Association*, <https://criticalreligion.org/what-is-critical-religion/>.

presented the critique of religion as the beginning of all critique, this was limited to a critique of religion which accepted its already dominant presentation at the time of his work. But what about species of religion which didn't fit this model? What about the material production of religion itself? And what might an account of religion look like that avoids the common understanding of it as a collection of beliefs?

The key element in Asad's analysis of the genealogy of religion is his re-introduction of the role played by power in the development of religion. While the power *of* religion has often been investigated and theorized (including by Marx, Foucault, and many others), Asad is interested now in the power exerted *by* the category of religion itself. How have figures over time shaped what constitutes acceptable religious behavior? Rather than thinking that "religion" designated a naturally occurring and grouped set of practices, behaviors, and texts, the truth is that "religious" authorities (in addition to political and economic authorities) systematically built what, in any case, was allowed to count as a particular "religious" phenomenon, and what attitudes, habits, and rituals were allowed to be considered canonical.

This understanding of power has two levels. The first concerns the level of local, social power: how authorities have curated particular religious experiences or ideas into appropriate expression. It is in this sense that what is essential is not the power that *religions* exercise over people, but that we recognize that exertion of power has contributed to the development of what we understand as "religion" itself. The second is at the level of academic – and in some ways global – power: how colonizers and their academic inheritors categorized these individual instances of cultural phenomenon into forms of proper religiosity. While Asad deals with both, the second concerns the area of study more beneficial to my current project.²⁰²

In the realm of the academy multiple efforts have been made to bring religion under one definition or account. While Asad, an anthropologist, is most interested in the efforts of anthropologists to this end, a clear parallel has developed in philosophy of religion and in the treatment of religion in other

²⁰² Talal Asad, *Genealogies of Religion: Discipline and Reasons of Power in Christianity and Islam* (Baltimore: Johns Hopkins University Press, 1993).

philosophical fields, including political philosophy. The challenge here is in recognizing and rectifying the divide between the reified, clinical treatment of religion we receive or engage in when we attempt to isolate it from its surrounding features and historical context to treat it as a puzzle piece or mere component of our theorizing, both anthropological and political.

The central foil against which Asad developed his critique of religious studies was Clifford Geertz, and his account of “religion” as constituted by a set of cultural symbols.²⁰³ Connected with this account of symbols, for Geertz, are the moods and motivations they ought to, or at least do, inspire in the religious practitioner. Asad’s core criticisms were threefold. The first concerned the phenomenological character of Geertz’s presentation.²⁰⁴ His fixation on the particular moods or motivations experienced by religious practitioners neglected, for Asad, the particular character of the practitioner. Is the relevant mood the one taken up by the novice, or by the experienced attendee?²⁰⁵ In short, how can we reliably determine those moods or motivations which are essential to a particular religion?

The second and third critiques are closely related, that Geertz neglects the role of power in establishing those stereotypical moods and motivations, as already discussed, and that he neglects the historical, social, and economic conditions which produced the religious experiences under attention. In other words, symbols alone can’t create religious experiences. As Asad tells us, “it is not simply worship but social, political, and economic institutions in general... that lend a stable character to the flow of a Christian’s activity and to the quality of her experience.”²⁰⁶ As an example, Asad brings in Augustine to remind us of the way in which discipline was an essential feature of the development of Christianity. Given a Christian commitment to the fallen nature of human beings, their experiences and intuitions will have to be set in tune. The mind alone doesn’t move itself “spontaneously to religious truth,” but it is moved by a particular power, one which “created the conditions for experiencing that truth.”²⁰⁷

²⁰³ Clifford Geertz, *The Interpretation of Cultures* (Basic Books, 1973).

²⁰⁴ Asad, *Genealogies*, 51.

²⁰⁵ *Ibid.*, 51.

²⁰⁶ *Ibid.*, 33.

²⁰⁷ *Ibid.*, 35.

The upshot of this critique, that Geertz pays insufficient attention to the historically constitutive elements of particular religious traditions or experiences, is that Geertz treats religion as a discrete, identifiable, *naturally occurring* phenomenon, rather than one produced through the exercise of power. While Geertz focuses on the role of symbols in constituting religion, he doesn't attend to the way in which particular symbols came to be seen as appropriate or authoritative for particular religious experiences. As Asad would say, this allows religion to seemingly float free of considerations of power, born of natural human experience or encounter with the sacred.²⁰⁸ This goes hand in hand with the Christian character of religion expressed by Geertz, which appears as an emphasis on the role of private experience – and ultimately private beliefs – as constituting an individual's religion. Part of the intent of Asad's critique, then, is to consider the ways religion could be understood that depart from understanding it as only a set of beliefs someone does or does not adopt. Rather religion has historically been the product of institutions disciplining practitioners into particular behavior that changes their commitments, their habits, and even – relevant for the conversation surrounding convergence – their evaluative standards.²⁰⁹ When theorists of public reason insist on defining religion primarily in terms of religious beliefs that individuals privately do or don't hold, they reinforce this limited definition that treats religion as if it appeared *ex nihilo*, which is plainly untrue.

2.3 Tomoko Masuzawa – A Genealogy of “World Religions”

While Asad steered the development of critical religion towards critiques of power and often unnoticed Christian influence, as well as towards renewed attention to historical-social contexts, Tomoko Masuzawa attempted to flesh out the particular history of a given term, “world religions.” Her goal in her book, *The Invention of World Religions: Or, How European Universalism Was Preserved in the Language of Pluralism*, was to build a “genealogy of a particular discursive practice, namely, ‘world

²⁰⁸ Asad, *Genealogies*, 35.

²⁰⁹ Muhammad Velij, “Change Your Look, Change Your Luck: Religious Self-Transformation and Brute Luck Egalitarianism,” *Res Philosophica* 92, no. 2 (April 2015): 453-471.

religions’ as a category and as a conceptual framework initially developed in the European academy.”²¹⁰

In so building, she brings forward “a certain logic, or certain ideological persuasions that are covered over by and at the same time still operative in our present-day discourse... in the now familiar, routinized strategy for mapping the world religiously.”²¹¹ Furthermore, the project aims at revealing just how monumental is the “monumental assumption... as pervasive as it is unexamined,” that “religion is a universal, or at least ubiquitous, phenomenon to be found anywhere in the world at any time in history, albeit in a wide variety of forms and with different degrees of prevalence and importance.”²¹² In other words, the ordinary understanding of religion – as a common, singular phenomenon that exhibits a common structure despite a variety of manifestations – is not a reasoned inference or a clear impression, but is upon close reflection a blanket, largely unsupported assumption.

To achieve those goals, Masuzawa traces the development of the language of “world religions,” primarily through a focus on the intellectual history that pre-dated the term. It is a way of inquiring into the conditions which facilitated the birth of a particular term, rather than a study of the term after it appeared. A key player in this genealogy is a science which had freshly arrived on the scene, comparative philology, and Masuzawa recounts how the emergence of the language classification system, of languages into “language families,” created an identity crisis in European scholars. Of the two most impactful language families, the Semitic and the Greco-Aryan, Christianity – via its descent from Judaism – appeared solidly Semitic. The campaign to redeem Christianity’s Aryan heritage unsurprisingly went hand in hand with the campaign to semitize Islam, ensuring that it would be seen as “the epitome of the racially and ethnically constrained, nonuniversal religion,” in contrast to Christianity’s Hellenic, philosophically unifying, and properly universal essential nature.²¹³ This paved the way for the European’s broader self-understanding as the bearers of all things unifying (rendering clear otherwise multiple and diverse phenomena) and universal (able to legitimately and properly spread its truth to all

²¹⁰ Masuzawa, *Invention*, 20.

²¹¹ *Ibid.*, xiv.

²¹² *Ibid.*, 1.

²¹³ *Ibid.*, xiii, 23-25.

people). Almost comically then, Masuzawa's genealogical excavation therefore reveals an early genealogical panic, one of the brute variety, a race to ensure that one has the proper ancestors. Masuzawa couples these events together, pointing to the way in which the language of world religions exploded so quickly and fully that she analogizes it to the outbreak of a serious disease, and was so deftly able to soothe Europe's genealogical panic.²¹⁴ Such language continues today, even though it repeatedly covers over the nuances in social practice, and importantly, allows a dominant narrative of what constitutes a religion *properly* to "[shape] communities, rather than [describe] them," and to reinforce or perpetuate conflicts where those with power can often employ such a narrative to "mobilize support" for their continued control.²¹⁵

I want to draw two conclusions from this. The first conclusion (from here, Conclusion One), is the more explicit of the two, and is, as Masuzawa's title underscores, that "European universalism was preserved in the language of pluralism." This is both that the seemingly obvious, standardized category – that of "world religions" – was and is not what many students in Western college classrooms are regularly instructed it is, and that it is in fact something with a more sinister history. The second, (from here, Conclusion Two) implicit conclusion is that by continuing to employ that term as if it belongs to a language of neutral discourse – as Audi does when he uses the same justificatory structure offered in the development of "world religions" – one may be perpetuating and reinforcing that system of European hegemony.

What exactly is this structure, though, and what is the way in which it continues to be dangerous, if at all? The brief summary I have offered here is not enough to substantiate the idea that such a habit of thought, if it exists, is dangerous or concerning enough that it ought to weigh at all on the debate surrounding public reason. In order to concretize this concern, I'll briefly review two historic examples

²¹⁴ Masuzawa, *Invention*, 11.

²¹⁵ Stephen Ramey, "The Harm of World Religions," *Culture on the Edge*, 13 July 2015.

which show in more detail the historical development of the term “religion” as it was used to characterize two cultures.

2.4 Concretizing the History of “Religion”

The two historical examples I’ll consider here briefly are from, first, Masuzawa, and second, Richard King, in his book, *Religion and Orientalism*. Both offer close case studies of religious traditions that, despite having the appearance of “naturally existing” religions, in fact have long histories of production by colonizers. These two traditions often provide the case studies for the Western constructions of religious identities. This is unsurprising, given that it is these two which most strongly resisted the neat categorization of “religions” modeled on Christianity. Orientalists therefore took on the labor of crafting them as “religions” accordingly, and as such, they demonstrate clearly the trends identified by Masuzawa in her work. In particular, they are examples of the practice of colonizers establishing, even in some instances producing, authoritative texts so that they could take them from the Orient back to Europe so they could be concretized in the emerging literature on “world religions.”²¹⁶ And apart from this specific practice, they also represent the broader colonialist habit of universalizing, that is, assuming the existence of “irreducible features of human life and experience... beyond the constitutive effects of local cultural conditions,” a necessary component of discourse which organizes and subjugates colonized places and peoples.²¹⁷

The first case study, Buddhism, demonstrates clearly the three essential trends of colonialism’s treatments of “emerging” religions. These are first, an effort to essentialize a particular tradition, second, a focus on identifying a core sacred text, and third, an emphasis on identifying an authoritative figure. Each of these was particularly egregious in the case of Buddhism. To put it plainly, at the time that scholars were codifying and correcting Buddhist texts, “there were no native adherents to be found in

²¹⁶ Richard King, *Orientalism and Religion: Postcolonial Theory, India, and the ‘Mystic East,’* (London: Routledge 1999), 102.

²¹⁷ Bill Ashcroft, Gareth Griffiths, and Helen Tiffin, *Post-colonial Studies: Key Concepts*, 2nd Edition (London: Routledge, 2007), 216-128.

contemporary India, the land of Buddhism's origin."²¹⁸ The religion was therefore in many ways a historical construction produced by academics from the beginning. To speak ironically, "those highly trained, monumentally devoted scholars would be in the best position, if not to say an exclusive position, to grasp Buddhism's essential character."²¹⁹

This essential character was standardized through the discovery, made by Brian Hodgson (a naturalist working for the British East India Company) and subsequent canonization by French philologist Eugène Burnouf, of a set of texts discovered in Kathmandu which Hodgson deemed historically important, and which Burnouf quickly turned into what was functionally the first textbook on Buddhism. These texts were codified, seeing as they were "badly in need of critical editing in order to remove 'corruptions' that had occurred over the centuries."²²⁰ Actually observed religious practices in places other than India were there classified as so many deviations, malformations, and "hybrid local traditions," bringing to life in academic precision the Protestant privileging of authoritative beliefs over religions as they were actually practiced.²²¹ This "discovery of Buddhism was... from the beginning, in a somewhat literal and nontrivial sense, a textual construction."²²² In an almost comic sense, then, contemporary pop disputes over what constitutes "true" Buddhism are actually the most divorced from what might be considered original Buddhist lived practice, and are much more in line with the European sensibility which strove to establish an essential core for what were a diverse set of practices and beliefs.

The second case study, Hinduism, illustrates a similar phenomenon, and Richard King helpfully situates it in a specific habit of Orientalism, the trend of associating the East with "mysticism."²²³ As King notes, this ongoing "mystical" characterization during colonization wasn't just about control of colonized peoples and resources, but was also closely related to "the implicit (and sometimes explicit) criticism of

²¹⁸ Masuzawa, *Invention*, 126.

²¹⁹ *Ibid.*

²²⁰ *Ibid.*

²²¹ *Ibid.*, 128-129.

²²² *Ibid.*, 126.

²²³ King, *Orientalism and Religion*, 96.

contemporary elements of the Orientalist's own culture."²²⁴ Specifically, categorization and negative assessments of other cultures was "a way of differentiating the essential historical truth of Christianity from its inferior rivals – and implicitly to attack those within Western Christianity who might want to focus upon the 'mystical' dimensions of their own traditions."²²⁵ As such, as Masuzawa argues, they sought to establish counter-religions to Christianity to better draw out its truth and to reveal its status as the one true religion. This establishment is clear in the case of Hinduism, a term which, "even when used by the indigenous Indian, did not have the specifically religious connotations that it subsequently developed under Orientalist influences until the nineteenth century."²²⁶

King identifies two essential ways Western colonization performed this homogenizing, essentializing work on Hinduism which in many instances was divorced from the lived experiences of the colonized peoples to whom they applied the term. First, the Western privileging of the literary enterprise functionally centralized particular Sanskrit texts and entailed the neglect of the rich oral tradition of the Indian religious landscape.²²⁷ And second, more sweepingly, colonizing efforts transformed the collected practices of Indian religion into a form that could be more easily compared to Christianity. This entailed primarily, a unifying effort to group together a wide range of diverse practices as all essentially Hindu, but also the development of forms of Hinduism with specifically nationalist or political emphases.²²⁸ These changes have not been negligible in their continuing effects, rather Orientalists engaged in the project of producing the notion of "Hinduism" seemed unaware of "the extent to which the superimposition of the monolithic unity of 'Hinduism' upon Indian religious material has distorted and perhaps irretrievably transformed Indian religiosity in a Westernized direction."²²⁹

Both of these case studies represent similar features, particularly the efforts by colonizers to establish a neat set of religions to be compared, often for the express purpose of demonstrating how

²²⁴ King, *Orientalism and Religion*, 97.

²²⁵ Ibid.

²²⁶ Ibid., 99.

²²⁷ Ibid., 101.

²²⁸ Ibid., 104.

²²⁹ Ibid., 100.

Christianity could come out on top. It is this logic, of classifying – and in so classifying, homogenizing – “religions,” and then using the standard for the classification – in all the relevant contexts, Protestant Christianity – as the model of religion par excellence, such that when other religions are unsatisfied by the constraints or freedoms offered they can clearly be slotted as mistaken, or as not even religions themselves. This theme will return in Chapter 4.

3. Assessing Critical Religion

Now I want to turn to Cécile Laborde’s presentation of this set of critiques and her relatively quick dismissal of them as a representative analytic philosophical response. Specifically, I will focus on her treatment of the Semantic Critique and then introduce the most significant challenge to CR as I see it here: the genetic fallacy.

3.1 Examining The Semantic Critique

Laborde is again a useful resource for the work I aim to do here. She is the only philosopher to thoroughly engage with both public reason and CR, and regarding the latter, the only one to take seriously, taxonomize, and systematically respond to the claims made by CR. As such, she is the representative analytic political philosophical response to the work that CR might do to the field. Given that her taxonomy is therefore the first of its kind, I attend to it so closely in order to stress the importance of understanding clearly the claims made by CR and to give full attention to the consequences I argue those claims should have on the public reason debate.

