

Public Reason and the Exclusion of Oppressed Groups

BEN CROSS *Wuhan University*

ABSTRACT: The ‘consensus’ model of public reason, associated with John Rawls’s political liberalism, has been criticised for excluding certain reasons from receiving consideration where the justification of the constitutional essentials is concerned. One limitation of these criticisms is that they typically focus on the exclusion of reasons political liberals are committed to excluding, notably reasons based on religious and comprehensive views. I argue that public reason excludes some reasons, central to the interests of many oppressed groups, that public reason advocates will agree should not be excluded.

RÉSUMÉ : L’idée de raison publique comme «consensus», associée au libéralisme politique de John Rawls, a été attaquée du fait de sa supposée incapacité à permettre la prise en compte de certaines raisons dans les cas où la substance même de la constitution est en question. Une limitation de ces critiques est qu’elles se concentrent habituellement sur l’exclusion de ces raisons que les libéraux eux-mêmes s’efforcent d’exclure, en particulier des raisons fondées sur des vues globales ou religieuses. Je défends l’idée selon laquelle la raison publique exclut de fait certaines raisons, essentielles aux intérêts de nombreux groupes opprimés, que les tenants de la raison publique eux-mêmes considèreraient ne pas devoir être exclues.

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1. Introduction

To say that public reason is exclusionary will surprise no one. Its proponents and critics alike acknowledge that there are certain reasons that a society governed

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by the norm of public reason will not even bother to refute, but will simply ignore.¹ For example, if Amy argues that the political institutions of her society ought to be reorganised in accordance with a particular sacred text, precisely because the text requires as much, then citizens who accept the duty of public reason will not take her argument into account when deliberating about how the constitutional essentials ought to be designed.² This is not necessarily because they reject the positions articulated in the sacred text to which Amy is referring; rather, that a political position follows from the text is not, in itself, a reason that the idea of public reason allows. In this sense, the reasons Amy puts forward in defence of her view can be said to be excluded by public reason, insofar as it guarantees that these reasons will be of no consequence where the justification of the constitutional essentials is concerned.

Many have argued that at least some of these reasons should not be so excluded. Here are two examples. First, and perhaps most prominently, the example of Amy is a particular instance of the way in which public reason is accused of unfairly excluding *religious* reasons or, at least, reasons that appeal to the authority of a particular religious text or teaching.³ Second, public reason is criticised for excluding reasons that appeal to certain metaphysical notions of truth, since these notions invoke values that are invariably subject to reasonable disagreement.⁴ The upshot, according to Joseph Raz, is that the idea of public reason may, in some circumstances, be “committed to the view that it is desirable to propagate false beliefs or unsound inferences.”⁵

There are probably more categories of exclusion that we could identify, but it is especially worth mentioning these two because of their pre-eminence in

¹ The idea of public reason is most commonly associated with the work of Rawls (2005), 212-254; 440-490. See also Macedo (1990) and (2000); Larmore (1996) and (2015); Quong (2011), 256-289. I focus exclusively on the dominant Rawlsian understanding of public reason as ‘consensus,’ where public justification requires reasons that all reasonable people can share. In doing so, I do not take into consideration the understanding of public reason as ‘convergence.’ See especially Gaus (2011).

² I take Rawls’s focus on the constitutional essentials and matters of basic justice to be a minimum scope for the application of public reason to which all advocates of public reason are committed. When I talk about the justification of the constitutional essentials, I refer to this minimal scope. Some argue in favour of an expansion of the application of public reason to all aspects of politics. See especially Quong (2011), 273-287; Schwartzman (2004), 191-220.

³ See Eberle (2002); Stout (2004); Neal (2009).

⁴ Rawls famously claims that political liberalism does without the notion of truth, relying instead on the notion of reasonableness as its sole standard of correctness. See Rawls (2005), 127. Others argue that political liberalism can and should admit a certain role for truth within public reason, as long as it is suitably ‘public’ or ‘mundane.’ See Cohen (2009); Quong (2011), 221-255.

⁵ Raz (1998), 42.

philosophical literature. Public reason, it is argued, not only excludes these reasons; it does so *unjustly*. Call these criticisms of public reason ‘exclusion-based objections.’

I will elaborate and defend an exclusion-based objection to public reason. I will argue that there are certain kinds of reasons that public reason excludes unjustly. However, I don’t think this injustice has anything to do with the two kinds of exclusion-based objections identified above. Those cases, I will suggest, represent examples of exclusion to which public reason advocates (PRAs) are committed on the basis of some of their foundational commitments. Insofar as they share political liberalism’s commitment to the requirements of reasonableness,⁶ they must regard religious reasons and the sorts of truth-claims that Raz has in mind as unsuitable justifications for the constitutional essentials. In contrast, the reasons that I believe are unjustly excluded by public reason are the sorts of reasons often associated with what both PRAs and citizens generally would recognise to be unjustly oppressed groups. Such groups include, but are not limited to, low-income workers, women, indigenous communities, and LGBTI people. I argue that the oppression faced by these groups and others like them is likely to be exacerbated by a commitment to public reason, because it will prevent their reasons from influencing the constitutional essentials of their societies.

This article proceeds as follows. After a brief explanation of the idea of public reason (2), I will explain the particular kinds of reasons that, I will argue, are unjustly excluded by public reason (3). I then turn to a particular ambiguity regarding the content of public reason, namely, whether the content consists of what I shall call an ‘idealised understanding,’ or a ‘realist understanding’ (4). Although the idealised understanding might not be vulnerable to an exclusion-based objection, I will argue that the realist understanding is so vulnerable, and is the only relevant interpretation for the purposes of fulfilling the duty of public reason in a real society, regardless of whether ideal or non-ideal conditions obtain (5-6). Finally, I consider two ways in which PRAs might attempt to mitigate the exclusionary character of public reason. First, I focus on two forms of non-public reason: John Rawls’s proviso, and arguments from conjecture (7). Second, I consider what I believe to be a more promising option for PRAs, according to which a public reason-centred approach to the *justification* of the constitutional essentials needs to be supplemented by an unrestricted and robust obligation to translate excluded reasons into public reasons where possible (8). However, I will argue that each of these options is ineffectual.

