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Which Theory of Public Reason? Epistemic Injustice and Public Reason

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Rawlsian public reason requires public decisions to be justified through reasons that each citizen can accept as reasonable, free and equal. It has been objected that this model of public justification puts unfair burdens on marginalized groups. A possible version of the criticism is that the alleged unfairness is constituted by what Miranda Fricker and other authors call epistemic injustice. This form of injustice obtains when some agents are unjustly treated as not reliable, or when they are deprived of epistemic resources to utter their claims or burdened when they need to express demands. I show that the Rawlsian model can stand the objection. Restricting justificatory reasons, at least when basic issues of human rights, liberties and opportunities are at stake, is needed in order to warrant a stable society as a fair system of cooperation among free and equal citizens.

Keywords: Epistemic injustice, Miranda Fricker, public reason, John Rawls.

1.

According to the Rawlsian view of political legitimacy, at least fundamental public decisions related to basic rights and liberties must be justified through reasons that all agents can accept as reasonable, free and equal. Namely, justifying a public decision through reasons that one could reject as a reasonable, free and equal person would risk enforcing decisions that infringe basic rights, liberties and opportunities, and endangering society as a stable system of cooperation among free and equal persons (Rawls 2005). Such a view is challenged in various ways. Among other objections, one states that a principle of legitimacy which insists on such justificatory reasons discriminates minorities, or disadvantaged groups that feel uneasy, or are not able, to make use of the mainstream political language and conceptual scheme of egalitarian liberal societies (Peñalver 2007, Dyer and Stuart 2013).

In the present paper, I examine whether such objection correctly attributes epistemic injustice to the Rawlsian proposal. The concept of epistemic injustice is first introduced and defined by Miranda Fricker (2007), and it indicates situations where agents are treated epistemically unfairly, or are in an unfair epistemic position due to their group belonging. After Fricker formulated the theory, there have been further developments (Anderson 2017, Dotson 2008, 2011, 2012, 2014, Medina 2013, 2018).

Fricker and other authors engaged in epistemic justice debates do not explicitly criticize the conception of public reason from the perspective of epistemic injustice, and, as far as I know, the two debates have never been put explicitly in relation. However, formulating the debate in terms of epistemic injustice seems as a possible interpretation of some of the criticism of public reason. Thus, I think that it is helpful to analyse the issue explicitly in terms of epistemic injustice in order to evaluate the public reason theory. Answering to the challenge of epistemic injustice is very important for the theory of public reason in virtue of its commitment to freedom and equality because epistemic injustice harms protection of such ideals. This is why it is crucially important for the theory to defeat this objection.

If the objection of epistemic injustice succeeds, public justification would have to be more open to a variety of reasons. Among them, there is the convergence theory of public reason, which requires that public decisions must be justified through reasons that each qualified agent can accept, but it is not necessary that the reasons are shared, because convergence of different reasons is sufficient (Gaus 2011); the accessible reasons view of public justification that says that the necessary and sufficient condition for being a valid reason is that each qualified agent can interact with it, by understanding, debating, commenting, analysing, criticising, etc. it (Laborde 2017); substitution of public reasoning to public reason, i.e. establishing rules that agents can follow in the process of public justification, instead of defining in advance the reasons that can be used (Chambers 2010); substituting Rawls's static view of public reason, with a more dynamic view of reasons that must be constantly tested through the principle of rational verification and probability (Ferretti 2019).

In the paper, I proceed as follows:

1. I describe Rawls's conception of public reason.
2. I describe Fricker's conception of epistemic injustice.
3. I put forward a form of criticism of Rawls's conception of public reason that could be interpreted as a challenge of epistemic injustice.
4. I investigate whether Rawls's public reason is a form of epistemic injustice. I show that there are no elements in the epistemic injustice debate which can represent a basis for criticism of Rawls's public reason. I explain that Rawls's requirements of public reason are needed in order to secure freedom and equality.

