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Is there a Need for Political Liberalism to have an Account of Pre-Overlapping Consensus Reasoning?

Abstract *In his Liberalism without Perfection, Jonathan Quong argues for internal conception of political liberalism which goal is to show that a liberal well-ordered society is internally coherent ideal and that citizens who would be raised in such society could endorse and support their own liberal institutions and principles if those institutions and principles are justified in particular way. These institutions should be justified by particular conception of public reason which main feature is that overlapping consensus is the first stage of its justificatory structure. So, public reasoning of citizens in well-ordered society should be based solely on values and ideas inherent to liberal conception of justice – freedom, equality, fair system of cooperation and burdens of judgment. Another important feature of Quong's conception of public reason concerns its scope. Quong argues for a wide scope of public reason which demands that all coercive or binding laws or public policies should be justified (whenever possible) on basis of these values alone. Thus, reasonable citizens in well-ordered society by definition accord deliberative priority to public reasons over their other comprehensive or nonpublic beliefs whenever they exercise their collective political power over one another. The problem I raise in this paper is that it is very likely that in well-ordered society there will be a group of citizens that will not accord full deliberative priority to political values, especially not at all levels of political deliberation. On certain issues they will like to see their particular values being realized through common political institutions. If our political theory excludes this group from justificatory constituency on this particular issue or categorize them as unreasonable it can easily undermine their general adherence to liberal conception of justice and endanger stability of well-ordered society. Thus, my point is that we need a further development of political liberalism to solve such problems not as a part of non-ideal theory but as a part of its ideal of well-ordered society.*

Keywords: *Quong, Rawls, political liberalism, public reason, reasonableness, sincerity, moral duty of civility*

It is a great privilege to have the opportunity to discuss Jonathan Quong's *Liberalism without Perfection*. This book is one of finest accounts of political liberalism that will surely have wide impact on new generation of political thinkers interested in liberal political theory. Perfectionist liberals have good target to attack and political liberals have a great starting point for further development of their theory. I agree with Quong's account of political liberalism, so the aim of this paper is not to raise

critical points about his book. Rather, aim is to provoke Quong to elaborate more on certain problems concerning stability of well-ordered society that can possibly go beyond his initial account.

Starting point in Quong's thinking of political liberalism is to develop an internal conception of political liberalism the goal of which is "to show that a kind of citizens who would be raised in a society well-ordered by a liberal conception of justice could endorse and support their own liberal institutions and principles if those institutions and principles are justified in particular way".¹ The main feature of Quong's internal conception of political liberalism is that the constituency of public justification is made only of reasonable citizens that, by definition, accept political values and *always accord them deliberative priority* in reasoning about political rules that their common political institutions should implement.² These political values – fairness, equality, freedom and reasonable pluralism (characterized by burdens of judgment) – are in the focus of overlapping consensus. Thus, overlapping consensus is conceptualized as the first stage in the justificatory structure of a political liberalism.³ We begin by asking what values or ideals citizens in an ideally well-ordered liberal society would all accept, and then we use those ideas as the basis for subsequent philosophical argument and public reasoning about the content of liberal justice. So, political reasoning according to this picture is post – overlapping consensus reasoning (post-OC reasoning).

Further aspect of post-OC reasoning is that we have two kinds of disagreement – *foundational reasonable disagreement* (FRD) and *justificatory reasonable disagreement* (JRD).⁴ Former kind of disagreement is characterized by the fact that there are no shared premises or frameworks between the parties, latter kind of disagreement is characterized by the fact that the parties share certain premises which frame their dispute. First kind of disagreement is part of pre-OC reasoning, while the latter is part of post- OC reasoning. So, there is a principled reason for treating these two kinds of disagreements differently. Quong's main point is that there is asymmetry between these two kinds of disagreement. FRD is disagreement about the good, and JRD is disagreement about justice. Even in well-ordered society it would be implausible to

1 Quong (2011), p. 158

2 Ibid, ch. 5

3 Ibid, ch. 6

4 Ibid, ch. 7

think that all reasonable citizens would give equal weight to same public reasons and hold same particular law justified by these same reasons. Citizens will differently weigh public reasons and they will disagree on outcomes of their post-OC reasoning. But, the important thing is that whatever decision is reached we can expect that all citizens can reasonably accept it, because it is based on shared political values, even if they think that some other decision is more reasonable or more just.⁵ Thus, the criterion by which the law is just and legitimate is that it can be reasonably accepted and not that it cannot be reasonably rejected.

