Chapter 4

Justificatory Failures and Moral Entrepreneurs

A Hayekian Theory of Public Reason

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> Reason can only help us to *see what are the alternatives before us*,
> which are the values which are in conflict, or which of them are true
> ultimate values and which are, as is often the case, only mediate
> values which derive their importance from serving others values. Once
> this task is accomplished, however, *reason cannot help us further*.
>
> —F. A. Hayek, "Kinds of Rationalism"
> (1967 [2014]; emphasis added)

Ever since John Locke asserted in the *Second Treatise of Government* that all men naturally exist in "a state of perfect freedom to order their actions" as well as "a state also of equality, wherein all the power and jurisdiction is reciprocal," the ideas of freedom and equality have been at the normative bedrock of liberalism (Locke [1690] 1980, 8). The most sophisticated contemporary articulation of these twin ideals is done by a school of political theories that all fall under the broad heading *public reason liberalism*. Beginning with John Rawls's *Political Liberalism* and reaching its current (though certainly not final) zenith in Gerald Gaus's *The Order of Public Reason*, public reason liberalism holds—very roughly—that coercive rules implemented and enforced by the state must be justified to all persons in society. When such is the case we treat persons *freely*, because it is each person's own reason that is sovereign in terms of deciding which sorts of commands must be obeyed; and we treat persons *equally*, because no person's reason claims authority over the reason of any other.

There is a trite yet forceful criticism of public reason liberalism in the current literature: that the set of coercive rules that is indeed justified to *everyone* happens to be the *empty set*. That is, given the diversity in terms of evaluative standards we find characterizing contemporary liberal orders, the prospect of

actually finding a set of rules to live by justified to all is slim indeed. Call this the *justificatory failure critique* (JFC). The JFC is usually cashed out in terms of illiberal dissenters: the presence of those holding illiberal values will effectively veto liberal institutions as justified (Abbey 2007; Okin 2005; Quong 2012, 2014; Raz 1998; Sleat 2013; Taylor 2011).The JFC need not rely on such individuals, though. Even when all hold liberal values it is by no means obvious we can find a set of rules to live by that meet the public reason liberal's justificatory demands—witness here the sharp policy divides between Democrats and Republicans (both typically in the broadly liberal camp) over questions such as abortion, welfare entitlements, and so on. Though many rejoinders have been offered by public reason liberals in response to the JFC, I believe that all such attempts fail (§2). In response, this chapter uses the tools and insights from F. A. Hayek's social philosophy to rescue public reason liberalism from this powerful criticism.

In our rescue of public reason we begin by noting an assumption the JFC makes: that all possible institutional arrangements that could serve to help us live better together are currently known to us as theorists (§3). But once we take seriously Hayek's insights concerning the limits of human knowledge then such an assumption is obviously untenable: knowledge of such a kind is either dispersed in a decentralized manner or, quite possibly, not yet known by anyone at all. But, as Hayek further notes, though individuals always face incurable ignorance, structuring institutions properly can allow for society to grapple with this knowledge problem by both allowing and incentivizing individuals to reveal the private information they have that no one else does, as well as discover new information currently known by none.

This suggests a novel solution for the public reason liberal in the face of justificatory failures: the public reason liberal should endorse institutions that allow for and incentivize the discovery of institutional arrangements that can meet public reason liberalism's justificatory demands. Such a response prompts in an investigation into which institutions best perform this function. We begin by turning to the emerging literature on epistemic democracy, which holds that democratic institutions possess desirable epistemic properties, perhaps allowing persons to find arrangements satisfying the public reason liberal's justificatory requirements (§4).

But there is a problem with such proposals: though epistemic democrats highlight mechanisms detailing how such rules can be found, such mechanisms do not *incentivize* the discovery of such rules. This spurs an investigation into a quite different mechanism with desirable epistemic properties that is *also* incentive-compatible: namely, Hayek's emphasis on the use of competition as a discovery procedure (§5). It is here argued that the public reason liberal should endorse a system of competition in governance—or, in other words, a polycentric governance system—that allows and incentivizes

persons to find rules justified to all (§6). That is, the public reason liberal should endorse a system where moral entrepreneurs remedy our justificatory failures, just as entrepreneurs proper remedy market failures. This, I think, is the best hope we have of living in a just and stable liberal society that lives up to the ideals of freedom and equality lying at the very heart of the liberal ideal. There is a concluding section.

PUBLIC REASON AND JUSTIFICATORY FAILURES

Public reason liberalism says that coercive rules and institutions must be justified to all. We shall call this normative requirement the *public justification principle*. If a society satisfies the public justification principle then it treats all as free and equal moral persons—all coercive restrictions on behavior are grounded in each person's own reason, which means that people are free in the sense that it is their own standards governing their life, and equal in the sense that no one person's reason is sovereign over any other's. If a society fails to satisfy the public justification principle then it does not treat all persons as free and equal—some people are forced to obey the reason of others, meaning they are not free. And, since some are subjects and others sovereigns, persons are also not equal.

