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## Public justification versus public deliberation: the case for divorce

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I drive a wedge between public deliberation and public justification, concepts tightly associated in public reason liberalism. Properly understood, the ideal of public justification imposes no restraint on citizen deliberation but requires that those who have a substantial impact on the use of coercive power, political officials, advance proposals each person has sufficient reason to accept. I formulate this idea as the Principle of Convergent Restraint and apply it to legislators to illustrate the general reorientation I propose for the public reason project.

**Keywords:** philosophy; political philosophy; public reason liberalism; political liberalism; deliberative democracy; political theory

In this essay, I will drive a wedge between public *deliberation* and public *justification*, two widely associated ideas in contemporary public reason liberalism.<sup>1</sup> These ideas are not only distinct, but conflict. Recognizing and resolving this conflict has substantial consequences for public reason and deliberative democratic political theory. In particular, we will see that public reason liberals should focus less on regulating citizens' deliberations and more on regulating the behavior of public officials. In general, I seek to convince political theorists to focus less on public deliberation and more on designing an array of political institutions that can contribute to a legitimate political order.

Theorists intertwine public justification and public deliberation as follows. A common concern among public reason liberals and deliberative democrats is that state coercion be *publicly justified*.<sup>2</sup> According to the most common versions of public reason, respect for persons as free and equal is thought to require that coercive laws be *justified for* persons in terms they can reasonably be expected to accept.<sup>3</sup> This claim is often thought to entail or at least strongly suggest the following claim: respect for persons as free and equal requires that citizens *justify to* one another their preferred coercive laws in terms of public reasons, or reasons that all can accept. That is, a principle of *justification* is widely thought to engender a principle of *deliberation*.

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Let us call these deliberative norms principles of *restraint*, for they hold that good citizens restrain themselves from offering and acting upon reasons that are not shared or accessible to other citizens, for example, reasons that may serve to advance their interests at the expense of the interests of others. Note that concern for public justification is supposed to require restraint. Thus, in the name of public justification, citizens have a duty to “cite public reasons” in their political actions, reasons that “are related to and in some way advance the common interests of citizens” (Freeman 2000, 382). Rawls (2005, 450) claims that “a citizen engages in public reason when he or she deliberates within a framework of what he or she sincerely regards as the most reasonable political conception of justice.” Similarly, Gutmann and Thompson (1996, 55) maintain that “When citizens make moral claims in a deliberative democracy, they appeal to reasons or principles that can be shared by fellow citizens who are similarly motivated” in order to publicly justify coercion. Sometimes, a principle of public justification is even thought to *entail* a principle of public deliberation. Consider Cohen (1989, 21): “The notion of a deliberative democracy is rooted in the intuitive idea of a democratic association in which the justification of the terms and conditions of association proceeds through public argument and reasoning among citizens.”<sup>4</sup> To engage in public justification is to treat each other in certain specific ways in their actual, real-world political interactions. Public justification takes the form of public deliberation.

I shall argue that the friends of public justification are wrong to accept these deliberative implications. In fact, the job of the public reason liberal is not to regulate or morally interfere with citizens who wish to approach politics based on their own private values or through employing divisive or strategic forms of discourse. Instead, a commitment to public justification provides theorists with reason to focus on regulating the behavior of those who have *direct, obvious and substantial* control over the levers of power – not citizens, but public officials. Public justification requirements only have behavioral implications for representatives in the public sphere. As we shall see, the ideal of public justification imposes *no* restraint on citizens as such.

To demonstrate, I will draw two critical distinctions: not merely between public justification and public deliberation, but between restraint on *reasons* and restraint on *proposals*. The standard approach to public justification holds that citizens have a duty to offer shared reasons in public deliberation. But I shall take the contrasting view, arguing that public justification only requires that those who have a non-trivial impact on the use of coercive power must advance proposals that they believe each person has sufficient, diverse reason of her own to accept. We move from shared reason restraint in deliberation to proposal restraint among public representatives. I call this latter requirement the *Principle of Convergent Restraint* (PCR), which I shall apply to legislators.<sup>5</sup> The PCR, if sound, implies that political liberals should set aside their preoccupation with tweaking the political behavior of democratic citizens and reorient their focus to take seriously the threat that unrestrained public officials pose to a publicly justified polity.

This paper is part of a relatively new literature within public reason liberalism that explores the “convergence” conception of public justification that allows for diverse, unshared reasons to play a role in the public justification of laws.<sup>6</sup> But instead of defending convergence here, I will develop its implications for the regulation of political activity. Thus, the paper has the more novel aim of developing a principle of restraint implied by the convergence view. I shall say little, then, about reasons to favor convergence over consensus, beyond a quick review of arguments in favor of convergence. Instead, I shall simply assume that convergence is the right conception of justificatory reasons throughout the essay. It is worth stressing, however, that my arguments for restricting restraint to proposals and legislators do not depend on convergence being the correct conception of justificatory reasons.<sup>7</sup> One could hold that laws are justified for persons in terms of their shared reasons while maintaining that restraint should be confined to legislators and their proposals.

I unfold my argument in five sections. I will familiarize the reader with the ideal of public justification as I understand it (1) and explain how public reason liberals connect public justification and public deliberation, deploying my two distinctions along the way (2). I claim that the ideal of public justification should lead us to jettison rather than embrace reason restraints and the moral regulation of public deliberation, since a convergence view might endorse reason restraints (3). I then develop and defend my PCR and proffer the grounds on which it is based (4). PCR requires legislators to restrain their support of laws and officials. I conclude by explaining how PCR fundamentally alters public reason liberalism’s conception of civic life by returning it to liberalism’s first love – fighting against the illegitimate use of state power (5).