The criterion of reasonable acceptance and not reasonable rejection is in accordance with Rawls' principle of liberal legitimacy which states that "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".⁶ In this way we can see the link between justice and legitimacy. If liberal theory of justice is based on political values that all citizens accept in JRD and if they base their reasoning solely on these values then, even if they reasonably disagree on which outcome is best, whatever decision is reached will be reasonably just and legitimate.⁷ Thus, our exercise of political power over each other can be legitimate only if it is within the range of liberal theory of justice, and we know that it is within this range only if it is based on political values all reasonable citizens share. Society for which internal conception of political liberalism is designed is *well-ordered liberal society* and that is the reason we start from *liberal* theory of justice.

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Essential idea of political liberalism which refers to practice of political justification is idea of public reason. Since idea of public reason refers to question of legitimate exercise of our political power over each other then it is evident that for Quong the idea of public reason is grounded in the value of justice.⁸

This, I believe, can also be said for the moral duty of civility which refers to moral demands that norms of public reason place on citizens and officials in their political behavior or, in other words, in their exercising

5 Ibid, p. 209–210

6 Rawls (1996), p. 137 (my italics)

7 On difference between *reasonably* just and *perfectly* just institutions see Quong (2011), p. 133.

8 On different ways of grounding the idea of public reason see Quong (2013).

their political power over each other in well-ordered society. Moral duty of civility, similarly as liberal principle of legitimacy, requires from citizens to “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”.⁹ Moral duty of civility asks from citizens to reason with each other only in terms of public reasons or political values, at least when fundamental questions of justice are at stake. As we will see below, Quong does not restrict public reason only to fundamental questions of justice, but for now we can leave this problem aside. So, we have a moral, not legal, duty to restrain our reasoning on political issues on post-OC reasoning. Where that duty does come from? I believe that it is possible to ground that duty in more fundamental duty – *natural duty of justice*¹⁰. Natural duty of justice “requires us to support and 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”.¹¹ How do citizens in well-ordered society fulfill their duty of justice? Since reasonable pluralism is an internal fact about well-ordered society it would be wrong to determine one true or perfect conception of justice backed by comprehensive reasons and then demand from all citizens to comply with it. Disputes about comprehensive doctrines are part of foundational reasonable disagreement and any such proposal can be reasonably rejected. Demands of justice are not demands to accept certain comprehensive doctrine. Alternative approach is to define core political values of very broad liberal theory of justice – freedom, equality, fairness, cooperation and reasonable pluralism. Thus, if political decisions are reached solely on these values they will be reasonably just and therefore legitimate. When we as citizens exercise our political power over each other we should rely solely on political values (moral duty of civility) because this is the way how we support just institutions (natural duty of justice) in well-ordered society characterized by reasonable pluralism. Also, if we respect moral duty of civility we can demand compliance from other citizens on the basis of natural duty of justice even though there will be reasonable disagreement about political outcomes.

Further aspect of public reason and moral duty of civility is *sincerity requirement*. As Quong says – “We cannot, in other words, merely aim at

9 Rawls (1996), p. 217

10 Quong grounds principle of liberal legitimacy in the natural duty of justice. See Quong(2011), p. 131-135

11 Rawls (1971), p. 99

getting others to assent to our proposals, we must sincerely believe our proposal can be justified to them”.¹² 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”.¹³ 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”.¹⁴

Quong formulates sincerity requirement as a *principle of justificatory sincerity* (PJS). If we suppose we have political constituency of only two persons, A and B, and they face a choice as to whether or not to endorse proposal X, PJS “requires that A may only endorse X if the following are true (and vice versa for B):

- 1) A reasonably believes he is justified in endorsing X.
- 2) A reasonably believes that B is justified in endorsing X.

Furthermore, following Rawls’s duty of civility,

- 3) A may only (in the political domain) offer arguments in favor of X to B that he reasonably believes B would be justified in accepting”.¹⁵

It is clear that respecting PJS requires that our justification must be based on shared reasons. These shared reasons as we already mentioned are grounded in core political values of liberal theory of justice, so we can once again find basis of public reason in value of justice. But, as Quong notices, sincerity requirement has also further role – “it distinguishes public reason from rhetoric and manipulation”.¹⁶ This role is very important in sustaining the value of civic friendship and respect.¹⁷ It means that by manifesting our adherence to public reason in our political

12 Quong (2011), p. 265

13 Rawls, (1996), p. 241

14 Quong (2011), p. 266

15 Ibidem

16 Quong (2011), p. 265

17 Ibidem

behavior we constitute a valuable kind of relationship with our fellow citizens. I believe that this kind of relationship is necessary for a just society to be stable over time. Thus, it is not only that idea of public reason plays important role to sustain justice in well-ordered society, but also it plays important role to sustain stability in such society in terms of relation between citizens. Problem of stability will, I believe, confront internal conception of political liberalism with need for widening its scope from post-OC reasoning to consider some issues of pre-OC reasoning.

