

# What is Distinctive of Political Normativity? From Domain View to Role View

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## *Abstract*

In the last couple of years, increased attention has been directed at the question of whether there is such a thing as a distinctively political normativity. With few exceptions, this question has so far only been explored by political realists. However, the discussion about a distinctively political normativity raises methodological and meta-theoretical questions of general importance for political theory. Although the terminology varies, it is a widely distributed phenomenon within political theory to rely on a normative source which is said to be political rather than moral, or at least foremost political. In light of this concern, the present paper moves beyond political realism in the attempt to explore alternative ways of understanding distinctively political normativity, in a way which may be useful for political theorists. More specifically, we investigate two candidate views, here labelled the ‘domain view’ and the ‘role view’, respectively. The former traces distinctness to the ‘domain’, i.e., to the circumstances of politics. This view has gained a lot of support in the literature in recent years. The latter traces distinctness to ‘role’, i.e., the role-specific demands that normative-political principles make. Our twofold claim in this paper is that the domain view is problematic but that the role view is promising.

## *Keywords*

Political normativity; Waldron; role normativity; sources of normativity; the domain of politics; majority voting

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In the last couple of years, increased attention has been directed at the question of whether there is such a thing as a distinctively political normativity. With few exceptions, this question has so far only been explored by political realists (Rossi 2013, 2019; Jubb and Rossi 2015a, 2015b, Jubb 2019; Burelli 2020). For realists the question about a distinctively political normativity is important because they take the supposed fact that politics is a distinct affair to have fundamental implications for both how to

approach the subject matter and for which normative-political principles can be justified (for a critique, see Leader Maynard and Worsnip 2018; Erman and Möller 2015a, 2015b, 2018, 2022). However, the discussion about a distinctively political normativity raises methodological and meta-theoretical questions of general importance for political theory. Although the terminology varies, it is a widely distributed phenomenon within political theory to rely on a normative source which is said to be political rather than moral, or at least foremost political. A shared assumption seems to be that the conditions of politics are important when theorizing normative political ideals such as justice, democracy and political legitimacy, not only as empirical constraints but also as normative constraints, i.e., as a particular kind of political normativity. In light of this concern, the present paper moves beyond political realism in the attempt to explore alternative ways of understanding distinctively political normativity, in a way which may be useful for political theorists. More specifically, we investigate two candidate views, here labelled the ‘domain view’ and the ‘role view’, respectively. The former traces distinctness to the ‘domain’, i.e., to the circumstances of politics, and thus focuses on substance, such as basic political conditions. This view has gained a lot of support in the literature in recent years. The latter traces distinctness to ‘role’, i.e., the role-specific demands that normative-political principles make. To our knowledge, the role view has received largely no attention in political theory in discussions about political normativity. Our twofold claim in this paper is that the domain view is problematic but that the role view is promising.

The structure of the paper is straightforward. The first section defends the first part of the claim, demonstrating why the domain view is problematic (I), whereas the subsequent section defends the second part, demonstrating why the role view is promising (II). The final section winds up (III).

## **I. The domain view of distinctively political normativity**

The basic idea of a set of conditions which sets out the stage within which political theories necessarily must keep themselves is often contributed to John Rawls’ ‘circumstances of justice’, which he describes as “the normal conditions under which human cooperation is both possible and necessary” (Rawls 1999: 109). For Rawls, this includes conditions such as the no-Superman condition – a limitation of distribution of the strength and intelligence of the individuals in a population, such that no one

person can dominate all others – and, famously, the condition of moderate scarcity, i.e. where the resources within a society is neither so abundant that social cooperation is unnecessary, nor so harsh that “fruitful ventures must inevitably break down” (Rawls 1999: 110). Only in such circumstances is the concept of justice applicable, he claims.

The idea that a similar set of conditions apply not only to theories of *justice* within political theory, but to the very *domain of politics*, has not only been articulated by realists but also increasingly by mainstream liberal theorists. What we here will call the ‘domain view’ is the idea that there is a set of ‘circumstances of politics’ which substantially delimits which political theories may be justified. These particular circumstances thus constitute a distinctively political normative grounding that any political theory must respect, according to its proponents. Perhaps the most influential representative of this trend is Jeremy Waldron, who has offered the most systematic defence of such a view, premising his argument against judicial review on what he labels ‘the circumstances of politics’. In his most elaborate discussion of these fundamental conditions, Waldron characterizes the circumstances of politics as

the felt need among the members of a certain group for a common framework or decision or course of action on some matter, even in the face of disagreement about what that framework, decision or action should be (Waldron 1999a: 102).

In other words, the circumstances of politics are the combination of (1) the need for a common course of action, with (2) the fact of persistent disagreement. The interplay between the two aspects is what gives rise to politics on Waldron’s analysis. Were it not for the social need for a common course of action, the fact that we disagree would not matter. And were we all in agreement, politics as we know it would not exist (Waldron 1999a: 102-103).