2. Public Reason: A Brief Overview

Public reason, as Rawls points out, aims at public justification.⁷ The purpose of public reason is to ensure that the constitutional essentials are justified,

⁶ See Rawls (2005), 48-58.

⁷ Rawls (2005), 465.

i.e., they pass the test of legitimacy required by political liberalism. Rawls formulates this test as follows:

Our exercise of political power is fully proper only 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.⁸

Because political liberals frequently uses the terms ‘free and equal’ and ‘reasonable’ interchangeably, it is plausible to assume that this principle of legitimacy can also be summarised as claiming that political power is legitimate only when exercised in accordance with constitutional essentials that are acceptable to all reasonable people. Reasonable people are therefore the constituency to whom the constitutional essentials must be justified.⁹

Because the constitutional essentials must be justifiable to all reasonable people using only public reasons, public reason includes all values that are shareable by all reasonable people, and only those values. Or as Rawls puts it:

The point of the ideal of public reason is that citizens are to conduct their fundamental discussions within the framework of what each regards as a political conception of justice based on values that the others can reasonably be expected to endorse and each is, in good faith, prepared to defend that conception so understood.¹⁰

PRAs typically hold that traditional liberal political values, such as liberty and equality, can be accepted by all reasonable people, and are thus part of the values of public reason. Whether public reason contains only these values is an open question. Shortly, I will suggest that this need not be the case. The important point here is that PRAs are committed to the following view about the justification of the constitutional essentials:

The justification of the constitutional essentials must be carried out in accordance with reasons that are based on reasonably shareable values (RSVs), and only these values.

Please note that I have deliberately used the word ‘shareable’ rather than ‘shared.’ The two can have substantially different implications for the content of public reason. If public reason includes only ‘shared’ (or ‘accepted’)

⁸ Rawls (2005), 137.

⁹ On the relationship between ‘free and equal’ and ‘reasonable’ in Rawls’s work, see Besch (2004), 26.

¹⁰ Rawls (2005), 226.

values, then the content of public reason would be restricted to those values that reasonable people already happen to accept. It would thus rule out the possibility that new values could be added to public reason over time. If we instead say that public reason permits ‘shareable’ values, then it is possible for the content of public reason to include values not currently accepted by reasonable people, but that *could* be accepted by *all* reasonable people, in spite of the diverse comprehensive doctrines that they hold.

Rawls’s terminology of values “that the others can reasonably be expected to endorse” is ambiguous here, and it seems to me that this ambiguity is often overlooked by other political liberals.¹¹ Exegetical questions aside, I use ‘shareable’ rather than ‘shared’ because this interpretation enables us to examine public reason in a more charitable light, where it is most able to accommodate the concerns of those most marginalised in modern liberal democracies. If we wish to pursue an exclusion-based objection against Rawls’s theory of public reason, as I do, we should focus on the most inclusive reading of his theory.

3. What Reasons Should (Not) Be Excluded?

I have suggested that the most common sorts of exclusion-based objections, namely, those that focus on the exclusion of reasons that appeal to the authority of religion or a metaphysical account of truth, object to the exclusion of reasons that PRAs are committed to excluding for good independent reasons. A reasonable person, according to Rawls, must accept the burdens of judgement. This means recognising that such reasons are not RSVs.¹² To argue that they should be able to influence the exercise of the constitutional essentials is to either reject the burdens of judgement, or reject the liberal principle of legitimacy, according to which the choice of the constitutional essentials should be based on RSVs alone. Both of these exclusion-based objections, therefore, focus only on reasons that political liberals are committed to excluding in virtue of their foundational commitments. As Stephen Macedo perceptively notes, “not all forms of what can be labelled ‘marginalisation’ and ‘exclusion’ are to be regretted or apologised for.”¹³

The exclusion-based objection that I offer here focuses instead on reasons associated with groups whose historical marginalisation, I expect, will be freely acknowledged by PRAs as regrettable, and in need of redress. The idea of such an objection is not entirely new. Before Rawls’s idea of public reason

¹¹ A clear example of this ambiguity is found in the following passage from Schwartzman (2011), 384: “A political justification must be public in two senses. First, it must be based on *shared* or public reasons. It must appeal to considerations that citizens *can accept* as free and equal members of a liberal society.” Italics are mine.

¹² Rawls (2005), 54–58.

¹³ Macedo (2000), 2.

had been fully articulated in print, Seyla Benhabib¹⁴ and Iris Marion Young¹⁵ argued that these “1960s New-Left constituencies,” as Macedo¹⁶ calls them, might only further suffer in societies where political discourse is restrained in ways commonly associated with public reason.¹⁷ Religious and ‘whole-truth’ claims may well play an important part in the identity of at least some of these groups. However, the reasons that PRAs will likely hold that the interests of these groups ought to receive greater consideration than they often do are unrelated to these aspects. For example, PRAs might hold that Islamic communities are often subjected to unjust discrimination in many Western democracies and that this unjust discrimination is an important political issue, while nonetheless holding that distinctly Islamic reasons, such as appeals to the Qu’ran, can have no place in the justification of the constitutional essentials.¹⁸

We might well ask what makes reasons associated with these groups unworthy of exclusion, in contrast to those that PRAs are happy to exclude (e.g., religious and ‘whole-truth’-based reasons). The idea of public reason, after all, seems to present itself as the defining boundary of legitimate exclusion. Indeed, PRAs may argue that these reasons should not be excluded precisely because they believe (mistakenly, or so I will argue) that public reason can be relied upon to take them into account. Perhaps more helpfully, however, we can make a kind of *ad hominem* point: these reasons are reasons that PRAs themselves believe ought not to be excluded. This, it seems, would be sufficient for a persuasive exclusion-based objection to public reason. As I have indicated, I think it is plausible to assume that PRAs would accept that the various marginalised constituencies identified by Benhabib and Young should be supported and strengthened, not further marginalised, in a society that practices the duty of public reason.

One further clarification is necessary. Public reason focuses on the qualities of reasons, not of groups. As such, it can only be said to exclude or include a particular group if the group’s reasons are homogenous. But for the groups with whom my exclusion-based objection is concerned, this is not the case. Women, for example, may disagree with each other concerning how best to address sexism, or even its prevalence. They may offer radically different sorts of reasons for a variety of different views. I expect that PRAs will think that at

¹⁴ Benhabib (1992), 89-120.

¹⁵ Young (1990).