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To see this problem let us start with imagining a political community we can name *Political Liberal Expert State* (PLES) with deliberative legislative body such as parliament constituted by representatives and judicial body as Supreme Court constituted by experts. Further, let's imagine that in parliament there are no constraints on reasons officials can appeal to when they deliberate with each other on certain laws or public policies. They simply propose a certain law and offer perfectionist or comprehensive reasons of the group they represent. Of course, they deliberate with each other about these reasons arguing for or against certain comprehensive beliefs, they listen to each other, they respect each other and they are willing to meet each other halfway by making compromises on certain laws. After certain time given for deliberation they vote for proposed laws and law chosen by majority is passed on this level of legislation. But, this level is not enough for law to be enacted. There is also a second level that every elected law must pass – level of very active Supreme Court that questions if this particular law can be justified by public reason irrespectively of its prior justification it has got in parliament. In this body, Justices check if the law is in line with political values of freedom, equality and fairness and if it can be justified solely on reasons that reasonable citizens can accept. If the law does not pass the test of public reason then the issue it was supposed to regulate is again discussed in parliament. There is another round of discussion and another voting procedure and again elected law comes in front of the Justices. On the other hand, if the law is not in contrast to liberal political values, if it can be justified by public reasons alone then Justices will provide such justification and enact the law. Will this law be just and legitimate? Well, there is no reason why it should not be. First, the content and rationale for the law is in line with liberal theory of justice. Second, concerning legitimacy, Quong advocates *duty-based conception of legitimate authority*: “One way to establish that a person has legitimate authority over another person involves showing that the alleged subject

is likely better to fulfill the duties of justice he is under if he accepts the directives of the alleged authority as authoritatively binding and tries to follow them, rather than by trying to directly fulfill the duties he is under himself”¹⁸. So, by respecting the authority of our imagined Supreme Court it is likely to be the best way to achieve what justice requires.

Will this law be publicly justified? I suppose it will if we stipulate that in such society there are only reasonable citizens who by definition ascribe deliberative priority to political values and public reason. Thus, even though citizens and public officials offer each other their comprehensive reasons for certain law because they ascribe priority to political values, they accept when the law for which they voted is turned down by Supreme Court even if they were in majority. On the other hand, minority can also accept the law they voted against because finally it is justified in terms of public reasons and by definition it is part of justificatory reasonable disagreement, so they can reasonably accept such justification for the law. So, the law finally is justified by the shared perspective (given by Supreme Court) even though on the first step officials presented the case for the law in terms of their comprehensive or perfectionist perspective. After the law is enacted everybody knows that others accept the law and consider it justified either because they ascribe priority to shared perspective and political values (minority group) or because they consider it justified within their own comprehensive doctrine (majority group).

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So, in a sense, ascribing deliberative priority to political values can be seen as delegating to others – experts like Justices in the example above – job of finding public reasons for certain rule and accepting the rule because shared perspective was found and legally explicated. The rule is just, legitimate and enacted by procedure all reasonable citizens accept. Also, important aspect of this example is that every group has equal chance to be heard and to try to realize their values through common institutions, even though these values will be translated to public reasons. We can say that no one is exposed to injustice in their political interaction, they are all treated justly because they are treated in terms they all find acceptable – everyone can pursue their own values and finally the law and rationale for the law will be in terms they can reasonably accept.

But, there are certainly lots of things that are undesirable in our imagined arrangement. Of course, many undesirable things are connected