## **1. Public reason**

Following its precursors in the social contract tradition and its revival by John Rawls, Charles Larmore, and others, public reason liberalism holds that political power must be justified to many points of view in order to resolve citizens’ divergent, conflicting private judgments about what is good and just. Rawls (2005, xvii) argued that the fact of reasonable pluralism, the claim that the free exercise of reason tends to lead to disagreement about fundamental matters, ensures that reasonable comprehensive doctrines will diverge and conflict over time. Accordingly, political power must be justified to the reason of the public in terms they could reasonably be expected to accept (137). The ideal of public reason, then, is that a fully legitimate social order is one whose basic structure, its general coercive apparatus, employs force against citizens only when they have some reason to endorse it by their own lights.

Modern day public reason liberals, including Joshua Cohen, Gerald Gaus, Stephen Macedo, Thomas Nagel and many others, vary in how they understand political liberalism, so the ideal describes a family of views. As stated earlier, theorists disagree about what counts as a public reason. However, the vast

majority of public reason liberals hold that the ideal of public reason specifies *both* justificatory principles and deliberative principles. Justificatory principles maintain that respect for persons as free and equal requires that political power *be* justified *for* all in terms that citizens have public reason to endorse. Deliberative principles maintain that respect for persons as free and equal requires that citizens engage in the discursive practice of publicly justifying coercive proposals *to* one another (Rawls 2005, 398). However, the relationship between justificatory and deliberative principles is seldom examined.

## 2. From justification to deliberation

The ideal of public reason is first and foremost a principle of justification, not deliberation. It specifies how coercion can be justified, not how people ought to talk to one another when advocating coercion. I suggest, then, that we distinguish justification and deliberation and derive a principle of deliberative restraint from an ideal of public justification, that is, from the more fundamental idea to the less fundamental. Let me be clear that principles of deliberative restraint are not *legal* restrictions, but rather specify each citizen's purely *moral* duties. So, restraint can only be enforced by criticism, disapprobation, praise, etc. and not with legal force.

A principle of deliberation must be derived in *three* steps. First, the ideal of public reason must be shown to imply a particular conception of justificatory or public reasons, say that justificatory reasons are those that are shared or accessible. Then one must argue that a particular conception of justificatory reasons implies a *principle of exclusion*. A principle of exclusion specifies the appropriate bases of coercion in the law, such as the Free Exercise Clause in the U.S. Constitution, which bars restrictions on the free exercise of religion. Finally, one must connect a principle of exclusion to a principle of restraint, such as a principle requiring sincere deliberation, or some other restriction on citizen discourse and conduct. Let us examine these steps in turn.

Principles of restraint govern citizen conduct and generally require citizens to offer what they take to be *good* reasons for their positions, proposals, and the like. Typically, a good reason is a *public* reason, one that others somehow share, can access, recognize, evaluate, etc. Thus, to give content to principles of restraint, we first need a conception of public or justifying reasons. In most cases, a public reason is taken to be a shared reason. As Schwartzman (2011, 378) has recently written, "a justification is *public* only if it is based on reasons drawn from a family of shared moral and political values." Or, the reasons must at least be *shareable* based on citizens' implicit commitments. Freeman largely agrees that public reasons are those that "rely upon principles, values and methods of reasoning and assessing evidence that are shared by the reasonable doctrines affirmed by reasonable citizens in a democratic society" (Freeman 2000, 402). In other cases, public reasons are understood merely as those reasons amenable to external criticism. Nagel (1987, 232) affirms this view when he claims that public reason

requires a citizen be prepared “to submit one’s reasons to the criticisms of others, and to find that the exercise of a common critical rationality and consideration of evidence that can be shared will reveal that one is mistaken.” Greenawalt (1988, 12) characterizes public reasons similarly, as those that are publicly accessible in principle. On this view, justificatory reasons need not be shared to be public but must be evaluable by shared criteria. Some endorse still weaker principles, such as that public reasons are those that are simply intelligible (Gaus and Vallier 2009, 56–58). They are reasons that other citizens can see as reasons for them at the right level of idealization.<sup>8</sup>

I should explain intelligibility in a bit more detail, as the PCR assumes its superiority over shared and accessible reasons’ requirements. The Stanford Encyclopedia of Philosophy defines justificatory reasons as intelligible when citizens recognize them as justified for the persons who have or advance them. Thus, reasons are intelligible, and so potentially justified, even if (i) citizens do not share those reasons and (ii) some citizens do not even recognize these reasons as reasons, given their own (distinct) evaluative standards. So, intelligibility will count as justificatory those reasons derived from unshared and even somewhat obscure philosophical and religious views. Intelligibility also requires that these reasons be affirmed on the basis of at least some modest degree of epistemic justification, i.e. that the reasons not be logically inconsistent with a person’s other commitments and that the person has no overriding defeater for the reason in question. Second, for reasons to count as justificatory, they must be ones that suitably idealized members of the public can see as epistemically justified for the person who has them. Third, such reasons must have some minimal moral content; public reasons cannot be reasons to commit grossly immoral actions such as killing the innocent, etc.<sup>9</sup> The literature labels accessible and shared reasons’ requirements as “consensus” views and intelligible reason’s requirements as “convergence” views; I adopt that nomenclature here.

The first step of the argument for a particular principle of restraint, then, requires adopting a specific conception of justificatory reasons. In this paper, I assume the correct conception is convergence, while noting that the large majority of principles of restraint assume the consensus view. But whatever view one takes, we can only settle on a principle of restraint once we have settled on a conception of justificatory reasons.<sup>10</sup>

The second step of the argument from justification to deliberation requires connecting a conception of justificatory reasons to a principle of exclusion. This step is more straightforward. Since the ideal of a publicly justified polity requires that coercion be justified to each qualified point of view, reasons that fail to count as justificatory are excluded from the process of public justification. Consequently, laws cannot be justified based on excluded reasons. While principles of exclusion may vary, they are all the straightforward consequence of adopting the ideal of public reason and coupling the ideal with a particular conception of justificatory reasons. An adequate principle of exclusion, then,

holds that a publicly justified polity's institutions should not be sensitive to attempts to coerce citizens that they have public reason to reject or insufficient public reason to accept.

