UNIVERSITY OF COPENHAGEN

Fact-dependent policy disagreements and political legitimacy

Kappel, Klemens

FACT-DEPENDENT POLICY DISAGREEMENTS AND POLITICAL LEGITIMACY[#]

1. INTRODUCTION

We sometimes face political disagreements that arise from divergences about the non-normative factual assumptions that underlie the justification of out policy choices. The main question in this paper is what political legitimacy requires in such cases, or indeed whether there are defensible answers to that question.

A prominent case is the controversy over climate policy, insofar as this dispute can be traced back to disagreements about whether climate is

changing, whether there is a significant anthropogenic cause to climate change, and whether these changes now harm people or will do so in the future. According to a Pew Research Center survey, a total of 35% of the American population in 2014 held that there is no solid evidence of global climate change, either because they believe that it just not happening, or because they think that we do not know enough yet.[1] In general, views on climate issues following partisan lines, with Republicans being much less likely to consider climate change a serious problem. If the US were to refuse to enact policies aiming at restricting emissions, other states might well follow suit, making the impact on global climate and living conditions for future generations very significant.

Another case concerns the use of genetically modified crops in Europe. Here the controversy concerns whether genetically modified crops pose significant risks for health and environment. A major part of the population in the European Union believes so, despite no regulatory body or scientific study having documented any such risks. According to Eurobarometer surveys from 2010, 66% of the population in EU worried about GM food[2], and 53% disagreed that "GM food does no harm to the environment", whereas 59% disagreed that "GM food is safe for your health and your family's health".[3] In part because of this skepticsm, European politicians have adopted a rather restrictive governance of genetically modified crops. As a result, governments and private

---

[1]   See   http://www.people-press.org/2014/06/26/section-7-global-warming-environment-and-energy/

[2] Eurobarometer (2010) Special Eurobarometer 354: Food-Related Risks, Brussels: European Commission, p.30.

[3] Eurobarometer (2010), Special Eurobarometer 341: Biotechnology, Brussels: European Commission, p. 18.

enterprises in Europe are reluctant to invest in research in biotechnological innovations in agriculture. Yet, this policy is controversial as it is viewed as ill founded and damaging as research in new plant technology may provide our best option to secure a sustainable and environmentally sound supply of food in the future with growing populations and a changing climate.[4]

These two cases illustrate what I will refer to as *fact-dependent policy disagreements*, to distinguish them from the more familiar *value-dependent policy disagreements*. I will say more about fact-dependent policy disagreements below. Clearly, these cases of fact-dependent policy disagreements are important in the sense that they concern areas where the policies we adopt now will have tremendous consequences for people in the future. There are many other cases of substantive and important policy disagreements that are wholly or partly linked to disagreements over facts. Just think of policy areas involving taxation, immigration, trade, health, food, war, environmental protection, or energy policy.

Fact-dependent policy disagreements play a significant role in modern, pluralist democracies. While we disagree about values in such cases, we also disagree about the facts, though this aspect may feature less prominently in popular debate. Yet, the problem of political legitimacy in fact-dependent policy disagreements has received almost no attention in political philosophy, which

---

[4]   See Nobel Laurates Letter Supporting Precision Agriculture (GMOs) at http://supportprecisionagriculture.org/nobel-laureate-gmo-letter_rjr.html (accessed August 11, 2016).

has focused mostly on value disagreements and proposed theories of legitimate coercive legislation in value-dependent policy disagreements.

My present concern is how concern for political legitimacy applies to fact-dependent policy disagreements. I will present an argument aiming to show that under certain plausible assumptions regarding legitimacy, there are serious difficulties in identifying legitimate choices in such cases. This may seem unsurprising to political philosophers who focus on value-dependent policy disagreements, perhaps because it has been assumed that legitimacy-related concerns are irrelevant (or do not apply) to fact-dependent policy disagreements. I think that this is a premature response - and I briefly address why in section 5. If we should care about legitimacy at all, then it is by no means clear why we should ignore issues of legitimacy in policy-disputes that depend on factual disagreements. The general argument of the paper will be skeptical in that it argues that given plausible constraints on legitimacy it is not obvious that there can be a successful theory of legitimacy for fact-dependent policy disagreements. The paper ends by outlining various possibilities that merit further exploration. So, in part the paper aims to be stage-setting and explorative, rather than offering a solution to the problem.

The paper will proceed as follows. In section 2, I clarify the notion of a fact-dependent policy disagreement. In section 3, I outline the concept of a legitimate policy choice by suggesting a core role of the concept of legitimacy. I say more about what is required for the concept to fill that role in section 4. In section 5, I discuss a range of legitimizing conditions that one might suggest, and I argue that none of them meet the constraints laid out in section 4. Finally, in section 6 I offer some reflections and suggestions for further reflection.

2. FACT-DEPENDENT POLICY DISAGREEMENTS

To begin, some clarification of fact-dependent policy disagreements will be helpful. To make the issue less abstract, I will throughout refer to a schematic example of a purely fact-dependent policy disagreement:

Affirmers and Deniers

A polity must decide upon a common policy in some domain. A substantial segment of the population, the *Affirmers*, firmly believe a non-normative factual proposition P, while another substantial segment, the *Deniers*, firmly believe not-P. Everyone agrees that the question whether P is of vital importance in determining which common policy should be adopted in the domain in question. Consequently, Affirmers and Deniers sharply disagree about which policy to adopt, and their factual disagreement regarding P is the only thing that sets them apart. So if Affirmers and Deniers were to agree on the appropriate doxastic attitude to P, they would also agree about what policy to adopt in the domain. Affirmers and Deniers have debated their disagreement over P for a considerable time, and significant efforts have been made in exchanging reasons and sharing evidence. However, the members of the two groups are now unwavering in their confidence in their views. We can think of this as a case in which both Affirmers and Deniers hold, as a part of their outlook, a theory of error that serves to explain how the other side can be apparently rational and yet gravely mistaken.[5]

---

[5]   Cf. (Bergmann 2009, 338).

What would be the politically legitimate course of action in this case? Before we turn to that question, some remarks on terminology will be useful. Roughly, I take a *policy disagreement* to be a disagreement about which coercive common policy should be adopted in a given polity. A *common policy* is one that applies to all members of the polity, thereby affecting everyone, though perhaps sometimes in indirect ways.[6] There is a *disagreement about common policies* when members of the polity have conflicting views about which policy would be best or most just to adopt, all things considered. We have a *fact-dependent* policy disagreement when the dispute depends on non-normative factual disagreements. *Non-normative factual disagreements*, in turn, are disputes pertaining to the truth of non-normative factual propositions. Two individuals *disagree* about a proposition just in case they have different *doxastic attitudes* to that proposition; say because one believes the proposition, while the other rejects it, or because one has very high credence in the proposition, and the other lower credence. By focusing on non-normative factual disagreements, disagreements about moral, aesthetic, and political values are excluded, regardless of whether these are a special kind of factual disagreement, and disagreements merely based on divergent individual interests are excluded as well.

