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Order Ethics: The Turn towards Polycentric Democracy**

In this essay, I want to challenge the order ethics defense of constitutional democracy by confronting it with two prominent lines of friendly criticism: the anarchist critique by Michael Huemer and the minarchist critique by James M. Buchanan and Ludwig von Mises. A critique by these two approaches seems especially interesting, because both share with order ethics moral as well as methodological commitments. Nevertheless, all three approaches come to very different conclusions with respect to the preferred political order. I will argue that this friendly challenge exposes a conceptual tension in order ethics. In particular, I will argue that order ethics' epistemic commitment is not consistent with its univocal support for constitutional democracy. Since order ethics' epistemic commitment is theoretically more fundamental, order ethics, I argue, needs to give up its support for constitutional democracy in favor of polycentric democracy.

Keywords: Order Ethics, Karl Homann, Constitutional Democracy

Polyzentrischen Demokratie: Eine ordnungsethische Rechtfertigung

Ziel dieses Aufsatzes ist es, die ordnungsethische Rechtfertigung der Konstitutionellen Demokratie zu beleuchten und in Frage zu stellen. Dies möchte ich tun, indem ich Homanns Ansatz mit dem minarchistischen Ansatz von James M. Buchanan und Ludwig von Mises auf der einen und dem anarchistischen Ansatz von Michael Huemer auf der anderen Seite kontrastiere. Die Gegenüberstellung dieser Positionen scheint mir interessant, da die Ansätze trotz weiter Überschneidung in methodologischen und normativen Fragen zu sehr unterschiedlichen Empfehlungen in Bezug auf die politische Rahmenordnung kommen. Dieses Ergebnis deckt, so möchte ich argumentieren, eine konzeptuelle Spannung innerhalb der Ordnungsethik auf. Die Gegenüberstellung legt offen, dass die erkenntnistheoretische Position der Ordnungsethik inkonsistent ist mit ihrer Verteidigung der Konstitutionellen Demokratie. Im Schlussteil des Aufsatzes argumentiere ich, dass die Ordnungsethik, auf Grund ihrer erkenntnistheoretischen Festlegung, ihre Unterstützung der Konstitutionellen Demokratie zugunsten der Polyzentrischen Demokratie aufgeben sollte.

Schlagwörter: Ordnungsethik, Konstitutionelle Demokratie, Karl Homann, Polyzentrische Demokratie, James M. Buchanan

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1. Introduction

Order ethics can be understood as a method for solving normative problems in applied ethics (cf. Mueller/Luetge 2014). In the past, order ethics has been applied to questions of business ethics, educational policy, medical ethics, and many other fields. However, the central subject for order ethics has always been the political order of the nation-state. Questions regarding the rules of modern states are at the heart of the order ethics approach, both theoretically and historically. Karl Homann's *Rationalität und Demokratie* (1988) is one of the central works of order ethics that applies the order ethics approach to the question of political order. One of the main goals of *Rationalität und Demokratie* is defending constitutional democracy from an order ethics point of view. In this essay, I want to challenge Karl Homann's defense of constitutional democracy by confronting it with the critique of the minarchists James M. Buchanan and Ludwig von Mises as well as that of the anarcho-capitalist Michael Huemer.

The essay will proceed in the following order: in the first section, I want to develop Karl Homann's defense of constitutional democracy. In the second and third parts, I will develop the critiques of both anarchism and minarchism. In the fourth part, I want to discuss the nature of these two critiques. I will argue that the three approaches do not disagree on methodological questions and in fact share an evaluative standard. The disagreement – or so I will argue – mainly stems from their conflicting expectations regarding the likely outcomes of the discussed political orders. Although this result would *prima facie* allow for outsourcing the disagreement to the social sciences and move on, I will propose that order ethics, given its own epistemic commitments, needs to proceed differently. One of the central heuristics in order ethics is that the greatest opportunity cost usually consists of yet-undiscovered alternatives. If we take this commitment seriously, there is no reason to believe that this should be any different when it comes to alternative political orders or alternative institutional configurations. The greatest opportunity costs of living under a constitutional democracy with a certain institutional configuration thus likely consist in the opportunity cost of the undiscovered alternatives to the current political order or institutional configuration. In the last section, I will argue that based on its epistemic commitments, order ethics needs to abandon its support for constitutional democracy in favor of a political order that I call polycentric democracy.