The taxonomy Laborde offers of CR distinguishes three critiques: the Semantic Critique (already introduced), the Protestant critique, and the realist critique. Recall that the Semantic Critique charges that there is no stable referent for the word “religion.” The Protestant critique asserts that religion as it is deployed in liberal political discourse is modeled on a predominantly Protestant – specifically belief-based – understanding of religion, and so it regularly mistreats non-Protestant – usually practice-based –

forms of religiosity. Finally, the realist critique, though it has several versions, generally claims that something about the liberal state's treatment of religion is consistently misrepresented: rather than being about the relationship between a naturally occurring phenomenon of religion and the state, church-state relationships are really about the exercise of power or the control of phenomenon or individuals.²³⁰ In other words, "religion" is not really about "religion" at all, but is always better understood as being about something else, such nationalism or greed. With regard to each of the charges, Laborde aims to refute them specifically in light of their success in criticizing liberal egalitarianism as a whole, which she understands to be her central commitment. She concludes ultimately that, as a whole, liberal egalitarianism is not truly vulnerable to any of the three.

In considering the implications that CR ought to have for political philosophy and public reason in particular, a few roadblocks quickly present themselves. The first concerns the nature of the term "religion" in liberal discourses generally and finds exemplary expression in Laborde's first attempted refutation of the Semantic Critique. She argues that liberal egalitarianism is especially not at risk from the Semantic Critique because it is an irrelevant and therefore ineffective critique. The chief reason for this is that liberal egalitarianism "deploys an interpretive, *not a semantic* conception of religion."²³¹ In other words, the word "religion" is inconsequential; laws are about values, not about defining concepts; what is important is that our laws express and protect "the correct underlying values," and given that "liberal egalitarianism does not single out religion as an area of uniquely special concern, it does not need to get embroiled in controversial definitions of what religion is."²³² This is further underlined by the fact that courts have, in practice, "had little difficulty identifying what ordinary language would recognize as religion (including non-Western, nontheistic, and unfamiliar religions)."²³³ So while the Semantic Critique may successfully show "that there is no essence to religion," we can still, she argues, use a

²³⁰ Laborde, *Liberalism's Religion*, 18-25.

²³¹ *Ibid.*, 30.

²³² *Ibid.*, 31.

²³³ *Ibid.*

Wittgensteinian family resemblance view of religion.²³⁴ In other words, the fact that religion has consistently been challenging, if not impossible, to define is irrelevant for a society that has been generally using the term without much trouble, and by extension, the Semantic Critique as a whole is by and large irrelevant to liberal egalitarianism.

The general charge here is one likely at the ready for most liberal philosophers upon hearing the Semantic Critique: liberalism isn't in the business of being historically accurate, rather it's interested in putting forward (at least for Rawlsians) an ideal theory about how free and equal people can live fairly together. But this response, I argue, is far too quick and obscures the role that "religion" plays in these discussions and in liberalism (which often expresses interest in guaranteeing something like freedom of religion) as a whole. Further, it adopts what seems like a hollow distinction between a "semantic" and an "interpretive" conception of something. Just because the *intent* of liberal theorists might not be to accurately capture the nuances of "religion" in the same way as a scholar of Religious Studies, that seems irrelevant to the fact that they are using words that have referents which can be better or worse. We want our laws to be about real things in the world, and to not unknowingly carry with them falsehoods or prejudices. That this distinction is questionable is revealed even by Laborde's last comment on the matter, that the law *can* "adequately track the *semantic* meaning of religion, if we adopt" the Wittgensteinian family resemblance view described.²³⁵ Whatever she wants the "interpretive" and "semantic" conceptions to refer to, they are intimately tied together both in reality and in terms of what the liberal theorist wants their work to accomplish.

In other words: if the Semantic Critique is useless, why consider an interpretive concept an improvement? The transition from a semantic, descriptive concept of religion to an interpretive one is a deliberate move, and is not a natural extension of the way that states have historically treated religion (in the United States alone, the constitution speaks freely about a specific right to the free exercise of

²³⁴ As demonstrated by, for example, Kent Greenawalt. See Kent Greenawalt, "Religion as a Concept in Constitutional Law," *California Law Review* 72, no. 5 (September 1984): 753–816.

²³⁵ Laborde, *Liberalism's Religion*, 30. Emphasis added.

religion). And further, this transition is not a natural or obvious move even now, another way in which Laborde under-characterizes the Semantic Critique. To say that showing that religion has no essence is unimportant or irrelevant is to miss the significant transition such an insight historically instigated in political and academic understandings of religion. It also neglects that such an insight is still an ongoing site of debate for contemporary analytic political philosophers. Laborde writes that “liberal egalitarian philosophers have been able to bypass the debates about religion,” but if that’s true, it would be news to me and to many other political philosophers who would understand themselves as liberal egalitarians.²³⁶ Not only are there those in these debates who do seem convinced that there is in fact a meaningful essence to religion, they are also convinced that such an idea ought to be legally enshrined in a specific constitution. And, once a particular term is so enshrined, who’s to say whether or not it’s being enshrined semantically or interpretively? Won’t it be forced to be considered semantically the moment it comes under contestation? Laborde writes that she doesn’t come down on the debate over whether or not the law should be entangled with semantic interpretations of religion, and she certainly leaves that door open. However, leaving that door open is not as untouched by the Semantic Critique as she seems to believe.

The Semantic Critique is not ineffective in the way this dismissal of it suggests. The fact that people have so far been largely able to pass down political judgement in line with common understandings of religion is irrelevant to the Semantic Critique (if it is even true, something I’ll dispute later in this chapter). The central thrust of the Semantic Critique is that if religion doesn’t have an essence and is not a natural kind, then particular definitions will always be stipulative, and therefore, that determining a criteria for a stipulative definition will be problematically circular if one is working backward from the list of commonly accepted “religions.” If, say, American society and its corresponding social-political institutions have generally been able to adjust laws in line with changing public opinion about what constitutes a religion, the question remains from where did that public opinion about what constitutes a religion come from? Tracing the origin, it comes from a long tradition that began with defining that what

²³⁶ Laborde, *Liberalism’s Religion*, 32.

constituted religion was what simultaneously constituted *true* religion (Christianity, often Protestant), and moved to identifying the germ of this true religion in all cultures subsequently encountered by colonizing forces.²³⁷ Why group together *these* particular phenomenon, *now*? If the definition is simply, “because they have always been so grouped,” this is a weak response. The key thought here is that attempts at defining religion often begin and end by trying to give a list of qualities that will include everything in the set understood, via commonsense, as religion, and which will exclude everything in the set likewise understood as not religion, but that the concern is with the very picking out of that set in the first place.

Suggesting that the existence of a family resemblance view of religion solves the problem of the challenge of defining religion in the first place is, again, far too quick, and can be revealed to be a problem. I’ll offer two examples of this. First, in rejecting the Realist critique, Laborde writes that liberalism ought not be thought of as just another religion. But why not? On her own endorsed family resemblance view, religion can be shown to share many of the characteristics we would be inclined to call trademark features of the religion family: substantive personal ethical commitments, sacred texts, revered founders and saints, sweeping claims about how social life ought to be structured.²³⁸ One hard case quickly unseats a casual dependence on a family resemblance model. A second example can be found in Laborde’s own work when she puts forward a thorough discussion of religious exemptions. She ultimately concedes that a model of religious exemption which treats as necessary and sufficient for exemption the notion of “conscience” fails to capture relevantly religious instances of appropriate exemption.²³⁹ That is, she participates subtly and thoughtfully in an ongoing, rich debate surrounding what renders an exemption meaningfully “religious.” It’s clear that what constitutes something as religious is not sufficiently accounted for by relying on a family resemblance view, but is a site of substantive contestation.

²³⁷ Jonathan Z. Smith, “Religion, Religious, Religions,” in *Critical Terms for Religious Studies*, ed. Mark C. Taylor (Chicago: University of Chicago Press, 1998): 269-284.

²³⁸ And less we say here that calling Rawls a “revered founder” of liberalism would be merely a metaphorical use, why think that this is mere metaphor, while the figure of Paul in Christianity is a genuine, non-metaphorically religious figure?

²³⁹ Laborde, *Liberalism’s Religion*, 42.

3.2 The Genetic Fallacy

If we accept that CR has a legitimate target in its sights – that a semantic understanding of “religion” in liberal theory ought to be revised – there is another roadblock in accepting the potential applications which may come. One notable feature of CR, and the feature perhaps most likely to lead to its dismissal, is the use of genealogical critique. Both Asad and Masuzawa are explicitly genealogically-oriented, and the central thrust of the arguments as I have laid them out is the conceptually burdened nature of “religion” due to its history. But genealogical arguments have long been plagued with the charge of irrelevancy, or cast in finer terms, the recurring boogeyman of genealogical critiques has been the genetic fallacy. Why think that the literature I have just reviewed – critiques of the *historical* development of “religion” – should have any bearing at all on the use of the term “religion” in contemporary political life or in analytic political philosophy? I might be convinced that we should be interested in the insights offered by CR, but feel overall that much of the content they put forward is generally irrelevant. To answer this concern, I’ll first review the genetic fallacy (what it is and how it appears in the literature), then consider three possible responses. I’ll conclude that two of the three are unsatisfying, but that the third offers a promising way forward and ultimately a defense of the value of genealogical analyses.²⁴⁰

One commits the genetic fallacy by rejecting an idea or concept simply because of some feature of its origin or development. Imagine that Jim has a work colleague, Dwight, for whom Jim has an exceptional dislike. One day Dwight proposes a change in office policy that would increase maternity and paternity leave. If Jim rejects this change in policy *simply because* Dwight proposed it, he would be committing the genetic fallacy. Whether or not increased parental leave is the best thing to do for the

²⁴⁰ An objection needs to be addressed here. Given my endorsement of the Semantic Critique throughout the text and the implication which follows – that religion doesn’t exist in the way it is ordinarily thought to – one could object that we can’t do a genealogy of something which doesn’t exist. It therefore needs to be specified that the genealogies at play here are genealogies of discursive concepts (in the case of Masuzawa’s assessment of “world religions”) or of specific traditions (in the case of Asad’s genealogy of Christian practices of self-definition). They provide a history of the practice of defining or naming religion, rather than of “religion” itself.

office is irrelevant to who proposed the policy shift; the proposal ought to instead be judged on the merits of the proposal alone. A common example of the genetic fallacy in political philosophy appears in the literature on universal human rights, where critics of such a concept argue that human rights have been problematically informed by their historical production in the West and therefore compromised in some way. But, as Jack Donnelly notes, “this tells us absolutely nothing about the ‘applicability,’ ‘relevance,’ ‘appropriateness,’ or ‘value’ of these ideas, values, and practices – either inside or outside the West. From a causal or historical account analysis of the genesis of a social practice, we cannot conclude anything about its appropriate range of applicability.”²⁴¹ In other words, ideas should be judged on the criteria which are meaningful for their application, rather than merely on their historical origin. In the words of Raymond Guess, we must “clearly distinguish ‘context of discovery’ from ‘context of justification.’”²⁴² The circumstances surrounding something’s emergence or discovery are distinct from the frame by which we determine whether or not that thing is justified.

3.2.1 Genealogy in the Public Reason Debate

First, I want to consider the way genealogy and genetic critique appear in Laborde’s account, and will indicate ways in which I think her presentation is not as careful as it ought to be. Then I will review her version of the genetic fallacy, which I also think warrants critique, and will finally shift into potential responses to the genetic fallacy charge.

Where does genealogy appear in Laborde’s taxonomy of the three claims made by the critical religion school? Based on the taxonomy and conclusions offered, it is not terribly clear. Each critique raised by Laborde is discussed in terms of its content, not usually in the terms of its method. And yet, distinctions about method and focus are essential here. To examine one difference overlooked by Laborde and to stress the importance of getting the Semantic Critique laid out correctly, I will examine important

²⁴¹ Jack Donnelly, *Universal Human Rights in Theory and Practice* (Cornell: Cornell University Press, 2003), 158.

²⁴² Raymond Guess, *The Idea of a Critical Theory: Habermas and the Frankfurt School* (Cambridge: Cambridge University Press, 1981), 20.

differences between the thought of Stanley Fish and Talal Asad, who Laborde positions as both writers working within CR. And yet, there are important differences between the two. Most importantly, Asad's key work on this set of considerations, *Genealogies of Religion*, focuses precisely on the problem of essentializing religion, while Fish actively engages in that process. That is, Fish treats religion as an actually existing, consistent phenomenon, while Asad considers religion as a concept imbued with danger, that of using it as a "normalizing concept."²⁴³ To cite a few examples, Fish regularly references "religion" as a consistent whole in "Mission Impossible." First, Fish tells us that there is an irony in the state purporting to "[treat] religion just like anything else," even as this entails a "forgetting that it is the essence of religion, at least in forms stronger than anything Locke will allow, to not be just like anything else."²⁴⁴ Even though Fish distinguishes here between the essence of a particular class of religions, he still appeals to some essential feature among at least those.

Second, Fish tells us that those religions that will be "welcomed into the political process" are only so treated because "in their stripped down and soft-edged form they are indistinguishable from other enlightenment projects and are hardly religions at all."²⁴⁵ Here is a clear reference to the idea that there is such a thing as a stable phenomenon as "religion." And third, that there is such a thing as an "emptying out of religion," which Fish writes when criticizing an argument made by Franklin Gamwell. As Fish summarizes, Gamwell argues that "'religious grounds' can be asserted [in public deliberation] so long as the grounds for their acceptance or rejection are not religious."²⁴⁶ In so arguing, Fish writes, Gamwell effectively "makes religion and religious ways of knowing disappear," as if there is such a stable referent as "religious ways of knowing."²⁴⁷ There therefore seems to be an implicit claim in Fish that there is some kind of natural distinction between the religious and the secular, as when, in a criticism of Daniel O. Conkle, he writes that Conkle denies religion a place in the public sphere "if it does not conform itself to

²⁴³ Asad, *Genealogies*, 1.

²⁴⁴ Stanley Fish, "Mission Impossible: Settling the Just Bounds between Church and State," *Columbia Law Review* 97, no. 8 (December 1997): 2266.

²⁴⁵ Fish, "Mission Impossible," 2281.

²⁴⁶ *Ibid.*, 2281.

²⁴⁷ *Ibid.*

secular ways of knowing.”²⁴⁸ In this sense, we see that Fish misses the problem that the very distinction between what is “religious” and what is “secular” is precisely what is at stake. That is, there is no easy, natural divide between the two, rather that there is only contestation over what is religious and what is not. And this is the point that Asad raises so clearly in his work. Should it not matter to us that Asad and Fish are engaged in robustly different projects, and more importantly, that Fish would be an object of study for Asad, rather than a companion thinker?

Likewise, the content of their projects is quite different. Fish is interested in a philosophical problem of justification. That is, how can any state purport to fulfill the goal of total religious tolerance, while still being intolerant of some set of purportedly intolerable religious commitments? This is a concern with a conundrum, a contradiction hiding in plain sight. In contrast, Asad tackles no philosophical quagmires, but takes on a relentless presentation of the long history of power in crafting “religion.” In this sense, these two thinkers represent two poles of the CR critique. Fish’s article emerges within a philosophical problem (in fact, this is precisely his thesis), and an examination of that problem forms its core consideration, while Asad seeks to unseat the constitutive commitments that frame and orient such philosophical problems from the beginning, specifically using genealogy. Genealogical methods therefore perform a problematizing of the concepts used to build the puzzle Fish takes on. The differences between these thinkers, and the methods employed by genealogists in particular, may prove to be particularly illuminating for both public reason and political philosophy generally if they are drawn out with specificity. As Laborde’s presentation stands, she conflates the two poles of the project, neglecting the particular contributions of historically-minded analyses. In focusing here on the genealogical dimensions of CR, I want to retrieve the importance of religion’s history and bring it to bear on public reason.

²⁴⁸ Fish, “Mission Impossible,” 2280.

3.2.2 The Genetic Fallacy's Two Concerns

The genetic fallacy raises at least two specific concerns for genealogical arguments. The first is helpfully illustrated by Geuss' *The Idea of a Critical Theory* in his consideration of the relationship between genealogy and the genetic fallacy. His treatment of the form of genealogical critique is contextualized by his overall goal of developing an account of ideology critique, and so is discussed in terms of criticizing or rejecting particular forms of consciousness. Geuss displays a certain reticence towards genetic critiques of ideological forms of consciousness – or perhaps said more clearly, of efforts to categorize forms of consciousness as ideological on the basis of their genesis. This reticence is displayed as care in distinguishing forms of genetic critique from other versions of forms of consciousness critique. As an example, he argues that the form of critique wherein a form of consciousness is rejected, say, on the basis of its being born from the ruling class, is not actually a criticism on the basis of its *origins*, but rather on the basis of an epistemic criteria.²⁴⁹ That is, we reject a form of consciousness because we think it, perhaps, does not provide us with a wide enough view of the world. It therefore provides us with incorrect information and ought to be replaced with a form of consciousness that provides us with a more comprehensive or accurate understanding. And yet, as has plainly appeared, the critique is really about the form of consciousness being epistemically insufficient, incidentally or contingently by virtue of its origin.²⁵⁰

The second concern for genealogical arguments raised by the genetic fallacy appears in *Liberalism's Religion*, where Laborde begins her discussion of CR writings by clarifying a common misunderstanding found in them.²⁵¹ These critics, she writes, “tend to confuse genesis with justification,” and so falsely think that “a *historical* critique can serve as a *philosophical* critique.”²⁵² Even though, for example, we now know that the origins of liberalism are much darker and messier than previously

²⁴⁹ Geuss, *The Idea of a Critical Theory*, 36-39.

