

Political Legitimacy under Epistemic Constraints:
Why Public Reasons Matter

Fabienne Peter, Department of Philosophy, University of Warwick
Jack Knight and Melissa Schwartzberg (eds.),
Political Legitimacy, Nomos Volume LXI, 2019

Acknowledgments

I am most grateful for the detailed and insightful written comments on a previous version of this paper that I have received from Jennifer Rubinstein and Micah Schwartzman. I have also greatly benefitted from the comments of other participants at the Nomos conference at the March 2017 Central APA meeting in Kansas City and from the comments I have received on previous versions of this paper, including at the workshop on Factual Disagreements and Political Legitimacy at the University of Copenhagen, the New Directions in Public Reason conference at the University of Birmingham, the Pavia graduate conference in political philosophy, the workshop on Religion and Public Justification at University College London, the Philosophy, Politics, and Economics conference in honour of Luc Bovens at LSE, the Political Epistemology conference in London, and at research seminars at the University of Leiden, the ANU, and the University of Melbourne. I particularly want to thank Elizabeth Anderson, Ian Carter, Emanuela Ceva, Tony Coady, David Estlund, Elizabeth Erdenberg, James Fleming, Gerald Gaus, Dan Halliday, Klemens Kappel, Jack Knight, Cécile Laborde, Christian List, Steve Macedo, Jonathan Quong, Kristen Rundle, Debra Satz, Melissa Schwartzberg, Kai Spiekermann, Steve Wall, Han

van Wietmarschen, Jo Wolff, Andrew Valls, Daniel Viehoff, and Alex Voorhoeve, among many others.

Abstract

My aim in this paper is to provide an epistemological argument for why public reasons matter for political legitimacy. A key feature of the public reason conception of legitimacy is that political decisions must be justified *to* the citizens. They must be justified in terms of reasons that are either shared qua reasons or that, while not shared qua reasons, support the same political decision. Call the relevant reasons public reasons. Critics of the public reason conception, by contrast, argue that political legitimacy requires justification *simpliciter* – political decisions must be justified in terms of the reasons that apply. Call the relevant reasons objective reasons. The debate between defenders and critics of a public reason conception of political legitimacy thus focuses on whether objective reasons or public reasons are the right basis for the justification of political decisions. I will grant to critics of a public reason conception that there are objective reasons and allow that such reasons can affect the legitimacy of political decisions. But I will show, focusing on the epistemic circumstances of political decision-making, that it does not follow that the justification of those decisions is necessarily in terms of those reasons.

Keywords: political legitimacy, public reason, political epistemology

1. Introduction

Political decisions regulate many aspects of our lives. For example, they might concern the legal permissibility of abortions, influence the extent of income and

wealth inequalities, or determine membership in international or global institutions. Such political decisions are legitimate if either the decisions themselves, or the political institutions through which they were made, are justified.ⁱ

What does the justification of political decisions, whether it is substantive or procedural, demand? Philosophers generally understand justification in terms of reasons. A belief is justified if there are sufficient or decisive reasons that support that belief. An action is justified if there are sufficient or decisive reasons that support that action. On this view, which I will adopt here, a political decision is justified if there are sufficient or decisive reasons in support of it. But what sort of reasons can justify political decisions?

In political life, we often disagree about the answer to that question. Sometimes, these disagreements have their origin primarily in divergent moral or religious beliefs. We might disagree, for example, about the extent to which the government should protect individual liberty relative to other values and thus disagree about the legitimate extent of government interference with individual choices. Other disagreements have their origins primarily in divergent beliefs about non-moral facts. Examples include disagreements about climate change policies that derive from conflicting assessments of the effectiveness of carbon taxation or disagreements about the desirability of a minimum wage policy that are based in conflicting assessments about the effects of such policies on unemployment. These disagreements, too, might yield incompatible assessments of whether a government policy is justified.

This fact of disagreement about the justification of political decisions needs to be distinguished from the normative question of what grounds the justification of political decisions. It is this normative question, a question about the sort of reasons that have the power to justify political decisions, that is at the heart of the debate on public reason and that I want to focus on in this paper.

According to defenders of a Public Reason Conception of political legitimacy, the reasons that can justify political decisions are those that all can accept or that no one can reasonably reject, under some suitable qualification of what counts as an agreement or as a reasonable rejection.ⁱⁱ On this conception, at least some (but typically not all) of our disagreements are normatively significant in the sense that they have the power to undermine the justification of political decisions. John Rawls, for example, took some moral and religious reasons to be subject to normatively significant disagreements and argued that those reasons cannot justify political decisions.ⁱⁱⁱ Because the reasons that are in the justifying set are those that are not subject to a normatively significant disagreement, I want to characterize the reasons that can justify political decisions on the Public Reason Conception as agreement-dependent.

On the opposing conception of political legitimacy, which I call the Objective Reason Conception, the justification of political decisions is agreement-*independent*. According to defenders of this conception, normative practical reasons are, or are given by, objective facts, and whether political decisions are justified depends on how well they are supported by those reasons.^{iv} It is an implication of this view that our disagreements are not normatively significant; disagreements do not impact on

practical justification and, as a result, do not impact on the justification of political decisions.

A related way of understanding the contrast is this. According to the Public Reason Conception of political legitimacy, political decisions must be justified *to* the citizens. Disagreements are normatively significant when they imply a failure to justify a particular decision to the citizens. According to the Objective Reason Conception, by contrast, practical justification, in general, is not justification *to*, but justification *simpliciter*. Whether a political decision is justified depends on objective reasons, not on whether there is some sort of agreement.

My aim in this paper is to argue against the Objective Reason Conception of political legitimacy and, in this way, provide support for the claim that public reasons matter for political legitimacy. My starting-point, however, is to grant that there are objective reasons and to allow that they can affect the justification of political decisions. I will show that granting this premise to the defenders of the Objective Reason Conception does not entail that the justification of political decisions is necessarily in terms of those objective reasons. Agreement can still matter.

