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CONCEPTUAL EXCLUSION AND PUBLIC REASON[1]

BRANDON MORGAN-OLSEN

ABSTRACT

Deliberative democratic theorists typically use accounts of public reason – i.e., constraints on the types of reasons one can invoke in public, political discourse – as a tool to resist political exclusion; at its most basic level, the aim of a theory of public reason is to prevent situations in which powerful majority groups are able to justify policy choices based on reasons that are not even assessable by minority groups. However, I demonstrate here that a type of exclusion I call 'conceptual exclusion' complicates this picture. I argue that the possibility of conceptual exclusion creates the potential for public reason constraints to further exclude already marginalized groups – contrary to the standard view – and thus that taking conceptual exclusion seriously requires both a revision of traditional accounts of public reason and a re-conceptualization of our civic obligations.

KEYWORDS: *deliberative democracy; public reason; epistemic injustice; political exclusion; John Rawls; Jürgen Habermas; Miranda Fricker*

1 INTRODUCTION

Accounts of deliberative democracy emphasize the fundamental role of public deliberation in legitimating the coerciveness of political structures.[2] But, of course, not just any deliberation will do; the outcomes of a given deliberation can only be legitimately employed for political ends if it is an uncoerced enterprise between free and equal citizens, in which all reasons are given the appropriate consideration and from which no citizen is potentially excluded. Proponents of such accounts thus have to be acutely aware of the fact that these deliberative values can easily be undermined. Deliberative democrats always have to be on the lookout for ways in which deliberative processes might be affected by, for example, economic inequalities, imbalances of power, or the exclusionary effects of structural prejudice, and must build their theories so as to protect the deliberative capabilities of citizens as much as possible.[3]

There are a whole host of methods for excluding people from the political process, most of which are, unfortunately, quite familiar to us. One paradigmatic yet subtle class of political exclusion involves ineffective

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[2] This is true whether these accounts are Rawlsian, Habermasian, or otherwise affiliated.

[3] *Cf.* Bohman (1997), 1484.

inclusion. For example, individuals may be offered a seat at the table, and be allowed to articulate their positions, without their views receiving proper consideration – indeed, without their views being given any justificatory weight at all.[4] Although there has been much done to make visible the possible sources of such "justificatory exclusion," there is still significant work to be done in identifying these sources and bringing them – in all their intricacy – to light.[5] To this end, I want to focus in on a form of exclusion that is seldom addressed in full detail and yet has a significant impact on pluralistic political deliberation on the whole: exclusion that can be traced to issues of difference in conceptual resources.[6]

My analysis of this category of exclusion begins by thinking about the effects of what has been called hermeneutical injustice, a type of epistemic injustice.[7] Specifically, I demonstrate how hermeneutical injustice can work to politically exclude citizens both by inhibiting their ability to express certain political claims and by reducing the likelihood that their political claims will be easily assessable by the public at large. Both of these types of phenomena are constitutive of what I will refer to as 'conceptual exclusion.'

I take the latter type – which I call 'public exclusion' – to be of particular interest, because it has a potentially significant impact on formulations of public reason, i.e., constraints on the sorts of reasons one can invoke in the context of public, political discourse.[8] Deliberative democratic theorists typically use accounts of public reason as a tool to resist political exclusion; at

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[4] Iris Marion Young refers to this phenomenon as "internal" – as opposed to "external" – exclusion (*cf.* Young (2002), chap. 2).

[5] For instance, Young identifies exclusion that can come from privileging certain assumptions about procedures of discourse, styles of expression, or conventions of orderliness, and suggests methods for ameliorating such exclusion (Young (2002), chap. 1-2). While Young's varieties of exclusion clearly share common features both with each other and with the type of exclusion on which I will be focusing here, they are also distinct from one another.

[6] Note that this is a different issue than the issue of the incommensurability of conceptual frameworks as addressed by, for example, Jorge Valadez (*cf.* Valadez (2000), chap. 2).

[7] *Cf.* Fricker (2007). Miranda Fricker describes two particular types of epistemic injustice – testimonial injustice and hermeneutical injustice – that negatively impact one's abilities and activities as a knower. Her analysis of hermeneutical injustice helps to reveal how societal structures can negatively impact one's epistemic capabilities – and is interesting in its own right – but she does not explore how these limitations on one's knowing can affect one's political agency. Accordingly, my emphasis here is on how the structure of a society's conceptual framework can have far-reaching political implications, implications which extend beyond the injustices Fricker identifies.

[8] I acknowledge that – although this is a standard conception of public reason – not all theorists want to conceive of public reason in this fashion. For example, James Bohman thinks it is inappropriate to exclude classes of reasons from deliberation, stating, ". . . it is not necessarily significant, for example, whether the reason is religious or secular . . . such disqualification *of a type of reason* threatens the public character of political communication in which reasons are considered on their own merits" (Bohman (2003), 764, my emphasis).

its most basic level, the aim of a theory of public reason is to prevent situations in which powerful majority groups are able to justify policy choices based on reasons that are not assessable – or perhaps not even considered justificatory in nature – by minority groups. However, given the possibility of conceptual exclusion, the invocation of a public reason constraint has the potential to further exclude already marginalized groups. Thus, I argue that taking conceptual exclusion seriously requires a revision of traditional accounts of public reason, which, in turn, requires a re-conceptualization of our civic obligations.

2 HERMENEUTICAL INJUSTICE

To begin, we need to become familiar with the idea of hermeneutical injustice. Miranda Fricker starts an analysis of hermeneutical injustice by identifying a phenomenon in which a minority group is ill-served by its society's dominant conceptual framework. That is, the conceptual dynamics of the society are such that the set of common concepts from which meaning, explanations, and arguments are drawn is overwhelmingly reflective of the experiences of the majority group. Because of this, members of the minority group are unable to conceptualize and communicate about certain classes of events, including events that might have a significant impact on their everyday lives. So, not only do these individuals generally lack the power to make concepts they construct common currency, but they are also conceptually constrained so that they have a diminished ability to make sense of their own experience and to interact meaningfully with the larger social world.[9] Fricker labels this phenomenon "hermeneutical marginalization," and explains it as follows:

> [l]et us say that when there is an unequal hermeneutical participation with respect to some significant area(s) of social experience, members of the disadvantaged group are *hermeneutically marginalized*. The notion of marginalization is a moral-political one indicating subordination and exclusion from some practice that would have value for the participant. (Fricker 2007, 153, her emphasis)

[9] Although the context is different, Charles Mills describes the problem well in stating that ". . . concepts are crucial to cognition: cognitive scientists point out that they help us to categorize, learn, remember, infer, explain, problem-solve, generalize, analogize. Correspondingly, the *lack* of appropriate concepts can hinder learning, interfere with memory, block inferences, obstruct explanation, and perpetuate problems" (Mills 1999, 7, his emphasis).

She then goes on to define the central case[10] of hermeneutical injustice using this term:

> the injustice of having some significant area of one's social experience obscured from collective understanding owing to persistent and wide-ranging hermeneutical marginalization. (ibid., 154)

The "persistent and wide-ranging" nature of the marginalization is important here, because it emphasizes that the core of the injustice in these cases lies in the fact that certain groups will have their social experiences obscured from understanding in virtue of systematic prejudices built in to the societal structure.[11] Thus, important areas of experience for particular marginalized groups – generally, experiences specific to these groups[12] – will be difficult to conceptualize and process, because such experiences are not recognized in public discourse.