18 Quong (2011), p. 128

with disputes about value of democracy, but I will only mention problems from the point of idea of public reason.¹⁹ I will mention three problems concerning the point of public reason, scope of public reason, and idealization of reasonable citizens. First, as said above, public reason is not only about justice and justification of political rules. It is also about our political behavior in the role of public officials or citizens. It is about our exercising political power over each other and not only about our accepting political power that is exercised by some expert body. There is something valuable in relationship in which citizens themselves offer each other reasons they sincerely believe others can accept, and not simply abiding by the rules that are reasonably justified by some agency outside of their political cooperation. This is linked to the question of stability. One important point of the idea of public reason is that it aims at establishing inherent stability in plural democratic society. *Inherent stability* means that there are forces within the system that can correct deviations from justice in contrast to *imposed stability* that always imposes some agency out of cooperation that will correct deviations.²⁰ For inherent stability it is not enough that overlapping consensus obtains and that citizens endorse political values within their conceptions of good but also that in their practice this fact is manifested and made transparent. So, public reason can be grounded in justice in the sense of relation of democratic governance to the citizens, but also its moral basis is relation between citizens themselves. It is not only important that laws are justified to each of us, it is also important that citizens propose to each other fair terms on which these laws should be justified. When citizens in their political practice give priority to post-OC reasoning it ensures stability that can not be generated by experts. Rawls was clear on this problem:

„It is important for the viability of a just democratic regime over time for politically active citizens to understand those ideas. For in the long run, the leading interpretations of constitutional essentials are settled politically. A persistent majority, or an enduring alliance of strong enough interests, can make of Constitution what it wants”.²¹

19 For example, one problem is that it can give wrong picture about democratic politics. As Gaus notes: “To allow that principled deliberation is in some way the special purview of the judiciary is to accept, and encourage, the corrupted understanding of politics as a battle among interest groups, each claiming to impose its favored policies on the rest with no better justification than it has marshaled the numbers to do so.” Gaus(1996), p. 280

20 On this difference see Weithman (2010).

21 Rawls (1999), p. 496

It is citizens that have the responsibility to maintain a stable and just regime over time, and to do this they must have certain virtues for political cooperation. This surely gives republican flavor to liberalism but Rawls himself was aware of this:

„Classical republicanism, on the other hand, is the view that the safety of democratic liberties, including the liberties of nonpolitical life (the liberties of the moderns), requires the active participation of citizens who have the political virtues needed to sustain a constitutional regime. The idea is that unless there is widespread participation in democratic politics by vigorous and informed citizen body moved in good part by a concern for political justice and public good, even the best-designed political institutions will eventually fall into the hands of those who hunger for power and military glory, or pursue narrow class interests, to the exclusion of almost everything else. If we are to remain free and equal citizens, we cannot afford a general retreat into private life”.²²

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This requirement of citizens participating in political life on terms of public reason becomes more important if we defend broad view of public reason as Quong does. This is part of the second major problem with PLES concerning the idea of public reason.

Second problem with PLES is that it supposes that Justices have certain *ex ante* list of public reasons and then apply it in checking if the proposed law can be justified by them. Also, we would need to have a list of political issues that are amenable to public reason – should all laws that can be interpreted as coercive be sent to Justices or some of them should be solved solely by majority voting? How do we know which laws should be supported simply by majority voting in the parliament or by referendum and which should be sent to Justices? One proposal is that we can make a list of laws that concern only constitutional essentials and matters of basic justice and only these laws should be the subject of public reason. Quong rejects such view of public reason and argues for a *broad view of public reason* according to which public reason should include all decisions where citizens exercise collective power over one another – all coercive or binding laws or public policies, and not only constitutional essentials and matters of basic justice.²³ So, in principle, whenever possible, we should justify our exercise of political power over each other in terms of public reasons. As Quong writes: „My main point

22 Rawls (2001), p. 144

23 Quong (2011), p. 273–287.

is this: whether or not these reasons do exist, and if they do, how much weight they should carry in our political deliberations, can only be determined *ex post*. In other words...we should try and adhere to the idea of public reason when debating non-essential political issues to see if they are resolvable on publicly acceptable grounds. If they are, then we can ground a larger number of our political decisions in substantive reasons that are suitably public”.²⁴ As I understand him on this point he says two things. First, which issues can be solved by public reasons cannot be known in advance, but rather only if citizens deliberate together about these issues and try to find public reasons that can support political decision. Second point is also important, it is not only that through deliberation we can see which issues are appropriate subject of public reason, but also through deliberation we can see which reasons are suitably public, which refers to the content of public reason. Quong writes that „we should be open to the idea that the detailed content of public reason can only be worked out as part of the process of public reasoning”.²⁵ In Quong’s political liberalism there is no prior list of issues that are subject of public reason and prior list of reasons that are content of public reason like in PLES.

