The Duty of Mutual Respect as the Deliberative Duty of Democratic Citizenship

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Abstract: Rawls's conception of public reason is discussed by the current philosophical debate exclusively with reference to his late work like notably *Political Liberalism*. In that, Rawls conceptualises reasonable justifications as shareable regarding their reasons. Consequently, citizens are called upon, at least in the long run, to replace their formerly held reasons derived from their personal comprehensive doctrines with generally shareable ones. Only these new reasons shall then be capable of justifying democratically legitimate norms. Yet, critics such as Jürgen Habermas argue that the requirement that citizens replace their subjective reasons with generally shareable ones is overburdened, particularly for the context of diverse societies. To be specific, the consequence would be that citizens were forced to split their identities into a private and public one and then publicly engage in dishonest communication while accepting cognitive dissonance. Rawls's work can only escape this accusation by assuming that citizens of democratic societies practice self-censorship and give each other generally shareable reasons because they interpret this as a requirement of their comprehensive doctrines as well. However, this is a highly dubious auxiliary hypothesis, which Rawls's theory of democracy draws on, accepting cultural relativism. Yet, without explicitly mentioning the concept, the *Theory of Justice* contains an earlier conception of public reason, which differs from that found in Rawls's late work in two respects: On the one hand, it differentiates between the acceptance of reasons in terms of their divisibility of content and in terms of their consequences, whereby public reasons are to be assessed in terms of their consequence. On the other hand, this conception of public reason does not immediately require virtuous citizens to replace their reasons taken from their comprehensive doctrines, but only to

deliberate whether they can find acceptance in terms of their consequences. The aim of this text is to take the position that this early conception of public reasons and the corresponding deliberative duty, even if it may sound anachronistic from a biographical point of view, is better suited for deliberation under pluralistic conditions. Furthermore, this shall be exemplified with regard to the special case of religious diversity.

Key terms: public reason; reasonable pluralism; duty to civility; comprehensive doctrines; deliberative democracy; Rawls, John; Habermas, Jürgen

In the words of the German-American political scientist Ernst Fraenkel ([1964] 2011), pluralism is a *structural element of modern democratic societies* that can only be abolished by the use of coercion or violence.[1] John Rawls (1989, 235; 1993, 54-58) explains this characteristic of modern societies by, first, reminding us that the anthropologically constant burdens of judgement, the *idola tribus,* always make many of our individual judgements conditional on being partly subjective, since the human cognitive faculty is limited in principle. For example, as is well known in epistemology, no unambiguous inductive conclusions can be drawn from observation but these conclusions always dependent on factors like personal standpoints or theoretical premises. Now, moreover, modern societies are characterised by a high degree of functional differentiation, which goes hand in hand with the differentiation of the possible worlds of experiences depending on sociological factors such as occupation, gender, place of residence, milieu et cetera. This diversification of the possible worlds of experiences favours the fact that the already existing burdens of judgement are thus given a much larger contact surface. Looking on the micro-level, those who live in modern societies therefore form differently coloured world views depending on their social position. The result of this is that modern sociality, mediated by the mechanism of functional differentiation, will on the macro-level develop an irrevocable pluralism of reasonable, yet possibly divergent comprehensive doctrines, whereby different world views cannot necessarily be attributed to cognitive failures, but rather to different social positions.

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1 A draft of this paper was presented at the Joint Colloquium of Political Theory of the Universities of Giessen, Mainz, and Darmstadt, organised by Claudia Landwehr and Dirk Jörke and held in Summer 2021 at the University of Mainz. I thank the participants for helpful comments and queries.

For Rawls, the sociological fact of reasonable pluralism might pose a challenge to the normative theory of democracy. This is because, in essence, democratic rule is normatively legitimate, even if it might be enforced by irresistible restrictions and sanctions, because it does not violate the liberty and equality of citizens insofar as, firstly, it is exercised (at least indirectly) by norms which are authored by the citizens themselves and, secondly, their justifications could gain general acceptance, id est it takes account of the principle of public justification.[2] Only if an adopted norm can be generally acceptable – even if only because of its coming into being in a fair process – it does not exercise illegitimate coercion or force over free and equal citizens.

The second requirement for democratically legitimate rule was comparatively easy to fulfil in a relatively homogeneous society such as the one of the Swiss cantons or the Roman Republic which Jean-Jacques Rousseau had in mind when he prescribed the orientation towards the *volonté générale in Du contrat social* (cf. Ryan 2012, 568f.). Since there were no such pronounced sociocultural differences, at least with regard to the dimension of comprehensive doctrines – economic differences not taken into account – the public justification of political measures could not be assessed as challenging to the same extent as it is the case in today's fare more pluralistic societies, where different religions and world views disagree over morally and ethically disputed matters like abortion, genetic enhancement, the role of religion in the public sphere and so on.

Under the conditions of pluralistic societies, however, it seems to be the case that one runs into a dilemma when trying to fulfil the principle of public justification: The first horn is that the unrestricted, unconditional inclusion of all reasons derived from the various comprehensive doctrines will obviously not meet the general acceptance of the outcome. Yet, the second horn is that the exclusion of all those demands stemming from the comprehensive doctrines, for example those based on religious convictions, would in effect also lead to a violation of the principle of public justification. This is the case, because then, to remain with the case of

2 Rainer Forst (2017, 49) formulates this specific of democratic rule vividly in this conceptual work on the theory of power: "Democratic rule exists where those subject to a normative order are at the same time the normative authorities who co-determine this order through democratic justification procedures. […] Democratic power is exercised through the rule of reciprocally and generally justifiable reasons when it comes to basic question of justice."

religion, religious citizens might in turn not see their view of things represented in the political formation of a common will and thus could not accept the exclusion of their convictions.

So, in view of the pluralistic condition of modern societies, is the principle of public justification to be abandoned in favour of the mute, agonal competition for positions of power? Is deliberative democracy a naïve utopia? The consequences would be grave from a normative point of view, because, among other things, the counterfactual assumption alone that with regard to general binding norms a consensus can be reached favours the inclusion of justified but weak demands that could not, or could not sufficiently, gain influence in a purely agonal competition (cf. Habermas 2008a, 275). If the ideal of finding a consensus would be utopian in the negative meaning of the concept, the real advantages of gearing to it would be lost as well.

The current discussion on democratic theory with regard to Rawls's contribution to the requirements of public justification only focuses on *Political Liberalism*'s attempt to solve the dilemma or the slight revision of *Liberalism* published in 1997 in the *University of Chicago Law Review*. There Rawls states by introducing his *proviso* that in the long run, reasonable citizens will only name such reasons for generally binding norms that are *generally divisible* or *generally accessible*.