Fricker's most powerful example of hermeneutical injustice is the phenomenon of sexual harassment, which on her analysis was not articulable prior to the consciousness-raising efforts of second wave feminism.[13] Many women experienced intensely difficult and disturbing situations in their daily lives, yet were unable to describe these experiences – to themselves or others – using a coherent conceptual category. The unwanted, aggressive, sexually-charged advances – usually undertaken by men in positions of relative power – certainly could not be categorized as "flirting," nor would they be considered assault or abuse. This conceptual ambiguity meant that victims of sexual harassment suffered all of its psychologically harmful and debilitating effects along with the added cognitive difficulty of being unable to conceive of their causes. The fact that there was a "hermeneutical lacuna"[14] – a missing piece in the society's conceptual framework – where the concept of sexual harassment now sits engendered very real and unevenly distributed difficulties in the lives of many.

Most of Fricker's examples, including the sexual harassment case, describe the value of simply having the hermeneutical resources to make sense of your own experience. Lack of these resources can have an enormous

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[10] This central case, with which both Fricker and I are most interested, involves a persistent, systematic element. Fricker acknowledges the possibility of more ephemeral, localized hermeneutical injustices, which she labels "incidental." I will concern myself no further with these incidental cases.

[11] Fricker alternatively, and precisely, labels this systematic, wide-ranging marginalization as a "structural identity prejudice in the collective hermeneutical resource" (Fricker 2007, 155).

[12] I do not mean to imply here that different societal groups live in entirely different and incommensurable worlds of experience. The point is just that some groups have common experiences that are not generally shared with other groups.

[13] Fricker (2007), 148-152.

[14] Fricker (2007), 168.

impact on, for example, one's identity formation, self-confidence, and general ability to get along in the world. But, I want to focus here on the effects of hermeneutical marginalization on a particular – and particularly interesting – sort of valuable practice: engagement in political discourse and action. Specifically, I want to identify how hermeneutical marginalization can work to exclude individuals from engaging in political discourse by impeding their ability to advance political claims.

3 TWO LEVELS OF CONCEPTUAL EXCLUSION

The exclusionary effects of hermeneutical injustice can manifest themselves at two levels. At the first level, hermeneutical injustice can exclude people from the political process simply because it can make it difficult for an individual to formulate the relevant political claims; the affected individual lacks a foundational concept, and thus cannot make claims that would require this concept. Let us call this first level the *group level* and the related political exclusion *group exclusion*, because at this level individuals' expressive difficulties will impair the transmission of claims even within a group that shares the relevant – difficult to conceptualize – set of experiences.[15] Further discussion of the sexual harassment case will help to show how it can be seen as a clear example of group exclusion. At a second level, hermeneutical injustice can work to exclude by making it difficult for its victims to introduce political claims into the larger political community, because those political claims – once formulated – will be difficult for the public at large to understand. Let us call this second level the *public level*, and the related political exclusion *public exclusion*. Public exclusion is most relevant for the discussion at hand, but I will address each level in turn.

To get clear about group exclusion, let us stay briefly with the sexual harassment case introduced above, and think about what has to happen in order to eliminate the injustices of sexual harassment. It will be helpful to first address the *hermeneutical* injustice of sexual harassment, and then to discuss the associated *political* injustice.

In order for the hermeneutical injustice to be remedied, the victims[16] – both actual and potential – of sexual harassment must be properly armed

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[15] In a sense, group exclusion is pre-political, in that it impedes the formation of concepts needed to even begin the political process. However, since an inability to begin the political process can be clearly and directly linked to exclusion from that process, I consider group exclusion a form of political exclusion. Thanks to Michael Blake for urging this clarification.

[16] As we will see below, the perpetrators of sexual harassment will likely also have to gain the concept in order to put an end to the politically unjust phenomenon of sexual harassment. But, strictly speaking, the hermeneutical injustice could be addressed without taking this further step.

with the appropriate conceptual framework to understand their experiences of harassment in ways that allow for a connection to be made between those experiences and their psychological trauma, sense of self, etc. The ideal fulfillment of this goal involves a large scale change in society's hermeneutical resources. However, such a large scale change is not necessary[17], or, at least, there is substantial progress that can be made short of reaching this ideal. Specifically, the hermeneutical injustice can be mitigated by the creation of a small but significant "hermeneutical micro-climate"[18] – a localized social network that can support the creation of new conceptual frameworks from which the appropriate parties can draw the meaning they need.[19]

It should be clear that addressing a hermeneutical injustice is a crucial step towards addressing a related political injustice; group exclusion must be dealt with before political activism can begin. The concept of sexual harassment must exist before society can act to address it as a political injustice, and this concept must be grounded in the experiences of the victims of sexual harassment. Eliminating the hermeneutical injustice at the group level is, of course, only the beginning of the political fight; the creation of the relevant concept does not in itself eliminate the political harm.[20] The phenomenon of group exclusion that I have identified deals only with issues of conceptualization, and occurs prior to more familiar types of activism. What Fricker's work helps us to see, even though she does not address it explicitly, is that issues of conceptualization can play an important and often overlooked role in political activism. The consequence is that ignoring issues

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[17] Note that even if large scale societal change is unnecessary, logically speaking, it may very well be the case that such change is obligatory, ethically speaking.

[18] *Cf.* Fricker (2007), 174-175.

[19] This is an identifiable pattern in cases of political activism. The beginnings of political movements frequently involve groups of people coming to realize that they have experiences of mistreatment in common, and then collectively conceptualizing those experiences in a way that was difficult to accomplish as individuals. We can clearly locate the site of group exclusion at the early stages of such processes of group conceptualization; these groups come together in reaction to – and to work to overcome – the group exclusion of hermeneutical injustice. Such overcoming is still a challenge, but it is a more manageable challenge once an effective social group is formed.

[20] This is true even if there has been conceptual change at the societal level, outside of a hermeneutical micro-climate. Adjudicating such a case requires much more than overcoming conceptual exclusion; what is required is a hard-fought campaign of political activism of the sort with which we are all familiar. The current debate about gay marriage is an example of a political case where conceptualization plays a clear role even though, arguably, hermeneutical injustice is no longer operative. A substantial element of this debate concerns which concept of marriage should be enforced by government. The very fact that there are a number of contested concepts under consideration indicates that conceptual exclusion has been largely overcome.

of hermeneutical injustice leaves us with an impoverished account of political exclusion.

Indeed, one can see that there will often be a natural link between hermeneutical marginalization and political marginalization. If the powerful are in control of the hermeneutical resources, the structures that keep them in power – and keep other groups relatively powerless – are unlikely to be changed. When hermeneutical and political injustices collude, the powerless have an additional conceptual barrier to overcome at the group level, in addition to any other sort of disadvantage – material, socio-cultural, or otherwise – affecting their ability to pursue political aims.[21]

However, as I mentioned above, group exclusion is not the only manifestation of conceptual exclusion. From our discussion of the group level, one might conclude that once group exclusion is overcome the only barriers to political activism that remain are the familiar, non-conceptual barriers. This is not the case. We still need to investigate the impact of conceptual exclusion at the public level – once a group has formulated the relevant political claims, and has developed the requisite conceptual resources, but has not yet made them part of the wider public discourse.[22]

The key here is to recognize that, even if the affected group is able to conceptualize and name its felt injustice, this does not mean that the rest of society will be initially able to understand the group's view. Indeed, there is good reason to believe that they will not be able to do so because, by hypothesis, some part of the group's political claim will involve new – and, to the majority, strange – concepts. Since hermeneutical injustice inhibited the formulation of the appropriate concepts in the first instance, the implication is that society-at-large does not operate using these concepts. Therefore, groups that have been able to make sense of experienced structural injustices will be doing so with reference to a new, localized set of concepts.