2. Order Ethics: Political Philosophy

If we want to understand the justification of constitutional democracy by order ethics, we first need to lay out some of the fundamentals of the order ethics approach.

2.1 Basic Building Blocks

The order ethics approach is different from much of applied ethics and political philosophy in that it is not primarily concerned with questions of ultimate justification, but with working out provisionally justified solutions to real-world problems. Such solutions, from the perspective of order ethics, must be robustly equipped against human errors and weaknesses. Order ethics, more so than most approaches in applied ethics, is concerned with questions of feasibility. *Ought implies can* is the central mantra of Homann's approach to ethics. In the modern world, moral dilemmata should be addressed by rule changes rather through moral pleas and condemnation. The order ethicist, moreover, argues that applied ethics should only propose rules that – under plausible assumptions – could command a high level of compliance. In essence, Homann thus argues, the normative validity of a rule depends on whether a moral rule can solve the moral conundrum it is supposed to solve. In order to solve a given conundrum, the people affected by the moral problem need to view a proposed rule and the social state it is supposed to produce as an improvement to their current status. This is what Homann means by proposing that the normative validity of rule is a function of its incentive compatibility (cf. Homann/Luetge 2002: 257). Only rules that – at least in the mid to long run – are to the advantage of the affected agents will be stable.

Order ethics is then concerned with the question of whether a certain rule could be taken up and command compliance under real-world conditions. The real world, Homann likes to emphasize, is marked by moral pluralism, limited empathy, and resource scarcity. In order to capture these properties of the real-world, order ethics relies on a *homo economicus* model for its feasibility assessments. The idea here is simple: if it can be shown that a certain moral rule would be acceptable in a *homo economicus* analysis, then there is good reason to believe that the particular rule could also be taken up and enjoy compliance in the real world. In order ethics, the *homo economicus* analysis is thus mainly a test-instrument for assessing the desirability of proposed rules in specific situations. To avoid confusion, it should be pointed out that the *homo economicus* model employed by order ethics must be distinguished from the model employed in standard economics. The model employed by order ethics can be characterized by three features: non-tuism, non-satiation, and limited knowledge. A brief explanation is needed for these terms. Order ethics is concerned with cases of conflict. In cases of conflict, different parties typically, but not necessarily, have different desires, goals, or moral commitments. The idea of non-tuism articulates the principle that people tend to pursue their own goals (whatever they maybe) rather than the goals of other people. Non-tuism has the advantage then that it signals that the problem order ethics is concerned with, is value conflict rather than egoism. The criterion of non-satiation as I understand and mean it here is that an individual *ceteris paribus* always prefers more to less. This is an important condition, since order ethics' central strategy for solving moral conundrums is discovering Pareto improvements. A necessary condition for the existence of such an

improvement is that people are actually interested in improving their lots. The third condition is limited knowledge. This condition is self-explanatory. The importance of this condition needs to be stressed. If people would be rational and would possess full knowledge, order ethics would be essentially meaningless. In an important sense, order ethics is about proposing solutions that the agents on the ground have not yet (fully) considered. In a sense, order ethics is about discovering hidden Pareto improvements. These hidden alternatives, moreover, play a particular role in Homann's approach to applied ethics.

This point ties in nicely with another important commitment of the order ethics approach. Order ethics emphasizes the opportunity costs of undiscovered alternatives. In the long term, Homann stresses, the greatest opportunity costs usually consist of not discovering better alternative modes of acting or producing (cf. Homann 1988: 59). This implies that, for the sake of prudence, agents should always think about whether there are alternative ways of acting or producing that they have not conceived of yet. That there are usually better alternatives for every set of actions is an important assertion in Homann's philosophy. This assertion is hard to back up on purely theoretical grounds. The reason for this is that proving that there are always better alternatives presupposes that among other things, we would have very good knowledge of the very things we do not yet know. Even without a detailed argument, it seems plausible that every theoretical argument along these lines would run into a contradiction. What is the justification of the opportunity-cost assertion, then? I believe this assertion should be understood as an empirical hypothesis. History has taught us that human beings have continuously found improvements on their various technologies, and moreover, there seems to be no good reason to think that this process of improvement will stop in the foreseeable future.