5. I describe the demands of epistemic virtue and distributive epistemic justice in fair social interaction, as well as in the context of Rawls's political philosophy.

2.

The theory of public reason is a theory of public justification, i.e. of justification of public rules. Its core idea is explained by the liberal principle of legitimacy: "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" (Rawls 2005: 137). The principle, thus, requires restraint to use, in the process of justification of public decisions (that for Rawls are limited to constitutional essentials) reasons that not all reasonable agents can share as free and equal. In the light of Rawls's explanation of public reason, the principle of restraint can be interpreted, in a sense, like a principle of translation as well. Namely, citizens can use non-public reasons in their public justification of decisions, provided they offer translation in public reason terms and conceptual scheme in due time (Rawls 1999: 584, 591–593). Here a specification is needed. In Rawls's original view, the restraints of public reason apply primarily to constitutional essentials and "in other cases insofar as they border on those essentials and become politically divisive" (Rawls 2001: 117). The limitation to such domain, however, is not so strict for all authors. Some of them explicitly extend public reason to all laws and public policies (Quong 2011). Gerald Gaus even extends public reason to cover all social morality (Gaus 2011). These, however, are not issues that I will adjudicate here. In this paper, I cover all these cases.

Among reasons that can be employed in public justification, according to the liberal principle of legitimacy are, primarily, ideals like that of society as a fair system of social cooperation, certain basic rights, liberties and opportunities, and concepts related to these basic organizing ideas. Further public reasons are represented by "presently accepted general beliefs and forms of reasoning found in common sense, and the methods and conclusions of science when these are not controversial" (Rawls 2005: 224). Note that these reasons are dynamic. Methods and conclusions of science can, obviously change through development of science. Likewise, this happens for general beliefs and forms of reasoning in common sense. In particular, this holds when we consider possible pressure to common sense beliefs that can come from better consideration of what is coherent with the organizing political ideas of reasonable, free and equal persons seen above.

Public reason is characterized by epistemic responsibility, as well. Persons who participate in it are in a condition of disagreement about general doctrines not because of epistemic irresponsibility, but in virtue of burdens of judgment, i.e. difficulties in reasoning about moral is-

sues. An example of this is empirical underdetermination (Rawls 2005: 54–58).

Think about the debate on abortion. As Rawls famously said, it is legitimate to justify a law on abortion by appealing to reasonable public reasons like the value of human life, the equality of women, the right to choose in religious or moral issues. It is not legitimate to justify a law by appealing to comprehensive doctrines like religions or moral theories like utilitarianism (Rawls 2005: 243). In another example, it is legitimate to pass a law against racial segregation by appealing to values of freedom and equality of all people, but not to a religious doctrine that says that we are all equally God's children. Jonathan Quong offers an instructive example of application of the Rawlsian view of public reason.

The example regards passing a law that affirms the legitimacy of same-sex marriage (Quong 2013: 1). Imagine that some people say that marriage is one of the aspects of human flourishing. Imagine that the same people say that same-sex marriage fully realizes this. They pass the law on the basis on these beliefs. Quong, by instantiating the requirements of Rawlsian public reason, says that such a law is not legitimate, because it is supported by sectarian reasons. In other words, it is not admitted to appeal to a kind of controversial view of human flourishing in order to pass a law.

It is important to keep in mind what is the central rationale for public reason: to ground the project of building a stable cooperative society of free and equal persons, by avoiding threats that could result from leaving public decisions to the contingencies of various worldviews.[1] This rationale for the Rawlsian view of public reason is sustained by the occasions in the history of democracy where minorities have been deprived of their rights by majority votes. Think about the racial segregation in USA, an output of democratic representative system. The Rawlsian view of public reason answers to this demand by denying legitimacy to public decisions justified through reasons that not all reasonable agents as free and equal, as well as cognitively responsible, can accept.

3.