Centrally, the circumstances of politics constitute not only a hypothesis on the rise of politics on Waldron’s analysis, but also a limiting role for political theory by marking out normative boundaries that any justified theory must respect. While not losing sight of the fact that acknowledging a need for a common course of action is important – not least for motivating and justifying acceptance of policies and laws when they are the upshot of a legitimate process, even if one disagrees with them – it is the second aspect, the fact of persistent disagreement, where the real action takes place for Waldron. That there are, and will be, disagreements on which courses of

action we should take, whatever a society decides to do, is a premise that every political theory needs to respect. In other words, the fact of deep disagreement entails that some political principles and processes, which perhaps would have been justified were agreement possible, now become unjustified (Waldron 1999a).<sup>1</sup>

In later writings, Waldron puts special emphasis on institutional arrangements, an area he claims have taken a backseat position in political philosophy (2016: 3). While justice considerations are indeed important, Waldron thinks that “precious little attention is paid in the justice-industry or the equality-industry to questions about political process, political institutions, and political structures” (2013: 6). The institutional arrangement that Waldron specifically focuses on as incompatible with the circumstances of politics is *judicial review*.<sup>2</sup> That a court has the power to overrule or nullify laws and acts by the (elected) government that are considered unlawful does not respect the fact of disagreement, Waldron argues. It is “exactly because we disagree in our ethical and political aims” that the “structures that are to house and refine our disputes” become paramount (2016: 5). For Waldron, the inevitability of disagreement leads to the question: “Are there any principles of legislation which can be shared by the adherents of rival theories of justice or among rival agendas for public policy?” (2016: 147). On Waldron’s analysis, the answer is in the affirmative, with majority decision being the most important such principle (2016: 164). Since also reasonable people disagree – indeed, so do at times even the judges in judicial review – about which rights there are and how they should be interpreted, the only neutral and legitimate way to decide on how the rights should be interpreted is to hold a majority vote, to guarantee a right for people to participate. Instituting an overruling body is hence both anti-democratic and anti-political, Waldron concludes.

Waldron is an interesting representative of the domain view in that he, contrary to many realists arguing for similar constraints on political theories (Rossi 2013, 2019; Jubb and Rossi 2015a, 2015b; Burelli 2020), does not argue against a moral grounding of politics *per se* (see, e.g. Waldron 1999a, ch. 13). Still, as we will see below, similar to realists, he takes the circumstances of politics to have severe normative consequences.

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<sup>1</sup> From now on, the circumstance of a common need for action will be assumed unless otherwise stated, and will not be explicitly mentioned.

<sup>2</sup> See, for example, Waldron 2016, Ch. 3 and Ch. 9 (in particular pp. 12, 18, 41–43, 86, 125, and 135).

In this section, we will use Waldron's arguments as a guiding example of a dilemma facing the domain view. The dilemma is the following. In order to provide the normative 'bite' that proponents of the domain view take the circumstances of politics to have – to justify some political principles while rejecting others – we have to give them a very strong and demanding interpretation. The problem with such a strong interpretation, however, is that the conditions face the risk of being question-begging, avoiding or even crippling the normative space. Under this interpretation, a theorist accused of the claim that her theory does not respect the circumstances of politics could reasonably deny the very conditions as constitutive of politics. On a weaker (and more plausible) reading of the circumstances of politics, on the other hand, the conditions given by these circumstances are too weak to do any substantive normative work. Virtually all normative political principles are compatible with the circumstances of politics on this weaker interpretation. Hence, on this second horn, the circumstances of politics do not play the normative role in political theory for which proponents argue.

Before turning to these two horns, let us summarize Waldron's argument from the circumstances of politics. As mentioned in the introduction to this section, the circumstances of politics are the combination of the need for a common course of action with the fact of persistent disagreement. The first circumstance, the need for a common course of action, is here the stage-setter: in a society, we have to coordinate our action somehow. Hence, we need to act in one way rather than another. The first circumstance thus provides an incentive for acting in concert. But how do we, as a society, decide on which act to choose? Traditionally in political theory, the stage is now open for the theorist to argue for a set of substantial values and principles on which we should ground our actions for them to be just, legitimate or some other central normative property. Waldron, however, argues that the second circumstance of politics makes any substantive principle unjustified. While traditional liberal theorists such as Rawls readily acknowledges that people's ideas of the good life differ such that we cannot expect to agree on which (if any) substantial moral theory is the correct one, Waldron argues that Rawls is overly optimistic about the possibility of an overlapping consensus when it comes to a conception of justice (Waldron 1999a: 105-106). In his view, our disagreement goes much deeper than that – so deep that we cannot expect agreement on substantive normative issues such as which principle of justice should guide our society. Waldron concludes that “our common basis for justice

has to be forged in the heat of our disagreements, not predicated on the assumption of a cool consensus that exists only as an ideal” (1999a: 106).

The fact that we will always disagree about which substantial values and principles we should be committed to, Waldron argues, entails that the only legitimate way of grounding a societal decision is through majority voting. Only then do we respect the circumstances of politics – “action-in-concert in the face of disagreement”, as Waldron compactly rephrases the condition (1999a: 108). The reason is that majority voting is the only decision procedure that, in the circumstances of politics, shows a proper respect for individuals, Waldron argues. In majority voting, everyone’s received view is treated on equal terms, in that everyone gets an equal say. In contrast to decision procedures that emphasize consensus or let the opinions of some (‘experts’) count for more than others, “[m]ajority-decision does not require anyone’s view to be played down or hushed up because of the fancied importance of consensus” (Waldron 1999a: 111).

Importantly, though, adherence to the values of fairness or equal respect alone does not establish majority voting. Citing John Stuart Mill, Waldron agrees that differences in, for example, wisdom and experience may justify some plural voting scheme rather than majority decision. The deciding factor in establishing majority decision is instead a reiteration of the circumstances of politics. Waldron argues that, “if the mark of wisdom is having come up with just decisions in the past, and people disagree about what counts as a just decision”, it is unclear who should count as wise and not (1999a: 115). Hence, choosing another decision procedure than majority decision fails to respect other persons.

It is because we disagree about what counts as a substantively respectful outcome that we need a decision-procedure; in this context, folding substance back into procedure will necessarily privilege on controversial view about what respect entails and accordingly fail to respect others (Waldron 1999a: 116).