Nevertheless, this conception of reasonable justifications is not convincing. A common line of criticism in the research literature notes that the requirement to give generally divisible of generally accessible reasons would either be impossible to realize for truly convinced citizens in the case of value conflicts, or only possible at the cost of potentially enormous cognitive dissonance. Habermas (2008c, 129f.) for example objects in the case of religious comprehensive doctrines

> "[T]he normative expectation that all religious citizens when casting their vote should *ultimately* let themselves be guided by secular considerations is to ignore the realities of a devout life, an existence *guided* by faith. [...] The liberal state must not transform the necessary *institutional* separation between religion and politics into

an unreasonable *mental and psychological* burden for its religious citizens."[3]

Liberalism's suggested solution to the mentioned above dilemma fails, however, not because it imposes overburdensome deliberative duties – the just presented critique of Habermas might suggests this – but above all because Rawls avoids the dilemma with the help of a *culturally contextualising* premise that drastically restricts pluralism: Rawls (1997, 782) assumes that the comprehensive doctrines in the societies for that he writes will by themselves recognise the high demands of public justification as formulated in Liberalism. This may circumvent the dilemma within the theory, but one may doubt whether it adequately accounts for the reality of pluralistic societies.

With reference to considerations from the *Theory*, this article would like to present an alternative conception of public reasoning and the corresponding deliberative duties as a more convincing way to circumvent the dilemma. While analysing the possibility of civil disobedience in an almost just society, Rawls en passent states that generally acceptable reasons for political action do not have to be universally divisible. Rather, they must only "lead to similar political judgements" (Rawls 1972, 387). In this way, however, the *Theory* withdraws Liberalism's duty to name generally divisible reasons in the process of giving and taking reasons. If only a consensus regarding "similar political judgements" is necessary (and perhaps only possible) to avoid democratically illegitimate coercion, the individually comprehensive reasons for political means do not have to be divisible. The Christian in a well-ordered society, for example, can recognise a different comprehensive justification for a specific norm as acceptable to her then the

3 Following the model of a "two-track deliberative politics" (Habermas 1996, 304) as reconstructed in Between facts and norms, Habermas (2008c, 130; 2019b, 878) proposes to primarily leave the screening of publicly brought up reasons for the general acceptability to the administrative system. My following objection to the conception of public reason as presented by Rawls in his later work does not address the normatively appropriate distribution of tasks in a deliberative system, but rather the content of what can be classified as publicly reasonable. Therefore, I will not devote any further attention to more institutional-theoretical branches of critique.

Although Liberalism restricts adherence to the proviso to the deliberation of "constitutional essentials" (Rawls 1993, 214) only, this does not seriously mitigate the problem raised. This is because of the so-called horizontal effect of constitutional rights (cf. Böckenförde 1991, 190), which points to the fact that supposedly trivial political issues often have a connection to "constitutional essentials"

devout Muslim, without the norm causing any coercion. For a corresponding new formulation of the deliberative duty of democratic citizenship the "duty of mutual respect" (Rawls 1972, 337) can be found in the *Theory*'s listing of natural duties. What is to be shown in the following is that, even if it may sound anachronistic, both the purpose of the public use of reason and the duty of mutual respect, as introduced in the *Theory*, are normatively more appropriate for a conception of public reason for pluralistic societies than the one that Rawls presents in *Liberalism* (and slightly modified in 1997) – even though *Liberalism* was actually devoted to the overarching question of how a stable democratic constitutional order can be justified for a religiously and ideologically diverse society.

To show this, I will first depict the conception of public reasons and the duty of civility as developed and justified in *Liberalism* (I) and raise my objection that a problem of cultural contextualism, perhaps even relativism, arises in Rawls's late work (II). Following the objection that the conception of public reason and the duty of civility found in *Liberalism* can only be legitimate for culturally largely homogeneous societies and thus are not suitable for the context of pluralistic one, the *Theory*'s notion of publicly justified reasons as "lead[ing] to similar political judgements" (Rawls 1972, 387) follows. Supplemented by the discourse-theoretical differentiation between truth and rightness, this is to be interpreted in the sense that the epistemic competence of deliberation does cum grano salis does not consist of finding true but right reasons. At the same time, the duty of mutual respect, as can be found in the *Theory* as well, seems to be suitable for denominating deliberative obligation of democratic citizenship.

I. The conception of public reason in *Political liberalism* and *The idea of public reason revisited*

(a) *Reasonableness and democracy*. According to Rawls (1993, 48-54) human beings possess the competence to think and act both rationally and reasonably. It is important to emphasise that Rawls does not use the concepts of rationality and reasonableness synonymous, nor can they be reduced to one another. Rationality, on the one hand, refers to the capacity to choose and effectively pursue one's personal life plans vis à vis a wide variety of life goals and life

forms. Rational choice and action thus aim at the realisation of a good life for oneself. Reasonableness, on the other hand, refers to the ability to orient oneself to principles and norms that others can also recognise from their point of view, despite one's perhaps opposing preferences. If an actor does not simply act egocentrically, but for the sake of the justified demands of others, then she acts reasonably. Reasonableness thus aims at justice, understood as the general justifiability of actions or structures.

The question might now arise, why reasonableness is important for a philosophical theory of democracy. Why would a mere agonal competition for power and influence not be a normatively appropriate understanding of the democratic process, as it is affirmed in today's academic discourse by neoliberal, Hayekian approaches as well as agonal theories of democracy?[4] According to Easton's (1968, 129–134) classical definition, the "political" refers to the authoritatively regulated distribution of material and immaterial goods. Democracies, according to Rawls (1993, 4), are furthermore based on the idea that all human beings are in a moral sense free and equal. For a democratic polity or policy this might lead to a tension between the normatively desired recognition of the freedom and equality of each and every person on the one hand and the intention to authoritatively regulate the social life on the other, since political rule and state coercion prima facie implies the restriction of freedom and the asymmetry between the ruler and the ruled. The question therefore is, how it is possible to preserve the freedom and equality of every citizen and at the same time order their coexistence by the help of political rule.

Democratic systems *formally* attempt to resolve this tension by placing the development of norms, which then guide the exercise of state power, in the hands of those subjected to the law – at least indirectly –, for example by giving them the equal distributed right to vote. In democracies citizens exercise political rule over themselves so that their freedom and equality is not violated. This is at least a relevant aspect of a democratic order that all theories of democracy recognise, including minimalist ones (cf. Przeworksi 1999).

4 For a detailed critique of the analogy between market processes and (normatively appropriate) democratic procedures, see, for example, Rawls (1972, 356-362) or Elster (2009, 103-120).

Moreover, as regards *content* it must also be possible that the justification of the norm finds general acceptance – even if only because the norm came about in an open and fair process. Christian List (2011, 286f.) for example rightly objects democratic-theoretical approaches that merely identify the reaching of an undeliberated compromise supported by the mere majority as normatively sufficient for democratically legitimate decisions. By doing so these approaches do not make any qualifying demands with regard to the decision's justification, which might lead to a point where contradictory reasons by different actors supports the outcome, for example by different parties that form a governmental coalition. Yet, this is initially unsatisfactory from an intellectual point of view. As a rule, citizens demand to receive good arguments for policies that restrict their negative freedom. Furthermore, in a non-ideal political system there are various possibilities for socially powerful actors to politically assert their particular interests at the expense of weak interests. Here, the deliberation of good reasons to then justify a policy can provide a remedy by revealing positions that cannot be justified in general. The public use of reason should consequently guarantee that the norms and policies, which henceforth exercise rule over citizens, can also be accepted by them and thus in this respect no illegitimate coercion or even violence is exercised over persons who are actually recognised as free and equal.