The main problem with the Objective Reason Conception of political legitimacy arises from its stance on disagreements. According to this conception, as I mentioned, disagreements do not affect the justification of political decisions; disagreements are normatively neutral. Disagreements such as the ones I described at the beginning are the result of mistaken beliefs about reason-relevant facts – normative or non-normative – and such mistakes, it is thought, do not undermine the justification of

political decisions. I will argue that defenders of a Public Reason Conception of political legitimacy are right to emphasize that not all disagreements are mere mistakes; some disagreements have normative implications. When they do, political legitimacy depends on overcoming those disagreements.

Of course, a defender of a Public Reason Conception does not need to claim – and typically does not claim that all disagreements undermine political legitimacy. Some disagreements are not normatively significant because they are the result of mistakes or an unwillingness to consider relevant evidence or arguments, etc.

A successful defense of the claim that public reasons matter for political legitimacy needs to answer the question of which disagreements are normatively significant. I will say a lot more below on what I mean by normatively significant disagreements. For the time being, let me just note that I propose to answer this question not on the basis of some moral or political values, as has been common in the literature on public reason.^v Instead, I will start from the epistemology of practical reasoning. I will provide an account of practical reasoning that is compatible with the Objective Reason Conception and thus refrain from loading the dice against that conception from the start. I will then use this account to identify a category of normatively significant disagreements, however, and show how such disagreements affect practical justification, at least in the context of political legitimacy. This will allow me to pinpoint where the Objective Reason Conception goes wrong and to build my argument for the significance of public reasons for political legitimacy.

The paper is organized as follows. I will start with a more exact portrayal of what is at stake in the debate between defenders of the Objective Reason Conception and defenders of the Public Reason Conception (section II). I will then introduce my account of the epistemology of practical reasoning and present a first argument against the Objective Reason Conception– the argument from permissible practical reasoning (III). In section IV, I develop the idea of normatively significant disagreements and show how it figures in a second argument against the Objective Reason View. In section V, I will present my third and final argument against the Objective Reason View. This argument demonstrates that public reasons matter for political legitimacy, at least under some epistemic circumstances. I will end the paper with a brief discussion of some objections that one might raise against the view I defend in this paper (section VI).

2. Two Conceptions of Political Legitimacy

It is time to characterize the Objective Reason Conception of political legitimacy with greater precision. I understand it as committed to the following two claims. The first claim is this:

OR: There are normative practical reasons that are, or are given by, attitude-independent facts; they are objective reasons.

To accept OR is to accept that at least some normative practical reasons have their source of normativity in attitude-independent facts. Such reasons do not derive from

beliefs we have about what is desirable, for example, or from what we happen to desire.

There are two ways in which one can spell out OR. The strong version says that *all* normative practical reasons are reasons given by attitude-independent facts. Many have endorsed this claim – it has become a very popular view in recent metanormative theory.^{vi} OR can also be interpreted more weakly, however. On this interpretation, the claim is only that *some* normative practical reasons (but not necessarily all) are objective reasons. I accept the weak interpretation of OR and it is an upshot of the argument I present in this paper is that we should reject the strong interpretation, at least for the political context.^{vii}

While the first claim is a claim about normative practical reasons, the second claim is a claim about how these reasons bear on the justification of political decisions.

ORJ: the justification of political decisions is necessarily in terms of objective reasons.

ORJ states that the only reasons that matter for political legitimacy are those given by attitude-independent facts.^{viii}

Joseph Raz and David Enoch are among the philosophers who have most prominently advocated versions of the Objective Reason Conception. The Normal Justification Thesis that is at the core of the conception of political legitimacy that

Raz advocates states that the legitimacy of political decisions depends on whether those decisions allow the citizens to better conform to the reasons that apply to them anyway, independently of the decisions of the political authority (Raz 1984). The reasons in question are fact-given reasons; they are not reasons that citizens agree on or endorse. Enoch, similarly, draws a distinction between the facts that are reason-giving and people's beliefs about those facts. He argues that defenders of a Public Reason Conception are wrong to focus on people's perspectives; what justifies political decisions is not what people believe about those decisions, but whether or not the facts support those decisions (Enoch 2015: 130f).

My main target in this paper is ORJ, the claim that political justification is necessarily in terms of objective reasons. As mentioned above, I grant that there are objective reasons and I accept the weak version of OR. But I will argue that objective reasons are not the only reasons that can justify political decisions.

My argument against ORJ hinges on the role of practical reasoning in political decision-making and in political justification. Practical reasoning is reasoning about what we should do and political decision-making relies on it. Our practical reasoning, in general, is not determined by the facts, however, but by our perspective on the facts. As a result, what we have objective reason to do and what we believe we should do might come apart.

The following example illustrates the point. Suppose you consider offering your friend a drink. You believe – and have every reason to believe – that the glass in front of you contains gin. You decide that you should offer your friend the drink.

Unfortunately for you and your friend, the glass does not contain gin. It contains petrol. If all normative practical reasons are given by attitude-independent facts, as the strong version of OR claims, then you have no normative reason to offer your friend the drink. If only reasons given by attitude-independent facts determine practical justification, then you are not justified in offering your friend the drink. Yet, there seems to be nothing wrong with your reasoning. When we reason practically, we necessarily reason on the basis of what we believe about the practical circumstances we find ourselves in.

Even defenders of the strong version of OR accept that this is a feature of our practical reasoning, of course. They deal with the issue in the following way. In addition to objective reasons, there are subjective, or apparent (Parfit 2011), reasons. Subjective reasons reflect our perspective on the situation – as given by our beliefs and/or our evidence. And as the gin/petrol example shows, what we have objective reason to do and what we have subjective reason to do can come apart.

Defenders of the strong version of OR interpret subjective practical reasons in relation to our beliefs and/or our evidence.^{ix} Those who reject the strong version of OR – either in favor of a hybrid view or because they reject OR altogether – often characterize subjective reasons in other ways.^x Although this is an important topic, I cannot fully discuss it here. It is also somewhat tangential to the argument I develop in this paper, as my argument does not depend on a particular characterization of subjective reasons. For the purposes of this paper, I shall define subjective practical reasons as reasons that are or involve beliefs about the relevant practical circumstances. This is a fairly loose characterization that leaves open a number of

questions – whether the relevant beliefs need to be justified or not; what, if anything, justifies those beliefs, etc.