To sum up, the circumstances of politics play an iterative role in justifying majority voting. First, the need for a common course of action together with the fact of disagreement suggest majority voting as a way to respect each individual. The fact of disagreement undermines other alternatives, singling out majority voting as the justified decision procedure in the circumstances of politics.

## I.I. A strong interpretation of the circumstances of politics

Now, let us return to Waldron's dilemma. The problem with his inference of majority voting from the circumstances of politics is not that the steps themselves are unreasonable. Indeed, there is much to say for each and every one of them. That everyone's opinion is taken into account, that everyone gets an equal say, that no considered judgment is silenced – these are all reasonable candidates for considerations counting in favour of a certain decision procedure. But Waldron's claim is not merely that majority voting is one reasonable decision procedure among others, but that it is *the only one compatible with the circumstances of politics*. The problem with this claim is that in order for this inference to go through, we have to make a very strong interpretation of the circumstances of politics. And such a strong interpretation, we argue, would face a number of severe problems.<sup>3</sup>

While, as we have seen in the above section, the circumstances of politics are paramount in Waldron's argumentation, his explicit characterisation of their content is rather brief. We therefore need to infer (or 'reverse engineer') the more precise content they must have if they are to play the role he gives them in his argument. To that we now turn.

As should be evident even from the short summary of Waldron's own account above, several value notions, such as the notions of equality, fairness, and respect, all play inferential roles in Waldron's account. Thus, in order for the circumstances of politics to establish majority voting as the justified process, they must, necessarily, contain or entail these value notions, either conceptually or empirically.<sup>4</sup> This means that either the first circumstance (the need for a common course of action) or the second circumstance (the fact of disagreement) must contain or entail these values.

One suggestion along these lines would be to interpret the need for a common course of action as the need for a course of action *that respects fairness and the*

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<sup>3</sup> Arguably, in face of the considerations in the main text, Waldron himself would not accept the strong interpretation. The dilemma, however, is that since a weaker interpretation is insufficient (as will become evident in the subsequent subsection), his only options are to give up his main claim or subscribe to (some version of) the strong interpretation.

<sup>4</sup> Note, though, that even more would be needed to show sufficiency: to establish that majority voting is the *only* justified procedure, as Waldron claims.

*equality of persons*. In itself, this move does not establish majority voting. If nothing else, the contemporary debate in political theory has made clear that what follows from the basic values of fairness and the equality of persons is highly contested. And indeed, this is evident also from Waldron's own account. As his discussion of Mill mentioned above shows, what establishes majority voting on Waldron's account is the second circumstance of politics: *the fact of disagreement about substantial values and principles*. Since there is, and will be, disagreement about substantial values and principles among the individuals in a polity, Waldron holds that a decision procedure which would include such values, by for example favouring some condition of wisdom over others, is not compatible with the fact of disagreement. Hence, on this interpretative suggestion, majority decision is the only procedure that respects both conditions of the circumstances of politics.

The fundamental problem with a strong interpretation of the circumstances of politics sufficient to make the inference of majority voting is that it becomes implausibly question-begging. The point of the circumstances of politics is to make explicit the necessary premises on which the domain of politics rests, similar to (but more general than) Rawls' circumstances of justice. Arguably, it is plausible to claim that a common framework or course of action is a necessary property of the domain of politics, and that disagreement about guiding values and principles will always pertain in that domain. However, to claim that a common course of action in face of disagreement, in order to count as part of the political domain, must respect fairness and the equality of persons so that no individual's voice counts for more than another is just implausibly strong. It fails to meet relevant *empirical* conditions of a set of restrictions by immediately ruling out not only most actual historical societies but also many current ones, which would not count as political on this interpretation. Even more importantly, it also fails to meet relevant *theoretical* conditions by simply setting as a constitutive property a certain substantive interpretation of respect for fairness and equality of persons. Indeed, it would in effect entail an exclusion of many, if not most, political theorists from the very outset. Anyone arguing for some sort of judicial review, such as Rawls and Dworkin, would become excluded on this strong interpretation, since their theories do not respect the very conditions of the domain upon which they are supposed to be applied (Rawls 1999; Dworkin 1996). And while there is, of course, nothing wrong with arguing against any – or all – competing theorists, excluding them from the outset by claiming that their theories are not



concerned with politics seems obviously problematic, and something we assume that neither Waldron nor any other mainstream political theorist intend.

Apart from the general implausibility of such a strong interpretation of the circumstances of politics as the one we are now entertaining, there is also a threatening incoherence facing any *positive* account of a decision process entailed by the political domain itself – in Waldron’s case the process of majority voting. We need, says the first condition of politics, a common decision framework of some sort. But we disagree, says the second condition, not only about what is good, as Rawls claims, but also about what is right; we disagree, in other words, about which substantial political values and principles there are. There is no overlapping consensus in the political sphere, but disagreement ‘all the way down’, as it were. So far so good. These are all just (more or less) empirical claims about us. The potential incoherence arises if Waldron *normatively* were to take this fact of disagreement to exclude substantial values and principles, but still hold that one decision process is entailed.

The incoherence is this: in order to come to his conclusion, Waldron refers to the fact of disagreement when competing decision procedures are rejected. That the wise or knowledgeable should count for more when voting (the Millian idea) or that they should have a veto in certain foundational matters (judicial review) are substantial value claims, and in order to respect the fact of disagreement, the argument goes, our common course of action should not be based on such substantial values. But Waldron’s positive inference about majority voting is *also* based on values about which we may – and do – disagree. That all individuals are equal is of course a value claim. But even if this claim is not controversial in its abstract form, what it means to respect this equality is indeed controversial, both in theory and in practice. Another example is the all-affected principle, that those affected by a decision should have a say in the making of the decision, which Waldon relies on in his account, claiming that there is “no alternative” (1999a: 110), and that it is an “entirely unexceptionable principle” (1999a: 114). But since this principle is highly controversial in both the scholarly debate and the political practice, why would not Waldron’s interpretation of equality and the commitment to the all-affected principle face the same destiny as the other value claims that the fact of disagreement disqualifies? It seems odd, to say the least, that the fact of disagreement does not invalidate also Waldron’s own value premises from playing a justificatory role, as they indeed do in Waldron’s account.