In the third step, we move from exclusion to restraint. This requires some empirical inquiry, since we must determine which principles of civic conduct will best ensure that the relevant principle of exclusion is followed in political practice. One could claim, for instance, that citizens should not offer or act upon nonpublic reasons in public life lest they push states to coerce on the basis of those reasons. To treat other citizens properly, we should not insist on using state coercion to impose publicly unjustified law on them. Accordingly, we should not engage in discursive activities that make it more likely that the state will impose such coercion. Defenders of restraint assume that if citizens comply with principles of restraint, private reasons will be effectively excluded for legal decision-making. I am skeptical. The way in which public discourse satisfies principles of exclusion is likely to be a complex sociological question with no straightforward a-priori answer. The case for restraint remains ambiguous, more so than public reason liberals commonly recognize.

One critical ambiguity arises from the failure to distinguish restraint on *reasons* and restraint on *proposals*. A principle of reason restraint restricts the reasons that one can offer and act upon in public life. But a principle of proposal restraint only restricts which coercive laws or policies citizens and officials can support.<sup>11</sup> As an illustration, consider the behavior of politicians who support abortion restrictions. Assuming abortion restrictions cannot be publicly justified, proposal restraint would only prohibit politicians from *supporting* the restriction. Reason restraint would prohibit public appeals to, say, religious reasons, in order to justify the restriction. Even from this simple example, we can see that reason restraint is much more intrusive, so if we can achieve an adequate degree of exclusion through proposal restraint alone, that will speak in its favor.<sup>12</sup> Since I believe that proposal restraint provides adequate restraint, I shall focus on developing a principle of proposal restraint.<sup>13</sup>

In sum, the case for restrained public deliberation requires a complex argument conjoining the ideal of public reason with a principle of justificatory reasons, a principle of exclusion, and a principle of restraint. We cannot assess the mainstream approach to public deliberation and public justification unless we clearly distinguish each step and recognize that theorists can fill out these principles differently.

### 3. Against the mainstream political liberal approach

The standard model of public deliberation in a publicly justified polity endorses principles of restraint that *morally* restrict citizens from offering or acting upon non-public, non-justificatory reasons in the relevant public domain. To justify restraint, public reason liberals must demonstrate that these (purely moral) principles aid in the process of excluding publicly unjustified coercion from

being imposed by the state.<sup>14</sup> Thus, we need an argument from the ideal of public reason to a principle of restraint. To complicate matters further, this argument must be sufficiently strong to override two countervailing considerations frequently embraced by the liberal tradition.

First, the argument must override the liberal interest in protecting citizens' liberty against encroachment by political *and* ethical restrictions. Liberals commonly acknowledge a presumption in favor of citizens being able to act on their own judgments as they see fit in their political lives, understood as a form of non-moralized negative liberty. Mill (1978, 63) is far from alone in worrying about the interference legitimized by widely recognized moral rules, as social pressure can undermine individuality and quash creativity. Feinberg (1987, 9) held that "liberty should be the norm ... coercion always needs some special justification. More pertinent for our purposes is Rawls's own evolution on the content of the duty of civility. Unjustified coercion is *pro tanto* wrong." Rawls (2005, 247 and 248) gradually moved from a more "exclusive" view to an "inclusive" view and then to a "wide" view, permitting an increasingly diverse number of considerations to enter into public debate and discussion.<sup>15</sup> One reason for the alterations is Rawls's recognition that the restrictive versions of the duty of civility may limit freedom of expression. The duty of civility is a moral, not legal principle, so it may be hard to see the restrictions of liberty involved. But Rawls acknowledged that there is not only a presumption against legal coercion in the liberal tradition but against other forms of restrictions as well. Rawls explicitly claims, "there is a general presumption against imposing legal *and other* restrictions on conduct without a sufficient reason" (Rawls 2001, 44).<sup>16</sup> Liberal critics of public reason have also complained that principles of restraint unjustifiably restrict liberty of expression. Nicholas Wolterstorff (Audi and Wolterstorff 1997, 105) claims, "to require of [religious citizens] that they not base their decisions and discussions concerning political issues on their religion is to infringe, inequitably, on the free exercise of their religion." To illustrate, we can imagine John, a religious citizen who supports the redistribution of wealth from rich to poor on biblical grounds. Standard forms of (reason) restraint would not only morally prohibit him from supporting the law for these reasons, but at least implicitly license other citizens to insist that he does so. John could potentially be subject to the disapprobation of his fellow citizens, just as if he violated other publicly recognized duties.<sup>17</sup> Thus, while principles of restraint do not restrict behavior through the law, they do restrict behavior by morally foreclosing options to others and permitting other citizens to morally condemn those who fail to restrain themselves appropriately. And note that the liberal tradition is concerned with both legal and such moral restrictions.

Given this broad commitment to liberty, it seems clear that liberals should prefer forms of restraint that are less restrictive of citizens' actions over those that are more restrictive. This means that if two principles of restraint are adequate expressions of the ideal of public reason, we should prefer the less restrictive principle to the more restrictive, even if the restrictions being compared are moral



rather than legal. The presumption in favor of liberty places the burden on those who would place greater restrictions on citizens than not, rendering it more difficult to justify the more common forms of restraint.