Finally, something should be said about the normative criterion at work in order ethics. The normative criterion of order ethics is consent. Order ethics is thus about finding solutions to normative problems that are in the interest of everybody and thus could in principle command unanimous consent. Unanimous consent in order ethics, it should be pointed out, is understood as a regulative ideal (cf. *ibid.*: 193). This means primarily that order ethics is aware of the fact that in reality, few solutions to moral problems, if any, will ever find unanimous consent, but nevertheless, we should aim for it in theory as well as in practice (cf. *ibid.*).

2.2 *From Consent to Constitutional Democracy*

Homann's central thought in justifying a constitutional democracy is that the individual, in a world plagued by scarcity, faces a tradeoff between the costs caused by discrimination and the costs caused by reaching consent. The cost of discrimination can be understood as the costs the individual faces in the case that certain rules legislated by the state are not in his or her own interests. On the other hand, the costs of reaching consensus are time and the opportunity costs of all the beneficial collective decisions that would have been legislated under a dif-

ferent decision rule. Homann argues that in modern societies, most collective actions, especially ones that concern innovations, would have never been undertaken if we strictly adhered to the criterion of full consent. This is because, as Homann argues, there will always be individuals who are very risk-averse, stubborn, or would withhold their own vote in order to strike especially beneficial bargains for themselves (cf. *ibid.*: 170). Homann even claims that modern civilization is so dependent on collective decisions that under the rule of unanimous consent, no civilization would have been developed in the first place (cf. *ibid.*: 171). From the perspective of the individual, it is thus desirable to have a social decision criterion which is less demanding than full consent. More specifically for the individual, the decision criterion in which the combined cost of discrimination and inaction is at the minimum is efficient (cf. *ibid.*: 172). Homann argues that since everybody would benefit from a decision rule below unanimity, then at the stage of social contract, people would unanimously choose a political order (›Organisationsform‹) that reaches collective decision in a way that recognizes the costs of inaction.

On the other hand, Homann sees clearly that every decision rule below unanimity can easily lead to excessive discrimination of minorities or other adverse effects – for instance, vote trading (log-rolling). Democracy as understood by Homann is thus not only a certain decision rule for collective action, but a whole political order consisting of a constitution, civil rights, division of power, rule of law, a free press, etc. (cf. *ibid.*: 173). Even a theory of justice understood as a heuristic can be part of an institutional system that attempts to keep the costs of discrimination in check (cf. *ibid.*: 257). Constitutional democracy understood as a network of political and civic institutions must aim to minimize the sum of two costs: the opportunity cost that arises from political inaction and the cost arising from discrimination. At the same time, Homann concedes that any actual political system of institutions will always have a legitimacy gap.

In the end, Homann's justification of a constitutional democracy can be understood as a syllogism. The conclusion from unanimous consent under the constraining factor of scarcity is constitutional democracy (cf. *ibid.*: 168f.). The goal of constitutional democracy can be furthermore understood as rendering collective action agreeable, which can only be the case if nobody gets discriminated against, and thus all interests are recognized, even if not entirely (cf. *ibid.*: 160).

3. The Minarchist Critique

Minarchism is a political philosophy that in general favors a small state. Although minarchists agree on a night-watchmen-state-like constitution, they often disagree when it comes to justifying a small state. There are three basic ways in which minarchists can justify the small state. The most prominent defense of a small or minimal state was delivered by Robert Nozick. In *Anarchy, State and Utopia*, he defends the minimal state on the basis of a natural rights approach (cf. Nozick 1999). The famous economist Milton Friedman, on the

other hand, relies on a utilitarian defense. The third approach to justifying a small state is contractarianism. Here, the most prominent proponent is surely James M. Buchanan. Other than Buchanan, another author can also be seen as arguing for a small state on a quasi-contractarian basis: Ludwig von Mises. Unfortunately, Mises's defense of classical liberalism is usually misconceived as being either utilitarian or rights-based. Both are, in my opinion, not well-founded and in direct contradiction to Mises's own writings (cf. Mueller 2013).