In sum, not only is a strong interpretation of the fact of disagreement unjustified as a condition of politics; it also threatens to make the entire idea incoherent. Indeed, it seems to us that any attempt to argue for an interpretation of the circumstances of politics where the ‘common course of action’ and ‘fact of disagreement’ takes on a more substantial content than the very abstract (and in-itself non-committal) one given when introduced by Waldron, immediately becomes problematic. A protagonist may easily agree on the need for a common course of action in the political domain as well as on the meagre outlook for agreement on substantial values and principles, but still reject any interpretation that takes the conditions to include any additional values and principles. Such values can be included in an account – indeed they must, since for there to be any values on the output side, there has to be values on the input side, as Hume made explicit – and should of course *cohere* with the circumstances of politics, broadly construed. But an account which argues for another set of values is not disqualified as long as it coheres with these broadly construed circumstances of politics as well. Normative disputes in politics should be settled by normative arguments, not by being ‘defined away’ by premising an account of on some controversial set of circumstances of politics.

## I.II. A weak interpretation of the circumstances of politics

The considerations in the previous subsection make it clear that the strong interpretation of Waldron’s circumstances of politics is both unreasonably question-begging and potentially incoherent. But cannot a weaker interpretation play a normative role in political theory? Let us, again, say that the circumstances of politics are the two conditions of Waldron’s initial characterization: (1) the need for a common course of action, and (2) the fact of persistent disagreement. We need some sort of common action, and we cannot, in a polity of any relevant size, expect agreement on what that action should be. Let us take these conditions at face value, not sneaking in any additional values together with them. And let us ask ourselves which normative role these circumstances would play.

Above we claimed that a political theory should cohere with the circumstances of politics. That seems very much like a normative role. And indeed it is. Not every theory can reasonably count as a normative political theory. Hence, the circumstances of politics can delimit what counts as a political theory. A theory about geological

erosion is not a political theory, since it is neither normative nor political. A theory about positional play in chess is typically normative, but again, has nothing to do with the political domain. These are trivial examples of course. A more interesting question is whether the circumstances of politics can delimit accounts whose *intention* is to function as political theories. Although much more controversial, that too seems to be the case. Let us say that Adam presents (what he claims to be) a normative theory of politics. It seeks to coordinate a common course of action for a large group, suggesting and carefully justifying a normative principle. That principle, however, only prescribes action for the cases where there is total agreement among the individuals of the group. If there is no such agreement, the theory is completely silent on what to do. Arguably, such a theory does not cohere with the circumstances of politics as we now understand them. Indeed, in the ideal/non-ideal theory debate, a common criticism against ideal theories is that they are premised on agreement or full compliance, and hence do not apply to the world as we know it (e.g. Mills 2005). Defenders of such accounts typically argue either that their theories apply also to non-ideal circumstances (e.g. Simmons 2010) or – more relevant in this case – that there are many aims of a political theory other than giving direct prescriptions applicable to the actual world, such as providing an ideal to strive for or a statement of the morally or politically best state of affairs (e.g. Estlund 2011), regardless of whether such ideals are realizable or not.

While we are generally sympathetic to ideal accounts (Erman and Möller 2013, 2021b), let us assume, for the sake of argument, that any account which does not cohere with the circumstances of politics is invalidated. No matter how justified an account otherwise may be, if it does not fit with the circumstances of politics, it is not justified as a political theory. Given this assumption, then, the circumstances of politics do have a delimiting role even on a weak reading: not any normative account passes the gate it is guarding. Contrary to what its proponents argue, however, the gate is a gigantic opening rather than the needle's eye it is depicted as: it includes virtually any theorist in the contemporary political debate.

A hint of how little the circumstances of politics delimit political theory is given in the Adam example: in order to disqualify Adam's account, we had to make the rather ad-hoc assumption that it *demand*ed total agreement in order to give any prescription at all. In the absence of such a proviso, it is hard to find any remotely reasonable account which is incoherent with the circumstances of politics. And the basic reason for this is simple: contrary to Waldron's suggestion to the opposite, the fact of

disagreement is compatible with almost *any* political principle or value. To see this, let us return to Waldron's argument for majority voting. In his account, he relies on the reasonable idea that when we disagree about a matter, we should vote on what to do. No doubt, Waldron uses the close connection between voting and democracy as intuition pump here: 'one person, one vote' lies at the heart of democracy, and hence on most accounts of political legitimacy. However, there are many problems with this argument by association. First, the domain of politics should not be equated with the domain of democracy, even if the latter is part of the former. Although democracy may be the upshot of an argument about, for example, legitimate power, it is not a premise for the political domain as such. Second, most accounts of democracy demand more than electoral vote. Hence, even *if* we were to assume democracy, the defence of majority voting would be a matter of normative argumentation, not a property inherent in the notion of democracy as such.

One of Waldron's main arguments for majority voting is that it does not, as other decision procedures, "require anyone's view to be played down or hushed up because of the fancied importance of consensus" (1999a: 111). Treating other's views as ignorant, self-interested or based on insufficient contemplation, he argues, "embodies the idea that since truth in matter of justice ... is singular and consensus is its natural embodiment, some *special* explanation ... is required to explain disagreement, which explanation can then be cited as a reason for putting the deviant view to one side" (1999a: 111). This inference is rejected by Waldron.