The JFC says that the public justification principle likely will not be satisfied. To see why, we need to flesh out more details of the public reason framework; in doing so we follow Gaus's most recent articulation of the public reason project (Gaus 2011). We can think of all citizens as having preferences over possible rules available for them to implement when it comes to some certain domain of social interaction—say, what restrictions on rights of transfer should be. Suppose we have three persons in society: Althea, Bertha, and Cassidy. Further suppose that there are five rules up for debate (r_1–r_5), and that our three parties rank the rules as shown in Table 4.1.

Notice that in Table 4.1 is the option of "blameless liberty." When blameless liberty obtains there is no rule regulating the particular area of social interaction we are theorizing about—something like anarchy obtains, though

Table 4.1 Ranking for Proposals

Althea	Bertha	Cassidy
r_1	r_1	r_2
r_2	r_2	r_1
r_3	r_3	r_3
r_4	r_4	r_5
Blameless Liberty	Blameless Liberty	Blameless Liberty
r_5	r_5	r_4

the exact way of specifying what the absence of any regulation looks like is a difficult question that we push to the side (Gaus 2011, 310–321). In placing a particular way of regulating social interaction (say, r_5) below blameless liberty Althea is saying that she would rather have *no* rule regulating this area of social life than *that* rule because, according to her evaluative standards, the rule placed below blameless liberty is *so objectionable* that she would rather run the risk of no regulation at all than be subject to the authority of the particular rule in question.

Clearly, implementing a rule that Althea places below blameless liberty fails to treat her as free and equal. On the standard public reason picture, treating Althea as a free and equal moral person entails only claiming authority over Althea that Althea herself could endorse. But if Althea, after careful consideration, finds a way of regulating social life to be so objectionable that she prefers blameless liberty to it, then clearly she does not reflectively endorse that particular rule, making implementation of that rule inconsistent with treating her as free and equal. The JFC thus holds that it is likely that *every* candidate rule will be placed below blameless liberty by at least *some* citizen—every rule will be considered by some citizen as worse than a state of no rule regulating the relevant area of conduct at all. Thus, the purveyor of the JFC says that situations like Table 4.2 below are the rule, not the exception. In this case there is no possible rule to implement that satisfies the public justification principle—there is no possible way we can treat all persons as free and equal.

There are three broad strategies public reason liberals employ in response to the JFC. The first strategy appeals to *idealization*. Now, when public reason liberals hold that coercive rules must be justified to all persons, they are not seeking actual consent, what Gaus calls *justificatory populism* (Gaus 1996, 130–131). Rather, they want to ensure that all persons have reason to endorse a society's system of coercive rules. Here is an example of this distinction. Suppose a man is about to walk across a broken bridge, yet he does not know it is broken. Further suppose that if the man knew it was

Table 4.2 Justificatory Failure

Althea	Bertha	Cassidy	Dupree	Esau
r_1	r_2	r_3	r_5	r_4
r_5	r_5	r_1	r_2	r_5
r_4	r_1	r_4	r_4	r_3
r_2	r_3	r_2	r_3	r_1
Blameless Liberty	Blameless Liberty	Blameless Liberty	Blameless Liberty	Blameless Liberty
r_3	r_4	r_5	r_1	r_2

broken then he would not try to cross it. A worried onlooker wrestles the mistaken man down, only to have the would-be bridge-crosser resist. Here, the man trying to cross the bridge does not actually consent to the coercive interference imposed by the onlooker—but, by assumption of the case, such interference is justified by the man's own reason.

One response to the JFC holds that if we idealize enough—if we make sure persons reason perfectly and never error—then they will all endorse a non-empty set of coercive restrictions. This response thus holds that the reason so many rules are placed below blameless liberty by so many actual citizens is because they are not reasoning well; they are not fully consider-ing what their own evaluative commitments say is actually justified. There are two problems with this response to the JFC. First, it could be that ideal-izing persons too much ends up defeating the initial purpose of the public reason project. On Gaus's account of moderate idealization, idealization of an individual's reasons "must be accessible" to persons in a world "in which cognitive activity has significant costs" (Gaus 2011, 253). But suppose we idealize even further beyond this moderate account in hopes of finding the agreement we seek. If we do idealize to the point that our idealized model of a person is no longer accessible to their actual counterpart, then it is hard to see how we treat them freely and as equals—or, at the very least, it is hard to see how *they themselves* could see that they are being treated freely and equally. Note: this is very different from the case of the man about to cross the bridge where we moderately idealize: it should not take too much thought for him to realize that he did indeed have reason not to cross that bridge. But if we idealize too greatly in search of agreement then justifications of coercion may not be accessible to the actual persons we are supposedly trying to justify the coercion to.

A second worry is that *even if* there was no problem with radically ideal-izing persons in our search for agreement, it is still by no means obvious that modeling persons as perfect reasoners would actually rid us of justificatory failures. For the idealization rejoinder to the JFC to be compelling some kind of proof must be provided—it must be shown that flawless reasoning will indeed lead all individuals to endorse the same sorts of coercive rules and institutions. Since no uncontroversial proof of this exists, the idealization strategy fails to effectively counter the JFC.