What is interesting now is that the minarchists Buchanan and Mises share Homann's normative criterion (consent) and methodology (*homo economicus*). They basically disagree with Homann about the opportunity costs of government inaction. In a nutshell, Mises and Buchanan expect that (almost) nothing can be gained by democratic legislation that departs from the night-watchmen state. Classical liberals like Mises and Buchanan hold that almost every social problem can be better solved by the free market or spontaneous social non-political collective action than by democratic legislation. On the other hand, Mises and Buchanan stress the problems of discrimination caused by the political process. Both fear that when a society places a huge emphasis on solving social problems by political means, democracy will necessarily erode. With a slight alteration of a famous passage by Rousseau, the fear of classical liberals can be summed up nicely:

»(When there is an emphasis on solving problems with political means, then) private interests (will) begin to make themselves felt and small associations to exercise influence on the state, the common interest is injuriously affected and finds adversaries; unanimity no longer reigns in the voting; the general will is no longer the will of all; opposition and disputes arise, and the best counsel does not pass uncontested. (...) when the basest interest shelters itself impudently under the sacred name of the public welfare, (...) all, under the guidance of secret motives, no more express their opinions as citizens than if the state had never existed; and, under the name of laws, they deceitfully pass unjust decrees which have only private interest as their end. (...) Each detaching his own interest from the common interest, sees clearly that he cannot completely separate it; but his share in the injury done to the state appears to him as nothing in comparison with the exclusive advantage which he aims at appropriating to himself (cf. Rousseau 1998 [1762]: 106).«

While both Mises and Buchanan would agree with Homann that a constitutional democracy is a desirable political order, both are looking for ways to constrain political action to its bare minimum. Buchanan thus suggests a »constitutional revolution« (Buchanan 2000: 210–213), while Mises thinks that there is only one effective means to decrease political action – namely, ideological change and education (cf. Müller 2011: 191ff.).

Although both Mises and Buchanan share with Homann a normative outlook and a set of methodological considerations, they do not share his expectations about the potential benefits of an active government. Buchanan and Mises would thus both choose a constitution and a political system that restrains government a lot more than what Homann posits. Since Buchanan and Mises also favor a constitutional democracy, the difference between them and Homann is of course one of degrees. To mark that difference, I will call the favored political order by Buchanan and Mises ›restricted constitutional‹ democracy.

4. The Anarchist Critique

In his recent book *The Problem of Political Authority*, Michael Huemer defends an anarcho-capitalist social order.¹ Huemer's book has two main parts. In the first part, he argues based on our common-sense morality that the concept of political authority is void: »No state is legitimate, and no individual has political obligations« (Huemer 2013: 334). In the second part, Huemer asks »the reader to consider a broad theory of how society ought to be organized« (ibid.: 183). In particular, he invites the reader to compare the disadvantages and advantages of an anarcho-capitalist order relative to constitutional democracy. His argument is simply that when comparing the two modes of social organization, our common sense intuition leads us to favor anarcho-capitalism. The comparative evaluation that each individual undertakes will include both moral judgments and considerations of expedience. Huemer argues, »(t)he test of anarchism as a political ideal is whether it can *reduce* the quantity of injustice suffered relative to the best alternative system, which I take to be representative democracy« (ibid. 262f.).

For reaching conclusions about the likely outcome of anarcho-capitalism, Huemer employs a *homo economicus* model. The model of what he calls a »simplified conception of human nature« (ibid.: 187), consists of three important premises: »(h)umans are selfish but not sociopathic« (ibid.: 189), »(h)umans usually know obvious, practically relevant facts about the world« (ibid.: xvi), and »(h)umans are approximately rational« (ibid.: 187).

In his comparison of the two political orders, Huemer concedes that »(t)he democratic process inhibits the worst government abuses« (ibid.: 335). But at the same time, according to Huemer, one must admit that the democratic process »remains imperfect due to widespread ignorance and irrationality on the parts of the voters« (ibid.: 335). Furthermore, *pace* Homann, Buchanan, and Mises, Huemer thinks that »([c]onstitutional restrictions are often impotent, since there is none but the government to enforce the constitution. The separation of power fails because the branches of government can best promote their interests through making common cause in expanding state power rather than protecting the rights of people« (ibid. 335). In the end, Huemer arrives at the conclusion that an anarcho-capitalist system: »one that employs a free market for the provision of security, holds the promise of a safer, more efficient and more just society« (Huemer 2013: 263).