Again, Waldron sketches a straw man. Naturally, for any subject-matter, that there is a singular truth on the matter does not mean that this truth is evident, or even reachable. Even though there is a truth of the matter, we will arguably never know what Julius Caesar had for breakfast the 3<sup>rd</sup> of March, 83 BC. This trivial fact about the difference between knowledge and truth, however, does not automatically entail that all opinions are on par. In the Caesar case, experts in various historical fields may have a better idea than the average layman. Indeed, the very background assumption of science is that there is typically a way, even if fallible, to reach knowledge through careful and systematic study. Hence, although truth does not imply knowledge, we typically take there to be more or less justified belief. No doubt, Waldron would acknowledge this much. Waldron's *argument* utilizing the fact of disagreement, on the other hand, relies on the idea that unless everyone has an equal say in a common decision on how to act, we are failing to respect each individual. But the idea that

disagreement implies that all beliefs are equally justified is in serious tension with the idea that there exists more or less justified belief. In virtually any subject, there is disagreement. Disagreement among experts, among laymen, and disagreement between experts and laymen. If that entailed that all beliefs had an equal standing, there would simply not be any experts in any area. And as soon as there is disagreement, there would not be knowledge, since no view would be more justified than any other. We doubt this is a bullet Waldron, or any political theorist for that matter, is prepared to bite.

Waldron may, of course, argue for a divide between the natural and the normative: only in the latter case, the fact of disagreement entails that we must treat every view as on equal footing. While less controversial than the above position, it is still quite strong a claim. Moreover, it does not follow from his own considerations. In his argument for majority decision, Waldron appeals to Rawls' notion of 'burden of judgement', the many "hazards involved in the correct ... exercise of our powers of reason and judgement in the ordinary course of political life" (Rawls 1993: 56), which precludes an expectation of agreement also among reasonable people. While Rawls uses this notion to explain comprehensible philosophical disagreements, Waldron applies it to political deliberation in general, including justice, rights, and religion:

As in the case of more comprehensive disagreements, we do not need to invoke bad faith, ignorance or self-interest as an explanation. The difficulty of the issues – and the multiplicity of intelligences and diversity of perspectives brought to bear on them – are sufficient to explain why reasonable people disagree (Waldron 1999a: 112-113).

So far, so good. Reasonable people disagree in matters of value and principle. Indeed, as Waldron himself points out, even judges in appellate courts disagree with each other (1999b: 128). But granting the burden of judgement, and pointing to actual disagreement among legal experts, does not establish that everyone's belief has an equal standing. It is fully compatible with a view that experts in a certain field – e.g. legal experts – are more justified than others within their domain. Even though, due to the burden of judgement, they may also disagree.<sup>5</sup> Their disagreement, as it is

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<sup>5</sup> Interestingly, even experts in mathematics disagree about fundamental matters such as the Parallel Postulate or the Principle of Cardinality Comparison (cf. Clarke-Doane 2020: Ch. 2), making common claims such as this problematic: "[p]ersistent and apparently intractable disagreement on foundational

sometimes put, has a higher depth of intention. The burden of judgement does not entail that all belief, even concerning questions of value, are on an equal footing.

Indeed, the appeal to the burden of judgement is a double-edged sword. It essentially applies, in both Rawls' and Waldron's version, to *reasonable* people. Throughout his argument from the fact of disagreement to majority voting, Waldron premises his argument on people, "each of whom has thought long, hard, and conscientiously" about a problem requiring a common solution (1999a: 110). Given the burden of proof, he argues, it is wrong to exclude any of these reasonable people from consideration. He writes:

There is no alternative: if the problem affects millions, then a respectful decision procedure requires those millions to listen to one another and to settle on a common policy in a way that takes everyone's opinion into account (Waldron 1999a: 110).

However, Waldron's conclusion does not follow unless his premises are true. And in a majority vote where millions are involved, all of them will not have 'thought long, hard, and conscientiously' about the matter at hand. Some will, no doubt. But others will not. And a strong motivation for judicial review is arguably to ensure that where fundamental matters of human rights are concerned, the matter should be overseen by people who we can be sure have 'thought long, hard, and conscientiously' about the issue at hand.

To sum up, whereas it is true that we can expect disagreement in complex value matters among reasonable people, no specific conclusion follows from this insight. That is, from the fact of disagreement nothing in particular follows about the normative consequences of this disagreement. For example, a theorist may fully accept the fact of disagreement as well as the burden of judgement, and still argue, as does Rawls, that there is a subset of value commitments all reasonable individuals may agree about: an 'overlapping consensus'. Alternatively, a theorist may accept the fact of disagreement but deny the burden of judgement: reasonable persons will, given sufficient time and

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questions, of course, distinguishes moral theory from inquiry in the sciences and mathematics" (Leiter 2014: 126).

effort, agree not only on matters of justice but on comprehensive moral doctrines, just as some optimistic moral philosophers have argued (e.g. Smith 1994: 187-189). Both of these options – and many more – are consistent with the fact of disagreement.

## II. The role view of distinctively political normativity

So far the domain view. There is, however, an alternative approach to distinctively political normativity, which focuses on role rather than domain. In this section, we argue that this role view is much more promising than the domain view. According to the role view, what is distinctive of political normativity relates to the role-specific demands that normative-political principles make. Before we explore the role view in political theory, however, let us start off by trying to establish the general soundness of this approach to sources of practical normativity.

