

NOTES ON THE IDEA OF “PUBLIC REASON” AS NORMATIVE STANDARD FOR FAIR INSTITUTIONS: A RAWLSIAN PROPOSAL

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After the event which has been known as “the mensalão scandal” we must think seriously about the morality of our Institutions. This grievous event showed the importance of evaluating ethically our social Institutions, especially the political ones. To put it in another words, we ought to discuss about the principles that should be guiding these same Institutions. In this sense, the core of the discussion I am proposing here will be to demonstrate a way to normatively (as well as theoretically) evaluate Institutions. The idea is to show that through the concept of ‘Public Reason’ we may be able to design Fair Institutions, as well have a way to normatively and theoretically evaluate existing Institutions. The basic idea is to demonstrate that by using ‘Public

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Reason' as a standard we might achieve designing fair Institutions. In this sense, 'public reason' ought to be the evaluative (normative) standard for the Public Sphere. All Institutions should be evaluated with this standard.

The upshot of this discussion is to argue that through the use of 'Public Reason' we assure that liberal values, such as democracy, transparency³, human rights, liberty, fairness, equality, and so forth, will be realized. These values ought to serve, or so it will be argued, as guiding criteria in order for us to design Fair Institutions. These same values are those that will assure us that we will be a well adapted species in a well adapted society (a society in which we might achieve our individual, as well as our collective ends).

In fact this discussion intends to focus specifically on Political Institutions, elaborating - to start with - the arguments brought forward by John Rawls and Ronald Dworkin in defense of using 'Public Reason' as normative standard. As Rawls has formulated it: "Public deliberation must be made possible, recognized as a basic feature of democracy, and set free from the curse of money. Otherwise politics is dominated by corporate and other organized interests who through large contributions to campaigns distort if not preclude public discussion and deliberation. Deliberative democracy also recognizes that without widespread education in the basic aspects of constitutional democratic government for all citizens, and without a public informed about pressing problems, crucial political and social decisions simply cannot be made"⁴. And with regard to the work of Dworkin we can note that, although we don't find a detailed reference to the idea of Public Reason in his work, this idea is present in his defense of Democracy⁵. Anyhow,

³ After all, "transparency and democratic accountability can help control political corruption" (Arnold, Jason Ross. "Political awareness, corruption perceptions and democratic accountability in Latin America". *Acta Politica*. Vol. 47, 1, 67–90, 2012).

⁴ Rawls, John. 'The idea of Public Reason revisited'. In: *Collected Papers* (Ed. Samuel Freeman). Cambridge: Harvard University Press, 2001, p. 580.

⁵ See, for example: Dworkin, Ronald. *Is Democracy possible here? Principles for a new Political Debate*. Princeton: Princeton University Press, 2006. In it we may read: "That strategy is based on an attractive hope: that reasonable people in political community will wish to live together on terms of mutual respect and accommodation and will therefore accept the constraints of what the very influential philosopher John Rawls called public reason. They will accept that they must justify

his arguments against the financial investments in elections are quite strong⁶. And the same arguments could be used when we are talking, for example, about (financial) investments in academic research, like (financial) investments made by pharmaceutical companies in research projects at Institutions of higher learning⁷, as well as (financial) investments in projects that corroborate a specific thesis (even when it may be a wrong one), and so on. In both cases the aim is not a reasonable (disinterested) consensus: there is a previous (“behind-the-scenes”) interest involved.

Therein, in order to save democracy from “the curse of money”⁸, expressed paradigmatically (and sadly) by the aforementioned “the mensalão scandal”, we must, firstly, focus on education, on the development of what the philosopher Immanuel Kant had called a “public use of reason”. Then, we must recognize that, as it was formulated by Habermas in his ‘principle of democracy’, “only those statutes may claim legitimacy that can meet with the assent (*Zustimmung*) of all citizens”⁹.

Theoretically, the idea of a “public use of reason” was developed, for the first time, by Immanuel Kant in a notorious and influent text¹⁰ in which we may read the motto of the enlightenment: “*Sapere aude!* Have courage to make use of your own understanding”. By any means, by a “public use of reason” Kant understood “that use which someone makes *as a scholar (Gelehrter)* before the entire public of the *world of readers (Publikum der Leservelt)*”¹¹. That is why we must, when talking about ‘Public Reason’, to stress, as it was noticed by Rawls in the passage just

collective political decisions to one another in terms that each can understand and whose force each can appreciate given his own comprehensive religious, moral, and ethical beliefs” (p. 64).