²⁵⁰ Ibid.

²⁵¹ Laborde, *Liberalism's Religion*, 16.

²⁵² Ibid.

thought (“the liberal myth... has too often been used to equate religion with persecuting fanaticism”²⁵³), this critique is not damning for philosophical liberalism. This is because, as Laborde argues, this critique does not attack the appropriate target, that of the form of justification offered by philosophers of liberalism. The principle of separation of church and state and its related concepts need not rely on any particular history, rather their proponents defend it on other grounds. Its “philosophical argumentative structure” may be subject to certain *oversights* as a result of its historical associations, but these are not its grounding.²⁵⁴ Any problem with the genesis or storied development of a particular concept does not entail a need for its current rejection, thus, the distinction between context of origin and context of justification appears.

So the genetic fallacy raises two concerns here with genealogical criticisms. The first, illustrated by Geuss, is that what ought to be a genetic or genealogical critique often becomes something else. The work the critique does ends up being not really on the basis of its genesis or history, but on the basis of some other feature that is independently problematic, and is often of an epistemic nature. Closely related yet distinct is the second, illustrated by Laborde, which is that, even if the work of the criticism is properly genealogical in its inception, it may yet be unfitting as a critique. It may, to put it one way, *problematize* some idea, but it does not truly damage the continued use of that idea, form of consciousness, etc., today. We may be left wondering exactly what genealogical critiques establish.

4. Responding to the Genetic Fallacy

There are a number of responses to the charge that genealogical arguments commit the genetic fallacy and therefore either aren't actually about genealogy or are insufficiently critical; I'll consider two here. I conclude that the first is inappropriate for this context, and that the second is a promising alternative.

²⁵³ Laborde, *Liberalism's Religion*, 17.

²⁵⁴ *Ibid.*, 17.

4.1 Solution 1: Considering Origins

The first response is to flatly defend the idea that something's genesis does demonstrate important features that would undermine its philosophical justification; the genetic critique is itself misguided. This is Paul Loeb's position in defending Nietzsche against the genetic fallacy. We are, in contrast to contemporary treatments of genealogical arguments, entirely within our philosophical rights to reject an idea wholly because of its origin. Its origin is its pedigree, and a poor pedigree indicates poor blood. On this view, the development of the genetic fallacy is itself an instantiation of the kind of self-serving pseudo-reason Nietzsche is criticizing.²⁵⁵ But this position is likely not helpfully extendable to our contemporary work. Nietzsche's commitment to something like "aristocratic determinism" is not one I think most of us are eager to take on; though this reading provides a way of understanding a genealogical argument that does not fall prey to the genetic fallacy, it is not apt as a reason to revise our understanding of religion.

4.2 Solution 2: Genealogy and Contradiction

A second response is to indicate that an examination of something's genesis may draw out unacceptable features of it, specifically features which cannot be reconciled with its self-understanding. In other words, genealogy identifies not contingent features of some idea, but essential features of that idea, which those who are currently committed to it cannot uphold. Geuss defends this line when he proposes Nietzsche as someone who performs a "prime example" of the genetic approach to ideology critique in his criticism of Christianity.²⁵⁶ Nietzsche argues that Christianity is born "of hatred and envy," something which is "presumably not... a historical statement."²⁵⁷ Rather, a recognition of this as the motivation for past Christians is a problem for current Christians, for whom such motivations lie in direct contrast with the attitudes they understood to be appropriate for them. If persuaded by Nietzsche's genealogy then, they

²⁵⁵ Paul Loeb, "Is There a Genetic Fallacy in Nietzsche's Genealogy of Morals?" *The Agonist*, issue II (December 2008): 13.

²⁵⁶ Geuss, *The Idea of a Critical Theory*, 43-44.

²⁵⁷ *Ibid.*, 44.

would be therefore motivated to abandon their Christianity, and the critique would be successful. Geuss' reading of Nietzsche therefore demonstrates at least one form of genetic critique which, likewise, does not fall prey to the genetic fallacy. It is precisely because of the origin of the thing that the argument is successful.

To take this second response seriously, the target of these genealogical critiques needs to be more clearly established. While Laborde is specifically indexing the criticism of CR to liberal egalitarianism,²⁵⁸ my interest is with how CR could and should bear on the public reason debate. The object of criticism would therefore need to be the defining of "religion" that takes place in these debates, and especially uses of that definition that are iterations of old and uninformed accounts. These definitions would have to be shown to have hidden motivations that are unacceptable to the liberal theorists making them, to be motivated by beliefs which the theorists in question "could not acknowledge," and which, if they were made clear to those performing such definitions, would motivate them to stop doing the defining.²⁵⁹ In this case, if we could show convincingly enough that the origins of "religion" were such that continued use of the term will always be exclusionary and harmful – and therefore illiberal – the *liberal* theorists in question would have significant reason to reject these practices of definition and use.²⁶⁰ This isn't precisely an account which says, "the origin of this thing entails an immediate expulsion of that same thing from the sphere of justifiable things," but of course to do that would be to commit the genetic fallacy. It is instead an account of how a genealogical argument can reveal features indexed to a practice's past that determine how we should understand its contemporary justificatory context. It seems to solve decisively at least the first concern raised by the genetic fallacy (that genealogical arguments will be insufficiently genealogical).

²⁵⁸ Laborde, *Liberalism's Religion*, 20.

²⁵⁹ Geuss, *The Idea of a Critical Theory*, 20.

²⁶⁰ Technically, given that I'm using part of Geuss' theory concerning genetic ideology critique, this would entail that I am calling the practice of defining religion ideological. But I'm not committed to trying to defend that claim here.

4.2.1 Problems with Solution #2

While this appears promising, there are at least two serious problems with the success of this argument *in this context*: one, that I may have given too much to genealogy as it appears in this literature, and two, that this set of genealogical interventions may yet be insufficiently effective as a philosophical critique. Regarding the first, we may know that there is something intended, desired, by those who purport to build a genealogy rather than just, say, offer a historical reconstruction. But what exactly that thing is often escapes our tidy intention. Critics of Masuzawa reflected this exact tension, with some arguing that her claims were too strong and others arguing that there weren't really any claims at all. The first horn of this critique suggests that Masuzawa's work is too normative, or too political, in a pejorative sense. As an example, consider one reviewer for whom the task of *The Invention of World Religions*, that of "unmasking" the "hidden" agenda of the world religions discourse "to preserve European and Christian supremacy – sounds like a work of counter-espionage, not laborious scholarship."²⁶¹ The second horn of the critique charged Masuzawa with not claiming enough (or anything at all), and therefore not offering a sufficient recommendation for future academics working on religion:

I am convinced that she is not writing an intellectual history of Europe for the heck of it and that there must be some *reason*... Masuzawa makes a convincing case that scholars have played a significant role in defining world religions in the past. So have scholars stopped doing this? And if not, what kinds of agendas should they have?²⁶²

And still another engagement with her text argues that though the historical research is good, it is "ambiguous in relation to critical practice."²⁶³ The emergence of these two contradictory critiques doesn't highlight a case of a simply polarizing text, or even of a polarizing text being read uncharitably. Rather, I argue it is due precisely to the nature of the text as a genealogy. The conclusions of genealogy are often explicit or entombed, rendering it difficult to say definitively what their goals are. Even theorists of genealogy rely on theories of cryptonormativity (Habermas' characterization of Foucault's normativity at

²⁶¹ Leigh E. Schmidt, "The Invention of World Religions: Or, How European Universalism Was Preserved in the Language of Pluralism (review)," *Journal of the American Academy of Religion* 74, no. 1 (March 2006): 229-232.

²⁶² Finbarr Curtis, "The Invention of World Religions, Book Review," *Epoché* 23, no. 2 (Fall 2005): 269.

²⁶³ Timothy Fitzgerald, *Discourse on Civility and Barbarity* (Oxford: Oxford University Press, 2008), 48-49.

work in his genealogies), whose heft, Olson writes, is found in a normativity which is “subtle, implied, and often concealed,” enabling it to “travel unrecognized within practices of interpretation and explanation.”²⁶⁴ However, this covert normativity might work “precisely because it is not thematized as such,” instead it reveals what is hidden “even though we might be at a loss to explain exactly how it does so.”²⁶⁵

We might chalk this up to just how challenging it is to make a subtle normative claim spanning centuries of behavior, as Masuzawa seems to do when she interrogates her own method and the difficulty it poses:

But what does a turn of phrase [“world religions”] reveal? How could something so minute and seemingly so incidental as a gesture of language indicate anything beyond what has its provenance in the author’s person and his immediate circumstance, that is, anything over and above his conscious intentions, unconscious motives, habits... and the like? Above all, could forms of language employed by this or that author, rhetorical moves made at this or that moment, disclose to us anything of significance about history, and if so, how? Or, perhaps more to the point, could an analysis of such forms and moves be enlisted and incorporated for the purpose of producing historical knowledge...? These questions are difficult to answer. Even though I know the answers to be generally in the affirmative, the reasoning that could be articulated to support them might seem too intricate to be fully credible; it could appear either suspiciously obscure or improbably clever, and in the end, devious and inscrutable.²⁶⁶

But this strikes me as too evasive, given the intensity of the text’s self-framing. I argue that any text which aims at bringing to the surface “certain ideological persuasions” clearly has a bone to pick.²⁶⁷

Masuzawa did herself write, in an essay responding to a panel’s series of criticisms of her book, that the book is a work of discourse analysis, in which she says, “as a rule,” one should not begin “motivated by an aspiration to critique, correct, or improve upon, let alone chastise, that particular discourse,” nor by a desire to “set historical records straight, though it might contribute to this and other purposes.”²⁶⁸ But these are comments about the motivation for the text, not the text as a completed work. Further, the book clearly states that “this study suggests that the actual historical process that resulted in the current

²⁶⁴ Kevin Olson, “Genealogy, Cryptonormativity, Interpretation,” *Foucault Studies* 18 (October 2014): 255.

²⁶⁵ *Ibid.*, 255.

²⁶⁶ Masuzawa, *Invention*, 30-31.

²⁶⁷ *Ibid.*, xiv.

²⁶⁸ Tomoko Masuzawa, “What Do the Critics Want? – A Brief Reflection on the Difference between a Disciplinary History and a Discourse Analysis,” *Method and Theory in the Study of Religion* 20 (2009): 140.

epistemic regime was different from what this ‘just-so’ story would lead us to believe” about the development of the category of world religions, certainly signaling a setting-straight of a historical record.²⁶⁹ The book succeeds on the front of chastising that particular discourse as well; it is “particularly convincing” when arguing that “imperialism... has not gone away despite strategies to become more scientific, or more neutral, or more objective.”²⁷⁰ In other words, to read Masuzawa is for it to become clear that “intellectual history is about a lot more than intellectual history.”²⁷¹ And yet, something in the book’s method prevents an easy statement of the conclusion hidden in its uniquely genealogical critique.

So, I think it is warranted to concede here that though genealogical arguments do have the potential to be incisive without committing the genetic fallacy, at least in this instance there is an insufficient presentation of the features necessary to command that incisiveness. Genealogical arguments need to be more willing to put forward the conclusions and normativity at play in their critiques without relying on opaque logics.

The second problem is that those theorists sympathetic to maintaining the practice of defining “religion” can argue that while the genealogical critiques are very informative about the past, they are still insufficiently relevant to contemporary or future cases. This is a version of Laborde’s response: no matter how robust Masuzawa’s presentation of the history or her implicit critique, it is still only history. The second concern of the genetic fallacy emerges again unsatisfied. All that is *concretely* defended is in Masuzawa is Conclusion One (that the language of world religions has acted as a vehicle for European superiority narratives), and this only offers us reasons to revise our understanding of the historical development of “world religions.” It therefore fails as a *philosophical* critique, one which would properly attack the philosophical justifications of the *continued* use of “religion” in political discourses. We can always revise “religion” into a better form of itself; nothing is essentially tethered to its origin points. We can always just revise or adjust our use of “religion,” just as we have historically revised liberalism itself

²⁶⁹ Masuzawa, *Invention*, xii.

²⁷⁰ Curtis, “The Invention,” 269.

²⁷¹ *Ibid.*

to accommodate waves of critiques from feminist and critical race theorists, among others. There may be innumerable instances in which defining or categorizing religion was an illiberal enterprise, but it is not essentially or necessarily so.

I am sympathetic to this critique, as I am sympathetic to the entire liberal tradition's efforts to retrieve again and again the liberatory power potentially available its universal language.²⁷² However, I am unconvinced that we can so tidily cut off contemporary manifestations of a historical phenomenon with such roots of European superiority and hegemony. As Mills writes of the Racial Contract, despite its preservation of some of the ideals of the social contract, it itself is "an abstraction that is *this*-worldly," and therefore a rejection of abstraction (or idealization) that "characteristically abstracts away from things that matter, the *actual causal determinants* and their requisite theoretical correlates."²⁷³ But for now, I don't need to argue that in this particular case, genealogical critique takes the form it could to avoid the genetic fallacy. But this doesn't mean that there is therefore no value or use to the genealogies put forward. Instead, I argue that there is a unique contribution made by them that will be essential to conducting the public reason debate responsibly.

4.3 Genealogy's Unique Benefit

So, what is the value of these genealogical arguments concerning the genesis and history of "religion" to the debate over the best form of public justification? That is, given what I believe is the intensity and seriousness of the Semantic Critique – the backwards-reaching damage that it does to our understanding of religion – genealogy offers us the only way forward. Without a long, thorough, sensible understanding of what has produced "religion," we cannot adequately move forward. To be entirely fair to the charge that they're all helplessly mired in the genetic fallacy, this is indeed not a true critique of

²⁷² Such as Charles Mills continuing to use the language of the social contract (albeit in thoroughly revised form) in *The Racial Contract* (Ithaca: Cornell University Press, 1997), 129.

²⁷³ Mills, *Racial Contract*, 130, though he is drawing from Onora O'Neill in this passage, from "Justice, Gender, and International Boundaries," in *The Quality of Life*, ed. Martha Nussbaum and Amartya Sen (Oxford: Clarendon Press, 1993): 303-323. Emphasis added.

any philosophical foundations. Rather it is a challenge to the naïve continued use of a particular term, and in this case, a roadmap for how not to proceed. What it will affect is someone's philosophical justifications for how they define and use "religion" in liberal egalitarianism and public reason. Whatever story someone will tell about why they are or are not including the term "religion," or why they define it in a particular way, that story has to include the recognition, born of the Semantic Critique, that the definition is necessarily stipulative and contingent; to do otherwise is to risk making an essentialization of the term. In making this caveat, in this way, one acknowledges that defining "religion" is always an act that situates one explicitly in a colonialist history, burdening any contemporary stipulation of the term.