Let's see, now, what is epistemic injustice, in its various manifestations. Fricker speaks about three distinct forms of epistemic injustice. One is testimonial injustice. It "occurs when prejudice causes a hearer to give a deflated level of credibility to a speaker's word" (Fricker 2007: 1). Fricker exemplifies this form of epistemic injustice through a conversation that includes characters in *The Talented Mr. Ripley*. The detective, Greenleaf, a character in the story, was investigating a case of murder. He disregarded the epistemic attitude, i.e. the suspicions,

[1] My proposal is particularly inspired by Jonathan Quong's theory (2011).

of the victim's fiancé toward a potential criminal with the sentence "Marge, there's female intuition, and then there are facts" (Fricker 2007: 14), where obviously the intention was to dismiss her as a reliable provider of testimony and epistemic contribution. This is clearly a case of epistemic injustice, because on the basis of identity prejudice the detective did not even take in consideration the cognitive contribution of the woman as a possible candidate for truth that deserves to be explored. Epistemic injustice consists in excluding the possibility that a woman can rationally consider evidence, and assuming that she just has unfounded intuitions. The exclusion was clearly gender oriented and the detective would not dismiss in a similar way a male colleague.

Hermeneutical injustice manifests itself because of an unfair relation, where the privileged have at their disposal communicative resources to interpret and express social experiences that are significant to them, while the less advantaged are deprived of these capabilities (Fricker 2007: 155). A clear example of hermeneutical epistemic injustice is represented by sexual harassment. Before the phenomenon was individuated, the members of the discriminated group had not had the resources to render intelligible something that was harmful to them. Victims were pressed to describe the harm in already publicly managed and shared descriptions of harms. In their absence, they were unable to express the harm that they suffered. Hermeneutical epistemic injustice was constituted by the absence of such resources that caused strong burdens in communicating meaning relevant for them.

Members of the privileged group were cognitively deprived of the understanding of the social phenomenon as well, but they had benefits from the cognitive lacuna in their social context. As a consequence of this condition, harms of sexual harassment were underestimated for a long time. This was due to unfair relations of power that caused unfair epistemic interpretative relations (Fricker 2007: 156–157).

There is a third form of epistemic injustice remarked by Fricker, i.e. distributive epistemic injustice, that consists in "the unfair distribution of epistemic goods such as education or formation" (Fricker 2013: 1318).

In more recent debates, some other forms of epistemic injustice have been discussed. Kristie Dotson has conceptualised contributory epistemic injustice. An important novelty of her contribution is remarking that there are different hermeneutical resources utilised by different groups. Here, there is an important difference from Fricker's theory. In Fricker's description, even the disadvantaged group does not have the hermeneutical resources needed for fully expressing their condition. Hermeneutical injustice is represented by this shared deficit in society. In Dotson's description, the worse off dispose of resources to describe their own condition. They are, however, forced to abstain from using it. Instead, they are forced to use a conceptual scheme that does not entirely express their condition. This is because of wilful ignorance and

structurally prejudiced hermeneutical resources (which can be even unintentional) of the other side. An example can be represented by women of a minority who are inhibited in testifying family violence of which they are victims, in order to avoid to strengthen prejudices that concern their community as being particularly constituted by violent persons. Inequity is not represented by the general absence of hermeneutical resources that has unequal consequences for different groups. It is manifested by a reduction of the ability of some agents to participate in an epistemic community because the other side persists in wilful ignorance and structural prejudices (Dotson 2012, 2014).

Jose Medina has described further manifestations of epistemic injustice. He has interpreted testimonial and hermeneutical epistemic injustice like flaws in proper recognition. Agents, or actions, are recognized in the wrong way (Medina 2018). For example, civil disobedience inspired by achievement of equality is recognized like sedition.

A specific form of epistemic injustice has been denounced by Derek Anderson (2017). This is conceptual competence injustice, i.e. unwarranted denial of competence in managing a priori claims that cannot be assessed empirically. In such a form of epistemic injustice, a representative of a marginalized group is denied conceptual competence, as a result of systematic (economic, educational, etc.) oppression of the group to which she belongs. Conceptual competence injustice matters for the present paper, because, like Andersons says, it regards, among else, competence in managing concepts relevant for the present discussion, like assessments of justice, or injustice. However, I do not discuss it specifically, because it is a kind of testimonial injustice, as Anderson says.