What interests me here above all is the question of what sort of reasons can ground political ground practical justification in the context of political legitimacy – objective reasons or subjective reasons? Consider the following example from the political context. Suppose there is a policy A which would increase the health status of the poor, and which should be implemented for that reason. A defender of the Objective Reason Conception would argue that a political decision to implement policy A is justified on the basis of the fact-given reason that it increases the health status of the poor. But in our practical reasoning about whether or not we should implement policy A, we might form divergent beliefs about the empirical facts – whether or not policy A does, in fact, increase the health status of the poor – and about the normative facts – whether the fact that a policy increases the health status of the poor is a reason to implement it. From the perspective of our subjective reasons, the case for implementing policy A might not be clear-cut.

Do subjective reasons play a role in the justification of political decisions? Defenders of the Public Reason Conception of political legitimacy answer positively. Different interpretations of this view work with different interpretations of subjective reasons. What they all have in common, however, is the claim that political decisions must be justified on the basis of subjective reasons – whether they are substantive reasons or procedural reasons.^{xi} In my understanding, the Public Reason Conception is thus committed to the following claim:

PRJ: The justification of political decisions is necessarily in terms of an agreement grounded in subjective reasons.

Of course, PRJ should not be understood so as to entail that the relevant agreement that can justify a political decision must include any possible set of subjective reasons. Defenders of a Public Reason Conception typically allow for some restrictions in the admissible set. Some interpret the relevant restriction in terms of reasonableness, which is a restriction on public deliberation (Quong 2011). In this interpretation, subjective reasons that do not meet the reasonableness test, however it is specified, do not undermine the justification of political decisions. Only disagreements that survive the reasonableness test can undermine the justification of political decisions. Others formulate the restriction in terms of individual deliberation. Gaus, for example, argues that only good reasoning gives rise to what I call subjective reasons here (Gaus, 2011: 246).

Note also that my characterization of the Public Reason Conception does not distinguish between the so-called consensus accounts and convergence accounts. According to consensus accounts, agreement-based justification of political decisions is in terms of a single shared set of reasons. According to convergence accounts, it is sufficient that an agreement that is relevant for the justification of political decisions obtains at the level of the decisions themselves, it does not have to obtain at the level of the reasons that justify a particular decision. Such an agreement might thus be supported by diverse reasons. My characterization does not distinguish between the two accounts because it leaves open what exactly the relationship is between agreement and the reasons that justify a political decision.^{xii}

Whatever one might want to say about which subjective reasons are relevant for the justification of political decisions, the important point to note is that it is with regard to the normative significance of subjective reasons that the Public Reason Conception and the Objective Reason Conception come apart. Defenders of the Objective Reason Conception reject the normative significance of subjective reasons. They draw a distinction between practical reasoning and practical justification and maintain that even if practical reasoning is in terms of subjective reasons, practical justification is still necessarily in terms of objective reasons.

We can make progress in this debate if we examine the epistemology of practical reasoning, or so I will argue in this paper. Even if we grant that there are objective reasons and that they sometimes matter for the justification of political decisions, the epistemic circumstances that characterize the political justification are often such that we lack a good grip on what they are. And when objective reasons are epistemically out of reach, they are not available for the justification of political decisions. If there is any justification for political decisions in those circumstances, this justification will depend on what is accessible in valid practical reasoning and, therefore, on subjective reasons. ORJ should thus be rejected and be replaced by a conception of what is required for the justification of political decisions that recognizes that subjective reasons play an important role in political justification, at least in some – epistemic – circumstances.^{xiii}

3. Epistemic Constraints on Practical Reasoning

What do I mean by practical reasoning? Let me start with a comment on the contrast with theoretical reasoning. Theoretical reasoning answers a question about what should be believed. Practical reasoning, by contrast, answers a question about what should be done. But it would be wrong to think that there is no overlap between theoretical and practical reasoning. Practical reasoning depends on our beliefs about non-normative facts and, if one accepts at least a weak version of OR, as I do, it also depends on our beliefs in relation to normative facts – facts that are or give rise to normative practical reasons. Because of that fact-dependence, we can ask about the epistemic constraints that apply to practical reasoning.

Some have argued, building on Timothy Williamson's work on the knowledge norm for assertion, that the relevant constraint is knowledge.^{xiv} The knowledge norm for assertion is this:

KA: It is permissible for you to assert that p iff you know that p.

For example, suppose a lost tourist asks you about the way to his hotel. It is permissible for you to assert "the hotel is just down the road" if (and only if) you know that the hotel is just down the road, but not if you do not and just want to be seen as friendly. Williamson explains that "...asserting that P without knowing that P is doing something without having the authority to do it, like giving someone a command without having the authority to do so" (*Knowledge and its Limits*, 257).^{xv}

Assertions are, of course, a type of actions and some have thus generalized Williamson's account to reasons for action and to practical reasoning.^{xvi} Applied to practical reasoning, our topic here, the Knowledge Norm says this:

KPr: Your use of p as a premise in practical reasoning is permissible iff you know that p.

We can apply the knowledge norm both to ordinary practical reasoning and to normative practical reasoning. Using the example from above again the knowledge norm says that your reasoning that a policy A should be implemented because it increases the health status of the poor is a permissible instance of practical reasoning just in case you know that the policy increases the health status of the poor (non-normative) and that it does so is a reason to implement the policy (normative).^{xvii}

Is the Knowledge Norm a plausible restriction on practical reasoning? There are two main objections that aim to show that it is not.^{xviii} The first is that there are many cases in which knowledge of p does not seem necessary for permissible practical reasoning in p-related contexts. The second is that there are cases in which knowledge does not appear to be sufficient. Although I find both objections convincing and relevant to the topic under discussion, I will only be able to focus on the necessity objection here. In the final section of this paper, I will briefly touch on the sufficiency objection as well, however.

The gin/petrol case I mentioned earlier can serve to illustrate the necessity objection. Suppose you are justified to believe that the glass contains gin, not petrol –

all the other glasses on the table contain gin, you have had a drink yourself earlier from this table, you have seen a waiter fill the glasses with a bottle of gin in his hand, etc. It seems permissible for you in this case to use the premise “this is gin” when deliberating about whether to offer your friend the drink. As it happens, the glass contains petrol, a fact you do not know. So the knowledge norm is violated, but there does not seem to be anything wrong with your practical reasoning. We will also accept your excuse that you did not know this fact you when it turns out that your action made your friend very ill. This example seems to show that it can be appropriate to invoke p in your p-dependent practical reasoning and choice, even if p is false. Knowledge, which I am assuming is factive, is thus not necessary.

