

## ***Political Liberalism, Natural Duty of Justice and Moral Duty of Civility***

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### **ABSTRACT**

In this paper I present a relation between two principles on individuals that John Rawls presented in his two major works. First one is natural duty of justice in *A Theory of Justice* and second one is moral duty of civility in *Political Liberalism*. I start with the claim that natural duty of justice is the best answer to the problem of legitimacy of liberal institutions posed by A. John Simmons. But, in the circumstances of reasonable pluralism it is not clear how can such a vague duty guide us in political reasoning. That is why I claim that moral duty of civility, which demands that we respect boundaries of public reason, is the way how we fulfill our natural duty of justice in circumstances of reasonable pluralism. This implies that moral duty of civility has its moral grounding in natural duty of justice. Then I try to present how this view can answer to some objections raised against the idea of public reason and also how it can refer to some problems of distributive justice.

### **KEYWORDS**

Natural duty of justice, moral duty of civility, justice, legitimacy, political liberalism, John Rawls

The main question of political liberalism is: ‘How should citizens who adhere to different comprehensive doctrines or have different conceptions of good but in the same time share collective political power through public institutions over each other live together and legitimately exercise this political power on each other?’ For political liberalism it is not enough simply to set out an account of how people should order their public institutions. It is not enough to give an account of right principles of justice or an account of right conception of social justice. Political liberalism emphasizes that justification of political power should also include an account of the reasons the persons who live there have, or should have, for affirming those particular institutions. This extra element is provided by principle of legitimacy. More precisely with *principle of liberal legitimacy* which states that “our exercise of political power is fully proper only when it is exercised in

accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in light of principles and ideals acceptable to their common human reason” (Rawls, 1993, 137).

By emphasizing the problem of legitimatizing political power and not solely to justify best public institutions or principles of justice political liberalism is more sensitive to the problem of distinction between justification and legitimacy that was raised by A. John Simmons. Simmons points out that it is wrong to conflate justification with legitimacy because what justifies an institution is not what legitimates an institution. Justification of institutions “typically involves showing it to be prudentially rational, morally acceptable, or both” (Simmons, 1999, 740). Legitimacy is the complex moral right institution possess to be the exclusive imposer of binding duties on its subjects, to have its subjects comply with its duties, and to use coercion to enforce the duties. Such complex moral right institutions earn, according to Simmons, “by virtue of the unanimous consent of their members, a consent that transfers to the collectivity those rights whose exercise by central authority is necessary for viable political society” (Ibid, 747). Justifications appeal to an institution’s virtues, goodness, or other beneficial qualities. Legitimacy, by contrast, is achieved only by the consent of the governed. Simmons states that the big problem in contemporary liberal theory is that “the question about justification and the question about legitimacy are simply being conflated, so that the distinction between justification and legitimacy is being collapsed entirely” (Ibid, 757). This conflation of justification and legitimacy can pose big problem for liberals who emphasize the importance of justifying coercion exercised by shared political institutions. In the same way some Business Company can also be justified on prudential grounds if it provides goods or services better than any alternative company and individuals will more likely achieve their ends if they are clients of that company. Also, Company can be justified on moral grounds if for example it treats its employers on fair way or if it donates some money to the charity. But, it would be wrong, and certainly illiberal, to claim that because of this prudential and moral grounds Company has right to bill persons who did not voluntarily agreed to be its clients and to coerce this persons to behave according to Company rules. If this conclusion in respect to the Company is wrong then it is also wrong to conclude that political institutions earn such moral rights over their subjects that did not voluntarily agreed to live under them independently of institution’s prudential and moral virtues. What is needed is further condition that asks for voluntary consent of persons living under that institution. We can name

this problem as *voluntarism challenge*<sup>1</sup> - how can liberal institutions gain any legitimate authority over citizens without their actual consent? Since very few liberal institutions truly gain actual consent from their citizens it seems that many institutions are not legitimate. For liberals of any sort this is very awkward conclusion that they certainly do not want to accept. It seems that exercise of political power and liberal institutions are legitimate even without actual voluntary consent. But in providing their account of legitimacy of institutions liberals must answer to the voluntarism challenge.

In answering to this challenge we can take two routes: we can base legitimate authority on practical reason or we can base legitimate authority on natural duties. To notice the difference between these two approaches I will follow Jonathan Quong's way in addressing this problem.<sup>2</sup> He claims that we need to distinguish between three questions:

“1) What should I do?

2) What does justice requires me to do?

3) Who has the legitimate authority to decide what I must do?” (Quong, 2011, 118)

Practical reason models of legitimacy claim that the answer to the question (3) depends on the answer to question (1). Legitimate authority of person A over person B is established if B will likely better comply with reasons which apply to him if he accepts the directives of A rather than by trying to follow the reasons which apply to him directly. What is important to notice is that the question ‘What should I do?’ means ‘What should I *rationaly* do?’ where there is no difference between moral reasons and all reasons for action. If this is right way to establish legitimate authority than in political domain where we are establishing legitimate authority of liberal institutions we can present this model in three theses:

a) There is criterion according to which citizens are rational if they act in compliance with reasons they have.

b) Liberal institutions can help citizens to comply with their reasons better then they will do it if they follow their reasons directly.

c) Because liberal institutions can help citizens to follow their reasons better then they will do it themselves they have legitimate authority over citizens.

Now, even though we can accept theses a) and b), problem is with theses c). Namely, it is not clear how complex moral right to impose obligations and coerce individuals to respect these obligations can be established by showing that someone or some institution is better expert than certain individual

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<sup>1</sup> Quong (2011, 109) calls it *Simmons challenge*.