Third problem I want to mention about PLES is that it has an overly idealized picture of citizens. According to this picture citizens offer each other their comprehensive views about desired rules and then simply accept rules justified by public reasons given by experts because we simply stipulate that they ascribe priority to public reason. Problem is that PLES only has idea of laws as they should be, but it does not take people as they are. It only presents an answer (albeit not good one) to the question how *just* society is possible in circumstances of reasonable pluralism, but it does not answer to the question how just and *stable* society is possible in these circumstances? Namely, stability in political liberalism depends on moral development of sense of justice of citizens growing in just society. It is unlikely that our Supreme Court will have such profound and pervasive educative role. Simply, saying that citizens will be the kind of persons that ascribe such priority to public reason even though they try to win for their own particular values is illusory. It is more likely that such situation will give rise to group polarization. As Cass Sunstein notes “In brief, group polarization means that members of a deliberating group predictably move to a more extreme point in

24 *Ibid*, p. 285

25 *Ibid*, p. 289

the direction indicated by the members' predeliberation tendencies".²⁶ When citizens enter public forum without any constraints of public reason it is more likely that they will deliberate within small groups of like-minded people that will make their views more extreme moving them further from other citizens and weakening their adherence to public justification. Thus, we can say that picture of citizens in PLES is overly idealized even for well-ordered society.

But, this problem of idealization of justificatory constituency also presents problem for stability in Quong's idea of public reason and political liberalism. By Quong's definition reasonable persons are persons who ascribe full deliberative priority to public reason when discussing all political issues. So, reasonable citizens, according to Quong, are reasoning like experts in PLES on every political issue. In process of political justification reasonable citizens ascribe priority to post-OC reasoning. It would be unfair to say that Quong's society is utopian because he is aware that in well-ordered society there will also be unreasonable citizens. In well-ordered society political power is coercive power that must sometimes be used to contain threats to justice. It is then clear that institutions of well-ordered society will not generate its own support on behalf of all citizens living under them. There will always be citizens who want to see values of their comprehensive doctrine be realized on state level excluding interests of those citizens that do not share their comprehensive view. But, if this is true than there will always in well-ordered society be a number of citizens that generally do adhere to liberal institutions and political values of public reason but on certain political issues they want to see their values or good be realized through common institutions. Thus, they do not ascribe full deliberative priority of public reason, especially not on all levels of political deliberation, and they also do not definitely reject deliberative priority of public reason. They are not reasonable citizens according to Quong's definition, but they are also not unreasonable citizens. So, maybe Quong's grouping of citizens as reasonable and unreasonable does not exhaust all citizens living in well-ordered society.

We can say that problem is that Quong takes as constituency of public justification persons who are reasonable in a very idealized way. The idealization here is that they always accord deliberative priority to public reasons over other values in their comprehensive conceptions of good

26 Sunstein (2001), p. 15

at all levels of political deliberation. They always reason like experts in PLES. Political domain of well-ordered society according to this idea is always characterized by post-OC reasoning. But, such definition of reasonable persons, because of this feature, is too idealized; it does not take into account number of citizens who surely will populate well-ordered society.

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It seems that Rawls himself was aware of problem of overly idealizing reasonable citizens. According to Rawls reasonable citizens are citizens whose conception of good or value system are most of the time „either congruent with or supportive of, or else *not in conflict* with, the values appropriate to the special domain of the political as specified by a political conception of justice for a democratic regime”.²⁷ They „*normally* outweigh whatever values are likely to conflict with them. “ But, also these persons are deeply committed to some of their comprehensive values and in certain cases they want to see them realized through public rules and shared institutions. So, when these particular values come into a conflict we have a disagreement, but I would still name it disagreement among reasonable persons because it is among persons whose value systems as whole are mostly reasonable. In this particular case they do not pursue shared ends with others, and this conflict can easily come to impasse endangering their future political cooperation and stability of well – ordered society.

So, the problem Quong avoids, but that will likely occur in well-ordered society is that foundational reasonable disagreement can easily become value conflict which can end with a situation of impasse. In such situations it would be wrong to say simply that such persons are unreasonable because this can move them further away from accepting priority of public reason even in situations where they would otherwise give priority to public reason. Now, it seems likely that two situations can occur – they can make deliberative enclaves with likely effect of group polarization which can turn them into unreasonable citizens or they can become resident aliens feeling alienated or ambivalent to liberal values or shared institutions without striving to impose their values on others.