The right response to the necessity objection is to weaken the knowledge norm and replace knowledge by justified belief.^{xix} The Justification Norm for permissible practical reasoning says this:

JPr: Your use of p as a premise in practical reasoning is permissible iff you are justified to believe that p.

In the gin/petrol case, JPr says that if you are justified to believe that the glass contains gin, then your use of that premise in practical reasoning about whether to offer your friend the drink is permissible; knowledge is not required. In the political case, JPr says that if you are justified to believe that a policy is feasible, for example, then your use of that premise in practical reasoning about which policy options to consider is permissible; knowledge is not required.

If this correct and we should replace KPr by JPr, we can use this to formulate a first argument against the Objective Reason Conception of political legitimacy. The argument goes like this. The Objective Reason Conception is only plausible if practical reasoning is plausibly restricted by KPr, at least in the normative context. This is so because of the facticity of knowledge. To see this, assume p refers to a fact that gives rise to an objective reason. Only if you know that p do objective reason (given by p) and subjective reason – the reason that determines your practical reasoning, given by your belief that p – necessarily coincide. But we saw that KPr is not plausible and that we thus cannot assume that objective reasons and subjective reasons necessarily coincide. The more plausible norm, JPr, implies that knowledge is not necessary for permissible practical reasoning. This means that there might be a gap between what you permissibly reason you should do and what you should do in the objective reason sense.

Ah, you might say, but this argument is flawed. JPr only shows that permissible practical reasoning depends on subjective reasons, not that practical justification does. But the Objective Reason Conception is only concerned with practical justification, not with permissible practical reasoning. The whole point of the gin/petrol case is to show that I might be permissibly reasoning that this is gin and, on that basis, decide to offer the drink to my friend. But to say that I am reasoning permissibly is only to say that what I am doing is rational, that I can be excused for my action, and so on. It is not to say that I am justified in doing so in the full-blooded sense – that I have a normative reason to do so. Even if we accept that practical reasoning is necessarily in terms of subjective reasons, we do not have to accept that subjective reasons carry any independent normativity.

And you are right of course; the argument I have presented is flawed in this way. A successful argument against the Objective Reason Conception needs to show that subjective reasons not only determine permissible practical reasoning, but that they can have normative import in their own right and that ORJ is thus false. My next argument against ORJ is an argument from disagreement.

IV. Normatively Significant Disagreements

Characterized quite generally, disagreements involve attitudes that are not only incompatible but that cannot be jointly held.^{xx} Disagreements between doxastic attitudes are a case in point. If you express a belief that p (e.g. the policy is feasible) and I express a belief that not-p (the policy is not feasible), we have a disagreement as the two attitudes cannot be jointly held: the policy is either feasible or it is not.

But there are also non-doxastic disagreements. An interesting case is disagreement about taste. Can we have disagreements about taste? Say you maintain “haggis is tasty” and I maintain “haggis is not tasty”. Clearly, the two attitudes are incompatible. But there does not seem to be anything particularly problematic about that. It certainly does not follow that one of us has made a mistake. So while the two attitudes are incompatible, it appears that they can be jointly held – by different individuals, at least. If that is the relevant test, we do not have a disagreement. But if we apply a more demanding test and specify that the relevant attitudes that constitute a disagreement are attitudes that one individual could not jointly hold, then we have a disagreement about taste.^{xxi}

The topic of this paper is practical disagreements – disagreements about what we should do. Practical disagreements can result from attitudes such as desires, intentions to act, beliefs relating to practical reasons etc. If the relevant attitudes are desires, the practical disagreement might look like a disagreement about tastes – if there is a disagreement at all, it is faultless and typically unproblematic. But there clearly are constellations of practical attitudes that constitute a disagreement. Consider the following attitudes. You hold “we should do x”; I hold that “we should do not-x”. Our incompatible attitudes may still be faultless, i.e. not involve a mistake on either side but simply arise from different desires. But it is a clear case of a practical disagreement as our incompatible attitudes towards what we should do cannot be jointly realized and hence jointly held by us.

Given that we can have practical disagreements, there is a further distinction that is relevant for my purposes here, the distinction between fact-dependent and fact-independent disagreements. In a doxastic disagreement, the disagreement is about which proposition is made true by the facts: is the policy feasible or not? Such a disagreement is obviously a fact-dependent disagreement. In a disagreement about taste, if it occurs at all, there is probably no fact of the matter. If there is not, then it is not a fact-dependent disagreement. Practical disagreements can be of either kind. I will focus here on fact-dependent practical disagreements and the relevant facts might be either non-normative or normative.^{xxii} To use my political example again, you and I might disagree about whether or not policy A increases the health status of the poor and/or about whether or not the fact that A increases the health status of the poor justifies implementing A.

Returning now to practical reasoning, accepting JPr has the following implication: permissible practical reasoning may result in fact-dependent disagreements. This is an important difference between KPr and JPr. If knowledge sets the constraint for permissible practical reasoning, then we cannot have disagreements that are compatible with permissible practical reasoning. If we find ourselves in a disagreement about p, at least one of us will have reasoned impermissibly. But if JPr is the correct norm for permissible practical reasoning, then it is possible that one of us permissibly concludes that p and the other permissibly concludes that not-p.^{xxiii} Suppose we both agree that policy A is more desirable than policy B. But, to use my non-normative example again, suppose that while you justifiably believe that A is feasible, I justifiably believe that it is not feasible. We then find ourselves in a disagreement about whether to choose A or B that results from our permissible reasoning.

I want to claim that fact-dependent practical disagreements that result from permissible reasoning are normatively significant, at least in the context that is the focus of my paper here – the justification of political decisions. They are normatively significant in the sense that they have implications for practical justification. To see the plausibility of this, consider the contrast between a disagreement that results from impermissible reasoning and one that results from permissible reasoning. If I have simply not bothered to take into account evidence for the feasibility of A although it would have been easy for me to do, for example, then our disagreement is of a different kind than if my reasoning in favor of B is permissible. If I am to blame, epistemically speaking, for my false belief that A is not feasible, then it does not

follow from our disagreement that choosing A is not justified. Choosing A might still be justified, even if I believe that we should choose B. But if neither of us is reasoning impermissibly, the situation is different.