<sup>2</sup> Quong (2011, ch.4)

herself (and this is what premises (a) and (b) claim). Maybe for this individual it is prudent or rational to listen to directives of experts or institutions but prudence and rationality cannot simply be translated to legitimacy of practical authority. This is what David Estlund calls *expert/boss fallacy* - “To the person who knows better, the other might hope to say, ‘You might be right, but who made you the boss’” (Estlund, 2008, 40)? Citizens cannot legitimately exercise their collective political power over each other through shared liberal institutions if that legitimacy is established on reasons for action that apply to other citizens by stating that other citizens will better comply with their own reasons. Even if their collective acting can be beneficial to every individual citizen one can always say that she does not see this collective body as boss who is she obliged to listen and which can coerce her to follow its directives. For this collective body to be the boss what is needed is voluntary acceptance of its authority – so we are back with the problem of voluntarism challenge.

The other problem for practical reason models of legitimacy that is connected to *expert/boss fallacy* is problem of paternalism. As Quong states: “The problem with all such models is that they fail to explain why the brute fact that *I* have reason to do something should affect what rights *you* have with regard to me” (Quong, 2011, 115). The problem is very important because the rights we are talking about are rights to impose demands and use coercion to secure that individual will fulfill these demands. Justifying nonconsensual coercion in terms of potential benefits to the coerced is clear case of paternalism.<sup>3</sup> This is how we behave with children and mentally disabled (in certain circumstances), but this kind of behavior toward adults who are fully capable members of social cooperation is clearly illiberal, particularly in the circumstances of reasonable pluralism where individuals will most likely differently weight potential harms and benefits in their own conception of good life.

Alternative way to establish legitimacy that answers to voluntaristic challenge and avoids paternalism is that question ‘Who has legitimate authority to decide what I must do?’ depends on the answer to question ‘What justice requires me to do?’ Justice is concerned to the treatment of others in terms of rights and duties. As Quong writes:

“If we want to know who has the legitimate authority over some domain, we need to know what justice permits and requires with regard to that domain...The only kinds of reasons that can justify legitimate authority are

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<sup>3</sup> This problem is emphasized by Christopher Wellman in Simmons and Wellman (2005, 18).

thus the reasons that pertain to answering question (2): reasons that determine the allocation of rights and duties” (Quong, 2011, 119).

Thus, legitimate authority cannot be established by referring to any kind of reasons to action but to particular set of reasons, namely duties we have toward others and correlated rights others have. To establish legitimate authority of liberal institutions we must appeal to duties every individual has toward others that he can best fulfill by accepting authority of these institutions. Duty based model of legitimacy can address voluntarism challenge because fulfilling duty is not up to individual to decide – “To be under a duty to perform some act for someone else means precisely that the duty – bearer lacks the right to decide whether or not to perform”(Quong, 2011, 127). Of course, the main question is what is the nature of duty on which we can base legitimacy that can answer to voluntarism challenge? Since my concern in this article is Rawls’s idea of political liberalism I will focus on his proposals.

In his article from 1964. ‘Legal Obligations and Duty of Fair Play’ Rawls emphasizes principle of fairness which claims that if persons enjoy benefits of cooperation then they have a duty of fair play to perform or give their fair share in cooperation:

“Suppose there is a mutually beneficial and just scheme of social cooperation, and that the advantages it yields can only be obtained if everyone, or nearly everyone cooperates. Suppose further that cooperation requires a certain sacrifice from each person, or at least involves a certain restriction of his liberty. Suppose finally the benefits produced by cooperation are, up to a certain point, free: that is, the scheme of cooperation is unstable in the sense that if any one person knows that all (or nearly all) of the others will continue to do their part, he will still be able to share a gain from the scheme even if he does not do his part. Under these conditions a person who has accepted the benefits of the scheme is bound by a duty of fair play to do his part and not to take advantage of the free benefit by not cooperating”(Rawls, 1964/1999, 122).

Thus, we have a duty to give our fair share in cooperation which implies that institutions that coordinate cooperation have legitimate authority because in their absence it would be hard if not impossible under circumstances of social complexities to determine what a fair share is. Our non consent to authority of institutions is null because we are under a duty to give our fair share and we can do it only if we accept authority of institutions. But, of course, problem with this proposal is that duty of fair play applies to us only if we already voluntarily consented to enter into cooperation with others. Duty of fair play depends on our prior voluntary act

and that is why it cannot be good solution to the problem posed by voluntarism challenge.

To answer to voluntarism challenge we must rely on duties that we do not acquire by our prior voluntary acts. Of course, these duties are known as natural duties that apply to us simply because we are (moral) persons. To present natural duties I will use well known example from literature, accident case. Imagine a person A come to the scene of accident where there are injured people and that person can help them without too much cost to himself. We assume that this person has duty to aid these people even if he is not in any causal connection with accident. In this sense we can say that this person has natural duty to aid and duty not to cause unnecessary harm and that he will be blameworthy if he does not help them. We can say that act of not helping would be morally wrong. Now, imagine another person B also arriving at a scene of accident but this person has some medical knowledge, she is a nurse, and this person knows better how to help these people and not to cause additional harm. Person B issues directives to person A what to do and how to help people. Can in this case A reply: "Well, I know you are expert, but why am I obliged to accept your authority if I did not consent to it? I will help them in my own way by spreading positive energy and you have no right to coerce me to do what you tell me." So, A accepts that it would be wrong not to help victims but claims that B has no right to coerce him how is he going to help them. But, if obeying B is the only way how A can fulfill this duty, than not obeying B, not accepting authority of B, is equally morally wrong as not helping the victims. B can coerce A to do as she says without violating any of A's rights because she is only ensuring that B complies with duties (and not any kind of reasons for action) he is already under.

Now we can answer to voluntarism challenge. First, justification of B as the best source of directives lies in her ability (as nurse). Second, A should accept her authority not because of his rationality, but because it is the only way in which he can fulfill his duty that does not come out of any of his prior voluntary acts. His non-consent on B's authority violates his duty and that is why it is immoral. Immorality of his act of non-consent is the condition that makes act of non-consent null, independently of any voluntary act. Also, difference with duty of fair play is that A should consent on B's directives regardless of fact that he is in any cooperative scheme with victims. Natural duties we do not owe only to others with who we already are in cooperation but to all individuals generally.