In normative theory, we find several sub-domains which are explicated in role-specific terms, such as ‘medical ethics’, ‘ethics of law’, ‘research ethics’ and ‘parental ethics’, to name a few examples. In these areas, particular norms and values are specified and defended through a description of the roles that are key in that particular domain. It is argued that being a medical professional, a judge, a researcher, or a parent include special obligations or duties that identify and constrain what one ought to do *qua* medical professional, judge, researcher, and parent. Due to these roles, it may be right that Anna has done what she ought to do as a judge – e.g. convicted a citizen in line with judicial law – even if the law was morally unjust. Similarly, it might be a parental virtue to be biased towards one’s own children even when general moral norms demand something else.

Of course, it is controversial to what extent (or indeed whether at all), moral considerations may trump what the judge should do *qua* judge, and the parent *qua* parent. But arguably there are cases when what the judge or parent should do as *persons*, i.e. as *moral agents*, override what they should do as bearers of particular roles; cases when we simply must acknowledge that what S should do in C given role X is the same as what S should do in C regardless of whatever societal roles she occupies. For example, while a judge, *qua* judge, should refrain from letting her moral views interfere with the law for every little thing (e.g. driving against a red light when there is no other person around), when the stakes are high, she should arguably let morality trump, for instance, by refusing to sentence a woman found guilty of infidelity to death

by stoning, even if infidelity were against the law and this was the judicially assigned punishment.

It would be a mistake, however, to take the possibility that considerations from one area of practical normativity may influence, or even trump, considerations within another area, to indicate that, say, parental ethics or medical ethics fail to be distinct areas of practical normativity. Rather, it indicates that they are domains with some given parameters which make their ‘brief’ more limited than, say, moral theory proper, since in order to assess what parental or medical virtues and norms are, we take into consideration the particular circumstances of parenthood and the medical profession. Conditioning the norms and virtues on these circumstances, they give us an opportunity to argue for more specific norms and virtues than in general morality.

Contrary to the domain view of distinctively political normativity discussed in the previous section, where there are specific conditions given by the circumstances of the political domain itself, the role view takes the norms and principles of the plethora of different sub-domains of practical normativity to depend on the many roles within a certain domain. What questions such as “what should *I* do?” or “what should *we* do?” entail depends not only on the context in which it is uttered (or thought), but also on which salient role we have in mind, i.e. the ‘*qua*’ question. When the managing board of a chess club is thinking about what they should do, the answer is seldom “selling all of our equipment and donate the money to famine aid”, but rather chess-related. But, similar to the legal case above, this is compatible with the thought that what they should do, all things considered, might be to sell all equipment and donate money to reduce famine. Whether that is in fact the case is essentially up for debate. In this way, which of the many potential meanings of the question “what should *I* [or *we*] do?” that is the salient one in a certain situation is not given at the outset but a task for the normative account to (try to) settle.

## II.I. Role-specific demands in political theory

Not only do we find the role view plausible across different sub-domains of practical normativity, we also believe that it is applicable to political theory. Because similar to medical ethics or parental ethics, particular circumstances play a significant role in assessing the normative status of different instances of politics too. For example, what we ought to do as citizens may differ from what we ought to do as persons. Hence, it



seems reasonable to us that an important source of normativity for a political theory is political normativity, roughly understood as the norms and values that regulate and structure the political domain. Typical political values include ‘liberty’, ‘political obligation’, ‘equality before the law’, ‘consent of the governed’, and so on, which primarily make sense in a legal-political context.

But what would be the key entities that are ascribed role-specific obligations, duties and rights in political theory, analogous to the judge, the medical professional and the parent? For sure, in the sub-domains discussed earlier, there are numerous roles of importance. In medical ethics, for example, not only the medical professional but also other healthcare personnel as well as healthcare institutions are important subjects of normative principles of medical ethics regulating that domain. The same would be the case in the domain of politics. Intuitively, though, it seems that an important role would be ascribed to the *citizen*. It is the citizen who may occupy all other roles that we associate with politics, such as party leader, representative, office holder, and personnel of public authorities. Hence, it is not surprising that the citizen has been ascribed a central role in contemporary political theory.

From the standpoint of the citizen, moral and political rightness might diverge. For example, an important political norm is for citizens to respect the outcomes of a legitimate regulative process. And this is so even if the outcome as such happens to be morally wrong. Let us say, for example, that forbidding people to use a Burkini (a type of modesty swimsuit for women) on public beaches is morally wrong. Still, if its use is banned through a legislated political process, the regulation is politically legitimate. And since political and moral rightness (or wrongness) may go apart, it makes sense to say that political normativity is distinct from moral normativity. However, this does not mean that political normativity is not a moral kind, or a kind of practical normativity. Rather, the above example is best seen as one instance of the fact that what we ought to do is generally context-dependent: that S ought to do X in circumstances relating to being a citizen, and that S ought to do X in all circumstances are two very different statements. In our view, this is the most plausible way of understanding political normativity as distinct from moral normativity.

On closer inspection, however, viewing the citizen as inhabiting a key role may lead to severe problems under some circumstances. Many of the most urgent questions analyzed in political theory, particularly in the last decades, problematizes exactly what counts as rightful citizenship. Take, for example, the debate on the so-called ‘boundary

problem' in democratic theory, i.e. the problem of who should take part in the democratic decision-making (Whelan 1983) and thus belong to the 'demos' (the 'people').<sup>6</sup> This problem has been vividly discussed in the last decade, not least in response to intensified processes of globalization that have made us increasingly aware of the many challenging political issues that transgress traditional nation-state borders today, which cannot (rightfully) be solved within them, in relation to for example migration, climate change, terrorism, future generations, and human rights. In political theory, two solutions to the boundary problem have dominated the discussion. According to the all-affected interest principle, those whose interests are significantly affected by a decision should have a say or have their interests taken into consideration in the decision-making (Goodin 2007; Gould 2004; Benhabib 2004). According to all subjected principle, on the other hand, those who are subjected to a decision – e.g., by being legally bound by them (Beckman 2009) or by being coerced by them (Abizadeh 2012) – should have a say in the decision-making (Habermas 1996).