⁶ See: Dworkin, Ronald. “The Curse of American Politics,” *New York Review of Books*, October 17, 1996, pp. 19–24.

⁷ See, for example: Angell, Marcia. *The Truth About the Drug Companies: How They Deceive Us and What to Do About It*. New York: Random, 2004.

⁸ “We know that money is the curse of our politics” (Dworkin, Ronald. *Is Democracy possible here? Principles for a new Political Debate*. Princeton: Princeton University Press, 2006, p. 128).

⁹ Habermas, Jürgen. *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*. Cambridge: MIT Press, 1996, p. 110.

¹⁰ Kant, Immanuel. “An answer to the question: What is enlightenment?” In: *Practical Philosophy*. New York: Cambridge University Press, 1996.

¹¹ Kant, Immanuel. “An answer to the question: What is enlightenment?” In: *Practical Philosophy*. New York: Cambridge University Press, 1996, p. 18.

quoted, the importance of education as the first step towards a sort of enlightenment¹². In his late “Toward perpetual peace” (1795), Kant had put forth the concept of “Publicity”: “All actions relating to the rights of others are wrong if their maxim is incompatible with publicity”¹³. This means that social Institutions, since they invariably affect all people under their influence, ought to be subordinate to that principle, which was incorporated by Rawls in his seminal “A theory of Justice” (1971). In it we may find some passages in which Rawls defines remarkably the very idea of publicity, like the following one: “The publicity of the rules of an institution insures that those engaged in it know what limitations on conduct to expect of one another and what kinds of actions are permissible. There is a common basis for determining mutual expectations. Moreover, in a well-ordered society, one effectively regulated by a shared conception of justice, there is also a public understanding as to what is just and unjust”¹⁴. But a complete development of this fundamental idea we may find it in his ulterior works, such as “Political Liberalism” (1993), “The Law of Peoples” (1999) and “Justice as Fairness: A Restatement” (2001). By any means, in “Political Liberalism” Rawls already succeeded to demonstrate the basis of “public reasoning”, that is, of “a shared reason for informed and willing political agreement with regard to the design of the basic structure of society”¹⁵. The centrality of “Public Reason” is expressed in the idea that it “has to mediate between different religious, philosophical, and moral

¹² As Kant himself had put it in his “Critique of Pure Reason” (1781), “This freedom will carry with it the right to submit openly for discussion the thoughts and doubts with which we find ourselves unable to deal, and to do so without being decried as troublesome and dangerous citizens. This is one of the original rights of human reason, which recognizes no other judge than that universal human reason in which everyone has his say. And since all improvement of which our state is capable must be obtained from this source, such a right is sacred and must not be curtailed” (Kant, Immanuel. *Critique of Pure Reason*. New York: St Martin’s Press, 1965, B780, p. 602). To put it another way, “reason has no dictatorial authority; its verdict is always simply the agreement of free citizens, of whom each one must be permitted to express, without let or hindrance, his objections or even his veto” (Kant, Immanuel. *Critique of Pure Reason*. New York: St Martin’s Press, 1965, B767, p. 593).

¹³ Kant, Immanuel. “Toward perpetual peace”. In: *Practical Philosophy*. New York: Cambridge University Press, 1996, p. 347.

¹⁴ Rawls, John. *A Theory of Justice*. Cambridge: Harvard University Press, 1999, p. 49.

¹⁵ Lehning, Percy B. *John Rawls: An introduction*. Cambridge: Cambridge University Press, 2009, p. 106.

comprehensive doctrines”¹⁶. So, given the “pluralism”, which is a central concern in “Political Liberalism”, Rawls realized that in a democratic society we need a guiding criteria in order to justify our Institutions. Here Rawls is “concerned with ‘the guidelines of public inquiry’ between citizens, especially to ensure that public deliberation is free and public, as well as informed and reasonable”¹⁷. So here we are talking about “public justification”, a central theme in Rawls writings¹⁸. The point to note is that social Institutions, in a constitutional democratic regime¹⁹, must have a “public basis of justification”. It is by education that this ideal of “Public Reason” is internalized. Social Institutions play an important role in the whole process. They must foment the internalization of this ideal, as well as the willingness of citizens to use “Public Reason” in their deliberations. After all, these Institutions rule our lives. What if these Institutions are corrupted? If so, we are not going to achieve our conceptions of the good (neither individually nor collectively). The Institutional corruption endangers liberal values, as well as the meaning of our lives, since we need those same values in order to achieve our conceptions of the good life.