This is not to say that the group will be presenting an entirely new type of claim, created from whole cloth, and thus wholly unintelligible to outsiders. If that were the case, the enterprise might be hopeless, because there would be no common ground from which to build the common understanding necessary for the transmission of the claim. Rather, such an

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[21] To be clear, it might not be the case that hermeneutical and political injustices always come together. Or, at least, we may be able to find examples of hermeneutical injustice that do not have any *significant* connection to political ends. But, regardless, I want to hone in on the vast majority of instances where there *is* a connection between hermeneutical injustice and political claims.

[22] The importance of this process should be clear. The most common avenue for claims of political redress to reach public discourse, especially those that stem from instances of hermeneutical injustice, is to begin from a hermeneutical micro-climate and then expand outward into the larger community.

expression will involve an ensemble of quite familiar concepts, attached to some altogether new ones[23] and/or involving a re-conceptualization of old concepts.

Take, again, the case of sexual harassment. Those initially attempting to describe their victimization to the rest of society would report experiences of painful social interactions, and unwanted, unwelcome sexual advances, in terms clearly intelligible to all. However, these things alone do not exhaust the content of the concept of sexual harassment. To accurately understand sexual harassment, these experiences need to be linked to experiences of a hostile environment, which in turn is linked to a systemic, complex, and illegitimate inequality of power involving both gender roles and professional hierarchy. Some of these conceptual elements are exactly the sorts of things that are easily understood by all, but some are come to from very particular experiences, meaning that they will not be easily transmitted.[24] And, further, the packaging of all of these elements together in what is necessarily a novel fashion will make the whole claim hard to take in for those outside of the micro-climate in which the relevant experiences and conceptualization took place. So, we have here an illustration of group exclusion being overcome only to subsequently run up against problems of public exclusion; once the appropriate community has formed the concept, there is still a significant lack of understanding that must be overcome in order to introduce this concept into the larger public.

Another, perhaps less complicated example of public exclusion – one that is not contingent on prior group exclusion – involves the concept of pregnancy. In 1974, the Supreme Court's decision in *Geduldig v. Aiello*[25] spurred controversy by declaring that insurance policies which disadvantaged pregnant employees could not be considered discriminatory.[26] The logic of the majority was that such policies divided employees into two categories: pregnant women and non-pregnant persons. Since women are represented in both categories, the decision was that the categorization could not be traced to gender discrimination, and so the class of 'pregnant women' should not be

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[23] I do not mean to be taking a position on the atomism of concepts. It might be that the new, created elements of the claim are not new whole concepts, but rather new constituent parts of concepts. The point is the same either way.

[24] Iris Marion Young traces such particular experiences to differences in "social perspective," and relates social perspectives to Donna Haraway's notion of "situated knowledge" (*cf.* Young (1997)). Note that Young herself brings up the case of sexual harassment, identifying it as an example of Lyotard's "problem of the differend" (Young (2002), 72-73). However, she seems to identify it as only a linguistic problem – which I see as an incomplete diagnosis – and also does not acknowledge the significant barriers of public exclusion at play in the case.

[25] *Geduldig v. Aiello*, 417 U.S. 484 (1974).

[26] Thanks to Michael Blake for pointing me towards this example.

viewed as a protected class.[27] Two years later, this logic was extended to apply to cases of employers' disability packages in *General Electric Co. v. Gilbert*[28].

The partly conceptual nature of this political problem is evidenced by the public reaction to these Supreme Court rulings. In response to the *Gilbert* case, more than three hundred groups – primarily women's activist groups – came together to protest the decision. This movement was substantially founded on grounds that the decision involved a misunderstanding of pregnancy and motherhood.[29] The protesters, who had access to the appropriate experiences with which to ground a more accurate conception of pregnancy, needed to introduce a new concept of pregnancy into the dominant, patriarchal hermeneutical structure. Pregnancy – the claim would read – does not fit comfortably into the existing voluntary condition/involuntary disability binary. Pregnant women deserve specific treatment in virtue of pregnancy's unique existential status, and equal treatment policies need to be rethought accordingly, on pain of injustice.[30]

So, although there were a lot of issues at play in the debate over pregnancy – including multiple non-conceptual contestations about discrimination, equal treatment, and gender justice – a key element of the struggle was the fact that the relevant, dominant public was operating with a concept of pregnancy that was not reflective of the experiences of those who had actually been pregnant, or at least those for whom pregnancy was an existentially relevant possibility. In other words, the discussion was taking place using concepts uninformed by those who were the (seemingly obvious) conceptual authorities. What is of primary importance, though, is simply that the activists' campaign for legal change required a push for conceptual change before their arguments could be given the appropriate weight. Furthermore, such conceptual change was not straightforward, but required

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[27] The discussion in these cases was explicitly centered on the creation of legal distinctions, but establishing these distinctions required the invocation of a particular concept of pregnancy; the underlying conceptualization in these decisions essentially involved treating pregnancy as a voluntary condition, as opposed to an illness or disability, which meant that it did not deserve insurance coverage or disability support from employers. Thus, while this debate is somewhat technical in nature, it is interestingly reflective of conceptual trends extant in the public at large. And, arguably, the concept ultimately made use of by the Supreme Court was representative of the dominant public conception of pregnancy at the time, or at least of a significantly influential public concept.

[28] *General Electric Co. V. Gilbert*, 429 U.S. 125 (1976). In 1978, Congress passed the Pregnancy Discrimination Act, which overturned Gilbert.

[29] *Cf.* Gelb and Palley (1982), 167-170.

[30] *Cf.* Kay (1985) for an argument in support of one such rethinking.

an attempt to introduce a new concept – one that existed within a micro-climate of women's experience – into public discussion.[31]

To recap, *group* exclusion involves a group's inability to conceptualize political claims, whereas *public* exclusion involves a barrier to the transmission of such claims into public discussion – where the barrier is created by the non-existence (or insufficient recognition) of a relevant concept in public, political culture. The sexual harassment case demonstrated both group exclusion and public exclusion – once the group exclusion was overcome. In contrast, the pregnancy case demonstrated public exclusion independent of group exclusion. This shows that even if a group in a given hermeneutical micro-climate has a strong foundation of "collective self-understanding," and thus can readily make sense of newly experienced injustices, the barriers to expression of correlate political claims can still exist.[32] The difficulty in transmitting a "new" concept of pregnancy existed even though pregnant women, for example, themselves might have had no problem conceptualizing pregnancy.[33] In what remains, I want to focus explicitly on public exclusion, beginning with a discussion of possible political solutions to public exclusion.

The introduction of another example will be helpful in grounding this discussion. The examples of conceptual exclusion that we have discussed so

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[31] What is crucial is that this concept, whatever its explicit content, brought the speciousness of the distinctions suggested by the Supreme Court to light. This last point – at the very least – had to be brought home to a dominant group who in general both conceived of pregnancy differently and did not have the appropriate experiential ground upon which to base such a concept. That activist groups were able to overcome the barrier of public exclusion rather effectively in this case is indicative of the advances in awareness of women's issues that had taken place prior to this period of history, and also arguably indicative of the woefully inadequate public concept reflected in the Supreme Court's deliberations.

[32] The independence of public exclusion and group exclusion is worth emphasizing. At the group level – the level at which Fricker focuses her analysis – we are to view relatively powerless groups as being constrained in their conceptual capabilities by hermeneutical injustice. One might worry that this analysis is, at best, untrue in many relevant circumstances, and, at worst, nothing more than patronization. There is a need for wariness here, especially given that we often consider hermeneutic micro-climates – whether they be in the form of ethnic groups, cultural worldviews, or otherwise – to be vibrant and useful conceptual resources that are somewhat independent of the larger society's conceptual framework. Indeed, there are those who argue that such marginalized perspectives may provide epistemic *advantage* rather than detriment (*Cf., e.g.* Narayan (1988), Collins (1986), and Wylie (2003).