It seems that between ideally reasonable citizens and unreasonable citizens there will always be a large group of non-ideally reasonable citizens. And an important question for political liberalism then becomes how is it possible for non-ideally reasonable citizens “to be *wholehearted*

27 Rawls (1996), p. 169

members of a democratic society when they endorse an institutional structure satisfying liberal conception of justice with its own intrinsic political ideals and values, and when they are *not simply going along with it in view of the balance of political and social forces?*²⁸

This *problem of wholeheartedness* becomes more serious if we have in mind broad view of public reason. For narrow view this problem is not so severe because they do not ask so much from citizens. Narrow view only demands from citizens to ascribe full deliberative priority to public reason only when they deliberate on issues concerning constitutional essentials and matters of basic justice. It can also demand full deliberative priority when they discuss democratic procedures through which other political issues will be resolved. But, when these essentials and procedures are settled then they can express their values and try to win the day respecting constitutional and procedural constraints when other political issues are on the table. But, for the broad view of public reason which demands that norms of public reason be applied to all levels of deliberation where citizens exercise their political power over each other problem of wholeheartedness can not be so easily avoided. Particularly, if we want well-ordered society to implement some democratic innovations that are open to wider citizen participation in democratic decision-making like, for example, participative city budgeting.²⁹

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I believe that it is plausible to imagine that in broad view of public reason that includes some institutions for wider citizen participation in political deliberation there will be more situations where non-ideally reasonable persons will try to see their values realized through common institutions. Can we then simply say as Quong does that although as citizens we should try to reason with those citizens and persuade them that they should give priority to public reasons but that political liberalism *qua* political philosophy need not and should not aspire to resolve such situations?³⁰ Can we say that political liberalism simply passes the buck to non-ideal citizens how to translate their reasons into public

28 Rawls (1996), p. xxxviii. In this quotation Rawls explicitly mentions citizens of faith, but I put notion of non-ideally reasonable persons to cover wider range of conceptions of good like, for example, ecocentric.

29 In *participative city budgeting*, citizens are through popular assemblies at a neighborhood and district level participating in decisions about the distribution of significant portions of the city's budget. For more on this see Smith (2009). Here I mention participative city budgeting because example given by Quong for broad view of public reason – decision whether we should build an art gallery or football stadium (p. 280) – is an issue suitable for such democratic procedure.

30 Quong (2011), p. 189

reasons and than deliberate together on terms of these reasons alone? Well, if political liberalism is concerned with stability and not only with justice, it seems to me that problem of wholeheartedness is a problem of political liberalism qua political theory. Problems of non-ideal citizens retreating to private life and becoming resident aliens or worse making deliberative enclaves that can polarize citizens to become unreasonable citizens are problems of political liberalism qua political theory.

It seems to me that political liberalism must have a certain account of pre- overlapping consensus reasoning and not only account of post – overlapping consensus reasoning. The problem of pre-OC reasoning is how are we to reason with non-ideally reasonable persons in order for them to become participants of post-OC reasoning. It is important to note two things. First, pre-OC reasoning is not comprehensive reasoning. We do not reason with others in order to question the truth of their comprehensive doctrine, this should not be part of political theory. Second, aim of pre-OC reasoning is not to check if certain law can be justified on basis of comprehensive reasons citizens hold. Here I agree with Quong that justification of laws or policies must be public in a sense that it is based on shared public reasons. The point is not that we reason with others to achieve that certain outcome (law or policy) is justified according to their pre-OC reasons, but to reason with others to achieve that they accept reasons that are suitably public for outcomes to be justified. As is already said, we do not demand that citizens accept wholeheartedly outcomes, but only deliberative process and public reasons by which this outcome is justified. I believe that this is also clear in Rawls's own example of pre-OC reasoning, *reasoning from conjecture*:

“We argue from what we believe, or conjecture, are other people's basic doctrines, religious or secular, and try to show them that, despite what they might think, they can still endorse a reasonable political conception that can provide basis for public reasons. The ideal of public reason is thereby strengthened. However, it is important that conjecture be sincere and not manipulative. We must openly explain our intentions and state that we do not assert the premises from which we argue, but that we proceed as we do to clear up what we take to be a misunderstanding on other's part, and perhaps equally on ours.”³¹

Thus, as I understand him, Rawls is not saying that in reasoning from conjecture we try to show others that particular outcome is justified in

31 Rawls (1999), p. 594

terms of their particular reasons but that they can still endorse political conception that can provide basis for public reasons and then to enter post-OC reasoning based on these reasons alone. Otherwise, we would behave like experts in PLES, providing justification for a law from perspective of political values, but then explaining others how this law can be justified to them on terms of their particular reasons. But, we already saw that this is not idea of public reason we want to have in well-ordered society.