In this sense, specifically with regard to Political Institutions, the “economy of influence” through lobbying is (if we do not have a fair standard) the “curse” of politics. That is because lobbying (when not assessed by a fair standard such as the Public Reason) assures that political deliberations will not be guided by reason (the

¹⁶ Lehnig, Percy B. *John Rawls: An introduction*. Cambridge: Cambridge University Press, 2009, p. 110.

¹⁷ Lehnig, Percy B. *John Rawls: An introduction*. Cambridge: Cambridge University Press, 2009, p. 111.

¹⁸ See, for example: Rawls, John. *Justice as fairness : a restatement*. Cambridge: Belknap, 2001. Especially §9 (‘The Idea of Public Justification’).

¹⁹ “Democracy involves, as I have said, a political relationship between citizens within the basic structure of the society into which they are born and within which they normally lead a complete life; it implies further an equal share in the coercive political power that citizens exercise over one another by voting and in other ways. As reasonable and rational, and knowing that they affirm a diversity of reasonable religious and philosophical doctrines, they should be ready to explain the basis of their actions to one another in terms each could reasonably expect that others might endorse as consistent with their freedom and equality. Trying to meet this condition is one of the tasks that this ideal of democratic politics asks of us. Understanding how to conduct oneself as a democratic citizen includes understanding an ideal of public reason” (Rawls, John. *Political Liberalism*. New York: Columbia University Press, 2005, p. 217-218).

“Public Reason”), but by private interests instead. So, using the legal (not always moral) channels, this kind of practice weakens Institutions, the trust people have in them, and weakens even more so the moral values that should be supported by these same Institutions. Presently we see the growth of the lobbying industry. It is affecting many Institutions, including the political ones. As a matter of fact it is corrupting these Institutions. In the case of Politics, the idea of limiting the increasing costs of political campaigns answers “the interest in preventing corruption of the electoral process, and the appearance of such corruption”. After all, “the fair value of the political liberties is required for a just political procedure, and that to insure their fair value it is necessary to prevent those with greater property and wealth, and the greater skills of organization which accompany them, from controlling the electoral process to their advantage²⁰. The same line of argumentation we find in Dworkin. In one of the lectures he delivered at Princeton in 2005²¹ (“Is democracy possible here?”) he went in fact further, showing that “big money poisons politics in yet another way, moreover, which is less often noticed”. It means that the problem that jeopardizes democracy is not only the lobbying industry, but the ways of stultifying people, by for instance the mass media²². The stultification of people is a way of silencing

²⁰ Rawls, John. *Political Liberalism*. New York: Columbia University Press, 1996, p. 360.

²¹ All of them published in: Dworkin, Ronald. *Is Democracy possible here? Principles for a new Political Debate*. Princeton: Princeton University Press, 2006.

²² “Journalism is supposed to help; journalists are supposed to be indispensable to democracy, the ombudsmen of truth. That is the justification most often given for the special protection of freedom of the press in our Constitution’s First Amendment. But television journalism is what matters now – until the Internet takes over, if it ever does – and television journalism is part of the problem, not the cure. Networks are owned by conglomerates within bottom lines, and news competes with the rest of the schedule for entertainment value” (Dworkin, Ronald. *Is Democracy possible here? Principles for a new Political Debate*. Princeton: Princeton University Press, 2006, p. 129). So, to put it differently, a “richer information environment does not inevitably lead to a more politically aware citizenry”: “theories of corruption control must contend with mass-level information heterogeneity, and in particular, the problem of widespread public ignorance. A freer, richer information environment does not inevitably lead to a more politically aware citizenry. Effective citizen monitoring of government officials depends on accurate corruption perceptions, which depend on the degree to which citizens are politically aware”. (Arnold, Jason Ross. “Political awareness, corruption perceptions and democratic accountability in Latin America”. *Acta Politica*. Vol. 47, 1, 67–90, p. 68). Moreover, “most corruption is hidden and unreported. Public officials have incentives to hide it. The press does not cover all corrupt acts, and when they do, they do not necessarily highlight accusations or convictions unless perpetrators are well known or politically important. In this context of hidden, unreported and unemphasized corruption, many citizens might perceive the universe of corruption to be generally limited