If one follows the line of argument that democratically legitimate norms must enjoy general acceptance, nothing is said about who is to be committed to this task in a deliberative system.[5] Intuitively, officials in the political-administrative system could be identified as the primary (and sole?) addressees of the claim to find generally acceptable justifications for legal norms, for example members of parliaments or constitutional judges. Rawls's theory of democracy, however, takes the position that citizens have largely the same duties as officeholders. The *Theory of Justice* already opens up the question of whether ordinary citizens, when they engage in political activities like casting their vote in an election, should bow to the duty of justice or can simply rationally pursue their interests that are inclined towards their own good (Rawls 1972, 360f.). Indeed, the latter would be short-sighted given the institutionalised coupling between the public opinion on the one hand and the decision-making processes on the other hand.

5 On the concept of deliberative systems, cf. Mansbridge et al. (2012).

Two cases for that: First, as a citizen one regularly selects those persons or parties who directly influence the political decision-making for a legislative period. Second, representatives use those reasons to deliberate justified decisions which they draw from a "pool of reasons" (Habermas 1989, 28, translated by the author) *administered by the public*. "Democracy [...] implies [...] an equal share in the coercive political power that citizens exercise over one another by voting and in other ways" (Rawls 1993, 217f.). Consequently, for reasons of institutional design, in democratic systems there can be no strict differentiation between the duties that affect persons in the political-administrative system and those that affect ordinary citizens.

Sound institutional restrictions or incentives inside the political-administrative system, for example the effective separation of powers or precautions that prevent the unduly influence of socially powerful groups, can get political actors to make reasonable political decisions out of strategic motives (cf. Habermas 1996, 304) – economising on virtue so to say. Nevertheless, Rawls's theory of democracy can be classified in the series of (empirically well-founded) approaches, which assume that a certain degree of virtue and public spirit are moreover necessary for a long-term stable democratic society, too.[6] In order, for example, to transfer learning processes that have been made at the grassroots level in favour of the emancipation of largely unheard minorities into political decisions, there must ultimately be a willingness on part of the wider public and their political representatives to go beyond a purely strategic orientation, which merely focuses on their own benefits (cf. Maus 1991, 145).[7] This, however, cannot be achieved by a smart institutional design alone, but requires virtuous citizens and politicians to act *out of duty*.

(b) *The wide conception of the duty of civility*. Rawls defines the duty corresponding to the demands of the public use of reason as the duty of civility. Following a slight revision made in 1997, he cum grano salis qualifies the wide conception as

6 For similar positions with diverse justifications, cf. Taylor 1995, Habermas 1996, 316f.; Audi 1997, 16; Böckenförde 2021.

7 In this respect, I assess the critical plea of Gaus and Vallier (2009, 65-70) to shift the research on public reason from the perspective on civic activity to institutional design as at least partially misguided.

a normatively appropriate formulation of the duty of civility (Rawls 1997, 783-787).[8] This wide conception allows all those reasons to be given in the decision-making process – cases such as hate speech or incitement of racial hatred not included – of which one is truly convinced, without immediately filtering them with regard to their general acceptability. Thus, in a first stage, it is possible to give reasons for the then generally binding norm that stem from only subjectively recognised comprehensive doctrines. Only in a second stage – "in due course" (Rawls 1997, 776) – are citizens called upon to give other equivalent reasons that are generally accessible (Rawls 1997, 778). This second part of the wide conception is familiar in the academic discourse under the concept of the proviso. The proviso ensures that, although the wide conception of the duty of civility is not very restrictive, it nevertheless achieves the objective of the principle of public justification to avoid the democratically illegitimate exercise of state coercion, id est state action that cannot be accepted by those affected.

In the first stage, for example, it is not a violation of the duty of civility if a devout citizen who reject a liberal regulation of stem cell research out of religiously founded doubts – "we must not play God" – also makes this known publicly with reference to religious arguments. Only with time should he, according to the wide conception, give generally accessible reasons for his position, reasons that could also convince his atheist fellow citizen.

What is the output of considering the proviso? Rawls does not go into detail as to whether the normatively appropriate transformation of the firstly given reason into a publicly acceptable one denotes, as Habermas (2008c, 136) favours it for some religious reasons, a "translation" of its content into a generally accessible

8 There are two other conceptions of the duty of civility in Rawls's work. The so-called exclusive conception of the duty of civility requires that virtuous citizens dispose of all reasons that are not publicly shareable, as soon as they participate in the forming of the political will (Rawls 1993, 247). Rawls, however, largely rejects the exclusive conception on grounds of non-ideal theory-building, because, historically seen, it turns out that in real societies the arguing for actually generally acceptable democratic values in the guise of reasons of comprehensive doctrines can be more effective in the steady realisation of the realistic utopia of a well-ordered society. If one thinks of cases like the US-American civil rights movement, it can be observed that religious semantics, for example, can be far more reminiscent "of the violations of solidarity throughout the world, […] of what cries out to heaven" (Habermas 2010a, 19) and thus might motivate people to action for justice more easily (cf. Rawls 1972, 384f.). If so, according to Rawls's (1993, 247) inclusive conception, it is appropriate for religious or otherwise comprehensive doctrinal reasoning to find a place in the political public sphere "provided they do this in ways that strengthen the ideal of public reason itself".

language or whether the latter given, publicly acceptable reason must be only equivalent in effect. It remains open, therefore, whether the wide duty of civility might also prescribe the necessity for "*complementary* learning processes" (Habermas 2008c, 140) – what can be elicited for example in a statement like "we must not play God", from which post-secular societies could also expect a gain in knowledge in practical and political questions – or whether ultimately the latter given reason only has to work in the same way.[9] The only think that is clear in Rawls's (1997, 778, 786) work is that it must be a reason other than the one initially given, which is taken directly from the specific comprehensive doctrine. So, in the end, Rawls's proviso prescribes a *replacement* of reasons.

(c) *Justification of the wide conception of the duty of civility*. Rawls (1997, 783-788) considers the wide conception of the duty of civility as normatively appropriate for two reasons: Firstly, as a liberal approach to democracy Rawls's (2001, 44) theory starts from the "presumption in favour of liberty", which means that all those publicly expressed opinions that citizens would simply like to name and that do not have a direct influence on the formation of will – cases as hate speech and incitement of the people that can cause harm to others, as said, left out – have to be tolerated. The freedom of opinion prohibits an immediate evaluation of public statements in terms of their productive value for the process of the formation of a common will (cf. Niesen 2005, 15). In the words of Judith Shklar (1964, 5, emphasis by the author) "tolerance is a *primary* virtue and [...] a diversity of opinions and habits is not only to be endured but to be cherished and encouraged".

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9 For the second case, to stay with the example, one could imagine that the religious citizen does not provide a Habermasian translation for the argument that it is wrong to play God, but instead gives another publicly accessible reason that, like his religious argumentation, amounts to a justified rejection of stem cell research. Yet, such a strategy to cope with reasonable pluralism in the political public sphere would have the disadvantage that at the end of the forming of the political will there might be a justification for a concrete policy of which none of the citizens is truly convinced, but which is somehow publicly accessible.