¹⁶ Macedo (1995), 469.

¹⁷ Many feminist criticisms of Rawls’s political liberalism offer arguments that could be construed along these lines. In particular, see Okin (1994); Morgan-Olsen (2010). I agree with much of what Morgan-Olsen has to say; however, I am considerably less optimistic about the capacity of PRAs to find ways to mitigate the kind of exclusion he identifies.

¹⁸ I owe this point to an anonymous reviewer.

least some, but perhaps not all, of these reasons are unworthy of exclusion. I think, however, the selection of reasons from these groups that PRAs will want to ensure have some influence over the constitutional essentials are those that, either by their content or expression, are essential to the interests of women in overcoming the various kinds of injustices that they face. Let us call such reasons ‘central reasons.’¹⁹

This is not to say that we can always clearly identify which reasons are central reasons, and which reasons are not. In fact, PRAs may well disagree about what a particular group’s central reasons are. However, I don’t think that this poses a problem for an exclusion-based objection focusing on these reasons. PRAs may disagree about what the central reasons for various indigenous groups are, but they will agree that their central reasons ought not to be excluded by public reason. And the fact that these reasons may be difficult to identify does not mean that we cannot argue that public reason will exclude them. In fact, I will suggest that it is precisely because of the difficulties involved in identifying central reasons that they are likely to be excluded by public reason.

4. Exclusion and the Misinterpretation of Public Reason

Our task, then, is to show that public reason specifically excludes central reasons. One argument for thinking this is the case is straightforward: central reasons receive maximum exposure and consideration when citizens utilise a broad, unrestricted array of reasons in justifying the constitutional essentials. Restricting the set of reasons available to citizens, according to Benhabib:

would restrict the scope of the public conversation in a way which would be inimical to the interests of oppressed groups. All struggles against oppression in the modern world begin by redefining what had previously been considered “private”, non-public and non-political issues as matters of public concern, as issues of justice, as sites of power which need discursive legitimation. In this respect, the women’s movement, the peace movement, the ecology movements, and new ethnic identity movements follow a similar logic. There is little room in the liberal model of neutrality for thinking about the logic of such struggles and social movements.²⁰

Each group Benhabib names has, at some point in its past (and in some cases, present) struggles, attempted to provide reasons explaining why its central reasons justify political action. Each group has also encountered difficulties—to say the least—in having its reasons received and accepted.

¹⁹ From here on, I shall use the term ‘central reasons’ to refer specifically to the central reasons of those groups that PRAs agree ought to be supported by the duty of public reason.

²⁰ Benhabib (1992), 100f.

Insofar as public reason restricts the range of reasons available to such groups, it would make their tasks harder, not easier. Insofar as citizens do not believe that these reasons are based on RSVs, the duty of public reason would exclude them.

There is, however, a way in which PRAs can respond to this kind of argument. It can be argued that it is not the idea of public reason itself that contributes to the exclusion of central reasons, but only *misinterpretations* of public reason. The capacity of public reason to accommodate a diversity of reasons is greater than its opponents have generally allowed. An example of this is Rawls's attempt to show that the religious arguments offered by Abolitionists were not made in violation of the duty of public reason,²¹ although whether he succeeded is unclear.²² Consider also the way in which many PRAs have attempted to show that public reason can accommodate feminist concerns about the division of labour.²³ Let us therefore distinguish between: (i) an *idealised understanding* of the content of public reason, according to which its content consists of all genuine RSVs; and (ii) a *realist understanding* of public reason, according to which its content consists of whatever values citizens in the relevant society believe are reasonably shareable, however misinformed their judgements about RSVs might be.

If PRAs hold that the content of public reason should be understood in idealised terms, they can escape at least two exclusion-based objections raised against public reason. First, and most obviously, on an idealised understanding, the claim that public reason makes politics captive to the ignorance of citizens is plainly false. Misinterpretations of RSVs are just that—misinterpretations. They are not an accurate representation of what RSVs actually entail. Segregationists who accepted the Declaration of Independence's claim that "all men are created equal" were mistaken in their application of the value of equality. Anti-environmentalist political figures who dismiss concerns about the environment as 'fringe' issues mistakenly believe that such concerns cannot be articulated in terms of RSVs.²⁴ Such reasons, then, are not excluded by public reason, but by incorrect interpretations of what public reason requires. The correct application of public reason, utilising an idealised understanding, would ensure that these reasons are well represented in any justification of the constitutional essentials.

Second, the idealised understanding also undermines a different kind of argument for the claim that public reason excludes central reasons. According to this

²¹ Rawls (2005), 249, 464.

²² See especially Stout (2004), 69-70.

²³ See Rawls (2005), 466-474; Baehr (2008); Hartley and Watson (2009).

²⁴ I am not claiming that segregationists and anti-environmentalist politicians necessarily accept, or did accept, the idea of public reason. I am, however, interested in the effect that the duty of public reason might have on a context where such politicians are active.

argument, public reason lacks the conceptual resources necessary for the articulation and defence of central reasons. Consider the three case studies examined by Brandon Morgan-Olsen: women dealing with sexual harassment in the workplace, pregnant women facing discriminatory insurance policies, and indigenous people seeking native title recognition.²⁵ For groups such as these, whose central reasons deal with what Miranda Fricker describes as “exceptional interpretations of some of their formerly occluded experiences,” the language of RSVs might seem inadequate.²⁶ Such a claim, however, neglects two ways in which an idealised understanding of the content of public reason is flexible: the meaning of existing RSVs can be extended; and the list of RSVs can itself be expanded.²⁷

To see that the meaning of existing RSVs can be extended, consider how traditional liberal political values can be extended to include new forms of injustice. All of Morgan-Olsen’s examples can be accounted for as RSVs by extending the value of equality. It is surely not a great stretch to argue that equal treatment for women requires recognition of the wrongness of sexual harassment and insurance policies that disadvantage pregnant women. Similarly, equal treatment for indigenous peoples requires recognition of at least some claims of native title.