[33] One might wonder if this obstruction – at the public level but not at the group level – no longer counts as hermeneutical injustice as defined by Fricker. However, the fact that the structure of the society's conceptual framework is causing the problem should lead us to at least identify the injustice in these purely public level cases as having a familial relation to hermeneutical injustice. And, clearly, both group and public phenomena fall within the category of conceptual exclusion.

far are significant because they illustrate the very real possibility of conceptual barriers to political discourse existing *within* a particular culture. This should give pause to those inclined to think that salient conceptual difficulties will only arise in deliberations across vast cultural or ideological differences. Nevertheless, the most striking examples of public exclusion are likely to be those that result from what one might identify as cross-cultural communication. Thus, for purposes of drawing further conclusions about the ramifications of public exclusion, a clear cross-cultural case will be most useful.

An intriguing such case is highlighted by Elizabeth Povinelli's analysis of land claim disputes between Belyuen Aborigines and the Northern Territory government in Australia.[34] As Povinelli frames the scenario:

> Aborigines and non-Aboriginal developers, both government and private, represent the meanings of space differently . . . Whereas Belyuen Aborigines describe open country as productive country, the Northern Territory government describes open country as that which is unused, wild, and therefore potentially available for development. By claiming that large portions of the Cox Peninsula are unoccupied and un- or underdeveloped, Northern Territory administrators avoid engaging in a debate about what kind of development is best for the Cox Peninsula region: there is no other use plan than their own. They portray Aboriginal use of the Cox Peninsula as unplanned and haphazard and their own use and schemes as rational, future oriented, and productive. (Povinelli 1994, 203)

Leaving aside issues of exactly how we should characterize the public in this case, relevant issues should be immediately apparent. The Australian government operates in terms of dominant concepts of productivity and legitimate ownership of the land that are agrarian and/or industrial in origin. Attempts by the Belyuen Aborigines to lay public claim to land based on concepts of productivity or social significance grounded in hunting and foraging traditions are bound to run up against public exclusion.

This quick description of the immediately apparent conceptual discrepancies, however, severely under-describes the barriers facing the Belyuen Aborigines. This is because their concept of appropriate connection to the land is tied deeply to a complex set of concepts known as "the Dreaming," which intermingles economic, social, metaphysical, philosophical, and spiritual concerns and which, in part, attributes sentience

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[34] Povinelli (1994). Although Povinelli's analysis is over fifteen years old, and progress has been made, this debate is still ongoing. (Thanks to Kavita Philip for pointing me towards this source.)

to aspects of the land.[35] It is hard to overstate the difficulty involved in attempting to transmit political claims grounded in such concepts into a public whose conceptual framework lacks them entirely.

Just as in the pregnancy example, there are a lot of complicated non-conceptual political issues at hand in this case. Historically, the Belyuen Aborigines have faced much unjust treatment of a sort that is clearly publicly and cross-culturally identifiable, and thus they have many political claims that do not face public exclusion. However, the effects of a foundational conceptual disconnect are prominent in the political deliberation over land claims. Further, in contrast to the case of conceptualizing pregnancy, the conceptual issues at play here are in principle much less easy to resolve. The relevant concepts of land use are grounded not only in differing experiential bases, but in well-established cultural practices that operate using quite disparate evaluative frameworks. It is difficult to see how to create a transparently fair process for dealing with the competing claims of deliberators with such wildly different fundamental assumptions. Yet, there are some possibilities for overcoming the stark issues of public exclusion that the Aboriginal groups face,[36] which is one reason why this case is particularly fruitful for analysis.

How might one seek to bridge this conceptual gap in political discourse? The attractive route of identifying the appropriate conceptual authorities – which was part of the process of overcoming public exclusion in the pregnancy case – is here far from straightforward; it is much less controversial to claim that the public should defer to women's conception of pregnancy, even if many do not fully understand the concept invoked, than it is to say the public should defer to Aboriginal conceptions of land use and productivity.[37] It seems, then, that transmission of Aboriginal claims about land use from their source into public discourse would ideally require either a

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[35] For a more in-depth discussion of the Dreaming, *cf.* Povinelli (1994), chap. 3. For sustained argument as to why it is a mistake to analyze Belyuen Aboriginal economic practices separately from their socio-cultural practices and beliefs, *cf.* Povinelli (1994), chap. 1, 4, and 5.

[36] Indeed, as we will discuss below, the improvements in the state of land claim deliberation in Australia in the last two decades – especially following the 1992 *Mabo* judgment (*Mabo v. Queensland (No. 2)*) – provide evidence of the fact that public exclusion has been at least partially addressed.

[37] There is a sense, though, in which something like this is going on in the Australian government's official policies about native title. The High Court grants native title in part with reference to Aboriginal traditions and cultural practices, without claiming to understand those practices. So, there is some conceptual authority granted, even if it is insufficient for the purposes of significantly overcoming public exclusion. *Cf.* Levy (1994) for a description of the High Court's justifications in this matter (as well as an argument as to how they are sometimes misleading).

teaching of new concepts to the public, or something of a translation of Aboriginal concepts into some publicly intelligible form.

The first option – the teaching of new concepts – is rather daunting, exactly because the concepts that matter are interwoven so thoroughly into a cultural context. There is a very real question about how well one can understand Belyuen Aboriginal concepts of land use independently of understanding the larger cultural worldview within which they reside.[38] Further, although bicultural competency will most definitely be helpful to the process of overcoming public exclusion, it is unreasonable to think that the aim of the political endeavor should be complete cross-cultural understanding. In short, a reformation of the public conceptual framework so that it incorporates elements of the Aboriginal worldview might be a laudable ideal for the long-term development of Australian culture, but it is probably overly optimistic as a more immediate political remedy to public exclusion.

The prospect of "translating" the relevant concepts will share some of these difficulties, but it is arguably less problematic than teaching new concepts entirely. One must keep in mind the political role such concepts need to serve. In the Belyuen case, what is at issue is the use, development of, and title to stretches of land. So, the Aboriginal concepts only need to be invoked insofar as they function to resist non-Aboriginal characterizations of appropriate development and title-holdings. These ends, although fraught with political strife, are often ultimately rather modest; significant advances were made, for example, when the Australian government officially acknowledged the seemingly obvious fact that traditional Aboriginal lands were not *terra nullius*, but were rather occupied territories over which Aborigines ought to have some control.[39]

This is not to say we should be satisfied with such simple, insufficient responses to acts of gross injustice, but we can realize that gains can be made without a demand for full-blooded public understanding of Aboriginal concepts. There is sometimes hope of finding mutually acceptable and intelligible equivalents of Aboriginal concepts that can have an impact for achieving the relevant political ends. Such a process requires Aboriginal and non-Aboriginal groups to come together to discuss the contested concepts of land use, but the result need not be full conceptual transmission in order for public exclusion to be overcome. It is sufficient if such deliberation gives rise to concepts that can support the Belyuen Aborigines' political claims – perhaps concepts associated with non-Aboriginal conceptions of the importance of religious or spiritual practices.

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[38] Thanks to James Bohman for stressing this point.

[39] This is this primary effective result of the *Mabo* ruling.