Now, we can draw an analogy between accident case and political domain. In *A Theory of Justice* Rawls states that beside natural duties to aid

and not to cause unnecessary harm to others, every individual has a natural duty of justice. This natural duty describes our duties in regard to justice. As Rawls writes:

“This duty requires us to support and to comply with just institutions that exist and apply to us. It also constrains us to further just arrangements not yet established, at least when this can be done without too much cost to ourselves. Thus if the basic structure of society is just, or as just as it is reasonable to expect in the circumstances, everyone has a natural duty to do his part in the existing scheme. Each is bound to these institutions independent of his voluntary acts” (Rawls, 1971, 99).

As Jonathan Quong explains this duty of justice:

“ If there is some just institution X that is necessary to secure the basic rights and claims of person P, than person P has a claim against everyone else to support and comply with institution X insofar as this is necessary to maintain X and does not come at unreasonable cost to others. Each person whose rights and claims are secured by X has a similar claim against others. It thus follows that if we fail to fulfill our natural duty of justice, we fail to provide specific others with what we owe them as matter of justice” (Quong, 2011, 128).

Thus, if person is under a duty to provide others with what we owe them as matters of justice, and if there is an agent that can coordinate how best to fulfill this than we are required to obey that agent and to recognize its authority. If that agent is coercing us to follow her directives than she is not violating any of our rights because we do not have right not to fulfill our duty.

In circumstances of pluralism of various conceptions of good and socially complex interconnections we are unable to judge by ourselves what justice requires.<sup>4</sup> Because of complexity and unpredictability of our interactions and transactions in modern circumstances it is practically impossible to demand from individuals to have all information about possible moral implications of their acts. Jon Mandle nicely explains this problem with a simple case:

“Spending a dollar on certain groceries may be morally innocuous when we confine our view to the local context. But if, along with similar behavior on the part of many others, that purchase serves to enrich the owner of a farm which, in turn, gives him unfair bargaining advantage over his workers

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<sup>4</sup> For example, Ronald Dworkin states this problem clearly: “We may try to live with only the resources we think we would have in a fair society doing the best we can with the surplus, to repair injustice through private charity. But, since a just distribution can only be established through just institutions, we are unable to judge what share of our wealth is fair” (Dworkin, 2002, 265).

whom he then exploits, it may not be as innocuous. Yet, we cannot expect individuals to anticipate all the ways in which their behavior might combine with that of others to generate undesired or unacceptable consequences” (Mandle, 2000, 26).

Fortunately, there is an agent that is capable of imposing a distribution among citizens of rights and duties and conducting fair political deliberation on equitable distribution of goods. Of course, this agent is the state, or we can say in Rawlsian terms basic structure of society which consists from liberal institutions.<sup>5</sup>

It is important to notice that natural duty of justice has two parts. First part says that we have to comply with just institutions when they exist and apply to us. Second part says that we have to further just arrangements not yet established, i.e. to help establish just institutions where they do not yet exist. Important thing to notice is that first part does not have qualification of cost, while the second part has – so, we have to help establish just institutions where they do not yet exist “when this can be done without too much cost to ourselves.” This qualification of cost is important because without it, second part of natural duty of justice would be supererogatory. We consider individuals as Martin Luther King, Sophie Scholl or Mahatma Gandhi as moral heroes because they suffered heavy costs in their effort to establish just institutions in circumstances of unjust regimes. It would be wrong to say that they were just fulfilling their duty of justice that equally applies to all individuals in these regimes and that individuals who didn’t bear such burden are all equally blameworthy in not fulfilling their duty of justice. Two parts of natural duty of justice thus, differently apply on individuals depending on circumstances of actual regimes in which individuals live. First part, because it does not have any qualification of cost, applies more strongly to individuals living in ideally well – ordered society where institutions through public deliberation assigned what burden of cooperation is fair on the basis of reciprocity. In this case qualification of cost is unnecessary because not accepting fair cost is by definition unfair. We can say that there is correlate negative duty on individuals not to impose unfair

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<sup>5</sup> There is another problem for account of legitimacy based on natural duty of justice. Problem is that we owe this duty to every individual so it is hard how can this duty require to respect institutions of our society and not institutions that are just wherever in the world they are. This is so called *Particularity objection* (see Simmons in Simmons and Wellman, 2005). I will not deal with this problem here but there are many responses given to this objection such as Quong (2011, 129-131), Estlund (2008, 147-151), Risse (2012, ch. 16), Waldron (1993).



burdens to others. This duty we can respect passively, simply by following directives of just institutions. But, in non-ideal circumstances where institutions are not distributing fair shares of cooperation and when this distribution is not respecting the process of political deliberation between free and equal citizens than we have a more stronger positive duty to help establish institutions that will be more just. This duty involves more active citizenship because it includes duty to engage in political activity to establish just institutions and to assure that they collect and distribute fair shares. There is also, I believe, negative correlate to this positive duty. As Charles Fried says – “there is personal duty not only to comply with the norms of existing institutions but also in appropriate situations to resist them in order to move them in the direction of justice” (Fried, 1978, 129). This means that we have negative duty in appropriate situation not to collaborate in the design or imposition of institutions that foreseeable and avoidably cause injustice.<sup>6</sup> In these negative formulation clause ‘in the appropriate situation’ has same role as qualification of cost in positive formulation. Of course, it leaves some discretion to individuals to decide whether they are appropriately situated to resist or not to collaborate in the same way there is some discretion on individuals to see what too much cost is that they have to bear in furthering just arrangements. But, certainly we can say that citizens who already enjoy certain benefits from unjust arrangements and have more political influence in decision making (and these are rich and upper middle class citizens in contemporary capitalist societies) are appropriately situated and that they violate their duty if they collaborate with or support existing unjust arrangement. Citizens who are in bad position because of unjust arrangement are most likely not equally appropriately situated to resist or change existing arrangement and it certainly sounds cynical to say that because they passively accept it they collaborate with or support a regime. Discretion left to individuals to estimate what is too much cost is not unlimited discretion that refers to any cost to individuals’ interests. If, for example, in the process of voting individual chooses between two alternatives, A and B, and he thinks that A is more just option but he still votes for B because B promotes better his interests than this individual violates duty of justice irrespectively of his social position.