Second, the argument for restraint must override the liberal interest in respecting reasonable diversity both politically and ethically. Traditional liberal theory, including political liberal theory, is thought to celebrate, or at least respect, many forms of social, biological and ideological diversity. This is frequently taken to imply that liberals should avoid treating citizens as a homogeneous group and recognize the degree to which reasonable individuals and groups disagree. Consequently, laws and ethical principles that require more consensus and public agreement among reasonable citizens are, all else equal, inferior to those that require relatively less. Liberals routinely point out that free and moral persons sincerely, deeply, and reliably disagree about matters of ultimate import, so liberals should prefer expressions of the ideal of public reason that permit reasonable citizens wider latitude of public disagreement and end pursuit in their political lives. Consider John once more. Standard forms of restraint discourage religious diversity because they morally prohibit John from living in accord with his religious convictions in important dimensions of his public life. Restraint homogenizes because it prioritizes shared reasoning over diverse reasoning in the public square, at least with respect to important constitutional matters. John is homogenized because political liberals will insist that he only act upon or offer shared, non-religious reasons when matters of constitutional essentials or basic justice are at stake.

Mainstream public reason liberals will probably deny that restraint imposes upon liberty and restricts diversity. After all, principles of restraint are not enforced as legal duties, nor do they apply to all political debate in the wider culture. Restraint is merely a moral restraint covering a restricted domain of activity and discourse. I reject this reply because restraint encourages citizens to morally sanction those who rely on private reasons in their political lives. Failing to comply with principles of restraint permits the public disapprobation of citizens. Rawls is alive to this concern, as he admits that public reason might initially seem to “unreasonably limit the topics and considerations available for political argument and debate.” Rawls denies that his duty of civility overly restricts diverse expression, but he regards diversity as a *desideratum* in determining which principle of restraint to adopt. If a principle of restraint restricts liberty and diversity, then that counts against it. Larmore (2008, 213) has argued that public reason “amounts to a demanding form of self-discipline that the citizens of a liberal democracy are called upon to exercise.” Citizens call *one another* to the discipline of restraint and back their demands the threat of moral censure. It seems fair to conclude then that political liberals rightly regard restraint as demanding and so requiring diversity-limiting interference in the lives of others, at least in the form of sanction and criticism.

Many principles of restraint, including Rawls’s duty of civility, permit the introduction of private reasons into public discourse, so long as sufficient public

reasons exist to back up those private claims. So a critic could argue that the restrictions are not problematic, even if restraint restricts liberty and diversity. But we must not forget that restraint is intended to generate important political goods that could not otherwise be generated in adequate supply. Restraint, therefore, must do some heavy lifting when it comes to citizen conduct. Otherwise, restraint has no point. Notice here a tension among defenses of restraint. On the one hand, restraint must be significant enough to generate important political goods. On the other hand, restraint is not seriously burdensome in the way that religious critics of political liberalism complain. Consider Larmore again, who claims that public reason involves a “demanding” form of “self-discipline” and that critics exaggerate the burdens of restraint because restraint “applies to a limited domain only” (212). We can resolve the tension by distinguishing between the *degree* to which restraint is burdensome and its *domain* of application. Thus, a theorist can endorse one of four options:

- (i) Demanding restraint within a limited domain;
- (ii) Light restraint within an expansive domain;
- (iii) Demanding restraint within an expansive domain; or,
- (iv) Light restraint within a limited domain.

Larmore opts for (i). His reply to religious critics is, therefore, that restraint is only *objectionably* demanding when it has an expansive domain. But restraint can also be objectionably demanding within a limited domain as well, given that concerns about liberty and diversity apply within that domain. We can ask why we should opt for demanding restraint within that limited domain rather than light restraint and argue that concern for liberty and diversity demonstrates that demanding restraint is unjustified.

To complete my review of the critique of mainstream forms of restraint, I will now introduce less demanding forms of restraint that adequately express the ideal of public reason. Restraint can vary along three dimensions: (a) the conception of justificatory reasons used to flesh out the content of restraint, (b) the number of citizens to whom restraint applies, and (c) whether restraint applies to reasons, proposals, or both. Based on respecting the liberal interest in preserving liberty and diversity, we should, all else equal, prefer principles of restraint that utilize *diverse* (i.e., convergence) conceptions of justificatory reasons that apply to a *small* number of citizens, and that apply restraint to *proposals* alone rather than merely to reasons and to both proposals and reasons. Given the value of liberty and diversity, our default expression of the ideal of public reason should be convergent proposal restraint that applies to a restricted number of individuals.

The second step in the argument against the mainstream political liberal approach in civic life is to determine whether the positive arguments for restraint are sufficient to rebut the presumption in favor of more lax principles. I once again set aside arguments about consensus and convergence, so I shall focus on showing that there is no compelling argument that restraint should apply to a large number of citizens and that it should apply to reasons rather than proposals.

This is a challenging task because theorists seldom distinguish dimensions (a)–(c), so standard arguments for mainstream restraint assume consensus, making it hard to defend permissive restraint without tackling the consensus–convergence debate. To simplify, I will assess the arguments for restraint by assuming the superiority of the convergence view on the grounds that it better respects liberty and diversity, though, yet again, I do not defend convergence over consensus here.

Public reason liberals offer two varieties of argument for restrictive restraint: empirical and conceptual. Empirical arguments hold that, as a matter of contingent, sociological fact, more restrictive principles of restraint are superior expressions (or perhaps the only adequate expressions) of the ideal of public reason in virtue of the fact that they best promote publicly justified outcomes. Conceptual arguments hold that restrictive principles of restraint are *necessarily* superior expressions of the ideal of public reason because they alone give expression to the ideal of public reason.<sup>18</sup>