We will revisit both the Belyuen case and possibilities of conceptual "translation" below. Suffice it to say, though, that this example shows public exclusion to be a robust political problem even when viewed in isolation. Let us now extend the analysis to think about further political consequences of public exclusion.

4 ASSESSABILITY, ACCESSIBILITY, AND PUBLIC REASON

I want to suggest that recognizing the possibility of public exclusion obliges a careful scrutiny of accounts of public reason, though I recognize that it might not be immediately obvious why this is so. At the least, it should be clear that accounts of deliberative democracy – in which public reason standards are most at home – are going to care deeply about the type of political exclusion addressed in the last section. This is particularly the case because of the tight connection these theories draw between public deliberation and political legitimacy. Deliberative democratic theories are committed to maintaining a culture that allows for the free flow of political claims *via* avenues of public discussion. This is not to say that non-deliberative accounts will be insensitive to the burdens placed on victims of conceptual exclusion, but rather that they might be able to emphasize other sorts of avenues for such claim-making, perhaps voting and elected representation, in order to facilitate inclusion.[40]

My worry, specifically, is that the incorporation of a public reason standard in deliberative theories – depending on how the standard is spelled out – has the potential to disallow the introduction of the types of reasons forwarded in cases of conceptual exclusion, and thus to encourage the very exclusion such theories are pledged to prevent. Or, at least, I am worried that a public reason standard will not be able to allow these reasons into discussion without also including the sorts of reasons against which these theories are designed to protect. This worry is grounded in the fact that a public reason criterion is designed to exclude those reasons that are not in principle assessable by all participants in political deliberation. The reasons underlying the types of political claims addressed in the last section seem to fit this criterion – at least upon first treatment – as we will discuss below.

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[40] Let us also be clear about one way that we should *not* be concerned about the use of a public reason standard in these contexts. One might worry that a public reason constraint could be misused by those in power to further exclude groups from political discussion, by illegitimately setting the bar to entry in their own favor. We can certainly acknowledge the possibility, and, indeed, this possibility might provide us with a reason to be careful about how we instantiate a public reason standard in a given political culture. However, the possibility of misapplication does not impugn a principle. If we are to find a substantive complaint against a principle of public reason, it is going to have to be of some other sort.

Another way to characterize this concern is to realize that so far we have been addressing practical – or descriptive – barriers to political expression, rather than normative barriers. That is, given the phenomenon of hermeneutical marginalization, affected parties are constrained purely with respect to what they are able to do; conceptual exclusion either affects one's conceptual and expressive *capabilities* or makes transmission of certain claims *difficult*. The invocation of a public reason standard would, in contrast, create an additional normative barrier; one's expression of political claims would be constrained in virtue of whether or not that individual *ought* to forward particular reasons. The question, then, is whether this normative constraint – designed to assuage political exclusion – will help or hinder those confronting conceptual exclusion at the public level discussed above. It will be problematic if public reason constraints further disadvantage those with diminished deliberative capabilities. In short, I want to use the account of conceptual exclusion developed above to raise a challenge to standard accounts of public reason, arguing that a complete account of public reason must be able to deal with such cases correctly. Insofar as they cannot do so, we ought to consider such accounts incomplete or in need of revision.

Let us think about this challenge from the point of view of an individual who has come to make sense of an injustice within a hermeneutical micro-climate, and who wants to introduce a political claim for recognition and redress into public discourse. Assume that she is aware of the difficulties associated with forwarding such a claim, recognizing that the process will involve the introduction of new, unfamiliar concepts that stem from likely unshared experiences. Assume, furthermore, that she recognizes the legitimacy of a publicity constraint, and wants to make sure that she is not violating this constraint in her political expressions. Given this situation, should she forward her political claim? In other words, does she have reason to think that the sorts of reasons used to support her political claim will be non*public* reasons?

It is likely that her claim will be a novel contribution to public deliberation, but the very fact of novelty does not indicate that it is nonpublic; even a traditional public reason constraint is clearly able to accommodate new *reasons* into political discourse. Lawrence Solum puts the point nicely in his analysis of Rawls' inclusive view of public reason, arguing that Rawls' standard allows for novel reasons as long as they are ". . . widely available – that is, they would not be rejected as unreasonable by a substantial number of reasonable citizens. Because wide availability is the criterion for public reason, only novel premises that are unavailable count as nonpublic

reasons" (Solum 1996, 1484).[41] For Rawls, it is not the novelty of a reason which speaks to whether or not it is nonpublic, but rather its "availability," i.e., whether or not it is assessable as a reason by the public at large.

Here, then, is the worry about the type of claim at hand: that it will be unavailable, to varying extents, because it contains content that the public cannot assess. Forwarding such a claim will involve the production and transmission of new concepts that do not exist within the public's conceptual lattice.[42] Indeed, Solum identifies a class of reasons apparently in line with our discussion so far – "nonpublic novel premises" – that he argues *would* be barred from public discourse by the version of Rawls' public reason standard under consideration. Solum considers these cases to be unproblematic, because "[n]onpublic novel premises may be introduced in the background culture, and if such premises gain acceptance there, they may then be introduced into public political debate" (Solum 1996, 1484). The suggestion, then, is that political claims can be fostered in a forum unconstrained by a theory of public reason, and in the process gain the support needed to make their way into more formal deliberative contexts. As demonstrated above, this suggestion is not as straightforward as Solum makes it out to be. At some point, even if a claim gains widespread acceptance in a hermeneutical micro-climate that is part of the background culture, there needs to be something of a translation of the claim into public reasons for it to be able to become part of public, political discussion. In the cases under discussion, there are barriers to the sort of introduction proposed by Solum – the barriers of public exclusion. There is a significant issue, then, about whether or not a public reason standard is sufficiently sensitive to the potential for conceptual exclusion, and thus sufficiently inclusive of related political claims that are grounded in novel and unfamiliar *concepts*.

To keep in mind why this might be the case, let us think broadly about the accessibility of concepts. New concepts regularly make their way into public understanding, and some of these are widely accessible, which for present purposes we can take to mean simply that they enter into public understanding quite easily. Take, for example, the concept of an automobile. At some point after its invention, the world had to learn what an automobile was. This, I presume, was a rather straightforward process involving descriptions and pictures of automobiles, comparison of the automobile to

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[41] Solum is replying to Jeremy Waldron's criticism of Rawls in Waldron (1993). The fact that this discussion took place before the change of Rawls' position in Rawls (1997) – which we will discuss below – does not significantly affect the point. Although Rawls' view does become more inclusive of nonpublic reasons, in a sense, his characterization of what makes a reason nonpublic does not change.

[42] To be clear, it is important not to confuse new *concepts* with new *terms*. The latter are entirely unproblematic in this context.

previous forms of transportation, and – for the lucky ones – rides in actual automobiles. Even though the process of public conceptualization took place over an extended amount of time, and evolved as the invention itself changed, we can still recognize the accessibility of the concept – accessibility that can be traced to the myriad possible experiential bases that exist for the concept's formation. Compare the automobile to a concept on the other end of the spectrum of accessibility: the salvational potential of belief in the divine nature of Jesus Christ. The best we can do to identify a clear experiential basis for such soteriological concepts would be to appeal to revelatory experience, which – however it is characterized – we can all agree is substantially less accessible than a ride in an automobile.

Of course, there are a lot of concepts that lie in between automobiles and Christian salvation on the spectrum of accessibility. Electrons are harder to form concepts of than automobiles, but we could at least in practice show electron trails in a bubble chamber to anyone who cared. Concepts that face public exclusion are hard to place on this spectrum, but we can say at least that their experiential bases will tend to be limited, since it is the very fact of minority experience that characterizes paradigmatic cases of conceptual exclusion. This limited accessibility, then, is what begins to ground a concern about the application of a public reason standard.