4.

I show now the possible connections between public reason and epistemic injustice. I focus here on the claim that public reason's restraint requirement deprives people of expressive resources that they need, because they are not able to use other resources, or, because these resources are not replaceable for them. Some critics of public reason say that the restraint and translation rule puts particular burdens exactly on the discriminated minorities. It leaves unrecognized important parts of the experience of those parts of society who are already disadvantaged. For example, in USA, "African-Americans and the poor, both of whom benefit enormously from churches' egalitarian inculcation of civic engagement and skills" (Peñalver 2007: 539).

Such a criticism of public reason is instantiated by Eduardo Peñalver who says that the principle of restraint "of public reason can work to silence the central, and perhaps most compelling, elements of religious speakers' political beliefs and motives" (Peñalver 2007: 533).

Peñalver indicates the example of Karl Barth's evangelical moral theology, according to which people's knowledge of the good is rooted

in the perception of a command of God, apprehended in an immediate, direct and intimate personal account with God. God's will is known by a single person, but this is not visible to other persons, nor "available to his own reflection. A believer committed to Barth's conception of ethics would not be able to offer any publicly cognizable reason for her behaviour, even in the form of a mediating principle" (Peñalver 2007: 534). As a consequence, such believers are excluded from the process of public deliberation.

Even when some people or communities are able to translate their claims, something may be, and sometimes will be, lost in translation. When religious people translate their arguments into the language of public reason, the arguments are less compelling. "The assertion of the less persuasive public arguments—the price for admission into public discourse for an inclusive system of public reason—could undermine the credibility of the non-public arguments" (Peñalver 2007: 535). Peñalver's criticism shown above suggests that the restraint rule of public reason corresponds to hermeneutical epistemic injustice, or, perhaps more precisely, to contributory epistemic injustice. In his description, the principle of restraint exactly deprives agents of the resources, or the best resources, that they have, for the expression of burdens, harms, disadvantages, or unfairness, that they endure.

Further problems, claims Peñalver, are that those who must translate their original messages will in some sense be epistemologically stigmatized, or, more precisely, their non-public discourse will be stigmatized. In addition, it can be possible that the stigmatization extends to the use of public reasons of such persons. For example, Alf can discredit Betty's attempt to evaluate an action as unjust by the employment of some public reason concepts, in virtue of the non public reasons that she embraces.[2] Injustice is manifested in comments like "We can't take seriously a claim of justice, when it is expressed by a person who believes in such an unreliable religious doctrine". Here, it seems that we see the charge of testimonial epistemic injustice (in Betty's case, we have a conceptual competence testimonial injustice).

Critics of public reason could press with the objection despite a general disanalogy between the definition of epistemic injustice and the restraint rule of public reason. An important component of epistemic injustice, as Fricker indicates, is an identity prejudice, at the core of the discrimination of some groups. There is no such prejudice implied or present in the theory of public reason. Its inspiration is addressed against segregation, harassment, etc. The intention of the theory of public reason is to hamper the mechanisms of majoritarian aggregative democracy that risk to found a society ruled by principles different than those based on the ideal of society among free and equal. In Rawls's view, this is achieved since according to his theory laws are legitimate

[2] An analogous objection has been raised by one of the reviewers of the article, to whom I express my thanks.

only if each and every person can accept the sustaining reasons of the laws as reasonable, free and equal. But the final result, say the critics, is marginalization of some minorities and depriving them of resources to oppose damages and unfairness, and to protect themselves.

5.