At this point, there's a risk of simply leveling all definitions, and arguing that the Semantic Critique in fact gives us a reason to freely define religion without regard to its history. If there's no essence, then any account is up for grabs. Someone could argue that in the case of, say, concern over certain religious minorities not receiving the accommodations they're warranted, that they simply aren't a member of the stipulated class of religions. If the semantic critique tells us that no coherent story can be told about religion, then why worry at all that some people feel excluded from the necessarily incoherent story? But here, there is one coherent narrative available to us, the genealogical account, which offers a clear historical story. This is the story we should be working from, because it explains the ways in which "religion" is a powerful term with an exclusionary history. To assess definitions and treatments of religion apart from this history is to speculate wildly in the midst of a host of concepts that have a wide variety of definition-related problems.²⁷⁴ As Fitzgerald writes:

If religion can mean anything, then it means nothing. But having abandoned the search for an essence, or for a valid operational definition such as Wittgensteinian language games, we must turn our attention to *the operation of religion as a power category*. The question worth asking is

²⁷⁴ There is perhaps an interesting comparison to be drawn here between "religion" and "race." "Race" has come to be the subject of sustained debate over its definition, with some even proposing the removal of the term altogether (eliminativism). Sally Haslanger proposes what she calls an ameliorative account, that is, we ought to revise our definition of race with an eye towards the work we want the definition to do for us. What would a successful definition of race accomplish, and how could we gear our definition to achieve that? I'm proposing something similar with regard to religion. A successful definition of religion would be one which doesn't use the same kind of hierarchizing, exclusionary logic which has defined the act of naming something as "religious" for the vast majority of its history. See Sally Haslanger, "How Not to Change the Subject," in *Shifting Concepts: The Philosophy and Psychology of Conceptual Variation*, ed., Teresa Marques and Åsa Wikforss. Oxford: Oxford University Press, 2020.

why this indefinable category has achieved such rhetorical significance in our public life, why it is specially mentioned in written constitutions and the subject of judicial interpretation, [and] why it is deployed as it is by politicians and the media.²⁷⁵

5. Bringing the Semantic Critique Up to Date

I have just argued that the genealogical method employed by CR offers us a uniquely valuable reading of the Semantic Critique. As a means of supplementing that critique, I want to turn here to two contemporary examples of challenges that emerge when either strict state definitions of “religion” or commonsense attitudes about religion serve to harm or undermine the lives of even accepted “religious” individuals. These two contemporary examples are the Danish cartoon controversy and a state ruling on cemeteries in Boca Raton, Florida. Both demonstrate clearly how state attitudes towards what “really” constitutes a religion can create misunderstanding and harm.

5.1 The Danish Cartoon Controversy

The Danish cartoon controversy is by now well-known, and is often a case ready-at-hand in discussions about tensions between “the secular” and “the religious.” On many tellings, this case is in an instance in which religious individuals had an outsize, inappropriate response to the natural exercise of secular critique and free speech. Saba Mahmood, however, offers a more sophisticated reading. Of most interest to her was the lack of empathetic understanding for the pain felt by Muslims at the offensive depictions of the Prophet, one produced by “an *inability* to understand the sense of injury expressed by so many Muslims.”²⁷⁶ Mahmood ultimately argues that this misunderstanding was in key ways the product of a mis-match in what common European sensibility understood “religion” to entail and what it actually meant for Muslims. In particular, she points to how a Christian, Protestant idea about how religion is “a set of propositions in a set of beliefs to which the individual gives assent” facilitated a complementary

²⁷⁵ Fitzgerald, “Critical religion and critical research on religion,” 304. Emphasis added.

²⁷⁶ Saba Mahmood, “Religious Reason and Secular Affect: An Incommensurable Divide?” in *Is Critique Secular?: Blasphemy, Injury, and Free Speech* (Berkeley: The Townsend Center for the Humanities, 2009), 68.

idea that “the primary function of images, icons, and signs is to communicate meaning.”²⁷⁷ The problem which emerged is that this commitment rendered Muslims who were deeply hurt over the depictions of the Prophet Muhammad as merely mistaken and as ultimately committing a category mistake, that of failing “to realize that signs and symbols are only arbitrarily linked to the abstractions that humans have come to revere and regard as sacred.”²⁷⁸ To become upset about a particular representation was to collapse into one another the subject and the object, while proper religiosity knows to keep these apart. What is most compelling about her argument is that she traces this understanding all the way to missionary activity during the 18th and 19th centuries which focused in part on instructing indigenous peoples to “distinguish properly between inanimate objects, humans, and divinity.”²⁷⁹ In other words, the project of instructing people that to be appropriately religious was to know that symbols are distinct from the sacred beings they represent has a long history, and this contemporary misunderstanding and lack of empathy is a clear continuation of that practice.

This misunderstanding, however, was not merely a social failure of empathy, but led to institutional challenges. European Muslims raised concerns about what they felt to be increasingly hostile treatment towards them throughout the EU, but despite this, their two arguments were both dismissed, for reasons that Mahmood argues were “not simply because of the European majority’s prejudice against Muslims but because of structural constraints internal to secular liberal law, its definition of what religion is, and its ineluctable sensitivity to majoritarian cultural sensibilities.”²⁸⁰ The first of these arguments was that Muslims were subject to increasing vitriol because of their racialized status as Muslims, and so speech against them ought to be understood as hate speech.²⁸¹ This was widely rejected because “race is an immutable biological characteristic, whereas religion is a matter of choice.”²⁸² That is, one can be changed, the other cannot. Given that one’s religion can be changed, the offense caused by the Danish

²⁷⁷ Mahmood, “Religious Reason,” 71-72.

²⁷⁸ *Ibid.*, 73.

²⁷⁹ *Ibid.*, 73.

²⁸⁰ *Ibid.*, 79.

²⁸¹ *Ibid.*, 79-80.

²⁸² *Ibid.*, 80.

cartoons was merely a critique of someone's belief, rather than a direct attack on their racialized personhood. As Mahmood writes, it was not a matter merely of "mis-recognizing the kind of religiosity at stake in Muslim reactions to Danish cartoons: they also echo the presumptions of the civil law tradition in which the epistemological status of religious belief has come to be case as speculative and therefore less 'real' than the materiality of race."²⁸³

Additionally, it is important to note that the European Convention for the Protection of Human Rights had historically prohibited the distribution and display of two films offensive to Christians, one case in Austria in 1994 and one in the UK in 1997.²⁸⁴ These decisions were not so much made on the grounds of the films' offensiveness, but instead made explicit reference to the sheer amount of Christians who would be affected. As Mahmood puts it, the legal reasoning at hand "tends to privilege the cultural and religious beliefs of the majority population," no matter where such decisions take place.²⁸⁵ While this might seem to stand in contrast with the argument Mahmood put forward about how real religious belief isn't concerned with what happens to mere representations of sacred figures, it actually is a clear presentation of the justificatory process at work, identified in Masuzawa and reiterated through the Semantic Critique. This is that the event of naming what is "religious" is very often, and nearly always, at the same time naming what is *truly* religious. So when Muslims are considered to be mistaken in their level of outrage over what is a mere representation, the undercurrent is that it is at least in part a mere representation because it is not the *true* religion. In contrast, the Christian videos banned in Europe were sufficiently harmful because they were appropriately damaging of a genuine religious truth.

Now, it is challenging, if not impossible here, to disentangle a realist perspective – which says that the nature of "religion" in the debate is inconsequential, it is all entirely about social control, and the Christian population is simply much larger than the Muslim one, and on *those* grounds it is worthy of protection – from the kind of religious perspective I am attempting to take, which suggests that the

²⁸³ Mahmood, "Religious Reason," 81.

²⁸⁴ *Ibid.*, 83.

²⁸⁵ *Ibid.*, 86.

academic-social-legal tradition of establishing an appropriately “religious” category is being continued in almost identical fashion to undermine religious minorities. At the very least, it ought to be clear that these two work in tandem with one another. Rejections of Muslim offense are inseparable from the fact that this dismissal can accord with a longstanding European, Euro-centric habit of concretizing in whatever way possible the superiority of Christianity.

5.2 Warner v. Boca Raton

The second example is from Winnifred Sullivan’s book, *The Impossibility of Religious Freedom*, a text which chronicles Sullivan’s participation as an expert of religion in a 1999 court trial in Boca Raton, Florida concerning allowable markers at gravestones. The trial, *Warner v. Boca Raton*, was between a group of residents and the city of Boca Raton, because the latter sought the removal of a number of grave markers. The local cemetery’s regulations required that all grave markers be small and flat to ensure ease of maintenance, while the residents wanted a religious exemption from these regulations, on the grounds that their more elaborate, often vertical, grave markers were important parts of their religious practice.²⁸⁶ Ultimately, the judge ruled against the group of residents, arguing that while items such as Stars of David, fences to prevent people from walking over the graves, and upright statues of small angels and saints may have been important personal items, they were not properly considered an exercise of religion. As one of the City’s religious experts explained, “personal religious beliefs is... something of an oxymoron. If it is purely personal, I’m suggesting it is not religious. It may be strongly felt... it may have great psychological meaning. But I would hesitate to say that it has religious meaning.”²⁸⁷

This case stands out for the way in which it complicates Laborde’s earlier statement about how courts most often do well by those noncontroversial acts of religion. Here it becomes painfully clear that what constitutes a noncontroversial act is in itself a matter of great controversy. Consider the final

²⁸⁶ Winnifred Sullivan, *The Impossibility of Religious Freedom* (Princeton: Princeton University Press, 2005), 2.

²⁸⁷ *Warner v. Boca Raton*, Trial Transcript, p. 454; cited in Sullivan, *The Impossibility*, 77.

decision, and then hear what the plaintiff’s lawyer said in his opening statement: while “it may well be difficult to draw a bright line around what is religion and what is not religion in some cases,” the case at hand didn’t “involve a fringe or marginal religious practice.”²⁸⁸ Given the location of the acts – in a cemetery, “where religious expression is to be expected” – the plaintiffs, and Sullivan, as one of the expert witnesses, thought that they easily constituted what would normally be considered religious activity.²⁸⁹ And yet two understandings of religion were at odds. For the defendants, and ultimately for the judge, religion was properly understood as “something that had dogmas and rules and texts and authorities,” while for the plaintiffs, religion was understood as “a field of activity, one in which an individual’s beliefs and actions were the result of a mix of motivations and influences.”²⁹⁰ The case hung on the court being able to determine, concretely, what was and was not “integral and essential to a *religious tradition*,” a fixation which upheld an unreflective commitment, that religious activities are appropriately denoted as essential or not based on their rootedness in a tradition, as concretized in a particular sacred text or authority.²⁹¹

In the judge’s final opinion, he made it clear that religion ought to be understood primarily as “a matter of ‘views,’” and that it is to these views that “rights are attached... not to the actions that one takes.”²⁹² The contrast between this model of religion and the religious understanding and practices of the citizens involved can be seen during one particularly illuminating exchange, between one of the plaintiffs and her lawyer. The plaintiff, Ms. Warner, was asked why she believed she felt she needed to be able to have this particular “public expression” of her faith (the Star of David on her husband’s grave). She responded that having it was not “a matter of public expression of my faith. My faith is within me. But to us this is a desecration if you walk on a grave.”²⁹³ For Ms. Warner, religion was not best understood as being something internal, or private to oneself that was then either repressed or expressed outwardly, nor

²⁸⁸ *Warner v. Boca Raton*, Trial Transcript, p. 8; cited in Sullivan, *The Impossibility*, 34.

²⁸⁹ Sullivan, *The Impossibility*, 34 and 11.

²⁹⁰ *Ibid.*, 36.

²⁹¹ *Ibid.*, 79.

²⁹² *Ibid.*, 92.

²⁹³ *Warner v. Boca Raton*, Trial Transcript, p. 39; cited in Sullivan, *The Impossibility*, 119.

was it exhausted by a set of commitments understood in this way. Rather equally important for her was a particular, localized, (what is often called) “folk,” religious practice.²⁹⁴

Conclusion

Let us return now to the Semantic Critique. My intention has been to show through the richness of these contemporary examples that the Semantic Critique carries more weight than being merely a rhetorical dismissal of an obvious truth (that socially constructed concepts are challenging to define). Rather, the Semantic Critique – supplemented by the resources of genealogy – shows that a definition of religion is always two things. One, it is an expression of power and a rhetorically weighty act. And two, it is a tool of functional inclusion and exclusion, particularly when in a legal or political context. To neglect the Semantic Critique is to obscure the benefits that are offered to us by the work of those scholars of critical religion. Even if we do not adopt wholesale the Semantic Critique (and so want to maintain some stipulative definition), it drives us towards using religion in a self-reflective way – much more self-reflectively than has been the norm in the literature so far. That is, the Semantic Critique is the necessary starting point for building the case that our definitions of religion are not transparent descriptions, but political activities. Even an attempt to evade the role of religion in public reason is an act. As Fish himself writes, “There are no moves that are not moves in the game, and this includes even the move by which one claims no longer to be a player.”²⁹⁵

²⁹⁴ Sullivan, *The Impossibility*, 2.

²⁹⁵ Stanley Fish, *Is There a Text in This Class? The Authority of Interpretive Communities* (Cambridge: Harvard University Press, 1980), 355.

CHAPTER IV

CHALLENGING CONVERGENCE

Let me begin by summarizing the argument so far. First, I have described an ambiguity at the heart of the project of public justification that has led to two competing models of that project: consensus and convergence. I have argued that the convergence model of public justification is a compelling alternative to the consensus model inasmuch as they both present a viable interpretation of public justification and so fulfill its goal of providing a legitimate government. Second, I have examined the purportedly main advantage of the convergence model, that it not only fulfills the goal of public justification but does so in a way superior to the consensus model because it can correct for the Integrity Objection and solve the long-standing tension between religion and liberalism. Then, in Chapter 3 I stepped back from this debate to examine the conception of religion at work in the debate. The public reason literature has so far worked with an impoverished concept of “religion” that needs to be updated. I showed that once we study recent genealogies of the practice of building and defining “religion,” the concept is revealed to have a history of reproducing Christian norms and reinforcing European superiority narratives, rendering the continued use of the term questionable at best, especially given demonstrated contemporary instances of such practices discriminating against religious minorities. In this chapter I will turn to the last steps in my dissertation: arguing that the convergence model does not fulfill its claim to be the model of public justification that is better for religious citizens (either their integrity specifically or religious citizens in general), and that the consensus model is better poised to handle increasing religious complication and diversity.

This chapter will proceed as follows. I will begin by contesting the convergence model’s claim to be better for the integrity of religious citizens. In doing so I will make three arguments, two concerning the integrity of legislators and judges and one concerning citizen political activity. All three of these arguments work even without invoking the more sophisticated conception of religion I have previously

defended. Then, I will examine the way that CR can inform and adjust our concept of integrity, asking principally: what kind of integrity is at play, and whose integrity is worth protecting? I will argue that though convergence may look in some ways capable of passing the muster of CR, it does so only by protecting a limited concept of integrity of a limited group of individuals, ultimately leaving vulnerable several other groups of citizens, including minority religious populations. Next, I will focus on the broad treatment of “religion” by convergence, making three arguments in the process: that convergence uses a false and damaging account of religion, that the model will be forced to utilize this account, and that convergence ultimately fails in its central goal to reconcile liberalism and religion. Fourth and finally, I will lay out the state of play between consensus and convergence, arguing that, with the field leveled regarding the treatment of “religion,” the decision ultimately comes to rest on a choice between ideals, and that ultimately the ideal presented by consensus provides a more promising future for all citizens.

1. Convergence and Citizen Integrity

As I’ve made clear, Vallier contends that the convergence model is the more “faith friendly” form of public reason liberalism, and that it saves liberalism, declaring it “innocent by answering the challenges that *religious critics* have raised against it.”²⁹⁶ Doing this is an act of redemption, protecting religion from a long history of being seen as “hostile to religion in public life.”²⁹⁷ Vallier’s book hopes to show that the best form of liberalism, public reason liberalism, ought to actually be understood as “friendly to religion in public life,” and therefore that liberalism itself might by definition be the same.²⁹⁸ As I’ve also noted, this is primarily on the grounds that convergence better protects the *integrity* of religious citizens through a variety of corrective measures to the consensus position. It most importantly (i) rejects the doctrine of restraint (nearly), (ii) includes an idea of moderate idealization that protects

²⁹⁶ Vallier, *Liberal Politics*, 9 and “Liberalism, Religion and Integrity,” 149.

²⁹⁷ Vallier, *Liberal Politics*, 9.

²⁹⁸ *Ibid.*

religious commitments from being idealized away, and (iii) promotes a robust set of religious accommodations through a justification of the free exercise and establishment clauses.

Furthermore, there is another dimension of the convergence model's approach which at first glance seems poised to be able to make a valuable contribution to the public reason literature following even the critique of CR. This is that Vallier, despite working with a largely standard conception of "religion," is arguing for a form of integrity that seemingly involves an act, not simply a belief. This is notable because a theme in the CR literature is that, due to the Protestant Christian origins of "religion," political treatments of the concept often fixate on personal belief, rather than group activity. This can be seen in the case of *Warner V. Boca Raton*, where it was the judge's fixation on personal belief's centrality to religion that led to the dismissal of a host of burial practices important to local citizens. And in Vallier's critique and investment in correcting for the Integrity Objection there seems to be a commitment to recognizing and prioritizing the importance of religious activity, not just religious belief. In this sense, the convergence model might strike us as a step up from the consensus model in line with CR. Consensus, as Rawls developed it, was intimately interested in protecting one's right to private belief.²⁹⁹ The convergence model still protects this but goes a step further in ensuring that one's private belief can be manifested as one sees fit.