If we compare Homann's and Huemer's approaches, we will find that the normative basis of Huemer's political argument seems to be very close to Homann's. Both argue for a political order that they think would be in the general interest of people as they are. Furthermore, it seems to be no stretch that Homann,

1 The system that Huemer sketches is also referred to as »free market anarchism« or »libertarian anarchism« (Huemer 2013: 232).

Buchanan and Mises, and Huemer all employ approximately the same model of human action and motivation.²

The difference between the three approaches can be summarized as follows: While Homann argues that society could benefit from a government that has considerable freedom to legislate, Buchanan and Mises think that society would gain more if it restricted political action more severely. Huemer agrees that constitutional democracy as proposed by Homann is actually the best political order humans have developed so far, but he challenges us to think of new ways to order society which might be even better.

5. Answering the Critics

What makes the critique of Mises and Buchanan on the one hand and Huemer on the other so interesting is that both share a broad moral and methodological basis with Homann's approach. Since this is the case, the question arises: how is it that all four philosophers come to different – in the case of Huemer, even to very different – conclusions with regards to the question of what the most desirable social order would look like? My take on this question is that the difference between these thinkers is located in their prediction of how the political orders in question would play out. If we view constitutional democracy, restrictive constitutional democracy, and anarcho-capitalism as three machines, all three thinkers disagree on the likely comparative outputs of those machines.

How then should order ethics react to this friendly disagreement on the likely outputs of different political orders? First of all, it should be stressed that order ethics is not committed to a certain socio-economic theory, nor certain socio-economic predictions for that matter, as long as such predictions are compatible with the *homo economicus* model. One possible response would be to conclude that since the disagreement is over an empirical subject, there is no philosophical argument to be made. We should just turn the problem over to the social scientists and wait for a solution. But although this would be the standard approach for much of applied ethics, order ethics has its own resources to productively incorporate the criticism.

As stated earlier, from the perspective of order ethics, the greatest opportunity costs usually consist in undiscovered alternatives. Taking this essential building block seriously, there is no reason to believe that this should be any different when it comes to alternative political orders or alternative institutional configurations of the same political order. The greatest opportunity costs of living under a constitutional democracy with a certain institutional configuration thus likely consist in the opportunity costs of the undiscovered alternatives to the current political order or institutional configuration.

² In the first part of the book, Huemer argues that no existing state is legitimate and that there are no political obligations. In discussing these questions, Huemer employs a certain brand of intuitionism. The argument for an anarcho-capitalistic institutional system, on the other hand seems to be at least compatible with contractarianism.

Before we proceed with the argument, a conceivable defense of Homann's conception should be considered. One could argue that Homann already anticipated this critique when he wrote that the function of democracy is to decrease the costs of collective action by *developing* and *changing the democratic institutions* (cf. Homann 1988: 169; my emphasis). While a charitable reading might conclude that Homann anticipated the critique, one could nevertheless argue that he did not consider the full extent of the challenge.

A political order, as Homann defines it, can be understood as complex arrangement consisting of a set of rights, including for instance property rights, a collective choice mechanism, and some set of background institutions. Based on his particular approach to political philosophy, Homann argues that a particular manifestation of constitutional democracy—the social market economy (*Soziale Marktwirtschaft*) – is the best order. This order consists of a constitution that secures certain basic civil rights, a market economy, democratic elections, and a welfare state that provides a safety net for the less fortunate and at the same time encourages risk-taking and thus economic growth. These are the cornerstones of his favored political order. In my reading, Homann surely agrees that these pillars of society need to adapt to changing times through piecemeal social engineering. Let us call social engineering that is about adapting and enhancing the pillars of the social market economy a search for better institutional arrangements, as opposed to a search for better political orders. Few philosophers would claim that their favored set of institutions, once set up, would never need to be adjusted or to adapt to new and unforeseen challenges or changes in technology. What I want to argue here is that Homann did not take proper account of the possibility that the greatest opportunity costs of social market economy might be undiscovered alternative political orders. For the sake of convenience, let us stipulate that political orders are defined through a certain set of features (or cornerstones), and that two political orders are different if they have at least one different defining feature. Democratic socialism as defended by Rawls (2001) and social market economy, for instance, both share defining features, both rely on a democratic choice mechanism, both secure a set of basic civil rights, and both feature a social safety net. However, they differ with regard to property rights. While a social market economy secures a robust set of private property rights to the means of production, democratic socialism does not. The difference between the political orders defended by Huemer, Buchanan and Mises, and Homann have to do *inter alia* with the role of the government and the provision of publically financed social goods, as explained in the previous sections.³

3 The concept of a political order is, it must be admitted, rather rough. For instance, in many cases, it might become a question of whether a certain change of a defining feature is just an *adaptation* in the sense that the essence of the feature is maintained or whether the change of a defining feature is one that actually alters the very nature of the defining feature and thus alters the political order. For the purposes of the essay, however, I believe the provided exposition suffices.