Thus, to have justice and justification we need moral duty of civility with PJS in political *justificatory* domain where laws are finally being justified. Justification of laws is domain of post-OC reasoning. But, having in mind broad view of public reason and wider citizen's political participation we also need political *deliberative* domain where non- ideally reasonable citizens will sometimes offer each other their comprehensive reasons. This will be the domain where pre-OC reasoning will most likely occur. But, if moral duty of civility and PJS are only notions of civility and sincerity that political liberalism qua political theory employs then it will not have its own resources how to deal with such situations because they are, by definition, elements of post-OC reasoning. It is important to have notions of civility and sincerity on pre-OC level also because we want to avoid manipulation, strategic reasoning and bargaining – these things can endanger stability even if final outcome will be suitably justified.

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Appropriate notion of sincerity at a level of pre-OC reasoning is nicely captured in Principle of Sincerity proposed by Gaus. According to Gaus's principle of sincerity, "If we have two persons, A and B, and different reasons R_a and R_b , A can sincerely appeal to B (and vice versa) only if A believes that (i) B would have sufficient reason to endorse R_b and (ii) A could see this as intelligible and relevant, though he does not endorse it".³²

Let's see Gaus's own example of this principle:

"I believe that virtue theory is an erroneous account of basis of social morality, and I believe that at some level of deliberation this can be shown. Yet I believe that my colleagues who are virtue theorists have considerable warrant for their beliefs. Now suppose that I am deliberating with one of these colleagues about the proper rule governing, say,

32 Gaus (2011), p. 289

property, and I point out that, on grounds of her virtue theory, rule x is to be ranked as superior to rule y . I believe that she has sufficient warrant for her beliefs at this level of deliberation, and so for her endorsement of x (over y). I have respected her moral autonomy and have appreciated that on these difficult matters highly competent reasoners have conflicting beliefs. No insincerity, manipulation, or deception is involved in our relations: I treat her as a free and equal person with her own store of warranted beliefs at this level of deliberation, which quite properly guide her as a rational agent.”³³

Now, as already said, I do not agree with Gaus that we should justify particular rules or laws on reasons we hold unjustified.³⁴ But, if instead of rules we put public reasons then I think this Principle of sincerity can be appropriate as part of political liberalism for pre-OC reasoning. For example, in debate about gay marriages there are many reasons that anti-gay marriage group can offer. Reasons that heterosexual marriage is part of tradition, that it has intrinsic spiritual value and reasons concerning interests of children. So, if we can show to this group that according to their comprehensive doctrine, that we do not hold justified, they should rank reason concerning interests of children over other reasons, I think that we should do it without behaving insincerely, even if we clearly violate PJS. Interest of children is public reason, it should have deliberative priority over tradition and spirituality, and it is appropriate reason for justificatory domain irrespectively of the outcome itself.

This kind of sincerity is essential part of our virtue of civility like PJS is essential part of our moral duty of civility. Virtue of civility I have in mind is one of political virtues that are „specified as those qualities of citizens’ moral character important in securing a just basic structure over time“.³⁵ Virtue of civility directs us how to approach non - ideally reasonable persons when they see the threat to realization of their very important values through public rules in certain situations. Saying that this is their problem with which our theory is not concerned but unfortunately they are not part of justificatory constituency on this issue can make them feel exposed to injustice which can endanger stability of just

33 Gaus (2011), p. 291. Elvio Baccharini offers an attempt to reformulate the convergence view in order to show that sincerity can be respected even by justification related to convergence. Baccharini (2014).

34 It may be useful, here, to mention the importance in Gaus’s theory of balancing the reasons that one has with the reasons that others have, in order to establish common moral demands with them. Cfr. Baccharini (2013).

35 Rawls (2001), p. 142

basic structure. We act in accordance with our virtue of civility when we listen to others and try to see things from the point of view of their conception of good. In this way we do not only *treat* others in a tolerant and respectful way, but we *communicate* in a tolerant and respectful way.³⁶ The place where this communication occurs is part of pre-OC reasoning and its aim is to manifest readiness on our part and insurance on part of others that in justification of particular political decision everyone will respect moral duty of civility as essential part of post-OC reasoning. Finally, developing certain account of pre-OC reasoning that is part of political liberalism can possibly be a first step for political liberals to give directions how our actual societies can move more closely toward the ideal of well-ordered society. In actual circumstances we are very far from fulfilling moral duty of civility and principle of justificatory sincerity, but I believe we can still cooperate together manifesting virtue of civility with its own notion of sincerity.