Furthermore, even if traditional liberal political values like liberty and equality were insufficiently resourceful to allow for the articulation and defence of central reasons, there is no reason that the list of RSVs can’t be expanded—provided, of course, we say that that the content of public reason consists of values that are shareable, rather than just shared, by reasonable people. Suppose Amy is a particularly clever citizen advocating on behalf of a group whose central reasons are excluded. She explains to her fellow citizens: ‘our political deliberations have so far failed to take value X into account. And X is the kind of value that *can* be shared by reasonable people. It is not dependent on any comprehensive doctrine, but it can be embedded in all reasonable comprehensive doctrines. Therefore, we ought to take X into account in our political deliberations from now on.’ Now suppose X is a new value that, if treated as an RSV, would enable this group’s central reasons to be articulated within the boundaries of public reason. Perhaps Benhabib’s example of the ecology movement is instructive here. It may be that the recognition of the importance of the environment required a new set of non-anthropocentric terms and values. The case for animal rights is perhaps another such example.²⁸

²⁵ Morgan-Olsen (2010), 218-227.

²⁶ Fricker (2007), 148.

²⁷ It is not strictly true that a realist understanding is incapable of the same flexibility. However, it would make the possibility of this flexibility contingent upon the ability of citizens to realise that RSVs are better interpreted in these ways.

²⁸ I owe this point to an anonymous reviewer.

Yet such terms and values, PRAs will undoubtedly insist, are reasonably shareable. In this case, the list of RSVs has been expanded in such a way that effectively accommodates a particular group's central reasons.

We can see, then, that when the content of public reason is given an idealised understanding, PRAs can respond to exclusion-based objections in one of two ways. They can deny that the reasons in question are excluded (as in the case of reasons put forward by Abolitionists and feminists), or they can accept that the reasons are excluded, but deny that this is in any way problematic (as in the case of religious and 'whole-truth' reasons). The way in which many citizens misinterpret RSVs may often give the appearance that public reason excludes central reasons, but this is deceiving: their exclusion would not happen without these misinterpretations. PRAs can thus claim that the proper response is not to abandon the duty of public reason, but to improve citizens' understanding of RSVs to the point where it more closely resembles the idealised understanding.

5. The Practice of the Duty of Public Reason

We have said that the most likely response PRAs might offer to the claim that public reason excludes central reasons is that central reasons will never be excluded by public reason as long as its content is given in terms of an idealised understanding. As such, two possible arguments that we might use to put forward an exclusion-based objection—that public reason makes politics captive to the ignorance of citizens, and that it possesses inadequate conceptual resources for the articulation and defence of central reasons—seem implausible. How, then, can a plausible exclusion-based objection proceed?

We can begin by noting that both of the two failed arguments discussed above nonetheless offer important observations. RSVs are frequently misinterpreted. And when they are misinterpreted, the conceptual resources available are often substantially diminished. As Morgan-Olsen points out, if a society does not have the term 'sexual harassment,' then it is tragically difficult to explain the injustices arising from sexually exploitative behaviour in the workplace.²⁹

Why should this matter? Suppose it turns out that citizens of even a Rawls-type well-ordered society will either always or nearly always have an inadequate understanding of RSVs, meaning that they will not realise that certain central reasons are based on RSVs. In this case, it would follow that a realist understanding of the content of public reason will draw on this inadequate

²⁹ Morgan-Olsen (2010), 219. He goes on (218-227) to point out that the kind of exclusion faced by such groups operates at two stages: first, *group exclusion*, where the group in question struggles to make a claim about the injustice it has experienced; and second, *public exclusion*, where the group struggles to make this claim accessible to the public.

understanding. As a result, it would be highly likely that, in any such society, at least some central reasons would be excluded. This means that, on a realist understanding, an exclusion-based objection seems highly plausible. Not only this, if public reason is primarily meant to be an ideal that citizens put into practice in some existing society, whether present or future, then it seems that the realist understanding is the *only relevant understanding* of the content of public reason, for the purposes of assessing the extent to which public reason excludes central reasons.

Let me briefly explain why this is the case. Suppose that the citizens in a particular society agree to abide by the duty of public reason. To do so, they must rely on some understanding of the content of RSVs. By necessity, they can only ever rely on the understanding that is available to them at the time. To be sure, their understanding may change over time, and hopefully for the better. But they can only ever practice the duty of public reason in such a way that utilises the realist understanding of its content. The only way in which the idealised understanding might shape the practice of public reason in a real society is if citizens' understanding of RSVs can improve to such an extent that they possess the idealised understanding, in which case, a realist understanding and an idealised understanding would become one and the same. But as long as this is not the case, and citizens always have an imperfect understanding of RSVs, then the idealised understanding plays no role in the practice of public reason.

The claim that citizens will either always or nearly always have an inadequate understanding of RSVs is very difficult to reject. It draws considerable support from the way in which central reasons have been so frequently misunderstood throughout the history of modern democratic societies. Beyond historical evidence, however, we can also point to the nature and character of central reasons themselves: they often involve the use of concepts that are foreign to the majority of people in a democracy. When any group struggling to articulate and defend its central reasons attempts to expand the scope of an existing RSV, or introduce a new RSV altogether, they will often deploy new and unfamiliar concepts that the majority of people in a democracy are unlikely to understand, even while the group advocating for these reasons may be justifiably confident that these concepts do indeed refer to RSVs.³⁰ While progress in the recognition of central reasons may well be possible, the novelty of these reasons makes it unlikely that a society can ever be confident that it has reached a point of according them full and proper recognition.

Even if we grant this, however, there is a deeper question about its relevance. If we wish to focus on a realist understanding of the content of public reason, it may seem to many that this involves an application of public reason to non-ideal circumstances in ways that go beyond the intentions of Rawls's own

³⁰ See Morgan-Olsen (2010), 220.

political liberalism. If this is correct, then the use of this argument to criticise public reason would amount to criticising it for its inability to do something that it is not designed to do. Let us therefore assess the extent to which focusing on the realist understanding constitutes a departure from ideal theory and, if so, the extent to which this is problematic for the argument.

One way in which it might be suggested that focusing on a realist understanding violates the requirements of ideal theory is that it departs from Rawls's idea of a well-ordered society.³¹ If citizens have an inadequate understanding of RSVs, then it might be thought that the conditions for a well-ordered society are not met. A Rawlsian well-ordered society consists of three features: all accept the same principles of justice and know that others accept them; the basic structure satisfies these principles of justice; and citizens comply with the basic structure.³² I struggle to see how the inability of citizens to possess an idealised understanding of RSVs violates any of these three requirements. Perhaps an inadequate understanding of RSVs violates the third criterion. But even here, it is difficult to see how citizens are in any way failing to comply with the duty of public reason if they simply lack an idealised understanding of RSVs. Perhaps wilful ignorance might imply a lack of compliance but as we have just seen, the novelty of central reasons strongly suggests that citizens can lack an idealised understanding of RSVs without being wilfully ignorant. Hence, I do not think that focusing on the realist understanding in any way violates the requirements of a well-ordered society.