Another response to the JFC is to narrow the scope of persons to whom we owe justification to. This is the approach taken by Jonathan Quong in his recent articulation of the public reason project (Quong 2011). Accord-ing to Quong, public reason liberalism is not about justifying *actual* rules to *actual* persons in *actual* societies—because this is true, we do not have to worry about the evaluative diversity characterizing contemporary liberal orders as leading to justificatory failures. Rather, public reason liberalism

is about modeling ideally just liberal orders populated by a specific type of individuals. As such, the public justification principle only requires we justify coercive rules to those kinds of persons that inhabit such a model society. Such an understanding of the public reason project "does not see the fact of reasonable pluralism as something external to liberal theory. It is not simply a fact about the world, like scarce resources, to which liberal theory must accommodate itself. It is, instead, a fact about liberalism" (Quong 2011, 142).

Now, I do not think there is anything particularly wrong with Quong's version of the public reason project—it is an interesting intellectual exercise to model ideal liberal societies, determine the kinds of conditions that would characterize them, and then check to see if these conditions are consistent with our normative ideals of freedom and equality. I do not, however, see why this is the only way the public reason project must succeed. There are many motivations for inquiring into the normative status of our shared social world, and some of these motivations require we take seriously the actual levels of evaluative diversity we confront, rather than circumscribe our attention to idealized models. One such motivation, in the words of Gaus, is to see, when we demand that others obey the rules and regulations we place on them, whether we actually have authority to make such claims or whether we are just "pushing people around" (Gaus 2011, 16). To make sure we take seriously the possibility that we are just pushing people around we cannot assume away the actual diversity that surrounds us. But if this is so then Quong's response to the JFC is off-limits: we cannot address the problem of nothing being publicly justified by circumscribing our attention to idealized models while remaining faithful to the original goals of the theoretical exercise.

A final response to the JFC is to change what it is that public reason is about. This is the approach taken in a recent article by Chad Van Schoelandt (2015). Van Schoelandt argues that though public justification is not necessary for justifying coercion, it *is* necessary for forming a *bona fide* moral community—a community where persons hold each other responsible for their actions via the reactive attitudes of blame and resentment. Thus, it is important to make sure all have reason to endorse the rules we place on them *not* to justify the coercion these rules inflict, but rather to form the right kind of community with our fellow citizens. Here I do not want to disagree with Van Schoelandt's claim concerning the relationship between moral communities and the public justification principle. Still, there must be *something* that justifies the state's use of coercive force, lest we inhabit a world that is unjust to its core. And, if it is liberal values that are to do this job, then there must be some relationship between the ideas of freedom and equality that tell us when the state's use of force is justified or not. Arguing that there exists an important relationship between public justification and moral community

leaves this puzzle unsolved——the puzzle we are primarily concerned with, and the puzzle the JFC doubts can indeed be solved at all.

THE JFC'S FATAL CONCEIT

The JFC says that given the evaluative diversity we find characterizing contemporary liberal orders, there is no set of rules that all persons deem justified; since this is true nothing is justified, meaning the public reason project fails. In making this charge the purveyor of the JFC must reason as follows: first, we begin by looking at the set of all possible rules $R = \{r_1, r_2, \ldots, r_n\}$. From there we look at the set of evaluative standards we find in contemporary liberal societies $E = \{e_1, e_2, \ldots, e_n\}$. Then, we see that for every r_m in our set R there will be at least one e_m in our set E that judges r_m to be unjustified, in that e_m places r_m below blameless liberty. This means that every r_m fails to satisfy the public justification principle.

Note, though, that purveyor of the JFC has made two key assumptions here: that she can enumerate in detail both sets R and E. Now enumeration of set E depends on empirical observation of the kinds of diversity we find in liberal societies and thus does not seem terribly implausible. Let us then focus attention on the first assumption, that the purveyor of the JFC can offer a precise characterization of all those elements in R. In order to show that there is always some member of R that has a corresponding member of E that could reasonably reject it, one must be able to enumerate all the members making up R. That is, for any given domain of social interaction one must be able to say what *all* the different possible rules for regulating that domain of interaction are. Then, and only then, can one plausibly argue that each member of R could be rejected by some member of E.

The assumption that the theorist propagating the JFC possesses such knowledge lines up with what Hayek in many places calls the *rational constructivist* approach to social order. In the *The Constitution of Liberty* Hayek draws a distinction between two different schools of historical thought that are broadly understood as being defenders of the liberal order, even though they differ greatly in their underlying theoretical commitments (Hayek [1960] 2011, chap. 4). One school of thought is associated with the Scottish Enlightenment and thinkers such as Adam Smith, David Hume, and Bernard Mandeville. We can label this broad school of thought as *anti-rationalist*. The other school of thought is associated with the French Enlightenment and thinkers such as René Descartes, Jean-Jacques Rousseau, and Marquis de Condorcet. We can label this broad school of thought as *rational constructivist*—the school of thought that the purveyor of the JFC implicitly lines herself up with.