We should be careful, though, to distinguish between *accessibility* and *assessability*, since we have been discussing concepts in terms of the former but talking about reasons – when describing a public reason standard – in terms of the latter.[43] Clearly, these terms have different meanings, the most relevant difference being that whether or not something is assessable is a question about its evaluation; a reason is assessable if one can evaluate its justificatory weight. It would be a mistake, then, to label a concept as either assessable or unassessable, since concepts are not the sort of thing that are justificatory entirely on their own. It is only once concepts are placed within a claim that they play a part in a justificatory whole. So, one cannot jump immediately from judgments about the accessibility of concepts to judgments about the assessability of reasons.

Now, it is fair to conclude that, if reasons contain concepts that are inaccessible to the general public, they will not be immediately assessable as reasons. This is due to the simple fact that one must fully understand a

[43] Thanks to William Rehg – in his comments on a presentation of this paper – for urging me to be more clear about this distinction.

reason in order to be able to evaluate it completely.[44] However, this general, superficial lack of assessability will not on its own be strong enough to make a reason nonpublic. After all, one might not know what an automobile is, and thus might not be able to immediately assess a claim about automobiles, but it would be unreasonable to therefore identify this claim as deeply unassessable and thus not widely available in Rawls' terms.

One might take this line of thought a bit further, and think that all cases of conceptual exclusion can be accommodated within the purview of Rawls' account of public reason. One might argue for such a position on the grounds that Rawls' mature view allows nonpublic reasons into public, political discourse provided that they are accompanied by public reasons.[45] There is a caveat to this condition: that such nonpublic reasons will not be treated as justificatory, although they might play other valuable roles in the discussion.[46] However, given this model, if the issue at hand is just the need to transmit concepts that are generally used in nonpublic reasons into public discourse, it would seem that there is an avenue available for doing so. Even if a group – for whatever reason – could only express the necessary concepts using nonpublic reasons, one could argue they could still be justified, on Rawls' view, in doing so *for the purpose* of exposing the public to the relevant concepts. In other words, the suggestion is that since the transmission of the important concepts would not be dependent on the assessment of the accompanying reasons, Rawlsian public reason criteria would not inhibit their presentation into the public sphere.[47]

However, this further line of thought – which would stand as an objection to the argument at hand – is misguided. The alleged objection is

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[44] Understanding is clearly relevant, as a necessary but not sufficient condition for publicity. *Cf.*, e.g., (Rawls 1995), li: ". . . if we argue that the religious liberty of some citizens is to be denied, we must give them reasons they can not only understand – as Servetus could understand why Calvin wanted to burn him at the stake – but reasons we might reasonably expect that they as free and equal might reasonably also accept."

[45] This is the proviso added in Rawls (1997). In his final word on the subject, Rawls allows nonpublic reasons in "provided that in due course public reasons, given by a reasonable political conception, are presented sufficient to support whatever the comprehensive doctrines are introduced to support" (Rawls 1995, liii-liv), which implies that an accompanying public reason need not be introduced along with – that is, at the same time as – a nonpublic reason.

[46] This caveat is why I consider Rawls' mature view to be more inclusive of public reason, *in a sense* (see. n. 41 above). Even when nonpublic reasons are allowed into discussion in this view, they still face justificatory exclusion.

[47] Even if this were so, there is still a further question about whether simply *allowing* these attempts to transmit new concepts sufficiently mitigates conceptual exclusion. Depending on their accessibility, these concepts might have a very difficult time making their way into public deliberation, even among primarily reasonable citizens. It is thus worth questioning whether additional norms are needed to govern public political discussions in civil society.

mistaken, because for the relevant set of concepts the connection between their accessibility and the assessability of claims that contain them will generally be tighter than the objection acknowledges. These are concepts that carry with them an evaluative valence – concepts often labeled as "thick" concepts. Such concepts will play a substantial justificatory role in any claim they inhabit, and so will be more centrally relevant to a claim's availability. The concepts discussed above – sexual harassment, pregnancy, the Dreaming – can all be seen to have this "thick" quality, and this stands to reason. First of all, the types of concepts that will be operative in political claims subject to conceptual exclusion are often those grounded in experiences of mistreatment, unfairness, or injustice. And, more to the point, concepts that play a central role in political disagreements *in general* will tend to have substantial evaluative and culturally specific elements, meaning that political deliberation is bound to be replete with thick concepts.[48] Furthermore, the thick concepts in cases of conceptual exclusion are not present in public culture, which means that there is no guarantee they will reference existing shared public values. Acknowledgement of this fact leads one to conclude that the sorts of political claims that we have been discussing would be considered to be nonpublic based on Rawlsian criteria.

It should be clear, then, that any reasonable account of public reason – Rawls' account included – will not disallow the introduction of new concepts into public discussion, *per se*. There must be the possibility for changes in the content of public reason.[49] What accounts of public reason are designed to do is to disallow the introduction of a *certain* type of concepts – concepts that are so embedded within a particular, parochial conceptual framework that their evaluative force cannot be appraised outside of that framework;[50] a core concern of a public reason criterion is to ensure that concepts which cannot get evaluative traction outside of a particular religious worldview, for example, are not used in justifications of positions to those who do not share that worldview. Allowing such concepts into deliberation is one way of ensuring that the related reasons will not be publicly assessable.

So, we find ourselves at an interesting impasse with respect to the thick concepts operative in cases of conceptual exclusion. Recognizing that the content of the concepts themselves is partly evaluative means that the assessability of the political claims at hand is importantly tied to the

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[48] Thanks to James Bohman for urging me to make this point more explicit.

[49] *Cf.* Rawls (1995), liii): "[t]he content of public reason is not fixed, any more than it is defined by any one reasonable political conception."

[50] Thanks to William Talbott for this way of framing the issue.

accessibility of the concepts,[51] and thus that the difficulty of the transmission of the concepts from micro-climate to public is relevant to Rawlsian public reason criteria. In other words, the local, situated nature of the concepts, which inhibits the wide availability of reasons that contain them, is exactly the sort of thing which ought to lead an individual facing conceptual exclusion to conclude that her reasons are nonpublic in nature.

However, we have been assuming that the claims of, for example, victims of sexual harassment are ones that deserve consideration in public deliberation. This assumption is grounded, I suggest, in the fact that the concept of sexual harassment seems to be a very good example of a concept that *can* and should make its way – with its evaluative force at least mostly intact[52] – into the public at large. Furthermore, implicit in our discussion of the Belyuen case was the fact that it would be a mistake to exclude Aboriginal land claims from political deliberation, even though it seems like many of the concepts that make up of the Dreaming may very well be intractably embedded in a culturally and religiously specific conceptual framework. This is because a culturally robust, politically effective, and social-practice focused "alternative" evaluative concept of land use and development can likely be garnered from the Aborigines even without the entirety of its original conceptual scaffolding. We are thus faced with an issue of distinction. How does a victim of sexual harassment, or a member of the Belyuen community, know whether or not her claim is able to be removed from her own conceptual framework, especially given the fact that she knows it is formulated using concepts grounded in some very particular experiences and/or cultural practices? More importantly, even if she does not know, is there some way that the issue could be adjudicated in principle?