Habermas' (1987, 77-111) notion of a "complementary learning processes" builds on a specific socio-theoretical assumption, the so-called linguistification of the sacred, according to which religious narratives and motives potentially have a rational content. This premise leads his political philosophy to the point of recommending a cooperative translation of religious reasons into a generally accessible language, realised by religious and non-religious citizens alike. Such a socio-theoretical grounding of his proviso, combined with the call for a jointly endeavoured translation of religious reasons, would be too presuppositional for Rawls' political liberalism, however. One would then again – which Rawls (1985; 1995, 132) would strongly like to avoid – introduce certain assumption of an assumed (!) comprehensive doctrine, the theory of communicative action, into the formulation of the proviso.

In fact, however, Rawls's (1993, 47) late work is not primarily concerned with this classically liberal consideration, but rather with the *sociocultural conditions of political stability*: How can a democratic constitutional and welfare state exist stably in the long term despite the diagnosed fact of a reasonable pluralism – especially bearing in mind the more republican prerequisite that citizens must not only act opportunistically and egoistically but also out of democratic duty? As is known, Rawls (1989) answers this question, among other things, by arguing that in pluralistic *and* stable well-ordered societies an overlapping consensus has emerged, in which individual compliance to the democratic duties is justified in diverse ways depending on different religious or ideological worldviews. While, for example, for the devout Christian adherence to the democratic constitutional state could be justified by the fact that it respects and protects the God-given dignity of every human being, the secular republican could affirm it as a product of the Enlightenment et cetera.

But even if a well-developed consensus exists in a democratic society, it may still be the case that it does not unfold its stabilising effect, at least not to its full extent. Why is that the case? Especially in pluralistic *populous* societies, there could be a lack of knowledge that the person who is actually a *stranger* to me, with completely different religious and ideological convictions, habits and life forms, nevertheless shares the same democratic values as I do. How shall I know that I can trust him and stick to being compliant with my citizen duties?[10] Rawls (1997, 784) favours the wide conception of the duty of civility, because the initially unfiltered presentation of one's own convictions, what one's own doctrine says in its (not generally accessible) entirety, enables the development of a mutual knowledge of each other and thus trust in the existence of the overlapping consensus. Thus, the wide conception is recommended not only for intrinsic reasons, which lie in the respect for the individual freedom of opinion and expression, but also because it facilitates trust-building communication between strangers but fellow citizens.

However, Rawls gives no clear psychological explanation why the naming of (supposedly) purely subjective reasons in the first place and the subsequent

10 For Rawls (1993, 54, emphasis by the author) this is a reciprocity problem: "The first basic aspect of the reasonable, then, is the willingness to propose fair terms of cooperation and to abide by them provided others do."

transmission into divisible justification solves or mitigates the problem for the strongly convinced citizen of not being able to *effectively* bring his true convictions into the decision-making process after all. One could assume here, though, that by first being able to publicly proclaim his true convictions, the devout individual derives an expressive and identity-building benefit from this before complying with the proviso (cf. Larmore 2010).[11]

II. Objections to the conception of public reason as formulated in *Political liberalism* and *The idea of public reason revisited*

(a) *A metaphysical liberalism indeed?* Following Cristina Lafont's (2009, 129f.) interpretation of Rawls, an according to the wide conception of the duty of civility qualified forming of the political will can be illustrated on the individual level as follows: To deliberative politically relevant matters, the individual citizen has got two "pools of reason" (Lafont 2009, 130). One pool filled with reasons taken from the comprehensive doctrines she holds, and one with reasons that can gain general divisibility and are thus publicly reasonable. In the course of the public use of reason, she initially has the option of contributing justifications for the matter in question that she derives from the first pool, for example, those from a religious narrative. In time, however, following the proviso, she must try to give equivalent reasons from the second pool.

A first objection to the wide conception of the duty of civility, to be more precise to the proviso, was given by Nicholas Wolterstorff (1997, 105-109), among others, to the effect that neither a second pool of publicly accessible reasons should always be assumed to exist, nor, even if it does, should the devout individual be expected to make us of it. On the contrary, one could assume that it belongs to the authentic religiosity of a believing citizen, for example, to on the one hand derive his political convictions from his religious views and only from these and on the other hand that he cannot truly name any other reasons then these religious ones without pretending to be somebody else.

11 I thank Peter Niesen for drawing my attention to this.

> "It belongs to the *religious convictions* of a good many religious people in our society that *they ought to base* their decisions concerning fundamental issues of justice on their religious convictions. They do not view it as an option whether or not to do so. [...] Their religion is not, for them, about *something other* than their social and political existence; it is also about their social and political existence" (Wolterstorff 1997, 105).

This objection must not only be seen with regard to religious comprehensive doctrines, but it concerns many comprehensive world views one can be truly convinced of. The predicate of being convinced of something per definitionem excludes the possibility of simply discarding that of which one is convinced of. "If I really thought that there was no more reason for me to believe what I believe than there is for what others believe, then I would not have reasons to believe what I believe" (Christiano 2008, 212).[12]

A heavily discussed juridical case from Germany can illustrate the problem this objection is referring to: In 2012, the District Court of Cologne (151 Ns 169/11, translation by the author) delivered the judgement that the circumcision of male infants performed "without [...] medical indication" and motivated solely by religious consideration was to be assessed as "unjustifiable" bodily harm and thus as a contradiction to the German constitution. As a reaction to the District Court's sentence, the federal parliament passed a law, which allowed circumcisions on purely religious reason "if it is carried out according to the rules of medical craft" (§ 1631d, para. 1 BGB).

For the purpose of my argumentation, I will disregard the discourses in moral theory and legal philosophy and assume without any further discussion, following the German legislative authority, that allowing religiously motivated circumcisions must be seen as a way to enable an important part of the religious identity formation - hence a necessary legally enabled religious practice in a society that identifies itself as liberal. How then would the proponents of this legal

12 See also Raz (1990). This does not mean that I do not put the enforcement of my convictions last because out of tolerance, which among others means in the light of "higher-order reasons" (Forst 2013, 20). But then I am convinced by these "higher-order reason".

position have to argue in order to comply with the proviso? In the long run, as has been shown, no reasons accessible only to believing citizens, meaning to citizens of Jewish and Muslim faith, are legitimate. Rather, the proviso ultimately requires other, generally accessible reasons to be given. But in the given case, it is a genuinely religious reason and only this one that can truly claim validity for the legally secured option of a religiously motivated circumcision – "Circumcise the flesh of your foreskin, and that shall be the mark of the covenant between you and me" (Gen 17:11). Those who are convinced of the necessity of performing circumcisions have no other reasons than religious ones, or, if they were to give generally accessible reasons such as medical ones, they were forced to behave dishonestly.