To advance empirical arguments for restrictive restraint, public reason liberals often claim that if citizens sincerely offer shared reasons for their political positions and actions, the quality of dialogue will improve. Such restraint enables citizens to improve their ability to pass laws that treat all as free and equal, that is, for producing good and legitimate political decisions. For example, Gutmann and Thompson (1996, 41 and 42) claim that deliberation contributes to legitimacy since citizens who lose “out in the resolution of competing claims are more likely to accept the decision when it is adopted after careful considerations of the relevant merits of competing moral claims for resources.” Similarly, Freeman (2000, 383) argues “having to deliberate with others and give reasons acceptable to them inclines citizens to take into account others’ points of view and thereby extends people’s imaginations and empathy.” This means that citizens’ political decisions will more likely be based upon considerations that others have reason to accept. What is more, sincere civic engagement in shared terms promotes “free discussion and open debate” which “allow[s] relevant information to be distributed, mistaken reasoning to be exposed, and all the reasons for and against laws to be debated and considered” (383). Thus, good civic behavior helps to distribute information and arguments and so assist citizens in appealing to sound considerations when deciding political questions. Finally, Goodin (2008, 263) argues that sincere, shared civic engagement helps to generate “trust-building” and “shared commitments.” Such public interactions help to “encourage public-spirited justifications and proposals, which might redound to the benefit of all” (Fearon 1998, 55). These forms of civic behavior help to produce respect for others as free and equal and so seem required by the ideal of respect for others as free and equal.

The problem with such arguments is not that they fail to cite benefits for shared deliberative engagement by citizens. Rather, they fail to demonstrate that public reason liberals’ preferred principles of restraint *better* promote these goals than more lax alternative principles. Looser principles still permit and can even

encourage citizens to engage in respectful interactions and to share reasons in dialogue and develop shared values. A fan of mainstream restraint could counter that looser forms of restraint will generate “noise” because institutions and officials will have to sift through a larger set of non-public reasons in response to deliberative inputs in order to determine which proposals are publicly justified. But considerations of noise plague shared reasons’ views as well (Thrasher and Vallier 2013). The argument that we should endorse reason restraint because it promotes trust and shared commitments is also inadequate. We have little reason to suppose that allowing a large segment of the citizenry to appeal to non-public considerations will compete with the development and formation of shared values. For all we know, freeing up discourse could help promote the formation of shared values, as citizens could trace more lines of thought from their particular points of view to a shared conception of justice and legitimacy.

But the real bone in the throat of arguments for shared values is recent empirical literature that shows that discussion and debate among persons with diverse points of view can often be far more productive and effective than discussions among persons who share similar perspectives and values. Most well known is recent work by Page (2008, Part 4), who argues that cognitive diversity is in many cases more important than individual ability in problem solving.<sup>19</sup> Gaus (2011b) and Landmore (2013, Chapter 4) have begun to apply much of this work to models of discussion and deliberation in political philosophy. In these models, individuals are allowed to bring the particularities of their individual experience and cognitive abilities to bear on solving social coordination problems.

I should caution that none of this work explicitly tests how mainstream principles of restraint perform on a society-wide level. But it is certainly suggestive: restricting informational inputs into public deliberation could easily reduce the quality of public decision-making. In other words, restrictive forms of restraint could reduce the likelihood that enacted legislation is publicly justified. There is, I think, sufficient evidence connecting open discussion with good decision-making that the empirical arguments for mainstream principles of restraint are a wash, at best. Given the burden of justifying restricting the liberty of citizens, we need at least some evidence that restrained deliberation will produce higher quality, that is, more publicly justified, political decisions than unrestrained deliberation.

The second argument for restrictive restraint is that the resulting deliberation *constitutes* respectful treatment. For instance, sincere civic behavior is thought to constitute respectful treatment because it expresses respect for others as possessing “equal membership” in the “sovereign political body” (Cohen 1997, 416). Additionally, political behavior requires offering others reasons that they recognize as having force because that is just what it *means* to treat others as free and equal (Quong 2011, 265–270). That treating others as free and equal conceptually requires the sincere exchange of shared reasons is perhaps the more fundamental ground for restraint.

Larmore has defended a constitutive claim by arguing that if we should not impose coercive laws on others unless they have sufficient reason to accept them, then we should not appeal to reasons they reject when we make our case for the laws in question. Larmore (1996):

In discussing how to resolve some problem (for example, what principles of political association they should adopt), people should respond to points of disagreement by retreating to neutral ground, to the beliefs they still share in order either to (a) resolve the disagreement and vindicate one of the disputed positions by means of arguments that proceed from this common ground, or (b) bypass the disagreement and seek a solution of the problem on the basis simply of this common ground. (135)

For Larmore, then, when citizens reasonably disagree, they should speak in common terms out of mutual respect. A good liberal democratic citizen understands that others reject doctrines she holds dear. If she is to treat them as equals, she must speak to them in terms they can both understand. To put it another way, by adhering to deliberative restrictions, citizens develop a political relationship with one another based on respect.

We have already mapped the conceptual gap that lies between the requirement of public justification and restrictions on deliberation. Arguments like Larmore's face a similar problem. Respect for persons is supposed to require a particular way of talking to one another, but we need further principles to bridge the gap between a commitment to respecting persons and public deliberation, principles that do not appear in the public reason literature. I believe both gaps result from public reason liberals' tendency to identify public justification with the *process* of deliberatively justifying our preferred political proposals. Quong draws this connection when he claims that "that is, they only support laws that can be justified by appeal to public reasons" which occurs when both citizens and officials advocate political proposals only when they genuinely think that their decisions are justifiable based on "considerations that each person can reasonably endorse in their capacity as a free and equal citizens, that is, they only support laws that can be justified by appeal to *public reasons*" (2011, 256). If respect requires public justification, then of course it requires a particular way of talking to one another. But if we separate the concepts, the need for more arguments and principles becomes apparent.

To put the criticism of constitutive arguments another way, I claim that the commitment to respect for persons is already captured by a principle of public justification. We need an argument to justifying building a principle of public deliberation into that more foundational commitment. But public reason liberals seldom provide such an argument on *conceptual* grounds. They instead appeal to principles of publicity and sincerity to show that public justification without public deliberation is insufficient for respect for persons. But these are, ultimately, empirical arguments concerning which social practices in fact better promote public justification, and I have already explained why they are problematic.