the voice of “Public Reason”. That is why philosophers like Kant, Rawls and Dworkin all stressed the importance of education. As Dworkin had put it: “what can we do? First, Education”²³. So, this article intends to promote a debate²⁴ about the normative standard for Institutions, based on “Public Reason”, as well as to investigate ways of implementing it through education. The idea is to demonstrate that only through a “public use of reason” we will be able to build Fair Institutions, which will, on their turn, strengthen the liberal values that are essential for the achievement of our conceptions of the good. Having a recent study regarding corruption in Latin America²⁵ as background, we may stress that the focus ought to be on the “political knowledge”, or “political awareness”²⁶ (which here we are bonding to the idea of “Public Reason”). The plentiful data the author set forth in his article demonstrates that “better informed citizens tended to perceive more generalized corruption”²⁷, which means that one of the most urgent issues regarding corruption is education. As the author concludes in his study regarding the problem of corruption in Latin America, “better informed Latin Americans are overall better equipped to hold politicians to account, due in part to their more accurate appraisal of the extensiveness and nature of the corruption problem. The problem in Latin America, as with much of the

to the big scandals that intermittently become the ‘talk of the town’, in addition to any personal experiences that individuals might have that color their perceptions (Arnold, Jason Ross. “Political awareness, corruption perceptions and democratic accountability in Latin America”. *Acta Politica* Vol. 47, 1, 67–90, p. 72).

²³ Dworkin, Ronald. *Is Democracy possible here? Principles for a new Political Debate*. Princeton: Princeton University Press, 2006, p. 147.

²⁴ Particularly a theoretical one.

²⁵ Arnold, Jason Ross. “Political awareness, corruption perceptions and democratic accountability in Latin America”. *Acta Politica*. Vol. 47, 1, 2012, 67–90. In it we may read: “The empirical analysis shows that citizens in Latin American democracies at different levels of political awareness have very different perceptions of corruption in their countries. Moreover, those who are better informed have more accurate corruption perceptions. Policy recommendations that highlight information and democratic accountability for controlling corruption should therefore consider ways in which politics might increase citizen engagement and knowledge of public affairs” (Arnold, Jason Ross. “Political awareness, corruption perceptions and democratic accountability in Latin America”. *Acta Politica* Vol. 47, 1, 67–90, p. 68-69).

²⁶ “Citizens’ corruption perceptions are clearly shaped by their level of political awareness” (Arnold, Jason Ross. “Political awareness, corruption perceptions and democratic accountability in Latin America” *Acta Politica*. Vol. 47, 1, 67–90, p.85).

²⁷ Arnold, Jason Ross. “Political awareness, corruption perceptions and democratic accountability in Latin America”. *Acta Politica* Vol. 47, 1, 67–90, p. 77.

world, is that citizens typically do not have the motivation, opportunity or ability to acquire much political information”²⁸. That is exactly the point: to give people “motivation”, “opportunity” and “ability” in order for them to be able to make use of “Public Reason”. For this aim we need to develop “tools for increasing civic engagement along with those that expand transparency, such as those that target press freedoms”. Another requirement (perhaps the more important) is to strongly stimulate civic education in schools. It means to boost the internalization, by means of education, of the liberal values established by the liberal tradition that might be traced back to the Modern Political Philosophy²⁹. So, since “corruption monitoring requires accurate perceptions of reality, which requires citizen political awareness”³⁰, we need to reinforce education and to suggest ways of implementing the practice of Democracy.

On that matter, we must think about the morality of our Institutions. The “the mensalão scandal” is an example of the “curse” of money that jeopardies the human values. Since Rawls we are very aware of the importance of our Institutions in the achievement of our conception of “good”. So, in despite of all problems we are currently facing in our Institutions (our Universities included), we have to promote a debate having those theoretical concepts as a philosophical (justified) background for the discussion regarding the concrete implementation of them, that is, in order to give practical effect to them through “Public Reason” (its instigation), and to ensure their concrete fulfillment by concrete

²⁸ Arnold, Jason Ross. “Political awareness, corruption perceptions and democratic accountability in Latin America” *Acta Politica*. Vol. 47, 1, 67–90, p.86.