In what follows, I argue that the restraint rule of public reason does not cause epistemic injustice. Firstly, I reject the accusation of testimonial epistemic injustice that is related to the charge of stigmatization. In my view, the restraint and translation rule does not represent nor favour stigmatization of persons, or the doctrines that they endorse, because it does not exclude them as valid public reasons in public justification in virtue of their epistemic weakness. On the contrary, they can even be recognised as sophisticated intellectual constructions. But they are still under the constraint of showing that they are reasonable in Rawls's sense. In other words, they need to show that they are suitable as justificatory reasons in the project of a stable cooperative society among free and equals. In order to achieve this, they need to show that they can be put in positive relation with the organizing ideas of such a society, which implies their translation in public reason terms.

In reply to the other charge of stigmatization, I remind the intention of my paper. This is to discuss whether requirements of public reason as such represent epistemic injustice. But, far from corresponding to a requirement of public reason, a reaction like the one indicated above, "We can't take seriously a claim of justice, when it is expressed by a person who believes in such an unreliable religious doctrine", is simply unreasonable and cannot function as a justificatory reason, in the public reason model. Thus, although the present objection indicates a realistic problem in the process of public justification, it is not an objection to public reason as such, but to a deviation from public reason.

In reply to the stigmatization objection, I remind also about Rawls's proviso. As I have shown above, Rawls admits the public employment of sectarian doctrines. Such employment can, even, be helpful. They are thus not stigmatized, but respected, and, in some cases, even welcome when they can help public reasons. The requirement is not to ban them, but to translate them in due time to public reason terms. Restraint regards only the last stage of the decision-making process, when proposals must be verified as suitable for a stable society of free and equals.

Still, there could be a problem of testimonial injustice in the fact that maybe some non public reasons correspond to truth, and, despite this, it is not allowed to use them in public justification. One could, even, object that there is contributory injustice, because other persons persist in their ignorance, instead of acknowledging true doctrines. But I think that there is no injustice here, provided that other persons have listened carefully and bona fide bearers of such a doctrine, and, still,

there is reasonable disagreement due to burdens of judgment. In such a case, it is needed to show the positive relation of the doctrine with the organizing public reasons in order to ground a stable cooperative society of free and equals.

In fact, Fricker does not see an instantiation of epistemic injustice, neither in its hermeneutical, as well as in its testimonial form, in the constraint which requires from agents that they translate demands or complaints into shareable terms. Correspondingly the strategies of discriminated groups to express the harms that they are subjected to that Fricker illustrates are not constituted by expressing their stance in specific terms that it is not possible to share with others. On the contrary, she shows attempts to shape their social experience in a way that can become part of shared meanings. In the harassment case, for example, the strategy appears to be that of creating public awareness of a peculiar way of how people can be victims of humiliation, of commodification, of denial of autonomy, etc.

An example of this is, in Fricker's view, the achievement of a group of women in determining that the term "harassment" is the proper concept for describing the harm they suffer. Here an extensive description (quoted by Fricker in her book) of the way how 'sexual harassment' was endorsed, is illustrative: "'Eight of us were sitting in an office of Human Affairs', […] 'brainstorming about what we were going to write on the posters for our speak-out. We were referring to it as 'sexual intimidation', 'sexual coercion', 'sexual exploitation on the job'. None of those names seemed quite right. We wanted something that embraced a whole range of subtle and unsubtle persistent behaviors. Somebody came up with 'harassment'. Sexual harassment! Instantly we agreed. That's what it was" (Fricker 2007: 150).

A critic of public reason could still protest by saying that it puts on the victim a further burden, that of shaping the debate in Rawlsian public reason terms, i.e. in terms around the organizing idea of society as a fair system of cooperation among free and equal citizens. Valid public reasons must be related to such organizing idea, as well as to basic rights, liberties and opportunities.

My reply is that once harassment and domestic violence have been explained in terms of humiliation, harm to autonomy, harm to integrity, etc., and once it has been explained that not leaving the husband is not a sign of complacence, the explanation in terms of society as a fair system of cooperation among free and equal citizens, as well as certain basic rights and liberties, becomes feasible. Further, and more fundamentally, the public reason restraint and translation requirement does not represent injustice, because it is not arbitrary. Some constraints are, always, needed for participation in public deliberative process. For example, the requirement to be familiar with a common language could be justified in some conditions. The request is not unjust, if it has justification. Similarly, engagement in public reason terms is justified by

the commitment to a stable society among free and equals, and thus requiring it does not represent injustice.