Broadly speaking, those associated with the Scottish Enlightenment understood all social order and hence the development of liberal institutions as the result of a slow, spontaneous, evolutionary process. These thinkers "find the origin of institutions, not in contrivance or design, but in the survival of the successful . . . [They stress] what we call the political order is much less the product of our ordering intelligence than is commonly imagined" (Hayek [1960] 2011, 112). Those associated with the French Enlightenment, however, understood all social order as the result of deliberate human planning and engineering—a sort of literal social contract where parties to this contract design society from scratch. With this cluster of theories, the "idea of intelligent men coming together for deliberation about how to make the world anew" is the characteristic feature all such theories share in common (Hayek [1960] 2011, 113).

A large body of Hayek's work highlights the impossibility of rational constructivism along with the dangers of attempting to carry out a rationally constructivist project and, inevitably, failing. There are, I believe, two key premises to Hayek's argument concerning the impossibility of rational constructivism. First (1) Hayek lists all the information required in order for one to successfully carry out such a project. Then (2) Hayek points out that no single person or group of people actually possesses the requisite knowledge enumerated in (1). Thus, one cannot successfully carry out a rational constructivist project, making rational constructivism an empirically as well as normatively flawed social theory.

These two premises are succinctly captured in the following passage:

> Complete rationality of action in the Cartesian sense demands complete knowledge of all the relevant facts. A designer or engineer needs all the data and full power to control or manipulate them if he is to organize the material objects to produce the intended result. But the success of action in society depends on more particular facts than anyone can possibly know. And our whole civilization in consequence rests, and must rest, on our believing much that we cannot know to be true in the Cartesian sense. (Hayek [1973] 1998, 13)

It is important to note just how strong a claim Hayek makes with premise (2). He is not merely saying that acquiring this knowledge would be difficult or is currently in infeasible. Rather, Hayek says that our ignorance is "necessary," "irremediable," and "incurable" (Hayek [1973] 1998, 14). It is a part of the human condition—something we must learn to live with.

Now the claim I want to make in this section is *not* that the purveyor of the JFC is a rational constructivist—given that those who make this critique only necessarily have in the common the fact that they criticize public reason in a similar way, it would be a stretch to claim that they endorse the constructing

and designing of social orders *de novo*. What I do want to emphasize, though, is that the defender of the JFC is committed to rational constructivist assumptions, assumptions that Hayek forcefully argues against. More specifically, the purveyor of the JFC—when they tell the public reason liberal that for every member in *R* there exists a defeater in *E*—*assumes that they know the full content of R*. That is, they assume they can list out all possible ways of organizing social order and then, from there, are able to show how no such possible arrangement will actually satisfy the public justification principle. Contrast this with Hayek's anti-rationalist claim that the true "inventors" of liberal institutions did not design nor could they foresee the benefits such institutions would bring—rather, through a slow evolutionary process such institutions developed, and it was only *after* they developed that their desirable properties could be appreciated by those theorists of the Scottish Enlightenment (Hayek [1960] 2011, 107–108).

It should be noted that the public reason liberal is not committed to these constructivist assumptions. For the public reason liberal does not assert that it will necessarily be the case that there will in fact be at least one member of *R* that every member of *E* deems justified—if they did do this, then they too would be committed to being able to fully enumerate *R*. Though Gaus does offer some considerations for why he thinks the set of justified rules will not be the empty set, it is not a foregone conclusion of the public reason project that things will work out so smoothly (Gaus 2011, 323). Indeed, in Rawls's initial attempt at the public reason project he often says that the existence of an overlapping consensus on a shared system of rules is a mere hope, not something to be taken for granted (Rawls [1993] 2005, 40, 65, 172, 246, 252, 392).

The purveyor of the JFC might have a response to our Hayekian critique: they are not claiming that there is *no* member of *R* that could pass the public justification test. For—they might grant after a quick study of Hayek—such a set could not fully be enumerated. Rather, the critic of public reason may simply say that there is no member of a *particular subset* of *R* that could pass the public justification test, where such a subset is determined by the theorist. Compare here to how Rawls specifies those menu options deliberators confront in the original position. Though "ideally of course one would like to say that they are to choose among all possible conceptions of justice," Rawls notes that "an obvious difficulty is how these conceptions are to be characterized so that those in the original position can be presented with them" (Rawls 1971, 122). Because one cannot possibly list all possible conceptions of justice, Rawls presents a limited menu of options and argues that justice as fairness is best among that menu. Similarly, those putting forth the JFC might take a limited subset of *R* and merely say that no member of that subset can satisfy the public justification principle. Call this the *modified JFC*.

Now whether the modified JFC is a successful criticism of public reason depends on just how extensive the subset on *R* is. If the subset is very limited then the modified JFC looks like a strawman; it looks as though the subset was constructed just to get the result the critic of public reason intended. (Imagine here the reactions to Rawls's theory of justice if utilitarianism was not included on the menu presented to deliberators.) But the modified JFC need not be so weak. To see why, let *R** be the set of all rules that we currently see implemented in liberal societies, or could plausibly imagine being implemented in liberal societies in the near future. It could very well be—as some convincingly argue—that for every member of *R** there exists a member of *E* capable of justifiably rejecting it. Now *this* is certainly a worrying criticism the public reason liberal must address. Though Hayek's insights suggest there may be rules not in *R** yet still in *R* that we have not yet discovered that could satisfy the public justification principle, this is surely not a resounding response in the face of our modified JFC.