(b) *The problem of cultural relativism*. Thus, some branches of critique of Rawls's *Political liberalism*, such as that of Wolterstorff (1997, 96-102), lead to the position that Rawls's normative theory of democracy, contrary to its self-understanding, ultimately rest on metaphysical assumptions that leads to arbitrary prescriptions, for example, by qualifying publicly accessible reasons as somehow better than the ones stemming from comprehensive doctrines. Raymond Geuss (2009, 41) vividly formulates this reproach against liberal political philosophies in general as follows:

> "In Europe up to the eighteenth century the holding of heretical beliefs was one of the public crimes par excellence [...], the suppression of heresy was therefore in everyone's interest. Liberals, however, think that theory (of collective responsibility before God) is wrong and disallow that you are 'affecting' your neighbors and fellow citizens in any relevant sense simply by holding a certain belief, even a heretical one. So the liberal can make an effective distinction between public and private in cases like this by first determining who is 'affected' by a given action where 'affect' means '(potentially) injures materially' or 'harms the interest of,' and then by evaluating the truth or falsity of the theory the agents in question hold about what harms or might harm their interests. The question is then: who does the evaluating? Liberals, of course, think they ought to have the final word, although they are generally careful to camouflage this as well as they can. In

> other words, it is the fact that liberal think that the beliefs of religiously minded persons (e.g., that God will hold all responsible for the heresies of any one member of the society) are false that is supposed to count as a reason or thinking that religious people have no grounds for the claim heresy causes real 'harm'. It is not clear, however, why this whole line of argument is saying anything more than this: if you have the view about reasonable belief and action that liberals prefer, you will also endorse their policy proposals."

Turned against Rawls's political liberalism, however, such a critique would be too simplistic. He himself recognises the problem raised and summarises the question that moves Wolterstorff's and Geuss's line of criticism in the following words:

> "How is it possible for citizens of faith to be wholehearted members of a democratic society who endorses society's intrinsic political ideals and values and do not simply acquiesce in the balance of political and social forces? [...] How is it possible – or is it – for those of faith, as well as the nonreligious (secular), to endorse a constitutional regime even when their comprehensive doctrines may not prosper under it, and indeed may decline" (Rawls 1997, 781f.)?

My objection to the criticism of Rawls just presented, and at the same time an answer to the question just posed by Rawls, is that it is therefore possible for citizens of a well-ordered society, as Rawls has it in mind in Liberalism, to comply with the requirements of the wide conception of the duty of civility and therefore prima facie distance themselves from their personal convictions, because this is in turn part of their conviction, which is also justified by their comprehensive doctrine (Rawls 1997, 782; cf. Jaeggi 2018, 11).

Thus, the differentiation between duties that follow from what is subjectively rational and duties that derive from what is reasonable is also to be understood heuristically. For reasonable citizens living in a well-ordered society, Rawls assumes that there is congruence between the requirements of their comprehensive doctrines and the resulting form of life on the one hand and what is reasonable

on the other. That which is demanded by, for example, the duty of civility is at the same time also something that appears, however formulated, and justified, as a duty or at least a recommendation for action withing the framework of a rational plan of life *as well*.

To give an illustrative sketch: The duty of civility requires that a religious citizen does not use state power to enforce her religious beliefs in the whole society. Since her faith cannot be generally divisible in a pluralistic society, such a practice would be unreasonable. This restraint – if the concept is at all apt here – does not, however, come in the sense of a "Jefferson's compromise" (Rorty 1999, 169), restricting the believing citizen in form of a modus vivendi from the outside, because she and her denomination are simply not powerful enough to impose their comprehensive doctrines on all others. Rather, as a member of a well-ordered society, she is also truly convinced from an internal point of view that, in accordance with her belief, it would be wrong to use state power to impose her religious convictions on her fellow citizens. Thus, she can also consider such an action wrong from her religious doctrine, because, for example, it might violate the God-given dignity of human beings to disrespects the individual freedom of faith, conscience, and creed.

What does this mean for the relationship between the duty of civility and the duties or instructions that are derived from reasonable comprehensive doctrines? For the reasonable citizen, it will not be possible in the concrete situation to neatly separate their reasons for action. What the duty of civility demands overlaps, however this may look in detail, with duties or dictums that involve leading a good life. For Rawls, a good conduct of life is always a right conduct of life, even though the good, unlike, for example prominently in Kierkegaard's ([1843] 1959, 182f.; cf. Habermas 2019a, 686-688) philosophy of existence, does not merge into the right alone.[13]

With this, however, the problem of the prescription found in *Political liberalism* is not that it argues (unreasonably) metaphysical by qualifying publicly accepted

13 With the assumption of a congruence between the right and the good, Rawls circumvents the supposedly existing motivational problem of Kantian moral theories (cf. Korsgaard 1996, 38-46): Reasonable persons act rightly because it seems meaningful and good for them.

values as better for whatever reasons, but insofar as it is assumed that the citizens of democratic societies see this in such a way by themselves and congruently with their comprehensive doctrines, the prescriptions are relative to a certain political culture. There are no universally good reasons for them do to so, just those, which they can find in their comprehensive doctrines.

> "The epistemic justification of the procedure in which Rawls gains the freestanding conception of justice, however, can [...] be understood in terms of a perspectival and contextualist rationalism. On the level of rational procedures themselves, according to this view, there is no rational consensus, but only contextually attuned standards of rationality" (Schmidt 2008, 100, translated by the author).

So, one could justifiably object that Rawls's premises for concluding what justice and therefore public reasoning demands are culturally and historically relative and contingent. One could, for example, argue that Rawls's duty of civility might be easy to accept in a society like the one of the United States of America, which Rawls primary addresses, because due to historical factors there is a relatively large number of Protestant denominations – and Protestantism is said to have a primary focus on the individual's inner religiosity that does not need to express itself in public and especially the political realm. But what does the predicate of reasonableness then denominate more than a certain idea hold by a majority of people living in a certain place and time? But when, for example because of migration, cultural or technological change, new forms of religion and other comprehensive doctrines take on a significant position in this particular society, the concept of public reason as found in Liberalism can no longer justify itself because the cultural background consensus supporting it has become porous.

III. The *Theory of Justice*'s conception of public reason

Inspired by empirical studies (cf. Landwehr 2009), one might ask whether Rawls's focus on the conditions of the public use reason is not misaligned insofar as it is rather the case that our political preferences are not existent *before* we go to into the public sphere. Therefore, they are in fact formed *endogenously* in the

discourse. On account of this, the development of reasonable comprehensive doctrines is not a *precondition but a consequence of deliberation*. So, is the possibility of an irresolvable conflict between political unreasonable claims stemming from comprehensive doctrines on the one hand and the demands of public reason on the other not rather a problem of unfavourable institutional design, which prevents deliberation, or of participants who stubbornly stick to unreasonable position for psychological reasons? And furthermore, are comprehensive doctrines as static as Rawls considers them to be or rather dynamic and open to learning processes stimulated by deliberation? All these are relevant socio-theoretical and empirical questions about the conditions of the public use of reason. My objection to Rawls's late work *by means of his Theory of Justice,* however, will take a different approach of critique, namely to reflect on what the meaning and purpose of the public use of reason is and what this in turn means for the deliberative duties of democratic citizenship.

Spread across the *Theory of Justice*, there are elements of an alternative conception of public reasoning, which will be presented in the following and justified as normatively appropriate, especially for the context of pluralistic societies. The guiding questions of this paper's chapter will be what the purpose of the public use of reason is (b) and which the corresponding duty is (c). First, however, a socio-epistemological consideration slightly modifying the duty of civility should be introduced, which can also be justified with the *Theory* (a). This modification, as important it is for applied question like the ones of institutional design, however, does not yet propose an alternative conception of public reason, but, compared to *Liberalism*, just a different view on the social practice of the public use of reason.