And yet, I'll argue here that despite these measures, the convergence model fails to fulfill its claim to better protect the integrity of religious citizens. I'll offer three arguments here. The first and second are both drawn from the convergence model's restrictions on legislators and judges, and argue that the justifications for these restrictions are offensive to religious citizens and that the restraints themselves offer an opportunity for the Integrity Objection to resurface. The third concerns the type of citizen political advocacy which is allowed on the convergence model, which I argue is highly restricted, even more so than on the consensus model.

²⁹⁹ Rawls, *Political Liberalism*, xxiv.

1.1 Problems of Convergent Restraint

While convergence models allow the religious citizens such as the Barthian to put forth their reasons in the public sphere of deliberation, there is still some, even if “mild,” restraint proposed by convergence models on legislators and judges.³⁰⁰ Legislators are not permitted to vote for a law “in order to contribute to [its] becoming or remaining law... if he justifiably believes that members of the public” don’t have sufficient intelligible reasons to support that law.³⁰¹ Judges have even more intense restrictions, and are not to “issue decisions concerning the constitutionality of coercive laws that appeal to reasons they justifiably believe are not shareable (or accessible) for members of the public.”³⁰² This restraint is problematic for the religious individual for two reasons: first, that the reasons offered in support of convergence restraint seem diminutive to religious individuals, and second, that it creates a new class of potential integrity objections.

The reason Vallier offers for prioritizing certain restraints on legislators is because *they have a direct pathway to something’s becoming law* and therefore to the exercise of coercive power.³⁰³ They are therefore bound to only vote for legislation which they believe fulfills the condition of the convergence model: that there is public justification for it. But this looks potentially disrespectful to the religious citizen. Such a citizen ought to, on Vallier’s reasoning, only feel comfortable voicing their endorsement of some law on the condition that they think they won’t “effectively contribute to [policy P] becoming law.”³⁰⁴ Perhaps there are religious citizens who are satisfied by just being able to express their religious convictions in the public space, but I’m inclined to think (and even if I’m wrong, we could imagine a religious citizen like this) that citizens are satisfied by this expression *because* of the possibility of its contributing to law. Likewise, the reason Vallier offers for restraint on the part of judges, why “religious justifications should not figure into” their rulings, is because those rulings “are the grounds for future

³⁰⁰ Vallier, *Liberal Politics*, 195.

³⁰¹ *Ibid.*, 191.

³⁰² *Ibid.*, 195.

³⁰³ *Ibid.*, 188.

³⁰⁴ *Ibid.*, 188.

law.”³⁰⁵ But again, isn’t part of the religious citizen’s advocacy the idea that their convictions will indeed shape the future of their society as well as their current experience? These reasons offered for judicial and legislative restraint, wherein religious justifications ought not to play a definitive role in either, appear primed to disturb religious citizens’ understanding of their political participation.

The final additional potential problem here regards the possibility of pressing integrity concerns for legislators and judges. Even someone who has taken on a civic role may experience religious conviction so robust that they feel they still have to vote for a particular policy even in spite of its lack of public justification on the part of every member of their constituency (or the citizenry at large). We therefore have to ask, on what grounds can we consider this integrity of less value than the integrity of the private citizen, particularly if it is held exceptionally deeply or strongly?

Vallier anticipates this response and argues that even though “some religious citizens will dislike the fact that convergence is hostile to laws that can only be justified on a religious basis,” this doesn’t give us any reason to reject convergence, since “liberalism draws the line at religiously-based coercion,” period.³⁰⁶ In other words, he suggests that it would be absurd to re-assert the importance or existence of the Integrity Objection, given all the ways that convergence has mitigated the force of the objection already, and since the stopping point convergence provides is the right one. He goes on to develop a few criteria that differentiate the possible damage done to the integrity of legislators and judges from that done to citizens. These integrity concerns are not genuine problems for convergence because legislators and judges make up a very small portion of the overall population, and furthermore, that there is no religion (to Vallier’s knowledge) that requires one to take on the role of political legislator or judge.³⁰⁷ Being in these positions is therefore very easy to avoid, unlike the role of being a voting citizen in a democracy.

There are surely certain individuals who experience a call to be a legislator or judge, and who would frame that calling as the result of their religious commitments. Even if it is not written in some particular

³⁰⁵ Vallier, *Liberal Politics*, 194.

³⁰⁶ *Ibid.*, 182, footnote 1.

³⁰⁷ *Ibid.*, 193.

holy book that all adherents to a particular religious tradition have to become political leaders, it is likewise not written in any such book that adherents have to vote in democratic elections. Religious citizens vote in elections because they feel it is important for them to be able to express their commitments in the ways politically available to them; I see no reason why these commitments need to end before one becomes a judge or legislator. We could easily imagine a revision of Wolterstorff's initial presentation of the Integrity Objection in which a religiously committed legislator argues that for them, they are not, any less than a private citizen, in the position to restrict "their decisions concerning fundamental issues of justice" from being informed by their religious convictions; it is not for them "an option whether or not to do so," but they need to be allowed to let their religious convictions "shape their existence as a whole, including... their political existence."³⁰⁸ Furthermore, it seems likely that religious individuals become judges and legislators at least in some instances because they want to see their religious commitments represented at a higher level than they are able to achieve on their own. In accord with what I've noted previously, telling religious citizens that they can vote according to their convictions *only because* their votes don't matter or cannot be recognized in public policy strikes me as something likely to cause disturbance to these citizens' self-understanding. And accepting that their votes don't matter is a very good reason for a citizen to put themselves into a political position with significantly more efficacy.

This also makes clear that restraint on the convergence view is tied directly to causality. On these grounds, then, if a legislator or judge is in the minority position – say a Republican in a Democratically-controlled House of Representatives, or a far-left judge on a conservatively-dominated Supreme Court – does the requirement of restraint lift? If the concern is only with someone effectively making law, could someone who knows they're voting in the minority refrain from voting in accord with the Doctrine of

³⁰⁸ Wolterstorff, "The Role of Religion," 105.

Convergent Restraint (DCR) as a kind of political statement, rather than voting in their capacity as an effective contributor to the development of public policy?³⁰⁹ The DCR seems to be silent on this issue.³¹⁰

But the broader consideration here is that Vallier seems to index convergence's superior treatment of the Integrity Objection merely to a matter of numbers, and a close look at the numbers may not be as favorable for him as he desires. When we consider the number of citizens whose integrity is actually crippled by the consensus view of the Doctrine of Religious Restraint (DRR), the number is probably quite small. As Patrick Neal exhaustively documents, on the Rawlsian position, the instances in which citizens will actually be called upon to refrain from voting in accord with their non-public comprehensive doctrine are few and far between.³¹¹ Then, from this small number of instances, Vallier protects the private citizens, not political legislators or judges, and it is these citizens who make the difference between the convergence and consensus conceptions. Of course, this number of individuals who now feel more free to participate politically than they did on a consensus model are not unimportant, but my interest here is in adjusting the conversation from a mere numbers game to a question about what type of integrity matters, and how we determine what shapes or instances of it matter. As said previously, people who become political leaders do so precisely because they have a stronger compulsion to political participation that can represent their own concerns – likely religious – and those of their – possibly religious – communities. So their integrity is likely weightier because it is held closer to the chest, so to speak. And as such, the Integrity Objection posed by these figures is all the more challenging to reconcile.

³⁰⁹ The response here is probably that, if all legislators followed the DCR, then one would expect that there would never be instances of majority or minority votes in government. Presumably whether or not members of the public all have intelligible reasons to publicly justify law L ought to be simply a yes or no question. There would likely not even be reason to have a large legislative branch.

³¹⁰ Vallier does address this concern in a brief footnote, but he argues that even if a legislator's vote won't matter, they are still not warranted an exemption from the DCR, because they still have more chance of influencing policy than a citizen. I find this rather strange and incongruous with Vallier's focus elsewhere on causality as the determining feature. A vote that doesn't count is a vote that doesn't count, regardless of who casts it.

³¹¹ Patrick Neal, "Is Public Reason Innocuous?" *Critical Review of International and Social and Political Philosophy* 11 (2008): 131-152.

1.2 Loss of Public Political Advocacy

I have just argued that the DCR for legislators and judges allows for the continuation of certain claims of obstructed integrity and the possibility of offense for religious citizens. Here I'd like to draw out one more problem with the DCR. As a reminder, the final version of the DCR for citizens is as follows: for citizen A...

A should not publicly advocate law L in order to contribute to M's becoming or remaining law (where L may be equivalent to M) if A justifiably believes (a) that members of the public lack sufficient reason Rn to endorse M and (b) that A's public advocacy effectively contributes to M's becoming law.³¹²

The goal of this formulation, I believe, is to ensure that citizens never immediately enable the passing of a law that would be unjustified. But since that would be impossible on almost any political institutional setup (including the one put forward by convergence), I will assume there is some other point to the inclusion of this feature of the convergence view. But, taken more seriously, and as it is written, it currently appears to have the unusual conclusion of rendering a significant amount of citizen political activity inappropriate. It seems to me that most citizen political activity is done precisely on the grounds of hoping that one's political activity be effective in changing the beliefs of their fellow citizens towards ones more favorable to their preferred position. It is exactly *this hope*, that one's public advocacy will contribute to M becoming law, that leads one to advocate at all.

Citizen behavior that is prima facie reasonable and furthermore, ubiquitous, has therefore been characterized as problematic. Not only religious citizens but nonreligious citizens are therefore in the odd position of having a significant portion of their political activities undermined. Voting alone seems to be the sole opportunity for the politically active religious citizen to voice their public opinion, or only very

³¹² Vallier, *Liberal Politics*, 188.

This is also echoed in Gaus and Vallier's "minimalist proviso," which "holds that (2) given the contingent facts of contemporary western society, if citizen Alf proposes L on purely reasonable religious grounds, for Alf to legitimately endorse L in the public sphere he must believe that there are non-religious grounds that plausibly justify L to reasonable non-religious members of the public." Though this is also weakened, and ultimately only has significant force for legislators.

small-scale political activism. This strikes me as a significant loss for public discourse and citizen religious life on the convergence model of public reason.

Furthermore, this gestures toward the most robust critique posed by convergence against consensus: that the latter pays far too much attention to the process of justification, rather than the *fact* of it. As Gaus and Vallier tell it, what matters is simply whether or not something is publicly justified, not how it gets there. The DCR represents a shift away from any concern with the political-ethical life of its citizens, particularly with regard to their engagement with one another. In attempting (and as I see it, failing) to remove any restrictions for citizens with regard to their political participation, convergence fails to grant or consider the importance of their political lives. This serves to undermine convergence's effort to be better for religious citizens, because, as previously noted, religious citizens are not just interested in their particular individual satisfaction, but with the broader role religion is allowed to play in political life and institutional structures, that is, with the political efficacy of religion.

2. Beyond Integrity

I have argued here that the convergence model does not actually defuse the Integrity Objection, and now I want to consider further ways in which the convergence model's treatment of integrity is untenable. I've shown that the convergence model does not protect the value of integrity as well as it claims, but even if it did, there would still be good reason to question the way that convergence treats the value of personal integrity. Vallier privileges respect for integrity as one of the two foundational values of political liberalism, specifically respect for personal integrity, where this is "loyalty or fidelity to one's projects, plans and principles."³¹³ But this privileging is one of the very things under suspicion in CR. Why fixate on a value – personal integrity – which is wholly individual? Further, why think of integrity as a virtue primarily attached to the ability to fulfill act one's beliefs through voting and political activity,

³¹³ Vallier, *Liberal Politics*, 87.

rather than being a virtue which might entail different material distributions or protections? Finally, *whose* integrity is under concern?

In this section I will look at the way that the convergence model won't be able to protect other dimensions of citizen life beyond integrity. Additionally, given the way I've destabilized the notion of what constitutes a "religious" citizen, I want to turn here to marginalized citizens in general. I do this for two reasons. One, Vallier himself argues that the convergence model protects marginalized citizens³¹⁴ (which I assume he understands to include religious minorities), and two, this turn to marginalized citizens or vulnerable populations more generally is the right move following increased criticism of the notion of a "religious" class of citizens. Here I follow Laborde in her argument that "religion" ought to be *disaggregated*, that is, we ought to isolate the values we associate with religion – as a phenomenon in need of attention – and build in protections for those values, rather than for some idealized form of "religion" as a whole.³¹⁵ One of these values is the ideal of an inclusive state, one which is especially aware of "socially vulnerable identities" and the instances in which a self-declared religious identity functions as such a vulnerable identity.³¹⁶ This strategy allows us to hone in on populations that are actually at risk of having their integrity – personal, material, and communal – undermined. Thus in this section I pay particular attention to how vulnerable populations will be treated on the convergence model. I will criticize the convergence model for the ways in which it doesn't protect other dimensions of the lives of religious citizens and (and most importantly, those who are members of religious minorities). I'll argue that, contrary to claims that the convergence model "protects the poor and marginalized" better than consensus, it in fact does the opposite in this specific regard.³¹⁷ I argue this for two reasons, that the model undermines citizen participation and that it fails to pass protective laws.

³¹⁴ Vallier, *Liberal Politics*, 138.

³¹⁵ Laborde, *Liberalism's Religion*, 115-117.

³¹⁶ *Ibid.*, 137.

³¹⁷ Vallier, *Liberal Politics*, 138.

2.1 Convergence Liberalism and Vulnerable Citizens

Vallier argues that the convergence model is better for marginalized citizens on the grounds that it recognizes and so does not exclude ways of reasoning or forms of speech that might not otherwise accord with the language of public reasons.³¹⁸ This justification is particularly important to consider, as it is the sort of justification that individuals interested in the representation of diverse religious perspectives would find convincing. I want to contest this argument in two ways, by first arguing that it is not as responsive to non-standard forms of reasoning as it argues, and second, that it prevents the passing of laws which would benefit marginalized citizens.

2.1.1 Undermines Citizen Participation

As I'll discuss in section 3.2, the convergence view needs to draw borders in order to limit the forms of reasoning they will consider acceptable and those they won't in order to lay out who is an acceptably reasonable citizen. As I've already noted, what it means for a reason to fail at or succeed at being *intelligible* is challenging to pin down, given its quality of being indexed to what *other citizens* can recognize as being justified for you.³¹⁹ That is, if other citizens "cannot see your purported reasons as reasons for you even according to *your own* evaluative standards," and so "cannot reason from your standpoint," they can reject your reasons as unintelligible.³²⁰ Even if you understand your reasons to be justified, to be a "bona fide reason," it can be labeled unintelligible and unacceptable as a convergence justification if your "rational commitments differ from the commitments discernible by members of the public."³²¹ I argue that since assessing a reason as intelligible or not falls to the domain of one's fellow citizens, we have grounds to worry that these fellow citizens will impose the same kinds of critical, restrictive demands that convergence theorists believe consensus theorists would impose, particularly in the case of those marginalized citizens convergence aims to be accommodating of.

³¹⁸ Vallier, *Liberal Politics*, 138.

³¹⁹ *Ibid.*, 107.

³²⁰ *Ibid.*

³²¹ *Ibid.*, 106-107.

Specifically, we have room to worry that the convergence theory is not actually expansive enough to accommodate different forms of reasoning which may be put forward by marginalized groups. This kind of concern appears frequently in the public reason literature, more specifically the literature on deliberation, and one wonders if the convergence response is sufficient. The kind of objection I'm referring to here are those which have frequently been put forward by feminist theorists. A paradigmatic example of such concerns are those advanced by Iris Marion Young, who criticizes deliberative democratic ideals because they place as an ideal "a common good in which [the discussion participants] are all supposed to leave behind their particular experience and interests."³²² In contrast to this, Young advocates for a model of democracy which puts differences at the forefront, and which highlight alternative kinds of communication such as "greeting, rhetoric, and storytelling."³²³ While these criticisms are also affecting for consensus models, what I want to argue here is that convergence thinks it avoids these critiques by not putting forward any model of public communication, but through this avoidance actually re-creates the opportunity for such problems to arise. Convergence still emphasizes the dominance of one form of rationality, evidenced by the notion of moderate idealization, and then in the world of interpersonal communication, lets the appropriateness of reasons be determined by other citizens, allowing for other citizens to misunderstand or misrecognize alternative forms of reasoning. In other words, has convergence snuck the problems of deliberation – without any of the benefits – back in?

Furthermore, the convergence model seems poised to run into a particularly challenging and explicitly religious version of this problem: how am I supposed to feel confident in knowing that my reason – which is neither shareable nor accessible but is drawn from a deeply-held religious commitment – could be rejected as unintelligible by someone for whom my evaluative standards are a problem for *their own* religious commitments? Imagine, for example, a committed member of the Church of Jesus

³²² Iris Marion Young, "Communication and the Other: Beyond Deliberative Democracy," in *Democracy and Difference: Contesting the Boundaries of the Political*, ed. by Seyla Benhabib, (Princeton: Princeton University Press, 1996), 126.