Practical disagreements that result from permissible reasoning can affect justification in the following way. If you justifiably believe p and I justifiably believe not-p, a p-dependent policy choice is either not justified to me or it is not justified to you. In the policy example, if you permissibly reason that A is feasible and that we ought thus to do A and I permissibly that A is not feasible and that we thus ought to choose B, choosing A is not justified to me and choosing B is not justified to you. The same line of thought can also be developed for disagreements that involve normative beliefs.

We can use this point to formulate a second argument against the Objective Reason Conception of political legitimacy – the argument from normatively significant disagreements. Recall that ORJ says that the justification of political decisions necessarily depends on objective reasons. This implies that disagreements about normative practical reasons are normatively *insignificant*. But I have just shown that disagreements about which objective reasons apply that result from our permissible practical reasoning can undermine practical justification, including the justification of political decisions. Such disagreements are thus normatively significant and subjective reasons may affect what counts as a justified decision. Therefore, ORJ is false.

Ah, you might say now, but this argument is flawed too. To show that ORJ is false, I would have to show that objective reasons are not necessary for the justification of political decisions. But I have not yet shown that. I have only shown that there might be a gap between justification *simpliciter* and justification *to* – justification in terms of objective reasons and justification in terms of subjective reasons.

And you are right again. My belief that A is not feasible might be mistaken, whereas you correctly hold that A is feasible. Choosing A might then still be justified, even if it is not justified to me. That is all that ORJ claims. I have thus not yet shown that ORJ is false, let alone that we should adopt some version of the Public Reason Conception of political legitimacy.

While more work is needed to show that ORJ is false, the second argument establishes something. It cannot establish that objective reasons are not necessary for the justification of political decisions, but it does show that the justification of political decisions may be epistemically underdetermined when permissible practical reasoning leads to disagreements about which policy should be chosen and neither side can justifiably claim the epistemic high-ground. If nobody knows – in a factive sense – the reason-relevant facts, then ORJ does not have a grip on the justification problem. Permissible practical reasoning may lead to a gap between objective and subjective reasons and this gap implies that practical justification in terms of objective reasons is epistemically underdetermined. This does not yet show that agreement at the level of subjective reasons is required for the justification of political decisions, as

the Public Reason Conception claims, but it does show that disagreements that result from permissible practical reasoning can undermine the applicability of ORJ.

V. Political Legitimacy and Disagreements

To show that ORJ is false, I have to show that objective reasons are not necessary for the justification of political decisions, at least in some contexts. I will do so by showing that there are epistemic circumstances in which the justification of political decisions requires an agreement involving subjective reasons. I will not, however, argue for the Public Reason Conception of political legitimacy as it is normally understood.

Recall that I characterized this conception in the following way:

PRJ: The justification of political decisions is necessarily in terms of an agreement grounded in subjective reasons.

What I will defend in this section is a weaker version of this conception. The weaker conception does not claim that political legitimacy always requires an agreement involving subjective reasons. It only claims that an agreement involving subjective reasons is sometimes necessary for political legitimacy, the idea being that is necessary when the justification of political decisions in terms of objective reasons fails because of epistemic limitations. Specifically, what I will defend is the following claim:

PRJ*: In some epistemic contexts, the justification of political decisions is necessarily in terms of an agreement grounded in subjective reasons.

To show that ORJ, the claim that political justification is necessarily in terms of objective reasons, is false and that PRJ* is correct, I need to make a stronger case than I have so far for the normative significance of agreement-based justification of political decisions. As a start, consider again the non-normative example that I have already used a few times. You justifiably believe p – that policy A is feasible – and permissibly support policy A on that basis. I justifiably believe not- p and permissibly support policy B on that basis. Suppose that p is true and A is the correct choice. For the time being, assume that you do not know that, however.^{xxiv}

What are the implications of this case for the political legitimacy of choosing A? First, note that finding ourselves in such a disagreement does not imply that choosing A cannot be justified to me. How can I permissibly reason that choosing A is justified? After all, I just said that the disagreement we find ourselves in is normatively significant in the sense that it results from the permissible reasoning of each of us. True. But that was our separate reasoning. After establishing the disagreement, we might turn to collective deliberation to try and resolve it. I see two main ways this might happen (there might be others).^{xxv} First, you might testify that p and this might give me epistemic reason to adjust my belief that p in response to your testimony. Such reasons could include that you have a reputation for making reliable judgments in the p area, that you are in a more privileged epistemic position with regard to p than I am, or that the methods that you used to form your belief that p are generally trustworthy, etc. If I have such epistemic reasons to accept your testimony,

then I cannot justifiably hold on to my original belief. I might have sufficient reason to come around and form a belief that p.

Alternatively, choosing A may become justified to me if you can explain to me why p. For example, you might be able to show me evidence that demonstrates conclusively that p. Again, if the force of epistemic reasons is on your side, you may be able to change my permissible reasoning, in which case I cannot justifiably stick to my original belief that not-p.

While it is thus possible that A – the correct choice, I have assumed – can be justified to me, it might not be possible to do so. The problem arises because justifiably believing – or even knowing – that p neither entails being a good testifier nor that one is able to explain why p. Whether one is a good testifier depends on a range of factors that are only indirectly, or not all, related to p. And “why p” is a different proposition than “p”. So none of your reasons for believing that p (or even knowing that p) may be reasons that you could mobilise to explain to me “why p”.

If neither condition is met, then I have no way of forming a justified belief that p and hence to conclude that we should choose A. So our disagreement that results from permissible reasoning persists and, I want to claim, remains normatively significant. I have assumed that we are in a symmetrical epistemic situation – we have both reasoned permissibly and although your belief that A is feasible happens to be correct and my belief that A is not feasible is not correct, you do not know that and you have not been able to give me good epistemic reasons for believing otherwise. Given that we both lack access to the relevant facts, there is no epistemic basis for privileging

your belief and dismissing mine and thus for insisting that choosing A is justified. Under those circumstances, the fact that A is not justified to me undermines the political legitimacy of choosing A.