There is, however, another way in which a realist understanding might be said to violate the requirements of ideal theory. Its problematic relationship to ideal theory, it might be said, lies not with the representation of a well-ordered society, but with the application of public reason as a normative ideal. Public reason is not supposed to be embodied as a deliberative practice, but is rather a device for ascertaining the legitimacy of a society. As such, it might be evaluative, but not normative.³³ If anything, it might be thought that this interpretation is supported by the fact that citizens may perpetually lack an idealised understanding of RSVs. Perhaps this simply confirms that the duty of public reason was never meant to be applied in any real society, past, present, or future.

Ultimately, I think this criticism is unpersuasive, both as a representation of Rawlsian public reason, and as a convincing view in its own right. Prominent political liberals such as Charles Larmore regard the question of whether political liberalism "has the resources to deal with the salient problems of our time"³⁴ as a pressing concern. There is also much to suggest that Rawls himself

³¹ See Rawls (2005), 35–40, and (2001), 12.

³² Rawls (2005), 35.

³³ I owe this point to an anonymous reviewer.

³⁴ Larmore (2015), 86.

was very much concerned with normative applications of public reason.³⁵ Otherwise, we might rightly wonder: how can it make sense to speak of a ‘duty’ of public reason at all?³⁶ Moreover, exegetical questions to one side, I don’t see how public reason can play an evaluative role in determining the extent to which political power is exercised legitimately in a particularly society without also playing some kind of normative role. If it should turn out that the idea of public reason shows that political power is exercised illegitimately, this should not simply be a matter for reflection; it should provide grounds for reconsidering the kinds of reasons that govern the exercise of the constitutional essentials. I am therefore unpersuaded that the realist understanding goes beyond ideal theory in any way that is inconsistent with an accurate or charitable interpretation of the idea of public reason.

Let me summarise the argument I am putting forward here. It consists of a minor premise and a major premise. The minor premise is that citizens will either always or nearly always possess an inadequate understanding of RSVs, such that they will not realise that certain central reasons can be articulated and defended in terms of RSVs. The major premise is that the fact that citizens will either always or nearly always possess an inadequate understanding of RSVs entails that the duty of public reason causes the exclusion of central reasons. I suggested that the minor premise could be defended by appealing to a combination of historical evidence and the novel character of central reasons. The main objection to the major premise, meanwhile, was that its reliance on the realist understanding violates the requirements of ideal theory, either because it is inconsistent with the idea of a well-ordered society, or because public reason is meant to be a way of assessing the legitimacy of a society, rather than a practice that citizens should adopt. As we have just seen, both of these interpretations of the objection to the major premise are unpersuasive.

6. Should Citizens Just Be Expected to Be More Informed?

One further objection to the major premise remains. In Section 4, I identified two arguments for the claim that public reason excludes central reasons, and found that, on the idealised understanding, PRAs could respond to both arguments by claiming that citizens simply must become more informed. The proper response to a scenario where citizens lack an adequate understanding of RSVs is not to abandon the idea of public reason, but to instead require citizens to improve their understanding of RSVs. We must now show why the argument

³⁵ For an extended defence of the claim that Rawls intended the idea of public reason to be applicable to both ideal and non-ideal societies, see Besch (2017). For a rival view, see Enoch (2015). For the purposes of this article, it is only important to accept that the idea of public reason entails the existence of a duty for citizens, *at least* under ideal conditions.

³⁶ See especially Rawls (2005), 217, 445.

offered in the previous section, drawing instead on the realist understanding, is not vulnerable to the same response. In this context, I will argue, this response is especially unhelpful, insofar as our aim is to enable central reasons to appropriately influence the constitutional essentials as soon as possible.

Let us first note that the response may invite scenarios where some central reasons remain perpetually excluded. The minor premise—that citizens will likely never have a full understanding of the nature of RSVs—entails that there will most likely never be any time when no central reasons are excluded. If this is the case, it is not clear that citizens are even capable of understanding that particular central reasons are based on RSVs. Even though the premise does not strictly entail that citizens will perpetually fail to recognise that any one set of central reasons is based on RSVs, but only that the reasonable shareability of some central reasons will be unrecognised at any particular point in time, the possibility of perpetual exclusion in a society practicing the duty of public reason remains. A group who waits for other citizens to realise that its central reasons are grounded in RSVs may well be waiting for political solutions that will never come, or may only ever come in inadequate or incomplete forms.

PRAs may respond by pointing out that the duty of public reason does not require that a group must wait until its central reasons are recognised as based on RSVs. It allows for the possibility that such a group may engage in actions that shape the constitutional essentials in accordance with its central reasons, as long as it is correct in its belief that its central reasons are, in fact, based on RSVs. However, this becomes particularly problematic when we consider the possibility that a group may suffer from what Morgan-Olsen calls “group exclusion,” where it does not yet perceive that its central reasons can be formulated in terms of RSVs.³⁷ If the group is very large, capable of forming a sizeable voting bloc, or even a majority, come election time, it could quite possibly influence the constitutional essentials in such a way that the group’s central reasons may at least begin to receive consideration. But if it tries to act in accordance with the duty of public reason, it will restrain itself, believing that its central reasons are not based on RSVs.

What if this group is not so large and influential that it is capable of affecting the exercise of the constitutional essentials? In this case, there are still some important strategic considerations that would discourage the group from limiting its political claims to the use of RSVs. If the group were to make claims—based on its central reasons—about how the constitutional essentials ought to be exercised even before they and other citizens realise that its central reasons are based on RSVs, it provides them with greater public exposure. It is plausible to think that such exposure will hasten the process by which other citizens accept the group’s central reasons as an appropriate justification for the exercise of the constitutional essentials.

³⁷ Morgan-Olsen (2010), 218.