Also worth noting is that in general, the specific content of an agent's normative views will determine whether support for a particular policy rationally

---

[6]   See Nagel's remarks about when coercion requires a legitimizing justification (Nagel 1987, 224)

depends on the truth of a particular non-normative factual proposition or not. So for one agent, a particular factual question may be very important policy-wise, whereas for an agent with different values, that same factual question may be irrelevant. The scenario of the Affirmers and Deniers avoids these complications by stipulating that if both groups were to agree about P, they would also agree about which policy choice is best: that is to say that their values do not differ in a way that influences their ranking of policy options. Most of our actual fact-dependent policy disagreements are obviously not purely dependent on non-normative factual disagreements, but for the purpose of the discussion ahead we need only consider a case that is.

It might be objected that either Affirmers or Deniers must somehow fail to be fully epistemically rational in their appreciation of the available evidence.[7] So it cannot be that both groups are fully rational, understand that they disagree about certain facts, and yet continue to disagree. According to this objection, if fully rational, Affirmers and Deniers should realize that the existence of an irresolvable disagreement is an important piece of social evidence that should compel them to reduce their confidence in the views that set them apart, and ultimately agree to suspend belief.

---

[7] See, for example, Kitcher who considers what he calls *chimeric epistemology*, which is an epistemology 'including two methods of certifying that can deliver opposing verdicts about acceptance and rejection' (Kitcher 2011, 157), see also (Kitcher 2008). Kitcher suggests that 'if this chimeric epistemology were brought into the open and scrutinized, it would be seen as a very uncomfortable position' (Kitcher 2011, 157).

Though I cannot elaborate on the question here, I will assume that we can set this objection aside. Affirmers and Deniers may have very diverse background beliefs, making it rational for them to adopt incompatible epistemic principles, trust different authorities, or interpret the shared evidence in disparate ways. Affirmers may hold views that explain why Deniers are deeply mistaken, as well as why the fact that they do disagree does not constitute a reason for Affirmers to alter their view. But Deniers may have similar views that explain where Affirmers have gone wrong. So neither Affirmers nor Deniers need to have made a mistake in the way they form beliefs, despite maintaining undiminished confidence in their own view, even subsequent to acknowledging the prolonged disagreement. At any rate, this is what I will assume for the purpose of the present paper. [8]

Another worry is that the case of Affirmers and Deniers abstracts from asymmetries between state action and state non-action, i.e. cases in which collective action is undertaken, and cases in which it is not. It might be held that state *action* is in need of being legitimate in a way that state non-action is not. Or one may distinguish between enacting policies involving *coercive* legislation, and enacting polices that does not, and again it may be held that these are normatively asymmetrical. [9]

In my discussion I assume that there are no such prior normative asymmetries between policy options, and there are a couple of reasons

---

[8] See (Bergmann 2009) for a useful discussion of the social epistemology of this sort of situation. See also (Lynch 2010; Lynch 2012).

[9] Thanks to anonymous reviewers for raising this issue.

supporting this. The first is merely a question of scope. I focus on the problem of legitimacy in fact-dependent policy choices, and it is a separate and independent question whether there are normative asymmetries having to do with action/non-action and coercion/non-coercion asymmetries. For the purpose of this paper, I will simply make the assumption that there are no such asymmetries in the cases under discussion. Second, I grant that this assumption may seem controversial exactly in the kind of cases that I used for illustration above, i.e. climate policy and the governance of genetically modified crops, as they might be thought to involve policy options that are non-coercive. However, in those cases, as in many other realistic cases, it is not easy to see how non-action or non-coercion is a realistic policy option at all. Adopting a less restrictive governance of genetically modified organisms would not be non-action or non-coercion, but would be a decision to adopt a different set of coercive rules than the current ones. Similar for climate policy, where realistic policy options involve different coercive regimes, not a choice between a coercive policy and a non-coercive one. Finally, suppose that a fully non-coercive climate policy exist. Presumably, this would be one that imposed no constraints on individual behaviour with respect to their contribution to emissions of gases that might contribute to climate change. Granting this, one would not need to justify a coercive element of such a policy, but there would still be an issue of somehow justifying adopting this policy, given our state of knowledge about the consequences of anthropogenic climate change, and this would raise a similar issue about how to do so when we publicly disagree about the facts.

Yet a concern is that certain domains of life that are constitutionally unfit for state legislation, say matters of family life. In this paper I assume throughout that we consider policy questions in domains where the state can legitimately enact policies, and where the question thus is which of several incompatible policies it would be legitimate to adopt.[10]

I have specified an abstract and idealised case of a fact-dependent policy disagreement. Plainly, in real life policy disagreements are not so neat, and this of course includes the cases I mentioned above. Most policy disagreements exhibit various combinations of value-dependency and fact-dependency. Moreover, people may of course be mistaken or insincere in the way they conceive of the political disagreements that they are involved in. They may say, and even sincerely believe, that a given disagreement is fact-dependent, while it really is not. In some cases, there might be strategic advantages to framing a disagreement as fact-dependent, even when it is not. Or conversely, disagreements may be framed as value-dependent, when they are really fact-dependent, and so on. While obviously important in many respects, for my present purposes, I will abstract away from these issues.

3. THE CONCEPT OF POLITICAL LEGITIMACY

I now need to say more about the concept of political legitimacy. I will follow a broadly Rawlsian liberal tradition, according to which contemporary liberal societies feature a plurality of irreconcilable and comprehensive doctrines that underlie disagreements about which policies are just or right. When such disagreements occur, the policy that is adopted and enforced on everyone

---

[10]   Thanks to a reviewer for raising this issue.

should at least be legitimate. So, despite our persistent deep disagreements about what is right or just, we should be reconciled by legitimate policy options. This is what legitimacy is all about. Even when we have different views on justice, we should be able to acknowledge that certain policy options are legitimate. And when realising that an option qualifies as legitimate, this should command some sort of respect, or deference, even among those who do not agree that it is best or the right. This, I will assume, is the *core role of the concept of legitimacy*. It is this familiar concept of legitimacy that I will be concerned with here,[11] and the broader question concerns the application of this notion of legitimacy to fact-dependent policy disagreements.[12]

A number of theories of political legitimacy have been devised for the particular context of value dependent disagreements. These theories agree about the core role of the concept of legitimacy outlined above, but they propose different views about what the proper *legitimizers* are. A legitimizer is a property of a policy choice or of the process that led to that choice, in virtue of which that choice is legitimate. I will not discuss any particular theory of political

---

[11]   See (Nagel 1987; Rawls 1993; Wall 2002; Estlund 2007; Peter 2009) for this way of conceiving of legitimacy. Note that Rawls assumes that constitutional essentials are the primary bearers of legitimacy, whereas individual policies earn their legitimacy only derivatively by being adopted by the proper institutions in the right sort of way. For the sake of conducting a systematic discussion surveying all the options, I don't go along with this assumption. See further discussion of this issue in section 6.