In sum, then, neither empirical nor conceptual arguments for more restrictive forms of restraint seem promising. The empirical case is rarely made in adequate detail and the constitutive arguments are undermined by the conceptual gap between respect and public justification on the one hand, and public deliberation on the other.

In the absence of arguments to the contrary, then, we should apply restraint to proposals rather than reasons and we should prefer principles of restraint that apply to fewer citizens rather than more. I have already explained that liberals have a theoretical interest in respecting the liberty and diversity of citizens. So if two principles of restraint set liberty back to different degrees, or diversity, we should prefer the principle the sets them back less to those that set them back more. We apply restraint to proposals rather than reasons, then, because proposal-restraint restricts individual liberty and diversity less. Proposal-restraint restricts individual liberty less because it does not try to morally regulate the reasons that citizens can offer or act upon in their public political lives. Instead, it only regulates which laws and policies they may advocate. Thus, in the absence of an argument for reason-restraint, we should only restrain support for proposals if we are to have restraint at all. Proposal-restraint restricts diversity less because it permits citizens to appeal to a broader array of considerations in supporting proposals than do principles of reason-restraint. Citizens are permitted to act on a more diverse and complex set of motives. Similar arguments can be offered on behalf of restricting the scope of restraint to a smaller rather than a larger number of citizens. The fewer citizens burdened by restraint, the less the liberty and diversity of citizens is restricted.

We may now examine candidates for a more lax principle of restraint, as there is good reason to favor lax restraint and little reason to oppose it.

#### 4. The Principle of Convergent Restraint

I begin articulating the Principle of Convergent Restraint (PCR) by discussing the grounds on which it is based. PCR is a principle of restraint based on a convergence view. In other words, it requires a certain subset of the citizenry to only advance proposals that others have *intelligible* reasons to accept. Further, PCR is a principle of proposal restraint because regulating proposals is much less intrusive than regulating reasons. And finally, PCR only applies to persons who have a direct, substantial impact on the content of coercive law, a restricted set of citizens, so it imposes relatively less on the citizenry vis-à-vis principles with a more expansive reach.

PCR is rather lax, and this raises the question of whether public reason liberals should endorse any principle of restraint. We could, after all, simply let citizens alone. The only way to justify interference via restraint, in my view, is to promote the aim of having publicly justified coercive law. That means I need to argue that, in comparison to a society without restraint, defeated coercive proposals will be passed less frequently in a society whose officials refrain from

advancing what they believe are defeated proposals. So that is my position: restraint is justified in order to help ensure that legal outcomes conform to a principle of public justification.

I can now formulate the PCR as follows:

*Principle of Convergent Restraint (PCR):* A should not publicly advocate law L if members of the public have sufficient reason  $R_n$  to reject L.

PCR forbids A from advancing a law defeated by the diverse reasons of members of the public, with diverse reasons represented by  $R_n$ . A should not advocate L even if L is defeated only for a small sector of the population. Some will find this standard too strong. Members of the public have distinct and conflicting views that can defeat even much-needed law. I cannot address this concern here, save to say that we could only determine whether this worry was valid if we have already settled on a notion of sufficiency, and I leave that notion unspecified.<sup>20</sup>

PCR has two problems. (a) First, it ignores the fact that political advocacy has an extremely small effect on outcomes. Citizens outside of political office have no real impact on which laws are imposed upon them. If so, it is no longer obvious that insisting citizens follow PCR has a point. After all, it has generated no benefit. We can demonstrate the power of this reply by considering a case raised by Gaus (2010, 24) of a voter in Hawaii who votes long after general U.S. elections are decided. Given that the Hawaiian voter cannot impact the outcome (the outcome has already been decided), it is hard to see why we should restrict his voting behavior any more than we should restrict his ordinary private action. And if we cannot restrict his *votes* because they lack impact, we should not restrict his *speech*.

A critic will claim that, although no citizen affects coercive outcomes *alone*, they do as a group. PCR could be grounded in its good effect at the macro-level, perhaps because group compliance with PCR could stop more defeated coercive proposals. But this claim has little empirical ground, given the complex social processes by which citizens' advocacy is translated into legislative outcomes. If we are to charge someone with this responsibility, then, let it be political officials, as they have a non-trivial, identifiable impact on outcomes.

The critic could push back, however. General restraints on the use of sexist and racist reasons in public have proven effective over the last few decades. Of course, if one citizen violates the constraints, he/she will not set back sexual and racial equality. Nonetheless, the restraints have had enormous social effects. For such norms to be relevant to public reason, they must impact coercive outcomes. But it is not implausible to think that the spread of anti-racist and anti-sexist discursive norms has impeded the passage of sexist and racist law and promoted the passage of anti-sexist and anti-racist law.<sup>21</sup>

I offer three responses to this argument. First, norms against discrimination based on race and sex were probably adopted because many people began to believe that holding discriminatory views is immoral, such that expressing those views is similarly immoral. But there is no analogy here with restraint on private reasons. Mainstream political liberals defend an individual right to be driven by

sound reasons that are inappropriate in the public political forum, so long as they are accompanied by accessible or shared reasons.<sup>22</sup> Political action based on discriminatory views cannot become permissible merely by showing that the discriminator also has shared reason to support the view he advances. Second, while restraint on racist and sexist reasons may account for some part of the variance between laws concerning race and sex over the last 50 years, we do not know how much effect they have had on real policy outcomes, in contrast to, say, better protection of the voting rights of racial minorities. Third, even with evidence that standard forms of restraint have a salutary impact, we will still have trouble determining how well mainstream restraint performs in comparison to PCR.