6.

I further defend the restraint and translation requirement of public reason, by addressing a challenge to its critics. The basic problem for those who criticize the public reason model of justification of public decisions for causing epistemic injustice is to provide a model of public justification that is better in protecting freedom and equality. For the strand of criticism that I show in this paper, the apparent proposal is to let each group use its own resources, which means that they are not required to relate their justification to the idea of society as a fair system of cooperation among free and equals, nor to the basic rights, liberties and opportunities, as organizing ideas of public justification. But, then, the question is how to distinguish legitimate from illegitimate claims. There is the serious problem of not being able to rebut discriminatory claims, for example.

The translation in public reason terms is important in order to distinguish real cases of discrimination or unfairness from improper requirements that are exactly addressed to justify injustice, and, even, oppression. Think about the dramatic problem of infibulation. A case in Seattle, described by Jacob Levy is instructive (2000). Communities that immigrated there, practice infibulation, which, as we all know, is an extremely cruel ritual. "Those who do not die of blood loss or infection face a life of great pain during sexual intercourse and great danger during childbirth" (Levy 2000: 54). As Levy indicates, there was a debate among the committee of the Medical Center and representatives of the community in order to look for a compromise that, although not able to affirm the equality of women in that community, at least will save the functionality of their bodies, and will avoid pain and dangers related to the absence of hygienic conditions. A base of compromise was found, because at least some representatives of the communities agreed that sunna circumcision (judged by medical experts as analogous to male circumcision) in appropriate hygienic conditions would be sufficient to meet the cultural and religious requirements met by infibulations. Here representatives of the minority communities expressed something that is important for them, i.e. acceptance of signs of the supremacy of males, and their messages were understood. Such matters important for communities and their members are not understood when the communities are hermeneutically marginalized and are interpreted only through the categories of the mainstream egalitarian liberal culture. But what are the consequences of this understanding, in cases like infibulation?

There may be practical consequences in conflict management (Ceva 2016). The goal, in such a context, is to render possible to communities to speak with each other in a fair interaction. Further, there could be

good practical consequences. An agreement can be reached that can save the lives and the quality of life of many girls. But nothing really substantial is obtained from the point of view of justification of public rules or policies as far as justice is concerned. As opponents of the compromise say, "[t]he cut might have only been symbolic, but it was symbolic of a tradition that insisted on controlling girls, symbolic of a particularly brutal kind of repression. The cultural need that the hospital was seeking to fill was seen as an illegitimate one, the need to have at least the symbols of control over the sexuality of girls and women" (Levy 2000: 54).

The humiliation, or sense of oppression, suffered by people who are forbidden to practice a substitute of infibulation, as required by their tradition, is properly judged as not giving the entitlement to a claim of justice. The public reason strategy indicates as the test for the legitimacy of a claim the possibility to be described in the language of reasonable public values, as related to the organizing idea of society as a fair system of cooperation among free and equal citizens, and certain basic rights, liberties and opportunities. The substitute of practice of infibulation, even after proper engagement in interpretative efforts, is still properly interpreted as a claim for a privilege to oppress. Thus, the practice is not rejected as a claim of justice because of hermeneutical marginalization of a minority community. The reason of exclusion is the impossibility to translate the claim for the practice in terms respectful of freedom and equality.[3] This is a reasonable and justified test.

The same happens, for example, in the cases of social movements and communities that require laws that discriminate against homosexuals, denying to them, for example, public offices and positions of teachers.