IN SEARCH OF JUSTIFICATION: THE EPISTEMIC TURN

At first glance Hayek's thesis concerning the necessary limits of our knowledge may lead one to despair: after all, such knowledge seems both helpful and desirable for an optimally functioning social order. Yet, if Hayek is right, then no one person or group of persons can ever achieve such knowledge—it is something that simply cannot be done. But though *individuals and groups* cannot possess and thus make use of the knowledge presumed by the rational constructivist in her social theory, *society* can still make use of dispersed knowledge and currently undiscovered knowledge to facilitate harmonious social life.

In fact, Hayek tells us that *the* economic problem every society faces is how to organize itself to make use of our dispersed knowledge and the currently unknown: "to put it briefly, it is a problem of the utilization of knowledge which is not given to anyone in its totality" (Hayek [1945] 2014, 94). Societies can do better or worse jobs of discovering and utilizing this knowledge through different institutional arrangements: different institutions will vary in terms of how well they discover what is unknown, incentivize persons to reveal what it is they and only they know, and aggregate dispersed knowns to yield information essential for cooperative social life.

For Hayek, then, the fact that we as individuals face incurable ignorance is thus more a call to arms than cause for despair: it "raises for a competitive society the question, not how we can 'find' the people who know best, but rather *what institutional arrangements* are necessary in order that the unknown persons who have knowledge specially suited to a particular task are most

likely to be attracted to that task" (Hayek [1948] 2014, 108; emphasis added). This is essentially the point Hayek makes in his papers spanning the socialist calculation debate. If we grant ourselves the assumption of omniscience (as most equilibrium models did at the time, and as most defenders of socialist calculation did) then institutions matter little. But, if we admit our incurable ignorance, then we need to select those institutions that best discover and make use of the dispersed and currently unknown.

Inspired by Hayek's call to arms, one possible response the public reason liberal can offer to the modified JFC is as follows: though it may be that there exists no rule in R^* justified to all, there may be a rule in the complement of R^* (that is, a rule in R but not in R^*) that *is* justified to all that we have simply not yet discovered. To make this a compelling response, however, the public reason liberal must give some account of how we do indeed find such a rule. The public reason liberal cannot merely assert that there may indeed exist a rule in the complement of R^* satisfying their justificatory demands. To be convincing, they must identify some kind of mechanism by which such a rule can be discovered.

Relevant here is the growing literature on epistemic approaches to democracy (Anderson 2006; Estlund 2008; Knight and Johnson 2011; Landemore 2012; Ober 2008, 2013). Epistemic approaches to democracy hold that, when compared to other methods of social choice, democratic institutions are more likely to select the "best" or "correct" choice from the set of available options. As Hélène Landemore notes in her important work on epistemic democracy, epistemic democrats are committed to *political cognitivism*, which says that (i) there exists a procedure-independent standard of correctness for evaluating social choices and that (ii) we can know, or at least get some grasp of, this standard (Landemore 2012, 208). Now the assumption of political cognitivism might seem at odds with the idea of public reason, for political cognitivism seems to imply some kind of robust moral realism, whereas the public reason liberal holds that standards of right ultimately lie in the commitments of individuals—in short, what these individuals have reason to endorse. Yet we need not interpret political cognitivism's procedure-independent standard as being determined by some kind of controversial notion of moral truth. Rather, such a standard can "take for granted a given set of values shared by a community and take this as the touchstone of 'correct' political judgments" (Landemore 2012, 217). Public reason liberals can thus endorse an epistemic account of democracy insofar as democratic institutions are more likely to find rules justified to all when compared to other methods of social choice. It is democratic institutions, the public reason liberal might insist, that will find us rules in the complement of R^* satisfying the public justification principle.

According to Melissa Schwartzberg's thorough review article, there are three broad approaches in the current epistemic democracy literature detailing

mechanisms for finding such rules (Schwartzberg 2015, 196). First, some epistemic democrats appeal to the *Condorcet jury theorem* which holds that, if certain conditions obtain, then as the size of a collectivity increases the likelihood of the collectivity selecting the correct answer to some binary proposition approaches one (Condorcet 1785). Or, the *miracle of aggregation* holds that, when we average a collectivity's estimates of some scalar value then—again, so long as certain conditions obtain—as the size of the collectivity increases the likelihood of the collectivity selecting the correct value approaches one (Galton 1907). Finally, many appeal to Lu Hong and Scott Page's *diversity trumps ability theorem*, which says that groups of diverse yet less-capable problem solvers can outperform homogenous yet more-capable problem solvers so long as certain conditions are met (Hong and Page 2001, 2004 Page 2007). The Condorcet jury theorem and miracle of aggregation are both voting-based epistemic mechanisms: it is the simple casting of a vote or estimation of a value that leads to the collectivity finding rules justified to all. The Hong-Page theorem, however, models the epistemic properties of deliberation. Here, it is democratic discourse that finds rules satisfying the public justification principle. Most epistemic democrats argue in defense of the epistemic properties of democracy by appealing to some combination voting and deliberation. It is thus an overall democratic structure, then, that the public reason liberal might appeal to in the face of the modified JFC.