6. Polycentric Democracy

If we take seriously the heuristic that the biggest opportunity costs most likely reside in the yet undiscovered opportunities, the question arises regarding whether we can find a change in rules that would systematically improve democracies' search for better alternatives in terms of both institutional arrangements and political orders.

To my knowledge, there is very little literature on this question. This might be the case because considerations of opportunity costs are still relatively foreign to political philosophy, and even more foreign are questions regarding the opportunity costs of undiscovered alternatives to the political order.

Even though there is almost no literature that directly addresses this question, order ethics itself has some resources to approach it. Order ethics, more than any other approach in ethics, emphasizes the necessity of open-ended discovery processes for the progress of society. The central mechanism for creating progress in the framework of order ethics is competition under a regulative framework (*Wettbewerbsordnung*). This approach is most familiar with respect to the production of consumer and – by extension – producer goods. The purpose of a free market order is to test hypotheses about what the consumer desires are and what bundle of inputs best realize these diverse consumer desires. Competition under rules, however, seems to be a much more general approach for discovery. What explains the productivity of modern sciences, according to Homann, is again a healthy competition between scientists under a general set of rules that channels the scientific discovery process into a direction that is desirable from a social standpoint. The idea to apply the competition under rules approach to the science, however, goes back to Karl Popper (2002) and Michael Polanyi (1998).

The question then arises of whether and how we can apply the competition under rules approach to the political order. If competition under rules allows us to discover an unending stream of new consumer goods and fuels scientific progress, there is hope that applying the framework to the political order will help us discover better political orders and institutional arrangements.

Aligica and Tarko (2013) provide a useful concept for thinking about competition under rules in a more general way. According to them, we can understand economic order as well as the scientific order, as they pertain in the western democracies, as particular instances of polycentric systems. Polycentric systems can be characterized by three features. Polycentric systems consist of a regulative framework, a multitude of agents, and a competitive process that emerges among these agents. The regulative framework has the purpose of channeling the competitive discovery process in a socially useful direction. In general, the regulative framework can channel the discovery process by regulating the scope of the search space that is traversed by the searching agents as well as the frequency in which the search space is traversed. Think about cancer research. The basic rights secured by modern democracies in addition to a host of legislation that pertains to the medical sector specifically defines what kind of medical research is prohibited and permitted. The basic rights granted to every human being prevent medi-

cal professionals from conducting medical experiments on human beings against their will. Moreover, there is special legislation in most or modern nation-states that prohibits medical professionals from conducting particularly cruel treatments on animals. From an evaluative point of view, modern states make a tradeoff by securing the basic rights of humans and protecting animals from particularly harsh treatments. The tradeoff I have in mind here is the tradeoff between epistemic and moral values. While preventing scientists from undertaking morally impermissible treatments on humans and animals is morally warranted, it comes with an epistemic cost. However, the modern nation-state cannot only adjust the scope of particular search space by introducing new legislation, but it can also influence the rate at which a certain search space is traversed. In other words, the state (or the agency tasked with fine-tuning a certain regulative framework) has certain tools to influence the rate in which new knowledge is produced in specific search environments. For instance, in modern nation-states, the state directly or indirectly subsidizes all kinds of research and puts out grants for startups and artistic endeavors. Of course, the regulative agency can also attempt to reduce the number of searches in a certain environment by introducing entry barriers to a given field.

The idea of a polycentric order can be transferred to the political realm. In order to do this, I will introduce here the idea of a polycentric democracy. A polycentric democracy, as I have explained elsewhere, can be defined as an institutional arrangement involving a multiplicity of decision centers acting independently but under the constraints of a democratically supervised and legitimized framework for institutional competition that restricts externalities.