Obviously, not all religious requirements are so horrible like infibulation, or clearly discriminatory, like the one shown above.[4] Some appear as less harmful and potentially legitimate even to some liberals, like denying same-sex marriage, or exposition of religious symbols in public institutions (Laborde 2017). In some cases, religious appeals are clearly good. Dyer and Stuart's reference to Martin Luther King indicates such a prominent case (Dyer and Stuart 2013). But still, the important message of the clearly horrible or harmful examples is that we cannot take religions (or other non-public doctrines) like self-authenticating sources of public norms. Their claims must be assessed through public justification that warrants protection of a stable order protective of freedom and equality. Otherwise, we lose a criterion to determine when appeals to religion are discriminatory (like forbidding public employment for sexual minorities), when they are not (like, maybe, in the requirement to expose religious symbols in public institutions), or when

[3] Thanks to a reviewer for the suggestion of this formulation.

[4] Thanks to a reviewer for pressing this point.

they even contribute to proper human rights, liberties and opportunities (like in King's case). The needed warrant is achieved through the public reason constraint.[5] This can put additional or specific burdens on some communities, until they develop capabilities to express their claims in public reason terms, but this is a price that needs to be paid, for the sake of stable protection of the order of freedom and equality.

To be sure, I do not think that this unfortunate consequence regards claims of racial equality. Even without entering in analyses of real-world cases, like claims of the civil rights movement, or court decisions, we can confirm this thesis by looking at theoretical disputes. Think about an actual debate on Rawls's theory of justice and racial justice. I will present it here in the shortest term, just to give a brief illustration. Tommie Shelby says that everything needed for a proper approach to racial justice is present in Rawls's theory of justice, in particular a non-discriminatory principle of liberty, as well as a principle of fair equality of opportunity (Shelby 2013). On the contrary, Charles Mills says that the excessive abstraction of Rawls's theory of justice does not permit to deal in appropriate way with questions of racial justice (Mills 2017). It is necessary to take in consideration real life facts, like the history of injustice and needs for correction.[6]

What matters, for the present discussion, is not whether Rawls's theory of justice meets satisfactorily questions of racial justice, because I do not discuss Rawls's theory of justice. I am concerned, here, with Rawls's theory of legitimacy of public decisions, concretely, in the actual example, with the question whether claims of racial justice can be properly framed in public reason terms. The Mills vs Shelby debate shows that it can. In fact, both authors use proper public reasons, i.e. the kind or reasons that can be addressed to persons as reasonable, free and equal. These are various concepts and theses that can be coherent with the fundamental idea of society as a stable system of cooperation among free and equals, as well as with some basic ideals like rights, liberties and opportunities, or can even be such ideas and ideals themselves. Such concepts are for example appeals to past injustice and requirements of corrective justice.

7.

There is still the problem that some people may be (and in fact, are) unfairly situated in matching the requirements of public reason. Here some important lessons can be drawn from Fricker's discussion of epistemic virtue and distributive epistemic injustice (Fricker 2013). The requirement of epistemic virtue is that representatives of the mainstream group or community be engaged in giving due respect and attention to the expressive resources of minorities in order to understand the sig-

[5] My claim here is inspired by Quong (2011, 2013).

[6] Thanks to a reviewer for the indication of relevant authors.

nificance of some social phenomena, a social atmosphere, a system of regulation, or a policy for them. As Fricker says: "The form the virtue of hermeneutical justice must take, then, is an alertness or sensitivity to the possibility that the difficulty one's interlocutor is having as she tries to render something communicatively intelligible is due not to its being a nonsense or her being a fool, but rather to some sort of gap in collective hermeneutical resources" (Fricker 2007: 169). Importantly, nothing at all here is said against public reason's requirement of translating claims into the conceptual scheme of public reason. The reaction against the specific burdens of some people in front of the requirements of public reason could be not to give up public reason, but to do the outmost to alleviate such burdens, and prospectively to eliminate them.