(a) *Not can, but must.* As a reminder: the wide conception of the duty of civility, which Rawls (1997, 873-787) prefers cum grano salis, first of all concedes to virtuous citizens the possibility to name their fully subjective reasons for political claims stemming from their comprehensive doctrines. Rawls accounts for this aspect of the wide conception intrinsically, on the one hand, by saying that the right to freedom of expression is thus respected, and extrinsically, on the other hand, by saying that trust and stability is generated because citizens can learn about the comprehensive doctrines of one another. What is important here now

is that Rawls considers this *normatively permissible*. Indeed, one can give a third reason in favour of the wide conception of the duty of civility, following discourse ethicists like Seyla Benhabib (1992, 98) or Karl-Otto Apel (1993, 510).

The purpose of the public use of reason lies in the evaluation of generally accepted justifications, which as such can prohibit democratically illegitimate coercion over free and equal citizens. Bearing in mind the burdens of judgement that are particularly influential in modern, functionally differentiated societies, it can be assumed that the single citizen by himself, before entering the public square, will often not know, or not know with sufficient certainty, which reasons can be generally accepted by his fellow citizens.[14] In this respect, the demand for an individual filtering of reasons before entering the discourse would put the cart before the horse. As a rule, citizens must therefore first be able to introduce all potential reasons for legal norms – including the ones they are convinced of surely being publicly reasonable – in order to find out in dialogue with each other whether they are de facto generally acceptable.[15] The possibility to name perhaps not generally acceptable reasons in the first stage of deliberation, as the

14 In this respect, I consider the thrust of Han van Wietmarschen's (2018) objection to Rawls's justification of the existence of a reasonable disagreement to be wrong: Van Wietmarschen argues that the Rawlsian assumption of a congruence between reasonable comprehensive doctrines of which the individual is truly convinced of, on the one hand, and the acceptance of the fact of reasonable pluralism, on the other, cannot be convincing. The reason for this, he argues, is that the fact that the other equally epistemically competent citizen holds a comprehensive doctrine that differ from mine must in turn be an indication to me that I cannot be intellectually honestly convinced of my comprehensive doctrine. He arrives at this conclusion by taking the concept of epistemic peers from the epistemology of disagreement and applying it to the citizens of democratic societies. Usually, however, epistemic peers are identified as researchers of the same academic discipline (Gutting 1982, 85; Christensen 2007, 216; McMahon 2009, 13f.; McGrath 2018, 75), friends (Christensen ibid., 188) or members of the same religious community (Plantinga 1981, 50), who, however concretised, have the same base of evidence. Now, it may be convincing, for example, to discard one's own assumptions about what the case is or to place them under reserve, if one is an empirical researcher and a colleague reaches different conclusions than oneself on the same data within the framework of a joint research project. For democratic societies, however, this makes no sense, since their members, mindful of the burdens of judgment, are not epistemic peers.

15 A look into the microcosm of contemporary philosophical discourses allows us to retrace this exemplarily. As Habermas (2010b, 474) makes clear, the today's personalistic conception of human dignity, as it can be found for example in the United Nation's universal declaration of human rights, has got decidedly religious origins in terms of its justification. At the same time, it is disputed whether the concept was already able to dispense with these. While authors such as Anne Philips (2015, 80-106) reject the use of the concept of human dignity for a contemporary political philosophy, as it is sill highly religiously connoted and thus not generally acceptable – whether one follows from the other is questionable here – Habermas (2010b, 470) assesses it as sufficiently translated by Kant's concept of human dignity for a post-metaphysical philosophy.

wide conception approves it, is therefore not simply normatively permitted, but considering the burdens of judgement *epistemologically necessary*.

When I speak of virtuous citizens having to do so, two reading of my statement can be distinguished. On the one hand, "having to do so" can be understood *pragmatically* in the sense that, for epistemological reasons, the evaluation of generally acceptable reasons can often only proceed dialogically. Conversely, Leibniz's monad would not be able to arrive at generally acceptable reasons, no matter how hard it tries, because it lacks the necessary input. On the other hand, "having to do so" can also be understood *normatively* in two ways: first, *epistemically normative* in the sense of the virtue of intellectual honesty, id est not being too convinced of one's own possibly erroneous assumptions and therefore making an effort to verify them (cf. Nagel 2012, 3; Tugendhat 2016, 61; Hegel [1807] 2018, 52f.), second, *morally and politically normative*.

The aspect of political normativity is addressed by Rawls (1972, 356-362) in the theory where he states that even in ideal-theoretical contexts, in which all participants in the decision-making process act solely on the basis of reasonable considerations, unjust decisions can still be made. This prima facie contradictory constellation might arise from the fact that – apart from basic needs like life, food and shelter – the participants may lack knowledge of what the further needs, perspectives and legitimate claims of other participants are. Only through and discursive process of decision-making can this problem be mitigated.

> "In everyday life the exchange of opinion with others checks our partiality and widens our perspective; we are made to see things from their standpoint and the limits of our vision are brought home to us. [...] No one [...] knows everything the others know, or can make all the same inferences that they can draw in concert. Discussion is a way of combining information and enlarging the range of arguments. At least in the course of time, the effects of common deliberation seem bound to improve matters (Rawls 1972, 358f.).

Thus, it can be summarised that, bearing in mind what Rawls later calls the burdens of judgement, a further reason in favour of a wide conception of the duty

of civility is that individuals can only in discourse come to know what generally accepted reasons are. Out of this follows, that general accepted reasons *must*, on the one hand, be filtered out in discourse, and on the other hand – here the duty of civility is coupled with the duty of justice (Rawls 1972, 115, 334) – a just basic structure must be stabilised or established that among other things makes such a "rule-free discourse" (*herrschaftsfreier Diskurs*) possible.[16]

(b) *Truth, rightness and the epistemic competence of deliberation.* In this "rule-free discourse", returning to *Liberalism*, reasons for legal norms should be found that can be shared by all those subject to the law. Only individually accessible religious reasons, for example, would therefore have to be replaced by generally shareable reasons. This, in turn, raises the objection like the before mentioned by Wolterstorff (1997, 109) that it is too ambitious a prescription for pluralistic societies. But it is also, as I want to argue, an unnecessary demand for the public use of reason and therefore deliberative democracy. In contrast, a more appropriate qualification for public reasonableness can be found in the Theory's discussion of the legitimacy of civil disobedience, even if the topic itself may initially sound all too specific for general considerations about public reason.