Briefly consider what happens if we modify the example and assume that you do not only have a justified belief that p, but you know that p. In the example I have been using, suppose you know that A is feasible. Is that sufficient for the legitimacy of a political decision in favor of A? Although I cannot fully argue it here, I am inclined to say that, at least in a political context, knowledge without an ability to testify or to explain is not sufficient for practical justification.

This point is based on the sufficiency objection to the knowledge norm of practical reasoning that I mentioned earlier. This objection says that sometimes even knowledge-level justification is not sufficient for permissible practical reasoning (e.g. Brown 2008). The objection can be illustrated with the following example. Suppose a surgeon has been informed by her extremely competent and reliable team that the tumor she is about to remove is in the left kidney. On the basis of this testimony by her team, the surgeon knows that the tumor is in the left kidney. But we would probably consider her irresponsible – engaging in impermissible practical reasoning – if she did not double-check the evidence herself before operating.

Similar circumstances regularly obtain in the political context and what creates the extra pressure on justification is the inter-personal constellation. Consider the health example again and suppose that you know, not only that policy A will increase the health status of the poor, but also that this empirical fact favors implementing the

policy. Suppose that I justifiably believe that it will not increase the health status of the poor or that, while it does, this is not a reason to implement it (because of countervailing reasons, for example that the policy is too expensive). I want to claim, deploying the sufficiency objection, that for me to be required to defer to your claim that we should implement A, it is not enough that you know what you do about A. Additional conditions have to be met, minimally conditions relating to your ability to testify or to explain to me that the policy has the empirical and/or normative properties that you claim.

This sketch of an argument will not convince the hard-nosed objectivist about normative reasons. He will deny the sufficiency objection and insist that knowledge of the objective reasons that apply is sufficient for practical justification, including the justification of political decisions. So this is a loose end I cannot argumentatively tie up here.

Let me bracket this issue and continue with the assumption I made above, that justification in terms of objective reasons is not epistemically accessible to either of us: neither of us has knowledge-level justification for the beliefs that drive our practical disagreement. This assumption echoes the epistemic skepticism that Rawls expressed in his essay on “The Independence of Moral Theory”.^{xxvi} I agree with Rawls that our knowledge of normative facts is not as robust as our knowledge of non-normative facts. With science, we have a fairly reliable, though of course not infallible, route to factual knowledge. In the context of normative claims, we lack a similarly reliable methodology. Especially if one endorses some version of non-naturalism, there thus remains an epistemological challenge: how do we gain

knowledge of normative facts? The proposals that defenders of OR have offered for how to deal with the epistemological challenge remain controversial.^{xxvii} In addition, in policy-evaluations that usually depend on a complex mix of normative and non-normative assessments, knowledge also very quickly comes under pressure. I thus do not think that a theory of practical justification that is suitable for the political context can be plausibly restricted to instances where we know all the relevant facts, normative and non-normative.

My third and final argument against the Objective Reason Conception of political legitimacy is thus this. If justification in terms of objective reasons is not epistemically accessible, then what we can justify to each other is all the justification we can get. Under those epistemic circumstances, if there is to be any justification for political decisions, it has to be justification in the sense of justification *to*, not of justification *simpliciter*. Disagreements that result from permissible practical reasoning can undermine political legitimacy. Vice versa, a political decision is only legitimate, in those epistemic circumstances, if the decision can be justified to each of us. In those circumstances, agreement-based justification has to the place of justification in terms of objective reasons.

Let me illustrate the point once gain in terms of my example of a disagreement about non-normative facts. For A to be the legitimate choice under the circumstances I have assumed, choosing A must be justifiable to me. If our normatively significant disagreement persists and A cannot be justified to me, then choosing A is not legitimate. Vice versa, if choosing B cannot be justified to you, then choosing B is not legitimate under the circumstances I have assumed. The only policy choices that are

legitimate under those circumstances are those that can be justified to both of us, i.e. those that are supported by an agreement grounded in subjective reasons.

Granted, the choices we make in this fashion may not be justified in terms of objective reasons, were they accessible. But there is no other route to justification than via (some account of) subjective reasons. Under those epistemic circumstances, ORJ is thus false and PRJ* is correct.

6. Objections

Let me end this paper by briefly considering some objections to the argument I have presented.

A first objection is political. One might object that a conception of political legitimacy that requires agreement is too demanding. Such a condition of political legitimacy will identify most policy-choices as illegitimate, as indeed it did in my example of a choice between policy A and B. In reply, I want to say something about how I understand the need to reach agreement through permissible practical reasoning. My examples throughout have highlighted the substantive level – which policy should we choose? I did this to keep things simple. I do not mean to imply that political legitimacy always requires agreement at the substantive level. I share the worry articulated in the objection that this would result in an overly minimal set of justified policies. The agreement required by PRJ*, by the weak version of the Public Reason Conception that I endorse, may be at the procedural level. An agreement at the procedural level is an agreement about how we should make decisions about

controversial policy choices. In many democratic societies, for example, the view that democratic procedures help resolve controversial policy issues is still very widely held. Nothing in what I have said above precludes developing the Public Reason Conception of political legitimacy in such a procedural direction. My argument can thus support the claim that in the face of normatively significant disagreements about policy issues, political legitimacy requires a democratic decision.^{xxviii}

The second objection I want to consider is conceptual. One might object that the epistemology of practical reasoning is the wrong starting-point for a defense of a Public Reason Conception because the justification of political decisions – whether substantive or procedural – is a practical problem, not a theoretical problem. The problem is what we have reason to do, not what we have reason to believe. In reply, note, first, that the main focus of the epistemology of practical reasoning is not on what one should believe. Instead, it is on what appropriate practical reasoning requires. And the thought is that appropriate practical reasoning cannot ignore the question of what one should believe about alternative courses of action.