³²³ *Ibid.*, 120.

Christ of Latter-Day Saints who believes that Satan is fundamentally a deceiver.³²⁴ Could that person ever “reason from [the] standpoint” of a Satanist, or even of a citizen who simply isn’t committed to the existence of Satan or any other supernatural agents?³²⁵ How can the convergence model adjudicate between these instances of competing religious integrity? Both agents in this example seem poised to be undermined by the intelligibility model: the Satanist for not having their evaluative standards recognized, and the LDS member if their judgment of the Satanist’s evaluative standards is criticized or rejected.

Finally, in an echo of my concern about public political advocacy, I think marginalized groups are unlikely to be satisfied by a model of public reasons that, while it technically allows citizens to say whatever they want in the public sphere, does so by almost entirely divorcing the event of citizen participation in public life from the actual passing of policy. What good does it do marginalized groups to be able to vote on the basis of whatever set of reasons they want if they aren’t actually given the opportunity to speak about or inhabit those views in the public sphere, or have those views affect policy except in instances where they align with the majority opinion? This is a demonstration of the way in which the convergence model, despite purporting to protect the integrity of citizens, does so with an eye towards only a version which centers on personal belief. Actual efficacy or policy change is off-limits for marginalized citizens; being allowed to vote their conscience is enough, convergence theorists argue, to considered themselves protected.³²⁶ These considerations are further complicated by convergence theorists’ having offered an exclusive account of religion, suggesting that religious minorities may be doubly undermined. I think it is warranted, then, to say that convergence views are therefore not actually better for marginalized groups of people in terms of their political participation.

³²⁴ Marion G. Romney, “Satan – The Great Deceiver,” *Church of Jesus Christ*, originally given April 1971, <https://www.churchofjesuschrist.org/study/general-conference/1971/04/satan-the-great-deceiver?lang=eng>

³²⁵ Vallier, *Liberal Politics*, 107. And for this example and argument, see Robert Talisse, *Pluralism and Liberal Politics* (Routledge, 2012), 151-152.

³²⁶ Vallier, *Liberal Politics*, 138.

2.1.2 Fails to Pass Protective Laws

The question of how well convergence views protect marginalized citizens benefits from a broader perspective than the sphere of public discourse alone. Here I'll look at the laws which would likely be passed by a government working from the convergence model. In such states, marginalized citizens would have the power to veto laws which would be harmful to them, even on the basis of reasons which may not have been recognized as properly public on a consensus model. And yet, a problem with this quickly emerges, one which often arises when we consider, for example, advocacy for "tolerance" across the board. This is that the endorsement of minority voices is valuable, but in the context of convergence justification, it comes alongside the endorsement of majority voices, and does so in an equalizing, contextless way. Convergence justification gives equal weight to all objections which take the form of intelligible reasons, even those which might be deeply insensitive to marginalized people and their concerns. Furthermore, we have to ask which position is *ultimately* better for these groups. While theorists who endorse convergence justification may have the presumption of protection on their side because they allow in the possibilities for more engagement on the part of normally marginalized individuals, we have to examine the sorts of policies that would be made possible on a consensus model of justification but are disabled or blocked by intelligible but unshared reasons on the convergence model. This all isn't to say that consensus will not face challenges in its efforts to treat all of its citizens fairly, but it's not clear we have a reason to think that shared reasons (given that they must also be reasons shared by the minority groups in question) are less able to account for or include the interests and voices of marginalized people.

As just one possible version of this concern, consider the Christian complementarian. Given their reasonable commitment to the idea that men and women simply are crafted differently and therefore ought to serve different ends in society, their defeater for laws which mandate equal pay, maternity leave, or which abolish sex discrimination in hiring would surely undermine the interests of marginalized people, namely women. And furthermore, it's unclear what the alternative would be. Vallier might propose a religious accommodation, but what would the accommodation look like for this kind of view?

Presumably complementarians couldn't just opt-out of paying taxes to the state in the instance that the state employs a woman who works in a capacity unfit for her role as a woman. It is important to ask, then, what institutional features does convergence build in for the passage of laws which are supported by broadly liberal values, but which are defeated by the illiberal citizen? Again, whatever benefit it is to some marginalized voices to have recognition in the public sphere of their forms of reasoning (though again, this privileges their reasoning over anything else, such as Young's storytelling), such a benefit is undercut by the challenge they face in passing laws which benefit them, but which are defeated by another minority's niche, illiberal yet intelligible reason.

2.2 The Problem of the Illiberal Citizen

The convergence model, then, has not built in sufficient protections for marginalized citizens (a community that will include religious minorities). An extension of this deficient feature emerges when we consider the problem of the illiberal citizen. How can the convergence model account for citizens who might pass the muster of reasonability but ultimately have what we might consider "illiberal" views? In order to frame this argument, I will first review and assess the account of moderate idealization provided by the convergence model. The convergence position argues that its model of idealization, moderate idealization, walks a fine line between over- and under-idealizing citizens. Rather than homogenize citizens through rendering all of their epistemic and informational capacities the same, moderate idealization preserves their commitments and yet doesn't let public justification be held hostage to just any impulse of actual, non-idealized citizens. In this sense, a law or proposal is publicly justified to the epistemically improved *views* that citizens hold, not to citizens themselves. While there isn't anything wrong in theory with moderate idealization when coupled with say, a consensus view, there are serious problems with Vallier's model of moderate idealization when with coupled with a convergence view. These concern the relationship between epistemic and moral idealization, and the way in which Vallier intends to use or not use these to bracket out potentially illiberal views. Specifically, I'm concerned here

with the collapse of moral and epistemic idealization, the function of the idealization, and how both of these inform the challenge of the illiberal citizen.

2.2.1 Conflation of Moral and Epistemic Idealization

First, Vallier collapses moral and epistemic idealization together, treating them as if they work in the same way. But why think this? Vallier models much of his idealization on Rawls, who specified that citizens needed to be both rational and reasonable. Vallier often references that Rawls thought citizens ought to undergo rational idealization, but only locates this in *Theory of Justice*.³²⁷ As such, I'm not sure the relevance of this for Rawls' system of political liberalism, wherein I find no real theory of epistemic idealization. Rather, for *Political Liberalism*, Rawls worked within a more general framework of ideal theory, wherein democratic societies should have a public political culture which stressed that citizens were free and equal, and that society should be a system of cooperation fair to all. Rawls did introduce what Vallier wants to call a kind of moral idealization in political liberalism, where he specifies that he is working on a conception of justice that is concerned with an ideal of public reason for reasonable citizens, where such reasonable citizens are cognizant of the burdens of judgement and are willing to offer reasons for their political endorsements that they think others are similarly reasonably able to accept.

But clearly this moral idealization is not of the sort that Vallier wants to stress. The whole host of critiques of political liberalism, and public reason in particular, often concern the idea that citizens – specifically religious citizens who want to express their religious ideas in the public sphere or allow for religiously-justified laws – are improperly excluded from consideration on the Rawlsian model because they are, in fact, *liberal*. Thus we should understand Rawls' "moral idealization" as a *line of demarcation*, not as something we do to real citizens. In contrast, for Vallier epistemic idealization clearly functions as follows: for a given set of members of the public, their views are collected and idealized, and laws are understood as justified to this set of views. If we were to do a comparative moral idealizing project, we

³²⁷ See Vallier on Rawls and Idealization, "Public Justification."

would take real citizens and morally improve, or “idealize” their views to be more liberal. But no one suggests doing this, and it is therefore clear that epistemic and moral idealization cannot function in the same way. Rather, while epistemic idealization functions to develop a set of idealized views from real citizens – it improves already existing things – any comparable moral idealization instead works to isolate a set of real citizens with whom we are concerned when we attempt public justification. Vallier neglects the difference between these two, providing the foundation for convergence’s poor response to the challenge of the illiberal citizen.

2.2.2 Function of Idealization Undermined

A second problem with convergence’s model of idealization is that it doesn’t actually get beyond the populist concern it was intended to overcome. Vallier, I’ll argue, actually fails to disentangle idealization, and therefore the project of public reason, from the challenges associated with non-idealized citizens, due to what I call here his Integrity Clause. The Integrity Clause is Vallier’s caveat concerning the extent of idealization. This clause says that properly idealized members of the public have local coherence among their views, *except* in those instances where developing such coherence would lead to significant revisions of their deeply-held beliefs, such that “if the beliefs are made consistent, the agent’s entire belief-value set will be fundamentally altered.”³²⁸ This caveat is intended to ensure that religious citizens don’t have their deepest, most integral commitments stripped from them by idealization, even if they are “locally inconsistent.”³²⁹

This leads me to wonder quite what moderate idealization is intended to do. If moderate idealization never produces results that real citizens would not quite recognize or would not agree with, then why bother with it? Perhaps it’s that moderate idealization is intended to produce results which more properly order citizens’ interests, as opposed to refining the actual interests (or eliminating them in the event that they’re unreasonable), such that citizens still recognize the outcomes, but simply would have chosen those

³²⁸ Vallier, *Liberal Politics*, 162-163.

³²⁹ *Ibid.*, 162-163.

particular outcomes themselves. And much more importantly, this suggests that there is idealization just until the line where citizens would no longer be satisfied with the results of that idealization; that is, until the idealization no longer feels like an extension of those projects they understand to be integral to themselves. So real citizens and their concern for their own integrity limit real-world policy, even though this is precisely the outcome that idealization was introduced to avoid.

2.2.3 No Protection from the Complementarian

These combined features render Vallier extremely vulnerable to one challenging critique of public reason, the problem of the illiberal citizen. Since Vallier treats epistemic and moral idealization the same, I believe he thinks that he has bypassed this critique, when in fact he has redoubled the danger posed by such a citizen. The challenge of the illiberal citizen has been posed many times to public reason, and runs something like the following: “If decisions have to be justified to all members of the public, what happens when Adolf Hitler is such a member?”³³⁰ The upshot is that if we have to publicly justify all policies, we will be unable to justify any genuinely liberal policy.

Consensus theorists solve this through in part a kind of moral idealization, that is, idealization as a demarcating line. As an example, consider Jonathan Quong’s proposal that the project of public justification in political liberalism is only concerned with reasonable citizens.³³¹ But this doesn’t ensure that there will never be illiberal citizens; as Rawls writes, “not all reasonable comprehensive doctrines are liberal comprehensive doctrines.”³³² However, in the face of the reasonable yet illiberal citizen, consensus theories can still ensure the protection of citizens because shareable or accessible reasons will work to restrain and constrain the kinds of policies which can, and will, be passed. That is, no law which has a shareable or accessible defeater can be passed (such as an illiberal law which might demand mistreatment of minorities), but similarly, no non-public reason can serve as a defeater for a law (Hitler cannot say that

³³⁰ The source of this example is Dreben, B. “On Rawls and political liberalism,” in ed. S. Freeman, *The Cambridge Companion to Rawls* (New York: Cambridge University Press, 2002), 329.

³³¹ Johnathan Quong, *Liberalism Without Perfection* (Oxford University Press, 2011), 6.

³³² Rawls, *Political Liberalism*, xxxvii.

a particular law is not justified *to him*). That is because the set of shared or accessible reasons relies on the public conception of justice which is the subject of the overlapping consensus. And further, the public conception of justice can never depart from the foundational values of a democratic society, which are – as noted earlier – that society is a system of fair cooperation among free and equal citizens. This component of public reason prevents the illiberal citizen from undermining otherwise publicly justified laws.

The convergence system, in contrast, has totally disabled this protective feature. Since reasons which are merely intelligible can serve as defeaters for otherwise liberal laws, there is no way to protect the passing of laws that would serve the goals and citizens of a liberal state. Furthermore, convergence has no way of preventing illiberal reasons from performing this defeater function. I take it that Vallier is relying on these two forms of idealization – epistemic and moral – to do this work. But why think that illiberal views will be removed by epistemic idealization? Presumably one would need to think that better reasoning is necessarily connected to greater reasonability or liberal commitment, but Vallier doesn't show this (and I don't know that he could). And even if he could, given the Integrity Clause above, if illiberal views are deeply held – and likely, connected to a standard religious identity – they are more likely to survive idealization.

The last line of defense here is moral idealization. But since moral idealization doesn't 'bring up to liberal speed' the views of regular members of the public, but rather serves as a demarcating line, what Vallier has done is limit the relevant public to those members who meet his criteria. But Vallier's criteria of reasonableness is only three criteria, copied in part from Rawls' account of reasonableness. A citizen is reasonable if:

1. "she complies with publicly justified principles and offers intelligible reasons for her proposals
2. "she recognizes the burdens of judgement, and
3. "she rejects repressing other reasonable points of view."³³³

³³³ Vallier, *Liberal Politics*, 163.

None of these are necessarily liberal-making features. I could be, say, a committed Christian with complementarian beliefs. As such, I would be committed to Christianity, and more importantly, to the idea that men and women are “equal but different.”³³⁴ Such Christians are usually evangelicals, but are not necessarily illiberal. They may not believe in the suppression of other points of view, but they are committed to their intelligible belief that men and women have different roles, and therefore ought to perform different functions in a society. On this view, a woman should not hold a position of “personal” power over a man, period.³³⁵ So complementarians have a defeater for a law which would refrain from discriminating on the basis of sex when it comes to any hiring practices, specifically positions of personal leadership.³³⁶

It is also not guaranteed that epistemic idealization would correct for this belief.

Complementarians have what they understand to be quite a bit of science on their side; the mere fact that women are physically able to have children is evidence enough of the fact that women are best fit for a particular set of roles in the home, church, and society.³³⁷ And more importantly, even if this view was epistemically deficient, it is exactly the sort of view which would structure the whole of someone’s life, and even their identity. In other words, it is exactly the sort of view that would be protected by Vallier’s

³³⁴ Ashley Easter, “The Equal but Different Hoax,” *Ashley Easter*, 17 February 2018.

³³⁵ While complementarians do not insist that women never work outside the home, they do believe there are restrictions on the jobs women can perform: “Overreactions are common, however, such as insisting that women may engage in any activity outside the home with virtually no or minimal concern for God’s specific creation purpose for each gender. This is contrary to biblical teaching and deeply problematic.” Andreas J. Köstenberger and Margaret Köstenberger, “5 Myths about Complementarianism,” *Crossway*, 15 January 2019, <https://www.crossway.org/articles/5-myths-about-complementarianism/>

As additional support, see John Piper’s position, responding to a woman who inquired about becoming a police officer: “*If a woman’s job involves a good deal of directives toward men, they will need to be non-personal in general, or men and women won’t flourish in the long run in that relationship without compromising profound biblical and psychological issues. And conversely, if a woman’s relationship to a man is very personal, then the way she offers guidance and influence will need to be more non-directive. And my own view is that there are some roles in society that will strain godly manhood and womanhood to the breaking point.*” “Interview with John Piper,” *desiring God*, 13 August 2015.

<https://www.desiringgod.org/interviews/should-women-be-police-officers>

³³⁶ Furthermore, I don’t see how there could be a “religious accommodation” for this view, which is what I anticipate the convergence theorists would argue. But briefly here, note that, as Piper says, complementarianism concerns overall social well-being (not just that of personal Christians, or of the Church alone), and concerns men and women in general, not just with regard to leadership within the Church.

³³⁷ Cisgender women, though a complementarian would likely not recognize this distinction.

Integrity Clause discussed above. Finally, to argue that such a view would be morally idealized away seems to run the risk of doing what Vallier has consistently refused to do: deny the religious sensibilities of a set of citizens, even when they don't insist on imposing religiously-imposed coercion on anyone. These citizens are highly likely to feel that their integrity is offended if they are told that these illiberal views which they likely hold quite close to the chest are in fact the sort of thing that will be idealized away by properly liberal philosophers.

We are therefore left with a pressing question concerning how convergence will be able to draw a line of demarcation – if at all – which can eliminate the problem of the illiberal citizen. And, because of the looseness with which they may draw this line, given that it could look many ways, the terms they do use and define are of paramount importance. This brings me again to “religion” and the roles it plays in the public reason literature, particularly the convergence model’s self-understanding as the more faith-friendly form of public justification. Given what we now know about religion, the right question to ask at this moment is not “what is religion?,” but “whose religion?” What kind of integrity has Vallier been protecting (an immaterial, individualistic conception), and *whose* integrity will be protected by the convergence conception? Who has the right kind of religious commitment such that they will find that the convergence model solves their concerns about liberalism?