Authority of basic structure comes out of our duty of justice and that gives it moral right to govern our conduct. Of course, basic structure must be just. In the text below there will be more said what it means that basic structure is just, but first we must say that for political liberalism the most abstract conception of justice is justice as reciprocity. That means that

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<sup>6</sup> This idea is most recently expressed in Pogge(2011, 17).

society must be organized as fair system of cooperation. Cooperation means that “all who are engaged in cooperation and who do their part as the rules and procedures require are to benefit in appropriate way”(Rawls, 1996, 16). To avoid above mentioned expert/boss fallacy it is important to see who determines rules and procedures of cooperation. According to political liberalism this rules must be publicly justified which means they cannot appeal to our private reasons because than we will fall again into expert/boss fallacy. Public justification according to political liberalism appeals to shared set of political values or public reasons.<sup>7</sup>

Only in this way can political power of authority be justified. In liberal democratic regimes the final political power lies in the hands of citizens and they exercise it on each other. Political institutions must be justified to citizens. This is captured in Rawls’ *liberal principle of legitimacy* with which we started— our exercise of political power is fully proper only when it is exercised in accordance with constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in light of principles and ideals acceptable to their common human reason.

The question is now why we need this principle? We said that justification of legitimate authority is based on demands of justice; the answer on question ‘Who has legitimate authority?’ depends on the answer what justice demands from citizens to do. In answering that question we invoked natural duty to uphold and establish just institutions. We said that subject of justice is basic structure and that the concept of justice is justice as reciprocity. But, according to discussion so far it looks like it is enough to find what justice requires, that is conception of justice that truly is just and on the basis of it justify state action or authority of basic structure. To those who do not accept obligations or rules, we can say that they should accept it on the grounds of natural duty of justice. Why to appeal to liberal principle of legitimacy when we already have natural duty of justice? Or to put this question in other words, how from duty of justice that demands to support just regime we can derive principle of legitimacy that demands to support legitimate regime? If we return to the case of accident we can form question in this way – did not the authority of nurse come out of the fact that she knows how best to help the victims, and not from fulfilling some further condition that the helper reasonably accept her directives?

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<sup>7</sup> In contemporary debate on public reason this is highly contested issue. But, here I follow 'orthodox' rawlsian understanding of idea of public reason, so I accept this idea of shareability without enetering into this complex discussion. For this discussion, for example, see Quong (2011, ch. 9) and Gaus (2011, ch. 14).

The answer to this question from the standpoint of political liberalism is very simple. In liberal societies characterized with reasonable pluralism there is no persons or groups that, like nurse in accident case, know best what justice demands or which specific conception of justice is the true one and such that everyone must accept it to fulfill duty of justice. Such conception we can call *perfect conception of justice*.<sup>8</sup> In reasonable pluralism characterized by different metaphysical, religious and philosophical doctrines there are many such perfect conceptions of justice. For example, hedonistic utilitarian perfect conception of justice is based on principle of maximizing happiness, catholic perfect conception of justice is based on natural law, also Rawls's justice as fairness as presented in *A Theory of Justice* is based on our nature as autonomous beings and so on. Every perfect conception of justice can first justify principles on justice on the basis of these deeper teaching, but also second, it can usually justify concrete political decisions or laws (issues such as homosexual marriage; forbidding neo-fascist marches or certain level of taxing) also on the basis of these deeper premises. For example, Catholics can say that it is inadmissible to recognize same sex marriages because it is contrary to natural law while hedonistic utilitarian can defend such marriages by appealing to maximization of happiness. But, on what grounds can they justify their authority in imposing these decisions? They cannot appeal to natural duty of justice because demands of justice are not demands to accept certain religious or philosophical teaching. To claim such thing means that they do not truly accept pluralism and, also they are ready to rely upon oppressive power that can establish de facto authority, but it cannot establish authority as moral power. This is example of expert/boss fallacy where certain groups can be presented as experts on what certain doctrine demands but this does not give them power to issue directives to others that do not accept such teachings. Political liberalism accepts both idea of public justification and idea of reasonable pluralism so it cannot accept basic structure of society and concrete political decisions to be dependent on perfect conception of justice.

Political liberalism demands that conception of justice must be based on reciprocity which implies that it must arrange fair social cooperation between free and equal citizens in the circumstances of reasonable pluralism. There will be family of specific conceptions of justice that can satisfy this more abstract conception of justice as reciprocity. But, every conception from this family is characterized by three features or three liberal principles: (i) it assigns citizens certain basic rights and liberties; (ii) assigns those rights and

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<sup>8</sup> Quong (2011, 131-135) also notes this difference between perfect and reasonable conception of justice but in a slightly different way.

liberties special priority; and (iii) provides citizens with adequate, all-purpose means to make use of those rights and liberties. Furthermore, concrete political decisions must be justified, not on deeper moral or religious grounds, but in terms of these various conceptions of justice. In other words, they must be justified on grounds of political values and public reasons. Conceptions of justice based solely on political values will be *reasonable conceptions of justice* and not perfect conceptions of justice. They are reasonably just because they do not derive from some deeper teachings but from political values that constitute reasonableness itself – freedom, equality and fairness. Also, they are reasonable conceptions of justice because concrete political decisions they justify can even be in conflict with some deeper teachings or world-views, but still be considered as just to some extent. For example, it is possible that by appealing to basic rights and freedoms such a conception will defend same sex marriages but that will be in conflict with catholic teaching. What are not in conflict with catholic teaching are basic rights and freedoms themselves. According to political liberalism catholic citizens could accept such a decision as reasonably just although not perfectly just. To avoid unjustified coercion and oppression over pluralism all justification must be based on political values and that is what principle of liberal legitimacy demands. We can say that legitimate authority of institutions based on natural duty of justice in circumstances of reasonable pluralism is established if these institutions are reasonably just or if they implement a reasonable conception of justice as described above. Reasonable conception of justice is one that is based on principle of liberal legitimacy.