There are, of course, practical contexts where what one should believe is largely irrelevant. For example, when you are deliberating about which ice cream flavor to buy, what you should believe about those flavors is probably not very important. What matters is which flavor you like best. I am happy to grant that even some political decisions may be of this kind. But most of our political decisions, and many of our private decisions, are not of this kind, or so I want to claim. When you are deliberating about which charity to give to, what you should believe about those charities is relevant. Your deliberation is criticizable if you rely on beliefs you should

not hold. Likewise, your argument that we should not choose policy A because A is not feasible is not defensible if you should believe that A is feasible. And, finally, your argument that we should not choose policy A because the health status of the poor is not a political concern is not defensible if you should believe that the health status of the poor is a political concern.

A third objection grants that the epistemology of practical reasoning is relevant for the justification of political decisions, but highlights that philosophers are just as likely to disagree about the correct epistemological theory as they are about the correct moral or political defense of a Public Reason Conception of political legitimacy. My approach thus does not offer progress. My argument is indeed vulnerable to this objection because I have made controversial claims about the epistemology of practical reasoning. I have claimed, for example, that the appropriate norm for practical reasoning is justified belief, not knowledge. If this premise is false, my argument is unsound.

In reply to this objection, let me emphasize that my aim in this paper has been somewhat narrower than the objection assumes. My aim has been to show that even if one accepts that there are objective reasons and that they matter for the justification of political legitimacy, it does not follow that they are the only reasons that matter. It does not follow because political justification often faces significant epistemic constraints and these constraints can imply that no justification in terms of objective reasons is available. The only justification that is available in those circumstances is a justification based on public reasons. Some epistemologies of practical reasoning – strongly externalist ones – will indeed be incompatible with this line of argument. But

it is at least conceivable that epistemologies other than the one I have adopted in this paper will support an argument roughly along those lines. And that will be sufficient for my main claim to go through. In addition, exploring the epistemological assumptions supporting different conceptions of political legitimacy is, I believe, illuminating in its own right.

A final objection to the view that I have developed in this paper concerns its implications for the Objective Reason Conception. A defender of an Objective Reason Conception can grant my argument but maintain that a weaker version of ORJ can still be upheld. I have argued that we should reject the following claim:

ORJ: the justification of political decisions is necessarily in terms of objective reasons.

The objection states that one could weaken ORJ in analogy to how I have weakened the Public Reason Conception. The weaker version of ORJ, call it ORJ*, states this:

ORJ*: In some epistemic contexts, the justification of political decisions is necessarily in terms of objective reasons.

I agree that my argument is compatible with ORJ*. What is more, I would want to endorse ORJ*. If we have sufficiently robust knowledge of what political decision is objectively correct, I agree that political legitimacy is undermined if the wrong decision is made. To see the plausibility of this, suppose a political regime makes

decisions that are obviously morally impermissible. For example, suppose a regime issues laws that violate essential human rights of some minorities without any redeeming justification. Such decisions do, I want to maintain, lack legitimacy because they disregard moral knowledge that is sufficiently robust.

While I accept ORJ*, it is important to recognize the limitations of building a conception of political legitimacy on ORJ*. My argument in this paper is motivated by the question of what legitimacy requires when we lack sufficiently robust knowledge of what the correct political decision is. I believe this to be the normal case in politics. I have no disagreement with a defender of an Objective Reason Conception who accepts that if the epistemic circumstances limit reliance on objective reasons, political legitimacy will require that political decisions are justified in terms of public reasons. My disagreement is primarily with those defenders of an Objective Reason Conception who subscribe to ORJ (the strong version) and who thus claim that public reasons are irrelevant for the justification of political decisions. And I also want to press upon all defenders of an Objective Reason Conception that the question of what legitimacy requires when epistemic circumstances limit reliance on objective reasons is in need of an answer.

ⁱ The concept of political legitimacy has been understood in many different ways, of course. I give an overview in Fabienne Peter “Political Legitimacy,” *Stanford Encyclopedia of Philosophy* (Summer 2017 Edition), Edward N. Zalta (ed.), <https://plato.stanford.edu/archives/sum2017/entries/legitimacy/>. To sidestep possible controversies on this issue, I take an ecumenical approach and understand political

legitimacy in relation to the justification of political decisions. In addition, I do not, for the most part, distinguish between substantive and procedural conceptions of political legitimacy. A substantive conception targets the justification of political decisions directly; a procedural conception targets the justification of decision-making institutions. I thus intend to cover both when I speak of the justification of political decisions.

ⁱⁱ Note that my focus in this paper is on conceptions of legitimacy, not on conceptions of justice. It is not an aim of this paper to defend a public reason conception of justice.

ⁱⁱⁱ See John Rawls, *Political Liberalism* (New York: Columbia University Press) and “Reply to Habermas,” *Journal of Philosophy* (vol. 92(3) 1995): 132-180.

^{iv} See, for example, Joseph Raz, *The Morality of Freedom* (Oxford: Oxford University Press); David Enoch, “Authority and Reason-Giving,” *Philosophy and Phenomenological Research* (vol. 89(2) 2014): 296 – 332; and Enoch, “Against Public Reason,” *Oxford Studies in Political Philosophy* Volume 1 (Oxford: Oxford University Press, 2015), pp. 112 – 142.

^v See, for example, Charles Larmore, *The Autonomy of Morality* (Cambridge: Cambridge University Press, 2008) and Jonathan Quong, *Liberalism without Perfectionism* (Oxford: Oxford University Press, 2011).

^{vi} See Derek Parfit, *On What Matters* Volumes 1 and 2 (Oxford: Oxford University Press, 2011) and Thomas Scanlon, *Being Realistic about Reasons* (Oxford: Oxford University Press, 2014), among others.

^{vii} If one understands objective reasons as a subset of all normative practical reasons, one is committed to a hybrid view of practical normativity. Such views are

³⁴ far less popular than the monist views. Ruth Chang, “Grounding Practical

Normativity: Going Hybrid,” *Philosophical Studies* (164 Vav 1, 2013): 163-187
defends a hybrid view. I defend a hybrid view of the grounds of political legitimacy in
Fabienne Peter, *The Grounds of Legitimacy*, manuscript.

^{viii} If the strong version of OR were true, ORJ would directly fall out of that – if all
normative practical reasons are objective, there are no other reasons that could play a
role in the justification of political decisions. But ORJ can be made compatible with
the weak version of OR as well and the combined claim is that even if there are
normative practical reasons that are not objective reasons, only objective reasons can
justify political decisions. An additional argument would be necessary to show why
only those reasons can justify political decisions.