A polycentric democracy, to put it in the terminology of order ethics, aims at achieving three goals:

1. *Discovering new heights.* A polycentric political system permits different individual and group agents to experiment with alternative ways of organizing subsystems of society and should therefore uncover better alternative institutional arrangements and political orders over time.
2. *Reducing shallow disagreement.* Much disagreement in politics is most likely due to our disagreement over non-normative facts. In a polycentric system, many more socio-economic theories can be tested than is the case in our current democratic systems. Reducing shallow disagreements is paramount for uncovering hidden Pareto improvements.
3. *Defusing deep disagreement.* It is highly likely that not all of our disagreement is ultimately based on non-normative facts. In a polycentric system, people who disagree are allowed to enter politics with more like-minded people.

Order ethics, as mentioned, is much more concerned with questions of implementation than other approaches to applied ethics. Polycentric democracy is a concept, or maybe an ideal, that can be implemented in different ways. A natural way to think about implementing the ideal of polycentric democracy is federalism. In federalism, a central government regulates which margins states or provinces are allowed to compete on. In most modern federal states, however, the

states have little room for experimentation. This is a contingent political fact, though. In principle, states could be allowed to set up their own social security, healthcare, and incarceration systems. Moreover, they could experiment with different forms of taxation, and so forth. Indeed, one traditional justification for federalism is that states could serve as the ›laboratories of democracy.‹

While in principle, a version of federalism in which the individual states possess a great deal of autonomy should indeed be able to discover better institutional arrangements, from the viewpoint of order ethics, this proposal might seem to be simply too utopian. To move from a constitutional democracy to the sketched federal order would be a huge leap. In a world inhabited by people with very different risk profiles, huge institutional leaps, under usual circumstances, are not capable of generating majorities. Since order ethics is much more concerned with feasibility considerations than other approaches to ethics, this objection seems to be lethal. This is a problem, since most of the traditional ideas for implementing polycentric polities are even more radical than the sketched version of federalism (cf. Kukathas 2007; Nozick 1999). This raises the question of whether a way of implementing polycentric democracy is conceivable that might have a better chance of generating an overlapping consensus.

There is, I submit, a conceivable way of implementing the ideal of polycentric democracy that has better chances of meeting the unanimity criterion. Instead of changing the basic structure of society in the direction of a federalized system with semi-autonomous states, modern nation-states could increase the rate of institutional experimentation by permitting or promoting experimental institutional zones (EIZ). The main idea would be to constitutionally assign spatial zones *within* a nation state that are permitted to deliberately experiment with different institutional arrangements or even political orders. In principle, there are two ways of realizing EIZs. First, existing cities could be granted EIZ-status, or as in the famous case of Shenzhen, mostly uninhabited stretches of land could be assigned the status. The latter option has the benefit of allowing for more radical experiments, but it is also much more expensive.

All this has been very tentative and rough. In other publications, I have treated several of the ideas that this article has touched upon in much more detail (cf. Mueller 2017a and 2017b).

For the sake of space constraints, I will confine myself here to pointing out several advantages of the EIZ-approach to implementing the ideal of polycentric democracy and then discuss a few pressing objections.

First, the approach has the advantage that its immediate impact on most of society would be rather negligible. For that very reason, there should be less initial resistance to the EIZ approach, compared to changing the basic structure to a more federalized system. Moreover, it should be stressed that constitutional economists are not alone in thinking about better institutional arrangements. Many other political theorists (and political factions) have thought about political arrangements (different ways of organizing production, different ways of organizing education, etc.) that might be preferable to the status quo. Democratic politics for better or worse is for the most part in a continuous gridlock. Different fac-

tions do their utmost to prevent other factions from implementing or testing their ideas. A world with EIZs, however, might be able to break this gridlock and make use of the creativity of different political factions. In our current world, to use a very simple model, each faction tries to change democracy in its preferred direction. At the same time, each faction tries to prevent every move from the status quo in a direction that does not appear desirable from its own point of view. Given that such factions are in coalitions of roughly equal power, this leads to a permanent gridlock. In the EIZ proposal, on the contrary, faction A might grant faction B the power to test out their favorite proposal in EIZ B, if faction A is allowed to test their proposal in EIZ A.

I conclude by addressing a few questions that this article might have raised.