[12]

legitimacy about fact-dependent policy disagreements, because none to my knowledge have been devised. Instead, I will discuss a range of familiar legitimizers that one might propose for the case of fact-dependent policy disagreements. The main contention will be that it is hard to identify any property or process that can serve as a plausible legitimizer in fact-dependent policy disagreements. If this is right, the underlying problem is that the core role of political legitimacy requires too much, or imposes constraints on legitimizers that cannot be simultaneously satisfied in realistic cases. I return to the significance of this in section 6.

4. THE CORE ROLE OF POLITICAL LEGITIMACY

I will now elaborate on the core role of the concept of political legitimacy.[13] Some of the suggestions to be made below will be familiar from the literature, others will be, I hope, plausible enough to be worth considering. The basic question that will guide the inquiry is this: what does it require for the property of being legitimate to be able to fulfil its core role? I will suggest five distinct requirements that, combined, give more specific content to the concept of legitimacy. The first requirement is this:

> **(a) The Distinctness Requirement**. The property of being legitimate is distinct from the properties of being morally right or just.

---

[13]   I talk interchangeably about the concept of political legitimacy and the property of political legitimacy, but nothing hinges on this.

The Distinctness Requirement is indispensable for familiar reasons.[14] As mentioned, we can disagree about whether a particular policy is right or just, while still agreeing that it is legitimate. So an agent can find a particular policy wrong or unjust, but concede that it is legitimate. Conversely, one can think that a policy is right or just, but insist that it is not legitimate. Clearly then, the property of being legitimate and the property of being morally right or just cannot be identical.[15]

The core role not only requires that justice and legitimacy are different properties. As mentioned above, the cognitive task of identifying the property of legitimacy should also, in a certain way, be less challenging than the task of identifying the properties of being just, or morally right, or morally permissible. The reason is that when we find ourselves unable to agree about what is right, we should still be able to determine what is a legitimate policy. In circumstances where we disagree about the right options, legitimate options should nevertheless still be available, and it should generally be feasible for us to identify those options. We can spell these desiderata out in terms of two further requirements, the first of which is:

---

[14]   Cf. Wall on the insufficiency of correctness-based justification in fulfilling what he calls the 'reconciling function' of public justification, (Wall 2002, 387). See also (Estlund 2007, 99ff).

[15]   Note that despite the Distinctness Requirement, the properties of being legitimate and being morally right or just can be extensionally equivalent in that they apply to the same set of policies in the actual world

(b) The Determinateness Requirement. Given a properly framed decision problem, and a properly functioning political system, at least one policy option should emerge as legitimate.

Note that the requirement is not that *any* decision problem has a least one legitimate option. This is because a decision problem might be ill formed, say, because some of the relevant alternatives are not represented. Or it might be that no alternatives are legitimate, say, because deliberative processes necessary for identifying legitimate policy options cannot be carried out. This is why the Determinateness Requirement only requires that properly framed decision problems contain at least one legitimate policy choice, and only when situated in a properly functioning political system.

One might worry that the Determinateness Requirement is too weak because it only requires that at least one policy option emerges as legitimate. Suppose that more than one policy option is declared legitimate, but that these policy options will affect members of the polity in very different ways. How, then, are we to decide between the plurality of legitimate choices? Wouldn't there be something distinctly illegitimate about, say, the powerful simply picking the option that serves their interests best? I agree that this is a concern. So, intuitively, in a properly framed decision problem, situated in a well-functioning political system, there should be at least one legitimate option, but there should not be more than one, unless all legitimate options are more or less equally good. However, as I will soon discuss, what I call the Non-arbitrariness Requirement will cater to that possibility.

But for now, consider the following requirement that together with the Determinateness Requirement, ensures that legitimate options can be identified:

(c) The Accessibility Requirement. In a properly framed decision problem, and given a properly functioning political system, the legitimate options should be jointly epistemically accessible to us, i.e. we should be able to discern and agree that they are indeed the legitimate options among those available.

I already noted why we need the provisos regarding properly framed decision problems and properly functioning political systems. The idea behind the Accessibility Requirement is that the mere existence of legitimate policy options does not suffice. We need to be able to find them, and once we have identified them, we should be able to agree that we have done so. It is otherwise hard to see how the concept of legitimacy could have the reconciling function that we assumed above.

While the previous requirements may seem uncontroversial, I turn now to what may at first appear to be a more contestable requirement. It seems that there should be a distinct functional relation between the legitimacy of a policy choice and the correctness of that choice:

(d) The Non-arbitrariness Requirement. If (but only if) there is a procedure-independent correct decision relative to a given policy choice, then some sub-set of the properties that make a decision legitimate also

tend to make it correct, or constitute evidence that this decision is likely to be correct.

The intuition behind the Non-arbitrariness Requirement is familiar from Estlund's work.[16] As Estlund notes, suppose that a procedure for identifying legitimate policy options were no better than random, as regards chances of identifying the procedure-independent correct policy option (assuming that there is one). Why even bother to identify legitimate options and why comply with them, if they are acknowledged to be no better than random as regards being correct? How would the property of being legitimate serve the reconciling function if it has no correlation to correctness? So, while legitimacy should remain distinct from correctness, legitimacy should nonetheless track correctness.[17]

---

[16]   See (Estlund 2007, 99ff) for a discussion of a similar constraint in his defense of epistemic proceduralism. See also (Estlund 2007, 112ff) for Estlund's remarks on how to spell out the notion of an epistemically good (accurate) procedure.

[17]   In one respect, the term 'Non-arbitrariness' is misleading. What is required is not just that a procedure is marginally better than random. Suppose that we have two procedures to choose between, both of them non-arbitrary, but one considerably more reliable than the other.   In such a case it would seem wrong not to choose the most reliable procedure, other things being equal. These complications will not affect the argument below. Thanks to [...] for pressing this point.

Though a detailed discussion of this is beyond the scope of the paper, I suggest that the Non-arbitrariness Requirement could be specified to deal with the problem noted above. Recall that the Determinateness Requirement only says that there should exist legitimate options, leaving open the possibility that there are too many intuitively morally non-equivalent options. In response to this problem note that the Non-arbitrariness Requirement would rule out legitimizers that cannot distinguish between outcomes that differ markedly from one another by how closely they approximate the correct outcome. If a legitimizer cannot distinguish outcomes that are very different on relevant moral parameters, then it can hardly be non-arbitrary.