3. Convergence and “Religion”

Having assessed the convergence model’s treatment of religious integrity and of vulnerable citizens more generally, and having found both lacking, I now want to turn more explicitly to the way convergence discusses “religion.” I will demonstrate how the definition of religion put forward by Audi and taken up by recent convergence theorists is not only insufficiently diverse, but more importantly, how it sets the stage for a discourse around religion that privileges and undermines certain beliefs and practices, a phenomenon that reinforces the very problem the convergence model was intended to correct. The convergence model’s account of those religions protected by getting rid of the DRR is overly narrow and therefore risks sanctioning a particular logic which hierarchizes religious traditions and individuals. It

potentially excludes a number of religious voices from the benefits it proposes, and reinforces an idea of certain religions as being more worthy of attention than others, and does so despite aiming to correct for religious exclusion in the consensus model.

3.1 Exclusive Understanding of Religion

Recall that Audi, drawing from Alston, defines religion by laying out nine features that religions generally share. What is most important about this set of features is that, after explaining each feature in turn, Audi tells us that Christianity, Judaism, and Islam are “the richest paradigms of religion.”³³⁸

Additionally, Audi qualifies this definition of religion by acknowledging that it may be too expansive and accommodating, but argues that it’s better to err on the side of accommodation rather than work with a definition which is too narrow and risk not covering some fitting cases. These two comments start to reveal what could be characterized as a lack of imagination on Audi’s part, specifically to consider that another religion other than the three with which he is most familiar could exist as equally “religious” (though they aren’t the most populous of those traditions currently recognized as religious³³⁹). But the common follow-up question here is: what could *possibly* be left out by this account of religion that ought to be included? But this is to miss the problem of this definition. We could certainly consider a number of hard cases that might problematize this definition. Is Shinto a religion (which undermines characteristics 4, 5, 7, 8)? Zen Buddhism (which undermines 1, 2, 4, 5, and 6)? Scientology or ethical veganism (which meet 7, 8, 9, and possibly 2, 3, and 5)?

But what is more important is the idea that there are things that are *more* or *less* of a religion, that there could be “richer” or presumably weaker accounts of religion in light of these criteria, in short that there could be a hierarchy of religious traditions. In saying that these three traditions are the “richest paradigms,” Audi suggests that there is a pre-existing account of religion that these three traditions just

³³⁸ Audi, “Liberal Democracy,” 5.

³³⁹ The order is currently Christianity, Islam, and Hinduism, followed by Chinese Traditional Religions, then Buddhism.

happen to fit into, rather than recognizing that the account of religion itself was built from the model of Christianity and monotheisms like it. And this move is not a neutral one, but, as Masuzawa's history of the notion of "world religions" showed in the previous chapter, is one that allows theorists who use it to "retain the structural superiority of Christianity over other religious traditions."³⁴⁰ This is so by virtue of their invocation of two ongoing assumptions functioning in the literature of comparative religions:

First, key transformations within Christian history have come to serve as the entelechy through which the adequacy, inadequacy, or development of other religious traditions has been measured. Second, a developmentalist notion of history posits a linear progress of mankind from "primitivism" to "civilization," wherein each stage of human development is assumed to correspond to a particular model of religion. In this narrative, if "primitive religion" is a sign of the "infancy of mankind," then Western European Christianity signals the most refined and highest achievement of human history.³⁴¹

Here, the "most refined and highest achievement" described by Mahmood should sound familiar to the "richest paradigm of religion" invoked by Audi.

Similarly, Vallier too offers an account of religion which privileges the role of personal belief. He acknowledges that his conception is "tied to the major monotheisms," but offers as justification that "the clash between liberalism and religion *is* tied to the major monotheisms."³⁴² We therefore can "confine ourselves to those religious traditions and philosophical doctrines that raise the problem."³⁴³ This complication of religion is at least partly in line with what Vallier himself wants for liberalism, that it should "offer genuine resolutions between to the conflicts between religious and secular citizens and between diverse peoples of faith."³⁴⁴ And yet Vallier doesn't see the irony of his phrasing, which implicitly limits the "diverse" religious people in question to those who would describe themselves as "peoples of faith" as opposed to any other more primary self-description.³⁴⁵ The convergence model therefore reflects an uncritical, commonsense understanding of religion that doesn't take into sufficient account religious diversity or the long history of religious development. This is coupled with the reality

³⁴⁰ Mahmood, "Can Secularism Be Otherwise?" 291.

³⁴¹ Ibid.

³⁴² Vallier, *Liberal Politics*, 47.

³⁴³ Ibid., 47.

³⁴⁴ Ibid., 4.

³⁴⁵ Ibid.

that the convergence view, because of its loose and wide line of demarcation concerning who constitutes a member of the public, will rely particularly heavily on a hierarchical account of what constitutes a “religion” in order to distinguish legitimate religious exemption claims or to determine which religious views will survive the process of epistemic idealization. For example, in responding to an objection to moderate idealization, that it “cannot distinguish the reasons of cult members from the reasons of people with more ordinary, seemingly rational religious and secular reasons,” Vallier responds that “cult members’ beliefs almost certainly do not survive rational scrutiny, given how much force and social pressure is required to sustain cultish beliefs.”³⁴⁶

But the designation of a “cult” has long been criticized in religious studies as being insufficiently distinction from any other religion, and has been largely replaced by the term “new religious movement,” in order to disjoin the idea of a young religious movement from the pejorative connotations of a “cult.”³⁴⁷ So when Vallier writes that commitments to cults won’t be sustained through moderate idealization because they are the product of “force and social pressure,” the next reasonable question is of course, what about ‘family resemblance’ religions that are also sustained, and were historically built through force and social pressure?³⁴⁸ Trusting that instances of religious beliefs which deserve to pass the muster of moderate idealization, or of warranting the ability to make a genuine claim to barred integrity, will reveal themselves in any kind of commonsense fashion is a mistake that risks occluding the free exercise of minority or non-standard religious practitioners and of reinforcing long-standing, harmful religious hierarchies.

An additional problem with Vallier’s explanation of the move to moderate idealization is that it reinforces the idea that religion is constituted primarily (or even exclusively) by rational beliefs. As Vallier explains, in convergence individuals are idealized enough to be improved epistemic versions of themselves, but not so much that they would have their religious commitments upset. So one’s religious

³⁴⁶ Vallier, *Liberal Politics*, 172.

³⁴⁷ Tara Burton, “What is a Cult?” *Aeon*, 7 June 2017. <https://aeon.co/essays/theres-no-sharp-distinction-between-cult-and-regular-religion>

³⁴⁸ Vallier, *Liberal Politics*, 172.

identity is protected because the idealization isn't strong enough to normalize citizens to the same commitments. But this doesn't demonstrate any protection or care for citizens for whom their religious identity is not largely compromised of things that they wouldn't describe as beliefs, such as practices, lived experiences, or participation in local traditions. The problem here is less about concern for those citizens who may or may not be protected – as Vallier could simply argue that they're protected through other means – but to press on the idea that idealization would have any effect on religious citizens at all. In order to think that idealization is a risk to religious identity, one needs to think that religious identity is primarily a matter of reasonably held beliefs, rather than anything else.

This is reflected as well in Vallier and Gaus' use of the religious/secular divide as a framing device that suggests that material concerns are “secular,” while concerns that deal with beliefs are “religious.” This comfortable reliance on the religious and secular binary has the effect of forcing Gaus and Vallier into odd claims, such as remarking that “even citizens who reason on religious grounds share most of these secular concerns: health, housing, earning and protecting income and public safety – laws that appeal to these are often endorsed by all members of the public.”³⁴⁹ But surely these concerns are not “secular” in the sense of being distinct from “religious” ones. Religious and non-religious citizens alike have interests in health, housing, and public safety. Furthermore, these interests can be themselves religious concerns. As an Orthodox Jew, I need to be sure that my home is within walking distance of my synagogue; I can only travel on foot during the Sabbath. But the model of religion used by convergence regularly fixates on the importance of personal belief and integrity as definitive of religious identity and existence.

3.2 Need to Define “Religion”

This importance of this limited definition of religion is made clear upon examining the instances in which the convergence model will encourage the state towards establishing a definition of religion.

³⁴⁹ Gaus and Vallier, “Roles of Religious Conviction,” 61.

This will appear in two ways: through the robust system of religious accommodations included in the convergence model and through the establishment of reasonable citizens in the process of establishing the right level of idealization.

3.2.1 For Accommodations

The robust system of religious accommodations advocated by the convergence view raises in a serious way the challenge of defining and conceptualizing “religion” in the liberal state. This is because, in determining whether or not a particular law is justified on the convergence model, legislators will need to take into account religious defeaters, and to presumably give them particular attention, risking making the state’s definition of religion not just a post-hoc consideration, but an integral piece of the justification process. As Mahmood and Danchin argue, when states regulate what is to be tolerated or considered appropriate for exemption for religious citizens, the court of the state “must unavoidably make substantive judgments on what constitutes or falls within the protected category,” which “requires considering how any set of restrictions will seem from the internal viewpoint of the category demarcated as religious.”³⁵⁰ These courts will then need to “make determinations that are inescapably entangled with and premised on religious criteria and concepts in order to define a sphere ‘free’ from state authority,” a move which will won’t be without some religious prejudice.³⁵¹ And further, as Vallier writes it, the convergence model ensures this system of accommodations on the grounds of a free exercise clause.³⁵² But here I echo Gaus’ worry with this move, that “relying on free exercise to permit selective application of laws might bind [Vallier] to the historical practice of treating religion as special,” something Vallier does not want to endorse.³⁵³ Vallier does argue specifically that he wants nonreligious reasons to be treated as compellingly as religious objections, and that in short there is no reason to think of religion as

³⁵⁰ Mahmood and Danchin, “Immunity or Regulation,” 147.

³⁵¹ Ibid.

³⁵² Vallier, *Liberal Politics*, 206.

³⁵³ Ibid., 206, footnote 53.

“special.”³⁵⁴ But all of the language *is* couched in the protection of religion in particular. In order to ensure that a robust system of accommodation could be put in place, we would need something like a moral general “free exercise of one’s moral conscience” clause. I don’t think Vallier would necessarily be opposed to this, but that he refrains from setting this out at the beginning of his account is telling.

Furthermore, while Vallier notes that he would be open to a model of accommodations that doesn’t rely on treating “religion” as a special phenomenon, he isn’t willing to revise contemporary models to produce this effect, rather he advocates for maintaining current religion-centered models and slowly building in non-religious instances of accommodations.³⁵⁵ So, while the best version of convergence would not need to define “religion,” the contemporary version does. And more importantly, in the process of transitioning from a religion-centered model to one where a religious identity isn’t necessary, the burden of seeking accommodations is left to those minorities who are in the most challenging position re: religious identity: that of arguing that they are sufficiently like an already existing religious standard in order to receive an accommodation. From here, the risk is that beginning with one religiously-focused model will force all later accommodations into a parallel structure which privileges the features of the religion the idea of accommodations was originally constructed to respond to.

3.2.2 For Idealization

The second instance in which convergence will push the state towards defining religion will be in the realm of idealization. To return again to the feature of moral idealization, I argue that it is best understood as a line of demarcation, rather than as analogous with epistemic idealization. Since these two run together for the convergence theory, where epistemic idealization is intended to work *as a kind of* moral idealization, the hope is that improving the rationality of citizens’ views will entail a moral reasonableness as well. My concern here is that when idealizing, Vallier says that close religious

³⁵⁴ Vallier, *Liberal Politics*, 217-219.

³⁵⁵ *Ibid.*, 217.

identities will be protected, but, as I've noted, the identities of those in "cults" hopefully would not.³⁵⁶

That is, people with religious identities of the type that Vallier recognizes as rational – and therefore real, or legitimate – will have their commitments retained, but it's likely that those who don't – and who are likely to be religious minorities – won't. So while there is no explicitly given account of what constitutes a religion on the convergence model, there is an implicit account working behind the scenes to ensure that particular religious commitments are preserved and rendered legitimate, and to allow for other less standard, less paradigmatically "religious," commitments to be ignored.

3.3 Failure to be Post-Secular

I've argued so far in this section that the convergence model works with an insufficient model of religion that will encourage hierarchizing and essentializing disparate phenomenon into a single category that will harm vulnerable populations. And yet, these potential instances of the either explicit or implicit defining of religion that I believe the convergence account will need are only one dimension of the challenges convergence will face in defining itself as the model of public reason better for religious citizens. The second, perhaps more significant, dimension is that in attempting to present itself as better for religious citizens, the convergence view also presents itself as a post-secular liberalism, that is to say, a liberalism which has overcome the ongoing challenge in liberal political philosophy to determine the proper balance between religiosity and secularism.

In order to explain this, I'll first return to Vallier's presentation of his investment in religion. Why is it that the tension between liberalism and religion is so important? He opens *Liberal Politics and Public Faith* with a summarizing treatment of the relationship between liberalism and religion. Specifically, he names four tensions that he argues emerge over liberalism's treatment of religion. These are as follows:

1. Religious citizens are committed to transcending their religious commitments.
2. Religion is protected through its limitation.

³⁵⁶ Vallier, *Liberal Politics*, 172.

3. Religion is treated as both a resource and as a threat to liberal institutions.
4. Religious citizens are committed to a secular state and a secular public sphere.³⁵⁷

This list reveals a number of curious contradictions. Perhaps the most curious thing about this consideration of religion is that Vallier is attempting to make the case that liberalism generally, and the consensus doctrine in particular, present a “conflicted attitude” about religion.³⁵⁸ But this shouldn’t strike us as strange; why would we have a consistent attitude about something so varied and multifaceted? The truth is that liberalism caters to, and is generous towards and encouraging of, forms of religion that benefit its goal of preventing conflict and cutting off commitments which might undermine it. There’s no conflict there, rather liberalism has maintained this consistent orientation regarding religious – and non-religious – commitments. This appears too in the oddity of the language Vallier utilizes here. Does liberalism have an interest in protecting religion? Or in using it as a resource? Again, these sentences are strange because they treat religion as an essential, unified phenomenon. It may be true that at times in history liberal societies have taken hold of particular values, narratives, or concepts from, as Vallier says he is interested in, one of the “major monotheisms,” but that doesn’t mean those societies therefore had any entailed commitment to religion as a whole (whatever that might be).³⁵⁹ If liberalism was produced through the effort to deal with religious conflict, then that origin point is consistent with its contemporary efforts, to protect citizens from unnecessary violence, and to also protect citizens’ rights of free speech, activity, and conscience (to reasonable degrees, respectively). These appeals to values are much more straightforward than appeals to “protecting religion,” whatever that might look like.

And yet, Vallier of course isn’t wrong that liberal democratic governments make contrasting statements about religion. But here Vallier hasn’t gone far enough. As I’ve noted, liberalism doesn’t have a conflicted attitude toward “religion,” but it is clear in its efforts to distinguish “good” religion from “bad.” Elizabeth Shakman Hurd presents this (following Tony Blair) as the “Two Faces of Faith”

³⁵⁷ Vallier, *Liberal Politics*, 22-23.

³⁵⁸ *Ibid.*, 38.

³⁵⁹ *Ibid.*, 47.

understanding of religion.³⁶⁰ Rather than having confidence in an unavoidably increasingly secular future, the post-secular age is characterized by a confidence that neither religion nor its influence will disappear, and so its forms need to be distinguished on the basis of their support, or lack of support, for the goals of the liberal state, and then fostered or suppressed accordingly.³⁶¹ The secular state “has entailed less the separation of religion from politics,” as Vallier pitches the consensus form of political liberalism as doing, “than the ongoing regulation of religion through state and civic institutions that constantly entwine religion with politics,” which the convergence model does as well (in the ways I have just articulated).³⁶² And the convergence model, like its liberal predecessors, produces a state which, in trying to “specify both what constitutes a recognized manifestation of religion or belief and an exceptional ground of limitation to protect public order,” ends up “inevitably... privileging those majoritarian sensibilities, traditions, and customs that have become intimately linked with the legal and political order.”³⁶³

What I aim to stress here is that Vallier presents himself as being a post-secular thinker, but ultimately his arguments perform the same kind of secular/religious divorce that is *the* thing actually problematized by post-secular theorists. That is, he adopts the rhetoric of post-secularity by being critical of any naïve embrace of the secular, but persists in the same idea of “religion” as before. This is evidenced both by the work I have already offered here, and as I discussed in a past section, by his and Gaus’ commentary on “religious” and “secular” interests, as if there are clear distinctions between these things.³⁶⁴ Put another way, Vallier legitimates a particular understanding of religion that is consistent with a colonialist sensibility: both in terms of the *content* of its categorization (consistent with Protestant-oriented discourse via its focus on personal belief and the supernatural) and in terms of its disposition (oriented towards blanket, universalizing statements about “religion”). Vallier makes a claim about *what religion properly is* by claiming that those forms which are appeased by the accommodations of

³⁶⁰ Hurd, *Beyond Religious Freedom*, 22-23.