1. The importance of cities for cultural and social development has recently attracted more and more interest from the community of researchers. At the same time, think tanks have sprung up to develop new ideas of how the concept of free cities and special economic zones could be employed to create economic progress in countries that are stuck in a political deadlock (cf. Khanna 2011: 136). Most famous might be the charter city approach by the economist Paul Romer (2009).

The order ethics approach sketched here is distinct from these approaches in that it addresses another problem. The charter city approach by Paul Romer is mainly concerned with developing poverty-stricken areas. In the order ethics framework, free cities would be a part of a constitutional order that enables epistemic progress through institutional competition. This of course fits in the general argument of order ethics that recommends competition in the realms of economics and science for the very reason that competition enhances knowledge and thus predictably generates value for the whole of society.

2. Institutional economics – even Buchanan himself – has stressed the positive effects of institutional competition and institutional diversity (cf. Buchanan 1995–1996). While it is certainly true that these approaches are related, there is a difference in focus between them. Institutional economists value institutional competition for two reasons. In their view, institutional competition is an important instrument for checking political power. Moreover, it allows people with different preferences for public goods to better meet their particular desires. The approach sketched and defended here is not primarily about checking power, but about discovering better institutions. The difference can best be highlighted if we assume full compliance. Under full compliance – meaning that politicians really do the job they are assigned to do – institutional competition understood as checking political power would be pointless. Under the same conditions, free cities as experimental fields for trying out different institutional sets would still make sense, because the idea behind free cities is discovering alternative choice mechanisms and institutional arrangements.
3. A different criticism might be raised: one could argue that the EIZ-approach would not be able to incorporate anarcho-capitalist alternatives. Of course, a

simple reply would be to concede this point while at the same time pointing out that the free cities approach could test more promising alternatives than any other approach in political theory. But I think one could make an even stronger case that the sketched approach could theoretically test even an anarcho-capitalist social order in one of its EIZs. There seems to be no essential problem with creating a zone in which all affairs are organized by free contract. From the viewpoint of the anarcho-capitalists, a nation-state itself is *prima facie* nothing but another security agency which is in several ways contractually related to the security agencies of the anarcho-capitalist society.

A revised approach of order ethics to organizing the political system – this needs to be stressed – would not conflict with the theories of Huemer, Buchanan, and Mises anymore. On the contrary, the revised approach would view the theories of these and other thinkers as conjectures on how to better organize society and thus as potentially superior alternatives to the constitutional democracy that need to be tested in the interest of all. Of course, testing is not without cost, which implies that the free cities approach needs to say something about how to prioritize test-worthy conjectures about alternative institutional arrangements. Regrettably, this question, as well as many others cannot be answered in this rough outline of the revised order ethics approach to political order.

7. Summary

In the first part of this article, I confronted Homann's defense of constitutional democracy with a friendly critique by Buchanan and Mises on the one hand and the critique by Huemer on the other. The analysis excavated that although all three approaches share important normative and methodological premises, all three approaches come to very different political recommendations: Homann defends a constitutional democracy, Mises and Buchanan propose a constitutional democracy that puts huge emphasis on tying politicians' hands, and Huemer recommends an anarcho-capitalist political order.

The common response to such a disagreement about the likely outcomes of a set of political orders in political theory would be to pass the buck to the social scientists. This response, however, is not open to order ethics. One of the central tenets of order ethics is that the greatest opportunity cost of any given action, plan, or mode of organization usually consists in the undiscovered alternatives. Given this epistemic commitment, I argued, order ethics needs to rethink its dedication to constitutional democracy.

In the final part of the essay, I argued that order ethics has to give up its commitment to constitutional democracy because of its epistemic commitments and embrace polycentric democracy instead. Polycentric democracy is defined as a political arrangement involving a multiplicity of decision centers acting independently but under the constraints of a democratically supervised and legitimized framework for institutional competition that restricts externalities.

The feature that makes polycentric democracy the political system of choice for order ethics, I argued, is that it fits order ethics' epistemic commitments. Polycentric democracy is essentially a *political meta-order* that aims at finding better institutional arrangements and political orders.

Moreover, order ethics in the tradition of Adam Smith believes that rather than taming self-interest by moralizing, we should design systems of rules that employ and channel these drives in a way that furthers the common good. Polycentric democracy can be understood as a political system that is built around this very idea. Rather than suppressing different political ideas, polycentric democracy aims at unleashing political creativity in a way that furthers the public interest.

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