The final requirement holds that legitimate policies should command our moral respect. Again, this derives from the role that defines the concept of legitimacy. Reasonable individuals should find themselves able and willing to abide by what they sincerely believe to be legitimate decisions. Again, this is part of what is involved in the reconciling function of legitimacy. Here is a way to state this last requirement:

(e) The Reason-giving Requirement. There is a *pro tanto* moral reason to comply with legitimate decisions, and for rational and reasonable agents, fully believing that a decision is legitimate should provide a *pro tanto* motivation to act in compliance with that decision.

This aspect of legitimacy is obviously important, and much more could be said about it, though in what follows I will only add a few remarks. The main argument that follows concerns the previous four requirements.

5. LEGITIMIZERS IN FACT-DEPENDENT POLICY DISAGREEMENTS

I now turn to the main argument. Assume now that the five requirements identified in the previous section identifies the concept of political legitimacy. The question now is what if anything could make it the case that some policy option or policy choice what we face in a fact-dependent policy disagreement has the property of being politically legitimate. Recall that a legitimizer is a property in virtue of which some policy is legitimate. So, the main question in this section is this: what, if anything, could act as legitimizers in fact-dependent policy choices? In the discussion below, I will propose a range of properties that might be candidates for being legitimizers. Candidate properties will all be more or less familiar adaptations from the literature on legitimacy in value-dependent policy disagreement. What I will argue in this section is that none of the proposed legitimizers appear plausible when we bear in mind the five requirements on legitimacy laid out in section 4.

First, however, we need some additional terminology. Recall that Affirmers and Deniers disagree about P, and it is this that underlies their disagreement about which policy they should adopt. Remember, we have assumed that Affirmers and Deniers do not hold dissimilar values that would cause them to rank policies differently. So by stipulation, if Affirmers and Deniers have the same beliefs, they also have the same ranking of policy options. Let us say, then, that a P-dependent policy is *correct* if and only if Affirmers and Deniers would rank it highest, had they believed the truth about P. Otherwise the policy is wrong.

Note that this is a *partially procedure-independent notion of correctness*. Of course, correctness depends on Affirmers and Denier's preferences. But once these preferences are fixed, correctness depends only on the truth about P, and this is procedurally independent of what Affirmers and Deniers think about P, their ranking of P-dependent policies, or any decision-making process they may engage in.

Let us now turn to the range of candidate legitimizers for fact-dependent policy disagreements. Each candidate will be defined by simply stating necessary and sufficient conditions for a P-dependent policy to be legitimate, using again the schematic case of the Affirmers and Deniers. The first proposal is familiar:

(1) Truth. A P-dependent policy is legitimate if and only if it would have been ranked highest, had the Affirmers and Deniers believed the truth about P.

It is natural to think that the legitimate policy would be the one that we would agree about if we all believed the truth about P, and so the attraction of identifying legitimacy with correctness is evident. It is equally clear, however, why this fails to meet the Distinctness Requirement. On this proposal, Affirmers and Deniers could not find a decision both legitimate and wrong.

Moreover, conception (1) fails to meet the Accessibility Requirement. We are assuming that Affirmers accept P, while Deniers reject P, and this is why they cannot agree on what policy option is best. But it is plain that given this starting point, Affirmers and Deniers could not agree which policy option is

legitimate according to (1), because they disagree about the truth of P. So while (1) would in fact identify a policy option as legitimate, Affirmers and Deniers could not jointly agree which one it is. Hence (1) violates the Accessibility Requirement.

Consider instead an epistemological cousin to (1). Rather than defining legitimacy in terms of true belief, we might try to define the concept in terms of rational belief, or the factual beliefs we ought to have, if we were fully rational:

(2) Full rationality. A P-dependent policy is legitimate if and only if it would have been ranked highest, had the Affirmers and Deniers had a fully rational doxastic attitude to P, given the available evidence.

Unlike (1), proposal (2) meets the Distinctness Requirement. A decision based on a fully rational doxastic attitude to P is distinct from the right decision (as I defined it above), though they might of course coincide in many cases.

But there are other problems with (2). One is that (2) will meet the Distinctness Requirement only if we accept what is known as the Uniqueness Principle. This principle says that for a given body of evidence and some proposition, there is one most rational doxastic attitude that one can have to the proposition. While some epistemologists consider Uniqueness Principle plausible, it is far from universally accepted.[18] But if we do accept the Uniqueness Principle then it seems that (2) will fail on the Accessibility

---

[18]   For discussions the uniqueness principle, see (White 2005; Feldman 2006; Christensen 2007).

Requirement. The reason is that it will be rational for both Affirmers and Deniers to insist that their view is fully rational. All rational inquirers will think that they themselves hold the most rational doxastic attitude to P. That is, rational inquirers cannot rationally believe that P (accord a certain level of credence to a proposition P), while rationally thinking that it would be equally or more rational to doubt P or disbelieve P (have a different credence in P) given the available evidence. If this is right, we get the following. When Affirmers and Deniers are divided because they accord some proposition P different levels of credence, and yet think of themselves as adopting just the right doxastic attitude to P, then evidently they disagree about what the most rational doxastic attitude to P is. But then Affirmers and Deniers will disagree about which policy option is legitimate according to (2). So, even if conception (2) identifies a legitimate policy option, Affirmers and Deniers cannot agree which one it is. So, (2) fails on grounds of accessibility.

If, on the other hand, we reject the Uniqueness Principle Affirmers and Deniers may concede that they both have epistemically fully rational doxastic attitudes to P. However, (2) will then in many cases be unable to identify any policy as legitimate, hence failing on the Determinateness Requirement. Think again of climate policy. If affirming the existence of anthropogenic climate change and firmly denying it are *both* fully rational attitudes, what climate policies would then be legitimate according to conception (2)? So, if we accept the Uniqueness Principle, (2) will fail on accessibility. If we reject the Uniquenes Principle, (2) falters on determinateness.

Defining legitimacy in terms of true belief or in terms fully rational beliefs are demanding options. Consider now instead what might be called an

epistemically reasonable doxastic attitude.[19] There is no widely shared theory of this, neither in epistemology nor in political philosophy, but the basic idea should be tolerably clear. Suppose we, very roughly, characterise what is epistemically reasonable along the following lines: S's doxastic attitude to P is epistemically reasonable just if S has made a sincere effort to get to the truth about P, has considered the question whether P carefully, has not ignored readily available evidence pertaining to P, has responded to the evidence by adjusting her views about P or by rebutting the evidence, and has made no immediately apparent mistakes in her reasoning about P.[20] In our example above, Affirmers and Deniers might both be epistemically reasonable in this sense, although they adopt very different doxastic attitudes to P.