The relevant question at hand, then, is what theoretical mechanism is in place to distinguish between new concepts that are intractably embedded – and thus are thoroughly nonpublic and ought not to be considered justificatory – and new concepts that are able to be unembedded and ought to be included as justifications in public contexts. The cases that we have discussed under the label of conceptual exclusion suggest that there are going to be circumstances in which it might be difficult to distinguish concepts that

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[51] One might be able to characterize the issue here in terms of the functional role of the concepts. In other words, for these thick concepts we could say that one does not fully understand the concept unless one can use it appropriately in a justification. In this way, we can account for cases where we have a "sense" of a concept, but not the full concept. For example, I might have an idea of what it means to be saved by religious belief, but the fact that this concept can play no role for me in a justification means I am not operating with the concept of salvation as used by a given religious group.

[52] Some might say that conceptualizing it as a form of 'harassment' fails to correctly identify the gravity of the phenomenon. Thanks to Alison Wylie for this suggestion.

fall into the latter category from those that fall into the former. In other words, I am in support of the claim that truly intractably embedded concepts should not be allowed to do justificatory work in public, political discourse, but worry about how to make the designation of intractability – both in principle and in practice. As mentioned above, any reasonable account of public reason will have to sort these different categories of concepts correctly, or risk excluding individuals from political deliberation who ought to be included.

I do not know of any proponent of a public reason standard who offers a clear candidate for a mechanism able to accomplish this necessary filtering of concepts. I have argued that Rawls' criterion of availability is an example of one that is – as it stands – unable to do so appropriately. Habermas' account is importantly different from Rawls', and in part because of this difference it offers a more useful line of response to the problem at hand. However, ultimately Habermas' view also stops short of providing a sufficiently compelling solution.

Habermas offers an account of political, public deliberation that is more open than Rawls'; Habermas allows, for example, religious reasons into informal political discourse at any time, without a suggestion that religious citizens must concern themselves with finding public equivalents of their nonpublic reasons.[53] However, Habermas does suggest a proviso to govern the use of nonpublic reasons in formal political contexts. This "institutional translation proviso"[54] asks citizens to accept that institutional justifications have to be in public terms, and thus that any nonpublic reasons put forward will not have justificatory weight in shaping policy decisions. So, Habermas' view turns out to be substantially similar to Rawls' in that nonpublic reasons will not be allowed justificatory weight unless they are "translatable."

Habermas, though, goes further than Rawls in suggesting that the responsibility for translating does not fall only on the individual forwarding a given argument. He offers a picture of a society where the burden of translating nonpublic reasons into public reasons is shared by all members of society – regardless of their worldview – a society where:

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[53] Habermas' recent work – to which I appeal here – engages in this discussion explicitly in terms of secular and religious reasons rather than in terms of public and nonpublic reasons. While it is certainly a mistake to identify 'public' with 'secular' on Rawls' view, I see no reason why we cannot apply Habermas' position vis-à-vis religious reasons to the more broad issue of public reason, and I will do so in what follows. I take this extension to be unproblematic because Habermas' justification for limiting religious reasoning in formal contexts is based on the familiar grounds of ensuring state neutrality "toward competing worldviews" and a concern for restricting state's justifications to those stemming from "generally accessible arguments" (*cf.* (Habermas 2008)).

[54] (Habermas 2008, 130-131).

> . . . this requirement of translation must be conceived as a cooperative task in which the nonreligious citizens must likewise participate . . . Whereas citizens of faith may make public contributions in their own religious language only subject to the translation proviso, by way of compensation secular citizens must open their minds to the possible truth content of those presentations and enter into dialogues from which religious reasons might well emerge in the transformed guise of generally accessible arguments (Habermas 2008, 132).[55]

Habermas is here understandably focused on distributing the burden of translation among religious and non-religious citizens, but it should be clear that the cooperative nature of the proposed translation process suggests something of a mechanism for the transmission of *prima facie* inaccessible concepts into public discourse. If citizens are obligated to engage with the reasoning of others with the aim of extracting generally accessible arguments, it follows that citizens will be required to similarly keep an eye out for accessible, "unembeddable" concepts, even if they are presented from within a nonpublic conceptual framework. This requirement of mutual translation, then, offers an intriguing possibility for counteracting any exacerbatory effects of a public reason standard in cases of conceptual exclusion.

However, Habermas' account is less helpful than we would like, for at least two reasons. First of all, it still does not aid us in developing distinguishing criteria between embeddable and unembeddable concepts. Re-labeling unembeddable concepts in terms of translatability does not indicate how it is that we are to differentiate between concepts that are translatable and those that are not. As addressed above, the difficult nature of conceptual exclusion is that it problematizes attempts to make such differentiations. In the face of this problem, there is not enough of an indication that Habermas' proposal will be able to sort concepts appropriately. We need a more in-depth analysis of the proposed process of translation before its ability to do so will be clear.

Secondly, even if we are hopeful about the in principle possibility of assisting the transmission of concepts into public contexts via a process of mutual translation, it is still an open question whether or not such a task is a reasonable thing to ask of citizens engaged in public, political discourse. One might wonder if the average citizen of a pluralistic democracy has the appropriate capabilities to engage effectively in such an endeavor. Indeed, Habermas himself pauses to acknowledge that his proposal "presupposes a mentality that is anything but a matter of course in the secularized societies

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[55] *Cf.* also Habermas (2003), 109: "In any event, the boundaries between secular and religious reasons are fluid. Determining these disputed boundaries should therefore be seen as a cooperative task which requires *both* sides to take on the perspective of the other one" (his emphasis).

of the West"(Habermas 2008, 139), suggesting that his view implies a substantial shift in the epistemic attitudes of western citizens, and thus a fairly demanding cognitive burden. Furthermore, if this burden is substantial enough, one might worry that a mutual duty of translation is an unjustifiable thing to ask of even those with the requisite capabilities, regardless of if doing so would militate against conceptual exclusion. If we are unable to obligate mutual attempts at translation as a matter of civic responsibility, we might very well be left with an overly exclusive civil society, given Habermas' insistence on the institutional translation proviso.

One way to respond to the lack of appropriate mechanisms of differentiation and transmission of concepts seen in the Rawlsian and Habermasian accounts would be to suggest that these theories are untenable because they are not appropriately sensitive to the need for an account of translatability. Another, more fruitful, response is to suggest that any theory of public reason is incomplete unless it is supplemented by such an account. I take the problems suggested by an analysis of conceptual exclusion, then, as a call to get to work in filling in the gaps that have been left by deliberative theorists to date.

An attempt to fill in these gaps would be beyond the scope of this paper, but that is not to say we have no foundations from which to do so. The above discussion identified two clear desiderata that provide promising avenues for further discussion. The first, clearly, is the need for an account of translatability. The second, building upon Habermas' suggestions, is the need for an argument as to why such robust civic obligations to translate other's professed reasons might be justifiable.

Since we have spent some time addressing the issue of translatability, I do not want to dwell much further on the point. Instead, I will limit myself to a couple of brief remarks. To begin, I want to emphasize that reflecting on Rawls' proviso suggests something of a point of departure for further thinking about translatability; since Rawls' account focuses on pairing nonpublic reasons with accompanying public reasons "sufficient to support whatever the comprehensive doctrines are introduced to support,"[56] he points us profitably towards thinking of translatable reasons as those that have public equivalents with a similar justificatory status. While insufficient, at the very least because it does not speak at all to the translation of semantic content, this starting point keeps us focused on thinking in terms of ways to mitigate justificatory exclusion. Further, this line of thought supports our tentative conclusions in the Belyuen case,[57] and points towards framing the discussion in such a way that the full transmission of semantic content is not

[56] *Cf.* n. 45 above.
[57] pp. 17-18 above.

always required for a successful translation. Some unembeddable concepts might have public "proxies" that can serve to render an otherwise unassessable reason functionally assessable.[58]

I want to conclude by gesturing at the second avenue above, *viz.* an argument for a robust civic obligation to assist in the translation of other citizens' reasons. Exploring this avenue requires building a more substantial case about why such a process could feasibly help respond to issues of conceptual exclusion, as well as the construction of an argument as to why citizens ought to engage in such a process. It also involves a shift away from asking how it is an individual facing conceptual exclusion ought to speak, and a shift towards asking how – and why – others should listen.