Since we want to count these discussions as part of political theory, rather than some other sub-domain of practical normativity, it seems insufficient from a role-specific view to consider only the citizen. Because, while the citizen plays a key role, it is not the only role of importance in the political domain. A supplementary candidate would be the 'aspiring member' (or non-member). This category would namely include all those persons who aspire to become members of the political community, such as refugees, migrants and other groups who are excluded from a 'demos', as well as those who want to be excluded by terminating membership, like many Americans did when Trump got elected. The advantage of focusing on 'membership' instead of 'citizenship' is that it leaves more normative room for political action since rather than presupposing a legal order, it may require that such an order is established. In the debate about the boundary problem, for example, there is a tendency to equate membership with citizenship, which is unfortunate, since citizenship is a complex legal notion and principles regulating citizenship presumably would have to consider other aspects than those we associate with inclusion in the decision-making for deciding on criteria for acquisition, for example, citizenship through birth right.

In addition to the citizen and aspiring member, also the basic institutions regulating the actions of citizens and aspiring members play a crucial role in political

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<sup>6</sup> Sometimes also referred to as the 'demos problem' or the 'problem of inclusion' in democratic theory.

theory. Indeed, political institutions are often the primary subjects of principles of political morality in political philosophy, and theorizing the norms, principles and duties regulating important political institutions is a central task on the role view. It is, however, often a tacit premise that those affected by these principles are citizens. But as sketched above, this is far from certain (and may vary between different institutions). By making these different ‘roles’ explicit, the role view brings these complications to the fore. In politics, institutional roles are intimately related, since no citizen – whether she is only a citizen or also a party leader, representative, or office holder – or aspiring member – whether she is a migrant or refugee – may perform her role and fulfil her normative demands (e.g., exercising her rights and duties) without others being able to do that as well. Therefore, all three categories are fundamental and should be treated as subjects of normative-political principles in the domain of politics and as such be ascribed role-specific normative demands.

Of course, our proposed list of roles is far from exhaustive. Depending on the aim of a theory, other roles may be equally or more important for the norms and values structuring the political domain, such as the voter, the representative, the judge, and the like. Moreover, new roles might appear with the changing character of politics. But it gives an idea of the proposed role-specific view of political normativity. It is distinctive from other sub-domains of practical normativity in the sense that it focuses on certain roles rather than others. However, this does not entail that a political theory should not utilize other sources of practical normativity, such as moral normativity proper. Quite the reverse. Consider, for example, the value of political equality, i.e., that citizens should have an equal say in the political decision-making. This seems to be a paradigmatic political value, being one of those values that typically regulate and structure the political domain. It is also commonly seen as the cornerstone of democracy. It seems peculiar to us to defend political equality without a notion of moral equality, e.g., in terms of the equal respect for persons. For it is not solely because we as citizens are equally subjected to the laws that we should have an equal say, but also because we are of equal moral worth as persons and therefore should be treated with equal respect. The same is the case with regard to (political) liberty vis-à-vis (non-political) freedom. It would not make sense to defend the former but rejecting the latter (Erman and Möller 2021a).

## II.II. Three conceptions of the role view

The role view, as we understand it, keeps the first-order normative issues in focus as questions for which answers are given by substantive reason-giving, as opposed to attempts to ‘define them away’ or make them hostage to a set of controversial premises as is the risk with the domain view (and the structural view mentioned in the introduction). The demands and obligations of political roles such as the citizen, aspiring member, or a specific political institution, become a matter of substantive normative argumentation. Furthermore, and centrally, also the exact nature of the relationship between the demands and obligations of one political role and that of other roles – ultimately the role as moral agent – becomes a normative matter that the theorist cannot simply assume, but must argue for. We take there to be at least three ways to conceive of this relationship, which we will explicate with the role of the *lawyer*, a topic extensively debated in juridical ethics, and then further illustrate with the role of the *voter* in electoral democracy, which constitutes a key role in (democratic) politics.

On a first conception, which we may call the *exclusive role view*, the obligations of a specific role, and those obligations alone, determine the rightful actions of an agent occupying that role. In judicial ethics, this is sometimes called the standard conception (Pepper 1986; Dare 2009; Wendel 2011). On this conception, the duty of the lawyer working in a professional capacity is to protect the legal rights of his or her clients, and that this duty gives the exclusive reasons superseding any (contrary) moral reasons to act otherwise. Hence, a lawyer has an obligation to utilize, if viable, also morally questionable legal tactics such as ‘burying’ the opposition in legal paperwork to make them settle or drop a case.

On a second conception, which we may call the *instrumentalist* (or *consequentialist*) *role view*, each role comes with a set of obligations and demands which in typical circumstances work just as under the exclusive role conception, i.e., they give exclusive reasons to act in a certain role-related way. As a lawyer, you typically have an obligation to, say, abide by the state rules of professional conduct. Strictly speaking, however, the justification for these rules and obligations is the very end or function of the role, what it is *for*. And sometimes, in order to remain faithful to the role, you have to act in ways which violates those state rules of professional conduct (Kadish and Kadish 1973; Postema 1980). For example, assuming that the aim of

protecting the client's legal rights is to avoid the conviction of innocent people, the instrumentalist view might entail revealing information relating to the representation of a client absent the informed consent of that client (contra the state rules of professional conduct), when doing so would prove the guilt of which you already have prior knowledge.