Though the epistemic democracy literature is optimistic that democratic institutions can produce better outcomes—in our terms, find rules in the complement of $R*$ that satisfy the public justification principle—there are many who doubt this. Indeed, some think the exact opposite is true: that democratic institutions are quite bad at producing good outcomes. The main claim that such detractors make is that we should expect widespread ignorance to be the norm in a democracy: the costs of acquiring information and becoming informed radically outweigh the benefits of being an informed voter and participant in democratic discourse (Brennan 2016; Caplan 2007; DeCanio 2014; Downs 1957; Pincione and Tèson 2006; Somin 2016). Because of this widespread ignorance it is hard to see how mere discourse and aggregation will produce desirable results; we have a simple case of garbage in, garbage out. Since this is so we should expect democracies to make quite bad decisions, casting doubt on the supposed desirable epistemic properties epistemic democrats claim such institutions possess.

These two literatures are, I think, talking past one another. The epistemic democrats do indeed highlight mechanisms by which democratic institutions can make good decisions—the Condorcet jury theorem, the miracle of aggregation, and the Hong-Page theorem are all mathematical results whose logical verity are beyond doubt. The detractors, however, essentially point out that (i) the mechanisms cited rely on specific behavioral assumptions—that

voters and participations in deliberation possess some minimal threshold of epistemic competence—but (ii) democratic institutions do not *incentivize* persons to actually satisfy these competency requirements. As example, the classical model of the Condorcet jury theorem says that if voters have a better than equal chance of being right and if they vote independently then as the size of the group increases the chances of a simple majority voting procedure selecting the correct answer approaches one. To which the detractor responds: persons in the democratic process are not incentivized to have a better than equal chance of being right, nor are they incentivized to vote independently.

It is not enough, then, that the public reason liberal highlight a mechanism by which rules satisfying the public justification principle in the complement of R^* be found. The public reason liberal must also show that this mechanism is *incentive-compatible*. This, again, is a lesson Hayek teaches us. He notes that we seek "a social system which does not depend for its functioning on our finding good men for running it, or on all men becoming better than they now are, but which makes use of men in all their given variety and complexity, sometimes good and sometimes bad, sometimes intelligent and more often stupid" (Hayek [1946] 1980, 12). The epistemic democracy literature gives us proposed mechanisms for finding publicly justified rules, but one that requires persons behave very differently than they currently do. In other words: we have not yet adequately addressed the modified JFC.

COMPETITION AND MORAL ENTREPRENEURS

Here is where things currently stand. The modified JFC says that there is no rule in the set R^* that is publicly justified. To adequately respond, the public reason liberal can identify a mechanism by which rules satisfying the public justification principle in the complement of R^* can be found. Yet not only must they identify such a mechanism, but in the last section we saw that they must also show that this mechanism is incentive-compatible—that people will actually be motivated to participate in the proposed method of finding justified rules that respect the freedom and equality of all. Epistemic accounts of democracy fail to satisfy this latter requirement.

One critical tool for discovering the unknown is competition within a market system. By competition I mean those activities engaged in by individuals and firms in hopes of capturing profits. Referencing again the knowledge that no one individual or group of individuals can attain, Hayek argues we should view competition "as a procedure for the discovery of such facts as, without resort to it, would not be known to anyone, or at least would not be utilized" (Hayek [1969] 2014, 304). Noting that competition is an integral component of the market system, we can link up these remarks concerning

the relationship between competition and discovery with what Hayek says more generally about the market's ability to extricate ourselves of our incurable ignorance: "We must look at the price system as such a mechanism for communicating information if we want to understand its real function . . . The most significant fact about this system is the economy of knowledge with which it operates, or how little the individual participants need to know in order to be able to take the right action" (Hayek [1945] 2014, 100).

But how exactly does competition within a market act as a discovery procedure? Here, it is important to distinguish between three different beneficial things the market might do for a society, two of which involve discovering the unknown (Kirzner 1988, 4). First, the market allocates resources to their most efficient uses in a world of scarcity. Here, there is no way in which the market acts as a discovery procedure. Second, the market communicates information from one part of the economy to another. To borrow an example from Hayek, if there is a shortage of tin for some reason—and Hayek emphasizes that it does not matter what the cause of this shortage is—then the market conveys information of this shortage by raising the price of tin (Hayek [1945] 2014, 99). Consumers of tin respond by economizing their use of this resource. Here, the market is acting as a discovery procedure in that it discovers decentralized information concerning the supply and demand of various goods in the economy.

Third, "the price system promotes alertness to and the discovery of as yet unknown information (both in regard to existing opportunities for potential gains from trade with existing techniques and in regard to possibilities for innovative processes of production)" (Kirzner 1988, 4). As an example, disequilibrium prices across a market for a specific good signals a market failure—the fact that gains from trade that could have been captured have been passed by, and that the market has not cleared (Kirzner 1992, 144–146). But more so than merely discovering market failures, the market system— and this is what is most important for our purposes—through its "heady scent of profits" also *incentivizes* the entrepreneur to remedy these failures by using existing technologies or *introducing new technologies* to capture these forgone opportunities (Kirzner [1973] 2013, 178). *This* is the sense of discovery we are most interested in: the ability of the competitive market process to signal failures and the ability of the market system to incentivize the discovery of novel solutions to help remedy these failures through the reward of profits.