³⁶¹ Ibid.

³⁶² Mahmood and Danchin, “Immunity or Regulation,” 130-131.

³⁶³ Ibid., 148.

³⁶⁴ Gaus and Vallier. “The Role of Religious Conviction in a Publicly Justified Polity,” 51-76.

convergence are the ones properly understood as religious. He reinforces the idea that religious life is fulfilled by being able to ‘vote your conscience,’ and that fulfilling those desires is of a higher and more important order than other acts we may have at times understood as religious. Here, I’d like to briefly quote Fitzgerald:

One of the unintended effects of these acts of classification [of classifying a specific range of theorized practices as religions, faiths or spiritualities] is that they marginalize a range of different ways of representing moral and metaphysical dimensions of existence into an irrational or at best non-rational sub-category, a hived-off basket of other-worldly fantasies, while simultaneously legitimating another range of representations such as politics, economics and the nation state as inevitably in accord with ‘natural reason’ and common sense.³⁶⁵

Vallier is doing this same thing, enacting the same model of state-religion relationship he understands himself as overcoming. In other words, convergence does not provide us with a model of public reason that is “better” for religion in any meaningful way. Rather, its revised conception persists in the same logic as previous models, ultimately serving only the interests of those who want less government, period, rather than those who aim to theorize a genuinely new way of understanding the relationship between the liberal state and (whatever we may choose to designate as) religion.

4. Settling the Debate

In this section I will make all of my final conclusions about the consensus and convergence debate and religion’s place in it. These are threefold. First, the convergence model of public justification is not better for religious citizens, either in terms of protecting citizen integrity, or with regard to being genuinely post-secular and so solving the long-standing problem facing the reconciliation of liberalism and religion. Second, this critique of convergence constitutes a leveling of the playing field between consensus and convergence with regard to religion. Neither model definitively solves the criticisms put forward by CR, and so that feature of convergence which was intended to pitch the public justification debate in its favor is undermined. As a result of this, I conclude three, that the debate between consensus

³⁶⁵ Timothy Fitzgerald, *Religion and Politics in International Relations: The Modern Myth* (London: Continuum, 2011), 8.

and convergence is better understood as a debate over competing visions of the liberal ideal, a debate I spell out in my conclusion and final chapter.

4.1 The Failure of Convergence

As I hope I have made clear throughout this chapter, the convergence model of public justification is neither better for religious citizens understood as discrete entities concerned with personal integrity nor for “religion” in general. Concerning citizen integrity, the convergence model puts forth a version of restraint that inhibits citizen political activity, offers justifications for that model which are at odds with religious citizens’ self-understanding, and also inhibits the integrity of legislators and judges. In doing so, the convergence model upholds an understanding of integrity that is exclusively individual and centered around personal beliefs. While it seems that the protections for integrity it offers are for an *act* – voting without regard for shareable or accessible reasons – that Vallier limits the efficacy of this act actually encourages the idea that one’s integrity should only affect one’s personal beliefs and expression of those beliefs. This not only runs afoul of CR’s critique of the limited, Protestant-informed conception of religion but also of some Christians themselves who want to understand their political activity as having the exact sort of causality Vallier denies it. Finally, the convergence model doesn’t solve the broader problem put to liberalism and religion. Rather than taking on a genuine reckoning with the way the state has shaped religion, it proposes that “religion can play a positive political role in modern society,” and like all liberalisms before it, it limits this to “those religions that are able and willing to enter the public sphere for the purpose of rational debate with opponents who are to be persuaded rather than coerced.”³⁶⁶ That is, it puts forth a “good religion/bad religion” dichotomy, where those religions that would demand citizens be able to actually create policy if they are a majority, or demand that religious legislators or judges be allowed to let their religious commitments inform their political activity over the standards of public justification will be pitched as not real religions, or religions not appropriate to the

³⁶⁶ Talal Asad, *Formations of the Secular: Christianity, Islam, Modernity* (Stanford University Press, 2003), 183.

state. The convergence model therefore reproduces against itself the charge made to the consensus model, albeit from a different set of individuals.

This entails both that the convergence model fails in its self-presentation as being better for religious citizens and as solving the problem of liberalism and religion, but also that the consensus model does not have the problem convergence charged it with. The convergence model begins by claiming that the consensus model fails religious citizens by not protecting their integrity, but in fact, both models end up treating religion the same. The consensus and convergence models are therefore on equal footing with regard to religious citizens and their integrity.

4.2 A Leveled Playing Field

This conclusion, that convergence is not any better for “religion” than the consensus view, in the sense that it too simply picks out a set of individuals who identify as religious and who desire a particular set of demands, is the segue for my next conclusion: that convergence and consensus are still, at heart, both liberalisms, and therefore neither of them solve the problem of secularity and religion as it is put forward by critical religion theorists. In spite of my criticisms, I do not believe it can be argued successfully that CR can meaningfully distinguish between or determine the superiority of either the consensus or convergence models of public reason. Vallier writes that convergence is a “*post-secular liberalism*,” one which has decisively answered the question I’ve posed about whether or not public reason liberalism can survive the post-secular turn.³⁶⁷ While I think I have complicated this argument, and even undermined it, I cannot demonstrate absolutely that it performs differently with regard to this notion than does consensus. Rather, the conversation surrounding religion – its careful use, a close examination of its history, a taking seriously of its politically damaging possibilities – does not open a space by which to argue that consensus is *better* than convergence. There is a conversation to be had internally about which protects forms of religion which belong to a colloquially standardized category of “religion” – a

³⁶⁷ Vallier, *Liberal Politics*, 261.

solution to the problem of defining “religion” which many people have found sufficient or acceptable³⁶⁸ – but once we broaden our scope and take seriously a genuinely external critique, it becomes nearly impossible to separate the way in which consensus and convergence fare with regard to CR.

For example, the consensus model will face some similar problems with regard to the state’s need to define religion in some instances. Presumably the consensus model, if it wants to allow for a robust system of accommodations (and it should), will need to establish some set of criteria to clarify in what cases someone ought to receive an accommodation. Even if this system isn’t constructed specifically using the language of “religion,” it is likely that, just as in convergence, some notion of what has historically constituted a religion will inform the criteria decided upon. So while the convergence position should face increased scrutiny for continuing to use the language of “religious” and “secular” categories, even while it claims to be “depriv[ing] the categories of the religious and the secular of their political significance,” the consensus model will face similar challenges.³⁶⁹ Just as the consensus model was criticized by religious citizens even though Rawls “emphatically [denied]” the idea that political liberalism was a “veiled argument for secularism,” and that it was instead an opportunity to achieve “common ground,” mutual understanding, and cooperation, so will the convergence model face scrutiny from other religious citizens and vulnerable individuals despite claiming that it enables “liberalism and secularism [to] receive a much-needed divorce.”³⁷⁰ And both models will be challenged by CR, given that many CR theorists are critical of any attempt to ensure religious liberty, given that its “conceptual architecture” can’t help but produce “criteria for inclusion and exclusion.”³⁷¹ Whether or not this is a problem worthy of revising all of liberalism’s treatment of religion need not be decided here, but what is important is that both consensus and convergence will face this criticism.

³⁶⁸ Laborde, among others.

³⁶⁹ Vallier, *Liberal Politics*, 261.

³⁷⁰ Rawls, “Interview with John Rawls,” *Commonweal*.

³⁷¹ Mahmood and Danchin, “Immunity or Regulation,” 151.

CONCLUSION

1. The Role of the Ideal

Having established that both consensus and convergence have an equal scoreboard on the question of religion and the integrity of religious citizens, I come to my final conclusion, that the debate over consensus and convergence ought to be decided on other grounds. Specifically their debate ought to be settled on the grounds of which ideal one takes to be the proper understanding of liberalism and therefore finds worthy of pursuit. I'll call these here the Democratic and Contractual ideals, where these represent the consensus and convergence models, respectively. I'll first explain why the turn to these ideals is warranted, then offer a consideration of the values of each ideal before making my final comments.

The debate so far has broken evenly on the conversation surrounding religion. While the genealogical accounts of "religion" offered by CR can recommend that future versions of public reason avoid efforts to define or hierarchize religion, the best versions of both consensus and convergence should both be able to avoid relying on an essentialized understanding of religion that would lead to such hierarchy. Furthermore, taking a more critical perspective suggests that the problem posed by a more informed understanding of religion is one that runs deeper than either model could truly address. The notion of religion that has operated within and through liberalism since its instantiation has been one focused primarily on the personal freedom of conscience, or in limit cases, with individual behavior as expression of that freedom of conscience. Neither the consensus nor the convergence model makes any serious effort to correct for this by making room for a more expansive understanding of religion or by reckoning with what broader protections for religion as more than free conscience might look like.

With this in mind, the best way to adjudicate the debate over the right form of public justification is not to consider their treatment of select groups of purportedly religious citizens in isolation, but to consider the benefits of both in terms of the broader ideals they put forward, either the Democratic or the

Contractual. In other words, we have returned to the ambiguity which first prompted the divorce between the consensus and convergence models: how should we understand the project of liberalism and the place of public justification in it? It is the answer to this question which determines whether we endorse a consensus or a convergence conception. This move is not without some precedence in the literature; Paul Billingham also expresses the idea that the debate over the proper form of public reason cannot be decided on the basis of religious concerns when he argues that the integrity and fairness objections come to a “stalemate.”³⁷² Billingham accordingly argues that this should then return the debate to more foundational ground.³⁷³

However, we quickly reach another sort of stalemate. Billingham frames this move as a divorce from religious concerns and a return to debate over the “right understanding of the [Public Justification Principle].”³⁷⁴ But this orientation is one that loads the debate in advance in favor of the convergence model. What will constitute the “right” understanding of the PJP? The convergence view will privilege the understanding of the PJP that strips it to its most essentializing account, given that it understands the PJP as the absolute core of the public reason liberal’s project. The consensus model, in contrast, presents an ideal that considers more than the bare fact of public justification, and so endorses the Liberal Principle of Legitimacy instead. Consensus theorists don’t privilege the “right” version of the PJP in its sparsest understanding, but argue for consensus on the basis of other its other positive benefits. And yet, to reject Billingham’s strategy on the grounds that it neglects the role that ought to be played by these additional benefits is to load the debate in the opposite direction, weighting it towards consensus. It is because of this that I frame the next move beyond the consensus/convergence scoreboard as being towards the ideal one finds most compelling.³⁷⁵

³⁷² Paul Billingham, “Review Essay: Consensus, Convergence, Restraint, and Religion,” forthcoming in *Journal of Moral Philosophy*, author’s manuscript, 9.

³⁷³ Ibid.

³⁷⁴ Ibid., 10.

³⁷⁵ And yet I want to be careful to note that this conclusion is not the same as saying that the notion of “religion” has *no* bearing on the conversation surrounding public justification. Billingham, in arguing against letting religion be decisive for the debate at hand, suggests that this foundational move works because technically the argument for the convergence view’s “interpretation of PJP involving the intelligibility standard combined with moderate

2. The Two Ideals

The consensus model includes robust concern for ideas of civic friendship and civic respect.³⁷⁶ The contours of a notion of public justification should be defined, on the consensus model, not just by the goal of achieving public justification but of enabling common ground and mutual respect. It prioritizes therefore not only the satisfaction of public justification but the promotion of shared understanding and mutual recognition of one another as citizens and fellow reasonable thinkers. The idea of public justification in the consensus model is of it as a *process* that citizens undergo together, thus why many contemporary deliberative democrats today are indebted to Rawls' model of public reason.³⁷⁷ It is for these reasons that I call the consensus model here the Democratic model. One is likely more compelled by this model if they are convinced by the idea that the coming to be of a legitimate government and the justification of its policies ought to be the product of a collaborative activity between citizens who have built into their collaboration restraints that ensure they treat one another as equals and respect one another as fellow reasoners.

In contrast, the convergence model of public justification – which I label here the Contractual model – “focuses like a laser on the core aim of the liberal tradition: justifying coercion to all.”³⁷⁸ This approach reframes public justification as a state or fact about particular policies or laws, rather than as a process that needs collaboration or citizen involvement.³⁷⁹ In doing so, it virtually eliminates the need for

idealization” can be made separately from a “discussion of the religious objections.” (Billingham, 10). But, I think I have demonstrated throughout this dissertation that this is not the case. Instead, the arguments for moderate idealization and intelligibility are intimately tied up with the convergence's intention to demonstrate that it is the model better for religion and religious citizens. As such, the blow that convergence takes by not fulfilling that goal is a serious one, and further, the justifications for the type of idealization (moderate) and the type of justificatory reason (intelligible) that convergence promotes are often deeply concerned with how those features will fare against religious critique. The convergence model has made significant revisions to their model of public justification *on the basis of* those revisions being better for the category of religious citizens they have stipulated. As such, it is possible that a close enough look at the foundational concerns at play could still involve a consideration of the role played by traditional conceptions of religion.

³⁷⁶ See Lister, *Public Reason and Political Community*, and Hartley and Watson, *A Feminist Political Liberalism*.

³⁷⁷ See Amy Gutmann, *Why Deliberative Democracy?* (Princeton: Princeton University Press, 2004).

³⁷⁸ Vallier, *Liberal Politics*, 261.

³⁷⁹ Vallier and Gaus, “The Roles of Religious Conviction,” 65.

public discourse, a feature of the view its proponents would not likely see as important or concerning. Accordingly, government power has been limited, but in the process, so has the need or possibility for citizen engagement.³⁸⁰ This Contractual model resonates at least partly what Kukathas has called the “politics of indifference” view of liberalism.³⁸¹ While Kukathas’ view is harsher than the Contractual ideal convergence puts forth,³⁸² his presentation of liberalism stresses that calls for recognition are not truly the concern of liberalism, whose “only concern is to preserve the order within which such groups and individuals exist,” and which has continually responded to such calls with “counsel to resist the demand for recognition.”³⁸³ While convergence theorists say they are interested in the well-being of marginalized citizens,³⁸⁴ they don’t build these protections into the very coming to be of policy, but are willing to leave it to the contingent fact of public opinion whether or not such protections are publicly justified. The chief benefit offered by the convergence model is that it has met the goal of public justification in the most streamlined form, and without building in any restrictions on citizen participation that might aim at ensuring respectful conversation, but which might ultimately entail feelings of exclusion on the part of certain religious citizens. The convergence form ultimately endorses the idea that public justification is the way in which we come to *discover* what is already publicly justified by members of the public, rather than something citizens do together.

From this broader perspective, which model may turn out to be in whatever way is left after CR, the model which is better for vulnerable citizens and citizens who understand themselves to be religious? Such a question should focus on discovering which model is more likely to provide a better overall environment for those citizens who identify as religious and yet are under the most risk of being excluded

³⁸⁰ This poses challenges not only for the good of mutual respect but more seriously, for what was for Rawls one of the central concerns of *Political Liberalism*, that of stability over time, and furthermore, stability for the right reasons. If citizens have no impetus to speak with one another, how can they build up and ensure with one another the kind of reciprocal goodwill needed to render our government not merely a *modus vivendi*?

³⁸¹ Chandran Kukathas, “Liberalism and Multiculturalism: The Politics of Indifference,” *Political Theory* 26, no. 5 (Oct. 1998): 686-699.

³⁸² For Kukathas the policies put in place in the liberal state don’t have as their goal to “shape the culture of the polity, or to uphold the dignity of the individual, or to rescue minority groups from their marginalized status in society,” because “liberalism as a whole is indifferent to these matters.” *Ibid.*, 693.

³⁸³ *Ibid.*, 687.

³⁸⁴ Vallier, *Liberal Politics*, 138.

or harmed by a liberal government, a group which would likely include religious minorities or other vulnerable populations. Both models would argue that they rise to such an occasion, but as I have tried to show throughout this dissertation, they both succeed and fail in this effort in similar ways.

3. Final Thoughts

I have aimed in this dissertation to accomplish three things. First, I wanted to disprove convergence's claims to be the superior form of justificatory liberalism with respect to the integrity of religious citizens and with respect to religion as a whole. Second, I attempted to update the understanding of religion at play in the debate over the best model of public justification, arguing that the genealogical methods of CR are not undone by the genetic fallacy. Third and finally, I have hoped to show that *the thing* often considered to be one of, if not the most, important factor in deciding between these two models, cannot in fact do the work of distinguishing them meaningfully. Instead, future resolutions of the debate over the proper form of public justification and public reason will have to be settled by one's commitment to the overall ideal pursued and promoted by either the consensus or the convergence view.

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