Therefore, first of all, Rawls's line of argumentation on civil disobedience in outlines: In the *Theory*, Rawls explicitly advocates to have the option of civil disobedience, but only if certain preconditions are met. Prima facie, it is the case that the duty of justice requires citizens of *democratic* states to abide by the rules the state passes, even if one of these rules is unjust, so to speak, on a small scale or has unjust consequences. Rawls (1972, 390-392) argues with a weighting of goods: by acting in compliance, one stabilises an institutional order, which is nonetheless

16 Elsewhere in the Theory, Rawls (1972, 47f.) asks in which case judgements can be qualified as considered and answers this question not with substantive but procedural criteria: "[T]hey enter as those judgements in which our moral capacities are most likely to be displayed without distortion. […] For example, we can discard those judgements made with hesitation […]. Similarly, those given when we are upset or frightened, or when we stand to gain one way or the other can be left aside. All these judgements are likely to be erroneous or to be influenced by an excessive attention to our own interest. Considered judgements are simply those rendered under conditions favorable to the exercise of the sense of justice […]." These "conditions favorable to the exercise of the sense of justice", it becomes apparent in view of the burdens of judgement, must not be realised intra-personally (alone), but must furthermore be realised inter-personally.

just on the whole.[17] However, conditions of pronounced injustice may exist, which make the exercise of civil disobedience appear legitimate as a way to appeal to the sense of justice of the legal community (Rawls 1972, 401, 409).

In this context, Rawls argues that the sociological entity of a common sense of justice must not be misunderstood to that effect that citizens share one and the same comprehensive idea of justice. Rather, in a reasonable well-ordered society, there may well be "differences in citizens' conception of justice provided that these conceptions lead to similar political judgements" (Rawls 1972, 387). In order for civil disobedience to appeal effectively to a common sense of justice, for example, it is only necessary that citizens, despite their differing religious and ideological convictions, assess the criticised wrong as a wrong worthy of criticism. Yet, "it is not necessary to have strict consensus" (Rawls 1972, 388). Considering the burdens of judgement, a "strict consensus" is rather not a realistic phenomenon to be, because it would mean, by way of example, that the convinced atheist would hold the same comprehensive ideas of justice as the deeply religious Christian. For a common sense of justice, however, shared religious-ideological doctrines are not necessary, since the sense of justice is concerned with becoming practically effective in the same way.

These remarks can be generalised in the sense that, for the political sphere of pluralistic societies, reasonable justifications for political norms or actions can be characterised as follows: A reasonable justification is one that can be generally agreed upon in terms of its practical consequences, even though the underlying ideas or conceptions of justice leading to those consequences may be marked by some range of disagreement.[18] Such a generalisation of Rawls's arguments

17 Furthermore, as Immanuel Kant ([1798] 1996, 253) already emphasised, in the democratic system as a necessarily reflexive system, there are always legal ways of criticising and changing unjust laws and conditions.

18 I would like to underline that I do not want to say that every form of epistemic disagreement does not pose a democratic problem as long as differing world views lead to the same consequences. I just want to say that there is space for possible variance in the justification of political matters, which is not normatively problematic for the ideal of public reasoning. Yet, I would intuitively add that the following might be a problem: Let us assume that a society consists of three people, two democrats A and B and one follower of a fascist ideology C. Perhaps on a concrete issue A and C can agree on a certain policy I. But since C as a fascist rejects the ideal of public reasoning itself, it would be normatively inappropriate and not publicly justifiable to B if A were to implement the policy I in question with the help of C. However, I will leave such constellations out of my argumentation here.

regarding civil disobedience is well-founded because the purpose of the public use of reason is to deliberate generally acceptable reasons *for avoiding illegitimate coercion*. But when it comes to avoiding illegitimate coercion over free and equal persons, reasons need only be judged as to whether they justify a political demand that might cause a social effect, which is acceptable or unacceptable. Not the reasons must be divisible or generally accessible, but the purpose. So, the proviso's demand for "in due course" giving shareable reasons is unduly. Shareable reasons are what we strive for with epistemic peers, with colleagues of the same academic discipline or sisters and brothers in faith, but not with our fellow citizens who might see the world different than we do.[19] As long as our fellow citizens share the same basic values such as respecting human dignity, we cum grano salis do not have to deliberate about what is, but what may be done.[20]

In order to conceptually clarify this argument, it is helpful to use concepts from discourse theory, such as those introduced by Jürgen Habermas (1981, 8-11) in *The theory of communicative action.* Political claims to validity ultimately refer to the *social world* of normatively ordered coexistence with others and hence claim rightness. These claims must be distinguished from claims to validity, such as those raised in basic research, which refer to the *external world* and therefore claim truth. Comprehensive doctrines also have this reference to the external world; the Abrahamic religions, for example, assume the existence of a personal God. However, whether a political claim of validity whose justification is found in a comprehensive doctrine is right depends not primarily on its truth claims, but on its *rightness*, that is, whether it can be generally accepted in its effects, even if the whole justification itself is not divisible. These two levels, truth and rightness, even if factually interwoven, must be differentiated from one another, when we think about which justifications are publicly reasonable. Rawls' (1972, 387) position

19 In this respect, I consider it potentially misleading when Rawls (1972, 389f.) names science as another case for the non-existent necessity of shareability of reasons. It is precisely in science, at least as no Friedmanian instrumentalist conception of science is held, that the divisibility of reason is aspired.

20 There are of course cases where facts have implication for what should be done. For example, whether global warming is anthropogenic or not has significant consequences for our ecological policy. In these cases, we do have to deliberative about question of truth, or take well-founded truth claims into account in our deliberation. Not because political deliberation is about gaining scientific knowledge, but facts here have an influence on whether people and the environment experience harm.

that in a well-ordered society "[t]here can, in fact, be considerable differences in citizens' conceptions of justice provided that these conceptions lead to similar political judgements" could thus be paraphrased discourse-theoretically in such a way that in pluralistic well-ordered societies no comprehensive consensus can be reached with regard to assumptions of *truth* because of the burdens of judgement. Yet, we nevertheless can assume a consensus with regard to what is right, at least as a regulative ideal. Accordingly, if all citizens can agree to a political claim to validity with regard to its consequences – even if only because they cannot present any reasonable justification against it (cf. Scanlon 1998, 191; Lafont 2009) – it can be qualified as right. But whether the comprehensive doctrine from which this claim derives is true is a question to be differentiated from its rightness.[21]

To illustrate the argumentation, reference can be made to the previously mentioned case of the religiously motivated circumcision of male infants: It was objected that especially in pluralistic societies, Rawls's divisibility conception of publicly reasonable arguments is overstraining. In the example, those affected can only give religious and thus not generally sharable reasons for claiming the right to continue the for them significant religious practice of circumcision. If, however, the epistemic competence of deliberation does not lie in finding truth but in avoiding illegitimate coercion, then on the one hand, religious reasons can be given and on the other hand it only needs to be deliberated whether the norms resulting from them exercise illegitimate coercion over the person affected. In the given case, one could argue in the respect that with the requirement that circumcision "must be carried out according to the rules of medical art" (Section 1631d (1) of the German Civil Code), it has been sufficiently ensured that there is no harm to the persons affected, neither to the infants nor to the devout, and

21 Incidentally, Habermas (2008b, 110f.; 2008c, 131) intervened in the discussion about the appropriate conceptualisation of public reasons by pointing out that religious semantics might have an epistemic potential that is also significant for pluralistic, post-secular societies. A religiously impregnated statement, such as "one should not play God" or that it is important to "preserve creation", can also find favour with people, who are, to use Max Weber's words, religiously unmusical, or more precisely with their sense of justice. If, in contrast to Rawls's proviso, one does not demand that those involved in the public use or reason find new, then no longer semantically religious reasons, but only check whether what follows politically from a certain reason cannot be rejected with good reasons by all those affected, then these from religious doctrines derived inspirational reasons can nevertheless be assessed as reasonable political claims to validity.

therefore the legal regulation of circumcision can be recognised as right and democratically legitimate.