We might now attempt to define legitimizers in terms of the epistemically reasonable. One option is this:

---

[19]   Note that the concept of the epistemically reasonable is very different from Rawls' concept of the reasonable, cf. (Rawls 1993, 48-54). For Rawls, being reasonable is, in part, a moral property of individuals comprising among other things the readiness 'to propose principles and standards as fair terms of cooperation and to abide by them willingly, given the assurance that others will likewise do so' (Rawls 1993, 49). Rawls also distinguishes the reasonable from the rational, where the rational concerns the choices of means for ends, among other things. Epistemic reasonability, by contrast, only concerns the way we form beliefs about the world.

[20]   This is similar to views on epistemic reasonability defended in (Talisse 2008) . See the discussion in [...]

(3) Reasonability. A P-dependent policy is legitimate if and only if it would have been ranked highest, had the Affirmers and Deniers both had epistemically reasonable doxastic attitudes to P, given the available evidence.

Surely, (3) meets the Distinctness Requirement - holding an epistemically reasonable attitude to P is distinct from believing the truth about P. One can agree that a particular policy choice is based on a reasonable doxastic attitude, and yet think that it is nevertheless wrong.

Moreover, unlike the two previous proposals, (3) may appear to meet the Accessibility Requirement. This is so because requiring a reasonable doxastic attitude is a far less stringent demand than requiring either a fully rational doxastic attitude to P, or a true belief about P. Reaching a common agreement about whether certain views are reasonable or not would seem to prove an easier task. First, it is simpler to agree that someone is outside the bounds of the reasonable than it is to determine that she is fully rational. Second, reasonable views are not mutually exclusive in the way that views aspiring to full rationality are. Affirmers can freely consider their own view reasonable, and at the same time consider views held by Deniers reasonable as well. So, affirmers and Deniers might both agree that their opponents have reasonable epistemic attitudes to P, although they still sharply disagree about P.

However, the problem with (3) should be obvious. The liberal nature of epistemic reasonability will make (3) falter on the Determinateness Requirement. Once there are several distinct reasonable doxastic attitudes that

Affirmers and Deniers may have, it is clear that (3) may not be capable of identifying any policy option as legitimate.

One can imagine a spectrum of more or less lenient conceptions of epistemic reasonability. On the most lenient conceptions, many different views would count as epistemically reasonable, whereas less permissive conceptions would allow fewer views as reasonable. Suppose that a sufficiently strict conception of epistemic reasonability leaves very little space for a plurality of epistemically reasonable doxastic attitudes to a particular proposition, given a fixed body of evidence. This would tend to make (3) meet the Determinateness Requirement. But this move would bring back the problem of meeting the Accessibility Requirement that we saw above. Affirmers and Deniers will both claim that they are complying with the high standards of reasonability, whatever they are, and they will reject any policy proposal that excludes their view as being based on factual views that are outside the bounds of the reasonable. So, if we accept narrowing the standards of reasonableness, Affirmers and Deniers will be unable to agree about whose views are reasonable, and this will tend to conflict with the Accessibility Requirement.

The views considered so far propose to define legitimacy in P-dependent policy choices in terms of agents' preferences, were they to believe the truth about P, have fully rational beliefs about P, or have epistemically reasonable beliefs about P. We have seen that none of these strategies are successful.

Turn now to a couple of suggestions that do not rely in the same way on the notion of a hypothetical agreement about factual beliefs. One familiar proposal appeals to convergence in policy options:

(4) Convergence. A P-dependent policy is legitimate if and only if it is the highest ranking *common* policy, given that Affirmers and Deniers both have epistemically reasonable doxastic attitudes to P.

To illustrate the idea, suppose that my wife and I wonder where to holiday for the summer. We consider three options: we could stay in Denmark, go to Italy or travel to Poland. I prefer staying in Denmark over going to Italy, which I in turn favour over a trip to Poland. My wife prefers Poland to Italy, and Denmark comes as the option she favours least. Italy clearly comes out as the highest ranking common policy, considering that we both rank it as the second best choice.

Similarly, (4) asks Affirmers and Deniers to compare their ranking of policy options, and to pick the highest ranked option that their opinions converge upon. Since we assume that Affirmers and Deniers disagree about which policy is best, they will not have the same preferred policy option. But their views might coincide on some lower ranked policy option. The idea in (4) is that the highest ranked common policy option would count as legitimate.

While (4) may seem promising at first sight, it takes but little reflection to see that it easily violates the Determinateness Requirement. Suppose that we have two policy options, A1 and A2. Affirmers prefer A1 over A2, whereas Deniers rank the options in the reverse order. According to conception (4), which policy option is the highest ranking common policy? Both options have an equally good claim of being the highest ranked common policy, and yet they might be very different from the perspective of the Affirmers and the Deniers.

A second, and also familiar proposal does not appeal to convergence, but rather to common ground or shared views:

(5) Common Ground. A P-dependent policy is legitimate if and only if it ranks highest, given the Affirmers and the Deniers's *shared set* of epistemically reasonable doxastic attitudes.

The idea behind (5) is that we set aside what we do not agree about, and make a policy choice based on what we do agree about. More specifically, Affirmers and Deniers should first set aside all beliefs that are not reasonable on some very permissive notion of epistemic reasonability. Next, they should set aside all beliefs that are not shared. Recall that we are assuming that Affirmers and Deniers don't have significantly divergent values causing them to rank policy options differently. So, when Affirmers and Deniers ground their rankings on their shared set of factual beliefs, they will agree about which option is best. So, (5) clearly passes the Determinateness Requirement as well as the Distinctness Requirement. Assume that if we accept a permissive standard of epistemic reasonability, it will be easier to identify which doxastic attitudes are reasonable and which are not. If we grant that assumption, it seems plausible that (5) could meet the Accessibility Requirement as well.

There are, however, two related difficulties with (5). The first concerns the Non-arbitrariness Requirement. Basing policies on the shared set of factual beliefs requires us to ignore every factual assumption that we happen to disagree about. Obviously then, rather than approximating the truth on matters that we disagree about, the process of seeking common ground will tend to

focus on other truths that don't divide us. The outcome of this will, at best, have a very loose correlation to correctness, as a correct P-dependent policy choice is defined as the choice we would have made, had we believed the truth about P. So, conception (5) would seem to violate the Non-arbitrariness Requirement.

The second related concern is that policies identified as legitimate by (5) could be vastly inferior to what all those concerned would see as optimal choices. Sometimes such policies may ultimately prove catastrophic, and the question arises about how one could take oneself to have a good reason to comply with such decisions. To illustrate, consider again controversies over climate policy. Assume that Affirmers and Deniers disagree about the very existence of anthropogenic climate change, and about the potential consequences that various climate policies might produce. Suppose that Affirmers and Deniers set aside all non-shared factual views, and then choose policies on the basis of the shared factual assumptions left intact. What will those policies involve? And how appealing would they be to Affirmers who sincerely believe that significant anthropogenic climate change is under way? Why should this way of selecting legitimate policy options be motivating for Affirmers? How could conception (5) meet the Reason-giving Requirement, demanding that there somehow be a reason to abide by legitimate policies, even if one happens to disagree about them?