²⁹ Needless to say that this education cannot be tied to a specific party, since, according to the same study just mentioned regarding the corruption in Latin America, “in 8 of 10 cases, respondents who reported more system support tended to perceive less corruption overall”, which means we must be as free thinkers as possible in order to recognize the corruption in our Institutions. To be tied to a party would distort our “perception of reality”. And, “In order for democracies to reduce corruption through accountability mechanisms, citizens must monitor government officials. In order for individuals to monitor officials effectively, they must first have a sense of the severity of the corruption problem. If people vastly underestimate the amount of corruption, for instance, they are not likely to effectively enforce democratic accountability” (Arnold, Jason Ross. “Political awareness, corruption perceptions and democratic accountability in Latin America”. *Acta Politica* Vol. 47, 1, 67–90, p.86).

³⁰ Arnold, Jason Ross. “Political awareness, corruption perceptions and democratic accountability in Latin America”. *Acta Politica* Vol. 47, 1, 67–90, p.86.

policies. After all, we must have both an empirical and normative focus.

Besides the philosophers quoted above, another readings may be essential for this discussion, such as “The theory of institutional design” (by Robert Goodin), “Democratic Innovations: Designing Institutions for Citizen Participation” (by Graham Smith), “Designing Democratic Government: Making Institutions Work” (by Margaret Levi), et al³¹.

In this sense, this discussion would be strongly inspired by some important existing projects, like “The Real Utopias Project”³², which “embraces a tension between dreams and practice”, considering that a “real utopia” is “grounded in the real potentials for designing social institutions”.

Therefore, the present consideration has this same *telos*, to wit, to propose a deep and serious discussion about alternatives to existing social practices, postulating a normative standard (“Public Reason”) for redesigning our Institutions in order for them to be Fair.

³¹ The series “Theories of Institutional design”, edited by Robert Goodin, published by Cambridge University Press, has some other titles which might be object of study and debate.

³² “The Real Utopias Project”, as we may read in its website, hosted by The University of Wisconsin, “began in 1991, explores a wide range of proposals and models for radical social change. The basic idea is to combine serious normative discussions of the underlying principles and rationales for different emancipatory visions with the analysis of pragmatic problems of institutional design. The project itself consists of a series of conferences sponsored periodically by the A. E. Havens Center at the University of Wisconsin. Each conference is built around some provocative, innovative manuscript dealing with some salient issue in radical social change. A group of scholars from around the world is then invited to write essays engaging the ideas of this manuscript. These essays are circulated among participants and discussed at the conference. After the conference the papers are revised in light of these discussions and the author(s) of the original manuscript write a concluding essay. The collection of papers is then published in the *Real Utopias Project Series* by Verso publishers, London”.

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Resumo: Após o evento que ficou conhecido como “o escândalo do mensalão” nós devemos pensar seriamente acerca da moralidade de nossas instituições. Esse triste evento mostrou a importância de avaliarmos eticamente nossas instituições sociais, especialmente as políticas. Em outros termos, devemos discutir os princípios que deveriam estar guiando essas mesmas instituições. Nesse sentido, o núcleo da discussão que proponho aqui é demonstrar uma maneira de avaliarmos normativamente as instituições. A ideia é demonstrar que mediante o conceito de “razão pública” nós podemos engendrar instituições justas, bem como avaliar normativamente as instituições existentes.

Palavras-chave: Razão pública; publicidade; instituições sociais.

Abstract: After the event which has been known as “the mensalão scandal” we must think seriously about the morality of our Institutions. This grievous event showed the importance of evaluating ethically our social Institutions, especially the political ones. To put it in another words, we ought to discuss about the principles that should be guiding these same Institutions. In this sense, the core of the discussion I am proposing here will be to demonstrate a way to normatively evaluate Institutions. The idea is to show that through the concept of ‘Public Reason’ we may be able to design Fair Institutions, as well have a way to normatively evaluate existing Institutions.

Key-words: Public reason; publicity; Social Institutions.