Principle of liberal legitimacy implies a duty which citizens of liberal plural societies have as citizens, and that is moral duty of civility – “to be able to explain to one another on this fundamental question how the principles and policies they advocate can be supported by the political values of public reason” (Rawls, 1996, 217).

There are two important aspects of moral duty of civility – epistemic restraint and sincerity. Epistemic restraint means that citizens should not appeal to what they see as the whole truth from their comprehensive perspective. Non-public reasons should not enter into political justification simply because they are part of a true comprehensive doctrine. Truth of a comprehensive doctrine is part of reasonable disagreement and that is why it cannot be public reason we can expect all reasonable citizens can accept. Epistemic restraint is closely connected to the second important aspect of moral duty of civility, and that is sincerity requirement. When we offer political proposals or reasons for these proposals to others “we should sincerely think that our view of the matter is based on political values that

everyone can be reasonably expected to endorse” (Rawls, 1996, 241). The reason for sincerity requirement is nicely stated by Quong:

“If we acted insincerely toward other citizens, if we offered arguments we believed to be invalid, or which we believed others had no good reason to accept, we would fail to respect their status as citizens who can understand and respond to moral reasons, and are owed justifications for the rules that regulate social cooperation” (Quong, 2011, 266).

By respecting duty of civility, we respect the framework within which we address matters of social justice. It is the framework of moral reasoning that citizens as collective body use when they address questions of justice. This framework is well known Rawls’s idea of *public reason*. So, public reason requires that we bracket those elements of our full comprehensive doctrine that not all reasonable people share, and to the extent possible, take our normative premises only from the idea of the reasonable itself.

First thing important to notice is that duty of civility by which we respect the framework of public reason is moral duty and not a legal duty. If it was a legal duty then it would be in contrast with some of the most important liberal rights and liberties such as freedom of speech and freedom of consciousness. It is not a restriction of what can be said in public. The purpose of it is to distinguish good or, we can say, legitimate political arguments from bad ones in circumstances of reasonable pluralism. As Jon Mandle nicely states this: “Rawls no more advocates enforcing legal restrictions against violations of public reason than he advocates enforcing them against affirming the consequent” (Mandle, 2000, 77).

Second important thing is that moral duty of civility does not demand from citizens always to respect boundaries of public reason when they address questions of justice. The boundaries of public reason and duty of civility more strongly applies to judges and public officials than to citizens. Rawls is clear in saying that citizens are allowed to introduce into political discussion comprehensive beliefs and to vote on these reasons “provided that in due course public reasons, given by reasonable conception, are presented sufficient to support whatever the comprehensive doctrines are introduced to support” (Rawls, 1996, xli). He is not particularly clear about exact meaning of this *proviso*. It is not clear what exactly means that citizens must in ‘due course’ give public reason. I agree with Paul Weithman’s interpretation of *proviso* to mean that citizens are allowed to rely on “their comprehensive doctrines – including *very fully comprehensive doctrines* – without adducing public reasons in support of their positions, so long as their doing so does not lead others to doubt that they acknowledge the authority of the public conception of justice. If doubts never arise, the proviso is never triggered and

they need do nothing more” (Weithman, 2010, 330). So, citizens are permitted to introduce into public political debate unshared non-public reasons as long as there is unified perspective of shared public reasons by which they can justify their proposal to others if they are asked to do so.

Let’s see argumentation so far. First, I accepted the establishment of legitimate authority of institutions on the basis of natural duty of justice. Natural duty of justice claims that we have a duty to comply with just institutions when they exist and further just arrangements not yet established if it does not demand too much cost from ourselves. These positive duties have its negative correlates in duty not to impose unfair burdens to others and duty not to collaborate or support unjust arrangements. Then I tried to show how recognition of reasonable pluralism where there are many perfect conceptions of justice places obstacles on view that natural duty of justice simply demands from us to conceive just arrangement as one that implements our own perfect conception of justice. In circumstances of reasonable pluralism principle of liberal legitimacy, or now we can say public reason, demands that we have to comply with institutions which implement reasonable conception of justice where reasonable refers to notion of political reasonableness – that it is based on political values of freedom, equality, fairness. In liberal institutions through which citizens as collective body exercise their political power they must do it by respecting liberal principle of legitimacy, i.e. by respecting boundaries of public reason. In other words, citizens legitimately use their political power when they respect moral duty of civility. Thus, natural duty of justice as principle for individuals in circumstances of reasonable pluralism manifests itself in another principle for individuals – moral duty of civility. Duty of civility has its moral grounding in natural duty of justice.

The claim that duty of civility has its normative force in natural duty of justice is easier to understand if we compare these duties. First, political decisions reached by respecting duty of civility, which means by respecting the boundaries of public reason, are binding and legitimate even if these decisions do not reflect or are in contrast to some comprehensive teaching or perfect conception of justice. According to what has been argued above, natural duty of justice implies that citizens have duty to comply with institutions that implement reasonable conception of justice which is based on political ideas of fair social cooperation between free and equal citizens and respects reasonable pluralism. That is the reason why citizens who fulfill moral duty of civility exercise their political power legitimately which gives them authority to bind and if necessary to coerce unreasonable citizens through their shared institutions. Unreasonable citizens, on this account,

cannot simply say that they do not accept boundaries of public reason because it is equal to saying that they do not accept their natural duty of justice or that they do not accept reasonable pluralism. Both things are by definition wrong, former is wrong because natural duty does not depend on voluntary acceptance of it and latter is wrong because it invokes political oppression over other free and equal citizens.<sup>9</sup> Of course, moral duty of civility implies that reasonable citizens also have to accept as binding and legitimate decisions that are different from those they defended. Respecting duty of civility and public reason does not require for decisions to be legitimate that there is consensus on them. In Rawls' own words:

“Reasonable political conceptions do not always lead to the same conclusions, nor do citizens holding the same conception always agree on particular political issues. Yet the outcome of a vote is seen to be reasonable provided all citizens of a reasonably just constitutional regime sincerely vote in accordance with the idea of public reason. This doesn't mean the outcome is true or correct, but it is for the moment reasonable and binding on citizens by the majority principle” (Rawls, 1996, lvi).