In fact, if the group suffers from group exclusion, its acceptance of the duty of public reason may have harmful consequences that go beyond missed opportunities to influence the constitutional essentials. It may also make it more likely to overlook the injustices that it suffers, and regard its central reasons as unsuitable justifications for influencing the constitutional essentials. Even as the group is aware of its desire to influence the exercise of the constitutional essentials in accordance with its central reasons, it finds that the idea of public reason decrees this desire unreasonable. In doing so, it places the group in the same category as other unreasonable people whose reasons, central or otherwise, are prevented from influencing the constitutional essentials. If the group starts to accept this judgement, then it naturally forms a substantial obstacle standing in the way of any attempts to allow its central reasons to influence the constitutional essentials.

We have seen, then, that there are three ways in which the duty of public reason may be especially harmful to groups suffering from group exclusion. First, it will prevent them from influencing the constitutional essentials in accordance with their central reasons in circumstances where they are capable of doing so. Second, it will prevent them from campaigning in ways that raise public awareness about their central reasons, in such a way that would likely cause citizens to recognise that these reasons are based on RSVs sooner than they would otherwise do so. Third, it may encourage groups to view as unreasonable any impulse they might have to shape the constitutional essentials in accordance with their central reasons, thus accepting the legitimacy of their own oppression.

Finally, let us also note that even if the group does not suffer from group exclusion and recognises that its central reasons are based on RSVs, because other citizens do not share this belief they will regard the group as unreasonable insofar as it wishes to influence the constitutional essentials on the basis of these reasons. This may well sow seeds of self-doubt in the minds of the group's members, and raise anew the possibility of group exclusion: perhaps its central reasons really aren't reasonably shareable after all! Furthermore, the fact that the group is regarded as unreasonable by other citizens makes it vulnerable to various ill-treatments that go beyond social stigma. For example, Rawls and Jonathan Quong both hold that unreasonable people must be "contained," like diseases.³⁸ While Rawls is not entirely clear about the meaning of this, Quong states that it permits the state to "undermine and restrict the spread of [unreasonable] ideas."³⁹ If this is the case, then the group is liable to face additional forms of censorship and restrictions of its freedom that it would not face if society did not accept the idea of public reason.

The idea of public reason is thus harmful to groups whose central reasons are not considered by citizens to have a basis in RSVs. This is especially so for

³⁸ Rawls (2005), 64n; Quong (2011), 299-305.

³⁹ Quong, (2011), 299.

groups who suffer from group exclusion, but it also holds for groups who do not. Much of this harm, to say the least, would not occur in a society that did not accept the idea of public reason, even if citizens retained an inadequate understanding of RSVs.

We should therefore reject the claim that the appropriate response to the argument I put forward in Section 5 is to require citizens to improve their understanding of RSVs. Although this would undoubtedly be a good thing, to place responsibility for rectifying injustices done to groups whose central reasons are prevented from influencing the constitutional essentials neglects the fact that this injustice is either caused or exacerbated by the very idea of public reason. If public reason does indeed hinder the efforts of groups who seek to enable their central reasons to influence the constitutional essentials, then it contributes to the injustice done. It must shoulder at least some of the blame.

7. Non-Public Reasons within a Public Reason Framework

I have argued that, when the content of public reason is given to a realist understanding, it is especially vulnerable to an exclusion-based objection. For reasons we have just seen, PRAs cannot respond to this objection by claiming that the problem posed by the objection can be solved by requiring citizens to improve their understanding of RSVs, desirable though this may be. If this exclusion-based objection to public reason is accepted, then it may seem that we have good reason to reject public reason. However, such a conclusion may yet be presumptuous and unwarranted. PRAs may consistently hold that, although the constitutional essentials can only ever be justified on the basis of RSVs, there are other kinds of reasoning that may not have the same kind of justificatory status, but are nonetheless politically relevant in some way. It may be that such kinds of reasoning can prove at least partially effective in preventing central reasons from being denied influence over the constitutional essentials. Consider, for example, the space Rawls allows for non-public kinds of reasoning in his revised account of public reason.⁴⁰ I will here consider two such kinds: first, the “proviso,” according to which non-public reasons can be offered as justification for the exercise of the constitutional essentials as long as public reasons are given “in due course”;⁴¹ and second, the idea of conjecture, where citizens engage directly with each other’s comprehensive doctrines.⁴²

Let us begin with Rawls’s proviso. At first glance, it may seem extraordinarily helpful. Suppose one such group decides to use its central reasons to influence the constitutional essentials, knowing that most citizens do not believe that they are based on RSVs. Suppose also that this group also insists that its central

⁴⁰ Rawls (2005), 463–465.

⁴¹ Rawls (2005), 453.

⁴² Rawls (2005), 464.

reasons are actually based on RSVs. Hence, the group can claim that the proviso will be fulfilled as soon as citizens actually realise that this is the case. If society views the group as acting in accordance with the duty of public reason, then this may seem to at least reduce the strength of at least some of the reasons discussed in the previous section for why it is unhelpful for the group to wait for citizens to understand that its central reasons are based on RSVs. In particular, it would mean that the group is no longer viewed as unreasonable for introducing its central reasons as a justification for the influencing the constitutional essentials.

It is not clear that the purpose of the proviso is to allow groups to do this. Although it sometimes appears that Rawls introduced the proviso as a way of ensuring that the religious arguments of Abolitionists and the Civil Rights Movement were consistent with the duty of public reason,⁴³ it is more likely, in my view, that the advantages of the proviso are concerned with the stability of a well-ordered society.⁴⁴

Putting these concerns aside, however, I don't think the proviso actually has the capacity to prevent groups such as this from being labelled unreasonable. If citizens do not believe that a group's central reasons are based on RSVs, then it would be very strange if they are satisfied with the group's claim that it is fulfilling the proviso because citizens will *one day* recognise that these reasons are based on RSVs. Accepting that claim requires that it regards its own judgement as mistaken even as it makes it. Unless citizens can be expected to make such paradoxical judgements—if such judgements are indeed possible at all—the proviso is incapable of preventing groups whose central reasons are denied influence over the constitutional essentials from being stigmatised as unreasonable for trying to change this. Hence, I do not think that this exclusion-based objection is any less potent if society accepts Rawls's proviso alongside of the idea of public reason.