^{ix} This is a very loose characterization, compatible with both the understanding
that a subjective reason is a belief that one has an objective reason and with the
counterfactual understanding that a subjective reason is a belief that, if true, would be
an objective reason. On this topic, see also Daniel Whiting “Keep Things in
Perspective: Reasons, Rationality, and the A Priori,” *Journal of Ethics and Social
Philosophy* (vol. 8, 2014): 1-22.

^x They define subjective reasons as dependent on attitudes such as desires, for
example, or on procedural factors such as endorsement.

^{xi} To keep the presentation simple, I will mainly focus on a substantive
interpretation of public reasons, even though this is not actually the interpretation that
I believe we should adopt – see my “Epistemic Foundations of Political Liberalism,”
Journal of Moral Philosophy (vol. 10(5), 2013): 598-620. I will come back to this
issue in the last section of this paper.

^{xii} For a discussion of the two accounts, see Kevin Vallier, “Convergence and
35
Consensus in Public Reason” *Public Affairs Quarterly* (vol. 25(4), 2011): 261 – 280.

A related way to put the point is that my characterization of the Public Reason
Conception leaves open whether the aggregation of individual judgments about which
political decision is justified should be premise-based or conclusion-based. According
to the consensus conception, it is the former; according to the convergence
conception, it is the latter. See Luc Bovens and Wlodek Rabinowicz, “Democracy and
Argument - Tracking Truth in Complex Social Decisions,” in Anne van Aaken,
Christian List, and Christoph Lütge (eds.) *Deliberation and Decision* (Aldershot:
Ashgate Publishing, 2003), pp. 143 – 157; and Christian List, “The Discursive
Dilemma and Public Reason,” *Ethics* (vol. 116(2), 2006): 362 – 402.

^{xiii} As I will explain below, I will not defend PRJ, but a weaker principle instead.

^{xiv} See Timothy Williamson, *Knowledge and its Limits* (Oxford University Press,
2000).

^{xv} Williamson originally only formulated the necessity claim: it is permissible for
you to assert that p only if you know that p. The tendency has since been to focus on
the defense of the stronger, biconditional, claim KA, which combines the necessity
claim with a sufficiency claim: knowing that p is sufficient for permissibly asserting
that p.

^{xvi} On this, see, among others, Jessica Brown, “Knowledge and Practical Reason,”
Philosophy Compass (vol. 3(6), 2008): 1135 – 1152; Jason Stanley and John
Hawthorne, “Knowledge and Action,” *Journal of Philosophy* (vol. 105(10), 2008):
571-590; and Mikkel Gerken, “Warrant and Action,” *Synthese* (vol. 178(3), 2011):
529-547.

^{xvii} In what follows, I will use the feasibility example more than normative
36
examples, as it is simpler.

^{xviii} See e.g. Jennifer Lackey, “Norms of Assertion,” *Noûs* (vol. 41, 2007): 595 – 626 and Brown “Knowledge and Practical Reason”.

^{xix} See also Lackey, “Norms of Assertion”, and Ralph Wedgwood, “Contextualism About Justified Belief,” *Philosophers' Imprint* (vol. 8(9), 2008): 1-20.

^{xx} See James Dreier, “Relativism (and Expressivism) and the Problem of Disagreement,” *Philosophical Perspectives* (vol. 23(1) 2009): 79 – 110.

^{xxi} Conflicting perceptions of color give rise to a related example, taken from a recent internet hype. Individually, we cannot both hold that a particular dress looks white/gold and that it looks blue/black. But different individuals might well see color differently. On the more demanding test, if two individuals see the dress as having a different color, they have a disagreement about color. On the less demanding test, they do not have a disagreement.

^{xxii} One might object at this stage that this move implies that my argument only works for those interpretations of the Public Reason Conception that accommodate fact-dependent normative disagreements. I understand Gaus’ interpretation of the Public Reason Conception that he puts forward in Gerald Gaus, *The Order of Public Reason* (Cambridge: Cambridge University Press), for example, to be in terms of disagreements that are not fact-dependent. According to Gaus, a normative order is justified if it is supported by everyone’s preferences, suitably understood, for rules of social morality. But those who defend a version of the Public Reason Conception of this kind could accept a hypothetical version of the argument that I intend to present: ORJ is false even if one accepts the weak version of OR. This hypothetical version leaves open whether one should accept OR or whether one should construe normative practical reasons in the political context on different premises altogether.

^{xxiii} This holds at least as long as epistemic justification is non-factive; see Clayton Littlejohn, *Justification and the Truth-Connection* (Cambridge University Press) for an opposing view.

^{xxiv} You might object that if you have a justified belief that p and p is true, you have knowledge. But just think of Gettier-style examples. P might be true even though the reasons for which you happen to believe p have nothing to do with the facts that make p true, so you do not know p.

^{xxv} A related question, one that I cannot address here, is whether we might have reasons to adjust our beliefs in response to the fact of disagreement. A version of this question is the focus of the literature on the epistemology of disagreement. I have discussed the implications of the epistemology of disagreement for political legitimacy elsewhere, in my “Epistemic Foundations of Political Liberalism” and in “The Epistemic Circumstances of Democracy,” in Miranda Fricker and Michael Brady (eds.) *The Epistemic Life of Groups* (Oxford: Oxford University Press), pp. 133 – 149.

^{xxvi} John Rawls, “The Independence of Moral Theory,” *Proceedings and Addresses of the American Philosophical Association* (48, 1974): 5 – 22.

^{xxvii} A prominent suggestion in this regard is that the epistemological challenge can be met via a reflective equilibrium approach. I believe that this strategy fails for reasons similar to those articulated by Thomas Kelly and Sarah McGrath, “Is Reflective Equilibrium Enough?” *Philosophical Perspectives* (vol. 24(1), 2010): 325 – 359.

^{xxviii} In *Democratic Legitimacy* (New York: Routledge, 2009), I defend a procedural interpretation of public reason and in “The Epistemic Circumstances of Democracy”, I provide a negative epistemic argument for democracy.