Using Hayek's insights concerning the relationship between ignorance and the competitive market process we now see clearly how the public reason liberal can respond to the modified JFC in the face of the failures of epistemic democratic approaches. The modified JFC says that though there *may* be rules satisfying the public justification principle, those rules we currently

know of do not. The public reason liberal can respond by endorsing those institutions that best allow society to discover unknown forms of social organization capable of solving these justificatory failures; and, moreover, those institutions which incentivize persons to actually go out and find such forms of social organization. Following Hayek, the answer lies in setting up a system of governance that relies on competition to achieve these ends: if there is competition in governance, then we incentivize persons to find arrangements justified to all, thereby adequately addressing the modified JFC. Just like entrepreneurs remedying market failures through discovering new technologies, moral entrepreneurs remedy justificatory failures through discovering new rules satisfying the public reason liberal's justificatory demands.

POLYCENTRIC PUBLIC REASON

Now we all know how market competition works when it comes to normal consumer goods—things like bicycles, books, and batteries. It is less clear, though, how we can have market competition in the choice of rules and institutions, which is essentially what the current proposal requires if we are to have competition act as a discovery procedure in the manner described above. Relevant here is the literature on polycentric or decentralized forms of governance. Polycentricity perhaps received its clearest exposition in a piece by Vincent Ostrom, Charles M. Tiebout, and Robert Warren examining metropolitan governance. The authors begin by noting that metropolitan governance usually consists of "overlapping jurisdictions" of authority, "duplication of functions" concerning the provision of public goods and services, and "many centers of decision making that are formally independent of each other" (Ostrom et al. 1961, 831). This is opposed to monocentric or "gargantuan" approaches to governance, where authority, decision making, and the provision of public goods and services are limited to one single governance unit, such that this one single unit's jurisdiction does not overlap with any other unit's jurisdiction. Importantly, when governance jurisdictions and functions are broken up and dispersed in a polycentric as opposed to a monocentric order, a market mechanism is induced over the provision of these public goods and services: "Patterns of competition among producers of public services in a metropolitan area, just as among firms in the market, may produce substantial benefits by inducing self-regulating tendencies with pressure for the more efficient solution in the operation of the whole system" (Ostrom et al. 1961, 838). Because of this, "much of the flexibility and responsiveness of market organization can be realized in the public service economy" (Ostrom et al. 1961, 839).

Let us try to make this notion of polycentricity more precise. Following Paul Dragos Aligica and Vlad Tarko, we can say that polycentric orders consist of the following three basic features:

Multiplicity of Decision Centers, where there are distinct units of governance that compete with one another.

Overarching System of Rules, which defines the limits of a polycentric governance system and specifies how separated governance units relate to and interact with one another. (Aligica and Tarko 2013, 737)

and

Spontaneous Order, which is the result of the polycentric order, generated by competition among competing governance units. (Aligica 2014, 58)

The multiplicity of decision centers is the defining feature of polycentric governance structures: instead of a single set of rules coming from a single centralized authority, there are multiple sets of rules coming from multiple authorities. Competition among such sources of authority is what induces the discovery procedure that, we saw in the section above, Hayek emphasizes in his analysis of markets. The overarching system of rules not only serves to define what is and is not part of a polycentric order, but also how different units of governance within the order must relate to and interact with one another—think here of how property rights in traditional markets define what persons in such a market may or may not do. And finally, the spontaneous order element characterizes the resulting states of affairs produced by polycentric orders: they are the result of human action, but not of human design.

Competition among different jurisdictions of authority in polycentric orders helps to resolve our justificatory failures through the use of experimentation and learning: novel ways of organizing our social and political lives can be tried out (which persons may or may not decide to sort themselves into), and the results of these experiments can inform other communities how they ought to organize their social and political institutions. This is something Aligica notes in his work on polycentricity. He writes:

If experimentalism is a central issue . . . then one can hardly think of a better arena of experimentation than polycentricity. It is a system of reciprocal monitoring and assessment in dynamic interdependence. The various units and decision-making centers depend on each other or compete with each other or both. They must stay informed about (and be prepared to adjust to) the evolutions of other units. (Aligica 2014, 66)

As an example, if governance unit g_2 thinks that many are unhappy with the current rules in governance unit g_1—many residing in g_1 live according to rules they deem unjustified—then governance unit g_2 can implement a set of rules that has never been tried out before in order to get some of those residing in g_1 to switch over to g_2. This is where the desirable effects of experimentation come in. Suppose g_2 actually does this and is successful: many dissatisfied in g_1 move to g_2 which has rules they deem to be justified. Then, other governance units in a similar position to g_1—those who, like g_1, harbor many citizens who think the current set of rules fails to be justified—might then take a similar approach to g_2 in order to keep their citizens from emigrating over to g_2. This is where the desirable effects of learning come in.