It is interesting to note that Rawls briefly suggests something similar to (5).[21] Rawls held that in public reason, citizens 'are to appeal only to presently accepted general beliefs and forms of reasoning found in common sense, and

---

[21] Thomas Nagel assumes a somewhat similar view in (Nagel 2008)

the methods and conclusions of science when these are not controversial.'[22] There are questions about how this is to be interpreted, but the main idea is that when factual beliefs are controversial, they should be excluded from the realm of public reason.[23] This, in essence, is what (5) prescribes: when facts are in dispute, set them aside for the purpose of legitimate policy making.

Consider, now, three familiar legitimizers that are based on the nature of the decision-making procedure, or the nature of certain institutions that are charged with making decisions. In part, such procedural or institutional suggestions may be plausible because the other proposals do not work. Recall that we assume that Affirmers and Deniers have debated their factual disagreement extensively without coming to an agreement, so we can set aside further deliberation as a candidate legitimizer. Three other processes come to mind and they are majority voting, delegation to experts and delegation to policy-makers. Let's discuss each in turn.

> **(6) Majority voting.** A P-dependent policy is legitimate if and only if it would be ranked highest, were Affirmers and Deniers to accept a doxastic attitude to P that is identified by a majority vote.

Of course, it is absurd to decide by vote what the facts are. But the idea is only to vote about what factual assumptions should inform common policy. Clearly, conception (6) would meet the Determinateness Requirement, and it will also

---

[22]   See (Rawls 1993, 224)

[23]   See the discussion in [....]

make good on the Distinctness Requirement. However, majority voting will in many actual cases not meet the Non-arbitrariness Requirement, and will also fail to meet the Accessibility Requirement.

It is worth briefly elaborating why. As is well known from work on Condorcet's jury theorem, majority voting can be a highly reliable method for determining the truth of a proposition under certain conditions. One crucial condition identified in the theorem is that voters be competent with respect to a question. Roughly, voters should on average be more likely than not to be right with respect to the question they vote about.[24] Let this be *the competence condition*.

There are now two crucial issues for the viability of (6). One is whether the competence condition is met in particular cases of fact-dependent policy disagreements. Conception (6) will meet the Non-arbitrariness Requirement only if the competence condition is also met, and it is easy to imagine cases

---

[24] As is well known, not all voters need be competent. It suffices if the average probability that voters are correct is above average. So probability that they are right should be above 0.5, provided that non-competent voters (those with a probability of less than 0.5 of identifying the correct answer) vote randomly. These details do not affect the argument. Another challenge concerns the independence of voters. The Condorcet's Jury Theorem requires that voters be independent, yet actual voters will typically not be independent in their views on factual matters , because they depend on the same sources and influence one another. For discussion of the Condorcet Jury Theorem, see for example (Estlund 1994; List 2001).

where it is not. Assume that Affirmers hold that there is a genuine change in the earth's climate, and that its cause is anthropogenic. Deniers reject both assertions. Suppose that the truth of the matter is that the Affirmers are right. Is the competence condition met? Will voting identify the correct factual view, and by extension the correct policy? Obviously, this will depend on the details regarding the sizes of the two groups - if the Deniers count more members than the Affirmers, then the competence condition will not be met.

But even if the competence condition is actually met, it seems unlikely that Affirmers and Deniers will agree that it is. Recall that we have assumed that Affirmers and Deniers have a persistent disagreement, and that members of both groups form theories about why constituents of the opposing group are wrong, despite their apparent rationality. So, Affirmers think that Deniers have been subject to manipulation, suffer from ideological ignorance, or have led themselves astray by wishful thinking. Deniers have similar theories about Affirmers. Consequently, both Affirmers and Deniers would be inclined to think that the competence condition fails whenever they find themselves to be a minority, because this is when a majority of the voters are mislead about the facts. By implication, we should expect conception (6) to fail to meet the Accessibility Requirement. The losing party will always have good grounds for contesting the resulting legitimizing force of a majority vote.

Let's turn now to the procedure that is undoubtedly the most familiar way of attempting to provide practical solutions to problems of disagreement about fact-dependent policy options. When we disagree about the factual basis for common policies, we should delegate the task of deciding what to believe to experts. So:

(7) **Delegation to experts.** A P-dependent policy is legitimate if and only if it would be ranked highest were Affirmers and Deniers to accept the doxastic attitude to P recommended by the experts.

The problem with (7) is that of identifying the relevant experts, and this problem can now be stated in more detail. We assume that Affirmers and Deniers disagree sharply about some factual proposition P, and have been doing so for a long time. Clearly, Affirmers will be inclined to reject the proposal that some individual is an expert on the matter, when that individual is predisposed to rejecting P, and conversely for Deniers. Indeed, in order for Affirmers and Deniers to preserve both their rationality and their disagreement, they *have to* disagree about who the relevant experts are. So, conception (7) will fail to meet the Accessibility Requirement.

I don't mean to say that (7) fails in all scenarios; fortunately, there will be cases where, though we disagree about some factual question, we can nonetheless agree to delegate the question to a mutually recognized group of experts. When this happens, conception (7) is likely to meet all requirements. The point is just that (7) is in no way guaranteed to succeed, and in some realistic cases it will not.

So far we have considered conceptions of legitimacy that implicitly acknowledge a familiar division of labour in democratic decision-making.[25] According to this view, democratic decision-making ideally consists of two

---

[25]   Such a view is commonly attributed to Weber, see (Weber 2011).

conceptually and institutionally separate components. One component concerns establishing what the facts are. The other component is about deciding what policies to pursue in light of the facts. The proposals for legitimizers assume this two-part decision process is upheld, but that factual input cannot be provided because we fail to agree about the facts. The proposals therefore offer conceptions of legitimate factual inputs to the democratic decision-making process, while still assuming that this is separate from the value component of the decision process.

Maybe, however, the discussion so far should lead us to worry about the separation of the decision-making process into a factual part, and a value part. Perhaps we should collapse the two, and let the value part take care of the factual part, so to speak. Deciding what factual input should be admitted into the decision-making process would itself be included under the value-based part of that process. Deciding what facts to use would be a political choice, not a decision that should be made prior to political choices.

This view can, very roughly, be characterised as follows:

(8) Delegation to policy makers. A P-dependent policy is legitimate if and only if it is adopted by democratically elected decision-makers on the basis of whatever doxastic attitude to P they see fit.