Now to (b). PCR holds that citizens should morally regulate their actions according to whether others *in fact* have sufficient reason to endorse the coercion in question. But justificatory reasons are diverse and dispersed, so it is quite difficult for a single citizen to determine the reasons others hold. So the informational demands of PCR are too high. I suggest that we modify PCR to base restraint on *beliefs* about which coercive laws citizens have sufficient reason to endorse. Additionally, given our interest in only applying PCR to effective agents, we can modify PCR to be sensitive to whether a citizen can expect her advocacy to be causally efficacious. PCR will now depend on two types of beliefs: beliefs about sufficient reasons, and beliefs about causal efficacy. Significantly, these beliefs should also have good epistemic credentials. I will not develop a conception of rational or epistemic credence here, though I will speak of epistemically “justified” beliefs. To proceed, simply import your favored conception of epistemic justification into my use of the term. We can now reformulate PCR:

*PCR'*: A should not publicly advocate law L if she justifiably believes (a) that members of the public lack sufficient reason  $R_n$  to endorse L and (b) that A's public advocacy effectively contributes to L's imposition.

*PCR'* is more plausible than PCR, and has an important implication. Since *PCR'* only applies to those who justifiably believe they have an impact on coercive laws, it applies to few individuals in mass elections. Ordinary voters cannot justifiably believe that their political activism affects outcomes, if for no other reason than that their vote is an incredibly small proportion of vote totals. If *PCR'* is true, it has little impact on citizens' political lives in these contexts.<sup>23</sup> I find this a happy result; restraining citizens' advocacy is often a poor way to advance publicly justified laws. Knowledge of other citizens' reasons is hard to come by. If so, we should encourage citizens to clearly and forcefully broadcast what they take their reasons to be, as political systems can use these broadcasts to determine whether a law is or is not publicly justified. One problem with mainstream principles of restraint is that they may misrepresent good information, partly because many reasonable citizens may keep their reasons to themselves, producing misinformation about matters of import and reducing a society's ability to draw on diversity in solving political challenges.<sup>24</sup>



Consequently, we should only apply versions of PCR to legislative officials, given that they have an obvious and direct impact on whether citizens are coerced.<sup>25</sup> I understand a legislator as any member of a coercive government body who directly votes to propose, amend, pass or repeal coercive laws, policies and proposals. The legislator's job is not primarily interpretative, unlike judicial bodies. Instead, legislators seek to legislate, which means they generally aim to coerce. Legislative votes are also typically causally efficacious – their votes make a predictable, substantive contribution to outcomes.<sup>26</sup> It is true that legislators, on occasion, fail to substantively contribute to legislative outcomes. A legislator might be part of a persistent minority with respect to some important issue, but legislators vote on many issues while in office, and in a great many we can expect that they contribute to the passage of legislation. One in several hundred is a small contribution, but it is many orders of magnitude greater than the contribution made by ordinary citizens.

PCR' claims that people should only enact legislation that they believe is publicly justified.<sup>27</sup> To apply PCR' to legislators, we can modify the principle again. First, legislators typically believe their advocacy effectively contributes to which laws are passed with a high degree of epistemic justification. This allows us to drop condition (b). Second, the new principle is restricted to real-world votes and public pressure on effective others to vote likewise. The aim of Convergent Restraint is to articulate the duty representatives have in not imposing coercive laws on those for whom it is not justified. The new formulation of PCR is restricted to legislators and their political behavior. Let us call the new principle the Principle of Convergent Restraint for Legislators (PCRL):

*PCRL:* A legislator should not vote for law *L*, or publicly encourage effective others to vote for *L*, if he justifiably believes that members of the public lack sufficient reason *R<sub>n</sub>* to endorse *M*.

Notice that PCRL is only a principle of proposal-restraint, not reason-restraint. Legislators are permitted to vote based on *whatever reason they like*, including sectarian religious reasons. So long as legislators justifiably believe the law they support is publicly justified, their votes are permissible.<sup>28</sup> The same goes for pushing other legislators to do likewise.

I should now address some objections. First, I imagine some will object that PCR is too permissive because it lets citizens be insincere, given that they can act on whatever reasons citizens like. That might mean that PCRL does not express respect for persons as well as more familiar principles. But so long as there are other moral norms that prohibit insincerity, deception, dishonesty, and the like, we need not require that PCRL prohibit these actions as well. The same values of respect, freedom, and equality that undergird PCRL could ground other norms as well.

The second objection is that the internalization of PCRL will not facilitate the public justification of law. Given that knowledge of all citizens' reasons is hard to come by, legislators will have a hard time determining whether the proposals they advance are publicly justified. PCRL should not require that legislators should

gather information about what is publicly justified, as this is too onerous. However, PCRL can plausibly require that legislators be sensitive to information about public justification when they encounter it. If legislators detect defeaters for their preferred proposals and have internalized PCRL, they will tend to stop advocating such proposals.

The third objection holds that PCRL hampers the passage of publicly justified law, when unrestrained advocacy would produce more justified law. Consider, for instance, legislators who represent large minority populations will push law into conformity with public reason if their advocacy is unrestrained. Yet this case seems exceptional. If PCR is internalized, then legislators will not push for publicly unjustified coercion in general, impeding the imposition of such coercion. While some public advocates may produce better outcomes if their behavior is unconstrained, these cases will probably not be prevalent enough to override the benefits brought about by widespread compliance with PCRL. We can reasonably expect that restrained legislators will more effectively generate publicly justified outcomes than unrestrained legislators. Politicians are fallible and often incompetent, but on the whole, liberal democratic politics are not so incompetent that their efforts to not promote defeated proposals will fail more than they succeed.