Let us now consider arguments from conjecture. When we engage in such arguments:

we argue from what we believe, or conjecture, are other people's basic doctrines, religious or secular, and try to show them that, despite what they might think, they can still endorse a reasonable political conception that can provide a basis for public reasons.⁴⁵

⁴³ See, for example, Rawls (2005), xlix-l.

⁴⁴ See Rawls (2005), 463. Note also that, since the Abolitionists and Civil Rights activists did not advance their claims within the context of a well-ordered society, it is hard to see how Rawls's intention to render their claims consistent with public reason can count as a reason for introducing the proviso in a well-ordered society.

⁴⁵ Rawls (2005), 463f.

Conjecture, then, unlike public reasons, is based on comprehensive doctrines, specifically the comprehensive doctrine held by one's interlocutor.

Rawls's remarks on arguments from conjecture are all too scarce; however, their potential significance has been brought to light by Micah Schwartzman. According to Schwartzman, the key contribution of arguments from conjecture is that they can enable reasonable citizens to help fellow citizens who have difficulty prioritising public reasons over their own comprehensive doctrines.⁴⁶ It is worth quoting him at length here in order for us to be clear on exactly what valuable task he believes arguments from conjecture are capable of accomplishing:

Suppose citizen C agrees with the broad outlines of the ideal of public reason ... Suppose further that C is faced with a choice between two mutually exclusive public policies α and β . Having thought carefully about the issues, she concludes that only β can be supported by a reasonable balance of political values ... This means that, so far as public reason is concerned, β is politically justifiable. Now, under normal circumstances, C might be satisfied with this outcome. She accords significant weight to the value of giving others public reasons, and the fact that public reasoning reaches a conclusive determination is usually sufficient to settle the matter for her. In this case, however, C worries that her comprehensive view conflicts with her *pro tanto* justification for β ... To arrive at a full, or all-things-considered, justification of α or β , she must balance two competing sets of values. On one side is the set of political values that justifies β , as well as the political values that support the general practice of giving public reasons; on the other is the set of non-public values drawn from C's comprehensive view. The question is: why should she give priority to the values of public reason?⁴⁷

The answer Schwartzman offers is as follows:

The basic strategy is to argue that C should respect the limits of public reason by demonstrating that the *pro tanto* justification of β is indeed fully justified according to her comprehensive view.⁴⁸

Unfortunately, this is not the kind of use of conjecture that can enable central reasons to influence the constitutional essentials. Although this use of conjecture would undoubtedly promote greater familiarity with the comprehensive doctrines of certain groups, including those whose central reasons are denied influence over the constitutional essentials, this would be to their benefit only if conjecture functions in a way that is *dissenter-biased*. Let me explain this by

⁴⁶ Schwartzman (2012), 521.

⁴⁷ Schwartzman (2012), 522.

⁴⁸ Schwartzman (2012), 523.

continuing Schwartzman's example. Suppose that citizen C is offered a conjecture-based argument, according to which her comprehensive doctrine actually requires her to accept β , rather than α . Suppose also that C is not persuaded by the argument. Now, if arguments from conjecture are dissenter-biased, then the fact that C is unpersuaded by the argument counts against β , placing it in need of revision. On the other hand, if conjecture is biased in the opposite direction—towards public reason—then the fact that C is unpersuaded counts against her and/or her own comprehensive doctrine.⁴⁹ It is clear, I think, that Schwartzman rejects a dissenter-biased account of conjecture, since, as we have seen, he views it as a way of buttressing support for the authority of what citizens believe is required by public reason.

Why is it the case that groups whose central reasons are excluded from a realist understanding can be helped only by a dissenter-biased view of conjecture? Suppose that C is a representative of one such group. If conjecture functions only in the way that Schwartzman envisages, then it cannot play any role in addressing the way in which the group's central reasons are unjustly denied influence over the constitutional essentials. Rather, it can only serve to persuade the group—mistakenly—that its situation is not, after all, a form of injustice. Hence, conjecture, too, is incapable of preventing such groups from being unjustly treated by public reason.

8. Duties of Translation

Let us consider one more form of non-public reason, not explicitly mentioned in Rawls's work. I have said that the understanding of RSVs held by citizens is likely to fall short of a fully informed understanding. But we might say that citizens ought to do all that they can to come as close as possible to a fully informed understanding. This seems to be what Morgan-Olsen recommends when he argues for “a robust civic obligation to assist in the translation of other citizens' reasons.”⁵⁰ Call this the ‘translation obligation.’⁵¹ I think he is certainly right to suppose that, if citizens were to act in accordance with the translation obligation, this might effectively reduce the extent to which public reason causes central reasons to be prevented from influencing the constitutional essentials. However, I doubt that PRAs can consistently hold that citizens can be under such an obligation.

If citizens are to practice the translation obligation, then it is plausible to assume that the state must play some role in promoting the virtues

⁴⁹ This has much in common with Thomas Besch's distinction between “derivative discursive standing” and “constitutive discursive standing.” See Besch (2014), 208-209.

⁵⁰ Morgan-Olsen (2010), 238.

⁵¹ A similar point is made by Habermas concerning the translatability of religious views. See Habermas (2006), 10.

associated with it. But this introduces additional complications. Since my focus in this article has been on distinctly Rawlsian versions of public reason, I will also assume that PRAs advocate for public reason within the framework of political liberalism. This is problematic because political liberals have a much more restricted view of the kinds of virtues that political institutions are able to promote than their perfectionist counterparts. The whole idea of ‘political’ liberalism is sometimes taken to mean that the sole subject of justice is what Rawls calls “the basic structure,” taken to refer only to coercive political institutions.⁵²

However, this reading of political liberalism is mistaken. Rawls does allow that a political liberal state can promote certain virtues among its citizens.⁵³ Importantly, however, these must be *political virtues*. As with the concept of a political value, the best way of understanding this concept is that a virtue is political if and only if it is reasonably shareable.

Naturally, this prevents the state from promoting any kind of comprehensive doctrine, since the burdens of judgement entail that they are the subject of reasonable disagreement. But political liberals have traditionally interpreted this restriction in a more stringent way. Consider the publicity condition. Political liberals have often appealed to the publicity condition in order to show that theories of justice that place particularly exacting and complicated duties upon citizens are incompatible with political liberalism.⁵⁴ This means that political liberalism not only opposes the idea that the state can promote comprehensive ideas of the good life; it also opposes the right of the state to promote theories of justice that are not suitably public.