The idea of polycentricity and competition in governance might initially seem a bit foreign to many political philosophers, but upon a second glance it should not. Robert Nozick's framework for utopia, I think, mirrors closely what an ideal polycentric order looks like, though there are certainly some deviations. According to Nozick's vision, "There will not be one kind of community existing, and one kind of life led in utopia. Utopia will consist of utopias, of many different kinds of divergent communities in which people lead different kinds of lives under different institutions" (Nozick 1974, 311–312). Chandran Kukathas's vision of a liberal order given in *The Liberal Archipelago* also resembles closely polycentricism. Kukathas offers a vision of "a society of societies which is neither the creation nor the object of control of any single authority; though it is a form of order in which authorities function under laws which are themselves beyond the reach of any singular power" (Kukathas 2003, 3).

Not only are polycentric forms of governance held as ideals in political philosophy, but the idea is being employed more frequently in the public reason literature as well. Gaus, for instance—quite independent of the current claim that polycentric orders have discovery mechanisms important for the public reason project—argues that given the sheer diversity we confront in contemporary societies, the only way for rules to be justified to all is to fracture ourselves into different communities that can be tailored to suit our heterogeneous preferences (Gaus 2016, 184–187). As another example, I have recently argued that once we admit that reasonable people disagree about not only the good but also the right, the only way of satisfying all the normative criteria Rawls employs when appraising different models of social order is by endorsing a polycentric model of governance, *contra* most the current literature (Kogelmann 2017).

To end we consider two objections to our proposed polycentric solution to public reason liberalism's justificatory failures problem. First, it might be argued that (i) though polycentricity is perhaps our best hope of uncovering rules that are justified to all through a competitive process, (ii) there is no

guarantee that persons will actually sort themselves into those communities regulated by the rules they deem to be justified. As an example, Althea may live in governance unit g_1 regulated by rules she deems unjustified *even though* governance unit g_2 is a regulated by rules she does deem to be justified. It is easy to see how this might occur: though my optimal rules are in Texas, I have compelling work-related reasons to live in Washington, DC. There are two responses to this objection. First, it should be noted that if the current proposal can help at least find rules justified to all *even if* persons do not end up living under such rules then the current proposal will have taken us further than any other proposal has. This is certainly desirable progress. And second, the suspect nature of living under rules one does not deem justified intuitively seems reduced when one *does* have the option of living under rules one does deem justified. Consider an example. If one is a celiac then being forced to eat gluten is intuitively bad. Yet if one is a celiac who eats gluten when a gluten-free option is available then, though this is still undesirable, it seems less bad than the first case we considered, where no such option is available.

As a second objection, it might be argued that (i) in order for public reason liberals to endorse polycentricism to solve their problems it must be the case that (ii) polycentrism itself is justified to all, yet (iii) it is unlikely that (ii) is true. Now there is something important to this objection, but as it currently stands it seems mistaken. The public reason liberal holds that the demands of freedom and equality require that persons live according to rules they deem justified. In a polycentric order, though, there will be many communities composed of many sets of rules that persons do not live under: if Althea lives in governance unit g_1 she will not be subject to governance unit g_2's rules. So it is wrong to think that the public reason liberal must show that polycentricism *itself* is justified to all: why think that g_2's rules must be justified to Althea when she is not subject to the demands of such rules? But the public reason liberal must still show that the rules persons do in fact live under—in the jurisdictions they reside in and are thus subject to—are indeed justified to them. Now the very point of polycentricism is to introduce market-like competition so jurisdictions can experiment with rules that persons may find justified. So polycentricity increases the likelihood of this happening when compared to current proposals in the literature. But recall one of the defining features of polycentricity we noted above when discussing Aligica and Tarko's definition of polycentricism: there is an overarching system of rules specifying how different governance units interact with and relate to one another. The major hurdle for the public reason liberal on the current proposal, then, is to show that *these* rules are justified. For *regardless* the jurisdiction one resides in, one is subject to such rules. A fuller defense of the current proposal must offer a resounding response to this worry.

CONCLUSION

This chapter began with a challenge to public reason liberalism, the dominant conception of liberalism in current liberal political theory: it is unlikely that there exist rules capable of satisfying public reason liberalism's justificatory demands. We saw first that the strong version of this criticism rests on untenable knowledge assumptions concerning the theorist's ability to know all possible forms of social organization, something Hayek's work on rational constructivism helped illustrate. A modified version of the criticism, though, suggests it is merely those rules we know of that cannot meet the public reason liberal's justificatory demands.

In response, the public reason liberal can grasp on to Hayek's insights concerning competition and discovery: competition within a market system can help us discover new ways of remedying our current justificatory failures by signaling where and when such failures occur and incentivizing the entrepreneur to find new remedies to these existing problems. We ended by examining just how this might work: in a system where there is competition among governance units, moral entrepreneurs are incentivized to find arrangements justified to all. Endorsing such a system is the public reason liberal's greatest hope of finding a set of rules that help us live better together while also treating persons according to those ideals that are the cornerstone of the liberal order: as persons born both naturally free and naturally equal.

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