There are many ways of specifying this general strategy, but we need not go into the details. The main point is that according to (8), duly elected decision-makers are free to base policy decisions on any factual view they consider appropriate. They need not, of course, agree with one another about what the

appropriate factual basis is, so differing factual views may become part of the negotiations of a representative body. Elected decision-makers are free to appoint whatever experts they like, even highly controversial figures whose expertise is not generally acknowledged in the scientific community. Sometimes when decision-makers base their policies on controversial factual views, they become unpopular among certain voters and risk their re-election; at other times not. Policy-makers might be criticised for adopting policies that ignore the evidence, but the policies cannot be criticized on grounds of illegitimacy. The outcome of the process would still count as legitimate on procedural grounds.

In one way the view expressed in (8) is quite natural, inasmuch as it solves the problem of factual disagreement by allowing democratic decision-making extend into the factual realm, though not in sense of voting about what the facts are, or by pretending that these parts of democratic decision-making are especially prone to truth-tracking. Rather, candidates for office will be elected partially on grounds of their views about the factual questions crucial for policy making; promoting their favoured policies in light of what they take to be sound evidence will be part of the role that is entrusted to policy makers. This, I think, is close to the political culture that we actually can observe in many democracies, and indeed it seems a tempting way of extending the realm representative democracy. When we cannot agree about the facts relevant for our policies, then why not let elected policy makers decide which factual views to adopt?

The obvious challenge to (8) is that one can easily imagine situations in which the Non-arbitrariness Requirement is not met, or where either Affirmers or Deniers have ample reason to think that it is not met. On proposal (8)

legitimate policies may be very far from tracking correctness. Why should Affirmers or Deniers feel obliged to comply with decisions that are based on what they consider irresponsible views of the facts?

While this is surely a valid objection against (8), I suggest that the significance of (8) is better appreciated by viewing it as abandoning the idea of partially procedure-independent correctness. Above, I defined partial procedure-independent correctness as follows: a P-dependent policy is *correct* if and only if Affirmers and Deniers would rank it highest, had they believed the truth about P. Proposal (8) is best interpreted as abandoning that idea of correctness, and instead adopting a procedural view of correctness, according to which outcomes regarding P-dependent policies as whatever outcomes we end up deciding upon in a fair process. The correct option in a policy choice that hinges on the truth of P does not depend on truth about P.

This is, I suggest, ultimately what is involved in rejecting the idea that democratic decision-making involves two stages, one that determines what the facts are, and one that determines which policies to adopt. It is, of course, the distinction between facts and values that is at play here, or more precisely, the very different ways in which we form rational opinions about these matters. In a way, (8) assumes that these differences should be collapsed - the question of what the facts are should be treated as a sort of value question for the purpose of legitimate policy making.

6. SOME FURTHER REFLECTIONS

If what I argued above is correct, none of the proposes legitimizers meets all requirements in all realistic cases. We can try to define legitimizers in terms of truth or ideal rationality, but we will disagree about whose views are true or

rational. We might suggest that factual views admissible into the process should at least be epistemically reasonable, but this permits too diverse factual views. Hoping for a convergence in policy choices will often be indeterminate. Deciding upon policy options on the basis of the intersection of our factual beliefs may prove unable to yield sensible decisions. We can appeal to procedures such voting, but we will likely disagree about when voting is a non-arbitrary procedure. We can defer to experts, but may then be unable to settle who the proper experts are. Finally, we might delegate the task of selecting the proper factual basis for contested policies to elected decision-makers. This option, I suggest, really denies the idea of partially procedurally independent correctness in fact-dependent policy disagreements.

Surely, the discussion is not conclusive, and perhaps there are candidates for legitimizers that have yet to be considered. But enough has been said to warrant mentioning some general responses, though a complete evaluation is not possible here.

One immediate response is that concerns about legitimacy simply do not apply to fact-dependent policy disagreements. Indeed, the conspicuous absence of explicit attention to the issue in political philosophy might indicate that this in fact is a widely shared assumption. This view seems hard to sustain, however. Rawls and others in the liberal tradition readily appeal to the relative epistemic inaccessibility of the right answers to moral, metaphysical and religious questions, as part of the reason why we need a theory of legitimacy.[26]

---

[26] Apart from Rawls' own concern about the burdens of judgment, see related discussions in (Larmore 1987) and (Barry 1995).

The exact same epistemological troubles plague fact-dependent policy disagreements. So it seems that if concerns about legitimacy apply to value-dependent disagreements, they also apply to fact-dependent disagreements.

Another response is that the discussion is misguided, as it wrongly assumes that individual policy decisions are the bearers of legitimacy. One might instead assume with Rawls that institutions (or constitutional essentials of institutions) are the primary bearers of legitimacy, whereas individual policies earn their legitimacy derivatively by being adopted by the proper institutions in the right sort of way. Accordingly, the fundamental question regarding the legitimacy is what constitutional essentials citizens may reasonably endorse, and there is no separate question concerning the legitimacy of fact-dependent policy disagreements. [27]

However, this approach merely raises the question of institutional design. What institutional design dealing with fact-dependent policy disagreements would reasonable citizens endorse? Which decision-procedures regarding fact-dependent policy disagreements should constitutional essentials demand or promote for them to be endorsable by reasonable citizens? The most obvious options, it seems, would be the institutional or procedural candidates discussed in Section 5: (6) Majority voting, (7) Delegation to experts, and (8) Delegation to policy makers. These candidates are consistent with the Rawlsian idea that the property of legitimacy primarily applies to constitutional essentials and only derivatively to individual policies. As we have seen, each of them has advantages and drawbacks, and it is not obvious which one reasonable citizens

---

[27]   Thanks to a reviewer suggesting this objection.

would endorse. Also, one might consider option (5) Common Ground. The idea would then be that it could be considered a constitutional essential that public policy can only be justified by appeal to 'to presently accepted general beliefs and forms of reasoning found in common sense, and the methods and conclusions of science when these are not controversial.' (Rawls 1993, 224). So, on this view, if methods and conclusions of science are controversial, they should be excluded from public reason and not ground political action. So, rather than being misguided, the discussion above locates the Rawlsian options in a broader array of possibilities.

In response to the skeptical outcome of section 5, another option would be to consider the argument a *reductio* of the notion of political legitimacy, at least given the way I have specified the core role in section 4. After all, the proposed requirements in section 4 seem completely generic, and it may not be obvious that the problems will be easier to solve when we turn to legitimacy in value-dependent choices. Thus, in response to the problems identified, we might decide to give up entirely on the idea of political legitimacy, as defined here.