Here we can emphasize what we already said about difference of justice and legitimacy. Justice refers to set of conditions to which political society and citizens should strive for, and it is inevitable in plural society that there will be certain disagreement about principles of justice and even among people who endorse same principles of justice there will be disagreement about which conditions or policies satisfy these principles best. On the other hand, legitimacy sets a minimum standard that has to be achieved for basic institutions to command morally the compliance of citizens with the laws and policies that issue from it. In a social world where there is inevitable disagreement about justice, the gap between justice and legitimacy is necessary in order to allow for honest political disagreement but in the same time to make sure that every outcome fits the terms of fair social cooperation. So, if citizens are under natural duty of justice to comply with just institutions, and institutions are just when they assure fair social cooperation in circumstances of reasonable pluralism, then citizens are under duty to respect duty of civility when they advocate or vote for policies they consider to be just. That is why above mentioned characteristics – epistemic restraint and principle of sincerity – are important for fulfilling duty of civility. How can one citizen demand from another citizen to abide or comply

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<sup>9</sup> This does not imply that unreasonable citizens should be ignored. Ignorance or isolation of them can produce more extreme group polarization that can be threat for stability in society. There are many ways how dialogue with these groups can be pursued in the non formal public forums, and it would be politically wise to do it.

with the law or policy that is based on doctrinal reasons or that is manipulation or paternalism? In the former case epistemic restraint is not respected so we have case of expert/boss fallacy, and in a latter case principle of sincerity is not respected and we do not behave toward other person as free and equal citizen.

Now we can compare duty of civility with second duty of justice and that is duty to further just arrangements if this does not place too much cost on ourselves. Here, the above mentioned gap between justice and legitimacy is also telling. If justice refers to set of conditions we should strive for and legitimacy refers to minimum standard every conception must satisfy, then our striving for justice must be within limits of legitimacy. Limits of legitimacy are boundaries of public reason. Thus, we can fulfill our second duty of justice in circumstances of reasonable pluralism only if we respect moral duty of civility. This also implies that if we violate duty of civility in imposing conditions we claim to be just then we are violating negative correlate of second duty of justice because we collaborate or support institutions that other reasonable citizens see as unjust. Unjust here does not mean that it is not perfectly just but that it is not reasonably just. In this case they do not see how natural duty of justice can demand that they comply with these laws or policies.

I believe that in grounding duty of civility in natural duty of justice political liberals can answer to some problems that can be presented against the idea of public reason. Problems to which I am referring are that it is not clear how boundaries of public reason are appropriate for correcting some severe violations of rights or economic injustices. Namely, arguments against many violations of rights in the past were based in religious arguments – Martin Luther King invoked many religious arguments against racism; abolitionists also claimed that slavery is heinous sin on basis of evangelical Protestantism; some Catholic bishops argued against euthanasia and sterilization programs in Third Reich on Christian arguments. Were they breaking the boundaries of public reason and disrespecting duty of civility when they were arguing on religious grounds for laws and policies that would stop slavery, racial aggregation or non-voluntary euthanasia of mentally handicapped? If their arguments were seriously taken to justify laws and policies that would stop such clearly unjust institutions do these laws, policies and also institutions that implement them pose problems that we mention above?<sup>10</sup> I think that the answer to those questions is negative. First of all, it is hard to talk about breaking the boundaries of public reason and disrespecting duty of civility in circumstances of grave injustice where basic

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<sup>10</sup> This is for example what Sandel claims in Sandel (1994).



rights and liberties are not being respected by existing institutions. In these cases we don't have circumstances of reasonable pluralism or reasonable disagreement to which these ideas apply, we have clearly unjust and unreasonable institutions that gravely violate human rights and here we have urgent task to design institutions under which reasonable disagreement can occur. So, it is very important to see the circumstances within which King, abolitionists and German Catholic Church were acting. These were the circumstances of deep injustice in which it was necessary to establish institutions that protect basic human rights, and not primarily to solve problems of reasonable disagreement. Circumstances are very important in understanding the idea of public reason and duty of civility. Rawls is also clear in noticing the importance of circumstances, he says that "under different conditions with different doctrines and practices, the ideal [of public reason] may best be achieved in different ways, in good times by following what at first sight may appear to be the exclusive view, in less good times what may appear to be more inclusive view"(Rawls, 1996, 251). Thus, we can say that in good times we are bounded by duty of civility to respect exclusive view according to which we argue for laws and policies only in terms of public reasons while in less good times we are allowed to argue on terms of our comprehensive reasons to further just arrangements and in this way fulfill our duty of justice. Nonpublic reasons can well serve to mobilize citizens and their consciousness to resist and correct clearly unjust practices. Argumentations for laws and policies will be more inclusive for nonpublic reasons if institutional injustice is more severe. It would be crazy for political liberals to say that argument based on Christian reasons were unreasonable if their purpose was to mobilize citizens to resist, for example politics of eugenics and euthanasia in Third Reich. On the other hand, these same arguments will show that citizens do not respect their duty of civility if they use them as premises in public justification of politics that will, for example stop stem-cell research in circumstances of reasonable disagreement. It would be unreasonable and oppressive to obstruct beneficial medical treatment on the basis of believe that we cannot reasonably expect that all citizens accept – namely, that it is intrinsically bad to destroy five days old artificially fertilized human egg by taking cells from it. It is wrong to compare these cases with cases of killing persons with Down syndrome, or violate person's rights because of her race or ethnicity. In former case we have reasonable disagreement while in the latter cases we have only disagreement where one side is clearly unreasonable and our duty is to stop this group from imposing further harm.