## 5. A new approach to public reason

Let us end by considering the chief implications of the PCR for the political liberal approach to civic life. Over the last three decades, public reason liberals and deliberative democrats have been constant companions. Typically where you find the one you find the other. But if I am correct, the tie between justification and citizen deliberation should be severed, for public reason liberalism and deliberative democracy are at *odds*. If public reason only requires that institutions and politicians create laws that each person has diverse reason of her own to accept, then citizens need not be disposed to deliberate in the ways deliberative democrats suppose. In fact, they may not need to be disposed to publicly deliberate in any particular way *at all*. Further, given the liberal commitment to respect for liberty and diversity, deliberative democratic attempts to regulate citizen conduct may prove to be *anti-liberal*. Attempts to regulate citizen behavior may also *reduce* the quality of public justifications and interfere with a society's institutional capacity to ensure that laws are publicly justified.

If PCR is the core principle of restraint, then political liberals have made a *significant* mistake in tailoring citizens' contributions to public life. Instead of focusing on citizens, they should focus on *political officials*, those individuals who substantially affect the content of the law. This means that public reason liberalism must reorient itself from designing deliberation-sensitive institutions to designing institutions that adequately protect citizens from unjustified coercive power employed by politicians with their own ends and goals. The prime practical concern of the political liberal should not be to enable the expression of

the popular will through public deliberation. Instead, political liberals should focus on limiting state power through institutional design and demanding that political officials be sensitive to whether the coercion they propose can be justified to each person. In short: less Rousseau, more Madison (Gaus and Vallier 2009, 69 and 70).

Deliberative democrats and political liberals should reconsider their decades-long alliance. I recognize that most political liberals will find this proposal absurd. After all, what else *is* public reason liberalism but a commitment to citizens justifying their political advocacy *to* one another in dialogue that proceeds in terms of shared values? I have offered an alternative view: the true ideal of public reason is that coercion is justified *for* each person based on her sufficient reasons. A focus on deliberation can detract from this aim. Political liberals do better to focus on regulating the proposals offered by politicians rather than the reasons offered by citizens. They do better still to focus less on deliberation and more on post-deliberative institutional design.

## Notes

1. I use the terms “political liberalism” and “public reason liberalism” interchangeably, along with “political liberal” and “public reason liberal.” Throughout, I typically apply these terms to mainstream political liberals who support deliberative democracy and consensus conceptions of public justification.
2. While the public reason and deliberative democrat literatures are similar, they are not identical. This essay focuses on political liberalism, though my arguments will be relevant to deliberative democrats.
3. Here I should note diversity among political liberals regarding the reasons they hold that most, if not all, state coercion must be publicly justified. See Larmore (2008) for the traditional, respect-based account and Gaus (2011a) for an argument that public reason concerns social morality broadly, not just law.
4. Also see Quong (2011, 256). Quong acknowledges that the entailment requires “a substantive position regarding the normative features of democratic practice.” See 257.
5. I do this to focus my attention, not because I think that the PCR only applies to legislators and not judges or presidents.
6. For a representative symposium on the debate, see the symposium in *Public Affairs Quarterly*, volume 25 in 2011. I define convergence and consensus below (2).
7. I thank an anonymous referee for pointing this out.
8. For a more detailed discussion of conceptions of justificatory reasons, see Vallier and D’Agostino (2013).
9. Much of this discussion of intelligibility is drawn from Section 2.3.1 of Vallier and D’Agostino (2013).
10. One might worry that, given how little convergence excludes, convergence-based restraint is not very interesting. I counter below that such restraint has considerable implications for legislative behavior.
11. Proposal restraints, like reason restraints, are ethical not legal requirements.
12. The extent to which reason restraint is intrusive is a matter of debate in the public reason literature, but most agree that reason restraint is at least somewhat restrictive. See Section 3.

13. The reason–proposal distinction does not correspond to the consensus–convergence distinction. However, Lister (2011) has tried to draw the consensus–convergence distinction in terms of restraint on reasons versus restraint on proposals.
14. One might also adopt a principle of restraint as a direct implication of the idea of mutual respect, but if the principle does not aid in the process of exclusion, the case must rely on the sorts of vague connections between respect and restraint that Larmore defends. I criticize Larmore's position below.
15. See 462–466 for the wide view.
16. Emphasis mine. Liberty here is the absence of legal coercion, hence negative liberty.
17. I develop more detailed cases of how restraint imposes upon citizens in Chapter 2 of Vallier 2014.
18. Note that, in principle, the empirical and conceptual arguments for restraint can be deployed on a convergence or a consensus conception of reasons.
19. These benefits seem to be present even if we restrict the diversity public reason liberals care about to reasonable diversity.
20. For an account of sufficient reasons that does not debilitate the political process, see Gaus (2011a, 292–333).
21. I thank an anonymous referee for this objection.
22. For instance, citizens might be driven partly by private religious reasons, which public reason liberals generally allow, so long as those reasons are accompanied by public reasons.
23. For discussion of further cases, see Vallier (2014), Chapter 6.
24. An anonymous referee raises the worry that PCR will be hard to apply since in practice it will lead to major disputes about how to apply it, as people will disagree about what others have sufficient reason to endorse. If PCR ultimately turned out to apply to citizens, I would be more worried about this criticism. Since I will restrict PCR to legislators, I suspect this problem will be much less serious.
25. Judges have an impact as well but I do not have space to apply PCR to them.
26. Let us focus on their legislative votes, as opposed to votes for officials such as judges and party officers, and leadership positions like Speaker of the House. I have crafted PCR to apply to these issues in Vallier (2014), Chapter 6.
27. PCR can be further tailed based on whether legislators should care more about whether laws are publicly justified for all members of the public or merely for their constituents. I take no stand on this issue.
28. It is true that each legislator often knows that his/her votes are unlikely to matter. Nonetheless, his/her impact is still non-trivial: even if the probability of his/her making a difference is low, it is not *very low*, as are the votes of citizens. So PCRL need not make explicit a caveat that ineffective legislators are exempt. I thank Chad Van Schoelandt for this point.

### Notes on contributor

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