What features render a virtue consistent with the publicity condition?⁵⁵ Andrew Williams identifies the following criteria in *A Theory of Justice*:

There Rawls appears to regard institutions’ constitutive rules as public in three respects. Thus, individuals are able to attain common knowledge of the rules’ (i) general applicability, (ii) their particular requirements, and (iii) the extent to which individuals conform with those requirements.⁵⁶

⁵² Rawls (2005), 9.

⁵³ Rawls (2005), 176.

⁵⁴ Consider the range of responses that political liberals have offered to G.A. Cohen’s critique of Rawls’s difference principle. For the most complete statement of Cohen’s views, see Cohen (2008). For a response that focuses on the incompatibility between publicity and Cohen’s theory, see Williams (1998). See also Arneson (2008); Estlund (1998), 100-103; Quong (2010), 316-333; Tan (2004), 345-360.

⁵⁵ For an extended discussion of the kinds of virtues that are compatible with the publicity criterion, see Cross (2016), 229-233.

⁵⁶ Williams (1998), 233; Rawls (1971), 55f, and (2005), 66f.

Now I think there are good reasons to hold that the virtues associated with the translation obligation would not pass either (i) or (ii). Consider the requirement of knowledge of general applicability. Citizens are not in a position to reliably distinguish between reasons that are based on RSVs and those that are not. If they were capable of doing this, then no central reasons would be prevented from influencing the constitutional essentials, and there would be no need for this obligation. Hence, there is no clear way for citizens to determine the kinds of reasons that ought to be tested for their capacity to be translated into RSVs, unless, of course, we simply conclude that all views ought to be tested. But this runs into another difficulty. The requirement of knowledge of general applicability, I think, implies that principles for citizens can only apply in a finite number of circumstances. They cannot generate duties that apply to citizens in all or most aspects of their lives. Otherwise, it risks eliminating what Samuel Scheffler refers to as an “agent-centred prerogative,” which allows individuals to pursue their own chosen projects to at least some extent.⁵⁷ As Kok-Chor Tan puts it:

A theory of justice that does not amply allow for, or unduly constrains, personal pursuits will not only be self-defeating, but it will serve no purpose. It is individuals’ capacity for a conception of the good that makes considerations of justice especially poignant. The good is that which gives purpose and meaning to persons’ lives, even as justice dictates the permissible bounds of the good.⁵⁸

Since the translation obligation lacks any clear limit to its scope of application, we ought to conclude that it is inconsistent with (i). Consider also (ii), which mandates knowledge of the requirements of the principle.⁵⁹ Presumably citizens are meeting the requirements of this obligation when central reasons are no longer denied influence over the constitutional essentials. But how can they tell when this is accomplished? Suppose that its practice over time un.masks several instances where central reasons have been prevented from influencing the constitutional essentials, and enables political institutions to address these cases. But this begs the question in a manner analogous to testing for performance enhancing drugs in sport. Does the fact that cases are being identified and addressed mean that the system is working? Or does it simply indicate that there are many other cases that are going undetected? I suggest it is always very difficult to refute the latter possibility. This is particularly the case

⁵⁷ See Scheffler (1994).

⁵⁸ Tan (2004), 333.

⁵⁹ I take it that the essential difference between ii) and iii) is that, while both are concerned with the knowledge of how the principle is satisfied, the latter is concerned with giving citizens the assurance that others are also ‘doing their bit’ and fulfilling their own duties of justice.

if we take into account the possibility of cases of group exclusion. *An absence of complaints does not entail an absence of injustice.*

We have good reasons to doubt, then, that the virtues associated with the translation obligation would meet either i) or ii) of Williams's criteria; translation-related virtues are thus inconsistent with the publicity condition. If this is the case, then they are not the kinds of virtues that PRAs can require from citizens. Hence, the translation obligation is not a feasible option for PRAs, however effective it might be in mitigating injustices caused by public reason.

9. Conclusion

I have argued that a strong case can be made for the claim that public reason unjustly excludes certain groups from influencing the exercise of the constitutional essentials. If it is true that citizens will either always or nearly always have an inadequate understanding of RSVs, then the duty of public reason will most likely prevent at least some central reasons from influencing the constitutional essentials.

The question of whether this gives us grounds to reject public reason altogether has not been directly addressed. PRAs might point out that certain central reasons that lacked sufficient political recognition in the past are now properly embedded in legislature. Consider, for example, the progress that the last 100 years has seen with regard to the rights of women, indigenous peoples, and LGBTI people. Perhaps, they might argue, we have reached a time where all central reasons have now had at least some influence over the political systems of modern democratic societies, meaning that the potential for public reason to exclude central reasons from influencing the constitutional essentials is no longer a troubling prospect.

I don't think this optimism is well founded, for at least two reasons. First, there is a very wide gulf between partial recognition and full recognition. To say, for example, that the complete and final victory of Martin Luther King and the Civil Rights Movement in the United States was attained with the signing of the Civil Rights Act in 1964 seems ludicrous, given the multifaceted forms of discrimination faced by African Americans today. The fact that most citizens' existing understanding of RSVs partially recognises a group's central reasons should not, and must not allow us to think that these central reasons have received full, appropriate recognition. Second, we cannot rule out the possibility that there are new groups whose central reasons are yet to receive any consideration at all. As Peter Singer puts it:

One should always be wary of talking of "the last remaining form of discrimination." If we have learnt anything from the liberation movements, we should have learnt how difficult it is to be aware of latent prejudice in our attitudes to particular groups until this prejudice is forcefully pointed out.⁶⁰

⁶⁰ Singer (1986), 215.

Ultimately, I think the force of this objection really does depend on the extent to which we think that the fair and just treatment of oppressed groups is an important task for political institutions. It may be that, for many PRAs, the task of ensuring that all central reasons are able to influence the constitutional essentials appropriately is only one desideratum among many, and the failure of public reason to accomplish this may be outweighed by its ability to accomplish other things. Public reason may have many aspects that make it attractive. It may be a bastion of liberal values against various fundamentalisms, and it seems a powerful expression of the value of civility in democratic discourse and deliberation. Its emancipatory capacity, however, is severely limited. It cannot claim to do justice for the many people who are unjustly oppressed in contemporary democratic societies.

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