Also, it is hard to see how in these circumstances political acts of King, abolitionists and Catholic Church can lead reasonable atheists or agnostics to doubt that they accept same political values as they do. It is easy to find public reasons for their causes. Of equal importance is that overwhelming majority of citizens to whom they were addressing were Christians. It is not contrary to idea of public reason to present argument how comprehensive doctrines which citizens accept can confirm or how they are compatible with reasonable political values.<sup>11</sup> So, in this case we have Christians addressing to Christians using arguments from Christianity.

Thus, duty of civility applies to us in circumstances where basic structure respects three liberal principles we mentioned above – it respects basic rights and liberties; assigns them priority and provides all-purpose means for citizens to make use of those rights and liberties. When our institutions are not in accordance with these principles then we are under duty of justice to design our institutions that will implement these principles. In designing these institutions citizens are allowed to argue from their comprehensive views. So, it is wrong to conclude that political liberalism is in contrast to such argumentation. On the contrary, in many cases where just institutions do not exist comprehensive argumentation can serve to design this institution and in this way to lead to the circumstances of liberal public reasoning where duty of civility is binding.

In discussion so far I said that cases for nonpublic reasons to serve as premises in political argumentation are cases where it is clear that grave injustice is happening. This implies that it is important to give some principled reason for dividing cases of clear injustice and reasonable disagreement about justice. For this reason I will focus now on problems of distributive justice where this boundary is most visible. It is clear that Rawls himself was always devoted to his two principles of justice that include fair equality of opportunity and difference principle.<sup>12</sup> But, in *Political liberalism* he writes that liberal constitution should beside basic rights and liberties guarantee only formal equality of opportunity and social minimum (what is also known in capitalist welfare state as ‘safety net’) – this is what he calls

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<sup>11</sup> This what Rawls calls *reasoning from conjecture*. See Rawls (1997/1999, 591).

<sup>12</sup> Fair equality of opportunity is more demanding than formal equality of opportunity because it demands more positive actions to secure basis of equal opportunity while formal equality of opportunity demand only negative actions is a sense of removing formal obstacles to “careers open to talents“. Difference principle claims that economic inequalities are justified only if they maximize position of the worst positioned group in society.

*constitutional essentials*.<sup>13</sup> He has left fair equality of opportunity and stronger distributive principles (such as difference principle, but also other principles that more strongly regulate social and economic inequalities) to be realized not on constitutional level but on legislative level as part of what he calls *matters of basic justice*. There are three interconnected reasons why he didn't demand these economic principles to be part of constitutional essentials. First one is that basic rights, equality of opportunity and social minimum are more *urgent* to establish and be protected in every reasonably just state, they define threshold below which basic structure is considered to be illegitimate. Constitution that does not guarantee these three things is not legitimate worthy constitution, and society where these essentials are violated is society where citizens are not under duty to comply with these institutions. Second reason is that those essentials are more *transparent*, meaning that it is easier to apply this essentials and that it is easier to tell and agree if they are respected.<sup>14</sup> It is easier to notice that institution is violating core contents of basic liberal rights, formal equality of opportunity and provision of social minimum then if it respects requirements of fair equality of opportunity and some stronger distributive principle. These requirements are much more complex and debatable, and it is hard to observe if they are met. Third reason is that because there will be *reasonable disagreement* about the question how much is needed to be provided for fair equality of opportunity to be met. It will be illegitimate to impose certain standard of justice through constitution when these questions should be answered through public deliberation on legislative level. These three reasons – urgency, transparency and reasonable disagreement about justice – show why it is allowed to use non-public reasons in circumstances we mentioned above. In these cases it was transparent that basic rights have been violated, that is why it was urgent to establish reasonably just institutions where reasonable disagreement can occur. It was demand of natural duty of justice to establish such institutions. But, when basic structure is arranged according to legitimate constitution then moral duty of civility takes the role that natural duty of justice unbounded by public reason had before this constitution was established and respected.

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<sup>13</sup> Most controversial thing among constitutional essentials is social minimum, but as Cass Sunstein writes: “Before the twentieth century, democratic constitutions made no mention of rights to food, shelter, and health care. A remarkable feature of international opinion –indeed a near consensus–is that socioeconomic rights deserve constitutional protection. The principal exception to the consensus is the United States, where most people think that such rights do not belong in a constitution“(Sunstein, 2001, 221).

<sup>14</sup> For more on arguemnt of urgency and transparency see Pogge (2007, 148-153).

Saying that institutions that implement constitutional essentials are legitimate mean that citizens have duty to comply with them even when some political decisions, and here I refer to decisions concerning distributive justice, do not meet their particular standards of justice. But, crucial thing to emphasize is that this is only minimum that must be satisfied for constitution to be legitimate; we can say that basic structure is *minimally reasonably just* if it simply respects constitutional essentials. Arrangements that violate basic rights and liberties, discriminate some group by not securing formal equality of opportunity or arrangements that deprive some citizens from social minimum and letting those to starve or unnecessary suffer are clearly unjust arrangements that we do not have duty to comply with. But, arrangement that satisfies only constitutional essential does not define social cooperation that is considered to be just. As we saw above, arguments for certain issues to be constitutional essentials is not that these issues are more important as matters of justice than stronger demands like fair equality of opportunity or distributive principle. Argument for constitutional essentials is that they are more urgent, more transparent and are not subject of reasonable disagreement. These arguments do not imply that for society to be just there does not to be settled an answer to matters of basic justice such as more fair equality of opportunity or some distributive principle that does not have to be difference principle but some principle that is based on mutuality. That arrangement is minimally reasonably just does not mean that arrangement is just and it would be wrong to understand it that way.