On a third conception, which we may call the *prima facie role view*, the set of obligations related to a specific role gives the agent *prima facie* – or default – reasons to act as these obligations demand. In some circumstances, such *prima facie* reasons may be overruled (or silenced) by other considerations (Applbaum 1999; Luban 1988). This conception is similar to the second conception in that it rejects giving trumping power to a set of role-related rules or obligations. It differs, however, in that it does not give the end or function of the role the exclusive casting vote. Hence, on this conception it may be argued that even if we were to endorse the view that the function of the lawyer is to protect the legal rights of their clients, we could still hold that there may be overruling moral considerations.

Let us analyze the role of the voter in electoral democracy in light of these three conceptions of the role view. In electoral democracy, the role of the voter is essential. It entails, for example, the duty of being an informed citizen before election day. This includes carefully familiarizing himself or herself with the parties (or candidates) running for office and the main political issues at stake, as well as reflecting upon which party (or candidate) to cast a vote on in the election. On election day, the voter has the responsibility for knowing the location of his or her polling place and its opening hours, bringing proper identification, and making sure that his or her completed ballot is correct before leaving.<sup>7</sup> Taken together, these actions are also meant to support basic democratic values more generally as well as to promote and strengthen the democratic system as a whole.

On the exclusive role view, the reasons for fulfilling these duties trump other moral reasons. So, for instance, if the voter receives a phone call from her old mother on election day, who asks for immediate help but lives quite far away, the voter should choose to go to the polling station before it closes instead of helping her mother, if she cannot do both. On the consequentialist role view, however, such exclusive role-

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<sup>7</sup> Or deliberately abstain from voting as a well-grounded decision after careful consideration of how to best promote and strengthen the democratic system in which he or she is a citizen.

specific reasons for action may be set aside under circumstances where it might be required to be faithful to the (justified) end or function of the voter. For example, if the voter is a citizen in a malfunctioning democratic polity, where the whole system is manipulated by an elite and the election is rigged in favor of certain candidates, the duty of the voter might be not only to abstain from casting a ballot but also to demonstrate together with fellow citizens on the streets to demand impartiality, transparency and non-corruption. Finally, on the *prima facie* role view, these voter duties may be trumped also by other than end-related reasons. For example, depending on the situation, it might be the duty of the voter in the first case above to prioritize helping her mother over casting her ballot.

Although our preferred conception is the *prima facie* role view, this is not something we argue for in this paper. Neither are we here offering a substantial account of the key political roles and their relation to moral considerations: the exact limits, for example, of the duties of the voter and the circumstances in which moral rather than political considerations determine the right action of the presumptive voter. Our point is instead that on the role view, these two questions become *substantive*. Hence, whichever duties and obligations the theorist argue are distinctly political, whichever conditions they take to be necessary for the political domain, the only way to make their case is to substantiate the account by (empirically informed) normative argumentation. If the institution of judicial review is wrong, it is because all normative considerations speaking in favor of it is outweighed (or silenced) by all the salient reasons against it. The question of whether these salient reasons – pro as well as contra – are all exclusively political is also a normative question in need of reasons for us to settle. In this way, on the role view claims such as ‘because this is in the concept of the political’, ‘because this is one of the circumstances of politics’ or ‘because this follows from the circumstances of politics’ have no special trumping power in themselves, and may all be questioned by other political theorists.

If it sounds like all of the hard work is left on the role view, it is because it is! Crudely put, it is our suggestion that proponents of the domain view, such as Waldron, are trying to get ‘for free’ that which may only be won by substantive, first-order normative argumentation. The role view makes the need for that substantive argumentation explicit.

### III. Winding up

The debate about political normativity raises methodological and meta-theoretical concerns of relevance for political theory. In this paper, we have contributed to this discussion by exploring two views on political normativity and assessed their viability. First, we have argued that the domain view, which traces distinctness to the circumstances of politics, is highly problematic. Second, we have argued that the role view, which traces distinctness to the role-specific demands that normative-political principles make, is promising.

Although no theorist in the discussion about political normativity has so far explicitly explored the role view, it seems to us that it has several advantages over the domain view. First, it does not rely on a pre-determined set of conditions for the domain giving rise to a certain distinct normativity. As we have seen, this would either unreasonably narrow the domain (becoming question-begging) or contain no normative ammunition whatsoever apart from the most basic (and practically non-committal) conceptual or empirical delimitation. On the role view, the many different roles within a practice come to the fore. Specifying and deliberating what these different roles are, and their respective 'brief', is a way of making the domain, in all its complexity, more concrete. But it is also a way of reminding us that each practice has several roles, and that it is not pre-theoretically given which role(s) will 'prevail' in a certain situation.

Second, that the salient roles (individual or institutional), and the rights and duties that come with them, are specified and deliberated as part of the normative theorizing, rather than are seen as a pre-determined set of constraints, means that no substantial normative theory is excluded at the outset. It is part of the actual normative endeavor, the reasons given for a certain account, that settles the matter, not any pre-determined conceptual or empirical conditions. The role view is in this sense much more flexible than the domain view since it does not reject any particular perspective until the full set of reasons for and against it are evaluated.

Third, on the role view, there are several, potentially intertwined layers of practical normativity. As a parent, we have assumed, I should be biased towards my own children. But that bias may be overridden by moral considerations, urging me to see to, say, the needs of another child rather than that of my own. In that way, considerations from another domain (morality proper) *trump* that of the parental ethics domain. But moral considerations might also play a normative role *within*

parental ethics, such as when, *qua* parent, one of my duties is to help my children to become morally righteous. That parenthood is a distinct role does *not*, in other words, stop the salient parental norms from being (also) moral norms. We think both of these options are very much relevant in the political domain.

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