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Thus, I can summarize my point in this paper by one question to Quong – can political liberalism still be a coherent account of just and stable society if it does not try to develop a certain account of pre-OC reasoning as part of political theory?

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Bibliography

- Baccarini, E. (2014), "Public Reason. The Consensus and the Convergence View", *Filozofija i društvo* 25: 75-95
- Baccarini, E. (2013), "Having a Reason and Distributive Justice in *The Order of Public Reason*", *European Journal of Analytical Philosophy* 9: 25-51.
- Calhoun, C. (2000), "The Virtue of Civility", *Philosophy and Public Affairs*, Vol. 29, No. 3, 251-275.
- Gaus, G. (1996), *Justificatory Liberalism: An Essay on Epistemology and Political Theory*, Oxford: Oxford University Press.
- Gaus, G. (2010), *The Order of Public Reason: A Theory of Freedom and Morality in a Diverse and Bounded World*, Cambridge: Cambridge University Press.
- Quong, J. (2011), *Liberalism without Perfection*, Oxford: Oxford University Press.
- Quong, J. (2013), "Public Reason", *The Stanford Encyclopedia of Philosophy* (Summer 2013 Edition), Edward N. Zalta (ed.), URL= <<http://plato.stanford.edu/archives/sum2013/entries/public-reason/>>.
- Rawls, J. (1971), *A Theory of Justice*, Cambridge, MA: Harvard University Press.
- Rawls, J. (1996), *Political Liberalism*, New York: Columbia University Press.

³⁶ For more on difference between civility and tolerance see Calhoun (2000).

Smith, G. (2009), *Democratic Innovations: Designing Institutions For Citizen Participation*, Cambridge: Cambridge University Press.

Sunstein, C. (2001), *Designing Democracy: What Constitutions Do*, Oxford: Oxford University Press.

Weithman, P. (2010), *Why Political Liberalism? On John Rawls's Political Turn*, Oxford: Oxford University Press.

Nebojša Želić

Da li je političkom liberalizmu potreban neki model rasuđivanja pre preklapajućeg konsenzusa?

Apstrakt

U svojoj knjizi *Liberalism without Perfection*, Džonatan Kvong zastupa unutrašnju koncepciju političkog liberalizma, čija je namera da pokaže da je liberalno dobro uređeno društvo unutrašnji koherentan ideal i da će građani odgojeni u takvom društvu moći prihvatiti i podupreti svoje liberalne institucije i načela ukoliko su te institucije i načela odgovarajuće opravdani. Odgovarajuće opravdanje podrazumeva posebnu koncepciju javnog uma, čija je glavna osobina to da je preklapajući konsenzus prvi stupanj opravdava-lčke strukture. Dakle, javno rasuđivanje građana u dobro uređenom društvu treba se temeljiti samo na vrednostima i idejama inherentnim liberalnoj koncepciji pravednosti – sloboda, jednakost, pravedan sistem kooperacije i tereti suđenja. Druga važna osobina Kvongove koncepcije javnog uma odnosi se na njegov doseg. Kvong brani široki doseg javnog uma što znači da bi svi obavezujući zakoni i javne politike treba da budu (kad god je to moguće) opravdani samo na temelju spomenutih vrednosti. Dakle, razložni građani u dobro uređenom društvu po definiciji pridaju deliberativni prioritet javnim razlozima nad njihovim drugim sveobuhvatnim verovanjima kad god koriste svoju kolektivnu političku moć jedni nad drugima. Problem koji postavljam u članku jeste da je vrlo verovatno da će u dobro uređenom društvu postojati grupa građana koja neće pridati potpuno deliberativno prvenstvo političkim vrednostima, a posebno to neće činiti na svim nivoima političke deliberacije. Oko nekih pitanje sigurno će hteti da vide svoje partikularne vrednosti realizovane kroz zajedničke političke institucije. Ukoliko naša politička teorija isključuje tu grupu iz opravdanja oko nekog pojedinog problema ili ih određuje kao nerazložne, tada je verovatno da će se narušiti njihova opšta odanost liberalnoj koncepciji pravednosti i ugroziti stabilnost dobro uređenog društva. Dakle, ono što želim da istaknem jeste da nam treba dalje razvijanje političkog liberalizma, kako bi mogao da se suoči sa pomenutim problemima, ne kao deo ne-idealne teorije, već kao deo liberalnog idela dobro uređenog društva.

Cljučne reči: Quong, Rawls, politički liberalizam, javni um, razložnost, iskrenost, moralna dužnost građanstva.