In minimally reasonably just arrangement citizen are still under a natural duty of justice to further more just arrangements. They are also under negative duty not to support institutions that foreseeable and avoidably cause injustice. Minimally reasonably just arrangement simply means that citizens cannot use all means in striving for justice like in unreasonably unjust arrangements, but only that they can fulfill their natural duty of justice in furthering just arrangements by respecting moral duty of civility. This implies, for example, that citizens with more egalitarian conceptions cannot impose on others ‘difference principle’ through some edicts or through revolution even though they consider it as the most just principle than any other. Reason for this is that there are other reasonable principles of distributive justice.<sup>15</sup>

But, certainly arrangement that lacks any kind of distributive principle except provision of social minimum is society that will hardly be in accordance with political value of fair social cooperation between free and

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<sup>15</sup> For example principle of restricted utility that Waldron defends in Waldron (1986, 27-32).

equal citizen. Equality in this context primarily refers to political equality or democratic equality according to which everybody is entitled to capabilities required to evade oppressive and exploitative social relationships and to live as human beings who can pursue their own conceptions of the good and participate in the social, economic and political life.<sup>16</sup> This is important to satisfy conception of justice as reciprocity. Taking value of equality as political value will also imply distributive demands that can be presented in terms of public reasons:

“Even if basic needs have been met [social minimum], a society cannot be considered a society of equals if the resources that individuals have available to pursue their most cherished ends is left entirely at the mercy of market forces. Moreover, significant distributive inequalities all too easily generate inequalities of power and status that are incompatible with relations among equals. Thus, those who accept the social and political ideal of equality will have compelling [public] reasons to avoid excessive variations in people’s shares of income and wealth, and this will mean, among other things that they have [public] reason to oppose institutions that allow too much scope for differences in people’s natural and social circumstances to translate into economic inequalities” (Scheffler, 2003, 22).

Thus, under minimally reasonably just arrangement citizens are under duty of justice to further just arrangements because they are not yet established solely by respecting constitutional essentials. For arrangement to be more than minimally just it must include also matters of basic justice like more substantive equality of opportunity and some distributive principle. Without these principles political value of fair social cooperation and political value of equality will not be realizable. So, even if imposing certain concrete principle of distribution will be in contrast with duty of civility, arrangement without some such principle will also be in contrast to duty of civility because it will be in contrast with values which we have a duty as citizens of liberal democracies to promote for our social cooperation to be based on reciprocity.

Let’s put these arguments like this. Institutions that respect only constitutional essentials will foreseeable (at least in nowadays capitalist societies) promote policies that cause huge inequalities in wealth and income. Huge inequalities in wealth and income are harmful to liberal democratic values because they tend to make some groups excluded from political

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<sup>16</sup> This concept of equality is best presented in Anderson (1999).

participation and they tend to diminish value of political equality.<sup>17</sup> If the role of political institutions is to be medium through which citizens exercise their collective political power over each other and if citizens should exercise their political power only in terms of political values (duty of civility), then citizens (or at least some of them) should be aware that they are not fulfilling their duty of civility if outcome of institutional arrangement is harmful to realization of political values. This particularly refers to citizens in their roles as public officials and policy makers, but also to citizens who are receiving benefits from this arrangement.

If economic institutions of nowadays capitalist societies are widening the gap between rich and poor then it is hard to see how they satisfy criterion of reciprocity.<sup>18</sup> Then it is not clear how can citizens who benefit from these institutions explain in terms of public reasons why they support these institutions and policies to citizens that are in worse position because of working of these institutions. This implies that these citizens are violating their duty of civility even though they support regime with legitimate worthy constitution. Respecting duty of civility in circumstances of nowadays capitalist societies means to support institutional arrangement or economic policies that can correct actual situation in direction which will guarantee fair value of political participation that is necessary for reciprocity.

Good example can be income tax policies. Are citizens violating their duty of civility when they support policy of lower income tax? In certain circumstances that policy can be publicly justified. Rawls himself writes that such policy can even be in accordance with difference principle.<sup>19</sup> Justification for this policy can be that lower rate of income tax will motivate talented and productive citizens to be more efficient in producing extra good that will be distributed in a way that makes everyone better. But, in actual circumstances, as Colin Farrelly claims, it is not true that unjust inequalities in society are caused by the problem of efficiency. In actual circumstances inequalities are caused by “for example, unequal opportunities in education, a gender structure which has created substantial inequalities between the sexes and unjust inheritance laws” (Farrelly, 2007, 105). And if it is true that “raising revenue through taxation is likely to be a necessary measure in any serious effort to remedy the substantial injustices that exist

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<sup>17</sup> Rawls is explicit in saying that huge economic inequalities will have bad political effects in making some groups sullen and resentful or excluded from political processes. See Rawls (2001, 128).

<sup>18</sup> Datas that this is actually happening can be found in OECD (2011).

<sup>19</sup> See Rawls (2001, 161).

in the current social structure of capitalist societies” (Ibidem) then citizens violate their duty of civility when they support initiatives for lower rate of income tax.

At the end I want to emphasize that this argument is different from similar arguments which claim that principles of justice apply to individuals themselves and not to institutions. Most famous argument of this kind is G.A. Cohen’s argument that difference principle applies to individual’s choices because it must be internalized as individual’s ethos.<sup>20</sup> My argument differs from Cohen’s because I do not demand that what has to be internalized is some particular principle as, for example, difference principle. There are reasonable citizens that do not accept difference principle and it would be contrary to political liberalism to claim that they are unjust. What I think every reasonable citizen must internalize are political values of freedom, equality and fairness that shape some kind of political ethos which manifests itself in pressing institutions in realizing this values according to her relative situation. From some citizens it will demand more than from others because they are in better situation to do it, but also it will demand more in bad times (in which actual societies are currently at least according to economic situation) and less in better times (in which it will not be necessary to support, for example, higher income tax policies).

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<sup>20</sup> See Cohen (1997).

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