A less pessimistic reply, though along the same lines, would be to consider rejecting one or more of the proposed requirements. Brief reflection suggests that this is not easy. What motivates these requirements is the sort of mediating role that the concept of legitimacy is supposed to have. So, the question is whether we can imagine some way of specifying a notion of legitimacy that permits concerns over legitimacy to have the same role, while ridding ourselves of one or more of the requirements in section 4.

It is not obvious how this might be done. It is hard to imagine a concept of legitimacy that does not conform to the Distinctness Requirement or the Accessibility Requirement - what work would we want such a concept to do for us? Consider the Non-arbitrariness Requirement that one might think of as the main culprit. Some of the proposed legitimizers fail to deliver on this. Should we abandon it? This would immediately raise the question of why we should care about legitimate policy choices, if they have no connection to correct choices? Surely, if we deny that correct policy choices even exist, then we need not worry about the Non-arbitrariness Requirement. Recall here that the main issue is factual disagreement underlying fact-dependent policy disagreements. We have defined correct choices in terms of what we would agree upon if everyone believed the truth of the factual assumptions at hand (and we made the simplifying assumption that we would then agree in our ranking). When correctness of policy choices is defined in this way, then rejecting that correct policy choices even exist would require rejecting that there are factual truths in the relevant domain. Surely, this would amount to a very extreme view.

A more appealing possibility is what one might call *disjunctivism*. Even if no one legitimizer meets all requirements in all realistic cases, there might, for each realistic decision problem, be at least one viable legitimizer. Maybe this would be all we need. We do not need to find one single legitimizer that applies across the board; it is sufficient if for each decision-problems there is at least one legitimizer that applies. This would adequately serve the sort of mediating role that our underlying concern here requires of legitimacy.

A few comments. First, a disjunctivist approach might encounter difficulties if several distinct legitimizers were to apply to the same decision

problem, if they also yielded different outcomes. We would then need to devise some sort of criteria for prioritizing the different legitimizers. Second, when our factual disagreements are sufficiently deep so that we are bound to disagree about when proposed legitimizers meet the Non-arbitrariness Requirement, it seems that no legitimizer would apply. Of course, we are not always so divided in our fact-dependent policy disagreements, but sometimes we are. So, while disjunctivism may be an improvement in some respects, it is not clear that it will solve all problems.

An option that may be worth exploring is what we might call *non-ideal conceptions of legitimacy*. I assumed earlier that admissible legitimizers would have to meet all requirements listed in section 4. Clearly, however, we could abandon that assumption, and instead rank proposed legitimizers according to their degree of compliance with the requirements listed. Even if no proposed legitimizer meets all constraints in all realistic cases, surely each proposed legitimizer can meet some constraint to some degree in any given case. Recognizing that no legitimizer is perfect, we may then aim to use the best or most appropriate one available to us.

A challenge to the viability of this possibility is that it will probably be the exception that one legitimizer will emerge as superior to other legitimizers on all relevant parameters. For example, a high score on the Accessibility Requirement would typically have to be traded off against a lower score on the Non-arbitrariness Requirement. Thus, taking this route would raise a higher order selection problem concerning the weight that should be allotted to each of the parameters.

There is another way of taking a non-ideal turn that is worth considering. When introducing the concept of legitimacy, I assumed that when we disagree about what common policies to adopt, the policy eventually enforced on everyone should at least be legitimate. So, legitimacy was thought to be a sort of necessary condition on the all-things-considered moral rightness of a choice of common policy. Maybe this assumption warrants revision. Suppose that for the reasons discussed above, there are significant, realistic cases where no acceptable legitimizer can be devised. In those situations, no policy choice counts as legitimate. If legitimacy is a minimal requirement on any policy adopted, the implication would be that no policy should be adopted in these cases. This is, of course, absurd, and we may instead want to think of legitimacy as a contingent good-making feature of policy choices, rather than as a necessary minimal condition on a policy choice. On this view, concerns about legitimacy would always have some weight. If a plausible legitimizer identifies one policy option as legitimate, then that would be a strong, even overriding reason in favour of picking that option. However, if no legitimizers are applicable, say because of the problems identified above, then policy choices will have to be made on other grounds, say on grounds of expected utility, or direct concerns for rights or fairness. This and the above are possibilities for how we might think about political legitimacy in fact-dependent policy disagreements that need to be explored more fully.

REFERENCES

Barry B (1995). Justice as Impartiality. Oxford University Press, Oxford

Bergmann M (2009) Rational Disagreement After Full Disclosure. Episteme 6: 336-53

Christensen D (2007) Epistemology of Disagreement: The Good News. Philosophical Review 116(2): 187-217

Estlund DM (1994) Opinion Leaders, Independence, and Condorcet's Jury Theorem. Theory and Decision: An International Journal for Methods and Models in the Social and Decision Sciences 36(2): 131-62

Estlund DM (2007) Democratic authority: a philosophical framework. Princeton University Press, Princeton, NJ.

Feldman R (2006) Epistemological Puzzles about Disagreement. In: S. Hetherington (ed) Epistemology Futures, Oxford Clarendon Press, Oxford, pp 216-36

Jones WE (2002) Dissidents Versus Loyalist: Which Scientists Should We Trust. The Journal of Value Inquiry 36: 511-20

Kappel K (2014) Factual disagreement and political legitimacy. In: Holst C (ed). Expertise and Democracy. ARENA - Centre for European Studies Report, Nr. 1, Vol. 14, 2014, pp. 141-172

Kitcher P (2008) Science, Religion, and Democracy. Episteme 5: 5-18

Kitcher P (2011) Science in a democratic society. Prometheus, Amherst, N.Y.

Larmore CE (1987) Patterns of moral complexity. Cambridge University Press, Cambridge

List C (2001) Epistemic Democracy: Generalizing the Condorcet Jury Theorem Journal of Political Philosophy 9(3): 277-306

Lynch M (2010). Epistemic Circularity and Epistemic Incommensurability. In A. Haddock, A. Millar and D. Pritchard (eds) Social Epistemology. Oxford University Press, Oxford, pp 262-77

Lynch, MP (2012). In praise of reason. MIT Press, Cambridge, Mass.

Nagel T (1987) Moral Conflict and Political Legitimacy. Philosophy & Public Affairs 16(3): 215-40

Nagel T (2008) Public Education and Intelligent Design. Philosophy and Public Affairs 36(2): 187-205

Peter F (2009). Democratic legitimacy. Routledge, New York; London

Rawls J (1993). Political liberalism. Columbia University Press, New York

Talisse R (2008). Toward a Social Epistemic Comprehensive Liberalism. Episteme 5(1): 106-128

Wall S (2002) Is Public Justification Self-Defeating?. American Philosophical Quarterly 39(4): 385-94

Weber M (2011) Methodology of social sciences. Somerset, N.J., Transaction; London

White R (2005) Epistemic Permissiveness. Philosophical Perspectives 19: 445-59