5 CONCLUSION

One way in which citizens' engagement in the process of translation can militate against conceptual exclusion is through the resulting formation of a supportive hermeneutical micro-climate. We have seen that the existence of a hermeneutical micro-climate can work to mitigate the effects of hermeneutical injustice and to overcome the phenomenon of group exclusion; given a space that can support the creation of conceptual resources that are not publicly available, victims of hermeneutical injustice can overcome the relevant conceptual barriers in order to formulate the necessary political claims. However, it is key to the value of political claims that they are not only formulated, but that they make their way into public deliberative contexts.[59] So, it might seem that the creation of a hermeneutical micro-climate – assuming that there exists a disconnect between the micro-climate and the larger political context – will not do any work towards the mitigation of public exclusion.

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[58] For some further discussion of how one might think about semantic translation in relevant contexts, especially with Habermas' proposal in mind, *cf.* Schmidt (2007).

[59] Fricker argues for a virtue whose role it is to mitigate hermeneutical injustice, which she names 'hermeneutical justice'. This virtue requires a hearer to be on the lookout for possible instances in which a speaker is having trouble expressing or conceptualizing her experiences due to hermeneutical injustice; she asserts that the "virtuous hearer" ought to be careful to, at the very least, suspend epistemic judgment if there is some evidence that a speaker's lack of clarity might be caused by an occasion of hermeneutical injustice. Although fulfilling the obligations of this virtue will not *necessarily* work to eradicate the justice it opposes, Fricker suggests that such virtuous listening *may* do something to help the agent because it will sometimes involve the creation of an inclusive micro-climate. However, I take it that – on Fricker's analysis – actively working to assist the victim in conceptualizing her experiences, or in transmitting her claims, need not be the express purpose of a virtuous hearer (*cf.* Fricker (2007), 174-175).

However, this conclusion is contingent upon the relative social perspectives of the political claimant and the hearer. If the speaker and the hearer are already operating from within the same social perspective, it is likely that the construction of a micro-climate between them will not work directly to bring the speaker's claims any further into public discussion. However, if the speaker and hearer come from different micro-climates, or the speaker is operating within a micro-climate while the hearer is not, the creation of a micro-climate between the speaker and hearer might work to create a bridge between the speaker's micro-climate and public discussion, and thus might be a force for public inclusion.

Now, this suggestion is certainly not altogether novel. A common thread in deliberative democratic theory is the use of small "minipublics" to address various large-scale public problems.[60] And many government initiatives aim to create forums for public engagement on issues of concern to diverse and wide-ranging communities. Indeed, institutionalized public discourses about indigenous land claims – ranging from the activities of New Zealand's Waitingi Tribunal to recent public consultations in New South Wales[61] – provide some particularly salient examples, because they typically state as part of their goal the encouragement of cross-cultural understanding. But, as discussed in our initial treatment of the Belyuen case, such efforts must result in the generation of functionally appropriate concepts that are acceptable to both parties in order to be effective. Else, significant barriers to public, political discourse will remain. Thus, an express aim of the political process will have to be the gathering of citizens of different social perspectives for the purpose of attempting conceptual translation.

Of course, much more needs to be said about the nature of these processes, and this suggestion will require much more by way of unpacking before it can be properly evaluated. It does, though, give us a bit more of a reason as to why attempts to translate another's reasons might provide an option for addressing conceptual exclusion in the face of a public reason standard. If the processes of translation are robust enough – and are supported adequately by institutional structures – one would be less worried that standards of public reason are exacerbating cases of public exclusion. And, importantly, although public reason standards will have to be somewhat more flexible, in that they must acknowledge that public exclusion can obscure designations of publicity, they will still be able to serve as appropriate limitations on the sorts of reasons that public deliberation considers

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[60] *Cf.*, e.g. Goodin (2008), chap. 2. For some interesting research into the results of small scale, focused public deliberation on ethical issues, *cf.* Tansey and Burgess (2006).
[61] *Cf.* NSW Government (2008).

justificatory. Therefore, we have the foundation for a potential positive proposal for addressing the challenges discussed above.

Why, though, should we take seriously the possibility of having a civic obligation with respect to something like this creation of "intergroup" micro-climates? Since we have seen that hermeneutical injustice can impinge on our abilities as political agents, in answering this question we would do well to reflect briefly on the proper treatment of an individual *qua* political agent.

As emphasized in our discussion of conceptual exclusion, being a political agent requires the appropriately guaranteed ability to provide input into public deliberation.[62] Assuming that there is something fundamental about being a political agent that deserves respect, a plausible assumption given a broadly democratic background theory, respect in this context is going to mean – in part – not impeding another's ability to forward political claims. But, the politically exclusionary effects of hermeneutical injustice are not easily mitigated, and the impediment of conceptual exclusion in these cases can effectively nullify one's ability to act as a political agent. Since the injustice in these cases is not so easily overcome, I want to suggest that proper respect for the political agency of others might require us to be sensitive to the possibility of such nullification, and might involve some action taken to counteract it. This means that, when conceptual exclusion is the cause of political marginalization, our civic obligations require something by way of an active attempt to shepherd the relevant political claims of the marginalized into public, political discourse. One route towards this end begins with the creation of a respectful space in which to engage in discourse across conceptual differences.

In what has come before, I have attempted to offer a clear account of a specific type of political exclusion – conceptual exclusion – which helps to bring to light the potential political implications of a society's conceptual structure. This analysis of conceptual exclusion demonstrates a need for accounts of public reason to provide mechanisms for distinguishing superficially inaccessible concepts from deeply inaccessible concepts. Further, we have seen that the Rawlsian and Habermasian accounts do not seem to provide an adequate account of such a mechanism, and thus appear incomplete on their own terms.

However, we also have some promising avenues for completing such theories, and at least one plausible candidate for resolving some of the tension between standards of public reason and an acknowledgment of the possibility of conceptual exclusion. We have seen at least where one might begin in

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[62] Indeed, mechanisms of making and responding to claims are fundamental to what it means for an agent to have rights at all. *Cf.*, e.g. Shue (1988), chap. 1-2 and Feinberg (1970).

developing an account of translatability to make sense of how to discern between reasons containing accessible and inaccessible concepts, by thinking about comparing the justificatory weight of reasons and the extent to which one ought to be concerned with the transmission of semantic content. We have also seen that conceiving of our civic obligations as requiring citizens to assist each other in the process of translation offers a promising avenue for mitigating the effects of conceptual exclusion. Thus, taking conceptual exclusion seriously requires revision and expansion – but not necessarily rejection – of traditional accounts of public reason.

This re-conceiving of our political obligations in the face of problems of conceptual exclusion – both in general and with respect to public reason standards – should not be taken lightly. Analysis of cases ranging from intracultural problems of sexual harassment to intercultural negotiation of indigenous land claims suggests that our duties are more ethically and cognitively demanding than commonly recognized. It is not just that the creation of supportive micro-climates is more important than one might think, it is that citizens must enter these micro-climates intent on engaging in the difficult work of generating public concepts that serve the political needs of marginalized groups. Thus, we all share the duty of listening well to the voices of the marginalized, and it is my hope that political philosophy can help us to understand exactly what this duty entails.

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