Here it is important to remember that some of the critics of public reason say that it is unfair, and certainly not correspondent to a reasonable interpretation of the duty of civility, to put all the burdens of understanding in communication on the minorities that speak in the language of their comprehensive doctrines, typically, religious doctrines (Waldron 2012). One of Fricker's solutions is to attribute the duty of epistemic justice to the advantaged. In the present discussion, this means that citizens familiar with the language and conceptual scheme of public reason have the duty to contribute to the attempts of translation of minority claims in the language of reasonable public values, or to help minorities in this translation. They must participate in explaining why and how these claims are related to the basic organizing idea of society as a fair system of cooperation among free and equals, as well as to basic rights, liberties and opportunities.

Epistemic virtues include also a contribution to the proper recognition of persons and facts. This is because, as Medina indicates, epistemic injustice derives from, among else, wrongful recognition. Such is, for example, interpretation of agents as violent, instead of as being engaged in protests that aim to achieve equality. A similar misrecognition involves their actions (Medina 2018). Epistemic virtue requires that privileged members of society be engaged in the needed public shift of perspective and interpretation. This shift is then a precondition for the proper framing of debates in public reason terms.

However, the primary requirement of distributive epistemic justice is to provide discriminated groups with the capabilities to participate actively in public justification. I relate the requirement to Rawls's idea of fair value of political liberties (Rawls 2005: 5). This idea requires the background of a basic structure of society that ensures resources to the discriminated group in order to help them to develop the ability to articulate their meanings in the language of reasonable public values. Formal equality is not sufficient. Substantial equality is needed, as well, i.e. equality from the standpoint of social and material resources in order not to be hermeneutically marginalized, as well as the possibility to be educated in order to have the possibility to learn the language

of human rights and reasonable public values as a necessary condition to express claims for recognition of rights. Fair access to public media is needed, as well. Although, in the absence of the ability of marginalized groups to express their claims in public reason terms, there is a duty for mainstream groups to make the translation, the most complete accomplishment of epistemic justice is constituted by enabling minorities to express their claims in the public reason conceptual scheme. Despite compatibility with epistemic justice, public reason implies the exclusion of some groups from the process of public justification. Such groups are those that are definitely unable to translate their moral claims in the language of public reason, nor others can do this for them, because of the nature of the relevant experience of these people. Their moral experience is particularized and personalized and they cannot share it with the others. This is the case of Karl Barth's evangelical moral theology, as described by Peñalver (2007).

Their position, although unfortunate, is not unjust however. The reason is the same as the one I have indicated above in reply to the objection that public reason puts additional or specific burdens on some people. Participation in the process of public justification requires some justified preconditions, and one of them is the capacity to offer reasons to others as reasonable, free and equal.

Note that the alleged condition of epistemic injustice of Karl Barth's evangelical moral theology is different from Marge's, in Fricker's example. By assumption, the moral theologist in the example relies only on unshareable, not public and personal insights. Marge, on the other hand, could support her intuition in some way, or offer it only as the motivation to steer research in a specific direction, not as the only or ultimate cognitive resource. Epistemic injustice, in her case, is present because she is simply immediately excluded from cognitive contribution, irrespectively of her merits. If Marge insisted that her intuition is the only, or ultimate, source of justification, her opinion could be legitimately neglected, and it would be irrational to consider such exclusion unjust.

8.

In conclusion, I do not claim that all public communication related to policy making must be always in terms of public reason. Practical needs could require, and frequently do require, strategies of interaction that neglect public reason, for the sake of communication with citizens who obstinately do not endorse its fundamental ideals. For example, some strategies of conflict management could be required (Ceva 2016). This is a valid reaction, sometimes the best available. It is not valid however, when we want to establish what is just, because it endangers the recognition of all citizens as free and equal, as we have seen in the infibulation example. Threatening the values of freedom and equality is not admissible in the justification of a conception of justice.

Finally, we see that Rawlsian public reason does not represent a case of epistemic injustice. On the contrary, it places reasonable constraints on agents to treat each other as free and equal. Further, I have shown reasons in its favour. In this way, I have contributed to its acceptance as the suitable form of public justification and public reason.[7]

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