But what then, one may ask, distinguished reasonable justifications from mere modus vivendi of egocentric preferences, together with the disadvantages of such a modus vivendi that are worthy of criticism, for example that a modus vivendi might lack good justifications and is unstable in the end (cf. Rawls 1993, 147f.; 2002, 88f.)? Unlike a modus vivendi, legitimate reasons do not merely result from an overlap of static, egocentric preferences, but from a deliberatively induced *transformation* of preferences towards a point where these reasons cannot be rejected with good reasons.

(c) *The duty of mutual respect as the deliberative duty of democratic citizenship.* If the epistemic competence of political deliberation cannot consist in the deliberation of generally divisible reasons, but in the deliberation of norms with which democratically legitimate rule can be exercised over free and equal citizens, the duty of civility, as introduced in *Liberalism*, must be replaced. Due to the question posed, the *Theory of Justice* focuses in particular on the *duty of justice,* id est the duty to create just institutions or, if these already exist, to comply to their rules and to work towards their stability (Rawls 1972, 115, 333-335). In addition, Rawls (1972, 337) also mentions other duties in the theory, including the so-called *duty of mutual respect*, which in my opinion formulates a normatively appropriate duty for the communicative action of democratically minded citizens when they enter der political public:

> "This is the duty to show a person the respect which is due to him as a moral being, that is, as a being with a sense of justice and a conception of the good. [...] Mutual respect is shown in several ways: in our willingness to see the situation of others from their point of view, from the perspective of their conception of the good; and in our being prepared to give reasons for our actions whenever the interests of others are materially affected."

If deliberation is to prevent the exercise of illegitimate coercion over free and equal persons, then giving divisible reasons can be an option to serve this

purpose, as described by the first realisation option of the duty of mutual respect; "to see the situation of others from their point of view, from the perspective of their conception of the good" (Rawls, 1972). This can be shown formally as follows: A and B live in the same legal community. If A claims validity for the legal norm *lx*, which is justified by reason x, then A can justify *lx* to *B* by either showing *B* that *B* sharing *x* – "you see it just as I do" – or introducing a reason *y* to *B*, which is equivalent to x, but can be shared by *B*. This is what the proviso demands.

However, this is only one possible circumstance that the deliberating parties can encounter, but which does not necessarily have to be in order to avoid illegitimate coercion. In this respect, I consider the divisibility requirement of Rawls's proviso to be supererogatory. For A could just as well make credible that *lx* does not affect B in a relevant matter and consequently there is not claim for justification by *B* for *lx*. Only if the "the interests of others are materially affected" (ibid.) one has to argue with the divisibility of reasons of an equivalence of reasons.[22]

Conclusion and clarification of the scope of this argumentation

The purpose of the democratic constitutional and welfare state is to enable political rule that does not violate the autonomy of those subject to the law. This is to be achieved by ensuring that the norms regulating the exercise of rule originate from the subjects of the law themselves and that their justification can be generally accepted. Intuitively, it may therefore be necessary – this is the view of the conception of public reason found in *Political liberalism* – that reasonable justifications must be shared by those subject to the law. However, inspired by Theory's remarks on the sociological realisation of the sense of justice in real well-ordered societies and on the duty of mutual respect, it was shown that the search for divisible reasons formulate a non-necessary requirement for those

22 This is accompanied by the necessity to clarify the group of people affected. Furthermore, a mutual understanding is necessary to what extent the claim of the other is important for him and whether it entails a legitimate or illegitimate restriction of one's own freedom. For this reason, I disagree with Lafont's (2009, 136) otherwise similar proposal for conceptualising the deliberative duties of democratic citizenship, because in order to accumulate such a knowledge, I consider the willingness to engage in learning processes, unlike Lafont, to be part of the deliberative duties of democratic citizens.

participating in the public use of reason. The consensus assumed by deliberating parties does not primarily refer to a consensus with regard to questions of truth, but to questions of rightness. Publicly justifying reasons therefore do not appear in political contexts as truth-makers, but as licence-givers for political action. Accordingly, it may well be the case that a reason may be disputed in terms of its propositional content but can nevertheless be regarded as a legitimate reason for a political claim to validity, for example, when it is intended to justify exceptions based on considerations of conscience.

As mentioned, one objection to Rawls's wide conception of the duty of civility, along with the proviso, is that the requirement to give generally shareable reasons can be "an unreasonable *mental and psychological* burden" (Habermas 2008c, 130) for citizens truly convinced of their comprehensive doctrines. To what extent can the conception of public reason as presented by Theory and the corresponding duty of mutual respect avoid this objection? For one thing, the *Theory*'s conception of public reason is more open to different reasons that can be brought up in the deliberative process. They are not filtered ante disputandum as to whether they are generally divisible or rather highly personal reasons derived from specific comprehensive doctrines. Throughout, the raising of all possible reasons is permitted and they are only examined as to whether they at least affect "the interest of others" (Rawls 1972, 337).

At no point, on the other hand, does the prescription to find and give other reasons occur without further ado. Only when, the "interests of others are materially affected" (ibid.), only when there is a threat of illegitimate coercion over other people, it is necessary to "to see the situation of others from their point of view, from the perspective of their conception of the good" (Rawls, 1972). However, this is not because the person demanding the reasons wants to "evaluat[e] the truth or falsity of the theory" (Geuss 2009, 41) out of an intellectualistic snootiness, but because she is threatened with being restricted in her own way of life. If this is the case, then it seems to be a justifiable, reasonable "*mental and psychological* burden" (Habermas ibid.) to give reasons *other* than those that are just subjectively accessible.

In addition, I would like to give two indications considering the scope of my argument: (1) Far from the formal analysis of what constitutes reasonable justifications for political matters, in factual political life situations might exist in which reasons for political claims to validity might not be rejected with regard to "the interests of others" (ibid.), they might even be generally shareable, but it would nevertheless be unreasonable to accept the given claim to validity. This might be the case because we cannot accept the person or party raising it. It may be the case, for example, that a member of parliament finds himself in agreement with the specific claims of an undemocratic other faction on a concrete issue, but then justifiably rejects the claim for the sake of those raising it. So, what has been said in my text does not want to neglect the *symbolic* dimension of giving and taking as well as rejecting reasons in deliberation, which goes beyond the pure content. (2) Furthermore: When it is said that the epistemic competence of deliberation lies not primarily in deliberating truth but rightness, it should be borne in mind that there are certain political questions and topics in which what is right *depends to a considerable extent on assumptions of truth.* For example, whether means to regulate greenhouse gas emissions are justified depends on whether we assume the existence of a climate change made by humankind or, more generally speaking, whether we accept the authority of empirical sciences. In this respect, political deliberation about what is the case may well occupy an important role in the political public use of reason, so that the latter *can fulfil its purpose of avoiding illegitimate coercion.*

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